

Bills Committee on Adaption of Laws (Military References) Bill 2010

**List of follow-up actions required of the Administration
(position as at 25 November 2011)**

Date of meeting	Follow-up actions required	Administration's response
9 November 2010	<p>The Administration was requested -</p> <ul style="list-style-type: none"> (a) to provide written views on the principles and scope of law adaptation and whether the Administration agreed to the principles and scope of law adaptation adopted in the past law adaptation exercises; (b) to conduct a comprehensive review of the scope and definition of law adaptation and provide a paper in this regard; (c) to provide an explanatory note setting out the guiding principles for the adaptation proposals, the terms and concepts to be adapted, the meaning of the original terms and the adapted terms, the ordinances involved, the justifications for the proposed adaptations, the interpretative principles and the reasons for the Administration's views that the proposed adaptations did not change the legislative intent and effect of the provisions concerned; (d) to provide information on the structure of the British forces and the Chinese People's Liberation Army ("CPLA"); 	<p>The Administration's response in LC Paper No. CB(2)479/10-11(02) which was issued to members on 10 December 2010 was discussed at the meeting on 14 December 2010.</p>

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	<p>(e) to provide information on the role, rights and obligations of the Hong Kong Garrison as stipulated in the Mainland laws, the Law of the People's Republic of China on the Garrisoning of the Hong Kong Special Administrative Region (" the Garrison Law") and the Sino-British Joint Declaration vis-à-vis those of the British forces stationed in Hong Kong before the handover;</p> <p>(f) to provide a list of the ordinances and the provisions where the four terms, i.e. "Commander of the Hong Kong Garrison", "Hong Kong Garrison", "member of the Hong Kong Garrison" and "military hospital" appeared; and</p> <p>(g) to consider deleting the proposed definition of the four terms in the Interpretation and General Clauses Ordinance (Cap. 1) and specifying their meaning repeatedly in the Ordinances covered in the Bill where necessary.</p>	
14 December 2010	<p>The Administration was requested -</p> <p>(a) to provide the full text of the Garrison Law;</p> <p>(b) to provide background information on the Hong Kong Garrison including its number, composition, rights and obligations, duration of stay, whether its members have the right of residence in Hong Kong, etc. Similar information on the British forces garrisoned in Hong Kong should also be provided for comparison;</p>	<p>The Administration's responses in LC Paper Nos. and CB(2)813/10-11(02) and (03) which were issued to members on 13 January 2011 were discussed at the meeting on 18 January 2011.</p>

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	<p>(c) to provide information concerning the constitutional status of Her Majesty's Forces and that of CPLA including to whom they pledge allegiance;</p> <p>(d) to provide the number and a list of the ordinances which contain the four terms proposed to be added to Cap. 1; and</p> <p>(e) to consider deleting the proposal of adding the four terms in Cap. 1.</p>	
18 January 2011	<p>The Administration was requested to -</p> <p>(a) to provide a written response to the Hong Kong Bar Association's comments in paragraph 17 of its submission dated 31 December 2010 (LC Paper No. CB(2)736/10-11(01);</p> <p>(b) to enquire with the Hong Kong Garrison on its size and relay the request to the Hong Kong Garrison for publishing the figure periodically;</p> <p>(c) to clarify whether the military hospitals before the Reunification were open to and had admitted members of the public; and</p> <p>(d) to confirm whether the notification mechanism and measures for control and prevention of infectious diseases applicable to local hospitals apply to military hospitals as well. The relevant ordinances and regulations, if applicable, should be quoted.</p>	<p>The Administration's responses in LC Paper No. CB(2)944/10-11(02) which was issued to members on 7 February 2011 was discussed at the meeting on 10 February 2011.</p>

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10 February 2011	<p>The Administration was requested -</p> <p><u>Cap. 1 Interpretation and General Clauses Ordinance</u></p> <p>(a) to revisit the need to include the proposed definitions in Cap.1;</p> <p>(b) to provide information on the circumstances under which a member of the Hong Kong Garrison was not serving with the Hong Kong Garrison;</p> <p>(c) to clarify whether the Hong Kong Garrison was the employer of the locally employed personnel, agents or servants under the laws of Hong Kong;</p> <p>(d) to provide the definition of commander of the Hong Kong Garrison;</p> <p>(e) to enquire with the Chief Executive about the availability of any mechanism to keep the Hong Kong Government informed of the size or the changes in the size of the Hong Kong Garrison;</p> <p><u>Cap. 3 Jury Ordinance- Section 5 Exemption from service</u></p> <p>(f) to clarify the meaning of "officers employed on full pay" in section 5(1)(j) and the reasons for exempting the spouses of members of the Armed Forces of Her Majesty serving on full pay from jury service;</p> <p>(g) to clarify the meaning and the Chinese translation of "officers" and "members" in Articles 12 and 14 of the Garrison Law;</p>	<p>The Administration's response in LC Paper Nos. CB(2)1495/10-11(01) and CB(2)1811/10-11(01) were issued to members on 12 April and 19 May 2011 respectively.</p>

