

17th August, 1949.

PRESENT:—

HIS EXCELLENCY THE GOVERNOR (SIR ALEXANDER WILLIAM GEORGE HERDER GRANTHAM, K. C. M. G.)

HIS EXCELLENCY THE GENERAL OFFICER COMMANDING IN CHIEF
(LIEUTENANT-GENERAL E. W. FESTING, C. B., C. B. E., D. S. O.)

THE COLONIAL SECRETARY (HON. J. F. NICOLL, C. M. G.)

THE ATTORNEY GENERAL (HON. J. B. GRIFFIN, K. C.)

THE SECRETARY FOR CHINESE AFFAIRS (HON. B. C. K. HAWKINS, O. B. E., *Acting*).

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

DR. HON. I. NEWTON (Director of Medical Services).

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

HON. A. NICOL (Acting Director of Public Works).

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

DR. HON. CHAU SIK-NIN.

HON. LEO D'ALMADA E CASTRO, K. C.

HON. M. M. WATSON.

HON. C. BLAKER, M. C., E. D.

MR. G. C. HAMILTON (Clerk of Councils).

ABSENT:—

HON. D. F. LANDALE.

HON. SIR MAN-KAM LO, KT., C. B. E.

MINUTES.

The Minutes of the meeting of the Council held on 3rd August, 1949, were confirmed.

PAPERS.

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

Annual Report of the Director of Supplies, Trade and Industry for the year 1948-49.

Annual Report of the Government Statistician for the year 1948-49.

QUESTIONS.

HON. GHOU TSUN-NIN asked the following questions:—

In view of the large increase in population and in view of the world-wide political and economic unrest, will Government state:—

1. What steps have been taken or will be taken to ensure that a sufficient supply of essential foodstuff will be available in case of emergencies?
2. Whether any reserve of essential foodstuff is being made immediately available to meet any possible contingency?

THE COLONIAL SECRETARY replied as follows:—

Government is well aware of the need at the present time to ensure the maintenance of adequate supplies of essential foodstuffs. The necessary arrangements to this end are being made as a matter of urgency and a senior officer has recently been appointed to take charge of these arrangements. The Honourable Member will appreciate that in the present circumstances, it is not advisable to publish detailed information on this matter.

EXPULSION OF UNDESIRABLES BILL, 1949.

THE ATTORNEY GENERAL moved the First reading of a Bill intituled "An Ordinance to control the population of the Colony by providing for the expulsion of undesirables therefrom as occasion may require." He said: Sir, it has been the experience of this Colony at many periods of its history that where conditions of war or economic or political stress prevail in China, reaction is strongly felt in this Colony and, Sir, it is felt, and not the least, by the fact that a large influx of persons from China occurs—persons who resort to this Colony as to a haven. This tendency has probably never been more marked than at the present time when the situation has arisen in which the Colony's actual capacity to absorb recruits to its population is not only seriously overtaxed, but, in fact, over-reached.

An important consequence, Sir, of that situation is that public health and public order is menaced in particular by the presence of a large number of persons who are new-comers to the Colony and who, being incapable of absorption into the Colony's economic fabric, nevertheless remain in the Colony by their own choice, but in conditions of inevitable and incurable squalor and unemployment.

Honourable Members will know that there exists, and has long existed, in the Colony legislation providing for the deportation or expulsion of undesirables from the Colony. Examples of such legislation are provided by the Vagrancy Ordinance of 1897 and by the Deportation of Aliens Ordinance, 1935. As such the legislation I have quoted is in frequent employment. Nevertheless, the machinery of such legislation, designed as it is for the relatively infrequent cases, is unexpeditious in operation and is not in general suited to the problem presented by an excess of population or an excess of the proportion in the population of persons who are undesirable, as such expression is defined in clause 4 of the Bill.

