

立法會
Legislative Council

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by the Administration)

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

**Minutes of Meeting
held on Wednesday, 22 September 1999 at 2:30 pm
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, JP
Hon LEE Wing-tat
Hon Fred LI Wah-ming
Hon Ronald ARCULLI, JP
Hon James TO Kun-sun
Hon CHAN Wing-chan
Hon CHAN Kam-lam
Hon Howard YOUNG, JP
Hon YEUNG Yiu-chung
Dr Hon TANG Siu-tong, JP
- Members Absent** : Hon Cyd HO Sau-lan
Hon Ambrose CHEUNG Wing-sum, JP
Hon Jasper TSANG Yok-sing, JP
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 Paul CHEUNG
Senior Staff Officer (Leisure Policy), Urban Services Department

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

Mr K T LAI
Assistant Director of Regional Services
(Environmental Health 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 : Miss Connie FUNG
Assistant Legal Adviser 3

Miss Flora TAI
Senior Assistant Secretary (2) 2

I. Clause-by-clause examination
(from paragraph 369 of Schedule 3)

The Chairman said that as agreed at the last meeting, discussion of the Hawker Regulation (paragraphs 315-368 in Schedule 3) would be deferred until the Administration had provided the comparison table. The Bills Committee then continued clause-by-clause examination of the Bill from paragraph 369 of Schedule 3 onwards. The Chairman invited the Deputy Secretary for Constitutional Affairs (DS(CA)) to highlight the purpose of the amendments.

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Paragraph 369 (Hong Kong Cemetery, Happy Valley, Rules)

2. Members did not raise any queries.

Paragraphs 370-371 (Imported Games, Meat and Poultry Regulations)

3. Members did not raise any queries.

Paragraphs 372-404 (Libraries Regulation)

4. Members noted that the Administration proposed to adopt the Regional Council By-laws. In response to the Chairman, DS(CA) said that the Libraries (Urban Council) By-laws were not adopted because some of its provisions were considered out-dated and too stringent. For example, it was an offence under section 30 of the Urban Council By-laws for any person in a library to engage in any conversation; to sit on any shelf or table or on the floor. It was also difficult to enforce a provision therein prohibiting a person suffering from any communicable disease to borrow, read or use any library material.

5. In reply to Mr LI Wah-ming, Senior Assistant Law Draftsman (SALD) confirmed that the age restriction to enter or use the adult library was an existing provision in the Regional Council By-laws and the Urban Council By-laws.

6. The Chairman suggested that the Libraries Regulation should be renamed as Public Libraries Regulation as it did not cover private libraries. DS(CA) considered however that the libraries governed by the Regulation were already clearly defined.

7. Mr CHAN Wing-chan referred to section 10 of the Regulation and asked about the reason for requiring an applicant below 18 years of age to have a guarantor before he could be issued a borrower's card. Assistant Director of Regional Services (Culture & Entertainment) (AD/RS(C&E)) explained that a borrower under 18 years of age could not be held liable for library material not returned or damaged. As regards the reasons for empowering a librarian under section 11(4) to refuse to accept any person as guarantor without giving a reason, AD/RS(C&E) said that the provision was only to cater for some exceptional circumstances and it had never been invoked.

8. Mr LI Wah-ming pointed out that the Chinese versions of the amount of deposit payable under section 25 of the Libraries (Regional Council) By-laws and Libraries (Urban Council) By-laws were slightly different. Principal Assistant Secretary for Constitutional Affairs (PAS(CA)) responded that the English version of the two By-laws was the same and he believed that the words "不超過" were missing from the Chinese version of section 25 of the Urban Council By-laws.

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9. In reply to Mr CHAN Wing-chan, AD/RS(C&E) confirmed that no fee was charged at present for the use of library materials in the listening areas and viewing areas. The provision was retained to provide for flexibility in case there was a need to charge a fee for such services in future to recover operational costs.

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10. Mr CHAN Wing-chan referred to section 34A of the Regulation and asked the Administration to consider repealing the restriction on taking of writing implements into any library. He said that the provision was unreasonable and out-dated. DS(CA) undertook to review whether the provision was still necessary.

Paragraph 405 (Declaration of Markets Notice)

11. The Chairman considered that the presentation of the Schedule should be improved by listing the markets in alphabetical order. SALD explained that for the purpose of the Bill, all existing Regional Council markets were simply added to the list of Urban Council markets, and a re-aligned list would be available at a later time.

