

OFFICIAL REPORT OF PROCEEDINGS**Meetings of 14th April, 1965****PRESENT**

HIS EXCELLENCY THE GOVERNOR (*PRESIDENT*)
SIR DAVID CLIVE CROSBIE TRENCH, KCMG, MC
HIS EXCELLENCY LIEUTENANT-GENERAL SIR DENIS STUART SCOTT
O'CONNOR, KBE, CB
COMMANDER BRITISH FORCES
THE HONOURABLE GEOFFREY CADZOW HAMILTON
ACTING COLONIAL SECRETARY
THE HONOURABLE MAURICE HEENAN, QC
ATTORNEY GENERAL
THE HONOURABLE JOHN CRICHTON McDOUALL
SECRETARY FOR CHINESE AFFAIRS
THE HONOURABLE JOHN JAMES COWPERTHWAITTE, CMG, OBE
FINANCIAL SECRETARY
THE HONOURABLE KENNETH STRATHMORE KINGHORN
DIRECTOR OF URBAN SERVICES
THE HONOURABLE ALEC MICHAEL JOHN WRIGHT
DIRECTOR OF PUBLIC WORKS
DR THE HONOURABLE TENG PIN-HUI, OBE
DIRECTOR OF MEDICAL AND HEALTH SERVICES
THE HONOURABLE WILLIAM DAVID GREGG
DIRECTOR OF EDUCATION
HONOURABLE PATRICK CARDINALL MASON SEDGWICK
COMMISSIONER OF LABOUR
THE HONOURABLE DAVID RONALD HOLMES, CBE, MC, ED
DIRECTOR OF COMMERCE AND INDUSTRY
THE HONOURABLE JOHN PHILIP ASERAPPA
DISTRICT COMMISSIONER, NEW TERRITORIES
THE HONOURABLE DHUN JEHANGIR RUTTONJEE, CBE
THE HONOURABLE RICHARD CHARLES LEE, CBE
THE HONOURABLE KWAN CHO-YIU, CBE
THE HONOURABLE KAN YUET-KEUNG, OBE
THE HONOURABLE SIDNEY SAMUEL GORDON
THE HONOURABLE LI FOOK-SHU, OBE
THE HONOURABLE FUNG HON-CHU
THE HONOURABLE TANG PING-YUAN
THE HONOURABLE TSE YU-CHUEN, OBE
THE HONOURABLE KENNETH ALBERT WATSON, OBE
THE HONOURABLE WOO PAK-CHUEN, OBE
THE HONOURABLE GEORGE RONALD ROSS
THE HONORABLE SZETO WAI
MR ANDREW McDONALD CHAPMAN (*Deputy Clerk of Councils*)

ABSENT

THE HONOROUBALE KAN YUET-KEUNG, OBE

MINUTES

The minutes of the meeting of the Council on 25th/26th March 1965 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>
Sessional Paper, 1965:—	
No 12—Annual Report by the Director of Agriculture and Forestry for the year 1963-64.	
No 13—Annual Report by the Director of Public Works for the year 1963-64.	
No 14—Annual Report by the Registrar, Supreme Court for the year 1963-64.	
Registration of Persons Ordinance 1960.	
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QUESTIONS

MR Woo PAK-CHUBN, pursuant to notice, asked the following question: —

As it is Government's policy to recruit overseas officers in the public services only if there are no suitable local officers, was the newly created post of Principal Amenities Officer advertised in the local press for local candidates prior to the recruitment abroad, and if not, why not?

MR K. S. KINGHORN replied as follows: —

Your Excellency, the post of Principal Amenities Officer was not advertised locally.

The Conditions of Service for the post, which were drawn up in consultation with the Urban Council and approved by the Public Services Commission, require that candidates for the post should possess a Diploma of the Institute of Park Administration (or the equivalent); additionally possession of the National Diploma of Horticulture is desirable. The Diploma of the Institute of Park Administration is not obtainable locally, and the Urban Services Department advised that no serving officer in the Gardens Section had the qualifications and necessary up to date experience of modern park administration and that it was most unlikely that such a candidate would be available in Hong Kong. This advice was accepted by the Establishment Officer and by the Public Services Commission. In consequence, at the same time as the Public Services Commission approved the Conditions of Service for the post, it advised that the vacancy should be referred to the Ministry of Overseas Development in London for recruitment on contract for a period of 3 years.

