

**Paper for the Bills Committee on Statute Law (Miscellaneous Provisions) Bill 2001  
Briefing by the Legal Service Division**

<b>Parts</b>	<b>Objects</b>	<b>Issues for Discussion</b>
Part I (clauses 1, 2) General	commencement section 7 : 17 February 1997 (compensation order) section 102(b) : 1 July 1997 (reference to "立法會") section 130 : 26 May 2000 (Agricultural, Fisheries and Conservation Department) remaining sections : on the day of publication in the Gazette	<ul style="list-style-type: none"> <li>• reason for selecting 17 February 1997 as the commencement date for section 7. The Costs in Criminal Cases Ordinance (Cap. 492) commenced on 17 January 1997</li> </ul>
Part II (clauses 3 to 5) Amendments consequential to repeal of certain provisions of Magistrates Ordinance	to amend the Employees Compensation Assistance Ordinance (Cap. 365), the Kowloon-Canton Railway Corporation Ordinance (Cap. 372) and the Protection of Wages on Insolvency Ordinance (Cap. 380) to remove a reference to section 8(1B) of the Magistrates Ordinance (Cap. 227) which was repealed in 1992.	
Part III (clauses 6, 7) Enforcement of compensation order	to amend the Criminal Procedure Ordinance (Cap. 221) to clarify the mechanism for enforcing compensation orders made under section 73 of that Ordinance.	<ul style="list-style-type: none"> <li>• certain differences between the proposed mechanism and that provided in the repealed section 72 of the Criminal Procedure Ordinance (Cap. 221)</li> <li>• review section 73(5)</li> </ul>
Part IV (clauses 8 to 10) Power of Court of Appeal and Appeal Committee to award costs	to amend the Hong Kong Court of Final Appeal Ordinance (Cap. 484) to empower the Appeal Committee to award costs when it refuses an application for leave to appeal to the Court of Final Appeal. The Costs in Criminal Cases Ordinance (Cap. 492) is also amended to empower the Court of Appeal to award costs in an appeal to the Court of Appeal by way of case stated under section 84 of the District Court Ordinance (Cap. 336).	

<b>Parts</b>	<b>Objects</b>	<b>Issues for Discussion</b>
Part V (clauses 11 to 17) Marital rape and related sexual offences	to amend the Crimes Ordinance (Cap. 200) to clarify that marital rape is an offence and to make consequential amendments.	• please refer to Annex A
Part VI (clause 18) Consideration of bail applications	to amend the Fugitive Offenders Ordinance (Cap. 503) to ensure that the courts will adopt the same approach in deciding whether to grant bail to fugitive offenders.	
Part VII (clause 19) Power of court to order repayment of deposit	to amend the Conveyancing and Property Ordinance (Cap. 219) to empower the court to order repayment of a deposit in an action for its return or where the court refuses to grant specific performance of a contract. Exclusion of the court's jurisdiction in this respect by contract is not permitted.	• please refer to Annex B
Part VIII (clauses 20, 21) Amendment of Administrative Appeals Board Ordinance	to amend the Administrative Appeal Board Ordinance (Cap. 442)— (a) to recast the wording of section 9 of that Ordinance so that the scope of appellants is determined by reference to the legislation providing for such appeal; (b) to remove the time limit within which appeals are to be made as specified in the Schedule to that Ordinance so as to remove the inconsistency with the time limit specified in that section 9; and (c) to update that Schedule.	
Part IX (clauses 22 to 34) Change of name and widening the powers of the Hong Kong Examinations Authority	to amend the Hong Kong Examinations Authority Ordinance (Cap. 261) to provide for the change of name of The Hong Kong Examination Authority to The Hong Kong Examinations and Assessment Authority and the widening of its powers to include planning and conducting assessments.	• need for transitional provision (clause 32)

