

LEGISLATIVE COUNCIL BRIEF

- Dangerous Drugs Ordinance
(Chapter 134)
- Societies Ordinance
(Chapter 151)
- Crimes Ordinance
(Chapter 200)(Parts III to XIII)
- Offences Against the Person Ordinance
(Chapter 212)
- Weapons Ordinance
(Chapter 217)
- Summary Offences Ordinance
(Chapter 228)
- Firearms and Ammunition Ordinance
(Chapter 238)
- Public Order Ordinance
(Chapter 245)
- Administration of Justice (Felonies and Misdemeanours) Ordinance
(Chapter 328)
- Complex Commercial Crimes Ordinance
(Chapter 394)
- Crimes (Torture) Ordinance
(Chapter 427)
- Organised and Serious Crimes Ordinance
(Chapter 455)

ADAPTATION OF LAWS (NO.2) BILL 1998

INTRODUCTION

At the meeting of the Executive Council on 22 September 1998, the Council ADVISED and the Chief Executive ORDERED that the Adaptation of Laws (No.2) Bill 1998 at the Annex should be introduced into the Legislative Council.

BACKGROUND AND ARGUMENT

2. Article 160 of the Basic Law states that-

“Upon the establishment of the Hong Kong Special Administrative Region, the laws previously in force in Hong Kong shall be adopted as laws of the Region except for those which the Standing Committee of the National People’s Congress declares to be in contravention of this Law. If any laws are later discovered to be in contravention of this Law, they shall be amended or cease to have force in accordance with the procedure as prescribed by this Law.”

Article 8 of the Basic Law states that-

“The laws previously in force in Hong Kong, that is, the common law, rules of equity, ordinances, subordinate legislation and customary law shall be maintained, except for any that contravenes this Law, and subject to any amendment by the legislature of the Hong Kong Special Administrative Region.”.

3. On 23 February 1997, the Standing Committee of the National People’s Congress published a decision on the treatment of laws previously in force in Hong Kong. It provides, among other things, that apart from the 24 Hong Kong Ordinances that are declared not to be adopted in whole or in part, the existing Hong Kong laws are to be adopted as laws of the Hong Kong Special Administrative Region and these laws shall, unless the context otherwise requires, be construed in accordance with specified principles of interpretation. These interpretative principles are included in the Hong Kong Reunification Ordinance (Ord. No. 110 of 1997) and are now incorporated as section 2A and Schedule 8 in the Interpretation and General Clauses Ordinance (Chapter 1). Although the Interpretation and General Clauses Ordinance laid down how terminology inconsistent with the Basic Law or with the status of Hong Kong as a Special Administrative Region of the People’s Republic of China are to be construed, it is considered

unacceptable to retain such terminology in our laws. Accordingly, we need to introduce further legislation to effect the necessary textual amendments.

THE BILL

4. Most of the proposed amendments are merely terminological changes. References to “the Governor”, “the colony” and “the Crown” etc. will be suitably amended. References to UK Acts are proposed to be either deleted or replaced by references to local legislation.

5. Other amendments include—

(a) **Item 5 of the Schedule to the Societies Ordinance**

At present, “[a]ny company or association constituted under Royal Charter, Royal Letters Patent, any Imperial Act or any Ordinance” are exempted from the Societies Ordinance. Special treatment for company or association constituted under instrument made by the British Government is no longer appropriate. Under the Bill, a company or association constituted pursuant to or under any Ordinance or other legislation applicable to Hong Kong is exempted. A new item (5A) is added so that any company or association which was, immediately before the commencement of this Bill, a company or association constituted under Royal Charter, Royal Letters Patent or any Imperial Act and was, immediately before that commencement, a local society will continue to be exempted.

(b) **The Repeal of Section 41 of the Crimes Ordinance**

The provision is obsolete and not consistent with Article 63 of the Basic Law in that it confers power to direct prosecution for perjury on a judge rather than on the Secretary for Justice.

