

LEGISLATIVE COUNCIL BRIEF

- Apprenticeship Ordinance
(Chapter 47)
- Boilers and Pressure Vessels Ordinance
(Chapter 56)
- Employment of Young Persons and Children at Sea Ordinance
(Chapter 58)
- Factories and Industrial Undertakings Ordinance
(Chapter 59)
- Trade Boards Ordinance
(Chapter 63)
- General Holidays Ordinance
(Chapter 149)
- Protection of Wages on Insolvency Ordinance
(Chapter 380)
- Occupational Safety and Health Council Ordinance
(Chapter 398)
- Occupational Safety and Health Ordinance
(Chapter 509)

ADAPTATION OF LAWS (NO. 19) BILL 1999

INTRODUCTION

At the meeting of the Executive Council on 22 June 1999, the Council **ADVISED** and the Chief Executive **ORDERED** that the Adaptation of Laws (No. 19) Bill 1999, at the Annex, should be introduced into the Legislative Council to effect necessary adaptations to the above nine Ordinances on matters relating to labour and their subsidiary legislation.

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 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 (Cap. 1). However, although the Interpretation and General Clauses Ordinance laid down how terminologies 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 terminologies in our laws. Accordingly, we now need to introduce further legislation to effect the necessary textual amendments.

THE BILL

4. Most of the proposed amendments are merely terminological changes, e.g. references to the "Governor in Council" and "立法局" are replaced by the "Chief Executive in Council" and "立法會" respectively. Similarly, a reference to the "Governor" will be replaced by the "Chief Executive". 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 Executive Council will still have to be consulted if the Chief Executive is to exercise this legislative function.

5. Other amendments include -

(a) **Section 3(1)(a) of the Boilers and Pressure Vessels Ordinance**

Section 3(1)(a) provides that the Ordinance does not apply to a boiler, pressure vessel or steam container belonging to the "Crown". The reference to the "Crown" is replaced by the "State" in accordance with section 7 of Schedule 9 to the Interpretation and General Clauses Ordinance which provides that where it is expressly provided in an Ordinance that the Ordinance is not binding on the Crown, that reference shall be construed as a reference to the State.

(b) **Section 2 (definition of "contractor") of the Factories and Industrial Undertakings Ordinance;
Regulation 2 (definition of "electrical contractor") of the Factories and Industrial Undertakings (Electricity) Regulations**

References to the "Crown" are replaced by the "State" to avoid any possible argument that the definitions of "contractor" and "electrical contractor" do not apply to contractors who work for the Central People's Government, the Garrison or other State bodies.

(c) **Section 14A(2) of the Factories and Industrial Undertakings Ordinance**

The reference to the "Crown" relates to the liability of the "Crown" in tort for the act or omission of public officers. Under section 3 of the Interpretation and General Clauses Ordinance, "public officer" means any person holding an office of emolument under the Government. As the matter is under the sole responsibility of the Government, the reference to the "Crown" is replaced by the "Government" in accordance with section 2 of Schedule 8 to the Interpretation and General Clauses Ordinance.

- (d) **Paragraph 1 of the Schedule to the Protection of Wages on Insolvency Ordinance;**
Paragraph 2 of the Schedule to the Occupational Safety and Health Council Ordinance

The provisions provide that the Protection of Wages on Insolvency Fund Board and the Occupational Safety and Health Council are not servants or agents of the "Crown" and that they do not enjoy any status, immunity or privilege of the "Crown". It is considered that the intention of the provisions is to rebut the presumption in section 66 of the Interpretation and General Clauses Ordinance, which formerly provided that the Crown was not bound by an Ordinance unless it contained an express provision or by necessary implication that it was bound. As the "Crown" in section 66 of the Interpretation and General Clauses Ordinance has already been changed to the "State", it is logical to substitute "State" for "Crown" in the provisions, so as to reflect the intention that the Protection of Wages on Insolvency

Fund Board and the Occupational Safety and Health Council do not enjoy any immunity under section 66 of the Interpretation and General Clauses Ordinance.

COMMENCEMENT

6. 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

7. The legislative timetable is -

Publication in the Gazette	25 June 1999
First Reading and commencement of Second Reading debate	7 July 1999
Resumption of Second Reading debate, committee stage and Third Reading	to be notified

HUMAN RIGHTS IMPLICATIONS

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

BINDING EFFECT

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

FINANCIAL AND STAFFING IMPLICATIONS

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

PUBLIC CONSULTATION

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

PUBLICITY

12. A press release will be issued on 25 June 1999.

ENQUIRIES

13. For enquiries, please contact Miss Aubrey Fung, Assistant Secretary for Education and Manpower at telephone number 2186 7188.

