

Defences.

12. (1) A person does not commit an offence under section 8(1), 8(2), 9(1) or 9(2) if he proves that—

- (a) the discharge or deposit in question is an existing discharge or deposit which is exempt under section 15; or
- (b) the discharge or deposit in question is made under, and in accordance with, a licence granted under section 20; or
- (c) where section 2(3) applies, the matter was deposited pursuant to an approval under subsection (2) and in accordance with the terms and conditions thereof; or
- (d) he exercised all such care and took all such steps as the court considers reasonable in the circumstances to avoid the occurrence of the prohibited discharge or deposit; or
- (e) the discharge or deposit was made in an emergency in order to avoid danger to life or property and as soon as was reasonably practicable he informed the Authority thereof in writing; or
- (f) he acted under instructions given to him by his employer and complied with paragraph (d) to the extent which the court considers reasonable having regard to his position as an employee.

(2) The Director of Agriculture and Fisheries may by order published in the *Gazette* approve the making of any particular kind of deposit as a farming practice to which the provisions of subsections (1)(a) and (1)(b) of section 8, or either of those provisions, do not apply so far as it is made in such areas by such persons and in such manner as may be specified in the order.

(3) The power of the Director of Agriculture and Fisheries under subsection (2) extends to practices employed in all kinds of farming, including agriculture, animal husbandry and fish farming.

Restoration of waters by convicted person.

13. (1) Where any person has been convicted of an offence under section 8(1), 8(2), 9(1) or 9(2) the Authority may if he is of the opinion that—

- (a) any part of the waters of Hong Kong suffered continuing damage as a direct result of the commission of the offence; and
- (b) it is reasonably practicable to restore, or partially restore, that part to the condition it was in before the commission of the offence,

by notice in writing require the person so convicted to carry out such work as is specified in the notice to effect such restoration or partial restoration.

(2) A notice under subsection (1)—

- (a) may specify the manner in which the work is to be carried out;
- (b) shall stipulate the time before which the work shall be commenced and the time by which it shall be completed;
- (c) shall be addressed to and served personally or by registered post on the person who committed the offence.

(3) If a person fails to comply with a notice under subsection (1) served on him, the Authority may, without further notice but subject to subsection (4), carry out or cause to be carried out the work, or the remaining work, specified in the notice and recover from that person the cost of so doing as a civil debt due to the Crown.

(4) The Authority shall not exercise the power in subsection (3)—

- (a) until after the expiry of the time allowed under section 29(3) for appeal against a requirement under subsection (1); and

(b) where an appeal is brought, until it is determined, withdrawn or abandoned.

(5) A copy of a document which purports to be a notice signed by the Authority for the purposes of subsection (1) shall be admitted in evidence in proceedings under subsection (3) on its production without further proof and—

- (a) until the contrary is proved, the court before the document is produced shall presume that the signature to the document is genuine and the person signing it was the Authority at the time when he signed it; and
- (b) such document shall be sufficient evidence of the opinion of the Authority and of all other matters contained therein.

PART IV

EXEMPTION OF EXISTING DISCHARGES AND DEPOSITS

14. (1) After a day appointed by order under subsection (2) of section 7 and before a day appointed by order under subsection (3) of that section a person may give notice to the Authority of an existing discharge or deposit to which those orders apply. Notices of existing discharges and deposits.

(2) A notice under subsection (1) shall be given in such manner and form and contain such information and estimates as may be prescribed.

(3) Any person who in any notice under subsection (1) makes any statement or gives any estimate which he knows to be incorrect in a material particular or who recklessly makes any statement or gives any estimate which is incorrect in a material particular or knowingly omits any material particular therefrom commits an offence and is liable to a fine of \$5,000.

15. (1) Subject to sections 16 and 17—

- (a) an existing discharge or deposit to which subsection (1)(a) of section 8 would otherwise apply is exempt from the operation of that subsection if notice of the existing discharge or deposit has been duly given under section 14;
- (b) an existing discharge or deposit to which subsection (1)(b) of section 8 would otherwise apply is exempt from the operation of that subsection if notice of the existing discharge or deposit has been duly given under section 14;
- (c) an existing discharge or deposit to which section 9(1) would otherwise apply is exempt from the operation of that section if notice of the existing discharge or deposit has been duly given under section 14.

Exemption of existing discharges and deposits.

(2) An exemption under subsection (1) is not limited to the making of the discharge or deposit by the person who gave the notice under section 14 but extends to the discharge or deposit in question when made by any person.

(3) No exemption shall arise under this section if, at the time when notice is given under section 14, the existing discharge or deposit is being or has been made—

- (a) from premises that have been unlawfully erected on unleased land in contravention of section 4 of the Crown Land Ordinance; (Cap. 28.) or

(b) from premises on land held under a Crown lease or on land occupied under a licence issued under section 5 of the Crown Land Ordinance and such discharge or deposit is in breach of that Crown lease or licence.

(4) A person may apply for a licence for any discharge or deposit notwithstanding that the discharge or deposit is already exempt under subsection (1) and the Authority may, subject to Part V, grant a licence therefor.

(5) The exemption conferred by this section shall apply to the discharge or deposit as from time to time varied under section 17 or 18.

Cessation and cancellation of exemption.

16. (1) Subject to section 29(4) and without prejudice to the powers in section 17, an exemption conferred by section 15(1) ceases to be operative during any time when—

(a) either of the following ceases to be the same as that described in the notice given under section 14 or the same as that required or approved by the Authority under section 17 or 18—

(i) the place at which the discharge or deposit is made;

(ii) the period within which the discharge or deposit is made;

(b) any one of the following exceeds by more than 30 per cent, calculated in such manner as may be prescribed, the information or estimate relating thereto in the notice given under section 14—

(i) the quantity of the discharge or deposit or any component of it;

(ii) the rate at which a discharge or deposit or any component of it is made;

(iii) the temperature of the discharge or deposit;

(c) a new component is added thereto without the approval of the Authority under section 18.

(2) If it appears to the Authority that a statement in any notice given under section 14 is incorrect in a material particular, but that no contravention of subsection (3) of that section arises therefrom, he may—

(a) by notice in writing call upon the person who is making the existing discharge or deposit, within such time as the Authority may allow, to give reasons why the notice under section 14 should not be declared inoperative; and

(b) after considering such reasons (if any), by notice in writing addressed to the said person declare the notice under section 14 to be inoperative for the purpose of conferring the exemption provided for in section 15(1) as from such date as the Authority may fix.

(3) If, in any proceedings for an offence against section 8(1) or 9(1), it appears to the court that an incorrect statement in a notice under section 14 has been made in contravention of subsection (3) of that section (whether or not the person who gave the notice is convicted under that subsection) the court shall declare the notice to be inoperative for the purpose of section 15(1) and it shall be treated as never having been operative for that purpose.

Further powers in relation to an existing discharge or deposit.

17. (1) Subject to section 6(6), the Authority may, by notice in writing to a person who is making a discharge or deposit which is exempt under section 15(1), exercise any of the powers set out in subsection (3) if he considers that—

(a) any part of the waters of Hong Kong are in such a condition as to constitute a danger to the health of the public, or a section

of the public, and the exercise of the power in relation to the exempt discharge or deposit would tend to lessen that danger; or

(b) in the case of an exemption from section 9, the discharge or deposit may be harmful to the drainage or sewerage system, or any part thereof, or to the health or safety of any person engaged in the operation thereof.

(2) Where neither paragraph (a) nor paragraph (b) of subsection (1) applies to a discharge or deposit, the Authority may (by notice in writing as provided in that subsection) exercise any power set out in subsection (3), in relation to that discharge or deposit, only with the prior approval of the Governor in Council, as to both the exercise and the manner of the exercise of the power, or with the agreement of the person who is making the discharge or deposit.

(3) The powers referred to in subsections (1) and (2) are—

(a) (i) to impose terms and conditions subject to the observance of which, as from a specified date, the exemption shall continue in force;

(ii) to declare the exemption liable to cancellation if at any time the person fails to observe any such term or condition;

(iii) to cancel the exemption as from a specified date if the person fails to observe any such term or condition;

(b) to cancel the exemption as from a specified date;

(c) to amend or add to any notice previously given under this section, or any part of such notice, or to substitute a new notice for it.

(4) The Authority may revoke a notice previously given under this section, subject to the further approval of the Governor in Council in the case of a revocation which affects anything previously done under this section with the approval of the Governor in Council.

(5) The date specified in a notice for the imposition, amendment or addition of any term or condition under paragraph (a)(i) or (c) of subsection (3) or for the cancellation of an exemption under paragraph (a)(iii) or (b) thereof shall be not less than 90 days after the day on which the notice is given to the person who is making the discharge or deposit.

(6) Subject to subsection (2), the Authority may impose such terms and conditions under subsection (3) as he thinks fit including any term or condition—

(a) requiring the person to restrict or from time to time to suspend the discharge or deposit;

(b) relating to the matters set out in the First Schedule.

First Schedule.

18. (1) A person who is making a discharge or deposit which is exempt under section 15(1) may apply to the Authority in the prescribed form for—

Applications for approval of changes in discharges or deposits.

(a) a variation or cancellation of any term or condition imposed by the Authority under section 17;

(b) approval of a change in the period within which the discharge or deposit may be made;

(c) approval of the addition to the discharge or deposit of a new component, being a substance normally resulting from the carrying on of the trade or business carried on by the applicant at the date appointed by the Governor by order under section 7(2) which applies to the discharge or deposit.

(2) An application under subsection (1) shall be accompanied by the prescribed fee.

(3) Section 19(3) and (4) shall apply for the purpose of publicly notifying an application under this section which relates to an exemption from section 8(1)(a) or 8(1)(b) as if it were an application for a licence.

(4) The Authority may either grant the application in whole or in part or refuse to grant it but in the case of an application which relates to an exemption from section 8(1)(a) or 8(1)(b) shall not do so earlier than 30 days after the last notice is published in a newspaper pursuant to subsection (3).

(5) If the Authority refuses to grant an application or any part thereof he shall notify the applicant and shall inform him of the reasons for his refusal.

(6) Section 20(3) shall apply to the exercise by the Authority of his discretion under this section as it applies to the exercise of his discretion to grant or refuse a licence.

(7) The Authority may grant an application in such terms and on such conditions as he thinks fit (including terms and conditions relating to the matters set out in the First Schedule) except that, without prejudice to section 17, he shall not impose any new obligation on the applicant in relation to that part of the discharge or deposit which is already exempt unless, in his opinion, such part would have a significantly different effect on the relevant waters as a result of the granting of the application.

First Schedule.

PART V

LICENSING OF DISCHARGES AND DEPOSITS

Applications for licences.

19. (1) A person who wishes to obtain a licence for the purposes of section 8(1)(a), 8(1)(b) or 9(1) shall apply to the Authority in the prescribed form.

(2) An application under subsection (1) shall be accompanied by the prescribed fee.

(3) The Authority shall publicly notify all applications for licences for the purposes of section 8(1)(a) or section 8(1)(b)—

- (a) by entering in the register such particulars thereof as may be prescribed;
- (b) by causing a notice to be published at the expense of the applicant in an English language and a Chinese language newspaper determined by the Authority containing such particulars of the application and other information as may be prescribed and a statement of the place or places where a copy of the application may be inspected.

(4) During the period of 30 days after the last notice is published pursuant to subsection (3)—

- (a) a copy of the application shall be kept at each place notified under subsection (3)(b) and shall be available for inspection by the public during normal office hours;
- (b) any person may, in such manner as may be prescribed, object to the granting of the application on the ground that it would tend to inhibit the attainment or maintenance of the relevant water quality objective.

20. (1) Subject to section 21, the Authority may, not earlier than 40 days after the last notice is published in a newspaper pursuant to section 19(3), either grant or refuse to grant a licence. Grant of licences.

(2) If he refuses to grant a licence the Authority shall notify the applicant in writing of his refusal and shall inform him of his reasons therefor.

(3) In the exercise of his discretion to grant or refuse to grant a licence the Authority shall—

- (a) have as his purpose the attainment and maintenance of the relevant water quality objective;
- (b) grant a licence unless he considers that to do so would tend to inhibit the achievement of that purpose,

and for the purposes of this subsection it shall be relevant for the Authority to have regard to the need to protect and ensure the efficient operation of the drainage and sewerage systems and the health and safety of persons engaged in the operation of those systems.

(4) Subject to section 21, the Authority may grant the licence in such terms and on such conditions as he thinks fit including terms and conditions relating to the matters set out in the First Schedule. First Schedule.

(5) A licence shall specify a period of time during which any cancellation or variation thereof which imposes additional obligations on the person making the discharge or deposit shall, unless that person agrees otherwise, give rise to the liability to pay compensation provided for in section 25.

21. Where a licence is applied for in respect of a discharge or deposit which, having been exempt under section 15(1), has ceased to be exempt by reason of section 16(1)(b), the following provisions shall apply— Special provisions where discharge licensed after cessation of exemption.

- (a) the applicant shall be entitled to a licence for so much of the discharge or deposit as was previously exempt;
- (b) the Authority shall not under section 20(4), but without prejudice to section 24, impose any new obligation on the applicant in relation to that part of the discharge or deposit which was previously exempt unless, in the opinion of the Authority, such part would have a significantly different effect on the relevant waters as a result of the change whereby the discharge or deposit ceased to be exempt under section 16(1)(b).

22. (1) A licence for the purposes of section 8(1)(a) shall, subject to the terms and conditions of the licence and during the period specified therein, authorize— Effect of a licence.

- (a) the discharge of matter or any specified class or description of matter into the waters of Hong Kong;
- (b) the deposit of matter or any specified class or description of matter (as provided in section 2(3)),

which, but for such authorization, would be a contravention of section 8(1)(a).

(2) A licence for the purposes of section 8(1)(b) shall, subject to the terms and conditions of the licence and during the period specified therein, authorize—

- (a) the discharge of matter or any specified class or description of matter into inland waters;
- (b) the deposit of matter or any specified class or description of matter (as provided in section 2(3)),

which, but for such authorization, would be a contravention of section 8(1)(b).

(3) A licence for the purposes of section 9(1) shall, subject to the terms and conditions of the licence and during the period specified therein, authorize—

- (a) the discharge of matter, or any specified class or description of matter, into a public sewer or public drain;
- (b) the deposit of matter, or any specified class or description of matter (as provided in section 2(3)),

which, but for such authorization, would be a contravention of section 9(1).

(4) A licence shall not be limited to a discharge or deposit by a particular person but shall extend to the discharge or deposit in question when made by any person.

Renewal of licences.

23. (1) During such period before the expiry of a licence as may be prescribed, the person who is making the discharge or deposit may apply in the prescribed form for a renewal of the licence.

(2) An application for renewal of a licence shall be accompanied by the prescribed fee.

(3) Section 19(3) and (4) shall apply for the purpose of publicly notifying an application for the renewal of a licence for the purposes of section 8(1)(a) or 8(1)(b) as if it were an application for a licence.

(4) The Authority may renew or refuse to renew the licence but in the case of an application for renewal of a licence for the purposes of section 8(1)(a) or 8(1)(b) shall not do so earlier than 30 days after the last notice is published in a newspaper pursuant to subsection (3).

(5) Subsections (2), (3), (4) and (5) of section 20 shall apply to the renewal of a licence as they apply to the grant or refusal of a licence under that section, but section 21 shall not apply on the renewal of a licence.

Cancellation or variation of a licence.

24. (1) Subject to section 6(6), the Authority may, by notice in writing to a person who is making a discharge or deposit for which a licence is in force, exercise any of the powers set out in subsection (3) if he considers that—

- (a) any part of the waters of Hong Kong are in such a condition as to constitute a danger to the health of the public, or a section of the public, and the exercise of the power in relation to the discharge or deposit would tend to lessen that danger; or
- (b) in the case of a licence for the purposes of section 9(1), the discharge or deposit may be harmful to the drainage or sewerage system, or any part thereof, or to the health or safety of any person engaged in the operation thereof.

(2) Where neither paragraph (a) nor paragraph (b) of subsection (1) apply to a discharge or deposit, the Authority may (by notice in writing as provided in that subsection) exercise any power set out in subsection (3), in relation to that discharge or deposit only with the prior approval of the Governor in Council, as to both the exercise and the manner of the exercise of the power, or with the agreement of the person who is making the discharge or deposit.

(3) The powers referred to in subsections (1) and (2) are—

- (a) (i) to impose new or amended terms and conditions subject to the observance of which, as from a specified date, the licence shall continue in force;
 - (ii) to declare the licence liable to cancellation at any time the person fails to observe any such term or condition;
 - (iii) to cancel the licence as from a specified date if the person fails to observe any such term or condition;
- (b) to cancel the licence as from a specified date;
- (c) to amend or add to any notice previously given under this section, or any part of such notice, or to substitute a new notice for it.

(4) The Authority may revoke a notice previously given under this section, subject to the further approval of the Governor in Council in the case of a revocation which affects anything previously done under this section with the approval of the Governor in Council.

(5) The date specified in a notice for the amendment or addition of any term or condition under paragraph (a)(i) or (c) of subsection (3) or the cancellation of a licence under paragraph (a)(iii) or (b) thereof shall be not less than 90 days after the day on which the notice is given to the person who is making the discharge or deposit.

(6) Subject to subsection (2), the Authority may impose such terms and conditions under subsection (3) as he thinks fit including any term or condition—

- (a) requiring the person to restrict or from time to time to suspend the discharge or deposit;
- (b) relating to the matters set out in the First Schedule.

First Schedule.

25. (1) Where a licence is, pursuant to section 24(1)—

- (a) cancelled as provided in section 24(3)(b); or
- (b) varied as provided in section 24(3)(a)(i) or (c) so as to impose additional obligations on the person making the discharge or deposit,

Compensation for cancellation or variation of certain licences.

within the period specified pursuant to section 20(5), the Authority shall be liable to pay compensation if the circumstances set out in subsection (2) are present.

(2) The circumstances mentioned in subsection (1) are—

- (a) that the possibility of danger to health or harm to the drainage or sewerage system or to the health or safety of any person engaged in the operation thereof (as provided in section 24(1)(a) and (b)) was known or could with reasonable foresight have been known, to the Authority at the time the licence was granted or renewed; or
- (b) that the danger or harm mentioned in paragraph (a) is a consequence of licences granted or renewed after the grant, or, where a licence has been renewed, the last renewal of the licence which is cancelled or varied.

26. (1) Where an exemption under section 15(1) is, pursuant to section 17(2)—

- (a) cancelled as provided in section 17(3)(b); or
- (b) varied as provided in section 17(3)(a)(i) or (c) so as to impose additional obligations on the person making the discharge or deposit,

Compensation for cancellation of licences and exemptions with the approval of the Governor in Council.

the Authority shall be liable to pay compensation.

- (2) Where a licence is, pursuant to section 24(2)—
- (a) cancelled as provided in section 24(3)(b); or
 - (b) varied as provided in section 24(3)(a)(i) or (c) so as to impose additional obligations on the person making the discharge or deposit,

within the period specified pursuant to section 20(5) the Authority shall be liable to pay compensation.

Assessment of compensation.

27. (1) Subject to subsection (2), the manner of determining the amount of compensation payable under sections 25 and 26, the factors to be taken into account or disregarded and the principle to be applied in determining that amount shall be such as may be prescribed in regulations made under section 46.

Second Schedule.

(2) The provisions of the Second Schedule shall have effect for the purposes of determining the amount of compensation payable under sections 25 and 26 and for the purposes of the incidental matters for which they provide.

Applications for variation of licences.

28. (1) A person who is making a discharge or deposit for which a licence is in force may apply to the Authority in the prescribed form for a variation of the licence.

(2) The application shall be accompanied by the prescribed fee.

(3) Section 19(3) and (4) shall apply for the purpose of publicly notifying an application under this section for the variation of a licence for the purposes of section 8(1)(a) or section 8(1)(b) as if it were an application for a licence.

(4) The Authority may either grant the application, with or without modification, or refuse to grant it but in the case of a variation of a licence for the purposes of section 8(1)(a) or 8(1)(b) shall not do so earlier than 30 days after the last notice is published in a newspaper pursuant to subsection (3).

(5) If the Authority refuses to grant an application or any part thereof he shall notify the applicant and shall inform him of the reasons for his refusal.

(6) Section 20(3) shall apply to the exercise by the Authority of his discretion under this section as it applies to the exercise of his discretion to grant or refuse a licence.

(7) The Authority may grant an application on such terms and conditions as he thinks fit (including terms and conditions relating to the matters set out in the First Schedule) except that, without prejudice to section 24, he shall not impose any new obligation on the applicant in relation to that part of the discharge or deposit which is already licensed unless—

First Schedule.

- (a) the place at which the discharge or deposit may be made is being varied; or
- (b) in his opinion such part would have a significantly different effect on the relevant waters as a result of the granting of the application.

PART VI APPEALS

When appeal may be brought.