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	<p>(h) to clarify the legal intent of the original provision of section 5(1)(j);</p> <p><u>Cap. 10 Probate and Administration Ordinance - Section 17 Saving as to estates of certain persons</u></p> <p>(i) to review the proposed adaptation of "any law of the Mainland" in section 17(2); and</p> <p><u>Pensions Regulations (Cap. 89) sub. leg. A and Pilotage Ordinance (Cap. 84)</u></p> <p>(j) to provide written information concerning the operation of the regulations and the relevant legislation, the number of persons being affected and the implication of the proposed adaptation, etc.</p>	
<p>28 February 2011</p>	<p>The Administration was requested -</p> <p><u>Cap. 84 Pilotage Ordinance</u> <u>Section 10D - Exemption from compulsory pilotage</u></p> <p>(a) to provide written information on how the exemption as mentioned in the Ordinance had been applied after the Reunification;</p> <p>(b) to provide written information concerning the basis on which pilotage exemptions were granted, i.e. whether it was based on the usage of the ships or the purpose of the visits, the cases requiring the advice of</p>	<p>The Administration's response in LC Paper No. CB(2)1811/10-11(01) was issued to members on 19 May 2011.</p>

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	<p>Department of Justice ("DoJ") and the details of the advice;</p> <p>(c) to review the proposed adaptation "used only on non-commercial service";</p> <p>(d) to provide the justifications for adapting Her Majesty to CPLA or the Central People's Government ("CPG") but not the Hong Kong Special Administrative Region ("HKSAR") in Cap. 84;</p> <p>(e) to provide the relevant provisions of the Merchant Shipping (Local Vessels) Ordinance (Cap. 548) which was referred to in section 10D (1)(c) of Cap. 84;</p> <p>(f) to provide the reasons for exempting Her Majesty's ships from compulsory pilotage;</p> <p>(g) clarify whether reflecting sovereignty was the legislative intent of the provision and check with the policy bureau the legislative intent of the provision;</p> <p>(h) to provide detailed information on the four CPLA/CPG ships which had visited Hong Kong after the Reunification and the purposes of their visits;</p>	

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	<p><u>Cap. 21 Defamation Ordinance</u> <u>SCHEDULE</u> <u>NEWSPAPER STATEMENTS HAVING QUALIFIED PRIVILEGE</u> <u>PART I - STATEMENTS PRIVILEGED WITHOUT EXPLANATION OR CONTRADICTION</u></p> <p>(i) to consider providing an editorial note to address the problem of retaining the expression "any part of the Commonwealth" in the provisions;</p> <p>(j) to review the proposed adaptation having regard to the views of members and the Legal Advisor;</p> <p><u>Cap. 53 Antiquities and Monuments Ordinance</u> <u>Section 2 - Interpretation</u></p> <p>(k) to review whether the proposed adaptation was appropriate; and</p> <p>(l) to provide a list setting out the provisions where the term "private land" appeared in the Ordinance concerned.</p>	
<p>11 April 2011</p>	<p>The Administration was requested -</p> <p><u>Public Service Commission Ordinance (Cap. 93)</u> <u>Section 6 - Functions of Commission</u></p> <p>(a) to discuss with the policy bureau and consider reviewing the proposed</p>	<p>The Administration's response in LC Paper No. CB(2)411/11-12(01) was issued to members on 25 November 2011.</p>

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	<p>adaptation to retain the reference of "office" in section 6(2)(d) having regard to the Police Force Ordinance (Cap. 232);</p> <p><u>Telecommunications Ordinance (Cap. 106)</u> <u>Section 14 - Power to place and maintain telecommunications lines, etc., on land, etc.</u></p> <p>(b) to advise the justifications of proposing the reference "Commander of the Hong Kong Garrison", and whether it had consulted the Hong Kong Garrison and if in the affirmative, the view of the Hong Kong Garrison;</p> <p>(c) to review the proposed definition of "Commander of the Hong Kong Garrison" in Cap. 1 having regard to the views of members and the Legal Adviser;</p> <p><u>Dutiable Commodities Ordinance (Cap. 109)</u> <u>Section 3 – Application</u></p> <p>(d) to make reference to section 10D(1)(a) of the Pilotage Ordinance (Cap. 84) and consider the need to add the reference of "goods for non-commercial services" in the provision;</p> <p>(e) to examine the meaning of "the Government of the United Kingdom" in the Bill and review the relevant adaptation proposals;</p>	

