

立法會 *Legislative Council*

LC Paper No. LS12/03-04

Observations on the Proposed Consequential Amendments in Schedule 2 of the Land Titles Bill

At the meeting of the Bills Committee on the Land Titles Bill (the Bill) on 28 October 2003, the Chairman has directed the Assistant Legal Adviser (ALA) to review Schedule 2 of the Bill to ascertain whether there are any amendments that are not strictly consequential in nature and may involve policy decisions. This paper reports on the review undertaken by the ALA.

2. Almost without exceptions, the amendments proposed in Schedule 2 of the Bill are technical amendments. The overwhelming majority of them are consequential on the provisions proposed in the Bill. It is, however, observed that items 1, 33 to 36 and 90 of Schedule 2 are not readily traceable to any specific provisions in the Bill that require the proposed amendments. Particulars of those items are summarised below for Members' easy reference:-

Item	Legislation Amended	Amendment proposed	Remarks
1	Schedule to Specification of Public Officers (Cap. 1 sub. leg. C)	Deleting "Secretary for New Territories Ordinance Home Affairs (Cap. 97), section 9(2) for the purpose of section 19"	Section 9(2) has been repealed in 1993.
33	New Territories Ordinance (Cap. 97)	Deleting section 19	Certification of Memorial by Land Registrar (LR)
34	Ditto	Deleting section 20	LR not required to keep index of names
35	Ditto	Deleting section 43	Copy or extract of any document certified by the LR admissible in evidence in any courts

Item	Legislation Amended	Amendment proposed	Remarks
36	Ditto	In section 44, by adding ", or caused to be done or made," after "made"	To extend the immunity of the Secretary for Home Affairs to cover any act or entry caused to be done or made by him
90	Conveyancing and Property Ordinance (Cap. 219)	Repealing section 15(d) and substituting a new paragraph (d)	The net effect is to abolish the overriding status the meaning of English words

3. The above observations were conveyed to the Administration for its clarification. Its response is set out in a letter dated 6 November 2003 from the Land Registrar, a copy of which is attached as Annex A for Members' perusal.

4. It is further observed that the consequential amendments in relation to the Estate Duty Ordinance (Cap.111), the Stamp Duty Ordinance (Cap. 117), the Land Registration Ordinance (Cap. 128) as amended by the Land Registration (Amendment) Ordinance (20 of 2002) and the Conveyancing and Property Ordinance (Cap. 219) provide for their application (or non-application) to registered land. Those consequential amendments are in themselves technical in nature, but they form part of the implementation of the policy intent of the Bill. It is therefore necessary to consider them in conjunction with the related provisions in the Bill as a whole. Although on a practical level, they present drafting issues, but such issues may only be resolved after the underlying policy questions have been determined.

Prepared by

Legal Service Division
Legislative Council Secretariat
6 November 2003

Annex A

(31) in LR/HQ/101/3 Pt.48

LS/B/9/02-03

2867 8005

6 November 2003

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By Fax
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(Attn: Mr. Kau Kin-wah
Assistant Legal Adviser)

Dear Mr. Kau,

Re: Land Titles Bill

I refer to your letter of 1 November 2003 with comments on some provisions in Schedule 2 of the Bill.

1. Item 1

Item 1 proposes 2 amendments. The first amendment repeals the Secretary for Home Affairs as specified in Section 9(2) of the New Territories Ordinance for the purpose of Section 19 of that Ordinance. Section 9(2) has been repealed. Section 19 has no effect as Section 7 of the Land Registration Ordinance (Cap.128) has also been repealed. This is a tidying up exercise.

The second amendment proposes to specify Land Registrar as the public office for the purpose of the Land Titles Bill.

This is necessary as the Land Registrar is the responsible public officer for carrying out the provisions of the Ordinance.

... to be cont'd

2. **Item 33**
As section 7 of the Land Registration Ordinance has been repealed, Section 19 of the New Territories Ordinance (Cap.97) ceases to have legal effect. It is proposed to repeal this section.
3. **Item 34**
Section 20 of the New Territories Ordinance is superfluous and accordingly, it is deleted.
4. **Item 35**
Section 43 of the New Territories Ordinance can be repealed as Section 26A of the Land Registration Ordinance and Clause 28(1) of the Bill provide for the same effect.
5. **Item 36**
This amendment is an improvement to the wordings in Section 44 of the New Territories Ordinance.
6. **Item 90**
This is an amendment related to land registration and we take the opportunity to amend it.

All the above amendments are related to land registration and we consider it reasonable that they are dealt with as consequential amendments under this bill.

Yours sincerely,

(Ms. Monica LO)
for Land Registrar