

立法會
Legislative Council

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(These minutes have been seen
by the Administration)

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

**Minutes of meeting
held on Wednesday, 30 May 2012, at 8:30 am
in Conference Room 2B of the Legislative Council Complex**

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

Member absent : Hon Mrs Sophie LEUNG LAU Yau-fun, GBS, JP

**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
Divisional Officer
(Kowloon South)
Fire Services Department

Mr Anthony LAM
Chief Superintendent of Police
(Conditions of Service and Discipline)
Hong Kong Police Force

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

Mr Damon AU
Chief Inspector (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

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 the Administration

- (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)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)1859/11-12(01) to (06) -- Marked-up copy of the Rules and Regulation prepared by Legal Service Division
- 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)

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

Admin Follow-up actions to be taken by the Administration

2. According to the Police, in general, files and records on ex-police officers who had left the service after a specified period of time (about five years) would be destroyed. Noting that after the Court of Final Appeal's judgment in the case of *Lam Siu Po v Commissioner of Police*, the Police had received 55 requests from 54 ex-police officers and one serving officer for review of the results of past disciplinary cases (paragraph 7 of LC Paper CB(1) 2052/11-12(01)), the Subcommittee asked the Police to advise whether in any of these 55 cases, the relevant files and records had been destroyed when the request for review was received; and if yes, the number of such cases.

3. Noting that under the Police (Discipline) Regulations, a defaulter might be represented at a disciplinary hearing by any other police officer of the defaulter's choice who was a barrister or solicitor without the need for prior approval, the Subcommittee asked the Administration to consider whether similar arrangements could be provided for under the other disciplined services legislation.

L.N. 58

4. According to rule 5(1)(a) of the amended Part I of the Second Schedule to the Fire Services Ordinance (FSO), an accused might be represented at a disciplinary hearing by a barrister or solicitor. Noting that in actual practice, a barrister might be accompanied by a solicitor, a solicitor trainee or a clerk from the instructing law firm at a disciplinary hearing, the Subcommittee asked the Administration to explain whether and how rule 5(1)(a) could cater for the presence of the aforesaid persons in addition to the barrister in question at the hearing.

5. The Administration was requested to consider a member's suggestions to improve the drafting of the following provisions under Part I of the Second Schedule to FSO:

- (a) rule 3;
- (b) rule 6(1); and
- (c) rule 7(3) (the Chinese version).

6. It was specified in rule 6(4) of Part I of the Second Schedule to FSO that "Evidence must not be taken on oath or affirmation". The Administration was requested to provide an explanation on why it was necessary to prohibit the taking of evidence on oath or affirmation.

7. It was specified in various rules of Part I of the Second Schedule to FSO that the Director was performing certain functions in connection with disciplinary proceedings, such as giving approval to legal representation of an accused at a hearing under rule 5(1), and communicating a finding to the accused under rule 7(1). To avoid ambiguity, the Administration was asked to consider stating explicitly that the functions in question were performed by the Director himself or by any other officers authorized by the Director.

The way forward

8. Given the highly compressed timeframe for scrutiny of the amendment regulations/rules and the complexity of many of the amendments, the Administration was asked to consider limiting the scope of the current legislative amendment exercise to only those proposals that were essential (e.g. legal representation, conducting hearings in absentia etc.) and including the other proposed amendments in the next phase of the review of the disciplined services legislation.

II Any other business

9. The Chairman said that members would be informed of the date of the next meeting in due course.

(Post-meeting note: With the concurrence of the Chairman, the next meeting was scheduled to be held on Monday, 4 June 2012 at 2:30 pm. The notice of meeting and the agenda for the meeting had been issued vide LC Paper No. CB(1)2081/11-12 dated 1 June 2012).

10. There being no other business, the meeting ended at 10:10 am.

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

**Third Meeting on Wednesday, 30 May 2012, at 8:30 am,
in Conference Room 2B of the Legislative Council Complex**

Time Marker	Speaker	Subject(s)	Action Required
000555 – 001341	Chairman Civil Service Bureau	Opening remarks by the Chairman. Briefing by the Administration on LC Paper No. CB(1)2052/11-12(01) (the paper)	
001342 – 003524	Chairman Dr Margaret NG Civil Service Bureau Hong Kong Police Force Ms LI Fung-ying	<p>Members enquired why the Police had rejected 54 ex-police officers' requests for review of completed disciplinary cases since the judgment of the Court of Final Appeal in <i>Lam Siu Po v Commissioner of Police</i> (FACV 9/2008) in March 2009 (paragraph 7 of the paper).</p> <p>The Administration's responses –</p> <p>(a) It was necessary to uphold the principle of finality of the decisions made in past disciplinary cases.</p> <p>(b) According to the Police, there were no exceptional circumstances in these past cases that would justify a departure from the principle of finality.</p> <p>Members noted the advice of the Police that in general, files and records on ex-police officers who had left the service after about five years would be destroyed unless there were ongoing court proceedings.</p> <p>Dr Margaret NG reiterated her view expressed at the meeting on 26 May 2012 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</p>	The Police to take follow-up action as stated in paragraph 2 of the minutes.

