

立法會
Legislative Council

LC Paper No. CB(2) 189/02-03

Ref : CB2/H/5

House Committee of the Legislative Council

**Minutes of the 3rd meeting
held in the Legislative Council Chamber
at 2:30 pm on Friday, 25 October 2002**

Members present :

Hon Mrs Selina CHOW LIANG Shuk-yee, GBS, JP (Chairman)
Hon Fred LI Wah-ming, JP (Deputy Chairman)
Hon Kenneth TING Woo-shou, JP
Hon James TIEN Pei-chun, GBS, JP
Dr Hon David CHU Yu-lin, JP
Hon Cyd HO Sau-lan
Ir Dr Hon Raymond HO Chung-tai, JP
Hon LEE Cheuk-yan
Hon Eric LI Ka-cheung, JP
Dr Hon David LI Kwok-po, GBS, JP
Dr Hon LUI Ming-wah, JP
Hon NG Leung-sing, JP
Hon Margaret NG
Hon James TO Kun-sun
Hon CHEUNG Man-kwong
Hon HUI Cheung-ching, JP
Hon CHAN Kwok-keung
Hon CHAN Yuen-han, JP
Hon Bernard CHAN, JP
Hon CHAN Kam-lam, JP
Hon Mrs Sophie LEUNG LAU Yau-fun, SBS, JP
Hon LEUNG Yiu-chung
Hon SIN Chung-kai
Hon Andrew WONG Wang-fat, JP
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 LAU Wong-fat, GBS, JP
Hon Miriam LAU Kin-ye, JP
Hon Ambrose LAU Hon-chuen, GBS, JP
Hon Emily LAU Wai-hing, JP
Hon CHOY So-yuk
Hon Andrew CHENG Kar-foo
Hon SZETO Wah
Hon LAW Chi-kwong, JP
Hon TAM Yiu-chung, GBS, JP
Dr Hon TANG Siu-tong, JP
Hon LI Fung-ying, JP
Hon Henry WU King-cheong, BBS, JP
Hon Tommy CHEUNG Yu-yan, JP
Hon Michael MAK Kwok-fung
Hon LEUNG Fu-wah, MH, JP
Dr Hon LO Wing-lok
Hon WONG Sing-chi
Hon IP Kwok-him, JP
Hon LAU Ping-cheung
Hon Audrey EU Yuet-mee, SC, JP

Members absent :

Hon Albert HO Chun-yan
Hon Martin LEE Chu-ming, SC, JP
Dr Hon YEUNG Sum
Hon LAU Chin-shek, JP
Hon Timothy FOK Tsun-ting, SBS, JP
Hon Abraham SHEK Lai-him, JP
Hon Albert CHAN Wai-yip
Hon Frederick FUNG Kin-kee
Hon MA Fung-kwok, JP

Clerk in attendance :

Mrs Justina LAM Clerk to the House Committee

Staff in attendance :

Mr Ricky C C FUNG, JP	Secretary General
Mr Jimmy MA, JP	Legal Adviser

Mr LAW Kam-sang, JP	Deputy Secretary General
Ms Pauline NG	Assistant Secretary General 1
Mr Ray CHAN	Assistant Secretary General 3
Mr LEE Yu-sung	Senior Assistant Legal Adviser 1
Mr Arthur CHEUNG	Senior Assistant Legal Adviser 2
Miss Kathleen LAU	Chief Public Information Officer
Mrs Vivian KAM	Principal Assistant Secretary (Complaints)
Mrs Constance LI	Chief Assistant Secretary (2)5
Mrs Betty LEUNG	Chief Assistant Secretary (3)1
Miss Kitty CHENG	Assistant Legal Adviser 5
Miss Monna LAI	Assistant Legal Adviser 7
Miss Betty MA	Senior Assistant Secretary (2)1

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I. Confirmation of the minutes of the 2nd meeting held on 18 October 2002
(LC Paper No. CB(2) 127/02-03)

The minutes were confirmed.

