

OFFICIAL REPORT OF PROCEEDINGS**Wednesday, 8th July 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 (*Acting*)
MR DAVID RONALD HOLMES, CMG, CBE, MC, ED, JP
THE HONOURABLE THE ATTORNEY GENERAL (*Acting*)
MR GRAHAM RUPERT SNEATH, QC, JP
THE HONOURABLE THE SECRETARY FOR HOME AFFAIRS (*Acting*)
MR PAUL TSUI KA-CHEUNG, OBE, JP
THE HONOURABLE THE FINANCIAL SECRETARY
SIR JOHN JAMES COWPERTHWAITHE, KBE, CMG, JP
THE HONOURABLE ROBERT MARSHALL HETHERINGTON, DFC, JP
COMMISSIONER OF LABOUR
THE HONOURABLE TERENCE DARE SORBY, JP
DIRECTOR OF COMMERCE AND INDUSTRY
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
DR THE HONOURABLE GERALD HUGH CHOA, JP
DIRECTOR OF MEDICAL AND HEALTH SERVICES
THE HONOURABLE ALASTAIR TREVOR CLARK, JP
DIRECTOR OF URBAN SERVICES (*Acting*)
THE HONOURABLE LAWRENCE EDWIN ARTHUR HOLT-KENTWELL, MBE, JP
DIRECTOR OF SOCIAL WELFARE (*Acting*)
THE HONOURABLE KAN YUET-KEUNG, CBE, JP
THE HONOURABLE WOO PAK-CHUEN, OBE, JP
THE HONOURABLE SZETO WAI, OBE, JP
THE HONOURABLE WILFRED WONG SIEN-BING, OBE, JP
THE HONOURABLE ELLEN LI SHU-PUI, OBE, JP
THE HONOURABLE WILSON WANG TZE-SAM, JP
THE HONOURABLE HERBERT JOHN CHARLES BROWNE, JP
DR THE HONOURABLE CHUNG SZE-YUEN, OBE, JP
THE HONOURABLE LEE QUO-WEI, OBE, JP
THE HONOURABLE GERALD MORDAUNT BROOME SALMON, JP
THE HONOURABLE OSWALD VICTOR CHEUNG, QC, JP
THE HONOURABLE LO KWEE-SEONG, JP

ABSENT

THE HONOURABLE ANN TSE-KAI, OBE, JP

IN ATTENDANCETHE DEPUTY CLERK OF COUNCILS
MR RODERICK JOHN FRAMPTON

Oath

MR L. E. A. HOLT-KENTWELL and MR K. S. LO took the Oath of Allegiance and assumed their seats as Members of the Council.

HIS EXCELLENCY THE PRESIDENT: —May I welcome Mr HOLT-KENTWELL and Mr LO to this Council.

Papers

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

<i>Subject</i>	<i>LN No</i>
Subsidiary Legislation: —	
Merchant Shipping ordinance.	
Merchant Shipping (Control of Ports) (Amendment) Regulations 1970	82
Interpretation and General Clauses Ordinance.	
Specification of Public Office	85
Animals and Birds (Restriction of Importation and Possession) Ordinance.	
Animals and Birds (Restriction of Importation and Possession) Ordinance (Commencement) Notice 1970	86
Animals and Birds (Restriction of Importation and Possession) Ordinance.	
Animals and Birds (Restriction of Importation and Possession.) (Fees) Regulations 1970	87
Rent Increases (Domestic Premises) Control Ordinance 1970.	
Rent Increases (Domestic Premises) Control Rules 1970	88
The Chinese University of Hong Kong Ordinance.	
Statutes of The Chinese University of Hong Kong (Amendment) Statutes 1970	89
Dangerous Goods Ordinance.	
Dangerous Goods (Classification) (Amendment) (No 2) Regulations 1970	90

<i>Subject</i>	<i>LN No</i>
Interpretation and General Clauses Ordinance.	
Delegation of Power	91
Supreme Court Ordinance.	
The Rules of the Supreme Court (Amendment) (No 3)	
Rules 1970	92
Sessional Papers 1969-70: —	
No 54—Annual Summary by the Director of Education for the year 1968-69 (published on 11.6.70).	
No 55—Report of the Board of Management of the Hong Kong Tourist Association 1969-70 (published on 26.6.70).	
No 56—Annual Report by the Chairman, Public Services Commission for the year 1969 (published on 8.7.70).	
No 57—Statement of Accounts of the Immigration Service Welfare Fund for the year ended 31.3.70 (published on 8.7.70).	

