

# 立法會

## *Legislative Council*

LC Paper No. CB(2)1462/11-12(04)

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### **Panel on Administration of Justice and Legal Services**

#### **Background brief prepared by the Legislative Council Secretariat for the meeting on 26 March 2012**

#### **Editorial Record 1 of 2012 (compiled in accordance with section 2B of the Laws (Loose-leaf Publication) Ordinance 1990)**

### **Purpose**

This paper provides background information on and gives a brief account of the discussions of the Bills Committee on the Legislation Publication Bill ("the Bill") on providing for additional editorial powers for the Loose-leaf Edition.

### **Background**

2. At present, an Ordinance as originally enacted or made (i.e. as-made Ordinance) is published in the Government Gazette and deemed to be authentic. To facilitate public access to the current version of Ordinances, all the Ordinances in force are published in a consolidated form in the Loose-Leaf Edition of the Laws of Hong Kong ("the Loose-leaf Edition"), which was first published in 1991. By virtue of the Laws (Loose-leaf Publication) Ordinance 1990, the Loose-leaf Edition has legal status, i.e. a provision appearing in the Loose-leaf Edition is deemed to be correct unless the contrary is proved. Currently, it is updated twice a year (around June and November) in the form of replacement issues published by the Department of Justice ("DoJ").

3. In April 2010, the Panel on Administration of Justice and Legal Services ("the Panel") received a briefing from the Administration on its legislative proposal to establish an electronic database of the legislation applying in Hong Kong with legal status ("the Database"). Noting the Administration's proposal for the introduction of a bill to, inter alia, provide for sufficient editorial powers to the Law Drafting Division of DoJ to update existing legislation to the new format and styles, a concern was expressed as to

whether the exercise of such editorial powers would alter the effect of the legislation concerned. The Administration assured the Panel that mechanisms would be put in place to ensure that any editorial changes would not alter the effect of the relevant legislation, and would so be written into the bill.

4. In October 2010, the Administration presented the Bill to the Legislative Council ("LegCo") with the main purposes of establishing the Database, give legal status to copies of the legislation published in the Database, and empower the Secretary for Justice ("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. Relevant provisions in Part 6 of the Ordinance (No. 13 of 2011), which contain provisions on additional editorial powers and are extracted in **Appendix I**, came into operation on 16 January 2012.

### **Relevant deliberations of the Bills Committee**

5. Clause 12<sup>Note1</sup> of the Bill sought to empower SJ to make editorial amendments to an Ordinance. Members expressed grave concern about the unclear scope of SJ's editorial powers which might give rise to uncertainty and dispute. Members were worried about the 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<sup>Note2</sup> that they could not change the legal effect of any Ordinance. SJ must also compile a record of editorial amendments under Clause 15<sup>Note3</sup>, 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.

6. To allay members' concerns, the Administration had agreed to transfer the following SJ's editorial powers under Clause 12 to Clause 17<sup>Note4</sup> (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 -

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Note<sup>1</sup> not yet in operation

Note<sup>2</sup> not yet in operation

Note<sup>3</sup> not yet in operation

Note<sup>4</sup> came into operation on 30 June 2011

- (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.

7. On the additional editorial powers for the Loose-leaf Edition under Clause 20<sup>Note 5</sup> 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 accordingly.

### **Recent development**

8. Editorial Record 1 of 2012 containing editorial amendments which took effect on 9 February 2012 was compiled by the Administration in accordance with section 2B of the Laws (Loose-leaf Publication) Ordinance 1990.

9. The Administration is requested to brief the Panel at its next meeting on 26 March 2012 on the editorial amendments.

### **Relevant papers**

10. A list of the relevant papers which are available on the LegCo website is in **Appendix II**.

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Legislative Council Secretariat  
21 March 2012

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Note<sup>5</sup> came into operation on 16 January 2012

## Part 6

### Additional Editorial Powers for Loose-leaf Edition

#### 19. Laws (Loose-leaf Publication) Ordinance 1990 amended

The Laws (Loose-leaf Publication) Ordinance 1990 (51 of 1990) is amended as set out in sections 20, 21 and 22.

