

立法會
Legislative Council

LC Paper No. LS 199/98-99

**Paper for the House Committee Meeting
of the Legislative Council
on 11 June 1999**

**Legal Service Division Report on
Adaptation of Laws (No. 15) Bill 1999**

Object of the Bill

To adapt certain Ordinances and their subsidiary legislation 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.

LegCo Brief Reference

2. ESB CR 5/3231/91 issued by the Economic Services Bureau on 26 May 1999.

Date of First Reading

3. 9 June 1999.

Comments

4. This Bill adapts seven Ordinances relating to aviation and tourism and their subsidiary legislation. The Ordinances affected by these amendments are at Annex A and a summary of the proposed amendments is set out in Annex B. Explanation to some particular amendments are set out in paragraph 8 of the LegCo brief.

5. The Ordinances relating to aviation are quite technical and one of the regulations to be adapted is the Air Navigation (Hong Kong) Order 1995 (L.N. 561 of 1995). The preparation of the Chinese text of this Order is still underway and therefore the adaptation of the Chinese text is not necessary in this Bill. Article 46 of this Order requires every public transport aircraft registered in Hong Kong to have markings of terms such as “Exits” and “Emergency Exits” in English only. The Administration takes this opportunity to amend this section so that markings are to be in Chinese as well. The commencement of these relevant sections (section 65(b), (c), (d) and (e)(ii) of Schedule 6) shall come into operation on a day to be appointed by the Director of Civil Aviation by notice in the Gazette.

6. Articles 9(3)(a)(iii) and 11(6)(a)(iii) and Regulation 13 in Schedule 15 of the Air Navigation (Hong Kong) Order 1995 provide for automatic recognition of the professional qualifications of aircraft maintenance engineers granted by the United Kingdom for the purpose of issuing a certificate of maintenance review and a certificate of release to service. It is proposed that these provisions regarding such automatic recognition should be repealed. As confirmed by the Administration, the deletion of these provisions would not affect the operation of the industry. Under other provisions of Articles 9(3) and 11(6) of the Order, UK engineers may apply for a licence from the Civil Aviation Department or have their qualifications validated or approved. The proposed repeal is to come into operation on the day when the Bill to be enacted is published in the Gazette instead of on 1 July 1997 because it would not be reasonable to render those certificates previously issued by UK engineers invalid retrospectively.

7. Apart from the different commencement dates for the provisions as mentioned in paragraphs 5 and 6 above, the Bill, if enacted, will take retrospective effect from 1 July 1997 to ensure that there is consistency in the interpretation of all laws on and after 1 July 1997. The retrospective effect will not apply to provisions involving criminal offences or penalties.

Public Consultation

8. There has not been any public consultation on the Bill.

Consultation with the LegCo Panel

9. No consultation with any LegCo Panel on the details of the Bill has been carried out.

Conclusion

10. The Legal Service Division has sought clarifications from the Administration on some technical points. (Please see correspondences attached at Annex C). We note that some provisions relating to the military or national defence have not been adapted. The Administration has replied that these provisions will be dealt with in the Adaptation of Laws (the Garrison) Bill. Hence, there will be some other adaptations to these seven Ordinances. Subject to Members' views, Second Reading debate of the Bill may be resumed.

Encls.

Prepared by

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Legislative Council Secretariat
8 June 1999

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List of Ordinances affected by the Adaptation of Laws (No. 15) Bill 1999

1. Hotel Proprietors Ordinance (Cap. 158)
2. Civil Aviation (Births, Deaths and Missing Persons) Ordinance (Cap. 173)
3. Hong Kong Tourist Association Ordinance (Cap. 302)
4. Civil Aviation (Aircraft Noise) Ordinance and its subsidiary legislation (Cap. 312)
5. Dangerous Goods (Consignment by Air) (Safety) Ordinance and its subsidiary legislation (Cap. 384)
6. Civil Aviation Ordinance and its subsidiary legislation (Cap. 448)
7. Airport Authority Ordinance (Cap. 483)

Adaptation of Laws (No. 15) Bill 1999

Summary of the proposed amendments

(a) Amendments on terminological changes

Original Terms	Proposed Amendments
the Colony	Hong Kong
Governor	Chief Executive
Governor in Council	Chief Executive in Council
立法局	立法會
Crown ¹	State
Her Majesty by Order in Council ²	the Central People's Government
Government of Hong Kong and the Government of the United Kingdom ³	Government of the Hong Kong Special Administrative Region and the Central People's Government
Greenwich Mean Time ⁴	Co-ordinated Universal Time
country or territory	country, territory or place
Her Majesty's Government in the United Kingdom ⁵	the Central People's Government or the Government of the Hong Kong Special Administrative Region

(b) Deletions

1. In Schedule 6, section 11(b), the definition of "the Board of Trade" in Air Transport (Licensing of Air Services) Regulations meaning " the Board of Trade of the United Kingdom" is deleted.

