

立法會
Legislative Council

LC Paper No. CB(2)2328/98-99

(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 Friday, 24 September 1999 at 8:30 am
in Conference Room A of the Legislative Council Building**

Members Present : Hon Andrew WONG Wang-fat, JP (Chairman)
Hon HO Sai-chu, SBS, JP
Hon Cyd HO Sau-lan
Hon LEE Wing-tat
Hon Fred LI Wah-ming, JP
Hon Ronald ARCULLI, JP
Hon CHAN Kam-lam
Hon Jasper TSANG Yok-sing, JP
Hon FUNG Chi-kin

Members Absent : Hon Kenneth TING Woo-shou, JP
Hon James TO Kun-sun
Hon Ambrose CHEUNG Wing-sum, JP
Hon CHAN Wing-chan
Hon Howard YOUNG, JP
Hon YEUNG Yiu-chung
Hon CHOY So-yuk
Dr Hon TANG Siu-tong, JP

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

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 : Mr LEE Yu-sung
Senior Assistant Legal Adviser

Miss Connie FUNG
Assistant Legal Adviser 3

Miss Flora TAI
Senior Assistant Secretary (2) 2

I. Clause-by-clause examination
(from paragraph 491 of Schedule 3 onwards)

The Bills Committee continued clause-by-clause examination from paragraph 491 of schedule 3. At the invitation of the Chairman, the Deputy Secretary for Constitutional Affairs (DS(CA)) highlighted the purpose of the amendments.

Paragraphs 491-514 (Pleasure Grounds Regulation)

2. Mr LEE Wing-tat queried why the Administration proposed to add "hand cart" to section 14(1) which prohibited the bringing into, or riding in, any pleasure ground any of the specified vehicles. DS(CA) explained that the

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provision meant to protect the safety of people in a pleasure ground. Mr LEE Wing-tat suggested that the provision should be amended by specifying that prosecution could be taken where the vehicles brought into a pleasure ground endangered the safety of others in the premises. The Chairman advised that if such circumstances were specified in the legislation, it would imply that the act was permissible in circumstances other than those specified.

3. Mr LEE Wing-tat maintained the view that the provision was unreasonable if the legal effect of which would prohibit the bringing into any pleasure ground a shopping trolley by a housewife. Senior Staff Officer (Leisure Policy) of Urban Services Department (SSO(LP)) pointed out that the provision was also meant to prevent hawking and nuisance in a pleasure ground, and that section 14(1) already provided for the exception of "in the exercise of any lawful authority or privilege". In this connection, Senior Assistant Legal Adviser (SALA) advised that "any lawful authority or privilege" in section 14(1) would mean prior authority or implied authority. A member of the public who brought into a pleasure ground a shopping trolley could be regarded to have contravened section 14(1) as presently drafted. SALA suggested that the Administration might consider specifying the types of vehicles to be prohibited, e.g. according to the weight or the kinds of goods carried.

4. Mr LEE Wing-tat opined that there were other legislation regulating illegal hawking or nuisance in a public place. He therefore considered that the provision should be repealed. Mr Ronald ARCULLI disagreed, pointing out that the restriction was necessary as vehicles could pose potential danger or hazard to others in a pleasure ground. In the light of views expressed, DS(CA) agreed to reconsider the drafting of section 14(1).

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5. Responding to Mr LEE Wing-tat, DS(CA) confirmed that the Administration would review the need for retaining section 28 which regulated the delivery of public addresses in a pleasure ground, since there was other legislation governing public addresses, public meetings or procession.

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Paragraphs 515-516 (Preservatives in Food Regulations)

6. Members did not raise any queries.

Paragraphs 517-530 (Private Cemeteries Regulation)

7. Members noted that the Administration proposed to adopt the Urban Council By-laws as the new Regulation, and that the Schedule had been amended to give a consolidated list of private cemeteries in the urban areas and in the New Territories.

8. Mr LI Wah-ming queried why it was necessary to retain section 9(2)

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which did not allow any coffin or urn to be deposited on the surface of the ground of a private cemetery. Assistant Director of Regional Services (Environmental Health Policy) (AD/RS(EHP)) advised that the provision did not exist in the Regional Councils By-laws. He agreed to consider the impact of retaining section 9(2) on private cemeteries in the Regional Council area.

