



立法會秘書處 法律事務部
LEGAL SERVICE DIVISION
LEGISLATIVE COUNCIL SECRETARIAT

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By Fax (2180 9928)

19 May 2014

Ms Adeline WAN
Senior Assistant Solicitor General
Department of Justice
Legal Policy Division
1st floor, High Block,
Queensway Government Offices,
66 Queensway, Hong Kong

Dear Ms WAN,

Statute Law (Miscellaneous Provisions) Bill 2014

We are scrutinizing the legal and drafting aspects of the above Bill.
We would be grateful if you could clarify the following matters.

Part 1

Clause 1

Please let members know the rationale of clause 1(3) for commencing Part 9 on the expiry of one month after the Ordinance is gazetted.

Please also let members know the rationale of clause 1(4) for commencing Divisions 1, 2 and 3 of Part 12 immediately after Division 4 comes into operation.

Part 2

It is noted that the relevant cases were decided in 2006 and 2007. Please let members know why it took so many years for proposing amendments to the relevant provisions which were declared to be unconstitutional by the courts.

Clauses 4 and 6

It is noted that section 118F (homosexual buggery committed otherwise than in private) of the Crimes Ordinance (Cap. 200) is proposed to be repealed by clause 4. However, only paragraph (a) of section 118J(2), but not the whole of section 118J (gross indecency by man with man otherwise than in private), is proposed to be repealed under clause 6. Please let members know the rationale for this.

Part 3

Clauses 14, 17, 22 and 23

Please let members know the reasons for repealing the provisions mentioned in the following clauses: 14(1), 17(2), 22, 23(2), 23(5) and 23(8).

Clause 14(2)

Please clarify whether "(g)" in the Chinese text of section 12(4)(a) of the Sex Discrimination Ordinance (Cap. 480) should also be repealed.

Clause 33(2)

Please let members know the rationale for adding section 73(1)(ba) to the Disability Discrimination Ordinance (Cap. 487) by clause 33(2).

Part 4

Clause 43

Section 81 of the Evidence Ordinance (Cap. 8) is proposed to be amended under clause 43. It is noted that the same section is also proposed to be amended under clause 13 of the Competition (Amendment) Bill 2014. If the Competition (Amendment) Bill 2014 is passed and gazetted as an Ordinance before the Statute Law (Miscellaneous Provisions) Bill 2014 (the Bill), clause 43 of the Bill may need to be amended.

Part 5

Clauses 45 to 47

Please 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 8

Please clarify whether there are any defence provisions (which are similar to section 26(4) of the Trade Descriptions Ordinance (Cap. 362)) in other Ordinances which should also be similarly amended.

Clauses 52 to 54

If sufficient evidence is adduced to raise an issue that the person charged (A) did not know, (B) had no reason to suspect, and (C) could not with reasonable diligence have ascertained that the goods are goods to which a false trade description or forged trade mark is applied (the fact), but the court is satisfied that the person charged could with reasonable diligence have ascertained the fact mentioned above, would the person be convicted or acquitted under the proposed new defence provision?

In respect of the condition that "the contrary is not proved by the prosecution beyond reasonable doubt", please clarify whether it refers to all of the conditions above, i.e. (A), (B) and (C), or it only refers to either one of the conditions, i.e. (A), (B) or (C).

Part 11

Clauses 58 and 59

Please clarify what "relevant documents" are in the proposed new sections 8A(4)(b) and (6)(b) under clauses 58 and 59.

Clause 59

In clause 59, it appears that the third column in Schedule 1 to the Legal Services Legislation (Miscellaneous Amendments) Ordinance 1997 (94 of 1997) is counted as "column 3" whereas the third column in Part 2 of Schedule 5 to the Sex Discrimination Ordinance (Cap. 480) is counted as "column 2" in clause 23(3). Please clarify if there is any discrepancy in counting the number of columns.

Part 12

Clause 63

The Schedule to the Specification of Public Offices (Cap. 1 sub. leg. C) is proposed to be repealed and substituted by a new Schedule under clause 63. In order to assist members in scrutinizing the proposed new Schedule, please let members know what amendments are in fact made to the Schedule.

Clause 66

Please provide a list of all the Gazette notices which are involved in the validation provisions under clause 66 for members' reference.

Please also explain to members the existing legal effect of the section 43 specifications, the relevant Gazette notices and the relevant entries in the existing Schedule to the Specification of Public Offices (Cap. 1 sub. leg. C) and the rationale for the validation provisions under clause 66.

Part 13

Clauses 67 and 68

Please provide a list of all the Gazette notices and orders which are involved in the validation provisions under clauses 67 and 68 for members' reference.

Please also explain to members the existing legal effect of the Gazette notices and orders, the relevant subparagraphs under paragraphs 2 and 3 of the Antiquities and Monuments (Declaration of Monuments and Historical Buildings) (Consolidation) Notice (Cap. 53 sub. leg. B) and the relevant items in the Schedule to the Country Parks (Designation) (Consolidation) Order (Cap. 208 sub. leg. B).

Please also let members know the rationale for the validation provisions under clauses 67 and 68.

Part 15

Clauses 157 and 173

Please let members know the reason(s) for repealing the Registration of Persons (Invalidation of Identity Cards) (Consolidation) Order (Cap. 177 sub. leg. C) in clause 157.

Please also let members know the reason(s) for repealing the sections mentioned in clause 173.

We would appreciate it if you could let us have your reply (in both Chinese and English and with soft copy to Miss Joey LEE at jmylee@legco.gov.hk) as soon as practicable.

Yours sincerely,



(Timothy TSO)
Assistant Legal Adviser

c.c. DoJ (Attn.: Ms Anita NG, Sr Govt Counsel (By Fax: 2180 9928)
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Clerk to the Bills Committee