

立法會
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Establishment Subcommittee of the Finance Committee

Minutes of the 8th meeting
held in Conference Room 1 of Legislative Council Complex
on Wednesday, 21 February 2017, at 8:30 am

Members present:

Hon Alvin YEUNG (Deputy Chairman)
Hon Abraham SHEK Lai-him, GBS, JP
Hon WONG Ting-kwong, SBS, JP
Hon Starry LEE Wai-king, SBS, JP
Hon Paul TSE Wai-chun, JP
Hon LEUNG Kwok-hung
Hon WU Chi-wai, MH
Hon YIU Si-wing, BBS
Hon MA Fung-kwok, SBS, JP
Hon Charles Peter MOK, JP
Hon CHAN Chi-chuen
Dr Hon KWOK Ka-ki
Hon KWOK Wai-keung
Dr Hon Fernando CHEUNG Chiu-hung
Hon IP Kin-yuen
Hon Martin LIAO Cheung-kong, SBS, JP
Hon POON Siu-ping, BBS, MH
Dr Hon CHIANG Lai-wan, JP
Ir Dr Hon LO Wai-kwok, SBS, MH, JP
Hon CHUNG Kwok-pan
Hon CHU Hoi-dick
Hon HO Kai-ming
Hon LAM Cheuk-ting
Hon Holden CHOW Ho-ding
Hon SHIU Ka-fai

Hon Wilson OR Chong-shing, MH
Hon YUNG Hoi-yan
Hon CHAN Chun-ying
Hon Tanya CHAN
Hon LAU Kwok-fan, MH
Hon Nathan LAW Kwun-chung
Dr Hon YIU Chung-yim

Members absent:

Hon Mrs Regina IP LAU Suk-ye, GBS, JP (Chairman)
Hon James TO Kun-sun
Dr Hon Priscilla LEUNG Mei-fun, SBS, JP
Hon WONG Kwok-kin, SBS, JP
Hon Steven HO Chun-yin, BBS
Hon Alice MAK Mei-kuen, BBS, JP
Dr Hon Helena WONG Pik-wan
Hon Jimmy NG Wing-ka, JP
Hon SHIU Ka-chun
Hon LUK Chung-hung
Hon KWONG Chun-yu
Hon Jeremy TAM Man-ho

Public Officers attending:

Ms Carol YUEN Siu-wai, JP	Deputy Secretary for Financial Services and the Treasury (Treasury) 1
Mr Eddie MAK Tak-wai, JP	Deputy Secretary for the Civil Service 1
Mr John LEE, PDSM, PMSM, JP	Under Secretary for Security
Mr Andrew TSANG	Principal Assistant Secretary for Security E
Mr Stanley CHUNG	Assistant Commissioner of Police (Crime)
Mr Anthony TSANG	Senior Superintendent of Police (Cyber Security and Technology Crime Bureau)
Dr Frank LAW	Superintendent of Police (Cyber Security and Technology Crime Bureau)
Miss Annie TAM, GBS, JP	Permanent Secretary for Labour and Welfare
Ms Carol YIP, JP	Director of Social Welfare
Mr LAM Ka-tai, JP	Deputy Director of Social Welfare (Services)

Ms PANG Kit-ling	Assistant Director of Social Welfare (Elderly)
Mr FONG Kai-leung	Assistant Director of Social Welfare (Rehabilitation and Medical Social Services)

Clerk in attendance:

Ms Anita SIT	Assistant Secretary General 1
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Staff in attendance:

Mr Hugo CHIU	Senior Council Secretary (1)4
Mr Keith WONG	Council Secretary (1)4
Ms Alice CHEUNG	Senior Legislative Assistant (1)1
Miss Yannes HO	Legislative Assistant (1)6
Ms Haley CHEUNG	Legislative Assistant (1)9

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The Deputy Chairman drew members' attention to the information paper ECI(2016-17)13, which set out the latest changes in the directorate establishment approved since 2002 and the changes to the directorate establishment in relation to the eight items on the agenda. He then reminded members that in accordance with Rule 83A of the Rules of Procedure ("RoP"), they should disclose the nature of any direct or indirect pecuniary interest relating to the funding proposal under discussion at the meeting before they spoke on the item. He also drew members' attention to RoP 84 on voting in case of direct pecuniary interest.

