

立法會 *Legislative Council*

LC Paper No. CB(2)909/11-12

Ref : CB2/BC/5/09

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

Purpose

This paper reports on the deliberations of the Bills Committee on Adaptation of Laws (Military References) Bill 2010.

Background

2. On 23 February 1997, the Standing Committee of the National People's Congress ("SCNPC") decided that except for 14 Ordinances and subsidiary legislation, and certain provisions in 10 Ordinances and subsidiary legislation which are in contravention of the Basic Law ("BL"), the laws previously in force in Hong Kong are adopted as the laws of the Hong Kong Special Administrative Region ("HKSAR") in accordance with BL8 and BL160. The decision of SCNPC also spells out the interpretative principles for provisions relating to the rights, exemptions and obligations of military forces stationed in Hong Kong by the United Kingdom ("UK") and "Her Majesty", "the Crown", "the British Government" and "the Secretary of State", etc. The interpretative principles promulgated by SCNPC have been enacted as part of Hong Kong law through 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).

3. According to the Administration, 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 since 1 July 1997. However, it is still necessary to adapt these military-related provisions in the interest of legal certainty in the laws of Hong Kong.

The Bill

4. Introduced into the Legislative Council ("LegCo") on 14 July 2010, the Bill seeks to adapt certain military references in, and other related provisions of, the laws of Hong Kong to bring them into conformity with BL and Hong Kong's status as a SAR of the People's Republic of China ("PRC"). The adaptation proposals set out in the Bill involve 85 pieces of legislation across different policy areas.

The Bills Committee

5. At the House Committee meeting on 8 October 2010, Members formed a Bills Committee to study the Bill. The membership list of the Bills Committee is in **Appendix I**.

6. Under the chairmanship of Hon IP Kwok-him, the Bills Committee has held 11 meetings with the Administration. The Bills Committee has received oral representation from Mr Martin Oei, a political commentator, and written submissions from the Hong Kong Bar Association and the Hong Kong Human Rights Monitor.

Deliberations of the Bills Committee

Principles for formulation of adaptation proposals

7. According to the Administration, the adaptation proposals are formulated in accordance with the following principles as set out in Cap. 1 -

- (a) provisions relating to the rights, exemptions and obligations of the military forces stationed in Hong Kong by UK shall, subject to the provisions of BL and the Garrison Law of the HKSAR of PRC ("the Garrison Law"), continue to have effect and apply to the military forces stationed in the HKSAR by the Central People's Government ("CPG") of PRC (section 2A(2)(c) of Cap. 1 refers);
- (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 HKSAR;

- (ii) involves affairs for which CPG of PRC has responsibility;
- (iii) involves the relationship between the Central Authorities and the HKSAR,

shall be construed as a reference to CPG or other competent authorities of PRC (section 1 of Schedule 8 to Cap. 1 refers); 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 HKSAR (section 2 of Schedule 8 to Cap. 1 refers).

8. The Administration has advised the Bills Committee that broadly speaking, general references to "Her Majesty's forces", for example, will be adapted as "the Chinese People's Liberation Army" ("CPLA") 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". When formulating the adaptation proposals, the Administration has also taken into account the context and the legislative intent of the relevant provisions.

Scope of adaptation of laws

9. Some members, including Dr Hon Margaret NG, Hon James TO and Hon Cyd HO, have expressed concern that the Bill covers not only adaptation proposals but also other amendments that may involve policy changes. They are particularly concerned that substantive changes to the law are introduced under the name of adaptation. Dr NG has pointed out that the fundamental principle of adaptation is not to amend the law. Adaptation of legislation should be a technical and mechanical exercise and should restrict solely to substitution of terms and expressions without changing the meaning or legal effect of the relevant provisions. Any policy changes should be dealt with by legislative amendments. In her view, a number of proposals in the Bill go beyond adaptation.

10. The Administration has stressed that the adaptation proposals are formulated in accordance with the interpretative principles promulgated by SCNPC on 23 February 1997 and as set out in Cap. 1, as well as the guiding principles, for the adaptation of laws programme as set out in the "Guiding Principles and Guideline Glossary of Terms" ("Guiding Principles") presented by the Department of Justice to LegCo in 1998. The Administration has advised that proposals that may involve law reform, or non-military-related references (such

as Crown immunity under the common law and references to any part of the Commonwealth outside Hong Kong), has not been included in the Bill. Proposals in the Bill are straight forward and technical amendments. The Guiding Principles also provide that the adaptation must be considered in the context of the particular Ordinance concerned and other related Ordinances. The adaptation proposals included in the Bill have no impact on the legal effect of the existing provisions and are consistent with the Guiding Principles adopted in other adaptation of laws exercises.

11. Dr Hon Margaret NG observes that the approach taken by the Administration in the current adaptation exercise is different from those in the past and has raised query about the rationale. The Administration has explained that the adaptation proposals included in the Bill are consistent with the Guiding Principles adopted in other adaptation of laws exercises. During the briefing to LegCo on the adaptation of laws exercise in 1998, the Department of Justice pointed out that for certain subjects, adaptation of the provisions concerned would be dealt with collectively in separate bills for the subjects concerned. The adaptation of military-related references is one such subject and, as such, is taken forward under the Bill.

12. At the request of the Bills Committee, the Administration has provided for members' reference the guiding principles for the adaptation of laws programme ("the Programme") prepared for the then Bills Committee on Adaptation of Law Bill 1998. Members note the guiding principles applied in implementing the Programme as follows -

- (a) the provision when adapted should be consistent with BL and with Hong Kong's status as a SAR of PRC, but 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 BL 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.

13. The Bills Committee notes that in the light of the Guiding Principles, there had been a number of occasions on which members of the relevant Bills Committees expressed concern about certain adaptation proposals which might fall outside the scope of the adaptation exercise. To address the concern, the Administration had in some cases revised the proposed adaptations to bring them

in line with the Guiding Principles. In some 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. The Bills Committee has also taken note of some examples of these cases as set out in a paper compiled by the Legal Service Division of the LegCo Secretariat¹.

14. While agreeing with the Guiding Principles that the provisions when adapted should be consistent with BL and with Hong Kong's status as a SAR of PRC, Hon Dr Margaret NG has queried whether it is appropriate for each of the adaptation proposals to be strictly adhered to Cap. 1. Unlike the interpretative principles promulgated by SCNPC which are binding and overriding, Cap. 1 is not conferred with such status. Dr NG is of the view that in considering the adaptation proposals, members could make reference to but should not be dictated by Cap. 1.

15. Dr Hon Margaret NG has also pointed out that the constitutional status of the Hong Kong Garrison under BL is totally different from that of the British Forces stationed in Hong Kong before the Reunification. The status of the British Forces and CPLA is also different in their respective countries because the constitutional systems of UK and PRC are fundamentally different. For instance, the then Governor of Hong Kong is the Commander of the military forces stationed in Hong Kong but the Chief Executive ("CE") does not have such a role under BL48. The Hong Kong Garrison should abide by the Garrison Law while the British Forces has to comply with the British laws like other UK citizens unless expressly provided otherwise in law. Given all these differences, Dr NG considers it inappropriate for the Administration to resort to amending military-related provisions in legislation under the adaptation of laws exercise as the proposed amendments may result in policy changes. In her view, the rights and obligations of the Hong Kong Garrison should be considered within the framework of the Garrison Law and BL instead of simply adapting those references to the British Forces stationed in Hong Kong before the Reunification. If the exemptions enjoyed by the British Forces stationed in Hong Kong originated from the Crown's immunity which is no longer applicable after the Reunification, it would be inappropriate to transfer such exemptions to the Hong Kong Garrison as this would not be in conformity with the constitution of PRC and the status of Hong Kong as a SAR of PRC.

