

- (f) the contributions made by each of the parties to the welfare of the family, including any contribution made by looking after the home or caring for the family;
- (g) in the case of proceedings for divorce or nullity of marriage, the value to either of the parties to the marriage of any benefit (for example, a pension) which, by reason of the dissolution or annulment of the marriage, that party will lose the chance of acquiring.

(2) Without prejudice to subsection (3), it shall be the duty of the court in deciding whether to exercise its powers under section 5 or 6 in relation to a child of the family and, if so, in what manner, to have regard to all the circumstances of the case including the following matters, that is to say—

- (a) the financial needs of the child;
- (b) the income, earning capacity (if any), property and other financial resources of the child;
- (c) any physical or mental disability of the child;
- (d) the standard of living enjoyed by the family before the breakdown of the marriage;
- (e) the manner in which he was being and in which the parties to the marriage expected him to be educated;

and so to exercise those powers as to place the child, so far as it is practicable and, having regard to the considerations mentioned in relation to the parties to the marriage in paragraphs (a) and (b) of subsection (1), just to do so, in the financial position in which the child would have been if the marriage had not broken down and each of those parties had properly discharged his or her financial obligations and responsibilities towards him.

(3) It shall be the duty of the court in deciding whether to exercise its powers under section 5 or 6 against a party to a marriage in favour of a child of the family who is not the child of that party and, if so, in what manner, to have regard (among the circumstances of the case)—

- (a) to whether that party had assumed any responsibility for the child's maintenance and, if so, to the extent to which, and the basis upon which, that party assumed such responsibility and to the length of time for which that party discharged such responsibility;

- (b) to whether in assuming and discharging such responsibility that party did so knowing that the child was not his or her own;
- (c) to the liability of any other person to maintain the child.

8. (1) Either party to a marriage may apply to the court for an order under this section on the ground that the other party to the marriage (in this section referred to as the respondent)—

- (a) being the husband, has wilfully neglected—
 - (i) to provide reasonable maintenance for the applicant, or
 - (ii) to provide, or to make a proper contribution towards, reasonable maintenance for any child of the family to whom this section applies;
- (b) being the wife, has wilfully neglected to provide, or to make a proper contribution towards, reasonable maintenance—

(i) for the applicant in a case where, by reason of the impairment of the applicant's earning capacity through age, illness or disability of mind or body, and having regard to any resources of the applicant and the respondent respectively which are, or should properly be made, available for the purpose, it is reasonable in all the circumstances to expect the respondent so to provide or contribute, or

(ii) for any child of the family to whom this section applies.

(2) The court shall not entertain an application under this section unless it would have jurisdiction to entertain proceedings by the applicant for judicial separation.

(3) This section applies to any child of the family for whose maintenance it is reasonable in all the circumstances to expect the respondent to provide or towards whose maintenance it is reasonable in all the circumstances to expect the respondent to make a proper contribution.

(4) Where the child of the family to whom the application under this section relates is not the child of the respondent, then, in deciding—

- (a) whether the respondent has been guilty of wilful neglect to provide, or to make a proper contribution towards, reasonable maintenance for the child, and

Neglect by party to marriage to maintain other party or child of the family.
1970 c. 45, s. 6.

- (b) what order, if any, to make under this section in favour or for the benefit of the child,

the court shall have regard to the matters mentioned in section 7(3).

(5) Where on an application under this section it appears to the court that the applicant or any child of the family to whom the application relates is in immediate need of financial assistance, but it is not yet possible to determine what order, if any, should be made on the application, the court may order the respondent to make to the applicant until the determination of the application such periodical payments as the court thinks reasonable.

(6) Where on an application under this section the applicant satisfies the court of any ground mentioned in subsection (1), then, subject to the provisions of section 10, the court may make such one or more of the following orders as it thinks just, that is to say—

- (a) an order that the respondent shall make to the applicant such periodical payments and for such term as may be specified in the order;
- (b) an order that the respondent shall secure to the applicant, to the satisfaction of the court, such periodical payments and for such term as may be so specified;
- (c) an order that the respondent shall pay to the applicant such lump sum as may be so specified;
- (d) an order that the respondent shall make to such person as may be specified in the order for the benefit of the child to whom the application relates, or to that child, such periodical payments and for such term as may be so specified;
- (e) an order that the respondent shall secure to such person as may be so specified for the benefit of that child, or to that child, to the satisfaction of the court, such periodical payments and for such term as may be so specified;
- (f) an order that the respondent shall pay to such person as may be so specified for the benefit of that child, or to that child, such lump sum as may be so specified.

(7) Without prejudice to the generality of subsection (6)(c) and (f), an order under this section that the respondent shall pay a lump sum—

- (a) may be made for the purpose of enabling any liabilities or expenses reasonably incurred in maintaining the applicant or any child of the family to whom the application relates before the making of the application to be met;

- (b) may provide for the payment of that sum by instalments of such amount as may be specified in the order and may require the payment of the instalments to be secured to the satisfaction of the court.

9. (1) The term to be specified in any order made by virtue of section 4(1)(a) or (b) or section 8(6)(a) or (b) shall be such term, being a term beginning not earlier than the date of the making of an application for the order in question and lasting not longer than the maximum term, as the court thinks fit.

(2) In subsection (1) "the maximum term" means—

- (a) in the case of an order made by virtue of section 4(1)(a) in proceedings for divorce or nullity of marriage, the joint lives of the parties to the marriage or a term ending with the date of the remarriage of the party in whose favour the order is made, whichever is the shorter;
- (b) in the case of an order made by virtue of section 4(1)(b) in any such proceedings, the life of that party or a term ending with the date of the remarriage of that party, whichever is the shorter;
- (c) in the case of an order made by virtue of section 4(1)(a) in proceedings for judicial separation or made by virtue of section 8(6)(a), the joint lives of the parties to the marriage;
- (d) in the case of an order made by virtue of section 4(1)(b) in proceedings for judicial separation or made by virtue of section 8(6)(b), the life of the party in whose favour the order is made.

(3) Where an order is made by virtue of section 4(1)(a) or (b) in proceedings for judicial separation or by virtue of section 8(6)(a) or (b) and the marriage of the parties affected by the order is subsequently dissolved or annulled but the order continues in force, the order shall, notwithstanding anything in it, cease to have effect on the remarriage of the party in whose favour it was made, except in relation to any arrears due under it on the date of such remarriage.

(4) If after the grant of a decree dissolving or annulling a marriage either party to that marriage remarries, that party shall not be entitled to apply for an order under section 4 or 6 against the person to whom he or she was married immediately before the grant of that decree unless the remarriage is with that person and that marriage is also dissolved or annulled or a decree of judicial separation is made on a petition presented by either party to that marriage.

Duration of certain orders made in favour of party to marriage and effect of remarriage.
1970 c. 45, s. 7.

Provisions as to powers of court to make orders in favour of children and duration of such orders.
1970 c. 45, s. 8.

10. (1) Subject to subsection (3)—

- (a) no order under section 5, 6(a) or 8 shall be made in favour of a child who has attained the age of twenty-one; and
- (b) the term for which by virtue of an order under section 5 or 8 any payments are to be made or secured to or for the benefit of a child may begin with the date of the making of an application for the order in question or any later date but shall not extend beyond the date when the child will attain the age of twenty-one.

(2) The term for which by virtue of an order under section 5 or 8 any payments are to be made or secured to or for the benefit of a child shall not in the first instance extend beyond the date when the child attains the age of sixteen unless the court which makes the order thinks it right in the circumstances of the case to specify a later date therein.

(3) The court may make such an order as is mentioned in subsection (1)(a) in favour of a child who has attained the age of twenty-one and may include in an order made under section 5 or 8 in relation to a child who has not attained that age a provision extending beyond the date when the child will attain that age the term for which by virtue of the order any payments are to be made or secured to or for the benefit of that child, if it appears to the court that—

- (a) that child is, or will be, or if such an order or provision were made would be, receiving instruction at an educational establishment or undergoing training for a trade, profession or vocation, whether or not he is also, or will also be, in gainful employment; or
- (b) there are special circumstances which justify the making of the order or provisions.

(4) Any order made by virtue of section 5(2)(a) or section 8(6)(d) shall, notwithstanding anything in the order, cease to have effect on the death of the person liable to make payments under the order, except in relation to any arrears due under the order on the date of such death.

11. (1) Where the court has made an order to which this section applies, then, subject to the provisions of this section, the court shall have power to vary or discharge the order or to suspend any provision thereof temporarily and to revive the operation of any provision so suspended.

Variation, discharge, etc. of orders for financial provision.
1970 c. 45, s. 9.

(2) This section applies to the following orders, that is to say—

- (a) any order under section 3;
- (b) any order made by virtue of section 4(1)(a) or (b) or 4(2)(b);
- (c) any order made by virtue of section 5(2)(a) or (b) or 5(4);
- (d) any order made by virtue of section 6(b), (c) or (d) on or after granting a decree of judicial separation; and
- (e) any order made by virtue of section 8(5), 8(6)(a), (b), (d) or (e) or 8(7)(b).

(3) The powers exercisable by the court under this section in relation to an order shall be exercisable also in relation to any instrument executed in pursuance of the order.

(4) The court shall not exercise the powers conferred by this section in relation to any order made by virtue of section 6(b), (c) or (d) on or after granting a decree of judicial separation except on an application made in proceedings—

- (a) for the rescission of that decree, or
- (b) for the dissolution of the marriage of the parties to the proceedings in which that decree was made.

(5) No such order as is mentioned in section 6 shall be made on an application for the variation of an order made by virtue of section 4(1)(a) or (b) or section 5(2)(a) or (b), and no order for the payment of a lump sum shall be made on an application for the variation of an order made by virtue of section 4(1)(a) or (b) or of section 8(6)(a) or (b).

(6) Where the person liable to make payments under an order made by virtue of section 4(1)(b), section 5(2)(b) or section 8(6)(b) or (e) has died, an application under this section relating to that order may be made by the person entitled to payments under the order or by the personal representatives of the deceased person, but no such application shall, except with the permission of the court, be made after the end of the period of six months from the date on which representation in regard to the estate of that person is first taken out.

(7) In exercising the powers conferred by this section the court shall have regard to all the circumstances of the case, including any change in any of the matters to which the court was required to have regard when making the order to which the

application relates and, where the party against whom that order was made has died, the changed circumstances resulting from his or her death.

(8) The personal representatives of a deceased person against whom any such order as is referred to in subsection (6) was made shall not be liable for having distributed any part of the estate of the deceased after the expiration of the period of six months referred to in that subsection on the ground that they ought to have taken into account the possibility that the court might permit an application under this section to be made after that period by the person entitled to payments under the order; but this subsection shall not prejudice any power to recover any part of the estate so distributed arising by virtue of the making of an order in pursuance of this section.

(9) In considering for the purposes of subsection (6) the question when representation was first taken out, a grant limited to trust property shall be left out of account and a grant limited to real estate or to personal estate shall be left out of account unless a grant limited to the remainder of the estate has previously been made or is made at the same time.

12. (1) A person shall not be entitled to enforce through the court the payment of any arrears due under an order made by virtue of section 3, 4(1), 5(2), 8(5) or 8(6) without the leave of the court if those arrears became due more than twelve months before proceedings to enforce the payment of them are begun.

(2) The court hearing an application for the grant of leave under this section may refuse leave, or may grant leave subject to such restrictions and conditions (including conditions as to the allowing of time for payment of the making of payment by instalments) as that court thinks proper, or may remit the payment of such arrears or of any part thereof.

(3) An application for the grant of leave under this section shall be made in such manner as may be prescribed by rules of court.

13. (1) Where on an application made under this section in relation to an order to which this section applies it appears to the court that by reason of—

- (a) a change in the circumstances of the person entitled to, or liable to make, payments under the order since the order was made, or

Payment of certain arrears unenforceable without the leave of the court.
1970 c. 45, s. 10.

Power of court to order sums paid under certain orders to be repaid in certain cases.
1970 c. 45, s. 11.

- (b) the changed circumstances resulting from the death of the person so liable,

the amount received by the person entitled to payments under the order in respect of a period after those circumstances changed or after the death of the person liable to make payments under the order, as the case may be, exceeds the amount which the person so liable or his or her personal representatives should have been required to pay, the court may order the respondent to the application to pay to the applicant such sum, not exceeding the amount of the excess, as the court thinks just.

(2) An application under this section may be made by the person liable to make payments under an order to which this section applies or his or her personal representatives and may be made against the person entitled to payments under the order or her or his personal representatives.

(3) An application under this section may be made in proceedings in the Supreme Court or the District Court for—

- (a) the variation or discharge of the order to which this section applies; or
(b) leave to enforce, or the enforcement of, the payment of arrears under that order;

but other applications under this section shall be made to the District Court.

(4) An order under this section for the payment of any sum may provide for the payment of that sum by instalments of such amount as may be specified in the order.

(5) This section applies to an order made by virtue of section 3, 4(1)(a) or (b), 5(2)(a) or (b), 8(5) or 8(6)(a) or (b), (d) or (e).

14. (1) If a maintenance agreement includes a provision purporting to restrict any right to apply to a court for an order containing financial arrangements then—

- (a) that provision shall be void; but
(b) any other financial arrangements contained in the agreement shall not thereby be rendered void or unenforceable and shall, unless they are void or unenforceable for any other reason (and subject to sections 15 and 16), be binding on the parties to the agreement.

Validity of maintenance agreements.
1970 c. 45, s. 13.

(2) In this section and in section 15—

“maintenance agreement” means any agreement in writing made, whether before or after the commencement of this Ordinance, between the parties to a marriage, being—

- (a) an agreement containing financial arrangements, whether made during the continuance or after the dissolution or annulment of the marriage; or
- (b) a separation agreement which contains no financial arrangements in a case where no other agreement in writing between the same parties contains such arrangements;

“financial arrangements” means provisions governing the rights and liabilities towards one another when living separately of the parties to a marriage (including a marriage which has been dissolved or annulled) in respect of the making or securing of payments or the disposition or use of any property, including such rights and liabilities with respect to the maintenance or education of any child, whether or not a child of the family.

Alteration of agreements by court during lives of parties.
1970 c. 45, s. 14

15. (1) Where a maintenance agreement is for the time being subsisting and each of the parties to the agreement is for the time being either domiciled or resident in Hong Kong, then, subject to subsection (3), either party may apply to the court for an order under this section.

(2) If the court to which the application is made is satisfied either—

- (a) that by reason of a change in the circumstances in the light of which any financial arrangements contained in the agreement were made or, as the case may be, financial arrangements were omitted from it (including a change foreseen by the parties when making the agreement), the agreement should be altered so as to make different, or, as the case may be, so as to contain, financial arrangements, or
- (b) that the agreement does not contain proper financial arrangements with respect to any child of the family,

then, subject to subsections (3), (4) and (5), that court may by order make such alterations in the agreement—

- (i) by varying or revoking any financial arrangements contained in it, or
- (ii) by inserting in it financial arrangements for the benefit of one of the parties to the agreement or of a child of the family,

as may appear to that court to be just having regard to all the circumstances, including, if relevant, the matters mentioned in section 7(3); and the agreement shall have effect thereafter as if any alteration made by the order had been made by agreement between the parties and for valuable consideration.

(3) The District Court shall not entertain an application under subsection (1) unless both the parties to the agreement are resident in Hong Kong, and shall not have power to make any order on such an application except—

- (a) in a case where the agreement includes no provision for periodical payments by either of the parties, an order inserting provision for the making by one of the parties of periodical payments for the maintenance of the other party or for the maintenance of any child of the family;
- (b) in a case where the agreement includes provision for the making by one of the parties of periodical payments, an order increasing or reducing the rate of, or terminating, any of those payments.

(4) Where a court decides to alter, by order under this section, an agreement by inserting provision for the making or securing by one of the parties to the agreement of periodical payments for the maintenance of the other party or by increasing the rate of the periodical payments which the agreement provides shall be made by one of the parties for the maintenance of the other, the term for which the payments or, as the case may be, so much of the payments as is attributable to the increase are or is to be made under the agreement as altered by the order shall be such term as the court may specify, but that term shall not exceed—

- (a) where the payments will not be secured, the joint lives of the parties to the agreement or a term ending with the remarriage of the party to whom the payments are to be made, whichever is the shorter;
- (b) where the payments will be secured, the life of that party or a term ending with the remarriage of that party, whichever is the shorter.

