

立法會
Legislative Council

LC Paper No. CB(4)1049/13-14
(These minutes have been seen
by the Administration)

Ref : CB4/BC/3/13

Bills Committee on Statute Law (Miscellaneous Provisions) Bill 2014

Minutes of the second meeting
held on Tuesday, 27 May 2014, at 2:30 pm
in Conference Room 2B of the Legislative Council Complex

Members present : Hon TAM Yiu-chung, GBS, JP (Chairman)
Hon James TO Kun-sun
Hon Emily LAU Wai-hing, JP
Hon Ronny TONG Ka-wah, SC
Dr Hon Priscilla LEUNG Mei-fun, SBS, JP
Hon Paul TSE Wai-chun, JP
Hon Charles Peter MOK
Hon CHAN Chi-chuen
Hon Dennis KWOK
Dr Hon Fernando CHEUNG Chiu-hung
Hon Martin LIAO Cheung-kong, JP

Members absent : Hon Albert HO Chun-yan
Hon Cyd HO Sau-lan

Public Officers attending : Item I

Department of Justice

Ms Adeline WAN
Senior Assistant Solicitor General

Ms Anita NG
Senior Government Counsel

Ms Karmen KWOK
Senior Government Counsel

Security Bureau

Mrs Millie NG
Principal Assistant Secretary for Security

Ms Alice YEUNG
Assistant Secretary for Security

Constitutional and Mainland Affairs Bureau

Mr D C CHEUNG
Principal Assistant Secretary (Constitutional and
Mainland Affairs) 5

Mr Michael YAU
Assistant Secretary (Constitutional and Mainland
Affairs) 5

Labour and Welfare Bureau

Miss Fanny CHEUNG
Assistant Secretary for Labour and Welfare
(Rehabilitation)

Judiciary Administration

Ms Wendy CHEUNG
Assistant Judiciary Administrator (Development)

Clerk in attendance : Miss Polly YEUNG
Chief Council Secretary (4) 4

Legal Adviser : Mr Timothy TSO
Assistant Legal Adviser 2

Staff in attendance : Mr KWONG Kam-fai
Senior Council Secretary (4)4

Ms Sandy HAU
Legislative Assistant (4)4

Miss Emma LAM
Clerical Assistant (4)3

Action

I. Meeting with the Administration and the Judiciary Administration

- (LC Paper No. CB(3)561/13-14 -- The Bill
- File Ref.: LP 3/00/13C -- Legislative Council Brief issued by the Department of Justice
- LC Paper No. LS44/13-14 -- Legal Service Division Report
- LC Paper No. CB(4)679/13-14(02) -- Marked-up copy prepared by the Legal Service Division
- LC Paper No. CB(4)691/13-14(01) -- Assistant Legal Adviser's letter dated 19 May 2014 to the Administration
- LC Paper No. CB(4)693/13-14(01) -- Table provided by the Administration with information on the 15 Parts of the Bill
- LC Paper No. CB(4)679/13-14(03) -- Background brief prepared by the Legislative Council Secretariat)

The Bills Committee deliberated (index of proceedings attached at **Annex**).

Action

2. Members noted the Administration's written responses dated 27 May 2014 [LC Paper No. CB(4)740/13-14(01) tabled at the meeting] to the issues in relation to Parts 2, 3 and 4 of the Bill raised in Assistant Legal Adviser's letter dated 19 May 2014.
3. Members examined Parts 2 to 5, 14 and 15 (clauses 147 to 162) of the Bill.
4. The Administration was requested to –

Part 3 – Clause 14(2)

- (a) provide in due course the proposed Committee Stage amendment to repeal "、(g)" in the Chinese text of section 12(4)(a) of the Sex Discrimination Ordinance (Cap. 480);

Part 4 – Clause 43

- (b) note that as section 81 of the Evidence Ordinance (Cap. 8) is also proposed to be amended under clause 13 of the Competition (Amendment) Bill 2014, if the aforesaid Bill is passed and gazetted as an Ordinance before the current Bill, then clause 43 of the Bill may need to be amended;

