

立法會
Legislative Council

LC Paper No. CB(2)2531/10-11
(These minutes have been seen
by the Administration)

Ref : CB2/BC/1/10

Bills Committee on Legislation Publication Bill

Minutes of meeting
held on Friday, 15 April 2011, at 10:45 am
in Conference Room A of the Legislative Council Building

Members present : Dr Hon Margaret NG (Chairman)
Hon LAU Kong-wah, JP
Hon Cyd HO Sau-lan

Members absent : Hon Albert HO Chun-yan
Dr Hon Samson TAM Wai-ho, JP

Public Officers attending : Item II

Department of Justice

Mr Gilbert MO
Deputy Law Draftsman
(Bilingual Drafting and Admin)

Mr W C SUEN
Senior Assistant Law Draftsman
(Professional Development)

Ms Mabel CHEUNG
Senior Government Counsel

Mr Peter SZE
Government Counsel

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Clerk in attendance : Mr Thomas WONG
Chief Council Secretary (2) 2

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

Ms Alice LEUNG
Senior Council Secretary (2)2

Miss Monique TSEUNG
Legislative Assistant (2)2 (Acting)

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I. Confirmation of minutes
[LC Paper No. CB(2)1499/10-11]

The minutes of the meeting held on 14 February 2011 were confirmed.

II. Meeting with the Administration
[LC Paper Nos. CB(2)1537/10-11(01), CB(2)1506/10-11(01),
CB(2)330/10-11(01), and CB(3)28/10-11]

Clause-by-clause examination of the Bill

2. The Bills Committee conducted the clause-by-clause examination of the Legislation Publication Bill ("the Bill"), including the Administration's proposed amendments to Part 1 and Part 2 of the Bill (index of proceedings at **Annex**).

SALA2 3. Members agreed that the Bills Committee would examine the English text of the Bill. The Legal Adviser to the Bills Committee would examine the Chinese text of the Bill and draw the Bills Committee's attention to any issues of significance.

Clerk 4. The Chairman requested the Clerk to compile a table on concerns raised by members at previous Bills Committee meetings about the

Action

wording of Clauses 12 and 17 on the Secretary for Justice ("SJ")'s editorial and revision powers for consideration by the Administration.

(Post-meeting note: At the Chairman's request, the Clerk submitted the aforesaid table to the Chairman on 21 April 2011. On 26 April 2011, the Chairman issued a letter to the Administration putting forward a list of proposals on Clauses 12, 17, 26, 27 and related clauses of the Bill, which mainly covered the issues of SJ's editorial and revision powers and the retirement of the Loose-leaf Edition of the Laws of Hong Kong. The Chairman's letter and the Administration's reply dated 13 May 2011 were circulated to members vide LC Paper Nos. CB(2)1660/10-11(01) and CB(2)1766/10-11(02) respectively.)

III. Any other business

Date of next meeting

5. Members agreed that the Bills Committee would continue the clause-by-clause examination at its next meeting on Tuesday, 17 May 2011, from 2:30 pm to 4:30 pm, and the meeting might be extended to 6:30 pm, depending on the progress of the examination.
6. There being no other business, the meeting ended at 12:47 pm.

Council Business Division 2
Legislative Council Secretariat
22 August 2011

**Proceedings of the meeting of the
Bills Committee on Legislation Publication Bill
on Friday, 15 April 2011, at 10:45 am
in Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subject	Action required
000000 - 000810	Chairman	Confirmation of minutes Clause-by-clause examination of the Legislation Publication Bill ("the Bill"), including the Administration's proposed amendments to Part 1 and Part 2 of the Bill [LC paper No. CB(2)1537/10-11(01)]	
000811 - 002023	Chairman Admin Mr LAU Kong-wah	Clause 1 Members' concurrence with the Chairman's suggestion that as the Administration's proposed amendments to Clause 1 would involve different commencement arrangements for different parts/provisions of the Bill, Clause 1 should be considered after completion of the examination of all other provisions of the Bill.	
002024 - 003059	Chairman Admin Mr LAU Kong-wah SALA2	Clauses 2 - 3 Mr LAU Kong-wah's enquiry whether Clause 2(2) should be placed under Clause 2 on interpretation of terms, as it was related to the inclusion of the "time element" in the consolidated version of an Ordinance published in the proposed electronic database of legislation with legal status ("the Database") instead of the interpretation of a term. His suggestion that Clause 2(2) should be treated as a separate provision. The Chairman's view that as Clause 2(2) was related to the definition of "consolidated version" under Clause 2(1), it might be placed under the definition of the term. SALA2's view that whether Clause 2(2) should be placed under Clause 2 depended on whether its interpretation was related to other provisions. The Administration's response that Clause 2(2) covered matters relating to interpretation. The term "Ordinance as at a date" in Clause 2(2) also appeared in some other provisions in the Administration's proposed amendments to the Bill, such as the proposed revised Clauses 5(3), 10B and 10C.	

