

立法會
Legislative Council

LC Paper No. CB(2) 503/01-02

Ref : CB2/H/5

House Committee of the Legislative Council

**Minutes of the 6th meeting
held in the Legislative Council Chamber
at 2:55 pm on Friday, 23 November 2001**

Members present :

Hon Mrs Selina CHOW LIANG Shuk-ye, JP (Chairman)
Hon Fred LI Wah-ming, JP (Deputy Chairman)
Hon Kenneth TING Woo-shou, JP
Hon James TIEN Pei-chun, GBS, JP
Hon Cyd HO Sau-lan
Ir Dr Hon Raymond HO Chung-tai, JP
Hon Eric LI Ka-cheung, JP
Dr Hon David LI Kwok-po, GBS, JP
Hon NG Leung-sing, JP
Hon Margaret NG
Hon CHEUNG Man-kwong
Hon HUI Cheung-ching, JP
Hon CHAN Kwok-keung
Hon CHAN Yuen-han, JP
Hon CHAN Kam-lam
Hon Mrs Sophie LEUNG LAU Yau-fun, SBS, JP
Hon LEUNG Yiu-chung
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, BBS
Hon LAU Kong-wah
Hon LAU Wong-fat, GBS, JP
Hon Miriam LAU Kin-ye, JP
Hon Ambrose LAU Hon-chuen, GBS, JP
Hon Emily LAU Wai-hing, JP
Hon CHOY So-yuk

Ms Pauline NG	Assistant Secretary General 1
Mr Ray CHAN	Assistant Secretary General 3
Miss Connie FUNG	Assistant Legal Adviser 3
Mr Stephen LAM	Assistant Legal Adviser 4
Mr Arthur CHEUNG	Assistant Legal Adviser 5
Mrs Vivian KAM	Chief Assistant Secretary (Complaints)
Miss Kathleen LAU	Chief Public Information Officer
Mrs Constance LI	Chief Assistant Secretary (2)5
Miss Betty MA	Senior Assistant Secretary (2)1

Action

**I. Confirmation of the minutes of the 5th meeting held on 16 November 2001
(LC Paper No. CB(2) 422/01-02)**

The minutes were confirmed.

II. Matters arising

**(a) 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 she had relayed to Acting (Ag) CS Members' requests and queries. Ag CS had undertaken to gather the information on the subject of 24-hour operation at boundary control points requested by Members and provide a paper before the House Committee meeting on 14 December 2001.

3. The Chairman further said that according to the Director of Administration, the Security Bureau took the lead in respect of the subject. He pointed out that the Secretary for Security had in fact answered a question on the subject at the Council meeting on 14 November 2001.

4. Ms Emily LAU asked whether the Chairman had raised with CS that one hour would not be sufficient to discuss the subject of 24-hour operation at boundary control points as it was very complex. Mr CHAN Kam-lam said that CS should stay for two hours. Dr YEUNG Sum concurred with Mr CHAN.

5. The Chairman said that she had raised with Ag CS that Members would like the meeting to be longer, but Ag CS had not responded whether CS would be agreeable to stay for more than one hour. She would raise the matter with CS upon his return from Europe.

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6. The Chairman said that she had relayed to Ag CS the points and queries raised by Members. In response, Ag CS had made the following points -

- (a) The Administration carried out its work in accordance with the Basic Law. The principle was to legislate if necessary instead of resorting to administrative measures;
- (b) If there was already sufficient legal basis in existing law to implement a new policy, the Administration would make use of the available authority and refrain from making new legislative provisions which were in fact unnecessary;
- (c) The Legal Adviser to the Legislative Council's understanding was correct. The provision for "executive order" had so far been used only once : in 1997, the Chief Executive issued an executive order in accordance with Article 48(4) of the Basic Law, i.e. the Public Service (Administration) Order 1997, which provided for the appointment, dismissal, suspension and disciplinary procedures in the Civil Service; and
- (d) An executive order was applicable only to the Administration's internal affairs, e.g. the Civil Service, and did not relate to matters affecting the community as a whole. It was different from the Common Law and laws passed by the Legislative Council. Moreover, it was not an independent source of law under the existing legal system of the Hong Kong Special Administrative Region. It could not therefore replace legislation or anything which carried the effect of law.

Retirement benefits for Members of the Legislative Council

7. The Chairman said that Ag CS had responded that he could only promise to revert to Members as quickly as possible. Ag CS pointed out that the issue was complex and important, and the Administration needed to gather information on overseas experience. He suggested that Members might wish to check progress after two to three months.

