

File Ref: HW/CR 4/3221/91

LEGISLATIVE COUNCIL BRIEF

Hospital Authority Ordinance	(Chapter 113)
Pesticides Ordinance	(Chapter 133)
Mental Health Ordinance	(Chapter 136)
Antibiotics Ordinance	(Chapter 137)
Pharmacy and Poisons Ordinance	(Chapter 138)
Quarantine and Prevention of Disease Ordinance	(Chapter 141)
Radiation Ordinance	(Chapter 303)
Pharmacopoeia Ordinance	(Chapter 308)
Medical Clinics Ordinance	(Chapter 343)
Smoking (Public Health) Ordinance	(Chapter 371)
Hong Kong Council on Smoking and Health Ordinance	(Chapter 389)
Hong Kong Academy of Medicine Ordinance	(Chapter 419)
The Prince Philip Dental Hospital Ordinance	(Chapter 1081)

ADAPTATION OF LAWS (NO. 16) BILL 1999

INTRODUCTION

At the meeting of the Executive Council on 25 May 1999, the Council ADVISED and the Chief Executive ORDERED that the Adaptation of Laws (No. 16) Bill 1999, at Annex A, should be introduced into the Legislative Council.

BACKGROUND AND ARGUMENT

2. The Bill covers 13 Ordinances and their subsidiary legislation relating to hospitals, clinics, mental health and other health-related matters such as antibiotics, pharmacy and poisons, smoking and prevention of disease. These 13 Ordinances which contain references inconsistent with the Basic Law or with Hong Kong's status as a Special Administrative Region of the People's Republic of China need to be adapted.

THE BILL

3. The Bill comprises mainly terminological changes, e.g. references to "the Colony" and "立法局" are replaced by "Hong Kong" and "立法會" respectively. Similarly, references to the "Governor" and the "Governor in Council" will be replaced by "Chief Executive" and "Chief Executive in Council" respectively. Where a provision previously conferred power on the "Governor" to make subsidiary legislation, the reference to the "Governor" will still be adapted to the "Chief Executive". Although the requirement under Article 56 of the Basic Law that the Chief Executive shall consult the Executive Council before making subordinate legislation is then not expressly set out, the Council will still have to be consulted if the Chief Executive is to exercise this legislative function. The adaptation of other terms and expressions which warrant further explanation is set out at Annex B.

COMMENCEMENT

4. The Bill provides that, subject to Article 12 of the Hong Kong Bill of Rights, most of the adaptations shall, when passed into law, take effect retrospectively as from the date of the establishment of the Hong Kong Special Administrative Region. Adaptations regarding provisions of an Amendment Ordinance that came into operation after 1 July 1997 shall take effect as from the date when the relevant provision was brought into force.

LEGISLATIVE TIMETABLE

5. The legislative timetable approved by the Chief Executive in

Council is as follows -

Publication in the Gazette	4 June 1999
First Reading and commencement of Second Reading debate	16 June 1999
Resumption of Second Reading debate, committee stage and Third Reading	to be notified

HUMAN RIGHTS IMPLICATIONS

6. The Department of Justice has confirmed that the Bill is consistent with the human rights provisions of the Basic Law.

BINDING EFFECT OF THE LEGISLATION

7. The amendments will not affect the current binding effect of the existing provisions of the various Ordinances covered by the Bill.

FINANCIAL AND STAFFING IMPLICATIONS

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

PUBLIC CONSULTATION

9. Since the amendments are essentially straightforward adaptations, consultation with the public is not considered necessary.

PUBLICITY

10. A press release will be issued on 4 June 1999.

11. For enquiries in relation to this Bill, please contact the following officer -

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June 1999

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ADAPTATION OF LAWS (NO. 16) BILL 1999

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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. 16) Ordinance 1999.

2. Commencement

(1) (a) This Ordinance, other than sections 4 to 16 and 31 to 40 of Schedule 3, shall be deemed to have come into operation on 1 July 1997.

(b) Paragraph (a) 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).

(2) Sections 4 to 16 and 31 to 40 of Schedule 3 shall be deemed to have come into operation on 1 February 1999.