Oral answers to questions

Permanent cattle quarantine depot

1. MR WILSON T. S. WANG asked: —

Will Government please state a firm completion date for provision of a permanent cattle quarantine depot at Kwai Chung and for the removal of the temporary depot at Ma Tau Kok?

THE ACTING COLONIAL SECRETARY (MR D. R. HOLMES): —Sir, there seems to be no choice but to continue to use the old depot at Ma Tau Chung temporarily for the purpose of cattle lairage until the new cattle quarantine depot is built. This project is in Category "A" of the public works programme but there have been many difficulties in finally deciding upon a site. A site has now been finally chosen at Kwai Chung in spite of many complications related to the container terminal, an essential sewage outfall, an incinerator and the possible Tsing Yi bridge, but the Director of Public Works is not yet able to say definitely when the new lairage can be provided. Some further detailed planning and consultation is needed before the project can

[THE ACTING COLONIAL SECRETARY] **Oral Answers**

start and there are also formalities to be gone through, notably the gazetting of a reclamation. It is hoped that all this can be completed by the end of this year after which it is likely to take about eighteen months to complete the work. I can promise that there will be no unnecessary delay.

Financial assistance to small-scale industries

2. DR S. Y. CHUNG asked: —

I understand that the committee appointed by the Trade and Industry Advisory Board in 1968 to study the possibility of setting up a loan institution to provide financial assistance to small-scale industries submitted its report to Government some months ago. Is Government in a position to inform this Council which recommendations made in that report of the committee have been accepted and which not, and the reasons therefor? Does Government intend to publish this report, and if so, when?

THE FINANCIAL SECRETARY (SIR JOHN COWPERTHWAIT): —Sir, the committee to which my honourable Friend's question refers was, as he says, appointed by the Trade and Industry Advisory Board. The committee's terms of reference were set by the Board and it was composed of four members of the Board and five others who were not members of the Board. The committee accordingly submitted its report to the Board, not to Government. The Board then endorsed the committee's recommendations and its Chairman sent the report to the Colonial Secretariat on 8th April this year. Government has reached no decision on the recommendations in the report.

As to the second part of my honourable Friend's question, the Board recommended that the report be published as soon as possible after it had been sent to the Colonial Secretariat. The question of publication has not yet been considered but I myself see no good reason why it should not be published as a TIAB paper.

DR CHUNG: —Sir, in view of the rapidly rising wages in Hong Kong in recent years, is Government aware that there is now an even more urgent and greater need for small scale industries to have access to medium term loans based on management viability and not on fixed assets for greater degree of mechanization?

THE FINANCIAL SECRETARY (SIR JOHN COWPERTHWAITTE): —I was not aware of the urgency to which my honourable Friend refers.

Government Business

Motion (in Committee)

SUPPLEMENTARY PROVISIONS FOR THE QUARTER ENDED 31ST MARCH 1970

Council went into committee, *pursuant to Standing Order No 58(2)*, to consider the motion standing in the name of the Financial Secretary (SIR JOHN COWPERTHWAITTE).

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

THE FINANCIAL SECRETARY (SIR JOHN COWPERTHWAITTE) moved: —

That this Council approves the supplementary provisions for the quarter ended 31st March 1970, as set out in Paper No 4 of 1969-70.

He said: —Sir, the schedule for the fourth quarter of the 1969-70 financial year covers supplementary provision totalling \$59.7 million. Of this amount \$15 million was required as a result of the Civil Service Salaries Revision, 1969; Public Works Non-Recurrent accounted for a further \$20.4 million, of which \$1.1 million represented revotes of funds unexpended on projects in the last financial year; \$14.8 million was required as a result of faster progress on existing projects and \$1.6 million to meet the cost of new projects. \$5.2 million was required as additional grants to Aided Schools under the Subsidy Code as a result of the reduction of primary school fees in the 1969-70 academic year.

The Finance Committee has approved all the items in the schedule. The covering approval of this Council is now sought.

Question put and agreed to.

Council then resumed.

THE FINANCIAL SECRETARY (SIR JOHN COWPERTHWAITTE) reported that the motion had been agreed to in committee without amendment.

Question agreed pursuant to Standing Order No 58(4).

Motions**BANK NOTES ISSUE ORDINANCE**

THE FINANCIAL SECRETARY (SIR JOHN COWPERTHWAIT) moved the following resolution: —

It is hereby resolved, by the Legislative Council, that this Council extends the powers of all the note-issuing banks to make, issue or re-issue and circulate notes until and including the 12th day of July 1971.

