

OFFICIAL REPORT OF PROCEEDINGS**Meeting of 6th April 1966****PRESENT**

HIS EXCELLENCY THE GOVERNOR (*PRESIDENT*)
SIR DAVID CLIVE CROSBIE TRENCH, KCMG, MC
THE HONOURABLE MICHAEL DAVID IRVING GASS, CMG
COLONIAL SECRETARY
THE HONOURABLE MAURICE HEENAN, CMG, QC
ATTORNEY GENERAL
THE HONOURABLE JOHN CRICHTON McDOUALL, CMG
SECRETARY FOR CHINESE AFFAIRS
THE HONOURABLE JOHN JAMES COWPERTHWAITHE, CMG, OBE
FINANCIAL SECRETARY
THE HONOURABLE DAVID RONALD HOLMES, CBE, MC, ED
DIRECTOR OF COMMERCE AND INDUSTRY
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
THE HONOURABLE JOHN PHILIP ASERAPPA
DISTRICT COMMISSIONER, NEW TERRITORIES
THE HONOURABLE JAMES TINKER WAKEFIELD
COMMISSIONER OF LABOUR
THE HONOURABLE GEOFFREY MARSH TINGLE
DIRECTOR OF URBAN SERVICES
THE HONOURABLE ALASTAIR TODD
DIRECTOR OF SOCIAL WELFARE
THE HONOURABLE DHUN JEHANGIR RUTTONJEE, CBE
THE HONOURABLE KWAN CHO-YIU, CBE
THE HONOURABLE KAN YUET-KEUNG, OBE
THE HONOURABLE SIDNEY SAMUEL GORDON, OBE
THE HONOURABLE LI FOOK-SHU, OBE
THE HONOURABLE FUNG HON-CHU, OBE
THE HONOURABLE TANG PING-YUAN
THE HONOURABLE TSE YU-CHUEN, OBE
THE HONOURABLE KENNETH ALBERT WATSON, OBE
THE HONOURABLE GEORGE RONALD ROSS
THE HONOURABLE SZETO WAI
THE HONOURABLE WILFRED WONG SIEN-BING
MR ANDREW McDONALD CHAPMAN (*Deputy Clerk of Councils*)

ABSENT

THE HONOURABLE WOO PAK-CHUEN, OBE

MINUTES

The minutes of the meeting of the Council held on 24th/25th March 1966, were confirmed.

HIS EXCELLENCY THE GOVERNOR: —I welcome Mr TODD to this Council.

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 1966: —	
No 5—Annual Report by the Director of Agriculture and Fisheries for the year 1964-65.	
Annual Report and Accounts of the School Medical Service Board for the year ended 30th September 1965.	
Statement of Government's Policy on Parking.	
Mining Ordinance 1954.	
Mining (General) (Amendment) Regulations 1966	23
Importation and Exportation Ordinance.	
Importation (Coffee) Regulations 1966	24
Dentists Registration Ordinance 1959.	
Dentists (Registration and Disciplinary Procedure) (Amendment) Regulations 1966	25
Road Traffic Ordinance 1957.	
Road Traffic (Parking and Waiting) (Amendment) Regulations 1966	26
Road Traffic Ordinance 1957.	
Road Traffic (Temporary Car Parks) (Amendment) Regulations 1966	27

QUESTIONS

MR K. A. WATSON, pursuant to notice, asked the following question: —

Your Excellency, announcements about increased parking fees have recently been made in the press. Would Government give the public full details how these costs have been worked out?

THE FINANCIAL SECRETARY replied as follows: —

Sir, a comprehensive statement on car park policy was released to the press on 1st April and has been tabled today in this Council along with the regulations made last week by the Governor in Council fixing new charges. The statement provides details of costs. Interested persons may obtain a copy of it from the Government Information Services or the Commissioner of Transport.

MR K. A. WATSON: — Your Excellency, may I have your permission to ask one or two supplementary questions?

HIS EXCELLENCY THE GOVERNOR: — Yes, Mr WATSON.

MR K. A. WATSON: —

I ask first of all, Sir, is Government's policy in economic terms one of a profit maximization policy or of a consumer's surplus maximization or, if neither, then perhaps we could have an explanation of what it is?

THE FINANCIAL SECRETARY replied as follows: —

On a point of order, Sir, I would suggest that this question introduces new matter not arising out of the question.

HIS EXCELLENCY THE GOVERNOR: — Would you repeat the question Mr WATSON?

MR K. A. WATSON: — I will, Sir. Is Government's policy in economic terms in reducing the figures in this paper a profit maximization one or a consumer's maximization one, and if neither, then what is it?

HIS EXCELLENCY THE GOVERNOR: — No, I am afraid that is out of order Mr WATSON, it introduces new matter.

MR K. A. WATSON: —

Could I ask another one, Sir? As Government's known costings, accepted in good faith by the Urban Council in 1962, gave an annual value of land for the Star Ferry and City Hall car parks of \$430,478.00 whereas the new assumption of this figure has increased to \$1,204,000.00 a figure almost three times higher. Is it suggested that the cost accountants of the Treasury are so incompetent that they originally undervalued the land at one-third of the present assessed value?

