

立法會
Legislative Council

LC Paper No. CB(1)1943/01-02

(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, 27 May 2002, at 10:45 am
in Conference Room A of the Legislative Council Building**

- Members present** : Hon IP Kwok-him, JP (Chairman)
Hon HUI Cheung-ching, JP
Hon Mrs Sophie LEUNG LAU Yau-fun, SBS, JP
Hon YEUNG Yiu-chung, BBS
Hon Emily LAU Wai-hing, JP
Hon CHOY So-yuk
Hon LI Fung-ying, JP
- Members absent** : Dr Hon David CHU Yu-lin, JP
Ir Dr Hon Raymond HO Chung-tai, JP
Hon LAW Chi-kwong, JP
Hon LAU Ping-cheung
- Public officers attending** : Mr Thomas CHOW, JP
Deputy Secretary for the Environment and Food
- 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

I. Confirmation of minutes of meeting

(LC Paper No. CB(1)1793/01-02 - Minutes of meeting held on 22 April 2002)

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

II. Meeting with the Administration

Matter arising

LC Paper No. CB(1)1822/01-02 - The Administration's response to the issues raised at the meeting on 22 April 2002 and the draft Committee Stage Amendments to the Noise Control (Amendment) Bill 2001

LC Paper No. CB(1)1791/01-02 - Paper prepared by the Senior Assistant Legal Adviser 1 setting out his legal advice as requested at the meeting on 22 April 2002

The Bill and related papers

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

- 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 the 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)

Other papers previously issued

- 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)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)1531/01-02 and CB(1)1815/01-02(01) - Summaries of views/concerns put forward by deputations prepared by the Secretariat
- 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 the 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)1812/00-01 - 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)1139/01-02 on 22 February 2002)

2. The Committee deliberated (Index of proceedings attached at **Annex A**).
3. The Administration/the Secretariat undertook to take the following actions and provide information as appropriate:

Validity period for the warning

- (a) To address members' concern that the well-being of the public would not be compromised as a result of the 24-month validity period for the warning, the Administration undertook to closely monitor the regulatory environment and the implementation of the legislation and would review the appropriateness of the validity period where necessary. The Administration would give an undertaking to this effect at the Second Reading debate on the Bill.

Mechanism for handling contraventions of environment-related legislation by public officers

- (b) While the Administration advised that the current system of handling contraventions of the Noise Control Ordinance (NCO) (Cap. 400) by public officers had proved to be effective and there had not been any case where Government departments were found to be in breach of the NCO, members were concerned that such contravention might arise in the future. To enhance transparency, the Administration agreed to inform the relevant Legislative Council Panel(s) of any such contravention which required the Environmental Protection Department to make a report to the Chief Secretary for Administration under section 38 of the NCO in future.
- (c) Members agreed that as the current mechanism for handling contraventions of environmental legislation by public officers was not specific to the present Ordinance, a more comprehensive study outside the scope of the Bill was required. To facilitate future monitoring, the Secretariat was requested to provide information on:
 - (i) whether there were provisions in other ordinances which were similar to the existing section 38 of the NCO; and
 - (ii) the appropriate Panel(s)/committee(s) to follow up issues relating to the current mechanism for dealing with contravention of related ordinances by public officers.

(Post-meeting note: An information note on handling contravention of environment-related legislation by public officers was issued to members vide LC Paper No. CB(1)1874/01-02 on 31 May 2002.)

Onus of proof

- (d) Members noted that the proposed section 28A imposed on the corporate management a strict liability. This was different from the offence provisions in other environmental legislation such as the Air Pollution Control Ordinance (Cap. 311) and the Water Pollution Control Ordinance (Cap. 358) in which the prosecution had to prove the "consent, connivance, negligence or omission" on the part of the directors. While the Administration had agreed to keep the effectiveness of the offence provisions of various pieces of environmental legislation under review, members considered that the Environmental Affairs Panel should be invited to examine the deterrent effect and compliance of environmental legislation to see whether they should be suitably amended as well.

