

政制事務局政府總部的信頭

Our Ref: CAB C4/17/7/1

17 July 1999

Mrs Constance LI
Clerk to Bills Committee
Legislative Council Secretariat
Legislative Council Building
8 Jackson Road
Central

Dear Mrs Li,

**Bills Committee on
Provision of Municipal Services (Reorganization) Bill**

Follow-up to meeting on 6 July 1999

Thank you for your letter of 6 July 1999, conveying the Bills Committee's request for information. Our response is set out in the paragraphs below.

- (a) *Whether the court judgement referred to by Mr Howard Young has any impact on the Bill under examination..*

We note from your fax message dated 8 July that the court case referred to by Mr Howard Young is different from the case described in paragraph B(a) of our response of 7 July 1999. The court case referred to by Mr Young is a Court of First Instance case between Oriental Solution Investment Limited (Plaintiff) and SIN Ka-wing trading as C K Design Co. (Civil Action No. HCA 1116 of 1999). Briefly, the issue in the case was whether the Plaintiff who had assigned to Madam X premises, subject to a tenancy agreement, could thereafter recover from the tenant (defendant) arrears of rent which fell due before the assignment. The Court held that the Plaintiff, once it had assigned its interest in the property, had no right to sue for arrears of rent and that it was Madam X, the assignee who had the right to recover arrears of rent. On the facts, the Provisional Municipal Councils' position corresponds to that of the Plaintiff and the Government would be in the position of the "assignee". The case shows that the Government's right to claim arrears of rent would not be affected. Moreover, under clauses 4, 5(1) and (6) and 6(d)

of the Bill, the Government becomes entitled to property, rights and legal claims of the Provisional Municipal Councils and contractual fees and other charges due to the Councils.

- (b) *The Administration to explain the purpose of **clause 10** and to provide a simpler version of **clause 10**, if that is to be retained, to make it clear that the repealed legislation will only apply to offences committed before the commencement of the new enactment, and that the new corresponding enactment will apply to a continuing offence or offence committed on or after 1 January 2000.*

In the light of the very useful views expressed by the Members at the last meeting, we are now considering whether clause 10(1) is necessary in view of clause 13. The Administration agrees that even if clause 10(1) is retained it should be amended to the effect that proceedings for offences committed under the repealed enactments should be commenced or continued “as if this Ordinance had not been enacted” and not under the corresponding enactment. We also agree that proceedings for continuing offences should be under the “corresponding enactment”. ***The Administration will make a committee stage amendment to clause 10 along the lines suggested by Members.***

- (c) *The Administration to provide a copy of the relevant sections in other legislation which contain similar provisions as **clause 11**, and*
- (d) *The Administration to provide a paper on the purpose and legal effects of **clause 11**, and to confirm that the order to be made by the Chief Executive in Council is subsidiary legislation, and that its scope is confined to those consequential, transitional or savings provisions in the Schedules of the Bill.*

A note explaining the purpose and legal effects of clause 11 is at **Annex A**. Copies of the relevant sections in other legislation which provide for consequential amendments and savings and transitional provisions to be made by subsidiary legislation are annexed at **Enclosures I to IV to Annex A**.

- (e) *The Administration to provide a comparison table on detailed provisions of the Bylaws of the two provisional municipal councils (PMCs) as listed in Schedules 1 and 2, with explanation on the differences and the reason for selecting the Bylaw of a particular municipal council for enactment.*

A table comparing the Bylaws of the two PMCs and explaining the reason for selecting a particular set of Bylaws where appropriate is at **Annex B**. In aligning the different Bylaws of the PMCs, we generally adopt the more comprehensive version among the two and make necessary adjustments to bridge the differences. The only exceptions are a few cases where we have proposed to adopt the less restrictive version either because the tighter measures would impose excessive burden on existing licensees or are considered to be not necessary. See for example item 34 in Annex B concerning installation of lighting system for swimming pools after sunset and items 14 and 17 in Annex B on offences and restrictions in public libraries and museums.

Fee-setting mechanism (your letter of 29 June 1999)

On the question of the fee-setting mechanism raised in your letter of 29 June 1999, we are still considering how to address Members' concern on a mechanism to enable the LegCo to become involved in certain fees and charges for "basic" services such as swimming pools, tennis courts, indoor games halls, libraries and museums, etc. and will respond to you in due course.

Yours sincerely,

(John C. Y. Leung)
for Secretary for Constitutional Affairs

**Note on the Purpose and Legal Effects of Clause 11 of
the Provision of Municipal Services (Reorganization) Bill**

The purpose of clause 11 is to make additional consequential amendments and transitional and savings provisions which may become necessary as a result of the repeals and amendments contained in the Bill. One example of a situation where such amendments may become necessary is to amend subsidiary legislation made after the enactment but before the coming into operation of this Bill.

