

立法會
Legislative Council

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Bills Committee on Adaptation of Laws Bill 2001

Background Brief on Adaptation of Laws Bills

Purpose

This paper highlights some of the concerns raised by Members during previous discussions of Bills Committees on Adaptation of Laws Bills concerning the scope of the adaptation of laws exercise and the actions taken by the Administration.

Adaptation of Laws Programme

2. The Administration briefed the Panel on Constitutional Affairs and the Panel on Administration of Justice and Legal Services on the Adaptation of Laws Programme in 1998. The Adaptation of Laws Programme was an exercise to amend all the references in laws which were inconsistent with the Basic Law or with the status of Hong Kong as a Special Administrative Region (HKSAR) of the People's Republic of China. Even though the Hong Kong Reunification Ordinance set out how the most important references were to be construed after 1 July 1997, that Ordinance did not change the words themselves. It was necessary to introduce further legislation to effect the necessary textual amendments.

3. The Administration also informed Members that the Adaptation of Laws Programme would be divided into two phases. Under the first phase, six bills dealing with items essential to the operation of the HKSAR were introduced into and passed by the Provisional Legislative Council (PLC). The names of these Bills are in **Appendix I**.

4. The second phase of the Programme would deal with the adaptation of non-essential items on an Ordinance by Ordinance basis. A total of 600 odd Ordinances which require adaptations would be divided into 54 Adaptation of Laws Bills but the actual number of bills could vary. The whole exercise was expected to be completed in the 1998-99 legislative session.

Guiding principles for the Adaptation of Laws Programme

5. At the request of the Bills Committee formed to study the Adaptation of Laws Bill 1998, the first bill introduced into LegCo under the adaptation of laws exercise, the Administration provided an information paper entitled "Guiding Principles and Guideline Glossary of Terms - Adaptation of Laws Programme" for members' reference. The Administration advised that over 80% of the proposed amendments in the present exercise were technical adaptation. A guideline glossary of terms was provided at Annex A of the paper. The "new terms" were treated as the guideline adaptation of the corresponding "original terms". The table was neither definitive nor exhaustive. However, amendments for adapting particular terms, or instances of departure from the guideline, would be explained separately to the Bills Committee concerned.

6. The Administration also informed the Bills Committee that the present adaptation of laws exercise would not deal with the following references and provisions -

- (a) references to "Her Majesty's forces" and other military references;
- (b) provisions relating to proceedings against the Crown that need to be considered in the context of the adaptation of the Crown Proceedings Ordinance (Cap. 300); and
- (c) provisions relating to Article 23 of the Basic Law.

They would be dealt with collectively in separate Bills for the subjects concerned.

7. The information paper provided by the Administration is made available for reference of all Bills Committees on Adaptation of Laws Bills. A copy of the information paper has been issued to this Bills Committee vide LC Paper No. CB(2)2570/01-02(03) on 12 July 2002.

Adaptation of Laws Bills introduced into the Legislative Council (LegCo)

8. Since the first term, 55 Adaptation of Laws Bills have been introduced into the LegCo - 52 in the 1998-99 session, one in the 2000-01 session, and two in the 2001-02 session. A list of these Bills is in **Appendix II**.

9. Although 55 Bills have been introduced into LegCo, the actual number of Bills is 54. While a Bills Committee was formed to study the Adaptation of Laws (No 27) Bill 1999 and placed on the waiting list, the Bill lapsed upon the dissolution of the first term Council before the activation of the Bills Committee. The Bill was subsequently reintroduced as the Adaptation of Laws Bill 2000 on 8 November 2000.

10. Of the 54 Adaptation of Laws Bills considered by LegCo since the first term of LegCo, Bills Committees were formed to study 12 of these Bills.

11. In respect of the Bills on which no Bills Committee was formed, some were passed by LegCo without amendments, while some were passed with minor or technical amendments.

