

# OFFICIAL REPORT OF PROCEEDINGS

Wednesday, 21st October 1970

The Council met at half past Two o'clock

[MR PRESIDENT in the Chair]

## PRESENT

HIS EXCELLENCY THE ACTING GOVERNOR (*PRESIDENT*)  
SIR HUGH SELBY NORMAN-WALKER, KCMG, OBE, JP  
THE HONOURABLE THE COLONIAL SECRETARY (*Acting*)  
MR DAVID RONALD HOLMES, CMG, CBE, MC, ED, JP  
THE HONOURABLE THE ATTORNEY GENERAL  
MR DENYS TUDOR EMIL ROBERTS, CBE, QC, JP  
THE HONOURABLE THE SECRETARY FOR HOME AFFAIRS (*Acting*)  
MR DENIS CAMPBELL BRAY, 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 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 RICHARD CHARLES CLARKE, ISO, JP  
DIRECTOR OF PUBLIC WORKS (*Acting*)  
THE HONOURABLE WOO PAK-CHUEN, OBE, JP  
THE HONOURABLE SZETO WAI, OBE, JP  
THE HONOURABLE WILFRED WONG SIEN-BING, OBE, JP  
THE HONOURABLE ELLEN LI SHU-PUI, OBE, JP  
THE HONOURABLE WILSON WANG TZE-SAM, JP  
THE HONOURABLE HERBERT JOHN CHARLES BROWNE, JP  
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

## ABSENT

THE HONOURABLE KAN YUET-KEUNG, CBE, JP  
DR THE HONOURABLE CHUNG SZE-YUEN, 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:—	
Auxiliary Forces Pay and Allowances Ordinance.	
Pay Classification (Auxiliary Medical Services Unit) Assignment (Amendment) Notice 1970.....	153

Sessional Papers 1970-71:—

No 11—Ninth Annual Report by the Social Work Training Fund Trustee for the period ending on 31st March 1970 (published on 21.10.70).

No 12—Annual Report by the District Commissioner New Territories for the year 1968-69 (published on 21.10.70).

No 13—Annual Report by the Commissioner of Registration of Persons for the year 1969-70 (published on 21.10.70).

## Oral answers to questions

### Succession to cooked food stall licences

1. MRS ELLEN LI asked:—

Will Government make a statement on the policy in relation to succession to cooked food stall licences?

MR D. R. W. ALEXANDER:—Sir, strictly speaking, there is no succession to any hawker licence. These are annual licences and are terminated by the death of the licensees. This has always been, and will continue to be, laid down in the Hawker By-laws and Regulations.

However, in the past, Urban Council policy did allow relatives of the deceased cooked food stall licensees to obtain new licences for the continued operation of the stalls. And this is what has come to be generally known as "succession".

This matter was recently reviewed by the Hawker Policy Select Committee of the Urban Council and the policy is now as follows:—

*Firstly*, there is no automatic succession as such.

*Secondly*, if a licensee dies and the cooked food stall is operated by the widow or widower of the deceased licensee, then she or he can apply for a new licence to operate the stall.

If the stall is located off-street, the applicant may be granted a new licence by the Hawker Management Select Committee to operate the stall on the same site.

If the stall is on-street, the applicant may register with the Urban Services Department to obtain an off-street site (and valid licence), but will be required to vacate the original site within 12 months, unless the Urban Services Department is unable to offer him an off-street site within the 12-month period. In the latter event, the operator will be allowed to remain on the original site until an off-street one is offered.

*Thirdly*, in a case where the licensee has died and the Council has decided that no new licence should be issued, if the relative of the deceased licensee (including a widow or widower who has not been operating the stall) or the operator of his stall, claims hardship, the case will then be referred to the Social Welfare Department for consideration—with a view to the issue of a fixed pitch licence. However, if the Social Welfare Department is satisfied that the operator is in genuine need of a new cooked food stall licence (operating such a stall being his only possible means of livelihood) a recommendation may be made to the Hawker Management Select Committee that he should be granted a new cooked food stall licence to operate at an off-street site to be offered by the Urban Services Department.

*Fourthly*, if an off-street site offered by the Urban Services Department is rejected, no second offer will be made, and the operator will be required to cease business.

MR P. C. WOO:—Sir, may I ask a supplementary question?

HIS EXCELLENCY THE PRESIDENT:—I had called the next question but please do if you wish.

MR WOO:—Can I ask for the reason why an on-street licence is changed to an off-street licence when the licensee is dead and the applicant is a widow or widower?

MR ALEXANDER:—The intention behind the change in policy, Sir, has been to try to get stalls off-street; that is, the streets are not made any more passable to traffic and other users by the presence of these stalls and the idea behind this is to try to get those on the streets onto off-street sites.

**Oral Answers****Control over completion of highway projects**

2. MR T. K. ANN asked:—

Is Government aware that on a large number of major highway projects there would appear to be a very small labour force working at any given time? Are steps taken to ensure that highway projects are completed on time, and if not, are damages sought against the contractors?

MR R. C. CLARKE:—Sir, in reply to the first part of this question I confirm that the Government is aware that a number of highway projects are being delayed by shortage of labour. This shortage is at present general throughout the construction industry but it is not the only reason why at times only a few workers may be seen on a particular job.

It is usual to take the opportunity of major construction or reconstruction to ask utility undertakers to modify or renew their services. This often involves a series of utility companies, each with its own contractor, having access to the site in turn, and despite careful advance planning and the ready co-operation of all concerned, periods do occur when it appears that little is being done on site.

With regard to the second part of the question I can assure honourable Members that the Public Works Department is very conscious of the importance of completing highway and other projects on time. Much of our necessarily limited staff effort is directed to this end. Daily and weekly supervision is exercised and quarterly reports are made to headquarters on contractors progress. When the last such report was made at the end of August this year there were 57 contracts for roadworks of various magnitudes in hand not counting the many hundreds of works orders on maintenance contractors for minor works. Of these 57 contracts progress was reported as fair on 16, good on 28 and less than satisfactory on the remaining 13.

Every contract contains a specified period for completion together with provision for the grant of extensions of time for delays caused by circumstances outside the contractors control, for example inclement weather. A figure for liquidated damages, usually expressed as so much per day, is included for failure to complete on time. Payment of such damages, where due, can only be waived with the approval of the Finance Committee of this Council and honourable Members will be aware that such waivers are very seldom sought.

### Completion period of highway projects

3. MR ANN asked:—

Would Government in letting out contracts for highway projects in the future stipulate quicker completion periods than have been apparent in current projects?

MR CLARKE:—Sir, I regret that the answer to this question is in the negative.

The time to complete a particular contract is dependent on the amount of work involved and its complexity. The time can be reduced in some cases by bringing in more plant or labour and by overtime or two or three shift working. This, of course, all adds to the cost. Normally the time for completion, stipulated in the tender documents, is calculated on the basis of single day shift working. Occasionally, where time is not so important, the contract period is left open for the contractor to specify in his tender offer with a view to minimizing cost. In a few cases, where speed is a vital factor, the time for completion is calculated on double shift or 24-hour working. In these cases, of course, the approval of the Governor in Council is required if noisy work is to be carried out between 11 o'clock at night and 6 o'clock in the morning. The North East Corridor Project in Kowloon City is a case in point but it is only in such special cases that the added inconvenience to residents and the extra cost to the taxpayer is justified.

