

立法會
Legislative Council

LC Paper No. CB(1)457/17-18
(These minutes have been
seen by the Administration)

Ref : CB1/BC/4/16

Bills Committee on Waterworks (Amendment) Bill 2017

Minutes of fifth meeting
on Tuesday, 7 November 2017, at 4:30 pm
in Conference Room 2B of the Legislative Council Complex

Members present : Ir Dr Hon LO Wai-kwok, SBS, MH, JP (Chairman)
Dr Hon Helena WONG Pik-wan (Deputy Chairman)
Hon Kenneth LEUNG
Hon Alice MAK Mei-kuen, BBS, JP
Dr Hon KWOK Ka-ki
Hon POON Siu-ping, BBS, MH
Dr Hon Junius HO Kwan-yiu, JP
Hon SHIU Ka-fai
Hon LAU Kwok-fan, MH

Member attending : Hon CHU Hoi-dick

Member absent : Hon LEUNG Che-cheung, SBS, MH, JP

Public officers attending : Agenda item II

Water Supplies Department

Mr Bobby NG, BBS
Team Leader/ Legislative Review

Mr Horace LEE
Senior Engineer/ Legislative Review (2)

Development Bureau

Mr Vincent MAK, JP
Deputy Secretary (Works) 2

Department of Justice

Miss Selina LAU
Senior Government Counsel

Miss Wendy HO
Government Counsel

Clerk in attendance : Mr Derek LO
Chief Council Secretary (1)5

Staff in attendance : Ms Wendy KAN
Assistant Legal Adviser 6

Mr Fred PANG
Senior Council Secretary (1)5

Ms Michelle NIEN
Legislative Assistant (1)5

Action

I. Application for late membership

(LC Paper No. CB(1)1339/16-17(01) — Letter dated 19 July 2017 from Hon Kenneth LEUNG on his application for late membership of the Bills Committee (*Chinese version only*))

The Bills Committee accepted Mr Kenneth LEUNG's application for late membership.

II. Meeting with the Administration

Matters arising from previous meeting

- (LC Paper No. CB(1)1363/16-17(01) — List of follow-up actions arising from the meeting on 11 July 2017
- LC Paper No. CB(1)1363/16-17(02) — Administration's response to the issues raised at the meeting on 11 July 2017)

Relevant papers issued previously

- (LC Paper No. CB(1)1254/16-17(01) — List of follow-up actions arising from the meeting on 19 June 2017
- LC Paper No. CB(1)1254/16-17(02) — Administration's response to the issues raised at the meeting on 19 June 2017
- LC Paper No. CB(1)1254/16-17(03) — Administration's response to Assistant Legal Adviser's letter dated 14 June 2017
- LC Paper No. CB(1)1289/16-17(01) — Administration's further response to Assistant Legal Adviser's letter dated 14 June 2017
- LC Paper No. CB(1)1150/16-17(01) — List of follow-up actions arising from the meeting on 12 June 2017
- LC Paper No. CB(1)1150/16-17(02) — Administration's response to the issues raised at the meeting on 12 June 2017
- LC Paper No. CB(1)1150/16-17(03) — Assistant Legal Adviser's letter dated 14 June 2017 to the Administration

- LC Paper No. CB(1)1093/16-17(01) — List of follow-up actions arising from the meeting on 19 May 2017
- LC Paper No. CB(1)1093/16-17(02) — Administration's response to the issues raised at the meeting on 19 May 2017
- LC Paper No. CB(1)962/16-17(03) — Assistant Legal Adviser's letter dated 9 May 2017 to the Administration
- LC Paper No. CB(1)1115/16-17(01) — Administration's response to Assistant Legal Adviser's letter dated 9 May 2017)

Clause-by-clause examination of the Bill

- (LC Paper No. CB(3)458/16-17) — The Bill
- LC Paper No. CB(1)962/16-17(01) — Mark-up copy of the Bill prepared by the Legal Service Division (Restricted to members only)
- File Ref: DEVB(CR)(W)1-10/49 — Legislative Council Brief issued by the Development Bureau
- LC Paper No. LS56/16-17 — Legal Service Division Report
- LC Paper No. CB(1)962/16-17(02) — Paper on Waterworks (Amendment) Bill 2017 prepared by the Legislative Council Secretariat (background brief)

