

立法會
Legislative Council

LC Paper No. CB(2)2560/10-11
(The minutes have been seen
by the Administration)

Ref : CB2/BC/5/09

**Bills Committee on
Adaptation of Laws (Military References) Bill 2010**

**Minutes of the eighth meeting
held on Thursday, 9 June 2011, at 10:45 am
in Conference Room B of the Legislative Council Building**

Members present : Hon IP Kwok-him, GBS, JP (Chairman)
Dr Hon Margaret NG
Hon James TO Kun-sun
Hon LAU Kong-wah, JP
Hon Andrew LEUNG Kwan-yuen, GBS, JP
Hon Cyd HO Sau-lan
Hon CHAN Hak-kan
Dr Hon Priscilla LEUNG Mei-fun
Hon WONG Kwok-kin, BBS
Hon Paul TSE Wai-chun

Public Officers attending : Item I
Ms Carol YIP, JP
Deputy Secretary for Security

Mr David LAU
Principal Assistant Secretary for Security

Ms Francoise LAM
Senior Government Counsel
Department of Justice

Clerk in attendance : Mrs Sharon TONG
Principal Council Secretary (2)

Staff in attendance : Mr Jimmy MA
Legal Adviser

Ms Clara TAM
Assistant Legal Adviser 9

Ms Catherina YU
Senior Council Secretary (2) 7

Ms Michelle LEE
Legislative Assistant (2) 7

I. Meeting with the Administration

The Bills Committee deliberated (index of proceedings attached at **Annex**).

Clause-by-clause examination of the Bill
(LC Paper No. CB(2)228/10-11(05))

2. The Administration was requested to take the following actions and revert to the Bills Committee -

Summary Offences Ordinance (Cap. 228)
Section 29 - Prohibition of smoking in certain places

- (a) to review the proposed adaptation and include the reference of the naval forces in section 29(2)(a) having regard to members' views;

Traffic Accident Victims (Assistance Fund) Ordinance (Cap. 229)
Section 5 - Levy on motor vehicles

- (b) to consult the Hong Kong Garrison and the Department of Justice and review the proposed adaptation for section 5(1)(c);

Traffic Accident Victims (Assistance Fund) Ordinance (Cap. 229)
SCHEDULE

- (c) to consider adding the word "證" after "允許" in the proposed item 5 in Part II of the SCHEDULE;

Public Order Ordinance (Cap. 245)

Section 31 - Curfew orders

- (d) to review the adaptation proposal for section 31(6)(m) of Cap 245 having regard to members' views;

Public Order Ordinance (Cap. 245)

Section 37 - Permits to enter and leave closed area

- (e) to separately consider making amendments to exclude commercial purposes from other shipping-related provisions;
- (f) to provide information on the closed areas or other places occupied by Her Majesty's forces or for other purposes of the Crown in right of Her Majesty's government in the United Kingdom before the Reunification;
- (g) to spell out the rank of the members of the Chinese People's Liberation Army who were authorized by the Commander of the Hong Kong Garrison to issue to any person a permit to enter and leave the closed area and explain the relevant arrangement;
- (h) to consider deleting "佔用的地區或地方" at the beginning of the adaptation to section 37(1) of Cap. 245;

Public Order Ordinance (Cap. 245)

Section 39 - Power of arrest

- (i) to provide information on "any member of the Essential Services Corps" referred to in section 39(4)(a) of Cap. 245;
- (j) to clarify whether the Tamar site was regarded as closed area under section 36 of Cap. 245;
- (k) to provide information on the closed areas or other places occupied for other purposes of the Central People's Government ("CPG") and how section 39 of Cap. 245 would apply to the Liaison Office of CPG in the Hong Kong Special Administrative Region; and

General issue

- (l) to provide a summary on the adaptation proposals in the Bill by

category of expression of terms proposed to be adapted, and illustrating the changes after adaptation.

3. Mr James TO requested the Administration to review section 3 of the Weapons Ordinance (Cap. 217) in the context of localization of legislation.

