

**立法會**  
**Legislative Council**

LC Paper No. CB(1)1793/01-02  
(These minutes have been  
seen by the Administration)

Ref: CB1/BC/15/00/2

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

**Meeting on  
Monday, 22 April 2002, at 10:45 am  
in Conference Room A of the Legislative Council Building**

- Members present** : Hon IP Kwok-him, JP (Chairman)  
Dr Hon David CHU Yu-lin, 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 Abraham SHEK Lai-him, JP  
Hon LI Fung-ying, JP  
Hon Michael MAK Kwok-fung
- Members absent** : Hon Mrs Sophie LEUNG LAU Yau-fun, SBS, JP  
Hon YEUNG Yiu-chung, BBS  
Hon LAW Chi-kwong, JP  
Hon LAU Ping-cheung
- Public officers attending** : Mr Howard CHAN  
Principal Assistant Secretary for the Environment and Food
- Mr K S CHAN  
Principal Environmental Protection Officer  
Environmental Protection Department
- Mr Geoffrey FOX  
Senior Assistant Law Draftsman

**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

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**I. Confirmation of minutes**

The minutes of meeting held on 22 March 2002 were confirmed.

**II. Meeting with the Administration**

Matters arising

LC Paper No. CB(1)1541/01-02(01) - The Administration's response to the issues raised at the meeting on 22 March 2002 and to the further submission from the Hong Kong Construction Association Limited

LC Paper No. CB(1)1531/01-02 - Summary of views/concerns put forward by deputations prepared by the Secretariat

The Bill, related papers and other papers previously issued

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 LC Paper No. CB(1)1071/01-02(04)
- LC Paper No. CB(1)1350/01-02(01) - The Administration's response to the issues raised at the meeting on 21 February 2002
- LC Paper Nos. CB(1)1350/01-02(02) and CB(1)1359/01-02(05) - The Administration's responses to the following LC Paper Nos. CB(1)1317/01-02(01), CB(1)1317/01-02(02), CB(1)1317/01-02(03), CB(1)1317/01-02(04), CB(1)1317/01-02(05); and CB(1)1350/01-02(03)
- LC Paper Nos. CB(1)1317/01-02(01) and CB(1)1518/01-02 - Submissions from the Hong Kong Construction Association Limited
- LC Paper No. CB(1)1317/01-02(02) - Submission from MTR Corporation Limited
- LC Paper No. CB(1)1317/01-02(03) - Submission from the Chinese Manufacturers' Association of Hong Kong
- LC Paper No. CB(1)1317/01-02(04) - Submission from Hong Kong Cable Television Limited
- LC Paper No. CB(1)1317/01-02(05) - Submission from the Hongkong Electric Company Limited
- LC Paper No. CB(1)1350/01-02(03) - Submission from Masons International Law Firm
- LC Paper Nos. CB(1)1359/01-02(01) and CB(1)1563/01-02 - Submissions from the Hong Kong Environmental Law Association

- LC Paper No. CB(1)1359/01-02(02) - Submission from the Hong Kong Institute of Acoustics
- LC Paper No. CB(1)1359/01-02(03) - Submission from the Tai Po Environmental Association
- LC Paper No. CB(1)1359/01-02(04) - Submission from the Federation of Hong Kong Industries
- 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)1812/01-02 - Extract of the minutes of the meeting of the Environmental Affairs Panel on 8 May 2001 (which was re-circulated vide LC Paper No. CB(1)1139/0102 on 22 February 2002)

2. The Committee deliberated (Index of proceedings attached at **Annex A**).

Admin 3. The Administration undertook to take the following actions and provide response/information as appropriate:

Further response

- (a) The Administration would provide its detailed response to the further submission from the Hong Kong Environmental Law Association received very shortly before the meeting.

Validity period for the warning system

- (b) The Administration took note of members' concerns about providing for a validity period for the warning system and at the Chairman's request agreed to re-consider the issue. The Administration had nevertheless made it clear at the meeting that so far, it had not changed its stance against a validity period.

Code of practice

- (c) The Administration would provide a copy of the draft code of practice which had been agreed with the Hong Kong Construction Association Limited for members' reference.

