

LegCo Panel on Constitutional Affairs

Negative Procedure for Vetting of Subsidiary Legislation

Purpose

This paper seeks Members' views on some options for extending, where necessary, the provision under section 34(4) of the Interpretation and General Clauses Ordinance (Cap. 1), to enable Members to have more time to scrutinise complicated and lengthy subsidiary legislation tabled in LegCo pursuant to Cap. 1 section 34.

Background

2. In considering the Securities (Margin Financing) (Amendment) Bill 1999, Members of the relevant Bills Committee expressed concern about the time available for scrutiny of subsidiary legislation tabled pursuant Cap. 1 section 34 (commonly referred to as the "negative vetting procedure"). The matter was then referred to the Panel on Constitutional Affairs for follow-up action. In the paper we submitted to the Panel on 20 November 2000, we undertook to explore whether and how the existing "extended by one-LegCo sitting" provision under Cap. 1 section 34(4) might be modified so that LegCo Members may, as necessary, have more time to examine the relevant subsidiary legislation.

"Negative Vetting" of Subsidiary Legislation

3. Under section 34 of Cap. 1, vide Attachment I, subsidiary legislation which does not require the positive approval of the LegCo must be laid on the table of the LegCo at the next sitting after it is gazetted. Any

Member who finds such subsidiary legislation unsatisfactory may move a motion to amend or repeal it. A motion for amendment or repeal has to be moved and carried at a sitting of the LegCo held not later than 28 days after the sitting at which the subsidiary legislation is laid. However, Members may, by resolution, extend the expiry period to the next LegCo sitting.

4. If the motion to amend or repeal is carried, the relevant subsidiary legislation is deemed to be amended or repealed as from the date of publication of the resolution in the Gazette.

Experience in the First SAR LegCo

5. According to the statistics kept by the LegCo Secretariat, 322 and 302 pieces of subsidiary legislation were tabled at the LegCo for negative vetting in 1998/99 and 1999/2000 legislative sessions respectively. Of them, 11 and 6 motions (covering 26 and 12 pieces of subsidiary legislation respectively) were moved to extend the scrutiny period. Of the 38 pieces of subsidiary legislation involved, 31 were passed without amendments and 4 were passed with amendments during the extended vetting period, while 3 were repealed.

6. An analysis of the 3 pieces of subsidiary legislation repealed by the LegCo revealed that –

- (a) two regulations were repealed because the LegCo did not have sufficient time for scrutiny, even after the scrutiny period had been extended by one sitting pursuant to Section 34(4) : the Chinese Medicine (Fees) Regulation was re-gazetted with amendments in about two weeks after it was repealed and was then passed; and the Road Traffic (Traffic Control) (Amendment) Regulation 2000 was re-gazetted about two months later and was also passed subsequently with amendments; and

- (b) The third piece of subsidiary legislation (the Electoral Affairs Commission (Printing of Name of Organization and Emblem on Ballot Paper (Legislative Council) Regulation) was repealed because LegCo Members did not agree to the implementation details proposed in the Regulation. The Regulation was not tabled again. It was the subject matter rather than the need for more time for consideration that was at issue.

7. Thus experience in the first term of the SAR LegCo, and indeed in the pre-1997 LegCo, has indicated that the existing “negative vetting” mechanism has worked reasonably well. The 28-day vetting period can be seen to be operating effectively as the ‘norm’ and the ‘extended by one-sitting’ provision also seems to be able to cater for ad hoc needs in most circumstances.

Possible Way Forward

8. Nevertheless, in view of Members’ latest concern (paragraph 2 above), we agree that consideration should be given to enable Members to have more time, where necessary, for the scrutiny of subsidiary legislation which is complicated and/or lengthy or has significant impact on the parties concerned, **without** compromising the objective of having this ‘negative vetting’ mechanism. That is, to ensure that the scrutiny of simple and straightforward subsidiary legislation could be completed in an expeditious manner, and that unnecessary workload will not be generated for the Council so that Members will not be distracted from other more important legislative functions.

9. In this connection, Members may wish to consider the following options for extending the “existing extended vetting period” under section 34(4) –

Option (a) To extend the extension period from the existing “one LegCo sitting” to “one LegCo sitting or 21 days whichever is the later”.

Prior to 1993, LegCo might extend the 28-day expiry period by a further period not exceeding 21 days.

This option is an improvement over both the existing arrangement and the pre-1993 arrangement in that, under normal circumstances, the scrutiny period is longer than that under the existing arrangement (since LegCo meets every Wednesday) and in the case of two LegCo meetings being ‘intervened’ by holidays such as the Christmas break, the extension period will be at least 21 days (the exact length would depend on the length of LegCo’s recess). If this option were adopted, there would not have been any need to repeal the Chinese Medicine (Fees) Regulation in the first term (paragraph 6(a) above); and

Option (b) To extend the extension period from the existing “one LegCo sitting” to “two LegCo sittings”.

