

OFFICIAL REPORT OF PROCEEDINGS

Wednesday, 26th May 1971

The Council met at half past Two o'clock

[MR PRESIDENT in the Chair]

PRESENT

HIS EXCELLENCY THE GOVERNOR (*PRESIDENT*)
SIR DAVID CLIVE CROSBIE TRENCH, GCMG, MC
THE HONOURABLE THE COLONIAL SECRETARY
SIR HUGH SELBY NORMAN-WALKER, KCMG, OBE, JP
THE HONOURABLE THE ATTORNEY GENERAL
MR DENYS TUDOR EMIL ROBERTS, CBE, QC, JP
THE HONOURABLE THE SECRETARY FOR HOME AFFAIRS
MR DONALD COLLIN CUMYNN LUDDINGTON, 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 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 DENIS CAMPBELL BRAY, JP
DISTRICT COMMISSIONER, NEW TERRITORIES
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 CHARLES BROWNE, JP
DR THE HONOURABLE CHUNG SZE-YUEN, 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

ABSENT

THE HONOURABLE LEE QUO-WEI, OBE, 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:—	
Pensions (Amendment) (No 3) Ordinance 1970.	
Pensions (Amendment) (No 3) Ordinance 1970 (Commencement) Notice 1970.....	56
Prevention of Bribery Ordinance.	
Acceptance of Advantages Regulations 1971	57
Prevention of Bribery Ordinance.	
Prevention of Bribery Ordinance (Commencement) Notice 1971.....	58
Buildings Ordinance.	
Building (Administration) (Amendment) Regulations 1971	59
Buildings Ordinance.	
Building (Ventilating Systems) (Amendment) Regulations 1971	60
Coroners Ordinance.	
Coroners (Fees) Rules 1971	61
Sessional Papers 1970-71:—	
No 56—Annual Report by the Director of Immigration for the year 1969-70 (published on 26.5.71).	
No 57—Triennial Survey of the Education Department for the years 1967-70 (published on 26.5.71).	

Oral answers to questions

Cleanliness of carriages on KCR

1. MR P. C. WOO asked:—

Is Government aware of complaints about the uncleanness of carriages on the Kowloon-Canton Railway? If so, what steps are contemplated to deal with the matter?

THE FINANCIAL SECRETARY (SIR JOHN COWPERTHWAIT):—Sir, Government is aware that there have been complaints. The complaints should properly be aimed not at Government or the Railway management but at the inconsiderate behaviour of fellow-passengers who dispose of their litter indiscriminately in the carriages. The General Manager goes to very great, indeed extraordinary, trouble and expense to try to keep the carriages clean in the face of this behaviour. During the day passenger carriages are swept at the terminal on completion of each journey although, as the turning time at Lo Wu is only 10 minutes, a more thorough sweeping cannot be carried out until the train returns to Tsim Sha Tsui Station. All carriages are thoroughly cleaned and washed after service ceases at night. In addition, on weekends, one train is taken out of service in the morning and one train in the afternoon and carriages are washed, both inside and outside.

Additionally, notices were posted in all carriages four months ago requesting passengers to keep carriages clean, and specially designed litter bins are to be installed in carriages shortly.

My honourable Friend may be assured that the General Manager and his staff are conscious that the state of cleanliness of carriages leaves much to be desired from time to time, particularly at weekends and public holidays when trains, loaded with holiday-makers, run on more frequent schedules. The General Manager's task would be considerably eased, and conditions made more pleasant for all, if passengers had more consideration for other passengers.

MR Y. K. KAN:—Sir, my honourable Friend read out his answer so rapidly that I am afraid I missed part of it. Are there in fact by-laws regulating cleanliness in the use of the Railway and, if so, are they being enforced?

THE FINANCIAL SECRETARY (SIR JOHN COWPERTHWAIT):—I regret I have no information on that point but I shall get it for the honourable Member.

MR H. J. C. BROWNE:—Sir, is not one of the problems that some of the carriages are so old and dilapidated that they give a very bad appearance and I wonder whether sort of spring cleaning or a sort of more painting up and doing up the carriages might not be a good thing?

THE FINANCIAL SECRETARY (SIR JOHN COWPERTHWAIT):—I do not think my honourable Friend's remarks call for any answer from me.

HIS EXCELLENCY THE PRESIDENT:—Are they not old, I think the question was....

Oral Answers

MR BROWNE:—Yes, I wonder whether the honourable Financial Secretary would consider more speedy renovation of the condition of some of the carriages?

THE FINANCIAL SECRETARY (SIR JOHN COWPERTHWAIT):—We will consider that point.

Fatal industrial accidents

2. DR S. Y. CHUNG asked:—

Will Government say how many fatal industrial accidents per 1,000 employees occurred in Hong Kong each year during the last five years, and how these figures compare with those in the industrially-advanced countries like the UK and USA?

MR R. M. HETHERINGTON:—Sir, with regard to the first part of my honourable Friend's question the figures, based on reported industrial and occupational accidents in registered, recorded and registrable industrial undertakings for the last five years, are as follows:—

1966-67.....	0.0860
1967-68.....	0.0530
1968-69.....	0.0593
1969.....	0.0504
1970.....	0.0657

The rates do not take into account the number of employees in registrable industrial undertakings which are not as yet recorded by or registered with the Labour Department.

This information was given by Mr Anthony ROYLE, M.P., Under-Secretary of State for Foreign and Commonwealth Affairs, in a written reply to a question by Mr James SILLARS, M.P., in the House of Commons on 5th May 1971. I understand that copies of parliamentary questions and answers are normally sent to Unofficial Members for their information.

I regret that I am unable to give precisely comparable figures for industrially-advanced countries like the United Kingdom and the United States. The annual report of Her Majesty's Chief Inspector of Factories

for 1969 records the following information on "fatal accidents in factory processes" in the United Kingdom:—

1966	0.046
1967	0.044
1968	0.045
1969	0.045

The National Safety News, a publication of the National Safety Council of the United States, records the following "work death rates in the manufacturing industry" in the United States:—

1969	0.10
1970	0.09

DR CHUNG:—Sir, I am glad to hear such good figures as compared to the industrially advanced countries like America. Are these figures quoted by my honourable Friend inclusive of all industries in Hong Kong and, if not, what are the industries not included in his reply?

