

立法會
Legislative Council

LC Paper No. CB(2)741/99-00

(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, 27 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 Ronald ARCULLI, JP
Hon Ambrose CHEUNG Wing-sum, JP
Hon CHAN Wing-chan
Hon CHAN Kam-lam
Hon Jasper TSANG Yok-sing, JP
Hon CHOY So-yuk

Members Absent : Hon James TO Kun-sun
Hon Howard YOUNG, JP
Hon YEUNG Yiu-chung
Hon FUNG Chi-kin
Dr Hon TANG Siu-tong, JP

Public Officers Attending : Mr John LEUNG
Acting Deputy 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 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. Matters arising
[Paper No. CB(2)2630/98-99(02)]

At the invitation of the Chairman, Acting Deputy Secretary for Constitutional Affairs (Ag DS(CA)) briefed members on the Administration's response to members' concerns raised at the meeting on 20 July 1999 [Paper No. CB(2)2630/98-99(02)].

Continuing offence

2. Ag DS(CA) explained how a continuing offence was dealt with in situations where the initial offence was committed under an existing Bylaw before 1 January 2000 and the offence continued after the Bylaw was repealed

on 1 January 2000. He said that while the relevant provision for the initial offence had been repealed, the conduct of the defendant was still an offence though under a technically different law. The Chairman asked whether it was legally feasible to treat an initial offence which was committed under a repealed law as a continuing offence under a different law. Senior Assistant Legal Adviser (SALA) advised that under clause 10(2) of the Bill, proceedings could be commenced on an offence committed under a repealed enactment as a continuing offence if there was a corresponding enactment for that offence.

Chief Executive in Council to make consequential, transitional and savings provisions

3. Ag DS(CA) informed members that the Administration would propose amendments to Clause 11 to make it simpler in presentation and to show the limited scope. Senior Assistant Law Draftsman (SALD) added that she had re-drafted clause 11 accordingly for SALA's comment.

錯誤! 尚未定義書籤。 On the question of whether clause 11 was necessary, Ag DS(CA) explained that there were situations which would require additional consequential, transitional and savings provisions to be made under clause 11. He added that an application for judicial review could be made only with the leave of court, if the court considered that the applicant had a sufficient interest in the matter.

Division of responsibilities in respect of food and environmental hygiene

5. In response to Mr CHAN Wing-chan, Ag DS(CA) explained that health inspectors of Urban Services Department (USD) and Regional Services Department (RSD) were responsible for management of food hygiene and for conducting surveillance at restaurants. The Hygiene Division of Department of Health (DH) was responsible for monitoring food safety and food sampling. Under the proposed structure, the Hygiene Division of DH would be placed under the proposed Food and Environmental Hygiene Department (FEHD) and there would be improved co-ordination in food hygiene matters. As the details of the new organization were still under consideration, the Administration would provide further information to members later. Mr CHAN Wing-chan asked about the future responsibilities of DH and whether it would operate independently from FEHD under the new structure. Ag DS(CA) responded that DH would remain as the health authority and it would maintain liaison with international health organizations. It would work closely with FEHD on food inspection and hygiene matters, as well as disease surveillance and monitoring.

6. Mr LI Wah-ming queried why the definition of "health officer" in the Bill did not cover directorate staff of Agriculture and Fisheries Department (AFD). Ag DS(CA) responded that their role as "health officer" was

covered in the Public Health (Animals and Birds) Ordinance (Cap. 139) and AFD would be put under the new Environment and Food Bureau. Assistant Director of Regional Services (Environmental Health Policy) supplemented that a health officer and a veterinary officer had different areas of responsibilities. A health officer was usually a medical doctor while many AFD directorate officers were veterinarians. In response to Mr LI Wah-ming, Ag DS(CA) advised that the directorate of DH were medical doctors. However, according to the Consultant's recommendation on the new structure for Food Safety and Environmental Hygiene Services, the directorate of FEHD would not be required to hold the qualification of a medical doctor, as they could seek professional advice where necessary.

7. Mr LEE Wing-tat expressed concern about the future division of responsibilities and the line of command in case of outbreak of communicable diseases. He asked how the coordination mechanism would be activated and what steps would be taken by different departments in dealing with emergencies and outbreak of food-borne diseases, such as the Avian flu crisis. Mr Ambrose CHEUNG shared similar concern and requested the Administration to illustrate the proposed workflow and procedures in relevant departments using the examples of food contamination caused by dioxin and ciguatera toxin. Ag DS(CA) assured members that there would be close coordination among relevant departments in such cases. Joint efforts of various departments would be required in the identification, investigation and control of such diseases while FEHD would assume the role of overall coordinator under the new structure.