(c) **The Repeal of Section 6 of the Offences Against the Person Ordinance (Cap. 212)**

The provision deals with petit treason which was an archaic offence committed when one subject of the Crown killed another who was his superior, e.g. when a feudal vassal slew his lord, a priest his bishop, or a wife her husband.

(d) **Sections 4 and 5 of the Firearms and Ammunition Ordinance**

Notices made under section 4(1) and (2) of the Ordinance for a class or description of persons for the exemption from the prohibition of possession of arms and ammunition without licence and under section 5(2) for a description of vessels for exclusion from such exemption have legislative effects and are therefore subsidiary legislation within the meaning of Interpretation and General clauses Ordinance. The sections should be adapted by repealing “the Governor” with “the Chief Executive in Council” in order to comply with Article 56 of the Basic Law. However, if exemption notices made under these sections concern an individual person or vessel, they do not have legislative effects and hence can be made by the Chief Executive.

6. Parts I and II of the Crimes Ordinance concerning treason, sedition and related offences have not been included in this Bill as they are being dealt with in the context of the current study on the legislation required under Article 23 of the Basic Law.

COMMENCEMENT

7. The Bill provides that, subject to Article 12 of the Hong Kong Bill of Rights, the adaptations when passed into law shall take effect retrospectively, as from the date of the establishment of the Hong Kong Special Administrative Region.

LEGISLATIVE TIMETABLE

8. The legislative timetable is as follows--

Publication in the Gazette	30 September 1998
First Reading and commencement of Second Reading debate	14 October 1998
Resumption of Second Reading debate, committee stage and Third Reading	to be notified

HUMAN RIGHTS IMPLICATIONS

9. The Department of Justice advises that the proposed Bill is consistent with the human rights provisions of the Basic Law.

BINDING EFFECT

10. The amendments in the Bill do not affect the current binding effect of the existing provisions of various Ordinances covered by the Bill.

FINANCIAL AND STAFFING IMPLICATIONS

11. There are no financial or staffing implications arising from the Bill.

PUBLIC CONSULTATION

12. Since the amendments are essentially straightforward

adaptations, consultation with the public is not considered necessary.

PUBLICITY

13. A press release will be issued on 30 September 1998.

14. Enquiries can be directed to Mr Philip CHAN, Principal Assistant Secretary for Security at 2810 2632.

Security Bureau

File Reference : SBCR 5/5/1162/88(98)Pt.15

ADAPTATION OF LAWS (NO. 2) BILL 1998

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A BILL

To

Adapt certain Ordinances to bring them into conformity with the Basic Law and with the status of Hong Kong as a Special Administrative Region of the People's Republic of China.

Enacted by the Legislative Council.

1. Short title

This Ordinance may be cited as the Adaptation of Laws (No. 2) Ordinance 1998.

2. Commencement

(1) This Ordinance shall be deemed to have come into operation on 1 July 1997.

(2) Subsection (1) shall be subject to Article 12 of the Hong Kong Bill of Rights set out in Part II of the Hong Kong Bill of Rights Ordinance (Cap. 383).

3. Amendment of Ordinances

The Ordinances specified in the Schedules are amended in the manner indicated in those Schedules.

SCHEDULE 1

[s. 3]

DANGEROUS DRUGS ORDINANCE

1. Section 2(1) of the Dangerous Drugs Ordinance (Cap. 134) is amended-

- (a) in the definition of “Chief Pharmacist”, by repealing “Governor” and substituting “Chief Executive”;
- (b) in the definition of “Conventions”, by repealing paragraphs (a) to (d);
- (c) in the definition of “medicinal opium”, by repealing “in accordance with the requirements of the British Pharmacopoeia”.

