

立法會
Legislative Council

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(These minutes have been seen by
the Administration)

**Bills Committee on
National Security (Legislative Provisions) Bill**

**Minutes of meeting
held on Tuesday, 13 May 2003 at 2:30 pm
in the Chamber of the Legislative Council Building**

Members present : Hon IP Kwok-him, JP (Chairman)
Hon Ambrose LAU Hon-chuen, GBS, JP (Deputy Chairman)
Hon Kenneth TING Woo-shou, JP
Dr 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 Martin LEE Chu-ming, SC, JP
Hon Fred LI Wah-ming, JP
Dr Hon LUI Ming-wah, JP
Hon NG Leung-sing, JP
Hon Margaret NG
Hon Mrs Selina CHOW LIANG Shuk-ye, GBS, JP
Hon James TO Kun-sun
Hon CHEUNG Man-kwong
Hon HUI Cheung-ching, JP
Hon CHAN Kwok-keung
Hon CHAN Kam-lam, JP
Hon LEUNG Yiu-chung
Hon SIN Chung-kai
Dr Hon Philip WONG Yu-hong
Hon WONG Yung-kan
Hon Jasper TSANG Yok-sing, GBS, JP
Hon Howard YOUNG, JP
Hon YEUNG Yiu-chung, BBS
Hon LAU Kong-wah
Hon Miriam LAU Kin-ye, JP

Hon Emily LAU Wai-hing, JP
Hon CHOY So-yuk
Hon SZETO Wah
Hon Timothy FOK Tsun-ting, SBS, JP
Dr Hon LAW Chi-kwong, JP
Hon TAM Yiu-chung, GBS, JP
Dr Hon TANG Siu-tong, JP
Hon Henry WU King-cheong, BBS, JP
Hon LEUNG Fu-wah, MH, JP
Hon LAU Ping-cheung
Hon Audrey EU Yuet-mee, SC, JP
Hon MA Fung-kwok, JP

Member attending : Dr Hon YEUNG Sum

Members absent : Hon LEE Cheuk-yan
Hon Eric LI Ka-cheung, JP
Hon Bernard CHAN, JP
Hon Andrew WONG Wang-fat, JP
Hon LAU Chin-shek, JP
Hon LAU Wong-fat, GBS, JP
Hon Andrew CHENG Kar-foo
Hon Abraham SHEK Lai-him, JP
Hon Michael MAK Kwok-fung
Dr Hon LO Wing-lok
Hon WONG Sing-chi

Public Officers attending : Mrs Regina IP, GBS, JP
Secretary for Security

Mr Timothy TONG, JP
Permanent Secretary for Security (Acting)

Mr Bob ALLCOCK, BBS, JP
Solicitor General

Mr Gilbert MO
Deputy Law Draftsman

Mr James O'NEIL
Deputy Solicitor General

Ms Winnie NG
Administrative Assistant to Secretary for Security

Mr Johann WONG
Principal Assistant Secretary for Security

Miss Adeline WAN
Senior Government Counsel

Ms Francoise LAM
Senior Government Counsel

Mr Hubert LAW
Assistant Secretary for Security

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

Staff in attendance : Mr Jimmy MA, JP
Legal Adviser

Ms Bernice WONG
Assistant Legal Adviser 1

Mr Raymond LAM
Senior Assistant Secretary (2)5

I. Meeting with the Administration

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

2. The Bills Committee requested the Administration to provide a written response to the following issues raised and information sought by members -

Sedition

- (a) to provide information on the number of prosecutions against incitement in Hong Kong;
- (b) to provide information on the background for the enactment of the existing time limit of six months in section 11 of the Crimes Ordinance (CO) for prosecution against sedition-related offences;

- (c) to explain whether the terms "incite" and "incitement" in sections 6 and 7 of CO were to be construed in accordance with their meaning under the common law;
- (d) to explain whether the proposed offences in the new sections 9A(1) and 9C of CO were beyond the requirements of Article 23 of the Basic Law on sedition;
- (e) to provide the names of American lawyers who provided views on the "clear and present danger" test in the United States;
- (f) to consider amending the terms "members of the public" and "lawful means" in the proposed section 9D(3)(c) of CO to "any person" and "non-violent means" respectively; and

Investigation power

- (g) to explain the inadequacies of the existing investigation power under the Police Force Ordinance (Cap. 232) and the need for the investigation power in the proposed section 18B of CO.

