

OFFICIAL REPORT OF PROCEEDINGS**Wednesday, 17th November 1971****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 MICHAEL DENY'S ARTHUR CLINTON, CMG, GM*, JP
THE HONOURABLE THE ATTORNEY GENERAL
MR DENYS TUDOR EMIL ROBERTS, CBE, QC, JP
THE HONOURABLE THE SECRETARY FOR HOME AFFAIRS
MR DONALD COLLIN CUMYN LUDDINGTON, JP
THE HONOURABLE THE FINANCIAL SECRETARY
MR CHARLES PHILIP HADDON-CAVE, JP
THE HONOURABLE DAVID RICHARD WATSON ALEXANDER, MBE, JP
DIRECTOR OF URBAN SERVICES
THE HONOURABLE JAMES JEAVONS ROBSON, JP
DIRECTOR OF PUBLIC WORKS
THE HONOURABLE JOHN CANNING, JP
DIRECTOR OF EDUCATION
DR THE HONOURABLE GERALD HUGH CHOA, JP
DIRECTOR OF MEDICAL AND HEALTH SERVICES
THE HONOURABLE JACK CATER, MBE, JP
DIRECTOR OF COMMERCE AND INDUSTRY
THE HONOURABLE DENTS CAMPBELL BRAY, JP
DISTRICT COMMISSIONER, NEW TERRITORIES
THE HONOURABLE PAUL TSUI KA-CHEUNG, OBE, JP
COMMISSIONER OF LABOUR
THE HONOURABLE TAN MACDONALD LIGHTBODY, JP
COMMISSIONER FOR RESETTLEMENT
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, OBE, JP
THE HONOURABLE HERBERT JOHN CHARLES BROWNE, JP
DR THE HONOURABLE CRUNG 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, OBE, JP

ABSENT

THE HONOURABLE KAN YUET-KEUNG, CBE, JP

IN ATTENDANCETHE CLERK TO THE LEGISLATIVE COUNCIL
MR RODERICK JOHN FRAMPTON

Papers

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

<i>Subject</i>	<i>LN No</i>
Subsidiary Legislation: —	
Drug Addiction Treatment Centres Ordinance.	
Drug Addiction Treatment Centres (Amendment)	
Regulations 1971	137
Supreme Court Ordinance.	
The Rules of the Supreme Court (Amendment) (No 3)	
Rules 1971	142
Pilots Ordinance.	
Pilots (Amendment) Regulations 1971	143

Sessional Papers 1971-72: —

No 17—Annual Report by the Commissioner of Inland Revenue for the year 1970-71 (published on 17.11.71).

No 18—Annual Report by the Registrar General for the year 1970-71 (published on 17.11.71).

No 19—Annual Report by the Director of Civil Aviation for the year 1970-71 (published on 17.11.71).

No 20—Annual Report by the Director of Commerce and Industry for the year 1970-71 (published on 17.11.71).

No 21—Annual Report by the Director of Fire Services for the year 1970-71 (published on 17.11.71).

No 22—Annual Report by the Registrar of Trade Unions for the year 1970-71 (published on 17.11.71).

No 23—Annual Report by the Director of Marine for the year 1970-71 (published on 17.11.71).

Oral answers to questions

Countryside preservation

1. MRS ELLEN LI SHU-PUI asked: —

Will Government say when the first reports of the two committees set up to deal with the preservation of the countryside will be ready for consideration, and when decisions are likely to be taken?

THE COLONIAL SECRETARY (ACTING) (MR M. D. A. CLINTON): — Your Excellency, the interim reports of both committees have already been received in the Secretariat and are at present under consideration. The committees were appointed on the 1st of August 1970. The Island Committee submitted its report on the 24th of March this year, while the New Territories Committee submitted its report on the 5th of October, that is about six weeks ago.

The report of the Hong Kong Island Advisory Committee calls for a capital expenditure in the order of \$10 million over the first 5 years mainly for minor roads and footpaths together with an annual expenditure of the order of \$1 million. The New Territories Advisory Committee's proposals involve capital expenditure of about \$27 million, mainly for the establishment of 4 country parks and 30 square miles of recreational areas, and would involve annual recurrent expenditure of the order of \$4 million.

I am well aware of the desirability of preserving the countryside but the sums involved are not insignificant and the proposals must be carefully studied both intrinsically and in relation to other calls on public funds before being put to honourable Members in Finance Committee. Nonetheless the processing of the Island Report has, regrettably, taken far too long but it is hoped that a decision can be taken in the very near future and that a decision on the New Territories report can be taken fairly soon. Meanwhile, I would like to record Government's appreciation for the work so far done by these two committees.

Amenities on islands

2. MRS LI asked: —

Will Government say whether it has any plans to preserve and extend the amenities for public enjoyment of scenically attractive islands such as Hei Ling Chau, Lamma and others?

MR D. C. BRAY: — Sir, as the honourable the Colonial Secretary has just said, interim reports on recreation and conservation of the countryside have already been submitted. These reports deal with proposals to provide for more intensive use and management of certain selected country areas which already attract thousands of visitors. Only one such area is on an island, that of Lantau. No specific proposals have been made as yet to extend the amenities for greater public enjoyment of other islands though the Committee has proposed that all picnic spots be cleared of litter regularly. This would cost about \$550,000 a year—money effectively thrown away by people who throw

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litter away. Implementation of the reports made by the two committees will call for considerable public expenditure and it should be accepted that large areas of countryside and many islands which are not so readily accessible will not be developed for more intensive recreational use. They will have to be enjoyed by the public in their natural state.

No specific proposals have been made for recreational use of Hei Ling Chau but consideration is being given to the best use which can be made of this island when the leprosarium is closed down. An exhaustive survey has been made of many possible sites for the reprovisioning of the Green Island Explosives Depot and the conclusion, based on expert advice, is that the rocky part of Hei Ling Chau which has not been used for any purpose at all will be suitable to reprovision the explosives depot from Green Island without interfering with whatever use may be made of the rest of the island. Similarly, as has been announced, the possibility of siting an oil refinery on Lamma is being examined and pending the results of this examination I am unable to say finally what will be done.