Paragraphs 406-440 (Milk Regulation)

12. Members noted that the Administration proposed to adopt the Milk (Urban Council) By-laws as the new Regulation.

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13. Mr LI Wah-ming asked the Administration to re-insert an existing provision in the Milk (Regional Council) By-law prohibiting "against processing, reconstituting or storage of any milk or milk beverage in any part of the premises containing any soil fitment or latrine fitment". DS(CA) agreed to consult USD/RSD on the suggestion and provide a response later. In this connection, Mr LEE Wing-tat and Mr LI Wah-ming reiterated their views that the Administration should take the opportunity to amend or repeal certain provisions of the subsidiary legislation if they were clearly obsolete or problematic.

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14. Mr LEE Wing-tat pointed out that "the temperature to which the milk or the milk beverage is subsequently cooled" in section 18 (1) of the Regional Council By-laws was not included in the relevant section (section 19) in the new Regulation. He considered that the section should be re-inserted. Assistant Director of Regional Services (Environmental Health Policy) (AD/RS(EHP)) agreed that this was important and should be re-inserted into the Regulation as the purpose was to control the temperature of the milk in order to prevent it from becoming sour.

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Paragraph 441 (Mineral Oil in Food Regulations)

15. Members did not raise any queries.

Paragraphs 442-454 (Museums Regulation)

16. In response to the Chairman, DS(CA) said that the Administration did not adopt the Museums (Urban Council) By-laws because some of the provisions were obsolete and had conferred excessive powers on members of the staff. For example, section 6 empowered the staff to refuse entry into a museum to a child under 3 years of age, or a person who in the opinion of the staff was offensively unclean, or one who was indecently or insufficiently dressed, etc.

17. Referring to section 5 of the Regulation concerning the Director of Leisure and Cultural Services' power to determine the opening times of museums, Mr LEE Wing-tat asked about the existing arrangements in this respect. AD/RS(C&E) informed members that the Provisional Urban Council (PUC) had recently decided that major museums would only close on the first and second days of the Lunar New Year. The Provisional Regional Council (ProRC) however did not have any major museum and there was no such policy on extension of opening hours. Mr LEE Wing-tat was of the view that museums should open on public holidays for the convenience of the general public. Mr James TO suggested that the Administration might consider stipulating in the legislation the criteria for the Director to determine the opening hours of museums instead of giving the Director the absolute discretion. The Chairman said that he would prefer the option proposed by Mr LEE Wing-tat, as it would be difficult to stipulate policy criteria in legislation.

18. AD/RS(C&E) informed members that there were no standard opening time of museums in overseas countries, and the opening time would depend on the popularity and scale of individual museums. DS(CA) pointed out that the legislation must provide for some flexibility with regard to opening times. She undertook to consult the Home Affairs Bureau on members' suggestions and revert to the Bills Committee.

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19. Mr LEE Wing-tat queried the reasonableness for the absolute exclusion of liabilities of the Government and the Director of Leisure and Cultural Services for loss or damage of articles deposited in cloakroom under section 8(6) of the Regulation. Mr James TO considered it more reasonable for the exemption to apply only in exceptional circumstances other than negligence. He said that the museum could refuse to accept the deposit of any article in the cloakroom. AD/RS(C&E) responded that the purpose of the provision was only a reminder to visitors to museums not to deposit valuables in the cloakroom. He explained that it would be difficult to prove the value of the article deposited in the cloakroom.

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20. In response to the Chairman, SALD pointed out that the clause provided for an absolute exclusion and that such exclusion of liability clause was not uncommon in other legislation. The Chairman remarked that the provision of an absolute exclusion was unreasonable.

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21. In the light of members' comments, DS(CA) agreed to consider whether absolute exclusion from liabilities was necessary having regard to similar provision in other subsidiary legislation.

22. Mr LEE Wing-tat queried the basis for adding a surcharge of 20% for damage to walls and exhibits under section 11(2). AD/RS(C&E) replied that 20% was a standard charge for damages to any Government property. Mr HO Sai-chu added that the surcharge rate was similar to those for public works projects. However, Mr James TO queried whether it was necessary to have a statutory formula since a person who wilfully damaged walls or exhibits in a museum would have civil liability under section 10. Mr TO expressed concern that without the monitoring of an elected municipal council, a Head of Museum might impose the surcharge on all damages regardless of circumstances. AD/RS(C&E) pointed out that the Head of Museum at present also did not have any discretion under the law and would impose the surcharge in all cases. The Chairman advised that the surcharge was only to recover the administrative costs and was not a penalty. He was of the view that the question of retaining an elected municipal council was not related to the setting of a surcharge rate.