Paragraphs 531-549 (Private Markets Regulation)

9. DS(CA) informed members that the Regional Council By-laws were adopted because the Urban Council did not have By-laws on private markets. She added that the new Regulation would be repealed when the only registered private market in Luen Wo Hui, Fanling was demolished in about two years.

10. In reply to Mr LEE Wing-tat, AD/RS(EHP) said that supermarkets selling fresh or cooked foods were not treated as private markets and were outside the scope of this Regulation. However, if restricted foods were sold, the relevant licensing requirements under Cap. 132 would apply. In this connection, Mr LEE Wing-tat expressed concern about the hygiene standard of those shops operated as a "private market" in some old private buildings if they were at present not subject to regulation. The Chairman remarked that markets in private buildings were similar to those operated within Housing Authority premises.

11. Mr LEE Wing-tat inquired about the reasons for restricting the types of commodities to be sold in private markets under section 8. AD/RS(EHP) replied that the provision only meant to list out those commodities available for sale in private markets at the time of enactment.

Paragraphs 550-564 (Public Cemeteries Regulation)

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12. DS(CA) informed members that while the Urban Council By-laws were adopted as the new Regulation, some existing provisions in the Regional Council By-laws were re-inserted to provide some flexibility for the Director in giving consent under the Regulation. In response to Mr LEE Wing-tat, AD/RS(EHP) explained that section 7(2A) was an existing provision in the Public Cemeteries (Regional Council) By-laws. The purpose was to cater for special circumstances such as the need for Government to relocate a family's grave for road construction. Section 7(2A) would empower the Director of Food and Environmental Hygiene (the Director) to allocate a grave space in a public cemetery for one or more deceased persons, without interring any human remains. Mr LEE said that the Chinese version of the amendment was unclear. DS(CA) undertook to review the drafting of the Chinese version of section 7(2A).

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13. Mr LEE Wing-tat considered section (9) unreasonable as the Director would not be liable for loss of, or damage to, articles in a public cemetery arising from any cause. AD/RS(EHP) informed members that section 9 was introduced in 1995 after a natural disaster had caused damage to graves in a public cemetery in the Regional Council area. DS(CA) added that there was a similar provision in the Public Cemeteries (Urban Council) By-laws. In view of members' concern, she undertook to provide more background information on section 9. The Chairman also requested information on similar disclaimer clause in other subsidiary legislation under the Public Health and Municipal Services Ordinance (Cap. 132).

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Paragraphs 565-586 (Public Cleansing and Prevention of Nuisance Regulation)

14. DS(CA) said that the Urban Council By-laws were adopted as the new Regulation. Since a number of public cleansing services had been contracted out, it was necessary to amend certain definitions under section 3 (Interpretation) to include services provided by contractors. The Administration also proposed to add new section 19(5) so that the Director would be empowered to direct an occupier of a premises to dispose of the waste if no public waste collection service was provided. DS(CA) further explained that the Administration did not include section 13 of the Public Cleansing and Prevention of Nuisances (Regional Council) By-laws in respect of prevention of fouling of street by dog faeces or urine in the Regulation because the provision was considered impracticable.

15. Mr LI Wah-ming pointed out an inconsistency on the age restriction between section 15 of the Regulation and section 21 of the Offensive Trade Regulation. He suggested the Administration to consider adopting a uniform age for related subsidiary legislation. DS(CA) agreed to consider Mr LI's suggestion.

