

For discussion on
27 March 2017

**Legislative Council Panel
on Administration of Justice and Legal Services**
Statute Law (Miscellaneous Provisions) Bill 2017

Introduction

A number of amendments to various Ordinances are proposed for inclusion in the above Bill. The proposed amendments are largely minor, technical and non-controversial but are important for the purpose of updating or improving existing legislation. The object of this paper is to seek the views of Members on the proposed amendments.

General background

2. The Government has used omnibus bills in appropriate cases as an efficient way of effecting miscellaneous amendments to improve existing legislation. This avoids the need to make bids for separate slots relating to each Ordinance, the amendments to which typically involve only a few clauses.

Outline of the proposed amendments

3. The proposed amendments to be included in the Bill are set out below under different headings.

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

4. Currently, under section 79B of the *Criminal Procedure Ordinance* (Cap. 221), the court¹ may, on its own motion or upon application, permit a person falling within any of the following three categories to give evidence by way of a live television link:

- (a) a child (other than a defendant) giving evidence in proceedings in respect of an offence of sexual abuse or

¹ “Court” is defined in section 79A of Cap. 221 to include the District Court and a magistrate.

cruelty, or of an offence (other than one triable summarily only) which involves an assault on, or injury or a threat of injury to, a person;

- (b) a mentally incapacitated person (including a defendant) giving evidence in proceedings in respect of an offence that is triable otherwise than summarily only; or
- (c) a “witness in fear” giving evidence in proceedings in respect of any offence.

5. A “witness in fear” is defined in section 79B(1) (by application of section 7(1) of the *Interpretation and General Clauses Ordinance* (Cap. 1)) to mean a witness whom the court hearing the evidence is satisfied, on reasonable grounds, is apprehensive as to the safety of himself or any member of his family if he gives evidence. While it is possible that a complainant of sexual offences can be a “witness in fear”, and hence be covered by the existing section 79B, it is not necessarily so. A complainant or witness of a sexual offence, though not “in fear” as statutorily defined, ought nonetheless to be treated with understanding, fairness and dignity. The court should have the requisite powers in appropriate cases to protect them from the embarrassment of being exposed to public sight, any indignity of treatment, and the anxiety arising from the need to physically face the assailants during the trial.

6. In this regard, the Department of Justice (“**DoJ**”) proposes to add a new provision to section 79B of Cap. 221, so that where a complainant within the meaning of section 156(8) of the *Crimes Ordinance* (Cap. 200)² is to give evidence in proceedings in respect of a specified sexual offence within the meaning of section 117(1) of Cap. 200³, the court may, on application or on its own motion, permit the complainant to give evidence by way of a live television link, subject to such conditions as the court considers appropriate in the circumstances. A consequential amendment will also be made to section 83V(13) of Cap. 221 so that the existing power of the Court of Appeal to examine a witness in accordance with section 79B of Cap. 221 will be extended to cover a complainant of a specified sexual offence. Similarly, rule 3 of the *Live Television Link and Video Recorded Evidence Rules* (Cap. 221J) which concerns the procedure of an application made under section 79B,

² Under section 156(8) of Cap. 200, complainant, in relation to an allegation of a specified sexual offence, means the person against whom the offence is alleged to have been committed.

³ Under section 117(1) of Cap. 200, specified sexual offence means any of the following, namely, rape, non-consensual buggery, indecent assault, an attempt to commit any of those offences, aiding, abetting, counselling or procuring the commission or attempted commission of any of those offences, and incitement to commit any of those offences.

will be amended accordingly to cover such a complainant. DoJ issued a consultation paper in October 2016 on the above amendments and comments received were generally in support of the proposal.

High Court Ordinance (Cap. 4) (“HCO”), District Court Ordinance (Cap. 336) (“DCO”) and Competition Ordinance (Cap. 619) (“CO”)

7. Section 14A(3) of the DCO 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 found in sections 37AB, 37AC, 37A and 37B of the HCO, section 14AB of the DCO and section 156C(1) to (3) of the CO which respectively provide for appointment of different ranks of temporary registrars in the High Court, the District Court and the Competition Tribunal.

8. The Judiciary Administrator (“JA”) considers that despite the omission of such specific provisions in the HCO, DCO and CO, it is reasonable for the temporary registrars of different ranks appointed to the High Court, the District Court and the Competition Tribunal to be given the same jurisdiction and powers etc. of the registrar at the respective rank because there will otherwise be no point in providing for such temporary positions in the law. For the sake of clarity, therefore, the JA proposes that a provision similar to that in section 14A(3) of the DCO be added to sections 37AB, 37AC, 37A and 37B of the HCO, section 14AB of the DCO and section 156C(1) to (3) of the CO.

District Court Ordinance (Cap. 336)

Composition of the District Court Rules Committee

9. At present, the DoJ is represented at all of the Rules Committees set up under various Ordinances for the making of court rules,⁴ except the District Court Rules Committee (“DCRC”).

10. According to section 72(1) of the DCO, the DCRC may make rules of court regulating and prescribing –

- (a) the procedure, including the method of pleading in the Court;
- (b) the practice to be followed in the Court;

⁴ They are the Court of Final Appeal Rules Committee, the High Court Rules Committee and the Criminal Procedure Rules Committee.

- (c) the procedure and practice to be followed in the Registry of the Court; and
- (d) any matters incidental to the procedure or practice.

