

*Thursday, 17th 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.B.E., M.C., (Deputy Clerk of Councils).

## MINUTES.

The Minutes of the meeting of the Council held on Friday, 11th October, 1946, were confirmed.

### STAMP (AMENDMENT) BILL, 1946.

The ATTORNEY GENERAL presented the Report of the Select Committee appointed to consider the Bill intituled "An Ordinance to amend the Stamp Ordinance, 1921" and moved that the Bill as amended by the Select Committee and published in the Gazette Extraordinary of 16th October, 1946, be substituted for the Bill as read a Second time.

He said: I think that Honourable Members are aware that the original Bill was presented to this Council as a result of recommendations made by the Taxation Committee. That Committee was naturally hampered in considering the Bill by the necessity for the utmost secrecy. After effect had been given in the original Bill to the recommendations of that Committee, not unnaturally criticism arose of certain provisions of the Bill and members of the legal profession were able to consider it with regard to practical transactions which are arising and it was in order to be able to consider the Bill more deeply that the Government proposed at the last meeting of the Council that this Bill should be referred to a Select Committee. A number of proposals were already in draft and it was possible to put them before the Select Committee and to obtain their recommendations on these proposals. Perhaps the most fundamental alterations made in the Bill are those relating to the date for ascertaining the previous value and the provisions with regard to the alteration of that previous value by augmentation or by diminution in certain cases. With regard to the date of previous value as explained in the recent recommendations we have been largely influenced by the fact that the assessor has complete records only for 1938. Those records will make the assessment of previous value very much simpler than it would have been if we had selected a year when those records were not available.

With regard to variation of previous value the amendments are incorporated in a new sub-section 13 and a new sub-section With regard to sub-section 13, the intention is to give the benefit of improvements effected between the dates selected for the date of previous value and the actual date of the execution of conveyance, and to give the benefits of the improvements effected between those dates to the taxpayer so that he will not have to pay on these improvements. In giving this benefit the Committee recommends that it should be the actual cost of the improvements that should be added to the previous value and not that is such value as the improvements might have on the market to-day, so that the tax on the increasing value will still apply in a modified extent to those improvements.

It is also plain in the recommendations that the power to specify which improvements shall have the benefit of this provision is given to the Governor-in-Council. It is explained that, for example, maintenance and repairs should probably be excluded, and the actual specification of the title of improvements is a matter for which expert guidance should be obtained before a definition is attempted.

Passing to sub-section 14 the Committee was in some difficulty as to the most practical method of arriving at a lower figure than the previously attributable value of the property, in those cases where between the dates of previous value and the execution of conveyance, the property had been diminished or damaged. It would have been, the Committee felt, a difficult matter to have attempted to estimate between the diminution value at the date at which such diminution or destruction occurred, and it was considered more practicable to arrive at the cost that it would take according to present-day ruling of prices which could be checked and then to work out what proportion of those costs could fairly be said to represent the diminution in value, the idea being that if, say, in 1938 the general cost of building was one-fifth of the cost to-day, then one-fifth of to-day's cost would be the figure by which the previous value would be written down. I would like to add something on the question of transaction during the Japanese occupation for the benefit of those Members of Council who may not appreciate what the position is. The Japanese did not continue the Land Office registers. They appointed a House Registration Office of their own and in that House Registration Office there were registered the transactions which took place during the Japanese occupation. A form of assignment was used which was not a deed in the ordinary English legal form, and as a result the legal estate in the property did not pass. There were other matters which required carrying out, such as the fact that in some cases no reference was made to the land upon which a house—the subject of the assignment—stood, so it was doubtful whether that was intended to be included in the assignment or not. It has been the policy for some months now to grant exemption from the restrictions contained in the Moratorium Proclamation with regard to dealings in land to transactions which we are satisfied were freely entered into and quite a number of persons have applied and been granted exemptions and as a result have entered into a confirmatory deed in proper form to confirm the transaction which was purported to have been carried out during the Japanese occupation. There are, however, many other cases outstanding and in many of these cases the purchaser is hampered by the fact that he cannot always find his vendor, and that if he can find him, he cannot always persuade him to enter into a confirmatory deed. Duty was charged by the Japanese on these transactions, not only the ordinary stamp duty—stamp duty in Yen, —which was almost identical in the percentage of *ad valorem* to the duties in the Stamp Ordinance, but