II. Matters arising

Report by the Chairman on her meeting with the Chief Secretary for Administration

Co-operation between the Administration and the Council

2. The Chairman said that she had advised CS of Members' views expressed at the House Committee meeting on 18 October 2002. CS had responded that since the implementation of the accountability system on 1 July 2002, the Administration was determined to strengthen its communication with the Legislative Council (LegCo) and would make every effort to do so. As regards attendance at meetings of the Council and its Panels or other committees, the Administration would field as far as possible the most appropriate public officers. Public officers attending meetings had full authority to represent the Administration, irrespective of their seniority.

3. The Chairman further said that CS hoped that Members would appreciate that because of the huge volume of Council business, division of labour in the Administration was necessary. The Directors of Bureaux would attend Council meetings and those Panel or other committee meetings with agenda items which involved controversial or complex policy issues. The guiding principle was that the Administration would field whoever having the best grasp of the issues concerned. For example, in the case of a public works

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item, the relevant Permanent Secretary should be the most appropriate candidate.

4. The Chairman informed Members that CS had assured that non-attendance of the Directors of Bureaux did not mean any lesser degree of commitment on the part of the Administration. CS had also pointed out that the "Legislative Council Paper on Accountability System for Principal Officials" had mentioned that the Secretaries of Departments and Directors of Bureaux would be responsible for attending "full sessions of LegCo" and "LegCo committee, subcommittee and Panel meetings where major policy issues were involved". CS added that he had discussed with Directors of Bureaux and that they would try their best to attend meetings themselves if necessary.

5. The Chairman said that she had responded that Members appreciated that flexibility should be exercised. There was no objection to Permanent Secretaries attending meetings, but as decisions rested with the Directors of Bureaux, it would be conducive to the smooth running of the committees if they attended the meetings themselves. The Chairman further said that she had urged CS to convey Members' views to Directors of Bureaux.

6. The Chairman added that CS had emphasised once again that the public officers attending meetings should be able to represent the Directors of Bureaux. CS had remarked that even Directors of Bureaux might not be able to respond to requests or queries right away at meetings, but had to go back and consider.

7. Ir Dr Raymond HO asked whether CS was aware that before the implementation of the accountability system for principal officials, the former Secretary for Works and Secretary for Planning and Lands normally attended the meetings of the Public Works Subcommittee (PWSC), in addition to other responsible public officers. Dr HO further said that he did not dispute that the relevant Permanent Secretary would probably have the best knowledge about a certain public works project. However, questions raised by Members were sometimes related to policy issues or issues which went beyond the areas of responsibility of a particular Permanent Secretary, and they should be answered by the responsible Directors of Bureaux.

8. Dr HO pointed out that although PWSC items would have to be presented to the Finance Committee (FC) for approval, the detailed deliberations on whether a public works project should be supported were held at meetings of PWSC, and not FC, unless the item was put to separate voting at the relevant FC meeting at the request of Members. PWSC was therefore a very important forum, and given the substantial investment in and economic implications of some public works projects, the responsible Directors of Bureaux should attend PWSC meetings.

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9. Dr HO added that at the special meeting of the Panel on Financial Affairs held on 25 October 2002, the Financial Secretary had assured Members that the Administration was committed to spending \$147 billion on public works projects in the years from 2002-2003 to 2006-2007. He considered that the work of PWSC would continue to be very important, and that PWSC could not exercise its monitoring role properly if the responsible Directors of Bureaux did not attend its meetings. Dr HO asked whether PWSC would have to request the responsible Directors of Bureaux to attend its meetings.

10. The Chairman said that Members' views and concerns were fully conveyed to CS. The response of CS was that the Administration would field whoever having the best grasp of the issues concerned. The Chairman further said that it was for individual committee to decide which public officer(s) should be invited to attend the discussion of an agenda item.

11. Dr Raymond HO said that in future, he would invite the responsible Directors of Bureaux concerned, where necessary, to attend discussion of the relevant PWSC items.

Progress of work of Bills Committees

12. The Chairman said that she had informed CS that some Members had pointed out that the Administration was sometimes slow in responding to issues or queries raised, and they had suggested that the Administration should send public officers of a sufficiently senior level to attend meetings so that there would be no need for reference back to the relevant Bureaux.

