

OFFICIAL REPORT OF PROCEEDINGS.**Meeting of 21st January, 1959.**

PRESENT:HIS EXCELLENCY THE GOVERNOR (*PRESIDENT*)

SIR ROBERT BROWN BLACK, K.C.M.G., O.B.E.

HIS EXCELLENCY THE COMMANDER BRITISH FORCES

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

THE HONOURABLE THE COLONIAL SECRETARY

MR. CLAUDE BRAMALL BURGESS, C.M.G., O.B.E.

THE HONOURABLE THE ATTORNEY GENERAL

MR. ARTHUR HOOTON, Q.C. (*Acting*).

THE HONOURABLE THE SECRETARY FOR CHINESE AFFAIRS

MR. JOHN CRICHTON McDOUALL.

THE HONOURABLE THE FINANCIAL SECRETARY

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

THE HONOURABLE PATRICK CARDINALL MASON SEDGWICK

(Commissioner of Labour).

THE HONOURABLE ALLAN INGLIS

(Director of Public Works).

DR. THE HONOURABLE DAVID JAMES MASTERTON MACKENZIE, C.M.G., O.B.E.

(Director of Medical and Health Services).

THE HONOURABLE COLIN GEORGE MERVYN MORRISON

(Director of Urban Services).

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

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

THE HONOURABLE LO MAN WAL C.B.E.

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

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.

THE HONOURABLE HUGH DAVID MACEWEN BARTON, M.B.E.

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

MINUTES.

The Minutes of the meeting of the Council held on 7th January, 1959 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 Paper, 1959: —	
No. 2—Annual Report by the Secretary for Chinese Affairs for the year 1957/58.	
Merchant Shipping Ordinance, 1953—Special Report in accordance with proviso to section 115(1).	
Importation and Exportation (Reserved Commodities) (Amendment) Regulations, 1958	A. 1.
Importation and Exportation Ordinance.	
Exportation of Cotton Manufactures (Prohibition) Regulations, 1959	A. 2.

**LEGAL OFFICERS (FEES AND COSTS)
(AMENDMENT) RULES, 1959.**

THE ATTORNEY GENERAL moved the following resolution: —

Resolved that the Legal Officers (Fees and Costs) (Amendment) Rules, 1959, made by the Chief Justice on the 5th day of January, 1959, under section 10 of the Legal Officers Ordinance, Chapter 87, be approved.

He said: Sir, the Rules for which approval is sought in this resolution amend a typographical error in the Legal Officers (Fees and Costs) Rules, 1953.

THE COLONIAL SECRETARY seconded.

The question was put and agreed to.

**DIRECTOR OF SOCIAL WELFARE
INCORPORATION BILL, 1959.**

THE ATTORNEY GENERAL moved the First reading of a Bill intituled "An Ordinance to provide for the incorporation of the Director of Social Welfare, and for matters connected therewith."

He said: Sir, it will be recalled that following upon the creation of the office of Director of Social Welfare, certain duties and functions of the office of the Secretary for Chinese Affairs were transferred to him, including for example, his duties in respect of infants and young persons. Prior to this transfer funds held on behalf of such persons were held in trust under the provisions of the Secretary for Chinese Affairs Incorporation Ordinance. Now that the Social Welfare Officer had graduated from his status as an officer in the Secretariat for Chinese Affairs to the head of a department of his own, it is desirable that he too should become a corporation, and that the corporation so created should have power to act as trustee of trusts "created for the benefit of persons in the care of the Social Welfare Department or of any trust created in connexion with the work of that department." The principal advantage of incorporation is that these trusts will devolve upon the successors in office to the present Director without legal formalities on each occasion.

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 object of this Bill is to provide for the incorporation of the office of Director of Social Welfare and to empower the corporation to act as trustee of any trust "created for the benefit of persons in the care of the Social Welfare Department or of any trust created in connexion with the work of the said department" (see clause 4).

2. By clause 5, the corporation is authorized to invest trust funds in accordance with the provisions of the Trustee Ordinance (Chapter 29) or by depositing the same in a bank or savings bank approved by the Governor.

**REGISTRAR GENERAL (ESTABLISHMENT)
(AMENDMENT) BILL, 1959.**

THE ATTORNEY GENERAL moved the First reading of a Bill intituled "An Ordinance to amend the Registrar General (Establishment) Ordinance, Chapter 100."

He said: Sir, this amending Bill will, if enacted, authorize the Registrar General, his deputies and assistants, to take, by virtue of their offices, those affidavits, affirmations or declarations required by law to be made in connexion with the various functions performed by the Registrar General.

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: —

Large numbers of statutory and other declarations and some affidavits have to be made in connexion with the various functions performed by the Registrar General, particularly those relating to the post registration of births. Hitherto such declarations have been mostly made either before Justices of the Peace or Assistant Registrars who have been appointed Commissioners for Oaths. It is, however, not considered appropriate that junior Assistant Registrars should have all the powers of Commissioners for Oaths. The object of the present Bill is to obviate the need for appointing Assistant Registrars to be Commissioners for Oaths by giving them the power to take affidavits, affirmations and declarations required for purposes limited to those of the Registrar General's Department. Similar powers are given to the Registrar General, Deputy Registrar General and Legal Assistants.

