

LEGISLATIVE COUNCIL BRIEF

- Education Ordinance (Cap. 279)
- Non-local Higher and Professional Education (Regulation) Ordinance (Cap. 493)
- Chater Masonic Scholarship Fund Ordinance (Cap. 1007)
- Diocesan School and Orphanage Incorporation Ordinance (Cap. 1017)
- Morrison Scholarships Fund Ordinance (Cap. 1037)
- St. Joseph's College Incorporation Ordinance (Cap. 1048)
- St. Stephen's College Incorporation Ordinance (Cap. 1049)
- Institute of the Marist Brothers of the Schools Incorporation Ordinance
(Cap. 1065)
- Portuguese Community Education and Welfare Foundation Incorporation
Ordinance (Cap. 1071)
- Education Scholarships Fund Ordinance (Cap. 1085)
- Hong Kong Tramways Educational Trust Fund Ordinance (Cap. 1091)
- Munsang College Incorporation Ordinance (Cap. 1094)
- Director of Education Incorporation Ordinance (Cap. 1098)
- Council of Heep Yunn School Incorporation Ordinance (Cap. 1099)
- St. Paul's College Council Incorporation Ordinance (Cap. 1102)
- Council of St. Paul's Co-educational College Incorporation Ordinance
(Cap. 1104)
- The English Schools Foundation Ordinance (Cap. 1117)
- The St. Stephen's Girls' College Council Incorporation Ordinance (Cap. 1121)
- Diocesan Boys' School Committee Incorporation Ordinance (Cap. 1123)
- Council of the Diocesan Girls' School Incorporation Ordinance (Cap. 1124)
- Diocesan Preparatory School Council Incorporation Ordinance (Cap. 1125)
- Hong Kong Council for Academic Accreditation Ordinance (Cap. 1150)

ADAPTATION OF LAWS (NO. 32) BILL 1999

INTRODUCTION

At the meeting of the Executive Council on 6 July 1999, the Council **ADVISED** and the Chief Executive **ORDERED** that the Adaptation of Laws (No. 32) Bill 1999 as set out at the Annex should be introduced into the Legislative Council, to effect necessary adaptations to the above 22 Ordinances and their subsidiary legislation related to schools and education.

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 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 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 Colony" and "立法局" are replaced by "Hong Kong" 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. The Bill also contains other straightforward amendments, including the following –

(a) Saving of rights

References to "saving the rights of Her Majesty the Queen, Her Heirs or Successors" will be amended to "saving the rights of the Central Authorities or the Government of the Hong Kong Special Administrative Region", based on item 10 of Annex 3 of the Decision of the Standing Committee of the National People's Congress on Treatment of the Laws Previously in Force in Hong Kong in accordance with Article 160 of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China (e.g. section 1 of Schedule 3, section 2 of Schedule 4, section 1 of Schedule 5).

(b) Reference to the "British Commonwealth"

Where a provision provides that a corporation shall have power to invest moneys on deposit in any bank in the Colony or elsewhere within the British Commonwealth or in any Hong Kong or British Commonwealth government bonds, the reference to the "British Commonwealth" is removed to avoid the implication that the concerned provisions confer a privilege on the United Kingdom or other Commonwealth countries for the purposes of section 2A(2)(b) of the Interpretation and General Clauses Ordinance (Cap. 1) and the implication that Hong Kong continues to be a member of the British Commonwealth (e.g. section 2(b) of Schedule 14, section 2 of Schedule 15, section 2 of Schedule 16).

(c) 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 (section 15 of Schedule 22 falls within this category).

6. The adaptation of section 9(1)(a) of the Education Ordinance (Cap. 279) (which provides, inter-alia, exemption to schools entirely maintained and controlled by the Crown in right of Her Majesty's Government in the United Kingdom and their owners, managers, teachers and pupils from Cap. 279) is deferred due to complicated legal issues behind and will require further review. The adaptation of this provision, together with some other provisions that are deferred from time to time under the Adaptation Programme, will be submitted at a later time in the form of an 'Omnibus' bill.

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 -

Publication in the Gazette	9 July 1999
First Reading and commencement of Second Reading debate	14 July 1999
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 the 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 7 July 1999.

ENQUIRIES

14. For enquiries, please contact Miss Jenny Choi, Assistant Secretary for Education and Manpower at telephone number 2810 2542.