

立法會
Legislative Council

LC Paper No. CB(2)1499/10-11
(These minutes have been seen
by the Administration)

Ref : CB2/BC/1/10

Bills Committee on Legislation Publication Bill

Minutes of meeting
held on Monday, 14 February 2011, at 10:45 am
in Conference Room B of the Legislative Council Building

Members present : Dr Hon Margaret NG (Chairman)
Hon Albert HO Chun-yan
Hon LAU Kong-wah, JP
Hon Cyd HO Sau-lan
Dr Hon Samson TAM Wai-ho, JP

Public Officers attending : Item II

Department of Justice

Mr Gilbert MO
Deputy Law Draftsman (Bilingual Drafting &
Administration)

Mr W C SUEN
Senior Assistant Law Draftsman (Professional
Development)

Ms Mabel CHEUNG
Senior Government Counsel

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Clerk in attendance : Mr Thomas WONG
Chief Council Secretary (2) 2

Staff in attendance : Mr Arthur CHEUNG
Senior Assistant Legal Adviser 2

Ms Alice LEUNG
Senior Council Secretary (2) 2

Miss Meghan MOK
Legislative Assistant (2) 2

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I. Meeting with deputations and the Administration
[LC Paper Nos. CB(2)989/10-11(01) and (02)]

The Bills Committee deliberated (index of proceedings attached at **Annex**).

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2. The Administration was requested to respond in writing to the following concerns raised by members on the proposed electronic database of legislation with legal status ("the Database") under the Legislation Publication Bill ("the Bill") -

- (a) whether the legislation relating to the establishment of the electronic legislation databases in the overseas jurisdictions stated in paragraphs 7 to 11 of the Administration's paper contained any provisions on the status and availability/retirement of the official printed copy of legislation after the implementation of such databases;
- (b) in connection with Clause 5 of the Bill,
 - (i) the first certification date of a copy of an Ordinance published in the Database, and whether such a copy would be certified when accessed every time;
 - (ii) whether the past version of an Ordinance back captured by the Database after its launch could be certified retrospectively; and

Action

- (iii) the types of past versions of legislation to be included in the Database;
- (c) whether there were any examples of Ordinances and/or subsidiary legislation which did not commence at zero hour of a particular day; and
- (d) in connection with Clause 17 of the Bill (particularly Clauses 17(b), (c), (d) and (e)) on the Secretary for Justice ("SJ")'s revision powers,
 - (i) whether there were any examples of SJ's exercise of such powers under the existing legislation; and
 - (ii) whether SJ's exercise of such powers would effect any change of powers of a department/office or an officer.

Admin 3. The Administration was also requested to provide a copy of the relevant parts of the standards and guidelines issued by the Office of the Government Chief Information Officer on information technology operation management and information security incident handling stated in paragraph 3 of the Administration's paper.

Admin 4. Members agreed that the Administration should prepare a financial proposal on the exercise of incorporating the past versions of legislation between 1991 (when the Loose-leaf Edition of the Laws of Hong Kong was first issued) and 30 June 1997 in the Database, including the timeframe, the tasks to be involved, the manpower to be incurred and the cost estimate, and submit the proposal to the Panel on Administration of Justice and Legal Services for consideration.

III. Any other business

Dates of next meetings

5 Members agreed to hold the next two meetings on -

- (a) 9 March 2011 at 8:30 am; and
- (b) 28 March 2011 at 10:45 am.

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6. The meeting ended at 12:42 pm.

Council Business Division 2
Legislative Council Secretariat
11 April 2011

**Proceedings of the meeting of the
Bills Committee on Legislation Publication Bill
on Monday, 14 February 2011, at 10:45 am
in Conference Room B of the Legislative Council Building**

Time marker	Speaker	Subject	Action required
000000 - 001641	Chairman Admin	<p>Confirmation of minutes</p> <p>The Administration's briefing on its written response to concerns raised by members on the proposed electronic database of legislation with legal status ("the Database") under the Legislation Publication Bill ("the Bill") at the meeting on 24 January 2011 [LC Paper No. CB(2)989/10-11(01)].</p>	
001642 - 002959	Chairman Ms Cyd HO Admin Mr LAU Kong-wah	<p>Ms Cyd HO's enquiry about whether there was any overseas jurisdiction which did not make available an official printed copy of legislation after launching the electronic legislation database, and if no, the reasons for the Administration to risk retiring the Loose-leaf Edition of the Laws of Hong Kong ("the Loose-leaf Edition") after the full implementation of the Database.</p> <p>The Administration's response that similar to the arrangement under the Bill, a reprint of legislation published in the electronic legislation databases was available in the overseas jurisdictions under study, although the format of such reprints might vary.</p> <p>The Chairman's concern that -</p> <p>(a) Clause 9 of the Bill only stated that the Secretary for Justice ("SJ") might, instead of have to, cause an authenticated copy of any Ordinance to be published in the form of a booklet;</p> <p>(b) unlike the Loose-leaf Edition which contained a complete set of the laws of Hong Kong, the copy of individual Ordinances might only be selectively published in the form of a booklet after the implementation of the Database; and</p> <p>(c) the Bill did not expressly state that both a printed copy of an Ordinance and its electronic copy published in the Database would be deemed authentic and would co-exist after the retirement of the Loose-leaf Edition.</p>	

