

立法會
Legislative Council

LC Paper No. CB(2)884/13-14
(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 Tuesday, 21 January 2014, at 11:30 am
in Conference Room 2B of the Legislative Council Complex**

Members present : Hon Dennis KWOK (Chairman)
Hon TAM Yiu-chung, GBS, JP
Hon Ronny TONG Ka-wah, SC
Hon Cyd HO Sau-lan
Hon WONG Yuk-man

Members absent : Hon Albert HO Chun-yan
Hon Paul TSE Wai-chun, JP
Dr Hon Fernando CHEUNG Chiu-hung

Public Officers attending : Item I

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

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

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

Ms Susana SIT
Deputy Principal Government Counsel
(Mutual Legal Assistance) 2
Department of Justice

Mr Allen LAI
Senior Government Counsel
Department of Justice

Ms Cathy SZETO Ying-lok
Government Counsel
Department of Justice

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

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

Miss Kay CHU
Council Secretary (2) 1

Miss Lulu YEUNG
Clerical 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 section 15(3) of the Child Abduction and Custody Ordinance (Cap. 512) ("CACO"), criminalising the removal of a child out of Hong Kong without appropriate consent of the parent concerned;
 - (b) consider establishing a mechanism for providing the Immigration Department ("ImmD") with information about a child on whom an application for a court order concerning the rights of custody or a court order prohibiting removal of the child out of Hong Kong without appropriate consent had been submitted and was pending determination by the court;
 - (c) expedite its consultation with the Judiciary and advise on the outcome of its consultation with the Judiciary on the suggestion of including a new provision to empower the Court of First Instance ("CFI") specifically to vary, suspend or discharge orders made under the proposed sections 15 to 18 of CACO;
 - (d) consider setting out in its administrative guidelines for implementation of the provisions in the Bill and other relevant arrangements ("the administrative guidelines") the requirement to bring to the attention of the child and the parent concerned the rights to seek legal assistance and pursue *habeas corpus* application under section 22A of the High Court Ordinance (Cap. 4);
 - (e) provide the Bills Committee with the main features of its administrative guidelines;

- (f) consider providing social workers with the administrative guidelines to facilitate their understanding of the process and procedures under the provisions in the Bill;
- (g) explain, with the aid of a flow chart, the process of preventing the removal of a child out of Hong Kong without appropriate consent, starting from the application for a court order concerning the rights of custody of or access to the child and including the notification of ImmD regarding the submission of an application for a stop order or a prohibition order;
- (h) explain whether the lead time for seeking legal aid for matrimonial proceedings would have any impact on an application for a court order prohibiting removal of a child out of Hong Kong without appropriate consent;

Clause 9 - proposed section 15

- (i) consult the Judiciary on the suggestion of empowering the Family Court to grant an order under the proposed section 15 of CACO to prohibit the removal of a child out of Hong Kong without appropriate consent;

Clause 9 - proposed section 16

- (j) consider amending the Chinese text "按理可取得的" in the proposed section 16(2) to "可合理地取得的";
- (k) consider amending the proposed section 16(6)(b), having regard to the provisions of similar legislation of other jurisdictions, to confine the scope of the information subject to legal professional privilege and to impose limitations or conditions on the use of such information;

Clause 9 - proposed section 17

- (l) review the drafting of the proposed section 17(2)(f) to spell out clearly that the authorisation or direction under the subsection was given by CFI;

Clause 9 - proposed section 18

- (m) consider amending the Chinese text "或在該國扣留該兒童" in the proposed section 18(2)(b)(i) to "或在該國扣留";
- (n) review the drafting of the proposed section 18(3) in relation to "home state", with a view to removing ambiguity, if any;

Clause 9 - proposed section 19

- (o) explain whether the proposed section 19 could be abused for preventing a child from leaving Hong Kong by deliberately prolonging the court proceedings for orders under CACO;
- (p) consider amending the English text "is pending" in the proposed section 19(2)(b) and 19(3)(a) to spell out clearly that it referred to circumstances where the application concerned had already been filed with the court; and
- (q) consider deleting the Chinese text "給予" in the proposed section 19(9)(a).

II. Any other business

- 3. Members agreed that the next meeting would be scheduled after the meeting and members would be informed in due course.

(Post-meeting note: With the concurrence of the Chairman, the next meeting was scheduled for 11 February 2014 at 10:45 am to continue discussion with the Administration.)

