OFFICIAL REPORT OF PROCEEDINGS

Wednesday, 8th April 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 E1OME AFFAIRS
MR DAVID RONALD HOLMES, CMG, CBE, MC, ED, JP
THE HONOURABLE THE FINANCIAL SECRETARY (*Acting*)
MR CHARLES PHILIP HADDON-CAVE, JP
DR THE HONOURABLE TENG PIN-HUI, CMG, OBE, JP
DIRECTOR OF MEDICAL ANDHEALTH 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 DONALD COLLIN CUMYN LUDDINGTON, JP
DISTRICT COMMISSIONER, NEW TERRITORIES
THE HONOURABLE JOHN CANNING, JP
DIRECTOR OF EDUCATION
THE HONOURABLE FUNG HON-CHU, OBE, JP
THE HONOURABLE TSE YU-CHUEN, OBE, JP
THE HONOURABLE KENNETH ALBERT WATSON, OBE, JP
THE HONOURABLE WOO PAK-CHUEN, OBE, JP
THE HONOURABLE SZETO WAI, OBE, JP
THE HONOURABLE WILFRED WONG SIEN-BING, OBE, JP
THE HONOURABLE ELLEN LI SHU-PUI, OBE, JP
THE HONOURABLE 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

ABSENT

THE HONOURABLE JAMES JEAVONS ROBSON, JP
DIRECTOR OF PUBLIC WORKS
THE HONOURABLE KAN YUET-KEUNG, CBE, JP
THE HONOURABLE WILSON WANG TZE-SAM, JP

IN ATTENDANCE

THE DEPUTY CLERK OF COUNCILS
MR RODERICK JOHN FRAMPTON

Papers

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

	Subject	*LN No*
Subsidiary Legislation: —		
Emergency (Principal) Regulations.		
	Emergency (Principal) Regulations (Discontinuance) Order 1970	42
Dogs and Cats Ordinance.		
	Approved Observation Kennels and Quarantine Stations	43
Pensions Ordinance.		
	Pensions (Amendment) Regulations 1970	44
Road Traffic Ordinance.		
	Road Traffic (Registration and Licensing of Vehicles) (Amendment) Regulations 1970	45
Revised Edition of the Laws Ordinance 1965.		
	Annual Revision 1969	46

Statement

Factories and Industrial Undertakings (Amendment) Regulations 1967

MR R. M. HETHERINGTON: —Sir, the Factories and Industrial Undertakings (Amendment) Regulations 1967 introduced a phased programme for the progressive reduction of hours of work for women and young persons in industrial employment. Each of the five phases begins on 1st December of each year of the programme and the third phase began on 1st December 1969.

I have previously made statements in this Council on the first two phases and I am now in a position to report on the third phase.

When I last spoke last year, I said that only four concerns, out of a total of 8,985, had not adopted a standard 9-hours day and 54-hours week by the end of March 1969. I regret that it was eventually necessary to prosecute three of these firms and they were convicted and fined.

In October 1969, the Labour Department sent out individual letters and copies of a simple guide to each establishment known to be employing women and young persons about the impending introduction

of the third phase of the programme. These were followed by general press releases and visits to factories to remind managements that, on 1st December 1969, the standard working hours must be reduced to 8 hours 40 minutes a day and 52 hours a week.

There was a very welcome response to this campaign largely because managements had prepared in advance for the third phase. Even before 1st December, 4,435 establishments had introduced working schedules on the basis of the reduced standard hours. By 1st December, 7,833 had completed the necessary formalities to comply with the regulations. More did so in the following weeks and, by the end of January, only 49 out of a known total of 9,762 factories had not fallen into line. These were further reduced to eleven by the middle of February and all finally complied with the regulations by 9th March.

Only 288 applications, compared with 472 in the previous year, were received to defer the introduction of the new hours. Many of these gave only perfunctory reasons and I refused 174. Of the remainder, I granted one exemption for one month, 106 until the middle of January, and seven up to the Lunar New Year.

The third phase was introduced in a satisfactory and uneventful manner. There were few complaints from workers although, in some cases, new working schedules were adjusted to meet complaints. No reports were received of any reduction of earnings. The timing of the third phase coincided with a period of economic buoyancy which provided an opportunity for a widespread increase in wage rates.

The fourth phase will begin on 1st December 1970 when standard working hours will be further decreased to 8 hours 20 minutes a day and 50 hours a week. I hope that managements will make timely preparations. Bu then, the scheme will have been in operation for three years and I expect that applications for temporary deferment will be made only in the most exceptional circumstances.

Motions

DUTIABLE COMMODITIES ORDINANCE

THE ACTING FINANCIAL SECRETARY (MR C. P. HADDON-CAVE) moved the following resolution: —

> Resolved, in exercise of the powers conferred by section 4 of the Dutiable Commodities Ordinance, as follows—
>
> That the Resolution of the Legislative Council, published as Legal Notice Number 102 of 1967, be amended with

Dutiable Commodities Ordinance

effect from 0001 hours on Thursday, the 9th day of April 1970, by deleting paragraph (*b*) and substituting the following—

"(*b*) heavy oils—

(i)	diesel oil for road vehicles	$1.30 per gallon
(ii)	other heavy oils	10 cents per gallon.".

He said: —Sir, this resolution is proposed under section 4 of the Dutiable Commodities Ordinance. Its purpose is to restore, with effect from midnight tonight, the position prior to the 1st of March, 1961 when the two enfranchised bus companies paid the *same* rate of duty on diesel oil as other users of diesel driven vehicles.

As part of his budget proposals for the financial year 1960-61, the then Financial Secretary (Mr Arthur CLARKE) raised the duty on petrol from 80 cents to $1.25 a gallon, but he left the rate on diesel oil at 40 cents a gallon. A year later in his 1961-62 budget speech, Mr CLARKE regretted that he had been so lenient on users of diesel driven vehicles: the widening of the differential between the rates of duty on petrol and on diesel oil from 40 cents to 85 cents had led to a noticeable encouragement of the use of diesel driven vehicles. The reason for this was quite simple: at the then existing rates of duty, diesel oil was cheaper in terms of miles per gallon and Mr CLARKE maintained that this would be so even if the rates were the same. He had apparently considered raising the rate of duty on diesel oil to the same level as that on petrol, but had accepted representations, and I quote, "that such a steep increase all at once is undesirable". Accordingly, he raised the rate from 40 cents to $1.00 a gallon only on that occasion, but he concluded his speech by saying, and I quote again: "The further step of raising the duty to $1.50 (a gallon) can be taken later". But in relation to the two enfranchised bus companies the position was not quite so simple: lengthy and complicated negotiations with the two companies had culminated in February 1960 with the passing of legislation by this Council whereby their franchises were renewed for an initial period of 15 years on the basis of certain reductions in fares and agreed royalty rates. These reductions in fares and agreed royalty rates were based, of course, among other things, on running costs at that time. If the new rate of duty on diesel oil of $1.00 a gallon had been applied only a year after these negotiations had been completed, it clearly would have meant *either* increased fares *or* further complicated negotiations to *reduce* the recently agreed royalty rates. Mr CLARKE decided, therefore, to leave fares and royalty rates undisturbed and increase the rate of duty on diesel oil used by the two bus companies from 40 cents to 50 cents a gallon only.

When the general rate was raised again from $1.00.to $1.30 a gallon in February 1966, the rate payable by the enfranchised bus companies remained at this special rate of 50 cents a gallon. That, Sir, is still the position today. In effect, the rate of tax payable by the two companies, by way of duty and royalty, has remained at virtually the same level while the rate of duty payable by other users of diesel driven vehicles has been increased by more than three times, from 40 cents to $1.30 a gallon.

In August last year this Council amended the Public Transport Services (Kowloon and New Territories) Ordinance to permit the alteration of the rate of royalty payable by the Kowloon Motor Bus Company, in any one of its financial years, by means of a resolution of this Council. This had become desirable because the need had arisen to put the arrangements for determining the rate of royalty payable by the Company on a more flexible basis, in the light of the more complex and rapidly-changing situation now prevailing. As there are now arrangements for the periodic adjustment of the rate of royalty, the original reason for preferring a lower rate of duty on diesel oil to an adjustment of royalty has disappeared and it is now possible, as part of this year's review of the appropriate rate of royalty payable, to revert to the original pre-1961 position, that is to say, *one* rate of duty for automotive diesel oil. This is clearly fair and reasonable for there is no good reason why passengers carried by the enfranchised bus companies should make a proportionately smaller contribution to public revenue than other road users.

The Government, Sir, is also discussing with the China Motor Bus Company a similar amendment to the Public Transport Services (Hong Kong Island) Ordinance to permit annual adjustments of royalty; and it is expected that an enabling bill will shortly be introduced into this Council. The necessary offsetting adjustment of royalty for this Company for its current financial year ending on 30th June 1970 will be negotiated shortly.