12. As regards the Bills examined by Bills Committees, some of the Bills contained more complicated adaptation proposals. On a number of occasions, members of the Bills Committees expressed concern that the amendments proposed were not straightforward adaptations, or the proposed amendments fell outside the scope of the adaptation of laws exercise and should be dealt with by way of an amendment bill.

13. To address the concerns of the Bills Committees, the Administration has taken the following actions -

- (a) to revise the proposed amendments;
- (b) to delete the proposed amendments from the Bills and to further pursue the matter outside the adaptation of laws exercise; or
- (c) not to give notice of resumption of the Second Reading of the Bill.

14. Some examples to illustrate the concerns of members of the Bills Committees and the actions taken by the Administration are detailed in paragraphs 15 to 40 below.

Revision of proposed amendments

Adaptation of Laws Bill 1998

(to adapt 15 Ordinances and their subsidiary legislation)

15. The Bill proposed, inter alia, to adapt the reference to "Colonial Regulations" to "relevant executive order". The new term was defined as "any executive order issued by the Chief Executive (CE) for the administration of the public service and any regulation or direction made under such order."

16. Members considered that although Article 48(4) of the Basic Law (BL) conferred on CE the power to issue executive orders, the scope of such orders was not specified. It was doubtful whether executive orders issued by CE would be equivalent to the Colonial Regulations and whether such orders would be confined to the administration of public service. In addition, the Colonial Regulations were not confined to the administration of public service. Some members considered that the proposed adaptation was not a technical amendment, but a legal and constitutional matter. It should not be dealt with in the context of the adaptation of laws exercise.

17. The Administration advised that the Public Service (Administration) Order 1997 was the only executive order so far issued by CE. Having regard to the views of members, the Administration proposed to replace "Colonial Regulations" by making reference to the existing executive order, i.e. the reference to "Colonial Regulations" would be adapted to "Public Service (Administration) Order" which was defined as follows -

- (a) the Public Service (Administration) Order 1997 (Executive Order No. 1 of 1997);
- (b) the Public Service (Disciplinary) Regulation made under section 21 of that Order (and together with that Order published as S.S. No. 5 to Gazette No. 2/97); and
- (c) any other regulation made or any direction given under that Order

as amended from time to time.

Adaptation of Laws (No. 2) Bill 1998
(to adapt 12 Ordinances and their subsidiary legislation)

18. The Bills Committee expressed concern that the reference to "Governor" was adapted to "Chief Executive in Council" in some cases, and to "Chief Executive" in other cases.

19. The Administration explained that CE had to consult the Executive Council before making subsidiary legislation. In the context of the adaptation of laws exercise, the Administration identified every provision which conferred a legislative function on the then Governor and to replace the reference to "Governor" by "Chief Executive in Council" so as to reflect the constitutional obligation under BL 56. Members had doubts on the need to decide in the context of adaptation the classification of a particular instrument as subordinate legislation or otherwise.

20. The Administration subsequently proposed to adopt a more mechanical approach in adaptations whereby all references to "Governor", in respect of making subordinate legislation and issuing administrative orders, would be adapted to "Chief Executive". This was agreed to by the Bills Committee.

Adaptation of Laws (No. 12) Bill 1998
(to adapt seven Ordinances and their subsidiary legislation)

21. The Bill proposed that the reference to "Crown" in section 56(2)(a) of the Criminal Procedure Ordinance (Cap. 221) and other provisions on criminal procedure be adapted as "Government" since the executive was a party to most criminal proceedings and BL 63 provided that the Department of Justice of the HKSAR shall control criminal prosecutions, free from interference.

22. Some members considered that to adapt the reference to "Crown" as "Government" would have the effect of changing the substance of the existing provisions, which was contrary to the principle of the adaptation exercise. Such adaptation would give a wrong connotation that prosecutors only acted in the interest of the Government rather than the public.

