立法會
Legislative Council

LC Paper No. CB(2)755/05-06
(These minutes have been seen by the Administration)

Ref : CB2/PL/SE/1

Panel on Security

Minutes of meeting held on Tuesday, 1 November 2005 at 2:30 pm in Conference Room B of the Legislative Council Building

Members present	:	Hon James TO Kun-sun (Chairman) Hon Daniel LAM Wai-keung, BBS, JP (Deputy Chairman) Hon Albert HO Chun-yan Dr Hon LUI Ming-wah, SBS, JP Hon Margaret NG Hon CHEUNG Man-kwong Dr Hon Philip WONG Yu-hong, GBS Hon WONG Yung-kan, JP Hon Howard YOUNG, SBS, JP Hon LAU Kong-wah, JP Hon Audrey EU Yuet-mee, SC, JP Hon Andrew LEUNG Kwan-yuen, SBS, JP Hon LEUNG Kwok-hung Hon CHIM Pui-chung
Members attending	:	Hon Martin LEE Chu-ming, SC, JP Hon Ronny TONG Ka-wah, SC
Member absent	:	Hon CHOY So-yuk, JP
Public Officers attending	:	Item IV Mr Stanley YING Permanent Secretary for Security

Mr Charles WONG
Principal Assistant Secretary for Security

Mr KWOK Leung-ming
Commissioner of Correctional Services (Acting)

Mr YING Kwok-ching
Assistant Commissioner of Correction Services (Quality Assurance)

Item V

Mr Stanley YING
Permanent Secretary for Security

Mrs Apollonia LIU
Principal Assistant Secretary for Security

Mr Gavin SHIU
Senior Assistant Director of Public Prosecutions
Department of Justice

Ms Roxana CHENG
Senior Assistant Solicitor General
Department of Justice

Mr Paul HUNG
Assistant Commissioner of Police (Support)

Ms Angela CHIU
Superintendent of Police (Licensing)

ItemVI

Mr Ambrose LEE
Secretary for Security

Miss S H CHEUNG
Deputy Secretary for Security

Mrs Apollonia LIU
Principal Assistant Secretary for Security

Mr Johann WONG
Administrative Assistant to Secretary for Security

Mr Hubert LAW
Assistant Secretary for Security

Mr Ian WINGFIELD
Law Officer (International Law)
Department of Justice

Mr John LEE
Assistant Commissioner of Police (Crime)

Clerk in attendance : Mrs Sharon TONG
Chief Council Secretary (2)1

Staff in attendance : Mr LEE Yu-sung
Senior Assistant Legal Adviser 1

Mr Stephen LAM
Assistant Legal Adviser 4

Mr Raymond LAM
Senior Council Secretary (2) 5

Ms Alice CHEUNG
Legislative Assistant (2) 1

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I. Confirmation of minutes of previous meeting
(LC Paper No. CB(2)126/05-06)

The minutes of the meeting held on 13 October 2005 were confirmed.

II. Information papers issued since the last meeting
(LC Paper Nos. CB(2)135/05-06(01), CB(2)187/05-06(01) and CB(2)241/05-06(01))

2. Members noted that the following papers had been issued since the last meeting –

(a) Referral from Duty Roster Members regarding issues identified in a study on the reconviction of ex-prisoners conducted in 2005 by the Society for Community Organization;

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(b) Information paper on proposed legislative amendments providing for maintenance of records of births, deaths and marriages in digital image provided by the Administration; and

(c) Administration's response to members' query on the factors/principles adopted in determining whether the fee revision proposals did not directly affect people's livelihood.

III. Date of next meeting and items for discussion
(LC Paper Nos. CB(2)192/05-06(01) and (02))

3. Members agreed that the following items would be discussed at the next meeting to be held on 6 December 2005 at 2:30 pm -

(a) Revision of certain fees and charges for services not directly affecting people's livelihood;

(b) Legislative proposal to implement the Convention on the Safety of United Nations and Associated Personnel; and

(c) Security arrangements for the Sixth Ministerial Conference of the World Trade Organization to be held in Hong Kong from 13 to 18 December 2005.

