

立法會
Legislative Council

LC Paper No. CB(2) 2655/10-11
(These minutes have been seen
by the Administration)

Ref : CB2/BC/1/10

Bills Committee on Legislation Publication Bill

Minutes of meeting
held on Tuesday, 17 May 2011, at 2:30 pm
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 I

Department of Justice

Mr Gilbert MO
Deputy Law Draftsman
(Bilingual Drafting and Admin)

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

Ms Mabel CHEUNG
Senior Government Counsel

Mr Peter SZE
Government Counsel

Action

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 Monique TSEUNG
Legislative Assistant (2)2 (Acting)

Action

I. Meeting with the Administration

[LC Paper Nos. CB(3)28/10-11, CB(2)330/10-11(01), CB(2)1537/10-11(01), CB(2)1766/10-11(01) and CB(2)1766/10-11(02)]

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

2. The Bills Committee completed the clause-by-clause examination of the Legislation Publication Bill ("the Bill").

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3. Members requested the Administration to -

(a) reconsider the wording of Clause 17(c) and the proposed revised Clauses 17(ed) and (ee) of the Bill to avoid uncertainty;

(b) ascertain whether safeguards similar to those under Clauses 13 and 14 of the Bill had also been available in the Laws (Loose-leaf Publication) Ordinance 1990 in relation to the Secretary for Justice ("SJ")'s editorial amendments to the Loose-leaf Edition of the Laws of Hong Kong, and if no,

Action

consider putting in place such safeguards; and

- (c) clarify whether the Legislative Council ("LegCo")'s powers under sections 98A, 98B and 98C of the Interpretation and General Clauses Ordinance (Cap. 1) had been covered by the Bill, and explain at the resumption of the second reading debate on the Bill why the proposed revised Clause 12(a) of the Bill was preferable to section 98A of Cap. 1, given that the repeal of the latter would result in the abolition of LegCo's powers to annul by a resolution any order made by SJ to amend any Ordinance under the proposed revised Clause 12 of the Bill.

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4. The Bills Committee requested the Administration to –

- (a) set up a working group consisting of main users of Hong Kong legislation, including representatives of the Judiciary, the Hong Kong Bar Association, the Law Society of Hong Kong and the Legal Service Division of the LegCo Secretariat, to monitor the planning and implementation of the proposed electronic legislation database with legal status ("the Database") under the Bill, and keep the working group updated on the progress of the Database project and solicit its views at regular intervals; and
- (b) report to the Panel on Administration of Justice and Legal Services on the Database project before the formal launch of the Database, including the views solicited from the working group.

5. Members agreed that the Administration's Committee Stage Amendments ("CSAs") and written response to concerns raised by members at the meeting would be circulated to members for consideration. Subject to the views received from members, the Chairman would consider holding a meeting to deliberate on them.

(Post-meeting note: The Administration's written response to concerns raised by members at the meeting on 17 May 2011 and a marked-up copy of CSAs to the Bill were issued to members vide

Action

LC Paper Nos. CB(2)1911/10-11(01) and CB(2)1911/10-11(02) respectively on 27 May 2011.)

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6. Members also agreed to entrust the Legal Adviser to the Bills Committee to vet the Administration's CSAs and the Chinese text of the Bill to ensure that their legal and drafting aspects were in order.

II. Any other business

7. There being no other business, the meeting ended at 5:45pm.

Council Business Division 2
Legislative Council Secretariat
22 September 2011

**Proceedings of the meeting of the
Bills Committee on Legislation Publication Bill
on Tuesday, 17 May 2011, at 2:30 pm
in Conference Room B of the Legislative Council Building**

Time marker	Speaker	Subject	Action required
000000 - 000254	Chairman	The Chairman's advice that the Bills Committee meeting might be extended to 6:30 pm, depending on the progress of the clause-by-clause examination of the Legislation Publication Bill ("the Bill").	
000255 - 000814	Chairman Admin	<p><u>Continuation of clause-by-clause examination</u></p> <p>The Administration's briefing on its written response to members' concerns about Clause 4 of the Bill [LC Paper No. CB(2)1766/10-11(01)].</p> <p>Clause 4</p> <p>Members raised no objection to the Administration's proposed amendments to Clause 4 below -</p> <p>(a) specifically setting out the Basic Law ("BL") in Clause 4(1) and moving Clause 4(2)(b) relating to the gazetted copy of Ordinances (i.e. as-made Ordinances) to be published in the proposed electronic database of legislation with legal status ("the Database") to Clause 4(1), so that BL and such a gazetted copy would become contents that had to, instead of might, be included in the Database;</p> <p>(b) deleting "other legislation" in Clause 4(2)(c) in view of BL being set out in Clause 4(1); and</p> <p>(c) adding the new Clause 4A on the "presumed to be correct" status of verified copies of database instruments, including an Ordinance, BL, a national law applying in Hong Kong or an item of materials or information referred to in section 4(2)(c) as defined under Clause 2, to replace Clauses 5 to 8 on the status of copies of such instruments.</p> <p>The Administration's reiteration that the contents to be provided in the Database would be no less than all the existing information in the Loose-leaf Edition of the Laws of Hong Kong ("the Loose-leaf Edition") and the Bilingual Laws Information System.</p>	