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	<p><u>Inland Revenue Ordinance (Cap. 112)</u> <u>Section 8 - Charge of salaries tax</u></p> <p>(f) to consider the need to mention "在中央人民政府的" before "職位" in the proposed adaptation for section 8(2)(d);</p> <p><u>Rating Ordinance (Cap. 116)</u> <u>Section 36 - Exemption of certain tenements from assessment</u></p> <p>(g) to provide information on whether the Government was charging rates for the United Services Recreation Club which was located within the Gun Club Hill Barracks;</p> <p>(h) to provide information on whether there were other provisions in the Rating Ordinance providing exemption from the payment of rates, wholly or in part, by the former Governor before the Reunification or the Chief Executive;</p> <p><u>Funeral Parlours Regulation (Cap. 132 sub. leg. AD)</u> <u>Regulation 3 – Interpretation</u></p> <p>(i) to consider including the reference of "any mortuary situated within the precincts of ... similar institution" in the proposed adaptation in section 3(ba);</p>	

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	<p><u>Hong Kong Cemetery, Happy Valley, Rules (Cap . 132 sub. leg. AJ)</u> <u>Rule 4 - Bands and photographs</u></p> <p>(j) to review the proposed adaptation, or consider taking away the exemption in a separate exercise;</p> <p><u>Dangerous Drugs Ordinance (Cap. 134)</u></p> <p>(k) to provide information on whether the provisions in Cap. 134 were applicable to military hospitals;</p> <p>(l) to provide information on whether pharmacists in military hospitals were exempted from registration; and</p> <p><u>Air Passenger Departure Tax Ordinance (Cap. 140)</u> <u>SECOND SCHEDULE</u></p> <p>(m)to review the appropriateness of replacing "關係" by "關連" in section 5(b).</p>	
<p>19 May 2011</p>	<p>The Administration was requested –</p> <p><u>Registration of Persons Regulations (Cap.177 sub. leg. A)</u> <u>Regulation 25 - Exemptions</u></p> <p>(a) to provide information on whether the persons serving in CPLA were all soldiers;</p>	<p>The Administration's response in LC Paper No. CB(2)411/11-12(02) was issued to members on 25 November 2011.</p>

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	<p>(b) to check if information could be provided on whether there were any spouse and children of members of the Hong Kong Garrison residing in Hong Kong;</p> <p>(c) to provide information on whether the spouse and children of members of the Hong Kong Garrison were required to undergo immigration clearance;</p> <p>(d) to provide information on whether measures implemented by local hospitals in relation to the provision of obstetrics services for Mainland women applied to the wives of members of the Hong Kong Garrison;</p> <p>(e) to consider reviewing the proposed adaptation of "服役" to "服務" in the Chinese text of regulation 25(b)(i) having regard to members' view;</p> <p><u>Defences (Firing Areas) Ordinance (Cap.196)</u> <u>Section 8 - Penalty for offences</u> <u>Section 9 - Officers authorized to arrest or remove trespassers, etc.</u></p> <p>(f) to review the proposed adaptations of "officer" to "person" in sections 8 and 9 having regard to members' views;</p> <p>(g) to explain in detail the justifications for adapting "warrant officer, non-commissioned officer or military policeman" to "soldier" in section 9(b), and the corresponding ranks under the establishment of</p>	

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	<p>the Hong Kong Garrison;</p> <p><u>Crimes Ordinance (Cap.200)</u> <u>Section 6 - Incitement to mutiny</u> <u>Section 7 - Incitement to disaffection</u></p> <p>(h) to provide information on the status of allegiance for the non-military groups after the Reunification;</p> <p>(i) to consider the appropriateness of the proposed adaptations to section 7 of Cap. 200 having regard to the non-military groups;</p> <p>(j) to consider whether the adaptation proposals of Cap. 200 should be excluded from the current exercise and be dealt with in a separate exercise;</p> <p><u>Crimes Ordinance (Cap.200)</u> <u>Section 158 - Application of ss. 156 and 157 to trials by courts-martial</u></p> <p>(k) to consider adapting section 158 by substituting the relevant Acts of the United Kingdom with the corresponding provisions of the Hong Kong Garrison and to seek the advice of the DoJ in this regard; and</p> <p>(l) to explain the provisions of section 156 in the context.</p>	

