

OFFICIAL REPORT OF PROCEEDINGS

Wednesday, 11th February 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, CBE, QC, JP
THE HONOURABLE THE SECRETARY FOR HOME AFFAIRS
MR DAVID RONALD HOLMES, CMG, CBE, MC, ED, JP
THE HONOURABLE THE FINANCIAL SECRETARY
SIR JOHN JAMES COWPERTHWAITHE, KBE, CMG, JP
DR THE HONOURABLE TENG PIN-HUI, CMG, OBE, JP
DIRECTOR OF MEDICAL AND HEALTH SERVICES
THE HONOURABLE ROBERT MARSHALL HETHERINGTON, DFC, JP
COMMISSIONER OF LABOUR
THE HONOURABLE TERENCE DARE SORBY, JP
DIRECTOR OF COMMERCE AND INDUSTRY
THE HONOURABLE DAVID RICHARD WATSON ALEXANDER, MBE, JP
DIRECTOR OF URBAN SERVICES
THE HONOURABLE GEORGE TIPPETT ROWE, JP
DIRECTOR OF SOCIAL WELFARE
THE HONOURABLE JAMES JEAVONS ROBSON, JP
DIRECTOR OF PUBLIC WORKS
THE HONOURABLE 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, OBE, JP
THE HONOURABLE SZETO WAT, OBE, JP
THE HONOURABLE WILFRED WONG SIEN-BING, OBE, JP
THE HONOURABLE ELLEN LI SHU-PUI, OBE, JP
THE HONOURABLE WILSON WANG TZE-SAM, JP
THE HONOURABLE HERBERT JOHN CHARLES BROWNE, JP
DR THE HONOURABLE CHUNG SZE-YUEN, OBE, JP
THE HONOURABLE MICHAEL ALEXANDER ROBERT HERRIES, OBE, MC, JP
THE HONOURABLE LEE QUO-WEI, OBE, JP

IN ATTENDANCE

THE CLERK OF COUNCILS
MR ROBERT WILLIAM PRIMROSE, MBE, JP

PAPERS

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

<i>Subject</i>	<i>LN No</i>
Subsidiary Legislation: —	
Dutiable Commodities (Amendment) Ordinance 1970	
Dutiable Commodities (Amendment) Ordinance 1970	
(Commencement) Notice 1970	17
Importation and Exportation Ordinance.	
Exportation (Certificates of Origin and Commonwealth Preference Certificates) (Amendment) Regulations 1970	19
Legal Practitioners Ordinance.	
Accountant's Certificate (Amendment) Rules 1970	20
Legal Practitioners Ordinance.	
Admission and Registration (Amendment) Rules 1970	21
Legal Practitioners Ordinance.	
Disciplinary Committee Proceedings Rules 1970	22
Legal Practitioners Ordinance.	
Practising Certificate (Amendment) Rules 1970	23
Legal Practitioners Ordinance.	
Students (Amendment) Rules 1970	24

ORAL ANSWERS TO QUESTIONS**Collection of revenue**

1. MR FUNG HON-CHU asked: —

In view of the pressure and congestion caused at times at Treasury Offices by large numbers of people calling there to pay rates and other dues in cash, could this Council be informed: —

(a) Whether Government would be prepared to consider the feasibility and practicability of arranging with banks in various parts of Hong Kong to receive on behalf of Government such rates and dues normally payable at Treasury Offices?

(b) If negative, what measures have Government in mind to make it more convenient for those members of the community who do not have bank accounts to discharge their obligations in the matter of payments due to Government?

THE FINANCIAL SECRETARY (SIR JOHN COWPERTHWAIT): —Sir, it is true that there is congestion at the Treasury offices on occasions but only during the last few days of each quarterly rating period. The congestion during these relatively short periods has been substantially reduced in the last two years, partly because a higher proportion of rate-payers have bank accounts and can pay by cheque and more of those who pay by cheque have been persuaded to pay by post; although a surprising proportion still bring or send their cheques by hand.

As to the first part of my honourable Friend's question, the Treasury has already given considerable study to the possibility of collecting rates and other dues through banks but the results of the study have been disappointing. A survey of bank branches has shown that there is relatively little surplus counter space available and few bank branches would be able to carry out regular and full time collections of public revenue; and, in general banks' first consideration must be to the efficiency of their normal services to their clients.

Furthermore, banking procedure is not easy to reconcile with Government's procedures for the issue of receipts for audit purposes and it has been found difficult to devise a compatible system that is not unduly uneconomical.

As to the second part of my honourable Friend's question, the period between issue of a demand note for rates and the due date of payment is one month. It is, of course, human nature to pay at the last possible moment and it is this above all else that causes congestion. Presumably those who pay late take account of the inconvenience of congestion.

It is difficult to know what to do to improve the situation. Further efforts are being made to persuade those with bank accounts to send cheques by post as this reduces congestion for the cash payer as well. One idea is to send a postage-paid return envelope with each demand note, although, of course, many would be wasted.

Another possible way of reducing congestion generally would be to phase due dates for rates over a longer period than one month but this would not be popular with those called upon to pay earlier.

We shall continue to study the problem.

Oral Answers

MR Y. K. KAN: —Sir, might I suggest that my honourable Friend adopt the proposal which he has just made, that is, to send a pre-paid envelope together with a demand note. That way, I am certain that a lot of people would prefer to send their cheques by post rather than hand them in personally.

THE FINANCIAL SECRETARY: —It is very likely that we will adopt this proposal.

Workmen's Compensation

2. MR P. C. WOO asked: —

With the promulgation of the Workmen's Compensation (Amendment) Ordinance 1969 which came into force on the 1st January 1970, domestic servants now fall within the provisions of the Workmen's Compensation Ordinance (Cap 282)

- (a) Has Government drawn the attention of the public to regulation 8 of the Workmen's Compensation Regulations, which requires every employer and every insurer carrying on the business of insuring employers against their liabilities under the Workmen's Compensation Ordinance to make a return specified in the Second Schedule to the said Regulations and lodge the same with the Commissioner of Labour on or before the 31st of January in each year in respect of the period 1st January to 31st December of the preceding year?
- (b) Whether Government is prepared to issue to the employers and insurers printed forms for the convenience of the public?
- (c) Has Government given thought to the question whether this type of return relating to domestic servants be waived?

MR R. M. HETHERINGTON: —Sir, the Workmen's Compensation Regulations were made in November 1953 and have remained substantially unchanged since then. Regulation 8 to which my honourable Friend refers was intended to elicit some basic information, particularly in relation to statistics, not then available, from insurers and employers. One of the purposes for requiring these statistics was to enable the Commissioner of Labour to determine the extent to which there was general compliance with the provisions of the Ordinance and, in

particular, to keep under annual review the necessity, if any, for strengthening these provisions, especially with regard to the desirability of compulsory insurance. Because there was general satisfactory compliance with the Ordinance, a strict enforcement of regulation 8 became unnecessary over the succeeding years.

With regard to the three questions which my honourable Friend has asked and bearing in mind my preliminary remarks, the answers are as follows.

With the recent extension of the scope of the Workmen's Compensation Ordinance a wider range of employers became liable to pay compensation for their employees. No publicity was given or will be given to regulation 8 because the department has not insisted for many years on returns from employers. However, I have recently called for returns in the appropriate form from all the 184 insurers known to be operating in Hong Kong at present. These insurers will be expected to complete statutory returns.

The returns required are specified in the Second Schedule to the Workmen's Compensation Regulations. It would be in accordance with common practice for the department to issue printed forms for the convenience of the public in making such returns but, for the reasons which I have already given, this has never been done. If returns were, in future, required from the public, printed forms would be provided.

Since the enactment of the amending Ordinance last year, I have been considering how statistics relating to workmen's compensation can and ought to be improved in the interests of all those who are concerned with industrial accidents, compensation for accidents, and the prevention of accidents. Regulation 8 has been under consideration. The amended Ordinance has applied to domestic servants and their employers only since the 1st January 1970 and it is not considered necessary that these employers should be required to make returns, under regulation 8, in respect of 1969. Before any possible obligation could arise in respect of 1970, I hope to recommend that a new regulation should replace regulation 8. This would set out more precisely such statistical information as may be required from employers. I cannot commit the Government but, as far as I can see at present, it is most unlikely that I would advise that it should be necessary to collect annual returns from employers of domestic servants.