2. The scope and effect of clause 11 is very limited as “consequential”, “savings” and “transitional” are self-limiting terms -

- (a) consequential amendments are those that are a necessary consequence of the substantive provisions in the proposed legislation, i.e. a necessary consequence of the Legislative Council enacting the repeals and amendments in this Bill;
- (b) the function of savings provisions is to preserve what already exists and they cannot create new rights or obligations;
- (c) transitional provisions are essentially special provisions with a short life span the purpose of which is, in applying the new legislation, to make arrangements for existing circumstances;

3. The provisions made under clause 11 is subsidiary legislation, whatever term is used to describe them. They can be called notices, orders or regulations, but as they are legislative in nature the legal effect would be the same. The orders do not come into operation until they are approved by the Legislative Council by Resolution under section 35 of the Interpretation and General Clauses Ordinance (Cap. 1)

4. The subsidiary legislation the Chief Executive in Council is empowered to make under clause 11 must be within the parameters described in paragraphs 2(a), (b) and (c) above. If any provision exceeds the enabling powers, it would be *ultra vires* and can be challenged as such by judicial review.

5. The provisions made under clause 11 can only relate to the consequences of the repeal of the Provisional Urban Council Ordinance, Provisional Regional Council Ordinance and the repeals and amendments contained in the Schedules to the Bill.

6. Sometimes savings and transitional provisions are incorporated into the relevant enactment but sometimes they merely appear in the amending legislation. In this case, they can exist as subsidiary legislation made under this Bill. It is usual for provisions of this nature to be omitted as spent from the Statute Book when they have had their effect. Consequential amendments are made to the enactment concerned.

7. Other Hong Kong examples of consequential amendments and savings and transitional provisions being made by subsidiary legislation are -

(a) paragraphs 5 and 6 of Schedule 2 to the Legal Services Legislation (Miscellaneous Amendments) Ordinance (No. 94 of 1997) (**Enclosure I**);

(b) paragraph 1 of Schedule 5 to the Occupational Safety and Health Ordinance (Cap. 509) (**Enclosure II**);

(c) section 45 of Long-Term Prison Sentence Review Ordinance (Cap. 524) (**Enclosure III**); and

(d) paragraph 1 of Schedule 4 of Securities (Margin Financing) (Amendment) Bill 1999 (**Enclosure IV**)

8. Members may also like to note that it is a common practice in other jurisdictions, in enacting legislation involving reorganization or reform, to give a subordinate law making authority power to make consequential amendments and savings and transitional provisions. The most relevant example is the Local Government Act of 1985 of UK. The relevant provisions are annexed at **Enclosure V**. Examples from Australian legislation and New Zealand legislation are also attached at **Enclosures VI and VII** respectively.

Enclosure I

**Extract from the Legal Services Legislation
(Miscellaneous Amendments) Ordinance
(No. 94 of 1997)**

A3706 Ord. No. 94 of 1997

**LEGAL SERVICES LEGISLATION
(MISCELLANEOUS AMENDMENTS)**

5. Consequential amendments to other Ordinances

The Attorney General may, by order published in the Gazette, consequentially amend a provision of another Ordinance, or of subsidiary legislation under this or another Ordinance, that applies to a solicitor or a foreign lawyer so that the provision will, after the amendment takes effect, also apply in a similar way to a solicitor corporation or a foreign lawyer corporation.

6. Power to make savings and transitional regulation

(1) The Attorney General may make a regulation containing provisions of a savings or transitional nature consequent on the enactment of this Ordinance.

(2) A provision referred to in subsection (1) may, if the regulation so provides, take effect from the date of assent to this Ordinance or a later date.

(3) To the extent to which a provision referred to in subsection (1) takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as—

- (a) to effect, in a manner prejudicial to any person (other than the Government or any public body), the rights of that person existing before the date of its publication; or
- (b) to impose liabilities on any person (other than the Government or a public body) in respect of anything done, or omitted to be done, before the date of its publication.

Enclosure II

**Extract from the Occupational Safety and
Health Ordinance (Cap. 509)**

Chapter:	509	Title:	OCCUPATIONAL SAFETY AND HEALTH ORDINANCE	Gazette Number:	
Schedule:	5	Heading:	SAVINGS AND TRANSITIONAL PROVISIONS	Version Date:	30/06/1997

[section 51]

1. Governor may make savings and transitional regulation

(1) The Governor may make regulations, subject to the approval of the Legislative Council, containing provisions of a savings or transitional nature consequent on the enactment of this Ordinance.

(2) A provision referred to in subsection (1) may, if the regulation so provides, take effect from the date of assent to this Ordinance or a later date.

(3) To the extent to which a provision referred to in subsection (1) takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as-

- (a) to affect, in a manner prejudicial to any person (other than the Government or a public body), the rights of that person existing before the date of its publication; or
- (b) to impose liabilities on any person (other than the Government or a public body) in respect of anything done, or omitted to be done, before the date of its publication.

2. Inquiries under Factories and Industrial
Undertakings Ordinance

Despite the repeal of sections 11A and 11B of the Factories and Industrial Undertakings Ordinance (Cap 59), an inquiry pending under either of those sections immediately before their repeal may be continued and completed as if those sections had not been repealed.

Enclosure III**Extract from the Long-Term Prison
Sentences Review Ordinance (Cap. 524)**

Chapter:	524	Title:	LONG-TERM PRISON SENTENCES REVIEW ORDINANCE	Gazette Number:	15 of 1999
Section:	45	Heading:	Power to make transitional regulation	Version Date:	01/07/1997

Remarks:

Amendments retroactively made - see 15 of 1999 s. 3

(1) The Chief Executive may make regulations containing provisions of a transitional nature consequent on the enactment of this Ordinance. (Amended 15 of 1999 s. 3)

(2) A provision referred to in subsection (1) may, if the regulation so provides, take effect from the date of assent to this Ordinance or a later date.

