

28th June, 1950.

PRESENT: —

HIS EXCELLENCY THE OFFICER ADMINISTERING THE GOVERNMENT (MR. JOHN FEARNIS NICOLL, C.M.G.).

HIS EXCELLENCY THE GENERAL OFFICER COMMANDING IN CHIEF (LIEUTENANT-GENERAL SIR E. C. R. MANSERGH, K.B.E., C.B., M.C.).

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

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

THE SECRETARY FOR CHINESE AFFAIRS (HON. J. C. McDouALL, *Acting*).

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

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

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

HON. A. P. WEIR (Acting Director of Public Works).

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

DR. HON. CHAU SIK NIN, C.B.E.

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

HON. M. M. WATSON.

HON. P. S. CASSIDY.

HON. LO MAN WAI, O.B.E.

HON. LAWRENCE KADOORIE.

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

**MINUTES.**

The Minutes of the meeting of the Council held on 14th June, 1950, were confirmed.

**PAPERS.**

THE COLONIAL SECRETARY, by Command of His Excellency the Officer Administering the Government, laid upon the table the following papers: —

The Bills of Sale (Fees) Regulations, 1950. (G.N. No. A. 127 of 1950).

The Rating Ord., 1901, —Order under S. 8(2). (G.N. No. A. 128 of 1950).

The Vehicle and Road Traffic (Amendment) (No. 2) Regulations, 1950. (G.N. No. A. 129 of 1950).

The Public Health (Sanitary Provisions) Regulations, 1948, —Declaration under Regulation 2(10)(a). (G.N. No. A. 130 of 1950).

The Price Control Order, 1946, —Amendments to the Schedule. (G.N. No. A. 131 of 1950).

Sessional Papers, 1950: —

No. 2. —Annual Report by the Financial Secretary on Exchange Control for the year ended the 31st March, 1950.

**MOTIONS.****PUBLIC HEALTH (FOOD) ORDINANCE, 1935.**

THE CHAIRMAN, URBAN COUNCIL moved—

That the By-laws made by the Urban Council on the 6th day of June, 1950, under Section 5 of the Public Health (Food) Ordinance, 1935, Ordinance No. 13 of 1935, be approved.

He said: Sir, this Motion refers to the amendment of market by-laws made in connection with the proposed establishment of a temporary market at Cha Kwo Ling. The population of this community has increased considerably recently and the Urban Council considers it desirable to establish and maintain a temporary market there until such time as the Government can provide a permanent market.

THE COLONIAL SECRETARY seconded, and the Motion was carried.

**ADVERTISEMENTS REGULATION ORDINANCE, 1912.**

THE CHAIRMAN, URBAN COUNCIL: Your Excellency, I beg to request permission to postpone the moving of the second Resolution standing in my name.

Since the Order Paper was circulated a petition has been received from some interested parties and it would seem desirable that the Urban Council should have an opportunity of considering the points raised in the petition before this Honourable Council takes any action.

H.E. THE OFFICER ADMINISTERING THE GOVERNMENT: —Unless Honourable Members have any objection I propose to suggest that the Motion be withdrawn.

This was agreed to.

H.E. THE OFFICER ADMINISTERING THE GOVERNMENT: —The Motion is withdrawn.

**NOTE-ISSUING BANKS EXTENSION OF POWERS  
ORDINANCE, 1939.**

THE FINANCIAL SECRETARY moved the following Resolution: —

Resolved pursuant to the proviso to section 3 of the Note-issuing Banks Extension of Powers Ordinance, 1939, as modified by the Law Amendment (Transitional Provisions) Ordinance, 1946, that this Legislative Council hereby extends the powers of all the note-issuing banks to make, issue, re-issue and circulate notes until and including the 12th day of July, 1951.

He said: Your Excellency, under section 3 of Ordinance No. 21 of 1939, the note-issuing banks were only authorized to continue to make, issue, re-issue and circulate notes until and including the 12th day of July, 1940, but it was provided that this Council should, by Resolution, extend the powers for any period not exceeding 12 months at a time. By resolution passed on the 6th July, 1949, these powers were extended to the 12th July, 1950, and it is now necessary to extend them for a further period of one year to the 12th July, 1951.

THE COLONIAL SECRETARY seconded, and the Motion was carried.

**PENSIONS ORDINANCE, 1949.**

THE ATTORNEY GENERAL moved the following resolution: —

Resolved that under the power conferred by section 3(3) of the Pensions Ordinance, 1949, the restropective effect as expressed therein of the proposed regulation in the Schedule hereto be approved.

