

立法會
Legislative Council

LC Paper No. CB(2) 422/01-02

Ref : CB2/H/5

House Committee of the Legislative Council

**Minutes of the 5th meeting
held in the Legislative Council Chamber
at 2:30 pm on Friday, 16 November 2001**

Members present :

Hon Mrs Selina CHOW LIANG Shuk-ye, JP (Chairman)
Hon Fred LI Wah-ming, JP (Deputy Chairman)
Hon James TIEN Pei-chun, GBS, JP
Hon David CHU Yu-lin, JP
Hon Cyd HO Sau-lan
Hon Albert HO Chun-yan
Ir Dr Hon Raymond HO Chung-tai, JP
Hon LEE Cheuk-yan
Hon Eric LI Ka-cheung, JP
Dr Hon David LI Kwok-po, GBS, JP
Dr Hon LUI Ming-wah, JP
Hon NG Leung-sing, JP
Hon Margaret NG
Hon James TO Kun-sun
Hon CHEUNG Man-kwong
Hon HUI Cheung-ching, JP
Hon CHAN Kwok-keung
Hon CHAN Yuen-han, JP
Hon Bernard CHAN
Hon CHAN Kam-lam
Hon Mrs Sophie LEUNG LAU Yau-fun, SBS, JP
Hon LEUNG Yiu-chung
Dr Hon Philip WONG Yu-hong
Hon WONG Yung-kan
Hon Jasper TSANG Yok-sing, JP
Dr Hon YEUNG Sum
Hon YEUNG Yiu-chung, BBS
Hon LAU Kong-wah
Hon Miriam LAU Kin-ye, JP
Hon Ambrose LAU Hon-chuen, GBS, JP

Hon Emily LAU Wai-hing, JP
Hon CHOY So-yuk
Hon Andrew CHENG Kar-foo
Hon SZETO Wah
Hon LAW Chi-kwong, JP
Hon TAM Yiu-chung, GBS, JP
Dr Hon TANG Siu-tong, JP
Hon Abraham SHEK Lai-him, JP
Hon LI Fung-ying, JP
Hon Henry WU King-cheong, BBS
Hon Tommy CHEUNG Yu-yan, JP
Hon Michael MAK Kwok-fung
Hon Albert CHAN Wai-yip
Hon LEUNG Fu-wah, MH, JP
Dr Hon LO Wing-lok
Hon WONG Sing-chi
Hon Frederick FUNG Kin-kee
Hon IP Kwok-him, JP
Hon LAU Ping-cheung
Hon MA Fung-kwok

Members absent :

Hon Kenneth TING Woo-shou, JP
Hon Martin LEE Chu-ming, SC, JP
Hon SIN Chung-kai
Hon Andrew WONG Wang-fat, JP
Hon Howard YOUNG, JP
Hon LAU Chin-shek, JP
Hon LAU Wong-fat, GBS, JP
Hon Timothy FOK Tsun-ting, SBS, JP
Hon Audrey EU Yuet-mee, SC, JP

Clerk in attendance :

Mrs Justina LAM Clerk to the House Committee

Staff in attendance :

Mr Ricky C C FUNG, JP	Secretary General
Mr Jimmy MA, JP	Legal Adviser
Mr LAW Kam-sang, JP	Deputy Secretary General
Mr LEE Yu-sung	Senior Assistant Legal Adviser
Ms Pauline NG	Assistant Secretary General 1
Mr Ray CHAN	Assistant Secretary General 3
Ms Bernice WONG	Assistant Legal Adviser 1

Mr Stephen LAM	Assistant Legal Adviser 4
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 4th meeting held on 9 November 2001
(LC Paper No. CB(2) 350/01-02)**

The minutes were confirmed.

II. Matters arising

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

Invitation to CS to attend a House Committee meeting

2. The Chairman said that CS had agreed to attend a special meeting of the House Committee on 14 December 2001 at 2:30 pm to discuss the issue of 24-hour operation at boundary control points. She added that the special meeting would last for about one hour, to be followed by the regular meeting of the House Committee.

3. Ms Emily LAU said that one hour might not be sufficient as the issue of 24-hour operation at boundary control points straddled a number of policy areas and had not been discussed by the relevant Panels before. She further said that the Legislative Council (LegCo) Secretariat should assist the relevant Panels in arranging follow-up discussions by the relevant Panels expeditiously.

4. Mr James TO said that the Administration should be requested to provide background information on the issue of 24-hour operation at boundary control points before the meeting on 14 December 2001. He added that the LegCo Secretariat should also assist in conducting research studies on the issue.

