

LEGISLATIVE COUNCIL BRIEF

- Co-operative Societies Ordinance
(Chapter 33)
- Gas Safety Ordinance
(Chapter 51)
- Credit Unions Ordinance
(Chapter 119)
- Oil (Conservation and Control) Ordinance
(Chapter 264)
- Electricity Ordinance
(Chapter 406)
- Mercantile Marine Assistance Fund Ordinance
(Chapter 1001)
- The Hong Kong and China Gas Company (Transfer of Incorporation)
Ordinance (Chapter 1022)
- Hongkong and Kowloon Wharf and Godown Company Limited (By-Laws)
Ordinance (Chapter 1023)
- North Point Wharves Limited Ordinance
(Chapter 1038)
- J.E. Joseph Trust Fund Ordinance
(Chapter 1067)
- Kadoorie Agricultural Aid Loan Fund Ordinance
(Chapter 1080)
- Kadoorie Farm and Botanic Garden Corporation Ordinance
(Chapter 1156)

ADAPTATION OF LAWS (NO. 34) 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. 34) Bill 1999 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.”

3. 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.”

4. On 23 February 1997, the Standing Committee of the National People’s Congress (NPCSC) published a decision which set out a number of principles for interpreting the laws which were adopted by the NPCSC to continue to remain in force as laws of the Hong Kong Special Administrative Region (HKSAR). These principles were included in the Hong Kong Reunification Ordinance and were subsequently incorporated as section 2A and Schedule 8 of the Interpretation and General Clauses Ordinance (Cap. 1).

5. Despite the guiding principles under the Interpretation and General Clauses Ordinance on construing terminology inconsistent with the Basic Law and Hong Kong’s status as a Special Administrative Region of the People’s Republic of China, it is considered unacceptable to retain such terminology in our statute books after the reunification. We need to introduce the Adaptation of Laws (No.34) Bill 1999 to bring necessary amendments to the texts of the Co-operative Societies Ordinance, Gas Safety Ordinance, Credit Unions Ordinance Oil (Conservation and Control) Ordinance, Electricity

Ordinance, Mercantile Marine Assistance Fund Ordinance, The Hong Kong and China Gas Company (Transfer of Incorporation) Ordinance, Hongkong and Kowloon Wharf and Godown Company Limited (By-Laws) Ordinance, North Point Wharves Limited Ordinance, J.E. Joseph Trust Fund Ordinance, Kadoorie Agricultural Aid Loan Fund Ordinance and Kadoorie Farm and Botanic Garden Corporation Ordinance and their subsidiary legislation.

THE BILL

6. Most of the proposed amendments are merely terminological changes, e.g. references to the "Governor", "Governor in Council", "the Colony", "立法局" and "地方法院" are replaced by the "Chief Executive", "Chief Executive in Council", "Hong Kong", "立法會" and "區域法院" respectively.

7. Other amendments include -

(a) Section 14 of the Co-operative Societies Ordinance (Cap. 33)

This section deals with competing claims on crops or other agricultural produce of a registered society and ranks a prior claim of the "Crown" above the members' first charge. Such claims should only concern the SAR Government and it is proposed to replace the reference to "the Crown" by "the Government".

(b) Section 33(b) of the Co-operative Societies Ordinance (Cap. 33)

This section limits investments by a co-operative society in securities issued or guaranteed by a "Government of the Commonwealth". In order to avoid, for the purpose of section 2A(2)(b) of the Interpretation and General Clauses Ordinance, any implication that a benefit is conferred on the Commonwealth and in line with the fact that Hong Kong is no longer a member of the Commonwealth, the reference to "the Commonwealth" is proposed to be replaced by "the Government of the Hong Kong Special Administrative Region or of any other place approved by the Registrar". It is proposed that the amendment shall come into operation on the day the Bill is enacted since the amendment may alter the scope of investment allowed.

(c) Section 36(2) of the Gas Safety Ordinance (Cap. 51)

This provision relates to the liability of the "Crown" in tort for the act or omission of public officers. "Public officer" is defined in section 3 of the Interpretation and General Clauses Ordinance to mean any person holding an office of emolument under the HKSAR 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) Section 16 of the Oil (Conservation and Control) Ordinance (Cap. 264)

The reference to "Greenwich Mean Time" in this provision is adapted to "Universal Standard Time". This proposal is based on the same adaptation amendment already made to the same reference appearing in section 67 of the Interpretation and General Clauses Ordinance, which defines the expression "Hong Kong Time".

