

立法會
Legislative Council

LC Paper No. CB(1)1940/98-99

(These minutes have been
seen by the Administration)

Ref: CB1/SS/5/98/1

**Subcommittee to study issues relating to the tabling of
subsidiary legislation in Legislative Council**

**Minutes of meeting held on
Tuesday, 27 April 1999, at 2:30 pm
in Conference Room A of the Legislative Council Building**

Members present : Hon Ronald ARCULLI, JP (Chairman)
Hon LEE Kai-ming, JP
Hon Margaret NG

Members absent : Hon James TO Kun-sun
Hon LAW Chi-kwong, JP

Public officers attending : Mr David MORRIS
Deputy Law Draftsman (Legislation)

Miss Agnes CHEUNG
Acting Senior Assistant Solicitor General

Ms Miranda CHIU
Deputy Director of Administration

Mr Jacky LUM
Assistant Director of Administration

Miss Mable CHAN
Clerk to the Executive Council

Clerk in attendance : Miss Odelia LEUNG, Chief Assistant Secretary (1)1

Staff in attendance : Mr Ricky FUNG, Secretary General
Mr Jimmy MA, Legal Adviser
Mrs Betty LEUNG, Chief Assistant Secretary(3)1
Mrs Mary TANG, Senior Assistant Secretary (1)2

I Confirmation of minutes of meeting
(LC Paper No. CB(1)1145/98-99)

The minutes of meeting held on 2 February 1999 were confirmed.

II Meeting with the Administration
(LC Paper Nos. CB(1)1127 and 1203/98-99)

2. The Chairman said that the purpose of the meeting was to discuss ways to improve the arrangement for tabling of subsidiary legislation in LegCo and to rectify the confusion of having appointed two commencement dates in respect of the Ozone Layer Protection (Controlled Refrigerants) Regulation (the Regulation).

Issues relating to the tabling of subsidiary legislation

3. The Deputy Director of Administration (DDA) took members through the paper which set out the Administration's views on the different options to improve the existing arrangement for tabling of subsidiary legislation in LegCo (Re: LC Paper No. CB(1)1203/98-99). She explained that after considering the merits of each of the options, the Administration proposed to divide the Legal Supplement No. 2 of the Gazette into two parts specifying that the first part contained all items of subsidiary legislation that should be tabled in LegCo. She sought the views of members and the LegCo Secretariat on the proposed arrangement.

4. The Secretary General said that the LegCo Secretariat had carefully studied the proposed arrangement and came to the view that the arrangement was appropriate as it would provide clarity and certainty of the items of subsidiary legislation that should be tabled. Subject to members' agreement on the proposed arrangement, the Director of Administration need to give an one-off written notice to the Clerk to LegCo confirming that with effect from a certain date, all items contained in Part A of the Legal Supplement No. 2 of the Gazette should be tabled at the next following LegCo meeting.

5. The Legal Adviser (LA) agreed that the giving of a formal notice by the Administration in respect of each and every item of subsidiary legislation that should be tabled was not practicable in view of the large number of subsidiary

legislation that need to be tabled at each LegCo meeting. For the purpose of complying with the requirement under section 34(1) of the Interpretation and General Clauses Ordinance, Cap. 1, LA suggested that a note be printed on Legal Supplement 2 of the Gazette stating clearly the tabling of subsidiary legislation contained in Part A.

6. The Chairman suggested that the LegCo Secretariat and the Administration work out the exact wording of the note to ensure practicality of the proposed methodology and compliance with the legal formalities under section 34(1) of Cap. 1.

7. DDA said that Administration intended to put the proposed arrangement into place as soon as possible, preferably by mid or late May 1999.

(Post-meeting note: the proposed arrangement was put into place on 11 June 1999.)

Measures to rectify the confusion of having two commencement dates in respect of the Ozone Layer Protection (Controlled Refrigerants) Regulation

8. With regard to the two Commencement Notices issued in respect of the Regulation, i.e. General Notice No. 4794 of 1993 (the 1993 Notice) and Legal Notice No. 391 of 1998 (the 1998 Notice), the Deputy Law Draftsman (Legislation) (DLD) said that the Administration's view was that the 1993 Notice was valid until challenged in court. The Administration proposed to issue a note in the next loose-leaf edition of the laws of Hong Kong stating that the commencement date of the Regulation was 1 January 1994. It also proposed to repeal the 1998 Notice by legislation. The Administration was still considering the desirability of enacting validating legislation to remove doubt on the validity of the 1993 Notice and the 19 items of subsidiary legislation that had not been tabled.

