OFFICIAL REPORT OF PROCEEDINGS

Wednesday, 20th May 1970

The Council met at half past Two o'clock

[MR PRESIDENT in the Chair]

PRESENT

HIS EXCELLENCY THE GOVERNOR (*PRESIDENT*)
SIR DAVID CLIVE CROSBIE TRENCH, GCMG, MC
THE HONOURABLE THE COLONIAL SECRETARY
SIR HUGH SELBY NORMAN-WALKER, KCMG, OBE, JP
THE HONOURABLE THE ATTORNEY GENERAL
MR DENYS TUDOR EMIL ROBERTS, CBE, QC, JP
THE HONOURABLE THE SECRETARY FOR HOME AFFAIRS
MR DAVID RONALD HOLMES, CMG, CBE, MC, ED, JP
THE HONOURABLE THE FINANCIAL SECRETARY (*Acting*)
MR CHARLES PHILIP HADDON-CAVE, JP
DR THE HONOURABLE TENG PIN-HUI, CMG, OBE, JP
DIRECTOR OF MEDICAL AND HEALTH SERVICES
THE HONOURABLE ROBERT MARSHALL HETHERINGTON, DFC, JP
COMMISSIONER OF LABOUR
THE HONOURABLE TERENCE DARE SORBY, JP
DIRECTOR OF COMMERCE AND INDUSTRY
THE HONOURABLE DAVID RICHARD WATSON ALEXANDER, MBE, JP
DIRECTOR OF URBAN SERVICES
THE HONOURABLE GEORGE TIPPETT ROWE, JP
DIRECTOR OF SOCIAL WELFARE
THE HONOURABLE JAMES JEAVONS ROBSON, JP
DIRECTOR OF PUBLIC WORKS
THE HONOURABLE DONALD COLLIN CUMYN LUDDINGTON, JP
DISTRICT COMMISSIONER, NEW TERRITORIES
THE HONOURABLE JOHN CANNING, JP
DIRECTOR OF EDUCATION
THE HONOURABLE TSE YU-CHUEN, OBE, JP
THE HONOURABLE KENNETH ALBERT WATSON, OBE, JP
THE HONOURABLE WOO PAK-CHUEN, OBE, JP
THE HONOURABLE SZETO WAI, OBE, JP
THE HONOURABLE WILFRED WONG SIEN-BING, OBE, JP
THE HONOURABLE ELLEN LI SHU-PUI, OBE, JP
THE HONOURABLE WILSON WANG TZE-SAM, JP
DR THE HONOURABLE CHUNG SZE-YUEN, OBE, JP
THE HONOURABLE MICHAEL ALEXANDER ROBERT HERRIES, OBE, MC, JP
THE HONOURABLE LEE QUO-WEI, OBE, JP
THE HONOURABLE ANN TSE-KAI, OBE, JP
THE HONOURABLE OSWALD VICTOR CHEUNG, QC, JP

ABSENT

THE HONOURABLE HERBERT JOHN CHARLES BROWNE, 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: —	
Census Ordinance.	
Census (Amendment) Regulations 1970	60
Public Health and Urban Services Ordinance.	
Public Health and Urban Services (Amendment of Fifth Schedule) Order 1970	61
Prisons Ordinance.	
Prisons (Amendment) Rules 1970	62
Revised Edition of the Laws Ordinance 1965.	
Revised Edition of the Laws (Correction of Error) Order 1970	63
Road Traffic Ordinance.	
Road Traffic (Temporary Car Parks) (Amendment) Regulations 1970	64
Road Traffic Ordinance.	
Road Traffic (Parking and Waiting) (Amendment) Regulations 1970	65
Sailors Home and Missions to Seamen Incorporation Ordinance.	
Sailors Home and Missions to Seamen (Amendment) Regulations 1970	66
Legal Practitioners Ordinance.	
Solicitors (General) Costs Rules 1970	67
Interpretation and General Clauses Ordinance.	
Change of Title of Office	68

Oral answers to questions

Multi-storey buildings

1. MR WILFRED S. B. WONG asked: —

Will Government give a date for the presentation to this Council of the Multi-storey Buildings (Owners Incorporation) Bill?

THE ATTORNEY GENERAL (MR D. T. E. ROBERTS): —Sir, the first and second readings of this bill will be moved at the next meeting of this Council.

MR WONG: —Thank you.

Roadworks in north-east Kowloon

2. DR S. Y. CHUNG asked: —

> Will Government state what progress has been made since September 1968 on the construction of Stage I of the road network in North-east Kowloon and in particular when will the first flyovers at the respective San Po Kong and Kowloon City roundabouts be open to traffic?

MR J. J. ROBSON: —Sir, the honourable Member has asked what progress has been made since September 1968 on the first stage of the improvements to the North-East Kowloon road network and when the first flyovers at the San Po Kong and Kowloon City roundabouts will be opened to traffic.

This work comprises the main interchanges at the two roundabouts together with extensive ground level road construction. Preparation of final designs and contract documents and the calling of tenders was approved in December 1968 when the project was upgraded to Category A in the Public Works Programme. Gazetting under the Streets (Alteration) Ordinance took place at the end of March 1969 and one objection was received. However, statutory permission to commence work on those sections of the project not affected by the objection was given by you, Sir, under section 10 of the Ordinance and the first piling contracts at these two interchanges were put in hand in July 1969. A start on the ground level road construction in Prince Edward Road and Argyle Street followed in September and the contract for the construction of the super-structure of the two flyovers at the San Po Kong roundabout commenced in October of that year.

The objection to the scheme was considered by Executive Council on the 12th of August and amendments to the scheme to meet the objection were approved in principle by that Council on the 26th of August. This necessitated regazetting that portion of the scheme under the Streets (Alteration) Ordinance. This time no objections were received and formal approval of the revised scheme as required under the Streets (Alteration) Ordinance was given by you, Sir, on the 25th of September. Designs were then finalized and the large contract for the three flyovers and ground level works at the Kowloon City interchange awarded in February of this year.

Overall progress has been good and some 40% of the work has been completed. Weather permitting, the first flyover at San Po Kong interchange will be opened in July and this will give traffic from Choi Hung Road direct access to the west bound lane of Prince Edward Road which runs past the airport. The whole interchange complex at this location should be ready in early 1971.

The third flyover to be completed at the Kowloon City roundabout will be that joining Argyle Street to Prince Edward Road. It is hoped that this can be opened to traffic in November of this year and the whole complex completed by the end of 1971.

DR CHUNG: —Thank you.

Traffic congestion on Clear Water Bay Road

3. MR OSWALD CHEUNG asked: —

> Is Government aware of the traffic congestion on Clear Water Bay Road between Kwun Tong Road and Fei Ngo Shan Road on Sundays and holidays, and does Government anticipate this will be aggravated when work starts on the roads for the High Island Water Scheme? If so, does Government intend to take immediate steps to alleviate the situation, and if so, what steps?

MR ROBSON: —Sir, the answer to the first part of my honourable Friend's question is that Government is aware of the increase in traffic on Clear Water Bay Road between Kwun Tong and Fei Ngo Shan Road on Sundays and holidays. Traffic counts taken of two-way traffic at weekends show the increase to be about 100% over the week-day traffic. Work on the access roads for the High Island Water Scheme should not materially affect traffic on this section of the road.

Unfortunately, in the short term, no immediate practical steps can be taken to alleviate the congestion because the existing alignment of the road is too steep and tortuous to allow for any simple and cheap improvements. However, major realignment and improvement of this length of road is planned and covered by two items in Category B of the Public Works Programme, namely the Shum Led Tsuen Development, Clear Water Bay Road (Item KDE6) and the Ngau Chi Wan Development (Item KDE9).

I am at present negotiating with a firm of consulting engineers to undertake these two schemes. If these negotiations are successful, and subject to the approval of the Finance Committee of this Council, it is hoped that work on the ground can start early in 1971 but will take possibly 3 years to complete.