In 1965-66 the construction industry was responsible for some 1,500 million dollars worth of work whereas last year the figure was less than \$700 million. Indications are that the expenditure this year (1970-71) will be nearly \$900 million and I anticipate that in two to three years time, at current prices, this will rise to a figure in the order of \$2,000 million per annum divided roughly half and half between public and private sectors.

Whilst there is undoubted scope for improved productivity in the industry, by such means as better management and financing, more plant and equipment and industrial training of staff, all of which are receiving attention, the effect of any such improvement is not likely to be felt for some years. To meet the immediate demand for more extensive works illustrated by these expenditure figures labour must be drawn back from manufacturing industry or from other sources and to effect this further increases in labour rates are to be anticipated. It would not be wise to add to this pressure by stipulating quicker completion periods in routine highway contracts such as to require double shift or overtime working.

[MR CLARKE] **Oral Answers**

Thus I cannot undertake to speed up work generally in future projects. By and large, however, the majority of the more important highway projects are completed within reasonable time and I shall certainly continue to ensure that, in those exceptional cases where time is a vital factor, special arrangements are made for early completion.

MR P. C. WOO:—May I ask the Director of Public Works, of the \$2,000 million spent how much was spent on highway projects?

MR CLARKE:—Sir, the figure of \$2,000 million is the anticipated total expenditure in the construction industry in two or three years time. The figure for this year is expected to be roughly \$900 million and the expenditure on highway projects for 1969-70 was about \$60 million—1969-70 not 1970-71.

MR WOO:—Sir, of these \$60 million will they be spent...

HIS EXCELLENCY THE PRESIDENT:—I am awfully sorry, Mr Woo, I am afraid I must interrupt you. Your supplementary must arise from the original question and that deals purely with the stipulation of quicker completion periods. I am sorry.

MR OSWALD CHEUNG:—Does the Director think it might be practicable to speed up construction of highways by requesting the public utility companies to work simultaneously on their works, and not one after the other in turn, as was done when Queensway was reconstructed some 18 or 20 years ago?

MR CLARKE:—I think this is a very difficult question, Sir. It is not always practicable to do this. Very often you have to take the surface off the road and then bring in one or other of the utility companies. I agree that we can look into this point in more detail but I cannot give a definite undertaking that this will be practicable in all cases.

**Statement**

**Composition of the Committee to examine  
the use of the Chinese language in  
official business**

THE ACTING COLONIAL SECRETARY (MR D. R. HOLMES):—Sir, we are now able to announce the composition of the Committee which is to examine the use of the Chinese language in official business.

As Members are already aware, the Honourable FUNG Ping-fan is to be the Chairman of this Committee and the following five gentlemen have now agreed to serve as members:—

Judge T. L. YANG, District Judge

Mr T. C. LAI of the Department of Extra-Mural Studies in the Chinese University

The Honourable G. M. B. SALMON, a Member of this Council, who represents the Hong Kong General Chamber of Commerce

Mr LI Fook-kow, Deputy Secretary for Home Affairs

and Mr M. A. B. STEVENSON, Deputy Director of Information Services. The Secretary of the Committee will be Mr A. F. NEOH, an Administrative Officer of the Colonial Secretariat.

### **Government business**

#### **First reading**

#### **PREVENTION OF BRIBERY BILL 1970**

#### **MAGISTRATES (AMENDMENT) (NO 2) BILL 1970**

#### **TELECOMMUNICATION (AMENDMENT) BILL 1970**

#### **BOILERS AND PRESSURE RECEIVERS (AMENDMENT) BILL 1970**

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

#### **Second reading**

#### **PREVENTION OF BRIBERY BILL 1970**

THE ATTORNEY GENERAL (MR D. T. E. ROBERTS) moved the second reading of:—"A bill to make further and better provision for the prevention of bribery and for purposes necessary thereto or connected therewith."

He said:—Sir, it is impossible to assess with any accuracy the extent to which society in Hong Kong is affected by corruption. The number of cases reported to the police and the number of convictions obtained cannot be regarded as a true indication of the real extent of the problem, since there is seldom any complaint from the man who gets what he pays his bribe for. Similarly, statistics are not available to compare the incidence of bribery here with that of other countries in Asia, though the generally held belief is that our record is certainly

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cleaner than that of most of them. But even if this be so, corruption does exist here to an extent which not only justifies, but demands, that the utmost efforts be made to eradicate it from our public and business affairs.

We are faced here with a formidable task. As society has become more complex, and as the governmental machine has steadily encroached into fields formerly left unregulated, so have the opportunities for bribery increased. Nor must we discount the formidable effect of the traditional belief, which is widespread in Asia among ordinary members of the public, that it is customary, and not even particularly objectionable, to pay money to a public servant, sometimes to secure a favour, and sometimes merely to thank him for doing what it is no more than his duty to do. And I should like to remind those who talk of corruption as if it were always the fault of the public servant, that to the willingness of members of the public to pay bribes must be attributed much of the responsibility for the present situation. In this respect it is, perhaps, of interest to note that in the past two years, there have been more convictions of members of the public for corruption than there have been of members of the public service.

Those whose task it is to prevent, investigate, or prosecute cases of corruption have long considered that the present law is inadequate in that it confers insufficient powers of investigation and makes the proof of offences too difficult and technical. Accordingly, in 1968, the Government instituted a detailed study of the present law. As the legislation of Singapore and Ceylon (both of which have had to face serious corruption problems) contained provisions which might, it was thought, be of value to us, visits were made to these countries, to find out exactly how their anti-bribery laws worked in practice.

Thereafter, a Working Party was established to consider amendments to the present Prevention of Corruption Ordinance (which I will refer to as Chapter 215) in the light of the knowledge which was gained from these visits. The Working Party expressed the opinion that, if corruption was to be successfully countered here, new legislation was imperative and put forward a draft bill, which was referred to the Advisory Committee on Corruption (under the chairmanship of Sir Cho-yiu KWAN). This Committee, which has great experience of the problem in Hong Kong, endorsed the bill, with a number of suggestions for amendment, which were embodied in it, and this bill (which I will call the 1969 bill) was published last year, with an invitation to members of the public to comment on its provisions.

At the same time, it was circulated to the Hong Kong Bar Association, the Law Society of Hong Kong, the Exchange Banks Association



and those Civil Service Staff Associations represented on the Senior Civil Service Council. Comments from these bodies, opinions expressed in the press, the views of heads of departments and the reactions of the public, as these became available particularly through the City District Offices, were all carefully studied and a number of changes have been made in consequence of them, mainly to provide safeguards against the possible abuse of some of the provisions of the bill, though the bill before Council today does not differ greatly in matters of substance from the 1969 bill.

After a number of amendments had been made to the 1969 bill it was, as honourable Members may be aware, submitted to the Secretary of State for his comments late last year, in view of its importance and of the nature of some of its clauses. The Secretary of State put forward a number of suggestions, which have been embodied in the present bill, and gave his approval to it in its present form.

