

**Bills Committee on
Landlord and Tenant (Consolidation) (Amendment) Bill 2001**

**List of follow-up actions arising from
the meeting on 16 July 2002**

Item 1

To explain in detail why a Committee Stage Amendment (CSA) to effect the proposal of imposing criminal liability on the provision of false information by tenants is outside the scope of the Landlord and Tenant (Consolidation) Ordinance (Cap.7) (LTO).

- (a) The Administration would like to point out that the question should relate to the scope of the present Bill rather than the scope of the LTO. In determining whether a CSA exceeds the scope of the Bill, Rule 57(4) of the Legislative Council Rules of Procedure underlines the test as the relevance of the CSA to the subject matter of the Bill. The subject matter of the LTO is only of very limited assistance.
- (b) According to the Department of Justice, the proposed amendment is beyond the scope of the Bill for the following two reasons:
 - (i) it is not relevant to any of the subject matter of the Bill; and
 - (ii) by its proposal for a new and unusual criminal offence, it raises very significant new issues of principle which go beyond the details of the Bill. By virtue of Rule 56 of the Legislative Council Rules, the Committee Stage shall not be used to alter the principles of a bill because, as rationalised under Rule 54(3), its principles have already been approved by passing the Second Reading.

Item 2

To ask the Judiciary Administrator to consider including in Form 22 (Notice of Application under the LTO) applications for distress for rent, interest for rent in arrears and disposal of properties left in premises by tenants.

The Judiciary Administrator is considering the proposal. The Administration would follow up the issue.

Item 3

To prepare a CSA to reflect the legislative intent to forbid a tenant to claim for relief from forfeiture more than once per tenancy unless with good cause as determined by the Court.

The drafting of a CSA to prohibit a tenant from being granted relief from forfeiture upon non-payment of rent more than once per tenancy unless with good cause is in progress. The Administration will provide a copy to members once the CSA is ready.

Item 4

To refine the drafting of the CSAs to Clause 11, proposed section 117(3)(b), (c) and (d), and 4(a) to ensure that the proposed forfeiture clauses are consistent with the provisions in the tenancy agreements concerned.

Please find at **Annex A** for the amendment.

Item 5

To advise the legislature intent of the CSA to Clause 11, proposed section 117(4)(b) and the different timeframes for relief under the Conveyancing and Property Ordinance (CPO) (Cap. 219).

- (a) Section 117(1) of the LTO provides that a tenancy shall not come to an end unless terminated in accordance with Part IV of the LTO. On the other hand, section 117(2) provides that section 117(1) shall not prevent the coming to an end of a tenancy by, inter alia, forfeiture.
- (b) Currently, in cases of forfeiture upon grounds **other than non-payment of rent** (or insolvency), the landlord must comply with the notice requirement provisions of section 58 of the CPO. Section 58 of the CPO provides that a right of forfeiture shall not be enforceable unless the landlord serves notice on the tenant. This notice must specify the breach complained of and, if the breach is capable of remedy, require the tenant to remedy it. The notice must also specify the compensation, if any, which the landlord requires for the breach. If the tenant fails to remedy a remedial breach nor make reasonable compensation to the landlord within a reasonable time of service of the notice, the landlord can apply to the court to forfeit the tenancy. Where the landlord is proceeding to forfeit the tenancy in court, the tenant has a statutory right to apply for relief given by section 58(2) of the CPO.
- (c) It is expressly provided in the fifth draft of CSAs that the new proposed section 117(3)(d), (e) and (f) would have effect subject to

section 58(1) to (13) of the CPO, notwithstanding the section 58(14) of the CPO (which states that section 58 shall have effect subject to the Landlord and Tenant (Consolidation) Ordinance (Cap 7)). This would mean that a landlord who wishes to forfeit the tenancy upon breach of any of the covenants implied into the tenancy by virtue of the new proposed section 117(3)(d), (e) or (f) of the LTO would have to comply with the notice requirement provided under section 58 of the CPO before he could proceed to enforce the forfeiture in court, and a tenant is entitled to an opportunity to remedy remediable breach before such tenancy is to be forfeited.

