

立法會
Legislative Council

Ref : CB2/BC/4/06

LC Paper No. CB(2)735/07-08

These minutes have been seen
by the Administration)

Bills Committee on Domicile Bill

**Minutes of the sixth meeting
held on Monday, 10 December 2007, at 10:45 am
in Conference Room B of the Legislative Council Building**

Members present : Hon James TO Kun-sun (Chairman)
Hon Martin LEE Chu-ming, SC, JP
Hon Jasper TSANG Yok-sing, GBS, JP
Hon Miriam LAU Kin-ye, GBS, JP

Members Absent : Hon Audrey EU Yuet-mee, SC, JP

Public Officers attending : Item III
Mr Michael SCOTT
Senior Assistant Solicitor General

Ms Kitty FUNG
Senior Government Counsel

Miss Betty CHEUNG
Senior Government Counsel

Mr Byron LEUNG
Senior Government Counsel

Clerk in attendance : Mrs Percy MA
Chief Council Secretary (2)3

Staff in attendance : Mr Arthur CHEUNG
Senior Assistant Legal Adviser 2

Mrs Eleanor CHOW
Senior Council Secretary (2)4

Action

I. Confirmation of minutes of meeting

(LC Paper No. CB(2)510/07-08 – Minutes of meeting on 16 October 2007)

The minutes of the meeting held on 16 October 2007 were confirmed.

II. Meeting with the Administration

(LC Paper No. CB(2)512/07-08(01) - Administration's response to issues raised at the meetings on 28 June and 16 October 2007

LC Paper No. CB(2)512/07-08(02) - Marked-up copy of draft Committee Stage amendments proposed by the Administration

LC Paper No. CB(3)335/06-07 – The Bill

LC Paper No. CB(2)1314/06-07(03) - Marked-up copy of clauses 14 and 15 of the Bill

Law Reform Commission's Report on "Rules for Determining Domicile" published in April 2005)

2. The Bills Committee deliberated (index of proceedings attached at **Annex**).
3. The Administration was requested to -
 - (a) review the drafting of the proposed new clause 7 and the newly added clause 10A, having regard to members' views as detailed in the index of proceedings attached at **Annex**;
 - (b) consider the need for inclusion of clause 13(3), having regard to members' concerns that some of the common law rules set out in clause 13(3) and proposed to be abolished might not be inconsistent with the Domicile Bill;
 - (c) step up publicity to facilitate the relevant parties to be familiarized with the new rules in determining domicile before the Ordinance came into force;
 - (d) explain during the resumption of Second Reading debate on the Bill the definition of "parents", having regard to members' views as detailed in the index of proceedings attached at **Annex**; and
 - (e) advise whether the word "parent", where it appeared in other ordinances, was in singular or plural form.

Action

4. The Chairman instructed the Senior Assistant Legal Adviser 2 to assist the Bills Committee in scrutinizing the Chinese text of the Bill.

(Post-meeting note: A letter dated 11 December 2007 was sent to the Administration by the Senior Assistant Legal Adviser 2 raising issues relating to the drafting of the Chinese text of the Bill. The letter was circulated to members vide LC Paper No. CB(2)591/07-08(01) on 13 December 2007.)

III. Any other business

5. The Chairman instructed the Clerk to liaise with the Administration on the date of the next meeting after the meeting.

(Post-meeting note: With the concurrence of the Chairman, the next meeting will be held on 15 January 2008 at 4:30 pm.)

