

立法會

# *Legislative Council*

LC Paper No. CB(2) 1386/08-09

Ref : CB2/H/5/08

## **House Committee of the Legislative Council**

### **Minutes of the 20th meeting held in the Legislative Council Chamber at 2:30 pm on Friday, 17 April 2009**

#### **Members present :**

Hon Miriam LAU Kin-yee, GBS, JP (Chairman)  
Hon Fred LI Wah-ming, JP (Deputy Chairman)  
Hon Albert HO Chun-yan  
Ir Dr Hon Raymond HO Chung-tai, SBS, S.B.St.J., JP  
Hon LEE Cheuk-yan  
Dr 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  
Dr Hon Philip WONG Yu-hong, GBS  
Hon WONG Yung-kan, SBS, JP  
Hon LAU Kong-wah, JP  
Hon LAU Wong-fat, GBM, GBS, JP  
Hon Emily LAU Wai-hing, JP  
Hon Andrew CHENG Kar-foo  
Hon TAM Yiu-chung, GBS, JP  
Hon Abraham SHEK Lai-him, 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, SBS, JP  
Hon WONG Kwok-hing, MH  
Hon LEE Wing-tat  
Dr Hon Joseph LEE Kok-long, JP  
Hon Jeffrey LAM Kin-fung, SBS, JP  
Hon Alan LEONG Kah-kit, SC  
Hon LEUNG Kwok-hung  
Hon CHEUNG Hok-ming, SBS, JP  
Hon WONG Ting-kwong, BBS  
Hon Ronny TONG Ka-wah, SC



Mrs Percy MA	Assistant Secretary General (Special Duties)
Mr LEE Yu-sung	Senior Assistant Legal Adviser 1
Mrs Sharon TONG	Principal Council Secretary (Complaints)
Ms Emily PANG	Chief Public Information Officer (Acting)
Miss Odelia LEUNG	Chief Council Secretary (2)6
Mr Timothy TSO	Assistant Legal Adviser 2
Mr Stephen LAM	Assistant Legal Adviser 4
Miss Kitty CHENG	Assistant Legal Adviser 5
Mr KAU Kin-wah	Assistant Legal Adviser 6
Mr YICK Wing-kin	Assistant Legal Adviser 8
Ms Clara TAM	Assistant Legal Adviser 9
Ms Amy YU	Senior Council Secretary (2)3
Mr Arthur KAN	Legislative Assistant (2)8

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**I. Confirmation of the minutes of the 19th meeting held on 20 March 2009**  
(LC Paper No. CB(2) 1337/08-09)

The minutes were confirmed.

**II. Matters arising**

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

Tight timetable for the scrutiny of subsidiary legislation

2. The Chairman said that she had conveyed to CS Members' concern about the need for sufficient time for the scrutiny of subsidiary legislation and their dissatisfaction with the tight timetable for scrutiny of the Product Eco-responsibility (Plastic Shopping Bags) Regulation. CS had responded that he hoped that both sides would continue to cooperate to make better arrangements in future.

Use of language at Special Finance Committee meeting on 24 March 2009

3. The Chairman also said that CS had indicated that the Administration could not accept the use of vulgar and offensive language at the Special Finance Committee meeting on 24 March 2009. She added that CS had subsequently written to the President, the Chairman of the Finance Committee and herself in this regard, and the matter would be discussed by the Committee on Rules of Procedure.

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4. Mr Albert CHAN said that CS should define "vulgar and offensive language" and clarify whether "吊吊搵" fell within that category. He added that CS had distorted the fact and misled the public, and owed the Legislative Council (LegCo) an apology. He pointed out that the Administration was ignorant of the meaning of "coarse expressions and downright offensive expressions" as decided by the Broadcasting Authority in 2006 in handling a complaint about the broadcasting of "An Autumn's Tale" on television. He added that the Administration should have made reference to the decision before making allegations against Members.
5. The Chairman referred Members to CS's letter dated 25 March 2009 addressed to her, and pointed out that the term had been used.
6. Mr Albert CHAN requested the Chairman to seek clarification from CS on the meaning of "vulgar and offensive language".
7. Mrs Regina IP was concerned about the English language proficiency of Government officials as reflected in their papers and speeches. Quoting some grammatical mistakes in CS's recent letters to the Chairman as an example, she queried how Hong Kong could aspire to be an international cosmopolitan if Government officials were not even proficient in English. She handed a letter to the Chairman highlighting the grammatical mistakes she found in CS's letters for the Chairman to take up with CS. In response to Dr Margaret NG, the Chairman said that she would circulate Mrs Regina IP's letter to Members for information.
8. Dr Margaret NG echoed Mrs Regina IP's concern and said that the problem was also observed in the drafting of the Interception of Communications and Surveillance Bill. To rectify a grammatical error, she had proposed a Committee Stage amendment but her proposal had not been accepted by the Administration. She considered that the Administration should improve its English language proficiency in law drafting.
9. The Chairman said that she would convey Members' concern to CS.

Conduct of Principal Officials

10. Ms Cyd HO noted with concern the recent incident of the Undersecretary for Commerce and Economic having used his name card in place of income proof when applying for the renewal of his domestic helper's contract. She considered this a sign of abuse of power on the part of Principal Officials. She said that although an oral question would be raised by Dr Margaret NG in this regard at the Council meeting on 29 April 2009, the question would focus more on the procedure. She considered there a need for

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the Chairman to relay her concern to CS and to request CS to remind Principals Officials not to abuse their official position for seeking special treatment. She added that Principals Officials should observe stringent codes of conduct and avoid causing embarrassment to the Government and creating public perception that they were seeking special treatment.

