

立法會
Legislative Council

LC Paper No. CB(2) 457/02-03

Ref : CB2/H/5

House Committee of the Legislative Council

**Minutes of the 7th meeting
held in the Legislative Council Chamber
at 2:30 pm on Friday, 22 November 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 Albert HO Chun-yan

Ir Dr Hon Raymond HO Chung-tai, JP

Hon LEE Cheuk-yan

Dr Hon LUI Ming-wah, JP

Hon NG Leung-sing, JP

Hon James TO Kun-sun

Hon CHEUNG Man-kwong

Hon HUI Cheung-ching, JP

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

Dr Hon YEUNG Sum

Hon YEUNG Yiu-chung, BBS

Hon LAU Chin-shek, JP

Hon LAU Kong-wah

Hon LAU Wong-fat, GBS, JP

Hon Miriam LAU Kin-yee, JP

Hon Ambrose LAU Hon-chuen, GBS, 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 Abraham SHEK Lai-him, 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
Hon MA Fung-kwok, JP

Members absent :

Hon Cyd HO Sau-lan
Hon Martin LEE Chu-ming, SC, JP
Hon Eric LI Ka-cheung, JP
Dr Hon David LI Kwok-po, GBS, JP
Hon Margaret NG
Hon CHAN Kwok-keung
Hon Emily LAU Wai-hing, JP
Hon Timothy FOK Tsun-ting, SBS, JP
Hon Albert CHAN Wai-yip
Hon Frederick FUNG Kin-kee

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
Mrs Vivian KAM	Principal Assistant Secretary (Complaints)
Miss Kathleen LAU	Chief Public Information Officer
Mrs Constance LI	Chief Assistant Secretary (2)5
Mrs Betty LEUNG	Chief Assistant Secretary (3)1
Miss Connie FUNG	Assistant Legal Adviser 3
Miss Betty MA	Senior Assistant Secretary (2)1

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I. Confirmation of the minutes of the 6th meeting held on 15 November 2002
(*LC Paper No. CB(2) 399/02-03*)

The minutes were confirmed.

II. Business arising from previous Council meetings

(a) Legal Service Division report on bills referred to the House Committee in accordance with Rule 54(4)

Education Reorganization (Miscellaneous Amendments) Bill 2002
(*LC Paper No. LS 21/02-03*)

2. The Legal Adviser explained that the Bill sought to amend the Education Ordinance, its subsidiary legislation and other related Ordinances to transfer the functions of the Director of Education to the Permanent Secretary for Education and Manpower, transfer the functions of the Education Department to the Education and Manpower Bureau, and abolish the Board of Education.

3. The Legal Adviser said that the policy aspects of the Bill had been discussed at the meetings of the Panel on Education on 28 October and 18 November 2002.

4. The Legal Adviser further said that the Legal Service Division had sought clarification from the Administration on a technical point. The Division had just received the Administration's response and would need time to study it.

5. Mr YEUNG Yiu-chung said that a Bills Committee should be formed to study the Bill in detail.

6. The Chairman proposed that a Bills Committee be formed. Members agreed. The following Members agreed to join : Mrs Selina CHOW, Mr CHEUNG Man-kwong, Mr YEUNG Yiu-chung and Mr Tommy CHEUNG.

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(b) Legal Service Division report on subsidiary legislation gazetted on 15 November 2002

(LC Paper No. LS 20/02-03)

7. The Legal Adviser said that there were two items of subsidiary legislation gazetted on 15 November 2002 and tabled in Council on 20 November 2002.

8. The Legal Adviser explained that the Antiquities and Monuments (Declaration of Historical Buildings) Notice 2002 declared the Hung Shing Temple at Sai Kung and the Tin Hau Temple at Fanling to be historical buildings for the purposes of the Antiquities and Monuments Ordinance.

