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LEGISLATIVE COUNCIL BRIEF

Interpretation and General Clauses Ordinance
(Chapter 1)
Import and Export Ordinance
(Chapter 60)
Buildings Ordinance
(Chapter 123)
Air Pollution Control Ordinance
(Chapter 311)
Water Pollution Control Ordinance
(Chapter 358)
Noise Control Ordinance
(Chapter 400)
Sewage Services Ordinance
(Chapter 463)
Dumping at Sea Ordinance
(Chapter 466)
Sex Discrimination Ordinance
(Chapter 480)
Disability Discrimination Ordinance
(Chapter 487)
Environmental Impact Assessment Ordinance
(Chapter 499)
Fugitive Offenders Ordinance
(Chapter 503)

EXTENSION OF VETTING PERIOD (LEGISLATIVE COUNCIL) BILL 2002

INTRODUCTION

At the meeting of the Executive Council on 5 February 2002, the Council ADVISED and the Chief Executive ORDERED that the Extension of Vetting Period (Legislative Council) Bill 2002, at the Annex, should be introduced into the Legislative Council (LegCo).

BACKGROUND AND ARGUMENT

2. Article 73 of the Basic Law provides that one of the functions of LegCo is to enact, amend or repeal laws. LegCo has delegated the power to make subsidiary legislation to bodies including the Chief Executive in Council, Bureau Secretaries, heads of departments and statutory bodies etc. Some of these items of subsidiary legislation are however subject to the negative vetting of LegCo in accordance with section 34 of the Interpretation and General Clauses Ordinance (the Interpretation and General Clauses Ordinance).

3. Section 34 of the Interpretation and General Clauses Ordinance states that all subsidiary legislation shall be laid on the table of LegCo at the next sitting after its publication in the Gazette. LegCo may by resolution amend or repeal a piece of subsidiary legislation at a sitting held not later than 28 days after its tabling in the Council. Before the expiry of the 28-day vetting period, LegCo may by resolution extend the vetting period by one sitting.

4. Operational experience has shown that the scrutiny period under the current negative vetting procedure is insufficient for LegCo's examination of the more complicated and lengthy subsidiary legislation. At the request of LegCo, the Administration conducted a review of the actual operation of the existing arrangement.

The Review

5. We conducted a review on all the subsidiary legislation, subject to negative vetting, introduced in the first term of LegCo. It transpires that –

- (a) majority of the 624 pieces of subsidiary legislation introduced during that period (i.e. 586 pieces) did not involve extension beyond the 28-day vetting period; and
- (b) the remaining ones (i.e. 38 pieces) did require extension of the vetting period by one LegCo sitting. Some were repealed by LegCo due to insufficient vetting time¹.

¹ If LegCo could not complete the scrutiny of a piece of subsidiary legislation after the extension of the vetting period, the only alternative is for LegCo to repeal the relevant subsidiary legislation.

6. These findings suggest that the initial vetting period of 28 days is working reasonably well in most circumstances and hence there is no practical need to alter this 28-day vetting period for the negative vetting procedure. We have however agreed to examine how the existing “extended by one-LegCo sitting” provision might be modified, so that LegCo may have more time and greater flexibility to examine lengthy and/or complicated subsidiary legislation. In considering what should be the appropriate length of that extended period, we note that before section 34 of the Interpretation and General Clauses Ordinance was amended in 1993 to give effect to the existing arrangement, the extension period provided for in the relevant section was 21 days.

The Proposal

7. Accordingly, we **propose** that the existing extension period of one Council sitting be modified such that LegCo may by resolution extend the vetting period to the first sitting held at least 21 days after the initial 28-day vetting period ends. In other words, the extended deadline for moving a resolution to amend or repeal a piece of subsidiary legislation tabled at LegCo for negative vetting will be –

- (a) the 21st day after the standard 28-day vetting period ends if there is a sitting on that 21st day; or
- (b) the sitting day immediately following these 21 days if there is no sitting on that 21st day.

