

**Legal implications concerning repeal of the
Country Parks (Designation)(Consolidation)(Amendment) Order 2010**

Under section 14 of the Country Parks Ordinance (Cap. 208), where the CE in Council has approved a draft map under section 13 of the Ordinance submitted to it by the Authority in accordance with the statutory procedures in Part III of the Ordinance, and the map has been deposited in the Land Registry, the CE shall make an order designating the area shown in the approved map to be a country park. The provision is cast in mandatory terms. Although the CE has some discretion as to the timing of the order and the commencement date, he is bound to make the order.

2. LegCo when acting under section 34 of the Interpretation and General Clauses Ordinance (Cap. 1) has the same power as the original maker of subsidiary legislation but is subject to the same statutory constraints as the original maker.

3. It would not be a lawful exercise of power on the part of CE to repeal the Designation Order without taking account of the statutory requirements of or for purposes other than the statutory purposes of Cap. 208. Based on an analysis of the statutory requirements and the purposes of the Ordinance, the CE himself does not have the power to lawfully repeal the Designation Order. It follows that the LegCo does not have power to do so under section 34 of Cap. 1 and to do so would be inconsistent with the power to make such order in the first place.

4. There are general powers under Cap. 1. In particular, section 28(1)(c) of Cap. 1 provides that where an ordinance confers power on a person to make subsidiary legislation, the subsidiary legislation may be amended by the same person in the same manner by and in which it was made. For this purpose "amend" in general includes "repeal". However, any exercise of the powers under this provision would need to take account of the statutory requirements of the original empowering ordinance and could only be for the statutory purposes of that ordinance.

5. If LegCo approved a motion to repeal the Designation Order, the legal implications would be as follows –

- (1) The repeal would have no effect in law and the Designation Order would remain in force.
- (2) The map approved by the CE in Council and deposited in the Land Registry in accordance with section 13(4) would remain in the Land Registry unless and until replaced by the statutory procedure under section 15 of Cap 208.

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