

OFFICIAL REPORT OF PROCEEDINGS**Meeting of 23rd September, 1953.**

PRESENT:

HIS EXCELLENCY THE GOVERNOR

SIR ALEXANDER WILLIAM GEORGE HERDER GRANTHAM, G.C.M.G.

THE HONOURABLE THE COLONIAL SECRETARY

MR. RONALD RUSKIN TODD, *Acting*.

THE HONOURABLE THE ATTORNEY GENERAL

MR. ARTHUR RIDEHALGH, Q.C.

THE HONOURABLE THE SECRETARY FOR CHINESE AFFAIRS

MR. BRIAN CHARLES KEITH HAWKINS, C.M.G., O.B.E., *Acting*.

THE HONOURABLE THE FINANCIAL SECRETARY

MR. JOHN JAMES COWPERTHWAITTE, *Acting*.

THE HONOURABLE DOUGLAS JAMES SMYTH CROZIER

(Director of Education).

THE HONOURABLE KENNETH MYER ARTHUR BARNETT, E.D.

(Director of Urban Services).

THE HONOURABLE ALEXANDER PROVAN WEIR

(Acting Director of Public Works).

DR. THE HONOURABLE JAMES MALCOLM LISTON

(Acting Director of Medical and Health Services).

THE HONOURABLE CEDRIC BLAKER, M.C., E.D.

THE HONOURABLE CHARLES EDWARD MICHAEL TERRY.

THE HONOURABLE LO MAN WAI, O.B.E.

THE HONOURABLE DHUN JEHangIR RUTTONJEE.

THE HONOURABLE KWOK CHAN, O.B.E.

DR. THE HONOURABLE ALBERTO MARIA RODRIGUES, M.B.E.

MR. ROBERT WILLIAM PRIMROSE *(Deputy Clerk of Councils)*.**ABSENT:**

HIS EXCELLENCY THE COMMANDER BRITISH FORCES

MAJOR-GENERAL RALPH CYRIL CKUDDAS, C.E., D.S.O.

DR. THE HONOURABLE CHAU SIK NIN, C.B.E.

THE HONOURABLE NGAN SHING-KWAN.

MINUTES.

The Minutes of the meeting of the Council held on 9th September, 1953, were confirmed.

PAPERS.

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

	<i>Subject.</i>	<i>G.N. No.</i>
Sessional Papers, 1953:—		
	No. 26—Annual Report by the Secretary for Chinese Affairs for the year 1952/53.	
	No. 27—Annual Report by the Commissioner of Police for the year 1952/53.	
	No. 28—Annual Report by the Commissioner of Prisons for the year 1952/53.	

The Waterworks Ordinance, Chapter 102.

The Waterworks (Amendment) Regulations, 1953	A. 126
--	--------

BUSINESS REGULATION (AMENDMENT) BILL, 1953.

THE FINANCIAL SECRETARY moved the First reading of a Bill intituled “An Ordinance to amend the Business Regulation Ordinance, 1952”.

He said:—Sir, the Business Regulation Ordinance came into force on 16th May, 1952. It provided for the compulsory registration of businesses and for the payment of a fee of \$200 a year (or \$600 in some special cases). As its net was spread very wide and, apart from some special exemptions, all businesses, great and small, were required to register, Section 7 enabled the Director of Commerce & Industry to remit the fee in cases of hardship. Applications for relief however had to be lodged within three months of the coming into force of the Ordinance or within two months of the commencement of business.

The novelty of the Ordinance and doubt and ignorance of its application in the minds of many people resulted in a considerable proportion of those affected failing to submit their applications for

relief within the statutory period and the Director of Commerce & Industry holds many thousands of applications which he is precluded from considering. It is considered in the circumstances that hardship would result if these applications were automatically rejected, and the principal object of the Bill is to extend the time limit from 16th June, 1952 to 16th August, 1953 in the case of all businesses begun before 16th May, 1953. At the same time it is proposed in the case of businesses commenced after that date to extend the period within which application may be made from two months to three months.

The opportunity has been taken to make several minor amendments which are detailed in the Objects and Reasons attached to the Bill.

THE COLONIAL SECRETARY seconded.

The question was put and agreed to.

The Bill was read a First time.

Objects and Reasons.

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

The Business Regulation Ordinance, 1952, which provided for the compulsory registration of businesses and for the issue upon payment of fees of business registration certificates, came into force on 16th May, 1952. Section 7 enabled the Director of Commerce and Industry to remit fees in cases of hardship provided that applications for remission were received by him within 3 months of that date in the case of a person carrying on business at the commencement of the Ordinance, and within 2 months of starting up business in the case of a first application by a person who commenced business afterwards.

