

立法會
Legislative Council

LC Paper No. CB(2) 17/10-11

Ref : CB2/H/5/09

House Committee of the Legislative Council

**Minutes of the 31st meeting
held in the Legislative Council Chamber
at 2:30 pm on Friday, 8 October 2010**

Members present :

Hon Miriam LAU Kin-yee, GBS, JP (Chairman)
Hon Fred LI Wah-ming, SBS, 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
Hon LEUNG Yiu-chung
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 Timothy FOK Tsun-ting, GBS, JP
Hon TAM Yiu-chung, GBS, JP
Hon LI Fung-ying, SBS, JP
Hon Tommy CHEUNG Yu-yan, SBS, JP
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, SBS, JP
Hon Jeffrey LAM Kin-fung, SBS, JP
Hon Andrew LEUNG Kwan-yuen, GBS, JP
Hon CHEUNG Hok-ming, GBS, JP
Hon WONG Ting-kwong, BBS, JP
Hon Ronny TONG Ka-wah, SC
Hon CHIM Pui-chung
Prof Hon Patrick LAU Sau-shing, SBS, JP
Hon KAM Nai-wai, MH
Hon Cyd HO Sau-lan

Hon Starry LEE Wai-king, JP
Dr Hon LAM Tai-fai, BBS, JP
Hon CHAN Hak-kan
Hon Paul CHAN Mo-po, MH, JP
Hon CHAN Kin-por, JP
Dr Hon Priscilla LEUNG Mei-fun
Dr Hon LEUNG Ka-lau
Hon CHEUNG Kwok-che
Hon WONG Sing-chi
Hon WONG Kwok-kin, BBS
Hon IP Wai-ming, MH
Hon Mrs Regina IP LAU Suk-ye, GBS, JP
Dr Hon PAN Pey-chyou
Hon Paul TSE Wai-chun
Dr Hon Samson TAM Wai-ho, JP
Hon Alan LEONG Kah-kit, SC
Hon LEUNG Kwok-hung
Hon Tanya CHAN
Hon Albert CHAN Wai-yip
Hon WONG Yuk-man

Members absent :

Dr Hon David LI Kwok-po, GBM, GBS, JP
Hon Abraham SHEK Lai-him, SBS, JP
Hon IP Kwok-him, GBS, JP

Clerk in attendance :

Mrs Vivian KAM Clerk to the House Committee

Staff in attendance :

Ms Pauline NG	Secretary General
Mr Jimmy MA, JP	Legal Adviser
Mrs Constance LI	Assistant Secretary General 1
Mrs Justina LAM	Assistant Secretary General 3
Mrs Percy MA	Assistant Secretary General (Special Duties)
Ms Connie FUNG	Senior Assistant Legal Adviser 1
Mrs Sharon TONG	Principal Council Secretary (Complaints)
Mr Simon WONG	Chief Public Information Officer
Miss Odelia LEUNG	Chief Council Secretary (2)6
Mr Kelvin LEE	Assistant Legal Adviser 1
Mr Timothy TSO	Assistant Legal Adviser 2
Mr Bonny LOO	Assistant Legal Adviser 3
Mr Stephen LAM	Assistant Legal Adviser 4
Miss Kitty CHENG	Assistant Legal Adviser 5

Mr KAU Kin-wah	Assistant Legal Adviser 6
Miss Winnie LO	Assistant Legal Adviser 7
Ms Clara TAM	Assistant Legal Adviser 9
Ms Amy YU	Senior Council Secretary (2)3
Ms Anna CHEUNG	Senior Legislative Assistant (2)3
Mr Arthur KAN	Legislative Assistant (2)8

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I. Confirmation of the minutes of the 30th meeting held on 9 July 2010
(LC Paper No. CB(2) 2342/09-10)

The minutes were confirmed.

II. Matters arising

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

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

III. Business arising from previous Council meetings

Legal Service Division report on bills referred to the House Committee in accordance with Rule 54(4)

(a) Adaptation of Laws (Military References) Bill 2010
(LC Paper No. LS 95/09-10)

3. The Chairman said that the Bill sought to adapt certain military references in, and other related provisions of, the laws of Hong Kong to bring them into conformity with the Basic Law ("BL"). The Panel on Security had been briefed on the legislative proposals at its meeting on 4 May 2010, and members had expressed concern about the Administration's slow progress in adapting the military-related references in the laws of Hong Kong.

4. The Chairman further said that the Legal Service Division had written to the Administration requesting clarification on certain drafting and legal aspects of the Bill. The Administration's reply was awaited.

5. Dr Margaret NG considered it necessary to form a Bills Committee to study the Bill.

6. The Chairman proposed that a Bills Committee be formed to study the Bill in detail. Members agreed. The following Members agreed to join: Dr Margaret NG, Mr James TO (as advised by Mr Fred LI) and Ms Cyd HO.