3. Secretary for Security stressed that the power conferred by the proposed section 18B of CO would be exercised under restricted conditions. The proposed section would not empower the Police to search any premises, place or conveyance at will. The Administration would consider the suggestion of the Hong Kong Bar Association that the direction by a Police officer of or above the rank of chief superintendent of police under the proposed section should be given in writing and a copy of the written direction should be shown to or left with the person affected.

II. Any other business

4. The Bills Committee agreed that the note from Hon Emily LAU and Hon LEE Cheuk-yan on the categorization of submissions on the Consultation Document on Proposals to implement Article 23 of the Basic Law would be dealt with at the next meeting.

5. The meeting ended at 6:30 pm.

**Proceedings of the meeting of the Bills Committee on
National Security (Legislative Provisions) Bill
on Tuesday, 13 May 2003 at 2:30 pm
in the Chamber of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action Required
000000 - 000135	Chairman	Opening remarks	
000136 - 000513	Hon Howard YOUNG Admin	Whether the arrangement under the proposed section 18D of the Crimes Ordinance (CO) was a usual one; whether a similar provision was found in other local legislation	
000514 - 002129	Hon Margaret NG Admin	Whether the proposed section 9A(1)(a) of CO should be deleted; meaning of the term "incites" in the proposed section 9A(1)(a) and (b) of CO; information on the number of prosecutions against incitement in Hong Kong	Admin to provide information on the number of prosecutions against incitement in Hong Kong
002130 - 002944	Hon Martin LEE Admin	Whether the extra-territorial effect proposed in the Bill was necessary and proportionate	
002945 - 003035	Hon LAU Kong-wah Chairman	Discussion of issues relating to amendments to the Official Secrets Ordinance	
003036 - 003846	Hon Albert HO Admin Chairman	Whether the requirements in Principle 6 of the Johannesburg Principles should be provided in sedition-related provisions in the Bill	
003847 - 004851	Hon Margaret NG Chairman Admin	Whether the extra-territorial effect proposed in the Bill was justified; information on the background for the enactment of the existing time limit of six months in section 11 of the Crimes Ordinance (CO) for prosecution against sedition-related offences; whether the terms "incite" and "incitement" in sections 6 and 7 of CO were to be construed in accordance with their meaning under the common law	Admin to provide information on the background for the enactment of the existing time limit of six months in section 11 of CO for prosecution against sedition-related offences; to explain whether the terms "incite" and "incitement" in sections 6 and 7 of CO were to be construed in accordance with their meaning under the common law
004852 - 005449	Hon Emily LAU Admin	Whether the proposed sections 9C and 18B of CO should be deleted; whether the protection in	

Time marker	Speaker	Subject(s)	Action Required
		the search and seizure of journalistic materials in the proposed section 18B(5) of CO should be extended to academics, librarians, non-government organizations and financial analysts	
005450 - 010736	Hon James TO Chairman Hon CHEUNG Man-kwong Admin	Whether the time limit for prosecution against sedition should be removed	
010737 - 011304	Hon CHAN Kam-lam Admin	Whether the proposed section 9C of CO should be deleted	
011305 - 011740	Hon Audrey EU Chairman	Whether the time limit for prosecution against sedition should be removed; whether the proposed section 9C of CO should be deleted	
011741 - 012415	Hon Cyd HO Chairman Admin	Whether the proposed removal of time limit for prosecution against sedition was justified	
012416 - 013253	Hon Martin LEE Admin Chairman	Whether the proposed removal of time limit for prosecution against sedition was justified; background for the enactment of the existing time limit for prosecution against sedition in CO	
013254 - 013809	Hon Albert HO Admin	Number of cases where prosecution could not be instituted because of the time limit for prosecution under existing legislation	
013810 - 014344	Hon Emily LAU Chairman Dr Hon YEUNG Sum Admin	Whether the time limit for prosecution against sedition should be removed	
014345 - 015459	Hon James TO Admin	Burden of proof in relation to the proposed sections 9C and 9D of CO	
015500 - 015814	Hon Cyd HO Admin	Whether the Administration would revise its proposal regarding the time limit for prosecution against sedition; endorsement by the Executive Council (ExCo) of the amendments to be proposed by the Administration to the Bill	
015815 - 020100	Chairman Hon James TO	Discussion of issues related to sedition and the Administration's responses on issues related to amendments to CO	
[Break]			
021205 - 022015	Chairman Hon Margaret NG Admin	Whether the time limit for prosecution against sedition should be removed; whether the proposed offences in the new sections 9A(1) and	Admin to explain whether the proposed offences

