

立法會
Legislative Council

LC Paper No. CB(2)307/19-20
(These minutes have been seen
by the Administration)

Ref : CB2/SS/13/18

Subcommittee on Prohibition on Face Covering Regulation

Minutes of the first meeting
held on Tuesday, 22 October 2019, at 8:30 am
in Conference Room 1 of the Legislative Council Complex

Members present : Hon WONG Ting-kwong, GBS, JP (Chairman)
Hon YUNG Hoi-yan, JP (Deputy Chairman)
Hon James TO Kun-sun
Hon LEUNG Yiu-chung
Prof Hon Joseph LEE Kok-long, SBS, JP
Hon Starry LEE Wai-king, SBS, JP
Hon CHAN Hak-kan, BBS, JP
Hon CHAN Kin-por, GBS, JP
Dr Hon Priscilla LEUNG Mei-fun, SBS, JP
Hon Claudia MO
Hon Steven HO Chun-yin, BBS
Hon Frankie YICK Chi-ming, SBS, JP
Hon WU Chi-wai, MH
Hon YIU Si-wing, BBS
Hon MA Fung-kwok, SBS, JP
Hon Charles Peter MOK, JP
Hon CHAN Chi-chuen
Hon CHAN Han-pan, BBS, JP
Hon LEUNG Che-cheung, SBS, MH, JP
Hon Kenneth LEUNG
Hon Alice MAK Mei-kuen, BBS, JP
Dr Hon KWOK Ka-ki
Hon KWOK Wai-keung, JP
Hon Dennis KWOK Wing-hang
Hon Christopher CHEUNG Wah-fung, SBS, JP
Dr Hon Helena WONG Pik-wan
Hon IP Kin-yuen
Hon Elizabeth QUAT, BBS, JP

Hon POON Siu-ping, BBS, MH
Dr Hon CHIANG Lai-wan, SBS, JP
Ir Dr Hon LO Wai-kwok, SBS, MH, JP
Hon CHUNG Kwok-pan
Hon Alvin YEUNG
Hon Andrew WAN Siu-kin
Hon CHU Hoi-dick
Hon Jimmy NG Wing-ka, BBS, JP
Dr Hon Junius HO Kwan-yiu, JP
Hon HO Kai-ming
Hon LAM Cheuk-ting
Hon Holden CHOW Ho-ding
Hon SHIU Ka-fai, JP
Hon SHIU Ka-chun
Hon Wilson OR Chong-shing, MH
Dr Hon Pierre CHAN
Hon CHAN Chun-ying, JP
Hon Tanya CHAN
Hon LUK Chung-hung, JP
Hon LAU Kwok-fan, MH
Dr Hon CHENG Chung-tai
Hon Jeremy TAM Man-ho
Hon Gary FAN Kwok-wai
Hon AU Nok-hin
Hon Vincent CHENG Wing-shun, MH, JP
Hon CHAN Hoi-yan

Members attending : Hon Jeffrey LAM Kin-fung, GBS, JP
Hon Martin LIAO Cheung-kong, GBS, JP
Hon KWONG Chun-yu

Members absent : Hon Paul TSE Wai-chun, JP
Dr Hon Fernando CHEUNG Chiu-hung
Hon HUI Chi-fung
Hon Tony TSE Wai-chuen, BBS

Public Officers attending : Item II
Mr Sonny AU Chi-kwong, PDSM, PMSM, JP
Under Secretary for Security

Ms Mimi LEE Mei-mei, JP
Deputy Secretary for Security 1

Ms Joceline CHUI Shih-yen
Principal Assistant Secretary for Security E

Ms Anna LEUNG Wing-sum
Assistant Secretary for Security E1

Mr Watson HAU Lai-man
Assistant Secretary for Security E3

Mr Gilbert MO Sik-keung
Deputy Law Draftsman I
Department of Justice

Mr LOH Vernon
Senior Assistant Solicitor General (Human Rights) (Acting)
Department of Justice

