OFFICIAL REPORT OF PROCEEDINGS

Wednesday, 28th January 1970

The Council met at half past Two o'clock

[MR PRESIDENT in the Chair]

PRESENT

HIS EXCELLENCY THE GOVERNOR (*PRESIDENT*)
SIR DAVID CLIVE CROSBIE TRENCH, GCMG, MC
THE HONOURABLE THE COLONIAL SECRETARY
SIR HUGH SELBY NORMAN-WALKER, KCMG, OBE, JP
THE HONOURABLE THE ATTORNEY GENERAL
MR DENYS TUDOR EMIL ROBERTS, OBE, QC, JP
THE HONOURABLE THE FINANCIAL SECRETARY
SIR JOHN JAMES COWPERTHWAITE, KBE, CMG, JP
DR THE HONOURABLE TENG PIN-HUI, CMG, ODE, 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 DONALD COLLIN CUMYN LUDDINGTON, JP
DISTRICT COMMISSIONER, NEW TERRITORIES
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, ODE, 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
DR THE HONOURABLE CHUNG SZE-YUEN, OBE, JP
THE HONOURABLE MICHAEL ALEXANDER ROBERT HERRIES, OBE, MC, JP
THE HONOURABLE LEE QUO-WEI, OBE, JP
THE HONOURABLE GERALD MORDAUNT BROOME SALMON, JP

ABSENT

THE HONOURABLE THE SECRETARY FOR HOME AFFAIRS
MR DAVID RONALD HOLMES, CMG, CBE, MC, ED, JP

IN ATTENDANCE

THE DEPUTY CLERKS OF COUNCILS
MR DONALD BARTON
MR RODERICK JOHN FRAMPTON

PAPERS

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

Subject	*LN No*
Subsidiary Legislation: —	
Credit Unions Ordinance.	
Credit Unions (Forms) Regulations 1970	2
Public Health (Animals and Birds) Ordinance.	
Public Health (Animals and Birds) (Amendment) Regulations 1970	3
Societies Ordinance.	
Societies (Amendment of Schedule) Order 1970	4
Supreme Court Ordinance.	
The Rules of the Supreme Court (Amendment) Rules 1970	5
Dutiable Commodities Ordinance.	
Dutiable Commodities (Amendment) Regulations 1970	6
Marine Stores Protection Ordinance.	
Marine Stores (Amendment) Regulations 1970	7
Pawnbrokers Ordinance.	
Pawnbrokers (Forms) (Amendment) Regulations 1970	8
Places of Public Entertainment Ordinance.	
Places of Public Entertainment (Amendment) Regulations 1970	9
Dogs and Cats Ordinance.	
Approved Observation Kennels and Quarantine Stations	10
Merchant Shipping Ordinance.	
Merchant Shipping (Launches and Ferry Vessels) (Amendment) Regulations 1970	11
Merchant Shipping Ordinance.	
Merchant Shipping (Pleasure Vessels) Regulations 1970	12
Census Ordinance.	
Census Order 1970	13

Subject	*LN No*
Workmen's Compensation Ordinance.	
Workmen's Compensation Ordinance (Amendment of Second Schedule) Order 1970	14
Interpretation and General Clauses Ordinance. Change of Title of Person	15
Interpretation and General Clauses Ordinance. Specifications of Public Office	16

Sessional Papers 1969-70: —

No 33—Annual Report by the Commissioner for Housing for the year 1968-69 (published on 26.1.70).

No 34—Annual Report of the Hong Kong Trade Development Council for the year 1968-69 (published on 28.1.70).

No 35—Report of the Housing Board 1969 (published on 28.1.70).

No 36—Annual Report by the Commissioner of Police for the year 1968-69 (published on 28.1.70).

No 37—Annual Report by the Director of Commerce and Industry for the year 1968-69 (published on 28.1.70).

No 38—Annual Report by the Commissioner of Rating and Valuation for the year 1968-69 (published on 28.1.70).

ORAL ANSWERS TO QUESTIONS

Primary school places

1. MR FUNG HON-CHU asked: —

Is Government aware of the recent closure of a number of private primary schools and will it in any way affect the programme of providing a primary school place for every child?

MR J. CANNING: —Sir, the total enrolment in private primary schools is known to have dropped by nearly 15,000 since September 1968. This reduction was caused in part by bringing 5,000 of these

places on to subsidy. However, this will in no way affect the attainment of the planned target of providing a place in Government or aided primary schools by 1971 for every child of primary school age who seeks such a place. The total enrolment in Government and aided primary schools increased from just over 402,400 in September 1968 to just over 522,000 at the beginning of the present school year, and it is estimated that by 1971 there will be 650,000 Government and aided primary school places available, in addition to some 200,000 existing private primary places, to meet the needs of a primary age group of 645,600.

Post-primary expansion

2. MR FUNG: —

Could this Council be informed of the progress being made on the post-primary expansion and whether any policy has been worked out to meet current and future demands for secondary education?

MR CANNING: —Sir, in September 1969 there was a total of nearly 65,000 secondary school places in the Government and aided sector. It is anticipated that by September 1970 there will be an increase of at least 10,000 places, with a further 15,000 places by September 1971 and a further 17,000 places by September 1972. These figures reflect the successful implementation of Government's existing policies. Proposals are under preparation to establish new targets for the provision of post-primary places in accordance with the needs of the 1970s. These proposals will, I hope, be ready shortly for consideration by the Board of Education and subsequently by Your Excellency in Council.

Under 17 Identity cards

3. DR S. Y. CHUNG asked: —

At present identity cards for Hong Kong residents below the age of 17 years contain no given names nor photographs and employers find it very difficult, if not impossible, to identify the true holder of the identity card and assess the true age of their young employees whose working conditions are governed by different sets of labour legislation. Will Government consider to amend the identity card system so that more positive identification of the card holders can be made by employers on those persons exceeding the employable age of 14 years but not yet reaching 17 years?

THE COLONIAL SECRETARY (SIR HUGH NORMAN-WALKER): —Sir, identity cards were first issued in 1949 to all persons over the age of 12, to aid any measures which might become necessary for the maintenance of law and order and for the distribution of supplies of food or other commodities.

It soon became clear that, aside from the original purpose, the identity card was becoming convenient for a variety of extraneous reasons and a modified scheme of registration was introduced in 1960. This provided for juvenile registration at the age of 6 and adult registration at the age of 17. Experience had shown that cards bearing a photograph taken at the age of 12 were of little value as permanent identity documents, since during the years of adolescence facial characteristics change rapidly and names were commonly changed during the same period. For this reason the juvenile card does not bear a photograph or other details that are likely to change.

However, I recognize and sympathize with the problem raised by my honourable Friend and the Commissioner of Registration is currently carrying out a review to determine whether and how the present system can be further modified so as to make it more useful for the varied purposes to which people, including employers, seek to put it.

DR CHUNG: —Sir, in the meantime will the onus on producing the true identity card be put on those persons who claim that they are the card holders?

THE COLONIAL SECRETARY: —I think I am right in saying that the onus of producing identity cards rests on the holders themselves. However, Sir, that is another question.

Fireworks ban

4. MR WOO PAK-CHUEN asked: —

> In view of the Honourable the Colonial Secretary's statement in this Council on the 23rd August 1968 that Government had decided that there would be no relaxation of the ban on the discharge of fireworks, will Government reconsider* relaxing the ban on the displays of fireworks, and if so, will the relaxation become effective before the next Lunar New Year?

* 1968 Hansard, page 356.

Oral Answers

THE COLONIAL SECRETARY (SIR HUGH NORMAN-WALKER): —Sir, the Government has an open mind about the possibility of organizing official fireworks displays on suitable occasions, but no such display has been organized for the forthcoming Lunar New Year.

MR WOO: —Will Government consider the granting of permits to discharge fireworks to responsible persons or bodies with the purpose of celebrating happy occasions?

THE COLONIAL SECRETARY: —Sir, I think I can best reply to that by saying that, as in the case of Government public displays in the future, Government also has an open mind about the possibility of fireworks displays organized by responsible bodies. The only difficulty I see is the possible need to make individious distinctions as to which such bodies are responsible in this particular connexion.

MR FUNG: —Sir, in view of Government's negative reply to my honourable Friend Mr WOO's question on the banning of fireworks as far as the general public is concerned, would Government consider the possibility of removing restrictions on certain items which are non-explosive such as sparklers and smoke crackers?

THE COLONIAL SECRETARY: —With respect to the honourable Member this is quite a different question. We are dealing with fireworks. Government has not had in mind this particular problem which the honourable Member has raised, but I will undertake to do so.

MR FUNG: —Excuse me, Sir, the items I referred to are within the scope of fireworks.

MR Y. K. KAN: —Sir, is it not so that, apart from a very small section there is in fact no demand—no pressure at all—for the resumption of fireworks? Is it not so?

THE COLONIAL SECRETARY: —Such pressures as I have been under, Sir, are to continue the ban on fireworks.

MR KAN: —That is my understanding, Sir.

Fireworks compensation claims

5. MR WOO: —

Will Government inform this Council the total payments made in respect of claims for compensation under the Emergency (Fireworks) Regulations of 1967 to licensed dealers and members of the public who handed in fireworks?

MR R. M. HETHERINGTON: —Sir, the answer to my honourable Friend's question is $358,165.98.

I made a statement in this Council on the 18th December 1968, when the Emergency (Firework) (Repeal) Order 1968 was tabled*, about the compensation paid for fireworks seized or surrendered under the Emergency (Firework) Regulations. I said then that 2,799 separate collections were made, 1,612 claims in respect of these collections had been settled, 34 claims had been waived, and $350,453.28 paid in compensation. A balance of 1,153 cases remained outstanding.

Since I made this statement, only 54 additional claims have been settled and an addition $7,712.70 paid in compensation. Very few claims have been made in recent months and it would appear that the former owners of the remaining 1,099 collections are not interested in compensation.

MR WOO: —Is it true that a number of traders have made claims to Government for compensation for loss of business as they have to close down their businesses on account of the prohibition?

MR HETHERINGTON: —Sir, I understand that my honourable Friend is referring to workers and firms formerly engaged in the long-string firecrackers trade.

I must first explain that, prior to the coming into force of the Emergency (Firework) Regulations in 1967, a licence was required to store fireworks in excess of 50 lbs in weight. When the regulations became effective, 115 persons were so licensed. Of these, 103 were restricted to stocks of not more than 400 lbs in weight.

After licences had handed over their stocks, compensation was subsequently paid to them in respect of fireworks lawfully in their possession at that time. I could not indicate the total compensation paid without examining in detail the 1,666 claims already settled.

Shortly after all fireworks had been taken over, certain employers and several workers came to the Mines Department claiming to represent 3,000 to 4,000 workers in the fireworks trade who had been affected by the ban on fireworks. They were interviewed on several occasions and their representations considered in consultation with the Secretary for Home Affairs and the Director of Social Welfare. As a result of detailed enquiries, it became evident that there were, among those who had made representations, only three firms which had previously relied solely on fireworks for their livelihood. These were firms which specialized in assembling and preparing long-string firecrackers for weddings and other social and ceremonial occasions. I

* 1968 Hansard, page 604.

should mention, at this stage, that there have been no factories manufacturing fireworks in Hong Kong since 1962. It was further established that these three firms employed 29 workers full time and, additionally, about the same number of casual workers during the last month or so of the lunar new year. As well as compensation already paid in respect of their stocks of fireworks, these three firms dealing in long-string firecrackers were subsequently granted, in addition, *ex-gratia* awards totalling $116,110. None of the other firms relied on the sale of fireworks for any substantial part of their income and such fireworks as they sold were in small quantities and additional to their main trade in stationery, joss sticks, and incense.