(b) **Subcommittees on policy issues**

*(Paragraphs 46 to 67 of the minutes of the 19th House Committee meeting on 20 March 2009)*

*(LC Paper No. CB(2) 1282/08-09)*

*[Previous paper:*

*LC Paper No. CB(2) 1102/08-09 issued vide LC Paper No. CB(2) 1121/08-09 dated 18 March 2009]*

11. The Chairman said that at the last House Committee meeting, Members requested the Secretariat to provide information on the financial implications for implementing proposals concerning the study of specific policy issues by the House Committee and Panels and the appointment of related subcommittees. Under the proposals, each Panel would have the resources to conduct at least one detailed study on policy issues and the House Committee two detailed studies at any one time. A total of 20 studies (i.e. 18+2) might be undertaken by the Panels or subcommittees appointed under Panels or the House Committee at the same time.

12. At the invitation of the Chairman, Secretary General (SG) referred Members to the paper, and said that the staff cost for implementing the proposals would be \$5,532,467 per annum. This included the addition of three Council Secretaries (CS) each for Council Business Division (CBD) 1 and CBD 2, so that each of the committee teams would be staffed by one Chief Council Secretary, one Senior Council Secretary, and one Council Secretary (CS) (instead of on a shared basis) and the establishment of a new Division to be headed by Assistant Secretary General (Special Duties) who, apart from undertaking other duties, would take over two Panels, one each from CBD1 and CBD2, and the related Bills Committees and subcommittees. SG added that monitoring the servicing of committees would constitute 20% of the work of Assistant Secretary General (Special Duties).

13. Mr LEE Wing-tat said that Members belonging to the Democratic Party supported the proposals as set out in the paper. As Members had different interests and priorities, each subcommittee on policy issues should set a time frame for completing its study, say four months as in the case of the Subcommittee on Combating Fly-tipping recently appointed under the Panel on Environmental Affairs. Under such a system, slots could be vacated within a reasonable time for the appointment of other subcommittees on other policy issues of interest to other Members. If a subcommittee had to work beyond

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12 months, it would have to seek the agreement of the House Committee for an extension of the duration of its work. This could avoid subcommittees operating for a long duration as if they were Panels.

14. Mr IP Kwok-him said that Members belonging to the Democratic Alliance for the Betterment and Progress of Hong Kong (DAB) noted that under the staffing proposals, the support provided by the Secretariat to Members would be strengthened. However, they were concerned about the proposal for the number of subcommittees on policy issues that could operate at the same time to be increased from eight to 20. He pointed out that there was already the problem of not having sufficient members to form a quorum under the existing quota of eight. With 20 subcommittees in operation at the same time, the quorum problem would be aggravated. He was concerned that should meetings be cancelled owing to a lack of quorum, the image of LegCo would be adversely affected. He said that Members belonging to DAB did not support the substantial increase in the number of subcommittees as proposed in the paper.

15. In response to the Chairman, Mr IP Kwok-him added that Members belonging to DAB considered that the present quota should be maintained. He added that the present system had worked well provided that subcommittees could complete their work within a reasonable period.

16. Ms Emily LAU said that LegCo Members discharged their duties through the work of committees and the holding of meetings. She attended meetings everyday in discharging her duties as a LegCo Member. The fundamental principle was to ensure the provision of sufficient resources to the Secretariat to support the work of Members. Should a meeting be cancelled because of a lack of quorum, the members concerned should be held responsible. However, the question of quorum could not be used as an excuse to disallow the appointment of subcommittees and the provision of sufficient resources for the Secretariat to support the work of the Council. She added that Members could decide not to join subcommittees should they be concerned about their attendance rate at meetings. She sought clarification from Members belonging to DAB on any alternative proposal if they considered the proposals in the paper unacceptable.

17. Mr IP Kwok-him reiterated that the present quota should remain. He stressed that Members belonging to DAB were concerned about the quorum for committee meetings, and therefore did not support the proposals. He reiterated that he also considered it his duty to attend meetings of the committees of which he was a member.

18. The Chairman said that the staff cost of \$5,532,467 per annum for implementing the proposals had been worked out on the basis of 20

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subcommittees in operation at the same time. While not every Panel would appoint a subcommittee, some Panels might appoint more than one subcommittee as in the case of the Panel on Environment Affairs and the Panel on Development. It was possible that not all 20 subcommittees would be appointed and some staff might not be fully occupied. She invited Members to consider the proposals from that perspective as well.

19. SG said that the Secretariat had all along adopted a flexible approach in staff deployment. The Secretariat would only fill the posts when there was such a need to do so. The Secretariat would take into account the actual workload, such as the number of Bills Committee in operation, in deciding the number of posts to be filled. In the past, the Secretariat appointed temporary staff to cope with work arising from the setting up of subcommittees, and this had posed operational problems to the Secretariat as the periods of temporary appointments were often subject to change. The proposed new structure of a committee team had aimed to provide greater flexibility in deploying staff to undertake clerkship duties when subcommittees were set up under the respective Panels.

20. The Chairman sought clarification on whether the total resources were required in one go for appointing the additional staff. Should that be the case, she enquired how the public concern of possible waste of public resources could be allayed as there was a possibility of less than 20 subcommittees being appointed.