EC(2016-17)23 Proposed creation of one permanent post of Chief Superintendent of Police (PPS 55) in the Hong Kong Police Force with effect from the date of approval by the Finance Committee to lead the Cyber Security and Technology Crime Bureau

2. The Deputy Chairman remarked that the staffing proposal was to create one permanent post of Chief Superintendent of Police (PPS 55) in the Hong Kong Police Force with effect from the date of approval by the Finance Committee ("FC") to lead the Cyber Security and Technology Crime Bureau ("CSTCB"). He pointed out that discussion of the item was carried over from the Subcommittee's meetings on 7 February and

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8 February 2017. The Deputy Chairman also advised that the Administration had submitted supplementary information (LC Paper No. ESC61/16-17(01)) ("the supplementary information") prior to the meeting in response to the issues raised at the Subcommittee's meeting on 8 February as well as Mr Nathan LAW's letter to the Chairman of the Subcommittee on 9 February.

3. Mr Nathan LAW pointed out that the arrangement for this additional meeting was undesirable as the meeting was held concurrently with the fifth meeting of the Subcommittee on Issues Relating to Bazaars, which consisted of a number of members of this Subcommittee as well, and so such members could not attend the two meetings. Mr CHAN Chi-chuen shared Mr LAW's view. The Deputy Chairman advised that the Secretariat had endeavoured to make appropriate arrangements for the meetings.

Police's approach to handling technology crimes

4. Dr Fernando CHEUNG was concerned that some technology-related cases might involve national-level hacking of emails of Hong Kong people. He enquired how CSTCB would coordinate with the relevant Mainland authorities if actions of Mainland intelligence agencies were involved in these cases, and whether Hong Kong could request the relevant Mainland authorities to stop such actions.

5. Under Secretary for Security ("US for S") advised that in the event of suspected hacking of email accounts or computers, members of the public should report to the Police regardless of the source of attack. Upon receipt of the victims' reports, the Police would handle them, and there were relevant talents in CSTCB to handle such cases. In general, the Police would look into the source of hacking. If other places were involved, the Police would liaise with the law enforcement agencies ("LEAs") of such places through the mechanism established by the INTERPOL and G7 as well as the collaboration mechanisms established between Hong Kong with individual jurisdictions to conduct relevant investigation (such as identifying the Internet Protocol ("IP") addresses involved in the cases). He pointed out that some cases of email hacking were rather complicated and might involve the IP addresses in multiple jurisdictions as well as the use of zombie computers.

6. Mr Nathan LAW pointed out that the supplementary information failed to address the issue he raised about the use of hacking software by the Police, and expressed disappointment at that. He requested the Police to clarify if there were guidelines banning the use of hacking software.

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He enquired whether the Police had the technologies to inspect the information in electronic devices (such as software for cryptanalysis). He requested the Police to provide the procedures and/or codes for their action if they had used such technologies, as well as the number of times such technologies were used in recent years. He also enquired whether the Police had devised relevant procedures and/or codes to ensure that privacy and human rights were not infringed while inspection was conducted on the electronic devices confiscated from members of the public.

7. In response, US for S said that the Police were all along committed to strengthening their capability in gathering evidence for criminal cases, but it was inappropriate for the Police to disclose relevant means lest the work of gathering of evidence would be affected. He stressed that the Police had to gather intelligence and evidence in a lawful manner. Assistant Commissioner of Police (Crime) ("ACP(Crime)") added that the Police would examine an exhibit only when it was permitted under the law or with the consent of the person concerned. Actions were taken in strict adherence to the "need-to-know" principle and relevant legislation throughout the process to ensure that the Police would only gather and investigate information relevant to the case.

8. Mr Nathan LAW noted that the Police would request information from Internet service providers ("ISPs") according to the mutually agreed mechanism as and when necessary. He enquired the details of such practice, including the relevant procedures, whether ISPs could decline to provide the information, as well as the procedures and codes the Police had in place to ensure that privacy of members of the public was protected and that ISPs would not be misled by the Police into providing information. He also enquired whether the subscribers affected would be informed if ISPs provided information of their subscribers to the Police. Mr LAW also requested the Police to provide the number of successful prosecutions instituted through the information obtained from ISPs in recent years.

