

立法會
Legislative Council

LC Paper No. CB(2)2000/03-04

(These minutes have been
seen by the Administration)

Ref : CB2/PL/HA

Panel on Home Affairs

**Minutes of meeting
held on Monday, 22 March 2004 at 10:45 am
in Conference Room A of the Legislative Council Building**

Members present : Hon IP Kwok-him, JP (Chairman)
Hon MA Fung-kwok, JP (Deputy Chairman)
Hon Cyd HO Sau-lan
Hon NG Leung-sing, JP
Hon James TO Kun-sun
Hon Andrew WONG Wang-fat, JP
Hon Emily LAU Wai-hing, JP
Hon CHOY So-yuk
Hon Andrew CHENG Kar-foo
Hon Henry WU King-cheong, BBS, JP
Hon Tommy CHEUNG Yu-yan, JP
Hon Albert CHAN Wai-yip
Dr Hon LO Wing-lok, JP
Hon WONG Sing-chi

Members attending : Hon Margaret NG
Hon CHAN Yuen-han, JP

Members absent : Hon Albert HO Chun-yan
Hon WONG Yung-kan
Hon Timothy FOK Tsun-ting, SBS, JP
Dr Hon TANG Siu-tong, JP

Public Officers attending : Item IV

Mr Stephen FISHER
Deputy Secretary for Home Affairs (1)

Mrs Nancy HUI
Principal Assistant Secretary for Home Affairs (2)

Mr Enoch YUEN
Assistant Secretary for Home Affairs (2)1

Ms Rebecca TSANG
Systems Manager
Home Affairs Department

Item V

Mr Leo KWAN
Deputy Secretary for Home Affairs (Special Duties)

Mr LAM Yiu-tong
Principal Assistant Secretary for Home Affairs (Culture) 2

Mr CHUNG Ling-hoi
Assistant Director (Heritage and Museum)
Leisure and Cultural Services Department

Item VI

Mr Stephen FISHER
Deputy Secretary for Home Affairs (1)

Mr John DEAN
Principal Assistant Secretary for Home Affairs (4)

**Attendance by
invitation** : Item IV

The Law Society of Hong Kong

Mr Robin EGERTON
Chairman
Family Law Committee

Ms Helen KONG
Member
Family Law Committee

Clerk in attendance : Ms Doris CHAN
Chief Council Secretary (2)2

Staff in attendance : Ms Joanne MAK
Senior Council Secretary (2)2

Agenda item VI

Mr Watson CHAN
Head, Research and Library Services

Mr CHAU Pak-kwan
Research Officer 5

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I. Confirmation of minutes

[LC Paper Nos. CB(2)1600/03-04, CB(2)1724/03-04, and CB(2)1746/03-04]

The minutes of the meetings held on 9 January, 29 January and 13 February 2004 were confirmed.

II. Information paper(s) issued since the last meeting

[LC Paper No. CB(2)1410/03-04(01), CB(2)1431/03-04(01) CB(2)1532/03-04(01) and CB(2)1794/03-04(01)]

2. Members noted the following papers provided by the Administration after the last meeting -

- (a) letter dated 17 February 2004 from the Secretary for Home Affairs (SHA) on matters relating to the application for Temporary Places of Public Entertainment Licence [LC Paper No. CB(2)1410/03-04(01)];
- (b) information on timing for submission of reports and hearings held by the United Nations Committees in respect of the human right treaties provided by the Administration [LC Paper No. CB(2)1431/03-04(01)];
- (c) Government's response to the policy recommendations of the Culture and Heritage Commission [LC Paper No. CB(2)1532/03-04(01)]; and

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- (d) information paper on Declaration of the Morrison Buildings as a Monument [LC Paper No. CB(2)1794/03-04(01)].

III. Items for discussion at the next meeting

[Appendies I and II to LC Paper No. CB(2) 1734/03-04]

3. Members agreed to discuss the following items proposed by the Administration at the next regular meeting to be held at 10:45 am on Friday, 16 April 2004 -

- (a) priority of the provision of leisure and cultural services facilities; and
- (b) review of advisory and statutory bodies.