## SCHEDULE.

## PENSIONS ORDINANCE, 1949.

## Regulations by the Governor in Council.

In exercise of the powers conferred upon him by subsections (1) and (3) of section 3 of the Pensions Ordinance, 1949, with the sanction of the Secretary of State and the prior approval of Legislative Council signified by resolution, the Governor in Council hereby makes the following regulations—

## REGULATIONS.

Citation. 1. These regulations may be cited as the Pensions (Amendment) Regulations, 1950, and shall be read as one with the Pensions Regulations, 1949, hereinafter referred to as the principal regulations.

Amendment  
of  
regulation  
18 of the  
principal  
regulations.

2. Regulation 18 of the principal regulations is hereby amended by the addition of the following paragraphs at the end thereof—

"(3) In the application of this regulation where the pensionable emoluments of an officer for a period prior to the first day of January, 1947, are required to be taken into account, there shall be taken into account in lieu of such pensionable emoluments the pensionable emoluments which such officer would have enjoyed during such period had he been subject at the commencement of such period to a scale of pay operative in this Colony on the first day of January, 1947, in consequence of the Salaries Revision, 1947, if this shall be to an officer's advantage.

(4) "Salaries Revision, 1947" for the purpose of this regulation shall have the same meaning as that given to the expression in section 19 of the Ordinance.

(5) This regulation shall have effect from the first day of January, 1947."

He said: Sir, section 3 of the Pensions Ordinance, 1949 provides that pensions, gratuities and other allowances may be granted in accordance with regulations which are contained in the Schedule to the Ordinance. Among those regulations appears regulation 18 which sets out the method of computation of the amount of an officer's pension or gratuity. The regulation provides, for instance, that where an officer has been promoted and retires, then his pensionable emoluments over the three years previous to his retirement shall be averaged for the purpose of calculating his pension.

But, Sir, the fact that a revision of salaries consequent on the Report of the Salaries Commission occurred and took effect from the first January, 1947 has introduced complication and anomaly in the application of the averaging principle which I have mentioned. For instance, it has introduced the complication that by averaging pre and post revision salaries undue hardship can result in individual cases. For instance, Sir, in many cases an officer would have received a larger pension if he had not been promoted prior to 1st January, 1947 since his pension would have been calculated on the revised maximum of the lower scale of salary without recourse to averaging.

This position, Sir, has been under consideration and has been the subject matter of consultation with the Secretary of State and the proposal has resulted that the problem be resolved, as it has been in other Colonies where a salaries revision has taken place, by allowing in such cases of hardship of the nature which I have described that pensions be calculated on the average of the revised salaries attached to the posts held by officers affected in the manner I have described and so held immediately before their retirement.

In order to give effect to this solution, amendment of regulation 18 of the Pensions Regulations is necessary, amendment being effected in the manner indicated in the Schedule which appears on the Order of Business.

But, Sir, I have referred to the fact that the Salaries revision had effect from 1st January, 1947. It is therefore necessary that the amending regulation to be effective to provide the solution of the problem I have described, should have retrospective effect to the 1st January, 1947. As to this requirement, section 3(3) of the Pensions Ordinance, 1949 has provided that retrospective effect may be given to Pensions Regulations if the Governor in Council be satisfied that it is equitable that retrospective effect should be given in order to confer a benefit or remove a disability from a person.

But, Sir, section 3(3) which I have quoted also requires that any regulation which is designed to have retrospective effect may not come into force unless and until approval of this Council, by Resolution, has been obtained.

I therefore, Sir, formally move the Resolution standing in my name to the effect that under the powers conferred by section 3(3) of the Pensions Ordinance, 1949, the retrospective effect as expressed therein of the proposed regulation be approved.

THE COLONIAL SECRETARY seconded, and the Motion was carried.

**LAND TRANSACTIONS (ENEMY OCCUPATION)  
(AMENDMENT) BILL, 1950.**

THE ATTORNEY GENERAL moved the First reading of a Bill intituled "An Ordinance to amend the Land Transactions (Enemy Occupation) Ordinance, 1948". He said: Sir, this Bill, as it rests in the hands of Honourable Members, has had published with it extensive or, I think, sufficient Objects and Reasons to explain the purposes of the Bill. I feel therefore, Sir, that further explanatory remarks are not called for on my part.

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: —

Section 4 of the Land Transactions (Enemy Occupation) Ordinance, 1948, the principal Ordinance, provides that certain entries termed "green ink entries", made by the Land Officer in the Land Office Registers for the purpose of recording transactions effecting land which took place during the Japanese occupation, shall be deleted on the 15th of July of this year.

