

立法會

Legislative Council

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Paper for the House Committee meeting on 22 May 2009

Committee on Rules of Procedure

Notice periods for motions to amend, or extend the scrutiny period of, subsidiary legislation and instruments which are not subsidiary legislation

Purpose

This paper invites the views of the House Committee on proposed amendments to rectify a discrepancy in Rule 29 of the Rules of Procedure (“RoP”) so that the notice periods for motions to amend or extend the scrutiny period of subsidiary legislation which is subject to a scrutiny mechanism very similar to section 34 of the Interpretation and General Clauses Ordinance (Cap.1) are consistent with those for subsidiary legislation and other instruments.

Background

2. Section 34 of Cap.1 provides that all subsidiary legislation, which includes any rule, regulation, order and other instrument made under any Ordinance and having legislative effect, is to be tabled at the next Council meeting after the publication in the Gazette of that subsidiary legislation. The Council may amend an item of subsidiary legislation by a resolution passed at a Council meeting held not later than 28 days after the meeting at which it was tabled. The Council may also extend the scrutiny period by 21 days, or to the Council meeting immediately following the 21st day, if there is no Council meeting on the 21st day.

3. Under current RoP 29, Members may give notice to amend or extend the scrutiny period of:

- (a) subsidiary legislation which is subject to section 34 of Cap.1;
- (b) subsidiary legislation which is subject to a scrutiny mechanism, very similar to section 34 of Cap. 1, as provided in their respective

Ordinances¹; and

- (c) instruments which are not subsidiary legislation but subject to a scrutiny mechanism, very similar to section 34 of Cap. 1, as provided in their respective Ordinances².

Problem

4. The Committee on Rules of Procedure (“CRoP”) has noted that while the notice period for a motion to amend or extend the scrutiny period of either 3(a) and (c) above is to be given no less than five clear days or three clear days respectively, the notice of a motion to amend or extend the scrutiny period of 3(b) above is to be given no less than 12 clear days before the relevant Council meeting. CRoP considers that the discrepancy should be rectified.

CRoP’s recommendation

5. CRoP proposes that RoP 29 be amended, so that the notice periods for motions to amend, or extend the scrutiny period of, subsidiary legislation and instruments which are not subsidiary legislation are the same, i.e. no less than five clear days for notice of amendment and no less than three clear days for notice of extension of scrutiny period.

6. The proposed amendments to RoP 29 are in **Appendix I**. The consequential amendments to be made to other relevant provisions in RoP and the House Rules (“HR”) are in **Appendix II**.

The Administration’s view

7. The Administration has been consulted and made no comment on CRoP’s recommendation to rectify the discrepancy.

Advice sought

8. Members are invited to note the proposed amendments to RoP and HR set out in Appendices I and II respectively.

¹ Examples of such subsidiary legislation are orders made under section 6F of the Import and Export Ordinance (Cap. 60) or under section 3 of the Fugitive Offenders Ordinance (Cap. 503).

² Examples of such instruments are technical memoranda made under section 37B of the Air Pollution Control Ordinance (Cap. 311) and codes of practice made under section 69 of the Sex Discrimination Ordinance (Cap. 480).

9. Subject to any views which Members may have, Hon TAM Yiu-chung, Chairman of CRoP, will move a motion at the Council meeting on 10 June 2009 to amend RoP as proposed. Upon the passage of the amendments to RoP by the Council, consequential amendments will be made to HR accordingly.

Legislative Council Secretariat
18 May 2009

Proposed amendments to Rule 29 of the Rules of Procedure

29. Notice of Motions and Amendments

(1) Except as otherwise provided in these Rules of Procedure, no motion shall be moved in the Council or a committee of the whole Council unless notice of it has been given not less than 12 clear days before the day on which the motion is to be considered by the Council or a committee of the whole Council:

Provided that the President or Chairman, as the case may be, may in his discretion dispense with such notice.

