

~~The Bills Committee has noted that the matters which can be dealt with under the proposed fixed penalty system would be specified in rules to be made by the Council of the Law Society. Such rules would be subject to negative vetting by the Legislative Council. The Bills Committee considers that if a subcommittee is formed by the House Committee to study the rules when they are finalized, the subcommittee should take into account the matter concerning dishonest intent in its deliberation.~~

Under the Legal Practitioners Ordinance, the Law Society may issue a practising certificate subject to such conditions as may be prescribed by the Chief Justice. To date, the Chief Justice has not prescribed any conditions for such purpose. In the views of the Administration, this creates a loophole in the law which has been exploited by some solicitors. Clause 105 of the Bill seeks to transfer to the Council of the Law Society the rule-making power of the Chief Justice to prescribe grounds for refusal to issue a practising certificate and conditions that may be attached to a certificate. Such rule-making power would be subject to the Chief Justice's prior approval. The Chief Justice has agreed to the proposed transfer of power.

In considering the proposal, the Bills Committee is satisfied that there is urgency to implement the amendment to enable the Law Society to better manage the practice of solicitors and improve professional conduct for greater protection of public interest.

Lastly, I would like to add that the Bills Committee has also considered the other Parts of the Bill in detail and has no objection to the technical amendments proposed by the Administration.

Madam President, with these remarks, and subject to the amendments to be moved at the Committee stage, the Bills Committee supports the resumption of ~~Second Reading debate on the Bill.~~

PRESIDENT (in Cantonese): Does any other Member wish to speak?

(No Member responded)

SECRETARY FOR JUSTICE (in Cantonese): As I explained when I introduced the Statute Law (Miscellaneous Provisions) Bill 2001 into this

Council in June 2001, this Bill proposes to amend certain obsolete, inconsistent or anomalous provisions; to adapt "non-immunity" provisions in various Ordinances; and to make relatively minor amendments to various Ordinances.

Since the introduction of the Bill, the Bills Committee, chaired by Miss Margaret NG, has thoroughly examined the clauses, which relate to a wide variety of issues in different areas of the law. I am most grateful to the Chairman and members of the Bills Committee, namely, Miss Cyd HO, Mr James TO, Mrs Sophie LEUNG, Mr Jasper TSANG, Mr Ambrose LAU, Miss Emily LAU and Ms Audrey EU for their hard work and helpful contributions. Some changes to the Bill have been proposed and agreed. As a result, I will be moving a number of Committee stage amendments later this afternoon. I will now give a brief outline of the more important of these amendments.

Commencement

The commencement of the various provisions of the Bill is provided for in clause 2. It is proposed to defer the commencement of provisions relating to the summary disposal of certain complaints against solicitors in order to allow time for the Law Society Council to prepare the relevant rules.

Amendments to clause 2 will provide for this, and will rectify an error in relation to the commencement of clause 7 of the Bill.

Marital rape

The Bills Committee has given detailed consideration to the provisions in the Bill relating to marital rape. Following the decision of the House of Lords in *Regina v R* in 1991, a husband may be guilty of rape of his wife if, in the circumstances of the case, the wife does not consent to sexual intercourse. This decision was reached despite the fact that the offence of rape must involve "unlawful sexual intercourse" and that expression originally excluded marital intercourse.

The proposed amendment to the statutory offence of rape is intended to remove any doubt there may be on this point by making it clear that marital intercourse is not excluded. The Bill also proposed to amend certain other sexual offences by making it clear that they too could apply in respect of marital intercourse. There were, however, concerns raised by Bills Committee members in respect of those other amendments.

After detailed discussion and consultation, the Bills Committee suggested that a minimalist approach should be adopted, and that the scope of the proposed clarification of the law should be limited to the offence of rape, and to three other offences of which a person charged with rape may be convicted. The Administration has agreed to this suggestion. I will therefore move an amendment, which is stated to be for the avoidance of doubt. The amendment declares that, for the purposes of sections 118, 119, 120 and 121, that is, the four relevant offences, the expression "unlawful sexual intercourse" does not exclude sexual intercourse that a man has with his wife. The original clause 11 will be amended, clauses 12 to 17 will be deleted.

Although the proposed clarification of the law is limited to four offences, I wish to make it clear that this is not intended to prevent or limit the application of the principles established in *Regina v R* to other sexual offences. It is not intended that the protection offered to women under Part XII of the Crimes Ordinance will be reduced in any way as a result of the proposed Committee stage amendments.

Review of sexual offence

In agreeing to this minimalist approach, the Bills Committee emphasized that other problems need to be addressed at a later stage. Members asked that a full-scale review of the sexual offences in Part XII of the Crimes Ordinance be conducted without delay. The Administration appreciates that there is a need to revise and update the law relating to sexual offences, for the protection of women, when there is an identified inadequacy in a particular area or offence. To address members' concerns in this respect, I would like to describe the specific areas of work that the Administration is already undertaking.

The first area relates to the rules of evidence which apply where a person is charged with an offence against his or her spouse. At present, the rules are such that the evidence of the spouse may not be available in particular cases. This can lead to marital violence going unpunished. A Bill to reform this area of law, namely the Evidence (Miscellaneous Amendments) Bill 2002, was introduced into this Council in May this year. The Bill deals with competence and compellability of spouses in criminal proceedings. I urge Members to support this Bill.

A second area of work relates to persistent sexual abuse of a child. The victims of such abuse may not be able to recall precisely details such as the

number of times they have been abused, the dates of each occasion of abuse and the acts performed on each occasion. As a result, there can be difficulty in prosecuting offenders for the full range of offences committed. My department is therefore considering a possible amendment to the Crimes Ordinance to create a specific offence relating to such conduct.

The third area is child pornography. The Prevention of Child Pornography Bill aims at prohibiting child pornography and child sex tourism so as to protect children from sexual exploitation and sexual abuse. The Bill was introduced into this Council in January this year and is now being scrutinized by a Bills Committee.

In addition to undertaking these three reform projects, in October 2001 the Administration established a Working Group on Combating Violence. The objectives of this Working Group are to examine the problem of violence in Hong Kong (with a particular focus on spouse battering and sexual violence); to map out strategies and approaches in handling the problem; to examine the existing procedures and guidelines on handling the problem; and to recommend improvement measures.

The Working Group, chaired by the Director of Social Welfare, comprises representatives of non-governmental organizations and various government bureaux and departments, including the Security Bureau, the Social Welfare Department, the Health, Welfare and Food Bureau, the Legal Aid Department, the Department of Health, the Hong Kong Police Force, the Education Department, and the Department of Justice. Meetings are held on a regular basis.

It is clear, therefore, that the Administration is taking active steps to ensure that our sexual offences are revised where necessary, and that women are fully protected from sexual abuse. This is a continuing process and, if the need arises, other aspects of the law relating to sexual offences will be reviewed.

Refund of deposits

Returning to the current Bill, I wish to comment on the proposal to allow the Courts to order a refund of deposit in a property transaction where the justice of the case so requires. Although similar powers exist in other common law jurisdictions, members of the Bills Committee were concerned about the application of such a power in the context of Hong Kong's property market.