

立法會
Legislative Council

LC Paper No. LS 56/99-00

**Paper for the House Committee Meeting
of the Legislative Council
on 7 January 2000**

**Legal Service Division Further Report on
Adaptation of Laws (No. 8) Bill 1999**

Members may recall that the Legal Service Division made its report on the Bill (LegCo Paper No. LS 142/98-99) to the House Committee on 16 April 1999. Annexes A and B of the report are attached for Members' ease of reference. Members agreed to defer decision on the Bill until clarification has been sought on the adaptation of references to "Crown" in sections 18(2) and 19(1) of the Country Parks Ordinance (Cap. 208) ("the Ordinance").

Sections 18(2) and 19(1) of the Country Parks Ordinance (Cap. 208)

2. Section 18(2) of the Ordinance prohibits any action, claim or proceedings against the Crown or any other person to recover damages, compensation or costs for -

- (a) damage or disturbance to or loss of or in the value of any land, chattel, trade or business;
- (b) personal disturbance or inconvenience;
- (c) extinguishment, modification or restriction of rights; or
- (d) the costs of effecting or complying with any requirement,

which is authorized or imposed by or under the Ordinance or arises from any act or omission so authorized, except in pursuance of the rights to compensation provided for in section 19.

3. Under section 19(1) of the Ordinance, the owner of the land and any person owning a compensatable interest in the land shall have the right to claim compensation from the Crown to the extent of the loss, damage or cost suffered or incurred by him, where -

- (a) the Country and Marine Parks Authority ("the Authority") refuses approval for the carrying out of new development on any land; or
- (b) the occupier of land within a country park discontinues or modifies the use or ceases to proceed with or modifies the proposed use of that land in accordance with a notice given to him.

4. The Bill proposes to adapt the term "Crown" to "Government" in both sections. The proposed adaptation follows the principle laid down in Article 7 of the Basic Law, i.e., that the Government of the HKSAR shall be responsible for the management, use and development of land and natural resources within the HKSAR.

Retrospective effect on civil claims

5. The Bill, if passed, would be deemed to have come into operation on 1 July 1997 and would have retrospective effect on claims for compensation under the Ordinance. According to the Administration, there have been no civil claims or proceedings under sections 18(2) or 19(1) of the Ordinance since 1 July 1997. Even if there were claims, they would have been brought against the Government of the HKSAR in accordance with section 2 of Schedule 8 to the Interpretation and General Clauses Ordinance (Cap. 1).

Crown Proceedings Ordinance (Cap. 300)

6. Members of the House Committee have questioned whether the proposed adaptation should be considered after adaptation of the Crown Proceedings Ordinance (Cap. 300) has been made. The Bills Committee on the Adaptation of Laws (No. 9) Bill 1999 agreed at the meeting on 2 September 1999 that where an Ordinance provides for an independent mechanism to enable affected parties to initiate claims against the Crown, adaptation of those provisions could be proceeded with before adaptation of the Crown Proceedings Ordinance.

7. Under the Ordinance, any person claiming compensation under section 19 shall submit a claim in writing to the Authority. If any such person and the Authority do not agree as to the amount of compensation to be paid, either party may submit a claim to the Lands Tribunal for determination of the amount of compensation. Since the Ordinance provides for an independent mechanism to initiate claims against the Crown, the Bill could be proceeded with before adaptation of the Crown Proceedings Ordinance.

8. Copies of two letters from the Administration are at Annex C. We are satisfied that the legal and drafting aspects of the Bill are in order. Subject to Members' views, the Bill is ready for resumption of Second Reading debate.

Encl

Prepared by

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3 January 2000

**List of Ordinances and subsidiary legislation
affected by the Adaptation of Laws (No. 8) Bill 1999**

- | Item No. | Ordinances and subsidiary legislation |
|-----------------|---|
| 1. | Forests and Countryside Ordinance (Cap. 96) |
| 2. | Wild Animals Protection Ordinance (Cap. 170) |
| 3. | Country Parks Ordinance (Cap. 208) and Country Parks and Special Areas Regulations (Cap. 208 sub. leg.) |
| 4. | Oil Pollution (Land Use and requisition) Ordinance (Cap. 247) |
| 5. | Ozone Layer Protection Ordinance (Cap. 403) |
| 6. | Environment and Conservation Fund Ordinance (Cap. 450) |
| 7. | Sewage Services Ordinance (Cap. 463) |
| 8. | Dumping at Sea Ordinance (Cap. 466) |
| 9. | Marine Parks Ordinance (Cap. 476) |
| 10. | Environmental Impact Assessment Ordinance (Cap. 499) |