4. Members agreed that members of the Panel on Commerce and Industry would be invited to join the discussion on the item referred to in paragraph 3(c) above.

5. Ms Margaret NG suggested that the item "Policy on the admission of refugees" be discussed at the Panel meeting in January 2006. She also suggested that the item "Operation of the Long Term Prison Sentences Review Board" be added to the list of outstanding items for discussion by the Panel. Members agreed.

IV. Long-term Prison Development
(LC Paper Nos. CB(2)192/05-06(03) and (04))

6. Permanent Secretary for Security (PS for S) briefed Members on the Administration's prison development plans subsequent to the shelving of the Hei Ling Chau Prison development proposal in October 2004.

7. Mr LAU Kong-wah said that the existing penal institution at Chi Ma Wan was located closer to the urban areas than the Lo Wu Correctional Institution (LWCI). He asked whether priority would be given to redeveloping the Chi Ma Wan Correctional Institution (CMWCI). He considered that the Administration should provide a comparison between the redevelopment of LWCI and CMWCI, including

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the respective site areas, costs involved and the additional number of penal places to be created.

8. PS for S responded that details of the redevelopment of CMWCI were still under study and thus the requested information was not available at this stage. The Administration would expedite its study of the redevelopment of CMWCI. He pointed out that although CMWCI had a capacity of about 600 penal places, it was currently accommodating over 1 100 inmates. If the institution was to be redeveloped, some other places had to be identified for accommodating these inmates during the redevelopment period. In the case of LWCI, it would be easier as the institution only had a capacity of 180 penal places.

9. Mr LAU Kong-wah asked about the respective numbers of Hong Kong residents serving sentence in the Mainland and Mainlanders serving sentence in Hong Kong. He also asked about the effect of the establishment of transfer of sentenced persons arrangements between Hong Kong and the Mainland on the penal population.

10. PS for S responded that there were 3 502 Mainlanders serving sentence in Hong Kong, representing about 28.8% of the penal population, and about 600 Hong Kong residents serving sentence in the Guangdong Province. Owing to the differences in the judicial systems, the transfer of sentenced persons arrangements had not yet been established with the Mainland. Under the model agreement on the transfer of sentenced persons, a sentenced person who wished to apply for transfer must have a remaining sentence of one year or more. Given that 48.9% of Mainlanders serving sentence in Hong Kong had a remaining sentence of less than one year, the establishment of transfer of sentenced persons arrangements with the Mainland on the penal population might not result in a substantial decrease in the penal population in Hong Kong.

11. Mr LAU Kong-wah considered that as Mainlanders serving sentences in Hong Kong had taken up 28.8% of the penal population, the transfer of such persons to the Mainland for serving their remaining sentences would considerably relieve the pressure on penal places. In view of this, he considered that priority should be given to establishing transfer of sentenced persons arrangements with the Mainland and the one-year remaining sentence requirement should be shortened.

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12. PS for S agreed to consider Mr LAU's suggestion. He stressed that under the model agreement on the transfer of sentenced persons, a transfer required the agreement of the transferring and receiving parties as well as the sentenced person. In this connection, he informed Members that seven sentenced persons had been transferred to the United Kingdom for serving their sentences and the application of another sentenced person for transfer to the United Kingdom was being processed. On the other hand, none of the 40 Thais serving sentence in Hong Kong had applied for transfer to Thailand for serving their sentences. It was thus difficult to assess the number of sentenced persons who would apply for transfer to the Mainland for serving their sentences, if transfer of sentenced persons arrangements were established with

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the Mainland.

13. The Chairman asked whether the Administration would consider providing incentives for Mainlanders serving sentence in Hong Kong to apply for transfer to the Mainland for serving their remaining sentences.

14. PS for S responded that the Administration had worked on the basis of the model agreement, and had not thought of incentives for inmates to transfer. Having said that, the Administration would be prepared to study concrete proposals.