2. At this date litigation is pending and there remains a number of instances in which delays have occurred in determination of cases where there have been successive dealings with property during the Japanese occupation consequent, for example, on difficulties encountered in tracing one or more assignors or because of questions relating to mortgages subsisting on such property.

3. In these circumstances it has been represented to Government by the Incorporated Law Society of Hong Kong that the deletion of the entries referred to in paragraph 1 should be deferred for a further year, *i.e.* 15th July, 1951, so as to avoid unnecessary re-registration of transactions in land at present protected only by such entries.

4. The object of this Bill is to meet such representations by appropriate amendment of sections 3 and 4 of the principal Ordinance.

**REGISTRATION OF UNITED KINGDOM  
PATENTS (AMENDMENT) BILL, 1950.**

THE ATTORNEY GENERAL moved the First reading of a Bill intituled "An Ordinance to amend the Registration of United Kingdom Patents Ordinance, 1932." He said: Sir, Honourable Members are well aware that one of the consequences of the war as it affected Hong Kong was that there was

a considerable loss of records. Legislation to meet that situation has more than once been before this Council within recent years. For instance, this Council has legislated to meet the situation caused by the loss, the entire loss, of the records of the Trade Marks Registry and again legislation was enacted to deal with the problem of the loss in part of registers of births and deaths.

Now, Sir, the loss of its entire records was also the fate of the Registry of Patents. The Registry of Patents has not in fact reopened since the close of the Japanese occupation of the Colony. There has been difficulty, quite substantial difficulty, regarding questions of staff and in addition there has been delay in reaching decision as to the necessity for or the nature of legislation to be passed before the Patents Registry could in fact be reopened.

Sir, in the result it is now the view that legislation is necessary but that it can be confined to the details of this very short Bill which is now before Council. As to this I would say that section 3 of the Registration of United Kingdom Patents Ordinance, 1932 provides that any person being the grantee of a patent in the United Kingdom or any person deriving his right from such grantee by assignment, transmission or other operation of the law, may, within five years—I stress five years—from the date of the issue of the patent, apply to have such patent registered in Hong Kong.

Thus, Sir, it will be appreciated that if the section, section 3, of the principal Ordinance be not amended, registration of a patent in Hong Kong will be precluded if more than five years has expired from the date of the issue of the patent in the United Kingdom.

Sir, in these circumstances it is proposed by clause 2 of the Bill to amend section 3 of the principal Ordinance in such a manner as to prevent time running against applicants for registration until the date of the reopening of the Registry. As indicated in the Objects and Reasons, it is in fact proposed that the Patents Registry be reopened at an early date following upon the enactment of the Bill now before Council.

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: —

Registration of United Kingdom Patents under the Registration of United Kingdom Patents Ordinance, 1932, has not been possible since 25th December, 1941, as the Registry has been closed and the records lost. The object of the amendment is to prevent time running against applicants for registration until it is possible to re-open the Registry.

2. It is proposed that the Registry be re-opened at the date corresponding to the date notified in accordance with section 3 (2) as proposed for enactment by clause 2 of the Bill.

**EMERGENCY POWERS (EXTENSION AND AMENDMENT  
INCORPORATION) AMENDMENT BILL, 1950.**

THE ATTORNEY GENERAL moved the First reading of a Bill intituled "An Ordinance to amend further the Emergency Powers (Extension and Amendment Incorporation) Ordinance, 1946." He said: Sir, it will be well within the knowledge of Honourable Members that the Defence Regulations of 1940, of war time, gave power in the interest of defence and efficient prosecution of the War to allow of the requisition of land, including buildings, and of chattels. In step with those Defence Regulations there were enacted the Defence Compensation Regulations, 1940 to deal with the assessment and payment of compensation where requisition of land and chattels took place in exercise of Emergency Powers. The authority to requisition under the Defence Regulations, 1940 has continued since the war for the purpose of maintaining supplies and services essential to the life of the community. Those powers at the moment, at the present time, run parallel with, but are being superseded by a new group of requisition regulations entitled the Emergency Requisition Regulations, 1949, which have been enacted under the Emergency Regulations Ordinance, 1922.

But, Sir, subject to modifications, the Defence Compensation Regulations of 1940 continue to be applicable in the assessment and payment of compensation for requisition taking place whether under the old Defence Regulations, 1940 or under the new Requisition Regulations, 1949.

