

Legislative Council Brief

Forests and Countryside Ordinance
(Chapter 96)
Wild Animals Protection Ordinance
(Chapter 170)
Country Parks Ordinance
(Chapter 208)
Oil Pollution (Land Use and Requisition) Ordinance
(Chapter 247)
Ozone Layer Protection Ordinance
(Chapter 403)
Environment and Conservation Fund Ordinance
(Chapter 450)
Sewage Services Ordinance
(Chapter 463)
Dumping at Sea Ordinance
(Chapter 466)
Marine Parks Ordinance
(Chapter 476)
Environmental Impact Assessment Ordinance
(Chapter 499)

ADAPTATION OF LAWS (NO. 8) BILL 1999

INTRODUCTION

At the meeting of the Executive Council on 2 March 1999, the Council ADVISED and the Chief Executive ORDERED that the Adaptation of Laws (No. 8) Bill 1999, as set out at Annex I, should be introduced into the Legislative Council, to effect necessary adaptations to the above ten Ordinances relating to the environment and their subsidiary legislation.

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.

Article 8 of the Basic Law states that –

“The law 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.”

3. On 23 February 1997, the Standing Committee of the National People’s Congress published a decision on the treatment of laws previously in force in Hong Kong. It provides, among other things, that the existing Hong Kong laws (with the exception of 24 Ordinances or parts of Ordinances) are to be adopted as laws of the Hong Kong Special Administrative Region and these laws shall, unless the context otherwise requires, be construed in accordance with specified principles of interpretation. These interpretative principles are included in the Hong Kong Reunification Ordinance (Ord. No. 110 of 1997) and are now incorporated as section 2A and Schedule 8 in the

Interpretation and General Clauses Ordinance (Cap. 1). However, although the Interpretation and General Clauses Ordinance laid down how terminology inconsistent with the Basic Law or with the status of Hong Kong as a Special Administrative Region of the People's Republic of China are to be construed, it is considered unacceptable to retain such terminology in our laws. Accordingly, we now need to introduce further legislation to effect the necessary textual amendments.

THE BILL

4. Most of the proposed amendments are merely terminological changes. References to "the Colony" and "立法局" etc. will be suitably amended to "Hong Kong" and "立法會" respectively. Similarly, a reference to the "Governor" will be replaced by the "Chief Executive". Where a provision previously conferred power on the "Governor" to make subsidiary legislation, the reference to the "Governor" will still be adapted to the "Chief Executive". Although the requirement under Article 56 of the Basic Law that the Chief Executive shall consult the Executive Council before making subordinate legislation is then not expressly set out, the Council will still have to be consulted if the Chief Executive is to exercise this legislative function. Those proposed amendments which are not covered by, or are given treatment different from, the general guidelines on adaptations are set out at Annex II, and those provisions which have not been adapted in this Bill are set out at Annex III.

5. Other amendments include adaptation of references to the "Crown" in sections 18(2) and 19(1) of the Country Parks Ordinance to become the "Government". Given the purpose of the Country Parks Ordinance, which is for the designation, control and management of country parks and special areas, it is considered that references to the "Crown" in that Ordinance should be references to the "Government" in exercising its regulatory functions. Section 18(2) and 19(1) provide, in respect of the exercise of

powers under that Ordinance, for the taking of legal proceedings and for the payment of compensations, and hence references to the "Crown" therein should be adapted accordingly.

COMMENCEMENT

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

LEGISLATIVE TIMETABLE

7. The legislative timetable is –

Publication in the Gazette	12 March 1999
First Reading and commencement of Second Reading debate	31 March 1999
Resumption of Second Reading debate, committee stage and Third Reading	to be notified

HUMAN RIGHTS IMPLICATIONS

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

BINDING EFFECT OF THE LEGISLATION

9. The amendments will not affect the current binding effect of the existing provisions of the various Ordinances covered by the Bill.

FINANCIAL AND STAFFING IMPLICATIONS

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

PUBLIC CONSULTATION

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

PUBLICITY

12. A press release will be issued on 12 March 1999.

ENQUIRIES

13. For enquiries, please contact Miss Agnes Kwan, Assistant Secretary (Environment), Planning, Environment and Lands Bureau, at 2848 2981.

