

立法會
Legislative Council

LC Paper No. CB(1)1505/20-21
(These minutes have been seen
by the Administration)

Ref : CB1/BC/13/20

Bills Committee on Film Censorship (Amendment) Bill 2021

**Minutes of the second meeting held on
Monday, 20 September 2021, at 4:30 pm
in Conference Room 3 of the Legislative Council Complex**

- Members present** : Hon MA Fung-kwok, GBS, JP (Chairman)
Hon Mrs Regina IP LAU Suk-ye, GBM, GBS, JP
Hon Paul TSE Wai-chun, JP
Hon Holden CHOW Ho-ding
Hon SHIU Ka-fai, JP
- Members absent** : Hon CHUNG Kwok-pan
Hon YUNG Hoi-yan, JP
- Member attending** : Hon LUK Chung-hung, JP
- Public Officers attending** : Agenda item I
Commerce and Economic Development Bureau

Mr Johann WONG, JP
Deputy Secretary for Commerce and Economic
Development (Communications and Creative
Industries)

Mr Keith GIANG
Principal Assistant Secretary for Commerce and
Economic Development (Communications and
Creative Industries)A

Miss Candace LO
Assistant Secretary for Commerce and Economic
Development (Communications and Creative
Industries)A2

Office for Film, Newspaper and Article
Administration

Mr Tony LI, JP
Deputy Director of Film and Newspaper and Article
Administration

Department of Justice

Mr Salvador TSANG
Senior Government Counsel (Acting)

Miss Carol LAM
Government Counsel

Clerk in attendance : Mr Daniel SIN
Chief Council Secretary (1)6

Staff in attendance : Mr Mark LAM
Assistant Legal Adviser 7

Ms Mandy LI
Senior Council Secretary (1)6

Ms Ada LAU
Senior Council Secretary (1)7

Miss Judy YEE
Council Secretary (1)6

Miss Yolanda CHEUK
Legislative Assistant (1)6

I. Meeting with the Administration

Matters arising from the previous meeting

(LC Paper No. CB(1)1349/20-21(01) -- List of follow-up actions arising from the discussion at the meeting on 14 September 2021

LC Paper No. CB(1)1356/20-21(01) -- Administration's response to the list of follow-up actions arising from the meeting on 14 September 2021

LC Paper No. CB(1)1315/20-21(03) -- Letter dated 8 September 2021 from the Legal Service Division to the Administration

LC Paper No. CB(1)1331/20-21(01) -- Administration's response to the Legal Service Division's letter dated 8 September 2021)

Clause-by-clause examination of the Bill

(LC Paper No. CB(1)1315/20-21(01) -- Marked-up copy of the Film Censorship (Amendment) Bill 2021 prepared by the Legal Service Division)
(Restricted to members only)

Other relevant papers

(LC Paper No. CB(3)921/20-21 -- The Bill

File Ref: CCIB/A 230-5/1(C) -- Legislative Council Brief

LC Paper No. LS115/20-21 -- Legal Service Division Report

LC Paper No. CB(1)1315/20-21(02) -- Background brief prepared by the Legislative Council Secretariat)

(A list of other relevant papers previously issued is available on the Legislative Council website at: <https://www.legco.gov.hk/yr20-21/english/bc/bc13/general/bc13.htm>)

The Chairman advised that after the first meeting, an invitation had been posted at the website of the Legislative Council and sent to the 18 District Councils seeking public views in writing on the Bill. No submissions were received as of 11 am of even date. The Chairman further advised that an information paper provided by the Administration in response to members' questions raised in the preceding meeting [LC Paper No. CB(1)1356/20-21(01)] had been circulated to members earlier.

[Post-meeting note: A soft copy of a letter from a Shatin District Councilor (Chinese version only) was received after the second meeting and was circulated to members vide LC Paper No. CB(1)1365/20-21(01) on 27 September 2021.]

2. The Bills Committee deliberated (index of proceedings in the **Appendix**).
3. Members noted that the Administration intended to seek resumption of the second reading of the Bill on the Council meeting on 27 October 2021. The Chairman advised that in that case, the deadline for giving notice to propose amendments to the Bill would be 18 October 2021.