Sir, the scheme for which the Bill before Council seeks to provide legislation and authority has, I believe, been adequately described in detail in the Objects and Reasons which have been published with the Bill as in the hands of Honourable Members. In so far as the scheme is capable of summarised description, such description is this: it provides, Sir, for an expeditious method, yet a method not too arbitrary and subject to reasonable safeguards, which enables the expulsion of persons who may be found to be undesirable for the reasons listed in clause 4 of the Bill.

Now, Sir, clause 4 of the Bill is largely founded upon the precedent of section 11 of the Immigrants Control Ordinance, 1949. The section sets out, and that section in the Immigrants Control Ordinance sets out, the categories of persons to whom the Bill applies and, in the case of the Immigrants Control Ordinance, sets out the categories of persons to whom entry to the Colony may be refused. Thus there is some reality in the comment which I have today read in the press that, in a sense, the Bill before Council provides for a process of immigration control in reverse. But, Sir, I draw the particular attention of Honourable Members to clause 3 of the Bill and it will be seen that such clause provides that a competent authority before he can make an order of expulsion, must hold due enquiry as prescribed by the provisions of the legislation. Furthermore, that clause, clause 3, makes it clear that there can be no order of expulsion made under this proposed Ordinance, in the case of a British subject, that is to say, a person who is born in the Colony, or who is otherwise a British subject; or in the case of a person who has been ordinarily resident in the Colony for a period of 10 years or more.

Sir, I believe I have said sufficient to emphasise that the proposed legislation is so proposed in relation to conditions of over-population of the Colony, and also to the fact that the legislation is intended as a re-enforcement to the usual legislation of this Colony which is like the legislation of most other parts of the world in giving powers of deportation and expulsion.

Now, Sir, the need for such re-inforcement of legislation would, of course, greatly diminish or disappear when peace returns to China, but on the teachings of history, it may be that the need for legislative re-inforcement on this topic will occur again in future. For this reason, Sir, clause 14 of the Bill makes provision for suspension and revival of the legislation by resolution of this Council as conditions in the Colony from time to time may dictate.

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

Objects and Reasons.

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

1. Hong Kong has traditionally allowed free ingress to Chinese except in times of emergency and the situation of the Colony's land frontier and the ease with which small water-borne craft can move in and out of the Colony's waters render control of such movement difficult and incomplete.

2. In these circumstances and because of the incentive to enter which is presented while unrest prevails in China, the Colony has at this date a population greatly in excess of what it is capable of absorbing.

3. The necessity is therefore presented of providing legislation which would enable action to be taken to expel persons who constitute undesirable elements in the surplus population and as such present serious problems in the maintenance of public order, safety and health within the Colony. The object of this Bill is to provide such legislation.

4. The scheme envisaged by the Bill is that a competent authority after a summary inquiry and recording a finding that an individual is undesirable, may make an order expelling such individual from the Colony (clause 3), unless he satisfies the competent authority that he is a British subject or that he has been ordinarily resident in the Colony for ten years or more.

5. The prescribed inquiry will be a summary inquiry following the general lines of the summary procedure employed by a magistrate in the trial of summary offences but with certain modifications. (See clause 5 of the Bill.) The inquiry will be held at any authorized place, an expression which is given, a wide interpretation by clause 2 of the Bill. (See the interpretation given to "place of detention" and "accommodation camp".) This is necessitated by the fact that in order to proceed with despatch it will be necessary to collect and detain suspected undesirables in camps or houses of detention. Power to establish camps is given to the Governor in Council by clause 6 and power to detain and remove undesirables and suspected undesirables is given to a police officer by clause 7. Further provision for detention and remand pending the prescribed inquiry and pending expulsion pursuant to an order, is made by clause 10.

6. The grounds upon which a competent authority may declare an individual to be undesirable are set out in clause 4. They incorporate the grounds upon which a prospective immigrant can be refused permission to enter under section 11 of the Immigrants Control Ordinance, 1949. But additional grounds are provided for by the last three paragraphs of clause 4.