<b>Parts</b>	<b>Objects</b>	<b>Issues for Discussion</b>
Part X (clauses 35 to 49) "Non-immunity" clauses	to amend the "non-immunity" clauses in 15 Ordinances to provide that the relevant organizations are not servants or agents of the Government and do not enjoy any immunity or privilege of the Government.	<ul style="list-style-type: none"> <li>• amendment of section 2 of Schedule 1 to the Occupational Deafness (Compensation) Ordinance (Cap. 469)</li> <li>• construction of the word "Crown" on and after 1 July 1997</li> <li>• report of the Bills Committee on the Adaptation of Laws (No. 16) Bill 1999 at Annex C</li> </ul>
Part XI (clauses 50 to 89) Miscellaneous amendments to ordinances relating to tertiary institutions	to amend 7 Ordinances relating to tertiary institutions to provide for a change in the job titles of some of the officers of the institutions, streamline the procedures for appointment of certain categories of Council members of the institutions by transferring the appointment authority from the Chief Executive to the relevant Council, and provide for cessation of Council membership for specified categories of Council members under specified circumstances.	<ul style="list-style-type: none"> <li>• committee stage amendment - replace "from among their member" with "from among their number"</li> </ul>
Part XII (clauses 90 to 99) Repeal of legislation relating to Kai Tak Airport	to repeal legislation relating to the Kai Tak Airport.	
Part XIII (clauses 100 to 103) Subsidiary legislation deemed laid before Legislative Council	to deem the Form of Warrant (To Compel Attendance) Order (G.N. 5975 of 1996) to have been laid on the table of the Legislative Council in accordance with the requirements of section 34(1) of the Interpretation and General Clauses Ordinance (Cap. 1)	

<b>Parts</b>	<b>Objects</b>	<b>Issues for Discussion</b>
<p>Part XIV (clauses 104 to 126) Amendments to Legal Practitioners Ordinance</p>	<p>to amend the Legal Practitioners Ordinance (Cap. 159) and its subsidiary legislation—</p> <p>(a) to provide for the disposal of complaints by the Tribunal Convenor of the Solicitors Disciplinary Tribunal Panel;</p> <p>(b) to transfer the powers of the Chief Justice to prescribe grounds for refusal to issue a practising certificate and conditions that may be attached to a practising certificate to the Council of The Law Society of Hong Kong ("the Law Society");</p> <p>(c) to transfer certain powers of the Chief Justice to the Chief Judge so that the day to day administration of regulating admissions and de-registration is relinquished to the Chief Judge;</p> <p>(d) to empower the Chief Justice (Chief Judge after the transfer of powers) to remit a matter to the Law Society or the Society of Notaries for reconsideration in an appeal against the decision of the Society concerned regarding the issue of, or attachment of conditions to, practising certificates; and</p> <p>(e) to clarify that, for the purposes of section 7 of that Ordinance, only the solicitors to whom the Solicitors (Professional Indemnity) Rules (Cap. 159 sub. leg.) apply need to comply with those Rules.</p>	<ul style="list-style-type: none"> <li>• choice of the Tribunal Convenor not restricted to solicitors on the Solicitors Disciplinary Tribunal Panel</li> <li>• similar method of disposal of complaints for barristers and notaries public</li> <li>• Committee Stage amendments               <ul style="list-style-type: none"> <li>- section 40A(4) : replace "Chief Justice" with "Chief Judge";</li> <li>- section 40E(6) : transfer powers of the Chief Justice to the Society of Notaries</li> <li>- section 40D</li> </ul> </li> <li>• background information at Annex D</li> </ul>
<p>Part XV (clauses 127 to 131 and Schedule) Miscellaneous amendments</p>	<p>to make miscellaneous amendments of a technical nature.</p>	

Encl

Prepared by

Legal Service Division  
Legislative Council Secretariat  
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**Part V**  
**Marital Rape and Related Sexual Offences**

**A. Marital Rape**

1. Reg v R [1991] 4 All ER 481

House of Lords : A husband may be guilty of rape of his wife if, in the circumstances of the case, the wife does not consent to sexual intercourse. The word "unlawful" in the definition of rape in section 1(1) of the Sexual Offences (Amendment) Act 1976 is to be treated as mere surplusage and not as meaning "outside marriage".

