

立法會
Legislative Council

LC Paper No. CB(2)1382/99-00
(These minutes have been
seen by the Administration)

Ref : CB2/BC/26/98

**Bills Committee on
Adaptation of Laws (No. 16) Bill 1999**

**Minutes of first meeting
held on Tuesday, 25 January 2000 at 10:45 am
in Conference Room B of the Legislative Council Building**

Members Present : Hon Margaret NG (Chairman)
Hon Cyd HO Sau-lan
Hon Jasper TSANG Yok-sing, JP

Members Absent : Hon James TO Kun-sun
Hon Andrew WONG Wang-fat, JP
Hon CHOY So-yuk

Public Officers Attending : Miss Angela LUK
Principal Assistant Secretary for Health and Welfare

Mr Fletch CHAN
Assistant Secretary for Health and Welfare

Ms Jenny CHAN
Assistant Secretary for Environment and Food

Miss Selina LAU
Government Counsel
Department of Justice

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Clerk in Attendance : Ms Doris CHAN
Chief Assistant Secretary (2) 4

Staff in Attendance : Mr KAU Kin-wah
Assistant Legal Adviser 6

Mrs Eleanor CHOW
Senior Assistant Secretary (2) 7

I. Election of Chairman

Nominated by Miss Cyd HO and seconded by Mr TSANG Yok-sing, Miss Margaret NG was elected Chairman of the Bills Committee.

II. Meeting with the Administration

(LC Paper Nos. LS 200/98-99 and CB(2)972/99-00(01))

2. Members noted that the Bill sought to adapt 13 Ordinances and their subsidiary legislation relating to hospitals, clinics, mental health and other health-related matters to bring them into conformity with the Basic Law and with Hong Kong's status as a Special Administrative Region of the People's Republic of China.

3. The Chairman said that members were familiar with the general principles for the adaptation of laws and pointed out that some of the proposed adaptations had already been dealt with in previous adaptation bills.

4. Principal Assistant Secretary for Health and Welfare (PAS/HW) said that the Administration had prepared a table setting out the provisions in the Bill which were not covered by or departed from the Guidelines for Adaptations. The paper was tabled at the meeting and subsequently issued to members vide LC Paper No. CB(2) 972/99-00(01). Members did not raise any questions on the paper.

5. The Chairman said that most of the amendments were straightforward adaptations. However, paragraph 9 of the Legal Service Division's report (LC Paper No. LS 200/98-99) raised the point that section 18 of the Hong Kong Council on Smoking and Health Ordinance (Cap. 389) and section 19 of the Prince Philip Dental Hospital Ordinance (Cap. 1081) proposed the adaptation of the word "Crown" to "State". She invited the Assistant Legal Adviser (ALA) to give views on the matter.

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6. Assistant Legal Adviser (ALA) said that the two provisions, which were similar in nature, stipulated that the Council/Board should not be regarded as a servant or agent of the Crown or as enjoying any status, immunity or privilege of the Crown. He considered that it was more appropriate for the word "Crown" to be adapted to "Government" instead of "State" in the context of the respective provisions. He noted that in legislation since 1996, generally the term "Government" was used. He said that while he understood the Administration's preference over "State" was that it covered a more comprehensive scope, he did not see the need for such adaptation in respect of the Hong Kong Council on Smoking and Health and the Board of Governors of the Prince Philip Dental Hospitals, which could not claim themselves to be agents of the State.

7. The Chairman asked about the purpose of section 18 of Cap. 389 and section 19 of Cap. 1081. Government Counsel of Department of Justice (GC/DJ) explained that in accordance with section 66 of the Interpretation and General Clauses Ordinance (Cap. 1), any legislation should not affect the right of or be binding on the Crown unless it was therein expressly provided. Section 18 of Cap. 389 and section 19 of Cap. 1081 sought to rebut the presumption in section 66 of Cap. 1 which formerly provided for the immunity of the Crown.

8. The Chairman expressed reservations about the Administration's explanation. She asked the Administration whether it was implied that if such a provision was not included in the ordinances in question, the Council/Board concerned would be regarded as an agent of the Crown. She said that the contemplation of a legislation was not to rebut section 66, although it might have the effect of rebutting it. She asked ALA whether it was a common practice for such a provision to be included in similar legislation in respect of persons/bodies appointed by the Government.

9. ALA said that he had not conducted a comprehensive research on the subject, but he could say that almost without exception, all the statutory bodies, if they were not part of the Government, had such a provision in their relevant statute. The provision sought to remove any doubt concerning the status and privilege of the statutory body concerned.

10. Mr TSANG Yok-sing asked whether similar provision was included in the Hospital Authority Ordinance (Cap. 113) or other ordinances pertaining to hospitals. He considered it reasonable to have such a provision in ordinances relating to medical and health-related matters, as the organizations concerned should not enjoy the immunity and privilege of the State. His concern was whether it would imply that these organizations could be regarded as a servant or agent of the Government, although they were not regarded as a servant or agent of the State.

11. ALA advised that section 3(6) of the Hospital Authority Ordinance (Cap. 113) had the same provision, but the word used was "Government" and not "State". Referring to the discrepancies in the adaptation of the word "Crown" in medical and

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Adm health-related ordinances, the Chairman requested the Administration to explain -

- (a) the criteria for including the provision such as the one set out in section 18 of Cap. 389 and section 19 of Cap. 1081 in law;
- (b) the purpose of such a provision;
- (c) why the term "Crown" was adapted to "State" instead of "Government" in the two sections mentioned in (a) above; and
- (d) the reason for and the effect of adapting different terms in ordinances and subsidiary legislation in the Bill, for instance, "Crown" was adapted to "State" in section 18 of Cap. 389 but "Government" was used in section 3(6) of Cap. 113.

12. Since the issue could not be further discussed until the Administration had provided the requested information, the Chairman proposed and members agreed to proceed to clause-by-clause examination of the Bill first.

Clause by clause examination

Clause 2

13. The Chairman asked why sections 4 to 16 and 31 to 40 of Schedule 3 should be deemed to have come into operation on 1 February 1999. GC/DJ explained that these sections had been amended before 1 July 1997 but only took effect on 1 February 1999 by way of a commencement notice.

Schedule 2 and 4

14. ALA explained that "Crown" was adapted to "Government" in section 18(1) of the Pesticides Ordinance (Cap. 133) and section 11(1) of the Antibiotics Ordinance because forfeiture in the course of enforcement of drug control was under the sole responsibility of the HKSAR Government.

Schedule 5

15. ALA said that given section 32(e)(ii) of the Pharmacy and Poisons Ordinance (Cap. 138) referred to an officer requiring poison for the purpose of public service, it was appropriate to replace "officer of the Crown" with "officer of the Government"

Schedule 6

16. ALA said that the amendment to section 21 of the Prevention of the Spread of Infectious Diseases Regulations (Cap. 141, sub. leg.) related to the cost of carrying out

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enforcement orders which was recoverable as a debt due to the Government, the term "Crown" was therefore adapted to "Government".

17. Members did not raise any queries on the rest of the schedules.

III. Date of next meeting

18. The Chairman suggested and members agreed to schedule the next meeting after the Administration had responded to the points raised by the Bills Committee in paragraph 11 above.

19. The meeting ended at 11:26 am.

Legislative Council Secretariat

14 March 2000