

OFFICIAL REPORT OF PROCEEDINGS**Meeting of 8th December 1965****PRESENT**

HIS EXCELLENCY THE GOVERNOR (*PRESIDENT*)
SIR DAVID CLIVE CROSBIE TRENCH, KCMG, MC
HIS EXCELLENCY LIEUTENANT-GENERAL SIR DENIS STUART SCOTT
O'CONNOR, KBE, CB
COMMANDER BRITISH FORCES
THE HONOURABLE MICHAEL DAVID IRVING GASS, CMC
COLONIAL SECRETARY
THE HONOURABLE MAURICE HEENAN, QC
ATTORNEY GENERAL
THE HONOURABLE JOHN CRICHTON McDOUALL
SECRETARY FOR CHINESE AFFAIRS
THE HONOURABLE JOHN JAMES COWPERTHWAITTE, CMG, OBE
FINANCIAL SECRETARY
THE HONOURABLE KENNETH STRATHMORE KINGHORN
DIRECTOR OF URBAN SERVICES
THE HONOURABLE ALEC MICHAEL JOHN WRIGHT
DIRECTOR OF PUBLIC WORKS
DR THE HONOURABLE TENG PIN-HUI, OBE
DIRECTOR OF MEDICAL AND HEALTH SERVICES
THE HONOURABLE WILLIAM DAVID GREGG
DIRECTOR OF EDUCATION
THE HONOURABLE JOHN PHILIP A'SERAPPA
DISTRICT COMMISSIONER, NEW TERRITORIES
THE HONOURABLE ROBERT MARSHALL HETHERINGTON, DFC
DEPUTY ECONOMIC SECRETARY
THE HONOURABLE KWAN CHO-YIU, CBE
THE HONOURABLE KAN YUET-KEUNG, OBE
THE HONOURABLE SIDNEY SAMUEL GORDON, OBE
THE HONOURABLE LI FOOK-SHU, OBE
THE HONOURABLE FUNG HON-CHU, OBE
THE HONOURABLE TANG PING-YUAN
THE HONOURABLE TSE YU-CHUEN, OBE
THE HONOURABLE KENNETH ALBERT WATSON, OBE
THE HONOURABLE GEORGE RONALD ROSS
THE HONOURABLE SZETO WAI
THE HONOURABLE WILFRED WONG SIEN-BING
THE HONOURABLE MRS ELLEN LI SHU-PUI, OBE
MR ANDREW McDONALD CHAPMAN (*Deputy Clerk of Councils*)

ABSENT

THE HONOURABLE DAVID RONALD HOLMES, CBE, MC, ED
DIRECTOR OF COMMERCE AND INDUSTRY
THE HONOURABLE WOO PAK-CHUEN, OBE

MINUTES

The minutes of the meeting of the Council held on 24th November 1965, were confirmed.

PAPERS

THE COLONIAL SECRETARY, by Command of His Excellency the Governor, laid upon the table the following papers: —

<i>SUBJECT</i>	<i>LN No</i>
Sessional Paper 1965: —	
No 49—Annual Report by the Registrar General for the year 1964-65.	
Penicillin Ordinance.	
Penicillin (and other Substances) (Amendment) Regulations 1965.....	148
Tallyclerks (Licensing) Ordinance.	
Tally clerks (Licensing) (Amendment) Regulations 1965.....	149

QUESTIONS

MR K. A. WATSON, pursuant to notice, asked the following questions:

Your Excellency, would Government agree that the piece of land lying between Murray Barracks Open-Air Car Park and Garden Road, which appears to be reserved for the parking of six cars, is very uneconomically used, bearing in mind:

- (a) That by 11 a.m. there is almost always a queue of cars waiting to use the car park;
- (b) that if the fence were removed at least 20 extra cars could be parked in this area?

Are there any good reasons why this area should not be incorporated in the Murray Barracks Open-Air Car Park?

THE COLONIAL SECRETARY replied as follows:

With your permission, Sir, I will deal with these two questions, which are related, together.

