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Paper for the House Committee on 18 May 2001

Panel on Administration of Justice and Legal Services

**Applicability of Ordinances to the offices
set up by the Central People's Government in the HKSAR**

Purpose

This paper reports on the deliberations of the Panel on the issue of the applicability of Ordinances to the offices set up by the Central People's Government in the HKSAR (CPG offices).

Background

2. The Reunification has necessitated the adaptation of legislative provisions to reflect the resumption of the exercise of sovereignty and the requirements of the Basic Law. With regard to the applicability of Ordinances to the CPG offices, the adaptation programme has involved the adaptation of specific provisions referring to the "Crown". The purpose of these adaptations has been not to reform the law, but to ensure that the laws previously in force continue to apply appropriately in the new constitutional order.

3. As a related matter, the Administration undertook to review 17 Ordinances which expressly applied to the HKSAR Government but were otherwise silent as to their applicability to the CPG offices, to see if their application should be extended. That exercise was one of reform, rather than adaptation. A list of the 17 Ordinances whose application was reviewed is in **Appendix I**.

4. The Administration informed the Panel in October 1998 that the preliminary results of the review were that, as a matter of policy, 15 of the 17 Ordinances should apply to the CPG offices. The two not included in this announcement were –

- (a) Social Workers Registration Ordinance; and
- (b) Personal Data (Privacy) Ordinance.

The former was found to be of no relevance to either the Government or CPG offices in the HKSAR. The latter involved complicated issues and needed to be carefully examined before the Administration could make any recommendation. The Administration would work out the necessary legislative amendments to the 15 Ordinances.

5. The Administration also undertook to review any Ordinance in respect of its applicability when the need to do so has been identified.

6. The issue was discussed at the Panel meetings on 15 September 1998, 20 October 1998, 2 November 1998 and 25 February 1999. A follow up discussion on the review of applicability of the Personal Data (Privacy) Ordinance was held by the Panel on 16 May 2000. The Panel resolved that the Administration should provide quarterly progress report on the review to members.

Deliberations of the Panel

7. To facilitate members to consider how to proceed with examining the issue of applicability of Ordinances to the CPG offices, the Administration was requested to provide an up-to-date report to the Panel at the meeting on 15 May 2001.

Review of the 17 Ordinances which expressly apply to the Government

15 Ordinances

8. According to the Administration, the Arbitration Ordinance is one of the 15 Ordinances which have been identified as in need of amendment. The Arbitration (Amendment) Bill 1999 introduced into LegCo in 1999 included a provision to extend the application of the Ordinance to cover all persons and organs, including the HKSAR Government and the CPG offices. Having regard to the view of the Bills Committee that the drafting of the proposed new section might not be perfect, it was agreed between the Administration and the Bills Committee that the existing scope of application of the Ordinance should remain unchanged upon enactment of the Bill. The Administration undertook to come up with an appropriate formula to extend the applicability of the Ordinance to CPG offices.

9. As to the remaining 14 Ordinances, the relevant policy bureaux will take matters forward, having regard to the legislative priorities of the relevant policy bureaux and the availability of an agreed formulation of a provision that extends the applicability to cover CPG offices.

Personal Data (Privacy) Ordinance

10. With regard to the Personal Data (Privacy) Ordinance, the Administration has repeated its previous explanations that the review of the Ordinance would need more time because of its complexities and discussions on its applicability are being held with the CPG. The Administration is still awaiting information from the Hong Kong and Macau Affairs Office on the result of their consultation with the relevant authorities.

53 Ordinances that are expressed to bind, or apply to, the "Crown"

11. Of the 53 Ordinances that are expressed to bind, or apply to, the "Crown", the Administration has advised that the relevant provisions in 18 of these Ordinances have already been either wholly or partly adapted. A list of these Ordinances is in **Appendix II**.

36 Ordinances that are applicable to Government in whole or in part (but are silent on their applicability to CPG offices)

12. The Panel notes that when these Ordinances were drafted and enacted, they were intended to apply to the Hong Kong Government but not other aspects of the "Crown". This intention reflects policy decisions. The resumption of the exercise of sovereignty has not affected the scope of application of the Ordinances and does not provide a strong reason for changing the scope of their application. Nevertheless, the Administration has assured members that it will review any Ordinance in respect of its applicability when the need to do so has been identified.