also a transaction duty of five per cent which was imposed in the late half of, I think, 1944. We accordingly passed a Proclamation during the period of Military Administration which exempted these transactions from *ad valorem* duty. If we did not make such a condition in these cases referring to deeds executed after the operative date, September 30, it might attract this excess stamp duty.

The recommendation was also made because of the practical difficulty that would arise as a result of the consideration being expressed in Yen. It would not be possible to assess the previous value of the property. I do not consider that I need add any further explanation on the recommendations which are explained in the Report presented and I move the motion standing in my name.

The FINANCIAL SECRETARY seconded and the motion was carried.

H.E. The GOVERNOR: By the motion that the Council has just passed, permission has been given in accordance with Standing Order 27(14) for the substitution of this Bill for the Bill which was read a First and Second time at the last meeting and we shall at a later stage proceed with the Committee stage and the Third reading of the Bill as so substituted.

**REPORT OF THE SELECT COMMITTEE APPOINTED TO CONSIDER  
THE BILL INTITULED 'AN ORDINANCE TO  
AMEND THE STAMP ORDINANCE, 1921.'**

1. The Committee was appointed at the meeting of the Legislative Council held on Friday, 11th October, and was constituted as follows:

Chairman: The Attorney General.

Members: The Financial Secretary  
Hon. Mr. D. F. Landale  
Hon. Mr. Lo Man-kam.

2. The Committee met on Saturday, 12th October, and considered the Bill. It is recommended that the Bill be amended as shown in the succeeding paragraphs of this report. These recommendations are unanimous and the grounds on which each recommendation is made are set out opposite the proposed amendment.

**3. Clause 2.**

**Reason for Recommendation.**

After the words "(2) in this section" and before the words "new conveyance" shall be inserted the following: "Conveyance on sale shall not include

Transactions registered in the Japanese House Registration Office are excluded because the consideration for the sales recorded in that office is express-

a conveyance on sale registered in the Japanese House Registraion Office as defined by the Stamp (Occupation Transactions) Proclamation, 1946, nor shall it include an assignment or reassignment exempt from *ad valorem* duty by virtue of Article 3 of the aforesaid Proclamation.

In the same sub-section the date "30th September, 1946" shall be substituted for the date "3rd October, 1946" in the definition of the phrase "new conveyance."

ed in yen. If such a sale were to be treated as the last registered conveyance it would be impossible to assess duty without an agreed rate for converting military yen into Hong Kong dollars. Similarly if a deed of confirmation of such a transaction were to be treated as a new conveyance it would be impossible to assess duty. The result of the amendment is that confirmatory deeds will not bear the new duty but on any new sale the value previously attributable will be arrived at without any reference to the occupation sale.

The date 30th September, has been substituted for the date, 3rd October, because the Committee understands from the Collector that a number of documents bearing the dates 1st and 2nd October were recently presented for stamping. While transactions are not, in most cases, large ones, there is one substantial transaction and in the mind of the Committee there is no logical distinction between imposing duty on transactions in respect of which there is already a valid contract of sale and transactions recently completed. Some starting point must, nevertheless, be taken, and in the view of the Committee, it is wiser to select a date which allows little scope for evasion. As conveyances on sale should be stamped within seven days of execution, the 30th of September appears a suitable date. The result will be that some instruments will have been insufficiently stamped but this can be rectified upon adjudication which is provided for by a new sub-section, (11).