5. Mr LAW Chi-kwong said that it would be difficult for the Secretariat to conduct research on the issue without clear instructions regarding the scope and focus of the research. He suggested that the Panel on Security should take the lead in following up the issue and steering the research work.

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6. Deputy Secretary General said that the Secretariat had prepared and issued a paper which provided background information on the operation of boundary control points and a brief account of past discussions on measures to ease congestion at control points. Deputy Secretary General added that the issue of 24-hour operation at boundary control points had not been discussed by any Panels before.

7. Mr James TO said that some universities and research institutes might have conducted research studies on the issue. He suggested the Secretariat to obtain copies of the relevant papers or reports, if available, for Members' reference.

8. The Chairman said that as the issue of 24-hour operation at boundary control points straddled a number of policy areas, Members agreed at the House Committee meeting on 2 November 2001 that CS should be invited to a special meeting of the House Committee to first brief Members on Government's policy and position on the issue, before relevant Panels held follow-up discussions with the Policy Bureaux concerned. The Chairman added that to facilitate the discussion at the meeting on 14 December 2001, she would request CS to provide as much information as possible to Members before the meeting.

9. Ms Cyd HO suggested that the information to be provided by the Administration should include an assessment of the impact of 24-hour operation at boundary control points on Hong Kong's retail business, the logistics industry, the passenger and vehicular flow between Hong Kong and the Mainland, and other aspects.

10. The Chairman said that she would also ask CS which Policy Bureau would take the lead in following up the issue of 24-hour operation at boundary control points.

Legislative Programme for the 2001-02 session

11. The Chairman said that she had relayed to CS the concerns raised by Members regarding the Legislative Programme for the 2001-02 session.

12. The Chairman informed Members that CS had responded that the objective and spirit of some bills in the past were not sufficiently clear. CS considered quantity and quality equally important, and the latter should not be sacrificed in favour of the former. CS also said that in some instances, problems arose after some bills had become law; great care must therefore be exercised during the drafting stage.

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13. The Chairman said that CS had reiterated that legislation should not impose a financial burden on the community unnecessarily, and that there should not be enforcement problems. CS added that other considerations were the administrative costs involved and the importance of not damaging the Administration's credibility. CS also considered that as Bills Committee slots were limited, it was unrealistic and impractical to introduce a large number of bills in a session.

14. The Chairman further said that CS had stressed that he had applied stringent standards in approving items for the Legislative Programme. For example, if an existing general legislative provision was adequate, it would not be necessary to introduce a more specific provision. CS felt aggrieved at the accusation that the Administration's aim was to avoid legislating and to employ administrative measures instead. He pointed out that when something could only be done legally by enacting legislation, using any other means would be illegal.

15. The Chairman added that CS had also confirmed that she, as Chairman of the House Committee, had never complained to him about the Council having too many bills to consider.

16. Miss Margaret NG asked whether CS had cited any examples to explain his point about the importance of introducing legislation which would not damage the Administration's credibility. The Chairman said that CS had not given any specific examples, but she believed what CS meant was that any legislative proposal should be well thought-out; otherwise, if enforcement or implementation problems arose subsequently, the credibility of the Administration would be undermined.

17. Miss Margaret NG also sought clarification on what CS meant by "when an existing general legislative provision was adequate, it would not be necessary to introduce a more specific provision".

18. The Chairman said that CS was referring to cases where a Policy Bureau or government department might have been over-cautious and sought to introduce more specific provisions to achieve certain purposes, although an existing general provision already provided the legal basis or authority for those purposes. Miss Margaret NG responded that this was an important matter which should be followed up by the Panel on the Administration of Justice and Legal Services (AJLS Panel). She requested the Chairman to let CS know that the AJLS Panel might invite him to attend the discussion of the Panel on the matter.

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19. Miss Margaret NG further pointed out that there were cases where the Administration had claimed that a particular legislative proposal was introduced simply to make clear certain provisions in an existing piece of legislation, but in actual fact the legislative proposal sought to make substantial changes to the legislation concerned. Miss NG said that she was also concerned that a Policy Bureau or government department might have introduced administrative measures without realising that it did not have the legal basis or authority to do so. She added that these issues would be followed up by the AJLS Panel.

20. Ms Emily LAU expressed concern that LegCo might not be informed of all the administrative measures and executive orders made by the Administration. Members therefore could not find out whether the Administration had actually avoided legislating in order to bypass the Council. She asked how the Secretariat could assist Members in this regard.

