

# OFFICIAL REPORT OF PROCEEDINGS

Wednesday, 24th 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  
THE HONOURABLE JOHN CANNING, JP  
DIRECTOR OF EDUCATION  
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 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  
THE HONOURABLE HERBERT JOHN CHARLES BROWNE, 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 GERALD MORDAUNT BROOME SALMON, JP  
THE HONOURABLE ANN TSE-KAI, OBE, JP  
THE HONOURABLE LO KWEE-SEONG, JP

## IN ATTENDANCE

THE CLERK TO THE LEGISLATIVE COUNCIL  
MR RODERICK JOHN FRAMPTON

### Papers

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

<i>Subject</i>	<i>LN No</i>
Subsidiary Legislation:—	
Cremation Ordinance.	
Cremation and Gardens of Remembrance (Amendment) Regulations 1971 .....	8
Jury Ordinance.	
Allowances to Jurors Order 1971 .....	12
Protection of Women and Juveniles Ordinance.	
Protection of Women and Juveniles (Places of Refuge) (Amendment) Order 1971 .....	13
Exportation (Cotton Manufactures) Regulations.	
Exportation (Cotton Manufactures) (Amendment of Schedule) Order 1971 .....	14
Mining Ordinance.	
Mining (Miscellaneous Amendment) Regulations 1971 .....	15
Census Ordinance.	
Census Order 1971 .....	16
Census Ordinance.	
Census (No 2) Order 1971 .....	17

Sessional Papers 1970-71:—

- No 46—Draft Estimates of Revenue and Expenditure with Explanatory Memoranda for the year ending 31st March 1972 (published on 24.2.71).
- No 47—Hong Kong Annual Report 1970 (published on 24.2.71).
- No 48—Report of the Establishment Sub-Committee of Finance Committee for the year 1970-71 (published on 24.2.71).
- No 49—Report of the Public Works Sub-Committee of Finance Committee (1970 Reviews leading to the 1971-72 Programme) (published on 24.2.71).

*Estimates of expenditure referred to a committee of the whole Council pursuant to Standing Order No 54(3) and also referred to the Finance Committee of the Council pursuant to Standing Order No 60(8).*

## Oral answers to questions

### Chong Hing Mansion

1. DR S. Y. CHUNG asked:—

Bearing in mind public misgivings over the Chong Hing Mansion affair, will Government cause an independent inquiry to be made into the affair, and table the report of the inquiry in this Council?

THE COLONIAL SECRETARY (SIR HUGH NORMAN-WALKER):—Sir, I am grateful to my honourable Friend for asking this question which gives me an opportunity to express my sympathy to those who find themselves in distress as a result of the closure of Chong Hing Mansion.

Perhaps I should first of all make it clear that I am advised that the Government has no legal liability for the position which has arisen. Architects are responsible professional men, and here and elsewhere building legislation places on the architect employed by the developer the duty of ensuring that the requirements of the relevant legislation are met and that proper building techniques are employed. It is true that Government officers can intervene if approved plans are being improperly varied, or the employment of improper building techniques come to notice; but, as regards the latter, there is a limit to the extent to which every detail of buildings under construction can in practice be scrutinized by government officers.

It is for this reason that architects are charged with the responsibilities they have. If an architect fails in this duty his conduct may be considered by a disciplinary body under the Buildings Ordinance, on which sit members of his own profession, and appropriate action is taken. This was what happened in this case.

There has been in some quarters a misunderstanding of the position which I would like to clarify. Application is to be made for a closure order because the building is now unsafe: but it was not because its constructional standards were ever previously in question that an occupation permit was never applied for. This failure was presumably because the developer was well aware that Government knew that the building did not conform to the approved plans; that the law therefore would not have allowed the Building Authority of the time to issue a permit even if it had been applied for. The decision to condone occupation in 1957 despite the fact that the building did not conform to the plans which had been approved was taken by one of my predecessors, after having obtained legal advice, in the light of the critical housing situation which existed at that time, and when there was no indication that the building would subsequently become dangerous to inhabit.

[THE COLONIAL SECRETARY]    **Oral Answers**

Looking back over fifteen years this may or may not have been the right decision, but it must be borne in mind that an architect has been disbarred from practising as a result of his disregard of the Buildings Ordinance in allowing a building which did not conform to the submitted plan to be built. Further, as I understand from the Commissioner of Police, the possibility of malpractice amongst those who were responsible for seeing that the building conformed to the approved plan was carefully investigated but there was insufficient evidence to justify a criminal prosecution. No suggestion that constructional techniques were faulty seems to have appeared at that time, but it is true that, at a period when the law was in transition, and the legal position not over clear, the developer was allowed to complete the building in the form he wanted and not in accordance with the approved site plans. Whatever the reasons for this, we need to assure ourselves now that every possible measure is taken to ensure that it could not happen again.

Our first and most immediate concern must be for the occupants of Chong Hing Mansion. On this I would inform Council that, taking into account all the circumstances of the case, I have requested that a proposal should be put before the Resettlement Policy Select Committee of the Urban Council at its meeting to be held tomorrow, that those occupants of the building who desire it should be considered for resettlement on the same terms as would be applied under present policy had the building been a prewar building.

Secondly, it has been suggested that the time limit set on occupation of this building should be extended. In considering this there is only one factor to be taken into consideration and that is the safety of the occupants. I am advised that on this count alone there can be no extension.

Third, it has been our concern to ascertain as quickly as possible the extent to which a similar situation may exist elsewhere. On this exercise my honourable Friend, the Director of Public Works, and his staff have been engaged at high pressure over the last three weeks. The preliminary results are reassuring. As a first task all the properties erected or owned by the same developers were subjected to inspection, and, as has already been publicized, only one other property, Chong Hing House, which is not in a dangerous condition, was found to be without an occupation permit. Extensive testing showed that the concrete used in the construction of this building was satisfactory. In all some 130 properties were checked. The next priority was the examination of the 48 buildings constructed by the same architect who built the Chong Hing Mansion. All save 3 are both structurally sound *and* have occupation permits. One building has an occupation permit but

is in need of repair. A comprehensive survey of this building is being carried out and if necessary it will be repaired by statutory order. The remaining two buildings, a village type house and a temporary factory building on land held under a Crown land permit, are structurally sound but are without occupation permits. This matter is being further looked into.

Meanwhile, and simultaneously, the records of post-war properties are being subjected to check. The detailed examination of several thousand records has revealed only one building without an occupation permit and only four buildings with provisional occupation permits, but all five for purely technical reasons. As has been announced one of these is in Kowloon, one on the Island and three in the New Territories. Once the technicalities have been overcome occupation permits can be issued.

These inquiries have involved, and are involving, a very substantial effort, and the final results will not be available for some little time. The work continues.

I know that the developers of the property are endeavouring to reach agreement with the co-owners and the tenants on the best course of action to find the best long term solution in all their interests. I do not wish to say more on this subject as I do not want to embarrass negotiations between the parties concerned. But this I will say—that if there is any way in which the Government or any department of Government can assist them in reaching their objective, we will do so.

The honourable Member has asked whether the Government will cause an independent inquiry to be made into this affair. It is the view of the Government that such an inquiry should go rather further than the honourable Member has suggested. I should say at this stage that the suggestion for such an inquiry was first made to me by my honourable Friend, Mr ROBSON, before the honourable Member's question was put down for today.

It is the Government's view that two separate matters require looking into, and that the inquiry should look both backwards and forwards. First, regardless of the architect's legal responsibilities, and in the light of anything the owners may do, it is desired to know whether there is anything in the decisions taken by Government at the time which would justify an offer of any further official assistance to those directly affected by the present state of the building over and above offers of resettlement in the manner which is being proposed. Second, it is necessary to consider whether the existing legislation concerning the construction and occupancy of buildings, and the present machinery and departmental procedures provided for the enforcement of the legislation, are adequate to their purpose.

[THE COLONIAL SECRETARY] **Oral Answers**

Terms of reference on these lines will be drafted, and the inquiry will be chaired it is proposed, subject to the agreement of the Chief Justice, by a District Judge. Members of the inquiry could be an unofficial and it is suggested Mr LIAO, the Commissioner for Housing, who is himself a professional architect. The whole inquiry, and in particular the second part, requires specialised expertise, and we propose the addition to the Committee of Inquiry of the Deputy Secretary for Home Affairs and an Assistant Registrar General.

That I think is a body capable of conducting the fair and impartial inquiry for which the honourable Member has asked. Its report would certainly be tabled, unless the Committee itself advised otherwise for some particular reason.

It would be understood that the second part of this inquiry may take a considerable time, and it would, of course, be open to the Committee if it so wished to make its report in two parts.

I hope the Committee of Inquiry can be set up with the least possible delay.

Thus, subject to what I have said, the short answer to my honourable Friend is Yes.

DR CHUNG:—Sir, I want to thank my honourable Friend for a very informative reply to my question and want to commend the decision in setting up an independent inquiry into the Chong Hing Mansion affair.

MR WILFRED S. B. WONG:—Sir, may I ask when was the architect concerned debarred from practice?

THE COLONIAL SECRETARY (SIR HUGH NORMAN-WALKER):—The precise date is not in my mind. The proceedings were taken in 1957 but there was an appeal which took some considerable time. An honourable Member of this Council was a member of that body and may be in a better position to give the exact date than I can.

MR SZETO WAI:—I am afraid, Sir, I couldn't shed any light on that because the architect actually brought the appeal to the Supreme Court. I sat on the Architect's Disciplinary Board and it was decided to strike off the architect from the list for 5 years.

### Workmen's compensation

2. DR CHUNG asked:—

The new Workmen's Compensation Ordinance has been in force for over a year now. Will Government inform this Council the number and percentage of cases which involved respectively delay and failure in the payment of compensation to injured workers?

MR R. M. HETHERINGTON:—Sir, I understand that this question refers to the Workmen's Compensation Ordinance as amended by the Workmen's Compensation (Amendment) Ordinance, number 55 of 1969. The amending provisions, except those dealing with compulsory insurance, became effective on 1st January 1970.

I regret that I cannot give a precise answer to the question asked by my honourable Friend. Statistics readily available do not throw up the figures which he has requested. It would require a long and detailed investigation into our files to obtain them and, in any case, it is too early to give final statistics in respect of the period from 1st January 1970 because it may take as long as 12 months, and, in some cases longer, before medical assessments can be made. I hope, nonetheless, that I can give him some general and specific information which will satisfy the purpose of his enquiry.

In the calendar year 1970, 24,610 occupational and industrial accidents were reported to the Workmen's Compensation Unit of the Labour Department. Of these, 259 were fatal and 24,351 were not fatal. I am confident that very few reportable accidents, certainly none of a serious nature, now escape our notice because of the existing system whereby officers of the department are located at all casualty departments of hospitals and of arrangements for receiving reports from other sources.