Education and Manpower Bureau

25 June 1999

ADAPTATION OF LAWS (NO. 19) BILL 1999

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A BILL

To

Adapt certain Ordinances 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.

Enacted by the Legislative Council.

1. Short title

This Ordinance may be cited as the Adaptation of Laws (No. 19) Ordinance 1999.

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
APPRENTICESHIP ORDINANCE

[s. 3]

1. Section 2 of the Apprenticeship Ordinance (Cap. 47) is amended, in the definitions of "Director" and "young person", by repealing "Governor" and substituting "Chief Executive".
2. Section 5(2A) is amended by repealing "Governor" and substituting "Chief Executive".
3. Section 33(1) is amended by repealing "Governor" and substituting "Chief Executive".
4. Section 34 is amended by repealing "Governor" where it twice appears and substituting "Chief Executive".
5. Section 44(1) is amended by repealing "Governor may" and substituting "Chief Executive, or any public officer delegated with the function, duty or power under section 5(2A), may after consultation with the Executive Council".
6. Section 45 is amended by repealing "Governor may" and substituting "Chief Executive, or any public officer delegated with the function, duty or power under section 5(2A), may after consultation with the Executive Council".
7. Section 47(3) is amended -

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

SCHEDULE 2
BOILERS AND PRESSURE VESSELS ORDINANCE

[s. 3]

1. Section 1(2) of the Boilers and Pressure Vessels Ordinance (Cap. 56) is amended by repealing "Governor" and substituting "Chief Executive".
2. Section 2(1) is amended in the definitions of "existing" and "new" (when used in relation to a pressurized fuel container), by repealing "Governor" and substituting "Chief Executive".
3. Section 3(1) (a) is amended by repealing "Crown" and substituting "State".
4. Section 4(1) is amended by repealing "Governor" and substituting "Chief Executive".
5. Section 15(2) is amended by adding "or Chinese" before "translation".

SCHEDULE 3

[s. 3]

EMPLOYMENT OF YOUNG PERSONS AND CHILDREN AT SEA ORDINANCE

1. Section 3 of the Employment of Young Persons and Children at Sea Ordinance (Cap. 58) is amended by repealing "the Colony" and substituting "Hong Kong".

SCHEDULE 4

[s. 3]

FACTORIES AND INDUSTRIAL UNDERTAKINGS ORDINANCE AND ITS
SUBSIDIARY LEGISLATION**Factories and Industrial Undertakings Ordinance**

1. Section 2(1) of the Factories and Industrial Undertakings Ordinance (Cap. 59) is amended -
 - (a) in the definition of "contractor", by repealing "Crown" and substituting "State";
 - (b) in the definition of "mineral", in paragraph (iii), by repealing "Governor" and substituting "Chief Executive".
2. Section 7(3) is amended -
 - (a) by repealing "Governor" and substituting "Chief Executive";
 - (b) by repealing "立法局" and substituting "立法會".
3. Section 14A(2) is amended by repealing "Crown" and substituting "Government".

Quarries (Safety) Regulations

4. Regulation 12 of the Quarries (Safety) Regulations (Cap. 59 sub. leg.) is amended by repealing "Governor" and substituting "Chief Executive".

Factories and Industrial Undertakings (Electricity) Regulations

5. Regulation 2 of the Factories and Industrial Undertakings (Electricity) Regulations (Cap. 59 sub. leg.) is amended, in the definition of "electrical contractor", by repealing "Crown" and substituting "State".

SCHEDULE 5 TRADE BOARDS ORDINANCE

[s. 3]

1. Section 2 of the Trade Boards Ordinance (Cap. 63) is amended -
 - (a) in subsection (1) -
 - (i) by repealing "Governor in Council" and substituting "Chief Executive in Council";
 - (ii) by repealing "the Colony" and substituting "Hong Kong";
 - (b) in subsections (2) and (4), by repealing "Governor" and substituting "Chief Executive";
 - (c) in subsection (5) -
 - (i) by repealing "Governor" and substituting "Chief Executive";

- (ii) by repealing "Governor's" and substituting "Chief Executive's";
 - (d) in subsection (7), by repealing "Governor" where it twice appears and substituting "Chief Executive".
- 2. Section 4 is amended by repealing "Governor" where it twice appears and substituting "Chief Executive".
- 3. Section 5(1) is amended by repealing "Governor in Council" and substituting "Chief Executive in Council".
- 4. Section 7(2) and (3) is amended by repealing "Governor in Council" and substituting "Chief Executive in Council".
- 5. Section 9(1) is amended by repealing "Governor in Council" and substituting "Chief Executive in Council".

SCHEDULE 6
GENERAL HOLIDAYS ORDINANCE

[s. 3]

- 1. Section 6(1) of the General Holidays Ordinance (Cap. 149) is amended -
 - (a) by repealing "立法局" and substituting "立法會";
 - (b) in paragraph (b) (iii), by repealing "Governor" and substituting "Chief Executive".

