

LEGISLATIVE COUNCIL BRIEF

Jury Ordinance (Chapter 3)
Official Languages Ordinance (Chapter 5)
Legal Aid Ordinance (Chapter 91)
Pension Benefits (Judicial Officers) Ordinance (Chapter 401)
Judicial Officers (Tenure of Office) Ordinance (Chapter 433)
Legal Aid Services Council Ordinance (Chapter 489)

ADAPTATION OF LAWS (NO.13) BILL 1998

INTRODUCTION

At the meeting of the Executive Council on 8 December 1998, the Council ADVISED and the Chief Executive ORDERED that the Adaptation of Laws (No.13) Bill 1998 (copy at the Annex) should be introduced into the Legislative Council.

BACKGROUND AND ARGUMENT

2 Article 160 of the Basic Law states that -

“Upon the establishment of the Hong Kong Special Administrative Region, the laws previously in force in Hong Kong shall be adopted as laws of the Region except for those which the Standing Committee of the National People’s Congress declares to be in contravention of this Law. If any laws are later discovered to be in contravention of this Law, they shall be amended or cease to have force in accordance with the procedure as prescribed by this Law.”

3 Article 8 of the Basic Law states that -

“The laws previously in force in Hong Kong , that is, the common law, rules of equity, ordinances, subordinate legislation and customary law shall be maintained, except for any that contravenes this Law, and subject to any amendment by the

legislature of the Hong Kong Special Administrative Region.”

4 On 23 February 1997, the Standing Committee of the National People’s Congress (NPCSC) published a decision which set out a number of principles for interpreting the laws which were adopted by the NPCSC to continue to remain in force as laws of the HKSAR. These principles were included in the Hong Kong Reunification Ordinance and were subsequently incorporated as section 2A and Schedule 8 of the Interpretation and General Clauses Ordinance (Cap. 1).

5 Despite the guiding principles under the Interpretation and General Clauses Ordinance on construing terminology inconsistent with the Basic Law and Hong Kong’s status as a Special Administrative Region of the People’s Republic of China, it is considered unacceptable to retain such terminology in our statute books after the reunification. We need to introduce the Adaptation of Laws (No.13) Bill 1998 to bring necessary textual amendments to the Jury Ordinance, Official Languages Ordinance, Legal Aid Ordinance, Pension Benefits (Judicial Officers) Ordinance, Judicial Officers (Tenure of Office) Ordinance and Legal Aid Services Council Ordinance.

THE BILL

6 Most of the proposed amendments are merely terminological changes, e.g. references to the “Governor in Council” and “立法局” are replaced by the “Chief Executive in Council” and “立法會” respectively. Similarly, a reference to the “Governor” will, in the usual case, be replaced by the “Chief Executive”. Where a provision previously conferred power on the “Governor” to make subsidiary legislation, a reference to the “Chief Executive in Council” will be substituted to comply with the requirement under Article 56 of the Basic Law that the Chief Executive shall consult the Executive Council before making subordinate legislation.

7 Other amendments include adapting the definitions of “public service” and “service” in the Pension Benefits (Judicial Officers) Ordinance. The Ordinance currently recognises services other than service in the Government of Hong Kong, such as service in other Commonwealth governments, for the purpose of computing pension for judicial officers. This is inconsistent with the status of Hong Kong as a Special Administrative Region of the People’s Republic of China and preferential pension treatment should no longer be given to services under the United Kingdom and other Commonwealth governments and organisations for judicial officers

appointed on or after 1 July 1997. On the other hand, saving provisions have been added to both the Ordinance and the Pension Benefits (Judicial Officers) Regulations to ensure that the pension rights accrued or accruing to any person before 1 July 1997 as guaranteed by Article 93 of the Basic Law are not affected.

COMMENCEMENT

8 The Bill provides that, subject to Article 12 of the Hong Kong Bill of Rights, the amendments when passed into law shall take effect retrospectively as from the date of the establishment of the Hong Kong Special Administrative Region.

LEGISLATIVE TIMETABLE

9 The legislative timetable is as follows -

Publication in the Gazette	18 December 1998
First Reading and commencement of Second Reading debate	6 January 1999
Resumption of Second Reading debate, committee stage and Third Reading	To be notified

HUMAN RIGHTS IMPLICATIONS

10 The Department of Justice advises that the proposed Bill is consistent with the human rights provisions of the Basic Law.