21. SG said that it had been feasible to fill the posts progressively according to the projection of committee work, as subcommittees would normally work for at least six months. The staffing requirement projected in the paper referred to the total of 20 studies being undertaken at the same time. It had been the Secretariat's normal practice to estimate the workload of Council business in the coming year during the budget exercise and provide a projection of the staffing needs to The Legislative Council Commission for its approval.

22. Mr IP Kwok-him said that the concern of Members belonging to DAB was not so much about the resources but the availability of Members for joining subcommittees, the number of which might be increased from eight to 20.

23. Mr CHAN Kam-lam shared the concern of the Chairman about the possibility of surplus staff. While the additional posts would provide the necessary support when the number of subcommittees reached 20, some subcommittees might complete their work after operation for a few months whereupon there would then be surplus staff in the Secretariat. He agreed that the appointment of temporary staff was undesirable from the angles of training difficulty and lack of job security. To address that concern, he considered it a

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better approach to adjust the number of subcommittees on a need basis within the existing system. For example, the number of subcommittees could be increased by one or two if considered necessary, and the staffing resources could then be increased correspondingly. In his view, such an approach would provide flexibility and allay the public concern about surplus staff and possible waste of public resources.

24. SG said that the Secretariat had adopted a new mindset in working out the proposed additional staffing requirements to support committee work. Under the staffing proposal, committee teams would be strengthened at the basic CS level. CSs were responsible mainly for preparing background briefs and maintaining an up-to-date database on specific policy issues in the LegCo website. Where necessary, CSs could assume the clerkship of subcommittees. SG pointed out that Members had found the background briefs and up-to-date database on specific policy issues to be very useful in keeping track of the development of policy issues. However, owing to the lack of manpower resources, the Secretariat could not develop and maintain a comprehensive database on policy issues. With the strengthening of the committee teams, more staffing resources could be deployed to maintain the database. As such, the concern about surplus staff would not arise. Moreover, as she had pointed out earlier, the additional posts would not be filled in one go. The Secretariat would take into account the actual workload, for example, the number of Bills Committees in operation, in deploying staffing resources. Should the number of Bills Committees be less than 16, the servicing of additional subcommittees would be absorbed by existing staff. SG stressed that the additional posts would be filled by stages and only when necessary.

25. Mr CHAN Kam-lam expressed support for adoption of the new mindset as proposed by SG for strengthening the preparation of background briefs and maintenance of the database. Nevertheless, he considered that there was no need to increase the number of subcommittees to 20 at that stage. The Secretariat could deploy the existing staff to service subcommittees given the smaller number of Bills Committees currently in operation. Should a need arise in future for increasing the number of subcommittees, the proposals could be brought up for reconsideration by Members. In his view, as LegCo was accountable to the public, a prudent approach should be adopted.

26. SG said that notwithstanding the decision of Members on the number of subcommittees/studies to be in operation/undertaken at the same time, staff of committee teams would be deployed in a direction which allowed the research capacity to be further strengthened. She reiterated that the additional posts would not be filled in one go but by stages and only when necessary.

27. Mr CHAN Kam-lam said that the deployment of staffing resources was an internal arrangement of the Secretariat, but the proposal to increase the

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maximum number of subcommittees to 20 would have impact on the committee system. Hence, two separate issues were involved.

28. The Chairman said that the two issues were somehow related as the Secretariat needed to have the additional staffing resources to support the work of subcommittees should their number be increased. The budget prepared by the Secretariat had to take this into account.

29. Mr CHAN Kam-lam reiterated his disagreement with the increase of subcommittees to 20.

30. Mr LEE Cheuk-yan found it incomprehensible and unacceptable for some Members not to support the strengthening of the Secretariat's staffing resources to support LegCo's work in monitoring the Government. He pointed out that compared with the establishment of the civil service, the establishment of the Secretariat was extremely thin and the proposed increase was modest. He questioned how Members belonging to DAB would be answerable to their voters by not supporting the provision of sufficient staff to enable Members to carry out their duties. He added that Members should assess their availability in deciding whether to join a subcommittee, and subcommittees with a small membership size should not pose any quorum problem. He indicated support for the Secretariat's proposals.

31. Dr Margaret NG supported the strengthening of the database on specific policy issues which had been found useful by Members and members of the public. She pointed out the concern of the public about the difficulty in searching and retrieving information from the database. She supported the deployment of more staffing resources for maintaining the database to facilitate retrieval and enable wider access. She said that from that perspective alone, the proposed increase in staffing resources was justified. Moreover, from the management perspective, budget planning was necessary. In her view, as opposed to the Administration's unsatisfactory approach of seeking resources on an ad hoc basis, the approach taken by the Secretariat was organized and systematic as it provided forward planning for the staffing resources required. Given that the total staff cost for implementing the proposals was only \$5,532,467 per annum, she considered it value-for-money and not at all costly. She expressed support for the proposals.

32. Ms Cyd HO said that even if Members supported the proposals and accepted their financial implications of \$5,532,467 per annum, the Secretariat would not use the additional provision to fill all the posts in one go. The additional provision would provide the Secretariat with the necessary resources to provide service to up to 20 detailed studies on policy issues at the same time, so that subcommittees could be appointed expeditiously in response to public concern and expectations. She expressed support for the Secretariat's

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proposals to strengthen the work of Members, and believed that the public would likewise support the proposals. In her view, if the public did not support the proposals, they would voice their objection and Members could then refrain from using the additional provision even though it had been allocated to the Secretariat. She pointed out that Members sometimes found it very difficult to appoint a subcommittee to study matters of concern, particularly when sensitive subjects were involved. She elaborated by way of illustration that some Members had urged the appointment of a subcommittee under the Panel on Development to study urban renewal strategies but to no avail, albeit the matter having been discussed by the Panel for two months and the majority of deputations which had given views on the subject had expressed support for the appointment. She pointed out that one of the advantages of appointing subcommittees to study issues of concern was that only those Panel members interested in the subject would join the subcommittee, hence reducing the quorum required for the meetings. She reiterated her strong support for the proposals of the Secretariat.

