

Adaptation of Laws (No.12) Bill 1998**Provisions involving adaptation of references to “Crown” / “Queen” as “Government”**

Item	Schedule & Section No.	Legal Provision	Remarks
1.	Sch. 2, s. 5	s. 9M(1) Criminal Procedure Ordinance (Cap. 221)	S. 9M(1) of Cap 221 provides that recognizance of bail or sum of money deposited be forfeited to the Crown on a person’s failure to surrender to custody. Since money being forfeited will, in practice, be paid to the Government, the reference to “Crown” is adapted to “Government”. Furthermore, s.2 of Sch 8 of the Interpretation and General Clauses Ordinance (Cap.1), copy attached, which reflects the adaptation guidelines embodied in the decision of NPCSC of 23 February 1997, stipulates that any reference in any provision to Her Majesty, the Crown, the British Government or the Secretary of State (or to similar names, terms or expressions) in contexts other than title to land in the HKSAR, affairs for which the CPG has responsibility or the relationship between the Central Authorities and the HKSAR shall be construed as a reference to the Government of the HKSAR.
2.	Sch. 2, s.8	s.56(2)(a) Criminal Procedure Ordinance (Cap.221)	The reference to “Crown” in s.56(2)(a) of Cap.221 is in the context of the Crown being a party at the trial of an offence and the Secretary for Justice or the Solicitor General appears for the Crown. The Secretary for Justice and the Solicitor General are both law officers of the Government (the executive authorities of the Region by virtue of Art. 59 of the Basic Law) who act as the government’s chief legal advisers and have important responsibilities in

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			<p>relation to the law and its enforcement. Section 19 of the Hong Kong Reunification Ordinance provides that criminal proceedings which before the reunification were brought by, in the name of or against the Crown may after the reunification be brought by, in the <u>name</u> of or against the HKSAR. That provision is made on the basis that crimes are committed against society or the state or political subdivisions of the state (such as the HKSAR). The idea that the executive is a party to most criminal proceedings is reinforced by Art.63 of the Basic Law which provides that the Department of Justice of the HKSAR shall control criminal prosecutions, free from any interference. Furthermore this adaptation is in accordance with the adaptation guidelines embodied in the decision of NPCSC of 23 February 1997 and incorporated in s.2 of Schedule 8 of Cap.1 as stated in item 1 above. For these reasons, the Administration is of the view that 'Crown' in the context of this provision should be adapted as 'Government'.</p>
3.	Sch. 2, s.9	s.59 Criminal Procedure Ordinance (Cap.221)	<p>The reference to “Crown” in s.59 of Cap.221 is in the context of the right to have evidence retaken in the presence of the jury in connection with statements of accused persons. The Crown and the accused person are both parties to the criminal proceedings. For the reasons set out in item 2 above, the Administration is of the view that 'Crown' in the context of this provision should be adapted as 'Government'.</p>
4.	Sch. 2, s.18	s.83S Criminal Procedure Ordinance (Cap.221)	<p>S.83S of Cap.221 empowers the Court of Appeal to dismiss a frivolous or vexatious notice of appeal without calling on anyone to attend the hearing or to appear for the Crown thereon. The reference to “Crown” is in the context</p>

