

立法會

Legislative Council

LC Paper No. CB(2) 1813/08-09

Ref : CB2/H/5/08

House Committee of the Legislative Council

Minutes of the 26th meeting held in the Legislative Council Chamber at 2:30 pm on Friday, 5 June 2009

Members present :

Hon Miriam LAU Kin-ye, GBS, JP (Chairman)
Hon Fred LI Wah-ming, JP (Deputy Chairman)
Hon Albert HO Chun-yan
Ir Dr Hon Raymond HO Chung-tai, SBS, S.B.St.J., JP
Hon LEE Cheuk-yan
Dr Hon David LI Kwok-po, GBM, GBS, JP
Dr Hon Margaret NG
Hon CHEUNG Man-kwong
Hon CHAN Kam-lam, SBS, JP
Hon Mrs Sophie LEUNG LAU Yau-fun, GBS, JP
Hon LEUNG Yiu-chung
Hon WONG Yung-kan, SBS, JP
Hon LAU Kong-wah, JP
Hon LAU Wong-fat, GBM, GBS, JP
Hon Emily LAU Wai-hing, JP
Hon Andrew CHENG Kar-foo
Hon TAM Yiu-chung, GBS, JP
Hon Abraham SHEK Lai-him, SBS, JP
Hon LI Fung-ying, BBS, JP
Hon Tommy CHEUNG Yu-yan, SBS, JP
Hon Frederick FUNG Kin-kee, SBS, JP
Hon Vincent FANG Kang, SBS, JP
Hon WONG Kwok-hing, MH
Hon LEE Wing-tat
Dr Hon Joseph LEE Kok-long, JP
Hon Jeffrey LAM Kin-fung, SBS, JP
Hon Andrew LEUNG Kwan-yuen, SBS, JP
Hon Alan LEONG Kah-kit, SC
Hon LEUNG Kwok-hung
Hon CHEUNG Hok-ming, SBS, JP
Prof Hon Patrick LAU Sau-shing, SBS, JP

Mrs Percy MA	Assistant Secretary General (Special Duty)
Mr LEE Yu-sung	Senior Assistant Legal Adviser 1
Mr Arthur CHEUNG	Senior Assistant Legal Adviser 2
Mrs Sharon TONG	Principal Council Secretary (Complaints)
Mr Simon WONG	Chief Public Information Officer
Miss Odelia LEUNG	Chief Council Secretary (2)6
Mr Kelvin LEE	Assistant Legal Adviser 1
Mr Timothy TSO	Assistant Legal Adviser 2
Miss Kitty CHENG	Assistant Legal Adviser 5
Miss Winnie LO	Assistant Legal Adviser 7
Mr YICK Wing-kin	Assistant Legal Adviser 8
Ms Clara TAM	Assistant Legal Adviser 9
Ms Amy YU	Senior Council Secretary (2)3
Mr Arthur KAN	Legislative Assistant (2)8

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I. Confirmation of the minutes of the 25th meeting held on 29 May 2009
(LC Paper No. CB(2) 1729/08-09)

The minutes were confirmed.

II. Matters arising

(a) **Report by the Chairman on her meeting with the Chief Secretary for Administration**

2. The Chairman said that there was nothing special to report.

(b) **Inland Revenue (Amendment) Bill 2009**

(Letter dated 2 June 2009 from the Secretary for Financial Services and the Treasury (SFST) to the Chairman of the House Committee (LC Paper No. CB(2) 1745/08-09(01))

(LC Paper No. LS 79/08-09)

[Previous papers:

LC Paper No. LS 64/08-09 issued vide LC Paper No. CB(2)1560/08-09 dated 14 May 2009; and

paragraphs 7 and 8 of the minutes of the 23rd House Committee meeting on 15 May 2009 (LC Paper No. CB(2)1611/08-09 issued vide LC Paper No. CB(2)1613/08-09 dated 20 May 2009)]

3. Referring to SFST's letter dated 2 June 2009 on the above Bill, the Chairman said that the original purpose of the Bill was to implement the one-off 50% reduction (capped at \$6,000) of salaries tax and tax under personal

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assessment for the year of assessment 2008-2009 as proposed in the 2009-2010 Budget. At the House Committee meeting on 15 May 2009, Members considered it not necessary to appoint a Bills Committee to examine the Bill and did not raise objection to the resumption of the Second Reading debate on the Bill.

4. The Chairman further said that on 26 May 2009, the Financial Secretary announced a number of additional relief measures to counter the financial crisis, including a proposal to increase the extent of the said tax reduction to 100% (capped at \$8,000). The proposed additional relief measures had been discussed at the meeting of the Panel on Financial Affairs on 29 May 2009. The Administration intended to move Committee Stage amendments (CSAs) to the Bill to reflect the additional tax reduction.

