

**OFFICIAL REPORT OF PROCEEDINGS.****Meeting of 31st July, 1957.****PRESENT:**HIS EXCELLENCY THE GOVERNOR (*PRESIDENT*)

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

HIS EXCELLENCY THE COMMANDER BRITISH FORCES

LIEUTENANT-GENERAL EDRIC MONTAGUE BASTYAN, K.B.E., C.B.

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. JOHN CRICHTON McDOUALL.

THE HONOURABLE THE FINANCIAL SECRETARY

MR. JOHN JAMES COWPERTHWAITTE (*Acting*).

THE HONOURABLE DAVID CLIVE CROSBIE TRENCH, M.C.

*(Commissioner of Labour)*.

THE HONOURABLE EDMUND BRINSLEY TEESDALE, M.C.

*(Director of Urban Services)*.

THE HONOURABLE ALLAN INGLIS

*(Director of Public Works)*.

DR. THE HONOURABLE GEORGE GRAHAM-CUMMING

*(Acting Director of Medical and Health Services)*.

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, O.B.E.

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

THE HONOURABLE KWOK CHAN, O.B.E.

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

MR. MAURICE DEREK SARGANT (*Deputy Clerk of Councils*).

**MINUTES.**

The Minutes of the Meeting of the Council held on 17th July, 1957, 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>
Summary Offences Ordinance.	
Summary Offences (Licences and Fees) (Amendment) Regulations, 1957 .....	A. 57.
The Hong Kong and Yaumati Ferry Company (Services) Ordinance, 1951.	
Hong Kong and Yatimati Ferry Company (Services) Order, 1957 .....	A. 58.
Midwives Ordinance.	
Midwives (Amendment) Regulations, 1957 .....	A. 59.
Vehicle and Road Traffic Ordinance.	
Vehicle and Road Traffic (Construction and Use) (Amendment) Regulations, 1957 .....	A. 60.
Pensions Ordinance.	
Pensions (Amendment) (No. 2) Regulations, 1957 .....	A. 61.

**TELEPHONE ORDINANCE, 1951.**

THE FINANCIAL SECRETARY moved the following resolution: —

RESOLVED in accordance with subsection (2) of section 29 of the Telephone Ordinance<sup>5</sup> 1951, that as from the 1st day of August, 1957, the Schedule to the said Ordinance be amended by the addition to PART IV of the following new item—

"20. For an installation at subscribers request which is not otherwise provided for in this Schedule.	A charge as may be agreed between the subscriber and the Company."
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He said: Sir, the Schedule to the Telephone Ordinance lays down the permitted charges for telephone services. Many refinements and luxury fittings are now becoming available and it would be very cumbrous to ask this Council to amend the Schedule for each and every innovation as it appears. As they play no essential part in the efficient operation of the telephone system, it is proposed to leave the charges to be agreed between company and subscriber and the Resolution gives the necessary authority for this.

THE COLONIAL SECRETARY seconded.

The question was put and agreed to.

### DEVELOPMENT FUND.

THE FINANCIAL SECRETARY moved the following resolution: —

WHEREAS—

- (1) on the 19th day of September, 1951, the Legislative Council by resolution published as Government Notification No. A. 169 in Supplement No. 2 to the *Gazette* of the 21st September, 1951, established a Development Fund;
- (2) by the Custodian of Property (Termination of Functions) Ordinance, 1957, (hereinafter referred to as the Ordinance) certain property, as therein mentioned, held by or in the custody, supervision or control of the Custodian of Property or by or in the name of any person in trust or otherwise for the Custodian of Property by virtue of or arising out of the provisions of the Custodian Proclamation, 1945, (hereinafter referred to as the assets) became vested in accordance with the provision of the Ordinance in the Crown absolutely.

NOW, THEREFORE, BE IT RESOLVED that a sum of ten million dollars only be appropriated to the Development Fund out of the assets vested in the Crown by the Ordinance.

He said: Sir, the Custodian of Property (Termination of Functions) Ordinance which was passed on 8th May this year had the effect of vesting in Government abandoned property to the value of about \$13 million which had been taken into custody by the Custodian on the liberation of the Colony. The question now arises of the disposal of these funds.

The Development Fund is heavily overcommitted, largely for housing, and the Financial Secretary said in his Budget speech this year that it would become necessary in the near future to make additional funds available for it. It has been suggested that this would be an appropriate purpose to which to put a windfall of this sort, and under Government accounting procedure it would be a convenient way of putting more money into the Fund.

The draft Resolution before Council today will have the effect of transferring \$10 million from this source to the Development Fund. The balance of about \$3 million will be paid into general revenue and should be more than enough to meet any normal claims for compensation which may be admitted in future under Section 4 of the Ordinance.