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			of the Crown being a party to criminal proceedings. For the reasons set out in item 2 above, the Administration is of the view that 'Crown' in the context of this provision should be adapted as 'Government'.
5.	Sch. 2, s.22	s.102(4) Criminal Procedure Ordinance (Cap.221)	S.102(4) of Cap.221 provides that where a court orders the sale or retention of property connected with offences and no person establishes a claim to it or its sale proceeds, then the property or its sale proceeds shall become the property of the Crown. In light of s.2 of Sch 8 of Cap.1, the reference to “Crown” is adapted as “Government”
6.	Sch. 2, s.36	rule 64(2) Criminal Appeal Rules (Cap.221 sub. leg.)	Under rule 64(2) the Crown may make application to the Court of Appeal for attendance of witness before the Court. The reference to “Crown” in rule 64(2) of Criminal Appeal Rules is in the context of the Crown being a party to criminal proceedings. For the reasons set out in item 2 above, the Administration is of the view that 'Crown' in the context of this provision should be adapted as 'Government'.
7.	Sch. 2, s.37(b)	Forms II and III Criminal Appeals Rules	Under Form II Criminal Appeals Rules, the Appellant acknowledges himself to owe to the Queen the sum of money paid in entering into recognizance of bail if he fails in the condition of recognizance. Under Form III Criminal Appeals Rules, the Appellant and his sureties severally acknowledged themselves to owe to the Queen the sums of money paid in entering into recognizance of bail if the Appellant fails in the condition of recognizance. In light of s.2 of Sch 8 of Cap.1, the reference to “Queen” is adapted as

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			“Government”.
8.	Sch. 2, s.37(f)	Forms XVI and XVII Criminal Appeal Rules	Under Form XVI Criminal Appeals Rules, the Appellant acknowledged himself to owe to the Queen the sum of money paid in entering into recognizance of bail if he fails in the condition of recognizance. Under Form XVII Criminal Appeals Rules, the Appellant and his sureties severally acknowledged themselves to owe to the Queen the sums paid in entering into recognizance of bail if the Appellant fails in the condition of recognizance. In light of s.2 of Sch 8 of Cap.1, the reference to “Queen” is adapted as “Government”.
9.	Sch. 2, s.43	Rule 2 Criminal Procedure (Representation) Rules (Cap.221 sub. leg.)	The reference to “Crown” in rule 2 Criminal Procedure (Representation) Rules is in the context of the Crown being a party to criminal proceedings. For the reasons set out in item 2 above, the Administration is of the view that 'Crown' in the context of this provision should be adapted as 'Government'.

Department of Justice
29 March 1999

Principal Assistant Secretary
Assistant Director of Administration

(Replaced L.N. 145 of 1974. Amended L.N. 238 of 1976; L.N. 63 of 1978; L.N. 21 of 1979; L.N. 282 of 1981; L.N. 379 of 1981; L.N. 24 of 1982; L.N. 73 of 1982; L.N. 50 of 1984; L.N. 151 of 1984; L.N. 76 of 1985; L.N. 320 of 1985; L.N. 55 of 1989; L.N. 94 of 1989; L.N. 262 of 1989; L.N. 291 of 1989; L.N. 99 of 1990; L.N. 167 of 1990; L.N. 273 of 1990; L.N. 323 of 1992; L.N. 354 of 1992; L.N. 96 of 1993; L.N. 621 of 1994; L.N. 372 of 1996)

SCHEDULE 7

[ss. 85(2) & 90]

DIRECTORATE DISCIPLINED OFFICERS

The following are directorate disciplined officers for the purposes of section 85(2) of this Ordinance--

- (a) a police officer at or above the rank of Chief Superintendent;
- (b) an officer of the Operations Department, Independent Commission Against Corruption above the rank of Principal Investigator;
- (c) a member of the Immigration Service at or above the rank of Senior Principal Immigration Officer;
- (d) a member of the Customs and Excise Service at or above the rank of Chief Superintendent.

(Added 88 of 1995 s. 3)

SCHEDULE 8

[s. 2A(3)]

CONSTRUCTION ON AND AFTER 1 JULY 1997 OF WORDS
AND EXPRESSIONS IN LAWS PREVIOUSLY IN FORCE

1. Any reference in any provision to Her Majesty, the Crown, the British Government or the Secretary of State (or to similar names, terms or expressions) where the content of the provision--

- (a) relates to title to land in the Hong Kong Special Administrative Region;
- (b) involves affairs for which the Central People's Government of the People's Republic of China has responsibility;
- (c) involves the relationship between the Central Authorities and the Hong Kong Special Administrative Region.

shall be construed as a reference to the Central People's Government or other competent authorities of the People's Republic of China.

