

OFFICIAL REPORT OF PROCEEDINGS**Meeting of 20th 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 MICHAEL DENYS ARTHUR CLINTON, GM
ACTING 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 TSE YU-CHUEN, OBE
THE HONOURABLE KENNETH ALBERT WATSON, OBE
THE HONOURABLE WOO PAK-CHUEN, 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 TANG PING-YUAN

MINUTES

The Minutes of the meeting of the Council held on 6th April 1966 were confirmed.

LIBRARY ORDINANCE 1965

MR G. M. TINGLE moved the following resolution: —

Resolved, pursuant to subsection (4) of section 4 of the Library Ordinance 1965, that the Library By-laws 1966, made by the Urban Council on the 8th day of March, 1966, under section 4 of that Ordinance, be approved.

He said: —Your Excellency, the purpose of the Library By-laws 1966, made by the Urban Council on the 8th March and now before honourable Members for approval, is to make provision for the operation of public libraries, both reference and lending, including such matters as times of opening and closing, conditions for the issuing and use of borrowers' tickets, return of books, fines, and damage to books. Provision is also made for proper behaviour within libraries. None of the by-laws calls for special comment.

THE COLONIAL SECRETARY seconded.

The question was put and agreed to.

INLAND REVENUE (AMENDMENT) BILL 1966

THE ACTING FINANCIAL SECRETARY moved the First reading of a Bill intituled "An Ordinance further to amend the Inland Revenue Ordinance."

He said: —Your Excellency, in Mr COWPERTHWAITTE'S Budget Speech on the 24th February, he gave notice of three amendments to the Inland Revenue Ordinance which would be introduced to this Council as soon as possible. This notice was given so that, if approved, the changes could take effect retrospectively from 1st April 1966.

The Bill now before Council is designed to give effect to these amendments. They are explained in the Objects and Reasons and I do not think it is necessary today to justify them as this has already been done in the Budget Debate. I shall therefore confine myself to a few points where further explanation may be desirable.

The most important amendment deals with the increase of the standard rate of tax applicable to all parts of the Ordinance from 12½% to 15%. The proposal to raise the rate by 2½% was taken in the face of the virtual certainty of a substantial deficit not only in respect of

1965/66 but also in respect of the current financial year. The necessity for this measure was argued at length by Mr COWPERTHWAIT in his Budget Speeches. It is estimated that the new rate will be revenue productive to the extent of approximately \$56 million in this financial year and \$67 million in 1967/68 when the increased rate will apply to practically all assessments.

In so far as salary tax is concerned, the irregular progression in the rates in the proposed Second Schedule is occasioned by the desire to soften the impact of the increase on the lower taxable income groups by setting the progression steps at 2¾% up to a net chargeable income of \$20,000; then 3% steps up to a chargeable income of \$45,000 and thereafter a final step of 4% to reach the full 20% increase. This can best be illustrated by taking the case of a married man with two children. The incidence of the new tax, if he enjoys a gross income of \$23,000 a year, will have the effect of making him pay annually an extra \$12.50 or 10% more than he pays at present; and if he earns \$43,000 a year, additional tax payable will be \$200 p.a. or nearly 11% extra. If he earns \$73,000 p.a., he will pay an additional of \$1,200 a year or 15% extra and if he earns \$88,000 p.a. he will pay \$2,200 or 20% extra. No one will pay more than a total of 15% of his gross income.

There is a minor difficulty concerning liability to interest tax under Part V of the Ordinance which I should mention. Interest arises at the time the interest becomes due for payment so that interest accruing in respect partly of 1965/66 and partly of 1966/67 but payable in 1966/67 is chargeable at the new rate. Furthermore, the payers of interest are required to deduct tax at the standard rate chargeable at the date interest is paid or credited. Because the Bill is retrospective to the 1st April 1966, interest falling due between that date and the passing of the Bill should be chargeable with tax at the revised higher rate, but it is proposed that interest tax for this period should be collected only at the old rate. It would require complicated provisions to deal with the position statutorily, particularly in respect of interest payable to banks or incorporated companies which pay profits tax and not interest tax on interest received. It is, therefore, proposed to deal with the problem administratively and the Commissioner of Inland Revenue has already notified banks that interest tax is deductible at 12½% only where interest has been paid or credited prior to the date of passing of the Bill.

