OFFICIAL REPORT OF PROCEEDINGS

Wednesday, 5th November 1969

The Council met at half past Two o'clock

[MR PRESIDENT in the Chair]

PRESENT

HIS EXCELLENCY THE ACTING GOVERNOR (*PRESIDENT*)
SIR HUGH (SELBY) NORMAN-WALKER, KCMG, OBE, JP
THE HONOURABLE THE COLONIAL SECRETARY (*ACTING*)
MR DAVID RONALD HOLMES, CMG, CBE, MC, ED, JP
THE HONOURABLE THE ATTORNEY GENERAL
MR DENYS TUDOR EMIL ROBERTS, OBE, QC, JP
THE HONOURABLE THESECRETARY FOR HOME AFFAIRS (*ACTING*)
MR PAUL TSUI KA-CHEUNG, OBE, JP
THE HONOURABLE THE FINANCIAL SECRETARY
SIR JOHN (JAMES) COWPERTHWAITE, KBE, CMG, JP
DR THE HONOURABLE TENG PIN-HUI, CMG, OBE, JP
DIRECTOR OF MEDICAL AND HEALTH SERVICES
THE HONOURABLE ROBERT MARSHALL HETHERINGTON, DFC, JP
COMMISSIONER OF LABOUR
THE HONOURABLE TERENCE DARE SORBY, JP
DIRECTOR OF COMMERCE AND INDUSTRY
THE HONOURABLE DAVID RICHARD WATSON ALEXANDER, MBE, JP
DIRECTOR OF URBAN SERVICES
THE HONOURABLE GEORGE TIPPETT ROWE, JP
DIRECTOR OF SOCIAL WELFARE
THE HONOURABLE JAMES JEAVONS ROBSON, JP
DIRECTOR OF PUBLIC WORKS
THE HONOURABLE JOHN CANNING, JP
DIRECTOR OF EDUCATION
THE HONOURABLE KAN YUET-KEUNG, CBE, JP
THE HONOURABLE FUNG HON-CHU, OBE, JP
THE HONOURABLE TSE YU-CHUEN, OBE, JP
THE HONOURABLE KENNETH ALBERT WATSON, OBE, JP
THE HONOURABLE WOO PAK-CHUEN, OBE, JP
THE HONOURABLE SZETO WAI, OBE, JP
THE HONOURABLE WILFRED WONG SIEN-BING, OBE, JP
THE HONOURABLE ELLEN LI SHU-PUI, OBE, JP
THE HONOURABLE WILSON WANG TZE-SAM, JP
THE HONOURABLE HERBERT JOHN CHARLES BROWNE, JP
DR THE HONOURABLE CHUNG SZE-YUEN, OBE, JP
THE HONOURABLE LEE QUO-WEI, OBE, JP
THE HONOURABLE GERALD MORDAUNT BROOME SALMON, JP

ABSENT

THE HONOURABLE DONALD COLLIN CUMYN LUDDINGTON, JP
DISTRICT COMMISSIONER, NEW TERRITORIES

IN ATTENDANCE

THE DEPUTY CLERK OF COUNCILS
MR DONALD BARTON

PAPERS

The following papers were laid pursuant to Standing Order No 14(2): —

Subject *LN No*

Subsidiary Legislation: —

Ferries Ordinance.

Excluded Ferries (Ma. On Shan and Ho Tung Lau) (Amendment) Regulations 1969 156

Royal Hong Kong Defence Force Ordinance.

Hong Kong Auxiliary Air Force (Amendment) Regulations 1969 157

Supreme Court Ordinance.

The Rules of the Supreme Court (Amendment) (No 2) Rules 1969 158

Banking Ordinance.

Specification of Special Liquid Assets 159

Sessional Papers 1969-70.

No 16—Annual Report by the Director of Broadcasting for the year 1968-69 (published 30.9.69).

No 17—Annual Report by the General Manager, Railway for the year 1968-69 (published 5.11.69).

Report: —

Report on the operation of Rice Control Scheme in 1968 (published 5.11.69).

ORAL ANSWERS TO QUESTIONS

Mutual funds

1. MR FUNG HON-CHU asked: —

As far as the Companies Ordinance is concerned, what is the position of firms or agents or fund managers soliciting public subscriptions to overseas mutual funds, as to both closed-end and open-end funds, from local residents insofar as complying with the provisions calling for the filing of prospectus and other statutory requirements with the Registrar of Companies prior to soliciting public subscriptions?

If the provisions of the Ordinance do not apply to these firms, agents or fund managers what steps are contemplated by Government to safeguard the interests of local subscribers to such mutual funds?

THE FINANCIAL SECRETARY (SIR JOHN COWPERTHWAITE): —Sir, under section 342(1) of the Companies Ordinance it is not lawful for any person to issue, circulate or distribute in the Colony any prospectus offering *for subscription*—I stress for subscription—shares in a company incorporated outside the Colony unless a copy of the prospectus, certified by the chairman and two other directors of the company as having been approved by resolution of the managing body, has previously been delivered to the Registrar of Companies. The particulars that must be contained in such a prospectus are listed in section 343 and included (by reference to Part I of the Third Schedule) the amount payable on application and allotment of each share.

Accordingly when an investment company or mutual fund makes a block offer of its shares for subscription at a fixed price it is required to file a prospectus containing the prescribed particulars. Where, however, as is normally the case, it is offering its shares as a continuous process at prices fluctuating with those of the underlying securities, it is clearly impossible from a practical standpoint for the company to comply with the provisions, which, being based on those of the 1929 Act in Britain, were not drafted with this type of case in mind.

As to the second part of my honourable Friend's question it is recognized that this position is very unsatisfactory, and that the law will have to be extended to cater for mutual funds. This is a matter falling within the purview of the Companies Law Revision Committee, which will I understand be making recommendations thereon.

MR FUNG: —Sir, when is it likely that the report will be ready for us. . . . from the Committee?

HIS EXCELLENCY THE PRESIDENT: —I'm sorry, I couldn't hear.

MR FUNG: —When is it likely that the Committee report will be ready for us?

THE FINANCIAL SECRETARY: —I understand, Sir, from the Chairman that the Committee hopes to report by July next year.

MR Y. K. KAN: —Sir, in view of the growth in number of these mutual funds, would it not be considered a matter of urgency that the necessary law should be modified?

Oral Answers

THE FINANCIAL SECRETARY: —Sir, it is difficult, of course, to gauge the urgency of such laws but I understand from the Registrar that there is no evidence so far of any fraud having taken place in connexion with mutual funds.

MR KAN: —Sir, would it not be a case of "prevention better than cure"? (*Laughter*).

HIS EXCELLENCY THE PRESIDENT: —Do you wish to reply?

THE FINANCIAL SECRETARY: —No, I don't think I can reply to that. (*Laughter*).

MR P. C. WOO: —Sir, may I ask whether the Committee can give an interim report, particularly on this point?

HIS EXCELLENCY THE PRESIDENT: —On which point?

MR WOO: —On this point which was raised by Mr FUNG.

HIS EXCELLENCY THE PRESIDENT: —Which of Mr FUNG's points?

MR WOO: —The point whether the report in respect of mutual funds—the question raised by Mr FUNG—the particular point. Whether this point—the mutual fund point—which is so urgent as pointed out by Mr KAN.