At this point, Sir, I should draw the attention of honourable Members to the Road Traffic (Registration and Licensing of Vehicles) (Amendment) Regulations 1970, made by Your Excellency in Council and laid on the table this afternoon. At present the two enfranchised bus companies are charged only a nominal annual licence fee of $10 per bus. As in the case of fuel duty, this apparently preferential treatment reflects the royalty charge borne by the bus companies—in effect by passengers—but not by other road users, and is likewise *not* a concession, strictly speaking. The normal licence fee for public buses is $10 per bus, *plus* $30 per seat. It is proposed, therefore, as for the rate of duty on diesel oil, to align the licence fees payable by the enfranchised companies to those for other public buses and to reduce the royalty to the equivalent extent.

[THE ACTING FINANCIAL SECRETARY] **Dutiable Commodities Ordinance**

One advantage of abolishing the special rate of duty on diesel oil and the special licence fee is that it will no longer be necessary, when deciding upon the appropriate rate of royalty, to consider whether the residual royalty covers the difference in the yields from the special and the standard rates. (I might mention here, Sir, by way of parenthetic comment, that a reduction in royalty of about two-fifths would have been required in 1969-70 to compensate for increased duty and licence fees in the case of the Kowloon Motor Bus Company; and of two-thirds, at least, in the case of the China Motor Bus Company). The next resolution standing in my name deals with the question of the royalty to be payable by the Kowloon Motor Bus Company in the *current* year 1970-71.

In conclusion, Sir, in case it is suggested otherwise, I should stress that these higher rates will not constitute a net additional burden on the companies or on bus travellers. The lower diesel duty and the nominal licence fee were always intended to be compensated by a part of the royalty charged and the loss to public revenue of the lower rates has always been more than fully covered by royalty payments.

MR FUNG HON-CHU: —Sir, it is with regret that I will have to abstain from voting on the resolution before Council. Likewise, I shall have to abstain from voting on the second resolution.

My decision is not only prompted by feelings of uncertainty about the merits or otherwise of the resolutions but also by some serious doubts as well as to whether they are immediately justifiable in the absence of a fuller, detailed statement on the overall operations of the bus companies, particularly in the case of the Kowloon Motor Bus Co.

I do not feel it is right to proceed on these matters on the lines proposed. The resolutions are important legislation and the manner in which they have been brought up certainly does not contribute towards totally erasing from the public mind the feeling that important decisions are made behind closed doors and rail-roaded through legislation. This does not help enhance Government's image. Furthermore, I think it is unwise to try to resolve the problems of the bus company by piecemeal measures.

There are some other observations I wish to make. The honourable Member, the Acting Financial Secretary, contends that the original reason for preferring a concessionary rate of diesel duty to an adjustment of royalty has disappeared.

I cannot see how it has. The position appears to be more or less the same, for, while on the one hand, Government will propose royalty payment to be shelved for one year, on the other hand, the full rate of diesel duty is to be charged and standard licence fees imposed. The original reason was to avoid an increase in bus fares but the threat of an increase looms even larger today than before.

Sir, it is abundantly clear that the imposition of standard rates of diesel duty, the removal of concessionary licence fees, the Company's application for an adjustment in the fare structure and the proposed waiving or royalty for a year are tied to the question of facilitating the earning by the bus company of a reasonable rate of return.

Any business is legitimately entitled to a reasonable return on capital employed and the bus company is no exception. But it seems to me that all discussions and negotiations between Government and the bus company have been based solely on budgetary statistics and balance statements.

Figures on paper, however accurate, do not necessarily reflect poor or even efficient management and, therefore, it is highly debatable that present and future measures decided on by Government will effectively serve their purpose if maximum efficiency is lacking.

We have no firm assurances that the Kowloon Motor Bus Company, for instance, is indeed operating at maximum efficiency which obviously cannot be determined without a comprehensive inquiry into its management and the operation of its services. The proposed steps to deal with the overall question seem to me like putting the cart before the horse.

Sir, much has been made of the Kowloon Motor Bus Company's entitlement to a reasonable rate of return but there has not been a single word about the public's legitimate demand for a reasonably adequate service. Little or no improvements resulted from the reduction of royalty from 20 per cent to 15 per cent last year.

Fleet expansion without an efficient system of operation to meet the needs of the public is utterly meaningless.

There is no doubt in my mind that the inefficiency in the operation of bus services, among other factors, is to a great extent responsible for other means of public transport, illegal and otherwise, attracting patrons away from the buses. In fact the poor services provided by the bus companies have invited competition and, indeed, encouraged it.

It is wrong to assume that the public in general is pathologically antagonistic towards paying more for transport. If they were, I think

most of the public light buses would be out of business by now and that the illegal public transport facilities would be suffering from a similar fate.

The public, as far as I can judge, is willing to pay a higher fare, if the service is up to the standard of its expectation which is not unreasonably high.

Before the fares are adjusted in future, I repeat, as I have indicated before in this Council, that Government would be well advised first to give a public assurance that not only have the statistics submitted by the company concerned been thoroughly scrutinized for accuracy and impartially assessed but also that its management has been examined for efficiency, and steps taken to correct the deficiencies discovered.

A public assurance would also be necessary to the effect that the system of operating the bus services would be completely overhauled to lead to improvements and more efficiency.

Only thus convinced, would the public be more likely to resign themselves to a rise in fares.

MR SZETO WAI: —Sir, since the resolution on the abolition of concessionary rates of fuel-tax as now introduced by my honourable Friend, the Acting Financial Secretary and that following for royalty reduction both concern bus service, I would, if I may, deal with them together as a matter of expediency.

The questions of bus royalty and fuel tax and licence fee concessions are closely linked in KMB's finances and both have been fully discussed by the Transport Advisory Committee. When my Committee was asked to advise on KMB's application for a fare increase early last year, its recommendation was that royalty was inequitable in a public transport operation except possibly as a residual at a very low level to avoid the need for over-rapid fare increase, and that its complete elimination should be a pre-requisite for any fare adjustment since royalty was undeniably a special tax on the bus users and, in the case of Hong Kong, it falls mainly on the poorer sections of the community. On the question of fuel tax and licence concessions, the Committee was generally in favour of full payment because of their analogy to hidden subsidies. When its royalty was reduced by 5% last year, KMB was given a respite in its financial difficulties and was able to embark on its minimum but long over-due scheme of expansion. But this was made possible by the fact that it still enjoyed the concessionary rates in fuel tax and licence fees which amounted to $6 million. With the passing of the two resolutions before Council today, the Company

would apparently be better-off by a sizeable sum of about $8 million in its present financial year. However, my honourable Friend has warned of the anticipated increase in the Company's operating expenses. Like other industrial undertakings, KMB is faced with the problem of wage increases and, as a public transport undertaking, greater proportion of its operating costs are salaries and wages which have increased considerably in recent years. The Company estimated the wage increases for the full year to be $4.6 million, and this and other increases coupled with the full payment of fuel tax and licence fee will certainly reduce the Company's profit and deny it again of a reasonable return even with its royalty eliminated. The proposals today are therefore not long-term measures and Government will soon be faced with the question of either granting subsidies for bus transport or a fare increase. Hong Kong's special conditions and its heavy reliance on public transport may justify consideration of the former. But, on the other hand, subsidy in public transport may rob off any incentives for a good service, and its operation must necessarily be put under strict and effective control which is not possible under the present arrangement.

I have, Sir, spoken in this Council last year, when KMB's royalty was first reduced, of the poor services and inefficiency of the Company as well as the many difficulties it faced which resulted from the tremendous increases in its franchise area, the population it served and the latter's increased travel requirements, all of which demanded resources that were clearly beyond those of the Company in its present financial state and under the present franchise conditions. By comparison, the China Motor Bus Company has problems that are much less formidable because of the trend of population decrease in the Island. It is to be appreciated that KMB's finance had its first hopeful turn last year since 1965 because of the royalty reduction which enabled it to pursue the ordering of its much needed new buses. Eighty new double-deckers had now been put into service and 150 new single-deckers have been promised within the coming year. It is therefore not unreasonable to say that there has been some improvement of late in the Company's service which should keep improving as more buses are available. However, it must be accepted that improvements to the service would result in higher costs and a smaller profit for each bus in operation. But, on the other hand, continued improvement of its services will help the Company to regain some of its passengers now patronizing public light buses. More buses will reduce over-crowding which in turn should lead to more courteous service by the crews. But the efficient running of the Company is of the greatest importance, and its performance must be put under the strict scrutiny of the Transport Department.

KMB's record of services does not warrant that its scheme of expansion will be effected within the promised period. Almost half

of the promised buses are for replacements while the remainder would barely meet the present needs. There are new transport requirements to be met as new towns are developed and new estates are built in its vast franchise area. The Company's capabilities and efficiency should be thoroughly examined by Government well before the expiration of its franchise in 1975 to determine if the vast territory would be more efficiently served by two franchised operators—a matter which I raised in this Council last year.