THE FINANCIAL SECRETARY replied as follows: —

On a point of order, Sir, I represent that this again introduces new matter not arising from the question.

HIS EXCELLENCY THE GOVERNOR: —Yes, I think it does, Mr WATSON.

MR K. A. WATSON: —I see, Sir, then I shall put my questions at the next Legislative Council meeting.

HIS EXCELLENCY THE GOVERNOR: —Do you have a further question Mr WATSON?

MR K. A. WATSON: —Oh yes, Sir, sorry. My second question: —

In spite of the Financial Secretary's statement in 1963, that "The net meter rents which accrue are treated, not as general revenue, but as going to help to meet the capital and recurrent cost of multi-storey car parks", these do not appear to have been so treated. Why has there been a change of policy?

THE FINANCIAL SECRETARY replied as follows: —

Sir, my honourable Friend's question is based on an erroneous assumption and therefore does not arise. The policy quoted by my honourable Friend has not changed.

URBAN COUNCIL (AMENDMENT) BILL 1966

THE COLONIAL SECRETARY moved the First reading of a Bill intituled "An Ordinance further to amend the Urban Council Ordinance 1955, and to make related amendments to other enactments."

He said: —Your Excellency, I beg to move that the Urban Council (Amendment) Bill 1966 be now read a first time.

The Objects and Reasons appended to the Bill are very clear and detailed and in moving this motion I propose to draw attention only to the more significant provisions in the Bill.

The main purpose of this Bill is to broaden the franchise and so provide opportunities for a substantial increase in the number of those eligible to vote for the election of members to the Urban Council. This extension of the franchise is based on the recommendations of the Working Party, composed of both officials and unofficials which was set up last year. The extension has been achieved, first, by removing any requirement that an elector must have a knowledge of the English language

and, secondly, by adding a number of new categories of persons eligible to register, selected on the criteria of service to the community, professional qualification and educational standard.

At the same time, in order to restrict the right to vote to persons who can show some measure of "belonging" to Hong Kong, a requirement is proposed that a person should have at least three years' ordinary residence before being eligible to register as an elector. Any provision such as this is, of course, liable to produce anomalies; one is, Sir, that I shall not be able to register for some years yet, but it is considered that the principle is right and that the period of three years is a reasonable compromise between the conflicting views that have been expressed on this issue.

Two further principles of importance are introduced into the Bill. Hitherto persons on the Jury List have been registered automatically as electors. But with the proposed extension and widening of the franchise it is intended that there should be no automatic or compulsory registration. Accordingly, except for those persons who are already on the register it will be necessary, under the provisions of the Bill and the Regulations which will be made under it, for all new applicants for registration to complete a form of application. One advantage of this will be that the register will be less likely to be cluttered up with the names of many people who may have no intention of exercising their right to vote.

The second important principle introduced is that a person, once enfranchised, shall always retain his right to vote unless he is specifically disqualified. A distinction is thus made between ceasing to be qualified and being disqualified. It is proposed that only when specifically disqualified should an elector lose his right to vote. This was a point on which the Working Party itself made no recommendations but it is one on which a definite decision had to be reached. Some electors will be eligible to register by virtue of a qualification which they can never lose, such as an educational qualification. But there are others, who will be eligible to register by reason, for example, of their being practising barristers or teachers. Although such persons would cease to be qualified on retirement, it is considered that there are no grounds for depriving them of their right to vote on retirement. Under the Bill, therefore, the loss of vote will only occur after disqualification for one or other of the reasons set out in the new sections 16 and 17 which are included in clause 6 of the Bill.

Subsection (2) of the new section 15 included in clause 6 sets out the categories of persons who it is intended should be eligible to register as electors. These categories follow the general recommendations of the Working Party, but it has been necessary, in order to remove any doubts

as to actual eligibility, to define several of them more specifically. In some cases, for example in the case of persons who are members of the press or broadcasting services, it has been necessary to widen the qualifications slightly in order to obtain a satisfactory legal definition.

A greater problem was posed by the Working Party's recommendation to include members of a limited number of specified professional bodies, selected on the basis of the size of their membership resident in Hong Kong. It has been felt that this might lead unnecessarily to invidious comparisons, and it is therefore proposed in the Bill that the Working Party's list of professional bodies should be expanded to include additional bodies of comparable standing, which are known to have members in Hong Kong. Furthermore, in recognition of the fact that the list is unlikely ever to be finally complete, it has been included in a Schedule where it can be amended by order of the Governor in Council rather than by a new amending bill.

In another respect, of more significance perhaps, the Bill departs from the recommendations of the Working Party in that the provision which disqualified members of the Police Force from registering as electors has now been removed. This is a most unusual provision in any case and with the extension of the franchise, is even more difficult to justify. Members of the Police Force will now, under these proposals therefore, be eligible to register if they wish, and if they are qualified, for many of course will qualify as pensionable officers. As a corollary, members of the Auxiliary Police Force will become eligible to register, as will locally enlisted personnel in the armed forces, but in their case because they probably have no other qualification it is proposed that they be specifically enfranchised.

The Bill provides that no persons on the existing register of electors will be disenfranchised merely by reason of the new provisions. They will be eligible to be included on the next register even if, for example, at that time they have not completed three years' residence in Hong Kong.

