

立法會
Legislative Council

LC Paper No. CB(2) 368/10-11

Ref : CB2/H/5/10

House Committee of the Legislative Council

**Minutes of the 5th meeting
held in the Legislative Council Chamber
at 2:30 pm on Friday, 19 November 2010**

Members present :

Hon Miriam LAU Kin-ye, GBS, JP (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
Hon LAU Kong-wah, 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 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

Ms Connie FUNG	Senior Assistant Legal Adviser 1
Mr Arthur CHEUNG	Senior Assistant Legal Adviser 2
Mr Andy LAU	Principal Council Secretary (Administration)
Mrs Sharon TONG	Principal Council Secretary (Complaints)
Mr Simon WONG	Chief Public Information Officer
Mr Stephen LAM	Chief Council Secretary (1)4
Miss Odelia LEUNG	Chief Council Secretary (2)6
Mr Kelvin LEE	Assistant Legal Adviser 1
Mr KAU Kin-wah	Assistant Legal Adviser 6
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 4th meeting held on 12 November 2010

(LC Paper No. CB(2) 306/10-11)

The minutes were confirmed.

II. Matters arising

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

Special House Committee meeting

2. The Chairman said that she had relayed to the Acting CS Members' request for CS to, apart from issues relating to population policy review, also exchange views with Members on the Community Care Fund at the special House Committee meeting scheduled for 10 December 2010. Should the latter subject not be ready for discussion at the special meeting, CS should exchange views with Members on it later. She had also conveyed to the Acting CS the request of the Chairman of the Subcommittee to Study Issues Relating to Mainland-HKSAR Families for CS to attend meetings of the Subcommittee to discuss and respond to issues raised by members on population policy. The Acting CS had indicated that he would relay Members' requests to CS.

III. Business arising from previous Council meetings

Legal Service Division report on subsidiary legislation gazetted on 12 November 2010 and tabled in Council on 17 November 2010

(LC Paper No. LS 8/10-11)

3. The Chairman said that a total of five items of subsidiary legislation, including two Commencement Notices, were gazetted on 12 November 2010 and tabled in the Council on 17 November 2010.

4. Regarding the four items of subsidiary legislation relating to statutory minimum wage, i.e. Minimum Wage Ordinance (Amendment of Schedule 3) Notice 2010, Minimum Wage Ordinance (Commencement) Notice 2010, Minimum Wage Ordinance (Commencement) (No.2) Notice 2010 and Employment Ordinance (Amendment of Ninth Schedule) Notice 2010, the Chairman said that they were to specify the Statutory Minimum Wage rate, its effective date on 1 May 2011 and the monetary cap on keeping record of hours worked to be \$11,500 per month as well as to provide for the establishment of the Minimum Wage Commission.

5. Mr WONG Kwok-hing considered it necessary to form a subcommittee to study the four Notices.

6. The Chairman proposed that a subcommittee be formed to study the four Notices in detail. Members agreed. The following Members agreed to join: Ms Miriam LAU, Mr Tommy CHEUNG, Mr WONG Kwok-hing, Mr Ronny TONG (as advised by Dr Margaret NG), Mr WONG Kwok-kin, Mr IP Wai-ming and Dr PAN Pey-chyau.

7. Members did not raise any queries on the other item of subsidiary legislation

8. The Chairman reminded Members that the deadline for amending the five items of subsidiary legislation was 15 December 2010, or 5 January 2011 if extended by resolution.

IV. Further business for the Council meeting on 24 November 2010

(a) **Tabling of papers**

Report No. 5/10-11 of the House Committee on Consideration of Subsidiary Legislation and Other Instruments

(LC Paper No. CB(2)309/10-11 issued vide LC Paper No. CB(3)198/10-11)

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9. The Chairman said that the report covered two items of subsidiary legislation the period for amendment of which would expire on 24 November 2010. No Member had requested to speak on the subsidiary legislation.

10. Members noted the report.

(b) Questions

(LC Paper No. CB(3) 186/10-11)

11. The Chairman said that Dr LAM Tai-fai had replaced his oral question.

(c) Bills - resumption of debate on Second Reading, Committee Stage and Third Reading

Buildings Energy Efficiency Bill

12. The Chairman said that the relevant Bills Committee had reported to the House Committee at the last meeting, and Members did not raise objection to the resumption of the Second Reading debate on the Bill.