23. The Legal Service Division advised that in the context of section 56(2)(a) of the Criminal Procedure Ordinance and other provisions on criminal procedure where the role of Secretary for Justice in the prosecution of criminal proceedings

was referred to, the term "Crown" should be adapted to "HKSAR" and not "Government" to reflect the constitutional reality. Such adaptation would be in conformity with past convention under the British rule and the provisions in the Basic Law and the Hong Kong Reunification Ordinance, as well as consistent with other Ordinances and other proposed adaptations in the Bill. The Bills Committee accepted the legal advice. The Administration moved a CSA accordingly.

Deletion of proposed amendments from the Bill

Adaptation of Laws (No. 3) Bill 1998

(to repeal the Smuggling into China (Control) Ordinance (Cap. 242) and the Smuggling into China (Control) Specification (Cap. 242 sub. leg))

24. While members unanimously agreed that Cap. 242 should be repealed due to its obsolescence, the majority of members, however, considered that the proposed repeal beyond the scope of the adaptation of laws exercise.

25. The Administration moved a CSA to remove the proposed repeal of Cap. 242 and its subsidiary legislation from the Bill, and undertook to deal with the proposed repeal outside the adaptation of laws exercise.

Adaptation of Laws (No. 6) Bill 1998

(to adapt 12 Ordinances and their subsidiary legislation)

26. Under the Dutiable Commodities Ordinance (Cap. 109), the definition of "export" means transshipment from one country to another country. The Bill proposed that the definition be changed to "export means to carry or cause to be carried out of Hong Kong by land, air or water and includes the export of anything carried or sent from a place outside Hong Kong and brought into Hong Kong by land, air or water for the sole purpose of being carried to another place outside Hong Kong after transshipment into another conveyance, but does not include transit cargo".

27. The Bills Committee had reservation on the proposed amendment as it would effectively change the scope of the definition of transshipment to cover transshipment between two different places within the same country.

28. In view of members' reservation, the Administration concluded that it might not be necessary to deal with the proposed amendments in the adaptation of laws

exercise. The Administration moved a CSA to delete the proposed amendments from the Bill.

Adaptation of Laws (No. 16) Bill 1999
(to adapt 13 Ordinances and their subsidiary legislation)

29. Section 18 of the Hong Kong Council on Smoking and Health Ordinance (Cap. 389) and section 19 of the Prince Philip Dental Hospital Ordinance (Cap. 1081) stipulate that the two bodies are not the servant or agent of the Crown and do not enjoy any status, immunity or privilege of the Crown. The Bill proposed to adapt the term "Crown" to "State" in these two sections.

30. Members considered that "Government" was the more appropriate term in the context of the two provisions since there was no question that the two bodies concerned could be regarded as part of the "State" under the categories listed in the definition of "State" in Cap. 1.

31. The Administration agreed to move CSAs to delete the proposed amendments and introduce legislative amendments to revise the term "Crown" to "Government" in the two provisions in a separate exercise.

Not giving notice of resumption of Second Reading debate

Adaptation of Laws (No. 9) Bill 1999
(to adapt 14 Ordinances and their subsidiary legislation)

Granting of exemption to vehicles from taking out third party insurance

32. The Administration proposed to adapt the reference to "Her Majesty or the Government" to "State" in provisions in the Motor Vehicles Insurance (Third Party Risks) Ordinance relating to the granting of exemption to vehicles owned by the State from taking out third party insurance.

33. Members expressed concern whether the term "Her Majesty" could be taken to mean the "Crown" in the context of references to property of Her Majesty or the Government, whether the exemption granted would contravene BL 22 which required all State organs shall abide by the laws of Hong Kong, and whether there would be sufficient legal remedy against a State organ if its motor vehicles involved in a traffic accident.

34. The Administration agreed to delete the proposed amendments from the Bill and to conduct a review before reverting to the Council.

Granting of exemption to vehicles from the payment of toll

35. The Bill proposed to adapt the term "Crown" to "State" in provisions in the Eastern Harbour Crossing Road Tunnel By-laws and the Tate's Cairn Tunnel By-laws relating to the granting of exemption to vehicles that carried persons in the service of the State from the payment of toll when they performed duties in relation to the relevant tunnels.