MR WOO: —Sir, as section 41 of the Workmen's Compensation Ordinance provides that any person who is in breach of regulation 8 can be fined \$100 per day until the default is remedied, may I take it by my honourable Friend's answer that he will not insist strictly on the provision of section 41?

Oral Answers

MR HETHERINGTON: —Yes, Sir, as far as employers are concerned.

MR WOO: —Thank you, Sir.

ESTATE DUTY (AMENDMENT) BILL 1970**WILLS BILL 1970****FIXED PENALTY (TRAFFIC CONTRAVENTIONS) BILL 1970****SEDITION (AMENDMENT) BILL 1970****LANDLORD AND TENANT (AMENDMENT) BILL 1970****PUBLIC ORDER (AMENDMENT) BILL 1970**

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

ESTATE DUTY (AMENDMENT) BILL 1970

THE FINANCIAL SECRETARY (SIR JOHN COWPERTHWAIT) moved the second reading of: —“A bill to amend further the Estate Duty Ordinance.”

He said: —Sir, this bill is really in two distinct parts. One dealing with charitable gifts, one with a number of largely technical matters.

The charitable provisions themselves deal with two different types of gift or disposition, those made before death and those made by will.

In the first case, the present provisions of the Ordinance require that any charitable gift made by a deceased person within one year of death shall be included in his estate for duty purposes. The effect of this is that, while the gift itself stands duty free, duty is still chargeable on the amount of the gift and must come out of the estate at the expense of the legatees. The purpose of this provision in the law (as of a similar proviso in the case of other gifts made within three years of death) is to prevent the avoidance of estate duty by someone with a short expectation of life. But, as a prospective donor, even in the best of health, cannot be sure of the effect of a charitable gift on the disposition of his estate, he may well be deterred from making a charitable gift he would otherwise have made. Clause 2 of the bill, therefore, seeks to amend section 6 to exclude such charitable gifts, even if made within a year of death.

The second case involves charitable gifts made by means of will. Here the same considerations do not apply as the testator is aware in advance of the effect of a charitable gift on the disposition of his estate. The justification commonly advanced for exempting charitable donations made by will is that it would encourage such donations and possibly thereby relieve the public purse of a greater amount in public expenditure on charitable objects than the yield of estate duty, were there no such exemption. I am myself, I fear, rather sceptical of this and suspect that such bequests will be increased only, if at all, by the amount of estate duty saved. But exemption has the merit of making it easier to bring in the first, and much more readily justifiable, exemption of gifts made within a year of death, by removing the incentive to attempt an evasion of duty by a gift in anticipation of early death. Clause 3(b) seeks to amend section 10 to this effect.

I now come to the other purposes of the bill.

Section 14 of the principal Ordinance is amended in several respects by clause 4. First, a new subsection is added by paragraph (a) of clause 4 to make both the executor and the surviving joint tenant or tenants accountable for estate duty payable on a joint interest if one joint tenant has died. At present the law on this point is not clear. Until recently it was thought both in Hong Kong, and in Britain, where the legislation is identical, that it was the executor who was liable for duty under subsection (6) of section 14 on a joint interest and that a surviving joint tenant might be held accountable under subsection (7) of section 14 only if there was no executor or administrator. Legal advice has now been received that subsection (7) of section 14 is capable of different interpretations and that it is desirable to amend section 14 to make both the executor and the surviving joint tenant accountable.

This amendment is a clarifying measure and is not designed to place the surviving joint tenant in an unfavourable position; in practice duty is normally recovered from the executor. However, in some cases it is necessary for the Commissioner to be able to proceed directly against the surviving joint tenant. For example, where an estate consists of only one asset, such as a joint deposit in a bank, which passes by operation of law to the survivor or survivors on the death of a joint holder, the executor, although accountable for duty, is excused from liability by virtue of the provision in subsection (6) of section 14 because no assets have passed into his hands. In another instance, although Government has a charge on the property for the duty, the property may have been disposed of before the charge can be enforced. In these circumstances it is necessary for the Commissioner to have some right of action against the surviving joint tenant personal.

[THE FINANCIAL SECRETARY] **Estate Duty (Amendment) Bill — second reading**

Section 14 is also amended in subsection (8) by paragraph (b) of clause 4 to make it clear that the Commissioner may require any person whom he believes to be accountable for duty to give information regarding the estate or affairs of a deceased person.

A third amendment to section 14 is the removal of an ambiguity in subsection (13). Paragraph (c) of clause 4 of the bill makes it clear that in every case in which too much estate duty has been paid, the excess duty will be refunded together with the interest on it at the rate laid down in subsection (6) of section 12.

It is also proposed to amend subsection (15) of section 12. As it is worded at present this subsection empowers the Commissioner to call upon an accountable person to file accounts where property in respect of which he is accountable for duty has not been disclosed and to assess duty in certain circumstances. As a result of a case which went to the Privy Council in 1967, this provision was found to be defective in two respects. First, the Commissioner can only call upon a person to file accounts if he is in fact accountable; if the person's accountability is in doubt, it must be determined by the court. Before the matter is decided, the accountable person may have left the jurisdiction and the Commissioner cannot proceed further. Secondly, even if the question of accountability is decided in the Commissioner's favour, if the accountable person fails to file accounts after being called upon under subsection (15) of section 14, the Commissioner is unable to make an assessment since subsection (12) of section 14 provides that the Commissioner can assess duty only on the basis of filed accounts.

To overcome the difficulties, paragraph (d) of clause 4 seeks to replace subsection (15) of section 14 by a new provision, giving the Commissioner power to assess duty if he is not satisfied with the accounts filed or if accounts have not been delivered within six months after the date of death of the deceased person and the Commissioner is of the opinion that a person is accountable. Discretionary power is reserved to the Commissioner to allow conditional postponement of payment of the assessed duty where an appeal against his assessment is to be made under section 22. This latter section is now amended by clause 5 of the bill to make it clear that accountability can be the subject of an appeal under this section.

The last clause in this bill to which I would like to refer is clause 6 which amends section 25 of the principal Ordinance. This section, as it now stands, requires all unincorporated banks, shops and business undertakings to disclose to the Commissioner of Estate

Duty details of the interest of a person in a bank, shop or business, whether as partner, depositor or creditor, within one month of their becoming aware of the death of such person. Until recently banks, all of which are now incorporated in consequence of the Banking Ordinance, have furnished this information. The Legal Adviser of one of the leading banks has however recently advised his clients that as this section applies only to unincorporated bodies, it is advisable that they should no longer furnish this information. The amendment in section 25 by clause 6 will rectify this position by bringing limited companies into the scope of this section. I understand that the banks have no objection.

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

Clause 2 amends section 6 so as to exempt altogether from estate duty gifts *inter vivos* and dispositions made prior to death, which would otherwise be dutiable, if they are made to a charitable institution or trust of a public character in the Colony.

2. Paragraph (a) of clause 3 removes an inconsistency in paragraph (c) of section 10, which provides that no estate duty is payable in respect of a share registered in "a local register" under the Companies Ordinance. The latter Ordinance makes similar provision but refers to "a local or branch register kept out of the Colony".

Paragraph (b) of clause 3 inserts a new exemption from estate duty in respect of property devised, bequeathed or otherwise passing on death to, or for the benefit in the Colony of, a charitable institution or trust of a public character.

3. Paragraph (a) of clause 4 inserts a new subsection (7A) in section 14. Its effect is to make both the executor and a person to whom property passes or accrues by survivorship accountable for estate duty thereon.

Paragraph (b) amends subsection (8) of section 14, to enable the Commissioner to obtain information from anyone whom he believes to be accountable for estate duty.

Paragraph (c) removes a minor ambiguity.

Estate Duty (Amendment) Bill—second reading*[Explanatory Memorandum]*

Paragraph (d) repeals and replaces subsection (15) of section 14 and empowers the Commissioner to assess duty, if he is not satisfied with accounts filed, or if a person who is, in his opinion, accountable has failed to file accounts.

4. Clause 5 amends section 22 to make it clear that accountability for duty can be the subject of an appeal under the section.

