

# 立法會

## *Legislative Council*

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### **Report of the Bills Committee on Adaptation of Laws (No. 3) Bill 1998**

#### **Purpose**

This paper reports on the deliberations of the Bills Committee on Adaptation of Laws (No. 3) Bill 1998.

#### **The Bill**

2. The Bill seeks to repeal the Foreign Jurisdiction (Expenses) Ordinance (Cap. 223), the Smuggling into China (Control) Ordinance (Cap. 242) and the Smuggling into China (Control) Specification (Cap. 242 sub. leg.) which, in the opinion of the Administration, are not in conformity with the status of Hong Kong as a Special Administrative Region (SAR) of the People's Republic of China (PRC) and have become obsolete.

#### **The Bills Committee**

3. At the House Committee meeting held on 13 November 1998, Members decided to form a bills committee to study the Bill. Five Members joined the Bills Committee. The membership list is in **Appendix I**.

4. Under the chairmanship of Hon Margaret NG, the Bills Committee held two meetings with the Administration.

#### **Deliberations of the Bills Committee**

5. The Bills Committee has examined in detail the rationale given by the Administration for the proposed repeal of the two Ordinances and the subsidiary legislation. The main deliberations of the Bills Committee are summarized below.

Foreign Jurisdiction (Expenses) Ordinance (FJEO)

6. The Administration has explained that enacted in 1889, FJEO provides for expenses in relation to persons ordinarily residing in Hong Kong who have been convicted or acquitted on the ground of insanity before courts in any country or place out of Her Majesty's dominions under the UK Foreign Jurisdiction Acts. Since those Acts upon which the operation of FJEO depended have ceased to apply to Hong Kong after the reunification, FJEO has become obsolete and should be repealed.

7. As FJEO is for the specific purpose of implementing the UK Foreign Jurisdiction Acts which have ceased to apply to Hong Kong after the reunification because Hong Kong is no longer a British colony, members support the proposed repeal of FJEO under the adaptation of laws exercise.

Smuggling into China (Control) Ordinance (SCCO) and its subsidiary legislation

8. The Administration has explained that SCCO and its subsidiary legislation were enacted in 1948 to give effect to an agreement between the British Government and the then Chinese National Government for various measures to prevent smuggling between Hong Kong and China. These measures include restricting the locations for loading of certain types of vessels or landing of cargo destined for China, enabling Chinese Maritime Customs to patrol and take enforcement actions within a delineated area, i.e. the waters in Mirs Bay and Deep Bay north of the agreed line which is commonly referred to as the Cap. 242 line. Cap. 242 line is equivalent to the specification stipulated in the subsidiary legislation to SCCO.

9. The Administration has pointed out that since the enactment of the Import and Export Ordinance (IEO) (Cap. 60) in 1972, smuggling offences have been dealt with under IEO. The provisions under SCCO are therefore not required and have never been invoked, except that Cap. 242 line continued to be used as a customary reference line, where the Mainland security vessels are allowed access north of the line. Following the promulgation of the boundary of the Hong Kong Special Administrative Region (HKSAR) by the State Council of PRC in its Order No. 221 on 1 July 1997, the customary line has become obsolete and the purpose of SCCO is spent. The Administration considers that SCCO and its subsidiary legislation do not conform with the status of Hong Kong as a SAR of PRC and should be repealed.

10. Members agree that the customary reference line as laid down in SCCO is in contravention of the boundary of HKSAR promulgated by the State Council. Noting that the provisions in SCCO are not required following the enactment of IEO, members express doubt whether the proposed repeal of SCCO is within the scope of the adaptation of laws. They point out that the

objective of the adaptation of laws exercise is to amend all the references in the laws which are inconsistent with the Basic Law or with the status of Hong Kong as a SAR of PRC. Should the rationale for repealing SCCO be solely due to its obsolescence, the proposed repeal would be beyond the scope of the adaptation of laws.

11. In examining the analysis provided by the Administration, members note that only a few provisions in SCCO are not in conformity with Hong Kong's status as a SAR of PRC or may be inconsistent with the Basic Law, and that most of the provisions in SCCO are considered to be obsolete mainly because of the enactment of IEO. Most members of the Bills Committee are of the view that the proposed repeal should not be dealt with under the adaptation of laws exercise.

12. A member takes the views that the purpose for not repealing SCCO upon the enactment of IEO is to allow the Chinese Customs to patrol and take enforcement actions in Hong Kong waters within the delineated area. The purpose of SCCO is to give effect to the customary reference line. As the customary line has become obsolete following the promulgation of the boundary of HKSAR by the State Council on 1 July 1997 and the boundary of HKSAR is no longer a subject for negotiation after the reunification, SCCO should be repealed. He considers that the proposed repeal could be dealt with in the context of the adaptation of laws exercise.

13. The Administration has further explained that the rationale for repealing SCCO under the adaptation of laws should be viewed in a wider perspective. The 1948 Agreement has not been ratified by the Central People's Government of PRC. It is irrelevant for Hong Kong after the reunification and the continued implementation of that agreement is incompatible with the status of HKSAR. It follows that SCCO which gives effect to that agreement is likewise considered as incompatible with the status of HKSAR from a policy point of view. From this perspective, the Administration considers that the proposed repeal of SCCO falls within the scope of adaptation of laws.

14. Members do not agree with the rationale given by the Administration because apart from the long title of SCCO, none of the provisions of SCCO makes reference to the 1948 Agreement. While members unanimously agree that SCCO and its subsidiary legislation should be repealed, the majority of members, however, do not support the repeal under the adaptation of laws exercise. They have suggested that the proposed repeal be dealt with by way of an amendment bill.

15. Having regard to most members' views of not supporting the repeal under the adaptation of laws exercise, the Administration has agreed to move Committee Stage amendments to remove the proposed repeal of SCCO and its

subsidiary legislation from the Bill. The Administration will pursue the proposed repeal outside the adaptation of laws exercise.

### **Committee Stage amendments**

16. The draft Committee Stage amendments in relation to SCCO and its subsidiary legislation are in **Appendix II**.

### **Recommendation**

17. The Bills Committee recommends that the proposed repeal of FJEO and the Committee Stage amendments to be moved by the Secretary for Security be supported.

### **Consultation with House Committee**

18. The Bills Committee consulted the House Committee on 12 March 1999 and sought the latter's agreement that, subject to the Committee Stage amendments to be moved by the Secretary for Security, the Second Reading debate on the Bill be resumed at the Legislative Council meeting on 31 March 1999.

Legislative Council Secretariat  
22 March 1999

**附錄 I**  
**Appendix I**

**《1998 年法律適應化修改(第 3 號)條例草案》**

**Bills Committee on  
Adaptation of Laws (No.3) Bill 1998**

**Membership List**

吳靄儀議員(主席)	Hon Margaret NG (Chairman)
涂謹申議員	Hon James TO Kun-sun
黃宏發議員	Hon Andrew WONG Wang-fat, JP
曾鈺成議員	Hon Jasper TSANG Yok-sing, JP
楊孝華議員	Hon Howard YOUNG, JP

合共 : 5 位議員

Total : 5 Members

日期 : 1998 年 12 月 30 日

Date : 30 December 1998