

律政司
法律政策科
香港金鐘道 66 號
金鐘道政府合署高座 1 樓
圖文傳真：852-2180 9928



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Legal Policy Division
1/F., High Block
Queensway Government Offices
66 Queensway, Hong Kong

Fax: 852-2180 9928

本司檔號 Our Ref.: LP 3/00/8C
來函檔號 Your Ref.: CB2/BC/24/00
電話號碼 Tel. No.: 2867 2157

8 May, 2002

Mr Paul Woo,
Clerk to Bills Committee,
Legislative Council Secretariat,
Legislative Council Building,
8 Jackson Road,
Central,
Hong Kong.

By Fax: 2509 9055

Dear Mr Woo,

Bills Committee on Statute Law (Miscellaneous Provisions) Bill 2001

Thank you for your letter of 3 May 2002 raising questions in connection with the above. The Administration is still awaiting advice on items (a) to (d) of the questions raised in relation to Part XI of the Bill (Miscellaneous Amendments to Ordinances relating to Tertiary Institutions). The Administration's replies to questions (e) to (i) are set out below.

Part XV of the Bill (Miscellaneous Amendments)

Clause 130

- (e) *to advise why the references to "Crown", "Her Majesty's Government" and "Her Majesty's Forces" in section 3 of the Firearms and Ammunition Ordinance are retained;*

The references to "Crown", "Her Majesty's Government" and "Her Majesty's Forces" in section 3 of the Firearms and Ammunition Ordinance will be replaced by way of adaptation in a Bill to deal with the garrison and military matters.

- (f) *to explain why clause 130 shall be deemed to have come into operation on 26 May 2000;*

The inclusion of section 3(b)(viii) of the Firearms and Ammunition Ordinance (Cap. 238) (i.e. the reference to the Agriculture and Fisheries Department) was dealt with under the Firearms and Ammunition (Amendment) Bill 1999. The Bill was passed by the Legislative Council on 24 February 2000 and became effective on 26 May 2000.

The Agriculture and Fisheries Department was renamed as Agriculture, Fisheries and Conservation Department on 1 January 2000, but the reference to the Agriculture and Fisheries Department in the Firearms and Ammunition (Amendment) Bill 1999 was not revised before the Bill became effective.

The amendment proposal under clause 130 of the Statute Law (Miscellaneous Provisions) Bill 2001 to replace “Agriculture and Fisheries” by “Agriculture, Fisheries and Conservation” will have to be effective from 26 May 2000 in order to be consistent with the date of enactment of the Firearms and Ammunition (Amendment) Bill 1999.

Clause 131

- (g) *to explain why Order 93, rule 14 of the Rules of the High Court should be repealed;*

Order 93, rule 14 of the Rules of the High Court provides for the Court of Appeal to make orders directing the Copyright Tribunal to refer questions of law to the Court of Appeal under section 176 of the Copyright Ordinance (Cap. 528). Section 176 of the Copyright Ordinance, however, provides that an appeal lies on any point of law arising from a decision of the Copyright Tribunal to the Court of First Instance. Order 93, rule 14 of the Rules of the High Court is inconsistent with section 176 of the Copyright Ordinance and should therefore be repealed. The procedure to appeal to the Court of First Instance is provided for in Order 55 of the Rules of the High Court.

- (h) *to explain why in the definition of “Secretary” in section 2 of the Land Drainage Ordinance, “Secretary for Planning and Lands” should be replaced with “Secretary for Works”, and to clarify why a different amendment is proposed under the draft Resolution to effect the transfer of statutory functions to the principal officials under the proposed accountability system;*

The “Secretary” as defined in section 2 of the Land Drainage Ordinance (Cap. 446) had policy responsibility for flood prevention at the time the Land Drainage Ordinance (Cap. 446) was enacted. However, policy responsibility for flood prevention was transferred to the Secretary for Works with effect from 15 August 1998. Amendment is therefore required to reflect the change of policy responsibility.

Retrospective operation of the proposed amendment is not required as the Secretary for Works has not exercised any statutory function as the “Secretary” under the Land Drainage Ordinance to date, and it is not expected that there would be any need for the Secretary for Works to exercise such functions until the effective date of the amendment.

The Administration considers that the amendment exercise under the Statute Law (Miscellaneous Provisions) Bill 2001 will finish shortly, and a different amendment exercise will be required to implement the proposals under the draft Resolution to effect the transfer of statutory functions to the principal officials under the proposed accountability system.

- (i) *to advise whether amendments to section 21(3) of the Eastern Harbour Crossing Ordinance and section 16(3) of the Tate’s Cairn Tunnel Ordinance would be revised if the proposed accountability system for principal officials is implemented.*

The proposals to amend section 21(3) of the Eastern Harbour Crossing Ordinance and section 16(3) of the Tate’s Cairn Tunnel Ordinance under the Bill will have to be revised if the proposed accountability system for principal officials is implemented.

Responses to the letters from Hon Audrey Eu and Mr. Sin Wai-man will be forwarded to you under separate covers. Please note that the Administration is still awaiting advice from the Society of Notaries.

Yours sincerely,

(Michael Scott)
Senior Assistant Solicitor General