MR HETHERINGTON:—Sir, the rates which I have quoted in respect of Hong Kong do not include all industries. In particular, the construction industry is not included and also the ship-breaking industry, in both of which fatalities occurred. There may be one or two others which I just can't recollect but they are of no particular consequence.

DR CHUNG:—Sir, what is the rate of fatal accidents in our construction industry which is not included in the earlier figures?

MR HETHERINGTON:—Sir, I can't give a precise rate but, in 1969-70 in the construction industry, there were 28 fatalities recorded. I can't remember precisely the exact number of people employed at that time but I would hazard very roughly that the rate is somewhere about 0.25 to 0.30 as a range. I can't be sure of the precise figure.

DR CHUNG:—Sir, how does this rate compare with that in the USA?

MR HETHERINGTON:—According to the National Safety News, to which I referred in my original reply, the figure in the United States for the construction industry was 0.72 for 1970.

HIS EXCELLENCY THE PRESIDENT:—0.72?

MR HETHERINGTON:—0.72, Sir.

Oral Answers

DR CHUNG:—It means our rate is about one-third of that in America.

Claimed health hazards in certain Hong Kong products

3. DR CHUNG asked:—

In view of the adverse publicity caused by certain unhealthy and unsafe Hong Kong products such as dangerous toys, contaminated ice cubes, faulty Christmas tree lights and, more recently, poisonous love beads, which could impair our image overseas and hinder our domestic exports, what steps is Government taking or contemplating to take to safeguard Hong Kong's interest in this regard?

MR J. CATER:—Sir, in view of recent press publicity and comment arising from overseas complaints about Hong Kong made confectionery and enamelware, I am grateful to my honourable Friend for giving me the opportunity of explaining, as briefly as I can, something of the positive work being done by the Commerce and Industry Department and by other organizations in the general field of health and safety aspects of export products.

My honourable Friend will of course be aware that it has been Government policy in these matters to react to overseas complaints by investigation, persuasion and education rather than by the establishment of statutory controls and standards. This policy has been followed, successfully I believe, for a number of years and my department has had a great deal of co-operation from manufacturers and from those organizations and other Government departments which are concerned in one way or another with product standards. Amongst these are the Federation of Hong Kong Industries, the Hong Kong Productivity Centre, and the Public Works, Medical and Health, and Urban Services Departments.

When considering the action which should properly be taken by Government with regard to health and safety aspects of exports of Hong Kong products, it is necessary to keep the problem in context and perspective. We export thousands of categories of consumer goods every month to every part of the world. We must expect problems of health and safety to arise occasionally, especially in those countries where the degree of consumer protection is advanced and where the

subject may well become emotive and possibly even political in character. In some countries, standards of health and safety for consumer products are only now being worked out and we are therefore faced also with changing requirements.

In these circumstances, Hong Kong's record in the export field is a very good one. The vast bulk of our export products enter foreign countries without giving rise to health and safety problems. Official agencies in many countries test import products as well as those made by domestic manufacturers, and Hong Kong appears to come out of these tests relatively well. On the basis of the evidence now available to me, therefore, I would not propose that statutory health and safety standards should be imposed on export products at this stage. This would be a most expensive and time consuming burden on commerce and industry and, in my view, it would be an unnecessary burden. For most of our products, adherence to overseas health and safety standards can quite safely be left to our manufacturers and exporters, whose buyers will obviously be anxious to ensure that the goods they purchase conform to their country's hygiene and safety standards.

There are occasions, however, when Government must do more than simply to react to complaints on individual products. Sometimes the pattern of complaints and the information which my department obtains when investigating them, reveals, or suggests, an industry-wide problem which should be tackled at source, that is, in the factories. Such problems have arisen within the three main categories of goods which cause the greatest number of overseas complaints. These are food products, electrical products and toys. In regard to all three, many overseas countries have statutory standards of quality, hygiene or safety and inspections are carried out regularly by official bodies charged with the protection of consumers. All three industries are of economic importance here and all have considerable growth potential.

At the risk of taking up even more of honourable Members' time than I should, I would like to illustrate very briefly by reference to electrical products how my department in concert with other interested parties tackles industry-wide problems of health and safety. This particular case, typical of others, started with an article in the British consumer magazine "Which" in 1967, demonstrating that Hong Kong made Christmas tree lights were of poor quality when compared against the British Standard Specification for this commodity. As my honourable Friend may be aware, this magazine is published by the British Consumers Association and is noted for its objective testing and reporting.

Soon afterwards my department received complaints from Britain regarding alleged flammability of Hong Kong Christmas tree lights. The assistance of the Federation of Hong Kong Industries was sought

[MR CATER] Oral Answers

in carrying out a comprehensive system of tests on *all* models of Christmas tree lights made in Hong Kong. The Federation, utilizing the services of an overseas electrical expert under contract with them at the time, carried out the tests required in its laboratory. These showed that the problem was less serious than had been feared but, nevertheless, *every* manufacturer was interviewed by my staff about the test reports. A number sought consultancy advice from the Federation and from the Productivity Centre, which at my request organized a series of practical courses for technicians in the factories producing Christmas tree lights.

The upshot of all this work is that no complaints at all have been received by my department since early last year, at least in regard to the safety aspects of these particular products. In addition, one manufacturer, working with the Federation, has been able to secure the use of the "Kite" mark from the British Standards Institute, *the first manufacturer of this product in the world to do so*.

These are the sort of results which can be brought about by pragmatic and practical action taken by my department. They depend on the goodwill of other organizations and of industry itself. Only on a very few occasions have I found it necessary to take special steps to restrict the export of unhygienic or dangerous products. I have, for example, refused to issue export licences for liquid filled toys and drink coolers unless supported by health certificates issued by the Urban Services Department.

