

立法會
Legislative Council

LC Paper No. CB(2)245/18-19
(These minutes have been seen
by the Administration)

Ref : CB2/BC/4/17

**Bills Committee on
Conservation of Antarctic Marine Living Resources Bill**

**Minutes of meeting
held on Monday, 8 October 2018, at 2:30 pm
in Conference Room 3 of the Legislative Council Complex**

Members present : Hon Steven HO Chun-yin, BBS (Chairman)
Hon Kenneth LEUNG
Dr Hon Elizabeth QUAT, BBS, JP
Hon SHIU Ka-fai
Hon HUI Chi-fung

Public Officers attending : Item I

Mr Daniel CHENG Chung-wai, JP
Deputy Secretary for Food and Health (Food) 1

Mr Bill WONG Kwok-piu
Principal Assistant Secretary for Food and Health (Food) 3

Ms Leonora IP Wan-yok
Senior Assistant Law Draftsman
Department of Justice

Miss Celia HO Wai-kwan
Government Counsel
Department of Justice

Mr Mickey LAI Kin-ming
Assistant Director (Fisheries)
Agriculture, Fisheries and Conservation Department

Ms Louise LI Wai-hung
Senior Fisheries Officer (Fisheries Management)
Agriculture, Fisheries and Conservation Department

Clerk in attendance : Miss Josephine SO
Chief Council Secretary (2) 2

Staff in attendance : Mr Cliff IP
Assistant Legal Adviser 8

Ms Wendy LO
Senior Council Secretary (2) 2

Miss Cally LAI
Legislative Assistant (2) 2

Action

I. Meeting with the Administration

(File Ref: FH CR 1/2576/18, LC Paper Nos. CB(2)1906/17-18(01), CB(2)1976/17-18(01), CB(2)1998/17-18(01), CB(2)2001/17-18(01), CB(2)2049/17-18(01), CB(2)2058/17-18(01)&(02) and CB(3)732/17-18)

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

Follow-up actions required of the Administration

2. The Administration was requested to provide written responses to issues raised by members and the legal adviser to the Bills Committee at the meeting as set out in **Annex B**.

Clause-by-clause examination

3. The Bills Committee completed discussion on the policy aspects and commenced clause-by-clause examination of the Bill. The Bills Committee examined up to Clause 24 of the Bill.

Action

II. Any other business

Date of next meeting

4. Members agreed that the next meeting of the Bills Committee would be held on Tuesday, 6 November 2018 at 2:30 pm to continue clause-by-clause examination of the Bill and to consider draft amendments, if any, proposed to the Bill.

5. There being no other business, the meeting ended at 4:24 pm.

Council Business Division 2
Legislative Council Secretariat
13 November 2018

**Proceedings of the meeting of the Bills Committee on
Conservation of Antarctic Marine Living Resources Bill
on Monday, 8 October 2018, at 2:30 pm
in Conference Room 3 of the Legislative Council Complex**

Time marker	Speaker	Subject(s)/Discussion	Action Required
000633 - 000655	Chairman	The Chairman's opening remarks	
<i>Administration's responses to issues raised at the last meeting</i>			
000656 - 001315	Chairman Admin	The Administration's briefing on its responses to issues raised at the meeting on 16 July 2018 (LC Paper No. CB(2)1976/17-18(01)).	
001316 - 002809	Chairman Dr Elizabeth QUAT Admin	<p>Dr Elizabeth QUAT's enquiries and the Administration's responses on:</p> <p>(a) the number of new posts to be created respectively in the Agriculture, Fisheries and Conservation Department ("AFCD") and the Government Laboratory ("GL") to cope with the increase in workload arising from the implementation of the Conservation of Antarctic Marine Living Resources Ordinance ("the Ordinance"), as referred to in paragraph 4 of LC Paper No. CB(2)1976/17-18(01), if the Bill was passed;</p> <p>(b) the expertise required for the post holders; and</p> <p>(c) the estimated staff cost and other expenses involved in providing the new services.</p> <p>The Chairman and Dr QUAT considered that the Administration should critically assess the need for creating two teams of professional and technical staff (one each under AFCD and GL) to carry out the additional workload, since only a small number of fishing vessels carrying Antarctic marine living resources had entered Hong Kong waters in recent years.</p>	
002810 - 003808	Chairman Dr Elizabeth QUAT Admin	Dr Elizabeth QUAT's enquiries and the Administration's responses on (a) the composition and membership of the Commission for the Conservation of Antarctic Marine Living Resources ("the Commission"); and (b) precedent cases of giving international organizations legal personality in Hong Kong.	