15. Mr CHEUNG Man-kwong said that the Administration had overestimated the number of Mainlanders with right of abode in Hong Kong and the demand for school places. He asked how the projected penal population referred to in paragraph 6 of the Administration's paper was compiled.

16. Commissioner of Correctional Services (Acting) (CCS(Atg)) responded that the projected penal population was compiled on the basis of the arrest and prosecution statistics provided by the Police and the Immigration Department. It was estimated that, between 2004 and 2015, there would be an annual increase of 0.8% in penal population, which was in line with the projected increase in the total population in Hong Kong.

17. PS for S said that by their nature, projections could not be entirely accurate; the question was the magnitude of the difference between projection and reality. The Administration had examined CSD's past projections on penal population and noted that in the period that they had studied, the difference between the projected and actual penal population was small. It was projected in 2002 that the penal population in 2004 would be 12 990 and the penal population in 2004 finally turned out to be 13 091.

18. Mr CHEUNG Man-kwong said that there were reports that many sentenced Mainlanders were convicted of engaging in vice activities or illegal employment. As the Secretary for Security (S for S) had said that the particulars of Mainland visitors found working illegally in Hong Kong were passed to Mainland authorities so that the problem could be tackled at source, he asked whether the adoption of such a measure would result in a reduced demand for penal places.

19. PS for S responded that the redevelopment of penal institutions would achieve the purposes of meeting increased demand for penal places as well as addressing the problem of aging of old penal institutions. If the penal population finally turned out to be much lower than projected, some old penal institutions could be demolished and the site surrendered for other land use. He said that the particulars of Mainland visitors found working illegally in Hong Kong were kept by the Immigration Department and passed to Mainland authorities, which might reject these visitors' application to visit Hong Kong for a certain period of time.

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20. Mr CHIM Pui-chung considered that the redevelopment of LWCI should be expedited so that the penal site at Stanley could be released for other land use. He added that a number of inmates had complained about the slow progress of establishing transfer of sentenced persons arrangements with the Mainland. He considered that the Administration should expedite the establishment of such arrangements.

21. PS for S responded that the Administration would seek to expedite the project, if funding for the project was approved by the Finance Committee. He said that the Administration would continue to work on the establishment of arrangements on the transfer of sentenced persons with the Mainland.

22. Mr LEUNG Kwok-hung said that, given the poor condition of Mainland prisons, Mainlanders serving sentence in Hong Kong would unlikely be willing to apply for transfer to the Mainland. He considered that persons arrested of engaging in vice activities or taking up illegal employment should be repatriated but not prosecuted. This would substantially relieve the pressure on penal places. He added that the Administration should, instead of passing the particulars of Mainland visitors found engaging in vice activities or working illegally in Hong Kong to Mainland authorities, refuse the entry of such persons at boundary control points.

23. PS for S responded that the Administration had to enforce the law. At the policy level, he said that the public at large and many LegCo Members had been of the view that the Administration should enforce the law against vice activities and illegal employment. Although the particulars of Mainland visitors found taking up illegal employment in Hong Kong were passed to the Mainland authorities, it was up to the Mainland authorities to determine whether actions should be taken against such persons. He stressed that according to the model agreement on the transfer of sentenced persons, a transfer required, among others, the agreement of the sentenced person.

24. Ms Margaret NG said that the Administration had previously adopted the policy of immediately repatriating illegal immigrants who were arrested for the first time. She considered that the Administration should review whether illegal immigrants should be imprisoned for a long period of time, whether such imprisonment could achieve the desired penal effect and the cost implications of such imprisonment.

25. PS for S stressed that the sentencing of a person was determined by court. He said that combating vice activities and illegal employment were ongoing initiatives of the Administration. As the treatment of persons convicted of engaging in vice activities or taking up illegal employment was outside the purview of penal policy, it might be more appropriate to discuss the issue when illegal employment and vice activities were discussed.

