

**Adaptation of Laws (Military References) Bill 2010**

**Response to the comments raised  
by the Bills Committee at its meeting on 28 November 2011**

**Purpose**

This paper sets out the Administration's response to the comments raised by the Bills Committee on the provisions covered by Section 2(1) and the savings and transitional clauses in Section 5 of the Adaptation of Laws (Military References) Bill 2010 ("Adaptation Bill"), and summaries the proposed amendments presented in LC Paper No. CB(2)390/11-12(01) by setting out the draft amendment proposals to the Adaptation Bill.

**Section 2(1) of the Adaptation Bill**

2. At the meeting on 28 November 2011, the Bills Committee suggested that the Administration should re-examine the adaptation proposals and consequential amendment of the 47 provisions included in Section 2(1) of the Adaptation Bill, and to confirm that the provisions and adaptation proposals concerned would not involve negative effect before determining whether the relevant provisions should instead be included in Section 2(3) of the Adaptation Bill. In view of the suggestion of the Bills Committee, the Administration has carefully studied all 47 provisions and confirms that having those provisions come into effect on 1 July 1997 will not involve negative effect. The detailed explanations are set out at Annex A.

3. The Interpretation and General Clauses Ordinance (Cap.1) has already stated clearly on how yet-to-be adapted legal provisions should be construed-

(a) According to Section 2A(1) of Cap. 1, "all laws previously in force shall be construed with such modifications, adaptations, limitations and exceptions as may be necessary so as not to contravene the Basic Law and to bring them into conformity with the status of Hong Kong as a Special Administrative Region of the People's Republic of China ("PRC")."

(b) Section 2A(2)(c) of Cap. 1 stipulates that the "provisions relating to the rights, exemptions and obligations of 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 (“HKSAR”) of PRC, continue to have effect and apply to the military forces stationed in the HKSAR by the Central People’s Government of PRC.”

## **Savings and Transitional Clauses**

4. The Administration has originally proposed to include the savings and transitional clauses in the Adaptation Bill with a view to provide additional safeguards and to remove doubt as to the validity of the actions or proceedings initiated under the Defamation Ordinance (Cap. 21), the right accrued or accruing under the Pensions Regulations (Cap. 99, Subsidiary Legislation A), the Pension Benefits Regulations (Cap. 99, Subsidiary Legislation A) and the Pension Benefits (Judicial Officers) Regulations (Cap. 401, Subsidiary Legislation A) and the documents or declarations executed or attested outside Hong Kong under the Adoption Rules (Cap. 290, Subsidiary Legislation A). Having taken into account the views of the Bills Committee, the Administration agrees that even if no savings and transitional clauses are included to the Adaptation Bill, it should not have actual impact on the proceedings under the relevant legislations and the interest accrued before the Reunification, as well as the validity of such documents or declarations. Therefore, the Administration accepts the proposal of having the savings and transitional clauses deleted from the Adaptation Bill and will put forward amendment proposals.

5. At the meeting on 28 November, the Bills Committee discussed and agreed the proposed amendments as set out in LC Paper No. CB(2)390/11-12(01) and requests the Administration to present amendments proposals. The Administration now presents the draft amendments to be put forward by the Administration at **Annex B**, which includes the amendment proposal mentioned in paragraph 4 of this paper.

Security Bureau  
December 2011

**Adaptation of Laws (Military References) Bill 2010**  
**Reasons for setting the commencement date on 1 July 1997**

**I. Schedule 1**

<b>Section</b>	<b>Related Legislation</b>	<b>Reasons for the amendment to come into operation on 1 July 1997</b>
2	Jury Ordinance (Cap. 3) - sections 5(1)(j) and 5(1)(p) Exemptions from service	- The provision has been construed in accordance with Cap. 1 of the Laws of Hong Kong. Members of the Chinese People's Liberation Army and their spouses have been exempt from service as jurors in trials initiated since 1 July 1997.
3	Probate and Administration Ordinance (Cap. 10) - section 17 Saving as to estates of certain persons	- The provision has been construed in accordance with Cap. 1 of the Laws of Hong Kong. The Official Administrator has not obtained administration of the estate of any person dying while serving in the Chinese People's Liberation Army since 1 July 1997.
5	Antiquities and Monuments Ordinance (Cap. 53) - section 2 Interpretation	- Under the Basic Law, the Hong Kong Garrison has taken up defence duties in Hong Kong since 1 July 1997 and has been using the land concerned since then.
6	Employment Ordinance (Cap. 57) - section 33(6)(a) Sickness allowance	- Under the Basic Law, the Hong Kong Garrison has taken up defence duties in Hong Kong since 1 July 1997 and the medical certificates issued by the military hospital may also be used by local residents for claiming sickness allowance.