2. Section 20(2) and (3) is amended by repealing “Governor” and substituting “Chief Executive”.

3. Section 33(3), (4)(b), (5), (7), (8) and (9) is amended by repealing “Governor” and substituting “Chief Executive”.

4. Section 38F(2) and (4) is amended by repealing “Crown” and substituting “Government”.

5. Section 38K(1) is amended by repealing “Governor in Council” and substituting “Chief Executive in Council”.

6. Section 50(1) is amended by repealing “Governor” and substituting “Chief Executive in Council”.

7. Section 51(1) is amended by repealing “Governor in Council” and substituting “Chief Executive in Council”.

8. Section 55 is amended by repealing “Crown” and substituting “Government”.

9. Section 56 is amended -
 - (a) in subsections (1), (2) and (4), by repealing “Crown” and substituting “Government”;
 - (b) in subsection (4), by repealing “Governor in Council” and substituting “Chief Executive in Council”.

10. Section 58 is amended by repealing “Governor” where it twice appears and substituting “Chief Executive”.

SCHEDULE 2

[s. 3]

SOCIETIES ORDINANCE

1. Section 2(3) of the Societies Ordinance (Cap. 151) is amended by repealing “Governor in Council” and substituting “Chief Executive in Council”.

2. Section 3 is amended by repealing “Governor” and substituting “Chief Executive”.

3. Section 6 is amended -
 - (a) in subsection (2), by repealing “Governor in Council” where it twice appears and substituting “Chief Executive in Council”;
 - (b) in subsection (4), by repealing “Governor in Council” and substituting “Chief Executive in Council”.

4. Section 8(7) is amended by repealing “Governor in Council” where it twice appears and substituting “Chief Executive in Council”.
5. Section 24(3) is amended by repealing “Governor in Council” where it twice appears and substituting “Chief Executive in Council”.
6. Section 25(3) is amended by repealing “Governor in Council” where it twice appears and substituting “Chief Executive in Council”.
7. Section 26A(1) is amended by repealing “Governor” and substituting “Chief Executive”.
8. Section 26B(1), (2), (3) and (4) are amended by repealing “Governor” and substituting “Chief Executive”.
9. Section 26N is amended -
 - (a) in subsection (1), by repealing “Governor in Council” and substituting “Chief Executive in Council”;
 - (b) in subsection (3), by repealing “Governor” and substituting “Chief Executive in Council”.
10. Section 41(1) is amended by repealing “Governor in Council” and substituting “Chief Executive in Council”.
11. The Schedule is amended by repealing paragraph (5) and substituting -
 - “(5) Any company or association constituted pursuant to or under any Ordinance or other legislation applicable to Hong Kong.

- (5A) Any company or association which was, immediately before the commencement of the Adaptation of Laws (No.) Ordinance 1998 (of 1998), a company or association constituted under Royal Charter, Royal Letters Patent or any Imperial Act and was, immediately before that commencement, a local society.”.

SCHEDULE 3

[s. 3]

CRIMES ORDINANCE AND ITS SUBSIDIARY LEGISLATION

Crimes Ordinance

1. Section 20(1)(b) of the Crimes Ordinance (Cap. 200) is amended by repealing “British ship” and substituting “Hong Kong ship”.
2. Section 23(1) is amended by repealing “Governor in Council” and substituting “Chief Executive in Council”.
3. Section 23C is amended -
 - (a) in subsection (1), by repealing “Governor” and substituting “Chief Executive”;
 - (b) in subsection (2) (c), by repealing “British ship” and substituting “Hong Kong ship”;
 - (c) by repealing subsection (3).
4. Section 41 is repealed.
5. Section 84 is amended by repealing “Act or”.
6. Section 85(1)(a) is amended by repealing “Act or”.

7. Section 88(a) is amended by repealing “the Colony” and substituting “Hong Kong”.
8. Section 145A(2) is amended by repealing “上訴法庭” and substituting “審理上訴的法院”.
9. Section 153(2) is amended by repealing “Crown” and substituting “Government”.
10. Section 153G is amended -
 - (a) in subsection (1), by repealing “Governor” and substituting “Chief Executive”;
 - (b) in subsection (2) -
 - (i) by repealing “Governor” where it first and secondly appears and substituting “Chief Executive”;
 - (ii) in paragraph (b), by repealing “Governor in Council” and substituting “Chief Executive in Council”;
 - (c) in subsection (3), by repealing “Governor in Council” and substituting “Chief Executive in Council”.
11. Section 153H(3) is amended by repealing “上訴法庭” where it twice appears and substituting “審理上訴的法院”.

