

立法會
Legislative Council

LC Paper No. CB(2)629/00-01
(These minutes have been
seen by the Administration)

Ref : CB2/BC/5/00

**Legislative Council
Bills Committee on Adaptation of Laws Bill 2000**

**Minutes of meeting
held on Wednesday, 29 November 2000 at 10:45 am
in Conference Room A of the Legislative Council Building**

- Members Present** : Hon Margaret NG (Chairman)
Hon Martin LEE Chu-ming, SC, JP
Hon Andrew WONG Wang-fat, JP
Hon Jasper TSANG Yok-sing, JP
Hon Mrs Miriam LAU Kin-yee, JP
Hon Ambrose LAU Hon-chuen, JP
Hon Emily LAU Wai-hing, JP
Hon CHOY So-yuk
- Member Attending** : Hon LEUNG Fu-wah, MH, JP
- Public Officer Attending** : Ms Miranda CHIU
Deputy Director of Administration
- Mr David LEUNG
Assistant Director of Administration
- Miss Natalie LI
Assistant Secretary (Administration)
- Mr Peter WONG
Senior Assistant Solicitor General
- Mr J D Scott
Senior Assistant Law Draftsman
- Miss Adeline WAN
Senior Government Counsel

Miss Leonora IP
Government Counsel

Clerk in Attendance : Mrs Percy MA
Chief Assistant Secretary (2)3

Staff in Attendance : Mr Stephen LAM
Assistant Legal Adviser 4

Ms Joanne MAK
Senior Assistant Secretary (2)2

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I. Election of Chairman

Miss Margaret NG was elected Chairman of the Bills Committee.

II. Meeting with the Administration

(LC Papers Nos. CB(3)108/00-01, LS18/00-01, CB(2)358/00-01(02) and CSO/ADM CR 11/3231/97(00)Pt.4)

2. The Chairman welcomed the representatives of the Administration to the meeting.

3. The Chairman said that the amendments proposed to certain Ordinances and subsidiary legislation were specified in the Schedules of the Bill. She said that the proposed amendments, as summarized at Annex B of the relevant Legal Service Division (LS) report, were terminological changes only. However, Assistant Legal Adviser 4 (ALA 4) had raised some issues for members' consideration. She invited ALA 4 to brief members on those issues.

4. ALA 4 said that he had sought clarifications from the Administration as to whether certain provisions of the Legislative Council (Powers and Privileges) Ordinance (Cap.382), other than those proposed to be amended by the Bill, also required amendments to ensure consistency between Cap. 382 and the Basic Law (BL). He was satisfied that most of the Administration's response was legally in order taken into consideration that the Bill only sought to introduce terminological changes to the Ordinances concerned to bring them into conformity with BL and the status of Hong Kong as a Special Administrative Region (SAR) of the People's Republic of China. However, the Administration had acknowledged the need to introduce necessary legislative amendments to certain provisions of Cap. 382 in response to the queries he had

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raised. Nevertheless, the Administration was of the view that those legislative amendments should be introduced outside the context of the adaptation of laws exercise.

Section 12 of Cap. 382 (Power to issue warrant)

5. ALA 4 said that in response to his query, the Administration had agreed to take necessary action to have the Order made under section 12(6) of Cap. 382 as subsidiary legislation.

6. Deputy Director of Administration (DD(A)) said that the Administration noted that the word "prescribed" was used in section 12(6) of Cap. 382. Given that the word "prescribed" when used in or with reference to any Ordinance was defined in section 3 of Cap.1 as "prescribed or provided by that Ordinance or by subsidiary legislation made under that Ordinance", the Administration agreed that it would be appropriate to treat an Order made under section 12(6) as subsidiary legislation. In response to the Chairman's question, DD(A) said that the Administration would deal with the matter in due course.

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Section 14 of Cap. 382 (Privileges of witnesses)

7. The Chairman referred members to the difference in scope between section 14 of Cap. 382 and Article 48(11) of BL. She said that BL 48(11) empowered the Chief Executive (CE) "to decide, in the light of security and vital public interests, whether government officials or other personnel in charge of government affairs should testify or give evidence before the Legislative Council or its committees". However, section 14(2) only provided that the Governor (to be amended as "CE") should decide on such matters in the light of the security of Hong Kong. Therefore BL 48(11) was broader in scope because of the reference to the condition of "vital public interests".

