

OFFICIAL REPORT OF PROCEEDINGS

Wednesday, 2nd December 1970

The Council met at half past Two o'clock

[MR PRESIDENT in the Chair]

PRESENT

HIS EXCELLENCY THE ACTING GOVERNOR (*PRESIDENT*)
SIR HUGH SELBY NORMAN-WALKER, KCMG, OBE, JP
THE HONOURABLE THE COLONIAL SECRETARY (*Acting*)
MR DAVID RONALD HOLMES, CMG, CBE, MC, ED, JP
THE HONOURABLE THE ATTORNEY GENERAL (*Acting*)
MR GRAHAM RUPERT SNEATH, QC, JP
THE HONOURABLE THE SECRETARY FOR HOME AFFAIRS (*Acting*)
MR DENIS CAMPBELL BRAY, JP
THE HONOURABLE THE FINANCIAL SECRETARY
SIR JOHN JAMES COWPERTHWAIT, KBE, CMG, JP
THE HONOURABLE ROBERT MARSHALL HETHERINGTON, DFC, JP
COMMISSIONER OF LABOUR
THE HONOURABLE DAVID RICHARD WATSON ALEXANDER, MBE, JP
DIRECTOR OF URBAN SERVICES
THE HONOURABLE DONALD COLLIN CUMYN LUDDINGTON, JP
DISTRICT COMMISSIONER, NEW TERRITORIES
THE HONOURABLE JOHN CANNING, JP
DIRECTOR OF EDUCATION
DR THE HONOURABLE GERALD HUGH CHOA, JP
DIRECTOR OF MEDICAL AND HEALTH SERVICES
THE HONOURABLE PAUL TSUI KA-CHEUNG, OBE, JP
COMMISSIONER FOR RESETTLEMENT
THE HONOURABLE RICHARD CHARLES CLARKE, ISO, JP
DIRECTOR OF PUBLIC WORKS (*Acting*)
THE HONOURABLE ERNEST IRFON LEE, JP
DIRECTOR OF COMMERCE AND INDUSTRY (*Acting*)
THE HONOURABLE KAN YUET-KEUNG, CBE, JP
THE HONOURABLE WOO PAK-CHUEN, OBE, JP
THE HONOURABLE SZETO WAI, OBE, JP
THE HONOURABLE WILFRED WONG SIEN-BING, OBE, JP
THE HONOURABLE ELLEN LI SHU-PUI, OBE, JP
THE HONOURABLE WILSON WANG TZE-SAM, JP
THE HONOURABLE HERBERT JOHN CHARLES BROWNE, JP
DR THE HONOURABLE CHUNG SZE-YUEN, OBE, JP
THE HONOURABLE LEE QUO-WEI, OBE, JP
THE HONOURABLE OSWALD VICTOR CHEUNG, QC, JP
THE HONOURABLE GERALD MORDAUNT BROOME SALMON, JP
THE HONOURABLE ANN TSE-KAI, OBE, JP
THE HONOURABLE LO KWEE-SEONG, JP

IN ATTENDANCE

THE CLERK TO THE LEGISLATIVE COUNCIL
MR RODERICK JOHN FRAMPTON

Oath

MR ERNEST IRFON LEE took the Oath of Allegiance and assumed his seat as a Member of the Council.

HIS EXCELLENCY THE PRESIDENT:—We welcome Mr LEE for the first time to our Council.

Announcement by the President

HIS EXCELLENCY THE PRESIDENT:—Under Standing Order No 11(b) I have an announcement to make. The Honourable the Attorney General, Mr ROBERTS, was admitted to hospital this morning. As a consequence, I must apologize to honourable Members for a last minute change in the announced timetable for the Prevention of Bribery Bill. The committee stage of this bill was down for today's sitting and, as Members are aware, notice of a considerable number of amendments at the committee stage had been the subject of notice during the second reading debate, some to be moved by honourable Unofficial Members and some by the Attorney General. This bill and these amendments have been the subject of consultations with the Attorney General personally, who has been the member in charge of the bill. In the circumstances, it has been decided in fairness to all those Members who have been concerned with discussion with Mr ROBERTS, both Officials and Unofficials over a period extending to some 18 months, to postpone the Committee stage of the bill until the next sitting of this Council in fourteen days time. I am sure that honourable Members will wish to join with me in wishing Mr ROBERTS a speedy recovery and a comfortable convalescence.

Papers

The following papers were laid pursuant to Standing Order No 14(2):—

<i>Subject</i>	<i>LN No</i>
Subsidiary Legislation:—	
Rating Ordinance.	
Rating (Forms) (Amendment) Regulations 1970	166
Banking Ordinance.	
Specification of Specified Liquid Assets.....	169
Medical Registration Ordinance.	
Medical Practitioners (Registration and Disciplinary Procedure) (Amendment) Regulations 1970.....	171

<i>Subject</i>	<i>LN No</i>
Resettlement Ordinance. Resettlement (Amendment) (No 3) Regulations 1970	172
Urban Council Ordinance. Urban Council Elections (Procedure) (Amendment) Regulations 1970...	173
Urban Council Ordinance. Urban Council Elections (Registration of Electors) (Amendment) Regulations 1970.....	174
Boilers and Pressure Receivers Ordinance. Boilers and Pressure Receivers (Exemption) Order 1970	175
Revised Edition of the Laws Ordinance 1965. Revised Edition of the Laws (Correction of Error) (No 3) Order 1970.....	176
Sessional Papers 1970-71:—	
No 27—Annual Report by the Director of Information Services for the year 1969-70 (published on 2.12.70).	
No 28—Annual Report by the Director, Royal Observatory for the year 1969-70 (published on 2.12.70).	
No 29—Hong Kong Narcotics Progress Report for the year 1969-70 (published on 2.12.70).	

Oral answers to questions

Yaumatei Typhoon Shelter fire

1. MR K. S. LO asked:—

Will Government reveal whether any investigation has been instituted at the Yaumatei Typhoon Shelter fire last month involving a cargo junk which was set adrift causing devastating fire and panic to other fishing junks anchored inside the Shelter, and what measures does Government propose to take to prevent a repetition of similar occurrence?

THE COLONIAL SECRETARY (ACTING) (MR D. R. HOLMES):—Sir, the Marine Department has carried out a full investigation into the cause of the fire which occurred in the Yaumatei Typhoon Shelter last month.

[THE COLONIAL SECRETARY (ACTING)] **Oral Answers**

It appears that the fire started in a motor cargo junk which was temporarily not manned and was loaded with plastic goods and textiles for export. The fire soon spread and affected twelve craft of various kinds. This fire is thought to have been due to a leak or spillage from the liquid gas container used to provide fuel for cooking; this fuel ignited for some reason which has not been discovered. Fortunately there were no casualties.

I think I should add here, Sir, a word of clarification, or of factual correction, in relation to the wording of the question, in which it is indicated that this vessel was adrift or was set adrift, in the words of the question. The official report does not confirm this. It appears that this junk, prior to the fire, was secured alongside the sea wall inside the Typhoon Shelter adjacent to Cherry Street; in the course of the fire fighting operations, the moorings were cast off and the vessel was taken in tow by a Marine Department launch, which towed it away from adjacent craft and eventually towed it to the fire station in the Government camber nearby, where the fire could be more adequately dealt with.

This incident has highlighted, as my honourable Friend's question implies, the necessity to keep free the fairways and fire lanes in the typhoon shelters. The Marine Department does ensure that these are maintained during normal weather and working conditions but during typhoons and other adverse weather periods Members will be well aware that the typhoon shelters become extremely congested and the situation becomes difficult to control. At the present time the Marine Department, in consultation with other departments, is undertaking a review of the current situation in the typhoon shelters. Safety of craft in the shelters will be one of the subjects covered by the report, which is expected to be completed shortly. After the consideration of this report by the two committees which deal with matters affecting the port, the report will be sent to the Government with recommendations.

The Government is conscious, Sir, of the importance of continually bringing to the attention of operators of small craft, the need to exercise the greatest caution in their operation. In this connexion, the Marine Department has recently published a local engineers' handbook for small craft operators, which is produced both in English and in Chinese, and which has a section on fire fighting and on safety of life.

MR LO:—In view of my honourable Friend's reply to my question, am I correct to assume that the provision of typhoon shelters is not quite adequate at this moment?

THE COLONIAL SECRETARY (ACTING) (MR HOLMES):—No, Sir, I think I am not in a position to confirm that assumption. It is true that shelters become crowded and others, I believe, in due course will be constructed, but I could not assent with this proposition on the information before me. I will, if Mr LO wishes, ask the Director of Marine for an assessment of this aspect of the situation and let the Member have it, Sir.

Evening institutes in the New Territories

2. MR WILSON T. S. WANG asked:—

Has Government any plan to provide evening institutes in the New Territories and is Government aware that in the Sheung Shui rural district it has been claimed that there are large numbers of young workers eager to improve themselves by evening studies but who as yet have no evening institute to attend?

MR J. CANNING:—Sir, Government provides further education in the evenings in the Sheung Shui area, and indeed in the New Territories as a whole, on a considerable scale. In Sheung Shui, by kind permission of the school authorities, Fung Kai Public Middle School accommodates 19 classes of various types, for which some 620 persons have enrolled. There are a few vacancies in these classes. In the New Territories as a whole, 154 classes operate in 26 centres, with a total enrolment of 5,113. I am advised that the number of applicants for courses in the Sheung Shui area does not exceed to a significant extent the number of places available.

MR Y. K. KAN:—Sir, may I ask a supplementary question? The answer given relates to the number of places but I think the question, does it not, deals with evening classes. Does my honourable Friend know whether in fact evening classes are provided for?

MR CANNING:—I am sorry I may not have made myself clear. My answer did seek to indicate that the classes provided were in the evening in this Fung Kai Middle School and in these other classes in the New Territories.

Summer time in Hong Kong

3. DR S. Y. CHUNG asked:—

As summer time is fast losing its popularity in the world, will Government inform this Council whether it has considered the discontinuation of summer time in Hong Kong and, if it has not, what are the reasons?

Oral Answers

THE COLONIAL SECRETARY (ACTING) (MR HOLMES):—Sir, it is the practice in many countries to adopt a legal time system of such a kind that the period of daylight is centred around the hour of twelve noon. However, for most people the middle of the active day falls later in the afternoon and it is generally recognized that there may be advantages in adopting a time system which not only enables people to make the maximum use of daylight for recreation and other activities in the evening but also reduces the cost, both public and private, of artificial lighting. In countries such as Hong Kong which have a dual time system this is usually accomplished by advancing the clock time by one hour during that part of the year when such a change does not give rise to unacceptably dark conditions in the morning.

