

Extract from the minutes of the House Committee meeting on 4 July 2008

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III. Business arising from previous Council meetings

Legal Service Division report on subsidiary legislation gazetted on 27 June 2008 and tabled in Council on 2 July 2008

(LC Paper No. LS 102/07-08)

16. The Chairman said that a total of eight items of subsidiary legislation, including one Commencement Notice, were gazetted on 27 June 2008 and tabled in the Council on 2 July 2008.

17. Regarding the Food Business (Amendment) Regulation 2008, the Chairman said that it sought to ban overnight stocking of live poultry at retail outlets and had come into operation upon its gazettal on 2 July 2008. Given that Mr Albert CHAN would move a motion at the Council meeting on 9 July 2008 to repeal the Regulation, she sought Members' view on the need to form a subcommittee to scrutinize it.

18. Mr Tommy CHEUNG said that there could be three possible outcomes in respect of Mr Albert CHAN's motion, viz. it might be carried or negated at the Council meeting on 9 July 2008 or withdrawn by Mr CHAN before the Council meeting. Should the motion be carried, the Regulation would cease to be in force and there would be no need for scrutiny. As the House Committee meeting was the last one for the current term, he was concerned whether the decision on the formation of a subcommittee could be deferred until after the outcome in respect of the motion had been known. Alternatively, Members could decide on the formation of a subcommittee to study the Regulation at the House Committee meeting, in which case the subcommittee would only commence work should the motion be withdrawn or negated.

19. The Chairman said that it was up to Members to decide how to handle the Regulation which had already come into operation. Should Mr Albert CHAN's motion to repeal the Regulation be carried, the Regulation would cease to be in force. She pointed out that as the Third LegCo would be prorogued on 19 July 2008, should a subcommittee be formed to study the Regulation, it would unlikely complete the scrutiny work within the current term. She sought clarification from the Legal Adviser (LA) on whether a subcommittee could be formed again in the Fourth LegCo to scrutinize the Regulation.

20. LA replied in the affirmative. He explained that under the Interpretation and General Clauses Ordinance (Cap. 1), the deadline for amending the Regulation was the second meeting of LegCo in the next session

(i.e. 15 October 2008), or the first meeting after 21 days from the second meeting of the next session (i.e. 5 November 2008) if extended by resolution. The Regulation would be subject to the scrutiny of LegCo within the prescribed period.

21. Mr Albert CHAN criticized the approach adopted by the Administration in handling the matter. He considered it inappropriate for the Administration to have introduced the Regulation shortly before the end of the Third LegCo and to have brought it into operation upon its gazettal with the effect that it would be in force at least until the second meeting of LegCo in the next session. Under such circumstances, there was no choice for Members but to repeal the Regulation. He appealed to Members to support his motion to repeal the Regulation. He pointed out that it was incumbent upon LegCo to scrutinize legislative proposals. As the Regulation was of wide public concern, he considered it necessary to form a subcommittee to study it, albeit there might not be sufficient time to complete the scrutiny.

22. Mr Tommy CHEUNG expressed support for forming a subcommittee to scrutinize the Regulation.

23. The Chairman proposed that a subcommittee be formed to study the Regulation in detail. Members agreed. The following Members agreed to join: Mr Fred LI, Mrs Selina CHOW, Mr Tommy CHEUNG, Mr Albert CHAN, Mr Vincent FANG and Mr Alan LEONG.

24. Members did not raise any queries on the other seven items of subsidiary legislation.

25. The Chairman reminded Members that the deadline for amending these items of subsidiary legislation was 15 October 2008, or 5 November 2008 if extended by resolution.

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