

立法會

## *Legislative Council*

LC Paper No. CB(2)2624/01-02

(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 eighth meeting  
held on Thursday, 23 May 2002 at 8:30 am  
in Conference Room B of the Legislative Council Building**

- Members Present** : Hon Margaret NG (Chairman)  
Hon Cyd HO Sau-lan  
Hon Ambrose LAU Hon-chuen, GBS, JP  
Hon Audrey EU Yuet-mee, SC, JP
- Member Absent** : Hon James TO Kun-sun  
Hon Mrs Sophie LEUNG LAU Yau-fun, SBS, JP  
Hon Jasper TSANG Yok-sing, JP  
Hon Emily LAU Wai-hing, JP
- Public Officers Attending** : Mr Michael SCOTT  
Senior Assistant Solicitor General
- Mr Gavin SHIU  
Senior Government Counsel Prosecutions Division
- Miss Doris LO  
Acting Senior Government Counsel  
Legal Policy Division
- Clerk in Attendance** : Mr Paul WOO  
Chief Assistant Secretary (2)6
- Staff in Attendance** : Ms Bernice WONG  
Assistant Legal Adviser 1
- Miss Lolita SHEK  
Senior Assistant Secretary (2)7
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## **I. Meeting with the Administration**

The Committee deliberated (index of proceedings attached at **Annex**).

Matters arising from the meeting on 2 May 2002 relating to Part XI of the Bill (Miscellaneous Amendments to Ordinances Relating to Tertiary Institutions) (LC Paper No. CB(2)1879/01-02(01))

2. The Committee noted the Administration's letter dated 8 May 2002 which responded to the issues raised at the meeting on 2 May 2002 concerning Part XI of the Bill.

Matters arising from the meeting on 9 May 2002 relating to Parts I, IV, VII and XIV of the Bill (LC Paper No. CB(2)1984/01-02(01))

3. The Administration introduced its letter dated 16 May 2002 which responded to the issues raised at the meeting on 9 May 2002 concerning Parts I, IV, VII and XIV of the Bill.

*Part VII of the Bill (Power of Court to Order Repayment of Deposit)*

4. The Committee noted that the Administration had agreed to introduce a transitional provision to Part VII of the Bill to the effect that the court would be entitled to exercise the discretion to order the return of a deposit under the new section 12(1A) in a case where the court had not given judgment prior to the commencement of the amendment. The Administration would provide a Committee Stage amendment to that effect.

5. Ms Audrey EU said that Mr Albert HO, who could not attend the meeting because of another engagement, had asked her to convey for the Administration's consideration an alternative proposal regarding the amendment to section 12 of the Conveyancing and Property Ordinance. Mr Albert HO had suggested that for cases where a transaction had fallen through because of a genuine dispute on the title of property which was subsequently found good by the court, and where the price of property had dropped during the process of the proceedings, the court should be given a statutory power to -

- (a) order a rescission of contract to relieve both parties from the obligation to perform the contract; or
- (b) order an extension of time to enable both parties to complete the transaction.

Ms Audrey EU said that in the opinion of Mr Albert HO, the above proposal could do better justice to the parties than the proposed amendment under Part VII of the Bill, i.e. to provide for a discretion of the court to order the return of a deposit to the purchaser.

6. Senior Assistant Solicitor General responded that consideration of the desirability of Mr Albert HO's proposal required detailed new analysis and consultation which might be conducted in the context of another legislative amendment exercise.

*Part XIV (Amendments to Legal Practitioners Ordinance)*

7. On clause 108, the Administration advised that the Law Society had no objection to the Committee's proposal to revise the proposed section 9A(1B) of the Legal Practitioners Ordinance to provide expressly that offences involving dishonesty would not be dealt with by way of the fixed penalty system under the proposed section 9AB.

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

(LC Paper Nos. CB(2)1913/01-02(01) to (03); 1708/01-02(01); 2032/01-02(02) to (04))

8. The Administration briefed members on its letters (LC Paper Nos. CB(2)2032/01-02(02) and (04)) explaining the proposal to amend section 118 of the Crimes Ordinance by introducing a revised new section 118(3A). The proposed section 118(3A) read as follows -

"For the avoidance of doubt, and without affecting any other provisions of this Part, it is declared that in subsection (3)(a), "unlawful sexual intercourse" includes sexual intercourse that a man has with his wife if the wife at the time of the intercourse does not consent to it."

The Administration also explained why in its view it was not necessary to amend section 117 of the Ordinance as proposed by the Assistant Legal Adviser (ALA) in her previous letters to the Administration (LC Paper No. CB(2)1913/01-02(01) and (03)).

9. ALA reiterated her concern as set out in her letters to the Administration that without amending section 117 to provide expressly that the newly added interpretation of "unlawful sexual intercourse" applied for the purposes of sections 118, 119, 120 and 121 of the Crimes Ordinance, a husband who was acquitted of the offence of raping his wife under section 118 might not be convicted of the alternative offences under sections 119, 120 and 121 when applying section 149. There had been no binding authority that "unlawful sexual intercourse" included sexual intercourse between a married couple for non-rape offences.

