

**OFFICIAL REPORT OF PROCEEDINGS****Meeting of 5th September, 1956.**

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**PRESENT:**HIS EXCELLENCY THE OFFICER ADMINISTERING THE GOVERNMENT (*PRESIDENT*)

MR. EDGEWORTH BERESFORD DAVID, C.M.G.

HIS EXCELLENCY THE COMMANDER BRITISH FORCES

LIEUTENANT-GENERAL WILLIAM HENRY STRATTON, C.B., C.V.O., C.B.E., D.S.O.

THE HONOURABLE THE COLONIAL SECRETARY

MR. CLAUDE BRAMALL BURGESS, O.B.E. (*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.

THE HONOURABLE THE FINANCIAL SECRETARY

MR. ARTHUR GRENFELL CLARKE, C.M.G.

THE HONOURABLE THEODORE LOUIS BOWRING, C.M.C., O.B.E.

*(Director of Public Works)*.

DR. THE HONOURABLE YEO KOK CHEANG, C.M.G.

*(Director of Medical and Health Services)*.

THE HONOURABLE DAVID RONALD HOLMES, M.B.E., M.C., E.D.

*(Director of Urban Services)*.

THE HONOURABLE PATRICK CARDINALL MASON SEDGWICK

*(Commissioner of Labour)*.

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

THE HONOURABLE CHARLES EDWARD MICHAEL TERRY, O.B.E.

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

THE HONOURABLE NGAN SHING-KWAN, O.B.E.

THE HONOURABLE DHUN JEHangIR RUTTONJEE.

THE HONOURABLE KWOK CHAN, O.B.E.

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

THE HONOURABLE JOHN DOUGLAS CLAGUE, C.B.E., M.C., T.D.

MR. THOMAS VERNON CHARLES REYNOLDS *(Deputy Clerk of Councils)*.

**MINUTES.**

The Minutes of the meeting of the Council held on 8th August, 1956, were confirmed.

**PAPERS.**

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

<i>Subject.</i>	<i>G.N. No.</i>
Sessional Papers, 1956: —	
No. 18—Annual Report by the Director of Marine for the year 1955/56.	
No. 19—Annual Report by the Postmaster General for the year 1955/56.	
Magistrates Ordinance.	
Magistrates (Administrative) (Amendment) Rules, 1956 .....	A. 78.
Prisons Ordinance, 1954.	
Prison (Amendment) Rules, 1956 .....	A. 79.
Public Health (Animals and Birds) Ordinance.	
Public Health (Animals and Birds) (Amendment) (No. 2) Regulations, 1956 .....	A. 80.
Vehicle and Road Traffic Ordinance.	
Vehicle and Road Traffic (Amendment) (No. 2) Regulations, 1956 .....	A. 81.
Administration of Justice (Summary Offences) Ordinance, 1955.	
Administration of justice (Summary Offences) (Amendment of First Schedule) Order, 1956 .....	A. 82.
Magistrates Ordinance.	
Magistrates (Forms) (Amendment) Rules, 1956 .....	A. 83.

**IMPORTATION AND EXPORTATION  
(AMENDMENT) BILL, 1956.**

THE ATTORNEY GENERAL moved the First reading of a Bill intituled "An Ordinance further to amend the Importation and Exportation Ordinance, Chapter 50."

He said: Sir, this Bill makes certain amendments to section 4 of the principal Ordinance under which the Governor in Council is empowered to make regulations in relation to the exportation of goods from this Colony. In the first place, it is desired to give the Governor in Council power to make regulations for the issue and endorsement of Imperial Preference Certificates. In the second, it is desired to remove a doubt which has arisen about the power to make the Exportation (Certificate of Origin) Regulations, 1953. Sir, those regulations which were published in the *Gazette* of the 9th January, 1953, provide for the issue of certificates of origin in relation to goods exported from Hong Kong and, as approximately 12,000 of these certificates are issued each month, honourable Members will appreciate the extent to which those regulations have been and are being used. It is essential that there should be no doubt about the validity of them, and the second purpose of this Bill is to amend section 4 of the principal Ordinance with effect from 1st January, 1953, so as to put it beyond question that they were properly made.

