

立法會
Legislative Council

LC Paper No. CB(2) 326/02-03

Ref : CB2/H/5

House Committee of the Legislative Council

**Minutes of the 5th meeting
held in the Legislative Council Chamber
at 4:32 pm on Friday, 8 November 2002**

Members present :

Hon Mrs Selina CHOW LIANG Shuk-ye, GBS, JP (Chairman)
Hon Fred LI Wah-ming, JP (Deputy Chairman)
Hon Kenneth TING Woo-shou, JP
Hon James TIEN Pei-chun, GBS, JP
Dr Hon David CHU Yu-lin, JP
Hon Cyd HO Sau-lan
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, JP
Hon Margaret NG
Hon James TO Kun-sun
Hon CHEUNG Man-kwong
Hon HUI Cheung-ching, JP
Hon CHAN Kwok-keung
Hon Bernard CHAN, JP
Hon CHAN Kam-lam, JP
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, GBS, JP
Hon Howard YOUNG, JP
Dr Hon YEUNG Sum
Hon YEUNG Yiu-chung, BBS
Hon LAU Chin-shek, JP

Hon LAU Kong-wah
Hon Miriam LAU Kin-yee, 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, JP
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 Audrey EU Yuet-mee, SC, JP
Hon MA Fung-kwok, JP

Members absent :

Hon Albert HO Chun-yan
Dr Hon David LI Kwok-po, GBS, JP
Hon CHAN Yuen-han, JP
Hon LEUNG Yiu-chung
Hon LAU Wong-fat, GBS, JP
Hon Timothy FOK Tsun-ting, SBS, 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
Ms Pauline NG	Assistant Secretary General 1
Mr Ray CHAN	Assistant Secretary General 3
Mr LEE Yu-sung	Senior Assistant Legal Adviser 1
Mr Arthur CHEUNG	Senior Assistant Legal Adviser 2
Mrs Vivian KAM	Principal Assistant Secretary (Complaints)
Miss Kathleen LAU	Chief Public Information Officer
Mr Andy LAU	Chief Assistant Secretary (1)2
Mrs Constance LI	Chief Assistant Secretary (2)5
Mrs Betty LEUNG	Chief Assistant Secretary (3)1
Ms Bernice WONG	Assistant Legal Adviser 1
Miss Anita HO	Assistant Legal Adviser 2
Miss Connie FUNG	Assistant Legal Adviser 3
Miss Monna LAI	Assistant Legal Adviser 7
Miss Betty MA	Senior Assistant Secretary (2)1

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I. Confirmation of the minutes of the 4th meeting held on 1 November 2002
(*LC Paper No. CB(2) 264/02-03*)

The minutes were confirmed.

II. Matters arising

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

2. The Chairman said that she had informed CS that the Bills Committee on the Human Organ Transplant (Amendment) Bill 2001 had decided to hold the scrutiny work in abeyance and the vacant slot had been taken up by the Bills Committee on the Electoral Provisions (Miscellaneous Amendments) Bill 2002.

(b) Patents (General) (Amendment) (No. 2) Rules 2002
(*LC Paper No. LS 14/02-03*)

3. The Chairman said that at the last House Committee meeting, Members agreed to defer a decision on the Amendment Rules to this meeting.

4. The Legal Adviser said that as requested by Miss Margaret NG, the Legal Service Division had sought further information from the Administration on the rationale of the one-month time limit in the existing section 39(1) of the Patents (General) Rules, and the specific problems or difficulties in the

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operation of the existing provision which made the Administration consider it necessary to remove the time limit.

5. The Legal Adviser further said that the Legal Service Division had subsequently found out that there was a pending appeal to the Court of Final Appeal on issues relating to section 39(1) of the Patents (General) Rules. In the light of the pending appeal, the Legal Service Division had asked the Administration to clarify whether there were any reasons for not making the amendments to section 39(1) until after the appellate proceedings had been concluded, and whether there were any reasons which made the Administration consider it more appropriate to remove the time limit altogether instead of giving the Registrar of Patents a statutory power to extend the one-month time limit based on the merits of individual cases.

6. The Legal Adviser added that the Administration's reply was attached to the report. He pointed out that according to the Administration, it was aware of the court proceedings relating to section 39(1) of the Patents (General) Rules, but considered that the time limit should be removed regardless of the outcome of those proceedings.

7. The Legal Adviser said that the Administration's response raised the policy issues of whether the amendment was pre-mature in the light of the court proceedings relating to section 39(1) of the Patents (General) Rules, and whether adequate consideration had been given to possible practical implications of removing the statutory time limit.

8. Miss Margaret NG said that the removal of one-month time limit did not seem to be able to address the problems related to the failure to file with the Registrar of Patents a notice of an amendment to the specification of a patent promptly. Miss NG was also of the view that it was not appropriate for the Administration to make the Amendment Rules given the pending court case.

9. The Legal Adviser said that the pending appeal to the Court of Final Appeal was related to the time limit under section 39(1) of the Patents (General) Rules for filing with the Registrar of Patents a court order allowing an amendment to the specification of a patent. The appellant was a patent proprietor who had filed with the Registrar of Patents a notice of an amendment two days after the one-month time limit, and he had sought leave for the time limit provided under section 39(1) of the Patents (General) Rules to be extended.

