

LEGISLATIVE COUNCIL BRIEF

ADMINISTRATION OF JUSTICE (MISCELLANEOUS PROVISIONS) BILL 1999

INTRODUCTION

At the meeting of the Executive Council on 16 March 1999, the Council ADVISED and the Chief Executive ORDERED that the Administration of Justice (Miscellaneous Provisions) Bill 1999 should be introduced into the Legislative Council.

BACKGROUND AND ARGUMENT

2 We periodically introduce Administration of Justice (Miscellaneous Provisions) bills to implement proposals which require legislative amendments to various court-related ordinances. The last time we introduced such a bill was in 1997 to deal with transition-related issues. Since then, we have identified a number of necessary amendments to various court-related ordinances.

3 The amendments in the proposed Administration of Justice (Miscellaneous Provisions) Bill (“the Bill”) include -

- (a) removing the requirement that judicial proceedings shall be adjourned when the red rainstorm warning signal is hoisted;
- (b) streamlining the mechanism for the temporary appointment of judicial officers in various courts and tribunals; and
- (c) making minor technical amendments to various ordinances.

Judicial Proceedings during Rainstorm Warnings

4 The Judicial Proceedings (Adjournment During Gale Warnings) Ordinance (Cap. 62) states that all judicial proceedings which are set down for hearing or are being conducted should be adjourned when a gale warning i.e. tropical cyclone warning signal of No. 8 or above, or a red or black rainstorm warning signal is in force. From experience, court time is wasted where proceedings have to be adjourned when the red rainstorm warning signal is hoisted, but the weather condition does not actually prevent parties from attending court. It also causes confusion and inconvenience to court users when all parties concerned are available, only to find that the proceedings cannot proceed because the red rainstorm warning signal is hoisted. To make efficient use of court time, avoid undue disruption to court operations, and minimise inconvenience to court users, we propose to remove the statutory requirement that judicial proceedings shall be adjourned when the red rainstorm warning is hoisted.

5 There might be concern that a litigant will be obliged to appear before the court when a red rainstorm warning signal is in force. If he should fail to arrive at the court at the prescribed time due to adverse weather, a default judgment might be entered against him. To address this, the Judiciary, after the enactment of the bill, will remind judges and judicial officers that they must be flexible and exercise their discretion regarding adjournment where a party does not turn up when a red rainstorm warning signal is in force. No penalty should be imposed unless the default is deliberate and intentional.

Temporary Judicial Appointment

6 From time to time, temporary judicial appointments are made to cater for the Judiciary's short-term operational needs. For instance, temporary judicial appointments are required to fill vacancies left by incumbents going on leave or acting in a higher rank, or to cope with an unexpected upsurge in workload, or to test out potential candidates for permanent appointments.

7 At present, the Chief Justice is empowered to make temporary appointments of deputy judges of the Court of First Instance, deputy District Judges and deputy adjudicators of the Small Claims Tribunal. There are no similar statutory provisions for temporary appointment of members of the Lands Tribunal, presiding officers of the Labour Tribunal, magistrates and coroners. In these cases, the appointing authority is taken to be the same as that for permanent appointment i.e. the appointment has to be made by the Chief

Executive. In practice, the authority in most of these cases has been delegated to the Chief Justice.

8 We propose to introduce amendments to streamline the appointment procedures and to ensure consistency in statutory provisions for temporary judicial appointment in all courts and tribunals.

Miscellaneous Minor Amendments

9 Minor technical amendments to various ordinances include -

- (a) repealing the transitional provision in the Official Languages Ordinance (Cap. 5) which is spent;
- (b) rectifying an inconsistency, arising as a result of the enactment of the Coroners Ordinance (Cap. 504), in the Births and Deaths Registration Ordinance (Cap. 174) which requires a death report to be sent to the coroner via the Commissioner of Police. According to Cap. 504, the report should be sent to the coroner with a copy to the Commissioner of Police at the same time;
- (c) standardising the level of fine at various levels of courts for similar offences;
- (d) amending the Chinese equivalents of various terms to improve accuracy; and
- (e) replacing outdated titles with current titles.