4. The Chairman invited members' view on the draft Committee Stage Amendment (CSA) proposed by the Administration. He reported that according to Mr LAW Chi-kwong, Members of the Democratic Party accepted the 24-month validity period. Mr YEUNG Yiu-chung said that Members of the Democratic Alliance for Betterment of Hong Kong considered the 24-month validity period reasonable and supported the draft CSA. As the implementation of the accountability system would be accompanied by a re-organization of a number of policy bureaux including the Environment and Food Bureau, the Administration advised that it might need to move a consequential CSA to reflect the new nomenclature of the Head of Bureau after the relevant Resolution to effect the transfer of statutory functions had been approved by the Legislative Council on 19 June 2002. The Chairman concluded that the Bills Committee had no objection to the proposed CSAs and would not move any CSA on its own.

5. The Bills Committee had completed scrutiny of the Bill and would report to the House Committee on 7 June 2002. Members noted that the Administration intended to resume Second Reading debate on the Bill on 26 June 2002.

III. Any Other Business

6. There being no other business, the meeting ended at 12:10 pm.

Legislative Council Secretariat

1 August 2002

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

**on Monday, 27 May 2002 at 10:45 am
in Conference Room A of the Legislative Council Building**

Time	Speaker	Subject(s)	Action Required
000000 - 000302	Chairman	<ul style="list-style-type: none"> - Confirmation of minutes of meeting held on 22 April 2002 - The Administration's response to the issues raised at the meeting on 22 April 2002 and the draft Committee Stage Amendment (CSA) to the Noise Control (Amendment) Bill 2001 - Paper provided by the Senior Assistant Legal Adviser 1 (SALA1) setting out his advice as requested by members at the meeting on 22 April 2002 	
000303 - 000557	Administration	<ul style="list-style-type: none"> - Proposing to impose a 24-month validity period for the warning (LC Paper No. 1822/01-02) 	
000558 - 000744	Mr Abraham SHEK	<ul style="list-style-type: none"> - Reflected the general view of the trade that it could accept the 24-month validity period for the sake of improving the noise environment of the community 	
000745 - 000900	Ms Emily LAU	<ul style="list-style-type: none"> - While understanding the concerns of the trade, she was worried that the Administration was making an inappropriate compromise at the expense of the public interest at large 	
000901 - 001104	Administration	<ul style="list-style-type: none"> - The Administration considered that the directors and officers concerned should comply with the Noise Control Ordinance (NCO) at all times - The 24-month validity period sought to strike a reasonable balance between the interests of the trade and the community at large 	

Time	Speaker	Subject(s)	Action Required
001105 - 001143	Ms Emily LAU Administration	<ul style="list-style-type: none"> - The Administration undertook to closely monitor the regulatory environment and the implementation of the legislation and would review the adequacy of the validity period where necessary - The Administration would give an undertaking to this effect at the Second Reading debate 	Admin
001144 - 001335	Chairman	<ul style="list-style-type: none"> - The CSA to be moved by the Administration on the validity period was a positive response to the majority of members' request raised at past meetings 	
001336 - 001431	Mrs Sophie LEUNG	<ul style="list-style-type: none"> - The validity period should not be considered as a compromise but the right move to balance the interests of the trade and the community at large 	
001432 - 001448	Chairman	<ul style="list-style-type: none"> - Reported that according to Mr LAW Chi-kwong, Members of the Democratic Party accepted the 24-month validity period 	
001449 - 001512	Mr YEUNG Yiu-chung	<ul style="list-style-type: none"> - Members of the Democratic Alliance for Betterment of Hong Kong considered the 24-month validity period acceptable and supported the proposed CSA 	
001513 - 001608	Chairman	<ul style="list-style-type: none"> - Concluded that the Bills Committee had no objection to the proposed CSA and would not move any CSA on its own 	
001609 - 001643	Ms Emily LAU	<ul style="list-style-type: none"> - Referred to the view of the Hong Kong Environmental Law Association that unlike the Air Pollution Control Ordinance (APCO) (Cap. 311) and the Water Pollution Control Ordinance (APCO) (Cap. 358), the prosecution under the Bill would no longer need to show the "consent, connivance, negligence or omission" on the part of a director 	