The other comparatively important amendment, which is effected by Clause 3 of the Bill, should be beneficial to many persons who have to pay salaries tax on lump sum payments granted on retirement, on gratuities on completion of a contract or on back-dated salary awards. This amendment permits the spreading of such lump payments at the

option of the taxpayer over the period for which the services have been rendered subject to a maximum of 3 years. Initially, it was not intended to give a taxpayer the option but in the light of representations, and because it was demonstrated that by not permitting an option not to spread, the probability was that many taxpayers would in fact find the provision which is intended to give relief working to their detriment.

The third amendment concerns the taxation of certain pensions. As the law stands at present, pensions arising in Hong Kong and paid to non-residents are not chargeable to tax in Hong Kong. This exemption is contrary to the principles of the Colony's tax system, which is based on source of income, not on the residence of the receiver of income, and its effect is to transfer to authorities elsewhere, tax which should properly be payable in the Colony. In future these pensions will be taxable in the Colony but this will not financially affect most pensioners as such tax is usually allowed as relief against any tax payable on the pension in the country of residence; and in some countries pensioners will be totally exempted from local tax if the pension is chargeable to Hong Kong tax.

Sir, I realize that any moves to increase taxation are bound to be unpopular but I would remind this Council that even with the increase in the standard rate to 15% Hong Kong's direct taxation structure is still one of the lowest in the world.

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 threefold; first, to implement the proposal of the Financial Secretary in his Budget Speech to increase the standard rate of taxation and amend the rates at which salaries tax shall be charged; secondly, to make pensions paid to a person who has left the Colony permanently, taxable in the Colony; and thirdly, to provide a more equitable method of taxing certain types of lump sum payment where the payments relate to services performed over a period extending into two or more years of assessment.

2. At present pensions paid in the Colony to a person who has left the Colony permanently, are not included as income arising in or derived from the Colony for the purposes of taxation although such pensions payable to persons who have not left the Colony permanently

are included. Clause 2 deletes this exemption, thus making such pensions arising in or derived from the Colony liable to tax in the Colony. However, wound and disability pensions granted to members of Her Majesty's Forces and sums received by way of commutation of pension from an approved retirement scheme still remain exempt.

3. At present, lump sum payments paid upon the termination of a person's employment, such as a gratuity or a retiring bonus, are taxable in the year of assessment in which the income accrues. A similar position applies in the case of lump sum payments of salary and wages paid pursuant to an award which may have retrospective effect over a period greater than a year. The purpose of clause 3 is to provide for the spreading of such payments at the option of the recipient over the periods to which the services, in respect of which the payment is made, relate, such spread to be limited to a period of three years. Taxpayers are given an option to spread because otherwise this provision would detrimentally affect some taxpayers. Thus to obtain the benefits of this provision it will be necessary for the taxpayer to make application to the Inland Revenue Department.

4. Clause 4 increases the standard rate of taxation from twelve and one-half per cent to fifteen per cent in line with the proposal made by the Financial Secretary in his Budget Speech.

5. Clause 5 adds the new rates of salaries tax chargeable as a result of the increase in the standard rate.

PHARMACY AND POISONS BILL 1966

DR TENG PIN-HUI moved the First reading of a Bill intituled "An Ordinance to consolidate and amend the law relating to pharmacy and poisons."

He said: —Your Excellency, as the long title suggests the main purpose of the Bill is to consolidate and clarify legislation that has become confusing through frequent amendment since it was first enacted in 1938. In fact with a few important exceptions, which I shall explain in detail, the Bill makes little significant change in the legislative position.