Time marker	Speaker	Subject(s)/Discussion	Action Required
		<p>Referring to the submission from the Jane Goodall Institute Hong Kong ("the Institute") (LC Paper No. CB(2)1988/17-18(01)), Dr QUAT requested the Administration to relay to the Commission the Institute's concern about the dangers of microplastics in Antarctic waters and their adverse impacts on marine ecology and human health. In Dr QUAT's view, the Hong Kong Government should regulate the sale of products containing microplastics for the protection of marine ecology.</p>	
Clause-by-clause examination of the Bill			
003809 - 003945	Chairman Admin	<p>Clause-by-clause examination of the Bill, with the aid of the Blue Bill (LC Paper No. CB(3)732/17-18).</p> <p><u>Part 1 - Preliminary</u></p> <p><i>Clause 1 - Short title and commencement</i></p>	
003946 - 004927	Chairman Mr Kenneth LEUNG ALA8 Admin	<p><i>Clause 2 - Interpretation</i></p> <p>In relation to the term "Convention Area", the Chairman requested the Administration to provide a map showing the exact location/ boundary of the Convention Area as defined under clause 2 of the Bill and Article I of the Convention on the Conservation of Antarctic Marine Living Resources ("CCAMLR").</p> <p>The enquiry of the legal adviser to the Bills Committee relating to the proposed definition of "Antarctic marine organism", having regard to the definition of "living organism" under section 2(1) of the Genetically Modified Organisms (Control of Release) Ordinance (Cap. 607), and the Administration's reply (LC Paper Nos. CB(2)2001/17-18(01) and CB(2)2049/17-18(01)).</p> <p>In response to Mr Kenneth LEUNG's enquiry on the proposed definition of the term "Hong Kong person", the Administration advised that clause 4(1) of the Bill sought to empower the Secretary for Food and Health ("SFH") to make regulations with extra-territorial effect for implementing the relevant Conservation Measures ("CMs") and related matters. Under clause 4(2)(b), the regulations would apply to (a) Hong Kong persons (wherever they might</p>	<p>Admin (para.2 of Annex B refers)</p>

Time marker	Speaker	Subject(s)/Discussion	Action Required
		<p>be) and Hong Kong companies (wherever they might be acting); and (b) other persons (including companies and bodies corporate that were not Hong Kong companies) acting in Hong Kong. The relevant regulations would be submitted to the Legislative Council ("LegCo") for scrutiny after the passage of the Bill.</p> <p>Mr Kenneth LEUNG's view that when and after the relevant regulations were/had been tabled in LegCo and if a subcommittee was formed to study the regulations, the Administration should provide all the details of the framework concerning extra-territorial operations under clause 4(2) and explain how the regulations would apply to "Hong Kong persons/Hong Kong companies" and "other persons acting in Hong Kong".</p> <p><i>Clause 3 - Commission has legal personality</i></p>	
004928 - 010127	Chairman Mr Kenneth LEUNG ALA8 Admin	<p><u>Part 2 - Regulations and Fees</u></p> <p>Division 1 - Regulation-making Powers</p> <p><i>Clause 4 - Secretary may make regulations</i></p> <p>The Chairman and Mr Kenneth LEUNG enquired about the need to empower SFH to make regulations with extra-territorial effect. The Administration explained that the implementation of certain CMs might require Contracting Parties ("CPs") to CCAMLR to regulate acts outside their territories. For example, under CM10-05 (Catch Documentation Scheme for <i>Dissostichus</i> spp.), each CP should require that each landing of <i>Dissostichus</i> spp. at its ports and each transshipment of <i>Dissostichus</i> spp. from, or to, its vessels be accompanied by a completed <i>Dissostichus</i> catch document. Under CM10-08, CPs should take measures to verify if any of their nationals, natural or legal persons were engaged in, responsible for or benefit from illegal, unreported and unregulated fishing activities for toothfish, and take appropriate action to deprive the benefits obtained and dissuade the actors of further illegal activities.</p>	