33. Mr LEUNG Kwok-hung said that he had spoken to the President on the need to strengthen the manpower resources of the Secretariat to complement the work of Members, and the President had expressed support for his view. The additional provision was requested in anticipation of the increasing volume of work of Members in monitoring the work of the Government. In his view, it would be illogical for Members to approve the funding for the appointment of Undersecretaries and Political Assistants, but not the funding for strengthening the Secretariat's resources to support Members' work in monitoring the appointees under the Political Accountability System. He appreciated the heavy workload of the Secretariat, and expressed support for its proposals to strengthen manpower resources to support the work of Members.

34. Mr LEE Wing-tat said that the Secretariat had all along provided high quality services to Members, but the resources provided to it were far from adequate. He stressed the importance of the provision of sufficient resources to the Secretariat to facilitate Members to discharge their duties of monitoring the work of the Government. He recalled that when Members paid a duty visit to the United States Congress some 10 years ago, they were highly impressed by the efficiency of its research officers in compiling research reports. While the United States Congress had some 365 research officers then, the Secretariat had less than 10 research officers at present, and it often took a few months for the preparation of an in-depth research report. He appealed to Members belonging to DAB to support the proposals to strengthen the capacity of the Secretariat. He further said that as the largest political party in LegCo, DAB should not be concerned about the cancellation of meetings owing to a lack of quorum. The 12 Members belonging to DAB could allocate among themselves the work in following up different policy areas, with each Member taking up, say, three to four policy areas. In contrast,

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an independent Member might have to take up five or six policy areas and had to shoulder a much heavier workload.

35. Mrs Sophie LEUNG said that according to her observation, Members generally supported the proposal to reorganize and strengthen the Secretariat's staffing structure to provide better support to Members' work; the only point of contention was whether the number of subcommittees on policy issues in operation should be increased to 20. As such, she suggested delinking the two issues so that the Secretariat could obtain the necessary resources to strengthen its support services to Members. In her view, the issue regarding the appropriate number of subcommittees on policy issues could be dealt with later.

36. The Chairman said that it would be difficult to delink the two issues regarding the proposals on the number of detailed studies on policy issues that could be undertaken at any one time and the financial implications for implementing the proposals.

37. Mrs Sophie LEUNG clarified that what she meant was that should Members support the Secretariat's proposals to strengthen its work in preparing background briefs and maintaining the database on specific policy issues, the Secretariat should be provided with the necessary resources to do so. This issue should not be mixed with the question of whether the present quota of the number of subcommittees on policy studies should be increased.

38. Mr Paul TSE said that he had observed that during the end of each LegCo term, Members of different political affiliations unanimously complimented the high quality of service provided by the Secretariat. He trusted that the Secretariat would only fill the posts when practical needs arose. He had also observed that the papers prepared by the Secretariat were of a higher quality than those provided by the Administration. For independent Members like him who did not have access to the resources of political parties, it was important that the Secretariat should be equipped with sufficient resources to conduct background research work to assist them in their work. He expressed support for the proposals.

39. Mr CHAN Hak-kan noted that in scrutinizing the Administration's staffing proposals at Directorate level, Members generally adopted the approach for the creation of one post to be offset by the deletion of another post. While expressing support for strengthening the Secretariat's manpower resources to complement the work of Members, he was concerned that should Members agree to provide the Secretariat with the additional provision of some \$5 million in one go, it would give the public the impression of Members being lenient towards the Secretariat but harsh on the Administration. In his view, Members should examine practically the need for each new post and consider whether the additional resources should be provided by phases instead of in one go.

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40. Mr IP Kwok-him considered Mr LEE Wing-tat's criticism of DAB unacceptable. He stressed that Members belonging to DAB had participated actively in the meetings of different LegCo committees. He reiterated that the principal concern of Members belonging to DAB about the proposals was the substantial increase in the number of subcommittees on policy issues from eight to 20, and not the additional costs involved in implementing the proposals. They were concerned whether Members could cope with such a substantial increase in workload. He said that Members should not allege that if Members belonging to DAB did not support the proposals, they were doing a disservice to the public. He hoped that Members would focus their discussions on the proposals and refrain from criticising other Members.

41. Mr LEE Wing-tat said that the understanding of offsetting one new post by the deletion of another post at the Directorate level had long been relaxed and was no longer in force. The Administration had sought approval for the creation of new posts for servicing the newly established West Kowloon Cultural District Authority, and its proposal was supported by Members belonging to the Democratic Party. In the same way, the Secretariat required additional new posts to service a greater number of subcommittees. He stressed that there was no question of Members being lenient towards the Secretariat but harsh on the Administration.

42. Mr CHAN Kam-lam said that Members should utilize public resources in a pragmatic manner. Should the Secretariat need more resources to strengthen its research capacity, Members belonging to DAB would support such initiatives. This, however, should be separate from the proposal to increase the number of subcommittees on policy issues from eight to 20, which would substantially increase the work of Members. He was concerned that unlike Members with political affiliation, independent Members could not share out their work with other Members and could not afford to join a large number of subcommittees. Consequently, the substantial increase in the number of subcommittees might result in some subcommittees being monopolized by certain political parties or groups, which, in his view, was not a healthy development.

