

Legislative Council
Subcommittee on Prohibition on Face Covering Regulation
Follow-up to Meetings

Information is provided as per the request of the Legislative Council (“LegCo”) Subcommittee on Prohibition on Face Covering Regulation (“the Regulation”).

Mechanisms for handling complaints against police in overseas countries (follow-up to the meeting on 22 October 2019)

2. The relevant information is at Annex.

“Lawful authority” or “reasonable excuse” as defence for offence under section 3(2) (follow-up to the meeting on 9 November 2019)

3. As stated in paragraph 16 of our reply to LegCo’s Assistant Legal Adviser (ALA) dated 28 October this year, one of the main purposes of the Regulation is to deter people from engaging in illegal and violent acts while concealing their identities, as people who do not cover their faces will generally be more prudent in considering whether their acts are lawful. To achieve this purpose effectively, we consider that in relation to the offence under section 3(2) of the Regulation, the absence of “lawful authority” and “reasonable excuse” should not form part of the elements of a charge, since it is impractical for the prosecution to furnish evidence first to disprove various reasonable excuses. To so require will severely undermine the deterrent effect of the Regulation.

Number of persons arrested and charged (follow-up to the meeting on 9 November 2019)

4. According to the information from the Police, as at 14 November, a total of 4 319 persons had been arrested by the Police in the public order events (POEs) that took place since 9 June 2019, and 629 of them had been charged. Offences with which most persons were charged include taking part in riots and unlawful assemblies, possession of offensive weapons, assault on police officers and criminal damage. In deciding whether to prosecute an arrestee, the Department of Justice will examine all of the evidence in the case and consider whether there is a reasonable prospect of

conviction before making a prosecutorial decision. While each case has its particular facts, we do not maintain statistics on the number of persons who were arrested but not charged on the premise that the relevant criminal acts could not be proved since the persons concerned used facial covering.

Implications of the Regulation (follow-up to the meeting on 12 November 2019)

5. In the making of any legislation, the Government will need to consider the relevant positive and negative implications. Regarding the implications of the Regulation on human rights, as is stated in paragraph 14 of the LegCo Brief on the Regulation, we considered at the time of making the Regulation that it is in conformity with the Basic Law, including the provisions concerning human rights. The fundamental rights protected by the Basic Law and the Hong Kong Bill of Rights Ordinance (Cap. 383) are not absolute, and may be subject to permissible limitations. We considered that the measure concerned strikes a careful balance between the public interest in protecting public order and safety, and respect for the fundamental rights and freedoms of Hong Kong residents. In view of the ever-escalating illegal and violent acts of radical protesters at past public events, we were satisfied that the Regulation is no more than what is necessary and proportionate to protect public order and safety. As for the proportionality test for the offences under sections 3 and 5 of the Regulation, details are given in paragraphs 15 to 16 of the LegCo Brief on the Regulation, as well as paragraphs 5 to 11 and 25 to 27 of our reply to LegCo's ALA dated 28 October.

6. The violence sparked by POEs in the past five months or so has severely impacted on Hong Kong's economy and people's livelihood. Hong Kong has always been one of the freest economies and most competitive cities in Asia and the world. However, starting from June, Hong Kong's economy has clearly been slipping into recession¹ as a result of violent incidents. 40 countries or regions have issued travel warnings on Hong Kong, with a number of countries having recommended their citizens to avoid visiting Hong Kong. This has led to a significant drop in the number of inbound visitors.² Hong Kong's tourism, retail and catering sectors have suffered heavily, and the unemployment rates in these

¹ The economy shrank by 3.2% in the quarter ending September 2019 compared to the quarter ending June 2019.

² The number of visitors in the third quarter of 2019 was around 11.9 million, representing a 26% drop from the same period last year.

sectors have risen³. Recently, some radical netizens even called for strikes and class boycotts, and engaged in protest activities involving road blocking in various districts, obstruction of transport services and vandalism of transport facilities. Traffic was severely disrupted, and people's daily lives of going out and commuting to work and school were seriously affected. The Regulation aims at curbing violence and restoring Hong Kong's public safety and order, which are essential to bringing Hong Kong's economic activities back to normal.