Part 5 – Clauses 45 to 47

- (c) explain why "any notarial act done before a diplomatic or consular officer of the People's Republic of China outside the People's Republic of China" is excluded from the proposed definition of "notarial act" in clauses 45 to 47;

Part 14

- (d) having regard to the amendments to the Chinese titles of "Commissioner of Customs and Excise", "Deputy Commissioner of Customs and Excise" and "Assistant Commissioner of Customs and Excise" by repealing the expression "香港", advise, where practicable, whether there are provisions in other Ordinances that would also require similar amendments to standardize the references to the Chinese titles of public officers;

Action

Part 14 – Division 48

- (e) advise whether the names of "Customs and Excise Service Children's Education Trust Fund" and "香港海關人員子女教育信託基金" have been duly registered and recognized as the official English and Chinese names respectively of the Fund; and

Part 15 – Clause 162

- (f) clarify whether it is the intention that the arrangements as set out in the proposed rule 14A of Order 24, Rules of the District Court (Cap. 336 sub. leg. H) would also apply to the situation in which a document has been read to or by the judge in chambers.

(Post-meeting note: The Administration's written response was issued to members on 18 June 2014 vide LC Paper No. CB(4)835/13-14(06).)

II. Any other business

- 5. There being no other business, the meeting ended at 4:26 pm.

Council Business Division 4
Legislative Council Secretariat
2 September 2014

**Proceedings of the second meeting of the
Bills Committee on Statute Law (Miscellaneous Provisions) Bill 2014
on Tuesday, 27 May 2014, at 2:30 pm
in Conference Room 2B of the Legislative Council Complex**

Time marker	Speaker(s)	Subject(s)	Action required
Agenda Item I – Meeting with the Administration and the Judiciary Administration			
<i>Discussion on Part 2 of the Bill</i>			
000000 - 001905	Chairman Administration Mr CHAN Chi-chuen	<p>Briefing by the Administration on Part 2 of the Bill</p> <p>Mr CHAN Chi-chuen said that many homosexual persons and even some frontline police officers had a misconception that as the relevant legislation had not been amended, it was unlawful for homosexual men aged 16 or above and under 21 to engage in buggery. He supported the early enactment of the proposed amendments to the Crimes Ordinance (Cap. 200) ("CO").</p> <p>Mr CHAN Chi-chuen also expressed his concern that under the existing CO, some offences and the levels of penalty were gender-specific and discriminatory on the ground of sexual orientation. He enquired whether the Administration would conduct a comprehensive review on the sexual offences under CO in addition to the currently proposed amendments under the Bill.</p> <p>The Administration advised that –</p> <p>(a) after the courts' rulings in 2006 and 2007 that the relevant sections under CO were unconstitutional, frontline police officers had been reminded that the provisions in question should be enforced in accordance with the rulings. Police would seek legal advice from the Department of Justice when necessary. No charge had since been laid against any person under the provisions concerned; and</p> <p>(b) the Review of Sexual Offences Sub-committee ("the Subcommittee") set up under the Law Reform Commission ("LRC") was reviewing the law relating to sexual and related offences, including the penalties, in a holistic manner. The Subcommittee's review was divided into four parts, namely (i) non-consensual sexual offences; (ii) offences based on the protective principle; (iii) offences based on public morality; and (iv) recommendations on sentencing.</p>	
001906 - 002747	Administration Mr CHAN Chi-chuen	Mr CHAN Chi-chuen sought further details about the Subcommittee's review.	