29. (1) Subject to subsection (2), a person who is aggrieved by a requirement or decision of the Authority or the Secretary under any of the following provisions may appeal to an Appeal Board constituted under this Part—

- (a) section 13(1) (requiring a convicted person to restore waters);
- (b) section 16(2)(b) (declaring an exemption to be inoperative);
- (c) section 17(3)(a)(i) (imposing terms and conditions subject to which an exemption may continue in force);
- (d) section 17(3)(a)(iii) or 17(3)(b) (cancelling an exemption);
- (e) section 17(3)(c) (amending or adding to a notice or substituting a new notice);
- (f) section 18(4) (refusing to vary an exemption);
- (g) section 20(1) (refusing to grant a licence);
- (h) section 20(4) (fixing terms and conditions of a licence);
- (i) section 20(5) (fixing the period for non-cancellation of a licence without compensation);
- (j) section 23(4) (refusing to renew a licence);
- (k) section 24(3)(a)(i) (imposing new or amended terms or conditions for continuance of a licence);
- (l) sections 24(3)(a)(iii) and 24(3)(b) (cancelling a licence);
- (m) section 24(3)(c) (amending or adding to a notice or substituting a new notice);
- (n) section 28(4) (refusing to vary a licence);
- (o) section 35 (requiring information to be furnished);
- (p) section 43 (refusing to withhold information from the register).

(2) No appeal shall lie under this section where the requirement of the Authority is made with the prior approval of the Governor in Council under section 17(2) or 24(2).

(3) An appeal under subsection (1) shall be made by lodging a notice of appeal in the prescribed manner and form within 21 days after the person aggrieved has received notice of the decision or requirement.

(4) Where the decision or requirement appealed from was made under a provision mentioned in paragraphs (a) to (e), (j) to (m) or (o) of subsection (1) the notice thereof shall be suspended and cease to have effect as from the day on which notice of appeal is duly given to the Authority and until the appeal is disposed of, withdrawn or abandoned, unless—

- (a) the decision or requirement is considered by the Authority to be necessary because—
 - (i) in any case, the quality of the part of the waters of Hong Kong to which the decision or requirement relates may constitute a danger to the health of the public or a section of the public; or
 - (ii) in the case of a licence for the purposes of section 9, the discharge or deposit to which the decision or requirement relates may be harmful to the drainage or sewerage system, or any part thereof, or to the health or safety of any person engaged in the operation thereof; and
- (b) the notice contains a statement to that effect.

(5) Where the appeal is from a decision of the Secretary under section 43, he shall not enter in the register the information to which the appeal relates until the appeal is disposed of, withdrawn or abandoned.

Constitution
of Appeal
Board.

30. (1) Every appeal under section 29 shall be determined by an Appeal Board constituted under this Part.

(2) The Governor shall appoint as Chairman of Appeal Boards a person who is qualified in law.

(3) Subject to section 32(3), the Chairman shall be appointed for a term of 2 years but may be reappointed.

(4) The Governor shall also appoint a panel of persons whom he considers to be suitable for appointment as members of an Appeal Board pursuant to section 31(1).

(5) An appointment under subsection (2) and every appointment to the panel under subsection (4) shall be notified in the *Gazette*.

(6) In subsection (2) and in section 32(1) "qualified in law" means qualified for appointment as a District Judge under section 5 of the District Court Ordinance.

(Cap. 336.)

Exercise of
Appeal Board's
jurisdiction.

31. (1) The jurisdiction of an Appeal Board on any appeal or group of appeals shall be exercised by the Chairman and such number of persons from the panel referred to in section 30(4) as the Chairman may appoint for that appeal or group of appeals.

(2) On any appeal an Appeal Board may confirm, reverse or vary the decision or requirement of the Authority or the Secretary.

(3) Every question before an Appeal Board shall be determined by the opinion of the majority of the Chairman and the members hearing the appeal except a question of law which shall be determined by the Chairman; in the event of an equality of votes the Chairman shall have a casting vote.

(4) An Appeal Board shall not at any time consist of a majority of persons who are public officers.

(5) An Appeal Board may—

(a) receive evidence on oath;

(b) admit or take into account any statement, document, information or matter whether or not it would be admissible as evidence in a court of law; and

(c) by notice in writing summon any person to appear before it to produce any document or to give evidence.

(6) The Chairman may determine any form or matter of practice or procedure in so far as no provision is made therefor in this Ordinance.

Supplementary
provisions as
to Appeal
Board.

32. (1) If the Chairman of Appeal Boards is precluded by illness, absence from Hong Kong or any other cause from exercising his functions the Governor may appoint any other person qualified in law to act as Chairman and as such to exercise and perform all of the powers, functions and duties of the Chairman during the period of his appointment.

(2) If a person appointed by the Chairman under section 31(1) to hear an appeal or group of appeals is precluded by illness, absence from Hong Kong, or any other cause from exercising his functions, the Chairman may appoint any other person from the panel provided for in section 30(4) to act in his place.

(3) The Chairman of Appeal Boards may at any time resign his office by notice in writing to the Governor.

(4) If the parties to an appeal consent, the hearing of the appeal may be continued notwithstanding any change in the membership of an Appeal Board as if the change had not occurred.

33. (1) This section applies where—

(a) an Appeal Board has reversed or varied a decision or requirement of the Authority or the Secretary; and

(b) the Authority or Secretary considers that exceptional circumstances require the review of the Board's decision in the public interest.

(2) The Authority or Secretary may, where this section applies, within 14 days of being notified of a decision of an Appeal Board refer the case for review by the Governor in Council.

(3) Where the Authority or the Secretary has referred a case for review under subsection (2), he shall forthwith notify the other party in writing of the reference, giving his reasons for seeking the review and inviting him to submit written representations concerning the review, within 14 days of receiving the notice, for consideration by the Governor in Council.

(4) Upon a reference under subsection (2) and upon the expiry of the period of 14 days referred to in subsection (3) the Governor in Council may review the case, considering any representations submitted under subsection (3), and may confirm, reverse or vary the decision of the Appeal Board.

34. (1) The Chairman of Appeal Boards may of his own motion, before an appeal is determined, refer any question of law to the Court of Appeal by way of case stated.

(2) On the hearing of the case the Court of Appeal may amend the case or order it to be sent back to the Appeal Board for amendment.

PART VII

POWERS OF ENFORCEMENT

35. (1) The Authority may by notice in writing to any person require him to furnish to the Authority, within a period and in a form stipulated in the notice, any information specified in the notice being information which he is authorized to obtain by regulations made under section 46(1)(j) or which the Authority may reasonably require for the purpose of exercising and performing his powers, functions and duties under this Ordinance.

Review of
Appeal
Board's
decision by
Governor
in Council.

Case may be
stated for
Court of
Appeal.

Authority
may obtain
information.

(2) A person who—

(a) fails without reasonable excuse to comply with the requirements of a notice served on him under subsection (1); or

(b) in compliance or purported compliance with such a notice, makes any statement which he knows to be false in a material particular or recklessly makes any statement which is false in a material particular or knowingly omits any material particular,

commits an offence and is liable to a fine of \$5,000.

36. (1) Subject to subsection (2), the Authority may in writing authorize public officers to exercise the powers conferred on an authorized officer by sections 37 and 38, or such of those powers as the Authority may specify.

Authorized
officers.

(2) The Authority shall under subsection (1), authorize only a public officer of or above the rank specified to exercise the following powers—

- (a) the powers in section 38(b) and (c), an officer of or above the rank of Pollution Control Officer;
- (b) any other power conferred by section 37 or 38 on an authorized officer, an officer of or above the rank of Assistant Pollution Control Inspector.

(3) An authorized officer exercising any power in section 37 or 38 may take with him such persons as he reasonably requires to assist him in the discharge of his duties.

Powers of authorized officers to enter premises etc.

37. (1) Subject to subsection (2), an authorized officer may, for the purposes of this Ordinance, without a warrant enter any place or premises or stop and board any vessel—

- (a) from or on which he has reason to suspect that, in contravention of section 8(1), matter has been or is being discharged or deposited into the waters of Hong Kong or inland waters, or, in contravention of section 9(1), matter has been or is being discharged or deposited into any public sewer or public drain;
- (b) from or on which matter is being discharged or deposited as mentioned in paragraph (a) pursuant to a licence or an exemption conferred by section 15(1), whether or not there is a suspected contravention of section 8 or 9;
- (c) on which he has reason to believe there is any thing likely to be, or to contain, evidence of an offence against this Ordinance.

(2) An authorized officer shall not under subsection (1) enter domestic premises (other than that part of such premises on which there is a private sewage treatment plant) or board any vessel used wholly or principally for dwelling purposes without a warrant issued by a magistrate under subsection (3).

(3) A magistrate may issue a warrant empowering any authorized officer to enter domestic premises or to board any vessel used wholly or principally for dwelling purposes if the magistrate is satisfied by information on oath that there is reasonable ground for suspecting that—

- (a) contrary to section 8(1), any matter is being or has been discharged or deposited into the waters of Hong Kong or inland waters from those premises or that vessel; or
- (b) contrary to section 9(1), any matter is being or has been discharged or deposited from those premises or that vessel into any public sewer or public drain;
- (c) there is on those premises or on that vessel any thing likely to be, or to contain, evidence of an offence against this Ordinance.

(4) An authorized officer who enters any place or premises or boards any vessel—

- (a) shall, if so required, produce evidence of his identity and of his authorization by the Authority under section 36; and
- (b) shall, if a warrant is under subsection (3) required for entry, produce that warrant.

Further powers of authorized officers.

38. An authorized officer who has pursuant to section 37 or any warrant issued thereunder, entered any place or premises or boarded any vessel, or who has been admitted to any place, premises or vessel in the course of his duties, may—

(a) inspect any plant or equipment or observe any process or procedure which he has reason to suspect is being, or has been, or is intended to be, used in connexion with—

(i) a discharge or deposit which is being, or has been, made contrary to section 8(1) or 9(1), or is made pursuant to a licence or an exemption conferred by section 15(1);

(ii) the treatment of any matter which is being, or is intended to be, discharged or deposited into the waters of Hong Kong or inland waters or into any public sewer or public drain, and may require any person in charge of the place, premises or vessel to do anything which the officer reasonably considers to be necessary for facilitating the inspection or observation;

(b) require the person in charge of the place, premises or vessel to produce for examination any drawing, record or document which is in the possession of such person, or which he can reasonably obtain, relating to any plant or equipment referred to in paragraph (a) or to any discharge or deposit to which section 8(1) or 9(1) applies or the officer has reason to suspect may apply;

(c) seize, remove and detain any drawing, record or document referred to in paragraph (b) or any other article or thing if he has reason to suspect that it is, or contains, evidence of an offence under this Ordinance;

(d) examine and make copies of records kept pursuant to a condition of the kind mentioned in paragraph 9 of the First Schedule;

First Schedule.

(e) take samples of any matter which is within the description in paragraph (a)(ii) or which he has reason to believe may come within that description.

39. (1) A certificate of analysis of a sample of any matter may be tendered in evidence in any proceedings under this Ordinance and shall, until the contrary is proved, be sufficient evidence of the facts stated therein if the procedure set out in this section has been complied with, or substantially complied with so far as is reasonably practicable, in relation to that sample.

Analysis of samples.

(2) An authorized officer who takes a sample of any matter for the purposes of subsection (1) shall—

- (a) divide it into 3 approximately equal parts;
- (b) place each part in a separate container and suitably mark or label each container;
- (c) ensure that the person appearing to be in occupation of the premises on which the sample was taken or his servant or agent—
 - (i) is handed such one of the parts as that person or his servant or agent may select or, if that is not reasonably practicable, is handed or sent by registered post such one of the parts as the officer shall select; and
 - (ii) is informed that one of the other 2 parts is intended to be submitted to the analyst for analysis;

(d) except where an analysis proves to be unnecessary, personally submit one of the remaining 2 parts to the analyst for analysis and retain the other for the purposes of comparison.

(3) As soon as the analyst has completed the analysis he shall furnish to the relevant Authority and to the person referred to in subsection (2)(c), or his servant or agent, a certificate of the results of the analysis.

(4) A certificate under subsection (3) shall be signed by the analyst but the analysis may be made by a person acting under his directions;

and any certificate purporting to have been signed by the analyst shall be presumed, until the contrary is proved, to have been signed by him.

(5) In this section "analyst" means the Government Chemist or any person appointed by the Governor as an analyst for the purposes of this section.

(6) An appointment by the Governor under subsection (5) shall be notified in the *Gazette*.

40. A person who—

- (a) wilfully obstructs an authorized officer in the exercise of any power conferred on such officer by or under section 37 or 38; or
- (b) fails without reasonable excuse to comply with any requirement duly made by an officer under those sections; or
- (c) in compliance or purported compliance with any such requirement produces any drawing, document or record which he knows to be incorrect or inaccurate in a material particular or does not believe to be correct and accurate,

commits an offence and is liable to a fine of \$5,000.

PART VIII

MISCELLANEOUS

41. (1) Where on an application under section 18, 19, 23 or 28, any objection to the grant of the application is duly made to the Authority, he may hear the applicant and any objector if he considers it expedient for the purpose of obtaining information relevant to any question to be decided.

(2) The procedure to be followed at, or for the purpose of convening, any hearing under subsection (1) shall be determined by the Authority.

42. (1) The Authority shall cause to be kept, in such form as the Secretary may determine, a register containing the prescribed particulars in relation to such of the following as fall under his jurisdiction—

- (a) all discharges and deposits which are exempt pursuant to section 15 and applications and notices under this Ordinance in respect thereof;
- (b) all discharges and deposits for which a licence is in force, applications for such licences and other applications and notices under this Ordinance in respect thereof;
- (c) such other matters as may be required by regulations made under section 46 to be recorded in the register.

(2) The register shall be open for inspection by the public during normal office hours at such places as the Secretary thinks fit.

(3) A person shall be entitled, upon payment of the prescribed fee, to a copy of any entry in the register certified by or on behalf of the Authority.

43. (1) Any person may apply to the Secretary to withhold from public notification or other public access under this Ordinance any specified information concerning a discharge or deposit, whether appearing in a licence or an application therefor or in any notice, return or other document.

Offences in relation to sections 37 and 38.

Authority may hold a hearing.

Authority to keep register.

Protection of private information from publicity.

(2) An application under subsection (1) shall be granted by the Secretary to the extent that he is satisfied that public notification or other public access to the information would—

- (a) be contrary to the applicant's private interest to an unreasonable degree; or
- (b) be contrary to the public interest.

(3) Where an application under this section is refused by the Secretary, whether in whole or in part—

- (a) notice of the refusal and of the reasons therefor shall be given in writing by the Secretary to the applicant;
- (b) the information shall not be publicly notified or otherwise made accessible to the public until the time for appeal under section 29(3) has expired.

44. (1) A person commits an offence who, except in the circumstances provided for in subsection (2), discloses or gives to another person any information or document concerning a trade or business secret which has come to his knowledge or into his possession in the course of the exercise or performance of his powers, functions or duties under this Ordinance.

Offence to disclose secret information obtained officially.

(2) A person does not commit an offence under subsection (1) if he discloses or gives any information or document to another person—

- (a) for the purpose of the exercise or performance of his powers, functions or duties under this Ordinance and proceedings connected therewith;
- (b) pursuant to an order of a court under subsection (3);
- (c) with the consent in writing of all such persons as appear to him, after reasonable inquiry, to be interested in the confidentiality of the information or document.

(3) Where in any proceedings a court considers that the justice of the case so requires, the court may order the disclosure of any information or the giving of any document referred to in subsection (1).

(4) A person who commits an offence under subsection (1) is liable to a fine of \$10,000 and to imprisonment for 6 months.

45. (1) No liability shall rest on the Crown or upon any public officer by reason of the fact that any licence or exemption is granted or continued under this Ordinance for the discharge or deposit of any matter into the waters of Hong Kong or into inland waters or into a public sewer or public drain.

Protection of Crown and public officers.

(2) A public officer shall not be personally liable in respect of any act or omission of his if it was done or made by him in the honest belief that it was required or authorized in the exercise of any power, function or duty of his under this Ordinance.

(3) The protection conferred on public officers by subsection (2) in respect of any act or omission shall not in any way affect any liability of the Crown in tort for that act or omission.

46. (1) The Governor in Council may, after consultation with the Environmental Protection Advisory Committee, by regulation provide for—

Regulations.

- (a) the manner in which quantities and rates of discharges and deposits are to be calculated for the purposes of section 16(1)(b);
- (b) the form and contents of—
 - (i) a notice under section 14;

- (ii) an application for approval under section 18;
 - (iii) an application for a licence under section 19;
 - (iv) an application for a renewal of a licence under section 23;
 - (v) an application for a variation of a licence under section 28;
- (c) the period within which a licensee shall make an application for a renewal of the licence, and the circumstances in which a licence may continue in force pending the determination of any such application;
- (d) the particulars to be entered in the register;
- (e) the particulars to be contained in a notice referred to in section 19(3)(b);
- (f) the manner in which objections shall be made under section 19(4)(b);
- (g) the manner of determining the amount of compensation payable under sections 25 and 26, the factors to be taken into account or disregarded and the principles to be applied in determining that amount;
- (h) the forms to be used and the procedure to be followed for the purpose of appeals under Part VI;
- (i) fees and charges which may be imposed by an Authority or the Secretary—
- (i) on persons who are making discharges or deposits which are exempt under section 15 or for which a licence is in force, or on any class or description of such persons or in respect of such discharges or deposits or any class or description thereof, including charges for the reception, treatment and disposal of matter discharged pursuant to a licence for the purposes of section 9;
 - (ii) persons making any application referred to in paragraph (b);
- (j) matters about which information may be obtained under section 35(1);
- (k) the manner in which notices required or authorized by this Ordinance may be given or sent to the person to whom they are addressed;
- (l) the inclusion of a lake, pool or pond or any description of lake, pool or pond within the definition of "inland waters" in section 2 as provided for in paragraph (a) of that definition;
- (m) prescribing anything (including any fee) which is to be or may be prescribed by regulations;
- (n) generally for the better carrying out of the provisions and purposes of this Ordinance.
- (2) Regulations made under subsection (1)(a) may delegate to the Authority the power to determine in any particular case the method of making any calculation for the purposes of section 16(1)(b).
- (3) Regulations made under this section may provide that a contravention of specified provisions thereof or of specified conditions of an exemption conferred by section 15 or of specified conditions of a licence shall be an offence and may provide penalties therefor not exceeding a fine of \$5,000 and imprisonment for 6 months.

47. (1) Subject to this section, this Ordinance shall bind the Crown. Application of Ordinance to Crown.
- (2) Sections 8 and 9 shall not have effect to permit proceedings to be taken against, or to impose any criminal liability on, the Crown or on any person who makes any discharge or deposit which he is required to make in the course of carrying out his duties in the service of the Crown.
- (3) If it appears to an Authority that any discharge or deposit is being, or has been, made in contravention of section 8(1) or 9(1) by any person in the course of carrying out his duties in the service of the Crown, he shall, if the contravention is not forthwith terminated to the satisfaction of the Authority, report the matter to the Chief Secretary.
- (4) On receipt of a report under subsection (3) the Chief Secretary shall inquire into the circumstances and, if his inquiry shows that a contravention of section 8(1) or 9(1) is continuing or likely to recur, he shall ensure that the best practicable steps are taken to terminate the contravention or avoid the recurrence.
- (5) Any notice or application under this Ordinance concerning a discharge or deposit which is to be, or may be, given or made by or on behalf of the Crown may be given or made by any public officer on behalf of the Crown.
- (6) Any notice under this Ordinance concerning a discharge or deposit which is to be, or may be, given by the Authority to the Crown shall be given to the principal officer of the Government Department which appears to the Authority to be responsible for the discharge or deposit or, in the event of any question arising as to which Department is responsible, to such public officer as the Chief Secretary shall determine.
- (7) No compensation shall be payable under section 25 in respect of any discharge or deposit made by or on behalf of the Crown.
- (8) No fee or charge prescribed for the purposes of this Ordinance shall be payable by the Crown.
48. If any question arises as to who are the body of persons for the time being constituting the Environmental Protection Advisory Committee mentioned in sections 3, 5 and 46, the matter shall be referred to the Chief Secretary who shall determine the question by certificate under his hand. Environmental Protection Advisory Committee.
49. (1) No exemption which arises for the purposes of this Ordinance by operation of section 15 and no licence shall be construed as a dispensation from the requirements of any other Ordinance except where that other Ordinance so provides. Ordinance not to affect or be affected by other Ordinances.
- (2) Without limiting section 8(3), the giving, granting or making of any direction, licence, permit, consent, approval or other requirement or authority under any other Ordinance shall not be taken to authorize any act or omission which contravenes section 8(1) or 9(1).
50. The enactments specified in the Third Schedule are amended in the manner specified therein. Consequential amendments. Third Schedule.
51. Upon section 8(1)(a) or 9(1) becoming applicable to a discharge or deposit pursuant to section 7 the enactments mentioned in the first column of the Fourth Schedule shall have effect in relation to that discharge or deposit as if they were amended in the manner specified in the second column of that Schedule. Disapplication of certain enactments. Fourth Schedule.