Time marker	Speaker	Subject	Action required
000815 - 003745	Chairman Admin Ms Cyd HO SALA2	<p data-bbox="596 383 778 416">Clauses 11 - 16</p> <p data-bbox="596 450 1262 611">The Administration's briefing on its written response to the Chairman's letter dated 26 April 2011 on the Secretary for Justice ("SJ")'s editorial and revision powers under Clauses 12 and 17 respectively [LC Paper No. CB(2)1766/10-11(02)].</p> <p data-bbox="596 645 1262 712">Members raised no objection to the Administration's proposed amendments to Clause 12 below –</p> <p data-bbox="596 745 1262 907">(a) transferring the following SJ's editorial powers under Clause 12 to Clause 17 under which any changes made by SJ to Ordinances had to be subject to the Legislative Council ("LegCo")'s negative vetting -</p> <ul style="list-style-type: none"> <li data-bbox="655 940 1262 1008">- changing "a reference to a date" under Clause 12(1)(b); <li data-bbox="655 1041 1262 1108">- changing the way of referring to or expressing a "provision" under Clause 12(1)(d); <li data-bbox="655 1142 1262 1209">- making gender-neutral drafting changes under Clauses 12(1)(f); <li data-bbox="655 1243 1262 1310">- omitting obsolete or redundant provisions under Clause 12(1)(g); and <li data-bbox="655 1344 1262 1411">- amending the heading of a provision or a group of provisions under Clause 12(1)(h); <p data-bbox="596 1444 1262 1606">(b) deleting "or an error of a similar nature" in Clause 12(1)(a) and the whole Clause 12(1)(c) on the renumbering of provisions, so as to remove any possible uncertainty of the scope of SJ's editorial powers under these provisions;</p> <p data-bbox="596 1639 1262 1706">(c) removing SJ's power to change the way of referring to or expressing a "penalty" in Clause 12(1)(d);</p> <p data-bbox="596 1740 1262 1901">(d) revising the wording of Clause 12(1)(e) to clarify that there had to be a deeming provision in the first place before SJ could alter the text of the relevant provisions to give effect to the intended meaning of the deeming provision;</p>	

Time marker	Speaker	Subject	Action required
		<p>(e) revising Clause 12(1)(g) in a way similar to section 2(2)(c) of the Laws (Loose-leaf Publication) Ordinance 1990 so that SJ would only be able to omit enacting, expired or spent provisions;</p> <p>(f) limiting the scope of SJ's power to re-arranging unnumbered items only under Clause 12(1)(i) in view of members' concern about Clause 12(1)(c) on the renumbering of provisions; and</p> <p>(g) adding new Clause 12(1)(ia) to empower SJ to insert, after an item in a list appearing in the text of one official language, the equivalent of that item in the other official language.</p> <p>The Administration's reiteration that all editorial amendments made by SJ under the proposed revised Clause 12 would be subject to the overriding principle under Clause 13 that they could not change the legal effect of any Ordinance. As editorial amendments were minor, any consequential amendments would be no more of that nature.</p> <p>In connection with Clause 14(2) under which a copy of an Ordinance published in the Database and amended under Clause 12 had to indicate "in a suitable place" the fact that it has been amended, Ms Cyd HO's enquiry about the suitable place referred to and request for keeping in view the progress of the Administration's work in this regard after the implementation of the Database. The Administration's response that a note would be added to such amended Ordinances to serve the purpose of Clause 14(2).</p> <p>Members raised no objection to –</p> <p>(a) Clause 15 which required SJ to compile a record of editorial amendments made under the proposed revised Clause 12; and</p> <p>(b) Clause 16 which stipulated that an editorial amendment by SJ did not have effect unless the information relating to it was contained in the aforesaid record, which had to be published in the Database under Clause 4(1)(c).</p>	
003746 - 020107	Chairman Admin	Clauses 17 – 18	

Time marker	Speaker	Subject	Action required
	<p>Ms Cyd HO SALA2 Mr Albert HO</p>	<p>The Administration's briefing on its proposed amendments (including provisions proposed to be transferred from Clause 12) to Clause 17 on SJ's revision powers and the relevant past examples of the exercise of such powers provided in Annex 3 to the Administration's paper [LC Paper No. CB(2)1766/10-11(02)].</p> <p>Mr Albert HO's enquiry why the proposed revisions made under Clause 17 would not be scrutinized by LegCo by way of positive vetting. The Administration's response that requesting all proposed revisions to go through the positive vetting procedure would involve a lot of legislative resources. The negative vetting procedure under Clause 18 would provide an efficient way to deal with uncontroversial revisions, and this arrangement was similar to those under section 4D of the Official Languages Ordinance (Cap. 5) and section 98A of the Interpretation and General Clauses Ordinance (Cap. 1).</p> <p>The Chairman's advice that in the absence of Clause 18, SJ would have no choice but to initiate the positive vetting procedure to deal with all proposed revisions, including those uncontroversial. If Clause 18 was vetoed, the editorial amendments made under the provisions proposed to be transferred from Clause 12 to Clause 17 would also have to be subject to the usual vetting procedure. This arrangement might not be necessary for such amendments.</p> <p>Ms Cyd HO's concern whether a revision made by SJ under Clause 17(e) to the name, title, etc. of a department/officer might effect a change of powers of that department/officer. For example, under the re-organization of the policy bureaux of the Government Secretariat in 2007, the increase of the number of Directors of bureaux and the change of their titles involved a change of the power structure within the Government.</p> <p>The Administration's response that the exercise of the revision power under Clause 17(e) had to be based on the fact that the change of the name, title, etc. of a department/officer had taken place. Clause 17(e) was intended to enable a revision to the text of Ordinances to reflect the change and was not for the purpose of effecting that change. The re-organization of the policy bureaux of the Government Secretariat in 2007 was conducted pursuant to section 55 of Cap. 1. Clause 17(e)</p>	