2. A large portion of the public was however slow to appreciate the necessity for making prompt application for remission of fees and as a result the Director of Commerce and Industry has received many thousands of applications which he is unable to consider as they have been made out of time. It is however considered right that in the circumstances provision should be made enabling consideration to be given to these applications and the principal object of this Bill is therefore to extend the time. To this end clause 4(c), amending section 7(6) of the Business Regulation Ordinance, 1952, allows applications made before 16th August, 1953, by persons who started up business

before 16th May, 1953, to be considered for remission. In the case of first applications for registration made on or after 16th May, 1953, the time for application for remission is extended from two to three months. Power is also given for refunds of fees already paid which are remitted (clause 4(b)).

3. The opportunity has been taken to make other minor amendments which have in practice been found necessary or desirable as follows—

- (a) clause 2 amends the definition of “Director” to include any assistant director and deletes the definition of “licensed bank” as this expression is not used in the Ordinance;
- (b) clause 3 substitutes the Director for the Governor as the authority for appointing officers to administer the Ordinance;
- (c) clause 5 clarifies the description of the documents which the Director can be required to certify and issue.

OFFICIAL SIGNATURES FEES (AMENDMENT) BILL, 1953.

THE FINANCIAL SECRETARY moved the First reading of a Bill intituled “An Ordinance to amend the Official Signatures Fees Ordinance, Chapter 88”.

He said:—Sir, the primary purpose of the Bill is to correct a mistaken reference in the present Ordinance to a section of the Interpretation Ordinance. The opportunity is being taken to increase the fee payable for the signatures of certain senior officials, a change which it was intended to introduce at the time of the Law Revision in 1950 when the Ordinance was extensively amended but which was overlooked at the time.

THE COLONIAL SECRETARY seconded.

The question was put and agreed to.

The Bill was read a First time.

Objects and Reasons.

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

The objects of this Bill are to correct in the Official Signature Fees Ordinance a mistaken reference to a section of the Interpretation Ordinance and to increase the amounts payable as fees for the signatures of the Governor, the Colonial Secretary and the Financial Secretary.

HONGKONG AND SHANGHAI BANKING CORPORATION**(AMENDMENT) BILL, 1953.**

THE FINANCIAL SECRETARY moved the Second reading of a Bill intituled "An Ordinance to amend the Hongkong and Shanghai Banking Corporation Ordinance (Chapter 70)".

THE COLONIAL SECRETARY seconded.

The question was put and agreed to.

The Bill was read a Second time.

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

Clauses 1 and 2 were agreed to.

Council then resumed.

THE FINANCIAL SECRETARY reported that the Hongkong and Shanghai Banking Corporation (Amendment) Bill, 1953 had passed through Committee without amendment and moved the Third reading.

THE COLONIAL SECRETARY seconded.

The question was put and agreed to.

The Bill was read a Third time and passed into law.

WORKMEN'S COMPENSATION BILL, 1953.

Resumption of debate on the Second reading.

THE SECRETARY FOR CHINESE AFFAIRS:—Your Excellency: At the last meeting of this Council the debate on the motion for the second reading of the Workmen's Compensation Bill was adjourned to today in order that Government might have time to give full consideration to the suggestions made by the Hon. Charles Terry regarding two Clauses in the Bill. In moving that adjournment I said that there was much substance in the Hon. Member's suggestions and that I thought I was prepared to agree with him in principle. This, Sir, has proved to be the case, and I propose to move two consequential amendments in Committee, but I should be grateful for the indulgence of the Council to allow me to say a few words on these amendments at this stage.

The Hon. Member's first point of criticism related to Clause 16 of the Bill and was directed against the provision which requires the approval of the Commissioner of Labour to Agreements on compensation made between employer and the injured worker. Mr. Terry feared that the necessity for obtaining such approval would lead to administrative delays which might hold up the payment of compensation in many cases, and he suggested that the interests of the workmen would be fully safeguarded if the wording of the Clause was changed so as to require the registration of every such Agreement with the Commissioner of Labour, but not the Commissioner of Labour's approval of the same.

Now, unfortunately, in the circumstances existing in Hong Kong it is and will continue for some considerable time to be necessary that Agreements for compensation between employer and employee should be scrutinized by an impartial third party. The reason for this is that leaving out all question of bad faith on either side, the provisions of the Bill governing the calculation and payment of compensation can easily be misunderstood and there is a very real danger of miscalculation due to honest error. Government does not feel justified therefore in entirely removing the supervisory power given to the Commissioner of Labour in respect of these Agreements, and on the other hand it is not considered desirable from a legal point of view to place the Commissioner of Labour in a position where he has to interfere administratively in a freely negotiated and valid Agreement. The clause as amended therefore still requires the approval of the Commissioner of Labour before the Agreement between employer and worker shall be binding upon either party. The opportunity has been taken, however, to remove the ambiguity of the wording of the original clause which might have been read to imply that an employer and workman could not enter into any Agreement until they had first obtained the approval of the Commissioner of Labour to do so. This, of course, was never intended and Government is most grateful to the Hon. Member for having directed its attention to this ambiguous wording.

