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Legislative Council

LC Paper No. CB(1) 357/03-04(01)

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**Background brief on
Landlord and Tenant (Consolidation) (Amendment) Bill 2003**

Purpose

This paper gives a summary of discussion by the Panel on Housing (the Panel) in relation to the proposals to relax the security of tenure provisions under the Landlord and Tenant (Consolidation) Ordinance (Cap. 7) (the Ordinance) at the Panel's meetings on 14 February and 7 April 2003.

Major proposals in the Bill

2. The main object of the Bill is to enable the private rental market in both domestic and non-domestic tenancies to operate as freely as possible by -
 - (a) removing security of tenure provisions for domestic tenancies under Part IV of the Ordinance; and
 - (b) removing the minimum notice requirement for terminating non-domestic tenancies under Part V of the Ordinance.

Major issues raised at the Panel meetings on 14 February and 7 April 2003

3. At the meetings on 14 February and 7 April 2003, the Panel discussed the Administration's proposals to relax the security of tenure provisions under the Ordinance. According to the Administration, while security of tenure affords protection to tenants when their bargaining power was weak, the protection has impeded the free operation of the private rental market and discouraged investors from renting out their properties. Furthermore, the protection has become excessively restrictive in the light of sufficient supply of flats, falling rentals for private housing and adequate and affordable public housing. Given that the bargaining power of tenants has risen significantly, there is no longer justification for providing excessive protection to tenants. The Administration therefore considers it timely to relax the excessive security of tenure provisions so as to restore the balance of interests between landlords and tenants, and allow the property market to operate more freely.

4. The four possible options for relaxation of the security of tenure provisions are as follows -

- (a) Option A: partial removal delineated by Rateable Value (RV) where the relaxation will proceed in two phases. Under phase I, leased premises above certain RV will no longer be entitled to security of tenure protection, while those below that level will continue to be protected by security of tenure. Under phase 2, complete relaxation will follow after a review;
- (b) Option B: removal for new tenancies only. Under this option, new tenancies entered into after a date appointed by the Secretary for Housing, Planning and Lands (SHPL) will not be entitled to security of tenure. Tenancies entered into before the appointed date and are renewed afterwards will continue to be accorded protection;
- (c) Option C: complete removal at one go. Under this option, security of tenure will be completely removed on a date appointed by SHPL. All tenancies will no longer be protected by security of tenure;
- (d) Option D: complete removal with a grace period. Under this option, security of tenure will be removed for all new tenancies entered into after a date to be appointed by SHPL. For existing tenancies entered into before the appointed date, a grace period starting from the appointed date will be allowed. If the tenancy expires during the grace period, tenants may still apply for statutory tenancy renewal under the protection of security of tenure. For those tenancies which expires after the grace period, there will be no protection of security of tenure after the expiry of the current tenancy.

5. Concern has been raised that the proposed relaxation of security of tenure may push up rents in the private market, thereby unduly affecting the underprivileged groups, particularly elderly singletons, dwellers living in cubicles and bedspace apartments and those with chronic illness, who may have difficulties in finding suitable alternative accommodation. There are also dissenting views on the options to be adopted, as explained in foregoing paragraphs.

6. On *Option A - partial removal delineated by RV*, some members hold the view that the approach is more acceptable as this will cause minimal disruption to leased premises of lower RV which comprise major dwellings of low-income households. Others however consider it unfair to landlord of premises of lower RV as they will not be able to act at full liberty according to the terms of agreement and repossess the leased premises at the end of the tenancy period or negotiate new terms with the tenants for the renewal of tenancy.

7. On *Option C - complete removal at one go*, there is support for this option as it is difficult to appoint a date at which the protection on security of tenure should be removed. Concern however has been raised that complete removal at one go will adversely affect the low-income families, particularly those living in cubicles or bedspace apartments who may have difficulty in finding new accommodation after being evicted as a result of high rentals.

8. On *Option D - complete removal with a grace period*, some members consider it more preferable as it will allow a reasonable transitional period for phasing out the security of tenure restrictions, enabling landlords and tenants to get prepared for the change. Others however do not agree that a grace period should be given as this may give the public a wrong impression that there will be further changes in the policy.

9. Given the divergent views received on the various options, members suggest that the Administration may consider amalgamating the essential features of different options.