MRS LI: — Sir, a supplementary question please. Will Government consider the possibility of the siting of a refinery on the other side of Lamma in order to preserve the beauty of the Island facing Hong Kong as well as to prevent any possible pollution of the beaches?

MR BRAY: — Sir, as I said the proposed site on Lamma is still only under investigation. A number of sites have been examined on Lamma, Lantau and Tsing Yi. I have a list of some eight sites that have been looked at in one degree or another and at present the one that seems to be favoured is the one on the north-east of Lamma. For a number of technical reasons the undertaking, if it were to go ahead, would be quite large and I don't think wherever it was put on Lamma it would be invisible from the southern part of Hong Kong Island.

MR OSWALD CHEUNG: — Sir, why is it necessary to move the explosive store from Green Island at all, and if so why shouldn't it be moved to Stonecutters where other explosives are stored?

MR BRAY: — I am not sure, Sir, that this supplementary question is based on the matter raised in the original question.

HIS EXCELLENCY THE PRESIDENT: — I must support the honourable Member.

Escapes by prisoners

3. MR SZETO WAI asked: —

What steps will Government take to safeguard against further escapes of prisoners being conveyed to and from the courts?

THE COLONIAL SECRETARY (ACTING) (MR CLINTON): — Sir, I am glad my honourable Friend has asked this question as the number of escapes that have occurred recently in or near the Courts must appear disturbing. In 1971 there have been five escapes, all within the last two months, on conveyance to or from the Courts and from Court premises. This compares with two in 1970, four in 1969, none in 1968 and one in 1967.

There are, of course, precise instructions in Prisons Department Standing Orders for the escort of prisoners. If these instructions were properly carried out I dare say that there would be fewer escapes, or even none at all.

When escapes occur, both the Police Force and the Prisons Department conduct investigations to see whether there is evidence to warrant disciplinary or criminal proceedings being taken against the escorting personnel. The Commissioner of Prisons is determined to put a stop to these escapes and is now considering what further measures should be taken to tighten up the Standing Orders wherever this is possible and to ensure that they are carried out and also to improve security generally. Hitherto, it has not been the practice to handcuff young prisoners but, as a result of these escapes, the Commissioner has already directed that they must be handcuffed in future. It has also not been the practice to handcuff prisoners to escorting officers though the prisoners themselves are handcuffed either singly or in pairs, but this may be necessary in future in some cases.

Accidents in non-manufacturing industries

4. MR T. K. ANN asked: —

In view of the high number of fatal accidents that have occurred during recent years in the non-manufacturing sector of industrial undertakings, will Government tighten up its control and, if necessary, introduce new legislation in order to exercise more vigilant surveillance over this sector of employment?

Oral Answers

MR PAUL K. C. TSUI: —Sir, I understand from my honourable Friend that, in putting his question, he had in mind tables 9D and 9E of the Labour Department's Annual Report of 1969-70 and, in particular, accidents occurring outside the manufacturing industries in such concerns as construction sites, wharves, mining, quarrying and other service industries which are classified as industrial undertakings.

Since 1968, the following new legislation has been enacted which safeguards workers in these industries, among others. Under the Factories and Industrial Undertakings Ordinance, five sets of regulations have been made. These are the

Factories and Industrial Undertakings (First Aid in Registrable Workplaces) Regulations.

Quarries (Safety) Regulations.

Factories and Industrial Undertakings (Blasting by Abrasives) Regulations.

Factories and Industrial Undertakings (Amendment) (No 2) Regulations 1969, setting a minimum age for underground work,

and Factories and Industrial Undertakings (Woodworking) Regulations.

In addition the Radiation (Control of Irradiating Apparatus) (Amendment) Regulations 1971 were made under the Radiation Ordinance to afford greater control over the carrying of radioactive substances. Four further sets of safety regulations under the Factories and Industrial Undertakings Ordinance are in preparation, dealing with safety on construction sites, in cargo handling, work in confined spaces, and the use of lifting gear and lifting appliances.

A joint working party of officers of the Labour Department, the Marine Department and the Fire Services Department has recently prepared a code of safe working practice for shipbreaking. A similar working party will shortly begin to draw up a code of safe working practice for ship-repairing, and may also consider extending the code to include shipbuilding. In the light of the success achieved in persuading employers and workers to abide by these codes, the need for legislation will be assessed.

While legislation is necessary in some cases, it is, in my opinion, far more important to create among management and workers an awareness of the need to follow safe working practices. To this end, the Industrial Safety Training Centre of the Labour Department has recently moved to new and better premises. The centre has launched three new courses on safety, of which one deals with manual handling

and is attended by workers from wharves and godowns, construction companies, shipyards and other firms. Additional courses are being run. The centre also organizes safety exhibitions, prepares and issues safety posters, and provides qualified and experienced officers to speak on safety at work to various organizations. My honourable Friend, who was recently so good as to present certificates at the end of a course, is aware of the activities of the centre.

In conclusion, I assure my honourable Friend that the Labour Department watches with great care trends in accident statistics and, where it is considered necessary, does not hesitate to put forward proposals for new legislation.

"Chit fund" companies

5. MR ANN asked: —

For public information, will Government make a statement on its policy towards "chit fund" companies since such are money lenders as well as fund trusts?

THE FINANCIAL SECRETARY (MR C. P. HADDON-CAVE): —Sir, as my honourable Friend is doubtless aware, "chit funds" have long been in existence in Hong Kong although, until recently, they have usually been organized privately among relatives and acquaintances. In principle, "chit funds" can represent a useful form of systematic savings and mutual financial assistance. Their method of operation, however, does provide considerable scope for various types of irregularity, and defaults or abscondments have not been unknown. So long as "chit funds" have been organized on a purely private basis, the failures which have occurred have generally not been matters of public knowledge or concern.