(3) To the extent to which a provision referred to in subsection (1) takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as-

(a) to affect, in a manner prejudicial to any person (other than the Government or a public body), the rights of that person existing before the date of its publication; or

(b) to impose liabilities on any person (other than the Government or a public body) in respect of anything done, or omitted to be done, before the date of its publication.

Enclosure IV

**Extract from the Securities (Margin Financing)
(Amendment) Bill 1999**

SCHEDULE 4

[s. 7]

SAVINGS AND TRANSITIONAL PROVISIONS

**1. Chief Executive in Council may make
savings and transitional regulation**

(1) The Chief Executive in Council may make regulations containing provisions of a savings or transitional nature consequent on the enactment of this Ordinance.

(2) A provision referred to in subsection (1) may, if the regulation so provides, take effect from the date on which the enactment of this Ordinance is notified in the Gazette or a later date.

(3) To the extent to which a provision referred to in subsection (1) takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as—

- (a) to affect, in a manner prejudicial to any person (other than the Government or a public body), the rights of that person existing before the date of its publication; or
- (b) to impose liabilities on any person (other than the Government or a public body) in respect of anything done, or omitted to be done, before the date of its publication

Enclosure V

Extract from the Local Government Act 1985,
United Kingdom

c. 51 1129



Local Government Act 1985

1985 CHAPTER 51

An Act to abolish the Greater London Council and the metropolitan county councils; to transfer their functions to the local authorities in their areas and, in some cases, to other bodies; and to provide for other matters consequential on, or connected with, the abolition of those councils. [16th July 1985]

B E IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

PART I

ABOLITION OF GREATER LONDON COUNCIL AND METROPOLITAN COUNTY COUNCILS

1—(1) On the date on which this subsection comes into force—
(a) the Greater London Council; and
(b) the metropolitan county councils,
shall cease to exist.

Abolition of
GLC and
metropolitan
county
councils.

(2) The date on which subsection (1) above comes into force is in this Act referred to as the "abolition date" and shall be 1st April 1986.

1202

c. 51

Local Government Act 1985

PART IX

of that authority or of any committee or officer of that authority within the meaning of subsections (1) and (2) of that section.

Transfers of property, rights and liabilities.

100.—(1) The Secretary of State may by an order or orders made at any time before the abolition date provide for the transfer on that date to any local authority, new authority or residuary body or to any other person, including any Minister of the Crown, of any property, rights or liabilities of the Greater London Council or a metropolitan county council which, if not transferred under this section, would vest in accordance with section 62 above.

(2) Any transfer under this section and any transfer of property by or under any other provision of this Act may be on such terms, including financial terms, as the Secretary of State thinks fit and the Secretary of State may by order create or impose such new rights or liabilities in respect of what is transferred as appear to him to be necessary or expedient.

(3) The Secretary of State may by order confer on any person to whom property is transferred by the order or by or under any other provision of this Act any statutory functions which before the abolition date were exercisable in relation to that property by the Greater London Council or a metropolitan county council.

(4) Without prejudice to subsections (2) and (3) above, any order under this section and any other order under this Act by which property is transferred may include such incidental consequential and supplementary provisions as appear to the Secretary of State to be necessary or expedient.

Power to make incidental, consequential, and transitional provisions.

101.—(1) The Secretary of State may at any time by order make such incidental, consequential, transitional or supplementary provision as appears to him to be necessary or expedient—

(a) for the general purposes or any particular purposes of this Act or in consequence of any of its provisions or for giving full effect to it; or

(b) in consequence of such of the provisions of any other Act passed in the same Session as this Act as apply to any area or authority affected by this Act.

(2) An order under this section may in particular make provision—

(a) for enabling any authority or body by whom any powers will become exercisable on the abolition date by virtue of any provision made by or under this Act to take before that date any steps (such as the undertaking of consultations, the giving of notices or the

Local Government Act 1985

c. 51

1203

consideration of objections) which are required to be taken as a preliminary to the exercise of those powers:

PART IX

- (b) for the making before the abolition date of arrangements for securing the satisfactory operation from that date of any provision made by or under this Act and for defraying the cost of any such arrangements;
- (c) for amending, repealing or revoking (with or without savings) any provision of an Act passed, or an instrument under an Act made, before the abolition date, for applying any such provision (with or without modification) and for making savings or additional savings from the effect of any amendment or repeal made by this Act;
- (d) with respect to the membership of any body so far as consisting of persons elected by, or appointed by or on the nomination of, the Greater London Council or a metropolitan county council, whether alone or together with one or more other bodies;
- (e) for dissolving any body corporate established by any Act passed, or by any instrument under an Act made, before the abolition date.

(3) The amendments that may be made under subsection (2)(c) above—

- (a) shall be in addition and without prejudice to those made by any other provision of this Act: and
- (b) shall, in particular, include amendments in consequence of functions under provisions applying to Greater London or a metropolitan county becoming exercisable in their respective areas by the councils of London boroughs or metropolitan districts or by the Common Council.

(4) No other provision of this Act shall be construed as prejudicing the generality of the powers conferred by this section.