8. The proposal should not have adverse effect on the operation of the Government. As actual operational experience has shown, LegCo is generally able to complete scrutiny of the majority of subsidiary legislation during the 28-day vetting period. For more lengthy and/or complicated subsidiary legislation, with advanced planning and co-ordination, we should be able to accommodate in our overall implementation timetable the revised vetting period.

9. At present, vetting mechanism identical to the arrangement prescribed under section 34 of the Interpretation and General Clauses Ordinance applies also to a number of instruments provided under different Ordinances (e.g.

Orders made by the Director-General of Trade and Industry for the restriction on the import or export of certain goods; technical memoranda issued by the Secretary for Environment and Food for the control of pollution; and codes of practice on the elimination of discrimination issued by the Equal Opportunities Commission, etc). We need to introduce similar amendments to these Ordinances so as to bring the vetting period in line with the proposed new arrangement under the Interpretation and General Clauses Ordinance.

THE BILL

10. The main provisions of the Bill are –

- (a) **Clause 2** amends section 34 of the Interpretation and General Clauses Ordinance so that LegCo may extend the standard 28-day vetting period to the first sitting held at least 21 days after that period ends.

For a vetting period that straddles two LegCo sessions, under the existing arrangement², the vetting period ends on the day after the second sitting in the next session. The existing extension of one Council sitting will correspondingly be modified to the first sitting at least 21 days from the last day of that vetting period;

- (b) **Clause 3** sets out the transitional arrangements. It provides that subsidiary legislation laid on the table of LegCo before the date of the commencement of clause 2 will not be affected by the new extension arrangement; and
- (c) **Clauses 4 to 25** make corresponding amendments to the provisions of other Ordinances under which vetting procedure similar to that provided for in section 34 of the Interpretation and General Clauses Ordinance applies to certain instruments made under such Ordinances. The same transitional arrangements are made in relation to these instruments. The relevant Ordinances

² Under section 34(3) of the Interpretation and General Clauses Ordinance, if the 28-day vetting period expires after the last sitting before the end of a session or dissolution of LegCo, but on or before the second sitting day in the next session, that period shall be deemed to extend to and expire on the day after that second sitting.

are –

- (i) Import and Export Ordinance;
- (ii) Buildings Ordinance;
- (iii) Air Pollution Control Ordinance;
- (iv) Water Pollution Control Ordinance;
- (v) Noise Control Ordinance;
- (vi) Sewage Services Ordinance;
- (vii) Dumping at Sea Ordinance³;
- (viii) Sex Discrimination Ordinance;
- (ix) Disability Discrimination Ordinance;
- (x) Environmental Impact Assessment Ordinance; and
- (xi) Fugitive Offenders Ordinance.

LEGISLATIVE TIMETABLE

11. The legislative timetable of the Bill is –

Publication in the Gazette	8 February 2002
First Reading and commencement of Second Reading debate	13 March 2002
Resumption of Second Reading debate, committee stage and Third Reading	To be notified

BASIC LAW IMPLICATIONS

12. The Department of Justice advises that the Bill is consistent with the Basic Law.

HUMAN RIGHTS IMPLICATIONS

13. The Department of Justice advises that the Bill has no human rights implications.

³ No transitional provision is made in relation to the Dumping at Sea Ordinance because the relevant section has not yet come into operation.

BINDING EFFECT OF THE LEGISLATION

14. The proposed amendments will not affect the binding effects of the Ordinances being amended.

FINANCIAL AND STAFFING IMPLICATIONS

15. There are no additional financial or staffing implications for the Government.

PUBLIC CONSULTATION

16. LegCo Panel on Constitutional Affairs was consulted in 2001. Members were in general supportive of the proposal.

PUBLICITY

17. A Legislative Council brief and a press release will be issued when the Bill is gazetted. A spokesman will be available to answer possible media and public enquiries.

