

立法會

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Bills Committee on Statute Law (Miscellaneous Provisions) Bill 2014

Background brief prepared by the Legislative Council Secretariat

Purpose

This paper provides a brief account of the discussion of various Panels when being consulted on some of the proposed amendments under the Statute Law (Miscellaneous Provisions) Bill 2014 ("the Bill").

The Bill

2. An omnibus bill may group together certain technical, minor and uncontroversial amendments to various Ordinances and subsidiary legislation for miscellaneous purposes. The Administration has advised that it has introduced omnibus bills in recent years as an efficient way of effecting miscellaneous amendments to existing legislation.

3. The Bill is an omnibus bill proposing amendments to various Ordinances. According to the Administration, the proposed amendments are largely technical and non-controversial but are important for the purpose of updating or improving existing legislation. The Bill comprises 15 Parts and 173 clauses. The major proposed amendments are as follows –

- (a) Part 2 – to repeal and amend certain offence provisions in the Crimes Ordinance (Cap.200) ("CO") that were declared to be unconstitutional by the courts in *Leung TC William Roy v Secretary for Justice* (HCAL 160/2004 and CACV 317/2005) and *Secretary for Justice v Yau Yuk Lung Zigo and Another* (FACC 12/2006);
- (b) Part 3 – to make miscellaneous amendments to the Sex Discrimination Ordinance (Cap.480) ("SDO"), Disability Discrimination Ordinance (Cap.487) ("DDO"), Family Status Discrimination Ordinance (Cap.527) and Race Discrimination Ordinance (Cap.602) for the purposes of, inter alia, enabling the service of enforcement notices by the Equal Opportunities

Commission ("EOC") and providing protection to the members and staff of EOC against certain liability;

- (c) Part 4 – to amend the Evidence Ordinance (Cap.8) ("EO") and Lands Tribunal Ordinance (Cap.17) to clarify the powers of members and temporary members of the Land Tribunal;
- (d) Parts 5 to 6 – to amend EO, the Rules of the High Court (Cap.4 sub.leg. A), the Oaths and Declaration Ordinance (Cap.11), the Rule of the District Court (Cap.336 sub.leg. H) and the Mutual Legal Assistance in Criminal Matters Ordinance (Cap.525) relating to admissibility of evidence in court proceedings;
- (e) Part 7 – to amend the Unsolicited Electronic Messages Ordinance (Cap.593) to add further modes for the service of notices issued by the Communications Authority;
- (f) Part 8 – to amend certain provisions under the Trade Descriptions Ordinance (Cap.362) to make it clear that they impose only an evidential burden on the accused;
- (g) Part 9 – to amend the Building Management Ordinance (Cap.344) ("BMO") to replace the existing requirement of a statutory declaration under certain provisions by a requirement of written statement;
- (h) Part 10 – to amend Schedule 1 to the Legal Services Legislation (Miscellaneous Amendments) Ordinance 1997 (94 of 1997) ("the 1997 Ordinance") to retain the definition of "controlled trust" for the purposes of Part IIA of and Schedule 2 to the Legal Practitioners Ordinance (Cap.159) ("LPO");
- (i) Part 11 – to amend LPO and the 1997 Ordinance relating to the powers of the Council of the Law Society of Hong Kong ("the Law Society");
- (j) Parts 12 to 15 – to make miscellaneous and technical amendments to various Ordinances or subsidiary legislation for different purposes, which include consequential amendments that were omitted in previous amendment exercises, correcting cross references in certain provisions, correcting certain technical consolidation irregularities in a few consolidation instruments and the references to the Chinese titles of certain public officers.

Consultation with Panels

4. The Panel on Home Affairs, the Panel on Constitutional Affairs and the Panel on Administration of Justice and Legal Services ("AJLS Panel") had been briefed on proposed amendments relevant to their remit.

Proposed amendments to BMO (Part 9 of the Bill)

5. Under the existing provisions of BMO, a member of the management committee of an owners' incorporation is required to lodge a statutory declaration stating that he/she does not fall within any of the categories of ineligible persons specified in paragraph 4(1) of Schedule 2 to BMO within 21 days after his/her appointment.

6. At the meeting of the Panel on Home Affairs on 28 May 2013, members were briefed on the findings of the Interim Report of the Review Committee on the Building Management Ordinance. Members generally welcomed the recommendation of the Review Committee to obviate the need of taking an oath by members of the management committee of an owners' incorporation before a third party such as a Commissioner for Oaths, and to replace it with a requirement on them to make a written statement on their eligibility.

Proposed amendments to the four anti-discrimination Ordinances (Part 3 of the Bill)

7. At the meeting on 17 June 2013, the Panel on Constitutional Affairs followed up the EOC's legislative amendment proposal related to the scope of protection against sexual harassment under SDO. On this occasion, members noted that the Administration intended to introduce a Statute Law (Miscellaneous Provisions) Bill tentatively by the end of 2013 to deal with five of the 11 legislative proposals submitted by EOC in 2011 which were technical amendments to the four anti-discrimination Ordinances. These proposed amendments relate to the repeal of certain exceptions under Part 2 of Schedule 5 to SDO; issuance of enforcement notice under DDO; protection of EOC staff against liability in implementing the four anti-discrimination Ordinances; and refining the Chinese text of these Ordinances.

8. In response to members' enquiry, the Administration had also updated members on the progress of work regarding the remaining six legislative proposals submitted by EOC¹.

