

Subcommittee on Prohibition on Face Covering Regulation

Government's response to the follow-up issues raised at the meeting on 22 October 2019

Emergency Regulations Ordinance and Prohibition on Face Covering Regulation

Section 2(1) of the Emergency Regulations Ordinance (“ERO”) (Cap. 241) provides that on any occasion which the Chief Executive in Council (“CE-in-C”) may consider to be an occasion of emergency or public danger, he may make any regulations whatsoever which he may consider desirable in the public interest. The justifications and coverage of the regulations made under ERO must be able to meet the requirements of ERO, and in the same time comply with the Basic Law and the Hong Kong Bill of Rights Ordinance, including the protection of freedom of speech, peaceful assembly, privacy and religious freedom.

2. In the past four months from early June to early October, over 400 demonstrations, processions and rallies arising from the proposed amendments to the Fugitive Offenders Ordinance were staged in Hong Kong, with a significant number of incidents ended up in outbreaks of violence. The degree of violence has been escalating, with radical and violent protesters repeatedly charging police cordon lines, occupying and blocking roads, seriously paralyzing the traffic. Protestors vandalized public facilities and shops, set fires and hurled petrol bombs at different locations, attacked police officers with weapons including high-powered laser pointers, sharpened objects and bricks, and heavily vandalized MTR stations and government offices, etc..

3. Up to early October, these incidents had resulted in more than 1 100 injuries. Many of the protesters suited up and masked to conceal their identity, enabling them to evade police investigation and continue with their illegal acts. The widespread and imminent public danger posed by the violent and illegal acts of masked protestors has resulted in an occasion of public danger in Hong Kong. The CE-in-C therefore made the Prohibition on Face Covering Regulation (Cap. 241 sub. leg. K) (the “Regulation”) under section 2(1) of the ERO to prohibit the use of facial covering in certain circumstances, in order to allow the Police to handle further illegal and violent acts of radical protesters more effectively so as to restore law and order, and to prevent serious public disorder, as well as

to apprehend the offenders and bring them to justice. When making the Regulation, the CE-in-C had made due regard for fundamental rights even in times of public danger.

Amendments to the Prohibition on Face Covering Regulation

4. The Regulation is a piece of subsidiary legislation according to section 3 of the Interpretation and General Clauses Ordinance (“IGCO”) (Cap. 1). The Regulation was published in the Gazette on 4 October and had been laid on the table of the Legislative Council on 16 October in accordance with section 34(1) of the Interpretation and General Clauses Ordinance. As stipulated under section 34(2) of the Interpretation and General Clauses Ordinance, the Legislative Council may amend the Regulation. Section 3 of the Interpretation and General Clauses Ordinance stipulates that “amend” includes “repeal, add to or vary and the doing of all or any of such things simultaneously or by the same Ordinance or instrument”.

5. Section 2(3) of ERO provides that any regulation made under the provisions of that section shall continue in force until repealed by an order of the CE-in-C. The Regulation is meant to deal with the situation of public danger at the time through deterring and reducing the violent acts of masked protesters, as well as facilitating police investigation and administration of justice, so as to protect public order and public safety. The Government has been closely monitoring the public order and public safety situation since the enactment of the Regulation. The Government had made clear to the public that when the prevailing public danger drops to a level which no longer justifies the Regulation, the Security Bureau will seek the approval from the CE-in-C to repeal the Regulation. The relevant repeal order is also a piece of subsidiary legislation to be laid on the table of the Legislative Council under section 34(1) of the Interpretation and General Clauses Ordinance.

6. In assessing whether the occasion of public danger remains, the Government will objectively consider relevant factors for a holistic assessment, including but not limited to whether public order events can be carried out orderly and peacefully, the frequency and degree of violent acts, the coverage of affected areas, and relevant risk assessment, etc..

Overseas legislation

7. The Administration has provided the Legislative Council with the provisions, situations to which they apply and penalties of similar laws in other jurisdictions in our reply to the Legal Service Division on 28 October 2019. We are still in the process of collating information about overseas examples of police complaints system and will provide the information separately.

Security Bureau
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