16. The Administration has responded that the adaption proposals are prepared in accordance with BL and the Garrison Law. The adaptation proposals in the Bill follow an important interpretative principle promulgated by SCNPC, i.e. provisions relating to the rights, exemptions and obligations of the former British

1 LC Paper No. LS13/10-11

Forces stationed in Hong Kong, should, subject to the provisions of BL and the Garrison Law, continue to have effect and apply to the Hong Kong Garrison.

17. The Bills Committee has agreed on the principle that the Bill should contain only adaptation proposals and members should examine the adaptation proposals on an Ordinance by Ordinance basis. Should members consider any proposal is beyond the scope of adaptation of laws in the process, such proposal should be deleted from the Bill by way of Committee Stage amendment ("CSA").

Proposed addition of definition for four terms to Cap. 1 (section 1 of Schedule 1 to the Bill)

18. The Bill proposes to add a definition respectively for four terms, i.e. "Commander of the Hong Kong Garrison", "Hong Kong Garrison", "members of the Hong Kong Garrison" and "military hospital", to section 3 of Cap. 1. Regarding the definition of "Commander of the Hong Kong Garrison" which is proposed to be defined as the officer for the time being in command of the Hong Kong Garrison, members have sought information on the scope of "for the time being in command of the Hong Kong Garrison" and the size of the Hong Kong Garrison.

19. According to the Administration, the Hong Kong Garrison is subject to the direction of the Central Military Commission of PRC, and the Commander of the Hong Kong Garrison is responsible for commanding the defence duties of the Hong Kong Garrison. The term "Commander of the Hong Kong Garrison" only refers to the Commander who is in command of the Hong Kong Garrison in performing its defence duties in Hong Kong, and should not be confused with the Central Military Commission of PRC or military officers of other military regions. The Administration has stressed that the Bill aims to ensure that the arrangement after the Reunification is in line with that before the Reunification, i.e. the Commander of the Hong Kong Garrison enjoys exemptions in the laws only when he carries out the defence-related duties in Hong Kong. It is therefore necessary to retain the reference to "for the time being in command of the Hong Kong Garrison" to clearly indicate that he would enjoy exemptions in the laws of Hong Kong only when he is performing defence-related duties in Hong Kong.

20. The Administration takes the view that information concerning the size of the Hong Kong Garrison and its changes are not of relevance to the adaptation proposals in the Bill. In response to members' request, the Administration has consulted the Hong Kong Garrison which has advised that the number of its members is determined according to the defence needs of the HKSAR. As the size of the Hong Kong Garrison is a defence matter and involves military information, it is considered not appropriate to provide such information. The Hong Kong Garrison has emphasized that it has all along been performing

defence responsibilities for the HKSAR in accordance with BL and the Garrison Law since the Reunification and will continue to adjust its size according to the defence need for the HKSAR.

21. Dr Hon Margaret NG has expressed concern that the proposed addition of four new definitions to Cap.1 would have an impact not only on the Ordinances covered in the Bill, but also on other Ordinances in which such terms appears. In her view, the addition of the four definitions is beyond the scope of adaptation of laws.

22. The Administration has explained that the new definitions are proposed with a view to providing clarity of drafting to the proposed adaptations, i.e. obviating the need to repeat the same definitions in various Ordinances covered in the Bill. Legal advice confirms that the inclusion of the four terms in Cap. 1 will not alter the meaning of any existing provisions in specific pieces of Ordinance to which the same terms apply. The scope of application of Cap. 1 with regard to other Ordinances is defined in section 2 of Cap. 1 which states that "Save where the contrary intention appears either from this Ordinance or from the context of any other Ordinance or instrument, the provisions of this Ordinance shall apply to this Ordinance and to any other Ordinance in force ...". In other words, if a term is defined in Cap. 1 and that same term appears in a specific Ordinance, this term in that Ordinance (if specified under it to have a meaning different from the term in Cap. 1) will not be affected or altered by Cap. 1, as the contrary intention is made clear in the context of that Ordinance.

23. Members still consider that the proposed addition of four definitions to Cap. 1 should be deleted. Having further considered views of the Bills Committee, the Administration agrees that the existing rights and exemptions conferred on CPLA and the Hong Kong Garrison will not be affected under the existing laws even if the four definitions presently proposed are not added to Cap. 1. The Administration will introduce CSA to delete the proposed four definitions.

Proposed adaptation to the Jury Ordinance (section 2 of Schedule 1 to the Bill)

24. Section 5(1)(j) and (p) of the Jury Ordinance (Cap. 3) provide exemption from service as jurors for officers employed on full pay in the naval, military or air services of Her Majesty, and spouses of members of the Armed Forces of Her Majesty serving on full pay. It is proposed in the Bill that reference to "officers employed on full pay in the naval, military or air services of Her Majesty" in section 5(1)(j) be adapted to "members of CPLA", and reference to "spouses of members of the Armed Forces of Her Majesty serving on full pay" in section 5(1)(p) be adapted to "spouses of members of CPLA". The Bills Committee has sought information on the rationale for the proposed adaptations and the operation of the Jury Ordinance, including the implementation of the relevant sections before the Reunification and exemption from jury service.

25. The Administration has advised members that the Jury Ordinance has exempted members of the former British Forces (irrespective of rank) and their spouses from service as jurors before the Reunification. The Bill therefore correspondingly proposes the exemption from service as jurors to be applied to members of CPLA (irrespective of rank) and their spouses, in order to ensure that the arrangement after the Reunification is in line with that before the Reunification. According to section 6 of Jury Ordinance, even if a person who is exempted from service eventually serves as a juror, such status shall not be accepted as a ground for impeaching any verdict given by the jury on which such person has served, nor affect the judgment of the case.

26. Regarding members' enquiry on whether the reference to "officers" in section 5(1)(j) should be interpreted as only officers of the British Forces/CPLA (as appropriate) could enjoy the exemption and whether the reference to "members" in section 5(1)(p) should be interpreted as both officers and non-officers, the Administration has explained that as the Jury Ordinance has been in operation since 1887, the Administration has no document and cannot find any document showing the legislative background of the legislation. Noting that reference to "members" appears in the Chinese version of both provisions, the Administration confirms that it has all along been providing exemption to members of the former British Forces (irrespective of rank) and their spouses, and members of the former British Forces and their spouses were not included in the list of jurors before the Reunification. Therefore, it is proposed that such exemption should be applied to members of CPLA and their spouses after the Reunification.

Proposed adaptation to the Probate and Administration Ordinance (section 3 of Schedule 1 to the Bill)

27. Section 17 of the Probate and Administration Ordinance (Cap. 10) stipulates that "Nothing in this Ordinance shall be construed to enable or require the Official Administrator to obtain administration of the estate of any person dying in any of Her Majesty's forces or of any deceased seamen or apprentice for the administration of whose estate provision is made by any Act". It is proposed in the Bill that the reference to "any person dying in any of Her Majesty's forces or of" be deleted, and subsections (2) and (3) be added. The proposed section 17(2) states that "Nothing in this Ordinance shall be construed to enable or require the Official Administrator to obtain administration of the estate of any person dying in the Chinese People's Liberation Army for the administration of whose estate provision is made by any law of the Mainland". The proposed section 17(3) provides that "In this section, Mainland ("內地") means any part of China other than Hong Kong, Macau and Taiwan". Members have sought clarification on the expression "any law of the Mainland" in the proposed section 17(2). Members note the views of the Legal Adviser to the Bills Committee that the expression "laws of the Mainland" could cover various levels of laws of the Mainland such as national laws, regulations and local regulations, etc. The meaning of "any law of the Mainland" should be made clear. Further, members have sought clarification on whether the Chinese expression ".....在中國人民解放軍服務時去世的人....." in the proposed adaptation include CPLA members as well as other persons who were providing service to CPLA. Dr Hon Margaret NG considers that the proposed adaptation of section 17 would have a broader coverage than the existing provision. Hon Cyd HO has suggested that the specific law governing the administration of estates of deceased members of CPLA should be stipulated in section 17.