II. Any other business

4. There being no other business, the meeting ended at 5:30 pm.

Bills Committee on Film Censorship (Amendment) Bill 2021

**Proceedings of the second meeting held on
Monday, 20 September 2021, at 4:30 pm
in Conference Room 3 of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action required
Agenda item I — Meeting with the Administration			
000350 – 000630	Chairman	Opening remarks	
Clause-by-clause examination of the Bill [The Bill (LC Paper No. CB(3)921/20-21)] [Marked-up copy of the Bill prepared by the Legal Service Division (LC Paper No. CB(1)1315/20-21(01))]			
000631 – 000733	Chairman Administration	The Chairman advised that for easy reference, the Administration and members might discuss the clauses with the aid of the marked-up copy prepared by the Legislative Council ("LegCo") Secretariat.	
000734 – 002155	Chairman Administration Mrs Regina IP LAU Suk- yee	<p>Part 1: Preliminary</p> <p><u>Clause 1 – Short title</u></p> <p>Part 2: Amendments to Film Censorship Ordinance</p> <p><u>Clause 2 – Film Censorship Ordinance amended</u></p> <p><u>Clause 3 – Section 2 amended (interpretation)</u></p> <p><u>Clause 4 – Section 7 amended (restriction on exhibiting films unless exempted or approved)</u></p> <p><u>Clause 5 – Part IV heading amended (censorship of films)</u></p> <p><u>Clause 6 – Part IV, headings added</u></p> <p>Division 1 – General Procedure</p> <p>Subdivision 1 – Submission of Films to Authority and Actions by Authority and Censors</p> <p>Members had no questions on the above clauses.</p> <p><u>Clause 7 – Section 10 amended (action to be taken by Authority and censor in relation to film which is not exempted)</u></p>	

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		<p>Mrs Regina IP enquired about what particular notice would be required to be added to the film as indicated in the proposed section 10(4A), so that a film would be considered as having been "modified in the specified way" and considered suitable for exhibition or given an appropriate classification under section 10(4)(c).</p> <p>The Administration advised that the proposed section 10(4A) (clause 7(6) of the Bill) sought to empower the censor to impose a condition that (a) part or parts of the film which the censor considered inappropriate for exhibition be excised; and/or (b) a notice in the specified way so as to warn the viewers against imitating certain acts portrayed in the film be added, for the film to be approved for exhibition. The censor might specify the length of the notice, the duration of such notice to be shown at the beginning of the film, etc., to ensure that viewers were aware of the warning. As regards excision, the applicant might propose to the censor alternative means such as mosaicking certain part(s) of the film.</p> <p><u>Clause 8 – Section 10A added</u></p> <p><i>10A Extension of period for making film censorship decisions in certain cases</i></p> <p>Mrs Regina IP and the Chairman enquired about:</p> <p>(a) the number of extensions allowed by the Bill for cases involving national security; and</p> <p>(b) whether an interim notification would be issued to the applicant concerned stating the reason of delay in completing the censorship procedure when national security issues arose.</p> <p>The Administration responded that:</p> <p>(a) the proposed power of extension was exercisable only for films with national security concerns. The Film Censorship Authority ("the Authority") would give an explanation if the applicant made an enquiry;</p> <p>(b) there was no express limit on the number of extensions allowable under the proposed</p>	