About 47 workers accepted help from the Labour Department. Those who sought employment for either themselves or their children were dealt with by the Local Employment Service. Those who had other problems were interviewed by social workers of the Social Welfare Department and the Lutheran World Service. The needs of each individual were examined and, where appropriate, assistance was given in the form of monetary grants and loans, dry rations, resettlement accommodation, free places in schools, recommendations for hawker licences, and payment of school fees and rents.

Confetti bombs

6. MR WOO: —

> Will Government consider taking steps to prohibit the importation and sale of confetti bombs which may cause injury to young children playing with them?

MR HETHERINGTON: —Sir, confetti bombs are listed by this precise description in division 2 of class 7 of category 1 of the schedule to the Dangerous Goods (Classification) Regulations. They are subject to control under the Dangerous Goods Ordinance and the Dangerous Goods (General) Regulations in respect of manufacture, packing, storage, conveyance, and use by either licence or permit.

On 10th October 1969, I issued a press release reminding retailers who might be ordering goods for sale at Christmas that joke bombs and string-actuated confetti or streamer bombs, often called party poppers, were classified as manufactured fireworks. I added that it was not intended to grant any licences for the storage of these items. Officers of the Mines Department subsequently made radio broadcasts on the same lines. Nonetheless, in spite of the warning which I gave, several shops were discovered to be selling confetti bombs. Where

stocks were found, instructions were given to remove them to the Government Explosives Depot pending destruction or re-export. The quantities were small and the managements of the shops concerned readily co-operated with officers of the Mines Department.

Confetti bombs are dangerous not only to young children, as my honourable Friend says, but also to adults. It is illegal for any person to store, and consequently to possess, any quantity of fireworks without a licence or to discharge fireworks without a permit. No additional legislation is necessary or contemplated. Members of the public including shopkeepers, who have at present any fireworks, including confetti bombs, are advised to take advantage of the present amnesty, which ends on 31st January, to dispose of them to the police.

MR WOO: —Sir, I understand these confetti bombs were imported to Hong Kong as toys. Is that true?

MR HETHERINGTON: —Sir, we have not been able to establish the source of these confetti bombs up to the present. It is possible that either they were old stocks or they were in fact incorrectly manifested as toys.

Interest on water deposit

7. DR CHUNG asked: —

> Public utilities such as electricity and gas companies accept bank guarantee in lieu of deposit and pay interest on cash deposits. The Water Authority, however, only accepts bank guarantee in lieu of deposit but does not pay interest on cash deposits. Will Government offer identical facilities to its water consumers and, if it will not, why not?

THE FINANCIAL SECRETARY (SIR JOHN COWPERTHWAITE): —Sir, the power companies and the gas company pay interest on consumers' deposits at 3½% and 3% respectively, but only on deposits of $100 or more. Section 9 of the Waterworks Ordinance specifically states that water deposits shall be without interest.

The practice of the Water Authority is to require deposits calculated at five months consumption, with certain minima. The minimum for domestic premises is generally $50 but this is reduced to $20 for Resettlement Estates. For trade consumers it is $250. Bank guarantees are accepted in lieu of deposits of not less than $2,000 and certain limited categories are exempted. Deposits total $31 million at present or an average of $97 over the 320,000 water accounts.

[THE FINANCIAL SECRETARY] **Oral Answers**

Water bills are generally much lower than electricity or gas bills and very few domestic consumers are required to provide a deposit of as much as $100, the lower eligibility limit in the case of the utilities. The great majority are required to deposit only the minimum amount. I regret I have no figures available of the number of deposits below $100 compared with those of $100 and upwards.

But apart from this, the main reason for treating water deposits differently is that, while other utilities are private profit-making undertakings and it would be wrong that interest free working capital should be supplied by customers, the Water Authority is a publicly-owned undertaking, the general aim of which is to do no more than cover costs; and any interest paid on deposits would be reflected in a higher price (including the high cost of calculating and paying interest).

A further difference is that other utility charges are payable monthly the following month, while water charges are generally payable quarterly in the second month after the end of the quarter. The Water Authority therefore gives longer credit to consumers.

It is true, of course, that the system of minimum deposits, alternative guarantees and limited exemptions redistributes costs to some extent; but this is fairly marginal and can cause no serious inequity. In general, interest on a deposit at 3½% would represent about 2½ cents per thousand gallons, compared with the standard price of $2.

Entry into the Philippines

8. MR KAN asked: —

> Will the Government clarify the position with regard to entry to the Philippines by Hong Kong residents in the light of the recent announcement by the Philippine Government?

THE COLONIAL SECRETARY (SIR HUGH NORMAN-WALKER): —Sir, I welcome my honourable Friend Mr KAN's question and the opportunity given me to try to clarify a matter which has caused some misunderstanding but one which is of course primarily a matter for the Philippine Government.

I am informed by the Consul General for the Philippines in Hong Kong that all holders of British passports, including those issued in Hong Kong, are now permitted to enter the Philippines without a visa as visitors for a period of up to 21 days, provided they have onward bookings. If such passport holders wish to remain for longer than 21 days, they require a visa.

Holders of Certificates of Identity are required, as previously, to apply for and may be granted a visa upon previous authorization from the Department of Foreign Affairs in Manila, for any visit to the Philippines, irrespective of the length of stay.

Honourable Members will appreciate that this is a considerable improvement over the previous position where certain holders of British passports were allowed to enter the Philippines without a visa only when in transit to other countries and then only for a maximum of 72 hours.

MR KAN: —Sir, the object of my question being that there should be no discrimination against Hong Kong residents holding British passports, is Government satisfied that we are getting the same treatment as those of other countries?

THE COLONIAL SECRETARY: —As I understand the position, Sir, the requirement which my honourable Friend has postulated has been met; but, however, as I said at the beginning, this is primarily a matter for the Philippine Government and I think under Standing Order 15 I have gone as far as I properly can in interpreting the rules and regulations and intentions of another administration.

MR KAN: —Sir, I appreciate my honourable Friend's difficulties.

STATEMENTS

Report of the Housing Board 1969

THE COLONIAL SECRETARY (SIR HUGH NORMAN-WALKER): —Sir, amongst the papers tabled today is the Report of the Housing Board 1969.

The Report records an impressive history of achievement, and makes interesting, constructive, and possibly even controversial proposals for the future.

It would be entirely premature for me to comment on the recommendations and conclusions, which are summarized at the end of the Report. These are now being considered by the Government, and are the subject of consultation with the Urban Council and the aided housing agencies.

We have come to expect sound constructive and well-reasoned advice from the Board, and I would like to take this opportunity of thanking the Chairman and Members for the work they have done and are doing, and for the present Report which comes fully up to the high standards that the Board has set itself.

Statements

Workmen's Compensation Ordinance (Amendment of Second Schedule) Order 1970

MR HETHERINGTON: —Sir, under Standing Order 20, I would like to make a very brief statement amplifying the explanatory note to the Workmen's Compensation Ordinance (Amendment of Second Schedule) Order 1970 which was laid on the table of this Council this afternoon.

The Workmen's Compensation Ordinance, enacted in 1953, was amended in 1964 to extend compensation to incapacity or death arising from certain occupational diseases. These occupational diseases, now listed in the second schedule to the principal Ordinance, include all those mentioned in International Labour Organization convention number 42. One is anthrax. However, compensation under the amending Ordinance was payable only if the disease was contracted when a workman was employed in any process involving the handling of wool, hair, bristles, hides, or skins or other animal products or residues or contact with animals infected with anthrax. Anthrax may be contracted through loading, unloading, or transporting merchandise which has also been in contact with infected animal products. It is a reasonable presumption, which the convention accepts, that a workman who has handled merchandise and is found to be suffering from anthrax contracted the disease through his employment.

Although no cases of human anthrax have been reported to the Industrial Health Division of the Labour Department since it was originally established in 1958, it is considered desirable to bring the Ordinance wholly into line with the convention. The order provides accordingly.

Suspension of Standing Orders

Motion made, and question proposed, pursuant to Standing Order No 68. That Standing Order No 40 be suspended to permit the presentation of the Security of Tenure (Domestic Premises) Bill 1970 without prior publication in the *Gazette*—THE ATTORNEY GENERAL (MR D. T. E. ROBERTS).

Question put and agreed to.

SECURITY OF TENURE (DOMESTIC PREMISES) BILL 1970
PENSIONS (AMENDMENT) BILL 1970
SIR DAVID TRENCH FUND FOR RECREATION BILL 1970
THEFT BILL 1970
IMPORTATION AND EXPORTATION (AMENDMENT) BILL 1970
EMPLOYMENT (AMENDMENT) (NO 2) BILL 1970
COMPANIES (AMENDMENT) BILL 1970

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

SECURITY OF TENURE (DOMESTIC PREMISES) BILL 1970

THE COLONIAL SECRETARY (SIR HUGH NORMAN-WALKER) moved the second reading of: —"A bill to provide for temporary security of tenure in respect of tenancies of domestic premises, and for purposes connected therewith."

He said: —Sir, at the last meeting of this Council on the 7th January in answer to a question from my honourable Friend Mr FUNG I not only gave an assurance that the Commissioner of Rating and Valuation's report on rents and the whole question of the present rental situation were under active and urgent consideration, but I went further and said that I would shortly be submitting proposals in this connexion to you, Sir, in Council. What I said on that occasion has been interpreted in certain limited quarters as indicating that the Government had no intention of taking action in the present situation.

The proposals to which I referred were, however, duly made to the Governor in Council, and as a result I now move the second reading of a bill entitled "An Ordinance to Provide for Temporary Security of Tenure in respect of Tenancies of Domestic Premises and for purposes connected therewith".

I regret very much that it is necessary to take two bites at this cherry. The legislation which I now commend to honourable Members is in the nature of a holding operation and will, if passed, be superseded with all possible speed by substantive legislation imposing specific controls. It must be apparent to honourable Members that a decision to impose any form of statutory restraint on freedom of contract and the normal operation of the property market is one that can only be taken with reluctance, and after the fullest consideration of all aspects of the situation. In particular we must be very careful to gauge the effect which any controls might have upon the provision of more accommodation. As I reminded Members on the 7th January, it is the provision of this additional accommodation that in the long run is the only entirely effective method of relieving the present shortage and the resulting rent increases.

Before we can proceed to present legislation covering specific controls there are certain questions which remain to be decided if those controls are to operate fairly. For example, we have to decide on the duration of such legislation and the method of its termination; the rate and periodicity of permitted increases: the extent to which there should or should not be a differential in permitted increases between different types of property, and indeed whether there should be a ceiling above which controls should not apply. Evidence is also

being collected on which can be based a decision whether controls should be based on rateable value, or on rent previously payable or on area or on a combination of any or all of these circumstances. The valuable report of the Rating and Valuation Department which has been circulated to Members was an interim report, and even before it was presented to this Council the department was collecting further information on the most up to date situation, which is being now processed.

Before I go on to deal with the detail of this bill there is one thing I must do. I must apologize to honourable Members for asking their indulgence to take all stages of the bill at this meeting of Council. The reason of course lies in what I said when answering my honourable Friend Mr FUNG—inherent in this sort of problem is the fact that Government cannot safely give an indication of its intentions until it is ready to put whatever plan it may devise into effect and to lay any proposals involving legislative change before this Council.

The Government has reached the conclusion that immediate action is necessary to restrain rent increases in domestic accommodation in the interim period. The purpose of this bill now before you is to give security of tenure to tenants of domestic premises, pending the enactment of the main legislation to which I have referred. With certain exceptions the present bill affords protection to those domestic tenancies in post-war buildings which are in existence at the time this bill comes into force. It follows closely the provisions of Parts I and II of the repealed Rent Increases (Domestic Premises) Control Ordinance, subject to certain relatively minor changes which reflect more recent developments in this field. In the simplest terms, what all this means is that until the new main legislation comes into force, tenants of domestic premises covered by this present bill, who between 30th July 1969 and the date this bill passes into law have received notices of termination of their tenancies for the purpose of increasing their rent will not have to worry either about having to give up their premises or to pay any increase in rent which is not allowed for under the terms of their existing tenancies. If this Council passes this bill today it will become law on the 30th January—the day after to-morrow.

