

OFFICIAL REPORT OF PROCEEDINGS**Meeting of 8th May 1963****PRESENT:**HIS EXCELLENCY THE GOVERNOR (*PRESIDENT*)

SIR ROBERT BROWN BLACK, GCMG, OBE

HIS EXCELLENCY LIEUTENANT-GENERAL RICHARD WALTER CRADDOCK, CB, CBE,
DSO

COMMANDER BRITISH FORCES

THE HONOURABLE EDMUND BRINSLEY TEESDALE, MC

COLONIAL SECRETARY

THE HONOURABLE DENYS TUDOR EMIL ROBERTS, OBE, QC

ACTING ATTORNEY GENERAL

THE HONOURABLE JOHN CRICHTON McDOUALL

SECRETARY FOR CHINESE AFFAIRS

THE HONOURABLE JOHN JAMES COWPERTHWAITTE, OBE

FINANCIAL SECRETARY

DR THE HONOURABLE DAVID JAMES MASTERTON MacKENZIE, CMG, OBE

DIRECTOR OF MEDICAL AND HEALTH SERVICES

THE HONOURABLE PETER DONOHUE

DIRECTOR OF EDUCATION

THE HONOURABLE ALEC MICHAEL JOHN WRIGHT,

DIRECTOR OF PUBLIC WORKS

THE HONOURABLE GEOFFREY MARSH TINGL

DIRECTOR OF URBAN SERVICES

THE HONOURABLE DHUN JEHANGIR RUTTONJEE, OBE

THE HONOURABLE FUNG PING-FAN, OBE

THE HONOURABLE RICHARD CHARLES LEE, OBE

THE HONOURABLE KWAN CHO-YIU, OBE

THE HONOURABLE KAN YUET-KEUNG, OBE

THE HONOURABLE WILLIAM CHARLES GODDARD KNOWLES

THE HONOURABLE SIDNEY SAMUEL GORDON

THE HONOURABLE LI FOOK-SHU, OBE

MR ANDREW McDONALD CHAPMAN (*Deputy Clerk of Councils*)MR GORDON ERIC MATHER (*Deputy Clerk of Councils*)

MINUTES

The minutes of the meeting of the Council held on 24th April 1963 were confirmed.

PAPERS

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

<i>Subject.</i>	<i>LN No</i>
The Census and You.	
Colonial Air Navigation Order, 1961.	
Hong Kong Air Navigation (General) Regulations, 1963	43
Prisons Ordinance, 1954.	
Prison (Amendment) Rules, 1963	44
Registration of Persons Ordinance, 1960.	
Registration of Persons (Re-registration) (No 16) Order, 1963	45
Road Traffic Ordinance, 1957.	
Road Traffic (Temporary Car Parks) Regulations, 1963	46
Road Traffic Ordinance, 1957.	
Road Traffic (Driving Licences) (Amendment) Regulations, 1963	47
Stamp Ordinance.	
Stamp (Bank Authorization) (No 2) Order, 1963	48
Registration of Persons Ordinance, 1960.	
Registration of Persons (Re-registration) (No 17) Order, 1963	49

QUESTIONS

MR R. C. LEE, pursuant to notice, asked the following question: —

A report appeared in the Press recently about the pulling down of a building in course of construction in Kowloon. This has caused general concern. Will Government inform this Council of the circumstances leading to the necessity of demolition?

MR A.M. J. WRIGHT replied as follows: —

During an inspection on 5th February, 1963 officers of the Buildings Ordinance Office noted that the steel reinforcement in a number of floor beams at fourth floor level were

not in accordance with the approved structural details. The Authorized Architect in charge of the work was instructed that the concreting of the fourth floor slabs and beams should cease.

At the same time, the Authorized Architect was asked to expose the reinforcement in a number of beams at second floor level. This was done, and on February 11th a joint inspection was made by officers of the Buildings Ordinance Office and the Authorized Architect. It was noted that some of the beams appeared to be deficient in reinforcing steel.

On February 15th a letter was sent to the Authorized Architect requesting an explanation, and a Cease Works Order, under section 14 of the Buildings Ordinance, was served. On the 20th March, the Architect replied to the effect that after careful investigation he had come to the conclusion that the superstructure of the building should be demolished, and he asked for consent to carry out this work.

On 30th March, the Buildings Ordinance Office authorized the Architect to proceed with the demolition.

Consideration is now being given as to what further action should be taken in connexion with this case.

PREVENTIVE SERVICE BILL, 1963

THE COLONIAL SECRETARY moved the First reading of a Bill intituled "An Ordinance to establish a Preventive Service and to make provision as to its duties and powers and as to the discipline of members thereof and to make provision for a welfare fund; and for purposes connected with the matters aforesaid".