Here, Sir, I should like to emphasise that the fact that a person has his name on the register is only *prima facie* evidence of his right to vote. If he is not in fact qualified to be on the register but nevertheless exercises a vote, he may be liable to a penalty for doing so and his vote may be rejected on an election petition. There is, however, a presumption that such a person is lawfully registered, although there is provision for his name to be removed if an objection is lodged and sustained.

Sir, in some respects this is a complicated Bill although it has been simplified as far as possible, for example, by the complete replacement of Part IV of the Urban Council Ordinance. Where the franchise is very restricted, as at present it is in Hong Kong, or where a universal franchise exists, it is possible to have comparatively simple provisions. But in the

intermediate position in which we now find ourselves it is inevitable that the need to include several new categories of persons eligible for the franchise, while excluding others, should make this legislation long and rather cumbersome. At the same time, the Bill has to include transitional provisions between the two registers, the old and the new, which are compiled on different bases.

But there is, unfortunately, a third complicating factor as well, forced upon us by the basic complications to which I have referred. Try as we have, we have been unable to prepare this legislation in time to ensure that the 1967 ordinary election to the Council could take place on the appointed date. This has necessitated including provision in the Bill to cover two related sets of circumstances in connexion with the first register and the holding of the first election under the new legislation. First, clause 4 of the Bill extends by three months the tenure of office of those elected members of the Urban Council whose term ends next year. Secondly, the timetable for the whole exercise of registration and preparation of the new register in 1966 will be three months later in the year than in past or in future years. I regret this additional complication, but in the circumstances it could not be avoided.

These, Sir, are the principal effects of the Bill to which I wish to draw attention except, perhaps, to mention one new provision only briefly referred to in the Objects and Reasons at the end of the Bill. This is the addition, by the amendment proposed in clause 9, of a further ground upon which an election may be challenged. This ground is a standard feature in other British electoral systems and with the extension of the franchise it now seems desirable to include it. It is linked with the provisions of the new sections 16 and 17 in clause 6 of the Bill.

Honourable Members will appreciate that the enactment of this Bill will involve consequential amendments to the Regulations made under the Urban Council Ordinance which provide for the registration of electors and for the holding of elections. The amendments to the former are so substantial that it is proposed to replace them by a new comprehensive set of Regulations. The necessary Regulations will be made and laid before this Council as soon as possible after this Bill becomes law. As in the case of the Bill, they will closely follow the recommendations of the Working Party to whose work I should like, Sir, to pay tribute.

Your Excellency, I beg to move.

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: —

The object of this Bill is to give effect to those recommendations of the Working Party on the Urban Council Franchise and Electoral Registration Procedure that have been accepted by Government, the implementation of which requires amendment of the Urban Council Ordinance 1955. At the same time the opportunity is taken to make other minor amendments and to clarify certain aspects of the principal legislation and other legislation.

2. The Working Party, which included the chairman and two elected members of the Urban Council, was appointed to advise, *inter alia*—

- (a) whether the present system whereby certain categories of persons are granted the franchise simply by virtue of their eligibility for jury service should not be discontinued and legislation drawn up specifically to list those groups or categories of persons over the age of 21 to whom the franchise should be granted, irrespective of their eligibility for jury service and consequently irrespective of their knowledge of English; and
- (b) whether improvements can be made in the machinery for registration in order to assist the electorate.

3. The Working Party in its Report published in September 1965 recommended—

- (a) that entitlement to vote should not depend merely on liability for jury service or exemption from such liability (as is largely the case at present) but on other grounds also, which should be listed as categories in the Urban Council legislation and be unconnected with any question of liability for jury service or knowledge of English; and
- (b) that, in addition to the other qualifications, there should be a basic requirement of at least three years' ordinary residence in Hong Kong which should be satisfied by every person before being registered as an elector.

4. In making the first recommendation the Working Party specified the categories of persons who should be enfranchised, and the new section 15 in clause 6, in giving effect to this recommendation, sets out in subsection (2) of that section the categories specified by the Working Party, save that—

- (a) in the case of pensionable civil servants, the recommendation is extended to include not only retired civil servants drawing

their pensions but also retired civil servants who would be in receipt of a pension but for the pension having been suspended due to re-employment in Government or having ceased due to bankruptcy (new s. 15(2)(e)(ii) refers);

- (b) in the case of editors and other employees of newspapers, news agencies and broadcasting and television services, it has been decided to include managing directors, art directors, producers and announcers with those recommended, and this category is not limited (as recommended) to locally registered publications, recognized news agencies, and recognized broadcasting and television services, although if a publication, news agency, broadcasting or television service is required by the law of the Colony to be registered or licensed, then the franchise is dependent upon due registration or licensing, as the case may be (new s. 15(2)(j) refers);
- (c) in the case of clergymen, etc., the franchise is limited to fulltime clergymen, etc. (new s. 15(2)(1) refers);
- (d) in the case of members of professional bodies, the recommended list is extended to include the Institute of Housing Managers, the Royal Institute of British Architects, and various institutes and associations of accountants (new s. 15(2)(u) and 2nd Schedule refer); and the Governor in Council is empowered to add to the list of the professional bodies (new s. 15(3) refers);
- (e) in the case of the educational category, diplomas and certificates granted by the extra-mural department of the two local universities, certificates merely indicating attendance at a course, and diplomas and certificates obtained after only a part-time course with the Technical College (other than a 3-year course for which an entry standard of at least Form 4 is a requirement) are not recognized for the purpose of franchise (new s. 15(2)(w) refers);
- (f) in the case of the teachers" category, the recommended category is extended to include teachers and other academic officers of, and full-time students of, approved post-secondary colleges in the Colony (new s. 15(2)(v)(ii) refers); and
- (g) with the removal of the disqualification from members of the Police Force referred to in paragraph 8, members of the Hong Kong Auxiliary Police Force are expressly enfranchised as such, thus placing them in the same position as members of the kindred Defence Force and Auxiliary Services (new s. 15(2)(d) refers).

