

立法會
Legislative Council

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Subcommittee on Prohibition on Face Covering Regulation

Minutes of the fifth meeting
held on Tuesday, 12 November 2019, at 2:30 pm
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 CHAN Hak-kan, BBS, JP
Hon CHAN Kin-por, GBS, JP
Dr Hon Priscilla LEUNG Mei-fun, SBS, JP
Hon Paul TSE Wai-chun, JP
Hon Claudia MO
Hon Steven HO Chun-yin, BBS
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 Fernando CHEUNG Chiu-hung
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 Alvin YEUNG
Hon Andrew WAN Siu-kin
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 KWONG Chun-yu
Hon Jeremy TAM Man-ho
Hon AU Nok-hin
Hon Vincent CHENG Wing-shun, MH, JP
Hon Tony TSE Wai-chuen, BBS
Hon CHAN Hoi-yan

Members absent : Hon Starry LEE Wai-king, SBS, JP
Hon Frankie YICK Chi-ming, SBS, JP
Hon CHUNG Kwok-pan
Hon CHU Hoi-dick
Hon HUI Chi-fung
Hon Gary FAN Kwok-wai

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

Ms Mimi LEE Mei-mei, JP
Deputy Secretary 1

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

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. Meeting with the Administration

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

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

- (a) the adverse impacts which could be brought about by the Prohibition on Face Covering Regulation ("the Regulation") as mentioned by the Chief Executive before the Regulation coming into operation, e.g. individuals' rights and the economy;

- (b) the details of the consultation with the Food and Health Bureau regarding the impacts on public hygiene relating to the defence of reasonable excuse on the ground of "a pre-existing medical or health reason" under section 4(3)(c) of the Regulation; and
- (c) the top five cities ranked with the highest police-to-public ratio worldwide.

II. Any other business

3. The Subcommittee agreed that the next meeting would be held on 18 November 2019 at 2:30 pm to commence examination of the provisions of the Regulation section-by-section.
4. There being no other business, the meeting ended at 4:39 pm.

Council Business Division 2
Legislative Council Secretariat
6 January 2020

**Proceedings of the fifth meeting of the
Subcommittee on Prohibition on Face Covering Regulation
held on Tuesday, 12 November 2019, at 2:30 pm
in Conference Room 1 of the Legislative Council Complex**

Time marker	Speaker	Subject(s) / Discussion	Action Required
000836 - 001148	Chairman Mr LAM Cheuk-ting	Opening remarks	
001149 - 001706	Chairman Mr AU Nok-hin Admin	<p>Mr AU Nok-hin's concern and the Administration's response regarding the conformity of the Emergency Regulations Ordinance (Cap. 241) ("ERO") to the Basic Law ("BL") and the Hong Kong Bill of Rights Ordinance (Cap. 383).</p> <p>Mr AU was particularly worried that the Prohibition on Face Covering Regulation ("the Regulation") made by the Chief Executive in Council ("CE-in-C") under ERO would never be repealed. The Administration said that when the prevailing public danger dropped to a level which no longer justified the Regulation, approval would be sought from CE-in-C to repeal the Regulation.</p>	
001707 - 002344	Chairman Dr Fernando CHEUNG Admin	<p>Dr Fernando CHEUNG's view regarding the effectiveness of the Regulation and the social disturbances arising from the proposed amendments to the Fugitive Offenders Ordinance (Cap. 503). He was particularly concerned about the police enforcement actions over the past few months and considered that the Regulation should also apply to the Police.</p> <p>The Administration pointed out that since the commencement of the Regulation, and up to 7 November 2019, a total of 363 persons were arrested for suspected breach of section 3 of the Regulation. It was observed that fewer people were using facial covering during various assemblies.</p>	
002345 - 003101	Chairman Mr KWOK Wai-keung Dr Fernando CHEUNG Mr IP Kin-yuen Admin	<p>Mr KWOK Wai-keung expressed his view on the effectiveness of the Regulation, and asked about the Administration's measures to enhance relevant enforcement work to stop violence and curb disorders more effectively.</p> <p>The Administration said that although some violent acts had escalated, the number of protesters was observed to be declining since the commencement of</p>	

