

OFFICIAL REPORT OF PROCEEDINGS**Meeting of 8th April 1964****PRESENT:**

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

MR EDMUND BRINSLEY TEESDALE, MC

HIS EXCELLENCY LIEUTENANT-GENERAL SIR RICHARD WALTER CRADDOCK, KBE,

CB, DSO

COMMANDER BRITISH FORCES

THE HONOURABLE GEOFFREY CADZOW HAMILTON,

ACTING COLONIAL SECRETARY

THE HONOURABLE MAURICE HEENAN, QC

ATTORNEY GENERAL

THE HONOURABLE PATRICK CARDINALL MASON SEDGWICK,

ACTING SECRETARY FOR CHINESE AFFAIRS

THE HONOURABLE JOHN JAMES COWPERTHWAITTE, CMG, OBE

FINANCIAL SECRETARY

THE HONOURABLE KENINETH STRATHIMORE KINGHORN

DIRECTOR OF URBAN SERVICES

DR THE HONOURABLE TENG PIN-HUI, OBE

DIRECTOR OF MEDICAL AND HEALTH SERVICES

THE HONOURABLE WILLIAM DAVID GREGG

DIRECTOR OF EDUCATION

THE HONOURABLE JAMES JEAUVONS ROBSON,

ACTING DIRECTOR OF PUBLIC WORKS

THE HONOURABLE DHUN JEHANGIR RUTTONJEE, OBE

THE HONOURABLE FUNG PING-FAN, OBE

THE HONOURABLE RICHARD CHARLES LEE, CBE

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*)

MINUTES

The Minutes of the meeting of the Council held on 26th March 1964, were confirmed.

OATHS

MR J. J. ROBSON took the Oath of Allegiance and assumed his seat as a Member of the Council.

HIS EXCELLENCY THE OFFICER ADMINISTERING THE GOVERNMENT: —Welcome to this Council, Mr ROBSON.

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>LN No</i>
Report of the Hong Kong Government Trade Mission to the Common Market Countries	
Consular Conventions Ordinance, 1951.	
Consular Conventions (Spain) Order, 1964	41
Consular Conventions Ordinance, 1951.	
Consular Conventions (Kingdom of Denmark) Order, 1964	42
Hong Kong and Shanghai Banking Corporation Ordinance.	
Special Resolution of shareholders	43
Registration of Persons Ordinance, 1960.	
Registration of Persons (Re-registration) (No 11) Order, 1964	44
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QUESTIONS

MR Y. K. KAN, pursuant to notice, asked the following question: —

Sir, a garage in a cinema in the Causeway Bay district and formerly used by its patrons has recently been converted into a restaurant with, I understand, the approval of the

Building Authority. Will the Honourable Director of Public Works please inform this Council whether a change of policy is involved whereby no garage facilities are now required in cinemas, and if this is not so, will he please explain why was approval given in this case?

MR J. J. ROBSON replied as follows: —

Your Excellency, The brief answer to the honourable Member's question is that there has been no change in policy in recent years in respect of the garage facilities to be provided in cinemas and while the Building Authority had no grounds for *not* approving the plans submitted for converting the Hoover Cinema car park into a restaurant the question did not arise as the Commissioner of Police, as Licensing Authority, had previously concluded that a car park was no longer desirable in this particular position.

However, I think a fairly detailed explanation is necessary for while there has been no recent change in policy there has, over the years, been a change in thinking. I feel, therefore, that it would assist if I outlined the present general policy, the background of the cinema car park problem and the facts of the particular case under consideration.

The present general policy is outlined in a note on car parking and lease conditions which was passed to the Director of Information Services for a press release in February, 1963. This reads:

- “1 In areas which are predominantly or entirely residential, having a minimum of commercial development, all new leases require the provision of car parking, usually at the rate of one space per flat. Where existing leases are modified to permit more intensive development in these areas it is also general practice to include a clause in the modification conditions requiring the provision of car parking spaces at the rate of one space per flat if the size of the lot makes it practicable.
- 2 Where existing leases are unrestricted, and thus do not require modification to permit more intensive development, there are no powers to require car parking.
- 3 The majority of leases in the Central, Eastern and Western districts of Hong Kong as well as many areas in Kowloon are unrestricted.

