

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 Friday, 29 October 1999 at 8:30 am
in Conference Room B 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 LEE Wing-tat
Hon Fred LI Wah-ming, JP
Hon Ronald ARCULLI, JP
Hon CHAN Kam-lam
Hon Jasper TSANG Yok-sing, JP
Hon Howard YOUNG, JP
Hon CHOY So-yuk
Dr Hon TANG Siu-tong, JP

Members Absent : Hon Cyd HO Sau-lan
Hon James TO Kun-sun
Hon Ambrose CHEUNG Wing-sum, JP
Hon CHAN Wing-chan
Hon YEUNG Yiu-chung
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

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

Mr Sunny CHAN
Senior Government Counsel (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. Election of Temporary Chairman

During the temporary absence of the Chairman at the beginning of the meeting, Hon Ronald ARCULLI was elected to chair the meeting on his behalf.

II. Proposed Committee stage amendments (CSAs) from the Administration

[Paper Nos. CB(2)153/99-00(01), CB(2)193/99-00(01), CB(2)213/99-00(01), CB(2)241/99-00(01) and CB(2)245/99-00(01)]

2. Members noted that the Administration had provided three batches of CSAs with explanatory notes as follows -

- (a) CSAs to main clauses and Schedule 3
[Paper Nos. CB(2)153/99-00(01) and CB(2)193/99-00(01)];

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- (b) CSAs to Schedules 4 and 5 [Paper No. CB(2)213/99-00(01)];
- (c) CSAs to Schedule 7 [Paper No. CB(2)241/99-00(01)].

Members further noted that the Administration had tabled the fourth batch of CSAs concerning further amendments to Schedule 3.

(Post-meeting note : The fourth batch of amendments was subsequently issued vide Paper No. CB(2)245/99-00(01).)

(The Chairman arrived at this juncture and resumed the chair.)

CSAs to main clauses

[Paper Nos. CB(2)153/99-00(01) and CB(2)193/99-00(01)]

3. At the invitation of the Chairman, Deputy Secretary for Constitutional Affairs (DS(CA)) briefed members on the proposed CSAs to main clauses and Schedule 3 of the Bill.

Clause 4(3)

4. Members noted that the Administration proposed to amend clause 4(3) to specify that acts being done by or in relation to the municipal councils could be continued by or in relation to the Government.

5. Mr Ronald ARCULLI queried whether it was appropriate to limit the provision to "the Government" having regard to the fact that the Licensing Appeals Board (LAB) and Municipal Services Appeals Board (MSAB) would perform some of the acts of the municipal councils. He said that it might be necessary to add other bodies (to be specified in the Bill) after "the Government". Senior Assistant Law Draftsman (SALD) responded that the Bill had provided separate provisions governing the powers and functions of these statutory bodies such as the Liquor Licensing Board. It was therefore not necessary to specify these bodies in clause 4(3).

Clause 8(2)(b)

6. Responding to Mr TSANG Yok-sing, DS(CA) confirmed that the Administration's proposed amendment to clause 8(2)(b) was only to replace "the former authority" by "a former authority" .

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Clause 9(3)

7. Members noted that the Administration proposed to add a saving clause to preserve all existing fees and charges as it might not be possible to stipulate all fees and charges in time by way of subsidiary legislation.

Clause 10(1)

8. Members noted that the Administration proposed to amend clause 10(1) to make it clear that offences committed before 1 January 2000 would be prosecuted under the repealed enactment and not the corresponding new enactment. In response to Dr TANG Siu-tong, SALD confirmed that legal proceeding could still be instituted even without clause 10(1) because the Interpretation and General Clauses Ordinance (Cap. 1) had provided that a repealed ordinance would not affect its corresponding legal proceeding or liability/punishment. In response to the Chairman, Senior Assistant Legal Adviser (SALA) advised that the proposed amendment would put it beyond doubt that the repealed enactment would still apply to acts committed before the effective date of the new enactments. As regards the phrase "as if this Ordinance had not been enacted" in clause 10(1), SALA said that the phrase made it clear that an offence committed against an enactment before 1 January 2000 could still be prosecuted after the enactment had been repealed. The Chairman noted that any new offence effective upon the enactment of the Bill would not have retrospective effect.