HIS EXCELLENCY THE PRESIDENT: —I think I have your question correctly—that, assuming the matter is urgent, could the Committee make an interim report?

MR WOO: —Yes, an interim report particularly on this point.

THE FINANCIAL SECRETARY: —I can certainly ask the Chairman whether he can do so. I understand he has been conducting a fairly thorough study of the situation of the legislation in other countries. Whether he is ready to make a recommendation, I do not know.

Explosives on building sites

2. MR SZETO WAI asked: —

> In view of the recent revival of building activities, would Government review its policy and regulation in regard to the restriction on the use of explosives on building sites?

MR R. M. HETHERINGTON: —Sir, restrictions on the use of explosives on building sites or, for that matter, on any approved blasting site are imposed by regulations 46 to 58 of the Dangerous Goods (General) Regulations. They cover such subjects as permission for blasting, employment of authorized persons, handling and preparing of explosives, firing of charges, dealing with misfires, and other special precautions. They are intended to protect the safety of workmen, the general public, and adjacent property. They have proved appropriate in practice and there is no intention to amend them or to review the policy on which they are based. They are necessary whatever the level of building activities.

But, Sir, I am not altogether satisfied in my own mind that this reply adequately covers those aspects of the controls over explosives in which my honourable Friend, Mr SZETO, may be interested.

MR SZETO: —Sir, my question concerns the use of explosives on building sites. The Honourable Commissioner has made distinction between the use and supplies of these. So, may I ask the question—put it in this way—whether Government would like to review the policy and regulations presently governing the restriction of supply of explosives to building sites, or for use on building sites, because at present the sites have explosives supplied only three days in a week?

MR HETHERINGTON: —Sir, I understand now that my honourable Friend, Mr SZETO, is also interested in the storage and supply of explosives, which is a matter of public security, rather than their use, which is a matter of public safety.

It has been the general policy of Government since the autumn of 1967 to restrict the storage of explosives to the Government explosives depot and to prohibit on-site storage. There is no intention that this policy should be changed.

Regulations 4 to 27 of the Dangerous Goods (General) Regulations deal adequately with the storage and conveyance of explosives, both in the present circumstances and in the situation which existed before the autumn of 1967. No review of these regulations is contemplated because it is unnecessary.

The present arrangements for delivering explosives from the Government explosives depot to building sites three times a week appear to satisfy the requirements of the building industry. All sites receive as much explosives as they request under these arrangements. No complaints have been received on the operation of the existing system.

Oral Answers

MR SZETO: —Sir, at present the explosives which could not be used in a day—for the supply of that day—they have to be fired. I wonder whether Government would consider—would be willing to, say—allow these explosives either to return, or to be stored on the site or rather, say, to extend the supply of explosives to building sites more than three days in a week—say four days.

MR HETHERINGTON: —Sir, I think my honourable Friend has asked me three questions. The first one is, would the explosives be allowed to be stored overnight on the site? The answer is no, Sir. It is not intended to change the policy on that. Regarding the return of explosives to the explosives depot, I will certainly look into this matter. As far as more frequent delivery is concerned, I am informed, and I have no reason to doubt this, that the present arrangements are entirely satisfactory. But, if there is some evidence that deliveries will be required more frequently, I will certainly look into it.

MR SZETO: —Thank you, Sir.

Garden Road complex

3. MR SZETO asked: —

> Is Government satisfied with the seemingly slow progress on the construction of the extension of Cotton Tree Drive, and when will the elevated road be completed to relieve traffic congestion on Garden Road?

MR J. J. ROBSON: —Sir, Government is not satisfied with the progress on the contract for the construction of Cotton Tree Drive from Helena May Institute to YWCA which was scheduled for completion by the end of this year but which is now expected to be completed by mid-1970. In fairness to the contractor, however, I should like to add that some of the delays which have been experienced could not have been foreseen.

The completion of this flyover should, to a large extent, relieve the traffic congestion to which my honourable Friend refers and which is at present being experienced at the Kennedy Road/Upper Albert Road/Garden Road junction during peak periods. I do, however, wish to emphasize that I do not consider this congestion as serious and it does not compare with the congestion which exists on many roads in Kowloon.

Further works are programmed for the widening of Kennedy Road and Upper Albert Road and for two elevated roads across Garden Road connecting Upper Albert Road with Cotton Tree Drive

and Kennedy Road. Some of these works have already commenced and the others will be commenced in stages so that traffic flow can be maintained. The whole of these works are expected to be completed by the second half of 1971.

MR SZETO: —Sir, can the Honourable Director tell this Council what was the length of the contract, and whether the contract time was stipulated by the Public Works Department or as required by the contractor in this tender?

MR ROBSON: —Sir, the contract commenced on the 13th of September in 1968. Whether it was the time specified by ourselves or by the contractor, I couldn't say off the cuff. I could, however, inform my honourable Friend of this.

Following is the additional information: —

The position is that the Engineer quoted a maximum of 540 days for completion, but the contractor was requested to insert his own time. He quoted 450 days but this had no influence on the award of the contract as the second lowest tenderer quoted 540 days.

MR Y. K. KAN: —I hope I can be excused, Sir, because my knowledge of English is not quite adequate to cope with answers being read out. We have not been told—unless I am wrong—we have not been told as to what is the exact cause of the delay. I think there was some mention about beyond the control of the contractor or some words to that effect. What is in fact the underlying cause for the delay in the completion of the works?

MR ROBSON: —Sir, in a project such as the one in question, there is usually no single cause for delay—there are multiple causes. For instance, this was a case where you have cranedrivers who operate the large cranes to lift the prestressed concrete beams: and who suddenly find there is a better job for them on containerization and leave the site and go and join another firm. At this moment in time it is very difficult to get experienced cranedrivers. This is a typical example of the type of delay which has occurred. The second case was that the foundation subcontractor had trouble, great trouble with his foundations. If you know this site at all, it is in a valley which is possibly a hundred feet deep full of boulders deposited over ages. And in there flows an underground stream which feeds quite a number of the properties along the way—one of the main streams, I think, in Hong Kong. He had difficulty with his de-watering. But there are usually many, many delays of this nature which compound and you cannot really determine—which were his fault, and which he could not have foreseen and allowed for, until the end of the contract. It would be wrong for me to try to anticipate what the engineer's conclusions will be.

STATEMENT

Report on the Operation of the Rice Control Scheme in 1968

MR T. D. SORBY: —Sir, tabled today is an Information Paper on the operation of the Rice Control Scheme in 1968. It covers in fact, Sir, events up to the end of March 1969, and follows from the second report in this series which I tabled in this Council on 26-th June last year*.

The world rice situation, which in 1967 was basically one of shortage of supplies and high prices, improved sharply in 1968 as a result of good harvests in most producing countries, particularly those in South East Asia. World prices registered a significant decline; the c.i.f. prices for Thai rice, for instance, dropped by some 20% during the past year. Local wholesale prices perhaps, say, inevitably followed this trend.

While prices were falling, registered importers in Hong Kong held, throughout the greater part of last year, very substantial stocks deliberately built up in 1967, and carried over. These stocks, purchased at high prices, depreciated rapidly in price as importers customarily sell on a current replacement cost basis. At the same time they involved the tying up of considerable capital and expenditure on related on-costs. The result was that, with a few exceptions, importers suffered a degree of financial loss. The situation was basically unhealthy and was likely to work, in the long run, against the interests of the consumer.

