

LEGISLATIVE COUNCIL

MINUTES

No. 22

**Minutes of the meeting held on Wednesday 14 April 2010 at 11:00 am
and Thursday 15 April 2010 at 9:00 am**

Members present:

President

The Hon Jasper TSANG Yok-sing, GBS, JP

The Hon Albert HO Chun-yan (absent on 15.4.2010)

Ir Dr the Hon Raymond HO Chung-tai, SBS, S.B.St.J., JP (absent on 15.4.2010)

The Hon LEE Cheuk-yan

Dr the Hon David LI Kwok-po, GBM, GBS, JP

The Hon Fred LI Wah-ming, SBS, JP (absent on 15.4.2010)

Dr the Hon Margaret NG

The Hon James TO Kun-sun

The Hon CHEUNG Man-kwong

The Hon CHAN Kam-lam, SBS, JP

The Hon Mrs Sophie LEUNG LAU Yau-fun, GBS, JP

The Hon LEUNG Yiu-chung

Dr the Hon Philip WONG Yu-hong, GBS (absent on 15.4.2010)

The Hon WONG Yung-kan, SBS, JP

The Hon LAU Kong-wah, JP

The Hon LAU Wong-fat, GBM, GBS, JP (absent on 15.4.2010)

The Hon Miriam LAU Kin-yea, GBS, JP

The Hon Emily LAU Wai-hing, JP

The Hon Andrew CHENG Kar-foo

The Hon Timothy FOK Tsun-ting, GBS, JP (absent on 15.4.2010)

The Hon TAM Yiu-chung, GBS, JP

The Hon LI Fung-ying, BBS, JP

The Hon Tommy CHEUNG Yu-yan, SBS, JP

The Hon Frederick FUNG Kin-kee, SBS, JP

The Hon Audrey EU Yuet-mee, SC, JP

The Hon Vincent FANG Kang, SBS, JP (absent on 15.4.2010)

The Hon WONG Kwok-hing, MH

The Hon LEE Wing-tat

Dr the Hon Joseph LEE Kok-long, SBS, JP

The Hon Jeffrey LAM Kin-fung, SBS, JP

The Hon Andrew LEUNG Kwan-yuen, SBS, JP

The Hon CHEUNG Hok-ming, GBS, JP

The Hon WONG Ting-kwong, BBS, JP

The Hon Ronny TONG Ka-wah, SC

The Hon CHIM Pui-chung

Prof the Hon Patrick LAU Sau-shing, SBS, JP

The Hon KAM Nai-wai, MH

(absent on 15.4.2010)

The Hon Cyd HO Sau-lan

The Hon Starry LEE Wai-king

Dr the Hon LAM Tai-fai, BBS, JP

The Hon CHAN Hak-kan

The Hon Paul CHAN Mo-po, MH, JP

The Hon CHAN Kin-por, JP

Dr the Hon Priscilla LEUNG Mei-fun

Dr the Hon LEUNG Ka-lau

The Hon CHEUNG Kwok-che

The Hon WONG Sing-chi

The Hon WONG Kwok-kin, BBS

The Hon IP Wai-ming, MH

The Hon IP Kwok-him, GBS, JP

The Hon Mrs Regina IP LAU Suk-yee, GBS, JP

Dr the Hon PAN Pey-chyou

The Hon Paul TSE Wai-chun

Dr the Hon Samson TAM Wai-ho, JP

Member absent:

The Hon Abraham SHEK Lai-him, SBS, JP

Public officers attending:

On 14.4.2010

The Hon Henry TANG Ying-yen, GBM, GBS, JP
The Chief Secretary for Administration

The Hon WONG Yan-lung, SC, JP
The Secretary for Justice

Dr the Hon York CHOW Yat-ngok, GBS, JP
Secretary for Food and Health

The Hon TSANG Tak-sing, JP
Secretary for Home Affairs

The Hon Matthew CHEUNG Kin-chung, GBS, JP
Secretary for Labour and Welfare

Prof the Hon K C CHAN, SBS, JP
Secretary for Financial Services and the Treasury

The Hon Mrs Carrie LAM CHENG Yuet-ngor, JP
Secretary for Development

Dr Kitty POON Kit, JP
Secretary for the Environment

The Hon Eva CHENG, JP
Secretary for Transport and Housing

Prof LAU Siu-kai, JP
Head, Central Policy Unit

On 15.4.2010

The Hon Ambrose LEE Siu-kwong, GBS, IDSM, JP
Secretary for Security

The Hon Edward YAU Tang-wah, JP
Secretary for the Environment

Dr Kitty POON Kit, JP
Under Secretary for the Environment

On 14.4.2010 and 15.4.2010

The Hon John TSANG Chun-wah, JP
The Financial Secretary

The Hon Michael SUEN Ming-yeung, GBS, JP
Secretary for Education

The Hon Stephen LAM Sui-lung, GBS, JP
Secretary for Constitutional and Mainland Affairs

The Hon Denise YUE Chung-ye, GBS, JP
Secretary for the Civil Service

The Hon Mrs Rita LAU NG Wai-lan, JP
Secretary for Commerce and Economic Development

Clerks in attendance:

On 14.4.2010

Ms Pauline NG Man-wah, Secretary General

On 14.4.2010 and 15.4.2010

Mrs Constance LI TSOI Yeuk-lin, Assistant Secretary General (1)

Mrs Vivian KAM NG Lai-man, Assistant Secretary General (2)

Mrs Justina LAM CHENG Bo-ling, Assistant Secretary General (3)

Tabling of Papers

The following papers were laid on the table pursuant to Rule 21(2) of the Rules of Procedure:

<u>Subsidiary Legislation / Instruments</u>	<u>L.N. No.</u>
1. Dutiable Commodities (Exempted Quantities) (Amendment) Notice 2010 (gazetted on 9.4.2010)	35/2010
2. Education Ordinance (Amendment of Schedule 3) Notice 2010 (gazetted on 9.4.2010)	36/2010
3. Import and Export (Amendment) Ordinance 2007 (Commencement) Notice (gazetted on 9.4.2010)	37/2010

Other Papers

- No. 82 - Audited statement of accounts together with the Director of Audit's report of the Hong Kong Rotary Club Students' Loan Fund for the year ended 31 August 2009 (published on 25.3.2010)
- No. 83 - Audited statement of accounts together with the Director of Audit's report of the Sing Tao Charitable Foundation Students' Loan Fund for the year ended 31 August 2009 (published on 25.3.2010)
- No. 84 - The Financial Reporting Council Annual Report 2009 (published on 31.3.2010)
- No. 85 - Research Endowment Fund
Audited financial statements together with the Report of the Director of Audit for the period from 6 February 2009 (date of establishment of the Fund) to 31 August 2009 (published on 1.4.2010)
- No. 86 - Audited statement of accounts of the Quality Education Fund for the year ended 31 August 2009 (published on 8.4.2010)
- No. 87 - Audited statement of accounts of the Education Development Fund for the year ended 31 August 2009 (published on 8.4.2010)

Report No. 7/09-10 of the House Committee on Consideration of Subsidiary Legislation and Other Instruments (published on 12.4.2010)

Questions

Written replies to Questions 1 to 20 were tabled for Members' information.

Statements

The President stated that under Rule 28(2) of the Rules of Procedure, no debate might arise on the statement but Members might put to the public officer making the statement short and succinct questions, provided that they were relevant to the statement.

The Chief Secretary for Administration made a statement on the Package of Proposals for the Methods for Selecting the Chief Executive and forming the Legislative Council in 2012.

One Member and Hon CHEUNG Man-kwong asked questions and the Chief Secretary for Administration replied.

After the Chief Secretary for Administration had replied, Hon CHEUNG Man-kwong stood up and indicated his wish to put further questions to the Chief Secretary for Administration. The President stated that it was not the time for a debate. If Hon CHEUNG Man-kwong was not satisfied with the reply given by the Chief Secretary for Administration, he should follow up the matter with the Administration on other occasions.

