

OFFICIAL REPORT OF PROCEEDINGS

Wednesday, 10th February 1971

The Council met at half past Two o'clock

[MR PRESIDENT in the Chair]

PRESENT

HIS EXCELLENCY THE GOVERNOR (*PRESIDENT*)
 SIR DAVID CLIVE CROSSBIE TRENCH, GCMG, MC
 THE HONOURABLE THE COLONIAL SECRETARY
 SIR HUGH SELBY NORMAN-WALKER, KCMG, OBE, JP
 THE HONOURABLE THE ATTORNEY GENERAL
 MR DENYS TUDOR EMIL ROBERTS, CBE, QC, JP
 THE HONOURABLE THE SECRETARY FOR HOME AFFAIRS
 MR DAVID RONALD HOLMES, CMG, CBE, MC, ED, JP
 THE HONOURABLE THE FINANCIAL SECRETARY
 SIR JOHN JAMES COWPERTHWAITTE, KBE, CMG, JP
 THE HONOURABLE ROBERT MARSHALL HETHERINGTON, DFC, JP
 COMMISSIONER OF LABOUR
 THE HONOURABLE DAVID RICHARD WATSON ALEXANDER, MBE, JP
 DIRECTOR OF URBAN SERVICES
 THE HONOURABLE JAMES JEAVONS ROBSON, JP
 DIRECTOR OF PUBLIC WORKS
 THE HONOURABLE DONALD COLLIN CUMYN LUDDINGTON, JP
 DISTRICT COMMISSIONER, NEW TERRITORIES
 DR THE HONOURABLE GERALD HUGH CHOA, JP
 DIRECTOR OF MEDICAL AND HEALTH SERVICES
 THE HONOURABLE PAUL TSUI KA-CHEUNG, OBE, JP
 COMMISSIONER FOR RESETTLEMENT
 THE HONOURABLE JACK CATER, MBE, JP
 DIRECTOR OF COMMERCE AND INDUSTRY
 THE HONOURABLE HO NGA-MING, JP
 DIRECTOR OF EDUCATION (*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, OBE, JP
 DR THE HONOURABLE CHUNG SZE-YUEN, OBE, JP
 THE HONOURABLE LEE QUO-WEI, OBE, JP
 THE HONOURABLE OSWALD VICTOR CHEUNG, QC, JP
 THE HONOURABLE ANN TSE-KAI, OBE, JP
 THE HONOURABLE LO KWEE-SEONG, JP

ABSENT

THE HONOURABLE HERBERT JOHN CHARLES BROWNE, JP
 THE HONOURABLE GERALD MORDAUNT BROOME SALMON, JP

IN ATTENDANCE

THE CLERK TO THE LEGISLATIVE COUNCIL
 MR RODERICK JOHN FRAMPTON

Oath

MR HO NGA-MING took the Oath of Allegiance and assumed his seat as a provisional Member of the Council.

HIS EXCELLENCY THE PRESIDENT:—May I welcome Mr Ho 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:—	
Companies Ordinance.	
Recognized Stock Exchanges Order 1971	2
Legal Officers Ordinance.	
Legal Officers Ordinance (Amendment of Schedule) Order 1971.....	3
Dutiable Commodities (Liquor) Regulations 1970.	
Dutiable Commodities (Liquor) Regulations 1970 (Commencement) Notice 1971	4
Sessional Papers 1970-71:—	
No 39—Annual Report by the Commissioner of Labour for the year 1969-70 (published on 10.2.71).	
No 40—Annual Report by the Commissioner for Resettlement for the year 1969-70 (published on 10.2.71).	
No 41—Annual Report by the Director of Marine for the year 1969-70 (published on 10.2.71).	
No 42—Annual Report of the Li Po Chun Charitable Trust Fund for the period 1st September 1969 to 31st August 1970 (published on 10.2.71).	
No 43—Annual Report by the Director of Audit for the year 1969-70 (published on 10.2.71).	
No 44—Despatch No 114 of 1971 to the Secretary of State on the report by the Director of Audit for the financial year ended 31st March 1970 (published on 10.2.71).	

Subject

No 45—Certificate of the Director General of the Overseas Audit Service on the accounts of Hong Kong for the year ended 31st March 1970 (published on 10.2.71).

Oral answers to questions
Transport of passengers to and from the Airport

1. MR K. S. Lo asked:—

I understand that by the end of this year there will be four or five airlines operating jumbo jet flights in and out of Kai Tak Airport. In view of the unsatisfactory and inadequate taxi service in the area, what plans has the Government in mind for transporting the large number of arriving and departing passengers to and from their hotels expeditiously?

THE FINANCIAL SECRETARY (SIR JOHN COWPERTHWAIT):—Sir, I understand that the matter is presently under study by the Commissioner for Transport and the Transport Advisory Committee.

Correspondence between Government and the public

2. MR Y. K. KAN asked:—

Is Government aware that its Departments usually insist on members of the public, with whom they correspond, quoting the Departments' references but fail to quote the reference used by members of the public? Is this Government's policy?

