

**National Security (Legislative Provisions) Bill -
Power to make rules to provide for court procedure**

Introduction

This paper sets out the Administration's response to the questions raised at the meeting of the Bills Committee on 24 May 2003, on whether there were precedents for executive authorities to make rules to provide for court procedure.

Appeals Against Administrative Decisions

2. Appeals in relation to administrative decisions are dealt with by a variety of tribunals with a broad spectrum of formality. This can range from a very informal committee procedure to a court setting. Even at the formal end of the spectrum it is not unusual for the power to make rules to be vested in the executive.

3. Under the Amusement Games Centre Ordinance (Cap 435) an appeal board is constituted under section 12. The Chairman of this tribunal must be a "person qualified for appointment as a District Court judge" under section 5 of the District Court Ordinance (Cap 336). The CE-in-Council is given power to make regulations for lodging of appeals and the practice and procedure of the Appeal Board (s18(1)(b)).

4. Another example is the Appeal Board constituted under section 27 of the Bedspace Apartment Ordinance (Cap 447) which also requires the Chairman to be qualified for appointment as a District Court judge. In exercising its powers in relation to the hearing of appeals the tribunal is given the powers vested in the Court of First Instance (s28(5)). The ordinance also provides for a further appeal on points of law from the Appeal Board direct to the Court of Appeal. In this case the SHA is empowered to make regulations providing for the lodging of appeals and the practice and procedure of the Appeal Board.

5. A good example of a judicial procedure being subject to regulation by the executive is found in section 82(2)(d) of the Legislative Council Ordinance (Cap 542) whereby the CE-in-Council is given power to regulate the powers and duties of the revising officer and appeals to the revising officer. The revising officer is a magistrate (or legal officer) appointed by the Chief Justice under section 77 of the ordinance and is vested with the various functions and duties, powers and immunities of a magistrate.

Security Bureau
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