In sub-section (3) after the words "on sale thereof" and before the words "recorded in" shall be inserted the words "after the 1st January, 1938."

In sub-section (4), line 2, after the words "conveyance on sale" and before the words "of the property" shall be inserted the words "after the 1st January, 1938."

In the same sub-section the words "immediately after the compliance with any building covenant affecting the land, or if there should be no such covenant, the value immediately after completion of the first development of such land" shall be deleted and the following substituted:

"On the 1st January, 1938, or on the date when the property was first acquired from the Crown, whichever shall be the later date."

A new sub-section (6) shall be inserted and shall read as follows:

"Excess stamp duty shall be payable on an exchange of property as, if the value of the greater property was the value of the consideration comprised in a new conveyance and the value of the same property on the 1st January, 1938, was the value previously attributable to it.

Sub-section (6) shall be renumbered sub-section (7), and shall be amended as follows:

Sub-sections (3) and (4). It will be observed that the 1st of January, 1938, has been selected as the date on which the previous value of the property will be ascertained if there has been no recorded transfer after such date. This date has been selected because the year 1938 is the first year prior to 1941 in which the Assessor has complete assessment records. It also meets the criticism that there might otherwise have been inequity done to persons who had, transferred at some very early date and who had not transferred since. On the other hand, the criticism that persons who had not transferred at all and persons who had, not transferred for a long time were being taxed on improvements is met later by the introduction of a new sub-section.

The new sub-section (6) imposes a duty on exchange as well as on sale' of property, partly because such transaction might well, be of doubtful character and partly because this might otherwise well have been adopted as a method of evasion, e.g., a small property ostensibly exchanged for a much more valuable property together with equality of exchange of an amount less than the previously attributable value of the larger property.

- (7) (a), line 3; after the words "new conveyance" and before the words "to produce" shall be inserted the words "subjected to excess duty by this Section."
- The amendment in line 3 becomes necessary as a result of the introduction of the new subsection (6).
- Line 10; after the words "new conveyance" and before the words "and to furnish" shall be inserted the words "or to ascertaining whether any such duty is chargeable."
- The amendment in line 10 has been inserted because the power might prove useful in exceptional cases where there is reason to suspect an attempt to evade payment of duty
- Line 12; after the words "for such purpose" shall be added the words "and to verify by statutory declaration any such information."
- See previous comment.
- Sub-section 7 (b). For the words "other than a requirement which a person accused satisfies the magistrate is unreasonable" shall be substituted the words "other than a failure which a person accused satisfies the magistrate is not unreasonable."
- The amendment is intended to clarify the meaning of this paragraph.
- Sub-section (T) shall be renumbered Sub-section (8).
- Sub-section (8) shall be renumbered Sub-section (9) and shall be amended by the addition at the end of the subsection of the following:
- "Provided always that where any new conveyance is executed pursuant to a contract or agreement for sale which on, or before the 30th September, 1946, was or might be deemed to have been duly stamped in accordance with section 31A of this Ordinance, any provision in such contract or agreement or any rule of law or equity whereby as between the parties the liability for the
- The effect of this amendment is that the duty on transactions entered into before the initial date but completed thereafter will be borne equally by vendor and purchaser, i.e., each shall pay half. In the absence of such a provision the whole of the duty would normally fall on the purchaser. As the duty was unforeseen it is considered equitable to divide the duty between

duty by this section imposed is to be borne by the purchaser shall not apply and as between such parties the duty shall be

borne and be recoverable in like manner as if provision had been made by such contract or agreement that the duty should be borne as to a moiety thereof by the purchaser and as to the other moiety by the person liable under such contract or agreement to transfer to or vest in the purchaser, or to or in another person by the direction or on behalf of the purchaser, the property comprised in the new conveyance”.

The original Sub-section (9) shall be deleted.

Vendor and Purchaser in such cases. In new transactions the incidence of duty as between the parties may be varied by agreement.

Appropriate provision is made in the new Sub-section (12).

