

**立法會**  
**Legislative Council**

LC Paper No. CB(2) 1558/00-01  
(These minutes have been seen by  
the Administration)

Ref : CB2/PL/SE/1

**LegCo Panel on Security**

**Minutes of special meeting  
held on Saturday, 16 December 2000 at 8:30 am  
in the Chamber of the Legislative Council Building**

**Members present** : Hon LAU Kong-wah (Chairman)  
Hon James TO Kun-sun (Deputy Chairman)  
Hon Margaret NG  
Hon Mrs Selina CHOW LIANG Shuk-ye, JP  
Hon CHEUNG Man-kwong  
Hon Howard YOUNG, JP  
Hon IP Kwok-him, JP

**Members attending** : Hon Martin LEE Chu-ming, SC, JP  
Hon Emily LAU Wai-hing, JP

**Members absent** : Hon Albert HO Chun-yan  
Dr Hon LUI Ming-wah, JP  
Hon Andrew WONG Wang-fat, JP  
Hon Ambrose LAU Hon-chuen, JP  
Hon WONG Sing-chi

**Public Officers attending** : Mrs Regina IP, JP  
Secretary for Security  
  
Mr Raymond WONG, JP  
Deputy Secretary for Security 1

Miss Pamela LAM  
Assistant Secretary for Security E

Mr LEE Ming-kwai  
Director of Operations  
Hong Kong Police Force

Mr Benedict LAI  
Deputy Law Officer (Civil Law)  
Department of Justice

Ms Roxana CHENG  
Senior Assistant Solicitor General  
Department of Justice

**Clerk in attendance** : Mrs Sharon TONG  
Chief Assistant Secretary (2)1

**Staff in attendance** : Miss Anita HO  
Assistant Legal Adviser 2

Mr Raymond LAM  
Senior Assistant Secretary (2)5

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**I. Discussion with the Administration on the enforcement and review of the Public Order Ordinance (POO)**  
(LC Paper Nos. CB(2) 303/00-01(01) and (02), CB(2) 402/00-01(01), CB(2) 520/00-01(01), CB(2) 524/00-01(01), CB(2) 525/00-01(01) and LS21/00-01)

Referring to paragraph 42 of the Administration's paper entitled "the Administration's response to submissions to LegCo on the Public Order Ordinance", Miss Emily LAU asked why the Administration considered it inappropriate to amend POO along the requirements in the Queensland Peaceful Assembly Act 1992.

2. Secretary for Security (S for S) responded that the system adopted in Queensland was more an exception rather than the rule. She said that it was required in Queensland that the notice of intention to hold a public assembly should be submitted to the police not less than five business days before the proposed assembly. The police would examine whether the proposed assembly would affect public order. In the event that the police objected to the proposed assembly, it would have to apply to the magistrates court for an order prohibiting the holding of the proposed assembly. The procedures involved were more complicated than those in Hong Kong and the

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whole process might take two to three weeks to complete. Thus, implementation of the Queensland system in Hong Kong would only result in more inconvenience for organizers of public assemblies. She added that while she did not have information on hand about the number of public processions in Queensland, she believed that Queensland had much fewer public processions in comparison with Hong Kong. Deputy Law Officer (Civil Law) (DLO(CL)) said that although prior notification was not compulsory in Queensland, a person who participated in a public assembly would not be exempted from civil or criminal liability if no notification was given. Thus, the effect was similar to that of a compulsory notification system.

3. Miss Emily LAU said that most organizations which had expressed views to the Panel accepted a notification system. However, the issues involving POO were the length of notice period required and whether the penalty for a person who did not comply with the notice requirement was too heavy. She pointed out that some organizations considered that failure to give notice should be decriminalized, especially given that there was already other legislation against misbehaviour in public meetings or public processions.

4. S for S responded that prosecution would not be instituted against a person merely because of his failure to comply with the notification requirement. Only persons who knowingly participated in an unauthorized assembly without lawful authority or reasonable excuse would be guilty of an offence under POO. She said that as the misconduct of a group of persons might develop into a riot, the potential harm to public safety was much greater than that caused by a single individual. The penalty for failure to give notice should be heavy enough to create a deterrent effect. The maximum penalty would only be applied in extreme cases. It was noted at a former Bills Committee meeting that a person convicted of stealing a piece of candy was liable under the Theft Ordinance (Cap. 210) to a maximum penalty of 10 years' imprisonment. She added that some students convicted of participation in an unauthorized public meeting in 1993 had only been sentenced to serving a Community Service Order.

