

立法會
Legislative Council

LC Paper No. CB(2) 1924/06-07

Ref : CB2/H/5/06

House Committee of the Legislative Council

**Minutes of the 25th meeting
held in the Legislative Council Chamber
at 2:30 pm on Friday, 18 May 2007**

Members present :

Hon Miriam LAU Kin-yee, GBS, JP (Chairman)
Hon Fred LI Wah-ming, JP (Deputy Chairman)
Hon James TIEN Pei-chun, GBS, JP
Ir Dr Hon Raymond HO Chung-tai, SBS, S.B.St.J., JP
Hon LEE Cheuk-yan
Dr Hon David LI Kwok-po, GBS, JP
Dr Hon LUI Ming-wah, SBS, JP
Hon Margaret NG
Hon Mrs Selina CHOW LIANG Shuk-ye, GBS, JP
Hon James TO Kun-sun
Hon CHEUNG Man-kwong
Hon CHAN Yuen-han, JP
Hon Bernard CHAN, GBS, JP
Hon CHAN Kam-lam, SBS, JP
Hon Mrs Sophie LEUNG LAU Yau-fun, SBS, JP
Hon LEUNG Yiu-chung
Hon SIN Chung-kai, JP
Dr Hon Philip WONG Yu-hong, GBS
Hon WONG Yung-kan, JP
Hon Jasper TSANG Yok-sing, GBS, JP
Hon Howard YOUNG, SBS, JP
Dr Hon YEUNG Sum
Hon LAU Chin-shek, JP
Hon LAU Kong-wah, JP
Hon LAU Wong-fat, GBM, GBS, JP
Hon Emily LAU Wai-hing, JP
Hon CHOY So-yuk, JP
Hon Timothy FOK Tsun-ting, GBS, JP
Hon TAM Yiu-chung, GBS, JP
Hon Abraham SHEK Lai-him, JP
Hon LI Fung-ying, BBS, JP
Hon Tommy CHEUNG Yu-yan, JP

Mrs Constance LI	Principal Council Secretary (Complaints)
Mr Simon WONG	Chief Public Information Officer
Miss Polly YEUNG	Chief Council Secretary (1)5
Miss Odelia LEUNG	Chief Council Secretary (2)6
Mr Kelvin LEE	Assistant Legal Adviser 1
Mr Timothy TSO	Assistant Legal Adviser 2
Ms Amy YU	Senior Council Secretary (2)3

Action

I. Confirmation of the minutes of the 24th meeting held on 11 May 2007
(*LC Paper No. CB(2) 1864/06-07*)

The minutes were confirmed.

II. Matters arising

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

2. The Chairman said that there was nothing special to report.

III. Business arising from previous Council meetings

Legal Service Division report on subsidiary legislation gazetted on 11 May 2007 and tabled in Council on 16 May 2007

(*LC Paper No. LS 72/06-07*)

3. The Chairman said that four items of subsidiary legislation relating to District Council elections were gazetted on 11 May 2007 and tabled in Council on 16 May 2007.

4. Members did not raise any query on the four items of subsidiary legislation.

5. The Chairman reminded Members that the deadline for amending the four items of subsidiary legislation was 13 June 2007.

Action

IV. Further business for the Council meeting on 23 May 2007

(a) **Questions**

(LC Paper No. CB(3) 575/06-07)

6. The Chairman said that Dr LUI Ming-wah had given up the oral question slot allocated to him and the slot was allocated to Ir Dr Raymond HO. The Chairman added that Mr Jasper TSANG and Mr LEUNG Yiu-chung had replaced their oral questions, and Dr KWOK Ka-ki had replaced his written question.

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

Unsolicited Electronic Messages Bill

7. The Chairman said that the Bills Committee on the above Bill had presented its report to the House Committee at the last meeting, and Members did not raise objection to the resumption of the Second Reading debate on the Bill.

V. Business for the Council meeting on 30 May 2007

(a) **Questions**

(LC Paper No. CB(3) 576/06-07)

8. The Chairman said that 20 questions (six oral and 14 written) had been scheduled for the meeting.

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

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

(c) **Government motion**

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

(d) **Members' Bill - First Reading and moving of Second Reading**

The English Schools Foundation (Amendment) Bill 2007

11. The Chairman said that Mr Abraham SHEK had given notice to present the above Bill to the Council on 30 May 2007. The House Committee would consider the Bill at its meeting on 1 June 2007.

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(e) **Members' motions**

(i) **Motion on "Fostering the development of the tourism industry"**

(Wording of the motion issued vide LC Paper No. CB(3) 579/06-07 dated 16 May 2007.)

(ii) **Motion on "The 4 June incident"**

(Wording of the motion issued vide LC Paper No. CB(3) 580/06-07 dated 17 May 2007.)

