



LegCo President's Decisions on Member's Bills

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

1. From July 2020 to June 2021, 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.

Protection of Children Legislation (Amendments) Bill 2020 ("PCL Bill")

3. On 14 July 2020, the President ruled that the PCL Bill 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 PCL Bill proposed by Dr Hon Fernando CHEUNG ("Dr CHEUNG"). The PCL Bill sought to amend the Protection of Children and Juveniles Ordinance (Cap. 213) and the Juvenile Offenders Ordinance (Cap. 226) to:

- (a) give effect to Article 20 of BoR by introducing reforms to Cap. 213;
- (b) further give effect to Articles 3 and 20 of the United Nations Convention on the Rights of the Child of 1989; and
- (c) protect children from child abuse and neglect.

5. In particular, the PCL Bill proposed to:

- (a) add a new definition of "child abuse" to Cap. 213;
- (b) impose a requirement on the court to call for the Director of Social Welfare ("DSW") to submit for review the care plans of children who have remained in institutional care for more than nine months during recent 12 months ("the proposed mandatory court review requirement"); and
- (c) impose a statutory duty on those responsible for the care and welfare of children to report child abuse to the Police Force or the Social Welfare Department ("SWD") ("the proposed mandatory reporting requirement").

6. The Government submitted that the PCL Bill related to operation of the Government, public expenditure and the Government policies within the meaning of BL 74,¹ as highlighted below:

- (a) the proposed mandatory court review requirement would affect the working procedures of and create enormous workload on SWD. Over 51 new permanent posts would need to be created. The estimated annual recurrent cost required would be over \$35 million;
- (b) the proposed mandatory reporting requirement would result in a significant increase in the number of reported suspected child abuse cases and affect the operation of the Family and Child Protective Services Units ("FCPSUs") operated by SWD. FCPSUs would have to assess each and every case by taking necessary steps. SWD estimated that it would have to restructure FCPSUs and set up four additional investigation units, involving 78 new permanent posts and an annual recurrent expenditure of about \$60 million; and

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."

(c) the existing Cap. 213 mainly aimed to empower the courts to grant a supervision order or appoint a legal guardian in respect of a child or juvenile, rather than targeting at specific criminal acts. Regarding those criminal acts listed in the proposed definition of "child abuse", the Government had put in place other legislation to protect children from abuse, including the Offences Against the Person Ordinance (Cap. 212), the Crimes Ordinance (Cap. 200) and the Prevention of Child Pornography Ordinance (Cap. 579). In view of the legislative intent of Cap. 213 and the legal protection provided by other legislation against relevant criminal acts, the proposal to add a definition of "child abuse" to Cap. 213 would have a substantive effect on the Government policies as reflected in the relevant legislation.

7. Dr CHEUNG disagreed with the Government and submitted that the proposed mandatory court review requirement was based on the existing mechanism. The requirement would only entail a new procedure for SWD to submit the relevant care plans to the courts. This would neither change the existing operation of SWD nor incur additional expenditure. Dr CHEUNG also argued that there was no evidence that the proposed mandatory reporting requirement would result in an upsurge in the child abuse cases. The relevant expenditure estimated by the Government was unnecessary and obviously exaggerated. Further, the new definition of "child abuse" would affect Cap. 212 only, but not the other Ordinances, and would not incur additional public expenditure.

8. 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.

9. The President was of the opinion that if the PCL Bill was enacted, a new mandatory duty would be imposed on the court to regularly review the care plans submitted by DSW. In addition, a large number of people in relevant sectors (e.g. registered medical practitioners, registered social workers, owners or operators of child care centres, etc.) would have a statutory duty to report child abuse



to the Police Force or SWD. It was inevitable that the implementation of the above new requirements would bring about significant changes to the existing work procedures of the relevant authorities and such effect would not be temporary. The President therefore considered that the PCL Bill related to the operation of the Government.

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

The Waterworks (Waterworks Regulations) (Amendment) Bill 2020 ("W(WR) Bill")

11. On 17 November 2020, the President ruled that the W(WR) Bill proposed by Hon Alice MAK related to Government policies within the meaning of Rule 51(4) of the RoP. Written consent of the CE was therefore required for the introduction of the W(WR) Bill into the LegCo.

12. The W(WR) Bill sought to amend the Waterworks Regulations (Cap. 102A) to prohibit a consumer from profiteering from the sale of water provided by the Water Authority ("WA") from the waterworks. Specifically, the W(WR) Bill proposed to amend regulation 47(2) of Cap. 102A by substituting



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"cost of water" with "charges for water in regulation 46" to the effect that a consumer of an inside service (usually a landlord) might only recover the charges for water billed by WA in accordance with regulation 46 from an occupier of the premises (usually a tenant).

13. The Government submitted that the W(WR) Bill did not relate to public expenditure, political structure or the operation of the Government. The Government, however, pointed out that the cost of water might exceed the water tariff imposed by WA since the former might incorporate maintenance or repair cost of the inside service, but not profit. The purpose of the policy was to allow the landlord to recover from his tenants the expenses relating to water supply. Accordingly, the Government considered that the W(WR) Bill did not align exactly with the Government's current policy under regulation 47(2).

14. Hon MAK disagreed and took the view that the purpose of regulation 47(2) was to prohibit any person from profiteering from the sale of water from the waterworks. The W(WR) Bill was to plug the current loophole that allowed landlords to overcharge their tenants for the use of water by amending the regulation and aligning it with the Government policy.

15. The President opined that in order for a bill not to be caught by Rule 51(4) of the RoP, the bill must not have substantive effect on Government policies, *i.e.* those that had been decided by the CE or CE in C under BL 48(4)² and BL 56.³ Policies implemented through legislation were also considered to be Government policies under Rule 51(4). The fact that a bill did not run contrary to or substantially deviate from existing policies did not necessarily mean that



the bill was not related to Government policies.

16. The President noted that the existing Government policy under regulation 47(2) was to allow landlords to recover from tenants the cost of water which might exceed the charges for water billed by WA under regulation 46. As the W(WR) Bill sought to limit the "cost of water" to the "charges for water", the President opined that the Bill related to Government policies because it would, if enacted, have substantive effect on the existing Government policy in relation to the scope and calculation of the "cost of water" that landlords might recover from tenants.

17. The President however pointed out that whether the W(WR) Bill was consistent with the Government policies was a point of merit which he would not consider when ruling on the admissibility of the W(WR) Bill.

18. The President therefore decided that CE's written consent was required for the introduction of the W(WR) Bill into the LegCo.

² BL 48(4) stipulates that:

"The Chief Executive of the Hong Kong Special Administrative Region shall exercise the following powers and functions:

...

(4) To decide on government policies and to issue executive orders;"

³ BL 56 provides that:

"The Executive Council of the Hong Kong Special Administrative Region shall be presided over by the Chief Executive.

Except for the appointment, removal and disciplining of officials and the adoption of measures in emergencies, the Chief Executive shall consult the Executive Council before making important policy decisions, introducing bills to the Legislative Council, making subordinate legislation, or dissolving the Legislative Council.

If the Chief Executive does not accept a majority opinion of the Executive Council, he or she shall put the specific reasons on record."