Such amendments do not involve a change in policy.

THE BILL

10 The main provisions of the Bill are as follows -

- (a) Part II proposes to remove the requirement that judicial proceedings be adjourned when a red rainstorm warning signal is in force;

- (b) Part III proposes to empower the Chief Justice to appoint deputy member of the Lands Tribunal, deputy presiding officer of the Labour Tribunal, deputy magistrate and deputy coroner; and
- (c) Part IV proposes to make minor technical amendments to various ordinances.

A copy of the Bill is at the Annex.

LEGISLATIVE TIMETABLE

11	The legislative timetable will be -	
	Publication in the Gazette	19 March 1999
	First Reading and commencement of Second Reading debate	31 March 1999
	Resumption of Second Reading debate, committee stage and Third Reading	To be notified

HUMAN RIGHTS IMPLICATIONS

12 The Department of Justice advises that the Bill is consistent with the human rights provisions of the Basic Law.

BINDING EFFECT

13 The amendments will not affect the binding effect of the existing provisions of the various Ordinances covered by the Bill.

FINANCIAL AND STAFFING IMPLICATIONS

14 There are no financial and staffing implications arising from the proposed amendments.

PUBLIC CONSULTATION

15 We consulted the Legislative Council's Administration of Justice and Legal Services Panel on the proposals on 25 February 1999. Members generally welcomed the proposals. We have also consulted the Law Society of Hong Kong and the Hong Kong Bar Association. The Law Society did not have any comments on the bill. The Bar Association has put forward some suggestions to enhance consistencies among various ordinances. We have taken on board their comments where appropriate.

PUBLICITY

16 A press release will be issued on 17 March 1999. A spokesman will be available to handle media enquiries.

ENQUIRIES

17 For enquiries on the brief, please contact Ms Amy Wong, Assistant Secretary (Administration) at 2810 2783.

Administration Wing
Chief Secretary for Administration's Office
March 1999
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ADMINISTRATION OF JUSTICE (MISCELLANEOUS PROVISIONS) BILL 1999

CONTENTS

Clause	PART I	Page
	GENERAL	
1.	Short title and commencement	1
	PART II	
	ADJOURNMENT DURING RAINSTORM WARNINGS	
	Judicial Proceedings (Adjournment During Gale Warnings) Ordinance	
2.	Interpretation	2
3.	Duration of gale warning and rainstorm warning	2
	PART III	
	TEMPORARY JUDICIAL APPOINTMENT	
	Lands Tribunal Ordinance	
4.	Interpretation	2
5.	Constitution of Tribunal	3
6.	Section added	
6A.	Appointment and powers of temporary members	3

Labour Tribunal Ordinance

7.	Interpretation	5
8.	Establishment of tribunal	5
9.	Appointment of presiding officers	5
10.	Section added	
	5A. Appointment of deputy presiding officers	6

Labour Tribunal (Suitors' Funds) Rules

11.	Interpretation	7
-----	----------------	---

Magistrates Ordinance

12.	Interpretation	7
13.	Section added	
	5A. Appointment of deputy magistrates	7

Small Claims Tribunal Ordinance

14.	Interpretation	8
15.	Establishment of tribunal	9
16.	Appointment and powers of deputy adjudicators	9

Small Claims Tribunal (Suitors' Funds) Rules

17.	Interpretation	10
-----	----------------	----

Coroners Ordinance

18.	Interpretation	10
19.	Section added	
	3A. Appointment of deputy coroners	10

Oaths and Declarations Ordinance

20.	Schedule 3 amended	11
-----	--------------------	----

PART IV

MISCELLANEOUS

Jury Ordinance

21.	Interpretation	12
22.	Qualifications and disabilities	12
23.	Fining of juror for non-attendance, etc.	12

Official Languages Ordinance

24.	Judicial proceedings	12
25.	Transitional arrangements	13

Oaths and Declarations Ordinance

26.	Taking and receiving declarations	13
27.	Oaths of Clerk and Deputy Clerk to the Executive Council	13

Births and Deaths Registration Ordinance

28.	Forms	13
-----	-------	----

Magistrates Ordinance

29.	Power to sentence person using insulting language to or concerning magistrate	14
	Provision as to entry of appeal	14
30.		14