The purpose of the reservation, which was made in 1963, is to ensure vehicle access to the adjacent Government office. The need for such access remains but it is agreed that with the increasing pressure for parking space the reserved area may be over-generous in conditions today. The area will accordingly be re-examined and any portion of it which is not required for its primary purpose will be incorporated in the Murray Barracks Open-Air Car Park.

MR K. A. WATSON:—Your Excellency, may I ask a supplementary question, and that is, is this area meant for access or for parking?

THE COLONIAL SECRETARY: —I said. Sir, the primary purpose is access.

MR K. A. WATSON: —Thank you.

MR K. A. WATSON, pursuant to notice, then asked the following question:

What are Government's immediate plans for relieving the present shortage of parking spaces in and around the Central District?

THE COLONIAL SECRETARY replied as follows:

Sir, pending the adoption of a comprehensive long-term policy for meeting Hong Kong's vehicle parking problems, scope for the *ad hoc* amelioration of the situation is necessarily limited. Nevertheless, further parking space on the central reclamation will be made available as reclamation proceeds. In addition, an examination is now being made to see to what extent it may be practicable to utilize space on the former dockyard site more effectively for this purpose.

MR K. A. WATSON:—May I ask a supplementary question. Your Excellency? Would Government, in addition to these measures, consider as an immediate measure the replanning of the Murray Barracks Open-Air Car Park in order to accommodate more cars in view of the fact that there are excessively wide lanes being left there.

THE COLONIAL SECRETARY: —That can be looked into.

EXPLOSIVE SUBSTANCES (AMENDMENT) BILL 1965

THE ATTORNEY GENERAL moved the First reading of a Bill intituled "An Ordinance to amend the Explosive Substances Ordinance."

He said:—Your Excellency, it is well established, as the Government has declared on previous occasions, that Hong Kong is being used by the agents of a foreign intelligence service as a base for mounting sabotage activities to be carried on elsewhere. This presents a most serious threat to the stability and security of the Colony and the Government has emphasized its determination to stamp out these activities with the utmost rigour.

In furtherance of these activities, substantial quantities of explosives and detonating devices are accumulated here and on a number of occasions during recent years the Police Force has seized some of these explosives and other sabotage material.

In addition to the threat which these activities present to the stability and security of the Colony, they also present a grave threat to the lives of innocent people living here. I regret to say that such is the disregard for the safety of others of persons engaging in these nefarious activities that some of the explosives seized by the Police Force have been found stored under primitive conditions in some of the most densely populated parts of the Colony. It requires no great exercise of the imagination to picture the disastrous consequences of an explosion in such circumstances.

Sir, the manufacture or possession of explosives for use for an unlawful object is of course presently a crime under the Explosive Substances Ordinance, but in view of the gravity of the threat to the stability and security of the Colony, and to the lives of people living here, to which I have already referred, the Government has been considering whether the law should be strengthened. The conclusion is that certain changes are desirable and this Bill seeks to effect those changes.

Sir, in the first place, it is considered that a person should be guilty of an offence if he is found in possession of some thing which proves to be an explosive substance notwithstanding that he did not know that it was an explosive. This is sought to be achieved in subsection (1) of the proposed new section 5. Secondly, that there should be a statutory presumption that a person in possession of anything containing an explosive shall be deemed to be in possession of the explosive therein unless he shows that he reasonably believed that the container was empty or contained something other than an explosive. Subsection (2) of the proposed new section 5 is designed to achieve this effect.

The justification for these new provisions is that experience has shown that there are all too many people in this Colony who, despite the dangers involved, are ready and willing, for gain, to store or look after goods for others, deliberately not inquiring as to, or turning a blind eye to, the nature of the thing that they are storing, an attitude which may well enable them to escape punishment under the Explosive Substances Ordinance because as the law now stands the prosecution must prove that an accused person knew that the thing in his possession was an explosive substance.

In view of the seriousness of the matter, it is considered that the public interest requires that the law be amended to meet the situation. The new provisions which I have mentioned will, I hope, deter people from co-operating in the manner outlined with agents of a foreign power and ensure that he who stores explosives for another does not escape a punishment because he is careful not to inquire or careless as to what it is that he is storing.