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7. The Chairman said that as there were vacant slots, the Bills Committee could commence work immediately.

(b) **Securities and Futures and Companies Legislation (Structured Products Amendment) Bill 2010**
(LC Paper No. LS 89/09-10)

8. The Chairman said that the Bill sought to transfer the regulation of public offers of structured products from the prospectus regime of the Companies Ordinance to the offers of investments regime of the Securities and Futures Ordinance. The Panel on Financial Affairs had been briefed on the legislative proposals at its meeting on 3 May 2010, and members had not raised any objection.

9. Mr CHAN Kam-lam considered it necessary to form a Bills Committee to study the Bill.

10. The Chairman proposed that a Bills Committee be formed to study the Bill in detail. Members agreed. The following Members agreed to join: Mr Albert HO (as advised by Mr Fred LI), Mr James TO, Mr CHAN Kam-lam, Ms Miriam LAU, Mr Ronny TONG, Mr CHIM Pui-chung and Mrs Regina IP.

11. The Chairman said that as there were vacant slots, the Bills Committee could commence work immediately.

(c) **Competition Bill**
(LC Paper No. LS 93/09-10)

12. The Chairman said that the Bill sought to prohibit conduct that prevented, restricted or distorted competition in Hong Kong. The former Panel on Economic Services and the Panel on Economic Development had been consulted on the legislative proposals at a number of meetings between 2006 and 2010, and members had raised various concerns. The Chairman added that the Legal Service Division was scrutinizing the legal and drafting aspects of the Bill.

13. Mr CHAN Kam-lam considered it necessary to form a Bills Committee to study the Bill.

14. The Chairman proposed that a Bills Committee be formed to study the Bill in detail. Members agreed. The following Members agreed to join: Mr Albert HO, Mr Dr Raymond HO, Mr Fred LI, Dr Margaret NG, Mr James TO, Mr CHAN Kam-lam, Dr Philip WONG, Ms Miriam LAU, Ms Emily LAU, Ms Audrey EU, Mr WONG Kwok-hing, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr Ronny TONG, Prof Patrick LAU, Ms Starry LEE, Mr Paul CHAN, Mr CHAN Kin-por, Mr CHEUNG Kwok-che, Mrs Regina IP, Mr Alan LEONG, Mr LEUNG Kwok-hung and Miss Tanya CHAN.

15. The Chairman said that as there were vacant slots, the Bills Committee could commence work immediately.

IV. Legal Service Division report on subsidiary legislation gazetted between 9 July and 24 September 2010

(LC Paper No. LS 98/09-10)

16. The Chairman said that a total of 11 items of subsidiary legislation were gazetted between 9 July and 24 September 2010. Of these, five items were tabled in the Council on 14 July 2010, two items would be tabled in the Council on 13 October 2010 and four items were not required to be tabled in the Council and not subject to amendments by the Council.

17. Regarding the Genetically Modified Organisms (Documentation for Import and Export) Regulation, the Chairman said that it was to provide for the detailed documentation requirements in relation to the import and export of genetically modified organisms intended to be used for the purposes set out in section 26(1) of the Genetically Modified Organisms (Control of Release) Ordinance enacted in March 2010.

18. Ms Audrey EU stressed the need to scrutinize prudently legislation concerning environmental protection. She considered it necessary to form a subcommittee to study the Regulation.

19. The Chairman proposed that a subcommittee be formed to study the Regulation in detail. Members agreed. The following Members agreed to join: Ms Audrey EU, Mr KAM Nai-wai and Miss Tanya CHAN.

20. Regarding the Port Control (Public Cargo Working Area) Order 2010, the Chairman said that it sought to declare the new boundaries of the Western District Public Cargo Working Area to facilitate the construction of the Western Island Line.

21. Prof Patrick LAU considered it necessary to form a subcommittee to study the Order.

22. The Chairman proposed that a subcommittee be formed to study the Order in detail. Members agreed. The following Members agreed to join: Ms Miriam LAU, Prof Patrick LAU, Mr KAM Nai-wai and Miss Tanya CHAN.

23. As regards the United Nations Sanctions (Eritrea) Regulation which was not required to be tabled in the Council, the Chairman said that it sought to give effect to the decision of the Security Council of the United Nations to impose certain sanctions on Eritrea. As the Regulation 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, she suggested that the Regulation be referred to the Subcommittee. Members agreed.

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

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25. As the deadline for amending the Genetically Modified Organisms (Documentation for Import and Export) Regulation and the Port Control (Public Cargo Working Area) Order 2010 was 20 October 2010, the Chairman proposed to move in her capacity as Chairman of the House Committee a motion at the Council meeting on 13 October 2010 to extend their scrutiny period to 10 November 2010. Members agreed.