31.	Second Schedule amended	14
32.	Fourth Schedule amended	15

Magistrates (Forms) Rules

33.	Schedule amended	15
-----	------------------	----

Places for Autopsies Order

34.	Schedule amended	16
-----	------------------	----

Coroners (Forms) Rules

35.	Schedule amended	16
-----	------------------	----

**Mutual Legal Assistance in Criminal
Matters Regulation**

36.	Appointment of process server	16
-----	-------------------------------	----

A BILL

To

Remove the requirement that judicial proceedings should be adjourned when a red rainstorm warning is in force; to enable temporary judicial appointments in court-related enactments and to provide for minor miscellaneous amendments to various Ordinances.

Enacted by the Legislative Council.

PART I

GENERAL

1. Short title and commencement

(1) This Ordinance may be cited as the Administration of Justice (Miscellaneous Provisions) Ordinance 1999.

(2) Parts II and III of this Ordinance shall come into operation on a day to be appointed by the Chief Justice by notice in the Gazette.

PART II

ADJOURNMENT DURING RAINSTORM WARNINGS

**Judicial Proceedings (Adjournment During Gale
Warnings) Ordinance**

2. Interpretation

Section 2 of the Judicial Proceedings (Adjournment During Gale Warnings) Ordinance (Cap. 62) is amended-

- (a) in the definition of “rainstorm warning”, by repealing “use of any of the heavy rainstorm warning signals” and substituting “the use of the heavy rainstorm warning signal”;
- (b) in the definition of “烈風警告”, by adding “藉” after “指” where it first appears.

3. Duration of gale warning and rainstorm warning

Section 5(1)(a)(ii) is amended by repealing everything after “that” and substituting “the heavy rainstorm warning signal commonly referred to as Black is in force; and”.

PART III

TEMPORARY JUDICIAL APPOINTMENT

Lands Tribunal Ordinance

4. Interpretation

Section 2 of the Lands Tribunal Ordinance (Cap. 17) is amended by adding -

““temporary member” (暫委成員) means a temporary member appointed under section 6A;”.

5. Constitution of Tribunal

Section 4 is amended -

- (a) in subsection (1), by repealing “subsection (4)” and substituting “this Ordinance”;
- (b) by repealing subsection (4) and substituting-

“(4) Subject to subsections (2) and (3) and section 6A, members of the Tribunal shall be such persons appointed by the Chief Executive who are-

- (a) qualified in law; or
- (b) in the opinion of the Chief Executive, sufficiently experienced in the practice of land valuation or some other subject relevant to the proceedings of the Tribunal to sit as members of the Tribunal.”.

6. Section added

The following is added-

“6A. Appointment and powers of temporary members

- (1) The Chief Justice may appoint any person who is-
 - (a) qualified in law; or

- (b) in the opinion of the Chief Justice, sufficiently experienced in the practice of land valuation or some other subject relevant to the proceedings of the Tribunal,

to sit as a temporary member of the Tribunal for such period and on such terms as he may think fit.

(2) Subject to the terms of appointment, a temporary member shall, during the period for which he is appointed, exercise all the jurisdiction and powers of the Tribunal, and perform all the duties of a member.

(3) Every appointment made in accordance with this section may be terminated by the Chief Justice at any time.