Among the definitions in clause 2 of the bill are those of "public servant" and of the "Director". The term "public servant" is in wide terms, and includes not only Government servants, but also Members of the Executive Council, the Legislative Council and the Urban Council and employees of any of the semi-public bodies which are listed in the Schedule to the bill. Anyone, therefore, who offers an advantage to any of those persons is offering an advantage to a public servant and, in consequence, commits the offence of bribery which is described in clause 4 of the bill. I would like particularly to direct the attention of honourable Members to the definition of "Director" because it reflects the Government's decision that the responsibility for tackling corruption should remain with the Anti-Corruption Branch of the Royal Hong Kong Police Force and not be given, as has been suggested in some quarters, to a new organization, independent of the police.

After carefully considering the arguments for the creation of a separate body, the Government is satisfied that the task should remain in the hands of the Anti-Corruption Branch which, even with its present powers, has attained a steadily increasing measure of success during the past two years. The setting up of a new organization would show a very serious lack of confidence, both in that Branch and in the Police Force as a whole, a lack of confidence which is in no sense justified by past experience. Furthermore, a separate body would have to be staffed by experienced police officers and it is doubtful if we could hope to obtain the high calibre of officer required for this difficult task with the relatively poor promotion prospects and the narrow degree of specialization which would be inseparable from the creation of a small independent organization of this kind.

However, it is recognized that the powers of investigation which are conferred by this bill are such that the greatest restraint must be

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shown and every precaution taken against too frequent use of them. As honourable Members will have observed, most of the powers conferred by the bill are subject to my authority or direction. For these reasons, and because many cases under investigation under the bill will present legal and evidential problems of some complexity, the Standing Finance Committee of this Council has approved the creation of a new post of Principal Crown Counsel, who will be attached to the Anti-Corruption Branch as my representative. He will perform, with certain exceptions to which I will refer later, the various tasks which are imposed on me by the bill, and will assist the Director of the Anti-Corruption Branch to maintain a proper balance between the requirements of an investigation and the need not to interfere unjustifiably with the privacy of private citizens or of public servants.

Clause 3 makes it an offence for a Crown servant to accept or solicit any advantage unless he has the general or special permission of the Governor to do so. In the 1969 bill this clause applied to public servants in the wide sense of the term, which, as I have mentioned, includes the employees of any of the bodies listed in the Schedule, or members of Executive, Legislative or Urban Councils and of various boards, bodies and commissions, appointed by the Governor.

Crown servants are, by virtue of Colonial Regulations, Establishment Regulations and General Orders, already subject to rules which control the kind of gifts and advantages which they may properly receive, even in circumstances related only to their private life. Members of the other bodies and authorities to which I have referred, however, are not subject to such a control and it would be hardly possible for the Governor to define the circumstances in which advantages might be properly accepted by their employees. On re-consideration, therefore, it is thought that it would not be reasonable or practicable to attempt to impose on them the very tight control contained in clause 3. Consequently this clause is now limited to Crown servants, that is to say, paid employees of the Hong Kong Government.

Honourable Members will have observed that the word "advantage" which is defined in clause 2 is in very wide terms so as to include any gift, loan, entertainment, favour, benefit or service of any description. It would, for example, be an offence for a Crown servant to accept dinner from a friend, unless such acceptance were permitted by the terms of a general or special permission of the Governor.

Establishment Regulations, as I have said, already exist which allow Crown servants to accept presents, gifts and advantages of various kinds in specified circumstances, and these regulations will be used as

a basis for the general permission under clause 3 which will be issued by the Governor, probably in the form of circulars. Until a circular is issued, the bill will not be brought into force. Apart from the circular, giving permission in general terms, it will always be open to a Crown servant to seek the special permission of the Governor, as represented by the Head of his Department, to receive any advantage if he is doubtful about the propriety of so doing. I should like to reassure Crown servants, who may well be anxious lest clause 3 should unduly restrict either their social or their official lives, that it is intended that the terms of the circular will be such as to permit the acceptance of any advantage which is of a personal or social nature, unconnected with official duties. The Government does not wish to interfere with innocent private activities, or with modest entertainment in some connexion with official position, but with the conferring or receipt of advantages when these are related in an improper way to a Crown servant's official position.

Clause 4(1) makes it an offence for a person to offer a bribe to a public servant in connexion with the latter's official duties, whereas clause 4(2) is aimed at the other party to the corrupt transaction, namely the public servant who accepts the bribe. The difference between clause 4 and clause 3 is that the essence of an offence under clause 3 is the receipt by a Crown servant of an advantage, other than a permitted one, irrespective of the motive with which he receives it. However, to constitute an offence under clause 4, there must be evidence not only of the giving or receiving of a bribe, but also that the bribe was given or received with a corrupt motive, that is to say, as a reward or an inducement to a public servant to do, or abstain from doing, something connected with his official duties.

Clauses 5, 6 and 7, which deal respectively with bribery in relation to public contracts, tenders and auctions, are unchanged from the 1969 bill, except that a defence of lawful authority or reasonable excuse is provided, though such a defence to these kinds of offence is not often likely to succeed.

Clause 8 of the 1969 bill prohibited the offering of an advantage to a public servant employed by a public body with which the offerer was currently having dealings. However, the objection was raised that, so far as the Government is concerned, a person's dealings with it are necessarily through a particular department and that the clause in its earlier form would have prohibited advantages being offered by a person who has dealings with one Government department, to any Government officer in whatever department the officer works. The clause has, therefore, been narrowed so as to limit its application to cases where the government servant, to whom the advantage is offered, works in that branch of the Government with which the offerer is having dealings at the time.

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Clause 9, which deals with corrupt transactions with agents, is substantially the same as section 4 of Chapter 215, which is itself based on an English Act. Although the section has been little used, I think that I should point out the fact, which is perhaps not generally realized, that the term "agent" is defined in clause 2 as including not only a public servant but any other person employed by or acting for another. Thus an employee or agent of a firm, a partnership or a company is an "agent" for the purpose of clause 9. Accordingly if, without lawful authority or reasonable excuse, he solicits or accepts any advantage or reward for doing any act, or for showing or not showing favour or disfavour to any person, in relation to his employer's affairs, he will be guilty of an offence for which the maximum punishment will be 7 years' imprisonment and a fine of \$100,000. If payments, which are sometimes called "kick-backs", are solicited or accepted by, or offered to, an agent as an inducement or reward for his help in relation to his employer's business, they may fall within the terms of this clause, if given to an agent without the knowledge and consent of his employer.

Clause 10 makes it an offence for a public servant to live at a higher standard, or to be in control of more money or property, than is justified by his salary, unless he gives a satisfactory explanation to the Court as to how he is able to do this or how he acquired the money or property. This clause imposes a criminal liability for something which has in the past rendered a Crown servant liable only to disciplinary proceedings. It has naturally aroused some criticism, since it introduces a novel crime.

I should however point out that the effect of this clause is not, as has been alleged by some critics, to relieve the Crown of all burden of proof. In prosecutions under this clause, as in other criminal offences, an initial burden of proof of certain facts lies on the prosecution and until these facts have been proved the accused has no case which he is obliged to answer. Under clause 10, it will be necessary for the Crown to prove that the public servant is living above his means or is in control of money or property beyond that which he might reasonably be expected to have in view of his salary. It is only after the Crown has done this that the accused will be obliged to give a satisfactory explanation to the Court.