12. The Chairman said that the above motions would be moved by Mr Jeffrey LAM and Mr Martin LEE respectively, and the wording of the motions had been issued to Members.

13. The Chairman reminded Members that the deadline for giving notice of amendments, if any, to the motions was Tuesday, 22 May 2007.

VI. Report of Bills Committees and subcommittees

Report of the Subcommittee to Examine the Implementation in Hong Kong of Resolutions of the United Nations Security Council in relation to Sanctions

(LC Paper No. CB(1) 1587/06-07)

(Summary of Key Issues Raised in the Report : LC Paper No. CB(1) 1586/06-07)

14. Ms Margaret NG, Chairman of the Subcommittee, said that the Subcommittee had held seven meetings to exchange views with the Administration on the legal and constitutional issues arising from the current arrangement for implementing in Hong Kong the sanctions imposed by the United Nations (UN). The Subcommittee had also invited Professor Yash GHAI, who had recently retired from the University of Hong Kong, to give expert advice on these issues.

15. Ms NG referred Members to the Subcommittee's report and its summary, and said that having carefully examined the legal, constitutional and operational aspects of the current mechanism for implementing UN sanctions as provided under section 3 of the United Nations Sanctions Ordinance (UNSO), the Subcommittee had come to the view that the current arrangement should be reviewed and improved. With a view to resolving the doubt about the constitutionality of section 3(5) of UNSO, the Subcommittee had also discussed the possibility of taking legal proceedings to clarify the issue by way of an application for judicial review to seek a court declaration.

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16. Ms NG further said that the Subcommittee had set out its views and suggestions in a draft form of the report and forwarded it in February 2006 to the Administration for response. The Subcommittee had also requested that the matter be brought to the personal attention of the Secretary for Justice (S for J) who had just taken up his office then. However, the Subcommittee had not received a substantive response from the Administration so far, and hence agreed to report its deliberations to the House Committee and seek its views on the way forward.

17. Ms NG then referred Members to the Subcommittee's two recommendations set out in paragraph 47 of the report. She explained that the Subcommittee's first recommendation was to invite the Chairman of the House Committee to convey its deliberations and proposed way forward to CS and request CS to critically re-examine the matter in consultation with S for J. The Subcommittee's second recommendation was that should the Administration maintain its stance against any change to the existing arrangement for implementing UN sanctions, the views of the House Committee would then be sought on the need or otherwise to seek the court's clarification on the constitutionality of section 3(5) of UNSO.

18. Ms NG added that as the Subcommittee had examined in depth the existing mechanism for implementing UN sanctions and had made a series of suggestions, it would like to seek the House Committee's views on whether it should conclude its work or continue to operate.

19. The Chairman said that Members had to consider for the time being the Subcommittee's first recommendation. The Subcommittee's second recommendation would be considered after receipt of the Administration's response.

20. Dr YEUNG Sum expressed support for the Subcommittee's recommendations.

21. Members agreed to the Subcommittee's first recommendation.

22. As regards the way forward for the Subcommittee, the Chairman considered that it should continue to operate. Ms Margaret NG suggested that the matter be discussed after Members had received the Administration's response. Members agreed.

VII. Position on Bills Committees and subcommittees
(*LC Paper No. CB(2) 1862/06-07*)

23. The Chairman said that there were 14 Bills Committees and six subcommittees under the House Committee in action.

VIII. Activation of the Subcommittee on Heritage Conservation of the Panel on Home Affairs

(LC Paper No. CB(2) 1865/06-07)

24. The Chairman said that the Panel on Home Affairs had appointed a Subcommittee on Heritage Conservation at its meeting on 11 May 2007. The House Committee was invited to decide whether the Subcommittee should be activated.

25. Secretary General (SG) explained that in accordance with the decision of the House Committee, the maximum number of subcommittees on policy issues and Council business other than subsidiary legislation, other instruments and senior judicial appointments should be eight. When eight such subcommittees were in operation, a waiting list would be formed for newly appointed subcommittees. If the total number of Bills Committees was less than 16, the House Committee might consider activating subcommittee(s) on the waiting list. Since the number of Bills Committees in action then was 14, the House Committee was invited to consider whether the Subcommittee should be activated notwithstanding the fact that 11 such subcommittees were already in operation.

26. SG further said that the factors to be taken into account by Members in considering whether the Subcommittee should be activated included the number of Bills Committees and subcommittees on subsidiary legislation likely to be appointed by the House Committee in the next three months. Referring Members to the position report on the existing and anticipated number of Bills Committees and subcommittees in Appendix II to the paper, SG pointed out that five Bills Committees and nine subcommittees on subsidiary legislation were expected to be formed in the next three months. Apart from the availability of resources in the Secretariat, Members might wish to consider also their own availability for participating in the work of the committees.