(4) Where the hearing of any proceedings before a temporary member is adjourned or where judgment is reserved therein or decision is subject to review, the temporary member shall have power to resume the hearing and determine the proceedings or to deliver as the judgment of the Tribunal the judgment which he has reserved or to review the decision which he has given, notwithstanding that before the hearing is resumed or judgment is delivered or the review is disposed of, his appointment has expired or has been terminated.

(5) For the purposes of subsection (4), the power of a temporary member to deliver judgment in a resumed hearing includes the power of awarding costs and the making of any order ancillary to or consequential upon the award of costs.”.

Labour Tribunal Ordinance

7. Interpretation

Section 2 of the Labour Tribunal Ordinance (Cap. 25) is amended-

(a) in the definition of “tribunal”, by repealing “appointed under section 4” and substituting “or a deputy presiding officer appointed under this Ordinance”;

(b) by adding-

““deputy presiding officer” (暫委審裁官) means a deputy presiding officer appointed under section 5A;”.

8. Establishment of tribunal

Section 3(2) is amended by adding “or a deputy presiding officer” after “presiding officer”.

9. Appointment of presiding officers

Section 4(1) is amended by repealing “, who shall constitute the tribunal”.

10. Section added

The following is added -

“5A. Appointment of deputy presiding officers

(1) The Chief Justice may appoint any person to be a deputy presiding officer for such period and on such terms as he thinks fit.

(2) Subject to the terms of appointment, a deputy presiding officer shall, during the period for which he is appointed, have all the jurisdiction, powers and privileges, and perform all the duties of a presiding officer and any reference in any law to a presiding officer shall be construed accordingly.

(3) Every appointment made in accordance with this section may be terminated by the Chief Justice at any time.

(4) Where the hearing of any proceedings before a deputy presiding officer is adjourned or where the determination is reserved therein or the award or order is subject to review, the deputy presiding officer shall have power to resume the hearing and determine the proceedings or to deliver as the determination of the Tribunal the determination which he has reserved or to review the award or order which he has made, notwithstanding that before the hearing is resumed or determination is delivered or the review is disposed of, his appointment has expired or has been terminated.

(5) For the purposes of subsection (4), the power of a deputy presiding officer to deliver a determination in a resumed hearing includes the power of awarding costs and the making of any order ancillary to or consequential upon the award of costs.”.

Labour Tribunal (Suitors' Funds) Rules

11. Interpretation

Rule 2 of the Labour Tribunal (Suitors' Funds) Rules (Cap. 25 sub. leg.) is amended by repealing the definition of "presiding officer".

Magistrates Ordinance

12. Interpretation

Section 2 of the Magistrates Ordinance (Cap. 227) is amended by adding-

““deputy magistrate” (暫委裁判官) means a deputy magistrate appointed under section 5A;”.

13. Section added

The following is added-

“5A. Appointment of deputy magistrates

(1) The Chief Justice may by warrant appoint any person to be a deputy magistrate for such period and on such terms as he thinks fit. Such appointment shall be notified in the Gazette.

(2) Subject to the terms of appointment, a deputy magistrate shall, during the period for which he is appointed, have all the jurisdiction, powers and privileges, and perform

all the duties of a permanent magistrate and any reference in any law to a magistrate shall be construed accordingly.

(3) Every appointment made in accordance with this section may be terminated by the Chief Justice at any time.

(4) Where the hearing of any proceedings before a deputy magistrate is adjourned or where judgment is reserved therein or where the determination of any matter is subject to review, the deputy magistrate shall have power to resume the hearing and determine the proceedings or to deliver as the judgment of the magistrate's court the judgment which he has reserved or to review the determination which he has made, notwithstanding that before the hearing is resumed or judgment is delivered or the review is disposed of, his appointment has expired or has been terminated.

(5) For the purposes of subsection (4), the power of a deputy magistrate to determine the proceedings in a resumed hearing includes the power of awarding costs and the making of any order ancillary to or consequential upon the award of costs.”.