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		<p>section 10A of Cap. 392 under clause 8 of the Bill;</p> <p>(c) in exercising the power of extension on the recommendation by the Authority, the Secretary for Commerce and Development ("SCED") had to be of the opinion that (i) the exhibition of the film might be contrary to the interests of national security; and (ii) the censor concerned could not reasonably be expected to make a decision for the film within the decision period because of the time required for considering the matters relating to national security; and</p> <p>(d) for films that did not involve national security considerations, under Cap. 392, a censor should make a decision on a film not later than 14 days after a film was submitted to and accepted by the Authority or within a longer period, but, in any case, not more than 28 days, as SCED might allow.</p> <p><u>Clause 9 – Part V heading repealed (matters consequential upon censor's decision in respect of a film)</u></p> <p><u>Clause 10 – Part IV, Division 1, Subdivision 2 heading added</u></p> <p>Subdivision 2 – Matters Consequential on Censor's Decision for Film</p> <p>Members raised no questions on the clauses above.</p> <p><u>Clause 11 – Section 13 amended (certificate of approval, notice of refusal to approve and notice concerning excision)</u></p> <p>Mrs Regina IP enquired about the appeal/review mechanism for a decision that the exhibition of a film would be contrary to the interests of national security.</p> <p>The Administration responded that the remit of the Board of Review (Film Censorship) ("Board of Review") was not intended to include judging whether a decision involving national security considerations was appropriate. The Bill was</p>	

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		<p>drafted in such a way that a person might seek a judicial review ("JR") of the decision of (a) a censor / the Authority where the decision was based on the opinion that the exhibition of such film would be contrary to the interests of national security; or (b) the Chief Secretary for Administration ("CS") to revoke a certificate of approval or a certificate of exemption.</p>	
<p>002156 – 003807</p>	<p>Chairman Administration Mrs Regina IP LAU Suk- yee Mr LUK Chung-hung Mr Paul TSE Wai-chun</p>	<p><u>Clause 12 – Part IV, Division 2 added</u></p> <p>Division 2 – Power of Chief Secretary for Administration to Direct Authority to Revoke Certificates of Exemption or Certificates of Approval in Interests of National Security</p> <p><i>14A Chief Secretary for Administration may give directions to revoke certificates</i></p> <p>Members raised no questions on this clause.</p> <p><u>Clause 13 – Sections 14B, 14C and 14D added</u></p> <p><i>14B Authority may require information about exhibition of films</i></p> <p><i>14C Offences in relation to notice under section 14B</i></p> <p><i>14D Use of incriminating evidence in proceedings</i></p> <p>Members noted that the proposed section 14B would empower the Authority to require a person who had been issued a certificate of exemption or approval for a film to provide any information about the exhibition of the film concerned.</p> <p>The Chairman and Mrs Regina IP enquired about the rationale for introducing the proposed section 14B and the scope of information that the Authority might require. Mr Paul TSE Wai-chun suggested that, to avoid uncertainty, a date after the enactment of the Bill should be specified so that the notice under section 14B would only require information about exhibitions that took place after that date.</p> <p>The Administration advised that the objective of the proposed section 14B was to facilitate the Authority's enforcement of Cap. 392 by requiring the holder of the certificate of approval or the</p>	

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		<p>certificate of exemption to provide information, such as the location, time and occasion of the exhibition, etc., about film exhibitions. Other information relating to the production of the film that was not related to the exhibition of the film, such as the source of fund in film making, was not covered in section 14B. This section would be enforceable in respect of exhibitions and re-exhibitions of films after the enactment of the Bill.</p> <p>Mr LUK Chung-hung enquired whether people arranging for the exhibition or re-exhibition of films with valid certificates would be prosecuted under the Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region ("NSL") if the Film Censorship Guidelines for Censors ("Guidelines") were subsequently revised so that the contents of the film might fail to fulfill the censoring criteria under the updated Guidelines.</p> <p>The Administration advised that one should consider all relevant facts and evidence, including the circumstances of such exhibition or re-exhibition when determining whether any offences including those under NSL or other ordinances had been committed. People arranging for exhibition of films with valid certificates should ensure compliance with the conditions of exhibition set out in the relevant certificates, as well as observing all other applicable laws and statutes. Private screening of films among family members or friends in private premises was not regulated under Cap. 392.</p> <p>Mr Paul TSE observed that the proposed section 14D provided for circumstances where a person had to make a claim, under the proposed subsection (1)(c), that the information he or she provided under the proposed section 14B(1) would tend to incriminate himself or herself, so that the information so provided would not be admissible in evidence against that person in certain criminal proceedings. Mr TSE made the point that any person had the privilege against self-incrimination under the common law without having to make a claim as in the proposed section 14D(1)(c), in order to enjoy the privilege. He queried whether the requirement to make a claim in section 14D(1)(c)</p>	