Section 38 of the Noise Control Ordinance (NCO)

- (d) Miss CHOY So-yuk suggested that in case a public officer contravened provisions in the NCO, such contravention should be recorded in the officer's performance appraisal report. Ms Emily LAU considered that the Administration should somehow give an assurance to members that in case of breaches of NCO, the public officer concerned would be subject to disciplinary action. The Administration was requested to consider the members' views.

Parties to be prosecuted for offences under NCO

- (e) Members enquired whether under the subcontracting system of the construction industry, the principal contractor would be held vicariously liable for offences committed by its subcontractors under NCO, and where a prosecution was to be taken out under the NCO against a subcontractor, whether the principal contractor could also be prosecuted concurrently. Senior Assistant Legal Adviser 1 was requested to advise on the matter in writing. The Administration could also provide its comments on the legal and enforcement aspects.

SALA1

**III. Any other business**

4. The Committee agreed to hold the next meeting on Tuesday, 21 May 2002 at 9:00 am to continue discussion with the Administration.

*(Post-meeting note: the meeting originally scheduled for 21 May 2002 at 9:00 am was subsequently re-scheduled to be held on 27 May 2002 at 10:45 am.)*

5. There being no other business, the meeting ended at 12:40 pm.

Legislative Council Secretariat  
24 May 2002

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

**on Monday, 22 April 2002, at 10:45 am  
in Conference Room A of the Legislative Council Building**

<b>Time</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action required</b>
<i>Agenda Item I – Confirmation of minutes</i>			
00000-000028	Chairman	- Confirmation of minutes of meeting held on 22 March 2002	
<i>Agenda Item II – Meeting with the Administration</i>			
000029-000256	Chairman	- Further submissions from the Hong Kong Construction Association Limited (HKCA) and the Hong Kong Environmental Law Association (HKELA) - Summary of views/concerns put forward by deputations prepared by the Secretariat	
000257-000900	Admin	- Undertook to provide a detailed written response to the further submission from the HKELA after the meeting - The Administration's response to the issues raised at the meeting on 22 March 2002 and to the further submission from the HKCA (LC Paper No. CB(1)1541/01-02(01))	Admin
000901-000957	Chairman	- The main points of contention were: (a) exemption of public officers from personal criminal liability while their counterparts in the private sector were subject to such liability; and (b) the prosecution would no longer need to show the "consent, connivance, negligence or omission" on the part of the director. Individuals could potentially be liable to personal conviction and to receive a criminal record for the offences of their companies without their	

Time	Speaker	Subject(s)	Action required
		knowledge or guilt	
000958-001231	Ms Emily LAU	<ul style="list-style-type: none"> <li>- In support of the Bill</li> <li>- Sanction under section 38(4) of Noise Control Ordinance (NCO) might not have sufficient deterrent effect</li> <li>- Suggested the imposition of a fine on the government departments which contravened NCO</li> </ul>	
001232-001616	Admin	<ul style="list-style-type: none"> <li>- Section 38 of the NCO provided that the Government and public officers were exempted from proceedings to be taken against them, and from criminal liability. It would not be permissible for a fine to be imposed. But Government and Public Officers were not exempted from complying with the provisions in NCO. They must follow the NCO just like non-government sectors</li> <li>- Section 38(4) provided that if the contravention was not terminated to the satisfaction of the Noise Control Authority, the latter would report to the Chief Secretary for Administration (CS) who must ensure that the best practicable steps were taken to terminate the contravention or avoid the recurrence. This was an effective mechanism in tackling such contravention</li> <li>- Some works departments might deploy direct labour for plant operation, maintenance work or emergency duties but so far, there was no record of NCO violations committed by government departments</li> </ul>	
001617-001731	Ms Emily LAU	<ul style="list-style-type: none"> <li>- The legal basis for exempting the Government and public officers from criminal liability</li> </ul>	
001732-001743	Chairman	- ditto -	