27. Ms Emily LAU said that the Panel had decided to appoint the Subcommittee having regard to the need for timely and urgent review of the planning for a number of preservation projects with heritage value. She pointed out that in making the decision, the Panel was mindful of the agreed arrangements on the appointment, operation and servicing of subcommittees and the heavy workload of Members and the Secretariat. Ms LAU added that Panel members belonging to various political groups supported the appointment of the Subcommittee.

28. Mr James TIEN said that he had expressed support for the appointment of the Subcommittee as he considered it more appropriate for Panel members to opt whether to join a committee dedicated to examine the issue of heritage conservation.

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29. Dr Fernando CHEUNG expressed support for activating the Subcommittee.

30. In response to the Chairman's enquiry on the capacity of the Secretariat in coping with the servicing of an additional committee, SG said that should Members decide to activate the Subcommittee, the Secretariat would make its best effort to complement the work of Members.

31. Ms Emily LAU thanked SG and said that if the Secretariat considered its existing resources insufficient to absorb additional work, additional resources should be sought.

32. Mr James TIEN said that if the Subcommittee was not appointed, the Panel would have to convene a series of special meetings and conduct visits to study the issue of heritage conservation; additional work for the Secretariat would be generated either way. He enquired about the difference in the Secretariat's workload if a subject matter was studied by a dedicated subcommittee and by a Panel.

33. SG said that the study of an issue by a dedicated subcommittee would entail more work than by a Panel at its meetings. Normally, a subcommittee appointed to examine an issue would convene more meetings, and a report would have to be prepared upon the completion of its work.

34. Members agreed to activate the Subcommittee.

IX. Follow-up on legislative amendments relating to the proposed reorganisation of policy bureaux of the Government Secretariat

(Letter dated 15 May 2007 from Hon Emily LAU Wai-hing to the Chairman of the House Committee (LC Paper No. CB(2) 1863/06-07(01))

35. Ms Emily LAU referred Members to her letter, and said that she had proposed on behalf of the Pan-democratic Members to discuss ways to deal with the resolution to be moved by the Administration concerning the proposed reorganization of policy bureaux. It was exaggerating for some Members to claim that her intention was to block the implementation of the proposed reorganization on 1 July 2007.

36. Ms LAU pointed out that the due process must be followed in dealing with legislative amendments. Following the announcement by the Chief Executive of the proposed reorganization on 3 May 2007, the Administration had provided the resolution in draft form to Members. According to the Secretary for Constitutional Affairs, the Administration intended to give notice on 23 May 2007 to move the resolution at the Council meeting on 13 June

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2007. The House Committee would consider the need to set up a subcommittee to study the resolution at its meeting on 1 June 2007 when a report by the Legal Service Division of the Secretariat would also be available, and the deadline for giving notice of amendments to the resolution was 6 June 2007. It had been the practice that if the formation of a subcommittee was considered necessary, the Administration would be requested to withdraw the notice.

37. Ms LAU further said that given the tight schedule to study the resolution, the Administration should give notice as soon as possible to enable Members to consider the formation of a subcommittee. Although the Panel on Constitutional Affairs (CA Panel) was currently examining issues relating to the proposed reorganization, she considered the formation of a subcommittee necessary to study the resolution as this was in line with the due process. Ms LAU added that a subcommittee had been set up in 2002 to examine the resolution concerning the implementation of the accountability system for principal officials, and a subcommittee was also appointed in 2005 to study the resolution concerning the proposed constitutional reform. She, therefore, proposed the setting up of a subcommittee to study the resolution concerning the proposed reorganization.

38. Mr James TIEN said that he had earlier on expressed reservations on the formation of a subcommittee to study the resolution as he was concerned about possible delay to the appointment of principal officials on 1 July 2007. However, after seeking clarification with Ms Emily LAU, Members belonging to the Liberal Party, the Democratic Alliance for the Betterment and Progress of Hong Kong (DAB) and The Alliance agreed to support the formation of a subcommittee, in anticipation of the formal notice to be given by the Administration on 23 May 2007 to move the resolution at the Council meeting on 13 June 2007. As the deadline for moving amendments to the resolution was 6 June 2007, the early formation of a subcommittee would allow Members more time to scrutinise the legislative amendments. Mr TIEN further said that while Members belonging to the Liberal Party, DAB and The Alliance would not object to the formation of a subcommittee, they did not agree with the suggestion for requesting the Administration to withdraw its notice to move the resolution.