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		<p>aligned with similar provisions compelling a person to furnish information in other ordinances.</p> <p>The Administration explained that, under the proposed section 14D(2), the information was not admissible in evidence against the person in criminal proceedings (usually known as a "direct use prohibition") other than those in which the person was charged with offences in the proposed section 14C (providing false and misleading information about the exhibition information of a film) and perjury-related offences. The Administration drew members' attention to the proposed section 14D(3) that the Authority must ensure that, on or before imposing a requirement on a person to provide information under section 14B(1), the person was informed or reminded of the limitations imposed by section 14D(2) on the admissibility in evidence of the information. The Administration also advised that the proposed section 14D aligned with the arrangement in similar provisions in other Ordinances and recent bills, such as the Financial Reporting Council Ordinance (Cap. 588), the Personal Data (Privacy) (Amendment) Bill 2021 and the Landlord and Tenant (Consolidation) (Amendment) Bill 2021 in the handling of self-incriminating information in criminal proceedings.</p>	
003808 – 004005	Chairman Administration Assistant Legal Adviser 7 ("ALA7")	<p><u>Clause 14 – Section 15A amended (approval for publication)</u></p> <p>The Chairman sought ALA7's opinion about the proposed amendments in clauses 14 and 15. ALA7 had no comments.</p>	
004006 – 004740	Chairman Administration Mr Paul TSE Wai-chun Mr LUK Chung-hung	<p><u>Clause 15 – Section 15K amended (submission for approval of advertising material)</u></p> <p>Mr Paul TSE noted that, according to section 15K(10), the maximum penalty for displaying to the public or publishing advertising material relating to a film classified for exhibition or publication only to persons who have attained the age of 18 years without a certificate of approval issued for the advertising material, on conviction, was a fine of \$200,000 and imprisonment for one year while clause 15(2) and clause 15(3) of the Bill proposed that the maximum penalty should be increased to a fine of \$1,000,000 and imprisonment for three years.</p>	

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		<p>He enquired about the rationale for the proposed amendments. In response, the Administration explained that Cap. 392 was last amended in 1999, and there was a need to adjust the level of penalty to keep up with the times. The proposed increase would also align the penalty with the relevant provisions in the Control of Obscene and Indecent Articles Ordinance (Cap. 390).</p> <p>Mr Paul TSE pointed out that the proposed level of penalty appeared to be too heavy when, by comparison, the penalty for exhibiting a film without displaying the certificate of approval or certificate of exemption in accordance with section 15 was a fine of \$10,000 and without imprisonment term; the Administration had not proposed amendment to that penalty to keep up with the times. He queried about the rationale for the disparate treatment.</p> <p>The Administration explained that exhibiting a film without having obtained a certificate at all was considered to be more serious than the offence of failing to display a certificate of approval or a certificate of exemption that has been issued.</p> <p>Mr LUK Chung-hung sought the Administration to clarify whether films (including short films) broadcast on online platforms (local and overseas) would be subject to the regulatory requirements proposed in the Bill.</p> <p>In response, the Administration reiterated that NSL and other statutes such as Crimes Ordinance (Cap. 200) provided for criminal liabilities of activities concerning secession, subversion, organization and perpetration of terrorist activities, collusion with a foreign country or with external elements to endanger national security and other offences endangering national security, such as publication of seditious materials. Activities on online platforms were subject to these laws. The Administration clarified that the regulatory framework was enforceable against films intended for "exhibition" as defined in section 2(1) of Cap. 392, regardless of the media in which the film was stored or transmitted.</p>	