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2. Schedule 6, section 12 deletes paragraphs (a) and (b) of Regulation 3 of the

above-mentioned Regulation. Please refer to paragraph 8(d) of the LegCo brief for explanation.

Notes:

- 1 Schedule 4, section 3(b) amends section 9(4) of the Civil Aviation (Aircraft Noise) Ordinance (Cap. 312). This section enables regulations made under the Ordinance to apply to aircraft in the service of the “Crown”. According to paragraph 8(b) of the LegCo brief, the Administration explains that under section 7 of Schedule 9 to the Interpretation and General Clauses Ordinance (Cap. 1), a reference to the “Crown” shall be construed as a reference to the “State” in a provision dealing with the scope of application of an Ordinance. The emission of noise from State aircraft will therefore be governed by this Ordinance.
- 2 Schedule 6, section 7 amends section 10(4) of the Civil Aviation Ordinance (Cap. 448). This section exempts aircraft from seizure on patents claim. Before adaptation, the section applies to aircraft as specified by Her Majesty by Order in Council. After adaptation, “The Central People’s Government” is empowered to make such specification.
- 3 Schedule 6, section 11 amends the definition of “air services agreements” in the Air Transport (Licensing of Air Services) Regulations. In the definition, “air services agreements” includes “such agreements between the Government of Hong Kong and the Government of the United Kingdom”. The Bill proposes to substitute these words with agreements between “the Government of the Hong Kong Special Administrative Region and the Central People’s Government”.
- 4 According to the Administration, this adaptation is necessary because “Co-ordinated Universal Time” is used by the International Civil Aviation Organisation.
- 5 Schedule 6, section 33(b) amends Article 3(1)(c) of the Air Navigation (Hong Kong) Order 1995 (L.N. 561 of 1995) which concerns signing of agreement with another country to provide for rights of aircraft registered in that country to fly in or over Hong Kong. The HKSAR Government may negotiate and conclude new air service agreements. Accordingly, references to both the Central People’s Government and the HKSAR Government are necessary.

Annex C

ESB CR 5/3231/91
LS/B/88/98-99
2869 9209
2877 5029

By Fax No. 28684679

Mr. Howard Lee
Principal Assistant Secretary
Economic Services Bureau
2/F Main and East Wings
Central Government Office
Hong Kong

1 June 1999

Dear Mr. Lee,

Adaptation of Laws (No. 15) Bill 1999

I am scrutinizing the above Bill with a view to advising Members. I should be grateful if you could clarify the following points on Schedule 6 to the Bill, i.e. - Civil Aviation Ordinance (Cap. 448) and its subsidiary legislation.

- (a) In section 2A(3)(b), (4) and (8) the term “the Secretary of State ” has not been adapted. Also, in section 2A(4), the term “the Governor in Council” still appears.
- (b) Section 13(1) reads: “Nothing in this Ordinance shall apply to aircraft belonging to or exclusively employed for the time being in the service of Her Majesty.” Will the Administration adapt this section?
- (c) For the Air Navigation (Hong Kong) Order 1995 (L.N. 561 of 1995), it is still not yet inserted into the Loose-leaf of the Laws of Hong Kong and there is no Chinese version thereof. Adaptation in respect of the Chinese text is therefore not necessary in this exercise. When will there be a Chinese text of this Order?
- (d) In section 87, should the reference be Article 86(1)(e)(i) instead of just Article 86(1)(i)?
- (e) Section 90 of the Bill amends Article 93 of the Order. The heading of this Article reads as “Application of Order to British-controlled aircraft not registered in Hong Kong”. Is this Article still applicable and that the Chief Executive can apply this Order to British-controlled aircraft? Furthermore, I note that in Article 92, there is the mentioning of “Commonwealth citizens or British protected persons” (which is also found in Article 3(3)). In Article 94, it states that this Order shall apply to the Crown and visiting forces. Both Articles have not been adapted. Does it mean that this Order still apply to aircraft in the service of Her Majesty after 1 July 1997?
- (f) Article 96 states that there can be an appeal to Supreme Court. Is there any need for adaptation of the terms “Supreme Court” and “High Court of Justice”?
- (g) Why is the Hong Kong Air Navigation (Fees) Regulations still found in the Revised Edition of the Laws of Hong Kong (App. I, p. N1) and not in the Loose-leaf of the Laws of Hong Kong? Is there a Chinese text thereof?

I shall be grateful if you can let me have a reply by 7 June 1999 to facilitate

my preparation of a report to the House Committee.