Section	Related Legislation	Reasons for the amendment to come into operation on 1 July 1997
10	Pensions Regulations (Cap. 89 sub. leg. A) - regulation 17A(9) Additional pension in respect of war service	- The provision is applicable to the Hong Kong Special Administrative Government for providing pension for officers who performed war service for the forces of the Crown and service for the then Hong Kong Government before the Reunification, and the provision concerned has not been applicable to members of the Chinese People's Liberation Army since 1 July 1997.
11	Public Service Commission Ordinance (Cap. 93) - section 6(2)(d) Functions of Commission	- The provision has been construed in accordance with Cap. 1 of the Laws of Hong Kong and the Public Service Commissions has not been advising the Chief Executive regarding the appointment of members of the Chinese People's Liberation Army since 1 July 1997.
13	Pension Benefits Regulations (Cap. 99 sub. leg. A) - regulation 15A(9) Additional pension in respect of war service	- The provision is applicable to the Hong Kong Special Administrative Government for providing pension for officers who performed war service for the forces of the Crown and service for the then Hong Kong Government before the Reunification, and the provision concerned has not been applicable to members of the Chinese People's Liberation Army since 1 July 1997.
15	Telecommunications Ordinance (Cap. 106) - section 14(1)(b) Power to place and maintain telecommunications lines, etc., on land, etc.	- Under the Basic Law, the Hong Kong Garrison has taken up defence duties in Hong Kong since 1 July 1997 and has been using the land concerned and issuing written consent to relevant persons for entry into the land concerned.

<b>Section</b>	<b>Related Legislation</b>	<b>Reasons for the amendment to come into operation on 1 July 1997</b>
16	Tramway Ordinance (Cap. 107) - section 2 Interpretation	- The provision has been construed in accordance with Cap. 1 of the Laws of Hong Kong, and the rights and protection applicable to Her Majesty's forces before the Reunification (i.e. the tramway company should give notice to the British forces should they wish to alter the position of any mains or pipes that belonged to the British Forces) has been applicable to the Garrison since 1 July 1997.
17	Dutiable Commodities Ordinance (Cap. 109) - section 3(4) Application	- The provision has been construed in accordance with Cap. 1 of the Laws of Hong Kong and the levy on goods related to the Garrison has not been applicable since 1 July 1997.
18	Inland Revenue Ordinance (Cap. 112) - sections 8, 8(2)(d), 8(2)(e) and 8(2)(f) Charge of salaries tax	- The provision has been construed in accordance with Cap. 1 of the Laws of Hong Kong and salaries tax has not been charged on members of the Chinese People's Liberation Army serving in Hong Kong in accordance with the Ordinance since 1 July 1997.
19	Immigration Ordinance (Cap. 115) - section 2(1) Interpretation	- The provision has been construed in accordance with Cap. 1 of the Laws of Hong Kong and the definition of the term "servicemen" has already been applicable to members of the Chinese People's Liberation Army since 1 July 1997.
20	Immigration Ordinance (Cap. 115) - section 17B(1)(e) Interpretation	- The provision has been construed in accordance with Cap. 1 of the Laws of Hong Kong and the proofs of identity of members of the Chinese People's Liberation Army have already been deemed as valid proofs of identity since 1 July 1997.