He said: —Sir, the Bank Notes Issue Ordinance lays down that the powers of the note-issuing banks lapse automatically unless renewed by this Council from time to time. The present powers of these banks expire on 12th July 1970. It is proposed in this resolution that these powers should be renewed for the maximum permissible period of twelve months.

Question put and agreed to.

**HONG KONG AND YAUMATI FERRY COMPANY
(SERVICES) ORDINANCE**

THE FINANCIAL SECRETARY (SIR JOHN COWPERTHWAIT) moved the following resolution: —

It is hereby resolved, by the Legislative Council, with the consent of the Company, that the Schedule to the Ordinance be amended in Appendix II, under the Heading "2. Other services"—

(a) by adding immediately before the column headed "1st Class" a new column headed—

"De Luxe Class"; and

(b) by inserting in the new column, in the appropriate place opposite "(Direct Service)"; where it occurs beneath the words "Silver Mine Bay", the following—

"4.00 (adult)

or

\$2.00 (child under 16). ”.

He said: —Sir, the Hong Kong and Yaumati Ferry Company Limited is about to launch a triple-decker passenger ferry for use on the direct service between Hong Kong Island and Silver Mine Bay. The third deck is designed to provide a new class of luxury travel;

it will have air-conditioning, carpets, individual seating and sun deck facilities. The Company proposes to charge \$4 for an adult and \$2 for a child under 16 per single journey, compared to the present \$1 fare for direct first class travel. The normal first class fare will continue to apply to the two lower decks.

Fares and charges levied by the Company are set out in Appendix II of the Schedule to the Hong Kong and Yaumati Ferry Company (Services) Ordinance. An amendment to the Appendix is necessary before the new luxury class fares can be introduced. This can be done by resolution of the Legislative Council with the consent of the Company. The present resolution has the Company's consent.

Question put and agreed to.

RADIATION ORDINANCE

DR G. H. CHOA moved the following resolution: —

It is hereby resolved, by the Legislative Council, that the following regulations made by the Radiation Board on the 16th day of June 1970 be approved—

- (a) Radiation (Control of Irradiating Apparatus) (Amendment) Regulations 1970; and
- (b) Radiation (Control of Radioactive Substances) (Amendment) Regulations 1970.

He said: — Sir, the Radiation (Control of Irradiating Apparatus) (Amendment) Regulations 1970, have been made by the Radiation Board to enable more effective control to be exercised over the disposal of irradiating apparatus. Various minor amendments relating to the licensing of this apparatus have also been made by the Board in the light of working experience since the principal regulations were first enacted in 1965. Further, the term "summary" has been deleted wherever it occurs in reference to offences against the regulations, as this expression is now superfluous because of section 89(1) of the Interpretation and General Clauses Ordinance, Chapter 1.

Similarly, the Radiation (Control of Radioactive Substances) (Amendment) Regulations 1970 have been made by the Radiation Board to make further provision for licences in respect of radioactive substances and to incorporate other minor technical amendments suggested by members of the Board in the light of working experience. As in the case of the Irradiating Apparatus Regulations, the term "summary" in reference to offences against the regulations has been deleted as this is now superfluous.

Question put and agreed to.

First reading**DRUG ADDICTS TREATMENT AND REHABILITATION
(AMENDMENT) BILL 1970****ROAD TRAFFIC (AMENDMENT) (NO 3) 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**DRUG ADDICTS TREATMENT AND REHABILITATION
(AMENDMENT) BILL 1970**

DR CHOA moved the second reading of:—"A bill to amend the Drug Addicts Treatment and Rehabilitation Ordinance."

He said:—The amendments in this bill are necessary in order that a layman may be appointed as the superintendent or assistant superintendent of an Addiction Treatment Centre.

Hitherto, the appointment of a superintendent or assistant superintendent has been restricted to registered medical practitioners. Experience now shows that it may be difficult to obtain the services of a doctor who, besides his medical duties of treating the patients, has to deal with the social and welfare aspects of their problems and in addition carry out administrative functions.

Clause 2 of the amended bill deletes the definition of "registered medical practitioners" from section 2 of the principal Ordinance, since the term "medical practitioner" has already been defined in the Interpretation and General Clauses Ordinance.

In clause 3, section 4 is amended to enable the Governor to appoint a person other than a medical practitioner to be the superintendent or assistant superintendent of an Addiction Treatment Centre, if he is satisfied that adequate arrangements have been made for the treatment of the patients in the centre by a medical practitioner.

Clause 4 replaces section 6 with a new section which enables a superintendent to delegate any of his powers and functions to a medical practitioner or any person approved by the Governor.