(5) Where a court decides to alter, by order under this section, an agreement by inserting provision for the making or securing by one of the parties to the agreement of periodical payments for the maintenance of a child of the family or by increasing the rate of the periodical payments which the agreement provides shall be made or secured by one of the parties for the maintenance of such a child, then, in deciding the term for which under the

agreement as altered by the order the payments or, as the case may be, so much of the payments as is attributable to the increase are or is to be made or secured for the benefit of the child, the court shall apply the provisions of section 10(1), (2) and (3) as if the order to which this subsection relates were an order under section 5.

(6) For the avoidance of doubt it is hereby declared that nothing in this section or section 14 affects any power of a court before which any proceedings between the parties to a maintenance agreement are brought under any other enactment (including a provision of this Ordinance) to make an order containing financial arrangements or any right of either party to apply for such an order in such proceedings.

16. (1) Where a maintenance agreement within the meaning of section 14 provides for the continuation of payments under the agreement after the death of one of the parties and that party dies domiciled in Hong Kong, the surviving party or the personal representatives of the deceased party may, subject to subsections (2) and (3), apply to the court for an order under section 15.

(2) An application under this section shall not, except with the permission of the court, be made after the end of the period of six months from the date on which representation in regard to the estate of the deceased is first taken out.

(3) The District Court shall not entertain an application under this section, or an application for permission to make an application under this section.

(4) If a maintenance agreement is altered by a court on an application made in pursuance of subsection (1), the like consequences shall ensue as if the alteration had been made immediately before the death by agreement between the parties and for valuable consideration.

(5) The provisions of this section shall not render the personal representatives of the deceased liable for having distributed any part of the estate of the deceased after the expiration of the said period of six months on the ground that they ought to have taken into account the possibility that a court might permit an application by virtue of this section to be made by the surviving party after that period; but this subsection shall not prejudice any power to recover any part of the estate so distributed arising by virtue of the making of an order in pursuance of this section.

(6) Section 11(9) shall apply for the purposes of subsection (2) of this section as it applies for the purposes of subsection (6) of section 11.

Alteration of agreements by court after death of one party.

1970 c. 45, s. 15.

17. (1) Where proceedings for relief under any of the relevant provisions of this Ordinance (hereafter in this section referred to as "financial provision") are brought by a person (hereafter in this section referred to as "the applicant") against any other person (hereafter in this section referred to as "the other party"), the court may, on an application by the applicant—

- (a) if it is satisfied that the other party is, with the intention of defeating the claim for financial provision, about to make any disposition or to transfer out of the jurisdiction or otherwise deal with any property, make such order as it thinks fit for restraining the other party from so doing or otherwise for protecting the claim;
- (b) if it is satisfied that the other party has, with the intention aforesaid, made a disposition to which this paragraph applies and that if the disposition were set aside financial provision or different financial provision would be granted to the applicant, make an order setting aside the disposition and give such consequential directions as it thinks fit for giving effect to the order (including directions requiring the making of any payment or the disposal of any property);
- (c) if it is satisfied, in a case where an order under the relevant provisions of this Ordinance has been obtained by the applicant against the other party, that the other party has, with the intention aforesaid, made a disposition to which this paragraph applies, make such an order and give such directions as are mentioned in paragraph (b);

and an application for the purposes of paragraph (b) shall be made in the proceedings for the financial provision in question.

(2) Paragraphs (b) and (c) of subsection (1) apply respectively to any disposition made by the other party (whether before or after the commencement of the proceedings for financial provision), not being a disposition made for valuable consideration (other than marriage) to a person who, at the time of the disposition, acted in relation to it in good faith and without notice of any such intention as aforesaid on the part of the other party.

(3) Where an application is made under this section with respect to a disposition which took place less than three years before the date of the application or to a disposition or other dealing with property which is about to take place and the court is satisfied—

- (a) in a case falling within subsection (1)(a) or (b), that the disposition or other dealing would (apart from this section) have the consequence, or

Avoidance of transactions intended to defeat certain claims.
1970 c. 45, s. 16.

(b) in a case falling within subsection (1)(c), that the disposition has had the consequence,

of defeating the applicant's claim for financial provision, it shall be presumed, unless the contrary is shown, that the other party disposed of the property with the intention aforesaid or, as the case may be, is, with that intention, about to dispose of or deal with the property.

(4) In this section—

“disposition” does not include any provision contained in a will or codicil but, with that exception, includes any conveyance, assurance or gift of property of any description, whether made by an instrument or otherwise;

“the relevant provisions of this Ordinance” means any of the provisions of sections 3, 4, 5, 6, 8, 11 (except subsection (6)) and 15;

and any reference to defeating an applicant's claim for financial provision is a reference to preventing financial provision from being granted to the applicant, or to the applicant for the benefit of a child of the family, or reducing the amount of any financial provision which might be so granted, or frustrating or impeding the enforcement of any order which might be or has been made at the instance of the applicant under the relevant provisions of this Ordinance.

(5) The provisions of this section shall not apply to a disposition made more than three years before the commencement of this Ordinance.

18. (1) The court shall not make absolute a decree of divorce or of nullity of marriage, or make a decree of judicial separation, unless the court, by order, has declared that it is satisfied—

(a) that for the purposes of this section there are no children of the family to whom this section applies; or

(b) that the only children who are or may be children of the family to whom this section applies are the children named in the order and that—

(i) arrangements for the welfare of every child so named have been made and are satisfactory or are the best that can be devised in the circumstances; or

(ii) it is impracticable for the party or parties appearing before the court to make any such arrangements; or

(c) that there are circumstances making it desirable that the decree should be made absolute or should be made, as

Restrictions on
decrees for
dissolution,
annulment or
separation
affecting
children.

1970 c. 45, s. 17.

the case may be, without delay notwithstanding that there are or may be children of the family to whom this section applies and that the court is unable to make a declaration in accordance with paragraph (b).

(2) The court shall not make an order declaring that it is satisfied as mentioned in subsection (1)(c) unless it has obtained a satisfactory undertaking from either or both of the parties to bring the question of the arrangements for the children named in the order before the court within a specified time.

(3) If the court makes absolute a decree nisi of divorce or of nullity of marriage, or makes a decree of judicial separation, without having made an order under subsection (1) the decree shall be void but, if such an order was made, no person shall be entitled to challenge the validity of the decree on the ground that the conditions prescribed by subsections (1) and (2) were not fulfilled.

(4) If the court refuses to make an order under subsection (1) in any proceedings for divorce, nullity of marriage or judicial separation, it shall, on application by either party to the proceedings, make an order declaring that it is not satisfied as mentioned in that subsection.

(5) This section applies to the following children of the family, that is to say—

(a) any minor child of the family who at the date of the order under subsection (1) is—

(i) under the age of sixteen, or

(ii) receiving instruction at an educational establishment or undergoing training for a trade, profession or vocation, whether or not he is also in gainful employment; and

(b) any other child of the family to whom the court by an order under that subsection directs that this section shall apply;

and the court may give such a direction if it is of opinion that there are special circumstances which make it desirable in the interests of the child that this section should apply to it.

(6) In this section “welfare”, in relation to a child, includes the custody and education of the child and financial provision for him.

Orders for custody and education of children affected by matrimonial suits.
1970 c. 45, s. 18.

19. (1) The court may make such order as it thinks fit for the custody and education of any child of the family who is under the age of twenty-one—

- (a) in any proceedings for divorce, nullity of marriage or judicial separation, before, by or after the final decree;
- (b) where such proceedings are dismissed after the beginning of the trial, either forthwith or within a reasonable period after the dismissal;

and in any case in which the court has power by virtue of this subsection to make an order in respect of a child it may instead, if it thinks fit, direct that proper proceedings be taken for making the child a ward of court.

(2) Where an order in respect of a child is made under this section, the order shall not affect the rights over or with respect to the child of any person, other than a party to the marriage in question, unless the child is the child of one or both of the parties to that marriage and that person was a party to the proceedings on the application for an order under this section.

(3) Where the court makes or makes absolute a decree of divorce or makes a decree of judicial separation, it may include in the decree a declaration that either party to the marriage in question is unfit to have the custody of the children of the family.

(4) Where a decree of divorce or of judicial separation contains such a declaration as is mentioned in subsection (3), then, if the party to whom the declaration relates is a parent of any child of the family, that party shall not, on the death of the other parent, be entitled as of right to the custody or the guardianship of that child.

(5) While the court has power to make an order in any proceedings by virtue of paragraph (a) of subsection (1), it may exercise that power from time to time; and where the court makes an order by virtue of paragraph (b) of that subsection with respect to a child it may from time to time until that child attains the age of twenty-one make a further order with respect to his custody and education.

(6) The court shall have power to discharge or vary an order made under this section or to suspend any provision thereof temporarily and to revive the operation of any provision so suspended.

20. (1) Where the court makes an order under section 8, the court shall also have power from time to time to make such orders as it thinks fit with respect to the custody of any child of the family who is for the time being under the age of twenty-one; but the power conferred by this section and any order made in exercise of that power shall have effect only as respects any period when an order is in force under that section and the child is under that age.

(2) Section 19(2) and (6) shall apply in relation to an order made under this section as they apply in relation to an order made under that section.

21. No person shall after the commencement of this Ordinance be entitled to petition the court for restitution of conjugal rights.

22. (1) An order made, or deemed to have been made, under section 28(1)(a) or (b) of the Matrimonial Causes Ordinance shall, notwithstanding anything in the order, cease to have effect on the remarriage after the commencement of this Ordinance of the person in whose favour the order was made, except in relation to any arrears due under it on the date of such remarriage.

(2) An order for the payment of alimony made, or deemed to have been made, under section 32 of the Matrimonial Causes Ordinance, and an order made, or deemed to have been made, under section 33 or 34 of that Ordinance, shall, if the marriage of the parties to the proceedings in which the order was made was or is subsequently dissolved or annulled but the order continues in force, cease to have effect on the remarriage after the commencement of this Ordinance of the party in whose favour the order was made, except in relation to any arrears due under it on the date of such remarriage.

23. (1) Where—

- (a) an order to which this section applies has ceased to have effect by reason of the remarriage of the person entitled to payments under the order, and
- (b) the person liable to make payments under the order or his or her personal representatives made payments in accordance with it in respect of a period after the date of such remarriage in the mistaken belief that the order was still subsisting,

no proceedings in respect of a cause of section arising out of the circumstances mentioned in paragraphs (a) and (b) shall be main-

Orders for custody of children in cases of neglect to maintain.
1970 c. 45, s. 19.

Abolition of right to claim restitution of conjugal rights.
1970 c. 45, s. 20.

Order for maintenance of party to marriage under Matrimonial Causes Ordinance to cease to have effect on remarriage of that party.
1970 c. 45, s. 21.
(Cap. 179.)

Orders for repayment in certain cases of sums paid after cessation of order by reason of remarriage.
1970 c. 45, s. 22.

tainable by the person so liable or his or her personal representatives against the person so entitled or her or his personal representatives; but on an application made under this section the court may exercise the powers conferred on it by subsection (2).

(2) The court may order the respondent to an application made under this section to pay to the applicant a sum equal to the amount of the payments made in respect of the period mentioned in subsection (1)(b) or, if it appears to the court that it would be unjust to make that order, it may either order the respondent to pay to the applicant such lesser sum as it thinks fit or dismiss the application.

(3) Subsections (2) to (4) of section 13 shall apply to an application made under this section and to an order made on such application as they apply to an application made under that section and to an order made on the last mentioned application, and the references to the court in this section shall be construed in accordance with subsection (3) of section 13 as applied by this subsection.

(4) No officer of a court to which any payments under an order to which this section applies are required to be made shall be liable for any act done by him in pursuance of the order after the date on which that order ceased to have effect by reason of the remarriage of the person entitled to payments under it, if, but only if, the act was one which he would have been under a duty to do had the order not ceased to have effect as aforesaid and the act was done before notice in writing of the fact that the person so entitled had remarried was given to him by or on behalf of that person, the person liable to make payments under the order or the personal representatives of either of those persons.

(5) This section applies to an order made by virtue of section 4(1)(a) or (b) or 8(6)(a) or (b) and to any such order as is referred to in subsection (1) or (2) of section 22.

24. The fact that a settlement or transfer of property had to be made in order to comply with an order of the court under section 6 shall not prevent that settlement or transfer from being a settlement of property to which section 47(1) of the Bankruptcy Ordinance (avoidance of certain settlements) applies.

Settlement, etc., made in compliance with order under s. 6 may be avoided on bankruptcy of settlor.
1970 c. 45, s. 23.
(Cap. 6.)

25. (1) Where a petition for divorce, nullity of marriage or judicial separation has been presented, then, subject to subsection (2), proceedings under section 3, 4, 5 or 6 may be begun, subject to and in accordance with rules of court, at any time after the presentation of the petition; but—

- (a) no order under section 4 or 6 shall be made unless a decree nisi of divorce or of nullity of marriage or a decree of judicial separation, as the case may be, has been granted;
- (b) without prejudice to the power to give a direction under section 26, no such order made on or after granting a decree nisi of divorce or of nullity of marriage, and no settlement made in pursuance of such an order, shall take effect unless the decree has been made absolute.

(2) Rules of court may provide, in such cases as may be prescribed by the rules—

- (a) that applications for ancillary relief shall be made in the petition or answer; and
- (b) that applications for ancillary relief which are not so made, or are not made until after the expiration of such period following the presentation of the petition or filing of the answer as may be so prescribed, shall be made only with the leave of the court.

(3) In subsection (2) "ancillary relief" means relief under any of the provisions of sections 3, 4, 5 and 6.

26. Where the court decides to make an order under this Ordinance requiring any payments to be secured or an order under section 6—

- (a) it may direct that the matter be referred to the Registrar of the Supreme Court for him to settle a proper instrument to be executed by all necessary parties; and
- (b) in the case of an order under section 4, 5 or 6, it may, if it thinks fit, defer the grant of the decree in question until the instrument has been duly executed.

27. Where the court makes an order under this Ordinance requiring payments (including a lump sum payment) to be made, or property to be transferred, to a party to a marriage and the court is satisfied that the person in whose favour the order is made is incapable, by reason of mental disorder within the meaning of the Mental Health Ordinance, of managing and administering his or her property and affairs, then, subject to any order,

Commencement of proceedings for financial provision orders, etc.
1970 c. 45, s. 24.

Direction for instrument to be settled by the Registrar.
1970 c. 45, s. 25.

Payments etc., under order made in favour of person suffering from mental disorder.
1970 c. 45, s. 26.
(Cap. 136.)

direction or authority made or given in relation to that person under the said Ordinance, the court may order the payments to be made, or, as the case may be, the property to be transferred, to such persons having charge of that person as the court may direct.

28. The First Schedule shall have effect for the purpose of the transition to the provisions of this Ordinance from the law in force before the commencement of this Ordinance and with respect to the application of certain provisions of this Ordinance to orders made, or deemed to have been made, under the Matrimonial Causes Ordinance.

29. Any decree of divorce, nullity of marriage or judicial separation which, apart from this section, would be void or voidable on the ground only that the provisions of section 45 of the Matrimonial Causes Ordinance (which restricts the making of decrees of dissolution or separation where children are affected) had not been complied with when the decree was made absolute or granted, as the case may be, shall be deemed always to have been valid unless—

- (a) before the commencement of this Ordinance the court declared the decree to be void; or
- (b) in proceedings for the annulment of the decree pending at the said commencement the court declares the decree to be void.

PART III

MISCELLANEOUS PROVISIONS

30. The jurisdiction conferred on the District Court by section 13 or section 23 or paragraph 5 of the First Schedule shall be exercisable by the District Court notwithstanding that by reason of the amount claimed in an application made under either of those sections or the said paragraph 5, as the case may be, the jurisdiction would not but for this subsection be exercisable by the District Court.

31. Section 32(3) of the Matrimonial Causes Ordinance (which provides that in a case of judicial separation certain property of the wife shall, if she dies intestate, devolve as if her husband had then been dead) shall cease to have effect except in relation to a case where the death occurred before the commencement of this Ordinance.