Administration Wing
Chief Secretary for Administration's Office

Subject Officer: Mr David Leung
Telephone Number: 2810 3946
February 2002

**EXTENSION OF VETTING PERIOD (LEGISLATIVE
COUNCIL) BILL 2002**

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A BILL

To

Amend the Interpretation and General Clauses Ordinance, the Import and Export Ordinance, the Buildings Ordinance, the Air Pollution Control Ordinance, the Water Pollution Control Ordinance, the Noise Control Ordinance, the Sewage Services Ordinance, the Dumping at Sea Ordinance, the Sex Discrimination Ordinance, the Disability Discrimination Ordinance, the Environmental Impact Assessment Ordinance and the Fugitive Offenders Ordinance to extend the time within which subsidiary legislation or other instruments laid on the table of the Legislative Council under such Ordinances may be amended by the Legislative Council; and for related purposes.

Enacted by the Legislative Council.

1. Short title

This Ordinance may be cited as the Extension of Vetting Period (Legislative Council) Ordinance 2002.

Interpretation and General Clauses Ordinance

2. Placing of subsidiary legislation before Legislative Council

Section 34 (4) of the Interpretation and General Clauses Ordinance (Cap. 1) is repealed and the following substituted –

“(4) Before the expiry of the period referred to in subsection (2) or that period as extended by virtue of subsection (3), the Legislative Council may by resolution in relation to any subsidiary legislation specified therein –

(a) in the case of the period referred to in subsection (2), extend that period to the first

sitting of the Legislative Council held not earlier than the twenty-first day after the day of its expiry;

- (b) in the case where the period referred to in subsection (2) has been extended by virtue of subsection (3), extend that period as so extended to the first sitting of the Legislative Council held not earlier than the twenty-first day after the day of the second sitting in that next session."

3. Transitional provision

The amendment made by section 2 shall not affect subsidiary legislation laid on the table of the Legislative Council before the date of commencement of that section and section 34(4) of the Interpretation and General Clauses Ordinance (Cap. 1) as in force immediately before that date of commencement shall continue to apply to such subsidiary legislation as if section 2 had not been enacted.

Import and Export Ordinance

4. Orders made by Director for purposes of section 6A, etc.

Section 6B(5) of the Import and Export Ordinance (Cap. 60) is repealed and the following substituted –

"(5) Before the expiry of the period referred to in subsection (3) or that period as extended by virtue of subsection (4), the Legislative Council may by resolution in relation to an order specified therein –

- (a) in the case of the period referred to in subsection (3), extend that period to the first sitting of the Legislative Council held not

earlier than the twenty-first day after the day of its expiry;

- (b) in the case where the period referred to in subsection (3) has been extended by virtue of subsection (4), extend that period as so extended to the first sitting of the Legislative Council held not earlier than the twenty-first day after the day of the second sitting in that next session."

5. Orders made by Director for purposes of sections 6C to 6E, etc.

Section 6F(5) is repealed and the following substituted –

"(5) Before the expiry of the period referred to in subsection (3) or that period as extended by virtue of subsection (4), the Legislative Council may by resolution in relation to an order specified therein –

- (a) in the case of the period referred to in subsection (3), extend that period to the first sitting of the Legislative Council held not earlier than the twenty-first day after the day of its expiry;
- (b) in the case where the period referred to in subsection (3) has been extended by virtue of subsection (4), extend that period as so extended to the first sitting of the Legislative Council held not earlier than the twenty-first day after the day of the second sitting in that next session."

6. Transitional provision

The amendments made by sections 4 and 5 shall not affect orders laid on the table of the Legislative Council before the date of commencement of those sections and sections 6B(5) and 6F(5) of the Import and Export Ordinance (Cap. 60) as in force immediately before that date of commencement shall continue to apply to such orders as if sections 4 and 5 had not been enacted.