Subclause (2) of clause 10, which was not in the 1969 bill, introduces a new safeguard, which is modelled on a similar provision in the Employment Ordinance. It obliges the Attorney General, before any prosecution is instituted under clause 10, to inform the suspected person that a prosecution against him is being considered and to give him an opportunity of making representations in writing. If, for example, there

is information that a clerk who is earning say \$1,000 a month has recently bought a flat costing 300,000 and investigations carried out by the Anti-Corruption Branch do not disclose any obvious legitimate source for the amount of money involved, I will write to the public servant, asking him if he wishes to explain to me how he acquired the money. If he puts forward an explanation, this will be carefully investigated and if it then appears that he acquired the money honestly, no further proceedings will take place under clause 10. Only if he offers no explanation, or one which did not satisfy me, would a prosecution under clause 10 be undertaken. It should be noted that the effect of subclause (3) of this clause is that the duty imposed on the Attorney General under this section can be performed only by him or by the Solicitor General personally and may not be delegated to anybody else. I hope that honourable Members may feel that this provides some safeguard against any hasty, widespread or unreasonable harrying of public servants who have legitimate sources of private money.

This clause is, I believe, an important element in this bill. It is intended to prevent the recipient of substantial bribes from avoiding successful prosecution because his gains cannot, due to the unwillingness of witnesses to testify or the difficulties of investigation, be linked to any specific corrupt transactions, as is necessary to obtain a conviction for offences under most clauses in Part II of the bill.

Clause 11, which has not been changed since the 1969 bill, is evidentiary. It states that if it is proved that a bribe is accepted by an accused, in such circumstances that he knew or suspected that it was an inducement connected with his duty, then it is no defence that he did not in fact do, or that he never meant to do or that in fact he was not able to do what he was paid for. Similarly, if a man offers a bribe to an employee to do something, it is no defence to the briber to show that the person bribed could not in fact do what he was paid for.

Clause 12 sets out the penalties for offences under Part II of the bill. These are substantially greater than those to be found in Chapter 215, under which the maximum punishment, on conviction on indictment, is imprisonment for 5 years and a fine of \$10,000. This is, I suggest, inadequate to deal with offences which may involve very large sums of money. Clause 12 therefore imposes a general maximum penalty of a fine of \$100,000 or 7 years' imprisonment for offences under Part II. Offences under clause 5 or 6, however, will carry a slightly greater punishment of 10 years' imprisonment, since they deal with public contracts and tenders. As these transactions involve huge sums it is thought that the penalty for bribery relating to them should reflect this. The maximum penalty for an offence under clause 3, however,

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will be \$20,000 and one year's imprisonment. This is because, in order to constitute an offence under clause 3 it is not necessary for the prosecution to establish any corrupt motive and consequently it is thought that the penalties provided for offences with such an element would be excessive for those under this particular clause.

However severe the penalty may be for an offence, it is unlikely to act as an effective deterrent, unless persons tempted to commit it are convinced that there is a substantial risk that they will be detected, prosecuted and punished. Furthermore, there is no doubt that many who have made large sums by bribery in past years are free to enjoy their profits because of the inadequacy of the present powers of investigation. For these reasons, I believe that, if any real progress is to be made in the reduction of bribery, those responsible for the detection of these offences must be given the enhanced powers of investigation contained in Part III, unpalatable as some of them may seem. If some infringement of traditional liberties and privacy is involved, then I believe it is a price which the community ought to be prepared to pay, if it really wishes to see corruption ousted from our public life. If it is not ready to surrender some of these liberties, then it cannot easily, in the future, complain that the Government is reluctant to tackle the evil with sufficient vigour.

Chapter 215 already empowers me, if satisfied that there are reasonable grounds for suspecting an offence, to search the bank account, share account and purchase account of a suspect. Clause 13 of this bill extends this power, so as to enable me to authorize the investigation and inspection of all kinds of account, safe deposits and books and to require the production of accounts, books and documents, whether they relate to the suspect or to other persons, if I am satisfied that there are reasonable grounds for suspecting that an offence has been committed under the bill. It is to be noticed that there can be no general authorization under this clause. It must relate to a person named or otherwise identified in the authorization. The powers conferred by it will be exercisable only by a police officer of or above the rank of senior inspector or by a named public servant. However, persons who are bound by the secrecy provisions contained in the Inland Revenue Ordinance and legal advisers, so far as privileged information is concerned, cannot be required to comply with a notice under clause 13.

Clause 14 will permit me to require information of the kind indicated in the clause, in the course of any investigation or proceedings under the bill, from a suspect, or from any other person who may be able to help or who appears to have information about the offence. Under this clause, information can be required from the

person in charge of a public body or a Government department (other than the Commissioner of Inland Revenue) and from managers of banks (in the form of copies of the accounts of the person suspected and of his spouse, parents and children). The information required under the clause must be set out in the notice with some certainty and the clause may not be used as a means of authorizing any general investigation of a citizen's private affairs. Because I realize that the power conferred by this clause must be used with the greatest care, either I, or the Solicitor General, will personally exercise it, unless we find that it has to be invoked so often that we are unable to continue to do so in the light of our other commitments, in which event it will not be delegated to anyone below the rank of Principal Crown Counsel.

Clause 14 differs in one important respect from the 1969 bill, in that a suspect will not now be guilty of an offence if he fails to comply with a notice under that clause calling on him to supply information. The effect of the previous clause would have been, in some cases, to force a suspect either to supply information incriminating himself, or to be convicted of the offence of failing to comply with a notice if he refused to do so. Now, where a notice is served on a suspect, he can either proffer an explanation or refuse to do so, without fear of prosecution for his refusal. However, if he does refuse, clause 20 of the bill will enable the fact of his refusal to be adduced in evidence, since it is surely pertinent for the court, in deciding how much weight can properly be attached to an accused's defence, to consider why it was not disclosed at an earlier stage when he received a notice under clause 14.

In the light of comments which have been received from the Bar Association and the Law Society, clause 15 has been redrafted so as to preserve, from disclosure under the bill, any privileged information which has come to the knowledge of a legal adviser for the purposes of any court proceedings, begun or contemplated, or for the purpose of enabling the legal adviser to give legal advice to his client. So long as it does not relate to privileged matters, legal advisers may be required to give the limited kind of information which is set out in clause 15(3). This provision is intended to enable an investigation to follow property or money, since without it many investigations might come to a dead end in a solicitor's office. Fears have been expressed lest this special position of members of the profession may be used by unscrupulous persons to conceal corrupt transactions or the proceeds of them. I am, however, confident that the legal profession in Hong Kong will ensure that its members do not lend themselves to this kind of exploitation.

Clauses 16 and 17 contain supplementary powers of search and seizure. It will be noted that, under clause 16(1)(b), I must authorize entry into the premises of a public body if this is to be done without obtaining a warrant in the usual manner. Clause 17 enables me or the

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Director to issue a warrant to a police officer to enter and search an office of a public body, if he has reasonable cause to believe that it contains evidence of an offence under the bill.