Transitional provisions and savings.
1970 c. 45, s. 28.
First Schedule.

(Cap. 179.)

Validation of certain void or voidable decrees.
1970 c. 45, s. 29.
(Cap. 179.)

Jurisdiction of, and appeal on question of fact from, District Court.
1970 c. 45, s. 34.

Devolution of property on intestacy of separated spouse.
(Cap. 179.)
1970 c. 45, s. 40(3).

32. The Chief Justice may make rules of court for the better carrying out of the purposes and provisions of this Ordinance.

33. (1) The Matrimonial Causes Ordinance is amended in the manner set out in the Second Schedule.

(2) Subject to the provisions of the First Schedule, the provisions of the Matrimonial Causes Ordinance specified in the Third Schedule are repealed to the extent set out in the third column of the Third Schedule.

(3) The Ordinances specified in the Fourth Schedule are amended in the manner set out in the third column thereof.

FIRST SCHEDULE

[s. 28.]

TRANSITIONAL PROVISIONS AND SAVINGS

General provisions

1. Without prejudice to the provisions of section 23 of the Interpretation and General Clauses Ordinance (which relates to the effect of repeals), nothing in any repeal made by this Ordinance shall affect any application made, proceeding begun, order made or deemed to have been made, or direction given or deemed to have been given, under any provision of the Matrimonial Causes Ordinance repealed by this Ordinance, and subject to the provisions of this Ordinance—

- (a) every such application or proceeding which is pending at the commencement of this Ordinance shall have effect as if made or begun under the corresponding provision of this Ordinance; and
- (b) every such order or direction shall, if in force at the commencement of this Ordinance, continue in force.

Provisions relating to proceedings for restitution of conjugal rights

2. (1) Sections 2, 7, 25, 27, 33, 42(1), 43, and section 46(1), (4) and (5) of the Matrimonial Causes Ordinance (hereafter referred to as "Chapter 179") shall continue to apply in relation to proceedings for restitution of conjugal rights begun before the commencement of this Ordinance and in relation to decrees and orders made in such proceedings so begun.

(2) In subsection (2) of the said section 33, as applied by subparagraph (1), the reference to such a direction as is mentioned in section 28(2)(a) of Chapter 179 shall be construed as a reference to such a direction as is mentioned in section 26(a) of this Ordinance.

(3) Notwithstanding the repeal by this Ordinance of section 41 of Chapter 179, rules of court made by virtue of that section, in so far as they apply to applications for relief under subsection (1) or (2) of the said section 33 or for relief under subsection (1)(c) of the said section 46, shall continue to have effect.

Rules of court.

Amendments and repeals.
Second Schedule.
(Cap. 179.)

Third Schedule.

Fourth Schedule.

(Cap. 1.)

(Cap. 179.)

Variation, etc. of certain orders made, etc. under the Matrimonial Causes Ordinance (Cap. 179)

3. (1) Subject to the provisions of this paragraph, section 11 shall apply to an order (other than an order for the payment of a lump sum) made or deemed to have been made under any of the following provisions of Chapter 179, that is to say—

- (a) section 27, except in its application to proceedings for restitution of conjugal rights,
- (b) section 28(1), that subsection as applied by section 28(3) and by section 31,
- (c) section 32(1) and section 29(2) as applied by section 32(2),
- (d) section 34,
- (e) section 46(1)(a) or (b), in so far as it relates to the maintenance of a child, and section 46(3),

as it applies to the orders mentioned in subsection (2) of the said section 11.

(2) Subject to the provisions of this paragraph, the court hearing an application for the variation of an order made or deemed to have been made under any of the provisions of Chapter 179 mentioned in sub-paragraph (1) shall have power to vary that order in any way in which it would have power to vary it had the order been made under the corresponding provision of this Ordinance.

(3) The said section 11, as applied by sub-paragraph (1), shall have effect as if for subsections (4), (5) and (6) thereof there were substituted the following subsections—

“(4) The court shall not exercise the powers conferred by this section in relation to an order made or deemed to have been made under section 29(2) of the Matrimonial Causes Ordinance, as applied by section 32(2) thereof, in proceedings for judicial separation except on an application made in proceedings—

- (a) for the rescission of the decree of judicial separation, or
- (b) for the dissolution of the marriage of the parties to the proceedings in which that decree was made.

(5) The court hearing an application for the variation of any order made or deemed to have been made under section 28(1), 32(1), 34, 46(1)(a) or (b) or 46(3) of the Matrimonial Causes Ordinance or under the said section 28(1) as applied by section 28(3) of that Ordinance or by section 31 thereof shall not have power to vary that order by making an order for the payment of a lump sum or any such order as is mentioned in section 6 of this Ordinance.

(6) Where the person liable to make payments under a secured periodical payments order made or deemed to have been made under the said section 28(1), 34 or 46(3) or under the said section 28(1), as applied by the said section 28(3) or by the said section 31, has died, an application under this section relating to that order may be made by the person entitled to payments under the order or by the personal representatives of the deceased person, but no such application shall, except with the permission of the court, be made after the end of the period of six months from the date on which representation in regard to the estate of that person is first taken out.

In this subsection “secured periodical payments order” means an order requiring a person to secure an annual sum or periodical payments to some other person.”

(4) Section 11(1) and (3) shall apply to an order made or deemed to have been made under section 27 of Chapter 179 in its application to proceedings for restitution of conjugal rights, under section 33 of Chapter 179 or under section 46(1)(c) thereof as they apply to the orders mentioned in subsection (2) of the said section 11, and in exercising the powers conferred by virtue of this paragraph the court shall have regard to all the circumstances of the case, including any change in any of the matters to which the court was required to have regard when making the order to which the application relates.

4. Section 12 of this Ordinance shall apply in relation to the enforcement of the payment of arrears due under an order made, or deemed to have been made, under any of the following provisions of Chapter 179, that is to say, sections 27, 28, 32, 33, 34 and 46 and section 28 as applied by section 31, where proceedings to enforce through the court the payment of such arrears are begun after the commencement of this Ordinance as it applies in relation to the enforcement of the payment of arrears due under any such order as is mentioned in that section.

5. An application may be made under this paragraph in relation to an order to which this paragraph applies in the like circumstances as those in which an application may be made under section 13, and the provisions of that section shall apply to such an application and to an order made on such an application as they apply to an application made under that section and to an order made on the last mentioned application.

This paragraph applies to an order made, or deemed to have been made, under any of the following provisions of Chapter 179, that is to say, sections 27, 28(1)(a) and (b), 32(1), 33 and 34, section 28(1)(a) and (b) as applied by section 28(3) and by section 31, section 46(1), in so far as it applies to maintenance, and section 46(3).

6. Section 19(6) of this Ordinance shall apply in relation to an order for the custody or education of a child made or deemed to have been made under section 46 of Chapter 179, and in relation to an order for the custody of a child made or deemed to have been made under section 47 of Chapter 179, as it applies in relation to an order made under section 19 of this Ordinance.

Avoidance of transactions intended to defeat claims for relief under the Matrimonial Causes Ordinance (Cap. 179)

7. (1) Section 17 shall apply in relation to proceedings for relief under any of the following provisions of Chapter 179, that is to say, sections 28, 29(2), 32(1), 34, 36, 43, 46(1)(a) or (b), 46(3) and 47, section 28(1) as applied by section 31 and section 29(2) as applied by section 32(2), where the proceedings are pending at the commencement of this Ordinance, and in relation to proceedings for relief under section 33 or 46(1)(c) of Chapter 179, as it applies in relation to proceedings for relief under any of the provisions of this Ordinance specified in section 17(4).

(2) Without prejudice to sub-paragraph (1), section 17 shall apply in a case where an order has been obtained under any of the provisions of

Chapter 179 mentioned in sub-paragraph (1) as it applies in a case where an order has been obtained under any of the provisions of this Ordinance specified in section 17(4).

Protection, custody, etc. of children

8. Section 45 of Chapter 179 shall continue to apply, and section 18 of this Ordinance shall not apply, in relation to any proceedings for divorce or nullity of marriage in which a decree *nisi* has been granted but not made absolute before the commencement of this Ordinance.

9. Where in any such proceedings the court has made an order by virtue of section 46(1) of Chapter 179 in relation to a child, the court shall have the like power to make a further order from time to time in relation to that child under section 5 or 19 of this Ordinance as it has where it makes an order in relation to a child under subsection (1) of the said section 5 or 19, but nothing in the foregoing provision shall be taken as affecting the power of the court in any such proceedings to make an order under either of those sections in relation to any other child, being a child of the family.

10. Where the court has made an order under section 34 of Chapter 179 the court shall have the like power to make orders under section 20 of this Ordinance with respect to the custody of any child of the family as it has where it makes an order under section 8 of this Ordinance.

SECOND SCHEDULE

[s. 33(1).]

MINOR AND CONSEQUENTIAL AMENDMENTS TO THE
MATRIMONIAL CAUSES ORDINANCE

The Matrimonial Causes Ordinance is amended as follows:

1. In section 10B—
 - (a) paragraph (a)—
 - (i) by deleting “37.”;
 - (ii) by inserting, after “Part VII”—“or under the Matrimonial Proceedings and Property Ordinance 1972 (other than section 16 thereof);” and
 - (b) paragraph (b), by deleting “section 34 or 36” and substituting—
“section 8 or 15 of that Ordinance”.
2. In section 10E(2), by deleting “section 36” and substituting—
“section 15 of the Matrimonial Proceedings and Property Ordinance 1972”.
3. In section 12(2), by deleting “relevant child” and substituting—
child of the family within the meaning of section 2 of the Matrimonial Proceedings and Property Ordinance 1972”.

^{1970 c. 45,}
^{s. 35.}

4. In section 24(1A), by deleting “section 45” and substituting—
“section 18 of the Matrimonial Proceedings and Property Ordinance 1972”.
5. In section 38—
 - (a) subsection (4)(c), by deleting the comma at the end of sub-paragraph (ii) and substituting a semicolon therefor and adding the following new sub-paragraph—
“(iii) where the survivor is a former wife or a former husband of the deceased, for an order under section 4 or 6 of the Matrimonial Proceedings and Property Ordinance 1972.”; and
 - (b) by inserting, after subsection (5), the following new subsection—
“^{1970 c. 45,} (5A) For the avoidance of doubt it is hereby de-
^{s. 36.}clared that references in this section to remarriage include references to a marriage which is by law void or voidable.”.
6. In section 48—
 - (a) subsection (1), by inserting, after “this Ordinance”—“or of the Matrimonial Proceedings and Property Ordinance 1972”; and
 - (b) subsection (2), by inserting, after “this Ordinance”—“or under the Matrimonial Proceedings and Property Ordinance 1972”.

THIRD SCHEDULE

REPEALS

[s. 33(2).]

<i>Short title</i>	<i>Extent of Repeal</i>	
Matrimonial Causes Ordinance.	1. In section 2, the definitions of “adopted” and “relevant child” except so far as they apply for the interpretation of section 50(2) of that Ordinance.	(Cap. 179.)
	2. Section 7.	
	3. Section 25.	
	4. Sections 27 to 31.	
	5. In section 32, subsections (1) and (2), subsection (3) except in relation to a case where the death occurred before the commencement of this Ordinance and subsection (4).	
	6. Sections 33 to 37 except section 37(4) and (5) as applied by section 40(2) of that Ordinance.	
	7. Sections 41 to 47.	

FOURTH SCHEDULE

[s. 33(3).]

*Short title**Amendment*

(Cap. 73.)

Intestates' Estates
Ordinance.

1. After section 4, and the following new section—

"Judicially separated spouses not entitled to claim in intestacy of each other.
1970 c. 45,
s. 40.

4A. (1) If while a decree of judicial separation is in force and the separation is continuing either of the parties whose marriage is the subject of the decree dies after the 1st July 1972 intestate as respects all or any of his or her real or personal property, the property of that party as respects which he or she died intestate shall devolve as if the other party to the marriage had then been dead.

(Cap. 16.)

(2) Notwithstanding anything in section 5(a) of the Separation and Maintenance Orders Ordinance, a provision in force in an order made, or having effect as if made, under that section that a party to a marriage be no longer bound to cohabit with the other party to the marriage shall not have effect as a decree of judicial separation on the ground of cruelty for the purposes of this section."

(Cap. 182.)

Married Persons
Status
Ordinance.

2(1) After section 7, add the following new sections—

"Further extension of sections 6 and 7.
1970 c. 45,
s. 39.

7A. An application may be made under section 6 (including that section as extended by section 7) by either of the parties to a marriage notwithstanding that their marriage has been dissolved or annulled so long as the application is made within the period of three years beginning with the date on which the marriage was dissolved or annulled; and references in sections 6 and 7 to a husband or a wife shall be construed accordingly.

Contributions by spouse in money or money's worth to the improvement of property.
1970 c. 45,
s. 37.

7B. It is hereby declared that, where a husband or wife contributes in money or money's worth to the improvement of real or personal property in which or in the proceeds of sale of which either or both of them has or have a beneficial interest, the husband or wife so contributing shall, if the contribution is of a substantial nature and subject to any agreement between them to the contrary express or implied, be treated as having them acquired by virtue of his or her contribution a share or an enlarged share,

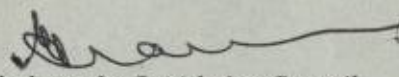
as the case may be, in that beneficial interest of such an extent as may have been then agreed or, in default of such agreement, as may seem in all the circumstances just to any court before which the question of the existence or extent of the beneficial interest of the husband or wife arises (whether in proceedings between them or in any other proceedings)."

(2) After section 8, add the following new section—

"Abolition of wife's agency of necessity.
1970 c. 45,
s. 41.


8A. Any rule of law or equity conferring on a wife authority, as agent of necessity of her husband, to pledge his credit or to borrow money on his credit is hereby abrogated."

Passed by the Hong Kong Legislative Council this 21st day of June, 1972.



Clerk to the Legislative Council.

This printed impression has been carefully compared by me with the bill, and is found by me to be a true and correctly printed copy of the said bill.



Clerk to the Legislative Council.

HONG KONG

No. 40 OF 1972



I assent.

Man, Man Lehon

Governor.

22nd June, 1972.

An Ordinance to amend the Inland Revenue Ordinance.

[23rd June, 1972.]

Enacted by the Governor of Hong Kong, with the advice and consent of the Legislative Council thereof.

1. (1) This Ordinance may be cited as the Inland Revenue (Amendment) (No. 2) Ordinance 1972.

Short title and commencement.

(2) Section 3 shall be deemed to have come into operation on the 1st April 1972 and shall apply to assessments for the year of assessment commencing on the 1st April 1972 and to subsequent years of assessment.

(3) Sections 5 and 6(e) shall come into operation on the 1st October 1972.

2. Section 9 of the principal Ordinance is amended in paragraph (a) of subsection (1) by deleting "except the value of any holiday warrant, or passage granted by an employer to an employee, or any allowance for the purchase of any such holiday

Amendment of section 9. (Cap. 112.)

warrant or passage in so far as it is expended for such purpose;" and substituting the following—

"except—

(i) the value of any holiday warrant or passage granted by an employer to an employee in so far as it is used for travel;

(ii) any allowance for the purchase of any such holiday warrant or passage in so far as it is expended for that purpose; and

(iii) any allowance paid by an employer to an employee for the transportation of the personal effects of the employee in connexion with any journey on which a holiday warrant or passage referred to in sub-paragraph (i) or (ii) is used in so far as the allowance is expended for the transportation of the personal effects of the employee;".

Amendment of section 24.

3. Section 24 of the principal Ordinance is amended—

(a) in subsection (2) by inserting after "trade" the following—

“, professional or business”; and

(b) in subsection (3) by inserting after "trade" the following—

“, professional or business”.

Amendment of section 51.

4. (1) Section 51 of the principal Ordinance is amended in subsection (4)—

(a) by deleting "any particular matter" and substituting the following—

"any matter";

(b) in the proviso to paragraph (a)—

(i) by deleting "the particular matter" in the first place where it occurs and substituting the following—

"any matter"; and

(ii) by deleting "the particular matter" in the second place where it occurs and substituting the following—

"the matter".

(2) Section 51 of the Principal Ordinance is amended by inserting after subsection (8) the following new subsection—

"(9) Subsection (4) shall expire on the 31st July 1975 unless the Legislative Council shall extend the operation thereof by resolution passed before that date.”.

