

立法會 *Legislative Council*

LC Paper No. CB(2)2763/06-07

Ref : CB2/SS/10/06

Paper for the House Committee meeting on 5 October 2007

Report of the Subcommittee on Official Languages (Alteration of Text under Section 4D) (Miscellaneous) Order 2007

Purpose

This paper reports on the deliberations of the Subcommittee on Official Languages (Alteration of Text under Section 4D) (Miscellaneous) Order 2007.

Background

2. Section 4D of the Official Languages Ordinance (Cap. 5) empowers the Secretary for Justice to make formal alterations to the text of an Ordinance in one official language to achieve consistency between a word, expression or phrase and another word, expression or phrase where both such words, expressions or phrases purport to be the equivalent of the same word, expression or phrase in the other official language in the same context. The Secretary for Justice has authorized the Law Draftsman pursuant to section 7 of the Legal Officers Ordinance (Cap. 87) to make such formal alterations.

The Order

3. The Order comprises five Parts. Part I provides for the commencement of the Order which is 26 November 2007. The proposed alterations to the Chinese text of various items of legislation are grouped under the remaining four Parts –

- (a) Part 2 – makes formal alterations to the Chinese text of various items of legislation by repealing "出庭代訟人", "代言人" and "代訟人" and substituting "訟辯人", and repealing "出庭代訟" and "代訟" and substituting "訟辯" in certain provisions respectively. The alterations seek to achieve consistency between the Chinese equivalent of "advocate" and "advocacy" in the Chinese text of those items of legislation and that in the Chinese text of other items of legislation;

- (b) Part 3 – makes formal alterations to the Chinese text of the Patents Ordinance (Cap. 514) and the Patents (General) Rules (Cap. 514 sub. leg. C) by repealing "科技" in certain provisions and substituting "技術" so as to achieve consistency between the Chinese equivalent of "art" in the Chinese text of those provisions and that in the Chinese text of other provisions of that Ordinance and those Rules;
- (c) Part 4 – makes formal alterations to the Chinese text of The Ombudsman Ordinance (Cap. 397) by repealing "香港輔助警隊" in Schedules 1 and 2 to that Ordinance and substituting "香港輔助警察隊" so as to achieve consistency between the Chinese equivalent of "Hong Kong Auxiliary Police Force" in the Chinese text of that Ordinance and that in the Chinese text of the Hong Kong Auxiliary Police Force Ordinance (Cap. 233); and
- (d) Part 5 – makes formal alterations to the Chinese text of the Peak Tramway Ordinance (Cap. 265) and The Methodist Church, Hong Kong, Incorporation Ordinance (Cap. 1133) by repealing "郊區建屋地段" in certain provisions and substituting "鄉郊建屋地段" so as to achieve consistency between the Chinese equivalent of "Rural Building Lot" in the Chinese text of those Ordinances and that in the Chinese text of the Antiquities and Monuments (Declaration of Proposed Monument) (No. 128 Pok Fu Lam Road) Notice (L.N. 59 of 2007).

The Subcommittee

4. At the meeting of the House Committee on 6 July 2007, members agreed that a Subcommittee should be formed to study the Official Languages (Alteration of Text under Section 4D) (Miscellaneous) Order 2007.

5. Under the chairmanship of Hon Margaret NG, the Subcommittee held a meeting with the Administration. The membership list of the Subcommittee is in **Appendix I**.

Deliberations of the Subcommittee

Part 2 of the Order

6. Noting that the term "advocate" is used in the context of the qualifications of legal practitioners and the services of advocate in court in the legislation to be amended by the Order, members question whether the term

"訟辯人" or "訟辯" is equivalent to "出庭代訟人", "代言人" and "代訟人" or "出庭代訟" and "代訟" respectively in the context of the services of advocate in court, particularly when making oral representations in the court. Members are of the view that instead of making mechanical alterations to the Chinese text of the legislation, the Administration should ensure that the proposed alterations to the Chinese text of the legislation reflect the meaning accurately and, more importantly, the users share the understanding of the meaning of the term.

7. The Administration advises that according to the information collected on the internet and other sources, the proposed Chinese equivalents of "advocate" and "advocacy" (i.e. "訟辯人" and "訟辯") are widely used by the legal profession, local academics and the general public. The Administration further advises that the Statute Law (Miscellaneous Provisions) Bill 2005 introduced various amendments relating to the professional qualifications of certain judicial officers. In those amendments, "訟辯人" was used as the Chinese equivalent for "advocate". The relevant amendments have come into effect after the enactment of the Bill in 2005.

8. Given that no public consultation has been conducted on the proposed alterations to the Chinese text of various terms of legislation, members consider that the Administration should seek the views of the relevant stakeholders on the proposed Chinese equivalent of "advocate" and "advocacy". The Administration has stressed that it is open minded on the use of the Chinese equivalent of "advocate" and "advocacy" in the legislation. In the light of members' concern, the Administration agrees to seek the views of the relevant stakeholders, including the Judiciary, the two legal professional bodies, the law faculties of universities and the Advocacy Institute of Hong Kong, on Part 2 of the Order.

9. In order to allow time for the consultation and not to delay the coming into effect of other amendments contained in the Order, the Administration accedes to members' request to delete the proposed amendments in Part 2 of the Order. The Secretary for Justice will give notice for moving a motion at the Council meeting on 17 October 2007 to this effect. The wording of the motion is in **Appendix II**. The Administration will re-introduce the amendments in the light of the views of the consulted parties.

Other amendments in Parts 3, 4 and 5 of the Order

10. The Subcommittee has noted that Parts 3, 4 and 5 of the Order contain amendments to the Chinese text of various items of legislation. Members raise no objections to these proposed amendments.

Follow-up action by the Administration

11. The Administration has undertaken to consult the relevant stakeholders on the Chinese equivalent of "advocate" and "advocacy" in various items of legislation, and will report the outcome of the consultation to the Panel on Administration of Justice and Legal Services (paragraph 8 above refers).

Recommendation

12. Subject to the amendments to be made by the Administration, the Subcommittee supports the Official Languages (Alteration of Text under Section 4D) (Miscellaneous) Order 2007.

Advice sought

13. Members are invited to note the deliberations of the Subcommittee.

Council Business Division 2
Legislative Council Secretariat
3 October 2007

Appendix I

Subcommittee on Official Languages (Alteration of Text under Section 4D) (Miscellaneous) Order 2007

Membership List

Chairman Hon Margaret NG

Members Hon LI Fung-ying, BBS, JP

Hon Audrey EU Yuet-mee, SC, JP

Hon LI Kwok-ying, MH, JP

Hon LEUNG Kwok-hung

(Total : 5 Members)

Clerk Miss Betty MA

Legal adviser Mr Stephen LAM

Date 26 July 2007

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INTERPRETATION AND GENERAL CLAUSES ORDINANCE

RESOLUTION

(Under section 34(2) of the Interpretation and General Clauses Ordinance
(Cap. 1))

OFFICIAL LANGUAGES (ALTERATION OF TEXT UNDER SECTION 4D)(MISCELLANEOUS) ORDER 2007

RESOLVED that the Official Languages (Alteration of Text under Section
4D)(Miscellaneous) Order 2007, published in the Gazette as Legal
Notice No. 136 of 2007 and laid on the table of the Legislative
Council on 4 July 2007, be amended by repealing Part 2.