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Paper for the House Committee meeting on 15 June 2012

Report of the Subcommittee on Amendments to Subsidiary Legislation on Discipline Made under Disciplined Services Ordinances

Purpose

This paper reports on the deliberations of the Subcommittee on Amendments to Subsidiary Legislation on Discipline Made under Disciplined Services Ordinances (the Subcommittee).

Background

2. At present, formal disciplinary action in respect of civil servants in civilian grades and generally senior ranking civil servants in the disciplined services grades is taken in accordance with relevant provisions in the Public Service (Administration) Order and the Public Service (Disciplinary) Regulation. Disciplinary matters of generally middle and junior ranking civil servants in the disciplined services grades and civil servants of the Traffic Warden grade are governed by the Ordinances on respective disciplined services, namely, the Customs and Excise Service Ordinance (Cap. 342), Fire Services Ordinance (Cap. 95), Government Flying Service Ordinance (Cap. 322), Immigration Service Ordinance (Cap. 331), Police Force Ordinance (Cap. 232), Prisons Ordinance (Cap. 234), Road Traffic Ordinance (Cap. 374), as well as rules and regulations made under such Ordinances (collectively referred to as Disciplined Services Legislation).

3. L.N. 58 to L.N. 63 of 2012 were made after a review had been conducted by the Administration on the Disciplined Services Legislation following a decision of the Court of Final Appeal (CFA) in *Lam Siu Po v.*

Commissioner of Police (FACV 9/2008) (the CFA Judgment) in March 2009. According to the CFA Judgment, the prohibition against legal representation provided in regulation 9(11) and (12) of the Police (Discipline) Regulations (Cap. 232 sub. leg. A) (P(D)R) is inconsistent with Article 10 of the Hong Kong Bill of Rights¹ (HKBOR), and is thus unconstitutional, null and void. It also held that legal representation is a matter for the disciplinary authority to consider under its discretion in accordance with the principle of fairness in common law, and that the disciplinary authority ought to be able to exercise discretion to permit appropriate forms of representation other than legal representation, whether by a fellow officer or another person, at a disciplinary hearing. Opportunity was also taken to introduce other amendments to improve upon the disciplinary proceedings provided for in the relevant subsidiary legislation on discipline.

The amendment regulations/rules

4. The following amendment regulations/rules were gazetted on 27 April 2012 and tabled at the Legislative Council (LegCo) on 2 May 2012 -

- (a) Fire Services Ordinance (Amendment of Second Schedule) Regulation 2012 (L.N. 58 of 2012);
- (b) Police (Discipline) (Amendment) Regulation 2012 (L.N. 59 of 2012);
- (c) Prison (Amendment) Rules 2012 (L.N. 60 of 2012);
- (d) Government Flying Service (Discipline) (Amendment) Regulation 2012 (L.N. 61 of 2012);
- (e) Traffic Wardens (Discipline) (Amendment) Regulation 2012 (L.N. 62 of 2012); and
- (f) Customs and Excise Service (Discipline) (Amendment) Rules 2012 (L.N. 63 of 2012).

L.N. 58 to L.N. 63 amend six pieces of subsidiary legislation on discipline (collectively referred to as Subsidiary Regulations²) made under relevant Ordinances governing the disciplined services.

¹ Article 10 of HKBOR provides (insofar as material): "All persons shall be equal before the courts and tribunal. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law."

² The Subsidiary Regulations are the First to Fourth Schedule to the Fire Services Ordinance (Cap. 95), the Police (Discipline) Regulations (Cap. 232 sub. Leg. A), the Prison Rules (Cap. 234 sub. Leg. A), the Government Flying Service (Discipline) Regulation (Cap. 322 sub. Leg. A), the Traffic Wardens (Discipline) Regulations (Cap. 374 sub. Leg. J) and the Customs and Excise Service (Discipline) Rules (Cap. 342 sub. Leg. B).

L.N. 58 to L.N. 63

5. The amendments applicable to all Subsidiary Regulations are as follows -

- (a) an officer of the relevant disciplined service charged with a disciplinary offence (the accused³) may, on application, be allowed to have legal or other forms of representation at a disciplinary hearing where the principle of fairness so requires, while the accused is still required to attend the hearing in person if he/she is represented by a defence representative;
- (b) a written record of the proceedings of a disciplinary hearing is to be made and the adjudicating officer/tribunal (AO) may cause an audio recording or an audio and visual recording of the whole or part of a disciplinary hearing to be made; and
- (c) to make explicit provisions stipulating that the AO may proceed with any part of the disciplinary proceedings in the absence of an accused if the latter is required to appear in those proceedings but, without reasonable justifications, has repeatedly failed to appear.

