

立法會
Legislative Council

LC Paper No. CB(2)340/11-12
(These minutes have been seen
by the Administration)

Ref : CB2/BC/7/10

Bills Committee on Guardianship of Minors (Amendment) Bill 2011

Minutes of meeting
held on Thursday, 3 November 2011, at 11:00 am
in Conference Room 2A of the Legislative Council Complex

Members present : Hon Cyd HO Sau-lan (Chairman)
Hon Miriam LAU Kin-ye, GBS, JP
Hon TAM Yiu-chung, GBS, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon CHEUNG Kwok-che

Member absent : Hon WONG Sing-chi

Public Officers attending : Item I

Ms Wendy LEUNG
Principal Assistant Secretary for Labour and
Welfare (Welfare) 1

Mr Parson LAM
Assistant Secretary for Labour and Welfare (Welfare) 1A

Ms Caran WONG
Assistant Director of Social Welfare (Family and
Child Welfare)

Ms Karmen KWOK
Government Counsel
Department of Justice

Clerk in attendance : Mrs Sharon TONG
Principal Council Secretary (2)

Staff in attendance : Ms Clara TAM
Assistant Legal Adviser 9

Mr Jove CHAN
Senior Council Secretary (2) 8

Ms Camy YOONG
Clerical Assistant (2) 7

I. Meeting with the Administration

The Bills Committee deliberated (index of proceedings attached at **Annex**).

2. The Bills Committee requested the Administration to provide the following information -

- (a) whether the word "must" in the proposed section 6(5) should be used given a parent or a guardian is only required to take into account the views of the minor as far as practicable having regard to the minors' age and understanding on the appointment of a guardian and there would not be any legal consequence if a parent or guardian fails to do so;
- (b) whether the proposed section 7(a) should be amended to clearly reflect the policy intent that the automatic assumption of guardianship would apply to cases of joint custody order so that the appointments of guardians by both parents would take effect with equal rights when both parents were deceased; and
- (c) the Administration's response to the queries raised by the Legal Service Division of the Legislative Council Secretariat in its letter dated 13 July 2011.

3. The Bills Committee also requested the Administration to revise the layout of the guardian appointment form to a single-page version.

4. The Chairman requested Assistant Legal Adviser 9 to scrutinize the English version of the guardian appointment form and check whether it was in alignment with its Chinese version.

II. Any other business

5. There being no other business, the meeting ended at 12:14 pm.

Council Business Division 2
Legislative Council Secretariat
17 November 2011

**Proceedings of meeting of
Bills Committee on Guardianship of Minors (Amendment) Bill 2011
held on Thursday, 3 November 2011, at 11:00 am
in Conference Room 2A of the Legislative Council Complex**

| Time marker | Speaker | Subject(s) | Action Required |
|--------------------|--|--|---|
| 000740 - 000745 | Chairman | Opening remarks | |
| 000746 - 001026 | Chairman Admin | LC Paper No. CB(2)178/11-12(01) Suggestion on the use of more modern terms and expressions in the Bill | |
| 001027 - 001200 | Admin Chairman | Suggestion on the notification requirements when guardian disclaims appointment | |
| 001201 - 001452 | Chairman Admin | The need for complying with the formal requirements for appointing guardians in the Bill | |
| 001453 - 002958 | Chairman Admin Mr CHEUNG Kwok-che Ms Miriam LAU | The appropriateness and procedural requirements for seeking the minor's view on the appointment of guardian | The Administration to provide information on whether the word "must" in the proposed section 6(5) should be used given a parent or a guardian is only required to take into account the views of the minor as far as practicable having regard to the minors' age and understanding on the appointment of a guardian and there would not be any legal consequence if a parent or guardian fails to do so. |
| 002959 - 003134 | Chairman Admin | Suggestion of including a statutory checklist of factors in the Bill to assist judges in proceedings concerning children | |
| 003135 - 003559 | Chairman Admin | Suggestion of lowering the threshold of application to the court to remove guardians in the proposed new section 8A(2) | |

| Time marker | Speaker | Subject(s) | Action Required |
|--------------------|--|---|---|
| 003600 - 003801 | Chairman Admin Ms Miriam LAU | Suggestion of accepting a third party to apply for custody and maintenance orders in respect of a minor under section 10 of the Guardianship of Minors Ordinance | |
| 003802 - 005212 | Chairman Admin Ms Miriam LAU | Measures to deal with conflicts arising from dual appointments by both parents under different scenarios including the cases where a joint custody order is granted to the divorced parents | The Administration to provide information on whether an amendment should be made to the proposed section 7(a) to clearly reflect the policy intent that the automatic assumption of guardianship would apply to cases of joint custody order so that the appointments of guardians by both parents would take effect with equal rights when both parents were deceased. |
| 005213 - 005754 | Chairman Admin Ms Miriam LAU ALA9 | LC Paper No. CB(2)2431/10-11(02) The content and layout of the standard form for appointment of guardians and the concern about the application of the proposed legislation to non-residents of Hong Kong | The Administration to revise the layout of the guardian appointment form to a single-page version; and ALA9 to scrutinize the English version of the guardian appointment form and check whether it was in alignment with its Chinese version. |
| 005755 - 010123 | Chairman Admin Ms Miriam LAU | LC Paper No. CB(2)2447/10-11(02) The concept of guardianship, custody and wardship | |
| 010124 - 010806 | Chairman Admin | LC Paper No. CB(2)2447/10-11(03) The mechanisms for appointing guardian for minors or making a minor a ward of the court under the Guardianship of Minors Ordinance, the Protection of Children and Juveniles Ordinance and the High Court Ordinance, and the guardianship arrangements for minors under different situations | |

| Time marker | Speaker | Subject(s) | Action Required |
|--------------------|---|--|---|
| 010807 - 010944 | Chairman Admin | LC Paper No. CB(2)2447/10-11(04) Provisions in the Children Act 1989 of England and Wales to which the Administration had made reference in drafting the Bill | |
| 010945 - 011259 | Chairman Admin | LC Paper No. CB(2)2447/10-11(05) The meaning and proof of "implied acceptance by the appointed guardian" | |
| 011300 - 011501 | Chairman Admin ALA9 Ms Miriam LAU | LC Paper No. CB(2)2447/10-11(01) Information requested by the Legal Service Division of the Legislative Council Secretariat in its letter to the Administration dated 13 July 2011 | The Administration to provide its response to the queries raised. |
| 011502 - 011630 | Chairman Ms Miriam LAU Mr TAM Yiu-chung Mr CHEUNG Kwok-che | Closing remark | |