

立法會
Legislative Council

LC Paper No. CB(2)1830/14-15
(These minutes have been seen
by the Administration)

Ref : CB2/PL/SE

Panel on Security

Minutes of meeting
held on Tuesday, 2 June 2015, at 2:30 pm
in Conference Room 1 of the Legislative Council Complex

Members present : Hon IP Kwok-him, GBS, JP (Chairman)
Hon NG Leung-sing, SBS, JP (Deputy Chairman)
Hon James TO Kun-sun
Hon CHAN Kam-lam, SBS, JP
Hon Emily LAU Wai-hing, JP
Hon Cyd HO Sau-lan, JP
Dr Hon LAM Tai-fai, SBS, JP
Hon CHAN Kin-por, BBS, JP
Dr Hon Priscilla LEUNG Mei-fun, SBS, JP
Hon WONG Kwok-kin, SBS
Hon Paul TSE Wai-chun, JP
Hon Alan LEONG Kah-kit, SC
Hon LEUNG Kwok-hung
Hon WONG Yuk-man
Hon Claudia MO
Hon Frankie YICK Chi-ming
Hon YIU Si-wing
Hon MA Fung-kwok, SBS, JP
Hon Charles Peter MOK, JP
Hon CHAN Chi-chuen
Dr Hon Kenneth CHAN Ka-lok
Hon Kenneth LEUNG
Hon KWOK Wai-keung
Hon Dennis KWOK
Hon Christopher CHEUNG Wah-fung, SBS, JP
Dr Hon Fernando CHEUNG Chiu-hung
Dr Hon Elizabeth QUAT, JP
Dr Hon CHIANG Lai-wan, JP
Hon CHUNG Kwok-pan
Hon Christopher CHUNG Shu-kun, BBS, MH, JP

Members absent : Hon Michael TIEN Puk-sun, BBS, JP
Hon LEUNG Che-cheung, BBS, MH, JP

Public Officers attending : Item IV

Mr John LEE Ka-chiu, PDSM, PMSM, JP
Under Secretary for Security

Mrs Millie NG KIANG Mei-nei
Principal Assistant Secretary for Security E

Miss Emily NG Wing-shan
Assistant Secretary for Security E3

Ms Irene HO Yuen-ha
Chief Superintendent (Crime HQ) (Crime Wing)
Hong Kong Police Force

Mr Francis CHAN Wing-on
Senior Superintendent, Cyber Security and
Technology Crime Bureau
Hong Kong Police Force

Item VI

Miss Shirley YUNG
Deputy Secretary for Security 2

Ms Amy WONG
Principal Assistant Secretary for Security C

Mr WK LEUNG, IDSM, IMSM
Assistant Director of Immigration
(Management & Support)

Mr Tom YIP Chi-kwai
District Planning Officer / Kowloon
Planning Department

Mrs Sylvia LAM YU Ka-wai
Project Director 2
Architectural Services Department

Mr MOK Chung-keung
Chief Project Manager 203
Architectural Services Department

Clerk in attendance : Miss Betty MA
Chief Council Secretary (2) 1

Staff in attendance : Mr KAU Kin-wah
Senior Assistant Legal Adviser 3

Mr Raymond LAM
Senior Council Secretary (2) 7

Ms Mina CHAN
Council Secretary (2) 1

Ms Kiwi NG
Legislative Assistant (2) 1

Action

I. Confirmation of minutes of previous meeting
(LC Paper No. CB(2)1465/14-15)

The minutes of the meeting held on 10 April 2015 were confirmed.

II. Information paper issued since the last meeting
(LC Paper No. CB(2)1484/14-15(01))

2. Members noted that a letter dated 11 May 2015 from Dr Fernando CHEUNG regarding the Police's handling of mentally incapacitated persons had been issued since the last meeting. The Chairman informed members that the Panel on Welfare Services would discuss the subject of "Enforcement agencies' procedures for dealing with persons with disabilities or persons with special needs (including mentally incapacitated persons) and support provided under the social welfare system for the above persons on law-related matters" at its meeting on 13 June 2015. Members of the Panel on Security had been invited to join the discussion.

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3. Members also noted a submission from Chosen Power regarding the detention of mentally incapacitated persons, which was tabled at the meeting.