It is hoped that under the guidance and supervision of the officer who has now arrived in Hong Kong it will be possible to train local officers to undertake the duties of the post in due course.

MR Woo PAK-CHUEN:—Sir, may I ask a supplementary question:—

Was it the specific advice of the Public Services Commission to dispense with the advertisement for local candidates?

MR K. S. KINGHORN replied as follows: —

I understand that the answer is yes, Sir.

MR Woo PAK-CHUEN:—Thank you.

MAGISTRATES ORDINANCE CHAPTER 227

THE ATTORNEY GENERAL moved the following resolution: —

Resolved that, in exercise of the powers conferred by section 18 of the Magistrates Ordinance, the Third Schedule to the said Ordinance be amended—

(a) by the deletion of item 3 and the substitution therefor of the following—

“3. *Road Traffic.*

(39 of 1957) (1) Any offence against the subsection 17 of the Road traffic ordinance 1957.

(G.N.A. 88/56). (2) Any offence against the Road Traffic (Driving Licences) Regulations 1956.

(G.N.A. 89/56). (3) Any offence against the Road Traffic (Registration and Licensing of Vehicles) Regulations 1956, other than a contravention of any of the provisions of regulation 26.

(G.N.A. 106/56). (4) Any offence against the Road Traffic (Construction and Use) Regulations 1956, other than a contravention of any of the provisions of paragraph(2) of regulation 94, subparagraph (a) of regulation 94A or paragraph(2) of regulation 95.

(G.N.A. 62/57). (5) Any offence against the Road Traffic (Lighting and Guarding of Road Works) Regulations 1957.

(G.N.A. 77/57). (6) Any offence against the Road Traffic (Road Crossing) Regulations 1957.

(G.N.A. 77/57). (7) Any offence against the Road Traffic (Parking and Waiting) Regulations 1958, other than a contravention of any of the provisions of paragraph (2) of regulation 3.

(G.N.A. 106/59). (8) Any offence against the Road Traffic (Roads and Signs) Regulations 1959.

(G. N. A.
77/58)

- (G.N.A. 36/60). (9) Any offence against the Road Traffic (International Circulation) Regulations 1960.
- (G.N.A. 25/61). (10) Any offence against the Road Traffic (Public Omnibus and Public Car) Regulations 1961.
- (G.N.A. 129/61). (11) Any offence against the Road Traffic (General) Regulations 1961.
- (L.N. 46/63). (12) Any offence against the Road Traffic (Temporary Car Parks) Regulations 1963.
- (L.N. 134/64). (13) Any offence against the Road Traffic (Taxis, Public Omnibuses and Public Cars) Regulations 1964, other than a contravention of any of the provisions of paragraph (2) of regulation 7 or of regulation 33 or 38.”; and

(b) by the insertion, after item 4, of the following new item—

“5. *Tramway.*

- (Vol. IX, p. 261). (1) Any offence against rule 5 of the Tramway Working Rules.
- (G.N.A. 77/57). (2) Any contravention of the Road Traffic (Road Crossing) Regulations 1957 that is an offence under regulation 13 of the said Regulations by virtue of rule 5A of the Tramway Working Rules.”

He said:—Sir, in July last year my honourable Friend Mr RUTTONJEE asked in this Council whether having regard to the congestion in the courts, and the precedent already established with regard to traffic offences. Government would consider whether written pleas of guilty might be accepted for minor offences, thereby relieving defendants from their obligation to attend court in person. At that time, I said that Government would give consideration to the desirability or otherwise of extending the scope of the relevant provisions of the Magistrates Ordinance.

The Honourable the Chief Justice has now recommended that the present congestion in the courts connected with minor traffic offences is such as to warrant an extension of the traffic offences in respect of which a magistrate may accept a plea of guilty by letter. The Government accepts this recommendation, which has the full support of the Commissioner of Police. If the Resolution now before honourable Members is passed, it will, in addition to the offences to which a plea

