

“(4) Notwithstanding the provisions of sub-section (1)—

Ordinance
No. 18 of
1935.

(a) a closure order may be made under section 120 of the Buildings Ordinance, 1935; and

(b) a closure order may be made under paragraph (ee) of sub-section (1) of section 6 of the Buildings Ordinance, 1935, if the Building Authority has certified by writing under his hand that the making of such an order is necessary in order to enable the owner to carry out the building works required without undue danger to the tenants or to the public generally.”

Amendment
of section
6 of the
principal
Ordinance.

4. (1) Subject as hereinafter provided sub-section (1) of section 6 of the principal Ordinance shall take effect as if for the words “forty five” in the sixth line thereof there were substituted the words “one hundred”.

(2) The addition to the standard rent authorized by the provisions of sub-section (1) shall in respect of any subsisting tenancy take effect as from the date when payment of standard rent next falls due after the commencement of this Ordinance: Provided that if such standard rent is payable in arrear it shall take effect on the second occasion when payment of standard rent falls due after the commencement of this Ordinance.

Passed the Legislative Council of Hong Kong, this 19th day of October, 1949.

Deputy Clerk of Councils.

HONG KONG

No. 44 OF 1949.

I assent.



Governor's Deputy.

3rd November, 1949.

An Ordinance further to amend the Deportation of Aliens Ordinance, 1935.

[4th November, 1949.]

BE it 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 Deportation of Aliens (Amendment) Ordinance, 1949, and shall be read as one with the Deportation of Aliens Ordinance, 1935, hereinafter referred to as the principal Ordinance.

Short title.

Ordinance
No. 39 of
1935.

2. Paragraphs (a) and (b) of section 2 of the principal Ordinance are hereby deleted and the following paragraphs substituted therefor:—

Amendment
of section
2 of the
principal
Ordinance.

“(a) “alien” means a person who is not a British subject or a citizen of the Irish Republic or a British protected person but includes a British protected person who has been deported, banished or expelled from any territory which is not a foreign country;

(b) "British subject", "British protected person" and "foreign country" have the meanings attributed thereto by the British Nationality Act, 1948."

Repeal and replacement of section 8 of the principal Ordinance.

3. Section 8 of the principal Ordinance as substituted by the Deportation of Aliens (Amendment) Ordinance, 1948, is hereby repealed and replaced by the following section:—

8. (1) A competent authority upon being satisfied—

"Competent authority may make deportation order against certain alien convicts.

(a) that an alien stands sentenced to a sentence of not less than six months' imprisonment for one or more of the offences specified in the Second Schedule; and

(b) that after taking into consideration any remission to which such alien may be entitled he will still be required to serve for such offence a sentence of imprisonment of not less than fourteen days after service upon him of a notification under sub-section (7) hereof;

shall unless the Governor otherwise directs order that such alien shall be deported for life.

(2) A competent authority upon being satisfied—

(a) that an alien stands sentenced to imprisonment for a term of one month or more and less than six months for an offence specified in the Second Schedule; and

(b) that after taking into consideration any remission to which such alien may be entitled he will still be required to serve for such offence a sentence of imprisonment of not less than fourteen days after service upon him of a notification under sub-section (7) hereof;

shall unless the Governor otherwise directs order that such alien be deported for ten years.

(3) Without prejudice to the provisions of sub-section (2) hereof a competent authority, upon being satisfied—

(a) that an alien has been convicted of an offence, whether or not such offence is an offence specified in the Second Schedule;

(b) that after taking into consideration any remission to which such alien may be entitled he will still be required to serve for such offence a sentence of imprisonment of not less than fourteen days after service upon him of a notification under sub-section (7) hereof; and

(c) either that a term of imprisonment of more than eighteen months has been applied for such offence or that the term of imprisonment applied for such offence is such that it will together with any other terms of imprisonment applied for any offence of which such alien has at any time been convicted by any competent court or magistrate in the Colony aggregate to more than eighteen months;

shall unless the Governor otherwise directs order that such alien be deported for a period of ten years.

(4) If it appears to the Registrar of the Supreme Court or to a magistrate that by reason of a sentence or sentences of imprisonment imposed on any person by the court or by such magistrate as the case may be, and by reason of the sentences imposed on such person for previous convictions which have been proved or admitted by such person in the proceedings before such court or magistrate the competent authority would, if such person were an alien, be required by the provisions of sub-section (3) to order his deportation, the Registrar or the magistrate shall cause to be forwarded to the Commissioner of Prisons together with the certificate of sentence or warrant of commitment a certificate of such previous convictions in Form No. 10 or No. 11 of the First Schedule hereto as the case may be.

(5) A certificate in the form prescribed by sub-section (4) purporting to be signed by the Registrar of the Supreme Court or a magistrate as the case may be shall unless it be shown that it was not signed by such Registrar or magistrate be sufficient evidence for the purposes of this section of the facts therein stated.

(6) A certificate of sentence purporting to be signed by the Registrar of the Supreme Court and a warrant of commitment purporting to be signed by the magistrate shall unless it be shown that it was not

signed by such Registrar or magistrate be sufficient evidence for the purposes of this section of the facts therein stated.

(7) Whenever the competent authority is satisfied that he would be required by this section to order the deportation of any person if such person is an alien he shall notify such person by the notification in Form No. 12 in the First Schedule that the competent authority is proposing to order his deportation as an alien convict, to whom this section applies.

(8) A person who has received notification under sub-section (7) may within fourteen days from the receipt of such notification claim that he is not an alien or petition the Governor to exercise the power conferred by sub-section (10) by completing the appropriate portions of Form No. 12 and delivering such Form to the Superintendent of the prison where he is in custody.

(9) If the person receiving such notification as aforesaid duly claims that he is not an alien then, after investigation of such claim, opinions on the validity of such claim shall be given by the Attorney General and the Secretary for Chinese Affairs and the claim together with such opinions shall be referred to the Governor.

(10) If the person receiving such notification petitions the Governor to exercise his powers under this sub-section such petition shall be forwarded to the Governor with the observations of the Attorney General and the Secretary for Chinese Affairs and the Governor may if he considers that in all the circumstances of the case the alien should be permitted to remain in the Colony direct that no deportation order shall be made under this section against such alien.

(11) If the person receiving such notification neither claims that he is not an alien nor petitions the Governor under sub-section (10) or if every such claim or petition as may be lodged within due time is rejected then the competent authority shall proceed to make an order of deportation in Form No. 13. Such order, if made during the subsistence of any term of imprisonment imposed on the person to whom it relates which

has not been remitted, shall take effect as on the day when such person is due to be released from such imprisonment and subject as aforesaid shall authorize deportation as from the day upon which it is made.

(12) If a prisoner becomes due to be released from custody by reason of the expiration of any lawful sentence of imprisonment at a time when a claim not to be an alien or a petition to the Governor lodged under this section is still undetermined the Commissioner of Prisons shall notify the Governor accordingly and shall detain such person in his custody until directed by the Governor to release him therefrom or, in the event of an order for the deportation of such person being made, until he is removed therefrom by or by the direction of the Commissioner of Police in pursuance of such order.

(13) The notification provided for by sub-section (7) shall not be given until the time for any material appeal or review has expired and, if any material appeal or review has in the meanwhile become pending, such notification shall not be given until the determination of any such appeal or review. A notification given in contravention of this provision shall be a nullity but shall not prejudice the giving of another valid notification. An appeal or review shall be deemed to be material to the giving of a notification to a particular person if as a result of such appeal or review a sentence of imprisonment, imposed by a competent court or magistrate in the Colony on such person might be affected.

(14) Nothing herein contained shall derogate from the power vested in the Governor in Council by section 3.

(15) The Governor in Council may by regulation amend the Second Schedule hereto.

(16) If the competent authority shall be a person other than the Commissioner of Prisons, the Commissioner shall transmit to the competent authority all documents and information relevant to the exercise of the powers and duties of such authority and shall afford to such authority every facility for inspection of prison registers and records and for interviewing any convict alien.

(17) The directions of the Governor under this section may be signified under the hand of the Clerk of Councils.

(18) In this section—

“competent authority” means such person as the Governor may by notification in the *Gazette* appoint to be the competent authority for the purposes of this section;

“competent court” includes any court constituted under Proclamation 8 of the British Military Administration and any court which since the 30th of August, 1946, was constituted for the trial of war criminals but does not include any court constituted or set up in the Colony between the 25th of December, 1941, and the 1st of August, 1945.

“Registrar of the Supreme Court” includes a Deputy Registrar of the Supreme Court;

“stands sentenced” or “applied for” means respectively stands sentenced or applied for whether before or after the commencement of the Deportation of Aliens (Amendment) Ordinance, 1949, after taking into consideration any appeal or review but without taking into consideration any remission whether granted by the Governor or by any application of the Prison Rules or any period of the sentence which has in fact been served.”

Repeal of sub-section (3) of section 9 of the principal Ordinance.

4. Sub-section (3) of section 9 of the principal Ordinance is hereby repealed.

Repeal and replacement of sub-sections (6) to (9) of section 13 of the principal Ordinance.

5. Sub-sections (5), (6), (7), (8) and (9) of section 13 of the principal Ordinance as amended by the Deportation of Aliens (Amendment) Ordinance, 1948, are hereby repealed and replaced by the following sub-sections:—

“(5) Whenever an alien is convicted by a court of being within the Colony without lawful excuse after the date fixed for his departure under any deportation order and before the expiration of the period of his deportation or banishment such conviction shall be sufficient authority for the Commissioner

of Police to make such arrangements as he may deem expedient to deport such alien from the Colony and to such end the Commissioner and any person acting upon his instructions or request may keep or cause such alien to be kept in custody in any prison or house of detention until such alien leaves the Colony and may use such force and restraint as is necessary to cause such alien to depart from the Colony, and until such departure such alien shall be deemed to be under lawful arrest and in lawful custody: Provided that no alien shall be deported while he is still serving a sentence of imprisonment imposed by any competent court or magistrate which has not been remitted or in breach of any condition imposed upon such remission and that no alien shall be deported by virtue of this sub-section after the expiration of the period of his deportation or banishment.

(6) Notwithstanding the provisions of sub-section (5) an order of banishment or deportation may by order of the Governor under the hand of the Clerk of Councils be enforced against an alien although he has not been prosecuted for the misdemeanour mentioned in sub-section (1) and the Governor may for such purpose by order under the hand of the Clerk of Councils fix the time within which any such alien shall leave the Colony and make any such order as is mentioned in section 11.

(7) An application for the order of the Governor may be made by the Commissioner of Police or any person authorized by him in any case or in any class or classes of case in which the Attorney General may by any special or general direction have authorized the making of such an application.

(8) Any order made by the Governor under this section shall refer to this section and may be endorsed either on the original order of banishment or deportation or upon any document which purports to be a copy of such order and to be certified by the Clerk of Councils or may be attached to any such order or document in any manner which the Clerk of Councils may deem convenient: Provided that nothing herein contained shall render invalid any order which is not so endorsed or attached.

(9) Any such order shall have the same effect and confer the same authority as a conviction by a magistrate under sub-section (5) hereof.

(10) It shall be lawful for any justice of the peace to order that any alien in respect of whom he is satisfied—

- (a) a deportation order is still in force; and
- (b) his detention in custody is required pending the making of an order under sub-section (6);

to issue a warrant ordering that such alien be arrested and be kept in custody in any police station or in any prison or house of detention for a period of seven days. Any warrant lawfully issued hereunder shall be a warrant of arrest and detention within the meaning of sub-section (1) of section 51 of the Police Force Ordinance, 1948.

(11) The Governor in Council may make regulations for carrying the provisions of sub-sections (6), (7), (8) and (10) of this section into effect and for prescribing forms and procedure."

Amendment of sub-section (5) of section 16 of the principal Ordinance.

6. Sub-section (5) of section 16 of the principal Ordinance is hereby amended by deleting the words "a British subject" in the fifth line thereof and substituting therefor the words "not an alien".

Addition of new section 18A to the principal Ordinance.

7. The principal Ordinance is hereby amended by the insertion of the following section as section 18A thereof:—

18A. The provisions of the Deportation (British Subjects) Ordinance, 1936, shall apply to British protected persons in like manner as if the expression "British subjects" had been therein defined so as to include British protected persons."

