

立法會
Legislative Council

LC Paper No. CB(2) 308/00-01

Ref : CB2/H/5

House Committee of the Legislative Council

**Minutes of the 7th meeting
held in the Legislative Council Chamber
at 3:50 pm on Friday, 17 November 2000**

Members present :

Hon Mrs Selina CHOW LIANG Shuk-yee, JP (Chairman)

Hon Fred LI Wah-ming, JP (Deputy Chairman)

Hon James TIEN Pei-chun, JP

Hon David CHU Yu-lin

Hon Cyd HO Sau-lan

Hon Albert HO Chun-yan

Ir Dr Hon Raymond HO Chung-tai, JP

Hon LEE Cheuk-yan

Hon Martin LEE Chu-ming, SC, JP

Hon Eric LI Ka-cheung, JP

Dr Hon LUI Ming-wah, JP

Hon NG Leung-sing

Prof Hon NG Ching-fai

Hon Margaret NG

Hon James TO Kun-sun

Hon CHEUNG Man-kwong

Hon HUI Cheung-ching

Hon CHAN Kwok-keung

Hon CHAN Yuen-han

Hon Bernard CHAN

Hon CHAN Kam-lam

Hon Mrs Sophie LEUNG LAU Yau-fun, SBS, JP

Hon SIN Chung-kai

Hon Andrew WONG Wang-fat, JP

Dr Hon Philip WONG Yu-hong

Hon WONG Yung-kan

Hon Jasper TSANG Yok-sing, JP

Hon Howard YOUNG, JP

Dr Hon YEUNG Sum

Hon YEUNG Yiu-chung

Mr Stephen LAM	Senior Assistant Legal Adviser (Acting)
Ms Bernice WONG	Assistant Legal Adviser 1
Miss Anita HO	Assistant Legal Adviser 2
Miss Connie FUNG	Assistant Legal Adviser 3
Mr Arthur CHEUNG	Assistant Legal Adviser 5
Mr KAU Kin-wah	Assistant Legal Adviser 6
Mrs Vivian KAM	Chief Assistant Secretary (Complaints)
Miss Kathleen LAU	Chief Public Information Officer
Mrs Constance LI	Chief Assistant Secretary (2)5
Mrs Betty LEUNG	Chief Assistant Secretary (3)1
Miss Betty MA	Senior Assistant Secretary (2)1

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I. Confirmation of the minutes of the 6th meeting held on 10 November 2000

(LC Paper No. CB(2) 236/00-01)

The minutes were confirmed.

II. Matters arising

Report by the Chairman on her meeting with the Chief Secretary for Administration (CS)

2. The Chairman said that she had again raised with Acting (Ag) CS Members' request that the Chief Executive (CE) should give a briefing to Members on his recent visits to Beijing and London. She added that Ag CS had advised that CE would carefully consider the request.

3. The Chairman further informed Members that as requested by the House Committee, the Administration had agreed to defer the motion debate on the Public Order Ordinance to the Council meeting on 20 December 2000. Miss Emily LAU suggested that there should not be any debate on Members' motion without legislative effect at the Council meeting on 20 December 2000 as the debate on the motion on the Public Order Ordinance would likely be a long one. The Chairman responded that Miss LAU's suggestion should be discussed at a future meeting.

III. Legal Service Division's report on subsidiary legislation tabled in Council on 15 November 2000 (gazetted on 10 November 2000)

(LC Paper No. LS 20/00-01)

4. Referring to the report, the Legal Adviser said that of the 29 items of subsidiary legislation gazetted on 10 November 2000, there were three

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Orders relating to double taxation relief arrangements made under the Inland Revenue Ordinance. The Legal Adviser explained that similar Orders had previously been declared in relation to arrangements made with other countries. He advised that Members had the power to repeal the Orders but could not amend the arrangements specified in the Schedules to the Orders.

