

OFFICIAL REPORT OF PROCEEDINGS.**Meeting of 13th July, 1960.**

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 RODERICK WILLIAM McLEOD, K.C.B., C.B.E.

THE HONOURABLE THE COLONIAL SECRETARY

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

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. ARTHUR GRENFELL CLARKE, C.M.G.

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).

THE HONOURABLE ROBERT MARSHALL HETHERINGTON, D.F.C.

(Commissioner of Labour).

THE HONOURABLE HECTOR WILLIAM FORSYTH

(Acting Director of Public Works).

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

THE HONOURABLE KWOK CHAN, O.B.E.

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

THE HONOURABLE DHUN JEHangIR RUTTONJEE, O.B.E.

THE HONOURABLE FUNG PING-FAN, O.B.E.

THE HONOURABLE RICHARD CHARLES LEE, O.B.E.

THE HONOURABLE KWAN CHO-YIU, O.B.E.

THE HONOURABLE GEORGE MACDONALD GOLDSACK.

MR. ANDREW McDONALD CHAPMAN *(Deputy Clerk of Councils).*

MINUTES.

The minutes of the meeting of the Council held on the 29th June, 1960, 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>
University Ordinance, 1958.	
Statutes of the University (Amendment) Statutes, 1958	A. 59.
Defence Regulations, 1940.	
Marketing (Marine Fish) Authorized Officers Order, 1960	A. 60.
Registration of Persons Ordinance, 1960.	
Registration of Persons (Re-registration) (No. 2) Order, 1960	A. 61.
Importation and Exportation Ordinance.	
Importation (Prohibition) (Strategic Commodities) (Amendment of Schedule) Order, 1960	A. 62.
Importation and Exportation Ordinance.	
Exportation (Prohibition) (Strategic Commodities) (Amendment of Schedule) Order, 1960	A. 63.
Protected Places (Safety) Ordinance.	
Protected Places (Authorized Guards) Order, 1960	A. 64.
Stamp Ordinance.	
Stamp (Bank Authorization) (No. 3) Order, 1960	A. 65.

PEARL CULTURE (CONTROL) (AMENDMENT) BILL, 1960.

THE ATTORNEY GENERAL moved the First reading of a Bill intituled "An Ordinance to amend the Pearl Culture (Control) Ordinance, 1958."

He said: Sir, the Pearl Culture (Control) Ordinance was largely an experimental measure, and the amendments proposed by this Bill are the result of further practical experience since the enactment of the Ordinance in August, 1958. The amendments are fully explained in the statement of objects and reasons, and there is nothing that I can usefully add at this stage.

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 purpose of this Bill is to seek amendment to the Pearl Culture (Control) Ordinance, 1958, in a number of respects.

2. It is now thought that the *Pinctada* oyster inhabits the waters of the Colony in such numbers that the maintenance of the restrictions relating to collection, possession and sale thereof are not necessary for conservation and that, this being the case, it would be desirable to lift these restrictions. The position as regards the *Pteria* oyster is that, while the limited numbers of such oysters in the Colony waters still renders it necessary to protect this oyster in the interests of conservation, it is now thought that those interests would be better served by permitting the unrestricted collection of *Pteria* oysters provided that they are not killed until they have spawned at least once. This would enable licensees to obtain immature oysters for cultivation, one of the effects of which recent experiments have shown to be the stimulation of the propagation and growth of the oysters.

3. In order to give effect to the above objects, clause 5 of the Bill seeks to repeal section 9 of the principal Ordinance. The effect will be to remove all restrictions on the collection, possession or sale of both the *Pinctada* and the *Pteria* oyster, but in the case of the *Pteria* oyster it is proposed to restrict by regulation the killing of the oysters until they have reached a size of 57 millimetres when measured through a plane drawn at right angles to the hinge, at which size experiments have now established that a *Pteria* oyster will have spawned.

