

Legislative Council

LC Paper No. CB(2) 214/98-99

(The 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 meeting held on Wednesday, 15 July 1998 at 10:45 am in Conference Room A 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
Hon SIN Chung-kai
Dr Hon Philip WONG Yu-hong
Dr Hon TANG Siu-tong, JP

Members absent : Dr Hon LEONG Che-hung, JP
Hon LEUNG Yiu-chung
Hon Andrew WONG Wang-fat, JP
Hon CHOY So-yuk
Hon Andrew CHENG Kar-foo

Public Officers attending : For items I(a) and I(b)

Mrs Carrie WILLIS
Principal Assistant Secretary (Security) A
Security Bureau

Mr John HUNTER
Deputy Principal Government Counsel
(International Law)
Department of Justice

For item I(c)

Ms CHANG King-yiu
Deputy Secretary for Security
Security Bureau

Mr MAK Kwai-pui
Principal Assistant Secretary (Security)
Special Duties
Security Bureau

Mr Jeffrey TO
Chief Safety Officer
(Security & Air Traffic)

For item I(d)

Ms CHANG King-yiu
Deputy Secretary for Security
Security Bureau

Mr HSU King-ping
Chief Fire Officer
Fire Services Department

Mr HO Cham
Assistant Director of Buildings
Buildings Department

For items I(e) and I(f)

Miss Eliza YAU
Principal Assistant Secretary for Health
and Welfare (Medical)
Health and Welfare Bureau

Dr Constance CHAN
Acting Assistant Director (Special Health Service)
Department of Health

Dr MA Po-ling
Chief Port Health Officer
Department of Health

Mr Michael LAM
Government Counsel
Department of Justice

For items I(g) and I(h)

Miss Amy TSE
Acting Deputy Secretary for the Treasury
Finance Bureau

Mr Y Y CHU
Acting Assistant Commissioner of Inland Revenue

Mr Bryan CHAN
Principal Assistant Secretary
(Financial Services) (Securities)

Miss Vivian SUM
Assistant Secretary (Treasury) (Revenue)
Finance Bureau

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 Connie FUNG
Assistant Legal Adviser 3

Mr Stephen LAM
Assistant Legal Adviser 4

Mr Colin CHUI
Senior Assistant Secretary (2)5

Action

Pursuant to the decision of the House Committee on 10 July 1998 to re-open the membership of the Subcommittee, members noted that Mr LEUNG Yiu-chung and Dr TANG Siu-tong had joined the Subcommittee.

I. Meeting with the Administration

- (a) Fugitive Offenders (Singapore) Order (L.N. 594 of 1997)

(Commencement) Notice 1998 (L.N. 236)

(b) Fugitive Offenders (New Zealand) Order (L.N. 263)

(Papers attached to LC Paper No.CB(2)24/98-99 - L.N.236 and 263 of 1998, Provisional Legislative Council Brief on L.N. 236 of 1998, Legislative Council (LegCo) Brief on L.N.263 of 1998 and article by article comparisons with the model agreement)

2. Mr James TO raised query that as provided under Article 2(2) of the Hong Kong Special Administrative Region (HKSAR)/Singapore Agreement, a request for surrender for the purpose of carrying out a sentence might be refused when the period of imprisonment or detention which remained to be served by the fugitive offender was less than four months, whereas the minimum period of sentence in the model agreement was six months. In response, Deputy Principal Government Counsel (International Law) (DPGC(IL)) said that the reduction in the minimum period of sentence was made as requested by the Government of the Republic of Singapore.

3. In response to Mr James TO's enquiry, DPGC(IL) said that the 'conduct' test (established in Article 2(3) of the HKSAR/Singapore Agreement and the HKSAR/New Zealand Agreement) ensured that surrender might take place if the conduct of the fugitive offender would be criminal in both jurisdictions even if the elements of the offences in both jurisdictions did not match. For instance, an offence of burglary in the jurisdiction of New Zealand, the requesting Party, might consist of three elements - breaking, entering premises and taking something. In Hong Kong the offence might require, in addition, that it be committed at night. Under the 'conduct' test, extradition would be available to New Zealand even though the elements of the offence did not match provided the offence had in fact been committed at night.

4. Mr James TO expressed concern that a person who had been convicted of an offence which was an offence against the laws of the requesting Party at the time it was committed but was subsequently removed from these laws would still be surrendered under Article 2(4) of the HKSAR/Singapore Agreement. He asked whether under the circumstances the Government of HKSAR was obliged to accede to such a request for surrender. DPGC(IL) responded that it was rare that the offences in criminal law would be repealed. While the Chief Executive had the discretion to refuse any request for surrender, the proper course of action in the circumstances would be to ask the Government of the Republic of Singapore to withdraw the request.