28. The Administration has explained that according to Schedule 9 to Cap. 1, "British enactment" means -

- (a) any Act of Parliament;
- (b) any Order in Council;
- (c) any rule, regulation, proclamation, order, notice, rule of court, by-law, or other instrument made under or by virtue of any such Act or Order in Council.

At the same time, section 5 of Schedule 9 (i.e. "References to subsidiary legislation under British enactment") stipulates that "A reference in any law to

any British enactment shall include a reference to any Order in Council, rule, regulation, proclamation, order, notice, rule of court, by-law or other instrument made under or by virtue thereof and having legislative effect". In light of these interpretative principles set out in Cap. 1, the Administration therefore proposes to adapt "any Act" to "any law of the Mainland".

29. The Administration has further explained that the existing corresponding Chinese text for "any person dying in any of Her Majesty's forces or of" in section 17 is ".....在英軍服務時去世的人.....". The Administration therefore proposes to adapt "英軍" directly to "中國人民解放軍". As the Administration cannot preclude the possibility that there may be new laws concerning the administration of estates of persons dying in CPLA in the future, the Administration does not consider it appropriate to make reference to specific laws of the Mainland in section 17.

30. The Bills Committee has sought information on how the estates of deceased members of the Hong Kong Garrison would be dealt with under the Garrison Law.

31. According to the Administration, there is no provision in the Garrison Law on the administration of estates of deceased members of the CPLA. There is also no specific law governing the administration of the estates of deceased CPLA members in the Mainland. The administration of estates in the Mainland is governed by the Law of Succession which applies to citizens of PRC in general. On this basis, the expression "any law of the Mainland" refers to the Law of Succession of the Mainland and relevant legal instruments. When a member of the Hong Kong Garrison dies in his service, his estate should be handled in accordance with such laws of the Mainland.

32. The Bills Committee has also sought information on the arrangements for the administration of the estate provision of any person who died in any of Her Majesty's forces before 1 July 1997 and where the relevant procedure straddled 1 July 1997.

33. The Administration has explained that if any person died in any of Her Majesty's forces before, on or after 1 July 1997, the Official Administrator may make an application under section 16 of Cap. 10 for a grant to administer the estate of that person on or after 1 July 1997 and is not precluded by the condition in section 17 of the Ordinance.

Proposed adaptation to the Schedule to the Defamation Ordinance (section 4 of Schedule 1 to the Bill)

34. The Defamation Ordinance (Cap. 21) makes provisions relating to defamatory words and libel. Paragraph 4 of the Schedule to Cap. 21 stipulates that "A fair and accurate report of any proceedings before a court exercising jurisdiction throughout any part of the Commonwealth outside Hong Kong or of any proceedings before a court-martial held outside Hong Kong under the Naval Discipline Act, the Army Act or the Air Force Act". Some members, including Hon IP Kwok-him and Dr Hon Margaret NG, have grave reservations about the retention of the expression "any part of the Commonwealth" in the existing provision. Dr NG has pointed out that the application of the existing provision is confined to places within the Commonwealth and the holding of court-martials are subject to certain Acts, but the proposed adaptation fails to adhere to the original intent of the provision which, in her view, is unacceptable.

35. The Administration has emphasized that as the scope of the current exercise only includes adaptation proposals of military-related references in the laws of Hong Kong, the Administration has not proposed to adapt the non-military reference, "any part of the Commonwealth outside Hong Kong", in the Bill. Regarding the suggestion of the Legal Adviser to the Bills Committee to provide an editorial note stating that the reference, "any part of the Commonwealth", still requires adaptation, legal advice confirms that such editorial note falls outside the scope of the Bill and is not suggested to be added.

36. Members note the comments of the Legal Adviser to the Bills Committee that the Garrison Law does not contain any provisions on court-martials, and seek clarification on whether the term "court-martials" could be regarded as "military judicial organs" as stipulated in Chapter V of the Garrison Law. Some members, including Hon IP Kwok-him and Dr Hon Margaret NG, have queried whether the adaptation of the reference "court-martial held outside Hong Kong under the Naval Discipline Act, the Army Act or the Air Force Act" to "court-martial of the Chinese People's Liberation Army held outside Hong Kong" to Cap. 21 should be included in the current adaptation of laws exercise as it would not be invoked in reality. The Administration has stated that given no such equivalent legislation under the laws of the Mainland and the Administration understands that there are no specific laws or regulations defining the jurisdiction of "court-martials" in the Mainland, it would not be appropriate to adapt the reference to a particular law of the Mainland. In the Administration's view, it is necessary to retain the adaptation proposal in the current exercise to ensure that the original scope of statutory defence which might be put forward under the provision concerned would not be affected after the Reunification.

Proposed adaptation of reference to "ships belonging to Her Majesty" by "ships belonging to the Central People's Government and used only on non-commercial service" in the Pilotage Ordinance, Merchant Shipping (Prevention and Control of Pollution) Ordinance and the Merchant Shipping (Seafarers) Ordinance (sections 8, 119 and 132 of Schedule 1 to the Bill)

37. The Administration proposes that the reference to "ships belonging to Her Majesty" be adapted to "ships belonging to the Chinese People's Liberation Army or ships belonging to the Central People's Government and used only on non-commercial service" in section 10D(1)(a) of the Pilotage Ordinance (Cap. 84), and similarly in section 5(3) of the Merchant Shipping (Prevention and Control of Pollution) Ordinance (Cap. 413)² and section 3(1)(a) of the Merchant Shipping (Seafarers) Ordinance (Cap. 478)³. The Bills Committee has sought clarification on why the term "the Chinese People's Liberation Army" is used but not "the Hong Kong Garrison", and the rationale for the proposed addition of the reference to "and used only on non-commercial service". The Bills Committee has also sought information on the legislative intent of exempting Her Majesty's ships from pilotage requirements before the Reunification, the operation of the exemption from compulsory pilotage under section 10D of the Pilotage Ordinance after the Reunification, and the criteria for granting such exemption. Dr Hon Margaret NG has expressed concern that the proposed adaptation has changed the legal effect as it has included ships other than warships.

38. The Administration has explained that the bill on compulsory pilotage was drafted in 1984 with reference to the relevant legislation on pilotage in UK at that time (section 31(3) of the Pilotage Act 1983 of UK), which provided exemption to Her Majesty's ships from compulsory pilotage in accordance with the actual implementation of the Act at that time. The Pilotage Ordinance establishes the Pilotage Authority and regulates and control pilotage in respect of certain types of ships in Hong Kong waters. The Ordinance, under section 10, has all along been offering exemption from pilotage requirements only to ships on official duties and providing non-commercial service. This principle had applied to ships belonging to Her Majesty, regardless of whether the ships were military or not,

2 The original reference "any vessel of Her Majesty's navy or to any ship not forming part of Her Majesty's navy which belongs to Her Majesty or is held by any person on behalf of or for the benefit of the Crown in right of Her Majesty's Government in the United Kingdom or Her Majesty's Government in Hong Kong" is proposed to adapt to "(a) any ship which is used by the Chinese People's Liberation Army; or (b) any ship which belongs to the Central People's Government or the Government of the Hong Kong Special Administrative Region and is used only no non-commercial service".