5. With regard to the Declaration of Change of Titles (Senior Management Personnel of Civil Aviation Department) Notice 2000, the Legal Adviser said that his Division was still scrutinizing the Notice and would make a further report if necessary.

6. On the remaining 25 items of subsidiary legislation, the Legal Adviser said that they were all related to revision of fees and charges. He added that it would be for Members to decide whether a subcommittee should be formed to scrutinize the proposals. Mr James TIEN suggested that a subcommittee should be formed.

7. The Chairman proposed that a subcommittee should be formed to study the 25 items of subsidiary legislation relating to fees and charges. Members agreed. The following Members agreed to join: Mr James TIEN, Mr Fred LI, Mr CHAN Kam-lam, Mr LAU Chin-shek, Mr MAK Kwok-fung and Mr Albert CHAN.

8. The Legal Adviser reminded Members that the deadline for amending the subsidiary legislation was 13 December 2000, or 20 December 2000 if extended by resolution.

IV. Business for the Council meeting on 29 November 2000

(a) Questions

(LC Paper No. CB(3) 154/00-01)

9. The Chairman said that a total of 20 questions (six oral and 14 written) had been scheduled.

(b) Bills - First Reading and moving of Second Reading

(i) Banking (Amendment) Bill 2000

(ii) Securities and Futures Bill

10. The Chairman said that the above two Bills would be introduced into the Council on 29 November 2000 and considered by the House Committee on 1 December 2000.

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(c) **Government motions**

- (i) **Resolution under section 9 of the Criminal Procedure Ordinance (Cap. 221) - to be moved by the Secretary for the Treasury**
(LC Paper No. LS 25/00-01)
- (ii) **Resolution under section 134(1) of the Magistrates Ordinance (Cap. 227) - to be moved by the Secretary for the Treasury**
(LC Paper No. LS 24/00-01)
- (iii) **Resolution under section 54 of the Matrimonial Causes Ordinance (Cap. 179) - to be moved by the Secretary for the Treasury**
(LC Paper No. LS 22/00-01)

11. The Legal Adviser said that the three motions sought to increase the fees payable for various services provided by the courts in relation to legal proceedings, and that the Panel on Financial Affairs had been consulted on 15 June 2000. The Legal Adviser added that upon approval by the Council, the proposed fee increases would take effect on 12 January 2001.

12. Miss Margaret NG said that although the proposed levels of increase did not seem significant, it was necessary to discuss the more fundamental issue of how the fee levels had been determined in the first place. Referring to the charge of \$17 for one page of a copy of a court document, Miss NG informed Members that she had received complaints that some of the fees were too high. She expressed concern that the fees for court services might constitute a heavy financial commitment and could deter a person from seeking justice through legal proceedings.

13. Mrs Miriam LAU concurred with Miss NG that the principles for setting fee levels for court services should be examined.

14. Mr James TO said that there was no urgency for the Administration to seek the fee increases. He suggested that the Panel on Administration of Justice and Legal Services should first discuss the principles for determining the fee levels as well as the proposed fee increases. Miss Margaret NG concurred.

15. The Chairman proposed that the Administration should be requested to withdraw the notices for the proposed resolutions, pending discussion of the matter by the Panel on Administration of Justice and Legal Services. Members agreed.

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(d) **Members' motions**

(i) **Motion on "Abolishing the age requirement for dependent parent allowance"**

16. The Chairman said that the wording of Mr WONG Sing-chi's motion had been circulated to Members.

(ii) **Motion on "Opposing the surge of fees and charges"**

17. The Chairman said that the wording of Mr CHAN Kam-lam's motion had been circulated to Members.

18. The Chairman added that the deadline for giving notice to amend the motions was 22 November 2000. She further suggested and Members agreed that the speaking time limits stipulated in rule 17(c) of the House Rules should apply.