102.—(1) The enactments mentioned in Schedule 16 to this Consequential Act shall have effect with the amendments there specified, being amendments consequential on the provisions of this Act. ^{amendments and repeals.}

(2) The enactments mentioned in Schedule 17 to this Act (which include spent provisions) are hereby repealed to the extent specified in the third column of that Schedule.

(3) This section has effect from the abolition date.

(4) Subsection (2) above does not affect any orders made before the abolition date under section 23, 83 or 87 of the London 1963 c. 33. Government Act 1963.

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*Health Reforms (Transitional
Provisions)*

1998, No. 23

(2) Before making any recommendation that regulations be made under subsection (1) (a) of this section, the Minister shall consult as to the principal contents of the proposed regulations with such persons, or representatives of the persons or classes of persons to be specified in the regulations, as the Minister thinks fit.

Amendments to Disabled Persons Community Welfare Act 1975

26. **Amendments to Disabled Persons Community Welfare Act 1975**—(1) The Disabled Persons Community Welfare Act 1975 is hereby amended in the manner indicated in the Second Schedule to this Act.

(2) Part II of the Disabled Persons Community Welfare Act 1975 is hereby repealed.

(3) Subsection (2) of this section shall come into force on a date to be appointed by the Governor-General by Order in Council, being a date after the 30th day of June 1994.

Amendments to Public Finance Act 1989

27. **Amendments to Public Finance Act 1989**—(1) The Public Finance Act 1989 is hereby amended by inserting in the Fourth, Sixth, and Seventh Schedules (as added by section 41 of the Public Finance Amendment Act 1992), in their appropriate alphabetical order, the following items:

- "Crown health enterprises.
- "Public Health Commission.
- "Regional health authorities."

(2) The Public Finance Act 1989 is hereby amended by inserting in the Fifth Schedule (as added by section 41 of the Public Finance Amendment Act 1992), in their appropriate alphabetical order, the following items:

- "Public Health Commission.
- "Regional health authorities."

(3) The Public Finance Act 1989 is hereby amended by inserting in the Fourth, Sixth, and Seventh Schedules (as so added), in its appropriate alphabetical order, the following item:

- "Residual Health Management Unit."

(4) The Public Finance Act 1989 is hereby amended by omitting from the Fourth and Seventh Schedules (as so added) the words "Area Health Boards".

Enclosure VI

**Extract from the Competition Policy Reform Act,
No. 88 of 1995, Australia**

Competition Policy Reform No. 88, 1995 2041

(b) a notice may be given under section 93 of the Principal Act; as if the amendments made by Division 1 of this Part commenced at the same time as this section.

**PART 6—AMENDMENTS COMMENCING AT THE FIFTH
COMMENCEMENT TIME**

Amendment of Trade Practices Act: insertion of feminine pronouns

91. The Principal Act is amended so that:

- (a) every occurrence of "he" is followed once by "or she";
- (b) every occurrence of "him" is followed once by "or her";
- (c) every occurrence of "himself" is followed once by "or herself";
- (d) every occurrence of "his" is followed once by "or her".

PART 7—MISCELLANEOUS

Regulations

92.(1) The Governor-General may make regulations prescribing matters:

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) In particular, the regulations may prescribe matters of a transitional or savings nature that arise out of the amendments made by this Act.

Enclosure VII

Extract from the Health Reforms (Transitional Provisions) Act,

No. 23 of 1993, New Zealand

1993, No. 23

Health Reforms (Transitional
Provisions)

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Amendments to Social Security Act 1964

24. Repeal of Part II of Social Security Act 1964—

- (1) Part II of the Social Security Act 1964 is hereby repealed.
- (2) The enactments specified in Part III of the Fifth Schedule to this Act are hereby repealed.
- (3) The enactments specified in Part IV of the Fifth Schedule to this Act are hereby revoked.
- (4) Notwithstanding subsections (1) and (2) of this section, section 100A of the Social Security Act 1964 (as inserted by section 25 of the Social Security Amendment Act 1973) shall continue to have effect as if those subsections had not been enacted.

25. Regulations—(1) The Governor-General may from time to time, by Order in Council, in accordance with the recommendation of the Minister, make regulations for all or any of the following purposes:

- (a) Prescribing the maximum amounts that persons or classes of persons specified in the regulations may charge in respect of any health services or disability services specified in the regulations for which payments are made by purchasers, being maternity, immunisation, diagnostic, pharmaceutical, or other services for which the amounts that could be charged were limited by any Act or regulations on the day before the day on which this section comes into force;
- (b) Defining classes of services or persons for the purposes of any regulations made under this section, which classes may be defined by reference to such criteria, circumstances, or matters as are specified in the regulations, including, but not by way of limitation, the income of the persons;
- (c) Prescribing transitional and savings provisions relating to the coming into force of section 24 of this Act; and, without limiting the generality of paragraphs (a) and (b) of this subsection, any such regulations may provide that, together with such amendments or additions (if any) as are specified in the regulations, specified provisions of this Act shall not apply during a specified transitional period, or specified provisions of Part II of the Social Security Act 1964, or of the enactments specified in Part III or Part IV of the Fifth Schedule to this Act shall continue to apply, in respect of any specified persons or class of persons.

