

立法會
Legislative Council

LC Paper No.CB(2) 1522/07-08

Ref : CB2/H/5/07

House Committee of the Legislative Council

**Minutes of the 17th meeting
held in the Legislative Council Chamber
at 2:30 pm on Friday, 28 March 2008**

Members present :

Hon Miriam LAU Kin-yee, GBS, JP (Chairman)
Hon James TIEN Pei-chun, GBS, JP
Hon Albert HO Chun-yan
Ir Dr Hon Raymond HO Chung-tai, SBS, S.B.St.J., JP
Hon LEE Cheuk-yan
Hon Martin LEE Chu-ming, SC, JP
Dr Hon David LI Kwok-po, GBM, GBS, JP
Dr Hon LUI Ming-wah, SBS, JP
Hon Margaret NG
Hon James TO Kun-sun
Hon CHEUNG Man-kwong
Hon CHAN Kam-lam, SBS, JP
Hon Mrs Sophie LEUNG LAU Yau-fun, GBS, JP
Hon LEUNG Yiu-chung
Hon SIN Chung-kai, SBS, JP
Dr Hon Philip WONG Yu-hong, GBS
Hon Jasper TSANG Yok-sing, GBS, JP
Hon Howard YOUNG, SBS, JP
Dr Hon YEUNG Sum, 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 TAM Yiu-chung, GBS, JP
Hon Abraham SHEK Lai-him, SBS, JP
Hon Tommy CHEUNG Yu-yan, SBS, JP
Hon Albert CHAN Wai-yip
Hon Frederick FUNG Kin-kee, SBS, JP
Hon Audrey EU Yuet-mee, SC, JP

Hon Vincent FANG Kang, JP
Hon LI Kwok-ying, MH, JP
Hon Daniel LAM Wai-keung, SBS, JP
Hon Jeffrey LAM Kin-fung, SBS, JP
Hon Andrew LEUNG Kwan-yuen, SBS, JP
Dr Hon KWOK Ka-ki
Dr Hon Fernando CHEUNG Chiu-hung
Hon CHEUNG Hok-ming, SBS, JP
Hon WONG Ting-kwong, BBS
Hon Ronny TONG Ka-wah, SC
Hon CHIM Pui-chung
Prof Hon Patrick LAU Sau-shing, SBS, JP
Hon Albert Jinghan CHENG, JP
Hon KWONG Chi-kin
Hon TAM Heung-man
Hon Mrs Anson CHAN, GBM, JP

Members absent :

Hon Fred LI Wah-ming, JP (Deputy Chairman)
Hon Mrs Selina CHOW LIANG Shuk-ye, GBS, JP
Hon CHAN Yuen-han, SBS, JP
Hon Bernard CHAN, GBS, JP
Hon WONG Yung-kan, SBS, JP
Hon LAU Chin-shek, JP
Hon Andrew CHENG Kar-foo
Hon Timothy FOK Tsun-ting, GBS, JP
Hon LI Fung-ying, BBS, JP
Hon WONG Kwok-hing, MH
Hon LEE Wing-tat
Dr Hon Joseph LEE Kok-long, JP
Hon Alan LEONG Kah-kit, SC
Hon LEUNG Kwok-hung

Clerk in attendance :

Mrs Vivian KAM Clerk to the House Committee

Staff in attendance :

Mr Ricky C C FUNG, JP Secretary General
Mr Jimmy MA, JP Legal Adviser

Ms Pauline NG	Assistant Secretary General 1
Mrs Justina LAM	Assistant Secretary General 3
Mr LEE Yu-sung	Senior Assistant Legal Adviser 1
Mr Arthur CHEUNG	Senior Assistant Legal Adviser 2
Mrs Constance LI	Principal Council Secretary (Complaints)
Ms Emily PANG	Acting Chief Information Officer
Miss Becky YU	Chief Council Secretary (1)1
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
Mr Arthur KAN	Legislative Assistant (2)7

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I. Confirmation of the minutes of the 16th meeting held on 7 March 2008
(*LC Paper No. CB(2) 1414/07-08*)

The minutes were confirmed.