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004741 – 005002	Chairman Administration Mrs Regina IP LAU Suk- yee	<p><u>Clause 16 – Section 16 amended (Board of Review)</u></p> <p>The Chairman and Mrs Regina IP enquired about the composition and chairmanship of the Board of Review, and the quorum of a meeting of the Board.</p> <p>The Administration advised that under the proposed section 16(2), the Chief Executive ("CE") might appoint not less than five persons, not being public officers, to the Board and appoint one of the Board members as Chairman. Under the proposed section 16(5B), SCED, the ex-officio member of the Board, might appoint a public officer to attend meetings of the Board on his behalf and exercise the functions of a member at the meetings. The proposed section 16(5B) did not specify whether the public officer was an officer of the Commerce and Economic Development Bureau. Six members should form a quorum but if, after 30 minutes had elapsed since the time fixed for the meeting, less than six members were in attendance at the meeting, then four members should form a quorum.</p>	
005003 – 005430	Chairman Administration Mr Paul TSE Wai-chun	<p><u>Clause 17- Section 19A added</u></p> <p><i>19A Disapplication of sections 17, 18 and 19 for decisions made on grounds of national security</i></p> <p>Noting that a person might seek JR against a decision by a censor that a film was unsuitable for exhibition or a decision by CS that a certificate of approval or a certificate of exemption should be revoked, Mr Paul TSE enquired whether it might be more appropriate for designated organizations more familiar with the implementation of NSL, such as the National Security Department of the Hong Kong Police Force ("the NS Department") or the Committee for Safeguarding National Security of the Hong Kong Special Administrative Region ("CSNSHK"), to determine whether the exhibition of a film was contrary to the interests of national security. Mr TSE pointed out that, with this approach, the handling of issues of national security in film censorship would align with the procedure for assessment and validation of the eligibility of candidates for the Election Committee Members, CE and LegCo Members. In these circumstances, the Candidate Eligibility Review Committee would</p>	

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		<p>make decisions pursuant to the advice of CSNSHK, which, in turn, would draw reference to the assessment made by the NS Department.</p> <p>The Administration advised that a party aggrieved by a decision that the exhibition of a film would be contrary to the interests of national security might seek a review of the decision by JR. The Administration added that, should the decision that the exhibition of a film would be contrary to the interests of national security be made by CSNSHK, such decision would not be amenable to JR pursuant to Article 14 of NSL. The existing amendments to Cap. 392 would allow an applicant to seek the review of a decision by the Board of Review on non-national security-related matters or, on national security-related matters, by initiating judicial proceedings.</p>	
005431–005755	Chairman Administration	<p><u>Clause 18 – Section 20 amended (offence in relation to exhibition or publication of films classified for exhibition or publication only to persons who have attained the age of 18 years)</u></p> <p><u>Clause 19 – Section 21 amended (offence in relation to contravention of conditions endorsed on a certificate)</u></p> <p>Members raised no questions on the clauses above.</p> <p><u>Clause 20 – Section 22 amended (offence in relation to revocation, etc.)</u></p> <p>Upon the Chairman's enquiry, the Administration remarked that the amendments in the Chinese version of the Bill were proposed with a view to aligning the provisions in both the English and Chinese versions.</p>	
005756 – 010010	Chairman Administration	<p><u>Clause 21 – Section 23 amended (inspection and enforcement)</u></p> <p>The Chairman enquired and the Administration remarked that the power of enter and search without warrant, as proposed in this clause, was in line with similar provisions in other Ordinances.</p>	

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		<p><u>Clause 22 – Section 27 – amended (risk and expense relating to submission of film)</u></p> <p>Part 3: Related Amendments Division 1 – Amendments to Film Censorship Regulations</p> <p><u>Clause 23 – Film Censorship Regulations amended</u></p> <p>Division 2 – Amendment to Control of Obscene and Indecent Articles Ordinance</p> <p><u>Clause 24 – Control of Obscene and Indecent Articles Ordinance amended</u></p> <p><i>Schedule Amendments Relating to References to Videotape or Laserdisc</i></p> <p>Members raised no questions on the clauses above.</p>	
010011 – 010030	Chairman ALA7	The Chairman advised the Bills Committee that the clause-by-clause examination had been completed. ALA7 had no questions to raise.	
010031 – 010225	Chairman Administration	Members noted that the Administration intended to have Second Reading debate on the Bill resumed at the Council meeting of 27 October 2021. The Chairman advised that notice to propose amendments to the Bill must be given on or before 18 October 2021.	
Agenda item II — Any other business			
010226 – 010339	Chairman	End of meeting	