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		the Regulation. Members of the public should condemn violence together. The Administration was determined to stop violence and restore public peace in Hong Kong.	
003102 - 003550	Chairman Mr James TO Admin	Mr James TO's enquiry and the Administration's response regarding the adverse impacts which could be brought about by the Regulation as mentioned by the Chief Executive before the Regulation coming into operation, e.g. individuals' rights and the economy. The Administration was requested to provide a written response on this aspect.	Admin
003551 - 004207	Chairman Dr Pierre CHAN Admin	Dr Pierre CHAN's concern regarding the defence of reasonable excuse on the ground of "a pre-existing medical or health reason" under section 4(3)(c) of the Regulation. Dr CHAN's enquiries and the Administration's response regarding the consultation with the Food and Health Bureau ("FHB") about the impacts of section 4(3)(c) on public hygiene and the relevant evidence required for a person to raise an issue that the person had reasonable excuse for using a facial covering for a pre-existing medical or health reason under section 4(3)(c) in an event regulated under section 3(1) of the Regulation. The Administration was requested to provide a written response on the details of the consultation with FHB.	Admin
004208 - 004541	Chairman Mr Alvin YEUNG Admin	Mr Alvin YEUNG's follow-up enquiry and the Administration's response regarding the consultation with FHB. The Administration assured members that FHB had been fully consulted on the impacts on public hygiene relating to the defence of reasonable excuse on the ground of "a pre-existing medical or health reason" under section 4(3)(c) of the Regulation. The Administration had also issued a press release clarifying that the Regulation was not in conflict with public health appeal. Mr YEUNG's further enquiry and the Administration's response regarding the figures relating to reports on improper implementation of the Regulation.	

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004542 - 005242	Chairman Mr CHAN Han-pan Admin	Mr CHAN Han-pan's view and the Administration's response regarding the police-to-public ratio, the need for the Regulation and the publicity work to enhance public understanding of the Regulation.	
005243 - 005753	Chairman Dr Priscilla LEUNG Admin	<p>Dr Priscilla LEUNG said that there was an imminent need for the Regulation to handle protests and violent incidents in the past few months. She further considered that the Regulation should only be repealed upon the enactment of primary legislation against the wearing of masks in public meetings and public processions by the Legislative Council ("LegCo").</p> <p>Dr LEUNG's enquiry and the Administration's response regarding the effectiveness of the Regulation in assisting police's enforcement actions.</p>	
005754 - 010621	Chairman Dr KWOK Ka-ki Admin Mr LAM Cheuk-ting Dr Fernando CHEUNG Ms Tanya CHAN	Dr KWOK Ka-ki's enquiries and the Administration's response regarding the effectiveness of the Regulation and the Administration's response to the five demands from the society.	
010622 - 011045	Chairman Mr Vincent CHENG Admin	<p>Mr Vincent CHENG expressed support for the Regulation.</p> <p>Mr CHENG's enquiries and the Administration's response regarding the Education Bureau's request to schools in relation to the Regulation and the wearing of masks in schools.</p>	
011046 - 011553	Chairman Mr Kenneth LEUNG Admin	<p>Mr Kenneth LEUNG requested the Administration to provide information on the top five cities ranked with the highest police-to-public ratio worldwide.</p> <p>Mr LEUNG further asked about the criteria for deciding whether a facial covering was likely to prevent identification under section 3(1) of the Regulation. The Administration advised that according to section 2 of the Regulation, facial covering means "a mask or any other article of any kind (including paint) that covers all or part of a person's face". Whether a facial covering was likely to prevent identification was to be determined by an objective test based on the actual circumstances upon assessment considered to be reasonable or logical by an ordinary person under normal circumstances.</p>	Admin

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011554 - 012122	Chairman Mr Steven HO Admin	<p>Mr Steven HO expressed his view on the rationale for the Regulation and suggested that all bureaux/departments should firmly work together to stop violence.</p> <p>Mr HO's further enquiry and the Administration's response regarding whether certain acts performed by some protesters, such as obstructing the Police from arresting violent and radical protesters, would constitute an offence.</p>	
012123 - 012638	Chairman Ms CHAN Hoi-yan Admin	<p>Ms CHAN Hoi-yan's enquiry and the Administration's response regarding the guidelines provided to frontline police officers to enhance their communication with journalists in an event regulated under section 3(1) of the Regulation.</p> <p>Ms CHAN's further suggestion and the Administration's response regarding the communication between the Security Bureau and relevant journalists associations.</p>	
012639 - 013141	Chairman Mr Wilson OR Admin	<p>Mr Wilson OR's enquiries and the Administration's response regarding the effectiveness of the Regulation and the measures taken by the Administration to protect public safety.</p> <p>The Administration stressed that the Regulation could strengthen the deterrence against illegal and violent acts committed by radical protesters. The Police had been dedicated to stopping violence and maintaining public safety. Around 3 400 protesters were arrested for committing illegal acts in public order events and some 500 of them were charged thus far. It was reiterated that members of the public should condemn violence together.</p>	
013142 - 013458	Chairman Mr Andrew WAN	Mr Andrew WAN expressed his view regarding the social disturbances in the past few months and considered that the Regulation was a total failure.	
013459 - 013813	Chairman Ms Claudia MO	Ms Claudia MO considered that the Regulation sought to provide an excuse to arrest and prosecute protesters.	
013814 - 014327	Chairman Dr CHENG Chung-tai ALA3 Admin	Dr CHENG Chung-tai expressed concern about the conformity of section 2(3) of ERO to Article 73 of BL and whether the making of the Regulation by CE-in-C was compatible with BL.	