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

Follow-up actions to be taken by the Administration

3. The Administration was requested to provide the following information –
- (a) given the Administration's advice that guidelines would be produced

to make clear the persons who were allowed to carry out specified plumbing works under instruction and supervision and the steps required to be taken by these persons to ascertain their instructing supervisors' qualifications, a copy of the guidelines/the draft of the guidelines;

- (b) as regards the persons who were allowed to provide instruction and supervision for other persons in carrying out plumbing works as proposed under the Bill, the requirements/criteria that had to be fulfilled by them for seeking/renewing licences/registrations, and whether and how such requirements/criteria would ensure that these persons had updated knowledge in the aspects of drinking water safety and relevant legislation; and
- (c) the content of the voluntary continuing professional development programmes/courses provided for registered plumbing workers.

(Post-meeting note: The Administration's supplementary information was issued to members vide LC Paper No. CB(1)314/17-18(02) on 4 December 2017.)

Date of next meeting

4. The Chairman said that the Bills Committee would hold its next meeting to discuss the committee stage amendments to the Bill to be proposed by the Administration. The Clerk would work out with the Administration the date of the meeting and inform members of the details in due course.

(Post-meeting note: As directed by the Chairman, the next meeting of the Bills Committee would be held on Tuesday, 16 January 2018 at 2:45 pm. The notice and agenda of the meeting were issued to members vide LC Paper No. CB(1)406/17-18 on 2 January 2018.)

III. Any other business

5. There being no other business, the meeting ended at 6:03 pm.

**Proceedings of the fifth meeting of
the Bills Committee on Waterworks (Amendment) Bill 2017
on Tuesday, 7 November 2017, at 4:30 pm
in Conference Room 2B of the Legislative Council Complex**

| Time marker | Speaker | Subject(s) | Action required |
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| 000530 – 000700 | Chairman | Application for late membership Mr Kenneth LEUNG's application for late membership was accepted. | |
| 000701 – 000940 | Chairman Administration | Briefing by the Administration on its response to the list of follow-up actions arising from the Bills Committee's meeting on 11 July 2017 (LC Paper No. CB(1)1363/16-17(02)) | |
| 000941 – 001600 | Chairman Administration | <p>The Chairman enquired whether the Administration had formulated any new position regarding workers' concerns about the risk of being charged with an offence under the Waterworks Ordinance (Cap. 102) ("WWO") as proposed to be amended by the Bill in respect of the plumbing works carried out by them under instruction and supervision, and about the time limit for prosecutions proposed under the Bill.</p> <p>The Administration replied that –</p> <p>(a) the Administration had discussed with the trade and some Legislative Council ("LegCo") Members the issues mentioned by the Chairman during the LegCo's summer recess;</p> <p>(b) having regard to the views of relevant stakeholders, the Administration would propose amendments to the Bill to the effect that workers would not be subject to criminal sanctions unless they had intentionally used the plumbing materials which were substandard when carrying out the plumbing works;</p> | |

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| | | <p>(c) the Administration maintained the view that the statutory defence provision proposed under the Bill would shift the onus of proof of the offence concerned under WWO from the workers to the prosecution, and that the longer the time between when the non-compliance was committed and when the non-compliance might be discovered by the Water Authority ("WA"), the more difficult it would be for the Administration to prove the offence; and</p> <p>(d) in view of the plumbing trade's concern that under the amended WWO, WA might institute prosecution against a person for a non-compliance of the relevant requirement in respect of the completed plumbing works concerned at any time after it was discovered, the Administration would amend the Bill to the effect that a prosecution under WWO might be brought within a specified period of time from the date on which the offence was committed, and was considering how long the period should be.</p> <p>The Chairman remarked that the Bills Committee would consider at a meeting the Administration's proposed amendments to the Bill when they were ready.</p> | |
| 001601 – 001803 | Chairman Mr POON Siu-ping Administration | <p>Mr POON Siu-ping enquired whether the Administration had studied why, given that 2 969 licensed plumbers ("LPs") had renewed their licences for 2017, only 785 LPs had attended the programmes/courses under the Voluntary Continuing Professional Development Scheme ("CPD Scheme") from October 2016 to May 2017.</p> <p>The Administration replied that –</p> <p>(a) of the about 3 000 LPs in the industry, not all of them were active LPs; and</p> | |