21. The Chairman reiterated that CS had stressed that there was no question of the Administration employing administrative measures to avoid legislating. CS had pointed out that when something could only be done legally by enacting legislation, using any other means would be illegal.

22. The Legal Adviser said that the LegCo Secretariat did not receive copies of all government instructions or circulars relating to administrative measures, but the Legal Service Division examined all legal notices published in the Gazette. He added that if any irregularities were found in these notices, the Legal Service Division would draw these irregularities to Members' attention. He further informed Members that since 1 July 1997, only one executive order had been made under Article 48(4) of the Basic Law and that was the Public Service (Administration) Order 1997.

23. Ms Emily LAU requested the Chairman to seek clarification from CS on the circumstances under which the Chief Executive would consider making an executive order, as provided in Article 48(4) of the Basic law.

24. The Chairman undertook to raise with CS Members' queries and concerns.

III. Business arising from previous Council meetings

(a) Legal Service Division report on bills referred to the House Committee in accordance with Rule 54(4)

Juvenile Offenders (Amendment) Bill 2001

(LC Paper No. LS 22/01-02)

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25. The Legal Adviser said that the Bill proposed to raise the age of criminal responsibility from seven to 10 years of age as recommended by the Law Reform Commission which had reported in 2000 after a public consultation exercise conducted in 1999.

26. The Legal Adviser further said that the Administration briefed the AJLS Panel on 18 September 2001 and Panel members had different views on the proposal. He added that as the determination of the minimum age of criminal responsibility was an important policy decision, Members might wish to form a Bills Committee to study the Bill.

27. The Chairman proposed that a Bills Committee be formed to study the Bill. Members agreed. The following Members agreed to join : Ms Cyd HO, Miss Margaret NG, Mr James TO (as advised by Dr YEUNG Sum), Mr TSANG Yok-sing, Mrs Miriam LAU and Mr MAK Kwok-fung. The Chairman advised that as there was no vacant slot, the Bills Committee would be placed on the waiting list.

(b) Legal Service Division report on subsidiary legislation gazetted on 9 November 2001

(LC Paper No. LS 21/01-02)

28. The Legal Adviser said that a total of six items of subsidiary legislation were gazetted on 9 November 2001. He advised that the Maximum Amount of Election Expenses (Chief Executive Election) Regulation and the Electoral Procedure (Chief Executive Election) Regulation would be examined by the Subcommittee on subsidiary legislation relating to the Chief Executive election.

29. The Legal Adviser further said that the Air Navigation (Hong Kong) (Amendment of Schedule 16) Order 2001 and Dangerous Goods (Consignment by Air) (Safety) Regulations (Amendment of Schedule) Order 2001 were to give effect to the 2001-02 edition of the "Technical Instructions for the Safe Transport of Dangerous Goods by Air" approved by the International Civil Aviation Organization. These two Orders were legally in order and came into operation on 9 November 2001.

30. As regards the Animals and Plants (Protection of Endangered Species) (Exemption) (Amendment) Order 2001 and Animals and Plants (Protection of Endangered Species) Ordinance (Amendment of Schedules) Notice 2001, the Legal Adviser said that the Administration had clarified that basking shark could continue to be traded under the export and re-export licences as import licensing requirements were exempted under section 10 of the Order.

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31. The Chairman reminded Members that the deadline for amending these items of subsidiary legislation was the Council meeting on 12 December 2001, or 19 December 2001 if extended by resolution.

IV. Further business for the Council meeting on 21 November 2001

(a) Questions

(LC Paper No. CB(3) 140/01-02)

32. The Chairman drew Members' attention to the new oral questions to be raised by Mr CHAN Kwok-keung and Mr WONG Yung-kan.

(b) Bills - resumption of debate on Second Reading, Committee Stage and Third Reading

Inland Revenue (Amendment) Bill 2001

33. The Chairman said that at the House Committee meeting on 9 November 2001, Members did not raise objection to the resumption of the Second Reading debate on the Bill.

(c) Government motion

Two proposed resolutions to be moved by the Secretary for Constitutional Affairs under section 34(2) of the Interpretation and General Clauses Ordinance relating to:

(i) the Election Committee (Subscribers and Election Deposit for Nomination) Regulation; and

(ii) the Electoral Affairs Commission (Nominations Advisory Committees (Election Committee)) Regulation.

(Wording of the motion issued vide LC Paper No. CB(3) 146/01-02 dated 13 November 2001.)

