

# 立法會 *Legislative Council*

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## **Report of the Bills Committee on Adaptation of Laws Bill 2000**

### **Purpose**

This paper reports on the deliberations of the Bills Committee on the Adaptation of Laws Bill 2000.

### **The Bill**

2. The Bill seeks to adapt the Private Bills Ordinance (Cap. 69), the Legislative Council (Powers and Privileges) Ordinance (Cap. 382) and its subsidiary legislation, and the Legislative Council Commission Ordinance (Cap. 443) to bring them into conformity with the Basic Law and with the status of Hong Kong as a Special Administrative Region of the People's Republic of China.

### **The Bills Committee**

3. At the House Committee on 10 November 2000, a Bills Committee was formed to study the Bill. Under the chairmanship of Hon Margaret NG, the Bills Committee has held one meeting with the Administration. The membership list of the Bills Committee is in **Appendix**.

### **Deliberations of the Bills Committee**

4. Apart from the amendments proposed in the Bill, the Bills Committee has also considered whether amendments should be made to certain provisions of the Legislative Council (Powers and Privileges) Ordinance (Cap. 382). The main deliberations of the Bills Committee are summarized below.

The Bill

5. Members have no objection to the following amendments proposed in the Bill which are terminological changes -

<b>Original Terms</b>	<b>Proposed Amendments</b>
立法局	立法會
Governor 總督	Chief Executive 行政長官
Standing Orders 會議常規	Rules of Procedure 議事規則
Her Majesty's Government in the United Kingdom 聯合王國的女皇政府	the Central People's Government 中央人民政府
Letters Patent or Royal Instructions 《英皇制誥》或《皇室訓令》	the Basic Law 《基本法》

Legislative Council (Powers and Privileges) Ordinance (Cap. 382)

*Section 12 (Power to issue warrant)*

6. The Bills Committee has considered the status of a warrant made under section 12 of Cap. 382. Under section 12(1), in the case of a person who is summoned to attend before LegCo or its committee has failed to do so, the President may direct the Clerk to issue a warrant in the prescribed form to apprehend the person and bring him before the Council or committee. Section 12(6) provides that the Governor may, by order in the Gazette, prescribe a form of warrant for such purpose.

7. Members consider that the Order made under section 12(6) should be subsidiary legislation. The Administration has advised that the word "prescribed", when used in or with reference to any Ordinance, is defined in section 3 of Cap. 1 as "prescribed or provided by that Ordinance or by subsidiary legislation made under that Ordinance". Given the word

"prescribed" is used in section 12(6), the Administration agrees that it would be appropriate to treat an Order made under this section as subsidiary legislation. As the proposed amendment is outside the scope of the adaptation of laws exercise, the Administration has undertaken to take necessary follow-up action in due course.

*Section 14 (Privileges of witnesses)*

8. Members note that under section 14(2), no person, other than a public officer acting with the consent of the Governor, shall before the Council or its committees give any evidence relating to the correspondence concerning (a) military matter or any other matter relating to the security of Hong Kong; or (b) the responsibilities of Her Majesty's Government in the United Kingdom otherwise than with respect to the administration of Hong Kong by its Government.

9. However, Article 48(11) of the Basic Law (BL 48(11)) empowers the Chief Executive to determine, in the light of security and vital public interests, whether government officials or other personnel in charge of government affairs should testify or give evidence before the Council or its committees.

10. Members have discussed whether section 14(2) is inconsistent with BL 48(11). They are of the view that BL 48(11) is broader in scope because of the reference to the condition of "vital public interests".

11. According to the Administration, the following principles have been adopted for the adaptation of laws exercise -

- (a) the provisions of laws currently in force should be preserved as far as possible; and
- (b) the Basic Law is part and parcel of the laws in force in the HKSAR and therefore could be relied on for the purpose of providing protection to LegCo Members. At the same time, safeguards provided in existing local laws but not in the Basic Law should be retained, provided that they do not contravene the Basic Law.

12. In the light of the above principles, the Administration has advised that the difference in scope between section 14(2) and BL 48(11) does not render the former inconsistent with the latter. The Administration has also pointed out that BL 48(11) has already been reflected in Rule 80 of the Rules of Procedure of LegCo and that section 15 of Cap. 382 provides that matters relating to evidence and production of documents before LegCo or its committees be determined in accordance with the existing usage and practice of the Council.

13. Members appreciate that the Chief Executive can exercise the power stipulated in BL 48(11) notwithstanding the difference in scope between section 14(2) and BL 48(11). Nevertheless, some members consider that it would be desirable to bring the local legislation in conformity with the Basic Law in order to avoid giving the public an impression that the Chief Executive could freely exercise discretion to exempt people from testifying before the Council or its committees. Moreover, given the relevant provisions of both the Basic Law and the Rules of Procedure of LegCo have made reference to "vital public interests", it is only logical that corresponding amendment should be made to section 14(2) for the sake of clarity of law. They have requested the Administration to consider introducing an amendment in this respect outside the context of the present adaptation exercise. Although the Administration has reiterated that amendment to section 14(2) is not necessary for the reasons set out in paragraphs 11 and 12 above, it has nevertheless agreed to consider the suggestion as appropriate.

#### **Consultation with the House Committee**

14. The Bills Committee consulted the House Committee on 8 December 2000 and sought the latter's support that the Second Reading debate on the Bill be resumed on 20 December 2000.

Legislative Council Secretariat  
12 December 2000

**Bills Committee on Adaptation of Laws Bill 2000**

**Membership list**

**Chairman** Hon Margaret NG

**Members** Hon Martin LEE Chu-ming, SC, JP  
Hon Andrew WONG Wang-fat, JP  
Hon Jasper TSANG Yok-sing, JP  
Hon Mrs Miriam LAU Kin-yee, JP  
Hon Ambrose LAU Hon-chuen, JP  
Hon Emily LAU Wai-hing, JP  
Hon CHOY So-yuk

(Total : 8 Members)

**Clerk** Mrs Percy MA

**Legal Adviser** Mr Stephen LAM

**Date** 29 November 2000