(Post-meeting note: The submission tabled at the meeting was circulated to members vide LC Paper No. CB(2)1620/14-15(02) on 3 June 2015.)

III. Date of next meeting and items for discussion

(LC Paper Nos. CB(2)1560/14-15(01) and (02))

4. Members agreed that the following items would be discussed at the next regular meeting on 7 July 2015 at 2:30 pm -

(a) Public consultation on the establishment of a reporting system on the physical cross-boundary transportation of large quantities of currency and bearer negotiable instruments;

(b) Unified screening mechanism for non-refoulement claims; and

(c) Long range search and rescue service of the Government Flying Service.

IV. Scope of application of section 161 of the Crimes Ordinance concerning access to computer with criminal or dishonest intent

(LC Paper Nos. CB(2)1560/14-15(03) to (04) and CB(2)1605/14-15(01))

5. Members noted a letter dated 2 June 2015 from Mr Charles MOK, which was tabled at the meeting.

(Post-meeting note: The letter tabled at the meeting was circulated to members vide LC Paper No. CB(2)1620/14-15(01) on 3 June 2015.)

6. Under Secretary for Security ("US for S") briefed members on the technology crime trend and scope of application of section 161 of the Crimes Ordinance (Cap. 200) in relation to access to computer with criminal or dishonest intent.

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7. Members noted an information note entitled "Scope of application of section 161 of the Crimes Ordinance concerning access to computer with criminal or dishonest intent" prepared by the Legislative Council Secretariat.

Issues relating to the legislative intent and application of section 161 of Cap. 200

8. Referring to the submission from Keyboard Frontline, Mr Charles MOK said that the former Secretary for Security ("S for S") had, during the resumption of Second Reading debate on the Computer Crimes Bill 1992, stated that the new offence of access to a computer with criminal or dishonest intent was aimed at penalizing access to computer for acts preparatory to but falling short of the commission of a fraud. He considered that the law enforcement agencies ("LEAs") had abused section 161 of Cap. 200 and misapplied the judgment in *HKSAR v Tsun Shui-lun* (HCMA 723/98) by invoking the section to institute prosecution against acts which did not involve unauthorized access to a computer, thus resulting in conviction of a person for speech. He added that the Administration should provide a written response to the issues raised in his letter of 2 June 2015, which had been tabled at the meeting.

9. Ms Emily LAU shared Mr Charles MOK's concern regarding the possibility of conviction of a person for speech. Referring to paragraph 17 of the submission from Keyboard Frontline, she expressed concern about abuse of section 161 of Cap. 200 by LEAs and said that consideration should be given to inviting the views of the public and the legal profession on the issue.

10. US for S responded that there was no question of abuse of section 161 of Cap. 200 by LEAs. He said that any abuse of section 161 of Cap. 200 by LEAs would have been criticized by the court. The question of whether there was abuse of section 161 of Cap. 200 had also been thoroughly discussed during the debate at the Council meeting of 5 February 2015 on a relevant motion which had been negatived. He pointed out that the former S for S had, when moving the Second Reading of the Computer Crimes Bill 1992, stated that "the Bill will create a new offence of gaining access to a computer with dishonest intent or with intent to commit an offence. This would apply irrespective of whether the access was unauthorized or not, and irrespective of the means of access".

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11. Referring to paragraphs 6 and 7 of the Administration's paper, Mr Alan LEONG expressed concern that although the comments made by the judge were *obiter dicta*, the Administration basing on it had adopted a broad interpretation of the scope of section 161 of Cap. 200.

12. Mr Paul TSE said that the judgments referred to in the Administration's paper were relevant to the interpretation of section 161 of Cap. 200. He disagreed with Mr Alan LEONG's view that the comments made by the judge were *obiter dicta*. He pointed out that the former S for S had stated during the moving of Second Reading of the Computer Crimes Bill 1992 that although there was no evidence that computer-related crime was widespread at that time, the Administration believed that it was necessary to put in place appropriate legal sanctions against computer misuse, which could result in dishonest gain for the wrongdoer or loss to others.

13. Mr CHAN Chi-chuen said that section 161 of Cap. 200 allowed conviction for expression of opinions and its application was inconsistent with the original legislative intent.

14. Mr James TO said that as use of Internet was not yet prevalent at the time of enactment of section 161 of Cap. 200 in 1993, the scope of section 161 was broader than the legislative intent with the anticipation that it would be reviewed later. He considered that there was abuse of section 161 of Cap. 200 by LEAs and a review should be carried out on the section.

