

立法會
Legislative Council

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Panel on Administration of Justice and Legal Services

Background Paper prepared by Legislative Council Secretariat

**Applicability of Ordinances to the offices set up by the Central People's
Government in the Hong Kong Special Administrative Region**

This paper sets out the information sought from the Administration concerning the above subject by the Panel and the House Committee.

2. After the Panel meeting on 15 May 2001, the Administration was requested to provide the following information to the Panel on 26 June 2001 -

- (a) The Constitutional Affairs Bureau was requested to advise on the implications, if any, arising from the delay in extending the applicability of each of the 16 Ordinances (including the Personal Data (Privacy) Ordinance) to cover the Central People's Government (CPG) offices in the Hong Kong Special Administrative Region (HKSAR).
- (b) The Department of Justice was requested to advise on the following -
 - (i) when was the Drafting Instructions to introduce a provision to extend the application of the Arbitration Ordinance to cover CPG offices received by the Department;
 - (ii) progress on the drafting of the formulation;
 - (iii) the difficulties encountered in drafting the formulation;
 - (iv) whether the drafting work has commenced in respect of the remaining 14 Ordinances; and
 - (v) progress of work regarding the adaptation of references to "Her Majesty's forces" and other military references and the Crown Proceedings Ordinance (Cap 300).

3. The Panel made a report to the House Committee on 18 May 2001. The matter was subsequently raised with the Acting Chief Secretary for Administration and the Chief Secretary for Administration on 21, 28 May, 4 June and 11 June 2001.

4. The House Committee has agreed that the Administration should be requested to respond to the following specific questions in its report to the Panel on 26 June 2001 -

15 relevant Ordinances that expressly apply to the Government

- (a) what exactly was the Central Government consulted on ?
- (b) when did such consultation(s) take place?
- (c) why are the issues involved complex?
- (d) what technical problems have been encountered by the Administration in the exercise?

Review of the Personal Data (Privacy) Ordinance

- (e) what problems have been encountered by the Administration in the review?

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

- (f) what is the timetable for adapting the relevant provisions of these Ordinances?

5. Extracts of the House Committee meetings on 25 May, 1 June, 8 June and 15 June 2001 are attached in **Appendices I - IV**.

Legislative Council Secretariat
22 June 2001

**Extract from Minutes of House Committee Meeting
of the Legislative Council held on 25 May 2001**

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II. Matters arising

Report by the Chairman on her meeting with the Chief Secretary for Administration

Report of the Panel on Administration of Justice and Legal Services on the applicability of Ordinances to the offices set up by the Central People's Government in the Hong Kong Special Administrative Region

2. The Deputy Chairman said that he had conveyed Members' views to Acting Chief Secretary for Administration (Ag CS), Mr Michael SUEN. Ag CS had responded that the issues involved were complex and the Administration had encountered technical difficulties in the exercise. The Department of Justice was considering how the provisions should be drafted, and that the Central People's Government (CPG) would have to be consulted. The Deputy Chairman further said that Ag CS had emphasized that the offices set up by CPG were not above the law.

3. As regards the review of the Personal Data (Privacy) Ordinance, the Deputy Chairman informed Members that he had asked that the matter be brought to the attention of the Chief Executive (CE) in order that the matter could be resolved early with the involvement of both sides at a higher level. Ag CS had responded that he would bring the matter to CE's attention. He also explained that the Administration was still sorting out a few problems, and that the Administration would expedite action.

4. Regarding the adaptation exercise of the remaining Ordinances that had provisions about applicability to the "Crown", the Deputy Chairman said that Ag CS had promised to co-ordinate and expedite.

5. Miss Margaret NG said that the Administration should provide a time-table for the adaptation of the Ordinances concerned. As regards the 15 Ordinances which the Administration had confirmed in 1998 that they should apply to CPG offices, Miss NG pointed out that the matter had dragged on for nearly four years. The Administration should explain why the issues involved were complex and why the Administration was taking such a long time to work out an agreed formulation to extend the applicability of the Ordinances to cover CPG offices.

6. Miss Margaret NG further said that the Administration should also explain what problems had been encountered by the Administration in the review of the Personal Data (Privacy) Ordinance.

7. Ms Emily LAU said that there was a limit to Members' patience and tolerance, and that Members could not wait indefinitely for a response from the Administration. She proposed that the matter should be raised with CS again. If a satisfactory answer was not provided by the Administration within two to three weeks, the House Committee should ask the Chairman to move a motion on the matter for debate in Council.

8. Miss Margaret NG said that the Panel on Administration of Justice and Legal Services would also follow up the matter.

9. The Deputy Chairman undertook to convey Members' views to CS again. He said that he would also inform CS that the House Committee would discuss Ms Emily LAU's proposal of holding a motion debate on the matter if the Administration did not provide a satisfactory response within these two weeks.