A detailed explanation of the provisions of the bill is given in the Explanatory Memorandum attached to the bill.

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 minor amendments to the Drug Addicts Treatment and Rehabilitation Ordinance.

2. Clause 2 deletes the definition of "registered medical practitioner", because of an existing definition in the Interpretation and General Clauses Ordinance.

3. Clause 3. Section 4 is amended to enable the Governor to appoint a person other than a medical practitioner to be the superintendent or assistant superintendent of an Addiction Treatment Centre, if he is satisfied that adequate arrangements have been made for the treatment of the patients in a centre by a medical practitioner.

4. Clause 4. Section 6 is replaced by a new section which enables a superintendent to delegate any of his powers and functions under the Ordinance to a medical practitioner or any person approved by the Governor.

ROAD TRAFFIC (AMENDMENT) (NO 3) BILL 1970

THE ACTING ATTORNEY GENERAL (MR G. R. SNEATH) moved the second reading of: —“A bill to amend further the Road Traffic Ordinance.”

He said: —Sir, finding this bill on the Order Paper may have come as something of a surprise to honourable Members. I hope not because of its contents but merely because it follows hard on the heels of the Road Traffic (Amendment) (No 2) Bill when at that time the Attorney General announced Government's intention of submitting to the Governor in Council regulations concerning the giving of notice to owners of public light buses before detention orders were made in respect of these buses. Honourable Members will recall that the Attorney General said this following his enumeration of the two grounds on which the Full Court had held that the regulations were *ultra vires*. The regulations which were to have been submitted to the Governor in Council would have been concerned with what he described as the main ground, namely, that the existing regulations

[THE ACTING ATTORNEY GENERAL] **Road Traffic (Amendment) (No 3) Bill—
second reading**

were *ultra vires* because they were contrary to that rule of natural justice which provides that a man shall not be deprived of his property unless he has had a fair opportunity of being heard. And the amending regulations were to have provided that an owner should receive a notice warning him that an order might be made for the impounding of his vehicle if the driver is convicted and also informing him that he should appear in court at a time and place to be stated if he wished to object to the making of the order.

Sir, the Explanatory Memorandum attached to this bill states "It has now become apparent that the detention provisions can be made more suitably and effectively if they are enacted as a part of the principal Ordinance." Honourable Members familiar with our old style "Objects and Reasons" with bills as well as with the Explanatory Memoranda of today may think this statement is rather more of a reason than an explanation. As I hope to outline in a few moments, other urgent amendments to this Ordinance have become necessary in connection with public light buses. So, therefore, if an amending Ordinance No 3 has to be enacted, it seemed proper to take this opportunity to make clear just what are the intentions of this legislature with regard to the detention of public light buses.

I hope, Sir, I may properly and correctly sum up those intentions by saying that this Council seeks to prevent the business of owning and operating public buses being conducted with disregard for the safety of the public using the streets.

My honourable Friend Mr SZETO on the occasion of the second reading of that earlier bill referred to "the attitude of the absentee landlord" manifested by some of the owners of these buses, and he went on to contrast this with the efforts made by public transport undertakings to discipline their drivers. Therefore, Sir, the responsibility of the owners which these proposed provisions seek to bring home is that they should ensure that their drivers of the buses not only are competent as drivers, but also that they exercise care both in regard to their standard of driving and also in their observation of the traffic law which has particular relevance to public light buses. It is thought necessary, Sir, that at this time this responsibility should form an absolute obligation, in the sense that the provisions provide for mandatory orders of detention except where special reasons exist once there has been a finding of guilt in respect of any of the offences which are set out in the Schedule.

Having mentioned special reasons, Sir, it is perhaps appropriate at this moment to refer to a small change that is being proposed. In traffic legislation special reasons for not ordering disqualification of a

driver has come to be regarded almost as a term of art; but this is where the order is contemplated against the person—the driver that is—who stands convicted before the court. It could be argued that the phrase need not have the same connotation when it is used in respect of an order affecting the property of a person who is not necessarily criminally guilty of anything. The opportunity is therefore being taken to provide that this phrase shall nevertheless have the same meaning in connection with public light buses as it does with disqualification of drivers.

