

Bills Committee on Adaptation of Laws Bill 1998

**The Administration's response to the issues
raised at the meeting on 15 January 1999**

Prisons Ordinance (Cap 234) - Adaptation of reference to "Regulations of the Hong Kong Government"

Members requested the Administration to advise what "Regulations of the Hong Kong Government" are, and review the proposed definition of "government regulations" to be added to section 2 of the Prisons Ordinance (Cap 234) if no such regulations entitled "Government Regulations" are in existence.

2. Members will wish to know that apart from Cap 234, terms similar to "Regulations of the Hong Kong Government" also appear in a number of other ordinances. For examples -

- (a) "Hong Kong Regulations" in the Fire Services Ordinance (Cap 95) and the Customs and Excise Service Ordinance (Cap 342);
- (b) "regulations of the Hong Kong Government" in the Police Force Ordinance (Cap 232); and
- (c) "Regulations of the Hong Kong Government" in the Royal Hong Kong Auxiliary Police Force Regulations (Cap 233 subsidiary legislation) and the Immigration Service Ordinance (Cap 331).

3. In the context of the various ordinances mentioned above, "Regulations of the Hong Kong Government" and similar aforementioned terms, notwithstanding their apparent inconsistencies in wording, refer generally to those regulations promulgated by the Government (or a subset of them) relating to the administration of the public service or management of civil servants. These include regulations known as the "Government Regulations" comprising seven Volumes as shown below.

<u>Volume</u>	<u>Name</u>	<u>Responsible Officer</u>
1	General Regulations	Director of Administration
2	Civil Service Regulations	Secretary for the Civil Service
3 (Part 1)	Financial and Accounting Regulations	Financial Secretary/ Secretary for the Treasury
(Part 2)	Standing Accounting Instructions	Director of Accounting Services
4	Stores and Procurement Regulations	Financial Secretary/ Secretary for the Treasury
5	Security Regulations	Secretary for Security
6	Accommodation Regulations	Secretary for the Treasury
7	External Service Regulations	Secretary for the Civil Service/ Secretary for Trade and Industry

4. Save for Financial and Accounting Regulations and Stores and Procurement Regulations which are made under the provisions of the Public Finance Ordinance (Cap 2), “Government Regulations” are made by or with the authority of the Chief Executive. The sole authority for their interpretation and application is also the Chief Executive, or those to whom he has delegated such authority.

5. Apart from the “Government Regulations” mentioned in paragraph 3, there are other general or departmental regulations, circulars, circular memoranda, instructions, orders, directions or procedures that may be issued from time to time by bureaux or departments, which supplement “Government Regulations” and of equal application and force to the Regulations. There is no exhaustive list of specific instruments referred to by the general reference of “government regulations”, given the vastly different types of instruments and the purposes for which they are issued. Such a list, if produced, would also be inappropriate as it would preclude the generality of the reference itself which will cover the eventuality of introducing any new instruments.

Prison Rules

Fugitive Offenders Ordinance (Cap 503)

Extradition (Hong Kong) Ordinance (Cap 236)

Extradition Acts 1870 and 1873

6. With regard to the proposed deletion of rule 188(1)(d) and (da) of the Prison Rules under the Prisons Ordinance (Cap 234) (“the Rules”), Members requested the Administration to advise whether there are any residual provisions which are not covered by the enactment of the Fugitive Offenders Ordinance (Cap 503), and whether sub-paragraph (db) of rule 188(1) had replaced sub-paragraph (d) of that rule entirely.

7. Cap 503 is intended to deal with extradition matters previously covered under the Extradition (Hong Kong) Ordinance (Cap 236), the Extradition Acts 1870 and 1873, and the Fugitive Offenders Act 1967 as extended to Hong Kong. There are no residual provisions which are not covered by Cap 503. Rule 188(1)(db) of the Rules has replaced rule 188(1)(d) in its entirety. After 30 June 1997, the aforementioned Acts no longer applied to Hong Kong. Upon enactment of Cap 503, Cap 236 was repealed by virtue of section 28 thereof.

Adoption of “market price in London”

8. Members requested the Administration to advise on the legislative intent for adopting “market price in London” as the valuation of investments under rules 258 and 259 of the Prison Rules (“the Rules”).

9. The Rules were first enacted in 1954 at the same time as the Prisons Ordinance. While the wording of rule 258 of the Rules has never been amended since then, that of rule 259 was amended once in 1977 (replacement of “Accountant General” by “Director of Accounting Services”). We are unable to trace the legislative intent for adopting “market price in London” as the valuation of investments under rules 258 and 259 of the Rules.

10. The investments of the Correctional Services Department (CSD) welfare fund refer to the investments of all sums considered by the Commissioner of Correctional Services to be surplus to the normal requirements of the fund. According to our records, the investments of the CSR welfare fund have been placed in banks licensed in Hong Kong as fixed deposits in the past ten years and no valuation of investments of the fund at the market price in London has been made. As investments of the fund are in the local market, it is considered appropriate to adopt the Hong Kong market price as the valuation of such investments.

“Joint Colonial Fund”

11. Members requested the Administration to explain what the “Joint Colonial Fund” is.

12. We have conducted a file search but have so far not been able to retrieve information on the “Joint Colonial Fund”. During the file search, we came across information on the “Joint Consolidated Fund” which, we believe, was formerly known as the “Joint Colonial Fund”. However, no documents could be found shedding light on details concerning the change of name.

13. According to the Director of Accounting Services, the “Joint Consolidated Fund” (now named as the “Account of the Government of the Hong Kong Special Administrative Region”) was an account maintained with the Crown Agents for Overseas Governments and Administrations (now named as Crown Agents Financial Services Ltd) in the United Kingdom. Today, the Account mainly deals with the Hong Kong Special Administrative Region Government’s payments of pensions in the U.K. and has nothing to do with the welfare funds of Government disciplinary forces.

Drug Trafficking (Recovery of Proceeds) Ordinance (Cap 405) - Adaptation of reference to “countries or territories”

14. Members requested the Administration to consider whether it is necessary to amend the English version of the reference to “countries or territories” in section 28(1)(a) of the Drug Trafficking (Recovery of Proceeds) Ordinance (Cap 405) and sections 2 and 3 of the Drug Trafficking (Recovery of Proceeds) (Designated Countries and Territories) Order under Cap 405, and to review the Chinese version of “countries or territories” if the reference in English is to be retained.

15. Section 28 of Cap 405 provides that countries or territories outside Hong Kong may be designated, by order, to enable their confiscation orders to be enforced in Hong Kong. China, as one of the Parties to the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, was so designated before 1 July 1997.

16. After 1 July 1997, China could not be “a country or territory outside Hong Kong”. Designation of component parts of China (provinces, autonomous regions, etc) as “territories” outside Hong Kong may also present difficulties, since

“territory” can bear a number of meanings, depending on the context in which it occurs. Moreover, China without Hong Kong might be taken as not a “country” or “territory” in its fullest sense. There could be an argument that a designation under section 28(1)(a) must be in respect of a “country” or “territory” in its entirety and that a designation of “China (except Hong Kong)” might not be a proper designation of “country” or “territory” and so *ultra vires* and void. If this argument is accepted, Cap 405 might not be able to apply to similar orders made in other parts of China. The addition of “place” in the reference will remove this possibility. This approach was also adopted in the Fugitive Offenders Ordinance (Cap 503) enacted in 1997.

Security Bureau
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