15. Ms Cyd HO considered that a person could be easily convicted under section 161 of Cap. 200 for inciting other persons to commit an offence. Referring to paragraph 6 of the Administration's paper, she said that the Administration should at least provide the respective court case numbers of the 293 prosecution cases pertaining to section 161 of Cap. 200 to facilitate members' examination of whether there was abuse of the section in each case. US for S responded that the requested information was not available since the statistics maintained by LEAs or the courts did not contain court case numbers, as case numbers were not relevant to research of crime trend, punishment patterns or offender's profile. He said that although the number of local technology crime cases had increased to 6 778 in 2014, the percentage of cases prosecuted under section 161 of Cap. 200 was only about 10% of those detected and the remaining detected cases had been prosecuted for other offences. This indicated that prosecutions pertaining to section 161 of Cap. 200 were prudent.

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16. Mr LEUNG Kwok-hung considered that section 161 of Cap. 200, the scope of which was too broad, would allow prosecution of an act which could not be prosecuted under other local legislation, as long as the act involved access to computer.

17. Mr Christopher CHUNG queried whether it was appropriate to examine the legislative intent of provisions enacted at a time when Internet was just introduced for civilian use and there had already been substantial technological development in the field over the years.

18. US for S stressed that section 161 of Cap. 200 was not directed at speech or expression, but acts with a criminal or dishonest intent. He pointed out that the application of section 161 of Cap. 200 was consistent with its legislative intent regarding access to a computer with dishonest intent or with intent to commit an offence, irrespective of whether the access was unauthorized or not, and irrespective of the means of access.

19. Mr YIU Si-wing disagreed with the view that LEAs had abused section 161 of Cap. 200. He said that the high conviction rate of over 85% for prosecution cases pertaining to the section reflected that there was no abuse of prosecution pertaining to the section. He expressed concern that the number of local technology crime cases had increased to 6 778 in 2014 and asked whether the Police had encountered problems in the enforcement of section 161 of Cap. 200. US for S advised that the difficulties encountered by the Police in the enforcement against technology crime were not mainly related to the scope of existing legislation, but the practical collection of evidence under the present operation of the Internet world.

20. Ms Claudia MO expressed concern that although proposals in 2000 to criminalize clandestine photo-taking, which faced strong opposition from Hong Kong Journalists Association, had been shelved, a reporter who carried out clandestine photo-taking with a smart phone might be caught by section 161 of Cap. 200. US for S responded that there had not been any case in which section 161 of Cap. 200 was invoked to prosecute reporters who carried out clandestine photo-taking with a smart phone in the course of news reporting. He stressed that an offence under section 161 of Cap. 200 required the element of criminal or dishonest intent.

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Whether there was a need to carry out a review on section 161 of Cap. 200

21. Mr Alan LEONG said that when the Computer Crimes Bill 1992 was passed in 1993, a subcommittee formed to study the Bill had suggested that the enacted legislation should be reviewed in the light of experience after enactment. He considered that a review should be carried out on section 161 of Cap. 200 and expressed concern that the Administration had no intention to do so.

22. Mr CHAN Chi-chuen said that as section 161 of Cap. 200 had been enacted many years ago when use of Internet was not yet prevalent, it was time to carry out a review on the section.

23. Mr WONG Yuk-man considered that there was a need to carry out a review on section 161 of Cap. 200 to keep it in pace with technological developments.

24. Mr Paul TSE took the view that as there had been substantial development in Internet since the enactment of section 161 of Cap. 200, a review of the section would probably reveal the need to broaden its scope.

25. Noting that the number of local technology crime cases had surged nearly 24 times since 2002, Dr CHIANG Lai-wan expressed concern about whether section 161 of Cap. 200 was adequate for tackling such crime and said that the Administration should review the adequacy of the section.

26. Mr MA Fung-kwok said that he had no strong views regarding whether section 161 of Cap. 200 should be reviewed. Noting that the conviction rate of prosecution cases pertaining to section 161 of Cap. 200 was over 85%, he considered that existing provisions in the section were adequate for combating technology crimes. He asked whether there was any category of technology crime which could only be dealt with under the section. US for S responded that the distributed denial of service attack was an example of such crime, in which the attack had only caused congestion but the website was still operating.