The operation of "chit funds" by registered companies must, on the other hand, be viewed differently, if only because such funds are open to public participation. The danger is the public may believe that "chit funds" run by registered companies are more secure and less open to abuse than funds organized privately. In fact, the opposite may well be the case, because the element of mutual trust and acquaintance among participants, which is largely the basis on which private "chit funds" are organized, is absent in the case of funds organized by registered companies, so that the possibilities of irresponsible behaviour and abuses are, if anything, likely to increase.

Company run "chit funds" have only recently been introduced into Hong Kong, mainly by Malaysian and Singapore interests after their

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operations in those countries had been threatened with legislative control. As at the end of last month 28 "chit fund" companies had been incorporated in Hong Kong (and five of these had also taken out money lenders' licences). Government early took the view that the need to protect the public from possible irregularities arising out of the activities of these companies should be examined; and we sought information on the legislative action being taken by the Governments of Malaysia and Singapore. After that the question was also referred to the Companies Law Revision Committee. The Committee has come to the view that there is a real possibility of abuse and danger to the public in the operation of "chit funds". In view of this, and of the practical difficulties of control, the Committee has recommended *first* that legislation should be introduced immediately to prohibit the operation of chit fund companies in the Colony, but *secondly* that sufficient time should be allowed to those companies already in business to complete those funds which they have at present in operation. The Government agrees with these recommendations and a bill to give effect to them will be submitted as soon as possible to Your Excellency in Council and thereafter, if approved, to this Council for enactment.

MR P. C. WOO: —Sir, may I ask the Government also, when introducing legislation to control "chit funds", to consider the unincorporated bodies which also exist in Hong Kong? I make this request because it is from time immemorial that the "chit fund", which is known among the Chinese community as "wooi ngan", has been a source of abuse and fraud, and although my honourable Friend said that is not a matter of public concern the fact is that sufferers cannot bring an action because each of these unincorporated bodies usually exceeds 20 persons in number and therefore in law is an illegal organization and no action can be brought in a civil court.

THE FINANCIAL SECRETARY (MR HADDON-CAVE): —Sir, certainly I have taken note of my honourable Friend's concern but I am afraid I feel bound to say that the problems involved in prohibiting private "chit funds" are rather daunting. Nevertheless, we shall take note of the honourable Member's wish.

DR S. Y. CHUNG: —Referring to the second recommendation of the Companies Law Revision Committee that sufficient time should be allowed to those companies already in business to complete those funds which they at present have in operation, will my honourable Friend clarify what is the position of those companies formed between today and the date of introduction of legislation?

THE FINANCIAL SECRETARY (MR HADDON-CAVE): —I am afraid, Sir, I must confess that we haven't given that particular point much thought as yet, but I imagine that any company in operation at the time the bill is enacted would be given time to complete that particular cycle of operations.

DR CHUNG: —Sir, is it fair to understand that there will be a lot of companies formed between today and the date of legislation?

THE FINANCIAL SECRETARY (MR HADDON-CAVE): —I am sorry, Sir, I didn't hear the honourable Member's question.

HIS EXCELLENCY THE PRESIDENT: —Could you repeat your question, Dr CHUNG?

DR CHUNG: —Do we expect a large number of new companies formed between today and the date of introduction of legislation?

THE FINANCIAL SECRETARY (MR HADDON-CAVE): —I shouldn't think so, Sir.

MR CHEUNG: —Will the honourable Member examine carefully the proposal to give time to these companies to wind up, because if you allow them to complete the cycle it may take three years or even more?

THE FINANCIAL SECRETARY (MR HADDON-CAVE): —I take the honourable Member's point, Sir.

General and Modified Consumer Price Indexes

6. DR CHUNG asked: —

Is Government aware of the doubts expressed by the public on the meaningful application of the General and Modified Consumer Price Indexes and has Government considered a general revision of these Indexes with a view to extending them to cover (a) both public and private housing separately and (b) higher household expenditures than \$1,999 per month?

THE FINANCIAL SECRETARY (MR HADDON-CAVE): —Sir, the General and Modified Consumer Price Indexes are based on a survey of households with expenditure ranging from \$100—\$1,999 per month and \$100—\$599 per month, respectively. The survey was conducted in

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1963-64 and, in some respects, is out of date because of the passage of time. In any case, the method adopted for the construction of the indexes—in other words, a single large survey of the distribution of household expenditures within particular income ranges—is no longer appropriate given the tendency for relative prices and consumer preferences to shift more rapidly nowadays than in the past. What is now required is a continuous expenditure survey which will provide material for an annual or biennial revision of the indexes. Accordingly, approval for certain staffing proposals to enable a revision of the indexes to be undertaken and continuously re-weighted and updated will shortly be sought. A final decision on the scope of the indexes must await the results of the 1971 Census but, certainly, the revised indexes will take account of current income ranges so as to recapture those who have escaped the present indexes as a result of increases in income over the past seven years. The question of the relative weights to be given to public and private housing will also be specifically considered.

Government business**Motions****EXCHANGE FUND ORDINANCE**

HIS EXCELLENCY THE ACTING GOVERNOR (SIR HUGH NORMAN-WALKER) moved the following motion: —

It is hereby resolved, under section 3(5) of the Exchange Fund Ordinance, with the approval of the Secretary of State, that the aggregate amount of borrowings under section 3(3) of the said Ordinance shall not at any one time exceed six thousand million dollars.

THE FINANCIAL SECRETARY (MR HADDON-CAVE): —Sir, honourable Members will recall that the Exchange Fund Ordinance was amended last May to enable the limit to the Financial Secretary's borrowing powers for the account of the Exchange Fund to be varied by a resolution of this Council, proposed by the Governor with the approval of the Secretary of State, instead of by an amending bill as previously required. At the same time, the limit was set at \$5,000 million, an increase of \$1,000 million on the limit set in October 1970.