5. Regarding refusal of surrender on the ground of breach of the requested Party's obligations under international treaties as provided under Article 6(3) of the HKSAR/Singapore Agreement, DPGC(IL) pointed out that the international treaties in question included those which were signed by the People's Republic of China and applicable to Hong Kong.

6. As regards legal representation in any proceedings arising out of requests made by Singapore for the surrender of a fugitive offender as provided under Article 14(1) of the HKSAR/Singapore Agreement, DPGC(IL) said that 'competent legal authorities' for the HKSAR would be the Secretary for Justice or counsel instructed or appointed by her. The term 'competent legal authorities' was used as the title of official of the HKSAR Government which was equivalent to the Attorney General of the former Hong Kong Government has not been determined when the terms of the Agreement were settled.

- (c) Aviation Security Regulation (L.N.622 of 1997) Commencement Notice 1998 (L.N. 247)
(Papers attached to LC Paper No.CB(2)24/98-99 - L.N.247 of 1998 and Aviation Security Regulation LC Paper No.CB(2)59/98-99(01))

7. In response to Mr CHAN Wing-chan, Deputy Secretary for Security (D S for S) said that under the Aviation Security Regulation (the Regulation), every person was required to wear a valid permit for entry to an airport restricted area (ARA) while a vehicle permit was needed for driving a vehicle into and within an ARA. Under section 22 of the Regulation, six categories of officers of disciplined forces, including the Police, who required access to an ARA for the performance of emergency duties were exempted from the permit requirement. Regarding the recent incident where two police officers were not given immediate entry to the ARA, D S for S said that according to the working procedures access to an ARA would be granted to officers of the disciplined forces concerned without the need for permit checking when sirens of the Police vehicles, ambulances or fire engines were activated. Unfortunately, the Police motorcycles which were used by the police officers in the incident did not have sirens. This had caused the misunderstanding and resulted in the delay in entering the ARA. Arising from the incident, the Airport Authority (AA), Aviation Security Company Limited and the disciplined forces concerned were conducting a review on the operational procedures for access to ARA in circumstances of urgency.

8. In response to the Chairman, D S for S said that the security requirements of the new airport at Chek Lap Kok were different from those of the Kai Tak Airport. For example, higher level of security protection was given to certain parts of ARA such as the passenger apron. Permit holders and vehicles entering these parts of ARA were subject to additional security control measures.

錯誤! 尚未定義書籤。 . Regarding issue of permits to airlines, airport tenants and their staff, D S for S said that a permanent permit valid for five years would normally be issued in four days. The four-days processing time was required as a permit application had to be submitted to CAD for

vetting by the Police, Customs and Excise Department and Immigration Department. For those in urgent needs while awaiting for approval, temporary permit could be issued in 24 hours. Escort permits would be issued when needed. On the issue of permits to people who were relocated from Kai Tak Airport to the new Airport, D S for S said that permit applications from these people did not need to go through the vetting process. Around March 1998, AA had reminded airlines and airport tenants to provide particulars of these people for issue of permits for use in the new airport. However, of the 20,000 holders of permits for use in the Kai Tak airport, less than half did so by the deadline of 15 May 1998. The influx of a large number of applications in the last minute had made timely processing and approval of these permits within the four-day period difficult. Nevertheless, temporary or escort permits were available to meet the urgent operational need of the airport staff. The Administration noted the difficulties of airport operators in providing these particulars before airport opening as they might need to recruit staff to work in the new airport. In any case, about 25,000 permanent permits had already been issued by mid-July 1998. Members were concerned about the number of applications for permanent permits pending for approval and the time taken for issuing these permits, D S for S undertook to provide further information.

9. Regarding access to ARA by Very Important Persons (VIPs), D S for S pointed out that pursuant to section 21 of the Regulation, the Airport Security Authority could grant exemptions from the permit requirement. Furthermore, in line with international practice, the Authority could also exempt recognised VIPs from security screening at the airport. At the Chairman's request, D S for S undertook to provide further information under this section.

(Post-meeting note: The requested information has been circulated to members vide LC Paper No. CB(2) 157/98-99)

(d) Fire Safety (Commercial Premises) (Amendment) Ordinance 1998 (L.N. 234)
(Papers attached to LC Paper No. CB(2)24/98-99 - L.N.234 of 1998 and Fire Safety (Commercial Premises) (Amendment) Ordinance LC Paper No. CB(2)40/98-99(01))

10. Regarding the preparatory work undertaken by the Administration for the commencement of the Fire Safety (Commercial Premises) (Amendment) Ordinance 1998, D S for S highlighted that the Authorities, namely the Director of Fire Services and the Director of Buildings, had been provided with additional resources to implement the Amendment Ordinance. Seminars had been conducted and advisory letters had been sent to parties being affected. A Fire Safety Improvement Loan Scheme was launched on 1 June 1998 to provide financial assistance to owners of

prescribed commercial premises and specified commercial buildings who had received statutory directions under the Fire Safety (Commercial Premises) Ordinance or the Amendment Ordinance to improve fire safety of their premises or buildings. Members noted that proposals to improve fire safety in private buildings would be discussed at the meeting of the LegCo Panel on Security to be held on 30 July 1998.

