

Legislative Council

LC Paper No. CB(2) 175/98-99

(These minutes have been
seen by the Administration)

Ref. : CB2/SS/1/98

Subcommittee on Subsidiary Legislation gazetted between 13 March and 6 July 1998

Minutes of the first meeting held on Thursday, 9 July 1998 at 2:30 pm in the Chamber of the Legislative Council Building

Members present : Hon Ronald ARCULLI, JP(Chairman)
Hon LEE Wing-tat
Hon Mrs Selina CHOW LIANG Shuk-ye, JP
Hon James TO Kun-sun
Hon CHAN Yuen-han
Hon CHAN Wing-chan
Dr Hon Philip WONG Yu-hong
Hon CHOY So-yuk
Hon Andrew CHENG Kar-foo

Members absent : Dr Hon LEONG Che-hung, JP
Hon SIN Chung-kai
Hon Andrew WONG Wang-fat, JP

Public Officers attending : For L.N.191, 209 and 240
Mr Eddie CHEUNG
Acting Principal Assistant Secretary
(Banking and Monetary)

Mr Raymond LI, JP
Executive Director (Banking Policy)
Hong Kong Monetary Authority

Mr K F CHICK
Acting Assistant Director of Marine
(Multi-lateral Policy)

Mr Philip TSE
Senior Manager (Currency)
Hong Kong Monetary Authority

For L.N.196, 208 and 251

Mr Kim SALKELD
Deputy Secretary (Environment)
Planning, Environment and Lands Bureau

Mr Howard CHAN
Principal Assistant Secretary (Environment)
Planning, Environment and Lands Bureau

Mr C W TSE
Assistant Director (Air)
Environmental Protection Department

Mr Wilson FUNG
Principal Assistant Secretary (Planning)
Planning, Environment and Lands Bureau

Mr Raymond CHIU
Assistant Director/Technical Service
Planning Department

Miss Vivian KO
Principal Assistant Secretary (Environment) (Ag.)
Planning, Environment and Lands Bureau

Mr K F TANG
Assistant Director (Waste Facilities)
Environmental Protection Department

Mr Alex NG
Principal Environmental Protection Officer
(Facilities Management)
Environmental Protection Department

For L.N.188, 189, 190, 199 and 225

Mr NG Hon-wah
Principle Assistant Secretary (2)
Home Affairs Bureau

Mrs Clara LEUNG
Assistant Secretary (Culture)
Home Affairs Bureau

Mr TANG Wing-on
Senior Legal Officer
Urban Services Department

Mr Roy LUI
Librarian
Urban Services Department

Mr YEUNG Shung-kui
Staff Officer (Markets)
Urban Services Department

Mr Paul CHEUNG
Senior Staff Officer (Leisure Policy)
Urban Services Department

For L.N.180, 181 and 212

Mr C M LEUNG
Deputy Secretary for Housing
Housing Bureau

Miss Sandy CHAN
Principal Assistant Secretary for Housing (2)
Housing Bureau

Mr Simon LEE
Assistant Director / Legal Advice
Housing Department

For L.N.182, 183 and 235

Miss CHEUNG Siu-hing
Deputy Secretary for Trade and Industry

Mr WAI Chi-hung
Assistant Commissioner of Customs & Excise (Ag.)

Mr John CHAN
Head of Trade Controls Branch
Customs and Excise Department

Mr CHEUNG Sai-yan
Head, Trading Standards Investigation Bureau
Customs and Excise Department

Mr Johann WONG
Principal Assistant Secretary for Trade and Industry (Ag.)

For L.N.193, 210, 215, 217, 223, 224, 241, 254 and 259

Miss Dora FU
Principal Assistant Secretary for Economic Services

Mr S P LAU
Assistant Director (Conservation)
Agriculture and Fisheries Department

Miss LAW Man-yuen, Monica
Senior Government Counsel

Ms Carman CHU
Senior Government Counsel

Mr David YUEN
Secretary
Veterinary Surgeons Board of Hong Kong

Mr K F CHICK
Assistant Director of Marine (Ag.)