THE COLONIAL SECRETARY (SIR HUGH NORMAN-WALKER):—Sir, I am certainly aware that the Government does all it can to encourage members of the public to quote references. I am not aware that we on our side "usually" fail to quote references in replies. Indeed it is the prescribed practice for the Colonial Secretariat and all Departments to quote the reference used by members of the public with whom they correspond. This is laid down in section 36 of the Government Manual of Office Practice.

It is of course possible—indeed probable—that in individual cases references have been omitted and, if my honourable Friend will let me have details of any such cases, I will be happy to draw the attention

[THE COLONIAL SECRETARY] **Oral Answers**

of the officer concerned to the rules—including myself if necessary. I will in any case have a circular issued to Heads of Departments asking them to remind their staffs of the correct procedure.

Corporal punishment

3. MR P. C. WOO asked:—

Does Government intend to amend the Corporal Punishment Ordinance (Chapter 222) so as to include the possession of offensive weapons among the offences attracting corporal punishment?

THE ATTORNEY GENERAL (MR D. T. E. ROBERTS):—Yes, Sir.

Delivery of parcels by the Post Office

4. MR WOO asked:—

Will Government inform this Council the method of delivery of parcels by the Post Office to receivers?

THE COLONIAL SECRETARY (SIR HUGH NORMAN-WALKER):—Sir, before 1962 all parcels were collected at post offices by the addressees. Since that date, when vans and staff were provided for the purpose, parcels, have been delivered to all addressees on Hong Kong Island; a similar delivery service started in Kowloon in 1969. However there are still seven circumstances in which addressees are requested to call at post offices to collect parcels.

First, parcels for addressees in the business area of the Central District. About 5 years ago extensive tests were carried out which indicated that it was impracticable to introduce a delivery service in to this area owing to traffic congestion and crowded lifts in multi-storey buildings.

Second, when more than 3 parcels are addressed to the same addressee.

Third, insured parcels.

Fourth, when charges have to be paid before delivery of a parcel can be made.

Fifth, when an attempt has been made to deliver a parcel but the addressee is not available—in this case a card is left by the postman asking the addressee to collect the parcel from a post office.

Sixth, when a parcel is received in a damaged condition the addressee is requested to attend at a post office to examine its contents.

Finally, the public sometimes think of large packets sent by low category letter post as parcels. These packets are normally taken out for delivery by the regular postman unless their weight and quantity would delay the distribution of first category correspondence, in which case addressees are requested to collect the packets from a post office.

There are four post offices on Hong Kong Island, five post offices in Kowloon and all post offices in the New Territories from which parcels can be collected.

MR KAN:—Sir, just one supplementary question. When the addressee is asked to collect his own parcel, is the reason generally given on the card?

THE COLONIAL SECRETARY (SIR HUGH NORMAN-WALKER):—I cannot answer that off the cuff. My own experience in other countries, and particularly in the UK, is that no reason is given. It simply says that a parcel is awaiting your collection. I will let the Member have the information he requires soon after the meeting.

Gross national product

5. DR S. Y. CHUNG asked:—

Based on the information available, will Government inform this Council

- (a) the estimated per capita gross national product at current prices for Hong Kong in the two years of 1969 and 1970 separately;
- (b) the estimated average annual growth rates for the per capita GNP and the total GNP during the last five years; and
- (c) the estimated share contributed by the manufacturing industry and the tourist industry respectively towards the GNP?

THE FINANCIAL SECRETARY (SIR JOHN COWPERTHWAITTE):—Sir, as we do not have information available on which we can base reasonable estimates of gross national product, I regret that I cannot provide the estimates my honourable Friend has requested.

DR CHUNG:—When will Government be able to give an estimated answer to my question, Sir?

Oral Answers

THE FINANCIAL SECRETARY (SIR JOHN COWPERTHWAITTE):—We have no information available and are unlikely to have information available, so I do not think we can give Dr CHUNG the estimates he has requested at any time. I dealt at length on the subject of estimates of gross national product in the debate on the estimates in the last financial year. The references are to pages 495 to 496 of Hansard 1969-70.

DR CHUNG:—Sir, I am aware of that. I believe that all Governments in the world make an attempt to estimate and publish such important national statistics. Why is it that the Government of Hong Kong tries to be indifferent in this manner?

THE FINANCIAL SECRETARY (SIR JOHN COWPERTHWAITTE):—I explained why in the debate to which I have referred.

Mutual funds legislation

6. MR KAN asked:—

The honourable Financial Secretary in reply to a question put by me in this Council on 5th November 1969 said that he found it difficult to gauge the urgency of making laws to deal with mutual funds and that he had no evidence at that time of any fraud having taken place in connection with mutual funds. Does he recall that I had then suggested that prevention was better than cure? In the light of recent developments is he in a position now of gauging the urgency of making such laws?

THE FINANCIAL SECRETARY (SIR JOHN COWPERTHWAITTE):—Sir, what further evidence of fraud there has been since 5th November 1969 (I stress the word fraud) has, I understand, neither been extensive nor conclusive.

I agree with my honourable Friend's implied view that we should have regulating legislation as soon as we can but it must be carefully thought out legislation. Hasty and partial legislation can be worse than the disease; and there is in any case a limit to the extent to which legislation can protect the public from its own gullibility and greed. We still await, I am afraid, the recommendations of the Companies Law Revision Committee on this and related problems. It was earlier hoped that their report would be ready by July last year but I understand that it will not now be ready before the end of March. Some work has already been done on the drafting of a bill based on the Committee's draft recommendations.

