

立法會 *Legislative Council*

LC Paper No. LS79/16-17

Paper for the House Committee Meeting on 16 June 2017

Legal Service Division Report on Statute Law (Miscellaneous Provisions) Bill 2017

I. SUMMARY

1. The Bill

The Bill seeks to introduce miscellaneous amendments to various Ordinances. The major proposed amendments include:

- (a) amendments to the Criminal Procedure Ordinance (Cap. 221) and the Live Television Link and Video Recorded Evidence Rules (Cap. 221J) to confer on the court a discretion to permit a complainant of specified sexual offences to give evidence in proceedings by way of a live television link;
- (b) amendments to the District Court Ordinance (Cap. 336) so that the jurisdiction limits of costs-only proceedings may be amended by resolution of the Legislative Council;
- (c) amendments to the Legal Practitioners Ordinance (Cap. 159) and the Admission and Registration Rules (Cap. 159B) relating to the residency requirements for admission as solicitor in Hong Kong; and
- (d) amendments to the Legislation Publication Ordinance (Cap. 614) and the Laws (Loose-leaf Publication) Ordinance 1990 (51 of 1990) relating to law compilation and operational arrangements for editorial amendments.

2. Public Consultation

According to the Legislative Council Brief, the Department of Justice issued a consultation paper on the proposed legislative amendments to Cap. 221 and Cap. 221J in October 2016 and has received views from respondents including the two legal professional bodies and the relevant interest groups. Save for one respondent, all other respondents expressed support to the proposals set out in the consultation paper.

3. Consultation with LegCo Panel

The Panel on Administration of Justice and Legal Services was consulted at its meeting on 27 March 2017. Members generally supported the proposed amendments.

4. Conclusion

The Legal Service Division is scrutinizing the legal and drafting aspects of the Bill. Members may wish to consider whether a Bills Committee should be formed to study the Bill in detail.

II. REPORT

The date of First Reading of the Bill is 14 June 2017. Members may refer to the Legislative Council Brief (File Ref.: LP 3/00/14C) issued by the Department of Justice on 31 May 2017 ("LegCo Brief") for further details.

Object of the Bill

2. The Bill seeks to introduce miscellaneous amendments to various Ordinances.

Provisions of the Bill

3. The Bill consists of nine Parts. The major proposed amendments in the Bill are summarized in the following paragraphs.

Amendments to the Criminal Procedure Ordinance (Cap. 221) and the Live Television Link and Video Recorded Evidence Rules (Cap. 221J)

4. At present, under section 79B of Cap. 221, the court¹ may, on its own motion or upon application, permit certain categories of person to testify by way of a live television link.

5. Division 1 of Part 2 of the Bill seeks to add new provisions to section 79B of Cap. 221 to confer on the court a discretion to permit a complainant of certain sexual offences² to give evidence in proceedings by way of a live television link.

6. Division 2 of Part 2 seeks to make consequential amendment to rule 3 of Cap. 221J, which relates to application for leave for a witness to whom section 79B of Cap. 221 applies to give evidence by means of a live television link, to cover a complainant of the relevant sexual offences.

Amendments to the High Court Ordinance (Cap. 4), the District Court Ordinance (Cap. 336) and the Competition Ordinance (Cap. 619)

7. Section 14A(3) of Cap. 336, which relates to appointment of temporary deputy registrars, provides that a temporary deputy registrar shall, during the period for which he is appointed, have all the jurisdiction, powers and privileges, and discharge all the duties of a deputy registrar and any reference in any law to a deputy registrar shall be construed accordingly. However, similar provisions are not provided in section 14AB of Cap. 336 and relevant provisions

¹ Under section 79A of Cap. 221, "court" includes the District Court and a magistrate.

² These offences, which are specified in section 117(1) of the Crimes Ordinance (Cap. 200), include rape, non-consensual buggery and indecent assault.

in Cap. 4 and Cap. 619 relating to appointment of temporary registrars of various ranks.

8. Part 3 of the Bill seeks to make amendments to Cap. 4, Cap. 336 and Cap. 619 to make it clear that temporary registrars of various ranks have all the jurisdiction, privileges, powers and duties conferred or imposed on registrars of the same ranks.

Amendments to Cap. 336 relating to composition of the District Court Rules Committee

9. Currently, the Department of Justice ("DoJ") is represented at the Court of Final Appeal Rules Committee, the High Court Rules Committee and the Criminal Procedure Rules Committee, but not at the District Court Rules Committee ("DCRC")³.

10. Part 4 of the Bill seeks to amend section 17 of Cap. 336 to provide for representation of the Secretary for Justice ("SJ") or a legal officer appointed by SJ at the DCRC.

Amendments to Cap. 336 relating to jurisdiction limits of costs-only proceedings

11. Under section 53A(5) of Cap. 336, the District Court has the jurisdiction to make an order for costs in "costs-only proceedings" if the amount of the party's claim for costs does not exceed \$1,000,000. However, this jurisdiction limit is not among one of those limits that may be amended by resolution of the Legislative Council ("LegCo") under the existing section 73A of Cap. 336.⁴

12. Part 8 of the Bill seeks to amend section 73A of Cap. 336 so that the jurisdiction limits of the amount of claim for costs for costs-only proceedings under section 53A(5) may be amended by resolution of LegCo.