Whilst we have incorporated in the present bill certain provisions from the 1963 Ordinance, I must stress that the present situation is much more complicated than it was in 1962 and 1963. At that time there had been a period of steadily rising rents for all types of accommodation. Today we are dealing with a strictly interim situation in which the incidence of rent increases is extremely uneven, and one

moreover which follows a period in which many tenancies were created at artificially low rents. Merely indefinitely to extend existing rent arrangements would operate unfairly, as well as unevenly.

And now, Sir, to detail. The effect of this holding bill is to continue any tenancy of domestic premises which is still in force on the date of commencement of the bill. If the six months notice required by the Tenancy (Notice of Termination) Ordinance has expired before the bill becomes law, the tenancy will not be protected; if it has not expired, the tenancy will be. If a tenancy is protected by the bill, the landlord will not be able to end it, and consequently will not be able to alter the rent, unless special conditions are satisfied. For example, a landlord may end a domestic tenancy if he requires the premises to house himself or his immediate family or if he intends to rebuild the premises, or if he has entered into a contract for sale of the premises, with vacant possession, before this legislation came into effect. Nor will the bill protect the tenant from the consequences of a breach of covenant on his part, or a failure to pay rent at all, if this would otherwise have led to the termination of his tenancy.

The present bill deals solely with domestic tenancies. It is the Government's view that present circumstances do not justify extending control to a wider range of tenancies. It is true that in the flatted factory category there has been a substantial rise in rents over the past few months, due to a short-fall in the provision of accommodation of this type during 1969 and also to a very strong demand. But over 6½ million square feet of new flatted factory accommodation, quite apart from a further 1¾ million square feet of floor space in individual factory premises now under construction, will become available during the current year. Moreover quite apart from certain flatted factories held by Government against planned clearances in the immediate future, some 400,000 square feet of flatted factory accommodation were vacant at the 1st January 1970—four weeks ago. The situation is then already easing and should ease very considerably during the latter part of this year. In parenthesis I would say that the suggestion has been made in many quarters that the Government could and should solve the flatted factory problem by making more land available. It is perhaps unnecessary to remind honourable Members: first, that there are already 4½ million square feet of undeveloped industrial land in the hands of private owners; secondly of Government's frequently announced programme of land sales: and thirdly that the sale of land at this point of time would not result in the provision of additional factory accommodation during the life-time of the problem. In any case, there are, I believe, fundamental objections of economic principle to interfering with market forces in this field. It seems wrong, in terms of equity, to tamper with these forces in favour of one group of entrepreneurs to the detriment of others; indeed it might be argued

by one school of economists that one was putting a premium on inefficiency.

We have heard many gloomy prophecies in recent weeks about the adverse effects of rent increases on our industrial expansion. But a closer scrutiny of reliable statistics exposes the weakness and fallacies of such arguments. For example, actual figures for the opening and closing down of factories simply do not bear out these gloomy prognostications. It is true that in the last quarter of 1969 621 factories have closed down, but over the same period 712 new factories have opened up. In 1968 during the equivalent period an even larger number of factories closed down—to be exact 765, but again a larger number than this were opened. Only in 1967 did the number of factories closing exceed the numbers opening, and Sir that was at a time when rents were at their lowest for some years. At the end of 1969 there were 15,167 companies on the register as compared with 12,929 at the end of 1968. In addition there were at the close of the year just ended 639 foreign companies registered as against only 607 at the end of 1968.

So far as shops and office accommodation are concerned, the Commissioner's reports indicate that although rents in these categories have shown a tendency to rise recently, they are still generally below the previous highest recorded level. There is also no overall shortage of space although premises in the most central and favoured locations are hard to find. Here again, Government believes that great care must be taken before interfering with the free play of market forces in establishing rent levels.

However I do not exclude the possibility of providing business tenants with a more limited form of security of tenure, provided they are prepared to pay a market rent for their premises. Government therefore intends in due course to revive and re-examine legislative proposals on these lines which were the subject of detailed consideration in 1964 and 1965, but were not pursued because of the prevailing surplus of accommodation at that time and the general decline in rents.

In any case all these types of non-residential accommodation to which I have referred continue to have the protection of the Tenancy (Notice of Termination) Ordinance.

The question of domestic accommodation is very much more difficult. It is more difficult principally because the shortage of accommodation which gives rise to the rent problem is likely to last very much longer. The Commissioner of Rating and Valuation's

preliminary report and figures which he has since produced, demonstrate that there have been demands for rent increases in many categories, though the incidence of these increases has been uneven. 1969 was not a good year for the completion of private housing, and though building has greatly speeded up, 1970 production is unlikely to catch up with demand. It is estimated that it will be late in 1971 before an equilibrium between supply and demand can be achieved.

At the lower end of the scale the supply of Government and Government aided housing, which is expected to provide new accommodation for over one hundred thousand people during the current year will assist the situation, and in addition resettlement blocks will be able to provide for an additional ninety thousand people during the year. However in the small, medium and large flat categories (as opposed to tenements) the pressure on rents is likely to increase for some substantial time to come, although in very varying degrees.

This brings me to a point at which it is desirable to define as clearly as possible the scope of the problem with which we are dealing. Some 80% of the population are not affected at all or only marginally affected by the present situation. This figure includes squatters, the legitimate marine dwellers, tenants of pre-war accommodation, those (some million and a half) in Government or Government aided housing, and those in private accommodation in the New Territories and owner-occupiers in the Urban areas. Of the remaining 20% approximately 2/3rds are living in post-war tenement floors. In this category the overall average increase in rents over the year 1969 has only been approximately 2% but this figure is, let me say at once, misleading. Some 75% have suffered no increase in rent, but in the case of those who have suffered an increase in rent the average increase is of the order of 11%. There remain the 6½% of the population living in small, medium or large flats, and it is this section of the population that has been most seriously affected by rent increases or notifications or threats of rent increases. On the basis of these figures Government cannot accept the validity of some of the more extreme and reckless forecasts of widespread distress and even civil unrest which some recent advocates of rent control have been voicing. What I have done is to try to put the situation into its proper perspective. When the picture is distorted the very expression of alarmist views can do more harm to our economy and stability than the rent increases themselves which have given rise to the controversy. But in saying this I do not mean that Government does not accept the responsibility on either social or equitable grounds for protecting domestic tenants of existing post-war premises, nor do we believe that they should be allowed to bear the burden of immoderate or extortionate rent increases.

I am therefore introducing the present legislation to freeze increases in the vulnerable area whilst we devise the more precise controls by

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which increases can be regulated on an orderly and reasonable basis until the supply of new accommodation, the first letting of which the Government does not intend to control, removes the need, as happened in 1966, for official intervention. As I have already said the new main legislation will be presented as soon as possible. Meanwhile this present bill, the holding operation, is as its name implies, intended to give security of tenure to existing post-war domestic premises.

If you compare this bill with the repealed Rent Increases (Domestic Premises) Control Ordinance; you will see that, it includes the security of tenure provisions of that Ordinance, but not the provisions relating to rent increases. It will apply to all tenancies and subtenancies in post-war private domestic premises which are in existence at the time the bill comes into effect with certain exceptions. One of the most important of these exceptions concerns tenancies which are either for a fixed term of three years or more of which may be extended so that the total term is for three years or more at the same rent. Again, landlords can still obtain vacant possession of premises which they wish to reconstruct or which they are at this date already contracted to sell with vacant possession.

One departure from the provisions of the 1963 Ordinance occurs in clause 4, which sets out the rules for determining whether a particular tenancy or subtenancy is domestic and therefore subject to the protection afforded by the bill. In 1963 the main concern was to prevent non-domestic tenancies becoming controlled, but the prevalence of mixed premises now makes it likely that the rules in section 4 of the old Ordinance could well exclude from protection many tenants who are following their trades in their own homes. In the present bill the actual primary user of the premises normally determines whether or not a tenancy is domestic, though the purpose for which the premises were let remains of significance, particularly if the user is specified in a written agreement between landlord and tenant. The intention is to protect the person who works in his home, rather than the person who lives in his workplace.

I am sure that many tenants and landlords will be anxious to find out how the new "holding" legislation will affect their own premises. City District Officers will be ready to do what they can to answer inquiries on the new Ordinance although, of course, there can be no substitute for private legal practitioners when it comes to advising on the precise effects on individual tenancies.

In short, Sir, what we are endeavouring to do is to take action to palliate the most serious and least desirable symptoms of the situation

which has recently affected post-war domestic premises. Permanent cure lies in the hands of the private developer, and I trust that honourable Members will share my view that we should proceed cautiously, so as not to deter new developments from going ahead as planned to satisfy the current demand for new domestic accommodation of all types.

MR KAN: —Sir, the Unofficial Members support this bill and, speaking for myself, not for professional reasons. We have, as has Government, been following the rent situation closely for some time past and have taken note of the representations made to us. We have also had the opportunity of studying the Commissioner of Rating and Valuation's report and certain other information which has since come forward. Sir, there are undoubtedly some bad cases of excessive rent increases but such cases are not as widespread as some may fear. Nonetheless a situation does exist which calls for governmental action. The tendency to increase rent unreasonably must be checked otherwise there will be a real danger of its becoming far more widespread particularly in the areas where the hardship will be the greater because the people affected can least afford to bear the extra burden.

We appreciate that the present bill is only a holding measure, that is to say, to preserve the *status quo* with regard to domestic premises while Government is considering further legislation on specific rent controls. In this connexion we welcome the Honourable Colonial Secretary's assurance that such further legislation will be introduced with all possible speed. The nature of our economy is such that controls should only be imposed with reluctance, but public interest demands that we act when disruptive forces in our midst endanger our economy and consequently the well being of our people.

In its new legislation may I suggest that Government adopts a formula based on first principles which would remain as a permanent part of our laws, one which would enable excessive profiteering, whenever it arises, to be immediately stopped. To pass an Ordinance of a temporary nature which is later repealed means that whenever a crisis arises there must be several months' delay before Government can act.

I believe that private builders themselves would prefer to operate under a reasonable set of rules so that there would be no uncertainty of Government's intentions. Provided initial rents can be freely negotiated and there is a reasonable measure of freedom in negotiating new leases when the old ones expire, there is unlikely to be any decrease in the amount of private buildings upon which we depend so much to meet the demand for more accommodation.

Security of Tenure (Domestic Premises) Bill—second reading

MR WILFRED S. B.WONG: —Sir, the introduction of this legislation on the security of tenure in one session is tangible proof of the fact that Government is acutely aware of the serious rental situation in which spiralling rents are causing instability in our economic society.

There was a time when proponents of the classic economic theory of supply and demand would consider it a sin to interfere with these free forces which Adam SMITH propounded in the year 1776. Modern economy, however, has proved that there are very few areas in the world today being left entirely to the natural forces of economics without any legislation for consequences of unrestrained developments of these forces.

My honourable Friend and Senior Colleague, Mr KAN, has already expressed the general feelings of the Unofficial Members. I would like to go a little further and say that it is essential that while this holding action on the security of tenure is being undertaken, a rent increase rationalization formula be devised as soon as possible. This would not be simple as all the factors which my honourable Friend, the Colonial Secretary, has mentioned have to be carefully weighed and considered but with the experience that was gained from the implementation of the 1963 Ordinance and with further information from the Department of Rating and Valuation and the City District Offices, it is not impossible to assess standards for fair rent. By this means, both the tenants and landlords would know how they stand. Rent is one of the four factors of production and is one of the most important components in the costs of living. Unrestricted increases in the cost of rents would, undoubtedly, affect salaries, wages and prices. This could be a basic cause of inflation. On the other hand, having due regard to the rise in the gross national product and the rise in the cost of maintenance of buildings, the cost of replacement of properties, a reasonable rise in proportionate amounts of rents is advisable for the encouragement of developers who would then continue to increase the supply of housing in Hong Kong. Therefore, whereas a rational increase is desirable, unrestricted increase out of proportion with previous levels is undesirable. These factors could readily be considered by a Rent Increase Advisory Committee such as the one which was established in 1963.