5. Referring to paragraph 12 of the Administration's paper entitled "the Administration's response to submissions to LegCo on the Public Order Ordinance", Miss Emily LAU asked why it was inappropriate for the Hong Kong Bar Association (the Bar) to compare the penalties under section 17A with those under section 22 of POO. S for S explained that such a comparison was inappropriate, as section 17A of POO was related to the offence of a group of persons, whereas section 22 of POO was related to the offence of a single individual. It was thus more appropriate to compare the penalties under section 17A with those of section 19 of POO, which provided that a person who participated in a riot was punishable for a maximum of 10 years' imprisonment on conviction on indictment and a maximum of five years' imprisonment for summary conviction.

6. Miss Emily LAU considered it inappropriate to compare the penalties for failure to comply with the notification requirement with those for participation in a riot. She

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reiterated that the maximum sentence of five years' imprisonment for failure to comply with the notification requirement was too heavy.

7. S for S responded that the Administration's paper explained the historical background and the jurisprudence of provisions in POO. As stated at previous meetings of the Panel, the Administration was willing to listen to the views of different sectors of the community on POO, especially in respect of the penalty provisions. She added that the wording of the motion to be moved on 20 December 2000 was that "That this Council considers that the Public Order Ordinance's existing provisions relating to the regulation of public meetings and public processions reflect a proper balance between protecting the individual's right to freedom of expression and peaceful assembly, and the broader interests of the community at large, and that there is a need to preserve these provisions". It did not rule out the possibility of future amendments to POO.

8. Mr Martin LEE said that there had been much refinement in S for S's arguments about POO in comparison with the arguments given earlier. He considered that in examining whether a piece of legislation was in contravention of the Hong Kong Bill of Rights Ordinance (BORO) and the International Covenant on Civil and Political Rights (ICCPR), it was essential to examine whether the restrictions were proportionate and necessary in a democratic country. He pointed out that there was no religious conflict or racial discrimination in Hong Kong. Public meetings and public processions had been held peacefully in the past and after reunification. In view of these, he questioned why the notice period could not be reduced from seven days to five or six days and why the motion debate was still needed after much discussions had been held on POO.

9. S for S responded that all parties concerned had demonstrated improvement in the past few months. It could be noted that the atmosphere in the community was generally irrational in September and October 2000. The written submissions provided by students were limited to one or two pages and the proposed amendments to POO were subjective in those days. Both the Bar and Hong Kong Human Rights Monitor (HKHRM) had only issued position papers at that time. It was not until the holding of the special Panel meetings on POO that they drew up more concrete suggestions. It could be noted that after notice was given for the moving of a motion on POO at a LegCo meeting, more than 200 written submissions on POO were received and four special meetings of the Panel had been held within six weeks to receive the views of about 90 deputations or individuals. Mr James TO and Miss Margaret NG commented that the students could not be expected to draw up suggestions as concrete as those proposed by the Bar or HKHRM.

10. S for S said that in studying the practices in other countries, the notice requirements, restrictions in respect of place and time, sanctions for failure to follow the law and the appeal mechanism should be examined in conjunction with each other. Although the required notice period was shorter in some countries, there might be restrictions on the time and place of public assembly. For example, demonstration outside the parliament building in London was prohibited. Legislative amendments

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had been introduced in Taiwan to prohibit demonstrations outside the president's building. Some cities in Europe also restricted public processions in the city centre to a maximum of three hours. She added that the restrictions in POO were proportionate, as they had been drawn up having regard to the particular circumstances of Hong Kong. For example, restrictions had not been imposed in respect of the time and place of public meetings or public processions in view of the fact that Hong Kong was a densely populated place.

11. Director of Operations (Dir of Ops) said that although the notices for a number of sizeable public processions held in June 1989 were given less than seven days, the community generally had a consistent view on a particular issue at that time. While most notices of intention to hold public processions could be processed by the Police within seven days, there were some processions where a notice period of seven days was just enough for coordination by the Police. Thus, the seven days' notice requirement was a reasonable one. It could be noted that the Hong Kong Alliance in Support of Patriotic Democratic Movements of China had always given early notice in respect of its assemblies in memory of the June-Fourth Incident because much time was needed for the coordination work for such public processions involving a large number of participants. He informed Members that the Police had not objected to the holding of a public procession merely for failure of organizers to comply with the notification requirements in the past three years.

12. Mr Martin LEE asked whether different notification requirements would be laid down for different numbers of participants in a public procession. He considered that as the Panel on Security had already held a number of meetings to discuss POO, discussions could be continued by the Panel. The motion on POO to be moved at the LegCo meeting on 20 December 2000 seemed no longer needed.