Buildings Ordinance

7. Technical memorandum

Section 39A(5) of the Buildings Ordinance (Cap. 123) is repealed and the following substituted –

"(5) Before the expiry of the period referred to in subsection (3) or that period as extended by virtue of subsection (4), the Legislative Council may by resolution in relation to a technical memorandum specified therein –

- (a) in the case of the period referred to in subsection (3), extend that period to the first sitting of the Legislative Council held not earlier than the twenty-first day after the day of its expiry;
- (b) in the case where the period referred to in subsection (3) has been extended by virtue of subsection (4), extend that period as so extended to the first sitting of the Legislative Council held not earlier than the twenty-first day after the day of the second sitting in that next following session."

8. Transitional provision

The amendment made by section 7 shall not affect technical memoranda laid on the table of the Legislative Council before the date of commencement of that section and section 39A(5) of the Buildings Ordinance (Cap. 123) as in force immediately before that date of commencement shall continue to apply to such memoranda as if section 7 had not been enacted.

Air Pollution Control Ordinance

**9. Placing of technical memorandum before
Legislative Council**

Section 37B(4) of the Air Pollution Control Ordinance (Cap. 311) is repealed and the following substituted –

"(4) Before the expiry of the period referred to in subsection (2) or that period as extended by virtue of subsection (3), the Legislative Council may by resolution in relation to a technical memorandum specified therein –

- (a) in the case of the period referred to in subsection (2), extend that period to the first sitting of the Legislative Council held not earlier than the twenty-first day after the day of its expiry;
- (b) in the case where the period referred to in subsection (2) has been extended by virtue of subsection (3), extend that period as so extended to the first sitting of the Legislative Council held not earlier than the twenty-first day after the day of the second sitting in that next following session."

10. Transitional provision

The amendment made by section 9 shall not affect technical memoranda laid on the table of the Legislative Council before the date of commencement of that section and section 37B(4) of the Air Pollution Control Ordinance (Cap. 311) as in force immediately before that date of commencement shall continue to apply to such memoranda as if section 9 had not been enacted.

Water Pollution Control Ordinance

11. Technical memorandum

Section 21(7) of the Water Pollution Control Ordinance (Cap. 358) is repealed and the following substituted –

“(7) Before the expiration of the period referred to in subsection (5) or that period as extended by virtue of subsection (6), the Legislative Council may by resolution in relation to a technical memorandum specified therein –

- (a) in the case of the period referred to in subsection (5), extend that period to the first sitting of the Legislative Council held not earlier than the twenty-first day after the day of its expiration;
- (b) in the case where the period referred to in subsection (5) has been extended by virtue of subsection (6), extend that period as so extended to the first sitting of the Legislative Council held not earlier than the twenty-first day after the day of the second sitting in that next following session.”.

12. Transitional provision

The amendment made by section 11 shall not affect technical memoranda laid on the table of the Legislative Council before the date of commencement of that section and section 21(7) of the Water Pollution Control Ordinance (Cap. 358) as in force immediately before that date of commencement shall continue to apply to such memoranda as if section 11 had not been enacted.

Noise Control Ordinance

13. Placing of Technical Memorandum before Legislative Council

Section 11(4) of the Noise Control Ordinance (Cap. 400) is repealed and the following substituted –

“(4) Before the expiration of the period referred to in subsection (2) or that period as extended by virtue of subsection (3), the Legislative Council may by resolution in relation to a Technical Memorandum specified therein –

- (a) in the case of the period referred to in subsection (2), extend that period to the first sitting of the Legislative Council held not earlier than the twenty-first day after the day of its expiration;
- (b) in the case where the period referred to in subsection (2) has been extended by virtue of subsection (3), extend that period as so extended to the first sitting of the Legislative Council held not earlier than the twenty-first day after the day of the second sitting in that next following session.”.

14. Transitional provision

The amendment made by section 13 shall not affect Technical Memoranda laid on the table of the Legislative Council before the date of commencement of that section and section 11(4) of the Noise Control Ordinance (Cap. 400) as in force immediately before that date of commencement shall continue to apply to such Memoranda as if section 13 had not been enacted.

