

立法會
Legislative Council

LC Paper No. CB(1)2496/11-12
(These minutes have been seen
by the Administration)

Ref : CB1/SS/11/11/1

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

**Minutes of meeting
held on Saturday, 26 May 2012, at 9:00 am
in Conference Room 3 of the Legislative Council Complex**

Members present : Hon LAU Kong-wah, JP (Chairman)
Dr Hon Margaret NG
Hon James TO Kun-sun
Hon Mrs Sophie LEUNG LAU Yau-fun, GBS, JP
Hon LI Fung-ying, SBS, JP
Hon Cyd HO Sau-lan
Dr Hon PAN Pey-chyou

**Public officers
attending** : **Agenda item I**

Ms Shirley LAM
Deputy Secretary for the Civil Service 3
Civil Service Bureau

Ms Ivy LAW
Principal Assistant Secretary (Conduct and
Discipline) Civil Service Bureau

Mr Sunny CHAN
Senior Assistant Law Draftsman
Department of Justice

Ms Carmen CHAN
Government Counsel
Department of Justice

Mr WOO Ying-ming
Assistant Commissioner
(Human Resource)
Correctional Services Department

Mr LAM Wai-kwong
Superintendent
(Staff Administration)
Correctional Services Department

Ms KWOK Ngan-ping
Assistant Commissioner (Administration and Human
Resource Development)
Customs and Excise Department

Mr LAU Tak-choi
Senior Staff Officer
(Service Administration)
Customs and Excise Department

Mr LI Kin-yat
Assistant Director (New Territories)
Fire Services Department

Mr TSANG Wing-hung
Acting Senior Divisional Officer
(Kowloon South)
Fire Services Department

Mrs Pauline NG
Assistant Commissioner of Police (Personnel)
Hong Kong Police Force

Mr Kenny TSE
Superintendent of Police
(Discipline) (Special Duties)
Hong Kong Police Force

Mr Jimmy KWAN
Senior Aircraft Engineer
(Maintenance)1
Government Flying Service

Ms Cynthia CHAN
Deputy Departmental Secretary (2)
Government Flying Service

**Attendance by
invitation**

: Agenda item I

Mr SO Chau-ming, Thomas
Chairman / Government Flying Service Aircraft
Technicians Union

Mr KWONG Koon-wan
Islands District Council Member

Mr LEE Kwan-kit
Member of Presidium / Disciplined Services
Consultative Council (Staff Side)

Mr LAM Kwok-ho
Chairman / Government Disciplined Services General
Union

Mr TAM Kam-fai
Vice Chairman / Hong Kong Traffic Wardens Union

Mr Jim CHIMA
Chairman / Mutual Rights Organization

Mr LEE Tak-kei
Chairman / Hong Kong Fire Services Department
Staffs General Association

Mr KWONG Chi-ki
Chairman / Government Flying Service Pilots Union

Mr MAN Siu-fung
Chairman / Hong Kong Fire Services Officers
Association

Mr LEUNG Chung-chee
Executive Committee Member / Superintendent
Correctional Services Officers' Association

Mr CHAN Shi-ki
Chairman / Hong Kong Fire Services Department
Ambulancemen's Union

Clerk in attendance : Miss Polly YEUNG
Principal Council Secretary (Subcommittee)1

Staff in attendance : Mr YICK Wing-kin
Assistant Legal Adviser 8

Mr Fred PANG
Council Secretary (Subcommittee)

Ms Sharon CHAN
Senior Legislative Assistant (Subcommittee)1

I Meeting with deputations and the Administration

(LC Paper No. CB(1)1989/11-12(03) -- List of follow-up actions arising from the discussion at the meeting on 16 May 2012

LC Paper No. CB(1)1989/11-12(04) -- The Administration's response to the list of follow-up actions arising from the discussion at the meeting on 16 May 2012 (the response to items 5 and 6 still awaited)

LC Paper No. CB(1)1989/11-12(05) -- Marked-up copy provided by the Administration in response to item 2 of the list of follow-up actions arising from the discussion at the meeting on 16 May 2012

LC Paper No. CB(1)1859/11-12(07) -- Letter dated 10 May 2012 from Assistant Legal Adviser to the Civil Service Bureau