13. S for S said that the motion debate would reveal the views of LegCo Members and their constituencies. It had broadened discussions on POO and attracted the silent majority, such as the middle class, the business sector and housewives, to express views on the subject.

14. As regards the suggestion of having different notification requirements for different numbers of participants in a public procession, S for S said that such a system was difficult to implement and was thus not adopted in other countries. It should be noted that the number of participants was not the only consideration in the assessment of a public procession. Other factors such as the time, place and subject of a public procession would also be taken into consideration. The number of participants above which notification had to be given had been determined having regard to the practical manpower deployment aspects of the Police. She pointed out that prior to the enactment of the Public Order (Amendment) Bill 1994 (the 1995 Amendments), organizers of a public procession consisting of more than 20 persons were required to apply to the Commissioner of Police (CP) for a licence. This was replaced in the 1995 Amendments by a notification system, where organizers of a public procession consisting of more than 30 persons were required to give a written notice to CP seven days before the commencement of the procession. Thus, there had already been a

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relaxation in the requirements. Dir of Ops added that the spirit of a seven days' notice was to provide sufficient time for the Police to work out necessary arrangements with organizers of public processions.

15. Mr CHEUNG Man-kwong said that the Police was empowered under POO to impose conditions on a public procession on the grounds of public safety, public order, national security and the protection of the rights and freedoms of others. According to his more than 20 years' experience in organizing public processions, there were many public processions where a notice period of two to three days was already sufficient for the Police to make the necessary arrangements. He considered that -

- (a) the exemption provisions in POO should be expanded to cover public processions where the number of participants was 100 persons or less and the procession was held on certain routes and places where processions were usually held, such as the procession route from Chater Garden to the Government Secretariat;
- (b) exemption from the seven days' notice requirement should be allowed under POO; and
- (c) the maximum penalty of five years' imprisonment for failure to comply with the notice requirement should be reduced.

16. S for S reiterated that a person would not be prosecuted merely because of failure to comply with the notification requirement. Only persons who knowingly participated in an unauthorized assembly without lawful authority or reasonable excuse would be guilty of an offence under POO. She stressed that the notice of no objection system was not a licencing system. The Police's power to object to the holding of a public meeting or public procession was not absolute. If an applicant was dissatisfied with the decision of the Police, he could lodge an appeal with the appeal board. An applicant dissatisfied with the decision of the appeal board could apply for a judicial review. If CP did not issue a notice of no objection or a notice of objection as soon as was reasonably practicable and within a specified time limit before the commencement of the event, he was taken to have issued a notice of no objection and the procession could proceed.

17. Dir of Ops said that although seven days might appear to organizers to be an ample time, it should be noted that the Police usually needed to make arrangements for a number of public processions at the same time. He added that the public procession of 100 persons with no prior notice would affect public order to some extent. Prior notification was even more necessary for public procession on popular routes and places, as a lack of necessary arrangements might result in clashes between different groups of demonstrators.

18. Mr CHEUNG Man-kwong said that when more than one group of people held public processions or public assembly at the same place and at the same time, the different groups would automatically adjust themselves. He considered that the

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channel of judicial review was a safeguard in the judicial system of Hong Kong and therefore should not be described as a safeguard in POO. As the appeal board as proposed in the 1995 Amendments was to give fair and just decisions as to the conditions imposed by the Police, it should not be a restriction to the power of the Police. S for S reiterated that the Police's power was not absolute, as its decision could be overturned by the appeal board.

19. Dir of Ops said that Mr CHEUNG Man-kwong was a responsible organizer of public processions. However, there were many organizers who were irresponsible. There were also cases where some demonstrators were attacked in public processions. Without the notice requirement, arrangements could not be made by the Police to ensure that processions were held in a peaceful manner.

20. Mr James TO said that the issue originated from disputes arising from the Administration's improper arrest and prosecution of students involved in the "June 26 incident". The holding of special meetings by the Panel to receive public views was decided only after the debate of the motion was deferred from 22 November to 20 December 2000. It could be noted from some of the submissions, such as those received by electronic mail, that the Administration had urged many organizations to express views to the Panel. Quoting a newspaper article, which was tabled at the meeting, of a Mr P Y LO who was a Council member of the Bar, he asked whether the passage of the motion by LegCo would increase the Administration's chance of success in court cases related to POO. He also asked whether the Administration had any intention to strengthen its enforcement of POO after the motion was passed.