BINDING EFFECT OF THE LEGISLATION

11 The amendments in the Bill do not affect the binding effect of the existing provisions of various Ordinances covered by the Bill.

FINANCIAL AND STAFFING IMPLICATIONS

12 There are no financial or staffing implications arising from the Bill.

PUBLIC CONSULTATION

13 Since the amendments are essentially straightforward adaptations, consultation with the public is not considered necessary.

PUBLIC REACTION

14 The public and the legal profession are likely to welcome the introduction of the Bill, as it sets out clearly the detailed adaptation amendments to a number of Ordinances, thus obviating the need to make cross references to the Hong Kong Reunification Ordinance and the Interpretation and General Clauses Ordinance.

ENQUIRIES

15 For enquiries on the brief, please contact Ms Rosanna Law, Assistant Director (Administration) at 2810 2576.

Administration Wing
Chief Secretary for Administration's Office
December 1998
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LEGISLATIVE COUNCIL BRIEF

The Director of Administration submits the following note for Members' information:

Title of the Note
Adaptation of Laws (No. 13) Bill 1998

Date of Gazette
18 December 1998

17 December 1998

Administration Wing
Chief Secretary for
Administration's Office

ADAPTATION OF LAWS (NO. 13) BILL 1998

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A BILL

To

Adapt certain Ordinances 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.

Enacted by the Legislative Council.

1. Short title

This Ordinance may be cited as the Adaptation of Laws (No. 13) Ordinance 1998.

2. Commencement

(1) This Ordinance shall be deemed to have come into operation on 1 July 1997.

(2) Subsection (1) shall be subject to Article 12 of the Hong Kong Bill of Rights set out in Part II of the Hong Kong Bill of Rights Ordinance (Cap. 383).

3. Amendment of Ordinances

The Ordinances specified in the Schedules are amended in the manner indicated in those Schedules.

SCHEDULE 1

[s. 3]

JURY ORDINANCE

1. Section 2 of the Jury Ordinance (Cap. 3) is amended in the definition of “法律程序” by repealing “法院” and substituting “法庭”.
2. Section 3 is amended by repealing “法院” and substituting “法庭”.
3. Section 4(1) is amended by repealing “法院” and substituting “法庭”.
4. Section 5 is amended -
 - (a) in paragraph (b) (vi) and (x), by repealing “皇家香港警隊” and substituting “香港警務處”;
 - (b) in paragraph (o) -
 - (i) in subparagraph (ia), by repealing “大法官” and substituting “法官”;
 - (ii) by adding -
“(ib) the Chief Judge;”.
5. Section 6 is amended by repealing “法院” where it twice appears and substituting “法庭”.
6. Section 15 is amended -

- (a) in subsection (1), by repealing “法院” where it twice appears and substituting “法庭”;
- (b) in subsection (2), by repealing “法院” where it secondly appears and substituting “法庭”.

- 7. Section 17(1) and (3) is amended by repealing “法院” and substituting “法庭”.
- 8. Section 21 is amended by repealing “法院” and substituting “法庭”.
- 9. Section 22 is amended by repealing “法院” wherever it appears and substituting “法庭”.
- 10. Section 23 is amended by repealing “法院” wherever it appears and substituting “法庭”.
- 11. Section 25 is amended by repealing “法院” wherever it appears and substituting “法庭”.
- 12. Section 26 is amended by repealing “法院” where it twice appears and substituting “法庭”.

13. Section 28 is amended by repealing “法院” wherever it appears and substituting “法庭”.
14. Section 30 is amended by repealing “法院” and substituting “法庭”.
15. Section 34 is amended by repealing “法院” and substituting “法庭”.
16. Section 35 is amended by repealing “法院” where it twice appears and substituting “法庭”.
17. Schedule is amended, in Form 1, by repealing “法院” and substituting “法庭”.

SCHEDULE 2

[s. 3]

OFFICIAL LANGUAGES ORDINANCE AND ITS SUBSIDIARY LEGISLATION

Official Languages Ordinance

1. Section 4(3) of the Official Languages Ordinance (Cap. 5) is amended -
 - (a) by repealing “Governor in Council” and substituting “Chief Executive in Council”;

(b) in paragraph (b), by repealing “立法局” and substituting “立法會”.

