

立法會
Legislative Council

LC Paper No. CB(2)705/13-14
(These minutes have been seen
by the Administration)

Ref : CB2/BC/5/12

**Bills Committee on
Child Abduction Legislation (Miscellaneous Amendments) Bill 2013**

**Minutes of meeting
held on Friday, 20 December 2013, at 8:30 am
in Conference Room 2 of the Legislative Council Complex**

Members present : Hon Dennis KWOK (Chairman)
Hon Albert HO Chun-yan
Hon TAM Yiu-chung, GBS, JP
Hon Ronny TONG Ka-wah, SC

Members absent : Hon Cyd HO Sau-lan
Hon Paul TSE Wai-chun, JP
Hon WONG Yuk-man
Dr Hon Fernando CHEUNG Chiu-hung

Public Officers attending : Item I

Miss SHEA Wing-man
Principal Assistant Secretary for
Labour and Welfare (Welfare) 1

Ms Veronica TSE
Assistant Secretary for Labour and Welfare
(Welfare) 1A

Ms Mary HO
Assistant Law Officer (Advisory)
Department of Justice

Mr Allen LAI Kai-pang
Senior Government Counsel
Department of Justice

Ms Cathy SZETO Ying-lok
Senior Government Counsel (Team 2) (Acting)
Department of Justice

Mr FUNG Man-chung
Assistant Director of Social Welfare
(Family & Child Welfare)

Ms Annisa MA
Chief Social Work Officer (Domestic Violence)
Social Welfare Department

Mr Matthew Philip James Hemmings
Chief Superintendent (Crime Support Group)
(Crime Wing)
Hong Kong Police Force

Mr Gareth Williams
Superintendent (Crime Support Group) &
(Child Protection Policy Unit) (Crime Wing)
Hong Kong Police Force

Miss CHOI Yee-fong
Assistant Principal Immigration Officer (Control)
Immigration Department

Clerk in attendance : Miss Betty MA
Chief Council Secretary (2) 1

Staff in attendance : Mr YICK Wing-kin
Assistant Legal Adviser 8

Mr Raymond LAM
Senior Council Secretary (2) 7

Ms Kiwi NG
Legislative Assistant (2) 1

I. Meeting with the Administration

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

2. The Bills Committee requested the Administration to -
 - (a) reconsider, in relation to the proposed new section 15(3) of the Child Abduction and Custody Ordinance (Cap. 512) ("CACO"), criminalizing the removal of a child from Hong Kong without appropriate consent;
 - (b) consider providing explicitly in the Bill that the Court of First Instance was empowered to vary, suspend or discharge a prohibition order, location order or recovery order made under the proposed new sections 15 to 18 of CACO;
 - (c) consider setting out in the Bill the consideration of the views of a child who was being removed out of Hong Kong and the provision of independent legal representation to the child;
 - (d) spell out explicitly in the administrative guidelines for implementation of the provisions in the Bill and other relevant arrangements ("the administrative guidelines") that -
 - (i) when the use of reasonable force against a child became necessary, the use of such force should be kept to a minimum level, as the use of such force was only for protecting the child; and
 - (ii) the responsibilities of the person in charge of the place of safety under the proposed new section 20(6) and (8) of CACO and the appropriate arrangements for a child being kept in the place of safety;

- (e) consider setting out explicitly in the Bill the right of pursuing *habeas corpus* application under section 22A of the High Court Ordinance (Cap. 4) and bringing such right to the attention of the child and his parents;
- (f) provide members with its draft administrative guidelines; and
- (g) consider providing support and assistance to parents whose child had been abducted to -
 - (i) the Mainland; and
 - (ii) Taiwan.

3. The Administration undertook to consider setting out in the administrative guidelines whether the consent of the custodial parent for the child to be removed out of Hong Kong should be given in a specified form when such consent needed to be notified to the Director of Immigration.

II. Any other business

4. The Chairman said that the next meeting would be scheduled pending the Administration's response to the issues raised by members.

5. There being no other business, the meeting ended at 9:35 am.

**Proceedings of meeting of the Bills Committee on
Child Abduction Legislation (Miscellaneous Amendments) Bill 2013
held on Friday, 20 December 2013, at 8:30 am
in Conference Room 2 of the Legislative Council Complex**

Time marker	Speaker(s)	Subject(s)	Action Required
000000 - 000420	Chairman	Opening remarks	
000421 - 000708	Chairman Admin	Briefing by the Administration on its response to issues raised at the first Bills Committee meeting on 24 October 2013 and the issues as set out in the letter from the Legal Service Division (LC Paper No. CB(2)430/13-14(02)).	
000709 - 000945	Chairman Admin	Briefing by the Administration on its response to the written submission of the Law Society of Hong Kong (LC Paper No. CB(2)556/13-14(01)).	
000946 - 002259	Chairman ALA8 Mr Albert HO Admin	<p>Issues 1 and 2(a) of the Administration's response to the letter dated 5 September 2013 from the Legal Service Division (Annex to LC Paper No. CB(2)430/13-14(02)).</p> <p>The Administration was requested to reconsider, in relation to the proposed new section 15(3) of the Child Abduction and Custody Ordinance (Cap. 512) ("CACO"), criminalizing the removal of a child from Hong Kong without appropriate consent.</p> <p>The Administration was requested to consider providing explicitly in the Bill that the Court of First Instance was empowered to vary, suspend or discharge a prohibition order, location order or recovery order made under the proposed new sections 15 to 18 of CACO.</p>	<p>Admin</p> <p>Admin</p>
002300 - 002421	Chairman Admin	Issue 3(a) of the Administration's response to the letter dated 5 September 2013 from the Legal Service Division (Annex to LC Paper No. CB(2)430/13-14(02)).	
002422 - 002640	Chairman Admin ALA8	Issue 3(b) of the Administration's response to the letter dated 5 September 2013 from the Legal Service Division (Annex to LC paper No. CB(2)430/13-14(02)).	