*(Post-meeting note : The newspaper cutting tabled at the meeting was circulated to members vide LC Paper No. CB(2) 532/00-01(01) on 18 December 2000.)*

21. S for S responded that the Administration had not urged any association to express views to the Panel. It had only suggested associations or individuals who expressed views to the Administration to also express their views to the Panel. It was up to these associations and individuals to decide whether to express their views to the Panel.

22. S for S stated that all prosecutions were instituted in accordance with established procedures and consistent with the requirements under the common law. D of J was always consulted before prosecutions were instituted. She stressed that everyone was equal under the law and there was no question of selective enforcement of the law against students. Increasing the Administration's chance of success in court cases related to POO was not the purpose of moving the motion. The motion only sought to gauge the views of LegCo Members and the people or sectors they represented. DLO(CL) said that the judicial system in Hong Kong was fair and independent. No one could influence the decision of the courts. He added that the Administration had no intention to influence the court through the moving of a motion in LegCo. Whether prosecution would be instituted in a case depended on the facts of the case and the provisions in the law.

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23. S for S disagreed with the view that the Administration had handled the "June 26 incident" improperly. She said that many people, such as the grassroots, the middle class and the commercial sector had urged the Administration to take legal actions against the students and stressed that everyone should be treated equally.

24. S for S also stressed that the criteria adopted in the enforcement of POO would remain unchanged regardless of whether the motion was passed by LegCo. Whether prosecution would be instituted would depend on -

- (a) whether the public meeting or public procession was held peacefully, such as whether there were clashes between different groups of people; and
- (b) the demonstrators' response towards the warnings given by law enforcement officers.

25. Miss Margaret NG stressed that before notice was given by the Administration for moving a motion on POO at the LegCo meeting on 22 November 2000, the Panel had already scheduled the discussion of issues related to POO at the meeting on 7 December 2000 and planned to receive public views on the subject matter. The moving of a motion was to settle disputes over issues related to POO. She said that acts of civil disobedience was highly respected in history in many places. It was especially justified when there was no channel for expression of views in a rational manner. As the Administration repeatedly stated in October 2000 that POO would not be amended and that it intended to prosecute the students, the situation at that time did not permit expression of views in a rational manner and acts of civil disobedience of students at that time were understandable. She considered that the Panel could reduce tension in the community through the provision of more room for discussion of POO. With more room for the expression of views, acts of civil disobedience would be less likely.

26. Miss Margaret NG said that according to her experience in holding public processions, there was very little time for organizers of processions to lodge an appeal against conditions imposed by the Police, especially the time left for notifying participants and printing leaflets. She considered that a review of POO should be conducted. A piece of civilized legislation would facilitate mutual trust between organizers and the Police, which would facilitate public processions to be held peacefully. A review of POO would facilitate it to become civilized and reduce tension in the community. She further said that proper balance was achieved in the relevant legislation in other places. Failure to comply with the notification requirement would usually result in a fine or amount to a civil offence. As POO was first enacted in the colonial times, it was originally drafted in such a manner to restrict public assembly. With the coming into force of the Basic Law (BL) after reunification, there was a need to examine whether the restrictions in POO were necessary in a democratic society.

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27. Miss Margaret NG was of the view that regardless of the result of the motion debate, continued discussion on POO could not be prevented. While she was not opposed in principle to the notification requirement, she would oppose it if the consequence for failure to comply with the requirement was so serious. She added that human rights should not merely be decided by the majority views in the society.

28. S for S said that the Administration had not stated that the purpose of moving the motion was to settle disputes over issues related to POO. The motion did not rule out the possibility of further discussion or future amendment of POO. The Administration welcomed public views on POO. However, the amendment of legislation was a serious matter that required full justification. Up to that moment, the shortening of the notice period or other amendment of POO was still not justified. She shared the view that human rights should not merely be decided by the majority views in the society. She stressed that the Administration could not implement any piece of legislation that was in contravention of BORO or BL. (*S for S left at this point.*)

29. Miss Emily LAU sought the Administration's response on the following issues -

- (a) her amendment to the motion proposing LRC to review POO, which was one of the solutions providing a channel for discussions to continue in an orderly manner;
- (b) the suggestion of some organizations that organizers of public processions should only be required to notify the Police of the holding of a public procession. If the Police wished to object to the holding of the procession, it should make its suggestion and justify it to the appeal board; and
- (c) the suggestion that the specified time limit within which the Police had to issue a notice of no objection should be amended to more than 48 hours before the commencement of the procession so that there would be more time for organizers to make necessary arrangements and launch publicity for the procession.