It is a testimony, Sir, to our continuing prosperity at the present time that we should find it necessary again to increase the borrowing powers of the Exchange Fund, if the protection of the sterling guarantee arrangement is to be given to yet further accruals of sterling in the hands of the commercial banks.

Of the present borrowing powers of \$5,000 million (or £ 343.75 million), some \$4,746 million has already been taken up, and if the present rate of increase in sterling holdings by the banks is maintained, the balance of \$254 million will soon be exhausted.

Accordingly, Sir, this resolution proposes, under section 3(5) of the Ordinance, that the Exchange Fund's borrowing powers shall be increased from the limit of \$5,000 million set under section 3(4) to \$6,000 million (or £ 412.5 million).

Question put and agreed to.

MATRIMONIAL CAUSES ORDINANCE

THE ATTORNEY GENERAL (MR D. T. E. ROBERTS) moved the following motion: —

It is hereby resolved that the Matrimonial Causes Rules 1971, made by the Chief Justice on the 9th November 1971, be approved.

He said: —I move the first motion standing in my name on the Order Paper.

Section 54 of the Matrimonial Causes Ordinance provides that rules made by the Chief Justice under that Ordinance are subject to the approval of this Council by resolution.

Honourable Members will recall that the Matrimonial Causes (Amendment) Ordinance 1971, which passed through this Council in July this year, conferred jurisdiction in undefended matrimonial causes on the District Court.

The Matrimonial Causes Rules 1971, which are now before Council for approval, contain procedural provisions which are necessary to enable the District Court to assume this new jurisdiction.

These rules make no substantial changes from the present Matrimonial Causes Rules, so far as other matters are concerned. Those rules which deal with the new jurisdiction of the District Court follow, with necessary modifications, the equivalent provisions of the English Matrimonial Causes Rules 1968.

It is intended that this jurisdiction of the District Court should be assumed on 1st January 1972. These are extensive and important rules and honourable Members have asked for more time in which to study them, and it is therefore proposed to move the adjournment of the debate on this resolution for two weeks to enable them to do so.

Matrimonial Causes Ordinance

Question proposed.

Motion made (pursuant to Standing Order No 30). That the debate on the motion be adjourned—THE COLONIAL SECRETARY (ACTING) (MR CLINTON).

Question put and agreed to.

CRIMINAL PROCEDURE ORDINANCE

THE ATTORNEY GENERAL (MR ROBERTS) moved the following motion: —

It is hereby resolved that the Criminal Procedure (Witnesses' Allowances) Rules 1971, made by the Chief Justice on the 5th November 1971, be approved.

He said: —Sir, I move the second resolution standing in my name on the Order Paper.

Honourable Members will recall that the Criminal Procedure (Amendment) (No 2) Ordinance, which passed through this Council on the 3rd of November, empowered the Chief Justice, with the approval of this Council, to make rules providing for the payment of allowances to witnesses in criminal proceedings.

The Criminal Procedure (Witnesses' Allowances) Rules 1971, which are now before Council, empower a court to allow a fee up to \$200 a day for professional or expert witnesses and an allowance, to cover loss of earnings and necessary expenses, of up to \$36 a day for other witnesses.

The scale of allowances set out in these rules has already been considered by the Standing Finance Committee of this Council and approved in principle.

Question put and agreed to.

CORONERS ORDINANCE

THE ATTORNEY GENERAL (MR ROBERTS) moved the following motion: —

It is hereby resolved that the Coroners (Witnesses' Allowances) Rules 1971, made by the Chief Justice on the 5th November 1971, be approved.

He said: —Sir, I move the third resolution standing in my name on the Order Paper.

The Coroners (Amendment) (No 2) Ordinance 1971, which passed through Council on the 3rd of November, empowered the Chief Justice, with the approval of this Council, to make rules providing for the payment of allowances to witnesses in enquiries held by coroners.

The scale of allowances provided by these rules is exactly the same as the scale in the Criminal Procedure (Witnesses' Allowances) Rules 1971, which were the subject of the last resolution.

Question put and agreed to.

First reading

CRIMINAL PROCEDURE (AMENDMENT) (NO 4) BILL 1971

BANKING (AMENDMENT) BILL 1971

AUDIT BILL 1971

PILOTAGE BILL 1971

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

Second reading

CRIMINAL PROCEDURE (AMENDMENT) (NO 4) BILL 1971

THE ATTORNEY GENERAL (MR ROBERTS) 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, the only purpose of this bill, though it involves a considerable number of small amendments to the Criminal Procedure Ordinance and to the other Ordinances which are listed in the Schedule to the bill, is to dispense with the need for formal monthly sessions of the Supreme Court.

At present, the principal Ordinance requires that persons to be tried by the Supreme Court shall be committed for trial at the next sessions, which are held on the 18th of each month, or the next day thereafter if the 18th happens to be a Sunday or public holiday.

This provision for set monthly sessions hardly seems appropriate for a court which sits continuously throughout the year and tries criminal matters at all times, including during the court vacations.

[THE ATTORNEY GENERAL] **Criminal Procedure (Amendment) (No 4)
Bill—second reading**

The result of this requirement is that an accused, not infrequently, may have to wait longer for his trial than necessary, because if he is committed by a magistrate for trial or sentence on, for example, the 20th of one month, he cannot be dealt with until, at the earliest, the 18th of the following month, even if counsel on both sides and the court are ready to proceed with the trial before then.

The amendments proposed will mean that an accused will merely be committed by a magistrate to the Supreme Court for trial. It will then be for the Registrar of the Supreme Court to arrange for the accused's plea to be taken as soon as possible and for a date to be arranged then for the trial, if the accused pleads not guilty.

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 amend the principal Ordinance to dispense with formal criminal sessions.

Clause 3 amends section 6 of the principal Ordinance to provide that the Commissioner of Prisons shall deliver a list of certain classes of prisoners to the Registrar of the court on the first day of each month, and for the references to sessions in sections 85, 86 and 110 of the principal Ordinance, clauses 5, 6 and 7 substitute "month".