10. Apart from the proposals on relaxation of security of tenure provisions, members are consulted on the outcome of consultation on provision of personal information by tenants and protection for sub-tenants which has been conducted pursuant to the request of the Bills Committee on Landlord and Tenant (Consolidation) (Amendment) Bill 2001. Members generally hold the view that it is not appropriate to impose mandatory requirement for tenants to provide their personal information such as name, occupation, salary and past rental records to landlords when entering into a tenancy agreement. Such a requirement will not only contravene the International Covenant on Civil and Political Rights incorporated into Hong Kong Laws through the Basic Law, but will also give rise to disputes between landlords and tenants. Besides, this will set a precedent for other legislation should criminal liability be imposed on the provision of false information. They also consider it necessary to protect the interest of sub-tenants when the principal tenancy is terminated by the landlord due to non-payment of rent by the principal tenant. To this end, sub-tenants should be granted a tenancy which term is not longer than the tenancy term between the landlord and the principal tenant.

11. The relevant extracts from the minutes of the Panel meetings on 14 February and 7 April 2003 are at **Appendices I and II** respectively.

Reference materials

12. The following papers are relevant to the Bill -

- (a) Consultation paper on security of tenure (Annex to LC Paper No. CB(1) 785/02-03(03));

- (b) Result of consultation exercise (LC Paper No. CB(1) 1354/02-03(04));
- (c) Result of telephone survey (LC Paper No. CB(1) 1380/02-03); and
- (d) Questionnaire used for the telephone survey (LC Paper No. CB(1) 1816/02-03).

Council Business Division 1
Legislative Council Secretariat
19 November 2003

**Extracts from the minutes of the meeting
of the Housing Panel on 14 February 2003**

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(LC Paper No. CB(1) 785/02-03(03) — Paper provided by the Administration)

5. At the invitation of the Chairman, the Permanent Secretary for Housing, Planning and Lands (Housing) (PSH) highlighted the salient points in the Administration's information paper, which set out certain proposals to remove the security of tenure provisions and other related issues under the Landlord and Tenant (Consolidation) Ordinance (Cap. 7) (LTO).

Relaxation of security of tenure provisions

6. While acknowledging that the rental market was declining as a result of economic downturn, Mr Albert HO expressed concern that the proposed relaxation of security of tenure provisions might drive up rents in the private market, thereby unduly affecting the underprivileged groups, particularly elderly singletons, dwellers living in cubicles and bedspace apartments and those with chronic illness, who might have difficulties in finding suitable alternative accommodation. Mr IP Kwok-him echoed that the average unit rent of cubicles and bedspace apartments in urban districts was already on the high side given their convenient locations. The proposed relaxation might further drive up the rents. The Chairman also enquired about the average rent of cubicles and bedspace apartments and the number of dwellers who had registered on the Waiting List (WL) for public rental housing (PRH) to improve their living conditions.

7. The Deputy Director (Strategy) (DD(S)) advised that according to the Census and Statistics Department, there were around 65 000 "part-let tenancies" (including shared tenancies all over Hong Kong) as at the end of 2001. According to various estate agents, she understood that the actual rents would vary according to locations and type of facilities offered and that the average rent for a typical cubicle was about \$1,200 per month. By way of illustration, the rents for a 30 and a 60 square-foot cubicles with shared kitchen and toilet in Tai Kwok Tsui were about \$700 and \$1,200 per month respectively. The monthly rent for a 120 square-foot room with a kitchen and toilet cubicle in Shamshuipo was \$1,500, and would drop to \$1,200 in the case of shared kitchen and toilet. The rent for a 100 square-foot suite in Yau Ma Tei was \$1,500 per month. DD(S) said that her talks with both landlords and tenants of such cubicles showed that average rental level had dropped significantly, as a result of the success of HA to rehouse families from WL and the reduction of average waiting time from nine years in 1990 to less than three years now. In light of the changed circumstances, landlords would unlikely raise rents in order to retain existing tenants. On members' concern about the possible surge in rent after the relaxation of security of tenure provisions, the Deputy Commissioner of Rating and Valuation (DCRV) advised that this might not be the case given that the bargaining power of tenants had significantly risen as a result of sufficient supply of private and public housing flats as

well as falling rentals for private housing. As regards the number of cubicle dwellers who had registered on WL, DCRV advised that the Administration did not keep such information.