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: —

Hitherto the Director of Commerce and Industry has issued or endorsed Imperial Preference Certificates without any legislative authority. The purpose of clause 2 is to empower the Governor in Council to make regulations for the issue and endorsement of such certificates and to impose conditions in respect thereof. The opportunity has been taken to remove any doubt as to the power of the Governor in Council to make the Exportation (Certificate of Origin) Regulations, 1953.

**PUBLIC HEALTH (ANIMALS AND BIRDS)  
(AMENDMENT) (NO. 2) BILL, 1956.**

THE ATTORNEY GENERAL moved the First reading of a Bill intituled "An Ordinance to amend the Public Health (Animals and Birds) Ordinance, Chapter 139."

He said: Sir, the purposes of this Bill are sufficiently explained, I think, in the statement of "Objects and Reasons" and there is nothing that I can usefully add.

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: —

Section 7 of the Public Health (Animals and Birds) Ordinance, (Chapter 139), deals with the payment of compensation for animals and birds slaughtered by order of the Director of Agriculture, Fisheries and Forestry under the provisions of that Ordinance or of regulations made thereunder. This Bill seeks to repeal and replace that section.

2. The amount of compensation payable for a diseased animal is based on a proportion of the full value of the animal immediately before it became affected with disease. In the case of tuberculosis of cattle the age at which the animal became affected with the disease cannot be determined and consequently there is no way of assessing the full value of the animal for the purpose of the section. The new section 7 overcomes this difficulty by fixing the compensation for cattle slaughtered on account of tuberculosis at \$1,500 for an animal of or over two years of age and \$750 for an animal under two years of age, unless the Director of Agriculture, Fisheries and Forestry otherwise orders.

3. Subsection (2) of the existing section provides that the full value of an animal for the purposes of the section shall be determined by the Governor in Council. It is considered that the

Director of Agriculture, Fisheries and Forestry should be the authority for determining the value of an animal or bird for purposes of compensation and subsection (2) of the new section provides accordingly.

4. Except for minor alterations in wording and as mentioned above, the provisions of the new section 7 are the same as those of the existing section.

**PUBLIC HEALTH (SANITATION)  
(AMENDMENT) BILL, 1956.**

MR. D. R. HOLMES moved the First reading of a Bill intituled "An Ordinance to amend certain provisions of the Public Health (Sanitation) Ordinance, 1935, relating to the occupation and use of basements."

He said: Sir, the object of this short Bill and the effect it will have if it is passed are, I think, sufficiently set out in the statement of Objects and Reasons attached to the Bill. But I should perhaps add a few words on the purpose behind it.

As the law stands at present the powers of the Urban Council in this field lack flexibility. In the light of the extreme shortage of accommodation the Council wishes to regularize and legalize the occupation of many basements which are at present occupied for domestic purposes. Whilst in many cases the conditions in these basements are very far from satisfactory, it would be unrealistic to suppose that such occupation should be prohibited until the housing situation improves. The Urban Council proposes to lay down simple conditions for the occupation of these sub-standard basements and to inform all concerned that permission to occupy must be regarded as only temporary, pending an improvement in the general housing situation.

At the same time it is considered that there is a limit to the extent to which sub-standard conditions can properly be tolerated, and the Bill before Council provides that a court shall order eviction where it has been shown that conditions in an illegally occupied basement are gravely prejudicial to health. Such cases are expected to be few. The Bill envisages also that the use of basements in new buildings, that is to say basements in buildings

to which the new Buildings Ordinance applies, shall be required to conform with satisfactory permanent standards, and provides that a Court shall order eviction where the occupation of a basement in such a building is contrary to the conditions attached to passing of the plans.

