

**立法會**  
**Legislative Council**

LC Paper No. LS57/11-12

**Paper for the House Committee Meeting  
on 4 May 2012**

**Legal Service Division Report on  
Statute Law (Miscellaneous Provisions) Bill 2012**

**I. SUMMARY**

- 1. Objects of the Bill** To make miscellaneous amendments to various Ordinances and to repeal subsidiary legislation that has ceased to be in force.
- 2. Comments** The more significant amendments introduced by the Bill include –

  - (a) abolition of the common law presumption that a boy under 14 is incapable of sexual intercourse;
  - (b) updates of and revision to the Legal Practitioners Ordinance (Cap. 159) and the Legal Service Legislation (Miscellaneous Amendments) Ordinance 1997 (94 of 1997);
  - (c) repeal of a provision in the Customs and Excise Service Ordinance (Cap. 342) to conform with the Basic Law;
  - (d) amendments to the Legislation Publication Ordinance (Cap. 614) for the addition of minor editorial powers; and
  - (e) some minor and technical amendments to various legislation.
- 3. Public Consultation** The Administration has consulted The Law Society of Hong Kong and the Hong Kong Society of Notaries in relation to certain amendments to the Legal Practitioners Ordinance.
- 4. Consultation with LegCo Panel** The Administration has consulted the Panel on Administration of Justice and Legal Service on major proposals in the Bill. Members were supportive to the abolition of the common law presumption.
- 5. Conclusion** The Bill includes some changes relating to legal policies. Members may wish to consider whether forming a Bills Committee is necessary.

## II. REPORT

### Objects of the Bill

To make miscellaneous amendments to various Ordinances, and to repeal subsidiary legislation that has ceased to be in force.

### LegCo Brief Reference

2. Members may refer to the LegCo Brief issued by the Department of Justice dated 18 April 2012 (File Ref: LP 3/00/12C) for further information.

### Date of First Reading

3. 2 May 2012.

### Comments

4. The Bill introduces amendments to various Ordinances, which can be classified into seven categories as set out below.

#### Legal Practitioners Ordinance (Cap. 159) (Part 2)

5. Part 2 of the Bill proposes various amendments to the Legal Practitioners Ordinance (Cap. 159) (LPO). One of the amendments (Clause 4) is to amend section 40M(1) of LPO to allow an appeal to the Court of Final Appeal (CFA) against any order made by a Notaries Public Discipline Tribunal, in the light of the CFA's ruling in A Solicitor v The Law Society of Hong Kong and Secretary for Justice [2004] 1 HKLRD 214, where the CFA held that the finality provision of LPO was inconsistent with CFA's power of final adjudication under the Basic Law.

#### Crimes Ordinance (Cap. 200) (Part 4)

6. The Bill proposes to abolish the common law presumption that a boy under the age of 14 is incapable of sexual intercourse, buggery or bestiality (the Presumption) to implement the recommendation of the Law Reform Commission (LRC) made in December 2010 in the Report on "The Common Law Presumption that a Boy under 14 is Incapable of Sexual Intercourse"<sup>1</sup> (the LRC Report).

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<sup>1</sup> The English pdf version is available at [http://www.hkreform.gov.hk/en/docs/boy\\_14\\_e.pdf](http://www.hkreform.gov.hk/en/docs/boy_14_e.pdf) (accessed on 2 May 2012)

7. The Presumption cannot be rebutted even where there is clear evidence that the boy was physically capable of sexual intercourse at the time of the alleged offence. As a result, the boy can only be charged and convicted of aiding and abetting another to commit rape, or of indecent assault.<sup>2</sup>

8. The minimum age of criminal liability is set at 10 under section 3 of the Juvenile Offenders Ordinance (Cap. 226). In respect of a child aged between 10 and 14 years, a rebuttable common law presumption of *doli incapax* applies, i.e. a child is presumed to be incapable of committing a crime unless the prosecution proves beyond reasonable doubt that, at the time of the offence, the child was well aware that his or her act was seriously wrong, and not merely naughty or mischievous. Upon the abolishment of the Presumption, the rebuttable presumption of *doli incapax* will still apply<sup>3</sup>.

#### Customs and Excise Service Ordinance (Cap. 342) (Part 5)

9. According to paragraph 12 of the LegCo Brief, section 12(6) of the Customs and Excise Service Ordinance (Cap. 342), which provides to the effect that an interdicted officer of the Customs and Exercise Service may not leave Hong Kong without the permission of the Commissioner of Customs and Excise, may be incompatible with Article 31 of the Basic Law and Article 8(2) of the Hong Kong Bills of Rights concerning the freedom to travel. Clause 13 of the Bill proposes to repeal section 12(6).

#### Legislation Publication Ordinance (Cap. 614) and the Laws (Loose-leaf Publication) Ordinance 1990 (51 of 1990) (Part 7)

10. Part 7 of the Bill proposes amendments to the Legislation Publication Ordinance (Cap. 614) and the Laws (Loose-leaf) Publication Ordinance 1990 (51 of 1990) to facilitate the editorial work involved in preparing and updating the Laws of Hong Kong by empowering the Secretary for Justice to –

- (a) insert after a reference to the title of another Ordinance the chapter number given to that other Ordinance; and
- (b) insert after a definition its English or Chinese equivalent.

