

立法會
Legislative Council

LC Paper No. CB(2) 1691/00-01
(These minutes have been seen by
the Administration)

Ref : CB2/PL/SE/1

LegCo Panel on Security

Minutes of meeting
held on Thursday, 3 April 2001 at 10:45 am
in Conference Room A of the Legislative Council Building

Members present : Hon LAU Kong-wah (Chairman)
Hon James TO Kun-sun (Deputy Chairman)
Hon Albert HO Chun-yan
Hon Margaret NG
Hon Mrs Selina CHOW LIANG Shuk-yee, JP
Hon CHEUNG Man-kwong
Hon Howard YOUNG, JP
Hon Ambrose LAU Hon-chuen, JP
Hon WONG Sing-chi
Hon IP Kwok-him, JP

Members attending : Hon CHAN Yuen-han
Hon Emily LAU Wai-hing, JP

Members absent : Dr Hon LUI Ming-wah, JP
Hon Andrew WONG Wang-fat, JP

Public Officers attending : Item III
Mr David WONG
Principal Assistant Secretary for Security B

Mr LAM Chun-man
Deputy Director of Fire Services

Mr LAU Kwai-shan
Chief Fire Officer (Licensing and Control)

Item IV

Miss Eliza YAU
Principal Assistant Secretary for Security E

Mr LEE Wai-lam
Acting Assistant Commissioner of Police (Support)

Mr WONG Che-kwong
Superintendent of Police (Licensing)

Item V

Mrs Margaret CHAN
Principal Assistant Secretary for Security A

Ms Amelia LUK
Deputy Law Officer (Mutual Legal Assistance Unit)
Department of Justice

Clerk in attendance : Mrs Sharon TONG
Chief Assistant Secretary (2)1

Staff in attendance : Mr Raymond LAM
Senior Assistant Secretary (2)5

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- I. Confirmation of minutes of meeting held on 6 February 2001 and matters arising**
(LC Paper Nos. CB(2) 1180/00-01 and 1201/00-01(01))

The minutes of the meeting held on 6 February 2001 were confirmed.

List of follow-up actions required of the Administration

2. Members noted the list of follow-up actions required of the Administration.

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II. Date of next meeting and items for discussion

(LC Paper No. CB(2) 1201/00-01(02))

3. Members agreed to discuss the following items at the next regular meeting to be held on 3 May 2001 at 2:30 pm -

- (a) Briefing on anti-smuggling work of Customs in 2000;
- (b) Juvenile crime and problem of youth gangs; and
- (c) Hong Kong residents detained in the Mainland and the reciprocal notification mechanism between the Mainland Public Security authorities and the Hong Kong Police.

On item (c), Miss Margaret NG expressed concern about recent incidents where academics such as LI Shaomin were detained by the Mainland authorities. Miss Emily LAU said that the public was worried about the sudden missing of some Hong Kong residents in the Mainland. This reflected that the coverage of the reciprocal notification mechanism established between Hong Kong and the Mainland authorities was inadequate. She said that some Hong Kong residents were detained or arrested by Mainland authorities not in accordance with Mainland laws. She asked whether the Hong Kong Special Administrative Region (HKSAR) Government had conveyed to the Mainland authorities the concerns and worries of Hong Kong people. Mr James TO said that although the family members of LI Shaomin, XU Zerong and LEUNG Hwa had not sought assistance from the Government, the Government had a responsibility to understand the situation of these missing persons. Mr CHEUNG Man-kwong added that the cases were not only related to the reciprocal notification mechanism, but the assistance provided by HKSAR Government to Hong Kong residents detained in the Mainland and their family members. Mr IP Kwok-him said that information about detention and arrest by the Mainland authorities should also be provided to facilitate the Panel's discussion on the subject.

4. Members noted that the Administration was proposing for discussion at the meeting on 3 May 2001 a financial proposal to implement projects of an updated Information Systems Strategy in the Immigration Department. Members agreed that the Administration should provide more information regarding the projects to enable the Chairman and Deputy Chairman to decide whether the subject should be discussed on 3 May 2001.