6. In addition to the above, the following amendments are made to specific items of Subsidiary Regulations.

L.N. 59

7. L.N. 59 makes further amendments to P(D)R as follows -

- (a) to remove the prohibition of representation of a junior police officer or an inspector by another person in proceedings against him or her in respect of minor disciplinary offences;
- (b) to transfer the power to appoint a board to be a tribunal from the Chief Secretary for Administration to the Secretary for the Civil Service, and the function to communicate the Chief Executive's decision on an appeal made by an inspector in accordance with P(D)R from the Chief Secretary for Administration to the Chief Executive's Office;

³ In this paper, the accused means a member of the relevant disciplined service against whom disciplinary proceedings have been instituted.

- (c) to align certain arrangements and procedures of disciplinary proceedings for junior police officers (“JPOs”) under Part II of P(D)R with those for inspectors under Part III of P(D)R; and
- (d) to replace the word "calculated" (刻意致使) in the offence of "conduct calculated to bring the public service into disrepute" by "likely (相當可能令)" to make it clear that the offence may be established without a subjective intention on the part of the accused to bring the public service into disrepute⁴.

L.N. 61

8. L.N. 61 also repeals section 3(7) of the Government Flying Service (Discipline) Regulation (Cap. 322 sub. leg. A) (GFS(D)R) which provides that an officer of the Government Flying Service who is interdicted may not leave Hong Kong without the permission of the Controller of the Government Flying Service. The Administration has proposed to repeal this provision as it considers that this provision may not be compatible with Article 31 of the Basic Law⁵ and Article 8(2) of the HKBOR⁶ concerning freedom to travel.

L.N. 62

9. L.N. 62 makes further amendments to the Traffic Wardens (Discipline) Regulations (Cap. 374 sub. leg. J) (TW(D)R) as follows -

- (a) to replace the word "calculated" (刻意作出使) in the disciplinary offence of "conduct calculated to bring the public service into disrepute" by "likely" (作出相當可能令) to make it clear that the offence may be established without a subjective intention on the part of the accused to bring the public service into disrepute;
- (b) to amend the disciplinary procedure so that an accused Traffic Warden, instead of a prosecutor, is to have the final address at a disciplinary hearing; and

⁴ According to paragraph 12 of LegCo Brief issued by Civil Service Bureau on 25 April 2012 (File Ref: CSBCR/DP/1-010-005/6), the Court of Appeal ruled in *Chiu Hoi Po v. Commissioner of Police* (CACV 200/2006) that the English word "calculated" in the said disciplinary offence meant "likely" in the context of P(D)R.

⁵ Article 31 of the Basic Law stipulates that "Hong Kong Residents shall have freedom of movement within the Hong Kong Special Administrative Region and freedom of emigration to other countries and regions. They shall have freedom to travel and to enter or leave the Region. Unless restrained by law, holder of valid travel documents shall be free to leave the Region without special authorization."

⁶ Article 8(2) of HKBOR stipulates that "Everyone shall be free to leave Hong Kong."

- (c) to add to TW(D)R "deferment or stoppage of increment" as a possible punishment for the contravention of a disciplinary offence by a Traffic Warden.

10. L.N. 58 to L.N. 63 will come into operation on a day to be appointed by the Secretary for the Civil Service by notice published in the Gazette.

The Subcommittee

11. At the House Committee meeting held on 4 May 2012, Members agreed to form a subcommittee to study L.N. 58 to L.N. 63. The membership list of the Subcommittee is at **Appendix I**. Under the chairmanship of Hon LAU Kong-wah, the Subcommittee held four meetings and received views from 13 organizations and individual. A list of organizations and individual that have submitted views to the Subcommittee is at **Appendix II**.

12. In view of the volume of amendments introduced by L.N. 58 to L.N. 63 and to allow sufficient time for scrutiny, the Subcommittee agreed that the Chairman should move a motion at the Council meeting of 23 May 2012 to extend the scrutiny period of the six items of subsidiary legislation from 30 May to 20 June 2012 (the motion). However, the motion was not dealt with at the Council meetings that commenced on 23 and 30 May 2012⁷ respectively owing to the heavy agenda for these meetings. As the motion was not passed at the Council meeting that commenced on 30 May 2012, the 28-day negative vetting period therefore expired under section 34(2) of the Interpretation and General Clauses Ordinance (Cap. 1) without being extended.