Implications of the Regulation on public health (follow-up to the meeting on 12 November 2019 and the letter from Hon Pierre CHAN dated 15 November 2019)

7. Under section 3 of the Regulation, a person who uses any facial covering that is likely to prevent identification at an unlawful or unauthorised assembly, or a public meeting or public procession regulated under the Public Order Ordinance, commits an offence. To cater for members of the public who may have legitimate reasons for using facial covering at a public assembly, meeting or procession, section 4 of the Regulation provides for the defence: if a person had lawful authority or reasonable excuse for using facial covering, the person would not be criminally liable for the offence. Using a facial covering for a pre-existing medical or health reason is a reasonable excuse provided in the Regulation. We have explained the relevant reasonable excuse and the evidential burden to be borne in paragraphs 15 to 20 of our reply to LegCo's ALA dated 28 October.

8. The relevant government departments, including the Food and Health Bureau ("FHB"), were fully aware of the relevant arrangements during the making of the Regulation. FHB also issued a press release⁴ on the day when the Regulation came into operation (5 October) to clarify that the Regulation is not in conflict with public health appeal. The Regulation will not prohibit members of the public from wearing masks for health reasons to prevent infection and transmission of diseases. Wearing masks is one of the measures to prevent respiratory infection. To prevent communicable diseases such as seasonal flu, the Government has suggested a list of preventive measures, including receiving relevant

³ The unemployment rate of the retail, accommodation and food services sectors rose further to 4.9% in July to September 2019, the highest level in more than two years. In particular, the unemployment rate of the food and beverage services sector soared to 6.0%, the highest in six years.

⁴ The press release is available at:
<https://www.info.gov.hk/gia/general/201910/05/P2019100500101.htm>

vaccines, and maintaining good personal and environmental hygiene. When members of the public develop respiratory symptoms, they should avoid going to crowded places and seek medical consultation promptly.

Police-to-public ratio of cities in the world (follow-up to the meeting on 12 November 2019)

9. There is no internationally recognised standard for calculating the police-to-public ratio and police strength. As far as Hong Kong is concerned, the Police have to perform more wide-ranging and diversified duties. Apart from maintaining law and order in the community, they are also responsible for carrying out certain duties which are not performed by the city police forces of some foreign jurisdictions, including boundary, shore and railway patrols, bomb disposal, counter-terrorism work, etc.

10. We do not have information on the top five cities in the world ranked with the highest police-to-public ratio. The numbers of regular police officers per 100 000 population in Hong Kong and some major cities in the world are tabulated as follows –

City	Number of regular police officers	Number of regular police officers per 100 000 population
Singapore	14 660	260
Tokyo	43 566	323
London	31 075	352
Hong Kong	30 827	414
New York	about 36 000	422
Paris	about 30 000	469

**Security Bureau
November 2019**

Mechanisms for Handling Complaints against Police in Overseas Countries

The mechanisms for handling complaints against police in some overseas countries are set out below.

Austria

2. The Austrian Ombudsman Board (AOB) has been monitoring the public administration since 1977. AOB assists citizens who feel that they have been treated unfairly by Austrian authorities. Complaints which can be lodged to AOB include those that relate to potential injustice or cases of maladministration, etc. with the police. AOB can examine documents, call witnesses, and appoint experts during investigative proceedings.

3. The establishment and legal position of AOB are based on Article 148a to 148j of the Austrian Federal Constitution and the Federal Laws in relation to AOB. AOB consists of three members who work together in a collegial way. They are elected for a term of six years by the Austrian Parliament (National Council) and can be re-elected once. AOB members are independent in the performance of their duties. They cannot be voted out, recalled or removed from office. They are sworn in by the Federal President.

Canada

4. The Civilian Review and Complaints Commission (CRCC) for the Royal Canadian Mounted Police (RCMP) is an independent agency created by the Canadian Parliament in 1988. It receives complaints from members of the public and conducts reviews when complainants are not satisfied with RCMP's handling of their complaints. CRCC has jurisdiction over a complaint from any individual that concerns the conduct of an RCMP member while performing a duty or function under the RCMP Act or the Witness Protection Program Act. Such duties and functions include criminal investigations, public complaint investigations, policing public events, security assignments and intelligence operations.