26. The Chairman reminded Members that the deadline for amending the subsidiary legislation tabled in the Council on 14 July 2010 was 20 October 2010, and that for the subsidiary legislation to be tabled in the Council on 13 October 2010 was 10 November 2010.

V. Business for the Council meeting on 13 October 2010

(a) Tabling of papers

**Report No. 1/10-11 of the House Committee on Consideration of
Subsidiary Legislation and Other Instruments**

*(LC Paper No. CB(2) 2343/09-10 issued vide LC Paper No. CB(3)
23/10-11 dated 7 October 2010)*

27. The Chairman said that the report covered only one item of subsidiary legislation, i.e. the Country Parks (Designation) (Consolidation) (Amendment) Order 2010, the period for amendment of which would expire on 13 October 2010. The relevant Subcommittee would report under agenda item VIII(a) below.

28. The Chairman further said that as a Member and the Administration had given notices respectively to move motions to amend the Order, Members would have the opportunity to speak on the Order. As such, she would not move a motion to take note of the Report in relation to the Order.

29. Members noted the report.

(b) The Chief Executive's Policy Address

30. The Chairman said that the Chief Executive ("CE") will deliver his Policy Address at the Council meeting on 13 October 2010. She would request the Administration to provide by noon on Thursday, 14 October 2010, the proposed grouping of policy areas for the debate on the Motion of Thanks to be held at the Council meeting of 27, 28 and 29 October 2010. The House Committee would discuss the Administration's proposed grouping at the meeting on 15 October 2010.

(c) **Government Motion**

Proposed resolution to be moved by the Secretary for the Environment under section 34(2) of the Interpretation and General Clauses Ordinance relating to the Country Parks (Designation) (Consolidation) (Amendment) Order 2010

(Wording of the proposed resolution issued vide LC Paper No. CB(3) 25/10-11 dated 7 October 2010.)

31. The Chairman said that the Secretary for the Environment had given notice to move the above proposed resolution at the Council meeting to defer the commencement date of the Order to 1 January 2012. The relevant Subcommittee would report under agenda item VIII(a) below.

VI. The Chief Executive's Question and Answer Session on 14 October 2010

32. The Chairman said that the CE's Question and Answer Session would be held from 3:00 pm to 4:30 pm, and CE would answer questions on his Policy Address.

VII. Business for the Council meeting on 20 October 2010

(a) **Questions**

(LC Paper No. CB(3) 16/10-11)

33. 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**

Legislation Publication Bill

34. The Chairman said that the Administration had given notice to present the above Bill to the Council on 20 October 2010. The House Committee would consider the Bill at its meeting on 22 October 2010.

(c) **Government Motions**

(i) **Proposed resolution to be moved by the Secretary for Constitutional and Mainland Affairs under the District Councils Ordinance relating to the District Councils Ordinance (Amendment of Schedule 3) Order 2010**

(Wording of the proposed resolution issued vide LC Paper No. CB(3) 9/10-11 dated 4 October 2010.)

(LC Paper No. LS 97/09-10)

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35. The Chairman said that the proposed resolution was for seeking the approval of the Legislative Council ("LegCo") of the District Councils Ordinance (Amendment of Schedule 3) Order 2010 to add a total of seven elected seats to six District Councils ("DCs") from the fourth term DCs which would start on 1 January 2012. The Panel on Constitutional Affairs had been briefed on the proposal at its meeting on 19 July 2010. While members had raised no objection to the proposal, they expressed different views on the level of population quota adopted for calculating the number of elected DC seats.

36. Ms Emily LAU considered it necessary to form a subcommittee to study the proposed resolution.

37. The Chairman proposed that a subcommittee be formed to study the proposed resolution in detail. Members agreed. The following Members agreed to join: Mr CHEUNG Man-kwong, Ms Emily LAU and Mr Ronny TONG.

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

(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) (No. 4) Regulation 2010; and**
- **the Poisons List (Amendment) (No. 4) Regulation 2010**

*(Wording of the proposed resolution issued vide LC Paper No. CB(3) 8/10-11 dated 4 October 2010.)
(LC Paper No. LS 96/09-10)*

39. The Chairman said that the proposed resolution was for seeking LegCo's approval of the Pharmacy and Poisons (Amendment) (No. 4) Regulation 2010 and the Poisons List (Amendment) (No. 4) Regulation 2010 to add three substances in Division A in both the First and Third Schedules to the Pharmacy and Poisons Regulations and to Division A in Part I of the Schedule to the Poisons List Regulations respectively. The addition of these substances meant that poisons containing these substances could only be sold on registered premises of an authorized seller by a registered pharmacist or in the pharmacist's presence and under the pharmacist's supervision.