IV. Computer programme for calculation of interest and surcharge on arrears of maintenance

[LC Paper No. CB(2)1734/03-04(01) and (02)]

4. Deputy Secretary for Home Affairs (1) (DSHA(1)) said that during the debate at the resumption of the second reading of the Interest on Arrears of Maintenance Bill 2001, SHA had undertaken to develop a computer programme to calculate interest and surcharge on arrears of maintenance for reference by parties concerned. DSHA(1) further said that in the past few months, an IT contractor had been engaged to develop the computer programme. In addition, representatives from the departments concerned, such as the Social Welfare Department (SWD) and the Legal Aid Department (LAD), had been invited to join an ad hoc group to steer the project. Assistant Secretary for Home Affairs (2)¹ referred members to a hypothetical case of arrears of maintenance, as set out in the annex to the paper, and demonstrated the working of the computer programme. A paper setting out the relevant calculation was tabled for members' reference.

5. Referring to the submission from the Family Law Committee of the Law Society of Hong Kong (the Law Society), Mr Robin EGERTON expressed the following views and concerns on the computer programme -

- (a) it might not be realistic to expect that all the potential applicants would be able to have complete records of the date of payment and exact amount of payment which were required to be produced by an applicant in using the computer programme;
- (b) the Home Affairs Bureau (HAB) should launch a publicity programme and issue pamphlets on the Interest and Surcharge on

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Arrears of Maintenance Ordinance 2003 (ISAMO), the computer programme, and the locations of public computers where an applicant under the ISAMO could gain access to the internet;

- (c) there should be an assessment of the resource implications for those departments dealing with the lower income claimants, such as SWD, LAD and the Family Court Registry, to see whether they should be given additional resources;
- (d) the Family Court currently had no internet access. It would be necessary for the Family Court Judges and practitioners to have access to the computer programme in the courtroom to enable the court to consider the arrears of maintenance and exercise its discretion to impose a surcharge.

6. Ms CHOY So-yuk enquired about the cost and staffing implications for the development and future implementation of the computer programme. DSHA(1) replied that it cost about \$150,000 for the development of the programme. There were no staffing implications arising from the project. DSHA(1) further said that SHA would appoint a commencement date for the ISAMO when the computer programme was ready. Upon commencement of the ISAMO, HAB would upload the computer programme onto the Bureau's website. Members of the public could access the webpage and the computer programme through the internet vide computers at home, at work and at the public computers. DSHA(1) added that the maintenance cost of the webpage would be insignificant.

7. Ms CHOY So-yuk further enquired whether the Administration would revisit the proposal of setting up an intermediary body for the collection of maintenance payments. DSHA(1) said that the Administration accepted the recommendation of the "Inter-departmental working group on review of law and administrative measures affecting divorcees and children who are eligible for alimony" (the Working Group) that setting up such an intermediary body was not the best option for Hong Kong, having regard to local circumstances and overseas experience. For example, the United Kingdom (UK) had encountered many problems in implementing an intermediary body.

8. As the Chairman of the Bills Committee on the Interest on Arrears of Maintenance Bill 2001 (the Bills Committee), Miss Margaret NG briefed members on the discussions of the Bills Committee and the reason for it to have asked the Administration to develop the computer programme. Miss NG shared the concern raised by the Law Society in paragraph 5(d) above on the provision of support facilities in the court and urged the Administration to follow it up.

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9. Principal Assistant Secretary for Home Affairs (2) (PAS(HA)(2)) said that the Administration had discussed the Law Society's comments with the Judiciary Administrator, who had advised that in the "settlement at the door of the court" scenario, the practitioners could ask for a temporary stay of court proceedings. The practitioners could make telephone calls to their respective offices to get the sums calculated by the computer programme. The information could then be faxed to the Family Court Registry which would pass the information to the practitioners. As for parties which had no legal representatives, they could enlist the assistance of the staff of the Family Court Registry to access the computer programme at the Registry and to do the calculation for them.