II. Date of next meeting

4. Members noted that the next meeting would be held on 27 June 2011 at 10:45 am.

5. The meeting ended at 12:45 pm.

Council Business Division 2
Legislative Council Secretariat
2 September 2011

**Proceedings of the eighth meeting of the
Bills Committee on Adaptation of Laws (Military References) Bill 2010
on Thursday, 9 June 2011, at 10:45 am
in Conference Room B of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action required
000159 - 000345	Chairman	Welcoming remarks	
000346 - 000523	Chairman Admin	<u>Country Parks and Special Areas Regulations (Cap. 208 sub. leg. A)</u> <u>Section 19 - Application to Crown servants and waterworks contractors</u> Briefing by the Administration on the proposed adaptation.	
000524 - 000550	Chairman Admin	<u>Aerial Ropeways (Operation and Maintenance) Regulations (Cap. 211 sub. leg. A)</u> <u>Section 13 - Prohibited goods, and prohibition on smoking</u> Explanation by the Administration on the proposed adaptation.	
000551 - 001912	Chairman Admin Mr James TO	<u>Weapons Ordinance (Cap. 217)</u> <u>Section 3 - Application</u> Mr James TO's enquiry on "any person on behalf of the Central People's Government ("CPG")" in section 3(a) of Cap. 217 and who other than the Chinese People's Liberation Army ("CPLA") would be in possession of prohibited weapons or martial arts weapon on behalf of CPG. The Administration's explanation that the proposal was direct. Mr TO's view on the possession of prohibited weapon or martial arts weapon on behalf of CPLA. The Chairman's remarks on the scope of adaptation of laws and his views on dealing with any amendments beyond the scope of adaptation of laws in a separate exercise. Mr TO's enquiry on the application and the enforcement of section 3 of Cap. 217. The Administration's response to Mr TO's enquiry that the scope of the proposed adaptation was in line with the principles of adaptation of laws.	

Time marker	Speaker	Subject(s)	Action required
		Mr TO's request for the Administration to review the provisions in the context of the localization of legislation.	Admin
001913 - 002916	Chairman Admin Mr James TO Dr Priscilla LEUNG Ms Cyd HO LA	<p><u>Summary Offences Ordinance (Cap. 228)</u> <u>Section 29 - Prohibition of smoking in certain places</u></p> <p>The Chairman and Mr James TO's enquiries on the reasons why "Her Majesty's naval forces" was not adapted to CPLA's naval forces" in section 29(2)(a) of Cap. 228.</p> <p>The Administration's explanation that the Hong Kong Garrison had been consulted on the Adaptation Bill in accordance with the Basic Law and that the Hong Kong Garrison considered it more appropriate to use "CPLA" as it had already included the forces from the Army, the Navy and the Air Force of CPLA.</p> <p>LA drew members' attention to Article 2 of the Law of the People's Republic of China on the Garrisoning of the Hong Kong Special Administrative Region ("Garrison Law") which stipulated that the military forces stationed by CPG in Hong Kong composed of forces from the Army, the Navy and the Air Force and the inconsistency of the proposed adaptation with Article 2 of the Garrison Law.</p> <p>LA's view that the legislative intent of section 29 of Cap. 228 was to impose prohibition of smoking mainly on the Navy in places or areas attached to the naval establishment in Hong Kong and the proposed adaptation might change the original legislative intent and depart from the principle of adaptation of laws.</p> <p>The Administration's explanation on the difference between the composition of the British forces and that of CPLA, the justifications for the proposed adaptation and that the current adaptation proposal had not altered nor expanded the scope of the legislation and was prepared in line with the original legislative intent and principles of adaptation of laws.</p> <p>The Chairman, Dr Priscilla LEUNG and Mr TO's view on the need to specify the Navy of CPLA in the provision.</p> <p>Mr TO's view on the localization of the provisions to cater for the actual situation if necessary.</p> <p>The Administration's undertaking to consider members' views on the proposed adaptation and include the reference of the naval forces in section 29(2)(a).</p>	Admin