13. The Chairman further said that given the large number of Committee Stage amendments ("CSAs") proposed to the Bill, the business on the Agenda of the Council meeting might not be finished on 24 November 2010. Should this be the case, the Council meeting would resume on the following day at 2:30 pm as meetings with District Council members had been scheduled for that morning.

(d) Members' motions

Proposed resolution to be moved by Hon Cyd HO Sau-lan under section 34(4) of the Interpretation and General Clauses Ordinance relating to the -

(i) Human Organ Transplant (Amendment) Regulation 2010; and

(ii) Human Organ Transplant (Appeal Board) Regulation.

(Wording of the proposed resolution issued vide LC Paper No. CB(3) 215/10-11 dated 19 November 2010.)

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14. The Chairman said that Ms Cyd HO, Chairman of the relevant Subcommittee, would move a motion at the Council meeting to extend the scrutiny period of the two Regulations to 5 January 2011.

V. Business for the Council meeting on 1 December 2010

(a) **Questions**

(LC Paper No. CB(3) 185/10-11)

15. 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**

16. The Chairman said that no notice had been received yet.

(c) **Government motion**

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) 204/10-11 dated 18 November 2010.)

17. The Chairman said that the Secretary for Constitutional and Mainland Affairs had given fresh notice to move the above proposed resolution at the Council meeting. The Chairman of the relevant Subcommittee would make a verbal report under item VI(c) below.

(d) **Members' motions**

(i) **Motion on "Comprehensively reviewing the Mandatory Provident Fund Scheme"**

(Wording of the motion issued vide LC Paper No. CB(3) 211/10-11 dated 19 November 2010.)

(ii) **Motion on "Reviewing the operation of the Land (Compulsory Sale for Redevelopment) Ordinance"**

(Wording of the motion issued vide LC Paper No. CB(3) 212/10-11 dated 19 November 2010.)

18. The Chairman said that the above motions would be moved by Mr WONG Kwok-kin and Mrs Regina IP respectively and the wording of the motions had been issued to Members.

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19. The Chairman reminded Members that the deadline for giving notice of amendments, if any, to the motions was Wednesday, 24 November 2010.

Report on study of subsidiary legislation

20. The Chairman said that a list containing five items of subsidiary legislation the period for amendment of which would expire on 1 December 2010 had been tabled at the meeting. Members who wished to speak on the subsidiary legislation should notify the Clerk by 5:00 pm on Tuesday, 23 November 2010.

VI. Report of Bills Committees and subcommittees

(a) Report of the Bills Committee on Matrimonial Proceedings and Property (Amendment) Bill 2010
(LC Paper No. CB(2) 319/10-11)

21. Dr Margaret NG, Chairman of the Bills Committee, reported on the deliberations of the Bills Committee as detailed in its report. She said that under the existing Matrimonial Proceedings and Property Ordinance (Cap. 192) ("MPPO"), Hong Kong courts had no power to deal with claims for ancillary relief after a foreign divorce. In a recent case, both the Court of First Instance and the Court of Appeal had urged the Legislature to consider putting in place legislation to address this deficiency in the existing matrimonial legislation. The object of the Bill was to amend MPPO to empower the Hong Kong courts to order financial relief for a former spouse whose marriage had been dissolved or annulled by a court outside Hong Kong.

22. Dr Margaret NG further reported that the Bills Committee had held four meetings with the Administration. Members were in general supportive of the Bill in order to address the existing deficiency in matrimonial legislation. Members were mainly concerned about whether the threshold for granting leave for making applications for financial relief was too high. To address members' concern, the Administration had provided information on the background to similar legislation in the United Kingdom and relevant case law for the Bills Committee's reference.

23. Dr Margaret NG added that the Bills Committee supported the resumption of the Second Reading debate on the Bill at the Council meeting on 15 December 2010 and the CSAs to be moved by the Administration.

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24. The Chairman reminded Members that the deadline for giving notice of CSAs, if any, was Monday, 6 December 2010.

(b) Report of the Subcommittee on Three Commencement Notices made under the Buildings (Amendment) Ordinance 2008, Building (Minor Works) Regulation and Building (Administration) (Amendment) Regulation 2009
(LC Paper No. CB(1) 472/10-11)

25. Ms LI Fung-ying, Chairman of the Subcommittee, reported that the Subcommittee had held two meetings with the Administration and had completed its scrutiny work. She explained that the three Commencement Notices sought to specify 31 December 2010 as the day on which the provisions of the Buildings (Amendment) Ordinance 2008 and the Building (Minor Works) Regulation that had yet to commence and the Building (Administration) (Amendment) Regulation 2009 to come into operation.

