

立法會
Legislative Council

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LC Paper No. CB(2)75/19-20
(These minutes have been seen
by the Administration)

Bills Committee on National Anthem Bill

Minutes of the eighth meeting
held on Monday, 15 April 2019, from 5:00 pm to 7:00 pm
in Conference Room 1 of the Legislative Council Complex

Members present : 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 Mrs Regina IP LAU Suk-ye, GBS, JP
Hon Paul TSE Wai-chun, JP
Hon Claudia MO
Hon Michael TIEN Puk-sun, BBS, JP
Hon Steven HO Chun-yin, BBS
Hon WU Chi-wai, MH
Hon YIU Si-wing, BBS
Hon MA Fung-kwok, SBS, JP
Hon Charles Peter MOK, JP
Hon CHAN Chi-chuen
Hon CHAN Han-pan, BBS, JP
Hon LEUNG Che-cheung, SBS, MH, JP
Hon Kenneth LEUNG
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
Hon Jimmy NG Wing-ka, JP
Dr Hon Junius HO Kwan-yiu, JP
Hon HO Kai-ming
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 HUI Chi-fung
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 Martin LIAO Cheung-kong, SBS, JP (Chairman)
Hon James TO Kun-sun
Hon Frankie YICK Chi-ming, SBS, JP
Hon Dennis KWOK Wing-hang
Hon LAM Cheuk-ting
Hon Tanya CHAN

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

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

I. Meeting with the Administration

[File Ref.: CMAB E4/1/1, LC Paper Nos. CB(2)1216/18-19(01), CB(3)307/18-19, CB(2)903/18-19(01), CB(2)811/18-19(01) and CB(2)893/18-19(02)]

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

2. The Bills Committee completed discussion of clause 3 and commenced discussion of clause 4 of the Bill at this meeting.

(The Deputy Chairman presided over the meeting in the absence of the Chairman.)

Action

(At 6:26 pm, Dr KWOK Ka-ki drew to the Deputy Chairman's attention that a quorum was not present. The Deputy Chairman ordered the ringing of the quorum bell to summon members to the meeting. The meeting resumed at 6:31 pm when a quorum was present.)

(At 6:57 pm, Mr CHAN Chi-chuen drew to the Deputy Chairman's attention that a quorum was not present. The Deputy Chairman ordered the ringing of the quorum bell to summon members to the meeting.)

3. At 7:00 pm, the Deputy Chairman declared the meeting closed.

Council Business Division 2
Legislative Council Secretariat
28 October 2019

**Proceedings of the eighth meeting of the
Bills Committee on National Anthem Bill
on Monday, 15 April 2019, from 5:00 pm to 7:00 pm
in Conference Room 1 of the Legislative Council Complex**

Time Marker	Speaker(s)	Subject(s)/Discussion	Action required
000743 - 000959	Deputy Chairman Mr Jeremy TAM Mr SHIU Ka-chun	<p>Opening remarks</p> <p>Continuation of clause-by-clause examination of the National Anthem Bill ("the Bill")</p> <p>Part 2 – Playing and Singing of National Anthem</p> <p><u>Examination of clause 3</u></p>	
001000 - 001543	Deputy Chairman Administration Dr Fernando CHEUNG	<p><u>Examination of clause 4</u></p> <p>Expression of concern that the requirement to "stand solemnly" in clause 4(2)(a) was discriminatory against persons who were physically unable to stand up, and a suggestion of deleting the words "stand solemnly" or adding the words "where practicable" after "stand solemnly" in clause 4(2)(a).</p> <p>The Administration's response that clause 4(2)(a), which reflected Article 7 of the Law of the People's Republic of China on National Anthem ("National Anthem Law"), was a directional provision which did not provide for penalties. A person with no intent to insult the national anthem would not commit an offence if he/she was unable to stand up during the playing and singing of the national anthem due to his/her physical condition.</p>	
001544 - 001818	Deputy Chairman Mr Christopher CHEUNG Administration	<p>Enquiries about (a) whether merely standing up without singing the national anthem during a performance of the national anthem would be regarded as behaving in a way disrespectful to the national anthem in breach of clause 4(2)(b); and (b) whether persons who were carrying out their own job duties (e.g. waitstaff) on an occasion where the national anthem was played and sung would also have to stand solemnly and deport themselves with dignity as required by clause 4(2)(a) when the national anthem was being played and sung.</p> <p>The Administration's explanation that clause 4(2) did not specify that the persons who took part in or attended an occasion on which the national anthem was played and sung must sing the national anthem having regard to the fact that some people might be unable to do so for various reasons. There would be no problem if a person present on the occasion was unable to stand up during the playing and singing of the national anthem due to engagement in other duties, so long as he/she did not behave in a way disrespectful to the national anthem.</p>	