3. Amendment of Ordinances

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

SCHEDULE 1

[s. 3]

HOSPITAL AUTHORITY ORDINANCE

1. Section 2(2) of the Hospital Authority Ordinance (Cap. 113) is amended by repealing "Governor" and substituting "Chief Executive".
2. Section 3(3) is amended by repealing "Governor" and substituting "Chief Executive".
3. Section 6(1) (f) is amended by repealing "Governor" and substituting "Chief Executive".
4. Section 7(1) (a) (i) is amended by repealing "立法局" and substituting "立法會".
5. Section 10(4) is amended by repealing "立法局" and substituting "立法會".
6. Section 11(4) is amended by repealing "立法局" and substituting "立法會".
7. Section 15 is amended by repealing "Governor" and substituting "Chief Executive".
8. Section 19(2) (a) (iv) is amended by repealing "Governor" and substituting "Chief Executive".
9. Section 20 is amended -

- (a) by repealing "Governor" and substituting "Chief Executive";
- (b) by repealing "立法局" and substituting "立法會".

10. Schedule 3 is amended, in paragraphs 2, 3(1), 4(3) and 7, by repealing "Governor" wherever it appears and substituting "Chief Executive".

SCHEDULE 2

[s. 3]

PESTICIDES ORDINANCE

1. Section 13(4) of the Pesticides Ordinance (Cap. 133) is amended by repealing "Governor's" and substituting "Chief Executive's".
2. Section 16 is amended by repealing "Governor" where it twice appears and substituting "Chief Executive".
3. Section 18(1) is amended by repealing "Crown" where it twice appears and substituting "Government".
4. Section 19(1A) is amended by repealing "Governor in Council" and substituting "Chief Executive in Council".

SCHEDULE 3

[ss. 2 & 3]

MENTAL HEALTH ORDINANCE AND ITS SUBSIDIARY LEGISLATION

Mental Health Ordinance

1. Section 3(1) and (2) of the Mental Health Ordinance (Cap. 136) is amended by repealing "Governor" and substituting "Chief Executive".
2. Section 4(1) and (2) is amended by repealing "Governor" and substituting "Chief Executive".
3. Section 5(1) is amended by repealing "Governor" and substituting "Chief Executive".
4. Section 7 is amended -
 - (a) in subsection (1), by repealing "高等法院" where it twice appears and substituting "原訟法庭";
 - (b) in subsection (5), by repealing "高等法院" and substituting "原訟法庭";
 - (c) in subsection (6), in the definition of "關於親屬或最近親及財產的證據", by repealing "高等法院" and substituting "原訟法庭".
5. Section 10(1) is amended by repealing "高等法院" where it twice appears and substituting "原訟法庭".

6. Section 10A is amended by repealing "高等法院" wherever it appears and substituting "原訟法庭".
7. Section 10B is amended by repealing "高等法院" wherever it appears and substituting "原訟法庭".
8. Section 10C(1) is amended by repealing "高等法院" where it twice appears and substituting "原訟法庭".
9. Section 10D is amended by repealing "高等法院" wherever it appears and substituting "原訟法庭".
10. Section 10E(2), (4) and (5) is amended by repealing "高等法院" wherever it appears and substituting "原訟法庭".
11. Section 11(1) and (2) is amended by repealing "高等法院" wherever it appears and substituting "原訟法庭".
12. Section 26 is amended by repealing "高等法院" where it twice appears and substituting "原訟法庭".
13. Section 26A is amended by repealing "高等法院" where it twice appears and substituting "原訟法庭".

14. Section 26B(1) is amended by repealing "高等法院" and substituting "原訟法庭".
15. Section 27(1) and (4) is amended by repealing "高等法院" wherever it appears and substituting "原訟法庭".
16. Section 28 is amended by repealing "高等法院" and substituting "原訟法庭".
17. Section 42B(6) (b) is amended by repealing "Governor" and substituting "Chief Executive".
18. Section 47 is amended -
 - (a) in subsection (1A) (b), by repealing "Governor" and substituting "Chief Executive";
 - (b) in subsection (2), in the proviso, by repealing "Governor" and substituting "Chief Executive".
19. Section 52(1), (3) (b) and (4) is amended by repealing "Governor" wherever it appears and substituting "Chief Executive".
20. Section 52A(1) and (3) (b) is amended by repealing "Governor" and substituting "Chief Executive".
21. Section 52B(1) and (3) (b) is amended by repealing "Governor" and substituting "Chief Executive".

22. Section 53(1) is amended by repealing "Governor" where it twice appears and substituting "Chief Executive".
23. Section 54(2) (a) is amended by repealing "Governor" where it twice appears and substituting "Chief Executive".
24. Section 57 is amended by repealing "Governor" and substituting "Chief Executive".
25. Section 59 is amended by repealing "Governor" where it twice appears and substituting "Chief Executive".
26. Section 59A(2), (3), (8) and (9) is amended by repealing "Governor" wherever it appears and substituting "Chief Executive".
27. Section 59B(1) is amended by repealing "until Her Majesty's pleasure is known" and substituting "at the discretion of the Chief Executive".
28. Section 59C(1) is amended by repealing "Governor" and substituting "Chief Executive".
29. Section 59E(1) (b) is amended by repealing "Governor" and substituting "Chief Executive".