(e) Clause 3(C) of the Schedule to The Hong Kong and China Gas Company (Transfer of Incorporation) Ordinance (Cap. 1022)

This paragraph prescribes disposing of and surrendering the Company's land to the "Crown" as one of the Company's objects in its memorandum. Relying on section 6 of the Interpretation and General Clauses Ordinance, "Crown" is adapted to the "Government" and is to be construed in accordance with Article 7 of the Basic Law, which means land within the HKSAR is State property and the HKSAR Government is responsible for their management and use.

(f) By-law 12 of the Hong Kong and Kowloon Wharf and Godown Company Limited By-laws (Cap. 1023 sub. leg.)

This is a saving clause, which provides that nothing in this set of by-laws is taken to restrict, derogate from or otherwise interfere with any power or duty conferred or imposed by or under any law upon any person in the service of the "Crown". As this provision affects the right of the "Crown", the reference is adapted to the "State" in accordance with section 7 of Schedule 9 to the Interpretation and General Clauses Ordinance.

COMMENCEMENT

8. The Bill provides that, subject to Article 12 of the Hong Kong Bill of Rights, the proposed adaptations when passed into law shall take effect retrospectively, as from the date of the establishment of the Hong Kong Special Administrative Region except as stated in paragraph 7(b) before.

LEGISLATIVE TIMETABLE

9. 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

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

BINDING EFFECT OF THE LEGISLATION

11. 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

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

PUBLIC CONSULTATION

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

ENQUIRIES

14. Subject officer : Mr. Eric Johnson, Principal Assistant Secretary for Economic Services, Tel. 2810 2128, fax. 2868 4679.

Economic Services Bureau
July 1999

ADAPTATION OF LAWS (NO. 34) 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. 34) Ordinance 1999.

2. Commencement

(1) This Ordinance, except as provided in subsection (3), 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) Section 6 of Schedule 1 shall come into operation at the beginning of the day on which this Ordinance is published in the Gazette.

3. Amendment of Ordinances

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

SCHEDULE 1

[s. 3]

CO-OPERATIVE SOCIETIES ORDINANCE AND ITS
SUBSIDIARY LEGISLATION**Co-operative Societies Ordinance**

1. Section 3 of the Co-operative Societies Ordinance (Cap. 33) is amended -
 - (a) by repealing "Governor" and substituting "Chief Executive";
 - (b) by repealing "the Colony" and substituting "Hong Kong".
2. Section 7 (1) is amended by repealing "Governor in Council" and substituting "Chief Executive in Council".
3. Section 10 (3) is amended by repealing "Governor in Council" and substituting "Chief Executive in Council".
4. Section 14 is amended by repealing "Crown" and substituting "Government".
5. Section 30 (3) is amended by repealing "Governor" and substituting "Chief Executive".
6. Section 33 (b) is amended by repealing "a Government within the Commonwealth" and substituting "the Government of the Hong Kong Special Administrative Region or of any other place approved by the Registrar".

7. Section 34 (1) is amended, in the proviso, by repealing "Governor" and substituting "Chief Executive".
8. Section 38 (2) is amended by repealing "Governor" and substituting "Chief Executive".
9. Section 48 is amended by repealing "Governor" where it twice appears and substituting "Chief Executive".
10. Section 50 (1) is amended by repealing "Governor" and substituting "Chief Executive".
11. Section 51 (1) is amended by repealing "Governor in Council" and substituting "Chief Executive in Council".
12. Section 53 is amended by repealing "Governor" and substituting "Chief Executive".
13. Section 54 is amended by repealing "Governor" and substituting "Chief Executive".
14. Section 55 is amended by repealing "Governor" and substituting "Chief Executive".
15. Section 56 (1) is amended by repealing "Governor" and substituting "Chief Executive".

Co-operative Societies Rules

16. Rule 19 (1) of the Co-operative Societies Rules (Cap. 33 sub. leg.) is amended by repealing "Governor" and substituting "Chief Executive".

SCHEDULE 2

[s. 3]

GAS SAFETY ORDINANCE

1. Section 4 (2) (b), (3) and (4) of the Gas Safety Ordinance (Cap. 51) is amended by repealing "Governor" and substituting "Chief Executive".
2. Section 5 is amended by repealing "Governor" and substituting "Chief Executive".
3. Section 7 is amended by repealing "Governor" and substituting "Chief Executive".
4. Section 8 (1) and (2) is amended by repealing "Governor in Council" and substituting "Chief Executive in Council".
5. Section 12 (5) (b) is amended by repealing "皇家香港警察隊" and substituting "香港警務處".
6. Section 36 (2) is amended by repealing "Crown" and substituting "Government".