In short, the sharp contrast between the situation in 1967 and in 1968 threw the local rice market (and, indeed, the world rice market) slightly off balance. A rapid restoration of normal conditions in the trade was imperative, the key to which was a reduction of the expensive stocks held by importers which, set against abundant world supplies, could not be justified. I therefore took steps to reduce these stocks by cutting imports. These steps were effective and some initial increase in prices was quickly checked. Since those days, more normal conditions have prevailed, and supplies and prices have been generally stable. Prices have, if anything, tended to fall.

I believe, the events of successive years confirm, that the basic objective of the Rice Control Scheme, *ie* the maintenance of a plentiful supply of rice to consumers at reasonably stable prices, continues to he realized. My department, Sir, continues to keep a close watch over developments in this trade.

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* 1968 Hansard, page 285.

MARINE STORES PROTECTION (AMENDMENT) BILL 1969

PAWNBROKERS (AMENDMENT) BILL 1969

Bills read the first time and ordered to be set down for second reading pursuant to Standing Order No 41(3).

MARINE STORES PROTECTION (AMENDMENT) BILL 1969

THE ATTORNEY GENERAL (MR D. T. E. ROBERTS) moved the second reading of: —"A bill to amend further the Marine Stores Protection Ordinance."

He said: —Sir, the main object of this bill is to revise those provisions of the Ordinance which deal with licences and which have proved to be inadequate in practice to confer a proper measure of control.

The Marine Stores Protection Ordinance, which is Chapter 143 of the laws, provides that a person shall not carry on business as a marine stores collector or as a dealer in marine stores unless he holds a licence to do so, granted by the Commissioner of Police. Such licence is for no fixed period and may be cancelled by the Commissioner for a breach by the licensee of any provision of the Ordinance or of any regulations which have been made under the Ordinance. There is at present no right of appeal against such a cancellation.

It is proposed, therefore, by clause 3 of the bill, that in future licences should be issued annually by the Commissioner, and, if he refuses to grant or renew a licence, that the applicant should be able to appeal by way of petition to the Governor.

This clause also proposes to insert a new section 4A, Sir, where by if a person holding a licence is convicted of any offence under the Ordinances or one which involves dishonesty and, punishable by imprisonment for not less than 12 months, the court convicting him may order the licence to be suspended or cancelled.

Clauses 4 and 5 of the bill make small consequential amendments and also repeal a section of the Ordinance which is now obsolete.

Clause 6 of the bill enables the forms of application for licences, the duties of dealers and the conditions on which licences may be held to be prescribed by regulations made by the Governor in Council.

Question proposed.

Motion made (pursuant to Standing Order No 30). That the debate on the second reading of the bill be adjourned—THE ACTING COLONIAL SECRETARY (MR D. R. HOLMES).

Question put and agreed to.

Marine Stores Protection (Amendment) Bill—second reading

Explanatory Memorandum

Section 4 of the principal Ordinance is repealed and replaced by two new sections. Subsection (2) of the new section 4 will make it clear that a marine stores dealer's licence and a marine stores collector's licence must be renewed annually; subsection (3) provides for an appeal to the Governor against a refusal to issue or renew a licence. The new section 4A provides that upon conviction of a licensee for any offence under the principal Ordinance or for certain other offences the court may cancel or suspend the licence.

Clause 5 of the Bill repeals section 15 of the principal Ordinance, which is redundant in view of the provision of section 83 of the Interpretation and General Clauses Ordinance (Cap. 1).

The new section 16 will enable the forms of licences and of applications for licences, the duties of licence holders and other related matters to be prescribed by regulations.

PAWNBROKERS (AMENDMENT) BILL 1969

THE ATTORNEY GENERAL (MR ROBERTS) moved the second reading of: —"A bill to amend further the Pawnbrokers Ordinance."

He said: —Sir, the main objects of this bill are firstly to make it more difficult for persons to dispose of stolen property to pawnbrokers and secondly to revise the licensing provisions.

At present, by section 8 of the Pawnbrokers Ordinance, pawnbrokers' licences are issued and renewed annually at the discretion of the Commissioner of Police, though there is a right of appeal to the Governor in Council against a refusal by the Commissioner to grant or to renew a licence.

Clause 3 of the bill replaces section 8, without making any changes of substance, save that the appeal will be to the Governor, instead of to the Governor in Council.

One of the objects of this bill, and of the previous bill which is before honourable Members, is attain to get some of consistency between the way in which licences are dealt with under this bill and under the other one. In addition, clause 3 proposes to insert a new section 8A in the principal Ordinance empowering a court, when convicting a pawnbroker of any offence under the Ordinance, or one involving dishonesty and punishable by not less than 12 months imprisonment,

to order his licence to be suspended or cancelled. There is at present no provision in this Ordinance for the cancellation or suspension of pawnbroker's licence.

Section 25 of the Ordinance at present prohibits a pawnbroker from receiving goods in pawn from any person apparently under the age of 14. It is proposed by clause 4 of the bill to raise this minimum age to 18. This clause also obliges a pawnbroker, before receiving goods, to inspect the identity document of the borrower. The term identity document is defined in clause 2 of the bill and includes an identity card and a passport. The object of this provision is to discourage persons from taking stolen property to pawnbrokers.

Clause 5 of the bill amends section 27 of the Ordinance so as to prohibit the pawning or redeeming of any goods before 8 a.m. in the morning or after 8 p.m. at night, instead of the present restricted hours of 8 p.m. to 6 a.m. It is hoped that this alteration in the hours will make it more difficult for people to deal with goods stolen during the night before information comes to the Police in the early hours of the morning.

I should also mention that this bill will not become effective, by virtue of clause 1, until the 1st February 1970, to enable pawnbrokers' books to be altered to include reference in them to the pawnor’s identity document.

Question proposed.

THE ACTING COLONIAL SECRETARY (MR HOLMES): —Sir, I have today been informed that representations or suggestions on the subject of the provisions of this bill are about to be addressed to the Governor by the Association of Pawnbrokers. I think under the circumstances it may be best to adjourn the debate on this motion until the contents of these suggestions have been examined. I should perhaps explain that the adjournment of the debate on the previous motion was proposed for the same reason, in that, as the Attorney General has said, these two bills are connected and, if amendments have to be considered for the one it will also be for consideration whether similar changes ought to be made in the other.

Motion made (pursuant to Standing Order No 30). That the debate on the second reading of the bill be adjourned—THE ACTING COLONIAL SECRETARY (MR HOLMES).

Question put and agreed to.

Pawnbrokers (Amendment) Bill—second reading

Explanatory Memorandum

Section 8 of the principal Ordinance is repealed and replaced by two new sections. Subsection (5) of the new section 8 provides for an appeal to the Governor against a refusal to issue or renew a licence. The new section 8A provides that upon conviction of a licensee for any offence under the principal Ordinance or for certain other offences the court may cancel or suspend the licence.

Section 25 of the principal Ordinance is repealed and replaced by two new sections which will make it an offence for a pawnbroker to receive goods from a person apparently under 18 years or to receive goods without first inspecting the identity card, passport or other like document of the borrower. Section 27 of the principal Ordinance is amended to prohibit a pawnbroker from carrying on business before 8 a.m.

The object of these amendments, which conform to similar amendments proposed to the Marine Stores Protection Ordinance and regulations thereunder, is to make it less easy to dispose of stolen goods to pawnbrokers.