Amendment of the principal Ordinance.

8. The principal Ordinance is hereby amended—

- (a) by inserting throughout the principal Ordinance the word "First" before the word "Schedule" save and except where the word "Schedule" is already by reason of the amendments effected by this Ordinance preceded by the word "Second" or already preceded by the word "First"; and
- (b) by the addition as the Second Schedule thereto of the First Schedule to this Ordinance; and
- (c) by the addition in the First Schedule to the principal Ordinance of Forms 10, 11, 12 and 13 of the Forms in the Second Schedule to this Ordinance.

Commencement.

9. This Ordinance shall come into operation on the first day of January, 1950.

FIRST SCHEDULE.

- The Offences against the Person Ordinance, 1865—
sections 5, 10, 11, 12, 13, 14, 15, 17, 19, 20, 21, 22, 23, 27, 28, 29, 30, 30A, 44, 45 and 45A.
- The Malicious Damage Ordinance, 1865—
sections 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 15, 25, 27, 27A, 28, 29, 30, 33, 36, 37 and 45.
- Piracy Jure Gentium.
- The Suppression of Piracy Ordinance, 1868—
sections 2, 4, 5 and 6.
- The Criminal Intimidation Ordinance, 1920—
section 3.
- The Societies Ordinance, 1949—
sections 10, 11 and 12.
- The Arms and Ammunition Ordinance, 1933—
section 4.
- The Larceny Ordinance, 1935—
sections 25, 26, 40, 41, 42, 43, 44, 45, 46 (1) (i), 47, 48 and 51.
- The Dangerous Drugs Ordinance, 1935—
section 21A (1) (c), (d) and (e).
- The Protection of Women and Girls Ordinance, 1938—
sections 3, 4, 5, 6, 8, 10, 12, 17, 18, 19, 20, 21, 22, 23, 25 and 26.
- Any offence under the Prevention of Corruption Ordinance, 1948.

SECOND SCHEDULE.

Form No. 10. [s. 8(4).]

THE DEPORTATION OF ALIENS ORDINANCE, 1935.

REGISTRAR'S CERTIFICATE OF PREVIOUS CONVICTIONS.

I hereby certify

1. That _____ was convicted at the Criminal Sessions of the Supreme Court of Hong Kong held on _____ of the offence(s) hereunder set out and that the sentence(s) of imprisonment specified were imposed therefor:

<i>Offence</i>	<i>Sentence</i>	<i>Date of Conviction</i>
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2. That in the course of his trial for the abovementioned offence(s), the previous convictions of which particulars are given hereunder were *{proved against } the said *{admitted by }

Offence Sentence Date of Conviction

3. That the said is the same person as the referred to in Certificate of Sentence No.†

Registrar, Supreme Court.

* Delete if inapplicable.

† Note:—This should be the Certificate of Sentence of the offences certified in paragraph 1.

Form No. 11. [s. 8(4).]

THE DEPORTATION OF ALIENS ORDINANCE, 1935.

MAGISTRATE'S CERTIFICATE OF PREVIOUS CONVICTIONS.

I hereby certify

1. That on the of was convicted by me of the offence hereunder set out for which I imposed the sentences of imprisonment specified.

Offence Sentence Date of Conviction

2. That in the course of his trial for the said offence(s) the previous convictions of which particulars are given hereunder were *{proved against } the said *{admitted by }

Offence Sentence Date of Conviction

3. That the said is the same person as the referred to in Warrant of Commitment No.†

Magistrate.

* Delete if inapplicable.

† Note:—This should be the Warrant of Commitment of the offences certified in paragraph 1.

Form No. 12. [s. 8(7).]

THE DEPORTATION OF ALIENS ORDINANCE, 1935.

NOTIFICATION THAT COMPETENT AUTHORITY PROPOSES TO ORDER DEPORTATION.

TAKE NOTICE

1. That I am proposing to order your deportation as an alien convict to whom sub-section* (1) (2) (3) of section 8 of the Deportation of Aliens Ordinance, 1935, applies on the ground that you are an alien who stands sentenced as follows:—

Offence Sentence Date of Conviction

2. That if you are in fact a British subject or British protected person you should complete Part I overleaf and return it to the Superintendent of your prison within 14 days.

3. That if you have good reasons for claiming to be allowed to stay in Hong Kong you should complete Part II overleaf and return it to the Superintendent of your prison within 14 days.

Competent Authority.

* Strike out sub-sections inapplicable.

PART I.

CLAIM NOT TO BE AN ALIEN.

I claim to have been born in

The following persons can prove I speak the truth:—

Names of Witnesses

Places where Witnesses can be found.

PART II.

PETITION TO BE PERMITTED TO STAY IN HONG KONG.

The Petitioner humbly prays that he be permitted to stay in Hong Kong for the following reasons:—

NOTES.

The following notes which are intended in appropriate cases to assist prisoners to complete this form should be explained to the prisoner by or on behalf of the competent authority in a language intelligible to the prisoner:—

Part I is only intended for persons who are British subjects or have been granted citizenship of or have been born in a state or territory under British protection. Residence in Hong Kong even for a long period is insufficient to justify a claim under this Part.

Under Part II the Petitioner should give his reasons for being allowed to stay in Hong Kong and the names of any people who can vouch for his future good behaviour. It is only in very special circumstances that permission to stay will be granted. Generally speaking permission will not be granted unless the Governor is satisfied that the Petitioner has been in Hong Kong for a period of at least five years and will obtain continuous honest employment, or that the Petitioner has been in Hong Kong for a very long time and there is a reasonable expectation that the Petitioner will be of good behaviour.

The prisoner should also be warned that the investigation of a claim or petition may take time and that if he becomes due for release prior to such investigation having been completed he will probably have to remain in prison after expiration of his sentence.

Form No. 13. [s. 8(11).]

THE DEPORTATION OF ALIENS ORDINANCE, 1935.

ORDERS FOR DEPORTATION OF ALIEN CONVICT.

Whereas I am satisfied that _____ is an alien and stands sentenced to a sentence of _____ months' imprisonment for *(an offence specified in the Second Schedule of the Deportation of Aliens Ordinance, 1935) (the offence of _____ of which he was convicted on the _____ of _____) and in addition to sentences aggregating to _____ months' imprisonment for offences of which he has been convicted by a competent court or magistrate in the Colony.

Now therefore in pursuance of the power vested in me by sub-section †(1) (2) (3) of section 8 of the Deportation of Aliens Ordinance, 1935, I hereby order—

that the said _____ be prohibited from being within the Colony } † for life } † (for the space of ten years)

and that he shall depart from this Colony as soon as the Commissioner of Police has made the necessary arrangements to that end.

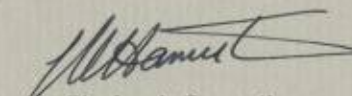
Competent Authority.

Date: _____ day of _____, 19 _____

Commissioner of Prisons.

- * Delete if inapplicable. † Delete the sub-sections inapplicable. ‡ Delete if inapplicable.

Passed the Legislative Council of Hong Kong, this 2nd day of November, 1949.


Clerk of Councils.

HONG KONG

No. 45 OF 1949.

I assent.



Albani
Governor's Deputy.

3rd November, 1949.

An Ordinance to amend the Criminal Procedure Ordinance, 1899.

[4th November, 1949.]

BE it 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 Criminal Procedure (Amendment) Ordinance, 1949, and shall be read as one with the Criminal Procedure Ordinance, 1899, hereinafter referred to as the principal Ordinance.

Short title
Ordinance
No. 9 of
1899.

2. The following section is hereby inserted as section 55 of the principal Ordinance :—

Insertion
of new
section as
section 55.

“Statements of accused persons. 55. It is hereby declared that, if on a trial by jury of a person accused of an offence, a statement alleged to have been made by such accused person is admitted

in evidence, all evidence relating to the circumstances in which the alleged statement was made shall be admissible for the purpose of enabling the jury to decide upon the weight (if any) to be given to the statement; and, if any such evidence has been taken in the absence of the jury before the admission of the statement, the Crown and such accused person shall have the right to have any such evidence retaken in the presence of the jury."

Passed the Legislative Council of Hong Kong, this 2nd day of November, 1949.



W. H. M. S. S.
Clerk of Councils.

HONG KONG

No. 46 OF 1949.

I assent.



J. H. M.
Governor's Deputy.
3rd November, 1949.

An Ordinance to amend the Prevention of Corruption Ordinance, 1948.

[4th November, 1949.]

BE it 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 Prevention of Corruption (Amendment) Ordinance, 1949, and shall be read as one with the Prevention of Corruption Ordinance, 1948, hereinafter referred to as the principal Ordinance.

Short title.
Ordinance
No. 39 of
1948.

2. Section 5 of the principal Ordinance is hereby repealed and replaced as follows:—

Repeal and
replacement
of section
5 of the
principal
Ordinance.

“Penalty for offences. 5. (1) Any person who commits an offence against section 3 of this Ordinance shall—

(a) be liable on summary conviction to imprisonment for a term not exceeding two years and to a fine not exceeding five thousand dollars;

(b) be liable on conviction on indictment to imprisonment for a term not exceeding five years and to a fine not exceeding ten thousand dollars;

(c) in addition be liable to be ordered to pay to such body, and in such manner as the magistrate or the court directs, the amount or value of any gift, loan, fee, or reward received by him or any part thereof;

(d) in the event of a second conviction for a like offence, in addition to the foregoing penalties, be liable to be adjudged to be incapable for seven years of being registered as an elector of members of any public body, and any enactment from time to time in force in the Colony for preventing the voting and registration of persons declared by reason of corrupt practices to be incapable of voting shall apply to a person adjudged in pursuance of this section to be incapable of voting.

(2) Any person committing an offence against section 4 of this Ordinance shall be liable—

(a) on summary conviction to imprisonment for a term not exceeding two years and to a fine not exceeding one thousand dollars;

(b) on conviction on indictment to imprisonment for a term not exceeding five years and to a fine not exceeding ten thousand dollars; and

(c) in addition to be ordered to pay to his principal and in such manner as the magistrate or the court may direct, any gift or consideration or any part thereof."

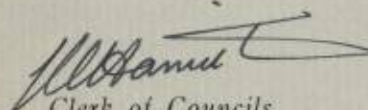
Repeal and replacement of section 9 of the principal Ordinance.

3. Section 9 of the principal Ordinance is hereby repealed and replaced as follows:—

"9. Notwithstanding any rule of practice or procedure to the contrary in the event of a person being charged with an offence against section 3 or section 4 of this Ordinance, a judge

shall not be required to direct the jury that it is dangerous to convict on the evidence of an accomplice without corroboration in a material particular implicating the accused but it shall suffice if the judge shall give the jury such instructions regarding the liability of the evidence of an accomplice as he may deem appropriate."

Passed the Legislative Council of Hong Kong, this 2nd day of November, 1949.

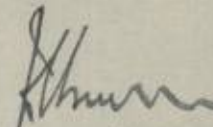

Clerk of Councils.

HONG KONG

No. 47 OF 1949.

I assent.




Governor's Deputy.

3rd November, 1949.

An Ordinance to control persons, other than accredited representatives of foreign states, in the discharge in the Colony of functions on behalf of the Governments of foreign states or on behalf of other foreign political organizations.

[4th November, 1949.]

BE it 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 Representation of Foreign Powers (Control) Ordinance, 1949. Short title.

2. In this Ordinance—

“accredited representative” means a person who by notice in the *Gazette* has been recognized by the Governor as the representative of a foreign state;

Inter-pretation.

“foreign power” means any of, or a combination of any of, the following, namely—

(a) the government whether legal or *de facto* of any foreign state;

(b) any organization which in the opinion of the Governor is either politically associated with controlled by or in political opposition to any such government; but does not include any international organization of which the United Kingdom is a member;

“foreign state” means any territory except—

(i) Republic of Ireland;

(ii) the territory of any member of the Commonwealth; and

(iii) any territory mandated or under trusteeship to or administered by any such member;

“function” means to perform any act or do any thing.

Regulation of persons who may function on behalf of any foreign power.

