

Bills Committee on Adaptation of Laws Bill 1998

The Administration's response to the issues raised at the meeting on 15 December 1998

Adaptation of reference to "Colonial Regulations"

Members requested the Administration to consider replacing reference to "Colonial Regulations" by a specific term, such as the executive order in force - "the Public Service (Administration) Order 1997".

2. We are agreeable to replacing reference to "Colonial Regulations" by reference to the existing executive order, provided that the reference is framed so as to include both future amendments to the order and also any regulations made or directions given under the order. This could be achieved by a Committee Stage Amendment to Schedule 3 to the Bill deleting the references to "relevant executive order" and substituting reference to "Public Service (Administration) Order", and deleting the definition of "relevant executive order" in section 1(b) of that Schedule and substituting -

"Public Service (Administration) Order" means-

- (a) the Public Service (Administration) Order 1997 (Executive Order No. 1 of 1997);*
- (b) the Public Service (Disciplinary) Regulation made under section 21 of that Order (and together with that Order published as S.S. No. 5 to Gazette No. 2/1997); and*
- (c) any other regulation made or any direction given under that Order.*

and in this definition a reference to an instrument is a reference to that instrument as amended from time to time.

Adaptation of reference to "saving the rights of Her Majesty, Her Heirs and Successors"

3. Members requested the Administration to provide information on whether similar savings provisions are required for the private Bills presented in the UK Parliament.

4. Members will wish to note that the need for private Bills in the UK has now for all practical purposes been superseded by “Special Procedure Orders” (these are orders made under the Statutory Orders (Special Procedures) Acts, 1945 and 1965). The private Bill procedure is rarely if ever used. However, provision for private Bills still remains.

5. Private Bills in the UK must pass through the same stages of Parliament as public Bills. However, they do so under a special procedure, and are governed by separate Standing Orders. They originate by a petition deposited by the promoter. They may be opposed by any person, and if that person’s rights or interests are directly affected by the Bill, he or she is entitled to be heard by the committee deliberating the Bill.

6. Reflecting the peculiar nature of private Acts, it became established as a matter of law that, while public Acts bind everyone, private Acts do not bind persons who are not parties to the Act, except by express words or necessary implication (the “strangers not bound” rule)¹. Consistent with this rule, the courts have said they will use every means to defeat an attempt by a private Act to affect the rights of the Crown or of any person who is not specifically mentioned in the Act.^{2,3}

7. It should be noted that the savings provision under the Bills Committee’s consideration operates so as to save the rights of “Her Majesty, Her heirs and successors, all bodies politic and corporate and all others except such as are mentioned in the bill ...”. The beneficiaries of the saving are anyone not specifically mentioned in the private Ordinance. Thus the savings provision under consideration reflects an established common law rule in force in England applying to private Acts. It may be assumed, therefore, that Clause XXVII of the Royal Instructions was intended to ensure that a similar rule continued to be applied in Hong Kong, for the protection of both the Crown and any person not mentioned in a private Ordinance enacted in Hong Kong.

Section 17(3) of Juvenile Offenders Ordinance (Cap 226)

8. Members requested the Administration to advise whether, apart from the making of rules as to places to be used as the places of detention in the Correctional Services Department, similar rules are made in the case of the Social

¹ Per wigram V-C in *Dawson v. Pover* (1847) 5 Hare 415, 434

² Per Lord Loreburn LC in *Great Northern, Piccadilly & Brompton Ry. v. An-Gen* [1909] AC 1,6

³ Both cases us cited in *Crates on Statute Law*, 7th ed. (1971) p.578

Welfare Department (SWD) and how this provision applies in the case of SWD.

9. Two sets of rules have been made under section 17(3) of the Juvenile Offenders Ordinance (Cap 226), namely, the Juvenile Offenders (Visitation of Places of Detention) Rules and the Remand Home Rules. Section 2 of the Juvenile Offenders (Visitation of Places of Detention) Rules provides that justices of peace (JPs) and such other persons as may be appointed by the Chief Executive are appointed visitors of places of detention. The making of the Juvenile Offenders (Visitation of Places of Detention) Rules resulted in JPs being appointed as visitors of places of detention. We are not aware of any other persons having been appointed as visitors under the same Rules.

10. Except for the appointment of visitors, neither set of Rules mentioned in paragraph 9 makes any provision for the inspection of places of detention.

11. The Places of Detention (Juvenile Offenders) Appointment (Consolidation) Order under Cap 226 specifies that the appointed places of detention under Cap 226 include the Begonia Road Boys' Home, Ma Tau Wei Girls' Home and Pui Yin Juvenile Home. These three Homes, which are operated by SWD, are visited by JPs monthly through arrangements coordinated by the Director of Administration. It is clear from section 17(3) that, while rules regarding the places of detention are to be subsidiary legislation, the inspection of places of detention may be effected under administrative arrangements.

Security Bureau
January 1999

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