#### 20. Section 2 amended (Publication of Ordinances, etc. in a loose-leaf edition)

(1) Section 2—

**Repeal subsection (2)**

**Substitute**

“(2) The Secretary for Justice may, in the loose-leaf edition—

(a) give a chapter number to an Ordinance and alter the short title or citation of the Ordinance; and

(b) arrange the grouping and sequence of legislation.”.

(2) Section 2—

**Repeal subsection (7).**

#### 21. Sections 2A and 2B added

After section 2—

**Add**

##### “2A. Power to make editorial amendments

(1) The Secretary for Justice may, in an Ordinance published in the loose-leaf edition—

- (a) replace a reference to the short title or citation of another Ordinance that has been altered under section 2(2)(a), by the altered short title or citation;
  - (b) correct a grammatical, clerical or typographical error;
  - (c) change the way of referring to or expressing a number, year, date, time, amount of money, quantity or measurement;
  - (d) alter the text of a provision to reflect an amendment to the provision deemed to have been made by another provision;
  - (e) omit any enacting, expired or spent provision;
  - (f) change the sequence of definitions, or of unnumbered items in a list;
  - (g) insert, after an item in a list appearing in the text of one official language, the equivalent of that item in the other official language;
  - (h) change the format, layout, printing style or any other presentational aspect; and
  - (i) make an amendment that is consequential on any amendment made under this subsection (other than this paragraph).
- (2) Subsection (1) does not permit any amendment that would change the legal effect of any Ordinance.
- (3) An Ordinance amended under subsection (1), as published in the loose-leaf edition, must indicate in a suitable place the fact that it has been amended under subsection (1).

**2B. Record of editorial amendments**

- (1) The Secretary for Justice must compile a record containing—
  - (a) descriptions of editorial amendments made; and
  - (b) other information that the Secretary for Justice considers useful to users of the record.
- (2) The record is to be published—
  - (a) in the loose-leaf edition; and
  - (b) in a form that the Secretary for Justice considers appropriate.
- (3) An Ordinance that is amended under section 2A(1) has effect for all purposes, on and after the effective date of the editorial amendment, as if the amendment had been made by another Ordinance that commenced on that date.
- (4) The effective date of an editorial amendment—
  - (a) must not be a date which is earlier than the date on which the record containing a description of the amendment, as specified in subsection (1)(a), is first published under subsection (2); and
  - (b) must be specified in the record.
- (5) In this section—

*editorial amendment* (編輯修訂) means an amendment to an Ordinance made under section 2A(1).”.

**22. Section 3A added**

After section 3—

**Add**

**“3A. Omission of Ordinances**

- (1) The Secretary for Justice may omit a verified Ordinance from the loose-leaf edition.
  - (2) For the purposes of subsection (1), an Ordinance is verified if a consolidated copy of the Ordinance, as published on an approved website, bears an official verification mark.
  - (3) In this section—  
*approved website* (認可網站) has the meaning given by section 2(1) of the Legislation Publication Ordinance (13 of 2011);  
*consolidated copy* (編訂文本) has the meaning given by section 2(1) of the Legislation Publication Ordinance (13 of 2011);  
*official verification mark* (官方核證標記) has the meaning given by section 2(1) of the Legislation Publication Ordinance (13 of 2011).”
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## Appendix II

### Relevant documents on Editorial Record 1 of 2012 (compiled in accordance with section 2B of the Laws (Loose-leaf Publication) Ordinance 1990)

<b>Committee</b>	<b>Date of meeting</b>	<b>Paper</b>
Panel on Administration of Justice and Legal Services	26.4.2010 (Item VI)	<a href="#">Agenda</a> <a href="#">Minutes</a>
Bills Committee on Legislation Publication Bill	17.5.2011	<a href="#">LC Paper No. CB(2)1911/10-11(01)</a> <a href="#">LC Paper No. CB(2)1911/10-11(02)</a>
House Committee	10.6.2011	<a href="#">Report of the Bills Committee on Legislation Publication Bill</a>

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