

LEGISLATIVE COUNCIL BRIEF

Landlord and Tenant (Consolidation) Ordinance (Chapter 7)
Housing Ordinance (Chapter 283)
The Hong Kong Institute of Housing Ordinance (Chapter 507)
Estate Agents Ordinance (Chapter 511)
Hong Kong Housing Society Incorporation Ordinance (Chapter 1059)

ADAPTATION OF LAWS (NO. 3) 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. 3) Bill 1999, at the Annex, should be introduced into the Legislative Council, to effect necessary adaptations to the above five Ordinances and their subsidiary legislation relating to housing matters.

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.”

and 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 contravene 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 “Governor” and “立法局” are replaced by the “Chief Executive” and “立法會” respectively. 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. Amendments to sections 44(2), 47(1) and 122(3) of the Landlord and Tenant (Consolidation) Ordinance are proposed in order to remove the superior legal status of the English language as compared with the Chinese language which may be implied from the original version and to give both official languages equal status.

5. References to the “Crown” are adapted in the following manner -

(a) Landlord and Tenant (Consolidation) Ordinance

- (i) Sections 70B(3) and 119V(3) deal with the penalty for harassment caused to the tenant. References to the “Crown” in section 70B(3) and “官方” in section 119V(3) in the context of forfeiting a sum to the Crown as a penalty should be adapted to the “Government” in accordance with section 2 of Schedule 8 of the Interpretation and General Clauses Ordinance.

(ii) Reference to “Crown suits” in section 103 should be adapted to “Government suits” in accordance with section 2 of Schedule 8 of the Interpretation and General Clauses Ordinance .

(b) Housing (Traffic Contraventions) (Fixed Penalty) Bylaw

Bylaw 3 provides that the Bylaw shall apply to vehicles owned by the Crown and persons in the public service of the Crown. References to the “Crown” here will be adapted to the “State” in accordance with section 7(1) of Schedule 9 to the Interpretation and General Clauses Ordinance.

(c) Estate Agents Ordinance

Section 2 of the Schedule to this Ordinance provides that the Estate Agents Authority 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 considered that this provision intends to rebut the presumption in section 66 of the Interpretation and General Clauses Ordinance which formerly provided for the immunity of the Crown. As the “Crown” in section 66 was adapted to the “State”, it is appropriate to adopt the same approach here to reflect the legislative intention that the Authority does not enjoy any State immunity.

COMMENCEMENT

6. The Bill provides that, subject to Article 12 of the Hong Kong Bill of Rights, most of 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. Adaptations of provisions in the Estate Agents Ordinance, which come into operation after 1 July 1997, shall take effect as from the date when the respective provisions come into operation.

LEGISLATIVE TIMETABLE

7. The legislative timetable is as follows -

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 Bill is consistent with the human rights provisions of the Basic Law.

BINDING EFFECT OF THE LEGISLATION

9. The Ordinances covered by the Bill do not bind the State by way of express provisions. The amendments in the Bill do not affect the current binding effect of the existing provisions of these Ordinances.

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 29 January 1999.

ENQUIRIES

13. For enquiries on the brief, please contact Ms Eva TO, Principal Assistant Secretary for Housing at telephone 2509 0290.

Housing Bureau
Government Secretariat
January 1999

ADAPTATION OF LAWS (NO. 3) 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. 3) Ordinance 1999.

2. Commencement

(1) This Ordinance, other than Schedule 4, 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) (a) Sections 1, 2 and 4 of Schedule 4 shall be deemed to have come into operation on 8 August 1997.

(b) Section 3 of Schedule 4 shall be deemed to have come into operation on 1 January 1999.

3. Amendment of Ordinances

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

SCHEDULE 1

[s. 3]

LANDLORD AND TENANT (CONSOLIDATION) ORDINANCE

1. Section 4(1) of the Landlord and Tenant (Consolidation) Ordinance (Cap. 7) is amended by repealing “Governor” and substituting “Chief Executive in Council”.
2. Section 10(8) is amended by repealing “立法局” and substituting “立法會”.
3. Section 44(2) is amended by repealing “, together with a copy in Chinese,” and substituting “and Chinese”.
4. Section 47(1) is amended by repealing “accompanied by a translation thereof in the Chinese language” and substituting “in English and Chinese”.
5. Section 48(2) is amended by repealing “立法局” and substituting “立法會”.
6. Section 50 is amended -
 - (a) in subsection (6) (m), by repealing “立法局” and substituting “立法會”;
 - (b) in subsection (9), by repealing “Governor” and substituting “Chief Executive in Council”;
 - (c) in subsection (11), by repealing “立法局” and

substituting “立法會”.