Deliberations of the Subcommittee

13. The major issues considered by the Subcommittee are summarized in the ensuing paragraphs.

The right of the accused to legal or other forms of representation at a disciplinary hearing

14. Members note that in the light of the CFA Judgment, the Administration has proposed to amend the Subsidiary Regulations to allow an accused to apply for, subject to the approval of the concerned disciplinary authority,

⁷ The motion could not be dealt with at the Council meeting of 23 May 2012 and was included on the agenda of the following Council meeting of 30 May 2012.

representation at his/her disciplinary hearing by a barrister or solicitor⁸ or by another person. Where an accused is legally represented, the AO and the prosecutor of the relevant disciplinary hearing may be assisted by their respective barristers or solicitors. As advised by the Administration, in considering an application for legal representation, the disciplinary authority should take into account the circumstances of each case and determine whether fairness requires that the accused be assisted by a legal representative. The disciplinary authority may take into account, but is not limited to, a host of factors such as the seriousness of the charge and the potential penalty, whether any points of law are likely to arise, the capacity of the applicant to present his/her own case, the need for fairness among the parties involved at the disciplinary hearing⁹. These factors are not specified in the relevant legislation. Pending the amendment of the Subsidiary Regulations, disciplined services departments (DSDs) have put in place administrative arrangements and promulgated guidelines on the application procedures and factors for consideration on applications for legal or other forms of representation.

15. On some members' suggestion that all, or some, of the factors should be specified in the relevant legislation in order to provide for greater certainty, the Administration has advised that the factors for consideration are by no means exhaustive and are reviewed from time to time with regard to practical experience in handling applications for legal representation, the developing jurisprudence in court cases and comments of the staff sides. The Administration is of the view that setting out the factors in the administrative guidelines of the relevant DSDs would enable these factors to be refined promptly in response to changing circumstances. It does not see a need to include the factors in the relevant legislation. In this connection, the Subcommittee notes from the "Procedures for requests for defence representation" provided by the Police Force that the factors for consideration of requests for legal representation are listed therein and supplemented by a "Guide" on how these factors¹⁰ should be considered.

16. Concern has been raised about the interpretation of the various factors by DSDs. Referring to factors such as "the defaulter's capacity to present his case at the hearing" and "any anticipated procedural difficulties", Ms LI Fung-ying considers that in the absence of any objective or quantifiable criteria, the same factor may be subject to different interpretation by the accused and by the relevant disciplinary authority. To avoid contention and achieve

⁸ A "barrister" or "solicitor" as defined in section 2 of the Legal Practitioners Ordinance (Cap. 159).

⁹ These are some of the factors referred to by CFA in the case of *The Stock Exchange of Hong Kong Ltd v. New World Development Co Ltd and Others* (FACV 22/2005).

¹⁰ Please see Chapter 8 of the Force Discipline Manual on Disciplinary Proceedings under the Police (Discipline) Regulations with Legal and Other Forms of Representation (Annex B4 of LC Paper No. CB(1)1989/11-12(04)).

consistency, Ms LI urges the Administration to consider quantifying these factors so as to provide clear guidance to the DSDs and the accused. The Administration has indicated that it would not be practicable to quantify all these factors, and that the underlying principle is to consider each application in accordance with the requirements of fairness on its own merits. The Administration has also provided some examples showing when legal representation would normally be approved in the light of the factors.

17. Noting that pursuant to the relevant amendments introduced by L.N. 58 to L.N. 63, legal representation of the accused would still be subject to the approval of the disciplinary authority concerned, some members of the Subcommittee including Mr James TO, Dr Margaret NG and Ms LI Fung-ying are gravely concerned whether the right of the accused to legal representation can be adequately safeguarded. Some depositions giving views to the Subcommittee share similar concern. The Administration advises that according to the CFA Judgment, there is no absolute right to legal representation at disciplinary hearings. This is a matter to be in the discretion of DSDs or the tribunal concerned in accordance with principles of fairness. Whether a defaulter should be permitted to be legally represented depends on whether fairness so requires in all the circumstances. The Administration considers that the relevant amendments in L.N. 58 to L.N. 63 are in compliance with the decision in the CFA Judgment.