26. Ms LI Fung-ying elaborated that the Subcommittee had expressed concern about the processing time of applications for registration as minor works contractors, particularly those submitted by individual Class III minor works practitioners. The Administration had explained that the current processing time for normal cases had already been reduced from three to two months in an attempt to meet the needs of Class III applicants to ensure their early registration. In the light of members' concern, the Administration had undertaken to further reduce the processing time for normal cases from two to one month. In other words, the Buildings Department had undertaken that, if all required supporting documents were duly provided and in order, all applications submitted by individuals by 30 November 2010 would be approved on or before 31 December 2010. As a further measure to encourage and assist frontline practitioners to register as Class III minor works contractors, the Department would sustain the above "fast track" registration arrangement until 31 March 2011.

27. Ms LI Fung-ying further reported that the Subcommittee had also expressed concern about the small number of applications for registration as minor works contractors and had considered measures to motivate more applicants to come forward for such registration. In response to members' concern, the Administration had agreed to adopt various measures to encourage early registration, including extending the provision of subsidy on application fees for applicants relying solely on experience with applications submitted by 31 March 2011 and maintaining the registration fee of such applications at \$155; continuing the provision of full subsidy on the relevant training courses until October 2012, and stepping up efforts to disseminate the message of early

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registration. She added that both the Administration and the Subcommittee would not move any amendments to the three Commencement Notices.

28. The Chairman reminded Members that as the deadline for amending the three Commencement Notices was 1 December 2010, the deadline for giving notice of amendments, if any, would be Wednesday, 24 November 2010.

(c) Report of the Subcommittee on District Councils Ordinance (Amendment of Schedule 3) Order 2010

29. Mr IP Kwok-him, Chairman of the Subcommittee, reported that the Subcommittee had held two meetings and had completed its scrutiny work. He explained that the Order was to amend Schedule 3 to the District Councils Ordinance to add a total of seven elected seats to six District Councils ("DCs") (i.e. Kwun Tong, Yau Tsim Mong, Kwai Tsing, North District, Sai Kung and Yuen Long DCs) from the fourth term DCs commencing on 1 January 2012.

30. Mr IP Kwok-him further reported that some members were of the view that the number of elected seats should be further increased for those DCs where the respective proposed numbers of seats were lower than the number of seats calculated according to the population quota. Some other members considered it important to ensure that the addition of elected seats would not result in major changes to the boundaries of existing DC constituency areas ("DCCAs") as this would disrupt the established cohesiveness of local communities. According to the Administration, its proposal on the allocation of the seven additional elected seats was made having regard to the projected population of each district and the current number of elected seats of each DC. For DCs where the number of elected seats calculated according to the population quota was lower than the existing number of seats, no change would be made to the number of elected seats so as not to affect the provision of services to the public in the districts concerned. As a result, the number of elected seats for some DCs would not be increased strictly in accordance with the projected population in the respective districts and the population quota.

31. Mr IP Kwok-him further said that the Subcommittee had also expressed concern about the delay in the timetable for the delineation of DCCAs as compared with that for the last exercise, as it would affect the preparation work of prospective candidates who planned to participate in the next DC election to be held in November 2011. In response to the Subcommittee's request, the Administration had undertaken to compress

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the relevant time frame. Upon obtaining the approval of the Legislative Council ("LegCo") for the Order, the Electoral Affairs Commission would commence public consultation on its provisional recommendations on the DCCAs in early December 2010 for a period of not less than 30 days. It was expected that the Electoral Affairs Commission would submit its report on the delineation of DCCAs to the Chief Executive by March 2011.

32. Mr IP Kwok-him added that the Subcommittee supported the Administration giving fresh notice to move the motion on the Order at the Council meeting on 1 December 2010. The Subcommittee would provide a written report the following week.

VII. Position on Bills Committees and subcommittees

(LC Paper No. CB(2) 307/10-11)

33. The Chairman said that there were 12 Bills Committees, eight subcommittees under the House Committee (i.e. five subcommittees on subsidiary legislation and three subcommittees on policy issues) and eight subcommittees under Panels in action.