My honourable Friend has said that Summer Time is fast losing its popularity in the world. Comprehensive information on the present practice in other countries is not very readily available but I am informed that last year about 25 countries had dual time systems with summer time in use for part of the year. It is believed that since 1966 there has, in fact, been a small increase in the number of countries which operate dual systems.

The period during which Summer Time is now in operation in Hong Kong, which is from mid-April to mid-October, was the outcome of a review held in 1964. A review was also conducted in 1968 and this indicated that at that time there was little demand for change. A further review has recently been put in hand and the results of this will be forwarded to the honourable Member when they are ready.

DR CHUNG:—My honourable Friend said in reply to my question "A review was also conducted in 1968 and this indicated that at that time there was little demand for change". How wide a sample of the Hong Kong people was consulted when the review in 1968 was made?

THE COLONIAL SECRETARY (ACTING) (MR HOLMES):—It must be confessed, Sir, that it is difficult to be sure that one has a representative selection of views when a review is carried out of a question of a somewhat vague nature such as this one. I have a note here, Sir, that in the course of this 1968 review the views of Government departments were collected, the few letters which appeared in the press were examined and public views were sought at the same time in the course of the Secretary for Home Affairs' and the District Commissioner, New Territories' contacts with the public. These were all passed to the Secretariat and, when considered together, indicated that there was little demand for a change.

MR H. J. C. BROWNE:—Sir, may I ask a supplementary? In view of the view expressed by the Honourable Colonial Secretary on the desirability of making full use of daylight for recreation, which I think is generally wanted in the community, may I ask if Government would give consideration to keeping summer time all the year round or, failing that, keeping half an hour of summer time?

THE COLONIAL SECRETARY (ACTING) (MR HOLMES):—Yes, Sir, I can give that assurance. It will be known to Members that in the United Kingdom, for example, at the present time the dual system has just been abandoned and one hour of daylight saving is in force through-out the year. I am sure that when the result of the present examination of public opinion on the subject has been completed, the possibility indicated by my honourable Friend can certainly be borne in mind.

Printing department at the Morrison Hill Technical Institute

4. DR CHUNG asked:—

It is understood that the Industrial Training Advisory Committee early this year submitted to Government the proposal of its Printing Industrial Committee for the recruitment of an organizer and the establishment of a printing department at the Morrison Hill Technical Institute. Will Government inform this Council of the present position in this matter and the reasons for the delay in making its decision?

MR CANNING:—Sir, Government has received and taken note of the Industrial Training Advisory Committee's recommendation. The establishment of a printing department at the Morrison Hill Technical Institute would involve a substantial extension of the physical facilities at the Institute and, of course, considerable recurrent expenditure. The recommendation is therefore being considered within the context of the whole question of the extent of Institute provision which, as honourable Members are aware, is receiving close attention at the highest levels. I understand that the main report of the Industrial Training Advisory Committee is at an advanced stage of preparation; the receipt of this report will, I am sure, provide both assistance and impetus towards the taking of these important decisions concerning the establishment of Technical Institutes generally and a printing department in particular.

DR CHUNG:—Sir, I am very much concerned with the reply made by my honourable Friend. Does he imply that no decision on all matters relating to technical education could be made until the main report of the ITAC were available?

Oral Answers

MR CANNING:—Sir, I have merely to indicate my answer that consideration has been given to the establishment of technical institutes and this matter has been considered for some time. It is hoped that when the main report is received from the Industrial Training Advisory Committee it will help expedite this decision making process but that does not mean to infer that decisions on the whole field of technical education are being held up awaiting the report of the Industrial Training Advisory Committee.

DR CHUNG:—Sir, I was informed that the decision on the four technical institutes could not be made

HIS EXCELLENCY THE PRESIDENT:—I think we are going rather outside the scope of your original question, Dr CHUNG.

DR CHUNG:—I am sorry, Sir.

Suspension of Standing Orders

THE FINANCIAL SECRETARY (SIR JOHN COWPERTHWAIT) moved the following motion:—

"That Standing Order No 40 be suspended to permit the presentation to the Council of the Public Transport Services (Hong Kong Island) (Amendment) Bill 1970 without prior publication in the *Gazette*."

He said:—Sir, having obtained your consent I move under Standing Order No 68 the suspension of Standing Order No 40 so as to permit the presentation to the Council of the Public Transport Services (Hong Kong Island) (Amendment) Bill 1970 without prior publication in the *Gazette*.

I must express apologies for the proposal to introduce this bill without proper notice. This has become necessary because of the following sequence of events. In 1969, Council passed the Public Transport Services (Kowloon and New Territories) (Amendment) (No 2) Bill which provided that the royalty payable by the Kowloon Motor Bus company be reduced from 20% to 15% of gross receipts and that the rate should in future be variable by resolution. Nothing was done at that time in respect of the China Motor Bus Company's royalty.

Then, with effect from 8th April 1970, it was provided that the franchised bus companies should pay fuel duty and licence fees on the same basis as other road users. This, of course, substantially altered

the commercial position of the companies. On the same day, the Acting Financial Secretary introduced a resolution reducing the Kowloon Motor Bus Company's royalty to nil. In doing so, he said that the China Motor Bus Company was also affected by these changes in taxation and by increasing costs. At this stage a bill permitting the China Motor Bus Company's royalty to be amended by resolution was already in draft and had been approved by the Governor in Council for introduction into this Council. It was decided, however, to defer this bill pending consideration of the China Motor Bus Company's application for a reduction in royalty, which was believed to be imminent, so that, as in the earlier case of the Kowloon Motor Bus Company, it could include whatever initial reduction in the rate of royalty it was agreed should be made.

Consideration of the company's formal application, which was not received until 14th July this year, has taken longer than expected. It was perhaps not dealt with as quickly as was desirable but one factor in the delay was apparently a belief on the part of those dealing with the matter that the bill providing for changes in the rate of royalty by resolution had been enacted and that the change could therefore be introduced at any time by that shorter process; although, in fact, as the bill is drafted, it would not have been possible, even if it had been enacted, to use the resolution procedure after 30th June, that is, after the company's application, because of a restriction in it on the retrospective effect of variations in royalty.

The matter has now unfortunately become extremely urgent as, under the Companies Ordinance, the company must publish its accounts and hold its Annual Meeting before the end of 1970 and it is obviously desirable that any change in the rate of royalty for the year 1969-70 should be decided before these events.

We considered a variety of possible procedures whereby the change could be accomplished in time and came to the conclusion that the best course would be to proceed to introduce the draft bill today and then propose amendments at the Committee stage—on the assumption that we reach that stage—on 16th December introducing a specific reduction in royalty with retrospective effect. Hence the necessity of the motion I now move.

Question put and agreed to.

Government business

First reading

ROYAL HONG KONG REGIMENT BILL 1970

ROYAL HONG KONG AUXILIARY AIR FORCE BILL 1970

CRIMINAL PROCEDURE (AMENDMENT) BILL 1971**MAGISTRATES (AMENDMENT) BILL 1971****LAW REFORM (MISCELLANEOUS AMENDMENTS) BILL 1970****LAW REVISION (MISCELLANEOUS REPEALS) BILL 1970****LI PO CHUN CHARITABLE TRUST FUND (AMENDMENT) BILL 1970****INLAND REVENUE (AMENDMENT) BILL 1971****PUBLIC TRANSPORT SERVICES (HONG KONG ISLAND) (AMENDMENT) BILL 1970**

Bills read the first time and ordered to be set down for second reading pursuant to Standing Order No 41(3).

Second reading**ROYAL HONG KONG REGIMENT BILL 1970**

THE COLONIAL SECRETARY (ACTING) (MR HOLMES) moved the second reading of:—
"A bill to provide for the establishment of the Royal Hong Kong Regiment."

He said:—Sir, the Hong Kong Regiment and the Hong Kong Auxiliary Air Force are at present raised and maintained as units of the Royal Hong Kong Defence Force under the powers granted by the Royal Hong Kong Defence Force Ordinance.

At the meeting of this Council on 8th August 1962, when moving the first reading of the Royal Hong Kong Defence Force (Amendment) Bill 1962, which provided for the abolition of the post of Commandant of the Royal Hong Kong Defence Force and for the disbandment of the Force Headquarters, and which recognized the administrative separation of each of the major units of the Force, the then Colonial Secretary announced that it was proposed in due course to introduce legislation to establish each of the principal units of the Force as a separate entity.

The purpose of the bill now before Council, Sir, and of the next bill on the agenda, is to complete after what I must admit is a considerable lapse of time, the formal process of disbanding the Royal Hong Kong Defence Force, and to establish the two remaining constituent units of the Force, known as the Hong Kong Regiment and the Hong Kong Auxiliary Air Force, as separate legal entities.

Honourable Members are aware that the Hong Kong Defence Force was established as a tri-service force in 1949, and that in 1951 His Majesty King George VI, to mark the gallantry of members of the Hong Kong Volunteer Defence Corps during the hostilities in 1941, conferred the title "Royal" on the whole force. I am sure that Members will note with pleasure that Her Majesty the Queen has agreed, upon their separate establishment, that the title "Royal" may be used by both Units as the joint descendants of the Hong Kong Volunteer Defence Corps.

The two bills are very similar in form and content, the main variation of substance being a slight difference in the extent to which the respective regular Service Commanders are concerned with the day-to-day administration of the two units. Both bills in most respects follow closely the existing provisions of the Royal Hong Kong Defence Force Ordinance; in particular the provisions relating to call-out, the payment of pensions and discipline when called out or undergoing training, largely re-enact the existing Legislation.

By clause 19 of each bill, which is new, officers and members are for the first time given a right to appeal to the Full Court against conviction or sentence by court-martial. A similar right of appeal to a civil court now exists for members of the regular forces.

The new sub-clause 24(2) seeks to protect members of the Regiment from being penalized in their regular employment as a result of performing duties as members of these auxiliary forces. Under this provision an employer would commit an offence if he penalized an employee, for example, by the reduction or deduction of wages or salary, or by way of dismissal, for performing duty as a member of the Regiment. Similar provision is made in the bill relating to the Auxiliary Air Force. This type of protection for members of volunteer forces is included in similar legislation in other territories. However, I am happy to say that in fact in our experience employers generally are responsible, helpful and co-operative in their attitude towards auxiliary service, and I envisage that it would very rarely be necessary to resort to the use of this clause. Sub-clause 24(3) makes it clear that while an employer may not penalize an employee for doing his duty in the Regiment he is under no liability to pay wages or salary to an employee in respect of periods during which he is absent from his regular employment for the purposes of auxiliary service. I should add, Sir, that those matters which still concern both units jointly, such as the Volunteer Centre, will continue as before to be administered by the Committee of Commanding Officers.

