

**Adaptation of Laws (Military References) Bill 2010
Response to Follow-up Actions of the Meeting on 27 June 2011**

Minutes of Meeting (LC Paper No. CB(2)2613/10-11)	Follow-up Action	Response
Section 82 of Schedule 1 to the Bill / Section 3 of the Massage Establishments (Cap. 266)		
Paragraph 2 (a)	<ul style="list-style-type: none">▪ A Member requested the Administration to check whether maternity home was one of the facilities in the military hospital, and consider whether the adaptation proposal of “a maternity home of the Hong Kong Garrison” suggested to Section 3(a)(a) would be necessary.	<ul style="list-style-type: none">▪ We understand that the construction works during the re-provisioning of the military hospital included the provision of obstetrics facilities. Further, each of the barracks of the Hong Kong Garrison has provided with clinic facilities.▪ In order to ensure the massage facilities of the obstetrics wards of the military hospital, or the massage services provided at any such facilities of the Hong Kong Garrison will continue to enjoy the exemption under the Ordinance, it is therefore necessary to include the reference “a maternity home of the Hong Kong Garrison” in the adaptation proposal.
Section 97 of Schedule 1 to the Bill / Section 70 of the Shipping and Port Control Ordinance (Cap. 313)		
Paragraph 2 (b)	<ul style="list-style-type: none">▪ A Member requested the Administration to provide information on the procedures involved when the Government of the Hong Kong Special Administrative Region (“HKSARG”) requested the Central People’s Government (“CPG”) for assistance	<ul style="list-style-type: none">▪ Under Article 14 of the Basic Law and Article 14 of the Garrison Law, the HKSARG may, when necessary, ask the CPG for assistance from the Hong Kong Garrison in the maintenance of public order and in disaster relief.▪ Based on the two afore-mentioned provisions, it will be for the HKSARG to decide whether

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	<p>from the Hong Kong Garrison in the maintenance of public order or in disaster relief under Article 14 of the Law of the People’s Republic of China on the Garrisoning of the Hong Kong Administrative Region (“the Garrison Law”).</p>	<p>assistance from the Hong Kong Garrison would be required. Should HKSARG consider the need for assistance, the HKSARG would generally make such request to the CPG via the Hong Kong and Macao Affairs Office of the State Council.</p>
Section 120 of Schedule 1 to the Bill / Section 2A of the Civil Aviation Ordinance (Cap. 448)		
<p>Paragraph 2 (c)</p>	<ul style="list-style-type: none"> ▪ A Member requested the Administration to provide information on the relevant procedures for the enforcement of the orders under Sections 2A(3) and (4) by the responsible departments of the CPG. 	<ul style="list-style-type: none"> ▪ After the Reunification, “the CPG shall be responsible for the maintenance of public order in the Region” under Article 14 of the Basic Law and the relevant departments of the CPG would be responsible for formulating defence-related flying regulations. ▪ The proposal to adapt the reference “Secretary of State” to the “Central People’s Government” is prepared in accordance with the principles of adaptation of laws and Section 1 to Schedule 8 of Cap. 1. It is a straight forward adaptation proposal.
Section 124 of Schedule 1 to the Bill / Section 64 of the Air Navigation (Hong Kong) Order 1995 (Cap. 448 Subsidiary Legislation C)		
<p>Paragraph 2 (d)</p>	<ul style="list-style-type: none"> ▪ A Member requested the Administration to provide examples of the regulations or directives 	<ul style="list-style-type: none"> ▪ Before the Reunification, under Section 64(3) of the Ordinance, it was regarded as lawful for the pilot in command to depart from the

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	<p>issued by the CPG under Section 64.</p>	<p>Rules of the Air set out in Schedule 14 as long as he was acting in the course of his duty as a member of Her Majesty's Forces.</p> <ul style="list-style-type: none"> ▪ After the Reunification, according to Section 14 of the Basic Law, the CPG shall be responsible for the defence of the HSKAR. The adaptation proposal is a straight forward one and is to ensure that after the Reunification the pilot in command will continue to enjoy the exemption to depart from the Rules of the Air set out in Schedule 14 as long as he was acting in the course of his duty as a member of the Chinese People's Liberation Army for defence-related flying operations so that flying activities can be conducted in a safe manner. ▪ The Hong Kong Garrison has maintained contact with the Civil Aviation Department on all of its flying activities (including training exercises) in order to ensure such activities are safely conducted.
Section 135 of Schedule 1 to the Bill / Section 2 of Aviation Security Ordinance (Cap. 494)		
<p>Paragraph 2 (e)</p>	<ul style="list-style-type: none"> ▪ A Member requested the Administration to consider taking away the reference of "or on behalf of" from the adaptation proposal in Section 2(4) (i.e. "by or on behalf of the Central 	<ul style="list-style-type: none"> ▪ The proposal to adapt the reference "Secretary of State" to "by or on behalf of the Central People's Government" is prepared in accordance with Section 1 of Schedule 8 to Cap.1, i.e. any reference in any provision to the Secretary of State where the content