13. The Chairman further said that CS had agreed that if materials requested by a Bills Committee had to take a long time to be made available, the work of the committee could be held in abeyance and the slot released to another bills committee. The Chairman added that CS had suggested that perhaps the time limit should be set at one month.

14. The Chairman informed Members that she had responded that she was of the view that no fixed time limit should be set, but that the decision as to whether the work of a Bills Committee should be held in abeyance should rest with the chairman and members of the committee. Nevertheless, she would convey CS's suggestion to Members.

15. The Chairman added that the Director of Administration had pointed out that apart from two Bills Committees, the problem was not serious.

16. Ms Cyd HO said that some Bills Committees could make very little progress in the last few months of the 2001-2002 session as Members were

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heavily involved in studying the accountability system for principal officials and scrutinising the Public Officers Pay Adjustment Bill.

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17. Ms Audrey EU said that a time limit, as suggested by CS, should not be set. Ms EU pointed out, for instance, that the Bills Committee on Landlord and Tenant (Consolidation) (Amendment) Bill 2001, which she chaired, could conclude its work by probably holding one more meeting to discuss the views of the two legal professional bodies on the proposed Committee Stage amendments, when their views were received. Ms EU considered it inappropriate to impose a deadline of one month on the legal professional bodies to give views, and even more inappropriate to hold the work of the Bills Committee in abeyance when only one more meeting was needed.

18. The Chairman clarified that CS had only made the suggestion in response to Members' concern that Administration was sometimes slow in responding to issues or queries raised. Mr Fred LI added that CS had suggested the time limit of one month because he considered it unacceptable for the Policy Bureaux to take more than one month to prepare a response.

19. Ms Audrey EU further said that she doubted whether individual Policy Bureaux would agree to the time limit suggested by CS, particularly when there was urgency for a bill to be passed by LegCo. She pointed out that the Bills Committee on the Gambling (Amendment) Bill 2000 had, at one stage, waited for over two months for the Administration to respond to certain issues. She could not see how a time limit of one month could have been imposed when the Administration was keen to get the Bill passed before the commencement of the World Cup Finals 2002.

20. Ms Emily LAU said that she agreed with the Chairman that no fixed time limit should be set, but that the decision as to whether the work of a Bills Committee should be held in abeyance should rest with the chairman and members of the Bills Committee. Ms LAU further said that CS's suggestion was not viable and not well thought-out. Ms LAU added that setting such a time limit would unnecessarily delay the work of a Bills Committee because once a Bills Committee had held the consideration of the bill in abeyance, the Bills Committee could not be reactivated until a vacant slot was available.

21. Miss Margaret NG said that the decision as to whether the work of a Bills Committee should be held in abeyance should be made by the Bills Committee concerned, and not the Administration. Miss NG added that the fact that CS had made such a suggestion reflected that he was not familiar with the work and operation of a Bills Committee.

22. Mr James TO said that he did not object to the arrangement of holding the work of a Bills Committee in abeyance if the materials requested by the Bills Committee would take a long time to be made available. However, he considered that such an arrangement should not take effect automatically based on a "pre-set" time limit. Mr TO was of the view that if the Policy Bureau

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concerned anticipated that it would take a long time to respond to the issues or queries raised by the Bills Committee, the Bureau could take the initiative to suggest that consideration of the bill be held in abeyance. However, the decision of whether to do so still rested with the Bills Committee.

23. Mr IP Kwok-him said that it was for LegCo to decide how bills should be scrutinised. However, Mr IP hoped that CS's suggestion helped put pressure on Policy Bureaux to, in future, respond more expeditiously to issues and queries raised by Bills Committees.

24. Mr James TIEN said that sometimes the public officers attending meetings of a Bills Committee could not make decisions at the relevant meetings. To help expedite the work of Bills Committees, Mr TIEN reiterated that the public officers attending meetings of Bills Committees, particularly for discussion on policy issues, should be of a sufficiently senior level so that there would be no need for reference back to the relevant Bureaux.

25. The Chairman said that she would convey Members' views to CS. The Chairman further said that the chairmen of Bills Committees should closely monitor the progress of bills under their consideration, and report to the House Committee should there be the need to hold a bill in abeyance.

