

**立法會**  
**Legislative Council**

LC Paper No. CB(2) 870/98-99  
(These minutes have been seen  
by the Administration)

Ref : CB2/BC/5/98

**Bills Committee on  
Adaptation of Laws Bill 1998**

**Minutes of meeting  
held on Wednesday, 4 November 1998 at 8:30 am  
in Conference Room A of the Legislative Council Building**

**Members present** : Hon Andrew WONG Wang-fat, JP (Chairman)  
Hon Kenneth TING Woo-shou, JP  
Hon Cyd HO Sau-lan  
Hon Margaret NG  
Hon James TO Kun-sun  
Hon Jasper TSANG Yok-sing, JP

**Members absent** : Hon Ronald ARCULLI, JP  
Hon Ambrose CHEUNG Wing-sum, JP  
Hon Ambrose LAU Hon-chuen, JP

**Public Officers attending** : Ms Mimi LEE  
Principal Assistant Secretary for Security (Narcotics)

Mrs Sarah KWOK  
Principal Assistant Secretary for Security B

Miss Bonnie WONG  
Assistant Commissioner for Correctional Services

Mr J L ABBOTT  
Senior Assistant Law Draftsman

Mr W C SUEN  
Senior Assistant Law Draftsman

Mr Byron LEUNG  
Government Counsel

**Clerk in attendance** : Mrs Sharon TONG  
Chief Assistant Secretary (2)1

**Staff in attendance** : Miss Betty MA  
Senior Assistant Secretary (2) 1

Miss Connie FUNG  
Assistant Legal Adviser 3

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**I. Election of Chairman**

Mr Andrew WONG was elected Chairman of the Bills Committee.

**II. Meeting with the Administration**

Briefing by the Administration

2. At the invitation of the Chairman, Senior Assistant Law Draftsman, Mr ABBOTT, (SALD) briefed members on the purpose and timetable of the adaptation of laws exercise as well as the object of the Adaptation of Laws Bill 1998 (the Bill). He said that the Adaptation of Law programme was an on-going exercise. During the tenure of the Provisional Legislative Council, the so-called essential adaptation of laws bills were enacted. It was expected that the whole exercise would be completed by the end of this legislative session. The adaptation exercise was carried out in accordance with section 2A of (in particular sub-section (3) of section 2A) and Schedule 8 to the Interpretation and General Clauses Ordinance (Cap.1). Referring to the Bill, he said that the proposed amendments had been carried out at a textual level to make the necessary technical adaptation in accordance with section 2A of and Schedule 8 to Cap.1. Clause 3 of the Bill provided the Ordinances specified in the Schedules were to be amended in the manner indicated in those Schedules to the Bill. Each Ordinance and

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subsidiary legislation dealt with in the Bill would be assigned a specific Schedule number which was considered a convenient format for the exercise. In proposing changes to individual Ordinances, the construction of words and expressions set out in Schedule 8 to Cap.1 was generally followed.

The principles of adaptation

3. Miss Margaret NG said that since it was the first Bills Committee to study a bill under the adaptation of laws programme, it would be worthwhile to set down a set of ground rules. If the rules were subsequently shown to be workable, bills committees on other adaptation of laws bills might consider following the rules. In this connection, she suggested that the following approach be adopted -

- (a) the Administration to brief members at the outset on all the general principles applied in the bill, such as under what circumstances the term "Governor" would be proposed to be substituted by "Chief Executive", and when the references to the "Crown" would be proposed to be replaced by "Government", etc. in certain ordinances and subsidiary legislation;
- (b) the Administration to inform members at the outset of each bills committee of the particular provisions in the bill which were adapted differently from the general principles stated in (a) above together with the explanations; and
- (c) the bills committee to examine in detail each and every proposed adaptation in the bill.

4. Referring to an information paper (LC Paper No. CB(2) 532/98-99(01)) prepared by the Department of Justice on Adaptation of References to the "Crown" for the discussion of the Panel on Administration of Justice and Legal Services, Miss Margaret NG asked whether the Administration could confirm if the principles laid down in the said paper were the basis for the current Adaptation of Laws programme.

5. SALD responded that the general principles of introducing legislation to effect the amendments in the Adaptation of Laws programme were in line with the provisions in Cap.1.

6 Referring to the summary of the proposed amendments prepared by the Legal Service Division of the Secretariat (LC Paper No. LS 42/98-99), Miss Margaret NG further suggested to ask the Administration to explain the principles adopted for each proposed amendment, whether the principles were adhered to strictly in drafting the Bill, and whether there was any change in the

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legal effect of the provisions after adaptation.

7. The Chairman said that as a matter of principle of adaptation, the Administration should not propose to delete a term or to add expressions to existing terms unless it was absolutely necessary as these might result in a change in the policy.