2. Section 1(1) of the 1976 Act was repealed in 1994 and the new provision refers to "sexual intercourse". The omission of the word "unlawful" makes clear Parliament's adoption of the House of Lords' decision.

3. Clause 12 of the Bill seeks to amend section 118 of Cap.200 by repealing "unlawful" and declaring that "sexual intercourse" includes sexual intercourse between a husband and a wife.

*Issue identified : Is it possible to limit the amendment to section 118 eg. to clarify that "unlawful sexual intercourse" in that section includes non-consensual marital intercourse?*

**B. Definition of unlawful sexual intercourse and consent**

4. Clause 11 of the Bill proposes to amend section 117 of the Crimes Ordinance (Cap. 200) :

- (a) to provide that the reference to "unlawful sexual intercourse" in Part XII of that Ordinance includes non-consensual marital intercourse;
- (b) to provide for the meaning of "consent" in relation to sexual and related offences.

*Issue identified : a non-exhaustive definition may not be desirable in the absence of a general review of the law relating to sexual offences.*

***C. Consequential amendments to offences relating to unlawful sexual act***

5. *HKSAR v Chan Wing Hung* [1997] 3 HKC 472

HK Court of Appeal: "Unlawful" in section 119 of the Crimes Ordinance (procurement by threats) means illicit. In the context of "unlawful sexual act", this means intercourse outside marriage.

6. The term "unlawful sexual act" is not used in the Sexual Offences Act 1956. In the UK, sections similar to our section 119 (procurement by threats), section 120 (procurement by false pretences) have been amended in 1994 by repealing "unlawful" in the context of unlawful sexual intercourse. The section similar to our section 121 (administering drugs to obtain or facilitate unlawful sexual act) however has not been amended.

7. Clauses 13, 14 and 15 of the Bill respectively seek to amend sections 119, 120 and 121 by adding "marital intercourse" after "unlawful sexual act".

*Issue identified : The Administration should be asked to clarify the implication of the amendments. If "unlawful sexual act" in these sections means sexual act outside the bonds of marriage, would it be inconsistent with the definition of "unlawful sexual act" in section 117 (one of the "unlawful sexual act" being "unlawful sexual intercourse" which includes non-consensual marital sexual intercourse)?*

***D. Consequential amendments to offences where marriage is a defence***

8. Clause 16 of the Bill seeks to amend section 124 concerning intercourse with girl under 16. It is proposed that a husband shall not be guilty of an offence under section 124 if the girl consents to the intercourse and he believes her to be his wife and has reasonable cause for the belief.

9. Clause 17 of the Bill seeks to amend section 146 concerning indecent conduct towards child under 16. It is proposed that a person who commits an act of gross indecency with or towards a child or who incites a child to commit an act of gross indecency with or towards him or her is not guilty of an offence under section 146 if—

- (a) that person is, or believes on reasonable grounds that he or she is married to the child; and
- (b) the child consents to the act of gross indecency.

10. R v Kowalski [1988] 1 FLR 447

UK Court of Appeal : A man may be guilty of indecent assault upon his wife if there is no consent.

*Issue identified : Does section 122 need to be amended? Under section 122(3), a person is not guilty of indecently assaulting another person, if that person is, or believes on reasonable grounds that he or she is, married to that other person.*

***E. Other sexual offences***

11. In the UK, sections similar to section 123 (intercourse with girl under 13) and section 125 (intercourse with mentally incapacitated person) have not been amended. Neither section 123 nor 125 is proposed to be amended under the Bill.

*Issue identified : The Administration should be asked to clarify the rationale for not proposing amendments. Does the term "unlawful sexual intercourse" in these two sections mean outside the bonds of marriage so that the offence does not apply to married couples, or is it the policy that marriage should not be a defence, or that a girl under 13 or a mentally incapacitated person cannot give consent?*

12. The Administration has confirmed that section 118A relating to non-consensual buggery applies within marriage.

***F. Conviction of offences other than that charged***

13. The Administration has also confirmed that no consequential amendment to the Schedule is necessary.

**Part VII**  
**Power of Court to order repayment of deposit**

1. Clause 19 of the Bill proposes to add section 12(1A) to the Conveyancing and Property Ordinance (Cap. 219) to empower the court to order the repayment of any deposit, if it thinks fit, where it refuses to grant specific performance of a contract or in any action for the return of a deposit.