Sir, the Explanatory Memorandum attached to the bill sets out the four ways in which the proposed provisions differ from the existing regulations; but I do not think, Sir, I need dwell on these differences, except to say a brief word about two of them. The first is that a detention order may now be made where the owner of a bus is convicted of the offence of failing to provide information about the driver. It has been found that in some cases where the driver is thought to have committed an offence, the owner of the bus prefers to take his chance of being convicted and fined for failing to give information about the driver rather than risk the driver being convicted and his bus being detained as a direct result of that conviction. Sir, instead of suggesting to this Council that the bill should add another offence which leads to the detention, it would have been pleasanter if I could have said that the Government's recommendation was for a reduction in the list of those offences. Unfortunately, Sir, the present situation is not thought to permit of this. But I would like to assure honourable Members that Government does have this under review and will keep it under review; and also, Sir, that Government's aim is to do away with the impounding of buses altogether, once the present need passes.

The second difference to which I would like to refer, Sir, is that the fact that a vehicle may have changed hands since the commission of the offence is no longer to be a bar to the making of a detention order. The Explanatory Memorandum points out that this is designed to prevent bogus sales of buses which have become liable to this detention. I should add that in practice a notice of intention to apply for a detention order would normally go out to the registered owner as soon as a summons is issued to the driver and that the Commissioner for Transport would be informed; he in turn would see that any person seeking to effect the transfer of registration would be made aware of the fact that the bus is liable to be involved in proceedings for its detention.

I have said, Sir, that it is thought desirable to enact these impounding provisions in the Ordinance so that they may more directly reflect this Council's intentions in the matter, and that in any event

[THE ACTING ATTORNEY GENERAL] **Road Traffic (Amendment) (No 3) Bill—
second reading**

the need for further amendments of this Ordinance has been realized. Just as the regulations for impounding were attacked on the ground that the enabling section of the Ordinance did not specifically authorize such temporary deprivation of a man's property without affording him an opportunity of being heard, so it is conceived that the regulations which provide for the towing away of vehicles obstructing the roads could come under a similar attack. Section 3(1)(k) is therefore to be amended by adding that regulations under it may provide for the removal of vehicles from roads without the necessity for notice to their owners.

Again, Sir, an apparent conflict has been discovered between regulation 8 of the Road Traffic (Roads and Signs) Regulations—which honourable Members will note is in Part I of the Schedule as being an offence which leads automatically to the detention of the bus—possible conflict, Sir, with section 19 of the Ordinance; and such a conflict might result in regulation 8 being held to be *ultra vires*. If I may explain, Sir, the apparent conflict arises from the fact that section 19 and regulation 8 each create the offence of failing to conform or comply with an authorized traffic sign, but the regulation provides for a greater penalty than does the section in the Ordinance. Since, however it is thought that this offence, and this penalty, is properly dealt with by the regulation, it is proposed to recast section 19 so that it will create simply the offence of failing to conform with the directions of a police officer in uniform when he is controlling traffic.

As it is considered necessary to amend section 3(1)(k) for the reasons I have given, the opportunity is also being taken to delete from this paragraph the reference to regulations made under the Ordinance. In the course of his judgment in the Full Court in the recent case of *Lau Ping v. The Queen*, the honourable the Chief Justice referred to the normal rule for construing Ordinances when he said that "under the Interpretation Ordinance the word 'Ordinance' includes any subsidiary legislation made thereunder". It has been suggested, Sir, that regulations made under 3(1)(L), and for that matter under 3(1)(e), could be challenged on the ground that where in one paragraph of a section there is a reference to contraventions of the Ordinance or regulations made thereunder, and in another paragraph the reference is simply to contraventions of the Ordinance, then this Council has expressed the clearest intention to limit the operation of those paragraphs to offences under the Ordinance and not to extend them to offences under the regulations: and furthermore, Sir, that this intention is sufficiently clear so as to displace the normal rule of construction to which the Chief Justice was referring. By deleting the reference in

paragraph (k) it is hoped that the intention of this Council will become apparent—namely, that the normal rule of construction is to apply and that since this section will now refer throughout simply to contraventions of the Ordinance, this will be taken to mean contravention of the Ordinance and of regulations made thereunder.

There is, Sir, just one other matter to which I should draw the attention of this Council. Government envisages that it may become desirable, and indeed even necessary, to appoint its own public light bus regulators: that is to say, Sir, those officials stationed at various points who control the routes on which the buses travel on each journey. I would like to emphasise, Sir, that there is no immediate action contemplated and that this provision is simply an enabling one which would permit the Governor in Council to make the necessary regulations if and when the need arises. Indeed, Sir, the only reason for including it at this time is the hope—perhaps a vain one—that it will obviate the need for the Attorney General to have to move the second reading of a Road Traffic (Amendment) (No 4) Bill 1970.

Question proposed.

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

Question put and agreed to.