THE COLONIAL SECRETARY seconded.

The question was put and agreed to.

### **RADIATION BILL, 1957.**

THE ATTORNEY GENERAL moved the First reading of a Bill intituled "An Ordinance to control the import, export, possession and use of radioactive substances and irradiating apparatus and the prospecting and mining for radioactive minerals and for purposes connected therewith."

He said: Sir, the primary object of this Bill is to make provision whereby the public may be protected against the harmful effects of undue exposure to dangerous radiation. I imagine that it is hardly necessary for me to stress the grave dangers of exposure to radio-activity; so much having of recent years been stated in print on this matter, I think that everyone will agree that steps should be taken to secure, so far as we are able, the health and safety of persons who may be brought into contact with dangerous radio-activity—I emphasize the epithet "dangerous" because there are innocuous forms, for example, a luminous watch.

I now turn to examine the scheme of this Bill. Clause 7 is very important because it provides the basis for control, which is a system of licensing for the production, dealing in, possession, importation and exportation of radioactive substances and irradiating apparatus. The expressions "irradiating apparatus" and

"radio-active substance" are defined in clause 2, and in the case of the apparatus there will have to be regulations to define precisely what is what. The term "radio-active substance" is defined in clause 2 by reference to what is called the Periodic Table which is the standard scientific classification of all elements, accepted throughout the world.

For the purpose of the administration of this measure, clause 3 establishes the Radiation Board which consists of three *ex-officio* members and not more than ten others to be appointed by the Governor. The *ex-officio* members are the Director of Medical and Health Services, the Commissioner of Labour and the Director of Commerce and Industry. The provision for ten others will allow the Board to be constituted on a broad basis which is a desirable thing considering the importance and intricacy of the task they will have in hand, and yet the quorum of five will allow the Board to operate as a small expert group when highly specialized subjects fall to be considered.

This Board will be the licensing authority and will be empowered to grant and refuse and to cancel, suspend and renew, licences as provided in clauses 10 and 11. An appeal to the Governor in Council against the Board's decisions under those clauses is provided for in clause 12. The Board will also be the regulation-making authority under clause 14. Honourable Members will see that the power to make regulations spreads over a very wide field but I think they will agree that this is so of necessity. Any regulations made by the Board are subject to the approval of this Council, and I feel that this provides a sufficient safe-guard because this formula involves, under paragraph (e) of section 14 of the Interpretation Ordinance, not merely a laying on the Table but positive approval by resolution; and this Council has power to amend or disapprove any such regulations. Ancillary powers of the Board are to appoint advisory and technical committees membership of which is not confined to members of the Board, to delegate certain of its functions, and to appoint inspectors. By clause 15 these inspectors are given powers of entry necessary to secure compliance with the law: in the case of premises where any licensed or exempted radio-active substance or irradiating apparatus is known to be situate, an inspector may exercise his powers of entry and inspection upon production of a written authority; in all other cases, entry and search must be authorized by a magistrate's warrant.

The Bill also provides for the control of prospecting and mining in relation to radio-active minerals, and will replace the existing Radio-Active Minerals Ordinance. The effect of clause 9 will be that persons who wish to prospect for or mine radioactive minerals will have to obtain a licence from the Board as well as a licence under the Mining Ordinance, No. 33 of 1954, which, as Honourable Members know, deals with prospecting and mining generally.

Of the remaining provisions I need, I think, only invite attention to two: clause 18 prohibits the disclosure of information about manufacturing processes and trade secrets obtained in exercise of powers conferred by the Bill. Clause 21 makes a licensee responsible for offences committed by his agent or servant, unless the licensee establishes non-complicity; that is not an unusual provision in legislation of this character, and I submit that it is justified in this instance where the danger resulting from breaches of the law is great and the temptation to shelter behind stooges probably greater.

Sir, I am afraid that I have taken up a lot of time on this Bill; but I hope it has not been entirely wasted. I would say one final thing before resuming my seat: this Bill was drafted in consultation with an informal Committee presided over by the Commissioner of Labour, and I think it will be agreed that they have done a good job.

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 increasing use of radioactive substances and irradiating apparatus in industrial and medical processes has brought about a need for a greater measure of control over such substances and apparatus. This Bill seeks to provide this control by—

- (a) requiring licences for the possession, use, etc. of such substances and apparatus (clause 7);

- (b) providing for the appointment of inspectors having certain powers (clause 15); and
- (c) enabling regulations to be made covering a wide range of matters relating to such substances and apparatus (clause 14).