**Comparison of the Bylaws of the two Provisional Municipal Councils made under
the Public Health and Municipal Services Ordinance (Cap. 132)
and Proposed Changes to the Subsidiary Legislation**

Item	New Title	Old/Repealed Title	Main Differences/Remarks
1.	Abattoirs Regulation	Abattoir (Urban Council) Bylaws	The Regulation will become obsolete after the closure of Cheung Sha Wan Abattoir, which is the only public abattoir in the territory, scheduled for decommissioning by the end of 1999. However, in order to make provision for any possible delay in the closure of the abattoir beyond 1 January 2000, the Regulation will need to be retained until the abattoir is actually closed.
2.	Advertisements Regulation	Advertisements Bylaws	The Bylaws apply to the whole territory.
3.	Bathing Beaches Regulation	Bathing Beach (Urban Council) Bylaws <i>[Bathing Beach (Regional Council) Bylaws to be repealed]</i>	The UC Bylaws contain a provision prohibiting persons from begging for alms which is not provided in the RC Bylaws (Bylaw 14).
4.	Civic Centres Regulation	Civic Centres (Regional Council) Bylaws <i>[Civic Centres (Urban Council) Bylaws to be repealed]</i>	<ul style="list-style-type: none"> ● The following provisions are contained in the RC Bylaws only - <ul style="list-style-type: none"> - Bylaw 9A on restricting the introduction of any conveyance into a civil centre; - Bylaw 9B on restricting recording and photographing activities;

			<ul style="list-style-type: none"> - Bylaw 9C on restricting filming activities; - Bylaw 11A on appeal brought to the Council by aggrieved persons. ● Some of the penalties imposed under the UC and RC Bylaws are slightly different.
5.	Commercial Bathhouses Regulation	Commercial Bathhouses (Urban Council) Bylaws	<ul style="list-style-type: none"> ● No similar Bylaws in the ProRC area. ● The Bill extends the Regulation to the New Territories to protect public health. A two-year grace period will be given to the existing commercial bathhouses in the ProRC area to comply with the licensing requirements.
6.	Cremation and Gardens of Remembrance Regulation	<p>Cremation and Gardens of Remembrance (Urban Council) Bylaws</p> <p><i>[Cremation and Gardens of Remembrance (Regional Council) Bylaws to be repealed]</i></p>	<ul style="list-style-type: none"> ● The RC Bylaws include provisions concerning “private crematorium” (Bylaws 18 to 22) which are not provided in the UC Bylaws. These are incorporated into the Regulation. ● The following provisions in the UC Bylaws are not contained in the RC Bylaws - <ul style="list-style-type: none"> - Bylaw 4(2)(b)(iii) provides that application for cremation permit shall be accompanied by documentary evidence of the cause of death in the case of human remains which have been placed in a repository specified in the Third Schedule; - Bylaw 16(1) provides restriction on attending cremations; Bylaw 16(2) provides an exemption clause for cases of cremation carried out in accordance with the rites of the Hindu religion.

7.	Designation of Libraries Order	Designation of Libraries (Urban Council Area) Order <i>[Designation of Libraries (Regional Council Area) Order to be repealed]</i>	<ul style="list-style-type: none"> ● No discrepancy between the UC and RC Orders. ● The Bill consolidates the UC and RC Orders into one Order.
8.	Food Business Regulation	Food Business (Regional Council) Bylaws <i>[Food Business (Urban Council) Bylaws to be repealed]</i>	<ul style="list-style-type: none"> ● Places where collection of shell fish is prohibited under Bylaw 29 of the UC Bylaws are different from those under Bylaw 28 of the RC Bylaws. The Bill consolidates these provisions.
9.	Food Business Regulation (Exemption from section 31(1)) Notice	Food Business (Regional Council) Bylaws) (Exemption from Bylaws 31(1)) (Consolidation) Notice <i>[Food Business (Urban Council) Bylaws (Exemption from Bylaw 32(1)) (Consolidation) Notice to be repealed]</i>	<ul style="list-style-type: none"> ● The RC Notice includes reference to private market which is not found in the UC Notice. ● The UC Notice includes reference to restaurant selling cooked food or light refreshments. The RC Notice mentions restaurant only. Reference to restaurant is considered adequate for the purpose and will be adopted.
10.	Frozen Confections Regulation	Frozen Confections (Urban Council) Bylaws <i>[Frozen Confections (Regional Council) Bylaws to be repealed]</i>	<ul style="list-style-type: none"> ● Bylaw 4 of the UC Bylaws empowers the licensing authority to amend by means of a notice in the Gazette the prescribed heat treatment methods at the First Schedule to the Bylaws. The RC Bylaws do not have such a provision.