Section	Related Legislation	Reasons for the amendment to come into operation on 1 July 1997
21	Immigration Ordinance (Cap. 115) <u>Repealed</u> <ul style="list-style-type: none"> <li>- section 57A Powers of arrest by Her Majesty's forces</li> <li>- section 57B Resisting arrest by, and obstruction of, Her Majesty's forces</li> <li>- section 58 Powers of Her Majesty's naval officers</li> <li>- section 58A Powers of persons in charge of authorized vessels</li> </ul>	<ul style="list-style-type: none"> <li>- Under the relevant articles of Basic Law which has come into effect since 1 July 1997, the Hong Kong Garrison will not carry out the duties and exercise the powers relating to the maintenance of public order within the Hong Kong Special Administrative Region since 1 July 1997.</li> </ul>
22	Authorization by the Governor under section 58A (Cap. 115 sub. leg. F) <u>Repealed</u>	<ul style="list-style-type: none"> <li>- This provision is an amendment consequential to the repeal of Section 58A of the Immigration Ordinance (Cap. 115). Please refer to the explanation provided to Section 21 above.</li> </ul>
23	Rating Ordinance (Cap. 116) <ul style="list-style-type: none"> <li>- section 36(4) Exemption of certain tenements from assessment</li> </ul>	<ul style="list-style-type: none"> <li>- Under the Basic Law, the Hong Kong Garrison has taken up defence duties in Hong Kong since 1 July 1997 and has been using the land concerned since then. The provision has also been construed in accordance with Cap. 1 of the Laws of Hong Kong. The buildings on the military land have been exempt from assessment to rates in accordance with the Ordinance.</li> </ul>
24	Buildings Ordinance (Cap. 123) <ul style="list-style-type: none"> <li>- sections 41(1)(b), 41(1)(ba) and 41(1A)(a) Exemptions</li> </ul>	<ul style="list-style-type: none"> <li>- Under the Basic Law, the Hong Kong Garrison has taken up defence duties in Hong Kong since 1 July 1997 and has been using the land concerned since then. The provision has also been construed in accordance with Cap. 1 of the Laws of Hong Kong and exemption has been provided to the buildings on military land in accordance with the Ordinance.</li> </ul>

Section	Related Legislation	Reasons for the amendment to come into operation on 1 July 1997
25	Lands Resumption Ordinance (Cap. 124) - section 2 Interpretation	- Under the Basic Law, the Hong Kong Garrison has taken up defence duties in Hong Kong since 1 July 1997. If the Hong Kong Special Administrative Region Government has to resume land for use by the Garrison, it can be deemed as “resumption for a public purpose” in accordance with the Ordinance.
26	Land Acquisition (Possessory Title) Ordinance (Cap. 130) - section 2 Interpretation	- Under the Basic Law, the Hong Kong Garrison has taken up defence duties in Hong Kong since 1 July 1997. If the Hong Kong Special Administrative Region Government has to resume land for use by the Garrison, it can be deemed as “resumption for a public purpose” in accordance with the Ordinance.
28	Hong Kong Cemetery, Happy Valley, Rules (Cap. 132 sub. leg. AJ) - rule 4 Bands and photographs	- The band of the Chinese People’s Liberation Army has not played within the Hong Kong Cemetery, Happy Valley.
38	Air Passenger Departure Tax Ordinance (Cap. 140) - Schedule 2 Passengers exempted from liability to pay the Tax	- The provision has been construed in accordance with Cap. 1 of the Laws of Hong Kong. It has been applicable to members of the Chinese People’s Liberation Army since 1 July 1997.
45	Registration of Persons Regulations (Cap. 177 sub. leg. A) - regulation 25(b)(i) Exemptions	- The provision has been construed in accordance with Cap. 1 of the Laws of Hong Kong, and exemption has been provided to members of the Chinese People’s Liberation Army regarding the registration of and the issue of Hong Kong identity card since 1 July 1997.

<b>Section</b>	<b>Related Legislation</b>	<b>Reasons for the amendment to come into operation on 1 July 1997</b>
46	Defences (Firing Areas) Ordinance (Cap. 196) <ul style="list-style-type: none"> <li>- section 4(1) Firing programme and notices</li> <li>- section 8 (2) Penalty for offences</li> <li>- section 9 Officers authorized to arrest or remove trespassers, etc.</li> <li>- sections 10(1)(c) and 10(1)(e) Exemptions</li> </ul>	<ul style="list-style-type: none"> <li>- Under the Basic Law, the Hong Kong Garrison has taken up defence duties in Hong Kong since 1 July 1997 and has been circulating the provisional programme of firing practices in accordance with the Ordinance since then.</li> </ul>
61 62 63 64	Traffic Accident Victims (Assistance Fund) Ordinance (Cap. 229) <ul style="list-style-type: none"> <li>- section 5 Levy on motor vehicles</li> <li>- sections 6(1), 6(5) and 6(6) Levy on licence holders</li> <li>- section 7(2) Failure to pay levy</li> <li>- Schedule Part II</li> </ul>	<ul style="list-style-type: none"> <li>- Under the Basic Law, the Hong Kong Garrison has taken up defence duties in Hong Kong since 1 July 1997 and is not required to obtain driving licences and vehicle licences under the Road Traffic Ordinance (Cap. 374) (Members of the Garrison are required to obtain the permission provided by the Commander of the Hong Kong Garrison to drive a vehicle belonging to the Hong Kong Garrison).</li> </ul>
65	Public Bus Services Regulations (Cap. 230 sub. leg. A) <ul style="list-style-type: none"> <li>- regulation 13(5)(d) Power to remove passengers etc.</li> </ul>	<ul style="list-style-type: none"> <li>- The provision has been construed in accordance with Cap. 1 of the Laws of Hong Kong and the proofs of identity of members of the Chinese People's Liberation Army have also been deemed as valid proofs of identity from 1 July 1997. As such, the adaptation proposal of the term "proof of identity" should come into operation since 1 July 1997.</li> </ul>