10. Miss Margaret NG, however, pointed out that the ISAMO actually required the maintenance payee to calculate the latest amount of interest and maintenance in arrears before the hearing. Hence, the Family Court should provide facilities to enable the Judges and practitioners to have access to the computer programme in the court. Miss NG added that the Bills Committee had intended that the computer programme would be used by the Judges, though it could also be made available for use by the legal representatives where necessary. PAS(HA)(2) said that the Judiciary Administrator had advised that the Judges would not do the actual calculations at the hearing. The payee should submit calculations on the latest amount of interest and maintenance in arrears to the Judges, and the calculations should be done beforehand. The computer programme would be able to work out the amount of interest on arrears of maintenance payable as at the date of the hearing. Miss NG requested the Administration to provide details of the relevant implementation plan of the Family Court. DSHA(1) undertook to relay the request to the Judiciary for a written response.

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11. The Chairman took the view that it should not be too difficult to install internet facilities in the courtroom or the court's waiting rooms, as such facilities had also been made available in public libraries and community centres. PAS(HA)(2) said that the Judiciary had indicated that it did not see the need to provide internet facilities in the courtroom or the waiting rooms for the reasons as explained above. Nevertheless, the Administration would convey members' views and concerns to the Judiciary for its consideration. The Chairman said that the Panel on Administration of Justice and Legal Services might also wish to relay members' concerns on the provision of necessary support facilities in the court to the Judiciary.

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12. Miss Margaret NG said that the Administration should revisit the proposal of setting up an intermediary body for the collection of maintenance payments even though the UK's experience in this regard had proven to be a failure. Miss NG further said that members of the Bills Committee had made suggestions with regard to such an intermediary body for Hong Kong, if it was

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to be set up, and that there was no need for Hong Kong to follow the operational mode of the one in UK.

13. DSHA(1) said that the Administration had fully considered the cost-effectiveness of setting up an intermediary body. The Administration had found that the amount of maintenance payments payable to payees who were also recipients of Comprehensive Social Security Assistance might not be enough to support an intermediary body's operation, if set up, given its substantial administrative cost. The Administration had also found that such intermediary bodies in overseas countries were given considerable power e.g. power of refusing to issue a driving licence. Therefore, the scope of powers of such an intermediary body had to be further discussed.

14. Miss Margaret NG pointed out that an intermediary body would be more cost-effective and efficient in recovering arrears from maintenance payers than if the same act was carried out by maintenance payees themselves. Miss NG suggested that the Panel should consider discussing the proposal of setting up an intermediary body at a future meeting. The Chairman said that the subject had already been included in the list of outstanding items for discussion by the Panel. Ms Cyd HO suggested that the Administration should make reference to the research report prepared by the Research and Library Services Division a few years ago on overseas experience (including Australia and New Zealand) in implementing intermediary bodies for collection of maintenance payments.

15. Ms Cyd HO suggested that the Administration should explore if it was possible to copy the computer programme on CD-ROMs for use in the court. In this way the computer programme would also be accessible in the courtroom even though internet access was not provided therein. DSHA(1) agreed to give thought to the suggestion, adding that the Administration would give a written explanation if it considered the suggestion infeasible.

Admin

16. Referring to the submission from the Law Society, Ms Cyd HO asked why it was proposed to have the computer programme recognised either by ISAMO, or by a Practice Direction issued by the Judiciary. Mr Robin EGERTON explained that the purpose of so doing was to ensure that the methodology of calculation could not be disputed since it was relating to enforcement proceedings. He added that the issue of a Practice Direction would be sufficient.

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17. The Chairman concluded the discussion by asking the Administration to provide a written response to the questions raised by Members at the meeting.

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V. Review of built heritage conservation policy

[LC Paper No. CB(2)1734/03-04(03) and (04)]

18. Principal Assistant Secretary for Home Affairs (Culture) 2 gave a PowerPoint presentation on the consultation document on the captioned review.

19. Mr MA Fung-kwok expressed disappointment at the consultation document which failed to provide details of potential heritage items identified for protection and conservation costs involved. Mr MA considered it a waste of time for the Government to consult the public merely on broad policy issues, as he believed that the large majority of Hong Kong people were clearly in support of heritage conservation. Mr MA considered that further delay in the conservation work would cost Hong Kong many valuable historical buildings in the midst of rapid urbanisation.