Container terminal at Kwai Chung

7. MR SZETO WAI asked:—

Can Government say when it is anticipated that the Container Terminal at Kwai Chung will be ready for operation, and what plans has Government to ensure that our urban roads are adequate to cope with the ensuing heavy transport?

MR J. J. ROBSON:—Sir, Members of this Council will be aware that in accordance with the lease conditions, reclamation and construction works necessary to develop the 3 container terminals are being carried out by the purchasers of the lots. These conditions stipulate that Lots 1 and 2 have to be opened for use as container terminals by August 1974 and Lot 3 by February 1975. It is, however, understood that the developers wish to bring the terminals into operation with target dates of mid-1972 for the completion of Lot 1 and the beginning of 1973 for Lots 2 and 3.

The second part of my honourable Friend's question asks what plans Government has to ensure that our urban roads are adequate to cope with the ensuing heavy traffic. Movement by road of the largest 40' long \times 8' \times 8' containers will obstruct traffic little more than double-decker buses and the roads have sufficient structural strength to take the wheel loads involved. It is expected, however, that in the first instance most of these containers will *not* be moved by road but filled and emptied at the container terminals. Greater numbers of smaller 20' long \times 8' \times 8' containers will be moved by road but these have been transported to and from the Kowloon Wharf & Godown Container Yard at Canton Road for some time without any great problem and transportation to and from Kwai Chung should be easier still.

As regards density of traffic, the handling of cargo by containers will not alter the volume of cargo imported and exported but the numbers of vehicles handling it will, of course, be reduced. Only the destination will alter and the Kwai Chung Terminal is well served by the road network on the mainland which is one of the reasons for choosing this site. Thus in general terms the only plans necessary in respect of container traffic are to ensure that this traffic has easy access to and from the container terminal. These plans include:—

- (a) grade separation at the junction of the container terminal access road with Kwai Chung Road which is already a dual carriageway of adequate capacity;
- (b) a new road link between Kwai Chung Road and Ching Cheung Road by way of Lai Chi Kok;

[MR ROBSON] **Oral Answers**

- (c) widening of Ching Cheung Road and Lung Cheung Road to dual carriageway standards with grade separation at the major intersections; and
- (d) extending Lung Cheung Road to Kwun Tong Road.

Honourable Members will be aware that the latter project has been delayed because of difficulty in clearing the land required.

Fire hazards in old buildings

8. MR SZETO asked:—

In view of the many serious fires recently, has any action been contemplated by Government to deal with those very old and crowded tenement buildings of timber floor and stair construction since they constitute fire hazards and therefore are dangerous?

MR ROBSON:—Sir, I think it is necessary to correct the impression which may have been given by my honourable Friend's question for I am informed by the Director of Fire Services that while there have been a number of serious fires recently, the number which occurred in the old buildings of timber floor and stair construction described by my honourable Friend is in fact less than usual.

These old properties are largely situated in the Western and Central Districts of Hong Kong Island and house great numbers of people. It would not be feasible to embark upon wholesale clearance and demolition of these buildings; the chief remedy lies in redevelopment and as far as can be observed when walking through this area redevelopment is in fact taking place naturally without any assistance from Government. However, the area is within the Urban Renewal District and the recent action taken to purchase property and form open spaces, *etc.*, will, it is felt, accelerate this process.

It will be a number of years before these old properties disappear and until this is accomplished they will continue to require the special attention of the Director of Fire Services.

MR SZETO:—Has Government taken any survey of the number of these old buildings with wooden floor and stair construction?

MR ROBSON:—We have no survey, Sir, which actually gives a count but, as I have said, I think basically that, in the Western District of Hong Kong Island, the older properties are of this type of construction.

Typhoon shelters

9. MR SZETO asked:—

What measures has Government taken in recent years to prevent congestion at the typhoon shelters at Yau Ma Tei and Causeway Bay at the approach of typhoons, and will Government explain why the construction of the typhoon shelter at Shau Kei Wan has taken so long?

MR ROBSON:—Sir, it was hoped that the typhoon shelters which have already been built at Aberdeen Harbour, Aberdeen Channel, Rambler Channel, Shuen Wan in Tolo Harbour and Yim Tin Tsai near Sai Kung would prevent congestion at the Yau Ma Tei and Causeway Bay shelters by taking care of local craft and providing alternative shelters to which boats at sea would run when a typhoon approached. However, congestion at the typhoon shelters at Yau Ma Tei and Causeway Bay is still being experienced due principally to the reluctance of the fishing fleet to remain at Aberdeen on the approach of a typhoon. To combat congestion the Marine Department in conjunction with the Marine Division of the Police maintain a presence at the entrances to typhoon shelters when warning of an approaching tropical cyclone is received. The object of this is to direct craft to particular areas and, when all available space is filled, to redirect craft to alternative typhoon shelters or sheltered anchorages.