9. Mr TSANG Yok-sing asked about the liability/punishment of the offender if the act was no longer an offence under the new enactment. SALD replied that according to section 101J of the Criminal Procedure Ordinance (Cap. 221), the offender was liable to the penalty prescribed at the time of the offence. If a lighter penalty was imposed in the new enactment, the offender would be liable to the lighter penalty. SALA added that the court would normally give regard to the mitigating factor that the act was no longer an offence under new enactment. DS(CA) stressed that the Administration would be very cautious when considering whether legal proceeding would be instituted against an act which was no longer an offence under the new enactment.

Clause 11(1)

10. Members noted that the Administration had addressed members' concern about the scope of clause 11 by limiting it to consequential amendments and provisions of a transitional or savings nature. At the suggestion of SALA, DS(CA) agreed to revise the phrase "purposes of the Ordinance" to "provisions of the Ordinance" to provide certainty.

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CSAs to Schedule 3

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New paragraph 26A

11. Members noted that the Administration proposed to amend section 80(1) to provide for the MSAB to handle appeals against termination of market stall agreements in order to address the Bills Committee's concern that the new structure did not provide an appeal channel for these cases.

12. Mr LI Wah-ming said that he remained concerned that the new structure did not provide for an appeal channel to deal with appeals against market stall rentals. DS(CA) responded that the Administration did not consider it appropriate for MSAB to hear appeals for market stall rentals which were determined by commercial agreements. She explained that while the Provisional Regional Council (ProRC) had a Market Stall Rental Review Sub-committee to hear appeals on market stall rentals, the Provisional Urban Council (PUC) did not have such appeals mechanism. Under the PUC current policy, any market stallholder who disagreed with the open market rent (OMR) as assessed by the Rating and Valuation Department (R&VD) could put forth his reasons and request for a review of the OMR assessment. R&VD would take into account the submission of the stallholder in reassessing the OMR of the stall.

13. DS(CA) informed members that the ProRC Market Stall Rental Review Sub-committee had only dealt with 3 cases since May 1997. Dr TANG Siu-tong said that there were cases pending adjudication. He considered that the new structure should provide for a separate mechanism to adjudicate on disputes over the OMR assessed by R&VD. The Chairman suggested that the Lands Tribunal might be an appropriate venue for dealing with these disputes. Mr LEE Wing-tat said that the Chairman's suggestion was worth considering as disputes over rates assessment were currently dealt with by the Lands Tribunal. The appellant could also engage private surveyors to provide an independent assessment. DS(CA) noted members' concern and agreed to examine the feasibility of providing an appeals mechanism for disputes over market stall rentals.

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14. Mr LEE Wing-tat asked whether the Authority was empowered by legislation to reduce market stall rentals when there was an economic downturn. Principal Assistant Secretary for Constitutional Affairs (PAS(CA)) confirmed that the Authority was empowered to reduce the rents under section 6 of the Public Market Regulation which provided for the Authority to let any stall at such rent and subject to such terms and conditions as it might determine.

New clause 30A

15. Members noted that the Administration proposed to add a new clause 30A to repeal section 87 as suggested by Mr LI Wah-ming at a previous meeting. Members noted that section 87 was obsolete and had not been revoked in recent years.

Paragraph 61

16. Members noted that the Administration proposed to amend proposed section 124D(4) of the Public Health and Municipal Services Ordinance (Cap. 132) to specify a time limit of 30 days for lodging appeals to MSAB regarding applications for crematorium in certain locations. The time limit was the same as other appeals mechanisms in existing legislation. In response to Mr LI Wah-ming, SALD said that Cap. 132 did not provide for an objection procedure for the proposed expansion of a crematorium. DS(CA) said that Government would consider any objection received although there was no legal appeal mechanism for such cases.

Paragraph 63

17. Members noted that the Administration would delete "the registration or licensing of public slaughterhouses or" from the proposed section 124I(1)(f) as public slaughterhouse did not require a licence. Mr LEE Wing-tat suggested that market stall rentals might be included as permit fee under the proposed section 124I so that the fee levels would be subject to the vetting of the Legislative Council (LegCo). DS(CA) said that the Administration did not propose to include rentals in section 124I at the present stage. Nevertheless, she agreed to provide a written response on the suggestion.

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Paragraph 66

18. Members noted that the Administration had proposed a number of amendments to address members' concerns about the operation of the future LAB. These included the provision of a Vice-Chairman to share out the heavy workload of the Chairman, the appointment of a Legal Adviser to provide independent legal advice and the stipulation of quorum for LAB meetings.