In conclusion, Sir, since under this bill the Royal Hong Kong Defence Force will finally be formally disbanded, I am sure that you, Sir, and honourable Members will agree that it is appropriate that I

[THE COLONIAL SECRETARY (ACTING)] **Royal Hong Kong Regiment Bill—
second reading**

should take this opportunity of paying tribute to the many men and women who have served the community as members of that force during the past twenty-one years. I am sure too, Sir, that we may rely on the new Royal Hong Kong Regiment (now formally known by its traditional name "The Volunteers") and the Royal Hong Kong Auxiliary Air Force to carry on the high traditions of their predecessors.

Question put and agreed to.

Bill read the second time.

Bill committed to a committee of the whole Council pursuant to Standing Order No 43(1).

Explanatory Memorandum

The purpose of this Bill is to provide for the establishment and maintenance of a regiment to be known as the Royal Hong Kong Regiment. At present the Regiment is part of the Royal Hong Kong Defence Force and it is considered that as the Regiment now functions quite independently of the other unit of the Defence Force, namely the Hong Kong Auxiliary Air Force each should be regulated by a separate Ordinance.

2. Clause 3 gives the Governor power to raise and maintain a force to be known as the Royal Hong Kong Regiment (The Volunteers). This title has received Her Majesty's approval. This clause also provides that the Regiment shall be maintained from public funds and specifies the categories of persons who will comprise the Regiment.

3. Clause 4 provides for the command of the Regiment and clause 5 deals with commissioned officers.

4. By clause 6 persons of any nationality may be enlisted as volunteers. The strength of the Regiment will be decided by the Governor under clause 7.

5. The duties of the Regiment are to defend the Colony, to maintain order and such other duties as the Governor may direct (clause 8).

6. Clause 9 provides that if an officer or member of the Regiment is serving or training under regular army officers, such officers shall have the same disciplinary powers as officers of the Regiment. However officers of the Regiment will not have disciplinary powers over regular army personnel, who would remain subject to the Army Act.

7. Clauses 10 and 11 permit a volunteer to quit the Regiment if he gives 28 days' notice and returns all equipment and clothing issued to him. He may not do so while the Regiment is called out except with the Governor's consent and if the Commanding Officer refuses to strike him off the list he will have a right of appeal to the Governor. Clause 10 also provides for payment of a penalty by volunteer who quits before his period of service has expired.

8. Clause 12 allows the Governor to disband the Regiment or any part of it and to dispense with the services of any member.

9. Clause 13 provides the procedure to be followed if the Governor calls out the Regiment on active service and follows the provisions of the Royal Hong Kong Defence Force Ordinance. In such an event, an officer and member must report as directed by the Commanding Officer and will be guilty of desertion if, without reasonable excuse, he fails to comply with such direction. The Commanding Officer may stand down any member who has been called out and may direct him to report back after a stand down.

10. Clause 14 empowers the Service Commander, who is the Commander, Land Forces, Hong Kong, to make a limited call out of the Regiment or any part of it, with the approval of the Governor.

11. Clause 15 is similar to the existing provision, contained in the Royal Hong Kong Defence Force Ordinance, for the award of a pension to members of the Regiment who are injured or become ill as a result of service. A Pensions Board decides whether or not the injury or illness is attributable to such service. Subclause (2) provides for the award of a pension to a dependant of a member who loses his life while on active service or in training. The pension will be as provided in the Royal Warrant which governs the pensions due to members of the British armed forces, and their dependants. The Governor may make regulations for the setting up and operation of a Pensions Appeal Tribunal for the purposes of this clause.

12. A member of the Regiment who is injured on duty may receive free medical and hospital treatment and full pay while disabled (clause 16).

13. By clause 17 the Army Act 1955 and Queen's Regulations, unless otherwise provided in the Bill, apply to the Regiment. This avoids the enactment in Hong Kong of a great amount of legislation which is already available in the Army Act and Queen's Regulations, particularly as regards discipline.

Royal Hong Kong Regiment Bill—second reading*[Explanatory Memorandum]*

14. If a court-martial is required it may be set up in accordance with clause 18. Clause 19 provides for an appeal from a court-martial to be to the Full Court as if it were an appeal from the District Court.

15. The Commanding Officer is empowered by clause 20 to discharge any member, who is not on active service, from the Regiment, for misconduct or any other cause, subject to a right of appeal to the Governor. The clause also provides for the arrest and detention of a member who has committed an offence against the Ordinance.

16. Clause 23 allows a member who has a complaint regarding any matter to present it to the Service Commander, and, if not satisfied with the manner in which the complaint has been dealt with, to the Governor.

17. Clause 24 creates an offence of obstructing a member of the Regiment in the performance of his duties. Subclause (2) is new and provides that if a member is required to perform duties as a member of the Regiment, his employer shall not penalize him for doing so by reduction of salary or by dismissing him.

18. Clause 26, 27 and 28 contain provisions relating to service property. A member who misapplies or fails to account for property in his charge will be guilty of an offence and liable to make good any loss. Clause 26 is in addition to section 44 of the Army Act 1955, which provides for a penalty such as reprimand or dismissal after conviction by a court-martial for offences in relation to service property.

19. Clause 29 modifies the Army Act and Queen's Regulations in their application to the Regiment.

20. Clause 32 sets out the matters for which the Governor may make regulations and clause 33 allows the Service Commander to make standing orders of a routine nature.

ROYAL HONG KONG AUXILIARY AIR FORCE BILL 1970

THE COLONIAL SECRETARY (ACTING) (MR HOLMES) moved the second reading of:—
"A bill to provide for the establishment of the Royal Hong Kong Auxiliary Air Force."

He said:—Sir, as I explained, when moving the second reading of the previous bill, the purpose of this bill is to make similar and

appropriate provision for the Royal Hong Kong Auxiliary Air Force on the repeal of the Royal Hong Kong Defence Force Ordinance, and there is nothing further I need in support of the bill.

Question put and agreed to.

Bill read the second time.

Bill committed to a committee of the whole Council pursuant to Standing Order No 43(1).

Explanatory Memorandum

The purpose of this Bill is to provide for the establishment and maintenance of an auxiliary force to be known as the Royal Hong Kong Auxiliary Air Force. At present the Force is part of the Royal Hong Kong Defence Force and it is considered that as the Force now functions quite independently of the other unit of the Defence Force, namely the Hong Kong Regiment, each should be regulated by a separate Ordinance.

2. The Bill, however, follows the provisions of the Royal Hong Kong Regiment Bill, which is published simultaneously herewith, provision being made for the different names, ranks and titles involved.

3. The main difference of substance in this Bill as compared with the Royal Hong Kong Regiment Bill is that the Commanding Officer rather than the Service Commander is empowered to make a limited call out (clause 14), to receive complaints from officers and members (clause 23) and to make standing orders (clause 33).

4. The Service Commander, who is the Officer Commanding, Royal Air Force, Hong Kong (clause 2), would, however, assume operational command of the Force in the event of a full call out to active service. Clause 4 so provides.

CRIMINAL PROCEDURE (AMENDMENT) BILL 1971

THE ATTORNEY GENERAL (ACTING) (MR G. R. SNEATH) moved the second reading of:—"A bill to amend the Criminal Procedure Ordinance and to make consequential amendments to certain other Ordinances."

He said:—Sir, this bill contains such parts of the Criminal Law Act 1967 and the Criminal Justice Act 1967 as are thought to be appropriate to our needs here in Hong Kong. They were, Sir, both measures of reform and of some importance.

[THE ATTORNEY GENERAL (ACTING)] **Criminal Procedure (Amendment)
Bill—second reading**

First, Sir, the question of bail. Section 13A, the first of four new sections introduced by clause 3, gives the courts power to attach special conditions to the grant of bail. This section will give statutory authority to a practice of the courts, the validity of which has been doubted.

The proposed section 13B will enable a police officer to arrest, without warrant, a person who has been admitted to bail, if the police officer reasonably suspects that the bailee is likely to break any condition of his bail, or is informed to this effect by one of the sureties. At present a police officer may not arrest a bailee in these circumstances, unless he has first obtained a warrant from the court which granted bail, and this has on occasion gives an absconding bailee the opportunity of escaping from Hong Kong.

Next, Sir, indictments. Clause 4, reproduces section 2 of the Administration of Justice (Miscellaneous Provisions) Act 1933, and sets out the circumstances in which an indictment may be preferred. It also makes it clear that a person who is committed for trial for one offence may be charged with other offences which are justified by the evidence contained in the depositions.

Next, Sir, pleas and findings of guilt. Clause 5 replaces the present section 51 with two new sections, the first of which contains a number of provisions dealing with the taking of pleas from a person who is tried on indictment. In particular, section 51(1)(b) sanctions the practice of courts whereby an accused may plead not guilty to the offence charged in the indictment, but guilty to another offence of which he might have been found guilty on that indictment. Similarly, section 51(2) provides that if an accused is found not guilty of an offence with which he is charged, he may be found guilty of any other offence if the evidence justifies this.

The proposed new section 51A will enable a judge to enter a verdict of not guilty, without having to give the accused into the charge of a jury, in the circumstances where the prosecution offers no evidence against that man.

And now, Sir, criminal intention and the subjective test. Clause 6 adds four new sections to the principal Ordinance. The proposed section 65A obliges a court to apply a subjective test in determining the intent with which a criminal act is committed. Under the existing law a court must apply an objective test, that is to say, the intention of a person, who commits an act, is presumed to be that which a reasonable man would contemplate as the natural and probable consequence of his act. The new section requires a court to decide whether or not, taking all the evidence into account, the accused actually foresaw what flowed from his act.

The use of written statements as evidence, Sir. By section 65B, written statements by a person are made admissible in evidence in criminal proceedings in the same way as oral evidence, provided that the various conditions set out in that section are satisfied. However, a party to criminal proceedings can object to a statement being tendered in evidence under this section and the court has power to require the maker of it to attend and give his evidence orally. If properly used, this section would save a substantial amount of the time of witnesses, members of the legal profession and the courts. Much time is now wasted because witnesses are obliged to give oral evidence on matters of a formal nature.

Now, Sir, the question of admissions by accused persons. Section 65C also is intended to shorten proceedings since it provides, for the first time in criminal trials in Hong Kong, that a party may admit any fact of which oral evidence may be given. This admission will then be conclusive evidence of the fact in those proceedings. Some use has been made of this provision in England during the last three years and it is hoped that members of the legal profession in Hong Kong will take full advantage of it as the way of shortening criminal trials.

Giving notice of alibis. Section 56D prohibits an accused, without the leave of the court, from calling evidence of an alibi at his trial, unless he has given previous notice to the prosecution of his intention to do so and of the name and address of any witness whom he proposes to call in support of that alibi. At present there is no obligation on an accused to warn the prosecution that he intends to raise such a defence at his trial. Consequently, the prosecution has no opportunity to investigate the truth of the evidence which has been adduced in support of it, with the result that there has always been the risk of an accused person being acquitted by reason of the acceptance of juries of false alibis.

