

立法會
Legislative Council

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(These minutes have been
seen by the Administration)

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**Bills Committee on
National Security (Legislative Provisions) Bill**

**Minutes of meeting
held on Tuesday, 20 May 2003 at 2:30 pm
in the Chamber of the Legislative Council Building**

Members present : Hon IP Kwok-him, JP (Chairman)
Hon Ambrose LAU Hon-chuen, GBS, JP (Deputy Chairman)
Hon Kenneth TING Woo-shou, JP
Dr Hon David CHU Yu-lin, JP
Hon Albert HO Chun-yan
Ir Dr Hon Raymond HO Chung-tai, JP
Hon Martin LEE Chu-ming, SC, JP
Hon Eric LI Ka-cheung, JP
Hon Fred LI Wah-ming, JP
Dr Hon LUI Ming-wah, JP
Hon NG Leung-sing, JP
Hon Margaret NG
Hon Mrs Selina CHOW LIANG Shuk-yee, GBS, JP
Hon James TO Kun-sun
Hon CHEUNG Man-kwong
Hon HUI Cheung-ching, JP
Hon CHAN Kwok-keung
Hon Bernard CHAN, JP
Hon CHAN Kam-lam, JP
Hon LEUNG Yiu-chung
Hon SIN Chung-kai
Dr Hon Philip WONG Yu-hong
Hon WONG Yung-kan
Hon Jasper TSANG Yok-sing, GBS, JP
Hon Howard YOUNG, JP
Hon YEUNG Yiu-chung, BBS

Hon LAU Kong-wah
Hon Miriam LAU Kin-yee, JP
Hon CHOY So-yuk
Hon Andrew CHENG Kar-foo
Hon SZETO Wah
Hon Timothy FOK Tsun-ting, SBS, JP
Hon TAM Yiu-chung, GBS, JP
Dr Hon TANG Siu-tong, JP
Hon Abraham SHEK Lai-him, JP
Hon Henry WU King-cheong, BBS, JP
Hon Michael MAK Kwok-fung
Hon LEUNG Fu-wah, MH, JP
Hon LAU Ping-cheung
Hon Audrey EU Yuet-mee, SC, JP
Hon MA Fung-kwok, JP

Member attending : Dr Hon YEUNG Sum

Members absent : Hon Cyd HO Sau-lan
Hon LEE Cheuk-yan
Hon Andrew WONG Wang-fat, JP
Hon LAU Chin-shek, JP
Hon LAU Wong-fat, GBS, JP
Hon Emily LAU Wai-hing, JP
Dr Hon LAW Chi-kwong, JP
Dr Hon LO Wing-lok
Hon WONG Sing-chi

Public Officers attending : Mrs Regina IP, GBS, JP
Secretary for Security

Mr Timothy TONG, JP
Permanent Secretary for Security (Acting)

Mr Bob ALLCOCK, BBS, JP
Solicitor General

Mr Gilbert MO
Deputy Law Draftsman

Mr James O'NEIL
Deputy Solicitor General

Ms Winnie NG
Administrative Assistant to Secretary for Security

Miss Adeline WAN
Senior Government Counsel

Ms Francoise LAM
Senior Government Counsel

Mr Hubert LAW
Assistant Secretary for Security

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

Staff in attendance : Mr Jimmy MA, JP
Legal Adviser

Ms Bernice WONG
Assistant Legal Adviser 1

Mr Raymond LAM
Senior Assistant Secretary (2)5

I. Meeting with the Administration

The Bills Committee deliberated (index of proceedings attached at **Annex**).

2. The Bills Committee requested the Administration to provide a written response to the following issues raised and information sought by members -

Issues relating to the amendments to the Official Secrets Ordinance

(a) to consider incorporating in the Official Secrets Ordinance (OSO) the following defence provisions -

"It shall be a defence to a prosecution of an offence under sections 13, 14, 15, 16 and 16A, if the defendant satisfies the court that having

regard to all the circumstances of the case, including, in particular, the nature of the information or document disclosed, and the seriousness or otherwise of the damage caused or likely to be caused by the disclosure of such information or document, public interest is better served by such disclosure than by non-disclosure";