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	<p>People’s Government”) having regard to Members’ views.</p>	<p>of the provision involves affairs for which the CPG of the People’s Republic of China (“PRC”) has responsibility shall be construed as a reference to the CPG or other competent authorities of the PRC, it is therefore proposed to adapt the reference “Secretary of State” to “the Central People’s Government”.</p> <ul style="list-style-type: none"> ▪ Considering that such documents would be signed by relevant officers of the CPG, it is therefore proposed to include the reference “or on behalf of” in the adaptation proposal. ▪ In view of Members’ suggestion to uniformly adapt the reference “Secretary of State” to the “Central People’s Government”, and that the responsible officers for signing the documents concerned are all officers of the CPG whereas such signing of documents is a matter which the CPG has responsibility, we suggest that the reference “or on behalf of” can be taken away from the adaptation proposal and to be uniformly adapted as “Central People’s Government”.
Sections 137 of Schedule 1 to the Bill / Sections 77 of the Registered Designs Ordinance (Cap. 552)		
<p>Paragraphs 2(f) and (g)</p>	<ul style="list-style-type: none"> ▪ A Member requested the Administration to consider reviewing the adaptation proposal “Secretary of State” to “Central People’s 	<ul style="list-style-type: none"> ▪ The proposal to adapt the reference “Secretary of State” to “competent authority” is prepared in accordance with Section 1 of Schedule 8 to Cap. 1., i.e. any reference in any provision to the Secretary of State

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	<p>Government”.</p> <ul style="list-style-type: none"> ▪ A Member suggested the Administration to provide information on the responsible authority of the CPG for the matters covered by Section 77. 	<p>where the content of the provision involves affairs for which the CPG of the PRC has responsibility shall be construed as a reference to the CPG or other competent authorities of the PRC. The adaptation proposal of “competent authority” refers to the responsible authority in the CPG, such as the Ministry of National Defence or other departments responsible for design registration matters, or the military forces garrisoned in Hong Kong.</p> <ul style="list-style-type: none"> ▪ In view of Members’ suggestion to uniformly adapt the reference “Secretary of State” to the “Central People’s Government”, and that the matter concerned is a matter which the CPG has responsibility, we suggest that reference “Secretary of State” can be uniformly adapted as “Central People’s Government”.
Other general information		
<p>Paragraph 2(h)</p>	<ul style="list-style-type: none"> ▪ A Member requested the Administration to provide justifications for the different adaptation proposals for “Secretary of State” in the Bill. 	<ul style="list-style-type: none"> ▪ The justifications for the different adaptation proposals for “Secretary of State” included in Sections 120, 126, 128, 135, 136 and 137 of Schedule 1 to the Bill had already been provided to the Bills Committee after the meeting vide LC Paper No. CB(2)2566/10-11(01). ▪ Generally speaking, according to Section 1 of Schedule 8 to Cap.1, any reference in any provision to the Secretary of State where the content

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		<p>of the provision involves affairs for which the CPG of the PRC has responsibility shall be construed as a reference to the CPG or other competent authorities of the PRC, it is therefore proposed to adapt the reference “Secretary of State” (“國務大臣” in the Chinese text to “Central People’s Government” (i.e. adaptation proposals included in Sections 120(2)(a), 126(2)(a) and 136 of Schedule 1 to the Bill), and “Secretary of State” (“工貿大臣” in the Chinese text) to “competent authority” (i.e. adaptation proposal included in Section 137 of Schedule 1 to the Bill).</p> <ul style="list-style-type: none"> ▪ The proposal to adapt “Secretary of State” to “by or on behalf of the Central People’s Government” (i.e. adaptation proposals in Sections 128 and 135 of Schedule 1 to the Bill) is prepared considering that the relevant documents will be signed by CPG officers on behalf of the CPG, it is therefore proposed to include the reference “or on behalf of” in the adaptation proposal. ▪ That said, in view of Members’ suggestion to uniformly adapt the reference “Secretary of State” (“工貿大臣” in the Chinese text) to “Central People’s Government”, and officers signing of documents are all CPG officers whereas the matter concerned is a matter which

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		<p>the CPG has responsibility, we suggest taking away the reference “or on behalf of” from the adaptation proposals, and uniformly adapt the reference to “Central People’s Government”.</p> <ul style="list-style-type: none"> ▪ Separately, considering that adaptation proposals should be made in accordance with the Basic Law, and Article 18(4) of the Basic Law indicates that, “the Standing Committee of the National People’s Congress decides to declare a state of war ... the Central People’s Government may issue an order applying the relevant national laws in the Region”, it is therefore proposed to adapt the reference “Secretary of State” to the “Standing Committee of the National People’s Congress” in respect of the power to declare the state of emergency under Section 2A(8) of Civil Aviation Ordinance (i.e. Section 120 of Schedule 1 to the Bill).

Security Bureau
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