

For discussion on
27 May 1999

LegCo Panel on Administration of Justice and Legal Services

Information Paper on
STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL 1999

INTRODUCTION

A number of enactments need minor amendment because they are obsolete, inconsistent or anomalous. In addition, it is important to put beyond doubt the validity of certain items of subsidiary legislation which were not tabled before the Legislative Council. The Administration proposes to deal with these matters by way of the above Bill. The object of this paper is to seek the preliminary views of members of the Panel on the proposed amendments. The Bill is scheduled for introduction into the Legislative Council on 30 June 1999.

BACKGROUND AND ARGUMENT

General Background

2. In making minor, technical and largely non-controversial amendments to the Laws of Hong Kong, the Bill follows the pattern of other bills (previously entitled Administration of Justice (Miscellaneous Provisions) Bills) which have been enacted in recent years, as an efficient way of effecting minor improvements to existing legislation. The categories of the proposed amendments are set out below.

DETAILED PROPOSALS

Provisions relating to further sentence while a detention order, supervision order or recall order is in force

3. At present, there are no statutory provisions governing what happens to an existing detention order, supervision order or recall order when a detainee in a Detention Centre, or a Drug Addiction Treatment Centre, or a Training Centre, is further sentenced to one or other of the centres for a separate offence. It is therefore proposed to amend the legislation governing the respective centres to clarify the appropriate procedure in those circumstances.

Discharge of encumbered property

4. Under the present law, a mortgagor of an interest in land will be unable to repay even an insignificant amount of the mortgage money if the mortgagee cannot be

found, the mortgage documents are missing or the date on which the mortgage should have been repaid is unknown. This hinders sale or development of the relevant property. It is proposed that amendments be made to the Conveyancing and Property Ordinance (Cap. 219) to allow payment into court under these circumstances of the amount outstanding under the mortgage, subsequent to which the court may make an order to declare the property free from that particular encumbrance.

Abrogation of the “Year and a Day Rule”

5. The “year and a day” rule is a common law rule that forbids the conviction of a person of the offence of homicide if the victim does not die within a year and a day after the injury was inflicted. The Law Reform Commission studied the issues and recommended the abolition of the rule in its Report published in June 1997. In light of the medical and technological advances in treatment and life support made since the rule was first established, the rule is now considered to be inappropriate, unnecessary and undesirable. It is proposed that the Offences Against the Person Ordinance (Cap. 212) be amended to provide for the abolition of the rule.

Psychiatrists to provide evidence to courts on accused’s fitness

6. Where an accused’s fitness to be tried and where determination of guardianship, supervision and treatment on account of a person’s mental fitness is in issue, a determination can only be made on the evidence provided by two or more registered medical practitioners approved for the purposes of section 2(2) of the Mental Health Ordinance (Cap. 136), namely those approved by the Hospital Authority within the meaning of the Hospital Authority Ordinance (Cap. 113) as having special experience in the diagnosis or treatment of mental disorder.

7. A Specialist Register of the Medical Council was established in March 1998 under section 6(3) of the Medical Registration Ordinance (Cap. 161). It is proposed that references to medical practitioners (where psychiatrists are meant) in the relevant laws should be amended so that reference is made to those registered in the Specialist Register as psychiatrists.

Publication of sections referred to in warning notices and conspiracy committed before commencement of Crimes (Amendment) Ordinance 1996

8. Section 153A of the Crimes Ordinance (Cap. 200) requires warning notices issued pursuant to the section to contain the entire texts of the sections referred to in a notice. Where more than one such notice is published contemporaneously, the sections would be repeated, sometimes many times, in a single edition of a newspaper at great public expense. It is proposed that amendments be made so that, in those circumstances, the texts of the sections need only be published once, with appropriate directions in the other notices as to where the full text may be found.

9. Section 159E of the Crimes Ordinance (Cap. 200) is ambiguous as to whether acts of conspiracy committed before the commencement of the section on 2 August 1996 for which proceedings have not been started may be prosecuted. It is

proposed that saving amendments be made to remove the ambiguity and ensure that such acts remain an offence and subject to prosecution.