Small Claims Tribunal Ordinance

14. Interpretation

Section 2 of the Small Claims Tribunal Ordinance (Cap. 338) is amended, in the definition of “adjudicator”, by repealing “or a deputy adjudicator”.

15. Establishment of tribunal

Section 3 is amended -

- (a) in subsection (2), by repealing “as may be appointed under section 4” and substituting “and deputy adjudicators as may be appointed under this Ordinance”;
- (b) in subsection (3), by adding “or a deputy adjudicator” after “an adjudicator”.

16. Appointment and powers of deputy adjudicators

Section 4A is amended -

- (a) in subsection (2) -
 - (i) by repealing “A” and substituting “Subject to the terms of appointment, a”;
 - (ii) by adding “and any reference in any law to an adjudicator shall be construed accordingly” after “of adjudicator”;
- (b) by adding -
 - “(2A) Every appointment made in accordance with this section may be terminated by the Chief Justice at any time.”;
- (c) by adding -
 - “(4) For the purposes of subsection (3), the power of a deputy adjudicator to determine the proceedings in a resumed hearing includes the power of awarding costs and the making of any order ancillary to or consequential upon the award of costs.”.

Small Claims Tribunal (Suitors' Funds) Rules

17. Interpretation

Rule 2 of the Small Claims Tribunal (Suitors' Funds) Rules (Cap. 338 sub. leg.) is amended by repealing the definition of "adjudicator".

Coroners Ordinance

18. Interpretation

Section 2 of the Coroners Ordinance (Cap. 504) is amended by adding -

““deputy coroner” (暫委死因裁判官) means a person appointed under section 3A to be a deputy coroner;”.

19. Section added

The following is added before Part II -

“3A. Appointment of deputy coroners

(1) The Chief Justice may appoint a person who meets the requirement in section 3(2) to be a deputy coroner for such period and on such terms as he thinks fit. Such appointment shall be notified in the Gazette.

(2) Subject to the terms of appointment, a deputy coroner shall, during the period for which he is appointed, have all the jurisdiction, powers and privileges, and perform

all the duties of a coroner and any reference in any law to a coroner shall be construed accordingly.

(3) Every appointment made in accordance with this section may be terminated by the Chief Justice at any time.

(4) Where an inquest conducted before a deputy coroner. is adjourned or where findings is reserved therein, the deputy coroner shall have power to resume the inquest or to give the findings which he has reserved, notwithstanding that before the inquest is resumed or findings is given, his appointment has expired or has been terminated.”.

Oaths and Declarations Ordinance

20. Schedule 3 amended

Schedule 3 to the Oaths and Declarations Ordinance (Cap. 11) is amended, in Part II, by adding at the end -

“Deputy Presiding Officer, Labour Tribunal

Deputy Magistrate

Deputy Adjudicator, Small Claims Tribunal

Temporary Member, Lands Tribunal

Deputy Coroner”.

PART IV

MISCELLANEOUS

Jury Ordinance

21. Interpretation

Section 2 of the Jury Ordinance (Cap. 3) is amended, in the definition of “proceedings”, by repealing “inquiry under the Coroners Ordinance (Cap. 14)” and substituting “inquest under the Coroners Ordinance (Cap. 504)”.

22. Qualifications and disabilities

Section 4(1) is amended by repealing “inquiry under the Coroners Ordinance (Cap. 14)” and substituting “inquest under the Coroners Ordinance (Cap. 504)”.

23. Fining of juror for non-attendance, etc.

Section 32(1) is amended by repealing “of \$3,000” and substituting “at level 2”.

Official Languages Ordinance

24. Judicial proceedings

Section 5 of the Official Languages Ordinance (Cap. 5) is amended -

- (a) in subsection (1), by repealing “Subject to section 6, a” and substituting “A”;

- (b) in subsection (4), by repealing “and subject to section 6”.

25. Transitional arrangements

Section 6 is repealed.