3. No person shall function on behalf of any foreign power without the consent of the Governor: Provided that this section shall not apply—

(a) to the accredited representative of any foreign state;

(b) to any person exempted by order of the Governor;

(c) to such members of the staff of an accredited representative as are in possession of a valid and subsisting certificate of exemption.

Consent of Governor. Signification.

4. The consent of the Governor required by section 3 may be given subject to such condition or limitation whatsoever as the Governor may see fit to impose and shall in any event be revocable at will. Such consent may be signified under the hand of the Colonial Secretary or the Deputy Colonial Secretary.

Certificate of exemption.

5. A certificate of exemption for the purposes of paragraph (c) of the proviso to section 3 shall be issued under the hand of the Colonial Secretary and shall be valid for the period therein specified (including any period for which it is renewed) but shall in any event be liable to cancellation by the Colonial Secretary at any time and without reason assigned.

Power of Governor to authorize search and seizure.

6. (1) Whenever it shall appear to the Governor, on such evidence as he may deem sufficient, that any person is reasonably suspected of having contravened or of intending to contravene the provisions of section 3 he may by warrant under the hand of the

Colonial Secretary authorize the search of any premises vessel or place upon or in which such person resides or carries on business or is suspected of having contravened or having intention to contravene the provisions of section 3 and such warrant shall be sufficient authority to any police officer of or above the rank of Inspector to enter at any time any premises vessel or place named in the warrant, if necessary by force, and to search such premises vessel or place and any person found thereon and to seize anything which he may find on such premises vessel or place or on any such person which he considers to be evidence that an offence against this Ordinance has been or is about to be committed.

(2) The issue of a warrant under the preceding subsection shall be sufficient authority for the police officer executing such warrant to seal any place or premises named in the warrant and to affix at the entrance to such place or premises a notice that such place or premises are sealed by virtue of the powers accorded by this section. Any person thereafter entering such premises or place without lawful authority or excuse shall be guilty of an offence and on summary conviction shall be liable to imprisonment for a term not exceeding three years and to a fine not exceeding three thousand dollars.

(3) If the person reasonably suspected is a firm, corporation, association or other organization of persons the expression “such person” in sub-section (1) of this section shall include the partners of such firm and the directors and officers of such corporation and the officers of such association or organization.

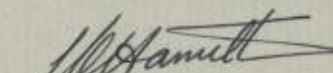
7. (1) Any person contravening the provisions of section 3 shall be guilty of an offence and on conviction upon indictment shall be liable to imprisonment for a term not exceeding five years and to a fine not exceeding ten thousand dollars.

Penalties. Consent to prosecution.

(2) Where a person convicted of an offence against this Ordinance is a body corporate, the chairman and every director and every officer of such body corporate at the time such offence was committed shall be guilty of that offence, unless he proves that the act or omission constituting the offence took place without his knowledge or consent.

(3) A prosecution for an offence under this section shall not be instituted except by or with the consent of the Attorney General.

Passed the Legislative Council of Hong Kong, this 2nd day of November, 1949.


Clerk of Councils.

HONG KONG

No. 48 OF 1949.

I assent.



M. H. H. H. H.
Governor.

17th November, 1949.

An Ordinance to amend further the Magistrates Ordinance, 1932, and to provide for the appointment with retrospective effect of officers who have been functioning as magistrates and to validate the acts judgments orders and decisions of such officers in a magisterial capacity.

[18th November, 1949.]

BE it 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 Magistrates Amendment and Validation Ordinance, 1949, and shall be read as one with the Magistrates Ordinance, 1932, hereinafter referred to as the principal Ordinance.

Short title.
Ordinance
No. 41 of
1932.

2. (1) The following appointments shall be deemed to have been duly made and notified under section 5 of the principal Ordinance :—

Certain
officers to
be deemed
to have

been duly appointed permanent magistrates with effect from the 20th of May, 1949.

(a) the appointment of each of the persons named in the First Column of the Schedule hereto to be a permanent magistrate with effect from the 20th of May, 1949;

(b) the appointment of each of the persons named in the Second Column of the Schedule hereto to be a permanent magistrate from the 20th of May, 1949, until the 11th of November, 1949.

(2) For the purpose of removing doubts it is hereby declared that the appointments which are by sub-section (1) deemed to have been duly made and notified shall have and be deemed always to have had the same effect and consequences for all purposes as if they had in fact been duly made and notified.

Amendment of sub-section (1) of section 5 of the principal Ordinance.

3. Sub-section (1) of section 5 of the principal Ordinance is hereby amended by inserting after the words "such appointments" in the penultimate line thereof the words "together with the warrant of appointment where such warrant limits jurisdiction or powers to be exercised by the person appointed".

Amendment of sub-section (3) of section 7 of the principal Ordinance.

4. Sub-section (3) of section 7 of the principal Ordinance is hereby amended by the substitution of the word "shall" for the word "to" in the fifth line thereof.

Amendment of sub-section (1) of section 13 of the principal Ordinance.

5. Sub-section (1) of section 13 of the principal Ordinance is hereby amended by substituting the word "rebuttal" for the word "reply" in the eighteenth line thereof.

Amendment of sub-section (4) of section 30 of the principal Ordinance.

6. Sub-section (4) of section 30 of the principal Ordinance is hereby amended by inserting the words, symbols and figures "sub-section (2) of" immediately after the word "under" in the second line thereof.

Amendment of section 51 of the principal Ordinance.

7. Section 51 of the principal Ordinance is hereby amended by adding at the end thereof the words "Nothing in the foregoing proviso shall be deemed to affect the provisions of section 38."

8. Sub-section (2) of section 111 of the principal Ordinance is hereby amended by deleting the words, figures and symbols "sub-section (4)" in the second line thereof and substituting therefor the following:—

Amendment of sub-section (2) of section 111 of the principal Ordinance.

"paragraph (a)".

9. Sub-section (2) of section 115 of the principal Ordinance is hereby amended by inserting after the word "and" in the last line thereof the words "without prejudice to the provisions of section 116".

Amendment of sub-section (2) of section 115 of the principal Ordinance.

SCHEDULE.

<i>First Column.</i>	<i>Second Column.</i>
A. D. Scholes	E. B. Teesdale, M.C.
F. X. D'Almada e Castro	D. C. C. Luddington.
J. Wicks	
W. A. Blair-Kerr	
Hin Shing Lo	
W. N. Thomas Tam.	

Passed the Legislative Council of Hong Kong, this 16th day of November, 1949.


Clerk of Councils.

HONG KONG

No. 49 OF 1949.

I assent.



M. H. H. H.

Governor.

17th November, 1949.

An Ordinance to validate the imposition and collection of duty on totalizator and pari-mutuel bets at the rate of three per centum in lieu of two per centum without an appropriate resolution of Legislative Council.

[18th November, 1949.]

BE it 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 Totalizator Bets Short title. (Rate of Duty) Validation Ordinance, 1949.

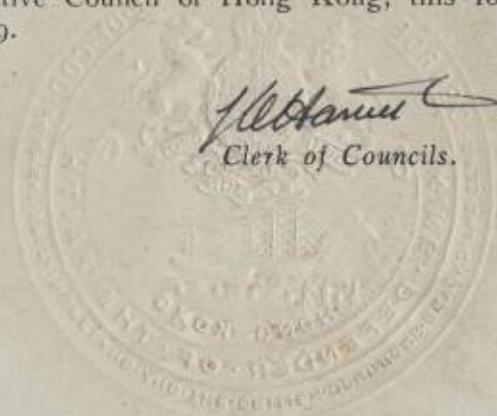
2. Notwithstanding anything contained in sub-section (1) of section 6 of the Betting Duty Ordinance, 1931—

(a) the scale of duty on every bet made on any totalizator or pari-mutuel authorized by the Betting Duty Ordinance, 1931, shall be deemed to have been three per centum as from the 1st of October, 1945, for all purposes; and

Validation
of three
per centum
rate of
duty on
totalizator
bets.
Ordinance
No. 4 of
1931.

(b) the scale of duty as aforesaid shall remain three per centum until a resolution shall have been passed by Legislative Council under sub-section (1) of section 6 of the Betting Duty Ordinance, 1931.

Passed the Legislative Council of Hong Kong, this 16th day of November, 1949.



HONG KONG

No. 50 OF 1949.

I assent.



[Signature]
Governor.

8th December, 1949.

An Ordinance to consolidate and amend the law regulating the granting of pensions, gratuities and other allowances in respect of public service.

[9th December, 1949.]

BE it enacted by the Governor of Hong Kong, with the advice and consent of the Legislative Council thereof :

1. This Ordinance may be cited as the Pensions Ordinance, Short title. 1949.

2. (1) In this Ordinance, unless the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them, that is to say :—

“pensionable office” means—

(a) in respect of service in this Colony an office which—

(i) by virtue of provision for the time being in force in an Order made by the Governor in Council and published in the *Gazette*, is declared to be a pensionable office ; and any such

Interpreta-
tion.

Order may specify a date prior to such Order from which the office is deemed to be a pensionable office; and any such Order may from time to time be amended, added to, or revoked by an Order so made and published; but where by virtue of any such amendment or revocation any office ceases to be a pensionable office, then so long as any person holding that office at the time of the amendment or revocation continues therein, the office shall, as respects that person, continue to be a pensionable office; or

(ii) immediately preceding the commencement of this Ordinance was pensionable whether to holders of such office generally or to a particular holder; and such office shall continue to be pensionable until declared to be no longer pensionable by an Order made by the Governor in Council and published in the *Gazette*; and such Order shall have the like effect as an Order made under sub-paragraph (i) hereof revoking an Order made under this Ordinance:

Provided that no declaration that any office is a pensionable office shall be deemed to imply that any holder thereof who is not on the permanent establishment of the Colony at the date of his retirement shall be pensionable;

(b) in respect of other public service an office which is for the time being a pensionable office under the law or regulations in force in such service;

“non-pensionable office” means an office which is not a pensionable office;

“pensionable emoluments” means—

(a) in respect of service in this Colony substantive salary, expatriation pay and personal allowance but does not include any other emoluments whatever:

Provided that where this Ordinance requires the pensionable emoluments received at a date prior to the first day of January, 1947, by an officer to whom the Pensions Ordinance, 1932, applied, to be taken into account the interpretation given to the words “pensionable emoluments” in the said Ordinance shall be applied to such emoluments;

(b) in respect of other public service emoluments which count for pension in accordance with the law or regulations in force in such service;

“salary” means the salary attached to a pensionable office or, where provision is made for taking service in a non-pensionable office into account as pensionable service, the salary attached to that office;

“personal allowance” means a special addition to salary granted personally to the holder for the time being of the office, but does not include such an addition if it is granted subject to the condition that it shall not be pensionable;

“expatriation pay” means a special addition to salary granted in accordance with the General Orders of this Colony governing such pay;

“Secretary of State” means one of His Majesty’s Principal Secretaries of State;

“public service” means service in a civil capacity under the Government of this Colony or the Government of any other part of His Majesty’s dominions or of any British protectorate, protected state or mandated or trust territory administered by the Government of any part of His Majesty’s dominions, or of the New Hebrides or the Anglo-Egyptian Sudan, or service which is pensionable under the Teachers’ (Superannuation) Act, 1925, or any Act amending or replacing the same, or under the Colonial Superannuation Scheme, or in a Colonial University College or pensionable employment under a local authority in the United Kingdom, or in such other service as the Secretary of State may determine to be “public service” for the purpose of any provision of this Ordinance, and, except for the purposes of computation of pension or gratuity and of section 9 of this Ordinance, includes service as a Governor-General, Governor or High Commissioner in any part of His Majesty’s dominions, any British protected state or protectorate, any mandated or trust territory administered by the government of any part of His Majesty’s dominions, or the Anglo-Egyptian Sudan;

15 & 16
Geo. 5 c.59.

“public service in a civil capacity under the Government of this Colony” shall be deemed to include, as service in a non-pensionable office—

(a) service, other than service as a doctor, in a Chinese Public Dispensary administered by the Chinese Public Dispensaries Committee under the Secretary for Chinese Affairs, and

(b) service under the District Watch Force administered by the District Watch Committee under the Secretary for Chinese Affairs,

when such service has been followed without a break by service under the Government of this Colony; and the period from the 25th day of December, 1941, to the 31st day of March, 1947, shall

be subject to the provisions of section 18 of this Ordinance as though such service, prior to the 25th day of December, 1941, as is included in paragraphs (a) and (b) hereof, was service under the Government of this Colony;

“other public service” means public service not under the Government of this Colony.