20. Deputy Secretary for Home Affairs (Special Duties) (DSHA(SD)) responded that the Administration was reviewing the current policy of heritage conservation as there were inadequacies in the existing system. For instance, the Antiquities and Monuments Ordinance, (Cap. 53) (the Ordinance) had made it difficult, if not impossible, to conserve a whole street or neighbourhood in order to retain its unique character and setting. Under the Ordinance, each and every building, structure, place or site declared as a monument had to meet the historical significance criterion. The emphasis was on "point" (i.e. a building), rather than "line" (i.e. a street) or "surface" (i.e. an area). DSHA(SD) explained that the Administration needed to know the majority views of the community on the broad policy issues as set out in the consultation document in order to propose policy changes. DSHA(SD) added that the consultation period would last for three months until 18 May 2004. Proposals on implementation measures would form the subject of another consultation exercise anticipated to be launched early next year.

21. Mr MA Fung-kwok pointed out that while no one would oppose heritage conservation, the key issue was the costs involved. Mr MA said that the Administration should therefore provide detailed information on the potential heritage items identified and the conservation costs, including any transfer of development rights required and what forms of incentives would be used to induce owners' co-operation.

22. DSHA(SD) said that the Administration could not assume that the community already had a consensus, as past experience had shown that some heritage conservation work had not been an easy task due to oppositions met. DSHA(SD) further said the Administration had to know the views of the community on fundamental principles, such as whether heritage items which did not meet the strict criteria of historical significance/architectural merit but formed part of the community's collective memory should be conserved, before it could formulate a holistic approach to guide the direction of conservation

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work. He added that the Administration had received many valuable views from the public since launching the consultation exercise.

23. Ms Cyd HO also expressed doubt as to whether the present consultation exercise could achieve any meaningful purpose since the Administration had not provided any options or concrete details, such as costs, for consideration by the public. Ms HO queried whether the Administration itself had already reached a consensus regarding heritage conservation as it might conflict with other Government policies such as that of urban redevelopment.

24. DSHA(SD) said that the present consultation exercise was a useful one, as there had not previously been any open, systematic discussion on heritage conservation, particularly on the need to conserve a street or an area. DSHA(SD) pointed out that the consultation document had been endorsed by the Executive Council (ExCo) before it was issued. In the future, once ExCo endorsed a new policy on built heritage conservation for adoption, all Government bureaux and departments would have to comply with the new policy.

25. Ms Cyd HO suggested that the Administration should immediately release concrete details on costs and compensations, including the transfer of development rights, in order to make the current consultation exercise more fruitful. DSHA(SD) responded that the Administration had in fact received many views and suggestions in that regard during the current consultation. He added that the Administration would consider any proposals received relating to implementation measures and the transfer of development rights, and include them in the second stage of consultation exercise.

26. Mr WONG Sing-chi declared interest as an executive member of the Hong Kong Council of the Church of Christ in China, which was the owner of the Hoh Fuk Tong Centre. Mr WONG asked whether the owner of a historical property declared as a monument under the current policy would be entitled to receive compensations in the future, if such compensations were made available to owners under the new policy. DSHA(SD) said that before the implementation of any new policy, heritage conservation work would continue to be carried out in accordance with the existing Ordinance.

27. Miss CHAN Yuen-han expressed dissatisfaction with the Administration's timetable for conducting the review and urged the Administration to release concrete proposals on implementation measures for public consultation around May or June 2004. Miss CHAN said that the Government should play a more proactive role in fostering heritage conservation which was important not only from the cultural point of view but also in helping to promote tourism. Miss CHAN also considered that the Administration had to first reach a consensus within the Government on the policy of heritage conservation in order to avoid any future disputes.

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28. DSHA(SD) said that after conclusion of the public consultation exercise in mid-May 2004, HAB would study the views collected and formulate implementation measures. It would need some time to conduct an internal consultation with other relevant bureaux in the Government on the proposed built heritage conservation policy and relevant implementation measures. HAB hoped to launch another public consultation exercise on the proposals early next year. DSHA(SD) reiterated that all Government bureaux and departments would have to follow the built heritage conservation policy after it had been formulated and endorsed by ExCo.