6. The meeting ended at 12:52 pm.

Council Business Division 2
Legislative Council Secretariat
4 January 2008

**Proceedings of the sixth meeting of the
Bills Committee on Domicile Bill
on Monday, 10 December 2007, at 10:45 am
in Conference Room B of the Legislative Council Building**

Time Marker	Speaker(s)	Subject(s)	Action required
000144-000219	Chairman	Confirmation of minutes of meeting	
000220-002208	Administration Chairman Ms Miriam LAU Mr Jasper TSANG Mr Martin LEE SALA2	<p>Briefing by the Administration on its response to the issues raised at the meeting on 28 June and 16 October 2007 (LC Paper No. CB(2)512/07-08(01))</p> <p>Discussion on the proposed new clause 7. Members made the following points -</p> <p>(a) the proposed amendment was an improved version over the existing provision;</p> <p>(b) members held no strong view on whether the phrase "shall be taken into account" or "may be taken into account" should be used in proposed new clause 7(a), except for Mr Martin LEE who preferred the former; and</p> <p>(c) if the Administration decided to adopt the former, the drafting of the proposed amendment should be reviewed for the sake of being logical</p> <p>The Administration was requested to review the drafting of the proposed new clause 7, taking account of members' views</p>	Admin to follow up
002209-011953	Administration Chairman Ms Miriam LAU Mr Jasper TSANG Mr Martin LEE SALA2	Discussion on the newly added clause 10A and its relationship with clauses 4(1), 8(1) and 8(3). Members considered that the newly added clause was necessary to reflect better the legislative intent of entrusting the court to take into account all relevant factors, including the intention of the person, in determining the domicile of children or an adult lacking the capacity to form the intention necessary for acquiring a domicile	

Time Marker	Speaker(s)	Subject(s)	Action required
		<p>The Administration was requested to review the drafting of the new clause 10A, including the following -</p> <p>(a) whether the reference to sections 4 and 8 should be replaced by sections 4(1) and 8(1);</p> <p>(b) whether the word "and" was necessary for connecting clause 10A(a) and 10A(b); and</p> <p>(c) the use of the words "may" and "shall" in the clause</p>	Admin to follow up
011954-012037	Administration	Discussion on the proposed amendment to clause 13	
012038-012059	Chairman	Clause-by-clause examination of the Bill	
012100-012412	Chairman SALA2 Administration	<p>Clause 1</p> <p>Advice of the Administration that there would be a grace period of at least six months before the Domicile Ordinance would come into operation after its passage</p> <p>The Administration was requested to step up publicity to facilitate the relevant parties to be familiarized with the new rules for determining domicile before the Ordinance came into force</p>	Admin to follow up
012413-014917	SALA2 Administration Chairman Ms Miriam LAU Mr Jasper TSANG Mr Martin LEE	<p>Clause 2</p> <p>Discussion on whether the terms "adoptive parents", "step-parents" and "parents of the child who are not married to each other" in the definition of "parents" in clause 2 should be in plural form and how the definition would apply in the circumstances described in clause 4(3) and (4), having regard to SALA2's concern that the child's parents referred to in clause 4(3) and (4) could comprise a single parent in different categories, e.g. a biological parent and a step-parent</p> <p>The Secretary for Justice was requested to consider explaining the following in his speech during the resumption of Second Reading debate on the Bill -</p>	Admin to follow up

Time Marker	Speaker(s)	Subject(s)	Action required
		<p>(a) the meaning of the definition of "parents" in the Bill and how the definition would apply under the circumstances described in clause 4(3) and (4); and</p> <p>(b) in applying the closest connection test in determining the domicile of children, whether one category of parents would have priority over the other categories</p> <p>The Administration was requested to advise whether the word "parent", where it appeared in other ordinances, was in singular or plural form</p>	
014918-014946	Chairman	Clauses 3 to 12	
014947-015343	Chairman Mr Martin LEE Administration	Clause 1	
015344-020523	Chairman Administration Mr Martin LEE SALA2	<p>Clause 13</p> <p>The Administration was requested to consider the need for inclusion of clause 13(3) in the Bill, having regard to members' concerns that some of the common law rules set out in clause 13(3) and proposed to be abolished might not be inconsistent with the Domicile Bill</p>	Admin to follow up
020254-020600	Chairman Administration	Clauses 14 and 15	
020601-020615	SALA2	Drafting of the Chinese text of the Bill to be scrutinized by SALA2	SALA2 to follow up
020616-020620	Chairman	Date of next meeting	