5. Clause 6 repeals and replaces section 25. The new section requires incorporated banks and business undertakings, in addition to similar unincorporated bodies, to disclose details of interests of deceased persons.

6. Clause 7 amends section 29 by substituting "executor", which is defined in section 3 and used throughout the Ordinance, for "legal personal representative".

WILLS BILL 1970

THE ATTORNEY GENERAL (MR D. T. E. ROBERTS) moved the second reading of: —"A bill to consolidate and amend the law relating to wills."

He said: —Sir, this bill consolidates the law relating to wills into one Ordinance.

At present, the law applicable in Hong Kong on this subject is to be found in the English Wills Act 1837, the Wills Ordinance (Chapter 30) and the Wills (Formality Validity) Ordinance (Chapter 350).

The bill reproduces the English 1837 Act closely, though the opportunity has been taken to omit certain obsolete provisions and to modernize the phraseology which is used in several clauses, without making any changes of substance in the law.

The present Wills Ordinance is re-enacted in clauses 2 and 5 of the bill in a modified form. Clause 5(2) provides that a will which is written wholly or substantially in Chinese, and signed by the testator, shall be validly executed, even though it does not comply with the normal formalities which are required of other wills by clause 5(1).

It has in fact long been the practice to admit wills of this nature to probate in Hong Kong, although the present law, if strictly applied, would require proof of the Chinese race of the testator and that the

will is effective by Chinese laws or usages, whatever that may mean. This bill, therefore, seeks to bring the law into line with what is an accepted and, if I may say so, a very sensible practice.

Changes to the present law are also made by clauses 6, 10(3) and 13(1). Clause 6 introduces the right of members of the armed forces to make what is called a "privileged will", that is to say, one in a simple form which need not comply with the usual formalities by members of the armed forces who are in "actual military service". This has been part of the law of England for some time but is new to Hong Kong.

Clause 10(3), which is based on the English Wills Act 1968, ensures that if a will is witnessed by two independent witnesses, it will be valid even if in addition a beneficiary has been a witness.

Clause 13 incorporates a provision of the Law of Property Act 1925, so as to save a will which is made in contemplation of a marriage which later takes place, because at present marriage automatically revokes any previous will.

I commend this to honourable Members as a useful law reform measure, consolidating the law on wills into a readily accessible form. It has the support of the Hong Kong Law Society.

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 consolidates the law relating to the making of wills, makes fuller provision for privileged wills, and generally brings the law of Hong Kong closer to that of the United Kingdom.

2. The basis of the present law is the English Wills Act 1837 which is in force in Hong Kong by virtue of the Application of English Law Ordinance, Cap. 88. The Bill follows that Act closely in substance though the opportunity has been taken to modernize, where appropriate, some of the phraseology in the Act and to delete obsolete provisions. No substantive change in the law however has been made in this process.

3. Those sections of the Wills Act 1837 which are obsolete have been omitted from the Bill and are indicated in the "Table of Repeals and Replacements". Certain sections of the Wills

Wills Bill—second reading*[Explanatory Memorandum]*

Act 1837 (namely sections 6, 25, 28, 30, 31 and 32) have also been omitted since they relate to “real property” only. Subject to one exception, viz. St. John's Cathedral, all land in Hong Kong is leasehold (personal property) and it is therefore unnecessary to distinguish throughout between "real property" and "personal property"; instead the general term "property" is used. This will not affect testators disposing by will of freeholds (real property) outside the Colony since "property" is defined in the interpretation clause to include both real and personal property.

4. Clause 5(2) re-enacts in changed form section 3 of Cap. 30, as this has been understood and applied in the Colony. Section 3 is in long and complex form in so far as it refers to domicile, China and Chinese law and custom. In practice, a will written in Chinese, if it represents the true intention of, and is signed by, the testator, is admitted to probate in Hong Kong being regarded as executed in compliance with section 3. Clause 5(2) follows this principle in direct and unequivocal terms.

5. Clause 6 of the Bill extends the scope of privileged wills to all property, and applies it to minors, to members of the Air Force and to any member of Her Majesty's naval or marine forces in "actual military service".

6. Clause 10(3) of the Bill re-enacts the Wills Act 1968 which amended section 15, Wills Act 1837, to ensure that a disposition made by will to a person who (or whose spouse) has witnessed it is not invalidated if the will is also attested by at least two independent witnesses.

7. Clause 13(1) of the Bill incorporates the statutory exception provided by section 177, Law of Property Act 1925 (which provision is not at present applicable in Hong Kong), which saves wills expressed to be made in contemplation of a specific marriage from being revoked by the solemnization of that marriage.

8. The substantive changes effected by clauses 6, 10(6) and 13(1) bring the law of Hong Kong closer into line with that of the United Kingdom.

FIXED PENALTY (TRAFFIC CONTRAVENTIONS)**BILL 1970**

THE ATTORNEY GENERAL (MR ROBERTS) moved the second reading of: —"A bill to provide for a fixed penalty to be payable for various

contraventions of the law; for the recovery of the fixed penalty summarily as a civil debt, and for matters incidental thereto or connected therewith."

He said: —Sir, in 1965, the Chief Justice appointed a Working Party, under the chairmanship of a judge of the Supreme Court, to consider ways of simplifying the procedure for the prosecution of minor traffic offences. The Working Party, which contained representatives of the Bar Association and the Law Society, submitted its recommendations to the Chief Justice, who endorsed them and forwarded them to the Government for consideration. This bill gives legislative effect, with only minor changes, to the substance of that Report.

The main object of this bill is to provide that in future a number of minor traffic contraventions will be dealt with not as criminal offences, giving rise to prosecution, but as more akin to civil trespass, creating only a liability to pay a sum of money. This fixed penalty is specified as thirty dollars by clause 13, which, however, also confers power on this Council to raise this amount by resolution at any time.

The contraventions to which the fixed penalty system will apply are obstruction by motor vehicles (clause 4), the stopping of motor vehicles at crossings (clauses 5 and 6) and parking or waiting at unauthorized places (clauses 7, 8 and 9) or without paying meter charges (clauses 10 and 11). By virtue of amendments to road traffic legislation, which amendments are contained in the Schedule to the bill, these contraventions will cease to be offences.

Clause 3 applies the bill to motor vehicles owned by the Crown and to public officers, so that the driver of a Crown vehicle will be personally liable to pay the penalty incurred by reason of any contravention which takes place while he is in charge of it.

Clause 12 exempts certain kinds of vehicle, and certain uses of motor vehicles, from liability for various contraventions. The clause will, for example, allow vehicles used in construction work, or road repairs or work on public utilities to operate in places where parking is restricted. Also, fire engines, ambulances and police vehicles will be excused, if they are on urgent duty, as will public omnibuses and taxis, if they are waiting in authorized stopping places or taxi ranks.

Perhaps the most convenient way of describing the operation of the bill is to outline briefly the various steps which will take place when a contravention occurs. Let us assume that a car has been left in Queen's Road Central, close to a sign prohibiting parking at all times. It is there seen by a police officer, who will fix to the car (under clause 15(2)) a notice, informing the owner that he has contravened the Ordinance and that he may pay the fixed penalty of \$30 to a specified address within seven days.

[THE ATTORNEY GENERAL] **Fixed Penalty (Traffic Contraventions) Bill—
second reading**

If the owner decides to pay up, he must send to that address a cheque or cash, for which he will get a receipt in due course. There is no provision for the payment of any penalty on the spot, since the dangers of corruption in such a procedure are obvious.

If the owner fails to pay within seven days, then a notice will be posted by the police to the address of the registered owner which appears in the register of motor vehicles. The notice will require him to pay the \$30 within 21 days after the contravention or within 10 days after the notice, whichever is the later.

If the owner fails to comply with this notice, then by clause 16 proceedings will be taken in the name of the Attorney General, who will in practice appoint police officers to act on his behalf, to recover the fixed penalty by civil proceedings before a magistrate. These proceedings will be instituted by a complaint which, by clause 17, may be served by sending it by post to the address of the registered owner.

I think that I should emphasize the fact that liability for payment of the fixed penalty is placed by clause 14 on the registered owner of the vehicle, even if the contravention was committed without his knowledge or consent, although it will be a good defence for the registered owner to show that the vehicle had been taken and driven away without his consent or had been stolen, at the time when the contravention occurred. The liability has been placed on the registered owner because the scheme for fixed penalties will not work properly unless it is kept as simple as possible. However, clause 24 makes it clear that a registered owner, who is obliged to pay a fixed penalty by virtue of the misuse of his vehicle by some other person, is entitled to recover this money from that other person.