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 so to amend the provisions of the Public Health (Sanitation) Ordinance, 1935, as to admit of the introduction by the Urban Council of a flexible system of permits to control the use of basements as places for human habitation or as shops, workshops or other similar places in which human beings must congregate for long periods and to enable, and in the two cases mentioned below to require, the courts to evict persons occupying such basements in contravention of the permits.

2. The two cases referred to above in which the courts are required to evict are where the courts are satisfied that—

- (a) a basement is insanitary or overcrowded in such manner as to render the continued occupation or use thereof gravely prejudicial to the health of the persons occupying or using the same; and
- (b) in the case of a basement constructed or reconstructed or converted in accordance with the provisions of the Buildings Ordinance, 1955, the continued occupation or use thereof is contrary to the purpose for which such basement was constructed or reconstructed or converted, as the case may be.

3. The reasons giving rise to this Bill are to be found in the fact that during the present acute shortage of housing accommodation in Hong Kong and Kowloon a great number of basements of every kind and condition, which are in fact unfit for

human habitation or unsuitable for human occupation, are so used with grave consequential risk to the health of the inmates. While it is appreciated that, as far as possible, use must be made of such places for accommodation purposes at the present time, the preservation of health requires that such use be subject to close control. So diverse, however, are the conditions and circumstances appertaining to the various types and kinds of basements in use that any effective control over them must necessarily be such as to admit of complete flexibility.

4. As the repeal and replacement of section 50 of the principal Ordinance, in the manner set out in clause 3 of this Bill, will render redundant the need for the Urban Council to make by-laws in this connexion, clause 2 of the Bill repeals the power contained in section 4(1) of the Ordinance to make such by-laws.

#### **INLAND REVENUE (AMENDMENT) BILL, 1956.**

THE FINANCIAL SECRETARY moved the Second reading of a Bill intituled "An Ordinance further to amend the Inland Revenue Ordinance, Chapter 112."

He said: Sir, since the first reading of this Bill not only my honourable and learned Friend the Attorney General but several Unofficial Members, and some outside organizations, have raised with Government a number of points, many of a highly technical nature, on various clauses. These points have been discussed at length with the persons and organizations who have raised them, and in a number of cases it was found that they were good ones. Government is grateful for the help it has received in the matter, and I propose, during the committee stage, to move a number of amendments giving effect to such changes as are agreed by Government as necessary or desirable.

THE COLONIAL SECRETARY seconded.

MR. J. D. CLAGUE: —Your Excellency, my honourable Friend, the Financial Secretary has indicated that he will be moving various amendments and if these are accepted by Council the commercial community will, I believe, view the present bill as favourably as they are likely to view any legislation designed to raise taxes.

A number of responsible bodies and associations, including the Hongkong General Chamber of Commerce as well as Unofficial Members of this Council, have raised points connected with the bill and have suggested improvements and possible amendments and I would like to thank the Financial Secretary for the consideration that he has given to these suggestions.

In particular all will welcome the modification of those retrospective clauses to which exception was taken. In my opinion retrospective legislation is objectionable in principle and can only be justified as far as taxation matters are concerned in very exceptional circumstances, such as the introduction of a clause in favour of the taxpayer.

Sir, whilst I did not take part in the lengthy debate on the Inland Revenue (Amendment) Ordinance of 1955, I have read the Hansard report. The main discussions centred round Sections 13A and 27 of the principal Ordinance, both of which sections were first introduced by Ordinance 36 of 1955.

Honourable members will recall that Mr. Blackwood fought a lone battle in Council though he made it clear in his speech that outside this Chamber he enjoyed the full support of the General Committee of the Hongkong General Chamber of Commerce, that Chamber's Legal Sub-Committee and the Association of Chartered Accountants. Mr. Blackwood sought to prove '*inter alia*' that as they stood the clauses now numbered 13A and 27 of the principal Ordinance were ambiguous and that doubts as to their exact meaning were likely to arise in the future. To this extent he is supported by the opinion obtained by Government from Counsel in London for the final paragraph of Mr. Bucher's opinion reads as follows:

"There is however some doubt in my opinion how the amendments should be construed and for this reason I suggest that a further amendment similar to that proposed in the previous paragraph of this opinion be considered".