26. Mr LEUNG Kwok-hung said that a resident of Ho Sheung Heung had

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complained that residents had not been consulted on the previous establishment of a minimum security penal institution in Lo Wu and the proposed redevelopment of LWCI, which would involve the removal of a grave, into minimum and medium security institutions.

27. PS for S responded that the Administration had started consulting the local community on its proposal to redevelop LWCI and would consult the North District Council shortly. The Administration had made public its plan to redevelop LWCI from a penal institution with 182 places to a penal institution with 1 400 places and the response received so far had generally been positive. The Administration had in fact met the village representatives of Ho Sheung Heung, who had advised the Administration to handle the grave located within the proposed site carefully. There had been no information on the ownership of the grave. The Administration would discuss the matter with the District Officer of North District and report on the progress in its paper to be submitted when seeking funding for the project.

28. The Deputy Chairman expressed support for the Administration's proposal to redevelop LWCI. He said that the Administration should launch a more thorough consultation on its proposals.

29. Mr LAU Kong-wah requested the Administration to provide a paper on the progress of the establishment of transfer of sentenced persons arrangements with the Mainland. He also requested the Administration to provide a comparison between the redevelopment of LWCI and CMWCI, and advise whether the redeveloped institutions at Lo Wu would be further developed to provide more than 1 400 places.

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30. PS for S said these matters would be covered when the Administration put a funding submission to the Finance Committee for the LWCI redevelopment project. He said that it was the Administration's plan to redevelop LWCI into penal institutions which provided a total of 1 400 places only. Even if these institutions were to be further redeveloped, the Administration would have to go through the usual processes of conducting studies on various aspects and consultations with relevant stakeholders and consultations with LegCo on the project and funding for the project.

V. Issues arising from the judgment delivered by the Court of Final Appeal on the case between LEUNG Kwok-hung, FUNG Ka-keung, Christopher, LO Wai-ming and the Hong Kong Special Administrative Region on 8 July 2005

(LC Paper Nos. CB(2)192/05-06(05), CB(2)2243/04-05(01) and (02))

31. PS for S briefed Members on the background to the case of *Leung Kwok Hung & Others v. HKSAR*, the effect of the judgment delivered by the Court of Final Appeal (CFA) (the judgment) and the way forward.

32. Ms Margaret NG expressed disappointment that the Administration had

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simplified the judgment into a matter of merely replacing the term "public order (*ordre public*)" in the Public Order Ordinance (Cap 245) (POO) with the term "public order". She expressed concern that while "*ordre public*" was specified in the International Covenant on Civil and Political Rights (ICCPR), one could not know when the Police could object to a proposed public procession. She pointed out that the court had emphasised that the Commissioner of Police (CP) must apply the proportionality test in exercising his statutory discretion to restrict the right of peaceful assembly. She considered that the Administration should not merely delete "*ordre public*" from the provisions in POO. The Administration should examine how the provisions could be improved so that Police officers and members of the public would be aware of the scope of the Police's power.

33. Referring to paragraphs 90 to 94 of the judgment, PS for S responded that the court had concluded that CP's statutory discretion to restrict the right of peaceful assembly for the purpose of public order must be held to satisfy the proportionality test and therefore the constitutional necessity requirement. He said that the regulation of public meetings and public processions and review of POO had been thoroughly discussed by the Legislative Council (LegCo) in 2000. Apart from the term "public order (*ordre public*)" which was ruled by CFA to be unconstitutional and thus would be amended, the Administration considered that the existing provisions in POO were in order and reflected a proper balance between protecting and facilitating individual's right to freedom of expression and right of peaceful assembly, and the broader interests of the community at large. He assured Members that CP would apply the proportionality test in exercising his discretion under POO.

34. Ms Margaret NG said that as a breach of the provisions in POO would amount to a criminal offence, providing CP with too much discretion to restrict the right of assembly would be unfair to members of the public. She recalled that CP had, in a previous case, imposed the condition that seditious slogans should not be used. She queried whether such a condition satisfied the proportionality test. She considered that the conditions which could or could not be imposed by CP should be set out clearly in legislation.