9. ACP(Crime) advised that the Police would request ISPs to provide information according to the mutually agreed mechanism as and when necessary in accordance with relevant legislation as well as the established procedures and codes. He pointed out that the cooperation mechanisms between the Police and different ISPs were not identical. US for S supplemented that if a subscriber of an affected ISP was under police investigation, the subscriber concerned would not be informed lest police investigation would be affected. In addition, ISPs had the right to refuse providing the information to the Police unless the Police had obtained a Court warrant. US for S stressed that the mechanism had been in place for years and ISPs also engaged legal officers to help them understand their

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legal rights, so there was no question of ISPs having been misled by the Police. He also advised that various areas were involved in Mr Nathan LAW's requests with regard to the figures provided by the Police; he suggested that Mr LAW raise his questions in writing after the meeting.

10. Dr Fernando CHEUNG referred to a case handled by his office years ago, in which he requested a telecommunications company to provide the telephone communication records of its individual customer, but the company said that the records had been deleted. He enquired whether telecommunications companies had the right to delete the telephone communication records of their customers, and whether the Police had the power to request the companies to delete such records.

11. In response, US for S said that telephone communication records were kept by telecommunications companies in accordance with their contracts with individual customers. The Police had no power to instruct telecommunications companies to delete such records.

Statistics maintained by the Police on their law enforcement actions

12. Referring to paragraph 6 of the supplementary information (on the statistics in respect of "access to computer with criminal or dishonest intent" under section 161 of the Crimes Ordinance (Cap. 200) ("CO")), Mr CHAN Chi-chuen enquired about the respective rates of prosecution and conviction among the cases of arrests and prosecutions under section 161 of CO in recent years.

13. In response, US for S said that the respective years of arrest and prosecution for cases involved in the figures provided in the supplementary information might be different, so direct comparison was impossible. In gist, the rates of prosecution and conviction among the cases of arrests and prosecutions under section 161 of CO amounted to around 75% and over 90% respectively in 2014 and 2015.

14. Mr CHAN Chi-chuen advised that Members expected the Police to provide a breakdown of cases by nature of such cases where prosecutions were instituted under section 161 of CO over the past few years. He noted that the Police was exploring the possibility of maintaining the statistics on different offences under section 161 of CO in the future, but he commented that the Police should also maintain figures by nature of such cases to facilitate public monitoring over the Police's enforcement of section 161 of CO. Mr CHAN enquired whether the Police could make an undertaking in this regard. He also suggested that a brief description of the nature of cases be added to the records of cases where prosecutions were instituted

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under section 161 of CO to facilitate the provision of a breakdown by nature of cases to Members in the future.

15. In response, US for S said that the Police hoped to follow up Members' concerns through improving the existing system. ACP(Crime) advised that in deciding whether to maintain some figures, departments would consider whether the figures were of statistical significance and conducive to fighting and preventing crime. LEAs and relevant departments would maintain various types of figures useful to their investigation or analysis, such as the figures on cases, persons arrested, prosecutions and convictions in respect of major offences. He pointed out that in the light of members' concerns, the Police was seeking the Judiciary's views on whether the Integrated Law and Order Statistical Information System could be enhanced in the future to facilitate maintenance of figures of prosecutions and convictions by the Police in respect of the provisions under section 161 of CO.

16. Mr LEUNG Kwok-hung suggested that the Innovation and Technology Bureau should draw reference from the practice of other areas for compiling statistics based on needs to help the Police set up a mechanism to compile the statistics requested by Members, as such information was paramount to public monitoring on whether there was abuse of power by the Police. He observed that the Police seized the mobile phones of members of the public in some actions without obtaining Court warrants. He expressed strong concern on this and urged the Police and the holder of the proposed post to review such practice to ensure that there was no abuse of power by the Police. Mr LEUNG further requested the Police to provide information on the number of mobile phones seized from members of the public without Court warrants over the past few years, the number of mobile phones returned to their owners due to the Police's failure to decode their passwords, and the number of prosecutions made or not made by the Police based on the information obtained through decoding mobile phone passwords.

17. US for S pointed out that the Police were empowered by the Police Force Ordinance (Cap. 232) and other related legislation to inspect exhibits in criminal investigation. There was internal monitoring system to ensure that the Police took action in compliance with the requirements of relevant legislation. ACP(Crime) added that the Police did not maintain the information mentioned by Mr LEUNG Kwok-hung, and reiterated that a department's decision to maintain some figures hinged on whether the figures were beneficial to the department's work and of statistical significance.

