

Friday, 11th October, 1946.

—————
PRESENT: —

HIS EXCELLENCY THE GOVERNOR (SIR MARK AITCHISON YOUNG, G.C.M.G.).

HIS EXCELLENCY THE GENERAL OFFICER COMMANDING THE TROOPS (MAJOR-GENERAL F. W. FESTING, C.B., C.B.E., D.S.O.).

THE COLONIAL SECRETARY (HON. MR. R. R. TODD, *Acting*).

THE ATTORNEY GENERAL (HON. MR. G. E. STRICKLAND, *Acting*)

THE SECRETARY FOR CHINESE AFFAIRS (HON. MR. T. MEGARRY, *Acting*).

THE FINANCIAL SECRETARY (HON. MR. C.G.S. FOLLOWS, C.M.G., *Acting*).

HON. DR. P. S. SELWYN-CLARKE, C.M.G., M.C., (Director of Medical Services).

HON. MR. C. H. SANSOM, C.M.G., C.B.E., (Acting Commissioner of Police).

HON. MR. V. KENNIFF (Director of Public Works).

HON. DR. J. P. FEHILY, O.B.E., (Acting Chairman, Urban Council).

HON. MR. D. F. LANDALE.

HON. MR. CHAU TSUN-NIN, C.B.E.

HON. MR. LO MAN-KAM, C.B.E.

HON. MR. LEO D'ALMADA E CASTRO.

HON. MR. R. D. GILLESPIE.

HON. DR. CHAU SIK-NIN.

MR. D. R. HOLMES, M.E.E., M.C., (Deputy Clerk of Councils).

MINUTES.

The Minutes of the meeting of the Council held on Thursday, 3rd October, 1946, were confirmed.

PAPERS.

The COLONIAL SECRETARY, by command of H.E. The Governor, laid upon the table the following papers: —

The Trading with the Enemy (Specified Persons) (Revocation) Order, 1946, made by the Governor with the prior approval of the Secretary of State under Sub-section 2 of Section 3 of the Trading with the Enemy Ordinance, 1914, Ordinance No. 25 of 1914, dated 4th September, 1946.

The Trading with the Enemy (Authorization) Order, 1946, made by the Governor under Sections 4, 6, 7 and 15 of the Trading with the Enemy Ordinance, 1914, Ordinance No. 25 of 1914, dated 4th September, 1946.

The Wholesale (Kowloon) Marketing (Vegetables) Order, 1946, made by the Acting Director of Supplies, Trade & Industry under Regulation 50 of the Defence Regulations, 1940, dated 3rd September, 1946.

Additional items made by the Acting Director of Supplies, Trade & Industry under Defence Regulation 50 of the Defence Regulations, 1940, to the Schedule to the Price Control Order, 1946, dated 4th September, 1946.

The Fish Section of the Kennedy Town Wholesale Market exempted by the Urban Council under By-law 46 of the Markets By-laws, Public Health (Food) Ordinance, 1935, Ordinance No. 13 of 1935, from the application of Markets By-laws Nos. 3, 5, 6, 11, 18, 37, 42 and 45.

The Government Wholesale Vegetable Market exempted by the Urban Council under By-law 46 of the Markets By-laws, Public Health (Food) Ordinance, 1935, Ordinance No. 13 of 1935, from the application of Markets By-laws Nos. 3, 5, 9, 10, 11, 18, 20 to 42 inclusive, and 45.

Order made by the Governor in Council under section 18 of the Quarantine and Prevention of Disease Ordinance, 1936, Ordinance No. 7 of 1936, declaring Swatow an infected place, dated 6th September, 1946.

**FACTORIES AND WORKSHOPS AMENDMENT
BILL, 1946.**

The ATTORNEY GENERAL moved the First reading of a Bill intituled "An Ordinance to amend the Factories and Workshops Ordinance, 1937." He said: Your Excellency, May I refer Honourable Members to paragraph 3 of the objects and reasons. In paragraph 3 it is stated: "The Labour Officer and his staff have gradually been taking over the responsibilities for labour control previously exercised by the Chairman of the Urban Council and the objects of this bill is to carry his development to its natural conclusion by formally divesting the Chairman of the Urban Council of his functions as Protector of Labour and substituting regulations by the Governor in Council for by-laws by the Urban Council." A number of consequential amendments follow from that, the words "by-law" and "by-laws" having been deleted in the appropriate places. Consequential amendments are also required in the Schedule. I don't think I need add any more by way of explanation of this bill.

The COLONIAL SECRETARY seconded and the Bill was read a First time.

Objects and Reasons.

1. When the Factories and Workshops Ordinance, 1937, was enacted, the Labour Office had only recently been set up and the Labour Officer was engaged mainly on research into labour organization and labour problems. The task of enforcing the Ordinance was given to the Chairman of the Urban Council.