7. An order of expulsion will be final and conclusive subject to revocation by the Governor. (Clause 11, which is so worded as to enable the Governor to revoke generally when the situation permits.) An order of expulsion, if not revoked, will be valid for five years (clause 8), whether or not the Ordinance continues to be in operation.

8. A competent authority will be any justice of the peace and any person declared to be such by the Governor. A justice of the peace is, by clause 11, empowered to authorize, by warrant, entry and search of premises upon which there may be undesirables or suspected undesirables.

9. Power to make regulations in relation, *inter alia*, to the management of and conduct to be observed in accommodation camps, is given to the Governor in Council by clause 13.

10. The need for legislation as envisaged by the Bill is, as stated, related to conditions of over-population of the Colony. At times when such conditions do not prevail such need would be diminished or disappear. For this reason the Bill (clause 14) gives power by resolution of Legislative Council to suspend the operation of "the Ordinance" and thereafter, as and when necessity to employ "the Ordinance" again occurs, to terminate such suspension.

EMERGENCY REGULATIONS (AMENDMENT) (NO. 2)

BILL, 1949.

THE ATTORNEY GENERAL moved the First reading of a Bill intituled "An Ordinance further to amend the Emergency Regulations Ordinance, 1922." He said: Sir, this Bill, which seeks to amend the Emergency Regulations Ordinance of 1922, that is to say, an Ordinance some 27 years old, has two main objectives. The first objective relates to the question of the penalties which may be imposed for the breach of any regulations made under the Emergency Regulations Ordinance. Under the principal Ordinance as it stands today, the question of penalties is left very open. It merely provides that where no other penalty is named in any regulation, then the penalty shall not exceed the named maximum. Thus it is arguable that even as the Ordinance stands today, it is permissible to attach to regulations made under the Ordinance the penalty of death, but the first object of this Bill is to put that possibility beyond dispute and provide quite definitely that regulations made under the Emergency Regulations Ordinance may, in a case of sufficient seriousness, provide that the penalty shall be death. But clause 3 of the Bill also goes on to provide for a reservation where a regulation provides for the death penalty, and that reservation is that such regulations as provide for the death penalty as a penalty shall be subject to the approval of this Council.

The other main objective of this Bill, and it is provided for in clause 4 is this: by section 2 of the principal Ordinance the Governor in Council is given power to make any regulation'- whatsoever which he may consider desirable in the public interest. In fact, regulations have been made from time to time since 1922 and such regulations necessarily have over-ridden or been inconsistent with other law. Now, Sir, the purpose of clause 4 of the Bill is to resolve any possible doubt there may be that where regulations are made under the Emergency Regulations Ordinance, 1922 they may, as they must necessarily do, they may over-ride or be inconsistent with other law in the Colony.

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

Objects and Reasons.

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

1. In any emergency it will or may be necessary—

(a) to make regulations on numerous matters and to enforce them strictly; and

(b) to enforce with or without modifications regulations made in the past under the Emergency Regulations Ordinance, 1922.

2. It is envisaged that in certain eventualities breach of certain regulations may have to be punished with death and that special provisions may have to be made for expediting and simplifying trial and for dispensing with juries except in capital cases.

3. The object of this Bill is to amend the Emergency Regulations Ordinance, 1922, so as to clarify—

(a) that the death penalty and other sanctions may be imposed (clause 3); and

(b) that it has always been the law that such emergency regulations could over-ride the ordinary law (clause 4).

4. The opportunity has been taken to impose the control of Legislative Council over regulations providing for the death penalty. (See sub-section (3) of the new section 3 proposed by clause 3 of the Bill). The opportunity has also been taken to amplify paragraph (n) of sub-section (2) of section 2 (See clause 2) so as to provide that by regulations provision may be made for the apprehension, trial and punishment of persons offending against other law as well as against emergency regulations.