2. Section 4A(1) is amended by repealing “Governor in Council” and substituting “Chief Executive in Council”.

3. Section 4B is amended -

(a) in subsection (1), by repealing “Governor in Council” and substituting “Chief Executive in Council”;

(b) in subsection (2), by repealing everything before “that there” and substituting -

“(2) Where a text has been declared to be an authentic text of an Ordinance under subsection (1) and it appears to the Chief Executive in Council”.

4. Section 4C is amended -

(a) in subsection (1), by repealing “Governor in Council” where it twice appears and substituting “Chief Executive in Council”;

(b) in subsections (2), (3) (d) and (4), by repealing “Governor” wherever it appears and substituting “Chief Executive”.

5. Section 4D(2) is amended by repealing “立法局” and substituting “立法會”.

6. Section 5(5) is amended by adding “終審法院” before “首席法官”.

High Court Civil Procedure (Use of Language) Rules

7. Rule 2 of the High Court Civil Procedure (Use of Language) Rules (Cap. 5 sub. leg.) is amended, in the definition of “法官”, in paragraph (b), by repealing “上訴法院” and substituting “上訴法庭”.
8. Rule 7(2) is amended by repealing “上訴法院” and substituting “上訴法庭”.

SCHEDULE 3

[s. 3]

LEGAL AID ORDINANCE AND ITS SUBSIDIARY LEGISLATION

Legal Aid Ordinance

1. Section 2(3) of the Legal Aid Ordinance (Cap. 91) is amended by repealing “Governor” and substituting “Chief Executive in Council”.
2. Section 3(1) is amended by repealing “Governor” and substituting “Chief Executive”.
3. Section 7 is amended by repealing “立法局” and substituting “立法會”.

4. Section 22A is amended by repealing “立法局” and substituting “立法會”.
5. Section 26A(9) is amended by repealing “立法局” and substituting “立法會”.
6. Section 27 is amended by repealing “立法局” and substituting “立法會”.
7. Section 28(1) is amended by repealing “Governor in Council” and substituting “Chief Executive in Council”.
8. Schedule 2 is amended, in Part II, in paragraph 4, by repealing “立法局” and substituting “立法會”.

Legal Aid Regulations

9. Regulation 5(4) (b) of the Legal Aid Regulations (Cap. 91 sub. leg.) is amended by repealing “該法庭” and substituting “該法院”.

SCHEDULE 4

[s. 3]

PENSION BENEFITS (JUDICIAL OFFICERS) ORDINANCE AND ITS SUBSIDIARY LEGISLATION

Pension Benefits (Judicial Officers) Ordinance

1. Section 2(1) of the Pension Benefits (Judicial Officers) Ordinance (Cap. 401) is amended, in the definition of “public service” and “service”, by repealing paragraphs (a) to (h) and substituting -

“(a) with respect to an officer appointed on or after the date on which Schedule 4 to the Adaptation of Laws (No. 13) Ordinance 1998 (of 1998) comes into operation -

- (i) service in a civil capacity under the Government;
- (ii) any other service that the Chief Executive has determined to be public service for the purposes of this Ordinance;

(b) with respect to an officer appointed before the date on which Schedule 4 to the Adaptation of Laws (No. 13) Ordinance 1998 (of 1998) comes into operation -

- (i) service in a civil capacity under the Government or under the government of any country or territory in the British Commonwealth;
- (ii) service in a civil capacity under the East Africa High Commission, the East African Common Services Organization, the East African Posts and Telecommunications Administration, the East African Railways and Harbours Administration, the East African Community, the East African Harbours Corporation, the East African Posts and Telecommunications Corporation, the East African Railways Corporation or any of their successor authorities;
- (iii) service which was, before the date on which

Schedule 4 to the Adaptation of Laws (No. 13) Ordinance 1998

(of 1998) comes into operation, pensionable -

(A) under the Oversea Superannuation Scheme of the United Kingdom;

(B) under any Acts of the United Kingdom relating to the superannuation of teachers in the United Kingdom;

(C) under a local authority in the United Kingdom; or

(D) under the National Health Service of the United Kingdom;

(iv) any other service that the Chief Executive has determined to be public service for the purposes of this Ordinance;

