

立法會
Legislative Council

LC Paper No. CB(2) 82/10-11

Ref : CB2/H/5/09

House Committee of the Legislative Council

**Minutes of the 1st meeting
held in the Legislative Council Chamber
at 2:30 pm on Friday, 15 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 David LI Kwok-po, GBM, GBS, JP
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
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 TAM Yiu-chung, GBS, JP
Hon Abraham SHEK Lai-him, SBS, 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 LEUNG Ka-lau
Hon CHEUNG Kwok-che
Hon WONG Sing-chi
Hon WONG Kwok-kin, BBS
Hon IP Wai-ming, MH
Hon IP Kwok-him, GBS, JP
Dr Hon PAN Pey-chyou
Hon Paul TSE Wai-chun
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 Philip WONG Yu-hong, GBS
Hon Andrew CHENG Kar-foo
Hon Timothy FOK Tsun-ting, GBS, JP
Dr Hon Priscilla LEUNG Mei-fun
Hon Mrs Regina IP LAU Suk-yeo, GBS, JP
Dr Hon Samson TAM Wai-ho, 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
Mr Arthur CHEUNG	Senior Assistant Legal Adviser 2
Mrs Sharon TONG	Principal Council Secretary (Complaints)
Mr Simon WONG	Chief Public Information Officer
Miss Odelia LEUNG	Chief Council Secretary (2)6

Mr Bonny LOO	Assistant Legal Adviser 3
Mr YICK Wing-kin	Assistant Legal Adviser 8
Ms Amy YU	Senior Council Secretary (2)3
Ms Anna CHEUNG	Senior Legislative Assistant (2)3
Mr Arthur KAN	Legislative Assistant (2)8

Action

I. Confirmation of the minutes of the 31st meeting held on 8 October 2010
(LC Paper No. CB(2) 17/10-11)

The minutes were confirmed.

II. Matters arising

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

Country Parks (Designation) (Consolidation) (Amendment) Order 2010 ("Amendment Order")

2. The Chairman said that she had relayed to CS Members' grave dissatisfaction with the Administration's way of handling the Amendment Order. She had also conveyed to CS Members' request for the Administration to provide a list of subsidiary legislation which, in its view, could not be repealed by the Legislative Council ("LegCo") by virtue of the provisions under their principal legislation. CS had responded that the Administration would not provide such information as he considered it not necessary to do so and an arduous task. Moreover, the list could not possibly be exhaustive and would provoke unnecessary dispute. Nevertheless, CS had indicated that he recognized Members' concern and the Administration would consider the feasibility of informing Members clearly as to whether LegCo had the power to amend (including repeal) an item of subsidiary legislation upon its introduction into LegCo, in order to facilitate Members to take note of any restriction to LegCo's amending power.

3. The Chairman further said that she had requested the Secretariat to collate information relating to LegCo's power to amend subsidiary legislation. The Secretariat had indicated that it would take about two to three months to complete the task. After the information was available, she would propose the appointment of a subcommittee under the House Committee to study the information in detail and consider courses of actions to be taken.

4. Mr Ronny TONG considered it inappropriate to request the Administration to provide information on subsidiary legislation which, in its view, were not subject to amendment or repeal by LegCo. In his view, the Administration should instead be requested to amend the relevant legislation to provide clearly for LegCo's power to amend and repeal the subsidiary legislation should the Administration consider there to be any uncertainty in

Action

this regard. He stressed that LegCo had the power to amend and repeal subsidiary legislation and such power could not in any way be compromised.

5. Ms Emily LAU said that to request the Executive Authorities to provide information on the subsidiary legislation which it considered were not subject to amendment or repeal by LegCo should not be taken as LegCo accepting their view. On the contrary, LegCo should then take up the matter with the Administration. She pointed out that there was subsidiary legislation in respect of which the restriction on LegCo's power to amend had been provided expressly in the relevant principal legislation, and no controversy would arise in such cases. Members were furious at the Administration's handling of the Amendment Order because it was not until the relevant Subcommittee had completed its scrutiny work did the Administration advance the legal opinion of its counsel that LegCo had no power to repeal the Amendment Order. She agreed that the Secretariat should be requested to conduct research and collate information. She also indicated support for the proposal for appointing a subcommittee to study the matter. She added that in future should the Administration inform LegCo of its view that LegCo had no power to amend or repeal the subsidiary legislation submitted for scrutiny, it should state clearly the relevant sections of the principal legislation on which its view was based. LegCo should then take up the matter with the Administration immediately.