As regards Mr. Terry's fear that the receipt of compensation may be unduly delayed, I would invite attention to the fact that under Clause 12(3) any employer may make payments to an injured workman or dependant not exceeding \$500 pending the settlement of the claim. Such payments may by Order of the Court be deducted from the final amount of compensation awarded to the workman. I think it will be agreed that this provision

ensures that where an employer admits liability and is prepared to pay compensation there need be no delay in providing the injured workman with an adequate sum as an *interim* payment pending approval of the Agreement.

The second point raised by the Hon. Member referred to Clause 33 which empowered the Governor in Council to amend the First Schedule to this Bill by Regulation. In framing this clause Government was influenced by the definition of “workmen” employed in this Bill which restricts the application of the Bill to those workmen engaged in the employments specified in the First Schedule. Every effort has been made to make that Schedule as comprehensive as possible, but there is no escaping the fact that when we come to administer this law it may well be found that certain categories of workers who should have been included are not so included because of the technical difficulty of fitting them into one or other of the categories. The easiest and quickest way to remedy such a situation should it arise was by an amending Regulation, and since analogous provision was contained in the Model Ordinance the Government provided accordingly. With the greatest respect to the opinion of the Hon. Member I still believe that this is a case in which administrative convenience and the common weal go hand in hand. As an example of what I mean, I would invite attention to an amendment of the Schedule which will be proposed in Committee today. This amendment of the eighth category in the Schedule has had to be made in order to cover certain work in connexion with wireless installations which might otherwise have been disputed as being outside the Schedule of employments.

On the question of principle, however, there is no doubt that the Hon. Member’s criticism was justified. The Schedule does form a part of the substantive law and as such amendment should be made not by Regulation but by an amending Ordinance. It is proposed therefore to delete Clause 33 and an amendment to this end will be moved in due course. I should like to express Government’s appreciation of the Hon. Member’s constructive criticism.

In conclusion I am authorized to state that if this Bill becomes law it is the intention of Government as at present advised that it should be brought into operation by Proclamation in the *Gazette* with effect from the 1st December, 1953.

The question that the Bill be read a Second time was put and agreed to.

The Bill was read a Second time.

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

Clause 1 was agreed to.

Clause 2.

THE SECRETARY FOR CHINESE AFFAIRS:—Sir: Clause 2 sub-clause (1)—I rise to move the amendment standing in my name, copies of which are already in the hands of Hon. Members.

Proposed amendment:

In the third line, leave out the word “second”.

Reason:

In the original draft there was a second proviso to this clause, but when the Bill was finalized this proviso was transferred to clause 10(1) and the word “second” should have been deleted.

Clause 2, as amended, was agreed to.

Clauses 3 to 11 were agreed to.

Clause 12.

THE SECRETARY FOR CHINESE AFFAIRS:—Sir, Clause 12 sub-clause (4)—I rise to move the amendment standing in my name, copies of which are in the hands of Hon. Members.

Proposed amendment:

In the seventh and eight lines, leave out the words “by an endorsement on such agreement direct” and insert the following—”direct in writing”.

Reason:

For convenience of administration.

Clause 12, as amended, was agreed to.

Clauses 13 and 14 were agreed to.

Clause 15.

THE SECRETARY FOR CHINESE AFFAIRS:—Sir: Clause 15 sub-clause (9) (a) and (b)—I rise to move the amendments standing in my name.

Proposed amendments :

15. (9)—(a) In the third and fifth lines leave out the word “fails” and insert the word “failed” in such lines.

(b) In the eighth line, leave out the word “disregards” and insert the word “disregarded”.

Reason:

This removes an error in the tenses hitherto overlooked.

Clause 15, as amended, was agreed to.

Clause 16.

THE SECRETARY FOR CHINESE AFFAIRS:—Sir: Clause 16— I rise to move the amendments standing in my name.

Proposed amendment:

Leave out clause 16 and insert the following clause—

“Agreement
as to
compensation

16. (1) An employer and workman may, after the injury in respect of which a claim to compensation has arisen, agree in writing as to the compensation to be paid by the employer: Provided that the compensation agreed upon shall not be less than the amount payable under the provisions of this Ordinance: Provided further that no such agreement shall be binding on any party thereto until the Commissioner of Labour has signified his approval thereof in writing.

(2) Where the Commissioner of Labour has reason to believe that the interests of the workmen require that such agreement be read over and explained to him, then the Commissioner of Labour shall not signify his approval of such agreement until he has so read and explained it to him.