5. Section 51A of the principal Ordinance is amended by deleting subsection (8).

Amendment of section 51A.

6. Section 51B of the principal Ordinance is amended—

Amendment of section 51B.

(a) in subsection (1)—

(i) by inserting after "the Commissioner for the purpose" the following—

"(in this section referred to as the authorized officer)";

(ii) by inserting after "the magistrate may by warrant authorize the Commissioner or" the following—

"authorized"; and

(iii) in the proviso by deleting "Commissioner or officer" and substituting the following—

"Commissioner or authorized officer"; and

(b) by inserting after subsection (1) the following new subsection—

"(1A) Any officer of the Inland Revenue Department under the direction of the Commissioner or an authorized officer may assist the Commissioner or an authorized officer in the execution of a warrant issued under subsection (1) and may exercise any of the powers referred to in paragraphs (i), (ii) and (iii) of subsection (1).";

(c) in subsection (2), by inserting before "officer" the following—

"authorized";

(d) in subsection (4), by—

(i) inserting after "or an" the following—

"authorized"; and

(ii) inserting after "subsection (1)" the following—

"or an officer assisting him under subsection (1A)"; and

(e) by deleting subsection (5).

7. Section 64 of the principal Ordinance is amended by inserting after subsection (6) the following new subsection—

Amendment of section 64.

"(7) No objection by a person to a personal assessment on his total income under Part VII shall—

(a) extend the time for making any objection under any other provision of this Ordinance;

- (b) make valid any objection which is otherwise invalid; or
- (c) authorize the revision of any amount which has been included in the total income of an individual pursuant to the provisions of subsection (1) of section 42, where such amount has been the subject of, or formed a part of, any assessment made under Part II, III, IV or V which has become final and conclusive under section 70:

Provided that nothing in this paragraph shall operate to prevent an objection by an individual on the grounds that an amount included in his total income as a share of the assessable profits of a partnership has not been ascertained in accordance with subsection (2) of section 42."

Amendment of section 68.

8. Section 68 of the principal Ordinance is amended—

- (a) in subsection (2)—
 - (i) by deleting "Every" and substituting the following—
"Subject to subsection (2B), an";
 - (ii) by deleting the colon and substituting a full stop; and
 - (iii) by deleting the proviso; and
- (b) by inserting after subsection (2) the following new subsections—

"(2A) At any time before the hearing of an appeal, the appellant may withdraw the appeal by notice in writing addressed to the clerk to the Board.

(2B) If, on the date fixed for the hearing of an appeal, the appellant fails to attend at the meeting of the Board either in person or by his authorized representative the Board may—

- (a) if satisfied that the appellant's failure to attend was due to sickness or other reasonable cause, postpone or adjourn the hearing for such period as it thinks fit;
- (b) proceed to hear the appeal under subsection (2D); or
- (c) dismiss the appeal.

(2C) If an appeal has been dismissed by the Board under paragraph (c) of subsection (2B) the

appellant may, within thirty days after the making of the order for dismissal by notice in writing addressed to the clerk to the Board, apply to the Board to review its order and the Board may, if satisfied that the appellant's failure to attend at the meeting of the Board for the hearing of the appeal was due to sickness or any other reasonable cause, set aside the order for dismissal and proceed to hear the appeal.

(2D) The Board may, if satisfied that an appellant will be or is outside the Colony on the date fixed for the hearing of the appeal and is unlikely to be in the Colony within such period thereafter as the Board considers reasonable on the application of the appellant made by notice in writing addressed to the clerk to the Board and received by him at least seven days prior to the date fixed for the hearing of the appeal, proceed to hear the appeal in the absence of the appellant or his authorized representative.

(2E) The Board may, if it hears an appeal in the absence of an appellant or his representative under subsection (2D), consider such written submissions as the appellant may submit to the Board."

9. Section 70 of the principal Ordinance is amended by inserting after "or profits assessed thereby," the following—

Amendment of section 70.

"or where an appeal against an assessment has been withdrawn under subsection (2A) of section 68 or dismissed under subsection (2B) of that section,".

10. Section 80 of the principal Ordinance is amended by inserting in subsection (2), after "dollars and", the following—

Amendment of section 80.

"a further fine equal to".

11. Section 80A of the principal Ordinance is amended by inserting after subsection (3) the following new subsection—

Amendment of section 80A.

"(4) The Commissioner may compound any offence under this section and may before judgment stay or compound any proceedings thereunder."

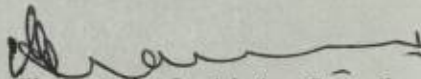
12. Section 82 of the principal Ordinance is amended in subsection (1) by deleting "treble the amount of tax for which the person who evaded or attempted to evade tax is liable under this Ordinance for the year of assessment in respect of which the

Amendment of section 82.

offence was committed, and to imprisonment for six months, and on indictment a fine of ten thousand dollars and treble the amount of the tax and to imprisonment for three years" and substituting the following—

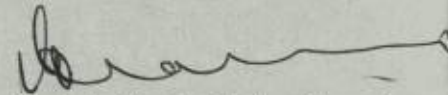
"a further fine of treble the amount of tax which has been undercharged in consequence of the offence or which would have been undercharged if the offence has not been detected, and to imprisonment for six months, and on indictment a fine of ten thousand dollars and a further fine of treble the amount of tax so undercharged or which would have been so undercharged and to imprisonment for three years".

Passed by the Hong Kong Legislative Council this 21st day of June, 1972.



Clerk to the Legislative Council.

This printed impression has been carefully compared by me with the bill, and is found by me to be a true and correctly printed copy of the said bill.



Clerk to the Legislative Council.



I assent.

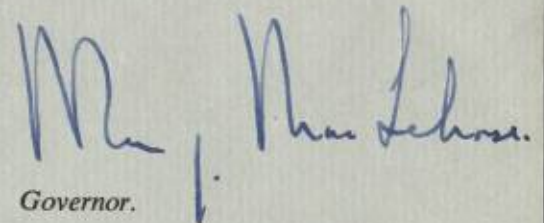
Mr. Hans Schoss.

HONG KONG

No. 41 OF 1972



I assent.


Governor.

22nd June, 1972.

An Ordinance to amend the Tramway Ordinance.

[1st July, 1972.]

Enacted by the Governor of Hong Kong, with the advice and consent of the Legislative Council thereof.

1. This Ordinance may be cited as the Tramway (Amendment) (No. 2) Ordinance 1972 and shall come into operation on the 1st July 1972.

Short title and commencement.

2. Section 50(1) of the principal Ordinance is amended by deleting "First class—twenty cents, Third class—ten cents" and substituting the following—

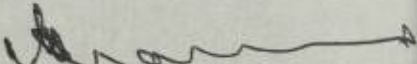
Amendment of section 50. (Cap. 107.)

"twenty cents".

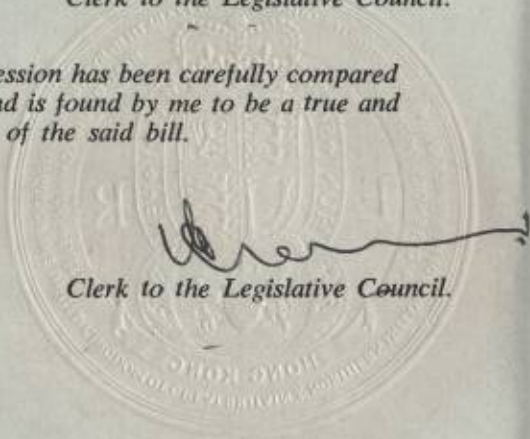

3. Section 52 of the principal Ordinance is repealed.

Repeal of section 52.

Passed by the Hong Kong Legislative Council this 21st day of June, 1972.


Clerk to the Legislative Council.

This printed impression has been carefully compared by me with the bill, and is found by me to be a true and correctly printed copy of the said bill.

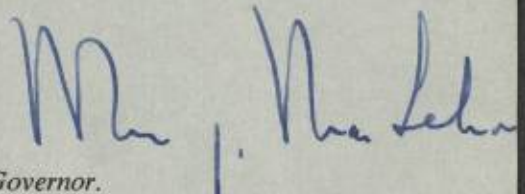


Clerk to the Legislative Council.

HONG KONG

No. 42 OF 1972



I assent.


Governor.

6th July, 1972.

An Ordinance to make provision for the raising of loans from the Asian Development Bank and for matters connected therewith.

[7th July, 1972.]

Enacted by the Governor of Hong Kong, with the advice and consent of the Legislative Council thereof.

1. This Ordinance may be cited as the Loans (Asian Development Bank) Ordinance 1972. Short title.

2. In this Ordinance, unless the context otherwise requires— Interpretation.
“Bank” means the Asian Development Bank.

3. (1) The Government may, in such manner and on such terms and subject to such conditions as may be agreed between the Government and the Bank, borrow from the Bank sums not exceeding those specified in the First Schedule for the purposes of the projects specified with respect to such sums in the First Schedule. Power to borrow from the Asian Development Bank.
First Schedule.

(2) Any agreement between the Government and the Bank in respect of sums borrowed under the powers conferred by subsection (1) shall be made in the name of the Government of Hong Kong and may be signed on behalf of the Government by the Financial Secretary, or by any person authorized by him in writing.

(3) As soon as practicable after the execution of an agreement under this section, the Financial Secretary shall cause a copy of the agreement to be laid on the table of the Legislative Council.

Power to issue instruments including bonds.

4. (1) The Government may issue such bonds, promissory notes or other instruments on such terms and conditions as may be necessary for the purpose of giving effect to the terms of any agreement which may be entered into by it with the Bank in respect of any borrowing authorized by this Ordinance.

(2) Any bond, promissory note or other instrument issued by the Government under subsection (1) may be signed on behalf of the Government by the Financial Secretary, or by any person authorized by him in writing.

Appropriation and charge of loans.

First Schedule.

5. (1) Any sums borrowed by the Government under this Ordinance shall be applied, and are appropriated, to the purposes of the project for which they were borrowed as specified in the First Schedule and more particularly in any agreement concluded with the Bank in respect of the sums so borrowed:

Provided that any part of such a sum which cannot be applied to those purposes may be applied to such other purposes as may be approved by the Financial Secretary and the Bank.

(2) Where sums borrowed under this Ordinance are not immediately available and expenditure in respect of the project for which they were borrowed must be met, such expenditure shall be charged as an advance pending reimbursement and the maximum amount which may be so advanced in any financial year in connexion with any project shall be specified in the Second Schedule.

Second Schedule.

(3) The sums borrowed under this Ordinance and all interest and other charges thereon are hereby charged upon and shall be payable out of the general revenues and assets of Hong Kong.

Implementation of obligations under agreement.

6. (1) Notwithstanding anything contained in any other law, any agreement concluded with the Bank in respect of any borrowing authorized under this Ordinance and any bond, promissory note or other instrument issued pursuant to any such agreement and any undertaking given in respect of any such agreement,

bond, promissory note or instrument by the Government shall be valid and enforceable and have full force and effect in accordance with their respective terms.

(2) The Governor may, by order published in the *Gazette*, provide for the remission of any tax, duty, charge or fee payable under any Ordinance in respect of any agreement, bond, promissory note, instrument or guarantee concluded with the Bank or issued in connexion with any borrowing authorized by this Ordinance or in respect of any payment of interest or otherwise under any such agreement, bond, promissory note, instrument or guarantee.

7. The Legislative Council may by resolution amend the Schedules.

Power to amend Schedules.

FIRST SCHEDULE

[ss. 3 & 5.]

Item One

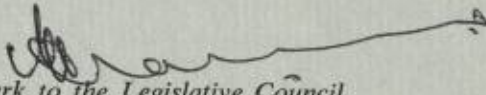
An amount in various currencies equivalent to twenty-one million five hundred thousand United States dollars (US\$21,500,000) for the purposes of a project involving the construction of seawater desalting works consisting of six units having a total design output of 40 million gallons per day and to be located near Castle Peak in the New Territories. The project includes all supporting facilities and installations necessary to render the project operable.

SECOND SCHEDULE

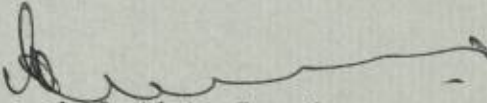
[s. 5.]

The maximum amount which may be advanced pending reimbursement under subsection (2) of section 5 in any financial year in connexion with the project described in Item One of the First Schedule is One hundred million Hong Kong dollars (HK\$100,000,000).

Passed by the Hong Kong Legislative Council this 5th day of July, 1972.


Clerk to the Legislative Council.

This printed impression has been carefully compared by me with the bill, and is found by me to be a true and correctly printed copy of the said bill.

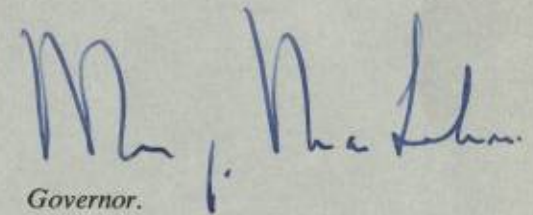

Clerk to the Legislative Council.

HONG KONG

No. 43 of 1972



I assent.


Governor.

6th July, 1972.

An Ordinance to amend the Public Health and Urban Services Ordinance.

[7th July, 1972.]

Enacted by the Governor of Hong Kong, with the advice and consent of the Legislative Council thereof.

1. This Ordinance may be cited as the Public Health and Urban Services (Amendment) Ordinance 1972. Short title.

2. Section 2 of the principal Ordinance is amended by inserting after the definition of "boarding house" the following new definition— Amendment of section 2. (Cap. 132.)

"canopy" means any shade, shelter or other structure not carrying a floor load which—

- (a) projects from a wall of a building and is cantilevered or supported by brackets, posts or other means; or

- (b) is erected on any building or in or over any open space adjacent to or on a building and is supported by posts or other means;”.

Addition of
new section
22A.

3. The principal Ordinance is amended by adding after section 22 the following new section—

“Prevention
of accumu-
lation of
refuse on
canopies.

22A. (1) If refuse of any kind is found on or in any canopy—

- (a) the Authority may cause a notice to be served on the occupier of the premises or of that part of the premises for the benefit of which the canopy is erected, requiring the occupier to remove the refuse within such time as may be specified in the notice; and
- (b) the occupier shall be guilty of an offence if he fails to remove the refuse in accordance with the notice served on him under paragraph (a).

(2) If the Authority is of opinion that refuse which is found on or in a canopy—

- (a) is or may become injurious or dangerous to health;
- (b) is or may become a danger to any persons;
- (c) constitutes a nuisance; or
- (d) is unsightly,

he may cause a notice to be served on the occupier of the premises or that part of the premises for the benefit of which the canopy is erected or, if the occupier cannot be found or there is no occupier, the owner of the premises, requiring him to remove the canopy within such time as may be specified in the notice.

(3) If a notice served under subsection (2) is not complied with within the time specified in the notice, the Authority may remove the canopy and do whatever is necessary to effect such removal.

(4) The Authority shall not remove a canopy under subsection (3) until fourteen days from the date of service of the notice or, in the event of an appeal to the Governor under subsection (7), the determination of such appeal.

(5) If a canopy is removed under subsection (3) the Authority may—

- (a) recover any expenses incurred in the removal from the person on whom the removal notice was served; and
- (b) remove and detain the canopy until the expenses recoverable under paragraph (a) have been paid.

(6) If a canopy is removed under subsection (3), no action, liability, claim or demand shall lie against the Authority or the Government or against any person acting for or on behalf of the Authority or the Government at the suit of any owner or occupier of the premises for the benefit of which the canopy so removed was erected, maintained or used, for any damage done to the canopy or the premises or for any damage or loss arising out of or by reason of the removal of the canopy.

(7) Any person on whom a notice to remove a canopy is served under subsection (2) who considers himself aggrieved by the requirement of the notice, may within fourteen days after the service thereof, appeal to the Governor.

(8) If an appeal is made under subsection (7), the Governor may confirm, vary or cancel the notice and the decision of the Governor shall be final.”.