18. Mr James TO considers that the CFA Judgment has only laid down the minimum requirement that should be observed by DSDs. There is nothing to preclude the Administration from providing better protection to the right of the accused to legal representation at disciplinary hearings. He suggests that suitable amendments should be made to L.N. 58 to L.N. 63 such that DSDs should normally grant approval for legal representation at disciplinary hearings, unless there are exceptional reasons not to do so. The Administration however considers that it would be arbitrary to draw up exceptional reasons to reject applications for legal representation. On the other hand, the CFA has laid down specific factors, though not exhaustive, which a tribunal should take into account in determining whether fairness requires that an accused be assisted by a legal representative.

19. Dr Margaret NG has urged the Administration to introduce necessary amendments to provide that where the potential punishment to be faced by the accused is dismissal, compulsory retirement or reduction in rank, then, the accused should be entitled to be legally represented. The effect of the aforesaid amendment is that if legal representation is not granted, then the accused may reasonably expect that dismissal, compulsory retirement or reduction in rank will not be imposed on him/her as possible punishment. The

Administration advises that the proposed arrangement can be reflected in the revised administrative guidelines to be promulgated by DSDs. However, further study is needed as to whether the proposed arrangement should be specified in the Subsidiary Regulations.

20. The Subcommittee notes from the Subsidiary Regulations that in considering an application for other forms of representation, such as representation by a "Friend" or a colleague, the arrangements differ among DSDs. For instance, relevant provisions under P(D)R allow the accused to be represented by a serving police officer who is a barrister or solicitor, or by an inspector or a JPO of his/her choice at a disciplinary hearing, without the need for prior approval. However, not all the other Subsidiary Regulations contain similar provisions allowing representation by a fellow colleague. On whether the arrangements currently adopted by the Police Force can be applied to the other DSDs, the Administration is of the view that there may be historical reasons underlying the arrangements put in place by different DSDs. As long as the principles of fairness are observed, individual departments should be allowed to implement arrangements that best suit their specific operational and organizational needs. The Administration does not see any strong need to align the practices in representation in disciplinary hearings (other than legal representation) adopted by various DSDs.

21. Some members have followed up the concerns raised by some of the deputations about the criteria adopted by DSDs in approving applications for representation by other parties who may be a colleague, a retired civil servant or a friend. The Administration has advised that in considering requests for these forms of representation at a disciplinary hearing, the disciplinary authority will consider the circumstances of the case, the requirements of procedural fairness and other factors such as the possibility of leakage of sensitive information. For example, according to the Police Force, checks may need to be conducted on a "Friend" in order to exclude persons with doubtful reputation or character, including known triad members, known criminals or those whose attendance may undermine the credibility of the disciplinary proceedings.

Past disciplinary cases

22. Some deputations and members including Dr Margaret NG are concerned about past cases in which the accused had been unfairly denied legal representation in disciplinary proceedings. They consider that the outcome might have been very different if the accused had been legally represented. Referring to some cases which involved police officers, Dr Margaret NG points out that some of these persons were compulsorily retired and facing financial hardship due to their pension being deferred. She considers that the

Administration should seriously look into the feasibility of reviewing past cases in the light of the CFA Judgment.

23. On the question of reviewing concluded disciplinary cases, the Police Force has informed the Subcommittee that having taken into consideration factors including the finality of the decisions made in disciplinary proceedings, the good administration of the Police Force, the possibility of opening a floodgate and the practical difficulties of rehearing such disciplinary cases, the Police Force has no plan to initiate a review of past disciplinary cases before the CFA Judgment where ex-police officers claim to have been prejudiced by denial of legal representation. According to the Police Force, files and records on ex-police officers will be destroyed after a specified period of time (about five years), unless there are ongoing court proceedings. Notwithstanding, Dr Margaret NG opines that reviewing past cases is not infeasible if the Administration is willing and prepared to take necessary action to do so.