Time	Speaker	Subject(s)	Action required
001744-001815	Admin	- Section 38(2) of NCO provided that the public officers would be exempted from criminal liability for breaches of NCO in the course of carrying out their duties	
001816-001836	Ms Emily LAU/ Admin	- ditto -	
001837-002139	SALA1	<p>Advised the meeting that:</p> <ul style="list-style-type: none"> <li>- Under the Common Law, the Crown or the Government was the defender of justice and therefore in principle would not commit any crime. Under this principle, no offence was provided for against the Crown or Government</li> <li>- Generally, in its content and application, the law must give identical treatment to all who were in the same position. However, in some decided cases, the Court would allow a departure from the principle of identical treatment if it could be shown that: <ul style="list-style-type: none"> <li>• sensible and fair-minded people would recognize a genuine need for some difference in treatment;</li> <li>• the difference embodied in the particular departure selected to meet that need was itself rational; and</li> <li>• the particular departure was proportionate to that need</li> </ul> </li> </ul>	
002140-002151	Ms Emily LAU	- Criteria for initiating proceedings by the Administration	
002152-002422	Admin	- Because of the effectiveness of the existing mechanism in place under section 38 of the NCO and the good record of compliance with NCO on the part of government departments, the Administration did not see the need to amend section 38(2) of the NCO which provided that the Government and the public officers were to be exempted from criminal liability	

Time	Speaker	Subject(s)	Action required
		<ul style="list-style-type: none"> <li>- In enforcing NCO, the Environmental Protection Department (EPD) would adopt the same standard for both government departments and the private sector</li> </ul>	
002423-002451	Ms Emily LAU	<ul style="list-style-type: none"> <li>- The head of the government department(s) should be subject to disciplinary action for contravention of the NCO, even if he could not be held criminally liable</li> </ul>	
002452-002515	Admin	<ul style="list-style-type: none"> <li>- It was possible that one of the best practicable steps to be taken by CS was disciplinary action</li> <li>- Could not pre-empt CS's course of action as he had a statutory responsibility to enquire into the circumstances of the case and to decide on the best practicable steps</li> </ul>	
002516-002753	Mr Abraham SHEK	<ul style="list-style-type: none"> <li>- In order to ensure fairness, the Administration and the public officers should not be exempted from prosecution</li> </ul>	
002754-002805	Admin	- ditto -	
002806-002826	Chairman	- ditto -	
002827-003025	Admin	- Reiterated the arguments of the Bill	
003026-003133	Mr Abraham SHEK	<ul style="list-style-type: none"> <li>- The Bill would only put onus on the construction trade in this difficult business environment</li> <li>- Feasibility of providing a validity period for the warning system</li> <li>- Under the subcontracting system, the management was personally criminally liable where they had no absolute control over their workers and subcontractors' workers on site</li> </ul>	
003134-003342	Admin	<ul style="list-style-type: none"> <li>- Reiterated the reservation on providing a validity period for the warning system</li> <li>- The proposed amendment did not change the existing legislative control and EPD might initiate proceedings against any person who committed an offence,</li> </ul>	

Time	Speaker	Subject(s)	Action required
		including the worker concerned	
003343-003359	Mr Abraham SHEK	- ditto -	
003400-003441	Admin	- ditto -	
003442-003450	Chairman	- Noted the divergent views held by the Administration and Mr Abraham SHEK	
003451-003632	Miss CHOY So-yuk	- Suggested that in case a public officer contravened provisions in the NCO, such contravention should be recorded in the officer's performance appraisal report	
003633-003736	Admin	<ul style="list-style-type: none"> <li>- Stressed that there was no record of NCO violations by government departments since 1989 and compliance was very good</li> <li>- Agreed to consider Miss CHOY So-yuk's view</li> </ul>	Admin
003737-003829	Miss CHOY So-yuk	- As the accountability system for principal officials would be implemented soon, she asked the Administration to seriously consider her suggestion	
003830-003838	Chairman/Admin	- The Administration had no further point to add	
003839-003926	Mr HUI Cheung-ching	- The Bill might not be justified as in 2001, there was a drop in the number of convicted companies which carried out works without a valid construction noise permit or carried out works not in accordance with permit conditions, as well as in the total number of construction related convictions	
003927-004024	Admin	- Notwithstanding, the number of convictions, in particular those on repeat offenders was still considered to be on the high side	
004025-004115	Mr HUI Cheung-ching	- Agreed with Mr Abraham SHEK's view that the proposed amendment would only put onus on the construction trade	
004116-004250	Admin	- Some 50 bodies corporate were repeated offenders and the proposed amendments were needed to	