10. ALA said that she would propose a revised amendment to section 117 of the Crimes Ordinance for the Administration's consideration.

11. In light of the issues raised at the meeting, the Administration was requested -

Part I of the Bill (Commencement)

*Clause 2*

- (a) in relation to Part X of the Bill, to confirm whether any of the relevant organisations had exercised any immunity or privilege of the State since 1 July 1997;

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

- (b) to revisit the need for amending beyond section 118 of the Crimes Ordinance in view of section 149 and item 1 of the Schedule to the Ordinance, in consultation with ALA and the legal professional bodies;

Part VII of the Bill (Power of Court to Order Repayment of Deposit)

- (c) to respond to the proposal that where the transaction had fallen through because of a genuine dispute on title which is subsequently found good by the court and where the price of property had dropped during the period of proceedings, the court should be given a statutory power, as an alternative to the proposed discretion to order the return of a deposit, to (i) order a rescission of the contract, or (ii) order an extension of time to enable completion; and
- (d) to explain the implications of having a transitional provision, or the absence of it, for Part VII of the Bill.

12. The Administration was also requested to provide its proposed draft Committee Stage amendments to the Bill for the consideration of the Committee as soon as they were available.

**II. Date of next meeting**

13. To allow sufficient time for the Administration to prepare its response to the issues raised, particularly those in relation to Part V of the Bill, the Committee agreed that the meeting originally scheduled for 30 May 2002

should be cancelled. The next two meetings were scheduled for 10 June 2002 (8:30 am) and 13 June 2002 (10:45 am) respectively.

14. There being no other business, the meeting ended at 10:00 am.

Council Business Division 2  
Legislative Council Secretariat  
19 July 2002

**Bills Committee on Statute Law (Miscellaneous Provisions) Bill 2001  
Meeting on Thursday, 23 May 2002 at 8:30 am.  
in Conference Room B of the Legislative Council Building**

<b>Time</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action required</b>
000000 - 000047	Chairman	Issues to be discussed at the meeting	
000047 - 000103	Clerk	- ditto -	
000103 - 000342	Chairman	- ditto -	
000342 - 000655	Ms Audrey EU Yuet-mee	Part VII of the Bill (Power of Court to Order Repayment of Deposit)  Proposal from Mr Albert HO regarding the amendment to section 12 of the Conveyancing and Property Ordinance	
000655 - 000706	Chairman	- ditto -	
000706 - 000719	Administration	- ditto -	
000719 - 000732	Ms Audrey EU Yuet-mee	- ditto -	
000732 - 000809	Chairman	- ditto -	
000809 - 000813	Ms Audrey EU Yuet-mee	- ditto -	
000813 - 000826	Chairman	- ditto -	
000826 - 000843	Ms Audrey EU Yuet-mee	- ditto -	
000843 - 000849	Chairman	- ditto -	
000849 - 000852	Ms Audrey EU Yuet-mee	- ditto -	
000852 - 000900	Chairman	- ditto -	
000900 - 001033	Administration	- ditto -	
001033 - 001402	Ms Audrey EU Yuet-mee	- ditto -	
001402 - 001409	Administration	- ditto -	
001409 - 001433	Ms Audrey EU Yuet-mee	- ditto -	
001433 - 001436	Administration	- ditto -	
001436 - 001515	Ms Audrey EU Yuet-mee	- ditto -	
001515 - 001604	Administration	- ditto -	
001604 - 001608	Ms Audrey EU Yuet-mee	- ditto -	
001608 - 001622	Administration	- ditto -	
001622 - 001641	Ms Audrey EU Yuet-mee	- ditto -	
001641 - 001818	Chairman	Adm's response to issues raised at the meeting on 2 May 2002 relating to Part XI of the Bill (Miscellaneous Amendments to Ordinances Relating to Tertiary Institutions (LC Paper No. CB(2)1879/01-02(01))	
001818 - 001821	Administration	- ditto -	
001821 - 002028	Chairman	- ditto -	
002028 - 002055	ALA	- ditto -	