5. Members did not raise objection to the Administration giving notice for the resumption of the Second Reading debate on the Bill and moving the CSAs.

III. Business arising from previous Council meetings

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

(i) Occupational Deafness (Compensation) (Amendment) Bill 2009

(LC Paper No. LS 75/08-09)

6. The Chairman said that the Bill sought to improve the compensation for persons with occupational deafness under the Occupational Deafness (Compensation) Ordinance, and to adjust the rate and proportion of distribution of the levy payable under the Employees' Compensation Insurance Levies Ordinance. The Panel on Manpower had been consulted on the legislative proposals at its meeting on 27 May 2008, and some members had expressed support for the proposals in principle.

7. The Chairman further said that the Legal Service Division (LSD) was scrutinizing the legal and drafting aspects of the Bill and had recommended that consideration be given to setting up a Bills Committee to study the Bill in detail.

8. Dr Margaret NG considered it inappropriate for LSD to make recommendations on whether a Bills Committee should be formed on a bill.

9. The Chairman said that should LSD consider that a bill warranted detailed examination by Members, say, on account of its complexity, it might recommend that consideration be given to setting up a Bills Committee.

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10. Dr Margaret NG said that it was for Members to decide whether to form a Bills Committee to study a bill, and such a decision could be based on various reasons. In her view, LSD's work was to provide a report on the legal and drafting aspects of a bill for Members' consideration.

11. The Chairman noted Dr NG's views. She invited Members' views on the need to form a Bills Committee to study the Bill.

12. Mr IP Kwok-him proposed that a Bills Committee be formed to study the Bill in detail. Members agreed. The following Members agreed to join: Mr IP Wai-ming, Mr IP Kwok-him and Dr PAN Pey-chyou.

13. The Chairman said that as there were vacant slots, the Bills Committee could commence work immediately.

(ii) Genetically Modified Organisms (Control of Release) Bill
(LC Paper No. LS 77/08-09)

14. The Chairman said that the Bill sought to give effect to the Cartagena Protocol on Biosafety to the Convention on Biological Diversity, and to control the release of genetically modified organisms (GMO) into the environment and the import and export of GMO. The Panel on Environmental Affairs had been consulted on the legislative proposals at its meeting on 30 March 2009, and members did not raise any objection to the proposals.

15. The Chairman said that as the Bill sought to impose a regulatory scheme over GMO, LSD recommended that Members might wish to examine the policy and operational aspects of the new regulatory scheme.

16. Dr Margaret NG said that it had all along been the established practice for LSD to advise Members of the contents of a bill and to draw their attention to the policy issues involved in its report. Given its independent role, she considered it inappropriate for LSD to make any recommendations on the need for the appointment of a Bills Committee. She was concerned that it might become a convention for Members to decide on the appointment or otherwise of a Bills Committee solely on the basis of LSD's recommendations, notwithstanding that the decision rested with Members.

17. Legal Adviser thanked Dr Margaret NG for her views on the role and work of LSD. He said that the role of LSD was to prepare a detailed report on the legal aspects of a bill from an independent professional perspective for Members' consideration. It was LSD's normal practice to provide an analysis of a bill and it was for Members to decide whether a Bills Committee should be formed. The role of LSD in this respect was provided in rule 20(g) and (h) of

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the House Rules. In exceptional cases where important legal or policy issues were involved, LSD would alert Members to the need for the setting up of a Bills Committee. In the case of the Occupational Deafness (Compensation) (Amendment) Bill, Members were invited to consider the setting up of a Bills Committee to study the bill having regard to the various concerns expressed by members of the relevant Panel on the transitional and implementation arrangements. As regards the Genetically Modified Organisms (Control of Release) Bill, Members were invited to consider the need for the setting up of a Bills Committee in view of the issues as set out in the report on the Bill which included the level of criminal sanctions and the provision for the appointment by the Secretary for the Environment of an expert group to which referral of any question in connection with the administration of the Bill could be made for its advice.

18. The Chairman invited Members' views on the need to form a Bills Committee on the Bill.

19. Dr Priscilla LEUNG considered it necessary to form a Bills Committee to study the Bill.

20. The Chairman proposed that a Bills Committee be formed to study the Bill in detail. Members agreed. The following Members agreed to join: Dr Margaret NG, Mr CHAN Hak-kan, Miss Tanya CHAN, Dr Priscilla LEUNG and Dr LEUNG Ka-lau.