39. Dr YEUNG Sum said that Members belonging to the Democratic Party supported the setting up of a subcommittee to study the legislative amendments concerning the proposed reorganization. He stressed that the Democratic Party had no intention of impeding the appointment of principal officials on 1 July 2007 but the due process for the scrutiny of legislative proposals must be followed. Dr YEUNG was of the view that the CA Panel should only examine the policy aspects of the proposed reorganization and not the details of the legislative amendments.

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40. Mr TAM Yiu-chung said that the due process should be followed provided that it was feasible to do so. He pointed out that Members agreed at the House Committee meeting on 4 May 2007 that the CA Panel should follow up on the proposed reorganization of policy bureaux. Although Members belonging to DAB considered that the resolution could be studied by the CA Panel, the formation of a subcommittee to study the resolution would also be acceptable. Mr TAM echoed the view of Mr James TIEN that the Administration should not be requested to withdraw its notice to move the resolution, in order not to delay the appointment of principal officials at the commencement of the Third Term of the Government of the Hong Kong Special Administrative Region on 1 July 2007. Mr TAM added that the subcommittee, if formed, should commence work as soon as practicable to allow more time for scrutiny of the legislative amendments.

41. Dr YEUNG Sum said that Members belonging to the Democratic Party would not request the Administration to withdraw its notice, and there was precedent for such an arrangement even if a subcommittee was formed to study a resolution.

42. The Chairman said that the current proposal was the formation of a subcommittee immediately to consider the resolution, in anticipation of the formal notice to be given by the Administration on 23 May 2007. The Chairman added that after the Administration had given notice, the House Committee would consider the resolution and whether it was necessary to request the Administration to withdraw the notice at its meeting on 1 June 2007.

43. Ms Audrey EU said that it was important to follow the due process for scrutiny of legislative proposals. She said that while Members belonging to the Civic Party supported the setting up of a subcommittee immediately to commence scrutiny of the resolution as soon as possible, the need to request the Administration to withdraw its notice for moving the resolution could not be precluded at that stage. Ms EU added that the CA Panel would meet with deputations immediately after the House Committee meeting and at another meeting on 26 May 2007. As opposed to the consultation by the Government which was seen by some as being a fake exercise, the consultation conducted by the Panel was genuine and the views of the deputations on the proposed reorganization should be taken into account. She considered it necessary to make it clear that the request for withdrawal of notice by the Administration should not be ruled out. Ms Margaret NG concurred with Ms EU's views.

44. Mr James TIEN clarified that it was the view of Members belonging to the Liberal Party, DAB and The Alliance that the Administration should not be requested to withdraw its notice for moving the resolution. This was not a condition for the agreement to set up a subcommittee.

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45. The Chairman reiterated that the proposal was to set up a subcommittee to consider the resolution in anticipation of the formal notice to be given by the Administration. Members would consider whether the Administration should be requested to withdraw its notice at the House Committee meeting on 1 June 2007.

46. Dr YEUNG Sum and Ms Emily LAU agreed with the views of the Chairman.

47. Mr TAM Yiu-chung considered it necessary to make it clear that the setting up of a subcommittee should be made on the condition that the Administration would not be requested to withdraw the notice. He was of the view that the two issues should be considered jointly.

48. Mr Abraham SHEK supported the views of DAB.

49. Mrs Selina CHOW considered it unnecessary to decide on the need to request the Administration to withdraw its notice at that juncture. She said that the subcommittee was set up in anticipation of the notice to be given by the Administration so that it could start work early. Mrs CHOW stressed that the due process would be followed and asked Ms EU not to be unduly worried.

50. The Chairman shared the view of Mrs CHOW that it was not necessary to consider the issue of withdrawal as the notice had not yet been given by the Administration. She reiterated that the House Committee would consider the resolution at its meeting on 1 June 2007 after the Administration had formally given notice.

51. Members agreed that a subcommittee be formed to study the legislative amendments relating to the proposed reorganization. The following Members agreed to join : Mr James TIEN, Ir Dr Raymond HO, Dr LUI Ming-wah, Ms Margaret NG, Mrs Selina CHOW, Miss CHAN Yuen-han, Mr Bernard CHAN, Mrs Sophie LEUNG, Mr SIN Chung-kai, Dr Philip WONG, Mr WONG Yung-kan, Mr Jasper TSANG, Mr Howard YOUNG, Dr YEUNG Sum, Mr LAU Wong-fat, Ms Emily LAU, Mr TAM Yiu-chung, Mr Abraham SHEK, Mr Frederick FUNG, Ms Audrey EU, Mr WONG Kwok-hing, Mr Daniel LAM, Mr Alan LEONG, Dr Fernando CHEUNG, Mr Ronny TONG, Prof Patrick LAU and Mr KWONG Chi-kin.

X. Any other business

52. There being no other business, the meeting ended at 3:08 pm.