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**Extract from Minutes of House Committee Meeting
of the Legislative Council held on 1 June 2001**

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II. Matters arising

Report by the Deputy Chairman on his meeting with the Acting Chief Secretary for Administration (Ag CS)

Report of the Panel on Administration of Justice and Legal Services (AJLS Panel) on the applicability of ordinances to the offices set up by the Central People's Government (CPG) in the Hong Kong Special Administrative Region (HKSAR)

2. The Deputy Chairman said that he had conveyed to Ag CS, Mr Michael SUEN, Members' dissatisfaction with the slow progress of the action taken to adapt the laws of Hong Kong to apply them to CPG offices in the HKSAR. He had also informed Ag CS that if the Administration did not provide a satisfactory answer within the next two weeks, Members would consider holding a motion debate on the matter.

3. The Deputy Chairman further said that Ag CS had responded that a proposal on how to amend the 15 relevant Ordinances to apply them to the CPG offices in Hong Kong had been forwarded to the Central Government. The HKSAR Government was still awaiting a response. Ag CS also advised that the AJLS Panel would discuss the matter again at its next regular meeting on 26 June 2001, and that the Administration would report to the Panel the progress on the amendment of these 15 Ordinances and the other related issues in detail.

4. The Deputy Chairman invited Members' views on whether the House Committee should wait until the Administration had reported its progress to the Panel before deciding on the way forward, or whether the matter should be raised with CS despite the fact that the matter had already been raised with Ag CS. The Deputy Chairman also sought Members' views on Ms Emily LAU's proposal of the Chairman of the House Committee moving a motion on the matter for debate in Council.

5. Ms Emily LAU pointed out that the Administration had confirmed in 1998 that the 15 Ordinances concerned should, as a matter of policy, apply to the CPG offices in the HKSAR. She queried why it was necessary for the HKSAR Government to consult the Central Government on how to amend these 15 Ordinances. She also asked when the Central Government was consulted and what Ag CS's response was concerning the progress of the

review of the Personal Data (Privacy) Ordinance. Ms LAU added that holding a motion debate in Council would convey a clear message on the importance of the matter to the Administration.

6. Ms Audrey EU said that the Chairman should raise the matter with CS again. Ms EU pointed out that under Article 22 of the Basic Law, all CPG offices and the personnel of these offices should abide by the laws of the HKSAR. Proposing amendments to the 15 Ordinances to apply them to the CPG offices was clearly a law drafting matter for the HKSAR. She could not see why the Central Government had to be consulted on how the 15 Ordinances concerned should be amended. Miss Margaret NG shared Ms EU's view.

7. While agreeing to Ms Emily LAU's proposal of holding a motion debate in Council, Miss Margaret NG said that the facts of the matter should be ascertained first. Regarding the amendment of the 15 Ordinances concerned, Miss NG pointed out that Ag CS's response was different from the information provided by the Administration to the AJLS Panel. At the Panel meeting on 15 May 2001, the Administration advised members that the relevant policy bureaux would take the matter forward so as to come up with an appropriate formulation to extend the applicability of the Ordinances to the CPG offices. Panel members were not told that a proposal on how to amend the 15 Ordinances had been put forward to the Central Government.

8. Ms Audrey EU and Miss Margaret NG enquired when the proposal on how to amend the 15 Ordinances was forwarded by the HKSAR Government to the Central Government and whether the proposal included the wording of the proposed amendments to the 15 Ordinances. The Deputy Chairman responded that Ag CS had not provided the details of the proposal. As regards the review of the Personal Data (Privacy) Ordinance, the Deputy Chairman said that Ag CS had reiterated that the Administration was still sorting out a few problems. He would raise the matter with CS again.

9. Dr YEUNG Sum expressed support for the matter to be raised with CS again. He further said that it was a cardinal principle that all CPG offices should abide by the laws of the HKSAR. The amendment of the 15 relevant Ordinances was clearly a matter for the HKSAR and there was no need to consult the Central Government. Dr YEUNG added that the AJLS Panel should also follow up the matter.

10. Miss Margaret NG said that it was clear that the Administration had made little progress in the adaptation and amendment of the relevant Ordinances to apply them to the CPG offices, and that Ag CS had failed to provide a satisfactory response to Members' queries. She suggested that the Chairman of the House Committee should proceed to apply for a debate slot.

11. The Deputy Chairman informed Members that the respective deadlines for the submission of applications for the debate slots for the last two Council meetings on 4 July and 11 July 2001 were 14 June and 21 June 2001.

12. Ms Emily LAU suggested that the motion debate should be held on 4 July 2001, as the Agenda for the last meeting on 11 July 2001 was likely to be long. The Deputy Chairman pointed out that the deadline for notice of motions for the Council meeting on 4 July 2001 was 16 June 2001.

13. Mr IP Kwok-him said that if a motion was to be moved by the Chairman of the House Committee on behalf of Members, its wording would have to be agreed to by the House Committee first. As Members were not provided with the wording of the proposed motion, he considered it inappropriate for Members to be asked to take a decision on Ms LAU's proposal at the meeting.