There are two types of compensation payable under the Ordinance to injured workers—periodical payments of two thirds of the workmen's monthly earnings in respect of temporary incapacity and lump-sum compensation in respect of permanent incapacity after the extent of the incapacity has been determined.

With regard to periodical payments, section 10 requires that these payments shall be made as far as possible on the same days as wages are normally payable but in any case at intervals of not less than one month. Some complaints were received in 1970 from workmen of non-compliance by employers with this requirement. These were dealt with in a routine manner by officers of the Workmen's Compensation Unit by direct approaches to the employers. Complaints of this

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nature are recorded in the individual file but no centralized statistics are collected. It is believed that, in 1970, they probably ranged between 60 to 100. I regret that I can offer no better information without investigating over 24,000 files. Delays in paying periodical payments do not appear to give rise to any serious administrative difficulties and such complaints as officers receive are satisfactorily disposed of by routine procedures. It is possible that cases of delays in payment occurred which were not brought to our notice. However, I can give my honourable Friend an assurance that, when a complaint is made, it is thoroughly investigated.

Regarding lump-sum compensation, the amount payable is determined by the extent of the permanent disability. The time taken to assess the disability depends on the nature of the injury. The procedure followed is for an assessment of the injury to be made by a medical assessment board and for the amount of compensation to be determined by the Workmen's Compensation Unit. This information is notified to the employer and the injured workman. When agreement is reached by the parties concerned, a certificate of approval, in both English and Chinese, is issued by the department to the employer and workman. It is normally left to the workman to pursue his claim. However, a special procedure by the department is adopted in three sets of circumstances

- (a) when the disability is 20% or over
- (b) when the compensation is in excess of \$4,000
- (c) when an enquiry or a complaint, either verbal or in writing, is received.

In the first two circumstances, a letter, in English and Chinese, is also sent to the workman requesting him, if he has any difficulties in obtaining compensation, to telephone a nominated officer of the Workmen's Compensation Unit. If no reply is received, a second letter is sent. If again no reply is received, the case is regarded as closed unless it is very serious or involves a large amount of compensation. Such cases are pursued until the department is satisfied that payment has been made.

There is no statutory limit within which lump-sum compensation must be paid. Some complaints are received from workmen that the employer has not yet paid them the agreed compensation because he has not received payment from his insurer. Such employers are advised by the department to arrange payment immediately because the liability to pay rests with them. Other complaints are received of the non-payment of compensation which involve individual investigation into



the particular circumstances. About twelve cases are on record where the employer, usually operating on a small scale, has not insured himself and has resources only sufficient to satisfy the claim against him through payment by instalments. There are also about twelve cases on record where an uninsured employer has absconded or been declared bankrupt or where a workman is unwilling to pursue an outstanding claim in the courts.

DR CHUNG:—I presume, Sir, that all these statistics are based on reported cases. Has Government any knowledge of the unreported cases and, if not, what steps is Government taking or contemplating to take to find out the magnitude of the unreported cases?

MR HETHERINGTON:—Yes, Sir, the information provided by me in reply to the question was based on reported cases. It is a little difficult to answer the question as to whether we know about unreported cases. If we did, they would not be regarded as unreported. But there are in fact certain steps that we take and I hope they are effective to make sure that the number of unreported cases are reduced to the very minimum; first of all by the visits of factory inspectors, particularly to industrial establishments, and secondly by the system that we have, and which I mentioned in my reply, of staff serving in the casualty departments of all hospitals; and also by other methods that we have for obtaining information about persons injured in industrial or occupational accidents.

DR CHUNG:—Thank you, Sir.

### **Statement**

#### **Mining (Miscellaneous Amendment) Regulations 1971**

MR HETHERINGTON:—Sir, I should like to make a very brief statement about the purpose of the Mining (Miscellaneous Amendment) Regulations 1971 which were made on 16th February 1971 by the Governor in Council and laid on the table of this Council this afternoon.

The First Schedule of the Mining (General) Regulations prescribes eight forms for applications for a prospecting licence, a mining licence, and a mining lease, for a prospecting licence, for a mining licence, for a mineral removal permit, for an authorized buyer's removal permit, and for an authorized buyer's licence. The First Schedule of the Mines (Safety) Regulations prescribes two forms for an application for a mine blasting certificate and for a mine blasting certificate.

[MR HETHERINGTON] **Statement**

All these ten forms are in English. Most of those who normally use these forms are more familiar with Chinese than with English. It was considered desirable that the statutory forms should be prescribed in both English and Chinese. The Mining (Miscellaneous Amendment) Regulations 1971 provides accordingly.

No change of any kind has been made to the English text of the forms. The Chinese text is a direct translation of the existing English text.

**Government business**

**First reading**

**APPROPRIATION BILL 1971**

**LAW OF PROPERTY AMENDMENT (AMENDMENT) BILL 1971**

**DANGEROUS GOODS (AMENDMENT) BILL 1971**

**MERCHANT SHIPPING (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**

**APPROPRIATION 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 apply a sum not exceeding two thousand nine hundred and thirty-five million, nine hundred and fifty-nine thousand, two hundred and twenty dollars to the Public Service of the financial year ending the 31st day of March 1972."

He said:—Sir, last year the Appropriation Bill was published in the *Government Gazette* during the week before Budget Day and this led to so much premature uniformed comment in the press and elsewhere that I said at the time that I would have to consider requesting Your Excellency to suspend Standing Orders to the extent necessary to allow the introduction of this bill today without prior publication. The bill has, in the event, been published today in a *Gazette Extraordinary*. I understand that publication at this time is not in conflict with Standing Orders and that I may properly propose the second reading of the bill today. I accordingly now move that the Appropriation Bill 1971-72 be read the second time.

Every year in our financial progress tends to be a remarkable one—that is a commonplace—but 1970-71 has perhaps been the most remarkable in post-war years, both for the extraordinary growth of revenue and for the fact that we are almost certain to overspend our original expenditure estimates.

The estimate of revenue in 1970-71 has been revised from the original figure of \$2,584 million to \$2,981 million. Actual revenue in 1969-70 was \$2,481 million, so that revenue has grown by \$500 million or a fraction over 20% in one year; and it will be recalled that there was a reduction in taxation this year estimated to cost \$14 million in revenue. This absolute increase has never before been approached (last year's \$399 million was the nearest) while in percentage terms it has only been exceeded (other than in years of substantially increased taxation) in 1962-63.

1970-71 has indeed been very like 1962-63 in some respects. In addition to substantial increases in recurrent revenue, largely under the influence of an exceptional advance in economic activity, land sales played a major role in raising total revenue in both years, about doubling to \$208 million in 1962-63 and more than doubling to \$258 million this year.

The yield of Salaries and Profits Tax reflects the results of the previous financial year and it is clear that that year was economically even better than we had supposed. The estimate has been revised upwards by \$59 million to \$749 million, a figure \$126 million higher than the actual yield in 1969-70. Part of this increase continues to derive from the growth of salaries. When we introduced a new allowance this year to relieve from tax anyone liable to pay less than \$100, we hoped to reduce very substantially the number of active salaries tax files. Instead the number has gone up by 9,000.

The yield of duties has also increased significantly, except for tobacco, which is likely to have fallen slightly. This fall is due to a number of complex reasons such as fluctuations in the timing of payment of drawback on exports and a transfer of consumption from imported to Hong Kong manufactured cigarettes. It is not possible to say what effect, if any, the advance of medical knowledge of the dangers of tobacco smoking has had. At least I think we can say that, with our relatively low rate of duty, we would not suffer such serious fiscal consequences as many other communities were there to be, for any reason, a significant reduction in smoking.

The total revised estimate of revenue is \$2,981 million but there are grounds for believing that we shall reach \$3,000 million for the first time. This is particularly remarkable in that revenue reached \$2,000 million for the first time in 1968-69, just two years ago, and

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we have had a not inconsiderable net reduction in taxation in the meanwhile.

As I have said, it seems that, exceptionally, actual expenditure this year will exceed the original estimate. The revised figure is \$2,473 million which is \$80 million higher than the original. I am not sure that the revised figure will in fact be reached but we should not fall more than \$40 million short of it.

This closer-than-usual estimate is due to a number of factors. One is that, as I said when introducing last year's Budget, we had made considerable effort to remove any surplus fat from departmental estimates. Then there was a general civil service salary award of 6% for Scale I staff and 4% for others (extended as usual to the aided schools and certain other subvented bodies). The general upward movement of prices also affected departmental spending. This is perhaps most noticeable in the field of capital public works, where the revised estimate is \$45 million above the original. I believe that this increase does represent some acceleration of work (but I shall leave it to my honourable Friend, the Director of Public Works to speak of his physical achievement) but it also reflects higher tender prices. It does not, however, reflect the full current increase in tender prices; certain continuing contracts let in previous years, and certain new contracts entered into in the earlier months of the current financial year, are at rates lower than would be tendered today. The Public Works Programme has not yet felt the full effects of the inflation of building costs which we have recently experienced with the increased strain being put on the industry by private developers.

The revised estimates of revenue and expenditure for 1970-71 now show a surplus of \$508 million. I believe, however, that the final figure will be about \$550 million.

I should add here that preliminary accounts of the Exchange Fund for 1970 show a surplus, after taking account of depreciation of investments, of \$134 million which raises the free surplus in the Fund (that is, the excess of assets over 105% of liabilities) to \$276 million.

This would bring our total financial assets at 31st March 1971, to \$2,380 million.

Mention of the Exchange Fund prompts me to draw to Members' attention one remarkable piece of evidence, not only of the growth of our wealth, but also of its wider distribution among the people; the extra currency issued during the holiday season this year was \$615 million, compared with \$459 million last year and \$305 million the year before. It is not surprising that prices go up at Chinese New Year with this large increase in spending power.

I now turn to the draft Estimates for 1971-72 which are already in the hands of honourable Members. They now comprise a large volume of 657 pages and I have to express my gratitude both to my own staff, and to the staff of the Government Printer, for their achievement in having put it together with such expedition and accuracy. The latter deserve a particular vote of thanks for the long hours they have worked on this exacting task.

The volume contains all the usual comparative and analytical tables in addition to the Estimates themselves; while the experiment we began last year of trying to write the Memorandum Notes in an extended form to give some idea of the achievements and future plans of departments has been carried further and the draft Estimates now constitute a compendious record of Government activity. They also, for the first time, take a rather longer look into the future but I shall speak of this feature later.