He said: Sir, this Bill, as its name implies, seeks to provide in law for the establishment of the Preventive Service as a separate disciplined force. It sets out the constitution, duties and powers of that force, including the powers of arrest, which are limited, and provides for the exercise of discipline over it. At present provision governing the appointment and powers of revenue officers are to be found in the Dutiable Commodities Ordinance. But, in the course of time, the duties of revenue officers have extended well beyond the subject matter of that Ordinance. Today these duties include, for instance, action under the Importation and Exportation Ordinance, which provides for trade controls; action against the smuggling of narcotics; and supervision at factory level of systems for the issue of Certificates of Origin. The Second Schedule to this Bill gives some idea of the scope of the present

duties of revenue officers. Indeed, they already function as a uniformed and disciplined preventive service, and this fact needs to be given recognition in separate legislation.

The Dutiable Commodities Ordinance itself has been under revision, and in a few moments the Financial Secretary will move the First Reading of a new Dutiable Commodities Bill. This revision has provided the opportunity, therefore, to exclude from that Bill the former provisions relating to revenue officers and, as I have said, to introduce a separate Bill constituting the Preventive Service as a disciplined force in its own right on the lines, for example, of the Police Force and the Fire Services.

A guide to the parts of the Bill will be found in the statement of Objects and Reasons, and I need only add that, should the Bill be enacted, it is the intention to invite the Finance Committee of this Council to vote a sum annually for the welfare fund provided for in Part IV.

THE ATTORNEY GENERAL 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: —

This Bill seeks to provide in detail for the establishment of the Preventive Service as a disciplined force. At present, revenue officers derive their powers from and are appointed under the Dutiable Commodities Ordinance, Chapter 109.

2. Part II of this Bill sets out *inter alia* the powers, rights and duties of members of the Preventive Service. Part III provides for discipline of members and Part IV is completely new in that it provides for the establishment of a Welfare Fund. Part V is concerned with protection of members acting *bona fide* in the exercise of their duties and provides for offences in respect of obstruction of members in the execution of their duties and in respect of the wearing of the uniform of the Preventive Service by persons who are not members of the Service.

FACTORIES AND INDUSTRIAL UNDERTAKINGS (AMENDMENT) BILL, 1963

THE ATTORNEY GENERAL moved the First reading of a Bill intituled "An Ordinance to amend the Factories and Industrial Undertakings Ordinance, 1955".

He said: Sir, the main purpose of this Bill is to revise the provisions under which factories, mines, quarries and other registrable workplaces are required to be registered by the Labour Department. Registration is at present restricted to premises in which industrial processes are permitted within the terms of the Crown lease, to premises outside exclusively residential areas and to those on the ground floors of domestic tenement buildings. With the rapid growth of industry there has been a chronic shortage of proper industrial accommodation with the result that large numbers of small concerns have established themselves in premises not designed for industrial use. Although such undertakings are required to be registered and to comply with prescribed safety standards, many have failed to apply for registration and their existence has only been discovered as a result of complaints from persons living in the buildings in question or occasionally after a fire or accident has occurred. While the shortage of industrial buildings and in particular of premises suitable for use by small industrial concerns persists, it is impracticable to insist that factories may only be operated in premises in industrial zones specifically designed for industrial purposes, for although it is highly desirable that all industrial concerns should be properly accommodated, this aim can only be achieved after there has been a substantial increase in industrial buildings. It would cause considerable economic dislocation as well as much unemployment if too rigid a policy were to be pursued, yet at the same time it is essential that every workplace containing machinery or using potentially hazardous materials should be operated in a proper manner without endangering those employed in it or living nearby.

The Bill now before Council attempts to meet this problem by providing for two forms of registration. Full registration will be granted in respect of premises which are suitable for industrial purposes both in structural design and by virtue of the terms of the relevant Crown lease on which the land is held and which are situated either in a recognized industrial area or in an area zoned for industry under an approved town plan. Alternatively, provisional registration will be granted in respect of premises which are not in an industrial zone or recognized industrial area and are not specifically designed for industrial use provided that they can in the opinion of the Commissioner of Labour be used temporarily for industrial purposes without endangering the safety, health and welfare of persons working therein or of the public at large. Provisional registration is designed to assist industry by enabling numerous small undertakings which do not qualify for full registration to continue in operation until such time as proper industrial accommodation is more readily available. If these workplaces are to receive provisional registration, they must comply with the normal safety requirements in the interests of those who work in them. They must be reasonably lighted and ventilated and the dangerous parts of any machinery used must be properly guarded. The same precautions must

be taken as in fully registered premises in respect of hazardous processes. If these workplaces happen to be in domestic buildings, the interests of persons living in the buildings must also be considered and it may therefore be necessary for night work to be prohibited or for the use of heavy or noisy machinery to be banned or for the number of workers allowed to be employed in the workplace to be restricted. For this purpose the Commissioner of Labour is given personal authority in the Bill to endorse conditions on any certificate he may issue and breach of any such condition may lead to the cancellation of the certificate of registration or a provisional registration.