Five new sub-sections shall be added to the Bill as follows:

(10) The expression "ad valorem duty" in section 31A of this Ordinance shall be deemed to include the excess duty hereinbefore imposed.

In the case of ad valorem duty section 31A of the Stamp Ordinance, 1921, provides, for stamping of the contract of sale prior to completion and for refund upon cancellation. Further a contract may be stamped nominally as a contract and used for certain purposes, provided that it is presented for stamping ad valorem within six months, in which event, the conveyance itself is not also stamped with ad valorem duty. The effect of the amendment is that these provisions will apply also to the new duty.

(11) Notwithstanding anything contained in section 14 of this Ordinance, the Collector may be required to express his opinion under that section on any conveyance on sale or exchange to which this section applies and no such conveyance shall be

As the conveyance subjected to duty will not contain all the facts which are relevant to duty, it is clearly desirable for all concerned that it should be adjudicated. This is provided for by this sub-section which follows closely an amendment to



deemed to be duly stamped unless the Collector has expressed his opinion thereon in accordance with this section.

(12) Save as herein expressly provided the provisions of this Ordinance and of any regulation made hereunder shall apply to the excess stamp duty hereinbefore imposed but such duty shall not be deemed to be payable on any instrument solely by reason of any provision in the said Ordinance other than this section or in the Schedule thereto that it shall be chargeable with the like duty as a conveyance on sale.

(13) (a) In any case in which between the date, on which under this section the value previously attributable to the property comprised in any conveyance subject to excess duty required to be ascertained for the purpose of assessing excess duty, and the date of execution of such conveyance, such property has been improved by any improvement which shall be declared by regulation made by the Governor in Council to be an improvement to which this sub-section applies, the value of the property previously attributable to the property comprised in any such conveyance shall for the purpose of assessing the excess duty by this section imposed be deemed to be augmented by such a sum as the Collector is satisfied by such evidence as he may in his discretion require was expended in effecting such improvement.

(13) (b) For the purpose of removing doubts it is hereby declared

Section 23 of the Stamp Ordinance, 1921, effected by Ordinance, No. 19 of 1938.

Sub-section (12) is intended to clarify that excess duty does not apply to leases or other instruments subjected to the same ad valorem duty as conveyances on sale. It also clarifies that with the exceptions contained in the new section the provisions of the Stamp Ordinance and the regulations will apply to the new duty.

The original Bill was criticized because it had the effect of taxing improvements to the property effected between the date determining previous value and the date of conveyance. Clearly this would discourage reconstruction and penalise those who since the liberation had rebuilt or repaired. Moreover, now that value in 1938 or date of subsequent acquisition from the Crown is the determining date it would be grossly unjust to fix previous value without reference to building or other improvements effected since that date. The Committee accordingly recommend the addition of a new sub-section (13) which has the effect of augmenting previous value by the cost of such improvements as shall be specified by regulation. The object of leaving the nature of the improvement to be determined by regulation is that although it seems clear that site levelling, building and reconstruction should be deemed improvements,

that it shall be lawful for the Governor in Council by regulation to provide that no improvement shall be taken into account unless it is subsisting at the date of the conveyance subjected to excess duty and to make different provision for improvements effected at different dates.

(14) In any case in which between the date, on which under this section the value previously attributable to the property comprised in any conveyance subject to excess duty requires to be ascertained for the purpose of assessing excess duty, and the date of execution of such conveyance, buildings on the property sold have been demolished or damaged the value previously attributable to the property comprised in such conveyance shall for the purpose of assessing excess duty be deemed to be diminished by a sum equivalent to such proportion of the cost of restoring the property to the state in which it was at the date determining the previously attributable value thereof as the Governor in Council may by regulation from time to time specify.

it may be questionable how far, if at all, minor repairs or repairs necessary for ordinary maintenance should be included. Expert guidance is clearly required.