We have heard a certain amount of pessimistic talk this year about our economic future, although more recent news of general agreement reached with the European Economic Community on the Generalized Preference Scheme has helped to counteract this. Even those, however, who are prepared to confess a maintenance of, or even an increase in, the level of business activity have been speaking anxiously of rising costs and squeezed profit margins. I am not wholly convinced by such talk and our estimates of recurrent revenue next year are based on the premise of a continued high level of growth, although at a rate rather less than in the last two years; and, of course, for Salaries and Profits Tax it is 1970-71 experience that is reflected in 1971-72 tax yields.

The total estimate for recurrent revenue is \$2,902 million which represents an increase of 8.7% over the revised estimate for 1970-71. I do not think that this can be said to be a pessimistic forecast; possibly the reverse might be alleged. There is little that is particularly remarkable about the individual estimates under the various heads but there are one or two which probably deserve special mention.

The estimated increase in the yield of rates is only \$18 million or little over 5%. This may seem strange at a time of rising rents and rising production of new property. The reason for it is that, in deciding to introduce controls on rent increases last year and to use the staff of the Rating and Valuation Department to administer the scheme, we took, in effect, a deliberate decision to forego the additional revenue which would have accrued from the routine revaluation planned for this year. Normally we revalue every two or three years, revaluing in alternate years on each side of the harbour. But we have had to postpone revaluations due both in 1970-71 and 1971-72 and we estimate that the loss in revenue in 1971-72 is about \$20 million and in 1972-73

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about \$40 million. It is hoped that the ordinary valuation processes can be resumed again in time for adoption of new valuations for the fiscal year commencing 1st April 1973.

This has had an effect also on Property Tax which, except in cases where rents are treated as profits, is charged on the annual value of property as assessed under the Rating Ordinance. This has lost us perhaps \$7 million in 1971-72 rising to \$14 million in 1972-73. This is in some respects a more serious matter in terms of equity, as rates are charged on occupation of property and all occupants are affected, but Property Tax is in intention a charge on income from property and that income has now increased in many cases substantially beyond the rateable value—and the increase is escaping tax. Indeed, I did consider whether the basis of Property Tax assessment should not be changed to actual rent but the administration would be complicated and onerous and I came to the conclusion that it was preferable not to make the change to meet what is, I hope, only a temporary situation.

The estimated revenue from Stamp Duty at \$130 million is \$4 million higher than the revised estimate for this year. This is a head of revenue which has fallen at times in the past; its maintenance at this level will depend largely on whether the present very active markets in real estate and shares continue.

Post Office revenues are estimated at \$25 million or 15% higher than in 1970-71, this exaggerates the real increase in traffic on which the estimate is based, because the revised estimate of revenue this year has been adjusted for the United Kingdom postal strike; probably, with the prolongation of the strike, inadequately adjusted. I should like to mention here that we shall be revising the structure of our overseas postal charges next year largely in consequence of certain developments which took place at the recent Congress of the Universal Postal Union and also to bring our charges more closely into line with our obligations under the Union. Some rates are likely to go up and some down but the net effect on Post Office revenue is unlikely to be substantial.

In the case of capital revenues, we expect a fall from \$310 million this year to \$196 million next year. A reduction in revenue from land sales is responsible for most of the difference. One reason for this is that a substantial part of our land sales next year is likely to be either of major urban sites or of industrial sites and in both cases we generally allow payments by instalment instead of by way of lump sum; and much of the industrial land will be in the New Territories where most new leases involve a land exchange element.

One interesting and important feature of the extended use of instalment sales is the annual income from such instalments that we have

been building up. Because of the different payments periods, it is difficult to give an exact picture of this but the total of annual instalment payments at present on our books is \$57 million a year. On top of this, interest due on outstanding instalments amounts to \$19 million a year, which is credited to the Interest Head. These are substantial figures when one considers that total Land Sales amounted to only \$42 million in 1967-68 and \$40 million in 1968-69.

Total revenue in 1971-72 recurrent and capital, is thus estimated at \$3,098 million which is \$117 million or just under 4% more than the revised figure for this year.

It is interesting and, I think, inadequately taken into account by those who criticize our fiscal policies, that only some 60% of our revenues now come from taxes; the remainder comes principally from sale of goods and services, rents and interest. Our financial strength and our continuing ability to finance the rapid growth of social services at low tax rates derives in part from these policies and the assets they have created. There is inadequate recognition of this—in Hong Kong at least.

In introducing the 1968 Budget I said that I was just a little sorry that the total estimate of expenditure for that year had just failed to reach \$2,000 million for the first time, having just reached \$1,000 million six years before. I did not think that it would just fail to reach \$3,000 million only three years later.

The total estimate of expenditure in 1971-72 is \$2,936 million. It is \$463 million or 18.7% higher than the revised estimate for 1970-71. This is a very large, an unusually large, increase, particularly coming immediately on top of an increase of about \$400 million in actual expenditure this year compared with last year. Some may think that it represents a generous parting gesture from me, or perhaps from Your Excellency. I would like to be able to say that this is so but I fear it is not. It reflects quite other factors. One is, of course, rising costs, both of staff and of material things, these rising costs being a consequence of the same economic developments which have caused the even sharper growth of revenue in the recent past; but another, probably more important factor, is the maturing of plans long in the pipeline. I have for years tried to explain that Government's plans must not be judged by one year's estimates of expenditure but by the, in the short term, largely irreversible plans of expansion in nearly all fields of Government activity. It is true, all the same, I think, that our present economic prosperity and financial strength have led both Government departments and subvented organizations to think more largely. Financial restraints do tend to loosen in such circumstances and it becomes more difficult for a Financial Secretary to say about any single relatively modest increase in expenditure, and some not so modest, that we cannot afford it.

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I recently came across some comments by the Honourable E. R. BELLIOS in this Council in January 1893 which seem perhaps not inapposite to our present situation. He said apropos a proposal to raise a loan, speaking it must be confessed with hindsight—

"It is human nature when funds are available to feel inclined to spend these funds"

then went on to quote a poet in support of this view of human nature, in the words

"Ye mortals ever blind to fate

Too soon dejected and too soon elate".

It may be topical also that he went on to instance as an extravagance induced by the large sums available for spending two years previously, a proposal "to enlarge unnecessarily our race course at heavy outlay".

It is not, I hope, so topical that, at the committee stage of the Appropriation Bill a month earlier, unofficial motions to reduce each head of expenditure by the amount of an increase in civil service salaries the previous year were defeated one after the other by the official majority.

One of the principal fields for our proposed heavier outlay next year lies in expenditure on Public Works which is planned to go up from a revised figure this year of \$396 million to \$530 million next year. This is partly due to the greater incidence of increased costs as old contracts are completed and new ones let, although the full effect of price increases will not even then be felt; and partly to two major projects (Kai Tak Runway Extension and the Raising of Plover Cove Dam) getting properly into their stride. But again I shall leave it to my honourable Friend, the Director of Public Works to speak of the practical implications of the expenditure proposed.

I should like to draw attention to the very large increase in the size and cost of the Civil Service. This can be seen in compendious form in Appendices XV and XVI of the Estimates. For some years the annual percentage increase in the size of the civil service has been kept in the region of 3% after a period between 1960 and 1965 when it was increasing at nearer 7%. This year the increase is almost 8%. This more rapid rise is due to two main factors. One is the increased momentum generally in the expansion of public services and in the demands being made on it. The other is that we have made a determined effort this year (aided by the Establishment Sub-Committee of Finance Committee to whom I would like to pay a tribute—we have overloaded them throughout the year) a determined effort to deal with



an accumulated backlog of departmental requests for more staff and to complete the reviews of the establishments of certain major departments which we have been engaged on for some time. I certainly hope that the rate of growth will fall again next year.

To turn now to the cost of the civil service, the total of the personal emoluments subheads of the Estimates for next year is just under \$1,000 million. This is an increase of \$108 million or 12% over the original estimate for 1970-71 (or \$101 million over the revised estimate). This understates the additional costs because we have pruned the 1971-72 personal emoluments estimates even more carefully than last year. The true increase is nearer \$140 million, taking account of the salary award made with effect from April 1970 and staff increases approved during the year.

Of this \$140 million, the cost of additional staff may be estimated at \$71 million a year, and the cost of the 1970 salary award at \$29 million a year. The remaining \$40 million represents the "creep" in the cost of a relatively young and expanding civil service arising from the incremental structure of salary scales, and a tendency for piecemeal upward regradings of departmental staff and improved fringe benefits. Most of this "creep" cannot be avoided unless the establishment has been held without increase over a long period. It is one continuing increase in commitments against which our revenue growth is automatically mortgaged. The growing pension bill is another; it is estimated to increase by \$7 million or 11% next year.

This picture of the size and cost of the Civil Service is not complete without some reference to the staff of subsidized institutions, particularly those like aided schools where salaries are linked to Government's. The increased cost of teachers in aided schools alone next year over last year is estimated at nearly \$50 million; of which \$18 million is for salary awards and equal pay for women, \$10 million for incremental "creep" and \$21 million for increased staff. The present proposals for revision of teachers' salary scales which are still under discussion will add significantly to this, particularly in the expanding secondary field.

There are two other brief related comments I should like to make on the staffing of the civil service. First, I have, on a number of occasions when presenting the Estimates, spoken of the very high cost of the public service in general and have expressed doubts whether we can afford a full provision of public services, particularly social services, at the present cost of staffing them. One merely has to compare the cost of the public service in other countries of comparable wealth or even greater wealth in Asia, or in European countries, to experience these doubts. The main cause, I think, is what I call the "expatriate effect"

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that is, the salaries of our middle and upper echelons tend to be determined by the cost of recruiting and employing expatriate staff; this effect is increasingly an anachronism as we have been increasingly pursuing a policy of recruiting Hong Kong people. Another cause is the granting of equal pay to women at existing male scales, in spite of its inappropriateness when neither the structure nor level of our income tax nor yet our social services can offer an adequate substitute method of providing differentials in favour of those with families to support. I am, of course, aware that not all men have, and not all women are without, families to support but it is historically true that male salaries have assumed family status.

My second point relates to the Salaries Commission which is about to convene. As I see its primary purpose, it is not to advise on the appropriate level of a general award of increased emoluments to the public service, but to advise on a new and modern structure for these emoluments which would take into account the recent developments I have mentioned, and which may or may not involve a change in the general level. These developments have, in my view, rendered the whole present structure inappropriate to our changing community and its aspirations for increased public services. I do not think that we can continue much longer with our present structure.

I have already referred to increased spending on Public Works. Departmental capital expenditure has also shown a substantial rise from \$57 million to \$87 million. This is partly due to slow deliveries from abroad which are causing a rise in the amounts which must be revoted from one year to the next. For 1971-72 revotes total \$45 million out of \$87 million. Last year, they were \$31 million out of \$75 million. One large new capital item is the provision of \$13 million for seven new launches for the Police Force.