V. **Advance information on business for the Council meeting on 6 December 2000**

(a) **Members' motions**

(i) **Motion to be moved by Hon Emily LAU Wai-hing**

19. The Chairman said that Miss Emily LAU had been allocated a debate slot.

(ii) **Motion to be moved by Hon LAU Chin-shek**

20. The Chairman said that Mr LAU Chin-shek had been allocated a debate slot.

21. The Chairman reminded Members that the respective deadlines for notice of motion and amendments, if any, were 21 November 2000 and 29 November 2000.

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(b) **Government motion**

Resolution under section 42 of the Occupational Safety and Health Ordinance (Cap. 509) - to be moved by the Secretary for Education and Manpower

22. The Chairman informed Members that the Legal Service Division's report on the Resolution would be discussed at the next House Committee meeting on 24 November 2000.

VI. Bills Committee and subcommittee reports

(a) **Position report on Bills Committees/subcommittees**
(LC Paper No. CB(2) 250/00-01)

23. The Chairman said that there were eight Bills Committees and three subcommittees in action.

(b) **Report of the Subcommittee on Fixed Penalty (Criminal Proceedings) (Amendment) (No. 3) Regulation 2000 and Resolution of the Legislative Council (L.N. 206 of 2000) (Commencement) Notice 2000**

24. Mr James TIEN, Chairman of the Subcommittee, reported that the Subcommittee had held three meetings, including one meeting to listen to the views of deputations on the proposed commencement date of the increase in fixed penalty for smoky vehicles. Mr TIEN said that as a few more concern groups had requested to give their views to the Subcommittee, a further meeting had been scheduled for 21 November 2000. Mr TIEN further said that he would move a motion at the Council meeting on 22 November 2000 to extend the scrutiny period to 29 November 2000. He added that a written report of the Subcommittee would be presented to the next House Committee meeting on 24 November 2000.

25. The Legal Adviser said that the proposed commencement date of the increase in fixed penalty for smoky vehicles was 1 December 2000. He informed Members that the deadline for giving notice to amend the subsidiary legislation was 22 November 2000, if the scrutiny period was extended to 29 November 2000 by resolution of the Council.

(c) **First report of the Subcommittee on Members' Remuneration and Operating Expenses Reimbursement**
(LC Paper No. AS 86/00-01)

26. Introducing the report, Mr NG Leung-sing, Chairman of the Subcommittee, said that the Subcommittee had agreed to consider the four items listed in paragraph 4 of the paper. He informed Members that the Subcommittee had held a meeting with the Administration to discuss the two more urgent items of arrangements for Mandatory Provident Fund (MPF) payments for Members' personal assistants, and the annual adjustment mechanism.

27. On arrangements for MPF payments for Members' personal assistants, Mr NG Leung-sing said that the Administration had advised that a pension element had already been included in the existing system of Members' operating expenses reimbursement (OER), and that Members could set aside funds from the OER for payment of future staff benefits. Mr NG further said that some members of the Subcommittee held the view that the present amount of OER was insufficient for maintaining the day-to-day operation, let alone setting aside an amount for payment of staff benefits. In this regard, the Administration had responded that it would be willing to refer proposals, with justifications, for additional resources from Members to the Independent Commission on Remuneration for the Members of the Executive Council and the Legislature of the Hong Kong Special Administrative Region (Independent Commission) for a review. To assess the actual level of Members' operating expenses, the Subcommittee agreed that Members should provide all invoices and receipts of their expenses to the Legislative Council Secretariat irrespective of whether the OER ceiling would be exceeded. The survey would cover the period from October to December 2000.

28. Mr NG Leung-sing further explained that under the Employment Ordinance, a severance payment might be offset by a retirement scheme payment such as MPF benefits attributable to an employer's contribution. The Administration had confirmed that it would not reduce the severance payments because of the MPF contributions made by Members. Mr NG said that the Subcommittee had suggested that the Administration should also look into additional funding for long service payments for Members' staff which were now paid out from the OER.

