

立法會
Legislative Council

LC Paper No. CB(1)1320/01-02
(These minutes have been
seen by the Administration)

Ref: CB1/BC/15/00/2

**Bills Committee on
Noise Control (Amendment) Bill 2001**

**Meeting on
Thursday, 21 February 2002, at 4:30 pm
in Conference Room A of the Legislative Council Building**

- Members present** : Hon IP Kwok-him, JP
Ir Dr Hon Raymond HO Chung-tai, JP
Hon HUI Cheung-ching, JP
Hon Emily LAU Wai-hing, JP
Hon CHOY So-yuk
Hon LAW Chi-kwong, JP
Hon LI Fung-ying, JP
- Members absent** : Hon David CHU Yu-lin, JP
Hon Mrs Sophie LEUNG LAU Yau-fun, SBS, JP
Hon YEUNG Yiu-chung, BBS
Hon LAU Ping-cheung
- Public officers attending** : Mr Howard CHAN
Acting Deputy Secretary for the Environment and Food
- Mr Elvis AU
Assistant Director of Environmental Protection
- Mr K S CHAN
Principal Environmental Protection Officer
Environmental Protection Department

Clerk in attendance : Miss Polly YEUNG
Chief Assistant Secretary (1)3

Staff in attendance : Mr LEE Yu-sung
Senior Assistant Legal Adviser 1

Miss Yvonne YU
Senior Assistant Secretary (1)4

I. Election of Chairman

Mr HUI Cheung-ching, the member who had the highest precedence in the Council among those members of the Bills Committee present, presided at the election of the Chairman of the Bills Committee.

2. Mr HUI Cheung-ching invited nominations for the chairmanship. Mr IP Kwok-him was nominated by Ms LI Fung-ying and seconded by Ms Emily LAU Wai-hing. Mr IP accepted the nomination. There being no other nomination, Mr IP was elected Chairman of the Bills Committee. Mr IP took the chair.

3. Members agreed that for the time being, it was not necessary to elect a Deputy Chairman.

II. Meeting with the Administration

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|----------------------------------|---|
| LC Paper No. CB(3)790/00-01 | - The Bill |
| LC Paper No. CB(1)1071/01-02(02) | - Marked-up copy of the Bill prepared by the Legal Service Division |
| | - The Legislative Council Brief on the Bill issued by the Environment and Food Bureau in June 2001 |
| LC Paper No. CB(1)1071/01-02(03) | - Paper provided by the Administration in February 2002 supplementing the Legislative Council Brief |
| LC Paper No. LS133/00-01 | - The Legal Service Division Report on the Bill dated 26 June 2001 |
| LC Paper No. CB(1)1071/01-02(04) | - Letter dated 26 June 2001 from Senior Assistant Legal Adviser 1 to the Secretary for Environment and Food |

- LC Paper No. CB(1)1071/01-02(05) - The Administration's response dated 28 June 2001 to Letter dated 26 June 2001 from Senior Assistant Legal Adviser 1 to the Secretary for Environment and Food
- LC Paper No. CB(1)1148/00-01(03) - Discussion paper provided by the Administration for the meeting of the Environmental Affairs Panel on 8 May 2001
- LC Paper No. CB(1)1812/00-01 - Extract of the minutes of the meeting of Environmental Affairs Panel on 8 May 2001 (which was re-circulated vide LC Paper No. CB(1)1139/01-02 on 22 February 2002)

4. The Committee deliberated (Index of proceedings attached at **Annex A**).
5. The Administration undertook to take the following actions to facilitate the work of the Committee:
 - (a) Where appropriate, the Administration would provide details on prosecution and conviction cases involving breaches of the Noise Control Ordinance (NCO) (Cap. 400) during the three years between 1999 and 2001 (paragraph 4 of LC Paper No. CB(1)1071/01-02(03)). These included the names of the defendant companies, the dates of convictions, the nature of the offence and the level of fines imposed by the court.
 - (b) Regarding some members' concern that the types of directors and officers listed under proposed section 28A was too vague with the effect that difficulty might arise in identifying the person to be held liable, the Administration advised that similar provisions imposing a personal liability on directors/officers were also found in other Ordinances. It would provide information on such existing legislative provisions for members' reference.
 - (c) With reference to section 6(5) of the NCO which provided for a continuing offence, the Administration would clarify the existing enforcement practice and whether the Environmental Protection Department would prosecute a body corporate each day more than once in respect of a continuing contravention.
 - (d) Having regard to a member's concern about the practicability of the Code of Practice and the extent to which it could assist bodies corporate

to prevent violation of the NCO, the Administration undertook to consult the Environmental Affairs Panel before the Code of Practice was finalized.