(2) For the avoidance of doubts it is hereby declared that, where an officer has been confirmed in a pensionable office and is thereafter appointed to another pensionable office, then, unless the terms of such appointment otherwise require, such last mentioned office is, for the purposes of this Ordinance, an office in which he has been confirmed.

Pension regulations.

3. (1) Pensions, gratuities and other allowances may be granted by the Governor in accordance with the regulations contained in the Schedule to this Ordinance to officers who have been in the service of this Colony and to the dependants of such persons where such service is terminated by death: Provided that where a pension, gratuity or other allowance is expressed to be grantable by the Governor in Council such pension, gratuity or other allowance shall be granted only by the Governor in Council.

The said regulations may from time to time be amended, added to, or revoked by regulations made by the Governor in Council with the sanction of the Secretary of State, and all regulations so made shall be laid before the Legislative Council and published in the *Gazette*.

(2) All regulations made under this section shall have the same force and effect as if they were contained in the Schedule to this Ordinance, and the expression “this Ordinance” shall, wherever it occurs in this Ordinance, be construed as including a reference to the said Schedule.

(3) Whenever the Governor in Council is satisfied that it is equitable that any regulation made under this section should have retrospective effect in order to confer a benefit upon or remove a disability attaching to any person that regulation may be given retrospective effect for that purpose: Provided that no such regulation shall have retrospective effect unless it has received the prior approval of the Legislative Council approved by resolution.

(4) Any pension or gratuity granted to any officer under this Ordinance shall be computed in accordance with the provisions relating to such officer which are in force at the actual date of his retirement.

4. There shall be charged on and paid out of the general revenues of this Colony all such sums of money as may from time to time be granted by way of pension, gratuity or other allowance in pursuance of this Ordinance.

Pensions, etc., to be charged on revenues of this Colony.

5. (1) No officer shall have an absolute right to compensation for past services or to pension, gratuity, or other allowance; nor shall anything in this Ordinance affect the right of the Crown to dismiss any officer at any time and without compensation.

Pensions, etc., not of right.

(2) Where it is established to the satisfaction of the Governor in Council that an officer has been guilty of negligence, irregularity or misconduct, the pension, gratuity, or other allowance may be reduced or altogether withheld; and if an officer is dismissed from the service of this Colony for such negligence, irregularity or misconduct, no pension, gratuity or other allowance shall be granted, unless in any special case the Governor in Council with the approval of the Secretary of State otherwise directs.

6. Unless otherwise provided under this Ordinance or regulations made hereunder no pension, gratuity or other allowance shall be granted under this Ordinance to any officer holding a pensionable office except on his retirement from the public service in one of the following cases:—

Circumstances in which pension may be granted.

(1) on or after attaining the normal age of retirement, as provided in section 8 hereof, or the age of 45 years when such retirement is with the approval of the Governor and, if such officer was appointed with the approval of the Secretary of State and has not attained the normal age of retirement, when such retirement is with the approval of the Governor and Secretary of State;

(2) in the case of transfer to other public service, on or after attaining the age at which he is permitted by the law or regulations of the service in which he is last employed to retire on pension or gratuity;

(3) on the abolition of his office;

(4) on compulsory retirement for the purpose of facilitating improvement in the organization of the department to which he belongs, by which greater efficiency or economy may be effected;

(5) on medical evidence to the satisfaction of the Governor or the Secretary of State that he is incapable by reason of any infirmity of mind or body of discharging the duties of his office and that such infirmity is likely to be permanent;

(6) in the case of removal on the ground of inefficiency as provided in this Ordinance;

11 & 12
Geo. 6, c.12.

(7) on retirement in circumstances, not mentioned in the preceding paragraphs of this section, rendering him eligible for a pension under the Pensions (Governors of Dominions, &c.) Acts, 1911 to 1947, or any Act amending or replacing those Acts:

Provided that a gratuity may be granted to a female officer, in accordance with the provisions of this Ordinance, who retires for the reason that she has married or is about to marry, notwithstanding that she is not otherwise eligible under this section for the grant of any pension, gratuity or other allowance.

Retirement
for in-
efficiency.

7. Where an officer is removed from his office on the ground of his inability to discharge efficiently the duties thereof, and a pension, gratuity or other allowance cannot otherwise be granted to him under the provisions of this Ordinance, the Governor in Council may, if he considers it justifiable having regard to all the circumstances of the case, grant such pension, gratuity or other allowance as he thinks just and proper, not exceeding in amount that for which the officer would be eligible if he retired from the public service in the circumstances described in paragraph (5) of the preceding section.

Compulsory
retirement.

8. (1) The normal age of retirement of an officer holding a pensionable office, other than a judge, shall be on attaining the age of 55 years in the case of a male officer and on attaining the age of 50 years in the case of a female officer: Provided that the Governor in Council may approve any such officer's continued service in this Colony after attaining such age.

(2) It shall be lawful for the Governor in Council to require an officer holding a pensionable office, other than a judge, to retire from the service of this Colony in any of the following cases:—

(a) at any time after he attains the age of 45 years: Provided that retirement under this sub-section shall in addition be approved by the Secretary of State if such officer has not attained the normal age of retirement and such officer's appointment was with the approval of the Secretary of State; or

(b) in the case of a female officer, who has entered public service after the 23rd day of June, 1932, on marriage; or

(c) if he appears to the Governor to be unable to discharge efficiently the duties of his office.

9. (1) Except in cases provided for by sub-section (2) of this section, a pension granted to an officer under this Ordinance shall not exceed two-thirds of the highest pensionable emoluments drawn by him at any time in the course of his service in this Colony. Maximum pension.

(2) An officer who shall have been granted a pension in respect of other public service shall not at any time draw from the funds of this Colony an amount of pension which, when added to the amount of any pension or pensions drawn in respect of other public service, exceeds two-thirds of the highest pensionable emoluments drawn by him at any time in the course of his public service: Provided that where an officer receives in respect of some period of public service both a gratuity and a pension, the amount of such pension shall be deemed for the purpose of this sub-section to be four-thirds of its actual amount.

(3) Where the limitation prescribed by the preceding sub-section operates, the amount of the pension to be drawn from the funds of this Colony shall be subject to the approval of the Secretary of State, in order that it may be determined with due regard to the amount of any pension or pensions to be drawn in respect of other public service.

(4) For the purposes of the preceding sub-sections an additional pension granted in respect of injury shall not be taken into account; but where the officer is granted such an additional pension under this Ordinance, the amount thereof together with the remainder of his pension or pensions shall not exceed five-sixths of the highest pensionable emoluments drawn by him at any time in the course of his public service.

10. (1) Every pension granted to an officer under this Ordinance shall be subject to the following condition:—

Unless or until he has attained the age of 45 years, he may, if physically fit for service, be called upon by the Secretary of State to accept, in lieu of his pension, an office, whether in this Colony or in other public service, not less in value, due regard being had to circumstances of climate, than the office which he held at the date of his retirement, and if a pensioner so called upon declines to accept such office the payment of his pension may be suspended until he has attained the age of 45 years.

Liability of
pensioners
to be called
upon to take
further em-
ployment.

(2) The provisions of the foregoing sub-section shall not apply in any case where the Governor, being of opinion that the officer is not qualified for other employment in the public service or that there is no reason to expect that he can be shortly re-employed therein, otherwise directs.

Suspension of pensions on re-employment.

11. If an officer to whom a pension has been granted under this Ordinance or an Ordinance repealed hereby is appointed to another office in the public service, the payment of his pension may, with his consent, if the Governor in Council thinks fit, be suspended during the period of his re-employment.

Pensions, etc., not to be assignable.

12. A pension, gratuity or other allowance granted under this Ordinance shall not be assignable or transferable except for the purpose of satisfying—

(1) a debt due to the Government; or

(2) an Order of any Court for the payment of periodical sums of money towards the maintenance of the wife or former wife or minor child of the officer to whom the pension, gratuity or other allowance has been granted;

and shall not be liable to be attached, sequestered or levied upon for or in respect of any debt or claim whatever except a debt due to the Government.

Pensions, etc., to cease on bankruptcy.

13. (1) If any person to whom a pension or other allowance has been granted under this Ordinance is adjudicated bankrupt or is declared insolvent by judgment of any competent Court, then such pension or allowance shall forthwith cease.

(2) If any person is adjudicated bankrupt or declared insolvent as aforesaid either—

(a) after retirement in circumstances in which he is eligible for pension or allowance under this Ordinance but before the pension or allowance is granted; or

(b) before such retirement, and he shall not have obtained his discharge from bankruptcy or insolvency at the date of retirement;

then, in the former case any pension or allowance eventually granted to him shall cease as from the date of adjudication or declaration as the case may be and, in the latter case, the pension or allowance may be granted, but shall cease forthwith and not become payable.

(3) Where a pension or allowance ceases by reason of this section, it shall be lawful for the Secretary of State, or if the person in question is resident in this Colony, the Governor, from time to time during the remainder of such person's life, or during such shorter period or periods, either continuous or discontinuous, as the Secretary of State or the Governor, as the case may be, shall think fit, to direct all or any part of the moneys to which such person would have been entitled by way of pension or allowance, had he not become bankrupt or insolvent, to be paid to, or applied for the maintenance or benefit of all or any to the exclusion of the other or others, of the following, that is to say, such person and any wife, child or children of his, in such proportions and manner as the Secretary of State or the Governor, as the case may be, thinks proper, and such moneys shall be paid or applied accordingly.

(4) Moneys applied for the discharge of the debts of the person whose pension or allowance has so ceased shall, for the purposes of this section, be regarded as applied for his benefit.

(5) When a person whose pension or allowance has so ceased obtains his discharge from bankruptcy or insolvency, it shall be lawful for the Secretary of State or, if such person is resident in this Colony, the Governor, to direct that the pension or allowance shall be restored as from the date of such discharge or any later date, and the pension or allowance shall be restored accordingly.

14. (1) If any person to whom a pension or other allowance has been granted under this Ordinance is sentenced to death or a term of imprisonment by any competent Court for any offence, such pension or allowance shall, if the Secretary of State, or if such person is resident in this Colony the Governor, so directs, cease as from such date as the Secretary of State or the Governor, as the case may be, determines.

Pensions, etc., may cease on conviction.

(2) If any person is sentenced as aforesaid after retirement in circumstances in which he is eligible for pension or allowance under the Ordinance but before the pension or allowance is granted, then the provisions of the foregoing sub-section shall apply as respects any pension or allowance which may be granted to him.

(3) Where a pension or allowance ceases by reason of this section it shall be lawful for the Secretary of State or the Governor, as the case may be, to direct all or any part of the moneys to which such person would have been entitled by way of

pension or allowance had he not been sentenced as aforesaid to be paid, or applied, in the same manner in all respects as prescribed in the preceding section, and such moneys shall be paid or applied accordingly.

(4) If such person after conviction at any time receives a free pardon, the pension or allowance shall be restored with retrospective effect; but in determining whether arrears of such pension or allowance are payable to such person and in computing the amount thereof, account shall be taken of all moneys paid or applied under the preceding sub-section.

15. If any person to whom a pension or other allowance has been granted under this Ordinance otherwise than under section 17 becomes either a director of any company or a partner in any partnership the principal part of whose business is in any way directly concerned with the Colony, or an officer or servant employed in the Colony by any such company or partnership, without the prior permission of the Governor in writing, such pension or allowance shall cease if the Governor so directs:

Provided that it shall be lawful for the Governor, on being satisfied that the person in respect of whose pension or allowance any such direction shall have been given has ceased to be a director of such company or a partner in such partnership or to be employed as an officer or servant of such company or partnership in the Colony, as the case may be, to give directions for the restoration of such pension or allowance, with retrospective effect, if he shall see fit, to such a date as he shall specify, and the pension or allowance shall be restored in accordance with any such directions.

16. (1) Where an officer holding a pensionable office who is not on probation or agreement, or an officer holding a non-pensionable office to which he has been transferred from a pensionable office in which he has been confirmed, dies while in the service of this Colony, it shall be lawful for the Governor in Council to grant to his legal personal representative, or in case the gratuity does not exceed \$2,500, to such person as the Governor in Council shall name as the recipient, a gratuity of an amount not exceeding his annual pensionable emoluments.