Ordinances which may be applicable to the Government or the CPG offices by necessary implication

13. The Administration has advised that it would be extremely time-consuming and a legally difficult task to consider all sections in hundreds of Ordinances in order to form a view as to whether the "beneficial purpose of the legislation would be wholly frustrated" if the Ordinances were not applicable to the HKSAR Government or CPG offices. It is also not clear what purpose this would serve.

14. The Administration undertakes to review any Ordinance in respect of its applicability when the need to do so has been identified. So far, no such need has been identified in respect of any Ordinance.

Views of the Panel

15 Ordinances that expressly apply to the Government

15. The Panel has expressed grave concern about the progress in amending the 15 Ordinances, given that the Administration has confirmed in October 1998 that

these Ordinances, as a matter of policy, should apply to the CPG offices. Members have requested the Administration to work out an agreed formulation to extend the applicability of the Ordinances to cover CPG offices without further delay. In addition, members consider that the relevant policy bureaux should accord priority to the proposed amendments in the legislative programme.

Personal Data (Privacy) Ordinance

16. Members are dissatisfied with the progress of the review of the Ordinance, particularly the prolonged discussions held with the CPG. Members have suggested that the Administration should bring the matter to the attention of the Chief Executive in order that the matter could be resolved early with the involvement of both sides at a higher level.

53 Ordinances that are expressed to bind, or apply to, the "Crown"

17. Given that only 18 Ordinances have so far been adapted, the Panel urges the Administration to proceed with the adaptation exercise expeditiously.

Advice sought

18. While the Panel would follow up the relevant issues with the Administration, members agree that a report on the matter should be made to the House Committee. Subject to the view of the House Committee, the Panel recommends that the Chairman of the House Committee should convey the views of the Panel as set out in paragraphs 15 - 17 to the Chief Secretary for Administration.

Council Business Division 2
Legislative Council Secretariat
17 May 2001

Appendix I

(A) **17 Ordinances that expressly bind the Government (but are silent on the binding effect on the State organs)**

	<u>Title</u>	<u>Chapter</u>	<u>Section</u>
1	Gas Safety Ordinance	Cap.51	s.3
2	Arbitration Ordinance	Cap.341	s.47
3	Ozone Layer Protection Ordinance	Cap.403	s.18
4	The Legislative Council Commission Ordinance	Cap.443	s.23
5	Dumping at Sea Ordinance	Cap.466	s.3
6	Marine Parks Ordinance	Cap.476	s.28
7	Sex Discrimination Ordinance	Cap.480	s.3
8	Mandatory Provident Fund Schemes Ordinance	Cap.485	s.3
9	Personal Data (Privacy) Ordinance	Cap.486	s.3
10	Disability Discrimination Ordinance	Cap.487	s.5
11	Plant Varieties Protection Ordinance	Cap.490	s.3
12	Environmental Impact Assessment Ordinance	Cap.499	s.3
13	Social Workers Registration Ordinance	Cap.505	s.3
14	Occupational Safety & Health Ordinance	Cap.509	s.5
15	Patents Ordinance	Cap.514	s.151
16	Registered Designs Ordinance	Cap.522	s.4
17	Family Status Discrimination Ordinance	Cap.527	s.3

Appendix II

Ordinance	Cap.
1. Interpretation and General Clauses Ordinance	Cap.1
2. High Court Ordinance	Cap.4
3. Government Rights (Re-entry and Vesting Remedies) Ordinance	Cap 126
4. Foreshore and sea-bed (Reclamations) Ordinance	Cap.127
5. Public Health and Municipal Services Ordinance	Cap.132
6. Country Parks Ordinance	Cap.208
7. Mass Transit Railway (Land Resumption and Related Provisions) Ordinance	Cap 276
8. Mining Ordinance	Cap.285
9. Dangerous Goods Ordinance	Cap.295
10. Air Pollution Control Ordinance	Cap.311
11. Civil Aviation (Aircraft Noise) Ordinance	Cap.312
12. District Court Ordinance	Cap.336
13. Customs and Excise Service Ordinance	Cap.342
14. Limitation Ordinance	Cap.347
15. Trade Descriptions Ordinance	Cap 362
16. Merchant Shipping (Prevention and Control of Pollution) Ordinance	Cap.413
17. Merchant Shipping (Registration) Ordinance	Cap.415
18. Land Drainage Ordinance	Cap.446