

LEGISLATIVE COUNCIL BRIEF

Hong Kong Examinations Authority Ordinance (Cap. 261)
Post Secondary Colleges Ordinance (Cap. 320)
Lingnan College Ordinance (Cap. 422)
The Hong Kong Institute of Education Ordinance (Cap. 444)
University of Hong Kong Ordinance (Cap. 1053)
The Hong Kong Polytechnic University Ordinance (Cap. 1075)
St. John's College Ordinance (Cap. 1089)
The Chinese University of Hong Kong Ordinance (Cap. 1109)
Hong Kong Baptist University Ordinance (Cap. 1126)
City University of Hong Kong Ordinance (Cap. 1132)
The Hong Kong University of Science and Technology Ordinance (Cap. 1141)
The Open University of Hong Kong Ordinance (Cap. 1145)

ADAPTATION OF LAWS (NO. 2) BILL 1999

INTRODUCTION

At the meeting of the Executive Council on 19 January 1999, the Council **ADVISED** and the Chief Executive **ORDERED** that the Adaptation of Laws (No.2) Bill 1999 as set out at the Annex should be introduced into the Legislative Council, to effect necessary adaptations to the above 12 Ordinances and their subsidiary legislation relating to the Hong Kong Examination Authority and tertiary institutions.

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. For example, references to “立法局” and “Colony” are replaced by “立法會” and “Hong Kong”. Provisions saving the rights of "Her Majesty the Queen, Her Heirs or Successors" are adapted, in accordance with section 21 of Schedule 8 to the Interpretation and General Clauses Ordinance (Cap. 1), as saving the rights of "the Central People's Government or the Government of the Hong Kong Special Administrative Region under the Basic Law or other laws".

5. References to “Crown” are replaced by “State” or “Government” respectively depending on the context of the particular provision -

- (a) **Section 14 of The Hong Kong Examination Authority Ordinance** - Pursuant to section 7 of Schedule 9 of the Interpretation and General Clauses Ordinance, “Crown” is adapted to “State” where it is stipulated that the Hong Kong Examination Authority is not the servant or agent of the Crown and does not enjoy any status, immunity or privilege of the Crown.

- (b) **Section 18 of The Chinese University of Hong Kong Ordinance** - Pursuant to Article 7 of the Basic Law which provides that the Government of the Hong Kong Special Administrative Region shall be responsible for the management, use, development, lease or grant of lands within the Region, the “Crown” is adapted to “Government” because that section provides for the payment of rent to the Crown in respect of land granted to the Chinese University by the Crown.

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	29 January 1999
First Reading and commencement of Second Reading debate	10 February 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. The tertiary institutions and the Hong Kong Examination Authority have all been consulted on the proposed amendments.

PUBLICITY

12. A press release will be issued on 27 January 1999.

ENQUIRIES

13. For enquiries, please contact Mr Kenneth Cheng, Assistant Secretary for Education and Manpower at telephone number 2810 2520.

Education and Manpower Bureau
January 1999

ADAPTATION OF LAWS (NO. 2) 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. 2) 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

[s. 3]

HONG KONG EXAMINATIONS AUTHORITY ORDINANCE

1. Section 3(5)(a), (6) and (7) of the Hong Kong Examinations Authority Ordinance (Cap. 261) is amended by repealing "Governor" and substituting "Chief Executive".

2. Section 7(2)(b) and (c) is amended by repealing “Governor” and substituting “Chief Executive”.
3. Section 8 is amended by repealing “Governor in Council” and substituting “Chief Executive in Council”.
4. Section 10(1), (2), (4) and (5) is amended by repealing “Governor” wherever it appears and substituting “Chief Executive”.
5. Section 11 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 13 is amended by repealing “Governor” wherever it appears and substituting “Chief Executive”.
7. Section 14 is amended by repealing “Crown” where it twice appears and substituting “State”.
8. Section 15(2)(c) is amended by repealing “皇家香港警察隊” and substituting “香港警務處”.

9. Schedule 2 is amended in paragraphs (a)(v), (b) and (c) by repealing “Governor” and substituting “Chief Executive”.

SCHEDULE 2

[s. 3]

POST SECONDARY COLLEGES ORDINANCE AND ITS SUBSIDIARY LEGISLATION

Post Secondary Colleges Ordinance

1. Section 4(j) of the Post Secondary Colleges Ordinance (Cap. 320) is amended by repealing “foreign government, foreign organization or” and substituting “government other than the Government of the Hong Kong Special Administrative Region or any organization outside Hong Kong or any”.
2. Section 6(4), (5) and (6) is amended by repealing “Governor in Council” wherever it appears 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 12(1) is amended by repealing “Governor in Council” and substituting “Chief Executive in Council”.

Post Secondary Colleges Regulations

5. Regulation 7 of the Post Secondary Colleges Regulations (Cap. 320 sub. leg.) is amended by repealing “Governor” and substituting “Chief Executive”.

