

立法會
Legislative Council

LC Paper No. LS64/06-07

**Paper for the House Committee Meeting
on 27 April 2007**

**Legal Service Division Report on
Statute Law (Miscellaneous Provisions) Bill 2007**

I. SUMMARY

1. **Objects of the Bill** To provide for miscellaneous amendments to various Ordinances and for connected purposes.

2. **Comments** The proposed amendments seek to amend, improve, clarify and update the law and rectify textual errors and omissions of consequential amendments as a result of revision of various ordinances. Details of the proposed amendments are contained in paragraph 2 of the LegCo Brief.

3. **Public Consultation** Public consultation has been carried out on the proposed amendments to the Costs in Criminal Cases Ordinance (Cap. 492). The proposal was opposed by the Bar Association and the Law Society of Hong Kong. Concern was expressed that the threat of a wasted costs order may diminish creativity and deter legal representatives from fearlessly conducting cases in ways which they consider to be in the best interests of their clients. On the other hand, the Consumer Council, the Legal Aid Department and the Judiciary supported the proposal. According to the Administration, there has not been public consultation on other aspects of the Bill.

4. **Consultation with LegCo Panel** The Panel on Administration of Justice and Legal Services (the "AJLS Panel") was briefed on the legislative proposals contained in the Bill at its meetings on 22 May 2006 and 27 November 2006. Given the controversial nature of the proposed amendments to the Costs in Criminal Cases Ordinance (Cap. 492), the AJLS Panel agreed that a Bills Committee should be set up to study the Bill.

5. **Conclusion** The Legal Service Division is still scrutinizing the legal and drafting aspects of the Bill. Members may wish to consider setting up a Bills Committee in view of the suggestion by the AJLS Panel and the controversial nature of the proposed amendments to the Costs in Criminal Cases Ordinance (Cap. 492) and to the penalty for the offence of perverting the course of public justice.

II. REPORT

Objects of the Bill

To provide for miscellaneous amendments to various Ordinances and for connected purposes.

LegCo Brief Reference

2. The LegCo Brief (no file reference) issued by the Department of Justice dated March 2007.

Date of First Reading

3. 25 April 2007.

Comments

4. This is an omnibus bill which is considered by the Administration to be “the only efficient option by which to make improvements to a number of ordinances and subsidiary legislations”.

5. The proposals in this Bill are grouped into 14 parts with the following themes—

- (a) Part 1 – Preliminary;
- (b) Part 2 – Amendment relating to a bankrupt’s obligation to notify the trustee when leaving Hong Kong;
- (c) Part 3 – Amendments to references to “*ordre public*” in the Societies Ordinance (Cap. 151) and the Public Order Ordinance (Cap. 245);
- (d) Part 4 – Amendments relating to suicide of another person;
- (e) Part 5 – Penalty for perverting the course of justice at common law;
- (f) Part 6 – Power of magistrates to award costs;
- (g) Part 7 – Wasted costs in criminal proceedings;
- (h) Part 8 – Amendments to provisions providing that the decision of the Court of First Instance on an appeal is final;
- (i) Part 9 – Amendments consequential to the Rules of the High Court (Amendment) Rules 2000 (L.N. 129 of 2000) in relation to the time for serving notice of motion of appeal;
- (j) Part 10 – Amendments relating to the Legal Practitioners Ordinance (Cap. 159);
- (k) Part 11 – Amendments to remove certain minor inconsistencies between the English and Chinese texts of the Prevention of Bribery Ordinance (Cap. 201) and the Independent Commission Against Corruption Ordinance (Cap. 204);

- (l) Part 12 – New powers to substitute dates and titles of subsidiary legislation;
- (m) Part 13 – Minor and technical amendments to various ordinances;
- (n) Part 14 – Amendments to achieve internal consistency and consistency between the English and Chinese texts of various ordinances.

6. The proposed amendments seek to amend, improve, clarify and update the law and rectify textual errors and omissions of consequential amendments as a result of revision of various ordinances. For a brief description of the substance of the proposed amendments, Members may refer to paragraph 2 of the LegCo Brief.

Public Consultation

7. According to paragraph 8 of the LegCo Brief, the Administration has consulted the Law Society, the Hong Kong Bar Association, the University of Hong Kong, the City University of Hong Kong, the Chinese University, the Director of Legal Aid, the Judiciary Administrator and the Consumer Council in August 2006 with respect to the proposed amendments to the Costs in Criminal Cases Ordinance (Cap. 492). Details are contained in paragraphs 6 to 10 of Annex B to the LegCo Brief.

8. The proposal was opposed by the Bar Association and the Law Society of Hong Kong. Concern was expressed that the threat of a wasted costs order may diminish creativity and deter legal representatives from fearlessly conducting cases in ways which they consider to be in the best interests of their clients. On the other hand, the Consumer Council and the Legal Aid Department supported the proposal. The proposal was also supported by the Judiciary.

9. According to the Administration, there has not been public consultation on other aspects of the Bill.

Consultation with LegCo Panel

10. The Panel on Administration of Justice and Legal Services (the “AJLS Panel”) was briefed on the legislative proposals contained in the Bill at its meetings on 22 May 2006 and 27 November 2006.

11. At its meeting on 22 May 2006, the AJLS Panel was briefed on the proposal to amend section 101I of the Criminal Procedure Ordinance (Cap. 221) to remove the limit for the maximum period of imprisonment of seven years for the offence of perverting the course of public justice, and to provide for such an offence to be punishable by fine and imprisonment at the discretion of the court. Members noted that the legal professional bodies had not been consulted on the proposal. Members expressed concern about the basis for granting such discretion to the court, as well as for lifting the maximum sentence limit in respect of the offence of perverting the course of public justice only, and not other indictable offences which could be of similar gravity.

12. At its meeting on 27 November 2006, the AJLS Panel was briefed on the proposed amendments to the Costs in Criminal Cases Ordinance (Cap. 492). The Panel noted that the proposal was opposed by the two legal professional bodies as mentioned in paragraph 8 above.

13. After consultation in respect of the proposed amendments to the Costs in Criminal Cases Ordinance (Cap. 492), the Administration has included in the proposed amendments a provision which requires the court to take into account the public interest in fearless advocacy under the adversarial system of justice when determining whether or not to make a wasted costs order against a legal representative.

14. Given the controversial nature of the proposed amendments to the Costs in Criminal Cases Ordinance (Cap. 492), the AJLS Panel agreed that a Bills Committee should be set up to study the Bill.

Conclusion

15. The Legal Service Division is still scrutinizing the legal and drafting aspects of the Bill. Members may wish to consider setting up a Bills Committee in view of the suggestion by the AJLS Panel and the controversial nature of the proposed amendments to the Costs in Criminal Cases Ordinance (Cap. 492) and to the penalty for the offence of perverting the course of public justice.

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