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003100 - 011839	Chairman Admin Mr LAU Kong-wah SALA2	<p data-bbox="600 342 703 371">Clause 4</p> <p data-bbox="600 409 1262 667">In connection with Clause 4(2)(c) which stated that the Database might contain "other legislation, materials and information" that the Secretary for Justice ("SJ") considered "useful" to users, Mr LAU Kong-wah's enquiry about the definition of "useful" and whether the Administration would consult the stakeholders on the contents to be included in the Database under Clause 4(2)(c).</p> <p data-bbox="600 705 1262 963">The Administration's response that under Clause 4(2)(c), the Database might include reference materials that could facilitate users to use and understand Hong Kong legislation, such as a glossary of legal terms and the text of international treaties and bilateral agreements. The Administration would consult the public and stakeholders in this regard at various stages of the Database project.</p> <p data-bbox="600 1001 1262 1158">SALA2's concern that the scope of Clause 4(2)(c) was too wide and the inclusion of too many reference materials in the Database would render the Database cumbersome. His suggestion that the Database could provide hyperlinks to reference materials.</p> <p data-bbox="600 1196 1262 1323">The Administration's response that it might not have sufficient resources to include much information in the Database under Clause 4(2)(c). Limited hyperlinks would be attached to the Database where appropriate.</p> <p data-bbox="600 1361 1262 1682">The Chairman's concern that as the Database was to contain mainly Hong Kong legislation, the proposed inclusion of "other legislation" under Clause 4(2)(c) might mislead users into believing that such legislation was applicable to Hong Kong. Her request for the Administration to clarify what "other legislation" was being referred to, and suggestion to delete "other legislation". The Administration's response that "other legislation" might include legislation not enacted in Hong Kong and the Basic Law ("BL").</p> <p data-bbox="600 1720 1262 1937">Members noted that Clause 4(1) covered the contents that had to be included in the Database and Clause 4(2) covered those that might be included in the Database for users' reference. The Chairman noted that the national laws applying in Hong Kong expressly stated in Clause 4(1)(b) did not include BL and Interpretations and Decisions on BL by the Standing Committee of the</p>	

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		<p>National People's Congress ("the Standing Committee"), which were not national laws but binding on Hong Kong.</p> <p>The Chairman noted that the Loose-leaf Edition of the Laws of Hong Kong ("the Loose-leaf Edition") had a specific volume containing constitutional documents relating to Hong Kong, including BL, the Standing Committee's Interpretations and Decisions on BL, and the Constitution of the People's Republic of China ("the Constitution"). These were included in accordance with section 2(4) of the Laws (Loose-leaf Publication) Ordinance 1990, which stated that SJ might "include in the loose-leaf edition and in any booklet such notes, indexes and other information as he considers useful". Her suggestion that Clause 4(2)(c) should be worded similarly. The Administration's response that under Clause 4(2)(c), SJ could include the constitutional documents in the Database.</p> <p>Mr LAU Kong-wah's suggestion that instead of being treated as a reference material in the Database under Clause 4(2)(c), BL should be an essential item that had to be included in the Database and therefore be placed under Clause 4(1).</p> <p>The Administration's response that under section 3 of the Interpretation and General Clauses Ordinance (Cap. 1), "national laws applying in Hong Kong" stated in Clause 4(1)(b) of the Bill had been defined as national laws applied in Hong Kong pursuant to the provision of Article 18 of BL, which did not include BL. The Administration's concurrence with Mr LAU Kong-wah's suggestion to expressly put BL under Clause 4(1).</p> <p>The Chairman drew members' attention that a reason for not putting BL and other Hong Kong-related constitutional documents under Clause 4(1) might be SJ's lack of power to verify them under the Bill, and therefore they should be treated as reference materials. Under the Bill, SJ would only be empowered to establish and maintain an electronic database of the legislation applying in Hong Kong, and such constitutional documents were not legislation. As the key purpose of the Database was to contain legislation applying in Hong Kong, treating such constitutional documents as reference materials in the Database was understandable, regardless of their constitutional status.</p>	

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		<p>SALA2's view that it might not be appropriate to put constitutional documents applying in Hong Kong, such as BL and the Standing Committee's Interpretations and Decisions, under the category of "other legislation, materials and information" stated in Clause 4(2)(c). They should be properly placed under Clause 4 to reflect their status.</p> <p>The Administration's response that –</p> <p>(a) Clauses 4(1) and (2) were intended to empower SJ to include certain contents in the Database. Whether constitutional documents applying in Hong Kong were treated as essential contents or reference materials in the Database would not affect their importance and constitutional status; and</p> <p>(b) the contents of the Database would not be less than those of the Loose-leaf Edition. No indication would be shown in the Database on what contents were essential (i.e. included in accordance with Clause 4(1)) and what contents were not (i.e. included in accordance with Clause 4(2)).</p> <p>Mr LAU Kong-wah's advice that the Administration should set out a clear rationale for the contents to be included in the Database under Clauses 4(1) and 4(2).</p> <p>The Administration's concurrence with the Chairman's suggestion that given their importance, "as-made Ordinances" should be treated as essential contents, instead of reference materials, that had to be included in the Database, and therefore they should be moved from Clause 4(2) to Clause 4(1).</p> <p>The Administration's response to the Chairman's enquiry that "consolidated versions of Ordinances" under Clause 4(1)(a) would include subsidiary legislation.</p>	
011840 - 012051	Chairman Admin SALA2	<p>Clause 5</p> <p>Views of the Chairman and SALA2 that the proposed amendments to Clause 5 were clearer and had addressed members' concerns. The Chairman's support for the proposed official verification mark specified by the Law Draftsman in the consolidated version of an Ordinance published in the Database, as it would facilitate users to identify the verified copy of an Ordinance.</p>	
012052 -	Chairman	Clause 6	

