

**立法會**  
*Legislative Council*

LC Paper No. CB(2)228/10-11(02)

Ref: CB2/BC/5/09

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

**Background brief prepared by the Legislative Council Secretariat**

**Purpose**

This paper provides background information and summarizes past discussions by the Panel on Security ("the Panel") on the adaptation of military-related references in the laws of Hong Kong.

**Background**

2. On 23 February 1997, the Standing Committee of the National People's Congress decided that except for 14 Ordinances and subsidiary legislation, and certain provisions in 10 Ordinances and subsidiary legislation which were in contravention of the Basic Law, the laws previously in force in Hong Kong were to be adopted as the laws of the Hong Kong Special Administrative Region in accordance with Articles 8 and 160 of the Basic Law. The decision of the Standing Committee of the National People's Congress also spelt out the interpretative principles for provisions relating to the rights, exemptions and obligations of military forces stationed in Hong Kong by the United Kingdom and references of "Her Majesty", "the Crown", "the British Government" and "the Secretary of State", etc.

3. The interpretative principles promulgated by the Standing Committee of the National People's Congress had been enacted as part of Hong Kong law by the Hong Kong Reunification Ordinance (No. 110 of 1997) and incorporated as section 2A of and Schedule 8 to the Interpretation and General Clauses Ordinance (Cap. 1). In line with these general principles, more detailed principles of interpretation had been added to Cap. 1 by the amendments made under the Adaptation of Laws (Interpretative Provisions) Ordinance (No. 26 of 1998).

4. Since 1 July 1997, military-related provisions in the laws of Hong Kong previously in force have been construed in accordance with the interpretative principles set out in Cap. 1. Despite this, in the interest of legal certainty of the

laws of Hong Kong, it is still necessary to adapt these military-related provisions.

### **Broad principles governing the adaptation of military-related references**

5. According to information provided by the Administration in July 2010, there are a substantial number of military-related references in the laws of Hong Kong which require adaptation to bring them into conformity with the Basic Law and Hong Kong's status as a Special Administrative Region of the People's Republic of China. Such military-related references include direct military references such as "Her Majesty's forces" and "armed forces of the Crown", references that are to be construed as including the Chinese People's Liberation Army or the Hong Kong Garrison, and references in a military context, for instance, national defence. A total of 85 pieces of legislation across different policy areas will be involved in this law amendment exercise, and the adaptation of military-related references will be formulated in accordance with the following principles -

- (a) provisions relating to the rights, exemptions and obligations of the military forces stationed in Hong Kong by the United Kingdom shall, subject to the provisions of the Basic Law and the Garrison Law of the Hong Kong Special Administrative Region of the People's Republic of China ("the Garrison Law"), continue to have effect and apply to the military forces stationed in the Hong Kong Special Administrative Region by the Central People's Government ("CPG") of the People's Republic of China;
- (b) 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 -
  - (i) relates to title to land in the Hong Kong Special Administrative Region;
  - (ii) involves affairs for which CPG of the People's Republic of China has responsibility;
  - (iii) involves the relationship between the Central Authorities and the Hong Kong Special Administrative Region,shall be construed as a reference to CPG or other competent authorities of the People's Republic of China; and
- (c) 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 (b)

above shall be construed as a reference to the Government of the Hong Kong Special Administrative Region.

6. In accordance with the principles mentioned above, general references to "Her Majesty's forces", for example, will be adapted as "the Chinese People's Liberation Army" since "Her Majesty's forces" covered the British forces garrisoned in Hong Kong and other members of the British forces before 1 July 1997. References specific to the British armed forces stationed in Hong Kong will be adapted as "the Hong Kong Garrison". In formulating the actual adaptation proposals, the Administration will take into account the context and the legislative intent of the relevant provisions.

### **Deliberations of the Panel on Security**

7. The Administration briefed the Panel at the meeting on 4 May 2010 on the principles to be adopted for adapting military-related references in the laws of Hong Kong and the work progress regarding the adaptation of such military-related references.

8. Some members expressed concern about the Administration's slow progress in amending and adapting the military-related references in the laws of Hong Kong. They asked whether the Administration had encountered any particular difficulties in taking forward this adaptation of laws exercise.

9. The Administration advised that there were a substantial number of military-related references in Hong Kong laws which required adaptation and the adaptation of laws exercise would involve a total of 86 pieces of legislation across different policy areas. For this reason, time was needed for consultation within the Government of the Hong Kong Special Administrative Region before finalizing the proposed adaptations. The Administration further advised that Article 10 of the Garrison Law provided that the Hong Kong Special Administrative Region should consult the Hong Kong Garrison when formulating any policy or drafting any legislative proposals which concerned the Hong Kong Garrison. While the Administration was consulting the Hong Kong Garrison on the detailed proposals for the adaptation of military-related references in Hong Kong laws, the drafting of the relevant legislation was conducted in parallel.

10. Notwithstanding the Administration's response, some members remained dissatisfied with the Administration's slow progress in formulating the adaptation proposals. They sought clarification whether the slow progress of work was due to delay in consultation with the Hong Kong Garrison. A member pointed out that the discussion on amending and adapting the military-related references in Hong Kong laws had started since the Reunification in 1997. The member queried whether the lack of coordination amongst policy bureaux and government departments was a crucial factor

causing the prolonged delay in finalizing the adaptation proposals.

11. The Administration responded that the Adaptation of Laws Programme was divided into phases. Since the First Legislative Council, 56 adaptation of laws bills had already been introduced. Regarding the adaptation of military-related references, the Administration needed time to finalize the proposed adaptations as the exercise involved a significant number of policy bureaux and government departments and required consultation with the Hong Kong Garrison. The Administration did not see any particular problems in the working relationship amongst policy bureaux and government departments or in the consultation with the Hong Kong Garrison.

### **Relevant papers**

12. Members are invited to access the Legislative Council website (<http://www.legco.gov.hk>) for details of the relevant papers and minutes of the meeting.

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8 November 2010