



Legislative Council

LC Paper No. CB(2)1812/01-02

(These minutes have been
seen by the Administration)

Ref : CB2/BC/24/00

Legislative Council Bills Committee on Statute Law (Miscellaneous Provisions) Bill 2001

Minutes of the fifth meeting held on Thursday, 18 April 2002 at 10:45 am in Conference Room A of the Legislative Council Building

Members Present : Hon Margaret NG (Chairman)
Hon Cyd HO Sau-lan
Hon James TO Kun-sun
Hon Mrs Sophie LEUNG LAU Yau-fun, SBS, JP
Hon Jasper TSANG Yok-sing, JP
Hon Mr Ambrose LAU Hon-chuen, GBS, JP
Hon Emily LAU Wai-hing, JP

Member Absent : Hon Audrey EU Yuet-mee, SC, JP

Public Officers Attending : Mr Michael SCOTT
Senior Assistant Solicitor General

Miss Monica LAW
Acting Senior Assistant Law Draftsman

Miss Doris LO
Acting Senior Government Counsel
Legal Policy Division

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

Staff in Attendance : Ms Bernice WONG
Assistant Legal Adviser 1

Mr Paul WOO
Senior Assistant Secretary (2)3

I. Confirmation of minutes of meeting
(LC Paper Nos. CB(2)1591 & 1600/01-02)

The minutes of the meetings held on 28 March 2002 and 4 April 2002 respectively were confirmed.

II. Meeting with the Administration
(The Bill, marked-up copy of the Bill, LC Paper No. LS69/01-02, LC Paper Nos. CB(2)1290/01-02(01), 1378/01-02(01), 1610/01-02(01) & (02), 1608/01-02(01), 1619/01-02(01))

2. The Committee deliberated (index of proceedings attached at **Annex**). The Committee completed clause by clause examination of Parts I - IV, VI and X of the Bill.

3. The Committee considered the Administration's written responses to issues raised at previous meetings on Parts V (Marital rape and related sexual offences), X (Non-immunity clauses) and XIV (Amendments to the Legal Practitioners Ordinance) of the Bill respectively.

4. The Committee noted that the Administration had accepted the proposal to take a minimalist approach to simplify Part V of the Bill for the primary purpose of clarifying that marital rape was an offence, pending a subsequent full review of the sexual offences at a later stage. The Administration had come up with a proposal that only a modified clause 12 (with clauses 11 and 13 to 17 to be deleted) needed to be retained in Part V of the Bill. Subject to law drafting advice, the modified clause would be in approximately the following form -

“12 Rape

Section 118 is amended by adding -

“(3A) For the avoidance of doubt, and without limiting the generality of any other section, it is declared that in subsection (3)(a), “unlawful sexual intercourse” includes sexual intercourse between a husband and his wife.”

5. The Chairman considered that the newly proposed amendment to deal with marital rape might be further improved. She requested the Administration to review the amendment in consultation with the legal adviser to the Committee.

6. On Part X of the Bill, the Committee noted that the Administration would amend section 2 of Schedule 1 to the Occupational Deafness (Compensation) Ordinance (Cap. 469) by way of a proposed Committee Stage amendment.

7. On clause 2, Part I (General) of the Bill, the Administration clarified that section 7 should be deemed to have come into operation on 17 January 1997, rather than 17 February 1997 as specified in the Bill.

8. In the light of the issues discussed by members, the Administration was requested -

Part I of the Bill (Commencement)

Clause 2

- (a) to explain why the amendments in Part X of the Bill should not take effect from 1 July 1997, and in view of the absence of retrospective effect of the amendments, how the word "Crown" in the relevant Ordinances should be construed on and after 1 July 1997;

Part III of the Bill (Enforcement of Compensation Order)

Clause 7

- (b) to consider the proposal to substitute "liable to pay" in the proposed section 73(5) of the Criminal Procedure Ordinance with "entitled to be paid";
- (c) to advise on the justifications for clause 7 to take retrospective effect from 17 January 1997 (e.g. whether there are evidence to substantiate that in the absence of retrospective effect some aggrieved persons would be unable to enforce an order for payment of compensation);

Part IV of the Bill (Power of Court of Appeal and Appeal Committee to Award Costs)

Clause 9

- (d) to provide information on the number of appeals brought by the prosecution under section 84 of the District Court Ordinance and dismissed by the Court of Appeal, say, in the past three years;

Part V of the Bill (Marital Rape and Related Sexual Offences)

Clauses 11 and 12

- (e) to reconsider the newly proposed amendments to deal with marital rape, having regard to the views of members and legal adviser to the Bills Committee;

Part VI of the Bill (Consideration of Bail Applications)

Clause 18

- (f) to consider revising the drafting by substituting “neither the court of committal nor any other court shall remand on bail the person...” with “the court of committal or any other court shall not grant bail to the person...”;

Part XIV of the Bill (Amendments to Legal Practitioners Ordinance)

Clause 108

- (g) to revise the drafting of the proposed subsections 9A(1A) and (1B) to clarify that the alleged breaches of the matters prescribed in rules made by the Council of the Law Society which were suitable for disposal by the Tribunal Convenor under the proposed section 9AB would be confined to breaches involving no dishonesty. Some members had pointed out that the scope prescribed in subsection (1A)(a), (b), (c) was too wide, and also requested the Administration to review the use of the word "may" in subsection (1B).