It should be clearly understood that the Rent Rationalization Ordinance should exclude new premises which must still be subject to the free forces of supply and demand. This would eventually allow supply to catch up with the demand and rents would then find their own level in, I hope, the interests of Hong Kong as a whole.

With these few words, I support this bill for the Security of Tenure on Domestic Premises.

MR M. A. R. HERRIES: —Sir, I welcome Government's action in introducing this bill which will stabilize the situation for the short term. This will enable Government to deliberate and introduce, with the minimum delay, legislation to safeguard the rights of both tenants and landlords where considered necessary. Much has been said in the press, often distorted, of the actions of a small number of extortionate landlords. Little has been said, if anything, of the good landlords who have, by their enterprise over the years, built accommodation, maintained reasonable standards in their properties and also agreements equitable to both parties, landlord and tenant alike, through thick and thin. This free economy of ours has operated remarkably satisfactorily over the past 20 years with the minimum of controls and I, for one, would deplore anything which basically changed this state of affairs. However, it is obviously necessary that this matter should be reviewed urgently and action taken to prevent any abuses. In the interim, obviously a moratorium is necessary. With regard to the ensuing legislation, I very much support what my honourable Friend, Mr KAN, has said regarding the setting up of reasonable and permanent rules for the future. Sir, I support the bill.

MR K. A.WATSON: —Sir, I also would like to support my Friends, the Honourable Mr KAN and Mr HERRIES' call for rather more permanent legislation in the future if this can be devised without discouraging the production of new housing. In recent months, there has been considerable criticism of Government's apparent slowness in acting on complaints of excessive rent increases. This would be more justifiable if Government had stepped in and clamped on controls without first studying the extent of the trouble, considering the possible effects on the community, and making sure that new legislation contained no loopholes. All this unfortunately takes time during which Government is unable to make any announcement other than that it has the question under consideration, a phrase which many people take to be synonymous with the intention not to take any action. I am sure that the new legislation, when it appears, will be based on principles of justice and it therefore could remain permanent. The main objection to permanent legislation is that it might discourage building, but this I feel sure can be avoided. As Mr KAN has said most real estate developers would probably prefer to know exactly where they stood, instead of having to make large financial decisions and commitments with possible threats of unknown controls and restrictions hanging over them. In supporting this bill, I repeat the hope that the new legislation will be drafted in such a way that the anguish and apprehension suffered by many tenants who suddenly found themselves with very large rent increases in recent months will seldom, if ever, occur in the future.

Security of Tenure (Domestic Premises) Bill—second reading

THE COLONIAL SECRETARY (SIR HUGH NORMAN-WALKER): —Sir, I would like to thank honourable Members for the general support they have given to this measure and perhaps refer specifically to two points. The honourable Mr HERRIES referred to the—I think—to the castigation of landlords. I would hate anyone to think that I had attempted to castigate landlords as a class and indeed I think, if the honourable Member will refer to my reply to the question on January the 7th*, I made it clear that I was referring only to an extortionate minority of an admirable body of men. I was also extremely interested in the honourable Mr KAN's suggestion, which was supported by other honourable Members, that Government might try to devise a framework—a permanent framework—within which it would be possible to move swiftly to suppress extortionate action or action which could rapidly damage our economy. This suggestion, Sir, will receive our very serious consideration.

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(1).

Explanatory Memorandum

The purpose of this Bill is to give temporary security of tenure to tenants of domestic premises, until more comprehensive legislation on the subject can be prepared. The Bill covers only tenancies of domestic premises, which are in existence at the date when the Bill comes into force.

The Bill is based on Parts I and II of the repealed Rent Increases (Domestic Premises) Control Ordinance.

PENSIONS (AMENDMENT) BILL 1970

The Governor's recommendation signified by the Colonial Secretary *pursuant to Standing Order No 23(1).*

THE COLONIAL SECRETARY (SIR HUGH NORMAN-WALKER) moved the second reading of: —"A bill to amend further the Pensions Ordinance."

* Page 227.

He said: —Sir, it may be from time to time that on your recommendation and on the advice of the Finance Committee this Legislative Council would wish to make a special allowance of one kind or another pensionable. The purpose of this minor amendment is to enable this Council to do so by resolution, rather than by going through all the complex procedure of amending the Ordinance.

The immediate occasion of this amendment is a proposal approved by Finance Committee that the special allowance at present payable to all members of the rank and file of the Royal Hong Kong Police Force should be regarded as pensionable; and it is because this particular allowance was introduced at its present rate on the 1st November 1967 that provision is included in the bill for any resolution that may be passed by Legislative Council to have retrospective effect to that date.

Sir, I would like to emphasize that, in moving this bill, I am not seeking to take any powers away from this Council, but merely to enable this Council to exercise its powers in an easier way.

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(1).

Explanatory Memorandum

The purpose of this Bill is to provide that certain allowances not falling within the definition of "personal allowance" in section 2(1) of the principal Ordinance may be declared pensionable by resolution of the Legislative Council.

Clause 1 gives the amendment retrospective effect.

Clause 2(*a*) includes "special allowance" in the definition of "pensionable emoluments" in the principal Ordinance, and clause 2(*b*) defines "special allowance".

Clause 3 empowers the Legislative Council to declare by resolution that a special allowance is to be pensionable and provides also that such resolution may be expressed to take effect earlier than the date on which the resolution is passed but not before 1st November 1967.

SIR DAVID TRENCH FUND FOR RECREATION BILL 1970

The Governor's recommendation signified by the Attorney General *pursuant to Standing Order No 23(1).*

THE ATTORNEY GENERAL (MR ROBERTS) moved the second reading of: —"A bill to establish a fund for providing or assisting in providing facilities for recreational, sporting, cultural and social activities and for the due administration of such fund and for purposes connected with the matters aforesaid."

He said: —Sir, honourable Members will, I am sure, wish to be associated with me when I express the Government's deep appreciation of the very generous gift which has made it possible to establish this Fund. And you, Sir, have also authorized me to include a warm expression of Your Excellency's personal appreciation and thanks.

In making this generous gift the donor has said that he does so by way of acknowledgment of the work of the Civil Service and of the many public-spirited private citizens, who serve on our numerous boards and committees, and, more particularly, in commemoration of the period of Your Excellency's governorship.

This has been a period during which both the Government and the community as a whole have become increasingly aware that one of our foremost tasks is to make of Hong Kong a society in which the energies and aspirations of our young people can find full scope and opportunity, and the main object of this Fund will be to provide recreational, cultural, social and sporting facilities for them, though, as honourable Members will see from the terms of clause 5, the use of the fund is not in terms restricted only to such activities as will benefit the young.

I believe that the fund will command widespread support, and would like to express the hope that others, who are able to do so, may be disposed to contribute to it. Clause 3 of the bill makes provision for the receipt of additional contributions at any time.

The main purpose of the trust fund, which the bill seeks to establish, is to enlarge the opportunities for the satisfying and rewarding use of leisure time. Within the limits of this general purpose wide discretion is conferred upon the Governor. I am given to understand that it is Your Excellency's intention to set up an informal committee, of persons with a special interest in the field of recreation, to advise on the use of the Fund's resources and that the general public will also be invited to put forward suggestions. Although some time must necessarily elapse before any substantial projects can be put into effect, I hope that some practical results may be seen in the coming summer.

Clause 8 of the bill contains safeguards with regard to the spending of the Fund's capital. These are sensible and common provisions in a trust fund, but they usually mean that there must be an initial interval, whilst income accumulates, before money is available for the purposes of the trust. The anonymous philanthropist, in order to avoid such a delay in this case, has contributed, in addition to the original capital sum of $3 million, a further $200,000, which will be treated as income and can be spent at any time after the Ordinance becomes law.

The rest of the bill follows the form of other recent charitable Ordinances of a similar nature.

MR WILSON T. S. WANG: —Sir, although it is quite obvious in this case that we all give our consent and endorsement of what my honourable Friend has just said so ably and appropriately in commending this bill to the Council, I cannot resist rising to add a few more words to convey my very special appreciation and admiration of the extraordinary generosity of the anonymous donor and my warmest support for the most worthy purposes of the gift.

Your Excellency, as we all know, you have made it your business throughout your term of office to do all in your power to encourage our hardworking people, particularly the younger generation, to take a keener interest in recreation, and as this money is to be spent on the promotion of recreational and related activities, I am sure that we all feel immensely delighted that this princely gift is to be associated with your name.

It is an undisputed fact that both our Government and also the community as a whole are fully convinced that one of our foremost tasks is to make Hong Kong a city and a society in which our young peoples' energies and aspirations can find full scope and opportunity. However, I cannot say for sure that the scale of effort required on our part has yet been so clearly appreciated. It is essential not just to do a lot, but to do a tremendous lot—and even then we shall not have done enough. At a time when perhaps there may be some danger of our resting on our laurels, an almost inevitable human reaction to growth and prosperity, this donation, because as it does out of the blue, will act as a valuable spur to all of us who recognize the pressing need to redouble our efforts to provide further recreational facilities.

In support of this bill, I should like, therefore, to add my word of applause for the foresight which has prompted the inclusion in this bill of an expressed hope that further gifts may be forthcoming. I have no doubt at all that many of our public-spirited citizens, inspired

by this formidable act of charity and goodwill, will follow the lead that has been given to us.

MR Q. W. LEE: —Sir, since the announcement of this Fund was made on the 16th January 1970 it has aroused considerable public interest. With very warm applause for the generous donation, complete support for its use and strong endorsement for the work of the civil service and that of the public-spirited citizens who serve on advisory boards and committees and, in particular, to commemorate Your Excellency's governorship, it has been with wide speculation who this generous donor is and why he has chosen to be anonymous.

There are of course very good reasons for him to remain anonymous and I believe one of such reasons must be that he does not wish to be solely associated with the Fund so that it will be able to induce contributions from any other source as now so provided in clause 3.

Sir, you have kindly agreed for the Fund to be named after you. This is interpreted by many as a further indication of Your Excellency's continuous concern for the welfare and future of our young people whose number occupies a significant proportion in our population.

My honourable Friend, the Attorney General believes that the Fund will commend wide support and so does my honourable Friend, Mr WANG. You will no doubt be pleased to hear that a few members of the community have already pledged their willingness to give support to the Fund. The indicated amounts, of course, not large when compared to the capital sum of $3,000,000 especially. But I hope the Government will give constant publicity on the activities of the Fund so that by its very nature many other donors in our community in which ready support is always forthcoming for a worthwhile cause will be attracted to give their support too. There is every chance that this one will continue to grow and the benefit it intends to provide will reach many more young people in Hong Kong. I am sure the donor would wish the Fund to develop into a community-wide scheme, not only in respect of its activities, but also of raising further money for its use.

With these remarks, Sir, I have much pleasure in supporting the bill.

THE ATTORNEY GENERAL (MR ROBERTS): —I am greatly obliged to both honourable Members for their encouraging remarks which are much appreciated.

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(1).

Explanatory Memorandum

This Bill seeks to establish a trust fund to be known as the Sir David Trench Fund for Recreation.

2. Clause 3 establishes the fund which shall be held by the Accountant General as trustee. Under subclause (3) the fund is to consist of a sum of three million dollars donated anonymously on the 5th day of January 1970 for the purpose of setting up the fund, such assets as may have been acquired since that date by the use of these moneys and such further sums as may be donated to or acquired for the benefit of the fund after the enactment of the Bill.

