

**立法會**  
**Legislative Council**

Ref : CB2/BC/3/18

LC Paper No. CB(2)1904/18-19  
(These minutes have been seen  
by the Administration)

**Bills Committee on National Anthem Bill**

**Minutes of the fifth meeting**  
**held on Wednesday, 27 March 2019, from 8:45 am to 10:45 am**  
**in Conference Room 2 of the Legislative Council Complex**

**Members present** :

- Hon Martin LIAO Cheung-kong, SBS, JP (Chairman)
- Hon CHEUNG Kwok-kwan, JP (Deputy Chairman)
- Hon LEUNG Yiu-chung
- Hon Tommy CHEUNG Yu-yan, GBS, JP
- Prof Hon Joseph LEE Kok-long, SBS, JP
- Hon Jeffrey LAM Kin-fung, GBS, JP
- Hon WONG Ting-kwong, GBS, JP
- Hon Starry LEE Wai-king, SBS, JP
- Hon CHAN Hak-kan, BBS, JP
- Hon CHAN Kin-por, GBS, JP
- Dr Hon Priscilla LEUNG Mei-fun, SBS, JP
- Hon WONG Kwok-kin, SBS, JP
- Hon Paul TSE Wai-chun, JP
- Hon Claudia MO
- Hon Michael TIEN Puk-sun, BBS, JP
- Hon Steven HO Chun-yin, BBS
- Hon Frankie YICK Chi-ming, SBS, JP
- Hon WU Chi-wai, MH
- Hon YIU Si-wing, BBS
- Hon MA Fung-kwok, SBS, JP
- Hon CHAN Chi-chuen
- Hon CHAN Han-pan, BBS, JP
- Hon LEUNG Che-cheung, SBS, MH, JP
- Hon Alice MAK Mei-kuen, BBS, JP
- Dr Hon KWOK Ka-ki
- Hon KWOK Wai-keung, JP
- Hon Christopher CHEUNG Wah-fung, SBS, JP
- Dr Hon Fernando CHEUNG Chiu-hung
- Dr Hon Helena WONG Pik-wan
- Hon IP Kin-yuen
- Dr Hon Elizabeth QUAT, BBS, JP

Dr Hon CHIANG Lai-wan, SBS, JP  
Ir Dr Hon LO Wai-kwok, SBS, MH, JP  
Hon Alvin YEUNG  
Hon Andrew WAN Siu-kin  
Hon CHU Hoi-dick  
Dr Hon Junius HO Kwan-yiu, JP  
Hon LAM Cheuk-ting  
Hon Holden CHOW Ho-ding  
Hon SHIU Ka-fai  
Hon SHIU Ka-chun  
Hon Wilson OR Chong-shing, MH  
Hon YUNG Hoi-yan  
Hon CHAN Chun-ying, JP  
Hon Tanya CHAN  
Hon LUK Chung-hung, JP  
Hon LAU Kwok-fan, MH  
Hon Kenneth LAU Ip-keung, BBS, MH, JP  
Dr Hon CHENG Chung-tai  
Hon KWONG Chun-yu  
Hon Jeremy TAM Man-ho  
Hon Gary FAN Kwok-wai  
Hon AU Nok-hin  
Hon Vincent CHENG Wing-shun, MH  
Hon Tony TSE Wai-chuen, BBS  
Hon CHAN Hoi-yan

**Members  
absent** : Hon James TO Kun-sun  
Hon Mrs Regina IP LAU Suk-ye, GBS, JP  
Hon Charles Peter MOK, JP  
Hon Kenneth LEUNG  
Hon Dennis KWOK Wing-hang  
Hon Jimmy NG Wing-ka, JP  
Hon HO Kai-ming  
Hon HUI Chi-fung

**Public Officers  
attending** : Mr Patrick NIP Tak-kuen, JP  
Secretary for Constitutional and Mainland Affairs  
  
Mr Roy TANG Yun-kwong, JP  
Permanent Secretary for Constitutional and Mainland Affairs