of guilty may be entered in writing at present, be possible to plead guilty by letter to any offence against the Road Traffic (Construction and Use) Regulations 1956 (other than an offence consisting of the carriage in a vehicle of more than the permitted number of persons), any offence against the Road Traffic (Lighting and Guarding of Road Works) Regulations 1957, any offence against the Road Traffic (Parking and Waiting) Regulations 1958 (other than the offence committed by parking or waiting within fifty feet of a sign indicating a bus stop), any offence against the Road Traffic (International Circulation) Regulations 1960, any offence against the Road Traffic (Public Omnibus and Public Gar) Regulations 1961, any offence against the Road Traffic (Temporary Car Parks) Regulations 1963 and any offence against the Road Traffic (Taxis, Public Omnibuses and Public Cars) Regulations 1964 (other than the offence committed by a person who causes or permits a taxi to stand or ply for hire otherwise than in the permitted area, and offences against regulations 33 and 38 which respectively prohibit the public omnibuses to which the Regulations apply and public cars from standing or plying for hire elsewhere than in the place at which they are normally accommodated and the overloading of a public omnibus or public car). It will also be possible to plead guilty by letter to an offence under section 17(1) of the Road Traffic Ordinance 1957 (which broadly speaking deals with the offence commonly referred to as jaywalking) and to certain offences under the Tramway Working Rules.

Sir, this represents a very substantial increase in the cases in which a magistrate may accept a plea of guilty by letter, and will it is hoped materially reduce the congestion in the magistrates courts attributable to the vast number of traffic cases now coming before them.

THE COLONIAL SECRETARY seconded.

The question was put and agreed to.

LIMITATION BILL 1965

THE ATTORNEY GENERAL moved the First reading of a Bill intituled "An Ordinance to consolidate and amend the law relating to the limitation of actions and arbitrations."

He said:—Your Excellency will recall that in his speech in this Council on the 12th of last month, my honourable Friend Mr P. C. Woo in referring to the need for Law Reform drew attention to the fact that "the Law of Limitation of Actions in Hong Kong is not only archaic but is also in a state of confusion in that it is governed by certain very old and long repealed Acts of Parliament". He pointed out that the law on Limitations in England had been consolidated, with amendment, in the Limitation Act 1939, which was subject to further amendments

in 1954 and 1963. Sir, the Bill now before Council is the measure to which I referred in my reply as having been completed so far as my Chambers were concerned.

The Bill follows very closely the provisions of the Three Acts to which my honourable Friend referred, thus bringing this extremely technical branch of the law into line with the current English law on the subject.

The only departure from the periods of limitation prescribed in England (which is referred to in paragraph 3 of the Objects and Reasons) is in the case of the recovery of land. To follow the English Acts in this field would bring about a considerable shortening of the periods of limitation which are at present applicable in the Colony. This might well cause undue hardship to those who, owing to circumstances beyond their control, (such as, for instance, the loss and destruction of records during the occupation, the influx of immigrants and the consequent squatter problems), may not have had a fair opportunity of looking after their property in the Colony. Accordingly, the *status quo* is preserved in the case of the recovery of land. Clause 7 is the relevant clause in this connexion.

I should perhaps mention—as a point of interest—that, except in the case of the recovery of land, actions by the Crown are not, under the existing provisions applicable in the Colony, subject to any period of limitation. Clause 37 of this Bill changes this situation by applying the provisions of the Bill, subject to minor exceptions, to proceedings by the Crown in like manner as they apply to proceeding between subjects. In this connexion, I might also mention that the period of limitation fixed by section 17 of the Law Amendment (Miscellaneous) Provisions Ordinance Chapter 23, whereby action's against public officers for anything done or omitted to be done in pursuance of any enactment are required to be commenced, if at all, within a period of 6 months, will no longer apply, as that section is repealed by clause 39 of this Bill.

The necessary transitional provisions are contained in clause 38. These provide the general rule that the period of limitation applicable in respect of any cause of action arising before the enactment of this Bill, which is not by then already time-barred, will be the period applicable under the old English law or the period under this Bill, whichever expires the later. In the case of actions already before the courts, the period of limitation under the old English law will continue to apply. In the case of causes of action arising before the enactment of this Bill for which no periods of limitation are prescribed under the old English law, the periods prescribed in this Bill will apply but will commence to run from the date of enactment of the Bill.

Finally, and again with reference to the speech of my honouaole Friend Mr P. C. Woo, a glance at the Acts listed in Part I of the Schedule to the Bill—which are the Acts by which the law on limitations in the Colony is at present governed—will indicate just how very old those Acts are. The first Act mentioned in the Schedule was enacted in 1588.