The Marine Department and the Public Works Department are investigating the feasibility of reducing the depth of water in certain areas of the typhoon shelters at Aberdeen so as to provide better holding ground for the anchors. In addition the Marine Department is considering laying special mooring buoys with substantial sinkers for the use of fishing craft in typhoon conditions. If found practicable these measures should reduce the fishermen's present fears of typhoon winds from the east which sweep along the length of the shelter often in conjunction with the much stronger tidal currents which occur at these times.

With regard to the Aldrich Bay breakwater, this item was upgraded to Category B of the Public Works Programme at the Third Review 1966 and to Category A at the First Review 1967. Work started on the breakwater in March 1968 and was substantially completed in November 1970 thereby forming an effective typhoon shelter. Both the Director of Marine and I consider that the actual time spent on design and construction to be reasonable.

[MR ROBSON] **Oral Answers**

Some additional work is being carried out for the installation of four oil storage tanks on the breakwater which will supply four marine fuelling stations, but this work does not affect the use of the area inside the breakwater as a typhoon shelter.

MR SZETO:—Sir, is it true that there have been occasions when the shelter at Yau Ma Tei was so congested due to the presence of non-working craft that some of the vehicular ferries have had to stop running earlier than was necessary in order to gain entry into the shelter?

MR ROBSON:—Sir, I have heard that said but I have no facts to support the statement. I could, however, look into this and let the honourable Member know.

Primary and secondary education

10. MR WILSON WANG asked:—

What is the present number of Primary Six pupils in all the schools and how many aided and assisted Form One places will be available for them this September?

MR HO NGA-MING:—Sir, there are 94,600 children at present attending Primary 6 classes in day schools and a further 7,000 attending Primary 6 classes in night schools and tutorial classes, making a total of 101,600. Of this total, an estimated 69,400 will sit the Secondary School Entrance Examination in May this year.

I am unable to give a precise figure for the number of aided and assisted places which will be available in Form I this September, but the present indications are that it could be about 26,000, made up as follows:—

(a)	Form I and Middle I places in 5-year courses in Government and aided schools	approx. 14,600
(b)	Form I places in 3-year courses in Government and aided schools.....	approx. 1,400
(c)	Assisted Form I and Middle I places in 5-year courses in private schools	approx. 2,000
(d)	Assisted Form I places in 3-year courses in private schools.....	approx. 8,000
		<hr/> approx. 26,000

The 8,000 places referred to at (d) above, that is the assisted Form I places in 3-year courses in private school, would be receiving assistance for the first time and would represent the first step in implementing the new policy of providing, as soon as practicable, 3 years of aided post-primary education for all who want it. The Board of Education has endorsed the basis on which it is proposed to grant financial assistance for these places. In the near future comprehensive proposals covering the financing generally of the new post-primary policy will be presented to the Finance Committee of this Council for consideration.

MR OSWALD CHEUNG:—Sir, may I ask a supplementary question of my honourable Friend. Does this mean that 43,000 of those who sit for the secondary school entrance examination will not find places in Government or aided schools in the forthcoming year?

MR HO:—Sir, this is true, but it is to be mentioned that the number of new places—what we call bought places—to be created for September is going up tremendously. The 8,000 represents a substantial increase in the number of bought places. Those who are unable to attend the Government and aided schools would seek admission in the private schools and it is to be hoped that, with the implementation of the newly approved policy on post-primary education, more places in the private schools as well as in Government and aided schools will be provided.

MR CHEUNG:—Sir, one more supplementary question. Is Government encouraging aided schools to create more places in the secondary stream or is it limiting the number of places in the grammar school type of secondary school and discouraging the expansion of aided schools in that direction?

MR HO:—The present figures show that there is a steady increase in the number of Form I places in the Government as well as the aided schools and it is hoped that the total number of bought places in the private schools, whether assisted or unassisted, will be increased in the near future. There are a number of projects involving the creation of more aided or subsidized secondary schools and these new places are likely to be available in the near future. The figure which I have just given as 14,600 places in 5-year courses in Government and aided schools has taken into account another 2,000 places to be created in subsidized secondary schools in September.

Oral Answers

Free primary education

11. MR KAN asked:—

Will the Government make a statement concerning the provision of free primary education urged by me in the Budget Debate in March last year?

MR HO:—Sir, proposals relating to the provision of free primary education are to be considered very shortly by Finance Committee of this Council. I know that my honourable Friend would not wish me to anticipate the findings of Finance Committee.

Government business Motions

WIDOWS AND ORPHANS PENSION ORDINANCE

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

It is hereby resolved that the Widows and Orphans Pension (Application) (Amendment) Regulations 1970, made by the Governor in Council on the 22nd day of December 1970, be approved.

He said:—Sir, at the meeting of 22nd December 1970, the Governor in Council ordered that the Widows and Orphans (Pension) (Application) (Amendment) Regulations be made. Section 3 of the principal Ordinance provides that no such regulation shall take effect unless it has received the prior approval of this Council, signified by resolution.

Sir, these regulations make two amendments of a minor nature to section 3 of the existing regulations. That section lists certain posts whose holders are not to be "officers" within the meaning of the Ordinance and to whom the Ordinance does not, therefore, apply.