35. PS for S responded that the court had stated that a statutory provision conferring discretion on a public official to restrict a fundamental right must satisfy the constitutional requirement of "prescribed by law". Such discretion must give an adequate indication of the scope of the discretion with a degree of precision appropriate to the subject matter. As the situations that might arise were of an infinite variety and would involve many different circumstances and considerations, it was important to provide CP with a certain degree of flexibility. It was difficult to set out in legislation the conditions that might be imposed. He said that existing provisions had already provided any person aggrieved by the decision of CP to lodge an appeal to an independent appeal board, the decision of which was subject to judicial review.

36. Senior Assistant Legal Adviser 1 said that in its judgment, the CFA ruled that

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sections 14(1), 14(5) and 15(2) of POO were unconstitutional. The CFA had an analysis of the law on how CP's discretion should be exercised in the law and order sense and in the constitutional sense and what should be included in the relevant provisions. The term "*ordre public*" also appeared in sections 2, 6, 9 and 11 of POO. Members might wish to consider whether other amendments should be made in this context when reviewing the POO.

37. Mr LEUNG Kwok-hung said that POO was outdated and should be repealed. He considered that CP's power to impose conditions under POO should be vested with the court. The prior notification requirement under POO should be removed. The term "national security" in POO should be deleted and replaced by "public safety and public order". He further said that it was unfair to allow CP to impose conditions without giving reasons. CP should not be allowed to impose any restrictions unless it could be proved that such restrictions were necessary for public safety and public order. He added that "national security" and "the protection of the rights and freedoms of others" should not have been added to the grounds on which CP might exercise his powers under POO in 1997.

38. Mr Martin LEE said that POO was enacted in 1967 in view of the riots at that time. He questioned whether such legislation was still suitable for present day circumstances. Referring to paragraph 87 of the judgment, he pointed out that the court had not addressed the question of whether CP's statutory discretion in relation to the protection of the rights and freedoms of others was in compliance with the constitutional requirement of "prescribed by law". He also pointed out that the court had stated in paragraph 88 of its judgment that as the meaning of the expression "*ordre public*" in the International Covenant on Civil and Political Rights (ICCPR) had been incorporated in section 2(2) of POO, it could be seriously argued that in the context of CP's statutory discretion to restrict the right of peaceful assembly, a purpose based on a notion of such wide and precise import did not satisfy the constitutional requirement of "prescribed by law". In view of these, he considered that the Administration should conduct a comprehensive review on POO.

39. Mr CHEUNG Man-kwong said that there were a number of examples where unreasonable conditions were imposed on public processions. For example, an organising party was required to ensure that all participants of a public procession would not act in such a manner that resulted in breach of public peace. Another organising party was required not to organise any activity that might hinder the progression of a public procession. He had also come across a case where a public procession comprising 2 000 participants was regarded as breaching conditions when the number of participants exceeded by only 20 persons. He considered that the Administration should, besides reviewing POO, conduct a full review on whether the conditions imposed by CP were proportionate.

40. PS for S responded that the existing mechanism sought to facilitate peaceful and orderly public meetings and public processions. The Police were required to apply the proportionality test in determining the conditions to be imposed. He

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informed Members that, in the light of the judgment, the Police had given guidance to frontline police officers and were reviewing its internal guidelines. Representatives of the Department of Justice would also brief police officers on the implications of the judgment. He said that the Administration had fully explained the jurisprudence of provisions in POO during the discussions in 2000. It had been noted then that as compared to legislation of comparable jurisdictions, in various ways the POO provisions offered greater protection of the relevant rights. For example, the notice period required for the holding of public meetings or processions in New York and Vancouver were much longer than that in Hong Kong. There were some places where the Police were empowered to exercise discretion without giving reasons. While notification was required when the number of participants exceeded a certain threshold, many countries had not adopted any threshold.