If a person served with a summons under clause 17 fails to appear, the magistrate can hear the case in his absence, though before doing so he must be satisfied that the summons was served a reasonable length of time before the hearing. If proceedings take place in the absence of the registered owner, the complaint may be proved by producing to the magistrate firstly, a copy of the notice originally served under clause 15, that is to say the notice demanding payment of the fixed penalty, accompanied by a certificate of posting; secondly, a certificate by the Commissioner for Transport stating that the person specified was the registered owner at a particular date; and thirdly, a certificate by the Commissioner for Transport stating that the fixed penalty has not been paid at the date of the certificate.

By clause 20, if a defendant wishes to dispute the complaint, he shall, at the outset, be asked to state the nature of his defence. If he does not, at this stage, expressly dispute the contents of the certificates to which I have referred, he cannot afterwards do so. If he does indicate that he wants to dispute them, then the magistrate may either hear the case forthwith or may adjourn it so that the necessary evidence of these disputed matters can be obtained.

The powers, which are contained in clauses 18 to 21, to hear proceedings *ex parte* and to prove the offence by the production of various documents, should make it possible to deal much more quickly and economically, but without undue prejudice to registered owners, with contraventions which may arise under the bill. There should be a very substantial saving of the time of the Police Force, members of which will no longer be obliged attend court to prove matters which are essentially of a formal nature or are not disputed.

At the conclusion of any proceedings for the recovery of a penalty, the magistrate may, if a complaint is dismissed, make an order for the payment of costs by the complainant of between \$20 and \$400.

If, on the other hand, an order for payment of the fixed penalty is made, the magistrate is obliged to make an order for the payment of costs of not less than \$20 nor more than \$400. He will also issue an order directing the Commissioner for Transport not to register any change of ownership of the vehicle, or to license the vehicle, unless the defendant has paid within 24 hours from the making of the order.

An order of this nature will cease to have effect if the defendant produces to the Commissioner for Transport a receipt showing that he has paid the penalty and costs, or if the defendant sells the vehicle to a new owner and the new owner is in possession of a certificate issued by the Commissioner for Transport to the effect that no valid court order exists in relation to that vehicle. The latter provision is necessary because, where a stop order is in force against a vehicle, a purchaser would be unable to transfer it into his name on the register and also might find that, after he had bought it, it was seized to meet a penalty incurred by the previous owner. To safeguard the interests of *bona fide* purchasers, therefore, clause 22(4) provides that a prospective purchaser can obtain a certificate from the Commissioner for Transport that no stop order is outstanding against the vehicle, and he may complete the sale and register the vehicle even if a stop order is made in the meantime, so long as he registers the transfer within 72 hours of the issue of the certificate.

If the defendant fails within one month to pay the amount of the fixed penalty and any costs awarded against him, the magistrate may make an order empowering the Commissioner of Police to seize the vehicle. It may then be removed and detained by him until the amount

[THE ATTORNEY GENERAL] **Fixed Penalty (Traffic Contraventions) Bill—
second reading**

of the penalty, costs, towing charges, licence fees and any other charges incurred under the Ordinance is paid in full by the defendant.

The Commissioner must, as soon as possible after seizure, serve notice on the defendant that he has detained the vehicle and the Commissioner may, if the defendant does not claim the vehicle within 3 months, publish in the *Gazette* a notice, in the prescribed form, of his intention to apply for a warrant of distress.

One month after the publication of that notice in the *Gazette*, the Commissioner of Police may apply to a magistrate for a warrant of distress to enforce payment of any outstanding sums which the defendant is liable to pay by the sale of the car. As honourable Members will see, the sale of the vehicle arises only as a last resort. Even if the whole process from the contravention to the sale is carried through in the minimum possible time, a period of approximately 6 to 7 months must elapse and in most cases it will probably be substantially longer.

It should, I think, also be noticed that, since the normal procedure for issuing a warrant of distress under the Magistrates Ordinance will apply, persons with competing claims to the proceeds of sale, which would of course include a hire purchase company, will be able to put these before the magistrate and will receive any balance which is available from the sale of the vehicle after the amounts due under the Ordinance have been settled. The obligation on the Commissioner of Police to advertise in the *Gazette* at least one month before applying for a warrant to sell the car should amount to an adequate warning to all hire purchase companies that one of their vehicles may be in danger of being sold.

I believe that this bill will be widely welcomed by members of the public who would I think, on the whole, prefer their minor contraventions of motoring laws to be treated as giving rise to civil debts and not as making them into small criminals. It is, so far as I know, an original solution to an intractable problem and one which will, I believe, prove to be both effective and practical. If it does, it may be possible in the future to extend it to other contraventions of the law, in which the element of moral blame is negligible.

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 purpose of this Bill is to provide a fixed penalty for obstruction, parking and other similar traffic contraventions and to enable the recovery of the fixed penalty on notice or, in cases of non-payment, summarily as a civil debt. The corresponding provisions of the Road Traffic regulations which provide for criminal sanctions for such contraventions are being replaced in so far as they relate to motor vehicles by this Bill.

Clause 3. The Bill applies to motor vehicles owned by the Crown but the person liable for the fixed penalty for a contravention in respect of any such vehicle is the driver in charge of the vehicle at the time the contravention is committed. Clauses 14, 15 and 17 provide for the recovery of the fixed penalty in such cases.

Clauses 4 to 11 contain various provisions for the proper control of motor vehicles on roads and the fixed penalty applies to any contravention of these provisions—

Clause 4 prohibits obstructions on roads by motor vehicles.

Clause 5 prohibits stopping of motor vehicles at crossings.

Clause 6 prohibits stopping of motor vehicles at uncontrolled crossings.

Clause 7 prohibits parking or waiting of motor vehicles at unauthorized places.

Clause 8 prohibits parking or waiting of motor vehicles in parking places otherwise than in accordance with any sign or signal erected at such parking places.

Clause 9 prohibits parking or waiting of motor vehicles on a road, where parking or waiting signs are erected, otherwise than in compliance with such signs.

Clause 10 provides that when a motor vehicle is parked or waits in a parking place at which there is a parking meter an appropriate coin has to be inserted in the parking meter.

Clause 11 prohibits the parking or waiting of a motor vehicle in a parking place at which there is a parking meter unless the parking meter indicates that payment has been made for the use of the parking place.

Clause 12. This clause contains exceptions to the provisions of clauses 7, 9, 10 and 11.

Clause 13. The fixed penalty for a contravention of any of the provisions of clauses 4 to 11 is thirty dollars. The Legislative Council may, by resolution, fix a larger amount.

Fixed Penalty (Traffic Contraventions) Bill—second reading*[Explanatory Memorandum]*

Clause 14. The person liable for the fixed penalty is the registered owner for the time being of the motor vehicle when the contravention is committed. It is no defence that the contravention was committed without the knowledge or consent of the registered owner or that at the time of the contravention the vehicle was driven by or was in charge of a person other than the registered owner. This clause, however, makes provision for cases where a motor vehicle is taken and driven away without the consent of the registered owner by a person other than a driver employed by him or is stolen. If any contravention is committed in such circumstances it is a good defence for the registered owner to prove any such fact in proceedings for recovery of the fixed penalty.

Clause 15. Subclause (1) enables a police officer to give the person liable for a traffic contravention an opportunity to discharge his liability by paying the fixed penalty by notice which may be delivered personally to the driver of the vehicle or fixed on the vehicle. If the fixed penalty is not paid within 7 days of the contravention a notice is to be served by post on the registered owner demanding payment of the fixed penalty within 21 days after the date of the contravention or 10 days after the date of the notice, whichever is the later. To safeguard against service of notices after a considerable lapse of time the proviso to subclause (3) provides that no notice is to be served on expiry of 6 months from the date of a contravention. On the production of a certificate of posting due service of the notice is presumed.

Clause 16. This clause provides for the recovery of the fixed penalty summarily as a civil debt by complaint made to a magistrate. These proceedings may be commenced if the fixed penalty is not paid within the time allowed in the notice.