WORKMEN'S COMWENSATION (AMENDMENT) BILL 1969

Resumption of debate on second reading (22nd October 1969)

Question again proposed.

MR P. C. WOO: —Sir, on the 28th of last month the District Court of Hong Kong decided in 6 workmen's compensation cases that there was no jurisdiction of the District Court to entertain these cases brought by dependants of various members of the crew of a Panamanian ship who lost their lives as a result of a collision between that ship and a Japanese tanker in August this year in waters outside those belonging to Hong Kong.

The members of the crew were recruited in Hong Kong but the Panamanian ship is owned by a foreign company and is managed by a Company registered in Hong Kong. It is clear that the Court, namely, the District Court which has exclusive jurisdiction to deal with compensation cases, has no jurisdiction under the Workmen's Compensation Ordinance to deal with these cases. It was argued that the Court may entertain the applications if the owners of the said foreign ship submitted to its jurisdiction. In fact the owners were equally as anxious as the dependants of these crew so that the Court should rule on the question as to who were the dependants of the

members of this crew. However, the learned District Judge held that the Court had no jurisdiction to deal with matters which were in themselves beyond its power since the jurisdiction of the Court was created under the Workmen's Compensation Ordinance.

Furthermore, as the learned District Judge rightly pointed out, if he has acted he would probably lose the protection afforded him under the District Court (Civil Jurisdiction and Procedure) Ordinance (Cap 336) as it would be hard for him to establish that he had acted with reasonable cause if he continued with an action knowing it to be beyond his authority.

The learned District Judge also pointed out that "the points raised are not without importance in view of what seems to be the great number of seamen recruited in Hong Kong for employment upon ships sailing under alien flags." There indeed will be great hardship to the dependants of the members of the crew if they are recruited here and their dependants are resident in Hong Kong who would have to seek their remedies in the country in which the foreign ship is registered and have to go to great expense to obtain compensation or other remedies. There may be cases where there are no similar provisions as the Workmen's Compensation Ordinance in such a country.

In the circumstances, Sir, I urge that a new subsection be inserted after the proposed subsection (2) of section 20 of the Workmen's Compensation Ordinance giving jurisdiction to the District Court to hear cases as above mentioned where the parties consent and submit to the jurisdiction of the Court.

MR Y. K. KAN: —Sir, I support the point made by my honourable Friend just now. This is a very important question and, no doubt, my honourable Friend the Commissioner of Labour will reply to it and will point out the various difficulties that arise with a problem of this kind. None the less, Sir, it is a very important question, a question which I believe affects a vast number of people. For I believe that many shipping companies, particularly the foreign shipping companies, do rely on their supply of labour from Hong Kong. Mr WOO has made one suggestion as to the remedy for the situation. May I, Sir, contribute by making another suggestion which, with due respect to Mr WOO, I think it is perhaps a more direct one. That is I would have thought, Sir, that this is just the sort of case which part 3(*a*) —a new part 3(*a*) of the bill—compulsory insurance, should be invoked. That is to say, that all shipping companies recruiting labour in Hong Kong should be compelled to effect insurance with a local insurance company. Now that way, Sir, I suggest, would at once bring the claim within the jurisdiction of the courts. I have no doubt that suitable modification may have to be made, but it seems to me that this is a much more direct remedial measure.

Workmen's Compensation (Amendment) Bill—resumption of debate on second reading (22.10.69)

MR FUNG HON-CHU: —Your Excellency, I wish to state at the outset that, in principle, I support the bill before Council. As I see it, the proposed legislation amounts, in effect, to a new deal for workers and employees in general. It provides for much more realistic levels of compensation for those whose livelihood and the livelihoods of their dependents might be jeopardized as a result of industrial accidents or other mishaps in the course of their employment.

Indeed, I wish to congratulate all those concerned for the thoroughness with which the subject of the bill was handled.

There are however, two points on which I wish to comment.

The first concerns the amendment that provides for a worker who suffers injury as a result of negligence or default of the employer to recover compensation and also to sue for common law damages. Existing law allows the worker to choose to receive compensation on the basis specified in the Ordinance or to exercise his common law right to sue for damages but shall not be entitled to recover both damages and compensation.

Clause 20 of the bill seems to make it no longer necessary for the injured worker to elect. He can have his compensation under the Ordinance and then sue in an attempt to get additional damages through the Courts. In all probability the worker will be fighting the case at no cost to himself through the Legal Aid Scheme. I foresee a substantial and perhaps undesirable increase in litigation, supported at the public expense. However the reverse side of this coin is that employers are likely to suffer financially, even if they win the cases because of the heavy legal expense in defending the claims. I suggest therefore that a critical view should be taken by the Director of Legal Aid before approving aid for such cases.

May I now refer to the clause on compulsory insurance.

If all workers and employees are to be afforded equal protection, as they should, and their legitimate claims not frustrated, insurance is a must, and should be made compulsory.

The relevant clause, however, empowers the Governor in Council to impose, when necessary, compulsory insurance on certain employments only.

Such a selective process appears to be in conflict with the principles and spirit of the bill which is to give protection to workers and employees generally, not to any particular groups or occupations.

However, Government must have some sound reason for not wanting to make insurance compulsory at the start.

I trust that once the bill goes into effect a close watch will be kept on the acceptance by employers of their obligations and that Government will not hesitate to make insurance mandatory wherever such is found to be necessary. Equally important a close watch should be kept on the premium rates which I now understand are not unduly high and could possibly be borne without serious hardship. But there is always the possibility of these rates being raised in future to levels that might impose serious hardship on some employers. I therefore strongly urge Government not to overlook such a possible development. And in the event of the insurance companies raising their premiums to unreasonable levels, I suggest that Government reconsider my earlier idea and assume the role of underwriter—as a non-profit making venture—in order to keep the rates as low as possible and thereby prevent the smaller firms from taking risks in leaving their workers and employees unprotected merely because they feel they cannot bear the rates charged by commercial insurance companies.

DR S. Y. CHUNG: —Your Excellency, since the enactment of the Workmen's Compensation Ordinance in 1953* there has been rapid progress in the industrialization of Hong Kong. During the last 16 years, both the size of labour force and the number of factories have gone up by 4 times, industrial output as expressed in export value by 13 times, and labour wages by about 2 to 3 times. Therefore, it is appropriate that this Council make a major review of this Ordinance in the light of changing conditions.

I support the view of my honourable Friend, Mr HETHERINGTON, that there should be no change on the two main underlying principles of the existing Ordinance†, namely firstly, that the losses incurred by employees through injuries arising out of employment should be fairly compensated and secondly that the risks of liability for such compensation should be readily insurable.

There is, however, concern in some circles that whereas the scope of the Ordinance is being extended to cover non-manual workers earning up to $1,500 a month, which represents an increase of about 115 per cent over that provided in the principal Ordinance of 1953*, the maximum compensation has been raised in the case of death from $10,000 in 1953 to $45,000, representing an increase of 350 per cent, and in the case of permanent total incapacity, from $14,000 in 1953 to $60,000 representing an increase of 330 per cent.

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* 1953 Hansard, pages 253-6, 276-9 and 285-292.

† Page 108.