5. In order to avoid disenfranchising persons who are at present enfranchised and registered as electors, the Working Party also recommended the inclusion, as a separate category, of persons who do not

fall within any of the specifically recommended categories but who are at present entitled to be and are registered. This recommendation is implemented in paragraph (a) of subsection (1) of the new section 15 in clause 6, but at the same time is extended to incorporate the principle: once enfranchised, always enfranchised. Most of the qualifications in the categories in section 15(2) are permanent, but some, notably persons with permits to teach, are by nature temporary. The purpose of the above principle is to ensure equality of treatment between the various categories. Thus, those who register as electors on the strength of a temporary qualification will not cease to be entitled to be registered on the next subsequent register merely by reason of having in the meantime lost such qualification.

6. Subsection (4) of the new section 15 in clause 6, in defining what is to be the qualifying period for the purpose of section 15(2), also in effect implements a further recommendation of the Working Party in providing a variable qualifying date for determining whether or not a person possesses any of the qualifications entitling him to be registered as an elector. Under the existing legislation, the qualifying date is the first day, and that day only, of the period during which a person may apply for inclusion in the provisional register. Under the provisions of this Bill, the qualifying date can be any date during that period.

7. Possession of any of the qualifications for registration does not, however, entitle a person to be registered or to vote if he is also subject to a disqualification, and the new s. 15 does not alter this and the principle: once enfranchised, always enfranchised, is subject to this. However, the basic requirement of at least three years' ordinary residence in Hong Kong recommended by the Working Party is, in effect, added to the list of disqualifications so that a person who does not satisfy this requirement cannot be registered as an elector. This residential requirement is contained in the new section 15A in clause 6, but, in order not to disenfranchise persons who are at present enfranchised and registered, this section provides that any person who is registered on the current register shall not be disqualified from being registered on the 1966/67 register merely because he does not possess the residential requirement of this section.

8. The existing disqualifications are repeated in the new sections 16(1) and 17(1) and (2) in clause 6, save that, although not recommended by the Working Party in their Report, the existing disqualification of police officers and locally enlisted personnel of the Regular Armed Forces of the Crown is lifted, since no good reason is apparent for disqualifying either.

9. Clause 7, in replacing sections 18, 19 and 20 of the principal Ordinance, makes the corrections in dates and periods which are necessary to give effect to the recommendations of the Working Party

regarding registration procedure. On procedure, the Working Party suggested a new time-table for the various steps involved in the compilation of the register. This time-table is set out in Annex F of the Working Party's Report. A period of 4 months commencing on 15th February in every even year is recommended for the first step in the preparation of the register, namely for persons to apply to be registered. This is suggested in place of the present period of 2 months commencing on 1st July in every even year. This, in turn, affects the timing of all subsequent steps, and while these are matters substantially dealt with in regulations under the Urban Council Ordinance 1955 (and to that extent the regulations will require amendment), the principal Ordinance similarly requires amendment where dates and periods affected by the suggested time-table are referred to. As regards the preparation of the 1966 register, however, the whole time-table is postponed by 3 months due to the impossibility of drafting and enacting the necessary legislation in time.

10. Clause 7 also introduces two new subsections, namely subsections (3) and (4), in section 19. These subsections are designed to clarify the position of the registration officer as regards questions of disqualification arising.

11. Clause 8 will enable regulations to be made whereby the Colony may be divided into, electoral districts, as recommended by the Working Party, to assist in the arrangement of the register and, more particularly, to provide a criterion for determining the polling station at which an elector may vote. The recommendation of the Working Party was that, except where the revising officer considers there are special grounds for the contrary in any particular case, each elector should be assigned to a particular polling station according to his place of residence. To give effect to this, it will be necessary to divide the Colony into districts so that each elector can be assigned to the polling station designated for the district in which he resides.

12. As there is more than one Deputy Director of Medical and Health Services, clauses 3 and 10 specify, simply for the avoidance of doubt, that the Deputy Director of Medical and Health Services who is a member of the Council and the professional adviser to the Council on medical matters is the Deputy Director in charge of the Health Division of the Medical and Health Department.

13. The amendments in clauses 2 and 5 are consequential, and the amendment to the Jury Ordinance in clause 14 arises out of the fact that entitlement to vote will no longer depend substantially on liability for or exemption from jury service and that the jury list and the register of electors will, in future, have to be compiled as separate lists and according to differing time-tables.

