

立法會
Legislative Council

LC Paper No. CB(2)2598/11-12
(These minutes have been seen
by the Administration)

Ref : CB2/BC/9/10

Bills Committee on Immigration (Amendment) Bill 2011

Minutes of meeting
held on Monday, 30 April 2012, at 10:45 am
in Conference Room 2A of the Legislative Council Complex

Members present : Hon LAU Kong-wah, JP (Chairman)
Dr Hon Margaret NG
Hon Emily LAU Wai-hing, JP
Hon Cyd HO Sau-lan
Hon CHAN Hak-kan
Hon WONG Kwok-kin, BBS
Dr Hon PAN Pey-chyou
Hon Paul TSE Wai-chun, JP

Members absent : Hon James TO Kun-sun
Dr Hon Philip WONG Yu-hong, GBS
Hon WONG Yung-kan, SBS, JP
Hon Abraham SHEK Lai-him, SBS, JP

Public Officers attending : Item I
Mr NGAI Wing-chit
Deputy Secretary for Security 3

Mr CHOW Wing-hang
Principal Assistant Secretary for Security D

Mr LEUNG Kwok-hung, IMSM
Assistant Director (Enforcement and Torture Claim Assessment)
Immigration Department

Ms Fanny IP
Senior Assistant Law Draftsman
Department of Justice

Mr Henry CHAN
Government Counsel
Department of Justice

Mr Billy WOO
Assistant Secretary for Security D1

Mr FUNG Ming-keung
Principal Immigration Officer (Torture Claim Assessment)
Immigration Department

Clerk in attendance : Mrs Sharon TONG
Principal Council Secretary (2)

Staff in attendance : Ms Connie FUNG
Senior Assistant Legal Adviser 1

Ms Rita LAI
Senior Council Secretary (2) 1

Ms Michelle LEE
Legislative Assistant (2) 7

I. Meeting with the Administration

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

2. The Administration was requested to consider withdrawing the proposed section 43A (Disturbing proceedings of Torture Claims Appeal Board); or specifying the behaviour which would disturb or otherwise interfere with the proceedings of the Appeal Board.

3. The Clerk was requested to seek the views of the Hong Kong Bar Association and The Law Society of Hong Kong on the proposed Schedule 4 (Transitional and Savings Provisions in respect of Immigration (Amendment) Ordinance 2011 (Torture Claims)), in particular the proposed sections 2 and 6 and table of Schedule 4.

II. Date of next meeting

4. Members noted that the next meeting had been scheduled for 11 May 2012 at 10:45 am.

(Post-meeting note: The meeting scheduled for 11 May 2012 has been cancelled to avoid clashing with the Council meeting. Subsequently, the next meeting was held on 22 May 2012.)

5. The meeting ended at 12:43 pm.

Council Business Division 2
Legislative Council Secretariat
17 July 2012

**Proceedings of meeting of the
Bills Committee on Immigration (Amendment) Bill 2011
held on Monday, 30 April 2012, at 10:45 am
in Conference Room 2A of the Legislative Council Complex**

Time marker	Speaker(s)	Subject(s)	Action Required
000425 - 000510	Chairman	Opening remarks	
000511 - 000656	Chairman Admin	Continuation of clause-by-clause examination of the Bill; and Briefing on clause 8 (Section 38AA amended (Prohibition of taking employment and establishing business, etc.))	
000657 - 000756	Admin Chairman	Briefing on clause 9 (Section 42 amended (False statements, forgery of documents and use and possession of forged documents))	
000757 - 000947	Chairman Admin	Briefing on clause 10 (Section 43A added - Disturbing proceedings of Torture Claims Appeal Board); and Views of deputations; and request for examples as reference	
000948 - 002033	Chairman Dr Margaret NG Admin SALA1 Ms Emily LAU	Concern about right of expression and speech, including those of the legal representatives of claimants under the proposed section 43A; Concern about the wide meaning of "disturbing" and its application; and request for examples as reference; Hearing to be held in private unless the Torture Claims Appeal Board ("Appeal Board") directed that it be held in public; Reference made to a similar offence provision in the Legislative Council (Powers and Privileges) Ordinance (Cap. 382) relating to disturbance where the degree of disturbance was specified; and Whether it would be difficult for the torture claim screening mechanism to	The Administration to consider - (a) withdrawing the proposed section 43A (Disturbing proceedings of Appeal Board); or (b) specifying the behaviour which would disturb or otherwise interfere with the proceedings of the Appeal Board

Time marker	Speaker(s)	Subject(s)	Action Required
		operate if the proposed section 43A was not to be added	
002034 - 002535	Chairman Admin Ms Emily LAU SALA1	Briefing on clause 11 (Section 53 amended (Review of decisions of public officers); and Whether claimants could appeal to the Appeal Board against decisions made by an immigration officer referred to in the proposed section 53(8)(h)(i) and (iv)	
002536 - 002655	Chairman Dr Margaret NG Admin	Judicial review against decisions of immigration officers referred to in the proposed section 53(8)(h)(i) and (iv)	
002656 - 002935	Chairman Admin	<u>Proposed Schedule 4 (Transitional and Savings Provisions in respect of Immigration (Amendment) Ordinance 2011 (Torture Claims))</u> Briefing on the proposed section 1 - interpretation on "established claim"	
002936 - 004911	Chairman Dr Margaret NG Admin SALA1	Whether the decisions on torture claims made under the administrative scheme would be legalized by virtue of the transitional and savings provisions, including those processed in an unfair manner because of the absence of legal representatives; Whether established claims by the Director of Immigration after the implementation of the statutory scheme would be confirmed as determined cases; Table of Transitional Provisions - continuation of processing of cases at different stages; and Whether it would be guaranteed that torture claimants' position would not be worse off under the transitional provisions	
004912 - 010022	Chairman Ms Emily LAU Admin	Number of torture claims to be processed afresh after the first-time transition i.e. under the administrative	