Ms Cordelia LAM Wai-ki  
Principal Assistant Secretary for Constitutional and  
Mainland Affairs

Ms Jocelyn NG Wai-chung  
Assistant Secretary for Constitutional and Mainland Affairs

Dr CHOI Yuk-lin, JP  
Under Secretary for Education

Mrs HONG CHAN Tsui-wah  
Deputy Secretary for Education

Mr Lawrence PENG Si-yun  
Deputy Law Draftsman (Acting)  
Department of Justice

Mr Jonathan LUK King-hang  
Senior Government Counsel  
Department of Justice

**Clerk in  
attendance** : Ms Joanne MAK  
Chief Council Secretary (2) 3

**Staff in  
attendance** : Mr Kelvin LEE  
Senior Assistant Legal Adviser 3

Miss Rachel DAI  
Assistant Legal Adviser 2

Ms Jasmine TAM  
Senior Council Secretary (2) 3

Mr Dennis HO  
Council Secretary (2) 3

Mrs Fonny TSANG  
Legislative Assistant (2) 3

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**I. Meeting with the Administration**

[File Ref.: CMAB E4/1/1, LC Paper Nos. CB(3)307/18-19, LS42/18-19, CB(2)811/18-19(01) and CB(2)893/18-19(02)]

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

2. A number of members expressed concern about education matters relating to the National Anthem Bill ("the Bill") at this meeting. The major views and concerns raised are set out in paragraphs 3 to 17 below.

*Impact of clause 9 on the autonomy of schools*

3. Members noted that clause 9 of the Bill required the Secretary for Education ("SED") to give directions for the inclusion of the national anthem in primary and secondary education. Mr Gary FAN raised concern about whether the directions were mandatory and the impact on the autonomy of primary and secondary school teaching. Mr Gary FAN, Mr AU Nok-hin, and Dr KWOK Ka-ki also expressed grave concern about whether the Education Bureau ("EDB") could invoke the Education Ordinance (Cap. 279) ("EO") to impose sanctions on schools or their principals and teachers for failure to comply with the directions given by SED under clause 9.

4. The Secretary for Constitutional and Mainland Affairs ("SCMA") explained that the Hong Kong Special Administrative Region Government had a constitutional duty to enact local legislation to implement the Law of the People's Republic of China on the National Anthem ("the National Anthem Law"). Clause 9 of the Bill sought to reflect the requirement in Article 11 of the National Anthem Law that the teaching of the national anthem should be included in primary and secondary education, while taking into account the actual circumstances in Hong Kong. SCMA clarified that clause 9 only imposed a legal responsibility on SED to give directions for the inclusion of the national anthem in primary and secondary education. Upon passage of the Bill, SED would issue, through the existing mechanism, circulars and related guidelines to schools to direct them to take forward the relevant work. The Under Secretary for Education ("USED") pointed out that students at primary and secondary levels were already being taught to sing the national anthem and the learning contents of the national anthem were also covered in the relevant subject curricula and in Moral, Civic and National Education. The Administration did not envisage any substantive difference in the teaching of the national anthem by schools after the passage of the Bill.

5. USED stressed that the spirit of clause 9 was to educate students to respect and acquire a basic understanding of the national anthem. How this was to be done was a matter of learning and teaching, which fell under the

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professional purview of teachers. USED explained that clause 9 did not provide for penalties for non-compliance with the directions given by SED under the clause. EDB all along had administrative measures in place, e.g. giving verbal/written advice and warnings, to follow up on irregularities identified in school operation (including non-compliance with the directions given by SED). If individual schools still did not comply with the requirements and make rectifications, SED was empowered by relevant provisions of EO to follow up.