Co-ordinated work is being done at present, within Government and by the relevant external institutions, in the general field of health and safety aspects of Hong Kong products with a view to raising manufacturing standards where necessary. My department will also continue to take action in response to complaints, and will initiate collective action where appropriate in the interests of the economy. I do not suggest that the action taken is always effective or adequate; but I believe that, given the need to restrict trade as little as possible, what my department is doing, with other interested agencies, is moving in the direction of consolidating Hong Kong's growing reputation in world markets for the production of merchandise competitive not only in price but in quality as well.

My position, Sir, as a former Executive Director of the Trade Development Council gives rise to a particular concern, based on first-hand experience of the considerable damage to our overseas image which can arise from widely-publicized complaints about the health and safety standards of Hong Kong products. I should therefore like to conclude by reassuring my honourable Friend that I am in no way

complacent about these issues and that I am prepared to act firmly as and when necessary.

DR CHUNG:—Sir, I am most grateful to my honourable Friend for his very comprehensive answer to my question. I am aware of and do appreciate the good work done by the Department of Commerce and Industry in conjunction with other trade and industry associations in this matter. With due respect, however, the current solution is somewhat like the fire brigade which is to put out...

HIS EXCELLENCY THE PRESIDENT:—What is your question, Dr CHUNG?

DR CHUNG:—I am leading to the question, Sir.

HIS EXCELLENCY THE PRESIDENT:—Well, please do not make a speech.

DR CHUNG:—Has my honourable Friend considered a more positive and preventive approach to the problem by encouraging manufacturers to submit for testing their new products within the categories which my honourable Friend has mentioned, and awarding to those successful ones some kind of safety mark like the Underwriters Laboratory mark or the Good Housekeeping mark in America?

MR CATER:—Well, Sir, the suggestion made by my honourable Friend is an interesting one and worthy of consideration, although clearly there are substantial problems involved in the scheme as outlined by him. Such a scheme would require, I suggest, the support of industrial organizations such as the Federation of Hong Kong Industries and of course the general support of industry itself. I would propose therefore to discuss this possibility with the interested parties and if the proposal seems to have possibilities then I would take this to the Trade and Industry Advisory Board for their advice.

DR CHUNG:—Sir...

HIS EXCELLENCY THE PRESIDENT:—Yes, Dr CHUNG.

DR CHUNG:—Will my honourable Friend undertake to report his findings to this Council, say within about six months?

MR CATER:—Yes, Sir.

Oral Answers**Fixed Penalty (Traffic Contraventions) Ordinance**

4. MR Y. K. KAN asked:—

Why has Government taken so long in implementing the Fixed Penalty (Traffic Contraventions) Ordinance 1970 since it was passed in this Council on the 25th February 1970?

THE ATTORNEY GENERAL (MR D. T. E. ROBERTS):—Sir, various administrative arrangements, some of which have proved to be difficult, have had to be made. Among them were the devising of effective methods of audit, the invention of the necessary registers and forms, the provision of the additional staff required, the supply of continuous stationery and the programming of a computer system. Some of the forms needed for the computer cannot be produced locally and are being printed in Japan.

There has been, unfortunately, an accumulation of short delays in dealing with these problems which has held back the bringing into force of this Ordinance longer than should have been the case. I hope that it will be possible to introduce it when the forms have arrived from Japan and have been shown to be satisfactory in computer tests.

MR KAN:—Dealing with the last part of my honourable Friend's reply, do I gather that as yet no early date can be foreseen in the implementation of this law?

THE ATTORNEY GENERAL (MR ROBERTS):—Well, the present estimate is that the forms should arrive from Japan fairly early in July and if this happens, subject to the necessary tests being satisfactory, we shall aim at bringing the Ordinance into force by about the beginning of September.

Statements**Metrication**

THE COLONIAL SECRETARY (SIR HUGH NORMAN-WALKER):—Sir, honourable Members will remember that last year you, Sir, appointed a Committee to advise on the question whether, when and to what extent metric systems of measurement should be adopted in Hong Kong. The Committee, under the chairmanship of my honourable Friend, Dr S. Y. CHUNG, has since submitted two interim reports.

In the second of these reports, the Committee examined in some detail the need for adopting metric systems in various sectors of the economy. The report concluded that in some sectors, particularly in the engineering industries and in education, a change to metric measurements in Hong Kong is inevitable. The report made two important recommendations: first that the Government firmly decide in principle to "go metric" in certain fields, such as education, public works and legislation, for which the Government has a direct responsibility; secondly, and more particularly, that the Director of Public Works start planning now to introduce metric units into public works and into the Buildings Ordinance.

I need not, I think, describe in detail here the findings and arguments on which the Committee has based these recommendations, since honourable Members will have had the opportunity to study the second interim report. All I need say is that they are highly persuasive and convincing arguments, and that it is the Government's decision to accept the two recommendations I have mentioned.

I should like, at this juncture, to make two points clear. The first is that acceptance of the Committee's recommendations does not mean that we are necessarily committed to metrication across the board, or to implement the changes simultaneously in all sectors. There are fields in which the metric system is, and may always be, inapplicable and inefficient. There are other fields—such as land records—in which the disruption caused by a change in mensuration may outweigh the advantages. But it is clear that metrication is not only inevitable but also desirable in most fields.

The second point I wish to make is that, in accepting metrication for some of its own activities, the Government has no intention of seeking compulsory powers to enforce the exclusive use of metric units in the private sector. In some cases, of course, an amount of compulsion cannot be avoided, as in the case of examination syllabuses; but in such cases the same amount of compulsion already exists, only related to some other system of mensuration. In the majority of cases, the law is permissive rather than mandatory. Those who want to can continue to use imperial and other units as long as the actual measurements are within the limits stipulated by statute. Individuals and firms in the private sector are free to decide whether or not they wish to adopt metric systems for their own purposes.