3. Under clause 4 the Accountant General will be incorporated as trustee of the fund.

4. Clause 5 provides that the trustee shall apply the fund in such manner as the Governor directs for the provision of and assistance in the provision of facilities for recreation, sporting, cultural and social activities and such objects ancillary or incidental thereto as the Governor may consider appropriate.

5. Clause 6 sets out special provisions relating to the manner in which the fund is to be applied. The original capital sum of three million dollars is not to be spent without prior approval of the Legislative Council.

6. Clause 7 provides for the investment of moneys of the fund in such investments as the Governor may direct, subject to approval being obtained, in the case of investments which are not trust investments, from the Investment Advisory Committee appointed by the Governor under subclause (2).

7. Clause 8 will empower the trustee to employ officials and professional advisers to assist in the management of the fund. The expenses of doing so are to be paid out of the fund.

8. Under clause 9 the trustee will be required to keep accounts of all transactions concerning the fund and to prepare annual statement of such accounts. Under subclause (2) the accounts of the fund and the statement of the accounts are to be audited by an auditor appointed by the Governor. Under subclause

Sir David Trench Fund for Recreation Bill—second reading

[*Explanatory Memorandum*]

(3) the audited statement of accounts together with the auditor's report thereon, a report of the trustee on the administration of the fund and such other report as the Governor sees fit to make thereon are required to be laid before Legislative Council once in each year.

9. Clause 10 provides that, subject to a small supervision fee which may be charged against the fund, all the costs of the administration of the fund shall be a charge upon the general revenue of the Colony.

10. Clause 11 is a saving clause.

THEFT BILL 1970

THE ATTORNEY GENERAL (MR ROBERTS) moved the second reading of: —"A bill to revise the law as to theft and similar or associated offences, and in connexion therewith to make provision as to criminal proceedings by one party to a marriage against the other; and for other purposes connected therewith."

He said: —Sir, this bill contains a restatement and modernization of the law on theft and similar offences and follows very closely, with only minor modifications, the terms of the Theft Act 1968, which has been in force in the United Kingdom since the beginning of 1969 and which has worked very well in practice.

Clauses 2 to 7 of the bill deal with the new offence of theft, which will replace the existing offences of larceny, embezzlement and fraudulent conversion. The existing law of larceny is complex, mainly because it is regarded as a violation of the owner's right of possession and not of his rights of ownership. It is also inadequate, since larceny does not cover many kinds of misappropriation which are in substance indistinguishable from stealing. For example, a taking amounts to stealing only if the taker is acting fraudulently at the time of taking and intends to deprive the owner permanently of the property; an innocent acquisition which is later followed by a dishonest decision to keep or dispose of property is, generally speaking, not larceny. Similarly, a finder of lost property, who intends at the time he finds it to return the property to the owner, is not guilty of larceny if he afterwards changes his mind and dishonestly sells or keeps the property.

At present, fraudulent conversion depends on misappropriation of property by someone who is in possession of it on behalf of somebody

else. Embezzlement is a similar offence committed by a clerk or servant. Both offences are now encompassed by a single offence of theft which is defined in Clause 2 as the dishonest appropriation of property belonging to another with the intention of permanently depriving the other of it. Clauses 3 to 7 of the bill define expressions which are used in the basic definition to cover certain special cases.

The most important element in the new offence of theft is the dishonest appropriation, rather than the actual physical taking, of another's property and the bill concentrates on what the accused dishonestly achieved or attempted to achieve and not, as the present law does, on the means which he used. This avoids the need for numerous offences to cover illegal acts which are essentially similar in character.

The effect of the new definition is as if fraudulent conversion were widened to include the whole of larceny and embezzlement by leaving out the requirement in fraudulent conversion that the offender should already be in possession of the property. As a result, dishonest appropriation by a person who originally acquired possession innocently will become theft. It will also include some kinds of conduct which may not be criminal under the present law. One example is dishonest appropriation by a parent of things which are taken initially by a child under the age of criminal responsibility.

In the definition of theft the word “dishonestly” replaces the present requirement that the finder should take the property "fraudulently and without a claim of right made in good faith". However, it preserves the present rule that a finder of property can be guilty of stealing only if he believes that the owner can be discovered by taking reasonable steps to trace him.

Theft will apply to any kind of property, though under clause 5 land and things forming part of the land, wild creatures and things growing wild, will be capable of being stolen in defined circumstances, generally only if taken for a commercial purpose.

The maximum penalty for theft under clause 9 will be 10 years' imprisonment, instead of the present varying maximum penalties for larceny, embezzlement and fraudulent conversion, which range from six months' imprisonment for stealing a dog to imprisonment for life for stealing a will.

Clause 10 deals with robbery, the essence of which is stealing by using force against the victim or by putting him in fear. The clause requires that force must be used or threatened immediately before or at the time of the stealing to constitute robbery. A mere snatching of property, such as a handbag, from an unresisting owner, would

not be using force for the purpose of the definition, though it might be so if the owner resisted.

The maximum penalty for robbery and assault with intent to rob is to be life imprisonment, instead of the present penalties of 14 years for simple robbery and life imprisonment if an aggravating feature is present, such as being armed with an offensive weapon. The new provision will simplify and rationalize the law. At present, the slightest personal violence is enough to attract the possible penalty of life imprisonment, yet to rob a person by threatening to kill him amounts to no more than simple robbery.

Clauses 11 and 12 deal with burglary and aggravated burglary and replace the complicated breaking and entering offences which are found in the Larceny Ordinance. By clause 11 a person will be guilty of burglary if he enters a building as a trespasser with the intention of committing any of the serious offences listed in clause 11(2) or if he enters as a trespasser and then steals or inflicts any grievous harm, or commits rape or does any damage inside the building.

The existing offence of burglary depends on the breaking and entering being in the night, which is an artificial distinction, and on the concept of breaking, which is also unsatisfactory. Clause 11 makes no distinction between night and day or between different kinds of buildings and the test of breaking is replaced by the concept of entering as a trespasser. By clause 12, aggravated burglary consists of burglary when in possession of a firearm, imitation firearm, offensive weapon, or explosive.

The different penalties for burglary and the various forms of breaking and entering which exist at present will be replaced by a maximum penalty of 14 years' imprisonment for burglary and imprisonment for life for aggravated burglary.

Clause 13 makes it an offence to remove a work of art from a museum, art gallery or similar place without authority, even if there is no intention of permanently depriving the owner of it. This is an exception to the general rule that temporary deprivation of property should not constitute an offence and is included because, although the taking may not be intended to be permanent, something which is of great value, or irreplaceable, may be put in jeopardy.

Clause 14 replaces the present offence of taking and driving away a motor vehicle without authority under the Road Traffic Ordinance. Subclause (1) applies to conveyances generally, except pedal cycles and rickshaws, with regard to which there is a lesser offence under subclause (2) of clause 14.

Clause 17, which deals with obtaining property by deception, and clause 18, which is concerned with obtaining pecuniary advantage by deception, replace a number of offences of obtaining by false pretences or other deception and will greatly simplify the law.

Clause 17 makes it an offence dishonestly to obtain property belonging to another with the intention of permanently depriving the other of it. The definition of "deception", which replaces the phrase "false pretences" in the Larceny Ordinance, includes any deliberate or reckless misstatement of fact or law and any deception as to the intention or opinion of any person.

Clause 18 makes it an offence to dishonestly obtain by means of a deception any pecuniary advantage, which phrase is defined in subclause (2).

Clause 23 replaces a group of offences of demanding property with menaces and similar conduct by that of the offence of blackmail, of which a person will be guilty if, with a view to gain for himself or another or with intent to cause loss to another, he makes any unwarranted demand with menaces. A demand with menaces is unwarranted unless the person making it believes that he has reasonable grounds for the demand and that the use of menaces is a proper means of reinforcing it.

Clause 24 replaces the offence of receiving stolen property by one of handling stolen goods. This will strike not only at the receiver but also at those who have lesser roles, for example, the intermediary who puts a thief in touch with a buyer, or a man who moves stolen goods from one place to another.

Clause 27 provides that it is an offence for anyone to have with him, when not at the place where he lives, any article for use in the course of or in connection with any burglary, theft, or cheat. It is not confined to housebreaking implements but will also apply, for example, to false number plates and articles carried for the purpose of deception such as false references and uniforms.

Clause 30 replaces the law governing the restitution of stolen goods and provides a summary procedure, by which the courts will be able to make orders for the restoration of stolen goods, or those obtained by cheat or blackmail, or things which represent the stolen goods. The conviction of the offender will not affect the title to the goods and it is made clear by subclause (4) of clause 30 that the summary power is to be exercised only if the facts about ownership are clear from the original proceedings.

Clause 31 makes one spouse liable for offences under the bill against the other's property. It also enables one spouse to prosecute

the other as if they were not married, and makes one spouse a competent, but not a compellable, witness in a prosecution instituted against the other. Although the criminal courts should not generally be concerned with petty disputes between husbands and wives, one spouse can systematically make away with the other's property, including even property held on trust, without committing any offence, and it is felt conduct of this nature ought to be made criminal. A safeguard against the risk of trivial prosecutions is provided by requiring the consent of the Attorney General to a prosecution for stealing or unlawful damage to the other property of the spouse.

I am sure that there will be general agreement that this bill provides a clear and workable scheme, which I commend to this Council as a valuable measure in the task of improving and simplifying the criminal law.

Because of the many changes proposed in the bill, its operation is suspended by clause 1 until a date to be appointed by the Governor, in order to give all those concerned with its operation time to become familiar with its provisions. Both the Hong Kong Bar Association and the Hong Kong Law Society have expressed themselves as supporting the introduction of this bill.

Question proposed.

Motion made (pursuant to Standing Order No 30). That the debate on the second reading of the bill be adjourned—THE COLONIAL SECRETARY (SIR HUGH NORMAN-WALKER).

Question put and agreed to.

Explanatory Memorandum

The Bill brings the law on larceny and related offences into line generally with the law in the United Kingdom as contained in the Theft Act 1968. The Theft Act 1968 was enacted as a result of the Eighth Report of the Criminal Law Revision Committee, entitled "Theft and Related Offences". The Bill follows the 1968 Act, with certain minor changes, mostly procedural, though certain offences, peculiar to the Colony's legislation, are re-enacted.

Clause 1 sets out the short title and date of commencement of the Ordinance.

Clause 2 contains the basic definition of theft and clauses 3 to 7 further define the expressions used in that definition. Clause 8 contains definitions of other expressions used in the Bill.

Clause 9 provides a maximum penalty for theft.

Clause 10 defines the offence of robbery, and provides a maximum penalty for that offence and for assault with intent to rob.

Clauses 11 and 12 define the offences of burglary and aggravated burglary, and provide maximum penalties for them.

Clause 13 creates a new offence consisting of the removal of articles on show in buildings open to the public.

Clause 14 replaces the present offence of taking away motor vehicles without authority by an offence relating to conveyances generally, except pedal cycles and rickshaws, and by a lesser offence applying to these.

Clause 15 provides for an offence of dishonestly abstracting electricity.

Clause 16 provides for dishonest use of the public telephone or telex system.

Clause 17 creates an offence of obtaining property by deception and clause 18 of obtaining pecuniary advantage by deception.

Clause 19 creates offences of false accounting.

Clause 20 makes directors and other officers of bodies corporate liable for offences under clause 17, 18 or 19 committed by the body corporate with their consent or connivance.

Clause 21 provides for offences of false statements by officers of bodies corporate or unincorporated associations.

Clause 22 provides for offences of suppression of valuable securities, wills and certain other classes of documents and procuring by deception the execution of a valuable security.