III. Business arising from previous Council meetings

Legal Service Division report on subsidiary legislation gazetted on 18 October 2002

(LC Paper No. LS 7/02-03)

26. The Legal Adviser said that four items of subsidiary legislation were gazetted on 18 October 2002 and tabled in Council on 23 October 2002. The Legal Adviser explained that the Road Traffic (Construction and Maintenance of Vehicles) (Amendment) (No. 2) Regulation 2002 and the Road Traffic (Safety Equipment) (Amendment) Regulation 2002 required public light buses (PLB) registered after a date to be announced by notice published in the Gazette to provide for retractable belts for rear seats and high back rest, etc.

27. The Legal Adviser said that according to the LegCo Brief, the PLB trade and the vehicle suppliers had been consulted, and they had indicated general support and requested for sufficient lead time for the design and installation of the proposed safety facilities. The Legal Adviser added that the Panel on Transport was briefed on the proposals at its meeting on 19 January 2001.

28. The Legal Adviser further said that the Administration expected to bring both Amendment Regulations into operation on or after 1 August 2004.

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29. Mr LEUNG Fu-wah said that some PLB trade unions had pointed out that they had not been consulted on the proposal, and they were concerned that the requirement of rear belts in PLBs would adversely affect their competitiveness because franchised buses were not subject to such a requirement. Mr LEUNG suggested that a subcommittee should be formed to study the proposal in detail.

30. The Chairman proposed that a Bills Committee be formed to study the two Amendment Regulations. Members agreed. The following Members agreed to join : Mr LAU Kong-wah (as advised by Mr IP Kwok-him), Ms Miriam LAU (as advised by the Chairman), Mr Andrew CHENG (as advised by Mr CHEUNG Man-kwong), Ms LI Fung-ying and Mr LEUNG Fu-wah.

31. The Legal Adviser said that the Legal Service Division report also covered the Employees Retraining Ordinance (Amendment of Schedule 2) Notice 2002 and the Airport Authority (Permitted Airport-related Activities) Order (L.N. 127 of 2002) (Commencement) Notice 2002. The Legal Adviser further said that no difficulty in the legal or drafting aspects of these two items of subsidiary legislation was observed. Members did not raise any queries on these two items of subsidiary legislation.

32. The Chairman reminded Members that the deadline for amending these four items of subsidiary legislation was 20 November 2002, or 11 December 2002 if extended by resolution.

33. Referring to the United Nations Sanctions (Angola) (Suspension of Operation) Regulation 2002, the Legal Adviser said that this item of subsidiary legislation was also gazetted on 18 October 2002 but was not required to be laid before the Council and the Council had no power to make any amendment. The Legal Adviser further said that the Regulation had already come into operation upon its gazettal on 18 October 2002.

34. The Legal Adviser said that the object of the Regulation was to suspend the operation of sections 4D and 4E of the United Nations Sanctions (Angola) Regulation to give effect to an instruction given by the Ministry of Foreign Affairs (MFA) of the People's Republic of China to implement United Nations Security Council Resolution (UNSCR) 1432 passed on 15 August 2002.

35. The Legal Adviser further said that sections 4D and 4E of the United Nations Sanctions (Angola) Regulation were previously made by the Chief Executive (CE) to give effect to UNSCR 1127 passed on 28 August 1997, on the instruction of the MFA after consultation with the Executive Council (ExCo) to take necessary measures (the Measures) to -

- (a) prohibit the entry or transit of any person designated as a senior

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official of the National Union for the Total Independence of Angola (UNITA) or an adult member of his immediate family through the Hong Kong Special Administrative Region; and

- (b) cancel any travel document issued to such a person by the Director of Immigration.

36. The Legal Adviser explained that the UNSCR 1432 was passed (on 15 August 2002) to suspend the Measures on UNITA for an "additional" period of 90 days from 15 August to 13 November 2002. The Legal Adviser further explained that a similar Resolution, i.e. UNSCR 1412, was passed on 17 May 2002 to suspend the Measures on UNITA for 90 days from 17 May 2002 to 14 August 2002, but no corresponding Regulation was made. The Legal Service Division had requested the Administration to clarify the measures adopted by the Administration to implement UNSCR 1412 for the period from 17 May 2002 to 14 August 2002, and the absence of any expiry day in the United Nations Sanctions (Angola) (Suspension of Operation) Regulation 2002.