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

(d) **Members' motions**

- (i) **Motion on "Improving personal data privacy protection"**
(Wording of the motion issued vide LC Paper No. CB(3) 19/10-11 dated 7 October 2010.)
- (ii) **Motion on "Facing up to the transport needs of people with disabilities"**
(Wording of the motion issued vide LC Paper No. CB(3) 20/10-11 dated 6 October 2010.)

41. The Chairman said that the above motions would be moved by Mr WONG Kwok-hing and Mr LEUNG Yiu-chung respectively and the wording of the motions had been issued to Members.

42. The Chairman reminded Members that the deadline for giving notice of amendments, if any, to the motions was Tuesday, 12 October 2010.

Report on the study of subsidiary legislation

43. The Chairman said that the list of subsidiary legislation the period for amendment of which would expire on 20 October 2010 had been tabled at the meeting. The list contained a total of 16 items of subsidiary legislation. Members who wished to speak on the subsidiary legislation should notify the Clerk by 5:00 pm on Tuesday, 12 October 2010.

VIII. Report of Bills Committees and subcommittees

- (a) **Report of the Subcommittee on Country Parks (Designation) (Consolidation) (Amendment) Order 2010**
(LC Paper No. CB(1) 2980/09-10)

44. Miss Tanya CHAN, Chairman of the Subcommittee, reported on the deliberations of the Subcommittee as detailed in its report. She said that the Subcommittee had held seven meetings, one of which was to receive views from deputations. The Subcommittee had also conducted a site visit to the South East New Territories ("SENT") Landfill. As of noon of the day of the House Committee meeting, the Subcommittee had received a total of 4 350 submissions.

45. Miss Tanya CHAN elaborated that the Subcommittee had held in-depth discussions with the Administration on the environmental impacts arising from the existing operation of the SENT Landfill, including odour management and control measures; monitoring of odour control measures; as well as the design, operation and management of refuse collection vehicles. The Subcommittee had also examined the justifications for extending the SENT Landfill, the need for excision of land from the Clear Water Bay Country Park for the SENT Landfill extension and the issue of compensation.

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46. Miss Tanya CHAN further reported that at the meeting held on 27 September 2010, the Subcommittee had passed a motion requesting CE to repeal the Amendment Order and re-introduce it after the measures taken to combat the odour problem had proven to be effective. Members had urged the Administration to proactively discuss with the Sai Kung District Council on the provision of compensatory facilities in Tseung Kwan O to win the support of local residents. The Administration had responded that as there was an urgent need to extend the SENT Landfill to address the imminent waste problem, the Administration considered it undesirable to repeal the Amendment Order. At the meeting on 4 October, the Subcommittee had passed a motion resolving that a motion be moved by her in her capacity as Chairman of the Subcommittee to repeal the Amendment Order.

47. Miss Tanya CHAN added that subsequent to the meeting on 4 October, the Administration had provided its further views concerning the repeal of the Amendment Order. It was the view of the Administration that CE did not have the power to lawfully repeal the Amendment Order. It followed that LegCo also did not have power to repeal the Amendment Order. However, the Legal Adviser ("LA") of LegCo held the view that section 34(2) of the Interpretation and General Clauses Ordinance (Cap. 1) provided for the power of LegCo to amend any subsidiary legislation. As the expression "amend" included "repeal", LegCo also had the power to repeal any subsidiary legislation. Members were gravely concerned that the Administration had not raised its legal views until the Subcommittee had decided to move a motion to repeal the Amendment Order, and considered that such an approach had adversely affected the relationship between the Executive and the Legislature. As this would have constitutional and legal implications, many members expressed grave reservations about the Administration's legal position on the matter.

48. Miss Tanya CHAN further said that the Subcommittee had held special meetings on 6 and 7 October to consider and discuss the legal views raised by the Administration lately. After discussions, the Subcommittee agreed to proceed with its original decision to move a motion at the Council meeting on 13 October to repeal the Amendment Order. She had given notice for moving the motion, pending the President's ruling on it.

49. Miss Tanya CHAN further said that before the deadline for giving notice of amendments at midnight on 6 October 2010, the Administration gave notice to move a proposed resolution to defer the commencement date of the Amendment Order by 14 months to 1 January 2012. In the light of this unexpected development, the Subcommittee had held a special meeting on 7 October to discuss the amendment proposed by the Administration. Some members were concerned how LegCo, in the event of passage of the Administration's motion, could act as a gatekeeper to stop the extension of the SENT Landfill should the Administration fail to resolve the odour problem. At the meeting held on 7 October, the Secretary for the Environment ("SEN") had undertaken not to submit any funding proposal on the extension of the

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SENT Landfill to the Finance Committee within the next 14 months. In the meantime, the Administration would report to the Panel on Environmental Affairs on the operation of the SENT Landfill. Members could also consider forming a subcommittee comprising representatives from different political parties and groupings to follow up on the operation of the SENT Landfill.