- (b) **Formation of a subcommittee to study issues relating to the Fugitive Offenders (Sri Lanka) Order**
(Paragraph 56 of the minutes of the 5th House Committee meeting held on 16 November 2001)

8. The Chairman said that the Fugitive Offenders (Sri Lanka) Order was repealed at the Council meeting on 21 November 2001. She proposed that a subcommittee be formed to study issues relating to the Order, as discussed at the last meeting of the House Committee. Members agreed. The following Members agreed to join : Miss Margaret NG, Mr James TO (as advised by Dr YEUNG Sum), Mr Jasper TSANG (as advised by Mr IP Kwok-him), Ms Miriam LAU, Ms Emily LAU and Ms Audrey EU.

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)**

Inland Revenue (Amendment) (No. 2) Bill 2001
(*LC Paper No. LS 18/01-02*)

9. Presenting the report, the Legal Adviser explained that the Bill proposed to make empowering provisions for tax returns to be submitted in electronic form using a password and by telephone. The Legal Adviser said that only certain types of tax returns meeting specific criteria and requirements would be covered by the proposed lodgment scheme which would be expanded in future. Provision was therefore made under the Bill empowering the Commissioner to specify by notice in the Gazette the classes of persons or returns to which the electronic and telefiling lodgment scheme would apply. Under the Bill, such notice would not be subsidiary legislation.

10. The Legal Adviser further said that the legislative proposal was essentially the development of existing policies. The Legal Service Division earlier sought clarification from the Administration on some drafting points and its reply had just been received. He added that the Division did not have further queries on the legal and drafting aspects of the Bill.

11. Dr YEUNG Sum expressed concern about the security of information contained in tax returns furnished by electronic means and by telephone. He suggested that a Bills Committee be formed to seek clarification from the Administration on the security measures to be put in place.

12. The Legal Adviser said that as the Legislative Council Brief on the Bill did not provide detailed information on the system security measures to be put in place, the Legal Service Division could raise further queries with the Administration, if Members so wished.

13. Mr Eric LI said that he had no objection to forming a Bills Committee to study the Bill. He further said that when the relevant professional bodies and advisory committees were consulted on the legislative proposal, they had raised

enquires as to whether the Inland Revenue Department (IRD) accepted the filing of tax returns using the e-Cert Certificate provided through the Hongkong Post.

14. The Chairman suggested that as the Bill had not been discussed by the relevant Panel prior to its introduction into the Council, the Bill might first be considered by the Panel on Financial Affairs. She further suggested that a decision on whether to form a Bills Committee to study the Bill be deferred. Members agreed.

(b) Legal Service Division report on subsidiary legislation gazetted on 16 November 2001

(LC Paper No. LS 24/01-02)

15. The Legal Adviser explained that the Census and Statistics (Survey of External Claims, Liabilities and Income) (Amendment) Order 2001 sought to increase the frequency of surveys relating to external claims, liabilities and income of local individuals and local undertakings from quarterly to monthly, and to collect additional information in these surveys. He added that the Order would come into operation on 1 January 2002, and that the legal and drafting aspects of the Order were in order.

16. As regards the Chief Executive Election (Election Petition) Rules, the Legal Adviser said that the Rules would be studied by the Subcommittee on subsidiary legislation relating to the Chief Executive election.

17. Miss Margaret NG said that she had some queries about the Chief Executive Election (Election Petition) Rules, but she was not a member of the Subcommittee. The Chairman responded that non-Subcommittee Members could also attend meetings of the Subcommittee. Mr IP Kwok-him, Chairman of the Subcommittee, informed Members that the next meeting of the Subcommittee would be held on 26 November 2001 at 8:30 am.

18. The Chairman reminded Members that the deadline for amending these two items of subsidiary legislation was the Council meeting on 19 December 2001, or 9 January 2002 if extended by resolution.

IV. Further business for the Council meeting on 28 November 2001

Request for special leave of the Council to give evidence of Council proceedings

Request made under section 7 of the Legislative Council (Power and Privileges) Ordinance (Cap. 382) and Rule 90 of the Rules of Procedure for special leave of the Council to give evidence of Council proceedings

(The request of the Acting Deputy Director of Public Prosecution has been set out in the paper issued on 19 November 2001 under LC Paper No. CB(3) 168/01-02.)

19. The Chairman said that the Acting Deputy Director of Public Prosecution had, under section 7 of the Legislative Council (Power and Privileges) Ordinance (Cap. 382), sought special leave of the Council for three members of the staff of the Legislative Council Secretariat to give evidence in a court case.

20. The Chairman further said that in accordance with Rule 90(2) of the Rules of Procedure, the request for leave should be placed on the Agenda for such meeting as the President might appoint and, unless on a motion which might be moved without notice at that meeting by any Member the Council determined that such leave should be refused, the Council should be deemed to have ordered that such leave be granted.