III. Any other business

6. The Committee agreed to hold the next meeting on 22 March 2002 at 10:00 am to meet with deputations and the Administration.

7. There being no other business, the meeting ended at 5:45 pm.

Legislative Council Secretariat

16 March 2002

**Proceedings of the meeting of the Bills Committee on
Noise Control (Amendment) Bill 2001**

**on Thursday, 21 February 2002, at 4:30 pm
in Conference Room A of the Legislative Council Building**

Time	Speaker	Subject(s)	Action required
<i>Agenda Item I – Election of Chairman</i>			
00000-000033	Mr HUI Cheung-ching/ Ms LI Fung-ying/ Ms Emily LAU/ Mr IP Kwok-him	- Mr IP Kwok-him was elected Chairman of the Bills Committee	
<i>Agenda Item II – Meeting with the Administration</i>			
000119-000201	Chairman	- Introductory remarks	
000202-000525	Admin	- Brief introduction of the background and argument of the Bill (LC Paper No. CB(1)1071/01- 02(03))	
000526-000710	Chairman	- Members agreed that the Bills Committee would meet with deputations to receive their views on the Bill	
000711-000908	Ms Emily LAU	- Supported the Bill and enquired about the latest progress of the consultation - Requested the Administration to provide details on prosecution and conviction cases involving breaches of the Noise Control Ordinance (NCO) (Cap. 400) during the three years between 1999 and 2001 including the names of the defendant companies, the dates of convictions, the nature of the offence and the level of fines - Asked why it was not feasible to increase the maximum fine levels for noise control offences to enhance deterrent effect	
000909-001320	Admin	- Commercial and industrial sectors agreed to the Bill in principle but the construction trade still expressed reservation	

Time	Speaker	Subject(s)	Action required
		<ul style="list-style-type: none"> - Hong Kong Construction Association (HSCA) agreed in principle to the formulation of codes of practice - Agreed to provide, where appropriate, details of conviction cases as requested by Ms Emily LAU - Explained why it was not feasible to increase the maximum penalty as some corporate management continued to give little regard due to a lack of personal liability 	Admin
001321-001346	Ms Emily LAU	<ul style="list-style-type: none"> - The Administration's position on the views/reservation of the construction trade 	
001347-001606	Admin	<ul style="list-style-type: none"> - Addressing HKCA's concerns, a provision was added to the Bill to provide for a warning system - The Administration did not agree to HKCA's suggestion to provide a time limit of one year for the warning system - Criminal records, rather than the fine levels, would provide more deterrence and make the corporate management personally accountable 	
001607-001712	Mr HUI Cheung-ching	<ul style="list-style-type: none"> - Number and nature of companies which had repeatedly been convicted of noise offences 	
001713-001935	Admin	<ul style="list-style-type: none"> - ditto - 	
001936-001956	Mr HUI Cheung-ching	<ul style="list-style-type: none"> - Application procedures for noise permit for the construction trade 	
001957-002058	Admin	<ul style="list-style-type: none"> - User-friendly procedures were in place 	
002059-002254	Ms LI Fung-ying	<ul style="list-style-type: none"> - Requested the Administration to provide information on the prosecutions, convictions and penalty levels of noise offence cases - Sought clarification on the level of directors and officers of the body corporate to be held personally liable under proposed section 28A 	