Yours sincerely,

(Anita Ho)
Assistant Legal Adviser

c.c. Dept. of Justice (Attn: Miss. Betty Cheung, SGC)
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第1欄 項	第2欄 成文法則	第3欄 修訂
17.	(Air Navigation (Hong Kong) Order 1995) (1995年第561號 法律公告)	<p>(a) 在第4(3)條中，廢除(a)、(b)、(c)及(d)段而代以——</p> <p>"(a) the Central People's Government or the Government of the Hong Kong Special Administrative Region;</p> <p>(b) Chinese citizens;</p> <p>(c) permanent residents of the Hong Kong Special Administrative Region;</p> <p>(d) bodies—</p> <p>(i) incorporated in Hong Kong or other parts of the People's Republic of China or incorporated under the law of Hong Kong; and</p> <p>(ii) having their principal place of business in Hong Kong or in other parts of the People's Republic of China."</p> <p>(b) 在第92條中——</p> <p>(i) 在第(1)(d)段中，廢除"Commonwealth citizens or British protected persons"而代以"permanent residents of the Hong Kong Special Administrative Region or Chinese citizens";</p> <p>(ii) 廢除第(2)段。</p> <p>(c) 在第98(1)條中，廢除"British national"及"The Commonwealth"的定義。</p>

附表2 [第2(2)條]

對《入境條例》(第115章)的修訂

第1欄 項	第2欄 條文	第3欄 修訂
1.	第1A部	<p>(a) 在標題中，在"香港居留權"之後加入"及香港入境權"。</p> <p>(b) 在第2A條之後加入——</p> <p>"2AAA. 前永久性居民的 香港入境權</p> <p>(1) 除第(2)及(3)款另有規定外，任何人——</p> <p>(a) 如在緊接1997年7月1日前根據當時有效的本條例是香港永久性居民，但並沒有在</p>

Column 1 Item	Column 2 Enactment	Column 3 Amendment
17.	Air Navigation (Hong Kong) Order 1995 (L.N. 561 of 1995)	<p>(a) In Article 4(3), repeal paragraphs (a), (b), (c) and (d) and substitute—</p> <p>"(a) the Central People's Government or the Government of the Hong Kong Special Administrative Region;</p> <p>(b) Chinese citizens;</p> <p>(c) permanent residents of the Hong Kong Special Administrative Region;</p> <p>(d) bodies—</p> <p>(i) incorporated in Hong Kong or other parts of the People's Republic of China or incorporated under the law of Hong Kong; and</p> <p>(ii) having their principal place of business in Hong Kong or in other parts of the People's Republic of China."</p> <p>(b) In Article 92—</p> <p>(i) in paragraph (1)(d), repeal "Commonwealth citizens or British protected persons" and substitute "permanent residents of the Hong Kong Special Administrative Region or Chinese citizens";</p> <p>(ii) repeal paragraph (2).</p> <p>(c) In Article 98(1), repeal the definitions of "British national" and "The Commonwealth".</p>

SCHEDULE 2

[s. 2(2)]

AMENDMENT TO THE IMMIGRATION ORDINANCE (CAP. 115)

Column 1 Item	Column 2 Provision	Column 3 Amendment
1.	Part 1A	<p>(a) In the heading, add "AND RIGHT TO LAND IN HONG KONG" after "HONG KONG".</p> <p>(b) Add after section 2A—</p> <p>"2AAA. Right to land in Hong Kong for former permanent residents</p> <p>(1) Subject to subsections (2) and (3), any person who—</p> <p>(a) immediately before 1 July 1997 was a Hong Kong permanent resident under this Ordinance as then in force but did not become a permanent</p>