Another capital item of interest is the provision of \$11 million in Head 51 for new coins, compared with \$4.5 million this year. The large outflow of coins at Chinese New Year this year has made it advisable to increase our orders for coins for next year.

I should like now to draw particular attention to the estimates for the various social services. As can be seen from Appendix V and Appendix VII which analyse expenditure by functions, the proposals for next year commit 40.5% of expenditure directly to the social services, compared with 38.6% this year and only 34% five years ago. This is, of course, related to much higher total expenditure and the absolute figures are even more remarkable.

Spending on Education is estimated at \$610.8 million compared with \$272 million five years ago; and this estimate is, in fact, understated

by about \$46 million because it does not include financial provision for three decisions which have been made in principle, but whose detailed application has not been formally approved so that it would not be entirely proper to ask Council to vote funds for them in the context of the Estimates.

The first of these decisions, which I have already mentioned, is the revised structure of teachers' salaries which will cost about \$13 million a year initially.

The second is the new and extended programme of post-primary education. This is calculated on present plans to cost \$9 million in recurrent costs initially in 1971-72 plus \$10 million in capital subsidies.

Thirdly, a formal decision has now been taken to provide primary education free, although the actual details of the scheme have not been fully agreed. It will probably cost initially \$14 million a year, including an additional subsidy to meet certain essential costs of school operation at present met from additional contributions by parents, not from the basic fee. It will also involve waiving \$23½ million in outstanding loans made from the Development Loan Fund to the sponsors of primary schools; it has become the practice, although I do not think it was the original intention, that sponsors repay these capital loans from additional contributions levied on parents. The waiving of these loans does not affect our main accounts but will reduce the assets of the Development Loan Fund.

I cannot say that I myself am particularly happy to make this announcement, which extends free primary education beyond those who cannot afford to pay for it (and are not being asked to do so at present) to very many on whom primary school fees are no burden. There may be very good grounds for universal compulsory primary education but I see none for universal free education, even if that education is compulsory; for there is no principle that I am aware of which lays down that it is proper to levy compulsory taxes but not compulsory fees, so long, that is, as there is adequate provision to avoid hardship for those with low incomes. I hope that we shall be able to do something to limit free primary education, and possibly, for that matter, heavily subsidized primary education, to the schools which do not cater for the affluent. This is generally the situation in other countries with free primary education; our system has been distorted by its historical development.

I have not referred yet to the Polytechnic on which the Planning Committee is still working. There is no financial provision for this other than for the expenses of that Committee.

I should, however, like to draw attention to the estimates for the Universities in Head 81; these total \$131 million. Ten years ago

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expenditure was \$13 million or one tenth of that sum. It is true that next year will be the peak year for capital spending at the Chinese University's new site, but even so it seems to me that the cost of a University place is now disproportionate to the means of our community (and to the cost of other forms of education) and will stunt the future growth of our Universities.

The cost of Medical Services is also growing rapidly, although not so rapidly at present as that of Education, because none of the large new proposals we are engaged on are coming to fruition next year. But costs are going to rise even more rapidly as these present projects mature. It seems to me, looking at future developments and their cost, that we are reaching the point where we can no longer provide a virtually free non-contributory public health service, at high standards, on the basis of a low tax structure. At present, for example, the daily rate charged in Government hospitals does not even cover the cost of the raw foodstuffs. It seems to me that, with our growing affluence, we must consider urgently a more realistic charging system for hospitals, Government as well as subsidized. We already have a professional body of Medical Social Welfare Workers with the expertise and authority to ensure that no hardship arises. The alternative is going to be higher direct taxes.

The estimates also include provision for the first full year of the expanded Public Assistance Scheme with the provision of the sum of \$17 million in subhead 13(2) of the Social Welfare Department head. This is, of course, an estimate of the cost at present assistance levels, not a limiting figure. Additionally the increased staff required in both the Social Welfare Department and the Post Office involved annual expenditure of about \$4 million. Once the scheme is well underway it would be timely to review the levels of assistance in the light of present circumstances.

It may be noted also that the amount proposed for Social Welfare Subventions in Head 77 has been increased from \$12.7 million this year to \$16.2 million in 1971-72, about a 28% increase although voluntary agencies are being relieved of some of their case-load by the Public Assistance Scheme.

There is one further provisional element in the Estimates. The present agreement on the Defence Contribution expires on 31st March this year and its future level is under consideration at present, a decision having been delayed because there was no basis for consideration of the appropriate level until Her Majesty's Government had reached decisions on Far Eastern defence dispositions. In the meantime, the estimates have been prepared on the basis of the present agreement.

The difference between the draft estimates of Revenue and Expenditure produces a surplus for next year of \$162 million, but as I have said, this is likely to be reduced substantially, but not eliminated, when certain additional costs are finally determined.

We are fortunate in that we can budget for so unusually large an increase in expenditure without incurring a deficit. I have considered, however, whether I have detected, in our financial experience, a causal connexion, or at least a correlation, between years of prosperity and increased revenues on one hand and budgetary deficits on the other. For both our deficits in recent years, that is, in 1959-60 and 1965-66, have come after a series of unusually prosperous years which have perhaps led us (as suggested by Mr BELLIOS in 1893) into rather more spendthrift ways. There is, as it happens, a similar correlation, or coincidence, between Salaries Commissions and deficits.

But I am not too concerned about these correlations, in the short term at least, as we remain careful not to allow recurrent spending to catch up with recurrent revenues by quite a wide margin. I have frequently stressed the importance of the ratio between these. In the last ten years it has varied between 65% in 1963-64 and 75% in 1968-69. In next year's estimates it is 74%. Furthermore, as there tends to be a time-lag between revenue growth in times of rapidly increasing prosperity and the growth of public spending based on that prosperity, we tend to accumulate surpluses during this period which enable us to look at deficit spending on capital works with some equanimity; although there is one catch, in that some \$150 million a year of our present revenue from interests depends on the maintenance of our surplus funds unspent; not that this revenue would all disappear if we invest in works which produce revenue directly or indirectly. And, of course, we have not in the post-war years experienced any long period of serious time-lag in the opposite direction.

I would like, at this point, to draw special attention to an innovation in the draft Estimates which I promised last year. We have included in Appendices VII—XII forecast figures of estimated expenditure annually up to 1974-75. These are the figures which we have been compiling for some years in the unpublished Five Year Forecast of Revenue and Expenditure and they are, I must stress, merely forecasts, not proposals for the actual appropriation of funds. I must also ask the public's indulgence for not including the forecasts of revenue also, but that is an exercise in crystal-gazing which I should not like to put on public exhibition for a number of reasons. The Expenditure estimates, while likely to be substantially different in actual outcome (possibly higher as new ideas and policies emerge, possibly lower if achievement falls behind intention) have a much sounder basis in fact as they are compiled from actual (and in most cases approved) plans

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for expansion. I hope that they will serve to illustrate my often-repeated contention that critics under-estimate the built-in growth in our planned expansion by looking only at the year's estimates and ignoring the seeds of future expenditure.

These forecasts show an increase in recurrent expenditure from \$2,152 million next year to \$2,813 million in 1974-75, which is an increase of 30% in three years. Capital expenditure is forecast to increase slightly faster from \$784 million next year to \$1,068 million in 1974-75. Total expenditure in 1974-75 is forecast at \$3,881 million. These figures exclude the operations of the Development Loan Fund and the Lotteries Fund.

That concludes my introduction of the expenditure estimates. The next question that arises is what, if any, fiscal measures I propose in the light of the estimates of revenue and expenditure. Let me say at once that I propose no increase in taxes but rather the repeal of two taxes, one fairly substantial and the other a minor anachronism.

When I proposed the abolition of radio licence fees four years ago, I said that it was our intention to retain the television licence fee of \$36 a year as television was still something of a luxury for the few. Our increasing affluence has, however, changed the situation with remarkable rapidity and it is estimated that there are now over 500,000 television sets in operation—but, although efforts to reduce evasion have been meeting with substantial success, it is very difficult to limit it to reasonable proportions. Revenue is estimated at \$8.4 million this year and just under \$9.1 million next year, perhaps not much more than half the amount legally due. There has been, it is true, at the same time a substantial increase in revenue from royalty payable by Television Broadcasts, Limited although at \$2.5 million, it is small compared with the revenue from licence fees. We propose, therefore, to abolish television receiving licences. There was a certain amount of public complaint about the arrangements made for abolition of radio licences because some unlucky people had just renewed their licences, while some lucky ones had licences just about to expire. We propose, therefore, this time to adopt the system used in Britain when radio licences were abolished there; that is, to abolish them completely as from 1st April 1972, and in the meantime to require renewal of expiring licences for the period between their date of expiry and 31st March 1972, at appropriately adjusted fees so that all licences finally expire on the same day. This will also give parity of treatment between those with television licences of their own and those who pay on a monthly basis through their subscription to Rediffusion Television. There will, therefore, be some revenue in 1971-72; possibly the estimate

should be reduced from \$9.1 million to \$5 million. There would be no revenue thereafter. Abolition requires an amendment of the Telecommunications Regulations by the Governor in Council.

The second tax we propose to abolish is that levied by the Sunday Cargo Working Ordinance. This was introduced in 1891 under pressure from London and against a certain amount of opposition from business interests. It levies a fee on ships working cargo on Sunday. I can describe its purpose best by quoting the words of the Governor at the time, Sir William DES VOEUX; he said about the scale of fees proposed—

"My object was to fix the cost of a permit at the smallest sum that would have the practical effect of putting an end to working cargo on Sunday. There is no desire to raise revenue from it."

The idea was to relieve ships' crews rather than port workers but it seems doubtful if it ever had much effect on the working of cargo on Sundays and certainly has had none for many years. It has become virtually a tax for revenue purposes; indeed, we increased it by 50% in 1962 with this in view. The revenue is small, however, being about \$700,000 a year. In 1892 the honourable Ho Kai, as he was then, in explaining his original support for the measures spoke as follows:—

"Personally, my sympathy is with those who are trying to obtain one day's rest out of seven, whether there be one thousand men in the Colony who are affected by it or only one. As I myself wish to have my Sunday rest, I also wish that everyone else may have the same."

Now that we have passed legislation providing the right to four rest-days a month for all workers, the last vestige of the original purpose has gone and I feel that we should remove it as an anachronism; the more particularly as we have recently revised the fees payable by ships towards the services of the port.

These are my only proposals concerning taxes but I must now speak of water, on which we do not levy a tax (except a 2% element included in Rates) but charge for supplies actually consumed.

My first topic is the supply of water. Although it is not long since we completed our largest single water supply scheme at Plover Cove, which trebled our storage capacity, and we are now engaged in extending it, the present rate of increase in consumption of water is so rapid (about 8% last year, a figure we happened to have adopted for planning purposes), and the time between conception and completion of a major scheme so long, that we have to make plans up to ten years

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ahead. We now virtually have to provide a source of supply the size of Shek Pik every two years and, of course, the annual increment is growing; in a few years it will be one Shek Pik every year unless the rate of growth falls substantially.