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Paragraphs 587-597 (Public Conveniences (Conduct and Behaviour) Regulation)

16. Members noted that the Urban Council By-laws were adopted as the new Regulation.

17. Mr LI Wah-ming considered that section 4, which set a fee for use of public latrines, was out-dated and should be repealed. DS(CA) agreed to consider Mr LI's suggestion. Mr LI Wah-ming also considered section 5(d) which prohibited loitering in public conveniences obsolete as there was other legislation governing loitering. The Chairman expressed doubt as to whether section 5(d) had ever been enforced. SALA advised that the provision was for prevention of illegal activities. He said that while it was a criminal offence under the Crimes Ordinance (Cap. 200) for a person to loiter in a public place, a specific provision in the Regulation prohibiting loitering in a public convenience

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could facilitate prosecution. AD/RS(EHP) agreed with SALA, pointing out that while the police would enforce the general provision prohibiting loitering in a public place, it would be necessary to empower officers of the Food and Environmental Hygiene Department under the Regulation to prohibit loitering in a public convenience.

18. Mr LEE Wing-tat inquired about the reasons for re-inserting section 6A which was an existing provision in the Regional Council By-laws prohibiting the removal of content of septic tank or cesspool without the approval of the Director. AD/RS(EHP) explained that the provision was necessary because such illegal removal still existed in the New Territories.

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19. Mr LI Wah-ming opined that section 8 (communicable diseases) should also be repealed as the Administration had proposed to repeal similar provision in the Libraries Regulation. DS(CA) agreed to consider deleting the provision.

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20. Mr LI Wah-ming expressed concern that section 12 would confer excessive powers on the attendants of public convenience, or their assistants, by exempting them from the provisions of the Regulation. The Chairman pointed out that the exemption was subject to the condition that the act of attendants or assistants was necessary for, or incidental to, the proper execution of their duties. AD/RS(EHP) clarified that the provision was necessary to enable the attendants or their assistants to execute their duties effectively. For example, an attendant might need to enter a public convenience for the use of the other sex despite the prohibition under section 7. Mr LI maintained the view that the scope of the saving provision was unnecessarily broad. In view of members' concern, the Chairman asked the Administration to re-consider whether such a broad exemption clause under section 12 was really necessary.

Paragraphs 598-609 (Public Funeral Halls Regulation)

21. Members did not raise any queries.

Paragraphs 610-622 (Public Markets Regulation)

22. DS(CA) said that the Administration proposed to adopt the Regional Council By-laws which contained more comprehensive provisions. For example, section 7 of the Public Markets (Urban Council) By-laws only regulated the alteration and removal of electric equipment in a market, while relevant provisions in the Public Markets (Regional Council) By-laws also regulated the alteration and removal of the stall and its fixtures. As regards section 7A, the requirement for the provision of a refuse bin at the market stall would be a new requirement for existing public markets in the Urban Council areas.

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23. On section 6 which regulated the letting of market stalls, Mr LI Wah-ming said that the existing Urban Council By-laws allowed the letting of any stall to any person, or jointly to any number of persons not exceeding 4. He sought clarification as to whether the new Regulation, which was based on the Regional Council By-laws, would empower the Director to let any stall to "any one person" only. SALA advised that according to the Interpretation and General Clauses Ordinance (Cap. 1), "person" included any body of persons. However, Mr Ronald ARCULLI said that normally "any person" was used in legislation and "any one person" was rather unusual. He was of the view that whether or not "any one person" could be interpreted as a body of persons would depend on the policy intention. In response to Mr ARCULLI, AD/RS(EHP) confirmed that it was the existing policy of the Provisional Regional Council (ProRC) that any tenancy agreement of a market stall would be signed with one person only, although that person was allowed to operate the market stall in partnership with others. AD/RS(EHP) added that this was to facilitate dealings with the tenant in respect of operational and enforcement matters. PAS(CA) also confirmed that the Provisional Urban Council (PUC) had adopted a similar policy and the market stall tenancy agreement was now signed with one person only.

24. In view of the Administration's explanation, the Chairman requested the Administration to review the drafting of the Chinese version of section 6 to clearly reflect the policy intention. Mr Ronald ARCULLI suggested that, alternatively, the English version could be amended by using "any person" instead of "any one person" to provide flexibility for the Director to let a market stall to one person or a number of persons. DS(CA) undertook to consider members' views.