- (b) to explain the effect of sections 18(5) and 23 of OSO in relation to a Chinese national who was not a Hong Kong permanent resident;
- (c) to consider adapting the term "British national" in sections 12, 18(5) and 23 of OSO to "Chinese national";
- (d) to provide information on amendments, if any, to the United Kingdom Official Secrets Act 1989 and legislation on official secrets in Australia, Canada and Singapore;
- (e) to consider the need to cover illegal access to protected information by photographing or photocopying under the proposed section 18(5A)(a) of OSO;

Proscription of local organizations

- (f) in relation to the rules for appeals against proscription under the new section 8E(3) of the Societies Ordinance (SO) -
 - (i) to explain whether the proposed provision was consistent with human rights protection;
 - (ii) to provide information on similar provisions in other jurisdictions;
- (g) to provide background information on the definition of "national security" added to SO by the Societies (Amendment) Bill 1997; and
- (h) to provide a response to the points raised in the submission from the Hong Kong Bar Association (Submission No. 53) on whether the rules to be made under the new section 8E(3)(a) and (b) of SO would be inconsistent with Article 35 of the Basic Law.

3. The meeting ended at 6:30 pm.

**Proceedings of the meeting of the Bills Committee on
National Security (Legislative Provisions) Bill
on Tuesday, 20 May 2003 at 2:30 pm
in the Chamber of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action Required
000000 - 000119	Chairman	Opening remarks	
000120 – 000714	Hon LAU Kong-wah Chairman Admin	Whether there was a need for new section 12A of the Official Secrets Ordinance (OSO); whether the term "British national" in section 18(5) of OSO should be adapted to "Chinese national"	
000715 – 001832	Hon Margaret NG Admin Chairman LA	Provision of the Administration's response to issues previously raised by members on new section 2A(1)(a) of the Crimes Ordinance (CO); whether minor offences would fall within the meaning of "serious criminal means"; provision of the Administration's response on the mental element required for the offence of subversion	
001833 – 002050	Dr Hon Philip WONG Admin	Whether new section 12A of OSO should be deleted	
002051 – 003412	Hon Audrey EU Admin LA	Whether there was a need for new section 12A of OSO; whether the expression "Article 39 of the Basic Law" in the proposed section should be amended to "Chapter III of the Basic Law"; whether a public interest defence should be provided for unauthorized disclosure of protected information	
003413 – 005015	Hon Jasper TSANG Chairman Admin	Whether Mainland officials fell within the new definition of "public servant" in OSO; effect of sections 18(5) and 23 of OSO in relation to a Chinese national who was not a Hong Kong permanent resident; whether there were situations of theft of information which could not be dealt with under the proposed section 18(5A)(a)(iii) of OSO	Admin to explain the effect of sections 18(5) and 23 of OSO in relation to a Chinese national who was not a Hong Kong permanent resident
005016 – 010809	Hon Albert HO Hon CHEUNG Man-kwong Admin LA	Whether Taiwan residents fell within the meaning of Chinese nationals; whether opposing the reunification of the Mainland and Taiwan by force would amount to secession; meaning of the term "withdraws" in new section 2B(1) of CO	

Time marker	Speaker	Subject(s)	Action Required
010810 – 011914	Hon Martin LEE Admin	Incorporating in OSO the following defence provisions - "It shall be a defence to a prosecution of an offence under sections 13, 14, 15, 16 and 16A, if the defendant satisfies the court that having regard to all the circumstances of the case, including, in particular, the nature of the information or document disclosed, and the seriousness or otherwise of the damage caused or likely to be caused by the disclosure of such information or document, public interest is better served by such disclosure than by non-disclosure"	Admin to consider the suggestion
011915 – 011951	Hon LAU Kong-wah Chairman	Whether the term "British national" in sections 12, 18(5) and 23 of OSO should be adapted to "Chinese national"; discussion of issues relating to amendments to the Societies Ordinance	Admin to consider adapting the term "British national" in sections 12, 18(5) and 23 of OSO to "Chinese national"
011952 – 012507	Hon Margaret NG Admin	Whether the damaging disclosure in Hong Kong of protected information obtained by illegal access outside Hong Kong would be an offence under the proposed section 18 of OSO	
012508 – 013113	Dr Hon YEUNG Sum Admin	Whether a public interest defence should be provided for the unauthorized disclosure of protected information	
013114 – 013422	Hon Henry WU Admin	Whether OSO was outdated; information on amendments, if any, to the United Kingdom Official Secrets Act 1989 and legislation on official secrets in Australia, Canada and Singapore	Admin to provide information on amendments, if any, to the United Kingdom Official Secrets Act 1989 and legislation on official secrets in Australia, Canada and Singapore
013423 – 015309	Hon Audrey EU Admin LA Chairman	Whether there were situations of illegal access of information which could not be dealt with under the proposed section 18(5A)(a)(iii) of OSO; whether a prior disclosure defence should be provided for unauthorized disclosure of protected information; threshold of new section 16A(2)(b) of OSO	