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 law of the Colony relating to the limitation of actions is for the most part contained in English statutes enacted before 1843 and in force in the Colony by virtue of section 5 of the Supreme Court Ordinance (Chapter 4). This Bill seeks to consolidate these provisions and to bring this branch of the law of the Colony more into line with that now in force in England so far as it is applicable in the Colony. In so doing the relevant provisions of the Limitation Act 1939, as amended by the Law Reform (Limitation of Actions, etc.) Act 1954, and the Limitation Act 1963, have been closely followed, and the marginal references opposite the respective clauses of the Bill indicate their source in relation to those Acts.

2. The Bill is divided into four Parts. Part II sets out the periods of limitation applicable to particular types of civil action, that is, the period (reckoned in most cases from the date when the cause of action accrued) after the expiration of which the action cannot be brought. Part III provides for the extension of these periods in certain cases. Part IV contains general provisions including provisions relating to the application of the Bill to arbitrations and to transitional provisions.

3. The periods of limitation prescribed by the Acts mentioned above have been adopted for the purposes of the Bill except in the case of the recovery of land. In such cases, the prescribed period of limitation under the Bill remains what it always has been, namely sixty years, as opposed to thirty years in England, in the case of actions brought by the Crown to recover land, and twenty years, as opposed to twelve years in England, in the case of actions brought by private persons to recover or redeem land.

4. The principal changes made in the existing periods of limitation under the relevant pre-1843 statutes of England for other actions are as follows—

- (a) for actions for damages for negligence, nuisance or breach of duty where the damages include damages in respect of personal injuries (see Limitation Act 1623, s. 3), the period is reduced from six to three years; and
- (b) for actions for slander (see Limitation Act 1623, s. 3), the period is increased from two to six years.

LAND REGISTRATION (AMENDMENT) BILL 1965

THE ATTORNEY GENERAL moved the First reading of a Bill intituled “An Ordinance further to amend the Land Registration Ordinance.”

He said:—Sir, the purpose of this Bill is to amend section 7 of the Land Registration Ordinance to provide that where a memorial of an instrument to be registered in the Land Office has been prepared in the Land Office it may be verified by the certificate of the Land Officer.

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:—

Section 7 of the Land Registration Ordinance requires that memorials of instruments to be registered in the Land Office shall be verified either—

- (a) by the oath of some competent person taken before a justice of the peace; or
- (b) by the certificate of a solicitor.

For purposes of convenience in the Land Office this Bill seeks to amend section 7 by providing that where a memorial has been prepared in the Land Office it may be verified by the certificate of the Land Officer.

SUMMARY OFFENCES (AMENDMENT) BILL 1965

THE ATTORNEY GENERAL moved the First reading of a Bill intituled "An Ordinance further to amend the Summary Offences Ordinance."

He said:—Sir, this Bill seeks to amend the Summary Offences Ordinance to provide for an increase in the penalty which may be imposed by a magistrate in respect of offences against paragraphs (4), (6) and (32) of section 3 of the Ordinance. These offences are—

- (a) causing obstruction in a public place;
- (b) encroaching on a public place or Crown land by erecting a building on it or projecting over it; and
- (c) depositing earth, stones or other materials on Crown land without a permit;

and they are at present punishable with a fine of \$500 or imprisonment for three months.

In the normal case of an offence of this type the appropriate sentence would be a fine; thus it is unusual for the Court to impose a sentence of imprisonment. In these circumstances, it has been found that a maximum fine of \$500 is no longer an adequate deterrent to those persons who are the most persistent offenders.

In practice there is widespread disregard of these provisions of the Ordinance, particularly by building contractors and others, who with increasing frequency are willing to disregard the law because of the lightness of the fine in order to save themselves the time and inconvenience which observance would otherwise entail. It is felt that if these provisions are to be effective it is necessary to increase the maximum penalty of a fine from \$500 to \$5,000 to provide a punishment alternative to imprisonment which will be an adequate deterrent to offenders.

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 of the Summary Offences Ordinance, Chapter 228, in order to increase from five hundred dollars to five thousand dollars the penalty of a fine which may be imposed for offences under paragraphs (4), (6) and (32) of section 3 of the Ordinance.

RADIATION (AMENDMENT) BILL 1965

DR TENG PIN-HUI moved the First reading of a Bill intituled “An Ordinance further to amend the Radiation Ordinance 1957.”