Turning, Sir, to aiders and abettors and the concealing of offences. The new Part V, which is contained in clause 7, simplifies and consolidates the present law dealing with aiders, abettors, and accessories. Section 90 creates the offence of knowingly assisting an offender who has been found guilty of what is called an arrestable offence. Section 91 sets out the penalties for concealing an offence and for giving false information to the police. The latter replaces the common law crime of public nuisance in a somewhat more simple form. Clause 8A adds a new section 94A, to resolve doubt which has been expressed as to whether the prosecution must expressly negative exceptions to, or exemptions from, a law in circumstances in which it would be a defence to establish such an exception or exemption. It replaces, in somewhat wider terms, a similar provision in the existing section 65 of the Ordinance, and this section 65 is now being repealed by clause 12.

[THE ATTORNEY GENERAL (ACTING)] **Criminal Procedure (Amendment)
Bill—second reading**

Turning, Sir, to the lawful use of force. Clause 10 enacts the common law rule that such force as is reasonable in the circumstances may be used in the prevention of crime and in the lawful arrest of offenders.

I come finally to the proposed introduction in Hong Kong of suspended sentences of imprisonment. Clause 11 introduces seven new sections dealing with suspended sentences of imprisonment. The effect of these sections is to empower a court, when it passes a sentence of imprisonment not exceeding two years, to order that the sentence shall not take effect, unless the offender commits another offence punishable with imprisonment during the period specified in the order, which period must be not less than one, nor more than three, years from the date of the order.

If the offender does commit another such offence during what is called, in these sections, the operational period of the order, then the court must order the original sentence to take effect, unless it is of the opinion that it would be unjust in all the circumstances to order the convicted person to serve his original sentence of imprisonment.

Although these sections follow generally the sections 39 to 42 of the Criminal Justice Act 1967, there are a number of significant differences, which it is thought will make this method of dealing with offenders more suitable to our needs here in Hong Kong.

In England, sentences of less than six months imprisonment must be suspended, whereas those between six months and two years may be suspended at the discretion of the trial judge. This means that immediate short sentences of imprisonment have been abolished in England, a principle which this Government would not like to see adopted in Hong Kong at this time.

Section 109B(3)(a) contains another important difference in that a court is given power, if it passes a suspended sentence, to impose such conditions as it thinks fit upon the offender. This would, for example, enable a court to order the convicted person not to undertake certain kinds of work, not to attend specified places, or not to mix with undesirable characters. Any breach of such a condition would, by virtue of section 109F, be dealt with by the court in the same manner as if it amounted to a conviction of the accused of a subsequent offence during the operational period. It is hoped that these provisions will make it clear to persons upon whom a suspended sentence has been passed that the courts retain an interest in their behaviour and the means for effective supervision of their activities.

Of the various arguments which are advanced in favour of the system of suspended sentences, perhaps the most important is that they confer on a court a wider choice, when faced with the very difficult task of assessing what is the correct sentence for the particular offender appearing before it. A court gives weight to two major considerations, which are to some degree in conflict and between which a balance must be struck. On the one hand, it must decide to what extent the sentence should reflect the gravity of the offence, in which event imprisonment may be appropriate; on the other, it must ask itself how far the punishment should be related to the particular circumstances of the offender, in which case a probation order or some other kind of punishment might be more suitable. The power to award a sentence of imprisonment and then to suspend it will enable a court to pass a sentence which reflects the seriousness of the crime, but at the same time to exercise a measure of leniency if the individual circumstances of the offender appear to justify such a course.

It is to be hoped that, in a substantial percentage of cases, the imposition of a suspended sentence will operate as a deterrent to the convicted person who knows that, if he is convicted of another serious crime during the operational period, he will be brought back to court, ordered to serve the original sentence and the sentence for the new offence. It is worth noting that, during the first year of the operation of these sections in England, over 90 percent of those with suspended sentences who offended again during the operational period were required to serve the original sentence of imprisonment. In other words, Sir, the courts were slow to let a man off serving his suspended sentence if in fact he offended again.

If English experience is a reliable guide, it is likely that about half the cases in which the court suspends a sentence will be ones in which they would send the offender to prison now, and that the other half will consist of cases in which a fine, probation order or other punishment would be imposed. These are, Sir, only rough figures, but they show that the suspended sentence of imprisonment is certainly not the soft alternative which it has been represented to be by some of its opponents.

In England, approximately 40 percent of those sentenced to a suspended sentences were reconvicted during the operational period. Although this is a disturbing figure, looked at from one point of view, it is I think possible to draw some encouragement from the fact that it means that about 60 percent of the offenders behaved themselves during the period of one to three years for which their sentences were suspended.

It is, Sir, important that the public should not be misled into thinking that this is a weak method of dealing with offenders. It is intended to enable the courts, in appropriate cases, to give a further

[THE ATTORNEY GENERAL (ACTING)] **Criminal Procedure (Amendment)**
Bill—second reading

chance to offenders who appear to want it and in order to keep them out of prison, an environment which may turn a young man against the community and makes him into a professional criminal. However, it is important to emphasize the fact that an offender who misbehaves again will, in the ordinary course of events, have to serve both the original sentence of imprisonment and a further punishment for the later offence. Further, if the English practice is adopted here, suspended sentences of imprisonment will be awarded in many cases where, at present, a fine or a probation order is imposed.

Nevertheless, the Government recognizes that this is a controversial measure and that it is difficult to assess with any accuracy the extent to which it will assist us in the prevention of crime and in dealing with offenders. Consequently, section 109H provides that these parts of the bill which deal with suspended sentences will expire at the end of 1973, unless this Council appoints a later date by resolution. The moving of that resolution, if it is thought proper to take this course in three years time, will give honourable Members an opportunity to express their views on the success or otherwise of this experiment.

Question proposed.

Motion made (pursuant to Standing Order No 30). That the debate on the second reading of the bill be adjourned—THE COLONIAL SECRETARY (ACTING) (MR HOLMES).

Question put and agreed to.

Explanatory Memorandum

This Bill amends the Criminal Procedure Ordinance so as to introduce into the law of Hong Kong certain provisions of the Criminal Law Act 1967 and the Criminal Justice Act 1967.

Clause 2 adds to the interpretation section of the principal Ordinance a definition of "arrestable offence". This definition was contained in section 101 of the Ordinance.

Clause 3 adds two new sections, 13A and 13B, to the principal Ordinance. Section 13A provides for the imposition of certain special conditions when a person is admitted to bail. Section 13B affords to the police powers to arrest a person who is in default, or who is reasonably suspected of being about to default, in the terms of his bail.

Clause 4, which is based on section 2(2) of the Administration of Justice (Miscellaneous Provisions) Act 1933, deals with

the circumstances in which an indictment can be preferred and enables an indictment to be preferred on the charge upon which an accused person was committed or on any other charges founded on facts disclosed in the depositions.

Clause 5 repeals section 51 of the principal Ordinance and replaces it with two new sections. The first, section 51, contains various provisions relating to the trial of offences. The second, section 51A, enables a judge to enter a verdict of not guilty without giving the defendant in charge to a jury if the prosecution offers no evidence.

Clause 6 adds four new sections to the principal Ordinance, based on sections 8, 9, 10, and 11 of the Criminal Justice Act 1967.

- (a) *Section 65A* provides that in determining whether a person has committed an offence a court shall apply the subjective test.
- (b) *Section 65B* enables written evidence by a witness to be admitted to the same extent as oral evidence in all criminal trials, subject to the right of the party against whom it is tendered and the court to require that the witness should give evidence orally.
- (c) *Section 65C* provides that in all criminal proceedings (including committal proceedings) a formal admission of a fact by either party is to be conclusive evidence of that fact.
- (d) *Section 65D* prevents a defendant from calling at a trial on indictment evidence in support of an alibi without the leave of the court, unless he has given to the prosecutor particulars of the alibi, including the best information he has about the identity and whereabouts of the witnesses.

Clause 7 repeals and replaces Part V of the principal Ordinance. The new section 89 provides that any person who aids, abets, counsels or procures the commission by another person of any offence shall be guilty of the like offence. The new section 90 creates the offence of assisting an offender and the new section 91 makes it an offence to conceal an offence or give false information.

Clause 8 adds a new section 94A, to the effect that it shall not be necessary for the Crown to negative any exception or exemption from or qualification to the operation of the law creating the offence.

Clause 9 repeals subsection (1) of section 101 as the definition of "arrestable offence" contained therein has been transferred to the interpretation section.

Criminal Procedure (Amendment) Bill—second reading*[Explanatory Memorandum]*

Clause 10 adds a new section 101A to the principal Ordinance so as to enable a person to use reasonable force in the prevention of crime or in arresting offenders.

Clause 11 contains seven new sections which introduce the suspended sentence into the penal system of Hong Kong.

- (a) *Section 109B* provides that a court which passes a sentence of imprisonment of not more than two years may (unless a probation order is made on that occasion in respect of another offence) order that the sentence shall not take effect, unless during a period specified in the order, which must be not less than one year nor more than three years from the date of the order, the offender commits another offence punishable with imprisonment and a court then orders under section 109C that the original sentence shall take effect.
- (b) *By section 109C*, if an offender commits, during the period specified in an order made under section 109B, a further offence punishable with imprisonment, a court shall order the sentence to take effect unless this would be unjust in view of circumstances arising since the sentence was suspended.
- (c) *Sections 109D and 109E* deal with the court by which a suspended sentence is to be dealt with and the discovery of further offences.
- (d) *Section 109F* provides that an offender, who breaks a condition imposed on him by the court which passed the suspended sentence, shall be dealt with as if he had been convicted of an offence punishable with imprisonment.
- (e) *Section 109G* is an interpretation section.
- (f) *Section 109H* provides that the powers relating to suspended sentences shall expire in three years time or at any other later date appointed by the Legislative Council.

Clause 12 and 13 contain repeals and amendments. Among the sections repealed is section 43 which empowers the Attorney General to file an information for misdemeanor.

Clause 14 is a transitional provision.

The Schedule contains a number of amendments to various Ordinances, including an amendment to the Offences against the Person Ordinance to deal with alternative verdicts on a charge of murder.

MAGISTRATES (AMENDMENT) BILL 1971

THE ATTORNEY GENERAL (ACTING) (MR SNEATH) moved the second reading of:—
"A bill to amend the Magistrates Ordinance and to amend consequentially the Defamation Ordinance."

He said:—Sir, this bill, like the last one before Council, introduces a number of sections which are based on the Criminal Justice Act 1967.

Clause 2 will enable a representative of a corporation to enter a plea on its behalf at trial before a magistrate. On a plea of not guilty, that representative will be able to exercise the rights which an individual accused enjoys for the calling of witnesses, examining or cross-examining and addressing the court. At present, a corporation is obliged to engage a solicitor or counsel to conduct the case on its behalf.