37. The Legal Adviser said that the Administration's response was detailed in paragraph 21 of the report. The Legal Adviser further said that the Administration's response raised the issue of whether CE had complied with the requirement under section 3 of the Ordinance to make regulations to give effect to an instruction given by MFA to implement the UNSCRs in question. The Legal Adviser added that Members might wish to consider forming a subcommittee to study the Regulation.

38. Miss Margaret NG asked why the Director of Immigration had considered it possible for him to carry out UNSCR 1412 by accepting applications for entry visas from the senior officials of UNITA and their immediate family members, when sections 4D and 4E of the Regulation had not yet been suspended. Noting that the Immigration Department had not received any applications from the senior officials of UNITA and their immediate family during the period from 17 May 2002 to 15 August 2002, Miss NG further asked whether any such applications were received between 16 August 2002 and 17 October 2002, i.e. before the gazettal of the United Nations Sanctions (Angola) (Suspension of Operation) Regulation 2002.

39. The Legal Adviser said that the Legal Service Division had raised similar queries with the Administration, and copies of the relevant correspondence were attached to the report. The Legal Adviser further said that as the Legal Service Division had reservations about the administrative means used by the Administration to give effect to UNSCR 1412, it had not raised further queries with the Administration as to whether the Director of Immigration had received any applications from the senior officials of UNITA and their immediate family during the period from 16 August 2002 to 17

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October 2002.

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40. Miss Margaret NG considered that a subcommittee should be formed to study the Regulation. Miss NG also requested the Legal Service Division to seek more information from the Administration on whether the Director of Immigration had received any applications from the senior officials of UNITA and their immediate family during the period from 16 August 2002 to 17 October 2002.

41. Mr James TO agreed with Miss NG that the Regulation should be studied in detail. Mr TO suggested that the subcommittee formed to study the United Nations Sanctions (Afghanistan) (Amendment) Regulation 2002 should also scrutinise this item of subsidiary legislation. Members agreed.

42. The Chairman informed Members that the deadline for joining the Subcommittee on the United Nations Sanctions (Afghanistan) (Amendment) Regulation 2002 was 12:00 midnight on 28 October 2002.

IV. Further business for the Council meeting on 30 October 2002

Questions

(LC Paper No. CB(3) 70/02-03)

43. The Chairman drew Members' attention to the new oral question to be raised by Miss CHOY So-yuk.

V. Business for the Council meeting on 6 November 2002

(a) Questions

44. The Chairman said that 20 questions (six oral and 14 written) had been scheduled for the Council meeting on 6 November 2002.

(b) Bills - First Reading and moving of Second Reading

45. The Chairman said that no notice had been received yet.

(c) Bills - resumption of debate on Second Reading, Committee Stage and Third Reading

Immigration (Amendment) Bill 2001

46. The Chairman said that at the House Committee meeting on 11 October 2002, Members did not raise objection to the resumption of the Second Reading debate on the Bill.

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(d) **Government motion**

47. The Chairman said that no notice had been received yet.

(e) **Members' motions**

(i) **Motion on "Developing an offshore fishing industry"**

(Wording of the motion issued vide LC Paper No. CB(3) 81/02-03 dated 24 October 2002.)

(ii) **Motion on "Emissions trading"**

(Wording of the motion issued vide LC Paper No. CB(3) 84/02-03 dated 24 October 2002.)

48. The Chairman said that the above motions would be moved by Mr WONG Yung-kan and Miss CHOY So-yuk respectively, and the wording of the motions had been issued to Members.

49. The Chairman reminded Members that the deadline for giving notice of amendments, if any, to the motions was Wednesday, 30 October 2002.

VI. Report of Bills Committee and subcommittee

(a) **Position report on Bills Committees/subcommittees**

(LC Paper No. CB(2) 135/02-03)

50. The Chairman said that there were 15 Bills Committees and six Subcommittees in action, as well as four Bills Committees on the waiting list.