The first amendment is purely a formal one. It removes from the list the obsolete grade of Fireman which was restyled Fireman Class II with effect from 1st April 1961. The grade of Fireman Class II is already in the list.

The second amendment adds to the list the new grade of Ambulanceman Class II. This grade has the same scale as Fireman Class II, which is already exempted and which was replaced in the Ambulance Division of the Fire Services by the grade of Ambulanceman Class II,

with effect from 5th January 1966. Strictly speaking, these men have been liable to contribute to the Widows and Orphans Pension Scheme since that date but they have not been required to do so and have not done so; and it is understood that they do not wish to do so. The Ordinance gives power to amend the regulations with retrospective effect.

There are, however, two Ambulancemen Class II who, by virtue of service in a previous post to which the Ordinance did apply, are already contributors. Their rights will be safeguarded as they may continue as contributors on the normal conditions if they so opt. If they opt to cease contributing, a pension will be registered in their name based on their contributions to the date of cessation.

Question put and agreed to.

FACTORIES AND INDUSTRIAL UNDERTAKINGS ORDINANCE

MR R. M. HETHERINGTON moved the following motion:—

It is hereby resolved that the Factories and Industrial Undertakings (Amendment) Regulations 1971, made by the Commissioner of Labour on the 22nd day of December 1970, be approved.

He said:—Sir, I move the resolution standing in my name on the Order Paper.

The purpose of this resolution is to obtain the approval of the Legislative Council for regulations made by me on 22nd December 1970 and submitted to the Governor in accordance with subsection 3 of section 7 of the Factories and Industrial Undertakings Ordinance. These regulations are called the Factories and Industrial Undertakings (Amendment) Regulations 1971.

In a speech made in this council on 27th August 1969, my honourable Friend, Dr CHUNG, drew attention to regulation 29 of the Factories and Industrial Undertakings Regulations*. He said that it provided means for closing openings in the floor of factories in the case of fire which were obsolete and suggested that it should be amended when the next batch of amendments was under consideration. Mr RICHARDSON, Commissioner of Labour in my absence, agreed with Dr CHUNG's view and undertook to amend regulation 29.

The regulations now presented fulfill this undertaking. Regulation 29 is revoked. Regulation 33(d) is revised to give the Commissioner of

* 1969 Hansard, page 529.

[MR HETHERINGTON] **Factories and Industrial Undertakings Ordinance**

Labour adequate powers to specify measures to be taken in any registrable workplace to reduce the risks of an outbreak of fire, the spread of fire, and the spread of smoke from any fire. The amended regulation is an adaptation of a similar provision in the United Kingdom Factories Act. In accordance with my present practice, I will continue to seek the advice of the Director of Fire Services on appropriate safety measures against fires in factories.

These regulations have been unanimously approved by the Labour Advisory Board. The Director of Fire Services has also been consulted and he finds them acceptable.

Sir, I feel that I should explain the reason for the long delay in presenting these comparatively simple amending regulations to this Council. The Factories and Industrial Undertakings Regulations are constantly under examination in the light of changing circumstances. It is normally preferable to bring together a batch of amendments for consideration by honourable Members from time to time rather than to present individual amendments at more frequent intervals. Several amendments are under consideration at present but these require further examination. Because of the promise given to my honourable Friend, Dr CHUNG, by Mr RICHARDSON, I considered that it was desirable to honour the undertaking without further delay. Accordingly, I decided not to hold up any longer action on regulation 29, which was finished some time ago, until the examination of other amendments could be completed.

DR CHUNG:—Your Excellency, I am grateful to my honourable Friend, the Commissioner of Labour, for honouring his undertaking without further delay to revoke regulation 29 of the Factories and Industrial Undertakings Regulations.

I was pleased to hear that these Factories and Industrial Undertakings Regulations are constantly under examination in the light of changing circumstances. Since my honourable Friend indicated that several amendments are under consideration, I venture to take this opportunity to comment on two particular regulations and request that consideration be given to amending them in the next batch of amendments.

The first one is regulation 34 which, in essence, stipulates that all benches of workrooms shall be wiped daily; the floor of every workroom shall be cleaned at least once in every week; and all inside walls, partitions and ceilings shall be limewashed at least once in every year. My honourable Friend is no doubt aware that apart from factories in the electronic and textile spinning industries, there are increasing

numbers of factories in other industries air-conditioning their workrooms. There is therefore hardly any necessity to impose such a restrictive regulation upon these air-conditioned and almost dust-free workrooms. The main requirement is to keep the workrooms clean and, for the purposes of this regulation, the method of keeping the workrooms clean is immaterial. In view of changing conditions, it appears that regulation 34 requires amendment to bring it up to date.

The next one is regulation 30, which prohibits smoking in workplaces where there is any inflammable liquid or any mixture containing such liquid or any substance or thing which involves danger from fire. It is therefore natural to assume that in those other factories which do not have any such inflammable materials smoking would be permitted. However, to the best of my knowledge and belief, all registrable factories are required to put up non-smoking signs.

Lest honourable Members misinterpret my intention, I hasten to say that I do believe that smoking in all factories should not be allowed. Although workrooms in factories, strictly speaking, are not public places, it would be in the interests of public health to ban smoking in all registrable workplaces. I therefore suggest that my honourable Friend, the Commissioner of Labour, give due consideration to amending regulation 30 for the prohibition of smoking in any registrable workplace on the ground of public health.

