

Bills Committee on Adaptation of Laws Bill 1998

**The Administration's response to the issues
raised at the meeting on 27 November 1998**

Alternatives to an Executive Order under Article 48(4) of the Basic Law (BL)

The option of legislation has been addressed in the Civil Service Bureau's paper submitted prior to the Bills Committee meeting on 27 November 1998. It is considered that enactment of law by the Legislative Council would not have been appropriate as it would have constituted a major departure from the previous system in which the Administration retained full executive authority to administer the public service. Another option would be an administrative order issued by the Chief Executive (CE). However, such an order would have no statutory backing and accordingly may not constitute a "legal procedure" for the purpose of BL Article 48(7).

Approach to the making of Executive Order under BL Article 48(4)

2. An Executive Order issued by the CE under Article 48(4) of the BL has sufficient legal backing as it stands to enable the HKSAR Government to preserve its executive authority for the continued administration of the public service. This is in line with Article 103 of the BL which provides for continuity in the management of the public service. The Court has already ruled that executive orders as promulgated under BL 48(4) are a "legal procedure" for the purposes of the Basic Law. As such, an executive order made by the CE has no ground to be subject to approval by the Legislative Council.

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

3. There is nothing in the language or structure of section 17(3) of Cap 226 to support the inference that the rule-making power under the second part of the provision should necessarily be exercised by the same person as is charged with the duty under the first part, or vice versa. The rule-making power is discretionary ("...may make rules...") and the two parts stand independently of each other. Clearly, the duty conferred under the first part could quite properly be discharged by purely administrative means, without the exercise of the rule-making power.