The role of the adjudicating officer/tribunal in the consideration of application for legal representation

24. The Subcommittee has noted that under the existing practice of the Correctional Services Department and the Customs and Excise Department, the AO instead of a senior officer at the departmental headquarters, is empowered to decide on the application of the accused for legal representation at disciplinary hearings. The current arrangements adopted by the Police Force, the Fire Services Department and the Government Flying Service are different in that these departments entrust this task to a senior officer at the departmental headquarters. However, the AO can make a recommendation to the approving or appeal authority at the departmental headquarters who should give significant weight to the recommendation. Some members are concerned that as the relevant AOs are familiar with details and facts of the disciplinary cases before them, they should be empowered to decide on applications for legal representation, instead of only making recommendations. They see no reason why the authority to grant legal representation should be restricted to officers at the headquarters.

25. In response, the Administration has advised that as shown in *Au Hing Sik v Commissioner of Police and Others* (HCAL 74/2010), the current mechanism governing the consideration of application for legal representation by an officer other than a tribunal does provide a proper system for considering a request for legal representation in accordance with the requirement of fairness and is not unconstitutional. As such, the Administration does not consider that there is a strong need at this stage to empower the AO to approve applications for legal representation in those departments where the applications are now

considered by senior officers at the departmental headquarters. Notwithstanding, the Subcommittee has requested the Police Force, the Fire Services Department and the Government Flying Service to explain whether they can empower the AO to approve applications for legal representation as in the case of the Correctional Services Department and the Customs and Excise Department, in addition to senior officers at the departmental headquarters.

Appeal mechanism

26. It is noted that an appeal mechanism is in place in each DSD under which any appeal against refusal of legal representation will be considered and determined by a directorate officer not lower than the rank of Assistant Commissioner/Director or equivalent. Some members have expressed concern about the independence and impartiality of an officer within the same department to consider and determine an appeal. They are of the view that the Administration should consider including an independent third party (e.g. an external party outside the Administration or an officer from the Civil Service Bureau) as a member of the review authority of DSDs.

27. The Administration refers to court decisions showing that government officers could discharge their functions without bias. For example, as shown in *Wong Tak Wai v Commissioner of Correctional Services* (CACV 231/2009), the mere fact that the Superintendent (i.e. the AO) is also the head of the prison should not lead to the conclusion that there is bias on the part of the Superintendent in each and every prisoner's disciplinary case he tries. The Administration is of the view that disciplinary cases are primarily matters arising from the employer-employee relationship between the DSD and the relevant staff. Since the heads of DSDs understand fully their unique operational needs and are entrusted with the powers under the relevant legislation to deal with disciplinary matters of their staff, the responsibility of handling applications for legal representation, as well as considering appeals against decisions to refuse such applications, should continue to rest with the respective departments. There is also the need to safeguard confidentiality of information in some disciplinary cases. The Administration takes the view that it is not appropriate to involve any third party in the consideration of appeals as this would entail a fundamental change to the current disciplinary regime. Nevertheless, in response to members' concern, the Administration indicates that this issue may be re-visited in the next phase of the review of the Disciplined Services Legislation if necessary.

Hearings *in absentia*

28. As informed by the Administration, there are disciplinary cases where the accused repeatedly failed to appear at scheduled hearing sessions, causing delays to the disciplinary proceedings. Although the Subsidiary Regulations do not provide explicit provisions for the AO to proceed with disciplinary proceedings in the absence of an accused, legal advice has confirmed that hearing *in absentia* is not unlawful if the accused has failed to appear repeatedly without reasonable justifications. In order to put the matter beyond doubt, the Administration has proposed to include explicit provisions in the Subsidiary Regulations to allow the AO to proceed with disciplinary proceedings in the absence of an accused if he/she has repeatedly failed to appear at the hearings. In addition, DSDs will promulgate administrative guidelines on the factors to be considered and arrangements to be observed by the AO when deciding whether or not to proceed with the disciplinary proceedings in the absence of an accused. The factors for consideration include proofs that prior notices requiring the attendance of the accused at the disciplinary hearing have been duly served, the nature and circumstances of the accused's behaviour in absenting himself/herself, the extent of the disadvantage to the accused in not being present at the hearing, whether further adjournment might resolve the matter, the general public interest and the particular interest of witnesses that the hearing should take place within a reasonable time, etc.¹¹ As advised by the Administration, it has consulted the staff sides and the Panel on Public Service on these guidelines separately in December 2010. Neither the Panel nor the staff sides have indicated any in-principle objection.

29. Members of the Subcommittee have enquired about the number of occasions of absence that would constitute "repeated" failure to appear at disciplinary hearings, and are concerned that different departments may adopt different thresholds. In response, the Administration has advised that fairness requires the AO to consider each case on its own merits, and that normally the AO may proceed with disciplinary proceedings if the accused is absent for the third time without any reasonable justifications. The Civil Service Bureau will issue guidelines to DSDs to this effect.