2. Any reference in any provision to Her Majesty, the Crown, the British Government or the Secretary of State (or to similar names, terms or expressions) in contexts other than those specified in section 1 shall be construed as a reference to the Government of the Hong Kong Special Administrative Region.

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首席助理司長
助理行政署長

(由 1974 年第 145 號法律公告代替。由 1976 年第 238 號法律公告修訂；由 1978 年第 63 號法律公告修訂；由 1979 年第 21 號法律公告修訂；由 1981 年第 282 號法律公告修訂；由 1981 年第 379 號法律公告修訂；由 1982 年第 24 號法律公告修訂；由 1982 年第 73 號法律公告修訂；由 1984 年第 50 號法律公告修訂；由 1984 年第 151 號法律公告修訂；由 1985 年第 76 號法律公告修訂；由 1985 年第 320 號法律公告修訂；由 1989 年第 55 號法律公告修訂；由 1989 年第 94 號法律公告修訂；由 1989 年第 262 號法律公告修訂；由 1989 年第 291 號法律公告修訂；由 1990 年第 99 號法律公告修訂；由 1990 年第 167 號法律公告修訂；由 1990 年第 273 號法律公告修訂；由 1992 年第 323 號法律公告修訂；由 1992 年第 354 號法律公告修訂；由 1993 年第 96 號法律公告修訂；由 1994 年第 621 號法律公告修訂)

附表 7

[第 85 (2) 及 90 條]

紀律部隊首長級人員

就本條例第 85 (2) 條而言，以下人士屬紀律部隊首長級人員——

- (a) 職級不低於總警司的警務人員；
- (b) 職級高於首席調查主任的總督特派廉政專員公署行動處的人員；
- (c) 職級不低於高級首席入境事務主任的入境事務隊成員；(由 1997363 號法律公告修訂)
- (d) 職級不低於總督的香港海關成員。

(由 1995 年第 88 號第 3 條增補)

附表 8

[第 2A (3) 條]

原有法律中的字和詞句在 1997 年 7 月 1 日及之後的解釋

1. 在任何條文中對女皇陛下、皇室、官方、英國政府或國務大臣(或相類名稱、詞語或詞句)的提述，在條文內容與以下所有權有關或涉及以下事務或關係的情況下，須解釋為對中華人民共和國中央人民政府或其他主管機關的提述
 - (a) 香港特別行政區土地的所有權；
 - (b) 中華人民共和國中央人民政府負責處理的事務；
 - (c) 中央與香港特別行政區的關係。
2. 在任何條文中對女皇陛下、皇室、官方、英國政府或國務大臣(或相類名稱、詞語或詞句)的提述，在文意並非第 1 條所指明者的情況下，須解釋為對香港特別行政區政府的提述。