It seems only equitable that it should be a corollary to the concession made by the Crown with regard to improvements that, where the property sold has deteriorated by demolition of or damage to buildings, for the purpose of excess duty previous value should be written down. The Committee considered that the most practical way of achieving this would be to estimate cost of reconstruction at present prices and then to take such proportion of such cost as building costs at the date determining previous values bear to present costs. For the sake of simplicity, it would be better to specify fixed proportions for each year since 1938. Sub-section (14) enables the Governor in Council to fix this proportion by Regulation and diminishes previous value by the sum equivalent to such proportion.

4. A new Clause to be numbered Clause 3 shall be added to the Bill as follows:

"3. This Ordinance shall be deemed to have had effect as from the 30th September, 1946." Commencement.

**GEORGE E. STRICKLAND,**  
Chairman.

**URBAN COUNCIL BY-LAW.**

The ATTORNEY GENERAL moved—

That the amendment made by the Urban Council under section 4 (1) (xx) of the Public Health (Sanitation) Ordinance, 1935, Ordinance No. 15 of 1935, on 1st October, 1946, to the by-laws under the heading "Laundries" contained in Schedule A to the said Ordinance, be approved.

He said: As it stands at present there is no discretion given in the by-laws to refuse registration or cancel registration. The object of the present amendment made by the by-law is to give that discretion to the Urban Council. The amended by-law is before Honourable Members and I do not propose to add any further information.

The COLONIAL SECRETARY seconded and the amendment was carried.

**PAWNBROKERS AMENDMENT BILL, 1946.**

The ATTORNEY GENERAL moved the First reading of a Bill intituted "An Ordinance to amend temporarily the Pawnbrokers Ordinance, 1930."

He said: The Pawnbrokers originally approached the Government with a view to having the rate of interest increased and they have for a long time refused to re-open business unless some concession was made to them. As explained in the Objects and Reasons it was considered preferable to keep the rate of interest as A present but to enable articles to be sold after a shorter period than previously. That is the object of the present Bill and it is hoped that this provision will not be permanent and accordingly provision is made by clause 5 of this Bill that the Ordinance should remain in force for a limited period only.

The COLONIAL SECRETARY seconded and the Bill was read 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.

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

The ATTORNEY GENERAL moved the Second reading of a Bill intituled "An Ordinance to amend the Factories and Workshops Ordinance, 1937."

The COLONIAL SECRETARY seconded.

HON. Mr. M. K. LO: Your Excellency: According to the Objects and Reasons the object of this Bill is to divest the Chairman of the Urban Council of his functions as Protector of Labour, to invest such functions in the Labour Officer, and to substitute regulations by the Governor in Council for by-laws by the Urban Council of his functions as Protector of Labour, to invest such functions in the Labour Officer, and to substitute regulations by the Governor in Council for by-laws by the Urban Council.

The Factories and Workshops Ordinance 1937 is a typical example of what is called delegated legislation. After giving, under section 2, comprehensive definitions of various terms such as "Factory," "Industrial Undertaking," etc. and, under section 3, wide powers to Protectors and Inspectors of entry inspection and examination in relation to industrial undertakings, it proceeds, under section 5, to authorise the Urban Council to legislate within the framework of the Ordinance by making by-laws in respect of industrial undertakings for the purposes set out in sub-section (1) (a) to (1). This power to make by-laws is very wide and includes the power to declare what trades are dangerous, to prohibit the employment of persons or any class of persons in dangerous trades, etc. The by-laws already made are pretty comprehensive. Safeguards, from the point of view of the Legislative Council are, however, contained in sub-paragraphs (2) and (3), which read as follows: —

- (2) All by-laws made by the Urban Council shall be submitted to the Governor, and shall be subject to the approval of the Legislative Council.

- (3) The by-laws in the Schedule shall be deemed to have been made under this Ordinance, and shall be in force until rescinded or amended by by-laws made under this Ordinance.