LC Paper No. CB(1)1859/11-12(08)	-- Civil Service Bureau's response to Assistant Legal Adviser's letter dated 10 May 2012
LC Paper No. CB(1)1859/11-12(01) to (06)	-- Marked-up copy of the Rules and Regulation
L.N. 58 of 2012	-- Fire Services Ordinance (Amendment of Second Schedule) Regulation 2012
L.N. 59 of 2012	-- Police (Discipline) (Amendment) Regulation 2012
L.N. 60 of 2012	-- Prison (Amendment) Rules 2012
L.N. 61 of 2012	-- Government Flying Service (Discipline) (Amendment) Regulation 2012
L.N. 62 of 2012	-- Traffic Wardens (Discipline) (Amendment) Regulation 2012
L.N. 63 of 2012	-- Customs and Excise Service (Discipline) (Amendment) Rules 2012
CSBCR/DP/1-010-005/6	-- The Legislative Council Brief
LC Paper No. LS56/11-12	-- Legal Service Division Report
LC Paper No. CB(1)1854/11-12	-- Background brief prepared by the Legislative Council Secretariat)

Presentation of views

The Chairman welcomed representatives of the Administration and deputations to the meeting. He reminded the deputations that their views presented at the meeting and their written submissions, if any, would not be covered by the protection and immunity provided under the Legislative Council (Powers and Privileges) Ordinance (Cap. 382).

2. At the invitation of the Chairman, 11 organizations and individual as listed below presented their views on L.N. 58 to L.N. 63 (the amendment regulations/rules):

- (a) Government Flying Service Aircraft Technicians Union
- (b) Mr KWONG Koon-wan, Islands District Council member
- (c) Discipline Services Consultative Council (Staff Side)
- (d) Government Disciplined Services General Union
- (e) Hong Kong Traffic Wardens Union
- (f) Mutual Rights Organization
- (g) Hong Kong Fire Services Department Staffs General Association
- (h) Government Flying Service Pilots Union
- (i) Hong Kong Fire Services Officers Association
- (j) Correctional Services Officers' Association
- (k) Hong Kong Fire Services Department Ambulancemen's Union

(Post-meeting Note: The submissions from two organizations not attending the meeting, namely the Association of Customs & Excise Service Officers and Hong Kong Correctional Services General Union, were tabled at the meeting and issued to members vide LC Paper No. CB(1)2013/11-12 dated 28 May 2012.)

3. The Subcommittee deliberated (Index of proceedings attached at **Appendix**).

Admin Follow-up actions to be taken by the Administration

4. The Administration was requested to provide:
- (a) the number of disciplinary cases in which the accused had been denied legal representation and the reasons for such denial; and
 - (b) the number of cases in (a) above in which the punishment imposed on the accused was dismissal, compulsory retirement or reduction in rank.

5. Regarding the overall timeframe for handling disciplinary cases, the Administration was asked to follow up a member's suggestion of issuing written guidelines on the timeframe for completing each stage of disciplinary proceedings, namely investigation, disciplinary hearings, imposition of punishments and appeals against disciplinary decisions.

6. The Administration was requested to introduce amendments to L.N. 58, 59, 60, 61, 62 and 63 to the effect that if the possible punishment to be faced by the accused was dismissal, compulsory retirement or reduction in rank, then the accused was entitled to be legally represented at disciplinary hearings. The effect of the proposed amendment was that if his application for legal representation was refused, the accused might assume that the punishment to be imposed on him would not be dismissal, compulsory retirement or reduction in rank.

7. It was noted that under the current practice of the Correctional Services Department and the Customs and Excise Department, the adjudicating officer/tribunal, instead of a senior officer in headquarters, was empowered to decide on the defaulters' application for legal representation at disciplinary hearings. The Police, the Fire Services Department and the Government Flying Service were requested to consider and revert to the Subcommittee whether they could adopt the same practice; and if not, the reasons.

8. Noting that unlike the rest of the civil service, junior police officers (JPOs) and staff of the Traffic Warden grade were currently not subject to "deferment or stoppage of increment" as a possible form of punishment in disciplinary cases, the Subcommittee asked the Administration to advise whether there had been any policy considerations underlying the current arrangement for JPOs and the Traffic Warden grade.

9. Regarding the disciplinary proceedings involving disciplined services staff and staff of the Traffic Warden grade in the relevant disciplined services departments (DSDs), the Administration was requested to inform the Subcommittee of the measures, if any, to enhance the transparency of such disciplinary proceedings, in particular ways to enable the staff to understand the factors taken into consideration in deciding whether to approve applications for legal and other forms of representation (including representation by a "friend") at disciplinary hearings; the criteria adopted by the DSDs in interpreting such factors; and how the result of each application for legal representation and the outcomes of disciplinary proceedings were communicated to the accused.