Planning, Environment and Lands Bureau
March 1999

ADAPTATION OF LAWS (NO. 8) BILL 1999

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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. 8) Ordinance 1999.

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]

FORESTS AND COUNTRYSIDE ORDINANCE

1. Section 18 of the Forests and Countryside Ordinance (Cap. 96) is amended by repealing "Governor in Council" and substituting "Chief Executive in Council".

SCHEDULE 2

[s. 3]

WILD ANIMALS PROTECTION ORDINANCE

1. Section 16 of the Wild Animals Protection Ordinance (Cap. 170) is amended by repealing “Governor” and substituting “Chief Executive”.

SCHEDULE

[s. 3]

COUNTRY PARKS ORDINANCE AND ITS
SUBSIDIARY LEGISLATION

Country Parks Ordinance

1. Section 4(a) of the Country Parks Ordinance (Cap. 208) is amended by repealing “Governor” and substituting “Chief Executive”.
2. Section 5(2A), (3) and (4) is amended by repealing “Governor” and substituting “Chief Executive”.
3. Section 7(1) and (2) is amended by repealing “Governor” and substituting “Chief Executive”.
4. Section 8(1) is amended by repealing “Governor” and substituting “Chief Executive”.
5. Section 12 is amended by repealing “Governor in Council” and substituting “Chief Executive in Council”.
6. Section 13(1) to (4) is amended by repealing “Governor in Council” and substituting “Chief Executive in Council”.

7. Section 14 is amended -
 - (a) by repealing “Governor in Council” and substituting “Chief Executive in Council”;
 - (b) by repealing “Governor shall” and substituting “Chief Executive shall”.
8. Section 15(1) is amended by repealing “Governor in Council” and substituting “Chief Executive in Council”.
9. Section 17 is amended -
 - (a) in subsection (8), by repealing “Governor” and substituting “Chief Executive”;
 - (b) in subsection (9) -
 - (i) by repealing “Governor may” and substituting “Chief Executive may”;
 - (ii) in paragraph (b), by repealing “Governor in Council” and substituting “Chief Executive in Council”;
 - (c) in subsection (10), by repealing “Governor in Council” and substituting “Chief Executive in Council”;
 - (d) in subsection (11), by repealing “Governor or the Governor in Council” and substituting “Chief Executive or the Chief Executive in Council”.
10. Section 18(2) is amended by repealing “Crown” and substituting “Government”.
11. Section 19(1) is amended by repealing “Crown” and substituting “Government”.

12. Section 21 is amended by repealing “立法局” and substituting “立法會”.
13. Section 22 is amended by repealing “立法局” and substituting “立法會”.
14. Section 24(1) is amended by repealing “Governor” and substituting “Chief Executive”.
15. Section 25 is amended by repealing “Governor” and substituting “Chief Executive”.
16. Section 26(1) is amended by repealing “Governor in Council” and substituting “Chief Executive in Council”.

Country Parks and Special Areas Regulations

17. Regulation 8(2) of the Country Parks and Special Areas Regulations (Cap. 208 sub. leg.) is amended by repealing everything after “granted” and substituting “under the Land (Miscellaneous Provisions) Ordinance (Cap. 28) or a licence or lease issued by the Commissioner of Mines.”.

SCHEDULE 4

[s. 3]

OIL POLLUTION (LAND USE AND REQUISITION) ORDINANCE

1. Section 2 of the oil Pollution (Land Use and Requisition) Ordinance (Cap. 247) is amended, in the definition of “specified purpose”, by repealing “the Colony” and substituting “Hong Kong”.

2. Section 3 is amended by repealing “Governor” and substituting “Chief Executive”.
3. Section 4(1) to (3) is amended by repealing “Governor” and substituting “Chief Executive”.
4. Section 10(1) (a) and (b) is amended by repealing “the Colony” and substituting “Hong Kong”.