8. Mr James TO however cautioned that the gradual demolition of old buildings in urban areas would reduce the number of cubicles and bedspace apartments and thus pushing up their rents when supply was no longer able to meet demand. He also pointed out that the proposed relaxation of security of tenure provisions would allow landlords to refuse renewal of tenancies even if tenants were willing to pay market rent. Tenants so evicted would have to find alternative accommodation which would incur additional removal and renovation cost. Such an eviction would also break the social ties which the tenants, particularly elderly tenants, had established in the districts over the years. As such, consideration should be given to phasing out the removal of security of tenure provisions taking into account the social cost incurred from re-establishing these ties.

9. In response, PSH reiterated that as the bargaining power of tenants had risen significantly, there was no longer justification for providing excessive protection to tenants. The Government therefore considered it timely to relax the excessive security of tenure provisions so as to restore the balance of interests between landlords and tenants, and allow the property market to operate more freely. DD(S) added that against the background of sufficient supply, the Government should let the market operate as freely as possible and adjust to the demand. This had been reflected by the high mobility of cubicle dwellers who could easily find an alternative accommodation. Besides, the Administration had put in place a safety net, i.e. public housing for those who were in genuine need. Those who were not eligible for PRH would be offered interim housing. Apart from PRH, rental allowance was also offered to elderly persons, who had registered on WL for at least one year and whose applications were due for PRH allocation, as an alternative to public housing so that they could rent private accommodation in districts of their choice. Elderly singletons with genuine housing need might be allocated PRH on compassionate grounds upon recommendation by the Social Welfare Department. Mr Albert HO however pointed out that many people had become ineligible for PRH as a result of the lowering of the income and asset limits for PRH.

10. Mr Fred LI remained unconvinced of the Administration's response. Given the scarce supply of PRH in urban districts, Mr LI remained of the view that rents of cubicles and bedspace apartments in these areas would go up after the relaxation of security of tenure provisions, as in the case of the redevelopment project undertaken by the Urban Renewal Authority (URA) at Cherry Street. Mr IP Kwok-him echoed that dwellers concerned might have to move to cubicles or bedspace apartments at the fringe of urban districts such as the Western District or Shaukeiwan because of the lower rentals. PSH noted that at present, there were over 10 000 vacant PRH flats, mainly located at extended urban areas and the New Territories. Prospective PRH tenants were reluctant to move to take up these flats due to the anticipated increase in travelling expenses. Notwithstanding, the Administration would endeavour to optimize the use of vacant PRH units. WL applicants who had no strong preference for specific districts would be allocated PRH at a time much shorter than the average waiting time of three years.

11. Noting that landlords who wished to redevelop their premises would be able to repossess the premises at the end of the tenancy period without the need to pay the statutory compensation after the relaxation of security of tenure provisions, Mr Albert HO was skeptical that the proposed relaxation was aimed at reducing the cost of redevelopment to pave way for urban renewal. PSH advised that there were established provisions governing the compensation for tenants affected by URA projects. Once a building was included for urban renewal, a freezing survey would be conducted to register the affected tenants and the landlords were not allowed to evict tenants concerned. Therefore, the proposed relaxation should not affect these tenants. The Chairman declared interest that he was a non-executive director of URA. He remarked that as compensation payable to landlords by URA was higher than that to tenants, the proposed relaxation was by no means to pave way for urban renewal.

12. Mr Tommy CHEUNG supported the relaxation of security of tenure provisions as this would help tackle the problem of rogue tenants. He then enquired about the total number of vacant private residential flats in the market. DCRV replied that according to Rating and Valuation Department, there were about 60 000 vacant flats, representing 5.7% of the total private housing stock as at the end of 2001. It was expected that the vacancy rate would rise further this year. The Chairman however remarked that a high vacancy rate did not necessarily mean that the rents were affordable to tenants, particularly to low-income families. DD(S) replied that landlords nowadays were inclined to lower the rents in order to ensure early leasing of their premises when the supply of private flats was abundant.