Clause 10 amends the forms contained in the First Schedule to remove references to sessions.

Clause 11 would repeal sections 4, 8, 39, 40 and 44 of the principal Ordinance which relate to criminal sessions.

Clause 12 contains transitional provisions and clause 13 makes consequential amendments to the Supreme Court Ordinance, District Court Ordinance and the Magistrates Ordinance.

BANKING (AMENDMENT) BILL 1971

THE FINANCIAL SECRETARY (MR HADDON-CAVE) moved the second reading of: —"A bill to amend the Banking Ordinance."

He said: —Sir, the main purpose of this bill is to remove a possible conflict between section 53, subsection (1), of the Banking Ordinance on the one hand and section 51 of the Inland Revenue Ordinance on the other. The amendment proposed makes it clear that the duty of secrecy imposed by section 53 of the Banking Ordinance is designed to apply only to the Commissioner of Banking and other persons exercising *official* functions under the Ordinance, and not to directors and employees of licensed banks.

It is, of course, Sir, a well-established principle in the banking profession that, except in special circumstances, banks have an obligation to preserve secrecy in respect of the affairs of their customers. The special circumstances in which the obligation does not apply include those where banks are required under the law to disclose certain information relating to the affairs of individual customers—such as, for example, under section 51 of the Inland Revenue Ordinance. The bill, if passed into law, will afford protection to licensed banks against possible actions brought by customers for breach of secrecy in such special circumstances.

I should add, Sir, that the opportunity has also been taken to incorporate into the bill amendments of a formal nature to sections 52 and 54 of the principal Ordinance.

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

Clause 2 of the bill amends section 52 of the Banking Ordinance to confer the protection of that section to persons appointed under section 14(1)(ii) to advise a bank in the proper conduct of its business. This corrects an omission in section 52.

2. Section 53 of the Ordinance binds to secrecy all persons who exercise or perform any function or duty under the Ordinance. It has been suggested that this section may apply to directors and employees of banks because certain provisions of the Ordinance impose duties on banks. The proposed new subsection (1A) in clause 3 makes it clear that it does not, by listing the person to whom it applies, which would include the Commissioner of Banking, his staff and any other person appointed by him or the Governor in Council.

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

3. Where under section 13 or 14 of the Ordinance the Commissioner or other person appointed assumes control of and carries on the business of a bank, it is necessary to exclude the Commissioner or such other person from the secrecy provisions so that they are able to comply with the statutory obligation to give information under section 51 of the Inland Revenue Ordinance. The proposed new subsection (1B) in clause 3 provides for this.

4. Clause 4 makes an amendment similar to that in clause 2. It provides for the recovery of remuneration and expenses payable to persons appointed under section 14(1)(ii) to advise a bank in the proper conduct of its business.

AUDIT BILL 1971

THE FINANCIAL SECRETARY (MR HADDON-CAVE) moved the second reading of: —"A bill to provide for the appointment, tenure of office, duties and powers of the Director of Audit and for the auditing of and reporting on the public accounts and the accounts of specified persons, bodies corporate and other bodies and for matters incidental thereto or connected therewith."

He said: —Sir, the purposes of this bill are threefold: *firstly*, to make statutory provision for the audit of the accounts of the Colony; *secondly*, to confer on the Director of Audit the independence normally accorded to Government auditors; and *thirdly*, to provide for the Auditor's appointment, tenure of office and powers and duties. The bill, which follows closely the provisions of similar legislation elsewhere, has been prepared on the advice and with the approval of the Secretary of State.

Whilst the post of Director of Audit has not hitherto been provided for by law, his office, under various titles, is one of the oldest in the Colony. Only three years after the Colony was founded, an Auditor General, Mr A. E. SHELLEY, was appointed and was reporting to the Commissioners of Colonial Accounts, then a division of Her Majesty's Treasury in London.

In 1889, responsibility for the audit of colonial accounts in London was taken over by a branch of the Exchequer and Audit Department, and this arrangement lasted until 1910. It was then decided that the Exchequer and Audit Department should be relieved of this responsibility and that the audit of colonial accounts should be supervised

by a separate establishment in London under the control of the then Secretary of State for the Colonies.

Thus the accounts of Hong Kong, as those of other British dependencies, have for the past sixty years been audited on behalf of the Secretary of State by members of the Colonial (latterly Overseas) Audit Service acting under the supervision of the Director General of that service in London. The overall policy direction of the audit has been exercised by the Director General, who has certified the Colony's accounts on the basis of assurances and reports given to him by the Director of Audit in Hong Kong, who in this respect acted rather as a Deputy.

But this era is coming to an end: the Central Office of the Overseas Audit Service in London will be closed, and the post of Director General abolished, at the end of this year, after which full responsibility for the audit and certification of the accounts of the Colony will devolve upon the Director of Audit here in Hong Kong in his own right.

Clearly, in order to function effectively, the Director of Audit must enjoy complete independence and freedom of comment on the accounting transactions of the Colony. The abolition of the post of Director General of the Overseas Audit Service and the removal of direct access to him in London on matters affecting the audit may, in some degree, prejudice that independence and freedom. This bill is designed to ensure that the Director may continue to comment on the accounts and any matters relating to his powers and duties as he sees fit, without adverse consequences to his position.

To this end it is proposed under clause 3 of the bill that the Director shall be appointed by the Governor with the prior approval of the Secretary of State; and under clause 4 that he shall hold office during good behaviour and may be dismissed from his office or prematurely retired only by order in writing by the Governor made with the prior approval of the Secretary of State. Should a Director of Audit be dismissed or prematurely retired, a full statement of the circumstances will be made at the first opportunity to this Council.

Under clause 8 the Director will, on behalf of the Governor, examine, inquire into and audit the accounts of all accounting officers in respect of public moneys, stamps, securities, stores and any other Government property. He will satisfy himself as to the adequacy and observance of financial and accounting instructions and he will also satisfy himself that all issues and payments have been made in accordance with the purposes for which the funds were appropriated by this Council. Clause 9 of the bill provides certain statutory powers to ensure that the Director of Audit may carry out his duties without let or hindrance.