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001819 - 002248	Deputy Chairman Ms Claudia MO Administration	<p>Enquiry about whether clause 4 would apply to occasions on which the national anthem was played on musical instruments only but not sung, and query about the appropriateness of using the word "etiquette" in the heading of clause 4.</p> <p>The Administration's advice that clause 4 applied to both the occasions set out in Schedule 3 to the Bill and those on which the national anthem was played and sung. As defined in clause 2(3), a reference to playing and singing the national anthem included, among others, playing the national anthem on musical instruments only.</p>	
002249 - 003130	Deputy Chairman Mr Jeremy TAM Mr Andrew WAN Administration	<p>Discussion on whether persons who provided services on an occasion where the national anthem was played and sung (e.g. waitstaff) would also be regarded as persons who "take part in or attend" the occasion and therefore, subject to clause 4(2).</p> <p>Expression of concern that the meaning of the expression "deport themselves with dignity" in clause 4(2)(a) was unclear and the judgment of whether one was behaving "in a way disrespectful to the national anthem" in breach of clause 4(2)(b) was very subjective and abstract; and query about whether clause 4 was redundant, given that no similar provision was provided in the National Flag and National Emblem Ordinance ("NFNEO"), which implemented the Law of the People's Republic of China on National Flag.</p> <p>The Administration's explanation that:</p> <p>(a) clause 4(2) reflected Article 7 of the National Anthem Law and provided guidance for members of the public by describing the etiquette to be followed when taking part in or attending an occasion on which the national anthem was played and sung. It was a directional provision which did not provide for penalties. For the offence of insulting the national anthem, the law enforcement agencies would only enforce the law in accordance with clause 7;</p> <p>(b) there was no legal definition for the expression "deport themselves with dignity" and it should be understood in accordance with its ordinary meaning; and</p> <p>(c) the Administration did not have records showing the consideration behind the adoption or otherwise of specific provisions of the national laws by the Government in 1997 during the drafting of the National Flag and National Emblem Bill.</p>	
003131 - 003636	Deputy Chairman Mr CHAN Chi-chuen Administration	Discussion on the scope of applicability of clause 4.	
003637 - 004046	Deputy Chairman Dr Priscilla LEUNG Administration	Expression of support for including clause 4 in the Bill as it could serve an educational purpose of guiding members of the public on how to behave when taking part in or attending an occasion on which the national anthem was played and sung;	

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		and a suggestion that the Administration should seek to dispel misconceptions about clause 4 by stating clearly that a person who was physically unable to stand up during the playing and singing of the national anthem would not contravene the law.	
004047 - 004508	Deputy Chairman Mr Alvin YEUNG Administration	<p>Expression of concern that the expression "behave in a way disrespectful to the national anthem" in clause 4(2)(b) was very broad in scope, which might cover the insulting behaviour referred to in clause 7; and queries about how the line between insulting behaviour and behaviour which was disrespectful but not insulting could be drawn, and the standard to be applied by the Police in determining whether enforcement action should be taken.</p> <p>The Administration's reiteration of its earlier explanation that for the offence of insulting the national anthem, the law enforcement agencies would only enforce the law in accordance with clause 7.</p>	
004509 - 004948	Deputy Chairman Dr Cheng Chung-tai Administration	<p>Queries about what the expression "take part in or attend" in clause 4(2) meant and whether bystanders in certain situations would be deemed as persons who "take part in or attend the occasion", given that the boundary of certain occasions (e.g. a firework display) was hard to define.</p> <p>The Administration's advice that according to clause 4, the etiquette to be followed regarding the playing and singing of the national anthem only applied to persons who "take part in or attend" an occasion on which the national anthem was played and sung. In the Administration's view, this should be able to dispel public concerns about "whether one should stand solemnly when the national anthem was broadcast on television in a restaurant" and other similar scenarios.</p>	
004949 - 005410	Deputy Chairman Mr KWONG Chun-yu Administration	Discussion on whether there would be any legal consequence if the audience of a horse race failed to stand solemnly when the national anthem was being played and sung at the racecourse.	
005411 - 005832	Deputy Chairman Dr KWOK Ka-ki Administration	Discussion on whether a person would contravene the law if he/she sang the national anthem in a private event in a way which might be considered as disrespectful to the national anthem and the act was video-taped and published on the social media or reported to the Police.	
005833 - 010245	Deputy Chairman Mr WU Chi-wai Administration	Discussion on the meaning of "occasion" and the scope of applicability of clause 4.	
010246 - 010704	Deputy Chairman Hon CHU Hoi-dick Administration	Discussion on why NFNEO did not contain provisions similar to Part 2 of the Bill and the implications of deleting clauses 3 and 4 from the Bill.	
010705- 011130	Deputy Chairman Mr AU Nok-hin Administration	Query about why clause 3 was framed in a positive manner (i.e. "must be"), whereas clause 4(2)(b) was framed in a double negative manner (i.e. "to not behave").	