Clause 18 empowers a magistrate to require a person under investigation, who is about to leave the Colony, to furnish bail or to commit him to prison until he does so, for up to 28 days. An appeal will lie against such an order and proceedings under the clause will take place in Chambers, since this will avoid publicity which may damage the suspect's reputation at this stage. The object of this clause, of course, is to prevent a suspect from escaping from the Colony as soon as he realizes that his conduct or his affairs are under investigation.

Part IV deals with matters of evidence. Clause 19 provides that it shall not be a defence to show that the giving or receiving of an advantage is customary in Hong Kong in the particular trade or business concerned. Clause 21 is similar to section 12 of Chapter 215 and enables evidence of unexplained pecuniary resources to be given on a charge for any offence under Part II. Such evidence may then be treated as tending to support evidence that an accused accepted a bribe or accepted it as an inducement or reward.

Clause 22 modifies the common law rule whereby a court is required to have specific regard to the danger of convicting a person on the evidence of an accomplice, without corroboration. This rule has developed, in practice, to a point at which courts have become very reluctant to convict on the uncorroborated evidence of an accomplice. This clause seeks to modify this practice, to the extent that, for the purposes of the rule, one party to a corrupt transaction shall not be regarded as an accomplice of the other party in a prosecution against the latter for an offence under the bill. This does not mean that there is any obligation on the court to believe the evidence of that other party to the bribe, but merely that the court will have to decide whether or not, in the particular case, such a witness is worth of belief, the fact that he might be an accomplice being disregarded.

Clause 23 empowers a court, at my request, to inform a person who has committed an offence under Part II that he will not be prosecuted if he gives full and true evidence. It is not uncommon in criminal cases to call a party to the crime as a witness, rather than to charge him with the offence. As a general rule, a witness is not compelled to incriminate himself and in a case where this seems likely judges often expressly inform the witness of this. Unfortunately, such a warning may well deter the witness from giving evidence at all. This clause therefore provides for a specific assurance to such a witness that he will not be prosecuted if he gives full and frank evidence.



Clause 24 places on accused person the burden of proving the defence of lawful authority or reasonable excuse, a defence available under clauses 4, 5, 6, 7, 8 and 9. This provision, though the matter is not free from doubt, probably reproduces the present position at common law, the general principle being that if the subject matter of an allegation is peculiarly within the knowledge of an accused, it is for him to rebut it. A similar provision is already to be found in the Criminal Procedure Ordinance.

By clause 25, where it is proved, in a prosecution under clause 4 or 5, that an accused gave or accepted a bribe, there is a presumption, which it is open to him to rebut, that the advantage was accepted for the reason alleged in the charge. This provision is similar to the presumption which is contained in section 11 of Chapter 215, though that section is limited to offences connected with public contracts.

Perhaps I should make it clear that the effect of these two clauses is not, as has been suggested, to place an accused in the position of having to prove himself innocent. Before these presumptions are of any effect it will be for the prosecution to establish the various elements of the offence. Only when it has done to the satisfaction of the court will it be necessary for the accused to put forward his defence that he had lawful authority or reasonable excuse for receiving the advantage, or that he did not accept it for the reason which is alleged in the charge.

Clause 26 will enable the prosecution and the court to comment on the failure of the accused to give evidence on oath. Such comment by the prosecution is, at present, generally prohibited though it may be made by the court. In corruption cases if the accused fails to give any explanation at all it is surely not unreasonable to permit attention to be called to this fact.

Clause 28, which permits costs to be awarded by the Supreme Court and District Courts to a person acquitted on a charge of bribery, was not in the 1969 bill. It is thought that the nature of some of the provisions of the bill is such that prosecutions might be brought more freely than in regard to other offences and that, consequently, the courts should be able to award costs to a person acquitted of charges under the bill in an appropriate case.

Clause 27 enables a court to report to me cases of malicious allegations which come before it, so that I can study the record and decide what action, if any, should be taken. Clause 29 makes it an offence to render a false report of an offence under the bill or otherwise to mislead a police officer or other person acting under clause 13. The object of these clauses is to discourage unfounded reports of corruption to which public officers will inevitably be vulnerable.

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Clause 30 makes it an offence to disclose to a suspect the fact that he is the subject of an investigation. It is hoped that this will deter persons from warning a suspect and so giving him a chance to destroy evidence or subvert witnesses.

Clause 31 prohibits the institution of any prosecution under the bill without the consent of the Attorney General, a power which, with the exceptions I have mentioned, I intend to delegate to Principal Crown Counsel who will be attached to the Anti-Corruption Branch.

Clause 32 empowers the court, on a trial for an offence under Part II, to convict the accused of any of the other offences under that Part, if the existence justifies this, and also to make any necessary amendments to the particulars which are contained in the charge. These powers are similar to those which are contained in the Magistrates Ordinance.

This has been described in the press as a tough bill and I think that this is a fair description of it. It introduces novel offences and wide powers of investigation which may cause inconvenience and annoyance to members of the public. I hope that they will regard this as a reasonable price to pay for arming those who enforce the law with adequate powers to do so. Although much of the bill is aimed, directly or indirectly, at the Public Service, I believe that it has the support of the bulk of its members. The great majority of public servants consists of loyal, hardworking and wholly honest men, who detest corruption as much as any member of the public and who resent the manner in which the conduct of a few of their colleagues soils the reputation of their service as a whole.

I have spoken at unusual length in moving the second reading of this bill, but I believe that honourable Members will regard this as justified by the importance both of the problem and of the new attempt which we are making to grapple with it.

*Question proposed.*

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

*Question put and agreed to.*

*Explanatory Memorandum*

The need to root out corruption in the Colony has long been recognized, but despite continuous efforts towards this end

success has been moderate only. In order to find out the reason for this, the Prevention of Corruption Ordinance (Cap. 215) which is based to a large extent on English statutes of 1889, 1906 and 1916, has been compared with the more recent legislation of other countries where corruption has been a problem.

2. As a result of this study it is considered that Cap. 215 is inadequate in several important respects and that a new Ordinance is required, containing new powers to deal with the problem.

3. The Bill is divided into five Parts dealing, respectively, with Preliminary Matters, Offences, Powers of Investigation, Evidence and Miscellaneous Matters.

*Preliminary Matters (Part I).*

4. This Part contains, in clause 2, definitions of the more important words and expressions used throughout the Bill. References to these definitions are made in the comments on individual clauses.

*Offences (Part II).*

5. This Part creates all those offences which come under the general description of corruption or bribery.

6. *Clause 3* prohibits a Crown servant from soliciting or accepting any advantage (which is widely defined) without the general or special permission of the Governor for so doing. Unlike the position under the existing legislation, the advantage, under this clause, does not necessarily have to be solicited or accepted as an inducement to, or reward for or otherwise on account of, the doing or not doing of anything by the public servant. A mere indication of willingness to receive an advantage amounts to soliciting and a mere agreement to take, receive or obtain an advantage amounts to accepting the advantage within the meaning of this and the other clauses, by reason of the definitions in clause 2(2).