In recent years the tendency in England to resort to delegated legislation has been noted by eminent lawyers with growing concern. But, in the words of the learned author of Halsbury's Laws of England, volume 6, page 386, "In view of the complexity of modern government and the congestion of parliamentary business, it is probably necessary that the executive should exercise powers of subordinate legislation." There is a note, however, in the same work to the effect that in the Report of Committee of Ministers' Powers (1932 Cmd. 4060), the Committee made recommendations on pages 64 to 70 for securing the maintenance of the control exercised by both Parliament and the Courts over subordinate legislation.

The same tendency is observable in Hong Kong but I doubt whether there can be the same excuse, for I do not think that it can reasonably be said that there is any congestion of legislative business in the Colony.

Now, Sir, the effect of the amendments proposed by this Bill is that the power of the Urban Council to make regulations subject to the approval of this Council is to be taken away from the Urban Council and is to be vested in the Governor in Council, over which this Council has no control.

While I fully appreciate that the Labour Officer and not the Chairman of the Urban Council should now exercise the functions of the Protector under the Ordinance, I cannot see any reason why the supervisory powers of the Legislative Council over by-laws or regulations made thereunder should be removed. I should have thought that the object of the Bill would be achieved by vesting in the Protector of Labour the power to make regulations which, under the existing sub-section (2) of section 5, would have to be submitted to you, Sir, as the Governor and would further have to be subject to the approval of this Council.

I submit, Sir, that this Council should be vigilant in seeing to it that such control as it now has over delegated or subordinate legislation should not be lightly given up, so that as the constitutional legislative body of the Colony it should have the right of veto in regard to by-laws or regulations which may gravely affect the powers and liberty of the subject.

Accordingly I propose in Committee to move the necessary amendments for the purpose I have indicated.

The ATTORNEY GENERAL: —Your Excellency, Government naturally sympathises with any expression of opinion by Honourable Members that powers of supervision of legislation now vested in this Council should not be divested from this Council and Government will consider any amendment that the Honourable Member wishes to move in Committee. But at the same time I think that I can satisfy Council that in this case it is in the best interests that the powers should be exercised by the Governor-in-Council and not by Legislative Council. It is interesting that in this Ordinance it is provided by sub-section 4 of Section 5 that it should be lawful for the Protector in such cases as he thinks fit to exempt any industrial undertakings from any by-law under this Ordinance or to order any adoption of special precaution in addition to any precautions required by the by-law. In other words even at the time that this power of making by-laws was vested in the Urban Council there was a power given to the Protector of Labour which to a large extent nullifies the power to make bylaws and appeals from decision taken to exercise that power went not to Urban Council but to the Governor-in-Council. Apart from that consideration as Honourable Members know, it is hoped at a not too distant date that a Municipal Council will be set up. At that date the whole question of the seat of power in the manner of subsidiary legislation of making regulations and by-laws will have to be revised and the Municipal Council will, it is hoped, be vested with such powers it can reasonably exercise. Among those powers I venture to think that quite a number of the powers contained in Section 5 will be allocated to the Municipal Council. In the meanwhile we have an interim period and during that interim period the administration is given to a Government officer. It is not given to an independent body like the Urban Council and it would be a departure from the normal to have regulations made by a Government officer which were then subject to approval of the Urban Council. In the case of rules made by the Chief Justice as rules of Court, these rules have to be approved by the Legislative Council. I do not think therefore in this particular case that Council need fear that its powers are being unnecessarily restricted although as I said before one naturally sympathises with the opinion that this Council is not so harassed that it cannot review by-laws or regulations.