VIII. Concern about prosecutions instituted by the Police against demonstrators in the Legislative Council

*(Letter dated 15 November 2010 from Hon Emily LAU Wai-hing to the Chairman of the House Committee (LC Paper No. CB(2)308/10-11(01))
(LC Paper No. AS 55/10-11)*

34. At the invitation of the Chairman, Ms Emily LAU said that in her letter to the Chairman of the House Committee, she had requested the Secretariat to provide information on cases in the past three years where members of the public who staged protests when observing meetings of the Council or attending meetings of its committees to give views were reported to the Police. Members were concerned about the case which happened at the meeting of the Subcommittee on Package of Proposals for the Methods for Selecting the Chief Executive and for Forming LegCo in 2012 ("the Subcommittee") held on 22 May 2010. Noting from the Secretariat's paper that cases of disturbances were handled according to the Guidelines on Handling of Disturbances in the Public Galleries of the Legislative Council Building ("the Guidelines") approved by The Legislative Council Commission ("LCC") in June 1999, she invited the Secretary General ("SG") to brief Members on the Guidelines. She also sought explanation for the non-inclusion of the relevant case in table form, which was referred to in its paragraph 14, in the appendices to the paper.

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35. At the invitation of the Chairman, SG briefed Members on the relevant statutory provisions and arrangements for the handling of disturbances which interrupted proceedings of the Council or its committees as set out in the Secretariat's paper. Referring to paragraph 8 of the paper, SG explained that cases of disturbances were dealt with in accordance with the Guidelines approved by LCC on 10 June 1999. SG then elaborated on the following three types of circumstances set out in the Guidelines as detailed in paragraph 8(a) to (c) of the paper, namely, circumstances under which no further action would be taken by the Secretariat; circumstances under which the person concerned should be removed from the public galleries and be given warnings again before his release; and circumstances under which the person concerned should be handed to the Police after he had been removed from the public galleries. SG pointed out that, in accordance with the Guidelines, the Secretariat would report to the Police where -

- (a) the person concerned threw articles from the public galleries to the Chamber, hence causing disturbance;
- (b) the person concerned displayed violent behaviour and had to be removed from the public galleries by the security staff;
- (c) the behaviour of the person concerned had caused injury to himself and/or others, or damages to the property of the Council; and
- (d) the person concerned had a record of having been removed from the public galleries and forewarned of the consequence should he cause disruption again.

36. SG stressed that the Secretariat had all along dealt with cases of disturbances according to the respective circumstances of each case by following the Guidelines strictly. Information on cases involving disturbances in the public galleries of the LegCo Building and whether they were reported to the Police during the period from October 2007 to September 2010 was set out in Appendices I and II to the paper.

37. SG further explained that as there were only two cases of disturbances caused by deputations/individuals when attending committee meetings over the past three years, they were not set out separately in an appendix to the paper. In the first case which took place in 2009, the person concerned had left the meeting after causing disruption, and the Secretariat had not taken any further action. The second case was the one referred to in paragraph 14 of the paper. At the meeting of the Subcommittee held on 22 May 2010, a member of a deputation appearing before the Subcommittee to give views when ordered to leave the

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Chamber by its Chairman refused to do so but charged at a public officer. Two Security Assistants were injured when preventing him from reaching the public officer and in the course of removing him from the Chamber. One of the Security Assistants was given 10 days' sick leave because of the injury sustained, while the other sustained minor injury and was not granted sick leave. The Secretariat considered that the circumstances of the case was akin to those stated in paragraph 8(c) of the paper and had therefore decided to follow the Guidelines and reported it to the Police. The reporting of the case to the Police was considered a reasonable approach by the Legal Adviser ("LA") under the circumstances.

38. Ms Emily LAU thanked the Secretariat for providing the relevant information. She said that the purpose of raising the matter for discussion was to clarify the circumstances under which members of the public who staged protests when observing or attending meetings of the Council or its committees were handed to the Police. It was her understanding that the Police would not enter into the precincts of LegCo to take enforcement actions on its own and would only take action after the Secretariat had reported to it. She stressed that Members had all along encouraged free expression of views by members of the public in a peaceful and rational manner. In her view, only very serious cases of disturbances should be reported to the Police. She agreed that the circumstances listed in paragraph 8(c) of the Secretariat's paper were serious, particularly where the person concerned had caused injury to others. She sought information on whether the Secretariat had received any complaints from members of the public alleging that the actions taken by the Secretariat in handling cases of disturbances were too stringent or had interfered with their expression of views.

39. At the invitation of the Chairman, SG confirmed that no such complaints had been received by the Secretariat. She added that there had been only cases where persons causing disruption indicated that they were not aware of the prohibition of their acts until they were given warning. SG reiterated that the Secretariat had all along dealt with cases of disturbances according to their respective circumstances by following the Guidelines.