Time	Speaker	Subject(s)	Action Required
001644 - 001953	SALA1	<ul style="list-style-type: none"> - Agreed that the provisions of the Bill on criminal liability of directors and officers were different from the APCO and WPCO - Under the Bill, directors and persons concerned in the management of the body corporate would need to establish the defence under proposed section 28A(3) and 28A(4) - As compared with the APCO and WPCO, the Bill imposed a heavier burden on the corporate management 	
001954 - 002158	Administration	<ul style="list-style-type: none"> - Compared with air and water pollution offences, there was a more serious problem of repeated noise offences committed by bodies corporate (the rate of repeated offence for noise pollution was over 70% while that for air and water pollution were only about 30%) - Incorporating a strict liability provision into the NCO would be more effective in deterring bodies corporate from repeating noise offences 	
002159 - 002235	Ms Emily LAU	<ul style="list-style-type: none"> - Sought SALA's advice on whether it was acceptable that the onus of proof was shifted from the prosecution to the defendant under the Bill 	
002236 - 002404	SALA1	<ul style="list-style-type: none"> - Advised that the two different drafting approaches relating to the onus of proof could be found under the existing legislation - It was very much a policy decision on whether a more stringent approach should be adopted 	
002405 - 002629	Ms Emily LAU Administration	<ul style="list-style-type: none"> - ditto - 	
002630 - 002705	Mr Abraham SHEK	<ul style="list-style-type: none"> - Compared with noise pollution, air and water pollution were more hazardous to people's health. As 	

Time	Speaker	Subject(s)	Action Required
		such, the requirement under the Bill relating to noise offences should not be more stringent	
002706 - 002858	Administration	- Having considered the serious problem of repeated noise offences and provisions in other Ordinances as well as overseas practice, the Administration considered the currently proposed provisions appropriate	
002859 - 003310	Mr Abraham SHEK Administration Chairman	<ul style="list-style-type: none"> - Concerned about the double standard adopted by the Administration in handling contravention of different environmental legislation - The sanction proposed by the Administration would depend on the seriousness and recurrence of the offences in question - If in future, the Administration found that the deterrent effect for repeated air and water offences was insufficient, consideration might be given to suitably amending the relevant legislation 	
003311 - 003455	Ms Emily LAU	<ul style="list-style-type: none"> - The Environmental Affairs Panel should be invited to examine the deterrent effect and compliance of different environmental legislation (e.g. APCO and WPCO) to see whether they should be suitably amended as well - Concerned whether too much onus was put on the directors and officers under the Bill 	Clerk
003456 - 003756	Administration Chairman	- Reiterated that due diligence defence under the proposed section 28A(3) and (4) could provide the necessary safeguard	
003757 - 004001	SALA1	- Under the Bill, the code of practice did not have any legal status but compliance with the code might be a defence to a director under the proposed section 28A(3) because compliance could be argued as	

Time	Speaker	Subject(s)	Action Required
		having taken reasonable precautions and exercised due diligence to prevent the commission of the offence by the body corporate	
004002 - 004148	Mrs Sophie LEUNG	- Suggested that the onus of proof should rest with the prosecution to the effect that the Administration could prosecute the director concerned if it found that the director had not complied with proposed section 28A(3) or (4)	
004149 - 004412	Administration	<ul style="list-style-type: none"> - For noise offences, it might be difficult for the prosecution to prove that a director had not taken reasonable precautions and exercised due diligence to prevent the commission of the offence by the body corporate if the director concerned would not provide the necessary information. Therefore, the due diligence defence under proposed section 28A(3) and (4) was provided - The construction trade had been consulted on and was agreeable to the code of practice 	
004413 - 004457	Mr Abraham SHEK	- The code of practice was acceptable to the construction trade	
004458 - 004734	Ms Emily LAU Chairman	<ul style="list-style-type: none"> - Reiterated that it was unfair that public officers were exempted from personal criminal liability while their counterparts in the private sector were subject to such liability - The Chairman recalled that this point had been discussed at past meetings 	
004735 - 004854	Administration	<ul style="list-style-type: none"> - Confirmed that there had not been any case where the Government departments were found to be in breach of the NCO - At present, the Drainage Services Department and the Water Supplies Department were the only Government department which 	

