

立法會
Legislative Council

LC Paper No. CB(2)442/19-20
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by the Administration)

Ref : CB2/SS/13/18

Subcommittee on Prohibition on Face Covering Regulation

Minutes of the third meeting
held on Tuesday, 5 November 2019, at 10:45 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
Hon Paul TSE Wai-chun, 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 LEUNG Che-cheung, SBS, MH, JP
Hon Kenneth LEUNG
Hon Alice MAK Mei-kuen, BBS, JP
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

Hon CHUNG Kwok-pan
Hon Alvin YEUNG
Hon Andrew WAN Siu-kin
Hon CHU Hoi-dick
Hon Jimmy NG Wing-ka, BBS, JP
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 Tony TSE Wai-chuen, BBS
Hon CHAN Hoi-yan

**Members
absent** : Dr Hon Priscilla LEUNG Mei-fun, SBS, JP
Hon CHAN Han-pan, BBS, JP
Dr Hon KWOK Ka-ki
Dr Hon Fernando CHEUNG Chiu-hung
Ir Dr Hon LO Wai-kwok, SBS, MH, JP
Hon HUI Chi-fung
Hon KWONG Chun-yu

**Public Officers
attending** : Item I

Mr Sonny AU Chi-kwong, PDSM, PMSM, JP
Under Secretary for Security

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

Mr Kevin LAI Ming-fai
Principal Assistant Secretary for Security (Special Duties)

Mr Raymond LAM Cheuk-ho
Assistant Secretary for Security E4

Ms Fanny IP Fung-king
Deputy Law Draftsman II
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. Meeting with the Administration

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

2. The Subcommittee requested the Administration to provide information in respect of whether similar laws imposing prohibition on face covering in other western democratic jurisdictions as mentioned in the Administration's response (LC Paper No. CB(2)74/19-20(02)) were made by the executive authority in the form of subsidiary/subordinate legislation or primary legislation.

3. The Chairman said that Ms Tanya CHAN had indicated an intention to move a motion under Rule 91 of the Rules of Procedure ("RoP") at the Council meeting of 13 November 2019 to suspend RoP 18(1) ("RoP 91 motion") to the effect that the motion on extension of the scrutiny period of the Prohibition on Face Covering Regulation ("the Regulation") to the Council meeting of 4 December 2019 could be dealt with immediately after the agenda item II "Questions" at that meeting. Ms CHAN proposed a motion that the Subcommittee supported the RoP 91 motion. The Chairman invited members to consider whether Ms CHAN's motion should be proceeded with. As there were divided views among members, the Chairman ordered that a vote be taken on it. Members requested a division.

The following members voted for it:

Prof Joseph LEE, Ms Claudia MO, Mr Charles MOK, Mr CHAN Chi-chuen, Mr Kenneth LEUNG, Dr Helena WONG, Mr IP Kin-yuen, Mr Alvin YEUNG, Mr Andrew WAN, Mr LAM Cheuk-ting, Mr SHIU Ka-chun, Ms Tanya CHAN, Dr CHENG Chung-tai, Mr Jeremy TAM, Mr Gary FAN and Mr AU Nok-hin (16 members)

The following members voted against it:

Deputy Chairman, Ms Starry LEE, Mr CHAN Hak-kan, Mr CHAN Kin-por, Mr Steven HO, Mr Frankie YICK, Mr YIU Si-wing, Mr MA Fung-kwok, Mr LEUNG Che-cheung, Ms Alice MAK, Mr KWOK Wai-keung, Mr Christopher CHEUNG, Ms Elizabeth QUAT, Mr POON Siu-ping, Dr CHIANG Lai-wan, Mr CHUNG Kwok-pan, Mr Junius HO, Mr HO Kai-ming, Mr Holden CHOW, Mr SHIU Ka-fai, Mr Wilson OR, Mr CHAN Chun-ying, Mr LUK Chung-hung, Mr LAU Kwok-fan, Mr Vincent CHENG and Ms CHAN Hoi-yan (26 members)

4. The Chairman said that 16 members voted for and 26 members voted against it, and no member abstained from voting. He declared that Ms CHAN's motion would not be proceeded with.