3 The original reference "any of Her Majesty's ships or other ships of war except, subject to section 141, a Royal Fleet Auxiliary ship" is proposed to adapt to "any ship of war of the Chinese People's Liberation Army, any other ship of war or any ship belonging to the Central People's Government and used only on non-commercial service".

prior to the Reunification. In adapting the term, "the Chinese People's Liberation Army" is proposed instead of "the Hong Kong Garrison" as there is a need to cater for visiting warships from CPLA (i.e. those based outside Hong Kong). Further, as ships belonging to Her Majesty also included ships of the UK Government, a second limb making reference to "the Central People's Government" has been included as part of the adaptation. The adaptation proposal reflects the intent and application of the provision.

39. According to the Administration, after the Reunification, ships belonging to CPLA or CPG which call on Hong Kong for non-commercial purposes are exempted from compulsory pilotage in accordance with section 10D of the Pilotage Ordinance. In determining whether the exemption from compulsory pilotage is applicable, the Marine Department will take into account the nature and type of a ship as well as its purpose of visiting Hong Kong. Since the Reunification, four CPG ships visited Hong Kong between October 2004 and May 2009, and their purposes were mainly for educational purposes. The ships were opened to the public during their visits to Hong Kong. Members have noted further details of these four CPG ships' visit to Hong Kong provided by the Administration.

40. Members raise no objection to adapt the reference to "ships belonging to Her Majesty" in certain shipping-related provisions to cover ships belonging to CPLA or CPG.

41. Regarding the proposed addition of the expression "and used only on non-commercial service", the Administration has explained the expression aims to provide clarity to the provisions to accurately reflect the intent and the actual implementation before and after the Reunification.

42. The Bills Committee is of the view that given there is no such reference as "and used only on non-commercial service" in the original provisions, even though the purpose of its addition is to further clarify the legislative intent and to accurately reflect how the provisions concerned are implemented before and after the Reunification, the adaptation proposal may not be in compliance with the principle of adaptation of laws. The Bills Committee has suggested that the expression "and used only on non-commercial service" should be deleted.

43. Having considered the views of the Bills Committee, the Administration accepts that deleting the reference will have no impact on the legal effect of the relevant provisions and will better reflect the principles of strict adaptation. The Administration will propose CSAs to delete the expression "used only on non-commercial service" from Cap. 84, Cap. 413 and Cap. 478.

Schedule 1 to the Bill)

44. The Public Service Commission Ordinance (Cap. 93) provides for the establishment of the Public Service Commission, and section 6 specifies the functions of the Commission. Section 6(2) states that "Nothing in this section shall apply to the following offices, classes of office or appointment - (d) any office or rank in any naval, military or air force constituted by or raised under any enactment or in the police force". The Bill proposes to delete the reference "in any naval, military or air force constituted by or raised under any enactment or" from section 6(2)(d), such that the provision after adaptation will read "any office or rank in the police force". Members have asked about the rationale for the proposed adaptation.

45. The Administration has responded that prior to the Reunification, there were only two bodies, namely, the Royal Hong Kong Regiment and the Royal Hong Kong Auxiliary Air Force, that were constituted by or raised under enactments in Hong Kong, and were thus relevant to Cap. 93. As these two bodies have been disbanded prior to the Reunification and no longer exist, the adaptation proposal is to delete the expression "in any naval, military or air force constituted by or raised under any enactment or".

46. There is a suggestion that the term "office" should be deleted from the provision as there is no concept of "office" in the Police Force Ordinance (Cap. 232). According to the Administration, the Bill aims to adapt certain military-related references in the laws of Hong Kong. As the reference to "any office or rank in the police force" in the provision is not military-related, the suggestion is outside the scope of adaptation of laws. The Administration has explained to the Bills Committee that there are in fact references to "office" and "rank" in Cap. 232, the reference to "any office or rank in the police force" has thus been adopted in Cap. 93. Having regard to members' views, the Administration will examine the feasibility of the suggestion in a separate exercise.

Proposed adaptation to the Telecommunications Ordinance (section 15 of Schedule 1 to the Bill)

47. The Telecommunications Ordinance (Cap. 106) makes provisions for the licensing and control of telecommunications, telecommunications service and telecommunications apparatus and equipment. Under section 14(1)(b), the power of the Telecommunications Authority to place and maintain a telecommunications line, pipe or wire in land occupied by Her Majesty's naval, military or airforce services was subject to the consent in writing of the Commander, British Forces before the Reunification. The Administration proposes to adapt the reference "Her Majesty's naval, military or airforce

services" to "the Hong Kong Garrison", and the reference "Commander, British Forces" to "Commander of the Hong Kong Garrison". The Bills Committee has enquired about the justifications for the proposed adaptations and whether the Hong Kong Garrison has been consulted.

48. The Administration has explained that before the Reunification, entering the land occupied by the then British Forces stationed in Hong Kong for the purpose of maintenance of telecommunications facilities therein, including telecommunications lines, was subject to the written consent of the Commander, British Forces. In accordance with the principles of adaptation of laws, it is therefore proposed to adapt the reference "Commander British Forces" to "Commander of the Hong Kong Garrison" in section 14 of Cap. 106. Under Article 10 of the Garrison Law, the HKSAR shall consult the Hong Kong Garrison when formulating any policy or drafting any legislation which concerns the Hong Kong Garrison. The HKSAR Government has consulted the Hong Kong Garrison in accordance with the requirements of the Garrison Law during the preparation of the Bill, and the Garrison has agreed to the adaptation proposals.

Proposed adaptation to the Dutiable Commodities Ordinance (section 17 of Schedule 1 to the Bill)

49. The Dutiable Commodities Ordinance (Cap. 109) imposes duties on alcoholic liquors, tobacco, hydrocarbon oil (including aircraft spirit, light diesel oil, motor spirit and kerosene) and methyl alcohol. Section 3(4) provides that the Ordinance does not apply to "goods which are the property of or imported or purchased for the Government of UK or of Hong Kong". The Administration proposes to adapt the reference "Government of the United Kingdom or of Hong Kong" to "the Central People's Government, the Chinese People's Liberation Army or the Government of the Hong Kong Special Administrative Region". While members have no objection to the adaptation proposal for the expression "Government ... of Hong Kong", some members have sought clarifications on the justifications for the inclusion of CPLA in the adaptation proposal. Hon Cyd HO is concerned that the inclusion of CPLA is beyond the scope of adaptation of laws.

50. The Administration has explained that the Government of UK includes, among others, the British Forces stationed in Hong Kong prior to 1 July 1997. On this basis, it is proposed to adapt the reference to "Government of the United Kingdom" to "the Central People's Government, the Chinese People's Liberation Army" to ensure that the rights, exemptions and obligations of the former British Forces stationed in Hong Kong will continue to have effect and apply to CPLA.

Proposed adaptation to the Inland Revenue Ordinance (section 18 of Schedule 1 to the Bill)

51. The Inland Revenue Ordinance (Cap. 112) imposes a tax on property, earnings and profits. Section 8(2)(d) excludes "the emoluments payable by the Governments of the members of the Commonwealth, other than the Government of Hong Kong, to members of Her Majesty's forces and to persons in the permanent service of those Governments in Hong Kong in respect of their offices under those Governments" from salaries tax. It is proposed in the Bill that the provision in section 8(2)(d) be adapted to "the emoluments payable by the Central People's Government to members of the Chinese People's Liberation Army, and to persons in the permanent service of that Government in Hong Kong in respect of their offices under that Government". Some members, including Hon IP Kwok-him and Hon LAU Kong-wah, are concerned that the proposed adaptation may change the meaning of the original provision and have enquired about the reasons for the adaptation. Hon Cyd HO has also asked whether there are any persons in the permanent service of CPLA in Hong Kong.