[THE FINANCIAL SECRETARY] **Audit Bill—second reading**

Under clause 12 the Director will examine the annual accounts of the Colony submitted to him by the Accountant General in accordance with clause 11, and report thereon to the Governor within a period of seven months after the close of the financial year. Provision is made to ensure that the statements and report, and the Governor's comments thereon, are laid before this Council and submitted to the Secretary of State within three months of their receipt by the Governor. The Director may also submit to the Governor any special report which he thinks fit, and is required, under clause 13, to report to the Governor any serious accounting irregularity which comes to his notice.

In addition to his audit of the accounts of the Colony the Director may audit the accounts of various statutory and other bodies and provision is made under clauses 14 and 15 to ensure that, when doing so, he has the same powers as those accorded to him in his audit of the accounts of the Colony. Section 16 prescribes that the accounts of statutory and other bodies audited and certified by the Director, and reports made by him, shall be submitted to the Governor and, if the Director so requests, laid before this Council and submitted to the Secretary of State.

This is an important bill, Sir, in both content and purpose and represents an important step historically following as it does on the devolution of many of the Secretary of State's formal financial powers to this Council in 1958. The Director of Audit will, in future, be responsible directly to the Governor and through him to this Council and he, and not the Director General of the Overseas Audit Service, will be fully responsible for the audit and certification of the Colony's accounts.

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 the Bill is to confer on the Director of Audit the independence normally accorded to government auditors and to provide for his appointment, tenure of office, powers and duties.

2. Clause 3 provides for the appointment of the Director. Clauses 4 and 5 provide that the Director shall be employed under the terms and conditions applicable generally to public officers,

save that he shall hold office during good behaviour and may be dismissed, or compulsorily retired before the normal retiring age, only with prior consent of the Secretary of State. In this event, a full public statement of the facts must be given to the Legislative Council.

3. Clause 6 provides for the filling of a vacancy in the office. Clause 7 enables a person to be appointed to act temporarily as Director, if the Director is unable to carry out his duties.

4. Clauses 8 and 9 set out the duties and powers of the Director. Clause 10 provides for the appointment of staff to assist him in the performance of his duties and the exercise of his powers.

5. Clause 11 imposes a duty on the Accountant General to submit the Government's annual accounts to the Director within five months after the end of each financial year.

6. Clause 12 obliges the Director to audit the annual accounts and, within seven months after the end of each financial year, to submit a report, together with copies of the statements of the Government's assets, liabilities, receipts and payments, duly certified by him, to the Governor. Within three months after the Director has so submitted the reports and certified statements they shall, together with the Governor's comments thereon, be laid before the Legislative Council and submitted to the Secretary of State. The same procedure shall apply to any special report which the Director may submit to the Governor.

7. Clause 13 requires the Director to report to the Governor any serious irregularity in respect of public moneys, stamps, securities, stores or any other Government property which comes to his notice in the performance of his duties and the exercise of his powers.

8. Clause 14 provides for the Director to audit, examine or inquire into any accounts, if he is empowered to do so by any Ordinance. Clause 15 empowers the Governor to authorize the Director to audit, examine or inquire into any accounts, notwithstanding that the Director is not required to do so by any Ordinance. Clause 16 applies the procedure specified in clause 12 to any report submitted to the Governor upon the Director's audit, examination or inquiry into any accounts under clause 14 or 15.

9. Clause 17 empowers the Financial Secretary to determine the fees which the Director is entitled to charge for an audit, examination or inquiry under clause 14 or 15. This clause also empowers the Financial Secretary to determine the fees which may be paid to any accountant outside the Government who undertakes any work on the authority of the Director under clause 14 or 15.

PILOTAGE BILL 1971

THE FINANCIAL SECRETARY (MR HADDON-CAVE) moved the second reading of: —"A bill to establish the Pilotage Authority, to regulate and control pilotage in Hong Kong and to provide for matters connected therewith".

He said: —Sir, the origins of pilotage in Hong Kong are obscure. However, it probably dates back to the 1840's when fishermen, rich in local knowledge, were engaged to guide incoming ships to safe anchorages. We now have 23 licensed pilots providing an important and a necessary service to the shipping industry.

Over the years, the volume of shipping in the harbour has steadily increased and this trend is continuing: in 1960, a total of 10,732 ocean-going vessels entered and cleared the port. By 1964 the number had increased to 12,317. Last year a record number of 14,303 ocean-going vessels was recorded.

The objects of the bill before honourable Members are to raise the standard of pilotage and the professional status of pilots in Hong Kong. The general regulation and control of pilotage in Hong Kong will be vested in a Pilotage Authority. Clause 3 of the bill establishes the Director of Marine as the Authority. The Authority will be assisted by a Pilotage Advisory Committee whose members will be appointed by the Governor to represent a wide range of interests.

Hitherto, applicants for a pilot's licence have been required to pass an examination for eyesight and physical fitness besides being examined for competency by a pilotage board of examiners. Under this bill, an applicant must pass eyesight, physical fitness and mental fitness examinations; and in addition be examined as to his competency to pilot ships by a board of examiners comprising selected members of the Pilotage Advisory Committee. Once licensed, the pilot will be required to submit to further eyesight, physical fitness and mental fitness examinations at the direction of the Authority and, in any case, once every two years.

Although the engagement of pilots is not mandatory, I should draw attention to the fact that it will be an offence for any person other than a licensed pilot or the master of a vessel to perform pilotage. Each licence will specify the class of pilotage which the holder is qualified to undertake. Pilots may only undertake pilotage in the appropriate class. This, for example, will ensure that pilots gain experience before attempting to pilot very large ships in or out of awkward berths.