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

Referring to Clause 5, HON. Mr. LO said: I desire to move certain amendments which I indicated and before doing so, Sir, it may be advisable to say one or two words in reply to the observations made by the Attorney General. I submit that there is no reason at all why during the interim period and until the Municipal Council does take office the power of control exercised

by this Council over the legislation by the Urban Council should be taken away. Actually, the person who was in charge of the provisions of this Bill was not the Urban Council but the Chairman of the Urban Council, although the regulations were made by the Urban Council. I cannot see any difficulty at all in any officer of the Government making regulations subject to two safe-guards: (1) to Your Excellency and (2) to the Legislative Council. Whatever powers the Municipal Council may have in future is a matter of the future but I have not heard a single word today which satisfies me that there is any reason for removing the control of this Council over this particular legislation. As regards the section referred to by the Attorney General that the Protector could exempt a factory from certain regulations, that power of exemption hardly matters as it would be in favour of the public, but any additional requirements are subject to appeal. The regulations which form part of the Bill are not new regulations; any new regulation cannot be in force until approved by this Council. I move, Sir, that the words "Governor-in-Council" in sub-section 1 of Section 5 should be substituted by the words "Labour Officer" and that in subsection 2 by the repeal of the words "Urban Council" in sub-section 2 thereof and by the substitution of the words "Labour Officer" and by the deletion of the whole of Clause 3 so that the only provisions would be sub-section 1 and sub-section 2. These are the amendments I propose, Sir, in respect of Section 5 of the Bill.

H.E. The GOVERNOR: Is the Honourable Member able to let me have those amendments in writing.

HON. Mr. M. K. LO: I have them in rough draft here, Sir.

The ATTORNEY GENERAL: I think perhaps the reasons why these amendments were made were reasons which might have been valid had the regulations been made by the Governor in Council and not by the Labour Officer. The result would be legislation by the Legislative Council with exemptions granted by the Labour Officer plus additional conditions imposed by the Labour Officer from those provisions or from exemptions granted appeal would lie to the Governor in Council. It is not a consistent position....

HON. Mr. M. K. LO: Why not repeal that sub-section giving the right of exemption if there is the obstacle to the continuance by this Council of a supervisory power on it; and then do not give the power to the Protector of exemption.

The ATTORNEY GENERAL: I imagine the power of exemption was given because application in a Colony like Hong Kong is no easy matter although desirable. I quite see there might be special circumstances in which exemption should be granted and might have to be granted expeditiously. Repealing this clause is impossible without the views of the Labour Officer who is administering

this Ordinance. I imagine that he would confirm the power of exemption as in fact the usual power. While that power exists it seems to me to be unnecessary to give the power to make a number of regulations to Legislative Council and to have exemptions by the Labour Officer.

HON. Mr. M. K. LO: May I ask if any exemption has been granted or applied for since the Ordinance in 1937.

H.E. The GOVERNOR: I don't know whether any Honourable Members can remember.

The ATTORNEY GENERAL: I can state one case a short time ago relating to the question of employment of women. In point of fact there was an application made for exemptions to the prohibition of employment of women owing to the fact that the electricity was only available during a certain time.

H.E. The GOVERNOR: Government would not be prepared to consider an amendment which would remove from the statute the power of exemption. We must consider the Honourable Member's amendment in the light of the fact that the power of granting exemptions will remain part of that Ordinance.

HON. Mr. M. K. LO: I still cannot see why the power of exemption should affect the question. It seems to me that here you have legislation which applies to all industrial undertakings. The question is whether the by-laws should be subjected to this Council for approval, as we have existing by-laws which are most comprehensive but they could change the whole by-laws to-morrow and these by-laws may affect the subject. I accept Your Excellency's ruling that for the purpose of this discussion that power is given to the Labour Officer to exempt. If there are particular cases where you want the Labour Officer to have the power to impose or exempt certain regulations, let him have it subject to appeal to the Governor in Council. I have not even a seconder yet. If somebody seconds my motion it would then go before Council.

HON. Mr. LEO D'ALMADA seconded.

H.E. The GOVERNOR: I will ask the Attorney General to examine the amendments proposed by the Honourable Member which I am quite prepared to put to the open vote of this Council. Before I do go I should like to have from the Attorney General his assent to the wording of the amendment to make sure that the effect is precisely what is intended. Meanwhile if any other Honourable Member has any views to express on the subject, I should like to hear them.