Government Business

First reading

RENT INCREASES (DOMESTIC PREMISES) CONTROL BILL 1970

INLAND REVENUE (AMENDMENT) BILL 1970

EMPLOYMENT (AMENDMENT) (NO 3) BILL 1970

MERCHANT SHIPPING (AMENDMENT) BILL 1970

PUBLIC HEALTH AND URBAN SERVICES (AMENDMENT) BILL 1970

SUPREME COURT (AMENDMENT) (NO 2) BILL 1970

HONG KONG EXPORT CREDIT INSURANCE CORPORATION (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

RENT INCREASES (DOMESTIC PREMISES) CONTROL BILL 1970

THE COLONIAL SECRETARY (SIR HUGH NORMAN-WALKER) moved the second reading of: —"A bill to make provision for the temporary control of increases in rent of domestic premises, and for the security of tenure of such premises, and for purposes connected therewith."

He said: —Sir, since this bill was published, there has been a satisfactory amount of comment, both in the press and otherwise, which has in general been helpful and constructive. The emphasis, however, has been on what the bill does *not* do. Responsive to that emphasis, therefore, I would like to start by explaining the reasons for which I have limited the scope of this legislation.

First, it does not seek to control increases in industrial rents. Honourable Members will recall that on January 28th I stated that, as at 1st January, an area of nearly half a million square feet of

factory space was vacant: that an estimated 6½ million sq. ft. of space in new flatted factories, as well as one and three quarter million sq. ft. of space in individual factory premises, would be completed during 1970. A survey conducted by the Commerce and Industry Department has shown what I said to be true.

It still remains my view that with so large an amount of new space coming on to the market in the course of the next few months, the current shortage of industrial floor space which is producing demands for increases in rent will be adequately met. I have also every reason to believe that there will be no slowing down thereafter in the supply of further new industrial accommodation; this, in view of the very considerable area of industrial land, already subject to building covenants, still remaining to be developed.

There has also been some recent publicity about sharp increases in shop rents. But as the Commissioner of Rating and Valuation's Property Review has shown, these appear to be mainly confined to certain favoured localities. Although it certainly seems that the demand for shop space exceeds supply in the better shopping areas, the position is easier elsewhere. I am not inclined to pay too much heed to gloomy prophecies about adverse effects on our tourist trade. Just as landlords with their rent increases, so the shopkeepers with their higher prices—they cannot damage the tourist industry without damaging themselves.

Again, much has been said in recent weeks about the number of private schools in rented premises which allegedly have had to close because of rent increases. I have already once this year given figures to prove that the pattern in 1969 was much the same as in previous years—that is to say there was a net gain in the number of schools. Lest it be said that the pattern has changed since the beginning of the year, I have had the figures taken out for the first quarter of this year. During that period 29 schools closed, but 61 opened.

The Government's view therefore remains unchanged. That is that there is no case for interfering with the free play of market forces in the non-domestic field beyond the six months' notice already required under the Tenancy (Notice of Termination) Ordinance. However as I said in January, we do intend to re-examine earlier legislative proposals for security of tenure for business premises. This legislation as originally envisaged would not control either rent or rent increases, but would ensure security of tenure for tenancies of premises used for the purposes of any trade, profession or employment, at a fair market rent. Such legislation would be complex, and even if the Government decided to go ahead with it, the associated administrative arrangements

would clearly take some time to put in hand. It is therefore unlikely to be enacted within the near future. It would also do nothing to meet the claims of commercial tenants, particularly shopkeepers, who think they have a right to occupy space at less than a proper market rate. This is a view with which, I have no sympathy; I do not see why we should favour one group of entrepreneurs at the expense of others, or put a premium on inefficiency.

I now turn to the question of domestic tenancies. When I introduced the Security of Tenure (Domestic Premises) Bill into this Council at the end of January, I explained that that bill was in the nature of a holding operation, and that it would, if passed, be superseded with all possible speed by further legislation imposing specific controls. The intervening period has been spent in investigating the various important problems involved in the drafting of this further legislation.

I gave very serious consideration to the suggestion made by some honourable Members during the January debate that Government should try to devise a permanent framework within which it would be possible to take swift action whenever it became necessary to prevent excessive rent increases. Our conclusion was that to attempt to devise a radically different solution to the problem of controlling rent increases from the strictly temporary solution applied in 1963 would result in undue delay in the enactment of this legislation, during which time the present rent "freeze" would have to be continued. I have not therefore adopted this suggestion for the purposes of the present bill.

Next, we went on to consider whether controls should be based on rateable value or on rent previously payable or on area or on a combination of all or any of these factors. Our final conclusion was that none of these possible alternative approaches would be as effective as that of regulating increases on existing rents. Accordingly the bill now before Council is on the same general lines as the earlier Rent Increases (Domestic Premises) Control Ordinance which was in force from 1963 to 1966. There are however considerable changes of detail, which reflect the rather different, and in many ways much more complex, situation which now faces us.

As background material to this study we received the further valuable statistical material on the rental situation, in the form of the Commissioner of Rating and Valuation's Property Review for 1970, which was published in February. This review confirmed the indications contained in the Commissioner's earlier interim report, which was the basis of the decision to take action to restrain rent increases in post-war domestic accommodation. In particular, it showed clearly the uneven pattern of rent increases which have taken place. These variations flow both from the type of property and its geographical location. Thus it was not open to me to establish an average permitted rent

[THE COLONIAL SECRETARY] **Rent Increases (Domestic Premises) Control Bill—second reading**

increase which could be regarded by the Rating and Valuation Department and by the Courts as a norm for judging the reasonableness or otherwise of the increases for which landlords may apply.

The Commissioner's Review did not invalidate in any way the Government's view that the duration of the legislation should be only for such a limited period as would allow fresh building construction to relieve the existing shortage which is the root cause of the recent increases in rents.

It may be of assistance to honourable Members if, at this stage, I describe briefly the general principles of the new legislation which is now before this Council.

Subject to certain exceptions, with which I will deal later, the present bill provides for security of tenure for existing domestic tenancies and sub-tenancies in post-war buildings, during the life of the legislation. That is until 31st May 1972, or for a period of two years after a rent increase permitted under its provisions, whichever is the later.

The bill allows for rents to be increased by agreement between landlord and tenant, provided the landlord notifies the Rating and Valuation Department. Alternatively, the landlord may apply to the Department for an increase to be certified as fair and reasonable in the circumstances of the tenancy. These certificates will be issued by Senior Rating and Valuation Surveyors or officers more senior to them.

When an increase of more than fifteen per cent is specified in the certificate, both landlord and tenant will have the right to a review of the certificate by the Commissioner or one of his more senior officers, who will consult one or more members of an advisory panel specially constituted for the purpose. After the review, both landlord and tenant will have a right of appeal to the District Court. If the original certificate specifies an increase of fifteen per cent or less, only the landlord will have a right to a review or of appeal to the District Court.

The District Court itself, in dealing with appeals, will have the assistance of assessors drawn from a panel of professionally qualified surveyors.

It is most important that we all understand the nature of the figure of fifteen per cent which I have mentioned. Despite the official explanations issued, there have been many public but erroneous statements to the effect that rent increases will not exceed fifteen per cent. This is simply not so. Nor must the figure be thought of as representing

a norm for rent increases which would be applicable in all cases. Nor is it the level of increase which landlords can expect to get without difficulty.

As I pointed out earlier, the incidence of rent increases during the months before the "freeze" was very uneven. Increases, for example, below fifteen per cent might well be appropriate for many tenancies where the Commissioner's Review showed that there had already been during 1969 average rent increases ranging between 7% and 16%. On the other hand, increases in excess of 15% might well be reasonable in some better class properties.