50. Miss Tanya CHAN added that as the legal views advanced by the Administration would limit the power of LegCo in the scrutiny of subsidiary legislation, the Subcommittee had requested the Administration to clarify as early as possible when introducing subsidiary legislation into LegCo whether LegCo had the power to amend (including repeal) them. She appealed to Members to support the Subcommittee's motion to repeal the Amendment Order at the Council meeting on 13 October.

51. Ms Emily LAU said that the matter was very serious. From time to time, Members dealt with subsidiary legislation which were not subject to amendment by LegCo, and such a restriction had been provided expressly in the relevant principal legislation. However, for the Amendment Order, there was no express statutory provision restricting the power of LegCo to amend or repeal it. It was not until the Subcommittee had almost completed its scrutiny work did the Administration indicate that LegCo did not have the power to repeal the Amendment Order. She had opined at the Subcommittee meeting held on 7 October that the Secretariat should confirm with the Administration whether LegCo had the power to amend or repeal an item of subsidiary legislation upon its introduction into LegCo. As SEN had pointed out at the same Subcommittee meeting, such a matter was not to be resolved between lawyers. In her view, the Administration could have resolved the matter by not accepting the legal opinion of its counsel and confirming that LegCo had the power to repeal the Amendment Order. She hoped that the President would make a ruling on the repeal motion as soon as possible. Given the importance of the issues arising from the matter, she considered that there should be a forum for Members to discuss and address them at root. To facilitate Members' discussion, she requested the Secretariat to compile background information which should include information on any similar precedent cases.

52. At the invitation of the Chairman, Secretary General ("SG") said that the Secretariat would conduct research and collate information on the issues of concern raised by Members to facilitate their discussion at an appropriate forum.

53. Ms Emily LAU requested the Chairman to relay to CS that LegCo was very shocked by the matter.

54. The Chairman said that a thorough review on the matter would be conducted and Members would have the opportunity to discuss it.

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55. Mr KAM Nai-wai said that according to the views of LA, LegCo had the power to repeal the Amendment Order. He sought confirmation on whether the Secretariat was seeking independent legal advice on the matter. Noting that the President's ruling on the repeal motion was awaited, he was concerned when the President would make his ruling and how he would rule should the independent legal advice obtained be contrary to that of LA. He further said that should the President rule the moving of the repeal motion out of order, he might request the Subcommittee to convene an urgent meeting to discuss possible courses of action. He stressed that the Subcommittee had agreed unanimously to move a motion to repeal the Amendment Order, and such unanimity was rare for a LegCo committee. He sought information from SG on the latest developments of the matter.

56. At the invitation of the Chairman, SG said that when the Administration indicated for the first time on 4 October that LegCo could only amend but not repeal the Amendment Order, she had already discussed with LA whether independent legal advice should be sought on the matter. It had always been the view that by virtue of the interpretation provisions of the Interpretation and General Clauses Ordinance (Cap. 1), the expression "amend" included "repeal". It was the first time that a contrary view had been advanced. On 6 October, with the agreement of the President, the Secretariat had invited a solicitors firm to engage Mr Philip Dykes, Senior Counsel, to provide legal advice on the matter. The legal advice would be ready by 9 October afternoon. She would further discuss the matter with LA upon receipt of the legal advice.

57. Mr Ronny TONG said that he had attended the Subcommittee meeting at which the matter was discussed. In his view, the question of whether LegCo had the power to repeal the Amendment Order could not be decided by the legal advice obtained from counsel. So long as the moving of the repeal motion was in compliance with the relevant procedures of LegCo, it should be proceeded with. Any legal challenge against the powers of LegCo in doing so would ultimately have to be settled in the court. He did not subscribe to the view that LegCo should enquire with the Administration on LegCo's powers to amend each and every time a subsidiary legislation was introduced into LegCo. He considered this absurd, unacceptable and an affront to the dignity and constitutional status of LegCo. It would be more acceptable to request the Administration to clearly inform LegCo when it was of the view that LegCo could not amend or repeal the subsidiary legislation submitted for scrutiny.

58. The Chairman said that while Members could give views on how to handle the matter, the relevant issues should be discussed at a proper forum in due course.

59. Mr Ronny TONG suggested that the matter be discussed by the Panel on Constitutional Affairs.

60. The Chairman noted Mr Ronny TONG's view.

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61. Mr James TO said that the matter had serious constitutional implications, as it was concerned with the question of whether LegCo had the powers under the constitutional structure to monitor the work of the Administration and amend the subsidiary legislation introduced by the Administration. In his view, the Secretariat should conduct a review on the subsidiary legislation enacted to identify all those items in respect of which LegCo did not have the power to amend and/or repeal, and collate information on any precedent cases similar to that of the Amendment Order. At the same time, the Administration should also be requested to provide information on subsidiary legislation which, in its view, could only be amended but not repealed by LegCo. After obtaining all the relevant information, Members could then deliberate on the ways to rectify the issues involved either in one go or on a case-by-case basis. He was strongly of the view that LegCo had the power to amend and repeal subsidiary legislation and said he would do everything he could including resorting to judicial review to preserve such important power of LegCo. He added that if the Administration's view on the power of LegCo in respect of the Amendment Order was supported, there would be serious imbalance of powers between the Executive Authorities and the Legislature.