II. Matters arising

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

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 7 March 2008 and tabled in Council on 12 March 2008

(*LC Paper No. LS 63/07-08*)

3. The Chairman said that a total of five items of subsidiary legislation were gazetted on 7 March 2008 and tabled in the Council on 12 March 2008.

4. Regarding the Interpretation and General Clauses Ordinance (Amendment of Schedule 6) Order 2008, the Chairman said that it sought to amend Schedule 6 to the principal Ordinance by adding “Under Secretary” to the list of public officers who were empowered to signify the exercise of statutory powers and the performance of statutory duties by the Chief Executive.

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5. Mr Albert HO considered it necessary to form a subcommittee to study the Order.

6. The Chairman proposed that a subcommittee be formed to study the Order in detail. Members agreed. The following Members agreed to join: Mr Albert HO, Dr YEUNG Sum, Ms Audrey EU and Mrs Anson CHAN.

7. The Chairman said that as the deadline for amending the Order was 9 April 2008, she would move a motion at the Council meeting on that day to extend its scrutiny period to 30 April 2008 to allow sufficient time for scrutiny. Members agreed.

8. Members did not raise any queries on the other four items of subsidiary legislation.

IV. Legal Service Division report on subsidiary legislation gazetted on 14 March 2008

(LC Paper No. LS 65/07-08)

9. The Chairman said that three items of subsidiary legislation, i.e. the Merchant Shipping (Limitation of Shipowners Liability) (Rate of Interest) (Amendment) Order 2008, and two items of subsidiary legislation made under the United Nations Sanctions Ordinance which were not required to be tabled in the Council, were gazetted on 14 March 2008.

10. As regards the two Regulations made under the United Nations Sanctions Ordinance, i.e. the United Nations Sanctions (Liberia) Regulation 2008 and the United Nations Sanctions (Liberia) Regulation 2005 (Repeal) Regulation, the Chairman said that they were not subject to amendment by the Legislative Council (LegCo). As the two Regulations came within the terms of reference of the Subcommittee to Examine the Implementation in Hong Kong of Resolutions of the United Nations Security Council in relation to Sanctions, the Chairman proposed that the Regulations be referred to the Subcommittee. Members agreed.

11. Regarding the Merchant Shipping (Limitation of Shipowners Liability) (Rate of Interest) (Amendment) Order 2008, the Chairman said that it would be tabled in the Council on 9 April 2008.

12. Members did not raise any queries on the Order.

13. The Chairman reminded Members that the deadline for amending the Order was 7 May 2008.

V. Legal Service Division report on subsidiary legislation gazetted on 20 March 2008

(LC Paper No. LS 66/07-08)

14. The Chairman said that only one item of subsidiary legislation, i.e. the Electoral Affairs Commission (Electoral Procedure) (Legislative Council) (Amendment) Regulation 2008, was gazetted on 20 March 2008. The Regulation would be tabled in the Council on 9 April 2008.

15. Members did not raise any queries on the Regulation.

16. The Chairman reminded Members that the deadline for amending the Regulation was 7 May 2008.

VI. Business for the Council meeting on 9 April 2008

(a) Questions

(LC Paper No. CB(3) 467/07-08)

17. 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

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

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

Pneumoconiosis (Compensation) (Amendment) Bill 2008

19. 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.

(d) Government motion

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

(e) Members' Bills - First Reading and moving of Second Reading

Alice Ho Miu Ling Nethersole Charity Foundation Bill

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21. The Chairman said that at the last House Committee meeting, Members noted that Mrs Selina CHOW had given notice to present the above Bill to the Council on 9 April 2008. The House Committee would consider the Bill at its meeting on 11 April 2008.

(f) **Members' motions**

(i) **Motion on “Elderly housing policy”**

(Wording of the motion issued vide LC Paper No. CB(3) 473/07-08 dated 26 March 2008.)