Our basic aim is to provide a minimum of four hours every day from our own resources in the worst season a supply system which can achieve this will in practice give us twenty four hours a day in all reasonably normal circumstances. Our researches both into the probable growth of demand and the possible sources of supply and into their significance for our basic aim have led us to the conclusion that we must proceed at once to implement the High Island Scheme. This scheme will eventually provide about 70 million gallons a day and is now estimated to cost \$1,000 million. This figure includes the necessary extension of the main trunk distribution system and is to be compared with the \$700 million which is the cost of Plover Cove in its extended form. It represents about \$250 for every man, woman and child in Hong Kong.

But High Island cannot begin to produce any water until 1976 (and will not reach full supply before 1979) and, if consumption continues to grow at its present rate, there will be a period between 1974 and 1976 when we would be in some difficulty in meeting our minimum supply criterion were rainfall to be significantly below normal. As anyone who experienced the drought of 1963-64 and remembers the hardship it caused will, I am sure, agree, we cannot afford to take risks with the water supply. We have therefore come to the *further* conclusion that we must set up desalting plants capable of producing 20 million gallons a day by 1974, although water so produced will cost more than twice as much as natural supplies at present. This would be single purpose plant, that is not linked with the production of electricity. It means proceeding to plan the installation immediately (incorporating the lessons we will have learnt from the small pilot plant being set up at present). The capital cost is estimated at \$190 million.

I might add that there is a limit to the amount of single-purpose desalting plant that we can economically use in our present system because of limitations of storage. This limit will be 60 million gallons per day, after High Island has been added to the system. For the same reasons there is a limit on the amount of Chinese water we can economically take on a regular contractual basis. But we could probably use more than we do now and we shall be inviting the Chinese authorities to explore the possibilities with us.

Looking further ahead we shall have to begin detailed discussions with the power companies about the possibility of dual purpose plants



for water production in the early 1980's. We shall, with High Island, have exhausted major conventional sources, although further minor schemes might still produce useful additions to supplies.

Neither the proposal to proceed at once with High Island or that for the planning and installation of desalting plant giving 20 million gallons a day has yet been formally put to this Council or to its Finance Committee, although honourable Members are aware of them. I apologize if I appear to be jumping the gun. Detailed proposals will be presented as soon as possible.

Very large capital sums are involved in these projects and, also, with the introduction of desalting, large recurrent sums; 20 million gallon a day desalters will cost \$21 million a year to run, that is, over \$3 a thousand gallons for this element of cost alone; although it is an advantage of single purpose desalters that they can be run intermittently, only when required.

At present, in spite of a 24-hour a day supply which spreads overheads, charges are not covering costs. It will be recalled that, when we raised the charge for water in 1965 from \$1 to \$2 a thousand gallons, we guaranteed that it would remain unchanged up to the end of 1970. We have kept this promise but in doing so have run up a deficit in the notional water accounts on fresh water supply which will amount to \$56 million by the end of this financial year. These accounts up to 31st March 1970, are at Appendix XVII of the draft Estimates.

It is a characteristic of water—or at least our water supply—that each new source tends to be more expensive than the last, both because the available sites are less economical and because the cost of capital has been rising. Our present internal supply system produces water at a cost of \$1.45 per thousand gallons treated and delivered to service reservoirs; Chinese water costs \$2 at the same point. High Island will cost a little over \$2, while desalted water from the proposed single purpose plant will cost between \$4 and \$5. To these costs must be added distribution and other operating costs and the loss in the distribution system, which together add about \$1.50 per thousand gallons in each case. Furthermore, these unit costs relate to the optimum situation where the capacity of the system is being fully utilized. The actual amount of water consumed, will always be less than this, either because actual demand as reflected in consumption has not yet caught up with the potential supply (and we can never let it do that for any length of time) or because consumption may have to be restricted in periods of drought. As the high capital costs of the system are in practice spread over a smaller quantity the actual unit cost is higher than the theoretical one.

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It is estimated that over the period from 1971 to 1976 (*i.e.* approximately up to the time when High Island should begin to supply), and assuming a 7% increase in actual consumption annually, the average price of water will have to be about \$3.40 a thousand gallons to cover costs. This is after taking into account the yield from 2% of Rates and it also includes a small element to eliminate the accumulated deficit. If, therefore, we are to continue our present practice, as I think we should, of pricing water so as to recover costs, assuming a rate of interest reasonable in relation to current rates at the date of investment (when we are assuming 7% at present), then it is clear that we must proceed to raise the present price of water substantially forthwith. I say that we must continue our present practice because the supply of water cannot be regarded as a social service. Above a fairly small minimum amount, it is the provision of a commodity of which consumers may choose to purchase more or less (and there are, in fact, wide variations in levels of domestic consumption), they should, therefore, pay the appropriate price (on a non-profit basis) for what they choose to consume, the more particularly so as a continuity of supply to meet their demands requires the investment of large amounts of the community's capital. I am not suggesting that we should price water so as to reduce these calls on the community's capital and I do not think our proposed new charges, which I will come to shortly, will have any effect on the level of consumption.

One question which arises is whether we should not introduce a greater degree of differential pricing than we have at present; the only exceptions to the present price of \$2 per unit are \$5 for contractors and ocean-going ships and \$3 for non-ocean-going ships.

We believe that there are clear and sound grounds for tempering the increase to domestic consumers and raising the price to commercial consumers by a higher amount. There are a number of reasons for this. Firstly, it is our policy to endeavour to ensure that industrial demand is as fully met as possible even when domestic supplies are severely restricted. The consequence of this is that, contrary to the situation with electricity where supply is not subject to the vagaries of nature, a high constant load factor is less economic than one on which fluctuations can be imposed. This particular phenomenon might be modified to some extent as greater reliance comes to be placed on desalting but that is a long way ahead.

Second, the demand of trade and industry is rising, and has been for some years, more rapidly than domestic demand. It is forecast that between 1969 and 1981 domestic demand will rise only from 75 million gallons a day to 125 million gallons a day, or 4.1% a year, but trade and industry demand will rise from 42 million gallons a day to 196 million gallons a day or 13.7% a year, more than three times as

fast. These forecasts are based on experience. This has two effects on costs. First, if the demand, to meet which we are planning so considerable an investment of capital, does not eventuate, the cost per unit consumed will be increased thereby because we will be under utilizing the system. The estimate of increase in commercial demand is, in the nature of things, more speculative than that for domestic demand. In other words, we will be taking a higher degree of commercial risk, with public money, in endeavouring to ensure a continuity of water supply for trade and industry than for domestic supply. Secondly, each source of supply tending to be more expensive than the last, the growth of commercial demand is pushing us more rapidly than is domestic demand towards higher supply costs.

Thirdly, it would be bad economic policy to encourage the growth of industries or other activities, which are dependent on large consumption of water by pricing water unrealistically, leading to the need to invest yet more public capital in ever more expensive supply schemes. And, finally, trade and industry in general make a smaller contribution to water revenue by way of rates in proportion to water consumed than do domestic consumers.

It may be of interest in this context that a factory using 500,000 gallons per day, and we already have some of these, involves Government in the outlay of between \$7-\$8 million in public capital investment to give it its water supply alone.

For these reasons we propose that the price per thousand gallons be increased to \$3 for domestic consumers, to \$4 for trade and industry and for non-ocean-going ships, and to \$7 for ocean-going ships, but remain unchanged at \$5 for the building industry. We do not believe that the domestic increase will cause any hardship nor that the commercial increase will inhibit industrial development except, perhaps, of a kind which we cannot afford in any case. A six member family in a resettlement estate at present incurs an average bill of \$4.50 a month; the increase will be \$2.25 a month, assuming, that is, they do not reduce consumption. That will pay for 2,250 gallons a month, which is not a small amount. As to industry, when the charge was increased to \$2 in 1966, it was estimated that for the dyeing and finishing industry (generally, by a wide margin, the biggest industrial user) the increase was less than 1% of the sales value of finished cloth. On that basis the present proposed increase would add substantially less than 2%, taking into account developments in the industry. The generality of industry will be affected very much less than this.

We did consider differentiating, not on the basis of use, but by means of an upward sliding scale based on quantity. There are, however, very great difficulties about this (as there is for using quantity rather than time as the basis of restriction in times of shortage). It

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would be difficult to prevent consumers splitting up their consumption into as small separate areas as possible; and there are large domestic buildings where bulk metering is in use and a sliding scale would be unfair on separate householders. The power companies do not have the same problem as with their downward sliding scale they have the easier problem of preventing unreasonable bulking of consumption.

It is intended that the changes be brought into effect from meter readings taken from 1st July onwards. As meters are read quarterly this means that no-one will pay the new charge for any water consumed prior to the announcement of the change, although some will enjoy water at the present rate rather longer than others. A crash meter reading programme over a limited period of time is no longer feasible with 418,000 meters in use.

This delayed introduction will not apply to shipping or building. Special supply and charging arrangements are in force for these and it is intended to apply the new rates from 1st April.

On the assumption that the new rates will have no effect on consumption, including the rate of increase in consumption, they would bring in additional revenue from water in 1971-72 of \$66 million if applied for the full year, roughly equally divided between domestic and commercial users. The delayed start would reduce this to \$44 million in theory. I would propose to increase the estimate, however, by \$40 million only.

The price of water is set by the Governor in Council by regulation. The appropriate amendment to the First Schedule of the Waterworks Regulations will be made at an early date.

I can give an assurance that these charges will not be increased again before the end of 1976 and I have hopes that we will be able to maintain them for a further four or five years thereafter, unless there is an extraordinary increase in operating costs or demand falls well below forecast levels.

It is of interest, although it is not our reason for proposing higher charges, that the increased rates should bring in about \$700 million net in terms of cash flow during the period 1971-72 and 1975-76; of this about half would come from the increase in charges. During the same period capital expenditure on Waterworks is estimated at \$1,350 million of which we shall have to find nearly half from other sources.

It has also become necessary to consider the level of charges for *salt water* for flushing purposes. The present rate is 40 cents per thousand gallons (and has been since a supply was first given in 1959)

but, as salt water cannot be metered in the normal way because of corrosion, the application of this price for bulk consumers depends on periodic assessment based on test metering and, in the case of domestic premises, on an arbitrarily assumed ratio between fresh and salt water consumption.