43. The Chairman reminded Members that the matter under discussion was the proposals in the paper concerning the study of specific policy issues by the House Committee and Panels and the appointment of related subcommittees and the financial implications for implementing the proposals, and not ways for enhancing the capacity and efficiency of the Secretariat.

44. In response to Mr IP Kwok-him, the Chairman said that the Clerk to the House Committee had drawn to her attention that the cost for implementing the proposals was a matter for the decision of The Legislative Council Commission.

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She also confirmed in response to Dr Margaret NG that Members were to vote on the proposals concerning the study of specific policy issues set out in paragraph 2 of the paper, and not the staffing proposal to be submitted to The Legislative Council Commission.

45. The Chairman put to vote the proposals that a total of 20 studies (i.e. 18+2) could be undertaken by the Panels or subcommittees appointed under Panels or the House Committee at the same time. The result was: 22 Members voted for and 22 Members voted against the proposal. The Chairman said that since it was a tie vote, she, as the Chairman, should not exercise the vote in such a way as to produce a majority vote in favour of the question put, in accordance with Rule 79A(1) of the Rules of Procedure (RoP). As such, she would exercise her casting vote to negative the motion. The Chairman declared that the proposal was voted down.

46. The Chairman further said that as the proposal had been voted down, the existing arrangements for the appointment, operation and activation of subcommittees on policy issues, including the existing quota of eight such subcommittees which might be in operation at any one time, would continue to be in force.

47. Dr Margaret NG said that SG had raised the need to enhance the manpower of the Secretariat to strengthen its research work and the maintenance of its database on specific policy issues. She considered there to be a need for the Secretariat to seek resources from The Legislative Council Commission in this regard. SG undertook to follow up.

### III. Business arising from previous Council meetings

#### **Legal Service Division report on subsidiary legislation gazetted on 27 March 2009**

*(LC Paper No. LS 51/08-09)*

48. The Chairman said that a total of nine items of subsidiary legislation were gazetted on 27 March 2009, including two items of subsidiary legislation made under the United Nations Sanctions Ordinance which were not required to be tabled in the Council.

49. Regarding the United Nations Sanctions (Somalia) Regulation and United Nations Sanctions (Arms Embargoes) (Amendment) Regulation 2009 which were not required to be tabled in the Council, the Chairman suggested that they be referred to the Subcommittee to Examine the Implementation in Hong Kong of Resolutions of the United Nations Security Council in relation to Sanctions in line with past practice. Members agreed.

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50. As regards the Building (Minor Works) Regulation, the Chairman said that its principal objective was to provide for various matters relating to the implementation of the minor works control system.

51. Ir Dr Raymond HO said that the implementation of the minor works system would create many job opportunities. As the matter had been thoroughly discussed by the relevant LegCo committees during the Second and Third LegCo, he considered it unnecessary to form a subcommittee to study the Regulation.

52. The Chairman said that a preliminary draft of the Regulation had been provided to the Bills Committee formed to study the relevant primary legislation. She further said that the Panel on Development had been briefed on the Regulation at its meeting on 24 February 2009, and members had raised various issues of concerns. The Legal Service Division was still scrutinizing the Regulation. She added that the Regulation was subject to the negative vetting procedure, and the deadline for amending it was 29 April 2009, or 20 May 2009 if extended by resolution.

53. At the invitation of the Chairman, Legal Adviser (LA) said that the Regulation contained 66 sections and three schedules. The Legal Service Division had written to the Administration on certain legal and drafting aspects of the Regulation and was awaiting the Administration's reply.

54. The Chairman said that the Regulation was quite complicated. She invited Members' views on whether a subcommittee should be formed to study it.

55. Dr Margaret NG said that she was a member of the Bills Committee formed to study the relevant primary legislation. In her view, the creation of employment opportunities should not be a reason for not conducting detailed scrutiny of complex legislative proposals. She considered it necessary to form a subcommittee to study the Regulation as it was complex and would affect the trade.

56. Given the diverse views on the need to form a subcommittee on the Regulation, the Chairman put to vote the proposal that a subcommittee be formed to study the Regulation in detail. The result was: 12 Members voted in favour of the proposal, six Members voted against the proposal and 11 Members abstained. The Chairman declared that the proposal was supported. The following Members agreed to join the subcommittee: Ir Dr Raymond HO, Dr Margaret NG, Mr Abraham SHEK, Ms Audrey EU, Mr LEE Wing-tat, Prof Patrick LAU, Ms Cyd HO and Miss Tanya CHAN.

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57. As the deadline for amending the Regulation was 29 April 2009, the Chairman proposed to move a motion, in her capacity as Chairman of the House Committee, at that Council meeting to extend its scrutiny period to 20 May 2009. Members agreed.

58. Members did not raise any queries on the other six items of subsidiary legislation.

**IV. Legal Service Division report on subsidiary legislation gazetted on 3 April 2009**

*(LC Paper No. LS 52/08-09)*

59. The Chairman said that a total of three items of subsidiary legislation, including two Commencement Notices, were gazetted on 3 April 2009.

60. Members did not raise any queries on these three items of subsidiary legislation.

61. The Chairman reminded Members that the deadline for amending these items of subsidiary legislation was 20 May 2009, or 10 June 2009 if extended by resolution.