The ATTORNEY GENERAL: I take it that the Honourable Member is proposing that sub-section 3 of Section 5 should stand, and that the amendment of this repeal in sub-section 3 should be deleted from the present Bill and the subsequent amendments in that section should also go.

HON. Mr. M. K. LO: Yes, that is what I tried to indicate in my draft.

The ATTORNEY GENERAL: That would achieve the purpose.

H.E. The GOVERNOR: The amendment which I am going to put to the Committee proposed by Hon. Mr. Lo and seconded by Hon. Mr. Leo d'Almada, is that for the words "Governor in Council" in subsection (i) of Clause 5 of the Bill, the words "Labour Officer" should be substituted, that subsection (ii) should read "by repeal of the words 'Urban Council' in subsection (2) thereof and by the substitution of the words 'Labour Officer' " and that subsection (iii) and subsection (iv) be deleted. Although the Committee has not yet formally considered Clause 6 I think it would be convenient if we took at the same time the amendment which the Hon. Member proposes in Clause 6 of the Bill, and I shall therefore read an amendment which he proposes to that Clause: "that subsection (i) of Clause 6 be deleted and that subsection (ii) and (iii) be renumbered (i) and (ii) respectively.

I think Hon. Members will have derived an adequate idea of the effect of these amendments from what has been said and I will now put to the Committee the question whether the amendments proposed by the Hon. Member shall be adopted.

The amendments were put to Committee and carried.

Council then resumed.

The ATTORNEY GENERAL: Your Excellency, I have to report that the Bill intituled "An Ordinance to amend the Factories and Workshops Ordinance, 1937" has passed through Committee with amendments. In view of those amendments I ask Council to defer the Third reading of the Bill.

H.E. The GOVERNOR: It is laid down in the Standing Orders that if there has been any material amendment the bill shall not be read a third time at the same meeting as the Committee stage except after suspension of the Standing Orders. I see no reason why the Standing Order should be suspended, and the consideration of the Third reading of this Bill will therefore be postponed to a subsequent meeting of this Council.

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

The ATTORNEY GENERAL moved the Second reading of a Bill intituled "An Ordinance to amend the Arms and Ammunition Ordinance, 1933."

He said: I stated to Honourable Members when moving the First reading of this Bill that Government had under consideration the question whether anything more should be done by way of legislation to deal with the question of possession of certain types of imitation fire-arms and also the question of importation and sale of such fire-arms. I am now authorised to state that it is the intention of Government to introduce a Bill on the question of possession and sale and importation of the type of firearms that could be described as having the appearance of being a lethal weapon. The exact form of that legislation is still under consideration but it is anticipated that it will take the form of the creation of one or more additional summary offences and be by way of amendments to be included in the Summary Offences Ordinance.

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.

Upon Council resuming.

The ATTORNEY GENERAL said: Your Excellency, I have to report that the Bill intituled "An Ordinance to amend the Arms and Ammunition Ordinance, 1933" has passed through Committee without amendment and I now move that it be read a Third time and passed into law.

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

**STAMP (AMENDMENT) BILL, 1946.**

The ATTORNEY GENERAL moved the Committee stage and the Third reading of a Bill intituled "An Ordinance to amend the Stamp Ordinance, 1921."

The FINANCIAL SECRETARY seconded, and Council then went into Committee to consider the Bill clause by clause.

Upon Council resuming.

---

The ATTORNEY GENERAL said: Your Excellency, I have to report that a Bill intituled "An Ordinance to amend the Stamp Ordinance, 1921," has passed through Committee without amendment and I move that it be read a Third time and passed into law.

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

**ADJOURNMENT.**

H.E. The GOVERNOR: That concludes our business and Council now stands adjourned until 24th October, 1946.

---