9. The Legal Adviser further explained that the Public Health and Municipal Services (Amendment) Ordinance 2002 (1 of 2002) (Commencement) Notice 2002 appointed 15 November 2002 as the day on which certain provisions of the Public Health and Municipal Services (Amendment) Ordinance 2002 (1 of 2002) would come into operation. The Legal Adviser added that the provisions were mainly related to the establishment of the Appeal Board on Closure Orders (Immediate Health Hazard) under the new section 128D of the Amendment Ordinance.

10. The Legal Adviser said that no difficulties relating to the legal and drafting aspects of the two items of subsidiary legislation had been identified.

11. The Chairman informed Members that the deadline for amending these two items of subsidiary legislation was 18 December 2002, or 8 January 2003 if extended by resolution.

III. Further business for the Council meeting on 27 November 2002

Questions

(LC Paper No. CB(3) 151/02-03)

12. The Chairman drew Members' attention to the new oral question to be raised by Dr TANG Siu-tong.

IV. Business for the Council meeting on 4 December 2002

(a) Questions

(LC Paper No. CB(3) 152/02-03)

13. The Chairman said that 20 questions (six oral and 14 written) had been scheduled for the Council meeting on 4 December 2002.

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

(i) **Housing (Amendment) Bill 2002**

(ii) **Education (Amendment) Bill 2002**

14. The Chairman said that the above two Bills would be introduced into the Council on 4 December 2002 and considered by the House Committee on 6 December 2002.

(c) **Government motion**

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

(d) **Members' motion**

(i) **Motion on "Desalination"**

(Wording of the motion issued vide LC Paper No. CB(3) 157/02-03 dated 20 November 2002.)

(ii) **Motion on "Maintaining infrastructural investments"**

(Wording of the motion issued vide LC Paper No. CB(3) 159/02-03 dated 21 November 2002.)

16. The Chairman said that the above motions would be moved by Dr LUI Ming-wah and Ir Dr Raymond HO Chung-tai respectively and the wording of the motions had been issued to Members.

17. The Chairman further said that the deadline for giving notice of amendments, if any, to the motions was Wednesday, 27 November 2002.

V. Advance information on business for the Council meeting on 11 December 2002

Bills - First Reading and moving of Second Reading

Stamp Duty (Amendment) Bill 2002

18. The Chairman said that the Bill would be introduced into the Council on 11 December 2002 and considered by the House Committee on 13 December 2002.

VI. Report of Bills Committee and subcommittee

Position report on Bills Committees/subcommittees

(LC Paper No. CB(2) 418/02-03)

19. The Chairman said that there were 15 Bills Committees and seven Subcommittees in action, as well as four Bills Committees, including the Bills Committee on the Education Reorganization (Miscellaneous Amendments) Bill 2002 formed under agenda item II(a) above, on the waiting list.

VII. Papers of the Committee on Rules of Procedure

(a) Allocation of debate slots to Panel chairmen for moving motions with no legislative effect

(LC Paper No. CROP 15/02-03)

20. Mr TSANG Yok-sing, Chairman of the Committee on Rules of Procedure (CRoP), said that at the House Committee meeting on 31 May 2002, Members requested CRoP to study whether a procedure should be provided for Panel chairmen to move, on behalf of the relevant Panels, motions for debate in Council.

21. Referring to the paper, Mr TSANG said that CRoP had discussed the matter and recommended that a procedure be put in place for allocating debate slots to Panel chairmen. Mr TSANG further said that as proposed in paragraphs 9 and 10 of the paper, a slot would automatically be allocated to a Panel chairman provided that -

- (a) the motion was on a consultative document published by the Government and would be debated before the expiry of the consultation period;
- (b) the motion was neutrally-worded without stating any stance; and
- (c) no amendment to the motion would be proposed.

22. Mr TSANG informed Members that CRoP also proposed that -

- (a) the slot so allocated would not be counted as the mover's own slot as an individual Member;
- (b) the relevant motion would be debated ahead of the other motion to be debated at the same Council meeting;
- (c) only one slot would be allocated for such purpose for each Council meeting;

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- (d) the Panel's request for debate slot at a particular Council meeting should be submitted before the relevant cut-off date for application for debate slots; and
- (e) except with the agreement of the House Committee, each Panel would normally be allocated not more than one such slot in a session.