2. Sub-section (8) of Section 2 of the Ordinance provides that the Protector of Labour shall be the Chairman of the Urban Council or such other person as the Governor may appoint. and by Section 5 it is provided that industrial undertakings may be regulated by by-laws of the Urban Council.

3. The Labour Officer and his staff have gradually been taking over the responsibilities for labour control previously exercised by the Chairman of the Urban Council and the object of this Bill is to carry this development to its natural conclusion by formally divesting the Chairman of the Urban Council of his functions as Protector of Labour and substituting regulations by the Governor in Council for by-laws by the Urban Council. These amendments are carried out by Clause 2 and Clause 5 of the Bill respectively.

4. Consequential amendments are effected by other clauses of the Bill.

**ARMS AND AMMUNITION AMENDMENT
BILL, 1946.**

The ATTORNEY GENERAL moved the First reading of a Bill intituled "An Ordinance to amend the Arms and Ammunition Ordinance, 1933." He said: Your Excellency, I would like to make one or two observations in addition to the observations made in the objects and reasons. Honourable Members will, I am sure, recollect that early in May of this year, we made an amendment to give magistrates increased powers. These increased powers we gave to the magistrates do not apply when the ordinance itself provides that on summary conviction only a particular sentence can be imposed. Under the Arms and Ammunition Ordinance, magistrates are at present restricted to a sentence of one year's imprisonment for possession of arms. There are quite a number of cases of possession of arms in which there is no more than the mere fact of possession. There are no aggravating circumstances and there is nothing to show any offence is intended. In the present pressure upon the Supreme Court it is considered desirable that those sorts of cases should be taken by magistrates---that they should have increased powers of sentence up to three years. That is one of the main objects of the present bill. A new section is proposed to be inserted-section 29A. That section has been modelled upon similar legislation in the United Kingdom. The object is to make it an offence to use imitation revolvers under certain circumstances. It is stated in the objects and reasons that quite recently a large cargo of toy revolvers had been imported into the colony. Those revolvers were extremely like the real thing. We have had also before the Courts at least two cases in which toy revolvers were used in the commission of a robbery, and those robberies were assisted by the possession of these weapons. I think I am right in saying, I cannot say with any certainty, that the importer in this particular case had been persuaded not to release the cargo for sale. It may seem strange that we have gone no further than we have but at present it is considered that we should at any rate have achieved something if we introduce measures corresponding to similar legislation in the United Kingdom.

The COLONIAL SECRETARY seconded, and the Bill was read a First time.

Objects and Reasons.

1. The main objects of the measure are three: —
 - (a) To obtain so far as possible an accurate list of all arms legitimately in the Colony;
 - (b) To enable a sentence exceeding one year's imprisonment and not exceeding three years to be imposed for possession of arms on summary conviction; and

- (c) To make it an offence in certain cases to use or be in possession of imitation firearms.

2. The first object necessitates the issue of licences for all arms except duty arms which can be otherwise checked and arms expressly exempted by or under the provisions of the Ordinance. Exempted arms can also be checked. It is sought to achieve this object by replacing subsection (d) of section 2 by a new subsection which while re-enacting with modifications paragraph (1) of the present subsection, replaces paragraphs (ii), (iii) and (iv) with a new subsection (ii) enabling the Governor by order to grant exemption.

3. The precise effect of the amendments effected by the new subsection will be observed by perusing the comparative table appearing in Part I of the Schedule to these objects and reasons, The most important innovation is that commissioned officers of the fighting services of foreign governments are no longer exempted as of right. They can be exempted by the Governor or they can apply for a licence and in a proper case the Governor may by virtue of Clause 3 of the Bill waive the fee. With armed robbery on the increase it is essential that an accurate check be kept on arms. The Governor can confer exemption on any consular representative or United Nations Organization official desiring it but in this event the weapon will in fact be registered, thus assisting the police in recovering the weapon should it be lost or fall into wrong hands.

4. The amendments recently made to the Magistrates Ordinance do not in my view authorise a magistrate to pass the sentences thereby authorised in cases where the maximum sentence possible on summary conviction is prescribed by the Ordinance creating the offence. In cases relating to possession of arms the magistrate normally has to answer a simple question of fact and in view of the frequency of such cases it is thought desirable to give power to magistrates to give 3 years for possession of arms. The provision is safeguarded by the power only being exercisable at the request of the Commissioner of Police.

5. The use of imitation firearms in robberies and other offences often enables an offender to escape with impunity. In the United Kingdom this is specifically made an offence by section 25 of the Firearms Act, 1937 as is also the possession of imitation firearms at the time of committing specified offences. It is considered that this should be also the law in Hong Kong particularly as imitation firearms have recently been used and the importation of a large cargo of toy revolvers closely resembling the genuine article has come to light. The necessary amendment has been effected by means of the addition of a new section, Section 29A. A comparative table appears in Part 11 of the Schedule to these Objects and Reasons.