II. Any other business

5. The Chairman reminded members who intended to propose amendments to the Regulation and wished their proposed amendments to be considered by the Subcommittee to forward their proposed amendments to the Subcommittee as soon as possible.

6. The Chairman further reminded that the next meeting would be held on 9 November 2019 from 9:00 am to 6:00 pm to receive views from 150 deputations on the Regulation.

7. There being no other business, the meeting ended at 12:46 pm.

Council Business Division 2
Legislative Council Secretariat
23 December 2019

**Proceedings of the third meeting of the
Subcommittee on Prohibition on Face Covering Regulation
held on Tuesday, 5 November 2019, at 10:45 am
in Conference Room 1 of the Legislative Council Complex**

Time marker	Speaker	Subject(s) / Discussion	Action Required
000747 - 001055	Chairman	Opening remarks	
001056 - 001616	Chairman Mr IP Kin-yuen Admin	<p>Mr IP Kin-yuen referred to paragraph 6 of the Administration's response (LC Paper No. CB(2)141/19-20(01)) to his letter, and asked whether police officers were within the meaning of "a person" referred to in section 3(1) of the Prohibition on Face Covering Regulation ("the Regulation").</p> <p>The Administration affirmed that "a person" referred to in section 3(1) of the Regulation covered any natural person, including a police officer. That said, under section 4(1) of the Regulation, a person (including a police officer) at an event regulated by section 3(1) of the Regulation could have a defence for using facial covering if the person had lawful authority, or a reasonable excuse (e.g. the person was engaged in employment and was using the facial covering for the physical safety of the person while performing an act or activity connected with the employment, in line with section 4(3)(a) of the Regulation).</p>	
001617 - 002432	Chairman Mr CHAN Chi-chuen Admin	<p>Mr CHAN Chi-chuen expressed concern about:</p> <p>(a) the title of the Regulation; and</p> <p>(b) the proportionality of section 3 of the Regulation.</p> <p>The Administration responded that:</p> <p>(a) the making of the Regulation did not mean that Hong Kong was in a state of emergency. The Regulation sought to respond to the public danger that arose in Hong Kong. The word "emergency" was not a prerequisite for the title of the Regulation; and</p> <p>(b) the freedom of speech and right to peaceful assembly were protected by the Basic Law ("BL") and the Hong Kong Bill of Rights Ordinance (Cap. 383). It was highlighted that</p>	

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		<p>the prohibition on the use of facial covering at the events regulated under section 3(1) of the Regulation could strengthen the deterrence against illegal and violent acts committed by radical protesters, thus safeguarding the rights of others to peaceful assemblies. A reasonable balance had been struck between the public interest in protecting public order and public safety and individuals' rights.</p>	
002433 - 002959	Chairman Dr Helena WONG Admin	<p>Dr Helena WONG's condemnation about the absence of the Secretary for Justice and the Secretary for Security at the meetings of the Subcommittee.</p> <p>Dr WONG considered that objections from the Police in respect of recent public assemblies, meetings and processions had deprived the freedom of assembly in Hong Kong.</p> <p>The Administration provided statistics on the notifications of public meetings and processions received by the Police. The Administration explained that each notification had been considered by the Police on a case-by-case basis having regard to the risk assessment.</p>	
003000 - 003632	Chairman Mr LAM Cheuk-ting Admin	<p>Mr LAM Cheuk-ting sought information on the application of the reasonable excuse under section 4(3)(a) and (c) to social workers and Members of the Legislative Council if they used facial covering at public meetings or assemblies for their physical safety or medical reasons respectively.</p> <p>The Administration responded that examples of reasonable excuse were set out under section 4(3) of the Regulation, and whether an act would constitute a reasonable excuse would be considered based on the actual circumstances of each case.</p>	
003633 - 004049	Chairman Mr LEUNG Che-cheung Admin	<p>Mr LEUNG Che-cheung's concern and the Administration's response regarding the defence under section 4 of the Regulation. For instance, police officers and journalists would have a reasonable excuse if they used facial covering at a public assembly, meeting or procession for their physical safety while performing an act connected with their employment.</p>	