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Cyber patrol

18. Mr CHAN Chi-chuen requested the Police to provide details of its cyber patrol, including the number of cyber patrols conducted in recent years, how the Police conducted cyber patrols through the three-tier intelligence framework (namely the headquarters, regions and police districts), whether all cyber patrols were conducted by CSTCB, and how the information obtained would be used.

19. In response, ACP(Crime) said that the Police would conduct cyber patrols if necessary and decide on how the information obtained was used. In general, cyber patrols conducted on the police district level would target criminal activities within the police district concerned, whereas those conducted on the levels of regions and headquarters would focus on syndicated criminal activities.

Necessity to create the proposed post

20. Mr LAU Kwok-fan advised that he had received a lot of views about undesirable progress of the Police in handling technology crimes. He also noted a rising global trend in technology crimes. As such, he supported the staffing proposal and commented that the Police should devote more resources to combating technology crimes. He understood some members' concerns about section 161 of CO, but commented that there was no direct relationship between the staffing proposal and the review of the section. He suggested that the Police explain its current complaint handling mechanism so as to address some members' concerns about the abuse of power by the Police. Mr SHIU Ka-fai supported creating the proposed post as soon as possible, and called on the Subcommittee to vote on this item expeditiously.

21. Dr Fernando CHEUNG advised that he agreed that creating the proposed post could help the Police combat technology crimes, but he was concerned about the Police's excessive public authority at present. Coupled with the lack of relevant checks and balances, he commented that in considering the staffing proposal, Members had to ensure that there was no abuse of public authority by the Police.

22. In response, US for S said that the holder of the proposed post would lead CSTCB to strengthen the Police's work of combating technology crimes. He stressed that the staffing proposal should not be linked with the discussion on section 161 of CO. The Police encountered a lot of difficulties in the investigation of technology crimes, and there was a pressing need to create the proposed post. He advised that the Police

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had established the relevant complaint mechanism, and audit trails were available in the computer systems to check whether police officers acted in accordance with the relevant guidelines, procedures and codes. The Commissioner of Police had also said repeatedly that integrity was the priority of the Police.

Motions proposed by members pursuant to paragraph 31A of the Establishment Subcommittee Procedure

23. At 9:33 am, The Deputy Chairman said that as there were no questions from members, he would begin to deal with the motions proposed by members pursuant to paragraph 31A of the Establishment Subcommittee Procedure. The Deputy Chairman advised that he had received a total of two proposed motions to be moved by Mr Nathan LAW. After examination, he considered that the proposed motions were directly relevant to the agenda item and would put forward the motions to the Subcommittee for considering whether they should be proceeded forthwith.

24. The Deputy Chairman put to vote the question that Mr Nathan LAW's proposed motion numbered 1 be proceeded forthwith. At the request of Mr LAW, the Deputy Chairman ordered a division and the division bell rang for five minutes. Mr LAW read out the content of the proposed motion. The question was negatived.

25. The Deputy Chairman then put to vote the question that Mr Nathan LAW's proposed motion numbered 2 be proceeded forthwith. At the request of Mr LAW, the Deputy Chairman ordered a division and the division bell rang for five minutes. Mr LAW read out the content of the proposed motion. The question was negatived.

Voting on the item

26. At 9:45 am, the Deputy Chairman put the item EC(2016-17)23 to vote. At the request of members, the Deputy Chairman ordered a division and the division bell rang for five minutes. Fifteen members voted for the item and seven against it. The Deputy Chairman declared that the Subcommittee agreed to recommend the item to FC for approval. The votes of individual members were as follows:

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For

Mr WONG Ting-kwong
Mr YIU Si-wing
Mr KWOK Wai-keung
Mr POON Siu-ping
Mr CHUNG Kwok-pan
Mr Holden CHOW
Mr Wilson OR
Mr LAU Kwok-fan
(15 members)

Ms Starry LEE
Mr MA Fung-kwok
Mr Martin LIAO
Ir Dr LO Wai-kwok
Mr HO Kai-ming
Mr SHIU Ka-fai
Mr CHAN Chun-ying