The Rating and Valuation Department will therefore have to look at the facts of each case and decide on the level of increase which is fair and reasonable.

The significance of fifteen per cent is purely and simply that above that level the tenant becomes entitled to a review and to an appeal to the Court. The Government's view is that it cannot be said to be unreasonable for any tenant to have his rent increased by up to 15 per cent without the right of a review or an appeal. This view is based on the Commissioner's finding that the average overall rent increase during 1969 was about 14% and, much more important, takes account of the fact that any increase will first have to be certified by the Rating and Valuation Department as fair and reasonable, that the rent cannot be increased again for at least two years, and that special provisions are made for the hearing of disputes about the facts contained in any landlord's application.

Although the bill applies to most existing post-war privately-owned domestic tenancies, there are certain exceptions. The most important of these is the exclusion of all domestic tenancies and sub-tenancies of which the rateable value is $15,000 per annum or more. Rateable value in this context means the value entered in the valuation list, which was declared on 5th March 1970. For premises not included in the list, including premises in areas of the New Territories not subject to rates, the Commissioner of Rating and Valuation will issue certificates indicating whether the rateable value is $15,000 or above or below $15,000. In the urban areas, the effect of this provision will be to exclude some 1,500 of the larger flats and houses, amounting to less than one per cent of the total number of tenancies in privately-owned buildings.

In very broad terms this provision means that tenancies of premises of which the monthly rent in 1968, when a general revaluation was carried out, was more than $1,500, inclusive of rates, will be excluded. But I must emphasise that it is rateable value, and not rent which is the determining factor.

In addition, those other categories of tenancy which were excluded from the 1963 legislation and from the temporary Ordinance are also excluded, such as tenancies for fixed terms of three years or more, short-term tenancies devised for particular purposes, and tenancies of Government or Government aided housing. So far as the last category is concerned there is clearly no risk of excessive increases in rent being charged.

I should make it clear at this stage that the bill affords protection only to existing tenancies in existing buildings. In order not to inhibit new construction, which provides, as I stressed in January, the only permanent cure to the current shortage of private domestic accommodation, tenancies in new buildings completed after 30th January 1970, that is the date of the enactment of the holding Ordinance, will not be controlled, nor will new tenancies in existing buildings. These exclusions represent departures from the 1963 legislation, but are logical provisions since we are engaged in controlling increases in rents of existing tenancies, and not in controlling the letting of premises.

As regards fresh lettings in existing buildings, we considered a number of possible alternative courses. For example, we could have given such lettings security of tenure for the life of the Ordinance or for some other period; or we could have made them wholly subject to control; or we could have excluded them altogether. Complete control would certainly have protected the new tenants against any further rent increases; limited security of tenure would have had much the same effect and it might have deterred some unscrupulous landlords from exerting pressure on sitting tenants in order to obtain a fresh letting at an uncontrolled rent. However, after very careful consideration of the various arguments for and against any form of control, we decided to exclude these lettings.

Sir, I am not one of those who believe that all landlords are rapacious, or that all tenants have halos (nor indeed the other way round). But let me say here and now that if we have evidence of landlords attempting to coerce sitting tenants to vacate their premises in order to relet them at a higher rent, I will have no hesitation in seeking the approval of this Council to an amendment of the legislation to impose a form of control over new lettings in existing buildings.

Finally, the bill continues the provisions of the interim legislation by allowing for the termination of tenancies in certain circumstances, for instance where the landlord has already contracted to sell the premises, with vacant possession, before the rent "freeze" came into effect in January, or where the landlord proposes to demolish and

redevelop or where the landlord requires the accommodation for occupation by himself or his immediate family. In these cases, as a precaution against abuse, if the landlord later relets the same premises, the tenancy will be controlled at the same rent as before the notice to quit took effect. Moreover when premises are required for family occupation, the tenant has a right to oppose the landlord's notice to quit, and the District Court is empowered to decide such cases on the basis of which party would suffer the greater hardship.

I should now mention that I shall be proposing a small amendment to Clauses 11 and 12 of the bill at the committee stage. Since the bill was published it has been brought to my notice that while the review and appeal provisions allow an increase permitted by the Commissioner's certificate to be confirmed, varied or set aside, or a refusal to award any increase to be confirmed, they do not provide at the moment for the award of an increase in cases where the original certificate refused to award one. The amendment which I shall propose will rectify this omission.

By its very nature, legislation of this kind is inevitably complicated and not easy for the general public to follow. In order to help landlords and tenants to understand their rights and responsibilities under the bill, a special pamphlet is being produced by the Rating and Valuation Department, and Chinese and English versions will be available. In addition, the Rating and Valuation Department, the City District Officers and District Offices in the New Territories will be ready to give as much advice and assistance as they can in any matter connected with the proposed control machinery.

To sum up, the principal object of this bill is to provide protection, where the Government believes that it is most needed, against excessive rent increases during a temporary shortage of private domestic accommodation. It seeks to do so without inhibiting the private developer in whose hands lies the only long-term solution to the problem. Hence the exclusion of new buildings, of new lettings in existing buildings and of the larger flats and houses. All the evidence available to the Government indicates that by the time this legislation is due to expire at the end of May 1972, private building, and the massive programme for Government and Government-aided housing, should have provided enough new domestic accommodation to meet the demand.

Question proposed.

Motion made (pursuant to Standing Order No 30). That the debate on the second reading of the bill be adjourned—THE ATTORNEY GENERAL (MR ROBERTS).

Question put and agreed to.

Rent Increases (Domestic Premises) Control Bill — second reading

Explanatory Memorandum

The purpose of this Bill is to control increases in rent in certain domestic premises for a limited period.

2. The broad outline of the class of tenancy whose rent-increases are to be controlled is set out in clause 3, which goes on to list 12 types of tenancy which are to be outside the scope of the Bill, including new tenancies. In addition, flats with a rateable value of $15,000 or above are to be excluded from the operation of the Bill (clause 4). Where a tenancy becomes excluded by reason of this last provision, time under any notice to quit which had been given in respect of it before the 30th January 1970 is not to run between that date (the commencement of the Security of Tenure (Domestic Premises) Ordinance 1970) and the date on which the tenancy becomes excluded (which may be the date of commencement of this Ordinance or the date on which a certificate is issued under clause 4) (clause 26).

3. The criteria to be applied in determining whether a tenancy is domestic or non-domestic are to be as follows.

(*a*) The purpose for which the premises were let is to be the starting point; and it determines the nature of the tenancy save where the tenant is in fact using premises primarily for other purposes, (if premises let for non-domestic use are being used for domestic in breach of any condition, the landlord's consent or condonation must be established).

(*b*) The primary user determines the nature of the tenancy where there is insufficient evidence of the purpose of the letting.

(*c*) Sub-tenancies in premises which had been let to the principal tenant for non-domestic purposes, or were being so used when the sub-tenancy came into being, are themselves to be deemed to be non-domestic until the sub-tenant satisfies a court to the contrary. (The rule about establishing consent or condonation applies where he seeks to prove domestic user in breach of a condition in his sub-tenancy).

In an attempt to resolve disputes and cut down litigation over "mixed" premises, the Bill provides that the staff of the Rating and Valuation Department shall visit premises in dispute and issue a certificate specifying whether the primary user is considered to be domestic or non-domestic (clause 5).

Rent increases by agreement or on the certificate of the Commissioner of Rating and Valuation.

4. Although, as in the case of the Rent Increases (Domestic Premises) Ordinance, Cap. 338 the Commissioner of Rating and Valuation, assisted by a Rent Increases Advisory Panel, is the prime arbiter of what increases in rent would be fair and reasonable, landlords and tenants remain free to agree to vary the existing rent. There is a requirement in clause 9 that such agreements be registered: this enables the landlord to sue for the increased rent, or to give notice to quit for non-payment.

