

STATUTE LAW (MISCELLANEOUS PROVISIONS) BILL 2005

COMMITTEE STAGE

Amendments to be moved by the Secretary for Justice

<u>Clause</u>	<u>Amendment Proposed</u>
Part 2, Division 5	In the heading, by deleting " the Matrimonial Causes Ordinance " and substituting " certain Ordinances ".
New	By adding immediately before the subheading " Matrimonial Causes Ordinance " - "High Court Ordinance 10A. Rules concerning deposit, etc. of moneys, etc. in High Court Section 57(1) of the High Court Ordinance (Cap. 4) is amended by repealing "Chief Justice" and substituting "Chief Judge of the High Court".
New	By adding immediately after clause 14 - "Criminal Procedure Ordinance 14A. Chief Judge to make rules

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Section 79D of the Criminal Procedure Ordinance (Cap. 221) is amended by repealing "Chief Justice" and substituting "Chief Judge".

14B. Application for dismissal of charges contained in a notice of transfer

Section 79G(8) is amended by repealing "Chief Justice" and substituting "Chief Judge".

District Court Ordinance

14C. Suitors' Funds Rules

Section 73(1) of the District Court Ordinance (Cap. 336) is amended by repealing "Chief Justice" and substituting "Chief Judge".

**Evidence (Miscellaneous Amendments)
Ordinance 2003**

14D. Part added

Section 17 of the Evidence (Miscellaneous Amendments) Ordinance 2003 (23 of 2003) is

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amended, in the new section 79L of the Criminal Procedure Ordinance (Cap. 221), by repealing "Chief Justice" and substituting "Chief Judge".

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(a) By adding immediately before subclause (1) -

"(1A) Notwithstanding the amendment made by section 10A to section 57(1) of the High Court Ordinance (Cap. 4), any rules made under section 57(1) of that Ordinance which are in force immediately before the date of commencement of section 10A shall on and after that date continue in force as if they were made by the Chief Judge under section 57(1) of that Ordinance as amended by section 10A."

(b) By deleting subclause (2).

(c) By adding -

"(5) Notwithstanding the amendment made by section 14A to section 79D of the Criminal Procedure Ordinance (Cap. 221) -

(a) any rules made under
section 79D of that

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Ordinance which are in force immediately before the date of commencement of section 14A shall on and after that date continue in force as if they were made by the Chief Judge under section 79D of that Ordinance as amended by section 14A;

- (b) any directions given under section 79D of that Ordinance which are in force immediately before the date of commencement of section 14A shall on and after that date continue in force as if they were given by the Chief Judge under section 79D of that Ordinance as amended by section 14A.

(6) Notwithstanding the amendment made by section 14B to section 79G(8) of

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the Criminal Procedure Ordinance (Cap.
221) -

- (a) any rules made under section 79G(8) of that Ordinance which are in force immediately before the date of commencement of section 14B shall on and after that date continue in force as if they were made by the Chief Judge under section 79G(8) of that Ordinance as amended by section 14B;
- (b) any directions given under section 79G(8) of that Ordinance which are in force immediately before the date of commencement of section 14B shall on and after that date continue in force as if they were given by the Chief Judge under section

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79G(8) of that Ordinance
as amended by section 14B.

(7) Notwithstanding the amendment made by section 14C to section 73(1) of the District Court Ordinance (Cap. 336), any rules made under section 73(1) of that Ordinance which are in force immediately before the date of commencement of section 14C shall on and after that date continue in force as if they were made by the Chief Judge under section 73(1) of that Ordinance as amended by section 14C."

Part 3 By deleting Division 6.