29. Miss CHAN Yuen-han said that proposals relating to the transfer of development rights were controversial and urged the Administration to reach a consensus on the issue as early as possible. Miss CHAN urged the Administration to put in place interim measures to conserve and prevent demolition of historical properties from now on until the completion of the current review and implementation of the new policy. DSHA(SD) said that the Administration had been striving to conserve heritage items and it would maintain its efforts in this regard.

30. Ms Emily LAU proposed to include this item for discussion at the meeting scheduled for 11 June 2004. She hoped that the Administration could then brief the Panel on the outcome of the consultation exercise and proposals on implementation measures. DSHA(SD) explained that it would not be possible for proposals on implementation measures to be ready for discussion by June or July 2004, as the Administration would need some time to conduct an internal consultation after conclusion of the present consultation. DSHA(SD) said that the Administration planned to release the proposals on implementation measures for public consultation early next year.

Admin

31. In response to the Chairman, DSHA(SD) agreed to provide a progress report on the review of built heritage conservation policy for discussion by the Panel at its meeting in June or July 2004.

VI. Research report on "Monitoring Mechanisms for the Implementation of International Human Rights Treaties in the United Kingdom, New Zealand and Canada"
[RP03/03-04]

32. Head, Research and Library Services (H(RL)) briefed members on the salient points of the above research report.

33. Ms Emily LAU said that the practice of Hong Kong was that the Administration, before drafting human rights reports, only published outlines of the reports for public consultation. She asked H(RL) about the practices of

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the three places studied and their establishment of human rights monitoring mechanisms. H(RL) said that in UK, mechanisms were in place to involve the public and non-governmental organisations (NGOs) in the preparation of reports to the United Nations (UN) treaty-monitoring bodies. The NGO community in UK had the opportunity to comment on the draft periodic reports when they were released for public consultation. In New Zealand, the government endeavoured to release its treaty reports in draft form to allow for public comment. In Canada, the federal government consulted NGOs in the preparation of its own section of most major UN reports. H(RL) further said that in the three places studied, only UK did not have a national human rights commission. The UK government, however, had recently announced its intention of setting up a Commission for Equality and Human Rights.

34. Ms Emily LAU asked whether the Administration would conduct studies on the establishment of a human rights commission in Hong Kong, taking into account the mechanisms and practices in place in the three places studied. DSHA(1) said that in the past year or so, the Administration had established a forum on human rights which had been holding meetings with local NGOs on a regular basis to discuss human rights issues. DSHA(1) said that all NGOs concerned with human rights were welcome to take part in the forum. DSHA(1) pointed out that there were quasi-human rights institutions set up in Hong Kong, such as the Equal Opportunities Commission, the Ombudsman, and the Race Relations Unit under HAB. In addition, the Administration intended to introduce legislation against racial discrimination in the 2004-05 legislative session. DSHA(1) added that the Administration was obliged to observe the Paris Principles in considering the way forward regarding the establishment of a commission for equality and human rights like the one in UK. The Administration was of the view that at present Hong Kong did not have the conditions for establishing such a commission.

Admin

35. DSHA(1) further said that the Administration had conducted a review two or three years ago which had found that it was in line with the international practice to publish only outlines of human rights reports for public consultation. DSHA(1) undertook that the Administration would review the practice, taking into account the findings of the research study.

Admin

36. Ms Emily LAU requested DSHA(1) to provide a written response to the findings of this research report, and details of the human rights forum and its participants. DSHA(1) agreed.

37. Ms Emily LAU proposed and members agreed to include this item for further discussion by the Panel at its meeting on 14 May 2004. The Panel would also invite deputations to attend the meeting to give views on the research findings.

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38. Dr LO Wing-lok suggested that reference should also be made to the mechanisms put in place in Hong Kong's neighbouring places and the Mainland to promote and monitor human rights. He said that such information would facilitate members' discussion on this item at the meeting in May. Referring to paragraph 5.1.17 of the research report which mentioned that "a distrust of the court system in handling human rights" was one of the reasons for the formation of human rights commissions in both New Zealand and Canada, the Chairman requested the Research and Library Services Division of the Legislative Council Secretariat to provide more information on this point. H(RL) agreed to provide the supplementary information.

H(RL)

39. The meeting ended at 1:05 pm.

Council Business Division 2
Legislative Council Secretariat
15 April 2004