30. Section 59H(5) is amended by repealing "Governor" and substituting "Chief Executive".
31. Section 59J(2) and (3) (a) is amended by repealing "Governor" wherever it appears and substituting "Chief Executive".
32. Section 59W is amended by repealing "高等法院" wherever it appears and substituting "原訟法庭".
33. Section 59ZB(3) is amended by repealing "高等法院" and substituting "原訟法庭".
34. Section 59ZD(2) is amended by repealing "高等法院" and substituting "原訟法庭".
35. Section 59ZG is amended by repealing "高等法院" wherever it appears and substituting "原訟法庭".
36. Section 59ZH(2) is amended by repealing "高等法院" where it twice appears and substituting "原訟法庭".
37. Section 59ZI is amended by repealing "高等法院" wherever it appears and substituting "原訟法庭".

38. Section 59ZJ is amended by repealing "高等法院" wherever it appears and substituting "原訟法庭".

39. Section 74(4) is amended by repealing "by the Governor in Council".

40. The Schedule is amended, in sections 1(1) and (2) and 2(2), by repealing "Governor" and substituting "Chief Executive".

Mental Health Regulations

41. Regulation 5(2) of the Mental Health Regulations (Cap. 136 sub. leg.) is amended -
- (a) in paragraph (a), by repealing "Governor" and substituting "Chief Executive";
 - (b) in paragraph (b), by repealing "行政局" and substituting "行政會議";
 - (c) in paragraph (c), by repealing "立法局" and substituting "立法會".

Mental Health Review Tribunal Rules

42. Rule 29(d) of the Mental Health Review Tribunal Rules (Cap. 136 sub. leg.) is amended by repealing "Governor" and substituting "Chief Executive".

SCHEDULE 4
ANTIBIOTICS ORDINANCE

[s. 3]

1. Section 11 of the Antibiotics Ordinance (Cap. 137) is amended by repealing "Crown" wherever it appears and substituting "Government".

SCHEDULE 5
PHARMACY AND POISONS ORDINANCE AND ITS SUBSIDIARY LEGISLATION

[s. 3]

Pharmacy and Poisons Ordinance

1. Section 3 of the Pharmacy and Poisons Ordinance (Cap. 138) is amended -
 - (a) in subsection (2) (e), (f), (fa), (fb), (g), (h) and (i), by repealing "Governor" and substituting "Chief Executive";
 - (b) in subsections (3) and (4), by repealing "Governor" wherever it appears and substituting "Chief Executive".
2. Section 7(3) (c) is amended by repealing "the Colony" and substituting "Hong Kong".
3. Section 10(1) (a) is amended by repealing "this Colony" and substituting "Hong Kong".

4. Section 15(1) (a) and (2) is amended by repealing "Governor" and substituting "Chief Executive".
5. Section 29(1) is amended by repealing "立法局" and substituting "立法會".
6. Section 30(2) (a), (3), (4) and (5) is amended by repealing "Governor" wherever it appears and substituting "Chief Executive".
7. Section 32 is amended -
 - (a) in paragraph (b), by repealing "the Colony" and substituting "Hong Kong";
 - (b) in paragraph (e) (ii), by repealing "Crown" and substituting "Government".
8. Section 36(1) is amended by repealing "Crown" where it twice appears and substituting "Government".

**Course of Training, Study and Examination
for Applicants for Registration
as Pharmacists Regulations**

9. Regulation 6 of the Course of Training, Study and Examination for Applicants for Registration as Pharmacists Regulations (Cap. 138 sub. leg.) is amended by repealing "Governor in Council" and substituting "Chief Executive in Council".

10. Regulation 12 is amended by repealing "Governor in Council" and substituting "Chief Executive in Council".

SCHEDULE 6 [s. 3]
QUARANTINE AND PREVENTION OF DISEASE ORDINANCE
AND ITS SUBSIDIARY LEGISLATION

Quarantine and Prevention of Disease Ordinance

1. Section 2(1) of the Quarantine and Prevention of Disease Ordinance (Cap. 141) is amended -

- (a) in the definition of "authorized aerodrome", by repealing "Governor in Council" and substituting "Chief Executive in Council";
- (b) in the definition of "health officer", by repealing "Governor" and substituting "Chief Executive";
- (c) in the definitions of "quarantine anchorage" and "quarantine station", by repealing "Governor in Council" and substituting "Chief Executive in Council".