Another change in the law which is proposed is to dispense with the necessity, imposed under the existing section 5 of the principal Ordinance, for the prosecution to prove that the circumstances in which an accused person manufactured or possessed an explosive substance were such as to give rise to a reasonable suspicion that he did not make it or possess it for a lawful object. If this Bill is enacted, a person who is proved to have manufactured an explosive or to have been in possession of something which was in fact an explosive will be guilty of an offence unless he, the accused, shows that he made it or had it in his possession for a lawful object. The lawful uses for explosives are few, and anyone who makes or possesses an explosive for a lawful purpose should have no difficulty in establishing his innocence.

Finally, Sir, it is proposed that a court or magistrate hearing proceedings for an offence under the Explosive Substances Ordinance should be empowered to sit in camera on the application of the prosecution on the ground that the publication of evidence to be given in the course of the proceedings would be prejudicial to the public safety.

Sir, in view of the far-reaching effect of the proposed new section 5 it has been considered desirable to make express provision for the consent of the Attorney General to any prosecution under subsection (1) of the new section 5.

THE COLONIAL SECRETARY seconded.

The question was put and agreed to.

The Bill was read a First time.

Objects and Reasons

The "Objects and Reasons" for the Bill were stated as follows:—

In view of the grave dangers to the Colony which arise from the unlawful possession of explosive substances, it is considered necessary to repeal and replace section 5 of the Explosive Substances Ordinance, Chapter 206. The effect of the proposed new section 5 will be that it will be sufficient, to establish a *prima facie* case against an accused person, to show that he made an explosive substance or was knowingly in possession of some thing which in fact was an explosive substance; the accused will be guilty of the offence unless he is able to prove that he made the explosive substance or had it in his possession or custody or under his control for a lawful object.

2. Proceedings under the Explosive Substances Ordinance may often involve the disclosure of highly secret information. Power will, therefore, be conferred on the court by the new section 6A, to be

inserted in the Ordinance by clause 3, to conduct proceedings for an offence under the Ordinance in camera so far as may be necessary to protect the public safety.

APPLICATION OF ENGLISH LAW BILL 1965

THE ATTORNEY GENERAL moved the First reading of a Bill intituled "An Ordinance to declare the extent to which English law is in force in the Colony."

He said:—Your Excellency, section 5 of the Supreme Court Ordinance provides that the laws of England in force on 5th April 1843, shall be in force in Hong Kong, except in so far as such laws may be inapplicable to local circumstances or modified by local law.

This introduction of 1843 English law, in such a wholly general manner, has caused increasing difficulty with the passage of time. It was comparatively easy, a hundred years ago, to find out exactly what the English law was on a given subject in 1843. Today it is no mean task to do that.

Many of the English Acts which were in force in 1843 have long since been repealed in England, and can only be found in old sets of the statutes, and long and tedious research is necessary, to ensure that all the 1843 English law on a subject has been considered.

The object of this Bill is to remove the need, in future, for such prolonged research by providing a list of those pre-1843 English Acts which are henceforth to be in force in the Colony. The list consists only of 70 statutes, although nearly 1800 Acts had to be examined to see if they were in force in 1843 and, assuming that they were, to decide whether or not they served any useful purpose in our law.

As before, common law and equity will continue to apply, so far as applicable to local circumstances and unless modified or excluded by Order in Council, Act of Parliament or local Ordinance.

Clause 4 of the Bill provides that there shall be in force in Hong Kong those English Acts which are listed in the Schedule to the Bill and such other Acts as are applied to Hong Kong by notice of any Act, Order in Council or Ordinance. No English Act which does not fall within the terms of this clause will in future be in force in the Colony.

Clause 5 empowers this Council, by resolution, to delete items from the Schedule, amend items in it, or add to the Schedule pre-1843 English Acts.

It is hoped that this Bill, which has the support of the legal profession in Hong Kong, will be of assistance to those who wish to ascertain precisely what is the law in force in Hong Kong.