**V. Business for the Council meeting on 22 April 2009**

**(a) Questions**

*(LC Paper No. CB(3) 487/08-09)*

62. The Chairman said that 20 written questions had been scheduled for the meeting.

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

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

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

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**Appropriation Bill 2009**

(Response by the Administration)

64. The Chairman said that the Administration would respond to Members' comments on the Appropriation Bill 2009.

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(d) **Government motion**

**Proposed resolution to be moved by the Secretary for the Environment under the Product Eco-responsibility Ordinance and the Interpretation and General Clauses Ordinance relating to the Product Eco-responsibility (Plastic Shopping Bags) Regulation**  
*(Wording of the proposed resolution issued vide LC Paper No. CB(3) 476/08-09 dated 2 April 2009.)*

65. The Chairman said that the Secretary for the Environment had given fresh notice to move the proposed resolution at the Council meeting.

**VI. Business for the Council meeting on 29 April 2009**

(a) **Questions**

*(LC Paper No. CB(3) 488/08-09)*

66. 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**

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

(c) **Government motions**

(i) **Proposed resolution to be moved by the Chief Secretary for Administration under the Judicial Officers Recommendation Commission Ordinance**

*(Wording of the proposed resolution issued vide LC Paper No. CB(3) 481/08-09 dated 14 April 2009.)*

*(LC Paper No. LS 54/08-09)*

68. The Chairman said that the proposed resolution was for seeking LegCo's approval to amend Schedule 1 to the Judicial Officers Recommendation Commission Ordinance by adding "Principal Family Court Judge".

69. The Chairman further said that the Panel on Administration of Justice and Legal Services had discussed the proposed creation of the new office at its meetings on 26 and 29 May 2008, and members generally supported it.

70. Members did not raise objection to the Administration moving the proposed resolution at the Council meeting.

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(ii) **Proposed resolution to be moved by the Secretary for Food and Health under the Pharmacy and Poisons Ordinance relating to:**

- **the Pharmacy and Poisons (Amendment) Regulation 2009;**  
**and**
- **the Poisons List (Amendment) Regulation 2009**

*(Wording of the proposed resolution issued vide LC Paper No. CB(3) 489/08-09 dated 15 April 2009.)*

*(LC Paper No. LS 56/08-09)*

71. The Chairman said that the proposed resolution was for seeking LegCo's approval of the two Amendment Regulations to -

- (a) add six substances to Division A of the First and Third Schedules to the Pharmacy and Poisons Regulations (the principal Regulations) and Division A in Part I of the Schedule to the Poisons List Regulations, so that pharmaceutical products containing the substances must be sold on registered premises of an authorized seller of poisons by a registered pharmacist or in his presence and under his supervision, with the support of prescriptions given by a registered medical practitioner, registered dentist or registered veterinary surgeon; and
- (b) amend the Second Schedule to the principal Regulations so that preparations intended for external application only containing testosterone or its esters were no longer exempt from the restrictions imposed under the Pharmacy and Poisons Ordinance and the principal Regulations.

72. Members did not raise objection to the Administration moving the proposed resolution at the Council meeting.

(iii) **Proposed resolution to be moved by the Secretary for Home Affairs under the Legal Aid Ordinance**

*(Wording of the proposed resolution issued vide LC Paper No. CB(3) 482/08-09 dated 14 April 2009.)*

*(LC Paper No. LS 55/08-09)*

73. The Chairman said that the proposed resolution was for seeking LegCo's approval of the upward adjustment of the financial eligibility limits of legal aid applicants. The Panel on Administration of Justice and Legal Services had been briefed on the legislative proposal at its meeting on 30 March 2009, and members did not make any comment on the proposal.

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74. Dr Margaret NG said that the Panel did not make any comment on the proposal not because members did not have any views on it, but because members noted that the Administration would move a resolution on the proposal at a Council meeting. While she did not object to the proposed upward adjustment of the financial eligibility limits of legal aid which would benefit the public, she pointed out that Members would usually use the opportunity of the moving of the resolution to express their views on the deficiencies of the existing legal aid system. She sought confirmation on whether Members would have the opportunity to speak on the resolution if no subcommittee was formed to study it and no amendments were proposed by Members.

75. The Chairman said that as the legislative proposal was subject to the positive vetting procedure, Members would have the opportunity to speak on it when the Administration moved the proposed resolution at a Council meeting. Each Member would have a speaking time limit of 15 minutes.

76. At the invitation of the Chairman, LA confirmed the understanding of the Chairman.

77. Dr Margaret NG said that she would not propose to form a subcommittee to study the resolution if Members would have the opportunity to speak on it at the Council meeting.

78. Mr LEE Cheuk-yan considered the financial eligibility limits for legal aid too low. He sought clarification on whether a proposed amendment to the resolution to raise the financial eligibility limits further would have charging effect on Government expenditure and might be disallowed under RoP.

79. At the invitation of the Chairman, LA said that the relevant provisions in RoP concerning the moving of amendments with charging effect on Government expenditure applied also to the proposed resolution under discussion. He further said that an amendment to raise the financial eligibility limits of legal aid would likely have charging effect on Government expenditure.

80. Mr LEE Cheuk-yan said that it appeared to serve no practical purpose in forming a subcommittee if Members could not move amendments to raise the financial eligibility limits.