Eight other Members and Hon LEE Cheuk-yan asked questions and the Chief Secretary for Administration replied.

While the Chief Secretary for Administration was speaking, Hon LEE Cheuk-yan, with the President's permission, elucidated a point raised by the Chief Secretary for Administration in his speech which Mr LEE considered to be misunderstood by the Chief Secretary for Administration. The Chief Secretary for Administration then continued to speak.

Dr Hon Philip WONG asked a question on the statement.

After Dr Hon Philip WONG had spoken, some people in the Public Gallery yelled noisily. The President asked them to keep quiet. As they ignored the President's direction, the President ordered them to leave the Chamber immediately. Pursuant to the President's order, the people concerned were escorted out of the Public Gallery by security staff.

The Chief Secretary for Administration replied to the question raised by Dr Hon Philip WONG.

While the Chief Secretary for Administration was replying, a person spoke in the Public Gallery. The President asked the person to keep quiet. The person concerned ignored the President's direction and continued to make noises. Security staff then escorted the person out of the Public Gallery.

The Chief Secretary for Administration then continued to reply.

Eleven more Members and Hon James TO asked questions and the Chief Secretary for Administration replied.

After the Chief Secretary for Administration had replied, Hon James TO requested the Chief Secretary for Administration to elucidate a point raised in his reply. The President did not accede to Mr TO's request and reiterated that Members who were not satisfied with the replies given by the Chief Secretary for Administration should follow up the matter on other occasions.

Two more Members asked questions and the Chief Secretary for Administration replied.

After the Chief Secretary for Administration had spoken, a person in the Public Gallery yelled noisily. The President ordered the person to leave the Chamber immediately. Pursuant to the President's order, security staff escorted the person out of the Public Gallery.

Two more Members asked questions and the Chief Secretary for Administration replied.

Bills

Second Reading

Appropriation Bill 2010

The debate on the motion for the Second Reading which was moved on 24 February 2010 resumed, in accordance with Rule 67(2) of the Rules of Procedure.

Dr Hon David LI spoke on the motion.

While Dr Hon David LI was speaking, the President left the chair at 12:52 pm temporarily and the President's Deputy, Hon Miriam LAU, took the chair.

Eight other Members and Hon CHEUNG Kwok-che spoke on the motion.

At 2:43 pm, while Hon CHEUNG Kwok-che was speaking, the President resumed the chair.

Twenty more Members spoke on the motion.

The President suspended the meeting at 7:36 pm.

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The Council resumed at 9:00 am on 15 April 2010 and continued to debate the motion for the Second Reading of the Appropriation Bill 2010.

Twelve Members and Hon WONG Yung-kan spoke on the motion.

While Hon WONG Yung-kan was speaking, the President left the chair at 12:06 pm temporarily and the President's Deputy, Hon Miriam LAU, took the chair.

Four Members and Hon LAU Kong-wah spoke on the motion.

At 1:12 pm, while Hon LAU Kong-wah was speaking, the President resumed the chair.

Five more Members spoke on the motion.

Hon Miriam LAU moved that the debate on the motion be adjourned to the meeting to be held on 21 April 2010.

Question on the motion proposed, put and agreed to.

Motions

Proposed resolution under the Interpretation and General Clauses Ordinance

The Secretary for Security moved the motion in the **Appendix** and spoke on the motion.

Hon James TO spoke on the motion as the Chairman of the Subcommittee on Subsidiary Legislation Relating to Transfer of Management of the Castle Peak Bay Immigration Centre, and then in his personal capacity as a Member.

Question on the motion proposed, put and agreed to.

Next Meeting

The President declared that the next meeting of the Council would be held on 21 April 2010 at 11:00 am.

The Council was adjourned at 2:53 pm.