(2) Such gratuity if granted to the legal personal representative shall form part of the estate of the officer for purposes of distribution but, nevertheless, no estate duty shall be payable in respect thereof, and its addition to the principal value

Pensions, etc., may cease on accepting certain appointments.

Gratuity to estate where officer dies in service of the Colony.

of the estate shall not be taken into consideration for the purpose of increasing the rate at which estate duty on the remainder of the estate may be payable.

(3) For the purpose of this section, "annual pensionable emoluments" means the emoluments which would be taken for the purpose of computing any pension or gratuity granted to the officer if he had retired at the date of his death in the circumstances described in paragraph (5) of section 6 of this Ordinance.

17. (1) Where any officer dies as a result of injuries received—

Pensions to dependants when an officer is killed on duty.

- (a) in the actual discharge of his duty; and
- (b) without his own default; and

(c) on account of circumstances specifically attributable to the nature of his duty;

while in the service of the Government of this Colony it shall be lawful for the Governor in Council to grant, in addition to the grant, if any, of a gratuity—

(i) if the deceased officer leaves a widow, a pension to her, while unmarried and of good character, at a rate not exceeding one-sixth of his annual pensionable emoluments at the date of the injury or four hundred and eighty dollars a year, whichever is the greater or in exceptional cases at a rate not exceeding one-fourth of such emoluments;

(ii) if the deceased officer leaves a widow to whom a pension is granted under the preceding sub-paragraph and a child or children, a pension in respect of each child of an amount not exceeding one-eighth of the pension prescribed under the preceding sub-paragraph;

(iii) if the deceased officer leaves a child or children but does not leave a widow or no pension is granted to the widow, a pension in respect of each child of double the amount prescribed by the preceding sub-paragraph;

(iv) if the deceased officer leaves a child or children and a widow to whom a pension is granted under sub-paragraph (i) of this sub-section, and the widow subsequently dies, a pension in respect of each child as from the date of the death of the widow of double the amount prescribed in sub-paragraph (ii) of this sub-section;

(v) if the deceased officer does not leave a widow, or if no pension is granted to his widow, and if his mother was wholly or mainly dependent on him for her support, a

pension to the mother, while of good character and without adequate means of support, of an amount not exceeding the pension which might have been granted to his widow :

Provided that—

(A) pensions shall not be payable under this sub-section at any time in respect of more than six children ;

(B) in the case of a pension granted under subparagraph (v) of this sub-section, if the mother is a widow at the time of the grant of the pension and subsequently remarries such pension shall cease as from the date of re-marriage ; and if it appears to the Secretary of State at any time that the mother is adequately provided with other means of support, such pension shall cease as from such date as the Secretary of State may determine ;

(C) a pension granted to a child under this section shall cease in the case of a male at the age of 18 years and in the case of a female on marriage or at the age of 21 years.

(2) In the case of an officer not holding a pensionable office, the expression "pensionable emoluments" in the preceding sub-section shall mean the emoluments enjoyed by him which would have been pensionable emoluments if the office held by him had been a pensionable office.

(3) For the purposes of this section—

(a) where an officer contracts a marriage and by reason of the form thereof he is precluded from being married to another person at the same time, "wife" shall mean the woman to whom such officer is lawfully married ;

(b) where an officer contracts a marriage and by reason of the form thereof he is or becomes lawfully married to more than one woman at the same time, "wife" shall mean the woman whom such officer first married : Provided that in the event of any wife eligible for a pension under this Ordinance ceasing to be so eligible and at the time of such cessation the officer was lawfully married as aforesaid to another wife or other wives the officer shall be deemed for the purposes of this Ordinance to have become a widower at the time of such cessation aforesaid and simultaneously to have married the woman who at such time was his wife and whom he married first after his marriage to the wife who has ceased to be eligible as aforesaid ;

(c) where an officer contracts a lawful Chinese customary marriage "wife" shall mean the kit fat or tin fong wife ;

(d) "widow" shall mean the woman who is the wife of an officer at the time of his death ;

(e) "child" shall mean—

(i) the child of an officer born by a woman who is the wife or widow of such officer at the time of the birth ; and

(ii) a person wholly or mainly dependent upon the deceased officer for support, adopted as a child by such officer before the date of injury in a manner recognized by the Governor.

(4) If an officer proceeding by a route approved by the Governor to or from this Colony at the commencement or termination of his service therein, or of a period of leave therefrom, dies as a result of damage to the vessel, aircraft or vehicle in which he is travelling or of any act of violence directed against such vessel, aircraft or vehicle and the Governor is satisfied that such damage or act is attributable to circumstances arising out of war in which His Majesty may be engaged, such officer shall be deemed, for the purposes of this section, to have died in the circumstances described in sub-section (1) of this section.

(5) An officer who dies as a result of injuries received while travelling by air in pursuance of official instructions shall be deemed to have died in the circumstances detailed in (a) and (c) of sub-section (1) of this section : Provided that in such a case and if (b) is also satisfied the rates of pension prescribed in (i) and (ii) of that sub-section shall be one-fourth and one-sixth respectively.

18. For the purpose of calculating a pension allowance or gratuity under this Ordinance an officer's service may with the approval of the Governor be deemed to be unbroken notwithstanding that he ceased to be employed in the service of this Colony after the 25th day of December, 1941, if such officer resumed such service not later than the 31st day of March, 1947, and in such case such period of cessation of service which occurred before the 15th day of March, 1946, or any part thereof may, with the approval of the Governor, be deemed to be service which may be counted for the purpose of calculating an allowance or gratuity grantable under this Ordinance : Provided that an officer who did not resume duty and who died not later than the 31st day of March, 1947, shall nevertheless be deemed to have resumed duty, for the purpose of this section, on the date of his death.

Effect of enemy occupation.

19. (1) Subject to express provisions to the contrary in the Ordinance or the regulations in the Schedule hereto, this Ordinance and such regulations shall be deemed to have had effect from

Commencement and application of the

Ordinance and recomputation of benefits.

the first day of January, 1947, and the provisions thereof shall except as otherwise provided apply to all officers in the service of the Colony on or after the said date: Provided that no pension or gratuity shall be grantable under this Ordinance in respect of service by an officer terminating between the first day of January, 1947, and the enactment of this Ordinance when no pension or gratuity would have been grantable, if this Ordinance had effect on the date of enactment, by reason of the age at which such officer left the service of the Colony.

Ordinance No. 21 of 1932.

(2) Any pension, gratuity or other allowance granted under the provisions of an Ordinance or regulation repealed by section 21 other than Pension Regulations C made under the Pensions Ordinance, 1932, in respect of service in this Colony by an officer who was in receipt of salary according to a scale of pay operative in this Colony in consequence of the Salaries Revision, 1947, shall be recomputed according to the provisions of this Ordinance. Such recomputed pension, gratuity or other allowance shall be granted in substitution of the former award except that where it is to the advantage of the recipient such former award shall be deemed to have been validly made under this Ordinance.

(3) A pension, gratuity or other allowance in respect of service of an officer who is not or has not been in receipt of salary based upon a scale of pay operative in this Colony in consequence of the Salaries Revision, 1947, shall be grantable hereunder according to the provisions relating to the grant of pension, gratuity or other allowance in respect of such officer's service applicable prior to the first day of January, 1947, except in respect of service which would necessitate the application thereto of the provisions of Pension Regulations C made under the Pensions Ordinance, 1932, in which case the provisions of Part V of the Schedule hereto shall be applied in respect of the service to which the said Pension Regulations C would have been applicable: Provided that if such an officer rejoins or an officer is appointed to the service of this Colony after the enactment of this Ordinance the provisions of this Ordinance other than this sub-section shall apply in respect of the grant of any pension, gratuity or other allowance granted after so rejoining or being so appointed.

Ordinance No. 13 of 1886.

(4) "Salaries Revision, 1947" shall mean for the purpose of this section, the revision of salaries initiated by the report of the Commissioners appointed on the 20th day of March, 1947, by virtue of section 2 of the Commissioners Powers Ordinance, 1886.

(5) If any question arises as to whether any salary is according to a scale of pay operative in the Colony in consequence of the Salaries Revision, 1947, the decision thereon of the Governor in Council shall be final.

20. For the purpose of this Ordinance any person holding office in the service of the Government of Palestine immediately before the 15th day of May, 1948, shall be deemed to continue in his office until either he is appointed to public service elsewhere, or, if he is not so appointed, he retires or is removed from his office.

Provisions for officers transferred to Government from the service of the Government of Palestine.

21. The Pensions Ordinance, 1932, the Pensions Amendment Ordinance, 1934, the Pensions Amendment Ordinance, 1935, the Pensions Amendment Ordinance, 1936, the Pensions (No. 2) Amendment Ordinance, 1936, the Pensions Amendment (No. 3) Ordinance, 1936, the Pensions (No. 4) Amendment Ordinance, 1936, the Pensions Amendment Ordinance, 1939, the Pensions (War Service) Ordinance, 1940 and the Pensions Amendment Ordinance, 1947, are hereby repealed and all regulations made thereunder are hereby revoked. Section 23, paragraph (a) of sub-section (1) of section 43 and section 44 of the Police Force Ordinance, 1948, are hereby repealed and the regulations made under the powers conferred by sub-section (1) of section 9 of the Police Force Ordinance, 1932, and paragraph (a) of sub-section (1) of section 43 of the Police Force Ordinance, 1948, are hereby revoked: Provided that the repeal of Pension Regulations C made under the Pensions Ordinance, 1932, shall have effect from the date of enactment hereof.

Repeal. No. 21 of 1932, 12 of 1934, 29 of 1935, 3 of 1936, 27 of 1936, 34 of 1936, 53 of 1936, 28 of 1939, 30 of 1940, 8 of 1947

PENSIONS ORDINANCE, 1949.

SCHEDULE.

[s. 3].

REGULATIONS FOR GRANTING OF PENSIONS, GRATUITIES AND OTHER ALLOWANCES.

PART I.

PRELIMINARY.

1. These Regulations may be cited as the Pensions Citation Regulations, 1949.

Interpretation.

2. In these Regulations, unless the context otherwise requires—

“qualifying service” means service which may be taken into account in determining whether an officer is eligible by length of service for pension, gratuity or other allowance;

“pensionable service” means service which may be taken into account in computing pension under these Regulations;

“the Ordinance” means the Pensions Ordinance, 1949.

PART II.

OFFICERS WITHOUT OTHER PUBLIC SERVICE.

Application of Part II.

3. Save when the Governor in Council in any special case otherwise directs, this Part of these Regulations shall not apply in the case of any officer transferred to or from the service of this Colony from or to other public service except for the purpose of determining whether such officer would have been eligible for pension or gratuity and the amount of pension or gratuity, for which the officer would have been eligible, if the service of the officer had been wholly in this Colony.

Pensions to whom and at what rates to be granted.

4. Subject to the provisions of the Ordinance and of these Regulations, every officer holding a pensionable office in this Colony, who has been in the service of this Colony in a civil capacity for ten years or more, may be granted on retirement a pension at the annual rate of one six-hundredth of his pensionable emoluments for each complete month of his pensionable service.

Gratuities where length of service does not qualify for pension.

5. Every officer, otherwise qualified for a pension, who has not been in the service of this Colony in a civil capacity for ten years, may be granted on retirement a gratuity not exceeding five times the annual amount of the pension which, if there had been no qualifying period, might have been granted to him under Regulation 4 of these Regulations.

Marriage gratuities.

6. Where a female officer having held a pensionable office or offices in this Colony for not less than five years and having been confirmed in a pensionable office, retires from the service of this Colony for the reason that she has married or is about to marry, and is not eligible for the grant of any pension or otherwise eligible for gratuity under this Part of these Regulations, she may be granted on production within six months after her retirement, or such longer period as the Governor may in any

particular case allow, of satisfactory evidence of her marriage, a gratuity not exceeding one-twelfth of a month's pensionable emoluments for each completed month of pensionable service in this Colony or one year's pensionable emoluments, whichever shall be the less.

PART III.

TRANSFERRED OFFICERS.