FIRST SCHEDULE

[ss. 17(6), 18(7),
20(4), 24(6),
28(7) & 38.]TERMS AND CONDITIONS SUBJECT TO WHICH A LICENCE MAY BE
GRANTED OR AN EXEMPTION CONTINUED

1. The place and times or periods at or during which the discharge or deposit may be made.
2. The design and construction of any plant or equipment used in making the discharge or deposit.
3. The rate of discharge or deposit or the total amount thereof in relation to the matter discharged or deposited or any constituent thereof.
4. The nature, composition, colour and temperature of the matter discharged or deposited or of any constituent thereof.
5. The treatment of matter before it is discharged or deposited and the plant and equipment to be provided, maintained and used therefor.
6. The equipment and facilities to be provided for inspecting, sampling or measuring the discharge or deposit or any constituent thereof.
7. The maintenance and security of any equipment and facilities referred to in paragraph 6.
8. The provision to the Authority of samples, and of the results of the analysis of samples, of discharges and deposits.
9. The keeping of records in relation to the matters mentioned in paragraphs 3 and 4.
10. The access of authorized officers to the equipment, facilities and records referred to in paragraphs 6 and 9.
11. Precautions to be taken against matter discharged or deposited entering any specified part of the waters of Hong Kong or any public drain or public sewer.

SECOND SCHEDULE

[s. 27(2).]

DETERMINATION OF COMPENSATION

1. A person who claims compensation under section 25 or 26 shall submit to the Authority particulars in writing of his claim.
2. (1) A claim under paragraph 1 shall be submitted—
 - (a) where a licence or exemption is cancelled, within 1 year after the cancellation;
 - (b) where a licence or exemption is varied so as to impose additional obligations on the person making the discharge or deposit, within 1 year after the completion of the works attributable solely to the requirement of the Authority.
- (2) The period referred to in sub-paragraph (1) may, upon application made to the Governor either before or after the expiry of that period be extended in accordance with this paragraph.

(3) Notice of an application under sub-paragraph (2) shall be given to the Authority by the applicant.

(4) The Governor may extend the period within which particulars of a claim must be submitted to the Authority if he considers that the delay in submitting such particulars was occasioned by mistake of fact or mistake of any matter of law (other than the matters contained in sub-paragraph (1)) or by any other reasonable cause or that the Crown is not materially prejudiced by the delay.

(5) An extension may be granted by the Governor under sub-paragraph (4) with or without conditions for such period as he thinks fit but not in any case exceeding 6 years from the time when the right to compensation first arose.

3. If the Authority and the claimant do not agree on the settlement or compromise of the claim within 3 months of the submission of particulars under paragraph 1, the claimant may notify the Authority that he desires a reference to a tribunal; and the Authority shall thereupon refer the claim with the particulars thereof to a tribunal, consisting of a District Judge nominated by the Chief Justice for the purpose.

4. The tribunal shall hear any evidence which the Authority or the claimant may wish to tender and, if so desired, hear counsel on behalf of the Authority and the claimant, and shall determine the amount of compensation, if any, to be paid to the claimant.

5. For the purposes of paragraph 4, the tribunal shall have powers similar to those vested in the Supreme Court for hearing evidence, determining claims for damages and awarding costs.

6. The practice and procedure in connexion with any proceedings before a tribunal under this section shall be such as the tribunal may determine.

7. Any award or decision of a tribunal under this Schedule shall be final but if a party is dissatisfied with the decision as being erroneous in point of law, he may, within 1 month after the decision, require the tribunal to state and sign a case for the decision of the Court of Appeal.

8. The tribunal may direct that interest be paid on compensation (but not on costs) from such date and for such period as the tribunal thinks fit, at the lowest rate paid from time to time by members of the Exchange Banks Association on time deposits or at such other rate as may be determined by resolution of the Legislative Council.

9. All compensation, including interest thereon and costs, shall be paid from such money as may be provided from time to time by the Legislative Council.

THIRD SCHEDULE

[s. 50.]

Enactment

Amendment

Public Cleansing and
Prevention of
Nuisances By-lawsBy-law 4 is amended by inserting after paragraph
(3) the following—(Cap. 132,
sub. leg.)“(4) No offence under paragraph
(1)(c) is committed by a person who

<i>Enactment</i>	<i>Amendment</i>
	makes a discharge or deposit under and in accordance with—
(41 of 1980.)	(a) a licence granted under section 20 of the Water Pollution Control Ordinance 1980; or
	(b) an exemption which arises under section 15 of that Ordinance.”.
(Cap. 132, sub. leg.)	Public Cleansing and Prevention of Nuisances (New Territories) Regulations
	Regulation 4 is amended by inserting after paragraph (3) the following paragraph—
	“(4) No offence under paragraph (1)(c) is committed by a person who makes a discharge or deposit under and in accordance with—
(41 of 1980.)	(a) a licence granted under section 20 of the Water Pollution Control Ordinance 1980; or
	(b) an exemption which arises under section 15 of that Ordinance.”.
(Cap. 160, sub. leg.)	Marine Hawkers Regulations
	Regulation 19 is revoked.
(Cap. 208, sub. leg.)	Country Parks and Special Areas Regulations
	Regulation 12 is amended—
	(a) by being renumbered as paragraph (1);
	(b) by inserting after paragraph (1) the following—
	“(2) No offence under paragraph (1)(b) is committed by a person who makes a discharge or deposit under and in accordance with—
(41 of 1980.)	(a) a licence granted under section 20 of the Water Pollution Control Ordinance 1980; or
	(b) an exemption which arises under section 15 of that Ordinance.”.
(Cap. 285.)	Mining Ordinance
	The Ordinance is amended by adding after section 28 the following—
	“Discharges and deposits under Water Pollution Control Ordinance.
(41 of 1980.)	28A. No offence under section 27 or 28 is committed by a person who makes a discharge or deposit under and in accordance with—
	(a) a licence granted under section 20 of the Water Pollution Control Ordinance 1980; or
	(b) an exemption which arises under section 15 of that Ordinance.”.

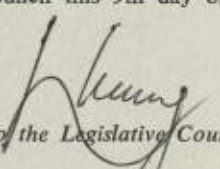
<i>Enactment</i>	<i>Amendment</i>
Pearl Culture Control Ordinance	Section 9 is amended— (Cap. 307.)
	(a) by being renumbered as subsection (1);
	(b) by inserting after subsection (1) the following—
	“(2) No offence under subsection (1) is committed by a person who makes a discharge or deposit under and in accordance with—
(41 of 1980.)	(a) a licence granted under section 20 of the Water Pollution Control Ordinance 1980; or
	(b) an exemption which arises under section 15 of that Ordinance.”.
Shipping and Port Control Ordinance	The Ordinance is amended by adding after section 48 the following— (Cap. 313.)
	“Discharges under the Water Pollution Control Ordinance.
(41 of 1980.)	48A. No offence under section 46 is committed by, and no obligation arises under section 48 on the part of, any person who makes a discharge or deposit of oil or a mixture containing oil under and in accordance with a licence for the purposes of section 9 of the Water Pollution Control Ordinance 1980 granted under section 20 of that Ordinance.”.
	FOURTH SCHEDULE [s. 51.]
	<i>Amendment deemed to have been made for the purposes of section 51</i>
Public Health and Urban Services Ordinance	The Ordinance shall have effect as if section 6(1) were amended as follows— (Cap. 132.)
	(a) by deleting paragraphs (a), (c) and (d);
	(b) by deleting paragraph (b) and substituting the following—
	“(b) causes or permits any solid matter, mud or waste to be placed or thrown, or to fall, or to be carried over any grate communicating with any public sewer or drain;”.
Public Cleansing and Prevention of Nuisances By-laws	The By-laws shall have effect as if they were amended as follows— (Cap. 132, sub. leg.)
	(a) in by-law 10, by deleting sub-paragraph (c);

Enactment

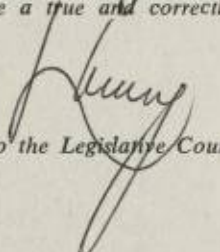
Amendment deemed to have been made for the purposes of section 51

- (Cap. 132, sub. leg.) Public Cleansing and Prevention of Nuisances (New Territories) Regulations
- (Cap. 228.) Summary Offences Ordinance
- (Cap. 307.) Pearl Culture (Control) Ordinance
- The Regulations shall have effect as if they were amended as follows—
- (a) in regulation 10, by deleting subparagraph (c);
- (b) in regulation 14, by deleting paragraph (2) and substituting the following—
- “(2) No person shall discharge, deposit, or place any pigwash in or into a public place.”.
- The Ordinance shall have effect as if it were amended as follows—
- (a) in section 4(1), by deleting the words “, or into the waters of the Colony”, the words “, stream, watercourse, ford or reservoir, or into any drain or sewer” and the words “, stream or watercourse”;
- (b) in section 5(1), by deleting paragraph (c).
- The Ordinance shall have effect as if section 9(b) were amended by deleting “or to pollute or to be likely to pollute the waters in any such area”.

Passed by the Hong Kong Legislative Council this 9th day of July 1980.


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.

No. 42 of 1980



I assent

Governor

10 July 1980

An Ordinance to provide for registration, discipline and the regulation of the occupation of public places.

Amendment

the purposes of section 51

(b) in by-law 14, by deleting paragraph (2) and substituting the following—

“(2) No person shall discharge, deposit, or place any pigwash in or into a public place.”.

Amending and of (New

The Regulations shall have effect as if they were amended as follows—

(a) in regulation 10, by deleting subparagraph (c);

(b) in regulation 14, by deleting paragraph (2) and substituting the following—

“(2) No person shall discharge, deposit, or place any pigwash in or into a public place.”.

Offences

The Ordinance shall have effect as if it were amended as follows—

(a) in section 4(1), by deleting the words “, or into the waters of the Colony”, the words “, stream, watercourse, ford or reservoir, or into any drain or sewer” and the words “, stream or watercourse”;

(b) in section 5(1), by deleting paragraph (c).

Provision

The Ordinance shall have effect as if section 9(b) were amended by deleting “or to pollute or to be likely to pollute the waters in any such area”.

HONG KONG

No. 42 OF 1980



I assent.

Governor.

10 July 1980.

An Ordinance to provide for registration, discipline and the better control of persons engaged in occupations and professions supplementary to medicine.

[]

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

PART I

PRELIMINARY

1. (1) This Ordinance may be cited as the Supplementary Medical Professions Ordinance 1980 and shall come into operation on a day to be appointed by the Governor by notice in the *Gazette*. Short title, commencement and application.

(2) This Ordinance shall apply to any profession included in the Schedule with effect from such date as the Governor may appoint by order in the *Gazette* and any such order may fix different dates for different provisions of this Ordinance. Schedule.

2. (1) In this Ordinance, unless the context otherwise requires— Interpretation.
“board” means any board established under section 5;

“certificate of registration” means a certificate of registration or a duplicate certificate of registration issued under section 14 and a certificate of provisional registration issued under section 15;

"Council" means the Supplementary Medical Professions Council established under section 3;

"practising certificate" means a certificate issued under section 16;

Schedule.

"profession" means any profession specified in the second column in the Schedule;

"registered" means entered in a register in accordance with sections 13 and 15 or restored to the register in accordance with section 10;

Schedule.

"registered address" means the address appearing upon the certificate of registration issued under section 14.

(2) A profession specified in the second column in the Schedule shall mean the occupation of persons of the description specified opposite thereto in the second column.

(3) For the purposes of this Ordinance, a person shall be deemed to practise a profession, who, for gain or otherwise, represents himself, whether directly or by implication from his conduct, as practising or being prepared or entitled to practise that profession.

PART II

ESTABLISHMENT AND POWERS OF COUNCIL AND BOARDS

Establishment and composition of Council.

3. (1) There shall be a Council called the Supplementary Medical Professions Council and consisting of the following members—

- (a) a Chairman to be appointed by the Governor;
- (b) a Deputy Chairman to be appointed by the Governor;
- (c) not more than 4 public officers appointed by the Governor;
- (d) the following persons, whose terms of office shall run for 3 consecutive years, from the respective dates of their appointment—
 - (i) 1 person appointed by the Governor on the nomination of the University of Hong Kong;
 - (ii) 1 person appointed by the Governor on the nomination of The Chinese University of Hong Kong;
 - (iii) 1 person appointed by the Governor on the nomination of the Hong Kong Polytechnic;
 - (iv) 1 person appointed by the Governor from each profession; and
 - (v) 4 other persons, not being public officers, appointed by the Governor.

(2) Any member appointed under subsection (1)(d) may, upon the expiry of his term of office, be reappointed.

(3) Any member appointed under subsection (1)(d) or reappointed under subsection (2) may before the expiry of his term of office—

- (a) resign his office by notice to the Governor; or
- (b) be removed from office by the Governor for permanent incapacity or other sufficient cause (as to the existence of which the decision of the Governor shall be final),

and upon such resignation or removal the term for which he was appointed or reappointed shall be deemed to have expired.

(4) There shall be—

- (a) a secretary; and
- (b) a legal adviser,

to the Council who shall be appointed by the Governor.

4. (1) The purposes of the Council shall be—

- (a) to promote adequate standards of professional practice and of professional conduct in the professions;
- (b) to co-ordinate and supervise the activities of the boards established under section 5; and
- (c) to carry out any additional functions assigned to it by this Ordinance.

Purposes of the Council.

(2) The Council shall perform its function of co-ordinating and supervising the activities of the boards—

- (a) by making to each board, or inviting the board to make to the Council, proposals as to the activities to be carried on by the board or other boards;
- (b) by recommending a board to carry on such activities, or to limit its activities in such manner, as the Council considers appropriate after consultation with the board on the proposals referred to in paragraph (a);
- (c) by concerning itself with matters appearing to it to be of special interest to any 2 or more of the boards, and by giving to the boards such advice and assistance as it thinks fit with respect to such matters; and
- (d) by exercising its powers under this Ordinance in such manner as the Council considers most conducive to the satisfactory performance by each board of the board's functions under this Ordinance.

5. (1) For each profession there shall be a board consisting of not less than 9 and not more than 12 members comprising the following—

- (a) a Chairman appointed by the Governor from among the members of the Council, other than a member appointed under section 3(1)(d)(iv);
- (b) 1 person, being a registered medical practitioner, appointed by the Governor, on the nomination of the Hong Kong Medical Association;
- (c) 1 person, being a registered medical practitioner, appointed by the Governor on the nomination of the Hong Kong Branch of the British Medical Association;
- (d) 1 person specially qualified to advise the board on professional education appointed by the Governor; and
- (e) not less than 5 and not more than 8 persons, being members of the relevant profession, appointed by the Governor.

Establishment and composition of boards.

(2) Any member of a board may, upon the expiry of his term of office, be reappointed.

(3) Any member of a board appointed under subsection (1) or reappointed under subsection (2) may before the expiry of his term of office—

- (a) resign his office by notice to the Governor; or
- (b) be removed from office by the Governor for permanent incapacity or other sufficient cause (as to the existence of which the decision of the Governor shall be final),

and upon such resignation or removal the term for which he was appointed or reappointed shall be deemed to have expired.

(4) There shall be—

- (a) a secretary; and
- (b) a legal adviser,

to each board who shall be appointed by the Governor.

6. The purposes of a board appointed under section 5 shall be—

- (a) to promote adequate standards of professional practice and professional conduct among members of the relevant profession; and
- (b) to carry out the functions assigned to it under this Ordinance.

7. (1) The Council and each board shall meet at such times and places as their respective Chairmen may appoint.

(2) At any meeting of the Council or a board 6 members shall form a quorum.

(3) In the absence of the Chairman from any meeting of the Council, the Deputy Chairman shall act in his place and if the Deputy Chairman is also absent, those members present shall appoint one of their number to act as chairman.

(4) In the absence of the Chairman from any meeting of a board, those members present shall appoint one of their number to act in his place.

(5) Every item for consideration before any meeting of the Council or a board shall be determined by a majority of the votes of the members present and voting thereon and in the event of an equality of votes the Chairman or member presiding shall have a casting vote in addition to his original vote.

(6) Subject to this Ordinance, the Council and a board may regulate its own procedure.

8. The Council and a board may transact any of its business by the circulation of papers and a resolution in writing which is approved in writing by a majority of the members shall be as valid and effectual as if it had been passed at a meeting of the Council or a board by the votes of the members so approving the resolution.

9. (1) Subject to this section the Council and any board may appoint committees for the better discharge of its functions under this Ordinance.

(2) The number of members of any such committee and their term of office shall be fixed by the Council or the board, as the case may be.

(3) Any committee may include persons who are not members of the Council or the board.

(4) Each committee shall have as its chairman a member of the Council or of the board, and the Council or the board may make rules respecting the quorum, proceedings and place of meeting of any committee.

Purposes of boards.

Meetings of the Council and boards.

Transaction of business by circulation of papers.

Appointment of committees.

(5) The Council or a board may in writing delegate to a committee, with or without restrictions or conditions, any of the powers or functions of the Council or the board:

Provided that no delegation made hereunder shall preclude the Council or the board from exercising or performing at any time any of the powers or functions so delegated.

PART III

REGISTRATION AND PRACTISING CERTIFICATES

10. (1) Each board shall cause a register for the relevant profession to be kept in the form prescribed and the secretary of the board shall be responsible for the maintenance and custody of the register.

Every profession to have a separate register.

(2) The secretary of the board shall from time to time insert in the register any alteration or addition which may come to his knowledge to the name, addresses, or qualifications of any person registered.

(3) The secretary shall make such amendments to the register as are made necessary by any decision of the board.

(4) The board may direct the removal from the register of the name of any person who—

- (a) requests in writing that his name be so removed;
- (b) is deceased;
- (c) being a person required to be the holder of a practising certificate, has practised a profession in Hong Kong for a period exceeding 6 months without having obtained such a certificate;
- (d) is not practising his profession in Hong Kong; or
- (e) has not supplied the secretary of the board with an address in Hong Kong at which all notices from the board may be served on him:

Provided that any person failing to acknowledge within 6 months of the date of dispatch the receipt of a registered letter or telegram addressed to him at the last address supplied by him to the secretary shall be deemed not to have supplied the secretary with an address under this paragraph.

(5) A person whose name has been removed from a register under this section or section 22, may apply to the board for the restoration of his name to the register, and the board may subject to any conditions it considers appropriate, approve or decline the application, and, if it approves the same, the secretary of the board shall, upon payment of the prescribed fee, restore the name accordingly.

(6) A register may be inspected without payment of any fee, during usual business hours upon application to the secretary of the board.

11. (1) As soon as may be after 1 July of every year, the secretary of each board shall prepare and publish in the *Gazette*, lists of the names, addresses, qualifications and dates of the qualifications of all persons whose names appear on the register maintained by the secretary, on 1 July immediately preceding the publication of such list.

Publication of register and evidence of registration.

(2) The publication of a list under subsection (1) shall be evidence that each person named in such list is registered.

(3) The absence of the name of a person from the list last published under subsection (1) shall be evidence that such person is not registered.

(4) A certificate signed and dated by the secretary of a board, stating that the name of a person has been entered on or removed from a register shall be conclusive evidence that as at the date of the certificate such person is or is not registered.

Persons who are qualified to be registered.

12. (1) Subject to this Ordinance, the following persons are qualified to be registered—

- (a) a person who holds such degree, diploma or other document of an examining body as may be prescribed or who holds such degree, diploma or other document and who has such experience as may be prescribed; or
- (b) a person who holds such other degree, diploma or any other document of any examining body, which together with appropriate experience, may from time to time be recognized by the Council as qualifying the holder thereof to be registered; and in deciding whether or not to so recognize the Council may consult the relevant board; or
- (c) a person who, on the date on which this section commenced to apply to a profession, is practising that profession and who by reason of his education, training, professional experience and skill satisfies the Council, after consultation with the relevant board, that he is a fit person to be registered.

(2) A person who wilfully procures himself or any other person to be registered by making or producing or causing to be made or produced, any false or fraudulent representation or declaration, whether in writing or otherwise commits an offence.

Application for registration.

13. (1) A person claiming to be qualified to be registered may apply in the manner prescribed to the secretary of the relevant board for registration and such application shall be accompanied by such documents, photographs and particulars as may be prescribed.

(2) If after due inquiry the board is satisfied that an applicant for registration is qualified in accordance with section 12 to be registered, or should under section 15(2) be issued with a certificate of provisional registration, the board shall approve the application subject to such conditions as the board may consider appropriate:

Provided that if the board is satisfied that an applicant—

- (a) has been convicted in Hong Kong or elsewhere of an offence punishable with imprisonment;
- (b) has acted in an unprofessional or improper manner; or
- (c) is the subject of an existing order under section 22(1)(i) or (ii),

it may decline the application.

(3) Where an application for registration receives the approval of the board, the name of the applicant shall after payment of the prescribed fee be entered in the register by the secretary of the board and upon such entry, the applicant shall be entitled to represent in connexion with his profession that he is registered and, subject to section 16(1), shall be entitled to practise that profession.

Certificate of registration.

14. (1) When a person has been registered, the secretary of the relevant board shall issue to him a certificate of registration in the prescribed form.

(2) The secretary of the board may amend any particulars contained in a certificate of registration.

(3) A person registered who requires a certified copy of his certificate of registration in order to comply with section 18 shall apply in writing to the secretary of the relevant board stating the address of the premises at which he proposes to practise, and the secretary shall upon payment of the prescribed fee issue to the person registered a certified copy of his certificate of registration with the words "certified copy" endorsed thereon.