Now, Sir, until approximately the 1st April, 1949 requisitions of buildings taking place under the powers I have described were restricted to old buildings, that is to say, buildings which were in existence prior to the 15th August, 1945 and in general being buildings to which the Landlord and Tenant Ordinance, 1947 applied. In regard to the old buildings the payment of compensation for their requisition is made within the terms of the Compensation Defence Regulations, 1940 subject, however, to the important factor that compensation over and above the amount allowable in the Compensation Regulations as they were in 1940 is permitted parallel to the percentage permitted increases which are allowable under the Landlord and Tenant Ordinance, 1947.

Sir, I desire to emphasize on this point once again that before 1st April, 1949 new buildings were not requisitioned, but the situation altered necessarily after that date due to the reinforcement of the garrison of the Colony as a result of which it became unavoidable to apply requisition to a number of new premises. This necessity gave rise immediately to the problem



for decision as to the appropriate compensation to be payable upon requisition of a new building, because it was felt that compensation within the limits permitted by the Compensation Regulations of 1940 and permitted increases in relation to the Landlord and Tenant Ordinance would not allow of the payment of a fair compensation in the case, as I have said, of new buildings because the consideration had to be borne clearly in mind that new buildings were constructed during this post-war period during which increase to a very considerable extent has taken place in building costs.

As a result, Sir, of such consideration and of consultation with the Service Departments concerned decision has been reached to make provision to meet the problem of fair compensation for the requisition in particular of new buildings by effecting amendment to the Defence Compensation Regulations of 1940.

Sir, the amendments proposed appear in a Schedule to the Bill which is now before Council. The most important provision of those Regulations appears at regulation 4. Briefly stated, the effect of that regulation is that compensation will be paid in respect of a new building as defined in regulation 2 of these regulations and the compensation shall relate to the rent which might reasonably be expected to be payable in respect of a new building at the designated date, the term designated date being once again defined in regulation 2. It is the 1st April, 1949. Thus an assessment will be made in relation to rent reasonably expected to be payable on 1st April, 1949 and not in relation to any date prior to the commencement of the war, which is the foundation of the principle applicable, as applied in the Defence Compensation Regulations, 1940 as amended.

There is, as Members will notice, in regulation 4 the stipulation, however, that in assessing compensation as at the designated date no account may be taken of any appreciation of values which may have taken place since the designated date.

Sir, I have indicated that the necessity for requisition of new buildings commenced shortly after 1st April, 1949. Thus it is necessary that the power to compensate in the manner proposed for the requisition of new buildings shall carry with it retrospective effect so as to make the new provision for compensation applicable to requisitions which have taken place within the past year.

Thus the amendments to the Regulations as they appear in the Schedule to the Bill are given retrospective effect and are necessarily given retrospective effect by Ordinance, and it is for that purpose that this Bill is before Council since it will be observed that clause 2 of the Bill empowers that Regulations made can have retrospective effect to the 1st day of April, 1949.

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. The Compensation (Defence) Regulations, 1940, (the principal regulations) govern the payment of compensation upon the exercise of emergency powers. It is considered that the effect of the first proviso to paragraph (1) of regulation 4 of such regulations would limit the compensation payable for taking possession of land and buildings to what would constitute a fair rent for such land and buildings before World War II.

2. The regulations were amended in 1947 to increase this compensation by the same proportions as the increases in standard rent sanctioned by the Landlord and Tenant Ordinance, 1947, and an increase of 50% was permitted in the case of premises outside the scope of that Ordinance.

3. In fact new buildings were not requisitioned until after the 1st of April, 1949, but several new buildings have been requisitioned since that date and in view of the cost of building the sanctioned increase of 50% which would be applicable is inadequate. Moreover, since the 1st of November, 1949, the standard rent percentage increase for business premises controlled by the Landlord and Tenant Ordinance, 1947, has become 100% in lieu of 45%.

4. It has for some time been the intention of Government to rectify the anomalous situation by making appropriate amendments to the regulations. This intention has been under discussion with the service departments on whose behalf emergency powers have been exercised and agreement reached as to the appropriate amendment. This has now been obtained but if the Governor were to exercise the power conferred upon him by the Emergency Powers (Extension and Amendment Incorporation) Amendment Ordinance, 1948, to modify the regulations he could not do so with retrospective effect. It is accordingly necessary for the modification of the regulations to be sanctioned by Ordinance. The object of this Bill is to enable retrospective effect to be given while enacting, as in the Schedule, the necessary amending regulations.

5. Such amending regulations classify buildings as old and new buildings. New buildings are those constructed after the 16th of August, 1945, or those upon the reconstruction of which a sum not less than equivalent to the standard rent thereof for seven years has been expended. All other buildings are "old buildings". See regulation 2.