19. Members also noted that the Administration proposed to add a new section 125B(5) to provide that LAB might at discretion suspend operation of its decision pending the outcome of appeal of MSAB. In response to members' queries, PAS(CA) informed members that the proposed section had made reference to the operation of the existing Review Committees of the municipal councils and section 125(9)(d) of Cap. 132 which also provided such discretion for the licensing authority.

20. Mr LEE Wing-tat expressed concern that LAB members who did not sit through the appeal hearings might not be able to make a fair decision on the appeal. PAS(CA) said that according to the proposed section 125E(3), if after the commencement of the hearing of an appeal, one or more members (other than the Chairman) were unable to continue, the remaining members, so long as their

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number (including the Chairman) was not less than three might, only with the consent of the parties, continue to hear and determine the appeal.

21. Members expressed support for the proposed provisions.

Paragraph 84

22. Members noted that the Administration proposed some minor amendments on omissions and inadvertent mistakes concerning the new designated authorities under the Third Schedule.

Paragraph 88

23. Members noted that amendments were proposed to update the penalty levels specified in some existing forms in the Seventh Schedule in Schedule 3.

Amendments to subsidiary legislation under Cap. 132

Advertisement Regulation (Paragraph 250)

24. Members noted that the Administration proposed to repeal section 5 of the Advertisement Regulation which dealt with the control of occulting signs and the relevant offence provision. DS(CA) informed members that the Transport Department had been consulted and the latter had confirmed that no correlation could be drawn between the number of traffic accidents and the existence of occulting signs. She added that there were provisions in other legislation such as the Building Ordinance for the regulation of the erection of occulting signs.

25. Mr LEE Wing-tat recalled that when the subject was discussed at a meeting of the LegCo Panel on Transport, the Administration had stressed the need for control of occulting signs. He therefore warned the Administration that it had to be careful in lifting the restriction on occulting signs. The Chairman also drew members' attention to the Administration's reply to a Member's question at the Council Meeting on 16 September 1998 that relaxing the control of occulting sign in the Advertisement By-laws should only be considered when there was other legislation governing its impact on road traffic. To address members' concerns, DS(CA) agreed to further consult the relevant bureaux and departments to ascertain whether there was any implication of the proposed repeal on road traffic.

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26. Members noted that the Administration proposed to re-instate part of section 11 of the Advertisement Regulation to retain the power to remove dangerous signs which interfered with road traffic.

Food Business Regulation

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27. SALD informed members that the term "Harbour" in section 28(a) would be amended to "harbour" as the latter term was defined in Cap. 1 and covered a wider area than the Victoria Harbour.

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28. Members noted that the Administration proposed to re-insert "accidentally defaced" in section 31(6) as suggested by the Bills Committee. Assistant Legal Adviser (ALA) pointed out that corresponding amendments might need to be made to section 30(3) as well. SALD agreed.

29. Mr LI Wah-ming reiterated his concern that a grace period should be provided for operators of food business operators in urban areas to comply with section 13(2)(a) which required the open space to be surfaced and drained. He said that such requirement currently only applied to the Regional Council areas. DS(CA) agreed to examine whether the requirement would cause operational difficulties to food business operators in urban area.

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30. ALA also pointed out that the Administration had not proposed any amendment to address members' concern about applying the more stringent standards for cleanliness and repair of food premises in the Regional Council By-laws to the whole territory. DS(CA) undertook to provide a written response.

Frozen Confections Regulation

31. Members noted that the Administration had accepted the suggestions of the Bills Committee concerning the wearing of uniforms by hawkers of frozen confection and the need for additional licensing condition in line with the requirements of the repealed set of Regional Council By-laws.

Proposed change of the name of the new Department of Food and Environmental Hygiene (Paragraphs 360, 366, 546, 555, 558 and 638 etc.)

32. Members noted that the Administration proposed to change the name of the new "Department of Food and Environmental Hygiene" to "Food and Environmental Hygiene Department". DS(CA) confirmed that the Administration did not agree with the proposal of the Hong Kong Public Health Inspectors Association that the new Department should be renamed as "Food and Environmental Health Department". DS(CA) explained that the term "environmental health" encompassed a much broader range of functions, many of which were beyond the responsibility of the new department. The use of "environmental health" as the name of the new Department might cause confusion and disputes about the responsibilities of different government departments since the existing Environmental Protection Department was also performing environmental health functions. She said that the status of a particular grade (i.e. health inspectors) was not determined by the name of the department in which it worked. However, Miss CHOY So-yuk, Mr LEE Wing-tat and Mr LI Wah-ming held a different view. They considered that

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"environmental health" was a more appropriate name for the new department, having regard to the international development on environmental health.