Removal of reference to repealed Ordinance and saving

10. The Affiliation Proceedings Ordinance (Cap. 183) has been repealed by the Law Reform (Miscellaneous Provisions and Minor Amendments) Ordinance 1996. Section 12 of the Births and Deaths Registration Ordinance still refers to the same and amendment is required.

Reference to former or retired judge

11. The Adaptation of Laws (Courts and Tribunals) Ordinance (Ord. No. 25 of 1998) excluded persons who were formerly judges of the High Court (i.e. who had retired before 1 July 1997) from serving on the Post-Release Supervision Board and the Long-term Prison Sentences Review Board. This was not the policy intent. It is proposed that suitable amendments be made to more accurately reflect the policy intent.

Delegation of power by the Director of Audit

12. Amendments are proposed to be made to the Audit Ordinance (Cap. 122) to enable directorate officers of the Audit Commission (in addition to the Director of Audit) to perform the certifying and reporting of accounts to allow the Director to perform more value for money audit work. Amendments are also proposed to provide a statutory basis for the audit work the Director of Audit has been performing for various funds within the judicial system, the ICAC Welfare Fund and the World Refugee Year Loan Fund.

Provision for transfer of persons serving indeterminate sentences

13. Amendments are proposed to sections 2 and 4 of the Transfer of Sentenced Persons Ordinance (Cap. 513) to allow for the issue of an inward warrant in relation to persons sentenced for an indeterminate period generally and not just those sentenced for an indeterminate period on account of their mental incapacity. Without these amendments, persons who do not have any mental incapacity and are sentenced for an indeterminate period cannot be transferred back to Hong Kong.

Amendments consequential to change of short title of principal ordinance

14. The Child Care Centres Ordinance (Cap. 243) had been amended to “Child Care Services Ordinance” but some subsidiary legislation still refers to the old title. Amendments are proposed to correct these references.

Updating references to and title of organizations

15. A number of international organizations have changed their names and amendments are proposed to our legislation to reflect those changes.

Subsidiary legislation deemed laid before Legislative Council

16. Some items of subsidiary legislation were inadvertently not laid before the Legislative Council contrary to section 34 of the Interpretation and General Clauses Ordinance (Cap. 1). The LegCo Subcommittee formed for the purpose of studying issues relating to tabling of subsidiary legislation in the Legislative Council indicated that whilst it was of the preliminary view that the tabling requirement is directory rather than mandatory, it would be prepared to consider the Administration's proposal to clarify the matter.

17. The legal effect of failing to lay subsidiary legislation is unclear. Despite the opinion of the Subcommittee there is an equally respectable view that the requirement to lay is mandatory and that failure to comply with it results in the invalidity of the subsidiary legislation. Deeming the subsidiary legislation to have been laid settles any doubt.

18. There remains, at present, a continued failure to comply with a statutory requirement. This is constitutionally improper and should be rectified.

19. An indemnity provision has been included to indemnify all persons against liability for the common law offence of contempt of statute (for which the penalty is imprisonment or a fine, or both). The contempt is at least a possibility.

20. There are 2 commencement notices for the Ozone Layer Protection (Controlled Refrigerants) Regulations. The first in 1993 has not been tabled; the latter in 1998 has been tabled. As the legal status of the 1993 notice is now considered to be uncertain it is appropriate to clarify the position by an Ordinance.

21. The Administration proposes that, for the avoidance of doubt, provisions be enacted to deem those items of subsidiary legislation as having been duly laid (**clauses 44 to 47**). This follows UK precedents.

Miscellaneous amendments to legislation to remove anomalies and inconsistencies

22. Part XIV of the Bill makes minor amendments to numerous Ordinances to ensure consistency in the terminology used and to ensure consistency between the Chinese and English texts.

Repeal of legislation

23. Part XV of the Bill provides for the repeal of redundant legislation.

PUBLIC CONSULTATION

24. The Law Society and the Bar Association have both indicated support for the abrogation of the "year and a day" rule. The Law Society has indicated support for the proposed amendments relating to reference to psychiatrists registered on the

Specialist Register. A working draft of the Bill has been supplied to both professional bodies for comments. The Bar Association indicated that it had no comments on the draft Bill. It is considered that the public will have little interest in the majority of the proposed amendments which are mainly minor and technical in nature.

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