6. In order to determine the standard rent of such old buildings they have first to be classified as domestic or business according to the user to which they were put or for which they were most readily adaptable prior to possession thereof having been taken. Regulation 3 accordingly substitutes new definitions for domestic and business premises because the definitions contained in the Landlord and Tenant Ordinance, 1947, are not sufficiently comprehensive. In view of the fact that a number of old buildings which were requisitioned were not then let it is necessary to clarify that the provisions for determining the standard rent thereof shall apply irrespective of there not being a letting. Otherwise it might not be possible to invoke by reference the provisions of the Landlord and Tenant Ordinance, 1947.

7. In the case of new buildings regulation 4 of the regulations in the Schedule provides for regulation 4 of the Compensation (Defence) Regulations, 1940, being applied with modifications. The main effect of these modifications is that a fair rent for the premises will now be assessed on the footing that the tenant pays tenants rates and taxes and repairs and insurance and the rent so assessed will be payable as compensation but appreciations in value after 1st of April, 1949, will be ignored and if the rateable value subsequently falls below the assessed compensation the latter will be reduced accordingly.

8. Two further amendments to the Compensation (Defence) Regulations, 1940, are proposed by regulations 5 and 6 of the regulations in the Schedule to the Bill, *i.e.* —

(a) as property tax is now paid and not land tax, paragraph (2) of regulation 4 requires modification accordingly; and

(b) it is proposed to empower a service department concerned to become a party to a dispute as to whether any and if so, what compensation is payable and so allow of representation by any such department before a compensation tribunal established under regulation 9 of the principal regulations.

### **PUBLIC SERVICES COMMISSION BILL, 1950.**

THE ATTORNEY GENERAL moved the Second reading of a Bill intituled "An Ordinance to constitute a Public Services Commission". He said: Sir, in so doing I would wish to indicate that I propose at committee stage, when that is reached, to move certain relatively minor and unimportant amendments.

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 6.

THE ATTORNEY GENERAL: —Sir, I desire to move that paragraph (*d*) of sub-clause (2) of clause 6 be amended by the substitution of the word "enactment" for the words "written law" in the second line thereof.

This was agreed to.

Clause 9.

THE ATTORNEY GENERAL: —Sir, I move that this clause, clause 9, be amended by the deletion of the words "to imprisonment for a period not exceeding two years or to a fine not exceeding two thousand dollars or to both such imprisonment and fine" at the end thereof and the substitution therefor of the words "to a fine of two thousand dollars and to imprisonment for two years".

This was agreed to.

Clause 12.

THE ATTORNEY GENERAL: —Sir, I move that this clause, clause 12 (1) and (2), be amended by the deletion of the words "to imprisonment for a term not exceeding one year or to a fine not exceeding two thousand dollars or to both such imprisonment and fine" appearing at the end thereof and the substitution therefor of the following words "to a fine of two thousand dollars or to imprisonment for one year".

This was agreed to.

Clause 13.

THE ATTORNEY GENERAL: —Sir, I move that clause 13 be amended by the deletion of the words "fine not exceeding four thousand dollars or to imprisonment for a period not exceeding two years or to both such fine and imprisonment" in the fifth, sixth, seventh and eighth lines thereof and the substitution therefor of the words "fine of four thousand dollars or to imprisonment for two years".

This was agreed to.

First Schedule.

THE ATTORNEY GENERAL: —Sir, I move that the First Schedule be amended by the deletion of the words "Director of Medical Services" and the substitution therefor of the words "Director of Medical and Health Services". Sir, the amendment I propose here is necessitated by the fact that there has been a change of title from Director of Medical Services to Director of Medical and Health Services.

This was agreed to.

Council then resumed.

THE ATTORNEY GENERAL reported that the Public Services Commission Bill, 1950, 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.

#### **FULL COURT AMENDMENT BILL, 1950.**

THE ATTORNEY GENERAL moved the Second reading of a Bill intituled "An Ordinance to amend the Full Court Ordinance, 1933".

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 Full Court Amendment Bill, 1950, 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.

#### **SUPREME COURT AMENDMENT BILL, 1950.**

THE ATTORNEY GENERAL moved the Second reading of a Bill intituled "An Ordinance to amend further the Supreme Court Ordinance, 1873".

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 Supreme Court Amendment Bill, 1950, 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 OFFICER ADMINISTERING THE GOVERNMENT: —That, Gentlemen, concludes the business for to-day. When is it your pleasure that we should meet again?

THE ATTORNEY GENERAL: —I propose this day fortnight.

H.E. THE OFFICER ADMINISTERING THE GOVERNMENT: —Council adjourns to this day fortnight.