New By adding immediately before the subheading
"Prevention of Bribery Ordinance" -

"Dangerous Drugs Ordinance

34A. Surrender of travel document

Section 53A of the Dangerous Drugs Ordinance (Cap. 134) is amended -

(a) by adding -

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"(4A) Subject to subsection (8), a person to whom a notice under subsection (1) is addressed shall not leave Hong Kong, whether or not the notice has been served on him under subsection (3), before the expiry of a period of 3 months from the date of the notice unless -

(a) an application made under section 53B(1) for the return of a travel document is granted; or

(b) an application made under

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section
53C(1) for
permission
to leave
Hong Kong
is
granted.";

(b) in subsection (5), by repealing
"thereupon";

(c) by adding -

"(7A) Subject to
subsection (8), a travel
document surrendered to
the Commissioner of Police
or the Commissioner of
Customs and Excise in
compliance with a notice
under subsection (1) may
be detained for a period
of 3 months from the date
of the notice unless an
application made under
section 53B(1) for the
return of the travel

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document is granted.";

(d) in subsection (8) -

(i) by repealing
everything before
"for not more than"
and substituting -

"(8) The
period of 3
months referred
to in
subsections (4A)
and (7A) may be
extended";

(ii) by repealing "further
detention" and
substituting
"extension";

(e) in subsection (10), by adding
"and sections 53B and 53C"
after "In this section".

34B. Section added

The following is added -

**"53C. Application for permission
to leave Hong Kong**

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(1) Without prejudice to section 53B, a person on whom a notice under section 53A(1) is served may at any time make written application to the Commissioner of Police or the Commissioner of Customs and Excise, as the case may be, for permission to leave Hong Kong and every such application shall contain a statement of the grounds on which it is made.

(2) Before determining an application under subsection (1), the Commissioner of Police or the Commissioner of Customs and Excise may require that any matter of fact relied on in the application shall be substantiated by statutory declaration.

(3) Any person aggrieved by the refusal of an application under subsection (1) may, within 14 days of being informed of such refusal, appeal to a magistrate against that refusal and the magistrate may, upon considering the

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grounds of the application and any evidence which may be adduced in relation thereto by or on behalf of either party, order that the person be permitted to leave Hong Kong.

(4) The decision of a magistrate in relation to an appeal under this section shall be final."."

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By deleting paragraphs (a) and (b) and substituting -

"(a) by adding -

"(3A) Subject to subsection (6), a person to whom a notice under subsection (1) is addressed shall not leave Hong Kong, whether or not the notice has been served on him under subsection (2), before the expiry of a period of 6 months from the date of the notice unless -

(a) an application made under section 17B(1) for the return of a travel document is

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granted; or

(b) an application made under section 17BA(1) for permission to leave Hong Kong is granted.";

(b) in subsection (4), by repealing "thereupon be arrested and taken before a magistrate" and substituting "be arrested and taken before a magistrate by a police officer or by a person appointed in that behalf by the Commissioner";

(c) by adding -

"(5A) Subject to subsection (6), a travel document surrendered to the Commissioner in compliance with a notice under subsection (1) may be detained for a period of 6 months from the date of the notice unless an application made under section 17B(1) for the return of the travel document is granted.";

(d) in subsection (6) -

(i) by repealing everything before

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the proviso and substituting -

"(6) The period of 6 months referred to in subsections (3A) and (5A) may be extended for a further period of 3 months if a magistrate, on application by the Commissioner, is satisfied that the investigation could not reasonably have been completed before the date of such application and authorizes such extension:";

(ii) in the proviso, by repealing "who surrendered the document" and substituting "to whom the relevant notice is addressed".".

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By deleting paragraphs (b) and (c) and substituting -

"(b) in subsection (6), by repealing "subject

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to such conditions as to the further
surrender of the travel document and the
appearance of the applicant at any time
and place in Hong Kong as may be
specified." and substituting -

"subject to the conditions that -

(a) the applicant shall
further surrender his
travel document to
the Commissioner at
such time as may be
specified; and

(b) the applicant shall
appear at such time
and place in Hong
Kong as may be
specified and at such
other time and place
in Hong Kong
thereafter as may be
further specified.";

(c) by repealing subsection (7) and
substituting -

"(7) Where a travel document is

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returned to the applicant under this section subject to a condition imposed under subsection (5)(a) or (6)(a), then after the time specified under that subsection, the provisions of section 17A(3A) shall continue to apply in respect of the applicant and the provisions of section 17A(5A) shall continue to apply in respect of the travel document surrendered by the applicant pursuant to the condition as if no return had been made to the applicant under this section."."