11.	Funeral Parlours Regulation	Funeral Parlour (Regional Council) Bylaws <i>[Funeral Parlour (Urban Council) Bylaws to be repealed]</i>	<ul style="list-style-type: none"> ● The definitions of “funeral parlour” in the RC Bylaws and UC Bylaws are different in that the latter include places set apart for the purpose of washing dead bodies in accordance with Islamic rites. The Bill adopts the latter. ● In addition to the provisions in the UC Bylaws, the RC Bylaws - <ul style="list-style-type: none"> - empower the authority to refuse to grant or to revoke a licence granted to a person under 21 years or on public interest ground (Bylaw 5); and - give a more detailed classification of offences and penalties (Bylaw 14).
12.	Hawker (Permitted Places) Declaration	Hawker (Permitted Place) (Urban Council) (Consolidation) Declaration	<ul style="list-style-type: none"> ● No similar Declaration in the ProRC area.
13.	Hawker Regulation	Hawker (Urban Council) Bylaws <i>[Hawker (Regional Council) Bylaws to be repealed]</i>	<ul style="list-style-type: none"> ● The UC and RC Bylaws are quite different in terms of content and arrangement. The Bill adopts the UC Bylaws and incorporates certain provisions in the RC Bylaws as necessary to meet the special needs in the New Territories. ● The UC Bylaws have provisions concerning hawker permitted areas (Bylaws 4 and 22) and more detailed provisions on fixed pitches (Bylaws 27-39) and hawker stalls and equipment (Bylaws 40-43, 46-47 and 53-54) which are not present in the RC Bylaws. ● The following aspects are covered in the RC Bylaws only –

			<ul style="list-style-type: none"> - hawking without licence in a place set aside by the Council (Bylaw 4(2)(a)); - hawking with an expired licence for a period of 2 months (Bylaw 4(2)(b)); - regulation of hawking by means of mobile van (Bylaw 6); - special provisions as to licences to hawk by means of mobile van for sale of food (Bylaw 9); - pitch cards and display thereof (Bylaws 11 and 22); - removal at night (Bylaw 21); - requirements as to stalls, size of stalls and hours of business (Bylaws 23, 24, 25); - intoxicating liquor not allowed at hawker stalls (Bylaw 30); - hawker bazaars (Bylaw 31); - diagrams showing construction of cooked food stalls, fixed pitch stalls and boot-black's box (Schedule). <ul style="list-style-type: none"> ● Under PUC's Itinerant Hawker Licence (IHL) Compulsory Deletion Policy, the category of IHL in the PUC area is to be deleted by a date to be fixed. In fact, the Hawker (UC) (Amendment)(No. 3) Bylaws 1994 concerning deleting of IHL was passed in 1994 but without a commencement date. There is no similar policy in the ProRC area. The Bill retains IHL throughout the territory pending a review of the policy.
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14.	Libraries Regulation	<p>Library (Regional Council) Bylaws</p> <p><i>[Library (Urban Council) Bylaws to be repealed]</i></p>	<ul style="list-style-type: none"> ● Some acts are classified as offences under the UC Bylaws but not explicitly prohibited under the RC Bylaws. Examples are spitting, engaging in any conversation after one has been requested not to do so by the librarian, and sitting on any shelf or table or sitting on the floor (Bylaw 30). ● The UC Bylaws prohibit a person suffering from any communicable disease from borrowing, reading or using library material or entering a library (Bylaw 35). There is no similar provisions in the RC Bylaws. ● The UC Bylaws give the librarian wider power to require a person to leave a library. For example, the person concerned is offensively unclean in person or in dress, or is, in the librarian’s opinion, indecently or insufficiently clad (Bylaw 36). ● Most of the above provisions are considered to be either too restrictive or not necessary for the proper management of public libraries. Except for a provision preventing a person with a communicable ear disease from wearing a headset provided by the library, we will not incorporate the above UC Bylaws provisions into the Regulation.
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15.	Declaration of Markets Notice	<p>Declaration of Markets in the Regional Council Area</p> <p><i>[Declaration of Markets in the Urban Council Area to be repealed]</i></p>	<ul style="list-style-type: none"> ● No discrepancy between the Declarations in the PUC and ProRC areas. ● The Bill consolidates the two Declarations into one notice.
16.	Milk Regulation	<p>Milk (Urban Council) Bylaws</p> <p><i>[Milk (Regional Council) Bylaws to be repealed]</i></p>	<ul style="list-style-type: none"> ● The Regional Council Bylaws do not have a provision empowering the licensing authority to amend by means of a notice in the Gazette the prescribed heat treatment methods at Schedule 1 as in UC Bylaw.
17.	Museums Regulation	<p>Museums (Regional Council) Bylaws</p> <p><i>[Museums (Urban Council) Bylaws to be repealed]</i></p>	<ul style="list-style-type: none"> ● Under the UC Bylaws, members of the museum staff are given wider power to refuse a person entry into a museum or require him/her to leave a museum. For example, the person concerned is offensively unclean in person or in dress, is indecently or insufficiently dressed, or is likely to cause a nuisance (Bylaws 6 and 7). Bylaw 6 also empowers a member of the staff to refuse entry into a museum a child under 3 years of age. Such provisions are considered to be either too restrictive or not necessary for the proper management of museums and are therefore not incorporated into the Regulation. ● The following provisions appear in the RC Bylaws only - <ul style="list-style-type: none"> - removal from the museum a person who is refused entry into a museum or who refuses to leave a museum (Bylaw 6); and