[DR CHUNG] **Workmen's Compensation (Amendment) Bill—resumption of debate on second reading (22.10.69)**

The purpose of raising the maximum amounts of compensation is primarily to cope with the wage increases during the past 16 years and to anticipate further wage increments in the immediate years ahead. In the light of our rapid industrial development, I believe these proposed increases in the limit of maximum compensations, though they appear substantial, are justified.

I find it difficult to agree with the view expressed by some people that the two issues, namely, the wage ceiling of $1,500 a month covering non-manual workers and the maximum compensation in respect of death and permanent total incapacity, are unrelated. Nevertheless, I realize that these two issues are applicable to the two different and distinct groups of workers, —manual and non-manual. The wage increments for non-manual workers, such as clerks and office assistants, have been much slower than those for manual workers in the past decade, and therefore a 115 per cent increase for the non-manual workers will probably continue to embrace the same categories of white-collar workers as in the early 1950's.

Some uncertainty exists in the interpretation of the new subsection (5) of section 5 of the principal Ordinance. I hope my honourable Friend, the Commissioner of Labour, will clarify whether it is the intention of this new subsection that the employer should be responsible for compensation to his worker who is injured while carrying out first aid, ambulance, or rescue work or in any competition or exercise in connexion therewith under conditions, for example, (1) as a member of the Auxiliary Fire Service, Civil Aid Services, St John Ambulance, Life Saving Society, *etc* and (2) while on official duty for their employers, the workers go to the rescue of a victim of an accident which is entirely unrelated to his employer's business and which did not occur in his employer's premises.

I believe it is only fair that, under the conditions of example (1), the principal employer of the worker should not be held responsible. On the other hand, such public services are voluntary and members of those bodies such as the St John Ambulance Brigade, the Royal Hong Kong Life Saving Society and the Civil Aid Services are not really paid employees. Therefore, it is doubtful that these bodies could be considered as employers of their members. Who then should be responsible for the compensation in the event that members of these services receive injuries or meet fatal accidents while on duty?

According to the Employment Ordinance, passed by this Council in September 1968[*], a contractor who carries out the whole or part of any work undertaken by a principal is regarded as the employer of

[*] 1968 Hansard, pages 399-408 and 443-454.

the persons engaged by him to do the work. It is also stated in section 5 of the principal Workmen's Compensation Ordinance that the employer is the person liable to pay compensation in the event of injury or fatal accident to his workers. From these two sections, it is clear that the person who does the actual and direct hiring of the worker is the party who is liable.

However, in section 23 of the principal Workmen's Compensation Ordinance, even though the contractor may be the person who actually hires the worker, it is the principal who is liable for the payment of compensation in case of injury or death. Although it is true that the principal may take action to recover from the contractor who would have been liable to pay compensation independently of this section, yet the person who actually hires the worker may not be the party who is initially liable. There is thus an anomaly in the sections of the Ordinances.

I am given to understand that section 23 of the principal Workmen's Compensation Ordinance is almost a direct copy of section 6 of the UK Workmen's Compensation Act 1925 and that the primary object of section 23 is to prevent an employer from deliberately avoiding liability by contracting with some one else, such as a man of straw, to provide labour or to execute work. First of all, let me say that it is neither good principle nor good practice to adopt or copy sections of legislation of other territories, if they are not consistent with those of our own as this results only in anomalies. As for the attempt to prevent evasion of liability by an employer, I feel that the protection provided to workmen under the section is, in my opinion, more seeming than real because of the "escape clause" contained in subsection (5) of section 23 of the principal Ordinance.

The inclusion of domestic servants in this Ordinance is, I think, necessary even though their numbers in Hong Kong will very likely decrease as our industrial wages rise. Families employing domestic servants do not necessarily have the resource to pay compensation in case of injury and fatal accidents to their servants. A servant may slip in the market place or fall on the street and sustain permanent total incapacity. The maximum compensation to which the employer is liable is $60,000 which is a considerable amount of money for any person to pay. If the family does not have the money, both the family and the servant can suffer greatly because the servant will be without compensation and the family will have to bear all the grave consequences of not being able to meet the liability. It will indeed be a double tragedy.

I, therefore, urge that all employers of domestic servants insure against their liabilities and that all insurance companies simplify their procedures and improve their facilities for such insurance policies.

With these comments, Sir, I support the motion.

Workmen's Compensation (Amendment) Bill—resumption of debate on second reading (22.10.69)

MR H. J. C. BROWNE: —Sir, I am in broad agreement with the proposed amendments to the Ordinance. The increases in limits are considerable but not perhaps out of line since they were fixed in 1953. However, this has highlighted the need for a continuous review to keep these limits generally in line with rising wages. I would like to suggest, therefore, that the bill should be looked at at regular intervals, in future and preferably not more than every five years.

The other point is that it is important to get these new provisions across to the public and also to employers. I understand that the present Ordinance is now out of print and is, in any event, very confusing to the layman because of the various amendment's that have been made over the years. I hope, therefore, that priority will be given to reprinting the whole Ordinance and also to reprinting and issuing, this month if possible, a new copy of the Guide.

With regards to ships crews, I agree with Mr WOO that this should be looked at. The Workmen's Compensation is in one aspect a complex problem of employing seamen on ships of different flags. There is much overseas legislation on this subject that could be helpful but I just like to say that in my view, whatever we do, we must keep Hong Kong generally in line with international practice.

Finally, Sir, while on the subject of labour legislation, may I suggest that the Commissioner works towards a comprehensive Ordinance to cover most of Hong Kong's labour legislation, perhaps using the recently promulgated Employment Ordinance as a basis which will make things much easier for both employees and employers. This is a long-range suggestion covering labour legislation in general and it should not perhaps include the Workers' Compensation Ordinance.

Sir, I support the bill.

MR R. M. HETHERINGTON: —Sir, I am pleased to hear, this afternoon, the general support given by my Unofficial Colleagues to the bill under discussion.

I wish to assure my honourable Friend, Mr BROWNE, that all legislation for which I am responsible is regularly kept under review. I agree with him that I should keep an eye on the level of wages to ensure that groups of employees do not, in the course of time, become disenfranchised from the protection of existing legislation because of a general rise in earnings. I accept his suggestion that a period of five years is a reasonable interval for re-examining the situation from this point of view and I will endeavour to follow his advice.

I also agree that it is important that the provisions of the bill should become widely known and easily understood. Considerable

publicity was arranged by the Labour Department prior to and after the publication of the text of the bill. Preparations were made for a guide, in Chinese and English, to the amended ordinance but it was not possible to complete this work until I could be sure that the bill would be enacted in the manner proposed. Now that I know that I have the support of this Council for the bill as drafted, it will be possible to complete the guide quickly. I hope to have it ready before the new provisions come in to effect at the beginning of next year.

Copies of the text of the existing Ordinance are no longer available because supplies have been exhausted. I have already sought authority for a revised edition of the text of the amended Ordinance to be printed in a separate publication for general sale to the public as a matter of urgency.

I suspect that Mr BROWNE must be a mind-reader when he advocates the use of the Employment Ordinance[*] as the basis for a comprehensive Ordinance. This is what I plan to do. Items of legislation already in draft on the subjects of maternity protection, holidays with pay, sickness allowance, and compulsory and voluntary rest days all propose additions and amendments to the Employment Ordinance which will be progressively expanded to cover these subjects. There are other legislative items which are not suitable for treatment in this way and separate bills will be prepared. I agree that workmen's compensation is one of such items.