62. Ms Audrey EU considered the Administration's way of handling the matter grossly unjustifiable and unacceptable. She found it inconceivable that the Administration indicated only at the very last minute that LegCo could only amend the commencement date of the Amendment Order, but could not repeal it. In her view, it should be the responsibility of the Administration to provide information to LegCo on all subsidiary legislation in respect of which the power of LegCo was restricted to amend but not to repeal, and CS should be requested to provide such information. She pointed out that in the event of the President approving the moving of the repeal motion and the passage of the motion, the Administration could seek a declaration from the court that the repeal had no effect in law. She was concerned whether Members would have any recourse, such as instituting legal proceedings against the President, in the event of the President ruling the repeal motion out of order. She invited LA's views in this regard.

63. At the invitation of the Chairman, LA said that it was the responsibility of the President to make decisions in accordance with the provisions of the Rules of Procedure, in a prudent manner and in good faith. While section 23 of the Legislative Council (Powers and Privileges) Ordinance (Cap. 382) provided that the President of LegCo should not be subject to the jurisdiction of the court, it applied only in respect of lawfully exercised powers. There were cases in the past where LegCo Members had taken legal proceedings against certain decisions made by the President. One such case was the court proceedings taken by Mr LEUNG Kwok-hung against the decision made by the President in respect of the Agenda of a Council meeting. The same avenue for seeking relief against a ruling made by the President existed, subject to the application of relevant factors.

64. Mr IP Wai-ming hoped that the President would give approval for the moving of the repeal motion by the Chairman of the Subcommittee, which was

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a unanimous decision of the Subcommittee. He said that residents of Tseung Kwan O and the public had been bothered by problems relating to landfills for many years. The Administration had missed many opportunities to resolve the problems in the last decade, and the incident had provided an opportunity for Members and the public to press the Administration to take actions to address them. He noted the suggestion for the formation of a subcommittee comprising representatives from different political affiliations to follow up the issue of waste reduction, among others, and considered it worthy of consideration. He pointed out that the Subcommittee members were furious because it was only after the Subcommittee had studied the Amendment Order for a few months, conducted a site visit to the SENT Landfill and completed its report did the Administration raise the legal issues concerning LegCo's power to repeal the Amendment Order. Should there be such a restriction on LegCo's power, the Administration should have informed LegCo at the outset. He considered the Administration's handling of the matter autocratic and disrespectful to LegCo. In his view, similar incidents might recur in future. He would not mind if the matter was taken to the court for the purpose of delineating the respective powers of the Executive Authorities and the Legislature.

65. The Chairman reiterated that the subject would be discussed in-depth at an appropriate forum after a review had been conducted and information collated by the Secretariat.

66. Dr Priscilla LEUNG said that she was not a member of the Subcommittee. She was surprised to learn of the Administration's legal advice that LegCo did not have the power to repeal the Amendment Order. She stressed that the law-making power of LegCo was provided in the BL and this was most important. She could not accept that LegCo had the power to enact and amend bills but not subsidiary legislation. She considered it necessary to examine the law-making power of LegCo in respect of subsidiary legislation arising from the Amendment Order. She stressed that it was not uncommon for different legal experts to have different legal opinion. While legal opinion could be sought on whether LegCo had the power to repeal the Amendment Order, the legal advice obtained should be for reference only. LegCo should not be dictated by a certain piece of legal advice and should make a decision on the matter by herself. In her view, the court was also not the most appropriate authority to delineate the powers of the Executive Authorities and the Legislature as these were political powers.

67. Ms Cyd HO said that at the Subcommittee meeting held on 7 October 2010, SEN had confirmed that it was not the power of the Executive Authorities to enact laws. She pointed out that under Article 62(5) of the BL, the powers and functions of the Executive Authorities were to draft bills. The power to enact laws rested with the Legislature. She considered it necessary to reaffirm with CS the respective powers and functions of the Legislature and the Executive Authorities under the constitutional structure. In the event that any existing ordinances had provided for the law-making power of the Executive Authorities according to the Administration's interpretation, it should

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be rectified in one go. She appealed to Members to attend the relevant Council meeting and vote for the motion to be moved by Miss Tanya CHAN.