6. Dr Margaret NG said that any attempt by the Executive Authorities to take away the law-making power of LegCo was unconstitutional, as the Legislature was the only institution empowered under the Basic Law ("BL") to enact, amend or repeal laws. Unless the Legislature, in enacting certain legislation, had delegated its law-making power to third parties, the law-making power still rested with the Legislature. The power to make subsidiary legislation was provided in the relevant principal legislation. She recalled that a few years back, there was a serious dispute between LegCo and the Executive Authorities over whether certain items were subsidiary legislation. While the two parties held different views on the matter, they agreed that if an item was subsidiary legislation, LegCo would, by virtue of the Interpretation and General Clauses Ordinance (Cap. 1), have the power to amend and repeal it. For those items which were not subsidiary legislation, clear arrangements on their legislative process including gazettal had been agreed on. For the Amendment Order, both LegCo and the Executive Authorities agreed that it was an item of subsidiary legislation. The only point of contention was whether LegCo had the power to repeal it. As far as she knew, the only subsidiary legislation which were not subject to amendment by LegCo were those made under the United Nations Sanctions Ordinance (Cap. 537). She stressed that the Administration could not assert that LegCo had no power to repeal an item of subsidiary legislation merely on the basis of the legal opinion of a counsel. Any such assertion must be based on express statutory provisions.

7. Ir Dr Raymond HO said that the Legislature had two major powers and functions, namely enacting laws and monitoring the work of the Administration. It was provided in Article 73(1) of BL that LegCo had the powers to enact, amend or repeal laws in accordance with the provisions of the BL and legal

Action

procedures. There was no dispute that laws included subsidiary legislation. In his view, Members should not make the assumption that LegCo did not have the power to amend or repeal certain subsidiary legislation. Members should instead discharge their duties on the premise that LegCo had the full powers to enact, amend and repeal subsidiary legislation, save those where restrictions were expressly specified in statutory provisions such as those in the United Nations Sanctions Ordinance. He also shared the view that the Secretariat should be requested to collate the relevant information to facilitate Members' consideration of the matter.

8. Mr Paul TSE said that Members might make reference to the experience of the Parliament of the United Kingdom. The House of Lords and the House of Commons formed a joint committee to study legal instruments which were required to be tabled before Parliament. The joint committee would advise the Parliament on the legal instruments after scrutiny. He opined that Members might consider the feasibility of forming a similar committee to examine subsidiary legislation. He considered that this would be a proactive approach to address the matter.

9. Dr PAN Pey-chyou said that the legal opinion obtained by the Administration had caused unease amongst Members. The functions of LegCo were to monitor the work of the Executive Authorities and to enact laws including subsidiary legislation. The law-making power of LegCo was important and integral to the political structure. Without such power, LegCo would be devoid of its functions and could not operate. He considered it important to make clear the power of LegCo in respect of subsidiary legislation.

10. Dr Margaret NG said that the power to make and amend subsidiary legislation was provided in the principal ordinances. She reminded Members to consider carefully in the scrutiny of bills whether the Executive Authorities should be conferred with the power to make relevant regulations; whether these regulations should be subsidiary legislation; and what the scrutiny process should be. She noted with concern some cases where certain provisions should not be made by way of subsidiary legislation but had been so provided in the principal ordinances. In some other cases, certain matters which should have legal effect and should be made by way of subsidiary legislation were made by administrative orders. She appealed to Members that they should be more vigilant on these provisions during the scrutiny of bills.

11. Mr Albert HO said that the Administration should provide information on subsidiary legislation in respect of which the power of LegCo to amend was restricted in its view. He considered that unless there were express provisions to restrict the power of LegCo to amend subsidiary legislation, LegCo had such power. He requested the Legal Service Division to draw Members' attention to any such restriction in reports on subsidiary legislation.

Action

12. The Chairman said that the views of Members would be recorded for the subcommittee's consideration in due course. Members' stance was clear that LegCo had the power to amend subsidiary legislation. She requested the Secretariat to collate the relevant information expeditiously. She added that once the information was available, she would propose the formation of a subcommittee under the House Committee to take forward the matter.

Introduction of bills

13. Mr Ronny TONG said that the Administration should be requested to submit its Legislative Programme for the 2010-2011 session as soon as possible. It should also be reminded to introduce bills into the Council as scheduled and avoid bunching of bills at the end of the session and the LegCo term.

14. The Chairman said that she would relay Mr Ronny TONG's views to CS.

III. Business arising from previous Council meetings

Legal Service Division report on subsidiary legislation gazetted on 8 October 2010 and tabled in Council on 13 October 2010

(LC Paper No. LS 1/10-11)

15. The Chairman said that a total of 12 items of subsidiary legislation were gazetted on 8 October 2010 and tabled in the Council on 13 October 2010.