14. Dr YEUNG Sum concurred with Mr IP. Dr YEUNG further said that although he supported the proposal of holding a motion debate on the matter, the proposal should be formally put on the agenda so that Members had prior notice that the matter would be discussed. He suggested that the matter should be considered at the next House Committee meeting on 8 June 2001.

15. Mr James TIEN agreed with Dr YEUNG that the matter should be discussed at the next House Committee meeting.

16. The Deputy Chairman said that the matter would be further considered at the next House Committee meeting on 8 June 2001. Members agreed. To facilitate Members' discussion at the next meeting, Ms Emily LAU suggested that the Secretariat should provide Members with the necessary background information. Miss Margaret NG pointed out that the AJLS Panel had earlier submitted to the House Committee a detailed report concerning the applicability of the laws of Hong Kong to the CPG offices in the HKSAR. Ms LAU said that the report should be re-issued to Members, if necessary. The Deputy Chairman instructed the Secretariat to prepare the draft wording of the proposed motion in consultation with Ms Emily LAU and Miss Margaret NG.

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**Extract from Minutes of House Committee Meeting
of the Legislative Council held on 8 June 2001**

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II. Matters arising

Report by the Deputy Chairman on his meeting with the Chief Secretary for Administration (CS)

Report of the Panel on Administration of Justice and Legal Services (AJLS Panel) on the applicability of Ordinances to the offices set up by the Central People's Government (CPG) in the Hong Kong Special Administrative Region (HKSAR)

2. The Deputy Chairman informed Members that CS had clarified that the CPG had actually agreed in principle to the adaptation proposals regarding the 15 Ordinances concerned, but it was important to get the detailed provisions right. The draft wording of the amendments had been provided to the CPG. The Deputy Chairman further said that CS had conceded that the Administration could have accorded the matter higher priority and dealt with it more expeditiously.

3. As for the Arbitration Ordinance, the Deputy Chairman informed Members that the Director of Administration (D of Adm) had said that the AJLS Panel did not find the adaptation provisions previously proposed by the Administration satisfactory. The Administration was working out suitable provisions and would provide a further report to the AJLS Panel at its next meeting on 26 June 2001.

4. The Deputy Chairman added that CS was informed that the House Committee would discuss Ms Emily LAU's proposal of holding a motion debate on the matter.

5. Ms Emily LAU said that at the last meeting, she had requested the Deputy Chairman to seek further information from CS as to when the Central Government was consulted on the proposal on how to amend the 15 Ordinances concerned and what the proposal was. Ms LAU queried why it was necessary for the HKSAR Government to consult the Central Government when the Administration had confirmed in 1998 that these 15 Ordinances should, as a matter of policy, apply to the CPG offices in the HKSAR. Ms LAU asked what CS's response was.

6. The Deputy Chairman said that CS had responded that the Administration would give a detailed report to the AJLS Panel at its meeting on 26 June 2001.

7. Miss Margaret NG pointed out that it was the Bills Committee formed to study the Arbitration (Amendment) Bill 1999, and not the AJLS Panel, which had raised objection to the adaptation provisions proposed by the Administration. As the Bills Committee considered that the proposed adaptation provisions could not achieve the intended legal effect, the Administration had undertaken to come up with an appropriate formulation to extend the applicability of the Ordinance to the CPG offices. Miss NG said that the matter had dragged on for more than three years; she could not see any excuse for the Administration to further delay the adaptation work. Miss NG added that the Administration should be requested to provide, at the meeting of the AJLS Panel meeting on 26 June 2001, details of the proposal put forward by the HKSAR Government to the Central Government.

8. Ms Emily LAU said that as the Administration had confirmed in 1998 that the 15 relevant Ordinances should apply to the CPG offices in the HKSAR, it was a very serious matter that the Administration had still not amended the Ordinances. Ms LAU said that she hoped Members would support her proposal of the Chairman of the House Committee moving a motion for debate in Council.

9. The Chairman said that Ms Emily LAU's proposal of holding a motion debate on the matter would be discussed under item VII below.

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**Extract from Minutes of House Committee Meeting
of the Legislative Council held on 15 June 2001**

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II. Matters arising

(a) Report by the Chairman on her meeting with the Chief Secretary for Administration (CS)

Report of the Panel on Administration of Justice and Legal Services (AJLS Panel) on the applicability of Ordinances to the offices set up by the Central People's Government (CPG) in the Hong Kong Special Administrative Region

2. The Chairman said that she had urged CS that the Administration should provide, at the AJLS Panel meeting on 26 June 2001, information on what exactly CPG was consulted on and when the proposal on how to amend the Ordinances was forwarded to CPG.

3. The Chairman informed Members that CS had again undertaken to expedite action. CS had stressed that complex issues were involved and it was important to get the formulation right. CS also said that in view of the significance of the matter, consultation was considered necessary.

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