



立法會
LEGISLATIVE COUNCIL

電郵急件

來函檔號 YOUR REF :
本函檔號 OUR REF : CB(3)/P/5
電 話 TELEPHONE : 3919 3300
圖文傳真 FACSIMILE :

香港中區
立法會道1號
立法會綜合大樓909室
涂謹申議員

涂議員：

2020年6月10日的立法會會議 擬提出有關“港區國安法”的口頭質詢

你於2020年6月1日，根據《議事規則》第24(2)條作出預告，擬於上述會議就以下事宜提出一項口頭質詢：全國人民代表大會（“全國人大”）授權全國人大常務委員會（“人大常委會”）就建立健全香港特別行政區（“香港特區”）維護國家安全的法律制度和執行機制制定相關法律（“港區國安法”）（**附錄1**）。你的質詢主要包括香港特區政府何時及如何就上述事宜諮詢香港居民及國際社會，以及是否知悉國際社會就人大常委會制定港區國安法所作的回應及採取的措施。

政務司司長於6月5日致函立法會主席，認為你的質詢所涉事宜不屬於香港特區的自治範圍，亦違反了《議事規則》第22(1)條¹及25(1)(h)條²的規定。司長請主席考慮裁定該項質詢不合乎規程（**附錄2**）。按主席指示，秘書處較早前已將司長的函件送交你參閱，你今天就政府當局的意見作出回應（**附錄3**）。主席現指示我向你轉告他就上述質詢的裁決。

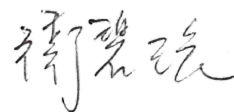
¹ 《議事規則》第22(1)條訂明，任何議員均可就政府的工作向政府提出質詢，要求提供有關該事的資料，或要求政府就該事採取行動。

² 《議事規則》第25(1)(h)條訂明，質詢不得為求取見解、解決抽象法律問題或解答假設論題而提出質詢。

人大常委會正在制定的港區國安法，是根據《憲法》及《基本法》在國家層面進行的立法工作，關乎國家安全事宜。主席認為，有關法律屬《基本法》第十八條所指有關國防、外交和其他按《基本法》規定不屬於香港特區自治範圍的法律，**屬於中央負責的事務**，而不屬於香港特區政府根據《基本法》自行管理的事務。

主席明白到，港區國安法在香港特區備受各界關注。然而，考慮到港區國安法的立法工作**不屬於香港特區的工作**，而該法律的草擬及相關諮詢工作均由人大常委會(而非香港特區政府)負責，加上法律草擬的具體內容尚未公布，主席認為就現階段而言，你擬提出的口頭質詢所涉的事宜，並不屬於《議事規則》第22(1)條所指政府(即“香港特區政府”)的工作。因此，主席**不批准**你在上述立法會會議提出該項質詢。

立法會秘書



(衛碧瑤代行)

2020年6月8日

連附件

副本送：立法會所有其他議員

第4項質詢
(口頭答覆)

港區國安法

涂謹申議員問：

全國人民代表大會(下稱“人大”)於上月28日決定，授權其常務委員會(下稱“人大常委會”)，就建立健全香港特別行政區(下稱“香港特區”)維護國家安全的法律制度和執行機制制定相關法律(下稱“港區國安法”)。該決定亦訂明，中央人民政府維護國家安全的有關機關根據需要在香港特區設立機構(下稱“國安機構”)，依法履行維護國家安全相關職責。港區國安法在獲制定後將列入《基本法》附件三，由香港特區在當地公布實施。人大的上述決定引起部分香港居民及國際社會的高度關注，特別是關於香港特區的高度自治及香港居民各項權利和自由的保障。就此，政府可否告知本會：

- (一) 最早於何時知悉，人大會議議程將包括審議上述決定的草案，以及該草案的內容；
- (二) 打算何時及如何諮詢香港居民及國際社會，以便向人大常委會反映他們的下列關注：(i)港區國安法中“危害國家安全的行為和活動”的定義與普通法地區採用的會否完全不同，以及(ii)根據需要設立的國安機構在香港特區的活動，會否嚴重損害香港特區的高度自治及打壓香港居民的言論、資訊、結社，以至與外國組織聯繫等自由；及
- (三) 是否知悉，國際社會就人大常委會將制定港區國安法已作出的回應及採取的措施；有否評估，國際社會會進一步作出的回應及採取的措施，以及有關措施對香港和內地在國際社會的地位有何影響？