27. Mr CHAN Kam-lam considered that the Administration should examine the adequacy of section 161 of Cap. 200 and whether there was a need to broaden the scope of the section, given the rapid technological development in the relevant field in recent years. Referring to

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paragraph 27 of the submission from Keyboard Frontline, he pointed that the statistics provided in the submission did not support the claim in the paragraph that there was an increasing trend in the number of prosecutions under section 161 of Cap. 200.

28. Mr Christopher CHUNG said that the scope of section 161 of Cap. 200 was too narrow in that it could not tackle cases in which the perpetrator was outside the territory of Hong Kong. He considered that there was a need to broaden the scope of section 161 of Cap. 200.

29. Dr Elizabeth QUAT took the view that LEAs had not abused section 161 of Cap. 200. She said that as technology crimes had become more serious especially in recent years, there was a need to carry out a review on section 161 of Cap. 200 to facilitate the combating of technology crimes by LEAs.

30. US for S said that in determining whether there was a need to review a piece of legislation, consideration was given to the prevailing crime trend, whether difficulties were encountered by the Police in the enforcement of the legislation and comments, if any, of the courts. In this connection, he pointed out that the courts had not made any adverse comments on section 161 of Cap. 200. He did not see any need for review of the section at this stage. He said that the rapid increase in technology crimes was a global problem. While existing legislation was adequate for tackling technology crimes, the Administration would monitor the trend and keep track of the development of relevant legislation in other jurisdictions.

31. Mr MA Fung-kwok asked whether offences similar to that under section 161 of Cap. 200 could be found in other jurisdictions. US for S responded that similar legislation could be found in the United Kingdom.

Other issues

32. Mr Dennis KWOK asked whether it would be an offence under section 161 of Cap. 200 for a person to post on his social media account the message that he would park a car at the double yellow lines outside a certain building, which was in violation of road traffic legislation.

33. US for S responded that whether an act amounted to an offence under section 161 of Cap. 200 would have to be examined having regard to the circumstances of the case. The section had mainly been invoked for prosecution of cases involving cyber attack, theft of virtual weapons

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for online games, online business fraud, cyber bullying, clandestine photo-taking of women under their skirts using smart phones, online publication of obscene or threatening information and theft of online password. He pointed out that amongst 293 prosecution cases pertaining to section 161 of Cap. 200 between 2008 and 2014, there were 252 cases in which the defendants were convicted, representing a conviction rate of over 85%.

34. Mr Kenneth LEUNG asked whether the "offence" in section 161(1)(a) of Cap. 200 referred to a summary offence or indictable offence. He considered that if it referred to a summary offence, the question of absurdity would arise as it would mean that a person who obtained access to a computer with intent to commit a summary offence committed an indictable offence. He also expressed concern about whether "access to a computer" covered access to the perpetrator's own computer.

35. US for S responded that the "offence" referred to in section 161(1)(a) of Cap. 200 could be a summary offence or an indictable offence. He pointed out that although the latter part of section 161(1) of Cap. 200 referred to "conviction upon indictment", an offence under section 161(1)(a) of Cap. 200 could be tried summarily, having regard to the seriousness of the offence concerned and on the advice of the Department of the Justice.

36. Dr CHIANG Lai-wan asked whether cyber bullying fell within the scope of section 161 of Cap. 200. US for S responded that such an act could be dealt with under existing legislation, including those relating to criminal intimidation, libel and unauthorized disclosure of personal data without the data subject's consent.

Moving of motions by members

37. The Chairman said that Mr Charles MOK and Dr Elizabeth QUAT had indicated respective intentions to move a motion in relation to the agenda item and he had examined the wording of the two motions in accordance with Rule 22(p) of the House Rules. He ruled that the two motions were directly related to the agenda item and were not inconsistent with each other. He said that the two motions would be proceeded with and be voted on in the order in which they were presented to the Panel.