14. Sections 14A, 16(2) and 17(3) in clause 6 will make it clear that registration on the register of electors is not, by itself, conclusive evidence of entitlement to vote. A person cannot vote unless his name is on the register. Registration alone, however, will not entitle a person to vote if he is not entitled to be on the register or if he has become disqualified from voting, and although it is impracticable to prevent such a person from actually voting at the time of an election, these provisions, together with clause 9, are intended to make it clear that his vote can subsequently be challenged on an election petition and that his liability (under the Corrupt and Illegal Practices Ordinance 1955 which makes it both an offence and an illegal practice for a person to vote when he knows he is not entitled to vote) for voting, when not entitled to vote, is not affected. Section 14 of that Ordinance is in turn replaced by clause 13 in order to bring its wording into line with the wording used in the Urban Council Ordinance 1955.

15. Finally, in order to give effect to the time-table for various stages in the registration procedure, which is recommended by the Working Party in its Report, and in the light of the impossibility of drafting the necessary legislation any earlier, the terms of office of the members who are due to retire on 31st March 1967 are, by clause 4, extended by three months and, in order to preserve the present system of retirement by rotation, the terms of office of their successors are correspondingly reduced by three months.

HONG KONG AIRPORT (CONTROL OF OBSTRUCTIONS) (AMENDMENT) BILL 1966

THE COLONIAL SECRETARY moved the First reading of a Bill intituled "An Ordinance further to amend the Hong Kong Airport (Control of Obstructions) Ordinance 1957."

He said: —Sir, the Ordinance, as now in force, provides for the restriction and, where necessary, the reduction of the height of buildings in the vicinity of the Airport. We are advised that with the development of modern aircraft and the increase in traffic this does not fully meet the present needs for the safety of aircraft using the Airport, particularly in view of the general building development taking place in Hong Kong. In short, modern safety requirements call for the control of obstructions over a wider area than merely within the vicinity of the Airport.

This is not only a matter of the safety of a large modern aircraft and its passengers; we have to bear in mind the disastrous ground effects if such an aircraft were to crash in one of the densely populated areas of Kowloon or Hong Kong. Any aircraft within the limits of Hong Kong, which is in difficulty in landing through weather conditions or instrument failure, presents a risk to the local population as well as to itself. We

need also to remember the fact that, if local risks to the operation of aircraft into and out of Hong Kong become too great, the operating companies might cease to use Hong Kong.

Clause 2 of the Bill, therefore, seeks to amend the long title of the Ordinance so as to give the Government the power to control the height of buildings anywhere within the Colony and not just in the vicinity of the Airport, provided that it is in the interest of the safety of aircraft, which in effect, of course, also means in the interests of the people of Hong Kong.

In proposing this amendment, however, the Government appreciates that certain tall buildings already exist or are in process of erection in parts of the Colony which might be affected by Orders made under these wider powers of control. Not all these buildings may in themselves provide an unacceptable hazard to aircraft and in clause 3 of the Bill, therefore, provision is made to allow exceptions to be made in special cases.

This Bill, Sir, seeks to safeguard the interests not only of aircraft operating into and out of Hong Kong and their passengers but also the residents of Hong Kong in general and I commend it to honourable Members. At the same time I should like to add that the Government will be considering proposals to extend the application of the Ordinance to certain new areas as soon as the Bill becomes law. In order to reduce the period of uncertainty for prospective developers, I wish to give notice that I intend, provided no difficulties arise, to move the second and third readings of this Bill at the next meeting of the Council.

Your Excellency, I beg to move.

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: —

In view of the intensive development taking place in certain areas at Hong Kong, it is intended that early consideration should be given by the Governor in Council to the necessity for restricting the height of buildings in such areas in the interest of the safety of aircraft. It may, however, be possible to exclude buildings in the course of construction from the operation of any order that may be made for that purpose. Accordingly, clause 3 of this Bill seeks to empower the Governor in Council to exclude particular buildings and particular areas from the

operation of an order under subsection (1) of section 3 of the Hong Kong Airport (Control of Obstructions) Ordinance 1957.

LAW REVISION (MISCELLANEOUS AMENDMENTS) BILL 1966

THE ATTORNEY GENERAL moved the First reading of a Bill intituled "An Ordinance to make amendments to miscellaneous Ordinances for the purpose of facilitating the preparation of the revised edition of the laws".

He said: —Sir, the Bill before Council is prefaced by a Preamble which explains the authority for its introduction as a Bill which seeks to effect the amendment of some forty-five separate Ordinances and subsidiary legislation. A Bill of this nature is commonly described as an omnibus Bill because it deals with the amendment of a variety of legislation covering diverse and unconnected subjects.

The amendments are set out in the Schedule to the Bill which, for convenience, is in two Parts: Part I contains Ordinances and Part II subsidiary legislation. The contents of the two Parts are in turn set out according to the dates of the commencement of the Ordinances or their chapter numbers as they appear in the 1950 Revised Edition of the Laws. Parts I and II of the statement of the Objects and Reasons set out in detail the purpose of each proposed amendment; the amendments are, for the most part, of a relatively unimportant nature. They include amendments, the need for which has been observed and noted over the years since the enactment of the 1950 Revised Edition, and amendments seen to be necessary or desirable in the course of the Commissioner's work on the current revision of the laws. Sir, if this Bill is enacted, the amendments effected by it will be incorporated into the new revised edition, work on which is now almost completed. In order not to complicate by amendment the existing edition of Ordinances and annual volumes, the amendments included in this Bill are intended to have effect only from the day on which the new revised edition of the laws shall come into operation by virtue of an order made under subsection (1) of section 11 of the Revised Edition of the Laws Ordinance 1965.