(4) The registered address appearing upon the certificate of registration shall be the principal address at which the person registered practises his profession.

(5) Every person registered shall report to the secretary of the relevant board—

- (a) every address at which he practises his profession; and
- (b) any change in his registered address or the change of any other address at which he practises his profession for gain within 2 months of such change and within such period lodge his certificate of registration or certified copy of his certificate of registration, as the case may be, with the secretary for amendment.

(6) Any person registered who fails without reasonable excuse to make a report in accordance with subsection (5)(a) or (b) commits an offence.

(7) If a certificate of registration has been lost, destroyed or defaced, the person registered may apply in writing to the secretary of the relevant board to issue to him a duplicate certificate of registration and the secretary, upon being satisfied as to such loss, destruction or defacement, shall upon payment of the prescribed fee issue to the person registered a duplicate of such certificate with the word "duplicate" endorsed thereon.

(8) If it appears to the secretary of a board that a certificate of registration is defaced or that the photograph thereon is not a reasonable likeness of the person registered to whom the certificate of registration relates the secretary by notice in writing may require the person registered to lodge his certificate of registration with the secretary and to apply for the issue of a duplicate certificate of registration or of another certified copy, as the case may be, and any person registered who on being so required fails without reasonable excuse to do so within 7 days of the service of such notice commits an offence.

15. (1) A person who is practising a profession on the date when this Part commenced to apply to that profession, but who, on that date, is not qualified under section 12 to be registered, may apply, within such period of time from such date as may be determined by the Council, to the secretary of the relevant board for provisional registration.

Provisional registration.

(2) If the board is satisfied that an applicant for provisional registration has acquired substantial knowledge, experience and skill in the practice of his profession the board may dispense with the requirements of section 12(1) and may authorize its secretary, upon payment of the prescribed fee, to issue to such applicant a certificate of provisional registration with the word "provisional" endorsed thereon.

(3) The board may, in exercising the powers conferred by subsection (2), impose on an applicant for provisional registration such conditions as it thinks fit.

(4) Where the board has imposed conditions under subsection (3) it may cancel, amend or add to those conditions.

(5) Any conditions imposed under subsection (3), as the same may have been amended or added to under subsection (4), shall be included in the certificate of provisional registration issued to the person to whom the conditions apply.

(6) Where any person to whom such conditions apply fails to comply with those conditions, the board may cancel that person's provisional registration and direct that his name and particulars be removed from the register.

(7) Section 12(2) and section 13 shall apply to every application for provisional registration under this section.

(8) The names and particulars of persons to whom certificates of provisional registration are issued under this section shall appear in a separate part of the register.

16. (1) A person registered shall not practise a profession in Hong Kong unless he is the holder of a practising certificate which is then in force.

(2) Subject to the payment of the prescribed fee, the secretary of the relevant board, on application made to him for that purpose by a person registered, shall issue to him a certificate to the effect that he is, subject to any conditions and restrictions specified in the certificate, entitled to practise his profession.

(3) Where a practising certificate is issued pursuant to an application made during the course of a year in respect of that year, the certificate shall, subject to subsection (5), be in force from the time of its issue until the end of that year.

(4) Where a practising certificate is issued pursuant to an application made during the course of a year in respect of the following year, the certificate shall, subject to subsection (5), be in force for a period of 12 months commencing on 1 July in that following year.

(5) If at any time during the currency of a practising certificate, the holder of the certificate ceases to be registered, the certificate shall thereupon be deemed cancelled.

(6) A person who is required under this section to be the holder of a practising certificate under this section shall be deemed to have obtained the certificate when he has duly applied to the secretary of the board and paid the prescribed fee for the issue thereof.

(7) A person who is required under this section to be the holder of a practising certificate shall not be entitled to recover any fees, costs or other remuneration on any cause of action relating to the practice of his profession unless he was, at the time when the cause of action arose, the holder of a valid practising certificate.

17. (1) If any person registered contravenes section 16(1) the amount of the fee prescribed for the purposes of section 16(2) shall be recoverable as a civil debt by claim made in the name of the secretary of the relevant board.

(2) In any proceedings under this section a certificate purporting to be under the hand of the secretary of the board, that the person registered, has not paid the fee prescribed for the issue of a practising certificate shall, until the contrary is proved, be evidence of non-payment of the fee.

(3) On recovery from a person of a prescribed fee under this section, the secretary of the relevant board shall, if the person is registered, issue a practising certificate to him.

Registered person not to practise without practising certificate.

Recovery of practising fees.

18. (1) A person registered shall keep displayed in a conspicuous position in any premises in which he practises his profession, his certificate of registration, or a certified copy of such certificate issued under section 14(3). Certificate of registration to be displayed in premises.

(2) A person registered who fails to comply with subsection (1) commits an offence.

(3) A person who displays or causes or permits to be displayed in any premises, a certificate of registration or a certified copy of a certificate of registration bearing his name or photograph, at a time when his name does not appear on the register kept for the profession to which that certificate relates, commits an offence.

PART IV

CONTROL OF PROFESSIONS

19. (1) No person registered shall practise his profession in premises which are considered by the relevant board to be unsuitable for such practice. Premises to be suitable for practice.

(2) A public officer with the authorization of the board, which shall be signed by the Chairman of the board, may at any reasonable time enter and inspect premises used or proposed to be used, for the practice of a profession and shall on demand, produce such authority.

(3) A person wilfully obstructing or resisting a public officer duly authorized by the board, in the inspection of premises used or proposed to be used for the practice of a profession, commits an offence.

20. (1) No company as defined in the Companies Ordinance may carry on the business of practising a profession unless— Companies may carry on professions by way of trade or business. (Cap. 32.)

(a) all persons practising the profession who are employed by the company are registered in respect of that profession;

(b) it has among its objects the practice of that profession; and

(c) within 14 days after 1 July in each year, it transmits to the secretary of the relevant board a statement in the prescribed form containing—

(i) the names and addresses of all persons who are directors or managers of the company;

(ii) the names, addresses, occupations and qualifications of all persons employed by the company in the practice of the profession and the duties performed by such persons; and

(iii) such other particulars as may be prescribed.

(2) A company carrying on the business of practising a profession in contravention of subsection (1), and every director and manager thereof unless he proves that the offence was committed without his knowledge, shall be guilty of an offence.

21. (1) A person who practises a profession without being registered in respect of that profession commits an offence. Professions only to be practised by persons registered.

(2) Any person who employs any other person to practise a profession to which this Ordinance relates when the second-mentioned person is not registered in respect of that profession commits an offence.

(3) Where a person has been convicted of an offence under this section, a magistrate may, on application made on behalf of the Crown, order that all materials and equipment in the possession or under the control of that person and used in the practice of a profession shall be forfeited.

PART V

DISCIPLINE

Disciplinary powers of board.

22. (1) If after due inquiry into any case referred to it by a Preliminary Investigation Committee in accordance with regulations made under section 29 a board is satisfied that a person registered by that board—

- (a) has been convicted in Hong Kong or elsewhere of an offence punishable with imprisonment;
- (b) has acted in an unprofessional or improper manner;
- (c) was not at the time of his registration qualified to be registered;
- (d) has obtained registration by fraud or misrepresentation; or
- (e) has not complied with or is in breach of any condition of his registration (other than a condition under section 15) or has failed to comply with this Ordinance,

the board may—

- (i) order the name of the person registered to be removed from the register;
- (ii) order the name of the person registered to be removed from the register for such period as it thinks fit;
- (iii) order the person registered to be reprimanded; or
- (iv) order that a warning letter in such terms as it considers appropriate be served on the person registered.

(2) Within 1 month after the expiry of the time within which an appeal against an order made by a board under subsection (1) may be made to the Court of Appeal under section 25 or if such appeal has been made, within 1 month after the decision of the Court of Appeal affirming or varying such order, the board—

- (a) shall, in the case of an order made under subsection (1)(i), (ii) or (iii), or the order as so varied, as the case may be, publish the order in the *Gazette* together with an account of the particulars and the nature of the matter to which such order relates; and
- (b) may, in the case of an order made under subsection (1)(iv), or the order as so varied, as the case may be, publish the order in the *Gazette* together with an account of the particulars and the nature of the matter to which such order relates.

(3) In any inquiry held under this section, a board may make such order as it thinks fit for the payment of the costs of its secretary, a complainant, counsel or a solicitor present at the inquiry and the person registered or any one or more of them and any costs awarded may be recovered as a civil debt.

Powers of boards at inquiries.

23. (1) For the purposes of an inquiry under section 13 or 22 or when it otherwise appears desirable to a board that any matter relating to the relevant profession should be inquired into, the board shall subject to subsection (4) have—

- (a) to hear, receive and examine evidence on oath; and
- (b) to summon a person to attend the inquiry to give evidence or produce a document or other thing in his possession and examine him as a witness or require him to produce a document or other thing in his possession.

(2) A summons under subsection (1) shall be in the prescribed form and signed by the secretary of the board.

(3) Subject to subsection (4), a person who—

- (a) being summoned under subsection (1) to attend an inquiry to give evidence or to produce a document or other thing in his possession, refuses or neglects to do so; or
- (b) being examined under subsection (1) as a witness by or before a board, refuses or neglects to answer a question put to him by or with the concurrence of the board, or to produce a document or other thing in his possession when required to do so,

commits an offence.

(4) Notwithstanding subsection (3) a person who appears as a witness before a board shall be entitled to the same privileges in respect of the giving of evidence and the production of a document or other thing as he would be entitled to if appearing as a witness in civil proceedings before the High Court.

(5) A person whose conduct is the subject of an inquiry, or who is implicated or concerned in the subject matter of the inquiry, shall be entitled to be represented by counsel or a solicitor at the inquiry.

(6) A person who—

- (a) behaves in an insulting manner or uses any abusive, threatening or insulting expression to or in the presence of a board; or
- (b) wilfully disrupts the proceedings of a board,

commits an offence.

24. (1) The secretary of a board shall cause a copy of any decision of the board under section 13(2) or of any order made by the board under section 22 to be served forthwith upon the person concerned.

Provisions relating to decisions and orders of boards.

(2) No order of a board under section 22(1) shall take effect while the person to whom the order relates remains entitled to appeal against the decision in accordance with section 25 or while the appeal awaits determination by the Court of Appeal.

25. (1) Any person whose application for registration is declined under section 13(2) or a person registered who is aggrieved by an order made in respect of him under section 22(1) may appeal to the Court of Appeal and the Court of Appeal may thereupon affirm, reverse or vary the decision or order appealed against.

Appeals to Court of Appeal.

(2) The decision of the Court of Appeal shall be final.

(3) The Court of Appeal may make such order for the payment of costs as it considers reasonable.

(4) Subject to subsection (5), the practice in relation to the appeal shall be subject to any rules of court made under the Supreme Court Ordinance. (Cap. 4.)

(5) Notwithstanding subsection (4), the Court of Appeal shall not hear an appeal against a decision of a board under section 13(2) or an

order made under section 22(1) unless notice of the appeal was given within 1 month of the service of a board's decision on the applicant or within 1 month of the service of the order under section 24, as the case may be.

PART VI

GENERAL

Boards may prepare Codes of Practice.

26. (1) A board may prepare and revise Codes of Practice for the relevant profession for the purposes of this Ordinance—

- (a) prescribing standards of conduct and practice for persons practising that profession, for the employers of persons practising that profession and the directors of any company carrying on the business of practising that profession; and
- (b) regulating the activities of persons practising that profession including the activities of such persons in the supervision and control of unqualified persons assisting such persons in the practice of the profession,

and the Codes of Practice may prohibit specified activities.

(2) The secretary of the board shall cause a copy of a Code of Practice and each revision thereof to be served upon each person registered in respect of the profession to which the Code of Practice or revision applies.

(3) A person, who contravenes any Code of Practice prepared or revised under subsection (1) and applicable to his profession, shall be deemed to have acted in an unprofessional or improper manner; but the fact that any matters are not mentioned in a Code of Practice, shall not preclude the board from judging a person to have acted in an unprofessional or improper manner by reference to those matters.

Penalties.

27. (1) A person guilty of an offence against—

- (a) section 12(2), is liable on conviction to a fine of \$5,000 and to imprisonment for 2 years;
- (b) section 14(6) or 14(8), is liable on conviction to a fine of \$500;
- (c) section 18(2) or 18(3), is liable on conviction to a fine of \$1,000;
- (d) section 19(3), is liable on conviction to a fine of \$2,000 and to imprisonment for 6 months;
- (e) section 20(2), is liable on conviction to a fine of \$5,000 and to imprisonment for 6 months;
- (f) section 21(1) or 21(2) is liable on conviction to a fine of \$5,000 and to imprisonment for 6 months;
- (g) section 23(3) or 23(6), is liable on conviction to a fine of \$500 and to imprisonment for 3 months.

Notices.

28. Where any notice or order is required by this Ordinance to be served upon or given to a person by the secretary then it shall be sufficient if it is sent by registered letter addressed to him at his last registered address.

Regulations.

29. (1) The Governor in Council may by regulation provide for—

- (a) the qualifications and experience required by persons to qualify them for registration;

- (b) the additional qualifications and experience required by persons wishing to practise on their own account or as a corporation or in partnership;
- (c) the licensing of premises used by persons to practice professions;
- (d) the supervision and control of unqualified persons who assist registered persons in the practice of a profession;
- (e) the form and number of parts of every register and the mode in which they shall be kept;
- (f) the manner in which applications for registration shall be made;
- (g) the receipt of complaints or information about any registered person or any applicant for registration and the establishment for each profession of a committee to be known as the Preliminary Investigation Committee for that profession to make a preliminary investigation into such complaint or information and to determine whether or not there shall be an inquiry under section 22;
- (h) the prohibition of a member of any Preliminary Investigation Committee who is also a member of any board from attending any meeting of the board whilst it is inquiring under section 22 into a complaint or information, in the preliminary investigation of which he took part;
- (i) the fees to be paid in connexion with matters within the scope of this Ordinance;
- (j) any certificate, document or form required for carrying out the purposes of this Ordinance;
- (k) the duties of the members and the officers of the Council or any board;
- (l) anything that is to be or may be prescribed;
- (m) exempting or providing for the exemption of any specified class of persons from all or any of the provisions of this Ordinance;
- (n) generally carrying into effect the provisions of this Ordinance.

(2) Regulations made under this section may provide—

- (a) that the contravention of any particular regulation shall constitute an offence and may prescribe penalties for any such offence not exceeding a fine of \$5,000 or imprisonment for 1 year or both such fine and such imprisonment; and
- (b) for different fees to be paid by different categories of a profession.

30. (1) Sections 13, 14(1), (2), (3), (4), (7) and (8), 18 and 19 shall not apply to the following persons practising a profession directly connected with and necessary for the discharge or performance of their duties while serving in the appointments specified—

- (a) a person holding a teaching appointment at a university, polytechnic, school or institution approved for the purposes of this section by the Governor;
- (b) a person holding an appointment as a public officer; and
- (c) a person holding an appointment in a subvented voluntary organization approved for the purposes of this section by the Council.

(2) The following persons practising a profession directly connected with and necessary for the discharge or performance of their duties shall while serving in the appointments specified be deemed to be registered but sections 13, 14, 15, 16, 18 and 19 shall not apply to or in relation to them—

Disapplication of certain provisions to certain classes of person.

- (a) a person holding an appointment in Her Majesty's Forces; and
 (b) a person holding an appointment in a ship.
- (3) Subsections (1) and (2) shall not extend to any person specified therein who is practising a profession privately in Hong Kong.

Exemption of
 course of
 training.

31. Nothing in this Ordinance shall operate to prevent the conducting of any course of training by a school, polytechnic, university or institution approved for the purposes of this section by the Governor.

Ordinance not
 to derogate
 from other
 Ordinances.

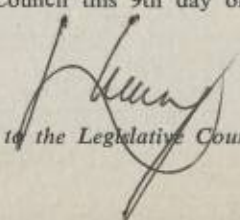
32. This Ordinance shall be in addition to and not in derogation from any other Ordinance that regulates the manner in which a person may practise a profession.

SCHEDULE

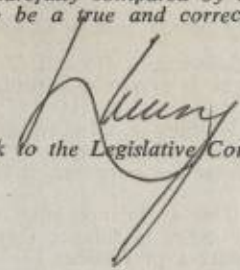
[ss. 1 & 2.]

Item	Profession	Interpretation
1.	Medical Laboratory Scientific Officer Medical Laboratory Technologist Medical Laboratory Technician	A person trained in the practice of processing clinical, medical, legal, public health or veterinary specimens for the sole purpose of making and reporting on analysis or examination in vitro and the processing of all matters for human and animal consumption for the sole purpose of making and reporting on analysis or examination in vitro.
2.	Radiographer	A person trained to operate either— (a) radio-diagnostic, ultra sound and thermographic equipment for the purpose of radiological diagnosis; or (b) radiation therapy equipment for the treatment of diseases; or (c) radionuclear equipment including isotopes.
3.	Physiotherapist	A person trained to assess and treat physical disabilities by means of remedial exercises, manual therapy and mechanical, thermal or electrical energy.
4.	Occupational Therapist	A person trained to assess and treat disabilities caused by diseases or injuries using mental, physical or social activities to enable the disabled to achieve the maximum possible independence in daily life.

Passed by the Hong Kong Legislative Council this 9th day of July 1980.


 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.

No. 43 OF 1980



I assent.

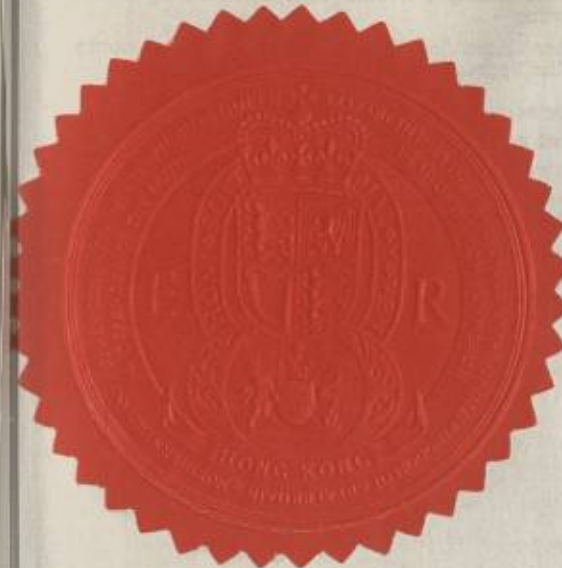
A handwritten signature in black ink, appearing to be 'M. J.', written over the printed name 'Governor'.

Governor.

10 July 1980.

HONG KONG

No. 43 OF 1980



I assent.

Governor.

10 July 1980.

An Ordinance to amend the Apprenticeship 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 Apprenticeship (Amendment) Ordinance 1980 and shall come into operation on a day to be appointed by the Governor by notice in the *Gazette*.

Short title and commencement.

2. The principal Ordinance is amended in Part IV by adding after section 14 the following—

Addition of new section 14A. (Cap. 47.)

"Preference to be given to registered apprentices.

14A. Where the Commissioner makes an attendance order in relation to a registered apprentice, the technical institution specified in the order shall give preference to the registered apprentice, if he has attained the minimum educational requirements for entrance to the course, over other candidates who are not registered apprentices, for positions on the course."

3. Section 17 of the principal Ordinance is amended by deleting subsection (1) and substituting the following—

Amendment of section 17.

"(1) An employer who enters into a contract of apprenticeship that is not required to be registered under section 15(1) or 16(1) may,

if the contract is in a form similar to that provided for in section 8, send the contract at any time to the Commissioner for registration under this Ordinance, and the Commissioner may, subject to subsections (2) and (3), register that contract."

Amendment of section 30.

4. Section 30(2)(d) of the principal Ordinance is amended by inserting after "parties" the following—

"unless the Commissioner is satisfied that a shorter period of notice would be beneficial to the apprentice".

Amendment of section 31.

5. Section 31 of the principal Ordinance is amended—

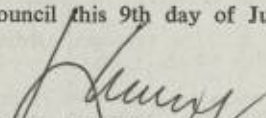
- (a) by being renumbered as subsection (1);
- (b) in subsection (1)(i) by inserting after "trade" the following—
"or in the trade in respect of which the apprentice was registered prior to his disqualification";
- (c) by deleting subsection (1)(ii) and substituting the following—
"(ii) attending the course of instruction at a technical institution specified by the Commissioner in the original attendance order."; and
- (d) by inserting after subsection (1) the following subsection—
"(2) The Commissioner shall give written notice of the disqualification of an apprentice under this section to the technical institution at which the apprentice was attending prior to his disqualification and may send copies of the notice of the disqualification of an apprentice to any other technical institution that provides a course in respect of which the disqualification applies."

Amendment of section 48.

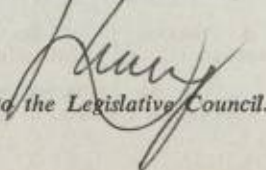
6. Section 48 of the principal Ordinance is amended—

- (a) in paragraph (e) by deleting "and";
- (b) by inserting after paragraph (e) the following paragraph—
"(ea) Part VIIIA (Annual leave with pay);";
- (c) in paragraph (f) by deleting the full stop at the end and substituting a semicolon; and
- (d) by inserting after paragraph (f) the following paragraphs—
"(g) Part IXA (Liability to pay wages of sub-contractor's and nominated sub-contractor's employees); and
(h) Part XIII (Offences and penalties)."