He said: —Sir, the control of the import and export of irradiating apparatus and radioactive substances is vested in both the Radiation Ordinance and the Importation and Exportation Ordinance Chapter 50. This would necessitate issuing two different licences resulting in inconvenience to the general public. As the Importation and Exportation Ordinance maintains adequate control over the import and export of radioactive substances and irradiating apparatus the purpose of this Bill is to seek amendment of the Radiation Ordinance 1957 in order to dispense with the requirement of a separate licence under that 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: —

The purpose of this Bill is to seek the amendment of the Radiation Ordinance 1957 in order to dispense with the requirement that the import or export of radioactive substances and irradiating apparatus be subject to licence under that Ordinance as the import and export of such substances and apparatus is subject to control by licence under the Importation and Exportation Ordinance (Chapter 50).

STREETS (ALTERATION) (AMENDMENT) BILL 1965

THE COLONIAL SECRETARY moved the Second reading of a Bill intituled “An Ordinance to amend the Streets (Alteration) Ordinance.”

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.

Clauses 1 and 2 were agreed to.

Council then resumed.

THE COLONIAL SECRETARY reported that the Streets (Alteration) (Amendment) Bill 1965 had passed through Committee without amendment 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 into law.

WIDOWS AND ORPHANS PENSION (AMENDMENT)

BILL 1965

THE ATTORNEY GENERAL moved the Second reading of a Bill intituled "An Ordinance further to amend the Widows and Orphans Pension Ordinance."

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 3 were agreed to.

Council then resumed.

THE ATTORNEY GENERAL reported that the Widows and Orphans Pension (Amendment) Bill 1965 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.

BANKRUPTCY (AMENDMENT) BILL 1965

THE ATTORNEY GENERAL moved the Second reading of a Bill intituled "An Ordinance to amend the Bankruptcy Ordinance."

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.

Clause 1 was agreed to.

Clause 2.

THE ATTORNEY GENERAL: —I rise to move that clause 2 be amended as set forth in the paper before honourable Members.

Proposed Amendment

Clause

2 (1) In the new section 100B—

(a) after subsection (3), add the following new subsection—

“(4) Notwithstanding anything in section 20 or 25, where a majority in number and three-fourths in value of all the creditors who have proved their debt, or who by virtue of section 100H are deemed for voting purposes to have proved a debt exceeding one hundred dollars, agree to accept a composition, the composition shall be deemed to be duly accepted by the creditors, and when approved by the court shall be binding on all the creditors.” and

(b) re-number subsection (4) as subsection (5).

(2) In paragraph (a) of subsection (1) of the new section 100H—

(a) leave out the semicolon and the word “; and” and substitute therefor a colon; and

(b) add thereafter the following new proviso—

“Provided that if the said balance does not exceed one hundred dollars he shall not be deemed to have proved his debt for the purposes of subsections (2) and (4) of section 20, subsection (1) of section 25 and subsection (4) of section 100B; and”.

Clause 2, as amended, was agreed to.

Council then resumed.

THE ATTORNEY GENERAL reported that the Bankruptcy (Amendment) Bill 1965 had passed through Committee with certain amendments 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.

COMPANIES (AMENDMENT) BILL 1965

THE ATTORNEY GENERAL moved the Second reading of a Bill intituled “An Ordinance to amend the Companies Ordinance.”

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.

Clause 1 was agreed to.

Clause 2.

THE ATTORNEY GENERAL:—Sir, I rise to move that clause 2 be amended as set forth in the paper before honourable Members.

Proposed Amendment

Clause

2 In the new section 212D—

(a) after subsection (1) add the following new subsection—

“(2) Where a majority in number and three-fourths in value of the creditors, or a class of creditors, as the case may be, who have proved their debt, or who by virtue of section 212E are deemed for voting purposes to have proved a debt exceeding one hundred dollars, agree to any compromise, such agreement shall, for the purposes of section 151, have the same effect as if a meeting of the creditors or class of creditors had been summoned under subsection (1) of section 151 and a majority in number representing three-fourths in value of the creditors or class of creditors, as the case may be, had been present and voted either in person or by proxy at the meeting and agreed to the compromise.”; and

(b) re-number subsections (2) and (3) as subsections (3) and (4).

Clause 2, as amended, was agreed to.

Council then resumed.

THE ATTORNEY GENERAL reported that the Companies (Amendment) Bill 1965 had passed through Committee with certain amendments 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. The next meeting of Council will be held on 28th April.