2. The proposed amendment is based on section 49(2) of the Law of Property Act, 1925. Paragraph 19 of the LegCo Brief states that the courts in New South Wales, Australia have an identical power. Certain differences are noted after comparing the text of section 55 of the New South Wales Conveyancing Act 1919 ("NSW Act") (see Appendix) with section 49(2) of the Law of Property Act, 1925.

***Specific provisions***

3. The Administration has been asked :

- (a) to consider including an express provision similar to section 55(1) and (2) of the NSW Act where specific performance of a contract would not be enforced against the purchaser by the court by reason of a defect in the vendor's title;
- (b) whether the court has any power to order repayment of deposit with interest thereon (similar to section 55(2A) of the NSW Act);
- (c) to consider including provision similar to section 55(3) of the NSW Act where the court has the power to declare and enforce a lien on the property in respect of the payment ordered.

4. According to the Administration, it would be contrary to the policy intent to include provisions similar to sections 55(1) and (2) of the NSW Act. The proposed amendment would enable the court to order the return of the deposit as it thinks fit where it refuses to grant specific performance taking all the circumstances into account. To specify particular circumstances under which the return of the deposit should be allowed would tend to fetter the court's discretion.

5. The Administration holds the view that the court will have the discretion to order the return of a deposit with interest if it considers it just to do so. The proposed section 12(1A) which permits the court to order the repayment of any deposit, needs to be read in conjunction with the existing section 12(1). The

inclusion of an express provision that the court may award interest is therefore not considered necessary. As the court will have the discretion to make such order as it thinks just, the inclusion of an express provision similar to section 55(3) of the NSW Act is not considered to be necessary.

*Issue identified : Would a specific provision override a general provision so that section 12(1) cannot be relied on for the court to award interest or to declare and enforce a lien on the property?*

**Transitional provision**

6. The Administration has also been asked to assess the need for a transitional provision in relation to applications made to the court under section 12 of the Conveyancing and Property Ordinance (Cap. 219) prior to the commencement of the amendment.

7. The Administration considers that there is no need for such transitional provision to be included in the Bill. The court will have the power to order the return of a deposit in current proceedings as soon as the amendment commences.

## **CONVEYANCING ACT 1919 - SECT 55**

### 55 Right of purchaser to recover deposit etc

(1) In every case where specific performance of a contract would not be enforced against the purchaser by the Court by reason of a defect in the vendor's title, but the purchaser is not entitled to rescind the contract, the purchaser shall nevertheless be entitled to recover his or her deposit and any instalments of purchase money he or she has paid, and to be relieved from all liability under the contract whether at law or in equity, unless the contract discloses such defect and contains a stipulation precluding the purchaser from objecting thereto.

(2) If such undisclosed defect is one which is known or ought to have been known to the vendor at the date of the contract the purchaser shall in addition be entitled to recover his or her expenses of investigating the title.

(2A) In every case where the court refuses to grant specific performance of a contract, or in any proceeding for the return of a deposit, the court may, if it thinks fit, order the repayment of any deposit with or without interest thereon.

(3) On the application of the purchaser the Court may order payment under this section and declare and enforce a lien in respect thereof on the property the subject of the contract.

(4) This section applies only to contracts made after the commencement of this Act and shall have effect notwithstanding any stipulation to the contrary.

(5) This section applies to land under the provisions of the Real Property Act 1900. \_

Part X "Non-immunity" clauses

立法會

*Legislative Council*

LC Paper No. CB(2)2216/99-00

Ref : CB2/BC/26/98

**Paper for the House Committee meeting  
on 9 June 2000  
Report of the Bills Committee on  
Adaptation of Laws (No. 16) Bill 1999**

**Purpose**

This paper reports on the deliberations of the Bill Committee on Adaptation of Laws (No. 16) Bill 1999 and seeks Members' support for the Second Reading debate on the Bill to be resumed.