5 June 2020

附錄2

Appendix 2

(只備英文本
English version only)

The Hon Andrew Leung Kwan-yuen, GBS, JP
President
Legislative Council
1 Legislative Council Road
Central
Hong Kong

Dear President,

LegCo Questions relating to National Security Law

Further to my letter of 1 June and your decision ruling the proposed oral question relating to the National Security Law (“NSL”) to be applied to the Hong Kong Special Administrative Region (“HKSAR”) for the LegCo sitting on 3 June to be out of order, I write to invite your consideration to make a similar ruling for all other proposed questions on this subject.

The HKSAR Government’s stance as set out in my abovementioned letter to you (copy attached) remains valid. We do not propose to repeat it in full but wish to stress once again the overarching principles. Specifically, national security is outside the limits of the autonomy of the HKSAR but a matter under the purview of the Central Authorities. The NSL is a national law under the ambit of “defence and foreign affairs as well as other matters outside the limits of the autonomy of the Region” as set out in Article 18(3) of the Basic Law. Given that the details of the NSL to be enacted by the Standing Committee of the National People’s Congress (“NPCSC”) and to be listed under Annex III of the Basic Law for application in the HKSAR by promulgation are not yet made public, it is premature and impracticable for the HKSAR Government to offer views in response to questions raised by LegCo Members concerning the NSL at this juncture.

We note your ruling on 1 June regarding an oral question proposed by Hon Wu Chi-wai on the NSL to be out of order was made on the ground that it was not related to the work of the HKSAR Government and hence not in compliance with Rule 22(1) of the Rules of Procedure of the Legislative Council ("RoP")¹. We submit that a consistent approach should be taken and all similar questions on the NSL should likewise be ruled out of order.

With regard to the proposed questions from Hon James TO and Hon HUI Chi Fung in particular, we also wish to make the following points as well.

As their proposed questions are speculative on the content of the future NSL which is still at the drafting stage and involve soliciting legal advice thereon, we take the view that they are seeking an expression of opinion, the solution of an abstract legal question and the answer to a hypothetical proposition, hence contravening Rule 25(1)(h).

We would therefore invite the President to also consider ruling out their questions taking into account Rules 25(1)(h).

The HKSAR Government will fully co-operate with NPCSC to complete the work on legislation as soon as possible and will proactively reflect the detailed situation in Hong Kong during the process. We would explain the objective and the importance of the legislation to various sectors of our community. We will also appeal to members of the public to lend their full support for the legislation.

Yours sincerely,

A handwritten signature in black ink, consisting of a large, stylized 'M' followed by a series of loops and a long horizontal stroke extending to the right.

(Matthew Cheung Kin-chung)
Chief Secretary for Administration

¹ Rule 22(1) of the RoP provides that any Member may address a question to the Government, and either seeking information on such matter or asking for official action with regard to it.

中華人民共和國香港特別行政區政府
政務司司長辦公室

Chief Secretary for Administration's Office

The Government of the Hong Kong
Special Administrative Region
of the People's Republic of China



政務司司長 張建宗
Matthew CHEUNG Kin-chung, GBM, GBS, JP
Chief Secretary for Administration

1 June 2020

The Hon Andrew Leung Kwan-yuen, GBS, JP
President
Legislative Council
1 Legislative Council Road
Central
Hong Kong

Dear President,

Proposed Oral Question No. 3 for the LegCo Sitting on 3 June 2020

We understand that a Member has proposed to raise, at the Council meeting of 3 June 2020, an oral question related to the National People's Congress ("NPC")'s decision on establishing and improving the legal system and enforcement mechanisms for the Hong Kong Special Administrative Region ("HKSAR") to safeguard national security ("NPC Decision"). I write to invite your consideration to rule the question out of order.

