

**立法會**  
*Legislative Council*

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**Paper for the House Committee meeting on 11 March 2011**

**Report of the Subcommittee to Study Issues Relating to the Power of  
the Legislative Council to Amend Subsidiary Legislation**

**Purpose**

This paper reports on the proposed terms of reference and work plan of the Subcommittee to Study Issues Relating to the Power of the Legislative Council to Amend Subsidiary Legislation.

**Background**

2. At the House Committee meeting on 21 January 2011, Members formed a subcommittee to study issues relating to the power of the Legislative Council ("LegCo") to amend subsidiary legislation. The membership list of the Subcommittee is in **Appendix I**.

3. Under the chairmanship of Dr Hon Margaret NG, the Subcommittee held its first meeting on 22 February 2011 to discuss the terms of reference and work plan of the Subcommittee. The relevant proposals of the Subcommittee are set out below.

**Proposed terms of reference of the Subcommittee**

4. The terms of reference proposed by the Subcommittee are as follows -

"To study issues relating to the power of the Legislative Council to amend subsidiary legislation which is subject to section 34 of the Interpretation and General Clauses Ordinance (Cap. 1) and the respective roles of the Legislature and the Executive Authorities under the Basic Law in the

legislative process, and to make recommendations to the House Committee where necessary."

## **Work plan**

### Areas of study

5. The Subcommittee will focus its examination on the following areas in relation to subsidiary legislation subject to negative vetting -

- (a) statutory provisions indicating the nature of an instrument as subsidiary legislation;
- (b) statutory provisions empowering the making of subsidiary legislation under which LegCo's power to amend varies;
- (c) enabling provisions in various ordinances in relation to the scrutiny of subsidiary legislation by LegCo;
- (d) the provisions in Cap. 1 in relation to the scrutiny of subsidiary legislation by LegCo;
- (e) proposal for alternative provisions, if any, for LegCo's power to amend (including repeal) subsidiary legislation;
- (f) proposals on the procedures and practices to be followed where LegCo and the Administration take different views on the interpretation of provisions impinging on LegCo's jurisdiction to amend an item of subsidiary legislation; and
- (g) principles and policies for delegating legislative powers by way of empowering an Executive Authority to make subsidiary legislation.

### Time frame

6. As agreed at the House Committee meeting on 21 January 2011, the Subcommittee aims to complete its work within 12 months of its commencement and report to the House Committee in accordance with rule 26(c) of the House Rules.

7. During the 12 months period, the Subcommittee will hold meetings with the Administration to discuss the areas in paragraph 5 above. The Subcommittee will consider views from the legal professional bodies and legal academics, and views from the public where necessary. The Subcommittee will also hold internal deliberations.

8. The work plan of the Subcommittee is in **Appendix II**.

### **Advice sought**

9. Members are invited to endorse the terms of reference proposed by the Subcommittee in paragraph 4 above and note its work plan as set out in Appendix II.

Council Business Division 2  
Legislative Council Secretariat  
10 March 2011

**Subcommittee to Study Issues Relating to the Power of the Legislative  
Council to Amend Subsidiary Legislation**

**Membership list**

**Chairman** Dr Hon Margaret NG

**Members** Ir Dr Hon Raymond HO Chung-tai, SBS, S.B.St.J., JP  
Dr Hon Philip WONG Yu-hong, GBS  
Hon LAU Kong-wah, JP  
Hon Emily LAU Wai-hing, JP  
Hon Cyd HO Sau-lan  
Dr Hon Priscilla LEUNG Mei-fun  
Hon IP Kwok-him, GBS, JP  
Hon Tanya CHAN

(Total : 9 Members)

**Clerk** Mrs Sharon TONG

**Legal Adviser** Mr KAU Kin-wah

**Date** 22 February 2011

**Subcommittee to Study Issues Relating to the Power of  
the Legislative Council to Amend Subsidiary Legislation**

**Work Plan**

**Target**

To complete examination on the areas of concern and report to the House Committee by the end of February 2012.

**Time frame**

<b>Areas of study</b>	<b>Time frame / Activities</b>
<ul style="list-style-type: none"> <li>• Statutory provisions indicating the nature of an instrument as subsidiary legislation</li> <li>• Statutory provisions empowering the making of subsidiary legislation under which LegCo's power to amend varies</li> <li>• Enabling provisions in various ordinances in relation to the scrutiny of subsidiary legislation by LegCo</li> <li>• Provisions in Cap. 1 in relation to the scrutiny of subsidiary legislation by LegCo</li> <li>• Proposal for alternative provisions, if any, for LegCo's power to amend (including repeal) subsidiary legislation</li> <li>• Proposals on the procedures and practices to be followed where LegCo and the Administration take different views on the interpretation of provisions impinging on LegCo's jurisdiction to amend an item of subsidiary legislation</li> <li>• Principles and policies for delegating legislative powers by way of empowering an Executive Authority to make subsidiary legislation</li> </ul>	<p><b>March to April 2011</b></p> <ul style="list-style-type: none"> <li>• Inviting views from legal professional bodies, legal academics and the Administration and holding meeting with them</li> </ul>
	<p><b>May to November 2011</b></p> <ul style="list-style-type: none"> <li>• Discussions with the Administration</li> <li>• Inviting views from the public if necessary</li> </ul>
	<p><b>December 2011 to February 2012</b></p> <ul style="list-style-type: none"> <li>• Internal deliberations</li> <li>• Preparation of the Subcommittee's report for the House Committee</li> </ul>