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		<p>In response, the Administration provided the following information –</p> <p>(a) Due to widespread public concern about the need to protect children from sexual abuse, the Subcommittee had spent some time in studying the establishment of an administrative scheme on sexual conviction record check and made corresponding recommendations in 2010. Thereafter, the Subcommittee continued its review on sexual and related offences.</p> <p>(b) In the first consultation paper issued in September 2012, the Subcommittee had pointed out that section 118A was the only section relating to the offence of non-consensual buggery in CO while all the other buggery offences were consensual in nature. In the consultation paper, the Subcommittee had recommended that the offence of non-consensual buggery under section 118A of CO should be abolished upon enactment of the proposed new legislation. The other buggery offences would be reviewed at a later stage of the Subcommittee's overall study.</p> <p>(c) Although the Subcommittee had not completed its review, the Administration would commence its preparatory work for legislative amendments with regard to the Subcommittee's recommendations.</p> <p>Noting that the Subcommittee's first consultation paper had been issued in September 2012, Mr CHAN Chi-chuen expressed his concern about the timetable for the overall review of sexual and related offences.</p> <p>The Administration advised that –</p> <p>(a) the Subcommittee needed time to examine the existing legislation with reference to the legislation on sexual and related offences in other jurisdictions including Australia, Canada, England and New Zealand. The Subcommittee aimed to issue its second consultation paper as soon as possible; and</p> <p>(b) in its recent submission to the Panel on Administration of Justice and Legal Services, LRC had advised that since the review involved a wide scope of issues which required careful and comprehensive consideration, it was not practicable to provide a definite timetable for completion of the entire review.</p>	

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002748 - 003550	Assistant Legal Adviser 2 ("ALA2") Administration Mr CHAN Chi-chuen	<p>ALA2 noted that while sections 118F(1) and 118J(2)(a) of CO had been declared unconstitutional by the courts, the Administration had proposed to repeal section 118F in its entirety (clause 4 of the Bill), but only paragraph (a) of section 118J(2) (clause 6 of the Bill) instead of the entire section 118J was proposed to be repealed.</p> <p>On the difference in the scope of amendments to the two sections, the Administration explained that –</p> <p>(a) the entire section 118F was proposed to be repealed because section 118F(1), which was the main provision of the offence, was declared unconstitutional in <i>Secretary for Justice v Yau Yuk Lung Zigo and Another</i> (FACC 12/2006). Section 118F(2)(a), which provided an interpretation of section 118F(1), was declared unconstitutional in <i>Leung TC William Roy v Secretary for Justice</i> (HCAL 160/2004 and CACV 317/2005);</p> <p>(b) it was not proposed that the entire section 118J be repealed because only section 118J(2)(a) was declared unconstitutional in <i>Leung TC William Roy v Secretary for Justice</i> (HCAL 160/2004 and CACV 317/2005). Section 118J(1), the main provision of the offence, was not involved in the relevant court cases. Nevertheless, section 118J of CO was also among the sexual offences covered in the review currently conducted by the Subcommittee of LRC.</p> <p>Members noted ALA2's advice that amendments, if any, proposed by Members to the Bill would be dealt with in accordance with the relevant provisions under the Rules of Procedure.</p> <p>In response to Mr CHAN Chi-chuen's question on whether the existing section 118J and other relevant sections of CO would be further amended, the Administration confirmed that pending the comprehensive review by the Subcommittee, it would not propose to further amend individual sections under CO relating to sexual and related offences at this stage.</p>	
003551 - 003956	Chairman Administration	<p><u>Clause-by-clause examination</u></p> <p><i>Clauses 3 to 12</i></p> <p>Members raised no query.</p>	
<i>Discussion on Part 3 of the Bill</i>			
003957 - 004430	Chairman Administration	The Administration's briefing on Part 3 of the Bill	