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

MR HETHERINGTON:—Sir, I am grateful for the personal support which my honourable Friend, DR CHUNG, has given to this resolution. I also welcome the helpful suggestions which he has made on other regulations of which, I know, he has a detailed knowledge.

Regulation 34 of the Factories and Industrial Undertakings Regulations requires that registrable workplaces shall be kept clean

- (a) by the daily removal of dirt and refuse;
- (b) by the weekly washing or sweeping of every floor;
- (c) by the annual limewashing of every inside wall, partition, and ceiling or, where these are oil-painted or varnished, washing with hot water and soap at least every 14 months.

These requirements follow very closely the text of portions of section 1 of the United Kingdom Factories Act. It is, I believe, significant that the first section of the United Kingdom act deals with good housekeeping in factories. Moreover, it is effectively enforced. Only last week, I read of a successful prosecution against the management of a plastics factory which was fined £60 for failing, in accordance with this section, to keep its floors clean.

[MR HETHERINGTON] **Factories and Industrial Undertakings Ordinance**

I see no reason to change these standards of cleanliness for general application. They have the merit of precision. Apart from considerations of health, there are also good reasons, in the interests of safety, why factories should be kept clean and tidy. Nonetheless, I agree that there are circumstances when these standards may be inappropriate. The nature of particular processes may be such that a higher degree of cleanliness than the statutory requirement is demanded as an integral part of a process. On the other hand, the standards may be too low in some circumstances—a point which Dr CHUNG does not make—and even higher standards than those generally required would be appropriate. Subsection (5) of section 1 of the United Kingdom Factories Act permits the Minister not only to exempt the whole or part of a factory from the general standards of cleanliness but also to impose higher standards. I think that it is now appropriate, bearing in mind the development of Hong Kong industry, to introduce comparable discretionary powers into regulation 34. I undertake to re-examine this regulation along these lines and to include any changes deemed appropriate in the next batch of amendments to the Factories and Industrial Undertakings Regulations.

Regulation 30 empowers me to prohibit smoking and the use of naked lights in any registrable workplace. There is no similar general provision in the United Kingdom Factories Act. In the United Kingdom, reliance is placed on the byelaws which local fire authorities are empowered to make in respect of factories. In Hong Kong, it is my practice to seek the advice of the Director of Fire Services on fire precautions generally and on the desirability of placing restrictions on smoking in particular. My honourable Friend, Dr CHUNG, is, I regret to say, misinformed in alleging that it is the universal practice to prohibit smoking in all registrable workplaces. There is no point, from considerations of safety, to ban smoking in boiler houses or near furnaces or in work rooms where naked lights are used as, for example, in jewellery workshops. No such prohibition is prescribed in such cases and I can provide him with the names and addresses of some of the workplaces where smoking is not prohibited by me.

As I understand Dr CHUNG's suggestion, he is proposing that regulation 30 should be amended to empower me to prohibit smoking not only for safety reasons but also from considerations relating to the health of employees. This is not a matter, I suggest, on which I should take departmental action independently of Government's policy on the subject. You will recall, Sir, that Dr CHUNG asked a question* in this Council three weeks ago about some aspects of Government's policy regarding smoking and public health. My honourable Colleague, the

* 1971 Hansard, page 339.

Director of Medical and Health Services, promised in his reply "to take a fresh look on whether any further action is called for". I am sure that he will take note of these latest exchanges when he does so.

Question put and agreed to.

First reading

DECEASED'S FAMILY MAINTENANCE BILL 1971

WIDOWS AND ORPHANS PENSION (AMENDMENT) BILL 1971

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

Second reading

DECEASED'S FAMILY MAINTENANCE BILL 1971

THE ATTORNEY GENERAL (MR ROBERTS) moved the second reading of:—"A bill to provide for maintenance of certain dependants out of the estates of deceased persons."

He said:—Sir, this bill is based mainly on the United Kingdom Inheritance (Family Provision) Act 1938, as subsequently amended. The enactment of legislation of this nature was recommended by the Hong Kong Law Reform Committee in its Third Report in 1959.

The object of the bill, which introduces a new principle to Hong Kong, is to ensure that very close relatives of a deceased person shall, in certain circumstances, be able to apply to the Supreme Court for a share of his estate, if he has not made an adequate provision for them himself.

It may well be argued that the need for legislation of this nature is less in Hong Kong than in most other countries, because of the strong tradition of family obligation which, in the majority of cases, ensures that a man's dependants will be looked after by other members of the family after his death. Nevertheless, although this is usually true, there are cases where people dispose of their estates in such a way as to leave their wives or children inadequately provided for after their death.

The most important provision of the bill is contained in clause 4, which empowers the Supreme Court to order that reasonable provision shall be made out of the estate of a deceased for the maintenance of his dependants, if the court is of the opinion that the deceased's will, or the operation of the law governing intestacy, or a combination of both, is such that the dependants are not adequately provided for.

[THE ATTORNEY GENERAL] **Deceased's Family Maintenance Bill — second reading**

The court will normally order maintenance by way of periodical payments, though there is provision for the payment of lump sums.