36. Members noted that the word "Government" was adopted in similar provisions in other tunnel legislation, viz the Tsing Ma Control Area Ordinance, Western Harbour Crossing By-laws and Tai Lam Tunnel and Yuen Long Approach Road By-laws. They queried the inconsistencies identified. The Administration advised that the inconsistencies rested with the original drafting of the legislation. Given that the legislature passed the relevant legislation with clear reference to the "Crown" and "Government" under different tunnel legislation, any changes were policy changes which would have to be dealt with outside the adaptation of laws exercise. The Bills Committee decided by majority vote to move a CSA to adapt the term "Crown" to "Government" in the concerned provisions.

37. The Administration agreed to delete the proposed amendments from the Bill and to conduct a review before reverting to the Council.

Provisions saving and preserving powers or duties

38. The Bill proposed to adapt the term "Crown" to "State" in provisions saving and preserving the powers or duties the law had conferred or imposed on persons in the public service of the Crown which might be affected by the operation of the Eastern Harbour Crossing Road Tunnel By-laws, the Road Tunnels (Government) Ordinance and the Tate's Cairn Tunnel By-laws.

39. Since the Bills Committee had accepted the Administration's proposal to deal with the exemption provisions outside the context of the adaptation of laws exercise, the Administration agreed to move CSAs to delete these provisions, which were closely related to the exemption provisions, from the Bill.

40. After the Bills Committee made a report on its deliberations to the House Committee, the Administration wrote to advise the Bills Committee that it would conduct a comprehensive review of the tunnel legislation instead of amending the Bill in a piecemeal manner. The Administration did not give notice of resumption of the Second Reading debate of the Bill which lapsed upon the dissolution of the first term Council.

Council Business Division 2
Legislative Council Secretariat
13 September 2002

Appendix I

List of Adaptation of Laws Bills introduced into the PLC

| Bill | Date of 1 st Reading | Date of passage through PLC | Date of formation of Bills Committee (if applicable) |
|--|---------------------------------|-----------------------------|--|
| <p>1. <u>Merchant Shipping (Registration) (Amendment) Bill 1998</u></p> <p>(to adapt provisions of the Merchant Shipping (Registration) Ordinance (Cap. 415) relating to the flying of proper colours of ships registered in Hong Kong (i.e. national flag by PRC directly above the regional flag of the HKSAR etc)</p> | 11.2.98 | 18.3.98 | N/A |
| <p>2. <u>Adaptation of Laws (Courts and Tribunals) Bill</u></p> <p>(to provide for the adaptation of reference to court nomenclatures or titles of courts in over 230 Ordinances)</p> | 11.2.98 | 7.4.98 | N/A |
| <p>3. <u>Adaptation of Laws (References to Foreign Country, Etc.) Bill</u></p> <p>(to make amendments to reference to foreign country, and other related expressions in specific ordinances)</p> | 11.2.98 | 1.4.98 | N/A |
| <p>4. <u>Adaptation of Laws (Crown Land) Bill</u></p> <p>(to amend references to the Crown in relation to land in the laws of Hong Kong to conform with Article 7 of the Basic Law)</p> | 11.2.98 | 7.4.98 | N/A |

| Bill | Date of 1st Reading | Date of passage through PLC | Date of formation of Bills Committee (if applicable) |
|--|---------------------------------------|------------------------------------|---|
| <p>5. <u>Adaptation of Laws (Interpretative Provisions) Bill</u></p> <p>(to amend provisions of the Interpretation and General Clauses Ordinance (Cap. 1) relating to the construction, application and interpretation of laws)</p> | 25.2.98 | 7.4.98 | 27.2.98 |
| <p>6. <u>Adaptation of Laws (Nationality Related Matters) Bill</u></p> <p>(to introduce necessary adaptations to references to "British national", "commonwealth citizen" and similar expressions in the laws of Hong Kong and make supplementary provisions for right to land in Hong Kong enjoyed by former permanent residents)</p> | 25.2.98 | 7.4.98 | 27.2.98 |