I have no doubt, however, that the private sector will move towards metrication *pari passu* with the Government. In fact, the recommendation that the Government take the lead in metrication has emanated from industry. The Metrication Committee is composed of both officials and unofficials, and so are the eight specialist sub-committees it has established. The Committee, is widely representative

[THE COLONIAL SECRETARY] **Metrication**

of those bodies and organizations in both the public and the private sectors which are likely to be affected by metrication. The Committee's reports reflect the views of industry, and are given wide circulation to trade, industrial and professional organizations. Thus, if the Committee considers metrication to be inevitable in many fields, I have no doubt that most of the organizations in the fields concerned have already come to the same conclusion.

It only remains for me, Sir, to congratulate my honourable Friend, Dr CHUNG, for the excellent work which he and his Committee have done so far on this important question. At this stage, the Government's decision is one of principle only. Details of the change will have to be carefully worked out and co-ordinated so that the process of metrication can be carried out smoothly and efficiently. The task is a sizeable one, but I am confident that, with the continued advice and assistance of the Metrication Committee, there will be no insuperable difficulties.

MR J. J. ROBSON:—Sir, the decision of Government to move towards the adoption of a metric system in Hong Kong is welcomed by the Public Works Department which will share with the Education Department the task of taking the lead in its implementation.

My honourable Friend, the Director of Education, and the Hong Kong University have already commenced teaching metric units to the rising generation of engineers, architects, surveyors and builders. My task is to convert to the metric system those who, perhaps for all their lives, have been used to yards, feet and inches; tons and pounds per square inch; and gallons and pints. In this connexion it is relevant that the construction industry in Hong Kong only comparatively recently decided to adopt the imperial system of weights and measures throughout the whole industry. However, this process is not complete and the use of certain of the traditional Chinese units of measurement such as the picul is still common. I would not therefore wish the industry to spend any more time in converting itself to imperial units and would now like to see it concentrate on the change to the metric system so that this can be effected as quickly and as painlessly as possible.

While certain amendments to legislation will be needed in due course the most important task will be to teach people of many different professions and trades to think metric. This is not easy as the metric system is an artificial one not based upon natural objects which are easily visualized as are the older systems used by the Chinese, the Americans and the British. The linear units of these latter systems are based upon the natural pace and the human foot but unfortunately all

people are not the same size and from the relationship between the 1,000 Roman paces (or double steps) which became the British and American mile and the 360 paces of the Chinese mile it seems that the Chinese were a much taller nation than the Roman. (*Laughter*). As the Chinese foot is equal to almost 1¼ times the British foot and the old Roman foot, it also seems that they had bigger feet. These old systems are not therefore much suited for acceptance internationally as a precise system of measurement.

In the metric system the unit of linear measure, the metre; the unit of capacity, the litre; and the unit of weight, the gramme are all inter-related one with the other and with the density of pure water. This, together with it being a decimal system throughout, makes it ideal for scientific and engineering measurements and calculations. It has for a long time had universal acceptance throughout the scientific world and is now in use in Britain in the engineering and building industries. It has also for some time been in general use in China, Japan and of course all European countries. Except therefore for the few imports from America, standard supplies to the building and engineering industries of Hong Kong coming from overseas will conform to metric sizes and standards rather than those given in our present specifications and building legislation.

When the Metrication Committee on which I had a representative was investigating the problems of metrication prior to submitting its report to Government, one of the sub-committees which was set up was charged with the task of investigating the effect of metrication upon the building construction and civil engineering industries. This sub-committee, which was chaired by my representative on the main committee, comprised Government professional officers, representatives of the various professions and industries involved and a representative of the Hong Kong University. After making its initial report this sub-committee, at my request, accepted the task of investigating the implications which metrication would have upon the different offices in the Public Works Department, including the Buildings Ordinance Office, and also upon the building and civil engineering industries insofar as they were affected by PWD decisions. It has now accepted the further role of a committee which will steer the Public Works Department towards metrication and is at present at work preparing a programme for this.

The Steering Committee thinks that the initial stage of the change may be complete in two years and, in view of the fact that the building industry basically relies upon imported raw materials which, as I have explained, are now to an increasing extent being supplied in

[MR ROBSON] **Metrication**

metric sizes and standards, the quicker the change can become effective the better.

However, there is much to be done before the change will become effective for it is one thing to say that as from tomorrow we shall use only metric units in the Public Works Department and our specifications will be drafted accordingly and another for this instruction to become effective. I have already mentioned that many traditional Chinese units are still in use in spite of a conscious decision by the building industry that the imperial system would be adopted. I fancy therefore that the same traditional Chinese units will be used for a long time yet but nevertheless I think that the change to the metric system may be easier still for Hong Kong than it is proving to be for the United Kingdom. I say this because the older members of our population who were brought up in China will probably have a basic knowledge of the metric system and have had practice in its use. These early lessons are the ones that the memory retains and I am therefore hopeful that this will lead to the early conversion to metric thinking of the members of the different professions and trades of the building industry.

The present indications are, as has been said, that the Registrar General's land records will continue to be kept in imperial units and the Colony survey maps will continue to show heights in feet for a long time yet. It will however be necessary for all new surveys of construction sites and the preparation of plans upon which all construction is based to be carried out in metric units. New standard scales for building plans and even new sizes of drawing paper must be adopted. It will also be necessary to make appropriate amendments to the building legislation while permitting a period of grace during which plans prepared to the old imperial code can be submitted. In the intervening period, however, it will be necessary to introduce amending legislation based upon the imperial system as the life of the Colony cannot stop simply because we are thinking of how best to "go metric".

Local manufacturers will have to be encouraged to produce for our use materials to new specifications in which sizes and weights will be in the metric units. This however should enable them to compete more effectively in the overseas markets which are increasingly demanding products which will conform to metric standards. In my view therefore, that at least as far as the building industry is concerned, the benefits of going metric will prove to be well worth the effort and the extra work involved will be of direct advantage to the Colony generally.

Government business**Motion****HONG KONG STADIUM ORDINANCE**

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

It is hereby resolved that the Hong Kong Stadium By-laws 1971, made by the Urban Council on the 4th day of May 1971, be approved.