**The Bill**

2. The Bill seeks to adapt 13 Ordinances and their subsidiary legislation relating to hospitals, clinics, mental health and other health-related matters 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. The House Committee agreed at its meeting on 25 June 1999 to form a Bills Committee to study the Bill. The Bills Committee first met on 20 January 2000 and Hon Margaret NG was elected Chairman. The membership of the Bills Committee is in **Appendix I**. The Bills committee has held two meetings with the Administration.

**Deliberations of the Bills Committee**

4. Members note that most of the amendments proposed in the Bill are straightforward adaptations. However, they consider the proposed adaptation of the word "Crown" to "State" in section 18 of the Hong Kong Council on Smoking and Health Ordinance (Cap. 389) and in section 19 of the Prince Philip Dental Hospital

Ordinance (Cap. 1081) inappropriate in the context of the respective provisions.

The non-immunity provisions

*Discrepancies noted by the Bills Committee*

5. The two provisions, which are similar in nature, stipulate that the Hong Kong Council on Smoking and Health / the Board of Governors of the Prince Philip Dental Hospital is not the servant or agent of the Crown and does not enjoy any status, immunity or privilege of the Crown. Members note that the Hospital Authority Ordinance (Cap. 113) has the same provision but the word used is "Government" and not "State". In view of the discrepancies found, the Bills Committee has requested the Administration to explain the criteria and purpose of such non-immunity provisions as well as the reason for and the effect of adapting different terms in the ordinances in question.

*Purpose of and criteria for such provisions*

6. The Administration explains that such non-immunity provisions are typically included in an ordinance if the ordinance establishes a new corporation or other body that is empowered to perform a public function, and it is intended that it should operate as an independent body and without the benefit of "Crown" status. They are included for the purpose of removing any doubt as regards the body's legal status. They make it clear that the body is to be treated in law as an ordinary private body and is not entitled to share in any of the privileges or immunities of the "Crown". Such immunities include the general immunity from statute provided for by section 66 of the Interpretation and General Clauses Ordinance (Cap. 1), immunity from taxation, immunity from criminal law, and immunity from injunctions.

7. As regards the criteria for determining when such provisions should be included in an ordinance, the Administration advises that there are no hard and fast rules, but there are a number of questions which might usefully be asked to help determine whether such a provision should be included: Does the body established by the ordinance perform a public or semi-public function? Does the Governor (Chief Executive) appoint any of its directors or members? Is it answerable to the Government for the conduct of its operations? Are its operations controlled by the Government through share holdings or other means? Is it publicly funded? Does it carry out policies determined by the Government? If it is intended that the body should not enjoy Crown status, then a positive answer to any of the above questions

would suggest that it would be helpful to include a non-immunity provision in the relevant ordinance.

*The proposed adaptation*

8. In the Administration's view, the proposed adaptation of the references to "Crown" in section 18 of Cap. 389 and section 19 of Cap. 1081 to "State" best gives effect to the principle of the Adaptation of Laws Programme that each provision "should as far as possible, be to the same legal effect after its adaptation as before". The term "Crown" has a broader meaning and the Administration believes that it should be replaced by a term that is roughly equivalent in meaning. It considers that the most suitable term in this context is "State". The Administration also considers that the proposed adaptation is consistent with the adaptation of "Crown" to "State" in section 66 of Cap. 1.

*The adoption of different terms in different ordinances*

9. As regards the use of the term "Government" in the non-immunity provisions of some other ordinances, the Administration admits it is difficult to explain the difference. However, since the various provisions were enacted at different times, the use of different terminology may reflect a different policy intention or different legislative practice.

10. The Administration acknowledges that the non-immunity provisions which use the term "Government" are not consistent with the provisions which use the term "Crown". However, it would involve a matter of law reform if these provisions were to be amended to make all of them consistent as such amendments lie beyond the scope of the Adaptation of Laws Programme.