List of Adaptation of Laws Bills introduced into LegCo since 1998

| <u>Bills</u> | <u>Date of 1st Reading</u> | <u>Date of Passage through LegCo</u> | <u>Date of formation of Bills Committee (if applicable)</u> |
|---|--|---|--|
| @ 1. Adaptation of Laws Bill 1998 | 14.10.98 | 28.4.99 | 23.10.98 |
| @ 2. Adaptation of Laws (No. 2) Bill 1998 | 14.10.98 | 31.3.99 | 23.10.98 |
| @ 3. Adaptation of Laws (No. 3) Bill 1998 | 11.11.98 | 31.3.99 | 13.11.98 |
| @ 4. Adaptation of Laws (No. 4) Bill 1998 | 11.11.98 | 31.3.99 | 13.11.98 |
| @ 5. Adaptation of Laws (No. 5) Bill 1998 | 11.11.98 | 13.10.99 | N/A |
| @ 6. Adaptation of Laws (No. 6) Bill 1998 | 11.11.98 | 31.3.99 | 13.11.98 |
| @ 7. Adaptation of Laws (No. 7) Bill 1998 | 18.11.98 | 5.1.00 | N/A |
| 8. Adaptation of Laws (No. 8) Bill 1998 | 18.11.98 | 7.7.99 | N/A |
| @ 9. Adaptation of Laws (No. 9) Bill 1998 | 25.11.98 | 13.10.99 | N/A |
| @ 10. Adaptation of Laws (No. 10) Bill 1998 | 2.12.98 | 2.6.99 | N/A |
| @ 11. Adaptation of Laws (No. 11) Bill 1998 | 6.1.99 | 26.6.00 | N/A |
| @ 12. Adaptation of Laws (No. 12) Bill 1998 | 6.1.99 | 7.7.99 | 8.1.99 |
| @ 13. Adaptation of Laws (No. 13) Bill 1998 | 6.1.99 | 16.6.99 | N/A |
| @ 14. Adaptation of Laws (No. 14) Bill 1998 | 6.1.99 | 23.6.99 | N/A |
| @ 15. Adaptation of Laws (No. 15) Bill 1998 | 6.1.99 | 16.6.99 | N/A |
| @ 16. Adaptation of Laws (No. 16) Bill 1998 | 6.1.99 | 26.6.00 | N/A |
| @ 17. Adaptation of Laws (No. 17) Bill 1998 | 6.1.99 | 19.5.99 | N/A |
| @ 18. Adaptation of Laws (No. 18) Bill 1998 | 20.1.99 | 23.6.99 | N/A |
| @ 19. Adaptation of Laws Bill 1999 | 27.1.99 | 7.7.99 | N/A |
| @ 20. Adaptation of Laws (No. 2) Bill 1999 | 10.2.99 | 26.6.00 | N/A |
| @ 21. Adaptation of Laws (No. 3) Bill 1999 | 10.2.99 | 21.6.00 | N/A |
| @ 22. Adaptation of Laws (No. 4) Bill 1999 | 10.2.99 | 16.7.99 | N/A |
| @ 23. Adaptation of Laws (No. 5) Bill 1999 | 10.3.99 | 27.10.99 | 30.4.99 |
| 24. Adaptation of Laws (No. 6) Bill 1999 | 10.3.99 | 19.5.99 | N/A |