SCHEDULE 3

[s. 3]

LINGNAN COLLEGE ORDINANCE

1. Section 4 of the Lingnan College Ordinance (Cap. 422) is amended by repealing “Governor” and substituting “Chief Executive”.
2. Section 7 is amended by repealing “Governor in Council” wherever it appears and substituting “Chief Executive in Council”.
3. Section 9(1)(a), (b), (c), (d) and (f), (2), (5) and (6) is amended by repealing “Governor” wherever it appears and substituting “Chief Executive”.
4. Section 13(1)(a), (c), (d) and (e), (7) and (8) is amended by repealing “Governor” wherever it appears and substituting “Chief Executive”.
5. Section 21 is amended by repealing “Governor” where it twice appears and substituting “Chief Executive”.
6. Section 22(3) is amended by repealing “Governor” and substituting “Chief Executive”.
7. Section 24 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”.

8. Section 25 is amended by repealing “Governor in Council” and substituting “Chief Executive in Council”.

SCHEDULE 4

[s. 3]

THE HONG KONG INSTITUTE OF EDUCATION ORDINANCE

1. Section 5 of The Hong Kong Institute of Education Ordinance (Cap. 444) is amended by repealing “Governor in Council” wherever it appears and substituting “Chief Executive in Council”.
2. Section 6(2) is amended by repealing “Governor” and substituting “Chief Executive”.
3. Section 8 is amended -
 - (a) in subsection (1)(c), by repealing “Governor” and substituting “Chief Executive”;
 - (b) in subsection (3), by repealing “Governor’s pleasure” and substituting “discretion of the Chief Executive”.
4. Section 9(3)(e) is amended by repealing “Governor” and substituting “Chief Executive”.

5. Section 16(1) is amended by repealing “Governor” where it twice appears and substituting “Chief Executive”.
6. Section 17(2) is amended by repealing “Governor” and substituting “Chief Executive”.
7. Section 20(3) is amended by repealing “立法局” wherever it appears and substituting “立法會”.
8. Section 24 is amended by repealing “Governor in Council” and substituting “Chief Executive in Council”.

SCHEDULE 5

[s. 3]

UNIVERSITY OF HONG KONG ORDINANCE

1. Section 3 of the University of Hong Kong Ordinance (Cap. 1053) is repealed.
2. Section 5(1)(a) is amended by repealing “, and if made according to English law to be”.
3. Section 12(3) is amended -
 - (a) by repealing “Governor” where it first and secondly appears and substituting “Chief Executive”;
 - (b) by repealing “Acting Governor or the Governor’s Deputy” and substituting “person for the time being assuming the duties of the Chief Executive according to the provisions of Article 53 of the Basic Law”.

4. Section 16 is amended by repealing “Her Majesty the Queen, Her Heirs or Successors” and substituting “the Central People’s Government or the Government of the Hong Kong Special Administrative Region under the Basic Law or other laws”.

5. Statute XV of the Statutes of the University of Hong Kong in the Schedule is amended, in paragraph 1(d)(i), by repealing “立法局” and substituting “立法會”.

SCHEDULE 6

[s. 3]

THE HONG KONG POLYTECHNIC UNIVERSITY ORDINANCE

1. Section 3A of The Hong Kong Polytechnic University Ordinance (Cap. 1075) is amended -

(a) in subsection (2) -

(i) by repealing “Governor” where it first appears and substituting “Chief Executive”;

(ii) by repealing “Acting Governor or the Deputy to the Governor” and substituting “person for the time being assuming the duties of the Chief Executive according to the provisions of Article 53 of the Basic Law”;

(b) in subsection (3), by repealing “Governor” and substituting “Chief Executive”.

2. Section 10(1)(d) and (e), (2), (3), (4) and (5) is amended by repealing “Governor” and substituting “Chief Executive”.

3. Section 13 is amended by repealing “Governor” wherever it appears and substituting “Chief Executive”.

4. Section 19 is amended by repealing “Her Majesty the Queen, Her Heirs or Successors” and substituting “the Central People’s Government or the Government of the Hong Kong Special Administrative Region under the Basic Law or other laws”.

SCHEDULE 7

[s. 3]

ST. JOHN’S COLLEGE ORDINANCE

1. Section 3 of the St. John’s College Ordinance (Cap. 1089) is amended by repealing “the Colony” and substituting “Hong Kong”.

2. Section 11 is amended by repealing “Governor in Council” where it twice appears and substituting “Chief Executive in Council”.

3. Section 13 is amended by repealing “Her Majesty the Queen, Her Heirs or Successors” and substituting “the Central People’s Government or the Government of the Hong Kong Special Administrative Region under the Basic Law or other laws”.