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		<p>could not be used to effect such a re-organization.</p> <p>SALA2's view that the meaning of "department" in Clause 17(e) was quite narrow in that it might not cover bureau. His enquiry whether it might be replaced by "public body". The Administration's response that under section 3 of Cap. 1, the definition of "department", in relation to the Government, included bureau. The Administration noted the definition of "public body" in section 3 of Cap. 1 but considered that it was not easy to delineate the scope of "public body" clearly.</p> <p>The Chairman's advice that the meanings of transferring a provision under Clause 17(c), "the way of referring to or expressing a provision" under the proposed revised Clause 17(ed) and "any word, expression or provision which is obsolete or redundant" under the proposed revised Clause 17(ee) were too broad and might give rise to uncertainty and dispute. The Administration's concurrence to reconsider the wording of the Clauses in question.</p> <p>The Chairman's emphasis that members largely found the proposed revised Clause 17 acceptable because of the following reasons –</p> <ul style="list-style-type: none"> (a) the Administration would address members' concerns about the loosely-worded provisions under the proposed revised Clause 17, particularly Clauses 17(c), (ed) and (ee); (b) the Administration had assured members that SJ would exercise the revision powers under the proposed revised Clause 17 prudently and the revisions so made would be uncontroversial; and (c) such revisions would be subject to LegCo's negative vetting under Clause 18. 	<p>Admin (para. 3 of the minutes)</p>
020108 - 021421	Chairman	Suspension of the meeting for 15 minutes	
021422 - 022749	Chairman Admin SALA2	<p>Resumption of the meeting</p> <p>Clauses 19 -21</p> <p>As members raised no objection to the proposed revised Clause 12 on SJ's editorial powers, the Administration tabled its proposal to revise Clause 20(4) to apply such</p>	

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		<p>editorial powers to the Loose-leaf Edition, with a view to facilitating the future migration of the Loose-leaf Edition to the Database [LC Paper No. CB(2)1904(10-11(01))].</p> <p>The Chairman's request for the Administration to ascertain whether safeguards similar to those under Clauses 13 and 14 of the Bill had also been available in the Laws (Loose-leaf Publication) Ordinance 1990 in relation to SJ's editorial amendments to the Loose-leaf Edition, and if no, to put in place such safeguards. The Administration's undertaking to follow up the request.</p>	Admin (para.3 of the minutes)
022750 - 024456	Chairman Admin Ms Cyd HO SALA2	<p>Clauses 22 - 28</p> <p>On the Chairman's suggestion to repeal the Laws (Loose-leaf Publication) Ordinance 1990 and the Revised Edition of the Laws Ordinance 1965 at the appropriate time by way of an amendment bill instead of the Bill, the Administration's view that as the Bill was to provide for the establishment of the Database and publication of printed and electronic copy of legislation after that time, it was the appropriate vehicle to effect the repeal of the two Ordinances in question.</p> <p>The Administration's assurance that it would consult the Panel on Administration of Justice and Legal Services ("the AJLS Panel"), the Hong Kong Bar Association, the Law Society of Hong Kong and other stakeholders before seeking to commence Clauses 26 and 27 by commencement notice (which itself was a piece of subsidiary legislation subject to LegCo's scrutiny) to repeal the two Ordinances in question. Members also noted that Clauses 26 and 27 would not come into operation before all the Ordinances in the Loose-leaf Edition had been verified and migrated to the Database.</p>	
024457 - 030850	Chairman Admin Ms Cyd HO SALA2	<p>Clauses 29 – 35</p> <p>Concern of the Chairman and Ms Cyd HO about Clauses 29 to 33 which enabled the repeal of sections 98A, 98B and 98C of Cap. 1 in relation to LegCo's powers to scrutinize SJ's amendments to Ordinances. In particular, under sections 98A(1) and (2), SJ's rectification of any clerical or printing error appearing in any Ordinance printed or published pursuant to Cap. 1 had to be made by order published in the Gazette, and every order so made had to be laid before LegCo without unreasonable delay and could be annulled by a resolution passed by LegCo. The Chairman's concern that the repeal of</p>	