MR WILFRED WONG: —Your Excellency, every speaker before me has tied the second resolution on abolition of royalties to the first resolution on withdrawal of concession on fuel duties. I may as well do the same. I am in favour of the abolition of the royalties because it will help to maintain the present bus fares.

In speaking on this resolution, if it is meant that the new rates for diesel oil and other heavy oils would amount to the withdrawal of concessions on fuel duties for the bus companies with consequent result in the increase of bus fares, then I find it difficult to support.

My reason for opposing it is not economic but social. Economically, prices adjust themselves according to supply and demand. The cost of any service is governed by the cost of materials and labour. The cost of transportation has risen in most parts of the world and of course it is not possible to argue against an increase in the cost of transportation as economically inviable.

However from a social point of view and remembering "economics" is in ultimate reality "social economy", the increase in the cost of transportation, does count with the low income earning group and this applies not only to the bread-winners who go to work but also to wives going to market and children going to school.

The present fare structure should be retained as long as possible and if the withdrawal of the concessions on fuel duties would presage an increase in bus fares I would not be in favour of this resolution.

DR S. Y. CHUNG: —Your Excellency, Hong Kong is well known for its phenomenal economic development on the one hand and for its gulf between the rich and the poor on the other. We are frequently criticized by many people both within and outside Hong Kong that sufficient attempts have not been made to narrow this undesirable gulf. Faster improvements in wages and working conditions of those people in the lower earning brackets is, of course, one way to narrow

the gulf but, at the same time, it is also important to keep the cost of living, particularly the cost of basic daily needs, as stable as possible. Most countries, particularly the socialist ones, are subsidizing their basic living requirements in one way or another.

I believe it is already the policy of Government to suppress inflation as much as possible on basic daily needs. One can cite many examples of Government action in trying to maintain stable prices on basic necessities, such as the control of rice imports, the control of pre-war residential buildings, the establishment of the vegetable marketing organization and the recent holding Ordinance for rental and tenure control of residential premises. In 1966 when the Ordinance for the establishment of the Hong Kong Trade Development Council was passed in this Council, imports of foodstuffs were specially exempted from the levy imposed on all exports and imports for the financing of the Trade Development Council. The major reason for the exemption was to keep the cost of food as low as possible.

For the same reason the cost of public transport by omnibus, which is mainly for the less wealthy of the general public, should be kept as low as possible. With due respect to my honourable Friend, the Acting Financial Secretary, I find it difficult to accept his two statements that firstly the concessions on licence fees and fuel duty rates should be withdrawn for there is no good reason why bus passengers should pay less duty than other road users and secondly the increase of licence fees and fuel duty rates will not constitute an additional burden on bus travellers.

The next resolution on today's Order Paper is to abolish the royalty completely and, as a result, the Kowloon Motor Bus Company will have an increased revenue of about $14 million a year. However, the Company has to shoulder the increased expenditure on the full rates of fuel duty and licence fee amounting to about $6 million per annum. In addition to this increased payment of indirect taxation, the Company. I understand, would have to face a rising wage demand in round figures of another $6 million per annum. It is reported that under these conditions the Company, despite the abolition of royalty, could not maintain a reasonable rate of return on investment and has already applied for an immediate increase of bus fares.

I think I am right in saying that if the concessions on licence fees and fuel duty rates were not withdrawn, the abolition of royalty would enable the Kowloon Motor Bus Company to postpone any increase in bus fares for a substantial period of time.

Sir, I do not really object to any variation of bus fares provided the increased revenue is for improvement of services or for defraying unavoidable rising operating costs. However, like my honourable

colleague Mr Wilfred WONG, I do not think it is justifiable on modern socialist principles that omnibus fares should be inflated for the purpose of obtaining funds to pay Government any indirect taxes, such as increased fuel duty rates and licence fees in this case. There is no doubt that bus fares would be inflated if this resolution were passed.

Under the circumstances, Sir, I regret that I cannot support the motion before this Council.

MR K. A. WATSON: —Sir, in statements made by Government spokesmen, and in the speech made by my honourable Friend, the Acting Financial Secretary, it has not been made clear that the proposed increase in the duty on diesel fuel and licence fees will in practice have to be paid for by bus passengers. As soon as this motion is passed, I anticipate that the KMB fares will be increased by about $10 million almost as soon as the necessary arrangements can be made, and that 500,000 journeys each day will then cost double.

The effect on the CMB may be worse. The position is unclear because we have not been given any figures by Government to show what the additional taxation is likely to do to their services. The increase in fares and the deterioration in its service may be even more severe than that of KMB.

I am very concerned about the future of transportation in Hong Kong. During the last ten years we have seen congestion growing in our streets and this has had a serious effect on our public transport services. In recent years there has been a swing away from buses to more comfortable and convenient forms of transport, to minivans, taxis and private cars. But as these are less economical of road space from the point of view of passengers carried, it is clear that we should do everything we can to counteract this swing and to encourage people to continue to patronize what is the most economical form of mass transport.

The proposals now consist of measures which will directly penalize bus users and nobody else, measures which will decrease the difference between bus fares and those of their main competitors, the public light buses, and this will have an effect the opposite of what is required.

It is not as if Government is in desperate need of this money. After a year in which the estimated surplus is $450 million, with the probability of another large surplus this year, it surely is not so hard-pressed for revenue that it has to attack the less affluent part of the community. These measures are not going to affect those who use

private cars or taxis or the light buses, except perhaps to make their use more attractive. It is aimed at those who will be affected most by the additional burden, those who regularly use buses because they cannot afford anything better.

The reason given by my honourable Friend for this policy is that "there is no good reason why passengers carried by the enfranchised bus companies should make a proportionately smaller contribution to public revenue than other road users".

This has echoes of a theoretical economic world where opportunities are exactly equal and all competition is fair. A policy that requires Government to make the same demands on all road users, giving none of them any financial advantage so that they can compete on equal terms is difficult to justify if it means the bankruptcy of the franchised bus companies. It would only be fair if the different forms of transport were operating on equal terms.

But they are not doing so. Since the legalization of the public light buses, KMB and CMB no longer enjoy a monopoly and their most profitable routes are being eroded by the competition. But they are still obliged to maintain scheduled services, whether profitable or not, throughout most of the day and night and in all parts of their territories. Their competitors are under no such obligation. They can confine themselves to the most profitable routes and to the most profitable times of the day. They do not have to provide uneconomic services to outlying districts or at hours when the demand is slight.

The greater obligations of the franchised companies seem to me to be ample justification for the present difference in the rates of duty, allowing them to operate at lower fares and so remain competitive. But more important than this is the special need to protect and to encourage the use of the form of transport which uses our scarce road space most economically.

If Government insists on making their passengers pay the same proportionate duty as other road users and makes the companies provide regular scheduled services, the fares must increase, leading to more passengers deserting the large buses, which could in time lead to a vicious circle which could lead to bankruptcy. If private enterprise cannot compete, Government may have to take them over and subsidize them. Or if the minibuses are allowed to take over, Government's expenditure on roads will have to be considerably increased. In either event the cost to Government will be very much greater than a continuation of the present concessions. I appeal to Government to recognize the difference between our problems of transporting people efficiently and the unreal world of the economic textbook in which perfectly equal competition reigns and the devil takes the hindmost. We cannot afford to allow the bus companies to be that hindmost.

[MR WATSON] **Dutiable Commodities Ordinance**

For many years I have advocated the introduction of an underground railway system, but I am well aware that even with the full system recommended by the consulting engineers, a large proportion of our transportation will continue to depend on surface transport.

I am not going to deal at any length with my honourable Friend's arguments concerning the historical reasons why, for nine years, the bus companies have enjoyed these concessions. They arose out of deliberate decisions made in 1961 and in 1966, when the different rates of duty were introduced. On both occasions fares could have been raised to meet the higher duties if they were imposed. But in both cases good reasons were found why bus passengers should pay less.

In 1961, for example, the Financial Secretary, Mr Arthur CLARKE, spoke at length of the taxi companies having "a very privileged position in being protected against competition by limitation of the number of taxi licences, and saying that their profits over the past few years have been very substantial indeed". The same, more or less, applies today, both to taxis and to the new public light buses. One of the justifications for the difference in rates was clearly stated as being the profitability of the taxi companies.

I hope I have shown that there are still good reasons for maintaining this concession in order to keep our bus companies as competitive as possible and to make up for the greater obligations they undertake. Even if we accept my honourable Friend's arguments about past history, this decision should be based on conditions as they stand today and in the light of problems that face us in the future.

I feel, however, that before we can vote properly on this resolution, we need more information. The speech of my honourable Friend, the Acting Financial Secretary was singularly lacking in the figures which might have indicated the extent of the burden he proposed to inflict on bus-users. Yesterday we received a copy of a letter from the CMB which contained a very gloomy forecast of the future of its services if these proposals were accepted. I think that before taking a decision on this resolution we should be given an opportunity to study CMB's claims together with a detailed answer or commentary from Government.