NPC's Decision, passed on 28 May 2020, demonstrates the commitment of the Central Authorities to fully and accurately implement "One Country, Two Systems" as well as their care for Hong Kong people. The objective of a National Security Law ("NSL") to be enacted by the Standing Committee of the NPC ("NPCSC") and applied to the HKSAR is to prevent, curb and sanction secession, the subversion of state power, the organisation and carrying out of terrorist activities that seriously endanger national security, and interference by foreign and external forces in the affairs of the HKSAR.

National security is outside the limits of the autonomy of the HKSAR but a matter under the purview of the Central Authorities. Taking into account the current situation in Hong Kong and the difficulty faced by the HKSAR to complete our own legislation for safeguarding national security in the foreseeable future, the Central Authorities have the right and duty to introduce a national law to safeguard national security from the state level in accordance with the Constitution of the People's Republic of China and the Basic Law. This is an exercise of the authority and duty of the Central Authorities. Such national law is under the ambit of "defence and foreign affairs as well as other matters outside the limits of the autonomy of the Region" as set out in Article 18(3) of the Basic Law.

While we appreciate that there are concerns over the NSL to be enacted, we consider it inappropriate for anyone to make unwarranted speculations on its content at this stage, given that the details of the same to be enacted by the NPCSC and to be listed under Annex III of the Basic Law for application in the HKSAR by promulgation are not yet made public. It is hence premature at this juncture for the Government to offer views in response to the question.

In particular, Rule 25(2) of the Rules of Procedure of the Legislative Council ("RoP") stipulates that if the President is of the opinion that a question which a Member seeks to ask infringes any of the provisions of Rule 22 (Nature of Questions) or Rule 25 (Contents of Question), he may direct, inter alia, *"(c) that the Member concerned be informed that the question is out of order"*.

Rule 22(1)

Rule 22(1) of the RoP provides that any Member may address a question to the Government on the work of the Government, and either seeking information on such matter or asking for official action with regard to it. As the details of the future NSL to be enacted are subject to the manner in which the NPCSC will exercise its law-making power, the question clearly does not fall into the descriptions specified in Rule 22(1), and the President may wish to consider ruling the question out of order as contravening Rule 22(1).

Rule 25(1)(h)

Rule 25(1)(h) of the RoP provides, “*(h) A question shall not be asked for the purpose of obtaining an expression of opinion, the solution of an abstract legal question, or the answer to a hypothetical proposition.*”

The question being asked is premised upon a situation after the implementation of the future NSL to be enacted and applied in the HKSAR. As mentioned above, there is, as yet, no NSL having been enacted by the NPCSC.

Therefore, the question is clearly asked for the purpose of obtaining an expression of opinion, the solution of an abstract legal question, or the answer to a hypothetical proposition for the purpose of Rule 25(1)(h) respectively. More specifically, no meaningful answer can be given to sub-questions (1) to (3), and they are entirely misconceived. The question should therefore be ruled out of order for contravening Rule 25(1) (h) of the RoP.

The HKSAR Government would, however, continue to provide such explanation as may from time to time be necessary. We also appeal to members of the public for their full understanding and staunch support for NPC’s Decision.

Yours sincerely,

A handwritten signature in black ink, consisting of a large, stylized 'C' followed by a horizontal line and a small flourish.

(Matthew Cheung Kin-chung)
Chief Secretary for Administration



涂謹申立法會議員辦事處

Office of Legislative Councillor James To Kun-Sun



香港中區立法會道1號立法會綜合大樓909室

TEL:2869 9530 FAX:2537 1469

Room 909, Legislative Council Complex, 1 Legislative Council Road Central, Hong Kong

網頁:<http://www.tokunsun.org.hk> 電郵: jkstolegco@gmail.com

香港中區
立法會道一號
立法會綜合大樓
立法會主席
梁君彥先生

梁主席：

就本人擬於6月10日提出的口頭質詢，見附件。

本人提出的質詢內容是問政府何時知悉人大會議議程包括審議5月28日所作的決定，及打算何時及如何諮詢香港居民及國際社會的意見，以便向人大常委會反映，以及政府是否知悉及有否評估國際社會的回應及會作出的措施。

本人的質詢沒有要求政府就人大常委會將來草擬的法案的內容作出任何猜測。

本人謹此回應政府提出的意見。

立法會議員涂謹申

2020年6月8日