- (e) Quarantine and Prevention of Disease Ordinance (Declaration under section 2(1)) Notice 1998 (L.N. 250)
- (f) Quarantine and Prevention of Disease Ordinance (Sanitary Aerodrome) Declaration 1998 (L.N. 255)
(Papers attached to LC Paper No.CB(2)24/98-99 - L.N.250 and 255 of 1998 and LegCo Brief on L.N.255 of 1998
LC Paper Nos.CB(2)40/98-99(02) and CB(2)59/98-99(02))

11. Members noted that according to section 2(1) of the Quarantine and Prevention of Disease Ordinance (the Ordinance), the Director of Health might declare an authorized aerodrome to be a “sanitary aerodrome” after being satisfied that it would at all times have certain facilities at its disposal as stipulated in the Ordinance. To this end the Department of Health had conducted a series of inspections of sanitary facilities and examination of fresh water samples before the operation of the Airport. All the criteria for “sanitary aerodrome” were deemed fully satisfied on 11 June 1998. The declaration notice was therefore made on 17 June 1998, and published in the Gazette under L.N. 255 of 1998. The Department of Health would continue its monitoring work to ensure that such criteria would be fully satisfied after operation of the Airport.

12. In response to Miss CHAN Yuen-han, Principal Assistant Secretary for Health and Welfare (Medical) said that the Department of Health had liaised with AA on rectification of the defects in sanitary facilities identified in the first few days of operation of the Airport. The sanitary conditions had been improved.

- (g) Stamp Duty (Amendment) (No.2) Ordinance 1998 (33 of 1998) (Commencement) Notice 1998 (L.N. 214)
- (h) Stamp Duty (Amendment) (No.2) Ordinance 1998 (33 of 1998) (Commencement) (No.2) Notice 1998 (L.N. 237)
(Papers attached to LC Paper No.CB(2)24/98-99 - L.N.214 and 237 of 1998 and Stamp Duty (Amendment) (No.2) Ordinance 1998)

13. On the reason for making two Commencement Notices for the Stamp Duty (Amendment) (No. 2) Ordinance 1998, Acting Deputy Secretary for the Treasury explained that most of the provisions of the

Amendment Ordinance could come into operation as soon as the Amendment Ordinance was passed. The Administration therefore brought such provisions into effect on 1 May 1998 by Commencement Notice (L.N. 214). Operation of sections 5 and 11(a) of the Amendment Ordinance, however, had to be deferred until the computer programmes of the Stock Exchange of Hong Kong had been adjusted to accommodate the changes made under these provisions. As a result, these provisions could only be brought into operation on 1 July 1998 vide the latter Commencement Notice (L.N. 237).

14. In reply to Mr SIN Chung-kai, Principal Assistant Secretary (Financial Services)(Securities) (PAS(FS)) said that Stamp Duty exemption for regional derivative products was in line with the Government policy to develop Hong Kong as an international and regional financial centre. The exemption could encourage local securities industry to continue to develop new financial products to meet different investors' needs and enhance Hong Kong's competitive edge over other regional markets, such as Singapore and Taiwan, which were also keen in developing their domestic market in regional financial products. Responding to a further question from Mr SIN, PAS(FS) pointed out that the Stamp Duty exemption for transactions in regional derivative warrants was only applicable to basket warrants which had no more than 40% weighting by value in Hong Kong stock.

15. Members raised no queries on the remaining 18 items of subsidiary legislation gazetted between 24 April 1998 and 26 June 1998.

II. Conclusion of the Subcommittee

16. Members supported the eight items of subsidiary legislation under study at the meeting and the remaining 18 items of subsidiary legislation gazetted between 24 April and 26 June 1998. Regarding the Housing (Amendment) (No. 2) Ordinance 1998 (24 of 1998) (Commencement) Notice 1998 (L.N. 212 of 1998) discussed at the last meeting on 9 July 1998, the Chairman informed members of Mr LEE Wing-tat's intention to move a motion to amend the Commencement Notice to repeal the commencement of the provisions concerning further fine for making false statements. The deadline for making amendment to this and the other items of subsidiary legislation gazetted between 24 April and 6 July 1998 was 29 July 1998 and the deadline for giving notice of amendment was 22 July 1998. The Chairman said that he would make a verbal report to the House Committee at its meeting on 17 July 1998.

17. The meeting ended at 12:10 pm.

Legislative Council Secretariat
18 August 1998