Time marker	Speaker	Subject(s)/Discussion	Action Required
		<p>The legal adviser to the Bills Committee's enquiries and the Administration's responses on: (a) why the offence-creating provisions would only be provided for in the regulations to be made, but not in the Bill; and (b) the reasons for adopting the "direct reference approach" in the regulations to be made under clause 4, i.e. an approach of making direct reference to a provision in CCAMLR, or in a CM, that applied to Hong Kong in making regulations under the Bill in future (LC Paper Nos. CB(2)2001/17-18(01) and CB(2)2049/17-18(01)).</p>	
010128 - 010643	Chairman Admin	<p><i>Clause 5 - Regulations - general powers</i></p> <p>In response to the Chairman's enquiries, the Administration advised that "public officers" under clause 5(1)(b) would include public officers to be appointed as authorized officers under clause 9(1) and to be delegated with the functions of the Director of Agriculture, Fisheries and Conservation ("DAFC") under clause 10(1). In relation to clause 5(1)(c), the regulations to be made by SFH might provide for additional functions of public officers for enforcing the Ordinance.</p> <p>Division 2 - Fees</p> <p><i>Clause 6 - Regulations - fees</i> <i>Clause 7 - Prescribed fees not refundable</i></p>	
010644 - 010908	Chairman ALA8 Admin	<p><u>Part 3 - Administrative Provisions</u></p> <p>Division 1 - Specified Forms</p> <p><i>Clause 8 - Director may specify forms</i></p> <p>The legal adviser to the Bills Committee's enquiry regarding the means of accessing the forms in the future, having regard to section 35(5)(b) of the Competition Ordinance (Cap. 619). The Administration replied that it would certainly put the forms online (LC Paper Nos. CB(2)2001/17-18(01) and CB(2)2049/17-18(01)).</p>	
010909 - 011540	Chairman ALA8 Admin	<p>Division 2 - Authorized Officers and Delegation</p> <p><i>Clause 9 - Appointment of authorized officers</i> <i>Clause 10 - Delegation of Director's functions</i></p>	

Time marker	Speaker	Subject(s)/Discussion	Action Required
		<p>The Administration was requested to revert in writing on whether it would consider the Bills Committee's suggestion to clearly provide for in the Bill the minimum rank(s) of the public officers to be appointed as authorized officers under clause 9(1) and to be delegated with the functions of DAFC under clause 10(1), drawing reference to legislation as referred to by the legal adviser to the Bills Committee (e.g. section 29 of Cap. 607 and the related legislative history).</p> <p><i>Clause 11 - Performance of functions</i></p>	<p>Admin (para.1(a) of Annex B refers)</p>
011541 - 012052	<p>Chairman' Mr Kenneth LEUNG ALA8 Admin</p>	<p><u>Part 4 - Enforcement, etc.</u></p> <p>Division 1 - Functions of Authorized Officers</p> <p><i>Clause 12 - Interpretation</i></p> <p>Various modes of transport to be used in the trading of toothfish.</p> <p><i>Clause 13 - Power to inspect and take copies of documents</i></p> <p><i>Clause 14 - Power to search and detain</i></p> <p>The legal adviser to the Bills Committee's enquiries and the Administration's responses on: (a) the meaning of "used wholly or principally for dwelling purposes" in clauses 13(2) and 14(3); and (b) whether a vessel used both for the purposes of dwelling and fishing would fall within the description of "used wholly or principally for dwelling purposes" (LC Paper Nos. CB(2)2001/17-18(01) and CB(2)2049/17-18(01)).</p>	
012053 - 012657	<p>Chairman Admin ALA8</p>	<p><i>Clause 15 - Power to enter and search on issue of warrant</i></p> <p>The Administration was requested to (a) consider the Bills Committee's suggestion to state expressly in the Bill that the term "necessary force" in clause 15(3)(b) must be "reasonable force" in order to achieve consistency in the use of expression with a similar reference in clause 19(3); and (b) if the suggestion was adopted, provide the Bills Committee with the wording of the proposed amendment to clause 15(3)(b) for members' consideration.</p>	<p>Admin (para.1(b) of Annex B refers)</p>

Time marker	Speaker	Subject(s)/Discussion	Action Required
012658 - 013332	Chairman ALA8 Admin	<p><i>Clause 16 - Power to seize, remove and detain things</i></p> <p>The legal adviser to the Bills Committee's enquiry and the Administration's reply regarding the interpretation of the terms "things" and "a thing" (LC Paper Nos. CB(2)2001/17-18(01) and CB(2)2049/17-18(01)).</p> <p><i>Clause 17 - Power to take samples and carry out tests</i></p>	
013333 - 014054	Chairman ALA8 Admin	<p><i>Clause 18 - Power to require identification</i></p> <p>The Administration's responses to the enquiries from the Chairman and the legal adviser to the Bills Committee on whether the power under clause 18(1) to stop and board a transport and to require identity proof without warrant might be exercised in relation to a transport (including a vessel) which was used for dwelling purposes (LC Paper Nos. CB(2)2001/17-18(01), CB(2)2049/17-18(01) and CB(2)2058/17-18(01)& (02)).</p> <p><i>Clause 19 - Power to arrest</i></p>	
014055 - 015432	Chairman ALA8 Admin	<p>Division 2 - Disposal and Forfeiture of Things Seized</p> <p><i>Clause 20 - Sale or disposal of things seized</i> <i>Clause 21 - Return or forfeiture of things seized - offences prosecuted</i> <i>Clause 22 - Return or forfeiture of things seized - no offence prosecuted</i> <i>Clause 23 - Sale or disposal of forfeited things</i></p> <p>In response to the Chairman's enquiry, the Administration advised that clauses 21 and 22, among others, sought to provide for the return of things seized or any proceeds from the sale of the things to a person or its owner under certain circumstances. If a thing was sold under clause 20(1) and the proceeds from the sale were forfeited to the Government under the Ordinance (including under an order made under the Ordinance), the proceeds would be paid into the general revenue or a Commission Fund as decided by DAFC.</p>	