The definition of dependant, in clause 2 of the bill, limits the class of persons who may apply to the court for an order for maintenance to a surviving spouse, an unmarried daughter, an infant son, a son of full age who is incapable of maintaining himself and a parent who is substantially maintained by the deceased at the time of his death.

If periodical payments are ordered by the court, then they will cease on the remarriage of a surviving spouse, on the marriage of a daughter, the attaining of 21 years or the cessation of a disability in case of a son, or the remarriage of a parent and on the death of any of these beneficiaries. By clause 5, application under the Ordinance must be made not later than six months after representation with regard to the deceased's estate is first taken out, although the court has power to extend this period.

When considering an application under the Ordinance, clause 6 obliges the court to take into account a number of factors which are set out in that clause, in particular the financial situation of the dependant who is making the application, his conduct in relation to the deceased, and the interests of other dependants.

Clause 10 enables the court, where an application for maintenance has been made, to give immediate financial assistance to the applicant if he can show that he needs this, pending the court's decision as to the provision of maintenance on a permanent basis.

Clause 11 provides for the discharge or variation of orders for maintenance and clauses 12 to 14 deal with supplementary matters.

Clause 16 and the Schedule contain transitional provisions, which will apply to unions of concubinage entered into before 7th October of this year, which is the day appointed for the coming into force of the Marriage Reform Ordinance 1970. The effect of clause 16 and the Schedule is to treat partners and dependants of these unions of concubinage as dependants for the purposes of the bill, except that no lump sum payments may be made to a party of a union of concubinage.

This bill is, I think, a useful reform which may help to mitigate hardship suffered by dependants who may be inadequately provided for after the death of the person on whom they have relied for support.

If the bill is enacted it is intended to bring it into effect on the same date as the Marriage Reform Ordinance 1970, and the Intestates' Estates Ordinance 1971, that is to say 7th October this year.

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

Question put and agreed to.

Explanatory Memorandum

This Bill seeks to introduce important new provisions designed to ensure that certain dependants of a deceased person shall receive benefits from his estate, if the deceased himself has failed to make reasonable provision for them. It is based largely on the Inheritance (Family Provision) Act 1938 (as amended) with some variations taken from the New Zealand Family Protection Act 1955.

2. In clause 2(1), a "dependant", in relation to a deceased, is defined as a wife or husband by a valid marriage, an unmarried daughter by a valid marriage, an infant son by a valid marriage or a son by a valid marriage who is, by reason of some mental or physical disability, incapable of maintaining himself, and a parent of the deceased substantially maintained by him at the time of this death. "Son" and "daughter" of a deceased include a child adopted by the deceased under the Adoption Ordinance or by an adoption to which section 17 of that Ordinance applies, and a son or daughter of the deceased born after his death.

3. Clause 2(2) defines the "net estate" of a deceased person out of which an order for maintenance may be made. Land to which Part II of the New Territories Ordinance applies which has not been exempted under section 7 of that Ordinance is excluded.

4. Clause 3 defines "valid marriage" for the purposes of the Ordinance as a marriage contracted under the Marriage Ordinance or validated or declared valid by the Marriage Reform Ordinance 1970, or a marriage contracted outside Hong Kong and valid under the law in the place it is contracted.

5. By clause 4 the court on the application of a dependant, if it is of opinion that the disposition of the deceased's estate under his will or the law relating to intestacy or a combination of his will and that law is not such as to make reasonable provision for the maintenance of that dependant, may order reasonable provision for the maintenance of that dependant to be made out of the deceased's net estate. But so that no such application shall be made where the surviving spouse is entitled to not less than two-thirds of the income of the net estate and the only other dependant or dependants is or are a child or children of the surviving spouse.

Deceased's Family Maintenance Bill—second reading*[Explanatory Memorandum]*

6. The court may order provision for maintenance to be made by way of periodical payments or, wholly or in part, by lump sum. But periodical payments made to any one dependant shall not be made at an annual rate which exceeds the annual income of the net estate and, if periodical payments are made to more than one dependant in respect of the same period, the aggregate annual rate of such payments shall not exceed the annual income of the net estate.

Periodical payments cease on the spouse's remarriage, a daughter's marriage, a son's majority or cessation of his disability or a parent's subsequent marriage, or, in any event, on death.

7. Application may be made within six months of the date on which representation in regard to the deceased's estate was first taken out or within such further period as the court may allow (clause 5). Those matters which are to be considered by the court on any application under clause 4 are set out in clause 6. In considering whether reasonable provision has been made for a dependant's maintenance, the court is not bound to assume that the law relating to intestacy makes reasonable provision in all cases.

8. Clause 7 deals with the effect and form of an order for maintenance. Clause 8(1) makes a deceased's net estate situate in Hong Kong liable for maintenance whether he was domiciled in or outside Hong Kong at the time of his death. Clause 8(2) provides that, unless the court orders otherwise, liability for the payment of any provision for maintenance ordered shall fall rateably upon the whole estate of the deceased, or on so much of it as is subject to the jurisdiction of the court. Under clause 8(3) the court may exonerate any part of the estate from this liability, thus enabling the court to throw liability on those best able to bear it.