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38. Mr Charles MOK moved the following motion -

"本委員會促請保安局，將《刑事罪行條例》(第200章)第161條'有犯罪或不誠實意圖而取用電腦'提交至法律改革委員會進行研究及展開公眾諮詢，並加入明確的指引和定義，以免該條例被執法部門濫用，保障市民不受無理拘捕或檢控。"

(Translation)

"That this Panel urges the Security Bureau to refer section 161 of the Crimes Ordinance (Cap. 200) on 'access to computer with criminal or dishonest intent' to the Law Reform Commission for study and public consultation, adding clear guidelines and definitions to the Ordinance, so as to avoid abuse of the Ordinance by law-enforcement agencies, thereby protecting the public from groundless arrests and prosecutions."

39. The Chairman put Mr Charles MOK's motion to vote. Mr Charles MOK requested a division.

The following members voted in favour of the motion -

Mr James TO, Ms Emily LAU, Ms Cyd HO, Mr Alan LEONG, Mr LEUNG Kwok-hung, Mr WONG Yuk-man, Ms Claudia MO, Mr Charles MOK, Mr CHAN Chi-chuen, Dr Kenneth CHAN, Mr Kenneth LEUNG, Mr Dennis KWOK and Dr Fernando CHEUNG.

(13 members)

The following members voted against the motion -

Mr CHAN Kam-lam, Mr CHAN Kin-por, Dr Priscilla LEUNG, Mr WONG Kwok-kin, Mr NG Leung-sing, Mr Frankie YICK, Mr YIU Si-wing, Mr MA Fung-kwok, Mr KWOK Wai-keung, Mr Christopher CHEUNG, Dr Elizabeth QUAT, Dr CHIANG Lai-wan, Mr CHUNG Kwok-pan and Mr Christopher CHUNG.

(14 members)

40. The Chairman declared that 13 members voted for and 14 members voted against the motion. He declared that the motion moved by Mr Charles MOK was negated.

Action

41. Dr Elizabeth QUAT moved the following motion -

"隨着互聯網及社交媒體普及，越來越多人在互聯網上組織及進行非法活動，更有人在互聯網上呼籲羣眾作出網絡攻擊及衝擊立法會綜合大樓和政府總部，可見現時涉及使用電腦有關的罪行日益猖獗，本委員會促請政府當局檢討《刑事罪行條例》(第200章)第161條及其他相關的法例，以加強打擊與使用電腦有關的違法行為，從而保障市民及社會的利益。"

(Translation)

"That, given that with the prevalence of the Internet and social media, more and more people organize and conduct illegal activities on the Internet, and there are people even appealing on the Internet for the masses to launch network attacks and storm the Legislative Council Complex and the Central Government Offices, showing that crimes involving the use of computers have now become increasingly rampant, this Panel urges the Administration to conduct a review of section 161 of the Crimes Ordinance (Cap. 200) and other relevant legislation to strengthen the combat against illegal acts associated with the use of computers, thereby safeguarding interests of the public and the society."

42. The Chairman put Dr Elizabeth QUAT's motion to vote. Mr Charles MOK requested a division.

The following members voted in favour of the motion -

Mr CHAN Kam-lam, Mr CHAN Kin-por, Dr Priscilla LEUNG, Mr WONG Kwok-kin, Mr Paul TSE, Mr NG Leung-sing, Mr Frankie YICK, Mr YIU Si-wing, Mr MA Fung-kwok, Mr KWOK Wai-keung, Mr Christopher CHEUNG, Dr Elizabeth QUAT, Dr CHIANG Lai-wan, Mr CHUNG Kwok-pan and Mr Christopher CHUNG.

(15 members)

The following members voted against the motion -

Mr James TO, Ms Emily LAU, Ms Cyd HO, Mr Alan LEONG, Mr LEUNG Kwok-hung, Mr WONG Yuk-man, Ms Claudia MO, Mr Charles MOK, Mr CHAN Chi-chuen, Dr Kenneth CHAN, Mr Kenneth LEUNG, Mr Dennis KWOK and Dr Fernando CHEUNG.

(13 members)

Action

43. The Chairman declared that 15 members voted for and 13 members voted against the motion. He declared that the motion moved by Dr Elizabeth QUAT was carried.

V. Training on psychological quality of police officers
(LC Paper Nos. CB(2)1560/14-15(05) and (06))

44. Owing to time constraint, members agreed that the item would be deferred to a future meeting.

VI. Construction of quarters for the disciplined services in Kwun Tong
(LC Paper No. CB(2)1560/14-15(07))

[To allow sufficient time for discussion, the Chairman advised that the meeting would be extended to 4:45 pm.]