8. With regard to the contamination of bathing beaches, Assistant Director of Urban Services (Leisure Management) (AD(LM)) said that USD would collect water samples from the bathing beach concerned and pass the samples to Environmental Protection Department (EPD) for analysis and recommendation. USD would then take a decision as to whether the beach should be closed based on EPD's recommendation.

9. On staffing arrangements, Assistant Director of Regional Services (Environmental Health Policy) informed members that health inspectors were now seconded to the Hygiene Division of DH to perform duties relating to the setting of food standards and import and export control of food products. The Hygiene Division was operationally responsible to the Director of Health but also acted as health adviser to the municipal councils. Ag DS(CA) said that the municipal councils now paid for the costs of these staff who would be transferred to FEHD after reorganization.

10. Mr Ambrose CHEUNG considered that the future division of responsibilities was unclear and members still did not know which department or bureau would take overall command in case of outbreak of food-borne diseases under the new structure. He maintained that there should be one single authority, with clear statutory powers and functions, to be responsible

for the overall co-ordination in dealing with outbreak of communicable diseases.

11. In view of members' concerns, the Chairman advised the Administration to provide further information to address the following -

- (a) the procedures (with the aid of a flowchart) for the proposed Department to co-ordinate with DH and AFD in the surveillance, investigation, assessment and control of outbreak of food-borne diseases, using the examples of the Avian Flu crisis, suspected food contamination caused by dioxin and presence of ciguatera toxin in coral reef fish;
- (b) the authorities for each step of action described in (a);
- (c) a comparison of the existing and proposed procedures and workflow for dealing with food and environmental hygiene matters;
- (d) the existing and proposed arrangements for secondment of health officers from DH, the line of command and their sphere of responsibilities; and
- (e) the authorities for identification, assessment, control and prevention of communicable diseases, including those involving bathing beaches, livestock and seafood.

Adm Ag DS(CS) undertook to provide a response.

II. Clause-by-clause examination of the Bill

12. The Bills Committee continued examination of Schedule 3 of the Bill from paragraph 39 onwards.

Paragraphs 39 - 41

13. Members did not raise any queries.

Paragraph 42

14. Members noted that clause 42 sought to replace Urban Council (UC) and Regional Council (RC) by the Director of Food and Environmental Hygiene (DFEH) as the authority to grant permission to display or fix bills or posters in respect of the land in existing UC and RC areas. Mr LEE Wing-tat then sought clarification on the scope of the proposed section 104E(1)(f) as to

whether it would adequately cover all the land not referred to in subsections (a) to (e). In response, Ag DS(CA) explained that section 104E in Cap 132 set out the authorities for the control of advertisements, decorations and signs in different areas. The proposed section 104E(1)(f) sought to assign the authority to DFEH in respect of any land (private land or Government land) where no authorities had been designated. He added that the Director of Leisure and Cultural Services (DLCS) would be the authority to control advertisements, decorations and signs in those cultural and recreational venues managed by his department although this was not stipulated in legislation.

15. As regards the authority for granting permission to display banners and billboards in public places, Ag DS(CA) advised that sections 104A to 104D in Cap. 132 were related to display of bills or posters and it was arguable as to whether these sections covered billboards. In addition to provisions under the Advertisements By-Laws in Cap. 132, Director of Lands was empowered under section 5 of the Land (Miscellaneous Provisions) Ordinance (Cap. 28) to grant permission to display bills or posters on unleased land including fences on such land. Assistant Director of Regional Services (Environmental Health Policy) pointed out that section 104 of Cap. 132 mainly concerned with the environmental impact of the display of posters and advertisements. The proposed amendment to section 104E(1)(f) sought to transfer the power from UC and RC to DFEH so that the latter could order removal of bills and posters if they were not maintained in a clean and tidy condition. Concerning the application of this section to unleased land, SALA advised that relevant provisions of Cap.132 only referred to private land and Government land and it did not set out clearly the arrangement in respect of unleased land. Ag DS(CA) acknowledged that there might be grey areas in existing legislation in this respect. He said that the Administration was reviewing the relevant legislation to clearly define the authorities for granting permission to display bills, posters or billboards in public places. The Administration would provide further information in this respect.

Adm

16. Mr LEE Wing-tat inquired why the proposed section did not include land belonging to the Mass Transit Railway Corporation (MTRC) and Land Development Corporation (LDC). Ag DS(CA) replied that this might have been covered by Mass Transit Railway Corporation Ordinance (Cap. 270). Nevertheless, he would check and provide further information in respect of areas controlled by public corporations such as MTRC and LDC. In this connection, Mr CHAN Kam-lam pointed out that section 104E(1)(a) would require amendment because the Airport Authority had replaced Director of Aviation as the authority for the airport areas. Ag DS(CA) responded that Economic Services Bureau had suggested similar amendments and he would provide the details later.