5. Failing any such agreement the landlord may apply to the Rating and Valuation Department for a certificate as to what would constitute a fair and reasonable increase in his rent (clause 10).

Frequency of increase and security of tenure.

6. An application by a landlord may be made at any time after the expiry of nine months from the last increase, or from the beginning of the tenancy (clause 14). Any increase in rent authorized by a certificate would take effect three months from the date of the landlord's application; and this means that the rent could be increased, otherwise than by agreement, only after one year from the last increase or from the beginning of the tenancy, which includes any period before the enactment of this Bill. No further application for an increase may be made during the life of the Ordinance, which is expressed to be until the 31st May 1972 (clauses 11 and 14).

7. To achieve this control of increases in rent it is necessary to give security of tenure by providing that the tenancies to which the Bill applies may not be terminated during the life of the Ordinance (clause 6(1)). This protection is afforded beyond that date where necessary to give security for two years from the date of any increase in rent (clauses 6(4) and 9(4)). However, a landlord may obtain vacant possession for a variety of reasons, which include the situation where he had, prior to 30th January 1970, contracted to sell the property with vacant possession (clause 7).

8. The payment of rent on the due date is made an implied covenant in all tenancies benefiting from this security of tenure, and non-payment within 15 days would give the landlord the right of forfeiture (clause 6(3)). There is to be an exception in the case where after the expiry of three months from the landlord's application (at which time the increase is to take effect) the procedure for review and appeal have not been completed (clause 8(2)). In such cases although the landlord remains entitled to the

Rent Increases (Domestic Premises) Control Bill—second reading

[*Explanatory Memorandum*]

increased rent from the time when the increase took effect, he may not treat as a breach of covenant the tenant's failure to pay the increase pending the appeal.

Reviews, appeals and disputed facts.

9. Where a certificate authorizes an increase in rent exceeding 15 *per cent* of the existing rent both the landlord and the tenant have a right to have the case reviewed, and thereafter to appeal to the District Court (clauses 11 and 12 and see paragraphs 11 and 12 below). Where the authorized increase is for 15 *per cent* or less only the landlord may seek to challenge this assessment. However, the tenant is safeguarded against any increase being awarded on incorrect facts supplied by the landlord.

10. In any such case where it became apparent from the comments submitted by the tenant under clause 10 that relevant facts are disputed the Commissioner would issue a provisional certificate after consulting the Rent Increases Advisory Panel (clause 13 and see paragraph 13). If he wishes the tenant may then serve a formal notice of objection. In that event, the rent would not automatically increase three months after this application, and the landlord would have to apply to the District Court to determine the facts in dispute, and to deal with any appeal he lodged against the provisional certificate.

11. On an appeal to the District Court from a certificate issued after a review, or where the facts were in dispute, the court could employ the services of an assessor who would be qualified to give expert advice on land values and market rentals. It would not, however, be possible for the Commissioner or his staff to be called to give evidence because their duties under the Rating Ordinance, and the additional work required of them under this Bill, could not be carried out if their time were taken up in attending at court (clause 16). The certificates issued by them would be available as *prima facie* evidence of their contents, and either party would retain his right to call evidence in support or in contradiction of them.

Fair increases in rent and their assessment.

12. The Bill is concerned with "an increase in rent (which) would be reasonable in the circumstances of the tenancy" (clause 11); and so it is the fairness and reasonableness of the increase

compared to other increases rather than the rent itself which has to be looked at. But this increase is to be judged in the circumstances of the particular tenancy without regard to the circumstances which are personal to the landlord or to the tenant; and in considering whether an increase awarded on review is manifestly unfair or unreasonable the court may take account of increases in rent in similar tenancies, and may finally fall back on a consideration of the actual rents prevailing for such tenancies (clause 12).

13. The responsibility for making the assessment of what constitutes a fair increase is to be undertaken as follows. The initial certificate stating what percentage, if any, of the present rent represents a fair increase is issued by a Senior Rating and Valuation Surveyor or by one of his superiors in the Department of Rating and Valuation. Where a review is sought, this is carried out by a Principal Rating and Valuation Surveyor, by an Assistant Commissioner or by the Commissioner himself, who then issues a fresh certificate (clause 18). He may he assisted with advice by members of a Rent Increases Advisory Panel, which is to be especially appointed for this purpose (clauses 11 and 17).

14. A comparative table is attached to the Bill which shows the extent to which its provisions derive from the Rent Increases (Domestic Premises) Control Ordinance Cap. 338 and the Security of Tenure (Domestic Premises) Ordinance 1970.

INLAND REVENUE (AMENDMENT) BILL 1970

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

He said: —Sir, honourable Members will recall that, in his recent Budget Statement, Sir John COWPERTHWAITE proposed the introduction of various personal allowances with effect from the 1st of April 1970, and he also indicated that legislation was being drafted to provide for relief in respect of certain charitable donations. The purpose of this bill is to amend the Inland Revenue Ordinance to give effect to these proposals; and also to amend the Ordinance in three minor respects.

The allowances Sir John proposed were for dependent parents; the earnings of married women; and for taxpayers in the lower income groups.

To deal with each of these three allowances very briefly in turn: the new paragraph (*g*) to be inserted in section 42B(1) of the Ordinance by virtue of clause 7 of the bill introduces the dependent parents'

allowance. This allowance may be claimed against Salaries Tax or Personal Assessment by a taxpayer in respect of the amount contributed towards the support of dependent parents or parents-in-law up to a maximum of $2,000. The allowance may also be claimed by widowers or widows in respect of any contributions made in support of their dependent parent or parents-in-law.

In his Budget Statement Sir John warned of the possibility of abuse and the allowance is, therefore, subject to certain limitations: in the first place, the dependent parent must be a permanent resident of the Colony as defined by section 41(4) of the Ordinance. Honourable Members will appreciate, I am sure, that it would be extremely difficult to administer this allowance if it was applicable to dependent parents or parents-in-law living abroad. Secondly, the personal income (excluding any contributions made by the taxpayer or his wife) of the dependent parent, regardless of whether or not it is chargeable to tax in Hong Kong, must not exceed $2,000 in the relevant year of assessment; and, finally, only one allowance will be granted in respect of any one dependent parent. Where two or more contributors are entitled to claim an allowance for the same parent in the same year of assessment, the allowance will be apportioned either on the basis of an agreement reached between the contributors, or, in the absence of such agreement, by the Commissioner of Inland Revenue having regard to the contributions made by each individual towards the maintenance of the parent.

The new paragraph (*f*) to be inserted in section 42B(1) of the Ordinance introduces the allowance relating to the earnings of a married woman. If a wife's earnings are included in an assessment for tax on her husband, an allowance equivalent to the wife's income or $3,000, whichever is the less, may be granted.

The case for an allowance for a working wife stems from the extra cost of maintaining the home when a wife is unable to give it her full attention because of her employment. To counteract possible abuse, the allowance must relate to what Sir John COWPERTHWAITE described in his Budget Statement as "emoluments of a genuine office or employment of profit". The Commissioner of Inland Revenue is, therefore, to be empowered to withhold the allowance in those cases where he is not satisfied that the wife's income is reasonable in relation to services rendered.

The new paragraph (*h*) to be inserted in section 42B(1) of the Ordinance introduces the Lower Income Relief Allowance. As well as affording relief to certain taxpayers, the allowance will free the Inland Revenue Department from the administrative burden and cost

of assessing and collecting a small amount of tax from a large number of taxpayers. In 1969 there were over 30,000 salaries and personal taxpayers in the lowest income bracket from whom less than $3 million was collected.

The allowance, which is subject to a maximum of $3,600, is to be applied to net chargeable income (that is to say, total income after all other deductions and allowances have been made). Thus a person whose net chargeable income is $3,600 (which attracts at present a tax of $99) will, in effect, be exempted from tax as a result of this allowance.