III. Date of next meeting

- 9. The next meeting would be held on 2 May 2002 at 8:30 am.
- 10. There being no other business, the meeting ended at 12:45 pm.

Annex

**Proceedings of the fifth meeting of the Bills Committee on
Statute Law (Miscellaneous Provisions) Bill 2001
Thursday, 18 April 2002 at 10:45 am
in Conference Room A of the Legislative Council Building**

| Time | Speaker | Subject(s) | Action required |
|---------------|-----------------|--|------------------------|
| 000001-000456 | Chairman | Confirmation of minutes (LC Paper Nos. CB(2)1591 & 1600/01-02) / Adm's response to issues raised at previous meeting relating to Part XIV of the Bill (LC Paper No. CB(2)1608/01-02(01)) | |
| 000457-000532 | Mr Jasper TSANG | Legislative intention of Clause 108 on matters suitable for disposal by the Tribunal Convenor | |
| 000533-000709 | Chairman | - ditto - | |
| 000710-000722 | Ms Emily LAU | - ditto - | |
| 000723-000750 | Chairman | - ditto - | |
| 000751-000758 | Ms Emily LAU | - ditto - | |
| 000759-000805 | Chairman | - ditto - | |
| 000806-000823 | Ms Emily LAU | - ditto - | |
| 000824-000829 | Chairman | - ditto - | |
| 000830-000924 | ALA | - ditto - | |
| 000925-001000 | Ms Emily LAU | - ditto - | |
| 001001-001045 | ALA | - ditto - | |
| 001046-001310 | Chairman | - ditto - | |
| 001311-001341 | Adm | - ditto - | Adm (para. 8(g)) |
| 001342-001635 | Chairman | Adm's proposal, in response to members' views expressed at the last meeting, on ways to simplify Part V of the Bill to make it clear that marital rape was an offence under section 118 of the Crimes Ordinance (LC Paper No. CB(2)1619/01-02(01)) | |
| 001636-001650 | Adm | - ditto - | |
| 001651-001731 | Chairman | - ditto - | |
| 001732-002029 | Adm | - ditto - | |
| 002030-002212 | ALA | - ditto - | |
| 002213-002255 | Chairman | - ditto - | |
| 002256-002454 | ALA | - ditto - | |
| 002455-002804 | Chairman | - ditto - | |
| 002805-002926 | ALA | - ditto - | |
| 002927-002936 | Ms Emily LAU | - ditto - | |
| 002937-002956 | ALA | - ditto - | |
| 002957-003006 | Ms Emily LAU | - ditto - | |
| 003007-003208 | Chairman | - ditto - | |
| 003209-003232 | Ms Emily LAU | - ditto - | |
| 003233-003258 | Chairman | - ditto - | |
| 003259-003311 | Adm | - ditto - | |
| 003312-003324 | Chairman | - ditto - | |
| 003325-003338 | Ms Emily LAU | - ditto - | |

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|---------------|-----------------|--|---------------------|
| 003339-003428 | Chairman | - ditto - | Adm (para. 8(e)) |
| 003429-003436 | Ms Emily LAU | Para. 8 of Adm's paper (LC Paper No. CB(2)1619/01-02(01)) on section 120 of the Crimes Ordinance on a third party procuring a wife by false pretence to have non-consensual intercourse with her husband | |
| 003437-003717 | Chairman | - ditto - | |
| 003718-003812 | Ms Emily LAU | - ditto - | |
| 003813-004014 | Adm | - ditto - | |
| 004015-004043 | Ms Emily LAU | - ditto - | |
| 004044-004258 | Chairman | - ditto - | |
| 004259-004333 | Ms Emily LAU | - ditto - | |
| 004334-004419 | Chairman | Adm's paper on nature of the organizations specified in the 15 Ordinances set out under Part X of the Bill (LC Paper No. CB(2)1610/01-02(02)) | |
| 004420-004426 | Mr Jasper TSANG | - ditto - | |
| 004427-004957 | Chairman | - ditto - | |
| 004958-005014 | Mr Jasper TSANG | - ditto - | |
| 005015-005022 | ALA | - ditto - | |
| 005023-005028 | Chairman | - ditto - | |
| 005029-005037 | Mr Jasper TSANG | - ditto - | |
| 005038-005050 | Chairman | - ditto - | |
| 005051-005120 | Adm | - ditto - | |
| 005121-005440 | Chairman | Clause by clause examination of Part X of the Bill (Non-immunity clauses) | |
| 005441-005506 | ALA | Adm to propose a Committee Stage amendment to section 2 of Schedule 1 to the Occupational Deafness (Compensation) Ordinance (Cap. 469) (LC Paper No. CB(2)1378/01-02(01)) | |
| 005507-005707 | Chairman | Adm's response to issues relating to other Parts of the Bill (LC Paper Nos. CB(2)1290/01-02(01) and 1378/01-02(01)) | |
| 005708-005725 | ALA | - ditto - | |
| 005726-010108 | Chairman | Clause by clause examination of the Bill starting from Part I | |
| 010109-010256 | Adm | Clause 2 | |
| 010257-010334 | Chairman | - ditto - | |
| 010335-010346 | Adm | - ditto - | |
| 010347-010439 | Chairman | - ditto - | |
| 010440-010523 | Adm | - ditto - | |
| 010524-010541 | Chairman | - ditto - | |
| 010542-010600 | ALA | - ditto - | |
| 010601-010623 | Chairman | - ditto - | |
| 010624-010758 | ALA | Commencement of Part X of the Bill and how the word "Crown" in the relevant Ordinances should be construed on and after 1 July 1997 | |

