

File Ref : CSO/ADM CR 7/3231/98

BRIEF FOR THE LEGISLATIVE COUNCIL

The Director of Administration submits the following note for Members' information :

Title of the Note

Date of Gazette

Adaptation of Laws (No. 15) Bill

18 December 1998

17 December 1998

Chief Secretary for Administration's Office
Administration Wing

BRIEF FOR THE LEGISLATIVE COUNCIL

Oaths and Declarations Ordinance (Cap. 11)
Fatal Accidents Ordinance (Cap. 22)
Maintenance Orders (Reciprocal Enforcement) Ordinance (Cap. 188)
Justices of the Peace Ordinance (Cap. 510)

ADAPTATION OF LAWS (NO. 15) BILL 1998

INTRODUCTION

At the meeting of the Executive Council on 8 December 1998, the Council ADVISED and the Chief Executive ORDERED that the Adaptation of Laws (No. 15) Bill (copy at the Annex) 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. The Standing Committee of the National People's Congress, on 23 February 1997, 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 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 (Chapter 1).

5. Despite the guiding principles under the Interpretation and General Clauses Ordinance on construing terminology inconsistent with the Basic Law and the status of Hong Kong as a Special Administrative Region of the People's Republic of China, it is considered unacceptable to retain these terminology in our Statute Book after the Reunification. We, therefore, need to introduce the Adaptation of Laws (No. 15) Bill to bring necessary textual amendments to the Oaths and Declarations Ordinance, the Fatal Accidents Ordinance, the Maintenance Orders (Reciprocal Enforcement) Ordinance and the Justices of the Peace Ordinance.

THE BILL

6. 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, in the usual case, be replaced by "the Chief Executive". Where a provision previously conferred power on "the Governor" to make subsidiary legislation, a reference to the "Chief Executive in Council" will be substituted to comply with the requirement under Article 56 of the Basic Law that the Chief Executive shall consult the Executive Council before making subordinate legislation.

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 as follows -

Publication in the Gazette	18 December 1998
First Reading and commencement of Second Reading debate	6 January 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.

ENQUIRIES

13. For enquiries on the brief, please contact Ms Rosanna Law, Assistant Director of Administration (2) on 28102576.

Administration Wing
Chief Secretary for Administration's Office
17 December

ADAPTATION OF LAWS (NO. 15) BILL 1998

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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. 15) Ordinance 1998.

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

[s. 3]

OATHS AND DECLARATIONS ORDINANCE

1. Section 22 (3B) of the Oaths and Declarations Ordinance (Cap. 11) is amended by repealing everything after "by the" and substituting

“Rules of Procedure of the Legislative Council, again take the Oath as required by those Rules of Procedure.”.

2. Schedule 1 is amended, in Parts I, II and III, by repealing “the Colony of”.

3. Schedule 3 is amended -

(a) in Part I -

- (i) by repealing “of the High Court” where it first appears;
- (ii) by repealing “Judge of the High Court” and substituting “Judge of the Court of First Instance”;
- (iii) by repealing “首席大法官” and substituting “終審法院首席法官”;
- (iv) by repealing “終審法院常任大法官” and substituting “終審法院常任法官”;
- (v) by repealing “終審法院非常任香港大法官” and substituting “終審法院非常任香港法官”;
- (vi) by repealing “終審法院其他普通法適用地區大法官” and substituting “終審法院其他普通法適用地區法官”;

(b) in Part II, by repealing “土地審裁處大法官” and substituting “土地審裁處庭長”.