Suppression of Piracy Regulations

12. Regulation 4 of the Suppression of Piracy Regulations (Cap. 200 sub. leg.) is amended by repealing “the Colony” and substituting “Hong Kong”.
13. Regulation 5 is amended by repealing “the Colony” and substituting “Hong Kong”.
14. Regulation 7 is amended by repealing “the Colony” and substituting “Hong Kong”.
15. Regulation 10 is amended by repealing “the Colony” where it twice appears and substituting “Hong Kong”.
16. Regulation 11 is amended by repealing “the Colony” and substituting “Hong Kong”.
17. Regulation 13 is amended by repealing “the Colony” and substituting “Hong Kong”.

Protected Coins (Designation) Order

18. The Schedule to the Protected Coins (Designation) Order (Cap. 200 sub. leg.) is amended, in the heading to column 1, by repealing “Country” and substituting “Country or territory”.

SCHEDULE 4

[s. 3]

OFFENCES AGAINST THE PERSON ORDINANCE AND ITS SUBSIDIARY
LEGISLATION**Offences against the Person Ordinance**

1. Section 5 of the Offences against the Person Ordinance (Cap. 212) is amended -
 - (a) by repealing “the Colony” where it twice appears and substituting “Hong Kong”;
 - (b) by repealing “whether he is a subject of Her Majesty or not and whether he is within Her Majesty’s dominions or not” where it twice appears and substituting “whatever his nationality or citizenship and wherever he may be”.
2. Section 6 is repealed.
3. Section 9 is amended by repealing “the Colony” wherever it appears and substituting “Hong Kong”.
4. Section 44(2) is amended by repealing “the Colony” and substituting “Hong Kong”.
5. Section 47A is amended -
 - (a) in subsection (3), by repealing “Crown” and substituting “Government”;
 - (b) in subsection (5), by repealing “Governor in Council” and substituting “Chief Executive in Council”.

Termination of Pregnancy Regulations

6. The Schedule to the Termination of Pregnancy Regulations (Cap. 212 sub. leg.) is amended, in Form 3, by repealing “Crown” and substituting “Government”.

SCHEDULE 5

[s. 3]

WEAPONS ORDINANCE

1. Section 3(b)(iii) of the Weapons Ordinance (Cap. 217) is amended by repealing “皇家香港警隊” and substituting “香港警務處”.
2. Section 13(2) is amended by repealing “Crown” and substituting “Government”.
3. Section 17 is amended by repealing “立法局” and substituting “立法會”.

SCHEDULE 6

[s. 3]

SUMMARY OFFENCES ORDINANCE

1. Section 2(1) of the Summary Offences Ordinance (Cap. 228) is amended, in the definition of “public officer,” or “public department,” by repealing “Governor” where it twice appears and substituting “Chief Executive”.

2. Section 4(25) is amended by repealing “licence of Her Majesty signified in writing by the Governor” and substituting “licence of the Government signified in writing by the Chief Executive”.

3. Section 21(2) is amended -

- (a) by repealing “or for the British Mercantile Marine”;
- (b) by repealing “皇家香港警察隊” and substituting “香港警務處”;
- (c) by repealing “皇家”.

4. Section 24 is amended by repealing “皇家”.

5. Section 37 is amended by repealing “Governor in Council” and substituting “Chief Executive in Council”.

SCHEDULE 7

[s. 3]

FIREARMS AND AMMUNITION ORDINANCE AND ITS SUBSIDIARY LEGISLATION

Firearms and Ammunition Ordinance

1. Section 2(1) of the Firearms and Ammunition Ordinance (Cap. 238) is amended, in the definitions of “ammunition” and “arms”, by repealing “Governor in Council” and substituting “Chief Executive in Council”.

2. Section 3(b)(iii) is amended by repealing “皇家香港警隊” and substituting “香港警務處”.

3. Section 4(1) is amended by repealing “Governor” and substituting “Chief Executive or Chief Executive in Council (as the case may be)”.