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| 010759-010824 | Adm | - ditto - | |
| 010825-010845 | Chairman | - ditto - | |
| 010846-010852 | Adm | - ditto - | |
| 010853-010943 | Chairman | - ditto - | |
| 010944-010951 | Adm | - ditto - | |
| 010952-011116 | Chairman | - ditto - | Adm (para. 8(a)) |
| 011117-011138 | Adm | - ditto - | |
| 011139-011241 | Chairman | Clause by clause examination of Part II of the Bill (Amendments consequential to repeal of certain provisions of Magistrates Ordinance) | |
| 011242-011315 | Adm | - ditto - | |
| 011316-011328 | Chairman | - ditto - | |
| 011329-011338 | Adm | - ditto - | |
| 011339-011408 | Chairman | - ditto - | |
| 011409-011442 | ALA | - ditto - | |
| 011443-011647 | Chairman | Clause by clause examination of Part III of the Bill (Enforcement of compensation order) | |
| 011648-011752 | Adm | Clause 7 | |
| 011753-012003 | ALA | Adm's letter on Part III - clause 7 of the Bill (LC Paper No. CB(2)1378/01-02(01)) | |
| 012004-012011 | Chairman | - ditto - | |
| 012012-012051 | Adm | - ditto - | Adm (para. 8(b)) |
| 012052-012341 | Chairman | Commencement of clause 7 (LC Paper No. CB(2)1290/01-02(01)) | |
| 012342-012414 | Adm | - ditto - | |
| 012415-012512 | Chairman | - ditto - | |
| 012513-012549 | Adm | - ditto - | |
| 012550-012613 | Chairman | - ditto - | |
| 012614-012657 | Ms Emily LAU | - ditto - | |
| 012658-012730 | Chairman | - ditto - | |
| 012731-012808 | Ms Emily LAU | - ditto - | |
| 012809-012847 | Chairman | - ditto - | |
| 012848-012909 | ALA | - ditto - | |
| 012910-013325 | Chairman | - ditto - | Adm (para. 8(c)) |
| 013326-013354 | Adm | Part IV of the Bill (Power of Court of Appeal and Appeal Committee to award costs) Clause 8 | |
| 013355-013407 | Chairman | - ditto - | |
| 013408-013426 | Ms Emily LAU | - ditto - | |
| 013427-013431 | Adm | - ditto - | |
| 013432-013437 | Ms Emily LAU | - ditto - | |
| 013438-013610 | Chairman | Clause 9 | |
| 013611-013638 | Ms Emily LAU | - ditto - | |

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|---------------|---------------------------|---|---------------------|
| 013639-013725 | Chairman | - ditto - | Adm (para. 8(d)) |
| 013726-013735 | Ms Emily LAU | - ditto - | |
| 013736-013802 | Chairman | - ditto - | |
| 013803-013958 | Ms Emily LAU | - ditto - | |
| 013959-014015 | Chairman | Part VI (Consideration of bail applications) Clause 18 | |
| 014016-014308 | Adm | - ditto - | |
| 014309-014323 | Ms Emily LAU | - ditto - | |
| 014324-014342 | Adm | - ditto - | |
| 014343-014409 | Ms Emily LAU | - ditto - | |
| 014410-014531 | Chairman | - ditto - | |
| 014532-014555 | Ms Emily LAU | - ditto - | |
| 014556-014609 | Chairman | - ditto - | |
| 014610-014639 | ALA | - ditto - | |
| 014640-014719 | Chairman | - ditto - | |
| 014720-014754 | Ms Emily LAU | - ditto - | |
| 014755-014823 | Chairman | - ditto - | |
| 014824-014900 | Adm | - ditto - | |
| 014901-014955 | ALA | - ditto - | Adm (para. 8(f)) |
| 014956-015027 | Adm | - ditto - | |
| 015028-015036 | Chairman | - ditto - | |
| 015037-015107 | Ms Emily LAU | - ditto - | |
| 015108-015156 | Chairman | Follow up discussion at next meeting on 2 May 2002 | |
| 015157-015207 | Ms Emily LAU/ Chairman | - ditto - | |

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

Council Business Division 2
Legislative Council Secretariat
 3 May 2002