Mr S K ANAND
Chief (Shipping Policy) (Nautical)

Mr C Y TSANG
General Manager/Operation (Ag.)

Mr Peter KWOK
Assistant Secretary for Economic Services

Ms Bonnie YAU
Acting Principal Assistant Secretary for Economic Services

Mr H C LAI
Acting Chief Electrical & Mechanical Engineer
(Electricity Legislation)

Mr Frederick FUNG
Senior Government Counsel

Mr Howard LEE
Principal Assistant Secretary for Economic Services (New

Airport)

For L.N.228, 231, 232, 238, 239, 243, 244, 245, 248, 257 and 258

Mr Allan CHOW
Principal Assistant Secretary for Transport (3)
Transport Bureau

Ms Grace FUNG
Chief Transport Officer/Port and Airport Development
Transport Department

Mr David YAM
Senior Engineer/Port and Airport Development
Transport Department

Mr Joseph YAU
Legal Counsel
MTR Corporation

Mr Michael KWOK
Design Management Engineer
MTR Corporation

Mr Eric CROWTER
Senior Superintendent/Traffic
Hong Kong Police Force

Mr Brian LO
Principal Assistant Secretary for Transport (2)
Transport Bureau

Miss Eliza LEE
Principal Assistant Secretary for Transport (1)
Transport Bureau

Mr Alan LUI
Assistant Commissioner for Transport
Transport Department

Clerk : Mrs Sharon TONG
in attendance Chief Assistant Secretary (2) 1

Staff in : Mr LEE Yu-sung
attendance Senior Assistant Legal Adviser

Ms Bernice WONG
Assistant Legal Adviser 1

Miss Anita HO
Assistant Legal Adviser 2

Miss Connie FUNG
Assistant Legal Adviser 3

Mr Stephen LAM
Assistant Legal Adviser 4

Mr Arthur CHEUNG
Assistant Legal Adviser 5

Mr Colin CHUI
Senior Assistant Secretary (2)5

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I. Election of Chairman

Mr Ronald ARCULLI was elected Chairman of the Subcommittee.

II. Meeting with the Administration

2. The Chairman said that given the large volume of subsidiary legislation under scrutiny, the Subcommittee might not be able to complete the deliberations of them at the first meeting. He suggested to give priority to studying the subsidiary legislation gazetted between 13 March to 3 April 1998, of which the deadline for amendment to be made had been extended to 15 July 1998 as well as items which members had indicated interest at the House Committee meeting on 6 July 1998 to study in more detail. Members agreed.

Housing (Amendment) (No. 2) Ordinance 1998 (24 of 1998) (Commencement) Notice 1998 (L.N. 212 of 1998)
(Appendix V to LC Paper No. CB(2)14/98-99(01))
(LC Paper No. CB(2)21/98-99(02))

Appeal panel

3. Noting that section 3 of the Housing (Amendment) (No. 2) Ordinance 1998 (the Amendment Ordinance) served to remove the upper limit of the number of members of the appeal panel, Dr Philip WONG remarked that this could be achieved by simply deleting “11” from the original section 7A of the Housing Ordinance. He therefore enquired about the rationale for the present amendment which replaced “11 other members” by “such number of members as the Secretary thinks fit”. Assistant Director of Housing/Legal Advice (AD/LA) responded that in addition to removing the upper limit, the amendment would make it clear that the number of members was determined by the Secretary for Housing.