Against

Mr LEUNG Kwok-hung
Dr Fernando CHEUNG
Mr LAM Cheuk-ting
Dr YIU Chung-yim
(7 members)

Mr CHAN Chi-chuen
Mr CHU Hoi-dick
Mr Nathan LAW

27. Mr LEUNG Kwok-hung requested that the item be voted on separately at the relevant FC meeting.

EC(2016-17)22 Proposed creation of one supernumerary post of Assistant Director of Social Welfare (D2) in the Social Welfare Department up to 31 March 2021 upon approval of the Finance Committee to head a new Licensing and Regulation Branch

28. The Deputy Chairman remarked that the staffing proposal was to create one supernumerary post of Assistant Director (D2) in the Social Welfare Department ("SWD") up to 31 March 2021 upon approval of the FC to head a new Licensing and Regulation ("LR") Branch.

29. The Deputy Chairman advised that the Administration had consulted the Panel on Welfare Services on the staffing proposal on 9 May and 12 December 2016. Panel members supported the proposal and at the meeting on 12 December 2016 passed a motion urging SWD to immediately set up a committee comprising users, family members, professionals and Members of the Legislative Council ("LegCo") to reform the legislation and codes relevant to residential care homes for persons with disabilities and for the elderly ("homes") within three years. In addition, the Panel requested SWD to: (a) open up the monitoring system for homes and support the setting up of inspection teams in the community, so that stakeholders such as family members, users and professionals could assist

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in the monitoring work; (b) take over the management of homes with poor service quality and strengthen SWD's support to homes where takeover was not possible; and (c) submit an interim review report and a final report to LegCo two and four years respectively after the creation of the post.

Impact of not passing the staffing proposal in the last Legislative Council term

30. Mr CHAN Chi-chuen supported the broad direction in improving the service quality of homes. He noted that the staffing proposal had been discussed during the last LegCo term, but the item was eventually not dealt with in FC due to insufficient time. He enquired about the measures implemented by SWD to improve the service quality of homes since submission of the proposal in the last LegCo term, the impact of non-passage of the proposal, and whether SWD had created the non-directorate posts referred to in the paper under the LR Branch.

31. In response, Permanent Secretary for Labour and Welfare ("PS(LW)") said that after submitting the staffing proposal in the last LegCo term, the Government had all along maintained communication with stakeholders. In the light of stakeholders' views, SWD had plans to introduce various measures to improve the service quality and monitoring of homes. Sixteen concrete measures were set out in paragraph 5 of the Government's paper, including strengthening inspection of homes, enhancing the service quality of homes, reviewing the legislation and Codes of Practice relevant to homes. To facilitate the implementation of such measures, SWD was conducting a systematic review of the operation of homes. The new LR Branch would be formed by merging the existing Licensing Office of Residential Care Homes for the Elderly ("LORCHE") with Licensing Office of Residential Care Homes for Persons with Disabilities ("LORCHD"), among others. Its manpower would include 81 existing posts, 39 new time-limited non-directorate posts and the proposed directorate post, totalling 121. At present, SWD was creating the 39 time-limited non-directorate posts. She added that the new LR Branch was yet to be established, and the work of the proposed directorate post was currently shared by Assistant Director (Elderly) and Assistant Director (Rehabilitation & Med Social Services). Given that the two Assistant Directors were occupied with their current work, it would be difficult to effectively implement the proposed measures to improve the service quality and monitoring of homes as set out in the paper without the strategic leadership provided by a dedicated directorate head.

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Improving the service quality of residential care homes for persons with disabilities and for the elderly

32. Mr Wilson OR said that members from the Democratic Alliance for the Betterment and Progress of Hong Kong supported the staffing proposal. He enquired how the new LR Branch would strengthen inspection of homes, improve the monitoring and quality of homes and enhance the existing complaints mechanism.

33. Mr Holden CHOW commented that the staffing proposal had addressed the call of the community. He requested the Administration to elaborate the details regarding the staffing arrangements and implementation of the measures set out in paragraph 5(a) and (b) of the Government's paper, including setting up a dedicated multi-disciplinary inspectorate team to strengthen inspection, engaging retired disciplined service officers to assist the inspection teams, as well as setting up a designated team to handle complaints against homes.