Passed by the Hong Kong Legislative Council this 9th day of July 1980.


Clerk to the Legislative Council.

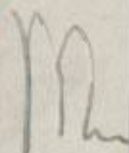
This printed impression has been carefully compared by me with the bill, and is found by me to be a true and correctly printed copy of the said bill.


Clerk to the Legislative Council.

No. 44 OF 1980



I assent


Governor
10 July 1980

his Ordinance, and the Commissioner may, subject to sub-
(2) and (3), register that contract.”.

tion 30(2)(d) of the principal Ordinance is amended by insert-
“arties” the following—

the Commissioner is satisfied that a shorter period of notice
be beneficial to the apprentice”.

tion 31 of the principal Ordinance is amended—

being renumbered as subsection (1);

subsection (1)(i) by inserting after “trade” the following—

“or in the trade in respect of which the apprentice was
registered prior to his disqualification”;

deleting subsection (1)(ii) and substituting the following—

“(ii) attending the course of instruction at a technical in-
stitution specified by the Commissioner in the original
attendance order.”; and

inserting after subsection (1) the following subsection—

“(2) The Commissioner shall give written notice of the
disqualification of an apprentice under this section to the
technical institution at which the apprentice was attending
prior to his disqualification and may send copies of the
notice of the disqualification of an apprentice to any other
technical institution that provides a course in respect of which
the disqualification applies.”.

tion 48 of the principal Ordinance is amended—

paragraph (e) by deleting “and”;

inserting after paragraph (e) the following paragraph—

“(f) Part VIIIA (Annual leave with pay)”.

HONG KONG

No. 44 OF 1980



I assent.

Governor.

10 July 1980.

An Ordinance to amend the Workmen's Compensation Ordinance.

[]

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 Workmen's Compensation (Amendment) Ordinance 1980. Short title and commencement.

(2) This Ordinance shall come into operation on a day to be appointed by the Governor by notice in the *Gazette*, and notices under this section may appoint different dates for different provisions of this Ordinance.

2. The long title to the principal Ordinance is amended by deleting “workmen” and substituting the following—
“employees”. Amendment of long title. (Cap. 282.)

3. Section 2(1) of the principal Ordinance is amended by deleting paragraph (a). Amendment of section 2.

4. Sections 6 and 7 of the principal Ordinance are repealed and replaced by the following— Repeal and replacement of sections 6 and 7.

6. (1) Where death results from the injury, if the employee leaves any dependants wholly dependent on his earnings, the amount of compensation shall be— Compensation in fatal cases.

- (a) in the case of an employee under 40 years of age at the time of the accident, a lump sum equal to 84 months' earnings or \$168,000, whichever is the less;
- (b) in the case of an employee of or over 40 years of age but under 56 years of age at the time of the accident, a lump sum equal to 60 months' earnings or \$168,000, whichever is the less;
- (c) in the case of an employee of or over 56 years of age at the time of the accident, a lump sum equal to 36 months' earnings or \$168,000, whichever is the less.
- (2) The amount of compensation payable under subsection (1) shall in no case be less than \$56,000.

(3) Notwithstanding anything in subsection (1) or (2), where in respect of the same accident compensation has been paid under section 7 or 9, there shall be deducted from the sum payable under subsection (1) any sums so paid as compensation.

(4) Where death results from the injury, if the employee does not leave any dependants wholly dependent on his earnings, but leaves any dependants in part so dependent, the amount of compensation shall be such sum, not exceeding in any case the amount payable under subsections (1), (2) and (3), as may be determined by the Court to be reasonable and proportionate to the injury to the said dependants.

(5) Where death results from the injury, if the employee leaves no dependants, the reasonable expenses of the burial of the deceased employee and the reasonable expenses of medical attendance on the deceased employee, not exceeding in all the sum of \$3,000, shall be paid by the employer.

7. (1) Where permanent total incapacity results from the injury, the amount of compensation shall be—

- (a) in the case of an employee under 40 years of age at the time of the accident, a lump sum equal to 96 months' earnings or \$192,000, whichever is the less;
- (b) in the case of an employee of or over 40 years of age but under 56 years of age at the time of the accident, a lump sum equal to 72 months' earnings or \$192,000, whichever is the less;
- (c) in the case of an employee of or over 56 years of age at the time of the accident, a lump sum equal to 48 months' earnings or \$192,000, whichever is the less.

(2) The amount of compensation payable under subsection (1) shall in no case be less than \$64,000."

Amendment of section 8.

5. Section 8 of the principal Ordinance is amended by deleting subsection (4) and substituting the following—

"(4) The amount of compensation payable under this section shall not exceed \$77,000."

Amendment of heading to Part IIIA.

6. The heading to Part IIIA of the principal Ordinance is amended by deleting "PROSTHESIS" and substituting the following—
"PROSTHESES".

7. Section 36A of the principal Ordinance is amended by deleting the definitions of "registered dentist" and "Medical Assessment Board" and substituting the following—

Amendment of section 36A.

"Board" means the Protheses and Surgical Appliances Board appointed under section 36M(1);

"Director" means the Director of Medical and Health Services;"

8. Section 36B of the principal Ordinance is amended—

Amendment of section 36B.

(a) in subsection (2), by deleting paragraph (c) and substituting the following—

"(c) the prosthesis or surgical appliance so supplied and fitted is—

(i) manufactured or on sale in Hong Kong; and

(ii) certified by the Board under section 36M(4)."; and

(b) in subsection (3), by deleting "of Medical and Health Services".

9. Section 36D of the principal Ordinance is amended—

Amendment of section 36D.

(a) in subsections (1) and (2), by deleting "workman" wherever it occurs and substituting in each case the following—

"Director"; and

(b) in subsection (3), by deleting "a Medical Assessment Board under section 36I(2)" and substituting the following—

"the Board under section 36M(4)".

10. Section 36E of the principal Ordinance is amended—

Amendment of section 36E.

(a) in subsections (1) and (2), by deleting "workman" wherever it occurs and substituting in each case the following—

"Director";

(b) in subsection (1), by deleting "14 days" and substituting the following—

"1 month"; and

(c) in subsection (2), by deleting "of Medical and Health Services".

11. Section 36G of the principal Ordinance is amended by deleting "workman" and substituting the following—

Amendment of section 36G.

"Director".

12. Sections 36I and 36J of the principal Ordinance are repealed and replaced by the following—

Repeal and replacement of sections 36I and 36J.

"Employer's liability to pay for the cost of repair or renewal of prostheses or surgical appliances.

36I. Subject to section 36J, where in respect of an accident occurring on or after the date on which this section comes into operation an employer is liable to pay for the cost of supplying and fitting a prosthesis or surgical appliance to an employee under section 36B, he shall also be liable to pay for the probable cost of the normal repair and renewal of the prosthesis or surgical appliance during a period of 10 years after the date on which the prosthesis or surgical appliance is originally fitted.

Limit of employer's liability to pay under section 36I.

36J. The amount of the cost which the employer is liable to pay under section 36I shall be the total amount assessed by the Board under section 36M(2)(c) and (3) and shall not, in the case of any one employee, exceed an aggregate of \$30,000 in respect of any one accident.

Treatment of
claims under
section 36I.

36K. (1) A claim for payment of the cost which an employer is liable to pay under section 36I shall be treated as a claim for the cost of supplying and fitting a prosthesis or surgical appliance under section 36B, and, subject to subsection (2), sections 36D, 36E, 36F and 36G shall, with the necessary modifications, apply in respect of a claim under section 36I.

(2) An employer may not, in respect of any claim made under section 36I, dispute the necessity for renewal and repair of the prosthesis or surgical appliance.

Payment of
costs from
and into
general
revenue.

36L. (1) Where, in respect of an accident occurring on or after the date on which this section comes into operation, an employer is liable to pay for the cost of—

- (a) supplying and fitting any prosthesis or surgical appliance to an injured employee under section 36B; and
- (b) the normal repair and renewal of such prosthesis or surgical appliance under section 36I,

then, subject to the rights of the Director in respect of the recovery of any amount from the employer under this Part, the cost—

- (i) of the supplying and fitting; and
- (ii) whenever incurred, of the normal repair and renewal,

of such prosthesis or surgical appliance shall be payable out of the general revenue of Hong Kong.

(2) All amounts—

- (a) paid to the Director under section 36E(1); and
- (b) recovered by him under sections 36F(2) and 36G,

shall be paid by him into the general revenue of Hong Kong.

Prostheses
and Surgical
Appliances
Board.

36M. (1) The Director shall appoint a board to be known as the Prostheses and Surgical Appliances Board which shall consist of—

- (a) 2 medical practitioners or registered dentists; and
- (b) the Senior Industrial Health Officer or any Industrial Health Officer.

(2) The functions of the Board shall be—

- (a) to determine whether a prosthesis or surgical appliance required by an injured employee is necessary for him having regard to the nature and extent of his injury and, if so, to determine the cost of supplying and fitting the same;
- (b) in any case where a prosthesis or surgical appliance has already been fitted to an injured employee, to determine whether the prosthesis or surgical appliance is necessary for him having regard to the nature and extent of his injury and, if so, to determine whether the cost of the same is reasonable; and
- (c) in any case to which section 36I applies, to assess the total amount of the probable cost of the normal repair and renewal of any prosthesis or surgical appliance during a period of 10 years after the date of the original fitting of the same.

(3) The Board shall, when assessing the total amount of the probable cost of the normal repair and renewal of a prosthesis or surgical appliance under subsection (2)(c), have regard to—

- (a) the durability of the prosthesis or surgical appliance originally fitted;
 - (b) the probable number of replacements of such prosthesis or surgical appliance required during a period of 10 years after the date of the original fitting; and
 - (c) the cost of the prosthesis or surgical appliance at the time of the assessment.
- (4) If the Board is satisfied—
- (a) in any case to which subsection (2)(a) applies, that the prosthesis or surgical appliance is necessary; or
 - (b) in any case to which subsection (2)(b) applies, that the prosthesis or surgical appliance is necessary and that the cost of supplying and fitting the same is reasonable,

it shall issue a certificate to the Director, stating in respect of such prosthesis or surgical appliance—

- (i) that it is necessary;
- (ii) the cost of the supplying and fitting;
- (iii) that such cost has been determined by the Board under subsection (2)(a) or has been determined by the Board to be reasonable under subsection (2)(b), as the case may be; and
- (iv) where applicable, the Board's assessment of the total amount of the probable cost under subsection (2)(c).

(5) A certificate purporting to be issued under subsection (4) and to be signed by or for the Board shall be admitted in evidence without further proof on its production in the Court and—

- (a) until the contrary is proved, it shall be presumed that the certificate is so issued and signed;
- (b) shall be evidence of the matters stated therein.

36N. The Director shall take such steps as to him seem necessary to ensure—

- (a) the supply and fitting of a prosthesis or surgical appliance to an injured employee under section 36B; and
- (b) the normal repair and renewal of such prosthesis or surgical appliance under section 36I.

Director to
take steps
to ensure
supply, etc.

Application
of provisions
of sections
5, 21, 24, 25,
28, 31 and 47.

36O. For the purposes of this Part, sections 5(2), (3), (4) and (5), 21(1), 24, 25, 28, 31 and 47 shall apply as if an employer's liability to pay for the cost of supplying and fitting a prosthesis or surgical appliance and for the cost of repair and renewal of such prosthesis or surgical appliance were a liability to pay compensation in accordance with the provisions of this Ordinance, and—

- (a) notwithstanding anything in sections 24 and 28, in the application of those sections in respect of any claim for such cost under this Part the rights possessed by or vested in an employee under those sections shall be vested in the Director; and
- (b) notwithstanding anything in section 31, the right of any person to compensation referred to in section 31(2) shall be deemed to include the right of the Director to claim for such cost under this Part."

Addition of new section 48A.

13. The principal Ordinance is amended by adding, after section 48, the following—

"Legislative Council may amend amounts of compensation, etc.

48A. The Legislative Council may by resolution amend the amounts of compensation, cost and expenses specified in sections 6, 7, 8, 36C and 36J."

Replacement of First Schedule.

14. The principal Ordinance is amended by deleting the First Schedule and substituting the following—

"FIRST SCHEDULE [s. 9.]

Item	Injury	Percentage of loss of earning capacity
1.	Loss of two limbs	100
2.	Loss of both hands or of all fingers and both thumbs	
3.	Loss of both feet	
4.	Total loss of sight	
5.	Total paralysis	
6.	Injuries resulting in being permanently bedridden ...	75
7.	Paraplegia	
8.	Any other injury causing permanent total disablement	35
9.	Loss of arm at shoulder	
10.	Ankylosis of shoulder joint—	55
	in optimum position	
	in worst position	70
11.	Loss of arm between elbow and shoulder	
12.	Loss of arm at elbow	65
13.	Ankylosis of the elbow joint—	
	in optimum position	30
	in worst position	
14.	Loss of arm between wrist and elbow	60
15.	Loss of hand at wrist	
16.	Ankylosis of wrist joint—	30
	in optimum position	
	in worst position	40
17.	Loss of four fingers and thumb of one hand	

Item	Injury	Percentage of loss of earning capacity
18.	Loss of four fingers of one hand	40
19.	Loss of thumb—	
	both phalanges	30
	one phalanx	20
	guillotine loss of tip without loss of bone	8
20.	Ankylosis of—	
	interphalangeal joint of the thumb	4
	metacarpophalangeal joint of the thumb	8
	all these 2 joints of the thumb	12
21.	Loss of index finger—	
	three phalanges	14
	two phalanges	10
	one phalanx	7
	guillotine amputation of tip without loss of bone	4
22.	Ankylosis of—	
	distal interphalangeal joint of the index finger ...	2
	proximal interphalangeal joint of the index finger	3
	metacarpophalangeal joint of the index finger ...	4
	all these 3 joints of the index finger	9
23.	Loss of middle finger—	
	three phalanges	11
	two phalanges	8
	one phalanx	5
	guillotine amputation of tip without loss of bone	2
24.	Ankylosis of—	
	distal interphalangeal joint of the middle finger ...	2
	proximal interphalangeal joint of the middle finger	2
	metacarpophalangeal joint of the middle finger ...	3
	all these 3 joints of the middle finger	7
25.	Loss of ring finger—	
	three phalanges	8
	two phalanges	6
	one phalanx	4
	guillotine amputation of tip without loss of bone	2
26.	Ankylosis of—	
	distal interphalangeal joint of ring finger	1
	proximal interphalangeal joint of ring finger	2
	metacarpophalangeal joint of ring finger	2
	all these 3 joints of the ring finger	5
27.	Loss of little finger—	
	three phalanges	7
	two phalanges	5
	one phalanx	4
	guillotine amputation of tip without loss of bone	2

Item	Injury	Percentage of loss of earning capacity
28.	Ankylosis of—	
	distal interphalangeal joint of little finger	1
	proximal interphalangeal joint of little finger	1
	metacarpophalangeal joint of little finger	2
	all these 3 joints of little finger	4
29.	Loss of metacarpals—	
	first (additional)	8
	second, third, fourth or fifth (additional)	3
30.	Loss of leg at hip	80
31.	Loss of leg at or above knee	70
32.	Ankylosis of hip joint—	
	in optimum position	35
	in worst position	50
33.	Loss of leg below knee	50
34.	Ankylosis of knee joint—	
	in optimum position	25
	in worst position	35
35.	Loss of foot	40
36.	Ankylosis of ankle joint—	
	in optimum position	15
	in worst position	25
37.	Loss of toes—	
	all of one foot	20
	great, both phalanges	8
	great, one phalanx	4
	other than great, for each one toe lost	3
38.	Loss of sight of one eye	30
39.	Loss of hearing of one ear	20
40.	Total loss of hearing, both ears	100

Note: (1) Total permanent loss of the use of a member shall be treated as loss of such member.

(2) Where there is loss of two or more parts of the hand, the percentage shall not be more than the loss of the whole hand.

(3) Loss of remaining arm, leg or eye, if one has already been lost, shall be the difference between the compensation for the total incapacity, and compensation already paid or that which would have been paid for the previous loss of limb or eye.

(4) Where there is loss of a thumb and one or more fingers of the same hand, the aggregate percentage shall not be more than that in respect of the loss of four fingers and the thumb of the same hand."

15. (1) The principal Ordinance and the Workmen's Compensation Regulations are amended by deleting—

(a) the expression "Workmen's" wherever it appears and substituting the following—

"Employees'";

(b) the expressions "workman", "workman's" and "a workman" wherever they appear and substituting, respectively therefor, the following—

"employee", "employee's" and "an employee"; and

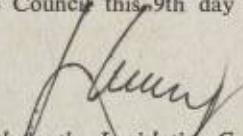
(c) the expression "workmen" wherever it appears and substituting the following—

"employees".

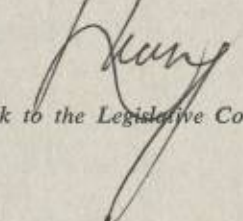
(2) Every reference in an Ordinance or in any document to the Workmen's Compensation Ordinance or the Workmen's Compensation Regulations shall, unless the context otherwise requires, be read as a reference to the Employees' Compensation Ordinance or the Employees' Compensation Regulations, as the case may be.

16. Nothing in this Ordinance shall apply with respect to claims for compensation or other rights, obligations or liabilities in respect of accidents happening before the date of commencement of sections 4, 5, 8 and 12 or of section 14, as the case may be; and without limiting the provisions of the Interpretation and General Clauses Ordinance, the provisions of the Workmen's Compensation Ordinance repealed or deleted by this Ordinance shall continue to apply to such claims, rights, obligations or liabilities as if such provisions had not been repealed or deleted by this Ordinance.

Passed by the Hong Kong Legislative Council this 9th day of July 1980.


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.

"Employee",
etc.,
substituted for
"workman",
etc.
(Cap. 282,
sub. leg.)

Transitional.

(Cap. 1.)
(Cap. 282.)

No. 45 OF 1980



I assen

A handwritten signature in black ink, appearing to be 'M. H. ...', written over the printed name of the Governor.

Governor

10 July 1980

HONG KONG

No. 45 of 1980



I assent.

Governor.

10 July 1980.

An Ordinance to amend the Theft 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 Theft (Amendment) Ordinance 1980 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 18(2) of the principal Ordinance is amended by deleting paragraph (a). Amendment of section 18. (Cap. 210.)

3. The principal Ordinance is amended by adding after section 18 the following new sections— Addition of new sections 18A, 18B and 18C.

*Obtaining services by deception. 1978 c. 31, s. 1.

18A. (1) A person who by any deception (whether or not such deception was the sole or main inducement) dishonestly obtains services from another shall be guilty of an offence and shall be liable on conviction upon indictment to imprisonment for 10 years.

(2) It is an obtaining of services where the other is induced to confer a benefit by doing some act, or causing or permitting some act to be done, on the understanding that the benefit has been or will be paid for.

(3) For the purposes of this section, "deception" has the same meaning as in section 17.

18B. (1) Subject to subsection (2), where a person by any deception (whether or not such deception was the sole or main inducement)—

- (a) dishonestly secures the remission of the whole or part of any existing liability to make a payment, whether his own liability or another's;
- (b) with intent to make default (whether the default is permanent or otherwise) in whole or in part on any existing liability to make a payment, or with intent to let another do so, dishonestly induces the creditor or any person claiming payment on behalf of the creditor to wait for payment (whether or not the due date for payment is deferred) or to forgo payment; or
- (c) dishonestly obtains any exemption from or abatement of liability to make a payment,

he shall be guilty of an offence and shall be liable on conviction upon indictment to imprisonment for 10 years.

(2) For the purposes of this section "liability" means legally enforceable liability; and subsection (1) shall not apply in relation to a liability that has not been accepted or established to pay compensation for a wrongful act or omission.

(3) For the purposes of subsection (1)(b) a person induced to take in payment a cheque or other security for money by way of conditional satisfaction of a pre-existing liability is to be treated not as being paid but as being induced to wait for payment.

(4) For the purposes of subsection (1)(c) "obtains" includes obtaining for another or enabling another to obtain.

(5) For the purposes of this section, "deception" has the same meaning as in section 17.

18C. (1) Subject to subsection (3), a person who, knowing that payment on the spot for any goods supplied or service done is required or expected from him, dishonestly makes off without having paid as required or expected and with intent to avoid payment of the amount due shall be guilty of an offence and shall be liable on conviction upon indictment to imprisonment for 3 years.

(2) For the purposes of this section "payment on the spot" includes payment at the time of collecting goods on which work has been done or in respect of which service has been provided.

(3) Subsection (1) shall not apply where the supply of the goods or the doing of the service is contrary to law, or where the service done is such that payment is not legally enforceable."

Evasion of liability by deception.
1978 c. 31,
s. 2.

Making off without payment.
1978 c. 31,
s. 3.

Amendment of section 20.

4. Section 20(1) of the principal Ordinance is amended by inserting after "18" the following—

“, 18A, 18B”.

5. Section 29(6) of the principal Ordinance is amended—

Amendment of section 29.