Time marker	Speaker	Subject(s)	Action required
002917 - 005224	Chairman Admin Mr James TO Dr Priscilla LEUNG Mr LAU Kong-wah LA	<p><u>Traffic Accident Victims (Assistance Fund) Ordinance (Cap. 229)</u> <u>Section 5 - Levy on motor vehicles</u></p> <p>The Chairman's view that there might be CPLA's motor vehicle in Hong Kong and adapting "the United Kingdom" to "the Hong Kong Garrison" in section 5(1)(c) of Cap. 229 had narrowed the coverage of the levy.</p> <p>Mr James TO's expression of support to the Chairman's view, and his views on the need to also include CPG in the provision as there might be CPG's motor vehicles entering Hong Kong.</p> <p>The Administration's explanation on the requirement of levy for non-military motor vehicles in the possession of CPG and licence holders of members of CPG Offices as stipulated in sections 5(1)(a) and (6)(1)(a) of Cap. 229, and its elaboration that the non-military vehicles and drivers of the other CPG offices in Hong Kong (excluding the Hong Kong Garrison) obtained registration and driving licences respectively in accordance with the Road Traffic Ordinance (Cap. 374) and therefore should not be included in the adaptation proposals in sections (5)(2) and (6)(1)(b) which covered military vehicles and drivers.</p> <p>The Administration's explanation on the exemption of Her Majesty's forces in Hong Kong from the registration under the Road Traffic Ordinance (Cap. 374) before the Reunification and the reasons for the proposed adaptation.</p> <p>LA drew members' attention to section 5(7) of Cap. 229 that the proposed adaptation would result in the HKSAR Government paying the levy and his enquiry on whether the proposed change would contradict the provision in Article 4 of the Garrison Law which provided that expenditure for the Hong Kong Garrison should be borne by CPG.</p> <p>The Administration's response to LA's enquiry that the proposed adaptation would not change the existing arrangements.</p> <p>The Chairman's enquiry on the justifications for adapting "the Crown in right of Her Majesty's Government in Hong Kong" to "Government" in section 5(7) of Cap. 229.</p> <p>The Administration's response to the Chairman's enquiry that the adaptation proposal was proposed in accordance with the principles of adaptation of laws.</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>Dr Priscilla LEUNG's view on the inappropriateness for the Hong Kong Special Administrative Region ("HKSAR") Government to pay the levy for the Hong Kong Garrison and her suggestion to exclude the Hong Kong Garrison from the new provision.</p> <p>Dr LEUNG's enquiry on the justifications for adapting "the Crown in right of Her Majesty's Government in Hong Kong" to "Government" in section 5(1)(c) of Cap. 229.</p> <p>The Administration's response to Dr LEUNG's enquiry that the then Hong Kong Government paid the levy for the former British Forces stationed in Hong Kong before the Reunification, and any change to the arrangement would be a matter of law reform and should be considered in a separate exercise. The current adaptation proposal was straightforward and adhered to the principles of adaptation of laws.</p> <p>The Chairman and LA's view on the need for strict adherence to the principles of adaptation of laws.</p> <p>The Chairman's request for the Administration to review the proposed adaptation for section 5(1)(c) of Cap. 229.</p> <p>The Administration's undertaking to consult the Hong Kong Garrison and the Department of Justice and to review the proposed adaptation for 5(1)(c) of Cap. 229.</p> <p>Mr LAU Kong-wah's view on the importance to comply with the principles of adaptation of laws unless there was downside of direct adaptation.</p> <p>Dr LEUNG's views on the redundancy of sections 5(1)(a) and (c) of Cap. 229.</p>	Admin
005225 - 005910	Chairman Admin Mr LAU Kong-wah LA	<p><u>Traffic Accident Victims (Assistance Fund) Ordinance (Cap. 229)</u> <u>Section 6 - Levy on licence holders</u></p> <p>Mr LAU Kong-wah's enquiry on the justifications for adding "members of Hong Kong Garrison" to section 6 of Cap. 229.</p> <p>LA and the Administration's response to Mr LAU's question.</p> <p>Mr LAU's enquiry on whether members of the Hong Kong Garrison were licence holders.</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>The Chairman's views on the inclusion of members of the Hong Kong Garrison in section 6 of Cap. 229.</p> <p>The Administration's response that members of the former British Forces stationed in Hong Kong and the Hong Kong Garrison were not required to obtain registration under the Road Traffic (Driving Licences) Regulation (Cap. 374 sub. leg. B), but were provided with the relevant written authorization or permission to drive motor vehicles.</p> <p>LA's remark on the payment of levy on licence holders by the HKSAR Government.</p>	
005911 - 010344	Chairman Admin Mr LAU Kong-wah LA	<p><u>Traffic Accident Victims (Assistance Fund) Ordinance (Cap. 229)</u> <u>Section 7 - Failure to pay levy</u></p> <p>Briefing by the Administration on the proposed adaptation.</p> <p><u>Traffic Accident Victims (Assistance Fund) Ordinance (Cap. 229)</u> <u>SCHEDULE</u></p> <p>LA's enquiry on the difference in the meaning between "准許" in section 6(1)(b) and "允許" in Part II of the SCHEDULE to Cap. 229.</p> <p>The Administration's response to LA's enquiry that "允許" was a written form of permission.</p> <p>The Chairman's suggestion to add the word "證" after "允許" in the new item 5 in Part II of the SCHEDULE.</p> <p>The Administration's undertaking to consult the Hong Kong Garrison on the Chairman's suggestion.</p>	Admin
010345 - 010447	Chairman Admin LA	<p><u>Public Bus Services Regulations (Cap. 230 sub. leg. A)</u> <u>Section 13 - Power to remove passengers etc.</u></p> <p>LA drew members' attention to the views of the Hong Kong Human Rights Monitor on replacing "服務" by "服役".</p> <p>The Chairman's remarks on some members' views expressed at previous meetings that "服役" was a more suitable expression.</p>	