My honourable Friends, Mr WOO and Mr KAN, draw attention to a recent ruling in the District Court regarding its jurisdiction in cases of workmen's compensation involving Hong Kong seamen killed while serving in foreign ships. This was given a few days ago and the District Judge ordered that a copy of the ruling should be delivered to me. I have now had the opportunity of reading the text. It raises substantial issues regarding the jurisdiction of Hong Kong courts, and, at this stage, I can only say that these will be examined to see what appropriate action may be taken. I will, of course, bear in mind the suggestions made by Mr WOO and Mr KAN and I wish to thank them for their proposals[†] although on immediate consideration these would not necessarily appear to avoid the problems of jurisdiction involved in trying to give Hong Kong courts jurisdiction over accidents on foreign ships.

I think I should mention that in his ruling the District Judge stated that

> "…. I am given to understand that some of my brother judges have followed courses different from that which I have taken."

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[*] Page 142.
[†] Page 137.

[MR HETHERINGTON] **Workmen's Compensation (Amendment) Bill—resumption of debate on second reading (22.10.69)**

In the past no practical difficulties have arisen in such cases because owners of ships, through their agents, have always been willing to pay compensation to the dependants of deceased seamen and settlements have been reached by agreement on the basis of departmental enquiries and recommendations. I would be preferable if arrangements could be made for the courts to decide any questions at issue in the application of the principles of Hong Kong's legislation on workmen's compensation to those cases where there is strictly no liability under the Ordinance but where the parties are, nevertheless, both willing to submit to the jurisdiction of the courts. So far as I can see, the difficulty of jurisdiction seems to have been, and will continue to be, of academic rather than of practical importance. The dependants of Hong Kong seamen have not been and, I think, will not be prejudiced in any way. Clearly, it is desirable that such a situation should be preserved and this consideration will be uppermost in our minds when considering what steps should now be taken in the light of the most recent District Court ruling.

My honourable Friend, Dr CHUNG, raises two points*, one arising from the law as it now is and one related directly to the amending bill.

The first point concerns section 5(1), which the bill proposes to amend but only in respect of matters not dealt with by Dr CHUNG, and section 23 which it is not proposed to amend. Section 5(1) is the fundamental operative provision of the Ordinance and places the liability to pay compensation to an injured workman on the employer. A workman may have more than one employer and, in general, it is the employer in whose employment the workman was working at the time of the accident who is liable to pay compensation. Section 23(1) deals with the special case of a person, described as a principal, who for the purposes of his trade and business, engages a contractor. Although subsection 1 of section 23 places on the principal a liability, in these special circumstances, to pay compensation to the injured employee of the contractor, it does not affect, in any way, the liability of the contractor as the real employer of the workman to pay compensation. Subsection 2 of section 23 gives the principal, who may be called upon to pay compensation, the right of indemnity against his contractor. Dr CHUNG rightly points out that the purpose of section 23 is not to remove any liability imposed on the real employer but to prevent a person from deliberately evading liability to pay compensation by contracting with another person, possibly of no substance, who can discharge his responsibilities as an employer only by the grace of his principal. The provision has been part of the law of Hong Kong since the Ordinance was first enacted in 1953 and it is found in corresponding

* Pages 140 and 141.

legislation in many other territories. I am not aware that any difficulties have arisen in its application. The main practical effect is the very desirable one that the prudent principal, who engages a contractor for the purposes of his trade or business, ensures that his contractor is full able, by insurance or otherwise, to meet any liability for compensation which may arise.

Dr CHUNG's second point concerns clause 5 of the bill which introduces a new subsection dealing with workmen carrying out first-aid and similar duties. It is the intention of this subsection to place a liability for compensation on an employer when his workmen are carrying out these duties in certain circumstances which are clearly set out in this new subsection. These duties may be precisely the duties for which the employer employs the workman. In so far as the provision goes beyond this, the assumption is that the employer would authorize the workman's actions to save life or property if there was time to give any specific authorization which might be considered necessary. On the other hand, a workman, even if trained in rescue work, may not look to his normal employer for compensation when injured in rescue work outside the employer's premises and also outside the scope of his employment unless the employer has consented to the workman being so engaged.

As far as members of the Essential Services Corps and any unit of it, including the Auxiliary Fire Service, the Auxiliary Medical Service, and the Civil Aid Services, are concerned no problems arise. Regulation 17 of the Essential Services Corps (General) Regulations makes provision for a pension, gratuity, or allowance in respect of death or disability sustained by a member when called out for active service or in training or under instruction. With regard to members of the St John Ambulance Brigade I am informed that, while on duty on behalf of the Brigade, they are covered by a group personal accident policy covering death and disablement. I should add that the services of these members are voluntary and consequently there is no employer-workman relationship between the Brigade and its members. I am informed that a similar situation exists with regard to the Hong Kong Life Guard Club, which is the Hong Kong branch of the Royal Life Saving Society. Members of this organization also offer their services on beaches, at pools, and on launches on a voluntary basis and there is no employer-workman relationship between the Club and its members.

My honourable Friend, Mr FUNG, makes two points* which do not concern the substance of the bill but possible developments subsequent to its enactment. I am confident that the system of legal aid will be administered in such a way that his fears of excessive litigation will

* Pages 138-9.

Workmen's Compensation (Amendment) Bill—resumption of debate on second reading (22.10.69)

be unjustified. His remarks on compulsory insurance will be borne in mind if the question of invoking the relevant provisions arises.

Question put and agreed to.

Bill read the second time.

Bill committed to a committee of the whole Council pursuant Standing Order No 43.

FIRE SERVICES (AMENDMENT) BILL 1969

Resumption of debate on second reading (8th October 1969)

Question again proposed.

MR Y. K. KAN: —Your Excellency, an important amendment to the existing Ordinance is that contained in clause 3 of the bill which confers on the Director of Fire Services power to take summary action for abatement of dangerous fire hazards.

I concede that in case of emergency where there is an immediate danger to life and property, there is justification for taking summary action. On the other hand, it should be borne in mind that if this power is wrongly exercised it can also do a great deal of harm to the persons concerned.

All too often, Sir, special executive powers by-passing the normal process of law open up the possibility of abuse, excess and even corruption. I would be failing in my public duty if I were to hold that the Fire Services Department is above reproach in this respect.

It is perhaps with this in mind that the new clause 3B specifically provides that summary action is not to be used except on the personal authority of the Director, the Deputy Director or one of the three Chief Fire Officers. I suggest that to make this safeguard more effective, an assurance should be given to this Council that this power will not be exercised in any particular case unless and until one of these officers has *personally* investigated into the matter and is absolutely satisfied that summary action is necessary.

I should add, Sir, that, by personal investigation, I do not mean on the spot inspection which clearly is not practicable having regard to the many other important duties of the officers concerned. But I do ask that a very close examination of the facts should be made and not merely relying upon the recommendation of a subordinate officer.

MR SZETO WAI: —Sir, in supporting the bill, I believe I am echoing the concurrence of all right thinking citizens of the community who are abhorred by the increased number land gravity of fire disasters in recent months. There is a growing concern among the great multitude of our population who live in tall congested multi-storeyed buildings of mixed occupancy about their own safety. Many of these high density developments that sprang up in the last decade have only the minimum of fire protection facilities and much of what they had originally been provided with have been left in a state of neglect or have been abused. While my honourable Friend Mr KAN* has rightly expressed concern about the possible abuse of the greater power this bill proposes to invest, I would, on the other hand call for greater control and more effective abatement of the hazards because of our special circumstances.