(a) by deleting "In any proceedings for obtaining property or pecuniary advantage by deception under section 17 or 18" and substituting the following—

"In any proceedings for an offence under section 17, 18, 18A or 18B"; and

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

"(a) any person who—

(i) obtains property, pecuniary advantage or services by means of a cheque or other bill of exchange which is refused payment upon presentation on or after becoming due shall, until the contrary is proved, be deemed to have obtained the property, pecuniary advantage or services with knowledge that such cheque or other bill of exchange would not be honoured; or

(ii) evades liability to make a payment by means of a cheque or other bill of exchange which is refused payment upon presentation on or after becoming due shall, until the contrary is proved, be deemed to have evaded the liability to make a payment with knowledge that such cheque or other bill of exchange would not be honoured;"

6. The Schedule to the principal Ordinance is amended—

Amendment of Schedule.

(a) by deleting item 1 and substituting the following—

"1. Theft (section 9).

(i) Taking conveyance without authority (section 14).

(ii) Obtaining property by deception (section 17).

(iii) Obtaining pecuniary advantage by deception (section 18).

(iv) Obtaining services by deception (section 18A).

(v) Evasion of liability by deception (section 18B).

(vi) Making off without payment (section 18C).

(vii) False accounting (section 19).

(viii) Handling stolen goods (section 24).

(ix) Going equipped for stealing (section 27).";

(b) by deleting item 7 and substituting the following—

"7. Obtaining property by deception (section 17).

(i) Theft (section 9).

(ii) Obtaining pecuniary advantage by deception (section 18).

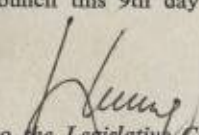
(iii) Obtaining services by deception (section 18A).

(iv) Evasion of liability by deception (section 18B).

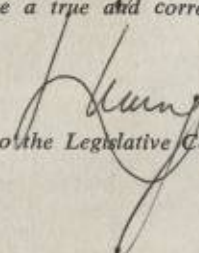
(v) Making off without payment (section 18C).

- (vi) Blackmail (section 23(1)).
 - (vii) Handling stolen goods (section 24).
 - (viii) Going equipped for stealing (section 27).";
- (c) by deleting item 8 and substituting the following—
- "8. Obtaining pecuniary advantage by deception (section 18).
- (i) Theft (section 9).
 - (ii) Obtaining property by deception (section 17).
 - (iii) Evasion of liability by deception (section 18B).
 - (iv) Blackmail (section 23(1)).
 - (v) Handling stolen goods (section 24).";
- (d) by deleting item 9 and substituting the following—
- "9. Evasion of liability by deception (section 18B).
- (i) Theft (section 9).
 - (ii) Obtaining property by deception (section 17).
 - (iii) Obtaining pecuniary advantage by deception (section 18).
 - (iv) Obtaining services by deception (section 18A).
 - (v) Making off without payment (section 18C).
 - (vi) Blackmail (section 23(1))."; and
- (e) by adding the following items—
- "10. Making off without payment (section 18C).
- (i) Theft (section 9).
 - (ii) Obtaining property by deception (section 18).
 - (iii) Obtaining services by deception (section 18A).
 - (iv) Evasion of liability by deception (section 18B).
 - (v) Blackmail (section 23(1)).
11. Blackmail (section 23(1)).
- (i) Obtaining property by deception (section 17).
 - (ii) Obtaining pecuniary advantage by deception (section 18).
 - (iii) Obtaining services by deception (section 18A).
 - (iv) Evasion of liability by deception (section 18B).
 - (v) Making off without payment (section 18C).
 - (vi) Possession of blackmailing letter (section 23(4)).
 - (vii) Common assault."

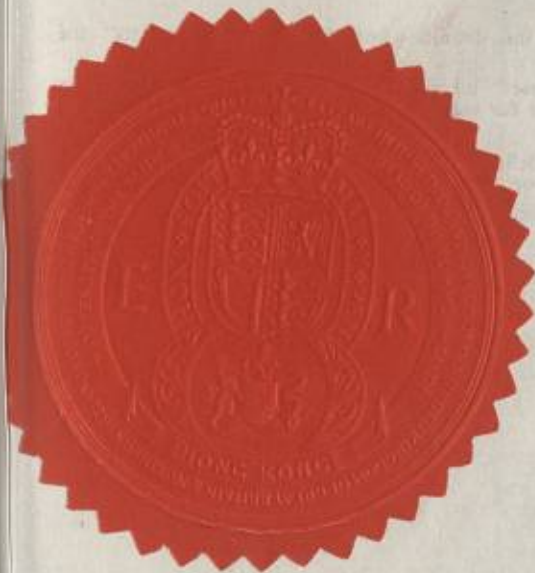
Passed by the Hong Kong Legislative Council this 9th day of July 1980.


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.

No. 46 of 1980

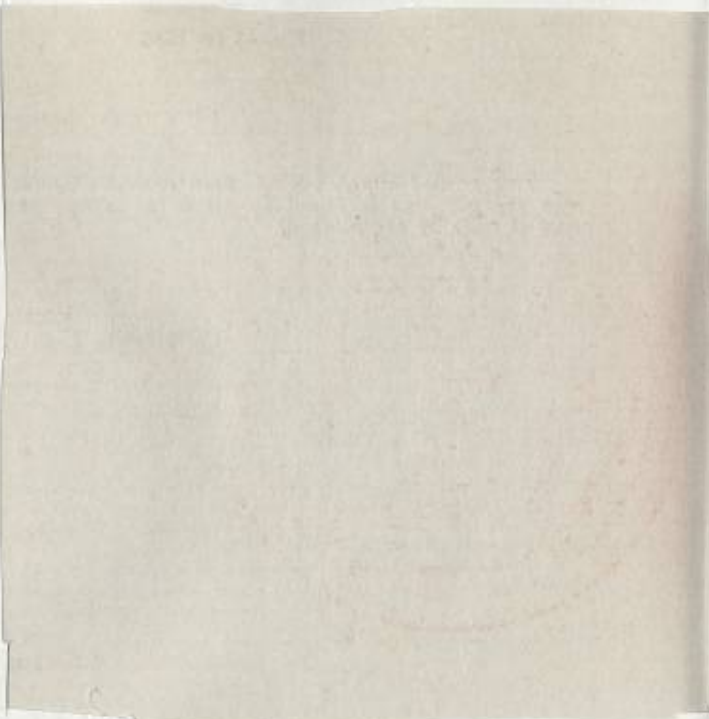


I assent.

A handwritten signature in black ink, appearing to be "M. ...".

Governor.

16-5-80



HONG KONG

No. 46 of 1980



I assent.

Governor.

10 July 1980.

An Ordinance to amend the Dutiable Commodities Ordinance.

[11 July 1980]

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 Dutiable Commodities Short title. (Amendment) Ordinance 1980.
2. Section 6(1) of the principal Ordinance is amended in paragraph (h) by inserting after "duty" the following—
"on duty-paid goods used in the manufacture of dutiable goods or". Amendment of section 6. (Cap. 109.)
3. Section 26(1) of the principal Ordinance is amended—
(a) by inserting after "dutiable goods" the following—
"or any drawback"; Amendment of section 26.
(b) by deleting "and shall be paid" and substituting the following—
"and the duty shall be paid"; and
(c) by inserting after "In assessing the duty" the following—
"or drawback".

Amendment of
section 53.

4. Section 53 of the principal Ordinance is amended—

- (a) in the definition of "adulterated liquor" by inserting after paragraph (c) the following—

"(d) beer mixed with water in course of its manufacture by a person licensed under section 17 to manufacture such beer;"

- (b) by inserting after the definition of "Chinese type spirits" the following—

"“declaration vessel” means a vessel of a type approved by the Director for use in the assessment of duty on worts;”
and

- (c) by deleting the definition of "“liquor”, “alcoholic liquor”, “spirituous liquor” or “spirit”" and substituting the following—

"“liquor”, “alcoholic liquor”, “spirituous liquor” or “spirit” means any liquid which contains more than 1.2% of ethyl alcohol by volume except denatured spirits or spirits contained in pharmaceutical products registered under the Pharmacy and Poisons Ordinance;”.

(Cap. 138.)

Amendment of
section 63.

5. Section 63 of the principal Ordinance is amended—

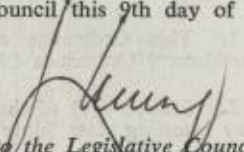
- (a) in subsection (2) by inserting after "on the worts" the following—

“, which shall be collected for that purpose in a declaration vessel;” and

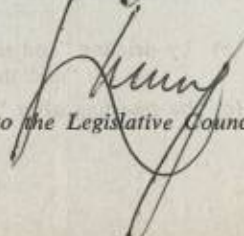
- (b) by inserting after subsection (2) the following—

"(3) Where any worts in respect of which duty is assessed under subsection (2) are treated thereafter by the brewer by any process so that the original gravity, as determined by the Government Chemist for the purposes of this subsection, of the beer produced after that process is completed is less than the relevant degree of original gravity, the duty may be re-assessed according to the quantity of the beer so produced and its original gravity as so determined by the Government Chemist; and for the purposes of this subsection "relevant degree of original gravity" means the lowest degree of original gravity specified in respect of beer in a resolution under section 4 by virtue of which such duty is payable."

Passed by the Hong Kong Legislative Council this 9th day of July 1980.


Clerk to the Legislative Council.

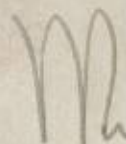
This printed impression has been carefully compared by me with the bill, and is found by me to be a true and correctly printed copy of the said bill.


Clerk to the Legislative Council.

No. 47 OF 1980



I assent



Governor

10 July 1980

An Ordinance to amend the Education Ordinance

the definition of "spirituous liquor" by inserting after paragraph (c) the following—

"(d) beer mixed with water in course of its manufacture by a person licensed under section 17 to manufacture such beer;"

inserting after the definition of "Chinese type spirits" the following—

"“declaration vessel” means a vessel of a type approved by the Director for use in the assessment of duty on worts;" and

deleting the definition of "“liquor”, "alcoholic liquor", "spirituous liquor" or "spirit" and substituting the following—

"“liquor”, "alcoholic liquor", "spirituous liquor" or "spirit" means any liquid which contains more than 1.2% of ethyl alcohol by volume except denatured spirits or spirits contained in pharmaceutical products registered under the Pharmacy and Poisons Ordinance;"

section 63 of the principal Ordinance is amended—

subsection (2) by inserting after "on the worts" the following—

" , which shall be collected for that purpose in a declaration vessel;" and

inserting after subsection (2) the following—

"(3) Where any worts in respect of which duty is assessed under subsection (2) are treated thereafter by the brewer by any process so that the original gravity, as determined by the Government Chemist for the purposes of this subsection, of the beer produced after that process is completed is less than the relevant degree of original gravity, the duty may be reassessed according to the quantity of the beer so produced

HONG KONG

No. 47 of 1980



I assent.

Governor.

10 July 1980.

An Ordinance to amend the Education Ordinance.

[11 July 1980]

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 Education (Amendment) Ordinance 1980.

2. Section 83 of the principal Ordinance is amended—

(a) in subsection (1)(i), by deleting "close" and substituting the following—

"suspend the operation of the school in";

(b) in subsection (2)(a), by deleting "close" and substituting the following—

"suspend the operation of the school in"; and

(c) in subsection (6), by deleting paragraph (a) and substituting the following—

"(a) any premises or any part of any premises in which the operation of a school has been suspended under subsection (1) or (2);

(aa) any premises or any part of any premises which have been closed under subsection (3) or (4); or".

Amendment of
section 83.
(Cap. 279.)

Amendment of section 84.

3. Section 84(1) of the principal Ordinance is amended by adding after paragraph (s) the following—

“(sa) the approval by the Director of any scheme of fee remission, the remission of the whole or any part of inclusive fees and the persons who may grant such remission;”.

Repeal of Part X.

4. Part X of the principal Ordinance is repealed.

Passed by the Hong Kong Legislative Council this 9th day of July 1980.

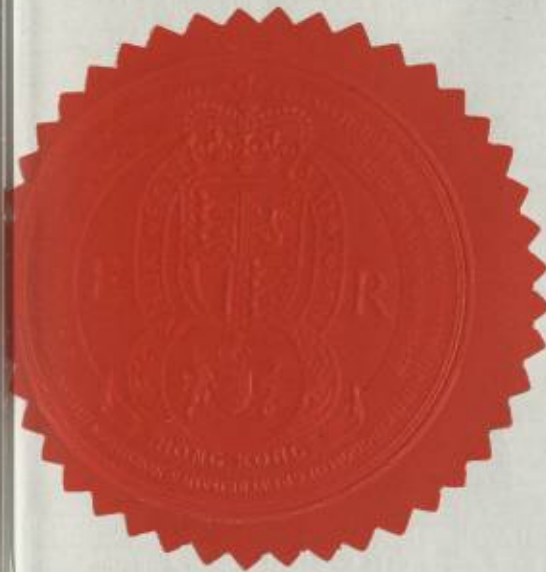


Clerk to the Legislative Council.

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.

No. 48 OF 1980



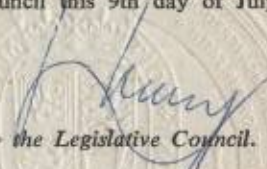
I assent.

Jack
Acting Govern


approval by the Director of any scheme of fee remission, mission of the whole or any part of inclusive fees and the s who may grant such remission;".

C of the principal Ordinance is repealed.

the Hong Kong Legislative Council this 9th day of July


Clerk to the Legislative Council.


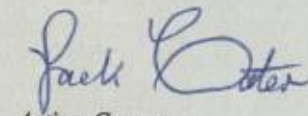
printed impression has been carefully compared by me bill, and is found by me to be a true and correctly copy of the said bill.


Clerk to the Legislative Council.

HONG KONG

No. 48 OF 1980

I assent.



Acting Governor.

24 July 1980.

An Ordinance to amend the Inland Revenue Ordinance.

[25 July 1980]

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. 3) Ordinance 1980. Short title and commencement.

(2) Section 2 shall apply to the year of assessment commencing on 1 April 1980 and to subsequent years of assessment.

(3) Sections 3 and 4 shall apply to the year of assessment commencing on 1 April 1979 and to subsequent years of assessment.

2. Section 28(1) of the principal Ordinance is amended in the proviso thereto— Amendment of section 28. (Cap. 112.)

(a) in paragraph (e) by deleting the full stop after "Ordinance" and substituting a semicolon; and

(b) by inserting after paragraph (e) the following—

(Cap. 119.) *"(f) any interest paid or payable in respect of a loan made by a credit union registered under the Credit Unions Ordinance to a member thereof."*

Amendment of
section 42B.

3. Section 42B(1) of the principal Ordinance is amended—

- (a) in paragraph (a) by deleting "\$10,000" and substituting the following—
"\$12,500";
- (b) in paragraph (aa) by deleting "10 per cent" and substituting the following—
"the percentage specified in Part 1 of the Fourth Schedule";
- (c) in paragraph (b) by deleting "\$10,000" and substituting the following—
"\$12,500";
- (d) in paragraph (bb) by deleting "10 per cent" and substituting the following—
"the percentage specified in Part 2 of the Fourth Schedule";
- (e) in paragraph (c)—
- (i) by deleting "\$4,000" and substituting the following—
"\$5,000";
 - (ii) by deleting "\$3,000" and substituting the following—
"\$4,000";
 - (iii) by deleting "\$2,000" and substituting the following—
"\$3,000";
 - (iv) by deleting "\$1,000" and substituting the following—
"\$2,000";
 - (v) by deleting "\$500" and substituting the following—
"\$1,000"; and
 - (vi) in the proviso by deleting "\$13,500" and substituting the following—
"\$21,000"; and
- (f) in paragraph (d) by deleting "\$4,000" and substituting the following—
"\$5,000".

Addition of
new Fourth
Schedule.

4. The principal Ordinance is amended by adding after the Third Schedule the following—

"FOURTH SCHEDULE [s. 42B.]

PART 1

Percentage reduction specified for the purposes of s. 42B(1)(aa)—

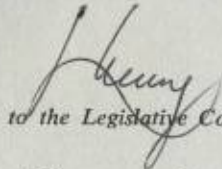
For the year of assessment 1979/80 and subsequent years of
assessment nil

PART 2


Percentage reduction specified for the purposes of s. 42B(1)(bb)—

For the year of assessment 1979/80 and subsequent years of
assessment nil".

Passed by the Hong Kong Legislative Council this 23rd day of July 1980.


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.

No. 49 of 1980




I assent.

Prathap
Acting Govern

HONG KONG

No. 49 OF 1980

I assent.


Paul Oates
Acting Governor.

24 July 1980.

An Ordinance to amend the Coroners Ordinance and to make a consequential amendment to the Judicial Service Commission Ordinance.

[25 July 1980]

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 Coroners (Amendment) Ordinance 1980. Short title.

2. Section 2 of the principal Ordinance is amended—

Amendment of
section 2.
(Cap. 14.)

(a) in the definition of "coroner" by deleting "magistrate" and substituting the following—

"coroner"; and

(b) in the definition of "official custody" by inserting after paragraph (a) the following—

"(aa) in the custody of an officer of the Independent Commission Against Corruption or other officer having statutory powers of arrest or detention; or".

3. Section 3 of the principal Ordinance is amended by deleting subsection (1) and substituting the following—

Amendment of
section 3.

"(1) The Governor may appoint such number of coroners as he considers necessary.

(1A) No person shall be appointed to be a coroner unless he is qualified to practise as a barrister, solicitor or advocate in a court in Hong Kong, England, Scotland, Northern Ireland, or some other part of the Commonwealth, or the Republic of Ireland, having unlimited jurisdiction either in civil or criminal matters."

Amendment of section 6.

4. Section 6(5) of the principal Ordinance is amended by deleting "forthwith" and substituting the following—

"upon the request of the Attorney General".

Amendment of section 11.

5. Section 11 of the principal Ordinance is amended by deleting subsection (4) and substituting the following—

"(4) Any juror who, having been served with a summons in accordance with this section fails, without reasonable excuse, to attend an inquiry pursuant to such summons or at any adjournment of an inquiry shall be guilty of an offence and shall be liable to a fine of \$3,000."

Addition of new sections 12A and 12B.

6. The principal Ordinance is amended by adding after section 12 the following—

"Discharge of jurors.

12A. (1) A coroner may at any time during an inquiry discharge a juror—

- (a) where, in the interests of justice, it appears to the coroner expedient to do so; or
- (b) in the interests of the juror.

(2) In the event of the death or discharge by a coroner under subsection (1) of a juror during an inquiry, the inquiry shall be proceeded with in a like manner as if the full number of jurors had continued on the jury.

(3) Where a member of a jury is discharged by a coroner under subsection (1) or dies—

- (a) subject to paragraph (b), the jury shall be considered as remaining properly constituted for all the purposes of the inquiry; and
- (b) if the coroner considers it in the interests of justice to do so, he may discharge the remaining jurors and order a fresh inquiry to be held.

Majority verdicts.

12B. (1) In the event of any of the jurors, after reasonable consultation, dissenting from the residue, the verdict of a majority shall be taken to be the verdict of the jury.

(2) If in any inquiry it seems for any cause to be desirable the coroner may direct the jury to consider their verdict further."

Amendment of section 19.

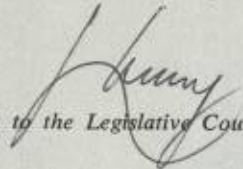
7. Section 19 of the principal Ordinance is amended by deleting "As soon as practicable after the conclusion of an inquiry" and substituting the following—

"If, after the conclusion of an inquiry, the Attorney General so requests,".

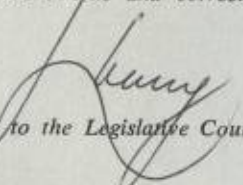
8. The First Schedule to the Judicial Service Commission Ordinance is amended by inserting after "District Judge" the following—
"Coroner".

Amendment of First Schedule to Judicial Service Commission Ordinance. (Cap. 92.)

Passed by the Hong Kong Legislative Council this 23rd day of July 1980.


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.

No. 50 of 1980



I assent.

Jack

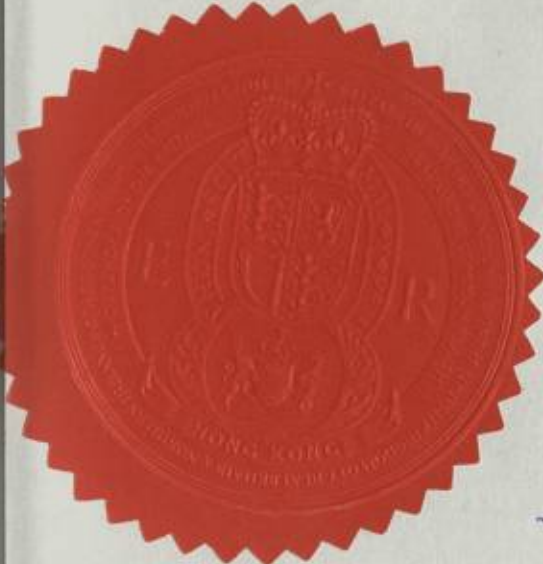
Acting Govern

24 July 1980

HONG KONG

No. 50 OF 1980

I assent.