4. In addition to the above, opportunity has been taken in this Bill to introduce the following further amendments—

- (a) Clauses 8 and 9, taken in conjunction with the amendment of the definition "pearl oyster" proposed in clause 2, have the effect of transferring the list of oysters to which the principal Ordinance applies to a Schedule which may be amended by Order of the Governor in Council. This is considered an advisable measure because it is known that a number of species of oyster are pearl bearing and may in the future be found to be suitable for the culture of various kinds of pearls.
- (b) Clause 3 amends section 6 to enable the Director to renew temporary licences for periods of six months at a time up to a maximum period of two years. It has been found that six months may in some cases be insufficient to enable a licensee or the Director properly to assess the prospects of a venture of this nature. This clause also makes a conviction under the principal Ordinance a ground for cancellation of the licence

and adds a further subsection to section 6 to enable the Director to exempt from the payment of licence fees undertakings concerned solely with scientific research work.

- (c) Clauses 4 and 6 reduce the penalty for contraventions of sections 8 and 10 of the principal Ordinance respectively from a fine of one hundred thousand dollars and twelve months imprisonment for a first offence to a fine of twenty thousand dollars and twelve months imprisonment in each case and delete the still greater penalties applicable in the case of subsequent offences. It is felt that the present maximum fines are out of proportion to the gravity of the relevant offences.
- (d) Clause 7, taken in conjunction with the amendment in the definition "cultivate" proposed in clause 2, extends section 16 of the principal Ordinance—

(i) in paragraph (i), to enable regulations to be made to control, if need be, the collection and cultivation of oyster spawn, and, in paragraph (j), to enable regulations to be made to control not only the size and type of oysters but also the numbers which may be collected or harvested from time to time or in which pearls may be cultured; and

(ii) to increase the penalty which may be prescribed by regulation from one thousand dollars and six months imprisonment to ten thousand dollars and six months imprisonment.

This latter amendment is to enable the imposition of appropriate fines to ensure the enforcement of measures directed towards the conservation of oysters which, by this Bill, it is proposed to transfer from the principal Ordinance into the regulations to be made from time to time thereunder.

MINING (AMENDMENT) BILL, 1960.

THE ATTORNEY GENERAL moved the First reading of a Bill intituled "An Ordinance further to amend the Mining Ordinance, 1954."

He said: Sir, subsequent to the enactment in August, 1954 of the Mining Ordinance, detailed comments were made by the Secretary of State on many provisions of that Ordinance. After lengthy consideration and correspondence agreement was reached with the Secretary of State as to the amendments to be made to the principal Ordinance, and the greater part of the provisions of this Bill will give effect thereto. The opportunity has been taken however to make better provision touching the giving of security for moneys payable under the Ordinance by way of compensation, and royalties and so forth.

The various provisions of this Bill are very fully explained in the statement of objects and reasons and I do not think that there is anything that I can usefully add to that statement at this stage. I therefore beg to move.

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 main purpose of this Bill is to amend the Mining Ordinance, No. 33 of 1954, in accordance with certain suggestions made in consequence of the examination of that Ordinance in the Colonial Office.

2. The main, but not verbal or consequential, amendments are explained below, and references to sections are of course to sections of the Mining Ordinance, 1954.

3. Clause 2 of the Bill amends the interpretation section (section 2 of the principal Ordinance) in two respects—

(a) A more comprehensive definition of the term "mineral" is provided, but common constructional materials and clay other than kaolin have been excluded from the Ordinance save for section 3 which vests in the Crown minerals in situ and save for the safety provisions of the Ordinance and regulations.

(b) The definition of the terms "prospect" and "prospecting" has been amended by the deletion of certain words which are considered to be unnecessary and which might lead to difficulty.

4. Section 12 which enables all prospecting or mining for specified minerals to be prohibited is to be repealed as being unnecessary and a serious deterrent to mining development. Section 11 which enables areas to be closed to prospecting or mining is considered adequate to deal with areas in which prospecting or mining should not be permitted for security or other reasons.

5. Subsection (2) of section 13 is to be replaced by a subsection which makes it clear that when an area has been closed to prospecting or mining under section 11 compensation shall be payable in the case of prospecting, in respect of disturbance and expenses incurred in prospecting the area and in the case of mining, in respect of disturbance and for the loss of reasonable expectation of profits from proved minerals.

