

立法會
Legislative Council

LC Paper No. LS13/10-11

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

Issues relating to the Scope of Adaptation of Laws Bills

At the meeting of the Bills Committee on 9 November 2010, questions were raised as to the scope of the adaptation of laws. This paper sets out the guiding principles adopted by the Administration for the Adaptation of Laws Programme and its application and highlights some concerns raised by the members during past deliberations on legislative proposals which might fall outside the scope of the adaptation of laws and the actions taken to address those concerns.

Background

2. The Adaptation of Laws Programme (the Programme) is undertaken by the Administration to amend the references in legislation which are inconsistent with the Basic Law or with the status of Hong Kong as a Special Administrative Region (SAR) of the People's Republic of China.

3. The interpretative principles on which certain references that continue to be in force after 1997 should be construed have been laid down in section 2A of and Schedules 8 and 9 to the Interpretation and General Clauses Ordinance (Cap. 1). The Administration considers it inappropriate to retain references such as "Governor", "Crown", "Colonial Regulations" etc. in the legislation of Hong Kong. Also, to obviate the need to make cross references to Cap. 1, the Adaptation of Law Bills were introduced to effect the necessary textual amendments¹.

¹ see "Official Records of Proceedings of the Legislative Council" on the speech of the Secretary for Security made upon introduction of the Adaptation of Laws Bill 1998 and the Adaptation of Laws (No. 2) Bill 1998 (14 October 1998), the Adaptation of Laws Bill (No. 3) 1998 (11 November 1998), the Adaptation of Laws Bill (No. 6) 1998 (11 November 1998) and the Adaptation of Laws Bill (No. 9) 1998 (31 March 1999).

4. The bills introduced under the Programme are, as expressed in their long title, "to adapt certain Ordinances/introduce necessary adaptations to bring them into conformity with the Basic Law and with the status of Hong Kong as a Special Administrative Region of the People's Republic of China".

5. The Programme commenced in 1998 and is conducted in two phases. Under the first phase, six bills² were introduced during the term of the Provisional Legislative Council to deal with the adaptations considered essential to the operation of SAR. The second phase deals with the adaptations on an ordinance-by-ordinance basis.

Guiding Principles for the Adaptation of Laws Programme

6. At its first meeting on 4 November 1998 of the Bills Committee formed to study the Adaptation of Laws Bill 1998, the first bill introduced under the second phase of the Programme, members expressed concern on the appropriateness of replacing the reference to "Colonial Regulations" by "relevant executive order". Members found that it would be worthwhile to set down the guiding principles to be applied in the adaptation exercise.

7. At the request of the Bills Committee, the Administration provided a paper entitled "Adaptation of Laws Programme: Guiding Principles and Guideline Glossary of Terms" (LC Paper No. CB(2)739/98-99(01)) (the Paper).

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- ² (i) Merchant Shipping (Registration) (Amendment) Bill 1998: to adapt provisions of the Merchant Shipping (Registration) Ordinance (Cap. 415) relating to the flying of proper colours of ships registered in Hong Kong (i.e. national flag by PRC directly above the regional flag of the HKSAR etc;
- (ii) Adaptation of Laws (Courts and Tribunals) Bill: to provide for the adaptation of reference to court nomenclatures or titles of courts in over 230 Ordinances;
- (iii) Adaptation of Laws (References to Foreign Country, Etc.) Bill: to make amendments to reference to foreign country, and other related expressions in specific ordinances;
- (iv) Adaptation of Laws (Crown Land) Bill: to amend references to the Crown in relation to land in the laws of Hong Kong to conform with Article 7 of the Basic Law;
- (v) Adaptation of Laws (Interpretative Provisions) Bill: to amend provisions of the Interpretation and General Clauses Ordinance (Cap. 1) relating to the construction, application and interpretation of laws) and
- (vi) Adaptation of Laws (Nationality Related Matters) Bill: to introduce necessary adaptations to references to "British national", "commonwealth citizen" and similar expressions in the laws of Hong Kong and make supplementary provisions for right to land in Hong Kong enjoyed by former permanent residents.

8. In paragraph 5 of the Paper, the Administration sets out the guiding principles (Guiding Principles) to be applied in implementing the Programme as follows -

- (a) the provision when adapted should be consistent with the Basic Law and with Hong Kong's status as a Special Administrative Region of the People's Republic of China, but that subject to this each provision should, as far as possible, be to the same legal effect after its adaptation as before;
- (b) Any amendment that is neither related to the Basic Law nor necessitated by Hong Kong's new status is outside the scope of the Programme; and
- (c) the adaptation of each provision should be made in accordance with the relevant provisions of Cap. 1 where applicable, but the adaptation must be considered in the context of the particular Ordinance concerned and other related Ordinances.