SCHEDULE 8

[s. 3]

THE CHINESE UNIVERSITY OF HONG KONG ORDINANCE

1. Section 5(3) of The Chinese University of Hong Kong Ordinance (Cap. 1109) is amended by repealing “Governor” and substituting “Chief Executive”.
2. Section 18 is amended by repealing “Crown” where it twice appears and substituting “Government”.
3. Section 22(4) is amended by repealing “Her Majesty the Queen, Her Heirs or Successors” and substituting “the Central People’s Government or the Government of the Hong Kong Special Administrative Region under the Basic Law or other laws”.
4. Statute 11 of the Statutes of The Chinese University of Hong Kong in Schedule 1 is amended, in paragraph 1(1), by repealing “立法局” and substituting “立法局”.

SCHEDULE 9

[s. 3]

HONG KONG BAPTIST UNIVERSITY ORDINANCE

1. Section 4(1) of the Hong Kong Baptist University Ordinance (Cap. 1126) is amended by repealing “Governor” and substituting “Chief Executive”.

2. Section 15(1)(a), (b), (c), (d) and (e), (2)(a) and (3) is amended by repealing “Governor” wherever it appears and substituting “Chief Executive”.

3. Section 31 is amended by repealing “Her Majesty the Queen, Her Heirs or Successors” and substituting “the Central People’s Government or the Government of the Hong Kong Special Administrative Region under the Basic Law or other laws”.

SCHEDULE 10

[s. 3]

CITY UNIVERSITY OF HONG KONG ORDINANCE

1. Section 4(2) of the City University of Hong Kong Ordinance (Cap. 1132) is amended by repealing “Governor” and substituting “Chief Executive”.

2. Section 10 is amended -

- (a) in subsections (1)(e), (f)(ii) and (iii), (g) and (h) and (2)(a), by repealing “Governor” and substituting “Chief Executive”;
- (b) in subsection (3) -
 - (i) in paragraph (a), by repealing “during the pleasure of the Governor” and substituting “at the discretion of the Chief Executive”;
 - (ii) in paragraphs (b) and (c), by repealing “Governor” and substituting “Chief Executive”.

SCHEDULE 11

[s. 3]

THE HONG KONG UNIVERSITY OF SCIENCE AND TECHNOLOGY ORDINANCE
AND RELATED ORDINANCE

**The Hong Kong University of Science and
Technology Ordinance**

1. Section 6(2) of The Hong Kong University of Science and Technology Ordinance (Cap. 1141) is amended -

- (a) by repealing “Governor” where it first and secondly appears and substituting “Chief Executive”;
- (b) by repealing “Acting Governor or the Governor’s Deputy” and substituting “person for the time being assuming the duties of the Chief Executive according to the provisions of Article 53 of the Basic Law”.

2. Section 9 is amended -

- (a) in subsection (1)(e), by repealing “Governor” and substituting “Chief Executive”;
- (b) in subsection (3)(a), by repealing “during the pleasure of the Governor” and substituting “at the discretion of the Chief Executive”.

**The Hong Kong University of Science and Technology
(Amendment) Ordinance 1995**

3. Section 9 of The Hong Kong University of Science and Technology (Amendment) Ordinance 1995 (27 of 1995) is amended by repealing “Her Majesty the Queen, Her Heirs or Successors” and substituting “the

Central People's Government or the Government of the Hong Kong Special Administrative Region under the Basic Law or other laws".

SCHEDULE 12

[s. 3]

THE OPEN UNIVERSITY OF HONG KONG ORDINANCE

1. Section 6(2) of The Open University of Hong Kong Ordinance (Cap. 1145) is amended by repealing "Governor" and substituting "Chief Executive".
2. Section 8 is amended -
 - (a) in subsections (1)(d) and (f) and (2), by repealing "Governor" wherever it appears and substituting "Chief Executive";
 - (b) In subsection (3), by repealing "Governor's pleasure" and substituting "discretion of the Chief Executive";
 - (c) in subsection (4)(a) and (b), by repealing "Governor" and substituting "Chief Executive".

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 -

Hong Kong Examinations Authority Ordinance (Cap. 261)	Schedule 1
Post Secondary Colleges Ordinance (Cap. 320)	Schedule 2

Lingnan College Ordinance (Cap. 422)	Schedule 3
The Hong Kong Institute of Education Ordinance (Cap. 444)	Schedule 4
University of Hong Kong Ordinance (Cap. 1053)	Schedule 5
The Hong Kong Polytechnic University Ordinance (Cap. 1075)	Schedule 6
St. John's College Ordinance (Cap. 1089)	Schedule 7
The Chinese University of Hong Kong Ordinance (Cap. 1109)	Schedule 8
Hong Kong Baptist University Ordinance (Cap. 1126)	Schedule 9
City University of Hong Kong Ordinance (Cap. 1132)	Schedule 10
The Hong Kong University of Science and Technology Ordinance (Cap. 1141)	Schedule 11
The Open University of Hong Kong Ordinance (Cap. 1145)	Schedule 12

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).