The Bills Committee's views

11. Members note that during the colonial days, the term "Crown" used in ordinances carried two different meanings, namely, "in the right of Her Majesty's Government" and "in the right of the Hong Kong Government". In the Adaptation of Laws Programme, the former should be adapted to "State" while the latter should be adapted to "Government". They share the view that adaptation of "Crown" to "State" or "Government" should depend upon the nature of the bodies and the context of the provisions concerned.

12. Members have examined the two lists of the statutory bodies which use the terms "Crown" and "Government" respectively. It appears from this examination that the reason for the different terminology used is because the various provisions were enacted at different times. Those in the list using the word "Government" were enacted closer to 1997, whereas those in the list using the word "Crown" were enacted well before 1997, except for the provision in respect of the Estate Agents Authority in Cap. 511 which only took effect in 1997.

13. While members agree to the policy that statutory bodies such as the Hong Kong Council on Smoking and Health and the Board of the Governors of the Prince Philip Dental Hospital should not be given immunity under section 66 of Cap. 1, they disagree with the proposed adaptation of the term "Crown" to "State". They consider that "Government" is the more appropriate term in the context of the two provisions since there is no question that the two bodies concerned could be regarded as part of the "State" under the categories listed in the definition of "State" in Cap. 1, other than the category of the Government of Hong Kong Special Administrative Region. The definition is set out in **Appendix II**.

#### The Administration's proposals

14. After consulting the other bureaux which intend to introduce similar adaptation to other relevant ordinances, the Health and Welfare Bureau has informed members that it fully appreciates the Bills Committee's view. However, adapting "Crown" to "Government" in these situations is inappropriate because it is beyond the ambit of the Adaptation of Laws Programme as explained by the Administration earlier in response to the Bills Committee's questions.

15. To take forward members' suggestion, the Administration proposes to take out the adaptation proposals of the two non-immunity provisions from the Bill, and introduce legislative amendments to revise "Crown" to "Government" in the two provisions in a separate legislative exercise in the coming session in 2000-01. It believes that this approach would be able to address members' concern without changing the scope of the Adaptation of Laws Programme.

16. The Bills Committee accepts the proposed approach.

17. Members note that this is the first time a Bills Committee has encountered the adaptation of "servant or agent of the Crown" in non-immunity provisions of statutory bodies in the Adaptation of Laws Programme. Nine other bills

requiring similar adaptation are awaiting resumption of the Second Reading debate pending the decision of this Bills Committee.

### **Committee Stage amendments (CSAs)**

18. The Administration will move CSAs to Schedules 11 and 13 of the Bill to repeal the amendments to section 18 of the Hong Kong Council on Smoking and Health Ordinance (Cap. 389) and section 19 of the Prince Philip Dental Hospital Ordinance (Cap. 1081) respectively. It will also move two technical amendments to Schedule 10 in respect of the Smoking (Public Health) Ordinance (Cap. 371). The draft CSAs are in **Appendix III**.

### **Recommendation**

19. The Bills Committee supports the Bill and the CSAs referred to in paragraph 18 above and recommends that the Second Reading debate on the Bill be resumed on 26 June 2000.

### **Advice sought**

20. Members are invited to note the recommendation in paragraph 19 above.

Legislative Council Secretariat

7 June 2000

**Bills Committee on  
Adaptation of Laws (No. 16) Bill 1999**

**Membership List**

Hon Margaret NG (Chairman)

Hon Cyd HO Sau-lan

Hon James TO Kun-sun

Hon Andrew WONG Wang-fat, JP

Hon Jasper TSANG Yok-sing, JP

Hon CHOY SO-yuk

Total : 6 members

Legislative Council Secretariat

26 January 2000

## Appendix II

"State" ("國家") includes only -

- (a) the President of the People's Republic of China;
- (b) the Central People's Government;
- (c) the Government of the Hong Kong Special Administrative Region;
- (d) the Central Authorities of the People's Republic of China that exercise functions for which the Central People's Government has responsibility under the Basic Law;
- (e) subordinate organs of the Central People's Government that -
  - (i) on its behalf, exercise executive functions of the Central People's Government or functions for which the Central People's Government has responsibility under the Basic Law; and
  - (ii) do not exercise commercial functions, when acting within the scope of the delegated authority and the delegated functions of the subordinate organ concerned; and
- (f) subordinate organs of the Central Authorities of the People's Republic of China referred to in paragraph (d), that -
  - (i) on behalf of those Central Authorities, exercise executive functions of the Central People's Government or functions for which the Central People's Government has responsibility under the Basic Law; and
  - (ii) do not exercise commercial functions, when acting within the scope of the delegated authority and the delegated functions of the subordinate organ concerned; (Added 26 of 1998 s. 4)