			<ul style="list-style-type: none"> - prohibition of filming (Bylaw 12(i)).
18.	Declaration of Offensive Trades Notice	<p>Declaration of Offensive Trades in the Regional Council Area</p> <p><i>[Declaration of Offensive Trades in the Urban Council Area to be repealed]</i></p>	<ul style="list-style-type: none"> ● No discrepancy between the Declarations in the PUC and Pro RC Area. ● The Bill combines the two Declarations into a consolidated notice.
19.	Offensive Trades Regulation	<p>Offensive Trades (Regional Council) Bylaws</p> <p><i>[Offensive Trades (Urban Council) Bylaws to be repealed]</i></p>	<ul style="list-style-type: none"> ● The RC Bylaws require more information from the licence applicants and impose certain stricter licensing conditions (e.g. proper installation of heating equipment.) ● The UC Bylaws do not contain the following provisions in the RC Bylaws - <ul style="list-style-type: none"> - power to grant exemption from observance of certain Bylaws (Bylaws 19); - power of free access by health officers (Bylaw 20); and - restriction of persons under the age of 14 in premises where offensive trade is carried on (Bylaw 21).
20.	Places of Amusement Regulation	<p>Places of Amusement (Urban Council) Bylaws</p> <p><i>[Places of Amusement (Regional Council) Bylaws to be repealed]</i></p>	<ul style="list-style-type: none"> ● No discrepancy between the UC and RC Bylaws
21.	Pleasure Grounds Regulation	<p>Pleasure Grounds (Urban Council) Bylaws</p>	<ul style="list-style-type: none"> ● The Bill adopts the UC Bylaws and incorporates certain provisions in the RC Bylaws as necessary.

		<i>[Pleasure Grounds (Regional Council) Bylaws to be repealed]</i>	<ul style="list-style-type: none"> ● The following provisions are included in the UC Bylaws only - <ul style="list-style-type: none"> – Bylaw 11(g) and (h) which prohibit persons from feeding any animal, bird or fish kept in any pleasure ground and from throwing or placing anything in any cage or in any enclosure not open to the public; – Bylaw 23A which prohibits tampering with hot wax; – Bylaw 29 which restricts the behaviour within and around the Cenotaph site.
22.	Private Cemeteries Regulation	Private Cemeteries (Urban Council) Bylaws <i>[Private Cemeteries (Regional Council) Bylaws to be repealed]</i>	<ul style="list-style-type: none"> ● No substantive differences between the UC and RC Bylaws. ● The Bill consolidates the two lists of private cemeteries specified in the Fifth Schedule to Cap. 132.
23.	Private Markets Regulation	Private Markets (Regional Council) Bylaws	<ul style="list-style-type: none"> ● No similar Bylaws in the PUC area.
24.	Public Cemeteries Regulation	Public Cemeteries (Urban Council) Bylaws <i>[Public Cemeteries (Regional Council) Bylaws to be repealed]</i>	Bylaw 7A(2A) of the RC Bylaws provides that the Council may allocate a grave space in a public cemetery for the purpose of erecting monuments, headstones, etc without interring any human remains. It provides necessary flexibility in the management of public cemetery which is not present in the UC Bylaws. The Regulation incorporates this provision. <ul style="list-style-type: none"> ● The commencement dates as specified in Bylaws 8A(1)(a) of the UC Bylaws and RC Bylaws which allow the management to remove or dispose of any grave covering or any monument,

			<p>headstone, etc erected in a public cemetery after a specified period are different. The Bill retains the different dates for the former PUC and ProRC areas in the Regulation.</p> <ul style="list-style-type: none"> ● The Regulation consolidates the two lists of public cemeteries in the Fifth Schedule to Cap. 132.
25.	Public Cleansing and Prevention of Nuisances Regulation	<p>Public Cleansing and Prevention of Nuisances (Urban Council) Bylaws</p> <p><i>[Public Cleansing and Prevention of Nuisances (Regional Council) Bylaws to be repealed]</i></p>	<ul style="list-style-type: none"> ● Bylaw 13 of the RC Bylaws prevents fouling of street by dog urine which is not controlled under the UC Bylaws. The Bill does not include the reference to urine as it is considered not practical for the dog owner to control. ● Bylaw 19(4)(c) of the RC Bylaws provides the Authority to direct the manner of disposal of waste where waste collection service is not provided. This is not provided in the UC Bylaws. The Regulation incorporates this provision.
26.	Public Conveniences (Conduct and Behaviour) Regulation	<p>Public Conveniences (Conduct and Behaviour) (Urban Council) Bylaws</p> <p><i>[Public Conveniences (Regional Council) Bylaws to be repealed]</i></p>	<ul style="list-style-type: none"> ● Bylaw 8 of the RC Bylaws prevents any unauthorized removal of content from a septic tank or cesspool which are not provided in the UC Bylaws. This provision is incorporated into the Regulation. ● The UC Bylaws contain Bylaw 9 which provides power to direct persons to leave public conveniences, which is not covered in the RC Bylaws.