8. DD(A) responded that in the current adaptation of laws exercise, the guiding principles adopted were as follows -

- (a) the provisions of laws currently in force should be preserved as far as possible; and
- (b) BL was part and parcel of the laws in force in the HKSAR and therefore could be relied on for the purpose of providing protection to LegCo Members. At the same time, safeguards provided in existing local laws but not in BL should be retained, provided that they did not contravene BL.

9. DD(A) pointed out that, in the light of these principles, the difference in scope between section 14(2) and BL 48(11) did not render section 14(2)

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inconsistent with BL48(11). She added that while CE could make a decision as to whether Government officials or other personnel in charge of Government affairs should testify or give evidence before the Legislative Council in accordance with BL 48(11), it did not preclude the granting of privileges and immunities to other persons by legislation through relevant provisions of Cap. 382. The Administration considered that section 14(2) did not contravene BL and was legally in order.

10. The Chairman agreed to the principles as explained by DD(A), adding that CE was certainly entitled to exercise the power stipulated in BL 48(11) notwithstanding the difference in scope between BL 48(11) and section 14(2). However, in order to avoid giving the public an impression that CE could freely exempt people from testifying before the Legislative Council on the ground of "vital public interests", she suggested that the Administration should amend section 14(2) to clearly provide that "vital public interests" was also a factor that CE would take into consideration in making his decision.

11. DD(A) invited members to note section 15 of Cap. 382 which provided that matters relating to evidence and production of documents before the Legislative Council or its committees were governed by the existing usage and practice of the Council. She also pointed out that BL 48(11) had already been reflected in Rule 80 of the Rules of Procedure which stipulated that "the Chief Executive may decide, in the light of security and vital public interests, whether Government officials or other personnel in charge of Government affairs should testify or give evidence before the Legislative Council or its committees".

12. Given the relevant provisions of BL and the Rules of Procedure of LegCo had made reference to "vital public interests", the Chairman considered that it was desirable for the Administration to amend section 14(2) by adding "vital public interests" for the sake of clarity of law. Nevertheless, she agreed that such an amendment would be outside the scope of the adaptation of laws programme and could be undertaken at a suitable time in the future.

13. Ms Emily LAU requested ALA 4 to further explain whether section 14(2) was in contradiction of BL. ALA 4 said that having regard to the guiding principles as explained by DD(A) in paragraph 8 above, he was of the view that section 14(2) did not contravene BL. However, he agreed with the Chairman that it was desirable to introduce an amendment to section 14(2) to include the condition of "vital public interests". DD(A) reiterated that amendment to section 14(2) was not necessary for the reasons set out in paragraphs 8, 9 and 11 above. Nevertheless, she said that the Administration would consider the suggestion as appropriate.

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Retrospective effect of the Bill

14. In reply to Ms Emily LAU's question on the retrospective effect of the Bill, ALA 4 said that he did not see any problems for the Bill to take retrospective effect from 1 July 1997 as proposed by the Administration. He explained that the purpose of the proposal was to ensure consistency in the interpretation of all laws on and after 1 July 1997. He added that the retrospective effect would not apply to provisions involving criminal offences or penalties. The Chairman further pointed out that the proposed amendments in the Bill had already been stipulated in the Schedules of the Hong Kong Reunification Ordinance (Ord. No. 110 of 1997). She said that the proposed amendments were just mechanical adaptations involving textual amendments only. Senior Assistant Solicitor General echoed the Chairman's view and pointed out that the arrangement for the Bill to take retrospective effect was consistent with the approach of previous Adaptation of Laws Bills.

Clause-by-clause examination

15. Members conducted clause-by-clause examination of the Bill and agreed that the proposed amendments in the Bill were in order.

III. Legislative timetable

16. Members agreed that a report on the Bill would be made to the House Committee on 8 December 2000 recommending that the Second Reading debate on the Bill be resumed on a date to be advised by the Administration.

(Post-meeting note : The Administration has subsequently advised that the Second Reading debate on the Bill will be resumed on 20 December 2000.)

17. There being no other business, the meeting ended at 11:35 am.

Legislative Council Secretariat

8 January 2001