Time Marker	Speaker	Subject(s)	Action Required
		reduction in rank, then the accused must be entitled to be legally represented at disciplinary hearings.	
003525 – 004130	Chairman Civil Service Bureau Dr Margaret NG Department of Justice	<p>Clause-by-clause examination of L.N. 58 (LC Paper No. CB(1)1989/11-12(05))</p> <p><u>Rule 1 – Interpretation of this Part</u> Members did not raise any query.</p> <p><u>Rule 2 – Charge sheet</u> Members did not raise any query.</p> <p><u>Rule 3 – Investigation of charge</u> Dr Margaret NG's suggestion to improve the drafting of rule 3.</p> <p><u>Rule 4 – Appointment of prosecutor</u> Members did not raise any query.</p>	The Administration to take follow-up action as stated in paragraph 5 of the minutes.
004131 – 010503	Chairman Civil Service Bureau Dr Margaret NG Mr James TO	<p><u>Rule 5 – Representation of accused at hearing</u> Members used rule 5 as an example and considered that the Administration should state explicitly whether the functions of the Director set out in L.N. 58 were to be performed by the Director himself or by any other officers authorized by the Director.</p> <p>Mr James TO declared that he was a consultant of a law firm providing legal services to a police officer subject to disciplinary proceedings.</p> <p>Noting that in practice, a barrister might be accompanied by another person who was a solicitor, a solicitor trainee or a clerk from a law firm at a disciplinary hearing, Mr James TO considered that it was not clear whether rule 5(1)(a) could cater for the presence of such accompanying persons at disciplinary hearings.</p>	The Administration to take follow-up action as stated in paragraphs 3, 4 and 7 of the minutes.

Time Marker	Speaker	Subject(s)	Action Required
		<p>Noting that under the Police (Discipline) Regulations (P(D)R), a defaulter might be represented at a disciplinary hearing by any other serving police officer of the defaulter's choice who was a barrister or solicitor without the need for prior approval, members saw no reason why similar arrangement was not provided for under the relevant subsidiary legislation governing the other disciplined services.</p> <p>The Administration's response that there might be historical reasons underlying the different arrangements put in place by disciplined services departments (DSDs).</p>	
010504 – 011535	Chairman Civil Service Bureau Dr Margaret NG Department of Justice Hong Kong Police Force Ms LI Fung-ying Mr James TO ALA8	<p><u>Rule 6 – Procedures at hearing</u> Dr Margaret NG's suggestion to improve the drafting of rule 6(1).</p> <p>Members were concerned about the rationale for prohibiting the taking of evidence on oath or affirmation at disciplinary hearings under rule 6(4).</p>	The Administration to take follow-up action as stated in paragraphs 5 and 6 of the minutes.
011536 – 012329	Chairman Civil Service Bureau Ms LI Fung-ying Dr Margaret NG	<p><u>Rule 7 – Adding or amending charge</u> Clarification by the Administration on what constituted "reasonable" adjournment under rule 7(3).</p> <p>Dr Margaret NG's suggestion to improve the drafting of the Chinese version of rule 7(3).</p> <p>Dr Margaret NG reiterated the need for the Administration to state explicitly whether the functions of the Director set out in L.N. 58 were to be performed by the Director himself or by any other officers authorized by the Director.</p>	The Administration to take follow-up action as stated in paragraphs 5 and 7 of the minutes.

Time Marker	Speaker	Subject(s)	Action Required
012330 – 012641	Chairman Civil Service Bureau Dr Margaret NG	As regards the suggestion to put in place a single set of regulations/rules that were applicable to the procedures of all DSDs' disciplinary proceedings, the Administration's advice that since the procedures of disciplinary proceedings varied among different DSDs due to their specific operational and organizational needs, it was practically difficult to implement the suggestion.	
012642 – 014200	Chairman Dr Margaret NG Ms LI Fung-ying Civil Service Bureau Ms Cyd HO Clerk Dr PAN Pey-chyou	Given the highly compressed timeframe for scrutiny of the amendment regulations/rules and the complexity of many of the amendments, members' suggestion to limit the scope of the current legislative exercise to only those proposals that were considered essential, while the other proposed amendments would be taken forward in the next phase of review of the relevant subsidiary legislation governing disciplinary matters. Date of next meeting	The Administration to take follow-up action as stated in paragraph 8 of the minutes.