Further fine for making false statements

4. In response to Mr LEE Wing-tat, Senior Assistant Legal Adviser (SALA) advised that section 34 of the Interpretation and General Clauses Ordinance (Cap. 1) empowered the Legislative Council (LegCo) to amend subsidiary legislation. Under the same Ordinance, amendment included repeal. Should Members repeal the Commencement Notice, the Amendment Ordinance would not come into operation. Should Members remove part of the Amendment Ordinance from the Commencement Notice, the effect would be the removed part could not come into operation. AD/LA said that according to section 1(2) of the Amendment Ordinance, only one commencement date could be appointed for the entire Amendment Ordinance. Appointing different commencement dates for different provisions was therefore inconsistent with the section. He considered it inappropriate to deter the operation of the Amendment Ordinance by amending the Commencement Notice as the Administration

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had a duty to bring the duly passed Amendment Ordinance into effect. Should members wish to amend provisions of the Amendment Ordinance, they should do so by introducing amendment bills rather than amending the Commencement Notice. Principal Assistant Secretary for Housing (2) pointed out that the legal advice sought from the Department of Justice on commencement of the Amendment Ordinance concurred with that of AD/LA. SALA advised in response to the Chairman that from the legal point of view, the Commencement Notice could be amended to provide for different commencement dates for different provisions of the Amendment Ordinance. Mr CHAN Wing-chan enquired whether Members who wished to move motions to amend the Commencement Notice to provide for appointment of different commencement dates for different provisions should seek prior written consent of the Chief Executive as provided under Article 74 of the Basic Law. SALA responded that the view of the Legal Service Division (vide LC Paper No. LS 6/98-99) was that the consent requirement was only applicable to Member's bills relating to government policies but not to motions moved by Members. In response to a further question from Mr CHAN Wing-chan, SALA said that according to the Rules of Procedure of the LegCo, the President of LegCo had the power to rule whether a motion was in order.

(Post-meeting note : The Secretary for Housing had sought further legal advice on the commencement dates for different provisions of the Housing (Amendment) (No.2) Ordinance 1998. The advice obtained was that the Legislative Council could lawfully amend the commencement notice to provide for different commencement dates for different provisions.)

5. Members noted that under the Housing Ordinance, persons found guilty of knowingly making false statements were liable for a fine of \$50,000 and imprisonment for six months. The Amendment Ordinance provided for, inter alia, a further fine of treble the amount of rent undercharged if a tenant knowingly made false statements in furnishing particulars regarding his total household income and/or assets or if a person knowingly made false statements in respect of an application for a lease. Mr LEE Wing-tat said that whilst supporting the remaining provisions, he was opposed to the provisions concerning the further fine on the ground that there was no evidence to suggest that the number of cases of making these false statements was on the rise. He would therefore move a motion to repeal the commencement of the provisions. Mr James TO said that he was also against the provisions as the formula used to calculate the further fine was unacceptable. The imprisonment terms already had sufficient deterrent effect. It would be more reasonable to increase the fine rather than to adopt the formula of trebling the amount of rent undercharged.

6. In response, Deputy Secretary for Housing doubted whether

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imprisonment alone had sufficient deterrent effect. The increased penalty for making false statements was proportionate to the severity of the offence. With effect from 1 April 1997, tenants whose total household incomes and assets exceeded the prescribed limit had to pay market rent. Should a tenant get round the market rent payment by making false statements, the rent undercharged would be about \$40,000 per annum for a four-persons family. Given that the limitation period for prosecution of offences was six years, the rent undercharged might go up to about \$240,000. In comparison with the amount of rent undercharged, the original maximum penalty of \$50,000 would not have sufficient deterrent effect. To this end, the further fine which tied in with the rent undercharged was introduced to strengthen the deterrent effect. Failure to implement the further fine might convey a wrong message that making false statements was not a serious offence and invite further abuse of public housing resources. As the Housing Authority did not have substantial resources to vet all the particulars furnished by tenants, raising the penalty was a just and reasonable way to prevent the abuse of public housing resources.

