

**立法會**  
**Legislative Council**

LC Paper No. CB(2)2608/99-00  
(These minutes have been  
seen by the Administration  
and cleared with the Chairman)

Ref : CB2/BC/27/98

**Bills Committee on  
Statute Law (Miscellaneous Provisions) Bill 1999**

**Minutes of 3<sup>rd</sup> Meeting  
held on Tuesday, 11 April 2000 at 8:30 am  
in Conference Room B of the Legislative Council Building**

**Members Present** : Hon Albert HO Chun-yan (Chairman)  
Hon Martin LEE Chu-ming, SC, JP  
Hon Margaret NG  
Hon Andrew WONG Wang-fat, JP  
Hon Jasper TSANG Yok-sing, JP  
Hon Ambrose LAU Hon-chuen, JP

**Public Officers Attending** : Mr Stephen K Y WONG  
Deputy Solicitor-General (Advisory)

Mr Michael SCOTT  
Senior Assistant Solicitor General

Miss Agnes CHEUNG  
Senior Government Counsel (Advisory)

Ms Anastasia KWONG  
Senior Government Counsel (Drafting)

Mr Darryl SAW  
Deputy Director of Public Prosecutions

Mr Patrick CHEUNG Wai-sun  
Senior Assistant Director of Public Prosecutions

**Clerk in Attendance** : Miss Flora TAI  
Chief Assistant Secretary (2) 6

**Staff in Attendance** : Mr Arthur CHEUNG  
Assistant Legal Adviser 5

Ms Eleanor CHOW  
Senior Assistant Secretary (2) 7

---

**I. Matters arising**

(LC Paper Nos. CB(2) 1565/99-00(01) and CB(2)1652/99-00(01))

Members noted that the Administration's response to the points raised by members at the last meeting on 20 March 2000 had been issued vide LC Paper Nos. CB(2)1565/99-00(01) and CB(2)1652/99-00(01). The gist of discussion on the Administration's response is summarised below.

Clauses 4 and 5 - Provisions relating to further sentence while a detention order, supervision order or recall order is in force

---

2. Members noted that Assistant Legal Adviser 5 (ALA5) had raised queries as to whether regulation 6 of the Drug Addiction Treatment Centres Regulations and regulation 7 of the Training Centres Regulations should be amended to the effect that the respective Board of Review (the Board) was empowered in legislation to deal with outstanding recall orders.

3. Senior Government Counsel (Advisory) (SGC(A)) said that the Administration was of the view that consequential amendments were not required because the respective principal ordinance as amended would empower the Board to deal with a recall order, i.e. to decide whether a recall order should be waived, suspended or treated as lapsed.

4. ALA5 said that he was more concerned about the policy issues rather than the drafting aspects. He explained that the current function of the Board, as provided in the Drug Addiction Treatment Centres Regulations, was to make recommendations to the Commissioner of Correctional Services (the Commissioner). The Bill, on the other hand, proposed to confer the Board with discretionary power to suspend, waive or lapse an order. ALA5 pointed out that it was clearly a departure from the existing policy. ALA5 also pointed out that section 5(2) of the Drug Addiction Treatment Centres Ordinance (Cap. 244) provided that "the Commissioner may at any time vary or cancel a supervision order". He asked whether the meaning of "vary or

Action

cancel a supervision order" also covered that of "waive or suspend a supervision order". It would appear that the proposed amendments would confer the Board with a power which was inconsistent with the existing power of the Commissioner. It might be necessary to consider amending section 5(2) of the Drug Addiction Treatment Centres Ordinance instead to add the words "waive and suspend" in order to ensure that the Commissioner rather than the Board would enjoy discretionary power in respect of parallel orders.

5. SGC(A) did not agree with ALA5's observation that the proposed amendments would be in conflict with the power of the Commissioner. She said that section 5 of the Drug Addiction Treatment Centres Ordinance dealt with a supervision order and section 6(3) only empowered the Commissioner to release a person in respect of whom a recall order was in force. The proposed new section 6A(2)(c) provided for treatment of a recall order when the person in question was still subject to detention in another institution.