Clause 3 obliges a magistrate to warn an accused, during committal proceedings, that he must give the prosecution notice of the particulars of an alibi, if he intends to raise such a defence at his trial. This provision is, in effect, warning the accused of the provisions of the new section 65D of the Criminal Procedure Ordinance, which was proposed in clause 6 of the last bill before Council.

Clause 5 makes it an offence to publish a report of committal proceedings which are held in Hong Kong, except for the limited details which are set out in subclause (7), unless the accused himself applies for the restriction to be removed.

The object, Sir, of these restrictions is to prevent potential jurors from reading details of the prosecution case, as it comes out in the committal proceedings, and from forming a prejudice against the accused. However, there may be occasions on which publicity is of some benefit to the accused, for instance if he cannot trace a witness who might see a newspaper report and come forward to give evidence as a result. Therefore, the accused is given this right to apply for an order by the magistrate removing the restrictions, though the prosecution does not have any similar right.

The proposed section 87B obliges the clerk of the magistrate's court to display a notice in the court building, at the end of the committal proceedings, giving the name, age, and address of the accused, the offence charged and whether or not he was in fact committed for trial.

The object of clause 6 is to ensure that a report of committal proceedings, under subsections (5) and (6) of section 87A, at the end of a trial, is to be regarded as a contemporaneous report, if it is published as soon as is practicable after the necessary permission has been given. This is necessary if such reports are to enjoy the protection

[THE ATTORNEY GENERAL (ACTING)] **Magistrates (Amendment) Bill—
second reading**

conferred by section 13 of the Defamation Ordinance. This section makes a fair and accurate report of proceedings before a court absolutely privileged if it is published contemporaneously with the proceedings.

Question proposed.

Motion made (pursuant to Standing Order No 30). That the debate on the second reading of the bill be adjourned—THE COLONIAL SECRETARY (ACTING) (MR HOLMES).

Question put and agreed to.

Explanatory Memorandum

This Bill seeks to amend the Magistrates Ordinance by adding various provisions based on certain sections of the Criminal Justice Act 1967.

Clause 2 will enable a representative of a corporation to enter a plea on its behalf on the trial of any complaint or information by a magistrate. Where a plea of not guilty is entered by a representative the rights afforded to individual defendants under section 16 of the principal Ordinance may be exercised by the representative as if he were an individual defendant.

Under section 65D of the Criminal Procedure Ordinance a defendant, when charged with an indictable offence, will not be able to adduce evidence in support of an alibi, unless he gives notice of particulars of the alibi to the prosecution. Clause 3 amends section 82 so as to require an examining magistrate to warn an accused of this obligation.

Clause 4 is an amendment consequential upon clause 5.

Clause 5 adds two new sections to the principal Ordinance dealing with restrictions on the reporting of committal proceedings.

New section 87A makes it an offence to publish or broadcast in Hong Kong a report of any committal proceedings in Hong Kong, which contains more than a limited number of permitted details, unless the defendant applies for an order that the restriction shall not apply to a report of those proceedings. It is not open to the prosecution to seek publication.

Section 87B provides that, upon committal for trial or discharge of the accused, as the case may be, the clerk of the court must, on the day on which the committal proceedings are concluded or the next day, cause to be displayed in a part of the court

house to which the public have access a notice giving the name, address and age (if known) of the accused, the charge on which he was committed or discharged and, if committed, the court to which he is committed.

Against the possibility that a court might hold that publication in accordance with subsection (5) or (6) of section 87A of a report of committal proceedings, at the end of the trial, was not a contemporaneous report, clause 6 amends section 13 of the Defamation Ordinance to provide for it to be so treated if the report is published as soon as practicable after it has become permissible. Newspapers and broadcasting authorities will then continue to have the benefit of the protection afforded to them by section 13 of the Defamation Ordinance.

LAW REFORM (MISCELLANEOUS AMENDMENTS) BILL 1970

THE ATTORNEY GENERAL (ACTING) (MR SNEATH) moved the second reading of:—
"A bill to make provision for interim payments and for conferring powers exercisable by the courts before the commencement of an action, to make further provision with respect to interest on damages, and to amend the law relating to the limitation of actions."

He said:—Sir, this bill makes a number of amendments, mainly of a procedural nature, which will be applicable to civil proceedings in the Supreme Court and in the District Courts.

Item 1 of the Schedule follows closely the provisions of sections 20 to 22 of the Administration of Justice Act 1969 and Part III of the Administration of Justice Act 1970. The introduction of these amendments accords with our practice of keeping the law relating to civil proceedings generally the same as that in force in England.

Honourable Members may recall that, by the Supreme Court Amendment Ordinance of this year, a new section 30A was added to the Supreme Court Ordinance to empower a court, in an action for the recovery of a debt or damages, to order that interest should be paid on the whole or any part of the debt or damages for the period between the date when the cause of action arose and the date of the judgment. Paragraph 1 of item 1 of the Schedule amends section 30A so as to provide that where judgment is given for more than \$3,000, in an action for damages due to personal injuries or death, the court is obliged to award interest on the damages, unless it is satisfied that there are special reasons why this should not be done. This follows the recommendations of the Winn Committee on personal injuries litigation in England.

[THE ATTORNEY GENERAL (ACTING)] **Law Reform (Miscellaneous Amendments) Bill—second reading**

The new section 30C, which is contained in item 2 of the Schedule, authorizes a court, in such circumstances as may be specified in rules of court, which will be made for this purpose, to make an order providing for the inspection, photographing, preservation, custody and detention of property which the court thinks may become the subject matter of, or relevant to, subsequent proceedings. The court may also authorize the taking of samples of property and the carrying out of experiments with it. This section is not confined to personal injuries litigation, but will apply to all civil proceedings.

Under the new section 30D, which is restricted to personal injury cases, a court may order the disclosure and the production of documents to a person likely, in the opinion of the court, to become a party to subsequent proceedings. The proposed section will enable a court to order the disclosure and production of documents to a party in an action for personal injuries, after the proceedings have begun, by a person who is not a party to them. Rules of court will be made under section 30F, specifying the circumstances in which orders may be made under sections 30D and 30E.

Section 30G makes the Crown subject to section 30C, so far as that section may relate to property likely to become the subject matter of personal injury proceedings. Sections 30D, 30E, and 30F, will also bind the Crown, save that a court may not make an order under any of these sections if compliance with it would be likely to be injurious to the public interest.

Paragraph 3 of item 1 of the Schedule enables the Supreme Court Rules Committee to make rules of court governing orders for interim payments of damages by a party to civil proceedings.

The amendment proposed in item 2 of the Schedule will allow an action, for the benefit of the estate of a person killed by the negligence of another, to be brought within three years after the death of the deceased, instead of within twelve months. This present limitation has, in a number of cases, prevented the families of deceased persons from obtaining damages. This period was increased in England from twelve months to three years in 1954. Item 2 proposes that we should follow this precedent, somewhat belatedly, Sir.

Item 3 of the Schedule, which is based on another England reform adopted in 1954, abolishes the rule that an action in tort can only be brought against the estate of a deceased person, if the cause of action arose not earlier than six months before his death. It will now be possible to sue the estate of a deceased person, up to six months after his death, so long as the cause of action is not barred by the

ordinary limitation periods which apply to actions in tort, that is to say six years, or three years in the case of actions for damages for personal injuries.

And finally, Sir, item 4 of the Schedule makes to the District Court (Civil Jurisdiction and Procedure) Ordinance identical amendments to those which are made to the Supreme Court Ordinance by item 1.

Question put and agreed to.

Bill read the second time.

Bill committed to a committee of the whole Council pursuant to Standing Order No 43(1).

Explanatory Memorandum

The Schedule to the Bill—

- (1) adds new sections to the Supreme Court Ordinance, Cap. 4, and the District Court (Civil Jurisdiction and Procedure) Ordinance, Cap. 336—
 - (a) to clarify the law as to the payment of interest on damages in actions for personal injuries;
 - (b) to enable rules of court to be made authorizing the making of orders for —
 - (i) interim payments;
 - (ii) the disclosure of documents before the commencement of proceedings against a person who is not, or is not yet, a party, in actions involving personal injuries or death; and
 - (iii) the inspection etc. of any property which is relevant after the commencement of proceedings or may be relevant in subsequent proceedings;
- (2) amends the Fatal Accidents Ordinance, Cap. 22, to extend the period of limitation in that Ordinance from one to three years; and
- (3) amends the Law Reform (Miscellaneous Provisions) Ordinance, Cap. 271, so as to abolish the requirement that in actions in tort against a deceased person's estate the cause of action must have arisen not earlier than six months before the person's death.

The provisions referred to in paragraph (1) above are modelled on sections 20 to 22 of the Administration of Justice Act 1969 and Part III of the Administration of Justice Act 1970. The provisions referred to in paragraphs (2) and (3) follow sections 3 and 4 of the Law Reform (Limitation of Actions, etc.) Act 1954.

LAW REVISION (MISCELLANEOUS REPEALS) BILL 1970

THE ATTORNEY GENERAL (ACTING) (MR SNEATH) moved the second reading of:—
"A bill to repeal certain Ordinances."

He said:—Sir, this bill repeals four old Ordinances, none of which is any longer required, either because the purposes for which it was enacted have been achieved or because the matters contained in it are now adequately dealt with in some other legislation.

Question put and agreed to.

Bill read the second time.

Bill committed to a committee of the whole Council pursuant to Standing Order No 43(1).

Explanatory Memorandum

This Bill repeals four Ordinances which are no longer necessary.

**LI PO CHUN CHARITABLE TRUST FUND (AMENDMENT)
BILL 1970**

THE SECRETARY FOR HOME AFFAIRS (ACTING) (MR D. C. BRAY) moved the second reading of:—"A bill to amend the Li Po Chun Charitable Trust Fund Ordinance."

He said:—Sir, the purpose of this bill is to solve a problem which has arisen with regard to the membership of the Li Po Chun Charitable Trust Fund Committee. Following the donation of shares by the late Mr LI Po-chun to Government, the existing Ordinance was enacted to establish the Fund and provide for its administration in accordance with his wishes. The Committee provided for by the Ordinance consisted of Mr LI Po-chun, up to three members to be appointed by the Governor and the Secretary for Home Affairs as Chairman. The Ordinance also provided for Mr LI to appoint his own successor on the Committee but unfortunately he died without doing so. The interest of the Li family in the Fund has been met so far by the appointment to the Committee by the Governor of one of Mr LI's descendants. The position is unsatisfactory because the original wish of Mr LI Po-chun was that one of his descendants should be a member as of right. The bill resolves the problem by enabling the Governor to appoint a son of the late Mr LI Po-chun to the Committee and by providing for the son so appointed to appoint his own successor from among Mr LI Po-chun's descendants.