2. Clause 3 provides for the establishment of a Radiation Board, to whom the powers of granting and cancelling licences and of imposing conditions on licences is given. It is provided, however, that these powers may be delegated by the Board to any of its *ex-officio* members, namely, the Director of Medical and Health Services, the Commissioner of Labour and the Director of Commerce and Industry (clause 6). An appeal by way of petition to the Governor from any refusal to grant or renew or from any cancellation or suspension of a licence is provided for by clause 12.

3. The power to make regulations referred to above is conferred on the Board subject to the approval of the Legislative Council (clause 14). In addition the Board is empowered to amend the Schedule (which contains a list of radioactive minerals), by order, again with the approval of the Legislative Council (clause 22).

4. The provisions of the Radio-Active Minerals Ordinance, Chapter 145, (which mainly deals with the prospecting for and mining of radioactive minerals) are substantially incorporated in the Bill and that Ordinance is repealed by clause 24.

5. It is anticipated that regulations giving effect to the Bill may take some time to materialize and for this reason the commencement of clauses 7 and 9 (requiring licences for the possession, use, etc. of such substances and apparatus) and clause 24 (repealing the Radio-Active Minerals Ordinance) is suspended until such date as the Governor may proclaim.

### **MENTAL HOSPITALS (AMENDMENT) BILL, 1957.**

THE ATTORNEY GENERAL moved the First reading of a Bill intituled "An Ordinance further to amend the Mental Hospitals Ordinance, Chapter 136."

He said: As the statement of objects and reasons explains, the purpose of this Bill is to put it beyond doubt that the Governor has power to give from time to time orders for the safe custody of "criminal lunatics" detained by order of the Supreme Court, but I would like to add a few words about the necessity for this amendment.

Where the Supreme Court makes such an order, section 16 of the Mental Hospitals Ordinance provides that the Governor shall by warrant under his hand declare Her Majesty's pleasure and may by such warrant direct that the subject of the Court order be removed to a mental hospital and there detained in accordance with the terms of the warrant. It is, to say the least, doubtful whether, as the law stands, the Governor has power to do anything but direct the discharge of a person so detained in a mental home where he becomes of sound mind.

Now a person detained as a criminal lunatic is not detained for the period of his insanity but is detained during Her Majesty's pleasure which is of course determined in a Colony by the Governor. The fact that a criminal lunatic becomes of sound mind is not of itself a sufficient reason for releasing him. For example, he may have been guilty of killing someone or doing grave physical injury, and in such a case a duty is clearly owed to the public to ensure that he is not set free, unless it is almost a certainty that he will never again do such a thing. It is essential therefore in the public interest that a criminal lunatic who recovers his mental balance should, if necessary, be kept under observation for a period, which will vary in length according to the circumstances of his particular case: the Governor has to take into account the gravity of the offence with which he was charged, his history, his present mental condition, his prospects of employment, the conditions under which he will live if released and so forth. Honourable Members will appreciate that a person who becomes rational under the conditions of institutional life may again become deranged when exposed to the strains and stresses of ordinary life, and that the greatest care has to be taken in dealing with these unfortunate cases, although this may mean the continued detention of a human being who is apparently rational.

On the other hand, it is not considered right that an apparently rational being should continue to be detained in an ordinary mental home lacking the facilities available in the special



institutions in the United Kingdom for the detention of criminal lunatics, known as Broadmoor Institutions. This amendment will therefore allow of a criminal lunatic who is of sound mind being detained in a place other than a mental home until such time as it is safe to allow him to go free without risk to the community.

Finally, Sir, I would mention that the Government has under consideration the possibility of setting up a special institution on the lines of the Broadmoor Institutions in the United Kingdom for the detention of criminal lunatics. Criminal lunatics are accepted as being in a class apart from persons normally confined under the Mental Hospitals Ordinance.

*Objects and Reasons.*

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

The purpose of this Bill is to make it quite clear that the Governor has the power to give from time to time such orders as he considers necessary for the safe custody of persons ordered by the Supreme Court to be detained as "criminal lunatics". These persons fall into two categories—

- (i) persons found to be unfit to take their trial on account of insanity; and
- (ii) persons found guilty of the act or omission charged against them, but found to have been insane at the time of the alleged offence.

Sections 76, 77 and 78 of the Criminal Procedure Ordinance, Chapter 221, contain the provisions relating to the procedure of the Supreme Court in such cases.

**STAMP DUTIES MANAGEMENT (AMENDMENT)**

**BILL, 1957.**

THE FINANCIAL SECRETARY moved the Second reading of a Bill intituled "An Ordinance to amend the Stamp Duties Management Ordinance, Chapter 121."

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 to 4 were agreed to.

Council then resumed.

THE FINANCIAL SECRETARY reported that the Stamp Duties Management (Amendment) Bill, 1957 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 GOVERNOR: —That concludes the business for today, Gentlemen. When is it your pleasure that we should meet again?

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

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