4. There being no other business, the meeting ended at 1:01 pm.

Council Business Division 2
Legislative Council Secretariat
14 February 2014

**Proceedings of meeting of the Bills Committee on
Child Abduction Legislation (Miscellaneous Amendments) Bill 2013
held on Tuesday, 21 January 2014, at 11:30 am
in Conference Room 2B of the Legislative Council Complex**

Time marker	Speaker(s)	Subject(s)	Action Required
000000 - 000302	Chairman	Opening remarks	
000303 - 000720	Admin	Briefing by the Administration on its response to issues raised at the Bills Committee meeting on 20 December 2013 (LC Paper No. CB(2)712/13-14(01)).	
000721 - 001007	Chairman Mr WONG Yuk-man Admin	<p>Mr WONG Yuk-man's expression of the view that -</p> <p>(a) there was a need to criminalise the removal of a child out of Hong Kong from the custodial parent without appropriate consent; and</p> <p>(b) mechanisms should be established for the provision of support and assistance to parents whose child had been abducted to the Mainland and Taiwan.</p> <p>The Administration was requested to reconsider, in relation to the proposed section 15(3) of the Child Abduction and Custody Ordinance (Cap. 512) ("CACO"), criminalising the removal of a child out of Hong Kong from the custodial parent without appropriate consent.</p>	Admin
001008 - 001244	Ms Cyd HO Admin	<p>Ms Cyd HO's suggestion that a mechanism should be established for notifying the Immigration Department ("ImmD") of the name of a child whose family was involved in domestic violence or a child on whom an application for a court order concerning the rights of custody or prohibiting removal of the child out of Hong Kong without appropriate consent had been submitted.</p> <p>The Administration was requested to consider establishing a mechanism for providing ImmD with information about a child on whom an application for a court order concerning the rights of custody or a court order prohibiting</p>	Admin

Time marker	Speaker(s)	Subject(s)	Action Required
		removal of the child out of Hong Kong without appropriate consent had been submitted and was pending determination by the court.	
001245 - 001443	Chairman Admin	<p>The Chairman's concern regarding when the outcome of the Administration's consultation with the Judiciary on the suggestion to include a new provision to empower the Court of First Instance ("CFI") specifically to vary, suspend or discharge orders made by it under CACO would be available.</p> <p>The Administration was requested to expedite its consultation with the Judiciary and advise on the outcome of its consultation with the Judiciary on the suggestion.</p>	Admin
001444 - 001613	Chairman ALA8 Admin	<p>The Chairman's question regarding whether a child or his parent could pursue <i>habeas corpus</i>, when there was a parallel application to CFI for variation, suspension and discharge of orders made by it under CACO, and when there was a right to lodge an appeal against an order made by CFI under CACO.</p> <p>The Administration's response that the Bill had no impact on such rights.</p> <p>The Chairman's question and the Administration's reply regarding the progress of preparation of administrative guidelines for implementation of the provisions in the Bill and other relevant arrangements ("the administrative guidelines").</p> <p>The Administration was requested to -</p> <p>(a) consider setting out in its administrative guidelines the requirement to bring to the attention of the child and his parents the rights to seek legal assistance and pursue <i>habeas corpus</i> application under section 22A of the High Court Ordinance (Cap. 4); and</p> <p>(b) provide the Bills Committee with the main features of its administrative guidelines.</p>	Admin

Time marker	Speaker(s)	Subject(s)	Action Required
001614 - 001820	Ms Cyd HO Admin	Ms Cyd HO's view that social workers should be provided with the administrative guidelines to facilitate their understanding of the process and procedures concerned. The Administration was requested to consider providing social workers with the administrative guidelines to facilitate their understanding of the process and procedures concerned.	Admin
001821 - 001848	Chairman	Commencement of clause-by-clause examination of the Bill.	
001849 - 002152	Chairman Ms Cyd HO Admin	Examination of the long title and clauses 1 to 5. Ms Cyd HO's question and the Administration's response regarding whether the commencement notice of the Bill would be made in the form of subsidiary legislation subject to the negative vetting procedures.	
002153 - 002255	Admin Chairman	Examination of clauses 6 to 8.	
002256 - 002507	Ms Cyd HO Admin Chairman	Ms Cyd HO's view and the Administration's response regarding consulting the Panel on Welfare Services on its administrative guidelines before making the subsidiary legislation on the commencement of the Bill.	
002508 - 002845	Chairman Ms Cyd HO Admin	Examination of the proposed section 15 in clause 9. Ms Cyd HO's concern regarding the possibility of the abduction of a child under the age of 18 who left Hong Kong on his own with an independent travel document. The Administration's response that the staff of ImmD would not allow a child to leave Hong Kong, if there was reasonable suspicion that the child was removed out of Hong Kong without appropriate consent.	
002846 - 005525	Chairman Admin Ms Cyd HO ALA8 Mr WONG Yuk-man	Examination of the proposed section 16 in clause 9. Ms Cyd HO's concern regarding whether the removal of a child out of Hong Kong without	

