

立法會
Legislative Council

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Ref : CB2/SS/13/18

Subcommittee on Prohibition on Face Covering Regulation

Minutes of the sixth meeting
held on Monday, 18 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 Starry LEE Wai-king, SBS, JP
Hon CHAN Hak-kan, BBS, JP
Hon Paul TSE Wai-chun, JP
Hon Claudia MO
Hon Steven HO Chun-yin, BBS
Hon Frankie YICK Chi-ming, SBS, JP
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 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
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 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
Hon CHAN Chun-ying, JP
Hon Tanya CHAN
Hon LUK Chung-hung, JP
Hon LAU Kwok-fan, MH
Dr Hon CHENG Chung-tai
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**

: Hon CHAN Kin-por, GBS, JP
Dr Hon Priscilla LEUNG Mei-fun, SBS, JP
Hon WU Chi-wai, MH
Hon LEUNG Che-cheung, SBS, MH, JP
Hon Kenneth LEUNG
Dr Hon Fernando CHEUNG Chiu-hung
Dr Hon Helena WONG Pik-wan
Hon CHUNG Kwok-pan
Hon Andrew WAN Siu-kin
Hon CHU Hoi-dick
Dr Hon Pierre CHAN
Hon HUI Chi-fung
Hon KWONG Chun-yu
Hon Jeremy TAM Man-ho

**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 for Security 1

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

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

Miss Lulu YEUNG
Clerical Assistant (2) 1

I. Meeting with the Administration

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

2. At the invitation of members, Assistant Legal Adviser 3 made the following points regarding the judgment on the applications for judicial review ("JR") respectively made by 24 Members and Mr LEUNG Kwok-hung in relation to the Prohibition on Face Covering Regulation ("the Regulation") (HCAL 2945/2019 and 2949/2019):

- (a) the court had held that the Emergency Regulations Ordinance (Cap. 241), insofar as it empowered the Chief Executive in Council to make regulations on any occasion of public danger, was incompatible with the Basic Law;

- (b) the court had also held that the restrictions that section 3(1)(b), (c) and (d) and section 5 of the Regulation imposed on fundamental rights went further than was reasonably necessary for the furtherance of the legitimate objects and therefore did not pass the proportionality test;
- (c) the court, however, had made it clear that it was not the court's judgment that "anti-mask" law was generally objectionable or unconstitutional. Its validity must depend on the details of the legislation and the particular societal aims sought to be pursued by the measure being brought in through the legislation;
- (d) there would be a further hearing for the parties to make submissions on the appropriate relief and costs;
- (e) the scrutiny period of the Regulation had already expired;
- (f) the Subcommittee was formed under the House Committee ("HC") to study the Regulation. The Subcommittee needed to submit a report to HC concerning the Subcommittee's deliberations;
- (g) it was noted that some members were concerned about the actions that would be taken by the Administration in response to the judgment; and
- (h) it would be for the Subcommittee to decide whether it would invite the Administration to give a response regarding the judgment of the JR concerned and further actions that would be taken by the Administration.

3. The Subcommittee agreed to invite the Administration to give a response to the judgment. At the invitation of the Chairman, the Administration said that it would take some time to study the judgment and seek relevant legal advice to decide its next course of action. It further explained that, generally speaking, the Administration would suspend law enforcement actions in respect of a piece of legislation that had been ruled by the courts to be unconstitutional.

II. Any other business

4. The Subcommittee considered that its scrutiny work should come to a halt having regard to the latest development and the fact that the scrutiny period of the Regulation had already expired. In the light of the above, the Subcommittee had not examined the provisions of the Regulation section-by-section or considered the draft amendments proposed by individual Members to the Regulation.

5. There being no other business, the meeting ended at 3:05 pm.

Council Business Division 2
Legislative Council Secretariat
6 January 2020

**Proceedings of the sixth meeting of the
Subcommittee on Prohibition on Face Covering Regulation
held on Monday, 18 November 2019, at 2:30 pm
in Conference Room 1 of the Legislative Council Complex**

Time marker	Speaker	Subject(s) / Discussion	Action Required
000544 - 003541	Chairman Mr Dennis KWOK Ms Tanya CHAN Ms Claudia MO Mr CHAN Chi-chuen Mr LAM Cheuk-ting Dr CHIANG Lai-wan Mr Charles MOK Mr Holden CHOW Mr AU Nok-hin Mr Alvin YEUNG Mr Paul TSE Mr Junius HO Ir Dr LO Wai-kwok ALA3 Dr KWOK Ka-ki Mr LEUNG Yiu-chung Ms Starry LEE	Discussion on the subsequent meeting arrangements of the Subcommittee as a result of the judgment on the applications for judicial review ("JR") respectively made by 24 Members and Mr LEUNG Kwok-hung in relation to the Prohibition on Face Covering Regulation (HCAL 2945/2019 and 2949/2019).	
003542 - 003936	Chairman Admin	The Administration's response to the judgment of the JR concerned.	