52. According to the Administration, the reference "Her Majesty's forces" is proposed to be replaced by "Chinese People's Liberation Army" as the provision refers to the exemption of Her Majesty's forces and other Commonwealth Forces where applicable prior to the handover in relation to the British Forces in Hong Kong. It should continue to have effect and apply to CPLA after the Reunification. In the Administration's view, the adaptation proposal is necessary and would not alter the legal effect of the provision concerned. The Administration has also advised members that the Hong Kong Garrison has not employed any individuals in Hong Kong.

53. As regards members' suggestion to improve the drafting of the Chinese version of the proposed section 8(2)(d) by deleting the expression "在中央人民政府的" before "職位", the Administration has explained that the inclusion of the reference to "在中央人民政府的職位" in the provision is to ensure clarity and correspond to the expression "in respect of their offices under that Government" in the English text so as to avoid misinterpreting the reference to "offices" as offices in the HKSAR Government.

Proposed adaptation to the Rating Ordinance (section 23 of Schedule 1 to the Bill)

54. Section 36(1) of the Rating Ordinance (Cap. 116) provides exemption of military land from assessment to rates. Military land is defined in section 36(4) as "any land and any building thereon occupied by Her Majesty's forces, or by any body or organization established primarily for defence proposes and designated by the Governor for the purposes of this section, but not any land or building thereon rented for public purposes by any such force, body or organization unless such land or building is rented directly from the Government". It is proposed in the Bill that the definition be adapted to "any land and any building thereon occupied by the Hong Kong Garrison, but does not include any land or building thereon rented for public purposes by the Hong Kong Garrison unless such land or building is rented directly from the Government". Hon Cyd HO has expressed concern about the exclusion of the expression "for defence purposes" from the proposed section 36(4). In her view, the expression should be retained. Ms HO is also concerned that the United Services Recreation Club ("Club") located within the Gun Club Hill Barracks is regarded as a military land, notwithstanding that the land is occupied by a private organization established not for defence purposes. As such, the Club can enjoy exemption from paying rates.

55. According to the Administration, the Hong Kong Garrison is established under the Garrison Law for defence of the HKSAR. It is considered unnecessary to repeat the expression "for defence purposes" in the provision where the military land is concerned. The arrangements of assessments to rates for any land and any building thereon will not be altered after the adaptation. Under section 36(1) of Cap. 116, any land and any building on the military land occupied by the Hong Kong Garrison or rented for public purposes by the Hong Kong Garrison directly from the HKSARG will be exempted from assessment to rates. The arrangements for the Club located within the Gun Club Hill Barracks are based on the "Exchange of Notes between the Government of the People's Republic of China and the Government of the United Kingdom on the Arrangements for the Future Use of the Military Sites in Hong Kong" ("Exchange of Notes") signed in November 1994 and will not be altered by the adaptation proposal.

Proposed adaptation to the Funeral Parlours Regulation (section 27 of Schedule 1 to the Bill)

56. The Funeral Parlours Regulation (Cap. 132 sub. leg. AD) regulates the operation of funeral parlours. Any mortuary situated within the precincts of a military hospital is exempted from the application of the Regulation. According to the Administration, as "any hospital or similar institution which is maintained or controlled by the Crown" refers to those maintained or controlled by the then Hong Kong Government as well as the former British Forces stationed in Hong

Kong, it is proposed to be adapted by adding a new regulation 3(ba) "any mortuary situated within the precincts of a military hospital", i.e. a hospital of the Hong Kong Garrison.

57. Hon LAU Kong-wah has suggested that the reference to "any mortuary situated within the precincts of ... similar institution" be included in the proposed regulation 3(ba). The Administration has responded that as the Hong Kong Garrison only has mortuaries in the military hospital and no other similar institution, it is considered not appropriate to include the reference so suggested.

Proposed adaptation to the Hong Kong Cemetery, Happy Valley, Rules (section 28 of Schedule 1 to the Bill)

58. Rule 4(a) of the Hong Kong Cemetery, Happy Valley, Rules (Cap. 132 sub. leg. AJ) provides that "Except with the prior permission of the Director of Food and Environmental Hygiene, no band, other than a band of Her Majesty's armed forces, may enter or play within the cemetery". The Bill proposes to delete the reference "other than a band of Her Majesty's armed forces".

59. Some members, including Hon IP Kwok-him, Hon LAU Kong-wah and Hon Cyd HO, have expressed concern about the adaptation proposal which, in their view, may not be in full compliance with the principles of law adaptation. They consider that the repeal of the provision should be dealt with in a separate exercise.

60. As the Hong Kong Garrison advises that there will not be any band of Hong Kong Garrison performing at a funeral within the Hong Kong Cemetery at Happy Valley after the Reunification, the Administration proposes to repeal this provision. The Administration has advised that the exemption is no longer applicable after the Reunification.

Proposed adaptation to the Dangerous Drugs Ordinance and Dangerous Drugs Regulations (sections 29 to 36 of Schedule 1 to the Bill)

61. The Dangerous Drugs Ordinance (Cap. 134) regulates the manufacture, sale, supply and possession of dangerous drugs and sets out related offences. Hon IP Kwok-him has expressed concern about the applicability of the provisions in Cap. 134 to military hospital given that the medical officers of CPLA serving in Hong Kong are exempted from registration in Hong Kong. Hon Cyd HO has sought information on whether pharmacists practising in military hospital are exempted from registration in Hong Kong.

62. The Administration has explained that Cap. 134 specifies a number of exceptions to these offences, some of which are dependent on the meaning of the

term "health centre or clinic maintained by the Crown" or the term "prescribed hospital" defined in its section 2(1). As "any hospital or similar institution which is maintained or controlled by the Crown" refers to those maintained or controlled by the then Hong Kong Government as well as the former British Forces, it is proposed to adapt the reference to include a hospital maintained by the Government and a military hospital (i.e. a hospital of the Hong Kong Garrison). Under Article 16(2) of the Garrison Law, members of the Hong Kong Garrison shall abide by the laws of the HKSAR, and Article 7 provides, *inter alia*, that the Hong Kong Garrison and its members shall also enjoy other rights and immunities prescribed by the laws in force in the HKSAR. In view of the above provisions, the Administration considers that Cap. 134 equally applies to the Hong Kong Garrison.

Proposed adaptation to the Registration of Persons Regulations (section 45 of Schedule 1 to the Bill)

63. The Registration of Persons Regulations (Cap. 177 sub. leg. A) provides for the registration and recording of particulars relating to persons in Hong Kong and persons elsewhere who have the right of abode in Hong Kong, for the issue, carrying, production and application of identity cards. Under regulation 25(b)(i), persons serving in Her Majesty's regular naval, military or air forces, other than those locally domiciled, in possession of the official identity card or document of identity normally issued to them, and their wives, and their sons and daughters under 18 years of age, shall not be required to register or apply for the issue of the Hong Kong identity cards. The Bills Committee notes that the reference to "Her Majesty's regular naval, military or air forces" is proposed to be adapted to "the Chinese People's Liberation Army". The Bills Committee has sought information on whether persons serving in CPLA are "servicemen"; whether there are spouse and children of members of the Hong Kong Garrison residing in Hong Kong; and whether the spouse and children of members of the Hong Kong Garrison are required to undergo immigration clearance.

64. According to the Administration, all persons serving in CPLA are members of CPLA. The Hong Kong Garrison adopts a closed-camp management approach and no spouse or children of its members accompanies members of the Garrison to Hong Kong. Under Article 16(2) of the Garrison Law, members of the Hong Kong Garrison shall abide by the laws of the HKSAR including immigration-related ordinances. If the spouse and children of members of the Hong Kong Garrison visit Hong Kong, they have to undergo the same immigration clearance (i.e. producing a valid travel document under section 5 of the Immigration Ordinance) as any other visitors to Hong Kong.