7. Section 53A(4)(e) is amended by repealing “立法局” and substituting “立法會”.
8. Section 58(3) is amended by repealing “立法局” and substituting “立法會”.
9. Section 70B(3) is amended by repealing “Crown” and substituting “Government”.
10. Section 74B(2) is amended by repealing “立法局” and substituting “立法會”.
11. Section 101(3) is amended by repealing “立法局” and substituting “立法會”.
12. Section 103 is amended by repealing “Crown” and substituting “Government”.
13. Section 114 is amended by repealing “Governor” and substituting “Chief Executive in Council”.
14. Section 119F(4)(e) is amended by repealing “立法局” and substituting “立法會”.

15. Section 119K(3) is amended by repealing “立法局” and substituting “立法會”.
16. Section 119V(3) is amended by repealing “官方” and substituting “政府”.
17. Section 122(3) is amended -
 - (a) by repealing “, together with a copy in Chinese,”;
 - (b) by adding “in English and Chinese” after “termination” where it first appears.
18. Section 123(2) is amended by repealing “Governor in Council” and substituting “Chief Executive in Council”.
19. Section 132A is amended by repealing “立法局” and substituting “立法會”.

SCHEDULE 2

[s. 3]

HOUSING ORDINANCE AND ITS SUBSIDIARY LEGISLATION

Housing Ordinance

1. Section 3(2)(b) and (c), (3) and (5) of the Housing Ordinance (Cap. 283) is amended by repealing “Governor” and substituting “Chief Executive”.

2. Section 4(1), (2)(f) and (j) and (3) is amended by repealing “Governor” wherever it appears and substituting “Chief Executive”.
3. Section 5 is amended by repealing “Governor” and substituting “Chief Executive”.
4. Section 9 is amended by repealing “Governor” where it twice appears and substituting “Chief Executive”.
5. Section 12 is amended by repealing “Governor” where it twice appears and substituting “Chief Executive”.
6. Section 14 is amended -
 - (a) in subsections (2) and (3), by repealing “Governor” 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”.
7. Section 15 is amended -
 - (a) in subsection (1), by repealing “Governor” 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 17A(1) is amended by repealing “Governor” and substituting “Chief Executive”.

9. Section 17AA(2) is amended by repealing “Governor in Council” and substituting “Chief Executive in Council”.

10. Section 30(2) is amended by repealing “立法局” and substituting “立法會”.

Housing (Traffic Contraventions) (Fixed Penalty) Bylaw

11. Section 3 of the Housing (Traffic Contraventions) (Fixed Penalty) Bylaw (Cap. 283 sub. leg.) is amended by repealing “Crown” wherever it appears and substituting “State”.

12. Section 9(1)(a) is amended by repealing “人民”.

13. Schedule 3 is amended, in Forms 1 and 2, under the heading “繳款辦法”, in item (1)(b)(i), by repealing “人民”.

SCHEDULE 3

[s. 3]

THE HONG KONG INSTITUTE OF HOUSING ORDINANCE

1. Section 12 of The Hong Kong Institute of Housing Ordinance (Cap. 507) 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 4

[ss. 2 & 3]

ESTATE AGENTS ORDINANCE

1. Section 7(1), (3) and (4) of the Estate Agents Ordinance (Cap. 511) is amended by repealing “Governor” and substituting “Chief Executive”.
2. Section 12(5) is amended by repealing “立法局” and substituting “立法會”.
3. Section 28(4) is amended by repealing “立法局” and substituting “立法會”.
4. The Schedule is amended -
 - (a) in section 2, by repealing “Crown” where it twice appears and substituting “State”.
 - (b) in section 3(1)(a), (b), (c)(ii)(B) and (C) and (iv) and (d), (2), (3), (4) and (6)(a), by repealing “Governor” and substituting “Chief Executive”.

SCHEDULE 5

[s. 3]

HONG KONG HOUSING SOCIETY INCORPORATION ORDINANCE

1. Section 3 of the Hong Kong Housing Society Incorporation Ordinance (Cap. 1059) is amended by repealing “the Colony” and substituting “Hong Kong”.

2. Section 4 is amended -
 - (a) in paragraph (a), by repealing “the Colony of”;
 - (b) in paragraph (c), by repealing “the Colony” wherever it appears and substituting “Hong Kong”.

3. Section 11 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”.

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 5).

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

Estate Agents Ordinance (Cap. 511)	Schedule 4
Hong Kong Housing Society Incorporation Ordinance (Cap. 1059)	Schedule 5
Housing Ordinance (Cap. 283)	Schedule 2
Landlord and Tenant (Consolidation) Ordinance (Cap. 7)	Schedule 1
The Hong Kong Institute of Housing Ordinance (Cap. 507)	Schedule 3

3. The Bill also provides that, subject to Article 12 of the Hong Kong Bill of Rights, most of 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. Adaptations of provisions that come into operation after 1 July 1997 shall take effect as from the date when the relevant provisions come into operation (clause 2).