In any case in a proposal of this nature, involving perhaps $10 million of added taxation on bus-users, we should avoid any suspicion that Government is trying to rush an unpopular measure through the Legislative Council in one sitting in order to prevent the public expressing its views. I understand however that the Official Members

of this Council will vote against any motion to adjourn this debate. Inspite therefore of the fact that most of the Unofficials would have supported such a motion I will refrain from proposing it.

THE ACTING FINANCIAL SECRETARY (MR HADDON-CAVE): —Sir, I am in some difficulty because my honourable Friends have linked the two resolutions together and certainly the Government links them together as well. Unfortunately, I have only delivered one speech. Might I ask, Sir, whether I could deliver my speech on the second resolution before replying to the honourable Members.

HIS EXCELLENCY THE PRESIDENT: —No, I am afraid not. I am afraid that it would be out of order. If you wish to speak again to this resolution you may but otherwise it will have to go to the vote.

THE ACTING FINANCIAL SECRETARY (MR HADDON-CAVE): —Well, Sir, in that case I shall be unable to deal with all the many interesting points made by honourable Members and for which I am grateful. May I begin with my honourable Friend, Mr FUNG: he was somewhat doubtful of the Government's ability to analyse the annual statements submitted by the Kowloon Motor Bus Company critically and in depth. I can only assure him, Sir, that these statements are so analysed. The company's statistics of both revenue and expenditure are submitted to a great deal of examination and assessment. My honourable Friend, Dr CHUNG, Sir, stated that it was apparently a Government policy to try to maintain stable prices on basic necessities, implying in that particular part of his speech that we would seek to hold prices below costs. That, of course, is not part of any policy which we may have to maintain a stable cost of living and Dr CHUNG rather contradicted himself in the latter part of his speech where he talked about "I do not really object to any variation of bus fares provided the increased revenue is for improvement of services or for defraying unavoidably rising costs".

Now, Sir, to the extent that my honourable Friend, Mr WATSON dealt with the first resolution, I would like to say that we are trying to deal with the four inter-related questions of a reasonable renumeration for the companies, levies payable (that is to say duty, licence fees and royalty), improved services, and fares in a logical sequence. Last year we adjusted the royalty for KMB downwards to 15% to give the company a chance to make a reasonable return; and we also simplified the procedures to amend the rate of royalty payable. This year we propose to do away with the special or preferential rate of duty on diesel oil and the nominal licence fee, both of which, I was at some pains to demonstrate, have rather accidental historical origins. But in view of the companies' probable financial position we are proposing also that the rate of royalty should be appropriately adjusted in each case so

that they will be no worse off as a result of the removal of these hidden subsidies. The question of the appropriate rate of royalty for this year, we believe, can then be considered in its own right and for KMB, as honourable Members are aware, we shall shortly be proposing it should be nil. I think my honourable Friend also suggested, Sir, that if the rate of fuel duty and licence fees were not increased, the elimination of royalty alone would enable KMB to earn a reasonable return. This may be so, Sir, for a while but, in any case, the Government simply cannot accept that there should be hidden subsidies when royalty has been eliminated, much less that fuel tax and licence fees should be used as a regulator of profit. All we are doing is to restore the tax position of the bus companies and of bus travellers to parity with other road users. I think the honourable Member is in fact suggesting that, with royalty eliminated as well, bus travellers should be put in a preferential position and, further, that fares should never be put up, increasing costs to be offset in fact by the elimination of the special rates and then by subsidies. I am afraid that philosophy, Sir, is neither acceptable nor, in our view, practicable.

MR WATSON: —Sir, I would point out that I didn't say anything of the sort.

THE ACTING FINANCIAL SECRETARY (MR HADDON-CAVE): —Sir, I was drawing out the logical consequence of the honourable Member's view point.

Perhaps, Sir, I may lastly deal with the interesting point made by my honourable Friend, Mr WATSON, regarding the problem of competitiveness between buses and mini-buses. I trust that I have him right on this occasion: he argued that bus fares must be sufficiently competitive with mini-bus fares to dissuade passengers from switching over to the smaller vehicles because, otherwise, we shan't achieve an optimum use of road space. Indeed, he would like to see, I think, a reducing number of public light buses, at any rate proportionately to public buses, in the interests of better road utilization and traffic control. Well, Sir, I am afraid that the Government's view is that the fare increases proposed—and I might add that they are offset to some extent, and to some important extent, by some reductions—our view is that the fare increases now under consideration will not significantly reduce the competitiveness of buses. In our view, convenience as much as, or more than, fares is the main determinant of the mode of transport chosen by the travelling public, as indeed the popularity of public light buses illustrates; and my honourable Friend, Mr FUNG has, perhaps unwittingly, come to my aid by arguing that, in his judgment—and I found this part of his speech particularly interesting—

the public is willing to pay a higher fare if the standard of service is up to their "not unreasonably high expectations".

One last point, Sir, if I may, my honourable Friend, Mr WATSON developed an argument about the unfairness of competition between buses and public light buses in terms of the control of the one and the freedom enjoyed by the other. There is, of course, some substance in the argument, but I think it should be remembered that public light buses pay a stiff licence fee of $3,000 a year as well as the full rate of duty on diesel oil consumed.

Question put.

MR FUNG: —Sir, I am sorry I have to abstain from voting.

HIS EXCELLENCY THE PRESIDENT: —You merely have to keep silent if you wish to abstain.

Question agreed to.

PUBLIC TRANSPORT SERVICES (KOWLOON AND NEW TERRITORIES) ORDINANCE

THE ACTING FINANCIAL SECRETARY (MR HADDON-CAVE) moved the following resolution: —

> Resolved, pursuant to subsection (6) of section 8 of the Public Transport Services (Kowloon and New Territories) Ordinance, that no royalty shall be paid by the Company for the yearly period beginning on the 15th day of February 1970 and ending on the 14th day of February 1971.

He said: —Sir, the second resolution standing in my name on the Order Paper is proposed under subsection (6) of section 8 of the Public Transport Services (Kowloon and New Territories) Ordinance. Its purpose, Sir, is to set the rate of royalty payable by the Kowloon Motor Bus Company for the Company's financial year ending on the 14th of February 1971 at "nil". In the absence of such a resolution, as honourable Members are aware, the Company would be required to pay royalty at the rate prescribed in subsection (1) of the same section, section 8; in other words, at a rate of 20% of gross income.

Sir, when the Financial Secretary introduced the Public Transport Services (Kowloon and New Territories) (Amendment) Bill into this Council on the 13th of August last year he stated that, after examining the Company's present position and future plans for the introduction of improved services, it had been agreed that a reduction in royalty from 20% to 15% of gross income would give the Company an opportunity to earn a reasonable rate of return on capital in the financial year ending on the 14th of February 1970.

[THE ACTING FINANCIAL SECRETARY] **Public Transport Services (Kowloon and New Kowloon) Ordinance**

Similar discussions have been held with the Company on the basis of its estimates of income and expenditure for the financial year ending on the 14th of February, 1971. As a result, the Government has agreed that, unless royalty is again reduced this year, the Company will not be in a position to have a similar opportunity to earn a reasonable rate of return. In these discussions, account has been taken of the proposal to remove the preferential rate of duty on diesel oil, now agreed by honourable Members in the resolution just considered; and account has also been taken of the deletion of the nominal licence fee hitherto payable by the Company, provided for in the Road Traffic (Registration and Licensing of Vehicles) (Amendment) Regulations 1970 tabled this afternoon.

These discussions with the Company, Sir, have shown that a reasonable rate of return cannot be achieved unless the rate of royalty payable is reduced to "nil" for the current financial year. The loss to public revenue brought about by the reduction in the rate of royalty to 15 % in the Company's last financial year was about $5 million. By reducing the rate to nil for the Company's current financial year, a further loss of about $15 million will be incurred, against which must be offset the additional revenue which will be derived from the full rate of duty on diesel oil and the $30 per seat licence fee which, together, in a full year should amount to about $7 million. Perhaps it would be helpful, Sir, to honourable Members if I illustrate what these figures mean in terms of average gross income per ticket sold. In the Company's financial year 1969-70 this worked out at 16.35 cents: the complete elimination of royalty that year would have meant a saving of 3.27 cents per ticket sold, but the Company would have had to pay out an additional 0.95 cents per ticket on account of increased duty on diesel oil and the additional licence fee per seat. In other words, the net effect of these three changes taken together would have been in 1969-70 that the Company was 2.32 cents per ticket sold better off.

But I am afraid, Sir, that the reduction of royalty to "nil" for the current financial year may not itself provide the Company with an opportunity to earn a reasonable rate of return in view of the increased operating expenses expected. The Company will increase its carrying capacity by over 40% during 1970-71 and will incur as a result greatly increased expenditure of the order of $14 million to $15 million on wages for additional crews and maintenance staff, and this increase will not be matched by the reduction of royalty or a corresponding increase in income. Furthermore, Sir, a new wage structure is at present being negotiated between the Company's management and staff.