68. Mr Albert CHAN said that the approach taken by the Administration in the scrutiny process had set a very bad precedent. It was only after the Subcommittee had decided unanimously to repeal the Amendment Order did the Administration provide its legal advice that LegCo did not have the power to repeal it. It was also after the making of that decision did SEN attend the Subcommittee's meetings twice. Moreover, SEN had given very short notice for proposing an amendment to the Amendment Order. He considered that the Administration had abused its power, hindered LegCo in the scrutiny of legislation and insulted LegCo. He had never seen such bad performance of the Administration since his joining of the Legislature in 1991. He opined that the Administration should be condemned, and his views should be conveyed to CS, albeit that this might be futile.

69. Mr Albert CHAN further said that rarely had a LegCo committee agreed on a matter unanimously as in the case of the Subcommittee. He was concerned that members of some political affiliations had not joined the Subcommittee. Of those members who had not joined the Subcommittee, 16 were elected by functional constituencies. He considered it ironical that the stance of these members who had not participated in the scrutiny of the Amendment Order and studied the relevant papers could be decisive on the repeal motion. This was unfair to members of the Subcommittee. He stressed that should the non-Subcommittee members vote to support SEN's motion to defer the commencement of the Amendment Order without regard to the views of the Subcommittee, they would be insulting the Subcommittee, LegCo and members of the public.

70. Mr TAM Yiu-chung considered it important for LegCo's decisions to be founded on legal basis even though different interpretations might be held by different persons. In his view, as it had been agreed that a review would be conducted to prevent the recurrence of similar incidents, the Administration should be advised to discuss with LA of LegCo at an early stage in future should it consider that LegCo did not have the power to repeal a certain piece of legislation.

71. Mr Paul TSE said that while Members should not jump to any premature conclusions without sufficient evidence that the Administration had handled the matter in bad faith, there was prima facie case to suggest its poor handling of the matter. The issue at stake was no longer the problem of landfills but the authority of LegCo. To facilitate his further understanding of the matter, he asked for information on when the Administration sought legal advice. He also expressed dissatisfaction with the Administration's mere provision of a summary of legal advice obtained but not the legal advice in its entirety. This was very different from the transparent practice adopted by the Secretariat. He further opined that Members should not create conflict among themselves in the matter on account of their election by functional constituencies or geographical constituencies. Some Members returned by functional

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constituencies like himself had not joined the Subcommittee, but this should not be taken that they had no concern about the matter or had not studied the relevant papers. He considered it a futile attempt for certain Members to influence the stance of other Members on the matter by verbal threats.

72. Mr LEUNG Kwok-hung said that under the BL, the powers of the Executive Authorities were to draft and introduce bills. The matter was serious as the Executive Authorities were attempting to take away the Legislature's monitoring power. Should LegCo have no power to repeal the Amendment Order as held by the Administration, it would be tantamount to removing the powers of LegCo altogether. It would be disastrous for Members to support the Administration's view. He considered it necessary for the Administration to provide the legal advice obtained in its entirety and not only the summary. In his view, the matter was a constitutional issue relating to the functions of LegCo; the dignity of not only Members but also electors was at stake. He expressed grave dissatisfaction with the Administration's way of handling the matter. To express LegCo's dissatisfaction, he appealed to Members not to join the lunch with the Chief Executive to be hosted by the President.

73. The Chairman reiterated that the issues arising from the matter were not intended to be discussed at the meeting. A thorough review would be conducted and the issues would be discussed at a proper forum in due course.

74. Miss Tanya CHAN offered to provide the information sought by some non-Subcommittee members. She said that the Administration had not stated categorically when it sought legal advice. It was not the case that the Administration had advised the Subcommittee in end July 2010 that LegCo had no power to repeal the Amendment Order. The Administration had only advised that CE had no power to withdraw the Amendment Order. She further said that in the opinion of the legal adviser to the Subcommittee, LegCo had the power to repeal the Amendment Order, and he had not said that LegCo had the power to withdraw it. The Subcommittee had asked for the legal advice obtained by the Administration but the Administration refused to provide the legal advice in its entirety on the ground of legal professional privilege.

75. Ms Emily LAU considered it necessary for the House Committee to convene an urgent special meeting in the event that the President ruled the motion proposed by Miss Tanya CHAN out of order.

76. The Chairman took note of Ms Emily LAU's view.

77. LA advised that the law-making powers of LegCo as provided in the BL were clear as established in case law. He drew Members' attention to Article 73(1) of the BL that the powers of LegCo were to enact, amend or repeal laws in accordance with the provision of the BL and legal procedures. The legal procedures relevant to the Amendment Order were the negative vetting procedures. Although the Country Parks Ordinance (Cap. 208) was enacted in 1976, under Article 8 of the BL, the laws previously in force in Hong Kong

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should be maintained. Under Article 64 of the BL, the Government must be accountable to LegCo, and it should implement laws passed by LegCo and already in force.