5. Members also agreed that the following items proposed by the Administration be discussed at the regular Panel meeting on 7 June 2001 -

- (a) Replacement of Command and Control Communications System for the Operations Department of the Hong Kong Police Force; and
- (b) Prison Development Plan.

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6. Members noted that the Administration had proposed a visit of the Panel to penal institutions in late April 2001. Members agreed that the date of visit would be decided later.

III. Proposed amendments to the Fire Services Ordinance

(LC Paper No. CB(2) 1201/00-01(03))

7. At the invitation of the Chairman, Principal Assistant Secretary for Security B (PAS(S)B) briefed Members on the proposed amendments to the Fire Services Ordinance (FSO) (Cap. 95).

8. Referring to paragraphs 10 and 11 of the Administration's paper, Mr CHEUNG Man-kwong questioned whether it was appropriate to wait for 12 months before a closure order was issued for premises where illegal refuelling activities were repeatedly found. He considered that as illegal refuelling activities would pose a serious threat to the safety of the residents living nearby, it was inappropriate to wait for 12 months before a closure order was issued. He pointed out that illegal refuelling activities were repeatedly found at a premise in To Kwa Wan although the Customs and Excise Department (C&ED) had taken enforcement actions against the premise for more than 20 times.

9. PAS(S)B clarified that, under the current proposal, a closure order could be issued once repeated illegal refuelling was found at a place within a period of 12 months. It would not be necessary to wait for 12 months before a closure order was issued. He said that under the existing provisions of FSO, upon the identification of illegal refuelling activities at a particular site, the Fire Services Department (FSD) had to issue a fire hazard abatement notice, reinspect the site upon expiry of a certain time limit and establish non-compliance again before prosecution could be instituted. Protection of the public against fire hazards was one of the major objectives of FSO. However, the existing provisions had rendered enforcement actions against illegal refuelling activities difficult and were not satisfactory. The proposed amendments to FSO would empower the court to issue a temporary closure order to effect complete closure of premises where illegal refuelling activities were repeatedly found within a certain time limit. It would also empower FSD to remove illegal refuelling facilities. He stressed that the proposed arrangement had achieved a proper balance between the interests of the owner of the premises concerned and the protection of the public against fire hazards.

10. Mr Howard YOUNG considered that provisions against illegal refuelling activities should be stringent, as it affected the safety of residents living nearby.

11. In response to Mr Howard YOUNG's question about paragraph 5 of the Administration's paper, PAS(S)B said that amendments were proposed to FSO after an overall review of the FSO. The Administration also proposed to repeal some provisions and re-enact them in a neat and tidy manner in a new piece of subsidiary legislation dedicated to fire hazard abatement.

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12. Mr James TO said that illegal refuelling activities were usually associated with organized crime. The Administration should therefore address the problem from the perspective of combating organized crime rather than merely from the perspective of abatement of fire hazards. Deputy Director of Fire Services (DDFS) responded that FSD had been working closely with C&ED to combat illegal refuelling. Exchange of intelligence was frequently made with C&ED and the Police. PAS(S)B pointed out that the problem of illegal refuelling fell within the purview of a number of policy bureaux. The policy bureaux concerned were taking steps to address the problem within the context of their respective policy areas.

13. As regards the proposed amendments as referred to in paragraph 14 of the Administration's paper, Mr James TO asked whether there had been legal challenges or claims in respect of the investigation findings of FSD. PAS(S)B responded that FSD had carried out investigation into each and every fire to which it had attended. After completion of investigation, FSD would compile an incident report containing a section on the believed cause of fire. Any person or party, such as loss adjudicators and law firms, could obtain a copy of the report with the payment of a specified fee. As there was currently no specific provision in FSO for FSD to carry out investigation into an incident of fire, amendments would be proposed to FSO to empower the Director of Fire Services to take necessary measures to investigate.