Amendments to the Legal Practitioners Ordinance (Cap. 159) and the Admission and Registration Rules (Cap. 159B)

13. Under section 4(1A) of Cap. 159, one of the residency requirements for admission as a solicitor in Hong Kong is that a person has resided in Hong Kong for at least three months immediately before his admission. However, according to footnote 5 of the LegCo Brief, for practical purpose, The Law Society of Hong Kong has always taken the date in the forms for application for a certificate of eligibility for admission as the reference point for the calculation

³ Rules Committees are set up under various Ordinances for the making of court rules.

⁴ Section 73A of Cap. 336 provides that the amounts mentioned in sections 32, 33, 35, 36, 37, 49, 52, 68B and 69B may be amended by resolution of LegCo.

of the period of residence for those applicants who choose to declare that they have resided in Hong Kong for the requisite period before their admission.

14. Part 5 of the Bill seeks to amend section 4(1A)(a) of Cap. 159 to make the date of application for a certificate of eligibility for admission instead of the date of the applicant's admission as the reference point for the calculation of the period of residence for admission as a solicitor in Hong Kong. It also seeks to make consequential amendments to Forms 1B, 1C, 2, 3 and 4 of Cap. 159B as a result of the above proposed amendment.

Amendments to the Mainland Judgments (Reciprocal Enforcement) Ordinance (Cap. 597)

15. Part 6 of the Bill seeks to make technical amendments to Cap. 597. It seeks to rectify an error in the Chinese text of the long title of Cap. 597 by adding the words "協議" which are omitted in the existing version. It also seeks to amend the references to "Basic People's Court(s)" to "Primary People's Court(s)" and to amend the references to "recognized Basic People's Court(s)" to "recognized Primary People's Court(s)" in the English text of Cap. 597 to achieve consistency with the English translation of the same terms in the Mainland.⁵

Amendments to the Legislation Publication Ordinance (Cap. 614) and the Laws (Loose-leaf Publication) Ordinance 1990 (51 of 1990)

16. The editorial powers under sections 11(a) and 12 of Cap. 614 are equivalent to those under sections 2(2)(a) and 2A(1) of Ord. No. 51 of 1990 respectively. Part 7 of the Bill seeks to amend these sections in Cap. 614 and Ord. No. 51 of 1990 to streamline law compilation and editorial amendment work. It also seeks to amend section 4(1)(a) of Cap. 614⁶ to the effect that consolidated copies of five Ordinances that are not given chapter numbers⁷ are included in the contents of the database.

⁵ The Legislative Affairs Commission of the Standing Committee of the National People's Congress has adopted "primary people's court(s)" as the English equivalent of the Chinese term "基層人民法院" since 2006.

⁶ Under the existing section 4(1)(a) of Cap. 614, the electronic database of legislation applying in Hong Kong, established under section 3, is to contain consolidated copies of Ordinance that have been given chapter numbers.

⁷ The five Ordinances are (i) the Revised Edition of Laws Ordinance 1965 (53 of 1965); (ii) the Laws (Loose-leaf Publication) Ordinance 1990 (51 of 1990); (iii) the Hong Kong Reunification Ordinance (110 of 1997); the National Flag and National Emblem Ordinance (116 of 1997); and the Regional Flag and Regional Emblem Ordinance (117 of 1997).

Other miscellaneous amendments

17. The Bill also seeks to introduce miscellaneous and technical amendments to various legislative provisions for different purposes. These amendments include consequential amendments that were omitted in previous amendment exercises, repealing legislation that has ceased to have effect, removing obsolete references to repealed provisions from certain provisions, and provisions for correcting other minor errors.

Commencement

18. The Bill, if passed, would come into operation on the day on which it is published in the Gazette as an Ordinance, except that:

- (a) Part 6 (amendments to Cap. 597) comes into operation on a day to be appointed by SJ by notice published in the Gazette; and
- (b) Division 52 of Part 9 (technical amendments to the Airport Authority Bylaw (Cap. 483A) relating to modification of the Road Traffic Ordinance (Cap. 374)) comes into operation on 15 December 2017.

Public Consultation

19. According to paragraph 21 of the LegCo Brief, DoJ issued a consultation paper on the proposed legislative amendments to Cap. 221 and Cap. 221J (paragraphs 4 to 6 above) in October 2016 and has received views from respondents including the two legal professional bodies (namely Hong Kong Bar Association and The Law Society of Hong Kong) and the relevant interest groups. Save for one respondent, all other respondents expressed support to the proposals set out in the consultation paper.

Consultation with LegCo Panel

20. The Clerk to the Panel on Administration of Justice and Legal Services advised that the Panel was consulted on the proposed legislative amendments at its meeting on 27 March 2017. Members generally supported the proposed amendments. In relation to the proposed amendments to Cap. 221 on giving evidence by way of a live television link in proceedings in respect of specified sexual offences, members of the Panel agreed that the proposal would provide better protection to children and mentally incapacitated persons during the relevant court proceedings.

Conclusion

21. The Legal Service Division is scrutinizing the legal and drafting aspects of the Bill. Members may wish to consider whether a Bills Committee should be formed to study the Bill in detail.

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