81. Dr Margaret NG said that in the past, resolutions of a nature similar to the proposed resolution might involve more than mere technical amendments. By way of illustration, she said that during the scrutiny of a similar legislative proposal in the past, the two legal professional bodies had pointed out that the calculations made by the Administration were wrong when adjusting the

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financial eligibility limits of legal aid in the light of the outcome of the annual and biennial reviews. Had the right calculations been made, the extent of increase to the financial eligibility limits would have been greater.

82. At the invitation of the Chairman, LA said that as pointed out in the Legal Service Division Report on the proposed resolution, the financial eligibility limits of legal aid were reviewed annually to take account of movements in Consumer Price Index (C) (CPI(C)), and biennially to take account of changes in litigation costs. On the basis of the outcome of the annual review, the Administration had proposed to raise the financial eligibility limits for legal aid by 6.1% to reflect the change in the CPI(C) during the relevant reference period. As regards the biennial review, as private litigation costs were not available from the two legal professional bodies and the Judiciary could only provide information on the litigation costs of a small number of cases, the Administration considered that the findings of the biennial review were not representative of the overall litigation costs and hence were not reflected in the proposal. He added that it would be up to Members to decide whether it was necessary to study the policy aspects of the reviews.

83. Mr LEE Cheuk-yan considered it necessary to form a subcommittee to study the proposed resolution.

84. The Chairman proposed that a subcommittee be formed to study the proposed resolution in detail. Members agreed. The following Members agreed to join: Mr LEE Cheuk-yan, Dr Margaret NG and Mr IP Wai-ming.

85. The Chairman said that the Administration would be requested to withdraw its notice for moving the proposed resolution.

**(d) Members' motions**

- (i) Motion to be moved by Hon Mrs Regina IP LAU Suk-ye**  
*(Wording of the motion issued vide LC Paper No. CB(3) 495/08-09 dated 16 April 2009.)*

86. The Chairman said that the subject of the motion to be moved by Mrs Regina IP was "Developing new economic strategies to meet economic challenges" and the wording of the motion had been issued to Members.

- (ii) Motion to be moved by Dr Hon Joseph LEE Kok-long**  
*(Wording of the motion issued vide LC Paper No. CB(3) 493/08-09 dated 16 April 2009.)*

87. The Chairman said that the subject of the motion to be moved by Dr Joseph LEE was "Concern about the youth drug problem" and the wording of the motion had been issued to Members.

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88. The Chairman reminded Members that the deadline for giving notice of amendments, if any, to the motions was Wednesday, 22 April 2009.

**VII. Report of Bills Committees and subcommittees**

**(a) Report of the Bills Committee on Public Health and Municipal Services (Amendment) Bill 2008**  
*(LC Paper No. CB(2) 1320/08-09)*

89. The Chairman said that Ms Audrey EU, a member of the Bills Committee, would report on the work of the Bills Committee on behalf of Mr Fred LI, Chairman of the Bills Committee, who had to leave the House Committee meeting early.

90. Ms Audrey EU reported that the Bills Committee had held 10 meetings and had received views from relevant organizations and individuals. She elaborated that the Bill sought to -

- (a) empower the Director of Food and Environmental Hygiene (DFEH) to make an order under the new section 78B (section 78B order) if he had reasonable grounds to believe that the making of the order was necessary to prevent a possibility of danger to public health. A section 78B order might prohibit the import or supply of any food, direct that any food supplied be recalled, direct that any food be impounded, isolated, destroyed, or otherwise disposed of, or prohibit or permit the carrying on of any activity in relation to any food; and
- (b) provide for incidental and connected matters.

91. Ms EU further reported that having considered members' views, the Administration had agreed to propose Committee Stage amendments to -

- (a) empower DFEH to issue code of practice on section 78B orders;
- (b) set out the factors that DFEH might take into account in making section 78B orders;
- (c) provide that a person bound by a section 78B order might, within 28 days (instead of the original 14 days) from becoming bound by it, appeal to the Municipal Services Appeals Board (MSAB);
- (d) provide that the compensation recoverable as a direct result of

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compliance with a section 78 order should cover the costs or expenditure actually and directly incurred;

- (e) remove the requirement that a person bound by a section 78B order must first seek a decision from MSAB if he wanted to seek compensation under the new section 78H; and
- (f) empower DFEH to determine the effective time of a section 78B order published in the Gazette on a case-by-case basis.

92. Ms EU further said that the Administration had also undertaken to include in the speech to be given by the Secretary for Food and Health during the resumption of the Second Reading debate on the Bill that -

- (a) DFEH would exercise his power provided under the new section 78B in a prudent manner; and
- (b) the testing of food in relation to the making of section 78B orders would be carried out in the first instance and expeditiously, and the revocation of a section 78B order would be made in the same manner as the making of the order in the first place and as soon as possible.

93. Ms EU added that the Bills Committee supported the resumption of the Second Reading debate on the Bill at the Council meeting on 29 April 2009.

- (b) **Report of the Bills Committee on Adaptation of Laws Bill 2009**  
(*LC Paper No. CB(2) 1333/08-09*)

94. Mr WONG Ting-kwong, Chairman of the Bills Committee, reported that the objectives of the Bill were to introduce a single definition of "Offices set up by the Central People's Government in the Hong Kong Special Administrative Region" in section 3 of the Interpretation and General Clauses Ordinance; and to amend the application provisions of The Legislative Council Commission Ordinance, the Plant Varieties Protection Ordinance, the Patents Ordinance and the Registered Designs Ordinance to make the provisions of these Ordinances, apart from being applicable to the Hong Kong Government, also applicable to the three Offices set up by the Central People's Government (CPG) in the Hong Kong Special Administrative Region (HKSAR), namely the Liaison Office of CPG in HKSAR, the Office of the Commissioner of the Ministry of Foreign Affairs of the People's Republic of China in HKSAR, and the Hong Kong Garrison of the Chinese People's Liberation Army.