8. Members were of the view that the Adaptation of Laws programme should not be regarded as a mechanical exercise. SALD assured members that each term had been looked at in its own particular context throughout the adaptation of laws exercise. The programme was to amend all the references in the existing legislation which were inconsistent with the Basic Law or with the status of Hong Kong as a Special Administrative Region of the People's Republic of China. There should be no change in the legal effect of the provisions after adaptation.

Consultation with the legal profession

9. Miss Margaret NG pointed that when the timetable for Adaptation of Laws programme was discussed at a meeting of the Panel on Constitutional Affairs, the Administration agreed that there was a need to consult the legal profession on the adaptation of laws bills though it considered that all adaptations were technical in nature. Miss NG suggested that views from The Hong Kong Bar Association and The Law Society of Hong Kong should be invited on all the adaptation of laws bills.

10. SALD said that this Bills Committee might consider whether the legal profession be consulted given that the Bill had been published for some time. Principal Assistant Secretary for Security (Narcotics) (PAS/S(N)) explained that since the proposed amendments in the Bill were merely terminological changes, and were essentially straightforward adaptations, consultation with the public was not considered necessary.

11. Miss Margaret NG opined that the scrutiny of bills by the Council would be dealt with under separate bills committees. The legal profession could be consulted only when a relevant bills committee was formed. It would inevitably delay the scrutiny of the bill. She considered that the Administration should adopt a standing practice to consult the legal profession before the adaptation of laws bills were published and gazetted. PAS/S(N) responded that the Administration would consider this point.

12. Members agreed that views on the Bill from The Hong Kong Bar Association and The Law Society of Hong Kong be sought.

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(*Post-meeting note* : The Secretariat had issued letters on 4 November 1998 to invite The Hong Kong Bar Association and The Law Society of Hong Kong to put forward their views on the Bill.)

Adaptation of references to “Colonial Regulations”

13. The Chairman expressed concern about the proposed amendments to replace references to “Colonial Regulations” by “relevant executive order”. Prior to the transfer of sovereignty, the Colonial Regulations constituted imperial legislation made under the Royal Prerogative. Article 48(4) of the Basic Law conferred on the Chief Executive the power to issue executive orders without limiting the scope of such orders. He doubted whether executive orders issued by the Chief Executive would be equivalent to the Colonial Regulations and whether such orders were confined to the administration of the public service. In the event that the Chief Executive promulgated executive orders in relation to other government policies, such promulgation would have far-reaching repercussions from the constitutional point of view. Miss Margaret NG echoed his concerns. She said that even if the Chief Executive was empowered to issue executive orders under the Basic Law, such power needed to be exercised under certain legal procedures, eg. by way of legislation. Members questioned about the nature and legal status of, and the legal basis on which an executive order was made by the Chief Executive.

14. In relation to Colonial Regulations, Principal Assistant Secretary for Security B said that the Bill proposed to replace this term with “relevant executive order” in the Prisons Ordinance which dealt with disciplinary offences committed by staff of Correctional Services Department. Regarding the nature of “relevant executive order”, SALD said that the definition was proposed under item 1(b) of Schedule 3 to the Bill, i.e. any executive order issued by the Chief Executive for the administration of the public service and any regulation or direction made under such order. SALD added that the Chief Executive had in July 1997 promulgated the Public Service (Administration) Order 1997 (Executive Order No.1 of 1997) and the Public Service (Disciplinary) Regulation made under the said Executive Order. The Executive Order and the Disciplinary Regulation had effectively replaced the Colonial Regulations dealing with the administration of the public service.

15. To conclude, the Chairman summarized members’ concerns and requested the Administration to provide the following information before the next meeting -

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- (a) to provide a paper setting out the guiding principles applied in the adaptation of laws exercise, specifying whether each of these principles was strictly adhered to in respect of proposed amendments in the Bill, and highlighting the specific areas in the Bill which did not follow the principles together with

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explanations; whether the proposed change to the terms mentioned in LC Paper No. LS 42/98-99 had already been adopted in any provisions of existing ordinances, if so, the Administration should set out the relevant references;

- (b) to provide a brief on what the Colonial Regulations were; the relationship between the Governor and the Colonial Regulations prior to the transfer of sovereignty; the nature of executive order made by the Chief Executive under Article 48(4) of the Basic Law, together with illustrative examples; the background for making reference to Colonial Regulations in the existing ordinances; the rationale for replacing “Colonial Regulations” with “relevant executive order” and whether the proposed change from “Colonial Regulations” to “relevant executive order” was covered by the Hong Kong Reunification Ordinance; and
- (c) whether the Administration agreed to consult The Hong Kong Bar Association and The Law Society of Hong Kong on each adaptation of laws bill prior to introducing it into the Legislative Council.

Date of next meeting

- 16. The next meeting was scheduled for Friday, 20 November 1998 at 8:30 am.

*(Post-meeting note : The next meeting was re-scheduled for Friday, 27 November 1998 at 8:30 am.)*

- 17. The meeting ended at 10:00 am.

Legislative Council Secretariat  
26 November 1998