6. Lastly, the opportunity afforded by the necessity of other amendments has counselled the modification of subsection (6) of Section 6 so as to extend the exemption thereby granted to other vessels which in the opinion of the Harbour Master and the Commissioner of Police reasonably require arms for their protection.

Table of Comparison.

Part I.

Principal Ordinance.

Amendment Ordinance.

Section 2 (d):

Section 2 (d):

“Exempted person” means—

“Exempted person” means—

(i) every person in the naval, military, air, volunteer and police forces, district watchmen, members of the volunteer reserve, and members of the police reserve, in respect of arms and ammunition used by them solely in connection with their duties;

(i) every person who is a member of His Majesty's Armed Forces or of the Volunteer Forces or of the Police Force or of the Police Reserve or who is a District Watchman in respect only of arms issued to him for the execution of his duty; and

(ii) commissioned officers on the active lists of the navy, army and air forces and the consular representatives de carriere of any foreign government;

(ii) to the extent specified in any such exemption any person or class of persons exempted by order of the Governor.

(iii) public officers whose names are approved by the Governor and recorded in a list kept at the Colonial Secretary's Office;

(iv) any person to whom the Inspector General of Police shall have issued, in his discretion, a written letter of exemption, any such exemption being confined in the discretion of the Inspector General of Police to any particular weapons or ammunition mentioned therein.

Section 3(4):

The fee payable for such licence shall be that mentioned in the Second Schedule.

Section 4(6):

Sub-section (1) shall not apply to any arms or ammunition on board any junk or other similar vessel if such arms and ammunition are described and enumerated in the licence or clearance of such junk or other similar vessel, and are reasonably necessary for the protection of such junk or other similar vessel.

Section 29:

Every person who contravenes or attempts to contravene any of the provisions of this Ordinance, or any of the conditions of any licence or permit issued under this Ordinance, shall upon summary conviction be liable to a fine not exceeding one thousand dollars, and to imprisonment for any term not exceeding *one year*, and shall upon conviction on indictment be liable to imprisonment for any term not exceeding ten years.

Provided that no charge under section 4 or section 20 shall be dealt with summarily except at the request in writing of the Inspector General of Police.

Section 3(4) & proviso:

The fee payable for such licence shall be that mentioned in the Second Schedule, provided that the Governor may in his absolute discretion remit the payment of any such fee.

Section 4 (6):

Sub-section (1) shall not apply to any arms or ammunition on board any junk licensed as a trading junk by the Harbour Master or river steamers and launches holding Class 4 licences under the Merchant Shipping Ordinance, 1889, and any Ordinance amending or substituted for the same, if such arms and ammunition are described and enumerated in the licence or clearance of such junk, river steamer or launch and are reasonably necessary for the protection of such junk, river steamer or launch

Section 29:

Every person who contravenes or attempts to contravene any of the provisions of this Ordinance, or any of the conditions of any licence or permit issued under this Ordinance, shall upon summary conviction be liable to a fine not exceeding one thousand dollars, and to imprisonment for any term not exceeding *three years*, and shall upon conviction on indictment be liable to imprisonment for any term not exceeding ten years.

Provided that no charge under section 4 or section 20 shall be dealt with summarily except at the request in writing of the Inspector General of Police.

Part II.**Section 23 of the Firearms Act, 1937.**

(1) If any person makes or attempts to make any use whatsoever of a firearm or imitation firearm with intent to resist or prevent the lawful apprehension or detention of himself or any other person, he shall be guilty of an offence under this subsection, and on conviction thereof on indictment shall be liable to penal servitude for a term not exceeding fourteen years.

Where any person commits in offence under this subsection in respect of the lawful apprehension or detention of himself for any other offence committed by him he shall be liable to the penalty provided by this subsection in addition to any penalty to which he may be sentenced for that other offence.

(2) If any person, at the time of his committing, or at the time of his apprehension for, any offence specified in the Third Schedule to this Act, has in his possession any firearm or imitation firearm, he shall, unless he shows that he had it in his possession for a lawful object, be guilty of an offence under this subsection, and on conviction thereof on indictment shall be liable to penal servitude for a term not exceeding seven years in addition to any penalty to which he may be sentenced for the first-mentioned offence.

Section 29A of the Arms and Ammunition Ord., 1933.

(1) If any person makes or attempts to make any use whatsoever of an imitation firearm with intent to resist or prevent the lawful apprehension or detention of himself or any other person he shall be guilty of an offence under this subsection, and on conviction thereof on indictment shall be liable to imprisonment for a term not exceeding fourteen years.

