

立法會 *Legislative Council*

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Bills Committee on Statute Law (Miscellaneous Provisions) Bill 2012

Background brief prepared by the Legislative Council Secretariat

Purpose

This paper provides background information on the Statute Law (Miscellaneous Provisions) Bill 2012 ("the Bill") and gives a brief account of (a) the discussions of the Panel on Administration of Justice and Legal Services ("the Panel") on the proposal included in the Bill for abolishing the common law presumption that a boy under 14 is incapable of sexual intercourse; and (b) the discussions of the Bills Committee on the Legislation Publication Bill ("Bills Committee") on the editorial powers of the Secretary for Justice ("SJ").

Background

2. The Bill is an omnibus bill which seeks to make miscellaneous amendments to various Ordinances and repeal subsidiary legislation that have ceased to be in force. The Bill comprises 12 Parts and 72 clauses. Part 1 contains the preliminary provisions. The amendments are grouped under the remaining 11 Parts with the following themes –

- (a) Part 2 – amendments to the Legal Practitioners Ordinance ("LPO") (Cap. 159) to provide, among others, for the exemption of an applicant for an employed barrister's certificate from the insurance requirement under section 30(3)(b) of the Ordinance, and the repeal of the finality provision in section 40M(1) of the Ordinance to allow an appeal to the Court of Final Appeal against any order made by a Notaries Public Discipline Tribunal;
- (b) Part 3 – amendments to the Administration of Estates by Consular Officers Ordinance (Cap. 191) to streamline the gazettal

requirement of orders;

- (c) Part 4 – amendments to the Crimes Ordinance (Cap. 200) to abolish the common law presumption that a boy under 14 is incapable of sexual intercourse;
- (d) Part 5 – amendments to the Customs and Excise Service Ordinance (Cap. 342) to repeal a provision prohibiting an officer under interdiction to leave Hong Kong without permission;
- (e) Part 6 – amendments to the Toys and Children's Products Safety Ordinance (Cap. 424) to simplify the definitions of "children's product standard" and "toy standard" and the format of Schedules 1 and 2 to the Ordinance to facilitate the updating of applicable safety standards;
- (f) Part 7 – amendments to the Legislation Publication Ordinance (Cap. 614) and the Laws (Loose-leaf Publication) Ordinance 1990 (51 of 1990) to provide a few additional editorial powers to SJ;
- (g) Part 8 – amendments to LPO and the Legal Services Legislation (Miscellaneous Amendments) Ordinance 1997 (94 of 1997) ("1997 Ordinance") to provide that only a solicitor who is a member or employee of a solicitor corporation can be appointed as a proxy for the purpose of attending and voting at any meeting of the solicitor corporation, and to update various provisions to enable the 1997 Ordinance and the Solicitor Corporation Rules to be brought into operation;
- (h) Part 9 – amendments to various Ordinances to reflect the establishment of the legal office of Assistant Principal Solicitor in the Intellectual Property Department; and
- (i) Parts 10 to 12 – minor and technical amendments to various Ordinances or subsidiary legislation, and repeals of various items of subsidiary legislation that have ceased to be in force.

Relevant deliberations of the Panel

Common law presumption that a boy under 14 is incapable of sexual intercourse

3. At its meeting on 28 February 2011, the Panel discussed the recommendation in the Law Reform Commission ("LRC") Report to abolish the irrebuttable common law presumption that a boy under 14 is incapable of sexual

intercourse. Members noted LRC's view that the presumption was out-dated, at odds with reality and meant that on occasion the true criminality of the defendant's conduct could not be reflected in the charge. Members also noted that the two legal professional bodies were in favour of the proposed reform, which was considered logical and straightforward. Members generally supported the proposal.

4. On the concern expressed by individual organizations about the issue of minimum age of criminal responsibility in Hong Kong, the Administration advised that the minimum age of criminal responsibility was raised from seven years to 10 years in 2003 as a result of proposals made by LRC in its report on "The Age of Criminal Responsibility in Hong Kong" published in 2000. Under the common law, there was also a rebuttable presumption of *doli incapax* applicable to children aged from 10 to 14, meaning that a child within this age range was presumed to be incapable of committing a crime. The presumption provided adequate protection for children under the age of 14, as the prosecution must be proven beyond reasonable doubt that the child knew that the particular act was not merely naughty or mischievous, but seriously wrong.