9. Miss Margaret NG expressed concern about the Administration's intention of publishing a note to clarify the commencement date of the Regulation. She pointed out that the scope of publication in the loose-leaf edition of the laws was limited by the Law (Loose-Leaf Publication) Ordinance 1990 (the Ordinance). She queried if the Administration, in the absence of a validation ordinance, had the authority under the Ordinance to put in such a note and if so, the legal effect of it.

10. DLD said that page one of the loose-leaf editions of the laws contained the commencement dates of all the ordinances. The Administration had the authority under the Ordinance to make notes. DLD stressed that the publication of the note would not alter the underlying legal position of the 1993 Notice. If the 1993 Notice were invalid, putting in the note in the loose-leaf editions would not vary

its validity. The Chairman agreed that unless challenged, the underlying legal position of the 1993 Notice would stand.

11. Miss Margaret NG said that if it was agreed that the 1993 Notice was valid, it would be very odd to publish a note in the loose-leaf editions in 1999 stating that the commencement date of the Regulation was 1 January 1994. However, if a view was taken that the 1993 Notice was invalid, then the publication of the said note was not only odd but also wrong because the commencement date of the Regulation was not 1 January 1994. She therefore had reservation about the proposed publication of a note in the loose-leaf editions.

12. The Chairman opined that there were two possible options to deal with the situation. Rectification could be made by introducing a validation ordinance which would put the matter beyond doubt. The other option would be to leave the matter as it was. If the court ultimately ruled the 1993 Notice invalid, the Administration could then proceed to introduce a validation ordinance to specify the commencement date of the Regulation.

13. Miss Margaret NG said that the Administration should take action to rectify the situation rather than to react until its position was challenged. But, any steps taken must be legal and done in the right way.

14. The Chairman said that a validating ordinance, if introduced, would need to comply with the International Covenant on Civil and Political Rights and the provisions of the Bill of Rights Ordinance. As the validating ordinance would seek to validate a notice, which was published in 1993, retrospectivity would be inevitable. He cautioned that a line would have to be drawn between observance of the law and application of a criminal sanction for non-observance.

15. Miss Margaret NG said that if a view was taken that the 1993 Notice was not invalid from the start but was only invalid at the point of challenge, then the problem of retrospectivity would not arise.

16. Members noted the Administration's intention of deleting the current entry in the loose-leaf editions in respect of the commencement date of the Regulation on 1 January 1999. The Chairman and Miss Margaret NG expressed reservation about this proposal.

17. LA said that the loose-leaf editions of the laws were not the sole and proper laws. The underlying legal position of a piece of law would not be changed by an editorial action. Assuming the 1998 Notice was valid, the only downside for deleting the entry was an incomplete loose-leaf edition of the laws, i.e. the 1998 Notice was not included.

Action

18. Miss Margaret NG said that she was concerned from both the practical and the legal points of view. Although the proposed editorial action would not affect the underlying legal position, the Administration should not freely add or delete an entry. The Chairman concurred that apart from printing errors, which could be rectified through an editorial action, other entries or deletions should not be dealt with editorially. If the Administration agreed that the introduction of a validation ordinance was the right way forward, it should be dealt with under the normal legislative process. On the other hand, if the Administration decided not to introduce a validation ordinance, then it would have to come up with a proposal on the way to deal with the entry for the 1998 Notice.

19. Concluding the discussion, the Chairman said that the Subcommittee would make an interim report to the House Committee on its deliberations and keep track of the decision of the Administration concerning the enactment of a validating ordinance.

(Post-meeting note: the Subcommittee reported to the House Committee on 7 and 28 May 1999 respectively on its deliberations and the decision of the Administration to include in the Statute Law (Miscellaneous Provisions) Bill 1999 a scheme of validation in respect of the 19 items of subsidiary legislation and the 1993 Notice.)

III Any other business

20. There being no other business, the meeting ended at 3:00 pm.

Legislative Council Secretariat
20 September 1999