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		<p>The Administration further advised that enhanced communication and mutual understanding between frontline police officers and journalists could facilitate both parties' work.</p>	
004050 - 004718	<p>Chairman Ms Tanya CHAN Admin</p>	<p>Ms Tanya CHAN's enquiry and the Administration's response regarding the rationale of using the word "at" ("身處") an unlawful assembly, etc. in section 3(1) of the Regulation, as compared with the use of "participate" or "take part" in an assembly/event in some overseas legislation similar to the Regulation.</p> <p>Ms CHAN said that those overseas legislation similar to the Regulation were mainly primary legislation enacted by their respective legislature pursuant to the legislative procedures concerned (i.e. as examined by and debated in their parliaments), which were different from the Regulation (i.e. a piece of subsidiary legislation made by the Chief Executive in Council and then laid on the table of LegCo for negative vetting).</p>	
004719 - 005354	<p>Chairman Dr CHENG Chung-tai Admin</p>	<p>Dr CHENG Chung-tai referred to paragraph 3 of the Administration's response to letters from Mr James TO and Mr IP Kin-yuen (LC Paper No. CB(2)141/19-20(01)), and sought clarification on the rationale and scope of the Regulation as he considered that the Regulation did not fall within the matters set out in paragraphs (a) to (n) of section 2(2) of the Emergency Regulations Ordinance (Cap. 241) ("ERO").</p> <p>The Administration responded that section 2(2) of ERO stipulated that, without prejudice to the generality of the provisions of section 2(1) of ERO, regulations made under ERO could provide for matters set out in paragraphs (a) to (n). As such, the scope of the Regulation was not confined to the matters referred to in section 2(2).</p>	
005355 - 010333	<p>Chairman Mr Jeremy TAM Admin</p>	<p>Mr Jeremy TAM's concern and the Administration's response regarding the legislative procedures for enacting similar laws imposing prohibition on face covering in other western democratic jurisdictions.</p> <p>The Chairman requested the Administration to provide written response on whether similar laws in other western jurisdictions as mentioned in the Administration's response (LC Paper No.</p>	<p>Admin</p>

Time marker	Speaker	Subject(s) / Discussion	Action Required
		<p>CB(2)74/19-20(02)) were made by the executive authority in the form of subsidiary/subordinate legislation or primary legislation.</p> <p>Mr TAM's enquiry and the Administration's response regarding the use of facial covering because of a medical reason at a lawful assembly.</p>	
010334 - 010452	Chairman Mr LAM Cheuk-ting	Mr LAM Cheuk-ting expressed his view on the Administration's response to members' enquiries.	
010453 - 011111	Chairman Mr WU Chi-wai Admin	<p>Mr WU Chi-wai considered that the Regulation had violated Articles 27 and 28 of BL, and expressed concern about Police's unreasonable dissolution of recent lawful assemblies.</p> <p>The Administration stressed that the Police's decision was made after conducting relevant risk assessment and with a view to protecting public safety. Such arrangement complied with BL.</p>	
011112 - 011704	Chairman Mr YIU Si-wing Admin	<p>Mr YIU Si-wing considered that protesters with facial covering had enabled them to evade police investigation and emboldened them to continue with illegal acts and in some cases engage in escalated violence. The recent violence and riotous acts had posed negative impact on the local economy.</p> <p>Mr YIU sought information on relevant training provided to frontline police officers on implementation of the Regulation. The Administration advised that frontline police officers should comply with Police's guidelines and procedures on the use of force. Frontline police officers would, as far as possible, give warnings before taking enforcement actions.</p>	
011705 - 012217	Chairman Mr LEUNG Yiu-chung Admin	<p>Mr LEUNG Yiu-chung sought information on the meaning of an unlawful assembly and unauthorized assembly as stipulated in section 3(1) of the Regulation. He was particularly concerned about the Police's power to require removal of facial covering in an assembly/meeting took place in a shopping centre.</p> <p>The Administration explained that any place in a shopping centre to which the public or any section of the public were entitled or permitted to have access at the time concerned, whether on payment or</p>	