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| | | <p>(b) while the Administration considered it acceptable that 785 LPs had attended the voluntary continuing professional development programmes/courses within a short period of about seven months from October 2016 to May 2017, it hoped that more LPs would attend the programmes/courses and would continue to communicate with the trade in this regard.</p> | |
| 001804 – 001941 | Chairman Ms Alice MAK | <p>Ms Alice MAK opined that –</p> <p>(a) workers had expressed concern that they might be charged with an offence under the amended WWO in respect of plumbing works due to reasons out of their control and if they were prosecuted, they needed to spend time and efforts to defend themselves against the charge;</p> <p>(b) the workers' concern in this regard might discourage them to stay in the plumbing industry; and it was appropriate for the Administration to amend the Bill with a view to addressing the concern; and</p> <p>(c) the Administration should take into account the views of workers and their unions when working out the proposed amendments, and should submit the proposed amendments to the Bills Committee for consideration as early as possible.</p> | |
| 001942 – 002854 | Chairman Dr Helena WONG Administration | <p>Dr Helena WONG opined that –</p> <p>(a) the proposed provision that any prosecution under WWO might be brought within a period of six months from the date on which the offence was discovered by, or came to the notice of, WA should not be a burden to industry practitioners if they had taken all reasonable steps to comply with the relevant requirements when carrying out plumbing works;</p> | |

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| | | <p>(b) to specify a shorter time limit for prosecutions in the Bill might make it impossible for the Administration to institute prosecutions against the non-compliances of plumbing works discovered by WA; and if the Administration considered it necessary to amend the Bill to shorten the time limit, the time limit for prosecutions should not be less than 10 years; and</p> <p>(c) the general guiding principles for "works of a minor nature" such as those set out in paragraph 4 of LC Paper No. CB(1)1363/16-17(02) should not only be posted on the Water Supplies Department ("WSD")'s website, but should also be provided under WWO.</p> <p>The Administration replied that –</p> <p>(a) the Administration believed that the time limit for prosecutions should not be less than six years in order to provide a deterrence effect to non-compliance with relevant requirements under WWO, and the Administration would continue to discuss the matter with relevant stakeholders;</p> <p>(b) the existing practice of promulgating the principles for "works of a minor nature" via publications on the WSD's website had retained flexibility for WA to give prompt response in catering for changes in the plumbing trade; and</p> <p>(c) the Administration had consulted the trade since the summer recess of LegCo on the suggestion of including the principles for "works of a minor nature" in the Bill, and as the trade had yet to have a consensus view on the matter, the Administration considered it appropriate to deal with the suggestion as part of its next phase review of WWO.</p> | |
| 002855 – 003411 | Chairman Mr Kenneth LEUNG Administration | <p>Mr Kenneth LEUNG opined that –</p> <p>(a) the Administration should issue guidelines to formally set out the general guiding principles for "works of a minor nature";</p> | |

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| | | <p>(b) in considering the time limit for prosecutions, the Administration should take into account relevant objective data, and make reference to the relevant provisions in other legislation, such as the Inland Revenue Ordinance (Cap. 112) and the Stamp Duty Ordinance (Cap. 117), etc.; and</p> <p>(c) the Administration might consider whether the time limit for prosecutions should be seven to 10 years.</p> <p>The Administration replied that –</p> <p>(a) the Administration would consider Mr LEUNG's suggestion of issuing guidelines to promulgate the principles for "works of a minor nature"; and</p> <p>(b) the Administration would make reference to other legislation when considering the appropriate time limit for prosecutions.</p> <p>The Chairman said that when considering the appropriate time limit for prosecutions, the Administration should pay due regard to the importance of safeguarding drinking water safety and the plumbing practitioners' concern that the Bill would impose additional liabilities on them.</p> | |
| 003412 – 003806 | Chairman Mr SHIU Ka-fai | <p>Mr SHIU Ka-fai opined that –</p> <p>(a) it was unfair to hold a plumbing practitioner liable for a non-compliance of the relevant requirement in respect of a plumbing system that was discovered at any time after the installation of the plumbing system concerned, as some other people might have made modifications to the installed system;</p> <p>(b) WSD should step up its inspection of the completed plumbing works with a view to identifying all non-compliances cases during the inspection; and</p> <p>(c) the Administration should amend the Bill to the effect that a prosecution under WWO might be brought within six years from the date on which the offence was committed.</p> | |