Time marker	Speaker	Subject(s)	Action required
010448 - 010522	Chairman Admin	<p><u>Undesirable Medical Advertisements Ordinance (Cap. 231)</u> <u>Section 3 - Prohibition of advertisements relating to certain diseases; exceptions therefrom</u></p> <p>Briefing by the Administration on the proposed adaptation.</p>	
010523 - 010536	Chairman Admin	<p><u>Fixed Penalty (Traffic Contraventions) Ordinance (Cap. 237)</u> <u>SCHEDULE 2</u></p> <p>The Administration's explanation on the proposed adaptation.</p>	
010537 - 010621	Chairman Admin LA	<p><u>Firearms and Ammunition Ordinance (Cap. 238)</u> <u>Section 3 - Possession on behalf of the Crown etc.</u></p> <p>LA's enquiry on whether the word "等" in the heading of section 3 of Cap. 238 included CPG and the Government of Hong Kong, and the Administration's response in the affirmative.</p>	
010622 - 010742	Chairman Admin	<p><u>Public Order Ordinance (Cap. 245)</u> <u>Section 5 - Prohibition of quasi-military organizations</u></p> <p>Briefing by the Administration on the proposed adaptation.</p>	
010743 - 010811	Chairman Admin	<p><u>Public Order Ordinance (Cap. 245)</u> <u>Section 17C - Prohibition of offensive weapons at public meetings and processions</u></p> <p>Explanation by the Administration on the proposed adaptation.</p>	
010812 - 011816	Chairman Admin Mr LAU Kong-wah Ms Cyd HO LA	<p><u>Public Order Ordinance (Cap. 245)</u> <u>Section 31 - Curfew orders</u></p> <p>Mr LAU Kong-wah's enquiry on the justifications for the adaptation proposal.</p> <p>Ms Cyd HO's enquiry on the reasons for adding "a valid pass of the Ministry of National Defence" to section 31(6)(m) of Cap 245.</p> <p>The Chairman's views that the proposed adaptation was cumbersome.</p> <p>The Administration's response to Mr LAU and Ms HO's enquiries, and that the adaptation proposal was a straightforward one.</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>LA's remark on the legislative intent of the provision, the terms of "Army Department pass", "pass of the Ministry of National Defence or the Hong Kong Garrison" and his suggestion for the Administration to further explain the proposed terms to ascertain their compliance with the principles of adaptation of laws.</p> <p>The Administration's response that the Hong Kong Garrison had been consulted on the proposed term of "Army Department pass" and prepared in accordance with the principles of adaptation of laws and its undertaking to review the adaptation proposal for section 31(6)(m) of Cap 245.</p>	<p>Admin</p>
<p>011817 - 014254</p>	<p>Chairman Admin Dr Margaret NG Ms Cyd HO Mr LAU Kong-wah LA</p>	<p><u>Public Order Ordinance (Cap. 245)</u> <u>Section 37 - Permits to enter and leave closed area</u></p> <p>The Administration's explanation on the adaptation proposal of "in right of Her Majesty's government in the United Kingdom" from the provision.</p> <p>Dr Margaret NG's remarks that the proposed adaptation was beyond the scope of adaptation of laws and her view on the differences of the constitutional systems between the British Government and CPG.</p> <p>Dr NG's reiteration that making policy-related amendments by adaptation of laws was detrimental to the laws of Hong Kong.</p> <p>Ms Cyd HO's reiteration on the expression "for other purposes" in the provision might include commercial purposes and her request for the Administration to separately consider making amendments to exclude commercial purposes from other shipping-related provisions.</p> <p>Ms HO's views on the removal of "in right of Her Majesty's government in the United Kingdom" from the provision had lifted the restrictions on the power of Her Majesty's government in the United Kingdom and hence had changed the policy objective.</p> <p>The Administration's explanation that the original provision had not provided restrictions on the power of Her Majesty's government in the United Kingdom and that neither the policy intent nor legal effect of the provision concerned had been changed after adaptation.</p> <p>The Chairman and Mr LAU Kong-wah's enquiries on the areas or places occupied by Her Majesty's forces or for other purposes of the Crown in right of Her Majesty's government in the United Kingdom.</p>	<p>Admin</p>