13. Mr NG Leung-sing noted that the impact of the relaxation of security of tenure provisions could be resolved with the adequate supply of affordable public housing. He however pointed to the need to address the problem of rogue tenants to protect the interest of landlords. While agreeing that it was an appropriate time for relaxing the security of tenure provisions, the Chairman stressed the need for the Administration to take care of the need the underprivileged, including dwellers of cubicles and bedspace apartments.

Possible options

14. On *Option A - partial removal delineated by Rateable Value* (RV), Mr Albert HO noted that under this option, the relaxation would proceed in two phases. He considered the approach more acceptable as this would cause minimal disruption to leased premises of lower RV which comprised major dwellings of low-income households. Mr Tommy CHEUNG however took a different view. He opined that Option A was unfair to landlords of premises of lower RV as they would not be able to act at full liberty according to the terms of agreement and repossess the leased premises at the end of the tenancy period or negotiate new terms with the tenants for the renewal of the tenancy. Mr NG Leung-sing echoed that many landlords of leased premises of lower RV were small investors whose interest should also be protected. In reply, PSH agreed that Option A might not be fair to small investors, particularly those elderly landlords who relied on rental return for their living. Moreover, it was difficult to draw a line on what premises should continue to be subject to the restriction of security of tenure and what should not.

15. Apart from RV, Mr Fred LI asked if the Administration would consider using the types of leased premises as the baseline for relaxation. For example, premises with shared facilities should continue to be subject to restriction of security of tenure. To avoid sudden surge in rents of cubicles and bedspace apartments after the relaxation, Mr SZETO Wah opined that these premises should also be subject to restriction of security of tenure to protect the interest of dwellers. DD(S) advised that there was technical difficulty to draw a line on the types of premises. Question on whether leased premises in the Mid-levels with shared facilities should be subject to restriction of security of tenure might also arise.

16. While not having any strong views on the kind of tenancies or type of premises to be protected, Mr SIN Chung-kai considered it necessary for the Administration to work out an effective mechanism to balance the interest of both landlords and tenants. PSH affirmed that the proposed relaxation of excessive security of tenure provisions was aimed at restoring the balance of interests between landlords and tenants, and allowing the property market to operate more freely. Mr SIN however considered the relaxation too drastic given the strong interventionist approach which the Administration had adopted for the property market in the past. DD(S) explained that with the expiry of Parts I and II of LTO which dealt with rent control and security of tenure of pre-war and certain post-war tenancies respectively on 31 December 1998, most domestic tenancies were now protected under Part IV which accorded security of tenure to tenants subject to payment of prevailing market rent. Part IV was introduced in 1981 against the background of a serious shortfall of domestic accommodation leading to significant rental increases on renewal of tenancies. Given the present sufficient supply of flats, the Administration considered it timely to relax the security of tenure provisions.

17. On *Option C - Complete removal at one go*, Mr Tommy CHEUNG opined that this option was more appropriate as it was difficult to appoint a date at which the protection on security of tenure should be removed as proposed under Options B and D. Mr Albert HO however took a different view. He considered that the complete removal at one go would adversely affect the low-income families, particularly those living in cubicles or bedspace apartments who might have difficulty in finding new accommodation after being evicted as a result of high rentals.

18. On *Option D - Complete removal with a grace period*, Mr IP Kwok-him sought clarification on the difference between Options C and D. DD(S) explained that under option C, security of tenure for all tenancies would be completely removed on a date appointed by the Secretary for Housing, Planning and Lands (SHPL). Under Option D, security of tenure would be removed for all new tenancies entered into after a date to be appointed by SHPL. For existing tenancies entered into before the appointed date, a grace period starting from the appointed date would be allowed. Tenants might still apply for statutory tenancy renewal under the protection of security of tenure if the tenancies expired during the grace period. For those tenancies which expired after the grace period, there would be no protection of security of tenure after the expiry of the current tenancy and landlords would be allowed to repossess the leased premises freely at the end of the tenancy period.

19. Mr IP found Option D more preferable as it would allow a reasonable transitional period for phasing out the security of tenure restrictions, enabling landlords and tenants to get prepared for the change. Mr NG Leung-sing however did not agree that a grace period should be given, as this might give the public a wrong impression that there would be further changes in the policy. To alleviate the possible impact of the relaxation on tenants, the Government should put in place measures such as provision of rent subsidy or PRH to those eligible persons. Mr Fred LI suggested that to achieve a win-win situation for both landlords and tenants, consideration should be given to amalgamating the features of Options A and D to address the various concerns raised by members. By the way in which the paper was drafted, Mr Albert HO asked if the Administration had taken its stance on Option D. PSH assured members that the Administration would take into account all views received during the consultation exercise before deciding on the Option to be adopted. He also noted members' suggestion of amalgamating the essential features of various Options.