Sir, the amendments which Counsel suggested having been accepted by Government, it only remains for me to thank my honourable Friend, the Financial Secretary for having implemented in full the promise he made on behalf of Government on 14th September, 1955, namely, to refer the matter to the Legal Authorities in the United Kingdom and to reconsider the matter in the light of the opinion so obtained.



Sir, I support the bill and the suggested amendments.

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.

H. E. THE OFFICER ADMINISTERING THE GOVERNMENT: —Gentlemen, as this is rather a long Bill, we will with your agreement take it in blocks of five.

Clauses 1 to 5.

THE FINANCIAL SECRETARY: —Sir, I move that clauses 2 and 3 be amended as set forth in the paper before honourable Members.

*Proposed amendments.*

Clause 2. Delete from sub-clause (1) the reference to section 11, and insert a reference to section 11 in sub-clause (2)

Clause 3. In paragraph (a) in the proposed new definition of "approved retirement scheme" leave out the words "approved by the Commissioner" and substitute the following—

“or part thereof approved for the time being by the Commissioner under section 87A”.

Clause 1, clauses 2 and 3 as amended, and clauses 4 and 5 were agreed to.

Clauses 6 to 10.

THE FINANCIAL SECRETARY: —Sir, I move that clause 9 be amended as set forth in the paper before honourable Members.

*Proposed amendment.*

In subsection (1) of the new section 15A, leave out the number "1955" and substitute the following—

“1956”.

Clauses 6 to 8, clause 9 as amended, and clause 10 were agreed to.

Clauses 11 to 15.

THE FINANCIAL SECRETARY: —Sir, I move that clauses 11 and 13 be amended as set forth in the paper before honourable Members.

*Proposed amendments.*

Clause 11. In subsection (1) of the new section 16A leave out the words "that the Commissioner is satisfied".

Clause 13. In subsection (6) of the new section 18 insert after the word "assessment" in the sixth line the following—

"or, where the claim has been made under the proviso to subsection (4), within two years after the end of the second of the two years of assessment referred to in such proviso".

Clause 11 as amended, clause 12, clause 13 as amended, and clauses 14 and 15 were agreed to.

Clauses 16 to 20.

THE FINANCIAL SECRETARY: —Sir, I move that clauses 18 and 20 be amended as set forth in the paper before honourable Members.

*Proposed amendments.*

Clause 18. In paragraph (a) leave out the words "26A and any interest received from which interest tax has been deducted in accordance with section 29" and substitute the following—

“26(a)”.

Clause 20. (a) In subsection (2) of the new section 23B and in subsection (5) of the new section 23C leave out the definition of "permanent establishment" and substitute the following in each case—

““permanent establishment" means a branch, management or other place of business, but does not include an

agency unless the agent has, and habitually exercises, a general authority to negotiate and conclude contracts on behalf of his principal;”.

- (b) In the proviso to subsection (2) of the new section 23C leave out the words "one year" and substitute the following—

“two years”.

- (c) In subsection (3) of the new section 23C leave out the words "belonging to" and substitute the following—

"owned or chartered by".

Clauses 16 and 17, clause 18 as amended, clause 19, and clause 20 as amended, were agreed to.

Clauses 21 to 25.

THE FINANCIAL SECRETARY: —Sir, I move that clause 23 be amended as set forth in the paper before honourable Members.

*Proposed amendment.*

Leave out the words "other than a life insurance company."

Clauses 21 and 22, clause 23 as amended, and clauses 24 and 25 were agreed to.

Clauses 26 to 40 were agreed to.

Clauses 41 to 45.

THE FINANCIAL SECRETARY: —Sir, I move that clause 43 be amended as set forth in the paper before honourable Members.