Originally the rate was fixed on a rather arbitrary assessment of costs at a time when we had no experience of salt water supply. The assessment erred, too, on the conservative side as we did not wish to discourage the adoption of what was then as unfamiliar system. There is no danger of discouragement now but it has become clear for some years that the system is losing heavily, *and* attracting unfavourable comment from the Director of Audit. The annual deficit is now of the order of \$7 million to \$8 million on an income of under \$1½ million and is increasing each year, largely as a consequence of extension of the system. The accumulated deficit at the end of this financial year will be about \$27 million. The salt water accounts are also in Appendix XVII of the draft Estimates.

Salt water can be costed rather more accurately than fresh water because its supply is constant and does not depend on rainfall or costly impounding reservoirs. A review of the cost has now determined that it is approximately 70 cents per thousand gallons.

The relationship of fresh water to salt water consumption in domestic accommodation has also been reappraised. Under the present system, it is assumed that only one gallon of salt water is used for every four gallons of fresh water. Tests have shown that the true figure varies from something like one to three in high and medium density residential areas to one to two-thirds in resettlement estates. The average might be put at one to one.

It is proposed, therefore, to increase the basic charge for salt water from 40 cents to 70 cents per thousand gallons and to apply the new rate on the basis of an assumed consumption of one unit of salt water to one of fresh. It is intended that the new rate will apply to the assessed consumption of bulk consumers from 1st April and for others it will apply to bills based on fresh water meter readings taken on or after 1st July. The increase in revenue on a full year basis next year would be \$9 million but the actual increase next year is put at \$6 million. The effect of this proposal, taken with the increase in the price of fresh water, will be to increase the cost of all water supplies to the domestic user who has salt water flushing by 76%. The total increase in cost to the average resettlement family I referred to before will then be not \$2.25 per month but \$3.24. The user of salt water flushing will, of course, still pay substantially less than the small minority who do not have access to salt water mains and are permitted to use fresh water

[THE FINANCIAL SECRETARY] **Appropriation Bill—second reading**

I have one further proposal to make; it is a formal one rather than one with any substantial practical consequences. In 1953 a resolution was passed by this Council setting up a Revenue Equalization Fund. In proposing the setting up of this Fund, my predecessor, having spoken of the need always to have in mind the dangers of depression, went on to say:

—

"We propose to establish this Revenue Equalization Fund specifically for the purpose of meeting any serious shortage of revenue for a particular year, or for meeting any non-recurrent increase in expenditure in any particular year. There is for example the possibility that we might have some disaster such as a typhoon which would involve us in very heavy expenditure for repairs and rehabilitation. If that were to happen now and were to cause a deficit on the year's accounting, despite an immediate pruning of all other expenditure, the Colony's credit would suffer; but with the establishment of this Fund built up in prosperous times, specifically for this purpose, we would be justified in carrying on our normal activities and meeting the extraordinary expenditure as well. Now this Fund could carry a temporary shortfall in revenue, but I must make it absolutely clear that it can only carry a *temporary* shortfall, and that the ideal of having revenue and expenditure in balance must always be aimed at. We propose gradually to build this Fund up to the level of one year's revenue, and as a first step to transfer to it from the General Revenue Balance the sum of \$100 millions."

Since then we have added only \$38 million, and nothing at all since 1960, so that the Fund is very far short of the original target of one year's revenue. Indeed, our total financial reserves at present, which many criticize as excessive, amount to only eight months' revenue.

But, whatever the situation may have been in 1953, I do not think that an accounting device of this kind can influence in any way the effect on our credit of temporary deficits. What will influence it in these circumstances is our overall reserve position, whatever we may call the fund in which the assets are held. With financial reserves of the present size and with our comparatively large reserves of taxable capacity, deficit years, within limits, would have no effect on our credit. Indeed, deficit budgets are now commonplace, if not fashionable. I propose, therefore, that the Fund be wound up and its assets transferred back to the General Revenue Balance. This will require a resolution of this Council.

Taking into account the additional expenditure on Education which I have referred to, and the proposed changes in taxes and water

charges, but not any possible variation in the Defence Contribution, the estimated surplus would be reduced from the figure of \$162 million in the printed draft Estimates to \$157 million.

Sir, that completes my statement introducing the second reading of the Appropriation Bill 1971-72. I commend the draft Estimates of expenditure to honourable Members.

*Question proposed.*

Debate adjourned *pursuant to Standing Order No 54(2)*.

4.02 p.m.

HIS EXCELLENCY THE PRESIDENT:—I think honourable Members might like a short suspension at this time. Council will accordingly suspend and resume at 15 minutes past Four o'clock.

4.16 p.m.

HIS EXCELLENCY THE PRESIDENT:—Council will resume.

### **LAW OF PROPERTY AMENDMENT (AMENDMENT) BILL 1971**

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

He said:—Sir, the Law of Property Amendment Ordinance, which was enacted in 1873, followed closely the provisions of the English Law of Property Act of 1859.

Section 7 of this 1873 Ordinance provided that relief under the Ordinance might not be given by the court against forfeiture for a breach of the same covenant in a lease to the same person more than once. This was intended to prohibit relief if the same person had broken a covenant to insure the property comprised in a lease on more than one occasion.

In 1911, however, for reasons which are not now traceable, the words "under this Ordinance" were removed from section 7.

In a recent case, the Supreme Court ruled that the effect of this removal is to prevent the court from granting relief against forfeiture for the non-payment of rent more than once to the same person in relation to the same lease.

[THE ATTORNEY GENERAL] **Law of Property Amendment (Amendment) Bill—  
second reading**

This conflicts with the long established rule of equity that relief against forfeiture for non-payment of rent will normally be granted if the person in default pays up the arrears of rent, plus costs and interest, even if he has offended in a similar manner before.

The object of this short bill is to restore what was previously thought to be the position, namely that the bar against relief against forfeiture on more than one occasion is limited to failure to observe a covenant to insure and that relief against forfeiture for other reasons may be granted by the court in all cases in which it feels this to be appropriate.

*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 reinserts in the principal Ordinance words which were repealed by the Law Revision (No. 2) Ordinance 1911.

In a recent case in the Supreme Court, the Judge suspected that the words were repealed in over-sight, and he pointed out that the result of the repeal was to limit a long-standing rule of Equity, concerning relief against forfeiture for breaches of covenant.

The Bill seeks to rectify the situation in respect of future breaches of covenant.

**DANGEROUS GOODS (AMENDMENT) BILL 1971**

MR HETHERINGTON moved the second reading of:—"A bill to amend the Dangerous Goods Ordinance."

He said:—Sir, this bill is closely related to the Merchant Shipping (Amendment) Bill 1971 which was read for the first time earlier this afternoon and to which, with your permission, Sir, it would be convenient for me to refer.

Following the enactment of the Dangerous Goods (Amendment) Ordinance 1964, the Commissioner of Mines assumed, on 1st August 1964, statutory responsibility for controlling the manufacture, storage,



transportation, and use of explosives. An exception was made, for the time being, of explosives stored in bulk at the Government Gunpowder Depot situated on Green Island. The Director of Marine retained statutory responsibility for the depot under the Merchant Shipping Ordinance. It became possible for the Commissioner of Mines to assume administrative control over the Green Island depot on 1st July 1969 from which date the Director of Marine delegated the necessary statutory powers to the Commissioner of Mines. Staff at the depot were first seconded and subsequently transferred from the Marine Department to the Mines Department. The Dangerous Goods (Amendment) Bill 1971 now completes the transfer by giving statutory jurisdiction to the Commissioner of Mines to carry out the responsibilities which he has assumed in practice.

The bill amends the principal Ordinance to provide for the establishment of Government explosives depots. Consequential amendments are necessary to the Merchant Shipping Ordinance which are dealt with by the Merchant Shipping (Amendment) Bill 1971. In addition to the use of the more appropriate designation of explosive depot instead of gunpowder depot now used in respect of Green Island, the bill permits the establishment of more than one depot, either permanent or temporary and either land-based or located on a vessel. If a vessel is used as a Government explosives depot, new section 13C, introduced by clause 7, reserves special powers to the Director of Marine to give directions regarding the movement, siting, and use of the vessel. Otherwise, clause 7 provides for the control and management of explosives depots to be the responsibility of the Commissioner of Mines. It also empowers the Governor in Council to make regulations for the proper control and management of depots. It is the intention, if this bill is enacted, to make such regulations under new section 13E.

The only other noteworthy feature of this bill to which it is necessary to draw attention is clause 5. This introduces, in standard form, a new section to the principal Ordinance empowering the Governor to give to any public officer, other than a judge or magistrate, overriding directions, either in general or in particular, regarding the exercise of any powers, functions, and duties under the Ordinance.

As I said earlier, this bill and the Merchant Shipping (Amendment) Bill 1971 are closely related. I have also referred, in the course of this speech, to an intention to make new regulations for the proper management of Government explosives depots. These new regulations will, in turn, entail amendments to existing regulations made under the Merchant Shipping Ordinance. In order that all this interconnected legislation may become effective at the same time, clause 1 of the bill under consideration provides that its provisions shall come into operation only on a day to be appointed by the Governor by notice in the *Government Gazette*.

**Dangerous Goods (Amendment) Bill—second reading**

DR CHUNG:—Your Excellency, in rising to support the motion for amending the principal Ordinance to provide for the establishment of and to make regulations for the management of Government explosives depots, I beg to make two observations.

Honourable Members are aware that since 1967 a total ban was imposed on the sale and handling of explosives. However, in order to continue supplying explosives for the use in quarries, a control system for storage, transportation and use of explosives for blasting was introduced by Government. The control system is basically that each quarry is entitled to receive explosives two or three times a week and on the days fixed by the Commissioner of Mines. The explosives are transported to the quarries in special vehicles under Police escort, and consumed under the supervision of the Commissioner and Police. Any surplus explosives are either returned to Government store or destroyed on site.

In general, I am informed, the control system has worked fairly well in the past when quarry business was rather slack, although on several occasions the explosives did not arrive on the specified days and the quarries had to stop work. However, in view of the present buoyancy in building activities, I am given to understand that some quarries find it difficult to increase their output for meeting rising demand due to limited delivery services of explosives.

The quarries feel that in the light of the situation of Hong Kong today, as compared to 1967, Government should review the system of control with an aim of simplifying the control procedures and improving the delivery services to the extent that the most efficient use can be made of the equipment and mining rights. In my humble opinion, Sir, such a request by the quarries is both timely and reasonable, and I therefore hope my honourable Friend, the Commissioner of Mines, will find it possible to make a statement to this effect.

My second observation, Sir, is about the new section 13E under clause 7 of the amending bill. This section empowers the Governor in Council to make regulations for the management of explosives depots, *without* their being subject to the approval of the Legislative Council. The procedure of making regulations in this Ordinance is quite different from that in the Factories and Industrial Undertakings Ordinance whereby all regulations shall be subject to the approval of the Legislative Council. I am aware that regulations made under the existing Dangerous Goods Ordinance do not require the approval of this Council. Nevertheless, I see no good reasons for not subjecting the regulations made under the Dangerous Goods Ordinance to the

approval of the Legislative Council, particularly when fees and charges are involved in these regulations.