It is also proposed, Sir, to give marginal relief on a reducing scale to taxpayers whose net chargeable incomes are between $3,600 and $7,200 (and who are liable at present to pay tax ranging from approximately $100 to $250). Where the net chargeable income falls within this range the allowance will be reduced by $1 for every dollar by which the net chargeable income exceeds $3,600, so that the allowance will be phased out at $7,200. Although this is less than the upper limit of $10,000 mentioned by Sir John COWPERTHWAITE in his Budget Statement, it provides a sufficiently generous degree of marginal relief while, at the same time, allowing for relief to be phased out progressively at a rate which is not too steep. Perhaps, Sir, I should illustrate what I mean with an example. A single person with a net assessable income of $10,600 is entitled at present to a personal allowance of $7,000 which leaves a net chargeable income of $3,600. At this level, if this bill is enacted, he will be entitled to a further lower income allowance of $3,600, so that he has no net chargeable income and no tax to pay. If his assessable income increases to $11,500, so that his net chargeable income increases by $900 from $3,600 to $4,500, his lower income allowance decreases by $900 to $2,700 and his final net chargeable income becomes $1,800. If his assessable income again increases by $2,700 to $14,200 the allowance decreases by $2,700 and is then completely phased out.

The introduction of Lower Income Relief will probably exempt some 30,000 taxpayers from tax, while the associated scheme of marginal relief, which I have just described, will benefit another 10,000 taxpayers. The Inland Revenue Department will be freed, as a consequence, of a certain amount of unrewarding work, checking assessments, typing demand notes, issuing receipts and registering these documents.

The cost to the revenue of introducing these three allowances will probably be between $7 and $8 million, out of the $120 to $130 million produced by Salaries Tax and Personal Assessment in 1969-70.

Turning now to the clauses in the bill to provide for the deduction of donations made to charitable institutions and trusts to be specifically approved for this purpose by the Governor in Council, it is proposed

[THE ACTING FINANCIAL SECRETARY] **Inland Revenue (Amendment) Bill — second reading**

that the deduction should be limited in any year of assessment to a maximum of 10% of assessable profits in Profits Tax; or 10% of net assessable income in Salaries Tax; or 10% of total income included in a Personal Assessment. By clause 8 of the bill property and interest taxpayers may also obtain relief for charitable donations by electing for Personal Assessment if they wish to despite their total income.

To qualify for relief the amount of donations made by a taxpayer to approved charitable institutions or trusts in any year of assessment must not be less than $100. Donations made on or after the 1st of April 1970, and before the 1st of April 1971 will, under normal circumstances, qualify for relief in the year of assessment 1971-72.

The object of this relief is to encourage the making of donations to approved charitable institutions and trusts which play, as we all know, Sir, such an important part in promoting the well-being of the community. It is not possible to assess the cost of these concessions to the revenue as much depends on the extent to which the public takes advantage of them. The 10% limitation on the maximum deduction allowable is intended, of course, as a safeguard against the excessive loss.

The opportunity afforded by this bill has been taken to introduce three other unrelated amendments to the Ordinance. The first relates to Salaries Tax and Personal Assessment generally and stems from a recommendation by the Inland Revenue Ordinance Review Committee in paragraph 352 of their Report. Proviso (*b*) to section 13 of the Ordinance contains a limitation on the maximum amount of tax payable under Salaries Tax to the amount which would have been chargeable had the standard rate of 15% been charged on the whole of the taxpayers' income. This limiting feature does not exist as a statutory provision under Personal Assessment, but it operates at present in practice. An individual paying tax under the various parts of the Inland Revenue Ordinance may elect for Personal Assessment and, in so doing, may theoretically render himself liable to pay a greater amount in tax than he would have had to pay had he not so elected. In such a case the Assessor advises the taxpayer to withdraw his election as it would be unreasonable for his election to result in his having to pay more tax. By introducing a limitation on the maximum rate of tax payable under Personal Assessment similar to that provided for Salaries Tax payers, clause 8 of the bill will have the effect of giving legal recognition to existing practice.

The second and third amendments are set out in clauses 9 and 10 of the bill. Clause 9 provides for the appointment of an additional

Deputy Chairman to the panel of the Inland Revenue Board of Review, the need for which has been occasioned by an increase in the number of appeals brought before the Board. Clause 10 amends section 88 of the Ordinance, which deals with the exemption of charitable institutions or trusts, merely to make the wording of this section consistent with that used in a similar context in the Estate Duty Ordinance, but the clause does not alter the meaning or effect of the provisions of the section.

Finally, Sir, honourable Members will wish to note that many of the amendments contained in the bill will apply to assessments for the current year of assessment. There may be some taxpayers, however, who have already been assessed to tax for this year. To ensure that they are not denied any tax advantage as a result of being assessed to tax before the enactment of this bill, clause 12 contains transitional provisions enabling them to apply for re-assessment.

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 amend the Inland Revenue Ordinance to provide for the additional allowances proposed by the Hon. Financial Secretary in his recent Budget Speech.

Clause 1 provides for the commencement of the Bill. The allowances proposed in the Budget will apply as from the year of assessment beginning on 1st April 1970 except that relief in respect of approved charitable donations will apply as from the year of assessment beginning on 1st April 1971.

Clause 2 inserts a definition of "approved charitable donation". Only donations of money fall within the definition.

Clause 3 adds two new subsections to section 12 designed to enable the proper application of allowances under section 42B(1) to salaries tax assessments.

Clause 4 amends the proviso to section 13 consequentially upon the proposed relief for approved charitable donations, to enable relief to be given to donors who pay salaries tax at the standard rate on the assessable income.

Inland Revenue (Amendment) Bill—second reading

[*Explanatory Memorandum*]

Clause 5 adds a new section 19B to make provision for relief in respect of profits tax for approved charitable donations. Losses (if any) must first be deducted before relief can be given under the proposed new section.

Clause 6 amends section 42(1) to allow for the deduction of interest in the calculation of total income. This provision will replace the present allowance of the amount of interest contained in section 42B(1)(*e*).

Clauses 7 and 8 provide for relief for approved charitable donations in cases of personal assessment under Part VII of the Ordinance. Paragraph (*e*) in clause 7 will enable individual donors who as property tax or interest tax payers are unable to obtain direct relief as in the salaries tax or profits tax provisions to elect for personal assessment and obtain relief under the new paragraph (*e*) of section 42B(1) and the new section 43(1A).

Clause 7 also inserts new paragraphs (*f*), (*g*) and (*h*) to section 42B(1) to provide for the allowances proposed by the Hon. Financial Secretary in his Budget Speech in respect of the income of working wives, the maintenance of dependent parents, and taxpayers in the lower tax brackets.

Clause 8 introduces a limitation on the maximum tax payable under personal assessment similar to that provided with respect to salaries tax by paragraph (*b*) of the proviso to section 13 (as contained in clause 4). It enables persons who would otherwise not be able to claim relief for donations to obtain relief by claiming personal assessment.

Clause 9 amends section 65 to provide for an additional deputy chairman of the Board of Review.

Clause 10 amends section 88 to make its wording consistent with that used in a similar context in the Estate Duty Ordinance.

Clause 11 adds a new section 89 to permit the Governor in Council to specify by notice in the *Gazette* those charitable institutions or trusts gifts to which will fall within the scope of "approved charitable donations".

Clause 12 will ensure that the allowances under this Bill which are to apply for the year of assessment beginning 1st April 1970 will be available on application notwithstanding that assessment may have taken place before the enactment of this Bill.

EMPLOYMENT (AMENDMENT) (NO 3) BILL 1970

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

He said: —Sir, when speaking in this Council last month in support of the Companies (Amendment) (No 2) Bill, I mentioned that three other bills dealing with further aspects of the protection of wages were in the course of preparation. I expressed the hope that it would be possible to introduce one of them into the Legislative Council fairly soon. This has, in fact, proved possible and the Employment (Amendment) (No 3) Bill 1970, now under consideration, has already been given a formal first reading this afternoon.