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25. Mr LEE Wing-tat considered section 13 a discrimination against certain categories of discharged prisoners by prohibiting them from carrying on business or being employed in a public market up to two years. He said that as other more serious crimes were not included in section 13, the provision was unfair to those offenders specified in the section. Mr Ronald ARCULLI and Mr LI Wah-ming shared similar views and expressed concern about the enforcement difficulties for serving a notice to the person concerned. Mr LI Wah-ming also pointed out that there was no similar provision for other trades regulated by Cap. 132, for example, the Places of Amusement Regulation. These members therefore suggested deletion of section 13. DS(CA) responded that the new Department would review the subsidiary legislation at a later stage. Mr LEE Wing-tat said that he would consider moving Committee stage amendments (CSAs) to repeal the provision if the Administration did not agree to do so in the present legislative exercise.

Paragraphs 623-635 (Public Swimming Pools Regulation)

Admin 26. Mr LI Wah-ming reiterated his concern about the out-dated provision that a person who was sparsely clad in a swimming pool would be an offence. DS(CA) undertook to consider deleting the phrase from section 4 (k). In reply to Mr CHAN Kam-lam, SSO(LP) confirmed that section 4(h) prohibited smoking in all areas of a swimming pools except in designated areas in the spectators platform.

27. Members noted that the Administration proposed to restrict persons "of a height exceeding 1.35 metres", in addition to the existing age limit of eight years, from using a dressing room allocated to persons of the other sex under section 7. SSO(LP) informed members that there had been complaints that persons under the age of eight years but of considerable height had entered the dressing room allocated to persons of the other sex, causing embarrassment to the users. The USD had considered lowering the age limit to five years, but had concluded that it was not feasible after consulting the Department of Health and the Social Welfare Department. These Departments were of the view that it would be dangerous to leave children below five years of age without the company of an adult in a dressing room which was normally located near the swimming pool. Moreover, there would be difficulties to verify the age of a child as he was not required to carry an identity card. A height limit was therefore proposed to address the concern. As advised by the Department of Health, over 90% of the children at the age of eight years would not be of a height exceeding 1.35 metres. SSO(LP) added that the depth of a swimming pool was normally not exceeding 1.4 meters.

28. Mr LI Wah-ming was of the view that a lower age limit should be set for the use of a dressing room allocated for persons of another sex under this Regulation. Mr LEE Wing-tat expressed a similar view. SSO(LP) said that he personally preferred lowering the age limit to five years but that the safety of a child was an important consideration. He said that the long-term solution to the problem was to provide family changing rooms in public swimming pools.

Paragraphs 636-638 (Restriction of Hawking in Special Areas Notification)

29. In response to members' enquiries, AD/RS(EHP) explained that hawker restricted areas only applied to the Regional Council area (there were hawker permitted places in urban areas) where hawkers were prohibited from hawking in the specified areas except with special permission. The Administration acknowledged that the Regulation might be out-dated as no licence had been issued for hawking in the Regional Council area for years. DS(CA) said that the need for the legislation would be reviewed at a later stage.

Clauses 639-647 (Sanitation and Conservancy Regulation)

30. Mr LEE Wing-tat asked about the reason for excluding "temporary structure used solely for dwelling purpose" from the scope of the Regulation. AD/RS(EHP) replied that he believed that the temporary structure referred to squatters where no conservancy service was provided. In reply to Mr CHAN Kam-lam, AD/RS(EHP) said that the temporary conservancy service was provided free of charge. As regards the requirement under section 7(1), Mr CHAN Kam-lam was of the opinion that it was insufficient to require an occupier of premises to provide not less than one sanitary pail or container for each 25 inmates. AD/RS(EHP) agreed that the provision was out-dated, but added that it was unusual to have 25 inmates in any premises nowadays.