This is a variation of option (a). Under normal circumstances (i.e. with no holidays in between two LegCo meetings), the extension period under this option (i.e. 14 days) will be shorter than that under option (a) (i.e. at least 21 days). With intervening holidays such as the Christmas break, the extension period under this option (i.e. 28 days) would be slightly longer than that under option (a).

10. The proposed options will not be able to cater for the time required for vetting subsidiary legislation, such as the Road Traffic (Traffic Control) (Amendment) Regulation 2000, which is very technical and/or controversial or have significant impact on the parties affected. Nevertheless, a mechanism is already in place whereby Members may repeal the subsidiary legislation pro temp and the Administration will table it again after Members have thoroughly examined its provisions.

Advice sought

11. Members' are invited to comment on the options at paragraph 9 above.

Administration Wing
Chief Secretary for Administration's Office
December 2000

34. 向立法會提交附屬法例

(1) 所有附屬法例在憲報刊登後均須於隨後的一次立法會會議席上提交該會省覽。

(2) 凡附屬法例已根據第(1)款提交立法會會議席上省覽，在該次省覽的會議之後 28 天內舉行的會議上，立法會可藉通過決議，訂定將該附屬法例修訂，修訂方式不限，但須符合訂立該附屬法例的權力；此等決議一經通過，該附屬法例須當作由憲報刊登該決議之日起修訂，但已根據該附屬法例而作出的任何事情，其法律效力不受影響。

(3) 若第(2)款所指期限的屆滿日期(如非因本款規定)原應是——

(a) 在立法會會期結束前或在立法會解散前的最後一次會議後；但(由 1993 年第 89 號第 17 條代替)

(b) 在立法會下一會期的第二次會議日或該日之前，(由 1993 年第 89 號第 17 條代替)

則該期限須視為延展至該第二次會議的翌日，並在該日屆滿。

(4) 第(2)款所指期限屆滿之前，或憑藉第(3)款而延展的期限屆滿之前，立法會可藉決議就其中指定的附屬法例，將該期限或再將該經延展的期限延展至下一次會議。(由 1993 年第 89 號第 17 條修訂)

(5) 立法會按照本條通過的決議，須於通過後 14 日內在憲報刊登，或在特別情況下行政長官准許延展的期限內刊登。

(6) 在本條內——

“附屬法例”(subsidiary legislation)不包括立法會的決議；

“會議”(sitting)，用於計算時間時，只包括其議事程序表上載有附屬法例的會議，並指該會議開始當日。(由 1993 年第 89 號第 17 條代替)

(由 1986 年第 39 號第 2 條代替。由 1998 年第 26 號第 37 條修訂)

34. Placing of subsidiary legislation
before Legislative Council

(1) All subsidiary legislation shall be laid on the table of the Legislative Council at the next sitting thereof after the publication in the Gazette of that subsidiary legislation.

(2) Where subsidiary legislation has been laid on the table of the Legislative Council under subsection (1), the Legislative Council may, by resolution passed at a sitting of the Legislative Council held not later than 28 days after the sitting at which it was so laid, provide that such subsidiary legislation shall be amended in any manner whatsoever consistent with the power to make such subsidiary legislation, and if any such resolution is so passed the subsidiary legislation shall, without prejudice to anything done thereunder, be deemed to be amended as from the date of publication in the Gazette of such resolution.

(3) If the period referred to in subsection (2) would but for this subsection expire—

(a) after the last sitting before the end of a session or dissolution of the Legislative Council; but (Replaced 89 of 1993 s. 17)

(b) on or before the day of the second sitting of the Legislative Council in the next session, (Replaced 89 of 1993 s. 17)

that period shall be deemed to extend to and expire on the day after that second sitting.

(4) Before the expiry of the period referred to in subsection (2) or that period as extended by virtue of subsection (3), the Legislative Council may by resolution in relation to any subsidiary legislation specified therein extend that period or that period as so extended to the next sitting. (Amended L.N. 336 of 1990; 89 of 1993 s. 17)

(5) Any resolution passed by the Legislative Council in accordance with this section shall be published in the Gazette not later than 14 days after the passing thereof or within such further period as the Chief Executive may allow in any particular case. (Amended 26 of 1998 s. 37)

(6) In this section—

“sitting”(會議)，when used to calculate time, means the day on which the sitting commences and only includes a sitting at which subsidiary legislation is included on the order paper;

“subsidiary legislation”(附屬法例) does not include a resolution of the Legislative Council. (Replaced 89 of 1993 s. 17)

(Replaced 39 of 1986 s. 2).