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		<p>ALA3 advised that under Article 73 of BL, LegCo had the constitutional power and function to enact, amend or repeal laws (including subsidiary legislation). Besides, LegCo's constitutional power and function to scrutinize subsidiary legislation was reflected in section 34 of the Interpretation and General Clauses Ordinance (Cap. 1). In the light of the above, LegCo should have the power to amend or repeal the Regulation.</p> <p>The Administration affirmed that any Regulation made by CE-in-C under ERO was subsidiary legislation subject to LegCo's scrutiny under the negative vetting procedure and could be amended or repealed by LegCo. LegCo's powers were not mutually exclusive with section 2(3) of ERO.</p>	
014328 - 014912	Chairman Mr CHAN Chi-chuen Admin	<p>Mr CHAN Chi-chuen pointed out that a person might use a facial covering for preventing others from identifying him/her at an event regulated under section 3 of the Regulation because of various reasons. For instance, a person might be concerned that he/she was likely to be dismissed by his/her employer because of his/her presence at the event. A person might also use a facial covering to prevent others from knowing his/her sexual orientation after he/she had taken part in an event regulated under section 3 of the Regulation. He asked whether consideration would be given to providing exemption under the Regulation.</p> <p>The Administration said that the Regulation, which was not a piece of legislation intended to be permanent or indefinite, mainly sought to strengthen the deterrence against illegal and violent acts committed by radical protesters under the current situation as they had concealed their identities. Allowing persons to use facial covering to conceal their identities in meetings, assemblies and processions regulated under section 3(1) of the Regulation would be contrary to the purposes of the Regulation. The Regulation would not impair the very essence of the freedom of peaceful assembly enjoyed by members of the public. It was also reiterated that approval would be sought from CE-in-C to repeal the Regulation when the prevailing public danger dropped to a level which no longer justified it.</p>	

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014913 - 015211	Chairman Mr Holden CHOW Admin	Mr Holden CHOW considered that the Regulation could reduce violence to some extent and called on the Administration to expedite relevant prosecutions. The Administration said that law enforcement agencies would endeavour to speed up the corresponding evidence gathering work.	
015212 - 015517	Chairman Mr YIU Si-wing Admin	Mr YIU Si-wing's enquiry and the Administration's response regarding the numbers of persons taking part in or being at unlawful assemblies and of radical and violent protestors since the commencement of the Regulation.	
015518 - 015828	Chairman Mr SHIU Ka-fai Admin	Given that some violent acts had escalated recently, Mr SHIU Ka-fai sought information on the measures that would be taken by the Administration to stop violence. The Administration responded that members of the public should be made aware of the penalties concerned if they took part in riots or unlawful assemblies or were in possession of offensive weapons, etc., so as to strengthen the deterrence effect.	
015829 - 020134	Chairman Mr WU Chi-wai Admin	Mr WU Chi-wai's concern and the Administration's response regarding Police's use of facial covering and force at the event regulated under section 3 of the Regulation.	
020135 - 020145	Chairman	Extension of the meeting by 15 minutes	
020146 - 020507	Chairman Dr KWOK Ka-ki	Dr KWOK Ka-ki's view regarding the social disturbances in the past few months and effectiveness of the Regulation.	
020508 - 020934	Chairman Mr MA Fung-kwok Mr HO Kai-ming Admin	Mr HO Kai-ming's concern and the Administration's response regarding the complaint handling mechanism against police officers who were using facial covering on duty.	
020935 - 021253	Chairman	Closing remarks	