(ii) **Motion on “Raising the limit of university places for publicly-funded degree programmes”**

(Wording of the motion issued vide LC Paper No. CB(3) 470/07-08 dated 27 March 2008.)

22. The Chairman said that the above motions would be moved by Prof Patrick LAU and Mr Fred LI respectively, and the wording of the motions had been issued to Members.

23. The Chairman reminded Members that the deadline for giving notice of amendments, if any, to the motions was Tuesday, 1 April 2008.

VII. Advance information on business for the Council meeting of 16 and 17 April 2008

24. The Chairman said that Members would speak on the Appropriation Bill 2008 at the meeting. The Chairman reminded Members that the first day of the meeting would start at 11:00 am sharp, and the second day would start at 9:00 am sharp.

VIII. Report of Bills Committees and subcommittees

(a) **Report of the Bills Committee on Energy Efficiency (Labelling of Products) Bill**

(LC Paper No. CB(1) 1111/07-08)

25. Ms Audrey EU, Chairman of the Bills Committee, reported that the Bill aimed at introducing a mandatory Energy Efficiency Labelling Scheme (EELS) for the provision by suppliers of specified information in respect of, and the display of energy labels on, specified energy-using products, with a view to promoting energy saving by informing consumers of their energy performance

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level. Three of the 18 types of energy-using products under the existing voluntary EELS, namely room air conditioners, refrigerating appliances and compact fluorescent lamps, were included in the initial phase of the mandatory EELS.

26. Ms EU elaborated that the Bills Committee generally supported the policy intent of the Bill. However, as only three types of energy-using products were included in the initial phase of the mandatory EELS, members considered that the Administration should start consulting the relevant trades on the priority of and the timeframe for including the remaining products under the voluntary EELS in the second phase of the mandatory scheme. Members also considered it necessary to introduce a similar mandatory scheme for commercial and office buildings as these buildings had much higher energy consumption. In the light of members' views, the Administration had launched a three-month public consultation in December 2007 on a proposal to introduce mandatory implementation of the Building Energy Codes for certain new and existing buildings.

27. Ms EU further reported that in the course of deliberations, members had raised concern on various issues, including design of energy labels, prosecution and penalty, appeal, transitional arrangement, exemption, and codes of practice. The Administration had taken on board members' views and would move Committee Stage amendments (CSAs).

28. Ms EU added that the Bills Committee supported the resumption of the Second Reading debate on the Bill at the Council meeting on 30 April 2008.

29. The Chairman reminded Members that the deadline for giving notice of CSAs was Monday, 21 April 2008.

**(b) Report of the Bills Committee on Legislative Council (Amendment)
Bill 2007**

(LC Paper No. CB(2) 1416/07-08)

30. Mr Howard YOUNG, Chairman of the Bills Committee, reported that the Bill sought to amend the Legislative Council Ordinance to update the electorate of functional constituencies (FCs). He referred Members to the Bills Committee's report for details of its deliberations.

31. Mr YOUNG elaborated that during the deliberations of the Bills Committee, some members held the view that the Administration should take the opportunity to expand the electorate base of FCs in the current legislative exercise, while some other members considered this to be outside the scope of the Bill and should be followed up by the Panel on Constitutional Affairs. The Administration's position was that the issue of expanding the electorate

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base of FCs should be discussed at a later stage in the course of examining the method for forming LegCo in 2012.

32. Mr YOUNG further reported that the Administration would move CSAs to the Bill to reflect the most up-to-date information of some corporate electors and to delete the commencement date of the Bill on 1 April 2008. As the Bill was time-critical, it would take effect on the date of its publication in the Gazette. The Administration would give notice for the resumption of the Second Reading debate on the Bill at the Council meeting on 23 April 2008.