Proposed adaptation to the Defences (Firing Areas) Ordinance (sections 47 and 48 of Schedule 1 to the Bill)

65. The Defences (Firing Areas) Ordinance (Cap. 196) makes provisions for the regulation of practice firing within firing areas and for clearing of firing areas. Section 8 of the Ordinance stipulates the penalty for offences should a person contravene the provisions of the Ordinance. Section 9 provides for the arrest or removal of trespassers by authorized persons, and section 9(b) authorizes any officers or soldiers of different ranks under the command of the officer in charge to carry out duties within firing areas. The Bills Committee has enquired about the justifications for the adaptation proposals in these two sections. Some members, including Hon James TO, Dr Hon Margaret NG and Dr Hon Priscilla LEUNG, have expressed concern that the proposed adaptation of the term "officer" to "person" may extend the authorization to persons not covered by the original provisions. Dr NG has also expressed disagreement to the proposed adaptations. In her view, the persons mentioned in section 9(b) and (c) could not be any person but an officer. The proposal is not adaptation of laws and adapting the term "officer" is unnecessary.

66. The Administration has explained that the proposed adaptation of the term "officer" to "person" in section 8 of Cap. 196 will reflect more accurately the persons covered under section 9 of the Ordinance, including those individuals who are not stipulated as "officers" in section 9(b) and (c). As for the adaptation proposal of the reference to "such officer" to "any persons authorized by section 9", the aim is to provide clarity of drafting to section 8(2) in order to clearly specify the persons who can enforce Cap. 196. Regarding section 9(b), as there is no equivalent ranks of "warrant officer, non commissioned officer or military policeman" in CPLA as in the British Forces, and such personnel is generally known as "soldier", it is therefore proposed to adapt the reference to "soldier". The adaptation proposal is in line with the actual establishment of CPLA. As for the proposal to adapt the term "officer" to "person" in section 9, the purpose is to reflect accurately the persons covered under the section, including those individuals who are not stipulated as "officers" in section 9(b) and (c).

67. The Administration has stressed that the proposed adaptation of the term "officer" to "person" in sections 8 and 9 will not affect the legal effect of Cap. 196. In the Administration's view, it is necessary to retain the adaptation proposal in the provisions concerned.

Proposed adaptation to the Crimes Ordinance (sections 50 and 56 of Schedule 1 to the Bill)

Incitement to mutiny (section 6) and incitement to disaffection (section 7)

68. The Crimes Ordinance (Cap. 200) makes provisions for certain crimes. Section 6(a) of the Ordinance provides that any person who knowingly attempts

to seduce any member of Her Majesty's forces from his duty and allegiance to Her Majesty shall be guilty of an offence and shall be liable on conviction upon indictment to imprisonment for life. It is proposed in the Bill that the reference "Her Majesty's forces from his duty and allegiance to Her Majesty" be adapted to "the Chinese People's Liberation Army from his duty and allegiance to the People's Republic of China". Under section 7(1)(a), any person who knowingly attempts to seduce any member of Her Majesty's forces from his duty or allegiance to Her Majesty shall be guilty of an offence. The Administration proposes to repeal section 7(1)(a) and add a proposed section 7(1A) which stipulates that "Any person who knowingly attempts to seduce any member of the Chinese People's Liberation Army from his duty or allegiance to the People's Republic of China is guilty of an offence".

69. Dr Hon Margaret NG is of the view that as sections 6 and 7 of Cap. 200 relate to BL23, the adaptations should be dealt with in the context of the legislation to implement BL23. Dr NG has highlighted that the proposed addition of section 7(1A) will create a new statutory offence, and has expressed objection to the adaptation proposals. Members have asked for the justifications for the adaptation proposals, in particular the proposed addition of section 7(1A) and for not adapting the reference to "Her Majesty" in section 7(1), and hence giving rise to confusion. Members have also sought information on the allegiance requirement of non-military groups referred to in section 7(1)(ba), (c) and (d) (i.e. the Government Flying Service ("GFS"), the Hong Kong Police Force and the Hong Kong Auxiliary Police Force) after the Reunification.

70. The Administration has explained that the adaptation proposals to sections 6 and 7 are military references and thus falls within the scope of the Bill. According to the principles on adaptation of laws, except for land vested in or occupied by the former British Forces stationed in Hong Kong which is generally adapted to "Hong Kong Garrison", the references to "Her Majesty's forces" in the Bill are generally proposed to be adapted to "the Chinese People's Liberation Army". It is therefore proposed to adapt the term "Her Majesty's forces" to "Chinese People's Liberation Army" and the term "Her Majesty" to "the People's Republic of China". The Administration disagrees with Dr Hon Margaret NG that the proposed section 7(1A) has created a new offence, as the offence has already existed in the provision of section 7(1)(a) before the Reunification.

71. Regarding the arrangements after the Reunification, the Administration has advised members that under the GFS Ordinance (Cap. 322), there is no requirement for members of GFS to take an oath when taking up the duties of their office. A police officer is required to take an oath or declaration of office to pledge allegiance to the HKSAR Government under the adapted section 26 of the Police Force Ordinance (Cap. 232), while a member of the Hong Kong Auxiliary Police Force is not required to take an oath or declaration of office to pledge

allegiance to the HKSAR Government under the adapted section 11 of the Hong Kong Auxiliary Police Force Ordinance (Cap. 233).

72. In the view of the Administration, the adaptation proposal is straightforward. It will not affect the legal effect of the Ordinance concerned, and reflect the principles of strict adaptation. Therefore, the adaptation proposals should not be handled in a separate exercise.

Application of ss. 156 and 157 to trials by courts-martial (section 158)

73. Section 158 of Cap. 200 sets out the application of laws to trials by courts-martial established under the relevant Acts of UK of specified sexual offences before the Reunification. The Administration proposes to repeal section 158. Regarding members' enquiry about the rationale for the repeal proposal, the Administration has explained that after the Reunification, the relevant Acts of UK are no longer applicable. Members of the Hong Kong Garrison who commit such offences are to be dealt with in accordance with Chapter V "Jurisdiction over Members of the Hong Kong Garrison" of the Garrison Law.

74. Dr Hon Margaret NG is of the view that the proposed repeal of section 158 is not adaptation. The Administration should adapt the section by substituting the relevant Acts of UK with the corresponding provisions of the Garrison Law. The Administration has responded that the provisions in section 158 is obsolete after the Reunification. Under Chapter V of the Garrison Law, the offences concerned will be under the jurisdiction of the HKSAR courts instead of military courts. Therefore, the relevant provisions do not comply with the Garrison Law and it is necessary to repeal section 158.

Proposed adaptation to the Weapons Ordinance (section 59 of Schedule 1 to the Bill)

75. Part II of the Weapons Ordinance (Cap. 217) makes provisions for possession of prohibited weapon and martial arts weapon. Section 3 of Cap. 217 provides that "Part II does not apply to the possession of any prohibited weapon or martial arts weapon by any person - (a) on behalf of Her Majesty's Government including possession by an officer or member of any of Her Majesty's forces who is in possession of any prohibited weapon or martial arts weapon in his capacity as such; or". It is proposed in the Bill that subsection (a) be adapted to "on behalf of the Central People's Government, including possession by an officer or member of the Chinese People's Liberation Army who is in possession of any prohibited weapon or martial arts weapon in his capacity as such; or". On members' enquiry about the rationale for the proposed adaptation, the Administration has explained that before the Reunification, Her Majesty's Government, officer or member of any of Her Majesty's forces enjoyed

exemption and were not regulated by the provision. As such, the Administration proposes to adapt the reference "Her Majesty's Government" to "the Central People's Government", and the reference "an officer or member of any of Her Majesty's forces" to "any officer or member of the Chinese People's Liberation Army".