4. Section 4(2) is repealed and substituted by -

“(2) Exemption may be granted by notice in the Gazette -

- (a) by the Chief Executive for any person; or
- (b) by the Chief Executive in Council for any class or description of persons,

from the prohibition in section 13 either generally or to such limited extent as he may specify, and the Chief Executive or the Chief Executive in Council (as the case may be) may at any time by notice in the Gazette vary or revoke the exemption.”.

5. Section 5(2) is amended by repealing the definition of “specified vessel” and substituting -

“specified vessel” (指明船隻) means -

- (a) any vessel regularly employed in trading or going within river trade limits (as defined in the Shipping and Port Control Ordinance (Cap. 313));
- (b) any vessel employed in sea fishing;
- (c) any vessel used for pleasure purposes;
- (d) any other description of vessel, whether self-propelled or not, used in navigation solely within the waters of Hong Kong;
- (e) any other description of vessel in the waters of Hong Kong not used in navigation or not constructed or adapted for use in navigation;
- (f) any other vessel which the Chief Executive may

declare by notice in the Gazette to be a specified vessel or any description of vessel which the Chief Executive in Council may so declare to be a specified vessel,

whether the vessel is provided with a certificate of registry or a certificate of provisional registry granted under the Merchant Shipping (Registration) Ordinance (Cap. 415), or with any document granted in a place outside Hong Kong and similar or equivalent in effect to any such certificate.”.

6. Section 44(2) is amended by repealing “Crown” and substituting “Government”.
7. Section 45(1) is amended by repealing “Governor in Council” and substituting “Chief Executive in Council”.
8. Section 46(5) is amended by repealing “Crown” and substituting “Government”.
9. Section 52(1) is amended by repealing “Governor in Council” and substituting “Chief Executive in Council”.
10. Section 54 is amended by repealing “立法局” and substituting “立法會”.

Firearms and Ammunition Regulations

11. The First Schedule to the Firearms and Ammunition Regulations (Cap. 238 sub. leg.) is amended in Forms 4, 5 and 7 by repealing “ROYAL HONG KONG POLICE” and substituting “HONG KONG POLICE FORCE”.

Firearms and Ammunition (Storage Fees) (Exemption) Declaration

12. The Schedule to the Firearms and Ammunition (Storage Fees) (Exemption) Declaration (Cap. 238 sub. leg.) is amended -

- (a) in paragraph 1, by repealing “Royal Hong Kong Police Force Shooting Club” and substituting “Hong Kong Police Shooting Club”;
- (b) in paragraph 2, by repealing “Royal Hong Kong Auxiliary Police Rifle and Revolver Club” and substituting “Hong Kong Auxiliary Police Shooting Club”;
- (c) in paragraphs 3 and 4, by repealing “皇家香港警隊” and substituting “香港警務處”.

SCHEDULE 8

[s. 3]

PUBLIC ORDER ORDINANCE AND ITS SUBSIDIARY LEGISLATION

Public Order Ordinance

1. Section 2(1) of the Public Order Ordinance (Cap. 245) is amended, in the definition of “designated public area”, by repealing “Governor” and substituting “Chief Executive in Council”.

2. Section 10 is amended by repealing “Governor” and substituting “Chief Executive in Council”.
3. Section 17E(1) is amended by repealing “Governor in Council” and substituting “Chief Executive in Council”.
4. Section 31 is amended -
 - (a) in subsections (1), (3)(a) and (c) and (4), by repealing “Governor” and substituting “Chief Executive in Council”;
 - (b) in subsection (6)(j), by repealing “Crown” and substituting “Government”;
 - (c) in subsection (7), by repealing “Governor” and substituting “Chief Executive”.
5. Section 34 (1) is amended by repealing “Governor” and substituting “Chief Executive in Council”.
6. Section 35(1) and (4) is amended by repealing “Governor” and substituting “Chief Executive”.
7. Section 36(1) and (2) is amended by repealing “Governor” and substituting “Chief Executive in Council”.
8. Section 37 (2)(b) is amended by repealing “Governor” and substituting “Chief Executive in Council”.