33. The Chairman reminded Members that the deadline for giving notice of CSAs was Monday, 14 April 2008.

(c) Report of the Subcommittee on Antiquities and Monuments (Withdrawal of Declaration of Proposed Monument) (No. 128 Pok Fu Lam Road) Notice

(LC Paper No. CB(2) 1417/07-08)

34. Ms Audrey EU, Chairman of the Subcommittee, explained the background to the Notice. She said that on 20 April 2007, the Administration made the Antiquities and Monuments (Declaration of Proposed Monument) (No. 128 Pok Fu Lam Road) Notice (the Declaration Notice) to declare the buildings and the adjoining land situated within Rural Building Lot No. 324, at No. 128 Pok Fu Lam Road, together with all the structures erected on such land (collectively referred to as "the Building" hereunder) as a proposed monument for a period of 12 months, in view of the imminent threat of demolition of the Building. On 1 February 2008, the Secretary for Development made the Notice to withdraw the Declaration Notice. As the Notice took effect on the day of its publication in the Gazette, the Declaration Notice had been withdrawn and could not be revived.

35. Ms EU then reported the work of the Subcommittee. The Subcommittee had held two meetings and had received the views of three organizations and one individual. The Subcommittee had focused its deliberations on four main issues, namely assessment of the heritage value of the Building, authority for making the assessment, availability of options to preserve the Building and legal effect of amendments to the Notice. She referred Members to the Subcommittee's report for details of its discussions.

36. Ms EU said that the Subcommittee was strongly dissatisfied with the way in which the Administration had handled matters relating to the declaration and withdrawal of the declaration of the Building as a proposed monument, including the inconsistent assessment of the historical and architectural value of the Building and the non-appointment of an independent expert to assess the Building's heritage value. The Subcommittee had also expressed concern

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about the dual roles of the Secretary for Development who was the Authority for heritage conservation and was, at the same time, responsible for development. Ms EU pointed out that although repealing the Notice would not revive the status of the Building as a proposed monument, the Subcommittee still considered it necessary to do so to reflect members' dissatisfaction with the Administration's handling of the matter. The moving of a motion to repeal the Notice would also provide an opportunity for Members to express their views. The Subcommittee agreed that a motion should be moved by her as its Chairman to repeal the Notice at the Council meeting on 9 April 2008.

37. Prof Patrick LAU declared interest as a member of the Antiquities Advisory Board (AAB). He stressed that proper procedures had been followed by the Administration in reaching the decision to withdraw the declaration of the Building as a proposed monument. The Administration had consulted AAB on its proposal to withdraw the proposed monument declaration of the Building. AAB had discussed at length the heritage value of the Building. AAB considered that the Building should not be declared as a monument, and had graded the Building under its administrative grading system. As it had been decided that the Building should not be declared as a monument, it was proper to withdraw the Declaration Notice. Given that the due process had been followed and that the owner of the Building had decided to preserve it, he objected to the proposal to repeal the Notice.

38. Mr Abraham SHEK said that he was a member of the Subcommittee and supported the Notice. His prime concern was that the Building would not be demolished. He appreciated the efforts made and the time spent by the Administration on heritage conservation. He accepted the Administration's explanations for the handling of the matter.

39. Miss CHOY So-yuk acknowledged that the Administration's handling of the matter was unsatisfactory in many respects and could be improved. Nevertheless, she pointed out that even without the Notice, the Declaration Notice would expire after 19 April 2008 in any event. Noting that the Development Bureau had made improvements in heritage conservation work, and that the repeal of the Notice would not have any effect and could not revive the Declaration Notice, Members belonging to the Democratic Alliance for the Betterment and Progress of Hong Kong did not support the proposal to repeal the Notice.

40. Mr Howard YOUNG said that although Members belonging to the Liberal Party had not joined the Subcommittee, they were equally concerned about heritage conservation and were well aware of the high public expectation in this regard. He had carefully studied the Subcommittee's report. He noted that the Subcommittee had not queried the expertise and the professionalism of

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the Antiquities and Monuments Office in assessing the heritage value of the Building. As repealing the Notice would not have any effect, he questioned the appropriateness of using such a means to express the Subcommittee's dissatisfaction. In his view, there could be other ways to express members' views on the matter, such as by moving a motion for debate in the Council, or by referral of the subject matter to the relevant committee for follow up. He had reservation about the proposal to repeal the Notice.