Use of an omnibus bill

5. The Administration consulted the Panel on the Bill at the meeting on 26 March 2012. On members' enquiry on the guiding principles for introducing legislative amendments by way of an omnibus bill, the Administration explained that an omnibus bill was routinely used to group together under one bill certain technical, minor and uncontroversial amendments to various Ordinances and subsidiary legislation for miscellaneous purposes. The Administration introduced omnibus bills once every few years. The last omnibus bill was the Statute Law (Miscellaneous Provisions) Bill 2008 which was passed in July 2008.

Relevant deliberations of the Bills Committee on SJ's editorial powers

6. In October 2010, the Administration presented the Legislation Publication Bill to the Legislative Council ("LegCo") with the main purposes of establishing an electronic database of the legislation applying in Hong Kong with legal status ("the Database"), give legal status to copies of the legislation published in the Database, and empower the SJ to make editorial amendments and revisions to Ordinances. It also provided for additional editorial powers in respect of the Loose-leaf Edition. The Legislation Publication Ordinance (Cap. 614) was passed by LegCo on 22 June 2011.

7. Clause 12^{Note¹} of the Legislation Publication Bill sought to empower SJ

Note¹ not yet in operation

to make editorial amendments to an Ordinance. Members expressed concern about the unclear scope of SJ's editorial powers which might give rise to uncertainty and dispute, and possible abuse of the editorial powers. The Administration explained that provisions for making editorial amendments to Ordinances had already existed but scattered in various Ordinances and the provision sought mainly to consolidate such provisions. While SJ's editorial amendments under Clause 12 were not subject to LegCo's scrutiny, they were bound by the overriding principle under Clause 13^{Note2} that they could not change the legal effect of any Ordinance. SJ must also compile a record of editorial amendments under Clause 15^{Note3}, which had to be made available in the Database for public inspection. The Administration had undertaken not to propose to exercise the editorial powers under Clause 12 if a risk of dispute was foreseen.

8. To allay members' concerns, the Administration had agreed to transfer the following SJ's editorial powers under Clause 12 to Clause 17^{Note4} (powers to make revisions) under which any changes made by SJ to Ordinances must be effected by subsidiary legislation which was subject to LegCo's scrutiny by way of negative vetting –

- (a) changing a reference to a date;
- (b) changing the way of referring to or expressing a "provision";
- (c) making gender-neutral drafting changes; and
- (d) amending the heading of a provision or a group of provisions.

9. On the additional editorial powers for the Loose-leaf Edition under Clause 20^{Note 5} which included provisions mirrored those of Clause 12 empowering SJ to make editorial amendments in the Loose-leaf Edition, while expressing no objection to the proposed provision, members were concerned whether the availability of safeguards similar to those under Clauses 13, 15 and 16 in the exercise of SJ's editorial powers to the Loose-leaf Edition. The Administration assured members that it would incorporate such safeguards in the Laws (Loose-leaf Publication) Ordinance 1990 and had introduced Committee Stage amendments ("CSAs") accordingly. The relevant CSAs of the Legislation Publication Bill were passed.

Note² not yet in operation

Note³ not yet in operation

Note⁴ came into operation on 30 June 2011

Note⁵ came into operation on 16 January 2012

Relevant papers

10. A list of the relevant papers on the LegCo website is in the **Appendix**.

Council Business Division 2
Legislative Council Secretariat
21 May 2012

**Relevant papers on Bills Committee on
Statute Law (Miscellaneous Provisions) Bill 2012**

Meeting	Date of meeting	Paper
Panel on Administration of Justice and Legal Services	28.2.2011	Agenda Minutes CB(2)574/10-11(01) CB(2)574/10-11(02) CB(2)1196/10-11(01) CB(2)1669/10-11(01)
Bills Committee on Legislation Publication Bill	17.5.2011	CB(2)1911/10-11(01) CB(2)1911/10-11(02)
House Committee	10.6.2011	Report of the Bills Committee on Legislation Publication Bill
Panel on Administration of Justice and Legal Services	26.3.2012	Agenda CB(2)1452/11-12(02) CB(2)1462/11-12(04) CB(2)1462/11-12(05)

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