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| 003807 – 004000 | Chairman Ms Alice MAK | <p>Ms Alice MAK opined that –</p> <p>(a) workers considered that the Administration should ensure that the new regulatory regime proposed under the Bill would be fair to them;</p> <p>(b) workers would not intentionally carry out plumbing works in contravention of the relevant requirements under the legislation, but were concerned that they might be charged with an offence in respect of plumbing works due to reasons out of their control;</p> <p>(c) in considering the appropriate time limit for prosecutions, the Administration should take into account the workers' concern that it would be difficult for them to keep records or recall the details in respect of the plumbing works that had been completed for a certain period; and</p> <p>(d) the suggestion that the time limit for prosecutions should be six years was acceptable.</p> | |
| 004001 – 004530 | Chairman Dr Helena WONG Administration | <p>Dr Helena WONG opined that –</p> <p>(a) the "excess lead in drinking water in public rental housing estates" incident reflected that if the time limit for prosecutions was short, WA might be unable to take legal actions against non-compliances of the relevant requirements in respect of the plumbing systems if they could be discovered only after a certain period of time;</p> <p>(b) the time limit for prosecutions should not be less than 10 years; and</p> <p>(c) the general guiding principles for "works of a minor nature" should be provided under WWO, given that the Waterworks Regulations (Cap. 102A) ("WWR") had provided similar principles under which WA might allow a departure from a prescribed specification for a pipe or fitting.</p> | |

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| | | <p>In response to the Chairman's enquiry about whether the Administration would consider adding a definition of "works of a minor nature" to WWO by amending the Bill, the Administration advised that –</p> <p>(a) it might be practicable to take forward the suggestion of including in the Bill the two principles under which WA might allow a departure from a prescribed specification for a pipe or fitting as set out in WWR, i.e., the installation of a pipe or fitting did not adversely affect the efficiency of the fire service or inside service in which the pipe or fitting was installed in providing a reliable and adequate supply of water, and the quality of the water; and</p> <p>(b) the Administration would further discuss the suggestion with the trade, and subject to whether the trade had a consensus view on the suggestion, propose amendments to the Bill accordingly.</p> <p>The Chairman remarked that the Administration needed to adopt a holistic approach in enhancing water safety, and the proposals to amend WWO was only part of its efforts to deal with the issue.</p> | |
| <u>Clause-by-clause examination of Waterworks (Amendment) Bill 2017</u> | | | |
| 004531 – 004700 | Chairman Administration | <p><u>Part 2 Amendments to Waterworks Ordinance</u></p> <p><i>Clause 7 – Section 15 amended (construction, etc. by licensed plumbers)</i></p> | |
| 004701 – 011315 | Chairman Dr Helena WONG Ms Alice MAK Administration Assistant Legal Adviser 6 ("ALA6") | <p><i>Clause 8 – Section 15A added</i></p> <p>Dr Helena WONG noted that an authorized officer was allowed to take photographs of the non-domestic premises referred to under the proposed new subsection (1)(a) and the fire service or inside service on the premises, and suggested that an authorized officer should also be allowed to take video records.</p> <p>The Administration responded that it would consider proposing amendment to the Bill in light of Dr WONG's suggestion.</p> | |