21. The Chairman said that as there were vacant slots, the Bills Committee could commence work immediately.

(b) **Legal Service Division report on subsidiary legislation gazetted on 29 May 2009 and tabled in Council on 3 June 2009**
(LC Paper No. LS 76/08-09)

22. The Chairman said that a total of two items of subsidiary legislation were gazetted on 29 May 2009 and tabled in the Council on 3 June 2009.

23. Members did not raise any queries on these two items of subsidiary legislation.

24. The Chairman reminded Members that the deadline for amending these items of subsidiary legislation was 24 June 2009.

IV. Further business for the Council meeting on 10 June 2009

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

Supplementary Appropriation (2008-2009) Bill

25. The Chairman said that the Administration had given notice to present the above Bill to the Council on 10 June 2009. The House Committee would consider the Bill at its meeting on 12 June 2009.

(b) **Members' motions**

Proposed resolution to be moved by Hon Tommy CHEUNG Yu-yan under section 34(4) of the Interpretation and General Clauses Ordinance relating to the Food Business (Amendment) Regulation 2009

(Wording of the proposed resolution issued vide LC Paper No. CB(3) 651/08-09 dated 2 June 2009.)

26. The Chairman said that Mr Tommy CHEUNG, Chairman of the relevant Subcommittee, would move a motion at the Council meeting to extend the scrutiny period of the Amendment Regulation to 8 July 2009.

V. Business for the Council meeting on 17 June 2009

(a) **Questions**

(LC Paper No. CB(3) 652/08-09)

27. The Chairman said that 20 questions (six oral and 14 written) had been scheduled for the meeting.

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

Domestic Violence (Amendment) Bill 2009

28. The Chairman said that the Administration had given notice to present the above Bill to the Council on 17 June 2009. The House Committee would consider the Bill at its meeting on 19 June 2009.

(c) **Government motion**

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

(d) **Members' motions**

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- (i) **Motion to be moved by Hon LAU Kong-wah**
(*Wording of the motion issued vide LC Paper No. CB(3) 659/08-09 dated 5 June 2009.*)

30. The Chairman said that the subject of the motion to be moved by Mr LAU Kong-wah was "Promoting cooperation between Hong Kong and Shenzhen" and the wording of the motion had been issued to Members.

- (ii) **Motion on "Proposal on the constitutional reform in Hong Kong"**
(*Wording of the motion issued vide LC Paper No. CB(3) 655/08-09 dated 3 June 2009.*)

31. The Chairman said that the above motion would be moved by Mr LEUNG Kwok-hung and the wording of the motion had been issued to Members.

32. The Chairman reminded Members that the deadline for giving notice of amendments, if any, to the motions was Wednesday, 10 June 2009.

VI. Advance information on business for the Council meeting on 24 June 2009

Bills - First Reading and moving of Second Reading

- (a) **Legal Practitioners (Amendment) Bill 2009**
(b) **Inland Revenue (Amendment) (No. 2) Bill 2009**

33. The Chairman said that the Administration had given notice to present the above two Bills to the Council on 24 June 2009. The House Committee would consider these Bills at its meeting on 26 June 2009.

VII. Report of Bills Committees and subcommittees

- (a) **Report of the Bills Committee on Disciplined Services Legislation (Miscellaneous Amendments) Bill 2009**

(LC Paper No. CB(1) 1794/08-09)

34. Mr LEE Cheuk-yan, Chairman of the Bills Committee, reported that the Bills Committee had held four meetings and had received views from civil service organizations.

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35. Mr LEE elaborated that the Bill sought to amend the disciplined services legislation to introduce for civil servants who were members of the Civil Service Provident Fund Scheme (CSPF civil servants) removal punishments impinging on retirement benefits which were broadly comparable to those for pensionable civil servants. Members had expressed concern whether the proposals would constitute a variation on the employment contracts of CSPF civil servants. The Bills Committee noted the Administration's advice that the proposals did not breach the terms of employment contracts with CSPF civil servants.

36. Mr LEE further reported that some members were of the view that the maximum percentage (i.e. 25%) of reduction of the Government's voluntary contribution benefits (the reduction ceiling) on compulsory retirement of CSPF civil servants should be provided in the legislation. In response to members' concerns, the Administration had agreed to give a clear undertaking during the resumption of the Second Reading debate of the Bill that the Administration would consult the staff sides and the Panel on Public Service on any future revision to the reduction ceiling. Mr James TO had indicated that he might move CSAs to stipulate the reduction ceiling of 25% in the legislation. Mr LEE added that the Bills Committee supported the resumption of the Second Reading debate on the Bill at the Council meeting on 17 June 2009.