Where any person commits in offence under this subsection in respect of the lawful apprehension or detention of himself for any other offence committed by him he shall be liable to the penalty provided by this subsection in addition to any penalty to which he may be sentenced for that other offence.

(2) If any person, at the time of committing, or at the time of his apprehension for, any offence specified in the Schedule to this Ordinance has in his possession any imitation firearm, he shall, unless he shows that he had it in his possession for a lawful object, be guilty of an offence under this subsection, and on conviction thereof on indictment shall be liable to penal servitude for a term not exceeding seven years in addition to any penalty to which he may be sentenced for the first-mentioned offence.

Section 23 of the Firearms Act, 1937.

(3) If on the trial of any person for an offence under subsection (1) of this section the jury are not satisfied that that person is guilty of that offence but are satisfied that he is guilty of an offence under subsection (2) of this section, the jury may find him guilty of the offence under the said subsection (2), and thereupon he shall be liable to be punished accordingly.

(4) Where an adult within the meaning of section twenty-four of the Criminal Justice Act, 1925, is charged before a court of summary jurisdiction with an offence specified in the Second Schedule to that Act, and is also charged before that court with an offence under subsection (1) or subsection (2) of this section, then, notwithstanding anything in the said, section twenty-four, the Court shall not have power to deal summarily with the first-mentioned offence if the defendant is committed for trial in respect of the offence under this section.

(5) A firearm or imitation firearm shall, notwithstanding that it is not loaded or is otherwise incapable of discharging any shot, bullet or other missile be deemed to be an offensive weapon or instrument for the purpose of paragraph (a) of subsection (1) of section twenty-three of the Larceny Act, 1916, and paragraph (1) of section twenty-eight of the said Act.

Section 29A of the Arms and Ammunition Ord., 1933.

(3) If on the trial of any person for an offence under subsection (1) of this section the jury are not satisfied that that person is guilty of that offence but are satisfied that he is guilty of an offence under subsection (2) of this section, the jury may find him guilty of the offence under the said subsection (2), and thereupon he shall be liable to be punished accordingly.

(4) An imitation firearm shall, notwithstanding that it is not loaded or is otherwise incapable of discharging any shot, bullet or other missile, be deemed to be an offensive weapon or instrument for the purpose of section 45 of the Larceny Ordinance, 1935.

- (6) In this section—
- (a) the expression “firearm”, means any lethal barrelled weapon of any description from which any shot, bullet or other missile can be discharged, and includes any prohibited weapon, whether it is Such a lethal weapon as aforesaid or not; and
- (b) the expression "imitation firearm" means anything which has the appearance of being a firearm within the meaning of this, section (other than such a prohibited weapon as is mentioned in paragraph (b) of subsection (1) of section seventeen of this Act), whether it is capable of discharging any shot, bullet or other missile or not.
- (5) In this Section, the expression "imitation firearm" means anything which has the appearance of being a lethal barreled weapon of any description, whether it is capable of discharging any shot, bullet, or other missile or not
- (7) This section shall not extend to Scotland.

BRITISH CINEMATOGRAPH FILMS BILL, 1946.

The ATTORNEY GENERAL moved the Second reading of a Bill intituled "An Ordinance to provide for the exhibition of British Cinematograph Films and to restrict the advance booking of cinematograph films."

The COLONIAL SECRETARY seconded and the Bill was read a Second time.

On the motion of the ATTORNEY GENERAL, seconded by the COLONIAL SECRETARY, Council then went into Committee to consider the Bill clause by clause.

Council then resumed.

The ATTORNEY GENERAL reported t hat the British Cinematograph Films Bill, 1946, had passed through Committee without amendment and moved the Third reading.

The COLONIAL SECRETARY seconded and the Bill was read a Third time and passed.

STAMP (AMENDMENT) BILL, 1946.

The ATTORNEY GENERAL moved the Second reading of a Bill intituled "An Ordinance to amend the Stamp Ordinance, 1921." He said: I think it is a convenient time to state that it is the intention of Government to move that the Bill be referred to a Select Committee.

The FINANCIAL SECRETARY seconded and the Bill was read a Second time.

The ATTORNEY GENERAL moved that a Bill intituled "An Ordinance to amend the Stamp Ordinance, 1921" be referred to a Select Committee.

The FINANCIAL SECRETARY seconded and the motion was carried.

H.E. The GOVERNOR. —The Bill will accordingly be referred to a Select Committee. It will consist, as Honourable Members are aware, of members nominated by the President, and any member so nominated who finds that he is unable to serve can move the name of another Member be substituted for him. The Committee will comprise the Hon. Attorney General, as Chairman, the Hon. Financial Secretary, the Hon. Mr. Landale and the Hon. Mr. Lo.

ADJOITRNMENT.

H.E. The GOVERNOR. —That concludes the business before Council. Council will now adjourn until Thursday, 17th October, 1946.