9. A guideline glossary of terms is at the Annex A of the Paper. It is stated in paragraph 7 of the Paper that amendments for adapting particular terms or instances of departure, will be explained separately to the Bills Committee involved. A copy of the Paper has been re-circulated to members of the Bills Committee separately (LC Paper No. CB(2)479/10-11(03)).

Adaptation proposals outside the scope of law adaptation

10. In the light of the Guiding Principles, there were a number of occasions on which members of the Bills Committees expressed concern on adaptation proposals which might fall outside the scope of the adaptation exercise.

11. To address the concern, the Administration has in some cases revised the proposed adaptations to bring them in line with the Guiding Principles. In other cases, the Administration deleted the proposed amendments from the Adaptation of Laws Bills and introduced the amendments by way of other bills such as an omnibus bill.

12. The ensuing paragraphs set out some examples of these cases.

Proposals that might change the legal effect of the provisions concerned

The Adaptation of Laws Bill 1998

13. The Bill proposed, inter alia, to adapt the reference to "Colonial Regulations" to "relevant executive order" which was defined as "any executive order issued by the Chief Executive (CE) for the administration of the public service and any regulation or direction made under such order".

14. Members considered that although Article 48(4) of the Basic Law conferred on CE the power to issue executive orders, the scope of such orders was not specified. It was doubtful whether executive orders issued by CE would be equivalent to the Colonial Regulations and whether such orders would be confined to the administration of public service. Some members considered that the proposed adaptation was not a technical amendment, but a legal and constitutional matter. It should not be dealt with in the context of the adaptation exercise.

15. In response, the Administration proposed to move a Committee Stage Amendment (CSA) to adapt the reference to "Colonial Regulations" to "Public Service (Administration) Order" which was defined to include specific executive order published in the Gazette. The Bills Committee agreed.

The Adaptation of Laws (No. 6) Bill 1998

16. Under the Dutiable Commodities Ordinance (Cap. 109), the definition of "export" means transshipment from one country to another country. The Bill proposed that the definition be adapted to cover transshipment between two different places within the same country. The Bills Committee had reservation on the proposed amendment as it would effectively change the scope of the definition.

17. In response, the Administration reiterated the view that -

"The adaptation of laws exercise has a limited scope of adapting the ordinances as they stand. It would be outside the scope of the exercise and hence would be inappropriate to investigate or debate the reason why, as a matter of policy, the ordinance was enacted with the binding effect it has. The adaptation exercise does not involve any change to the binding effect of ordinances, except to reflect the change in sovereignty." (paragraph (a) of LC Paper No. CB(1)677/98-99(01) (29 December 1998))

18. The Administration agreed that the references to "any country" and "another country" in the definition of "export" under Cap. 109 did not require adaptation. The Administration moved a CSA to delete the proposed amendments from the Bill. No amendment has been introduced to the definition of "export" under Cap. 109 since then.

Proposals not related to the Basic Law nor necessitated by Hong Kong's new status

The Adaptation of Laws (No. 3) Bill 1998

19. The Bill proposed to repeal the Smuggling into China (Control) Ordinance (Cap. 242) and its subsidiary legislation. On the rationale for the proposed repeal, the Administration explained that in this case the need for compliance with the Basic Law and conformity with Hong Kong's status as a SAR happened to overlap with the desirability of removing a defunct Ordinance from the Statute book. The Administration was of the view that achievement of both purposes by way of the law adaptation bill would not be inappropriate and would be a convenient and efficient use of legislative time (paragraph 9 of LC Paper No. CB(2)1120/98-99(01)).

20. In examining the analysis provided by the Administration, members noted that only a few provisions in Cap. 242 are not in conformity with Hong Kong's status as a SAR of the People's Republic of China or may be inconsistent with the Basic Law and that most of the provisions in Cap. 242 are considered to be obsolete mainly because of the enactment of the Import and Export Ordinance (Cap. 60). While members unanimously agreed that Cap. 242 should be repealed due to its obsolescence, the majority of members, however, considered that the proposed repeal was beyond the scope of the adaptation exercise.

21. The Administration moved a CSA to delete from the Bill the proposed repeal. Cap. 242 and its subsidiary legislation were subsequently repealed under the Statute Law (Miscellaneous Provisions) Ordinance 2000 (Ord. No. 32 of 2000).