Time	Speaker	Subject(s)	Action required
		achieve better deterrent effect	
004251-004311	Mr HUI Cheung-ching	- Overseas practices in handling noise offences in Australia, Canada and the United Kingdom	
004312-004336	Admin	- ditto -	
004337-004350	Mr HUI Cheung-ching	- There might be other jurisdictions where liability would not be imposed on the director or officer of a body corporate for environmental offences	
004351-004413	Admin	- Australia, Canada and the United Kingdom were Common Law jurisdictions and it was appropriate to make reference to these jurisdictions	
004414-004505	Chairman	- The different viewpoints among members and the Administration could be further discussed during the clause by clause examination	
004506-004602	Mr Abraham SHEK	- Reiterated the need of providing a validity period for the warning system	
004603-004609	Chairman	- ditto-	
004610-004637	Admin	- ditto -	
004638-004656	Mr Abraham SHEK	- ditto -	
004657-004812	Ms Emily LAU	- The Administration should make it clear that disciplinary action would be instituted against public officers who contravened NCO	
004813-004944	Admin	- While disciplinary action might be one of the steps taken by CS, it was inappropriate to pre-empt CS in exercising his discretion to decide on the best practicable steps to terminate the contravention or avoid recurrence of the contravention	
004945-005010	Ms Emily LAU	- The Administration to consider her suggestion	Admin
005011-005108	SALA1	- The scope of the “best practicable steps” to terminate the contravention or avoid the recurrence under section 38(4) of NCO was wide enough to include disciplinary actions against public	

Time	Speaker	Subject(s)	Action required
		officers	
005109-005114	Ms Emily LAU	- Reiterated that the Administration should consider her suggestion	
005115-005155	Admin	- ditto -	
005156-005210	Ms Emily LAU	- ditto -	
005211-005340	Chairman	- ditto -	
005341-005440	Chairman	- Asked whether the Administration would re-consider providing a validity period for the warning system as requested by Mr Abraham SHEK - Opening remarks for clause by clause examination	
005441-005543	Chairman	- Clause 1 - Clause 2	
005544-005609	Ms Emily LAU	- Proposed section 28A(1)	
005610-005702	Admin/ Chairman	- ditto -	
005703-005746	Ms LI Fung-ying	- Proposed section 28A(1)(b) and (d)	
005747-005920	Admin	- ditto -	
005921-005954	Ms LI Fung-ying	- ditto -	
005955-010035	Admin	- ditto -	
010136-010205	Ms Emily LAU/ Admin	- Proposed section 28A(1)(a)	
010206-010231	Ms Emily LAU/ Chairman	- Proposed section 28A(1)(b) and (c) • sought confirmation from the Administration on whether both the director who had delegated his authority for the management of the body corporate to another officer, as well as the responsible officer concerned would be subject to prosecution in case of contravention	
010232-010433	Admin	- Advised that both the director who had delegated his authority and the officer concerned could be subject to prosecution under proposed section 28A	
010433-010447	Ms Emily LAU/ Admin	- ditto -	
010448-010505	SALA1	- Confirmed that as presently drafted a director who had delegated his authority could also be subject to prosecution	
010506-010517	Ms Emily LAU	- ditto -	

<b>Time</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action required</b>
010518-010527	Mr Abraham SHEK	- Given the prevalence of the subcontracting system, he asked whether the principal contractor would be liable to prosecution for offences committed by his subcontractors	
010528-010554	Admin	- ditto -	
010555-010608	Chairman	- ditto -	
010609-010640	Admin	- Whether or not prosecution would be taken out against the principal contractor would depend on circumstances of individual cases	
010641-010658	Chairman	- ditto -	
010659-010746	Admin	- On enforcement, as the principal contractor was responsible for the project, EPD would usually prosecute the principal contractor and the sub-contractor who actually committed the noise offence	
010747-010759	Chairman	- ditto -	
010800-010837	Mr Abraham SHEK	- If a worker of a subcontractor maliciously/deliberately violated the NCO, it would be unfair to the principal contractor's director or officer who would be held personally criminally liable	
010838-010954	SALA1	- As the developer, the principal contractor and the subcontractors were separate legal entities, the developer normally would not be held liable for the offence committed by the principal contractor and subcontractors	
010955-011039	Admin	- ditto -	
011040-011056	Chairman	- ditto -	
011057-011156	SALA1	- ditto -	
011157-011224	Chairman	- ditto -	
011225-011332	Admin	- ditto -	
011333-011342	Mr Abraham SHEK	- ditto -	
011343-011403	Ms Emily LAU	- ditto -	
011404-011613	SALA1	- ditto -	
011614-011632	Chairman	- ditto -	
011633-011721	Admin	- ditto -	
011722-011742	Chairman	- ditto -	