This amending bill adds two new sections and a new schedule to the Employment Ordinance.

Clause 3 introduces new section 20A. Subsection (1) of the new section prohibits an employer, after 30th June 1970, from entering into, renewing, or continuing a contract to employ any person without having reasonable grounds for believing that he can pay the person's wages as they become due. Subsection (2) requires the employer, if he ceases to believe, on reasonable grounds, that he will be able to pay all the wages due, forthwith to take all necessary steps to terminate the contract in accordance with its terms. This subsection is worded so as to prevent an employer from taking advantage of the new section to dismiss employees without notice, when he is, in fact, well able to pay their wages, by making it clear that he is required to give proper notice. Failure to comply with new section 20A is an offence under clause 4.

Clause 5 introduces new section 34A. This enables an employee to apply to a District Judge for a warrant for the apprehension of his employer if the judge is satisfied that there is probable cause for believing that the employer is about to leave Hong Kong with intent to evade payment of wages earned by or other moneys owing to any of his employees. An application may be made by one employee on behalf of others. The judge may require the employer to provide security for the payment of wages earned by or other moneys owed to the employees and may order the employer to be detained in custody, for not more than three months, until such security is provided. The procedure to be adopted, in these circumstances, is set out in a new schedule introduced by clause 7.

The new schedule establishes a procedure which closely follows Order 44A of The Rules of the Supreme Court 1967 dealing with the arrest of an absconding defendant. The main difference is that, whereas Order 44A is available only when the plaintiff has already commenced

an action against the defendant, the new schedule is available to an employee even if an action to recover the wages or other moneys claimed has not yet been started. However, the effect of paragraph 8(2)(*b*) of the schedule is to require one, at least, of the employees seeking security to institute proceedings within fourteen days after the application has been made for a warrant for the apprehension of an absconding employer. Although no court fees are payable by an employee who invokes the procedure, he may, if he has no reasonable grounds, be required to pay the employer's costs and also such compensation as the District Judge may decide.

It is not expected that clause 3 of the bill will be invoked except in unusual circumstances when the employer is virtually obtaining services of employees by false pretences or when an employer, knowing that he is in financial difficulties, fails to take positive steps to terminate contracts of employment and allows them to run on indefinitely and so aggravate an already difficult situation. The existence of this provision would have greatly strengthened the hands of the conciliation officers of the Labour Relations Service in, at least, two disputes during the past year.

Clause 5 introduces a procedure which has been found useful elsewhere. It is hoped that, in practice, an aggrieved employee will seek guidance from the Labour Relations Service as to the advisability of applying to a District Judge for a warrant. It is also hoped that conciliation officers will be able to intervene with employers to allay the fears that employees may have about the possibility of persons absconding without paying wages due or other moneys owed. The existence of this provision should also strengthen the hands of conciliation officers in resolving difficult problems involving the rights of employees to be paid what is owed to them and the rights of employers to go about their legitimate business.

Clauses 2, 4, and 6 dispose of consequential amendments to the principal Ordinance.

The bill has been unanimously endorsed by the Labour Advisory Board. No objections have been raised by any of the various organizations which I normally consult on labour legislation.

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 3 of this Bill prohibits an employer from entering into, renewing or continuing a contract to employ any person without having reasonable grounds for believing that he can pay the person's wages as they become due.

Clause 5 enables an employee to apply to a District Judge for a warrant for the apprehension of his employer, if the judge is satisfied that there is probable cause for believing that the employer is about to leave the Colony with intent to evade payment of wages earned by or other moneys owing to any of his employees. The procedure is contained in the new Second Schedule. The judge may require the employer to provide security for the payment of such moneys and may order the employer to be detained in custody until such security is provided, though in any event for not more than three months.

An employee who makes an application for the apprehension of his employer without reasonable ground may be ordered to pay compensation and costs to the employer. No court fees will be payable in respect of applications under clause 5.

MERCHANT SHIPPING (AMENDMENT) BILL 1970

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

He said: —Sir, section 92 of the Merchant Shipping Ordinance controls the extent to which a holder of a certificate of competency as a trawling master may operate a trawler for fishing purposes. If such a certificate is endorsed with the word "limited", then the holder may only command a trawler not exceeding 120 feet in length and may fish only in the limited area of the South China Sea which is prescribed in that section. If on the other hand he holds a certificate which is not so endorsed, then he may command a trawler of any size, provided that he operates only within the same restricted area.

However, changing conditions in the fishing industry, and the availability of modern mechanical aids on trawlers, have made it no longer necessary to retain these restrictions in their present form. The new section 92, therefore, which is introduced by clause 2 of the bill, will allow a trawling master who holds a certificate of competency, which is not endorsed with the word "limited", to command a trawler of any size on any voyage. If a certificate is endorsed with the word "limited", the holder may in future command a trawler of any size for the purpose of fishing, though still within the restricted area of the

[THE ATTORNEY GENERAL] **Merchant Shipping (Amendment) Bill—second reading**

South China Sea. The Director of Marine, however, by the proposed new subsection (3) of section 92, will have power to exempt any particular trawling master from this limitation also.

Clause 3 of the bill makes a number of minor alterations to section 93 of the Ordinance, which are consequential upon the proposed new section 92.

Section 100 of the Merchant Shipping Ordinance empowers the Director of Marine, after due enquiry, to cancel or suspend a local certificate of competency issued under Part XIII of the Ordinance to the master or engineer of a ferry vessel, launch or river steamer. However, at present no similar power exists in relation to certificates of competency for junks, hulks, lighters, barges, dredgers and other small craft. Clause 4 of the bill will rectify this omission, by introducing a new section 107A, which confers on the Director the same powers to deal with certificates of competency issued in relation to these latter kinds of small vessel as he at present has under section 100. It will be noticed that a right of appeal against the suspension or cancellation of a certificate will lie to a judge, district judge or magistrate appointed by the Chief Justice.

Clause 5 repeals the proviso to section 117 of the Ordinance, by which any fines expressed in terms of English currency in the Merchant Shipping Acts are to be paid in Hong Kong dollars calculated at the rate of 1s. 3d. to the dollar. This provision, apart from being inaccurate, is no longer necessary, since conversions from sterling to dollars are covered by section 10 of the Interpretation and General Clauses 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

The Bill seeks to amend the Merchant Shipping Ordinance (Chapter 281) in three respects.

2. Clause 2 repeals and replaces section 92 of the principal Ordinance, which provides for the permitted use of trawlers of a specified size and the command of trawlers by an officer holding a

certificate of competency as a trawling master. Changing conditions in the fishing industry and the advent of modern mechanical aids onboard trawlers have outdated the restriction upon the size of trawlers which are imposed at present by section 92. The new section 92 removes the former restrictions except that which prescribes the limits beyond which a trawler may not be taken by a trawling master whose certificate of competency is endorsed as "LIMITED".

3. Clause 3 makes formal amendments to section 93, consequential upon the revision of section 92.

4. Clause 4 adds a section 107A, in similar terms to section 100(3), which applies only to vessels to which Part XIII of the Ordinance applies. The new section will enable the Director, after due inquiry, to cancel or suspend a local certificate of competency issued under regulations made under Part XIV of the Ordinance, if he is satisfied that the holder thereof has been guilty of incompetency or negligence in the performance of his duties as a master or engineer.

5. Clause 5 repeals the proviso to section 117 of the principal Ordinance, which deals with the exchange rate at which sterling fines under the Merchant Shipping Acts, as applied to Hong Kong, are to be calculated in Hong Kong dollars, since this is now covered by section 10 of the Interpretation and General Clauses Ordinance.