10. The Legal Adviser further said that the Court of Appeal had upheld the decision of the Court of First Instance that the court had no power, either under the Rules of the High Court or under its inherent jurisdiction, to extend the statutory one-month time limit provided under section 39(1). Nevertheless,

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the Court of Final Appeal had granted leave to the patent proprietor concerned to appeal against the Court of Appeal's decision, on the ground that a point of great general or public importance had arisen in relation to the question of whether section 39(1) of the Patents (General) Rules and that part of section 100(2) of those Rules which provided that the Registrar of Patents could not extend the time limit provided under section 39(1) of those Rules were *ultra vires* (FAMV No. 18 of 2002). The Legal Adviser added that leave was also granted to the Registrar of Patents to intervene and to participate in the appeal as a respondent.

11. Miss Margaret NG said that it was not appropriate to introduce or make legislative amendments when there was a pending court case related to the amendments. Miss NG suggested that the Administration should be requested to withdraw the Amendment Rules.

12. Miss NG also expressed dissatisfaction that even though the Administration was aware of the court proceedings, it had not provided Members with the information in the first instance. The Chairman concurred with Miss NG and pointed out that the information should have been included in the Legislative Council (LegCo) Brief on the Amendment Rules.

13. The Legal Adviser said that the Amendment Rules were gazetted on 25 October 2002, and the Administration intended to bring them into operation on 20 December 2002. The Legal Adviser explained that there was no mechanism for the withdrawal of an item of subsidiary legislation, which was subject to the negative vetting procedure of LegCo, after its gazettal. However, a Member or public officer could move a motion at a Council meeting to amend, which included repealing, the Amendment Rules. The Legal Adviser added that the deadline for amending the Amendment Rules was 27 November 2002, or 18 December 2002 if the scrutiny period was extended by resolution of the Council.

14. The Legal Adviser further said that while there was no rule of law preventing the introduction of new legislative provisions or making amendment to existing legislative provisions which were related to issues material to pending court proceedings, the Administration should do so only on very strong public interest grounds (e.g. where issues of great public importance were involved), and it should fully explain to Members and the public the reasons for these legislative measures.

15. In response to Ms Audrey EU, the Legal Adviser said that the Court of Final Appeal had already granted leave on 20 September 2002 to the patent proprietor concerned to appeal against the Court of Appeal's decision. The case was now awaiting court hearing.

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16. The Chairman pointed out that while the trade generally welcomed the removal of the one-month time limit, it was unusual for the Administration to make the legislative changes given the pending court case. The Chairman said that she would raise the matter with CS. She would also convey to CS Members' dissatisfaction that the Administration had not provided the information on the pending court case in the LegCo Brief on the Amendment Rules. The Chairman further suggested that as there was no mechanism for the Administration to withdraw the Amendment Rules, Members might wish to form a subcommittee to study the Rules, before taking a decision on whether the Rules should be repealed or supported.

17. Ms Miriam LAU said that the Administration's response seemed to suggest that the pending court case and the removal of the one-month notice period were separate matters. She expressed support for setting up a subcommittee so that the Administration could explain the reasons for making the Amendment Rules while there was a pending court case. Miss Margaret NG concurred.

18. The Chairman proposed that a subcommittee be formed. Members agreed. The following Members agreed to join : Ms Cyd HO, Miss Margaret NG, Mrs Selina CHOW, Mr CHAN Kam-lam, Mr SIN Chung-kai (as advised by Mr Fred LI), Ms Miriam LAU and Ms Audrey EU.

19. Miss Margaret NG proposed that the scrutiny period of the Rules should be extended. The Chairman said that she would give notice to move a motion at the Council meeting on 20 November to extend the scrutiny period to 18 December 2002. Members agreed.

III. Business arising from previous Council meetings

Legal Service Division report on subsidiary legislation gazetted on 1 November 2002

(LC Paper No. LS 13/02-03)

20. The Legal Adviser said that there were six items of subsidiary legislation gazetted on 1 November 2002 and tabled in Council on 6 November 2002. Referring to the Notice on Specification of Public Office made under the Interpretation and General Clauses Ordinance, the Legal Adviser explained that except for the powers and duties under section 14(4) of the Employees Retraining Ordinance, the Secretary for Education and Manpower intended to delegate his powers under the Employees Retraining Ordinance, the Non-local Higher and Professional Education (Regulation) Ordinance and the Hong Kong Council for Academic Accreditation Ordinance either to the Permanent Secretary for Education and Manpower or to the Deputy Secretary for

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Education and Manpower.

21. The Legal Adviser further explained that section 14(4) of the Employees Retraining Ordinance provided for the power to set quota for the number of persons to be employed by an employer under the labour importation scheme. The Secretary for Education and Manpower intended to delegate this power to the Permanent Secretary for Economic Development and Labour (Labour).