Sir, I 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: —

Section 6 of the Revised Edition of the Laws Ordinance 1965 provides that omissions or amendments other than those authorized by

sections 4 and 5, although not in *pari materia*, may be combined in one or more Ordinances. They have been collected and are now combined in one Ordinance for submission to the Legislative Council for enactment. The embodiment of unconnected items of legislation in one Bill would be contrary to the principles of legislative drafting, were it not for the express power given to the commissioner for purposes connected with the revised edition.

2. The items of amendment or repeal of Ordinances, which take effect, because they are not of an urgent nature, on such day as the Governor may order that the revised edition prepared under the authority of the Revised Edition of the Laws Ordinance 1965 shall come into operation, are set out in the Schedule to the Bill. For convenience, amendments to Ordinances are placed in Part I of the Schedule and those to subsidiary legislation are set out in Part II thereof. The following are the reasons for the items of amendment proposed and correspondingly numbered in Part I and Part II of the Schedule—

PART I.

1. As the piece of land set apart as a burial ground for Christians is incorporated in the plan of the Colonial Cemetery deposited in the Land Office pursuant to subsection (3) of section 114 of the Public Health and Urban Services Ordinance 1960 (No. 30 of 1960), it is not considered necessary to keep in force the Christian Burial Ground Ordinance 1909 (No. 38 of 1909) and it is, therefore, repealed.

2. The Japanese Residents Association Ordinance 1927 (No. 7 of 1927) is repealed as it ceased to exist when war broke out between His late Majesty King George the Sixth and Japan as proclaimed on the 8th December, 1941, by Proclamation No. 12 of 1941.

3. The Public Works Loan Redemption Ordinance 1933 (No. 15 of 1933) is repealed because its purpose expired on 1st August, 1933, when the 1933 Conversion bonds were redeemed in full.

4. The Dollar Currency Notes Ordinance 1935 (No. 42 of 1935) is amended because the title "Treasurer" is no longer in use.

5. The Sterling Salaries Conversion Ordinance 1937 (No. 24 of 1937) is repealed as salaries of all Government servants are now paid in Hong Kong dollars and there is no further need for the Ordinance.

6. The Urban Council (Transitional Provisions) Ordinance 1946 was enacted to permit the Urban Council to function temporarily without elected members. The Urban Council Ordinance, Chapter 101 of the Revised Edition 1950, was repealed and replaced by the Urban Council Ordinance 1955. It is, therefore, considered advisable to remove this Ordinance from the Statute Book by its repeal.

7. The Divorce (Validity) (Dalziel) Ordinance 1947 (No. 28 of 1947) is repealed. By reason of section 10 of the Interpretation Ordinance, Chapter 1, any right, privilege or obligation of the persons mentioned in the Ordinance is not affected.

8. Subsection (1) of section 12 of the Supreme Court Ordinance, Chapter 4, is repealed and replaced because, as presently worded, it could be interpreted to mean that, at least, three judges must sit to form the Court. This is clearly not intended. The amendment of paragraph (b) of subsection (1) of section 37 is necessary because of the abolition of the Summary Jurisdiction of the Supreme Court and the establishment of the District Court of Hong Kong.

9. The Bankruptcy Ordinance, Chapter 6, is amended—

(a) in subsection (2) of section 34, since there is no mention of any order previously. The substitution conforms to the expressions used in subsections (1), (3) and (7);

(b) in subsection (1) of section 38, paragraphs (b) and (c), on the strength of *re. Smith* (1886, 17 QBD 4);

(c) in subsection (2) of section 93, because the prescribed form is an affidavit. In section 2 of the Ordinance "affidavit" is defined to include statutory declaration but there is no definition of the latter instrument.

10. Section 2 of the Distress for Rent Ordinance, Chapter 7, is repealed and replaced because of the abolition of the Summary Jurisdiction of the Supreme Court.

11. Section 10 of the Chinese Partnerships Ordinance, Chapter 31, is amended because, as presently worded, the provision for the recovery of duty and interest thereon conflicts with the provisions of section 13 of the Crown Proceedings Ordinance 1957 (No. 18 of 1957).

12. The Foreign Copper Coin Ordinance, Chapter 67, is repealed as it is not considered necessary to keep it in operation.

13. The Foreign Silver and Nickel Coin Ordinance, Chapter 69, is repealed as it is no longer required. As far as silver is concerned, the Ordinance became obsolete when the Colony went off the silver standard.

14. The Imbecile Persons (Introduction) Ordinance, Chapter 78, is repealed as it is considered that the Director of Immigration has adequate powers under the Immigration (Control and Offences) Ordinance 1958 (No. 34 of 1958) to deal with the categories of persons mentioned in the Ordinance.