Provision of false information by tenants

20. The Chairman was opposed to the mandatory requirement for tenants to provide their personal information such as name, occupation, salary and past rental records to landlords when entering into a tenancy agreement. He said that such a requirement would not only contravene the International Covenant on Civil and Political Rights incorporated into Hong Kong Laws through the Basic Law, but would also give rise to disputes between landlords and tenants. Mr Albert HO echoed that this would set a precedent for other legislations should criminal liability be imposed on the provision of false information.

Position of sub-tenants in the event of default of rent payment by the principal tenant

21. To protect the interest of sub-tenants when the principal tenancy was terminated by the landlord due to non-payment of rent by the principal tenant, the Chairman agreed that sub-tenants should be granted a tenancy which term was not longer than the tenancy term between the principal tenant and the landlord.

22. As regards legislative time-table, DD(S) advised that subject to the views collected from the consultation exercise, the Administration planned to introduce legislative amendments to LTO in June 2003. The Chairman reminded members to put forward their views to the Administration before the consultation ended on 1 March 2003.

(Post-meeting note: the Administration had decided to extend the consultation period to 22 March 2003.)

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**Extracts from the minutes of the meeting
of the Housing Panel on 7 April 2003**

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IV. Security of tenure

- (LC Paper No. CB(1) 785/02-03(03) — Paper provided by the Administration
- LC Paper No. CB(1) 1128/02-03 — Minutes of the meeting on 14 February 2003
- LC Paper No. CB(1) 1354/02-03(04) — Paper provided by the Administration)

14. The Deputy Director (Strategy) (DD(S)) briefed members on the outcomes of the public consultation exercise and the telephone survey on the proposals to amend the security of tenure provisions under the Landlord and Tenant (Consolidation) Ordinance (Cap. 7) (LTO) and other related provisions.

Relaxation of security of tenure

15. Mr LEUNG Yiu-chung remained of the view that the proposed relaxation of security of tenure might drive up rents in the private market, hence affecting the underprivileged groups, particularly elderly singletons, dwellers living in cubicles and bedspace apartment, who might have difficulties in finding suitable alternative accommodation. The situation would be further aggravated following the reduction in public rental housing (PRH) production. He asked what measures were put in place to meet the housing demand of the needy. DD(S) explained that the current rental market situation had changed substantially amid the economic downturn. The bargaining power of tenants had improved considerably as a result of the abundant supply of private flats. Rentals had also fallen by some 40% compared to the peak period in 1997. Besides, past figures indicated that tenants were highly mobilized and might not renew their tenancies even with the provisions of security of tenure. About 75% of tenancies, including those of cubicles and bedspace apartments, did not go beyond four years. Under such circumstances, there was no strong justification to provide excessive protection to tenants and it was timely to relax the security of tenure provisions. Those with genuine need of housing would be offered PRH and the current average waiting time for PRH was three years. Applicants on the Waiting List (WL) who had no strong preference for specific districts would be allocated PRH units within two years.

16. To ascertain the pros and cons of the proposed relaxation of the security of tenure, Mr Andrew WONG opined that the Administration should gauge the rationale behind the high mobility of tenants as some of them might have been evicted by landlords. He also pointed out that the main objective of the security of tenure provisions under Part IV of LTO introduced in 1981 was to protect tenants against

eviction by landlords. The proposed relaxation, whether in one go or with a grace period, would defeat such a purpose. Besides, it would be difficult for the Administration to reinstate the security of tenure provisions even if situations warranted as in the case of drastic surge of rentals and shortfall in supply of flats. He said that he would not support any proposed legislation to remove security of tenure. Mr LEUNG Yiu-chung echoed that it was imprudent for the Administration to relax the security of tenure provisions since there would be no remedy in the event of a booming property market.

