

立法會
Legislative Council

LC Paper No. CB(2)929/99-00

(These minutes have been
seen by the Administration)

Ref : CB2/BC/23/98

**Bills Committee on
Provision of Municipal Services (Reorganization) Bill**

**Minutes of Meeting
held on Tuesday, 20 July 1999 at 10:45 am
in Conference Room A of the Legislative Council Building**

Members Present : Hon Andrew WONG Wang-fat, JP (Chairman)
Hon Kenneth TING Woo-shou, JP
Hon HO Sai-chu, SBS, JP
Hon Cyd HO Sau-lan
Hon LEE Wing-tat
Hon Fred LI Wah-ming, JP
Hon Ambrose CHEUNG Wing-sum, JP
Hon CHAN Wing-chan
Hon CHAN Kam-lam
Hon Jasper TSANG Yok-sing, JP
Hon Howard YOUNG, JP
Dr Hon TANG Siu-tong, JP

Members Absent : Hon Ronald ARCULLI, JP
Hon James TO Kun-sun
Hon YEUNG Yiu-chung
Hon CHOY So-yuk
Hon FUNG Chi-kin

Public Officers Attending : Mrs Maureen CHAN
Deputy Secretary for Constitutional Affairs

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Mr John LEUNG
Principal Assistant Secretary for Constitutional Affairs

Mr Johnny WOO
Assistant Director of Urban Services (Leisure Management)

Mr Tony MA
Assistant Director of Regional Services (Culture & Entertainment)

Ms Rhonda LO
Assistant Director of Regional Services
(Environmental Health Services) Acting

Miss Olivia CHAN
Senior Staff Officer of Urban Services (Leisure Policy)

Mrs N DISSANAYAKE
Senior Assistant Law Draftsman (Department of Justice)

Miss Selina LAU
Government Counsel (Department of Justice)

Clerk in Attendance : Mrs Constance LI
Chief Assistant Secretary (2) 2

Staff in Attendance : Mr LEE Yu-sung
Senior Assistant Legal Adviser

Miss Connie FUNG
Assistant Legal Adviser 3

Miss Flora TAI
Senior Assistant Secretary (2) 2

I. Matters arising

[Paper Nos. CB(2)2522/98-99(02) and CB(2)2598/98-99(02)]

Members noted the Administration's response to members' questions raised at the meeting on 25 June 1999 [Paper No. CB(2)2522/98-99(02)]. At the invitation of the Chairman, Deputy Secretary for Constitutional Affairs

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(DS(CA)) briefed members on the Administration's response to members' questions raised at the meeting on 6 July 1999 [Paper No. CB(2)2598/98-99(02)]. The Chairman then invited questions from members and asked the Administration to respond accordingly. The gist of discussion is summarized in paragraphs 2 - 8 below.

Transitional provisions with respect to offences

2. DS(CA) informed members that after careful consideration of members' views, the Administration agreed that the legal effect of clause 10(1) as presently drafted could be confused as being not consistent with that of section 23 of the Interpretation and General Clauses Ordinance (Cap. 1) which dealt with offences committed under repealed enactments. The Administration would propose a Committee stage amendment to clause 10(1) to the effect that proceedings for offences committed under the repealed enactments should be commenced or continued "as if this Ordinance had not been enacted".

3. DS(CA) further informed members that the Administration agreed that proceedings for continuing offences should be instituted under the new corresponding enactment under clause 10(2). Senior Assistant Law Draftsman (SALD) explained that when a continuing offence had been committed under a repealed enactment, it could only be prosecuted under the new corresponding ordinance and not under the repealed ordinance. Senior Assistant Legal Adviser (SALA) advised that a continuing offence referred to an offence which had been committed over a span of time and against which no prosecution had been instituted during that time. Mr LEE Wing-tat then asked and Acting Assistant Director of Regional Services (Environmental Health Services) confirmed that the penalty levels for the various offences under the enactments to be repealed and those for the new enactments were same.