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		<p>The Administration's response that clause 3 served to provide guidance for the public by describing the standard relating to the playing and singing of the national anthem in a positive manner. Clause 4(2) reflected Article 7 of the National Anthem Law, which contained phrases framed both in a positive and double negative manner (i.e. "shall stand and deport themselves with dignity" and "must not carry out actions disrespectful to the national anthem").</p>	
011131 - 011538	Deputy Chairman Mr HUI Chi-fung Administration	<p>Enquiry about whether clause 4 imposed any civil obligation on any person or entity and whether the courts would take clause 4 into consideration in determining whether clause 7 had been breached.</p> <p>The Administration's advice that clause 4 itself did not impose any civil obligation or give rise to any civil liability. Any alleged offence of insulting the national anthem was to be dealt with in accordance with clause 7 only.</p>	
011539 - 011906	Deputy Chairman Mr CHAN Chi-chuen Administration	<p>Discussion on the difference in meaning between the term "present" in Article 7 of the National Anthem Law and the expression "take part in or attend" in clause 4(2) of the Bill.</p>	
011907 - 012314	Deputy Chairman Ms Claudia MO Administration	<p>Discussion on Ms Claudia MO's suggestion that the word "參加", instead of "出席", should be used as the Chinese equivalent of "attend" in clause 4(2).</p>	
012315 - 013020	Deputy Chairman Hon CHU Hoi-dick Dr Cheng Chung-tai Administration	<p>Discussion on whether it was necessary to provide for a definition of the term "occasion" under clause 4.</p>	
013021- 013816	Deputy Chairman Dr KWOK Ka-ki Administration	<p>Expression of the view that the scope of applicability of clause 4 was large and might amount to "white terror" as it would render everyone who played and sang the national anthem in almost all situations subject to clause 4.</p> <p>The Administration's reiteration of its earlier explanation that clause 4 was a directional provision which did not provide for penalties.</p>	
013817 - 014220	Deputy Chairman Mr Gary FAN Administration	<p>Queries about why it was necessary to include in the Bill directional provisions, which were extremely rare and unusual at common law and in the legislation of Hong Kong as pointed out by the Hong Kong Bar Association in its submission [CB(2)1158/18-19(01)]; and the implications of deleting clause 4(2)(a) from the Bill.</p> <p>The Administration's response that clause 4 was in line with the legislative principle of the Bill, which was to fully reflect the purpose and intent of the National Anthem Law, and at the same time to give due regard to the common law system and the actual circumstances in Hong Kong.</p>	
014221 - 014556	Deputy Chairman Mr Andrew WAN Administration	<p>Query about whether the directional provisions contained in Part 2 of the Bill were redundant; and enquiry about whether a group of tourists who passed by a flag-raising ceremony held</p>	

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		<p>at Golden Bauhinia Square would be regarded as persons who "take part in or attend the occasion" and thus subject to clause 4.</p> <p>The Administration's advice that a person who merely passed by a place at which the national anthem was played and sung was not taking part in the event concerned and thus not covered by clause 4.</p>	
014557 - 014806	Deputy Chairman Mr Holden CHOW Administration	Expression of the views that (a) as clause 4 was only a directional provision which did not provide for penalties, the claim that it would give rise to "white terror" was groundless; and (b) clause 4 should be retained not only to reflect the relevant provision of the National Anthem Law, but also to serve an educational purpose of guiding members of the public on how to behave when taking part in or attending an occasion on which the national anthem was played and sung.	
014807 - 015120	Deputy Chairman Dr Fernando CHEUNG Administration	Discussion on Dr Fernando CHEUNG's suggestion of deleting the words "stand solemnly" in clause 4(2)(a).	
015121 - 015433	Deputy Chairman Mr HUI Chi-fung Senior Assistant Legal Adviser Administration	<p>Query about whether clause 4 would give rise to any civil liability and a suggestion of adding a sub-clause to provide that failure to observe the etiquette for playing and singing the national anthem under clause 4 would not incur any civil liability.</p> <p>Senior Assistant Legal Adviser's advice that clause 4 per se did not provide for any civil liability in the situation mentioned by Mr HUI, which did not appear to attract other civil liability under the usual causes of action.</p> <p>The Administration's explanation that if the suggested provision was added, other clauses of the Bill that did not have such a sub-clause might be interpreted as providing for civil liabilities according to the interpretation principles under the common law.</p>	
015434 - 015747	Deputy Chairman Mr Jeremy TAM Administration	Further discussion on Dr Fernando CHEUNG's suggestion of deleting the words "stand solemnly" in clause 4(2)(a).	
015748 - 020030	Deputy Chairman Ms Claudia MO Administration	Expression of the view that the word "conduct", instead of "deport", should be used as the English equivalent of "舉止" in clause 4(2)(a).	
020241 - 020411	Deputy Chairman Mr CHU Hoi-dick Mr CHAN Chi-chuen	Quorum call	