

**立法會**  
**Legislative Council**

LC Paper No. CB(2)1060/99-00  
(These minutes have been  
seen by the Administration)

Ref : CB2/BC/27/98

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

**Minutes of Meeting  
held on Tuesday, 18 January 2000 at 8:30 am  
in Conference Room B of the Legislative Council Building**

**Members Present** : Hon Albert HO Chun-yan (Chairman)  
Hon Margaret NG  
Hon Andrew WONG Wang-fat, JP  
Hon Jasper TSANG Yok-sing, JP

**Members Absent** : Hon Martin LEE Chu-ming, SC, JP  
Hon Ambrose LAU Hon-chuen, JP

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

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

Ms Anastasia KWONG  
Senior Government Counsel (Drafting)

Miss Agnes CHEUNG  
Senior Government Counsel (Advisory)

Miss Doris LO  
Government Counsel

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

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**Staff in Attendance** : Mr Arthur CHEUNG  
Assistant Legal Adviser 5  
  
Ms Miranda LEUNG  
Senior Assistant Secretary (2) 9

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**I. Election of Chairman**

Mr Albert HO, the member who had the highest precedence, presided at the election.

2. Mr Albert HO called for nomination for the chairmanship of the Bills Committee. Mr Albert HO was nominated by Miss Margaret NG. The nomination was seconded by Mr TSANG Yok-shing. Mr Albert HO accepted the nomination.

3. As there was no other nomination, Mr Albert HO declared himself elected as Chairman of the Bills Committee.

**II. Meeting with the Administration**

[Legislative Council Brief issued by the Department of Justice in May 1999 (File Ref : LP 3/00/7C VI)]

4. The Chairman welcomed representatives of the Administration to the meeting.

5. At the invitation of the Chairman, Deputy Solicitor-General (Advisory) (DSG(A)) briefed members on the purpose and provisions of the Bill as set out in the Legislative Council Brief. He said that the Statute Law (Miscellaneous Provisions) Bill 1999 was introduced to make minor, technical and largely non-controversial amendments to remove inconsistencies and anomalies, and to put beyond doubt the validity of certain items of subsidiary legislation that were not tabled before the Legislative Council (LegCo).

6. The Chairman invited members to raise questions on the general principles and major provisions of the Bill for the Administration to prepare written replies for discussion at the next meeting.

Nomenclature of Bill's title

7. Miss Margaret NG sought clarification on the rationale for naming the Bill, "Statute Law (Miscellaneous Provisions) Bill". She pointed out that such

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technical amendments would normally come under an administration of justice bill. Since the terminology was widely understood and accepted, to now name the Bill differently seemed unnecessary and might cause confusion unless there was a good reason to do so.

8. Senior Government Counsel (Drafting) (SGC(D)) responded that while an "Administration of Justice (Miscellaneous Provisions) Bill" would normally be introduced to provide for amendments of a generally technical and non-controversial nature, the current Bill had a broader purpose. The Bill included validation provisions to deem certain items of subsidiary legislation laid before LegCo. The Administration thus considered that the title "Statute Law (Miscellaneous Provisions) Bill" was more appropriate to reflect the scope of the Bill. She added that similar titles had also been used in other countries such as Canada. Miss NG further asked and SGC(D) confirmed that the title was used for the first time for an omnibus bill to provide for miscellaneous amendments to various ordinances. On whether the title "Administration of Justice (Miscellaneous Provisions) Bill" would hitherto be replaced, SGC(D) said that it would be a matter for further consideration.

9. Miss Margaret NG was not convinced of the need to change the title which was widely used and accepted. The Chairman remarked that he also had doubts about the contents of the Bill when he first came across its name. DSC(A) said that the Administration would review the title of the Bill, having regard to members' expressed views.

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Clause 2 (Commencement)

10. In response to Miss Margaret NG's enquiry about the reference to "section" instead of "clause" in Clause 2 of the Bill, SGC(D) explained that provisions in a Bill were referred to as "clauses" and provisions in an Ordinance were referred to as "sections". Clause 2 was set out in the form in which it was proposed to be enacted. Responding to Mr. Andrew WONG, SGC(D) confirmed that it was the normal drafting practice.

Discharge of mortgaged property

11. Members noted that there were circumstances under which the sale or development of the property concerned would be hindered when a mortgagor of an interest in land was unable to repay even an insignificant amount of the mortgage money if the mortgagee could not be found, or the mortgage documents were missing, or the date on which the mortgage should have been repaid was unknown. The Bill proposed to amend the Conveyancing and Property Ordinance (Cap. 219) to allow payment into court of the outstanding amount under the mortgage, subsequent to which the court might order the discharge of that mortgaged property.

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12. Miss Margaret NG was of the view that the proposed amendments were not purely of a technical nature. She therefore requested the Administration to further explain the policy implications of the proposed amendments and elaborate on the rationale involved, with specific examples, for adding section 12A to the Conveyancing and Property Ordinance. Miss NG also suggested that the Administration should consult the Conveyancing and Property Law Association on the proposed amendments.

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13. The Chairman said that he was surprised that problems arising from mortgages only now came to light as there must be numerous occurrences of such cases before. Senior Government Counsel (Advisory) (SGC(A)) pointed out that persons concerned only recently brought such cases to court, some of whom were only a few dollars short of full repayment. She explained that these problems would only arise from private mortgages which were far and few between, and not those mortgages arranged through banks or financial companies. She informed members that there were two relevant cases in recent years presided over by Mr Justice GODFREY and Mrs Justice LE PICHON respectively. At Miss Margaret NG's request, SGC(A) agreed to provide details of the these two cases for members' reference.