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4. In view of members' concerns about how continuing offence would be dealt with under the Bill, DS(CA) undertook to provide a written response. Ms Cyd HO also requested the Administration to provide examples on how continuing offences were dealt with after the enactment of the Hong Kong Reunification Ordinance for members' reference.

The purpose and legal effects of clause 11 (Chief Executive in Council to make consequential, transitional and savings provisions)

5. Members noted the Administration's note explaining the purpose and legal effects of clause 11 [Annex A to Paper No. CB(2)2598/98-99(02)] and copies of the relevant sections in other legislation which provided for consequential amendments and savings and transitional provisions to be made by subsidiary legislation.

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6. Mr LEE Wing-tat said that despite the Administration's explanation, he was still concerned about the legal effects of clause 11 as presently drafted, having regard to the fact that its wording was different from that of relevant sections in other legislation [Enclosures I to IV to Annex A]. Mr LEE also reiterated members' concern expressed at the last meeting that the powers conferred on the Chief Executive in Council were too broad. Responding to the Chairman, SALA said that the scope of clause 11 was broader than equivalent existing provisions in other ordinances. He drew members' attention to the fact that the ambit of the Occupational Safety and Health Ordinance (Cap. 509) and Long-Term Prison Sentences Review Ordinance (Cap. 524) was fairly restricted. SALA added that clause 11(1)(a) empowered the Chief Executive in Council to make provisions which might be expedient to give effect to the provisions of the Ordinance, thus the scope was not limited to consequential, transitional and savings provisions.

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7. SALD pointed out that clause 11(1) was so worded because the Bill already contained savings and transitional provisions. Clause 11(1) would achieve the same legal effect if it was simplified to provide that the Chief Executive in Council could make consequential, transitional and savings provisions in addition to those contained in the Bill. DS(CA) undertook that the Administration would further explain the need for clause 11 and improve the drafting of clause 11 to limit its scope to only consequential, savings and transitional provisions in order to address members' concerns.

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8. The Chairman said that while he appreciated that the scope of clause 11 was limited to consequential, savings and transitional provisions, he wondered who could seek a judicial review if the provisions made under clause 11 exceeded the enabling powers. SALD responded that any person whose interest was affected by the provisions made could seek a judicial review. SALA concurred with SALD and added that it would be up to the court to decide the locus standi of the applicant in each case. At the Chairman's request, DS(CA) said that the Administration would provide a written response on the matter.

II. Clause-by-clause examination of the Bill

[Set A of the marked-up copy of relevant legislation, Appendix III to Paper No. CB(2)2387/98-99(01) and Annex B to Paper No. CB(2)2598/98-99(02)]

9. The Bills Committee continued examination of the Bill from Schedules 1 and 2 onwards.

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Schedules 1 and 2

10. DS(CA) explained to members the comparison table on detailed provisions of the Bylaws of the two Provisional Municipal Councils (PMCs) as listed in Schedules 1 and 2 [Annex B to Paper No. CB(2)2598/98-99(02)]. Responding to Mr LI Wah-ming, the Chairman advised that members could raise for discussion if they considered a particular piece of subsidiary legislation should be repealed when the Bills Committee examined Schedule 3 of the Bill later. Mr Howard YOUNG said that he was given the understanding that the Bill only sought to reconcile the differences between the subsidiary legislation made by the PMCs for the reorganization. In view of the voluminous provisions in the Bill, the Bills Committee would not discuss the detailed provisions of individual subsidiary legislation to determine whether they should be repealed or not. Mr LEE Wing-tat pointed out that detailed discussion of specific subsidiary legislation such as the Commercial Bathhouses Regulation would be required as the reconciliation affected the operation of existing commercial bathhouses in the Provisional Regional Council's area. The Chairman said that there was no conflict between Mr YOUNG and Mr LEE's views.