7. The term "public servant" is generally defined widely, so as to include not only persons employed by the Government, but also employees of those bodies listed in the Schedule (which list may be amended from time to time by order of the Governor in Council under clause 35). However, clause 3 applies only to "Crown servants", which term is restricted to officers of the Hong Kong Government.

### **Prevention of Bribery Bill—second reading**

[*Explanatory Memorandum*]

8. *Clause 4* deals with the person who, without any lawful authority or reasonable excuse, offers (which includes gives, by clause 2(2)(a)) any advantage to a public servant to induce him to abuse his official position, or as a reward for his having abused his official position, in any of the ways indicated in the clause; and with the public servant who, without any lawful authority or reasonable excuse, solicits or accepts any advantage as such an inducement or reward.

9. No attempt has been made to define "lawful authority or reasonable excuse" since this must depend on the particular facts and circumstances of each case. It will be for the courts to decide whether, in the circumstances of each case, this defence has been established; the phrase is to be found in other legislation.

10. *Clauses 5 and 6* deal with—

- (1) persons who induce or attempt to induce public servants to use undue influence in the promotion, execution or procuring of public contracts and allied subcontracts (clause 5);
- (2) persons who induce or attempt to induce others to withdraw or not make tenders for such contracts (clause 6);
- (3) public servants and others who solicit or accept an advantage for such purposes.

Offences under these clauses will attract greater penalties than other offences under Part II (see clause 12).

11. *Clause 7* makes it an offence to induce, or attempt to induce, others not to make bids at auctions conducted by or on behalf of any public body, and to solicit or accept any advantage for this purpose, unless there is some lawful authority or reasonable excuse for such conduct.

12. *Clause 8* makes it an offence for a person, who has dealings with a public body, to offer or give any advantage to a public servant employed by that public body, or, in the case of the Government, employed in that section of Government with which he has dealings.

13. *Clause 9* prohibits dishonest transactions by and with agents, and is similar to section 4 of Cap. 215.

14. *Clause 10* makes it an offence for a public servant to maintain a standard of living not commensurate with, or possess property disproportionate to, his official emoluments. No prosecution may, however, be instituted for this offence without the personal consent of the Attorney General (which, by reason of the Legal Officers Ordinance, includes the Solicitor General) who, before deciding whether or not a prosecution should be instituted, is required to give the person concerned an opportunity of making written representations in the matter to the Attorney General (or, as the case may be, the Solicitor General). Where a prosecution is instituted, the prosecution will have to prove that the public servant is or has been maintaining a high standard of living, or possesses or has possessed property, disproportionate to his official emoluments. If this is done, the burden will then lie on the public servant to satisfy the court that he has a satisfactory explanation as to how he has been able to live beyond his official means or as to how he came by so much property; if he fails to do so, he would be convicted of the offence.

15. At present, it is a disciplinary offence, under Establishment Regulations, for a public officer to live beyond his official means or to possess property disproportionate to those means without being able to give a satisfactory account. (E.R. 444). *Clause 10* will make this a criminal offence.

16. *Clause 11* emphasizes that where a bribe is offered for a particular purpose, e.g. to induce a public servant to use undue influence in the promotion of a public contract (see clause 5), then it is immaterial whether or not that purpose could, in fact, be carried out or, if it could, whether or not the person to whom the bribe is offered intends to carry it out in any way.

17. *Clause 12*. Under Cap. 215 the maximum general penalty for corruption is a fine of \$5,000 and imprisonment for 2 years on summary conviction or, on conviction on indictment, a fine of \$10,000 and imprisonment for 5 years. Under clause 12, the maximum general penalty will be a fine of \$50,000 and imprisonment for 3 years on summary conviction or, on conviction on indictment, a fine of \$100,000 and imprisonment for 7 years. However, for offences under clauses 5 and 6 the maximum punishment will be 10 years. The provisions in Cap. 215 for compelling an accused, convicted of corruptly receiving a bribe, to pay up the same are retained, save that under this clause the power of the court to order him to do so will be mandatory and no longer discretionary. The offence under clause 3, however, attracts lower penalties because that clause does not deal with public servants abusing their official position; clause 4(2), which attracts the higher general penalty, deals with this.

## **Prevention of Bribery Bill—second reading**

[*Explanatory Memorandum*]

### *Powers of Investigation (Part III).*

18. It is primarily in relation to the powers of investigation that Cap. 215 is thought to be inadequate compared with those conferred by the legislation of other countries. It is believed that wider powers of investigation, unpalatable as they might be, are essential if corruption is to be combatted. Corruption, by its nature, is a clandestine offence, which can be committed with very little trace of its commission. Also, it seldom comes to light by complaint, because both parties are frequently "satisfied customers", and a party may well be reluctant to complain because this would disclose his own conduct in the transaction.

19. *Clause 13* enables the Attorney General to authorize in writing a named police officer of or above the rank of senior inspector, or a named Crown servant, to investigate, inspect, require the production of and obtain all information relating to any account, safe-deposit box, books, documents or articles of or relating to any person who on reasonable grounds is suspected of having committed an offence under the Ordinance; and, for this purpose, to inquire from any source as to the whereabouts of such an account, box, book or article. The secrecy requirements of the Inland Revenue Ordinance are, however, preserved. Cap. 215 contains powers for the investigation of bank accounts, share accounts or purchase accounts, but clause 13 is in wider terms. Failure to comply, without reasonable excuse, with the requirement or obstruction of the police officer or other Crown servant under this clause will be an offence under subclause (3).

20. *Clause 14* is new to Hong Kong. It will empower the Attorney General to require information, relative to the investigations or proceedings under the Ordinance, from any person who is himself suspected of having committed an offence, from any other person who can assist the investigation or appear to be acquainted with the facts, from persons in charge of public bodies or any department, office or establishment of a public body and from managers of banks (in the form of copies of bank accounts of the person suspected). As with clause 13, the secrecy requirement of the Inland Revenue Ordinance are preserved. The neglect or failure by any person, other than the suspect himself, to comply with a requirement under this clause will be an offence under subclause (3).

21. *Clause 15* deals with legal advisers who, in that capacity, may be in possession of information regarding the

affairs of their clients which is relevant to an inquiry under this Bill. As a general rule, what a legal adviser, in his professional capacity, learns from his client is privileged from disclosure, because of the need for full and unreserved dealings between client and lawyer.

22. Although this privilege will not protect from disclosure communications made in furtherance of any crime, whether the legal adviser was a party to, or ignorant of, the illegal object, its protection is generally displaced only by definite evidence of illegality adduced in judicial proceedings. Consequently, the position of legal advisers in possession of privileged information which may be required for the purpose of the investigation of an alleged offence under this Bill will be regulated by clause 15, which preserves the general privilege, save for certain limited exceptions expressly dealt with in the clause.

23. In the absence of such a clause, persons might evade discovery by getting a solicitor to deal with the proceeds of corrupt transactions, relying on the rule against disclosure of privileged information. The clause is not, however, intended as a means of finding out what instructions an accused has given to his legal advisers for the purpose of obtaining legal advice or any judicial proceedings begun or in contemplation, and this is expressly so provided in the clause.