33. Mr LEE Wing-tat suggested that the Bills Committee might consider moving CSAs to change the name of the new Department to "Food and Environmental Health Department". The Chairman therefore requested members to take a view on Mr LEE's proposal. Three members present at the meeting supported Mr LEE's proposal while three other members were against the proposal. The Chairman said that he personally tended to agree that "Food and Environmental Health Department" was a more appropriate name. In view of members' concern, the Chairman advised the Administration to reconsider its position on the proposal.

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Milk Regulation (Paragraphs 419 and 424)

34. Members noted that the Administration had accepted the Bills Committee's suggestion to re-insert provisions governing the heating of milk, and the processing and storage of milk products.

Offensive Trades Regulation (Paragraphs 465 and new clause 466A)

35. Members noted the Administration had proposed amendments to address members' concerns about the "absolute discretion" of the Director and the age limit for carrying an offensive trade.

Pleasure Grounds Regulation (Paragraphs 500, 505 and 511)

36. Members noted that the Administration had agreed to delete the addition of "hand cart" in paragraph 500 and "statue or other sculpture" in paragraph 505(a)(i)(A). The Administration had also agreed to repeal section 28 on the prohibition of public meetings, etc. in pleasure grounds and the relevant offence provision.

Public Markets Regulation (Paragraph 615)

37. Members noted that the Administration had agreed to amend section 6(1) of the Public Markets Regulation to allow a stall-holder to appeal to MSAB against a decision of the Authority to terminate the lease, licence or permit. In response to Mr LEE Wing-tat, DS(CA) confirmed that it was the present practice to require a stallholder to appeal within 14 days after the notice of decision was received.

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38. DS(CA) agreed to provide a written response to Mr LI Wah-ming's suggestion to remove the restriction on employment of discharged prisoners under section 13.

Public Swimming Pools Regulation (Paragraphs 623-635)

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39. Responding to Mr LI Wah-ming, PAS(CA) said that the Administration had consulted the municipal services departments on Mr LI's proposal of deleting "or so sparsely clad" as an offence under section 4(k) of the Public Swimming Pools Regulation. He informed members that there was a recent incident where the pool staff had to remove a swimmer who went swimming clad only in underwear and caused considerable embarrassment to other swimmers. The municipal services departments therefore considered that the provision was necessary. The Chairman suggested that the term "improperly clad" might be more appropriate for the purpose. DS(CA) agreed to consider the suggestion.

40. Mr LI Wah-ming noted that the Administration did not propose to amend the height and age limits for entry to the dressing rooms of the opposite sexes in public swimming pools. As the Administration had previously proposed to provide family changing rooms as the solution, he asked about the timetable for implementation. DS(CA) replied that the Administration did not have an implementation timetable at the present stage, but she agreed to relay members' concern to the proposed Leisure and Cultural Services Department.

Other amendments to Schedule 3

41. Members noted that the Administration had also proposed amendments to address the following concerns of the Bills Committee -

- (a) power to refuse entry to civic centres and crematoria of person who was indecently or insufficiently dressed ;
- (b) prohibition of public meetings and assemblies in bathing beach and crematoria;
- (c) absolute exclusion of liabilities for loss or damage of articles deposited in the cloakroom of public libraries; and
- (d) the minimum age for a person to be licensee of funeral parlour, place of amusement and undertaker of burials.

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CSAs to Schedule 4

42. PAS(CA) briefed members on the Administration's proposed CSAs to Schedule 4 to address members' concerns raised at previous meetings. As regards Mr LI Wah-ming's suggestion to appoint two District Council (DC) members as ex-officio members of MSAB, DS(CA) pointed out that seven out of the 21 existing MSAB members were District Board members and the same practice would be adopted in the future appointment of MSAB members. The Administration considered that the appointment of DC members to MSAB could be made by administrative arrangement and it would not be necessary to stipulate it in legislation.

III. Date of next meeting

43. Members agreed to hold the next meeting on Tuesday, 2 November 1999 at 2:30 pm. to continue discussion of the Administration's proposed CSAs.

44. The meeting ended at 12:35 pm.

Legislative Council Secretariat

26 June 2000