



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

來函檔號 YOUR REF :

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URGENT

By Fax (2136 3282)

3 October 2018

Mr Bill WONG
Principal Assistant Secretary for Food & Health (Food)³
Food and Health Bureau
17/F, East Wing
Central Government Offices
2 Tim Mei Avenue
Tamar, Hong Kong

Dear Mr WONG,

Conservation of Antarctic Marine Living Resources Bill

I refer to your reply dated 28 September 2018 (LC Paper No. CB(2)2049/17-18(01)). I would be grateful if you could further clarify the following matters.

Clause 15(3)(b)

In respect of our enquiry on whether "necessary force" in clause 15(3)(b) of the captioned Bill must be "reasonable", it was stated in paragraph 12 of your reply that "[a]ccording to the judicial authority, ... 'necessary force' must be 'reasonable' ...". Please explain the relevant judicial authority for members' reference (preferably with a summary of the relevant case(s)). Please also explain why the word "reasonable" cannot be suitably added to clause 15(3)(b) to more clearly reflect your policy intent.

Clause 18(1)

Under clause 18(1), if an authorized officer reasonably suspects that a person has committed, is committing or is about to commit an offence under the Ordinance (if the Bill is passed), the officer may, without warrant, stop and board the transport which the person is in or on, and require the person to provide identity proof etc. It was stated in paragraph 15 of your reply that "... [t]he authorized officer may still ask a person to produce his or her proof of identity without entering the part of the transport used wholly or principally for dwelling purpose". Please further clarify whether the officer may without warrant stop and board the transport at all which is used wholly or principally for dwelling purposes and require identity proof. If the answer is in the negative, please further clarify why it is not necessary to have a provision similar to clauses 13(2) and 14(3).

Clauses 31(4) and 32

With respect to the defences under clauses 31(4) and 32, it was stated in paragraph 28 of your reply that it is your "policy intention that the defendant is required to discharge an evidential burden to establish the defence ...". Please clarify why the phrase "... sufficient evidence to raise an issue ..." is not adopted in clauses 31(4) and 32 to reflect your policy intent. Reference may be made to paragraph 6.2.18 of *Drafting Legislation in Hong Kong: A Guide to Styles and Practices* published by the Department of Justice in 2012. It is also noted that in *HKSAR v. Tong Kai Man* [2017] 6 HKC 585 (paragraph 37), it was held that the phrase "... sufficient evidence is adduced to raise an issue ..." in section 26(1)(a) of the Trade Descriptions Ordinance (Cap. 362) imposes an evidential burden on the defendant.

I should appreciate your reply in both English and Chinese as soon as practicable, preferably by 5 October 2018.

Yours sincerely,


(Cliff IP)

Assistant Legal Adviser

c.c. Department of Justice
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