The opportunity has also been taken to make some other amendments considered desirable in present day circumstances. These have been drawn up in consultation with the present Committee and senior members of the Li family. The most important of these changes relate to the existing arrangement whereby the income of the Fund is applied to social welfare purposes after the cost of certain named scholarships has been provided for. Mr Li's original intention was that this arrangement should ensure that the fund was used for educational and social welfare purposes in roughly equal proportions but the income of the fund has so increased—it now stands at well over a quarter of a million dollars annually—that the cost of the scholarships requires little more than a quarter of the income. The bill therefore enables the Committee to apply approximately half of the income to educational purposes in accordance with the Schedule to the Ordinance, before passing on the balance to the Honourable Director of Social Welfare to apply to social relief.

Question put and agreed to.

Bill read the second time.

Bill committed to a committee of the whole Council pursuant to Standing Order No 43(1).

Explanatory Memorandum

This Bill has two objects—

- (a) to provide for the appointment of the fifth member of the Li Po Chun Charitable Trust Fund Committee; and
- (b) to provide that the income of the fund is applied for educational and social welfare purposes in roughly equal proportions.

2. The late Mr. Li Po Chun failed, before his death, to exercise his power under the principal Ordinance to nominate a member to sit in his stead on the Li Po Chun Charitable Trust Fund Committee. Clause 2 of the Bill therefore provides that the Governor shall appoint a son of the late Li Po Chun to sit on the committee. The clause also gives the son so appointed power to nominate by deed or will in his place on the committee, another descendant of Mr. Li. Clause 2 further provides that if the son appointed by the Governor, or a member appointed by this son, fails to nominate a successor, the Governor may appoint a descendant of the late Li Po Chun as a member. If no descendant of the late Li Po Chun is resident in the Colony and willing to act, he may appoint any person. Clause 2 empowers the Governor to remove members.

Li Po Chun Charitable Trust Fund (Amendment) Bill—second reading*[Explanatory Memorandum]*

3. Clause 3, which repeals and replaces section 6 of the Ordinance, provides that the income of the fund shall be divided into two approximately equal portions, one to be applied towards the scholarships specified in the Schedule and the second for social welfare purposes.

4. Clause 4 adds to the Ordinance a Schedule which specifies the manner in which the committee is to apply that part of the income which is earmarked for educational purposes. These details are presently contained in section 6 of the Ordinance. The Schedule also provides for the creation of new scholarships at the discretion of the committee.

INLAND REVENUE (AMENDMENT) BILL 1971

THE FINANCIAL SECRETARY (SIR JOHN COWPERTHWAIT) moved the second reading of:—"A bill to amend the Inland Revenue Ordinance."

He said:—Sir, as honourable Members are aware, a Committee, known as the Inland Revenue Ordinance Review Committee, was set up in 1966 to consider certain matters connected with the Inland Revenue Ordinance which had been raised by the Commissioner and by the Hong Kong General Chamber of Commerce and certain other bodies. The Committee reported in two parts, the full report being completed and published in the middle of 1968.

The recommendations in Part I of the Committee's report and certain related recommendations in Part II were given legislative effect in the Inland Revenue (Amendment) Ordinance 1969. The present bill is designed to give effect to Part II of the Report, with three important exceptions which I shall mention, along with certain other minor amendments.

The three exceptions are, firstly, the treatment of losses, in respect of which the principles proposed by the Committee are proving complex and controversial; secondly, the assessment of Life Insurance Companies, where a final solution is yet to be devised; and thirdly, and most important, the basis of assessment. As I said in the debate on this year's Estimates, although Government and the main professional and commercial organizations agree that a change from the present artificial basis is very desirable, they oppose the solution recommended in the report of the Committee and Government cannot accept the solution

proposed by them. I do not propose to go into the argument on this occasion but I am myself convinced that we must act fairly soon on the Committee's recommendation.

To turn now to the bill before Council, I do not propose to go through the whole bill clause by clause—there is a full Explanatory Memorandum attached to it and no change of principle or in the nature of the tax is proposed—I shall advert only to some of the more important provisions.

Clause 3 and 43 enable publication of decisions of the Board of Review. These may not at present be published because of the secrecy provisions in the Ordinance but it is desirable that their more important decisions should be available to the public and to tax practitioners. The principle of privacy is, however, to be maintained by the requirement that cases be reported in such a manner that the identity of the appellant is not disclosed.

One of the subjects considered by the Committee may be broadly described as the scope of the tax. Various difficulties arise from the limiting principle at the base of our tax, that is, that it is levied only on income arising in or derived from Hong Kong and not on other income received by a resident of Hong Kong but derived from outside Hong Kong.

In the context of Salaries Tax the Committee recommended the maintenance of the concept of the "situs of the employment" as determining liability to Salaries Tax. But at the same time it is proposed to use a residence test (although strictly in conflict with our basic principles) for the *relief* of certain categories of employees who in practice render services almost wholly outside the Colony, except for visits of short duration. This applies particularly to the case of sea-men and air-crews. These relieving provisions are in clause 5(a) and clause 5(b)(iii).

Difficulties also arise in the case of Profits Tax on certain types of business which have receipts originating in Hong Kong from which an element of profit arises in the Colony, but where it is not easy to show in precise terms the quantum of such profits. This arises particularly in the case of sums received from the grant of the right to exhibit cinematograph films and from the grant of the right to use patents, trade marks, etc. Clause 14 provides that 10% of receipts from such sources shall be deemed to be assessable profits. At the present standard rate of tax this means the levy of profits tax at $1\frac{1}{2}\%$ of gross receipts.

I should also like to draw attention to the proposal to repeal sections 13A and 27; clause 8 and 19 refer. These sections were originally introduced in 1955 and were designed to introduce as a test, but not a

[THE FINANCIAL SECRETARY] **Inland Revenue (Amendment) Bill—second reading**

conclusive test, in determining the question whether income was taxable in Hong Kong, the fact that it had not been taxed elsewhere. This raised a storm of controversy when it was put forward in 1955 as being allegedly intended—and I quote a remark made at the time— "to spread the net beyond the limit of the charging section". It finally reached the statute book in such weakened form that it has been seldom used, and, so far as Salaries Tax is concerned, will no longer be even of theoretical effect in consequence of the proposed amendments to section 8 clarifying the scope of this charge.

One change proposed in respect of Profits Tax is to abolish the distinction made between the profits of corporations and those of persons other than corporations. This is done by clause 9 which introduces a new section 15. There are certain consequential amendments, in particular the repeal by clause 13 of sections 18A and 18B(1) which become redundant.

Certain changes are also proposed in respect of Personal Assessment as it affects Profits Tax. At present section 18B provides an exemption from Profits Tax for profits not exceeding \$7,000 for each business, but there is a provision in section 15A requiring the aggregation of profits received by an individual from a number of businesses. The Committee recommended the repeal of the aggregation provision and the empowering of the Commissioner to dispense with a Profits Tax assessment where he is satisfied that the proprietor of a business had no other business and his profits do not exceed \$7,000. The first proposal has had to be deferred because of complications involving treatment of losses but the second is covered by clause 37, with an increased limit of \$10,600 because of the introduction this year of a lower income allowance. Also in clause 37 is a new provisions empowering the Commissioner to dispense with a profits tax assessment without requiring the lodgement of a Personal Assessment return, if he is satisfied that the person covered is eligible for Personal Assessment and under it would pay no tax; this will save a great deal of time and trouble for the small businessman.

A further provision affecting Profits Tax is in clause 14, introducing a new section 21B. The present provisions in section 20 enable the Commissioner to counter attempts by a non-resident person to arrange transactions with a resident associated person so as to produce either no profits taxable in Hong Kong or less profits than would be normal from the transactions involved. The Committee agreed with the Commissioner's submission that there should also be some specific authority for him to deal with the case where goods are manufactured

in Hong Kong and sold overseas and to give him power to determine the share of profits attributable in these cases to manufacturing which has been derived from the Colony. Section 21B relates this to the true wholesale market value in the Colony.

Two main changes are proposed in the section on Interest Tax. First, clause 20 would exempt interest paid by certain public utilities on consumers' deposits. This is for the same reason as the exemption of Savings Bank interest; the great majority of recipients would be eligible for personal assessment and for a refund in whole or part of the interest tax collected at source. The net revenue would not be worth the cost of administration.

Secondly, the Committee reviewed the machinery for withholding and remitting tax and made certain recommendations designed to remedy deficiencies in the system. The amendments are in clauses 22 to 26 inclusive. An important effect of these is to afford the recipient of interest protection against a claim for tax on himself when the payer of interest has withheld tax but has not passed it on to the Department. This matter was one raised by the General Chamber of Commerce.

That concludes my account of the main features of the bill; the remaining provisions deal mostly with technical matters, with clarification of matters where there is some scope for doubt and with the machinery of the tax.

I should, however, say at this stage that a number of defects, of a fairly minor nature, have been discovered since the bill was published and I shall be moving amendments to cure them at the Committee stage.

I might, however, mention one point of some importance now. I have referred already to the proposal to eliminate separate treatment of profits made by Corporations and by other persons. A consequential change is the deletion by clause 10, of the word "business" in section 15A. It appears that, in consequence of this amendment, a parent company with subsidiaries might be able to claim that profits or losses of the corporations should be aggregated. At paragraphs 248 to 250, however, of Part II of their Report the Committee rejected representations that allowable deductions be given in respect of subvention payments between associated companies in a group. Application of the aggregation provisions of section 15A would be in conflict with the Committee's views. As I said earlier, proposals to delete these provisions have been held up for decisions on the treatment of losses and in the meantime it will be necessary to make further amendments to prevent the effect I have described.

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second reading**

Notice of the other minor amendments it is proposed to introduce at the Committee stage will be given to honourable Members as soon as possible.

Question proposed.

Motion made (pursuant to Standing Order No 30). That the debate on the second reading of the bill be adjourned—THE COLONIAL SECRETARY (ACTING) (MR HOLMES).

Question put and agreed to.

Explanatory Memorandum

The principal purpose of this Bill is to implement recommendations contained in Part II of the Report of the Inland Revenue Ordinance Review Committee. A few other amendments have also been included. The Bill contains therefore a number of miscellaneous unrelated amendments the more important of which are referred to below.

2. Clause 2 amends the interpretation section of the Ordinance in two respects. The definition of "authorized representative" is amended to include, in the case of a corporation, a liquidator. The definition of "corporation" is amended to remove any possible doubt that a co-operative society or a trade union might be included.

3. Clause 3 and 43 make the necessary changes to enable the Attorney General to publish decisions of the Board of Review in law report.

4. Clause 4 provides that the exemption of the residence of an owner-occupier from property tax in section 5(3) of the Ordinance shall extend only to one residence per taxpayer, but the Commissioner is given a discretion to extend the exemption to more than one residence in special circumstances.