45. The Chairman drew members' attention to Rule 83A of the Rules of Procedure concerning the requirement of disclosing personal pecuniary interest.

46. Deputy Secretary for Security 2 ("DS for S2") briefed members on the Administration's proposal to upgrade the construction project of departmental quarters ("DQs") for the disciplined services in Kwun Tong to Category A.

Plot ratio for the proposed DQ site

47. Dr Elizabeth QUAT said that the Democratic Alliance for the Betterment and Progress of Hong Kong supported the Administration's proposal. Noting that 464 DQ units would be constructed under the proposed project, she asked whether a higher plot ratio could be applied to the site concerned to provide more DQ units for the disciplined services.

48. DS for S2 responded that the site concerned fell within an area zoned "Residential (Group A)" on the draft Kwun Tong (South) Outline Zoning Plan, which was restricted to a maximum domestic plot ratio of 7.5. The current project scope was already close to a plot ratio of 7.5 and had fully utilized the development potential of the site. District Planning

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Officer/Kowloon, Planning Department ("DPO/K") added that most of the high-density residential areas in Kowloon had been zoned "Residential (Group A)", to which a maximum domestic plot ratio of 7.5 was applied after taking into account factors such as overall transport and infrastructural constraints. He added that the plot ratio of a public housing estate in the vicinity was about 6.

Allocation of DQ units under the proposed project to staff of different disciplined services

49. Dr Elizabeth QUAT, Mr Paul TSE and Dr LAM Tai-fai expressed concern about how the DQ units to be constructed under the proposed project would be allocated among different disciplined services departments. DS for S2 responded that the DQ units to be constructed under the proposed project would be allocated to eligible staff of the Immigration Department ("ImmD"), the Fire Services Department, the Correctional Services Department, the Customs and Excise Department ("C&ED") and the Government Flying Service. Among these, more DQ units would be allocated to ImmD and C&ED, which had a substantial shortfall of DQ units.

50. Mr Paul TSE asked whether any of the DQ units under the proposed project would be allocated to eligible staff of the Police. DS for S responded that among the eight DQ projects under construction or planning, one was in Fanling which would provide about 1 000 DQ units for eligible staff of the Police.

Provision of car parking spaces

51. Mr YIU Si-wing expressed concern about the basis on which the number of car parking spaces was determined and how the parking spaces were to be allocated. DS for S2 and DPO/K responded that the number of car parking spaces were determined in accordance with the provision standards in the Hong Kong Planning Standards and Guidelines and calculated on the basis of the number of DQ units to be constructed and other adjustment factors. Under the proposed project, 46 car parking spaces and five motorcycle parking spaces would be provided. Assistant Director of Immigration (Management and Support) added that according to ImmD's prevailing parking spaces allocation mechanism, interested DQ occupants were required to apply for a parking space.

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Other issues

52. Dr Priscilla LEUNG expressed support for the Administration's proposal. She asked whether arrangements had been made for all those living in the existing quarters buildings on the site concerned to be relocated to other quarters. DS for S2 responded that the existing quarters buildings were former married quarters of the Housing Department and had been vacated following a change in its policy on the provision of staff quarters.

53. Dr Priscilla LEUNG considered that provision should be made for the construction of more DQ units to cope with the increased demand arising from a possible increase in the number of disciplined services staff. DS for S2 responded that it had been stated in the Chief Executive's 2014 Policy Address that the construction of DQs for the disciplined services would be expedited. The relevant government departments were collaborating to expedite the progress of eight construction projects with a view to providing over 2 200 quarters to six disciplined services by 2020.

54. Mr Paul TSE said that consideration should be given to constructing more DQ units at the premises of LEAs. DS for S2 responded that government departments had been asked to examine, in the development plan of sites under their use, the possibility of the inclusion of staff quarters in such development.

55. Dr LAM Tai-fai expressed support for the Administration's proposal. He asked whether the extension of retirement age of civil servants would lead to an increase in the waiting time for DQs. DS for S2 responded that only disciplined services staff who were married and whose salary points were within a certain range were eligible for DQs. The extension of retirement age might result in an increase in waiting time for DQs in the longer term.

56. The Chairman concluded that members had no objection in principle to the Administration's submission of its proposal to the Public Works Subcommittee.

57. There being no other business, the meeting ended at 4:45 pm.