Time marker	Speaker	Subject	Action required
		<p>The Administration's response that a printed copy of individual Ordinances would continue to be available, as Clause 9 of the Bill expressly provided for the publication of booklets of an authenticated copy of Ordinances, and Clause 9(2) would give an official status to such booklets.</p> <p>The Chairman's request for the Administration to provide information on whether the legislation relating to the establishment of the electronic legislation databases in the overseas jurisdictions stated in paragraphs 7 to 11 of the Administration's paper contained any provisions on the status and availability/retirement of the official printed copy of legislation after the implementation of such databases.</p> <p>Mr LAU Kong-wah's view that while Clauses 5 to 8 of the Bill clearly stated the status of copies of various types of legislation published in the Database, it appeared that Clauses 9(1) and 9(2) did not clearly give an official status to the copy of individual Ordinances to be published in the form of a booklet. His suggestion that these clauses should be revised. The Administration's undertaking to re-consider the drafting of the clauses.</p>	<p>Admin to provide information (para. 2(a) of minutes)</p>
003000 - 003614	Chairman Ms Cyd HO Admin	<p>In connection with the contingency measures to recover the Database stated in paragraph 3 of the Administration's paper, the Chairman's request for the Administration to provide a copy of the relevant parts of the standards and guidelines issued by the Office of the Government Chief Information Officer on information technology operation management and information security incident handling.</p> <p>Regarding paragraph 12 of the Administration's paper on the rough estimate of the manpower to be incurred for the exercise of incorporating the past versions of legislation between 1991 (when the Loose-leaf Edition was first issued) and 30 June 1997 in the Database ("the exercise"), Ms Cyd HO's view that given its huge fiscal reserves, the Administration should well afford to conduct the exercise, and her worry that the Administration neither wished to conduct the exercise by itself nor planned to outsource it.</p>	<p>Admin to provide information (para. 3 of minutes)</p>

Time marker	Speaker	Subject	Action required
		<p>The Administration's response that -</p> <ul style="list-style-type: none"> (a) the exercise was in the plan contemplated, and conducting the exercise by in-house staff would be more appropriate than outsourcing; and (b) members' support for the exercise would be reflected in its bid for resources. <p>The Chairman's request for the Administration to prepare a financial proposal on the exercise, including the timeframe, the tasks to be involved, the manpower to be incurred and the cost estimate, and submit the proposal to the Panel on Administration of Justice and Legal Services for consideration.</p>	<p>Admin to provide information (para. 4 of minutes)</p>
003615 - 011733	Chairman Admin Ms Cy HO	<p>On Clause 5(1) of the Bill on the status of authenticated copies of Ordinances published in the Database, the Chairman noted that the electronic copy of an Ordinance accessed by users from the Database as at a particular time on a particular date was an authenticated copy of the Ordinance as at that time on that date. Her view that if the past version(s) of an Ordinance before 1 July 1997 would not be back captured by the Database after its launch, there would be no authenticated past electronic version of the Ordinance in the Database.</p> <p>On the Chairman's enquiry about the date on which the Database would come into operation, the Administration's response that under Clause 1(2) of the Bill, the commencement date of the operation of the Database would be a day to be appointed by SJ by notice published in the Gazette.</p> <p>Given Clause 1(2) of the Bill, the Chairman was of the view that -</p> <ul style="list-style-type: none"> (a) Clause 5, particularly its expression "as at a particular time on a particular date" in relation to the authentication of an electronic copy of an Ordinance published in the Database, was loosely drafted, as such a copy could only be authenticated when or after the Database was launched instead of at any time; and (b) while an electronic copy of an Ordinance published in the Database would bear the date and time at which the Ordinance commenced or was accessed, the "time" element under Clause 5 was inapplicable 	

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		<p>to the past version(s) of an Ordinance published before the launch of the Database.</p> <p>The Administration's response that -</p> <ul style="list-style-type: none"> (a) the existing drafting of Clause 5 did not cover the date on which an authenticated copy of an Ordinance was accessed from the Database; (b) under Clause 5, a copy of an Ordinance was an authenticated copy of the Ordinance as at a particular time on a particular date if the copy was published in the Database and certified by the Law Draftsman to be the consolidated version of the Ordinance as at that time on that date; (c) if the Database would be launched on 1 January 2015, it would contain an authenticated current version of an Ordinance (i.e. the version as at 1 January 2015), and the unauthenticated past version(s) of the Ordinance (between 1 July 1997 and 14 December 2014) back captured by the Database; and (d) the electronic copy of an Ordinance published in the Database would bear two dates, namely the date of the Ordinance last being updated and the date on which the electronic copy was accessed. <p>Noting from the Administration that the Database would not commence operation until the end of 2015, the Chairman was of the view that -</p> <ul style="list-style-type: none"> (a) a copy of an Ordinance published in the Database could only be authenticated in accordance with Clause 5 when or after the Database was launched; (b) the Loose-leaf Edition could not be retired, as the past version(s) of Ordinances (i.e. those before the launch of the Database) could not be authenticated retrospectively after the launch of the Database; and (c) the Administration should consider retaining Clauses 26 and 27 of the Bill which enabled the issuance of the Loose-leaf Edition. <p>The Administration's response that the Loose-leaf Edition would not retire until 2020-2021 at the earliest when the authentication of the current version of the</p>	