PUBLIC HEALTH AND URBAN SERVICES (AMENDMENT) BILL 1970

MR D. R. W. ALEXANDER moved the second reading of: —"A bill to amend further the Public Health and Urban Services Ordinance."

He said: —Sir, in this bill, clause 2 amends section 55 of the principal Ordinance to enable fees to be prescribed for any bacteriological or other examination of food or drugs by a public analyst, while the amendment in clause 4 to section 74 is to enable such fees to be recovered.

Clause 3 amends section 63(1) of the Ordinance to exclude its application to samples of food or drugs taken for bacteriological examination. Section 63(1) itself provides that any sample taken for analysis must be divided into three parts. This provision is impractical in relation to samples taken for bacteriological examination because of the risk of contamination while the sample is being divided up, and should not therefore apply to such samples.

Public Health and Urban Services (Amendment) Bill—second reading

Question put and agreed to.

Bill read the second time.

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

Explanatory Memorandum

This Bill makes three minor amendments to the Public Health and Urban Services Ordinance.

2. Clause 2 amends section 55 to enable fees to be prescribed for any bacteriological or other examination of food or drugs by a public analyst, and the amendment in clause 4 to section 74 is to enable such fees to be recovered.

3. Clause 3 amends section 63(1) to exclude its application to samples of food or drugs taken for bacteriological examination. The section provides that any sample taken for analysis must be divided into three parts for distribution in the manner prescribed. This provision should not apply to samples taken for bacteriological examination because of the risk of contamination.

SUPREME COURT (AMENDMENT) (NO 2) BILL 1970

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

He said: —Sir, at present an infant, that is to say a person under the age of 21, becomes a ward of court only if any action or proceeding with regard to his person or property is instituted in the Supreme Court. Thereafter he remains a ward, and subject to various controls by the court, until he reaches full age, though there is often no real need for this and the fact that he is a ward is in practice very often ignored.

On the other hand, at present the court has no power to make an infant a ward of court merely by an application being made for that purpose.

This bill therefore adopts the provisions of section 9 of the English Law Reform (Miscellaneous Provisions) Act 1949, the effect of which is that an infant only becomes a ward of court if an application is made for that purpose, and that at any time thereafter the court may order that an infant shall cease to be a ward of court.

Question put and agreed to.

Bill read the second time.

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

Explanatory Memorandum

This Bill amends the law governing wards of court and adopts the provisions of section 9 of the English Law Reform (Miscellaneous Provisions) Act 1949 (12, 13 & 14 Geo. 6 c. 100). At present an infant becomes a ward of court if an action or other proceeding respecting his person or property has been instituted in court, and he remains a ward of court until he reaches full age. In many cases there is no need for this special jurisdiction and control. On the other hand, there is at present no specific provision for an infant to be made a ward of court simply by an application being made to the court for that purpose.

The new section 8A provides that an infant shall only be made a ward of court by virtue of an order to that effect made by the court, and that the court may order that any infant who is for the time being a ward of court shall cease to be a ward of court.

HONG KONG EXPORT CREDIT INSURANCE CORPORATION (AMENDMENT) BILL 1970

THE ACTING FINANCIAL SECRETARY (MR HADDON-CAVE) moved the second reading of: —"A bill to amend the Hong Kong Export Credit Insurance Corporation Ordinance."

He said: —Sir, the purpose of this bill is to enable the Corporation to re-insure itself against liability under a contract of insurance into which it has entered under section 9 of the Ordinance.

As honourable Members are aware the Hong Kong Export Credit Insurance Corporation was established as a statutory body in December 1966 to provide cover against those risks in export trading which are not normally insurable commercially. Actually the Corporation's policies are comprehensive in that they cover the risk of non-payment arising from political and economic causes as well as from the financial failure of individual overseas buyers. It is only this latter risk which the commercial market is prepared to accept.

The Corporation now provides cover for approximately 8% of the Colony's domestic exports and its liabilities on all current annual

[THE ACTING FINANCIAL SECRETARY] **Hong Kong Export Credit Insurance Corporation (Amendment) Bill—second reading**

policies amount to $600 million for which the Government under section 18 of the Ordinance and by resolution of this Council, is the guarantor of last resort. The amount at risk at any one time is normally only about half this figure because credits do not usually extend beyond six months as a maximum and are revolving.

The underwriting experience of the Corporation in the last 3½ years has been entirely satisfactory, claims amounting to just under $2½ million being made against recoveries of just under $½ million on a total volume of business written of $1½ thousand million. However, as Hong Kong manufacturers and exporters seek to produce and sell goods of higher quality and greater sophistication, credit terms are being increasingly demanded by buyers and we must expect a smaller proportion of our exports to be paid for by Letters of Credit. The business of the Corporation, and hence its total liabilities, are very likely to increase. In turn this is likely to lead to increased claims, particularly if, at the same time, the solvency of many individual firms in our major markets is affected by credit squeezes.

The Corporation is of the view, therefore, that it should spread its risks through partial reinsurance of its liabilities with a leading European based company. Indirectly, this will also reduce the likelihood of any part of the contingent liability on public funds being called up.

Question put and agreed to.

Bill read the second time.

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

Explanatory Memorandum

This Bill amends the Hong Kong Export Credit Insurance Corporation Ordinance so as to enable the Corporation established under that Ordinance to re-insure itself against liability under a contract of insurance into which it has entered under section 9 of the principal Ordinance. The new section 9A contained in clause 2 provides accordingly.

IMPORT AND EXPORT BILL 1970

Resumption of debate on second reading (6th May 1970)

Question again proposed.

MR M. A. R. HERRIES: —Sir, my honourable Friend the Director of Commerce and Industry is to be congratulated on the care which he has taken to ensure full consultation with all the interests likely to be affected by the provisions of this bill. As early as January 1969, on the advice of the Trade and Industry Advisory Board, the Director forwarded to the principal trade organizations a draft bill for their comments. Since that time there has been much discussion between these organizations and the Director and draftsmen of the Legal Department. As the Director has already observed, the consultative process was so thorough as to delay the timetable which he had in mind for the legislative process. Consultation has, however, resulted in a workmanlike piece of legislation and I am sure that the staff concerned in his Department, as well as the legal draftsmen concerned, have been gratified at the close interest taken in the provisions of the bill. Consultation, in this case, will clearly result in a far wider knowledge and appreciation of the law. Sir, I know we in the General Chamber of Commerce welcome this ready co-operation and I accordingly have pleasure in supporting the bill before Council.

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.

Committee stage

Council went into Committee.

COMPANIES (AMENDMENT) (NO 3) BILL 1970

Clauses 1 and 2 were agreed to.

BANKRUPTCY (AMENDMENT) (NO 2) BILL 1970

Clauses 1 and 2 were agreed to.

PAWNBROKERS (AMENDMENT) (NO 2) BILL 1970

Clauses 1 to 3 were agreed to.

LEGAL AID (AMENDMENT) BILL 1970

Clauses 1 to 3 were agreed to.

MR CHEUNG: —Sir, may I just be permitted to say this? I am not moving any amendment to clause 3 but as the object of the bill is to cut down the period when proceedings are staged against persons who have applied for legal aid, may I ask for Government's assurance that the period prescribed would not exceed 42 days?

THE ATTORNEY GENERAL (MR ROBERTS): —I am sure I can give that assurance because clearly the object of the clause, as the honourable Member says, is to cut down 42 days to not less than 14. While obviously I can't formally bind the regulation making authority under the Ordinance, I think it extremely unlikely that any longer period will be prescribed and certainly the honourable Member's views will be most carefully borne in mind when any amending regulations are considered.

HONG KONG TOURIST ASSOCIATION (AMENDMENT) BILL 1970

Clauses 1 and 2 were agreed to.

PROTECTION OF NON-GOVERNMENT CERTIFICATES OF ORIGIN (AMENDMENT) BILL 1970

Clauses 1 and 2 were agreed to.