9. Section 39(4)(c) is amended by repealing “Governor” and substituting “Chief Executive in Council”.
10. Section 40 is amended by repealing “Governor” where it twice appears and substituting “Chief Executive”.
11. Section 43(2), (3) and (6) is amended by repealing “Governor” and substituting “Chief Executive”.
12. Section 50(2)(b) is amended by repealing “Governor” and substituting “Chief Executive”.
13. Section 51(1) and (2) is amended by repealing “Governor” and substituting “Chief Executive”.

Public Order (Movement of Craft) Order

14. The Schedule to the Public Order (Movement of Craft) Order (Cap. 245 sub. leg.) is amended by repealing “the Colony” where it twice appears and substituting “Hong Kong”.

SCHEDULE 9

[s. 3]

ADMINISTRATION OF JUSTICE (FELONIES AND MISDEMEANOURS) ORDINANCE

1. Section 4 of and Schedule 4 to the Administration of Justice (Felonies and Misdemeanours) Ordinance (Cap. 328) are repealed.

SCHEDULE 10

[s. 3]

COMPLEX COMMERCIAL CRIMES ORDINANCE

1. Section 27 of the Complex Commercial Crimes Ordinance (Cap. 394) is amended by repealing “立法局” and substituting “立法會”.

SCHEDULE 11

[s. 3]

CRIMES (TORTURE) ORDINANCE

1. Section 8 of the Crimes (Torture) Ordinance (Cap. 427) is amended by repealing “Governor in Council” and substituting “Chief Executive in Council”.

SCHEDULE 12

[s. 3]

ORGANIZED AND SERIOUS CRIMES ORDINANCE

1. Section 2(16)(d) of the Organized and Serious Crimes Ordinance (Cap. 455) is amended by repealing “Her Majesty’s pardon in respect of his conviction” and substituting “the Chief Executive’s pardon in respect of the conviction”.
2. Section 3(19) is amended by repealing “立法局” where it twice appears and substituting “立法會”.
3. Section 28 is amended -
 - (a) in subsection (10), by repealing “Crown” and substituting “Government”;

- (b) in subsection (11)(b), by repealing “Governor” and substituting “Chief Executive”;
 - (c) in subsection (12), by repealing “Governor” and substituting “Chief Executive”.
4. Section 31 is amended -
- (a) by repealing “Governor in Council” and substituting “Chief Executive in Council”;
 - (b) by repealing “立法局” and substituting “立法會”.

Explanatory Memorandum

The purpose of this Bill is to adapt certain Ordinances and their subsidiary legislation to bring them into conformity with the Basic Law and with Hong Kong’s status as a Special Administrative Region of the People’s Republic of China (Clause 3, Schedules 1 to 12).

2. The Ordinances adapted and their respective Schedule numbers under the Bill are -

Administration of Justice (Felonies and Misdemeanours) Ordinance (Cap. 328)	Schedule 9
Complex Commercial Crimes Ordinance (Cap. 394)	Schedule 10
Crimes Ordinance (Cap. 200) (Part III to XIII)	Schedule 3
Crimes (Torture) Ordinance (Cap. 427)	Schedule 11
Dangerous Drugs Ordinance (Cap. 134)	Schedule 1
Firearms and Ammunition Ordinance (Cap. 238)	Schedule 7
Offences against the Person Ordinance (Cap. 212)	Schedule 4
Organized and Serious Crimes Ordinance (Cap. 455)	Schedule 12

Public Order Ordinance (Cap. 245)	Schedule 8
Societies Ordinance (Cap. 151)	Schedule 2
Summary Offences Ordinance (Cap. 228)	Schedule 6
Weapons Ordinance (Cap. 217)	Schedule 5.

3. The Bill also provides that the adaptations when passed into law shall take effect retrospectively, as from the date of the establishment of the Hong Kong Special Administrative Region (Clause 2).