16. Regarding the three items of Commencement Notices relating to the minor works control system (i.e. Buildings (Amendment) Ordinance 2008 (Commencement) Notice 2010, Building (Minor Works) Regulation (Commencement) Notice 2010 and Building (Administration) (Amendment) Regulation 2009 (Commencement) Notice), the Chairman said that they provided for the commencement of certain provisions of the Buildings (Amendment) Ordinance 2008 and the relevant subsidiary legislation.

17. Ms LI Fung-ying considered it necessary to form a subcommittee to study the three Commencement Notices.

18. The Chairman proposed that a subcommittee be formed to study the three Commencement Notices in detail. Members agreed. The following Members agreed to join: Mr Abraham SHEK, Ms LI Fung-ying, Prof Patrick LAU, Mr IP Wai-ming and Miss Tanya CHAN.

19. Members did not raise any queries on the other nine items of subsidiary legislation.

20. The Chairman reminded Members that the deadline for amending these items of subsidiary legislation was 10 November 2010.

IV. Further business for the Council meeting on 20 October 2010

(a) Tabling of papers

Report No. 2/10-11 of the House Committee on Consideration of Subsidiary Legislation and Other Instruments

(LC Paper No. CB(2) 19/10-11 issued vide LC Paper No. CB(3) 49/10-11 dated 14 October 2010)

21. The Chairman said that the report covered 14 items of subsidiary legislation, the period for amendment of which would expire on 20 October 2010. As a Member had notified his intention to speak on three items of subsidiary legislation included in the report (i.e. the Waste Disposal (Clinical Waste) (General) Regulation, the Waste Disposal (Charge for Disposal of Clinical Waste) Regulation and the Smoking (Public Health) (Designation of No Smoking Areas) (Amendment) Notice 2010), she, as Chairman of the House Committee, would move a motion to take note of the report in relation to the three items of subsidiary legislation.

22. The Chairman further said that in accordance with Rule 49E(7) of the Rules of Procedure, if the motion related to more than one item of subsidiary legislation or instruments, the debate on the motion might be divided into sessions each of which related to one or more items of subsidiary legislation or instruments. The Chairman proposed that the debate on the three items of subsidiary legislation be divided into two sessions, one covering the Waste Disposal (Clinical Waste) (General) Regulation and the Waste Disposal (Charge for Disposal of Clinical Waste) Regulation which were related, and the other the Smoking (Public Health) (Designation of No Smoking Areas) (Amendment) Notice 2010. Members agreed.

23. The Chairman added that the speaking time limit for each Member at each session of the debate was 15 minutes.

(b) Government motion

Proposed resolution to be moved by the Secretary for Financial Services and the Treasury under section 34(2) of the Interpretation and General Clauses Ordinance relating to the Inland Revenue (Double Taxation Relief and Prevention of Fiscal Evasion with respect to Taxes on Income) (Brunei Darussalam) Order

(Wording of the proposed resolution issued vide LC Paper No. CB(3) 32/10-11 dated 11 October 2010.)

24. The Chairman said that the relevant Subcommittee had presented its report at the last House Committee meeting, and Members did not raise objection to the proposed amendments to be moved by the Administration.

V. Business for the Council meeting of 27, 28 and 29 October 2010

(a) Questions

(LC Paper No. CB(3)42/10-11)

25. The Chairman said that 20 written questions had been scheduled for the meeting.

(b) Members' motion

Motion of Thanks

(Director of Administration's letter dated 14 October 2010 on "The Debate on the Motion of Thanks on the 2010-2011 Policy Address - Proposed Grouping of Policy Areas" (LC Paper No. CB(2) 52/10-11(01))

26. The Chairman referred Members to the Director of Administration's letter dated 14 October 2010 on the proposed grouping of policy areas for the five debate sessions. Members agreed with the proposed grouping which was largely the same as last year.

27. Members further agreed to adopt the same arrangements for the debate as those in the past five years.

28. In response to Ms Emily LAU, the Chairman said that a Member might speak once in one or more sessions of the five debate sessions, subject to the total speaking time limit of 30 minutes.

29. The Chairman informed Members that the first day of the debate would start at 11:00 am, and the second and third days at 9:00 am. The ending time for each of the three days of debate would be about 9:00 pm but might be extended for 30 minutes if necessary. The Chairman added that based on past experience, the debate on the third day normally ended earlier than 9:00 pm.

VI. Position on Bills Committees and subcommittees

(LC Paper No. CB(2) 18/10-11)

30. The Chairman said that there were 13 Bills Committees, seven subcommittees under the House Committee (i.e. four subcommittees on subsidiary legislation and three subcommittees on policy issues) and eight subcommittees under Panels in action.

VII. Any other business

31. There being no other business, the meeting ended at 2:58 pm.