

Bills Committee on Adaptation of Laws (No. 4) Bill 1998

Points raised at the meeting on 13 January 1999

Legal Officers Ordinance (Cap. 87)

ss. 5 and 6

- (a) To provide a research analysis of how jurisdictions which formerly were colonies of the U.K., such as India, dealt with provisions similar in nature to ss. 5 and 6 of Cap.87, particularly whether any of such jurisdictions have codified such rights in their laws;
- (b) To further consider the proposal of not adapting ss. 5 and 6 at this stage, and whether to do so would be inconsistent with the Basic Law and with the status of Hong Kong as an SAR of the PRC;
- (c) To be in conformity with the Basic Law and with the status of Hong Kong as an SAR, should the rights of SJ be allowed to develop on their own after reunification, or should they be linked to the rights exercisable by the AG of England immediately before 1 July 1997?
- (d) To respond to the views of a member of the Bills Committee that the present proposals in the Bill are not simple adaptation proposals as they have the effect of changing the substance of the original provisions by “freezing” the rights of SJ. The member recognises the difficulties of straight-forward adaptations of ss. 5 and 6 and considers that the matter should be dealt with by an amendment ordinance;
- (e) To consider whether the original and proposed ss. 5 and 6 could be put together to avoid the “freezing” effect of proposed ss. 5 and 6;
- (f) To comment on the Bar Association’s proposal to insert a footnote near the new ss. 5 and 6, setting out the repealed provisions;
- (g) To respond to the proposal to adapt ss. 5 and 6 as proposed in the Bill as a “stop-gap” measure, but the Administration should set a time-frame for introducing legislative amendments to enable the rights of SJ to develop after 30 June 1997.

Legal Practitioners Ordinance (Cap. 159)

s. 3(3)

- (h) To consult the Judiciary on the newly proposed s. 3(3);
- (i) Similar to the points raised in item (d) above, to consider the proposal to introduce legislative amendments in relation to this provision;
- (j) To respond, after consultation with the Judiciary, the Bar Association's recommendation to localise the provision by expressing the jurisdiction of the court in clear words under this part.

s. 75(1)(a)

- (k) To clarify, after consultation with the Judiciary, the rationale for the proposed repeal of "any member of Her Majesty's Overseas Judiciary"; to whom the reference is referring to; and whether at present there are persons falling within the meaning of such reference;

Legal Services Legislation (Miscellaneous Amendments) Ordinance 1997

- (l) To explain the comparability between ss. 98 and 99 of the Mental Health Act 1983 and ss. 10D and 11 of the Mental Health Ordinance respectively. The Bill seeks to repeal the former references and substitute them with the latter.

Official Solicitors Ordinance (Cap. 416)

s. 2

- (m) To respond to the Bar Association's query that the definition of "government regulations" appears to be wider than the original "Colonial Regulations".