

立法會
Legislative Council

LC Paper No. LS48/07-08

**Paper for the House Committee Meeting
on 22 February 2008**

**Legal Service Division Report on
Statute Law (Miscellaneous Provisions) Bill 2008**

I. SUMMARY

1. **Objects of the Bill** To provide for miscellaneous amendments to various Ordinances and for connected purposes.
2. **Comments** The proposals in this Bill can be grouped into 4 areas: (i) amendments to various Ordinances containing offence provisions with the drafting formula “to the satisfaction of” an enforcement agency, (ii) amendments to the Conveyancing and Property Ordinance (Cap. 219), (iii) amendments to the Legal Officers Ordinance (Cap. 87) and (iv) miscellaneous minor and technical amendments. The first two areas of proposed amendments involve change of policy and clarification of law whereas the other two areas may be considered as technical in nature.
3. **Public Consultation** The stakeholders relevant to the amendment proposed to the Conveyancing and Property Ordinance (Cap. 219) have been consulted. According to the Administration, they either supported or expressed no objection to the proposal. 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 24 April 2006, 23 October 2006, 27 November 2006 and 26 November 2007. Concerns were raised in respect of the proposed amendments to various provisions with the drafting formula “to the satisfaction of” an enforcement agency.
5. **Conclusion** The Legal Service Division is still scrutinizing the legal and drafting aspects of the Bill. The Bill involves matters of law in relation to the proposed amendments concerning the drafting formula “to the satisfaction of” an enforcement agency and concerning the Conveyancing and Property Ordinance (Cap. 219). Members may wish to consider setting up a Bills Committee to consider the details.

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 (with no file reference) was issued by the Department of Justice in February 2008.

Date of First Reading

3. 20 February 2008.

Comments

4. This is an omnibus bill which is considered by the Administration to be the only option by which the proposed changes can be effected.

5. The proposals in this Bill can be grouped into 4 areas —

- (a) Amendments to various Ordinances containing offence provisions with the drafting formula “to the satisfaction of” an enforcement agency

The proposed amendments seek to add a requirement that no offence is committed unless the official has specified to the affected person the measures to be taken to his “satisfaction”, or the person has commenced the regulated activity without approaching the official to ascertain the measures to be taken. The burden of proof in either case will expressly be on the prosecution.

The Court of First Instance has held that the drafting formula “to the satisfaction of” an enforcement agency was too vague to enable a person to ascertain the elements of the offence. These proposed amendments seek to improve and clarify the law concerning offence provisions with such drafting formula.

- (b) Amendments to the Conveyancing and Property Ordinance (Cap. 219)

The proposed amendments seek to add a new section 13A. The effect is that, unless the contrary intention is expressed, a purchaser of land shall be entitled to require from the vendor, for the purpose of giving title to that land, the delivery of the original of only (i) the Government lease if

it relates exclusively to that land and (ii) any document that relates exclusively to that land and is required to be produced by the vendor as proof of title to that land.

These amendments are proposed by the Law Society of Hong Kong. They seek to clarify the obligation of a vendor of land to deliver title deeds to the purchaser on completion of the sale of land. According to the Administration, the proposed amendments would help to alleviate potential problems for many property owners.

(c) Amendments to the Legal Officers Ordinance (Cap. 87) and related amendments

The proposed amendments seek to adopt the new post titles of “Senior Public Prosecutor” and “Public Prosecutor” for the ranks of Senior Government Counsel and Government Counsel respectively in the Prosecutions Division of the Department of Justice. The Bill also seeks to introduce related amendments. Members may consider that these proposed amendments are technical in nature.

(d) Miscellaneous minor and technical amendments

The proposed amendments seek to amend various Ordinances to replace references to repealed rules by references to the Rules of the District Court (Cap. 336 sub. leg. H). The Bill also seeks to make a minor and clerical amendment to the Rating Ordinance (Cap. 116). These proposed amendments are technical in nature.

Public Consultation

6. The stakeholders relevant to the amendment proposed to the Conveyancing and Property Ordinance (Cap. 219) have been consulted (please refer to paragraph 24 of the LegCo Brief for details). According to paragraph 13 of the Administration’s paper issued in November 2007 (LC Paper No. CB(2)404/07-08(05)), they either supported or expressed no objection to the proposal.

7. There has not been public consultation on other aspects of the Bill.

Consultation with LegCo Panel

8. The Panel on Administration of Justice and Legal Services was briefed on the legislative proposals contained in the Bill at its meetings on 24 April 2006, 23 October 2006, 27 November 2006 and 26 November 2007. In respect of the proposed amendments to various provisions with the drafting formula “to the satisfaction of” an enforcement agency, a member considered that a better alternative to the Administration's proposed amendments was to clearly stipulate the safety measures to be

taken by any affected persons "to the satisfaction of" the enforcement agency in the principal ordinance, to avoid uncertainty that might result in prosecution of the affected persons. The Administration explained that there were practical limitations on the extent to which the measures could be stipulated in advance. A member also expressed concern whether a person who had commenced a regulated activity without approaching the enforcement agency would be subject to prosecution after the relevant provision was amended as proposed. The Administration explained that such person would not be liable to prosecution for a pre-amendment failure to approach the enforcement agency as no one should be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under Hong Kong or international law at the time when it was committed. However, if the person continued to carry out the regulated activity after the amendment, it would be prudent for such person to approach the enforcement agency to ascertain the measures, if any, that the agency might require.

Conclusion

9. The Legal Service Division is still scrutinizing the legal and drafting aspects of the Bill. The Bill involves matters of law in relation to the proposed amendments concerning the drafting formula "to the satisfaction of" an enforcement agency and concerning the Conveyancing and Property Ordinance (Cap. 219). Members may wish to consider setting up a Bills Committee to consider the details.

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