(3) Any such agreement shall be executed in triplicate and one copy retained by the employer and workman respectively, and one copy lodged with the Commissioner of Labour within three days after the date of the execution of such agreement.

(4) Any such agreement which has been approved by the Commissioner of Labour may, on application to the Court by any party thereto or by the Commissioner of Labour, be made an order of the Court.

(5) Where any such agreement has been approved by the Commissioner of Labour the Court may, notwithstanding that the agreement has been made an order of the Court under the provisions of subsection (4), on application by any party thereto or by the Commissioner of Labour within three months after the date of the signification of the Commissioner of Labour's approval, cancel it and make such order (including an order as to any sum already paid under the agreement) as in the circumstances the Court may think just, if it is proved—

(a) that the sum paid or to be paid was or is not in accordance with the provisions of this Ordinance; or

(b) that the agreement was entered into in ignorance of, or under a mistake as to, the true nature of the injury ; or

(c) that the agreement was obtained by such fraud, undue influence, misrepresentation or other improper means as would, in law, be sufficient ground for avoiding it.

(6) No stamp duty shall be leviable or payable on any agreement made pursuant to the provisions of this section.”

Reason:

This clause has been recast in order to define more clearly the duties of the Commissioner of Labour in regard to agreements as to compensation.

Clause 16, as amended, was agreed to.

Clauses 17 to 32 were agreed to.

Clause 33.

THE SECRETARY FOR CHINESE AFFAIRS:—Sir: Clause 33— I rise to move the amendment standing in my name.

Proposed amendment:

Delete clause 33.

Reason:

As the First Schedule creates substantive law it is considered that amendment thereof should be by ordinance rather than by regulation.

Clause 33 was deleted.

Clauses 34 to 36.

THE SECRETARY FOR CHINESE AFFAIRS:—Sir: Clause 34 and subsequent clauses— I rise to move the amendment standing in my name.

Proposed amendment:

Re-number clause 34 and the remaining clauses and make all necessary amendments consequential thereon throughout the Bill.

Reason:

Consequential on deletion of clause 33.

Clauses 34 to 36, as amended, were agreed to.

First Schedule.

THE SECRETARY FOR CHINESE AFFAIRS:—Sir: I rise to move the amendment to item 8 of the First Schedule, standing in my name, copies of which are already in the hands of Hon. Members.

Proposed amendment:

Leave out item 8 and insert the following—

- 8.** Employment in setting up, repairing, maintaining, or taking down—
- (a) any telegraph or telephone line or post; or
 - (b) any overhead electric line or cable or post or standard for the same; or
 - (c) any wireless mast or aerial or feeder or post or standard for the same; or
 - (d) any wired broadcasting line or cable, or post or standard for the same.

Reason:

Item 8 has been recast and (c) and (d) added in order to make it clear that certain work connected with wireless is within the employments covered by the Bill.

The First Schedule, as amended, was agreed to.

Second Schedule.

THE SECRETARY FOR CHINESE AFFAIRS:—Sir: I rise to move the amendment to item 15 of the Second Schedule standing in my name.

Proposed amendment:

In item 15, insert the word “of” between the words— “Loss” and “thumb”.

Reason:

This word was inadvertently left out.

The Second Schedule, as amended, was agreed to.

Council then resumed.

THE SECRETARY FOR CHINESE AFFAIRS:—Sir: I have to report that the Bill has gone through Committee with amendments. I would ask Your Excellency to state whether or not in your opinion the amendments are material, and if you so consider I crave Your Excellency’s consent to move the suspension of Standing Orders so that the Bill may be read a Third time.

H.E. THE GOVERNOR:—I regard one of the amendments, that to clause 33, as a material amendment. I give my consent to move the suspension of Standing Orders.

THE SECRETARY FOR CHINESE AFFAIRS moved that the Standing Orders be suspended.

THE COLONIAL SECRETARY seconded, and the motion was agreed to.

THE SECRETARY FOR CHINESE AFFAIRS moved that the Bill be read a Third time.

THE COLONIAL SECRETARY seconded.

The question was put and agreed to.

The Bill was read a Third time and passed into law.

PENSIONS (AMENDMENT) BILL, 1953.

THE SECRETARY FOR CHINESE AFFAIRS moved the Second reading of a Bill intituled "An Ordinance to amend the Pensions Ordinance, Chapter 89".

THE COLONIAL SECRETARY seconded.

The question was put and agreed to.

The Bill was read a Second time.

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

Clauses 1 and 2 were agreed to.

Council then resumed.

THE SECRETARY FOR CHINESE AFFAIRS reported that the Pensions (Amendment) Bill, 1953 had passed through Committee without amendment and moved the Third reading.

THE COLONIAL SECRETARY seconded.

The question was put and agreed to.

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 we shall meet again?

THE ATTORNEY GENERAL:—May I suggest this day fortnight.

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