*Proposed amendment.*

Insert the following paragraph—

- (c) by the insertion after the words "Provided that" of the following—

"where a person has been required to furnish a return of any income or profits assessable to tax for any year of assessment in

accordance with the provisions of section 51 and where such return has been furnished not later than the 31st day of March, 1953, no assessment or additional assessment in respect of such income or profits shall be made on such person for that year of assessment after the 31st day of March, 1956; and

Provided further that".'

Clauses 41 and 42, clause 43 as amended, and clauses 44 and 45 were agreed to.

Clauses 46 to 50 were agreed to.

Clauses 51 to 55.

THE FINANCIAL SECRETARY: —Sir, I move that clauses 51 and 54 be amended as set forth in the paper before honourable Members.

*Proposed amendments.*

Clause 51. In the proviso to the new section 70A leave out the number "1956" and substitute the following—

“1955”.

Clause 54. At the end of the proposed new section 75, add the following new subsection—

“(5) In any proceedings in the District Court under this section, the Commissioner may appear in person or may be represented either by a legal officer within the (Cap. 87). meaning of the Legal Officers Ordinance or by any other person authorized by him in writing. ”.

Clause 51 as amended, clauses 52 and 53, clause 54 as amended, and clause 55 were agreed to.

Clauses 56 to 69 were agreed to.

Three new clauses.

THE FINANCIAL SECRETARY: —Sir, I move the addition of three new clauses to the Bill as set forth in the paper before honourable Members, and their purpose is set out.

*Proposed new clauses.*

"Amendment of section 5. Section 5 of the principal Ordinance is amended by the substitution of a semi-colon for the full stop at the end thereof and the addition thereafter of the following new paragraph to the proviso—

“(e) property tax shall not be charged for any year of assessment in respect of any land or buildings or land and buildings in the New Territories other than New Kowloon unless and until the Governor by proclamation in the *Gazette* declares that property tax shall be so charged.”.

Addition of new section 87A. The principal Ordinance is amended by the addition after section 87 of the following new section—

"Approval of retirement schemes. **87A.** Upon application in such manner as may be prescribed the Commissioner may, for the purposes of this Ordinance, approve, either as a whole or in part, any retirement scheme or provident fund which, in his opinion, complies substantially with such requirements as may be prescribed, and may withdraw any approval so given. ”.

Assessments for 1955/56 or 1956/57 made prior to enactment of this Ordinance. Where a person who has been charged to tax prior to the enactment of this Ordinance in respect of the years of assessment commencing on the 1st April, 1955, or the 1st April, 1956, proves to the satisfaction of the Commissioner within twelve months from the date of enactment of this Ordinance that had he been charged to tax for those years of assessment subsequently to the enactment of this Ordinance the amount of tax charged on him for those years of assessment would have been less than the amounts actually charged, the Commissioner shall, notwithstanding the provisions of section 70 of the principal Ordinance, direct the Assessor to cancel the assessments and to make fresh assessments under the principal Ordinance as amended by this Ordinance.”.

The three new clauses were agreed to.

Council then resumed.

THE FINANCIAL SECRETARY: —Sir, I beg to report this Bill from Committee with amendments and with your Excellency's leave to say that, pursuant to Standing Order 28, it will be published in the *Gazette* as amended prior to the Third Reading, which will take place at the next meeting.

**FRAUDULENT TRANSFERS OF BUSINESSES  
(AMENDMENT) BILL, 1956.**

THE FINANCIAL SECRETARY moved the Second reading of a Bill intituled "An Ordinance to amend the Fraudulent Transfers of Businesses Ordinance, Chapter 49."

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 Fraudulent Transfers of Businesses (Amendment) Bill, 1956 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.

**ADJOURNMENT.**

H. E. THE OFFICER ADMINISTERING THE GOVERNMENT: —That concludes our business, gentlemen. When is it your pleasure that we meet again?

THE ATTORNEY GENERAL: —May I suggest this day three weeks?

H. E. THE OFFICER ADMINISTERING THE GOVERNMENT: —Council will adjourn to this day three weeks.