Clause 23, which replaces a number of existing offences, creates the offence of blackmail.

Clause 24 creates an offence of handling stolen goods, which replaces and extends the present offences of receiving stolen goods.

Clause 25 makes it an offence to include a promise of immunity in an advertisement of a reward for the return of stolen or lost goods.

Clause 26 contains supplementary provisions about offences relating to stolen goods.

Clause 27 provides for an offence of going equipped for stealing, obtaining property by deception, etc.

Theft Bill—second reading

[*Explanatory Memorandum*]

Clause 28 makes provision for search for, and seizure of, stolen goods.

Clause 29 contains ancillary provisions relating to evidence and procedure on a charge of theft or handling stolen goods.

Clause 30 enables a criminal court to order the restoration of stolen goods or their proceeds to the person entitled to them or to order the owner or others who have lost by the theft to be compensated from money taken from the offender on his apprehension.

Clause 31 makes husbands and wives liable for any offence committed by one against the other. It also enables them to prosecute each other as if they were not married but, in certain cases, requires the consent of the Attorney General.

Clause 32 provides for alternative verdicts for offences under the Bill.

Clause 33 restricts the privilege of non-incrimination in respect of offences under the Bill and provides that the title to stolen property shall not be affected by reason only of the offender's conviction.

Clauses 34 and 35 contain ancillary provisions and provide for miscellaneous and consequential amendments, repeals and formal matters.

IMPORTATION AND EXPORTATION (AMENDMENT) BILL 1970

MR T. D. SORBY moved the second reading of: —"A bill to amend further the Importation and Exportation Ordinance."

He said: —Sir, as long as I can remember, there has been desultory debate in the columns of the press, among trade associations, and within my own department indeed about the statutory period within which must be filed the trade declarations from which are derived the published trade statistics. Nobody denies the need for these statistics; there are good reasons why they should be as accurate as possible in respect of value and quantity of trade in any particular month.

Most countries prepare their import statistics from customs documents, and their export statistics from declarations often linked with exchange permits. In Hong Kong, we have to rely solely on

declarations for both imports and exports, as we have no customs tariff and a much less than comprehensive exchange control. The growth of our total trade in the last ten years has been so rapid that the Trade Statistics Office has had great difficulty in keeping up with it, as, I am afraid, have many of our merchants and manufacturers in keeping up with the paper work essential to the preparation of the trade statistics. Nonetheless, the work does get done. And, if one stops to think about it at all, one cannot but marvel at the degree of effective co-operation that exists between those who lodge the statistical declaraions, those who register them and collect the ad valorem charges, and indeed the computer which disgorges the aggregates.

Despite this co-operation, only some 13% of declarations are lodged on time; many are two months overdue. The time at present prescribed in the Registration of Imports and Exports Regulations is 96 hours, and failure to lodge within that time renders the offender liable to prosecution in court. Even the statisticians have long recognized 96 hours as unreasonably short (although not so long ago it was 48 hours!); but two months is clearly far too long. The Trade and Industry Advisory Board finally reached the conclusion that 14 days would be reasonable. It is proposed in due course to amend the regulations accordingly.

This bill is, however, concerned not with the time limit for lodging declarations but with giving the Governor in Council power to impose money penalties for failure to lodge within the new statutory time limit. At present, tardiness on the part of some importers and exporters not only complicates the task of compiling accurate trade statistics but imposes a strain on the staff of both my own department and the Statistics Department, who have to cope with additional paper work and time-consuming prosecutions, inevitably to little effect. It is in effect impracticable to, prosecute all offenders; in any case, to prosecute is very much like taking a sledge hammer to crack a nut. It is therefore proposed, after consultation with the Trade and Industry Advisory Board, that in due course the Director of Commerce and Industry be empowered by Regulation to impose money penalties. The penalties we have in mind would be fixed sums, related to the length of delay in lodgment, ranging from $5 to $100, and the Director would have power to waive (or refund) payment in exceptional circumstances.

I sincerely hope that these not very severe measures would yet be a sufficient deterrent to late declarations; improve the accuracy and timeliness of trade statistics; reduce the number of prosecutions substantially; and ensure that the law applies to all. The revised regulations would not come into operation unless and until they are approved by resolution of this Council.

Question proposed.

Importation and Exportation (Amendment) Bill—second reading

Motion made (pursuant to Standing Order No 30). That the debate on the second reading of the bill be adjourned—THE COLONIAL SECRETARY (SIR HUGH NORMAN-WALKER).

Question put and agreed to.

Explanatory Memorandum

The Bill amends section 14 of the Importation and Exportation Ordinance to enable the Governor in Council to make regulations imposing a pecuniary penalty on a person who fails to comply with any regulations made under that section which require him to lodge a declaration with the Director of Commerce and Industry within a time prescribed in the regulations.

HIS EXCELLENCY THE PRESIDENT: —I think honourable Members might care for a short break at this time and I will therefore suspend the sitting of Council until quarter past Four o'clock.

4.07 p.m.

4.25 p.m.

HIS EXCELLENCY THE PRESIDENT: —Council will resume.

EMPLOYMENT (AMENDMENT) (NO 2) BILL 1970

MR HETHERINGTON moved the second reading of: —"A bill to amend further the Employment Ordinance."

He said: —Sir, honourable Members may recall that, arising from a suggestion made by my honourable Friend, Mr BROWNE, on 5th November last year[*], I confirmed that it was my intention to propose, from time to time, amendments and additions to the Employment Ordinance. In this way, the Ordinance would be periodically improved and progressively expanded to cover a variety of subjects with the object of transforming it in to a comprehensive measure on many aspects of employment. At the last sitting of this Council, an amending bill was passed dealing with maternity protection for female employees. A second amending bill, now before Council, introduces another new part, Part IIB, dealing with the grant of rest days to all employees falling within the scope of the principal Ordinance. These are, generally, all manual workers and those non-manual workers whose wages do not exceed $1,500 a month.

[*] Page 142.

Although, in accordance with either certain Ordinances or the terms of contracts of employment or the practices of particular trades or industries, many employees in Hong Kong enjoy, as a matter of right, some rest days, there still remain considerable numbers who have no claim to rest days and who must seek permission from their employers on each occasion when they wish to take a day off work. The absence of any right to rest days has been the direct cause of some disputes and, it is believed, the indirect cause of casual absenteeism in many trades and industries. It is considered desirable that all employees should be entitled, as far as it is reasonably practicable, to rest days, if they wish them, on a regular or predetermined basis and that the minimum entitlement should be four days in each month. The Employment (Amendment) (No 2) Bill 1970 seeks to provide such an entitlement. The main principles underlying the bill have been unanimously approved by the Labour Advisory Board.

Subsection (1) of new section 11E, contained in clause 3 of the bill, provides that every employee who has been employed by the same employer under a continuous contract shall be granted not less than four rest days a month. The meaning of a continuous contract is defined in the schedule to the Employment Ordinance. Subject to certain qualifications, it may be said that, in general terms, a person has been employed under a continuous contract when he or she has worked continuously for the same employer for four or more weeks. Although considerable numbers of employees in Government service, commerce, and industry already enjoy a rest day each week irrespective of the basis on which they work, there are still many undertakings, particularly those operating in a traditional manner, which work on a monthly basis and which pay wages either monthly or twice monthly. It is considered that, for these concerns, a statutory obligation to provide rest days on a monthly basis would be found more convenient than on a weekly basis. Consequently, provision is made accordingly. Those who already provide weekly rest days or who prefer to change to such an arrangement would, of course, automatically comply with this provision.

It is compulsory for an employer, in accordance with the Factories and Industrial Undertakings Regulations, to grant to all young persons aged 14 to 17 years and all women, engaged in industrial employment, one rest day in every seven days. It is not proposed to grant any additional rest days to these groups of workers. Consequently, they are specifically excluded by new section 11D.

Many employees, both male and female, in industrial employment are entitled to six holidays a year under the Industrial Employment (Holidays with Pay and Sickness Allowance) Ordinance. The rest days

to which they may become entitled under this bill are additional to these six holidays a year. Subsection (2) of new section 11E provides accordingly.

New section 11F sets out the procedure to be followed by an employer in granting rest days. Under subsection (1), an employer may elect either to appoint the same rest day for all employees or different rest days for different employees. Under subsection (2), an employer is required, before the beginning of each month, to inform each employee, either orally or in writing, of the appointed rest days. This requirement is satisfied if, in accordance with subsection (3), the employer exhibits, in a conspicuous place in the place of employment, a roster of appointed rest days for each employee. Under subsection (4), an employer is not required to notify each employee of appointed rest days if they are granted in each month on a regular basis. This could be done if an employer selected a particular day in each week or four specific dates in each month.

By subsection (1) of new section 11G, an employer is not permitted to require an employee to work on an appointed rest day. This provision is relaxed, by subsection (2), to permit an employer to require an employee to work on an appointed rest day if it is necessary to do so by reason of a breakdown of machinery or plant or other unforeseen emergency of any nature. In these circumstances, an employer is obliged, by subsection (3), to notify the employee, within forty-eight hours after the employee is required to work, of another rest day which must occur within a period of thirty days after the original rest day.

New section 11H permits either an employee to request work from his employer or an employer to request an employee to work on a rest day. Consequently, it remains open to both parties, if they are mutually agreeable, to arrange for work to be done on an appointed rest day. However, new section 11I stipulates that any condition in a contract of employment, which makes the payment of an annual bonus subject to working on rest days granted by this bill, shall be void.

This new section 11H provides for the circumstances in which an employee is willing voluntarily to forego a rest day. A situation may arise when an employee is prepared to work on an appointed rest day provided that another acceptable rest day is substituted. Subsection (5) of new section 11F provides for this by enabling an employer, with the consent of his employee, to substitute, for any rest day appointed under this section, another rest day within the period of thirty days next following.

The bill makes no provision for the payment of wages by the employer for rest days taken by the employee. This is a matter for settlement by negotiation between them.

Clause 4 of the bill amends section 31 of the principal Ordinance by adding new offences. An employer commits an offence if, without reasonable excuse, he or she fails to grant any rest day, fails to notify every employee, in advance, of his or her rest days, or requires an employee to work on a rest day contrary to the provisions of the bill.

Clause 2 amends section 2 of the principal Ordinance to provide for the definition of a rest day. This is a continuous period of not less than thirty hours for those engaged on shift work and of not less than twenty-four hours for all other employees.

No precise statistics are available concerning the number of employees who are, at present, granted, one way or another, at least four rest days a month. From limited information available, I doubt if the total exceeds half a million. A consequence of this bill may be to allow between 750,000 to 1,000,000 employees to take four rest days a month if they so wish. These are engaged in a great variety of employments. In order that there may be a reasonable period in which preparations can be made by managements of a wide range of concerns to meet the requirements of the bill, clause 1 provides that it shall not come in to operation until 1st April 1970.

The Labour Department will, as is customary, prepare a guide, in both Chinese and English, for general distribution in order that the rights and obligations created by the bill should be understood and widely-known. I anticipate that, initially, problems will undoubtedly arise as individual concerns take steps to comply with the provisions of the bill. I appeal to both employers and employees to act with forebearance in the early stages. Officers of the Labour Relations Service will be ready to give advice to all who may require it. I hope that, in this way, the purpose of the bill will be effectively and smoothly achieved.

Question proposed.

Motion made (pursuant to Standing Order No 30). That the debate on the second reading of the bill be adjourned—THE COLONIAL SECRETARY (SIR HUGH NORMAN-WALKER).

Question put and agreed to.

Explanatory Memorandum

The principal object of this Bill is to amend the Employment Ordinance to provide for the grant of rest days.

Employment (Amendment) (No 2) Bill—second reading

[*Explanatory Memorandum*]

Clause 3 introduces a new Part IIB in which—

Section 11D excludes from the operation of this Part women and young persons (and their employers) who are entitled to rest days under the Factories and Industrial Undertakings Regulations.