34. The Chairman said that the Secretary for Constitutional Affairs had given notice to move the two proposed resolutions at the Council meeting on 21 November 2001 to amend the two Regulations.

35. The Chairman added that the Subcommittee on the subsidiary legislation relating to the Chief Executive election had completed scrutiny of the six items of subsidiary legislation tabled in Council on 17 October 2001 and provided a report under agenda item VI(b).

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V. Business for the Council meeting on 28 November 2001

(a) Questions

(LC Paper No. CB(3) 141/01-02)

36. The Chairman said that 20 questions (six oral and 14 written) had been scheduled for the Council meeting on 28 November 2001.

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

Immigration (Amendment) Bill 2001

37. The Chairman said that the Bill would be introduced into the Council on 28 November 2001 and considered by the House Committee on 30 November 2001.

(c) Bills - resumption of debate on Second Reading, Committee Stage and Third Reading

The Ombudsman (Amendment) Bill 2001

38. The Chairman said that at the House Committee meeting on 2 November 2001, Members did not raise objection to the resumption of the Second Reading debate on the Bill.

(d) Government motion

Proposed resolution to be moved by the Secretary for Education and Manpower under section 7 of the Factories and Industrial Undertakings Ordinance relating to the Factories and Industrial Undertakings (Gas Welding and Flame Cutting) Regulation

(Wording of the motion issued vide LC Paper No. CB(3) 148/01-02 dated 14 November 2001.)

(LC Paper No. LS 23/01-02)

39. The Chairman said that at the request of the House Committee, the Secretary for Education and Manpower (SEM) withdrew her notice for moving the motion on the Regulation at the Council meeting on 11 July 2001 to allow time for the Panel on Manpower to consider the Regulation. The Panel had subsequently discussed the Regulation and reported to the House Committee.

40. The Chairman further said that at the House Committee meeting on 10 July 2001, it was agreed that a subcommittee to study the Regulation was not necessary, and SEM could give fresh notice to move the motion on the Regulation.

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41. The Chairman informed Members that SEM had given fresh notice to move the motion on the Regulation at the Council meeting on 28 November 2001.

42. The Legal Adviser advised that the Regulation was legally in order. In response to Mr LEUNG Fu-wah, the Legal Adviser said that the suggestion of incorporating training for electrical welding in the proposed safety training course was discussed by the Panel on Manpower on 4 July 2001.

43. Mr James TIEN said that he supported the Regulation.

44. The Chairman reminded Members that the deadline for giving notice of amendments, if any, was 21 November 2001.

(e) **Members' motions**

(i) **Motion on "Reducing utility charges"**

(Wording of the motion issued vide LC Paper No. CB(3) 152/01-02 dated 15 November 2001.)

45. The Chairman said that the above motion would be moved by Mr Fred LI Wah-ming and the wording of the motion had been issued to Members.

(ii) **Motion on "Going northward for development and employment"**

(Wording of the motion issued vide LC Paper No. CB(3) 153/01-02 dated 15 November 2001.)

46. The Chairman said that the above motion would be moved by Mr NG Leung-sing and the wording of the motion had been issued to Members.

47. The Chairman reminded Members that the deadline for giving notice of amendments, if any, was 21 November 2001.

VI. Report of Bills Committee and subcommittee on subsidiary legislation

(a) **Position report on Bills Committees/ subcommittees**

(LC Paper No. CB(2) 360/01-02)

48. The Chairman said that there were 15 Bills Committees and six subcommittees in action, as well as 10 Bills Committees, including the Bills Committee on the Juvenile Offenders (Amendment) Bill 2001 formed under agenda item III(a), on the waiting list.

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(b) Second report of the Subcommittee on subsidiary legislation relating to Chief Executive election

(LC Paper No. CB(2) 356/01-02)

49. Presenting the report, Mr IP Kwok-him, Chairman of the Subcommittee, said that the Subcommittee supported the six items of subsidiary legislation tabled in Council on 17 October 2001. He added that the Subcommittee also supported the Administration's proposed amendments to the Election Committee (Subscribers and Election Deposit for Nomination) Regulation and the Electoral Affairs Commission (Nominations Advisory Committees (Election Committee)) Regulation to align the meaning of the English text with the Chinese text.

50. Mr IP informed Members that the Subcommittee would meet on 20 November 2001 to discuss the two Regulations relating to the Chief Executive election tabled in Council on 14 November 2001 and considered by Members under agenda III(b) above.

