

Bills Committee on Legislation Publication Bill (the “Bill”)

**A paper in response to the concerns raised in the
Bills Committee meeting on 17 May 2011**

We have considered members’ comments on the proposed Committee Stage Amendments (“CSAs”) very carefully and would like to propose a few further minor changes to the Bill.

“An approved website” (Clauses 4A and 14)

2. After a careful review, we conclude that it is appropriate to use “an approved website” in both Clauses 4A(1) and 14(2) under the context of the Bill. This would provide more flexibility to accommodate future IT developments.

Powers to make revisions (Clause 17)

Clause 17(c)

3. To avoid doubt, we will state clearly that only saving or transitional provisions may be transferred.

Clause 17(ed)

4. The power is intended for changing the way of referring to a provision (for example, from “subsection (2) of section 4” to “subsection 4(2)”) so that statute users would not be confused by the different ways of referring to a provision in our current statutes. To alleviate members’ concern on the scope of the power, we will delete the words “or expressing”.

Clause 17(ee)

5. Having further considered the functions which the provision is intended to serve and the availability of other legislative means to remove obsolete or redundant provisions, we will remove the power from the Bill.

Additional editorial powers for Loose-leaf Edition (Clause 20, Part 5)

6. We are thankful for members' support to apply the editorial powers under Clause 12 of the Bill to the Loose-leaf Edition. Correspondingly, we will incorporate into the Loose-leaf Ordinance the overriding principle (i.e. editorial amendments cannot change the legal effect of any Ordinance) as well as the requirement for keeping and publication of records of editorial amendments made to the Loose-leaf Edition.

7. For tidiness sake, we will align the existing section 2(2) of the Loose-leaf Ordinance with Clause 11 of the Bill. Also, the existing section 2(b) power under the Loose-leaf Ordinance to alter any provision of an Ordinance in which a short title or citation altered under section 2(2) appears will be transferred to the new section 2A (added by Clause 20A of the Bill) of the Loose-leaf Ordinance. In this connection, the power will also be added to Clause 12 of the Bill so that the scope of editorial amendments that could be made under both the Loose-leaf regime and the Database regime would be the same.

8. To better prepare for the new arrangements under the Loose-leaf regime, we would like to commence Part 5 on a later date rather than on gazettal as originally proposed.

Why Clause 12(a) is preferred to section 98A of the Interpretation and General Clauses Ordinance (Cap.1)

9. Clause 12(a) is similar to section 98A of Cap.1. It is intended to rectify grammatical, clerical or typographical errors that are minor and straightforward in nature. Clause 12(a) is preferred to section 98A for the following reasons—

(a) Past experience

We have reviewed the past records of section 98A orders very carefully before proposing Clause 12(a). We have always taken a very cautious and meticulous approach in preparing section 98A orders pursuant to Cap.1 and there has been no debate by the Legislative Council (“LegCo”) on any of them since 1971¹. We will continue to take the same

¹ Section 98A was added to Cap. 1 in 1971 (14 of 1971).

cautious and meticulous approach when exercising the editorial powers under Clause 12(a).

(b) Overseas experience

Clause 12(a) is modelled on similar provisions in other jurisdictions, including ACT, Queensland and Western Australia in Australia and New Zealand.

(c) Procedural safeguards

The proposed power under Clause 12(a) will be exercised in an open and transparent manner. Firstly, it is subject to the overriding principle that any editorial amendment must not change the legal effect of an Ordinance (Clause 13). Further, in line with other common law jurisdictions, although legislative scrutiny is not required, editorial amendments must be properly recorded for them to be effective (Clause 16). Clause 15 of the Bill imposes a statutory obligation on the Secretary for Justice to compile records of editorial amendments. In addition, as expressly stated in Clause 4(1) of the Bill, these records are to be included in the Database and made available for inspection.

(d) Enhanced efficiency

Clause 12(a) provides a more efficient way to facilitate prompt rectification of minor errors in the statute book.

10. In view of the above reasons and the benefits brought about by the new regime under the Bill, we believe that the proposed Clause 12(a) mechanism could achieve the same objective in a more efficient way. Section 98A of Cap.1 is therefore considered no longer necessary.

Marked-up copy of the Bill

11. *Annex I* is the marked-up copy of the Bill showing all the proposed CSAs for members' reference. [LC Paper No. CB(2)1911/10-11(02)]

Hong Kong Legislation Database User Liaison Group

12. We agree that it would be beneficial to hear views from the two professional bodies, the Judiciary and the Legal Services Division of the Legislative Council Secretariat during the course of establishment of the Database.

13. We aim to issue the tender for the Database immediately after the Bill is passed by the LegCo. If everything goes smoothly, the contract for the Database will be awarded sometime in early to mid 2012. We will then invite representatives from the Bar Association, the Law Society, the Judiciary and the Legal Services Division of the Legislative Council Secretariat as well as the Librarian's Association to form a Hong Kong Legislation Database User Liaison Group. We will keep the Group updated on the progress of the establishment of the Database and solicit their views at appropriate intervals.

Department of Justice
May 2011