

立法會
Legislative Council

LC Paper No. LS 160/99-00

**Paper for the House Committee Meeting
of the Legislative Council
on 16 June 2000**

**Legal Service Division Further Report on
Adaptation of Laws (No. 32) Bill 1999**

Members may recall that the Legal Service Division made a report to the House Committee on 24 September 1999 on the Bill (LC Paper No. LS255/98-99 refers). Annexes A and B of the report are attached for Members' ease of reference. Members agreed to defer decision on the Bill pending clarifications from the Administration.

2. Section 4 of Schedule 17 of the Bill proposes to repeal the reference to "English" in section 12(1)(a) of the English Schools Foundation Ordinance (Cap. 1117) which prescribes that contracts on behalf of the English Schools Foundation shall be made under the common seal of the Foundation if required by English law to be under seal. The proposed adaptation would be deemed to have come into operation on 1 July 1997. In this respect, the Administration has clarified that:

- (a) the definition of "law" in section 3 of the Interpretation and General Clauses Ordinance (Cap. 1) would apply, i.e. any law for the time being in force in, having legislative effect in, extending to, or applicable in Hong Kong;
- (b) no contract has been made under the common seal of the Foundation since 1 July 1997; and
- (c) all contracts made by the Foundation since 1 July 1997 are entered into in accordance with the advice of lawyers that they are not required by English law nor the law in force in Hong Kong to be made under seal.

3. The Administration proposes to withhold the adaptation of "Crown" where the Hong Kong Council for Academic Accreditation is expressed as not to be regarded as a servant or agent of the Crown or as enjoying any status, immunity or privilege of the Crown. This amendment is made along the same line as the amendment proposed to the Adaptation of Laws (No. 16) Bill 1999.

4. Copies of the Administration's reply and the proposed Committee Stage amendment are at Annex C.

5. According to the Administration, all affected bodies have been consulted on the Bill and agreed to the proposed amendments. Subject to Members' views, the Bill is ready for resumption of Second Reading debate.

Encl

Prepared by
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14 June 2000

List of Ordinances affected by the Adaptation of Laws (No. 32) Bill 1999

- | Item No. | Ordinances |
|-----------------|---|
| 1. | Education Ordinance (Cap. 279) and its subsidiary legislation |
| 2. | Non-local Higher and Professional Education (Regulation) Ordinance (Cap. 493) |
| 3. | Chater Masonic Scholarship Fund Ordinance (Cap. 1007) and its subsidiary legislation |
| 4. | Diocesan School and Orphanage Incorporation Ordinance (Cap. 1017) |
| 5. | Morrison Scholarships Fund Ordinance (Cap. 1037) |
| 6. | St. Joseph's College Incorporation Ordinance (Cap. 1048) |
| 7. | St. Stephen's College Incorporation Ordinance (Cap. 1049) |
| 8. | Institute of the Marist Brothers of the Schools Incorporation Ordinance (Cap. 1065) |
| 9. | Portuguese Community Education and Welfare Foundation Incorporation Ordinance (Cap. 1071) |
| 10. | Education Scholarships Fund Ordinance (Cap. 1085) |
| 11. | Hong Kong Tramways Educational Trust Fund Ordinance (Cap. 1091) |
| 12. | Munsang College Incorporation Ordinance (Cap. 1094) and its subsidiary legislation |
| 13. | Director of Education Incorporation Ordinance (Cap. 1098) |
| 14. | Council of Heep Yunn School Incorporation Ordinance (Cap. 1099) |
| 15. | St. Paul's College Council Incorporation Ordinance (Cap. 1102) |
| 16. | Council of St. Paul's Co-educational College Incorporation Ordinance (Chapter. 1104) |

17. The English Schools Foundation Ordinance (Cap. 1117)
18. The St. Stephen's Girls' College Council Incorporation Ordinance (Cap. 1121)
19. Diocesan Boys' School Committee Incorporation Ordinance (Cap. 1123)
20. Council of the Diocesan Girls' School Incorporation Ordinance (Cap. 1124)
21. Diocesan Preparatory School Council Incorporation Ordinance (Cap. 1125)
22. Hong Kong Council for Academic Accreditation Ordinance (Cap. 1150)