This is reckoned to be necessary to facilitate recruitment and stem the flow of resignations. Without an adequate and efficient labour force the Company's expansion plans could obviously be frustrated. Accordingly, the Company has applied formally under section 17 of the Ordinance for the approval of Your Excellency in Council for a variation of the fares in its Schedule of Services. The Company's application is still under consideration, but it is likely that a variation in fares will be required in the fairly near future. I might add in conclusion, Sir, that the China Motor Bus Co may well be in a similar position: with increased operating expenses, including wages, it is possible that a variation in its fare structure will soon be required also.

MR WATSON: —Sir, the depressing comparisons made by my honourable Friend, the Acting Financial Secretary between the results in 1969-70 and 1970-71 leads me to ask whether this continual deterioration in the finances of the company is likely to continue in future years, whether the fares will have to be continually increased in order to make up for this imbalance between revenue and expenditure and does this not make the danger of bankruptcy, about which I spoke earlier, a very real one?

THE ACTING FINANCIAL SECRETARY (MR HADDON-CAVE): —Sir, I think I need only say in reply to the honourable Member's question that we are dealing with this matter in what we regard as a logical sequence. This year we propose to set the tax position straight and to adjust appropriately the rate of royalty for both companies. In the case of KMB we are, even at this stage, proposing to reduce the rate of royalty further to nil. In the absence of any dramatic change in the balance between operating expenses and income, we believe this would have given the company a reasonable opportunity of making a reasonable rate of return but, unfortunately, the expanding services envisaged will involve a more rapid increase in expenses than in income and also wages are to be adjusted upwards. So, in due course, we believe an adjustment to fares will be required.

Perhaps, Sir, I may revert to a point made by my honourable Friend, Mr FUNG Hon-chu, in his earlier speech in which he dealt with both resolutions: I would like to stress very strongly indeed that the company—my honourable Friend was referring to the Kowloon Motor Bus Company—is not "entitled" to a reasonable rate of return on capital employed. I think it is dangerous to use a word like that, particularly as it implies that the company has an entitlement and the travelling public has something else. I would agree with my honourable Friend that the public has a perfectly legitimate right to demand reasonably adequate services, and indeed this obligation is imposed upon the company by section 11 of the Ordinance. If I may quote, Sir: "The company shall provide and maintain throughout the term of the grant and any extension thereof to the satisfaction of the

authority adequate and efficient services of public transport." So, Sir, the Government does not consider the KMB, or indeed any of our privately owned public utility companies, to be "entitled" to a reasonable return. We do consider, however, that an efficiently run bus company should be given an opportunity to aim at a certain percentage return on assets employed, the company in return having an obligation to provide an adequate and efficient service.

Question put and agreed to.

PUBLIC HEALTH AND URBAN SERVICES ORDINANCE

MR D. R. W. ALEXANDER moved the following resolution: —

> Resolved, pursuant to section 144 of the Public Health and Urban Services Ordinance, that the Funeral Parlour (Amendment) By-laws 1970, made by the Urban Council on the 3rd day of March 1970 under section 123 of that Ordinance, be approved.

He said: —Sir, the Funeral Parlour (Amendment) By-laws 1970 are necessary as at the time the principal By-laws were made there were no posts of Supervisor or Deputy or Assistant Supervisors of Cemeteries and Crematoria. These amendment By-laws will enable the officers holding these posts to carry out the duties required of them.

The opportunity is also taken to make an amendment in the principal By-laws to the definition of '1uneral parlour", following amendments made to the Hospitals, Nursing Homes and Maternity Homes Registration Ordinance, Chapter 165.

Question put and agreed to.

First reading

COMPANIES (AMENDMENT) (NO 2) BILL 1970

BANKRUPTCY (AMENDMENT) BILL 1970

CENSUS (AMENDMENT) BILL 1970

CROWN RENT AND PREMIUM (APPORTIONMENT) BILL 1970

CROWN RIGHTS (RE-ENTRY AND VESTING REMEDIES) BILL 1970

RESETTLEMENT (AMENDMENT) BILL 1970

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

Second reading

COMPANIES (AMENDMENT) (NO 2) BILL 1970

THE ATTORNEY GENERAL (MR D. T. E. ROBERTS) moved the second reading of: —"A bill to amend further the Companies Ordinance.99

He said: —Sir, the main object of this bill is to confer better protection on worker's wages in the event of the winding up of a company.

At present, under the Companies Ordinance, two classes of debt are paid in priority to other debts proved in a winding up. These are, firstly, debts which have become due to the Crown within the preceding twelve months, and secondly, arrears of wages earned by employees of the company during the preceding four months.

Between themselves, these two classes of debt rank equally in priority so that, if a company is insolvent, the amount available to pay workers' wages is lessened by the amount due to the Crown. It is therefore proposed that, in future, arrears of wages shall have priority over some though not all of the Crown debts.

Clause 2 of the bill divides Crown debts into two classes, which are called statutory debts and non-statutory debts. The term "statutory debt" is defined as a debt which is payable under a statute. It will thus include taxes, rates, duties and fees, but not debts which are arising out of a contractual obligation.

Arrears of wages are given an absolute priority over non-statutory Crown debts, but statutory Crown debts will retain the same priority as arrears of wages. However, clause 2 gives a discretion to the Governor to waive the priority of the whole or any part of a statutory Crown debt in favour of any arrears of wages. Non-statutory Crown debts and waived statutory debts will, of course, continue to rank in priority to any ordinary debts.

The bill also increases the amount of arrears of wages which have priority in a winding up from the existing limit of three thousand dollars to six thousand dollars for each worker. These arrears of wages will only enjoy priority if they are due in respect of services rendered during the four months before the winding up. It is not thought to be desirable to extend this four month limit, since there is a danger that this might encourage the accumulation of arrears of wages. The increase of the limit to six thousand dollars will therefore only benefit workers earning between seven hundred and fifty and fifteen hundred dollars a month.

[THE ATTORNEY GENERAL] **Companies (Amendment) (No 2) Bill—second reading**

Clause 2 of the bill also amends the definition of "relevant date", so that, if a provisional liquidator is appointed by the court in a compulsory winding up of the company, the date for the purposes of calculating which preferential debts are to be payable will be the date of appointment of the provisional liquidator and not, as at present, that date of the winding up order. The first date is considered to be the proper one in such circumstances, and this amendment follows an equivalent provision in the United Kingdom Companies Act 1948.

MR HETHERINGTON: —Sir, I rise to support my honourable Friend, the Attorney General, in moving the second reading of the bill before Council. This bill is associated with the Bankruptcy (Amendment) Bill 1970 which has been given a first reading this afternoon.

As honourable Members will recollect, the problems of protecting the wages of workers were widely discussed during the summer of last year following two major disputes arising over the non-payment of wages. In reply to a question by my honourable Friend, Mrs LI, on 27th August 1969, Mr RICHARDSON, then Commissioner of Labour during my absence, announced that various measures were under consideration to improve existing legislation on the subject of protection of wages. He referred, in particular, to the following proposals: —

(i) employees to be given a greater priority to claim on their employer's assets in bankruptcy and winding-up proceedings

(ii) the creation of an offence by a person who employs someone when he has no reasonable grounds for believing that he will be able to pay wages when they become due

(iii) a procedure whereby a judge may issue a warrant to prevent an employer from absconding to avoid payment of wages due

(iv) the establishment of the vicarious responsibility of a principal for the wages of the employees of a contractor and subcontractors

(v) the introduction of labour courts to settle pay and other legal claims

You, Sir, made special mention of some of these measures when you addressed this Council on 1st October 1969 at the opening of the current session. During the subsequent debate I said, on 8th October 1969, that we were examining ways whereby the Employment Ordinance and other Ordinances concerned with bankruptcy and like matters could be strengthened.

The two bills before Council today deal with the first proposal which I have just mentioned. A bill amending the Employment Ordinance and dealing with the second and third proposals has been drafted and I hope that it will be possible to introduce it in to this Council fairly soon. These three bills have been already considered by the Labour Advisory Board and endorsed unanimously. A further amending bill dealing with the fourth proposal has been prepared. Finally, a bill to establish labour courts, the fifth proposal, is in the course of preparation and considerable progress has already been made on it.

Sir, I give this interim report on the progress of legislation related to the protection of wages to remove, in advance, any misunderstanding that the two bills at present being considered represent all that it is proposed to do in this field.

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(*b*) of this Bill increases from three thousand dollars to six thousand dollars the limit on the arrears of wages which are payable in priority to an employee when a company is wound up. The increased limit will only apply where the winding up occurs on or after the 1st day of June 1970.