Section 11E imposes an obligation on an employer to grant not less than 4 rest days a month to an employee who is in his continuous employment. An employee will remain entitled to statutory holidays under the Industrial Employment (Holidays with Pay and Sickness Allowance) Ordinance in addition to rest days provided by this section.

Section 11F. Rest days are to be appointed by an employer and he is required to inform every employee in advance of his rest days during a month.

Section 11G provides that no employee shall be required to work on a rest day except in cases of breakdown of machinery or plant or other unforeseen emergency. Where an employee works on his rest day because of an emergency he is to be granted another rest day in substitution.

Section 11H permits an employee to work for his employer on a rest day either at his own request or at the request of his employer.

Section 11I makes void any condition in a contract of employment which makes the payment of any annual bonus subject to working on rest days.

Clause 4 amends section 31 of the Ordinance to make it an offence for an employer, without reasonable excuse, to fail to grant any rest day or inform his employees of their rest days. The amendment also makes it an offence for an employer to require an employee to work in contravention of subsection (1) of section 11G or to fail to grant a substituted rest day in accordance with subsection (3) of that section.

COMPANIES (AMENDMENT) BILL 1970.

THE FINANCIAL SECRUARY (SIR JOHN COWPERTHWAITE) moved the second reading of: —"A bill to amend further the Companies Ordinance."

He said: —Sir, London has one Stock Exchange, New York has, I believe, two. Hong Kong now has three already formed and one, I understand, in course of incorporation. It is clear that there are dangers in the proliferation of stock exchanges, both in terms of lack of expertize and in terms of excessive competition in a field which is essentially one of trust.

Today's bill merely seeks to adapt the existing provisions of the Companies Ordinance to provide a small degree of protection against undesirable offers of stock.

The concept "recognized stock exchange" in the Colony appears only in section 344 of the Companies Ordinance. Subsection (2) thereof requires that any offer of shares to the general public shall be accompanied by a written statement or prospectus containing particulars with respect to certain matters listed in subsection (4). This statement is not required, however, by virtue of provision (*a*) to subsection (2), in respect of shares quoted on, or in respect of which permission has been granted to deal by "any recognized stock exchange in the Colony".

But the phrase has not been defined. The bill accordingly defines a recognized stock exchange in the Colony as one recognized by the Governor in Council and gives the Governor in Council power to recognize stock exchanges and to impose conditions on recognition. This follows the practice in Britain where the Board of Trade has this authority.

The effect of the bill, therefore, is to make illegal the offer to the public, except in detailed written form, of shares which are quoted on a stock exchange which has not been recognized by the Governor in Council, except, of course, when they are also quoted on another, but recognized, stock exchange. It will, therefore, make it difficult for a stock exchange to arrange the issue of, and to deal in, new issues without securing recognition. But I have hopes that, in spite of this restricted scope, stock exchanges will feel that they cannot properly remain in business without securing formal recognition.

I should add that I understand that the Companies Ordinance Review Committee will be recommending certain amendments which will have the effect of giving greater practical importance to recognition.

The bill, if passed, will come into operation on 1st May 1970. I expect to have ready well before that date a preliminary set of conditions for recognition for consideration 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 COLONIAL SECRETARY (SIR HUGH NORMAN-WALKER).

Question put and agreed to.

Companies (Amendment) Bill—second reading

Explanatory Memorandum

Section 344(2) of the Companies Ordinance, which restricts offers in writing to the public of shares for purchase, does not apply if the shares offered are quoted on, or permission to deal in them has been granted by, a recognized stock exchange, provided that the offer so states and specifies the stock exchange.

2. The principal Ordinance does not define a recognized stock exchange. This Bill adds a new definition of recognized stock exchange in the Colony, and also a new section 2A which empowers the Governor in Council to recognize stock exchanges by order.

3. The new section 2A contained in clause 3 also provides for the imposition of conditions by the Governor in Council and the withdrawal of recognition.

CONSULAR RELATIONS BILL 1970

Resumption of debate on second reading (7th January 1970)

Question again proposed.

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.

DIPLOMATIC PRIVILEGES (AMENDMENT) BILL 1970

Resumption of debate on second reading (7th January 1970)

Question again proposed.

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

SECURITY OF TENURE (DOMESTIC PRENUSES) BILL 1970

Clauses 1 to 7 were agreed to.

SUPREME COURT (AMENDMENT) BILL 1970

HIS EXCELLENCY THE PRESIDENT: —With the concurrence of honourable Members, we will take the clauses in blocks of not more than five. The question is that the following clauses stand part of the bill.

Clause 1.

THE ATTORNEY GENERAL (MR ROBERTS): —Sir, honourable Members will recall that during the second reading of the bill*, the honourable Mr CHEUNG asked that consideration should be given to the removal from the bill of references to Appeal Judges, and that the question of the creation of a separate Court of Appeal should be considered. I have, of course, consulted the Chief Justice, who has expressed his agreement with the suggestion that the references to an Appeal Judge should be removed from the bill and has authorized me to say that he believes that it will be possible to achieve much of the advantage which would be derived from the establishment of the separate Court of Appeal by ensuring that, as far as is practicable and as is consistent with the ordinary business of the Courts, the same judges will normally hear appeals. The necessary research will be undertaken to enable an accurate assessment to be made of the need for and the justification of a separate court, though it may very well be found that the volume of work does not, as yet, justify such a step. The amendments which I shall move to clauses 1, 3, 4, 9 and 10 of the bill are all necessary in order to delete from the bill the references to an Appeal Judge. I, therefore, firstly move that clause 1 be amended by the deletion of subclause (2).

Proposed Amendment

Clause

1 That subclause (2) of clause 1 be deleted.

The amendment was agreed to.

* Page 201.

Supreme Court (Amendment) Bill—committee stage

Clause 1, as amended, was agreed to.

Clause 2 was agreed to.

Clause 3.

THE ATTORNEY GENERAL (MR ROBERTS): —Sir, I move that clause 3 of the bill be amended by deleting the words “the Appeal Judge” .

Proposed Amendment

Clause

3 That the words "the Appeal Judge", be deleted.

The amendment was agreed to.

Clause 3, as amended, was agreed to.

Clause 4.

THE ATTORNEY GENERAL (MR ROBERTS): —Sir, I rise to move that clause 4 be amended as set forth in the paper before honourable Members.

Proposed Amendment

Clause

4 (*a*) That the Words “, Appeal Judge” wherever they occur in section 13, be deleted.

(*b*) In section 14—

(i) that paragraph (*b*) be deleted;

(ii) that paragraphs (*c*), (*d*) and (*e*) be re-numbered as paragraphs (*b*), (*c*) and (*d*), respectively.

The amendment was agreed to.

Clause 4, as amended, was agreed to.

Clauses 5 to 8 were agreed to.

Clause 9.

THE ATTORNEY GENERAL (MR ROBERTS): —Sir, I move that clause 9 be deleted.

Proposed Amendment

Clause

9 That clause 9 be deleted.

The amendment was agreed to.

Clause 10.

THE ATTORNEY GENERAL (MR ROBERTS): —Sir, I move that clause 10 be amended by deleting the words "the Appeal Judge".

Proposed Amendment

Clause

10 That the words "the Appeal Judge", be deleted.

The amendment was agreed to.

Clause 10, as amended, was agreed to.

Clause 11 was agreed to.

FULL COURT (AMENDMENT) BILL 1970

Clause 1.

THE ATTORNEY GENERAL (MR ROBERTS): —Sir, the removal of references to an Appeal Judge makes it necessary to delete subclause (2) of clause 1 and to amend clause 3. Since the bill was published, the Chief Justice has asked that section 3 of the Ordinance, which has already been amended by clause 3 of the bill, should be further amended so as to allow for a Full Court of more than 3 judges. At present, section 2 of the principal Ordinance provides that the Full Court shall be composed of 2 or 3 judges, but it is considered that, in very important cases, it should be possible, if the Chief Justice so directs, for more than 3 judges to sit together, as happens in the Court of Appeal from time to time in England. I shall therefore move the replacement clause 3 to achieve these objects. I now move that clause 1 be amended by the deletion therefrom of subclause (2).

Proposed Amendment

Clause

1 That subclause (2) of clause 1 be deleted.

The amendment was agreed to.

Full Court (Amendment) Bill—committee stage

Clause 1, as amended, was agreed to.

Clause 2 was agreed to.

Clause 3.

THE ATTORNEY GENERAL (MR ROBERTS): —Sir, I move that a new clause 3 be inserted as set forth in the paper before honourable Members.

Proposed Amendment

Clause

3 That clause 3 be deleted and the following new clause substituted therefor—

"Repeal and replacement of section 3.

3. Section 3 of the principal Ordinance is repealed and replaced by the following new section—

"Constitution and precedence.

3. (1) There shall be a Full Court which shall as occasion requires be constituted by two or more judges as the Chief Justice may direct and shall be composed of such judges as the Chief Justice may direct.

(2) The judges shall take precedence in the following order—

(*a*) the Chief Justice;

(*b*) the Senior Puisne Judge;

(*c*) the Puisne Judges, who among themselves shall rank according to their precedence as judges of the Supreme Court:

(*d*) Commissioners of the Supreme Court, who among themselves shall rank according to their precedence as judges of the Supreme Court.

(3) The Chief Justice shall be President of the Full Court, and in his absence the Presidency of the Court shall be determined in accordance with the order of precedence prescribed by subsection (2).” ”.

The amendment was agreed to.

Clause 3, as amended, was agreed to.

Clause 3A.

THE ATTORNEY GENERAL (MR ROBERTS): —Sir, the provision for a Full Court of more than 3 judges makes it necessary to provide for the effect of judgments of a court which is composed in that way. Section 4(1) of the Ordinance, which it is proposed should be amended by the new clause, which is No 3A on the paper before honourable Members, at present only deals with the effect of judgments of the court when composed of 2 or 3 judges. I therefore move that the bill be amended by inserting a new clause No 3A, in the form set out in the paper circulated to honourable Members.

Proposed Amendment

Clause

3A That the following new clause be added after clause 3—

"Amendment of section 4.

3A. Section 4 of the principal Ordinance is amended by deleting subsection (1) and substituting the following—

"(1) Where a Full Court consisting of more than two judges sits, the judgment or order which is that of the majority of the judges sitting shall be deemed to be the judgment or order of the Full Court, but if there is no judgment or order which is that of a majority of the judges sitting, the judgment or order appealed from shall be deemed to be the judgment or order of the Full Court." ".

The insertion of the new clause was agreed to.

Clause 4 was agreed to.

DISTRICT COURT (AMENDMENT) BILL 1970

Clauses 1 to 3 were agreed to.

PROMISSORY OATHS (AMENDMENT) BILL 1970

Clauses 1 to 3 were agreed to.

CORPORAL PUNISHMENT (AMENDMENT) BILL 1970

Clauses 1 to 6 were agreed to.

LEGAL PRACTITIONERS (AMENDMENT) BILL 1970

Clauses 1 and 2 were agreed to.

PROBATE AND ADMINISTRATION (AMENDMENT) BILL 1970

Clauses 1 to 4 were agreed to.

MAGISTRATES (AMENDMENT) BILL 1970

Clauses 1 to 4 and the Schedule were agreed to.

Council then resumed.

Third reading

THE COLONIAL SECRETARN (SIR HUGH NORMAN-WALKER) reported that the Security of Tenure (Domestic Premises) Bill 1970 had passed through committee without amendment and moved the third reading of the bill.

Question put and agreed to.

Bill read the third time and passed.

THE ATTORNEY GENERAL (MR ROBERTS) reported that the Supreme Court (Amendment) Bill 1970 had passed through committee with certain amendments and moved the third reading of the bill.