6. Mr Alvin YEUNG asked whether a school which deliberately excluded certain part of the history of the national anthem from its teaching of the national anthem would violate the spirit of clause 9(1)(b)(i). Dr Fernando CHEUNG enquired about the meaning of "spirit of the national anthem" in clause 9(1)(b)(i) and whether it included "to enhance citizen awareness of the People's Republic of China, and to promote patriotism" stated in the Preamble to the Bill.

7. USED advised that the spirit of the national anthem was to promote national unity. While clause 9 required SED to give directions for the inclusion of the national anthem in primary and secondary education to, among others, educate students on the history and spirit of the national anthem, it did not stipulate how schools should take forward the relevant work. At present, the history and spirit of the national anthem were already being taught in local schools as part of their curriculum. Teachers were free to exercise their professional judgment in their teaching, including selecting the teaching and learning materials that best suited the learning needs and abilities of their students. USED reiterated that the spirit of clause 9 was to educate students to respect the national anthem as the symbol of the country. EDB would not prescribe the teaching and learning materials to be used for teaching the national anthem.

8. Noting that the spirit of clause 9 was to educate students to respect the national anthem as the symbol of the country, Dr Fernando CHEUNG asked whether "the country" was referring to the People's Republic of China, the Chinese Communist Party or the Chinese nation. He further asked whether SED would make it clear in his directions to be given under clause 9 that the teaching of the national anthem should not involve educating students to love the Chinese Communist Party. Mr Andrew WAN expressed concern about whether the teaching of the tragic death of Mr TIAN Han, the lyricist of the national anthem who was persecuted till death during the Cultural Revolution, as part of the learning contents of the national anthem in local schools would constitute an offence of insulting the national anthem after the passage of the Bill.

9. USED responded that the concept of "the country" encompassed many different aspects and could include knowledge about the ruling party. As

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pointed out earlier, the learning contents of the national anthem were being taught at different learning stages of primary and secondary students. Apart from educating students to respect the national anthem, the inclusion of the national anthem in primary and secondary education also sought to enable students to understand and develop a sense of belonging to their own country and society. Ms Claudia MO considered that the concept of "the country" and that of "the ruling party of the country" should be clearly separated. USED reiterated that teachers were free to decide how the national anthem should be taught and what should be covered in their teaching having regard to the learning targets as well as the learning needs and abilities of students. She trusted that teachers would exercise professional judgment and uphold political neutrality in their teaching to enable students to have a comprehensive and objective understanding of the national anthem.

*Provision of guidelines and support to schools*

10. Dr Helena WONG sought details of the directions to be given by SED under clause 9, including whether schools would be required to conduct assessment on the effectiveness of the learning and teaching of the national anthem. She further asked whether international schools and schools admitting non-Chinese speaking students would also be required to teach the national anthem. USED replied that after passage of the Bill, EDB would issue, through the existing mechanism, circulars and related guidelines to schools regarding the inclusion of the national anthem in primary and secondary education. However, EDB would not prescribe specifically how the national anthem was to be taught. Individual schools could decide professionally on matters relating to the learning and teaching of the national anthem having regard to their own circumstances as well as the learning needs and abilities of their students. Clause 9 also did not stipulate any requirement for the learning outcome to be demonstrated by students after learning the national anthem. In response to Mr WU Chi-wai's enquiry, USED said that the relevant circulars and guidelines would be issued to schools and uploaded onto EDB's website in due course.

11. Mr LEUNG Yiu-chung asked whether EDB would consult relevant stakeholders and the public in preparing the relevant guidelines to be issued to schools. He considered that the Administration should conduct extensive consultation on the relevant guidelines to be issued. USED replied that EDB had all along maintained close liaison with the education sector on various education matters. She added that as "how to teach" was a matter falling under the professional purview of teacher, the Administration did not consider it necessary to conduct public consultation on relevant issues.

12. Mr Alvin YEUNG asked whether EDB would organize training programmes or workshops for teachers regarding the teaching of the national

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anthem (e.g. visits to schools in the Mainland to study their experience in teaching the national anthem). USED replied that EDB would provide support to schools and teachers according to their needs.