6. SGC(A) further said that there was no change in policy. She explained that the sentence per se was not dictated by the Board. The Board would only need to exercise the discretionary power when parallel orders were issued to the same person.

7. Mr Martin LEE queried why a judge or magistrate was not informed of the parallel orders so that he could exercise discretion in dealing with these orders. SGC(A) responded that the proposed amendments would not interfere with the discretionary power of the judge or the magistrate in this respect. Mr LEE further asked whether it was for administrative convenience that the Bill proposed to delegate such power to the Board rather than to the Commissioner. SGC(A) replied that given that the day-to-day welfare of the child was supervised by the Board, it was indeed more convenient for the treatment of parallel orders to be decided by the Board. She added that the composition of the Board included, among others, the Deputy Commissioner of Correctional Services.

8. The Chairman shared ALA5's view that the empowering provision proposed in the Bill involved a change in policy. He suggested that either corresponding amendments should be made to the respective Regulations to expand the functions of the Board, or that the Commissioner should be empowered to deal with parallel orders instead of empowering the respective Boards as proposed by the Administration in the Bill. SGC(A) undertook to provide a written response to the Chairman's suggestion after consultation with relevant government departments.

Adm

Clause 7 - Discharge of encumbered property

9. Senior Government Counsel (Drafting) (SGC(D)) informed members that after having considered members' comments, the Administration agreed

Action

that the first sentence of the proposed Committee Stage amendment (CSA) to section 12A(2) of the Conveyancing and Property Ordinance (Cap. 219) should be amended to read "upon payment into court of the sum referred to in subsection (1)" instead of "upon the redemption of the encumbrance and any interest thereon".

Clause 8 - Abrogation of the "Year and a day rule"

10. Members noted that the Administration had been requested to reconsider the drafting of proposed section 33C(2) of the Offences Against Persons Ordinance (Cap. 212) to improve its clarity. ALA5 informed members that the Administration took the view that proposed section 33C(2) as presently worded was appropriate because the act or omission in question must be proved to have caused the death before the presumption arose. Upon his subsequent enquiry, the Administration had further explained that it was not completely accurate to say that the act or omission in question must be "proved" to have caused the death. It was only necessary to prove that the act or omission did cause the death where a murder charge could be laid. Even if a murder charge could not be laid, a defendant might be charged with and convicted of other offences such as attempted murder. Deputy Solicitor General (Advisory) (DSG(A)) added that it was necessary to determine the date when the act or omission took place for the "year and a day rule" to apply.

11. Miss Margaret NG said that the legislative intent of proposed section 33C(2), i.e. to preserve the application of the rule in respect of any charge against an act which, *prima facie*, did cause the death and which occurred before the enactment of the proposed provision, was clear. Other members also shared the view.

Clause 14(c) - Conspiracy committed before commencement of Crimes (Amendment) Ordinance 1996

---

12. In light of the judgment of the Court of Appeal on *HKSAR v CHAN Pun-chung and Another M.A. 364/1999* and the availability of section 23(c) and (d) of the Interpretation and General Clauses Ordinance (Cap. 1), members had queried the need for clause 14(c) at the last meeting.

13. Deputy Director of Public Prosecutions (DD(PP)) said that section 159E(7) of the Crimes Ordinance (Cap. 200) as presently worded had not accurately reflected the legislative intent. This had been accepted by the Court of Appeal in its recent decision on the case *HKSAR v CHAN Pun-chung and Another M.A. 364/1999*. He explained that clause 14(c) was necessary as the true legislative intent at present could only be discerned by referencing to the existing provision, together with the judgment of the Court of Appeal. DD(PP) also informed members that the Administration proposed to further amend clause 14 by adding "(aa) For the avoidance of doubt" and "(d) any

Action

proceedings commenced after that time in respect of a conspiracy committed before and continuing after that time".