Jack Cater

Acting Governor.

24 July 1980.

An Ordinance to amend the Pharmacy and Poisons 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 Pharmacy and Poisons (Amendment) Ordinance 1980 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 2(1) of the principal Ordinance is amended— Amendment of section 2.

(a) by inserting after the definition of "sale by way of wholesale dealing" the following definition— (Cap. 138.)

"sell" includes offer or expose for sale, and "seller" has the corresponding meaning;"

(b) in the definition of "Secretary" by deleting the full stop and substituting a semicolon; and

(c) by inserting after the definition of "Secretary" the following definition—

"Tribunal" has the meaning assigned to it by section 30."

Addition of new section 4A. 3. The principal Ordinance is amended by adding after section 4 the following—

"Power of Board to establish executive committees.

4A. (1) The Board may establish such number of executive committees as it may deem fit for the purpose of performing such functions relating to—

- (a) the registration, licensing or certification under this Ordinance of persons, poisons or pharmaceutical products; or
- (b) the entering of the names of persons on the list kept under section 25 of persons entitled to conduct the retail sale of poisons included in Part II of the Poisons List,

as may be prescribed in respect of any such committee by regulations made under section 29.

(2) A committee established under this section shall consist of—

- (a) such member of the Board as the Board may appoint to be chairman of the committee; and
- (b) such other persons, whether members of the Board or not, as the Board may appoint to be members thereof,

and any person so appointed shall hold office on such terms and for such period as the Board may determine.

(3) A member of a committee established under this section may resign his office at any time by notice in writing addressed to the Chairman of the Board.

(4) The procedure of every committee established under this section shall be such as the Board may determine.

(5) The establishment of a committee under this section shall be notified by the Board in the *Gazette*, and such notice shall specify the purpose for which the committee has been established.

(6) The Board may at any time vary, modify or extend the purpose for which any committee has been established under this section and shall notify any such variation, modification or extension in the *Gazette*; and references in this Ordinance to the purpose for which any such committee has been so established shall be construed as references to such purpose as so varied, modified or extended.

(7) A committee established under this section may be dissolved by the Board at any time and, without prejudice to anything already done by the committee, such dissolution shall be notified by the Board by notice in the *Gazette* and shall take effect on the date of publication of the notice.

(8) Where any regulations made under section 29 provide for the performance by a committee established under this section of any functions referred to in subsection (1) and such committee has not been so established at the commencement of the regulations or is dissolved under this section, the regulations shall have effect, until such committee has been so established or, as the case may be, such functions are vested under this Ordinance in another committee established under this section, as if for references to

such committee there were substituted references to the Board.

(50 of 1980.) (9) A committee existing at the commencement of the Pharmacy and Poisons (Amendment) Ordinance 1980 which was established prior to the commencement of that Ordinance by regulations made under section 29 for the purpose of performing any functions referred to in subsection (1) shall be deemed to be a committee established by the Board under this section, and this section shall apply accordingly in relation to such committee."

4. Section 25 of the principal Ordinance is amended—

(a) in subsection (1) by inserting after "those premises" the following—
"and whose application is granted";

(b) in subsection (4) by deleting "The Board may direct the Secretary to refuse the application of any person if it is of the opinion" and substituting the following—

"Without prejudice to subsection (3), an application by any person under subsection (1) may be refused if it appears";

(c) by deleting subsection (5) and substituting the following—

"(5) Any person aggrieved by a direction of the Board under subsection (3) may, in the prescribed manner, appeal against such decision to the Tribunal."

Amendment of section 25.

5. Section 28(1) of the principal Ordinance is amended by deleting "Nothing" and substituting the following—

"Except as provided by regulations, nothing".

Amendment of section 28.

6. The principal Ordinance is amended by adding after section 28 the following—

"Restriction on import and export of pharmaceutical products.

28A. (1) No person shall carry on business as an importer or exporter of pharmaceutical products unless he is registered under this section.

(2) Applications for registration or renewal of registration under this section shall be made in the prescribed manner and shall be accompanied by the prescribed fee.

(3) The Board shall cause a register to be kept in which shall be entered such particulars as the Board may direct in respect of any person whose application for registration under this section is granted or renewed.

(4) An application by any person for registration or renewal of registration under this section may be refused if it appears that, by reason of the inadequacy of the storage facilities used by such person for the storage of pharmaceutical products to be imported or exported by him, it would not be in the public interest to grant the application.

(5) Registration under this section shall be valid for the period beginning on the date of registration and expiring on 30 June next thereafter, and may be renewed within 1 month prior to the expiry of that period.

(6) Any person who contravenes subsection (1) shall be guilty of an offence.

Addition of new section 28A.

- (7) Nothing in this section shall—
- (a) apply to any person licensed under this Ordinance as a wholesale dealer in poisons;
 - (b) operate so as to prohibit any person who was carrying on business as an importer or exporter of pharmaceutical products prior to the commencement of the Pharmacy and Poisons (Amendment) Ordinance 1980 from continuing to carry on such business until the expiration of a period of 6 months after the commencement of that Ordinance.”.

(50 of 1980.)

Amendment of section 29.

7. Section 29(1) of the principal Ordinance is amended—

- (a) by inserting after paragraph (g) the following—
 - “(ga) regulating the making and determination of applications under section 25(1) in respect of the entering of names on the list kept under that section and providing for appeals against refusals of such applications;”;
- (b) by deleting paragraph (h) and substituting the following—
 - “(h) providing for the licensing of wholesale dealers in poisons and for appeals against any refusal, revocation or suspension of a licence for wholesale dealers in poisons under such regulations;”;
- (c) by deleting paragraph (j) and substituting the following—
 - “(j) providing for the licensing of manufacturers and for appeals against any refusal, revocation or suspension of a licence for manufacturers under such regulations;”;
- (d) by deleting paragraph (q) and substituting the following—
 - “(q) providing for the registration of pharmaceutical products manufactured in or imported into Hong Kong and for the payment of fees in respect thereof, and for appeals against any refusal, revocation or suspension of such registration under such regulations;
 - (qa) providing for the provisional registration of pharmaceutical products and the conduct of clinical trials on human beings and medicinal tests on animals, and for the issue of certificates and duplicate certificates and the payment of fees in respect thereof;
 - (qb) providing for the registration of persons carrying on business as importers or exporters of pharmaceutical products and for the payment of fees in respect thereof, and for appeals against any refusal, revocation or suspension of such registration under such regulations;”.

8. The principal Ordinance is amended by adding after section 29 the following—

“Pharmacy and Poisons Appeal Tribunal.

30. (1) There shall be a Pharmacy and Poisons Appeal Tribunal (in this Ordinance referred to as “the Tribunal”) with jurisdiction to hear and determine—

- (a) any appeal against a direction of the Board under section 25(3);
- (b) any appeal against—
 - (i) a decision of a committee of the Board in respect of which provision authorizing such appeal is made in regulations under section 29; or

(ii) a decision of the Board in the performance by the Board under section 4A(8) of any function of a committee of the Board which, if made by the committee in exercise of such functions, would be a decision to which sub-paragraph (i) applies.

(2) The Tribunal shall consist of—

- (a) the following persons appointed by the Governor to be members thereof—
 - (i) a legally qualified person who shall be the chairman of the Tribunal;
 - (ii) a registered medical practitioner;
 - (iii) a registered pharmacist;
 - (iv) a person qualified in pharmacology;
- (b) such person from the panel referred to in subsection (3)(a) as the Director may nominate from time to time to act as a member representing pharmacists' associations;
- (c) such person from the panel referred to in subsection (3)(b) as the Director may nominate from time to time to act as a member representing the pharmaceutical industry; and
- (d) such person from the panel referred to in subsection (3)(c) as the Director may nominate from time to time to act as a member representing the retail pharmaceutical trade.

(3) For the purposes of subsection (2)(b), (c) and (d), the Governor may appoint—

- (a) a panel consisting of persons nominated by pharmacists' associations;
- (b) a panel consisting of persons nominated by pharmaceutical industry associations; and
- (c) a panel consisting of persons nominated by the retail pharmaceutical trade associations,

and may at any time terminate any such appointment or make any alternative or additional appointment as he may deem fit.

(4) A person appointed to be a member of the Tribunal under subsection (2)(a) shall hold office for such period not exceeding 3 years as the Governor may determine, and may resign at any time by notice in writing addressed to the Governor.

(5) A person nominated by the Director to act as a member of the Tribunal under subsection (2)(b), (c) or (d) shall hold such office during any period for which he is so nominated to act, and such person may resign from the panel of which he is a member at any time by notice in writing addressed to the Governor.

(6) If the chairman of the Tribunal is unable to attend at the hearing of any appeal, such other member of the Tribunal appointed under subsection (2)(a) as the Director may designate to act as chairman shall preside at the hearing.

(7) The Tribunal may act notwithstanding any vacancy in its membership and, for the purpose of hearing and

determining any appeal under this section, the Tribunal shall be duly constituted if it consists of the chairman (or the member designated under subsection (6) to act as chairman) and not less than 2 other members sitting together throughout the hearing and determination.

(8) The Tribunal may examine any person as a witness on oath or otherwise, and may summon any person to attend and give evidence or to produce any document relating to any appeal before the Tribunal, as the Tribunal may deem necessary for the determination of the appeal.

(9) In determining any appeal under this section, the Tribunal may dismiss the appeal or allow the appeal wholly or in part, and may, subject to regulations made under subsection (10), in either case give such reasons for its decision as it may deem fit.

(10) The Governor may make regulations—

- (a) regulating appeals under this section and the practice and procedure of the Tribunal;
- (b) prescribing fees in respect of such appeals and matters connected therewith.

(11) In this section "the Director" means the Director of Medical and Health Services.

Right of
appeal to High
Court.

30A. Any person whose appeal is dismissed or allowed in part only by the Tribunal under section 30 may, not later than 28 days after the decision of the Tribunal, appeal to the High Court against that decision, and the decision of the High Court shall be final."

Amendment of
section 32.

9. Section 32(b) of the principal Ordinance is amended by inserting after "exported" the following—

"by a person registered as an exporter of pharmaceutical products under section 28A or licensed under this Ordinance as a wholesale dealer in poisons".

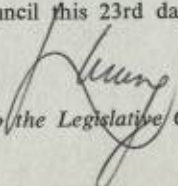
Saving and
transitional.

10. (1) Any licence, certificate or authority granted or any registration made under the principal Ordinance and in force at the commencement of this Ordinance shall be deemed to have been granted or made under the principal Ordinance as amended by this Ordinance and shall have effect accordingly.

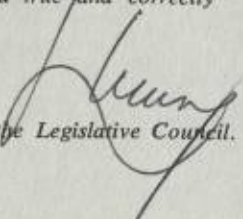
(2) Any application for any licence, certificate or registration under the principal Ordinance which is pending at the commencement of this Ordinance may be continued and disposed of after such commencement as if it had been made under the principal Ordinance as amended by this Ordinance.

(3) Any appeal to the High Court under the principal Ordinance which is pending at the commencement of this Ordinance may be continued and disposed of after such commencement as if this Ordinance had not been enacted.

Passed by the Hong Kong Legislative Council this 23rd day of July 1980.


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.

No. 51 of 1980



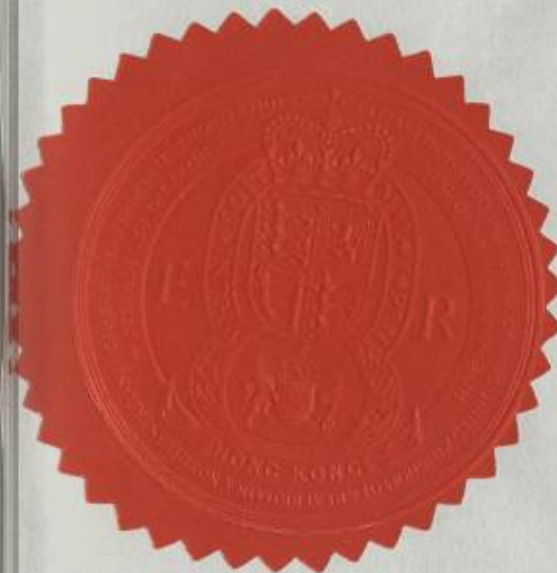
I assent.

Pack K
Acting Govern

24 July 1980

HONG KONG

No. 51 of 1980



I assent.

Jack Oates
Acting Governor.

24 July 1980.

An Ordinance to establish a scheme for compensating persons or their dependants in respect of incapacity or death resulting from pneumoconiosis and for purposes connected therewith.

[]

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

PART I

PRELIMINARY

1. (1) This Ordinance may be cited as the Pneumoconiosis (Compensation) Ordinance 1980. Short title and commencement

(2) This Ordinance shall come into operation on a day to be appointed by the Governor by notice in the *Gazette* and the notices under this section may appoint different dates for different provisions of this Ordinance.

2. (1) In this Ordinance, unless the context otherwise requires— Interpretation.
“Board” means the Pneumoconiosis Compensation Fund Board established under section 25;
“Commissioner” means the Commissioner for Labour;
“compensation” means compensation as provided by this Ordinance;

"construction works" has the meaning assigned to it in section 2(2) of the Industrial Training (Construction Industry) Ordinance;

"contractor" has the meaning assigned to it in section 2(1) of the Industrial Training (Construction Industry) Ordinance;

"Court" means the District Court;

"date of incapacity" means—

(a) in the case of temporary incapacity, the date specified in a medical certificate issued under section 10(2) as the date on which the temporary incapacity commenced;

(b) in the case of permanent incapacity, the date specified in a certificate issued under section 24(6) or (8) as the date on which the permanent incapacity commenced;

"dependants" means those members of the family of a person who were wholly or in part dependent upon his earnings at the time of his death, or would but for the incapacity have been so dependent, and, where the person, being the parent or grandparent of an illegitimate child, leaves such child so dependent upon his earnings, or being an illegitimate child, leaves a parent or grandparent so dependent upon his earnings, shall include such an illegitimate child or parent or grandparent respectively;

Provided that a person shall not be deemed to be a partial dependant of another person unless he was dependent partially on contributions from that other person for the provision of the ordinary necessities of life suitable for persons in his class and position;

"earnings" include any remuneration or profit derived from an employment, and for the purposes of this Ordinance earnings and the amount of earnings shall be calculated or estimated in such manner and on such basis as may be prescribed;

"employer" includes Her Majesty in Her Government of Hong Kong and any body of persons corporate or incorporate;

"employment" includes any self-employment in any trade, business or profession;

"financial year" means the period fixed by the Board under section 29;

"Fund" means the Pneumoconiosis Compensation Fund established by section 27;

"hospital" means any hospital registered under the Hospitals, Nursing Homes and Maternity Homes Registration Ordinance or maintained by the Crown;

"incapacity" means incapacity resulting from pneumoconiosis;

"levy" means the levy imposed under section 35;

"medical expenses" means all or any of the following expenses incurred in respect of the medical treatment of a person—

- (a) the fees of a medical practitioner;
- (b) the fees for any surgical or therapeutic treatment;
- (c) the cost of nursing attendance;
- (d) the cost of hospital accommodation as an in-patient;
- (e) the cost of medicines, curative materials and medical dressings;

"medical treatment", in relation to a person who has contracted pneumoconiosis, means medical treatment of any kind whatsoever given to the person by, or under the supervision of, a medical practitioner, whether as an in-patient or otherwise;

"member of the family" means—

- (a) a wife, husband, father, mother, grandfather, grandmother, step-father, stepmother, son, daughter, grandson, granddaughter, step-

son, stepdaughter, brother, sister, half-brother, half-sister, daughter-in-law or sister-in-law and any such person is included whether the relationship is created by blood or by any adoption recognized as valid by the law of Hong Kong; and

- (b) any other person who at the date of incapacity resides with the incapacitated person as a member of his household, including a woman who, at such date was living with the person as his wife;

"partial incapacity" means, where the incapacity is of a temporary nature, such incapacity as reduces the earning capacity of a person in any employment in which he was engaged at the time he is found to have contracted pneumoconiosis, and, where the incapacity is of a permanent nature, such incapacity as reduces his earning capacity in any employment which he was capable of undertaking at that time;

"pneumoconiosis" means—

- (a) fibrosis of the lungs due to dust of free silica or dust containing free silica, whether or not such disease is accompanied by tuberculosis of the lungs, or any other disease of the pulmonary or respiratory organs caused by exposure to such dust; or
- (b) fibrosis of the lungs due to dust of asbestos or dust containing asbestos, whether or not such disease is accompanied by tuberculosis of the lungs, or any other disease caused by exposure to such dust;

"Pneumoconiosis Medical Board" means the Pneumoconiosis Medical Board appointed under section 22;

"quarry operator" means—

- (a) in relation to a Government quarry, the person managing or in charge of that quarry;
- (b) in relation to a quarry other than a Government quarry, the person operating that quarry;
- (c) in relation to a stone crushing plant, the person operating that stone crushing plant;

"total incapacity" means such incapacity whether of a temporary or permanent nature as incapacitates a person from any employment which he was capable of undertaking at the time he is found to have contracted pneumoconiosis;

"value" means in relation to construction works and to any quarry, the value of the construction works and the quarry products assessed under or in accordance with regulations made under section 47.

(2) Save where the context otherwise requires, any reference to a person who contracts pneumoconiosis shall, where the person is dead, include a reference to his legal personal representative, or to his dependants or any of them or the Official Administrator or such other officer as the Governor may appoint to act on behalf of the dependants of the person.

3. This Ordinance shall be binding on the Crown.

Application to the Crown.

PART II COMPENSATION

4. (1) Subject to subsections (2), (3) and (4) and except where otherwise provided, compensation shall be payable to any person resident in Hong Kong for 5 years or more (whether before or after the commencement of this Part) in respect of any total or partial incapacity, whether of a permanent or temporary nature, resulting from pneumoconiosis; and where any such person dies as a result of pneumoconiosis, compensation shall be payable to his dependants.

Entitlement to compensation.

(2) Compensation shall be payable under subsection (1) only where the date of incapacity or date of death occurs on or after the date of commencement of this Part.

(3) No compensation shall be payable—

- (a) where *ex gratia* compensation has been or will be paid by the Government for any incapacity or death resulting from pneumoconiosis diagnosed before the date of commencement of this Part;
- (b) to a person in respect of incapacity, other than incapacity of a permanent nature, which does not incapacitate the person for a period exceeding 3 consecutive days from earning full wages or salary at the work at which he was employed;
- (c) to a person in the service of or formerly in the service of the Government who, in consequence of incapacity resulting from pneumoconiosis contracted in the discharge of his duties, is paid pension or gratuity which would not be payable if such incapacity were contracted otherwise than in the discharge of his duties, or in the case of his death, where such pension or gratuity is paid to his dependants, under any Ordinance or regulation providing for the grant of such pension or gratuity;
- (d) to members of the armed forces of the Crown;
- (e) to a person in the civil employment of Her Majesty, otherwise than in Her Government of Hong Kong, who has been engaged in a place outside Hong Kong.

(4) Notwithstanding subsection (1), compensation shall be payable to a person or his dependants, as the case may be, who, prior to the date of incapacity or death, was resident in Hong Kong for less than 5 years if such person or any of his dependants proves to the satisfaction of the Commissioner that he contracted pneumoconiosis in Hong Kong which resulted in the incapacity or death.

(5) For the purposes of subsection (1), residence in Hong Kong for 5 years or more may be proved—

- (a) by the production to the Commissioner of the identity card issued under the Registration of Persons Ordinance to the person in question; and
- (b) by the production of such other evidence as may be required by the Commissioner.

5. (1) Subject to subsections (2) and (3) and the First Schedule, where a person dies as a result of pneumoconiosis and leaves any dependants wholly dependent on his earnings, the amount of compensation shall be in accordance with Part I of the First Schedule.

(2) Subject to subsection (3), where a person, who has been paid compensation on first assessment in accordance with section 9(1)(a), dies as a result of pneumoconiosis before he is paid compensation on second assessment in accordance with that section and leaves any dependants wholly dependent on his earnings, the amount of compensation shall be a sum which would have been paid in accordance with subsection (1) had he died on the date of such first assessment less the amount of compensation paid on the first assessment and increased by such amount as the Commissioner considers appropriate to ensure that the amount of compensation has retained its value in relation to the general level of prices prevailing in Hong Kong.

(3) Where compensation has been paid to a person referred to in subsection (1) or (2) under section 6 there shall be deducted from the sum payable under subsection (1) or (2) any sums so paid as compensation.

(Cap. 177.)

Compensation
for death.
First
Schedule.
First
Schedule,
Part I.

(4) Where a person referred to in subsection (1) or (2) does not leave any dependants wholly dependent on his earnings, but leaves any dependants in part so dependent, the amount of compensation shall be such sum, not exceeding in any case the amount payable under subsection (1) or (2), as may be assessed by the Commissioner to be reasonable having regard to the extent of the dependence of such dependants.

(5) Where a person referred to in subsection (1) or (2) does not leave any dependants, the Board shall pay the reasonable expenses of the burial of the deceased person in accordance with Part I of the First Schedule.

First
Schedule,
Part I.

6. (1) Where permanent total incapacity results from pneumoconiosis, the amount of compensation shall be in accordance with Part II of the First Schedule.