(v) except for the purposes of computation of a pension or gratuity and of section 22, service in respect of which a pension could, before the date on which Schedule 4 to the Adaptation of Laws (No. 13) Ordinance 1998 (of 1998) comes into operation, have been granted under the Governors' Pensions Act 1957 of the United Kingdom (1957 c. 62 U.K.) or the Governors' Pensions Scheme 1979 or any Act of the United Kingdom or Scheme amending or replacing that Act or Scheme;

(vi) service as the holder of the office of President, Vice-President, Justice of Appeal, Registrar,

officer or servant of the Court of Appeal for Eastern Africa or the Court of Appeal for East Africa;

(vii) service in a civil capacity in the service of the Interim Commission for the West Indies;

(viii) pensionable service with the British Telecommunication and the Post Office, United Kingdom of Great Britain and Northern Ireland;”.

2. By adding -

“2A. Saving

The amendments made to this Ordinance by the Adaptation of Laws (No. 13) Ordinance 1998 (of 1998) shall not affect any right accrued or accruing to any person before the date on which those amendments come into operation.”.

3. Section 6(3) is amended by repealing “Governor” and substituting “Chief Executive”.

4. Section 7 is amended -

(a) in subsection (1) -

(i) in paragraph (e), by repealing “Article XVIA of the Letters Patent (App. I, p. A1)” and substituting “Article 89 of the Basic Law”;

(ii) in paragraphs (f) and (h), by repealing “Governor” and substituting “Chief Executive”;

(iii) in paragraph (j), by adding “終審法院” before “首席法官”;

(b) in subsection (2), by repealing “Governor” and substituting “Chief Executive”.

5. Section 8(1)(a) is amended by repealing “Governor” and substituting “Chief Executive”.

6. Section 9(6) is amended by repealing “Governor” wherever it appears and substituting “Chief Executive”.

7. Section 13 is amended by repealing “Governor in Council” and substituting “Chief Executive in Council”.

8. Section 19 is amended by repealing “Governor” and substituting “Chief Executive”.

9. Section 20(1) and (3) is amended by repealing “Governor” wherever it appears and substituting “Chief Executive”.

10. Section 20A(2) is amended by repealing “Governor” and substituting “Chief Executive”.

11. Section 21(10)(b) is amended by repealing “Governor” where it twice appears and substituting “Chief Executive”.

12. Section 23(2) is amended by repealing “Governor” and substituting “Chief Executive”.
13. Section 26(2), (6)(b) and (7) is amended by repealing “Governor” and substituting “Chief Executive”.
14. Section 28(1) is amended by repealing “Governor” and substituting “Chief Executive”.
15. Section 30(3) is amended by repealing “Governor” wherever it appears and substituting “Chief Executive”.
16. Section 31(1)(a) is amended by repealing “Governor” and substituting “Chief Executive”.
17. Section 32(1) is amended by repealing “Governor” and substituting “Chief Executive”.
18. Section 33 is amended by repealing “Governor” wherever it appears and substituting “Chief Executive”.
19. Section 34 is amended by repealing “Governor” wherever it appears and substituting “Chief Executive”.
20. Section 37 is amended -
 - (a) in subsection (1), by repealing “Governor” and substituting “Chief Executive”;

- (b) in subsection (2), by repealing “立法局” where it twice appears and substituting “立法會”.

21. Section 38 is amended -

- (a) in subsections (1) and (2), by repealing “Governor in Council” wherever it appears and substituting “Chief Executive in Council”;
- (b) in subsection (3), by repealing “立法局” where it twice appears and substituting “立法會”.

Pension Benefits (Judicial Officers) Regulations

22. The Pension Benefits (Judicial Officers) Regulations (Cap. 401 sub. leg.) are amended by adding in Part I -

“2A. Saving

The amendments made to these Regulations by the Adaptation of Laws (No. 13) Ordinance 1998 (of 1998) shall not affect any right accrued or accruing to any person before the date on which those amendments come into operation.”.

23. Regulation 3 is amended by repealing “Governor” and substituting “Chief Executive”.

24. Regulation 6 is amended -

- (a) by renumbering it as regulation 6(1);
- (b) by adding-

“(2) Regulations 7, 8, 10 and 12 apply only in respect of an officer who was appointed before the date on which Schedule 4 to the Adaptation of Laws (No. 13) Ordinance 1998 (of 1998) comes into operation.”.