Clause 17 provides for service of summons by post in addition to the other forms of service provided under the Magistrates Ordinance. On the production of a certificate of posting due service of the summons is presumed.

Clause 18 enables a complaint to be heard *ex parte* where a defendant, who is served with a summons, fails to appear.

Clause 19 provides for proof of complaint in *ex parte* proceedings under clause 18.

Clause 20 prescribes the procedure at the hearing of a complaint where the defendant is present.

Clause 21 provides for evidence by certificate in proceedings for recovery of the fixed penalty. A certificate under this clause would be *prima facie* evidence of the identity of the registered owner of a motor vehicle and of non-payment of the fixed penalty in respect of a contravention specified in any particular notice served under clause 15(3).

Clause 22. Subclause (1) gives a discretion to a magistrate to award costs to a defendant where a complaint is dismissed. The costs which the Attorney General, as the complainant, may be ordered to pay to a defendant may vary from \$20 to \$400.

Subclause (2) makes it mandatory for a magistrate to make the following orders where a defendant (the registered owner) is ordered to pay the fixed penalty—

- (a) an order for the payment of costs by the defendant of not less than \$20 or more than \$400 (subclause (2)(a)); and
- (b) an order directing the Commissioner for Transport not to register transfer of ownership of the motor vehicle concerned in the proceedings or to re-license it so long as the defendant refuses or neglects to pay the fixed penalty and costs ordered to be paid. This order is to be served on the Commissioner if payment is not made by the defendant within 24 hours of the making of the order (subclauses (2)(b) and (3)).

An order under subclause (2)(b), when served on the Commissioner, is to remain in force until either the defendant satisfies the Commissioner that he has paid the sum adjudged to be paid (subclause (4)(a)) or the sum is recovered under clause 23. Where therefore such an order is outstanding in respect of a motor vehicle a purchaser of such vehicle would be unable to transfer it into his name in the register maintained by the Commissioner and the vehicle may be seized under clause 23. In order to safeguard the interests of *bona fide* purchasers subclause (4)(b) provides that if a prospective purchaser obtains a certificate from the Commissioner that no order under subclause (2) is outstanding against the vehicle, he may on completing the purchase, and during the validity of the certificate, register the vehicle in his name notwithstanding that an order is made in the meantime. A certificate issued under subclause (4)(b) remains valid for 72 hours.

Clause 23. This clause makes further provisions for the recovery of a sum adjudged to be paid in cases of default. If the sum remains unpaid for one month, a magistrate may, if satisfied that reasonable efforts to recover such sum have been

Fixed Penalty (Traffic Contraventions) Bill—second reading*[Explanatory Memorandum]*

made, make an order empowering the Commissioner of Police to seize the motor vehicle concerned. Notice of such an order is to be served on the defendant. A motor vehicle seized by the Commissioner of Police (notice of which is to be given to the defendant) under such an order may be detained until the defendant pays the various sums specified in subclause (5). If within 3 months of seizure payment is not made, the Commissioner of Police may, after publishing a notice in the *Gazette* to that effect, apply (on the expiry of one month from the publication in the *Gazette*) for a warrant of distress under section 51 of the Magistrates Ordinance to enforce payment (subclauses (6) and (7)).

Subclause (3) provides that an order under subclause (1) may be made notwithstanding that the value of a motor vehicle far exceeds any sums due under this Bill and an order when made is to remain in force so long as any sum under subclause (5) remains unpaid and so long as the vehicle is registered in the name of the defendant notwithstanding any change in the legal ownership of the vehicle.

Clause 24 enables a registered owner to recover as a debt any sum paid by him, from the person in charge of the vehicle at the time of the contravention.

Clause 25 enables regulations to be made for the carrying out of the provisions of the Bill.

Clause 26 and the Schedule contain various consequential amendments to the Road Traffic regulations. The effect of these amendments is that the Road Traffic regulations would not apply to motor vehicles in cases where the provisions of this Bill apply.

SEDITION (AMENDMENT) BILL 1970

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

He said:—Sir, this bill has two objects, firstly to amend the definition of seditious intention which appears in the Sedition Ordinance and secondly to empower police and other public officers to remove or obliterate seditious matter which is displayed in places which are visible to the public.

The present definition of seditious intention, in section 3 of the Ordinance, is based on the common law and makes it sedition to excite

disaffection, to promote feelings of hostility between different classes of the population, to rouse discontent or disaffection, to excite people to alter matters established by law by unlawful means or to excite disaffection against the administration of justice. In all these forms of sedition it is likely that there will usually be an incitement to violence or to disobedience to the law, but such incitement does not, of itself, at present constitute sedition.

Experience of the sort of seditious publication which has appeared in Hong Kong argues that it should be, and so clause 2 of the bill amends section 3 of the principal Ordinances so as to make it sedition to incite persons to violence or to counsel disobedience to the law or to any lawful order.

Clause 3 amends section 4 of the Ordinance to make it clear that it is an offence to display a seditious publication. This is an odd omission from the present law, which makes it an offence to print, publish, sell, offer for sale, distribute or reproduce seditious matter, but not to display it. This produces an anomalous situation in that it would be an offence for a newspaper seller to sell a copy of a seditious publication, but not to paste it on a wall behind him.

Clause 4 adds a new section, empowering police or public officers to remove or obliterate seditious matter from premises, vehicles, trains and vessels. In the past, seditious matter has appeared on walls, streets, cars, boats and buildings, sometimes in the form of painted slogans or words and sometimes in banners, posters or pictures. While these can be dealt with adequately if they appear on public property, there are, at present, no powers which will enable prompt action to be taken by public officers to remove or obliterate seditious matter if it is on private premises, and all that they can do is to exhort the owner of the premises to remove it.

The clause distinguishes between seditious matter which is visible from a public place and that which is not. If it is so visible, then a police officer or public officer may enter the premises and remove or obliterate the seditious publication. If it is not so visible, then there is, of course, less urgency and it will be necessary for those circumstances, before a police officer or public officer can enter the premises, for him to obtain either the prior permission of the occupier or obtain a warrant to do so from a magistrate.

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.

Sedition (Amendment) Bill—second reading*Explanatory Memorandum*

Emergency (Principal) Regulation 25 makes it an offence to post or distribute any placard, circular or other document containing an incitement to violence or counselling disobedience to the law or to any lawful order or likely to lead to any breach of the peace. The elements of this statutory offence correspond closely to the common law definition of sedition. For this reason it is felt that the Sedition Ordinance should be amended so as to cover the offence contained in regulation 25.

2. Clause 2 of the Bill seeks to widen the definition of "seditious intention" contained in section 3 of the principal Ordinance by including an intention to incite persons to violence or to counsel disobedience to any law or to any lawful order.

3. Clause 3 seeks to amend section 4(1)(c) by making it an offence to "display" any seditious publication.

4. Clause 4 seeks to add a new section 8, which empowers police officers and public officers to remove and obliterate seditious publications. However if the publication is not visible from a public place, the powers of entry and removal can only be exercised with the prior permission of the occupier of the premises or under a warrant issued by a magistrate.

5. It is intended to repeal Emergency (Principal) Regulation 25.

LANDLORD AND TENANT (AMENDMENT) BILL 1970

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

He said:—Sir, in 1968, the Landlord and Tenant Ordinance was amended so as to empower the Governor to make an order excluding any particular premises from the Ordinance*, in any case in which there is no appeal to the Governor in Council against a recommendation for exclusion made by a Tenancy Tribunal.

Previously, all exclusion orders had to be made by the Governor in Council, who is now obliged to make them only if there has been an appeal from the Tenancy Tribunal.

Since the 1968 amendment, it has been found that in three sections in the Landlord and Tenant Ordinance there are references to the Governor in Council only, whereas there should be references also to

* 1968 Hansard, pages 479, 514 and 550.

the Governor, since he may now make exclusion orders as well as the Governor in Council.

This bill amends sections 33, 40 and 41 of the Ordinance accordingly.

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

As a result of an amendment in 1968, section 38(2) of the principal Ordinance provides that, upon the recommendation of a tenancy tribunal, an order excluding any particular premises from the further application of the Ordinance may be made by the Governor, if no appeal is lodged under section 39, and by the Governor in Council if an appeal is lodged.