Time marker	Speaker	Subject(s)/Discussion	Action Required
		<p>In relation to a thing to be sold under clause 20 or 23 and the proceeds from the sale and to be paid into the general revenue or a Commission Fund, the Administration was requested to consider the Bills Committee's suggestion to draw a clear line in respect of the amount of proceeds of sale for determining the whereto of the net proceeds (i.e. when the proceeds would be transferred to the general revenue or the Commission Fund).</p> <p>Regarding clause 22(1), the Administration was requested to consider the Bills Committee's suggestion to make it clear in the Bill that an advance notice and/or an opportunity to be heard would be given to the owner of the thing seized before applying to the court or magistrate for an order under the same subclause, drawing reference to section 70 of the Trade Marks Ordinance (Cap. 559).</p>	<p>Admin (para.1(c) of Annex B refers)</p> <p>Admin (para.1(d) of Annex B refers)</p>
015433 - 015722	Chairman Admin	<i>Clause 24 - Compensation for things seized or detained</i>	
015723 - 015836	Chairman	<p>The Chairman requested the Administration to provide written responses to issues of concern raised at the meeting.</p> <p>As the Administration had indicated in its reply letter dated 5 October 2018 (LC Paper No. CB(2)2058/17-18(02)) its intention to consider proposing amendments to clauses 31(4) and 32 to expressly make it clear that only evidential burden was required, the Administration was requested to provide the draft amendments to clauses 31(4) and 32 of the Bill for members' consideration at the next meeting.</p> <p>Date of next meeting.</p> <p>The Chairman's closing remarks.</p>	<p>Admin (para.3 of Annex B refers)</p>

**Bills Committee on
Conservation of Antarctic Marine Living Resources Bill**

**List of follow-up actions arising from the discussion
at the meeting on 8 October 2018**

The Administration was requested to provide a written response to address the following issues raised by members of and the legal adviser to the Bills Committee:

- (a) in relation to clauses 9 and 10, whether the Administration would consider the Bills Committee's suggestion to clearly provide for in the Bill the minimum rank(s) of the public officers to be appointed as authorized officers under clause 9(1) and to be delegated with the functions of the Director of Agriculture, Fisheries and Conservation under clause 10(1), drawing reference to legislation as referred to by the legal adviser to the Bills Committee (e.g. section 29 of the Genetically Modified Organisms (Control of Release) Ordinance (Cap. 607));
- (b) whether the Administration would consider the Bills Committee's suggestion to state expressly in the Bill that the term "necessary force" in clause 15(3)(b) must be "reasonable force" in order to achieve consistency in the use of expression with a similar reference in clause 19(3). If the answer is in the positive, please provide the Bills Committee, before its next meeting, with the wording of the proposed amendment to clause 15(3)(b) for members' consideration;
- (c) in relation to a thing to be sold under clause 20 or 23 and the proceeds from the sale and to be paid into the general revenue or a Commission Fund, the Administration was requested to consider the Bills Committee's suggestion to draw a clear line in respect of the amount of proceeds of sale for determining the whereto of the net proceeds (i.e. when the proceeds would be transferred to the general revenue or the Commission Fund); and
- (d) in relation to clause 22(1), whether the Administration would consider the Bills Committee's suggestion to make it clear in the Bill that an advance notice and/or an opportunity to be heard would be given to the owner of the thing seized before applying to the court or magistrate for an order under the same subclause, drawing reference to section 70 of the Trade Marks Ordinance (Cap. 559).

2. The Administration was also requested to provide a map showing the exact location/boundary of the Convention Area as defined under clause 2 of the Bill and Article I of the Convention on the Conservation of Antarctic Marine Living Resources.

3. As the Administration has indicated in its reply letter dated 5 October 2018 (LC Paper No. CB(2)2058/17-18(02)) its intention to consider proposing amendments to clauses 31(4) and 32 to expressly make it clear that only evidential burden is required, the Administration was requested to provide before the next meeting the draft amendments to clauses 31(4) and 32 of the Bill for members' consideration at the next meeting.

Council Business Division 2
Legislative Council Secretariat
11 October 2018