Punishment of deferment or stoppage of increments

30. Members note that currently, JPOs and staff of the Traffic Warden grade are the only civil servants who are not subject to the possible punishment of deferment or stoppage of increments as a result of disciplinary proceedings against them. The Administration has therefore proposed to amend P(D)R and

¹¹ These factors are based on the English Court of Appeal judgment in *R v. Hayward*; *R v. Jones*; *R v. Purvis* [2001] QB 862 as affirmed by the House of Lords in *R v. Jones (Anthony)* [2002] UKHL 5.

TW(D)R to include deferment or stoppage of increments as one of such possible punishments for JPOs and staff of the Traffic Warden grade.

31. Some members including Ms LI Fung-ying have expressed concern that the inclusion of deferment or stoppage of increments as a possible punishment may disadvantage JPOs and staff of the Traffic Warden grade and is in violation of the terms and conditions of service according to which they were employed. Regarding the views of the relevant staff sides, the Administration has informed members that three rounds of consultation with the relevant staff associations were completed in May 2010, December 2010 and January 2012 on this legislative amendment exercise. The relevant staff sides have raised no objection to the proposal.

32. On whether the proposal may be inconsistent with Article 100 of the Basic Law¹², the Administration advises that the terms of employment of JPOs and staff of the Traffic Warden grade, similar to those of other civil servants, are subject to the relevant legislation, government regulations and departmental orders or instructions that may be issued from time to time. The contractual provisions have provided a mechanism for making changes to the conditions of service. As such, the amendments made to P(D)R and TW(D)R to include deferment or stoppage of increments will unlikely be inconsistent with Article 100 of the Basic Law or the officers' contractual terms of employment. The Administration has also advised that the inclusion of this form of punishment would provide the disciplinary authority with greater flexibility to pitch punishment at the right level without the need to escalate to a more severe level. For example, instead of issuing a severe reprimand, the disciplinary authority may consider the alternative of imposing a reprimand plus deferment or stoppage of increment, where justified.

33. In this connection, the Administration has been asked to advise whether there were any policy considerations for not subjecting JPOs and staff of the Traffic Warden grade to the punishment of deferment or stoppage of increments when the relevant items of subsidiary legislation were first enacted.

The way forward

34. The Subcommittee notes that considerable amendments are introduced by L.N. 58 to L.N. 63, which are subsidiary legislation subject to negative vetting by LegCo. Members consider that these amendments entail important policy, legal and drafting issues and more time is required to examine them in

¹² Article 100 of the Basic Law provides that public servants serving in government departments before the establishment of the Hong Kong Special Administrative Region may retain their conditions of service no less favourable than before.

detail. They find it not feasible to complete scrutiny of the amendment regulations/rules within the tight timeframe under the negative vetting procedure (even with the scrutiny period duly extended) before the end of the current Term. At the Subcommittee meeting held on 30 May 2012, members urged the Administration to consider limiting the scope of the current amendment exercise so that only those proposals that are considered "essential" (e.g. legal representation, conducting hearings in absentia etc.) will be dealt with, while the other proposed amendments will be taken forward in the next phase of the review of Disciplined Services Legislation. This approach would facilitate consideration by the Subcommittee and the early implementation of major improvements.

35. Meanwhile, following the expiry of the 28-day negative vetting period for L.N. 58 to L.N. 63 of 2012 without being extended as mentioned in paragraph 12 above, the Civil Service Bureau wrote to the Subcommittee on 2 June 2012 advising that it will not bring L.N. 58 to L.N. 63 of 2012 into commencement. It has assured the Subcommittee that despite the absence of statutory backing, the DSDs will continue to process applications for legal and other forms of representation administratively in accordance with the fairness requirement. The Administration has also advised that it will consult the management and staff sides of the DSDs again on how to further refine the amendment regulations/rules by taking into account, among other things, the comments made by members of the Subcommittee. It will arrange to introduce the revised amendment regulations/rules into LegCo when such are ready for the purpose of replacing the current ones at L.N. 58 to L.N. 63 of 2012. A copy of the aforesaid letter is at **Appendix III**.