76. Hon James TO has expressed concern about the application and enforcement of section 3 after adaptation, and asked who, other than CPLA, would be in possession of prohibited weapon or martial arts weapon on behalf of CPG. According to the Administration, the Ministry of National Defence under CPG is responsible for possession of weapons. The proposal is a straight-forward adaptation and in line with the principles on adaptation of laws. Mr TO has requested the Administration to review section 3 in the context of localization of legislation in a separate exercise to cater for the actual situation.

Proposed adaptation to the Summary Offences Ordinance (section 60 of Schedule 1 to the Bill)

77. Section 29(2) of the Summary Offences Ordinance (Cap. 228) prohibits any person from smoking on board any vessel whatsoever which is in any naval dock or naval dockyard or alongside any naval premises and provides exemption for members of Her Majesty's naval forces. Under the Bill, the reference to "Her Majesty's naval forces" in section 29(2)(a) is proposed to be adapted to "the Chinese People's Liberation Army", and the reference "Senior Naval Officer in Hong Kong" in section 29(2)(b) is proposed to be adapted to "senior naval commander of the Hong Kong Garrison". Noting that Article 2 of the Garrison Law stipulates that the military forces stationed by CPG in Hong Kong composes of forces from the Army, the Navy and the Air Force, members have queried why the reference "Her Majesty's naval forces" is not proposed to be adapted to "the Chinese People's Liberation's naval forces". Members are concerned about the inconsistency of the adaptation proposal with Article 2 of the Garrison Law. As section 29 of Cap. 228 imposes prohibition of smoking mainly in places or areas attached to the naval establishments in Hong Kong, members are also concerned that the proposed adaptation may change the original legislative intent and depart from the principles on adaptation of laws. Members have suggested that the reference to "a member of Her Majesty's naval forces" should be directly adapted as "a member of the Chinese People's Liberation Army's naval forces".

78. The Administration has explained that the adaptation proposal is prepared on the basis that there is no separation of naval, army and air forces in CPLA, and such forces are generally known as CPLA. Having considered the views of the Bills Committee, the Administration accepts that the provision concerned only involves smoking in places such as the vicinity of a naval dock, and as such the legislative intent of the provision concerned should only affect members of the

naval forces rather than the entire military force (the entire military force also includes members of the army and the air forces). From the implementation perspective and for better reflecting the principles of strict adaptation, the Administrations will revise the adaptation proposal to read as "a member of the naval forces of the Chinese People's Liberation Army". The relevant CSA will be introduced by the Administration.

Proposed adaptation to the Traffic Accident Victims (Assistance Fund) Ordinance (sections 61 and 64 of Schedule 1 to the Bill)

Levy on motor vehicles (section 5)

79. The Traffic Accident Victims (Assistance Fund) Ordinance (Cap. 229) makes provisions for the creation of a Traffic Accident Victims Assistance Fund ("the Fund") for providing assistance to traffic accident victims and the charging of levies on each vehicle which is licensed or is required to be registered and licensed in accordance with the Road Traffic Ordinance (Cap. 374), as well as each driver who is holder of a valid full driving licence, learner's driving licence, temporary driving licence or probationary driving licence issued under the Road Traffic (Driving Licences) Regulations (Cap. 374 sub. leg. B). Section 5(1) of Cap. 229 stipulates the levy for the Fund in respect of every motor vehicle which is operated in Hong Kong, including those belonged to the former Hong Kong Government and the UK Government before the Reunification. Under the Bill, it is proposed that the reference to "Crown whether in right of Her Majesty's Government in Hong Kong or in the United Kingdom" be adapted to "Government or the Hong Kong Garrison" in section 5(1)(c). Members have pointed out that as there may be CPLA's motor vehicles in Hong Kong and CPG's motor vehicles entering Hong Kong, the adaptation proposal to section 5(1)(c) would narrow the coverage of the levy. Members have queried why the term is not adapted to "the Central People's Government". Members have stressed the need for strict adherence to the principles of adaptation of laws.

80. The Administration has explained that before the Reunification, other than the vehicles and members of the former British Forces stationed in Hong Kong, the non-military vehicles and drivers of the UK Government obtained registration and driving licences in accordance with Cap. 374. However, the vehicles used by her Majesty's forces were exempted from registration and licensing under the Road Traffic (Registration and Licensing of Vehicles) Regulation (Cap. 374 sub. leg. E). Members of Her Majesty's forces were also exempted from applying full driving licences under Cap. 374 sub. leg. B. The non-military vehicles of the Crown in right of Her Majesty's Government in UK paid the levy in accordance with section 5(1)(a) of Cap. 229, while the military vehicles of the British Forces paid levy by the Crown in right of Her Majesty's Government in Hong Kong from the general revenue in accordance with section 5(1)(c) and 5(7). After the

Reunification, as vehicles of the Hong Kong Garrison are exempted from registration under Cap. 374 sub. leg. E, it is therefore proposed to adapt the reference to "Crown in right of Her Majesty's Government in the United Kingdom" to "Hong Kong Garrison". For non-military motor vehicles in the possession of CPG and drivers of CPG organs in Hong Kong (excluding the Hong Kong Garrison), they are required to obtain registration and licences respectively in accordance with Cap. 374 sub. leg. E and Cap. 374 sub. leg. B, and therefore pay levy as provided for in sections 5(1)(a) and 6(1)(a) of Cap. 229. Given that the levy payment and the certification mechanism under section 5(2) of Cap. 229 only cover the certification for motor vehicles in the possession of Her Majesty's forces in Hong Kong, the legislative intent of section 5(1)(c) is not to cover any other vehicles of the UK Government, it is therefore proposed to adapt the reference to "Crown ..." in section 5(1)(c) to include "Hong Kong Garrison" instead of "Central People's Government".

81. Regarding members' enquiry on the adaptation proposal of the term "香港政府" to "政府", the Administration has explained that the term "香港政府" should have been adapted as "特區政府" as "Government" ("特區政府") is defined as Government of the HKSAR in Cap. 1. However, considering that the term "政府" has been used in other existing provisions in the same ordinance for references relating to the HKSAR Government, it is therefore proposed to adapt the relevant term as "政府" for the purpose of consistency.

Levy on licence holders (section 6)

82. Under section 6(1)(b) of Cap. 229, a levy shall be payable by the Crown in respect of every person in the public service of the Crown who holds a valid driving licence to drive Government vehicles issued under Cap. 374 sub. leg. B or other authorization permitting that person to drive a vehicle belonging to the Crown. The Administration proposes that the reference to "Crown" be adapted to "Government" and a subsection (c) be added to provide for the Government to pay levy to the Fund in respect of every member of the Hong Kong Garrison who is permitted by the Commander of the Hong Kong Garrison to drive a vehicle belonging to the Hong Kong Garrison. The Bills Committee has sought justifications for the adaptation proposal.

83. According to the Administration, before the Reunification, drivers of the former British Forces stationed in Hong Kong were not required to obtain a full driving licence, learner's driving licence, temporary driving licence or probationary driving licence issued under Cap. 374 sub. leg. B. The levy in respect of vehicles and drivers of the former British Forces stationed in Hong Kong for the Fund were paid from the general revenue in accordance with sections 5(7) and 6(5) of Cap. 229. As the term "Crown" covers the former Hong

Kong Government and the British Forces stationed in Hong Kong, it is therefore proposed to adapt the term as "Government" and add a subsection (c) to reflect the legislative intent. Although members of the former British Forces stationed in Hong Kong were exempted from applying full driving licences under Cap. 374 sub. leg. B, they were still required to obtain permission from the Commander, British Forces before they could drive any vehicles. The Administration therefore proposes to adapt the reference to "or other authorization permitting that person to drive a vehicle belonging to the Crown" to "permitted by the Commander of the Hong Kong Garrison to drive a vehicle belonging to the Hong Kong Garrison".