Consumer Goods Safety Regulation (L.N. 110 of 1997) (Commencement) Notice 1998 (L.N. 182 of 1998)
(Appendix VI to LC Paper No. CB(2)14/98-99(01))

7. Mrs Selina CHOW was concerned that there was a lack of communication between the Administration and the industry on the implementation of bilingual warning or caution for consumer goods as required under the Consumer Goods Safety Regulation. Deputy Secretary for Trade and Industry responded that the Administration had been in close liaison with the industry on enforcement of the Regulation. The Administration had also introduced measures to improve enforcement of the Regulation which were welcomed by the industry. Regarding an incident where sale of consumer goods was prohibited for non-compliance with the 'bilingual warning' requirement, Head of Trade Controls Branch of the Customs and Excise Department said that the Customs and Excise Department had conducted a review thereafter and adopted a more flexible approach in the enforcement of the Regulation provided that consumer goods safety would not be affected.

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The Airport Authority Bylaw (L.N. 10 of 1998) (Commencement) (No. 2) Notice 1998 (L.N. 241 of 1998))
(Appendix VII to LC Paper No. CB(2)14/98-99(01))

Section 11(1) of the Airport Authority Bylaw (the Bylaw)

8. Noting that the Airport Authority (AA) was empowered under section 11(1) of the Bylaw to issue permits to regulate access to and the conduct of persons in the Restrict Area of the Airport, Mr James TO enquired whether the Administration had any control over the issue of permits. Principal Assistant Secretary for Economic Services (New Airport) (PAS(ES)(NA)) said that the existing permits were issued by the AA under the legislative frame work of the Aviation Security Ordinance (the Ordinance) which was an Ordinance under the purview of the Security Bureau. Responding to members' concern that such permits might be subject to such terms and conditions as AA might from time and time determine, PAS(ES)(NA) advised that this was necessary for safe and secure operation of the Airport. Regarding Mr TO's request for statistics on the number and types of permits issued by the relevant authorities for regulating access to and the conduct of persons in the Restricted Area of the Airport, PAS(ES)(NA) agreed to liaise with the Security Bureau for the information.

*(Post-meeting note:*The requested information has been circulated to members vide LC Paper No.CB(2)72/98-99(01))

Section 11(2) of the Bylaw

9. Mr James TO enquired whether people who held valid boarding passes but did not get on the planes were within the meaning of bona fide airline passenger under section 11(2) of the Bylaw. He was concerned that some people, e.g. news reporters, who had valid boarding passes for the purpose of carrying out certain activities in the Restricted Area might be subject to prosecution for breach of section 11(2). PAS(ES)(NA) responded that he was not in a position to give an answer to this legal question. However, the purpose of the section was to ensure the safe and secure operation of the Airport. Persons who were not bona fide air passengers and had the need to have access to the Restricted Area might apply to the AA for permits.

10. In response to Mr James TO's enquiry, PAS(ES)(NA) pointed out that the military identification document referred to in section 11(2) of the Bylaw was not issued by AA. However, AA as the airport operator should be aware of any use of the Airport by military aircraft as arrangements would be made beforehand. In this connection, PAS(ES)(NA) was requested to -

(a) advise on the operational guidelines for handling the military

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identification document for access to the Restricted Area and whether a member of the Garrison was required to wear such a document or a valid permit for this purpose; and

- (b) provide a sample of the permit and military identification document.

(Post-meeting note: The requested information has been circulated to members vide LC Paper No. CB(2)72/98-99(01))

Section 19 of the Bylaw

11. In response to Mr James TO's enquiry, ALA5 pointed out that section 19 of the Bylaw had already come into operation and was therefore not covered in the Commencement Notice.

Road Traffic (Breath Analysing Instruments and Screening Devices) (Amendment) Notice 1998 (L.N. 228 of 1998)
(Appendix VIII to LC Paper No. CB(2)14/98-99)
(LC Paper No. CB(2)20/98-99(01))

12. Mr James TO enquired about the selection and specifications of the EnviteC screening device which was used to indicate whether the proportion of alcohol in a person's breath was likely to exceed the prescribed limit of 35 micrograms of alcohol in 100 ml of breath specimen. Principal Assistant Secretary for Transport (3) pointed out that selection of the new screening device was carried out by open tender earlier in the year. The device was a well proven equipment as tender specifications required all devices to have received approval in at least five other countries, including UK and one other European Economic Community country or Australia/New Zealand. It operated to the same level of accuracy as the Drager devices which were also approved instruments with maximum deviation at about $\pm 5\%$ of the normal screening level.