Honourable members will no doubt remember that in recent years there have been several deliberations in this Council on the Factories and Industrial Undertakings Regulations and, as a result, a number of regulations had been amended and several others are now under active consideration by the Commissioner of Labour. I do believe, Sir, that this Council should be given an opportunity to publicly debate and approve the regulations for controlling the manufacture, storage, transportation and use of dangerous goods. I therefore propose that consideration be given to amending the principal Ordinance in this respect.

MR HETHERINGTON:—Sir, I thank my honourable Friend Dr CHUNG for his general support of this bill. However, I regret to say that he is not correct when he says that a total ban on the sale and handling of explosives has been in force since 1967. However, it is true that, since then, overnight storage of blasting explosives on commercial sites has been generally prohibited, all blasting explosives have been transported under armed guard from the Government Gunpowder Depot to these sites, and the use of blasting explosives has been supervised by officers of the Mines Department and the Public Work Department and members of the Civil Aid Services and given armed protection by members of the Royal Hong Kong Auxiliary Police Force.

As my honourable Friend says, the system of control has worked reasonably well. Any operator of a quarry or construction site who applies for explosives receives delivery of the amount requested. Except on very rare occasions, delivery is made on up to three days in any one week provided the weather permits and a general holiday does not intervene. Delivery dates for particular districts are known to all operators because they are not varied and this system allows them to plan their operations well in advance.

I am aware of two occasions in recent months when the system failed and inconvenienced operators. Once, a vehicle carrying explosives developed a mechanical fault and the relief vehicle was not immediately available. On a second occasion, explosives were delivered but, through an oversight, no detonators had been loaded. These were two regrettable but unusual failures which stood out largely because we have made over 30,000 satisfactory deliveries. I am also aware that there have been increasing demands for deliveries, especially on the island, which, at times, over-tax the present organization.

My honourable Friend, as a Member of the Finance Committee of this Council, may recollect that this Committee, last year, approved

[MR HETHERINGTON] **Dangerous Goods (Amendment) Bill—second reading**

of the provision of funds for the purchase of additional vehicles to carry explosives and for a large increase in the establishment of the Mines Department to enable the introduction of a daily delivery service to any site anywhere in Hong Kong. These vehicles are on order and the recruitment of the staff is in progress. As soon as this equipment and trained personnel are available to me, I can assure my honourable Friend that a more frequent delivery service will be provided. I think that I should mention, in passing, that not all operators of quarries and construction sites make full use of the existing facilities available and often prefer, by careful planning, to restrict blasting to twice or even once a week.

The second observation of my honourable Friend raises general and specific issues on subsidiary legislation. On the general issue, section 34 of the Interpretation and General Clauses Ordinance is relevant. Subsection (1) of section 34 requires that all regulations shall be laid on the table of the Legislative Council at the next sitting after publication in the *Government Gazette*. Subsection (2) reads as follows:

"Where rules, regulations or by-laws have been laid on the table of the Legislative Council, in accordance with the provisions of subsection (1), the Legislative Council may, by resolution passed at the next meeting of the Legislative Council held after the sitting at which they were so laid, provide that any such rules, regulations or by-laws shall be amended in any manner whatsoever and if any such resolution is so passed, the said rules, regulations or by-laws shall, without prejudice to anything done thereunder, be deemed to be amended as from the date of publication in the *Gazette* of such resolution."

It is consequently open to any Member of this Council to move a resolution seeking to amend any regulations made by the Governor in Council under any Ordinance in accordance with section 34(2) of the Interpretation and General Clauses Ordinance.

On the specific issue, I suggest that my honourable Friend has drawn a false analogy between the Dangerous Goods Ordinance and the Factories and Industrial Undertakings Ordinance. Section 7 of the Factories and Industrial Undertakings Ordinance empowers the Commissioner of Labour to make regulations on certain matters but all regulations made by him are subject to the approval of this Council. This particular Ordinance is primarily the concern of one department and only the Commissioner of Labour is authorized to make regulations. On the other hand, the Dangerous Goods Ordinance is concerned

with a wide range of substances. There are ten major categories of dangerous goods listed in the Dangerous Goods (Classification) Regulations ranging from explosives, gases, and acids, to various types of poisonous and combustible substances. Explosives comprise only one of these ten categories. Several departments are concerned with dangerous goods. These include the Fire Services Department, the Marine Department, the New Territories District Administration, the Royal Hong Kong Police Force, and the Secretariat for Home Affairs in addition to the Mines Department. Section 5 of the Dangerous Goods Ordinance already empowers the Governor in Council to make regulations on matters concerned with this Ordinance. Such a provision is appropriate because the scope of the Ordinance embraces a wide range of substances and a variety of departments of Government. The subsidiary legislation made by the Governor in Council under the Dangerous Goods Ordinance at present takes up 267 pages of the printed Laws of Hong Kong. New section 13E, introduced by clause 7 of the amending bill, has very limited application because it relates only to one aspect of one category of dangerous goods—the storage and delivery of explosives in bulk. It merely sets out, in a new part III to the principal Ordinance, the specific powers of the Governor in Council to make regulations for the management of explosives depots as distinct from the more general powers of the Governor in Council already provided for by section 5. It does not, as is the case with the Factories and Industrial Undertakings Ordinance, empower a particular head of a Government department, in this case, the Commissioner of Mines, to make regulations. To that extent, it is consistent with other provisions of the Dangerous Goods Ordinance.

(DR CHUNG rose).

HIS EXCELLENCY THE PRESIDENT:—You can't speak again, Dr CHUNG, I am afraid.

DR CHUNG:—Upon clarification, Sir.

HIS EXCELLENCY THE PRESIDENT:—Yes, indeed.

DR CHUNG:—I am aware of the right of this Council to change regulations after publication, Sir, but my point and my request is for Government to propose the regulations and to explain the reason for their introduction in this Council before their enactment.

*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).*

**Dangerous Goods (Amendment) Bill—second reading***Explanatory Memorandum*

This Bill amends the principal Ordinance to provide for the establishment of Government Explosives Depots for the storage of explosives. The new depots will replace the existing Government Gunpowder Depot, which is established under the Merchant Shipping Ordinance (Chapter 281).

2. The main new provisions are contained in clause 7. The Governor may designate places and vessels as Government Explosive Depots. The Commissioner of Mines is given the control and management of the depots, but the Director of Marine may control the use and movement of any vessel designated as a depot.

3. The Governor may appoint managers and deputy managers of the depots (new section 13D). Regulations may be made by the Governor in Council for their proper management (new section 13E).

4. By clause 5, the Governor may give directions to any public officer, except a judge or magistrate, as to the exercise of the officer's functions under the Bill.

**MERCHANT SHIPPING (AMENDMENT) BILL 1971**

MR HETHERINGTON moved the second reading of:—"A bill to amend the Merchant Shipping Ordinance."

He said—Sir, this bill is closely related to the Dangerous Goods (Amendment) Bill 1971 on which I have just spoken. Its main purpose is to delete references in the principal Ordinance to the Government Gunpowder Depot at present under the statutory control of the Director of Marine and to make some consequential changes.

A secondary and wholly unrelated purpose is to amend the principal Ordinance to bring sections 69 and 78 up to date following a recent revision of the International Code of Signals. Clauses 3 and 4 provide accordingly.

I have also just said that it is the intention to bring the Dangerous Goods (Amendment) Bill and the Merchant Shipping (Amendment) Bill, if they are enacted, in to operation on the same day. Subsection 2 of clause 1 authorizes the Governor by notice in the *Government Gazette* to appoint such a day. However, because of the introduction by this bill of new signals under the revised International Code of Signals, it may be necessary to bring clauses 3 and 4 in to effect on a different

day from that appointed for the remaining clauses. Subsection 2 of clause 1 is so worded as to permit the Governor to appoint different dates for different provisions of 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*

The main object of this Bill is to amend the principal Ordinance by deleting references to the Government Gunpowder Depot, which is at present under the control of the Director of Marine. This follows the proposed amendment of the Dangerous Goods Ordinance (Chapter 295) to provide for the establishment of Government Explosives Depots under the control and management of the Commissioner of Mines. Under that Ordinance, however, the Director of Marine will retain control of the surveying, movement, siting and mooring of any ship which is designated as an Explosives Depot. These amendments are contained in clauses 2, 5, 6, 7, 8, 9 and 10.

2. Section 69(3) of the principal Ordinance, which deals with signals for police assistance aboard vessels, is amended by clause 3 to accord with a recent revision of the International Code of Signals. Section 78(4) of the principal Ordinance, which deals with the powers of police officers in respect of vessels which have been lawfully required to stop, is amended by clause 4 to conform with the revised Code.

### **DECEASED'S FAMILY MAINTENANCE BILL 1971**

#### **Resumption of debate on second reading (10th February 1971)**

*Question again proposed.*

*Question put and agreed to.*

Bill read the second time.

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

### Committee stage

Council went into Committee.

### CRIMINAL PROCEDURE (AMENDMENT) 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 4 were agreed to.

Clause 5.

THE ATTORNEY GENERAL (MR ROBERTS):—Sir, I move that clause 5 be amended as set forth in the paper before honourable Members.

There are three amendments proposed to this clause. Firstly that the words "demurrer or" should be deleted from paragraph (a) of the proposed new section 51(1). The reference to demurrer was included in error, since this form of plea has in fact been abolished by section 53 of the Criminal Procedure Ordinance.

The second amendment is to delete the words "or murder" from the proposed new section 51(2), since alternative findings on a charge of murder are dealt with in item 5 in the Schedule to the bill.

#### *Proposed Amendment*

#### *Clause*

- 5 That clause 5 be amended—
- (a) in paragraph (a) of subsection (1) of the proposed section 51, by deleting "demurrer or";
  - (b) in subsection (2) of the proposed section 51, by deleting "or murder";
  - (c) by deleting subsection (7) of the proposed section 51.

The amendments were agreed to.

Clause 5, as amended, was agreed to.

Clause 6 was agreed to.

Clause 7.



THE ATTORNEY GENERAL (MR ROBERTS):—Sir, I move two amendments to this clause in the manner set out in the paper before honourable Members.

The first amendment is a purely verbal one, which is intended to clarify a cross reference.

The second amendment seeks to abolish the offence of misprision of felony, which has long fallen into disuse and has been abolished in the United Kingdom. The offence is committed by anyone who conceals a felony, even if this amounts to no more than a failure to report the commission of a felony. A person who actively impedes the arrest or prosecution of an offender will, however, be guilty of an offence under the new section 90 of the Ordinance which is contained in clause 7 of the bill.