Explanatory Memorandum

As was stated in the explanatory memorandum attached to the Road Traffic (Amendment) (No. 2) Bill 1970, one purpose of that Bill was to widen the enabling powers in the principal Ordinance under which regulations were made for the seizure, detention and impounding of vehicles. It was also forecast that further regulations would be enacted to cure other defects which the Full Court has held to exist in the present regulations for the detention of light buses. It has now become apparent that the detention provisions can be made more suitably and effectively if they are enacted as a part of the principal Ordinance. The main object of this Bill is so to provide.

2. Clause 4 introduces into the principal Ordinance a new Part IVA, which contains the substance of the present Part VIA of the Road Traffic (Taxis, Public Omnibuses, Public Light Buses and Public Cars) Regulations and Part IIA of the Road Traffic (Registration and Licensing of Vehicles) Regulations, which in

Road Traffic (Amendment) (No 3) Bill—second reading*[Explanatory Memorandum]*

turn are revoked by clause 7. These new provisions differ from the existing regulations in the following respects—

- (a) public light buses become subject to detention for a further offence, namely, that committed by the owner in failing to provide information as to the identity of the driver under section 29 of the principal Ordinance—this is to meet the case of the owner who prefers to face prosecution and fine rather than risk detention of his bus by giving information which could lead to the conviction of the driver;
- (b) the prosecution is required to make a separate application to the court at the conclusion of the criminal case, thus making it clear that a detention order does not form part of the criminal proceedings;
- (c) the prosecution is also required to give notice to the registered owner at least seven days before making the application;
- (d) though, as previously, any person claiming to be the owner of a light bus may seek the leave of the court to be heard, the fact that a new person has become the registered owner since the date of the offence is specifically excluded from being a "special reason" which would justify no detention order being made—this new provision is intended to prevent bogus sales by owners of light buses seeking thereby to avoid the impounding of their buses;
- (e) the detention order will specify the place and time for the delivery of the vehicle to be impounded, instead of this being determined by the Commissioner for Transport and notified by him to the owner.

3. It is proposed to amend section 3(1) of the principal Ordinance in several respects. A new paragraph is to be inserted to empower the Governor in Council to make regulations for the appointment of authorized officers to regulate and control the use of public light buses, public cars and taxis and the conduct of persons driving or travelling in them (clause 2(b)).

4. The opportunity is taken to re-draft paragraph (k) and to make it clear that regulations providing for the removal of vehicles from roads need not provide for prior notice to the owners (clause 2(c)).

5. The Road Traffic (Roads and Signs) Regulations make failure to comply with traffic signs an offence and provide penalties which are in excess of those prescribed for the same offences created by section 19 of the principal Ordinance. It is proposed to remove from this section the provisions relating to traffic signs as it is considered that they are properly dealt with in the regulations, and this amendment will remove any apparent conflict between the principal Ordinance and its subsidiary legislation (clause 3).

Committee stage

Council went into Committee.

MARRIAGE REFORM BILL 1970

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

Clauses 1 to 26 were agreed to.

EVIDENCE (AMENDMENT) BILL 1970

Clauses 1 to 4 were agreed to.

PROMISSORY OATHS (AMENDMENT) (NO 2) BILL 1970

Clauses 1 to 3 were agreed to.

EMPLOYMENT (AMENDMENT) (NO 3) BILL 1970

Clauses 1 and 2 were agreed to.

Clause 3.

MR R. M. HETHERINGTON: —Sir, I move that clause 3 be amended as set out in the paper before honourable Members. It was originally hoped that the bill, if approved, would pass through all its stages before the end of June. It has not proved possible to keep to this time-table and the date referred to in subsection (1) of new section 20A has already passed. The opportunity has been taken to delete the words “after the 30th day of June 1970” entirely from this subsection and to add a new subsection (3) in order to bring both subsections (1) and (2) into effect on the same date, the first day of August.

Employment (Amendment) (No 3) Bill—committee stage

DR CHUNG: —Sir, I understand that later on in the committee stage the Commissioner of Labour will propose to place section 20A under subsection (1) instead of under subsection (2) of the offences and penalty section 31 of the principal Ordinance. This change will provide a little more latitude for those medium and small scale industries to face temporary financial limitations due to unforeseen circumstances. I am, therefore, prepared to give the proposed amendment a trial and hence am willing to support this clause 3 and in particular its subsection (2), Sir.

*Proposed Amendment**Clause*

3 That clause 3 be amended—

- (a) in subsection (1) of the proposed section 20A, by deleting the words “, after the 30th day of June 1970,”; and
- (b) in the proposed section 20A, by adding after subsection (2) the following new subsection—

"(3) This section shall come into operation on the 1st day of August 1970. "

The amendment was agreed to.