17. In reply, DD(S) explained that Part IV was introduced into LTO in 1981 against the background of a serious shortfall of domestic accommodation in Hong Kong leading to a significant rental increases on renewal of tenancies. The intention at that time was to protect tenants from the risk of being evicted by unscrupulous landlords. However, the provisions on security of tenure might not be fair to landlords in general as they were restricted from repossessing their premises so long as tenants were willing to pay the prevailing market rent. The protection had also impeded the free operation of the private rental market and discouraged investors from renting out their premises. As the bargaining power of tenants had risen as a result of sufficient supply of flats, falling rentals for private housing as well as adequate and affordable public housing, there was no longer any justification for providing excessive protection on tenants. The Administration considered that it was timely to relax the excessive security of tenure provisions so as to restore the balance of interest between landlords and tenants and allow the property market to operate more freely. This was particularly important for landlords with negative equities.

Results of the consultation exercise and the telephone survey

18. Given the short consultation period and the limited information on the various options in the consultation paper, Mr Andrew WONG questioned the reliability of the results of the consultation exercise as respondents might not be fully aware of the impact of the proposed relaxation of security of tenure. Expressing similar concern, Mr Albert HO noted that of the total submissions received, 48% were from landlords and only 9% from tenants. The predominant landlord-respondents' views might give a wrong impression that the public was in favour of the proposed relaxation. In reply, DD(S) stressed that all necessary information on the background, possible options and implications of the proposed relaxation of security of tenure provisions had been set out in the consultation paper. In order to allow more time for the public to express their views, the consultation period, scheduled to end on 1 March 2003, was extended to 22 March 2003. In addition to the consultation paper, a telephone survey was conducted from 26 to 30 March 2003 to gauge the views of the community at large.

19. As PRH tenants would not be affected by the proposed relaxation, Mr Andrew WONG questioned the rationale for including views from PRH tenants in the survey. He was skeptical that the Administration would remove the security of tenure of PRH tenants as the next step. In reply, DD(S) stressed that this was not the case. Views from PRH tenants were included because they might move to private

flats after their financial situation had improved. She added that the views from various groups of respondents were largely the same. About 50% of private housing tenant-respondents supported the proposed relaxation while about 21% had no views and about 29% objected the proposal. For PRH tenant-respondents, about 55% were supportive of the relaxation whereas about 25 % had no views and about 20% objected proposal.

20. Mr WONG held the view that PRH tenant-respondents' views should be excluded, and that emphasis should be focused on views from the concerned parties and professional bodies. On the sample size, he opined that at least 500 samples should be surveyed for each type of household. To enhance accuracy of the findings, consideration should also be given to stratifying tenants from owner-occupiers. The Assistant Director (Private Housing) explained that the telephone survey was aimed at collating views of the general public so a random rather than stratified sampling methodology had been adopted. DD(S) added that of the random sample of 5 800 individuals from all land-based households with residential telephone lines, a total of 2 040 individuals in the sample were successfully interviewed and asked to give views on the proposals. The margin of error was $\pm 3.1\%$ at 95 % confidence. In response to Mr WONG's further question, DD(S) confirmed that respondents were required to provide personal information such as sex, household income and property ownership during the telephone interview. In this connection, the Administration was requested to provide a copy of the questionnaire for members' reference.

The way forward

21. Given the divergent views received on the various options for relaxing the security of tenure provisions, Mr HO asked how the Administration could reach a decision on the option to be adopted. He said that Members of the Democratic Party were in favour of removing the security of tenure for tenancies above a certain level only in Phase 1 and complete removal after a review in Phase 2. This would allow sufficient time for the Administration to ascertain the effect of the removal on both landlords and tenants before proceeding with a complete removal. In response, DD(S) reiterated that it would be difficult to draw a line on the types of tenancies which should be subject to security of tenure. She assured members that the Administration would take into full account the views received before reaching a decision on the option to be adopted. As a majority of respondents preferred complete removal at one go or with a grace period, consideration might be given to amalgamating the essential features of these two options. Given that it would take time for the Legislature to scrutinize the proposed legislative amendments, both landlords and tenants might have some lead-time to make the necessary arrangements to prepare for the change. To enhance members' understanding, the Chairman requested and the Administration undertook to provide an information paper setting out the finalized legislative proposal on the relaxation of security of tenure before this was introduced into the Legislature in June 2003.

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