(2) No motion to amend -

(a) subsidiary legislation which is subject to ~~the provisions of~~ section 34 of the Interpretation and General Clauses Ordinance (Cap. 1) *or any other Ordinance; or*

(b) *any instrument (other than subsidiary legislation) in accordance with the Ordinance under which it is made,*

shall be moved in Council unless notice of it has been given not less than 5 clear days before the day on which the motion is to be considered by the Council:

Provided that the President may in his discretion dispense with such notice.

(3) No motion to extend the period ~~referred to in~~ *for amendment in accordance with* section 34(4) of the Interpretation and General Clauses Ordinance (Cap. 1) ~~in relation to subsidiary legislation~~ *or the relevant provision in the Ordinance under which the subsidiary legislation or instrument referred to in subrule (2) is made* shall be moved in Council unless notice of it has been given not less than 3 clear days before the day on which the motion is to be considered by the Council:

Provided that the President may in his discretion dispense with such notice.

(4) The notice period required for any amendment to a motion referred to in subrule (2) or (3) shall be decided by the President according to his discretion.

~~(5) The notice periods specified in subrules (2), (3) and (4) shall apply respectively to—~~

~~(a) a motion to amend an instrument (other than subsidiary legislation) made under any legislation and subject to amendment by the Council;~~

~~(b) a motion to extend the period provided for the making of any amendment to such an instrument; and~~

~~(c) any amendment to a motion referred to in paragraph (a) or (b).~~

(6) Except as otherwise provided in these Rules, no amendment shall be moved to a motion unless –

(a) notice of the amendment has been given not later than 5 clear days before the day on which the motion concerned is to be considered by the Council or a committee of the whole Council; or

(b) the President or Chairman, as the case may be, gives leave to dispense with notice of the amendment.

Legend:

Texts proposed to be added are shown in *italics*.

Texts proposed to be deleted are shown with deletion lines.

Proposed amendments to Rules 21(5) and 49(6) of the Rules of Procedure and Rule 2 of the House Rules

I. Rules of Procedure

21. Presentation of Papers

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- (5) A Member or a designated public officer may, with the consent of the President, address the Council on subsidiary legislation *(other than that subject to section 35 of the Interpretation and General Clauses Ordinance (Cap. 1)) or the instrument referred to in Rule 29(2)(b) (Notice of Motions and Amendments) which is laid on the Table of the Council, provided that the period (or any extended period) under section 34 of the Interpretation and General Clauses Ordinance (Cap. 1) for amendment of the subsidiary legislation or under any other statutory provision providing for amendment* has not expired. A Member or a designated public officer who wishes to address the Council under this subrule at any meeting shall inform the President of his wish before the beginning of that meeting.

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49. Divisions

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- (6) Where there is more than one motion in respect of subsidiary legislation *or the instrument referred to in Rule 29(2)(b) (Notice of Motions and Amendments)* on the Agenda of the Council (excluding motions referred to in Rule 29(3) ~~(Notice of Motions and Amendments)~~) then, immediately after the President has declared the result of the first division on any such motion or any amendment thereto, a Member may move without notice that in the event of further divisions being claimed at that meeting in respect of motions on subsidiary legislation *or the instrument*, or amendments thereto, the Council do proceed to each of such divisions immediately after the division bell has been rung for one minute. Thereupon the President shall propose the question on that motion.

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II. House Rules

2. Address on ~~Subsidiary Legislation, Papers and, Bills Committee Reports,~~ *Subsidiary Legislation and Instruments* Tabled in the Council

A Member who seeks the President's permission to address the Council under Rule 21(3), (4A) or (5) of the Rules of Procedure on the following matters should provide an advance copy of the intended address to enable the President to decide whether the address may provoke a debate, which is not permitted under Rule 21(6) of the Rules of Procedure:

- (a) a paper tabled in the Council;
- ~~(b) subsidiary legislation tabled in the Council; or~~
- (eb)* a report of a Bills Committee on a bill tabled in the Council and presented at the Council meeting at which the resumption of the second reading debate on the bill for the purpose of making an announcement for the withdrawal of the bill takes place; *or*
- (c) subsidiary legislation or an instrument tabled in the Council.*

Legend:

Texts proposed to be added are shown in *italics*.

Texts proposed to be deleted are shown with deletion lines.