SUPPLEMENTARY APPROPRIATION FOR 1947-48 BILL, 1949.

THE FINANCIAL SECRETARY moved the Second reading of a Bill intituled "An Ordinance to authorize the appropriation of a supplementary sum of thirty-four million six hundred and fifty-four thousand two hundred and fifty-one dollars to defray the charges of the financial year ending 31st March, 1948."

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

Council then went into Committee to consider the Bill clause by clause.

Council then resumed.

THE FINANCIAL SECRETARY reported that the Supplementary Appropriation for 1947-48 Bill, 1949 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 into law.

REGISTRATION OF PERSONS BILL, 1949.

THE ATTORNEY GENERAL moved the Second reading of a Bill intituled "An Ordinance to provide for the registration of persons, the issue of identity cards and for purposes incidental thereto." He said: Sir, I wish to mention at this stage that at the Committee stage I propose to move a few unimportant amendments to the Bill and Schedule.

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

Council then went into Committee to consider the Bill clause by clause.

Clause 2.

THE ATTORNEY GENERAL:—Sir, I move that clause 2 of the Bill be amended as to the definition of "employer" which occurs therein by the inclusion of the words "professional, social," between the words "educational" and "commercial" occurring in that definition.

Sir, in the interval it has been pointed out to me that for purposes of convenience for registration it may well be that organisations of a professional or social nature would be of sufficient size to warrant a process of registration taking place within such organisation.

This was agreed to.

Clause 12.

THE ATTORNEY GENERAL:—Sir, I move that sub-clause (6) of clause 12 be amended by deletion and replacement as follows:—

"(6) Any person who without lawful authority or reasonable excuse knowingly obtains or is in possession of more than one Identity Card, or is in possession of an Identity Card other than his own; or"

Sir, the purpose of the replacement is to provide that it shall be an offence for a person to hold more than one Identity Card.

This was agreed to.

Schedule.

THE ATTORNEY GENERAL:—Sir, in the Schedule of Rules I move that Rule 2 of the Rules be amended by the inclusion of a definition of “Schedule” to read as follows:—

“ ‘Schedule’ means the Schedule to the Rules.”

Again in Rule 11, Sir, Rule 11 paragraph (a), I move that the word “this” be substituted by the word “the” in the fourth line of that paragraph.

And at the conclusion of the Rules, I move that the word “Schedule” be inserted after Rule 18 and before Form 1 (a).

H.E. THE GOVERNOR:—Can Honourable Members follow that?

THE ATTORNEY GENERAL:—I am sorry, Sir. I move that at the end of Rule 18 the word “Schedule” be inserted to head the forms which follow, that is to say, between Rule 18 and Form 1 (a) at page 12.

I move that in Form 3(a), that is the Identity Card form at page 16 of the document in the hands of Honourable Members, that Chinese characters representing the words “Identity Card” shall be inserted.

These were agreed to.

Council then resumed.

THE ATTORNEY GENERAL reported that the Registration of Persons Bill, 1949, had passed through Committee with some six amendments, and moved the Third reading.

THE COLONIAL SECRETARY seconded, and the Bill was read a Third time and passed into law.

AIR ARMAMENT PRACTICE BILL, 1949.

THE ATTORNEY GENERAL moved the Second Reading of a Bill intituled “An Ordinance to regulate Practice Bombing and Firing from Aircraft and for clearing certain Sea Areas in connection therewith.”

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

Council then went into Committee to consider the Bill clause by clause.

Council then resumed.

THE ATTORNEY GENERAL reported that the Air Armament Practice Bill, 1949 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 into law.

ADJOURNMENT.

H.E. THE GOVERNOR:—That concludes the business Gentlemen. When is it your pleasure that we should meet again? |

THE ATTORNEY GENERAL:—I suggest this day fortnight, Sir.

H. E. THE GOVERNOR:—Council will adjourn to this day fortnight.