

## LEGISLATIVE COUNCIL.

## Draft Bill.

**No. S. 338.**—The following bill, which will be introduced into the Legislative Council at an early date, is published for general information.

C.S.O. 2531/25.

[No. 19 :—13.11.25.—2.]

## A BILL

## INTITLED

An Ordinance to amend the Magistrates Ordinance, 1890.

BE it enacted by the Governor of Hongkong, with the advice and consent of the Legislative Council thereof, as follows :—

Short title.      1. This Ordinance may be cited as the Magistrates Amendment Ordinance, 1925.

Amendment of Ordinance No. 3 of 1890, s. 7 (2).      2. Section 7 (2) of the Magistrates Ordinance, 1890, hereinafter called the principal Ordinance, is amended to read as follows :—

(2) The Governor may appoint magistrates from time to time and any such magistrate so appointed shall be capable of exercising all the powers and jurisdiction of a magistrate even though he has been appointed to some other office subsequently to his appointment as such magistrate.

Amendment of Ordinance No. 3 of 1890, s. 8.      3. Section 8 of the principal Ordinance, is amended as follows :—

(1) by the substitution of the words "The Harbour Master and the Assistant Harbour Master shall each of them be a marine magistrate, and", for the words "There shall be as heretofore a marine magistrate, who", in the first line thereof ;

(2) by the substitution of the words "a marine magistrate" for the word "him" in the third line thereof ; and

(3) by the substitution of the word "a" for the word "the" in the penultimate line thereof.

Addition of new section immediately after Ordinance No. 3 of 1890, s. 17.      4. The following section is inserted immediately after section 17 of the principal Ordinance :—

Power to order production of documents. 4 & 5 Geo. 5, c. 58, s. 29.      17A. The powers contained in sections 17 and 69 enabling a magistrate to issue a summons to any witness to attend to give evidence before a magistrate shall be deemed to include the power to summon and require a witness to produce to such magistrate books, plans, papers, documents, articles, goods, and things likely to be material evidence on the hearing of any charge, information, or complaint, and the provisions of those sections relating to the neglect or refusal of a witness, without just excuse, to attend to give evidence, or to be sworn, or to give evidence, shall apply accordingly, and a magistrate shall have power to vary or add to the forms in the First Schedule accordingly.

Forms Nos. 8, 9, 10 and 11.

5. The following section is inserted immediately after section 31 of the principal Ordinance :—

Reduction of imprisonment on part payment of fine. 4 & 5 Geo. 5, c. 58, s. 3 (1).	31A. Where a term of imprisonment is imposed by a magistrate in respect of the non-payment of any sum of money adjudged to be paid on a conviction, that term shall, on payment of a part of such sum to any person authorised to receive it, be reduced by a number of days bearing as nearly as possible the same proportion to the total number of days in the term as the sum paid bears to the sum adjudged to be paid : Provided that, in reckoning the number of days by which any term of imprisonment would be reduced under this section, the first day of imprisonment shall not be taken into account.	Addition of new section after Ordinance No. 3 of 1890, s. 31.
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6. Section 32 of the principal Ordinance, is amended by the substitution of the words "twenty five" for the word "five" in the first line thereof and by the insertion of the following words at the end thereof :—

or, if the money is insufficient to satisfy the fine, that it shall be applied towards payment of the fine and that the term of imprisonment to which the defendant is liable in default of payment of the fine shall be reduced by a number of days bearing as nearly as possible the same proportion to the total number of days in the term as the sum adjudged to be paid : Provided that, in reckoning the number of days by which any term of imprisonment would be reduced under this section, the first day of imprisonment shall not be taken into account.

Amendment of Ordinance No. 3 of 1890, s. 32.

7. The following section is inserted immediately after section 44 of the principal Ordinance :—

Consecutive sentences of imprisonment. 4 & 5 Geo. 5, c. 58, s. 18.	44A. Where a sentence of imprisonment is passed on any person by a court of summary jurisdiction, the court may order that the sentence shall commence at the expiration of any other term of imprisonment to which that person has been previously sentenced, so however that where two or more sentences passed by a court of summary jurisdiction are ordered to run consecutively the aggregate term of imprisonment shall not exceed twelve months.	Addition of new section after Ordinance No. 3 of 1890, s. 44.
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Addition of new section after Ordinance No. 3 of 1890, s. 44.

8. Section 45 of the principal Ordinance is amended as follows :—

- (1) by the insertion of the words "for any offence or offences" immediately after the word "imprisoned" in the second line thereof.
- (2) by the insertion of the words "or offences" immediately after the word "offence" in the fifth and in the ninth line thereof ; and
- (3) by the addition of the following proviso at the end thereof :—

"Provided that, irrespective of any current term of imprisonment which the defendant is then undergoing, the aggregate term of imprisonment which may be ordered by the magistrate for such subsequent offence or offences shall not exceed twelve months in all.

Amendment of Ordinance No. 3 of 1890, s. 45.

9. Section 88 of the principal Ordinance, is amended by substituting "one hundred" for "fifty" in the fifth line thereof.

Amendment of Ordinance No. 3 of 1890, s. 88.

**Objects and Reasons.**

1. The object of clause 2 of this Bill is to enable a Government servant who has once been appointed a police magistrate to exercise the powers of a magistrate even though he has since been appointed to some other office.

In practice the exercise of such a power would be convenient so as to enable a magistrate, who has moved on to another post, to complete the hearing of part-heard cases.

2. Clause 3 of the Bill, coupled with amendments shortly to be made in the Merchant Shipping Ordinance, 1899, is intended to confer upon the Assistant Harbour Master the same magisterial powers as the Harbour Master can now exercise, so as to remedy the inconvenience of the hearing of cases being hung up at the harbour office if at any time the harbour master is either ill or absent from the harbour office on other duties.

3. Clause 4 of the Bill which is based on 4 and 5 Geo. V, c. 58, s. 29, is intended to supply an omission in the Magistrates Ordinance, No. 3 of 1890, which neglects to provide for a witness under subpoena being ordered to bring up with him all material, books, papers, etc. At the same time the magistrate is given corresponding power to add to the Forms in the First Schedule to that Ordinance.

4. Clause 5 of the Bill, which is based on 4 and 5 Geo. V, c. 58, s. 3 (1), empowers a magistrate to accept payment of part of a sum of money imposed as a fine in commutation of a proportionate part of the alternative term of imprisonment.

5. Clause 6 of the Bill effects certain amendments in section 32 of Ordinance No. 3 of 1890, which section authorizes appropriation of money found on defendant for payment of fine not exceeding \$5, by raising the amount mentioned in that section from \$5 to \$25 and also enabling any sum found on the accused person to be appropriated in part commutation of the term of imprisonment ordered.

6. Clause 7 re consecutive terms of imprisonment is framed on similar lines to section 18 of the English Criminal Justice Administration Act, 1914, except that it substitutes 12 months for 6 months as the aggregate term of imprisonment.

7. Clause 8 of the Bill, by its amendments of section 45 of Ordinance No. 3 of 1890, authorises a magistrate to impose cumulative terms of imprisonment not exceeding 12 months in all irrespective of any current term of imprisonment which the defendant may be then undergoing.

8. Clause 9 of the Bill increases from \$50 to \$100 the amount which may be ordered to be paid by an offender as compensation to a person, who has suffered injury or loss to his person or property by any offence.

H. E. POLLOCK,  
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*13th November, 1925.*