

Paper for Bills Committee on Broadcasting Bill

**Examples of Ordinances providing for the issue of codes of practice
and the nature of codes of practice issued under those Ordinances**

Ordinance	Purpose of issuing code of practice	Whether code of practice is subsidiary legislation for the purpose of S.34 of Cap. 1	Power to amend code of practice	Consequence of non-compliance with code of practice
Gas Safety Ordinance (Cap. 51)	Section 9 (1) For the purpose of providing practical guidance in respect of any requirements under this Ordinance, the Gas Authority may approve and issue such codes of practice (whether prepared by him or not) as in his opinion are suitable for that purpose.	Not subsidiary legislation within the definition of "subsidiary legislation" under Cap. 1.	The Gas Authority	<ul style="list-style-type: none"> ● A failure on the part of any person to observe any provision of an approved code of practice shall not of itself render him liable to any civil or criminal proceedings. ● But any provision of a code of practice which appears to a magistrate or court to be relevant to a requirement under this Ordinance alleged to have been contravened shall be admissible in evidence in the criminal proceedings concerned.

<p>Bedspace Apartments Ordinance (Cap. 447)</p>	<p><u>Section 19 (1)</u> For the purpose of providing practical guidance in respect of the requirements on safety and sanitation, the Authority may from time to time give directions in the form of codes of practice to the licensee of a licensed bedspace apartment.</p>	<p>Not subsidiary legislation within the definition of "subsidiary legislation" under Cap. 1.</p>	<p>The Bedspace Apartments Authority</p>	<ul style="list-style-type: none"> ● Failure on the part of any person to comply with the provisions of any code of practice shall not of itself render that person liable to criminal proceedings of any kind. ● But any such failure may in any proceedings (whether civil or criminal proceedings and including proceedings for an offence under this Ordinance) be relied on by any party to the proceedings as tending to establish or to negate any liability which is in question in those proceedings.
<p>Amusement Rides (Safety) Ordinance (Cap. 449)</p>	<p><u>Section 49(1)</u> For the purpose of providing practical guidance in respect of any provision of the Ordinance, the Director of Electrical and Mechanical Services may approve and issue codes of practice.</p>	<p>Not subsidiary legislation within the definition of "subsidiary legislation" under Cap. 1.</p>	<p>Director of Electrical and Mechanical Services</p>	<p>Same as the Gas Safety Ordinance (Cap. 51).</p>

<p>Sex Discrimination Ordinance (Cap. 480)</p>	<p><u>Section 69(1)</u> The Equal Opportunities Commission ("EOC") may issue codes of practice containing such practical guidance as it thinks fit for the purposes of the elimination of discrimination; the promotion of equality of opportunity between men and women generally; and the elimination of sexual harassment.</p>	<p>Not subsidiary legislation within the definition of "subsidiary legislation" under Cap. 1.</p>	<p>A code of practice prepared by the EOC shall be laid on the table of the Legislative Council. Where a code of practice has been so laid, the Legislative Council may, by resolution passed at a meeting of the Legislative Council held before the expiration of a period of 28 days after the sitting at which it was so laid, provide that the code of practice shall be amended in any manner consistent with section 69 of the Ordinance¹.</p>	<ul style="list-style-type: none"> ● A failure on the part of any person to observe any provision of a code of practice shall not of itself render him liable to any proceedings. ● But in any proceedings under this Ordinance before any court any code of practice issued shall be admissible in evidence, and if any provision of such a code appears to the court to be relevant to any question arising in the proceedings it shall be taken into account in determining that question.
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¹ The same amendment mechanism applies to technical memoranda issued under certain Ordinances like the Noise Control Ordinance (Cap. 400) and the Environmental Impact Assessment Ordinance (Cap. 499).

<p>Personal Data (Privacy) Ordinance (Cap. 486)</p>	<p><u>Section 12(1)</u> For the purpose of providing practical guidance in respect of any requirements under this Ordinance imposed on data users, the Privacy Commissioner for Personal Data may approve and issue such code of practice (whether prepared by him or not) as in his opinion are suitable for that purpose.</p>	<p>Not subsidiary legislation within the definition of "subsidiary legislation" under Cap. 1.</p>	<p>The Privacy Commissioner for Personal Data</p>	<ul style="list-style-type: none"> ● A failure to observe any provision of an approved code of practice shall not render the person concerned liable to any civil or criminal proceedings. ● But a code of practice shall be admissible in evidence in any proceedings under the Ordinance for contravention of a requirement under this Ordinance. ● If it is proved that a failure to observe any provision of the code of practice is relevant to any matter which it is necessary to prove in order to establish a contravention of a requirement under this Ordinance, that matter shall be taken as proved in the absence of evidence that such requirement was in respect of that matter complied with otherwise than by way of observing that provision.
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<p>Disability Discrimination Ordinance (Cap. 487)</p>	<p><u>Section 65(1)</u> The Equal Opportunities Commission may issue codes of practice containing such practical guidance as it thinks fit for the purposes of the elimination of discrimination; the promotion of equality of opportunity between persons with a disability and persons without a disability generally; and the elimination of harassment and vilification.</p>	<p>Not subsidiary legislation within the definition of "subsidiary legislation" under Cap. 1.</p>	<p>Same as the Sex Discrimination Ordinance (Cap. 480).</p>	<p>Same as the Sex Discrimination Ordinance (Cap. 480).</p>
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Occupational Safety and Health Ordinance (Cap. 509)	<p><u>Section 40(1)</u> The Commissioner for Labour may issue codes of practice for the purpose of providing practical guidance to employers and employees, and to occupiers of workplaces who are not employers.</p>	Express provision in the Ordinance providing that a workplace code of practice is not subsidiary legislation for the purposes of Part V of Cap. 1.	Commissioner for Labour	<ul style="list-style-type: none"> ● A person does not incur a civil or criminal liability only because the person has contravened a provision of a workplace code of practice. ● However, if, in any legal proceedings the court is satisfied that a workplace code of practice is relevant in determining a matter that is in issue in the proceedings, the code of practice is admissible in evidence in the proceedings and proof that the person contravened or did not contravene a relevant provision of the code may be relied on by any party to the proceedings tending to establish or negate that matter.
Merchant Shipping (Local Vessels) Ordinance (Cap. 548)	<p><u>Section 8(1)</u> For the purpose of providing practical guidance in respect of any requirements under this Ordinance, the Director of Marine may approve and issue such codes</p>	Not subsidiary legislation within the definition of "subsidiary legislation" under Cap. 1.	Director of Marine	Same as the Personal Data (Privacy) Ordinance (Cap. 486).

	of practice (whether prepared by him or not) as in his opinion are suitable for that purpose.			
Electronic Transactions Ordinance (1 of 2000)	<u>Section 33</u> The Director of Information Technology Services may issue a code of practice specifying standards and procedures for carrying out the functions of recognized certification authorities.	Not subsidiary legislation within the definition of "subsidiary legislation" under Cap. 1.	Director of Information Technology Services	Failure of a recognized certification authority to comply with the code of practice is one of the matters which the Director may take into account in deciding whether to renew, revoke or suspend a recognition granted under the Ordinance.

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