24. *Clauses 16 and 17* regulate the entry and search of premises by persons conducting investigations, the former clause being concerned with the premises of public bodies and the latter with other premises. Lawyers' offices are not liable to entry and search under these provisions except if the lawyer or his clerk or servant is the subject of the investigation.

25. *Clause 18* will empower a magistrate to require any person who, in the course of an investigation, is about to leave the Colony, to furnish bail or to commit him to prison, until he does so, for up to 28 days. This provision is intended to prevent suspects from escaping from the Colony as soon as investigations start. An appeal will lie from the magistrate's decision.

#### *Evidence (Part IV).*

26. By *clause 19* it will not be a defence to show that the giving or accepting of an advantage is customary in Hong Kong in the particular profession, trade, vocation or calling concerned.

27. Although, as indicated in paragraph 20, it will not be an offence for the suspect himself to refuse to give a statement or make a declaration when called upon to do so by notice under

**Prevention of Bribery Bill—second reading***[Explanatory Memorandum]*

clause 14, if the investigations lead to his prosecution for an offence under this Bill, any such statement or declaration which he may have given or made, and also his refusal to give a statement or make a declaration, will, under clause 20, be admissible in evidence at his trial and may be made the subject of comment by the prosecution or the court.

28. *Clause 21* will enable evidence of unexplained resources to be given in support of a charge under Part II. Such evidence may be treated as tending to substantiate the truth of testimony that the accused accepted or solicited a bribe and as showing that the bribe was accepted or solicited as an inducement or reward.

29. *Clause 22* modifies the law as to accomplices which at present obliges a court to have specific regard to the danger of convicting a person on the uncorroborated evidence of an accomplice. If a person is accused of accepting a bribe, the person who gave him the bribe would be regarded as an accomplice, and vice versa. *Clause 22* modifies the rule by providing that the person who gave or, as the case may be, received the bribe shall not be regarded as an accomplice, by reason only of the fact that he paid money to, or received money from, the accused.

30. *Clause 23* empowers a court, at the request of the Attorney General, to inform a person who has committed an offence under Part II, that if he gives full and true evidence of the matter he will not be prosecuted. It is not uncommon, in cases where offences are committed by several persons, to call some of them as witnesses against the others. However, they may be deterred from giving full and true testimony by the fear of providing evidence against themselves on which they, in turn, could be prosecuted. Moreover, at common law a witness cannot be compelled to answer any question which might incriminate him. An assurance granted under this clause will by-pass this rule of evidence. No such assurance will, however, debar a prosecution for perjury if such a witness should commit perjury.

31. *Clause 24* provides that the burden of establishing lawful authority or reasonable excuse will be upon the accused. It is probable that this provision is merely declaratory of the position at common law, since, if the subject-matter of a particular allegation is peculiarly within the knowledge of the accused, it lies upon him to rebut the allegation. However, it is thought



desirable to put the matter beyond argument. The clause will not relieve the prosecution of establishing that the accused actually solicited, accepted, offered or gave a bribe, as the case may be.

32. *Clause 25* provides that, in a prosecution under clause 4 (which deals with bribery affecting a public servant's official duties) or clause 5 (which deals with bribery affecting public contracts and allied subcontracts), once it is proved that the accused gave or accepted an advantage there will be a rebuttable presumption that he gave or accepted the advantage for the reason alleged in the charge. This clause is not dissimilar to the existing section 11 of Cap. 215, save that the presumption of corruption raised by that section is limited to cases involving public contracts.

33. *Clause 26* will enable the prosecution, in the course of addressing the court or jury, as the case may be, to comment on the failure of the accused to give evidence on oath, which comment is at present forbidden by law. If the accused fails to give an explanation, it is not unreasonable to permit the prosecutor to call attention to the fact.

*Miscellaneous Matters (Part V).*

34. *Clause 27* enables the court to report to the Attorney General (for him to consider what action can be taken) frivolous, false or groundless allegations.

35. *Clause 28* empowers the Supreme Court and the District Court to award costs to a defendant who is acquitted of an offence under Part II, up to a maximum of ten thousand dollars. Magistrates already have a similar power, up to a maximum of five hundred dollars.

36. *Clause 29* makes it an offence to make a false report of the commission of an offence under the Ordinance or otherwise to mislead a police officer or person named in an authorization given under clause 13.

37. *Clause 30* prohibits the unauthorized disclosure of the fact that a particular person is subject to investigation or any details of the investigation. Such a disclosure, by alerting the suspect, can often frustrate an investigation.

38. *Clause 31* follows Cap. 215 by prohibiting the institution of a prosecution for any offence under Part II without the prior consent of the Attorney General, but permits the preliminary steps of arrest and remand on custody or on bail to be taken before consent is given.

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[*Explanatory Memorandum*]

39. *Clause 32* empowers the court, on the trial for an offence under Part II, to convict the accused of any of the other offences under that Part, if the evidence justifies this. Where there is a variance between the particulars of the offence charged and the evidence adduced, the court may make the necessary alterations in the particulars. These powers are similar to those of magistrates under section 27 of the Magistrates Ordinance (Cap. 227).

40. *Clause 33* disqualifies persons convicted of offences under Part II from being registered as electors or voting at Urban Council elections or from being members of any public body for a period of 7 years, and *clause 35* deals with the amendment of the Schedule of public bodies.

41. *Clause 36* repeals the Prevention of Corruption Ordinance and makes consequential amendments to the Urban Council Ordinance. Offences committed prior to the repeal, however, can still be prosecuted under the repealed Ordinance despite its repeal. *Clause 34* will enable the investigation and allied powers contained in this Bill to be used in the investigation of such offences.

### **MAGISTRATES (AMENDMENT) (NO 2) BILL 1970**

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

He said:—Sir, clause 2 of the bill empowers an officer of a magistrates court, authorized in writing for that purpose by a magistrate, to affix a facsimile signature of the magistrate to a summons. This will relieve magistrates of the very considerable burden, which lies on them at present, of having to sign personally approximately 30,000 summonses a month.

It has been the practice for magistrates to visit hospitals where a sick defendant is detained, in order to adjourn proceedings or to remand him, whether on bail or in custody. The validity of this practice has been questioned, since the Magistrates Ordinance does not specifically confer on a magistrate power to conduct proceedings outside a court-house.

To remove any doubt on the matter, clause 3 provides that a magistrate may visit a person, who is charged with a summary offence and who is unable by reason of sickness or accident to attend the court,

wherever he is. The magistrate may then, in his presence, adjourn the hearing or commit him to custody or grant him bail. Alternatively, the magistrate may exercise these powers in the absence of the defendant, if the latter is unable to come to court because of sickness or accident.

Clause 5 makes similar provision in respect of persons who are accused of indictable offences.

Clause 4 extends the time limit for commencing a summary prosecution from 6 to 12 months after the offence, if it is one committed in connexion with the flight of an aircraft involved in an accident and an investigation or public enquiry into the accident has been ordered. This provision is based on a recent amendment enacted in the United Kingdom, the law of which is closely followed here in civil aviation matters.

*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*

A summons issued under the Magistrates Ordinance in respect of a summary offence must at present be signed by a magistrate personally. Clause 2 enables an officer authorized by a magistrate to stamp a facsimile signature of a magistrate on a summons.