4. The Third Schedule to the principal Ordinance is amended—

- (a) by inserting after “22(2), (3), (4) and (5) Urban Council Director of Urban Services” the following—
“22A(1), (2), (3), Urban Council Director of
(4) and (5) Urban Services”; and
- (b) by deleting “108(2)(a) Director of Education Director of Urban Services” and substituting the following—
“108(2)(a) Urban Council Director of Urban Services”.

Amendment of
Third
Schedule.

5. The Sixth Schedule to the principal Ordinance is amended by inserting after “22(1)(a) Urban Council Director of Urban Services” the following—

“22A(1)(b) Urban Council Director of Urban Services”.

Amendment of
Sixth
Schedule.

6. The Eighth Schedule to the principal Ordinance is amended by deleting item 9.

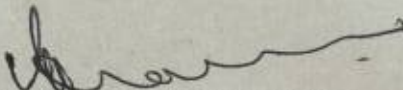
Amendment of
Eighth
Schedule.

Amendment of
Ninth
Schedule.

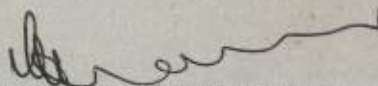
7. The Ninth Schedule to the principal Ordinance is amended by inserting after "22(1)(a) \$500 fine \$10 fine" the following—

"22A(1)(b) \$500 fine \$20 fine".

Passed by the Hong Kong Legislative Council this 5th day of July, 1972.


Clerk to the Legislative Council.

This printed impression has been carefully compared by me with the bill, and is found by me to be a true and correctly printed copy of the said bill.

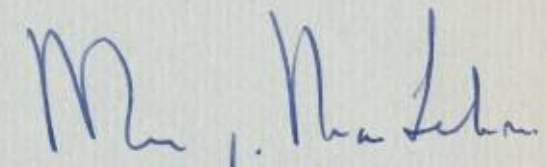

Clerk to the Legislative Council.

HONG KONG

No. 44 OF 1972



I assent.


Governor.

6th July, 1972.

An Ordinance to amend the Buildings Ordinance.

[15th June, 1972.]

Enacted by the Governor of Hong Kong, with the advice and consent of the Legislative Council thereof.

1. This Ordinance may be cited as the Buildings (Amendment) Ordinance 1972 and shall be deemed to have come into operation on the 15th June 1972.

Short title and commencement.

2. The principal Ordinance is amended by adding the following new section after section 30—

Addition of new section 30A. (Cap. 123.)

"Suspension of sections 15(1) and 21(7).

30A. (1) With effect from the 15th June 1972—

- (a) no approval or consent shall be deemed to have been given under section 15(1); and
- (b) no permit shall be deemed to have been granted under section 21(7).

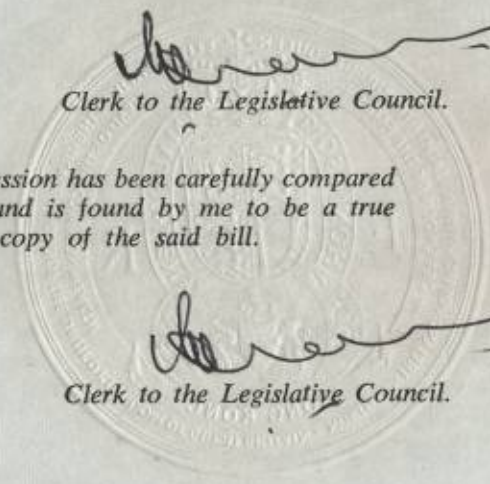
(2) This section shall cease to have effect on the 30th September 1972 or on such other date as may be specified by the Governor in Council by regulation."

Passed by the Hong Kong Legislative Council this 5th day of July, 1972.


Clerk to the Legislative Council.

This printed impression has been carefully compared by me with the bill, and is found by me to be a true and correctly printed copy of the said bill.


Clerk to the Legislative Council.

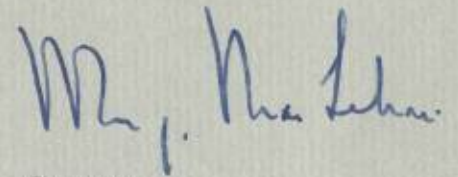


HONG KONG

No. 45 OF 1972



I assent.



Governor.

20th July, 1972.


An Ordinance to amend the Nurses Registration Ordinance.

[21st July, 1972.]

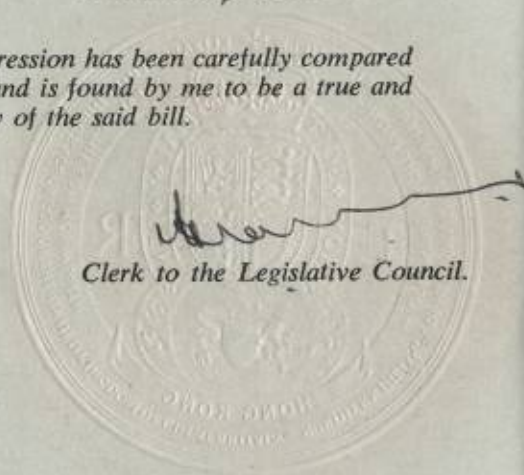
Enacted by the Governor of Hong Kong, with the advice and consent of the Legislative Council thereof.

- | | |
|--|---|
| 1. This Ordinance may be cited as the Nurses Registration (Amendment) Ordinance 1972. | Short title. |
| 2. The long title of the principal Ordinance is amended by deleting " <i>and assistant nurses</i> ". | Amendment of long title.
(Cap. 164.) |
| 3. The principal Ordinance is amended by deleting "assistant" wherever it occurs before "nurse" or "nurses". | Amendment of principal Ordinance. |
| 4. Section 14 of the principal Ordinance is amended in subsection (3) by deleting "1st day of June 1972" and substituting the following—
"31st day of December 1972". | Amendment of section 14. |

Passed by the Hong Kong Legislative Council this 19th day of July, 1972.


Clerk to the Legislative Council.

This printed impression has been carefully compared by me with the bill, and is found by me to be a true and correctly printed copy of the said bill.

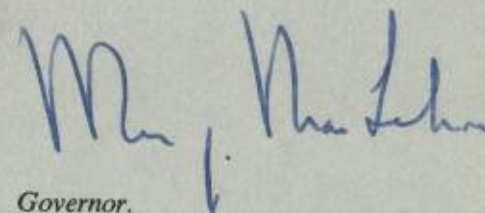


HONG KONG

No. 46 OF 1972



I assent.


Governor.

20th July, 1972.

An Ordinance to amend the Public Health and Urban Services Ordinance.

[21st July, 1972.]

Enacted by the Governor of Hong Kong, with the advice and consent of the Legislative Council thereof.

1. This Ordinance may be cited as the Public Health and Urban Services (Amendment) (No. 2) Ordinance 1972. Short title.

2. Section 15 of the principal Ordinance is amended in subsection (1)— Amendment of section 15. (Cap. 132.)

(a) by deleting paragraph (a) and substituting the following—

“(a) the prevention of nuisance or danger to health or person arising from salt, effluvia, earth, dirt, filth, dust, ashes, offal, fish, refuse or other matter or thing, anywhere in Hong Kong;

(aa) the prevention, control and collection of litter;

- (ab) the cleansing of any premises or place by any person.”;
- (b) by deleting the full stop at the end of paragraph (g) and substituting a semicolon therefor; and
- (c) by inserting after paragraph (g) the following new paragraph—
 - “(h) regulating or prohibiting the employment of children in the removal or disposal of refuse.”.

Repeal and replacement of section 20.

3. Section 20 of the principal Ordinance is repealed and replaced by the following—

“Removal of refuse and cleaning of area.

20. (1) If it appears to the Authority that any refuse or obnoxious matter, whether manure, dung, soil, filth or other matter, ought to be removed from any place, the Authority may serve a notice in accordance with subsection (2) on the person who appears to him—

- (a) to be the owner of the refuse or obnoxious matter;
- (b) to have deposited the refuse or obnoxious matter in that place; or
- (c) to be the occupier of the place where the refuse or obnoxious matter is found.

(2) A notice under subsection (1) shall require the person on whom it is served to remove the refuse or obnoxious matter, and may require him also to clean to the satisfaction of the Authority the area in which the refuse or obnoxious matter is found, within such period, not being less than twenty-four hours after the service of the notice, as may be specified therein.

(3) If a notice served in accordance with subsection (2) is not complied with within the period specified therein—

- (a) the refuse or obnoxious matter to which the notice refers shall become the property of the Crown and may be removed and destroyed or otherwise disposed of by the Authority which may clean the area in which it was found; and
- (b) the person on whom the notice was served shall be guilty of an offence and on conviction may, in addition to any other penalty

imposed, be ordered by the court to pay the whole or part of the expenses incurred by the Authority in removing and destroying or disposing of the refuse or obnoxious matter and in cleaning the area in which it was found.”.

4. Section 22 of the principal Ordinance is amended in subsection (2) by deleting paragraphs (a) and (b) and substituting the following—

Amendment of section 22.

“(a) cause to be served upon the owner of such article or thing, or, where the owner is absent from Hong Kong or cannot be found or ascertained by the Authority, cause to be attached to such article or thing, a notice requiring the owner or some person on his behalf—

(i) to remove the same within such period, being not less than twenty-four hours, as may be specified in the notice; and

(ii) to prevent the recurrence of such obstruction by the article or thing during such period, as may be specified in the notice; and

(b) if such article or thing is not removed or is found causing obstruction within the period specified in the notice referred to in sub-paragraph (a)(i) or (a)(ii), seize, carry away and detain such article or thing.”.

5. Section 23 of the principal Ordinance is amended by deleting subsection (1) and substituting the following—

Amendment of section 23.

“(1) Any public officer authorized in writing in that behalf by the Authority may—

(a) require any person whom he reasonably suspects of having contravened any regulation made under section 15, to give his correct name and address and produce evidence to that effect to the public officer;

(b) to arrest any person who, without reasonable excuse, refuses to comply with a requirement under paragraph (a); and

(c) to arrest in any public place any person who contravenes any of the provisions of section 4(2) or (3) of the Summary Offences Ordinance.”.

Addition of
new section
23A.

6. The principal Ordinance is amended by adding after section 23 the following new section—

"Notifica-
tion of
convictions
in news-
paper.

23A. The Authority may cause to be published in any newspaper—

- (a) the name of any person convicted of an offence under this Part or under any regulation made under section 15;
- (b) the nature of the offence; and
- (c) the fine, forfeiture or other penalty imposed."

Amendment of
First
Schedule.

7. The First Schedule to the principal Ordinance is amended by deleting "By-law 4(d) of the Public Cleansing and Prevention of Nuisances By-laws."

Amendment of
Third
Schedule.

8. The Third Schedule to the principal Ordinance is amended—

- (a) in the first column by deleting "20(1) and (2)" and substituting the following—
"20";
- (b) by inserting after "23(1) Urban Council Director of Urban Services" the following—
"23A Urban Council Director of Urban Services".

Amendment of
Sixth
Schedule.

9. The Sixth Schedule to the principal Ordinance is amended by inserting after "17 Urban Council Director of Urban Services" the following—


"20(3)(b) Urban Council Director of Urban Services".

Amendment of
Ninth
Schedule.

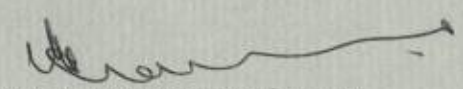
10. The Ninth Schedule to the principal Ordinance is amended by inserting after "17 \$1,000 fine —" the following—

"20(3)(b) \$1,000 fine \$50 fine".

Passed by the Hong Kong Legislative Council this 19th day of July, 1972.


Clerk to the Legislative Council.

This printed impression has been carefully compared by me with the bill, and is found by me to be a true and correctly printed copy of the said bill.


Clerk to the Legislative Council.

HONG KONG

No. 47 OF 1972



I assent.

Governor.

20th July, 1972.

An Ordinance to amend the Road Traffic Ordinance.

[21st July, 1972.]

Enacted by the Governor of Hong Kong, with the advice and consent of the Legislative Council thereof.

1. This Ordinance may be cited as the Road Traffic (Amendment) Ordinance 1972. Short title.
2. Section 2(1) of the principal Ordinance is amended— Amendment of section 2. (Cap. 220.)
 - (a) in the definition of "registration mark" by inserting after "deemed to be assigned" the following—

", or the special registration mark assigned or allocated";
 - (b) by substituting a semicolon for the full stop at the end of the subsection;

(c) by inserting after the definition of "vehicle licence" the following new definition—

"weight unladen" means the weight of a vehicle inclusive of the body and all parts (the heavier being taken where alternative bodies or parts are used) including the weight of water or accumulators which are necessary to, or ordinarily used with, the vehicle when working on a road, but exclusive of the weight of fuel, loose tools and loose equipment in the vehicle and, in the case of a light bus, of the weight of an air-conditioning unit installed in the vehicle."

Amendment of section 4.

3. Section 4(1) of the principal Ordinance is amended by inserting after paragraph (g) the following new paragraph—

"(ga) the assignment or allocation at the discretion of the Commissioner, or the allocation and sale by auction, tender, or at a special fee, not exceeding one thousand dollars, of special registration marks;"

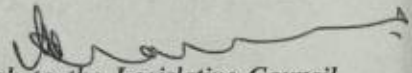
Amendment of section 5.

4. Section 5(1) of the principal Ordinance is amended in paragraph (d) by inserting after "applying for" the following—
"or holding".

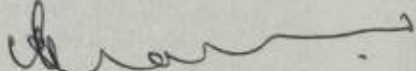
Consequential amendment to Regulations.
(Cap. 220, sub. leg.)

5. The definition of "weight unladen" in regulation 2 of the Road Traffic (Construction and Use) Regulations, and in regulation 2(1) of the Road Traffic (Driving Licences) Regulations and of the Road Traffic (Registration and Licensing of Vehicles) Regulations, is deleted.

Passed by the Hong Kong Legislative Council this 19th day of July, 1972.


Clerk to the Legislative Council.

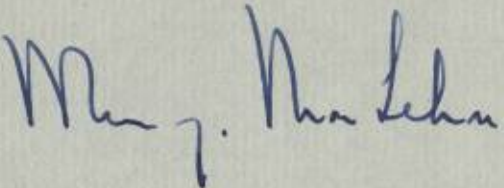
This printed impression has been carefully compared by me with the bill, and is found by me to be a true and correctly printed copy of the said bill.


Clerk to the Legislative Council.

HONG KONG

No. 48 OF 1972

I assent.



Governor.

3rd August, 1972.

An Ordinance to amend the Crimes Ordinance.

[]

Enacted by the Governor of Hong Kong, with the advice and consent of the Legislative Council thereof.

1. This Ordinance may be cited as the Crimes (Amendment) Ordinance 1972 and shall come into operation on a day to be appointed by the Governor by notice in the *Gazette*.

Short title and commencement.

2. Section 6 of the principal Ordinance is repealed.

Repeal of section 6.
(Cap. 200.)

3. The principal Ordinance is amended by adding after section 18 the following new Part—

Addition of new Part IV.

"PART IV

CRIMINAL DAMAGE TO PROPERTY

Interpretation.
1971 c. 48,
s. 10.

19. (1) In this Part "property" means property of a tangible nature, whether real or personal, including money and—

(a) including wild creatures which have been tamed or are ordinarily kept in captivity,

and any other wild creatures or their carcases if, but only if, they have been reduced into possession which has not been lost or abandoned or are in the course of being reduced into possession; but

- (b) not including mushrooms growing wild on any land or flowers, fruit or foliage of a plant growing wild on any land.

For the purposes of this subsection "mushroom" includes any fungus and "plant" includes any shrub or tree.

(2) Property shall be treated for the purposes of this Part as belonging to any person—

- (a) having the custody or control of it;
 (b) having in it any proprietary right or interest (not being an equitable interest arising only from an agreement to transfer or grant an interest); or
 (c) having a charge on it.

(3) Where property is subject to a trust, the persons to whom it belongs shall be so treated as including any person having a right to enforce the trust.

(4) Property of a corporation sole shall be so treated as belonging to the corporation notwithstanding a vacancy in the corporation.

Destroying or damaging property.
 1971 c. 48, s. 1.

20. (1) A person who without lawful excuse destroys or damages any property belonging to another intending to destroy or damage any such property or being reckless as to whether any such property would be destroyed or damaged shall be guilty of an offence.