10. Noting that according to the Administration, it would proceed to the next stage of review of disciplined services legislation upon completion of the current legislative amendment exercise, the Subcommittee asked the Administration to provide:

- (a) information on the subjects that would be included in the review; and
- (b) the time-frame for taking forward the review (such as staff consultation and legislative timetable).

II Any other business

11. Members noted that the motion to extend the scrutiny period of the six items of subsidiary legislation (the motion) could not be dealt with at the Council meeting of 23 May 2012.

(Post-meeting note: The motion was subsequently included on the agenda of the Council meeting of 30 May 2012. However, the motion could not be dealt with owing to the heavy agenda for the meeting. The 28-day negative vetting period expired under section 34(2) of the Interpretation and General Clauses Ordinance (Cap. 1) without being extended.)

12. Members noted that the Secretariat had reserved certain time-slots for holding meetings. The Chairman asked the Secretariat to invite members to indicate their availability for the proposed meetings, and he would decide on the dates of subsequent meetings based on members' return. Dr Margaret NG requested to put on record her dissatisfaction that the series of meetings of the Subcommittee to study the proposed legislative amendments relating to the re-organization of the Government Secretariat had taken up much of the time of Members. As a result, Members had very little time left to deal with matters relating to the work of the current-term Government.

(Post-meeting note: Members were invited to indicate their availability for meetings at the time-slots set out in a circular (issued vide LC Paper No. CB(1)2015/11-12 dated 26 May 2012). Based on members' return, the Chairman directed that the next meeting would be held on 30 May 2012 at 8:30 am.)

13. There being no other business, the meeting ended at 12:29 pm.

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

**Second Meeting on Saturday, 26 May 2012, at 9:00 am,
in Conference Room 3 of the Legislative Council Complex**

Time Marker	Speaker	Subject(s)	Action Required
001233 – 001706	Chairman	Opening remarks by the Chairman. Presentation of views by deputations/individual at the Chairman's invitation.	
001707 – 001848	Chairman Government Flying Service Aircraft Technicians Union (GFSATU)	GFSATU's views – (a) welcomed the repeal of the provision that prohibited an officer of the Government Flying Service (GFS) who was interdicted from leaving Hong Kong; and (b) expressed reservation that an accused officer was still required to seek approval of the Controller, GFS to be legally represented at disciplinary hearings.	
001849 – 002230	Chairman Mr KWONG Koon-wan	Mr KWONG Koon-wan's views – (a) the accused officer subject to disciplinary proceedings should be in the best position to state whether he needed legal representation at disciplinary hearings; (b) as regards the amendment to stipulate that an adjudicating officer might proceed with a disciplinary hearing in the absence of an accused if the accused had repeatedly failed to appear at scheduled sessions without reasonable justifications, disciplined services departments	

Time Marker	Speaker	Subject(s)	Action Required
		<p>(DSDs) should state clearly what constituted "repeated" failure; and</p> <p>(c) prosecutors of disciplinary hearings should be required to make declarations as to whether they had any personal relationship with the accused officer concerned.</p>	
002231 – 002442	Chairman Disciplined Services Consultative Council (Staff Side) (DSCC)	<p>DSCC's views –</p> <p>(a) there should be more transparency in how disciplinary proceedings were conducted; and</p> <p>(b) the disciplinary authority should take into account the views of the relevant staff associations when drawing up guidelines on disciplinary proceedings.</p>	
002443 – 003012	Chairman Government Disciplined Services General Union (GDSGU)	Presentation of views as set out in LC Paper No. CB(1)2013/11-12(03)	
003013 – 003028	Chairman Hong Kong Traffic Wardens Union (HKTWU)	HKTWU did not raise any specific comments on the amendment regulations/rules.	
003029 – 003642	Chairman Mutual Rights Organization (MRO)	Presentation of views as set out in LC Paper No. CB(1)1989/11-12(01)	
003643 – 003752	Chairman Hong Kong Fire Services Department Staffs General Association (FSDSGA)	FSDSGA considered that the disciplinary authority should decide on an accused officer's application for legal representation at disciplinary hearings in a timely manner, and should take into consideration the officer's concerns before making the decision.	