5. Clause 5 to 8 make various amendments to the salaries tax provisions. Clause 5 inserts a new subsection (1A) to section 8, paragraph (b) of which subsection excludes from charge to salaries tax the services rendered by a non-Government employee who renders all his services outside the Colony except during visits not exceeding an aggregate of 60 days in the relevant year. A new paragraph (j) is introduced to section 8(2) which will exclude from charge to salaries tax in certain cases the income of a person employed as a member of the crew of a ship or aircraft.

6. Clause 6 (which follows section 25 of the U.K. Finance Act 1966) amends section 9 by adding new subsections (4) and (5) to provide for the charge to tax of any share options acquired by a person as a result of his employment. The manner of valuation of such options for tax purposes is also provided for.

7. Clause 9 introduces a new section 15 into the Ordinance containing particular deeming provisions as recommended by the Inland Revenue Ordinance Review Committee. The sums deemed to be receipts in paragraphs (a) and (b) of the new section 15(1) are referred to in a new section 21A introduced by clause 14. This clause provides that for tax purposes the profits from such sums shall be taken to be 10% of the sums.

8. Clause 11 contains two amendments to section 16 of the Ordinance. The deduction at present allowable in respect of interest upon moneys borrowed for business purposes is extended to include legal fees, procuration fees, stamp duties and other expenses relating to the borrowing. Secondly, the existing allowance relating to rent paid for business purposes is restricted in the case of rent paid by a partnership to a partner thereof to an amount equal to the rateable value of the premises.

9. Clause 14 introduces a new section 21B to ensure that the profits arising from manufacturing business in the Colony are subject to profits tax in circumstances where the manufactured goods are sold or sold for delivery outside the Colony.

10. Clause 15 and 16 amend sections 23B and 23C of the Ordinance to provide that the provisions concerning the ascertainment of the assessable profits of ship-owners do not relate to any profits which may be derived from dealing in ships or agency business in connexion with shipping. The definition of "business as an owner of ships" and "charter hire" are amended.

11. Clause 20 amends section 28 to enable the exemption from interest tax of sums paid by way of interest by certain utility companies on consumers' deposits. The companies concerned are specified in a new Third Schedule to the Ordinance which is added by clause 48.

12. Clauses 22 to 26 overhaul the provisions in the Ordinance for the deduction and payment of interest tax in accordance with the recommendations of the Inland Revenue Ordinance Review Committee. These clauses should be read in conjunction with clauses 46 and 47 containing penalty provisions. A new section 80A makes it an offence without reasonable excuse to fail to deduct interest tax when required by law to do so and the misapplication of interest tax which has been deducted is also made an offence.

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13. Clause 27 introduces a new section 35A which ensures that the balancing allowances and charges provided for by section 35 in case of a termination of a lease do not arise when the lessee of a building on the termination of a lease remains in possession with the consent of the lessor or a new lease is granted or a regrant is made. Clause 27 also adds a new section 35B enabling the grant of an initial allowance to be made to the purchaser of an industrial building if he is the first user of that building as an industrial building.

14. Clause 28 amends section 37 to enable the grant of annual allowances for plant and machinery in the case of a succession to a trade, profession or business in circumstances where there has been no actual sale of the plant and machinery. The allowance is to be calculated on the reduced value of the item of plant or machinery. The reduced value will be the cost of it reduced by the allowances granted to the previous owner.

15. Clause 31 amends section 41 to reduce the time within which an election for personal assessment may be made. The proposal is that an election must be made not later than two years after the end of the relevant year of assessment or one month after an assessment in respect of that year becomes final and conclusive under section 70, whichever date is the later.

16. Clause 32 extends the scope of the allowance provided for by section 42B in respect of approved charitable donations. The clause extends the allowance to donations made by a wife of the taxpayer.

17. Clause 33 amends section 51 to impose an obligation on a person chargeable to salaries tax, profits tax or tax under personal assessment if he changes his address to notify the Commissioner of the particulars within one month.

18. Clause 35 inserts a provision as section 57(2) which, in case where no secretary, manager, director, or principal officer of a corporation or body of persons is ordinarily resident in the Colony, will require that corporation or body of persons to inform the Commissioner of the name and address of a person who is ordinarily resident in the Colony and who shall be answerable for doing all the things which are required to be done under the Ordinance by that corporation or body of persons.

19. Clause 38, 39 and 41 overhaul the provisions of the Ordinance as to provisional assessments. The amendments are

technical in character and do not effect any change of a substantive nature.

20. Clause 40 amends section 62 to empower the Commissioner specifically to fix a due date for payment at the time when he gives a notice of assessment under that section.

21. Clause 42 gives the Board of Review discretion to extend the time for appealing against a determination of the Commissioner.

22. Clause 44 adds a new section 75A which replaces the existing proviso to section 10 and complements section 42A. The effect is to enable the Commissioner to recover from a wife that part of the salaries tax or tax under personal assessment charged on her husband which relates proportionately to her salary or income.

**PUBLIC TRANSPORT SERVICES (HONG KONG ISLAND)
(AMENDMENT) BILL 1970**

THE FINANCIAL SECRETARY (SIR JOHN COWPERTHWAIT) moved the second reading of:—"A bill to amend further the Public Transport Services (Hong Kong Island) Ordinance."

He said:—Sir, I have already described, in moving a suspension of Standing Orders, the background to the introduction of this bill.

It follows the form of the earlier bill dealing with the royalty provisions for Kowloon Motor Bus Company and does not in itself, I think, raise any difficulties.

As regards the reduced rate of royalty which it is proposed to introduce at the Committee stage, we have not yet reached a final decision on the rate to be proposed. It is the intention to put a proposal before the Governor in Council on Tuesday, 8th December, and Members will be advised of the agreed proposals as soon as possible, along with the relevant background information so that they may have as much time as possible to consider them before the Committee stage on 16th December.

May I again express regret that a situation has been allowed to arise where we have had to ask honourable Members to accept this unusual procedure at short notice.

Question proposed.

[THE FINANCIAL SECRETARY] **Public Transport Services (Hong Kong Island) (Amendment) Bill—second reading**

Motion made (pursuant to Standing Order No 30). That the debate on the second reading of the bill be adjourned—THE COLONIAL SECRETARY (ACTING) (MR HOLMES).

Question put and agreed to.

Explanatory Memorandum

Clause 2 enables the Legislative Council to vary by resolution the rate of royalty payable by the China Motor Bus Company out of its net profits in any year beginning on 1st July, which is the Company's financial year. The variation may be general or limited to a particular financial year and may be made retrospective to the beginning of the financial year in which it is passed.

2. Clause 3 makes a consequential amendment.

**DISTRICT COURT (CIVIL JURISDICTION AND PROCEDURE)
(AMENDMENT) BILL 1970**

Resumption of debate on second reading (18th November 1970)

Question again proposed.

MR OSWALD CHEUNG:—Sir, there are only two points I wish to raise on this bill.

First, the proposal by clause 7 to add what is called a non-suit. It would allow a plaintiff who has failed to prove his case to the satisfaction of the court the liberty of suing the same defendant again on the same facts, provided he pays wasted costs. This procedure was abolished in the High Court in England 100 years ago, but was retained for reasons which are not apparent to me in the English County Court. What it means and how it operates has necessitated almost endless litigation and what it means has to be explained in two pages of small print in the current edition of the County Court Practice. It also seems to me unfair, for no one at the same time has thought of giving to a defendant who has failed to establish his defence a second chance to do so. Be that as it may, it is unnecessary in my view to add this esoteric provision to the Laws of Hong Kong, for our predecessors in this Council, in their wisdom, have given our District Court a power to review judgments within a month of their being given, if there be good

cause: our law treats plaintiff and defendant and, indeed, any third party alike. And I would submit that that power is enough. At the Committee Stage, therefore, I propose to move an amendment to delete clause 7.

Secondly, clause 10 originally set out to confer on the Registrar certain powers now exercisable only by a District Judge. That is fine; it is a power to give relief and to restore to a delinquent tenant who has not been paying rent if at the end of it all the tenant pays up all arrears of rent. The phrase "arrears of rent" has been in use since 1730, so far as my researches go, and has always been "rent in arrear" or something similar; it is now proposed to change that phrase to "rent in arrear and mesne profits". My view, and that of the representative of the Bar on the District Court Rules Committee, is that by doing so we would be putting the cat amongst the pigeons. I have communicated the reasons for that opinion to my honourable Friend, Mr Denys ROBERTS. I won't take up the time of this Council by going into them but I will circulate them to Members. I trust none will go into hospital as a result.

I recognize there may be a problem if the words "mesne profits" are left out, but if our policy be to conform to English Law and policy, which is that a tenant who pays up all that is due up to the day he pays up, at the same rate of rent reserved by the lease, should be restored to the status quo, and I think our intention can be made clear by an amendment which I shall move at the committee stage, and of which I gave my Friend, Mr ROBERTS, notice yesterday.

THE ATTORNEY GENERAL (ACTING) (MR SNEATH):—Sir, I find myself agreeing with the arguments put forward by my honourable Friend, Mr CHEUNG, and certainly with regard to clause 7 of the bill. It is indeed true that in Hong Kong the position is different because of section 22 of the principal ordinance, which enables a District Court Judge to review his previous judgment or order at any time within a month from making it.

This should serve as an adequate safeguard for a litigant who has failed in an action because of unfamiliarity with the rules of procedure or with the laws of evidence. I am told that in circumstances of this nature, District Judges have shown themselves willing to review a previous judgment or order.

Although the proposal to provide for a non suit had the support of the Law Society and of the majority of the members of the District Court Rules Committee, the Attorney General does not feel that, in view of the arguments put forward by my learned Friend, we would wish to resist the amendment he proposes.

[THE ATTORNEY GENERAL (ACTING)] **District court (Civil Jurisdiction and Procedure) (Amendment) Bill—
resumption of debate on second reading (18.11.70)**

Turning, Sir, to clause 10, I think that the honourable Member and myself are in agreement as to what it is that we want to achieve, and this is to provide that a lessee who has failed to pay rent shall only obtain relief against forfeiture of his interest in the land if he pays into Court all rent in arrears, not only up to the date of the breach, but up to the date of the Court's order for possession, whether this latter amount be described as rent or as mesne profits.

The exact phrase which is appropriate is a highly technical one, involving an examination of some of the obscure corners of the law of landlord and tenant. I am confident however that my honourable Friend and the Attorney General will be able to agree on a suitable form of words to be put before the Committee Stage.

Question put and agreed to.

Bill read the second time.

Bill committed to a committee of the whole Council pursuant to Standing Order No 43(1).

Committee stage

Council went into Committee.

HAWKER CONTROL FORCE ORDINANCE

Clauses 1 to 13 were agreed to.

Council then resumed.