Question put and agreed to.

Bill read the third time and passed.

THE ATTORNEY GENERAL (MR ROBERTS) reported that the Full Court (Amendment) Bill 1970 had passed through committee with certain amendments and moved the third reading of the bill.

Question put and agreed to.

Bill read the third time and passed.

THE ATTORNEY GENERAL (MR ROBERTS) reported that the District Court (Amendment) Bill 1970 had passed through committee without amendment and moved the third reading of the bill.

Question put and agreed to.

Bill read the third time and passed.

THE ATTORNEY GENERAL (MR ROBERTS) reported that the Promissory Oaths (Amendment) Bill 1970 had passed through committee without amendment and moved the third reading of the bill.

Question put and agreed to.

Bill read the third time and passed.

THE ATTORNEY GENERAL (MR ROBERTS) reported that the Corporal Punishment (Amendment) Bill 1970 had passed through committee without amendment and moved the third reading of the bill.

Question put and agreed to.

Bill read the third time and passed.

THE ATTORNEY GENERAL (MR ROBERTS) reported that the Legal Practitioners (Amendment) Bill 1970 had passed through committee without amendment and moved the third reading of the bill.

Question put and agreed to.

Bill read the third time and passed.

THE ATTORNEY GENERAL (MR ROBERTS) reported that the Probate and Administration (Amendment) Bill 1970 had passed through committee without amendment and moved the third reading of the bill.

Question put and agreed to.

Bill read the third time and passed.

THE ATTORNEY GENERAL (MR ROBERTS) reported that the Magistrates (Amendment) Bill 1970 had passed through committee without amendment and moved the third reading of the bill.

Question put and agreed to.

Bill read the third time and passed.

ADJOURNMENT

Motion made, and question proposed. That this Council do now adjourn—THE COLONIAL SECRETARY (SIR HUGH NORMAN-WALKER).

4.53 p.m.

Improving industrial workplaces

MR SZETO WAI: —Sir, in the course of the last year good progress has been made in the programme of labour legislation by this Council in that the Industrial Employment Bill[*], Workmen's Compensation Bill[†] and other resolutions improving hours of work, statutory holidays, maternity leaves, first aid measures, *etc*, have been enacted. Whilst drawing satisfaction from these legislative achievements that have enhanced the general well-being of our industrial population, I am concerned with the inadequacy of that aspect of our legislation which deals with the physical working conditions and amenities in our factory and workplaces. There appears to be inconsistency in the statutory planning requirements of our industrial premises and other types of accommodation such as office and domestic premises. In view of our rapid industrial expansion resulting in the accelerated development of factory buildings, our existing Regulations under the Factories and Industrial Undertakings Ordinance require to be brought up to date and in line with our complex Building Regulations particularly on matters which have not been covered comprehensively in either legislation. The provisions in our existing subsidiary legislation governing the ventilation, lighting and over-crowding of industrial workplaces appear to be rather vague and non-specific. Regulations 35 and 36 of the Factories and Industrial Undertakings Ordinance require merely every registrable workplace to have effective and suitable means of providing and maintaining the circulation of fresh air and adequate lighting, whether natural or artificial, in each workplace while no specific minimum requirements are laid down with regard to window areas in relation to the room areas or with the external environments of the premises such as those referred to in the Building Regulations for office and domestic accommodations, or where mechanical ventilation is provided, its minimum requirements. Sir, I consider areas used for industrial operation of any form rank with equal importance, if not greater, with places of commercial pursuits in these aspects considering the heat and noise some of the industrial processes may produce apart from the higher density of occupancy. The present Building Regulations while stipulating stringent requirements for both office and domestic accommodations do not provide sufficient coverage for industrial buildings.

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[*] 1968 Hansard, pages 237 and 264.

[†] Pages 107, 136 and 166.

On the question of accommodation capacity, regulation 38 of the Factories and Industrial Undertakings Ordinance stipulates a minimum of 250 cubic feet of cubic space per worker in any workroom to guard against over-crowding. As no mention is made of space required for machinery, storage of both raw materials and finished products, circulation, administration, *etc*, this figure must be taken as inclusive of all such areas. Allowing for a ceiling height of 9 feet, the minimum floor area required for each worker is therefore less than 28 sq. ft. This is of particular importance when the majority of our workplaces are housed in flatted factory buildings designed and built for separate tenancies or ownership without any specific industrial operation in view, and the undesirable result is that many of these factories resort to storing their materials and goods in public spaces and fire escape routes in order to cram as many workers as statutorily permissable under the existing regulation into the work area.

The existing subsidiary factory legislation does not provide for any regulation of minimum ceiling height of workplaces apart from the requirement of 250 cubic feet of space per worker. While the Labour Department normally accepts the proposed accommodation figures given by factory owners in the planning of factory premises for their own exclusive use subject of course to these being over the minimum of 250 cubic feet per worker, flatted factory premises have, in accordance with a long established policy of the Department, to be planned on 30 sq. ft. per person which figure has presumably been worked out on the basis of the statutory minimum cubic space with certain allowance for circulation, machinery, storage, *etc*. If this is to be accepted as being the minimum space required by each worker, it would be quite unrealistic to consider it as representing the actual accommodation in the building for the purpose of providing, sanitary facilities and staircases particularly when considering the fact that if the same premises were to be used as an office space, such facilities need only be planned on the data of 100 sq. ft. per person under the Building Regulations which does not represent the minimum space required by an office worker. In other words, flatted factories have to be provided with sanitary facilities and staircases to the extent of over three times those required statutorily for commercial buildings. Not withstanding the possibility of a slightly higher density of occupancy in industrial buildings, such wide discrepancies warrant reconsideration as they become impracticable and unrealistic particularly when applied to large floor areas which appear to be the present trend of development.

On the question of ceiling height, while the Factory Ordinance does not provide any minimum requirement, the Building Regulations lay down 9 feet for both office and domestic premises and the Education Ordinance stipulates 10 feet for classrooms. I am aware that

most of the workplaces in our textile-spinning and in our electronics industries are fully air-conditioned and comparable to the best in the world, but for one well-appointed workplace, there may exist many sub-standard work premises, and it is on these latter that we must focus our attention for improvement. It is of special importance at this juncture when considerable development of factory buildings is taking place or being planned in our new industrial towns, notably at Kwai Chung where large projects are envisaged, that comprehensive and well-defined regulations should be enacted to ensure healthy environments and amenities for our industrial workers.

5.00 p.m.

MR HETHERINGTON: —Sir, it is, I believe, one of my primary duties to improve the safety, health, and welfare of workers and I welcome my honourable Friend's interest in the physical working conditions in factory premises. He refers, in particular, to five separate subjects, ventilation, lighting, sanitary facilities, fire escape routes, and floor space for workers.

The requirements for ventilation are set out in regulation 35 of the Factories and Industrial Undertakings Regulations. As my honourable Friend has correctly mentioned these demand effective and suitable provision for ventilation, the rendering harmless of all fumes, dust, and other impurities so far as is practicable, and the supply and maintenance of exhaust appliances. The text follows almost exactly a similar provision on ventilation in the United Kingdom Factory Acts and, as far as I have been able to ascertain in the short time available to me, no general regulations have been made in the United Kingdom on this subject although specific regulations apply in the case of particular processes.

The requirements for lighting are set out in regulation 36 and provide for effective provision to be made for sufficient and suitable lighting, the cleanliness of windows, and mitigating measures against heat and glare. The text again follows almost exactly a similar provision on lighting in the United Kingdom Factory Acts. For certain factories in the United Kingdom standards of lighting are prescribed by regulations but these do not apply if, because of the construction of the building, they could not reasonably be applied or where the Chief Inspector of Factories considers that they are inapplicable or inappropriate.

The requirements for sanitary facilities are set out in regulation 39. In particular it lays down that any latrine or washing convenience which does not comply with the provisions of the Building Ordinance are unsuitable. The Building (Standards of Sanitary Fitments, Plumbing,

Drainage Works and Latrines) Regulations, made under the Building Ordinance, are specific regarding the number of sanitary facilities to be provided for a given number of people. These follow almost precisely similar specific requirements in regulations made under the United Kingdom Factory Acts.

Regulation 33(1)(*c*) authorizes me to require that any building exceeding sixty feet in height or in which more than twenty persons are employed which forms part of a registrable workplace shall be provided with means of escape. On this matter I rely on the advice of the Director of Fire Services who calculates the requirements on the basis of the number of persons which I estimate are likely to be employed in the building.

The requirements to prevent over-crowding are set out in regulation 38. These again follow the text of the United Kingdom Factory Acts. In the United Kingdom, the minimum amount of space permitted for each worker is 400 cubic feet. No ceiling height is laid down but, for the purposes of calculation, a maximum height of 14 feet is allowed. This produces a minimum floor area of a little under 30 square feet. In Hong Kong, regulation 38(2) permits a minimum of 250 cubic feet for each worker. When the Factories and Industrial Undertakings Regulations were made in 1955, it was accepted that this volume was more appropriate to local conditions than the volume used in the United Kingdom. In practice, we normally insist on a floor area of about 30 square feet for each worker and this is similar to that permissible in the United Kingdom.

I regret that I do not accept the argument of my honourable Friend that it is desirable to lay down precise and detailed requirements for factory buildings similar to those for domestic and commercial premises. It would, in my opinion, be impracticable to do so. When a factory building is designed, especially if it is for tenement-type factories, it is not possible to know what types of processes will be carried out in it. Some essential general requirements are clearly necessary and those relating to over-crowding, sanitation, and fire escapes are at present adequately dealt with by existing regulations. However, until it is known what particular process is to be carried on in a factory, it is not possible to prescribe exactly what special requirements are desirable. Moreover, the developer cannot necessarily foresee changes of trades or processes and it seems to me that it is in the developers' best interests to comply with general requirements which allow a degree of flexibility regarding the purposes to which the building can be put. Whereas I am as desirous as my honourable Friend to improve conditions of factories in Hong Kong, at the present time, bearing in mind that less than half of the factories are fully registered with the Labour Department and the demand for industrial accommodation is unsatisfied, any changes in the existing

general requirements for factory buildings would not serve the best interests of industrial development. I consider that, as a general policy, we should continue to follow the principles underlying the United Kingdom Factory Acts on which our Ordinance is based. These are that, for factory buildings, there should be certain general provisions but that, where appropriate, special conditions should be required for particular trades and processes. As I have already said, this allows for the greatest degree of flexibility in protecting the interests of the industrial workers who may be employed in a wide range of occupations. This is, in fact, how the Factories and Industrial Undertakings Ordinance is applied because I have adequate powers, which I exercise, to require special conditions to meet the needs of particular processes.

Question put and agreed to.

Tribute to Mr Barton

HIS EXCELLENCY THE PRESIDENT: —Just before we adjourn, honourable Members, I would like to call your attention to the fact that this is Mr BARTON's last sitting as Clerk of this Council. I am sure that honourable Members will wish me to thank him for the excellent work he has done as Clerk, not only in Council, but in the many ancillary duties and tasks performed by him. Particularly, I think, he has been of very great help, often at considerable personal inconvenience, in making sure that visitors from other legislatures were well looked after here, and in assisting Members generally.

MR KAN: —Sir, I for one am most extremely grateful to Mr BARTON for the many assistances which he has given to me and to all Unofficial Members of this Council. We realize how valuable his work has been to this Council and outside this Council. May I associate myself, Sir, with what you have just said.

THE COLONIAL SECRETARY (SIR HUGH NORMAN-WALKER): —On behalf of the Official Members, I also associate myself with Mr KAN's remarks.

NEXT SITTING

HIS EXCELLENCY THE PRESIDENT: —Council will accordingly adjourn. The next sitting will be held on 11th February 1970.

Adjourned accordingly at ten minutes past Five o'clock.

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