23. Mr TSANG further said that where there were more than one application from Panels in respect of the same Council meeting, priority would be given to the debate on the consultative document with the earliest deadline for concluding the consultation. Where the deadlines were the same, allocation would be determined by balloting. The Panel(s) which was not allocated a slot might be allocated one at the next or subsequent Council meeting(s).

24. Mr TSANG added that requests for allocation of debate slots on matters other than consultative documents published by the Government, and similar requests by chairmen of other committees for priority allocation of debate slots would continue to be dealt with by the House Committee on a case-by-case basis.

25. Mr TSANG said that subject to Members' agreement to the proposed arrangements, amendments would be made to the House Rules as set out in Appendix III to the paper to give effect to the arrangements.

26. Dr YEUNG Sum said that Members belonging to the Democratic Party considered the proposed arrangements acceptable. Dr YEUNG further said that the arrangements would enable a Panel chairman to move a motion on a consultative document for debate in Council so that Members could fully express their views before the expiry of the consultation period and the public could also know what Members' views were on the consultative document.

27. Members endorsed the proposed arrangements in paragraphs 9 to 10, and the proposed amendments to the House Rules in Appendix III of the paper.

- (b) **Consideration of whether the Committee on Rules of Procedure should be chaired by a Member of the Council who is also a Member of the Executive Council**
(LC Paper No. CROP 13/02-03)

28. The Chairman said that Mr TSANG Yok-sing, Chairman of CROp, had requested her to present the paper, as Mr TSANG considered it inappropriate for him to do so and Miss Margaret NG, Deputy Chairman of CROp, was unable to attend the meeting.

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29. Referring to the paper, the Chairman said that CRoP had considered at its meeting on 4 November 2002 whether CRoP, given its role and responsibilities, should not be chaired by a LegCo Member who was also an Executive Council (ExCo) Member. The Chairman further said that among the nine members who were present at the meeting, four considered it inappropriate for CRoP to be chaired by a Member who was also an ExCo Member, while the other four members did not see the need to bar such a Member from chairing CRoP. The Chairman added that the views of the two groups of members were detailed in paragraphs 6 and 7 of the paper.

30. The Chairman said that as the members who attended the meeting of CRoP on 4 November 2002 were evenly split in their views on the matter, CRoP had decided to refer the matter to the House Committee for consideration. The Chairman further said that while the House Committee was invited to give its view, it would be for CRoP to make its own decision on the matter, taking into consideration the House Committee's view.

31. Dr YEUNG Sum said that Members belonging to the Democratic Party were of the view that it was inappropriate for CRoP to be chaired by a Member with dual membership of LegCo and ExCo. Dr YEUNG stressed that the issue was not about Mr TSANG Yok-sing personally, but a matter of principle. Dr YEUNG further said that CRoP was responsible for reviewing and proposing changes to the Rules of Procedure to ensure the smooth conduct of the Council's business. Given the close relationship between ExCo Members and the Executive Authorities, allowing a Member with dual membership of LegCo and ExCo to be the chairman of CRoP would undermine the role of LegCo in monitoring the work of the Government.

32. Dr YEUNG added that he did not have strong views on imposing similar restriction on the chairmanship of other LegCo committees, such as Panels, as these committees did not formulate rules and procedures for the conduct of Council business.

33. Mr LEUNG Fu-wah said that chairmen of LegCo committees were elected by and from among members of the relevant committees, and under Article 71 of the Basic Law, the President of LegCo was elected by and from among the Members of LegCo. Mr LEUNG considered that an individual Member should not be deprived of his rights from being elected chairman of LegCo committees simply because he was also an ExCo Member or a member of some other bodies. He added that if Members considered a certain Member unsuitable to be the chairman of a particular committee, Members could choose not to elect that Member.