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23. In response to members' comments, DS(CA) said that it would be more appropriate to stipulate the amount of surcharge in the legislation, instead of leaving it to the discretion of a Head of Museum. Nevertheless, she agreed to provide further information on the rationale of setting the rate at 20%.

Paragraph 455 (Declaration of Offensive Trades Notice)

24. Members did not raise any queries.

Paragraphs 456-468 (Offensive Trades Regulation)

25. Mr LI Wah-ming noted that the Regional Council By-laws would be adopted. He expressed concern that section 10(1) of the new Regulation would impose additional licensing requirements for offensive trades in the existing Urban Council area. DS(CA) advised that the existing licence holders would only be required to comply with the new licensing requirement when they applied for renewal of licence. AD/RS(EHP) added that section 125(1B)(a) of the Public Health and Municipal Services Ordinance (Cap. 132) already provided that a notice period of no less than 90 days should be given for existing licenceholders to comply with new licensing requirements. Mr James TO

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expressed concern that the provision might not be applicable because the additional requirements were now imposed by legislation instead of by the licensing authority. The Chairman shared Mr TO's view. At Mr TO's suggestion, DS(CA) undertook to consider whether a grace period should be specified in the legislation having regard to the impact of these additional requirements on existing licence holders.

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26. Mr LEE Wing-tat queried that section 19 had provided the Authority "absolute discretion" to exempt a licensee from all or some provisions of the Regulation. He considered the absolute discretion unreasonable and suggested that such discretion should only be exercised under specified circumstances. Mr James TO was of the view that the discretion should be removed. The Chairman suggested that the Administration could consider deleting the word "absolute" before "discretion". DS(CA) undertook to consider the suggestion.

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27. Mr LI Wah-ming pointed out that the Urban Council By-laws did not contain a similar age restriction of 14 years for a person to carry on any offensive trade as stipulated under section 21 of the Regulation. In response to Mr LI, AD/RS(EHP) said that he believed that the age limit was in line with the statutory age for children taking up employment. He agreed to provide information on the background of the age restriction.

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28. At Mr LI's request, representatives of the Administration also undertook to consider re-inserting the provision in section 10 of the Urban Council By-laws in respect of maintenance of machinery for disposal of vapours, etc. in the Regulation.

Paragraphs 469-490 (Places of Amusement Regulation)

29. Members did not raise any queries.

Paragraphs 491-514 (Pleasure Grounds Regulation)

30. Mr LEE Wing-tat queried why the Administration proposed to amend section 20(1) of the Regulation by adding "statue or other sculpture". He was of the view that the purpose of the addition was to prevent the Hong Kong Alliance in Support of Patriotic Democratic Movements of China from erecting "the Pillar of Shame" in the Victoria Park in future. Mr James TO echoed the same view. PAS(CA) responded that the various amendments to the Regulation were proposed for textual improvement and for clarity. For example, section 13 was re-drafted and "hand cart" was added to section 14(1). He explained that although "other structure" in section 20(1)(a) might cover statue or sculpture, it would be clearer in meaning to add "statue or other sculpture" to the provision. PAS(CA) stressed that the amendment was not targeted at any particular organization or application.

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31. Mr LEE Wing-tat said that he was not convinced of the explanation as the Administration had claimed that the Bill only sought to introduce necessary amendments for the reconciliation of differences between the By-laws of the PUC and ProRC. Mr James TO and Mr LI Wah-ming expressed a similar view. Mr TO also queried whether it was appropriate to regulate the "display" of statute or sculpture under section 20(1) which was to regulate the erection of structures, etc. on pleasure grounds.

32. In response to Mr James TO, Senior Staff Officer (Leisure Policy) of Urban Services Department said that section 20 only regulated erection of structures, trading and camping for a period of long duration for which PUC approval was required. The Chairman pointed out that "erection" was different from "display" and he wondered whether the amendment could achieve the effect of regulating the display of statutes or sculptures. Assistant Legal Adviser agreed with the Chairman that section 20 only covered erection of structure but not display of sculpture. She also drew members' attention that the Administration had not proposed similar amendments to the same provision under the Museums Regulation. In view of members' comments, PAS(CA) undertook to reconsider the need for adding "statute or other sculpture" to section 20(1)(a).

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II. Any other business

33. The Chairman reminded members that the Bills Committee would meet again on Friday, 24 September 1999 from 8:30 am to 12:30 pm to continue clause-by-clause examination of the Bill.

34. The meeting ended at 4:45 pm.

Legislative Council Secretariat
9 May 2000