7. This Part of these Regulations shall apply only in the case of an officer transferred to or from the service of this Colony from or to other public service. Application of Part III.

8. (1) In this Part and Part IV of these Regulations— Interpretation.

“Schedule Government” means the Government of any territory, or any authority, mentioned in the Schedule to these Regulations and includes the Government of Ceylon, in respect of any officer appointed to the service of that Government prior to the 4th February, 1948, and the Government of Palestine, in respect of any officer appointed to the service of that Government prior to the 15th May, 1948;

“Service in the Group” means service under the Government of this Colony and under a Scheduled Government or Scheduled Governments.

(2) Where an officer, to whom this Part of these Regulations applies, is, on his retirement from the public service, not granted a pension or gratuity in respect of his employment in the service in which he is last employed, solely by reason of the fact that he has not held office or pensionable office therein for a specified period he should nevertheless be deemed for the purpose of this Part of these Regulations to have retired in circumstances in which he is permitted by the law or regulations of the service in which he is last employed to retire on pension or gratuity.

9. (1) Where the other public service of an officer to whom this Part of these Regulations applies has been wholly under one or more Scheduled Governments, and his aggregate service would have qualified him had it been wholly in this Colony for a pension under the Ordinance, he may, on his retirement from the public service in circumstances in which he is permitted by the law or regulations of the service in which he is last employed to retire on pension or gratuity be granted in respect of his service in this Pension for service wholly within the Group.

Colony a pension of such an amount as shall bear the same proportion to the amount of pension for which he would have been eligible had his service been wholly in this Colony, as the aggregate amounts of his pensionable emoluments during his service in this Colony shall bear to the aggregate amounts of his pensionable emoluments throughout his service in the Group.

(2) In determining for the purposes of this Regulation the pension for which an officer would have been eligible if his service had been wholly in this Colony—

(a) in the application of Regulation 18 his pensionable emoluments shall be determined by reference to the pensionable emoluments enjoyed by him at the date of retirement from the public service or during the three years preceding that date, as the case may be, except that where the officer is not serving under a Scheduled Government at that date, the date upon which he was last transferred from the service of a Scheduled Government shall be deemed to be the date of his retirement for the purposes of this sub-paragraph;

(b) no regard shall be had to an additional pension under Regulation 22 or Regulation 31;

(c) regard shall be had to the condition that pension may not exceed two-thirds of his highest pensionable emoluments;

(d) no period of other public service under a Scheduled Government in respect of which no pension or gratuity is grantable to him shall be taken into account.

(3) For the purposes of this Regulation the aggregate amount of an officer's pensionable emoluments shall be taken as the total amount of pensionable emoluments which he would have received or enjoyed had he been on duty on full pay in his substantive office or offices throughout his period of service in the Group subsequent to the attainment of the age of 18 years: Provided that—

(a) in calculating the aggregate amount of his pensionable emoluments, no account shall be taken of any service in this Colony or under any Scheduled Government in respect of which no pension or gratuity is grantable to him;

(b) where under Regulation 19 a fraction only of any service in a civil capacity is otherwise than in pensionable service, that same fraction only of the officer's aggregate pensionable emoluments during that service shall be taken into account for the calculation aforesaid;

(c) where an officer entered the public service prior to the first day of January, 1930, his pension in respect of his service in this Colony may be calculated as though any Scheduled Government under which he has served had not been included in these Regulations should this be to his advantage.

10. (1) Where the other public service of an officer to whom this Part of these Regulations applies has not included service under any of the Scheduled Governments, and his aggregate service would have qualified him, had it been wholly in this Colony, for a pension under these Regulations, he may, on his retirement from the public service in circumstances in which he is permitted by the law or regulations of the service in which he is last employed to retire on a pension or gratuity, be granted in respect of his service in this Colony a pension at the annual rate of one six-hundredth of his pensionable emoluments for each complete month of his pensionable service in this Colony.

Pension where other service not within the Group.

(2) Where the officer is not in the service of this Colony at the time of such retirement, his pensionable emoluments for the purposes of the preceding paragraph shall be those which would have been taken for the purpose of computing his pension if he had retired from the public service and been granted a pension at the date of his last transfer from the service of this Colony.

11. Where a part only of the other public service of an officer to whom this Part of these Regulations applies has been under one or more of the Scheduled Governments, the provisions of Regulation 9 shall apply; but in calculating the amount of pension regard shall be had only to Service in the Group.

Pension when other service both within and not within the Group.

12. Where an officer to whom this Part of these Regulations applies retires from the public service in circumstances in which he is permitted by the law or regulations of the service in which he is last employed to retire on pension or gratuity, but has not been in the public service in a civil capacity for ten years, he may be granted in respect of his service in this Colony a gratuity not exceeding five times the annual amount of the pension which, if there had been no qualifying period, might have been granted to him under Regulations 9, 10 or 11, as the case may be.

Gratuities where length of service does not qualify for pension.

13. A female officer to whom this Part of these Regulations applies who retires for the reason that she has married, or is about to marry, and in consequence—

Marriage gratuities.

(1) would, if the whole of her public service had been in this Colony, have been eligible for a gratuity under Regulation 6 of these Regulations, and

(2) if, at the date of her retirement in other public service, she is eligible for a gratuity under provisions corresponding to that Regulation in the law or regulations of the public service in which she is last employed,

may, if she is not eligible for the grant of any pension or otherwise eligible for gratuity under this Part of these Regulations, be granted a gratuity which bears, to the gratuity for which she would be eligible if the whole of her public service had been in the service in which she is last employed, the proportion which her service in this Colony bears to her total public service: Provided that for the purpose of computing such an officer's total public service under this paragraph no regard shall be had to any service under a Government which does not grant a gratuity to her in consequence of her retirement.

PART IV.

GENERAL.

General rules as to qualifying service and pensionable service.

14. (1) Subject to the provisions of these Regulations, qualifying service shall be the inclusive period between the date on which an officer begins to draw salary in respect of public service and the date of his leaving the public service, without deduction of any period during which he has been absent on leave.

(2) No period which is not qualifying service by virtue of the foregoing paragraph shall be taken into account as pensionable service or as service for the purpose of calculating an allowance under Part V of these Regulations.

(3) No period during which the officer was not in public service shall be taken into account as qualifying service or as pensionable service or service for the purpose of calculating an allowance under Part V of these Regulations:

Provided that any period during which an officer shall have been seconded for non-public service with the approval of the Governor in Council may be taken into account as qualifying service and as pensionable service or service for the purpose of calculating an allowance under Part V of these Regulations.

15. (1) Except as otherwise provided in these Regulations, only continuous service shall be taken into account as qualifying service or as pensionable service: Provided that any break in service caused by temporary suspension of employment not arising from misconduct or voluntary resignation shall be disregarded for the purposes of this paragraph. Continuity of service.

(2) An officer—

(a) whose pension has been suspended under section 11 of the Ordinance or under a corresponding provision in any law or regulation relating to the grant of pensions in respect of public service; or

(b) who has retired from the public service without pension on account of ill-health, abolition of office, or re-organization designed to effect greater efficiency or economy, and has subsequently been re-employed in the public service; or

(c) who has left pensionable service under the Teachers (Superannuation) Act, 1925, with a view to entering public service not being service pensionable under the said Act and has, not later than three months after leaving such first mentioned service, received any salary in respect of employment in public service not so pensionable; 15 & 16 Geo. 5, c.59.

may, if the Governor in Council thinks fit, be granted the pension or gratuity for which he would have been eligible if any break in his public service immediately prior to such suspension, re-employment or employment had not occurred, such pension to be in lieu of—

(i) any pension previously granted to him from the funds of this Colony; and

(ii) any gratuity so granted which is required to be refunded as a condition of the application to the officer of this Regulation;

but additional to any gratuity so granted which is not required to be refunded as aforesaid.

16. Where an officer shall have served with His Majesty's Forces in time of war and before so serving shall have been employed in the public service the following provisions shall have effect:— War service to count for pension purposes.

(1) During the period of such service in His Majesty's Forces, including any period after the termination of the war (in this Regulation referred to as "military service"), he shall be deemed for the purposes of the Ordinance and these Regulations to have been on leave on full salary from the public service in which he was last employed, and to have held the substantive office last held by him in that service prior to military service.

(2) During any period between his leaving the public service for the purpose of serving in His Majesty's Forces and the date of his commencing military service he shall, for the purposes of the Ordinance and of these Regulations, be deemed to be on leave without pay, not granted on grounds of public policy, from the public service in which he was last employed and to have held the substantive office last held by him in that service prior to military service; and during any period between the termination of his military service and the date of his re-entering the public service he shall, for the said purposes, be deemed to be on leave as aforesaid from the service and to have held the substantive office in which he is re-employed: Provided that—

(a) this Regulation shall not apply when either period mentioned in paragraph (2) of this Regulation exceeds three months, or such longer period as the Governor, with the approval of the Secretary of State, may in any special case determine; or if the officer fails after serving with His Majesty's Forces to re-enter the public service otherwise than in circumstances in which he would be permitted under the law applicable to the public service in which he is last employed prior to military service, to retire on pension or gratuity, such circumstances arising not later than the expiration of three months or such longer period as may be determined as aforesaid, after the termination of his military service;

(b) this Regulation shall not apply when subsequent to the commencement of this Ordinance an officer shall have commenced service with His Majesty's Armed Forces without the approval of the Governor of the territory in the service of which he was last employed before so serving or of the Secretary of State;

(c) if during any period mentioned in paragraph (1) of this Regulation the officer shall have qualified for pension, or received emoluments in lieu of pension rights, actually in respect of military service, paragraph (1) of this Regulation shall, as respects that period, have effect as if the words "leave without salary not granted on grounds of public policy" were substituted for the words "leave on full salary";

(d) if during his military service the officer shall be injured or killed, he shall not, for the purposes of any provision of the Ordinance or of these Regulations relating to injury awards be deemed to have been injured or killed in the discharge of his duty;

(e) the provisions of this Regulation which require that the officer shall be deemed to have held a specified office and to have been on leave from a specified service shall not apply in respect of any period during which he shall actually have held any other substantive office and have been on leave from any public service;

(f) save where in any particular case the Governor otherwise directs, this Regulation shall not apply where the office in the public service last held by the officer prior to military service was not a pensionable office;

(g) the provisions of this Regulation shall not apply to an officer who has received a pension or gratuity during a period of service in His Majesty's Forces in respect of public service prior to joining His Majesty's Forces.

17. Where an officer, during some period of his service, has been on the active list of the Royal Navy, the Army or the Royal Air Force and pension contributions have been paid in respect of that period from the funds of this Colony or of any Scheduled Government and have not been refunded, such period shall not be taken into account as pensionable service.

Service in His Majesty's Forces.

18. (1) For the purpose of computing the amount of an officer's pension or gratuity—

Emoluments to be taken for computation of pensions, etc.

(a) in the case of an officer who has held the same office for a period of three years immediately preceding the date of his retirement, the full annual pensionable emoluments enjoyed by him at that date in respect of that office shall be taken;

(b) in the case of an officer who at any time during such period of three years has been transferred from one office to another, but whose pensionable emoluments have not been changed by reason of such transfer or transfers, the full annual pensionable emoluments enjoyed by him at the date of his retirement in respect of the office then held by him shall be taken;

(c) in other cases one-third of the aggregate pensionable emoluments enjoyed by the officer in respect of his service during the three years of his service immediately preceding the date of his retirement shall be taken, or if his public service is less than three years, twelve times the average monthly pensionable emoluments in respect of such service shall be taken: Provided that—

(i) if such figure is less than the highest annual pensionable emoluments enjoyed by him at the date of any transfer within such period of three years those pensionable emoluments shall be taken; and

(ii) if such figure is less than the annual pensionable emoluments which would have been enjoyed by him at the date of his retirement, if he had continued to hold any office from which he has been transferred at any time during such period of three years, and had received all increments which, in the opinion of the Governor would have been granted to him, the annual pensionable emoluments which would have been so enjoyed shall be taken;

(iii) for the purpose of calculating pensionable emoluments under this paragraph, the officer shall be deemed to have been on duty on full pensionable emoluments throughout the said three years.