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| | | <p>In response to Dr Helena WONG, the Administration advised that the documentary proof under the proposed new subsection (2)(c) included construction worker registration cards and plumbers' licences.</p> <p>Discussion on whether the Bill should propose to specify the types of document that might be produced by a person to prove that he/she was a qualified person.</p> <p>In response to Dr Helena WONG's enquiry about an authorized officer's power of entry into premises, the Administration advised that –</p> <ul style="list-style-type: none">(a) an authorized officer might enter any premises under construction; and(b) for premises inhabited by people, an authorized officer would obtain consent of the occupier for entering the premises. <p>ALA6 drew members' attention that –</p> <ul style="list-style-type: none">(a) the proposed new section 15A(6) provided a statutory defence for a person charged with the offence of making or providing false or misleading statement or information if the person established that at the time of the alleged offence, the person did not know, had no reason to suspect, and could not with reasonable diligence have ascertained, that the statement or information concerned was false or misleading in a material particular;(b) there might be a situation that a worker who was allowed to carry out specified plumbing works under instruction and supervision made or provided a false or misleading statement or information that the instructing supervisor, not being an LP or registered plumbing worker, was an LP or registered plumbing worker;(c) further, the worker concerned would commit the offence under the proposed section 15(3) if the instructing supervisor concerned was not an LP or registered plumbing worker; and | |

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| | | <p>(d) the Administration had advised that WSD would issue guidelines to assist a worker working under instruction and supervision to ascertain the instructing supervisor was an LP or registered plumbing worker, and members might invite the Administration to explain the content of guidelines.</p> <p>The Administration advised that –</p> <p>(a) the guidelines would make clear the persons who were allowed to carry out specified plumbing works under instruction and supervision, and the steps required to be taken by these persons to ascertain their instructing supervisors' qualifications; and</p> <p>(b) the Administration had worked out a draft of the guidelines.</p> <p>Dr Helena WONG and the Chairman requested the Administration to provide a copy of the guidelines/the draft of the guidelines.</p> <p>Dr Helena WONG opined that to ensure that the persons who were allowed under the proposed regime to provide instruction and supervision for other persons in carrying out plumbing works had updated knowledge in the aspects of drinking water safety and relevant legislation, their attendance of the relevant continuing professional development programmes/courses should be a prerequisite for them to seek/renew their licenses/registrations.</p> <p>The Administration replied that –</p> <p>(a) WSD launched the CPD Scheme for LPs in October 2016, and the Administration considered that making the scheme mandatory to LPs might not be necessary if the scheme was well received by LPs;</p> <p>(b) to seek registrations under the Construction Workers Registration Ordinance (Cap. 583) ("CWRO"), registered skilled/semi-skilled workers were required to take certain training courses which aimed at enhancing their skills in providing instruction and supervision to other persons; and</p> | <p>The Administration to follow up as stated in paragraph 3(a) of the minutes.</p> |

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| | | <p>(c) since May 2017, the Construction Industry Council ("CIC") provided voluntary continuing professional development programmes/courses to registered plumbing workers, and the Administration would continue to keep in view the degree of participation of workers before considering the way forward with respect to the training.</p> <p>Dr Helena WONG requested the Administration to provide information on the requirements/criteria that had to be fulfilled by the persons who were allowed to provide instruction and supervision for other persons in carrying out plumbing works as proposed under the Bill for seeking/renewing licences/registrations, whether and how such requirements/criteria would ensure that these persons had updated knowledge in the aspects of drinking water safety and relevant legislation, and the content of the voluntary continuing professional development programmes/courses provided for registered plumbing workers.</p> <p>Ms Alice MAK opined that –</p> <p>(a) workers were in general active in participating in relevant training programmes/courses to enhance their skills and knowledge, irrespective of whether the attendance of such programmes/courses was a prerequisite for them to seek/renew their registrations; and</p> <p>(b) the Administration should consult the trade and workers on any suggestions to impose new requirements that had to be fulfilled by workers for seeking/renewing licences/registrations, and should take into account the fact that workers might need extra time and efforts and sacrifice work income to cope with any new requirements.</p> | <p>The Administration to follow up as stated in paragraph 3(b) and (c) of the minutes.</p> |