SCHEDULE 5

[s. 3]

OZONE LAYER PROTECTION ORDINANCE

1. Section 2 of the Ozone Layer Protection Ordinance (Cap. 403) is amended, in the definition of “Advisory Council on the Environment”, by repealing “Governor” and substituting “Chief Executive”.
2. Section 16(3) is amended by repealing “立法局” and substituting “立法會”.

SCHEDULE 6

[s. 3]

ENVIRONMENT AND CONSERVATION FUND ORDINANCE

1. Section 7(2) (a) and (f) and (6) of the Environment and Conservation Fund Ordinance (Cap. 450) is amended by repealing “Governor” and substituting “Chief Executive”.
2. Section 8(3) is amended -
 - (a) by repealing “Governor” and substituting “Chief Executive”;

- (b) by repealing “立法局” and substituting “立法會”.

SCHEDULE 7

[s. 3]

SEWAGE SERVICES ORDINANCE

1. Section 4(1) of the Sewage Services Ordinance (Cap. 463) is amended by repealing “Governor in Council” and substituting “Chief Executive in Council”.
2. Section 12(1) is amended by repealing “Governor in Council” and substituting “Chief Executive in Council”.
3. Section 13 is amended -
 - (a) in subsections (2) to (7), by repealing “立法局” wherever it appears and substituting “立法會”;
 - (b) in subsection (6), by repealing “Governor” and substituting “Chief Executive”.

SCHEDULE 8

[s. 3]

DUMPING AT SEA ORDINANCE

1. Section 2 of the Dumping at Sea Ordinance (Cap. 466) is amended, in the definition of “Secretary”, by repealing “(司長)” and substituting “(局長)”.
2. Section 4 is amended -
 - (a) in subsections (2) and (3), by repealing “司長” and substituting “局長”;
 - (b) in subsection (3), by repealing “Governor” and substituting “Chief Executive”.

3. Section 11(1) and (2) is amended by repealing “司長” wherever it appears and substituting “局長”.
4. Section 13(2) is amended by repealing “司長” and substituting “局長”.
5. Section 14 is amended -
 - (a) in subsections (1) and (2), by repealing “司長” and substituting “局長”;
 - (b) in subsections (1) to (5) and (7), by repealing “立法局” wherever it appears and substituting “立法會”;
 - (c) in subsection (5), by repealing “Governor” and substituting “Chief Executive”.
6. Section 24(10) is amended by repealing “Governor” and substituting “Chief Executive”.
7. Section 28(1) and (3) is amended by repealing “Governor” and substituting “Chief Executive”.
8. Section 30(1) and (4) is amended by repealing “Governor” and substituting “Chief Executive”.

SCHEDULE 9

[s. 3]

MARINE PARKS ORDINANCE

1. Section 4(a) of the Marine Parks Ordinance (Cap. 476) is amended by repealing “Governor in Council” and substituting “Chief Executive in Council”.

2. Section 6(1) and (2) is amended by repealing “Governor” and substituting “Chief Executive”.
3. Section 7(1) is amended by repealing “Governor in Council” and substituting “Chief Executive in Council”.
4. Section 13 is amended by repealing “Governor in Council” and substituting “Chief Executive in Council”.
5. Section 14(1) to (4) is amended by repealing “Governor in Council” and substituting “Chief Executive in Council”.
6. Section 15 is amended -
 - (a) by repealing “Governor in Council” and substituting “Chief Executive in Council”;
 - (b) by repealing “Governor shall” and substituting “Chief Executive shall”.
7. Section 16 is amended -
 - (a) in subsections (1), (7) and (8), by repealing “Governor in Council” wherever it appears and substituting “Chief Executive in Council”;
 - (b) in subsection (8) (a) and (b), by repealing “Governor shall” and substituting “Chief Executive shall”.
8. Section 17(1) is amended -
 - (a) by repealing “Governor in Council” and substituting “Chief Executive in Council”;

- (b) by repealing “Governor may” and substituting “Chief Executive may”.