Section	Related Legislation	Reasons for the amendment to come into operation on 1 July 1997
84 85	Employees' Compensation Ordinance (Cap. 282) <ul style="list-style-type: none"> <li>- section 3(1) Interpretation</li> <li>- section 4(1)(a) Application to certain employees</li> </ul>	<ul style="list-style-type: none"> <li>- Under the Basic Law, the Hong Kong Garrison has taken up defence duties in Hong Kong since 1 July 1997 and relevant hospital facilities have been set up since then. As such, the adaptation proposal of the definition "hospital" has already come into operation since 1 July 1997 and the Chinese People's Liberation Army has been exempt from providing employees' compensation to its members in accordance with the Ordinance since then.</li> </ul>
88 89	Mining Ordinance (Cap. 285) <ul style="list-style-type: none"> <li>- section 2 Interpretation</li> </ul> Mining (General) Regulations (Cap. 285 sub. leg. A) <ul style="list-style-type: none"> <li>- Schedule 1 Forms IV and V</li> </ul>	<ul style="list-style-type: none"> <li>- Under the Basic Law, the Hong Kong Garrison has taken up defence duties in Hong Kong since 1 July 1997 and has been using the land concerned since then. Holders of prospecting and mining licence should obtain prior consent in writing from the owner or any lawful occupier of the land concerned before commencing any prospecting and mining works.</li> </ul>
92	Dangerous Goods (Shipping) Regulations (Cap. 295 sub. leg. C) <ul style="list-style-type: none"> <li>- Schedule 1 Approved Petroleum Wharves</li> </ul>	<ul style="list-style-type: none"> <li>- The name of the barracks concerned, i.e. "Ngong Shuen Chau Barracks", has been adopted since 1 July 1997.</li> </ul>
102	Census and Statistics Ordinance (Cap. 316) <ul style="list-style-type: none"> <li>- section 10 Enumeration of armed forces and travellers</li> </ul>	<ul style="list-style-type: none"> <li>- The provision has been construed in accordance with Cap. 1 of the Laws of Hong Kong, and the Commissioner for Census and Statistics is entitled to conduct census of population on members of the Chinese People's Liberation Army in Hong Kong since 1 July 1997.</li> </ul>

Section	Related Legislation	Reasons for the amendment to come into operation on 1 July 1997
103	Industrial Training (Clothing Industry) Ordinance (Cap. 318) - section 3 Application	- The provision has been construed in accordance with Cap. 1 of the Laws of Hong Kong. According to the Garrison Law, the Garrison will not engage in any form of profit-making business activities. As such, no clothing items will be exported by or on behalf of the Hong Kong Garrison. The provision concerned has not been relevant to the Hong Kong Garrison since 1 July 1997.
106	Motor Vehicles (First Registration Tax) Ordinance (Cap. 330) - section 5 Tax not payable in respect of certain motor vehicles	- The provision has been construed in accordance with Cap. 1 of the Laws of Hong Kong. The exemption from tax arrangement was granted to vehicles of any member of Her Majesty's forces where similar tax had been paid in any Commonwealth country before the Reunification. The exemption is not relevant to vehicles of the Chinese People's Liberation Army after 1 July 1997.
109 110	Pneumoconiosis and Mesothelioma (Compensation) Ordinance (Cap. 360) - section 2 Interpretation - section 4 Entitlement to compensation	- Under the Basic Law, the Hong Kong Garrison has taken up defence duties in Hong Kong since 1 July 1997 and relevant hospital facilities have been set up since then. As such, the adaptation proposal of the definition "hospital" has already come into operation since 1 July 1997 and members of the Chinese People's Liberation Army have not been allowed to claim pneumoconiosis and mesothelioma compensation in accordance with the Ordinance since then.