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		<p>appropriate consent could not be prevented, if there was no court order prohibiting removal of the child out of Hong Kong without appropriate consent.</p> <p>The Administration's response that once an application for such a court order had been filed with CFI, the parent who filed the application could notify ImmD to prevent the removal of the child from Hong Kong without appropriate consent.</p> <p>The Chairman's view that besides CFI, the Family Court should also be empowered to make an order under CACO to prohibit the removal of a child out of Hong Kong without appropriate consent.</p> <p>The Administration was requested to -</p> <ul style="list-style-type: none"> (a) explain, with the aid of a flow chart, the process of preventing the removal of a child out of Hong Kong without appropriate consent, starting from the application for a court order concerning the rights of custody of or access to the child, and including the notification of ImmD regarding the submission of an application for a court order; (b) explain whether the lead time needed for seeking legal aid for matrimonial proceedings would have any impact on an application for a court order prohibiting removal of a child out of Hong Kong without appropriate consent; (c) consult the Judiciary on the suggestion of empowering the Family Court to make an order under CACO to prohibit the removal of a child out of Hong Kong without appropriate consent; (d) consider amending the Chinese text "按理可取得的" in the proposed section 16(2) along the lines of "可合理地取得的"; and (e) consider amending the proposed section 16(6)(b), having regard to the provisions of 	<p>Admin</p>

Time marker	Speaker(s)	Subject(s)	Action Required
		similar legislation of other jurisdictions, to confine the scope of the information subject to legal professional privilege and to impose limitations or conditions on the use of such information.	
005526 - 010451	Admin Chairman Ms Cyd HO Mr WONG Yuk-man	<p>Examination of the proposed section 17 in clause 9.</p> <p>The Chairman's question and the Administration's response regarding whether the power of seizure was provided under the proposed section 17(2)(b).</p> <p>Questions raised by Ms Cyd HO and Mr WONG Yuk-man and the Administration's response regarding the government department responsible for provision of the day-to-day care under the proposed section 17(2)(g) and circumstances under which such care would be provided.</p> <p>The Administration was requested to review the drafting of the proposed section 17(2)(f) to spell out clearly that the authorisation or direction under the section was given by CFI.</p>	Admin
010452 - 012304	Admin Mr WONG Yuk-man Chairman Ms Cyd HO	<p>Examination of the proposed section 18 in clause 9.</p> <p>The Chairman's question regarding whether any person was allowed to make a representation to the court in Hong Kong under the proposed section 18 and the Administration's response that such representation should be made to the court ordering the return of the child when the return application concerned was being considered.</p> <p>The Administration was requested to -</p> <p>(a) consider amending the Chinese text "或在該國扣留該兒童" in the proposed section 18(2)(b)(i) along the lines of "或在該國扣留"; and</p> <p>(b) review the drafting of the proposed section 18(3) in relation to "home state", with a view to removing ambiguity, if any.</p>	Admin

Time marker	Speaker(s)	Subject(s)	Action Required
012305 - 013148	Admin Mr WONG Yuk-man Chairman	Examination of the proposed section 19 in clause 9. The Administration was requested to - (a) explain whether the proposed section 19 could be abused for preventing a child from leaving Hong Kong by deliberately prolonging the court proceedings for orders under CACO; (b) consider amending the English text "is pending" in the proposed section 19(2)(b) and 19(3)(a) to spell out clearly that it referred to circumstances where the application concerned had already been filed with the court; and (c) consider deleting the Chinese text "給予" in the proposed section 19(9)(a).	Admin
013149 - 013204	Chairman	Date of next meeting.	

Council Business Division 2
Legislative Council Secretariat
14 February 2014