36. The Subcommittee has no objection in principle to the arrangement proposed by the Administration. It recommends that the Panel on Public Service would follow up with the Administration its responses to issues raised by members at past meetings of the Subcommittee. In addition, the Subcommittee has proposed the following way forward:

- (a) To allow sufficient time for scrutiny of the amendments to the Subsidiary Regulations under the negative vetting procedure, the Administration is asked to consult the Panel on Public Service early on the draft version of the amendment regulations/rules, so that Members' views and suggestions can be taken into account before the amendment regulations/rules are made and gazetted.
- (b) The Panel on Public Service is invited to consider setting up a subcommittee for the purpose of taking up the matter in (a) above in the next Term.

Advice sought

37. Members are invited to note the deliberations of the Subcommittee and its views on the way forward as set out in the foregoing paragraphs.

Council Business Division 1
Legislative Council Secretariat
14 June 2012

Appendix I

Subcommittee on Amendments to Subsidiary Legislation on Discipline Made under Disciplined Services Ordinances

Membership list

Chairman Hon LAU Kong-wah, JP

Members Dr Hon Margaret NG
Hon James TO Kun-sun
Hon Mrs Sophie LEUNG LAU Yau-fun, GBS, JP
Hon LI Fung-ying, SBS, JP
Hon Cyd HO Sau-lan
Hon Mrs Regina IP LAU Suk-ye, GBS, JP (up to 22
May 2012)
Dr Hon PAN Pey-chyou

Clerk Miss Polly YEUNG

Legal Adviser Mr YICK Wing-kin

Appendix II

Subcommittee on Amendments to Subsidiary Legislation on Discipline Made under Disciplined Services Ordinances

List of organizations/individual that have given views to the Subcommittee

1. Government Flying Service Aircraft Technicians Union
2. Mr KWONG Koon-wan, Islands District Council member
3. Disciplined Services Consultative Council
4. Government Disciplined Services General Union
5. Hong Kong Traffic Wardens Union
6. Mutual Rights Organization
7. Hong Kong Fire Services Department Staffs General Association
8. Government Flying Service Pilots Union
9. Hong Kong Fire Services Officers Association
10. Correctional Services Officers' Association
11. Hong Kong Fire Services Department Ambulancemen's Union
12. Association of Customs & Excise Service Officers (written submission only)
13. Hong Kong Correctional Services General Union (written submission only)

政府總部
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政府總部西翼



**CIVIL SERVICE BUREAU
GOVERNMENT SECRETARIAT**
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來函檔號 Your Ref.: CBI/SS/11/11

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Urgent by Fax

2 June 2012

Miss Polly YEUNG
Legislative Council Secretariat
Council Business Division 1
Principal Council Secretary (Subcommittee)1
Legislative Council Complex
1 Legislative Council Road
Central, Hong Kong
(Fax. No.: 2121 0420)

Dear Miss YEUNG,

**Subcommittee on
Amendments to Subsidiary Legislation on Discipline
Made under Disciplined Services Ordinances**

At the meeting on 30 May, the Subcommittee advised that in view of the highly compressed timeframe for scrutiny of the amendment regulations/rules (L.N. 58 to L.N. 63 of 2012), the busy schedules of the Legislative Council and the complexity of some of the amendments, there might not be sufficient time to complete the scrutiny of the amendment regulations/rules within the prescribed timeframe.

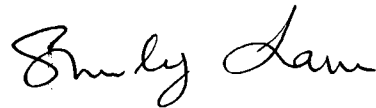
We note that with the adjournment of the last sitting of the Council meeting on 1 June, the 28-day negative vetting period for the amendment regulations/rules has expired without being extended.

Having carefully considered the Subcommittee's views, I write to advise that this Bureau will not bring the amendment regulations/rules into commencement. We assure Members that despite the absence of statutory backing, the disciplined services departments will continue to process applications for legal representation administratively in accordance with the fairness requirement.

To take the matter forward, we will consult the management and staff sides of the disciplined services departments again on how to further refine the amendment regulations/rules by taking into account, among other things, Members' comments. Once the revised amendment regulations/rules are ready, we will arrange to introduce them into the Legislative Council for the purpose of replacing the current ones at L.N. 58 to L.N. 63 of 2012.

We hope the above arrangement is agreeable to the Subcommittee.

Yours sincerely,

A handwritten signature in cursive script, appearing to read "Shirley Lam".

(Ms Shirley LAM)
for Secretary for the Civil Service