Clause 3, as amended, was agreed to.

Clause 4.

MR HETHERINGTON: —Sir, it is my intention to move amendments to both clauses 4 and 5. It would be illogical to consider the proposed amendment to clause 4 at this stage because it would be meaningless unless the amendment which I wish to propose to clause 5 is considered and approved first. Consequently, I seek your approval, Sir, in accordance with section (4) of Standing Order 46 of this Council, that consideration of clause 4 should be postponed.

HIS EXCELLENCY THE PRESIDENT: —Clause 4 will be considered after clause 5.

Clause 5.

MR HETHERINGTON: —Sir, I move that clause 5 be amended on two occasions as set out in the paper before honourable Members.

The first amendment simply re-numbers new section 34A as subsection 1 of new section 34A.

The second amendment adds a new subsection 2. This requires that a person who applies to a District Judge for a warrant for the arrest of an absconding employer shall have reasonable grounds for making such an application. I suggest that this requirement is unexceptionable.

DR CHUNG: —Sir, I believe the new subsection (2) of the proposed section 34A is a necessary and fair addition to provide a deterrent against possible abuse of the subsection (1) by any employee, and therefore it has my full support.

Proposed Amendment

Clause

5 That clause 5 be amended—

- (a) by renumbering the proposed section 34A as subsection (1) of that section; and
- (b) in the proposed section 34A, by adding after subsection (1) the following new subsection—

"(2) No person shall make an application under subsection (1) unless he has reasonable grounds for making such application. "

The amendment was agreed to.

Clause 5, as amended, was agreed to.

Clause 4.

MR HETHERINGTON: —Sir, following the amendment of clause 5, I now return to clause 4. I move that the existing clause 4 be deleted and a new clause 4, as set out in the paper before honourable Members, be substituted.

New clause 4 amends section 31 of the Employment Ordinance in two respects. Firstly, it adds a new subsection, subsection (1B), which makes it an offence for a person to apply wilfully for an application for a warrant for the arrest of an absconding employer without reasonable grounds for doing so. The purpose of this new subsection is to enable a prosecution to be initiated against a malicious employee. Secondly, it brings an offence by an employer against new section 20A within subsection (1) instead of subsection (2) of section 31 of the

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Employment Ordinance. The significance of this change is that no prosecution may be commenced under subsection (1) of section 31 unless the Commissioner of Labour has consented in writing and, before giving such consent, has heard the person against whom the allegation is made or has given him an opportunity of being heard. In the course of normal administrative practice, such steps would generally be taken. The effect of this amendment is to impose a statutory obligation on the Commissioner of Labour to adopt a procedure which would normally be followed.

Proposed Amendment

Clause

4 That clause 4 be deleted and the following new clause substituted therefor—

"Amendment
of section 31.

4. Section 31 of the principal Ordinance is amended—

(a) in subsection (1), by deleting "or 15" and substituting the following—

“, 15 or 20A”;

(b) by adding, after subsection (1A), the following new subsection—

"(1B) Any person who wilfully contravenes subsection (2) of section 34A shall be guilty of an offence. "

The amendment was agreed to.

Clause 4, as amended, was agreed to.

Clause 6 was agreed to.

Clause 7.

MR HETHERINGTON: —Sir, I move that clause 7 be amended on two occasions as set out in the paper before honourable Members.

It is considered that the creation of a new offence under subsection (2) of new section 34A now provides a sufficient deterrent against a malicious application for a warrant for the arrest of an employer. It is no longer thought necessary to include a summary procedure for the award of damages against a malicious applicant. Consequently,

paragraph 10 of the new Second Schedule is deleted. In any event, an employer can exercise an existing right to initiate a civil action to recover compensation for any loss or inconvenience which he may have suffered. The purpose of the amendments previously approved and the present amendment is to attempt to strike a fair balance between protecting the interests of genuinely-aggrieved employees against absconding employers and the interests of law-abiding employers against malicious employees. This particular problem has provoked a great deal of discussion and thought and it has not been easy to find a solution. I am grateful to all those who have offered suggestions for reaching a satisfactory answer to the difficulty.

The re-numbering of existing paragraph 11 as paragraph 10 is consequential on the deletion of existing paragraph 10.

Proposed Amendment

Clause

- 7 That clause 7 be amended—
- (a) by deleting paragraph 10 of the proposed Second Schedule; and
 - (b) by renumbering paragraph 11 of the proposed Second Schedule as paragraph 10 of that Schedule.

The amendment was agreed to.

Clause 7, as amended, was agreed to.