The Bill provides a more rational arrangement of material; related subjects are grouped together in logical sequence and the most important changes which will result from the enactment of this Ordinance concern the Pharmacy Board whose powers are codified and somewhat extended. The post of Registrar which was formerly held by the Director of Medical and Health Services has now been abolished; the powers vested in the Registrar in person, including disciplinary powers in respect of pharmacists have been more appropriately transferred to

the Board. The Director remains as before Chairman of the Board and its disciplinary powers are subject to appeal to the Supreme Court.

The responsibility for prescribing the Poisons Lists is now placed on the Board subject to the approval of this Council; this will greatly facilitate the making of the amendments and additions which are so often necessary as and when new drugs are placed on the market. The confusion which exists between the main list and the subsidiary lists will be avoided by a more logical and straightforward classification.

The power to make regulations is also vested in the Board, again subject to the approval of this Council. The opportunity has been taken to revise and bring up to date the list of subjects in respect of which regulations may be made and to draw more clearly the distinction between the Ordinance and its Regulations. For example, two sets of Regulations, that is the Appointment of Examiners Regulations and the Pharmacists Holding Diplomas (Registration) Regulations are repealed and their contents incorporated into the Ordinance where they more appropriately belong.

A small but significant addition which has been newly introduced into the Bill is the power to make regulations to control the manufacture of pharmaceutical products. This was a matter of negligible importance when the present law was enacted but drug manufacture in Hong Kong has now become an established industry which is growing in size and complexity and some measure of control is essential in the public interest. Furthermore there is now an important export trade in locally manufactured drugs and the requirements of importing countries in regard to certification make it essential that manufacture be subject to official inspection.

The Bill was drafted by a sub-committee of the Pharmacy Board and one of the three representatives of the trade who are members of the Board sat on this sub-committee. The Hong Kong General Chamber of Commerce and the Pharmaceutical Trade Federation were also invited to comment and have signified their approval of the draft Bill.

Since there has been considerable redistribution of subject matter between the Ordinance and Regulations some difficulty would be caused if the Ordinance came into force before the Regulations. Provision has therefore been made for both the Ordinance and subsidiary legislation to be brought into force simultaneously. The Regulations are, in fact, in the final stages of drafting; when the Ordinance has been enacted by this Council the Pharmacy Board will be re-appointed and will then proceed formally to make the Regulations and to prescribe the poisons lists. The date on which the new legislation will come into operation will then be announced by proclamation.

A detailed clause by clause explanation of the provisions of the Bill and of the points on which the new Bill differs from the present Ordinance is given in the draft "Objects and Reasons" appended to the Bill, but I would draw the attention of honourable Members to Clause 35 which provides that nothing in the Bill shall be construed in any way to affect the sale, manufacturing or dispensing of traditional Chinese medicines provided no poisons are used therein.

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 consolidates and amends to law relating to Pharmacy and Poisons.

2. The Pharmacy Board is given jurisdiction over the sales of poisons within the Colony and has been given the power, to be exercised with the approval of the Legislative Council, to make regulations governing the manufacturing, distribution and sale of poisons and to control persons engaged in these activities.

3. One of the principal regulation-making functions of the Board will be to classify various substances as poisons and to restrict the sales of certain types of poisons by including the same in Part I of the Poisons List.

4. Clauses 3 and 4 constitute the Pharmacy Board and provide for the term of appointment of members, other than *ex officio* members, to be for not more than three years. The powers of the Chairman of the Board are also set out. Clauses 15, 16, 18 and 19 define the powers of the Board to discipline certain persons under its jurisdiction. There is a right of appeal against any disciplinary decision of the Board to the Supreme Court. The Chief Pharmacist of the Medical and Health Department is excluded from taking part in any deliberation of the Board on disciplinary matters as, in practice, he would be the person responsible for the preliminary investigation into any alleged misconduct.

5. Clauses 5 to 10 deal with the registration of pharmacists. Clause 8 sets out the qualifications for registration and replaces the Pharmacists Holding Diplomas (Registration) Regulations.

6. Clause 11 provides for certain persons to be authorized sellers of poisons if the sale of poisons is conducted at registered premises by or in the presence and under the supervision of a registered pharmacist.