| <u>Bills</u> | <u>Date of 1st Reading</u> | <u>Date of Passage through LegCo</u> | <u>Date of formation of Bills Committee (if applicable)</u> |
|---|---------------------------------------|--------------------------------------|---|
| @ 25. Adaptation of Laws (No. 7) Bill 1999 | 10.3.99 | 23.6.99 | N/A |
| 26. Adaptation of Laws (No. 8) Bill 1999 | 31.3.99 | 31.5.00 | N/A |
| * 27. Adaptation of Laws (No. 9) Bill 1999 | 31.3.99 | Lapsed | 16.4.99 |
| @ 28. Adaptation of Laws (No. 10) Bill 1999 | 21.4.99 | 15.12.99 | 30.4.99 |
| @ 29. Adaptation of Laws (No. 11) Bill 1999 | 5.5.99 | 2.6.99 | N/A |
| @ 30. Adaptation of Laws (No. 12) Bill 1999 | 19.5.99 | 27.6.00 | N/A |
| @ 31. Adaptation of Laws (No. 13) Bill 1999 | 19.5.99 | 27.6.00 | N/A |
| 32. Adaptation of Laws (No. 14) Bill 1999 | 19.5.99 | 23.6.99 | N/A |
| 33. Adaptation of Laws (No. 15) Bill 1999 | 9.6.99 | 30.6.99 | N/A |
| @ 34. Adaptation of Laws (No. 16) Bill 1999 | 16.6.99 | 26.6.00 | 25.6.99 |
| 35. Adaptation of Laws (No. 18) Bill 1999 | 23.6.99 | 16.7.99 | N/A |
| @ 36. Adaptation of Laws (No. 17) Bill 1999 | 30.6.99 | 7.6.00 | N/A |
| @ 37. Adaptation of Laws (No. 19) Bill 1999 | 7.7.99 | 26.6.00 | N/A |
| 38. Adaptation of Laws (No. 20) Bill 1999 | 14.7.99 | 8.12.99 | N/A |
| 39. Adaptation of Laws (No. 21) Bill 1999 | 14.7.99 | 27.10.99 | N/A |
| @ 40. Adaptation of Laws (No. 22) Bill 1999 | 14.7.99 | 10.11.99 | N/A |
| 41. Adaptation of Laws (No. 23) Bill 1999 | 14.7.99 | 27.10.99 | N/A |
| 42. Adaptation of Laws (No. 24) Bill 1999 | 14.7.99 | 27.10.99 | N/A |
| 43. Adaptation of Laws (No. 25) Bill 1999 | 14.7.99 | 3.11.99 | N/A |
| 44. Adaptation of Laws (No. 26) Bill 1999 | 14.7.99 | 27.10.99 | N/A |
| # 45. Adaptation of Laws (No. 27) Bill 1999 | 14.7.99 | Lapsed | 28.4.00 |
| 46. Adaptation of Laws (No. 28) Bill 1999 | 14.7.99 | 27.10.99 | N/A |
| @ 47. Adaptation of Laws (No. 29) Bill 1999 | 14.7.99 | 24.11.99 | N/A |
| @ 48. Adaptation of Laws (No. 30) Bill 1999 | 14.7.99 | 5.1.00 | N/A |
| 49. Adaptation of Laws (No. 31) Bill 1999 | 14.7.99 | 27.10.99 | N/A |

| <u>Bills</u> | <u>Date of 1st Reading</u> | <u>Date of Passage through LegCo</u> | <u>Date of formation of Bills Committee (if applicable)</u> |
|---|---------------------------------------|--------------------------------------|---|
| @ 50. Adaptation of Laws (No. 32) Bill 1999 | 14.7.99 | 26.6.00 | N/A |
| @ 51. Adaptation of Laws (No. 33) Bill 1999 | 14.7.99 | 26.6.00 | N/A |
| @ 52. Adaptation of Laws (No. 34) Bill 1999 | 14.7.99 | 26.6.00 | N/A |
| 53. Adaptation of Laws Bill 2000 | 8.11.00 | 20.12.00 | 10.11.00 |
| 54. Adaptation of Laws Bill 2001 | 19.12.01 | <i>Bills Committee in action</i> | 4.1.02 |
| 55. Adaptation of Laws (Miscellaneous Provisions) Bill 2002 | 15.5.02 | 5.6.02 | N/A |

@ Bill passed with CSA moved by Administration

* The Administration did not give notice for resumption of Second Reading debate on the Bill

Reintroduced as the Adaptation of Laws Bill 2000