V. **Business for the Council meeting on 5 December 2001**

(a) **Questions**

(LC Paper No. CB(3) 175/01-02)

21. The Chairman said that 20 questions (six oral and 14 written) had been scheduled for the Council meeting on 5 December 2001.

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

22. The Chairman said that no notice had been received from the Administration.

(c) **Government motion**

23. The Chairman said that no notice had been received from the Administration.

(d) **Members' motions**

(i) **Motion on "Reducing government fees and charges"**

(Wording of the motion issued vide LC Paper No. CB(3) 182/01-02 dated 21 November 2001.)

24. The Chairman said that the above motion would be moved by Mr LAU Chin-shek and the wording of the motion had been issued to Members.

(ii) **Motion on "Reviewing the labelling system for prepackaged foods"**

(Wording of the motion issued vide LC Paper No. CB(3) 184/01-02 dated 22 November 2001.)

25. The Chairman said that the above motion would be moved by Mr CHAN Kam-lam and the wording of the motion had been issued to Members.

26. The Chairman reminded Members that the deadline for giving notice of amendments, if any, was 28 November 2001.

VI. Report of Bills Committee and subcommittee on subsidiary legislation

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

(LC Paper No. CB(2) 430/01-02)

27. The Chairman said that there were 15 Bills Committees and seven subcommittees, including the subcommittee formed to study issues relating to the Fugitive Offenders (Sri Lanka) Order under agenda item II(b) above, in action. The Chairman added that 10 Bills Committees were on the waiting list.

(b) **Report of the Subcommittee on Public Health (Animals and Birds) (Amendment) Regulation 2001, Public Health (Animals and Birds) (Animal Traders) (Amendment) Regulation 2001 and Food Business (Amendment) Regulation 2001**

28. Mr Fred LI, Chairman of the Subcommittee, said that the Subcommittee would hold a further meeting after the meeting of the House Committee to continue discussion with the Administration. Mr LI informed Members that to allow more time for the Subcommittee to examine the Regulations, he would move a motion at the Council meeting on 28 November 2001 to extend the scrutiny period of the three sets of Regulations to the Council meeting on 5 December 2001. He added that the Subcommittee would provide a written report to the House Committee on 30 November 2001.

29. Mr Fred LI further said that subject to the extension of the scrutiny period of the Regulations to 5 December 2001, the deadline for giving notice of amendments was 28 November 2001.

VII. Report of the Panel on Welfare Services on "Proposed inter-departmental committee to combat poverty"

(LC Paper No. CB(2) 445/01-02)

30. Miss CHAN Yuen-han, Chairman of the Panel, reported that the Panel on Welfare Services (WS Panel) passed a motion at its meeting on 12 November 2001 that the Administration should set up an inter-departmental "Combat Poverty Committee" to conduct studies on the issue of poverty and propose alleviating measures. She added that the motion was also supported by the 12 deputations which attended the meeting of the Panel on 12 November 2001.

31. Miss CHAN Yuen-han said that the Administration had pointed out to the Panel that there was no need to set up an inter-departmental committee to address poverty. Miss CHAN further said the Panel disagreed with the Administration, and considered that the proposal of setting up an inter-departmental "Combat Poverty Committee" within the Administration should be put forward to CS for consideration.

32. The Chairman said that on 21 November 2001, the Council debated the motion moved by Mr Frederick FUNG on "Alleviating the disparity between the rich and the poor" and the amendment to the motion proposed by Mr WONG Sing-chi to establish an inter-departmental anti-poverty commission. The Chairman further said that the amendment to the motion was negated, and that in his speech made during the debate, the Secretary for Health and Welfare (SHW) had stressed that the existing arrangements for co-ordinating poverty alleviation efforts across the Government had already provided the necessary degree of co-ordination.

33. Miss CHAN Yuen-han said the WS Panel considered that the approaches adopted by the Administration to tackle poverty were ineffective and lacked co-ordination. Miss CHAN reiterated that the proposal to set up an inter-departmental "Combat Poverty Committee" was supported by the majority of the members of the Panel and the 12 deputations attending the meeting of the Panel on 12 November 2001.

34. Dr YEUNG Sum said that although the amendment moved by Mr WONG Sing-chi was negated, he hoped that Members would agree to ask the Administration to reconsider the proposal of setting up an inter-departmental committee to tackle the problem of poverty.