*Proposed Amendment*

*Clause*

- 7 That clause 7 be amended—
- (a) in subsection (2) of the proposed section 90 by inserting after "offence charged" in the second place where they occur the following—  
" (or that other offence) ";
  - (b) in the proposed section 91 by adding, after subsection (4), the following  
—  
"(5) The Offence of misprision of felony is hereby abolished."

The amendments were agreed to.

Clause 7, as amended, was agreed to.

Clauses 8 to 10 were agreed to.

Clause 11.

THE ATTORNEY GENERAL (MR ROBERTS):—Sir, I move that clause 11 be amended as set out in the paper circulated to honourable Members.

The effect of the first proposed amendment will be that a person convicted of any of the offences set out in the Third Schedule may not be given a suspended sentence of imprisonment.

The second amendment substitutes a new subsection (2) in section 109C. At present the court is given a discretion as to whether or not a suspended sentence shall be consecutive to or concurrent with a sentence imposed for another offence committed during the operative

[THE ATTORNEY GENERAL]      **Criminal Procedure (Amendment) Bill—committee stage**

period. The amendment will make it clear that the suspended sentence must run consecutively to the other sentence, unless there are special circumstances which justify the court in making the sentences concurrent.

The third amendment inserts into section 109G a definition of the expression "excepted offence".

*Proposed Amendment*

*Clause*

- 11      That clause 11 be amended—
- (a)    in subsection (1) of the proposed new section 109B, by inserting after "offence" where it first occurs the following—
    - " , other than an excepted offence, ";
  - (b)    by deleting subsection (2) of the proposed new section 109C and substituting the following—
    - "(2) Where a court orders that a suspended sentence shall take effect, with or without any variation of the original term, the term of such sentence shall commence on the expiration of another term of imprisonment passed on the offender by that or another court, unless the court is of opinion that, by reason of special circumstances, the sentence should take effect immediately.";
  - (c)    in the proposed new section 109G, by inserting after the definition of "court" the following new definition—
    - ""excepted offence" means an offence declared to be an excepted offence by the Third Schedule;"

The amendments were agreed to.

Clause 11, as amended, was agreed to.

Clauses 12 to 14 were agreed to.

New clause 10A "Amendment of section 109A".

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

THE ATTORNEY GENERAL (MR ROBERTS):—Sir, in accordance with Standing Order No 46(6), I move that new clause 10A, as set out in the paper before honourable Members, be read a second time.

MR Y. K. KAN:—Sir, I have been asked by my Unofficial colleagues to make the following statement in connection with this amendment. Sir, as you know Unofficial Members have repeatedly voiced their deep concern in this Council on the increasing amount of violent crime in the Colony. It was for this reason that we had advocated the exclusion of certain offences from the operation of suspended sentences which the bill now before Council seeks to introduce.

Since the second reading of the bill consideration has also been given by Unofficial Members to exclude these offences from the operation of section 107 of the principal Ordinance and the Probation of Offenders Ordinance.

Under section 107 of the principal Ordinance, where a person is convicted of an indictable offence the Court may, instead of sending him to prison, deal with him more leniently by ordering him to sign a bond to be of good behaviour. Under section 3 of the Probation of Offenders Ordinance the Court may simply place him under the supervision of a probation officer.

Most of my Unofficial colleagues feel that these two methods of treatment are inappropriate in the case of the offences listed in the Schedule and that there ought to be no alternative to imprisonment in such cases.

On the other hand it is recognized that particular circumstances of the offence or of the offender may be such as to warrant some less harsh penalty.

For this reason the Unofficial Members have decided not to press at this time for an amendment which would exclude such alternative methods of treatment from those available to the Courts.

The public, however, may rest assured that we are fully aware of the necessity of ensuring that every member of the community is adequately protected by law against crimes of violence, and we shall not hesitate to seek a review of the position if at any time in the future it becomes necessary to do so.

THE ATTORNEY GENERAL (MR ROBERTS):—I realize, of course, that the views put forward by honourable Members do represent those of a substantial proportion of the general public.

Nevertheless, I am relieved that honourable Members have not felt that they ought at this stage to seek to limit by legislation the discretion which the courts enjoy, to make probation orders or to give absolute or conditional discharges.

[THE ATTORNEY GENERAL]      **Criminal Procedure (Amendment) Bill —  
committee stage**

These are well tried methods of dealing with offenders and it would, I think, be unfortunate to have to remove them, even in relation to crimes of the kind which are to be set out in the new Schedule to the Ordinance.

Like all methods of dealing with criminals, of course, they must be used with discretion and only in appropriate cases. Perhaps the most difficult of all judicial tasks is that of finding the right punishment in a particular case, weighing up the circumstances of the offender as compared with the needs of the protection of the community.

I would ask honourable Members and the public generally not to form too hasty a general view of the severity of sentences passed by the courts on the basis of a few cases in which apparently light sentences are imposed.

Reports in newspapers of the facts of a case do not necessarily include all the factors which influenced the court in deciding a sentence. Furthermore, there is bound to be some variation in the views of individual judges as to the gravity of a particular offence, just as honourable Members themselves are not always in agreement on this subject.

I believe that the courts here are well aware of, and give proper weight to, the natural revulsion of the community at the spread of violence, but they must, of course, beware that this does not lure them into injustice to any particular individual.

*Question put and agreed to.*

Clause read the second time.

THE ATTORNEY GENERAL (MR ROBERTS):—Sir, I move that new clause 10A be added to the bill.

*Proposed Addition*

*Clause*

10A      That the following new clause 10A be added—

"Amendme  
nt of section  
109A.      **10A.** Section 109A of the principal Ordinance is amended  
by inserting after subsection (1) the following new subsection—

"(1A)      This section shall not apply to a person  
who has been convicted of any offence which is declared to  
be an excepted offence by the Third Schedule."."

The addition of the new clause was agreed to.

New clause 12A "Addition of new section 124".

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

THE ATTORNEY GENERAL (MR ROBERTS):—Sir, in accordance with Standing Order No 46(6), I move that new clause 12A, as set out in the paper before honourable Members, be read a second time.

*Question put and agreed to.*

Clause read the second time.

THE ATTORNEY GENERAL (MR ROBERTS):—Sir, I move that new clause 12A be added to the bill.

*Proposed Addition*

*Clause*

12A	That the following new clause 12A be added—
"Addition of new section 124.	<p style="margin-left: 20px;"><b>12A.</b> The principal Ordinance is amended by adding, after section 123, the following new section—</p> <p style="margin-left: 20px;">"Amendment of Third Schedule.      <b>124.</b> The Legislative Council may, by resolution, from time to time amend the Third Schedule."."</p>

The addition of the new clause was agreed to.

New clause 12B "Addition of new Third Schedule".

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

THE ATTORNEY GENERAL (MR ROBERTS):—Sir, in accordance with Standing Order No 46(6), I move that new clause 12B, as set out in the paper before honourable Members, be read a second time.

*Question put and agreed to.*

Clause read the second time.

THE ATTORNEY GENERAL (MR ROBERTS):—Sir, I move that new clause 12B be added to the bill.

**Criminal Procedure (Amendment) Bill—committee stage***Proposed Addition**Clause*

12B That the following new clause 12B be added—  
 "Addition of 12B. The principal Ordinance is amended by adding, after the Second  
 new Third Schedule, the following new Schedule—  
 Schedule.

"THIRD SCHEDULE. [ss. 109A, 109G

& 124.]

*Excepted Offences.*

The following offences are declared to be excepted offences

- |                  |   |
|------------------|---|
| (Cap.<br>134.)   | 1. Manslaughter.<br>2. Rape or attempted rape.<br>3. Affray.<br>4. Any offence against section 4, 5, or 6 of the Dangerous Drugs Ordinance.       |
| (Cap.<br>212.)   | 5. Any offence contrary to section 10, 11, 12, 13, 14, 17, 19, 20, 21, 22, 23, 28, 29, 30, 36 or 42 of the Offences against the Person Ordinance. |
| (Cap.<br>213.)   | 6. Any offence or attempted offence against section 7 of the Protection of Women and Juveniles Ordinance.   |
| (Cap.<br>238.)   | 7. Any offence against section 4 of the Arms and Ammunition Ordinance.  |
| (21 of<br>1970.) | 8. Any offence against section 10 or 12 of the Theft Ordinance."".  |

The addition of the new clause was agreed to.

Schedule.

THE ATTORNEY GENERAL (MR ROBERTS):—Sir, I move that the schedule be amended as set forth in the paper before honourable Members.

*Proposed Amendment*

Schedule That the Schedule be amended—

(a) by deleting item 5 and substituting the following—

- |                 |   |   |  |
|-----------------|---|---|--|
| "(Cap.<br>212.) | 5. Offences against the Person Ordinance. | Add, after section 8, the following—<br>"Alternative verdicts. [cf. 1967. c. 58. s. 6.] | <b>8A.</b> On an indictment for murder a person found not guilty of murder may be found guilty of<br>(a) any offence of which he may be found guilty under any Ordinance specifically so providing, or under |
|-----------------|---|---|--|

(Cap. 221.)

subsection (2) of section 51 or subsection (2) of section 90 of the Criminal Procedure Ordinance; or

- (b) an attempt to commit murder, or of an attempt to commit any other offence of which he may be found guilty.".

(b) by inserting after item 11 the following new item—

- "(Cap. 5.) 12. District Court Ordinance. "Aiders and abettors. (Cap. 5.)
- (i) Section 39 is repealed and replaced by the following—
- 39.** Sections 89, 90 and 91 of the Criminal Procedure Ordinance shall apply to proceedings in the Court with such verbal alterations and modifications not affecting the substance thereof as may be necessary to render the same conveniently applicable."
- (ii) The Second Schedule is amended—
- (a) in Part I, by deleting "51,";
- (b) in Part II, by deleting sub-paragraph (3) of paragraph 1."

The amendments were agreed to.

The Schedule, as amended, was agreed to.

#### **MAGISTRATES (AMENDMENT) BILL 1971**

Clauses 1 to 6 were agreed to.

#### **WIDOWS AND ORPHANS PENSION (AMENDMENT) BILL 1971**

Clauses 1 and 2 were agreed to.

Council then resumed.

#### **Third reading**

THE ATTORNEY GENERAL (MR ROBERTS) reported that the Criminal Procedure (Amendment) Bill 1971 had passed through Committee with certain amendments and that the Magistrates (Amendment) Bill 1971 had passed through Committee without amendment and moved the third reading of each of the bills.

*Question put on each bill and agreed to.*

Bills read the third time and passed.

THE FINANCIAL SECRETARY (SIR JOHN COWPERTHWAIT) reported that the Widows and Orphans Pension (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.

### **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 10th March 1971.

*Adjourned accordingly at eight minutes to Five o'clock.*