(c) Report of the Subcommittee on Fugitive Offenders (Sri Lanka) Order and Fugitive Offenders (Portugal) Order

(LC Paper No. CB(2) 391/01-02)

51. Miss Margaret NG introduced the report on behalf of Mr James TO, Chairman of the Subcommittee, who had to leave the meeting early.

52. Miss Margaret NG said that the Subcommittee's main concern was that the arrangements for the surrender of fugitive offenders to which the Orders related should be substantially in conformity with the provisions of the Fugitive Offenders Ordinance. The Subcommittee had also compared the provisions of the two Orders with the Hong Kong Special Administrative Region (HKSAR) model agreement.

53. Miss NG informed Members that the Subcommittee supported the Fugitive Offenders (Portugal) Order.

54. As regards the Fugitive Offenders (Sri Lanka) Order, Miss NG said that the Subcommittee was very concerned about the implications of Article 6(2) of the HKSAR/Sri Lanka Agreement as such a provision was not found in other Fugitive Offenders Orders made in the past except the Fugitive Offenders (India) Order. Miss NG explained that under Article 6(2) of the Agreement, murder or manslaughter, any offence against the laws relating to explosives and any offence within the scope of any convention which was binding on both Parties and which obligated the Parties to prosecute or grant surrender for such offence should not be considered to be offences of a political character. As the Administration had advised that Article 6(2) was made having regard to the

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problem of terrorism in Sri Lanka, the Subcommittee had requested the Administration to provide detailed information on the international conventions concerning suppression of terrorism.

55. Miss Margaret NG further said that to allow time for Members to discuss with the Administration the outstanding issues relating to the Fugitive Offenders (Sri Lanka) Order, the Subcommittee had agreed that the Chairman of the Subcommittee, Mr James TO, should move a motion to repeal the Order at the Council meeting on 21 November 2001. As the deadline for giving notice of such a motion had already expired, the Subcommittee hoped that the House Committee would support seeking the President's leave to dispense with the notice requirement.

56. Miss NG added that if the Fugitive Offenders (Sri Lanka) Order was repealed, the Subcommittee recommended that the House Committee should set up a subcommittee to follow up the issues relating to the Order. The Chairman responded that the recommendation would be considered at the next meeting of the House Committee, if the motion to be moved by Mr James TO was passed by the Council on 21 November 2001.

57. Ms Emily LAU said that she was a member of the Subcommittee and she was concerned about Article 6(2) of the HKSAR/Sri Lanka Agreement. She further said that the Hong Kong Human Rights Monitor had also indicated that it would like to further study the implications of the Article and present its views to the Council. She hoped that Members would support the Subcommittee's recommendation to seek the President's leave to dispense with the notice requirement for the Chairman of the Subcommittee, Mr James TO, to move a motion to repeal the Fugitive Offenders (Sri Lanka) Order at the Council meeting on 21 November 2001. Ms LAU also asked whether the Administration had raised objection to the Chairman of the Subcommittee moving the motion.

58. The Chairman said that according to paragraph 24 of the report, the Administration had indicated that it did not see the need for the Order to be repealed, but respected the decision of the Subcommittee.

59. Miss Margaret NG reiterated that it was important that the provisions in the Order should be substantially in conformity with the Fugitive Offenders Ordinance. She was concerned that if the arrangements for the surrender of fugitive offenders set out in an agreement were inconsistent with the provisions of the Ordinance, the executive authorities might not have the legal authority to enter into the agreement. Ms Cyd HO concurred with Miss NG and asked the Legal Adviser for his opinion on whether such an agreement was legally in order. The Legal Adviser responded that although the proper authority for determining the legality of a piece of subsidiary legislation would be the Courts,

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it would be a relevant matter for the Legislature's consideration when scrutinizing the subsidiary legislation in question.

60. The Chairman proposed that the President's leave be sought to dispense with the notice requirements for the Chairman of the Subcommittee, Mr James TO, to move a motion at the Council meeting on 21 November 2001 to repeal the Fugitive Offenders (Sri Lanka) Order. Members agreed.

VII. Any other business

Retirement Benefits for Members of the Legislative Council

61. Miss Emily LAU said that in his letter dated 13 November 2001, CS indicated that regarding Members' request that the Administration should draw up a proposed pension scheme for LegCo Members, the Administration would "revert to Members once we are in a position to do so". Miss LAU would like to know roughly when the Administration would revert to Members on the matter. The Chairman said that she would raise this at her meeting with CS on 19 November 2001.

62. There being no further business, the meeting ended at 3:32 pm.

Council Business Division 2
Legislative Council Secretariat
21 November 2001