3. Any reference to Her Majesty in Council or to the Privy Council, where the content of the provision relates to appellate jurisdiction in relation to Hong Kong, shall be construed as a reference to the Hong Kong Court of Final Appeal.
4. Any reference to Her Majesty in Council or to the Privy Council in contexts other than its appellate jurisdiction shall be construed in the same manner as references to Her Majesty are construed under sections 1 and 2.
5. Any reference to a Government agency which bears a name which includes the word "Royal" shall be read--
 - (a) as if the word "Royal" were omitted; and
 - (b) as a reference to the corresponding Government agency of the Hong Kong Special Administrative Region.
6. Any reference to the Colony of Hong Kong (or to similar names, terms or expressions) shall be construed as a reference to the Hong Kong Special Administrative Region and any reference to the boundaries of the Colony of Hong Kong shall be construed as a reference to the boundaries as specified in the map of the administrative division of the Hong Kong Special Administrative Region published by the State Council of the People's Republic of China.
7. Any reference to the Supreme Court of Hong Kong shall be construed as a reference to the High Court of the Hong Kong Special Administrative Region.
8. Any reference to the Court of Appeal of Hong Kong shall be construed as a reference to the Court of Appeal of the High Court of the Hong Kong Special Administrative Region.
9. Any reference to the High Court of Justice of Hong Kong shall be construed as a reference to the Court of First Instance of the High Court of the Hong Kong Special Administrative Region.
10. Any reference to "地方法院" shall be construed as a reference to "區域法院".
11. Any reference to the Governor of Hong Kong or to the Governor in Council shall be construed as a reference to the Chief Executive of the Hong Kong Special Administrative Region or the Chief Executive in Council respectively.
12. Any reference to the Chief Justice of the Supreme Court of Hong Kong shall be read as a reference to the Chief Judge of the High Court of the Hong Kong Special Administrative Region.
13. Any reference to "上訴法院大法官" shall be construed as a reference to "高等法院上訴法庭法官".
14. Any reference to a judge of the High Court shall be construed as a reference to a judge of the Court of First Instance.
15. Any reference in the Chinese version of any law to the Legislative Council, the Judiciary or the Executive Authorities or to the officers of those bodies shall be construed in accordance with the relevant provisions of the Basic Law.
16. Any reference in any law to the Legislative Council shall, as the case may require, be construed as including a reference to the Provisional Legislative Council.
17. Any reference to the People's Republic of China or to China (or to similar names, terms or expressions) shall be construed as a reference to the People's Republic of China as including Taiwan, the Hong Kong Special Administrative Region and Macau.
18. Any reference to the Mainland, Taiwan, Hong Kong or Macau (whether separately or concurrently) shall be construed as a reference to the Mainland, Taiwan, Hong Kong or Macau, as the case may be, as a part of the People's Republic of China.
19. Any reference to a foreign country or foreign state (or to similar terms or expressions) shall be construed as a reference to a country or territory other than the People's Republic of China or as a reference to any place other than the Hong Kong Special Administrative Region, depending on the content of the relevant law.

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3. 對女皇陛下會同樞密院或對樞密院的提述，在條文的內容與關乎香港的上訴司法管轄權有關的情況下，須解釋為對香港終審法院的提述。
4. 對女皇陛下會同樞密院或對樞密院的提述，在文意並非涉及其上訴司法管轄權的情況下，須以與根據第 1 及 2 條解釋對女皇陛下的提述的相同方式，予以解釋。
5. 對名稱中包含"皇家"一詞的政府機構的提述，須一
 - (a) 在猶如"皇家"一詞已被刪去的情況下理解；及
 - (b) 理解為提述香港特別行政區的相應政府機構。
6. 對殖民地香港（或相類名稱、詞語或詞句）的提述，須解釋為對香港特別行政區的提述，而對殖民地香港的邊界的提述，須解釋為對由中華人民共和國國務院頒布的香港特別行政區行政區域圖所指明的邊界的提述。
7. 對香港最高法院的提述，須解釋為對香港特別行政區高等法院的提述。
8. 對香港上訴法院的提述，須解釋為對香港特別行政區高等法院上訴法庭的提述。
9. 對香港高等法院的提述，須解釋為對香港特別行政區高等法院原訟法庭的提述。
10. 對地方法院的提述，須解釋為對區域法院的提述。
11. 對香港總督的提述，須解釋為對香港特別行政區行政長官的提述；對總督會同行政局的提述，須解釋為對行政長官會同行政會議的提述。
12. 對香港最高法院首席大法官的提述，須解釋為對香港特別行政區高等法院首席法官的提述。
13. 對上訴法院大法官的提述，須解釋為對高等法院上訴法庭法官的提述。
14. 對高等法院大法官的提述，須解釋為對高等法院原訟法庭法官的提述。
15. 在任何法律中文文本中對立法局、司法機關或行政機關或該等機關的人員的提述，須按照《基本法》有關規定解釋。
16. 在任何法律中對立法局的提述，須視情況要求，解釋為包括對臨時立法會的提述。
17. 對中華人民共和國或中國（或相類名稱、詞語或詞句）的提述，須解釋為對包括台灣、香港特別行政區及澳門在內的中華人民共和國的提述。
18. 對大陸、台灣、香港或澳門的提述（不論是單獨提述或同時提述），須門解釋為對作為中華人民共和國一個組成部分的大陸、台灣、香港或澳門（視屬何情況而定）的提述。
19. 對外國（或相類詞語或詞句）的提述，須解釋為對中華人民共和國以外的任何地方或地區（或地區）的提述，或解釋為對香港特別行政區以外的任何地方的提述，視乎有關法律的內容而定。