Adaptation of Laws (No. 32) Bill 1998
Summary of the proposed amendments

A. Amendments

| Original Terms | Proposed Amendments |
|--|--|
| the Colony | Hong Kong |
| tenements in the Colony | tenements in Hong Kong |
| Governor 總督 | Chief Executive 行政長官 |
| Governor in Council 總督會同行政局 | Chief Executive in Council 行政長官會同行政會議 |
| Her Majesty the Queen, Her Heirs or Successors 女皇陛下、其世襲繼承人或 其他繼承人 | the Central Authorities or the Government of the Hong Kong Special Administrative Region under the Basic Law and other laws 中央或香港特別行政區政府根據 《基本法》和其他法律的規定所享有 |
| Crown 官方 | State ¹ 國家 |
| pleasure 隨意 | discretion 酌情 |
| the British Commonwealth 英聯邦 | Hong Kong or elsewhere ² 香港或其他地方 |

| | |
|--|--|
| the Colony or elsewhere within the British Commonwealth 香港或英聯邦其他地方 | Hong Kong or elsewhere ² 香港或其他地方 |
| Hong Kong or British Commonwealth government bonds 香港或英聯邦的任何政府債券 | Hong Kong or other government bonds ² 香港或其他的政府債券 |
| 立法局 | 立法會 |
| 行政局 | 行政會議 |
| 統籌司 | 局長 |

B. Repeals

1. Section 7 of Schedule 10 of the Bill proposes to repeal "of the Colony" when referring to the general revenue in section 21 of the Education Scholarships Fund Ordinance (Cap. 1085).

2. Section 3 of Schedule 12 of the Bill proposes to repeal "the Colony of" when referring to Hong Kong in Rule 9(2) of the Munsang College Rules (Cap. 1094 sub. leg.).

3. Section 12(1)(a) of the English Schools Foundation Ordinance (Cap. 1117) prescribes that contracts on behalf of the Foundation shall be made under the common seal of the Foundation if required by English law to be made under seal. Section 4 of Schedule 17 of the Bill proposes to repeal the reference to "English".

Notes:

¹ Section 24 of the Hong Kong Council for Academic Accreditation Ordinance (Cap. 1150). See paragraph 7 of the Report for comments.

² Section 4(d) of the Council of Heep Yunn School Incorporation Ordinance (Cap. 1099), section 4(1)(e) of St. Paul's College Council Incorporation Ordinance (Cap. 1102), section 4(d) of the Council of St. Paul's Co-educational College Incorporation Ordinance (Cap. 1104) and section 4(d) of The St. Stephen's Girls' College Council Incorporation Ordinance (Cap. 1121) -

Under these provisions, the relevant corporations have the power to invest moneys on deposit in any bank in Hong Kong or elsewhere within the British Commonwealth, or in Hong Kong or British Commonwealth government bonds, or on mortgage of any land, buildings, messuages or tenements in the Colony, or in or on debentures, debenture-stocks, stocks, funds, shares, or securities of any corporation or company carrying on business in Hong Kong or elsewhere within the British Commonwealth. References to the British Commonwealth are repealed for the purposes of section 2A(2)(b) of Cap.1 which specifies that provisions conferring a privilege on the British Commonwealth countries shall have no further effect.

EMBCR 2/3/3231/88 IV

LS/B/120/98-99

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2147 5720

13 June 2000

Miss Bernice Wong
Legal Services Division
Legislative Council Secretariat
Legislative Council Building
8 Jackson Road, Central
Hong Kong

Dear Miss Wong,

Adaptation of Laws (No. 32) Bill 1999

Thank you for your letter of 14 September 1999 seeking clarifications on the Adaptation of Laws (No. 32) Bill 1999. Our reply is set out below -

Section 4 of Schedule 17

- (a) Yes.
- (b) & (c) Since 1 July 1997, the English Schools Foundation (ESF) has only entered into contracts which are not required by the English law nor Hong Kong law to be made under seal. All these contracts are entered into in accordance with the advice of ESF's lawyers. Our proposal of this specific provision taking retrospective effect from 1 July 1997 therefore will not cause any operational difficulties or legal problems.

Section 15 of Schedule 22

We understand that, as agreed between the Health and Welfare Bureau and the Bills Committee, the adaptation of the non-immunity provision has been taken

out in the Adaptation of Laws (No. 16) Bill 1999. We will introduce a similar committee stage amendment (CSA) to take out the proposed adaptation of the non-immunity provision in section 24 of the Hong Kong Council for Academic Accreditation Ordinance (Cap 1150). A draft CSA is attached for your reference.

Public consultation

All affected bodies have been consulted on the Bill, and agreed to the proposed amendments.

Yours sincerely,

(Miss Jenny Choi)
for Secretary for Education and Manpower

c.c. Department of Justice (Attn.: Ms Anastasia Kwong
Mr M Y Cheung)

ADAPTATION OF LAWS (NO. 32) BILL 1999

COMMITTEE STAGE

Amendments to be moved by the Secretary for
Education and Manpower

Clause

Amendment Proposed

Schedule 22

By deleting section 15.