40. Dr Margaret NG said that she was concerned about the case which took place on 22 May 2010. Apart from looking up the relevant statutory provisions, she had also enquired with the Department of Justice ("DoJ") and the Secretariat about the case. Her prime concern was that LegCo should have the autonomy to deal with matters relating to order within its precincts, although the Basic Law provided for the power of prosecution with DoJ. To her understanding, it had all along been the practice that persons causing disturbances were handed to the Police by the Secretariat staff where necessary. The case in question was different

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in that the Secretariat staff had not handed the person concerned to the Police right after the disturbance; it was only reported to the Police at a later stage and the Police then took action to arrest the person concerned. She was concerned about the impact on freedom of expression in LegCo if the Police had the power to initiate investigations into cases involving order in LegCo under the P&P Ordinance. In her view, to ensure preservation of LegCo's autonomy to deal with matters relating to order in its precincts without interfering with DoJ's prosecution power, DoJ should communicate with the President before instituting any prosecutions against persons who had caused disturbances in LegCo. She further pointed out that section 26 of the P&P Ordinance provided that no prosecution for an offence under the Ordinance should be instituted except with the consent of the Secretary for Justice ("SJ"). In respect of the case on 22 May, it was her understanding that the Police had not obtained the consent of SJ before instituting prosecution against the person concerned. The prosecution proceedings had not been proceeded with subsequently as the person concerned had agreed to be bound over, and neither conviction nor guilty plea was involved in the process. She considered it necessary to rationalise the matter. Given that the existing guidelines for handling disturbances by members of the public were approved by LCC and issued by the President, she suggested referring the matter to LCC for discussion.

41. Mr LEUNG Kwok-hung said that he had been charged several times for causing disturbances in LegCo. Every time he was handed to the Police by the Secretariat staff, and prosecutions had been instituted against him with the consent of SJ. He was concerned about the case on 22 May as the Police had not obtained the consent of SJ for instituting prosecution and had later dropped the prosecution against the person concerned. He was given to understand that the person concerned panicked and therefore agreed to be bound over. He had discussed the case with the President, who had explained that it was reported to the Police as injuries were involved. In his view, the President, as the representative of LegCo, should be vested with the discretion to decide whether prosecutions should be instituted against persons causing disturbances in LegCo.

42. Dr Margaret NG said that pursuant to the P&P Ordinance, the consent of SJ must first be obtained before prosecution was instituted. In respect of the case on 22 May, prosecution had been instituted against the person concerned but was subsequently not proceeded with. She invited LA's views on whether the consent of SJ should have been obtained in the first place for taking prosecution. She reiterated her view that it should be for LCC to discuss whether the Guidelines should be enforced strictly or whether flexibility should be built in for handling cases under different circumstances.

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43. At the invitation of the Chairman, LA said that the relevant statutory provision was section 26 of the P&P Ordinance, which stipulated that no prosecution for an offence under the Ordinance should be instituted except with the consent of SJ. Prosecution proceedings generally commenced with the presentation of the relevant charge or indictment to the court. The consent of SJ should have been given before the commencement of any prosecution proceedings instituted under the P&P Ordinance, irrespective of whether there was any subsequent termination or withdrawal of the proceedings.

44. In response to Dr Margaret NG's further enquiry on the implications for cases where SJ's consent had not been obtained before instituting prosecutions, LA said that there was no relevant case law under the P&P Ordinance. He pointed out that under the Immigration Ordinance (Cap. 115), the institution of certain prosecution proceedings required the consent of SJ and there had been cases where the conviction was deemed null and void after it was found that SJ's consent to prosecute had not been obtained in the first place.

45. Mr IP Kwok-him shared the view that the matter should be referred to LCC for discussion. He added that he fully supported the Secretariat's handling of disturbance cases which occurred in the Chamber by following the Guidelines.

46. In concluding the discussions, the Chairman said that some Members considered it necessary to review and improve the Guidelines. The question of whether the President should have a role in the matter was also raised. She proposed that the matter be referred to LCC for discussion, and the House Committee's views could be sought on LCC's recommendations if necessary. Members agreed.

IX. Any other business

47. Mr LEUNG Kwok-hung enquired about the channels for following up the undertakings made by the Administration in respect of Choi Yuen Village. The Chairman suggested that Mr LEUNG should approach the Secretariat for advice.

48. There being no other business, the meeting ended at 3:08 pm.