41. PS for S said it was also relevant to see if in practice POO had had the effect of inhibiting the exercise of the relevant rights. Since the last round of amendments to the relevant provisions of POO, about 11 000 public meetings and processions which required prior notification under POO had been held in Hong Kong. The Police had only objected to the holding of 19 public meetings or processions and instituted prosecution against failure to give prior notification in two cases. He said that the Administration would introduce amendments to delete references to the term "*ordre public*" in POO. The Administration would also review the issue raised in paragraph 88 of the judgment regarding the rights and freedoms of others. Assistant Commissioner of Police (Support) added that the Police were reviewing its internal guidelines. Issues relating to restrictions on the number of participants would be covered in the review.

42. PS for S said that the addition of "national security" to the grounds on which CP might exercise his powers under POO had been discussed when the relevant amendment was introduced in 1997. As a result of the discussions, a definition of "national security" had been incorporated in POO and the Administration had undertaken at that time that guidelines on how CP should enforce POO in relation to "national security" would be issued. The guidelines had been issued, submitted to LegCo, and published for public information. Under POO, CP was required to give the reasons for imposing conditions on public processions. He further said that the power to restrict public processions was vested with the police in many places. POO included various safeguards. For example, an appeal mechanism was provided for in the law in respect of the decision of CP to prohibit, object or impose or amend conditions on public meetings or processions. There had only been 17 appeal cases since July 1997 and the average processing time of an appeal was 4.3 working days.

43. The Chairman said that the issue should be discussed at a future meeting.

VI. Law Enforcement (Covert Surveillance Procedures) Order – Police's

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internal guidelines
(LC Paper Nos. CB(2)2639/04-05(01), CB(2)2419/04-05(01), CB(2)2632/04-05(04) and LS103/04-05)

44. Members noted a submission from the Hong Kong Human Rights Monitor on surveillance, Article 30 of the Basic Law (BL30) and the right to privacy in Hong Kong.

45. S for S briefed Members on the background for declassifying the Police's internal guidelines on covert surveillance. He informed Members that the Administration would consult the relevant parties, including LegCo Members, the Hong Kong Bar Association and the Law Society of Hong Kong, on the legislative proposals on covert surveillance in the coming two months.

46. The Chairman said that the Police's internal guidelines were mostly copied from the Law Enforcement (Covert Surveillance Procedures) Order (the Order), and were relatively less detailed in comparison with other internal guidelines of the Police. Referring to the definition of covert surveillance in paragraph 2 of the guidelines, he asked about the meaning of "specific law enforcement investigation or operation". He also asked whether "law enforcement investigation or operation" had the same meaning as "detection of crime". He expressed doubt whether the guidelines were the Police's only internal guidelines on covert surveillance.

47. S for S responded that the internal guidelines were drawn up for the reference of Police officers who had received the relevant professional training. Police officers who had undergone such training were aware of how they should carry out their duties in accordance with the law, the Order and the Police's internal guidelines. He said that it was not possible to set out all scenarios in the guidelines.

48. Assistant Commissioner of Police (Crime) (ACP(C)) said that the internal guidelines had been issued to supplement the Order. They sought to set out the practice of the Police in more specific terms. Although many parts of the guidelines were similar to the contents of the Order, additional information had been provided on the following areas –

(a) criteria for discontinuation of covert surveillance;

(b) record of authorisations;

(c) regular reviews;

(d) handling of information obtained from covert surveillance; and

(e) collateral intrusion.

49. The Chairman said that the guidelines were intended not only for the

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reference of Police officers, but also members of the public. He asked how Police officers would interpret, for example, the phrase "reasonable expectation of privacy" in the definition of "covert surveillance". He said that the Office of the Privacy Commissioner for Personal Data (PCO) had issued a detailed code of practice for employers of domestic helpers. He asked whether the Police would issue similarly detailed guidelines on covert surveillance.