15. The Pensions Ordinance, Chapter 89, is amended—

(a) in the definition "public service" in subsection (1) of section 2, by the addition of a new paragraph (g) in order to make

service in the service of the Interim Commission for the West Indies a public service within the meaning of the Ordinance;

- (b) in section 18, by the insertion of a comma after the word "pension" and the substitution of the words and comma "a pension, allowance" for the words "an allowance" to cure a defect as there cannot be any doubt that the intention of the section is also to allow the period up to the 15th March, 1946, to be regarded for pension purposes.

16. Section 12 of the Crown Rents (Apportionment) Ordinance, Chapter 125, is amended by the deletion—

- (a) in subsection (1), of the manner in which fees are to be paid as it is considered unnecessary so to specify;
- (b) of subsection (2) because of the repeal of the Supreme Court (Summary Jurisdiction) Ordinance, Chapter 5.

17. The Rice Ordinance, Chapter 146, is repealed as it is considered that there is, no longer, any justification for its retention.

18. The purpose of the amendment of subsection (2) of section 3 of the Nursing and Maternity Homes Registration Ordinance, Chapter 165, is to increase the registration fee from five dollars to twenty-five dollars. The fee of five dollars has not been altered since the enactment of the Ordinance in 1936.

19. Subsection (1) of section 29 of the Pawnbrokers Ordinance, Chapter 166, is amended to make it clear that the term of imprisonment is six months according to the Gregorian calendar. The amendment is necessary because "month" is defined in section 2 of the Ordinance as meaning a Chinese lunar month.

20. The amendment to section 7 of the Places of Public Entertainment Ordinance, Chapter 172, is made to conform to present legislative drafting practice which is to place such a provision in a subsection.

21. The Representation of Foreign Powers (Control) Ordinance, Chapter 191, is repealed as it has proved to be of no practical value.

22. Subsection (2) of section 15 of the Industrial and Reformatory Schools Ordinance, Chapter 225, is amended to cure a defect by the addition of "District Court". Subsection (1) was amended by Ordinance No. 32 of 1959, section 3, but consequential amendment of subsection (2) was overlooked.

23. Sections 2 and 17 of the Magistrates Ordinance, Chapter 227, are amended because of amendments to the Schedule to the Legal

Officers Ordinance, Chapter 87, by G.N.A. 124/61 and L.N. 31/64 which added the following—

Principal Crown Solicitor, Senior Crown Solicitor, Crown Solicitor, Deputy Public Prosecutor, Law Draftsman, The Crown Solicitor and Assistant to the Law Officers.

24. Subsection (3) of section 28 of the District Watch Force Ordinance, Chapter 230, is amended because of the repeal of the Supreme Court (Summary Jurisdiction) Ordinance, Chapter 5, and also because the deleted words are in conflict with section 13 of the Crown Proceedings Ordinance 1957 (No. 18 of 1957).

25. The Naval Establishments Police Ordinance, Chapter 231, is repealed as the Admiralty no longer maintains a Police Force in Hong Kong.

26. The Hongkong and Shanghai Banking Corporation (Reconstruction of Records) Ordinance, Chapter 253, is repealed as it has served the purpose for which it was enacted.

27. The War Damaged Sites Ordinance, Chapter 264, is repealed as it has served its purpose.

28. The Hop Yat Tong Church of Christ Hong Kong Incorporation Ordinance, Chapter 290, is amended—

(a) in section 2, because the term “corporation sole” is incorrect;

(b) in section 6, because the word "corporate" is superfluous.

29. Section 7 of the Secretary for Chinese Affairs Incorporation Ordinance, Chapter 310, was repealed and replaced by Ordinance No. 24 of 1950 in the course of law revision. A check in the Land Office registers reveals that several lots listed in the Schedule to the original Ordinance (which are registered in the Land Office) had already been disposed of, either in whole or in part, by the corporation before the coming into effect of Ordinance No. 24 of 1950. The replacement of section 7 should therefore have read "except such of the same as have been or may at any time be disposed of etc.". The purpose of the amendment is to state correctly the situation then existing.

30. Subsection (1) of section 4 of the Trustees of the Chater (Cathedral and St. Andrew's Endowment Funds Incorporation Ordinance, Chapter 316, should have been omitted as a spent provision in the 1950 Law Revision. It was not done. Instead the subsection was amended in accordance with G.N. 1212/50, which now makes it necessary to repeal the subsection by a substantive provision.

31. The Merchant Shipping Ordinance 1953 is amended—

(a) in subsection (2) of section 16, to remove the conflict with section 13 of the Crown Proceedings Ordinance 1957 (No. 18 of 1957);

- (b) in subsection (4) of section 5, to conform to the amendments effected by the Code of Civil Procedure (Amendment [Crown Proceedings]) Rules 1957 (G.N.A. 82/57).