41. Ms Emily LAU said that she was not a member of the Subcommittee. She sought Ms Audrey EU's further explanation of the Subcommittee's decision to move a motion to repeal the Notice and the legal effect of such a motion, to facilitate Members' consideration of the matter.

42. Ms Audrey EU said that the Subcommittee decided to move a motion to repeal the Notice to express members' dissatisfaction not only with the Administration's handling of the matter but also with the existing system. The case had exposed and illustrated the loopholes in the existing system on heritage conservation which, in her view, was unfair to owners of heritage buildings and members of the public, and was not conducive to the development of heritage conservation. She acknowledged the availability of other platforms for LegCo to follow up the matter. However, if the Subcommittee did not move a motion to repeal the Notice, it would be taken as the Subcommittee having accepted the Administration's way of handling the matter. The public had expressed concern on the matter and the loopholes in the existing system on heritage conservation. If nothing was done by LegCo, Members would not be discharging their duties. The moving of a motion to repeal the Notice at a Council meeting would provide an opportunity for Members to express their views and to debate on the matter. Without such a motion, a Member who wished to speak on the Notice would have to seek the President's prior approval and provide the President with an advance copy of his/her address. No debate on such address was allowed. Therefore, although repealing the Notice would not have any effect, the Subcommittee still considered it appropriate and necessary to do so.

43. Ms Margaret NG said that the Committee on Rules of Procedure had considered whether a procedure should be provided in the Rules of Procedure to facilitate debates on issues relating to subsidiary legislation subject to negative vetting by the Council to which no amendment had been proposed. She pointed out that some items of subsidiary legislation involved important issues which merited debates in the Council, and the Notice was a case in point. She considered it appropriate to initiate a debate on the Notice.

44. Ir Dr Raymond HO said that he was neither a member of the Subcommittee nor AAB. He considered that the decision to withdraw the Declaration Notice had gone through the proper process. The Building was

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declared as a proposed monument to allow time for the Administration to assess whether it was of such historical significance as to justify its declaration as a monument. Upon completion of a comprehensive assessment of the heritage value of the Building and after consultation with AAB which had accorded the Building a Grade III status, the Administration then decided to withdraw the Declaration Notice. He stressed that the Administration had followed the established procedures, and he accepted the Administration's explanations. He could not understand why the Subcommittee was dissatisfied with the Administration's handling of the matter. He further said that any Member who wished to propose a debate on an issue could apply for a debate slot through the ballot system.

45. The Chairman said that the House Committee had received the Subcommittee's report at the meeting, and Members had expressed their views on the report. Members could debate issues relating to the Notice upon the moving of the motion to repeal the Notice at the Council meeting on 9 April 2008. Any Member could propose amendments to the Notice. She reminded Members that the deadline for giving notice of amendments to the Notice was Tuesday, 1 April 2008.

IX. Position on Bills Committees and subcommittees

(LC Paper No. CB(2) 1415/07-08)

46. The Chairman said that there were 14 Bills Committees, eight subcommittees under the House Committee and five subcommittees under Panels in action.

47. The Chairman further said that as there were two vacant Bills Committee slots, the Bills Committee on Fixed Penalty (Smoking Offences) Bill and the Bills Committee on Statute Law (Miscellaneous Provisions) Bill 2008 on the waiting list could commence work immediately.

48. The Chairman added that there was one subcommittee on policy issues, namely the Subcommittee on Police's Handling of Searches of Detainees, remaining on the waiting list.

X. Any other business

49. The Chairman reminded Members that a fire drill would be held immediately after the meeting.

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50. There being no other business, the meeting ended at 3:00 pm.

Council Business Division 2
Legislative Council Secretariat
9 April 2008
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