(2) In the application of paragraph (1) of this Regulation to an officer to whom the Pensions Ordinance, 1932, applied prior to the commencement of the Pensions Ordinance, 1949, and who retires before the first day of January, 1950, the provisions of the preceding paragraph of this Regulation shall be applied to the pensionable emoluments which such officer would have received in accordance with the interpretation given to the words "pensionable emoluments" in the Pensions Ordinance, 1932, had he not become subject to a scale of pay operative in this Colony in consequence of the Salaries Revision, 1947, and had he received all the increments which in the opinion of the Governor would have been granted to him, if this shall be to such officer's advantage.

Service
in a non-
pensionable
office.

19. Only service in a pensionable office shall be taken into account as pensionable service: Provided that—

(1) Where a period of service in a civil capacity otherwise than in a pensionable office is immediately followed by service in a pensionable office and the officer is confirmed therein—

(a) three quarters of such period may with the approval of the Governor in Council be so taken into account; or

(b) if prior to the 31st May, 1937, the officer was in the service of this Colony and such period of service might have been taken into account as pensionable service either as a whole or less a third for any part of such period paid for out of an open vote, such period may as a whole or less such third, continue to be so taken into account, if this shall be to such officer's advantage;

and where it would be to an officer's advantage to make separate awards in respect of his service in a pensionable and non-pensionable office, such separate awards may be made.

(2) Any break in service which may be disregarded under the provisions of Regulation 15 of these Regulations may likewise be disregarded in determining for the purposes of the preceding proviso whether one period of service immediately follows another period of service.

(3) Where an officer has been transferred from a pensionable office in which he has been confirmed to a non-pensionable office and subsequently retires either from a pensionable office or a non-pensionable office, his service in the non-pensionable office may, with the approval of the Governor in Council, be taken into account as though it were service in the pensionable office which he held immediately prior to such transfer and at the pensionable emoluments which were payable to him at the date of transfer; except—

(a) where the officer so elects, his total service including service in the pensionable office, may be reckoned as though it were service in a non-pensionable office; and

(b) where a transfer from a pensionable to a non-pensionable office is made to provide continued employment for an officer who, on the ground of physical infirmity has become incapable of retaining his pensionable office, then the whole of his service shall be deemed to be service in a non-pensionable office unless, by his subsequent re-transfer to a pensionable office, his case is brought within the provisions of proviso (1) to this Regulation.

(4) Where a period of service in a non-pensionable office is so taken into account under this Regulation, the officer shall, during that period, be deemed for the purposes of Regulations 6,

22 and 31 of these Regulations to be holding a pensionable office, and where that period is taken into account under the preceding proviso, to have been confirmed therein.

Acting service.

20. Where an officer has performed acting service in an office in this Colony the period of such service may be taken into account as pensionable service (subject if the office is a non-pensionable office to the provisions of the preceding Regulation) if the period of such acting service—

- (1) is not taken into account as part of the officer's own pensionable service in other public service;
- (2) is immediately preceded or followed by service as the substantive holder of a pensionable office in this Colony.

Service not counting for pension.

21. Save as otherwise provided in these Regulations, there shall not be taken into account as pensionable service—

- (1) any period of service while the officer was under the age of 18 years; or
- (2) any period of service while he was on probation or agreement, unless without break of service he is confirmed in a pensionable office in the public service; or
- (3) any period during which an officer shall have been absent from duty on leave without salary unless such leave shall have been granted on grounds of public policy with the approval of the Secretary of State:

Provided that any break of service which may be disregarded under the provisions of Regulation 15 of these Regulations may likewise be disregarded in determining whether the officer is confirmed in a pensionable office without break of service.

Abolition of office and reorganization.

22. If an officer holding a pensionable office and who has been confirmed therein retires from the public service in consequence of the abolition of his office or for the purpose of facilitating improvements in the organization of the department to which he belongs, by which greater efficiency or economy may be effected,

- (1) he may, if he has been in the public service for less than ten years, be granted in lieu of any gratuity under Regulation 5 or Regulation 12 of these Regulations, a pension under Regulations 4, 9, 10 or 11, as the case may be, as if the words "for ten years or more" were omitted from Regulation 4;

(2) he may, if he retires from the service of this Colony, be granted an additional pension at the annual rate of one-sixtieth of his pensionable emoluments for each complete period of three year's pensionable service: Provided that—

- (a) the addition shall not exceed ten-sixtieths; and
- (b) the addition together with the remainder of the officer's pension shall not exceed the pension for which he would have been eligible if he had continued to hold the office held by him at the date of his retirement and retired on reaching the age at which he may be required to retire without the approval of the Secretary of State, having received all increments for which he would have been eligible by that date.

23. (1) An officer to whom a pension is granted under the Ordinance shall, if he has exercised his option as hereinafter provided, but not otherwise, be paid in lieu of such pension a pension at the rate of three-fourths of such pension together with a gratuity equal to ten times the amount of the annual reduction so made in the pension. Gratuity and reduced pension.

(2) The option referred to in paragraph (1) of this Regulation shall be exercisable, and if it has been exercised may be revoked not later than the day immediately preceding the date of such officer's retirement: Provided that the Governor may, if it appears to him equitable in all the circumstances so to do, allow him to exercise the option or revoke an option previously exercised at any time between that date and the actual date of award of pension under this Ordinance.

(3) Subject to the provisions of paragraph (2) of this Regulation, if an officer has exercised the option his decision shall be irrevocable so far as concerns any pension to be granted to him under the Ordinance.

(4) If an officer who has not exercised the option dies after he has finally retired but before a pension has been awarded under the Ordinance, it shall be lawful for the Governor in Council to grant a gratuity and a reduced pension as provided in paragraph (1) of this Regulation, as if the officer before his death had exercised the option.

(5) The date of the exercise of the option by an officer shall be deemed to be the date of the receipt of his written notification addressed either to the Colonial Secretary or to the Crown Agents for the Colonies.

(6) A re-employed officer or pensioner shall be deemed to have exercised, or not to have exercised, in respect of his service subsequent to re-employment, the said option, according as he exercised, or did not exercise, such option in respect of his previous service even if, in respect of such previous service, the option was not available to him.

PART V.

NON-PENSIONABLE OFFICERS.

Application of Part V.

24. This Part of these Regulations shall apply only to non-pensionable officers and shall have effect from the date of enactment hereof.

Interpretation.

25. In this Part of these Regulations—

“salary” and “pay” mean remuneration exclusive of cost of living allowance or other allowance or extra pay for work done in hours which are beyond the normal working period;

“non-pensionable officer” shall include—

(a) a person paid at daily rates of pay, hereinafter referred to as a daily paid employee;

(b) an officer other than a daily paid employee who does not hold a pensionable office or who holding a pensionable office is serving on probation, but not including an officer who is serving under an agreement expressly providing for the payment of a gratuity dependent upon the length of service of such officer; such officers are hereinafter referred to as monthly paid officers:

Provided that an officer holding a pensionable office whilst on probation who is confirmed without break of service to a pensionable office shall not be eligible for benefit under this Part of these Regulations in respect of service in a pensionable office whilst on probation.

For the purpose of this provision any break of service which may be disregarded under the provisions of Regulation 15 of these Regulations may likewise be disregarded in determining whether an officer is confirmed in a pensionable office without break of service.

Annual allowance and gratuity for monthly paid officers.

26. (1) Every monthly paid non-pensionable officer serving in this Colony in respect of whom the conditions set forth herein are fulfilled may on retirement be granted by the Governor an annual allowance which, if his length of service does not exceed 25 years, shall be calculated at the rate of 1/800th of his annual

salary for every complete month of service in the Colony and if his service exceeds 25 years, shall be calculated at 300/800th of such annual salary with an addition thereto of 1/600th of such annual salary for every completed month of service in the Colony in excess of 25 years. Such annual salary shall be computed in accordance with paragraph (1) of Regulation 18, subject to the modification that for the words “annual pensionable emoluments” wherever they occur in such Regulation shall be substituted the words “annual salary”: Provided that where the officer at the date of retirement is employed in a post the minimum of the scale of salary of which amounts to \$624 per annum or less and who prior to the commencement of this Regulation was not in the service of this Colony no annual allowance may be granted but it shall be lawful for the Governor to award a gratuity to such officer not exceeding five times the amount of the annual allowance which might have been granted to him under this Regulation but for this proviso.

(2) Annual salary in respect of an officer who, having held a non-pensionable post is serving on probation in a pensionable office, shall be the annual pensionable emoluments of the pensionable office or the annual pay last received in respect of his service in a non-pensionable office, whichever shall be greater.

(3) The conditions upon which an annual allowance or gratuity may be granted under this Regulation are—

(a) such service must have been continuous for a period of not less than ten years: Provided that such interruptions in service which may be disregarded under Regulation 15 for the purpose of qualifying for and computing a pension may be disregarded for the purpose of qualifying for and computing an annual allowance under this Regulation; and either

(b) the officer must have attained the age of fifty-five; or

(c) the Governor must be satisfied on medical evidence that he is incapable by reason of infirmity of mind or body of discharging the duties of his office and that such infirmity is likely to be permanent; or

(d) the officer’s retirement must be necessitated by the reorganization of the department to which he belongs in order to effect greater economy or efficiency.

(4) Any officer to whom an annual allowance may be granted under this Regulation may, in lieu of such allowance, on application to the Governor not later than the date of retirement

or such later date as the Governor may decide in any particular case, he granted an annual allowance at the rate of three-fourths of the such allowance together with a gratuity equal to ten times the amount of annual reduction so made in the allowance.

(5) No annual allowance may be granted under this Regulation to any officer in a pensionable office in excess of the pension which might have been granted had that officer been a pensionable officer in the office held by him, with the same service.

(6) No period during which a non-pensionable officer shall have been absent from duty on leave without salary shall be taken into account for the purpose of computing the period of service in respect of which an annual allowance or gratuity may be granted under these Regulations: Provided that such period of leave shall not be deemed to constitute a break in service.

(7) Every monthly paid non-pensionable officer serving in the Colony who retires and who on his retirement has not completed ten years unbroken service may be granted by the Governor a gratuity not exceeding five times the annual allowance which if there has been no qualifying period might have been granted to him under this Regulation.

Gratuity for daily paid employees.

27. Every daily paid employee serving in the Colony may on his retirement on any of the conditions stated in Regulation 26 (3)(b), (c) and (d) after completing not less than five years unbroken service be granted by the Governor a gratuity calculated at the rate of 15 times the rate of pay per day of which he is in receipt at the time of his retirement for every completed period of twelve months' service: Provided that the Governor in Council may give directions in any particular case that service prior to a break which is not occasioned by dismissal for misconduct or by voluntary resignation and which does not extend for more than three years, shall be deemed to have preceded subsequent service without break: Provided further that no gratuity granted hereunder shall exceed 300 times such rate of pay.

Service partly as monthly paid officer and partly as a daily paid employee.

28. Where a person's service in this Colony has been partly as a monthly paid officer and partly as a daily paid employee he may if he fulfils any of the conditions set out in (b), (c) or (d) of paragraph (3) of Regulation 26 on his retirement be granted in respect of his service—

(a) an annual allowance or gratuity in respect of his aggregate service as a monthly paid officer under Regulation 26:

Provided that Regulation 18 shall be applied as though the words "date of the final termination of his service as a monthly paid pensionable officer" were substituted for the words "date of his retirement" wherever they appear in the said Regulation; and

(b) if his total service in this Colony is not less than five years a gratuity in respect of his aggregate service as a daily paid employee under Regulation 27 as though the words "time of the final termination of his service as a daily paid employee" were substituted for the words "time of his retirement" in the said Regulation.

29. (1) A gratuity of an amount determined by the Governor in each case not exceeding nine months' salary in the case of monthly paid officers and one hundred and eighty days pay in respect of daily paid employees may be granted to the dependants of any non-pensionable officer whose service is terminated by his death and—

Gratuity payable where a non-pensionable officer dies in the service of the Colony.

(a) who has completed three years' unbroken service; or

(b) whose death was caused in the discharge of his duty, or as a direct result of injuries received whilst on duty or by illness specifically attributable to the nature of his duties.

(2) For the purpose of this Regulation the service of an officer or employee shall be deemed to be terminated by his death if he dies as a result of continuous illness incapacitating him from work from the last day on which he drew salary or pay and the period of three years shall be computed up to such last day.