Time marker	Speaker	Subject(s)	Action required
		<p>The Administration's response to the Chairman and Mr LAU's enquiries.</p> <p>The Chairman's request for the Administration to provide written information on the closed areas or other places occupied by Her Majesty's forces or for other purposes of the Crown in right of Her Majesty's government in the United Kingdom.</p> <p>Mr LAU's enquiry on whether Liaison Office of the CPG in HKSAR ("the Liaison Office") and Ministry of Foreign Affairs of the People's Republic of China were regarded as closed areas occupied by CPG.</p> <p>The Administration's explanation on the definition of closed area.</p> <p>Information provided by LA on section 36 of Cap. 245 regarding closed area.</p> <p>LA's explanation on the legal effect of section 37(1) of Cap. 245 and his view on the closed areas occupied by CPG and the control over these closed areas.</p> <p>The Administration's response that the closed areas occupied by the Hong Kong Garrison were military land according to the legislation.</p> <p>Request for the Administration to provide information on the closed areas which were occupied by Her Majesty's forces or occupied for other purposes of the Crown in right of Her Majesty's government in the United Kingdom before the Reunification.</p> <p>Dr NG's view on the difference in terms of the legal requirements for Her Majesty and the Hong Kong Garrison to occupy an area or a place and that the proposed changes would not arrive at the same effect as the original provision.</p> <p>The Administration's explanation on section 36 of Cap. 245 regarding the declaration of closed areas by order by the Chief Executive and the requirement for such order to come into force.</p> <p>Mr LAU's suggestion to delete "佔用的地區或地方" at the beginning of the proposed adaptation to section 37(1) of Cap. 245 for textual improvement to the provision.</p> <p>LA's reminder of the need for the Administration to spell out the rank of the members of CPLA who were authorized by the Commander of the Hong Kong Garrison to issue to any person a permit to enter and</p>	<p>Admin</p> <p>Admin</p> <p>Admin</p>

Time marker	Speaker	Subject(s)	Action required
		leave the closed area and explain the relevant arrangement.	
014255 - 014308	Chairman Admin	<p><u>Public Order Ordinance (Cap. 245)</u> <u>Section 38 - Prohibition on entering or leaving closed area without permit</u></p> <p>Briefing by the Administration on the proposed adaptation.</p>	
014309 - 020226	Chairman Admin Mr LAU Kong-wah Ms Cyd HO Dr Margaret NG LA	<p><u>Public Order Ordinance (Cap. 245)</u> <u>Section 39 - Power of arrest</u></p> <p>The Chairman and Mr LAU Kong-wah's enquiries on the definition of "guard" in this section.</p> <p>The Administration's response that section 39(4) of Cap. 245 had provided the meaning of "guard".</p> <p>Ms Cyd HO's enquiry on the meaning of "any member of the Essential Services Corps" in 39(4)(a) of Cap. 245, and the Administration's undertaking to provide members with the requisite information after the meeting.</p> <p>Mr LAU's view that the proposed adaptations in the Bill comprised straightforward adaptation of laws as well as adaptations reflecting the changes after the Reunification. Mr LAU's request for the Administration to provide members with the proposed adaptations in the current exercise by category of expressions of terms proposed to be adapted.</p> <p>Dr Margaret NG's enquiry on the circumstances under which Her Majesty's forces could make the arrest, whether arrests could be made in any closed area and the provision under which the power of Her Majesty's forces to make an arrest was only confined to closed areas occupied by Her Majesty's forces.</p> <p>The Administration's response to Dr NG's and Ms HO's enquiries.</p> <p>Ms HO's enquiry on whether the application of the proposed new section 39(4)(ba) of Cap. 245 was subject to sections 39(1)(a), (b) or (c) of Cap. 245 and whether the Administration had discussed with CPLA about the meaning of "attempting to enter a closed area" in section 39(1)(c) of Cap. 245.</p> <p>Information provided by LA on military restricted zones mentioned in Article 12 of the Garrison Law.</p>	<p>Admin</p> <p>Admin</p>

Time marker	Speaker	Subject(s)	Action required
		<p>LA's enquiry on whether closed areas or other places occupied for other purposes of CPG as stated in the proposed adaptations were non-military restricted zones and if so, whether the categorization of members of CPLA as guards in section 39 of Cap. 245 conformed with the Basic Law and the Garrison Law.</p> <p>Mr LAU's view that the closed areas declared by the Chief Executive by order were not military restricted areas and his request for the Administration to clarify whether the Tamar site was regarded as closed area under section 36 of Cap. 245.</p> <p>Mr LAU's request for the Administration to provide information on the closed areas or other places occupied for other purposes of the CPG and how section 39 of Cap. 245 would apply to the Liaison Office in case the district where it located was declared as a closed area by the Chief Executive.</p>	<p>Admin</p> <p>Admin</p>
020227 - 020248	Chairman	Date of next meeting	

Council Business Division 2
Legislative Council Secretariat
 2 September 2011