50. ACP(C) responded that privacy issues were covered in training programmes for Police officers. Briefings and discussion sessions were held to facilitate Police officers' understanding of the Police's internal guidelines. It was the Police's practice to examine the implications of relevant judgments delivered by the court and provide training where necessary. The guidelines were issued for internal use by Police officers who were experienced and trained. A lot of detective training was given to officers. Some officers were also sent on overseas training programmes. He added that authorising officers of the Police possessed an average of 25 years' experience in the investigation of crime.

51. The Chairman questioned whether the guidelines only set out in writing what the Police had been doing in covert surveillance in the past. He considered that the Police should conduct an in-depth analysis of privacy legislation enacted in recent years and relevant judgments delivered by the court, and review covert surveillance conducted by the Police.

52. LO(IL) responded that paragraph 2(a) of the guidelines sought to set out when an authorisation should be sought under the Order. Whether the circumstances of a case amounted to those where a person was entitled to a reasonable expectation of privacy would depend on the particular facts of the case concerned. There was no need to specify the circumstances in detail. Dealing with grey areas, which were inevitable, would be a matter of judgment. He added that guidelines issued by PCO had to be taken into account by authorising officers.

53. The Chairman said that the guidelines should spell out what a Police officer should do when in doubt. In this connection, he noted that there were provisions of such a nature in many internal guidelines of the Police.

54. S for S reiterated that it was not possible to exhaustively set out all circumstances in the guidelines. He stressed that the Administration was very concerned about privacy. Any person who felt that his privacy was infringed could lodge a complaint with PCO. He pointed out that there were hardly any complaint cases of covert surveillance conducted by law enforcement officers having infringed privacy. He said that law enforcement officers who had received the necessary training were aware of the need to seek the advice of the Department of Justice when grey areas were encountered.

55. Mr LEUNG Kwok-hung said that more detailed guidelines should be drawn

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up. Without detailed guidelines, it would be difficult for law enforcement officers to know whether the covert surveillance they were instructed to undertake was lawful.

56. S for S responded that under the existing mechanism, law enforcement officers who had a need to conduct covert surveillance had to seek approval from an authorising officer. Thus, there was no question of an authorising officer instructing a law enforcement officer to carry out unlawful covert surveillance. He stressed that law enforcement officers had to act lawfully.

57. Mr Howard YOUNG said that covert surveillance was necessary for combating crime. He considered it not possible to set out all details in the guidelines. He asked whether seminars and case studies were conducted regularly for law enforcement officers to enhance their understanding of what they were allowed or not allowed to do in conducting covert surveillance.

58. S for S replied in the affirmative. He said that it was the Administration's established practice to organise training courses and case studies for law enforcement officers where there were court judgments or legislative amendments having implications on the work of law enforcement officers. Where necessary, representatives of the Department of Justice and PCO would be invited to explain the relevant requirements.

59. Dr LUI Ming-wah said that it was not possible to set out all details in the guidelines. However, the guidelines should be improved whenever necessary. He considered that the number of authorising officers should be kept to a minimum. He asked how the requirements on covert surveillance in Hong Kong compared with those of other countries such as Singapore and the United States of America (USA).

60. S for S assured Members that the Administration would constantly review the guidelines and, where necessary, introduce improvements. He said that the Administration was studying the practice and legislation of overseas countries on covert surveillance as part of its effort to formulate legislative proposals on the subject. The Administration would consult the relevant parties, including LegCo Members and the legal profession, in taking forward the exercise.

61. Mr WONG Yung-kan asked whether there were countries without legislation on covert surveillance where covert surveillance was authorised through the issuance of administrative orders.

62. LO(IL) responded that the Administration had been studying the practices of other common law jurisdictions and their legislation on covert surveillance. The Administration noted that legislation governing covert surveillance could be found in Australia, Canada, the United Kingdom and USA.

63. The Chairman said that he would provide further questions on the guidelines

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to the Administration for a written response.

64. The meeting ended at 6:00 pm.

Council Business Division 2
Legislative Council Secretariat
23 December 2005