An authorized seller of poisons is not required to be registered as such but is required to register each year each set of premises where he conducts his business and to supply the Board with a return showing the names of the registered pharmacists engaged in the sale of poisons in such premises. An authorized seller of poisons must have a registered pharmacist present at his premises for not less than two-thirds of the hours of each day when such premises are open for business (clause 2). An authorized seller is the only class of person entitled to sell poisons included in Part I of the Poisons List to the general public, and of course, he is also entitled to sell poisons included in Part II of the Poisons List.

7. Clause 23 limits (unless the provisions of this clause are dispensed with or relaxed by regulations) the sale of poisons included in Part I of the Poisons List to persons who are fit and proper to receive such poisons and are either known to the authorized seller or a registered pharmacist in his employment, or who are in possession of a certificate certifying their fitness to receive such poisons. All such sales shall be recorded in a poisons book which will be signed by the purchaser and counter-signed by the registered pharmacist effecting the sale.

8. Apart from acquiring poisons under the provisions of clause 23, any person who is found with such a poison in his possession will be presumed to have obtained it unlawfully and if that person occupies retail premises he will be presumed to have such poison in his possession for the purpose of unlawful sale.

9. Clause 26 sets up a second category of persons entitled to sell poisons at retail. These persons are called listed sellers of poisons and shall be licensed by the Board to sell a class or classes of poisons included in Part II of the Poisons List from specific premises. The Board is given certain discretions in refusing the application of any person to become a listed seller of poisons. Persons at the present time entitled to conduct the sale of poisons included in Part II of the Poisons List are deemed to be licensed to sell all classes of poisons in that Part of the List until the 1st day of January, 1967 which is the start of the next licensing year. These persons do not possess licences and generally operate businesses of the medicine shop type. Since the poisons included in this Part of the Poisons List are less dangerous than those included in Part I, there is no requirement for a listed seller of poisons to employ a registered pharmacist.

10. Clause 28 re-enacts the existing provisions relating to the labelling of poisons. A change has been made in the interpretation clause of the definition of the term "labelled". The present definition requires all labels to be in both English and Chinese. In practice this has not been observed and indeed a number of particulars with which pharmaceutical products must be labelled are not capable of being rendered into Chinese. The new definition merely describes the nature of the

label and detailed provisions as to the matters required to be labelled are dealt with elsewhere. In regulations to be made under this Bill, provision will be made for all instructions and warnings to users of medicines and poisons to be labelled clearly in both English and Chinese.

11. Clause 29 provides an exemption from the provisions of clause 23 (entries in poisons books) and clause 28 (the general labelling provisions) in respect of medicines. These provisions re-enact the existing law and provide separately for the keeping of records of sales of medicines, the retention of prescriptions and the labelling of medicines.

12. Clause 30 sets out the powers of the Board to make regulations. The powers given here are very similar to those in the present Ordinance. The only important addition being the power to provide for the licensing and controlling of manufacturers of pharmaceutical products.

13. Clause 31 re-enacts the existing exemption from the provisions of the Bill (unless otherwise extended specifically by regulations) to sales by wholesalers, sales of poisons to be exported, sales of substances for medical, dental and veterinary use, and the sales of substances to persons requiring the same for industrial purposes.

14. Clause 33 provides for the appointment of inspectors to enforce the provisions of the Bill and regulations made thereunder. The only new provision is contained in sub-clause (2)(b) where an inspector is given the power to enter and search any premises where he has reasonable cause to suspect poisons are being sold by a person not authorized to do so. Before exercising these powers the inspector must produce his authority as an inspector to the occupant of the premises.

15. Clause 35 is new and provides that nothing in the Bill shall be construed in any way to affect the sale, manufacturing or dispensing of traditional Chinese medicines provided no poisons are used therein.

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

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

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 to 3 were agreed to.

Council then resumed.

THE COLONIAL SECRETARY reported that the Hong Kong Airport (Control of Obstructions) (Amendment) Bill 1966 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.

NEXT MEETING

HIS EXCELLENCY THE GOVERNOR: —That concludes the business for today. The next meeting of Council will be held on the 4th May.