Paragraphs 648-685 (Slaughterhouses Regulation)

31. DS(CA) informed members that the Regional Council By-laws had been adopted as the new Regulation which would be applicable to (a) Tsuen Wan Slaughterhouse; (b) Cheung Chau Slaughterhouse; (c) Yuen Long Slaughterhouse and the Kennedy Town Slaughterhouse (until their closure in or before early 2000), and (d) the future Sheung Shui Slaughterhouse. Mr LEE Wing-tat opined that Tsuen Wan Slaughterhouse should be subject to more stringent licensing conditions as it had caused considerable nuisance to the neighbourhood. AD/RS(EHP) said that the Regional Services Department (RSD) had received complaints of nuisance caused by the noise and smell of the Tsuen Wan Slaughterhouse, but RSD was unable to gather sufficient evidence from the Environmental Protection Department for prosecution action. As a remedial measure, RSD had already required Tsuen Wan Slaughterhouse to take additional measures to reduce the nuisance. Where necessary, additional licensing conditions could be imposed subject to a reasonable notice period for the operator to comply with the new requirements. In this connection, the Chairman pointed out that under section 9(2) of the Regulation, a licence should be subject to such conditions and restrictions as might be imposed by the Director under section 125(1) of Cap. 132.

32. Mr LI Wah-ming noted that the Regulation did not contain a provision which empowered the Council to reduce, waive or refund any examination fees. In response, DS(CA) said that section 124L of the Ordinance was a general empowering provision for the Financial Secretary to reduce or waive fees or charges.

Paragraphs 686-699 (Stadia Regulation)

33. The Chairman inquired about the reason for adopting the Urban Council By-laws. SSO(LP) explained that all stadia at present were located in the Urban Council area and the Stadia (Urban Council) By-laws had been updated recently to incorporate necessary changes for the better management of stadia. In reply to

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Mr LEE Wing-tat, SSO(LP) said that the two existing stadia were the Hong Kong Stadium and Mongkok Stadium which were funded by the Government. The other sports grounds and pleasure grounds were regulated by the Pleasure Grounds Regulation.

34. Mr LI Wah-ming referred to section 7(1A) which authorized a manager or a member of the staff to refuse entry to a stadium by a person whom he believed was under the influence of alcohol or drugs. Mr LI asked how the provision was enforced. SSO(LP) responded that the manager or a member of the staff would exercise the power under section 7(1A) only if he found that the person was drunk or on medication, and the behaviour of the person would very likely affect others in the stadium. SSO(LP) added that it would not be practicable to specify the types of drugs to be prohibited. Mr LI expressed concern that the manager or the staff member was given broad discretionary power without any objective criteria.

35. With regard to the prohibition on sale or supply of intoxicating liquor in a stadium, SSO(LP) said that the Police could issue a temporary liquor licence for a particular event in a stadium, having regard to the possible impact on and safety of the audience.

36. On the reason for adding section 16 (Name in which proceedings may be brought) to the Regulation, Senior Assistant Law Draftsman (SALD) advised that similar provision could be found in all subsidiary legislation under Cap. 132 and it was an oversight that the provision was omitted from the Stadia (Urban Council) By-laws.

Paragraphs 700-714 (Swimming Pools Regulation)

37. DS(CA) informed members that the Administration proposed to adopt the Urban Council By-laws as the new Regulation which applied to private swimming pools. She said that the Regulation excluded those provisions in the Regional Council By-laws concerning lighting system after sunset under section 6, and disinfection of pool water, testing kits and inspection book under sections 17A, 17B and 17C respectively. The Administration considered that the existing provisions in the Urban Council By-laws were adequate. However, Mr LEE Wing-tat considered that the requirement for a swimming pool to be provided with lighting system after sunset was reasonable. DS(CA) pointed out that it was costly to provide additional lighting system for all existing private swimming pools which were already provided with underwater electric lighting.

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38. Mr LI Wah-ming said that section 6(i) of the Swimming Pools (Regional Council) By-laws gave very detailed requirements in respect of the purity of water. He asked whether similar requirements should be stipulated in the Regulation for the sake of public hygiene. DS(CA) said that that it would need careful consideration before imposing new licensing requirements which would be applicable to all private swimming pools. Mr LI remarked that a grace period for implementation could be allowed. DS(CA) agreed to consider Mr LI's view.

