

**Extract of minutes of meeting of
Constitutional Affairs Panel on 21 September 1998**

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III. Adaptation of laws

Timetable for Adaptation of Laws Programme

(LC Paper Nos. CB(2)298/98-99(01))

3. The Law Draftsman said that the Adaptation of Laws Programme was essentially a programme to amend all the references in the laws which were inconsistent with the Basic Law or with the status of Hong Kong as a Special Administrative Region (HKSAR) of the People's Republic of China (PRC). Although the Hong Kong Reunification Bill, which was passed by the Provisional Legislative Council (PLC) on 1 July 1997, set out how the most important references such as "Crown" and "Governor" were to be construed after 1 July 1997, it did not actually change the words in the Ordinances. The PLC had also enacted six Adaptation of Laws Ordinances which dealt with subjects essential to the operation of the HKSAR. The next step was to deal with the adaptation of non-essential items on an ordinance by ordinance basis. To complete the exercise, the Administration had grouped the ordinances of similar nature into one single bill. A total of 638 Ordinances which required adaptation were divided into 54 Adaptation of Laws Bills. The timetable of adaptation of bills to be introduced into LegCo was set out in the paper but the actual number of bills and their order of introduction might be adjusted as and when necessary. The Law Draftsman assured members that about 95% of the adaptation of laws involved merely technical amendments.

4. Miss Margaret NG said that the Administration and the legal profession might have different views as to whether an amendment was technical in nature or amounted to a change in policy. She urged the Administration to consult the legal profession on all adaptation of laws bills. She further questioned the delay in completing the adaptation of laws exercise, given that the matter had been dealt with well before the change of sovereignty by the Sino-British Joint Liaison Group and that funding had been approved by the Finance Committee of the former Legislative Council for the Administration to expedite action in this respect.

5. The Law Draftsman explained that the adaptation of laws involving some 600 ordinances was a colossal exercise. The exercise had gone through different stages with each serving a different purpose. Prior to the handover, the Administration had prepared papers on all the references in existing laws which required to be amended for the discussion of the Sino-British Joint Liaison Group. However, detailed drafting of

adaptation bills had not been undertaken at the time. During the PLC session, as the PLC should only enact laws which were essential for the normal operation of the HKSAR, only six adaptation of laws bills including the Adaptation of Laws (Interpretative Provisions) Bill and the Adaptation of Laws (Nationality Related Matters) Bill were enacted. The next stage of the exercise was to introduce specific amendments to the remaining ordinances. As a lot of amendments had been introduced to these ordinances in the past few years, it was necessary to scrutinize afresh the ordinances section by section at this stage. He assured members that the legal profession would be consulted and that the Administration would not use the adaptation exercise as an instrument to implement policy changes. Any textual amendments which were considered to be controversial would be highlighted in the LegCo Brief when the bill was introduced into the Council.

6. Regarding the review of ordinances binding on the Government but not on relevant PRC organs which arose in the context of the controversial Adaptation of Laws (Interpretative Provisions) Ordinance and which was recently discussed by the Panel on Administration of Justice and Legal Services, Miss Margaret NG urged the Administration to enhance co-ordination among policy bureaux and to advise on which policy bureau should be responsible for coordinating and collating the review.

7. The Chairman remarked that the Panel on Administration of Justice and Legal Services should be a more appropriate forum to discuss Miss NG's concern and issues relating to the Adaptation of Laws programme.

Adaptation of the Legislative Council (Powers and Privileges) Ordinance, the Legislative Council Commission Ordinance and the Private Bills Ordinance

(LC Paper CB(2)285/98-99(02))

8. The Law Draftsman said that many of the changes in the three Ordinances were basically housekeeping amendments. However, a few issues were legally more complex in nature and there were three possible approaches to achieve adaptation-

- (a) to retain the existing provision;
- (b) to amend the provision in line with the Basic Law; or
- (c) to repeal the provision and rely on the protection conferred by the Basic Law.

The Law Draftsman said that the Administration had yet to decide on the approach to be adopted and would like to seek members' view on the subject.

9. On (c) above, Miss Margaret NG commented that it would not be prudent to repeal an existing provision which offered greater degree of certainty and to replace it

by one which had not been tested in court. She opined that in the context of the adaptation of laws exercise, this principle should apply to ordinances across the board and not just the three Ordinances in question, given that the Basic Law only set out the broad policy principle and any amendment which appeared to be technical in nature might have policy implications. Some members expressed similar views and agreed that to be in line with the spirit of the Basic Law, provisions of laws currently in force should be maintained except for any that contravened the Basic Law.

10. In response to members, the Law Draftsman confirmed that the three Ordinances were not in breach of the Basic Law. He further said that while he concurred with members' view at large, he was concerned that some of the adaptations might not be so straight forward. For example, although both Article 78 of the Basic Law and section 5 of the Legislative Council (Powers and Privileges) Ordinance dealt with protection to Members from arrest, they were written differently and might therefore have different legal implications. Article 78 of the Basic Law stated that Members shall not be subjected to arrest when attending or on their way to a meeting of the Council. Section 5 of the Ordinance contained more elaborate provisions which stated that Members shall not be liable to arrest for any civil debt whilst going to, attending at or returning from a sitting of the Council or a committee, and for any criminal offence whilst attending at a sitting of the Council or a committee. The Law Draftsman said that the Administration had yet to decide on the approach for adaptation and would welcome members' comments.

11. The Chairman pointed out that the crux of the problem appeared to be whether an existing provision that was more specific than the one stipulated in the Basic Law would constitute a contravention of the Basic Law. He was of the view that while the Basic Law provided the direction for specific matters, the details of implementation should be supplemented by the laws currently in force. The overriding principle for the adaptation exercise should be where changes were not warranted, provisions in existing Ordinances should be maintained. Members echoed the Chairman's view and agreed that the least changes should be made to the three Ordinances in question.

12. In response to Miss Emily LAU, the Legal Adviser said that it was appropriate for this Panel to discuss the adaptation of the three Ordinances which were related to the operation of the legislature. While he would need more time to consider the paper provided by the Administration, his initial view was that so long as the provisions of the three Ordinances did not contravene the Basic Law, substantial amendments to the Ordinances were not recommended.

13. Some members said that the example cited by the Law Draftsman illustrated that the Adaptation of Laws Programme, if not carefully implemented, would have the effect of taking away certain legal rights currently enjoyed by Members. Since what appeared to be a technical exercise could result in material changes, they stressed that LegCo should be fully consulted on any amendment made to the three Ordinances.

They also cautioned the Administration not to use the adaptation exercise as a means to change existing laws.

14. The Law Draftsman thanked members for their views and said that he inclined to agree with members that any existing laws which did not contravene the Basic Law should be retained. He reassured members that the adaptation exercise was meant to be a technical one and any amendments to existing laws which involved policy implications would be dealt with separately.

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Legislative Council Secretariat

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