Proposals involving classification of a particular instrument as subordinate legislation

Adaptation of Laws (No. 2) Bill 1998

22. The Bills Committee expressed concern that the reference to "Governor" was adapted to "Chief Executive in Council" in some cases, and to "Chief Executive" in other cases. The Administration explained

that CE had to consult the Executive Council before making subsidiary legislation. In the context of that adaptation, the Administration identified every provision which conferred a legislative function on the then Governor and to replace the reference to "Governor" by "Chief Executive in Council" so as to reflect the constitutional obligation of CE under Article 56 of the Basic Law.

23. Members had doubts on the need to decide in the context of adaptation the classification of a particular instrument as subordinate legislation or otherwise. The Administration subsequently proposed to adopt a more mechanical approach by adapting all references to "Governor" in respect of making subordinate legislation and issuing administrative orders to "Chief Executive". The proposal was agreed by the Bills Committee and the Administration moved CSAs to amend the Bill as proposed.

Proposals that might contravene the Basic Law

The Adaptation of Laws (No. 9) Bill 1999

24. The Bill proposed to amend 14 traffic-related ordinances. During the scrutiny of the Bill, members raised queries on the proposal to adapt the reference to "Her Majesty or the Government" to "State" in provisions in the Motor Vehicles Insurance (Third Party Risks) Ordinance (Cap. 272) relating to the granting of exemption to vehicles owned by the State from taking out third party insurance. Members expressed concern whether the exemption granted to the State would contravene Article 22 of the Basic Law which requires that all State organs shall abide by the laws of Hong Kong.

25. The Bills Committee then decided by majority vote moving a CSA to adapt the reference to "Her Majesty or the Government" to "the Government" in the concerned provision. The Administration was of the view that the proposed amendment would involve complex policy and legal implications and should more appropriately be tackled outside the context of the Bill. To address the members' concern, the Administration agreed to delete the proposed adaptations from the Bill.

26. The Bill also proposed to adapt the term "Crown" to "State" in provisions in the Eastern Harbour Crossing Tunnel By-laws (Cap. 215 sub. leg. E) and the Tate's Cairn Tunnel By-laws (Cap. 393 sub. leg. B) relating to the granting of exemption to vehicles that carried persons in the service of the State from the payment of toll when they performed duties in relation to the relevant tunnels.

27. Members noted that the term "Government" was adopted in similar provisions in other tunnel legislation, viz the Tsing Ma Control Area Ordinance (Cap. 498), Western Harbour Crossing By-laws (Cap. 436 sub. leg. D) and Tai Lam Tunnel and Yuen Long Approach Road By-laws (Cap. 474 sub. leg. C). They queried the inconsistencies identified. The Administration advised that the inconsistencies rested with the original drafting of the legislation. Given that the legislature passed the relevant legislation with clear reference to the "Crown" and "Government" under different tunnel legislation, any changes would be policy changes which would have to be dealt with outside the adaptation exercise. The Bills Committee decided by majority vote to move a CSA to adapt the term "Crown" to "Government" in the concerned provisions. In response, the Administration agreed to delete such proposed amendments from the Bill.

28. After the Bills Committee made a report on its deliberations to the House Committee, the Administration advised that it would conduct a comprehensive review of the relevant legislation instead of amending the Bill in a piecemeal manner. The Administration did not give notice of resumption of the Second Reading debate of the Bill, which lapsed upon the expiry of the first term of the Legislative Council.

29. The Administration subsequently re-introduced some amendment proposals under the lapsed Bill by other bills. For example, the adaptation amendments proposed to the Road Traffic Ordinance (Cap. 374) and the Road Traffic (Driving-offence Points) Ordinance (Cap. 375) under the Bill, to which the Bills Committee raised no objection, were re-introduced under the Road Traffic Legislation (Amendment) Bill 2002.

30. A summary of the issues deliberated and the actions taken in the above cases is in **Appendix**.

31. Apart from the cases mentioned above, the questions as to the scope of the adaptation exercise were raised by members from time to time during previous deliberations on other Adaptation of Laws Bills. In response, the Guiding Principles have often been referred to by the Administration for considering whether certain amendment proposals would go beyond the scope of adaptation. Nevertheless, just as legislative proposals in other bills, each adaptation proposal should still be examined in the context of the ordinances concerned and in the light of the Administration's explanation on the rationale for the adaptation proposal.