At present sections 33, 40 and 41 of the Ordinance refer only to orders made by the Governor in Council, and this Bill amends these sections so as to include reference to orders made by the Governor.

PUBLIC ORDER (AMENDMENT) BILL 1970

THE ATTORNEY GENERAL (MR ROBERTS) moved the second reading of:—"A bill to amend the Public Order Ordinance and to make consequential amendments to the City Hall Ordinance."

He said:—Sir, the Public Order Ordinance, when it was introduced in 1967*, attracted a considerable amount of criticism in the press and by various associations and bodies, which argued that the Ordinance went further than was justified, that unnecessary powers were conferred on the police and that some of the provisions were so drafted that it might be possible for morally innocent persons to be found guilty of offences under it.

I concluded my speech on the Second Reading of the bill in the following terms:—

"It is a problem as old as the law itself, to find the proper point of balance between citizen and state. This point, as the history of any country will show, changes from time to time. It is to be hoped that this bill has found the right balance, taking

* 1967 Hanisard, pages 438 and 474.

[THE ATTORNEY GENERAL] **Public Order (Amendment) Bill—second reading**

into account, as must be done, our circumstances at the present time. If these change, or experience of the working of the bill discloses gaps, or provisions which prove unfair or oppressive, then the Government will be ready and willing to consider suitable amendment."

After the bill became law, representations about a number of its provisions were received from the Law Society, the Bar Association and the Hong Kong branch of Justice. These have been carefully considered and many of the amendments included in this bill stem from the comments of these bodies, and particularly of Justice. All of them have been consulted on the bill and have offered no comments, save one which has been accepted and embodied in the bill before Council.

Many of the amendments which are proposed in this bill are based on a recognition that some of the provisions of the Ordinance confer unnecessarily wide powers in ordinary times and that, in a few instances, there may be a risk that innocent persons may become involved in offences. In an emergency situation, of course, the Government might be obliged to resort to emergency regulations, and would not hesitate to do so if it considered that the maintenance of order so required. However, it is felt that the lessening of certain powers achieved by this bill is desirable in ordinary circumstances.

I should like to add, however, that there is no evidence to suggest that, in fact, there has been any abuse of the powers conferred by this Ordinance, or that persons have been wrongly convicted, or unreasonably prosecuted, in spite of the wide terms in which some of its sections of the principal Ordinance are drawn.

Objection has been taken that the definition of "meeting", which determines what public meetings need to be licensed, is in too wide terms. Consequently, clause 2 provides a new definition, which is limited to meetings in which there is a degree of organization, either before or during the meeting, and excludes a casual gathering of persons in a public place, which would be a meeting under the present definition and thus strictly require a licence. The new definition will also exclude any meeting which is held for the purposes of any Ordinance, such as a court sitting or a creditor's meeting.

Although, in general, any public meeting or public procession requires a licence under section 7 of the Ordinance, there are already excluded from this requirement religious meetings and meetings for entertainment or in theatres, cinemas and similar places. Clause 4

will also exempt from licensing meetings held for social or business purposes in licensed restaurants, and also funerals.

Clause 3 amends section 3 of the Ordinance so as to restrict the exercise by a police officer of the power to prohibit the public display of flags and banners to occasions where he reasonably believes that the display will lead to a breach of the peace. At present, he can do this without having to show that he had any reasonable grounds for exercising the power. Section 3 has also been amended to make the power available where flags are flown on vehicles and vessels as well as on premises.

Clause 6 amends section 11(2) so as to require a police officer to exercise the powers conferred under that section, which are powers to prevent the holding of a public gathering, or to stop or disperse one, only on the basis of reasonable belief, in the same manner as I have just indicated his discretion would be limited under section 3 by clause 3.

Section 9 obliges the holder of a licence to hold a public meeting to be present from the first assembly of the meeting to its final dispersal. Clause 5 amends this strict requirement so as to provide a defence to a licensee who can show that he has been absent from the meeting due to illness or other unavoidable cause. The present obligation imposed on the licensee, to ensure that police directions are followed for an hour after dispersal of the meeting, is deleted, since this imposes an unfair burden on him.

The effect of section 12 of the Ordinance is to make it an offence to take part in an assembly which becomes an unlawful one under that section, for example, if a public meeting takes place without a licence or if some members of a public gathering fail to obey an order to disperse. It is possible that, at least in the early stages of a meeting which thus becomes unlawful, innocent bystanders, activated only by curiosity, may find themselves trapped in the crowd and so become guilty of an offence of unlawful assembly. Clause 7 therefore amends section 12(3) so as to afford a defence of lawful authority or reasonable excuse, which would, for instance, be available to anyone who can show that he was only an innocent bystander and not a real participant in the unlawful assembly.

Section 13 of the Ordinance makes it an offence to behave in a noisy or disorderly manner or to use threatening abusive or insulting words if such conduct is intended or likely to cause a breach of the peace. Clause 8 removes a doubt as to whether or not the display of abusive words, as well as their verbal use, falls within the section.

Clause 9 provides a defence of lawful authority or reasonable excuse (instead of only lawful authority as at present) to a person

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charged with having an offensive weapon in his possession at a public meeting. Clause 21 gives a similar defence to a charge of carrying an offensive weapon during a curfew. These changes are necessary because the definition of offensive weapon is in wide terms and would include articles which have ordinary uses, such as choppers or knives.

Clause 10 amends section 15 so as to ensure that a person taking part in the organization of a meeting, which is prohibited by the Commissioner of Police under that section, will only be guilty of an offence if he does so after such a prohibition has been issued. On the present wording, it could be argued that the organizer was guilty of an offence even though he had done nothing after the prohibition was issued.

The definition of an unlawful assembly in section 18 is altered by clause 11 so as to require a disorderly intimidating, insulting or provocative element in the conduct of an assembly before it becomes unlawful under that section. Clause 12 makes it clear that the offence of riot, which perhaps may be described as an unlawful assembly which becomes violent, will arise only when preceded by the disorderly type of unlawful assembly under section 18, and not by the kind of assembly which is made unlawful under section 12.

Clause 13 makes it clear that a man will not commit the offence of forcible entry, under section 23, if he enters his own premises forcibly when they are in the possession of his servant or agent.

Section 25 makes it an offence to take part in any fight in a public place. Since this would strictly include a boxing match, the section will in future apply only to unlawful fights.

Under section 26, a man is guilty of proposing violence at a public gathering if he makes a statement, or behaves in a manner, which is likely to incite or induce a person to various kinds of violent behaviour. Clause 15 amends this section, so as to apply an objective test in deciding whether the accused has committed the offence.

Part V of the Ordinance, which deals with intimidation and intimidating assemblies, has been extensively altered by clauses 17, 18 and 19. Clause 17 repeals and replaces the section which deals with intimidation. The new section is narrower in its scope than the present one, which is wide enough to include behaviour which is not criminal in the usual sense of the term. Clauses 18 and 19 repeal the offences of intimidating assembly and of organizing an intimidating assembly which are thought to be unnecessary, since a person who takes part in an intimidating assembly can be charged with taking part in an unlawful assembly.

Clauses 22, 23 and 24 amend Part VII of the Ordinance, which is concerned with closed areas. These are places to which access by persons generally is prohibited and they include not only military, naval and air force premises but other vital installations such as electricity and gas plants. In future, by the new section 36, which is introduced by clause 22, a closed area order must be published in the *Gazette* as soon as possible after it is made. This new section also gives power to erect barriers or other obstacles in order to block off a closed area.

Clause 23 empowers the Commissioner of Police, or some other person authorized by the Governor, to issue permits to enter closed areas. This would, for example, enable the Governor to authorize the manager of an electric company to issue permits for a power station which has been declared to be a closed area.

Clause 24 gives powers to members of the forces and to guards to arrest persons in closed areas, who are there without permits or who are suspected of having committed an offence there. The term guard, by the new section 39(4), which is also contained in clause 24, will include members of the Essential Services Corps and other persons who may be appointed as guards by the Governor or the Commander, British Forces.

