

LegCo Panel on Administration of Justice and Legal Services

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

Introduction

At the meeting of the LegCo Panel on Administration of Justice and Legal Services (the AJLS Panel) on 15 May 2001, Members expressed concern about the progress in amending the 15 Ordinances to apply to the offices set up by the CPG in the HKSAR (CPG offices) and the review of the Personal Data (Privacy) Ordinance (PDPO). Members considered that the relevant Policy Bureaux should accord priority to the proposed amendments in their legislative programmes. In addition, Members also requested the Administration to work out an agreed application provision without further delay so as to extend the applicability of the 15 Ordinances to cover the CPG offices.

2. The Clerk to the AJLS Panel later wrote to the Constitutional Affairs Bureau to request a paper to be prepared on the effect in law of the 15 Ordinances not being applicable to the CPG offices. The Clerk to the Panel also wrote to the Department of Justice to request a paper on the following –

- (a) the progress of and the difficulties encountered in drafting the application formula;
- (b) the progress of the legislative work in respect of the 14 Ordinances;
- (c) the progress of the adaptation of references to “Her Majesty’s forces” and other military references; and
- (d) the progress of the adaptation of the Crown Proceedings Ordinance.

The two papers have been issued to the Clerk to the AJLS Panel for Members’ information.

3. Separately, the Clerk to AJLS Panel wrote to the Constitutional Affairs Bureau on 5 June and 12 June to convey the concern of the LegCo House Committee on the following –

- (a) the progress of amending the 15 Ordinances and the consultation with the CPG on the matter;
- (b) the review of the PDPO; and
- (c) the progress of the adaptation of the 35 Ordinances which contain express references to the “Crown”.

The Panel wishes the Administration to respond in respect of the above.

Legislative amendment in respect of the 15 Ordinances

4. As the Administration reported to the Panel at its meeting on 15 May, the Administration undertook in April 1998 to review the 17 Ordinances which expressly apply to the Government but are silent as to their applicability to the CPG offices. In reviewing the Ordinances the Administration had discussions with the CPG, in the course of which the CPG expressed no differing views to the proposal to extend the applicability of 15 of the 17 Ordinances to cover the CPG offices.

5. The Administration informed the LegCo AJLS Panel in October 1998 that as a matter of policy, 15 of the 17 Ordinances should apply to the CPG offices. The relevant Policy Bureaux and departments would further study and follow up on the necessary legislative work.

Application formula

6. The Arbitration Ordinance is one of the 15 Ordinances. The Administration Wing introduced into the LegCo in 1999 the proposed legislative amendments to the Arbitration Ordinance which included a provision to extend the application of the Ordinance to cover all persons and organs, including the HKSARG and the CPG offices. However, the Bills Committee considered that the drafting of the proposed provision might not be perfect, and that there might be better ways to reflect the policy intention. The Administration undertook to continue to work on an appropriate formula.

7. In considering an appropriate application provision, the Administration has consulted the views of the CPG. In the process of amending Ordinances, it is usual for the Administration to exchange views with the persons or bodies involved which may be affected by the draft provisions. The formulation of the application provision involves matters relating to the CPG offices and the Administration's discussion with the CPG on this matter is in line with our usual practice. At the same time, the Administration is examining how to work out an application formula which could be adopted by other Ordinances.

8. The Administration is fully aware of Members' concern over the progress in amending the 15 Ordinances to cover the CPG offices. As the relevant Policy Bureaux and departments which have policy responsibility over the 15 Ordinances at the same time need to work on the legislative proposals relating to various other issues under their purview, they would inevitably take forward the legislative amendments of the 15 Ordinances having regard to their legislative priorities. A related issue is the application provision which has to be incorporated into the 15 Ordinances to extend their applicability to the CPG offices. Subject to working out an appropriate application provision and LegCo's endorsement, it could then be adopted or used as a reference for other Ordinances. As the Chief Secretary has informed the Chairman and Deputy Chairman of the LegCo House Committee earlier, the relevant Policy Bureaux and departments will try their best to expedite action and speed up the legislative work. The relevant Policy Bureaux and departments are now examining the relevant Ordinances and will accord priority in the legislative work concerned with a view to introducing the legislative amendments into the LegCo as soon as possible.

The problems encountered by the Administration in the review of the PDPO

9. In the review of the PDPO, the Administration considered it necessary to explain to the HKMAO the key provisions of the PDPO and how they operate in practice. We see the need to do so for several reasons. First, some of the concepts in protection of personal data are new. For example, the right of data subjects to access and correct their personal data held by organisations, to the best of our knowledge, does not exist in the Mainland. Secondly, the PDPO embodies six data protection principles. Being principles and not specific rules, they leave a lot of room for interpretation. Thirdly, in order to provide practical guidance on how to comply with the principles, the Office of the Privacy Commissioner has issued several codes of practice. Some of the provisions in the codes of practice, such as those

relating to the use of identity cards and identity card numbers, require organisations to change their established practices in order to comply with the principles.

10. In view of the special and novel nature of the PDPO, it has taken some data users in Hong Kong some time to accept that the PDPO would not cause undue disruption to their operation. It is understandable, therefore, that HKMAO needs some time to assess whether - and if so, how - the operation of the CPG offices would be affected if the PDPO were to apply to them. The Administration understands Members' concern and will expedite matters with a view to resolving it as early as possible.

The progress of the adaptation of 35 Ordinances which contain express references to the "Crown"

11. The Adaptation of Laws Programme is carried out in two phases. The first phase involved "essential" items in six Adaptation of Laws Bills which were completed in 1998. As for the second phase, the Administration completed in 1999 and 2000 the legislative work for 52 Adaptation of Laws Bills, involving the adaptation of about 600 Ordinances. The remaining 53 Ordinances which contain express references to the "Crown" do not involve pure adaptation, but require legislative amendments pending policy deliberations.

12. As set out in the Administration's paper submitted to the Panel on 12 May, of the 53 Ordinances which contain express references to the "Crown", 18 of these Ordinances have already been either wholly or partly adapted so far. As for the remaining Ordinances or provisions which need to be amended, the relevant Policy Bureaux will proceed with the legislative amendments necessary once they have dealt with the policy considerations.

13. The legal advice of the Department of Justice is that the legal effect of these Ordinances or provisions has not been compromised as they are to be construed in accordance with the Hong Kong Reunification Ordinance the relevant provisions of which have now been incorporated into the Interpretation and General Clauses Ordinance (Cap.1).