(2) A person who without lawful excuse destroys or damages any property, whether belonging to himself or another—

- (a) intending to destroy or damage any property or being reckless as to whether any property would be destroyed or damaged; and
 (b) intending by the destruction or damage to endanger the life of another or being reckless as to whether the life of another would be thereby endangered,

shall be guilty of an offence.

(3) An offence committed under this section by destroying or damaging property by fire shall be charged as arson.

Threats to destroy or damage property.
 1971 c. 48, s. 2.

21. A person who without lawful excuse makes to another a threat, intending that that other would fear it would be carried out,—

- (a) to destroy or damage any property belonging to that other or a third person; or
 (b) to destroy or damage his own property in a way which he knows is likely to endanger the life of that other or a third person,

shall be guilty of an offence.

Possessing anything with intent to destroy or damage property.
 1971 c. 48, s. 3.

22. A person who has anything in his custody or under his control intending without lawful excuse to use it or cause or permit another to use it—

- (a) to destroy or damage any property belonging to some other person; or
 (b) to destroy or damage his own or the user's property in a way which he knows is likely to endanger the life of some other person,

shall be guilty of an offence.

Punishment of offences.
 1971 c. 48, s. 4.

23. (1) A person guilty of arson under section 20 or of an offence under section 20(2) (whether arson or not) shall on conviction upon indictment be liable to imprisonment for life.

(2) A person guilty of any other offence under this Part shall on conviction upon indictment be liable to imprisonment for ten years.

"Without lawful excuse".
 1971 c. 48, s. 5.

24. (1) This section applies to any offence under section 20(1) and any offence under section 21 or 22 other than one involving a threat by the person charged to destroy or damage property in a way which he knows is likely to endanger the life of another or involving an intent by the person charged to use or cause or permit the use of something in his custody or under his control so to destroy or damage property.

(2) A person charged with an offence to which this section applies shall, whether or not he would be treated for the purposes of this Part as having a

lawful excuse apart from this subsection, be treated for those purposes as having a lawful excuse—

(a) if at the time of the act or acts alleged to constitute the offence he believed that the person or persons whom he believed to be entitled to consent to the destruction of or damage to the property in question had so consented, or would have so consented to it if he or they had known of the destruction or damage and its circumstances; or

(b) if he destroyed or damaged or threatened to destroy or damage the property in question or, in the case of a charge of an offence under section 22, intended to use or cause or permit the use of something to destroy or damage it, in order to protect property belonging to himself or another or a right or interest in property which was or which he believed to be vested in himself or another, and at the time of the act or acts alleged to constitute the offence he believed—

(i) that the property, right or interest was in immediate need of protection; and

(ii) that the means of protection adopted or proposed to be adopted were or would be reasonable having regard to all the circumstances.

(3) For the purposes of this section it is immaterial whether a belief is justified or not if it is honestly held.

(4) For the purposes of subsection (2) a right or interest in property includes any right or privilege in or over land, whether created by grant, licence or otherwise.

(5) This section shall not be construed as casting doubt on any defence recognized by law as a defence to criminal charges.

25. (1) If it is made to appear by information on oath before a magistrate that there is reasonable cause to believe that any person has in his custody or under his control or on his premises anything which there is reasonable cause to believe has been used or is intended for use without lawful excuse—

Search for things intended for use in committing offences of criminal damage.
1971 c. 48, s. 6.

(a) to destroy or damage property belonging to another; or

(b) to destroy or damage any property in a way likely to endanger the life of another,

the magistrate may grant a warrant authorizing a police officer not below the rank of inspector, together with any other police officers, to search for and seize that thing.

(2) Any police officer who is authorized under this section to search premises for anything, may enter (if need be by force) and search the premises accordingly and may seize anything which he believes to have been used or to be intended to be used as aforesaid.

(Cap. 221.)

(3) Section 102 of the Criminal Procedure Ordinance (which makes provision for the disposal of property connected with offences) shall apply to property which has come into the possession of the police under this section as it applies to property which has come into the possession of the police in the circumstances mentioned in that section.

Evidence in connexion with offences under this Part.
1971 c. 48, s. 9.

26. A person shall not be excused, by reason that to do so may incriminate that person or the wife or husband of that person of an offence under this Part—

(a) from answering any question put to that person in proceedings for the recovery or administration of any property, for the execution of any trust or for an account of any property or dealings with property; or

(b) from complying with any order made in any such proceedings,

but no statement or admission made by a person in answering a question put or complying with an order made as aforesaid shall, in proceedings for an offence under this Part, be admissible in evidence against that person or (unless they married after the making of the statement or admission) against the wife or husband of that person.”

4. (1) The Malicious Damage Ordinance is repealed.

(2) The enactments specified in the first column of the Schedule are amended to the extent and in the manner set out in the second column of the Schedule.

Repeal, amendments and savings.
(Cap. 211.)
Schedule.

(3) The common law offence of arson is abolished.

(4) No repeal or amendment by this section of any enactment relating to procedure or to the jurisdiction or powers of any court shall affect the operation of that enactment in relation to offences committed before the repeal or amendment takes effect or to the proceedings for any such offence.

SCHEDULE [s. 4(2).]

AMENDMENTS

- | | | |
|-----------------------|---|--|
| (Cap. 96.) | 1. Forestry Ordinance. | <p>1. Section 21 is amended—</p> <p>(a) by deleting paragraph (b) and substituting the following—</p> <p style="padding-left: 2em;">“(b) plucks or damages any bud, blossom or leaf of any tree, shrub or plant;”;</p> <p style="padding-left: 2em;">and</p> <p>(b) by deleting paragraph (d).</p> <p>2. The Schedule is amended by deleting “Cap. 211. Malicious Damage Ordinance.” and “S. 16; s. 17 and s. 18.” and substituting respectively the following—</p> <p style="padding-left: 2em;">“Cap. 200. Crimes Ordinance. ” and</p> <p style="padding-left: 4em;">“S. 20 in respect of anything forming part of land.”.</p> |
| (Cap. 99.) | 2. Railways Ordinance. | Section 61 is amended by deleting “, defaces or in any way injures”. |
| (Cap. 105.) | 3. Public Lighting Ordinance. | Section 4 is amended by deleting “who wilfully injures, displaces or damages any of the posts, standards or brackets provided under this Ordinance or”. |
| (Cap. 106.) | 4. Telecommunication Ordinance. | Section 25 is amended in paragraph (a) by deleting “destroys,”. |
| (Cap. 107.) | 5. Tramway Ordinance. | Section 57 is amended by deleting “or defaces or destroys any mark made for the purpose of setting out the line of the tramway, or damages or destroys any property of the company,”. |
| (Cap. 132, sub. leg.) | 6. Public Conveniences (New Territories) Regulations. | Regulation 6 is amended by deleting paragraph (g). |
| (Cap. 174.) | 7. Births and Deaths Registration Ordinance. | Section 26 is repealed. |

- | | | |
|---|---|-------------|
| 8. Births Registration (Special Registers) Ordinance. | Section 11 is repealed. | (Cap. 175.) |
| 9. Deaths Registration (Special Registers) Ordinance. | Section 11 is repealed. | (Cap. 176.) |
| 10. Marriage Ordinance. | Section 32 is amended by deleting “, defaces, alters or destroys” and substituting the following— | (Cap. 181.) |
| | “or alters”. | |
| 11. Falsification of Documents Ordinance. | 1. Section 7 is amended— | (Cap. 208.) |
| | (a) by deleting paragraph (a); and | |
| | (b) in paragraph (b), by deleting “such register” and substituting the following— | |
| | “register of births, baptisms, marriages, deaths or burials which is by law authorized or required to be kept in the Colony.”. | |
| | 2. Section 8 is amended, in paragraph (c), by deleting “unlawfully destroys, defaces, injures, or”. | |
| 12. Criminal Procedure Ordinance. | 1. Section 73 is repealed and replaced by the following— | (Cap. 221.) |
| | “Power to award compensation. | |
| | 73. (1) Where a person is convicted of an offence, the court may, in addition to passing such sentence as may otherwise by law be passed or making an order under section 107(1), order the person so convicted to pay to any aggrieved person such compensation for— | |
| | (a) personal injury; | |
| | (b) loss of or damage to property; or | |
| | (c) both such injury and loss or damage, | |
| | as it thinks reasonable. | |
| | (2) The amount ordered as compensation under subsection (1) shall be deemed a judgment debt due to the person entitled to receive the same from the person so convicted, and the order for payment of compensation may be enforced in such and the same manner | |

as in the case of any costs or expenses ordered by the court to be paid under section 72.”.

Section 107 is amended in subsection (2) by deleting the following—

- (a) “or such damages for injury or compensation for loss”; and
- (b) “, or both such costs and damages or compensation”.

(Cap. 224.) 13. Police Supervision Ordinance.

The First Schedule is amended by deleting “10. The Malicious Damage Ordinance—sections 10, 11 and 40.” and substituting the following—

“10. The Crimes Ordinance—sections 20 and 22 in respect of offences involving explosives.”.

(Cap. 226.) 14. Juvenile Offenders Ordinance.

Section 15 is amended by—

- (a) being renumbered as subsection (1) thereof; and
- (b) inserting the following new subsection—

“(2) Damages which may be ordered under subsection (1)(h) or (i) shall be by way of compensation for—

- (a) personal injury;
- (b) loss of or damage to property; or
- (c) both such injury and loss or damage,

as the court thinks reasonable; but in the case of an order made by a magistrate’s court, the compensation shall not exceed five thousand dollars.”.

(Cap. 227.) 15. Magistrates Ordinance.

1. Section 36 is amended in subsection (2) by deleting the following—

- (a) “or such damages for injury or compensation for loss”; and
- (b) “, or both such costs and damages or compensation”.

2. Section 98 is repealed and replaced by the following—

“Power to award compensation.

98. Where a magistrate makes an order under section 36(1) or convicts a person of an offence and passes such

sentence (if any) as may otherwise by law be passed, he may, in addition to the order or sentence, order the offender to pay to any aggrieved person such compensation for—

- (a) personal injury;
- (b) loss of or damage to property; or
- (c) both such injury and loss or damage,

not exceeding five thousand dollars, as he thinks reasonable.”.

3. The Second Schedule is amended—

- (a) by inserting in item 2 in Part I, after “Ordinance”, the following—
“, or an offence against Part IV of the Crimes Ordinance”;
- (b) by deleting item 6 in Part II; and
- (c) by inserting in item 2 in Part III, after “Explosive Substances Ordinance”, the following—
“, an offence against Part IV of the Crimes Ordinance”.

16. Summary Offences Ordinance.

- 1. Section 9 is repealed. (Cap. 228.)
- 2. Section 16A is amended by deleting—
“or destroys”.

17. Arms and Ammunition Ordinance.

The Fourth Schedule is amended by deleting— (Cap. 238.)

“Malicious Damage Ordinance.
Sections 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 15, 21, 22(1), 22(2), 23, 24, 40.”

and substituting the following—

“Crimes Ordinance.
Sections 20, 21, 22.”.

18. Emergency (Principal) Regulations.

Regulation 124 is amended, in paragraph (c), by deleting “the Malicious Damage Ordinance” and substituting the following— (Cap. 241, sub. leg.)

“Part IV of the Crimes Ordinance”.

19. Protected Places (Safety) Ordinance.

Section 5 is amended, in paragraph (c), by deleting “the Malicious Damage Ordinance” and substituting the following— (Cap. 260.)

“Part IV of the Crimes Ordinance”.

(Cap. 265.)

20. Peak Tramway Ordinance.

Section 24 is amended by deleting “, or damages or destroys and property of the company,”.

(Cap. 292, sub. leg.)

21. Hong Kong Airport Regulations.

Regulation 4 is amended, in paragraph (2)(c), by deleting “damages,”.

(Cap. 298.)

22. Probation of Offenders Ordinance.

1. Section 3 is amended, in the proviso to subsection (2), by deleting “sums by way of damages for injury or compensation for loss” and substituting the following—

“compensation under that section”.

2. Section 5 is amended, in subsection (4), by deleting “, damages”.

3. Section 7 is amended—

(a) by deleting subsection (2) and substituting the following—

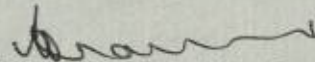
“(2) A court, on making a probation order or an order for conditional discharge, may, without prejudice to its power to award costs against him, order the offender to pay to any aggrieved person such compensation for—

- (a) personal injury;
- (b) loss of or damage to property; or
- (c) both such injury and loss or damage,

as it thinks reasonable; but in the case of an order made by a magistrate's court, the compensation shall not exceed five thousand dollars.”; and

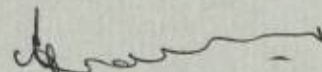
(b) in subsection (3) by deleting “damages or” wherever it occurs.

Passed by the Hong Kong Legislative Council this 2nd day of August, 1972.



Clerk to the Legislative Council.

This printed impression has been carefully compared by me with the bill, and is found by me to be a true and correctly printed copy of the said bill.



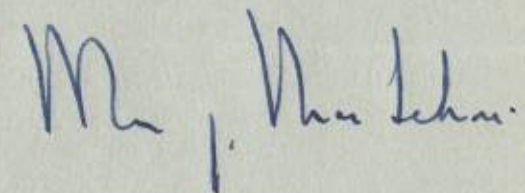
Clerk to the Legislative Council.

HONG KONG

No. 49 OF 1972



I assent.



Governor.

3rd August, 1972.

An Ordinance to amend the Public Health and Urban Services Ordinance.

[]

Enacted by the Governor of Hong Kong, with the advice and consent of the Legislative Council thereof.

1. This Ordinance may be cited as the Public Health and Urban Services (Amendment) (No. 3) Ordinance 1972 and shall come into operation on a day to be appointed by the Governor by notice in the *Gazette*.

Short title and commencement.

2. Section 116 of the principal Ordinance is amended—

(a) in subsection (1) by—

(i) deleting in paragraph (e) “, and fees or charges payable in relation thereto”;

(ii) deleting in paragraph (h) “and control”;

(iii) deleting the full stop at the end of paragraph (h) and substituting a semicolon; and

Amendment of section 116. (Cap. 132.)

(iv) inserting after paragraph (h) the following new paragraphs—

- “(i) the depth and size of graves and vaults;
- (j) fees or charges payable in relation to the burial of any human remains;
- (k) such other matters as, in the opinion of the Authority, are necessary for the proper regulation and control of cemeteries in the public interest.”; and

(b) in subsection (2) by—

- (i) deleting in paragraph (c) “the depth and size of graves and vaults and”; and
- (ii) deleting in paragraph (e) “the burial of any human remains.”.

Amendment of section 118.

3. Section 118 of the principal Ordinance is amended by inserting after subsection (4) the following new subsection—

“(5) The Authority may by regulations prescribe fees for the grant of permission under subsection (2) to exhume human remains.”.

Amendment of Third Schedule.

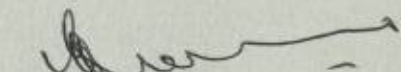
4. The Third Schedule to the principal Ordinance is amended by inserting, after “118(2)” in the first column and the matters specified opposite thereto in the second and third column, the following—

“118(5) Urban Council Governor in Council”.

Passed by the Hong Kong Legislative Council this 2nd day of August, 1972.


Clerk to the Legislative Council.

This printed impression has been carefully compared by me with the bill, and is found by me to be a true and correctly printed copy of the said bill.

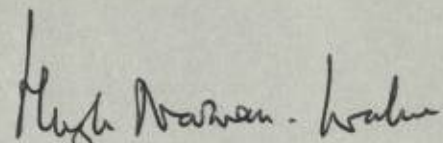

Clerk to the Legislative Council.

HONG KONG

No. 50 OF 1972



I assent.


Acting Governor.

17th August, 1972.

An Ordinance to amend the Urban Council Ordinance.

[18th August, 1972.]

Enacted by the Governor of Hong Kong, with the advice and consent of the Legislative Council thereof.

1. This Ordinance may be cited as the Urban Council (Amendment) Ordinance 1972. Short title.

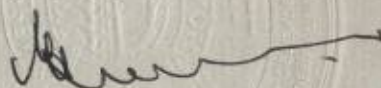
2. Section 45 of the principal Ordinance is repealed. Repeal of section 45. (Cap. 101.)

