

**立法會**  
***Legislative Council***

LC Paper No. LS 136/00-01

**Paper for the House Committee Meeting  
of the Legislative Council  
on 6 July 2001**

**Legal Service Division Report on  
Statute Law (Miscellaneous Provisions) Bill 2001**

**Object of the Bill**

To provide for miscellaneous amendments to various Ordinances.

**LegCo Brief Reference**

2. LegCo Brief File Ref. LP 3/00/8C X issued by the Department of Justice in June 2001.

**Date of First Reading**

3. 4 July 2001.

**Comments**

4. Certain parts of the Bill propose to make miscellaneous technical or minor amendments to existing legislation. These amendments do not involve any change in policy. The remaining parts of the Bill contain provisions introducing various law reforms, and those that may be of greater interest to Members are highlighted below.

**Marital Rape (Part V)**

5. The main purpose of Part V of the Bill is to clarify the law on marital rape. The Administration proposes to delete the word "unlawful" from "unlawful sexual intercourse" in the offence of rape, define the term "unlawful sexual intercourse" in Part XII of the Crimes Ordinance (Cap. 200) to include non-consensual marital intercourse, and makes consequential amendments to provisions that contain

references to "unlawful sexual intercourse" or "unlawful sexual act".

6. Under the Bill, amendments are proposed to the offences of procurement by threats, procurement by false pretences, administering drugs to obtain or facilitate unlawful sexual act, intercourse with girl under 16 and indecent conduct towards child under 16. The Bill does not, however, propose to amend the offences of unlawful sexual intercourse with girl under 13 and unlawful sexual intercourse with mentally incapacitated person.

7. At the meeting of the LegCo Panel on Administration of Justice and Legal Services ("AJLS Panel") on 26 April 2001, Panel members emphasized the need to carry out a review of the implications of the proposed amendments on every sexual and related offence contained in Part XII of the Ordinance. The Administration has provided a supplemental paper to the AJLS Panel circulated under LC Paper No. CB(2)1966/00-01(01) on 28 June 2001 explaining the effect of the amendments proposed under the Bill and the policy reasons for them. However, the Administration has not clarified its policy in respect of those sexual and related offences in Part XII of the Ordinance to which no amendment has been proposed.

#### Repayment of deposit (Part VII)

8. Part VII of the Bill amends 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. The amendment was prompted by comments made by Godfrey JA in the case of *Wu Wing Kuen v Leung Kwai Lin Cindy* [1999] 4 HKC 565 to the effect that the court ought to have such a discretion where the purchaser was not at fault and it would be unfair for the vendor to retain the deposit.

9. The matter has been discussed at the AJLS Panel but there was no consensus among Members. It is advisable that Members take a closer look at the policy aspect of the proposal.

#### Non-immunity provisions (Part X)

10. Part X of the Bill amends 15 Ordinances relating to the establishment of organizations that perform public or semi-public functions to the effect that these statutory bodies are not servants or agents of the Government and do not enjoy any immunity or privilege of the Government.

11. The amendment is made in response to the suggestion by the Bills Committee on Adaptation of Laws (No. 16) Bill 1999 in the session 1999-2000. The original proposal of the Administration under the Adaptation of Laws Programme then was to adapt the non-immunity provisions in various Ordinances by repealing the

references to "servants or agents of the Crown" and "immunity or privilege of the Crown" and substituting "servants or agents of the State" and "immunity or privilege of the State" respectively. Following discussion with the Bills Committee, the Administration agreed to withhold the relevant adaptation and to introduce legislative amendments replacing references to "Crown" with "Government" in a separate exercise.

12. Under the present Bill, the proposed amendments under Part X would come into operation on the day on which the Bill is published in the Gazette as an Ordinance. In the previous adaptation bills, the amendments proposed would be deemed to have come into operation on 1 July 1997, subject to Article 12 of the Hong Kong Bill of Rights set out in Part II of the Hong Kong Bill of Rights Ordinance (Cap. 383).

#### Legal Practitioners Ordinance (Part XIV)

13. Part XIV of the Bill amends the Legal Practitioners Ordinance (Cap. 159) and its subsidiary legislation mainly -

- (a) to provide for the disposal of complaints by the Tribunal Convenor of the Solicitors Disciplinary Tribunal Panel by imposing a fixed penalty on a solicitor who admits liability for the breach of a prescribed provision, practice direction or principle of professional conduct;
- (b) to transfer to the Council of the Law Society the powers of the Chief Justice to prescribe grounds for refusal to issue a practising certificate and conditions that may be attached thereto.

14. At present, the Ordinance provides where the Council of the Law Society considers that the conduct of a solicitor, foreign lawyer, trainee solicitor or an employee of a solicitor or foreign lawyer should be enquired into or investigated as a result of a complaint being made, the Council may submit the matter to the Tribunal Convenor. The Bill proposes an alternative to a full hearing by way of a fixed penalty where the Council considers that the matter is suitable to be so disposed of, taking into account (a) whether the alleged breach is deliberate; (b) the gravity of the alleged breach; and (c) any other factor it considers relevant. There is no mention in the LegCo Brief of any consultation being conducted.

#### **Public Consultation**

15. It is not clear from the LegCo Brief whether public consultation has been carried out.

## **Consultation with the LegCo Panel**

16. The AJLS Panel has been consulted on the issues of marital rape and repayment of deposit referred to in paragraphs 5 to 9 above.

## **Conclusion**

17. Owing to the large number of amendments, the Legal Service Division is still scrutinizing the legal and drafting aspects of the Bill. Members may wish to consider setting up a Bills Committee to study the Bill in detail, in particular the proposed reforms mentioned above.

Prepared by

Wong Sze-man, Bernice  
Assistant Legal Adviser  
Legislative Council Secretariat  
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