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		<p>scheme which was implemented in December 2009 and those to be processed afresh under the statutory scheme; and</p> <p>Consideration to be given to processing afresh all torture claims (except the established one) under the statutory scheme, including 1 600 determined cases</p>	
010023 - 011217	Chairman Dr Margaret NG Admin	<p>Concern about the proposed section 6 of Schedule 4; and</p> <p>Reference made to five cases where the claimants' claims were determined without arrangement for interviews - whether decisions made on the basis of unfair treatment would be legalized under the statutory scheme and claimants would not be allowed to apply for judicial review</p>	The Clerk to seek the views of the Hong Kong Bar Association and The Law Society of Hong Kong on the proposed Schedule 4 (Transitional and Savings Provisions in respect of Immigration (Amendment) Ordinance 2011 (Torture Claims)), in particular the proposed sections 2 and 6 and table of Schedule 4
011218 - 011427	Chairman Admin Ms Emily LAU	<p>Briefing on the proposed section 1 - interpretation on "commencement date"; and</p> <p>Relevant subsidiary legislation</p>	
011428 - 011439	Chairman Admin	Briefing on the proposed section 1 - interpretation on "Table"	
011440 - 011457	Chairman Admin	Briefing on the proposed section 1 - interpretation on "administrative scheme"	
011458 - 011549	Chairman Admin	Briefing on the proposed section 1 - interpretation on "non-refoulement claim"	
011550 - 011635	Chairman Admin Ms Emily LAU	<p>Briefing on the proposed section 1 - interpretation on "petition"; and</p> <p>Petition to be made to the Appeal Board under the statutory scheme instead of to the Chief Executive under the administrative scheme</p>	

Time marker	Speaker(s)	Subject(s)	Action Required
011636 - 011653	Chairman Admin	Briefing on the proposed section 1 - interpretation on "questionnaire"	
011654 - 011711	Chairman Admin	Briefing on the proposed section 1 - interpretation on "transitional provision"	
011712 - 011721	Chairman Admin	Briefing on the proposed section 1 - interpretation on "adjudicator"	
011722 - 011824	Chairman Admin	Briefing on the proposed section 1 - interpretation on "rejected claim"	
011825 - 012047	Chairman Admin	Briefing on the proposed section 2 (Non-refoulement claims and application of Part VIIC)	
012048 - 012345	Chairman Dr PAN Pey-chyou Admin	Meaning of "left Hong Kong" referred to in the proposed section 2(3) and the duration involved; and Whether it would be possible for a torture claimant to leave Hong Kong for a short period of time and then return to Hong Kong before the commencement date of the Bill	
012346 - 012406	Chairman Ms Emily LAU Admin	Consideration to be given to processing afresh the cases as described in the proposed section 2(4) after the commencement of the Bill	
012407 - 012601	Chairman Admin Ms Emily LAU	Briefing on the proposed section 2(5)	
012602 - 012644	Chairman Admin	Briefing on the proposed section 3 (Non-refoulement claim taken as previous torture claim)	
012645 - 012719	Chairman Admin	Briefing on the proposed section 4 (Persons making non-refoulement claims)	
012720 - 012925	Chairman Admin	Briefing on the proposed section 5 (Petition being heard or determined by adjudicator)	
012926 - 012959	Admin	Briefing on the proposed section 6 (Things done under the administrative scheme)	

Time marker	Speaker(s)	Subject(s)	Action Required
013000 - 013052	Chairman Admin	Briefing on the proposed section 7 (Taking of fingerprints etc.)	
013053 - 013340	Chairman Admin	Briefing on Part 3 of the Bill (Amendment to Immigration Regulations (Cap.115 sub.leg.A)); and Whether it would be necessary to specify the detention of a torture claimant in recognizance form	
013341 - 013748	Ms Emily LAU Admin SALA1 Chairman	Reasonable condition(s) imposed under the new section 36(1A) of the Immigration Ordinance, including the requirements to employ with the proposed section 37ZA (Duties of claimant) and reporting conditions; and Reference made to the proposed section 36(1A)	
013749 - 013908	Chairman Admin	<u>Part 4 of the Bill (Consequential Amendments to Fugitive Offenders Ordinance (Cap. 503))</u> Briefing on clause 15 - Section 2 amended (Interpretation)	
013909 - 014033	Admin	Briefing on clause 16 - Section 6 amended (Request for surrender and authority to proceed)	
014034 - 014251	Admin	Briefing on clause 17 - Section 13 amended (Order for surrender)	
014252 - 014353	Admin	Briefing on clause 18 - Section 14 amended (Discharge in case of delay)	
014354 - 015041	Chairman Mr Paul TSE Admin	Clarification on the proposed section 13(2A) and (2B) of the Fugitive Offenders Ordinance in respect of the Chief Executive's order for surrender of a torture claimant	
015042 - 015637	Chairman Dr PAN Pey-chyou Admin	Whether it was necessary to limit the considerations given to the Chief Executive's order for surrender of a torture claimant	

Time marker	Speaker(s)	Subject(s)	Action Required
015638 - 015800	Chairman Mr Paul TSE Admin	Clarification on the possibility of an order for surrender to be made for the surrender of a torture claimant to a place other than a prescribed place under the proposed section 13(2A)	
015801 - 015940	Chairman Ms Emily LAU Admin	Date of next meeting and closing remarks	

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