3. Section 46 of the principal Ordinance is repealed and replaced by the following— Repeal and replacement of section 46.

“Minutes. 46. (1) Minutes of the proceedings of the Council and of committees of the whole Council shall be kept and authenticated in accordance with standing orders.

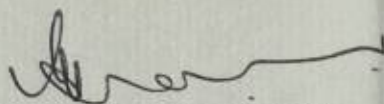
(2) Until the contrary is proved, a meeting of the Council or of a committee thereof, in respect of the proceedings whereof a minute has been kept and authenticated in accordance with standing orders, shall be deemed to have been duly convened and held and all the members present at the meeting shall be deemed to have been duly qualified, and where the proceedings are proceedings of a committee, the committee shall be deemed to have been duly constituted and to have had power to deal with the matters referred to in the minutes."

Passed by the Hong Kong Legislative Council this 16th day of August, 1972.



Clerk to the Legislative Council.

This printed impression has been carefully compared by me with the bill, and is found by me to be a true and correctly printed copy of the said bill.



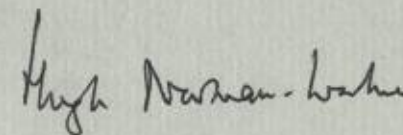
Clerk to the Legislative Council.

HONG KONG

NO. 51 OF 1972



I assent.



Acting Governor.

17th August, 1972.

An Ordinance to make new provision in relation to powers of attorney and for matters connected therewith.

[]

Enacted by the Governor of Hong Kong, with the advice and consent of the Legislative Council thereof.

1. This Ordinance may be cited as the Powers of Attorney Ordinance 1972, and shall come into operation on a day to be appointed by the Governor by notice in the *Gazette*.

Short title and commencement.

2. (1) An instrument creating a power of attorney shall be signed and sealed by, or by direction and in the presence of, the donor of the power.

Execution of powers of attorney.
1971, c. 27, s. 1.

(2) Where such an instrument is signed and sealed by a person by direction and in the presence of the donor of the power, two other persons shall be present as witnesses and shall attest the instrument.

(3) This section is without prejudice to any requirement in, or having effect under, any other Ordinance as to the witnessing

of instruments creating powers of attorney and does not affect the rules relating to the execution of instruments by corporations.

3. (1) The contents of an instrument creating a power of attorney may be proved by means of a copy which—

- (a) is a reproduction of the original made with a photographic or other device for reproducing documents in facsimile; and
- (b) contains the following certificate or certificates signed by the donor of the power or by a solicitor, that is to say—
 - (i) a certificate at the end to the effect that the copy is a true and complete copy of the original; and
 - (ii) if the original consists of two or more pages, a certificate at the end of each page of the copy to the effect that it is a true and complete copy of the corresponding page of the original.

(2) Where a copy of an instrument creating a power of attorney has been made which complies with subsection (1), the contents of the instrument may also be proved by means of a copy of that copy if the further copy itself complies with that subsection, taking references in it to the original as references to the copy from which the further copy is made.

(3) In favour of a person acting in good faith a signature on a certificate under subsection (1)(b) purporting to be that of a person described as being a solicitor shall, until the contrary is proved, be deemed sufficient for the purposes of this section.

(4) This section is without prejudice to any other method of proof authorized by any other Ordinance.

(5) In this section "solicitor" means a person who is enrolled on the roll of solicitors kept under the Legal Practitioners Ordinance and who, at the material time, is not suspended from practice.

4. (1) Where a power of attorney is expressed to be irrevocable and is given to secure—

- (a) a proprietary interest of the donee of the power; or
 - (b) the performance of an obligation owed to the donee,
- then, so long as the donee has that interest or the obligation remains undischarged, the power shall not be revoked—
- (i) by the donor without the consent of the donee; or
 - (ii) by the death, incapacity or bankruptcy of the donor or, if the donor is a corporation, by its winding up or dissolution.

Proof of instruments creating powers of attorney.
1971, c. 27, s. 3.

(Cap. 159.)

Powers of attorney given as security.
1971, c. 27, s. 4.

(2) A power of attorney given to secure a proprietary interest may be given to the person entitled to the interest and persons deriving title under him to that interest, and those persons shall be duly constituted donees of the power for all purposes of the power but without prejudice to any right to appoint substitutes given by the power.

(3) This section applies to powers of attorney whenever created.

5. (1) A donee of a power of attorney who acts in pursuance of the power at a time when it has been revoked shall not, by reason of the revocation, incur any liability (either to the donor or to any other person) if at that time he did not know that the power had been revoked.

(2) Where a power of attorney has been revoked and a person, without knowledge of the revocation, deals with the donee of the power, the transaction between them shall, in favour of that person, be as valid as if the power had then been in existence.

(3) Where the power is expressed in the instrument creating it to be irrevocable and to be given by way of security then, unless the person dealing with the donee knows that it was not in fact given by way of security, he shall be entitled to assume that the power is incapable of revocation except by the donor acting with the consent of the donee and shall accordingly be treated for the purposes of subsection (2) as having knowledge of the revocation only if he knows that it has been revoked in that manner.

(4) Where the interest of a purchaser depends on whether a transaction between the donee of a power of attorney and another person was valid by virtue of subsection (2), it shall be conclusively presumed in favour of the purchaser that that person did not at the material time know of the revocation of the power if—

- (a) the transaction between that person and the donee was completed within twelve months of the date on which the power came into operation; or
- (b) that person makes a statutory declaration, before or within three months after the completion of the purchase, that he did not at the material time know of the revocation of the power.

(5) Without prejudice to subsection (3), for the purposes of this section knowledge of the revocation of a power of attorney includes knowledge of the occurrence of any event (such as the death of the donor) which has the effect of revoking the power.

Protection of donee and third persons where power of attorney is revoked.
1971, c. 27, s. 5.

(6) In this section—

“purchaser” means—

- (a) a purchaser in good faith for valuable consideration;
- (b) a lessee, mortgagee or other person who for valuable consideration acquires an interest in property; and
- (c) an intending purchaser; and

“valuable consideration” includes marriage but not a nominal consideration in money.

(7) This section applies whenever the power of attorney was created but only to acts and transactions after the commencement of this Ordinance.

6. (1) The donee of a power of attorney may, if he thinks fit—

- (a) execute any instrument with his own signature and, where sealing is required, with his own seal; and
- (b) do any other thing in his own name,

by the authority of the donor of the power; and any document executed or thing done in that manner shall be as effective as if executed or done by the donee with the signature and seal, or, as the case may be, in the name, of the donor of the power.

(2) For the avoidance of doubt it is hereby declared that an instrument may be executed on behalf of a person by a donee of a power of attorney either as provided in this section or as provided in any other Ordinance.

(3) This section is without prejudice to a provision in any other Ordinance requiring an instrument to be executed by a person specified therein.

(4) This section applies to powers of attorney whenever created.

7. (1) Subject to subsection (2), a general power of attorney in the form set out in the Schedule, or in a form to the like effect but expressed to be made under this Ordinance, shall operate to confer—

- (a) on the donee of the power; or
- (b) if there is more than one donee, on the donees acting jointly or acting jointly or severally, as the case may be,

authority to do on behalf of the donor anything which he can lawfully do by an attorney.

Execution of instruments, etc. by donee of power of attorney.
1971, c. 27, s. 7.

Effect of general power of attorney in specified form.
Schedule.
1971, c. 27, s. 10.

(2) This section does not apply to functions which the donor has as a trustee or personal representative.

8. (1) Section 27 of the Trustee Ordinance is repealed and replaced by the following—

“Power to delegate trusts.
[cf. 1971, c. 27, s. 9.] &
[cf. 1925, c. 19, s. 25.]

27. (1) Notwithstanding any rule of law or equity to the contrary, a trustee may, by power of attorney, delegate for a period not exceeding twelve months the execution or exercise of all or any of the trusts, powers and discretions vested in him as trustee either alone or jointly with any other person or persons.

(2) The persons who may be donees of a power of attorney under this section include a trust corporation but not (unless a trust corporation) the only other co-trustee of the donor of the power.

(3) An instrument creating a power of attorney under this section shall be attested by at least one witness.

(4) Before or within seven days after giving a power of attorney under this section the donor shall give written notice thereof (specifying the date on which the power comes into operation and its duration, the donee of the power, the reason why the power is given and, where some only are delegated, the trusts, powers and discretions delegated) to—

- (a) each person (other than himself) if any, who under any instrument creating the trust has power (whether alone or jointly) to appoint a new trustee; and
- (b) each of the other trustees, if any;

but failure to comply with this subsection shall not, in favour of a person dealing with the donee of the power, invalidate any act done or instrument executed by the donee.

(5) The donor of a power of attorney given under this section shall be liable for acts or defaults of the donee in the same manner as if they were the acts or defaults of the donor.

(6) For the purpose of executing or exercising the trusts or powers delegated to him, the donee may exercise any of the powers conferred on the donor as trustee by statute or by the instrument creating the trust, including power, for the purpose of the transfer

Amendment of Trustee Ordinance.
(Cap. 29.)

of any inscribed stock, himself to delegate to an attorney power to transfer but not including the power of delegation conferred by this section.

(7) The fact that it appears from any power of attorney given under this section, or from any evidence required for the purposes of any such power of attorney or otherwise, that in dealing with any stock the donee of the power is acting in the execution of a trust shall not be deemed for any purpose to affect any person in whose books the stock is inscribed or registered with any notice of the trust.

(8) This section applies—

- (a) to a personal representative as it applies to a trustee except that subsection (4) shall apply as if it required notice there mentioned to be given to each of the other personal representatives, if any, except any executor who has renounced probate;
- (b) whenever the trusts, powers or discretions in question arose.”.

(2) Section 31 of the Trustee Ordinance is repealed.

SCHEDULE [s. 7.]

POWERS OF ATTORNEY ORDINANCE 1972

FORM OF GENERAL POWER OF ATTORNEY FOR PURPOSES OF SECTION 7

THIS GENERAL POWER OF ATTORNEY is made this day of
19 by AB of (address)

I appoint CD of (address) [or CD of (address)
and EF of (address) jointly or jointly and severally] to be
my attorney(s) in accordance with section 7 of the Powers of Attorney
Ordinance 1972.

IN WITNESS whereof I have hereunto set my hand and seal.

(L.S.)

Signature, etc.

一九七二年授權書條例

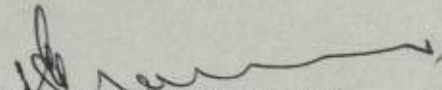
第七款
一般授權書格式

本一般授權書立於一九 年 月 日。
立一般授權書人(姓名)地址為 。
本人茲根據一九七二年授權書條例第七款之規定,授權 (姓名)地址
為 『(或)
(姓名)地址為 及
(姓名)地址為 聯同(或)
[聯同及個別]』為本人之代理人。此據。

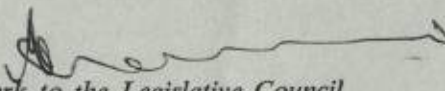
立一般授權書人

(簽名及蓋印/加蓋封印)

Passed by the Hong Kong Legislative Council this 16th day
of August, 1972.


Clerk to the Legislative Council.

*This printed impression has been carefully compared
by me with the bill, and is found by me to be a true and
correctly printed copy of the said bill.*


Clerk to the Legislative Council.

HONG KONG

No. 52 OF 1972



I assent.

Hugh Norman Lubbe

Acting Governor.

17th August, 1972.

An Ordinance to amend the Perjury Ordinance.

Enacted by the Governor of Hong Kong, with the advice and consent of the Legislative Council thereof.

[18th August, 1972.]

1. This Ordinance may be cited as the Perjury (Amendment) Ordinance 1972. Short title.

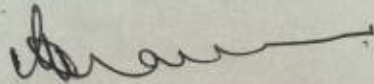
2. Section 8 of the principal Ordinance is amended by deleting subsection (2). Amendment of section 8. (Cap. 214.)

Passed by the Hong Kong Legislative Council this 16th day of August, 1972.

[Signature]

Clerk to the Legislative Council.

This printed impression has been carefully compared by me with the bill, and is found by me to be a true and correctly printed copy of the said bill.



Clerk to the Legislative Council.

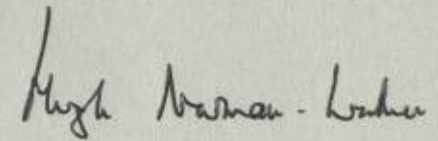


HONG KONG

No. 53 OF 1972



I assent.



Acting Governor.

17th August, 1972.

An Ordinance to amend the Births and Deaths Registration Ordinance.

[18th August, 1972.]

Enacted by the Governor of Hong Kong, with the advice and consent of the Legislative Council thereof.

1. This Ordinance may be cited as the Births and Deaths Registration (Amendment) Ordinance 1972. Short title.

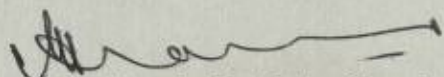
2. Section 24(2) of the principal Ordinance is amended— Amendment of section 24. (Cap. 174.)

(a) by deleting "registry" and substituting the following—
"register";


(b) in paragraph (a) of the proviso by deleting "no such entry in a post register book" and substituting the following—

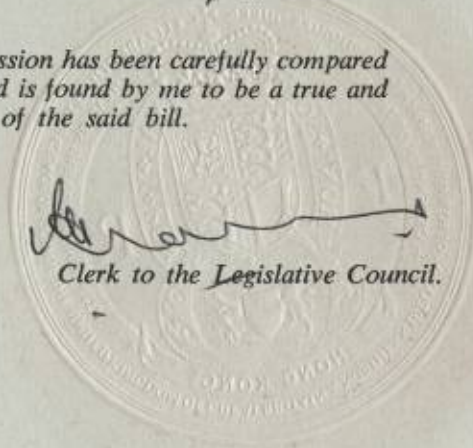
"no entry made in a post register book prior to 1st January 1972".

Passed by the Hong Kong Legislative Council this 16th day of August, 1972.


Clerk to the Legislative Council.

This printed impression has been carefully compared by me with the bill, and is found by me to be a true and correctly printed copy of the said bill.


Clerk to the Legislative Council.

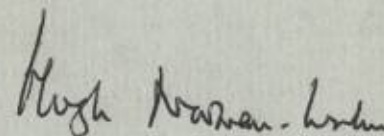


HONG KONG

No. 54 OF 1972



I assent.



Acting Governor.

17th August, 1972.

An Ordinance to provide for matters relating to Crown land.

[]

Enacted by the Governor of Hong Kong, with the advice and consent of the Legislative Council thereof.

PART I

PRELIMINARY

1. This Ordinance may be cited as the Crown Land Ordinance 1972 and shall come into operation on a day to be appointed by the Governor by notice in the *Gazette*. Short title and commencement.

2. In this Ordinance, unless the context otherwise requires— Interpretation.
“authorized person” means any public officer, or other person, acting on the direction of the Authority given under section 6(2) or section 12(2) and any public officer or other person assisting any such public officer or other person;
“excavation permit” means an excavation permit issued under section 8;

"leased land" means land which is—

- (a) held under a Crown lease; or
- (b) vested in a person by an Ordinance;

"lessee" means a person holding leased land;

"licence" means a licence issued under section 5;

"licensee" means a person occupying land under a licence or under a licence or permit granted or issued under any other Ordinance;

"licensing authority" means the Authority empowered by section 5 to issue a licence;

"occupy" includes use, inhabit, be in possession of, enjoy, erect or maintain a structure on or over, and place or maintain anything on, land;

"private street" means a street or part of a street on leased land;

"structure" includes a stilt, platform, fence and any other thing erected on or over land;

"unleased land" means land which is not leased land;

"urban area" means Hong Kong Island, Kowloon and New Kowloon.

Designation of
Authorities.
First Schedule.

3. (1) For the purpose of the provisions of this Ordinance specified in the first column of the First Schedule the Authority shall, in the areas specified in the second column of that Schedule, be the public officer specified in respect thereof in the third column of that Schedule.

(2) The Governor may by notice in the *Gazette* amend the First Schedule.

PART II

OCCUPATION OF UNLEASED LAND

Occupation of
unleased land.

4. Unleased land shall not be occupied except under a licence or a deed or memorandum of appropriation.

Issue and
validity of
licences.