Time marker	Speaker	Subject	Action required
		<p>whole set of Hong Kong legislation in the Database had been completed.</p> <p>In connection with Clause 5, the Chairman's request for the Administration to clarify in writing –</p> <p>(a) the first certification date of a copy of an Ordinance published in the Database, and whether such a copy would be certified when accessed every time;</p> <p>(b) whether the past version(s) of an Ordinance back captured by the Database after its launch could be certified retrospectively; and</p> <p>(c) the types of past versions of legislation to be contained in the Database.</p> <p>Ms Cyd HO's view that as the Loose-leaf Edition would not be retired until 2020-2021 at the earliest, the Administration should not request the Bills Committee to decide whether to repeal Clauses 26 and 27 of the Bill at present.</p> <p>Ms Cyd HO's and the Chairman's view that the "time" element under Clause 5 of the Bill in relation to the authentication of a copy of an Ordinance published in the Database was unnecessary.</p> <p>The Administration's response that the inclusion of the "time" element in Clause 5 was to cater for certain provisions which might not commence at zero hour of a day, e.g. the Public Revenue Protection Order might commence at 11 am on a certain date.</p> <p>The Administration's undertaking to reconsider the drafting of Clause 5 and provide examples of Ordinances and/or subsidiary legislation which did not commence at zero hour of a particular day.</p>	<p>Admin to provide information (para. 2(b) of minutes)</p> <p>Admin to provide information (para. 2(c) of minutes)</p>
011733 - 015240	Chairman Ms Cyd HO Admin SALA2	The Chairman's and Ms Cyd HO's view that certain provisions of the Bill conferred wide powers on SJ to change the text of a copy of an Ordinance published in the Database, e.g. Clauses 12(1)(e), 12(1)(k) and 17(a), (b) and (e). Taking 12(1)(e) as an example, the Chairman noted from the Administration's paper that similar editorial powers provided for in the legislation on electronic databases in overseas jurisdictions were more specific.	

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		<p>The Administration's response that Clauses 12 and 17 of the Bill were treated differently. The editorial powers under Clause 12 would be confined to making minor amendments with a view to improving the readability and presentation of legislation, while the exercise of the revision powers under Clause 17 would be by way of subsidiary legislation, and thus the scrutiny of the Legislative Council ("LegCo") would be required. The proposed editorial powers under the Bill were narrower than those for the electronic legislation databases in the overseas jurisdictions under study.</p> <p>Ms Cyd HO's view that under Clause 17(e) of the Bill, an alteration to the name, title, etc. of a department/office might effect a change of powers of that department/office. For instance, under the re-organization of the policy bureaux of the Government Secretariat in 2007, the increase of the number of Directors of bureaux from 11 to 12 involved a change of the power structure within the Government.</p> <p>Noting that if there was a change of the name or title of a department leading to a change of its powers and if the order made by SJ under Clause 17(e) to reflect that change would be scrutinized by LegCo through the negative vetting procedure, the Legal Advisor expressed concern about whether it would be proper for SJ to explain to LegCo the re-organization, as SJ was not the Principal Official responsible for it.</p> <p>The Administration's response that -</p> <ul style="list-style-type: none"> (a) the editorial powers under Clause 17(e) of the Bill could only be used to make an alteration to the text of an Ordinance to reflect the name, title, etc. of a department or an officer that had already been changed. Clause 17(e) could not be used to effect the change of powers of a department or an officer; and (b) the re-organization of the policy bureaux of the Government Secretariat in 2007 was conducted through a LegCo Resolution under section 54A of the Interpretation and General Clauses Ordinance (Cap. 1). 	

Time marker	Speaker	Subject	Action required
		<p>The Chairman's view that it appeared that Clause 17(e) could enable SJ to effect a change of powers of a department or an officer, depending on the Administration's interpretation.</p> <p>In connection with Clause 17 (particularly Clauses 17(b), (c), (d) and (e)) on SJ's revision powers, the Administration was requested to -</p> <p>(a) provide examples of SJ's exercise of such powers under the existing legislation; and</p> <p>(b) clarify whether SJ's exercise of such powers would effect any change of powers of a department/office or an officer.</p>	<p>Admin to provide information (para. 2(d)of minutes)</p>
015241-015744	Chairman	Dates of future meetings	

Council Business Division 2
Legislative Council Secretariat
11 April 2011