(b) Report of the Subcommittee on the three Inland Revenue (Double Taxation Relief and Prevention of Fiscal Evasion with respect to Taxes on Income) Orders gazetted on 2 July 2010
(LC Paper No. CB(1) 2975/09-10)

78. Mr James TO, Chairman of the Subcommittee, reported that the deliberations of the Subcommittee had focused on the issue of whether the respective Comprehensive Agreements for Avoidance of Double Taxation ("CDTAs") signed by Hong Kong with Brunei, the Netherlands and Indonesia had adopted all the safeguards relating to disclosure of information of Hong Kong taxpayers undertaken by the Administration during the scrutiny of the Principal Ordinance. The Subcommittee was satisfied that the three CDTAs had incorporated the relevant safeguards and supported the three Orders.

79. The Chairman reminded Members that as the deadline for amending the Orders was 20 October 2010, the deadline for giving notice of amendments, if any, was Tuesday, 12 October 2010.

IX. Position on Bills Committees and subcommittees
(LC Paper No. CB(2) 2344/09-10)

80. The Chairman said that there were 13 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.

81. The Chairman invited Members to note that the following seven Bills Committees would have to work beyond three months since commencement of their work –

- (a) Bills Committee on Motor Vehicle Idling (Fixed Penalty) Bill;
- (b) Bills Committee on Road Traffic (Amendment) Bill 2010;
- (c) Bills Committee on Food Safety Bill;
- (d) Bills Committee on Legal Practitioners (Amendment) Bill 2010;
- (e) Bills Committee on Matrimonial Proceedings and Property (Amendment) Bill 2010;
- (f) Bills Committee on Residential Care Homes (Persons with Disabilities) Bill; and
- (g) Bills Committee on Communications Authority Bill.

X. Duration of Council meetings

(Letter dated 28 September 2010 from Hon Emily LAU Wai-hing to the Chairman of the House Committee (LC Paper No. CB(2)2345/09-10(01))

82. Ms Emily LAU said that there was a consensus among Members on the arrangement for continuation of a Council meeting, namely when the President was of the opinion that it was unlikely that the business on the Agenda of a Council meeting could be finished by about midnight on the day of the meeting, he would suspend the meeting at about 10:00 pm and ordered that it be resumed the following day at 9:00 am or 2:30 pm for continuation of the unfinished business. The President had all along adhered to such an arrangement. However, for the Council meeting commencing on 14 July 2010, the standing arrangement had not been followed. The meeting had not been suspended on 16 July and had continued overnight until its end at about 2:30 pm on 17 July. She noted that the adoption of such an arrangement for that Council meeting was because some Members had scheduled to leave town on 17 or 18 July. In her view, Members should take into account the possibility of the last Council meeting in a session having to continue for a few days in planning their schedules to leave town. She stressed that it was not desirable to continue a Council meeting overnight, as it was tiring for Members and the debate in the Council would not be covered by the media. She hoped that there would be no more overnight Council meetings, and appealed to Members to affirm their consensus on the arrangement for continuation of a Council meeting and to avoid scheduling their subsequent activities too close to the date of the last meeting of a session.

83. The Chairman said that Members agreed in principle that it was not desirable to continue a Council meeting overnight. Such meeting arrangements were adopted only under very exceptional circumstances. She hoped that Members would make better planning in future to obviate the need for similar meeting arrangements.

XI. Election of members of The Legislative Council Commission

(LC Paper No. AS 347/09-10)

84. Members agreed that the election of members of The Legislative Council Commission would be held at the House Committee meeting on 22 October 2010.

XII. Election of the Chairman and Deputy Chairman of the House Committee for the 2010-2011 session

Election of Chairman

85. The Chairman called for nominations for the chairmanship of the House Committee for the 2010-2011 session. Mr TAM Yiu-chung nominated Ms

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Miriam LAU and the nomination was seconded by Ms Cyd HO. Ms Miriam LAU accepted the nomination.

86. The Deputy Chairman, Mr Fred LI, took over from Ms Miriam LAU to preside over the election. As there was no other nomination, Mr Fred LI declared Ms Miriam LAU elected as the Chairman of the House Committee for the 2010-2011 session.

Election of Deputy Chairman

87. The Chairman called for nominations for the deputy chairmanship of the House Committee for the 2010-2011 session. Mr CHEUNG Man-kwong nominated Mr Fred LI and the nomination was seconded by Mr WONG Sing-chi. Mr Fred LI accepted the nomination.

88. As there was no other nomination, the Chairman declared Mr Fred LI elected as the Deputy Chairman of the House Committee for the 2010-2011 session.

XIII. Any other business

Up-to-date position on the re-signification of membership of Panels

89. The Chairman reminded Members that the deadline for signification of new membership of Panels was 12:00 noon, Saturday, 9 October 2010.

90. There being no other business, the meeting ended at 3:51 pm.