(Jasper TSANG Yok-sing)
President
20 May 2010

Council Chamber
Hong Kong

INTERPRETATION AND GENERAL CLAUSES
ORDINANCE

RESOLUTION

(Under section 34(2) of the Interpretation and General Clauses Ordinance
(Cap. 1))

IMMIGRATION (TREATMENT OF DETAINEES)
(AMENDMENT) ORDER 2010

RESOLVED that the Immigration (Treatment of Detainees) (Amendment) Order 2010, published in the Gazette as Legal Notice No. 15 of 2010 and laid on the table of the Legislative Council on 24 February 2010, be amended, in section 2, by adding –

“(5) Schedule 1 is amended, in rule 1, by adding –
““arrest/detention sheet” (逮捕/羈留紀錄表)
means the sheet or record maintained in
respect of a detainee under rule 4A;”.

(6) Schedule 1 is amended by adding –

“1A. **Notification to relatives,
etc.**

Immediately after the detention of a detainee, or so soon after the detention as may be practicable, an officer must –

(a) at the request of the
detainee, cause a close

relative of the detainee, or any other person named by the detainee for that purpose, to be notified of the detainee's whereabouts; and

- (b) if the detainee is a public officer, cause the head of the department in which the detainee holds office to be notified of the detention orally and in writing.

1B. Communication with legal advisers, etc.

(1) A detainee must be afforded reasonable opportunity to communicate with a legal adviser and to consult with the legal adviser in the presence, but out of the hearing, of an officer unless the communication or consultation would cause unreasonable hindrance or delay to the investigation of the suspected offence or the administration of justice.

(2) For the purpose of preparing his or her defence a detainee detained under the order of a magistrate must be allowed –

- (a) a supply of writing material and, despite anything to the contrary in rule 8, to have letters

to the detainee's legal adviser, relatives and friends posted or delivered with the least possible delay;

- (b) to speak by telephone to the detainee's legal adviser, relatives and friends, unless the communication is reasonably likely to cause hindrance to the investigation of the suspected offence or the administration of justice.

1C. Duties of officers

(1) An officer is, while a detainee is in the officer's custody, responsible for the safe custody and welfare of the detainee and for discharging any other duties that are imposed on an officer by this Order in relation to the detainee.

(2) Despite anything in this rule, an officer may temporarily place a detainee in the custody of a member of the Immigration Service established by section 3 of the Immigration Service Ordinance (Cap. 331) for the purpose of furthering an investigation, in which case that member must, until returning the detainee to the custody of an officer at the Centre, have the

responsibilities and duties of an officer in relation to the detainee.”.

(7) Schedule 1 is amended by renumbering rule 3 as rule 3(1).

(8) Schedule 1 is amended, in rule 3, by adding –

“(2) A detainee must, except for reasons which an officer must cause to be recorded in the arrest/detention sheet, be permitted to retain any head-dress the detainee is by custom or religion required to wear, essential clothing and a hearing-aid.”.

(9) Schedule 1 is amended by adding –

“4A. Individual detention record to be kept

(1) There must be kept in respect of each detainee a record to be known as the “arrest/detention sheet”, in which must be recorded –

(a) immediately on the detention of a detainee, the reasons for the detention;

(b) all movements and interviews of, requests made by, and meals, articles and any facilities provided to, the detainee; and

(c) any other matters that are by this Order required to be so recorded.

(2) In addition to the matters required to be recorded under subrule (1), there may be recorded by an officer on an arrest/detention sheet any other matters that the officer considers desirable.

(3) Except where in this Order it is otherwise provided, an officer is responsible for recording in an arrest/detention sheet all matters required to be so recorded which occur while the detainee is in the officer's custody."

(10) Schedule 1 is amended by adding –

“6A. Sickness or injury

(1) Subject to subrules (2) and (3), if a detainee complains of or appears to be suffering from sickness or injury, the detainee must be provided with adequate medical attention at the Centre.

(2) If a medical officer so advises, or the services of a medical officer cannot be procured at the Centre, the detainee must be escorted elsewhere to receive medical attention.