He said:—Sir, the Hong Kong Stadium By-laws 1971 were made by the Urban Council on 4th May under the Hong Kong Stadium Ordinance (Chapter 270). If approved, they will enable that Council to regulate the management and control of the Hong Kong Stadium at So Kon Po. They provide for the appointment of a manager and staff at the Stadium and define their powers, which cover, *inter alia*, the control of the public and their behaviour, the direction of vehicular traffic, and the control of advertisements.

Penalties are prescribed for breaches of the By-laws, and the Urban Council is empowered to close the Stadium at any time.

Question put and agreed to.

First reading**MARRIED PERSONS STATUS BILL 1971****LAW REFORM (MISCELLANEOUS PROVISIONS) (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**MARRIED PERSONS STATUS BILL 1971**

THE ATTORNEY GENERAL (MR ROBERTS) moved the second reading of:—"A bill to consolidate with amendments the law relating to the status of married persons."

He said:—Sir, this bill, and the next one on the Order Paper for today, are two further measures in the programme of modernization of our family and personal law which has been undertaken during the past few months.

[THE ATTORNEY GENERAL] **Married Persons Status Bill—second reading**

This bill consolidates three existing Ordinances which deal with the legal status of husband and wife, removes out-of-date provisions from them and inserts a number of new sections, which are designed to keep our law generally in line with that of the United Kingdom, as it has usually been on this subject.

I think I need only draw the attention of honourable Members to those clauses which effect substantial amendments to the existing law.

Clause 4(2) abolishes all restraints upon anticipation or alienation attaching to the enjoyment of property by a woman. Under the rule of restraint upon anticipation, a married woman, to whom property was given as her separate property, can be restrained from alienating it, or from anticipating the income from it, during marriage. This restriction is a relic from the days when it was thought that a married woman was subject to undue influence from her husband whom she was incapable of resisting. Honourable Members will no doubt agree that this is no longer the case.

Clause 5 permits either party to a marriage to sue the other in tort in the same way as if they were single persons. At present, this is not possible by reason of the doctrine that in law husband and wife are one person. The consequence of the present bar is that, for example, a wife who is injured by her husband's negligent driving cannot recover damages against him or, and this is very much more important, against her husband's insurance company if he is insured to cover situations of this nature. In future, she would be able to do so.

Clause 6 reproduces an existing provision, whereby disputes between husband and wife as to the ownership or possession of property may be decided in a summary way by a judge. Clause 7, which is new, extends this power so as to enable the judge to order payments of money, or the sale of property and the distribution of the proceeds, and to make such orders in relation to money or property which has been in the possession of a spouse but is so no longer.

Clause 12 empowers a married infant to give valid receipts for all income to which he may be entitled in the same way as if he were an adult.

Clause 13 will enable a married woman, whether an infant or not, to appoint an attorney on her behalf to execute any deed or do any other act which she has power to do.

The remaining clauses reproduce in substance existing legislation relating to the status of married persons.

Question proposed.

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

Question put and agreed to.

Explanatory Memorandum

The object of this Bill is to consolidate and amend the law relating to the status of husband and wife.

2. Some of the existing legislation on this subject has become obsolete and will be repealed by clause 15.

3. Additions and amendments to the law are included in the Bill and the main changes to be effected by these are the following—

- (a) Clause 4(2) will abolish all restraints upon anticipation or alienation, past or future, purporting to attach to the enjoyment of any property by a woman which could not be attached to the enjoyment of that property by a man.
- (b) Clause 5, subject to certain limitations set out therein, will permit either party to a marriage to sue the other in tort.
- (c) Clause 7 extends clause 6 by giving power to the court, on an application under that clause—
 - (i) to order payment of money; and
 - (ii) to order the sale of the property.
- (d) Clause 12 provides that a married infant shall have power to give valid receipts for all income in like manner as if he were adult.
- (e) Clause 13 will enable a married woman, whether an infant or not, to appoint an attorney on her behalf for the purpose of executing any deed or doing any other act which she may execute or do.

4. The remaining clauses contain in substance the existing legislation (other than that repealed or modified by the Bill) relating to the status of married persons.

**LAW REFORM (MISCELLANEOUS PROVISIONS)
(AMENDMENT) BILL 1971**

THE ATTORNEY GENERAL (MR ROBERTS) moved the second reading of:—"A bill to amend the Law Reform (Miscellaneous Provisions) Ordinance and to make amendments to related Ordinances."

He said:—Sir, this bill reproduces the provisions of the English Law Reform (Miscellaneous Provisions) Act 1970. It abolishes a number of ancient causes of action dealing with various aspects of marriage and family relationships which are thought to be no longer appropriate in modern conditions.

The proposed new section 6, which is to be found in clause 4 of the bill, abolishes the action for breach of promise. In the past, an engagement to marry has been treated as if it were an ordinary contract, giving rise to legal rights and obligations as between the parties to it.

This kind of action is, I understand, seldom brought in our courts and there are substantial arguments against its retention. Perhaps the strongest objection to it is that the threat of an action for damages for a broken engagement may persuade some couples to enter into a marriage relationship which they do not really want.

The new sections 7 and 8, which are also contained in clause 4, provide that property which has been given to engaged couples will be dealt with as if they had been married. Consequently, any dispute between them about property will be settled in accordance with clauses 6 and 7 of the Married Persons Status Bill, which has just been considered by honourable Members.

By virtue of the proposed section 8, an engaged person who makes a gift to the other party on condition that it shall be returned if the marriage does not take place can recover the property even though he was responsible for breaking off the engagement, though there is a rebuttable presumption that the giving of an engagement ring is presumed to be an absolute gift.

The proposed new section 9 abolishes the right of an injured husband to claim damages against a co-respondent for adultery with his wife. The right of a husband to claim monetary compensation for the adultery of a wife seems to have been based on the theory that a man owned his wife like a chattel and was entitled to be compensated for having a piece of his property spoiled. It should also be noted that it has never been open to a wife to claim damages for her husband's misconduct, so that the abolition of this type of action will remove a minor example of discrimination between the sexes.