9. Clause 9 enables any person, who is interested in property appropriated to satisfy from the income thereof any provision for maintenance, to obtain its release. The court may fix a periodical or lump sum to represent that proportion of the provision ordered to be paid for which the property is liable and may order that on security being given, the property shall be released.

10. By clause 10 the court may make an interim order for provision for maintenance of an applicant in immediate need of financial assistance, if property forming part of the deceased's net

estate can be made available to meet the needs of the applicant. Clause 11 provides for the discharge or variation of an order for provision for maintenance. Clause 12 restricts the mortgage, assignment or charge of provisions for maintenance.

11. The effect of clause 13 is to protect the personal representative of the deceased against liability for having distributed any part of the deceased's estate after the six months period referred to in clause 5 on the ground that he ought to have taken into account the possibility of an order being made by the court after that period.

12. Under clause 14, where the court exercises its discretion as to the grant of administration of an estate, a dependant of a deceased person by or on whose behalf an application under clause 4 is proposed to be made shall be deemed to be a person interested in the deceased's estate.

13. Clause 16 and the Schedule contain transitional provisions applicable to unions of concubinage entered before the day appointed under section 3 of the Marriage Reform Ordinance 1970. Partners and dependants of such unions of concubinage are treated as dependants for the purposes of the Bill except that no lump sum payment may be made to a *tsip* or male partner of such a union; and a *tsip* who becomes a dependant will lose any benefit under the Ordinance if she marries or commits an act of sexual intercourse.

WIDOWS AND ORPHANS PENSION (AMENDMENT) BILL 1971

The Governor's recommendation called for, and signified by the Financial Secretary pursuant to *Standing Order No 42(1)*.

THE FINANCIAL SECRETARY (SIR JOHN COWPERTHWAIT) moved the second reading of:—"A bill to amend the Widows and Orphans Pension Ordinance."

He said:—Sir, the object of this bill is to rectify certain anomalies resulting from the enactment of the Widows and Orphans Pension (Amendment) (No 2) Ordinance 1967, which introduced a new set of actuarial tables reflecting up-to-date mortality experience to replace those enacted in 1928. This Ordinance came into operation on 1st December 1967, but was made retrospective to 1st July 1959, the effective date of the 1959 Salaries Revision.

Application of the 1967 actuarial tables and instructions for calculating benefits has thrown up eight cases in which pensions correctly awarded under the previous tables and instructions were reduced when calculated under the 1967 provisions.

[THE FINANCIAL SECRETARY] **Widows and Orphans Pension (Amendment) Bill**
—second reading

The amounts are fairly small but no reduction in pension benefits should properly result from the retrospective application of amending pension legislation. The addition of two new Notes 5 and 6 to the instructions is designed to remedy the position, although it must be confessed that, in order to avoid inordinate complication, it may overcorrect very slightly in some cases.

Note 5 provides that where the amount of the part of a pension purchased by contributions made before 1st December 1967, when calculated under the existing Schedule to the Ordinance, is less than if that amount were calculated under the previous provisions, then the difference between the two amounts is to be added to the registered pension (if any) as on 30th November 1967, as calculated under the existing Schedule.

Note 6 provides that where a pension which became payable prior to 1st December 1967, when calculated under the rules in force on 30th June 1959, is found to be greater than if calculated under the present Schedule, then the pension shall continue to be calculated under the previous rules.

Question put and agreed to.

Bill read the second time.

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

Explanatory Memorandum

This Bill seeks to amend the Instructions for the Use of Pension Tables contained in Part II of the Schedule to the Widows and Orphans Pension Ordinance (Cap. 94) by providing that—

- (a) where the amount of that part of a pension purchased by contributions made before the 1st of December 1967, when calculated under the present Schedule to the Ordinance is less than if the amount were calculated under the Widows and Orphans Pension Rules in force on the 30th of June 1959, then the difference between the two amounts is to be added to the registered pension, if any, as on the 30th of November 1967, calculated under the present Schedule; and
- (b) where a pension, payable before the 1st of December 1967, when calculated under the Widows and Orphans

Pension Rules in force on the 30th of June 1959, is greater than if calculated under the present Schedule, then the pension shall continue to be calculated under those Rules.

Committee stage

Council went into Committee.

JURY (AMENDMENT) BILL 1971

Clauses 1 to 8 were agreed to.

TUNG WAH GROUP OF HOSPITALS BILL 1971

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 12 and the First and Second Schedules were agreed to.

Council then resumed.

Third reading

THE ATTORNEY GENERAL (MR ROBERTS) reported that the Jury (Amendment) Bill 1971 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 SECRETARY FOR HOME AFFAIRS (MR D. R. HOLMES) reported that the Tung Wah Group of Hospitals Bill 1971 had passed through Committee without amendment and moved the third reading of the bill.

Question put and agreed to.

Bill read the third time and passed.

Adjournment and next sitting

HIS EXCELLENCY THE PRESIDENT:—Council will accordingly adjourn pursuant to Standing Order No 8(5). The next sitting will be held at 2.30 p.m. on Wednesday 24th February 1971.

Adjourned accordingly at quarter past three o'clock.