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012334	Admin Mr LAU Kong-wah	Members noted that subject to the proposed amendments to be made by the Administration to Clause 4, Clause 6 would be amended correspondingly.	
012335 - 013537	Chairman Admin SALA2	Clause 7 In connection with Clause 7(1) which stated that "a copy of an as made Ordinance, as published on or printed directly" from the Database, "is presumed, unless the contrary is proved, to correctly state the Ordinance", the Chairman's advice that as it was understood that the Database had not come into operation, it was unnecessary for the Administration to propose new Clause 7(2), which stated that Clause 7(1) "only applies in relation to an as made Ordinance that is gazetted on or after the date" on which the Database came into operation. The Administration's undertaking to reconsider the necessity of the proposed new Clause 7(2).	
013538 - 013949	Chairman Admin	Clause 8 The Chairman noted that Clause 8 was related to the "presumed to be correct" status of "other legislation" stated in Clause 4(2)(c). Her concern about the necessity of Clause 8, as such legislation was not enacted in Hong Kong. The Administration neither had the responsibility nor was able to ensure that such legislation published in the Database under Clause 4(2)(c) was presumed to be correct.	
013950 - 014105	Chairman Admin	Clauses 9 - 10 Members raised no objection to the Administration's replacement of Clause 9 on the publication of booklets of Ordinances by the new Part 2A on the reproduction of verified copies of Ordinances.	
014106 - 014521	Chairman Admin Mr LAU Kong-wah	Clauses 10A -10D Members' support for the publication of verified printed copies of Ordinances in the form of booklets and the publication of official storage media (such as DVD-Rom) containing verified electronic copies of Ordinances. Mr LAU Kong-wah's concern about why Clauses 10B and 10C only stated that SJ "may", instead of "must",	

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		<p>cause the publication of such verified printed copies of Ordinances and official storage media.</p> <p>The Administration's response that Clauses 10B and 10C were empowering provisions, the drafting of which was in line with those for official electronic legislation databases in overseas common law jurisdictions.</p> <p>The Chairman's view that the usage of the term "may" in Clauses 10B and 10C was intended to empower SJ to cause the publication of official printed copies of Ordinances and storage media, and was not to grant SJ discretion not to do so.</p>	
014522 - 020147	Chairman Admin Mr LAU Kong-wah	<p>Clauses 11 – 12</p> <p>The Chairman's enquiry whether the Administration would propose any amendments to Clause 12 on SJ's editorial powers to address members' concerns raised at previous Bills Committee meetings about the wide scope of such powers, the exercise of which could give rise to uncertainty and dispute.</p> <p>The Administration's response that it would not propose amendments to Clause 12 at the current stage but was willing to explain the operation of Clause 12 to allay members' worries. The editorial amendments made under Clause 12 would be minor and technical and could not change the legal effect of Ordinances. Clause 13 also imposed a statutory duty on SJ to compile a record of editorial amendments which would be available for public inspection, with a view to enhancing the transparency of SJ's exercise of the editorial powers under Clause 12.</p> <p>In connection with SJ's editorial powers under Clauses 11 and 12, Mr LAU Kong-wah's enquiry about the difference between giving a chapter number to an Ordinance under Clause 11(a) and renumbering provisions under Clause 12(c). The Administration's response that a chapter number was given to the whole Ordinance and an Ordinance already chapter-numbered could not be renumbered, while renumbering provisions was related to the numbering of provisions within an Ordinance.</p> <p>The Chairman's reservation about the empowerment of SJ to renumber provisions under Clause 12(c), as this might create confusion and inconvenience to users, and</p>	

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		<p>such renumbering would not be subject to the Legislative Council ("LegCo")'s scrutiny. The Administration's response that a note would be added to renumbered provisions to facilitate users' referencing to them before and after renumbering.</p> <p>In connection with Clause 12(k) on the empowerment of SJ to "make an amendment that is consequential on any amendment made" under Clause 12, Mr LAU Kong-wah's enquiry about the way by which such consequential amendments would be made. The Administration's response that these amendments would not be subject to LegCo's scrutiny. The Chairman's view that the term "consequential" under Clause 12(k) had a very wide meaning and could give rise to uncertainty.</p> <p>The Chairman's request for the Clerk to compile a table on concerns raised by members at previous Bills Committee meetings about the wording of Clauses 12 and 17 on SJ's editorial and revisions powers for consideration by the Administration.</p>	Admin (para. 4 of the minutes)
020148 - 020218	Chairman	Date of next meeting	

Council Business Division 2
Legislative Council Secretariat
 22 August 2011