The proposed new section 10 abolishes three old causes of action, namely enticement, seduction and harbouring. The action of enticement allows one spouse to claim damages against any person who induces the other spouse to leave the matrimonial home. Although theoretically open to both wife and husband, in practice this kind of claim has been brought only by a husband against someone who has enticed the wife to leave him. The justification for such a right of action was that it was considered to be the duty of a wife to reside with her husband and that he should be compensated by anyone who persuaded her to break this duty. Oddly enough, the action does not lie against a mother-in-law, who is perhaps more likely than anyone else to entice a wife to leave her husband. (*Laughter*).

An action for seduction may be brought if a child is seduced and, as a result, becomes pregnant or suffers mental distress, so that the parent loses the benefit of the services of the child. This followed from the doctrine that a father had a legal right to the services of those of his minor children who were resident in the household. Anyone who has minor children will realize that this is a genuine legal fiction which we can now do without.

An action for harbouring, which is very rarely brought, lies against anyone who persuades a minor child or a wife not to return home, against the wishes of the parent or husband.

The Schedule to the bill inserts in the Deceased Family Maintenance Ordinance a new section 4A, which will enable the court to make an award of maintenance under that Ordinance to a surviving party to a void marriage who entered the marriage with the deceased in good faith.

Question proposed.

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

Question put and agreed to.

Explanatory Memorandum

This Bill adopts the provisions of the English Law Reform (Miscellaneous Provisions) Act 1970. It abolishes some ancient causes of action relating to marriage and the family.

Clause 2 amends the long title of the principal Ordinance.

Clause 4 adds five new sections to the principal Ordinance.

Law Reform (Miscellaneous Provisions) (Amendment) Bill — second reading

[Explanatory Memorandum]

The new section 6 abolishes actions for breach of promise of marriage.

The new section 7 applies the law relating to matrimonial property to property disputes between engaged couples. The new section 8 provides for the recovery of conditional gifts between engaged couples, and specifies that the giving of an engagement ring is presumed to be an absolute gift.

The new section 9 abolishes actions for damages for adultery.

The new section 10 abolishes actions for the enticement or harbouring of a spouse and for the enticement, seduction or harbouring of a child.

Clauses 3 and 5 make consequential amendments and transitional provisions. The new section 4A to be added to the Deceased's Family Maintenance Ordinance 1971 by the Schedule to this Bill follows from the abolition of actions for breach of promise. It provides that the surviving party of a void marriage may claim maintenance from the estate of the other party.

PROBATE AND ADMINISTRATION BILL 1971

Resumption of debate on second reading (12th May 1971)

Question again proposed.

MR WOO:—Sir, my honourable Friend, the Attorney General, said at the last meeting of this Council that the proposed bill is to adopt the English law of probate and administration. It follows that the application of Chinese law and custom, hitherto applicable to the estate of a Chinese intestate domiciled in Hong Kong, will be abolished and I see the reason for not re-enacting section 57 of the present Probate and Administration Ordinance (Chapter 10) in the bill under discussion.

"Chinese law and custom" is susceptible to various meanings in the legal field. Without elaborating too much, this term can refer to the Ching law, which has been regarded and recognized as "the Chinese law and custom" in Hong Kong for over the past century as well as the present law and custom in China or in Taiwan.

The repeal of section 57 will result in the proof of Chinese law and custom by expert evidence, which is the practice of the English private international law. However, I would like to draw the attention

of this Council to what has been recognized by the Probate Court here, by a series of discussions since the case of Chan Yeung v. Chan Chew Shi reported in Volume 20 (1925) of the Hong Kong Law Reports at page 35, that in the case of a Chinese intestate, whose wife predeceased him, his concubine is the next person entitled to administer his estate. This is judge-made law peculiar to Hong Kong.

As section 5(2)(a) of the Marriage Reform Ordinance expressly preserves the status or rights of a concubine lawfully taken before the appointed date, that is the 7th October 1971, I would like to know from my honourable Friend whether this bill will affect the existing right of a concubine to the grant of administration of the estate of a Chinese intestate domiciled in Hong Kong; if it is not the intention of Government to do so then this should be expressly provided for.

Mr WILFRED S. B. WONG:—Sir, in speaking on the Probate and Administration Bill, I have realized my life-long ambition, that is to get a word in between two lawyers. (*Laughter*).

There are two points which I would like to raise in connexion with the Probate and Administration Bill 1971. The first point concerns the procedure for the grant of letters of administration with regard to fatal accident claims. At present, under section 5(1) of the Fatal Accident Ordinance (Chapter 22) a beneficiary has to wait at least 6 months and sometimes as long as a year before he can commence an action in his own name for his own benefit and the benefit of all the other dependents. The long period of waiting is caused by the fact that the Registrar has to wait for a certificate from the Estate Duty Commissioner that the estate duties have been paid. This causes innumerable hardship to the families and dependents of the deceased. This problem becomes acute where the deceased left some property and the question of estate duty comes in.

In view of the fact that estate duties consist of only 20%, could this procedure be streamlined so that the probate and letters of administration could be granted at an earlier date. This will enable the beneficiary to get along during the interim period which is usually important as the funeral of the deceased will take place in that period.

A second point concerns the provision in Part II clause 15 that, for small estate under \$10,000, an Official Administrator may get in and administer the estate in a summary manner for the benefit of persons he may deem interested therein without a grant or other legal formality.

In view of the fact that exemption from estate duties has been increased from \$100,000 to \$200,000, I would propose that one tenth of that amount, that is \$20,000, be considered to be the limit of small estate. Indeed in recent years, the funeral expenses and other expenses involved could absorb a whole estate of ten thousand dollars.

[MR WONG] **Probate and Administration Bill—resumption of debate on second reading (12.5.71)**

I hope that at the committee stage the two points I have mentioned will be taken into consideration. Otherwise, I support the motion.

MR OSWALD CHEUNG:—Sir, some years ago I was asked to advise on a matter concerning the grant of letters of administration which I think merits the attention of this Council.