Clerk in attendance : Miss Betty MA
Chief Council Secretary (2) 1

Staff in attendance : Mr Alvin CHUI
Assistant Legal Adviser 3

Ms Gloria TSANG
Senior Council Secretary (2) 7

Ms Priscilla LAU
Council Secretary (2) 1

Ms Kiwi NG
Legislative Assistant (2) 1

I. Election of Chairman and Deputy Chairman

Election of Chairman

Mr James TO, member who had the highest precedence in Council among members of the Subcommittee present, presided over the election of the Chairman. Mr TO called for nominations for the chairmanship of

the Subcommittee. Mr WONG Ting-kwong was nominated by Mr Christopher CHEUNG and the nomination was seconded by Mr CHAN Hak-kan. Mr WONG Ting-kwong accepted the nomination. Mr TO called for other nominations.

2. Mr Dennis KWOK was nominated by Ms Tanya CHAN and the nomination was seconded by Mr Alvin YEUNG. Mr Dennis KWOK accepted the nomination.

3. As there was no other nomination, Mr James TO then proceeded to the election and announced that voting be conducted by secret ballot. After all the members present had cast their votes, Mr TO invited Mr Christopher CHEUNG and Ms Tanya CHAN, who had nominated the two candidates respectively, to monitor the counting of votes.

4. After the votes were counted, Mr James TO announced that 29 members voted for Mr WONG Ting-kwong and 15 members voted for Mr Dennis KWOK respectively. Mr TO declared Mr WONG Ting-kwong elected as the Chairman of the Subcommittee. Mr WONG Ting-kwong then took the chair.

Election of Deputy Chairman

5. The Chairman called for nominations for the deputy chairmanship of the Subcommittee. Mr Dennis KWOK was nominated by Mr Kenneth LEUNG and the nomination was seconded by Ms Claudia MO. Mr Dennis KWOK accepted the nomination. The Chairman called for other nominations.

6. Ms YUNG Hoi-yan was nominated by Ms Elizabeth QUAT and the nomination was seconded by Mr Steven HO. Ms YUNG Hoi-yan accepted the nomination.

7. As there was no other nomination, the Chairman announced a vote by secret ballot. After all members had cast their votes, the Chairman invited Mr Kenneth LEUNG and Ms Elizabeth QUAT, who had nominated the two candidates to monitor the counting of votes.

8. After the votes were counted, the Chairman announced that 19 and 29 members voted for Mr Dennis KWOK and Ms YUNG Hoi-yan respectively. The Chairman declared Ms YUNG Hoi-yan elected as the Deputy Chairman of the Subcommittee.

II. Meeting with the Administration

9. The Subcommittee deliberated (index of proceedings attached at **Annex**).

10. The Subcommittee requested the Administration to provide the following information:

- (a) the criteria of invoking and the scope of application of the Emergency Regulations Ordinance (Cap. 241) ("ERO");
- (b) the relationship between ERO and the Prohibition on Face Covering Regulation ("the Regulation"), as well as the factors to be taken into consideration in deciding whether to repeal the Regulation; and
- (c) the penalty under similar laws imposing prohibition on face covering in other western democratic jurisdictions as mentioned in the Legislative Council ("LegCo") Brief, as well as their mechanism to monitor the work of the Police and the powers of their monitoring bodies in handling and investigating complaints against the Police.

11. ALA3 was requested to provide his advice in writing regarding the implications of the impending judicial review proceedings on the scrutiny of the Regulation by the Subcommittee / LegCo.

(Post-meeting note: ALA3's advice was issued vide LC Paper No. LS13/19-20 on 25 October 2019.)