New clause 4A "Amendment of section 32".

Clause read the first time and ordered to be set down for second reading pursuant to Standing Order No 46(6).

MR HETHERINGTON:—Sir, in accordance with section (6) of Standing Order 46 of this Council, I move that new clause 4A, as set out in the paper before honourable Members, be read a second time.

As I have explained, one of the effects of new clause 4, which has just been approved, is to make it mandatory for the Commissioner of Labour to hear an employer or give him an opportunity of being heard before commencing a prosecution for an offence under new section 20A. It is considered equally appropriate that no prosecution should be commenced against an employee for an offence under new subsection (1B) of section 31 unless the Commissioner of Labour has consented in writing and, before giving such consent, has heard the employee against whom the allegation is made or has given him an

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opportunity of being heard. New clause 4A provides accordingly. Thus, both an employer and an employee are subject to identical procedures before any prosecutions may be commenced against them.

Question put and agreed to.

Clause read the second time.

MR HETHERINGTON: —Sir, I now move that new clause 4A be added to the bill.

Proposed Addition

Clause

4A That the following new clause be added after clause 4—

"Amendment of section 32. **4A.** Section 32 of the principal Ordinance is amended, in subsection (1), by inserting after "subsection (1)" the following—

"or (1B)".

The addition of the new clause was agreed to.

**FACTORIES AND INDUSTRIAL UNDERTAKINGS
(AMENDMENT) BILL 1970**

Clauses 1 to 3 were agreed to.

BUILDINGS (AMENDMENT) BILL 1970

Clauses 1 and 2 were agreed to.

HONG KONG STADIUM BILL 1970

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

Clauses 1 to 10 were agreed to.

Council then resumed.

Third reading

THE ACTING COLONIAL SECRETARY (MR HOLMES) reported that the Marriage Reform 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 ATTORNEY GENERAL (MR SNEATH) reported that the

Evidence (Amendment) Bill 1970

Promissory Oaths (Amendment) (No 2) 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.

MR HETHERINGTON reported that the Employment (Amendment) (No 3) Bill 1970 had passed through Committee with certain amendments and one additional clause and, in moving the third reading, he said: —

The only significant amendment is that an offence has been created if a person applies wilfully for an application for a warrant for the arrest of an employer without reasonable grounds. Apart from the change of a date, all other amendments approved are related to or consequential on this single amendment. It has caused more textual changes than I had anticipated. One effect is that the publication of the usual guide to the new legislation, in both Chinese and English, will not be ready immediately because the draft, already prepared, will require amendment to conform with the revised text of the bill. I will endeavour to ensure that it is issued with the least delay.

Question put and agreed to.

Bill read the third time and passed.

MR HETHERINGTON reported that the Factories and Industrial Undertakings (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 J. J. ROBSON reported that the Buildings (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 A. T. CLARK reported that the Hong Kong Stadium 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.

Tribute to Mr T. D. Sorby and Mr Fung Hon-chu

HIS EXCELLENCY THE PRESIDENT: —Honourable Members will no doubt already know that this is the last sitting of the Council at which Mr SORBY will be present: he is due to go on leave on the 20th July 1970 prior to retirement. I should like, therefore, to thank him very sincerely for the service he has given since he became a permanent Member in 1966. He will of course be returning to Hong Kong later in the year to continue his association with the promotion of our overseas trade and I am sure all Members will join with me in wishing him every success in his new responsibilities.

Honourable Members will also wish to know that Mr FUNG Hon-chu, who is at present out of the Colony, has informed me of his wish not to be called upon to serve a further term. He has served continuously on the Council for the past six years and, before we adjourn, I am sure you would like me to record our sincere appreciation of the service he has rendered during that period.

MR Y. K. KAN: —Sir, on behalf of my unofficial colleagues I wish to associate ourselves with all that you have said. Mr SORBY—although he is leaving the Council—the community will continue to have the benefit of his able and valuable services in the other capacity to which you have referred and, speaking for myself, I look forward to working with him even more closely in that capacity.

Mr FUNG has a very long and distinguished record of public service. It has been my privilege to work with him first on the Urban Council and throughout his term as an Unofficial Member on this Council. I, like many of us who have had the benefit of working

together with him, have come to respect him and admire him for his very high sense of duty, his integrity and his very deep interest and concern for the welfare of this community. Although he is leaving this Council, I am sure that he will continue to make many more useful and valuable contributions for the good of Hong Kong.

ADJOURNMENT

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

3.12 p.m.

NEXT SITTING

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

Adjourned accordingly at twelve minutes past Three o'clock.