Conclusion

32. The Guiding Principles is a useful reference for members to understand the approach adopted by the Administration in the formulation of bills under its Adaptation of Laws Programme. That notwithstanding, each bill entitled an Adaptation of Laws Bill is subject to scrutiny by members in the usual way, with particular focus on the question of whether the bill, if enacted, would bring about policy changes not intended by the objective of the bill as set out in its long title.

Encl

Prepared by

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LS/B/25/09-10

Summary of issues discussed and actions taken as set out in Paras. 13 to 29

Bill Title	Issues discussed	Actions taken
<p>1. Adaptation of Laws Bill 1998</p> <p><i>Date of 1st Reading: 14.10.98</i></p> <p><i>Date of Passage through LegCo: 28.4.99</i></p> <p><u>Long Title:</u> <i>To adapt certain Ordinances and their subsidiary legislation to bring them into conformity with the Basic Law and with the status of Hong Kong as a Special Administrative Region of the People's Republic of China.</i></p>	<ul style="list-style-type: none"> • The Bill proposes to adapt the reference to "Colonial Regulations" to "relevant executive order" which was defined as "any executive order issued by the Chief Executive (CE) for the administration of the public service and any regulation or direction made under such order". • Members raised concern as to whether executive orders issued by CE would be equivalent to the Colonial Regulations and whether such orders would be confined to the administration of public service. Some members considered that the proposed adaptation was not a technical amendment, but a legal and constitutional matter. It should not be dealt with in the context of the adaptation of laws exercise. 	<ul style="list-style-type: none"> • The Administration proposed to move a CSA to adapt the reference to "Colonial Regulations" to "Public Service (Administration) Order" which was defined to include specific executive order published in the Gazette. • The Bills Committee agreed to such proposal.
<p>2. Adaptation of Laws (No. 2) Bill 1998</p> <p><i>Date of 1st Reading: 14.10.98</i></p> <p><i>Date of Passage through LegCo: 31.3.99</i></p> <p><u>Long Title:</u> <i>To adapt certain Ordinances and their subsidiary legislation to bring them into conformity with the Basic Law and with the status of Hong Kong as a Special Administrative Region of the People's Republic of China.</i></p>	<ul style="list-style-type: none"> • The Bills Committee expressed concern that the reference to "Governor" was adapted to "Chief Executive in Council" in some cases and to "Chief Executive" in other cases. • The Administration explained that CE had to consult the Executive Council before making subsidiary legislation. In the context of this adaptation of laws exercise, the Administration identified every provision which conferred a legislative function on the then Governor and to replace the reference to "Governor" by "Chief Executive in Council" so as to reflect the constitutional obligation of CE under Article 56 of the Basic Law. • Members had doubts on the need to decide in the context of adaptation the classification of a particular instrument as subordinate legislation or otherwise. 	<ul style="list-style-type: none"> • The Administration subsequently proposed to adopt a more mechanical approach by adapting all references to "Governor" in respect of making subordinate legislation and issuing administrative orders to "Chief Executive". • The proposal was agreed by the Bills Committee and the Administration moved CSAs to amend the Bill as proposed.

Bill Title	Issues discussed	Actions taken
<p>3. Adaptation of Laws (No. 3) Bill 1998</p> <p><i>Date of 1st Reading: 11.11.98</i></p> <p><i>Date of Passage through LegCo: 31.3.99</i></p> <p><u>Long Title:</u> <i>To repeal certain Ordinances and subsidiary legislation that are not in conformity with the status of Hong Kong as a Special Administrative Region of the People's Republic of China.</i></p>	<ul style="list-style-type: none"> • The Bill proposed to repeal the Smuggling into China (Control) Ordinance (Cap. 242) and its subsidiary legislation. • The Administration explained that in this case the need for compliance with the Basic Law and conformity with Hong Kong's status as a SAR happened to overlap with the desirability of removing a defunct Ordinance from the Statute book. • In examining the analysis provided by the Administration, members noted that only a few provisions in Cap. 242 are not in conformity with Hong Kong's status as a SAR or may be inconsistent with the Basic Law and that most of the provisions Cap. 242 are considered to be obsolete mainly because of the enactment of the Import and Export Ordinance (Cap. 60). While members unanimously agreed that Cap. 242 should be repealed due to its obsolescence, the majority of members, however, considered that the proposed repeal was beyond the scope of the adaptation of laws. 	<ul style="list-style-type: none"> • In response, the Administration moved a CSA to delete from the Bill the proposed repeal. • Cap. 242 and its subsidiary legislation were subsequently repealed under the Statute Law (Miscellaneous Provisions) Ordinance 2000 (Ord. No. 32 of 2000). <p><i>Date of 1st Reading: 23 June 1999</i></p> <p><i>Date of Passage through LegCo: 31 May 2000</i></p> <ul style="list-style-type: none"> • A Bills Committee was formed on 23 June 1999 to study the Statute Law (Miscellaneous Provisions) Bill 1999 and there were no discussion on issues previously raised.