Section 49 of the Ordinance confers upon a police officer wide powers to enter and search premises without warrant, if he suspects that an offence under the Ordinance is or has been committed therein, or that evidence of any such offence may be found there, or if he suspects that any person who has taken part in an unlawful assembly may be found on the premises. This has been criticized as giving powers which are unjustifiable and are open to abuse. Clause 27 repeals the section, since it is felt that the ordinary powers conferred by the Police Force Ordinance and at common law are adequate. The section is replaced by a much more restricted provision, empowering members of the forces and police officers to require a person to identify himself, if this is necessary for the purpose of preventing or detecting crime. This would enable an area to be cordoned off, or a road block to be established in suitable circumstances, for example, to arrest escaping bank robbers or to seize a consignment of heroin.

Clause 29 adds a new section making it an offence to obstruct servicemen and others carrying out duties under the Ordinance. This provision was omitted in error when the Ordinance was enacted in 1967.

I believe that these amendments will greatly improve the Public Order Ordinance, making it simpler and fairer in its application and

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clearer in its drafting and I would like to offer my thanks to those bodies whose criticisms and suggestions have greatly assisted the task of revision.

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

This Bill makes a number of amendments to the Public Order Ordinance which are designed to clarify some provisions about which doubt has been expressed and to relax others in order to give better protection to the public against any misuse of powers or against the possible conviction of persons innocently involved in circumstances which constitute offences under the Ordinance.

2. Clause 2 replaces the definition of “meeting” in the principal Ordinance so as to limit it only to those meetings where there is a degree of organization and to exclude those meetings which are held for any statutory purpose, such as creditors’ meetings; the definition will cover the situation where there is no prior organization but a person assumes control or leadership of a group in a public place.

3. It is considered desirable that the power conferred on a police officer by subsection (1) of section 3 of the principal Ordinance should be exercised on the basis of reasonable belief rather than on the basis of the opinion of the police officer. Similarly, subsection (2) of section 3 is amended so as to ensure that when a police officer enters any premises or place it should be “reasonably” necessary for him to do so. The section is also amended so as to control the flying of flags on vehicles and vessels, as well as on premises.

4. Clause 4 amends section 7 by providing that an application for the licence of the Commissioner of Police for a funeral procession at which the body is present shall be made not less than twenty-four hours before the procession is held. The clause also exempts funeral meetings and meetings held for social or business purposes in a restaurant from the need to be licensed.

5. By section 9 of the principal Ordinance, every licensee of a licence obtained under section 7 shall be present at the public meeting or public procession from the first assembly to the final dispersal thereof, and shall comply with any police directions regarding such meeting or procession throughout the period of assembly, conduct and dispersal thereof and the period of one hour following the final dispersal thereof. It is now felt that these conditions can cause problems when the licensee is unavoidably absent from the meeting. Accordingly, clause 5 proposes to amend section 9 by providing a defence for a licensee who is absent from a meeting by reason of illness or other unavoidable cause. Furthermore, the requirement that police directions be complied with during the period of one hour after the final dispersal of a meeting or procession is deleted.

6. Clause 6 amends subsection (2) of section 11 so as to oblige a police officer, when exercising the powers conferred by the subsection, to act only on reasonable belief.

7. Clause 7 makes it clear that paragraph (a) of section 12(2) applies only to meetings or processions for which a licence is required under section 7. Also, subsection (3) is amended so as to afford to a person charged with an offence under the subsection the defence of lawful authority or reasonable excuse; this is intended to confer protection on any innocent bystander who becomes unintentionally involved in an unlawful assembly.

8. Clause 8 widens the scope of section 13 so as to make it an offence to distribute or display threatening, abusive or insulting posters with intent to provoke a breach of the peace, or whereby a breach of the peace is likely to be caused.

9. Section 14 is amended so as to enable a person charged with possessing an offensive weapon at a public meeting or procession to plead “lawful authority or reasonable excuse” as a defence. (Clause 9).

10. Subsection (3) of section 15 is amended in such a way as to ensure that only those who promote, direct, organize or manage a prohibited public gathering after the issue of the prohibition by the Commissioner of Police shall be guilty of an offence under that subsection. (Clause 10).

11. The definition of an unlawful assembly in section 18 is altered by clause 11 to show that there must be a disorderly element in the conduct of an assembly before it becomes unlawful. Clause 11 and 12 also make it clear that section 18 and 19 apply only to assemblies which are unlawful by virtue of section 18, and not to assemblies deemed unlawful by section 12.

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12. The offence of forcible entry under section 23 will not be committed by a man who enters his own premises. (Clause 13).

13. At present section 25 applies to any fight in a public place, which might include a boxing match. This section is confined to unlawful fights by clause 14.

14. In section 26 an objective test will have to be applied in deciding whether an accused has committed an offence under the section. (Clause 15).

15. Section 27 of the principal Ordinance, which deals with intimidation, is repealed by clause 17 and replaced by a new section which is based on paragraph (a) of the repealed section. It is considered that the present section is too wide in its scope and that the mischief aimed at can be adequately dealt with under the new provision.

16. The offence of intimidating assembly is thought to be superfluous, because a person who takes part in such an assembly can be prosecuted for taking part in an unlawful assembly. Consequently, clauses 18 and 19 seek to repeal section 28 and 30.

17. The effect of the amendment to section 31 of the principal Ordinance, contained in clause 20, is to require the Commissioner of Police to serve notice of cancellation of a curfew permit on the permittee.

18. Section 32 enables a person charged with carrying an offensive weapon during a curfew to put up the defence that he had a reasonable excuse for so doing. This adds to the existing defence of lawful authority. (Clause 21).

19. Clause 22, 23 and 24 amend Part VII of the principal Ordinance, which deals with closed areas. In future a closed area order made under section 36 must be published in the *Gazette* although the order will be effective from the day on which it is made. The proposed subsection (3) of section 36 deals with the closing of closed areas by the erection of barriers or other means. The new subsection (2) of section 37 provides for the issuing of permits to enter non-military closed areas by the Commissioner of Police or by such other authority or person as is authorized for that purpose in the closed area order. By the new section 37(4), notice of cancellation of a permit must be given. The powers of arrest contained in subsection (1) of

section 39 are extended to enable a guard (defined in the new subsection (4) to arrest any person about to commit any offence within a closed area. The definition of “guard” will ensure that, in an emergency, closed areas may be guarded by persons other than police officers and members of the armed forces.

20. Section 40 is amended so as to empower the Governor to authorize the Commissioner of Police to appoint, in writing, any person as a special constable. (Clause 25).

21. Clause 26 makes a number of minor drafting amendments to section 44.

22. Section 49 of the principal Ordinance is repealed by clause 27. This conferred unusually wide powers of search and entry on police officers and it is now considered that the powers conferred by the Police Force Ordinance and at common law should prove sufficient. It is replaced by a section in much narrower terms, empowering members of Her Majesty’s forces and police officers, in specified circumstances, to require a person to identify himself.

23. Clause 28 amends section 50 by deleting a reference to section 49.

24. Clause 29 adds a new section 50A, which makes it an offence for a person to obstruct a member of Her Majesty’s forces, a member of the Royal Hong Kong Defence Force or any other person acting under a power or duty conferred or imposed on them by the Ordinance. In Hong Kong, military personnel in times of disturbance work in conjunction with the police and it is considered desirable that they should have a measure of protection from obstruction.

25. Clause 30 makes a consequential amendment to the City Hall Ordinance.

THEFT BILL 1970

Resumption of debate on second reading (28th 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.

**IMPORTATION AND EXPORTATION (AMENDMENT)
BILL 1970**

Resumption of debate on second reading (28th 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.

EMPLOYMENT (AMENDMENT) (NO 2) BILL 1970

Resumption of debate on second reading (28th January 1970)

Question again proposed.

DR S. Y. CHUNG: —Your Excellency, it is generally accepted that two major criteria in the measure of economic progress in a community are real wage and working hours. The success of economic development is, therefore, depicted by rising real wages and reducing working hours.

During the past ten years industrial wages in Hong Kong have gone up at an average rate of about 9 percent per annum and, with an inflation of approximately 3 percent per annum as reflected by the retail price index, real wages in industry have been rising at a rate of about 6 percent per annum. This annual compound incremental rate of 6 percent in real wage, I believe, is high by any standards. Furthermore, it was reported that the average wage increase in industry during 1969 was well over 12 percent.

Unfortunately, statistics for wage movements in non-industrial sectors are not available. Nevertheless, indications are that wage increments in services were not lagging very much behind those in industry.