*Handling of insulting behaviour within the school premises*

13. Ms CHAN Hoi-yan asked whether it was up to schools to decide what should be done if students intentionally performed acts that showed disrespect for the national anthem within the school premises. Mr LEUNG Yiu-chung also enquired whether EDB would issue guidelines to schools in this regard.

14. USED responded that schools were a place for children and young people to receive education. Handling of students' improper behaviour within the school premises should be left to the professional judgement of schools and teachers and be dealt with in such a way that the purpose of education was served. For individual behaviour that showed disrespect for the national anthem, schools should, in the light of their own context and usual counseling and guidance arrangements, handle the case in a reasonable, fair and lawful manner. USED further said that if a teacher encountered difficulties in teaching the national anthem or their teaching fell short of expectation, as with the learning and teaching of other curricula, schools should study the issue and provide necessary support for improvement. EDB would also support schools and teachers in educating and guiding students to respect the national anthem.

15. Mr SHIU Ka-chun expressed concern about whether students who performed acts to insult the national anthem within the school premises would be subject to prosecution if the relevant acts were reported to the Police. Permanent Secretary for Constitutional and Mainland Affairs ("PSCMA") replied that the Police was obliged to follow up reports of any alleged unlawful acts committed in schools.

16. Mr Alvin YEUNG asked whether EDB would impose sanctions on schools if their students showed disrespect for the national anthem after learning about the tragic death of Mr TIAN Han. USED replied that students' behaviour was affected by many factors. Clause 9 did not prescribe any learning outcome to be demonstrated by students after learning the national anthem. It did not provide for any penalties either. SCMA stressed that the spirit of clause 9 was to educate and guide students to respect the national anthem, irrespective of whatever feelings they might have about it.

17. Mr IP Kin-yuen said he noted that clause 7 of the Bill provided for penalties for public and intentional acts of insulting the national anthem, whereas clause 9 did not include penalties. Mr IP asked under what circumstances an act within the school premises would be considered as being

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performed "publicly" and therefore, subject to clause 7. SCMA replied that whether a specific act under different scenarios would constitute an offence under clause 7 depended on whether it was performed publicly, intentionally and with intent to insult the national anthem. PSCMA supplemented that while there was no legal definition of the word "publicly", it had been established in relevant court judgments that an act might be construed as being carried out "publicly" if it could be seen by other people.

Follow-up actions required of the Administration

18. The Administration was requested to provide a written response to address the following issues raised by members:

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- (a) whether the directions to be given by SED in connection with clause 9 of the Bill might infringe the professional autonomy of schools and teachers; and
- (b) whether the Communications Authority had to prove the intent of the licensee concerned before imposing sanctions against non-compliance with the determination or direction made by the Communications Authority under clause 10 of the Bill regarding the broadcasting of announcements or material in the public interest.

*(At 10:41 am, the Chairman directed that the meeting be extended by 15 minutes beyond the appointed ending time.)*

Arrangements for next meeting

19. The Chairman said that as the Bills Committee had almost completed its discussion on the policy aspects of the Bill at this meeting, it would commence clause-by-clause examination of the Bill at the next meeting. Members noted that the next meeting would be held on Saturday, 30 March 2019, from 9:00 am to 1:00 pm.

**II. Any other business**

20. There being no other business, the meeting ended at 11:00 am.



**Proceedings of the fifth meeting of the  
Bills Committee on National Anthem Bill  
on Wednesday, 27 March 2019, from 8:45 am to 10:45 am  
in Conference Room 2 of the Legislative Council Complex**