14. Members expressed reservation on the Administration's proposed CSAs. Mr Martin LEE was of the view that proposed clause 14(c) and (d) appeared to have made a distinction between a conspiracy committed before the commencement of section 159E of the Crimes Ordinance (Cap. 200) on 2 August 1996 and a conspiracy committed before and continued after that date. He asked the Administration to give examples to illustrate the application of proposed clause 14(c) and (d).

15. DD(PP) responded that clause 14(c) and (d) sought to deal with a conspiracy that started before 2 August 1996 and continued afterwards. For example, the planning and preparatory work of a conspiracy to defraud was carried out before 2 August 1996 but the defraud was concluded after that date. These provisions were also necessary in case where the conspiracy to defraud involved two parties who had made an agreement to defraud before 2 August 1996 and the third party joined the conspiracy after that date.

16. Mr Martin LEE expressed concern that the third party who joined the conspiracy after 2 August 1996 would be charged with common law conspiracy even though common law conspiracy had already been abolished at that time. DD(PP) responded that Part XIIA of Crimes Ordinance sought not to decriminalise certain forms of conspiracy, but to codify the law and to put the law of conspiracy on a statutory basis. It was never the intention to decriminalise conspiracies that had not been charged until that date. DD(PP) stressed that there was a distinction between decriminalisation and codification.

17. Miss Margaret NG said that when the Crimes Ordinance was amended on 2 August 1996, her understanding was that common law conspiracy had been abolished. DD(PP) reiterated that the Court of Appeal in *HKSAR V CHAN Pun-chung and Another M.A. 364/1999* acknowledged that abolition of an offence did not mean that the conduct which would have amounted to the offence before its abolition could not be prosecuted afterwards.

18. Mr Ambrose LAU said that while he noted that the "for the avoidance of doubt" provision was usually introduced together with the bill, he did not recall such a provision being added after the enactment of a bill. The Chairman remarked that it was more appropriate to introduce an amendment to the provision, instead of introducing an interpretative provision.

19. ALA5 drew members' attention to the fact that the appellants in *HKSAR V CHAN Pun-chung and Another M.A. 364/1999* had applied to the Court of Final Appeal for leave to appeal. He pointed out that enactment of the proposed amendments might have an impact on the appellants' right to appeal. DD(PP) informed members that the outcome of the relevant application would

Action

not be available until 19 May 2000.

Adm

20. Miss Margaret NG expressed reservation on the proposed amendments which sought to have retrospective effect. She said that when these interpretative provisions were added to the Ordinance, a court hearing a case would need to interpret the original provision as if it had the meaning, as stated by the interpretative provisions, from the date of its enactment. At Miss NG's request, DSG(A) agreed that the Administration would prepare a paper clarifying the impact of interpretative provisions with retrospective effect.

Adm

21. In light of members' views expressed, the Chairman said that the primary concern was that the proposed amendments might have an impact on the appellants' right to appeal. At the Chairman's request, DSG(A) agreed that the Administration would consider removing the proposed amendments from the Bill, pending the outcome of the relevant application for leave to appeal.

22. DSG(A) said that given the complexity of the issue, the paper on interpretative provisions as requested by Miss Margaret NG would take time to prepare. Miss Margaret NG said that if the Administration acceded to members' request to delete the proposed amendments, there was no urgency for the paper. If the decision was otherwise, the Administration should provide the paper at the soonest to facilitate consideration by the Bills Committee.

**II. Clause-by-clause examination of the Bill**  
(LC Paper Nos. CB(2) 881 and 1096/99-00)

23. DSG(A) informed members that the Criminal Procedure (Amendment) Ordinance was enacted on 27 June 1973 but had not taken effect. The Administration proposed to repeal the Ordinance because the object of the Ordinance was to introduce preventive detention which was now an outdated concept. Members had not raised any queries.

**III. Way forward**

24. Members agreed that the Administration's response to the points raised at the meeting would be circulated to members. If members decided that no further meeting was needed to discuss the Administration's response, the Bills Committee would report to the House Committee recommending resumption of the Second Reading debate on the Bill.

Action

25. The meeting ended at 10:25 am.

Legislative Council Secretariat

18 July 2000