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9 June 2011	<p>The Administration was requested –</p> <p><u>Summary Offences Ordinance (Cap. 228)</u> <u>Section 29 – Prohibition of smoking in certain places</u></p> <p>(a) to review the proposed adaptation and include the reference of the naval forces in section 29(2)(a) having regard to members' views;</p> <p><u>Traffic Accident Victims (Assistance Fund) Ordinance (Cap. 229)</u> <u>Section 5 - Levy on motor vehicles</u></p> <p>(b) to consult the Hong Kong Garrison and DoJ and review the proposed adaptation for section 5(1)(c);</p> <p><u>Traffic Accident Victims (Assistance Fund) Ordinance (Cap. 229)</u> <u>SCHEDULE</u></p> <p>(c) to consider adding the word "證" after "允許" in the proposed item 5 in Part II of the SCHEDULE;</p> <p><u>Public Order Ordinance (Cap. 245)</u> <u>Section 31 - Curfew orders</u></p> <p>(d) to review the adaptation proposal for section 31(6)(m) of Cap 245 having regard to members' views;</p>	<p>The Administration's response in LC Paper No. CB(2)411/11-12(03) was issued to members on 25 November 2011.</p>

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	<p><u>Public Order Ordinance (Cap. 245)</u> <u>Section 37 - Permits to enter and leave closed area</u></p> <p>(e) to separately consider making amendments to exclude commercial purposes from other shipping-related provisions;</p> <p>(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, or in the United Kingdom before the Reunification;</p> <p>(g) 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 leave the closed area and explain the relevant arrangement;</p> <p>(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;</p> <p><u>Public Order Ordinance (Cap. 245)</u> <u>Section 39 - Power of arrest</u></p> <p>(i) to provide information on "any member of the Essential Services Corps" referred to in section 39(4)(a) of Cap. 245;</p> <p>(j) to clarify whether the Tamar site was regarded as closed area under section 36 of Cap. 245;</p>	

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	<p>(k) to provide information on the closed areas or other places occupied for other purposes of CPG and how section 39 of Cap. 245 would apply to the Liaison Office of CPG in HKSAR; and</p> <p><u>General issue</u></p> <p>(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.</p>	
<p>27 June 2011</p>	<p>The Administration was requested –</p> <p><u>Massage Establishments Ordinance (Cap. 266)</u> <u>Section 3 - Application of Ordinance</u></p> <p>(a) to check whether maternity home was one of the facilities in the military hospital and consider whether amendments to the proposed section 3(aa) were required;</p> <p><u>Shipping and Port Control Ordinance (Cap. 313)</u> <u>Section 70 - Boarding ships without authority</u></p> <p>(b) to provide information on the procedures involved when the Government of HKSAR asked CPG for assistance from the Hong Kong Garrison in the maintenance of public order or in disaster relief under Article 14 of the Garrison Law;</p>	<p>The Administration's response in LC Paper No. CB(2)411/11-12(04) was issued to members on 25 November 2011.</p>

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	<p><u>Civil Aviation Ordinance (Cap. 448)</u> <u>Section 2A - Power to give effect to Chicago Convention and regulate air navigation</u></p> <p>(c) to provide information on the authority in CPG which was responsible for the enforcement of the orders under 2A(3) and (4) of the Ordinance and the relevant procedures;</p> <p><u>Air Navigation (Hong Kong) Order 1995 (Cap. 448 sub. leg. C)</u> <u>Section 64 – Rules of the Air</u></p> <p>(d) to provide examples of the regulations or directives issued by CPG under section 64;</p> <p><u>Aviation Security Ordinance (Cap. 494)</u> <u>Section 2 - Interpretation</u></p> <p>(e) to review the proposed adaptation in section 2(4) having regard to members' views;</p> <p><u>Registered Designs Ordinance (Cap. 522)</u> <u>Section 77 - Designs relevant for defence purposes</u></p> <p>(f) to consider revising the adaptation proposal for "Secretary of State " to "Central People's Government";</p> <p>(g) to consult the relevant policy bureau and identify the responsible authority of CPG for the matters covered by section 77; and</p>	

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	<p><u>General issue</u></p> <p>(h) to provide justifications for the different adaptation proposals for "Secretary of State" in the Bill.</p>	

Council Business Division 2
Legislative Council Secretariat
25 November 2011