Oaths and Declarations Ordinance

26. Taking and receiving declarations

Section 12 of the Oaths and Declarations Ordinance (Cap. 11) is amended by adding a comma after “notary”.

27. Oaths of Clerk and Deputy Clerk to the Executive Council

Section 20 is amended by repealing “Administrative Secretary” and substituting “Chief Secretary for Administration”.

Births and Deaths Registration Ordinance

28. Forms

The Second Schedule to the Births and Deaths Registration Ordinance (Cap. 174) is amended, in Form 18, in Part III, in paragraph 1 -

- (a) by repealing “via the Commissioner of Police”;
- (b) by repealing the full stop and substituting “and submit a copy of the report to the Commissioner of Police at the same time.”.

Magistrates Ordinance

29. Power to sentence person using insulting language to or concerning magistrate

Section 99 of the Magistrates Ordinance (Cap. 227) is amended by repealing “of \$2,000 or to imprisonment for 2 months” and substituting “at level 3 and to imprisonment for 6 months”.

30. Provision as to entry of appeal

Section 116(1) is amended -

- (a) by repealing “So soon as an appellant has complied with the provisions of section 114(c), with respect to entering into a recognizance or giving other security” and substituting “As soon as practicable after the appellant has lodged a notice of appeal”;
- (b) by repealing “and the recognizance, if any, and a statement as to any other security given by the appellant,”.

31. Second Schedule amended

The Second Schedule is amended -

- (a) in Part I, in item 7, by repealing “出版” and substituting “發布”;
- (b) in Part III, in item 7, by repealing “出版” and substituting “發布”.

32. Fourth Schedule amended

The Fourth Schedule is amended by repealing -

“Civil Aviation Department

- | | | | |
|--------|-------------------------------|-----|--------------------------------------------------|
| (i) | Airport Manager | (a) | Any offence under the |
| (ii) | Assistant Airport
Manager | | Public Cleansing and
Prevention of Nuisances |
| (iii) | Senior Airfield
Supervisor | | (Urban Council) By-laws
(Cap. 132 sub. leg.). |
| (iv) | Airfield Supervisor | (b) | Any offence under the |
| (v) | Senior Foreman | | Public Cleansing and |
| (vi) | Foreman | | Prevention of Nuisances |
| (vii) | Transport Assistant I | | (Regional Council) By- |
| (viii) | Transport Assistant II | | laws (Cap. 132 sub.
leg.).”. |

Magistrates (Forms) Rules

33. Schedule amended

The Schedule to the Magistrates (Forms) Rules (Cap. 227 sub. leg.) is amended, in Part VI, in Form 105, in paragraph 7, by repealing “Law Society Legal Advice & Duty Lawyer Schemes” and substituting “Duty Lawyer Service”.

Places for Autopsies Order

34. Schedule amended

The Schedule to the Places for Autopsies Order (Cap. 504 sub. leg.) is amended, in item 17, by repealing “維” and substituting “域”.

Coroners (Forms) Rules

35. Schedule amended

The Schedule to the Coroners (Forms) Rules (Cap. 504 sub. leg.) is amended, in Form 1, by repealing “特徵” where it first appears and substituting “認屍人”.

Mutual Legal Assistance in Criminal Matters Regulation

36. Appointment of process server

Section 8 of the Mutual Legal Assistance in Criminal Matters Regulation (Cap. 525 sub. leg.) is amended by repealing everything after “shall be” and substituting “the Chief Bailiff or his authorized agent.”.

Explanatory Memorandum

This Bill proposes certain amendments to a number of legislative provisions, none of which warrant a separate Bill.

2. Part II seeks to remove the requirement that judicial proceedings shall be adjourned when the Red rainstorm warning is in force. This amendment aims at an efficient use of court time as a Red rainstorm warning is usually of short duration and public transportation will be available.