New

By adding immediately after clause 36 -

"36A. Section added

The following is added -

**"17BA. Permission to leave
Hong Kong**

(1) Without prejudice to section 17B, a person on whom a notice under section 17A(1) is served may at any time make application in writing to the Commissioner or to a magistrate or both

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for permission to leave Hong Kong, and every such application shall contain a statement of the grounds on which it is made.

(2) A magistrate shall not consider an application made under subsection (1) unless he is satisfied that reasonable notice in writing of it has been given to the Commissioner.

(3) The Commissioner or a magistrate shall only grant an application made under subsection (1) where the Commissioner or the magistrate, as the case may be, is satisfied that having regard to all the circumstances, including the interests of the investigation referred to in section 17A(1), a refusal to grant the application would cause unreasonable hardship to the applicant.

(4) Before an application is granted under this section -

(a) the applicant may be required to -

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- (i) deposit such reasonable sum of money with such person as may be specified;
 - (ii) enter into such recognizance with such sureties, if any, as may be specified; or
 - (iii) deposit such a sum of money and enter into such a recognizance as may be specified;
- (b) any such applicant or surety may be required to deposit such property or document of title thereto with such person as may be specified for retention by

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that person until such time as any recognizance entered into under this subsection is no longer required or is forfeited.

(5) A recognizance referred to in subsection (4) shall be subject to a condition that the applicant shall appear at such time and place in Hong Kong as may be specified and at such other time and place in Hong Kong thereafter as may be further specified.

(6) An application under this section may be granted either without condition or subject to a condition that the applicant shall appear at such time and place in Hong Kong as may be specified and at such other time and place in Hong Kong thereafter as may be further specified.

(7) Where a person is permitted to leave Hong Kong under this section subject to a condition imposed under subsection (5) or (6), then after the

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time specified under that subsection or (if applicable) after the last of such times, the provisions of section 17A(3A) shall continue to apply in respect of the person as if the person had not been permitted to leave Hong Kong under this section.

(8) Proceedings before a magistrate under this section -

- (a) shall be conducted in chambers; and
- (b) shall be deemed to be proceedings which a magistrate has power to determine in a summary way within the meaning of sections 105 and 113(3) of the Magistrates Ordinance (Cap. 227) and, accordingly, Part VII of that Ordinance (which relates to appeals) shall apply, with the necessary modifications, to appeals

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against an order of a
magistrate under this
section.

(9) Anything to be specified in
respect of an applicant under this
section shall be specified by notice in
writing served personally on the
applicant."

**36B. Further provisions relating to
security, appearance, etc.**

Section 17C is amended by adding -

"(1A) Where a person granted an
application under section 17BA fails to
comply with the requirement of any
condition imposed under that section, any
deposit made or recognizance entered into
under that section may be forfeited by a
magistrate on application by the
Commissioner or under section 65 of the
Magistrates Ordinance (Cap. 227).".

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In the proposed section 9B, by adding "and the
Court of Appeal or the Court of First Instance, as
the case may be, is satisfied that the application

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is without merit," after "the Hong Kong Court of Final Appeal Ordinance (Cap. 484),".

38 In the proposed section 13B, by adding "and the Court of Appeal or the Court of First Instance, as the case may be, is satisfied that the application is without merit," after "the Hong Kong Court of Final Appeal Ordinance (Cap. 484),".

66 (a) In paragraph (b), by deleting the full stop and substituting a semicolon.

(b) By adding -

(c) in paragraph (c), by adding "或命令" after "決定".

198 (a) By deleting the subheading "**Firearms and Ammunition Ordinance**" before the clause.

(b) By deleting the clause.

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