<b>Time</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action required</b>
002055 - 002105	Chairman	- ditto -	
002105 - 002108	Administration	- ditto -	
002108 - 002111	Chairman	- ditto -	
002111 - 002126	Administration	- ditto -	
002126 - 002146	Chairman	Adm's response to issues raised at the meeting on 9 May 2002 relating to Parts I, IV, VII and XIV of the Bill (LC Paper No. CB(2)1984/01-02(02))	
002146 - 002209	ALA	Part I of the Bill (Commencement)  Clause 2  The Committee's proposed amendment to provide for Part X of the Bill to take effect from 1 July 1997	
002209 - 002216	Chairman	- ditto -	
002216 - 002219	Administration	- ditto -	
002219 - 002245	Chairman	- ditto -	Adm (para. 11(a))
002245 - 002253	Ms Audrey EU Yuet-mee	- ditto -	
002253 - 002341	Chairman	Part IV of the Bill (Power of Court of Appeal and Appeal Committee to Award Costs)  Clause 9  The case of appeal brought under section 84 of the District Court Ordinance and dismissed in 1999	
002341 - 002344	Administration	- ditto -	
002344 - 002416	Chairman	Part VII of the Bill (Power of Court to Order Repayment of Deposit)  Adm to introduce a transitional provision to the effect that the court will be entitled to exercise the discretion to order the return of deposit under the new section 12(1A) in a case where the court has not given judgment prior to the commencement of the amendment	
002416 - 002428	Administration	- ditto -	
002428 - 002517	Chairman	- ditto -	
002517 - 002603	Ms Audrey EU Yuet-mee	- ditto -	
002603 - 002911	Chairman	- ditto -	
002911 - 002933	Administration	- ditto -	
002933 - 003157	Chairman	- ditto -	Adm (para. 11(c) and (d))

<b>Time</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action required</b>
003157 - 003212	Administration	- ditto -	
003212 - 003229	Chairman	Part XIV of the Bill (Amendments to Legal Practitioners Ordinance)  Clause 108  Revision to the proposed section 9A(1B) of the Legal Practitioners Ordinance to provide expressly that offences involving dishonesty will not be dealt with by way of fixed penalty	
003229 - 003241	Administration	- ditto -	
003241 - 003318	Chairman	Adm's response to issues raised by members, ALA and Mr SIN Wai-man relating to Part V of the Bill (Marital Rape and Related Sexual Offences) (LC Paper Nos. CB(2)2032/01-02(02) and (04)) and Adm's proposed amendment to section 118 of the Crimes Ordinance	
003318 - 003337	Administration	- ditto -	
003337 - 003406	Chairman	- ditto -	
003406 - 003522	Administration	- ditto -	
003522 - 003524	Chairman	- ditto -	
003524 - 003551	Administration	- ditto -	
003551 - 003554	Chairman	- ditto -	
003554 - 003850	Administration	- ditto -	
003850 - 003923	Chairman	- ditto -	
003923 - 003931	Ms Audrey EU Yuet-mee	- ditto -	
003931 - 004006	ALA	- ditto -	
004006 - 004018	Chairman	- ditto -	
004018 - 004025	ALA	- ditto -	
004025 - 004029	Ms Audrey EU Yuet-mee	- ditto -	
004029 - 004038	Chairman	- ditto -	
004038 - 004054	ALA	- ditto -	
004054 - 004105	Ms Audrey EU Yuet-mee	- ditto -	
004105 - 004120	Administration	- ditto -	
004120 - 004157	Chairman	- ditto -	
004157 - 004200	Administration	- ditto -	
004200 - 004219	Chairman	- ditto -	
004219 - 004527	ALA	- ditto -	
004527 - 004740	Administration	- ditto -	
004740 - 004857	Ms Audrey EU Yuet-mee	- ditto -	
004857 - 005148	Administration	- ditto -	
005148 - 005340	Ms Audrey EU Yuet-mee	- ditto -	
005340 - 005416	Administration	- ditto -	



Time	Speaker	Subject(s)	Action required
005416 - 005449	ALA	- ditto -	
005449 - 005523	Chairman	- ditto -	
005523 - 005628	ALA	- ditto -	
005628 - 005654	Chairman	- ditto -	
005654 - 005847	Administration	- ditto -	
005847 - 010208	Chairman	- ditto -	
010208 - 010230	Administration	- ditto -	
010230 - 010240	Chairman	- ditto -	
010240 - 010300	ALA	- ditto -	
010300 - 010640	Chairman	- ditto -	Adm (para. 11(b))
010640 - 010718	Administration	- ditto -	
010718 - 010721	Chairman	- ditto -	
010721 - 010725	Administration	- ditto -	
010725 - 010843	Chairman	- ditto -	
010843 - 010909	Ms Cyd HO Sau-lan	- ditto -	
010909 - 011006	Chairman	- ditto -	
011006 - 011009	Administration	- ditto -	
011009 - 011223	Chairman	Date of next meeting and outstanding issues to be discussed at the next meeting	Adm (para. 12)
011223 - 011235	Administration	- ditto -	
011235 - 011456	Chairman	- ditto -	
011456 - 011520	Administration	- ditto -	
011520 - 011525	Chairman	- ditto -	
011525 - 011529	Administration	- ditto -	
011529 - 011726	Chairman	- ditto -	
011726 - 011734	Administration	- ditto -	
011734 - 011758	Chairman	- ditto -	
011758 - 011802	Administration	- ditto -	
011802 - 011839	Chairman	- ditto -	
011839 - 011843	Administration	- ditto -	
011843 - 012115	Chairman	- ditto -	

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

Council Business Division 2  
Legislative Council Secretariat  
 19 July 2002