29. Regarding the annual adjustment of Members' remuneration and the OER according to the movement of the Hang Seng Consumer Price Index (CPI) (C), Mr NG said that when the mechanism was recommended in 1995, the intention of the Commission on Remuneration for Members of the Legislative Council (the Commission) was to ensure that Members'

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remuneration and their monthly expenses allowance would not be eroded by inflation. It was therefore doubtful that the Commission had at that time envisaged any downward adjustment at times of deflation. As such, the Subcommittee considered that any downward adjustment was against the aim of the Commission's recommendation. The Subcommittee considered that the mechanism for the annual adjustment of Members' remuneration and the OER should be reviewed.

30. Mr NG Leung-sing added that paragraph 12 of the paper sought Members' endorsement of the Subcommittee's recommendations so that they could be referred to the Administration and the Independent Commission for consideration.

31. With regard to the recommendation in paragraph 12(a) of the paper, Miss Emily LAU expressed doubts as to whether the Administration and the Independent Commission would agree to conduct the review without Members providing justifications that the present level of the OER was insufficient. Miss LAU said that Members should give their views and should also provide more information, such as their actual operating expenses, to enable justifications to be forwarded to the Administration and the Independent Commission. She suggested that the survey on Members' actual operating expenses should cover a longer period than just three months. She further said that the Subcommittee should convene another meeting as soon as possible to work out concrete proposals in respect of the review of Members' OER.

32. The Secretary General advised that in deciding whether to extend the survey period of Members' actual operating expenses, Members should have regard to the urgency of the review given that the downward adjustment in Members' OER had already taken effect, and that Members would have to make MPF contributions starting 1 December 2000.

33. Mr Andrew CHENG expressed support for referring the Subcommittee's recommendations in paragraph 12(a), (b) and (c) of the paper to the Administration and the Independent Commission. Regarding the recommendation in paragraph 12(c), Mr CHENG informed Members that the Subcommittee believed that the Administration might have made a wrong interpretation of the annual adjustment mechanism by recommending a downward adjustment of 5.1% of Members' remuneration and the OER according to the movement of CPI(C). He said that this was against the intent of the adjustment mechanism which was to ensure that Members' level of remuneration and the OER would not be adversely affected because of inflation. He considered that the Administration and the Independent Commission should conduct an urgent review on the annual adjustment mechanism to correct the downward adjustment made recently.

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34. Dr Philip WONG said that the Subcommittee should have regard to the message conveyed to the public and employers in the public and private sectors, if Members sought to increase the OER to make up for the MPF contributions.

35. Mr Andrew WONG said that he supported the recommendation in paragraph 12(b) that the Administration should provide additional funding for long service payments to Members' staff. However, he was of the view that the two other recommendations in paragraph 12(a) and (c) would require further deliberations. Mr WONG said that a survey on Members' actual operating expenses might not be useful as such expenses varied from month to month, and that most Members would not spend beyond the current level of the OER. As regards the recommendation in paragraph 12(c), Mr WONG opined that Members' remuneration should be pegged to a salary point, or pegged at a certain percentage of a salary point, of the Civil Service pay scale, and that the annual adjustment should follow that for the Civil Service. As for the OER, he agreed that certain components, such as office expenses, could be linked to the movement of CPI(C).

36. Mr SZETO Wah said that he supported the recommendation in paragraph 12(b) that the Administration should provide additional funding for long service payments for Members' staff. He also agreed with Mr Andrew CHENG that the Administration should consider the recommendation in paragraph 12(c) as a matter of urgency to rectify the recent downward adjustment of Members' remuneration and the OER due to a wrong interpretation of the annual adjustment mechanism.

37. Mr LEUNG Fu-wah said that under the Employment Ordinance, eligible employees could not receive both severance payments and long service payments. Mr SZETO Wah responded that severance payments were only payable if a Member ceased to hold office by not standing for re-election or for reasons beyond his control. For a Member's personal assistant who chose to resign or retire after serving the qualifying period as specified in the Employment Ordinance, they were entitled to long service payments.