22. Members did not raise any queries on this item of subsidiary legislation.

23. As regards the Chinese Medicine (Fees) Regulation, the Chinese Medicines Regulation and the Chinese Medicines Traders (Regulatory) Regulation, the Legal Adviser said that these Regulations set out the fees and the regulatory measures to control the trading and manufacture of Chinese medicines. The Legal Adviser added that the Administration had briefed the Panel on Health Services on the three Regulations at its meeting on 25 October 2002.

24. The Legal Adviser further said that the Legal Service Division was still scrutinizing the legal and drafting aspects of the Regulations and would make a further report to the House Committee if any difficulties were identified.

25. Dr LO Wing-lok said that a subcommittee should be formed to study the Regulations in detail.

26. The Chairman proposed that a subcommittee be formed. Members agreed. The following Members agreed to join : Ms Cyd HO, Dr LAW Chi-kwong and Dr LO Wing-lok.

27. The Chairman said that she would also give notice to move a motion at the Council meeting on 20 November 2002 to extend the scrutiny period of the three Regulations to 8 January 2003, to allow more time for the Subcommittee to study the Regulations. Members agreed.

28. Members did not raise any queries on the Hospital Authority Ordinance (Amendment of Schedule 1) Order 2002 and the Tax Reserve Certificates (Rate of Interest) (No. 8) Notice 2002.

29. The Chairman reminded Members that the deadline for amending the six items of subsidiary legislation was 4 December 2002, or 8 January 2003 if extended by resolution.

IV. Business for the Council meeting on 20 November 2002

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(a) **Questions**
(*LC Paper No. CB(3) 112/02-03*)

30. The Chairman said that 20 questions (six oral and 14 written) had been scheduled for the Council meeting on 20 November 2002.

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

Education Reorganization (Miscellaneous Amendments) Bill 2002

31. The Chairman said that the Bill would be introduced into the Council on 20 November 2002 and considered by the House Committee on 22 November 2002.

(c) **Government motion**

32. The Chairman said that no notice had been received yet.

(d) **Members' motion**

Motion on "Developing elevated pedestrian walkway systems"
(Wording of the motion issued vide LC Paper No. CB(3) 121/02-03 dated 7 November 2002.)

33. The Chairman said that the above motion would be moved by Dr LAW Chi-kwong and the wording of the motion had been issued to Members. The Chairman added that only one motion debate had been scheduled for the Council meeting on 20 November 2002.

34. The Chairman further said that the deadline for giving notice of amendments, if any, to the motion was Wednesday, 13 November 2002.

V. Report of Bills Committee and subcommittee

(a) **Position report on Bills Committees/subcommittees**
(*LC Paper No. CB(2) 286/02-03*)

35. The Chairman said that there were 15 Bills Committees and seven Subcommittees in action (including the two subcommittees formed under items II(b) and III above), as well as three Bills Committees on the waiting list.

(b) **Report of the Subcommittee on Road Traffic (Construction and Maintenance of Vehicles) (Amendment) (No.2) Regulation 2002 and Road Traffic (Safety Equipment) (Amendment) Regulation 2002**

(LC Paper No. CB(1) 222/02-03)

36. Mr LEUNG Fu-wah, Chairman of the Subcommittee, said that the main purposes of the two Regulations were to extend the seat belt legislation to the rear seats of new public light buses (PLBs) and also provide high back seats with padding for interior impact protection as a safety enhancement package for new PLBs. Mr LEUNG further said that the Administration intended to bring the two Regulations into operation in August 2004.

37. Mr LEUNG Fu-wah said that the Subcommittee noted that the Administration had consulted the PLB trade and the vehicle suppliers, and they generally supported the Amendment Regulations. Mr LEUNG added that some PLB trade unions had subsequently met with the Administration to seek further clarification and they were generally satisfied with the Administration's explanation.

38. Mr LEUNG Fu-wah further said that the Subcommittee had also examined issues such as with whom legal responsibility should lie in case a seat belt did not function properly. The Administration had advised that a passenger was required to wear a seat belt if available. He would not be liable only if the seat belt did not function. The Subcommittee also noted that PLB owners and drivers were required to ensure that seat belts on PLBs were in good and serviceable condition, and failure to comply with this requirement was an offence punishable by a fine of \$10,000 and imprisonment for six months.

39. Mr LEUNG Fu-wah said that the Subcommittee had expressed concern that it was not practicable for PLB drivers to check all seat belts before moving off each day. In this connection, the Administration had advised that having regard to the experience of application of the seat belt legislation to taxis, it saw no problem would arise from the extension of the legislation to PLBs. The Administration had also advised that routine checks by drivers would be desirable, and passengers would be encouraged to inform drivers of PLBs of any malfunctioning of seat belts inside PLBs. The Administration would step up publicity to educate the general public and drivers before the Amendment Regulations came into operation.

40. Mr LEUNG Fu-wah informed Members that the Subcommittee had also taken the opportunity to examine other measures to lower the accident rates of PLBs, such as installation of speed enforcement cameras, red light cameras, and speed display device on PLBs.

41. Mr LEUNG Fu-wah said that the Subcommittee supported the Amendment Regulations.

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VI. Any other business

42. There being no further business, the meeting ended at 5:02 pm.

Council Business Division 2
Legislative Council Secretariat
13 November 2002