THE COLONIAL SECRETARY seconded.

The question was put and agreed to.

The Bill was read a First time.

Objects and Reasons

The “Objects and Reasons” for the Bill were stated as follows: —

English law is in force in Hong Kong by virtue of—

- (a) the express terms or necessary implication of various Acts of the Parliament of the United Kingdom and of Orders of Her Majesty in Council;
- (b) references in Ordinances which import the English law on certain subjects;
- (c) section 5 of the Supreme Court Ordinance (Cap. 4), which provides that the laws of England in force on the 5th April, 1843, shall be in force in Hong Kong, except insofar as such laws may be inapplicable to the local circumstances or may be modified by local law.

2. The terms of section 5 of the Supreme Court Ordinance give rise to considerable difficulties. As time passes, more and more research is necessary to discover what English law was in 1843. And further problems arise when local law is examined to see how far English 1843 law has been modified thereby.

3. It is, therefore, considered desirable that these uncertainties and difficulties should be resolved by declaring, in a Schedule annexed to this Bill, precisely which pre-1843 English laws are in force in Hong Kong and to what extent.

4. Clause 3 of the Bill provides that common law and equity shall apply in Hong Kong, so far as applicable to local circumstances, unless modified or excluded by Order in Council, Act of Parliament or local Ordinance.

5. Clause 4 states that the following Acts of Parliament shall be in force in Hong Kong—

- (a) those Acts which are listed in the Schedule;
- (b) such Acts as apply to Hong Kong by virtue of any Order in Council, any Act or any Ordinance.

6. Power is given to the Legislative Council by clause 5 to delete any item from the Schedule, amend any item in the Schedule, or add to it any pre-1843 English Acts.

7. The pre-1843 Acts listed in the Schedule have been modified in minor respects by post-1843 Acts, mainly to remove archaic wording.

8. It is hoped that this Bill will be of assistance to those who wish to find out exactly what the law in force in Hong Kong is and who now experience considerable difficulty in doing so in relation to pre-1843 English Acts.

CITY HALL (AMENDMENT) BILL 1965

MR K. S. KINGHORN moved the First reading of a Bill intituled “An Ordinance to amend the City Hall Ordinance 1961.”

He said:—Your Excellency, the main purpose of the Bill before honourable Members is to simplify the procedure for the fixing of fees for the hire of units of the City Hall. At present regulations governing the fees for the use of any of the facilities provided in the City Hall or for admission to any part of the City Hall are submitted by the Urban Council for approval by Your Excellency in Council. It is considered that this procedure, which has to be used to alter fees already fixed or to provide for new fees, is both inconvenient and unnecessary. Accordingly, it is proposed, if honourable Members agree, that the Urban Council may fix the fees to be paid for the use of the facilities at, or for admission to any part of, the City Hall, subject to the approval of Your Excellency.

The Bill also provides for the Urban Council to specify the conditions to be observed in the use of any of the facilities provided in the City Hall.

THE COLONIAL SECRETARY seconded.

The question was put and agreed to.

The Bill was read a First time.

Objects and Reasons

The “Objects and Reasons“ for the Bill were stated as follows:—

At present section 4 of the City Hall Ordinance 1961 enables the Urban Council to make regulations to prescribe or provide for the fixing of fees to be paid for the use of any of the facilities provided in the city hall or for admission to any part of the city hall. This procedure involves considerable inconvenience requiring the Urban Council to make regulations each time it is found necessary to alter any fees which have been fixed or to provide for new fees and it is considered desirable that the procedure for fixing fees should be simplified.

This Bill seeks to amend the Ordinance so as to enable the Urban Council to fix such fees otherwise than by regulation. A further amendment to the Ordinance is sought so as to provide that the Urban Council may specify the conditions to be observed in the use of any of the facilities provided in the city hall.

NEXT MEETING

HIS EXCELLENCY THE GOVERNOR: —That concludes the business for today. The next meeting of Council will be held on 22nd December.