Time	Speaker	Subject(s)	Action required
002255-002610	Admin	<ul style="list-style-type: none"> - Undertook to provide information as requested by Ms LI Fung-ying - The intent was to hold persons of the body corporate vested with decision making powers liable 	Admin
002611-002713	Ms LI Fung-ying	<ul style="list-style-type: none"> - Considered that the definition of the four types of persons who would be held liable under proposed section 28A was too vague 	
002714-002818	Admin	<ul style="list-style-type: none"> - Undertook to provide information on similar provisions found in other Ordinances 	Admin
002819-002822	Chairman	<ul style="list-style-type: none"> - Staff not involved in corporate decision-making should not be caught under the Bill 	
002823-003117	Ms CHOY So-yuk	<ul style="list-style-type: none"> - Feasibility of exempting voluntary organizations from the definition of “body corporate” - Feasibility of making the codes of practice subsidiary legislation 	
003118-003645	Admin	<ul style="list-style-type: none"> - Existing enforcement of NCO in respect of construction noise and other types of noise - Owners' Corporation would be exempted 	
003646-003900	Ms CHOY So-yuk	<ul style="list-style-type: none"> - Feasibility of making codes of practice subsidiary legislation - Feasibility of providing a validity period for the written warning so that bodies corporate could be given a second chance of warning after the expiry of the specified period, such as five years 	
003901-004231	Admin	<ul style="list-style-type: none"> - Unlike a Technical Memorandum, codes of practice would provide guiding reference for the trade and would not be made subsidiary legislation - Setting a time limit for the warning system would weaken the deterrent effect significantly 	
004232-004247	Chairman	<ul style="list-style-type: none"> - Requested the Administration to consult the relevant LegCo Panel on the codes of practice 	

Time	Speaker	Subject(s)	Action required
004248-004330	Admin	- Agreed to consult the Environmental Affairs Panel before finalizing the codes of practice	Admin
004331-004416	Chairman	- Defence for a director or officer charged to prove that he had taken reasonable precautions and exercised due diligence to prevent the commission of the offences	
004417-004512	Admin	- ditto -	
004513-004806	Ms Emily LAU	<ul style="list-style-type: none"> - Past discussion on the Bill (<i>Note: the relevant minutes of the Environmental Affairs Panel meeting held on 8 May 2001 was re-circulated vide LC Paper No. CB(1)1139/01-02 on 22 February 2002 for members' reference</i>) - Shared Ms LI Fung-ying's concern about identifying the right senior management staff to be held personally liable - Continuing offence 	
004807-005000	Admin	- Existing section 6(5) of NCO provided for penalty for a continuing offence	
005001-005018	Chairman/ Ms Emily LAU	- Number of prosecutions that could be initiated by the Environmental Protection Department (EPD) each day by virtue of section 6(5) of NCO	
005019-005102	Admin/ Ms Emily LAU/ Chairman	- ditto -	
005103-005118	SALA1	- Daily fine of \$20,000 each day while the offence continued	
005119-005125	Ms Emily LAU	- ditto -	
005126-005228	Admin	- ditto -	
005229-005257	Chairman	- With reference to section 6(5) of the NCO, the Administration was requested to clarify the existing enforcement practice and whether the EPD would prosecute a body corporate each day more than once in respect of a continuing contravention	Admin

Time	Speaker	Subject(s)	Action required
005258-005314	Admin	- Fines imposed in 2001	
005315-005435	Ms Emily LAU/Admin	- Identification of persons that would be held personally liable under the Bill, such as the Managing Director, General Manager or persons who had management control of the body corporate's operations	
005436-005502	Ms Emily LAU	- Sought confirmation whether the fines for the same offence would be doubled by virtue of the Bill	
005503-005700	Admin/ Ms Emily LAU	- ditto -	
005701-005722	SALA1	- The Administration would separately prosecute the body corporate (construction site) for breaching section 6 of the NCO and prosecute the directors or officers concerned under proposed section 28A for subsequent offences	
005723-010136	Chairman/Admin	- Next meeting to be held on 22 March 2002 at 10:00am to meet with deputations and the Administration - The Administration to provide Secretariat with a list of trades, associations and companies which it had consulted when preparing the Bill - A notice would be posted on the LegCo's Website to invite views from the public	
010137-010249	Ms CHOY So-yuk	- Urged the Administration to fully consult the trade and the Environmental Affairs Panel on the drafting of the codes of practice	
010250-010407	Admin	- Noted suggestion for necessary action	Admin
010408-010420	Chairman	- Closing remarks	

Note: The audio records of the above proceedings are kept at the LegCo Library

Legislative Council Secretariat

16 March 2002