Adaptation of Laws (No. 8) Bill 1999

Summary of the proposed amendments

Original Terms	Proposed Amendments
Governor 總督	Chief Executive ¹ 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
Crown 官方	Government ² 政府
Lands (Miscellaneous Provisions) Ordinance (Cap. 28)	Land (Miscellaneous Provisions) Ordinance (Cap. 28) ³
the Colony	Hong Kong
立法局	立法會
司長	局長

Notes

- ¹ The amendment follows the principle laid down by the Adaptation of Laws (No. 3) Ordinance 1999 (13 of 1999) i.e. where the provision relates to the power to make subsidiary legislation, the term will not be adapted to “Chief Executive in Council” notwithstanding Article 56 of the Basic Law.
- ² Sections 18(2) and 19(1) of the Country Parks Ordinance (Cap. 208) relate to legal proceedings against the Crown and the right to claim compensation from the Crown.
- ³ The amendment seeks to correct a typographical error in Regulation 8(2) of the Country Parks and Special Areas Regulations (Cap. 208 sub. leg.).

PELB(CR) 10/32(99) Pt.E

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13 May 1999

Legal Service Division
Legislative Council Secretariat
Legislative Council Building,
8 Jackson Road,
Central, Hong Kong

(Attn.: Ms Bernice Wong
Assistant Legal Adviser)

Dear Ms Wong,

Adaptation of Laws (No.8) Bill 1999

I refer to your letter of 19 April 1999 on the above Bill. My comments on the questions raised by Members are as follows:

- (a) There have been no civil claims or proceedings under sections 18(2) and 19(1) of the Country Parks Ordinance (Cap. 208) since 1 July 1997. The proposed Bill has retrospective effect. In practice, even if there were such claims and proceedings, the Bill would not affect them since they could have been brought under the interpretation principles introduced to the Interpretation and General Clauses Ordinance (Cap. 1) by the Hong Kong Reunification Ordinance. This states that references to the "Crown" should have been construed as references to the Government of the HKSAR in accordance with section 1 of Schedule 8 to the Interpretation and General Clauses Ordinance.
- (b) Adaptation of sections 18(2) and 19(1) of the Country Parks Ordinance (Cap. 208) should not be linked with the adaptation of the Crown Proceedings Ordinance (Cap. 300). The purpose of Cap. 208 is for the designation, control and management of country parks and special areas. References to the "Crown" in Cap. 208 should be references to the "Government" in exercising its regulatory functions. It would therefore not be necessary to extend the exclusion or liability to other organs of the State. Many similar provisions in other Ordinances are being adapted in the same way.

Please let me know if you have other queries.

Yours faithfully,

(Miss Agnes Kwan)
for Secretary for Planning,
Environment and Lands

c.c. D of J (Attn.: Ms. Sherman Chan)

LM(3) in PELB(CR) 10/32(99) Pt. E

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29 December 1999

Ms Bernice Wong
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Legal Service Division
Legislative Council Secretariat
8 Jackson Road
Central

Dear Ms Wong,

Adaptation of Laws (No. 8) Bill 1999

I refer to your letters of 26 May, 4 September and 21 October 1999. My comments on the questions raised by Members are as follows:

(a) Any proceeding to which the Crown was a party could be said to be a proceeding by or against the Crown under the Crown Proceedings Ordinance (Cap. 300) in the sense that one provision or another of Cap. 300 is likely to apply to that proceeding. However, an independent mechanism has already been provided for in the Country Parks Ordinance (Cap. 208) to enable affected parties to initiate claims against the Government under the various circumstances as defined in the Ordinance. As such, adaptation of the Ordinance could proceed without waiting for the adaptation of Cap 300.

(b) Similar provisions like those in the Roads (Works, Use and Compensation) Ordinance (Cap. 370) and the Road Traffic Ordinance (Cap. 374) in the Adaptation of Laws (No. 9) Bill 1999 are being adapted along the same line. Those provisions have been discussed at the meetings of relevant Bills Committee, though the Bill itself has not been enacted so far.

(c) There have been no civil claims or proceedings under section 18(2) and 19(1) of Cap. 208 since 1 July 1997.

Please let me know if you have other queries.

Yours sincerely,

(Miss Agnes Kwan)
for Secretary for Planning, Environment
and Lands

c.c. D of J (Attn.: Ms Sherman Chan)