The bill seeks to empower the Director of Fire Services to exercise his authority over the maintenance of fire service installations provided in all existing buildings including those outside his purview under the existing legislation. It is important to realize that most buildings that have been completed before the enactment of the current Buildings Ordinance are generally much below present day standards of fire protection with regard to planning (*ie* number of staircases, their widths and distance between them, smoke lobbies, proper enclosure of staircases, thickness of walls, *etc*), and materials of construction and fire service installations. The inadequacy in many of these buildings would certainly warrant serious consideration and in this connexion, I would raise two questions: —

(1) Will the Director of Fire Services be given authority to prescribe requirements for these old buildings that are lacking in fire services provision? and

(2) Will Government consider imposing restrictions on the type of accommodation that are presently existing within these buildings if, in the opinion of the Director of Fire Services, such accommodation constitutes a hazard to their occupants?

The second question is prompted by the existence of buildings with single staircases that are narrow and dark, being used as accommodation for residences, schools and industrial workshops all under one roof

The bill also seeks to ensure adequate means of egress from any premises in a building to street level outside the building. Inadequacy is very often brought about by the wilful obstruction of the means of escape by illegal alterations to buildings including the installation of lock-up gateways within the fire exit routes. While it would be common to find fire service installations in present day standards

* Page 146.

[MR SZETO] **Fire Services (Amendment) Bill—resumption of debate on second reading (8.10.69)**

totally lacking in many old buildings, there are other more flagrant contraventions of the Buildings Ordinance in respect of fire protection in buildings that evade the detection of the responsible authorities. The recent tragic fire that claimed two lives as a result of a blocked escape route has driven home to many people the gravity of such offences. Both the Buildings Ordinance Office and the Fire Services Department should redouble their efforts in detecting and prosecuting these offences. For this purpose, existing laws should be made more effective and expeditious in bringing these serious offenders to book. Also, penalties for the offences referred to above appear to be far too lenient and not consistent with those prescribed for similar contraventions of the Buildings Ordinance. A common offence involving the blocking up of exit routes by locked gates or the removal of fire escape doors from stair enclosures which contravents the Fire Services Ordinance as well as the Buildings Ordinance is liable to a fine of $1,000 under the former, but $2,000 plus six months' imprisonment in the case of the latter. Failure to comply with the requirements of the fire hazard abatement notice is liable to an additional fine of merely $20 for each day during which the offence continues. Such a penalty could hardly be regarded as a deterrent and is incompatible with the danger the offence would create. I therefore strongly urge Government to reconsider the entire penalty structure, especially in the light that an apparently overlapping of jurisdiction between the Director of Fire Services and the Building Authorities over such matters.

The operation of industrial workshops in crowded multi-storeyed buildings of mixed occupancy is a common fire hazard. These workshops are usually engaged in the manufacture of garments or plastic goods and contain easily inflammable materials. Aside from the health problems these factories create, their managements often abuse the fire prevention provisions of the buildings they are in by removing smoke lobbies and blocking fire escapes to their own convenience with complete disregard of the laws and safety of their co-residents. The Labour Department should exercise a strict control over these unsuitable factories and to prohibit, by way of compulsory registration, the future setting up of any factory in buildings that are designed for domestic use, or industrial operation of appreciable scale except in areas zoned for that purpose. It is quite incompatible for us to claim advanced industrial status while permitting factories to operate in multi-storeyed residential buildings with tens or even hundreds of families sharing the use of the same fire escapes most of which are of the minimum requirements. If such hazardous practice cannot be eradicated without causing hardship, its further growth should be stopped.

Our high-rise industrial buildings in congested industrial zones cannot also provide for sound industrial management not to mention safety, and I consider that the land development policy in the new towns now being built or planned requires to be overhauled in order to lower the permissible density of their industrial zones not only to provide better working conditions, more efficient productive layouts, but also greater safety measures against fire hazards. The dramatic helicopter rescue last month was called for by a fire which broke out in two plastic factories on the 10th and 11th floors of a 15-storey industrial building. Their great height must have added tremendous difficulties to fire-fighting and rescue operations.

For the protection of lives and properties amidst our existing unsatisfactory pattern of development, it is imperative that the Director of Fire Services be given greater power to abate fire hazards. Whilst it is important to boost our industrial output by encouraging production under all conditions, it is more important to protect lives and properties.

Sir, with the passage of the bill, it is hoped that the enactment of the multi-storey Buildings (Owners Incorporation) Bill will be accelerated, because the most effective measure against fire hazards will be the close co-operation between the building owners and occupiers and the Fire Services Department. The latter bill, through which building owners and occupiers are organized and disciplined, will achieve that co-operation.

Sir, I support the motion.

MR BROWNE: —Sir, section 2 of the bill proposes to add an additional subsection to the definition of "fire hazard" and with the wording quote "inadequate means of egress from any premises in a building to street level outside the building" unquote.

There is no definition of the word "inadequate" and it seems to me unsatisfactory that it should be left entirely to the Fire Services to decide what would be considered adequate or inadequate.

Owners of properties are bound to comply with Building Regulations where buildings are erected or altered, but there are many buildings in the Colony which have been approved under earlier regulations. Is it now intended to give the Fire Services Department power to decide, without reference to Building Regulations, the means of egress from any premises in a particular building was so sub-standard as to constitute a fire-hazard?

Sir, I am generally in favour of this bill but I should be grateful for clarification of these points for it does appear to me that the practical working of the bill is going to depend on how the Fire Services

[MR BROWNE] **Fire Services (Amendment) Bill—resumption of debate on second reading (8.10.69)**

Department interpret fire hazard, how they handle abatement notices and in what circumstances they order forcible removal of structures in various premises.

MR R. M. HETHERINGTON: —Sir, before my honourable Friend, the Attorney General, winds up the debate on the second reading of the bill before Council, I would like to intervene briefly on matters mentioned by my honourable Friend, Mr SZETO, with regard to factories in multi-storeyed buildings of mixed occupancy*.

The establishment of factories in premises not designed for industrial use is a development which has gravely worried me and my predecessors in office and which has presented the most difficult problems to the factory inspectorate. The stumbling block to a satisfactory solution is that there always has been and there still is an inadequate supply of proper and suitable industrial accommodation to meet the requirements of Hong Kong's industrial expansion. There is no immediate prospect that the situation in this respect will materially improve.

An attempt to resolve the dilemma was made in 1963† when an amending bill to the Factories and Industrial Undertakings Ordinance was enacted. Before then, the factory inspectorate was faced with a widespread proliferation of factories which could not satisfy the statutory requirements for full registration. The only alternative to full registration was refusal to register and subsequent prosecution. This was unenforceable in practice. The remedy incorporated in the bill was to provide two forms of registration.

The position now is that full registration is granted only in respect of premises which are suitable for industrial purposes both in structural design and by virtue of the relevant Crown lease on which the land is held and which are situated in either a recognized industrial area or in an area zoned for industry under an approved town plan. Alternatively, provisional registration is granted in respect of premises which are not in an industrial zone or recognized industrial area and are not specifically designed for industrial use provided that they can, in the opinion of the Commissioner of Labour, be used temporarily for industrial purposes without endangering the safety, health, and welfare of persons employed therein and of other persons.