It all happened because a foolhardy young man took his sports car round a bend below Chung Chi College on the wrong side of the road and collided with a truck. Had he killed only himself the lament would have been brief; unhappily, in the process, he injured other persons, at least one seriously. There was no doubt that he had driven recklessly and that he and he solely was responsible for the carnage. Equally, there was no doubt that his estate was liable to pay damages to my client, one of the injured persons.

But in law one cannot sue an estate unless personal representatives are appointed for the estate of the deceased. In the case of that young man he left no will and, though I believe he came from a well-to-do family, he had no property in his own name worth speaking of. At any rate no one from his family jumped in to ask for letters of administration just to oblige my client, to enable my client to sue his estate.

The one asset that he had was an insurance policy, and under it damages to my client would eventually be payable. But the problem was whom could we sue? Whom could we persuade to become his personal representative, or whom could we get the Court to appoint to be his personal representative?

The logical choice would have been someone nominated by the insurance company, which had the most substantial interest in the outcome of the proceedings we wished to bring. The insurance company, however, declined to nominate anyone—understandably, perhaps, because it was not in business to smooth the path of those who wished to get at its assets.

One alternative was for my client to nominate someone, a friend or a professional man, such as a solicitor or a chartered accountant, for the Court to appoint as administrator. Indeed this course, unknown to me, was followed more recently by a colleague of mine at the Bar; he got the solicitor instructing him to be appointed to represent the estate, so that in the upshot the solicitor, on behalf of the injured person, instructed counsel to sue him (the solicitor) as administrator of the estate of the dead wrongdoer. All the steps were taken with perfect propriety and it worked; my client's friend got the damages alright in the end.

The third course—coming back to my own case—was to persuade the Official Administrator, that is to say the Registrar of the Supreme Court, to consent to be appointed. He at first demurred on the grounds that the young man had no estate, but in the end sympathetically agreed to my representations that the wardrobe and books of the young man must form an estate of some value, however small. My representations were accompanied by an offer of a complete indemnity as to his costs and expenses, so that there would be no charge upon the public revenue. The Registrar in the end accepted.

More recently another friend of mine at the Bar, who did not know that I had been concerned in such an action, sued the Official Administrator without asking his leave beforehand. I believe that cat was let loose among the pigeons! Well, in the end my client got her money from the insurance company but what a rigmarole we went through! The law was obscure; it was not to be found in one place; it was secreted in a few lines here, and a few lines there, of very fine print.

This is a situation of not uncommon occurrence and of some importance to persons who collide with vehicles. It may also arise in workmen's compensation cases, and I draw attention to it so that we might take the present opportunity to lay down shortly, succinctly and in one place and in one piece, what person should be appointed to represent the estate of a dead tortfeasor and what the proper procedure should be in a case of that kind. I would suggest a complete section in the present bill to deal completely and comprehensively with this kind of matter. It's almost entirely a question of procedure. The problem is not insoluble, so much as being very untidy.

I mentioned earlier, in recounting my experiences, that we offered the Official Administrator an indemnity. This we were able to do and he was able to accept it because my client's father was a man of substance. Had we nominated a solicitor or an accountant to be appointed, the solicitor or accountant would have required, quite properly, a similar indemnity. But what is to happen, as is so often the case these days, if the injured person is legally aided and unable to give any indemnity of any use whatsoever to the Official Administrator.

I pose the problem; I think I may safely leave the solution to my honourable Friend the Attorney General, and I hope, if he wishes to have more time to consider it than the Committee Stage would allow, that nevertheless the answer would be in the statute book before the 7th October when this Ordinance comes into operation.

There are a number of other points of a technical nature in this bill which I have discussed with the Attorney General. Two relate to the protection of infants and life tenants, one to the withdrawal of renunciation of probate, a very technical matter, a third to removal of the

[MR CHEUNG] **Probate and Administration Bill—resumption of debate on second reading (12.5.71)**

limitation to personal estate (contrasted with landed property) from clause 36 of the bill, and several other points relating purely to drafting. My learned Friend has agreed, at the Committee Stage, to introduce amendments to this bill which will clear up these points and he will then explain the purport of the amendments, so I will not take up honourable Members' time on them.

If, Sir, I may now make a final point on the bill, I would refer to the inescapable tie between estate duty and probate. I draw inspiration from my honourable Friend, Mr Wilfred WONG, whom I am glad was able to get a word in between my honourable Friend Mr WOO and I. The present situation brings much hardship and suffering upon those least able to stand it, and I fully support Mr WONG's plea that the present opportunity should be taken to ameliorate it. What man has joined together, it would not be improper for man to put asunder.

When I consider how little this head of revenue grosses—no one has worked out the net yield after taking into account the time occupied by gentlemen in the Estate Duty Office and the rent the space costs— anyway the gross was about \$14 million last year and never more than \$19 million in the last five years; when I consider also how inequitable it is in its incidence, and what large sums my honourable Friend the Financial Secretary might garner for the Treasury under other heads of revenue were money to have no cause to leave Hong Kong before a man's demise; moreover, if money were to be injected into Hong Kong because it has no estate duty, I cannot but encourage my honourable Friend the Financial Secretary to propose euthanasia for estate duty. I assure him that most, if not all, of my unofficial colleagues are very receptive to such modern concepts in this context.

THE FINANCIAL SECRETARY (SIR JOHN COWPERTHWAIT):—May I, Sir, make a point of correction. The yield from estate duty last year was not \$14 million but to the best of my recollection \$24 million.

MR CHEUNG:—Well, Sir, I got a clerk in the UMELCO Office to get these figures from official publications.

THE ATTORNEY GENERAL (MR ROBERTS):—Sir, if may I deal with the various points made by honourable Members. First of all clause 15, which empowers the Official Administrator to administer small estates in a summary manner, might be properly described as providing a form of social service, since it introduces a quick and inexpensive way of dealing with estates of small value. In these circumstances, Government is agreeable to increasing the maximum value of estates which the

Official Administrator may deal with under this clause from \$10,000 to \$20,000 as suggested by the honourable Mr WONG. I must, however, warn honourable Members that, if substantial use is made of the extended powers conferred by this clause, it will be necessary for the Official Administrator to be provided with additional professional and clerical staff to undertake the extra work involved. I understand that about 60% of all the estates in respect of which application for a grant is made are less than \$20,000 in value.