14. In explaining the difficulties encountered in the investigation into the incident of a fire, DDES said that FSD was not empowered under FSO to take statements from witnesses or to request them to provide information in the course of investigation. The proposed amendments sought to formally empower FSD to do so. Chief Fire Officer (Licensing and Control) (CFO(LC)) added that current investigation of fire relied on the cooperation of the public. Where a witness refused to go to FSD for giving statements, FSD would have to visit the witness concerned. PAS(S)B added that where investigation revealed that a fire was due to leakage of gas or electricity, the investigation report would be provided to the Electrical and Mechanical Services Department for follow-up.

15. Mr James TO asked whether firemen were allowed to enter the offices of State organs of the Central People's Government in Hong Kong. He pointed out that there were reports that fire fighting in the Liaison Office of the Central People's Government in HKSAR was delayed because the firemen had to wait for 10 minutes before allowed to enter the premises. PAS(S)B responded that there was no delay in the fighting of the recent fire in the Liaison Office of the Central People's Government in HKSAR. To his knowledge, the fire had already been put out when firemen arrived at the scene. He did not see any particular problems in FSD's operations under FSO. DDES added that FSD was given necessary powers to carry out firefighting duties. In the case of embassies, prior consent had to be sought before entry into the premises was allowed to carry out fire fighting work.

16. Miss Margaret NG asked whether FSO was binding on the State. Mr James TO requested the Administration to provide a written response.

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17. Mr IP Kwok-him asked why a temporary closure order of six months was proposed. PAS(S)B responded that the period of six months was determined having regard to the need to strike a balance between the deterrent effect of the order and the interests of owners.

18. In response to Mr IP Kwok-him's question about the proposal in paragraph 9 of the Administration's paper, PAS(S)B said that direct prosecution could not currently be instituted against the improper stowage or conveyance of motorcycles and related spare parts containing residual fuel in an enclosed freight container or goods compartment. The proposed amendments would make it possible for direct prosecution to be instituted.

19. In response to Mr IP Kwok-him's question about overnight storage of fuel in goods vehicles, CFO(LC) said that amendments were being proposed under the Dangerous Goods (Amendment) Bill 2000 to step up regulation of the storage of fuel, which belonged to dangerous goods of Category 5, to tackle illicit refuelling activities. PAS(S)B said that FSD was aware of the black spots and had frequently taken operations at these sites.

20. In response to Mrs Selina CHOW's question about paragraph 10 of the Administration's paper, PAS(S)B said that operators of illegal refuelling stations would be prosecuted.

21. Mrs Selina CHOW said that while the safety of the public was important and more direct prosecution should be made against operators of illegal refuelling stations, it would be unfair to issue a temporary closure order to owners of premises where illegal refuelling activities were repeatedly found, as this would be a shifting of the Administration's enforcement responsibility to the owners of premises. She pointed out that a similar issue had been discussed in depth by the then Bills Committee on Copyright Bill and it was finally agreed that such a responsibility would not be imposed on the owners of premises. She expressed doubt about whether the proposal could reduce the fire hazard arising from illegal refuelling. She asked whether there were many premises where illegal refuelling activities were repeatedly found after enforcement actions had been taken. Miss Margaret NG said that she would object to the proposed amendments, if responsibility was imposed on a person who should not be held responsible.

22. PAS(S)B noted the views of Mrs Selina CHOW. He said that each piece of draft legislation was examined by the Department of Justice (D of J) before introduction to ensure consistency with the Hong Kong Bill of Rights Ordinance. He pointed out that repeated illegal refuelling activities had been found in districts such as To Kwa Wan, Yuen Long, Tuen Mun and Tsing Yi. The owners of the premises concerned had a responsibility to avoid posing a threat to the safety of neighbours. The proposed amendments had achieved a balance between public safety and the interests of owners. He added that once a closure order was issued, the Land Registry would be notified so that any new owner of the premises would be aware of the

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previous use of the premise for illegal refuelling . CFO(LC) added that where illegal refuelling activities were found at a particular site, the owner of the premises would be authorized to terminate the lease with the tenant. A temporary closure order would be issued only as a last resort.