Time	Speaker	Subject(s)	Action Required
		deployed direct labour to carry out works. Such works were mainly urgent repairs works	
004855 - 005027	Ms Emily LAU Administration Chairman	- Responding to concerns about enhancing transparency, the Administration agreed to inform the relevant LegCo Panel(s) of any contravention by public officers of relevant legislation which required Environmental Protection Department to make a report to the Chief Secretary for Administration (CS) under section 38 of the NCO in future	Admin
005028 - 005146	Mr Abraham SHEK	- While Government departments operating as Trading Funds could compete with the private sector for business opportunities, it was unfair that they could enjoy the privilege of being exempted from criminal liability	
005147 - 005406	Administration Chairman	- Public companies such as the MTRC and KCRC were bound by the provisions under the NCO as any private companies - A trading fund, which was merely an accounting entity within the Government, was also the same as any Government departments which were bound by the provisions of the NCO - There had not been any cases where trading funds or Government departments had been found to be in breach of the NCO	
005407 - 005440	Mr Abraham SHEK Administration	- Ditto -	
005441 - 005509	Ms Emily LAU	- Enquired about the current mechanism for handling contraventions by public officers	
005510 - 005612	Administration	- Under section 38(3) to (6) of the NCO, if the contravention was not terminated to the satisfaction of the Noise Control Authority, the	

Time	Speaker	Subject(s)	Action Required
		<p>Authority would report the matter to the CS, who had the statutory responsibility to enquire into the circumstances, and if his enquiry showed that a contravention was continuing or likely to recur, CS should ensure that the best practicable steps were taken to terminate the contravention or avoid the recurrence</p>	
005613 - 005720	Ms Emily LAU Administration	<ul style="list-style-type: none"> - Considered that the current mechanism for handling contraventions by public officers lacked transparency and fairness and needed to be improved 	
005721 - 005808	Mrs Sophie LEUNG	<ul style="list-style-type: none"> - Agreed with Ms Emily LAU's view 	
005809 - 010115	Chairman Ms Emily LAU	<ul style="list-style-type: none"> - As the current mechanism for handling contraventions of environmental legislation by public officers was not specific to the present Ordinance, a more comprehensive study outside the scope of the Bill was required - A proposed provision similar to the existing section 38 of the NCO was found in the Land (Miscellaneous Provisions) (Amendment) Bill 2002 in relation to the criminal liability of public officers in carrying out road excavation works - Sought information on (i) whether there were provisions in other ordinances which were similar to the existing section 38 of the NCO and (ii) the appropriate Panel(s)/committee(s) to follow up the issues relating to the current mechanism for dealing with contravention of related ordinances by public officers - Suggested to include members' wider policy concerns in the report to the House Committee - Requested the Secretariat to 	Clerk

Time	Speaker	Subject(s)	Action Required
		provide the relevant information as requested by members	
010116 - 011022	Chairman SALA1 Ms Emily LAU	- A paper prepared by the SALA1 setting out his legal advice on whether developers and principal contractors would be liable for offences relating to construction works without a construction noise permit (LC Paper No. CB(1)1791/01-02)	
011023 - 011101	Administration	- The Administration agreed with SALA's conclusion that whether a person had carried out, or caused or permitted to be carried out a prohibited act would be determined according to the applicable law and the facts of the individual case	
011102 - 011743	Chairman Administration Clerk	<ul style="list-style-type: none"> - The Administration might need to move a consequential CSA to reflect the new nomenclature of the Head of Bureau after the relevant Resolution to effect the transfer of statutory functions arising from the implementation of the accountability system had been approved by the LegCo on 19 June 2002 - The Bills Committee would report to the House Committee on 7 June 2002 - The Administration intended to resume the Second Reading debate on the Bill on 26 June 2002 - The deadline for giving notice of resumption of Second Reading debate was 10 June 2002 - The deadline for giving notice to move CSA was 17 June 2002 	
011744 - 011758	Ms Emily LAU SALA1	- SALA1 advised that the CSA to be moved by the Administration was in order	
011759 - 011814	Administration/ Chairman	- Ditto -	

Time	Speaker	Subject(s)	Action Required
011815 - 011850	Mrs Sophie LEUNG Chairman	- Legislative timetable	
011851 - 011915	Ms Emily LAU Chairman	- The Administration's intention to move the aforesaid consequential CSA should also be included in the report to the House Committee - Closing remarks by the Chairman	

Legislative Council Secretariat
1 August 2002