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004431 - 004713	Administration ALA2	<p><u>Clause-by-clause examination</u></p> <p><i>Clauses 13 to 14</i></p> <p>The Administration confirmed that it would propose a Committee Stage amendment ("CSA") to repeal all references to "、(g)" in the Chinese text of section 12(4)(a) of SDO.</p>	The Administration to take action as in paragraph 4(a) of the minutes
004714 - 005002	Chairman Administration	<p><i>Clauses 15 to 22</i></p> <p>Members raised no query.</p>	
005003 - 005342	Chairman Administration ALA2	<p><i>Clause 23</i></p> <p>ALA2 said that when reference was made to the exceptions listed in the third column in Part 2 of Schedule 5 to SDO, clause 23(3) referred to the column as "column 2". However, clause 59 of Part 11 of the Bill referred to the third column in Schedule 1 to the Legal Services Legislation (Miscellaneous Amendments) Ordinance 1997 ("Ord. No. 94 of 1997") as "column 3".</p> <p>On the difference in the references to the column number in a schedule, the Administration advised that under the existing drafting practice, where there was a column number or a column heading for the first column, it would be generally referred to as "column 1". However, if there was no such column number or column heading for the first column, the counting of column would start from the second column which would be generally referred to as "column 1". The references to columns in clauses 23(3) and 59 of the Bill followed the aforesaid principle.</p>	
005343 - 005613	Chairman Administration	<p><i>Clauses 24 to 34</i></p> <p>Members raised no query.</p>	
005614 - 005825	Chairman Administration	<p><i>Clauses 35 to 42</i></p> <p>Members raised no query.</p>	
<i>Discussion on Part 4 of the Bill</i>			
005826 - 010133	Chairman Administration Judiciary Administration ALA2	<p>Briefing by the Judiciary Administration on Part 4 of the Bill</p> <p>ALA2 advised that section 81 of the Evidence Ordinance (Cap. 8) was also proposed to be amended under clause 13 of the Competition (Amendment) Bill 2014. If the aforesaid Bill was passed and gazetted as an Ordinance before the current Bill, then clause 43 of the Bill might need to be amended.</p>	

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		The Administration said that it would monitor the progress of the scrutiny of the Competition (Amendment) Bill 2014 and, if necessary, propose CSAs to the current Bill.	The Administration to take action as in paragraph 4(b) of the minutes
010134 - 010242	Chairman Judiciary Administration	<u>Clause-by-clause examination</u> <i>Clauses 43 to 44</i> Members raised no query.	
<i>Discussion on Part 5 of the Bill</i>			
010243 - 010359	Chairman Administration	Briefing by the Administration on Part 5 of the Bill	
010400 - 010800	Chairman Administration ALA2	<u>Clause-by-clause examination</u> <i>Clauses 45 to 47</i> ALA2 asked why "any notarial act done before a diplomatic or consular officer of the People's Republic of China outside the People's Republic of China as referred to in section 10 of the Oaths and Declarations Ordinance (Cap. 11)" was excluded from the proposed definition of "notarial act" in clauses 45 to 47. The Administration explained that currently, a notarial act done before a diplomatic or consular officer of the People's Republic of China ("PRC") outside PRC was regarded as having the same effect as if duly done before a notary public in Hong Kong under section 10 of the Oaths and Declarations Ordinance ("ODO") (Cap. 11). Pursuant to the aforesaid section and upon enactment of Part 5 of the Bill, such a foreign notarial act would be received as prima facie evidence in civil proceedings in the courts of Hong Kong. This would have the inadvertent effect of changing the substantive law of evidence relating to the admission of overseas notarial acts executed by foreign notaries, which was inconsistent with the policy intent of Part 5 of the Bill. To avoid the inadvertent effect, the Administration had therefore proposed to exclude the notarial act referred to in section 10 of ODO from the proposed definition of notarial act in clauses 45 to 47 of the Bill.	The Administration to take action as in paragraph 4(c) of the minutes
<i>Discussion on Part 14 of the Bill</i>			
010801 - 012819	Chairman Administration Mr Paul TSE ALA2	Briefing by the Administration on Part 14 of the Bill Mr Paul TSE enquired why the expression "香港" appeared in the Chinese title of "Commissioner of Customs and Excise" under some, but not all, Ordinances.	