34. Mr NG Leung-sing shared Mr LEUNG Fu-wah's view. Mr NG said that he did not agree with Dr YEUNG that the monitoring role of LegCo would be undermined if CRoP was chaired by a Member who was also a Member of

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ExCo. Mr NG pointed out that all decisions of CROp were made collectively after discussion, and not made by the CROp chairman on his own.

35. Mr NG Leung-sing said that if the House Committee was of the view that it was inappropriate for a Member with dual membership of LegCo and ExCo to be the chairman of CROp, it might also have to consider whether Members who were members of other bodies should also be barred from being chairmen of certain committees. Mr NG further said that it was undesirable for the House Committee to consider imposing restriction on a case-by-case basis whenever an incumbent committee chairman accepted an appointment to serve on a certain body. He added that if Members considered that the issue involved a matter of principle, it should be dealt with by reviewing the relevant rules.

36. Mr Fred LI pointed out that under Rule 77(6) of the Rules of Procedure, a Member who was the chairman or deputy chairman of a Government advisory body in respect of matters which a Panel considered to be directly related to the terms of reference of the Panel should not be the chairman or deputy chairman of the Panel.

37. Mr NG Leung-sing said that Rule 77(6) was applicable to Panels and not CROp as its operation was governed by Rule 74 of the Rules of Procedure. Mr LEUNG Fu-wah added that ExCo was not an advisory body and therefore Rule 77(6) was not relevant.

38. Mr IP Kwok-him said that Members belonging to the Democratic Alliance of Betterment for Hong Kong did not consider that allowing a Member who was also an ExCo Member to be the chairman of CROp or a Panel would give rise to conflict of interest or undermine the integrity of LegCo. Mr IP further said that CROp was only responsible for the "internal" business of reviewing the Council's practices and procedures. As all matters of CROp were decided by its members after discussion, he did not see any conflict in roles for a Member with dual membership of LegCo and ExCo to be the chairman of CROp.

39. Mr Ambrose LAU said that he agreed with Dr YEUNG Sum that the issue was not about Mr TSANG Yok-sing being the Chairman of CROp. He further said that as the issue concerned the present system of chairmanship of LegCo committees, it should be considered carefully. Mr LAU pointed out that there were no provisions in the Rules of Procedure prohibiting a Member from being elected as a committee chairman because of dual membership of LegCo and ExCo. He further pointed out that when Mr TAM Yiu-chung was an ExCo Member, he was at the same time the Chairman of the Panel on Public Service, and Members did not find any problem with the arrangement.

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40. Mr Ambrose LAU further said that the argument that CRoP would not be able to safeguard LegCo's powers if CRoP was chaired by a Member who was also an ExCo Member could not be substantiated, as according to Rule 74 of the Rules of Procedure, CRoP did not have such a responsibility. Mr LAU pointed out that as the Rules of Procedure already contained provisions governing the disclosure of personal pecuniary interest and withdrawal from voting upon any question in which a Member had a direct pecuniary interest, the concern about conflict of interest should not arise. Mr LAU further pointed out that LegCo and the Executive Authorities were not always in opposition, they also sought to work with each other. Mr LAU added that in the event that the CRoP chairman who was also an ExCo Member considered it inappropriate for him to preside over the discussion of a certain item, the deputy chairman or another member of CRoP could always stand in.

41. Mr Ambrose LAU said that given the limited functions of CRoP as set out in Rule 74, and that any amendments to the Rules of Procedure could only be made by resolution of the Council, he could not agree that a Member with dual membership of LegCo and ExCo should not be the chairman of CRoP.

42. Mr Kenneth TING said that he supported that a Member with dual membership of LegCo and ExCo could be the chairman of CRoP.