The honourable Mr KAN has suggested to me in discussions on this bill, and I understand that the Law Society of Hong Kong takes the same view, that clauses 46 and 47, which oblige an administrator to enter into a bond with sureties for the due collection and administration of the estate of a deceased, should be replaced. The arguments against retaining this requirement are powerful. It puts the estate to additional expense by reason of the premium payable to professional sureties like insurance or guarantee companies. So far as I know, it has never been necessary to enforce such a bond in Hong Kong and nor have executors ever been subject to this requirement, which is illogical. Nor does it seem reasonable that, as clause 47 requires, the surety should enter a guarantee for twice the value of the gross estate.

In these circumstances, I agree that clauses 46 and 47 should be removed from the bill and replaced by a new clause which would follow closely the proposed new 167 of the Supreme Court of Judicature (Consolidation) Act. This new section 167 has not yet been enacted. It abolishes the requirement of a bond and replaces it by a provision empowering the court to require sureties to guarantee any loss which may be caused by a breach of duty by an administrator of an estate.

Such guarantees will, however, only be required in circumstances which would be set out in probate rules to be made under clause 72 of the bill, and such rules would follow the proposed English ones which will provide for a guarantee only to be given in very limited circumstances, in which creditors or minor beneficiaries require special protection.

The honourable Mr CHEUNG has raised the very pertinent question of making some more effective provision to enable persons to sue the estate of a deceased in respect of whom there are no personal representatives. While we are, I think, agreed that our objective should be to reduce as far as possible the time which elapses before an injured person can get damages from the deceased's estate, the actual method of attaining it is not easy to decide. It may be that power ought be given to the court to make a grant in such circumstances so as to enable an action to continue as quickly as possible—but there may be procedural difficulties involved and other legitimate interests might be prejudiced.

[THE ATTORNEY GENERAL] **Probate and Administration Bill— resumption of debate on second reading (12.5.71)**

I therefore propose to ask the Chief Justice if he would be prepared to refer this problem to the same working party which made the recommendations upon which this bill is based, and I would also ask if the working party could consider those aspects of the effect of section 5 of the Fatal Accidents Ordinance, which have been raised by the honourable Mr WONG. I should, however, point out that under that Ordinance the beneficiary is entitled to bring an action for his own benefit at any time, if no executor or administrator has been appointed, or after 6 months from the death if no action has been brought by the executor or administrator.

Consequently, any delay which might occur in the issue of a certificate by the Estate Duty Commissioner should not lengthen the time which a beneficiary must wait. After an action is brought by a dependent within 6 months, there being no executor or administrator, the Court will not, in the absence of bad faith, stay the beneficiary's action if administration is afterwards taken out. May I, while on this subject, assure honourable Members that the Estate Duty Office is fully aware of the hardship which delay in issuing certificates may cause and does its best to act as quickly as is consistent with a reasonable safeguard of public revenues.

At a later date, such amending legislation as may be thought desirable in the light of the working party's views will be introduced into this Council.

The old section 57, to which the honourable Mr WOO referred, provided that, if a person domiciled in China died intestate leaving property situated in Hong Kong, the Court might receive written evidence of the law of China. I agree with him that the repeal of this section will mean that the law of China will, in those cases in which it is relevant, have to be proved in future by expert evidence and this will be provided for in the non-contentious probate rules, which are being drafted. There will not in future, however, need to be such evidence of Chinese customary law, save to the extent to which this may be part of the present law in China itself, or unless a testator, as he could do, leaves property to be distributed in accordance with such custom.

Probate rules will provide that, if a person dies intestate, persons should be entitled to a grant of administration in a certain order. As at present proposed, the first person would be the surviving spouse and next the surviving partner of a union of concubinage, provided that was entered into before the 7th October in this year. However, I appreciate that there may well be different views as to what order of priority is desirable, particularly as to whether or not a surviving concubine should

have priority over adult children of the deceased. It would, therefore, I am sure, be of great assistance to the Chief Justice when he prepares the probate rules to have the benefit of the views of honourable Members on this matter.

I am most grateful to honourable Members for the careful way in which they have examined this very technical bill, and made a number of suggestions for its improvement. In particular, the honourable Mr CHEUNG has pointed out a number of provisions which need clarification and I shall move some amendments at the Committee Stage to accord with the proposals which honourable Members have made.

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.

EXCHANGE FUND (AMENDMENT) BILL 1971

Clause 1 was agreed to.

Clause 2.

THE FINANCIAL SECRETARY (SIR JOHN COWPERTHWAIT):—Sir, I beg to move that clause 2 be amended as set forth in the paper before honourable Members.

This amendment arises from a suggestion made by my honourable Friend, Mr Q. W. LEE, at the second reading. The Secretary of State has signified his consent to the increase in borrowing powers to the amended figure of \$5,000 million.

Proposed Amendment

Clause

- 2 That paragraph (b) be amended in the proposed subsection (4) by deleting "four thousand five hundred" and substituting the following—
"five thousand".

Exchange Fund (Amendment) Bill—committee stage

The amendment was agreed to.

Clause 2, as amended, was agreed to.

Council then resumed.

Third reading

THE FINANCIAL SECRETARY (SIR JOHN COWPERTHWAIT) reported that the Exchange Fund (Amendment) Bill 1971 had passed through Committee with one amendment and moved the third reading of the bill.

Question put and agreed to.

Bill read the third time and passed.

Adjournment and next sitting

HIS EXCELLENCY THE PRESIDENT:—Now, in accordance with Standing Order No 8(5), I now adjourn the Council until 2.30 p.m. on Wednesday the 9th June 1971.

Adjourned accordingly at twenty-three minutes to Four o'clock.