2. The existing law as to the respective priority of Crown debts and employees' arrears of wages is also altered. At present Crown debts which have become due and payable within twelve months before the winding up, and arrears of wages owing to employees for the four month period preceding the winding up, have priority over all other debts. Between themselves, Crown debts and arrears of wages rank equally. The Bill contains provisions which will give such arrears of wages priority over all non-statutory Crown debts. Statutory Crown debts will continue to rank equally with arrears of wages but the Bill includes a new provision which will empower the Governor to waive the equal priority of statutory Crown debts in particular cases.

3. The definition of "relevant date" for the purposes of ascertaining the debts to which priority is given is amended to mean, in any case where a provisional liquidator is appointed in a compulsory winding up, the date of such appointment.

BANKRUPTCY (AMENDMENT) BILL 1970

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

He said: —Sir, this bill is related to the bill which honourable Members have just considered. It amends the relevant provisions of the Companies Ordinance so that the payment of preferential debts where an individual or a firm goes bankrupt will continue to be governed by the same provisions as apply on the winding-up of a company.

Clause 2 of this bill accordingly amends the Bankruptcy Ordinance, with regard to the priority of Crown debts and arrears of wages and the limit of arrears of wages which will enjoy priority, in the same manner and for the same reasons as the Companies (Amendment) (No 2) Bill 1970, which honourable Members have just considered, amends the Companies Ordinance.

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(*c*) of this Bill increases from three thousand to six thousand dollars the limit on the arrears of wages which are payable as a preferential payment to the employee of a bankrupt or of a person who has died insolvent. The increased limit applies where the receiving order is made on or after the 1st day of June 1970.

2. The existing law as to the respective priorities of Crown debts and employees' arrears of wages is also altered. At present, Crown debts which have become due and payable within twelve months before the date of the receiving order, and arrears of wages owing to employees for the four month period preceding the date of the receiving order, have priority over all other debts. Between themselves, Crown debts and arrears of wages rank equally. The Bill contains provisions which will give such arrears of wages priority over non-statutory Crown debts. Statutory Crown debts will continue to rank equally with arrears of wages but the Bill includes a new provision which will empower the Governor to waive the equal priority of statutory Crown debts in particular cases.

CENSUS (AMENDMENT) BILL 1970

THE ACTING FINANCIAL SECRETARY (MR HADDON-CAVE) moved the second reading of: —"A bill to amend the Census Ordinance."

He said: —Sir, the present wording of the Census Ordinance (Cap 316) confines censuses to censuses of population. However, the Government is now planning to combine the Census of Population to be undertaken in March 1971 with a Census of Housing and, on the basis of the information received in these two main censuses, to undertake later a Census of Industrial Establishments. Clause 2 of the bill accordingly seeks to expand the definition of censuses which may be ordered by the Governor in Council under section 3 of the Ordinance to include censuses of "persons, places, establishments, or other matters".

The purpose and utility of both the housing and the industrial censuses will be self-evident to honourable Members. They are quite complex ventures. Their success will depend not only on the efforts of the Commissioner of Census and Statistics and his staff, but also on the co-operation of householders and firms.

The opportunity has also been taken, Sir, to make a number of other desirable amendments to the principal Ordinance. Section 14 requires census forms to be destroyed not later than nine months after the census date, but experience of the 1961 Census showed that nine months was barely sufficient to process the census data. Moreover, the several census planned for 1971 will be larger in scope and volume than the 1961 Census of population. It is proposed, therefore, to delete the statutory time limit within which the forms must be destroyed. Instead, it is proposed that the Governor in Council should lay down the date by which forms must be destroyed at the same time as making a Census Order. Honourable Members may be interested to know, Sir, that there is no provision in other countries requiring the destruction of census forms, but the time limit is retained in Hong Kong so as to allay any suspicions which may persist in the public mind.

Clauses 4, 5 and 6 of the bill propose amendments to sections 15 and 19 of the Ordinance to strengthen restrictions on the disclosure of information acquired in the course of census taking.

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.

Census (Amendment) Bill—second reading

Explanatory Memorandum

Clause 2 has two objects—

(*a*) It enlarges the scope of section 3 of the Ordinance which at present confines censuses to censuses of population. It would enable other types of censuses, for example censuses of establishments and housing, to be taken in addition to a census of population.

(*b*) It provides that the order directing a census to be taken shall prescribe the date on which all completed forms and returns and all copies made, shall be destroyed by fire.

2. Clause 3 makes a consequential amendment to section 14.

3. Clauses 4 and 5 delete paragraph (*b*) of section 15 and paragraph (*d*) of section 19, the provisions of which are now incorporated in the new section 19B.

4. Two new sections are inserted by clause 6. Section 19A makes it an offence for a person to disclose or communicate information which he knows to have been disclosed in contravention of the Ordinance.

Section 19B makes it an offence to publish or show to any person not employed in the execution of a duty in connexion with a census, information obtained by census and so arranged as to enable identification of any person, undertaking or business.

5. Clause 7 makes a consequential amendment to section 20.

CROWN RENT AND PREMIUM (APPORTIONMENT) BILL 1970

THE ATTORNEY GENERAL (MR ROBERTS) moved the second reading of: —"A bill to provide for the apportionment of Crown rent and premium."

He said: —Sir, the primary purpose of this bill is to provide a method of apportionment of the Crown rent and premium payable in respect of a piece of land between the owners of flats in a multi-storey building erected on the land. The effect of such an apportionment would be that a flat owner would be liable only for the amount of Crown rent and premium which is related to his own flat and would not be liable, as he is at present, to contribute with all other flat owners

to the whole of the Crown rent and premium which is payable in respect of the land on which the building stands.

Clause 2 of the bill contains a definition of the term "relevant interest", which is used to describe for the purposes of the bill the legal estate which the person commonly described as the "owner" of a flat has in the land on which the building stands. In addition to domestic flats, the bill applies to land on which there are buildings used for industrial, commercial or other purposes but not to land in the New Territories, unless this has been exempted from Part II of the New Territories Ordinance or unless it is declared by the Governor, by notice in the *Gazette*, to be subject to the bill.

At present, the Crown Rents (Apportionment) Ordinance enables the Land Officer to apportion the Crown rent due in respect of a lot among the owners of sections into which that lot has been divided, but it gives no power to apportion the premium due to the Crown on a lot among the owners of sections. The Crown Rents (Apportionment) Ordinance is therefore repealed by section 27 and Part II of the bill allows the Land Officer to apportion both premium and Crown rent among the owners of sections of a lot.

Part III of the bill contains provision for the apportionment of Crown rent and premium among flat owners, that is to say, persons who do not own any identifiable lot, or section of a lot, but merely an undivided share in a whole lot or section.

The power to apportion given to the Land Officer by clauses 5 and 12 is discretionary and may be exercised by him on his own initiative or on the application of the owner of a section or relevant interest. If the Land Officer decides to apportion, he will do so on the basis prescribed by clauses 6 and 7 (in the case of a section) or clauses 12 and 13 (in the case of a relevant interest). In the case of flats, apportionment will either be on the basis of an apportionment contained in an instrument registered in the Land Office by the owners of the flats or, in the absence of such an apportionment, in accordance with the proportions of the undivided shares in the land and building held by the respective flat owners.

If the Land Officer declines to apportion when he is asked to do so, the applicant will have a right of appeal against that decision by way of petition to the Governor in Council under clause 21 of the bill.

If, on the other hand, the Land Officer proposes to exercise his powers of apportionment and gives notice to that effect as required by clause 18, any flat owner may object under clause 19 to the proposed apportionment. The Land Officer is then obliged, by clause 20, to have regard to any objection which has been made to him, before

[THE ATTORNEY GENERAL] **Crown Rent and Premium (Apportionment) Bill—second reading**

he decides to make an apportionment. This clause also provides that if the owners of three quarters of the flats affected by a proposed apportionment object to it, the Land Officer shall not apportion for six months from publication of the notice of intended apportionment. This will give time for the owners to try to agree among themselves on a suitable basis of apportionment.

In practice, of course, owners of sections or flats will frequently be able to agree on the apportionment of the Crown rent and premium and the bill does not seek to interfere with such agreements so long as the actual amounts payable under them are ascertainable. In some cases, however, the agreement may provide only that each owner shall pay a due proportion of the Crown rent and premium. To meet this situation, clause 11 provides that Crown rent or premium shall not be treated as apportioned in an instrument registered in the Land Office unless the share payable by an owner is declared in the instrument to be a specified sum or a specified fraction of the Crown rent or premium or is otherwise ascertainable from the terms of the instrument.

It has proved to be very difficult to devise an equitable basis of apportionment, where there has been no agreement by the parties, in relation to existing buildings. If clauses 13 and 14 were strictly applied in all cases, both Crown rent and premium would be divided among flat owners in proportion to their undivided shares. For example, if a flat owner owns 10 out of a total of 50 undivided shares in the property, he would pay 1/5th of the premium. This, however, might be unfair if the price he paid for his interest was only 1/10th of the total price paid by the various purchasers. This is a situation which frequently arises, due to fluctuation in prices and to differences in area of flats or in their value according to their positions in a block and we have been unable so far to devise a system which will work fairly, taking into account these variable factors. Consequently, it is proposed that clauses 13 and 14 should be left in their present form, but that the Governor should direct the Land Officer, as he is empowered to do by clause 4, not to apportion flats in existing buildings until the owners have agreed amongst themselves upon a basis of apportionment acceptable to the Land Officer, or some other general method of dealing with these cases has been devised. This direction will be given in relation to any building in respect of which at least one assignment or agreement for a sale or purchase of a flat has been registered in the Land Office before 1st August 1970.