RADIATION (AMENDMENT) BILL 1970

Clause 1 was agreed to.

Clause 2.

DR P. H. TENG: —Sir, I move that clause 2 be amended as set forth in the paper before honourable Members.

Proposed Amendment

Clause

2 That clause 2 be amended in paragraph (*a*) by deleting the proposed definition of "irradiating apparatus" and substituting the following definition—

""irradiating apparatus" means any apparatus which is intended to produce or emit, or is capable of producing or emitting, ionizing radiation at a dose

rate in excess of 0.5 millirem per hour at a distance of five centimetres from any accessible point of the surface of the apparatus.".

DR CHUNG: —Sir, I am very pleased with this new definition of "irradiating apparatus" which in my opinion is more scientific, more logical and more specific than the one previously proposed. I therefore have pleasure in supporting the amendment.

The amendment was agreed to.

Clause 2, as amended, was agreed to.

Clauses 3 to 6 were agreed to.

Council then resumed.

Third reading

THE ATTORNEY GENERAL (MR ROBERTS) reported that the

Companies (Amendment) (No 3) Bill 1970

Bankruptcy (Amendment) (No 2) Bill 1970

Pawnbrokers (Amendment) (No 2) Bill 1970

Legal Aid (Amendment) Bill 1970

had passed through Committee without amendment and moved the third reading of each of the bills.

Question put on each bill and agreed to.

Bills read the third time and passed.

THE ACTING FINANCIAL SECRETARY (MR HADDON-CAVE) reported that the Hong Kong Tourist Association (Amendment) Bill 1970 had passed through Committee without amendment and moved the third reading of the bill.

Question put and agreed to.

Bill read the third time and passed.

MR T. D. SORBY reported that the Protection of Non-Government Certificates of Origin (Amendment) Bill 1970 had passed through Committee without amendment and moved the third reading of the bill.

Question put and agreed to.

Bill read the third time and passed.

DR TENG reported that the Radiation (Amendment) Bill 1970 had passed through Committee with one amendment and moved the third reading of the bill.

Question put and agreed to.

Bill read the third time and passed.

Unofficial Member's Bill

First reading

CHURCH OF ENGLAND TRUST (AMENDMENT) BILL 1970

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

Second reading

CHURCH OF ENGLAND TRUST (AMENDMENT) BILL 1970

MR WONG moved the second reading of: —"A bill to amend further the Church of England Trust Ordinance."

He said: —The object of this bill is to amend and bring up-to-date the Church of England Trust Ordinance. This has been the desire of the Church of England Trustees since the year 1952. The following are the main amendments.

Clause 2 of the bill deletes from section 2 of the principal Ordinance the definition of "Archdeacon of Hong Kong" because there is no person performing the functions of the Archdeacon; adds a definition of "Church of England" as it is considered that for the avoidance of doubt a definition of "Church of England" ought to be inserted; widens the definition of "Diocesan Conference" to include clergy holding the Bishop's licence who officiate in churches other than those which come within the definition of "Church of England"; and adds a definition of "House of Bishops".

Clause 3 seeks to amend section 3 to enable persons to be appointed as trustees notwithstanding that they are not British subjects.

Clause 4 seeks to replace subsection (4) of section 5, which provided that documents requiring the common seal of the trustees should be sealed in the presence of the Bishop and signed by him, with a new provision whereby such documents need only be witnessed by two trustees.

Clause 5 seeks to amend subsection (2) of section 6 so as to enable clergy, not of the Church of England who are approved by the Bishop to conduct services in Saint Andrew's Church, Kowloon.

Clause 6 seeks to effect a number of small changes to section 8, which deals with the nomination of boards of patronage.

Clause 7 adds Christ Church, Kowloon Tong, to section 10, w deals with church councils.

Clause 9 repeals section 14 as the arrangement by which troops may use Saint John's Cathedral has now lapsed.

Clause 11 is a validation clause. The Church of England Trust (Church Councils) Regulations provide that annual church meetings shall be held before the 15th February. The Appendix to the Regulations contains the rules of procedure for church councils. In some instances annual church meetings have been held after the 15th February and in order to remove any doubts the clause seeks to validate any acts done by church meetings held after the 15th February. Paragraph (*b*) of the clause also seeks to validate any acts done which have not complied with the rules of procedure.

Clauses 8 and 10 seek to effect a number of consequential amendments.

Question put and agreed to.

Bill read the second time.

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

Explanatory Memorandum

The object of this Bill is to amend and bring up-to-date the Church of England Trust Ordinance, Cap. 1014.

Clause 2 amends section 2 by—

(*a*) deleting the definition of "Archdeacon of Hong Kong" because there is no person performing the functions of the Archdeacon;

(*b*) adding a definition of "Church of England" as it is considered that for the avoidance of doubt a definition of "Church of England" ought to be inserted;

Church of England Trust (Amendment) Bill—second reading

[*Explanatory Memorandum*]

(*c*) widening the definition of "Diocesan Conference" to include clergy holding the Bishop's licence who officiate in churches other than those which come within the definition of “Church of England”;

(*d*) adding a definition of "House of Bishops".

Clause 3 seeks to amend section 3 to enable persons to be appointed as trustees notwithstanding that they are not British subjects.

Clause 4 seeks to replace subsection (4) of section 5, which provided that documents requiring the common seal of the trustees should be sealed in the presence of the Bishop and signed by him, with a new provision whereby such documents need only be witnessed by two trustees.

Clause 5 seeks to amend subsection (2) of section 6 so as to enable clergy, not of the Church of England who are approved by the Bishop to conduct services in Saint Andrew's Church, Kowloon.

Clause 6 seeks to effect a number of small changes to section 8, which deals with the nomination of boards of patronage.

Clause 7 adds Christ Church. Kowloon Tong, to section 10, which deals with church councils.

Clause 9 repeals section 14 as the arrangement by which troops may use Saint John's Cathedral has now lapsed.

Clause 11 is a validation clause. The Church of England Trust (Church Councils) Regulations provide that annual church meetings shall be held before the 15th February. The Appendix to the Regulations contains the rules of procedure for church councils. In some instances annual church meetings have been held after the 15th February and in order to remove any doubts the clause seeks to validate any acts done by church meetings held after the 15th February. Paragraph (*b*) of the clause also seeks to validate any acts done which have not complied with the rules of procedure.

Clauses 8 and 10 seek to effect a number of consequential amendments.

Tribute to Mr Herries

HIS EXCELLENCY THE GOVERNOR: —Honourable Members will be aware that this is Mr HERRIES' last attendance in this Council, as he is due to leave Hong Kong early in June. Before I adjourn this

sitting, therefore, I would like to pay tribute to Mr HERRIES' valuable services both to this Council and to the community as a whole, not the least of which has been the most valuable advice and assistance he has given as Chairman of the University Grants Committee. I know I can speak for us all when I express our gratitude for the service he has rendered and when I say that we wish him and Mrs HERRIES the best of health and fortune in the future. We are glad indeed, Mr HERRIES, that we shall be seeing you here again from time to time and that your connexion with Hong Kong will not be entirely broken.

MR HERRIES: —Sir, thank you very much indeed for those kind remarks, which I greatly appreciate. It has been a privilege to serve on this Council. I would like to thank you, Sir, and all my colleagues for their courtesy and friendship. As you said, I am not retiring in the true sense of the word and I therefore hope to be able to continue to serve Hong Kong in any way I can, as I will always regard it as my second home. Thank you very much.

ADJOURNMENT

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

3.45 p.m.

NEXT SITTING

HIS EXCELLENCY THE PRESIDENT: —Council will accordingly adjourn. The next sitting will be held on 3rd June 1970.

Adjourned accordingly at fifteen minutes to Four o'clock.

PRINTED BY THE GOVERNMENT PRINTER, HONG KONG