12. The Chairman said that Mr Dennis KWOK and Mr Alvin YEUNG had indicated their respective intention to move motions at the meeting. The Chairman pointed out that Mr Dennis KWOK's proposed motion was related to the extension of the scrutiny period of the Regulation and that some members had made a similar suggestion at the meeting. He proposed to deal with the matter in one go. Members agreed. Members further agreed that to allow more time for the Subcommittee to examine the Regulation, the Chairman would on behalf of the Subcommittee move a motion to extend the scrutiny period of the Regulation to the Council meeting of 4 December 2019.

13. Owing to time constraint, the Chairman said that Mr Alvin YEUNG's proposed motion on repealing the Regulation would be dealt with at the next meeting.

14. The Subcommittee also agreed in principle to invite the public to give views on the Regulation. Relevant meeting arrangements would be discussed at the next meeting.

III. Any other business

15. The Subcommittee agreed that the next meeting would be held on 28 October 2019 at 2:30 pm.

16. There being no other business, the meeting ended at 10:45 am.

Council Business Division 2
Legislative Council Secretariat
29 November 2019

**Proceedings of the first meeting of the
Subcommittee on Prohibition on Face Covering Regulation
held on Tuesday, 22 October 2019, at 8:30 am
in Conference Room 1 of the Legislative Council Complex**

Time marker	Speaker	Subject(s) / Discussion	Action Required
000000 - 001509	Mr James TO Mr Christopher CHEUNG Mr CHAN Hak-kan Mr WONG Ting-kwong Ms Tanya CHAN Mr Alvin YEUNG Mr Dennis KWOK	Election of Chairman	
001510 - 002454	Chairman Mr Kenneth LEUNG Ms Claudia MO Mr Dennis KWOK Ms Elizabeth QUAT Mr Steven HO Ms YUNG Hoi-yan	Election of Deputy Chairman	
002455 - 003610	Chairman Dr CHENG Chung-tai ALA3 Mr Dennis KWOK Admin	<p>Opening remarks</p> <p>Dr CHENG Chung-tai enquired about the implications of the impending judicial review ("JR") proceedings relating to the Prohibition on Face Covering Regulation ("the Regulation") filed by 24 Members on the scrutiny of the Regulation by the Subcommittee / Legislative Council ("LegCo").</p> <p>ALA3 advised that:</p> <p>(a) the court had not made any orders in the JR case concerned which might affect the scrutiny of the Regulation by the Subcommittee/LegCo ; and</p> <p>(b) based on the <i>sub judice</i> rule, it would be advisable for Members to avoid making references which might prejudice a case pending in the court during a debate or discussion at the Subcommittee meetings and refrain from making any comments or prejudgments on any issue required to be decided by the court in the case concerned.</p> <p>Dr CHENG requested ALA3 to put his advice into writing.</p>	ALA3

Time marker	Speaker	Subject(s) / Discussion	Action Required
		<p>The Chairman drew Members attention to Rule 41(2) of the Rules of Procedure, which stipulated that "reference shall not be made to a case pending in a court of law in such a way as, in the opinion of the President or Chairman, might prejudice that case."</p> <p>Mr Dennis KWOK said that a letter from 24 Members had been submitted to the House Committee (LC Paper No. CB(2)1975/18-19(01)). They declared that any speech and decision they made in relation to the Emergency Regulations Ordinance (Cap. 241) and the Regulation must not be considered as their concession to the constitutionality and/or legal foundation of the relevant law and regulation.</p>	
003611 - 003858	Chairman Mr CHAN Chi-chuen Clerk	<p>Mr CHAN Chi-chuen's suggestion that the Subcommittee Chairman should on behalf of the Subcommittee move a motion to extend the scrutiny period of the Regulation.</p> <p>Mr CHAN's enquiry and the Clerk's advice regarding the procedure for extending the scrutiny period of the Regulation.</p>	
003859 - 004431	Chairman Ms Claudia MO ALA3	<p>Ms Claudia MO enquired about the necessity to continue the scrutiny of the Regulation as there was a JR case pending for the court's decision.</p> <p>ALA3 advised that:</p> <ul style="list-style-type: none"> (a) under Article 73(1) of the Basic Law, LegCo had the constitutional power and function to enact, amend or repeal laws (including subsidiary legislation); (b) LegCo's constitutional power and function to scrutinize subsidiary legislation was reflected in section 34 of the Interpretation and General Clauses Ordinance (Cap. 1) by way of the negative vetting procedure; (c) no interim injunction order that might affect the current legislative exercise concerning the Regulation had been granted by the court; (d) in the light of the above, LegCo could and indeed had the constitutional duty to scrutinize the Regulation; and 	