23. Referring to paragraphs 8 and 10 of the Administration's paper, Miss Margaret NG asked about the types of activities where direct prosecution were made and the persons responsible for such direct prosecution. DDES said that direct prosecution were made by FSD officers under existing FSO in respect of obstruction to and locking up of means of escape. Where there was any doubt, legal advice would be sought from D of J. Under the proposed amendments, direct prosecution would be extended to cover illegal refuelling and improper stowage or conveyance of motorcycles, vehicles or parts containing residual fuel in an enclosed freight container. Miss Margaret NG considered that prosecutions should be made by D of J rather than officers of FSD. She added that the issue of who should be responsible for prosecution had been discussed at a number of meetings of the Legislative Council (LegCo) Panel on Administration of Justice and Legal Services (AJLS Panel). She suggested that the Administration should study the relevant minutes of AJLS Panel.

24. Mr Albert HO said that he doubted about the Administration's determination to combat illegal activities, as illegal refuelling activities had been repeatedly found on a piece of Government land in Western District. PAS(S)B responded that since 1999, the Lands Department (LD) had stepped up enforcement against the use of Government land for illegal refuelling activities and terminated two tenancies. LD had also imposed additional clauses in new tenancies to require the submission of security schemes against the use of land for illegal refuelling and to strengthen the power to cancel a tenancy expeditiously upon discovery of illegal activities. Mr Albert HO pointed out that although the Government land in Western District had been used for illegal refuelling for a long time, the lease had not been revoked.

25. Mr Albert HO said that owners of premises where repeated illegal refuelling was found should be given the opportunity to defend, if reasonable steps had been taken by the owners against the illegal activities of the tenants. PAS(S)B responded that sufficient safeguard would be provided for owners in the proposed legislative amendments.

26. In response to Miss CHAN Yuen-han's question about the measures to be adopted in combating illegal refuelling activities, PAS(S)B said that besides the proposed introduction of a temporary closure order, FSO would be amended so that the storage of any liquid fuel and the installation of fuel dispensing equipment in any premises other than a licensed petrol filling station would be subject to direct prosecution.

**IV. Proposed amendments to the Massage Establishments Ordinance (MEO)
(LC Paper No. CB(2) 1201/00-01(04))**

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27. Mr James TO expressed support for the Administration's proposal that massage establishments found inside spa and health clubs should not be required to obtain a massage establishment licence. He asked whether vice activities had been found in massage establishments offering full-body massage to customers of the same sex. Acting Assistant Commissioner of Police (Support) (ACP(S)(Atg)) responded that such a kind of vice activity had not been identified in massage establishments in the past few years.

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28. Referring to paragraph 6 of the Administration's paper, Mr James TO requested the Administration to provide the report of the consultancy study to review MEO and the related regulatory controls exercised by the Police. Principal Assistant Secretary for Security E (PAS(S)E) agreed to provide members with the executive summary of the report and the LegCo Secretariat with the full report for perusal by interested members.

29. Mr Howard YOUNG welcomed the Administration's proposals which exempted certain types of establishments from licensing control. Referring to the Administration's proposal to define full body massage as massage treatment provided to a person covering that part of the body between the neck and the knees, he questioned why the neck was used as a dividing line. He said that it was easy to touch a person's neck when massage was applied to a person's face or scalp. It was more appropriate to use the top of a person's shoulder as the dividing line. Mr CHEUNG Man-kwong added that unclear provisions in a piece of legislation would lead to enforcement difficulties and disputes. He said that there was full-body massage treatment which involved no vice activities.

30. PAS(S)E responded that the issue was whether full-body massage was administered rather than whether the neck was touched in the process. ACP(S)(Atg) added that in the enforcement of MEO, the Police would examine whether vice activities were involved in the massage process. He added that even under the existing provisions of MEO, it was difficult to prove that vice activities were involved in the process.