13. Mr James TO asked whether motorists who marginally failed in the screening test would be prosecuted. Senior Superintendent/Traffic of the Hong Kong Police Force (SS/T) responded that motorists who were screened at or above the prescribed limit would be arrested and brought to the police station for taking a breath specimen test using an evidential breath analysing instrument. The Police would be cautious that motorists would not be charged purely on the instrument reading of up to 39 micrograms, thus allowing more than 10 % variation. The motorists' blood specimen would be taken for analysis to determine whether prosecution should be instituted where necessary.
Schedule of Routes (New World First Bus Services Limited) Order 1998

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L.N. 238 of 1998)

(Appendix VIII to LC Paper No. CB(2)14/98-99(01))

14. Responding to Mr Andrew CHENG's question, Principal Assistant Secretary for Transport (1) (PAS(T)(1)) said that new routes might be added by either amending the Schedule of Routes (New World First Bus Services Limited) Order 1998 (L.N. 238 of 1998) or invoking provisions under the Public Bus Services Ordinance whereby the Commissioner for Transport was empowered to approve operation of temporary bus routes.

Schedule of Routes (North Lantau and Chek Lap Kok Airport (Citybus Limited) Order 1996 (L.N. 439 of 1996) (Commencement) Notice 1998 L.N. 257 of 1998)

Schedule of Routes (Long Win Holdings Limited) Order 1996 (L.N. 440 of 1996) (Commencement) Notice 1998 (L.N. 258 of 1998)
(Appendix VIII to LC Paper No. CB(2) 14/98-99(01))

15. In response to Mr Andrew CHENG's enquiry, PAS(T)(1) pointed out that the bus routes contained in Part I of the Schedule to each Order had already come into operation on 1 June 1997 to cover bus services for the Tung Chung new town. The two Commencement Notices served to give effect to the operation of the bus routes for the new airport at Chek Lap Kok Airport from 6 July 1998. Mr CHENG's request for additional bus routes for the Airport could be dealt with under the Public Bus Services Ordinance mentioned in paragraph 14 of the minutes. In view of this and the fact that the Commencement Notices did not adversely affect the request for additional bus routes, it was not necessary to amend the Commencement Notices. Responding to Mr CHENG's enquiry, SALA said that addition of new bus routes could not be dealt with under these Commencement Notices. Repealing the Commencement Notices would have the effect of ceasing the operation of all bus routes for the Airport.

16. Members raised no queries on the subsidiary legislation published under the following Legal Notices - L.N. 180, 181, 183, 188, 189, 190, 191, 192, 193, 196, 199, 208, 209, 210, 215, 217, 223, 224, 225, 231, 232, 235, 239, 240, 243, 244, 245, 248, 251, 254 and 259.

III. Way forward

17. Members supported the subsidiary legislation gazetted between 13 March to 3 April 1998 (L.N. 180-199) and subsidiary legislation published under the following Legal Notices - L.N. 208, 209, 210, 215, 217, 223, 224, 225, 228, 231, 232, 235, 238, 239, 240, 241, 243, 244, 245, 248, 251, 254, 257, 258 and 259. Mr James TO suggested to study the Fugitive

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Offenders (Singapore) Order (L.N. 594 of 1997) (Commencement) Notice 1998 (L.N. 236 of 1998) at the next meeting. To facilitate arrangements for the next meeting, the Chairman requested members to advise the Clerk of any remaining items of the subsidiary legislation that they wished to study in detail. The Chairman would make a verbal report to the House Committee at its meeting on 10 July 1998.

IV. Date of Next Meeting

18. The next meeting was scheduled for 15 July 1998 at 10:45 am.

19. The meeting ended at 4:25 pm.

Legislative Council Secretariat
7 August 1998