In some of the workplaces which are not at present registered it may be found that the processes or the materials used are so hazardous that continued operation of the workplace constitutes an unacceptable risk both to those who work there and to those who live nearby. Where this is the case, and where it is impossible to devise precautions to reduce the resultant risk to acceptable proportions, it will be necessary for the Commissioner to refuse either form of registration and to take action to ensure that the workplace is closed down promptly. To deal with potentially dangerous establishments of this kind the Bill provides that on convicting a proprietor for operating a registrable workplace without the appropriate certificate a magistrate may order the machinery in the workplace to be sealed or otherwise made inoperable. This power may only be exercised by a magistrate on the application of a Labour Inspector made with the consent of a Labour Officer or other more senior officer. It is intended to limit these applications to cases where the continued operation of machinery is considered dangerous or where the processes or materials used are likely to give rise to a serious risk of fire or explosion. The provisions of the Bill will thus not only make it possible for innocuous trades to be carried on for the time being, subject to certain safeguards, in premises not specifically designed for industry but will also make it easier for quick action to be taken where an unregistered workplace is a real source of danger.

Although Labour Officers may approve certificates of registration or provisional registration, the power to refuse applications, to cancel certificates or to impose conditions is given only to the Commissioner of Labour in person and appeal from such decisions by the Commissioner may be made to the Governor in Council.

The opportunity has been taken in the Bill to empower a magistrate, if satisfied that the condition or operation of an industrial undertaking may cause danger, to stop its operation or require steps to be taken to remedy the danger. This provision is modelled closely upon section 54 of the United Kingdom Factories Act, 1961, and if this Bill commends itself to Honourable Members, it is intended that regulation 14 of the Factories and Industrial Undertakings Regulations, 1955, which confers a similar power on Labour Inspectors, should be revoked.

The new system embodied in this Bill provides a more practicable and at the same time more flexible approach to the problem of factory registration than is possible under the existing Ordinance, while at the same time it makes it possible for prompt and effective action to be taken where really dangerous establishments are discovered in operation. The detailed provisions of the Bill have been unanimously endorsed by the Labour Advisory Board.

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: —

This Bill seeks to empower the Commissioner, as defined in section 2 of the principal Ordinance, to issue two types of certificates of registration of registrable workplaces—

- (a) a certificate of registration in respect of a registrable workplace which is suitably located for industrial purposes and capable of operation in accordance with the Ordinance and regulations made thereunder.
- (b) a certificate of provisional registration where he is satisfied that the premises can be used for industrial purposes with due regard to the interests of the public and of persons working therein.

2. The new section 7 would also give the Commissioner power to attach conditions to certificates and limit their period of validity, which would otherwise be two years, in the case of registration, or twelve months in the case of provisional registration.

3. Subsections (5) and (6) of the new section 8 confer a new power on a magistrate to order the scaling by a factory inspector of machinery in a registrable workplace, following a conviction for operating a registrable workplace without a valid certificate of registration or provisional registration. It is also made an offence to break any seals placed on the machinery, while the machinery remains on the premises.

4. The new section 8A, taken from section 54 of the Factories Act, 1961, empowers a magistrate, if he is satisfied that the condition or operation of an industrial undertaking may cause danger, to stop its operation or require steps to be taken to remedy the danger.

DUTIABLE COMMODITIES BILL, 1963

THE FINANCIAL SECRETARY moved the First reading of a Bill intituled "An Ordinance to repeal and replace the Dutiable Commodities Ordinance, Chapter 109".

He said: Sir, this Ordinance has a long and complicated history. In its earliest form it dates from the nineteenth century and provided only for liquor licensing. Then in 1909, to offset the serious loss of revenue from restrictions placed that year on the then Opium Farm, duties were imposed on liquor itself for the first time. It was admitted to be hastily drafted legislation and fears were also expressed about the possible consequences of this first breach of Hong Kong's free port status. These fears have not been realized and Hong Kong has remained a free port but the hasty legislation was often amended in subsequent years. It was given substantially its present form in 1931.

Tobacco duties were added in 1916 by separate legislation, which was also substantially revised in 1931, and duties on hydrocarbon oils were imposed in 1930. The three Ordinances were consolidated into the Dutiable Commodities Ordinance in the course of the Law Revision of 1937. Duty on Table Waters was added in 1941.