- 4 In certain cases where leases have been renewed, for example, in the Tsim Sha Tsui District, a special condition has been included whereby parking can be required. In practice it has been found that the isolated basement car parks which result are unsatisfactory because:
 - (a) the thick columns and the requirements of the multi-storey building over the car park leaves very little space suitable for car parking;
 - (b) entrances and exits across pavements interfere with pedestrian and vehicular traffic out of all proportion to the value of the few parking spaces available. These crossings also reduce street parking;
 - (c) in many cases the "car parks" are not used for the parking of private cars.
- 5 As a result it is possible for a developer in a commercial area (such as Tsim Sha Tsui District) where multi-storey car parks are being or will be constructed, to obtain a modification of this special condition by payment of a fee.
- 6 In all cases where the lease conditions give the necessary powers the PWD require satisfactory space for the loading and unloading of motor vehicles."

From what has just been said it will be appreciated that parking within the boundaries of private building land can usually only be insisted upon when this is covered by lease conditions. In the case of places of public entertainment, however, even when such lease conditions did not exist the Commissioner of Police was sometimes able to assist in arranging car parks in the planning stage, that is when the developers contacted him in respect of the licence which the Commissioner of Police has to issue under the Places of Public Entertainment Ordinance. Normally, parking is not asked for when it is considered that such facilities will create a traffic nuisance and this is in harmony with the general policy of not requiring the provision of car parks in commercial areas even though a considerable degree of residential users may exist, especially when public car parks are planned for the area.

In the early 1950's a number of cinemas were built by the redevelopment of existing lots and in a few cases the Commissioner of Police obtained agreement that the owner would provide car parks; one of these was the

Hoover Cinema. In recent years, however, with the build-up of traffic, with peak conditions coinciding with the times of cinema performances, these cinema car parks have proved a nuisance and since 1956 over 20 cinemas have been licensed without car parking in the building being required.

The Hoover Cinema car park is an ideal example to show why this change of heart took place. When the plans were submitted in 1952 traffic was comparatively light and Irving Street, where the exit and entry to the car park was sited, was not part of the main rotary junction as it is today. There were no lease conditions requiring car parking but the Commissioner of Police as Licensing Authority managed to arrange for a car park for 23 cars. Recently this car park has become more and more of an embarrassment and certainly of little help to patrons of the cinema as intending users were unable to enter the car park until it had been emptied and this took a long time as, between the end of one performance and the beginning of the next the Roxy Roundabout rotary junction is usually most congested. When, therefore, it was suggested that the car park be converted into a restaurant the Public Works Department raised no objections as:

- (a) as far as can be seen Irving Street will always be an essential part of a major traffic junction;
- (b) as far as I am aware no powers exist to insist that the car park be retained;
- (c) with the conversion of the Roxy Theatre car park to parking meters it is usually possible for patrons of both the Roxy and Hoover Cinemas to obtain a parking space; and
- (d) a multi-storey car park is planned for erection in the vicinity.

In conclusion honourable Members may be interested to know that when the Queen's Theatre was being redeveloped a suggestion that a car park within the lot should be asked for was not agreed to by the Police and the PWD.

MR Y. K. KAN: —Sir, I should like to ask a supplementary question. May I ask the Director when was the application first made for the conversion of this garage into a restaurant and, at that time, was the present new planning of the Roxy roundabout then under consideration?

HIS EXCELLENCY THE OFFICER ADMINISTERING THE GOVERNMENT: —Can you say, Mr ROBSON?

MR J. J. ROBSON: —I cannot say precisely when the application was made although it was probably about six months ago but regarding the alterations of the traffic flow at the Roxy Roundabout, that planning has been in progress for a number of years, the most recent plan being started about a year ago.

MR Y. K. KAN: —It was the recent plan I was referring to in my question just now, Sir.

MR S. S. GORDON, pursuant to notice, asked the following question: —

Sir, regarding the Financial Secretary's announcement at our last meeting that an amendment may be made to the Inland Revenue Ordinance, to take effect for the year of assessment 1964-65, may this Council be informed if the opportunity will be taken to introduce amendments necessary to correct some of the anomalies which react to the detriment of the taxpayer? In particular, is Government aware that the case of The Four Seas Company Limited which was decided in favour of the Inland Revenue Department by the Privy Council in November 1961 has produced results never contemplated when the Ordinance was drafted, all of which react against the taxpayer, but no action has been taken in the intervening 2½ years to introduce amending legislation?

THE FINANCIAL SECRETARY replied as follows: —

Sir, my honourable Friend's questions include one or two assertions which I am not sure that I can wholly accept. I will answer, however, by saying that it is not our intention to include in the amending Bill at present under preparation any amendments in favour of the taxpayer. This is largely because we wish to avoid complicating it or delaying it.

On the other hand we do have in mind quite a long list of amendments, some in the taxpayer's favour, some not, which I am hoping to get into a Bill to take effect in 1965-66.