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<sup>2</sup> Paragraph 6 of the LRC Report.

<sup>3</sup> Paragraphs 19 and 20, *ibid.*

Legal Services Legislation (Miscellaneous Amendments) Ordinance 1997 (94 of 1997) (Part 8)

11. The Legal Services Legislation (Miscellaneous Amendments) Ordinance 1997 (94 of 1997) was passed by the Legislative Council on 29 June 1997 and gazetted on 30 June 1997. Section 2 of that Ordinance adds a new Part IIAA, which consists of new sections 7B to 7L, to LPO. The provisions in Part IIAA empower a person to apply to The Law Society of Hong Kong (the Law Society) for approval for a company to be registered as a solicitor corporation and to provide for related matters.

12. The said Section 2 has not yet come into operation. The Law Society intends to bring all the relevant provisions relating to solicitor corporations in Ordinance 94 of 1997 into force at the same time when the Solicitor Corporation Rules prepared by the Law Society comes into operation.

13. According to the LegCo Brief, a provision in the draft Solicitor Corporation Rules<sup>4</sup> in relation to appointment of proxy may be in contravention of section 114C(1)<sup>5</sup> of the Companies Ordinance (Cap. 32) and the new section 7L<sup>6</sup>. As the Law Society maintains that the control of a solicitor corporation must remain with solicitors, clause 31 of the Bill proposes to amend section 7L so that only a solicitor can be appointed as a proxy in a solicitor corporation, as an exception to section 114C(1) of the Companies Ordinance.

14. Ordinance 94 of 1997 was enacted in 1997 and not all the provisions have come into operation. However, certain provisions of LPO have been amended after the enactment of Ordinance 94 of 1997. Division 2 of Part 8 of the Bill therefore proposes other amendments to bring the un-commenced provisions in Ordinance 94 of 1997 in line with the amended LPO.

15. Division 1 of Part 8 proposes other amendments to LPO regarding solicitor corporations and legal practice entities<sup>7</sup>. According to the LegCo Brief, these amendments are necessary to bring Ordinance 94 of 1997 and the Solicitor Corporation Rules into operation.

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<sup>4</sup> The provision provides that only a solicitor who is a member or an employee of a solicitor corporation may be appointed as a proxy to attend and to vote at a meeting of a solicitor corporation.

<sup>5</sup> Section 114C(1) provides that "... any member of a company entitled to attend and vote at a meeting of the company shall be entitled to appoint another person (whether a member or not) as his proxy to attend and vote instead of him."

<sup>6</sup> Section 7L provides that "[n]othing in this Part affects the operation of the Companies Ordinance (Cap. 32) in relation to its application to a company that is a solicitor corporation."

<sup>7</sup> "Legal practice entity" is defined in item 4 of Schedule 1 to Ordinance 94 of 1997.

Amendments enabling Assistant Principal Solicitors of the Intellectual Property Department to be appointed to certain judicial posts (Part 9)

16. Part 9 of the Bill proposes amendments to the High Court Ordinance (Cap. 4), the Lands Tribunal Ordinance (Cap. 17), the Labour Tribunal Ordinance (Cap. 25), the Magistrates Ordinance (Cap. 227), the District Court Ordinance (Cap. 336), the Small Claims Tribunal Ordinance (Cap. 338) and Coroners Ordinance (Cap. 504) so that an Assistant Principal Solicitor of the Intellectual Property Department is eligible to be appointed as certain judicial officers under those Ordinances.

Miscellaneous and technical amendments

17. The Bill also introduces other minor and technical amendments to various Ordinances or subsidiary legislation to bring them up-to-date. Examples include –

- (a) Part 6 of the Bill proposes to update the applicable safety standards specified for toys and children's products;
- (b) Part 10 of the Bill proposes to amend the titles of notices given by the Chief Executive under section 3 of the Prevention of Bribery Ordinance (Cap. 201) referred to in enactments involving disciplinary services such as the Police Force Ordinance (Cap. 232); and
- (c) Division 4 of Part 12 repeals various items of subsidiary legislation set out in the Schedule that have ceased to be in force.

**Commencement**

18. Apart from the amendments in Division 1 of Part 8, the Bill, upon enactment, will come into operation on the day on which the Ordinance is published in the Gazette.

19. As to Division 1 of Part 8, it will come into operation on the day on which section 2 of Ordinance 94 of 1997 comes into operation.

## **Public Consultation**

20. According to the LegCo Brief, the Hong Kong Society of Notaries expressed no comment on the proposal set out in paragraph 5 of this report. The Administration also consulted the Law Society on the proposed amendments in relation to solicitor corporations as set out in paragraphs 11 to 15 of this report.

## **Consultation with LegCo Panel**

21. At its meeting on 28 February 2011, the Panel of Administration of Justice and Legal Services discussed the LRC Report. Members in general were supportive of the LRC's recommendation to abolish the common law presumption that a boy under 14 is incapable of sexual intercourse. On 26 March 2012, the Administration consulted the Panel on the Statute Law (Miscellaneous Provisions) Bill 2012 but there was no discussion on the contents of the Bill.

## **Conclusion**

22. The Bill includes some changes to legal policies apart from minor and technical amendments. Members may wish to consider whether forming a Bills Committee is necessary.

23. No difficulties relating to the legal and drafting aspects of the Bill have been identified.

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