Provisional registration was originally designed temporarily to assist industry by enabling numerous small undertakings to continue

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* Page 148.

† 1963 Hansard, pages 188-190 and 206-7.

in operation until such time as proper industrial accommodation was more readily available. Unfortunately, the shortage of proper industrial accommodation has remained chronic and the expected transfer of factories from unsuitable buildings to premises properly designed for industrial purposes has not taken place. There are several factors, chiefly economic, which discourages this transfer. These include the availability of accommodation suitable to the size of the undertaking, the availability of labour, particularly those at present employed, and the desirability of a location convenient for providing an outlet for the products of the factory. The present position is that there are 4,778 fully-registered industrial undertakings and 4,759 which are provisionally registered. There are, undoubtedly, many other unknown and unrecorded undertakings in multi-storeyed buildings. Some come to our notice by complaint or are discovered by accident but it is beyond the resources of the factory inspectorate to discover all of them in the numerous large domestic-type buildings which have been constructed in recent years.

Many of these undertakings are small, many are family enterprises, and many would be tolerated in similar circumstances in other territories. None are given provisional registration unless they can comply with the safety and health measures which I prescribe. Some are undoubtedly hazardous and, in co-operation with the Fire Services Department, we take the strictest action against them.

My honourable Friend, Mr SZETO, suggests that these undertakings should be required to register. This is in fact the position under the Factories and Industrial Undertakings Ordinance but the problem is to detect those who refuse to apply for registration. He also suggests that the factory inspectorate should exercise a strict control over them. Where they are known, this is in fact done but the problem of enforcement is difficult where proprietors are prepared to operate in defiance of the law and where repeated prosecutions appear to have no deterrent effect. He also puts forward the proposal that no further provisional registrations should be granted. What effect such action would have on the industrial development of Hong Kong would require some careful study. Nonetheless, it is a timely suggestion because the general problem of factories in domestic tenements is being re-examined afresh and I welcome any helpful proposals for solving an extremely complicated and intractable subject.

No-one could be more concerned than the officers of the factory inspectorate and myself to procure the closure of any industrial undertaking which creates dangers to the safety and health of the employees or other persons. This is one of the fundamental aim of the Labour Department in its enforcement of the Factories and Industrial Undertakings Ordinance.

Fire Services (Amendment) Bill—resumption of debate on second reading (8.10.69)

THE ATTORNEY GENERAL (MR ROBERTS): —Sir, I am grateful to honourable Members for the support which they have felt themselves able to give to this bill, even though it does contain provisions which confer powers which could impose hardship and unfairness on members of the public if they were not administered with great care.

Nevertheless, I believe it will be generally agreed that it is justifiable to confer, on those officers whose task it is to deal with the fire dangers, powers which might be objectionable in other spheres. It is, Sir, indeed a field in which, as one honourable Member has observed in another context earlier today, prevention is better than cure.

I agree with the sense of the remarks made by the Honourable Mr KAN*, which is that a balance must be struck between swift and effective action and the preservation of private interests, and between the need to protect other members of the community and the right of the individual to do as he likes with his own property.

Naturally, I accept Mr KAN's observation that unusual powers conferred on the Executive may lead to abuse, to excess and even to corruption; this is a danger which exists in any department and I say this without in any way conceding that this will in fact occur in the Fire Services Department. However, the bill contains two safeguards against such a possibility. Firstly, the summary action provided for can only be taken on the personal authority of one of the five most senior officers in the Fire Services Department. Secondly, the new section 9A, which is proposed by clause 4 of the bill, provides a person, against whom a claim is made for the cost of work carried out to abate a fire hazard, with the defence that the Fire Services were not justified in taking the action which they did in the circumstances.

I can certainly give the honourable Member the assurance for which he asks that one of these five officers must be personally satisfied before the work is carried out. Indeed the new section 9(3)(*b*), which is also to be found in clause 3 of the bill, obliges one of them to be personally satisfied that a fire hazard exists.

The Honourable Mr BROWNE has suggested that a definition of the word "inadequate"† should be inserted in the Ordinance, since its absence would place an undesirable degree of discretion in Fire Services officers as to what is or is not a satisfactory means of escape from a building.

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* Page 146.
† Page 149.

I agree that such a definition would be helpful if a satisfactory one could be devised. Unfortunately, the number of situations to be covered by such a definition is so huge, and the types of building with which it would have to deal are so varied, that I doubt if it is possible to invent one that will work satisfactorily. The effect of the amendment of the definition of "fire hazard", which is achieved by clause 2(*b*) of the bill, will be to give the Fire Services Department power to decide that the means of escape from premises in a particular building do constitute a fire hazard, even though the building itself may comply with the Building Regulations. This is because the Building Regulations deal with the design and structure of the building, whereas the means of escape from the building may be blocked by goods or furniture placed on premises which, from a structural print of view, comply fully with the building regulations. Furthermore, whether or not a means of escape is adequate may depend not on the structural state of a building but on the use to which it is put; for example, what is a perfectly adequate and safe escape for occupiers of a block of residential flats may become quite insufficient if a large school is opened on one of the floors of the block.

The Honourable Mr SZETO Wai has asked whether the Director of Fire Services would be given authority to prescribe requirements for old buildings which are lacking in fire service installations[*]. The effect of the amendment to paragraph (*d*) of the definition of "fire hazard", which can be found in clause 2(*a*) of the bill, is to make into a fire hazard the failure to maintain fire service installations and equipment in proper order in buildings which were constructed before the Buildings Ordinance came into force in 1964. With regard to his second question, the new paragraph (*c*), which is inserted in section 9(5) of the principal ordinance and will be found in clause 3(*c*) of the bill on page 2, will enable the court to make a closing order prohibiting the use of premises in such a manner as may materially increase the risk of fire. For example, this would give the magistrate power to prevent dangerous industrial processes being carried in a block of residential flats.

If it is found in practice that the powers conferred by this bill are not in themselves proving sufficiently effective, then the Government would be prepared to consider increasing the maximum penalties which can be imposed on persons failing to comply with fire hazard abatement notices or orders. However, it is hoped that the new procedure authorized by the bill will enable the Fire Services to deal more swiftly and effectively with the fire dangers which are always present in our crowded cities and will render any further increase in penalties unnecessary.

[*] Page 147.

Question put and agreed to.

Bill read the second time.

Bill committed to a committee of the whole Council pursuant to Standing Order No 43.

Committee stage

INTERPRETATION AND GENERAL CLAUSES (AMENDMENT) BILL 1969

Clauses 1 to 8 were agreed to.

Council then resumed.

Third reading

THE ATTORNEY GENERAL (MR ROBERTS) reported that the Interpretation and General Clauses (Amendment) Bill 1969 had passed through committee without amendment and moved the third reading.

Question put and agreed to.

Bill read the third time and passed.

3.58 p.m.

ADJOURNMENT

Motion made, and question proposed. That this Council do now adjourn—THE ACTING COLONIAL SECRETARY (MR HOLMES).

Question put and agreed to.

NEXT SITTING

HIS EXCELLENCY THE PRESIDENT: —Council will accordingly adjourn. The next sitting will be held on 19th November.

Adjourned accordingly at one minute to Four o'clock.

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