(3) If the detainee is admitted to a hospital, the detainee must at all times be guarded by an officer until lawfully released on recognizance or otherwise.

6B. Comfort of detainees

(1) Reasonable arrangements must be made for the comfort of detainees.

(2) Whenever practicable both a detainee being questioned or making a statement and the officer asking the questions or recording the statement are to be seated.

(3) A detainee must be permitted to receive from outside any items of clothing that may be necessary, subject to their inspection by an officer.

(4) A detainee who has to spend a night or a substantial part of it at the Centre must be provided with a bed and reasonable bedding.

6C. Food and drink

(1) Reasonable arrangements must be made by an officer for the refreshment of a detainee, including the provision of adequate food, without charge to the detainee.

(2) Without limiting subrule (1), a detainee may be permitted by an officer to obtain other food at the detainee's own expense subject to the food being inspected by an officer.

(3) Drinking water must be supplied to a detainee on request.

(4) Details of all refreshment and food supplied to or received by a detainee must be recorded in the arrest/detention sheet.

6D. Toilet facilities and exercise

Subject to any supervision and other measures that may be necessary to ensure that detainees do not escape or injure themselves, they must be provided with adequate facilities and opportunity to wash, shower, shave, relieve themselves and take a reasonable amount of exercise.”.

(11) Schedule 1 is amended by adding –

“12A. Female detainees

(1) Female detainees must ordinarily be kept separate from male detainees.

(2) A female detainee must be guarded by a female officer and, except in an emergency, no male officer may enter a detention room in which a female detainee is detained otherwise than in the company of a female officer.

12B. Safety of detainees in emergency

In the event of fire or other emergency at the Centre, the safety of any detainees detained there is paramount and if their safety is threatened, an officer must escort the detainees to the nearest police station or other suitable place.

12C. Use of handcuffs

(1) Handcuffs may only be used to restrain a detainee when necessary for the

detainee's own safety or the safety of others or to prevent the detainee's escape.

(2) Any use of handcuffs must be recorded on the arrest/detention sheet by the officer causing them to be used.”.

(12) Schedule 1 is amended by adding –

“17. Notice to detainees

There must be displayed in a conspicuous position in every room used for the detention of a detainee and in other conspicuous places at the Centre where it can readily be seen by detainees, a notice in the following terms –

“Notice to Persons Detained

1. You may request that your relatives or a friend be informed of your detention.
2. Provided that no unreasonable delay or hindrance is caused to the processes of investigation or the administration of justice you may communicate and consult with a legal adviser.
3. For the purpose of preparing your defence you will, if you have been detained on the order of a magistrate, be allowed –
 - (a) a supply of writing material, and to have your

letters posted or delivered without delay;

(b) to make telephone calls, provided no hindrance is caused to the processes of investigation or the administration of justice.

4. You may ask to be released on recognizance.
5. If you feel ill, ask for medical attention.
6. Adequate food and refreshment will be supplied free. You are entitled to receive from outside any items of clothing that may be necessary. However you may, if you request, be permitted at your own expense to have food from outside brought to you subject to inspection.
7. Drinking water will be supplied on request.

被羈留者請注意

1. 你可要求通知你的親屬或一位朋友你已被羈留。
2. 在不會對進行調查或對執法構成

不合理延遲或阻礙的前提下，你可與一名法律顧問通訊和商議。

3. 你如根據裁判官的命令被羈留，為準備你的辯護，你會 —
 - (a) 獲供應書寫用品，而你的書信會在沒有延遲的情況下郵寄或送遞；
 - (b) 在不會對進行調查或對執法構成阻礙的前提下，獲准打電話給他人。
4. 你可要求擔保外出。
5. 你如感到不適，請要求醫療護理。
6. 你會獲得免費供應足夠的食物和茶點。你可接受從外間送來的任何所需衣物。但如你提出要求，則可獲准自費得到外間送來的食物，但這些食物須經過檢查。
7. 飲用水會應你的要求供應。”””。