SCHEDULE 3

[s. 3]

CREDIT UNIONS ORDINANCE

1. Section 59 (2) of the Credit Unions Ordinance (Cap. 119) is amended by repealing "地方法院" and substituting "區域法院".
2. Section 62 (1) and (3) is amended by repealing "地方法院" and substituting "區域法院".
3. Section 74 is amended by repealing "Her Majesty the Queen, Her Heirs or Successors" and substituting "the Central Authorities or the Government of the Hong Kong Special Administrative Region under the Basic Law and other laws".
4. Section 82 (1) is amended by repealing "Governor" and substituting "Chief Executive".
5. Section 85 is amended by repealing "Governor in Council" and substituting "Chief Executive in Council".

SCHEDULE 4

[s. 3]

OIL (CONSERVATION AND CONTROL) ORDINANCE

1. Section 3 of the Oil (Conservation and Control) Ordinance (Cap. 264) is amended by repealing "Governor" and substituting "Chief Executive".

2. Section 5 (1) is amended by repealing "Governor in Council" and substituting "Chief Executive in Council".
3. Section 8 (1) is amended by repealing "Governor in Council" and substituting "Chief Executive in Council".
4. Section 15 is amended by repealing "Governor" where it twice appears and substituting "Chief Executive".
5. Section 16 is amended -
 - (a) by repealing "Greenwich Mean Time" and substituting "Universal Standard Time";
 - (b) by repealing "立法局" and substituting "立法會".

SCHEDULE 5

[s. 3]

ELECTRICITY ORDINANCE AND ITS SUBSIDIARY LEGISLATION

Electricity Ordinance

1. Section 1 (2) of the Electricity Ordinance (Cap. 406) is amended by repealing "Governor" and substituting "Chief Executive".
2. Section 25A(4) (b) is amended by repealing "地方法院" and substituting "區域法院".
3. Section 39 (3) is amended by repealing "立法局" and substituting "立法會".

4. Section 45 (5) is amended by repealing "立法局" and substituting "立法會".
5. Section 59 (1) and (2) is amended by repealing "Governor in Council" and substituting "Chief Executive in Council".

Electricity Supply Regulations

6. Regulation 2 (d) of the Electricity Supply Regulations (Cap. 406 sub. leg.) is amended by repealing "Governor in Council" and substituting "Chief Executive in Council".
7. Regulation 14 is amended by repealing "Governor in Council" and substituting "Chief Executive in Council".

SCHEDULE 6

[s. 3]

MERCANTILE MARINE ASSISTANCE FUND ORDINANCE AND ITS SUBSIDIARY LEGISLATION

Mercantile Marine Assistance Fund Ordinance

1. Section 3 of the Mercantile Marine Assistance Fund Ordinance (Cap. 1001) is amended -
 - (a) in subsection (1) -
 - (i) by repealing "the Colony" and substituting "Hong Kong";

- (ii) by repealing "立法局" and substituting "立法會";
- (b) in subsection (2), by repealing "the Colony" and substituting "Hong Kong".

2. Section 4 is amended -

- (a) in subsection (1), by repealing "Governor" and substituting "Chief Executive";
- (b) in subsection (2), by repealing "Governor in Council" and substituting "Chief Executive in Council".

Mercantile Marine Assistance Fund Regulations

3. Regulation 2 of the Mercantile Marine Assistance Fund Regulations (Cap. 1001 sub. leg.) is amended by repealing "the Colony" and substituting "Hong Kong".

4. Regulation 5 (a), (b) and (c) is amended by repealing "the Colony" and substituting "Hong Kong".

5. Regulation 6 is amended by repealing "the Colony" and substituting "Hong Kong".

6. Regulation 7 is amended by repealing "the Colony" and substituting "Hong Kong".

7. Regulation 9 is amended by repealing "Governor" and substituting "Chief Executive".

SCHEDULE 7

[s. 3]

THE HONG KONG AND CHINA GAS COMPANY (TRANSFER OF
INCORPORATION) ORDINANCE

1. Section 7 of The Hong Kong and China Gas Company (Transfer of Incorporation) Ordinance (Cap. 1022) is amended by repealing "Her Majesty the Queen, Her Heirs or Successors" and substituting "the Central Authorities or the Government of the Hong Kong Special Administrative Region under the Basic Law and other laws".
2. The Schedule is amended, in clause 3 (C), by repealing "Crown" and substituting "Government".

SCHEDULE 8

[s. 3]

HONGKONG AND KOWLOON WHARF AND GODOWN COMPANY LIMITED
(BY-LAWS) ORDINANCE AND ITS SUBSIDIARY LEGISLATION

**Hongkong and Kowloon Wharf and Godown Company
Limited (By-laws) Ordinance**

1. Section 3 of the Hongkong and Kowloon Wharf and Godown Company Limited (By-laws) Ordinance (Cap. 1023) is amended by repealing "Governor in Council" and substituting "Chief Executive in Council".