¹ See LC Paper No. CB(2)1826/12-13(01) issued as a follow-up to the meeting of the Panel on Constitutional Affairs held on 17 June 2014.

Proposed amendments to CO (Part 2 of the Bill)

9. In *Leung TC William Roy v Secretary for Justice* (HCAL 160/2004 and CACV 317/2005), the Court of Appeal upheld the decision of the Court of First Instance, which declared that sections 118C (homosexual buggery with or by man under 21), 118F(2)(a) (homosexual buggery committed otherwise than in private), 118H (gross indecency with or by man under 21) and 118J(2)(a) (gross indecency by man with man otherwise than in private) of the CO were inconsistent with Articles 25 and 39 of the Basic Law and Articles 1, 14 and 22 of the Hong Kong Bill of Rights ("HKBOR") and were therefore unconstitutional. In *Secretary for Justice v Yau Yuk Lung and Another* (FACC 12/2006), the Court of Final Appeal declared that section 118F(1) (homosexual buggery committed otherwise than in private) of the CO was unconstitutional for infringing the respondents' right to equality guaranteed under Article 25 of the Basic Law and Article 22 of the HKBOR.

10. At the meeting of the AJLS Panel held on 16 December 2013, some members expressed concern about the long time taken by the Administration in introducing the necessary amendments to CO notwithstanding that the relevant provisions of CO had been ruled unconstitutional by the courts in 2005 and 2006. According to a Member, many homosexual persons and even some frontline police officers were under the misconception that as the relevant legislation remained unchanged, it was unlawful for homosexual men below the age of 21 to engage in buggery.

11. The Administration confirmed that after the courts' rulings in 2005 and 2006 that the aforesaid sections under CO were unconstitutional, no prosecution had been taken against any person under the provisions concerned. Frontline police officer had also been reminded that the provisions in question no longer had any legal effect.

12. The Panel was also informed that in July 2006, the Law Reform Commission had set up the Review of Sexual Offences Sub-committee ("the Subcommittee") to review the law relating to sexual and related offences in Hong Kong. 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. The original plan of the Administration was to introduce amendments to relevant provisions on sexual offences under CO in a holistic manner upon completion of the Subcommittee's review. However, in view of the request from the legal sector, the Administration would proceed to amend/repeal the unconstitutional provisions under CO first. The review of provisions related to sexual offences under CO, including penalty, would be dealt with under the Subcommittee's

comprehensive review.

Proposed amendments to the 1997 Ordinance (Part 10 of the Bill)

13. A member of the AJLS Panel did not agree with the Administration that the proposed amendments to the definition of "legal practice entities" referred to in Schedule 1 to the 1997 Ordinance were merely technical and non-controversial and therefore included in the Bill. It was suggested that the relevant stakeholders including solicitors and foreign lawyers should be consulted on the possible impact on their operation as a result of the amendments, if enacted.

14. In reply, the Administration explained that the proposed amendments should not have any adverse effect on the mode of operation of any practising solicitors, foreign lawyers or their law firms despite the fact that the Council of the Law Society had resolved to reinstate the law prior to the 1997 Ordinance, namely, only solicitors or foreign lawyers could become trustees or co-trustees of a trust. As Schedule 1 to the 1997 Ordinance had not yet come into operation, only solicitors or foreign lawyers could be trustees or co-trustees of a trust under the existing provisions of LPO.

Proposed amendments to LPO (Part 11 of the Bill)

15. At the meeting of the AJLS Panel on 16 December 2013, question had been raised as to whether the proposed amendments to section 8A of LPO were to deal with the revocation and restoration of a suspension of a solicitor's practice or a foreign lawyer's registration only in the circumstance when his financial position was at stake.

16. According to the Administration, the Council of the Law Society might, in deciding whether to exercise the power to suspend a solicitor from practice or a foreign lawyer from registration pending a decision of the Solicitors Disciplinary Tribunal, take into account factors such as the conviction of a solicitor or foreign lawyer for an offence which might be liable to a sentence of imprisonment. The Law Society considered it necessary that the Council of the Law Society be empowered to revoke or restore a suspension of a solicitor's practice or a foreign lawyer's registration pending a decision of the Solicitors Disciplinary Tribunal if the Council was satisfied that the circumstances that gave rise to the suspension/revocation no longer existed or otherwise considered appropriate.

Use of an omnibus bill

17. When being consulted on the Bill at its meeting on 16 December 2013, the AJLS Panel noted that according to the Administration, the use of omnibus

bills to deal with miscellaneous technical and non-controversial amendments is more efficient as it avoids the requirement on the relevant bureau(x) to make bids for separate slots relating to each Ordinance. The Panel however noted that a large number of amendments had been proposed under the Bill covering a wide range of policy areas. There was a view that the Administration should avoid bundling too many discrete issues into a single omnibus bill.

Relevant papers

18. A list of relevant papers is at the **Appendix**.

Council Business Division 4
Legislative Council Secretariat
19 May 2014

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List of relevant papers

Meeting	Date of meeting	Paper
Panel on Home Affairs	28.5.2013 (Item V)	Agenda Minutes
Panel on Constitutional Affairs	17.6.2013 (Item III)	Agenda Minutes CB(2)1826/12-13(01)
Panel on Administration of Justice and Legal Services	16.12.2013 (Item IV)	Agenda CB(4)225/13-14(04) Minutes

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