(b) **Report of the Subcommittee on Places of Public Entertainment Ordinance (Amendment of Schedule 1) Regulation 2002 and Places of Public Entertainment (Exemption) Order**

51. Mr James TO, Chairman of the Subcommittee, said that the object of the Places of Public Entertainment Ordinance (Amendment of Schedule 1) Regulation 2002 was to impose the licensing requirement under the principal Ordinance on rave parties and other dancing activities at premises not licensed for dancing activities.

52. Mr TO further said that places that were under the management of the Leisure and Cultural Services Department or the Home Affairs Department; places issued with a liquor licence under the Dutiable Commodities (Liquor) Regulations; places that were club-houses under the Clubs (Safety of Premises)

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Ordinance; and places issued with a public dance-hall licence under the Miscellaneous Licences Ordinance were exempted from the licensing requirement.

53. Mr James TO informed Members that the Subcommittee supported the Government's decision to bring rave parties and other dancing activities at premises not licensed for dancing activities under the ambit of the Ordinance. However, members had expressed concern that community organisations, voluntary agencies and students of tertiary institutions would be burdened with unnecessary administrative work and costs in applying for places of public entertainment (PPE) licence for holding dance parties in premises other than those specified in the Exemption Order.

54. Mr James TO said that to address members' concern, the Administration had undertaken that all applications for permanent PPE licences for holding dance parties in respect of premises managed by public bodies, voluntary organisations, tertiary institutions and public sector schools would be entertained, as long as they were eligible, and that permanent licences would be valid for 12 months and could be renewed upon application. Mr TO further said the Administration had also undertaken that the licensing authority would exercise his power under the Places of Public Entertainment Regulations to charge a nominal fee of \$100 to \$200 for PPE licence for the premises managed by these organisations. Mr TO added that the regular fee for the issue of an annual PPE licence was over \$10,000.

55. Mr James TO informed Members that the Subcommittee had held an urgent meeting prior to the House Committee meeting. At the meeting, the Administration had agreed to review, within one year's time, whether the validity period of PPE licence could be extended to at least 24 months. The Administration had also agreed that when processing applications for PPE licences for holding dancing parties, the licensing authority would not impose more fire safety requirements than those currently required for other PPE licences; and in the case of premises with liquor licences and club house licences, no additional building safety standards would be imposed. If the premises which had already been issued with PPE licences were found suitable for holding dance parties, their licences could be amended to provide for holding dance parties in these premises by way of paying an amendment fee, which would also be of a nominal nature. Mr TO further informed Members that the Administration had also undertaken to review, within one year's time, the discrepancy in the fees for an annual PPE licence in the urban and New Territories areas.

56. Mr James TO said that given the various undertakings made by the Administration, the Subcommittee supported the Amendment Regulation and the Exemption Order. He reminded Members that the deadline for giving

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notice of amendments, if any, was 30 October 2002. Mr TO added that a written report on the Subcommittee's deliberations would be issued to Members as soon as possible.

(c) Report of the Subcommittee on Solicitors (Group Practice) Rules

57. Miss Margaret NG explained that under the Solicitors (Group Practice) Rules (the Rules), two or more solicitors or firms of solicitors conducting their businesses from the same address, separately but in mutual co-operation, were members of a group practice. Miss NG further explained that the Rules provided that members of a group practice could share premises and facilities with each other. This arrangement enabled them to lower their overheads, and provided an environment in which they could have the support and assistance of each other.

58. Miss NG informed members that the Subcommittee considered that it was important that the public should not have the misconception that members of the same group practice were in partnership with each other, and that a group practice was a separate legal entity. The Subcommittee had therefore suggested that the Law Society should educate the public about the new practice. Miss NG further informed Members that the Law Society had agreed to issue information leaflets on the Rules for distribution to members of the public, and also publish an advisory manual on the operation of a group practice for reference of its members.

59. Miss NG said that the Subcommittee had completed scrutiny of the Rules and supported the Rules. A written report would be submitted to the House Committee on 1 November 2002. Miss NG also reminded Members that as the scrutiny period of the Rules had been extended to 6 November 2002, the deadline for giving notice of amendments, if any, was 30 October 2002.

VII. Any other business

60. There being no further business, the meeting ended at 3:15 pm.

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