



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913室
許智峯議員

許議員：

擬於2020年6月10日立法會會議 提出的口頭質詢

你於2020年6月1日，根據《議事規則》第24(2)條作出預告，擬於上述會議提出一項涉及下述事宜的口頭質詢(附錄1)：就全國人民代表大會(“全國人大”)常務委員會(“人大常委會”)即將公布針對香港特別行政區(“香港特區”)訂立國家安全法，某些類別的香港特區政府官員及其親人持外國護照及有外國居留權的事宜。

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。

正如你所知，全國人大已通過《關於建立健全香港特別行政區維護國家安全的法律制度和執行機制的決定》(“《決定》”)，當中包括授權人大常委會制定相關法律(“港區國安法”)，而該法律將列入《基本法》附件三，由香港特區在當地公布實施。《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(“國安駐港機構”)，依法履行維護國家安全相關職責。

¹ 根據《議事規則》第22(1)條，質詢應就政府的工作向政府提出質詢。

² 根據《議事規則》第25(1)(h)條，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。

你的質詢主要包括：

- (一) 香港特區有哪些副局長、政治助理、各部門首長及其配偶或子女持有外國護照或居留權；
- (二) 如何確保上述官員或其家人持有外國護照或居留權時，不會予人不尊重國家甚至有危害國家安全等情況；及
- (三) 香港特區政府會否“效法中共整治裸官的做法”(按你所述，“裸官”即配偶及子女均獲外國居留權的官員)。

主席認為你的質詢**違反《議事規則》**，原因如下：

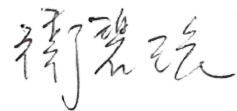
- (一) 正如政務司司長在其6月1日的來函³指出，港區國安法由人大常委會制定，屬**國家層面的立法工作**，現階段並不屬於《議事規則》第22(1)條所指“政府的工作”(即香港特區政府的工作)；
- (二) 你提述的官員及其家人(包括配偶及子女)是否持有外國護照或居留權，並不屬**他們在其公職或所參與的公共事務範圍內的品格或行為**，因此你的質詢違反了《議事規則》第25(1)(j)條⁴的規定；及
- (三) 港區國安法仍在草擬中，**具體內容尚未公布**。你提述的國安駐港機構會否成立、權責範圍及如何運作等事宜實在言之尚早。因此，主席認為你要求解答的事宜屬**假設論題**，違反了《議事規則》第25(1)(h)條的規定。

³ 隨附於2020年6月1日發出的立法會CB(3)487/19-20號文件。

⁴ 根據《議事規則》第25(1)(j)條，質詢不得問及行政長官、行政會議成員及立法會議員的品格或行為，亦不得問及其他人士在其公職或所參與的公共事務範圍以外的品格或行為。

基於上述考慮，主席裁定你於6月1日提交的質詢不符合規程，不可提出。你在附錄3的回應中，要求修改你該項質詢的措辭。主席認為你經修改的質詢，亦不符合《議事規則》第25(1)(j)條的規定，因此亦不可提出。

立法會秘書

Handwritten signature in black ink, appearing to read '衛碧瑤' (Margaret NG).

(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3項質詢
(口頭答覆)

許智峯議員問：

全國人大常委會即將公布針對香港訂立的國家安全法，當中包括「外國干預」的罪行，就有些支持訂立國安法的政治委任官員及部門首長，其直屬親人甚至本人持有外國護照或擁有外國居留權，政府可否告知本會：

- (一) 現時副局長、政治助理及各部門首長，有哪些人本身持有外國護照或外國居留權？哪些人的配偶或子女持有外國護照或外國居留權？如有，請詳列涉及的官員、家人身份及國家；
- (二) 目前的政策如何確保當副局長、政治助理、部門首長本人或家人持外國護照或外國居留權時，仍然保持愛國水平，不會予人不尊重國家、傷害中國人民感情的印象，及甚至有危害國家安全的情況；及
- (三) 中共近年多番整治「裸官」，即配偶及子女均獲外國居留權的官員，不少官員因此被免職，或不獲升調重要官職。就此，特區政府會否效法中共整治裸官的做法，並考慮日後國安法在香港實施後，由國安駐港機構對官員背景進行審查，並對家人持有外國居留權的官員進行免職或調職處理？



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 loop followed by a horizontal line and a small flourish.

(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



Fw: Question scheduled for the Council meeting of 10 June 2020

Date: 2020/06/08 上午 11:40
Subject: Re: Question scheduled for the Council meeting of 10 June 2020

致 立法會主席

鑑於早前政府當局去信立法會主席梁君彥要求剔除本人擬在6月10日立法會會議上提出的口頭質詢。本人回應如下：

根據議事規則22（1）條，「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」。政府當局表示國安法立法，屬全國人大常委會工作，因而本人的質詢不符合議事規則，本人認為該觀點合理。因國安法的實施，屬香港特別行政區事務。而且，本人的問題，除了背景部分提及國安法，亦只是問及政府現時的政策措施。過往的口頭質詢亦不乏同類問題，倘政府不作回答，顯然是雙重標準。

對於本人質詢問題違反議事規則25（1）（h）條，即「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」的質疑，本人必須強調，本人並非問及仍在草擬階段的國安法內容，相反，本人的問題，是問及政府當局的現有政策措施、機制及政策方向。上述皆為政府目前工作的一部分，按議事規則22（1）條，政府必須回答。

不過，為避免不必要爭議，本人建議將原質詢問題去除背景部分後，修改如下：
質詢問題：

就有些政治委任官員及部門首長，其直系親屬甚至本人持有外國護照或擁有外國居留權，政府可否告知本會：

（一）當局是否掌握現時副局長、政治助理及各部門首長，有哪些人本身持有外國護照或外國居留權？哪些人的配偶或子女持有外國護照或外國居留權？如有，請詳列涉及的官員、家人身份及國家；

（二）目前的政策如何確保當副局長、政治助理、部門首長本人或家人持外國護照或外國居留權時，仍然保持愛國水平，不會予人不尊重國家、傷害中國人民感情的印象，及甚至有危害國家安全的情況，及；

（三）特區政府會否採取措施，對官員背景進行審查，並對家人持有外國居留權的官員進行免職或調職處理？

立法會議員
許智峯