



LegCo President's Decisions on Member's Bills

Rule 51(3) and (4) of the Rules of Procedures

1. From October 2019 to June 2020, the President of the LegCo ("President") made two decisions under Rule 51(3) and (4) of the Rules of Procedure ("RoP").

2. Rule 51(3) of the RoP provides that Members may not either individually or jointly introduce a bill which, in the opinion of the President, relates to public expenditure or political structure or the operation of the Government. Rule 51(4) provides that in the case of a bill which, in the opinion of the President, relates to Government policies, the written consent of the CE is required for its introduction.

Residential Care Homes (Elderly Persons) (Amendment) Bill 2020 ("the RCHE Bill")

Residential Care Homes (Persons with Disabilities) (Amendment) Bill 2020 ("the RCHD Bill")

Offences against the Person (Amendment) Bill 2020 ("the OAP Bill")

3. On 9 April 2020, the President ruled that the RCHE Bill, the RCHD Bill and the OAP Bill ("the three Bills") related to the operation of the Government and hence might not be introduced to the LegCo by a Member.

4. The decision was made in respect of the three Bills proposed by Dr Hon Fernando CHEUNG ("Dr CHEUNG"). The RCHE Bill and the RCHD Bill aimed to amend the Residential Care Homes (Elderly Persons)

Ordinance (Cap. 459) and the Residential Care Homes (Persons with Disabilities) Ordinance (Cap. 613) respectively.

5. Both Bills sought to list specifically the licensing requirements for residential care homes ("RCHs"), which included:

- (a) requiring the applicant for a licence or a certificate of exemption ("CoE") to list a natural person as the licensee in the application;
- (b) setting out the factors that the Director of Social Welfare ("DSW") must consider in determining whether the applicant or any proposed employees at the RCHs concerned ("the relevant person") is fit to operate, take part in the management of or be employed at the RCHs; and
- (c) providing for restrictions on the issue, use and transfer of licence or CoE.

6. The OAP Bill sought to amend the Offences against the Person Ordinance (Cap. 212) to make ill-treatment or neglect of an elderly person or a person with disability ("PWD") a criminal offence.

RCHE Bill and RCHD Bill

7. The Government submitted that the RCHE Bill and the RCHD Bill had a substantive effect on the operation of the government, public expenditure and government policies within the meaning of BL 74,¹ as highlighted below:

- (a) under the two Bills, DSW would be imposed with a statutory obligation to look at the factors set out in the relevant provisions in determining if an applicant for a licence or

¹ BL 74 stipulates that "Members of the Legislative Council of the Hong Kong Special Administrative Region may introduce bills in accordance with the provisions of this Law and legal procedures. Bills which do not relate to public expenditure or political structure or the operation of the government may be introduced individually or jointly by members of the Council. The written consent of the Chief Executive shall be required before bills relating to government policies are introduced."



CoE is a fit person. Implementing the two Bills would require significant changes to the operation of the Government, including the setting up of a new dedicated section for conducting the relevant compliance checks and completely revamping the mechanism for applications for new/renewal of licence or CoE, etc;

- (b) the operational changes required would additionally incur an annual recurrent expenditure of about \$43.6 million and a non-recurrent expenditure of about \$63.3 million; and
- (c) the proposed statutory requirements might deprive non-governmental organizations and private companies of the opportunity to enter the RCHs sector as some of them might not be able or willing to meet those requirements.

8. Dr CHEUNG disagreed with the Government and submitted that since there were similar checking and licensing mechanisms under the existing Cap. 459 and Cap. 613, the two Bills, if enacted, would neither change the existing operation of the Government nor necessitate additional public expenditure.

9. The President noted that it had been established through the past rulings that a bill would relate to the operation of the Government if the implementation of the bill would have an

obvious effect on the structure or procedure of the executive authorities, and the effect would not be of a temporary nature.

10. The President opined that under the RCHE Bill and the RCHD Bill, DSW would be imposed with a statutory obligation to consider a list of factors in determining whether an applicant or the relevant person is a fit person. Such factors include:

- (a) whether the applicant is capable of operating the RCH concerned competently and honestly given the applicant's reputation, character and reliability;
- (b) whether the applicant is an undischarged bankrupt;
- (c) whether, in the five years before the relevant application, the applicant has entered into a composition or scheme of arrangement with creditors;
- (d) whether the applicant or the relevant person as a home manager has been censured, disciplined or disqualified by any professional body in relation to any trade, business or profession;
- (e) whether the applicant has been convicted of an indictable offence;
- (f) other conditions set out in Cap. 459 or the RCHD Bill; and



- (g) where the applicant is or was the licence holder or home manager of a RCH, whether the applicant (i) has been convicted of an offence under Cap. 459, Cap. 613 and their subsidiary legislation; and (ii) has failed to comply with the relevant regulations, or requirement, order or direction given by DSW.

Furthermore, the DSW would be obliged to refuse the issue of licence or CoE under a list of circumstances stated in the RCHE Bill and the RCHD Bill.

11. As the DSW must consider a basket of “the fit person” requirements specified in the two Bills, the Social Welfare Department (“SWD”) would have to conduct material background and compliance checks for applicants, and RCHs staff which are estimated at about 30,000 in number, with the scope of such checks extended substantially. As such, the President considered that the Bills, if enacted, would have an obvious effect on the work process of SWD, and such effect would not be temporary. The President therefore considered that the two Bills related to the operation of the Government.