| Time marker | Speaker | Subject(s) | Action required |
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| 011316 – 011454 | Chairman Administration ALA6 | <p><i>Clause 9 – Section 18A added</i></p> <p>In response to ALA6, the Administration advised that it would propose amendments to the Bill to clarify the policy intent that the proposed new section 18A only applied to the statutory defences provided under Part III of the amended WWO.</p> | |
| 011455 – 011519 | Chairman Administration | <p><i>Clause 10 – Section 36A added</i></p> <p>The Administration advised that it would propose amendments to the proposed new section 36A having regard to members' views on the proposed time limit for prosecutions.</p> | |
| 011520 – 011548 | Chairman Administration | <p><i>Clause 11 – Section 38A added</i></p> <p>Members raised no queries.</p> | |
| 011549 – 012959 | Chairman Mr CHU Hoi-dick Dr Helena WONG Administration ALA6 | <p><i>Clause 12 – Section 40 and Schedule added</i></p> <p>Mr CHU Hoi-dick enquired whether the Administration should set out in the Bill what "section 14 of the pre-amended Ordinance" (mentioned in the proposed new section 40(3)(a)) referred to.</p> <p>The Administration advised that –</p> <p>(a) it was a normal law drafting practice to provide in a legislation reference to a section of a pre-amended ordinance; and</p> <p>(b) the Hong Kong e-Legislation which was an electronic database of Hong Kong legislation allowed members of the public to have timely electronic access to the current and past versions of consolidated legislation dating back to 30 June 1997.</p> <p>In response to Dr Helena WONG, the Administration advised that it would propose amendments to the Bill in light of ALA6's suggestion to provide for the installation of a meter separately.</p> | |

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| | | <p>Discussion on the validity period of worker registration under CWRO and whether there were any requirements that had to be fulfilled by registered plumbing workers for renewing their registrations.</p> <p>In response to Dr Helena WONG's enquiry about whether the Administration would collect statistics on the number of plumbing workers who had attended the voluntary continuing professional development programmes/courses upon their applications for renewal of registrations, and the number of them who had not, the Administration advised that –</p> <ul style="list-style-type: none"> (a) it would review the effectiveness of the programmes/courses and collect information required for carrying out the review; and (b) the review would be conducted after CIC had run the programmes/courses for a sufficient length of time. <p>Dr Helena WONG remained of the view that the relevant continuing professional development programmes/courses should be mandatory to plumbing practitioners, including registered plumbing workers, to ensure that they possessed the relevant skills and knowledge in providing instruction and supervision to other persons in carrying out plumbing works.</p> <p>The Chairman remarked that although it might not be practicable for the Administration to include training requirements as a prerequisite for workers to renew their registrations, it was appropriate for the Administration to continue enhancing the skills and knowledge of plumbing practitioners in the long term.</p> <p>In response to Dr Helena WONG and ALA6, the Administration advised that it would propose a committee stage amendment to align the current cross trade arrangement in construction site defined under CWRO.</p> <p>Discussion on the meeting arrangement to consider the amendments to the Bill to be proposed by the Administration.</p> | |

| Time marker | Speaker | Subject(s) | Action required |
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| 013000 – 013344 | Chairman Administration | <p><i>Clause 13 – "拆除" substituted for "移動"</i></p> <p><u>Part 3 Amendments to Waterworks Regulations</u></p> <p><i>Clause 14 – Regulation 6 amended (inspection and approval of works)</i></p> <p><i>Clause 15 – Regulation 26 amended (installation of meters)</i></p> <p>Members raised no queries.</p> | |
| 013345 – 013403 | Chairman Administration | <p><i>Clause 16 – Regulation 51A added</i></p> <p>The Administration advised that it would amend the proposed new section 51A having regard to members' views on the proposed time limit for prosecutions.</p> | |
| 013404 – 013449 | Chairman Administration | <p><i>Clause 17 – "拆除" substituted for "移動"</i></p> <p>Members raised no queries.</p> | |
| 013450 – 013734 | Chairman All members present Administration | <p>Meeting arrangement</p> <p>Discussion on the Administration's timetable for submitting its proposed amendments to the Bill to the Bills Committee</p> <p>Dr Helena WONG said that the Administration's proposed amendments to the Bill should be made available to members as early as possible to facilitate their consideration at the next meeting.</p> | |