Section	Related Legislation	Reasons for the amendment to come into operation on 1 July 1997
116	Road Traffic (Parking on Private Roads) Regulations (Cap. 374 sub. leg. O) - regulation 10 Exemptions	- The provision has been construed in accordance with Cap. 1 of the Laws of Hong Kong, and exemption from the parking restrictions in regulations 4, 5 and 6 have been provided to vehicles of the Chinese People's Liberation Army employed on duty since 1 July 1997.
131	Occupational Deafness (Compensation) Ordinance (Cap. 469) - section 14 Entitlement to compensation for the first time	- Under the Basic Law, the Hong Kong Garrison has taken up defence duties in Hong Kong since 1 July 1997 and members of the Chinese People's Liberation Army have not been allowed to receive occupational deafness compensation in accordance with the Ordinance since then.
133 134	Merchant Shipping (Seafarers) Ordinance (Cap. 478) <u>Repealed</u> - section 141 Royal Fleet Auxiliary - Schedule 1 Specified provisions for purposes of section 125	- The provision has been construed in accordance with Cap. 1 of the Laws of Hong Kong and has been repealed since 1 July 1997.
135	Aviation Security Ordinance (Cap. 494) - section 2 Interpretation	- The provision has been construed in accordance with Cap. 1 of the Laws of Hong Kong, and the certificate issued by the "Central People's Government" has been considered as conclusive evidence of the fact since 1 July 1997.

## II. Schedule 2

Section	Related Legislation	Reasons for the amendment to come into operation on 1 July 1997
2	Interpretation and General Clauses (Cap.1) - section 2A(2)(c) Laws previously in force	- The reference “Laws of the People’s Republic of China on the Garrisoning of the Hong Kong Special Administrative Region in Schedule 2 to the Promulgation of National Laws (No.2) 1997 (L.N. 386 of 1997) proposed to be added has already come into operation on 1 July 1997.

Security Bureau  
December 2011

**ADAPTATION OF LAWS (MILITARY REFERENCES) BILL 2010**

**COMMITTEE STAGE**

Draft amendments to be moved by the Secretary for Security

<u>Clause</u>	<u>Amendment Proposed</u>
5	By deleting the clause.
Schedule 1	(a) By deleting “[ss. 3 & 5]” and substituting “[s. 3]”. (b) By deleting the cross-heading before section 1. (c) By deleting section 1.
Schedule 1, section 8	By deleting “and used only on non-commercial service”.
Schedule 1, section 14	In the Chinese text, by deleting “正在執行職務” and substituting “在當值中”.
Schedule 1, section 20	In the Chinese text, by deleting “為在中國人民解放軍中服務的目的” and substituting “因服役於中國人民解放軍”.
Schedule 1, section 45	In the Chinese text, by deleting “中服務” and substituting “服役”.
Schedule 1, section 60	By deleting subsection (1) and substituting – “(1) Section 29(2) of the Summary Offences Ordinance (Cap. 228) is amended, in paragraph (a) of the

proviso, by repealing “Her Majesty’s naval forces” and substituting “the naval forces of the Chinese People’s Liberation Army”.”.

Schedule 1,  
section 65

In the Chinese text, by deleting “為在中國人民解放軍中服務的目的” and substituting “因服役於中國人民解放軍”.

Schedule 1,  
section 71(2)

By deleting “or the Hong Kong Garrison”.

Schedule 1,  
section 119

In the proposed section 5(3)(b), by deleting “and is used only on non-commercial service”.

Schedule 1,  
section 128(3)

By deleting “or on behalf of”.

Schedule 1,  
section 132

In the proposed section 3(1)(a), by deleting “and used only on non-commercial service”.

Schedule 1,  
section 135

By deleting “or on behalf of”.

Schedule 1,  
section 137(1)

By deleting “competent authority” and substituting “Central People’s Government”.

Schedule 1,  
section 137(2)

By deleting “competent authority” and substituting “Central People’s Government”.