Time marker	Speaker(s)	Subject(s)	Action Required
002641 - 003123	Chairman Admin Mr Albert HO ALA8	<p>Issue 3(c) of the Administration's response to the letter dated 5 September 2013 from the Legal Service Division (Annex to LC Paper No. CB(2)430/13-14(02)).</p> <p>The Administration was requested to consider setting out in the Bill the consideration of the views of a child who was being removed out of Hong Kong and the provision of independent legal representation to the child concerned.</p> <p>The Administration undertook to consider setting out in the administrative guidelines to be issued for implementation of the provisions in the Bill and other relevant arrangements ("the administrative guidelines") whether the consent of the custodial parent for the child to be removed out of Hong Kong should be given in a specified form for the purpose of the proposed new section 19.</p>	<p>Admin</p> <p>Admin</p>
003124 - 003516	Chairman Admin ALA8 Mr Albert HO	<p>Issue 3(d) of the Administration's response to the letter dated 5 September 2013 from the Legal Service Division (Annex to LC Paper No. CB(2)430/13-14(02)).</p> <p>The Administration was requested to spell out explicitly in the administrative guidelines that when the use of reasonable force against a child became necessary, the use of such force should be kept to a minimum level, and the use of such force was only for the protection of the child.</p>	Admin
003517 - 003833	Mr Albert HO Chairman Admin	<p>Mr Albert HO's concern about whether a child being stopped at an immigration checkpoint would be detained in a detention cell.</p> <p>The Administration's response that the child would not be taken to a detention cell, but a suitably comfortable and secure room at a nearby police post or police station, such as an interview room, office or waiting room for return to the appropriate person. In the event that the appropriate person could not be contacted within a reasonable time, the child would be admitted to a place listed in the Schedule to the Protection of Children and Juveniles (Place of Refuge) Order (Cap. 213 sub. leg. B) ("PCJO").</p>	

Time marker	Speaker(s)	Subject(s)	Action Required
003834 - 004218	Chairman Admin ALA8	<p>Issue 3(e) of the Administration's response to the letter dated 5 September 2013 from the Legal Service Division (Annex to LC Paper No. CB(2)430/13-14(02)).</p> <p>The Chairman's question and the Administration's response regarding whether there was a need to provide expressly that the Bill did not affect a person's right of pursuing <i>habeas corpus</i> application.</p> <p>The Administration was requested to consider setting out explicitly in the Bill the right of pursuing <i>habeas corpus</i> application under section 22A of the High Court Ordinance (Cap. 4) and bringing such right to the attention of the child and his parents.</p>	Admin
004219 - 004800	Admin Chairman ALA8 Mr Albert HO	<p>Issue 3(f) of the Administration's response to the letter dated 5 September 2013 from the Legal Service Division (Annex to LC Paper No. CB(2)430/13-14(02)).</p> <p>The Chairman's concern about the scope of a place of safety and whether a child would be detained in a police station together with other detainees.</p> <p>The Administration's response that a child would not be detained together with other detainees in a police station. A place of safety included a comfortable and secure room at a police post or police station, such as an interview room, and a place of refuge listed in the Schedule to PCJO.</p> <p>The Administration was requested to provide members with its draft administrative guidelines on the issues about the appropriate arrangements for the child being kept in a place of safety under the proposed new section 20(6) and (8) of CACO.</p>	Admin
004801 - 005019	Chairman Admin	Issues 3(g) and 3(h) of the Administration's response to the letter dated 5 September 2013 from the Legal Service Division (Annex to LC Paper No. CB(2)430/13-14(02)).	

Time marker	Speaker(s)	Subject(s)	Action Required
005020 - 005346	Chairman ALA8 Admin	<p>Issue 2(b) of the Administration's response to the letter dated 5 September 2013 from the Legal Service Division (Annex to LC Paper No. CB(2)430/13-14(02)).</p> <p>The Chairman's concern whether additional rules or amendments would be made to Order 121 of the Rules of the High Court (Cap. 4 sub. leg. A) to deal with the procedure for applications for the new orders under the proposed new sections 15, 16 and 17 of CACO.</p> <p>The Administration's response that it would keep in view the making of the necessary rules by the Rules Committee of the High Court before the new provisions were brought into force.</p>	
005347 - 010412	Mr Albert HO Chairman Admin	<p>Mr Albert HO's question and the Administration's response regarding whether support and assistance would be provided to parents whose child was abducted to the Mainland or Taiwan.</p> <p>The Administration was requested to consider providing support and assistance to parents whose child was abducted to -</p> <p>(a) the Mainland; and</p> <p>(b) Taiwan.</p>	Admin
010413 - 010506	Chairman Admin	Date of next meeting	