**Part XIV**  
**Amendments to the Legal Practitioners Ordinance**  
**and its subsidiary legislation**

1. Part XIV of the Bill proposes to amend the Legal Practitioners Ordinance (Cap. 159) and its subsidiary legislation :

- (a) to provide for the disposal of complaints by the Tribunal Convenor of the Solicitors Disciplinary Tribunal Panel (clauses 107 to 110, 116);
- (b) to transfer the powers of the Chief Justice to prescribe grounds for refusal to issue a practising certificate and conditions that may be attached to a practising certificate to the Council of the Law Society (clause 105);
- (c) to empower remittance of a matter to the Law Society or the Society of Notaries for reconsideration in an appeal against the decision of the Society concerned regarding the issue of, or attachment of conditions, to practising certificates (clauses 105 and 126);
- (d) to transfer certain powers of the Chief Justice to the Chief Judge so that the day to day administration of regulating admissions and de-registration is relinquished to the Chief Judge (clauses 104, 105, 111 to 115, 117 to 126);
- (e) to clarify, for the purpose of section 7 of the Ordinance, that only solicitors to whom the Solicitors (Professional Indemnity Rules (Cap. 159 sub. leg.) apply need to comply with those Rules (clause 106).

2. The powers of the Chief Justice transferred to the Chief Judge referred to in paragraph 1(d) above relate to the admissions and de-registration of solicitors, barristers and notaries. As the other proposals mainly relate to solicitors, we have prepared, for Members' reference, a comparison of similar provisions relating to barristers and notaries public.

**Barristers**

2. The Bill does not propose a similar method of disposal of complaints by the Tribunal Convenor of the Barristers Disciplinary Tribunal Panel. Under section 34 of the Ordinance, the Tribunal Convenor is a barrister on the Barristers Disciplinary Tribunal Panel.

3. There is no equivalent provision in the Ordinance for the Chief Justice to prescribe grounds for refusal to issue a practising certificate to a barrister and to prescribe conditions that may be attached to such certificate. Hence, amendment along the lines of clause 105 is not required and the question of an appeal against the decision regarding the issue of, or attachment of conditions, to practising certificates does not arise.

4. There is no need to amend section 31 of the Ordinance in manner similar to the proposed amendment to section 7 because no reference to indemnity has been made in that section.

**Notaries Public**

5. The provisions on the regulation of notaries public are set out in section 3 of the Legal Practitioners (Amendment) Ordinance (27 of 1998) which has not come into operation.

6. The Bill does not propose a similar method of disposal of complaints by the Tribunal Convenor of the Notaries Public Disciplinary Tribunal Panel. Under the new section 40G of the Ordinance, the Tribunal Convenor is a notary public on the Notaries Public Disciplinary Tribunal Panel.

7. The new section 40E(6) is similar to section 6 of the Ordinance in that the Chief Justice may prescribe grounds for refusal to issue a practising certificate to a notary public and to prescribe conditions that may be attached to such certificate. The Administration has agreed to introduce Committee stage amendments to transfer the power to the Council of the Society of Notaries.

8. Amendments to the new section 40E(11) has been proposed in clause 126 of the Bill along the same line as Clause 105 in relation to an appeal against the decision regarding the issue of, or attachment of conditions, to practising certificates.

9. The new section 40D of the Ordinance is similar to section 7. The Administration may need to consider amendments along the line of Clause 106.

10. The Administration has agreed to introduce Committee stage amendments to the new section 40A(4) of the Ordinance to repeal "Chief Justice" and substituting "Chief Judge".