

律政司法律政策科的信頭

本司檔號 Our Ref: LP 5039/20/4C IV

來函檔號 Your Ref:

電話號碼 Tel. No.: 2867 4226

8 March 1999

Mrs. Percy Ma
Clerk to Bills Committee
Legislative Council Building
8 Jackson Road, Central
Hong Kong

via Mr. Michael Scott, SASG

Dear Mrs. Ma,

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

Thank you for your letters dated 27 January 1999 and 1 March 1999. Our written reply in respect of items (b), (c), (d), (e) and (f) of the outstanding issues are as follows:-

Item (b)

After consultation with the editor of the loose-leaf edition of the Laws of Hong Kong, we confirm that we accept the Bar Association's suggestion to insert a footnote setting out the repealed provisions near the new sections 5 and 6 of the Legal Officers Ordinance.

Item (c)

At the meeting in respect of the earlier Adaptation of Laws Bills, it was agreed that the word "Governor" should be adapted to "Chief Executive" for provisions relating to subsidiary legislation. Hence, we propose to move a CSA for deleting "in Council" in s.7 of Schedule 1.

Item (d)

The Judiciary Administrator confirmed that our replacement provision is acceptable. We also consider that the proposed replacement provision will not affect the jurisdiction of the Court.

Item (e)

The Judiciary Administrator commented that it would not be appropriate for judges to give an advice to us on the meaning of “Her Majesty’s Overseas Judiciary”. However it was pointed out that there is a Compensation Scheme for payment of compensation to members of Her Majesty’s Overseas Civil Service, and a member of Her Majesty’s Overseas Civil Service or Her Majesty’s Overseas Judiciary will be eligible to receive compensation under certain conditions. The Compensation Scheme was organised by the Overseas Development Administration in the UK. It appears that the benefits available to this category of persons were offered directly by Her Majesty’s Government in the UK. Therefore these matters would not be affected by the deletion of the said expression.

Item (f)

It was agreed in the Bills Committee meeting in relation to the Adaptation of Laws Bill 1998 that the term “Colonial Regulations” should be adapted as “Public Service (Administration) Order” with the term being properly defined. Hence, we propose to move a CSA to ensure a consistent approach being adopted in respect of the said term.

We enclose our draft CSA to be moved by us for the consideration by members of the Bills Committee. Our explanatory notes to our CSA are as follows:-

Clause 2(2)

The reason for the said amendment is that by L.N. 29 of 1999, the remaining provisions of the Mental Health (Amendment) Ordinance 1997 (81 of 1997) have been brought into operation on 1 February 1999. The amendment introduced under section 9(b) of Schedule 2 to the Bill provides that references in the yet-to-commence provisions of the Legal Practitioners Ordinance (Cap. 159) (introduced under item 28 in Schedule 1 to the Legal Services Legislation (Miscellaneous Amendments) Ordinance 1997 (94 of 1997) (“LSLO”)) to sections 98 and 99 of the Mental Health Act 1983 (“UK

Act”) should be replaced by references to sections 10D and 11 of the Mental Health Ordinance (Cap. 136), as introduced to Cap. 136 under the Mental Health (Amendment) Ordinance 1997.

As clause 2(2) of the Bill provided for prospective commencement of the amendment under s.9(b) of Schedule 2 to the Bill, it is appropriate to make necessary amendment by CSA to provide that the amendment, made under section 9(b) of Schedule 2 to the Bill, to the yet-to- commence provisions of Cap. 159 should come into operation on 1 February 1999, which is the date on which the relevant provisions have been brought into operation.

Schedule 1 section 2

This item is proposed to be dealt with collectively with other adaptations of military references in a separate Adaptation of Laws Bill in accordance with para. 12 of the Adaptation of Laws Guiding Principles.

Schedule 1 section 7

See explanation in item (c) above.

Schedule 2 section 2

See explanation in item (d) above. A replacement provision is inserted to preserve the jurisdiction of the Court.

Schedule 3 section 1

See explanation in item (f) above.

Yours sincerely,

(Ms Kitty FUNG)
Government Counsel
Legal Policy Division

win95u : jannie : csa-4

1st draft : 1.3.99

2nd draft : 3.3.99

3rd draft : 8.3.99

ADAPTATION OF LAWS (NO. 4) BILL 1998

COMMITTEE STAGE

Amendments to be moved by the Secretary for Justice

<u>Clause</u>	<u>Amendment Proposed</u>
2(2)	By deleting “come into operation on the day” and substituting “be deemed to have come into operation on 1 February 1999, which is the date”.
Schedule 1, section 2	By deleting paragraph (c).
Schedule 1, section 7	By deleting “in Council”.
Schedule 2	By deleting section 2 and substituting – “2. Section 3 (3) is repealed and the following substituted - “(3) Subject to the provisions of this Ordinance, the Court or any judge thereof may, in so far as it is not inconsistent with the Basic Law, exercise the same jurisdiction in respect of any person admitted to practise as a solicitor in the Court

as was exercisable immediately before 1 July 1997 by the then High Court or any judge thereof, as the case may be, in respect of any person admitted to practise as a solicitor in the then High Court.”.

Schedule 3,
section 1

(a) By deleting paragraph (b) and substituting -

“(b) in subsection (4), by repealing “Such Ordinances, Colonial Regulations” and substituting “The Public Service (Administration) Order, and such Ordinances”;

(b) By deleting paragraph (e) and substituting-

“(e) by adding-

“(9) In this section, “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,

as amended from time to time.””.