<b>Time Marker</b>	<b>Speaker(s)</b>	<b>Subject(s)/Discussion</b>	<b>Action required</b>
000903 - 001728	Chairman Ms Tanya CHAN The Clerk Mr AU Nok-hin	- Opening remarks  - Handling of letters from members raising questions on the Bill for the Administration's written response	
001729 - 002100	Chairman Mr Gary FAN Administration	- Directions to be given by the Secretary for Education ("SED") under clause 9 of the Bill and the impact on the autonomy of schools  - Consequence of non-compliance with SED's directions under clause 9	
002101 - 002413	Chairman Ms Tanya CHAN Administration	- Impact of the Bill on the exercise of the right to freedom of expression (details of Ms Tanya CHAN's question were set out in her letter dated 22 March 2019 to the Chairman [LC Paper No. CB(2)1127/18-19(26)])	
002414 - 002734	Chairman Mr LEUNG Yiu-chung Administration	- Handling of students' disrespectful or insulting behaviour against the national anthem	
002735 - 002903	Chairman Ms CHAN Hoi-yan Administration	- Teaching of the national anthem at school  - Handling of students' disrespectful or insulting behaviour against the national anthem at school	
002904 - 003215	Chairman Mr AU Nok-hin Administration	- Handling of non-compliance with SED's directions under clause 9	
003216 - 003622	Chairman Mr CHAN Chi-chuen Administration	- Whether urging others to boycott the playing and singing of the national anthem at a public event and whether joining the boycott would amount to insulting the national anthem under the Bill	
003623 - 004008	Chairman Mr Alvin YEUNG Administration	- Teaching of the national anthem at school  - Inclusion of the national anthem in primary education and in secondary education	
004009 - 004200	Chairman Mr WONG Ting-kwong Administration	- Teaching and promotion of the British national anthem before the People's Republic of China resumed the exercise of sovereignty over Hong Kong	
004201 - 004606	Chairman Ms Claudia MO Administration	- Impact of the Bill on university staff and students despite the fact that there was no provision in the Bill on inclusion of the national anthem in tertiary education	

Time Marker	Speaker(s)	Subject(s)/Discussion	Action required
004607 - 005024	Chairman Mr AU Nok-hin Administration	- Criteria for determining how the Law of the People's Republic of China on the National Anthem ("the National Anthem Law") was to be adapted for implementation in Hong Kong	
005025 - 005335	Chairman Mr Alvin YEUNG Administration	- Teaching of the national anthem at school	
005336 - 005929	Chairman Dr KWOK Ka-ki Dr Fernando CHEUNG	Concerns of Dr KWOK Ka-ki and Dr Fernando CHEUNG about the imposition of a deadline by the Chairman for submission of written questions relating to the policy discussion of the Bill.  The Chairman's advice that the Secretariat had forwarded all letters received on or before 22 March 2019 from individual members raising questions on the Bill to the Administration for response. All these letters and the Administration's written response would be circulated to members and uploaded onto the LegCo website.	
005930 - 010754	Chairman Ms Tanya CHAN Dr KWOK Ka-ki Administration	Concerns about the Administration's response to Ms Tanya CHAN's earlier query. The Chairman's request for the Administration to provide a written response to the questions raised by Ms Tanya CHAN, which were also set out in her letter dated 22 March 2019 to the Chairman.	<b>Admin</b>
010755 - 011624	Chairman Dr Fernando CHEUNG Ms Claudia MO Administration	- Meaning of "the spirit of the national anthem" in clause 9(1)(b)(i)  - Meaning of "the country" in the notion of "the national anthem being the symbol of the country"	
011625 - 012006	Chairman Dr CHENG Chung-tai Administration	- Possible issues arising from the implementation of the Bill, in view of the fact that there had been different versions of the national anthem  - Whether a Hong Konger who insulted the national anthem in the Mainland would be transferred to the Mainland for trial in future	
012007- 012310	Chairman Ms Tanya CHAN Administration	The Administration's agreement to provide a written response to Ms Tanya CHAN's question regarding the handling of non-compliance with the determination or direction made by the Communications Authority under clause 10 of the Bill.	<b>Admin</b> (para. 18(b) of minutes)
012311 - 012704	Chairman Mr CHAN Chi-chuen Administration	- Whether urging others to boycott the playing and singing of the national anthem at a public event and whether joining the boycott would amount to insulting the national anthem under the Bill	
012705 - 013013	Chairman Mr SHIU Ka-chun Administration	- Handling of student's insulting behaviour against the national anthem at school	