2. Section 8(1) and (3) (1) is amended by repealing "Governor in Council" and substituting "Chief Executive in Council".

Prevention of the Spread of Infectious Diseases Regulations

3. Regulation 21 of the Prevention of the Spread of Infectious Diseases Regulations (Cap. 141 sub. leg.) is amended by repealing "Crown" and substituting "Government".

SCHEDULE 7
RADIATION ORDINANCE

[s. 3]

1. Section 3 of the Radiation Ordinance (Cap. 303) is amended -
 - (a) in subsection (2) (b), by repealing "Governor" and substituting "Chief Executive";
 - (b) in subsection (3) -
 - (i) by repealing "Governor at his pleasure" and substituting "Chief Executive at his discretion";
 - (ii) by repealing "Governor" and substituting "Chief Executive";
 - (c) in subsection (9), by repealing "Governor" and substituting "Chief Executive".
2. Section 6 is amended by repealing "Governor" and substituting "Chief Executive".
3. Section 8(3) is amended by repealing "Governor" and substituting "Chief Executive".

4. Section 11 is amended by repealing "Governor" where it twice appears and substituting "Chief Executive".
5. Section 13(1) is amended by repealing "立法局" and substituting "立法會".
6. Section 21(1) is amended by repealing "Crown" and substituting "Government".
7. Section 24 is amended by repealing "立法局" and substituting "立法會".

SCHEDULE 8

[s. 3]

PHARMACOPOEIA ORDINANCE

1. The long title to the Pharmacopoeia Ordinance (Cap. 308) is amended by repealing "the Colony" and substituting "Hong Kong".
2. Section 2 is amended by repealing "the Colony" and substituting "Hong Kong".
3. Section 3 is amended by repealing "the Colony" and substituting "Hong Kong".

SCHEDULE 9

[s. 3]

MEDICAL CLINICS ORDINANCE

1. Section 12(1) of the Medical Clinics Ordinance (Cap. 343) is amended by repealing "Governor in Council" where it twice appears and substituting "Chief Executive in Council".
2. Section 15(3) is amended by repealing "Governor in Council" and substituting "Chief Executive in Council".

SCHEDULE 10 [s. 3]
SMOKING (PUBLIC HEALTH) ORDINANCE

1. Section 11(3) (aa) (ii) of the Smoking (Public Health) Ordinance (Cap. 371) is amended by repealing "Governor in Council" and substituting "Chief Executive in Council".
2. Section 18(1) is amended by repealing "Governor in Council" and substituting "Chief Executive in Council".

SCHEDULE 11 [s. 3]
HONG KONG COUNCIL ON SMOKING AND HEALTH ORDINANCE

1. Section 3(2) (e) of the Hong Kong Council on Smoking and Health Ordinance (Cap. 389) is amended by repealing "Governor" and substituting "Chief Executive".
2. Section 5 is amended by repealing "Governor" wherever it appears and substituting "Chief Executive".

3. Section 13(1) is amended -
 - (a) by repealing "Governor" and substituting "Chief Executive";
 - (b) by repealing "立法局" and substituting "立法會".
4. Section 16 is amended by repealing "Governor" and substituting "Chief Executive".
5. Section 17(6) is amended by repealing "立法局" and substituting "立法會".
6. Section 18 is amended by repealing "Crown" where it twice appears and substituting "State".
7. Section 19(1) is amended by repealing "Governor" and substituting "Chief Executive".

SCHEDULE 12
HONG KONG ACADEMY OF MEDICINE ORDINANCE

[s. 3]

1. Section 6(9) of the Hong Kong Academy of Medicine Ordinance (Cap. 419) is amended by repealing "Governor" and substituting "Chief Executive".

2. Section 12(5) is amended by repealing "立法局" and substituting "立法會".

SCHEDULE 13
THE PRINCE PHILIP DENTAL HOSPITAL ORDINANCE

[s. 3]

1. Section 3(2) of The Prince Philip Dental Hospital Ordinance (Cap. 1081) is amended by repealing "Governor in Council" and substituting "Chief Executive in Council".
2. Section 5 is amended by repealing "Governor" wherever it appears and substituting "Chief Executive".
3. Section 12(1) (c) is amended by repealing "Governor" and substituting "Chief Executive".
4. Section 15 is amended by repealing "Governor" wherever it appears and substituting "Chief Executive".
5. Section 16 is amended -
 - (a) in subsection (2), by repealing "Governor" where it twice appears and substituting "Chief Executive";
 - (b) in subsection (4) -
 - (i) by repealing "Governor" and substituting "Chief Executive";

(ii) by repealing "立法局" and substituting "立法會".