Time Marker	Speaker	Subject(s)	Action Required
003753 – 003838	Chairman Government Flying Service Pilots Union (GFSPU)	GFSPU's views – (a) expressed reservation that an accused officer was still required to seek approval of the Controller, GFS to be legally represented at disciplinary hearings; and (b) guidelines on the timeframe for handling disciplinary cases should be put in place.	
003839 – 003911	Chairman Hong Kong Fire Services Officers Association (HKFSOA)	HKFSOA considered that the disciplinary authority should take into account the concerns and views of the staff when drawing up the guidelines on disciplinary proceedings.	
003912 – 003942	Chairman Correctional Services Officers' Association (CSOA)	CSOA's views – (a) agreed with the amendments under L.N. 60; and (b) the proposal to allow an adjudicating officer to proceed with disciplinary proceedings in the absence of an accused if the latter had repeatedly failed to appear at the hearings might enhance the efficiency of disciplinary proceedings.	
003943 – 004131	Chairman Hong Kong Fire Services Department Ambulancemen's Union (FSDAU)	Presentation of views as set out in LC Paper No. CB(1)1989/11-12(02)	
004132 – 004934	Chairman Ms LI Fung-ying GDSGU Civil Service Bureau	Ms LI Fung-ying considered that as there had been disciplinary cases which had dragged on for a long time, the Administration should set out in written guidelines the timeframe for	The Administration to take follow-up action as stated

Time Marker	Speaker	Subject(s)	Action Required
		<p>completing each stage of disciplinary proceedings.</p> <p>The Administration's responses –</p> <p>(a) All DSDs except GFS had put in place guidelines on the timeframe for completing an investigation of a disciplinary case. GFS would promulgate similar guidelines once ready.</p> <p>(b) Long drawn disciplinary cases might have been due to the complexity of the case or repeated absence of the accused at hearings.</p>	<p>in paragraph 5 of the minutes.</p>
<p>004935 – 010209</p>	<p>Chairman Mr James TO GDSGU Civil Service Bureau</p>	<p>Mr James TO's views –</p> <p>(a) The Court of Final Appeal's judgment in the case of <i>Lam Siu Po v Commissioner of Police</i> (FACV 9/2008) (CFA Judgment) had only laid down the minimum requirement that should be observed by DSDs.</p> <p>(b) To better protect the right of the accused to legal representation at disciplinary hearings, DSDs should normally grant approval for legal representation at disciplinary hearings unless there were exceptional reasons not to do so.</p> <p>The Administration's responses –</p> <p>(a) According to the CFA Judgment, there was no absolute right to legal representation at a disciplinary hearing. This should be a matter for the disciplinary authority to decide having regard to fairness requirements.</p>	

Time Marker	Speaker	Subject(s)	Action Required
		(b) The factors that the disciplinary authority would take into account when considering applications for legal representation were drawn up on the basis of the Court of Final Appeal's judgment in <i>The Stock Exchange of Hong Kong Ltd v New World Development Co Ltd and Others</i> (FACV 22/2005).	
010210 – 011924	Chairman Dr Margaret NG GFSATU GDSGU GFSPU Civil Service Bureau DSCC	Some deputations were concerned about the subjects to be included in the next stage of review of the relevant subsidiary legislation governing disciplinary matters. The Administration's response that upon the completion of the current legislative exercise, it would continue to work with the management and the staff sides of DSDs to identify further areas for improvement	The Administration to take follow-up action as stated in paragraph 10 of the minutes
011925 – 012951	Chairman Dr PAN Pey-chyou MRO Civil Service Bureau GDSGU	Discussion on whether the existing channel to handle defaulters' appeals against the decision to reject their requests for legal representation could adequately safeguard the staff's interest. GDSGU considered that to ensure fairness for staff, the appeal mechanism should include an independent third party as a member.	
012952 – 013759	Chairman Ms Cyd HO FSDAU Fire Services Department	Referring to FSDAU's submission that Fire Services Department (FSD) had rejected an officer's application for defence representation by a retired officer in 2011 but allowed another officer to be represented by the same retired officer recently, Ms Cyd HO considered that DSDs should state clearly the criteria for considering	