34. Mr LEUNG Kwok-hung was concerned that the current system for homes was far from ideal, and questioned if the staffing proposal could effectively improve existing problems. He enquired about the new initiatives to be introduced by the holder of the proposed post to improve the quality of homes. Mr LEUNG also urged the Administration to dedicate more resources to improving elderly services.

35. Dr Hon Fernando CHEUNG criticized that the Government's current policy on homes was heading toward a wrong direction. He commented that relevant services should not be so market-oriented that homes were operated by persons intent on making profit. He stressed that strengthening inspection and monitoring alone would not address the existing problems of homes at source, and urged the Administration to immediately review the system for homes.

36. In response, PS (LW) advised that the Government was determined to improve the quality of homes and had been gathering views from stakeholders. The Government had all along been working to enhance the service standards of homes through a multi-pronged approach, including increasing the number of subsidized places at homes and enhancing relevant staff training and requirements. She pointed out that relevant dedicated teams would be set up under the new LR Branch to handle complaints and improve the quality of homes. Director of Social Welfare ("DSW") supplemented that three dedicated teams would be set up under the LR Branch, including the Risk Management and Complaints Section

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(dedicated to handling complaints against homes, conducting independent investigations and following up on substantiated complaint cases), the Target Monitoring and Prosecution Section (dedicated to handling of licensing and regulatory control of homes with serious irregularities or poor track records and taking prosecution actions where necessary) and the Quality Service Section (responsible for planning, development and implementation of training programmes catering to the needs of the sector and measures to enhance the management and service quality of homes). She also outlined SWD's proposed measures to strengthen inspection, improve the handling of complaints and enhance the quality of home managers and staff, as set out in paragraph 5 of the Government's paper. On engaging retired disciplined service officers, DSW stressed that such officers would only assist in and enhance the monitoring performed by the inspectorate team, and would not replace the work of the professional inspectorate staff in the existing LORCHE and LORCHD.

37. Dr Fernando CHEUNG pointed out that the Administration's response to the motion passed by the Panel on Welfare Services was ambiguous. The motion requested SWD to immediately set up "a committee to reform the relevant legislation and codes", but SWD only mentioned its plan to set up a platform to be engaged by different stakeholders for consulting and gathering stakeholders' views. He enquired about the details of the mode of operation of the said platform and the timetable for its formation.

38. PS(LW) advised that SWD would implement the 16 concrete measures as set out in paragraph 5 of the Government's paper upon the establishment of the LR Branch, including, among others, review of the legislation and Codes of Practice relating to homes. The Government expected the holder of the proposed post to submit a work proposal to DSW three months after taking office. SWD would then consult stakeholders on the proposal.

39. Dr KWOK Ka-ki pointed out that while he supported the staffing proposal, he was gravely dissatisfied with the current standards of private homes (such as staffing ratio at night) which was far lower than the relevant requirements of subvented homes and Enhanced Bought Place Scheme ("EBPS") homes. He criticized that with such low standards, the service quality would not be enhanced even if inspection work was strengthened. He commented that the Administration should establish common standards for various homes and include the relevant requirements of subvented and EBPS homes into the licensing conditions for homes.

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40. PS(LW) reiterated that the Government attached importance to improving the service quality of homes, and the Government would review the legislation and Codes of Practice relating to homes in the long run so as to enhance their service quality (including staffing ratio). She advised that if changes were made to the licensing conditions for homes across the board, some homes might have to close down due to non-compliance with the standards, thereby affecting the residents of these homes.

Duration of the proposed post

41. Dr LO Wai-kwok supported the staffing proposal. Noting that the proposed post involved a number of recurring tasks, he enquired about the reasons for not creating the said post on a permanent basis.

42. In response, PS(LW) said that taking into account that the proposed post was a new post and that some tasks were time-limited, the Government considered it more appropriate to create the said post on a supernumerary basis up to 31 March 2021. Before the expiry of the post, SWD would review the long-term manpower requirements having regard to the progress of work of the newly established LR Branch. DSW supplemented that SWD would submit an interim review report and a final report to LegCo in two years and four years respectively following the creation of the proposed post.

43. The Deputy Chairman said that the Subcommittee would continue to discuss this item at the meeting on 1 March 2017.

44. The meeting ended at 10:31 am.