Compensation
for permanent
incapacity.
First
Schedule,
Part II.

(2) Where permanent partial incapacity results from pneumoconiosis, the amount of compensation shall be such percentage of the compensation which would have been payable in the case of permanent total incapacity under subsection (1) as is proportionate to the loss of earning capacity permanently caused by pneumoconiosis in any employment which the person was capable of undertaking immediately before the date of incapacity.

7. (1) Where the Pneumoconiosis Medical Board determines under section 24 that the permanent partial incapacity has resulted from pneumoconiosis, the person shall elect that compensation be paid to him—

Payment of
compensation
for permanent
partial
incapacity.

- (a) in a lump sum under section 8; or
- (b) in 2 instalments under section 9.

(2) An election under subsection (1) shall be made in writing in the presence of the Commissioner, or a public officer authorized in that behalf by the Commissioner, and such election shall be final.

(3) Before an election is made under subsection (1), the Commissioner, or a public officer authorized in that behalf by the Commissioner, shall explain to the person the effect of the election and he shall be satisfied that the person understands the effect of the election.

(4) If a person who is required to make an election under subsection (1), fails to elect within 1 month of the Commissioner explaining the effect of the elected, he shall be deemed to have elected that compensation be paid to him in a lump sum under section 8.

8. (1) A person who has elected under section 7(1)(a) for the payment of compensation in a lump sum shall be paid compensation in respect of—

Payment of
compensation
for permanent
partial
incapacity in
a lump sum.

- (a) the degree of permanent partial incapacity assessed under section 24(1); and
- (b) any greater degree of permanent partial incapacity assessed under section 24(3).

(2) Where the aggregate percentage of the permanent incapacity referred to in paragraphs (a) and (b) of subsection (1) amounts to 100 per cent or more, compensation in respect of such incapacity shall be paid as if it were permanent total incapacity.

(3) Where compensation is paid to a person in pursuance of this section, that person or his dependants, as the case may be, shall not be entitled to compensation in respect of any other permanent or temporary incapacity or the death of the person resulting from pneumoconiosis.

Payment of compensation for permanent partial incapacity in 2 instalments.

9. (1) A person who has elected under section 7(1)(b) for payment of compensation in 2 instalments shall be paid compensation—

- (a) on the first occasion in respect of the degree of permanent partial incapacity assessed under section 24(1); and
- (b) on the second occasion in respect of the additional degree of permanent partial incapacity, if any, assessed under section 24(4).

(2) Except where in any particular case the Commissioner authorizes the payment of compensation under subsection (1)(b) at an earlier date, such payment shall be made at any time after the expiry of 6 years from the date of incapacity.

(3) Application for payment of compensation under subsection (1)(b) shall be made to the Commissioner at any time after the expiry of 6 years, and before the expiry of 8 years, from the date of incapacity; but the Commissioner may in any particular case permit such application to be made before the expiry of such 6 years or after the expiry of such 8 years.

(4) The amount of compensation payable under subsection (1)(b) shall be increased by such amount as the Commissioner thinks fit to ensure that the amount of compensation has retained its value in relation to the general level of prices prevailing in Hong Kong.

(5) Where compensation is paid to a person under subsection (1)(a), that person shall not be entitled to any compensation in respect of temporary incapacity.

Compensation for temporary incapacity.
First Schedule, Part III.

10. (1) Where temporary incapacity, whether total or partial, results from pneumoconiosis, the compensation payable shall be in accordance with Part III of the First Schedule.

(2) No compensation for temporary incapacity shall be payable under this section unless a certificate is issued by a medical practitioner stating that a person is suffering from pneumoconiosis and the date on which the temporary incapacity commenced.

Compensation for constant attention.

11. (1) Where permanent total incapacity which results from pneumoconiosis is of such a nature that the person is unable to perform the essential actions of life without the constant attention of another person, in addition to any compensation under the other provisions of this Ordinance, such compensation as the Commissioner considers necessary to meet the cost of such constant attention shall be payable under this section.

(2) Compensation under this section shall be in accordance with Part IV of the First Schedule.

First Schedule, Part IV.

Payment of medical expenses.

12. (1) Subject to this section, where a person contracts pneumoconiosis which results in the total or partial incapacity, whether of a permanent or temporary nature, of the person, he shall, during such incapacity, be entitled to medical expenses under this Ordinance for the medical treatment in respect of pneumoconiosis.

(2) Medical expenses under subsection (1) shall—

- (a) be payable in addition to any compensation payable under this Ordinance;
- (b) not be payable—
 - (i) in respect of the period of incapacity for which no compensation is payable under section 4(3); or
 - (ii) where his employer, if any, provides adequate free medical treatment to the person.

(3) Medical expenses under subsection (1) shall be payable in accordance with the Second Schedule in respect of the period during which the person receives medical treatment until—

Second Schedule.

- (a) the attending medical practitioner certifies that in his opinion the person requires no further treatment for pneumoconiosis;
- (b) the person becomes entitled to receive compensation for permanent incapacity, whether total or partial; or
- (c) the expiry of 2 years from the date of the incapacity, whichever is the earliest.

(4) Where a person has paid for any medical treatment received by him he shall be entitled to recover the medical expenses under this Ordinance by serving on the Commissioner a request in writing for the payment of the medical expenses together with a receipt for the payment for the medical treatment.

(5) On receipt of a request for the payment of medical expenses in accordance with subsection (4), the Commissioner shall determine whether or not medical expenses are payable under this Ordinance and if he determines that medical expenses are payable he shall issue a certificate to the person and the Board stating the amount of such medical expenses and thereupon the Board shall within 21 days after receipt of the certificate, pay from the Fund to the person the amount shown in the certificate.

(6) A certificate purporting to be issued under subsection (5) and to be signed by or for the Commissioner shall be admitted in evidence without proof on its production in any court and—

- (a) until the contrary is proved, it shall be presumed that the certificate is so issued and signed;
- (b) shall be evidence of the amount of the medical expenses payable under this Ordinance.

13. (1) Nothing in this Ordinance shall diminish or extinguish any right to damages enforceable at common law for incapacity or death resulting from pneumoconiosis.

Common law damages.

(2) Subject to subsection (4), where any person has paid damages for death or disability resulting from pneumoconiosis pursuant to a judgment of any court in Hong Kong, he shall be entitled to recover from the Fund the amount of such damages and interest thereon together with the amount of any costs ordered by the court to be paid by that person.

(3) Subject to subsection (4), where any person is liable to pay damages or interest in the circumstances described in subsection (2), at any time before the damages or interest are paid, the person entitled to the damages or the person liable to pay them may apply to the Board for the amount of such damages, interest and costs to be paid from the Fund to the person entitled to the damages in satisfaction of the judgment.

(4) Notwithstanding subsections (2) and (3), where a claim is made against any person for damages for incapacity or death resulting from pneumoconiosis, the Fund shall not be liable to pay such damages or any costs—

- (a) unless the person claimed against has, within 30 days of the receipt of the claim, given written notice thereof to the Board;
- (b) unless the person claimed against takes all reasonable steps to assist the Board to investigate the claim;
- (c) if the person claimed against has, without the written consent of the Board, made any admission of liability or offered or promised to pay any damages or costs.

(5) Where any claim is made against any person for damages for incapacity or death resulting from pneumoconiosis, then, subject to sub-

section (4), the Board may take over and conduct in the name of that person the defence or settlement of the claim and settle the claim on his behalf.

(6) Where any damages, interest or costs have been paid by or recovered from the Fund under subsection (2), (3) or (5), the Board shall be subrogated to all such rights and remedies that the person who has paid, or who was liable to pay, damages, may have against any other person in respect of the liability for such damages; and the Board shall be entitled to enforce such rights and remedies in the name of the Board.

(7) In assessing damages to be paid for death or disability resulting from pneumoconiosis, the court shall take into account any compensation that has been paid or is payable.

PART III

CLAIMS FOR ASSESSMENT AND PAYMENT OF COMPENSATION

Claims for compensation.

14. (1) Where a person—

- (a) suffers any incapacity and wishes to claim compensation he shall; or
- (b) dies as a result of pneumoconiosis and any dependant wishes to claim compensation, the dependant shall,

as soon as practicable notify the Commissioner in such form as the Commissioner may specify of such incapacity or death, as the case may be.

(2) On receipt of a notice under subsection (1) or where the Commissioner is otherwise notified of such death, he may—

- (a) in the case of the death of a person—
 - (i) make such inquiry as he thinks fit to ascertain whether the deceased person died as a result of pneumoconiosis and, if so, whether there are any dependants of the deceased person and, if so, the degree of their dependency;
 - (ii) inform such dependants, if any, of the cause and circumstances of the death of the person and advise them of their right to compensation; and
 - (iii) if such dependants, or any of them, so wish, pursue a claim for compensation on their behalf; or
- (b) in the case of the incapacity of the person, if the person so requests, pursue a claim for compensation on behalf of the person.

(3) For the purposes of this section the Commissioner may arrange for any person claiming compensation to be examined by the Pneumoconiosis Medical Board and in the case of the death of a person, he may request that Board determine whether the death resulted from pneumoconiosis.

(4) In any claim for compensation under section 5, a written report made of findings on an inquiry under subsection (2)(a)(i) purporting to be signed by or for the Commissioner shall, for the purposes of section 17(1), be admitted in evidence without further proof on its production and until the contrary is proved—

- (a) it shall be presumed that the report is so made and signed;
- (b) shall be evidence of the matters stated therein.

15. (1) Compensation shall be assessed by the Commissioner.

(2) When the Commissioner assesses compensation under subsection (1), he shall issue a certificate in such form as he may specify stating the amount of the compensation and the particulars of the assessment to—

- (a) the person or dependants claiming under section 14; and

Assessment and payment of compensation.

(b) the Board.

(3) An objection to the amount of the compensation assessed under subsection (1) may be made by the person or dependants or the Board, to the Commissioner in writing within 14 days after the receipt of the certificate issued under subsection (2) stating the grounds of the objection, and a copy of the objection shall be sent by the objector—

- (a) where the objector is the person or his dependants, to the Board; or
- (b) where the objector is the Board, to the person or his dependants.

(4) On receipt of an objection under subsection (3), the Commissioner shall review the assessment under subsection (1) and shall issue to the parties referred to in subsection (2) a certificate in such form as he may specify stating—

- (a) that the original assessment is confirmed; or
- (b) the revised amount of the compensation and the particulars of the assessment.

(5) The Board shall pay from the Fund compensation within 21 days after—

- (a) the receipt of the certificate issued under subsection (2); or
- (b) where an objection is made under subsection (3), the receipt of the certificate issued under subsection (4).

(6) A certificate purporting to be issued under subsection (2) or (4) and to be signed by or for the Commissioner shall be admitted in evidence without further proof on its production in any court and—

- (a) until the contrary is proved, it shall be presumed that the certificate is so issued and signed;
- (b) shall be evidence of the matters stated therein.

16. (1) The compensation shall be payable to or for the benefit of a person, or, where death results from pneumoconiosis, to or for the benefit of his dependants as provided by this Ordinance.

Persons entitled to payment of compensation.

(2) Where there are both total and partial dependants nothing in this Ordinance shall be construed as preventing the compensation being allotted partly to the total and partly to the partial dependants.

(3) Where a dependant dies before a claim in respect of death is made under this Ordinance, or, if a claim has been made, before an order for the payment of compensation has been made, the legal personal representative of the dependant shall have no right to payment of compensation, and the claim for compensation shall be dealt with as if that dependant had died before that person.

17. (1) Compensation payable where the death of a person has resulted from pneumoconiosis shall be apportioned by the Commissioner among the dependants of the deceased person or any of them in such proportion as the Commissioner thinks fit, or in the discretion of the Commissioner, allotted to any one such dependant, and the sum so allotted to any dependant shall be paid to him or be invested, applied or otherwise dealt with for his benefit in such manner as the Commissioner thinks fit.

Distribution of and payment of compensation.

(2) Where, on application being made to the Commissioner it appears to him that, on account of the variation of the circumstances of the various dependants, or for any other sufficient cause, a distribution made under subsection (1) ought to be varied, the Commissioner may vary such distribution in such manner as he may think just:

Provided that no such variation shall be made which requires the repayment by a dependant of any compensation already paid to him except where such payment has been obtained by fraud, impersonation or other improper means.

(3) Any other compensation payable under this Ordinance—

(a) shall be paid by the Board to the person entitled thereto; or

(b) if the compensation is payable under section 6 or 11 or is a lump sum payable under paragraph 1 of Part III of the First Schedule, may be paid by the Board to the Commissioner, who shall invest such compensation for the benefit of the person entitled thereto, in such manner as the Commissioner thinks fit.

(4) Nothing in this section shall prevent the Board from making any payment not exceeding \$1,000 direct to a person or dependant on account of a claim which is pending settlement or determination, and the Commissioner may order that the whole or any part of such payment shall be deducted from the amount of compensation payable to the person or dependant under this Ordinance.

(5) Where the Pneumoconiosis Medical Board has, in relation to any person, issued a certificate under section 24(6) or (8) and, before the payment of any compensation, that person dies from a cause other than pneumoconiosis his dependants shall be entitled to receive the compensation that the deceased person would have received had he lived; and the Commissioner shall apportion such compensation among the dependants as if it were compensation to which subsection (1) applies.

18. (1) Subject to subsection (2) and section 9, a claim for compensation shall be made within 24 months after the date of the incapacity or, in the case of death resulting from pneumoconiosis, within 24 months after the date of death.

(2) Notwithstanding subsection (1), the Commissioner may receive and determine any claim for compensation in any case after the expiry of the period specified in that subsection if he is satisfied that there was reasonable excuse for the failure to make a claim within such period.

19. Where a person in the service of, or formerly in the service of, the Government is paid pension for incapacity, or in the case of his death resulting from pneumoconiosis, where pension is paid to his dependants, under any Ordinance providing for the grant of such pension, the Board shall pay to the Government from the Fund a sum of money equal to the amount of money that would have been payable as compensation had that person not been disqualified to claim compensation by reason of section 4(3)(c).

20. (1) Subject to this section, an appeal shall lie to the Court from any decision of the Commissioner or the Board.

(2) Except with the leave of the Court (which shall not be granted unless in the opinion of the Court some substantial question of law is involved in the appeal) no appeal shall lie if the amount in dispute is less than \$1,000.

(3) No appeal shall lie in any case in which the parties have agreed to abide by the decision of the Commissioner or the Board, or in which the order of the Court gives effect to an agreement come to by the parties.

(4) No appeal shall lie after the expiration of 30 days from the date of the decision of the Commissioner or the Board:

First
Schedule,
Part III.

Limitation
of time for
claiming
compensation.

Board to pay
compensation
to Government
in certain
circumstances.

Appeals.

Provided that the Court may, if it thinks fit, extend the time within which to appeal under this section notwithstanding that that time has elapsed.

21. (1) The Commissioner, Board or Court may, if he or it thinks fit, submit any question of law for the decision of the Court of Appeal.

(2) Such submission shall be made in such form and in such manner as if it were a submission under section 22 of the Workmen's Compensation Ordinance, and any rules of court made under that Ordinance relating to submissions under that section shall apply, with such changes as may be necessary, to a submission under this section.

Power of the
Commissioner,
Board or Court
to submit
questions of
law.
(Cap. 282.)

PART IV

MEDICAL EXAMINATIONS

22. The Director of Medical and Health Services shall appoint a board to be known as the Pneumoconiosis Medical Board which shall consist of—

(a) 2 medical practitioners; and

(b) the Senior Industrial Health Officer or an Industrial Health Officer.

Appointment of
Pneumoconiosis
Medical Board.

23. (1) The Pneumoconiosis Medical Board may by notice in writing require any person who is suspected to be suffering from pneumoconiosis, or who claims compensation, to submit himself to a medical examination on such date and at such time and place as is specified in the notice.

Medical
examination.

(2) Where a person who receives a notice under subsection (1) is employed, he shall as soon as possible notify his employer (if any) of the date, time and place for the medical examination.

(3) For the purpose of attending to undergo a medical examination an employer shall grant to the person referred to in this section the necessary leave of absence from work and the employer shall pay the person the wages or salary in respect of such absence from work or the wages or salary he would have earned if he had worked during such period.

(4) Any employer who without reasonable excuse contravenes subsection (3) commits an offence and is liable to a fine of \$2,000.

24. (1) Where a person submits himself to a medical examination in accordance with section 23(1), the Pneumoconiosis Medical Board shall—

(a) determine whether the person is suffering from pneumoconiosis;

(b) determine whether any permanent or temporary total or partial incapacity has resulted from pneumoconiosis; and

(c) where the determination is that such incapacity has resulted—

(i) determine the date upon which the incapacity commenced; and

(ii) assess the degree of the incapacity.

(2) In the case of death, the Pneumoconiosis Medical Board shall, at the request of the Commissioner, determine whether the death resulted from pneumoconiosis.

Determination
of incapacity
or cause of
death.

(3) The Pneumoconiosis Medical Board shall, if it determines under subsection (1) that the permanent partial incapacity has resulted from pneumoconiosis—

- (a) determine whether the person may in the future suffer a greater degree of permanent incapacity resulting from pneumoconiosis; and
- (b) where the determination is that the person may in the future suffer such greater degree of permanent incapacity, assess the extent of the greater degree of incapacity, but such assessment shall not exceed 50 per cent of the degree of the permanent partial incapacity assessed under subsection (1).

(4) Where a person has elected under section 7(1)(b) for the payment of compensation in 2 instalments and has been paid compensation on the first occasion under section 9(1)(a), the Pneumoconiosis Medical Board shall—

- (a) determine whether the person has suffered a greater degree of permanent incapacity since the initial assessment of the incapacity for the purposes of payment of compensation on the first occasion; and
- (b) where the determination is that the person has suffered such greater degree of incapacity, assess the additional degree of the incapacity.

(5) A determination and assessment by the Pneumoconiosis Medical Board, if not unanimous, shall be that of the majority of the members of the Pneumoconiosis Medical Board.

(6) The Pneumoconiosis Medical Board shall issue a certificate of its determination and assessment made under this section to—

- (a) the person, or in the case of the death of the person to the dependant who has claimed under section 14(1);
- (b) the Commissioner; and
- (c) the Board.

(7) An objection to the determination and assessment made under subsection (1), (2), (3) or (4) may be made by the person in question or his dependants, as the case may be, or the Board, to the Pneumoconiosis Medical Board in writing within 14 days after the receipt of the certificate issued under subsection (6) stating the grounds of the objection, and a copy of the objection shall be sent by the objector—

- (a) where the objector is the person or his dependant, to the Board and to the Commissioner; or
- (b) where the objector is the Board, to the person or his dependant and to the Commissioner.

(8) On receipt of an objection under subsection (7), the Pneumoconiosis Medical Board shall review the determination or assessment under subsection (1), (2), (3) or (4), as the case may be, and shall issue to the parties referred to in subsection (6) a certificate stating—

- (a) that the original determination or assessment is confirmed; or
- (b) a revised determination or assessment.

(9) A certificate purporting to be issued under subsection (6) or (8) and to be signed by or for the Pneumoconiosis Medical Board shall be admitted in evidence without further proof on its production in any court and—

- (a) until the contrary is proved, it shall be presumed that the certificate is so issued and signed;
- (b) shall be evidence of the matters stated therein.

(10) Any person aggrieved by a review under subsection (8) may appeal to the Court against such review.

PART V

PNEUMOCONIOSIS COMPENSATION FUND BOARD

25. (1) There is hereby established a board, to be known as the Pneumoconiosis Compensation Fund Board.

Establishment of
Pneumoconiosis
Compensation
Fund Board.

(2) The Board shall consist of not more than 10 members appointed by the Governor of whom not more than 4 shall be public officers.

(3) The Third Schedule shall have effect with respect to the Board.

Third
Schedule.

26. (1) The Board shall have the following functions—

Functions and
powers of the
Board.

- (a) to administer the Fund;
- (b) to make recommendations to the Government with respect to the rate of levy; and
- (c) to perform such other duties as are imposed on it by this Ordinance.

(2) The Board may do all such things as are necessary for, or incidental or conducive to, the better carrying out of the functions of the Board and may in particular, but without prejudice to the generality of the foregoing—

- (a) hold, acquire or lease all kinds of property, whether movable or immovable;
- (b) subject to subsection (3), sell or otherwise dispose of all kinds of property whether movable or immovable;
- (c) enter into, assign or accept the assignment of, and vary or rescind any contract or obligation;
- (d) subject to subsection (4), meet expenditure on any item shown in the approved estimates of expenditure of the Board, borrow or otherwise raise money on such security as may be necessary, and for that purpose, charge all or any of the property of the Board;
- (e) make charges for the use of any facility or service provided by the Board.

(3) The Board shall not sell or otherwise dispose of land granted at nil premium by the Government except with the prior approval of the Governor.

(4) Except with the prior approval of the Financial Secretary, no sum shall be borrowed or otherwise raised under subsection (2)(d) which itself, or together with all other sums previously borrowed or otherwise raised under that subsection and still outstanding, exceeds, or in the aggregate exceeds, 10 per cent of the approved total estimated expenditure for the current financial year.