25. Regulation 13(5) is amended by repealing “Governor” and substituting “Chief Executive”.

26. Regulation 16 is amended -

- (a) in subsection (4)(c), by repealing “Governor” and substituting “Chief Executive”;
- (b) in subsection (6), by repealing “首席大法官” and substituting “終審法院首席法官”.

27. Regulation 20(1)(e) is amended by repealing “Governor” and substituting “Chief Executive”.

28. Regulation 22(2) is amended by repealing “Governor” and substituting “Chief Executive”.

SCHEDULE 5

[s. 3]

JUDICIAL OFFICERS (TENURE OF OFFICE) ORDINANCE AND ITS SUBSIDIARY LEGISLATION

Judicial Officers (Tenure of Office) Ordinance

1. Section 4(2)(b) of the Judicial Officers (Tenure of Office) Ordinance (Cap. 433) is amended by repealing “Governor” and substituting “Chief Executive”.
2. Section 8 is amended by repealing “Governor” and substituting “Chief Executive”.
3. Section 9 is amended by repealing “Governor” where it twice appears and substituting “Chief Executive”.

Judicial Officers (Tribunal) Rules

4. Section 1 of the Judicial Officers (Tribunal) Rules (Cap. 433 sub. leg.) is amended, in the definition of “審裁處”, by repealing “首席大法官” and substituting “終審法院首席法官”.
5. Section 2 is amended -
 - (a) in subsection (1), by repealing “首席大法官” and substituting “終審法院首席法官”;
 - (b) in subsection (3), by repealing “Judicial Service” and substituting “Judicial Officers Recommendation”.
6. Section 7 is amended -
 - (a) in subsection (1)(a), by repealing “Attorney General’s Chambers” and substituting “Department of Justice”;
 - (b) in subsection (2), by repealing “首席大法官” and

substituting “終審法院首席法官”.

7. Section 14 is amended -

- (a) by repealing “Judicial Service” and substituting “Judicial Officers Recommendation”;
- (b) by repealing “首席大法官” and substituting “終審法院首席法官”.

8. Section 15 is amended by repealing “Judicial Service” and substituting “Judicial Officers Recommendation”.

9. Section 16 is amended by repealing “High Court” and substituting “Court of First Instance”.

SCHEDULE 6

[s. 3]

LEGAL AID SERVICES COUNCIL ORDINANCE

1. Section 2 of the Legal Aid Services Council Ordinance (Cap. 489) is amended, in the definition of “appointed member”, by repealing “Governor” and substituting “Chief Executive”.

2. Section 3(1) is amended by repealing “Governor” and substituting “Chief Executive”.

3. Section 4(5) is amended -

- (a) by repealing “Governor’s” and substituting “Chief Executive’s”;

- (b) in paragraph (c), by repealing “Governor” and substituting “Chief Executive”.
- 4. Section 5 is amended by repealing “Governor” wherever it appears and substituting “Chief Executive”.
- 5. Section 11 is amended by repealing “Governor” and substituting “Chief Executive”.
- 6. Section 12 is amended -
 - (a) in subsection (1), by repealing “Governor” and substituting “Chief Executive”;
 - (b) in subsection (2) -
 - (i) by repealing “Governor” and substituting “Chief Executive”;
 - (ii) by repealing “立法局” where it twice appears and substituting “立法會”.
- 7. Section 13(2) is amended by repealing “Governor” and substituting “Chief Executive”.

Explanatory Memorandum

The purpose of this Bill is to adapt certain Ordinances and their subsidiary legislation to bring them into conformity with the Basic Law and with Hong Kong’s status as a Special Administrative Region of the People’s Republic of China (clause 3, Schedules 1 to 6).

2. The Ordinances adapted and their respective Schedule numbers under the Bill are -

Jury Ordinance (Cap. 3)	Schedule 1
Official Languages Ordinance (Cap. 5)	Schedule 2
Legal Aid Ordinance (Cap. 91)	Schedule 3
Pension Benefits (Judicial Officers) Ordinance (Cap. 401)	Schedule 4
Judicial Officers (Tenure of Office) Ordinance (Cap. 433)	Schedule 5
Legal Aid Services Council Ordinance (Cap. 489)	Schedule 6

3. The Bill also provides that the adaptations when passed into law shall take effect retrospectively, as from the date of the establishment of the Hong Kong Special Administrative Region (clause 2).