Sewage Services Ordinance

15. Technical memorandum

Section 13 of the Sewage Services Ordinance (Cap. 463) is amended –

- (a) in the Chinese text, by repealing subsection (4)(a) and (b) and substituting –

“(a) 在立法會會期結束或在立法會解散之後；但

(b) 在立法會下一會期的第二次會議日或之前，”；

- (b) by repealing subsection (5) and substituting –

“(5) Before the expiration of the period referred to in subsection (3) or that period as extended by virtue of subsection (4), the Legislative Council may by resolution in relation to a technical memorandum specified therein –

- (a) in the case of the period referred to in subsection (3), extend that period to the first sitting of the Legislative

Council held not earlier than the twenty-first day after the day of its expiration;

- (b) in the case where the period referred to in subsection (3) has been extended by virtue of subsection (4), extend that period as so extended to the first sitting of the Legislative Council held not earlier than the twenty-first day after the day of the second sitting in that next following session."

16. Transitional provision

The amendment made by section 15(b) shall not affect technical memoranda laid on the table of the Legislative Council before the date of commencement of that section and section 13(5) of the Sewage Services Ordinance (Cap. 463) as in force immediately before that date of commencement

shall continue to apply to such memoranda as if section 15(b) had not been enacted.

Dumping at Sea Ordinance

17. Tabling technical memorandum and commencement

Section 14(4) of the Dumping at Sea Ordinance (Cap. 466) is repealed and the following substituted –

"(4) Before the expiry of the period referred to in subsection (2) or that period as extended by virtue of subsection (3), the Legislative Council may by resolution in relation to a technical memorandum specified therein –

- (a) in the case of the period referred to in subsection (2), extend that period to the first sitting of the Legislative Council held not earlier than the twenty-first day after the day of its expiry;
- (b) in the case where the period referred to in subsection (2) has been extended by virtue of subsection (3), extend that period as so extended to the first sitting of the Legislative Council held not earlier than the twenty-first day after the day of the second sitting in that next following session."

Sex Discrimination Ordinance

18. Codes of practice

Section 69(7) of the Sex Discrimination Ordinance (Cap. 480) is repealed and the following substituted –

“(7) Before the expiration of the period referred to in subsection (5) or that period as extended by virtue of subsection (6), the Legislative Council may by resolution in relation to a code of practice specified therein –

- (a) in the case of the period referred to in subsection (5), extend that period to the first sitting of the Legislative Council held not earlier than the twenty-first day after the day of its expiration;
- (b) in the case where the period referred to in subsection (5) has been extended by virtue of subsection (6), extend that period as so extended to the first sitting of the Legislative Council held not earlier than the twenty-first day after the day of the second sitting in that next following session.”.

19. Transitional provision

The amendment made by section 18 shall not affect codes of practice laid on the table of the Legislative Council before the date of commencement of that section and section 69(7) of the Sex Discrimination Ordinance (Cap. 480) as in force immediately before that date of commencement shall continue to apply to such codes as if section 18 had not been enacted.

Disability Discrimination Ordinance

20. Codes of practice

Section 65(7) of the Disability Discrimination Ordinance (Cap. 487) is repealed and the following substituted –

“(7) Before the expiration of the period referred to in subsection (5) or that period as extended by virtue of subsection (6), the Legislative Council may by resolution in relation to a code of practice specified therein –

- (a) in the case of the period referred to in subsection (5), extend that period to the first sitting of the Legislative Council held not earlier than the twenty-first day after the day of its expiration;
- (b) in the case where the period referred to in subsection (5) has been extended by virtue of subsection (6), extend that period as so extended to the first sitting of the Legislative Council held not earlier than the twenty-first day after the day of the second sitting in that next following session.”.

21. Transitional provision

The amendment made by section 20 shall not affect codes of practice laid on the table of the Legislative Council before the date of commencement of that section and section 65(7) of the Disability Discrimination Ordinance (Cap. 487) as in force immediately before that date of commencement shall continue to apply to such codes as if section 20 had not been enacted.