- (d) Section 58(10) of the CPO provides that section 58, save as mentioned in subsection (4), shall not affect the law relating to forfeiture or relief in case of non-payment of rent. Such position remains in the present Bill by leaving the proposed section 117(3)(c) of the fifth draft out from the new proposed section 117(5)(b).
- (e) Under section 58(4), a subtenant might upon certain conditions apply to the Court for the right to continue the sub-tenancy for a term not longer than the term he had under his original sub-lease.
- (f) The Administration therefore considers that it is appropriate to effect the new proposed section 117(3)(c) of the fifth draft of CSAs to be subject to the operation of section 58(4) and (10) of the CPO. Such intention is reflected under the new proposed section 117(5)(a) of the fifth draft.
- (g) According to the Department of Justice, there are no specific time-frames for relief under section 58(2) of the CPO. The tenant can

apply for relief in the landlord's action to enforce the right of forfeiture, if any, or in any action brought by himself. A grant of relief may be on such terms as the Court thinks fit. The time to be given for the tenant to remedy the breach is entirely at the Court's discretion.

GFOX:DMA#57750v5
1st draft: 9.4.2002
2nd draft: 15.5.2002
3rd draft: 18.6.2002
4th draft: 3.7.2002
5th draft: 16.7.2002

LANDLORD AND TENANT (CONSOLIDATION)
(AMENDMENT) BILL 2001

COMMITTEE STAGE

Amendments to be moved by the Secretary for
Housing, Planning and Lands

<u>Clause</u>	<u>Amendment Proposed</u>
7	By deleting "Secretary for Housing" and substituting "Chief Justice".
11	By deleting the proposed section 117(3) and substituting - <p style="margin-left: 40px;">"(3) Subject to subsection (4), in the absence in a tenancy of either -</p> <p style="margin-left: 80px;">(a) an express covenant -</p> <p style="margin-left: 120px;">(i) for the payment of rent on the due date;</p> <p style="margin-left: 120px;">(ii) prohibiting the use of the premises or any part thereof the subject of</p>

the tenancy for an
immoral or illegal
purpose;

(iii) that the tenant not
cause unnecessary
annoyance,
inconvenience or
disturbance to the
landlord or any other
person; or

(iv) prohibiting any
alteration or addition
to the premises or any
part thereof the
subject of the tenancy;
or

(b) a condition for forfeiture for
breaking an express covenant
mentioned in -

- (i) paragraph (a) (i);
- (ii) paragraph (a) (ii);
- (iii) paragraph (a) (iii); or
- (iv) paragraph (a) (iv),

then there shall be implied in the tenancy -

(c) in the case of paragraph (a) (i) or
(b) (i), a covenant to pay the rent
on the due date and a condition for

forfeiture if that implied covenant is broken by virtue of non-payment within 15 days of the due date;

(d) in the case of paragraph (a) (ii) or (b) (ii), a covenant that the tenant not use, or suffer or permit the use of, the premises or any part thereof for an immoral or illegal purpose and a condition for forfeiture if that implied covenant is broken;

(e) in the case of paragraph (a) (iii) or (b) (iii), a covenant that the tenant not cause unnecessary annoyance, inconvenience or disturbance to the landlord or to any other person and a condition for forfeiture if that implied covenant is broken; or

(f) in the case of paragraph (a) (iv) or (b) (iv), a covenant that the tenant not alter or add to, or suffer or permit the alteration or addition to, the premises or any part thereof without the consent of the landlord and a condition for

forfeiture if that implied
covenant is broken.

(4) Where the wording of a tenancy renders it ambiguous as to whether or not a provision of subsection (3) should apply in relation to the tenancy, then that provision shall not apply in relation to that tenancy.

(5) It is hereby declared that -

- (a) subsection (3)(c) shall have effect subject to section 58(4) and (10) of the Conveyancing and Property Ordinance (Cap. 219) (and notwithstanding subsection (14) of that section);
- (b) subsection (3)(d), (e) and (f) shall have effect subject to section 58(1) to (13) of the Conveyancing and Property Ordinance (Cap. 219) (and notwithstanding subsection (14) of that section);
- (c) the persistent delay of payment of rent is unnecessary annoyance, inconvenience or disturbance as mentioned in subsection (3)(e)." .