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		<p>otherwise, would be regarded as a public place pursuant to the Public Order Ordinance (Cap. 245) ("POO"). A meeting in a shopping centre might thus be subject to the regulation of the Ordinance. In accordance with section 5 of the Regulation, a police officer could require a person in a public place to remove the facial covering to verify the identity of the person.</p>	
012218 - 012738	<p>Chairman Mr SHIU Ka-chun Admin</p>	<p>Mr SHIU Ka-chun asked whether social workers providing service at the events regulated under section 3 of the Regulation constituted a reasonable excuse for using facial covering.</p> <p>The Administration affirmed that social workers could have a reasonable excuse under section 4(3)(a) of the Regulation if they were engaged in a profession or employment and were using the facial covering for their physical safety while performing an act or activity connected with the profession or employment.</p>	
012739 - 013348	<p>Chairman Mr LUK Chung-hung Mr SHIU Ka-chun Admin</p>	<p>Mr LUK Chung-hung considered that the Regulation sought to strengthen the deterrence against illegal and violent acts committed by radical protesters as they concealed their identities. He asked about the factors to be taken into consideration in deciding whether to repeal the Regulation.</p> <p>The Administration advised that when the prevailing public danger dropped to a level which no longer justified the Regulation (including whether public order events could be carried out orderly and peacefully, the frequency and degree of violent acts and social stability, etc.), approval would be sought from the Chief Executive in Council to repeal the Regulation.</p>	
013349 - 013720	<p>Chairman Mr Christopher CHEUNG Admin</p>	<p>Mr Christopher CHEUNG sought information and the Administration's response on the publicity work of the Regulation.</p>	
013721 - 013802	<p>Chairman</p>	<p>Meeting arrangement</p>	
013803 - 014325	<p>Chairman Ms Elizabeth QUAT</p>	<p>Ms Elizabeth QUAT said that she had proposed since 2016 the enactment of legislation against the wearing of masks in public meetings and public processions. Although the Regulation could not</p>	

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		<p>completely resolve all problems under the present situation, she considered that it was at least better than doing nothing. She further said that the Administration should endeavour to carry out relevant publicity work to enhance public understanding of the Regulation.</p>	
014326 - 014844	<p>Chairman Mr Holden CHOW Admin</p>	<p>Mr Holden CHOW expressed support for the Regulation and considered that it took time to assess the effectiveness of the Regulation. He asked about the rationale of section 3(1)(c) and (d) of the Regulation, which stipulated that the use of facial covering that was likely to prevent identification while a person was at a public meeting or a public procession that took place under POO (for which a notice of no objection had been issued by the Commissioner of Police) was an offence.</p> <p>The Administration responded that according to recent experience, a public meeting or public procession which was lawfully taking place could turn into an unauthorized or unlawful assembly quickly, with some radical protesters readily resorting to violence. As such, the Regulation sought to deter radical protesters from engaging in illegal acts while concealing their identities to evade justice. It would also assist the Police in law enforcement and conducting investigations. The Administration would strengthen relevant enforcement work and was determined to restore peace as soon as possible.</p>	
014845 - 020500	<p>Chairman Ms Elizabeth QUAT ALA3 Mr CHAN Hak-kan Ms Starry LEE Dr CHIANG Lai-wan Ms Tanya CHAN Mr CHAN Chi-chuen</p>	<p>Discussion on whether the motion proposed by Ms Tanya CHAN would be proceeded with.</p> <p>Legislative timetable and upcoming meeting arrangements.</p>	
020501 - 020545	<p>Chairman</p>	<p>Date of next meeting</p>	