2. Clause 3 empowers a magistrate to visit a person charged with a summary offence who, because of accident or sickness, cannot appear before the magistrate's court. On visiting the defendant, the magistrate may adjourn the hearing and in the meantime commit him to custody, grant him bail or allow him to go at large. Alternatively, the magistrate may exercise these powers in the defendant's absence. Clause 5 gives a magistrate similar powers in respect of a person charged with an indictable offence.

3. Clause 4 extends the time limit for the commencement of proceedings for certain offences relating to civil aviation from six months to twelve months. The longer period would only apply to summary offences which are committed against any Order in Council which is in force under section 8 of the Civil Aviation Act 1949 of the United Kingdom [as applied to Hong Kong by Article 3 of the Colonial Civil Aviation (Application of Act)

**Magistrates (Amendment) (No 2) Bill—second reading**

*[Explanatory Memorandum]*

Orders 1952 to 1965] or against regulations made under such an Order in Council. It would not apply unless the offence was committed in the course of a flight involving an accident, and within six months after the offence—

- (a) public notice has been given that an investigation into the accident will be held under the Hong Kong Air Navigation (Investigation of Accidents) Regulations; or
- (b) the Governor has directed that a public inquiry into the accident be held under those regulations.

**TELECOMMUNICATION (AMENDMENT) BILL 1970**

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

He said:—Sir, at present the principal Ordinance does not provide for any amendments to be made to licences which are granted by the Governor in Council under the Ordinance. This means that a licence can only be altered by the revocation and replacement of an existing one, which is a cumbersome procedure.

In recent years, there have been striking technological advances in the field of telecommunications, as a result of which licences issued by the Governor in Council are likely to require amendment from time to time, and this situation is likely to continue.

Clause 2 of the bill therefore empowers the Governor in Council, with the written consent of the licensee, to amend a licence which he has issued under the Ordinance.

*Question put and agreed to.*

Bill read the second time.

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

*Explanatory Memorandum*

This Bill amends the principal Ordinance by providing that a licence granted by the Governor in Council may be amended with the written consent of the licensee. At present there is no power to amend these licences and an amendment can only be effected by cancelling and re-granting the licence in amended form.

**BOILERS AND PRESSURE RECEIVERS (AMENDMENT) BILL 1970**

MR R. M. HETHERINGTON moved the second reading of:—"A bill to amend the Boilers and Pressure Receivers Ordinance."

He said:—Sir, the Boilers and Pressure Receivers Ordinance contains many provisions of a technical nature designed to control the use and operation of boilers, pressure receivers, and steam containers in the interests of safety. The responsibility for enforcing these provisions is vested in the Registrar of Boilers and Pressure Receivers, an appointment at present held by the Commissioner of Labour. He exercises his functions mainly through the Principal Surveyor of Boilers and Pressure Receivers, an appointment held by a qualified professional officer.

In order effectively to enforce the requirements of the law, it is necessary to know where this type of equipment is installed and who is the owner responsible for it. The Registrar is required, by section 7 of the principal Ordinance, to keep appropriate registers to record such information. He is also required, by section 16, to register all applications for registration. Unfortunately, no statutory obligation is placed on owners to apply for registration and, consequently, equipment can be installed and operated without the knowledge of the Principal Surveyor. This situation defeats the essential purpose of the Ordinance which is to ensure safe operation of such equipment.

Clause 4 of the Boilers and Pressure Receivers (Amendment) Bill 1970 seeks to remedy this defect. It introduces a new section 15A to the principal Ordinance to require all owners, who have not previously applied for the registration of boilers, pressure receivers, and steam containers at present in use, to do so within thirty days after the commencement of the amending Ordinance. It also requires owners of such equipment, subsequently put in to use, to apply for registration within thirty days of doing so. Clause 6 amends section 50 of the principal Ordinance to create an offence for failing to comply with the new requirements to register.

Minor inconsistencies in the text of sections 2, 7, and 16 of the principal Ordinance have cast doubt on the inclusion of steam containers in one of the registers to be kept by the Registrar. It is considered desirable to remove such doubt and clauses 2, 3, and 5 of the bill substitute a consistent form of words in these sections.

The bill has been unanimously endorsed by the Labour Advisory Board. No objections have been raised by organizations whose members may be affected by it.

*Question put and agreed to.*

Bill read the second time.

**Boilers and Pressure Receivers (Amendment) Bill—second reading**

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

*Explanatory Memorandum*

The Registrar of Boilers and Pressure Receivers is required under section 16 of the principal Ordinance to register a boiler, pressure receiver or steam container on receipt of an application for registration and certain other documents from the owner of such equipment. There is, however, no obligation on the part of the owner of such equipment to apply for registration. The object of this Bill is to rectify this situation by requiring such owner to apply for registration of his equipment within a prescribed period of time.

Clause 4 which adds a new section to the principal Ordinance provides for the new requirement.

Clause 6 which amends section 50 of the principal Ordinance makes it an offence for failing to comply with the new requirement proposed in clause 4 above.

The opportunity is also taken to amend sections 2, 7 and 16 of the principal Ordinance where references are made to the register of boilers and pressure receivers in which particulars of steam containers are also registered, so that the register may be more appropriately referred to as the register of boilers, pressure receivers other than pressure vessels, and steam containers. Clauses 2, 3 and 5 provide accordingly.

**Committee stage**

Council went into Committee.

**TRUSTEE (AMENDMENT) BILL 1970**

Clauses 1 and 2 were agreed to.

**SOCIETIES (AMENDMENT) BILL 1970**

Clauses 1 and 2 were agreed to.

**COMPANIES (PREVENTION OF EVASION OF THE  
SOCIETIES ORDINANCE) (AMENDMENT) BILL 1970**

Clauses 1 and 2 were agreed to.

**PERJURY (AMENDMENT) BILL 1970**

Clauses 1 and 2 were agreed to.

**PLACES OF PUBLIC ENTERTAINMENT  
(AMENDMENT) (NO 2) BILL 1970**

Clauses 1 to 3 were agreed to.

**EXCHANGE FUND (AMENDMENT) (NO 2) BILL 1970**

Clauses 1 and 2 were agreed to.

Council then resumed.

**Third reading**

THE ATTORNEY GENERAL (MR ROBERTS) reported that the

Trustee (Amendment) Bill 1970

Societies (Amendment) Bill 1970

Companies (Prevention of Evasion of the Societies Ordinance) (Amendment) Bill 1970

Perjury (Amendment) Bill 1970

Places of Public Entertainment (Amendment) (No 2) Bill 1970

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

*Question put on each bill and agreed to.*

Bills read the third time and passed.

THE FINANCIAL SECRETARY (SIR JOHN COWPERTHWAIT) pursuant to Standing Order No 59 moved the third reading of the Supplementary Appropriation (1969-70) Bill 1970.

*Question put and agreed to.*

Bill read the third time and passed.

THE FINANCIAL SECRETARY (SIR JOHN COWPERTHWAIT) reported that the Exchange Fund (Amendment) (No 2) Bill 1970 had passed through Committee without amendment and moved the third reading of the bill.

*Question put and agreed to.*

Bill read the third time and passed.

### **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 on 4th November 1970.

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