Time Marker	Speaker	Subject(s)	Action Required
		<p>applications for representation by a "Friend".</p> <p>FSD's advice that the underlying principle was to consider each application on its own merits in accordance with the requirements of fairness.</p>	
<p>013800 - 014910</p>	<p>Chairman Ms LI Fung-ying HKTWU Mr KWONG Koon-wan Civil Service Bureau Dr Margaret NG</p>	<p>As regards the amendment to stipulate that an adjudicating officer might proceed with a disciplinary hearing in the absence of an accused if the accused had repeatedly failed to appear at scheduled sessions without reasonable justifications, Ms LI Fung-ying considered that DSDs should state clearly what constituted "repeated" failure so that consistency among DSDs could be achieved.</p> <p>The Administration's advice that guidelines would be issued to DSDs stating that in general, if the accused was absent at disciplinary hearing sessions for the third time without reasonable justifications, the relevant adjudicating officer might proceed with the disciplinary hearing in the absence of the accused.</p> <p>On whether the proposed inclusion of "deferment or stoppage of increment" as a possible punishment for disciplinary cases involving junior police officers (JPOs) and staff of the Traffic Warden grade would disadvantage the officers, HKTWU said that they had been consulted on the matter and had not raised any objection to the proposed amendment.</p>	<p>The Administration to take follow-up action as stated in paragraphs 4 and 8 of the minutes.</p>

Time Marker	Speaker	Subject(s)	Action Required
		<p>The Administration added that the proposed amendment would provide the disciplinary authority with greater flexibility to pitch punishment at the right level without the need to escalate to a more severe level.</p>	
<p>014911 - 020235</p>	<p>Dr Margaret NG Chairman Ms Cyd HO Civil Service Bureau GDSGU Hong Kong Police Force</p>	<p>Dr Margaret NG suggested that the Administration should make reference to relevant legislation in the United Kingdom and Canada, and introduce necessary amendments to the effect that where the potential punishment to be faced by the accused was serious, such as dismissal, compulsory retirement and reduction in rank, then the accused should be entitled to be legally represented.</p> <p>The Administration's advice that similar consideration had already been included in the existing administrative guidelines on disciplinary proceedings. Further study was however required as to whether the proposed arrangement should be specified in the relevant legislation.</p> <p>Whilst supporting Dr Margaret NG's suggestion to make disciplinary proceedings more transparent, GDSGU stated that consideration should also be given to the need to safeguard confidentiality of information in disciplinary cases.</p> <p>The Administration's response that in considering an accused officer's application for representation at disciplinary hearings by a defence representative other than legal representatives, the disciplinary authority would take into account the need to safeguard confidentiality of</p>	<p>The Administration to take follow-up action as stated in paragraphs 6 and 9 of the minutes.</p>

Time Marker	Speaker	Subject(s)	Action Required
		sensitive information and whether the defence representative was of doubtful reputation or character.	
021518 – 022106	Chairman Clerk Ms LI Fung-ying, Ms Cyd HO Dr Margaret NG	Date of next meeting	
022107 – 023236	Chairman Civil Service Bureau Dr Margaret NG	<p>Briefing by the Administration on LC Paper No. CB(1)1989/11-12(04) ("the paper")</p> <p>Clarification by the Administration on why the amendments to the relevant subsidiary legislation governing disciplinary matters had not been introduced immediately after the enactment of the Hong Kong Bill of Rights Ordinance in 1991.</p> <p>Dr Margaret NG reiterated her view that the Administration should introduce amendments to L.N. 58 to 63 to the effect that if the possible punishment to be faced by the accused was serious, such as dismissal, compulsory retirement and reduction in rank, then the accused should be entitled to be legally represented at disciplinary hearings.</p>	
023237 – 023839	Chairman Ms LI Fung-ying Civil Service Bureau Dr Margaret NG	Members noted the Administration's advice that relevant staff associations had been consulted on the proposed amendment to replace the word "calculated" in the disciplinary offence of "conduct calculated to bring the public service into disrepute" by "likely" following the ruling in <i>Chiu Hoi Po v Commissioner of Police</i> (CACV 200/2006), and that these associations had not raised any	

Time Marker	Speaker	Subject(s)	Action Required
		objection to the proposed amendment.	
023840 – 032916	Chairman Civil Service Bureau Ms LI Fung-ying Hong Kong Police Force Dr Margaret NG Correctional Services Department Ms Cyd HO Fire Services Department	Members' view that the Police, FSD and GFS should consider adopting the current practice of the Correctional Services Department and the Customs and Excise Department under which the adjudicating officers were empowered to decide on applications for legal representation at disciplinary hearings.	The Police, FSD and GFS to take follow-up action as stated in paragraph 7 of the minutes.

Council Business Division 1
Legislative Council Secretariat
24 August 2012