Time marker	Speaker	Subject(s)	Action Required
015310 – 015416	Hon CHEUNG Man-kwong Admin	Whether acts seeking to maintain the <i>status quo</i> of Taiwan would not amount to secession	
015417 – 020715	Hon Albert HO Admin Chairman	Whether the definition of "national security" in OSO was unclear; whether the meaning of "damaging disclosure" in new section 16A of OSO was too broad; whether the term "illegal access" was found in the relevant legislation of other jurisdictions; whether the proposed section 18(2)(d) of OSO was beyond the requirements in BL23 to enact laws to prohibit theft of state secrets	
[Break]			
022047 – 022728	Hon LAU Kong-wah Chairman Admin	Definition of "national security" in the Societies Ordinance (SO)	
022729 – 024749	Hon Margaret NG Admin	Whether a public interest defence should be provided for the unauthorized disclosure of protected information; the case of <i>R v Shayler</i> ; effect of the proposed section 18(2)(d) of OSO	
024750 – 025527	Hon CHEUNG Man-kwong Admin Chairman	Whether the definition of "national security" in SO was unclear	
025528 – 030156	Hon NG Leung-sing Admin	Meaning of "triad ritual" in section 18(3) of SO	
030157 – 030608	Hon Howard YOUNG Admin	Whether it would be difficult to enforce new section 8A(5)(h) of SO	
030609 – 031044	Hon CHAN Kam-lam Admin Chairman	Prohibition of the operation of a local organization subordinate to a political organization in Taiwan under SO; provision of the Administration's response on issues relating to appeals against proscription; whether new section 8E(3) of SO was consistent with human rights protection; information on similar provisions in other jurisdictions	Admin to explain whether new section 8E(3) of SO was consistent with human rights protection; to provide information on similar provisions in other jurisdictions
031045 – 031340	Hon Abraham SHEK Admin	Possibility of proscription of a local church subordinate to a Mainland church proscribed in the Mainland	

Time marker	Speaker	Subject(s)	Action Required
031341 – 031849	Hon Jasper TSANG Admin	Issues related to the new definition of "public servant" in SO; whether there was a need to cover illegal access to protected information by photographing or photocopying under the proposed section 18(5A)(a) of OSO	Admin to consider the need to cover illegal access to protected information by photographing or photocopying under the proposed section 18(5A)(a) of OSO
031850 – 034212	Hon James TO Hon Albert HO Admin Chairman	Whether the definition of "national security" in SO should be revised; background information on the definition of "national security" added to SO by the Societies (Amendment) Bill 1997	Admin to provide background information on the definition of "national security" added to SO by the Societies (Amendment) Bill 1997
034213 – 034307	Hon Kenneth TING Admin	Points raised in the submission from the Hong Kong Bar Association (Submission No. 53) on whether the rules to be made under the new section 8E(3)(a) and (b) of SO would be inconsistent with Article 35 of the Basic Law	Admin to provide a response
034308 – 035612	Hon Audrey EU Admin	Provision of the Administration's response to issues raised in the submission from Professor Johannes CHAN; onus of proof under the proposed section 18 of OSO	
035613 – 040125	Hon HUI Cheung-ching Admin Chairman	Whether the certificate referred to in new section 8A(3) of SO could be issued by the Liaison Office of the Central People's Government in the Hong Kong Special Administrative Region; whether there was a list of Mainland organizations proscribed in the Mainland on national security grounds	