Environmental Impact Assessment Ordinance

22. Technical memorandum

Section 16(8) of the Environmental Impact Assessment Ordinance (Cap. 499) is repealed and the following substituted –

"(8) Before the expiry of the period referred to in subsection (6) or that period as extended by virtue of subsection (7), the Legislative Council may by resolution in relation to a technical memorandum specified therein –

- (a) in the case of the period referred to in subsection (6), extend that period to the first sitting of the Legislative Council held not earlier than the twenty-first day after the day of its expiry;
- (b) in the case where the period referred to in subsection (6) has been extended by virtue of subsection (7), extend that period as so extended to the first sitting of the Legislative Council held not earlier than the twenty-first day after the day of the second sitting in that next session."

23. Transitional provision

The amendment made by section 22 shall not affect technical memoranda laid on the table of the Legislative Council before the date of commencement of that section and section 16(8) of the Environmental Impact Assessment Ordinance (Cap. 499) as in force immediately before that date of commencement shall continue to apply to such memoranda as if section 22 had not been enacted.

Fugitive Offenders Ordinance

24. Chief Executive in Council may apply Ordinance

Section 3(5) of the Fugitive Offenders Ordinance (Cap. 503) is repealed and the following substituted –

"(5) Before the expiry of the period referred to in subsection (3) or that period as extended by virtue of subsection (4), the Legislative Council may by resolution in relation to an order specified therein –

- (a) in the case of the period referred to in subsection (3), extend that period to the first sitting of the Legislative Council held not earlier than the twenty-first day after the day of its expiry;
- (b) in the case where the period referred to in subsection (3) has been extended by virtue of subsection (4), extend that period as so extended to the first sitting of the Legislative Council held not earlier than the twenty-first day after the day of the second sitting in that next session."

25. Transitional provision

The amendment made by section 24 shall not affect orders laid on the table of the Legislative Council before the date of commencement of that section and section 3(5) of the Fugitive Offenders Ordinance (Cap. 503) as in force immediately before that date of commencement shall continue to apply to such orders as if section 24 had not been enacted.

Explanatory Memorandum

The main purpose of this Bill is to extend the time within which the Legislative Council may amend subsidiary legislation and other instruments laid on its table under the following Ordinances –

- (a) the Interpretation and General Clauses Ordinance (Cap. 1);
- (b) the Import and Export Ordinance (Cap. 60);

- (c) the Buildings Ordinance (Cap. 123);
- (d) the Air Pollution Control Ordinance (Cap. 311);
- (e) the Water Pollution Control Ordinance (Cap. 358);
- (f) the Noise Control Ordinance (Cap. 400);
- (g) the Sewage Services Ordinance (Cap. 463);
- (h) the Dumping at Sea Ordinance (Cap. 466);
- (i) the Sex Discrimination Ordinance (Cap. 480);
- (j) the Disability Discrimination Ordinance (Cap. 487);
- (k) the Environmental Impact Assessment Ordinance (Cap. 499); and
- (l) the Fugitive Offenders Ordinance (Cap. 503).

2. Under those Ordinances, the Legislative Council has 28 days after the sitting at which subsidiary legislation or other instruments made thereunder are tabled to amend such subsidiary legislation or instruments. It may extend the time for vetting for one sitting. The Bill enables the Legislative Council to extend the vetting period for a longer time, that is, to the first sitting held at least 21 days after the expiry of that period. A very similar extension is provided for in respect of a vetting period that straddles 2 legislative sessions (clauses 2, 4, 5, 7, 9, 11, 13, 15(b), 17, 18, 20, 22 and 24).

3. Subsidiary legislation and instruments laid on the table of the Legislative Council before the commencement of the amendments will not be affected by this new extension arrangement (clauses 3, 6, 8, 10, 12, 14, 16, 19, 21, 23 and 25).

4. An amendment is also made to section 13(4) of the Sewage Services Ordinance (Cap. 463) to correct a mistake in the Chinese text (clause 15(a)).