Third reading

MR D. R. W. ALEXANDER reported that the Hawker Control Force (Amendment) Bill 1970 had passed through Committee without amendment and moved the third reading of the bill.

Question put and agreed to.

Bill read the third time and passed.

Adjournment

Motion made and question proposed. That this Council do now adjourn—THE COLONIAL SECRETARY (ACTING) (MR HOLMES).

3.47 p.m.

Public holidays

DR S. Y. CHUNG:—Your Excellency, sometime ago one of my overseas associates requested a list of public holidays in Hong Kong for planning his itinerary. Later on, when he wrote me, he firstly expressed his surprise on the large number of statutory general holidays in Hong Kong. Secondly, he was bewildered and confused by the co-existence of both the statutory general holidays and the statutory industrial holidays. As honourable Members are no doubt aware, these two categories of statutory holiday are not necessarily common to each other. For example, the Winter Solstice on 22nd December is a statutory industrial holiday but not a statutory general holiday, which is better known in Hong Kong as "public holiday" in English and “公眾假期” in Chinese.

This year we have, apart from Sundays, a total of seventeen statutory general holidays. There are seven in the first quarter,—one for the first week-day of the year, three for the Lunar New Year, and three for Easter. Then we have the Ching Ming Festival, the Queen's Birthday and the Dragon Boat Festival in the second quarter. This is followed by the first week-day in July, the first and the last Monday in August, the Mid-Autumn Festival, the Chung Yeung Festival, Christmas Day and Boxing Day.

In checking through about forty major countries around the world, most of them have about eight to eleven public holidays in 1970. Holland, New Zealand, Republic of Ireland, Peru, Switzerland and Turkey have only eight public holidays in a year. France, Israel and Norway have nine, whereas Belgium, Canada, Denmark, Kenya, Philippines, Portugal and West Germany have ten public holidays in this year. Those countries having eleven public holidays for the year are Australia, Austria, Finland, Japan, Malawi, Sweden and the USA. In the UK, Northern Ireland has seven public holidays, England and Wales have six, and Scotland has only five in the whole year.

During the past few years there have been rapid improvements in working conditions in Hong Kong. Many establishments provide annual holidays with pay up to four weeks a year. There is an increasing number of organizations, particularly foreign firms and some Government departments, working only five days a week. The statutory general holidays, like in many other countries, are not compulsory to all sectors of the community. Nevertheless they are observed mostly by commercial houses, institutions and Government departments, whose office hours are 38 hours or less per week and are comparable to those in the most developed countries of the West.

Some of the general or public holidays in Hong Kong have lost either their original meaning or their significance. The first week-day in

[DR CHUNG] **Public holidays**

July and the first Monday in August are, I believe, holidays specially designed for the banks. In the old days, it was necessary for the banks at certain times of the year to work behind closed doors for preparing statements of accounts for their clients. With the development of accounting machines and electronic computers, any statement of accounts can now be prepared within a fraction of a minute. These "bank holidays" are not really necessary in this space age.

We have already the Remembrance Sunday in November for paying our respects to those gallant persons who lost their lives in the two World Wars. The Liberation Day on the last Monday in August is, I think, no longer of significance after one quarter of a century.

Under the circumstances, I feel that it is time for Government to conduct another review of the statutory general holidays in Hong Kong with an aim of, firstly, discontinuing those which, as I said earlier, have lost either their original meaning or their significance and, secondly, making them coincide with the statutory holidays in industry.

MR WILFRED S. B. WONG:—Sir, I rise to support my honourable Friend, Dr CHUNG, in his speech on public holidays or, to save argument, gazetted general holidays in Hong Kong. In my speech to the Legislative Council on 2nd October 1969, I said "Hong Kong has the destiny of a mixed civilization. I hope this mixture is largely of the best and not of the worst features of each civilization."

I am not sure how to classify the present schedule of 17 gazetted general holidays into the best or the worst features of Hong Kong.

To those who are in favour of public general holidays, the more the merrier. Why shouldn't the people in Hong Kong enjoy both the Christian holidays and the Chinese traditional holidays plus some of the holidays which are spaced in between traditions, such as the first week-day in July, the first Monday in August, the last Monday in August, and the first weekday after Christmas Day.

These holidays seem to follow one of the aims of the socialist, that is, leisure.

Of course, we have labour legislation for four days statutory holidays per month and, in addition, the minimum of six statutory holidays a year, but commercial firms tend to follow Government's gazetted holidays. But I wonder if too many additional holidays are really good for the soul and body of men. There is evidence to show

that, other things being equal, men who do not take too many holidays have larger blood vessels, lower cholesterol level, enjoy better health and live longer. In recent years, there is more evidence to show that, contrary to common belief, idleness shortens rather than prolongs the life of cells and glands. This applies to all those in normal health.

Hong Kong has no natural resources; its most important resource is manpower productivity. I think the economy of Hong Kong should be kept at the level least disturbed by unessential holidays, and I support the proposal that Government should conduct a review of the gazetted general holidays of Hong Kong.

THE SECRETARY FOR HOME AFFAIRS (ACTING) (MR BRAY):—Sir, my honourable Friend, Dr CHUNG, has clearly conducted extensive research on the matter of statutory holidays and presents his argument in such a logical manner that I think we can deduce his conclusion even though he himself refrains from stating it. He suggests, Sir, we have too many general holidays. He argues that three particular general holidays are no longer important and points out that there is one industrial holiday—it is in fact the only one—which does not fall on a general holiday. I think we may deduce that he would like to reduce the number of general holidays by two by abolishing three general holidays and creating a new general holiday on the Winter Solstice. Although it is only two and a half years since this Council approved an increase in the number of general holidays by one, I am glad of the chance to speak briefly on holidays.

Few holidays are in fact prescribed by law. The Holidays Ordinance which prescribes general holidays requires only that banks, educational establishments, public offices and Government departments shall keep these days as holidays. Many people who work in other places do take holidays on these days but they are not obliged to do so nor do their employers commit any offence by failing to give these days as holidays. General holidays number not only 17 as my honourable Friend mentioned but also the 52 Sundays we have in a year.

DR CHUNG:—Sir, I did say apart from Sundays.

MR BRAY:—I stand corrected. All adult men who work in industrial undertakings and earn less than \$700 a month are required to be given holiday with pay but only on six days in the year, though women and young persons must be given one rest day a week in addition. Five of the six industrial holidays, as I shall call them, have also been general holidays at least since 1967. The exception is the industrial holiday on the Winter Solstice which falls only two days from the two general holidays at Christmas and it would perhaps cause an undue concentration of holidays at this time if a new general

[THE SECRETARY FOR HOME AFFAIRS (ACTING)] **Public holidays**

holiday were to be introduced on the Winter Solstice in place of one of the summer general holidays which my honourable Friend criticizes.

As to whether the 17 week day general holidays are the best seventeen days, I can only say that the present selection results from compromise. In moving the second reading of Holidays (Amendment) Bill 1967 which introduced the current list, my honourable Friend, the substantive Secretary for Home Affairs, said that the changes were proposed "after consultations with both religious and secular bodies and after extensive investigation into the views of the public at large". No other member spoke during the passage of the bill. The provisions of that bill were a complex compromise between the views of conflicting religious, secular, traditional, commercial and industrial interests involving Chinese and English backgrounds. That a compromise was reached at all is remarkable. That the public response during the four weeks the bill had been published was such as to lead the mover to have every reason to suppose that the changes would be generally acceptable and, indeed, welcomed must surely reflect the most delicate balancing of the conflicting interests. I find it hard to believe that reform on the scale of the 1967 bill is required again so soon.

By choosing our countries carefully we can prove almost anything when making comparisons with other countries. I suppose the closest comparison is with our week day general holidays. In Europe it seems that Protestant countries have fewer holidays than Catholic countries but practically nobody there works on a Saturday or Sunday anyway. In Asia we find that Laos, Cambodia and India have more holidays than we do but Japan, Korea, the Philippines, Pakistan and Thailand have less. We are roughly in company with Singapore, Indonesia, Burma and Malaysia. Switzerland, which my authority tells me has only 7 public holidays not 8, makes up for this by 43 Saints days observed in various cantons—but then in Switzerland offices open at 7 *a.m.* My conclusion from this international comparison, which does not take account of all the detailed provisions of their legislation on the meaning of their holidays, is that Hong Kong is not obviously out of step.

Many other holidays do not have absolute statutory force. For instance the four rest days a month under the Employment Ordinance are days on which no employer shall require an employee to work but on which an employee may request and, if his employer agrees, work for his employer and on which an employer may request his employee to work. There is not complete freedom to ignore the clear intention of the legislature that workers should have more holidays but there is nothing to stop a willing worker from voluntarily working throughout the year except, where applicable, on the industrial holidays. Our observations are that many workers do take some of their rest days as holidays though they also work on some of them, usually for

extra pay, perhaps 50 - 100% extra. The extra work springs sometimes from the employee's request, sometimes from the employer's request.

Other holidays have no statutory force at all. Among these are those enjoyed by fortunate employees in the establishments referred to by my honourable Friend, Dr CHUNG, where employees have as much as four weeks holidays with pay a year. Other holidays are common and I should hazard a guess that most of the leisure taken as whole or half days off could be forgone by the workers if they wanted to without breaking any law at all.

My honourable Friends, Dr CHUNG and Mr WONG, may be voicing opinions which I am aware do exist in certain quarters that the Government has moved too fast in the matter of encouraging greater leisure among the general body of workers in Hong Kong. That such encouragement has been given is not denied but it is not correct to say that any department of Government works a 5 day week, nor are the working hours of any civil servant as low as 38 hours a week. Perhaps the most effective encouragement that has been given has been in the amendment to the Employment Ordinance, which this Council made in the last session to provide for four rest days a month. That this legislation may be described as encouraging rather than directing is because the key provision requires only that employers offer the rest days. It is the employees who decide whether to accept the offer. That many have done so can be seen vividly every weekend in places of recreation. That increased leisure has gone with increased incomes which we see from the statistics my honourable Friend, Mr HETHERINGTON, publishes is not necessarily a reflection of astute government but certainly reflects the combined effort of the whole community to increase the value of Hong Kong's output. Increased leisure accompanied by increased incomes reflect our growing prosperity and I cannot believe that it is a matter for dismay that some of this prosperity should be enjoyed in the form of greater leisure by a great many people.

Adjournment and next sitting

HIS EXCELLENCY THE PRESIDENT:—Unless some matter of urgent public importance arises which necessitates an extraordinary meeting of this Council, this is the last time that I shall have the privilege of presiding over our debates before the return of Sir David TRENCH from leave. I would like to take this opportunity of thanking all Members for their unfailing courtesy and co-operation while I have presided.

Accordingly, I now adjourn the Council until half past two o'clock on Wednesday, 16th December.

Adjourned accordingly at seven minutes past Four o'clock.