31. Mr CHEUNG Man-kwong asked about the relationship between licensing of massage establishments and control of vice activities. ACP(S)(Atg) responded that there was a standard provision in the licensing conditions that no vice or immoral activities should take place in a massage establishment. There were requirements on the intensity of lights and space between beds to make it difficult for the premises to be used for vice activities. According to the record of the Police, vice activities had been found in some massage establishments. There were also massage establishments where no vice activities were found in the initial period of operation but subsequently engaged in such activities when they encountered financial problems. Inspections carried out in the licensing process would facilitate the detection of vice activities in massage establishments.

32. Mrs Selina CHOW hoped that the proposed amendments to MEO would be implemented as soon as possible. Referring to paragraph 15 of the Administration's

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paper, she suggested that a renewed licence should be valid for a period of more than two years. She asked whether the fee for a two-year licence was less than twice the fee for a one-year licence.

Adm 33. PAS(S)E undertook to consider the suggestion. She said that although the licence renewal fee was not yet determined, the fee for a two-year licence should be less than twice the fee for a one-year licence.

Adm 34. Mr IP Kwok-him said that the major objective of MEO was to prevent vice activities in massage establishments. He asked whether the Administration's proposed amendments, which would only result in about 33 licensed massage establishments being no longer required to obtain a massage establishment licence, might create grey areas. Mr CHEUNG Man-kwong added that the Administration should provide information about its control of licensed massage establishments.

35. PAS(S)E responded that although only about 33 licensed massage establishments would no longer be required to obtain a licence under the proposed legislative amendments, unnecessarily regulating establishments that did not appear to be prone to vice activities might inhibit the growth of bona fide massage businesses such as beauty parlours.

Adm 36. In response to Mr IP Kwok-him's question about the licensing process, PAS(S)E said that the owners, partners or shareholders of the proposed massage establishment should appoint a person who was fit and proper and could adequately supervise the proposed massage establishment to be a licensee. Upon receiving an "Approval-in-Principle" letter, the applicant could proceed with the decoration or renovation works in accordance with the licensing requirements. After completion of all decoration and renovation works, compliance check would be conducted by the relevant government departments. At the request of the Chairman, ACP(S)(Atg) agreed to provide information about the licensing requirements.

37. Miss Margaret NG said that some massage establishments had recently lodged a complaint against the existing requirements under MEO. She expressed concern that the proposed legislative amendments could not reflect the objective of prevention against vice activities. She said that the objective of prevention of vice activities should be reflected in the legislative amendments to be introduced.

Adm 38. Miss Margaret NG said that manipulative therapy (推拿), which was not necessarily performed by a person of the same sex and might be applied to the parts other than the arms and feet of a body, was becoming increasingly popular. She asked whether it would be excluded from MEO under the proposed legislative amendments. Mr CHEUNG Man-kwong said that if there was a lack of clarity in this respect, operators of establishments providing manipulative therapy would not know whether their operations were permitted under the law. Mr Albert HO said that the Administration should also examine whether chiropractic was exempted from MEO. PAS(S)E agreed to examine whether manipulative therapy was exempted from MEO and, if not, whether it could be regulated under the Chinese Medicine Ordinance (Cap.

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549). She also undertook to examine whether chiropractic was exempted from MEO.

39. In response to Miss Margaret NG's question about paragraphs 4 and 11 of the Administration's paper, PAS(S)E said that paragraph 4 referred to the existing situation, while paragraph 11 referred to the situation after the proposed legislative amendments came into force.

40. Miss CHAN Yuen-han expressed support for the proposed relaxation of requirements. She asked about the definition of full body massage. PAS(S)E responded that full body massage was proposed to be defined as that covering that part of the body between the neck and the knees. Miss CHAN Yuen-han considered that as it was not unusual for massage to be applied to a person's neck and shoulder, the part of the body above the chest of a person should be used in place of the neck as a division line. PAS(S)E said that in the enforcement of MEO, the Police would mainly examine whether vice activities were involved in the process.

