

**Bills Committee on the
Adaptation of Laws (No 2) Bill 1998**

**The Administration's Response
to comments raised by Members on 6 November 1998**

I. Article 56 of the Basic Law

Members requested that the principles and rationale for adapting “Governor” to “the Chief Executive in Council” be set out with references to the particular sections in the Bill.

2. In most cases, “Governor” will simply be replaced by “Chief Executive”. However, Article 56 of the Basic Law stipulates that “except for the appointment, removal and disciplining of officials and the adoption of measures in emergencies, the Chief Executive shall consult the Executive Council before making important policy decisions, introducing bills to the Legislative Council, making subordinate legislation, or dissolving the Legislative Council”. Where the Governor was previously given power under any Ordinance to make subsidiary legislation, that power will need to be exercised by “the Chief Executive in Council”. The term “subordinate legislation” or “subsidiary legislation” means any proclamation, rule, regulation, order, resolution, notice, rule of court, bylaw or other instrument made under or by virtue of any ordinance and having legislative effects (See section 3 of the Interpretation and General Clauses Ordinance (Cap 1)).

3. We would consider the following points to ascertain whether an instrument has legislative effect:

- (a) there is an express provision to say that a particular instrument is a piece of subsidiary legislation;
- (b) the instrument has general application to the public or a significant sector of the public as opposed to individuals;
- (c) the instrument extends or amends existing legislation;
- (d) the instrument formulates a general rule of conduct.

4. At Annex is a list of those sections in the Bill whereby the reference to “Governor” is proposed to be adapted to “the Chief Executive in Council” in accordance with Article 56 of the Basic Law.

II. Dangerous Drugs Ordinance (Cap 134)

5. Members requested that an explanation of the duties of the Chief Pharmacist as referred to in section 2(1) of Cap 134. The Chief Pharmacist is responsible for the supply of all drugs including certain dangerous drugs to the clinics maintained by the Government.

6. Members would like to know why paragraphs (a)-(d) of the definition of “Conventions” should be repealed. The four Conventions as referred to in paragraphs (a) to (d) of section 2(1) were replaced by the Single Convention on Narcotic Drugs 1961 (item (e)) and the continued application of the Single Convention was agreed in the Joint Liaison Group before the reunification. The amendment reflects the agreement.

7. Members expressed concern that the repeal of “in accordance with the requirements of the British Pharmacopoeia” in the definition of “medicinal opium” would leave the standard for making medicinal opium ambiguous. Members would also like to know the standard being adopted by D of H in practice in deciding whether a raw opium is for medicinal use or otherwise.

8. The proposed repeal would not leave the standard for making medicinal opium ambiguous. The differentiation between “raw opium” and “medicinal opium” is essentially in form and use, not substance. The standard of “medicinal opium” is laid down in national pharmacopoeia of countries manufacturing and exporting the “medicinal opium”. It is expressed as the level of the active components (usually morphine or codeine) of the processed raw opium for medicinal use. While the British Pharmacopoeia has been used as a reference for drugs manufactured in the UK, other national or regional pharmacopoeia, for example, the US Pharmacopoeia and the European Pharmacopoeia, are also used for determining the standard of “medicinal opium” from other countries or territories of origin.

9. Members would also like to know the policy intent and legislative effect of section 58(1) of Cap. 134.

10. Section 58(1) is a general reserve power of the then Governor to give directions to any public officer with respect to the exercise or performance of his powers, functions or duties under the Ordinance. Similar provision can be found in other Ordinances, for example, section 40 of the Public Finance Ordinance (Cap 2).

III. Societies Ordinance (Cap 151)

11. Members requested that the drafting of the proposed item (5) of the Schedule to Cap. 151 be reviewed and to provide examples of the proposed item (5) and the existing item (6).

12. Section 2 of Cap 151 provides that the Ordinance shall not apply to any person listed in the Schedule. The proposed item (5) and the existing item (6) of the Schedule will exempt the following types of organisations:

- (5) Any company or association constituted pursuant to or under any Ordinance or other legislation applicable to Hong Kong.
- (6) Any company, association or partnership formed for the sole purpose of carrying on any lawful business and registered under any other Ordinance.

13. The proposed item (5) deals with societies constituted under an ordinance. In practice, this method of incorporation is used only by organisations formed for non-profit making objects, for example, Caritas-Hong Kong Incorporation Ordinance (Cap 1092). Item (6) is a “catch-all” item and covers Ordinances other than those referred to in other items. One important Ordinance covered by item (6) is the Business Registration Ordinance (Cap 310). Thus a partnership carrying on lawful business and registered under the Business Registration Ordinance is excluded from the requirements for registration under Cap 151.

IV. Crimes Ordinance (Cap 200) (Parts I-II)

14. We have already explained in paragraph 6 of the LegCo Brief that adaptation of Parts I-II of the Crimes Ordinance 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. Members, however, suggested that we should explore the feasibility of inserting a “footnote” as part of the Bill to indicate this position for clarity sake.

15. To highlight the scope of the Adaptation of Laws (No 2) Bill, we consider that the Schedule heading for the Crimes Ordinance may be amended by adding after “**Crimes Ordinance**” the expression “**(Parts III to XIII)**”.

V. Crimes Ordinance (Cap 200) (Parts III-XIII)

16. Members requested information on the “British ship” and the definition of “Hong Kong ship” in the context of Cap. 200. Members further asked for an explanation as to why the definition of “Hong Kong ship” in section 23A only applies to sections 23A to 23C.

17. Section 23A to 23C of Cap. 200 were added by the Criminal Law (Amendment) Ordinance 1990 to localize the criminal jurisdiction of Hong Kong courts in relation to crimes committed at sea and in certain places elsewhere. Prior to the amendment, Hong Kong courts derived jurisdiction under various UK Acts, including the Merchant Shipping Act 1894. Under the Act, “British ships” are ships which are-

- (a) owned wholly by certain persons (such as natural born British subjects and persons having taken the oath of allegiance to Her Majesty the Queen); and
- (b) unless exempted from registry, registered under the Act.

18. The definition of “Hong Kong ship” in section 23A added by the 1990 amendment was in line with the establishment of the Hong Kong shipping register. We therefore agree with Members’ suggestion to extend the definition of “Hong Kong ship” to cover the reference to “Hong Kong ship” in section 20.

19. Members would also like to know the rationale for the proposed repeal of section 41 of Cap 200. As explained in paragraph 5(b) of the LegCo Brief, section 41 is obsolete and not consistent with Article 63 of the Basic Law (BL) in that it confers power to direct prosecution for perjury on a judge rather than on the Department of Justice as laid down in BL63. It should be noted that section 9 of the Perjury Act, on which our section 41 is based, was repealed in the UK by the Prosecution of Offences Act 1985.

20. Members would like to know the rationale for deleting the word “Act” in sections 84 & 85(1)(a). The proposed deletion of the words “Act” in both sections seeks to delete references in the law which are inconsistent with Hong Kong’s status as a Special Administrative Region.

Security Bureau
November 1998

**Sections in which the “Governor”
is adapted to the “Chief Executive in Council”**

I. Dangerous Drugs Ordinance (Cap 134)

Section 50(1)

II. Societies Ordinance (Cap 151)

Section 26N(3)

III. Firearms and Ammunition Ordinance (Cap 238)

Section 4(1)

Section 4(2)

Section 5(2)(f)

IV. Public Order Ordinance (Cap 245)

Section 2(1)

Section 10

Section 31(1), (3)(a) & (c) & 4

Section 34(1)

Section 36(1) & (2)

Section 37(2)(b)

Section 39(4)(c)