Adm

Adm

17. Mr CHAN Kam-lam also inquired about the authority for displaying posters

on private land such as walls of a bank. SALA advised that according to section 104A, no bill or poster could be displayed or fixed on any private land, except with the written permission of the owner or occupier thereof, or on any Government land, except with the written permission of the Authority.

Paragraph 43

18. Assistant Legal Adviser 3 pointed out an omission in the THIRD SCHEDULE in respect of authority for section 105E. The Administration had confirmed that the authority would be the Director of Leisure and Cultural Services and would move an amendment accordingly. In response to members' concern about the authority to reduce or waive any fee for the use of stadia, the Chairman advised that this would be discussed under paragraph 63 of Schedule 3 which proposed a new Part XIA in respect of fees and charges.

Paragraph 44

錯誤! 找不到參照來源。 Members noted that section 105E would be repealed as the relevant Regulations would have conferred adequate powers on the new authority, i.e. the Director of Leisure and Cultural Services, to discharge the functions therein.

Paragraph 45

20. Mr LI Wah-ming said that UC had a policy for lending out art collections for display in the official residence of chief officials. He inquired about the future arrangement after abolition of the two municipal councils, particularly the recovery of losses arising from damage of these art collections. Mr LEE Wing-tat asked whether the officials concerned would be held responsible for the damage. Ag DS(CA) responded that the Bill had provided for the recovery of losses and damages by the new authority. The Authority would investigate and identify the party which should be held responsible for the damage. To address members' concerns, he would provide further information on the policy and arrangements for lending out art collections for display in places other than public museums; and the policy for recovery of losses in this respect.

Adm

21. Mr LEE Wing-tat referred to section 105I(h) which empowered the Authority to refuse any person the use of any facility in a museum and asked whether the conditions for refusal would be specified in legislation. Ag DS(CA) replied that section 105I was only an enabling provision for the Authority to make the Museum Regulations which would specify details of operation.

Paragraphs 46 - 49

22. Members did not raise any queries.

Paragraph 50

23. Ag DS(CA) said that the proposed amendment was only to improve the drafting to provide a wider scope of sport and leisure activities. In response to Mr Ambrose CHEUNG, AD(LM) explained that "organized games" normally referred to activities organized in the name of an organization or a group. Mr Ambrose CHEUNG then expressed concern that "unorganized" leisure and sport activities might not be allowed to take place on public pleasure grounds. Ag DS(CA) responded that public pleasure grounds were provided for the conduct of sport and leisure activities, whether organized or not organized. He explained that "organized games" was an existing term in the Pleasure Grounds (Urban Council) Bylaw which empowered UC to set aside part of pleasure grounds for specified games.

24. In response to Mr LEE Wing-tat, AD(LM) informed members that an organization could apply for use of a public pleasure ground for organized activities so long as it would not affect others in using that public pleasure ground. He added that many bodies organized their activities in public pleasure grounds without seeking formal approval. Mr Ambrose CHEUNG therefore suggested that the Administration should consider putting in place a procedure to regulate the use of public pleasure grounds for both organized and unorganized activities. In this connection, SALA advised that section 107 was only an empowering provision for the Authority to demarcate playing fields and playing pitches for the conduct of organized games and sports. If the playing fields and playing pitches had not been demarcated for specific use, any person could use them for unorganized leisure and sport activities. Ag DS(CA) said that the Administration would consider improving the drafting by deleting "organized" to remove any doubt in this respect.

Adm

Paragraphs 51 - 52

25. 錯誤! 尚未指定書籤名稱。 Members did not raise any queries.

Paragraph 53

26. Ag DS(CA) informed members that it was the present practice that private street names in urban areas and in the New Territories were declared by UC and the Director of Lands respectively. The proposed provision sought to confer the power solely on the Director of Lands after the abolition of the municipal councils.

Paragraphs 54 - 55

27. Members did not raise any queries.

Paragraph 56

28. The Chairman queried the rationale for the new FEHD to take over the control and management of public cemeteries. He remarked that it might be more appropriate for Home Affairs Department to take up this responsibility. Ag DS(CA) undertook to provide a response.

Adm

Paragraph 57

29. Members did not raise any queries.

Paragraph 58

30. The Chairman suggested that it might be more appropriate to transfer the responsibilities for exhumations to the Department of Health having regard to the fact that the Department was also responsible for mortuaries. Ag DS(CA) undertook to consider the Chairman's suggestion and provide a response.

Adm

Paragraphs 59 - 62

31. Members did not raise any queries.

III. Date of next meeting

32. The Chairman reminded members that the next meeting scheduled for Friday, 30 July 1999 would be held from 8:30am to 12:30pm.

33. The meeting ended at 12:40 pm.