SCHEDULE 2

[s. 3]

FATAL ACCIDENTS ORDINANCE

1. Section 4(5) of the Fatal Accidents Ordinance (Cap. 22) is amended by repealing “立法局” and substituting “立法會”.

SCHEDULE 3

[s. 3]

MAINTENANCE ORDERS (RECIPROCAL ENFORCEMENT) ORDINANCE

AND ITS SUBSIDIARY LEGISLATION

Maintenance Orders (Reciprocal Enforcement) Ordinance

1. Section 2(1) of the Maintenance Orders (Reciprocal Enforcement) Ordinance (Cap. 188) is amended, in the definition of “responsible authority”, by repealing “Governor” and substituting “Chief Executive”.
2. Section 3 is amended -
 - (a) in subsection (1) -
 - (i) by repealing “Governor” and substituting “Chief Executive in Council”;
 - (ii) by repealing “territory outside Hong Kong” and substituting “place other than Hong Kong”;
 - (iii) by repealing “territory” wherever it appears and substituting “place”;

- (b) in subsection (2), by repealing “territory” where it twice appears and substituting “place”.

3. Section 4 is amended -

- (a) in subsection (1), by repealing “that country” and substituting “that reciprocating country”;
- (b) in subsection (4), by repealing “Governor” wherever it appears and substituting “Chief Executive”.

4. Section 5(5) is amended by repealing “Governor” wherever it appears and substituting “Chief Executive”.

5. Section 7(2), (3) and (4) is amended by repealing “Governor” wherever it appears and substituting “Chief Executive”.

6. Section 8(2), (5) and (6) is amended by repealing “Governor” wherever it appears and substituting “Chief Executive”.

7. Section 11(2) and (3) is amended by repealing “Governor” and substituting “Chief Executive”.

8. Section 12 is amended -

- (a) in subsection (1) -
 - (i) by repealing “Governor” where it twice appears and substituting “Chief Executive”;
 - (ii) by repealing “that country” and substituting “that reciprocating country”;

- (b) in subsection (2), by repealing “Governor” and substituting “Chief Executive”.

9. Section 20 is amended -

- (a) by repealing “Governor” where it twice appears and substituting “Chief Executive in Council”;
- (b) by repealing “territory” wherever it appears and substituting “place”.

Maintenance Orders (Reciprocal Enforcement) Rules

10. Rule 8(1) of the Maintenance Orders (Reciprocal Enforcement) Rules (Cap. 188 sub. leg.) is amended by repealing “Governor” and substituting “Chief Executive”.

11. Rule 10(1) and (2) is amended by repealing “Governor” and substituting “Chief Executive”.

12. Rule 11(1) is amended by repealing “Governor” and substituting “Chief Executive”.

Maintenance Orders (Reciprocal Enforcement) (Designation of Reciprocating Countries) Order

13. Paragraph 2 of the Maintenance Orders (Reciprocal Enforcement) (Designation of Reciprocating Countries) Order (Cap. 188 sub. leg.) is amended -

- (a) in subparagraph (1), by adding “or place” after “The country”;
- (b) in subparagraph (2), by repealing “territories” and substituting “places”.

14. Paragraph 3 is amended -

- (a) in subparagraph (1) -
 - (i) by repealing “territories” and substituting “places”;
 - (ii) by repealing “territory” where it twice appears and substituting “place”;
- (b) in subparagraphs (2), (3) and (4), by repealing “territories” and substituting “places”.

15. The Schedule is amended, in the heading, by repealing “TERRITORIES” and substituting “PLACES”.

SCHEDULE 4

[s. 3]

JUSTICES OF THE PEACE ORDINANCE

1. Section 3(1) of the Justices of the Peace Ordinance (Cap. 510) is amended by repealing “Governor” where it twice appears and substituting “Chief Executive”.
2. Section 5(3) is amended by repealing “Governor” and substituting “Chief Executive”.

3. Section 6(1) is amended by repealing “Governor” wherever it appears and substituting “Chief Executive”.

4. Section 7 is amended by repealing “Governor” where it twice appears and substituting “Chief Executive”.

5. Section 8 is amended by repealing “Governor” 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 4).

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

Fatal Accidents Ordinance (Cap. 22)	Schedule 2
Justices of the Peace Ordinance (Cap. 510)	Schedule 4
Maintenance Orders (Reciprocal Enforcement) Ordinance (Cap. 188)	Schedule 3
Oaths and Declarations Ordinance (Cap. 11)	Schedule 1

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).