The list does not include matters arising from the particular case of The Four Seas Company Limited to which my honourable Friend Mr GORDON has referred. The point in that case is that, because under the Ordinance a partnership consists of a separate entity for all three purposes of charge, assessment and recovery of tax, losses incurred by a taxpayer in connexion with his ordinary activities are not eligible for relief against his share of profits earned in a joint adventure in partnership with another person; or *vice versa*. Cases where the law has the effect of permanently excluding relief for such losses are in practice limited to those where, owing to the temporary nature of most joint adventures, losses lapse on their cessation; the likelihood of this happening being slightly increased by the lack of provision in our law for relief of terminal losses. But very few cases have in fact arisen since the Four Seas case established the law.

My honourable Friend has said that these results were never contemplated when the Ordinance was drafted. Mr GORDON may be right to the extent that they were not specifically considered at that time—although I have no evidence about that; but, in diametrical opposition to the case which has given rise to the amending Bill of which I have given notice, they are the natural and entirely proper results of our system of taxation in which, as a matter of principle, separate sources of income are not normally aggregated for tax purposes. If we had a full income tax and they were so aggregated, these consequences would not arise. As we do not have a full income tax, then surely we must in general accept the consequences, against as well as in favour of the taxpayer.

There may be, I would agree, circumstances where, although continuing to eschew a full income tax, we can afford to give the best of both worlds and moderate the natural consequences; and we have a number of provisions with that effect. I do not think that there are any clear equitable grounds for such a claim from the taxpayer in this case, but I would certainly be prepared to examine any evidence there is to suggest that the present position on losses from joint adventures is economically harmful in discouraging enterprise and investment; and, if there is clear evidence of this, to consider whether the present legal position could be changed reasonably simply without the risk of opening up consequential loopholes.

**URBAN COUNCIL (COMMISSIONER FOR RESETTLEMENT)
ORDINANCE, 1954**

THE COLONIAL SECRETARY moved the following resolution: —

Resolved, pursuant to section 3 of the Urban Council (Commissioner for Resettlement) Ordinance, 1954, that the duration of the said Ordinance be extended for the term of one year with effect from the 30th day of April 1964.

He said: Sir, the Urban Council (Commissioner for Resettlement) Ordinance, which was enacted in 1954, provides for the Commissioner for Resettlement to be temporarily an ex-officio member of the Urban Council. Section 3 provides that the Ordinance should continue in force for one year from the commencement, but gives power to this Council to extend its duration for periods not exceeding one year at a time. It has been so extended nine times.

Sir, in view of the continued need to retain the Commissioner as a member of the Urban Council, I beg to move that, under Section 3 of the Urban Council (Commissioner for Resettlement) Ordinance, 1954, the duration of the Ordinance be extended for a period of one year, that is to say, until 29th April 1965.

THE ATTORNEY GENERAL seconded.

The question was put and agreed to.

WORKMEN'S COMPENSATION (AMENDMENT) BILL, 1964

THE ATTORNEY GENERAL moved the First reading of a Bill intituled "An Ordinance further to amend the Workmen's Compensation Ordinance, 1953."

He said: Sir, certain industrial processes give rise to diseases, commonly referred to as occupational diseases, that are likely to cause incapacity or death. Such diseases may be caused by reason of the substance used in the process or by reason of the nature of the process itself or the material that is the subject of the process.

Legislation to provide employees or their dependants with a right to compensation for incapacity or death caused by an accident was introduced in Hong Kong in 1953, but the legislation was not extended to incapacity or death due to an occupational disease because the Labour Department lacked the specialist staff necessary to enable it to play its part. The Industrial Health Section of the Department has, however, been fully staffed since 1958, and has been playing an increasingly important role in promoting better standards of occupational health in industry. In particular, comprehensive surveys have shown that certain occupational diseases do occur in Hong Kong.

This Bill seeks to make such amendments to the Workmen's Compensation Ordinance, 1953, as are necessary to provide that compensation shall be payable for incapacity or death due to certain occupational diseases to the same extent as it is payable for incapacity or death caused by an accident. The new provisions follow the corresponding provisions of the former Workmen's Compensation Act, 1925 of the United Kingdom. In brief, if the Bill is enacted, compensation will be payable for incapacity or death caused by an occupational disease that is due to the nature of the employment in which the employee was employed at any time during the period of twelve months preceding the incapacity or death. Frequently, the symptoms of an occupational disease do not manifest themselves for some time after the disease is contracted, and, to meet this, the workman's last employer, who is otherwise liable to pay the compensation, will be able to acquit himself of his liability to pay by proving that the disease was in fact contracted whilst the employee was in the employment of some other employer.