37. The Chairman reminded Members that the deadline for giving notice of CSAs, if any, was Monday, 8 June 2009.

(b) Report of the Bills Committee on Dutiable Commodities (Amendment) Bill 2009

38. Mr CHAN Kin-por, Chairman of the Bills Committee, gave a verbal report, and said that the written report would be provided to Members the following week.

39. Mr CHAN elaborated that the purpose of the Bill was to increase tobacco duty by 50%. The Bills Committee had held two meetings with the Administration and had received views from the public. While members generally supported the policy intent and proposals of the Bill, some members had queried the effectiveness of the tobacco duty increase in reducing tobacco consumption and smoking prevalence. These members considered that the increase would only prompt smokers to switch to consuming illicit cigarettes, making the smuggling activities of illicit cigarettes more rampant. They were also concerned that many illicit cigarettes were counterfeit cigarettes, which posed an even greater health hazard. The Administration had undertaken to devote sufficient resources to enhance enforcement against illicit cigarette activities. The Bills Committee noted from the Administration that the smoking cessation hotlines had recorded a significant increase in the number of

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calls since the Financial Secretary's announcement of the tobacco duty increase.

40. Mr CHAN further reported that some members had expressed grave concern about the impact of the tobacco duty increase on the livelihood of newspaper hawkers. The Administration had advised that it was in active discussion with the trade to explore possible ways of enhancing their income, such as by permitting newspaper stalls to sell additional commodities and relaxing restrictions on the size of these stalls.

41. Mr CHAN said that at the request of the Bills Committee, the Administration had undertaken to provide within one year after the enactment of the Bill a report on the effectiveness of its efforts in combating illicit cigarette activities, sale figures of duty-free cigarettes, statistical changes in the number of smokers in Hong Kong and measures taken to increase the business opportunities of newspaper hawkers.

42. Mr CHAN added that the Bills Committee and the Administration would not propose any CSAs. The Bills Committee supported the resumption of the Second Reading debate on the Bill at the Council meeting on 17 June 2009.

43. Mr LEUNG Kwok-hung said that to effectively combat illicit cigarette activities, the Administration should quantify the extent of the problem by gathering relevant data such as the quantities of illicit cigarettes consumed and seized during enforcement actions over the past years.

44. The Chairman said that Members could express their views during the resumption of the Second Reading debate on the Bill, and each Member would have a speaking time of 15 minutes. She also reminded Members that the deadline for giving notice of CSAs, if any, was Monday, 8 June 2009.

(c) **Report of the Subcommittee on Race Discrimination (Proceedings by Equal Opportunities Commission) Regulation**
(LC Paper No. CB(2) 1730/08-09)

45. Mr Paul TSE, Chairman of the Subcommittee, reported that the Regulation sought to provide that where any person might bring proceedings under section 70 of the Race Discrimination Ordinance but had not done so, the Equal Opportunities Commission (EOC) might, in certain specified circumstances, bring those proceedings, in its own name. He referred Members to the Subcommittee's report for details of its deliberations.

46. Mr TSE elaborated that the Subcommittee's deliberations had focused on the differences between the provisions of the Regulation and those in the Disability Discrimination (Proceedings by Equal Opportunities Commission)

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Regulation in respect of the threshold and procedural requirements for bringing proceedings. While agreeing that there was as a matter of practice not much difference in implementation of the threshold provisions under the two Regulations, members considered that the Administration should in the long term standardize the threshold provisions governing the circumstances under which EOC could bring proceedings under the respective anti-discrimination ordinances.

47. Mr TSE added that the Subcommittee supported the Administration giving fresh notice to move the motion on the Regulation at a Council meeting. The Administration had indicated that it intended to move the motion at the Council meeting on 24 June 2009.

(d) Report of the Subcommittee on Fixed Penalty (Smoking Offences) Regulation and Fixed Penalty (Smoking Offences) (Specification of Authorities and Public Officers) Notice

(LC Paper No. CB(2) 1731/08-09)

48. Dr Joseph LEE, Chairman of the Subcommittee, said that the Subcommittee had completed its work. He referred Members to the Subcommittee's report for details of its deliberations.

49. The Chairman said that as the deadline for amending the subsidiary legislation was 17 June 2009, the deadline for giving notice of amendments, if any, was Wednesday, 10 June 2009.

VIII. Position on Bills Committees and subcommittees

(LC Paper No. CB(2) 1732/08-09)

50. The Chairman said that there were seven Bills Committees, eight subcommittees under the House Committee (i.e. five subcommittees on subsidiary legislation and three subcommittees on policy issues) and eight subcommittees under Panels in action.

IX. Any other business

51. There being no other business, the meeting ended at 2:51 pm.