BUSINESS REGISTRATION BILL, 1959.

THE FINANCIAL SECRETARY moved the First reading of a Bill intituled "An Ordinance to amend the law relating to the registration of businesses in the Colony."

He said: Honourable Members will recollect that when I presented the Estimates in March of last year, I touched on the difficulties of administration of the Business Regulation Ordinance, and I mentioned that consideration was being given to amending the law in order to reduce the fee, and to redefine the term "business".

The results of that consideration are embodied in this Bill before Council. Instead of amending the existing Business Regulation Ordinance, it is now proposed to repeal it, and to replace it by a completely new Ordinance.

The main objects of registration of businesses are two. One is to oblige businesses to disclose details of their partners for the information of the Inland Revenue Department with a view to taxation, and also for the information of the public generally, any member of which can, on payment of a small fee, obtain particulars of the makeup of any business from the registration office, so being in a position to know with whom he is going to deal. The other object is to raise revenue. Both these objects are preserved in the new Bill, but the amount of revenue to be expected in the future is very greatly reduced, for it is proposed to bring down the annual registration fee from \$200 to \$25. As I mentioned a year ago, it had been found that payment of \$200 per annum constituted a real hardship in many cases. The existing law provides that the fee can be reduced by the Commissioner where he considers there might be hardship, and this provision, this very necessary provision, resulted quite naturally in a flood of applications for relief. Many of these applications were genuine, but quite a number were far from genuine, and it was necessary in one or two cases to prosecute some quite prosperous businesses, who quite blatantly gave false particulars in order to get off payment of the annual fee. The fee of \$25 now proposed, which comes to two dollars a month, should constitute a hardship to relatively few, but nevertheless, provision is still made for relief under this Bill. The fee is low enough to offer little inducement for fraud, but if anyone feels that the fee is too heavy, he may put in a Statutory Declaration in a prescribed form to the Commissioner, and, of course, if he knowingly puts false particulars in that Statutory Declaration, he is liable to prosecution. In the case of businesses which provide services, such as for example a barber, it is proposed that the Commissioner may exempt the business from payment of the fee if the receipts from the business do not exceed \$300 a month. In the case of other businesses, trading businesses, buying and selling, exemption may be granted if monthly sales do not exceed \$1,000. This device of relating hardship to gross receipts, or rather to the lack of gross receipts, seems to be the only administratively practical way of giving relief. Efforts have been made to find a definition of "business" which would exclude all petty businesses, and would thus make any relief provision unnecessary, but these efforts have proved to be abortive.

I should add that the Bill empowers the Commissioner to exempt a business from payment of the fee for up to three years on the strength of one Declaration. I should also add that if the Commissioner decides that no exemption should be granted, despite the Statutory Declaration of the applicant, then the applicant has a right of appeal to the District Court. The only other important point meriting attention is that a certificate already issued under the present Business Regulation Ordinance will remain valid, notwithstanding the repeal of that Ordinance, until the end of its twelve months' period.

I have, Sir, just outlined the main purposes of this Bill and I would invite the attention of honourable Members to the statement of Objects and Reasons which is appended to it, and to the Comparative Table, which shows in detail the differences between the existing Business Regulation Ordinance and the proposed new legislation. Wherever possible the wording of this Bill follows that of the Inland Revenue Ordinance.

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: —

Government has decided to propose two major changes to the provisions of the Business Regulation Ordinance, 1952; the first being to reduce the annual fee from \$200 to \$25, and the second being to exempt small businesses and dormant businesses from the requirement that they should pay fees but not from that requiring registration. It is also considered desirable, in the light of experience gained in the working of this Ordinance, to repeal and replace the whole Ordinance and introduce a somewhat different scheme for the registration of businesses and payment of fees. A Comparative Table is attached and an explanation of the intended working of the new scheme follows below.

2. Clause 3 introduces an extensive definition of "person carrying on business", this being the person on whom rests the obligations and liabilities under the Bill. Sub-clause (4) of this clause permits the Commissioner of Inland Revenue to serve a notice on any person whom he considers to be a person carrying on a business, and the effect of this is to place on that person the onus of proving to the Commissioner's satisfaction that he is not carrying on a business; and if he fails to do so he is then deemed to be carrying on a business unless he appeals successfully under clause 17. Since the effect of this wide definition will be that in most businesses several persons will be deemed to be carrying it on, each of the clauses imposing an obligation provides that the performance of the duty by any one person is a fulfilment of the obligation on the part of all.

3. Under clause 5 application for registration is required for all new businesses, and businesses which were not registered under the Business Regulation Ordinance, 1952. On application being made for such registration the Commissioner is required to add it to the register

kept for the purpose; and in this connexion it should be noted that businesses registered under the old Ordinance are deemed to have been registered under this Bill. Having registered the business, the next obligation on the persons carrying it on is to pay the annual fee when called upon to do so by the Commissioner under clause 7. If however, he does not call upon them within one month of the expiry of their business registration certificate then such persons are obliged to notify the Commissioner of this fact.