Where an occupational disease is contracted whilst the employee is employed in any particular trade, industry or process specified in the legislation in relation to that disease, there will be a presumption that the disease was due to the nature of the employment. In order to afford a reasonable measure of protection to an employer, provision is made enabling him to require a person whom he proposes to employ in any of the specified trades, industries or processes, to undergo a medical examination before the employment commences. If the employee declines in writing to undergo the medical examination, he will not be entitled to recover compensation from that employer.

Honourable Members will wish to know that the Bill has the unanimous support of the Labour Advisory Board, and that it has been considered by the Hong Kong Accident Insurance Association, which has advised that no additional premium will be required in respect of cover for the occupational diseases to which it relates.

The Bill provides for its commencement on an appointed day. This is necessary in order to give those whom it is likely to affect an opportunity to familiarize themselves with the new provisions and to enable the necessary administrative machinery to be established. It is considered that a period of approximately three months should be sufficient for these purposes, which means that the Bill will probably be brought into operation in August or September of this year.

Sir, the enactment of this Bill, in conjunction with regulations which the Commissioner of Labour proposes to make under the Factories and Industrial Undertakings Ordinance, 1955, to require medical practitioners to notify cases of occupational diseases, will enable Hong Kong to

comply in full with the International Labour Inspection Convention, 1947.

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" attached to the Bill were stated as follows: —

This Bill seeks to make such amendments to the Workmen's Compensation Ordinance, 1963, as are necessary to provide that compensation shall be payable in respect of incapacity or death due to certain occupational diseases to the same extent as it is payable for personal injury caused by an accident.

FOREIGN JUDGMENTS (RECIPROCAL ENFORCEMENT) (AMENDMENT) BILL, 1964

THE ATTORNEY GENERAL moved the First reading of a Bill intituled "An Ordinance further to amend the Foreign Judgments (Reciprocal Enforcement) Ordinance, 1960."

He said: Sir, the Foreign Judgments (Reciprocal Enforcement) Ordinance, 1960, is intended to give legal effect to such arrangements as may from time to time be made between Hong Kong and other countries for the reciprocal enforcement of each others superior court judgments. Before the Ordinance can be extended to a country, the reciprocity assured by that country as regards enforcing Hong Kong judgments must be substantial. The expression "judgment" in the Ordinance, however, is defined as including arbitration awards, but most foreign countries are not in a position under their analogous law reciprocally to enforce Hong Kong arbitration awards. Thus, as between Hong Kong and these countries, the reciprocity is not substantial and, therefore, it is not possible to extend the Ordinance to these countries, even though, as regards other judgments, there may be substantial reciprocity. To remove this difficulty, Clause 2 of this Bill in effect omits the reference to arbitration awards in the definition of "judgment", so that the principal Ordinance may be extended to foreign countries that in other respects offer substantial reciprocity.

Sir, another difficulty has also arisen in the application of the Ordinance to certain Commonwealth countries. In a Commonwealth country having a federal system of Government, some, but not necessarily

all, of the provinces or states may wish to enter into reciprocal arrangements with Hong Kong, and in such a case it may well be eminently desirable for Hong Kong to enter into reciprocal arrangements with those provinces or states. Unfortunately, however, grave doubts have arisen as to whether the Ordinance, as at present worded, can be extended to part only of a Commonwealth country, as opposed to the country as a whole. The object of clause 3 of the Bill is to remove this doubt, and, in so doing, the procedure for extending the Ordinance to any part of the Commonwealth is brought into line with the corresponding English procedure.

If this Bill is enacted, it will not come into operation until a day appointed by the Governor. This will afford an opportunity of first re-enacting existing Commonwealth extensions the validity of which are in question as a result of the doubts already explained or may be called in question as a result of the change in procedure for extending the Ordinance to any part of the Commonwealth. These re-enactments will be made under the Ordinance, as amended by this Bill, assuming it is enacted, and will come into operation on the appointed day.

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" attached to the Bill were stated as follows: —

The objects of this Bill are twofold; first, to deny the enforcement locally, under the Foreign Judgments (Reciprocal Enforcement) Ordinance, 1960, of arbitration awards of foreign countries to which that Ordinance is extended, and secondly, to enable the Ordinance to be extended to parts only of Commonwealth countries.