Adaptation of s.19 Criminal Procedure Ordinance (Cap.221)

In Sch. 2, s.6 of the Bill, the reference to “in the peace of the Queen” in s.19 Criminal Procedure Ordinance (Cap.221) is repealed and substituted by “within the jurisdiction of the Hong Kong courts”. The expression “in the peace of the Queen” was formerly used to allege jurisdiction of the court in an indictment by the victim of an offence committed on the high seas or in any place outside Hong Kong. According to *Halsbury’s Laws of England, Vol.11(1):Criminal Law, Evidence and Procedure, para 428*, on a charge of murder or manslaughter it must be shown that the person killed was under the Queen’s peace (which has the same meaning of “in the peace of the Queen”). The Queen’s peace extends to all persons in Her Majesty’s territories, whether British subjects or aliens, except rebels and alien enemies who are at the time actually engaged in hostile operations against the Crown. An alien who is not at the time of his murder within Her Majesty’s territories is not within Her peace, unless the territory has been effectually occupied by Her forces. In Hong Kong, s.19 of Cap.221 was discussed in *AG v Yeung Sun-shun and Anor [1987] HKLR 987*. In that case, counsel for the Appellant argued that the Hong Kong court would have jurisdiction by virtue of s.19 of Cap.221 to try a case concerning conspiracy to import into Hong Kong unmanifested cargo, being elephant tusks, otherwise than in accordance with s.18(1)(a) of the Import and Export Ordinance (Cap.60) and s.4(1) of the Animals and Plants (Protection of Endangered Species) Ordinance (Cap.187). The Court of Appeal held that s.19 of Cap.221 did not confer jurisdiction, rather it dealt only with averments in indictments. The Court of Appeal stated that -

“We do not consider that [s.19 of Cap.221] was intended to confer a wider jurisdiction, by this little-known section which, so far as we know, has never been the subject of judicial comment since it was enacted in 1899, than is available at common law or by statutory provision dealing specifically with the subject of jurisdiction.

All that the section does, we think, is to provide that, if an indictment contains an averment that an offence was committed on the high seas or in foreign parts, it shall be sufficient to allege that the person injured was in the peace of the Queen.

No doubt this was intended to apply to those cases where jurisdiction had already been conferred by statute on Hong Kong courts to try cases outside Hong Kong, if the Queen's subjects were involved - e.g. the Offences at Sea Act 1799." (see E-J, at p.998)

Jurisdiction of Hong Kong courts to try offences committed on the high seas and in foreign parts is conferred by s.23B of the Crimes Ordinance (Cap.200). The term "in the peace of the Queen" is wider than "within the jurisdiction of Hong Kong courts". However, jurisdiction is conferred by s.23B of Cap.200, not s.19 of Cap.221. S.19 of Cap.221 does not confer a wider jurisdiction than s.23B of Cap.200 but must be read subject to it. Therefore, to adapt the term "in the peace of the Queen" in s.19 of Cap.221 to "within the jurisdiction of the Hong Kong courts" will not narrow the jurisdiction which is already in s.23B of Cap.200 which will remain unchanged.

Department of Justice
29 March 1999