95. Mr WONG further reported that the Bills Committee had held one meeting with the Administration and had completed the scrutiny work. The

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Administration had provided a written response to issues of concern raised by members at the meeting. He referred Members to the Bills Committee's report for details of its deliberations. He added that the Administration intended to resume the Second Reading debate on the Bill at the Council meeting on 29 April 2009.

(c) **Report of the Subcommittee on Independent Police Complaints Council Ordinance (Commencement) (No. 2) Notice 2009**  
(*LC Paper No. CB(2) 1321/08-09*)

96. Mr LAU Kong-wah, Chairman of the Subcommittee, reported that the Commencement Notice sought to appoint 1 June 2009 as the day on which the Independent Police Complaints Council Ordinance should come into operation. He further reported that the Subcommittee had held two meetings and had completed its work. Major issues discussed by the Subcommittee included the financial and staffing arrangements for the statutory Independent Police Complaints Council (IPCC) and its workflow. He added that the Subcommittee did not raise any objections to the Commencement Notice.

97. Ms Cyd HO said that the Administration had originally appointed 1 April 2009 as the day on which the Independent Police Complaints Council Ordinance was to come into operation, and a Subcommittee (the former Subcommittee) had been formed to study the relevant Commencement Notice. In response to the former Subcommittee's suggestion that the commencement of the Ordinance be deferred so as to allow time for Members to obtain more information about the financial provisions to be made available to the statutory IPCC, the Administration had repealed the previous Commencement Notice and made a new one to defer the commencement of the Ordinance to 1 June 2009. She noted that as the Commencement Notice was subject to the negative vetting procedure, there would not be any opportunity for debate on the subsidiary legislation in the Council should no amendment be proposed. She was aware that some Members would like to express their views on the statutory IPCC in the Council before the Commencement Notice took effect. She sought information on how this could be done.

98. The Chairman said that the deadline for amending the Commencement Notice was 6 May 2009. She pointed out that there were two avenues for Members to express their views on subsidiary legislation subject to negative vetting to which no amendment had been proposed. A Member might, with the consent of the President, address the Council on an item of subsidiary legislation provided that the scrutiny period of the subsidiary legislation had not expired; an advance copy of the intended address would have to be provided to the President. Alternatively, a motion could be moved for adjournment for the purpose of enabling Members to debate on the relevant subsidiary legislation at a Council meeting. The duration of an adjournment debate would be kept within one and a half hours.

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99. Ms Cyd HO considered the holding of an adjournment debate more appropriate.

100. The Chairman said that Members could discuss the proposal of holding an adjournment debate on the Commencement Notice, but it would be for the President to approve it.

101. Ms Emily LAU considered it absurd that under the existing arrangement, no debate could be held in the Council on subsidiary legislation subject to negative vetting to which no amendment had been proposed. It was her understanding that the matter would be discussed by the Committee on Rules of Procedure. As RoP currently did not provide for debates on subsidiary legislation, she supported the proposal for moving a motion for adjournment at the Council meeting on 6 May 2009 to enable Members to debate on issues relating to the subsidiary legislation. As the establishment of the statutory IPCC involved controversial issues and many Members would likely wish to speak during the adjournment debate, she considered that the President's approval should be sought to extend the duration of the adjournment debate beyond one and a half hours.

102. The Chairman said that the duration of an adjournment debate held pursuant to Rule 16(4) of RoP would be kept within one and a half hours unless extended by the President. She recalled that there were past occasions where the President had agreed to exercise his discretion to extend the duration of an adjournment debate to more than one and a half hours so as to enable all Members wishing to speak at the adjournment debate to do so. Each Member could speak for up to five minutes in the debate.

103. Ms Audrey EU said that Members belonging to the Civic Party supported the proposals for moving a motion for adjournment at the Council meeting on 6 May 2009 and seeking the President's approval to extend the duration of the adjournment debate beyond one and a half hours.

104. The Chairman invited Members' views on the proposal of holding an adjournment debate on the Commencement Notice at the Council meeting on 6 May 2009.

105. Mr LAU Kong-wah said that, as Chairman of the Subcommittee, he noted that members had many views on the statutory IPCC. He therefore supported the proposal of holding an adjournment debate on the Commencement Notice to enable Members to express their views.

106. Members supported the proposal for the moving of a motion for adjournment under RoP 16(4) for the purpose of enabling Members to speak on

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the Commencement Notice at the Council meeting on 6 May 2009. Members also agreed to recommend to the President the holding of the adjournment debate in addition to two other debates on Members' motions with no legislative effect at the Council meeting, and to request the President to consider exercising his discretion to extend the duration of the adjournment debate beyond one and a half hours, in order to enable all Members wishing to speak at the adjournment debate to do so.

**VIII. Position on Bills Committees and subcommittees**

*(LC Paper No. CB(2) 1322/08-09)*

107. The Chairman said that there were two Bills Committees, six subcommittees under the House Committee (i.e. three subcommittees on subsidiary legislation and three subcommittees on policy issues) and eight subcommittees under Panels in action.

**IX. Any other business**

108. There being no other business, the meeting ended at 3:49 pm.

Council Business Division 2  
Legislative Council Secretariat  
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