2. The reason for the former results from the inclusion of arbitration awards in the definition "judgment" in section 2 of the principal Ordinance. Most foreign countries, however, are not in a position under their analogous legislation to enforce Hong Kong arbitration awards. As a result, it has proved impossible to extend the principal Ordinance to such countries since there is no substantial reciprocity of treatment for Hong Kong "judgments" in this respect. Clause 2, in omitting from the definition "judgment" all reference to arbitration awards, will, if enacted, enable the principal Ordinance to be extended to those countries that under analogous legislation offer reciprocal benefits as regards the enforcement of Hong Kong judgments other than

arbitration awards. The reciprocal enforcement of foreign arbitration awards is, however, now dealt with separately under the Arbitration Ordinance, 1963.

3. Clause 3 will, if enacted, enable the principal Ordinance to be extended to part only of a Commonwealth country. It has always been possible to extend the Ordinance to a Commonwealth country as a whole but with reference to a country such as Canada doubt has arisen as to whether the Ordinance could be extended to a constituent province of that Dominion without being extended to the whole Dominion.

PENICILLIN (AMENDMENT) BILL, 1964

DR TENG PIN-HUI moved the First reading of a Bill intituled "An Ordinance further to amend the Penicillin Ordinance."

He said: Sir, this Bill is the first of two such Bills the need for which has arisen in connexion with the Medical Clinics Ordinance No 27 of 1963, which as you are aware, Sir, came into operation on the 1st day of January 1964. In future, doctors without registrable qualifications who have been approved by the Registrar of Clinics, will be permitted to practise in clinics registered with exemption and with the promulgation of Section 27 of the Medical Registration Ordinance 1957 this practice will be confined solely to such clinics.

The Penicillin Ordinance as it now stands does not include these unregistered doctors amongst those who are permitted to use the substances to which the Ordinance applies. These substances include penicillin itself and many other anti-biotics which are widely prescribed and are regarded as being indispensable to modern medical practice.

This Bill proposes certain amendments to the Penicillin Ordinance which will in future permit such unregistered doctors to use these valuable drugs, in connexion with their medical practice in these exempted clinics.

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" attached to the Bill were stated as follows: —

Notwithstanding the general prohibition contained in the Medical Registration Ordinance (Cap. 161) or the Medical Registration Ordinance, 1957, against unregistered doctors practising medicine, the effect

of one of the provisions contained in the Medical Clinics Ordinance, 1963, is to permit unregistered doctors to practise medicine in registered clinics which are exempt by the Registrar of Clinics from certain provisions of that Ordinance. The Penicillin Ordinance, however, at present deprives such doctors of the use of many of medicine's best and newest therapeutic weapons. This Bill proposes certain amendments to the Penicillin Ordinance with the object of enabling such doctors to use these weapons in the course of their medical practice in these clinics.

PHARMACY AND POISONS (AMENDMENT) BILL, 1964

DR TENG PIN-HUI moved the First reading of a Bill intituled "An Ordinance further to amend the Pharmacy and Poisons Ordinance."

He said: Your Excellency, this Bill has an identical object to that of the preceding Bill, namely, to enable unregistered doctors approved by the Registrar of Clinics to use certain drugs in connexion with their medical practice in exempted clinics the use of which is at present precluded by the Pharmacy and Poisons 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" attached to the Bill were stated as follows: —

Notwithstanding the general prohibition contained in the Medical Registration Ordinance (Cap. 161) and the Medical Registration Ordinance, 1957, against unregistered doctors practising medicine, the effect of one of the provisions of the Medical Clinics Ordinance, 1963, is to permit unregistered doctors to practise medicine in registered clinics that are exempt by the Registrar of Clinics from certain provisions of that Ordinance. The Pharmacy and Poisons Ordinance, however, at present deprives such doctors of the use of many of medicine's best and newest therapeutic weapons. This Bill proposes an amendment to the Pharmacy and Poisons Ordinance with the object of enabling such doctors to use these weapons in the course of their medical practice in these clinics.

ANIMALS (CONTROL OF EXPERIMENTS) (AMENDMENT) BILL, 1964

DR TENG PIN-HUI moved the Second reading of a Bill intituled "An Ordinance to amend the Animals (Control of Experiments) Ordinance, 1963."

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.

DR TENG PIN-HUI reported that the Animals (Control of Experiments) (Amendment) Bill, 1964, 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 OFFICER ADMINISTERING THE GOVERNMENT: — That concludes the business for today, gentlemen. When is it your pleasure that the Council should meet again?

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

HIS EXCELLENCY THE OFFICER ADMINISTERING THE GOVERNMENT: — Council will adjourn until this day fortnight.