SCHEDULE 10

[s. 3]

ENVIRONMENTAL IMPACT ASSESSMENT ORDINANCE

1. Section 14(3) and (4) of the Environmental Impact Assessment Ordinance (Cap. 499) is amended by repealing “Governor in Council” and substituting “Chief Executive in Council”.
2. Section 16 is amended -
 - (a) in subsections (5) to (10), by repealing “立法局” wherever it appears and substituting “立法會”;
 - (b) in subsection (9), by repealing “Governor” and substituting “Chief Executive”.
3. Section 18(2), (3), (5) and (7) is amended by repealing “Governor” and substituting “Chief Executive”.
4. Section 20(1) is amended by repealing “Governor” and substituting “Chief Executive”.
5. Section 30(1) and (2) is amended by repealing “Governor in Council” and substituting “Chief Executive in Council”.

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 10).

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

Country Parks Ordinance (Cap . 208)	Schedule 3
Dumping at Sea Ordinance (Cap . 466)	Schedule 8
Environment and Conservation Fund Ordinance (Cap. 450)	Schedule 6
Environmental Impact Assessment Ordinance (Cap. 499)	Schedule 10
Forests and Countryside Ordinance (Cap. 96)	Schedule 1
Marine Parks Ordinance (Cap. 476)	Schedule 9
Oil Pollution (Land Use and Requisition) Ordinance (Cap. 247)	Schedule 4
Ozone Layer Protection Ordinance (Cap. 403)	Schedule 5
Sewage Services Ordinance (Cap. 463)	Schedule 7
Wild Animals Protection Ordinance (Cap. 170)	Schedule 2

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).

Adaptation of Laws (No.8) Bill 1999Provisions that are not covered by, or are given treatment different from, the Adaptation Guidelines

Item	Schedule and Section No.	Term or Passage Repealed	Term or Provision Added or Substituted	Remarks or Proposals
1	Sch. 3, s. 17	“Crown Land Ordinance” (reg. 8(2), Country Parks and Special Areas Regulations (Cap. 208 sub. leg.))	“Land (Miscellaneous Provisions) Ordinance”	The purpose of the adaptation is to amend the reference to the English short title of Cap. 28 appearing in the relevant Regulations as a result of the change of its short title under s. 12 of the Adaptation of Laws (Crown Land) Ordinance (29 of 1998). <u>Note</u> : the Chinese short titles has already been amended under s. 53 of Ord. 29 of 1998.
2	Sch. 8, s. 1	“司長” (s. 2, Dumping at Sea Ordinance (Cap. 466))	“局長”	The purpose of the adaptation is to amend the Chinese rendition for “Secretary” from “司長” to “局長”, for consistency with the provisions of the Basic Law. Similar amendments are made under the Bill to the same reference in ss. 4, 11, 13 & 14 of Cap. 466.

Adaptation of Laws (No.8) Bill 1999Provisions in the relevant Ordinances which have not been adapted

Item	Provision	Remarks
1.	Section 13(2)(a) & (3)(a) of the Wild Animals Protection Ordinance (Cap. 170)	To be dealt with under the adaptation of laws bill relating to the Garrison.
2.	Regulation 19 of the Country Parks and Special Areas Regulations (Cap. 208 sub. leg.)	To be dealt with under the adaptation of laws bill relating to the Garrison.
3.	Schedule to the Country Parks (Designation)(Consolidation) Order (Cap. 208 sub. leg.)	The references to “Governor in Council” in the relevant Schedule are ones to historical facts and hence do not need to be adapted.
4.	Schedule to the Designation of Special Areas within Country Parks (Consolidation) Order (Cap. 208 sub. leg.)	The references to “Governor in Council” in the relevant Schedule are ones to historical facts and hence do not need to be adapted.
5.	Schedule to the Marine Parks (Designation) Order (Cap. 476 sub. leg.)	The references to “Governor in Council” in the relevant Schedule are ones to historical facts and hence do not need to be adapted.
6.	Schedule to the Marine Reserve (Designation) Order (Cap. 476 sub. leg.)	The reference to “Governor in Council” in the relevant Schedule is one to a historical fact and hence does not need to be adapted.