Time marker	Speaker	Subject(s)	Action Required
		9C of CO were beyond the requirements of Article 23 of the Basic Law (BL23) on sedition	in the new sections 9A(1) and 9C of CO were beyond the requirements of BL23 on sedition
022016 - 022353	Hon Albert HO Admin	Whether the time limit for prosecution against sedition should be removed; inadequacies of the existing investigation power under the Police Force Ordinance (Cap. 232) (PFO) and the need for the investigation power in the proposed section 18B of CO	Admin to explain the inadequacies of the existing investigation power under PFO and the need for the investigation power in the proposed section 18B of CO
022354 - 024027	Hon Martin LEE Admin	Endorsement by ExCo of the amendments to be proposed by the Administration to the Bill; whether a court warrant should be required for exercising the investigation power in the proposed section 18B of CO; names of American lawyers who provided views on the "clear and present danger" test in the United States	Admin to provide the names of the American lawyers
024028 - 025249	Hon James TO Admin	Amending the terms "members of the public" and "lawful means" in the proposed section 9D(3)(c) of CO to "any person" and "non-violent means" respectively	Admin to consider amending the terms
025250 - 025517	Chairman Hon CHEUNG Man-kwong Hon Margaret NG Hon James TO	Discussion of the Administration's responses on issues relating to amendments to CO	
025518 - 025543	Chairman	Paper numbers of the Administration's papers relating to enforcement to be consistent with BL23	
025544 - 030125	Hon CHEUNG Man-kwong Admin	Maximum penalty for an offence under the proposed section 9C of CO	
030126 - 030231	Hon David CHU	Whether there should be a time limit for prosecution against sedition	
030232 - 030715	Hon Audrey EU Chairman Admin	Meaning of the expression "seriously endanger the stability of the People's Republic of China" in the proposed section 9A(1)(b) of CO	
030716 - 030808	Chairman	Paper numbers of the Administration's responses relating to enforcement to be consistent with BL, treason, subversion and secession	

Time marker	Speaker	Subject(s)	Action Required
030809 - 031908	Hon Margaret NG Admin	Whether the proposed sedition-related offences were beyond the requirements of BL23 ; maximum penalty for an offence under the proposed section 9C of CO; difference between the proposed sections 9A and 9C of CO	
031909 - 032609	Hon NG Leung-sing Admin	How the proposed section 18E of CO would operate	
032610 - 033322	Hon Cyd HO Admin	Whether the term "stability" in the proposed sections 2A and 9A(1)(b) should be defined; whether a financial analyst whose analysis led to public disorder would be caught by the offence of sedition	
033323 - 033357	Hon HUI Cheung-ching	Whether there should be a time limit for prosecution against sedition	
033358 - 034421	Hon Jasper TSANG Admin	Why BL39 but not other Articles in Chapter III of BL was referred to in the provisions in the Bill requiring enforcement to be consistent with BL	
034422 - 035045	Hon NG Leung-sing Admin	How to determine the nationality of a Chinese national who had acquired foreign nationality	
035046 - 035747	Hon Albert HO Admin	Whether a Hong Kong Special Administrative Region (HKSAR) permanent resident would lose his permanent resident status when he lost his Chinese nationality; procedures for a Chinese HKSAR permanent resident to give up his Chinese nationality	
035748 - 040058	Chairman Hon Emily LAU	Study areas for the next meeting; whether the note from Hon Emily LAU and Hon LEE Cheuk-yan on the categorization of submissions on the Consultation Document on Proposals to implement BL23 should be dealt with at the next meeting	