43. Ms Miriam LAU said that the issue had been discussed in detail at the meeting of CRoP on 4 November 2002. She had voted against the proposal that a Member who was also a Member of ExCo should not be the chairman of CRoP. She further said that as LegCo had only 60 members, it would be impractical to impose too many restrictions on the chairmanship of committees as this would adversely affect the operation of the Council. She added that if Members considered that there was conflict in roles between the chairman of CRoP and an ExCo Member, the same concern might also arise in the case of Panels.

44. Ms Miriam LAU further said that she did not see how the chairman of CRoP could compromise LegCo's monitoring role, as the operation of CRoP was highly transparent and open, and all decisions of CRoP were made collectively after discussion. She therefore did not see any strong grounds to bar a Member with dual membership of LegCo and ExCo from serving as the chairman of CRoP.

45. Dr YEUNG Sum asked why CRoP had referred the matter to the House Committee. He was concerned that other committees might also refer their unresolved matters to the House Committee for consideration in future.

46. Mr TSANG Yok-sing explained that the discussion on the matter at the meeting of CRoP on 4 November 2002 was chaired by Miss Margaret NG, Deputy Chairman of CRoP, as he considered it inappropriate for him to chair

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the discussion. Although he was present at the meeting, he had not taken part in the discussion and the voting on the matter. Mr TSANG further said that of the other eight members present at the meeting, four voted for the proposal that a Member with dual membership of LegCo and ExCo should not be the chairman of CRoP, and four voted against the proposal. Mr TSANG added that he believed that Miss Margaret NG who presided over the meeting had a casting vote but had chosen not to exercise it.

47. The Chairman invited Members to consider whether the House Committee should take a position on the matter by taking a vote, or whether the House Committee should simply convey to CRoP the different views expressed by Members at the meeting and not indicate a stance.

48. Mr Andrew WONG said that the Panel on Constitutional Affairs had requested the Research and Library Services Division to carry out a research study on the relationship between the Government and the opposition or minority parties in the United Kingdom, New Zealand and United States. Mr WONG further said that under the accountability system for principal officials, the role of LegCo Members appointed as ExCo Members was a new issue which Members might wish to examine from a wider perspective and in the light of the experience of other places. Mr WONG pointed out that, for instance, the Committee of Public Accounts of the House of Commons of the United Kingdom must be chaired by a senior Member of the Opposition.

49. Mr WONG considered that CRoP should conduct a broader study of the system of chairmanship of the committees of LegCo. He said that he would only agree to take a vote if the question was on the broader issues that he had raised, and not restricted to the chairmanship of CRoP; otherwise, he would prefer the House Committee simply conveying to CRoP Members' views expressed at this meeting and not taking any position.

50. Ms Miriam LAU said that the House Committee should give a clear indication of its view to facilitate CRoP to follow up the matter. Ms LAU further said that the issues raised by Mr WONG could be pursued by the Panel on Constitutional Affairs if considered necessary.

51. Mr IP Kwok-him concurred with Ms LAU and proposed that the House Committee should take a vote on the matter.

52. Dr Philip WONG asked whether a decision on the matter could be deferred to allow more time for Members to consider the various views expressed.

53. Dr YEUNG Sum proposed that a decision on the matter be deferred to the next House Committee meeting.

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54. The Chairman put Dr YEUNG Sum's proposal to vote. The result was 13 Members voted for the proposal and 23 voted against the proposal. The Chairman declared that the proposal was negatived.

55. The Chairman put the question that the House Committee should take a vote on the matter. The result was 26 Members voted for the proposal and 11 voted against the proposal.

56. The Chairman put the question "that the Committee on Rules of Procedure may be chaired by a Member of the Council who is also a Member of the Executive Council" to vote. The result was 27 Members voted for the proposal and 12 voted against the proposal.

57. The Chairman said that it would be for CRoP to make its own decision on the matter taking into consideration the view of the House Committee.

VIII. Any other business

58. There being no further business, the meeting ended at 3:32 pm.

Council Business Division 2
Legislative Council Secretariat
27 November 2002