35. Ms LI Fung-ying said that she was a member of WS Panel and she supported the Panel's proposal. She further said that although SHW had repeatedly said that there was already a mechanism within the Administration to deal with issues related to poverty, she was of the view that setting up an inter-departmental committee would more effectively co-ordinate measures to address the problem of poverty.

36. Miss Margaret NG said that she supported the proposal of setting up an inter-departmental committee to address poverty and had voted in favour of Mr WONG Sing-chi's amendment during the debate at the Council meeting on 21 November 2001. However, she had reservations about asking the Chairman to request the Administration to consider a proposal which had just been voted down by the Council. Miss NG further said that as the original motion on "Alleviating the disparity between the rich and the poor" was passed by the Council, Members should request the Administration to study measures to alleviate the disparity between the rich and the poor instead.

37. Mr Frederick FUNG shared Miss Margaret NG's views. Mr FUNG said that asking the Chairman to put forward the proposal of the Panel to CS was in conflict with the decision of the Council. Mr FUNG further said that it would be more appropriate for the WS Panel to follow up the proposal, and the House Committee could ask the Administration to put in place measures to address the problem of the disparity between the rich and the poor.

38. Mr Howard YOUNG said that during the motion debate on 21 November 2001, Members belonging to the Liberal Party had clearly expressed their reservations about the proposal to establish an inter-departmental anti-poverty commission. Mr YOUNG further said that it would be more appropriate for WS Panel to follow up the matter.

39. Mr James TIEN said that as the Council had voted against the proposal on 21 November 2001, the House Committee should not ask the Chairman to raise the proposal with CS. Mr TIEN expressed agreement that the matter should be pursued by the WS Panel.

40. Mr CHAN Kam-lam concurred with Miss Margaret NG, Mr Frederick FUNG and Mr James TIEN. Mr CHAN said that as the Council had already decided not to support the establishment of an inter-departmental anti-poverty commission, the decision should be respected. He considered that the proposal should be followed up by the WS Panel. Mr CHAN also expressed concern that the House Committee would be "overloaded" with issues of individual Panels, if every Panel referred its proposals to the House Committee for follow-up with the Administration.

41. Dr YEUNG Sum said that he did not see any problem with asking the Chairman of the House Committee to put forward a particular proposal of a Panel to the Administration for consideration if the proposal was supported by the House Committee. He further said that if Members considered it inappropriate for the Chairman to raise the proposal of an inter-departmental committee to tackle the problem of poverty because the proposal was not supported by the Council, he would accept the decision.

42. Mr NG Leung-sing said that Members should consider whether it was logical for the House Committee to ask the Administration to consider something which the Council had just voted not to support. Mr NG added that Members should also consider whether the credibility of the House Committee would be affected if such a course of action was decided on.

43. Mr IP Kwok-him said that Members belonging to the Democratic Alliance for the Betterment of Hong Kong had reservations about putting forward the Panel's proposal to CS for his consideration as the Council had decided against the setting up of an inter-departmental committee to tackle the problem of poverty. Mr IP further said that the Council's decision should be respected and it would be more appropriate for the WS Panel to follow up the matter.

44. Mrs Sophie LEUNG said that she was a member of WS Panel and had reservations about the effectiveness of an inter-departmental "Combat Poverty Committee" proposed by the Panel. Mrs LEUNG further said that she did not participate in the vote on the proposal at the meeting of the Panel on 12 November 2001. She expressed reservations as to whether it was appropriate for the Panel to consider the motion when the meeting was coming to an end and some members of the Panel were not present at the meeting.

45. Dr YEUNG Sum said that it was in order for the Panel to take a decision on the proposal at the meeting on 12 November 2001. He pointed out that although some members of the Panel had left the meeting when the proposal was discussed, the meeting was quorate.

46. The Chairman said that any Panel could make a report to the House Committee on its deliberations of an issue or subject matter. The Chairman further pointed out that some Members were of the view that it was not appropriate for the House Committee to put forward to the Administration a proposal which had just been voted down by the Council. There were also divergent views among Members on the proposal of setting up an inter-departmental committee to tackle the problem of poverty. The Chairman concluded that she would not raise the matter with CS. Members agreed. The Chairman added that the proposal should be pursued by the WS Panel.

47. Miss Margaret NG asked whether the House Committee should discuss at a future meeting that a Panel should not make a report to the House Committee on a particular proposal if the proposal had been debated and voted down by the Council. The Chairman responded that the House Committee should not restrict Panels from making reports to it. The House Committee should make a decision on each proposal having regard to individual circumstances. Dr YEUNG Sum concurred with the Chairman.

VIII. Any other business

48. There being no further business, the meeting ended at 3:45 pm.

Council Business Division 2
Legislative Council Secretariat
28 November 2001