6. The total period for which a prospecting licence may remain in force is extended from two to five years by an amendment to the proviso to subsection (4) of section 14.

7. Section 15 has been amended by the addition of a new subsection (3) which makes it clear that the quantities of minerals which may be taken when prospecting must not exceed those required to prove the mineral bearing qualities and quantities of the area.

8. Section 18 which provides that no person may hold more than one prospecting licence is to be repealed. It is considered that this is an unnecessary restriction which would discourage prospecting and which in any event could easily be evaded by using nominees.

9. Section 20 provides for the cancellation of a prospecting licence in certain circumstances. Paragraphs (a) and (b) of that section have been recast so as to give the holder of the licence an opportunity to show cause why his licence should not be revoked in cases where his failure to comply with the terms or conditions of the licence or with the provisions of the Ordinance does not amount to an offence against the Ordinance. Paragraph (c) of section 20 which provides for cancellation where the holder becomes bankrupt or gets into financial difficulties is deleted. It is considered that the holder may have a valuable asset which he should be allowed to realize. Paragraph (d) of section 20 which provides that a licence may be cancelled if without the prior consent in writing of the Commissioner the holder wholly or substantially discontinues prospecting is amended by the deletion of the word "prior". Cases may occur where it is impracticable to obtain the consent in advance of the discontinuance of prospecting, as for example, where it is due to excessive rainfall and flooding. Section 22 and section 32 which make provision similar to that contained in section 20 in relation to mining licences and mining leases are to be amended to accord with section 20 as amended.

10. It is thought desirable to insert at the beginning of Part IV of the principal Ordinance a new section stating that mining shall only be lawful under a mining licence or mining lease. Although this is not strictly necessary from the legal point of view, it is a useful pointer to laymen who are concerned with the Ordinance.

11. Section 21 is amended to provide that a person who is carrying on under a licence adequate prospecting operations shall be preferred when the grant of a mining licence is under consideration. The proviso to subsection (4) of section 21 which restricts the total period of a mining licence to five years is amended to allow the Governor to extend this period.

12. As section 23(1) stands, the Land Officer has to be satisfied about the mineral-bearing qualities and quantities of the land in the area applied for before granting a mining lease. It is considered that

the Commissioner of Mines should be the person who decides whether the mineral-bearing qualities and quantities are such as to justify the grant of a mining lease, and clause 12 contains an amendment to this end.

13. Section 25 enables the Governor in Council to grant a mining lease for more than twenty-one years, but gives no such power in respect of a renewal. The section is to be amended to cure this defect.

14. The provision for compensation contained in section 34(1) at present only applies to disturbance of surface rights and to damage to private land, etc., within a prospecting or mining area. The subsection has therefore now been recast to extend it to damage caused by prospecting or mining operations to land outside a prospecting or mining area or to anything built, planted, grown or standing thereon.

15. Part VI of the principal Ordinance (which relates to possession and purchase of minerals) is amended so that it will only apply to minerals in their unmanufactured state with respect to which that Part is applied by order of the Governor.

16. Section 49 which makes provision for the reporting of accidents is to be replaced by provisions in line with those contained in regulations 11 and 12 of the Factories and Industrial Undertakings Regulations, 1955 (G.N.A. 103/55).

17. Section 61 (which provides for the forfeiture of minerals with respect to which any offence under the Ordinance or the regulations has been committed) is to be amended to restrict its application to certain specified offences. Paragraph (g) of subsection (1) of section 68 has been recast, and paragraph (q) is to be deleted as forfeiture is dealt with by section 61.

18. By clause 26 of this Bill references in certain sections to the Superintendent of Mines are replaced by references to the Commissioner of Mines as it is considered that the Commissioner is more appropriate as the authority for the discharge of the functions specified in those sections.