Despite the difficulty of dealing with these cases, the enactment of this bill will enable apportionment to be made of the great majority of buildings which are in common ownership.

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 will enable the Land Officer to apportion, between the owners of flats in a multi-storey building, the Crown rent and premium payable in respect of the land on which the building stands. The term "relevant interest" has been devised for the purposes of the Bill to describe the legal estate which the person commonly called the owner of a flat has in the land on which the building stands. This legal estate may consist of one undivided share or more than one such share, and the premises of which the owner of such estate has exclusive possession may consist of a single flat or more than one flat. Although the word "flat" usually denotes premises used for domestic purposes, the Bill also extends to buildings, on land held in undivided shares, which are used for industrial or commercial purposes.

2. Under the Crown Rents (Apportionment) Ordinance, the Land Officer already has power to apportion, between the owners of the sections (or other divisions) into which a lot has been divided, the Crown rent payable in respect of the lot. The Bill will repeal that Ordinance and, whilst reproducing the Land Officer's power to apportion Crown rent between the owners of sections, will also enable him to apportion the premium payable in respect of a lot.

3. Subject to any directions which may be given by the Governor (clause 4), the Land Officer will have a discretion, in the case of both sections and relevant interests, as to whether or not he will apportion in any particular case (clauses 5 and 12). Existing buildings present a problem where a basis of apportionment is not agreed by the parties and, as a solution acceptable to all has not yet been found, it is proposed that the Governor will direct the Land Officer not to exercise his powers of apportionment in respect of relevant interests in existing buildings until either the owners have agreed amongst themselves upon a basis of apportionment acceptable to the Land Officer or some other method of dealing with such cases has been devised. A paramount consideration for the Land Officer in the exercise of his discretion will be whether, if there is an apportionment of Crown rent or premium, each section or relevant interest will provide

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[*Explanatory Memorandum*]

adequate security for the apportioned Crown rent or premium. In the case of relevant interests, there may be other factors which make an apportionment in accordance with the Bill inappropriate. However, the owner of a section or relevant interest whose application for apportionment is declined will have a right of appeal to the Governor in Council, and the owners of relevant interests will also have a right of appeal if the Land Officer, having given notice of intention to apportion under clause 18, subsequently declines to do so (clause 21).

4. Where the Land Officer has given notice of his intention to apportion, the owners of not less than 75% of the aggregate of the relevant interests may under clause 19(3) object to the apportionment and under clause 20(2) such an objection will prevent the Land Officer from apportioning on a shares basis for a period of six months. This will give time for the owners to endeavour to conclude an agreement on some other basis.

5. In many cases, the owners of sections or relevant interests agree an apportionment between them of the Crown rent and premium, and the Bill will not interfere with such agreements. Clauses 6 and 7, in relation to sections, and clauses 13 and 14, in relation to relevant interests, require the Land Officer to apportion the Crown rent and premium in accordance with any apportionment made in an instrument registered in the Land Office. There are, however, cases in which the owners of relevant interests have agreed merely that each shall pay a due proportion of the Crown rent and premium, and consequently clause 11 provides that the Crown rent and premium shall not be regarded as apportioned in an instrument registered in the Land Office unless the share payable in respect of a relevant interest is declared to be a specified sum or a specified fraction of the Crown rent and premium payable in respect of the land on which the building stands or is otherwise ascertainable from the terms of the instrument.

6. If there is no agreed apportionment, the Bill provides that the Land Officer shall, if he decides to exercise his powers, apportion on a section according to the proportion which the area of the section bears to the area of the lot and on a relevant interest in the proportion which the relevant interest bears to the aggregate of the relevant interests.

7. The effect of an apportionment of Crown rent and premium on a section will be the same as the effect of an apportionment of Crown rent on a section under the existing Crown Rents

(Apportionment) Ordinance. That is to say, the section will be regarded as being held under a separate Crown lease containing the same terms and conditions as the Crown lease of the lot, subject to a covenant to pay the determined Crown rent and the determined annual instalment of premium instead of the Crown rent and premium payable under the Crown lease of the lot (clause 8).

8. An apportionment of Crown rent and premium on a relevant interest will replace the owner's joint and several liability for payment of the whole Crown rent and premium payable in respect of the land on which the building stands with a liability to pay direct to the Crown the determined Crown rent and the determined annual instalment of premium (clause 15).

9. In some instances, before all the flats in a building are disposed of, the Land Officer will apportion on the relevant interests then existing. When, in consequence of the disposal of further flats, new relevant interests are created out of a relevant interest on which there has been such an apportionment, the relevant interest out of which they were created will cease to exist and the apportionment will lapse in consequence. Clause 16, therefore, provides that, until there is an apportionment on the new relevant interests, the owners thereof will be jointly and severally liable for the payment of the determined Crown rent and the determined annual instalment of premium previously payable in respect of the relevant interest out of which they were created.

10. Clause 23 provides for the cancellation of an apportionment on relevant interests if the building is wholly or partly demolished or destroyed.

CROWN RIGHTS (RE-ENTRY AND VESTING REMEDIES) BILL 1970

THE ATTORNEY GENERAL (MR ROBERTS) moved the second reading of: —"A bill to make provisions enabling certain interests in land and connected rights and obligations to be vested in The Colonial Treasurer Incorporated in circumstances where the Crown is entitled to exercise a right of re-entry under a Crown lease or default is made in the payment of Crown rent or premium, and to consolidate those provisions with the provisions presently set forth in the Crown Rights (Re-entry) Ordinance, and for connected or incidental purposes."

He said: —Sir, the Crown Rights (Re-entry) Ordinance (Chapter 126) provides that, in the event of the breach of a covenant or stipulation in a Crown lease or tenancy, the Crown may re-enter the lot or

[THE ATTORNEY GENERAL] **Crown Rights (Re-entry and Vesting Remedies) Bill—second reading**

section which is the subject matter of the lease or tenancy. Unfortunately, such re-entry must be on the whole lot or section, which may mean that, where a breach is caused by the owner or occupier of one particular flat in a building standing on the lot or section, the other owners may find themselves deprived of their interests although they are in no way responsible for the default.

The principal purpose of this bill, therefore, is to enable the Crown, in circumstances where it has a right of re-entry on the whole lot or section, to register in the Land Office a vesting notice, the effect of which will be to vest in the Colonial Treasurer Incorporated only the interest in the flat in respect of which the default has occurred. Since the proposed new remedy is complementary to the Crown Rights (Re-entry) Ordinance, the opportunity has been taken to repeal and replace that Ordinance.

The term "relevant interest", which is used to describe the interest of the owner of a flat, has been adopted from the Crown Rent and Premium (Apportionment) Bill, which Council has just considered. This bill, like that other one, is not restricted to flats used for domestic purposes and will equally apply to buildings used for commercial, industrial or other purposes.

Part II re-enacts in substance provisions which are at present to be found in the Crown Rights (Re-entry) Ordinance and preserves the right of the Crown to register a memorial of re-entry, where a right of re-entry accrues, without any actual physical re-entry being required.

Clause 7 describes the new remedy, whereby a relevant interest will vest in the Colonial Treasurer as representative of the Crown for this purpose. It will arise if a right of re-entry occurs by reason of the breach of a covenant in a Crown lease by the owner or occupier of the flat, or otherwise in respect of that flat, or if default is made in the payment of Crown rent or premium due in respect of that flat as a result of an apportionment.

The registration of a vesting notice in the Land Office will vest the ownership of the relevant interest, and the rights and obligations attaching to it, in the Colonial Treasurer, absolutely and free from any mortgage or charge. He will then be able to let, sell or otherwise dispose of the flat as he thinks fit. Owners of other flats in the same building, however, will not be affected in any way by the vesting notice.

In Part IV, which deals with relief against re-entry or against the registration of a vesting notice, clause 8 substantially re-enacts equivalent provisions in the existing Crown Rights (Re-entry) Ordinance,

extended to confer relief against the registration of a vesting notice. Thus an aggrieved flat owner will be able to petition the Governor in Council or to apply to the Supreme Court for relief. Clause 9 empowers the Governor in Council, upon consideration of such a petition, to order the cancellation of a memorial of re-entry or of a vesting notice, as the case may be, upon such terms as to costs, damages or compensation as he may think fit.

The procedure for, and the effect of, a cancellation of a memorial of re-entry or of a vesting notice, are dealt with in clauses 11 and 12, the object of which is to restore, as far as possible, the position which existed before the re-entry or the registration of the vesting notice.

