

**立法會**  
**Legislative Council**

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

**Proposed outline of the Report of the Subcommittee  
prepared by the Legislative Council Secretariat**

**Purpose**

This paper invites members to consider the proposed outline of the report of the Subcommittee to Study Issues Relating to the Power of the Legislative Council to Amend Subsidiary Legislation for submission to the House Committee.

**Background**

2. At its meeting on 21 January 2011, the House Committee appointed a subcommittee to study issues relating to the power of the Legislative Council ("LegCo") to amend subsidiary legislation. The terms of reference and work plan of the Subcommittee are in the **Appendix**.

**Proposed outline of the Subcommittee report**

3. The outline of the report of the Subcommittee is proposed as follows -

(A) Introduction

- (i) Background
- (ii) Appointment of the Subcommittee and its terms of reference
- (iii) Membership of the Subcommittee

- (iv) Areas of study and work plan
- (v) Invitation of views
- (B) The legislative power of LegCo and its delegation under the Basic Law
- (C) The control over the delegated legislative power
  - (i) Under the empowering provision under the principal Ordinance
  - (ii) The scrutiny mechanism under the Interpretation and General Clauses Ordinance (Cap. 1)
    - (a) positive vetting
    - (b) negative vetting
  - (iii) Special cases to which the scrutiny mechanism under Cap. 1 does not apply
  - (iv) Ambiguous cases
- (D) Issues studied
  - (i) The principles and policies for delegating legislative powers by way of empowering an Executive Authority to make subsidiary legislation
  - (ii) What is subsidiary legislation?
    - (a) The statutory provisions indicating the nature of an instrument as subsidiary legislation (common grounds)
    - (b) difficulties in determining whether a piece of instrument is subsidiary legislation (differences in views)
  - (iii) LegCo's power to amend subsidiary legislation
    - (a) The enabling provision in various ordinances in relation to the scrutiny of subsidiary legislation by LegCo

- (b) The provisions in Cap. 1
- (iv) The proposal for alternative provisions for LegCo's power to amend (including repeal) subsidiary legislation
- (v) The proposal on procedure and practice 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

(E) Recommendations

**Advice sought**

4. Members are invited to consider the proposed outline of the Subcommittee report in paragraph 3 above.

Council Business Division 2  
Legislative Council Secretariat  
9 June 2011

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

### **Terms of reference**

To study issues relating to the power of the Legislative Council ("LegCo") to amend subsidiary legislation which is subject to section 34 of the Interpretation and General Clauses Ordinance (Cap. 1) and the respective roles of Legislature and the Executive Authorities under the Basic Law in the legislative process, and to make recommendations to the House Committee where necessary.

### **Areas of study and work plan**

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

<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> </ul>	March to April 2011 <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>
	May to November 2011 <ul style="list-style-type: none"> <li>• Discussions with the Administration</li> <li>• Inviting views from the public if necessary</li> </ul>

<ul style="list-style-type: none"><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>December 2011 to February 2012</p> <ul style="list-style-type: none"><li>• Internal deliberations</li><li>• Preparation of the Subcommittee's report for the House Committee</li></ul>
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### **Target**

3. The Subcommittee aims to complete examination on the areas of concern and report to the House Committee by the end of February 2012.

Legislative Council Secretariat

9 June 2011