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Urgent By Fax No. 25234889

19 May 1999

Mr. John Leung
Principal Assistant Secretary
Constitutional Affairs Bureau
3/F Main and East Wings
Central Government Offices
Hong Kong

Dear Mr. Leung,

Provision of Municipal Services (Reorganization) Bill

I am scrutinizing the amendments to the Public Health and Municipal Services Ordinance and its subsidiary legislation proposed in the above Bill (Schedules 1, 2 and 3 to the Bill) and should be grateful if you would clarify the following matters :

Proposed amendments to the Public Health and Municipal Services Ordinance (Cap. 132)

(a) Rules made by the Authority

Are the rules made by the Authority under the amended sections 43(1), 81(1) and 110(1) subsidiary legislation subject to the scrutiny of the Legislative Council?

(b) section 83A(2) (item 29 of Schedule 3 to the Bill)

Is the order published in the gazette specifying the places or areas to which the restrictions or prohibitions apply subsidiary legislation?

(c) Provisions relating to the Licensing Appeals Board

(i) Does the Licensing Appeals Board have to give reasons for its decision? Will the Administration consider including a provision which expressly imposes an obligation on the Board to give reasons for its decision in order to assist an aggrieved person in preparation for his appeal to the Municipal Services Appeals Board?

- (ii) Are the rules made by the Board subsidiary legislation?
- (d) Repeal of definitions provided in section 2 of Cap. 132
- (i) As a result of the proposed repeal of sections 40, 40A, 41, 90, 90A, 91 and 92 of Cap. 132, will the Administration repeal the definitions of “laundry”, “lines” and “boarding house” in section 2 of Cap. 132?
 - (ii) Will the Administration repeal the definition of “washhouse” in section 2 of Cap. 132 as a result of the proposed repeal of “washhouses” in sections 35, 36, 37, 38 and 39?
- (e) Repeal of provisions in Cap. 132 consequent upon the proposed repeal of the relevant subsidiary legislation
- (i) As the Mosquito Prevention (Urban Council) By-laws and the Wells and Water Storage (Urban Council) By-laws (Cap. 132 sub. leg.) are proposed to be repealed, will the Administration repeal the relevant provisions in Cap. 132 (i.e. sections 26 and 28) under which those By-laws are made?
 - (ii) Please explain why section 89 and the Ventilation (Urban Council) By-laws (Cap. 132 sub. leg.) are proposed to be repealed. With the repeal of those provisions, does the Government have any power under the existing legislation to prohibit obstruction of ventilation or light to any building, including a building which is used for human habitation?
- (f) The Third Schedule and the Sixth Schedule to Cap. 132 (items 84 and 87 to the Bill)
- (i) In the Third Schedule to Cap. 132, as amended by the Bill, who will be the designated authorities for the purposes of section 105E?
 - (ii) In the Sixth Schedule to Cap. 132, as amended by the Bill, in whose name are proceedings for offences under section 105S may be brought?

Proposed amendments to the subsidiary legislation of Cap. 132

- (a) In section 4 of the Abattoirs Regulation (item 100 of Schedule 3 to the Bill), subsection (1) refers to “prescribed fee” while subsections (2) and (3) refer to “fee prescribed under section 124I”. Please make the references to fees consistent. You may also note that “prescribed fee” has been adopted in the rest of the subsidiary legislation such as the Commercial Bathhouses Regulation (item 191 of Schedule 3 to the Bill), the Cremation and Gardens of Remembrance Regulation (items 203, 207, 208 and 216 of Schedule 3 to the Bill), etc. Please consider adopting a consistent approach in all references to prescribed fees.

- (b) Please explain why sections 8, 9, 10 and 11 of the Advertisements Regulation are proposed to be repealed (item 149 of Schedule 3 to the Bill). With the repeal of the provisions relating to neon signs (i.e. sections 9-11), is there any need to retain the definition of “neon sign” in section 13?
- (c) Please explain why section 7(2) of the Bathing Beaches Regulation (item 159 of Schedule 3 to the Bill) is proposed to be repealed.
- (d) In section 11A(2) of the Civic Centres Regulation (item 175 of Schedule 3 to the Bill), should “it” be substituted by “him”?
- (e) In sections 5 and 5A of the Hawker Regulation (items 319 and 320 of Schedule 3 to the Bill), are the notices in the Gazette issued by the Director subsidiary legislation?
- (f) Please explain why sections 28, 29 and 30 of the Hawker Regulation (items 341-343 of Schedule 3 to the Bill) are proposed to be repealed.
- (g) As a result of the repeal of section 17 of the Libraries Regulation (item 386 of Schedule 3 to the Bill), can borrowers reserve library materials any more? If not, what is the reason?
- (h) The effect of repealing section 14(2) and “of \$1.50” in section 33 (2) of the Libraries Regulation (items 384 and 396 of Schedule 3 to the Bill) is that fees for the issue of new library cards if the cards are lost and fees for deposit of bags, suitcases, etc. in the cloak-rooms will be determined under section 124J of Cap. 132 and therefore will not be subject to the Legislative Council’s scrutiny. This is different from the existing scheme where the relevant fees are set out expressly in the relevant provisions and any subsequent fee adjustments have to be effected in form of subsidiary legislation. Please explain the reason for the difference in the fee-setting and adjustment mechanism.
- (i) In section 39(1) of the Libraries Regulation (item 401 of Schedule 3 to the Bill), should the references to “Council” be substituted by “Government” in the light of a similar amendment to section 17(1) of the Museums Regulation (item 454 of Schedule 3 to the Bill)?
- (j) In section 5(2) of the Pleasure Grounds Regulation (item 495 of Schedule 3 to the Bill), please replace “determined” by “determine” in the context of “Director may determined under section 124J of the Ordinance”.
- (k) In section 18 of the Pleasure Grounds Regulation (item 503 of Schedule 3 to the Bill), please explain why subsections (2)(d) and (e), (2A), (3), (4), (5) and (7) are to be repealed.

- (l) In section 8A(1A) of the Public Cemeteries Regulation (item 558 of Schedule 3 to the Bill), please explain why “及” is used after paragraph (a) while the corresponding English text uses “or”.
- (m) In section 12 of the Public Swimming Pools Regulation (item 633 of Schedule 3 to the Bill), there is a typographical error in the Chinese text of the phrase to be repealed. “本條例” in that phrase should read “本附例”.

I would appreciate it if you would let me have your reply in both English and Chinese before the next Bills Committee meeting on 25 May 1999.

Yours sincerely,

(Connie Fung)
Assistant Legal Adviser

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