Clause 12(1) entitles a licensed pilot to demand from the master of the vessel information regarding the ship which he is piloting. The

master of the vessel will be liable if he provides the pilot with false information.

Finally, Sir, I should draw honourable Members' attention to clauses 17 to 20 which provide for disciplinary proceedings against licensed pilots. By clause 18, the Authority may appoint an officer of the Marine Department to hold a preliminary inquiry into alleged infringements by a pilot. These matters may be referred to a board of investigation. If the board finds the pilot to be unfit or guilty of misconduct or negligence, the pilot's licence may be suspended or revoked by the Authority. If the pilot disagrees with a disciplinary action taken against him, he may, by clause 20, make an appeal to a judge.

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 CLINTON).

Question put and agreed to.

Explanatory Memorandum

This Bill, which replaces the Pilots Ordinance, establishes a Pilotage Authority and confers upon him a greater measure of control over pilots and their training. The Director of Marine is to be the Authority and he is to be assisted by a Pilotage Advisory Committee to be appointed by the Governor (clauses 3 and 4).

2. The Authority may prescribe the qualifications and experience required of an applicant for a pilot's licence. Anyone who possesses such qualifications and experience may apply to the Authority for a licence (clause 6). An applicant's competence to pilot ships will be tested by a board of examiners, consisting of members of the Pilotage Advisory Committee (clause 7(1)). Clause 8 provides for the issue of licences.

3. A pilot may be examined at any time as to his general physical and mental fitness and eyesight and must undergo a medical and eyesight examination at least once in every two years (clause 10).

4. No person other than a licensed pilot or the master may pilot a ship (clause 11(1)). A licensed pilot may perform only the pilotage services permitted by the class of pilotage specified in his licence (clause 11(2) and (4)).

Pilotage Bill—second reading*[Explanatory Memorandum]*

5. Neither the Pilotage Authority nor the Government will be liable for any act or omission of a licensed pilot (clause 23).

6. Part V deals with disciplinary proceedings against licensed pilots. Complaints of misconduct, and allegations that a licensed pilot is not otherwise fit to act as a pilot, will be investigated by a board of investigation appointed in accordance with regulations. If, after due inquiry, a board recommends that the licence of a licensed pilot be cancelled, or suspended for a limited period, the Pilotage Authority may act accordingly. An appeal lies to a judge of the Supreme Court from a decision of the Pilotage Authority to cancel or suspend a licence.

7. Pilotage dues will be fixed by the Authority after consultation with the Pilotage Advisory Committee (clause 22) and must be paid by the master of the ship or the person who engaged the pilot (clause 13(2)). No fee or charge other than the prescribed pilotage dues may be demanded or paid for pilotage service (clause 14).

8. The Governor in Council may make regulations providing for the conduct and discipline of pilots, fees, the general supervision of the pilotage industry in Hong Kong by the Pilotage Authority and other matters (clause 21). The Authority may, after consultation with the Pilotage Advisory Committee, make orders dealing with pilotage dues, the qualifications, experience and training of apprentice pilots and applicants for a pilot's licence and the classification of pilots (clause 22).

9. A person holding a licence under the repealed Pilots Ordinance will be issued with a licence under the Bill. After consultation with the Pilotage Advisory Committee, the Authority will decide which class of pilotage each such person may perform (clause 25).

ANTIQUITIES AND MONUMENTS BILL 1971**Resumption of debate on second reading (3rd November 1971)***Question again proposed.*

MR H. J. C. BROWNE: —Sir, I think that most of my colleagues are in favour of this bill. I am very glad too that it has at last seen the light of day. I would like, if I may, to congratulate the honourable Attorney General because I believe that several dozen legal draftsmen have retired since it first came onto the drafting list! (*Laughter*).

There are a number of points I would like to ask about the bill. *First*, the date 1800 which is mentioned in the bill; I would like to ask whether there is any special significance about this date.

The *second* point is that I wonder how the Secretary for Home Affairs and the District Commissioner. New Territories propose to enforce the provisions of the bill. It seems to me that this poses some very difficult practical problems.

Thirdly, the provisions of the bill seem to me to be rather passive. It empowers the Authority to remove from an enterprising explorer a relic that he may find, but it does not seem to indicate in any way whether the Authority intends to go out to look for relics themselves. Is this the intention or are they going to leave them where they are? My feeling is that there are some interesting relics in various places in the Colony, and that the Authority would be well advised to search for them and put them in a museum. (*Laughter*). Otherwise, it seems to me we are going to leave the question to an explorer's conscience to report to the Authority, and in that case it is very difficult to see from the bill what inducement there would be to the explorer to actually produce the relics.

Finally, on the question of monuments, I wonder what buildings Government have in mind that might be declared as monuments. Flagstaff House which I believe is one of the oldest buildings in Hong Kong—1842—seems to me to be an appropriate building that might be declared as a monument. Then there is also the Rating and Valuation Department (*laughter*) . . . perhaps not so distinguished! The Supreme Court certainly is, and it would be a pity if a high rise building were to be put there. I also feel that perhaps the Hong Kong Club might be a suitable monument.

Sir, I shall be interested to hear whether my honourable Friend has any views on these points.

MR CHEUNG: —Sir, I have one point to make on this bill.

Whilst 1800 is the date which determines whether any structure or object is an antiquity, there is no such cut-off in the case of monuments to which clause 3 applies. Thus Flagstaff House, Murray Building, the Hong Kong Club and even this Chamber (*laughter*) could be declared monuments by reason of their historical significance. The words "historical significance", as the historians among honourable Members might be disposed to agree, are of wide import and not capable of precise interpretation. I note that the Authority might declare a monument only with the approval of the Governor, after consultation with the Board and after the owner has been heard in

[MR CHEUNG] **Antiquities and Monuments Bill—resumption of debate on second reading (3.11.71)**

objection. Clause 8, however, says it is for the Authority to determine what he considers should be reasonable compensation to the owner who suffers financial loss. This proposal is somewhat unusual in substance. Were one confident that the officers who might become the Authority would always be as reasonable and as fair as the present incumbents, and endowed with their historical sense, I would not have been tempted to work out the full implications of the two clauses; but as legislators we must be on our guard against aberrations.