This bill should be of considerable value to both the public and Government, since it will enable the Crown to take action directly against those who break covenants in leases, without prejudicing the rights of other occupiers of buildings or land in common ownership who were in no way responsible for the default.

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 purpose of this Bill is to provide a more equitable and practical alternative to re-entry by the Crown on a whole lot or section in cases where default has been made in respect only of a particular flat or flats in a building standing on that lot or section. The proposal is that where the Crown would be entitled to exercise a right of re-entry on the whole lot under a Crown lease or tenancy, a vesting notice may instead be registered in the Land Office having effect to vest in The Colonial Treasurer Incorporated, the owner's interest in the flat in respect of which the default has occurred.

The Bill adopts a number of the definitions contained in the Crown Rent and Premium (Apportionment) Bill 1970. The most important of these is the definition of "relevant interest", which term is used to describe the interest which the person commonly called the owner of a flat has in the land on which the building stands. This interest may consist of one undivided share or more than one such share, and the premises of which the owner of such interest has exclusive possession may consist of a single flat or more than one flat. Although the word "flat" usually

Crown Rights (Re-entry and Vesting Remedies) Bill—second reading

[*Explanatory Memorandum*]

denotes premises used for domestic purposes, the term "relevant interest" is also used in respect of interests in land on which stand buildings used for industrial or commercial purposes.

The new remedy proposed by this Bill may be regarded as complementary to the Crown's existing right of re-entry, and the opportunity has therefore been taken of consolidating the new provisions with those of the Crown Rights (Re-entry) Ordinance.

Clauses 3, 4, 5 and 6 of the Bill re-enact in substance sections 2, 3 (other than the provisos), 9 and 12 respectively of Cap. 126. Clause 4 re-enacts the procedure whereby the Crown's right of re-entry upon lands or tenements may be exercised by registering at the Land Office a memorial of an instrument of re-entry, signed by an officer authorized to sign such instruments by command of the Governor, and provides that on such registration the Crown shall be deemed to have re-entered the lands or tenements described in the memorial.

Clause 7 of the Bill provides for the registration in the Land Office of a vesting notice where a right of re-entry upon land accrues in consequence of a breach of covenant, condition or stipulation in a Crown lease or tenancy by the owner of a relevant interest, or by the occupier of premises the entitlement to exclusive possession of which is attached to the ownership of the relevant interest or in respect of a relevant interest, or alternatively if default is made in the payment of the Crown rent or premium due in respect of that relevant interest as a result of apportionment under the Crown Rent and Premium (Apportionment) law. The effect of registration of a vesting notice would be to vest the relevant interest absolutely in The Colonial Treasurer Incorporated together with the rights and obligations attaching to that interest under any Deed of Mutual Covenant registered in the Land Office but free from mortgages, charges and liens.

Clause 8 would re-enact the provisions as to relief against re-entry at present in the provisos to section 3 and sections 4, 5 and 11 of Cap. 126, and includes similar rights to petition the Governor in Council or apply to the Supreme Court for relief against a vesting notice registered under clause 7. As to the time for applying for relief a minor anachronism in section 5 of Cap. 126 is proposed to be removed so that the Governor in Council may in future extend the permitted period of six months in respect of petitions to the Governor in Council but is not so empowered in respect of appeals to the Supreme Court.

Clauses 9 and 10 re-enact the provisions of section 7 of Cap. 126 empowering the Governor in Council and the Supreme Court to cancel a memorial of re-entry and include similar provisions as to the cancellation of a vesting notice.

Clause 11 (re-enacting section 8 of Cap. 126) provides for the procedure and effect of cancellation of a memorial of re-entry and clause 12 makes similar provision in respect of the cancellation of a vesting notice.

Clause 13 provides for service of notices under the Ordinance.

Clause 14 provides that the provisions of this Bill shall not be construed as in derogation of other remedies.

Clause 15 would repeal the Crown Rights (Re-entry) Ordinance (Cap. 126) and includes transitional provisions in respect of pending applications for relief.

RESETTLEMENT (AMENDMENT) BILL 1970

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

He said: —Sir, the object of this bill is to empower the competent authority to let premises in a resettlement estate for commercial purposes and premises in a resettlement factory area for use as a factory.

It is intended that premises for both these purposes should be let by competitive tender if this bill is enacted.

Question put and agreed to.

Bill read the second time.

Bill committed to a committee of the whole Council pursuant Standing Order No 43(1).

Explanatory Memorandum

Clause 2 amends section 28A of the principal Ordinance in two respects. First so as to permit the competent authority to let premises in resettlement estates to persons who undertake to use the premises so let for commercial purposes. Second so as to permit the competent authority to let premises in a factory resettlement area to persons who undertake to use the premises as a factory.

It is intended that both classes of premises shall be let by competitive tender.

NURSES REGISTRATION (AMENDMENT) BILL 1970

Resumption of debate on second reading (25th March 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.

PUBLIC DANCE-HALLS TAX (REPEAL) BILL 1970

Resumption of debate on second reading (25th March 1970)

Question again proposed.

MR FUNG: —Your Excellency, as I have indicated previously in this Council, I am still at a loss to understand why Dance Hall Tax should be abolished.

I will concede that in some specific cases, revenue from taxation is small and efforts to collect it are so complex and difficult that it is not worthwhile pursuing.

But, in the case of the Dance Hall Tax, I feel that no convincing case has been presented to warrant its repeal. Indeed, I have also yet to hear complaints from the people in this particular business that the tax is either too heavy or unjust or even demands that it should be abolished. On the other hand, there have been some public criticisms of the proposal to repeal this tax.

A sum of two million dollars is not to be scoffed at for it could be made use of in many ways for the general benefit of the people. The mere fact that it is relatively an insignificant amount in comparison with our total budget expenditure and revenue is no justification for throwing it away or, in effect, putting it into the pockets of dance hall operators.

I also find it difficult to concur in the previous statement in this Council by my honourable Friend, the Secretary for Home Affairs, that, since it is proposed to abolish entertainment tax on all entertainments other than cinemas and horse-racing, "it is logical and appropriate to include the abolition of the tax on dance halls".

Regretfully, I can neither see the logic of his deduction nor appreciate the soundness of the argument that it is appropriate to

include dance hall tax in the abolition of entertainment tax on all entertainments.

If exceptions can be made of cinemas and horse-racing what reason is there not to apply the same exception to dance halls? In the interest of the general community, would it not be even more appropriate to include tax on cinemas in the abolition?

In case I have been misunderstood, I wish to state that I have not said or implied that dancing is an unhealthy entertainment. I merely had in mind the atmosphere and environment of most of our dance halls which are certainly not conducive to promoting healthy relaxation for young people.

And this unsatisfactory state of affairs is the result of inefficient enforcement of legislation governing such places which by and large encourages and provides opportunities for corrupting the morals of young people.

Instead of encouraging the growth of dance halls by removing the tax, I repeat, once again, that I would rather see the tax raised to double what it is now and would urge the imposition of more restrictions to ensure that the businesses are conducted in such a way as not to pose a threat to the morals of our young people.

I feel strongly that every means should be exploited to discourage young people from patronizing dance halls.

Sir, for lack of really convincing reasons why the tax in question should be abolished, I have no alternative but to oppose the motion.

MRS ELLEN LI: —Sir, as I am not quite convinced of the necessity for the abolition of this tax I shall myself vote against it.

THE ACTING FINANCIAL SECRETARY (MR HADDON-CAVE): —I am afraid, Sir, that I having nothing to add to the various arguments in favour of repealing this Ordinance put forward on earlier occasions by the Financial Secretary and the Secretary for Home Affairs. But, in view of my honourable Friends, Mr FUNG's and Mrs LI's obvious concern I should like to remind them both that the removal of the tax on admissions to dance halls is proposed by the Government quite without prejudice to the question of the control of the management of the premises themselves, for which provision is made in the Miscellaneous Licences Ordinance and subsidiary legislation.

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.

ESTATE DUTY (AMENDMENT) (NO 2) BILL 1970

Resumption of debate on second reading (25th March 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

Council went into Committee.

PUBLIC DANCE-HALLS TAX (REPEAL) BILL 1970

Clauses 1 and 2 were agreed to.

ESTATE DUTY (AMENDMENT) (NO 2) BILL 1970

Clauses 1 to 5 were agreed to.

Council then resumed.

Third reading

THE ACTING FINANCIAL SECRETARY (MR HADDON-CAVE) reported that the Public Dance-Halls Tax (Repeal) 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 ACTING FINANCIAL SECRETARY (MR HADDON-CAVE) reported that the Estate Duty (Amendment) (No 2) 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)*.

4.11 p.m.

NEXT SITTING

HIS EXCELLENCY THE PRESIDENT: —Council will accordingly adjourn. The next sitting will be held on 22nd April 1970.

Adjourned accordingly at twelve minutes past Four o'clock.

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