6. Section 17 is amended by repealing "Governor in Council" wherever it appears and substituting "Chief Executive in Council".

7. Section 18 is amended by repealing "Governor" wherever it appears and substituting "Chief Executive".

8. Section 19 is amended by repealing "Crown" where it twice appears and substituting "State".

9. Section 20 is amended by repealing "Governor in Council" and substituting "Chief Executive in Council".

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 13).

2. The Ordinances adapted and their respective Schedule numbers under the Bill are -
- | | |
|---|-------------|
| Antibiotics Ordinance (Cap. 137) | Schedule 4 |
| Hong Kong Academy of Medicine Ordinance | Schedule 12 |

(Cap. 419)	
Hong Kong Council on Smoking and Health Ordinance (Cap. 389)	Schedule 11
Hospital Authority Ordinance (Cap. 113)	Schedule 1
Medical Clinics Ordinance (Cap. 343)	Schedule 9
Mental Health Ordinance (Cap. 136)	Schedule 3
Pesticides Ordinance (Cap. 133)	Schedule 2
Pharmacopoeia Ordinance (Cap. 308)	Schedule 8
Pharmacy and Poisons Ordinance (Cap. 138)	Schedule 5
Quarantine and Prevention of Disease Ordinance (Cap. 141)	Schedule 6
Radiation Ordinance (Cap. 303)	Schedule 7
Smoking (Public Health) Ordinance (Cap. 371)	Schedule 10
The Prince Philip Dental Hospital Ordinance (Cap. 1081)	Schedule 13

3. The Bill provides that, subject to Article 12 of the Hong Kong Bill of Rights, most of the proposed adaptations shall when passed into law take effect retrospectively, as from the date of the establishment of the Hong Kong Special Administrative Region. Adaptations relating to provisions that came into operation after 1 July 1997 shall take effect as from the date when the relevant provisions come into operation (clause 2).

Adaptation of Certain Terms and Expressions contained in the Bill

1. Adaptation of references to the "Crown"

(a) Crown's servants/agents

Where a provision states that a corporation shall not be regarded as a servant or agent of the Crown or as enjoying any status, immunity or privilege of the Crown, it is proposed to change "the Crown" to "the State". The intention of such a provision is to rebut the presumption in Section 66 of the Interpretation and General Clauses Ordinance (Cap. 1) which formerly provided for the immunity of the Crown. As "the Crown" in that Section has been changed to "the State", it is logical to adopt the same approach here so as to reflect the legislative intention that the relevant corporation does not enjoy any immunity under that Section. (e.g. Section 6 of Schedule 11 and Section 8 of Schedule 13)

(b) Forfeiture to the Crown

Where a provision deals with the power of a magistrate to forfeit any property upon an application made by the "Crown", the reference to "Crown" is changed to "Government". As a result, the forfeited property shall be deemed to be the property of the "Government" instead of the "Crown". In effect the property belongs to the Hong Kong public. (e.g. Section 3 of Schedule 2 and Section 1 of Schedule 4)

(c) Debts due to the Crown

"Crown" is adapted to "Government" in the context where the cost of breaking in a premises for disinfecting a building is recoverable from the owner of the building as if it were a debt due to the Crown. In effect the debt constitute a debt to the Hong Kong public and were incurred in connection with the discharge of a governmental function performed in the interest of the Hong Kong public. (see Section 3 of Schedule 6)

(d) An officer of the Crown

Under Section 32(e)(ii) of the Pharmacy and Poisons Ordinance (Cap. 138), a person may not be affected by the Ordinance if he regularly sold poisons to a Government department or an officer of the Crown requiring certain substance for the purpose of public service. An officer of the Crown is adapted to an officer of the "Government" as the expression arises in a context where public service and Government department are involved. (see Section 7(b) of Schedule 5)

2. Detained until Her Majesty's pleasure is known

Under a repealed Section 78 of the Criminal Procedure Ordinance (Cap. 221), an accused person found to be insane or had a special verdict found against him (i.e. to the effect that the accused person was guilty but was insane at the time of the offence) was detained until Her Majesty's pleasure is known ("HMP" cases). At present, there are only 2 remaining HMP cases arising from that provision which involve convicted persons. For the purposes of adaptation, the convicted persons, as from 1.7.97, were detained "at the discretion of the Chief Executive". This is in line with the principle laid down in Article 48(12) of the Basic Law. Persons concerned may still apply to the Mental Health Review Tribunal for a review of the relevant case. (see Section 27 of Schedule 3)