3. Part III deals with temporary judicial appointments to the Lands Tribunal, the Labour Tribunal, Magistracies and Coroners' Court. At present, when magistrates, coroners, members to the Lands Tribunal, or presiding officers of the Labour Tribunal are appointed on a temporary basis, the appointing authority is taken to be the same as that of permanent appointments, i.e. the Chief Executive. Chief Justice is, however, empowered under the High Court Ordinance (Cap. 4), the District Court Ordinance (Cap. 336) and the Small Claims Tribunal Ordinance (Cap. 338) to appoint deputy judges of the Court of First Instance, deputy District Judges and deputy adjudicators respectively. To standardize the practice across all levels of court, the authority for the appointment of temporary judicial officers under the Bill is vested with the Chief Justice. Clause 20 is a consequential amendment to the Oaths and Declarations Ordinance (Cap. 11) by adding the titles of temporarily appointed judicial officers to the list of officers required to take the Judicial Oath.

4. Part IV contains miscellaneous amendments to various Ordinance and subsidiary legislation, some of which are set out below -

- (a) Clause 21 amends the Jury Ordinance (Cap. 3) as it contains a cross reference to the repealed Coroners Ordinance (Cap. 14). The Coroners Ordinance (Cap. 504) was enacted to replace the Coroners Ordinance (Cap. 14) and certain wordings in the Jury Ordinance are amended to follow that under the Coroners Ordinance (Cap. 504);
- (b) Clause 25 repeals section 6 of the Official Languages Ordinance (Cap. 5). All court proceedings can now be conducted in either official languages and the transitional function of section 6 of that Ordinance is spent;
- (c) Clause 27 amends section 20 of the Oaths and Declarations Ordinance (Cap. 11) by updating the English title of “Administrative Secretary” as the Declaration of Change of Titles (General Adaptation) Notice 1997 (L.N. 362 of 1997) does not incorporate such change;
- (d) Clause 28 amends the Births and Deaths Registration Ordinance (Cap. 174) in so far as the duties of a registered medical practitioner under the Coroners Ordinance (Cap. 504) is concerned. The wordings in the Births and Deaths Registration Ordinance are amended along the lines as provided under the Coroners Ordinance (Cap. 504);
- (e) Clause 29 amends section 99 of the Magistrates Ordinance (Cap. 227) to increase the penalty for using insulting language involving a magistrate and

this approach will be in line with the proposed penalty level for similar offences committed in the Small Claims Tribunal or the Labour Tribunal;

- (f) Clause 30 amends section 116(1) of the Magistrates Ordinance (Cap. 227) as that section contains a cross reference to section 114(c) of that Ordinance which was repealed under section 65 of the Administration of Justice (Miscellaneous Provisions) Ordinance 1995 (13 of 1995);
- (g) Clause 31 amends the Chinese text of the Second Schedule to the Magistrates Ordinance (Cap. 227) to adopt the same Chinese equivalent for “publishing” and its cognate expressions in similar context in the Defamation Ordinance (Cap. 21);
- (h) Clause 32 repeals all the entries relating to the Civil Aviation Department in the Fourth Schedule to the Magistrates Ordinance (Cap. 227) as it contains titles of posts of the Civil Aviation Department which are no longer in existence after closure of the Kai Tak Airport;
- (i) Clause 33 amends the Schedule to the Magistrates (Forms) Rules (Cap. 227 sub. leg.) by replacing an outdated reference with the current title of the “Duty Lawyer Service”;
- (j) Clause 34 amends the Chinese name of one of the mortuaries in the Schedule to the Places for Autopsies Order (Cap. 504 sub. leg.) so that the legislative intention will be accurately reflected;

- (k) Clause 35 amends the Chinese text of the Schedule to the Coroners (Forms) Rules (Cap. 504 sub. leg.) so that the legislative intention will be better reflected;
- (l) Clause 36 amends the Mutual Legal Assistance in Criminal Matters Regulation (Cap. 525 sub. leg.) to enable the Chief Bailiff's authorized agent, apart from the Chief Bailiff, to perform the service of foreign process.