5. (1) The Authority may, on payment of the appropriate prescribed fee, issue a licence to occupy unleased land.

(2) Subject to subsection (3), a licence shall be valid for the period specified therein and may be renewed for such period as the licensing authority thinks fit.

(3) A licence may be terminated by the licensing authority by giving such notice as may be specified in the licence.

6. (1) If unleased land is occupied, otherwise than under a licence or a deed or memorandum of appropriation, the Authority may cause a notice, requiring the occupation of the land to cease before such date as may be specified in the notice, to be posted in one or more places—

Unlawful
occupation of
unleased land.

- (a) on or near the land; or
- (b) on any property or structure on the land.

(2) If the occupation of unleased land does not cease as required by a notice under subsection (1), any public officer, or other person, acting on the direction of the Authority may, with the assistance of such other public officers or other persons as may be necessary—

- (a) remove from the land the persons (if any) thereon; and
- (b) take possession of any property or structure on the land.

(3) Any property or structure of which possession is taken under subsection (2)(b) shall become the property of the Crown free from the rights of any person and may be demolished or otherwise dealt with as the Authority thinks fit.

(4) Any person occupying unleased land, otherwise than under a licence or a deed or memorandum of appropriation, who without reasonable excuse does not cease to occupy the same as required by a notice under subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine of ten thousand dollars and to imprisonment for six months.

(5) The Authority may recover from any person convicted of an offence under subsection (4) any cost incurred in or arising out of the demolition of any property or structure under subsection (3) and the exercise of the powers conferred by this section.

7. (1) No person shall extract or remove earth, turf or stone from unleased land except under and in accordance with a removal permit issued under this section.

Prohibition of
removal of
earth, turf or
stone from
unleased land.

(2) The Authority may issue a removal permit authorizing the extraction and removal of earth, turf or stone from unleased land.

(3) A removal permit shall be valid for the period specified therein, but the Authority may extend the period for which the permit is valid.

(4) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine of five thousand dollars and to imprisonment for six months.

PART III

EXCAVATIONS IN UNLEASED LAND

Control of excavations in unleased land.

8. (1) Except under and in accordance with a prospecting licence, mining licence or sand removal permit, a person shall not make or maintain any excavation in unleased land, except under and in accordance with an excavation permit issued under this section.

(2) The Authority may issue an excavation permit authorizing the making of excavations in unleased land.

(3) An excavation permit shall be valid for the period specified therein, but the Authority may extend the period for which the permit is valid.

(4) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine of five thousand dollars and to imprisonment for six months.

(5) The Authority may, if any person makes or maintains an excavation in unleased land, without an excavation permit, carry out such works as he considers necessary to reinstate and make good the land on which the excavation is made or maintained and any other land the reinstatement and making good of which is, in his opinion, necessary in consequence of the excavation and may recover the cost of any work carried out by him under this subsection from the person who made or maintained the excavation.

Reinstatement of unleased land after excavation.

9. (1) A person who makes an excavation in unleased land under an excavation permit shall, before the expiry of the permit, reinstate and make good the land as required by any conditions of the permit.

(2) If any unleased land is not reinstated and made good in accordance with subsection (1) either—

(a) before the expiry of the permit; or

(b) as required by any conditions of the permit,

as the case may be, the Authority may carry out such work as he considers necessary to reinstate and make good the land, and any other land the reinstatement and making good of which is, in his opinion, necessary in consequence of the excavation, notwithstanding that the works for the carrying out of which the excavation was made have not been completed.

(3) The Authority may recover from the person to whom the excavation permit was issued—

(a) the cost of any work carried out by the Authority under subsection (2); and

(b) the cost of work carried out by the Authority to reinstate and make good any unleased land if the necessity for such work—

(i) arises within twelve months after the completion of work for the reinstatement and making good of the land under this section; and

(ii) is attributable to any fault on the part of such person or his servants or agents.

10. If any condition of an excavation permit requiring the provision of facilities for the safety or convenience of the public is contravened, the Authority may provide such facilities and recover the cost thereof from the person to whom the permit was issued.

Provision of safety facilities in connexion with excavation.

PART IV

UNLAWFUL STRUCTURES ON LEASED LAND OR LAND OCCUPIED UNDER A LICENCE

11. (1) If it comes to the knowledge of a lessee or licensee that, in breach of the Crown lease or licence, a structure—

(a) is being erected or placed on the land or on any building on the land; or

(b) has been erected or placed thereon since 22nd October 1965,

otherwise than by him or on his behalf, the lessee or licensee shall notify the Authority within forty-eight hours.

(2) Any person who without reasonable excuse contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine of one thousand dollars.

(3) In proceedings for an offence under subsection (2), the lessee or licensee shall be presumed to have known that the structure was being or had been erected or placed on the land, unless he proves that he did not know, and could not reasonably have known, of the same.

12. (1) If a structure is being or has been erected or placed on leased land, or land occupied under a licence, in breach of a Crown lease or licence, the Authority may, by notice in writing served on the lessee or licensee, require him to demolish the structure before such date as may be specified in the notice.

(2) If a lessee or licensee does not comply with a notice served on him under subsection (1), any public officer, or other

Duty of lessee or licensee to notify Authority of unlawful structure.

Demolition of unlawful structures.

person, acting on the direction of the Authority may, with the assistance of such other public officers or other persons as may be necessary, enter on the land and demolish the structure.

(3) A lessee or licensee (for the purpose of complying with a notice under subsection (1)) and (for the purpose of subsection (2)) any authorized person may—

- (a) remove from the structure any person or property therein; and
- (b) take possession of such property and of any property resulting from the demolition of the structure.

(4) Any property of which possession is taken under subsection (3)(b) by an authorized person shall become the property of the Crown free from the rights of any person and, subject to subsection (5), may be dealt with as the Authority thinks fit.

(5) The Governor may order that—

- (a) the whole or a part of any property which has become the property of the Crown under subsection (4); or
- (b) the whole or a part of the value of any such property,

shall be delivered or paid to any person who appears to him to have a moral claim thereto.

(6) The Authority may recover from the lessee or licensee any cost incurred in or arising out of the demolition of a structure under subsection (2) and of the exercise of the powers conferred by subsection (3).

(7) A notice under subsection (1) may be served by—

- (a) delivering it to the lessee or licensee;
- (b) posting it to him by registered post addressed to his last place of business or residence known to the Authority; or
- (c) posting the notice in or on the land or structure to which the notice relates.

Power of entry and inspection.

13. For the purpose of ascertaining whether a structure is being or has been erected or placed on leased land, or land occupied under a licence, in breach of the Crown lease or licence, any public officer authorized in writing by the Authority may enter and inspect the land and any structure thereon at any reasonable time.

PART V

PRIVATE STREETS

14. (1) If a Crown lease, or an agreement for surrender relating to leased land, contains a provision that the lessee shall, when required, hand back any private street to the Crown free of cost, the Authority may, by notice in the *Gazette*, declare the private street, or such part thereof as may be specified in the notice, to be a public street.

Vesting of private streets in the Crown.

(2) The Authority shall, within seven days after the publication of a notice under subsection (1), register a copy thereof in the Land Office together with a plan showing the land declared by such notice to be a public street.

(3) Upon the registration under subsection (2) in the Land Office of a copy of a notice published under subsection (1)—

- (a) all rights and obligations of the lessee in, upon or over the private street, or the part of the private street specified in the notice, shall be extinguished; and
- (b) the private street, or such part of the private street, shall vest in the Crown free from the rights of any person in the same manner and to the same effect as if it had been surrendered to the Crown.

15. No action shall be brought or continued, and no compensation shall be payable, in respect of the extinguishment under section 14(3) of the rights of any person in, upon or over the private street or such part of the private street.

No action to lie in respect of extinguishment of rights in private street.

PART VI

GENERAL

16. Any person who obstructs an authorized person exercising any power, performing any duty, or carrying out any function, under this Ordinance shall be guilty of an offence and shall be liable on conviction to a fine of five thousand dollars and to imprisonment for six months.

Obstruction.

17. An authorized person may use such force as may be necessary for the exercise of any power, the performance of any duty, or the carrying out of any function, under this Ordinance.

Use of force.

18. (1) Neither the Government nor the Authority shall be liable for any loss or damage suffered by any person in consequence of anything done under section 6, 8 or 12 by the Authority.

No claim to lie against the Government Authority.

(2) In this section, "Authority" includes any authorized person.

Regulations.

19. The Governor in Council may make regulations for all or any of the following purposes—

- (a) prescribing anything which is to be or may be prescribed under this Ordinance;
- (b) providing for applications for licences or copies of licences;
- (c) fixing fees for the issue of copies of licences;
- (d) empowering any public officer to determine whether land occupied or to be occupied under a licence is being or will be occupied for non-profit making, charitable or welfare purposes;
- (e) generally, for the better carrying out of this Ordinance.

Saving.

20. Nothing in this Ordinance shall affect the rights or powers of the Crown or any public officer under any other law.

Consequential amendments, Second Schedule.

21. The Ordinances specified in the first column of the Second Schedule are amended in the manner set out in the second column of that Schedule.

Transitional provisions. (Cap. 228.)

22. (1) Any licence or permit issued for the purposes of section 4(33), section 4A(3) or section 10 of the Summary Offences Ordinance and in force at the commencement of this Ordinance shall continue in force and have effect as if it were a removal permit issued under this Ordinance.

(2) Any permit issued for the purposes of section 4(27) of the Summary Offences Ordinance and in force at the commencement of this Ordinance shall continue in force and have effect as if it were an excavation permit issued under this Ordinance.

(3) Any document referring to section 4(27) or section 4A(3) or section 10 of the Summary Offences Ordinance shall, so far as may be necessary for preserving its effect, be construed as referring, or as including a reference, to the corresponding provision of this Ordinance.

FIRST SCHEDULE

[s. 3.]

DESIGNATED AUTHORITIES

In this Schedule, "railway land" means land within the fences or other boundary marks indicating the limits of land reserved for the Kowloon Canton Railway.

<i>Section</i>	<i>Area</i>	<i>Authority</i>
5(1)	Urban area.	Director of Public Works, except for railway land.
		General Manager of the Kowloon Canton Railway, in the case of railway land.
	New Territories, except New Kowloon.	District Commissioner, New Territories, except for railway land.
		General Manager of the Kowloon Canton Railway, in the case of railway land.
6(1)	Urban area.	Director of Public Works or Commissioner for Resettlement.
6(2)		
6(3) and 6(5)	New Territories, except New Kowloon.	District Commissioner, New Territories, or Commissioner for Resettlement.
7(2)	Urban area.	Director of Public Works.
7(3)		
8(2)	New Territories, except New Kowloon.	Director of Public Works in the case of streets.
8(3)		
8(5)		
9(2)		District Commissioner, New Territories, in the case of unleased land other than streets.
9(3)		
9(4) and 10		
11(1)	Urban area and Tsuen Wan District.	Commissioner for Resettlement.
	New Territories, except New Kowloon and Tsuen Wan District.	District Commissioner, New Territories.
12(1)	Urban area.	Director of Public Works or Commissioner for Resettlement.
12(2)		
12(4)		
12(6)		
12(7) and 13	Tsuen Wan District.	District Commissioner, New Territories or Commissioner for Resettlement.
	New Territories, except New Kowloon and Tsuen Wan District.	District Commissioner, New Territories.
14(1) and 14(2)	Urban area and New Territories.	Director of Public Works.

SECOND SCHEDULE

[s. 18.]

CONSEQUENTIAL AMENDMENTS

*Short title**Amendment*

(Cap. 228.)

Summary Offences Ordinance.

1. Section 4 is amended by deleting paragraphs (27) and (33).

2. Section 4A is repealed and replaced by the following—

"Obstruction of public places.

4A. Any person who without lawful authority or excuse sets out or leaves, or causes to be set out or left, any matter or thing which obstructs, inconveniences or endangers, or may obstruct inconvenience or endanger, any person or vehicle in a public place shall be liable to a fine of five thousand dollars or imprisonment for three months."

3. Section 10 is repealed.

4. Section 37 is amended by deleting paragraphs (a) and (b).

5. Section 38 is repealed.

(Cap. 228, sub. leg.)

Summary Offences (Licences and Fees) Regulations.

The Regulations are revoked.

(Cap. 304.)

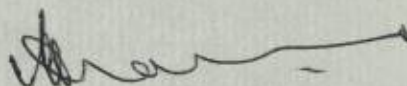
Resettlement Ordinance.

1. Part II is repealed.

2. Section 50C(3) is repealed and replaced by the following—

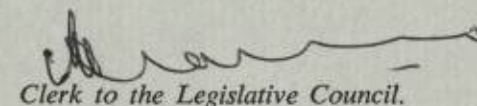
"(3) Any person occupying land in a Class I area, a Class II area or a Class III area under and in accordance with a licence granted under this Part of this Ordinance shall be deemed for the purposes of sections 4 and 6 of the Crown Land Ordinance to be occupying such land under a licence issued under section 5 of that Ordinance."

Passed by the Hong Kong Legislative Council this 16th day of August, 1972.



Clerk to the Legislative Council.

This printed impression has been carefully compared by me with the bill, and is found by me to be a true and correctly printed copy of the said bill.



Clerk to the Legislative Council.



I assent.

Hugh Norman - Walker

HONG KONG

No. 55 OF 1972



I assent.

Hugh Norman - Lockyer

Acting Governor.

31st August, 1972.

An Ordinance to amend the Pensions Ordinance.

[1st September, 1972]

Enacted by the Governor of Hong Kong, with the advice and consent of the Legislative Council thereof.

1. This Ordinance may be cited as the Pensions (Amendment) (No. 2) Ordinance 1972.

Short title.

2. Section 8 of the principal Ordinance is amended by deleting subsection (2) and substituting the following—

Amendment of section 8. (Cap. 89.)

“(2) Save as is provided in subsection (3), the Governor may—

- (a) after considering the advice of the Public Services Commission; and
- (b) in the case of an officer whose appointment was with the approval of the Secretary of State, subject to the approval of the Secretary of State,

require an officer, other than a judge, holding a pensionable office to retire from the service of the Colony at any time after he attains the age of 45 years.”.

Amendment of section 12.

3. Section 12(b) of the principal Ordinance is amended by deleting “wife” wherever it occurs and substituting the following—
“spouse”.

Amendment of section 13.

4. Section 13(3) of the principal Ordinance is amended by deleting “wife, child or children of his” and substituting the following—

“spouse, child or children of such person”.

Amendment of section 18.

5. (1) Section 18(1) of the principal Ordinance is amended—

(a) in sub-paragraph (i) by deleting “a widow, a pension to her, whilst she remains unmarried and of good character” and substituting the following—

“a surviving spouse, a pension to the spouse, whilst he remains unmarried and of good character”;

(b) in sub-paragraphs (ii), (iii), (iv) and (v) by deleting “widow” wherever it occurs and substituting the following—

“surviving spouse”.

(2) Section 18(3) of the principal Ordinance is amended—

(a) by deleting paragraph (d) and substituting the following—

“(d) “surviving spouse” means the person who is the husband or wife of the officer at the time of her or his death;”;

(b) in paragraph (e) by deleting sub-paragraph (i) and substituting the following—

“(i) any child of a female officer and, in the case of a child of a male officer, the child born by a woman who is the wife or widow of the officer at the time of the birth; and”.

Addition of new section 19A.

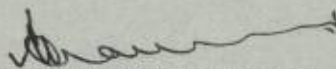
6. The principal Ordinance is amended by adding after section 19 the following new section—

“Husband entitled only if dependent.

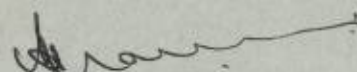
19A. No benefit shall accrue to a husband under sections 13(3) and 18(1)(i), nor shall he be entitled to exercise the option conferred by section 19 unless satisfactory evidence is produced to show that he was wholly or mainly dependent upon his wife for support

by reason of his infirmity of mind or body, illness or old age.”.

Passed by the Hong Kong Legislative Council this 30th day of August, 1972.


Clerk to the Legislative Council.

This printed impression has been carefully compared by me with the bill, and is found by me to be a true and correctly printed copy of the said bill.


Clerk to the Legislative Council.