4. Where the fees are not paid the Commissioner is empowered by clause 11 to impose monthly penalties for the period during which the fees remain unpaid. Should it then be necessary to institute criminal proceedings against the persons failing to make payment, the magistrate is required, upon conviction of such person, to order the immediate payment to the Commissioner of the fees and penalties that have accrued over the past two years; the remaining fees and penalties, if any, to be paid at such time as the magistrate may order.

5. Clause 10 makes provision for the case where several businesses are carried on by the same person or persons. Only one fee is required to be paid and a single business registration certificate is issued in respect of such businesses. Since clause 12 requires that a valid business registration certificate be displayed at every place at which business is carried on, clause 14 provides for the making of regulations concerning the issue of duplicate certificates and the payment of fees therefor. Exemption from payment of annual fees may be applied for and granted under clause 9, eligibility for such exemption being determined by the average of the sales or receipts of the business calculated over a period of six months. Certain businesses such as auctioneers and money changers were exempt from the payment of fees under the 1952 Ordinance on the grounds that they were already required to pay substantial licence fees under the Miscellaneous Licences Ordinance, Cap. 114. Now that the proposed fees are to be only \$25 these businesses are no longer exempted. Clause 16, however, exempts from the Ordinance as a whole charitable organizations and clubs under certain conditions, and businesses concerned with farming and fishing; and it further provides that the Governor in Council may, by regulation, exempt any other business.

6. The fee of \$25, the penalties which the Commissioner may impose for non-payment of that fee and the average of sales or receipts which entitle a business to exemption are all set out in the Schedule and may be amended by resolution of Legislative Council under clause 18; this is desirable since it is considered that alterations of the sums should be in the hands of Legislative Council but without the need for an amending Bill.

7. Clause 17 provides for an appeal to the District Court in those cases where the Commissioner had decided under clause 3(4) that a person is carrying on business or where he has refused to grant exemption under clause 9. This replaces the provisions in the 1952 Ordinance, and the Chief Justice is empowered to make rules to regulate the procedure.

**FACTORIES AND INDUSTRIAL UNDERTAKINGS
(AMENDMENT) BILL, 1959.**

MR. P. C. M. SEDGWICK moved the First reading of a Bill intituled "An Ordinance to amend the Factories and Industrial Undertakings Ordinance, 1955."

He said: Although the Commissioner of Labour is empowered to exempt any industrial undertaking from any regulation made under the Factories and Industrial Undertakings Ordinance, and can also order the adoption of special precautions in addition to any precautions required by regulation made under the Ordinance, he can at present only exempt absolutely and cannot make his exemption subject to conditions, unless the conditions are in fact special precautions. The number of processes used in Hong Kong industry is now so varied and working conditions differ in so many respects that it has become desirable that the Commissioner should be able where necessary to modify regulations of a general character in individual cases. It is equally desirable that where a modification is granted, it should be as binding on the proprietor concerned as the original regulation. This short Bill seeks to make the necessary amendment.

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 object of the amendments made by this Bill to the Factories and Industrial Undertakings Ordinance, 1955 (the principal Ordinance) is to provide that any exemption granted under subsection (4) of section 5 of the principal Ordinance may be granted for such period and subject to such conditions as the Commissioner of Labour may specify, and to provide that a failure to comply with any such condition shall be an offence.

HONG KONG AUXILIARY POLICE FORCE BILL, 1959.

THE COLONIAL SECRETARY moved the Second reading of a Bill intituled "An Ordinance to provide for the establishment and regulation of the Hong Kong Auxiliary Police Force."

THE ATTORNEY GENERAL 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.

H. E. THE GOVERNOR: —Take the clauses in batches of five.

Clauses 1 to 15 were agreed to.

Clause 16.

THE COLONIAL SECRETARY: —Clause 16, Sir. I beg to move the amendments standing in my name.

Proposed Amendments.

In subclause (3) —

(a) leave out the words "under this section" and substitute the following—

"for duty";

(b) after the word " vessel", insert the following—

“or in any aircraft”.

Clause 16, as amended, was agreed to.

Clauses 17 to 31 and the First and Second Schedules were agreed to.

Council then resumed.

THE COLONIAL SECRETARY reported that the Hong Kong Auxiliary Police Force Bill, 1959 had passed through Committee with amendments and moved the Third reading.

THE ATTORNEY GENERAL seconded.

The question was put and agreed to.

The Bill was read a Third time and passed.

COMMISSIONERS POWERS (AMENDMENT) BILL, 1959.

THE ATTORNEY GENERAL moved the Second reading of a Bill intituled "An Ordinance to amend the Commissioners Powers Ordinance, Chapter 86."

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 ATTORNEY GENERAL reported that the Commissioners Powers (Amendment) Bill, 1959 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: —Gentlemen, that concludes the business for today. When is it your pleasure that we should meet again?

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

H. E. THE GOVERNOR: —Council stands adjourned to this day fortnight.