11. In response to Mr LI Wah-ming's enquiry about the rationale for repealing the Basements (Urban Council) Bylaws, the Mosquito Prevention (Urban Council) Bylaws, the Ventilation (Urban Council) Bylaws and the Wells and Water Storage (Urban Council) Bylaws, Principal Assistant Secretary for Constitutional Affairs (PAS(CA)) briefed members on the Administration's note on "Obsolete Provisions in the Public Health & Municipal Services Ordinance and Subsidiary Legislation Proposed to be Deleted" [Annex C to the Legislative Council Brief]. Mr LI observed that unlawful cultivation of vegetables and the keeping of wells could still be found in some urban areas. He expressed concern whether such problems could be dealt with adequately by existing legislation. PAS(CA) pointed out that where mosquito breeding was found, actions could be taken under section 27 of the Public Health and Municipal Services Ordinance. At Mr Ambrose CHEUNG's request, PAS(CA) undertook to provide supplementary information on how existing legislation could adequately substitute those Bylaws to be repealed in Schedule 2.

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Schedule 3 - Amendments to Public Health and Municipal Services Ordinance and its subsidiary legislation

Paragraph 1

12. The Chairman asked why clause 1(b) sought to repeal "public body" from the definition of "Authority". SALD replied that "public body" in existing legislation referred to PMCs and such reference was no longer necessary because of their abolition. Responding to Mr Ambrose CHEUNG, PAS(CA) explained that the definition of "Authority" as amended referred to public officer

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designated by provisions of section 3 of the Public Health and Municipal Services Ordinance as set out in the Third Schedule. He assured members that all the designated authorities had been included.

13. PAS(CA) informed members that "health officer" was defined in the Interpretation and General Clauses Ordinance (Cap. 1) as "the Director, Deputy Director and Assistant Director of Health; or any person appointed as a health officer by the Chief Executive. He explained that the definition of "health officer" was proposed to be added to the Public Health and Municipal Services Ordinance because the Director of Food and Environmental Hygiene or an Assistant Director of Food and Environmental Hygiene would need to perform the duties of a health officer after the reorganization.

14. Mr LI Wah-ming referred to the fact that under the new set-up, directorates staff of two different departments i.e. Department of Health and Department of Food and Environmental Hygiene would perform the duties of a health officer. He expressed concern that the problem of fragmentation of responsibilities would persist particularly in crisis situations. PAS(CA) explained that "health officer" in legislation relating to food and environmental hygiene related matters e.g. safety of imported food products referred to directorates staff of the Department of Food and Environmental Hygiene while "health officer" in legislation relating to disease surveillance and monitoring referred to directorates staff of the Department of Health. Mr LEE Wing-tat queried why directorate staff of the Agriculture and Fisheries Department was not included in the definition of "health officer". PAS(CA) replied that it was because no reference to the Agriculture and Fisheries Department had been made in the Ordinance. At Mr LI Wah-ming's request, PAS(CA) agreed that the Administration would explain and provide examples on the division of responsibilities among the three departments (the Department of Health, Agriculture and Fisheries Department and the proposed Department of Food and Environmental Hygiene).

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15. PAS(CA) informed members that the definition of "prescribed fee" was added because the Bill sought to consolidate the provisions for prescribing various fees and charges under proposed section 124I or 124K.

III. Any other business

16. At Mr Ambrose CHEUNG's suggestion, the Chairman asked and DS(CA) agreed to provide information papers on "medium-range" policy issues to facilitate members' consideration when relevant provisions were examined.

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IV. Date of next meeting

17. The Chairman reminded members that the next meetings would be held on Friday, 23 July 1999 at 8:30 am and 2:30 pm respectively.

(Post-meeting note : The meeting scheduled for 2:30 pm on 23 July 1999 has been cancelled due to a lack of quorum.)

18. The meeting ended at 12:35 pm.

Legislative Council Secretariat
20 January 2000