5. The mandate of CRCC is set out in Parts VI and VII of the RCMP

Act. CRCC consists of a Chairperson and not more than four other members, one of whom is a Vice-chairperson. All of them are appointed by the Governor in Council. Each CRCC member holds office for a term of not more than five years, and is eligible for reappointment on the expiry of that member's term of office.

Denmark

6. The Danish Independent Police Complaints Authority (IPCA) is independent of both the police and the prosecution service. It investigates criminal offences committed by police officers on duty and incidents in which persons have died or been seriously injured as a consequence of police intervention or while in police custody. It also considers and decides on complaints in relation to police misconduct. Complaints about the police can be made to IPCA if it is considered that police officers have acted in a criticisable manner (e.g. speaking rudely or acting inappropriately, being too rough while arresting a suspect, abusing their powers). In some cases, complainants may have to give a statement in court before a judge, and may be offered free legal aid by an assigned lawyer.

7. IPCA was established by Act No. 404 of 21 April 2010, which entered into force on 1 January 2012. IPCA is headed by the Police Complaints Council (PCC) and the Chief Executive. PCC is the supreme governing body of IPCA and consists of a Chair, who must be a High Court judge, an attorney, a professor of jurisprudence and two representatives of the general public. Members of PCC are appointed by the Minister of Justice for a term of four years and are eligible for re-appointment once. The Chief Executive is in charge of the day-to-day operations of IPCA. IPCA also has a number of investigators as well as legal and administrative staff members.

Norway

8. The Norwegian Bureau for the Investigation of Police Affairs (BIPA) is a national investigation and prosecution agency responsible for investigating cases in which employees of the police or prosecuting authority are suspected of having committed criminal offences in the course of duty. BIPA is an independent body administratively subordinate to the Ministry of Justice and Public Security and professionally subordinate to the Director of Public Prosecutions. BIPA

is authorised to carry out investigation of all legal means. It can gather evidence and interview complainants, witnesses and suspects. In some cases, there may be grounds for conducting searches, making seizures and arrests, and handing the arrestees to custody by the police. It may also be necessary to investigate the scenes of incidents, obtain medical opinions, seize telephones or computers, and gain access to logs for perusal of police registers.

9. BIPA was founded in 2005 and its activities are governed by the Criminal Procedures Act, the Prosecution Instructions and directives issued by the Director of Public Prosecutions. BIPA has 35 permanent employees, of which 15 are investigators. BIPA is organised on two levels, one level for investigation and the other for overall management. The Director of BIPA has overall responsibility for activities and decides on prosecutions in all cases.

Spain

10. The Defensor del Pueblo (DdP) is the High Commissioner of Parliament responsible for defending citizens' fundamental rights and civil liberties by monitoring the activities of the Administration and public authorities. Any citizen may request the intervention of DdP to investigate any alleged misconduct by public authorities and/or the agents thereof (including complaints in relation to alleged police mistreatment or abuse). The office of DdP can also intervene *ex officio* in cases that have come to its attention without any complaint having been filed.

11. The legal basis of DdP is Article 54 of the Spanish Constitution and Organic Act 3/1981. DdP is elected by Congress and the Senate by a three-fifths majority, and the term of office is five years. DdP does not take orders or receive instructions from any authority, and must perform functions independently and impartially, autonomously and in his or her own good judgment. DdP enjoys inviolability and immunity in the exercise of his or her office.

Sweden

12. The Special Investigations Department (SID) of the Swedish Police Authority (SPA) is responsible for investigating offences committed by police officers. SID will investigate complaints filed against police officers, police students, prosecutors, judges and members of the

Parliament upon receipt of directives from the Special Prosecution Office. SID is an independent organisation of SPA. It has a preparedness organisation, which means that investigations can be initiated 24 hours on any day, to provide for fast response and investigations of high quality.

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