2. Section 7 is amended by repealing "the Colony" and substituting "Hong Kong".

SCHEDULE 7

[s. 3]

PROTECTION OF WAGES ON INSOLVENCY ORDINANCE

1. Section 3(2) and (3) of the Protection of Wages on Insolvency Ordinance (Cap. 380) is amended by repealing "Governor" and substituting "Chief Executive".
2. Section 4(1) (b) is amended by repealing "Governor" and substituting "Chief Executive".
3. Section 5 is amended by repealing "Governor in Council" and substituting "Chief Executive in Council".
4. Section 8 is amended by repealing "Governor" wherever it appears and substituting "Chief Executive".
5. Section 13 is amended -
 - (a) in subsection (1), by repealing "Governor" where it twice appears and substituting "Chief Executive";
 - (b) in subsection (2) -
 - (i) by repealing "Governor" and substituting "Chief Executive";
 - (ii) by repealing "立法局" and substituting "立法會".

6. Section 16(3) is amended by repealing "立法局" and substituting "立法會".
7. Section 27 is amended by repealing "Governor in Council" and substituting "Chief Executive in Council".
8. Section 28 is amended by repealing "Governor" and substituting "Chief Executive".
9. The Schedule is amended -
 - (a) in paragraph 1, by repealing "Crown" where it twice appears and substituting "State";
 - (b) in paragraph 3, by repealing "Governor" wherever it appears and substituting "Chief Executive";
 - (c) in paragraph 4(1) and (2), by repealing "Governor" and substituting "Chief Executive".

SCHEDULE 8

[s. 3]

OCCUPATIONAL SAFETY AND HEALTH COUNCIL ORDINANCE

1. Section 3 of the Occupational Safety and Health Council Ordinance (Cap. 398) is amended -
 - (a) in subsection (2) -
 - (i) in paragraphs (a), (b) and (c), by repealing "Governor" wherever it appears and substituting "Chief Executive";

- (ii) in paragraph (d) -
 - (A) by repealing "by the Governor" and substituting "by the Chief Executive";
 - (B) by repealing "at the pleasure of the Governor" and substituting "at the discretion of the Chief Executive";
 - (b) in subsection (4), by repealing "Governor" and substituting "Chief Executive".
- 2. Section 9(2) and (3) is amended by repealing "Governor" wherever it appears and substituting "Chief Executive".
- 3. Section 12 is amended -
 - (a) by repealing "Governor" where it twice appears and substituting "Chief Executive";
 - (b) by repealing "立法局" and substituting "立法會".
- 4. Section 18(1) is amended by repealing "立法局" and substituting "立法會".
- 5. Section 26(1) is amended by repealing "Governor" and substituting "Chief Executive".
- 6. Section 29(1) is amended by repealing "Governor in Council" and substituting "Chief Executive in Council".
- 7. The Schedule is amended -

- (a) in paragraph 2, by repealing "Crown" where it twice appears and substituting "State";
- (b) in paragraph 3(1), by repealing "Governor" and substituting "Chief Executive";
- (c) in paragraph 4(2), (3) and (4), by repealing "Governor" wherever it appears and substituting "Chief Executive";
- (d) in paragraph 5, by repealing "Governor" wherever it appears and substituting "Chief Executive".

SCHEDULE 9

[s. 3]

OCCUPATIONAL SAFETY AND HEALTH ORDINANCE

1. Section 3(1) of the Occupational Safety and Health Ordinance (Cap. 509) is amended, in the definition of "public analyst", by repealing "Governor" and substituting "Chief Executive".
2. Section 19(1) is amended by repealing "Governor" where it twice appears and substituting "Chief Executive".
3. Section 42(3) is amended by repealing "立法局" and substituting "立法會".
4. Section 1(1) of Schedule 5 is amended -
 - (a) by repealing "Governor" and substituting "Chief Executive";
 - (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 9).

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

Apprenticeship Ordinance (Cap. 47)	Schedule 1
Boilers and Pressure Vessels Ordinance (Cap. 56)	Schedule 2
Employment of Young Persons and Children at Sea Ordinance (Cap. 58)	Schedule 3
Factories and Industrial Undertakings Ordinance (Cap. 59)	Schedule 4
General Holidays Ordinance (Cap. 149)	Schedule 6
Occupational Safety and Health Ordinance (Cap. 509)	Schedule 9
Occupational Safety and Health Council Ordinance (Cap. 398)	Schedule 8
Protection of Wages on Insolvency Ordinance (Cap. 380)	Schedule 7
Trade Boards Ordinance (Cap. 63)	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).