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14. The Chairman asked whether the mortgagor had a case to sue the mortgagee if the mortgagor was unable to repay the outstanding mortgage money, because the mortgagee had disappeared, thereby causing denial of the former's chance of rightful ownership of the property. The Chairman further asked the Administration to advise whether the court had the responsibility to settle the amount of interest in allowing payment into court of an amount sufficient to meet the mortgage and any interest due thereon. DSG(A) undertook to provide written replies.

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15. On a related issue, Miss Margaret NG informed members that arising from the judgment delivered on 23 November 1999 by Mr. Justice GODFREY in respect of a conveyancing case, she had written to the Deputy Law Officer in her capacity as the Chairman of the Panel on Administration of Justice and Legal Services, proposing that the Conveyancing and Property Ordinance be amended. Her proposal sought to give the courts a discretionary power, similar to that provided for in the UK Law of Property Act, to the effect that the courts could order the return of deposit money to the purchaser if it ruled in favour of the purchaser in a conveyancing dispute. Miss NG asked whether the Administration would consider inclusion of the amendment item in the proposed Bill. DSG(A) replied that the Administration's response was under preparation and would be available by the end of January 2000. At the Chairman's request, DSG(A) agreed to provide a copy of Mr. Justice GODFREY's judgment for members' reference.

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Abrogation of the "year and a day rule"

Adm 16. At the request of the Chairman and Miss Margaret NG, DSG(A) agreed to provide relevant parts of the Law Reform Commission's report published in June 1997 (including information on overseas practices) in respect of the abrogation of the "year and a day rule" for members' reference.

Psychiatrists to provide evidence to courts on fitness of the accused to be tried

17. The Chairman said that the amendment seemed to propose a more restricted group of medical practitioners who could provide evidence to courts on fitness of the accused to be tried. In response to the Chairman's enquiry about the current practice, SGC(A) confirmed that currently the two registered medical practitioners who could provide evidence to courts on fitness of the accused to be tried must be those approved for the purposes of section 2(2) of the Mental Health Ordinance (Cap. 136) as having special experience in the diagnosis or treatment of mental disorder, which in fact meant psychiatrists. The proposed amendment aimed at streamlining the references, substituting it with a direct reference to the Specialists Register of the Medical Council established in 1998. Miss Margaret NG expressed support for the proposed amendment. She explained that the establishment of a comprehensive Specialist Register provided a clear-cut solution to the problem of not having a legal definition of "psychiatrists" in the past.

Publication of sections referred to in a notice

Adm 18. At Miss Margaret NG's request, DSG(A) agreed to provide actual cases in respect of repeated publication of sections referred to in warning notices for members' information.

Delegation of the Director of Audit's power

Adm 19. The Chairman wondered why the Director of Audit was not empowered in the legislation to delegate certain powers and duties to directorate officers. Margaret NG remarked that the general principle of delegation might have already been covered in other ordinances such as the Interpretation and General Clauses Ordinance (Cap. 1). The Chairman asked the Administration to provide information on whether there were similar provisions in other legislation i.e. the Interpretation and General Clauses Ordinance which empowered a director to delegate his powers and duties. The Chairman also requested the Administration to ascertain the reasons for not empowering the Director of Audit to so delegate. DSG(A) agreed to provide a written response.

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Transfer of persons serving indeterminate sentences

Adm 20. Miss Margaret NG sought information on the existing practice in dealing with anomalous situations arising from the transfer of persons serving indeterminate sentences. She requested the Administration to provide specific examples for the purpose of illustration.

Subsidiary legislation deemed laid before LegCo

Adm 21. Mr Andrew WONG said that the Bill proposed to put beyond doubt that the items of subsidiary legislation which were inadvertently not laid before LegCo should have legal effect, by enacting provisions to deem them as having been duly laid. He pointed out that while the Bill would be able to clarify the legal effect of these items of subsidiary legislation, it also carried implications on the relationship between the executive and legislature. Miss Margaret NG said that the matter had been discussed by both the Panel on Administration of Justice and Legal Services and the Subcommittee to study issues relating to the tabling of subsidiary legislation in Legislative Council. She recalled that at the relevant meetings, the views of some members were different from those of the Administration. At Miss NG's suggestion, DSG(A) agreed that the Administration would refer to minutes of the relevant meetings and advise on the extent to which the Bill addressed members' expressed concerns, and whether or not the differences identified still existed.

Adm 22. The Chairman pointed out that the Administration's proposal of enacting validation legislation would result in these items of subsidiary legislation taking effect retrospectively. He expressed concern about the possible implication on the Bill of Rights Ordinance (Cap. 383). DSG(A) informed members that before proposing the amendments, the Administration had already examined the issue of retrospectivity against section 12 of the Bill of Rights Ordinance and concluded that there was no indication of contradiction. He explained that the items of subsidiary legislation concerned did not rely on the Bill to have legal effect, and that unless the court declared them to be null and void, there was no question of their validity since gazettal. Notwithstanding the Administration's explanation, the Chairman asked and DSG(A) agreed to provide written justification of the Administration's conclusion that its proposal to clarify the matter by way of deeming provisions did not contravene the Bill of Rights Ordinance.

**III. Date of next meeting**

23. Members agreed that the next meeting would be held on Tuesday 15 February 2000 at 8:30 a.m. to consider the Administration's response and to commence clause-by-clause examination of the Bill.

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24. There being no other business, the meeting ended at 9:40 am.

Legislative Council Secretariat  
10 February 2000