38. Mr James TIEN said that the Liberal Party could support the recommendation in paragraph 12(b) regarding additional funding for long service payments for Members' staff. He however had reservations about the suggestion that the annual adjustment to Members' remuneration should follow that of the Civil Service. He said that the adjustment of Civil Service salaries was based on the annual pay trend survey of the private sector. However, the Civil Service salaries were frozen in the last two years despite a reduction in private sector pay. Mr TIEN pointed out

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that the Liberal Party's stance was that the Civil Service should have also reduced its salaries, in accordance with the findings of the pay trend survey.

39. The Chairman said that although Members generally agreed to the recommendation in paragraph 12(b), some Members, including Subcommittee members, had expressed different views on the recommendations in paragraph 12(a) and (c). The Chairman suggested that the Subcommittee should convene further meetings to work out more concrete proposals and provide another report to the House Committee as soon as possible.

40. Mr NG Leung-sing agreed that the Subcommittee could further discuss the recommendations in paragraph 12(a) and (c) to work out more concrete proposals. Mr NG pointed out that it would be for the Independent Commission to determine the level of Members' remuneration and the OER. It would not be appropriate for Members themselves to recommend specific amounts. He added that what the Subcommittee could recommend were the factors that should be taken into consideration in a review of Members' OER.

41. Mr Henry WU said that non-Subcommittee Members should be invited to attend meetings of the Subcommittee. Mr James TIEN suggested that the Subcommittee should also consider obtaining Members' views by way of a questionnaire.

42. Mr Andrew WONG requested that the Subcommittee should clarify with the Administration the technical arrangements in paragraph 8 of the paper concerning the recovery of MPF contributions made by Members with their own financial resources from the severance payments provided by the Administration.

43. Miss Emily LAU said that the Subcommittee would also discuss the retirement benefits for Members at a later stage. She added that information on the retirement benefits for legislators in other countries could assist Members' deliberation of the matter.

44. The Chairman said that Members could provide their views to the Subcommittee in writing or by attending meetings of the Subcommittee. She proposed that a decision on the Subcommittee's recommendations should be deferred until the Subcommittee had provided a further report. Members agreed.

VII. Any other business

(a) Proposed rescheduling of House Committee meeting on 22 December 2000 to 5 January 2001

45. On the proposed rescheduling of the House Committee meeting on 22 December 2000 to 5 January 2001, the Chairman said that the Secretariat had issued a circular inviting Members to indicate their preference. The result was that 34 Members had indicated that they would be able to attend the meeting on 22 December 2000 if it was held as scheduled, and 46 Members said that they would be able to attend if the meeting was to be rescheduled to 5 January 2001. The Chairman proposed and Members agreed that the meeting on 22 December 2000 should be rescheduled to 5 January 2001.

(b) Amendments proposed to Mr IP Kwok-him's motion

46. Noting that Mr Albert HO, Mr Andrew CHENG and Mr WONG Sing-chi had separately given notice to amend Mr IP Kwok-him's motion on "Increasing the support to District Council members" scheduled for debate at the Council meeting on 22 November 2000, Mr James TIEN sought clarification from Members belonging to the Democratic Party on the rationale for submitting three separate sets of amendments.

47. Mr Albert HO responded that the three sets of amendments had different emphasis and were independent of each other. Members would have greater flexibility in voting for any one or two of the amendments, if they did not support all of them.

48. Mr Andrew WONG informed Members that the Panel on Home Affairs and the Panel on Constitutional Affairs had scheduled meetings to discuss the role and functions of District Councils. He said that Members should consider moving a motion debate in Council after the subject matter had been discussed by the relevant Panel(s). Mr IP Kwok-him responded that a motion debate in Council also provided an opportunity for Members to express views on a particular subject matter. He did not agree that subject matters being discussed by a Panel should not be debated in Council.

49. There being no further business, the meeting ended at 5:05 pm.