Time marker	Speaker	Subject(s) / Discussion	Action Required
		(e) it would be advisable for the Subcommittee to take into account the <i>sub judice</i> rule in the course of its scrutiny, including not to make any prejudgments on any issue required to be decided by the court in the JR case concerned.	
004432 - 004854	Chairman Dr Priscilla LEUNG	Dr Priscilla LEUNG's concern regarding the security arrangement for deputations giving views on the Regulation if public hearings were to be held. The Chairman stressed that public views would be fully gauged by the Subcommittee.	
004855 - 004949	Chairman	Arrangements for dealing with members' proposed motions.	
004950 - 005016	Chairman Mr LEUNG Yiu-chung	Mr LEUNG Yiu-chung's suggestion and the Chairman's response regarding the need to invite the public to give views on the Regulation.	
005017 - 005708	Chairman Admin	Briefing by the Administration on the Regulation.	
005709 - 015404	Chairman Ms Tanya CHAN Mr LAM Cheuk-ting Mr Andrew WAN Mr AU Nok-hin Dr Junius HO Mr Kenneth LEUNG Mr CHAN Chi-chuen Dr CHENG Chung-tai Mr KWONG Chun-yu Ms Claudia MO Dr KWOK Ka-ki Mr Alvin YEUNG Dr Helena WONG Ms Elizabeth QUAT Mr Holden CHOW Ir Dr LO Wai-kwok Mr SHIU Ka-fai Admin Mr LEUNG Che-cheung Mr LUK Chung-hung Deputy Chairman	Views on the content of the powerpoint presentation materials prepared by the Administration. The Chairman agreed to convey members' request regarding the attendance of the Secretary for Justice and the Secretary for Security at the upcoming meetings of the Subcommittee.	

Time marker	Speaker	Subject(s) / Discussion	Action Required
015405 - 021927	Chairman Dr Junius HO Mr Christopher CHEUNG Ir Dr LO Wai-kiwok Mr SHIU Ka-fai Mr Alvin YEUNG ALA3 Mr KWOK Wai-keung Ms Tanya CHAN Mr CHAN Chi-chuen Mr Kenneth LEUNG Mr KWONG Chun-yu Mr CHU Hoi-dick Mr CHAN Han-pan	<p>Discussion on the following issues:</p> <p>(a) extension of the scrutiny period of the Regulation;</p> <p>(b) arrangement to deal with Mr Alvin YEUNG's proposed motion on repealing the Regulation; and</p> <p>(c) arrangements to hold meeting(s) to receive public views.</p> <p>Ms Tanya CHAN requested the Administration to provide the following information:</p> <p>(a) the criteria of invoking and the scope of application of the Emergency Regulations Ordinance (Cap. 241) ("ERO"); and</p> <p>(b) the relationship between ERO and the Regulation, as well as the factors to be taken into consideration in deciding whether to repeal the Regulation.</p> <p>Mr Kenneth LEUNG requested the Administration to provide information regarding the penalty under similar laws imposing prohibition on face covering in other western democratic jurisdictions as mentioned in the LegCo Brief, as well as their mechanism to monitor the work of the Police and the powers of their monitoring bodies in handling and investigating complaints against the Police.</p> <p>Date of next meeting</p>	<p>Admin</p> <p>Admin</p>