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39. On the different requirements for provision of latrine accommodation in the By-laws of the two municipal councils, Mr LI Wah-ming inquired whether dry latrine accommodation was equivalent to aquaprives and chemical closets. AD/RS(EHP) responded that aquaprives and chemical closets were more advanced facilities of latrine accommodation. The Administration would consider adding provision of equivalent latrine accommodation under section 6(1)(h). Mr LI Wah-ming also suggested that the Administration should consider deleting the obsolete provisions regarding hire of towels in section 15.

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Paragraphs 715-726 (Undertakers of Burials Regulation)

40. Members noted that the Administration proposed to adopt the Regional Council By-laws as the new Regulation. In response to the Chairman, DS(CA) explained the differences between the two By-laws of the two municipal councils in the regulation of undertakers of burials-

- (a) a licence was valid for one year under section 4(2) of the Undertakers of Burials (Regional Council) By-laws whereas the Urban Council By-laws stipulated that a licence could be valid for a period of one year or a shorter period;
- (b) under section 8 of the Regional Council By-laws, no person other than the Council could alter, deface or make any erasure on a licence whereas no person including the Council was allowed to do so under the Urban Council By-laws; and
- (c) section 10 of the Regional Council By-laws stipulated detailed requirements for the register to be kept by a licenced undertaker of burials, while less details were given in the Urban Council By-laws.

41. Mr LEE Wing-tat queried the purpose of empowering the Director to deface a licence under section 8. AD/RS(EHP) responded that Regional Council had never invoked the power to deface a licence. SALA said that he believed that the provision was to prohibit any person to make any alteration to the licence, and that the Director would inevitably "deface" a licence when making alteration to a licence. The Chairman suggested that the Administration could improve the

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Admin drafting of section 8 by adopting the version in the Urban Council By-laws. SALD agreed with the Chairman that the provision could be amended to the effect that no person without lawful authority could deface or alter a licence.

Admin 42. The Chairman referred to section 7 which authorized the Director to refuse to grant, renew or revoke a licence to a person who was under the age of 21 years. He asked the Administration to consider removing the age limit. DS(CA) undertook to consider the Chairman's suggestion.

Paragraphs 727-738 (Ventilation of Scheduled Premises Regulation)

43. Mr LEE Wing-tat queried why the municipal councils or the Director of Food and Environmental Hygiene, instead of the Director of Fire Services or the Director of Electrical and Mechanical Services, were designated as the licensing authority for regulation of ventilation systems. AD/RS(EHP) replied that it was the existing practice that the municipal councils were the licensing authority although the Fire Services Department conducted inspection of the ventilation system and provided specialist advice on compliance with the licensing requirements.

Paragraphs 739-743

(Wo Hop Shek, Sandy Ridge and Sandy Ridge (Urn) Cemeteries, Private Lots, Rules)

44. Members did not raise any queries.

II. Any other business

45. Members noted that the Administration had provided a comparison table explaining the differences between existing and proposed authorities which would initiate proceedings for offences under section 131(1) of the Ordinance. The comparison table was tabled at the meeting (which were subsequently issued to absent members vide LC Paper No. CB(2)2886/98-99).

Admin 46. Mr LEE Wing-tat requested the Administration to provide early response to members' concerns raised at previous meetings. The Chairman advised that the Administration must allow sufficient time for members to prepare their CSAs which should be ready by the end of October 1999 for the Bills Committee to consider. DS(CA) undertook to provide response to outstanding issues in the first week of October 1999. She also suggested the Bills Committee to schedule additional meetings in view of the tight legislative timetable. The Chairman said that the Bills Committee might have difficulty to hold more meetings when the new Legislative Council session commenced. At the Chairman's suggestion, members agreed that from October 1999 onwards, the Bills Committee would hold meetings every Tuesday at 2:30 pm and every Friday at 8:30 am, and that

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the Friday meetings would be a double time slot subject to availability of meeting venue.

47. The Chairman reminded members that the next meeting would be held on Wednesday, 29 September 1999 at 2:30 pm. Members also noted that as the policy briefing by the Secretary for Constitutional Affairs had been scheduled for Friday, 8 October 1999 at 8:30 am, the Bills Committee meeting on 8 October would be held at 10:45 am.

48. The meeting ended at 12:40 pm.

Legislative Council Secretariat

12 May 2000