The Bill before Council for the most part incorporates amendments in law and in practice which have been found necessary over the last thirty-two years. Some of these changes in practice have already been in effect, and it must be confessed, for a number of years without legislative authority and have been the subject of audit comment. The majority of the changes are in the direction of giving the Director of Commerce and Industry greater discretion in the administration of the Ordinance, largely in the way of concessions to the trade and to the consumer.

There are also a number of completely new provisions. The comparative table appended to the Bill gives the differences in full. Council has already today heard of one change from my honourable Friend, the Colonial Secretary, when he moved the First reading of the Preventive Service Bill. I shall mention the other major innovations only. Firstly, it is provided that it is an offence for vessels under 250 tons to fail to stop when challenged by a member of the Preventive Service; and that dutiable stocks on board ships or aircraft shall be maintained in a properly secured place. There are also provisions for an increase in the maximum penalty from \$10,000 and twelve months' imprisonment to \$100,000 and two years', for doubling the time limit within which proceedings must be brought, for the better definition of liquors and for the prevention of the removal of denaturants from denatured spirits without the approval of the Director. The rather authoritarian seizure procedure in the present Ordinance is replaced by that prescribed in

the Importation and Exportation Ordinance, which provides that notices be publicly posted in respect of seized goods and that application must be made to a magistrate for their condemnation in the event of their being claimed within a stipulated period.

The Regulations made under the present Ordinance also require considerable revision to bring them up to date. New regulations have been drafted and have been approved in principle by Executive Council for promulgation in the event of the passing of the present Bill. These include a set of regulations providing for the marking and colouring of light diesel oil sold for use other than in road vehicles. It will be recalled that I explained the delay in introducing these when presenting this year's Estimates.

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: —

This Bill seeks to repeal and replace the Dutiable Commodities Ordinance, Chapter 109, which no longer conforms in many respects to present-day requirements. The main difference between the present Ordinance and this Bill lies in the removal from the Bill of the provisions dealing with the appointment of revenue officers, which provisions are inadequate for present requirements, and with the granting of licences for the sale of liquor for consumption upon the premises of the vendors, which are better dealt with as a separate issue. The provisions with regard to the appointment of revenue officers now appear in the Preventive Service Bill which seeks to deal in greater detail with the establishment of the force to be entrusted with the enforcement of many of the provisions of this Bill. Until it is possible to enact a Bill, drafting of which is proceeding, to deal with liquor licensing, the provisions of the Dutiable Commodities Ordinance, Chapter 109, which are concerned with liquor licensing are maintained in operation by clause 77.

2. Of the detailed amendments the following are the most important—

- (a) Opportunity has been taken to increase the powers of the Legislative Council with regard to duties, by making provision for altering, in any manner, duties in particular cases as well as generally;

- (b) Clause 13 is new and is derived from section 78 of the Customs and Excise Act, 1952. It provides for penalties to be inflicted upon masters of ships not exceeding 250 tons net register who fail to stop or receive on board members of the Preventive Service when called upon so to do;
- (c) Clauses 25 and 28 likewise new and derived from sections 70 and 255 of the Customs and Excise Act, 1952 respectively;
- (d) Provisions have been made for execution and distress against licensees in respect of duty payable, or any penalty incurred: this provision is derived from section 253 of the Customs and Excise Act, 1952;
- (e) Clause 37 is new and is concerned with the counterfeiting of documents, seals, signatures etc., and is derived from section 302 of the Customs and Excise Act, 1952;
- (f) The provisions with regard to forfeiture, which are contained in clause 48 follow closely the provisions of the Import and Export Ordinance, Chapter 50, so as to provide for a uniform procedure where it is proposed to request the Court to forfeit goods which are liable to forfeiture.

TENANCY (PROLONGED DURATION) (AMENDMENT)

BILL, 1963

THE ATTORNEY GENERAL moved the Second reading of a Bill intituled "An Ordinance to amend the Tenancy (Prolonged Duration) Ordinance, 1952".

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 Tenancy (Prolonged Duration) (Amendment) Bill, 1963, 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.

HOMICIDE BILL, 1963

THE ATTORNEY GENERAL moved the Second reading of a Bill intituled "An Ordinance to make amendments to the law relating to homicide"

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 8 were agreed to.

Council then resumed.

THE ATTORNEY GENERAL reported that the Homicide Bill, 1963, 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

HIS EXCELLENCY THE GOVERNOR: —That concludes the business for today, gentlemen. When is it your pleasure that we should meet again?

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

HIS EXCELLENCY THE GOVERNOR: —Council will stand adjourned until this day two weeks.