11. Given DoJ's representation on all other Rules Committees, there appears to be no justifiable reason why DoJ should not be included in the DCRC. Having a representative from DoJ on the other existing Rules Committees has proved to be useful for their work. For consistency and to provide the DCRC with the same benefit, JA proposes an amendment of section 17 of the DCO to provide for the DoJ's representation at the DCRC.

Jurisdictional limit of "costs-only proceedings"

12. Section 73A of the DCO provides that the jurisdictional limits of the District Court set out in sections 32, 33, 35, 36, 37, 49, 52, 68B and 69B can be amended by resolution of the Legislative Council. A new set of proceedings known as "costs-only proceedings" was introduced by the Civil Justice Reform in 2008 to allow parties to a proceeding who have settled all issues in dispute, except the amount of costs, to seek an order of the court on costs only. In this regard, a new section 53A was added to the DCO giving effect to such proceedings. Section 53A(5) of the DCO, in particular, provides that the District Court has jurisdiction to make an order relating to "costs-only proceedings" if the amount of the party's claim for those costs does not exceed \$1 million. However, the reference to section 53A(5) is currently not included in section 73A of the DCO. As such, any legislative amendment exercise relating to the jurisdictional limit of "costs-only proceedings" under section 53A of the DCO cannot be made by resolution of the Legislative Council, which is clearly not in line with the general scheme for revising jurisdictional limits under the DCO. To address this omission, the JA proposes the addition of a reference to section 53A in section 73A of the DCO.

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

13. To facilitate a better processing of application for admission as a solicitor in Hong Kong, the Law Society of Hong Kong ("**Law Society**") proposes an amendment of section 4(1A)(a) of the *Legal Practitioners Ordinance* (Cap. 159) and Forms 1B, 1C, 2, 3 & 4 of the *Admission and Registration Rules* (Cap. 159B) so that the reference point for the calculation of the period of residence for admission as a solicitor

in Hong Kong under section 4(1A)(a) of Cap. 159 would be changed from the date of the applicant's admission as a solicitor to the date of the application for a certificate of eligibility for admission as a solicitor.⁵ The proposed amendments to the relevant forms of Cap. 159B are consequential amendments made as a result of the proposed amendment to section 4(1A)(a) of Cap. 159.

Mainland Judgments (Reciprocal Enforcement) Ordinance (Cap. 597) (“MJO”)

14. To maintain consistency with the English usage of the same term in the Mainland in making references to a specific level of courts in the judicial system of the Mainland and to avoid confusion of the meaning of the relevant term, the DoJ proposes the following amendments in the English text of the MJO: (a) the references to “Basic People’s Court(s)” be amended to “Primary People’s Court(s)”;⁶ and (b) the references to “recognized Basic People’s Court(s)” be amended to “recognized Primary People’s Court(s)”. It is also proposed that a typographical error in the Chinese text of the Long Title of Cap. 597 be rectified by adding two Chinese words which are omitted in the current Title.

Laws (Loose-leaf Publication) Ordinance 1990 (51 of 1990) (“Loose-leaf Ordinance”) and Legislation Publication Ordinance (Cap. 614)

15. To ensure that the statute book is accurate and up-to-date and conforms to the prevailing style and format, the editorial powers under section 2A(1) of the *Loose-leaf Ordinance* have been exercised since 2012. The editorial powers in section 12 of the *Legislation Publication Ordinance* (Cap. 614) mirror these powers. After accumulating a few years of experience, certain areas of improvement or rationalization have been identified. Amendments to the following provisions are proposed –

- (a) sections 2(2)(a) and 2A(1) of the *Loose-leaf Ordinance* and

⁵ For practical purpose, the Law Society has always taken the date in the forms for application for a certificate of eligibility for admission as a solicitor as the reference point for those applicants who choose to declare that they have resided in Hong Kong for the requisite period before their admission.

⁶ The Legislative Affairs Commission of the Standing Committee of the National People’s Congress (全國人民代表大會常務委員會法制工作委員會) has adopted “primary people’s court(s)” as the English equivalent of the Chinese term “基層人民法院” since 2006.

- sections 11(a) and 12 of Cap. 614 (to provide that the alteration of the title, short title or citation of an Ordinance is subject to editorial record requirements so that legislation users know clearly what alterations have been made); and
- (b) sections 14 to 16 of Cap. 614 (to follow closely the operational arrangements for editorial amendments in section 2B of the *Loose-leaf Ordinance* which have been proved to work smoothly).

In addition, DoJ proposes that the definition of “consolidated copy” in Cap. 614 be amended to make it clear that the term covers an Ordinance that has not been amended, and to amend section 4(1)(a) of Cap. 614 to include 5 Ordinances that are not given a chapter number⁷ so that they are categorized under the “consolidated copy” part of the database established under section 3 of Cap. 614.

Other miscellaneous amendments

16. It is proposed that miscellaneous and technical amendments to various legislative provisions be made for different purposes, including to reinstate consequential amendments that were omitted in previous amendment exercises, to formally repeal legislation that has ceased to have effect, to remove obsolete references to repealed provisions from certain provisions, to achieve consistency in certain expressions, to update a reference to the title of an item of subsidiary legislation, and to make provisions for correcting other minor errors.

Department of Justice
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⁷ The five Ordinances are (i) the *Revised Edition of the 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); (iv) the *National Flag and National Emblem Ordinance* (116 of 1997); and (v) the *Regional Flag and Regional Emblem Ordinance* (117 of 1997).