27.	Public Funeral Halls Regulation	Public Funeral Hall (Urban Council) Bylaws	<ul style="list-style-type: none"> ● No similar Bylaws in the ProRC area.
28.	Public Markets Regulation	<p>Public Market (Regional Council) Bylaws</p> <p><i>[Public Market (Urban Council) Bylaws to be repealed]</i></p>	<ul style="list-style-type: none"> ● The following provisions in the RC Bylaws are not contained in the UC Bylaws: <ul style="list-style-type: none"> - Bylaw 3 provides that “inside service” has the same meaning assigned to it by the Waterworks Ordinance (Cap. 102)”; - Bylaw 7A provides that every tenant of a stall shall provide a refuse bin; - Bylaw 7 concerning “Alterations to stall or its fixtures” is more comprehensive than Bylaw 7 of the UC Bylaws concerning “Electric Equipment”. ● Bylaw 6 of the RC Bylaws provides that a market stall should be leased to any one person while the PUC’s Bylaw 6 allows the stall to be leased to any person or any number of persons not exceeding 4. The RC provision reflects the current practice and is therefore adopted.
29.	Public Swimming Pools Regulation	<p>Public Swimming Pools (Urban Council) Bylaws</p> <p><i>[Public Swimming Pools (Regional Council) Bylaws to be repealed]</i></p>	<ul style="list-style-type: none"> ● No discrepancy between the UC and RC Bylaws.

30.	Restriction of Hawking in Special Areas Notification	Restriction of Hawking in Special Areas (Regional Council Area)(Consolidation) Notification	<ul style="list-style-type: none"> ● No similar restriction for PUC area.
31.	Sanitation and Conservancy Regulation	Sanitation and Conservancy (Regional Council) Bylaws <i>[Conservancy (Urban Council) Bylaws to be repealed]</i>	<ul style="list-style-type: none"> ● The UC Bylaws include definition of “conservancy service”; “premises”; “temporary conservancy service” and “water-borne sanitation” which are not provided in the RC Bylaws. The Bill incorporates these provisions. ● “Latrine” is used in the RC Bylaws but “waterclosets” is used in the UC Bylaws. The former is adopted. ● Bylaw 8 of the RC Bylaws allows “7 days after the receipt” for the Authority to refuse application for conservancy service whereas “48 hours” is provided in the UC Bylaws. The former is adopted.
32.	Slaughterhouses Regulation	Slaughterhouses (Regional Council) Bylaws <i>[Slaughterhouse (Urban Council) Bylaws to be repealed]</i>	<ul style="list-style-type: none"> ● The RC Bylaws currently apply to Tsuen Wan, Yuen Long and Cheung Chau slaughterhouses and will also apply to the new Sheung Shui Slaughterhouse tentatively scheduled for commissioning in late August 1999. The UC Bylaws apply to the slaughterhouse in Kennedy Town, which is scheduled for decommissioning in early 2000. ● In Schedule 5 of the UC Bylaws, the size of marks to be applied to the dressed carcasses and offal of slaughtered food animals are slightly different in diameter from those under the RC Bylaws.

33.	Stadia Regulation	Stadia (Urban Council) Bylaws <i>[Stadia (Regional Council) Bylaws to be repealed]</i>	<ul style="list-style-type: none"> ● The circumstances under which a person may be refused entry to or be directed to leave a stadium, as provided under the UC Bylaws, are stricter and clearer (Bylaw 7). ● The RC Bylaws do not contain provisions on the control of intoxicating liquor, as provided in the UC Bylaws (Bylaws 10A-10E).
34.	Swimming Pools Regulation	Swimming Pools (Urban Council) Bylaws <i>[Swimming Pools (Regional Council) Bylaws to be repealed]</i>	<ul style="list-style-type: none"> ● The UC Bylaws do not contain the following provisions as in RC Bylaws - <ul style="list-style-type: none"> - use of surface skimmers and installation of lighting system for swimming pools after sunset (Bylaw 6) - disinfection of swimming pool water (Bylaw 17A) - testing kits (Bylaw 17B); and - inspection book (Bylaw 17C). ● Currently the PUC exercises control over the disinfection and quality of swimming pool water, testing kits, inspection books, surface skimmer, etc through imposition of licensing requirements/conditions. Such an arrangement is considered acceptable and need not be included in the Regulation. ● There would be practical difficulties and financial implications to require all existing swimming pools in the PUC area to meet the requirement concerning installation of lighting system for swimming pools after sunset. We expect strong objection from the existing licensees if these

			<p>requirements were to apply to PUC area.</p> <ul style="list-style-type: none"> ● The quality of swimming pool water in terms of purity, clarity and pH value specified in the two Bylaws is different. From the public health point of view, both sets of standards are equally acceptable and both achieve the same objective of ensuring good quality of the pool water.
35.	Undertakers of Burials Regulation	<p>Undertakers of Burials (Regional Council) Bylaws</p> <p><i>[Undertakers of Burials (Urban Council) Bylaws to be repealed]</i></p>	<ul style="list-style-type: none"> ● Bylaw 4(2) of the RC Bylaws provides a licence valid for 1 year while the UC Bylaws allows such shorter period as stated in the licence. ● The following provisions in the RC Bylaws are not covered in the UC Bylaws - <ul style="list-style-type: none"> - Bylaw 8 provides the Council the authority to alter, deface or make any erasure on a license while prohibiting other persons to do so. - Bylaw 10(1) requires more particulars to be kept in the register of the licensed undertaker on the person paying the charges and the manner of disposal.
36.	Ventilation of Scheduled Premises Regulation	<p>Ventilation of Scheduled Premises (Urban Council) Bylaws</p> <p><i>[Ventilation of Scheduled Premises (Regional Council) Bylaws to be repealed]</i></p>	<ul style="list-style-type: none"> ● No discrepancy between the existing UC and RC Bylaws.