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		<p>The Administration explained that there were variations in the Chinese titles of "Commissioner of Customs and Excise", "Deputy Commissioner of Customs and Excise" and "Assistant Commissioner of Customs and Excise" among Ordinances. The current exercise aimed to standardize the Chinese titles by removing "香港" from the Chinese titles.</p> <p>Mr Paul TSE enquired whether similar amendments should be made to the Chinese titles of other public officers in different Ordinances.</p> <p>The Administration advised that for the time being, it had not identified similar inconsistency in the Chinese titles of other public officers.</p> <p><u>Clause-by-clause examination</u></p> <p><i>Clauses 69 to 78</i></p> <p>Members raised no query.</p> <p><i>Clause 79</i></p> <p>Referring to the Chinese text of the Schedule to the Pension Benefits (Prescribed Ages) (Directorate Ranks) Notice (Cap. 99 sub. leg. C) proposed to be amended by clause 79 of the Bill, the Chairman noted that the Chinese titles of the public officers of other disciplined services, such as "Director of Immigration" and "Commissioner of Police", were not prefixed by the expression "香港". He requested the Administration to advise whether there was any variation in the Chinese titles of these public officers among other Ordinances which required similar amendments.</p> <p><i>Clauses 80 to 117</i></p> <p>Members raised no query.</p>	<p>The Administration to take action as in paragraph 4(d) of the minutes</p> <p>The Administration to take action as in paragraph 4(d) of the minutes</p>
012820 - 013512	Chairman Administration ALA2	<p><i>Clauses 118 to 135</i></p> <p>The Chairman enquired why some of the proposed amendments only involved repealing the expression "香港" from the Chinese text while some other necessitated the replacement of the entire Chinese title (e.g. substituting "香港海關關長" with "海關關長").</p> <p>The Administration explained that this was primarily a drafting matter. For example, if several Chinese titles of public officers were mentioned in the provisions concerned, it would be more efficient to repeal the expression "香港" in the titles instead of substituting each of them by new titles.</p>	

Time marker	Speaker(s)	Subject(s)	Action required
		ALA2 supplemented that in some cases, the expression "香港" in the Chinese text of the provisions might refer to other matters and was not part of the Chinese titles of the officers in question.	
013513 - 013714	Chairman Mr Martin LIAO Administration	<i>Clauses 136 to 139</i> Mr Martin LIAO enquired whether the names of "Customs and Excise Service Children's Education Trust Fund" and "香港海關人員子女教育信託基金" had been duly registered and recognized as the official English and Chinese names respectively of the Fund. If this was the case, the names could not be easily changed even if "香港" appeared in the Chinese name but not in the English name. The Administration agreed to check and revert to the Bills Committee.	The Administration to take action as in paragraph 4(e) of the minutes
013715 - 013855	Chairman Administration	<i>Clauses 140 to 146</i> Members raised no query.	
<i>Discussion on Part 15 of the Bill</i>			
013856 - 014553	Chairman Administration	Briefing by the Administration on Part 15 of the Bill <u>Clause-by-clause examination</u> <i>Clauses 147 to 155</i> Members raised no query.	
014554 - 015134	Chairman Judiciary Administration Mr Dennis KWOK Mr Martin LIAO Mr Paul TSE	<i>Clause 156</i> Mr Dennis KWOK declared that he was registered on the roll of barristers. He referred to Form 2 of Schedule 2 to the Barristers (Admission) Rules (Cap. 159 sub. leg. AA) and sought clarification on whether the approval of the Chief Justice was required for admission to the roll of barristers. Mr Martin LIAO declared that he was a legal practitioner. He said that in England, the rolls of barristers and solicitors were approved by the master of the rolls. If the approval of the Chief Justice was required, this might have been modelled on the traditional arrangement in England. He enquired whether the proposed amendment would be at variance with the aforesaid model adopted in England. The Judiciary Administration explained that there was no requirement to obtain the approval of the Chief Justice for admission of barristers as this was the duty of the Registrar. It was merely a technical error to have included in the Form the date of approval and a space for the signature of the Chief Justice. It was therefore	

Time marker	Speaker(s)	Subject(s)	Action required
		<p>proposed to remove the above contents from the Form.</p> <p>In response to Mr Paul TSE's enquiry, the Judiciary Administration confirmed that there was no similar error in the prescribed form for the admission of solicitors.</p>	
015135 - 015551	Chairman Administration Mr Dennis KWOK ALA2	<p><i>Clauses 157 to 162</i></p> <p>Mr Dennis KWOK referred to clause 162 and sought clarification on whether it was the intention that the arrangements as set out in the proposed rule 14A of Order 24, Rules of the District Court (Cap. 336 sub. leg. H) would also apply to the situation in which a document had been read to or by the judge in chambers.</p> <p>The Administration agreed to provide clarification after the meeting.</p>	The Administration to take action as in paragraph 4(f) of the minutes
Agenda Item II – Any other business			
015552 - 015652	Chairman	Closing remarks	