

立法會
Legislative Council

LC Paper No. LS165/99-00

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

**Legal Service Division Further Report on
Adaptation of Laws (No. 19) Bill 1999**

At the House Committee meeting on 9 July 1999, Members agreed to defer consideration on the Bill until certain issues common to other adaptation bills have been resolved by the Bills Committees on those adaptation bills.

2. In the light of the resolution of these issues by the other Bills Committees, the Administration has now proposed in similar terms the following Committee Stage amendments (CSA) to the Bill :-

- (a) where the power to make subsidiary legislation was granted to the Governor under sections 44(1) and 45 of the Apprenticeship Ordinance (Cap. 47), to substitute "Chief Executive" (instead of "Chief Executive, or any public officer delegated with the function, duty or power under section 5(2A), may after consultation with the Executive Council" as originally proposed in the Bill) for "Governor"; and
- (b) to withhold the adaptation of "Crown" where the Protection of Wages on Insolvency Fund Board and Occupational Safety and Health Council are 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.

A copy of the proposed CSA is attached.

3. Annexes A and B of our main report (LS 230/98-99) are reproduced for ease of reference. Subject to Members' views, the Bill is ready for resumption of Second Reading debate.

Encls.

Prepared by

CHEUNG Ping-Kam, Arthur
Assistant Legal Adviser
Legislative Council Secretariat
13 June 2000

ADAPTATION OF LAWS (NO. 19) BILL 1999

COMMITTEE STAGE

Amendments to be moved by the Secretary for Education and Manpower

<u>Clause</u>	<u>Amendment Proposed</u>
Schedule 1, section 5	By deleting everything after "repealing" and substituting "'Governor" and substituting "Chief Executive".
Schedule 1, section 6	By deleting everything after "repealing" and substituting "'Governor" and substituting "Chief Executive".
Schedule 7, section 9	By deleting paragraph (a).
Schedule 8, section 7	By deleting paragraph (a).

List of Ordinance affected by the Adaptation of Laws (No. 19) Bill 1999

1. Apprenticeship Ordinance (Cap. 47)
2. Boilers and Pressure Vessels Ordinance (Cap. 56)
3. Employment of Young Persons and Children at Sea Ordinance (Cap. 58)
4. Factories and Industrial Undertakings Ordinance (Cap. 59), Quarries (Safety) Regulations (Cap. 59 sub. leg.) and Factories and Industrial Undertakings (Electricity) Regulations (Cap. 59 sub. leg.)
5. Trade Boards Ordinance (Cap. 63)
6. General Holidays Ordinance (Cap. 149)
7. Protection of Wages on Insolvency Ordinance (Cap. 380)
8. Occupational Safety and Health Council Ordinance (Cap. 398)
9. Occupational Safety and Health Ordinance (Cap. 509)

Adaptation of Laws (No. 19) Bill 1999

Summary of the proposed amendments

Original Terms	Proposed Amendments
Governor in Council 總督會同行政局	Chief Executive in Council 行政長官會同行政會議
Crown 官方	Government/State ¹ 政府/國家
the Colony	Hong Kong
Governor 總督	Chief Executive 行政長官
at the pleasure of the Governor 隨總督意願	at the discretion of the Chief Executive 由行政長官酌情
立法局	立法會

Notes:

¹ (a) **Section 3(1)(a) of the Boilers and Pressure Vessels Ordinance**

Section 3(1)(a) provides that the Ordinance does not apply to a boiler, pressure vessel or steam container belonging to the “Crown”. The reference to “Crown” is replaced by “State” in accordance with section 7 of Schedule 9 to the Interpretation and General Clauses Ordinance, which provides that where it is expressly provided in an Ordinance that the Ordinance is not binding on the Crown, that reference shall be construed as a reference to the State.

(b) **Section 2 (definition of “contractor”) of the Factories and Industrial Undertakings Ordinance**
Regulation 2 (definition of “electrical contractor”) of the Factories and Industrial Undertakings (Electricity) Regulations

References to “Crown” are replaced by “State” to avoid any possible argument that the definitions of “contractor” and “electrical contractor” do not apply to contractors who work for the Central People’s Government, the Garrison or other State bodies.

(c) **Section 14A(2) of the Factories and Industrial Undertakings Ordinance**

The reference to “Crown” relates to the liability of “Crown” in tort for the act or omission of public officers. Under section 3 of the Interpretation and General Clauses Ordinance, “public officer” means any person holding an office of emolument under the Government. As the matter is under the sole responsibility of the Government, the reference to “Crown” is replaced by “Government” in accordance with section 2 of Schedule 8 to the Interpretation and General Clauses Ordinance.

(d) **Paragraph 1 of the Schedule to the Protection of Wages on Insolvency Ordinance**
Paragraph 2 of the Schedule to the Occupational Safety and Health Council Ordinance

The provisions provide that the Protection of Wages on Insolvency Fund Board and the Occupational Safety and Health Council are not servants or agents of the “Crown” and that they do not enjoy any status, immunity or privilege of the “Crown”. It is considered that the intention of the provisions is to rebut the presumption in section 66 of the Interpretation and General Clauses Ordinance, which formerly provided that the Crown was not bound by an Ordinance unless it contained an express provision or by necessary implication that it was bound. As “Crown” in section 66 of the Interpretation and General Clauses Ordinance has already been changed to “State”, it is proposed to substitute “State” for “Crown” in the provisions, so as to reflect the intention that the Protection of Wages on Insolvency Fund Board and the Occupational Safety and Health Council do not enjoy any immunity under section 66 of the Interpretation and General Clauses Ordinance.