Coming to working hours by honourable Friend, the Commissioner of Labour, has already pointed out that it is at present compulsory for an industrial employer to grant to all young persons aged 14 to 17 years and all women one rest day in every seven days. Most industries employ both men and women in good proportions working side by side and are, therefore, governed as far as working hours are

concerned by labour legislation intended for women only. As a result, many male employees in industry are already enjoying four rest days a month.

The situation is, however, quite different in non-industrial sectors. Persons working in restaurants, retail shops, cinemas and particularly households do not customarily have fixed rest days every month. The introduction of this bill will hence benefit many employees in the non-industrial sectors of our community.

On the other hand, the proposed bill will likely cause problem of adjustment to some employers in the non-industrial sectors. Clause 1 of the bill specifies that it shall come into operation on the first day of April 1970. Since the third reading will not take place until the end of this month, it will give only one month for employers to make necessary adjustments. This period of notice seems rather short especially for those employers in non-industrial sectors who will have to depart substantially from customary practice. It is hoped that Government will show sympathetic consideration for these employers during the initial stage when this Ordinance comes into force.

This bill, in essence, provides, from the view of an employer, four compulsory rest days a month to his employees and, from the angle of an employee, an option of having four rest days a month. It, therefore, gives more leisure to those people who want it without hindering others who prefer to work harder and earn more income. During the past two years we have made significant progress in labour legislation. We have the phased programme on progressive reduction of working hours, the Maternity Protection Ordinance, the improved Workmen's Compensation Ordinance, the Employment Ordinance and now the Rest Days Ordinance. These new labour Ordinances together with the previous ones such as the Holidays with Pay and Sickness Allowance Ordinance will no doubt bring our labour legislation reasonably up to international standards.

Whilst employers have been most co-operative in helping Government to improve its labour legislation for the benefit of labour, Government has been most reluctant to look realistically at one problem in industry. I refer, Sir, to the problem of night work for women. This particular issue has been mentioned many times both in and outside this Council. To my knowledge, a very large and progressive electronic undertaking early last year applied for permission to operate a night shift with women. The wage level, fringe benefits and working conditions of this particular factory are very favourable by world standards, but so far no positive reply is received from Government. I believe my honourable Friend, the Commissioner of Labour, already

[DR CHUNG] **Employment (Amendment) (No 2) Bill—resumption of debate on second reading (28.1.70)**

has power to grant permission for women working on night shift but is very reluctant to exercise it due to certain restrictions imposed by White Hall in London. Therefore, when it comes to internal affairs, we are, as my honourable Colleague, Mr KAN, often said, remotely controlled by London and cannot decide for our own selves.

When, however, it comes to trade, Hong Kong is to be considered as a complete outsider. I can quote many good cases in point but I shall today confine myself to the most recent one involving the Industrial Development (Ships) Bill which was passed in the House of Commons last month. The enactment of this bill in the United Kingdom will mean a double-blow to our ship building and repairing industry. Firstly, British registered shipping companies will no longer enjoy the privilege of an investment grant from the UK Government when building or converting ships in Hong Kong. Secondly, British ship owners will have better financial incentive to have their ships built, converted or repaired even in an EFTA country than in Hong Kong.

It appears, then, that we are neither fish, flesh nor fowl in so far as our relations with the United Kingdom are concerned. This is highly unsatisfactory. I firmly believe that our Government in Hong Kong must be given the full authority to make decisions on internal matters so that we can adopt measures which, in our own opinion, are in the overall interests of our community.

Sir, I now come back to the Employment (Amendment) (No 2) Bill 1970 and have one point in detail. It relates to subsection (5) of new section 11F and subsection (3) of new section 11G. These two subsections grant permission to an employer to substitute for any appointed rest day some other rest day within the period of thirty days *next following*. I think it is essential, for practical reasons, to allow a substitute rest day to be given on a day *preceding* the appointed rest day, and not necessarily only on a day *following* the appointed rest day.

Let me take an example to demonstrate the need for greater flexibility in substitute rest days. The first day of May is known internationally as Labour Day and is a holiday for most, if not for all factories. This year May the 1st is a Friday. Since many factories designate Sunday as the appointed rest day of the week, it is very likely that some factories prefer, on account of higher efficiency and greater economy in their operations, to have two non-working days running consecutively or in other words to bring forward the appointed rest day of that week from Sunday to Saturday. Without

amendment subsection (5) of section 11F does not permit such a flexibility in the change of appointed rest days.

With these remarks, Sir, I support the motion before Council.

MR HETHERINGTON: —Sir, I thank my honourable Friend, Dr CHUNG, for his strong and welcome support for this bill.

The text of the bill was published in the *Government Gazette* on 23rd January. By 1st April, the date when it is proposed that the bill should come into force, a period of over nine weeks will have elapsed since publication. I think that employers will then have had a reasonable amount of time to make arrangements to comply with the provisions which are quite simple. When I spoke on the bill in this Council, a fortnight ago, I offered to help both employees and employers to surmount initial difficulties which might arise while they adjusted themselves to the new requirements. I can assure my honourable Friend, Dr CHUNG, that my officers will do all that they can to assist during this early period of change-over from customary practices, especially in the non-industrial sectors, to the new procedures.

I believe that this bill permits the greatest degree of flexibility without losing sight of the main purpose which is to provide a statutory entitlement of a minimum of four rest days in each month on a regular or pre-determined basis. My honourable Friend, Dr CHUNG, is not strictly correct to lump together the substituted rest days under new section 11F(5) and new section 11G(3). Another rest day may be substituted by an employer, under new section 11G(3), only when he requires an employee to work on an appointed rest day in the event of an unforeseen emergency. I do not see how the emergency could be regarded as unforeseen if the employer were permitted to substitute a rest day under new section 11G(3) in advance of an appointed rest day. For this reason, an amendment of this subsection would not be appropriate. On the other hand, a substituted rest day in the normal course of events requires, under new section 11F(5), the consent of both employer and employee. I accept Dr CHUNG's argument that a substituted rest day in these circumstances could be conveniently advanced, within prescribed limits, to the mutual satisfaction of both parties as well as postponed. I will endeavour to prepare a suitable amendment, for consideration by this Council at the committee stage, which would go some way to meet my honourable Friend's proposal without undermining the principle of regular rest days in each month.

DR CHUNG: —Sir, on a point of order, I can show to my honourable Friend that subsection 3 of section 11G could be relevant.

Employment (Amendment) (No 2) Bill—resumption of debate on second reading (28.1.70)

HIS EXCELLENCY THE PRESIDENT: —What is your point of order, Dr CHUNG?

DR CHUNG: —My point of order, Sir, is that I could show to my honourable Friend that subsection 3 of section 11G which I mentioned earlier could be relevant in this case.

HIS EXCELLENCY THE PRESIDENT: —That is not a point of order, Dr CHUNG.

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.

COMPANIES (AMENDMENT) BILL 1970

Resumption of debate on second reading (28th 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

CONSULAR RELATIONS BILL 1970

HIS EXCELLENCY THE PRESIDENT: —With the concurrence of honourable Members we will take the clauses in blocks of not more than five.

Clauses 1 to 14 and the three schedules were agreed to.

DIPLOMATIC PRIVILEGES (AMENDMENT) BILL 1970

Clauses 1 to 5 were agreed to.

PENSIONS (AMENDMENT) BILL 1970

Clauses 1 to 3 were agreed to.

SIR DAVID TRENCH FUND FOR RECREATION BILL 1970

HIS EXCELLENCY THE PRESIDENT: —With the concurrence of honourable Members we will take the clauses in blocks of not more than five.

Clauses 1 to 11 were agreed to.

Council then resumed.

Third reading

THE ATTORNEY GENERAL (MR ROBERTS) reported that the Consular Relations 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 Diplomatic Privileges (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 COLONIAL SECRETARY (SIR HUGH NORMAN-WALKER) reported that the Pensions (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 Sir David Trench Fund for Recreations 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

Council adjourned *pursuant to Standing Order No 8(5)*.

NEXT SITTING

HIS EXCELLENCY THE PRESIDENT: —Council will accordingly adjourn. The next sitting will be held on 25th February 1970.

Adjourned accordingly at quarter to Four o'clock.