32. The Workmen's Compensation Ordinance 1953 (No. 28 of 1953) is amended—

- (a) in section 3 by—

(i) the replacement of the definition "Commissioner of Labour" by a new definition to avoid the cumbersome repetition of the title "Commissioner of Labour" throughout the Ordinance;

(ii) the replacement of the definition "medical practitioner" by a new definition because of the enactment of section 28 of the Medical Registration Ordinance 1957 (No. 25 of 1957). The replacement limits the definition for the purpose of the above Ordinance to those medical practitioners who are registered under the Medical Registration Ordinance 1957 and to those deemed to be registered under paragraph (a) or (b) of section 28 thereof;

- (b) in subsection (1) of section 5, to remove the conflict which at present exists between the period mentioned therein and the period mentioned in paragraph (b) of the proviso to subsection (1) of section 9;
- (c) in subsection (1) of section 32, by the deletion of the comma and the word "forms" as a consequential amendment because of the introduction of a new section 33A;
- (d) by the addition after section 33 of a new section 33A as it is not considered necessary to approach the Governor in Council to prescribe forms or whenever a form requires amendment.

33. Subsection (2) of section 6 of the J. E. Joseph Trust Ordinance 1954 (No. 3 of 1954) is amended on the recommendation of the Director of Audit to permit of the waiver of past interest.

34. Subsection (2) of section 4,6f the Education Scholarships Fund Ordinance 1955 (No. 67 of 1955) is amended to put beyond doubt to whom payments out of the Fund may be made.

35. Subsection (6) of section 23 of the Buildings Ordinance 1955 (No. 68 of 1955) is repealed and replaced and subsection (9) thereof is repealed because the provisions conflict with the provisions of section 13 of the Crown Proceedings Ordinance 1957 (No. 18 of 1957).

36. Subsection (6) of section 15 of the Hong Kong Airport (Control of Obstruction) Ordinance 1957 (No. 27 of 1957) is repealed and replaced as it also conflicts with the provisions of section 13 of the Crown Proceedings Ordinance 1957 (No. 18 of 1957).

37. Section 9 of the Registered Trustees Incorporation Ordinance 1958 (No. 24 of 1958) is amended because "trustee" is preferred to the awkward expression "member of a corporation" and there can be no ambiguity as to its meaning.

38. A new section 32 (Saving the rights of the Crown) is added to the Public Transport Services (Hong Kong Island) Ordinance 1960 (No. 4 of 1960) to make good an omission.

39. A section saving the rights of the Crown is added as section 30 of the Public Transport (Kowloon and New Territories) Ordinance 1960 (No. 5 of 1960). This provision was inadvertently omitted from the Ordinance.

40. The Marine Insurance Ordinance 1961 (No. 21 of 1961) is modelled on the Marine Insurance Ordinance 1958 of the Colony of Aden which follows closely its English counterpart 6 Edw. 7 c. 41. The penalty in subsection (1) of section 92 was inadvertently left at one hundred pounds. The amendment substitutes two thousand dollars for that sum.

41. The Second Schedule to the Preventive Service Ordinance 1963 (No. 25 of 1963) is consequentially amended because of the repeal of the Foreign Copper Coin Ordinance (Chapter 67) and the Foreign Silver and Nickel Coin Ordinance (Chapter 69). See items 12 and 13.

PART II.

42. The present definition of ship in rule 2 of Article I of the Carriage by Sea under Bills of Lading Rules (Vol. VIII, p. 278) made under the Carriage of Goods by Sea Ordinance, Chapter 46, is no longer appropriate with the repeal, by the Merchant Shipping Ordinance 1953 (No. 14 of 1953), of the Merchant Shipping Ordinance 1899 (No. 10 of 1899). The amendment introduces a new definition of ship.

43. The penalty of imprisonment for three months prescribed in by-law 14 of the "Star" Ferry Company, Limited, By-laws (G.N.A. 43/59) made under the "Star" Ferry Company (Service) Ordinance 1951 (No. 41 of 1951) is ultra vires the by-law making power of the Company contained in section 6 thereof. The amendment is made to cure the defect.

44. The Road Traffic (Driving Licences) Regulations 1956 (G.N.A. 88/56) were made under the Vehicle and Road Traffic Ordinance (Chapter 220) and by virtue of section 9(2) of the Interpretation Ordinance, Chapter 1, continue to have the like effect as if they had been made under the Road Traffic Ordinance 1957 (No. 39 of 1957). The amendment is made to the First Schedule of the Road Traffic (Driving Licences) Regulations 1956 because the difference in conception of mental treatment under the Mental Hospitals Ordinance, Chapter

136, now repealed, and under the Mental Health Ordinance 1960 (No. 35 of 1960) is such that the amendment is considered necessary to bring the local law into line with the United Kingdom procedure.

45. The Schedule to the District Court Civil Procedure (Fees) Rules 1963 (L.N. 26/63) is amended to insert opposite item 6 a fee of \$6.00, which was inadvertently omitted from the Rules when they were first printed for enactment.

PRISONS (AMENDMENT) BILL 1966

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

He said: — Sir, a new rank structure was introduced in the Prisons Department in 1962, and certain posts have been added to the prisons establishment at various times since 1960. Sir, this Bill is a simple one whose main object is to give effect to these changes.

Sir, I 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: —

This Bill seeks to make such amendments to the Prisons Ordinance 1954 as are necessary in consequence of changes in the establishment and rank structure of the Prisons Department and in the titles of certain posts in the Department.

NEXT MEETING

HIS EXCELLENCY THE GOVERNOR: — That concludes the business for today. The next meeting of Council will be held on 20th April.