30. Mr CHEUNG Man-kwong said that the 1995 Amendments were based on the principle that the final decision in respect of restrictions on the right to public meeting and public procession should not rest with the Police. Although the Public Order (Amendment) Bill 1997 (the 1997 Amendments) did not introduce substantial changes to the amendments made in 1995, it introduced a notice of no objection system, which was regarded as a restoration of draconian laws because it restored the legislation to the situation before 1995 when the Police's power was allowed to override human rights.

31. Deputy Secretary for Security 1 (DS for S1) responded that before the 1997 Amendments came into force, organizers had to wait until the specified time limit to see whether a notice of prohibition was issued by the Police before proceeding with preparation for the public procession. With the introduction of a notice of no

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objection in the 1997 Amendments, the Police was required to issue a notice of no objection as soon as was reasonably practicable within a specified time limit. With this arrangement, organizers could proceed with preparation of the public procession once a notice of no objection was received. Thus, the 1997 Amendments did not deprive a person of his rights.

32. Miss Emily LAU reiterated that there would be very little time left for organizers of public processions to launch publicity and notify participants if the deadline for the Police to issue a notice of no objection was only 48 hours before the commencement of the procession. DS for S1 said that it would be inappropriate for an organizer to inform participants of the event before he knew whether the Police objected to the holding of the procession. He considered that the specified time limit was appropriate. The Chairman said that the specified time limit might be inconvenient to organizers of public processions. He asked whether the Administration would consider revising it. DS for S1 responded that the Administration would provide a response on the issue at the motion debate on POO on 20 December 2000.

33. DS for S1 said that as it was the Police which objected to the holding of a public procession, the burden of proving that a public procession should be prohibited was always on the Police. Under POO, the Police was required to provide its reasons for its objection to the holding of a public procession. If the organizer objected to the decision of the Police, it could lodge an appeal to the appeal board, to which the Police had to provide the reasons of objection. If the organizer accepted the reasons given by the Police, there might not be a need to refer the case to the appeal board. Dir of Ops added that requiring the Police to provide its justifications of objection to the appeal board would be equivalent to changing the mechanism to one in which objections to the holding of a public meeting or public procession were made by the appeal board.

34. As regards the suggestion of referring the issue to LRC, DS for S1 said that the Administration would spell out its position at the motion debate on 20 December 2000.

35. Mr Martin LEE requested the Administration to undertake that it would not, after the motion was passed, use the passage of the motion to answer the public's criticism of the Administration or prevent further discussion of POO. DS for S1 responded that the Administration had always allowed the public to criticize its policy. He said that the motion debate sought to identify the community's views on POO and provide an opportunity for the expression of views by LegCo Members and the Administration on POO. It did not prevent discussion on POO to continue in the future.

36. Mr James TO said that he was surprised to note from the Administration's paper that Singapore only required application for a permit to hold an assembly or procession to be made not less than four clear days before the event and the maximum penalty for failure to comply with the requirement was only a fine of S\$10,000 and an imprisonment term of six months. He considered that if the requirements in

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Singapore were less stringent than those in Hong Kong, there was really a need to review POO. DLO(CL) responded that the Administration's paper only provided a brief description of the requirements in law, but not the enforcement situation in Singapore.

37. Mr Martin LEE asked whether there were public processions held after reunification which indicated that serious problems would have arisen if the seven days' notice requirement, the notice of objection or the maximum penalty of five year's imprisonment had not been in place.

38. Dir of Ops responded that no one had been imprisoned after reunification for an offence under POO. As regards processions which indicated that a seven days' notice was needed, he recalled that in a recent public procession involving a large number of goods vehicles, a seven days' notice was really required for the coordination and arrangements for the route and place of the procession. He also recalled that a public procession held on 1 July 1997 involved a large number of participants that more than seven days were needed by the Police in coordinating and working out the procession route with the organizers. He added that if a number of groups intended to hold public processions on the same route or place at about the same time, more time was even needed for coordination and liaison with the organizers.

39. As regards public processions which indicated that serious problems would have arisen if the notice of objection system had not been in place, Dir of Ops said that there were a few cases where the Police objected to the holding of a public meeting or public procession. He recalled that one of the cases involved the proposed holding of a public procession at the Lo Wu Railway Station. Mr CHEUNG Man-kwong commented that the time required for coordination by the Police was longer for public processions held on 1 July 1997 because many venues had been reserved by the Administration for celebration purpose.

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40. The Chairman requested the Administration to provide information about the occasions on which the Police objected to the holding of public meetings or public processions since 1 July 1997.

*(Post-meeting note : The information provided by the Administration was issued to members vide LC Paper No. CB(2) 738/00-01(01) on 19 January 2001.)*

41. The meeting ended at 10:55 am.