My Unofficial colleagues, therefore, think it would be fairer to the owner to provide that full and fair compensation should be paid to him for his financial loss, and that the amount should be determined, not by the Authority, but by an independent tribunal, constituted perhaps along the lines of a tenancy tribunal in exemption cases, whom I recently said make awards which are widely respected as being fair, reasonable and impartial. It may be, of course, that Government would want to know what this amount of compensation is before the Authority embarks on making a declaration, but it would not be difficult to provide that such a tribunal should make an assessment first, and the Authority be given the option not to proceed if Government or Finance Committee reckon the cost too high. We hope this matter may be fully explored between today and the committee stage. Subject to that, I have pleasure in supporting the motion.

THE SECRETARY FOR HOME AFFAIRS (MR D. C. C. LUDDINGTON): —Sir, my honourable Friend, Mr BROWNE, has voiced some pertinent points about this bill although I suggest that, in making certain specific recommendations for the preservation as monuments of particular buildings built after 1800, he is being somewhat more controversial. I would certainly not wish to venture an opinion on them without full advice.

The best explanation I can give for the choice of the year 1800 is that it was an arbitrary date chosen after considerable discussion. It was accepted that, after some experience of administering this legislation, it might be appropriate to modify that date to enable it to cover a wider field. However, at this stage I believe that it would be better to concentrate on older antiquities and relics until such time as the two Authorities and Government have some experience of the administration of this Ordinance. Of course, as my honourable Friend, Mr CHEUNG, has pointed out in regard to monuments clause 3 does not rely on this date of 1880. To reassure Mr BROWNE, may I say that I understand that at present there is no intention of demolishing Flagstaff House or the old Murray Barracks Officers Mess, both of which are Crown

property. The present utilization of the latter building is likely to continue well into 1975. The future of the Hong Kong Club building lies at present of course in the hands of its members.

On the question of how this legislation is to be administered, I would remind honourable Members that it is the intention to appoint a provisional Antiquities Advisory Board as soon as possible after the enactment of the bill, and it will consider in detail the practical problems involved in administering this legislation when brought into force. The first task of the provisional Board will, in my view, be to recruit an Executive Secretary who has sufficient experience and interest in this field to enable him to inspect potential monuments and sites of archaeological digs and, after discussion with owners, technical departments of Government and others, to put detailed recommendations to the Board for consideration once the legislation is brought into force. If approved by the Board the detailed recommendation for monuments, including full estimates of all costs, including compensation, would be submitted to the Colonial Secretariat for appropriate processing, including the seeking of necessary funds from Finance Committee, before seeking Your Excellency's approval. This Executive Secretary would also be responsible for advising the Police and other departments concerned regarding offences against the Ordinance and how they should be dealt with. He will also have to consider the need for subsidiary legislation and inspect licensed excavations. Indeed he will be a very busy man.

It has not, of course, at this stage been possible to produce any budget of anticipated expenditure because we have in fact no experience on which to base such a budget. The one monument of ancient times which has come to light recently, the Lei Cheng Uk tomb, was fortunately found on Crown land. I have sought the advice and assistance on the problem of implementation from officers of the Department of the Environment in London but, while its staff and organization is large and has been established for a long time, they felt unable to assist by seconding an officer to help us with the administration of this legislation here.

In regard to the search for relics, again, we have not considered that Government would wish at the moment to go and search for relics, but only to have the necessary legislation to ensure that people who are merely after relics for profit do not destroy valuable relics and antiquities in their search for profit.

Finally my honourable Friend, Mr CHEUNG, has suggested that it is not appropriate for the Authority himself to award compensation as provided for in clause 8 of the bill despite the right given to appeal under clause 9. May I make it clear that such compensation would not

[THE SECRETARY FOR HOME AFFAIRS] **Antiquities and Monuments Bill —
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(3.11.71)**

be in regard to any expropriation of land which would, if it was considered to be essential for the preservation of a monument, fall to be dealt with under the Crown Lands Resumption Ordinance. The compensation payable under this clause of the bill would be in relation to, for instance, the requirement to retain a building or portion of a building in its existing condition and not to demolish it. Such assessment has not, to my knowledge, been attempted before in Hong Kong and will have to be the subject of some experiment. The compensation will in general have to be agreed between the Authority and the owner, because without such agreement it is unlikely that Finance Committee would approve the necessary funds or the Governor would approve the declaration of a monument. However, I accept my honourable Friend's point and his compliment, and will examine the matter further in consultation with the Attorney General prior to the committee stage of this 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).

WORKMEN'S COMPENSATION (AMENDMENT) BILL 1971

Resumption of debate on second reading (3rd November 1971)

Question again proposed.

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.

CRIMES BILL 1971

HIS EXCELLENCY THE PRESIDENT: —With the concurrence of honourable Members we will take the clauses in blocks of not more than five.

Clauses 1 to 19 and the Schedule were agreed to.

CRIMINAL PROCEDURE (AMENDMENT) (NO 3) BILL 1971

Clauses 1 and 2 were agreed to.

ADOPTION (AMENDMENT) BILL 1971

Clauses 1 and 2 were agreed to.

Council then resumed.

Third reading

THE ATTORNEY GENERAL (MR ROBERTS) reported that the

Crimes Bill 1971

Criminal Procedure (Amendment) (No 3) Bill 1971

Adoption (Amendment) Bill 1971

had passed through Committee without amendment and moved the third reading of each of the bills.

Question put on each bill and agreed to.

Bills read the third time and passed.

Adjournment and next sitting

HIS EXCELLENCY THE PRESIDENT: —In accordance with Standing Orders I now adjourn the Council until half past two o'clock on Wednesday the 1st of December 1971.

Adjourned accordingly at twenty-eight minutes to four o'clock.