19. All of the foregoing amendments to the principal Ordinance have been made in consequence of its examination in the Colonial Office. The opportunity occasioned by the need for those amendments has been taken to revise the provisions of the principal Ordinance as to the giving of security. At present, section 35 contains provisions with respect to the giving of security for payment of any compensation which may become payable under section 34, and regulation 32 of the Mining (General) Regulations, 1954 (G.N.A. 124/54) contains provisions with respect to the giving of security for payment of royalties. It is now desired to empower the Land Officer and the Commissioner, in the case of mining leases and prospecting and mining licences,

respectively, to require the giving of security in respect of any sum which may become payable to the Crown, by way of damages or otherwise, by reason of any contravention of the terms, covenants or conditions of any such lease or licence or which may become so payable under such terms, covenants or conditions or under the provisions of any regulations made under the principal Ordinance. The necessity for the new provisions has come to light, particularly, in connexion with those conditions which are designed to ensure the general rehabilitation of the area in which prospecting or mining has taken place in order to reduce, so far as practicable, the effect of the prospecting or mining operations on agricultural and other interests, either during the currency of the lease or licence or thereafter. It has been found convenient to make these new provisions by the repeal of section 35 (regulation 32 of the Mining (General) Regulations, 1954, will also be revoked) and the addition to the principal Ordinance of a new section, section 67A, containing all the provisions with respect to the giving of security (see clause 24). As will be seen, the opportunity has also been taken to improve, generally, the provisions of this legislation with respect to the giving of security.

20. Clause 27 provides for the retrospective operation in relation to certain prospecting and mining licences of the provisions of clauses 5 and 10(b), respectively. These licences have expired, having been renewed for the maximum period now permitted by sections 14(4) and 21(4), respectively, of the principal Ordinance. It was hoped that the Bill would have been enacted in time to enable consideration to be given, before their expiry, to the renewal of the licence under sections 14(4) and 21(4) as amended by those clauses. The effect of clause 27 is to enable consideration to be given to the question of their renewal on the enactment of this Bill and, if it is considered appropriate, to allow the licence to be renewed with effect from their expiry.

CHINESE RECREATION GROUND AND THE YAU MA TEI PUBLIC SQUARE BILL, 1960.

THE ATTORNEY GENERAL moved the Second reading of a Bill intituled "An Ordinance to provide for the management and control of the Chinese Recreation Ground, Hong Kong, and the Public Square, Yau Ma Tei."

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 18 and the preamble were agreed to.

Council then resumed.

THE ATTORNEY GENERAL reported that the Chinese Recreation Ground and the Yau Ma Tei Public Square Bill, 1960, 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.

PROTECTION OF NON-GOVERNMENT CERTIFICATES OF ORIGIN BILL, 1960.

THE ATTORNEY GENERAL moved the Second reading of a Bill intituled "An Ordinance to make provision for the better protection of certificates of origin issued by chambers of commerce and other bodies."

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 6 and the Schedule were agreed to.

Council then resumed.

THE ATTORNEY GENERAL reported that the Protection of Non-Government Certificates of Origin Bill, 1960, 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.

PUBLIC HEALTH AND URBAN SERVICES BILL, 1960.

MR. C. G. M. MORRISON moved the Second reading of a Bill intituled "An Ordinance to consolidate and amend certain legislation relating to public health and urban services and matters ancillary thereto."

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 151 and the Schedules were agreed to.

Council then resumed.

MR. C. G. M. MORRISON reported that the Public Health and Urban Services Bill, 1960, 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.

HAWKER CONTROL FORCE BILL, 1960.

MR. C. G. M. MORRISON moved the Second reading of a Bill intituled "An Ordinance to provide for the establishment, maintenance, and discipline and powers of a force to be known as the Hawker Control Force, and for matters connected with the purposes aforesaid."

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 36 and the Schedules were agreed to.

Council then resumed.

MR. C. G. M. MORRISON reported that the Hawker Control Force Bill, 1960, 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 for to-day, gentlemen. When is it your pleasure that we should meet again?

THE ATTORNEY GENERAL: —Sir, may I suggest this day four weeks.

H. E. THE GOVERNOR: —Council stands adjourned until this day four weeks.