41. The Chairman asked the Administration to consider Members' views on the proposed legislative amendments.

V. Progress of establishing an arrangement with the Mainland on surrender of fugitive offenders

(LC Paper No. CB(2) 688/00-01(01) and Research Report on Surrender of Fugitive Offenders between Hong Kong and Mainland China conducted by the LegCo Secretariat)

42. Principal Assistant Secretary for Security A (PAS(S)A) informed Members that discussions regarding the establishment of a rendition arrangement between HKSAR and the Mainland were still progressing. There was nothing further to report besides the information contained in the Administration's paper issued in January 2001.

43. Mr James TO asked whether meetings had been held between HKSAR and the Mainland after March 2000. PAS(S)A responded that since the last round of talks in Beijing in March 2000, experts of both sides had continued to exchange views through correspondence.

44. Mr James TO said that the Panel had provided the Administration with the report of a research study conducted by the LegCo Secretariat on the surrender of fugitive offenders between Hong Kong and the Mainland. The report also provided useful information on the rendition arrangements between different states of the United States. He asked whether the research materials studied by the Administration could be provided to Members to facilitate their understanding of the subject. He also asked the Administration to provide any additional information available on the rendition arrangements between different states of the United States, if it had conducted studies in this respect.

45. PAS(S)A responded that as stated by S for S at a previous special meeting of the

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Panel, such information might not offer much assistance to Members in understanding the hypothetical questions raised about the proposed arrangements. Nevertheless, the Administration could provide information on the public documents which it had studied in its research on the subject of rendition with the Mainland.

46. Miss Margaret NG said that JUSTICE had conducted a seminar on the subject on 17 March 2001 and she could provide members with copies of the speeches given at that seminar. She said that it was important for the rendition arrangements to be established to be acceptable to the public at large. She hoped that the Administration would disclose its position in respect of the rendition arrangements. PAS(S)A responded that as stated by S for S at the special Panel meeting on 13 April 2000, the Administration would adhere to the five guiding principles as set out in paragraph 8 of the Administration's paper for the Panel meeting on 3 December 1998. As discussion on the subject was still continuing, the Administration was not in a position to disclose any details. However, it welcomed the views of LegCo Members, the legal profession and academics on the subject.

47. Mr Albert HO said that one would be very worried if discussions were confidential and lengthy. He expressed concern that there might be no room for any alteration once the rendition arrangement had been agreed by the two sides, especially when it was the result of lengthy discussions. He questioned why the views of both sides and the major differences in views could not be disclosed.

48. PAS(S)A responded that the rendition arrangement to be devised would have to be consistent with the Basic Law and the principle of One Country Two Systems. It would also have to be in the interests of the people of Hong Kong. In determining the rendition arrangement, the Administration would have regard to the experience and safeguards in respect of the rendition arrangement between other countries. The arrangement would have to be acceptable to the people of Hong Kong and undergo the usual legislative process before it could be implemented. She assured Members that public consultation would be made on the rendition arrangement. However, such consultation could not commence until there were substantive arrangements.

49. Mr CHEUNG Man-kwong expressed concern that once a rendition agreement was reached by both sides, there would be no room for alteration of the arrangements. He also expressed concern that the legislative proposal to implement the arrangements would not be amendable by LegCo Members since it was related to Government policy. He asked whether LegCo Members were allowed to oppose an agreement signed by the Administration.

50. PAS(S)A responded that the implementation of any rendition arrangement must be underpinned by local legislation. LegCo Members could propose amendments to the bill in the legislative process and the Administration would explain the rationale behind its proposed arrangements.

51. Mr James TO expressed deep concern that the interests of the people of Hong Kong would be harmed in the rendition arrangement to be established between Hong

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Kong and the Mainland. Miss Margaret NG shared the same view. She expressed concern that discussions between the two sides were lengthy but confidential.

52. The meeting ended at 1:10 pm.

Legislative Council Secretariat

8 May 2001