(3) The dependants who shall be the recipients of any gratuity granted under this Regulation shall be such as may be named by the Governor in each case and the gratuity shall not form part of the estate for the purposes of distribution nor shall it be taken into account in computing estate duty.

30. The provisions of section 9 of the Ordinance shall apply to annual allowances under this Part of these Regulations as though the words "annual allowance" were substituted for the word "pension" except where the word "pension" relates to an additional pension and as though the word "salary" was substituted for "pensionable emoluments" wherever such word or words may appear.

Application of section 9 of the Ordinance.

PART VI.

SUPPLEMENTARY.

Officers retiring on account of injuries.

31. (1) If an officer holding a pensionable office in which he has been confirmed is permanently injured—

(a) in the actual discharge of his duty; and

(b) without his own default; and

(c) on account of circumstances specifically attributable to the nature of his duty—

(i) he may, if his retirement is thereby necessitated or materially accelerated and he has been in the public service for less than ten years, be granted, in lieu of any gratuity under Regulation 5 or Regulation 12 of these Regulations, a pension under Regulations 4, 9, 10 or 11, as the case may be, as if the words "for ten years or more" were omitted from the said Regulation 4;

(ii) he may, if so injured while in the service of this Colony, be granted on retirement an additional pension at the annual rate of the proportion of his actual pensionable emoluments at the date of his injury appropriate to his case as shown in the following table:—

When his capacity to contribute to his own support is—

	50
slightly impaired	600
	100
impaired	600
	150
materially impaired	600
	200
totally destroyed	600

Provided that the amount of the additional pension may be reduced to such an extent as the Governor in Council shall think reasonable where the injury is not the cause or the sole cause of retirement.

(2) Any officer so injured while in the service of this Colony not holding a pensionable office, or holding a pensionable office in which he has not been confirmed, may be granted on retirement a pension of the same amount as the additional pension

which might be granted to him under paragraph (1) of this Regulation if his office were a pensionable office and he had been confirmed therein.

(3) If an officer proceeding by a route approved by the Governor to or from the Colony at the commencement or termination of his service therein, or a period of leave therefrom, is permanently injured as a result of damage to vessel, aircraft or vehicle in which he is travelling, or of any violence directed against such vessel, aircraft or vehicle, and the Governor is satisfied that such damage or act is attributable to circumstances arising out of war in which His Majesty may be engaged, such officer shall be deemed for the purposes of this Regulation to have been injured in the circumstances described in the first paragraph of this Regulation.

(4) An officer who is permanently injured while travelling by air in pursuance of official instructions shall be deemed to have been injured in the circumstances detailed in (a) and (c) of paragraph (1): Provided that in such a case and if (b) is also satisfied the rates of pension prescribed in that paragraph shall be seventy-five six-hundredths; one hundred and fifty six-hundredths; two hundred and twenty-five six-hundredths and three-hundred six-hundredths respectively.

(5) The provisions of Regulation 23 shall not apply to a pension granted under this Regulation.

32. In lieu of the grant of a pension or annual allowance there may, with the approval of the Governor, be granted to an officer if he intends to reside in India or in China, a capital sum equal to the amount of five annual payments, but no such capital sum shall ordinarily be paid in any case of retirement on the ground of ill-health: Provided that for the purposes of this Regulation such annual payments shall be the remaining portions after deduction of the annual contribution, if any, due in respect of widows and orphans pension.

Commutation.

33. It shall be a condition of the grant of every pension or other allowance that the Governor in Council may cancel or reduce it if it be shown to have been obtained by the wilful suppression of material facts or to have been granted in ignorance of facts which, had they been known before the retirement of the officer, would have justified his dismissal or a reduction of his salary.

Conditions of pension.

34. Where a European matron or a European nursing-sister has been employed in other public service as a qualified nursing-sister or matron, which employment was obtained by or through

Allowance in certain cases to hospital

matrons and nursing-sisters, with other services.

the Overseas Nursing Association, and has held a pensionable office in this Colony on or at any time after the 1st day of January, 1926, as a matron or nursing-sister in a Government hospital for a period, which need not be continuous, of not less than three years, and she is not eligible for pension, gratuity or other retiring allowance under the Regulations contained in Parts II and IV of these Regulations, but her aggregate service in this Colony and in other public service as aforesaid make up a period, which need not be continuous, of not less than fifteen years, or ten years if she is compelled by reason of ill-health, not caused by her own misconduct, to relinquish her overseas nursing career, she may, subject as hereinafter provided, on her ultimate retirement from the public service be granted an allowance calculated at the rate of eight shillings and four pence (8s. 4d.) per annum for each complete month of her pensionable service in this Colony: Provided that, except in the case of retirement, which in the opinion of the Governor in Council is ultimate retirement on account of infirmity of mind or body, or which is from a Colony in which the age of voluntary retirement is less than fifty years, no such allowance shall be payable until the matron or nursing-sister attains the age of fifty years; and provided further that the grant of every allowance under this Regulation shall be dependent on the production to the satisfaction of the Secretary of State of certificates of satisfactory service in respect of each term of service making up the minimum period of fifteen years or ten years, as the case may be, and that the total allowance drawn by a matron or nursing-sister from all sources in respect of her nursing career shall not exceed two-thirds of the highest pensionable emoluments drawn by her at any time in the course of her service in this Colony or in other public service.

PENSIONS REGULATIONS, 1949. [Regulation 8.]

SCHEDULE.

- | | |
|---------------------------|---------------------------|
| Aden | British Solomon Islands |
| Bahamas | Protectorate |
| Barbados | Cayman Islands |
| Basutoland | Colonial Audit Department |
| Bechuanaland Protectorate | (Home Establishment) |
| Bermuda | Crown Agents for the |
| British Guiana | Colonies |
| British Honduras | |

- | | |
|-----------------------------|--------------------------|
| Cyprus | Nigeria |
| Dominica | North Borneo |
| East Africa High Commission | Northern Rhodesia |
| Falkland Islands | Nyasaland |
| Federated Malay States | St. Helena |
| Federation of Malaya | St. Lucia |
| Fiji | St. Vincent |
| Gambia | Sarawak |
| Gibraltar | Seychelles |
| Gilbert and Ellice Islands | Sierra Leone |
| Colony | Singapore |
| Gold Coast | Somaliland |
| Grenada | Straits Settlements |
| Jamaica | Swaziland |
| Kenya | Tanganyika Territory |
| Kenya and Uganda Railways | Trinidad |
| and Harbours Administration | Turks and Caicos Islands |
| | Uganda |
| Leeward Islands | United Kingdom of Great |
| Malayan Establishment | Britain and Northern |
| Malayan Union | Ireland |
| Malta | Zanzibar |
| Mauritius | |

Passed the Legislative Council of Hong Kong, this 7th day of December, 1949.


Clerk of Councils.

HONG KONG

No. 51 OF 1949.

I assent.



W. H. Murray
Governor.

8th December, 1949.

An Ordinance to provide for the establishment of an Essential Services Corps.

[9th December, 1949.]

BE it 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 Essential Services Corps Ordinance, 1949. **Short title.**

2. In this Ordinance—

“essential service” means any service declared to be an essential service in accordance with the provisions of section 3;

“member of the Corps” or “member” means every person who has enrolled in the Essential Services Corps and whose enrolment has not been cancelled;

“Corps” means the Essential Services Corps.

**Interpreta-
tion.**

Essential services. Application of Ordinance.

3. (1) The services specified in the Schedule to this Ordinance shall be essential services to which the provisions of this Ordinance apply.

(2) The Governor may, from time to time, by Order published in the *Gazette*, make addition to the Schedule to this Ordinance.

Power of Governor to raise the Corps.

4. It shall be lawful for the Governor to raise and maintain a body of persons by voluntary enrolment, to assist in the maintenance or the performance of essential services, to be known as the Essential Services Corps, consisting of such persons as may, in accordance with regulations made by the Governor or under the provisions of any enactment, undertake to serve therein, and be accepted for service in such Corps.

Corps may be maintained at expense of the Colony.

5. The Corps may be raised and maintained at the expense of the Colony out of moneys provided by the Legislative Council.

The Corps may consist of units or sub-units. Establishment.

6. The Corps may consist of such units or sub-units as may be prescribed and upon the formation of one or more such units the Corps shall be deemed to be established under the provisions of this Ordinance.

Power of Governor to make regulations.

7. (1) It shall be lawful for the Governor to make regulations to provide in general for any matter relating to the Corps and in particular for the following matters:— The procedure for enrolment in the Corps and for cancellation of enrolment; the period for which persons may be enrolled; the organization including sub-division and government of the Corps and the discipline of its members; the duties and obligations attaching to membership of the Corps and the powers privileges pay and benefits conferred by membership; the training of members of the Corps and the provision of clothing, equipment and other stores; and the calling out of members for actual service.

(2) Any regulations so made may apply either to the Corps as a whole or to any unit or sub-unit of the Corps: Provided that no regulation shall require a member, unless called out for actual service, either to give full-time service or to live away from his home.

8. Every member of the Corps authorized in that behalf by regulations made under section 7 shall, when called out for actual service, have the same powers for the preservation of the peace, the prevention of offences, the apprehension of offenders and for all other purposes, and the same privileges, protection and immunities as the members of the Hong Kong Police Force except as to pay and pension or other reward. In addition to these powers the Governor may, by regulations made under section 7, confer on members of the Corps authorized as aforesaid, when called out for actual service such further powers as the Governor may, from time to time, deem necessary for the proper performance of their duties.

Powers, etc., of member of the Corps.

9. Every member of the Corps who, in good faith, purports to act in the exercise of any power conferred by section 7 and section 8 hereof, shall be and is hereby indemnified and discharged from any indictment, penalty, action or other proceeding for so doing.

Indemnity.

10. Every person who, at the date of the commencement of this Ordinance, is a member of the Essential Services Wing of the Hong Kong Auxiliary Force of the Hong Kong Defence Force shall be deemed to be a member of the Corps unless he elects to continue to serve in the Hong Kong Defence Force.

Transfer of members of Essential Services Wing of the Hong Kong Auxiliary Force.

11. (1) Every person, not being a member of the Corps who—

Improper possession of arms or clothing, or assumption of character of member of the Corps.

(a) has in his possession any article being part of the clothing, accoutrements or appointments supplied to any member of the Corps and is not able satisfactorily to account for his possession thereof;

(b) puts on the dress or takes the name, designation or character of any member of the Corps for the purpose of thereby obtaining admission into any house or other place or of doing or procuring to be done any act which any such member would be entitled to do or procure to be done of his own authority, or for any other unlawful purpose;

shall, in addition to any other punishment to which he may be liable for such offence, be liable on summary conviction to a fine of five thousand dollars and to imprisonment for a term of two years.

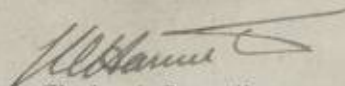
(2) If any person knowingly buys or takes in exchange or in pawn from any member of the Corps or any person acting

on his behalf, or solicits or entices any such member to sell or pawn any article being part of the clothing, accoutrements or appointments supplied to any member of the Corps, such person shall be liable, on summary conviction, to a fine of five thousand dollars and to imprisonment for a term of two years.

SCHEDULE

- The administration of government,
- The administration of justice,
- The administration of the prisons,
- The control and operation of civil aviation,
- The dissemination of information to the public,
- The extraction and distribution of coal-gas,
- The generation and distribution of electricity,
- The maintenance of facilities for banking and public finance.
- The maintenance of communications including telecommunications and the postal service,
- The maintenance of the firefighting services,
- The maintenance of medical, health and sanitary services,
- The operation of land and water transport,
- The operation of the Port,
- The operation of the Royal Observatory,
- The performance of emergency public works,
- The procurement storage and distribution of foodstuffs,
- The procurement storage and distribution of lubricating and fuel oils,
- The procurement storage and distribution of government stores,
- The storage and distribution of fresh water.

Passed the Legislative Council of Hong Kong, this 7th day of December, 1949.


Clerk of Councils.

D. & S. No 8/16

PUBLIC RECORDS OFFICE
OF HONG KONG

H.K.R.S. No. 30

28.29