Bill Title	Issues discussed	Actions taken
<p>4. Adaptation of Laws (No. 6) Bill 1998</p> <p><i>Date of 1st Reading: 11.11.98</i></p> <p><i>Date of Passage through LegCo: 31.3.99</i></p> <p><u>Long Title:</u> <i>To adapt certain Ordinances and their subsidiary legislation to bring them into conformity with the Basic Law and with the status of Hong Kong as a Special Administrative Region of the People's Republic of China.</i></p>	<ul style="list-style-type: none"> • Under the Dutiable Commodities Ordinance (Cap. 109), the definition of "export" means transshipment from one country to another country. The Bill proposed that the definition be adapted to cover transshipment between two different places within the same country. • The Bills Committee had reservation on the proposed amendment as it would effectively change the scope of the definition. 	<ul style="list-style-type: none"> • The Administration agreed that the references to "any country" and "another country" in the definition of "export" under Cap. 109 did not require adaptation. • The Administration moved a CSA to delete the proposed amendments from the Bill. • No amendment was introduced to the definition of "export" under Cap. 109 since then.
<p>5. Adaptation of Laws (No. 9) Bill 1999</p> <p><i>Date of 1st Reading : 31.3. 99</i></p> <p><i>Date of Passage through LegCo: Lapsed</i></p> <p><u>Long Title:</u> <i>To adapt certain Ordinances to bring them into conformity with the Basic Law and with the status of Hong Kong as a Special Administrative Region of the People's Republic of China.</i></p>	<ul style="list-style-type: none"> • On the proposal to adapt the reference to "Her Majesty or the Government" to "State" in provisions in the Motor Vehicles Insurance (Third Party Risks) Ordinance (Cap. 272) relating to the granting of exemption to vehicles owned by the State from taking out third party insurance, members expressed concern whether the exemption granted to the State would contravene Article 22 of the Basic Law which required all State organs shall abide by the laws of Hong Kong. • On the proposal to adapt the term "Crown" to "State" in provisions in the Eastern Harbour Crossing Tunnel By-laws (Cap. 215 sub. leg. E) and the Tate's Cairn Tunnel By-laws (Cap. 393 sub. leg. B) relating to the granting of exemption to vehicles that carried persons in the service of the State from the payment of toll when they performed duties in relation to the relevant tunnels, members noted that the term "Government" was adopted in similar provisions in other tunnel legislation, viz the Tsing Ma Control Area Ordinance (Cap. 498), Western Harbour Crossing By-laws (Cap. 436 	<ul style="list-style-type: none"> • In view of the members' concern, the Administration agreed to delete the proposed amendments from the Bill. • The Bills Committee decided by majority vote to move a CSA to adapt the term "Crown" to "Government" in the concerned provisions. In response, the Administration agreed to delete such proposed amendments from the Bill. • The Administration did not give notice of resumption of the Second Reading debate of the Bill which lapsed upon the expiry of the first term of the Legislative Council.

Bill Title	Issues discussed	Actions taken
	<p>sub. leg. D) and Tai Lam Tunnel and Yuen Long Approach Road By-laws (Cap. 474 sub. leg. C). They queried the inconsistencies identified.</p>	<ul style="list-style-type: none"><li data-bbox="1525 373 2145 735">• The Administration subsequently reintroduced some amendment proposals in the Bill by other bills. For example, the adaptation amendments to the Road Traffic Ordinance (Cap. 374) and the Road Traffic (Driving-offence Points) Ordinance (Cap. 375) proposed in the Bill, to which the Bills Committee raised no objection, were reintroduced under the Road Traffic Legislation (Amendment) Bill 2001. <p data-bbox="1585 778 2024 810"><i>Date of 1st reading: 20 June 2001</i></p> <p data-bbox="1585 852 2007 922"><i>Date of passage through LegCo: 27 February 2002</i></p> <ul style="list-style-type: none"><li data-bbox="1525 963 2145 1066">• A Bills Committee was formed on 22 June 2001 to study the Road Traffic Legislation (Amendment) Bill 2001.