Time Marker	Speaker(s)	Subject(s)/Discussion	Action required
		<ul style="list-style-type: none"> <li>- Whether a person would commit an offence under the Bill if he/she sang the national anthem in Cantonese in a serious manner</li> </ul>	
013014 - 013526	Chairman Mr LEUNG Yiu-chung Administration	<ul style="list-style-type: none"> <li>- Consultation on the guidelines to be issued by the Education Bureau regarding the inclusion of the national anthem in primary and secondary education</li> </ul>	
013527 - 013825	Chairman Mr MA Fung-kwok Administration	<ul style="list-style-type: none"> <li>- Criteria for determining whether a creative work, which was satirical in content and involved the playing and singing of the national anthem, constituted an insult to the national anthem</li> <li>- Liability of the parties involved in creative work in breach of the relevant provision(s) of the Bill</li> </ul>	
013826 - 014145	Chairman Mr SHIU Ka-chun Administration	<ul style="list-style-type: none"> <li>- Teaching of the national anthem and patriotism at school</li> </ul>	
014146 - 014446	Chairman Mr AU Nok-hin Administration	<ul style="list-style-type: none"> <li>- Criteria for selecting the occasions to be included in Schedule 3 to the Bill</li> </ul>	
014447 - 014720	Chairman Mr Alvin YEUNG Administration	<ul style="list-style-type: none"> <li>- Training for teachers in how to teach the national anthem</li> </ul>	
014721 - 015046	Chairman Mr LAM Cheuk-ting Administration	<ul style="list-style-type: none"> <li>- Standard for playing and singing the national anthem</li> </ul>	
015047 - 015412	Chairman Mr IP Kin-yuen Administration	<ul style="list-style-type: none"> <li>- Circumstances under which an act at school would be considered as being carried out publicly and subject to clause 7 of the Bill</li> </ul>	
015413 - 015632	Chairman Mr Andrew WAN Administration	<ul style="list-style-type: none"> <li>- Teaching of the national anthem at school</li> </ul>	
015633 - 020007	Chairman Dr Junius HO	<p>Dr Junius HO's remarks that the provisions of the Bill were simple and straightforward, and that the worries expressed by some members on the Bill were unwarranted.</p>	
020008 - 020314	Chairman Dr Helena WONG Administration	<ul style="list-style-type: none"> <li>- Details of the directions to be given by SED under clause 9 of the Bill</li> <li>- Applicability of the above directions to international schools and schools admitting non-Chinese speaking students</li> </ul>	
020315 - 020624	Chairman Mr WU Chi-wai Administration	<p>The Administration was requested to provide a written response on whether the directions to be given by SED in connection with clause 9 of the Bill might infringe the professional autonomy of schools and teachers.</p>	<p><b>Admin</b> (para. 18(a) of minutes)</p>

<b>Time Marker</b>	<b>Speaker(s)</b>	<b>Subject(s)/Discussion</b>	<b>Action required</b>
020625 - 021006	Chairman Mr LAM Cheuk-ting Administration	- Response to Dr Junius HO's earlier remarks  - Whether a person would commit an offence under the Bill if he/she could not perform or sing the national anthem well	
021007 - 021312	Chairman Dr KWOK Ka-ki Administration	- Consequence of non-compliance with SED's directions under clause 9 of the Bill	
021313 - 021714	Chairman Dr Fernando CHEUNG Mr SHIU Ka-chun Administration	- Teaching of the national anthem at school	
021715 - 021853	Chairman Ms Tanya CHAN Administration	- Impact of the Bill on the exercise of the right to freedom of expression	
021854 - 021921	Chairman	Closing remarks	

Council Business Division 2  
Legislative Council Secretariat  
9 September 2019