<b>Time</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action required</b>
011743-011845	Admin	- ditto -	
011846-011951	Mr Abraham SHEK	- ditto -	
011952-012055	Admin	- ditto -	
012056-012147	Chairman/ Ms Emily LAU	- SALA1 was requested to set out his advice in writing. The Administration could also provide its comments on the legal and enforcement aspects	SALA1 and Admin
012148-012158	Chairman	- Proposed section 28A(2)	
012159-012241	Ms Emily LAU	- Reasons for exempting owners' corporations registered under the Building Management Ordinance (Cap. 344)	
012242-012350	Admin	- ditto -	
012351-012412	Chairman	- ditto -	
012413-012429	Admin	- ditto -	
012430-012435	Chairman	- Proposed section 28A(3)	
012436-012446	Ms Emily LAU	- ditto -	
012447-012556	Admin	- ditto -	
012557-012604	Ms Emily LAU	- Proposed section 28A(4)	
012605-012658	Admin	- ditto -	
012659-012820	Ms Emily LAU/ Admin/ Chairman	- ditto -	
012821-012919	SALA1	- ditto -	
012920-012930	Chairman/ Admin	- ditto -	
012931-012949	Mr Abraham SHEK	- ditto -	
012950-013142	Admin	- ditto -	
013143-013222	Chairman	- Proposed section 28B(1)	
013223-013344	Admin	- ditto -	
013345-013433	Chairman	- ditto -	
013434-013520	Mr Abraham SHEK/ Chairman	- Reiterated the desirability of providing a validity period for the warning system	
013521-013535	Admin	- Reiterated that the Administration's stance had not changed	
013536-013711	Ms Emily LAU/ Admin	- At the request of Ms LAU, the Administration further elaborated on the issue of initiating proceedings against the directors and officers concerned	
013712-013909	Chairman/ Ms Emily LAU	- ditto -	

Time	Speaker	Subject(s)	Action required
013910-014017	Mr Abraham SHEK	- Proposed to provide a validity period of 6 months for the warning system	
014018-014133	Chairman	- Agreed that provide a validity period should be provided but considered that a period of 6 months too short	
014134-014213	Ms LI Fung-ying	- Appreciated the difficulty faced by the HKCA - Considered a period of over 1 year might be acceptable	
014214-014243	Chairman	- The Administration was asked to re-consider the feasibility of providing a validity period for the warning system as members present in principle had no objection to a validity period	Admin
014244-014258	Ms Emily LAU	- ditto -	
014259-014338	Admin	- ditto -	
014339-014513	Chairman/ Ms Emily LAU	- While the Chairman said that he would not mind to coordinate Members' views on the validity period for the warning system, he still requested the Administration to re-consider the issue and provide members with its response at the next meeting	
014514-014546	Chairman	- Proposed section 28B(2) - Proposed section 28B(3) - Proposed section 28B(4) - Proposed section 28C	
014547-014552	Mr Abraham SHEK	- Proposed section 28C - Asked about the progress on the consultation with the trade on the code of practice	
014553-014634	Admin	- A draft code of practice had been agreed with the HKCA - The Administration would consult the Environmental Affairs Panel before gazettal of the code of practice	
014635-014639	Ms Emily LAU/ Admin	- The Administration agreed to provide the draft code of practice for members' reference	Admin

<b>Time</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action required</b>
014640-014715	Ms Emily LAU/ Chairman/ Admin	- Commencement date of the code of practice	
014716-014810	Chairman/ Admin	- Clause 3	
014811-014838	SALA1	- If a validity period was to be provided, it should be stated in the written warning notice, thus a consequential amendment to the proposed Schedule would be required	
014839-014847	Admin	- Agreed with SALA1	
014848-014902	Chairman	- ditto -	
014903-014940	Admin	- ditto -	
014941-015234	Chairman/ Admin	- Concluding remarks - Date of the next meeting	

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

Legislative Council Secretariat  
24 May 2002