OAP Bill

12. The Government submitted that the OAP Bill had a substantive effect on the operation of the government, public expenditure and government policies within the meaning of BL 74, as highlighted below:

- (a) Under the OAP Bill, it would become a criminal offence if a caretaker neglects or abandons an elderly person or a PWD in a manner likely to cause the person unnecessary suffering or injury. Between 2013 and 2017, the Police received an average of 3,533 reported cases of “wandering old men/women” per year. These cases were highly likely to be caught by the Bill and would require criminal investigation by the Police. This would have an obvious effect on the operation of the Police and hence related to the operation of the Government;
- (b) it was estimated that a one-off capital

expenditure of about \$1.6 million and an additional recurrent expenditure of about \$16 million per year would be incurred to implement the Bill; and

- (c) the Bill, if enacted, would bring about substantive changes to the Government’s policy of protecting elderly persons and PWDs. Members of the public might no longer be willing to take care of those people in the neighbourhood for fear of inadvertently committing a crime. This would cause a setback in the Government’s policy of encouraging a caring community.

13. Dr CHEUNG disagreed with the Government, as highlighted below:

- (a) According to SWD’s Central Information System on Elder Abuse Cases, from 2005 to 2018, the average number of reported cases of abandonment and neglect were 1.14 cases and 1.92 cases per year respectively. There was no need for the Police to handle such a small number of cases by deploying additional manpower and facilities; and
- (b) the Government’s reliance on the statistics on reported cases of “wandering old men/women” was a misinterpretation of the Bill. As those cases mainly relates to demented or mentally-ill old men/women wandering on street without the knowledge of their caretakers, they obviously did not fall within the meaning of “neglect” or “abandon” under the Bill.

14. The President noted that the OAP Bill sought to amend Cap. 212 to introduce a new offence of ill-treatment or neglect of an elderly person or a PWD.

15. The President considered the arguments put forward by the Government and Dr CHEUNG on the potential effect of the Bill on the operation of the Police. The President had reservation that the cases of demented or mentally-ill elderly persons wandering on street “without the knowledge” of their caretakers would obviously fall outside the meaning of “neglect” or “abandon” under the Bill. The President expressed that view that, if the Bill

was enacted, any possible cases of ill-treatment or neglect of elderly persons or PWDs (involving wandering or not) would have to be investigated by the Police. Special arrangements would need to be made for those people with special needs in the course of criminal investigation. The Bill would have an obvious effect on the Police's relevant procedure for handling such cases as well as the distribution of responsibilities among different units in the Police, and such effect was not temporary. The President therefore considered that the Bill related to the operation of the Government.

16. In accordance with Rule 51(3) of the RoP, the President ruled that the three Bills intended to be presented by Dr CHEUNG might not be introduced into LegCo.

Rare Diseases Bill

17. The President made another decision on 15 June 2020 on whether a Member's Bill was caught by Rule 51(3) and (4) of RoP. The President ruled that the Bill concerned related to the operation of the Government and hence may not be introduced into the LegCo. A summary of the ruling of the President on the Member's Bill is provided below.

18. The decision was made in respect of the Rare Diseases Bill ("the RDs Bill") proposed by Dr CHEUNG. The RDs Bill sought to: provide for the basics for a comprehensive and integrative policy targeting to prevent, diagnose and cure RDs and ensure the well-being of persons afflicted with RDs; establish a Commission on RDs Policy ("CRDP") and an Evaluative Committee on RDs ("ECRD"); provide a mechanism for the recognition of RDs; provide for a register for RDs drugs, treatments or products; provide for a statutory scheme of subsidy for persons afflicted or suspected to be afflicted with RDs; and ensure that the rights of a person afflicted with a RDs guaranteed under the United Nations Convention on the Rights of Persons with Disabilities can be properly achieved.

19. The Government submitted the following views. Firstly, the RDs Bill related to public expenditure. The establishment and operation of

CRDP and ECRD would require public funds while the scheme of subsidizing drug and treatment expenses of RDs patients would have substantial implications on public expenditure. Secondly, the RDs Bill related to the operation of the Government. It would impose new statutory duties on the Food and Health Bureau relating to the recognition of RDs and registration of RDs drugs, treatment or products. The proposed registration regime for RDs drugs, treatments and products would also conflict with the existing systems and fetters the statutory roles of the Pharmacy and Poisons Board and the Drug Advisory Committee. Thirdly, the RDs Bill related to the Government's healthcare policy. Such policy is to provide the most suitable care and treatment to every patient in light of their individual clinical condition. However, the RDs Bill would obscure the aim of the policy by adopting a hard and fast definition of RDs.

20. Dr CHEUNG only contended that the RDs Bill did not conflict with the prevailing healthcare policy. He stated that the needs of RDs patients were different from those of ordinary patients and thus required different medical specialties. Moreover, setting up a specific category of RDs facilitated the coordination of multi-disciplinary care for RDs patients.

21. The President ruled that the implementation of the proposed statutory requirements of the RDs Bill would have an obvious effect on the procedures of the executive authorities and the functions of relevant statutory bodies, and such effect would not be temporary. Whether the RDs Bill related to public expenditure or Government policies was insignificant in the ruling. The President decided that the RDs Bill related to the operation of the Government within the meaning of RoP 51(3) and it might not be introduced into the LegCo.