項	成文法則	修訂
272.	《遊戲機中心條例》 (第435章)	(a) 在第12(2)、13(8)及14(1)條中，廢除所有“地方法院”而代以“區域法院”。 (b) 在第13(5)及(7)條中，廢除“高等法院”而代以“原訟法庭”。 (c) 在第15條中，廢除所有“上訴法院”而代以“上訴法庭”。
273.	《遊戲機中心(上訴委員會)規例》(第435章， 附屬法例)	在附表的表格1中，廢除“最高法院”而代以“高等法院”。
274.	《污水隧道(法定地役權)條例》(第438章)	在第12(1)(b)條中，廢除“最高法院”而代以“高等法院”。
275.	《立法會行政管理委員會條例》(第443章)	在第22(1)條中，廢除“高等法院”而代以“原訟法庭”。
276.	《集成電路的布圖設計(保護)條例》(第445章)	在第2(1)條“法院”的定義中，廢除“高等法院”而代以“原訟法庭”。
277.	《土地排水條例》 (第446章)	在第28(8)、32(3)、33(1)及(4)以及41(3)及(4)條中，廢除所有“高等法院”而代以“原訟法庭”。
278.	《床位寓所條例》 (第447章)	(a) 在第7(1)、(3)及(5)、23(1)、(3)及(5)、27(4)及(9)以及30(3)條中，廢除所有“地方法院”而代以“區域法院”。 (b) 在第28(5)及(10)條中，廢除“高等法院”而代以“原訟法庭”。 (c) 在第29(1)、(3)、(4)及(5)條中，廢除所有“上訴法院”而代以“上訴法庭”。
279.	《香港民航(意外調查)規例》(第448章，附屬法例)	(a) 在第14(8)及18(7)條中，廢除所有“最高法院”而代以“高等法院”。 (b) 在第17(2)(a)條中，廢除“地方法院”而代以“區域法院”。
280.	《1995年飛航(香港)令》 (1995年第561號法律公告)	在第96條中—— (a) 在標題中，廢除“Supreme Court”而代以“High Court”； (b) 在第(1)款中，廢除“High Court of Justice”而代以“Court of First Instance”。
281.	《機動遊戲機(安全)條例》 (第449章)	在第29(3)及30(3)條中，廢除“地方法院”而代以“區域法院”。
282.	《酒精式外煙實賣條例》 (第451章)	在第12(8)、13、43(1)、44(14)、55、59及62(3)條中，廢除所有“高等法院”而代以“原訟法庭”。
283.	《新界土地(豁免)條例》 (第452章)	在第6及12條中—— (a) 廢除所有“高等法院”而代以“原訟法庭”； (b) 廢除“地方法院”而代以“區域法院”。

Item	Enactment	Amendment
272.	Amusement Game Centres Ordinance (Cap. 435)	(a) In sections 12(2), 13(8) and 14(1), repeal “地方法院” wherever it appears and substitute “區域法院”. (b) In section 13(5) and (7), repeal “High Court” and substitute “Court of First Instance”. (c) In section 15, repeal “上訴法院” wherever it appears and substitute “上訴法庭”.
273.	Amusement Game Centres (Appeal Board) Regulation (Cap. 435 sub. leg.)	In the Schedule, in Form 1, repeal “Supreme Court” and substitute “High Court”.
274.	Sewage Tunnels (Statutory Easements) Ordinance (Cap. 438)	In section 12(1)(b), repeal “Supreme Court” and substitute “High Court”.
275.	The Legislative Council Commission Ordinance (Cap. 443)	In section 22(1), repeal “High Court” and substitute “Court of First Instance”.
276.	Layout-design (Topography) of Integrated Circuits Ordinance (Cap. 445)	In section 2(1), in the definition of “court”, repeal “High Court of Justice” and substitute “Court of First Instance”.
277.	Land Drainage Ordinance (Cap. 446)	In sections 28(8), 32(3), 33(1) and (4) and 41(3) and (4), repeal “High Court” wherever it appears and substitute “Court of First Instance”.
278.	Bedspace Apartments Ordinance (Cap. 447)	(a) In sections 7(1), (3) and (5), 23(1), (3) and (5), 27(4) and (9) and 30(3), repeal “地方法院” wherever it appears and substitute “區域法院”. (b) In section 28(5) and (10), repeal “High Court” and substitute “Court of First Instance”. (c) In section 29(1), (3), (4) and (5), repeal “上訴法院” wherever it appears and substitute “上訴法庭”.
279.	Hong Kong Civil Aviation (Investigation of Accidents) Regulations (Cap. 448 sub. leg.)	(a) In regulations 14(8) and 18(7), repeal “Supreme Court” wherever it appears and substitute “High Court”. (b) In regulation 17(2)(a), repeal “地方法院” and substitute “區域法院”.
280.	Air Navigation (Hong Kong) Order 1995 (L.N. 561 of 1995)	In Article 96— (a) in the heading, repeal “Supreme Court” and substitute “High Court”; (b) in paragraph (1), repeal “High Court of Justice” and substitute “Court of First Instance”.
281.	Amusement RiJes (Safety) Ordinance (Cap. 449)	In sections 29(3) and 30(3), repeal “地方法院” and substitute “區域法院”.
282.	Leveraged Foreign Exchange Trading Ordinance (Cap. 451)	In sections 12(8), 13, 43(1), 44(14), 55, 59 and 62(3), repeal “High Court” wherever it appears and substitute “Court of First Instance”.
283.	New Territories Land (Exemption) Ordinance (Cap. 452)	In sections 6 and 12— (a) repeal “High Court” wherever it appears and substitute “Court of First Instance”. (b) repeal “地方法院” and substitute “區域法院”.