**Hong Kong and Kowloon Wharf and Godown
Company Limited By-laws**

2. By-law 12 of the Hong Kong and Kowloon Wharf and Godown Company Limited By-laws (Cap. 1023 sub. leg.) is amended by repealing "Crown" and substituting "State".

SCHEDULE 9 [s. 3]

NORTH POINT WHARVES LIMITED ORDINANCE

1. Section 3 (1) of the North Point Wharves Limited Ordinance (Cap. 1038) is amended by repealing "Governor in Council" and substituting "Chief Executive in Council".
2. Section 5 is amended by repealing "Her Majesty the Queen, Her Heirs or Successors" and substituting "the Central Authorities or the Government of the Hong Kong Special Administrative Region under the Basic Law and other laws".

SCHEDULE 10 [s. 3]

J. E. JOSEPH TRUST FUND ORDINANCE

1. Section 4 of the J. E. Joseph Trust Fund Ordinance (Cap. 1067) is amended by repealing "立法局" and substituting "立法會".
2. Section 6 is amended -
 - (a) in subsection (2), by repealing "Governor" and substituting "Chief Executive";

- (b) in subsection (3) -
 - (i) by repealing "Governor" and substituting "Chief Executive";
 - (ii) by repealing "立法局" where it twice appears and substituting "立法會".

3. Section 7 is amended by repealing "Governor" where it twice appears and substituting "Chief Executive".

4. Section 8 is amended by repealing "Governor" where it twice appears and substituting "Chief Executive".

SCHEDULE 11

[s. 3]

KADOORIE AGRICULTURAL AID LOAN FUND ORDINANCE

1. Section 5 of the Kadoorie Agricultural Aid Loan Fund Ordinance (Cap. 1080) is amended -

- (a) in subsection (1) (d), by repealing "Governor" and substituting "Chief Executive";
- (b) in subsection (2) -
 - (i) by repealing "Governor shall" and substituting "Chief Executive shall";
 - (ii) by repealing "Governor at his pleasure" and substituting "Chief Executive at his discretion".

2. Section 6 (1) is amended by repealing "Governor" and substituting "Chief Executive".
3. Section 9 is amended, in the proviso, by repealing "Governor" and substituting "Chief Executive".
4. Section 11 is amended, in the proviso, by repealing "Governor" and substituting "Chief Executive".
5. Section 12 is amended -
 - (a) in subsection (2), by repealing "Governor" and substituting "Chief Executive";
 - (b) in subsection (3) -
 - (i) by repealing "Governor" and substituting "Chief Executive";
 - (ii) by repealing "立法局" where it twice appears and substituting "立法會".

SCHEDULE 12

[s. 3]

KADOORIE FARM AND BOTANIC GARDEN CORPORATION ORDINANCE

1. Section 24 of the Kadoorie Farm and Botanic Garden Corporation Ordinance (Cap. 1156) is amended by repealing "Her Majesty the Queen, Her Heirs or Successors" and substituting "the Central Authorities or the Government of the Hong Kong Special Administrative Region under the Basic Law and other laws".

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 -
- | | |
|---|-------------|
| Co-operative Societies Ordinance (Cap. 33) | Schedule 1 |
| Gas Safety Ordinance (Cap. 51) | Schedule 2 |
| Credit Unions Ordinance (Cap. 119) | Schedule 3 |
| Oil (Conservation and Control) Ordinance
(Cap. 264) | Schedule 4 |
| Electricity Ordinance (Cap. 406) | Schedule 5 |
| Mercantile Marine Assistance Fund Ordinance
(Cap. 1001) | Schedule 6 |
| The Hong Kong and China Gas Company
(Transfer of Incorporation) Ordinance (Cap.
1022) | Schedule 7 |
| Hongkong and Kowloon Wharf and Godown
Company Limited (By-laws) Ordinance
(Cap. 1023) | Schedule 8 |
| North Point Wharves Limited Ordinance (Cap.
1038) | Schedule 9 |
| J. E. Joseph Trust Fund Ordinance (Cap. 1067) | Schedule 10 |
| Kadoorie Agricultural Aid Loan Fund
Ordinance (Cap. 1080) | Schedule 11 |
| Kadoorie Farm and Botanic Garden
Corporation Ordinance (Cap. 1156) | Schedule 12 |
3. The Bill also provides that the adaptations (except that referred to in clause 2 (3)) when passed into law shall take effect

retrospectively, as from the date of the establishment of the Hong Kong Special Administrative Region (clause 2 (1)).