84. As to whether it is appropriate to impose a levy to be payable by the Government instead of the Hong Kong Garrison in the proposed section 6(1)(c) of Cap. 229, the Administration has explained that prior to the Reunification, the levies in respect of the British Forces' vehicles and drivers were paid from the general revenue by the Government and not apportioned as part of defence costs under the Defence Costs Agreement signed between the UK Government and the then Hong Kong Government. It was part of the Hong Kong Government's contribution to "a no fault welfare scheme" for traffic accident victims, and the contribution made in respect of the British Forces' vehicles and drivers was part of the overall payment for Crown vehicles and drivers whether in right of the Government in Hong Kong or in UK. The proposal is to reflect the practice in place before the Reunification.

Levy on Holders of Driving Licences (Part II of Schedule)

85. In response to members' suggestion to add "證" after "允許" in the proposed addition of item 5 "准許香港駐軍人員駕駛屬於香港駐軍的車輛的允許", the Administration has explained that the adaptation proposal is prepared on the basis that the Hong Kong Garrison calls its written permission for permitting a member of the Hong Kong Garrison to drive vehicles of the Hong Kong Garrison as "允許" in Chinese.

Proposed adaptation to the Public Order Ordinance (section 71 of Schedule 1 to the Bill)

Curfew orders (section 31)

86. The Public Order Ordinance (Cap. 245) makes provisions relating to matters such as the maintenance of public order. Section 31 (6)(f) and (m) provides exemption for members of Her Majesty's forces and employees of the Ministry of Defence in possession of a valid Army Department Pass from the need to comply with a curfew order. It is proposed in the Bill that the reference

"Her Majesty's forces" be adapted to "the Chinese People's Liberation Army", and the reference "an employee of the Ministry of Defence in possession of a valid Army Department Pass" be adapted to "a member of the Ministry of National Defence in the Central People's Government in possession of a valid pass of the Ministry of National Defence or the Hong Kong Garrison". The Bills Committee has sought justifications for the adaptation proposals.

87. The Administration has advised members that the term "Her Majesty's forces" is proposed to be adapted to "the Chinese People's Liberation Army" in accordance with the principles of adaptation of laws. As the "Pass" mentioned in section 31(6)(m) refers to the pass issued by the Army Department of the UK Government whereas the Ministry of National Defence in CPG is the relevant department for issuing a similar pass, and that members of the Ministry of National Defence in CPG are required to obtain such passes before they could handle any defence duties, it is therefore proposed to adapt the reference to "in possession of a valid Army Department Pass" to "in possession of a valid pass of the Ministry of National Defence or the Hong Kong Garrison". As there is no equivalent concept of an "employee" in the Ministry of National Defence, the term "employee" is proposed to be adapted to "member" to reflect the actual situation.

88. The Bills Committee has pointed out that the exemption enjoyed by the Hong Kong Garrison has already been included in the reference to "a member of the Chinese People's Liberation Army" in section 31(6)(f) of Cap. 245. It is therefore unnecessary to include the reference to "the Hong Kong Garrison" in the adaptation proposal for members of the Ministry of National Defence in section 31(6)(m) of the Ordinance. To simplify the drafting, the Bills Committee has also suggested that the reference "an employee of the Ministry of Defence in possession of a valid Army Department Pass" be adapted to "a member of the Ministry of National Defence in the Central People's Government in possession of a valid pass of the Ministry of National Defence".

89. Having considered the views of the Bills Committee, the Administration accepts that the adaptation proposals can be further refined. The Administration will propose CSAs to replace the reference "Army Department" (i.e. "軍部" in the Chinese text) by "Ministry of National Defence in the Central People's Government" (i.e. "中央人民政府國防部" in the Chinese text), and delete the reference to "or the Hong Kong Garrison" from the original adaptation proposal. In short, the reference to "an employee of the Ministry of Defence in possession of a valid Army Department Pass" (i.e. "持有有效軍部通行證的國防部僱員" in the Chinese text) in section 31(6)(m) will be replaced by "a member of the Ministry of National Defence in the Central People's Government in possession of a valid pass of the Ministry of National Defence" (i.e. "持有有效中央人民

政府國防部通行證的國防部人員" in the Chinese text).

Permits to enter and leave closed areas (section 37)

90. Section 37(1) of Cap. 245 provides for, before the Reunification, the Commander, British Forces or any commissioned officer in Her Majesty's forces authorized by him to issue to any person a permit allowing such person to enter and leave a closed area occupied by Her Majesty's forces or for other purposes of the Crown in right of Her Majesty's government in UK. The Bill proposes to adapt the section to "In the case of a closed area which is an area or place occupied by the Hong Kong Garrison or for other purposes of the Central People's Government, the Commander of the Hong Kong Garrison or any member of the Chinese People's Liberation Army authorized by him for the purposes of this subsection may issue to any person a permit allowing such person to enter or leave the closed area."

91. On the justifications for the adaptation proposal, the Administration has advised members that as the term "Her Majesty's forces" is used in relation to circumstances involving land occupied by the former British Forces stationed in Hong Kong, it is proposed to adapt the term to "the Hong Kong Garrison". It is also proposed to adapt the reference to "Crown in right of Her Majesty's government in the United Kingdom" to "the Central People's Government", the term "Commander British Forces" to "Commander of the Hong Kong Garrison", and the reference to "any commissioned officer in Her Majesty's forces" to "any member of the Chinese People's Liberation Army" to reflect the actual operation of the Hong Kong Garrison.

92. Dr Hon Margaret NG has pointed out the differences of the constitutional systems between the UK Government and CPG. In her view, the adaptation proposal is beyond the scope of adaptation of laws. Hon Cyd HO has expressed concern that the expression "for other purposes" in the provision may include commercial purposes. Ms HO is of the view that the deletion of "in right of Her Majesty's government in the United Kingdom" from the provision has lifted the restriction on the power of Her Majesty's government in UK and hence has changed the policy intent.

93. The Administration has responded that the original provision has not provided restrictions on the power of Her Majesty's government in UK and that neither the policy intent nor the legal effect of the provision concerned will be changed after adaptation.

94. Members have sought 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 in UK before the Reunification, and the arrangements for the Commander of the Hong Kong Garrison or any member of CPLA authorized by him to issue to any person a permit to enter and leave the closed area.

95. According to the Administration, it has looked into land records concerning occupation of land by Her Majesty's forces or for other purposes of the Crown before the Reunification, and found no other relevant information other than those use related to military sites. Regarding the arrangements under section 37(1) after the Reunification, the Administration has advised members that any person who wishes to enter a closed area occupied by the Hong Kong Garrison (such as military sites) has to obtain the relevant authorization from the Commander of the Hong Kong Garrison or any other members of CPLA authorized by him. For instance, a workman who needs to enter military sites of the Hong Kong Garrison to conduct maintenance works will have to submit a written application to the Hong Kong Garrison for entry. Having considered the application, should the Commander of the Hong Kong Garrison or any member of CPLA authorized by him allow such entry, a written permit will be issued to the applicant.

96. In response to Hon LAU Kong-wah's suggestion to delete the reference "any area or place" from the adaptation proposal for textual improvement, the Administration considers it preferable to retain the reference in order to ensure consistency with other provisions on closed areas in Cap. 245.

Power of arrest (section 39)

97. Section 39(1) of Cap. 245 provides the power of arrest to members of her Majesty's forces or any guard in closed area before the Reunification. Section 39(4) sets out the definition on persons guarding a closed area. The Bills Committee notes that according to BL, the maintenance of public order is the responsibility of the HKSAR Government. As the Hong Kong Garrison will not carry out such duty and exercise such power, the Administration proposes to repeal the reference to "any member of Her Majesty's forces". The Administration has explained that before the Reunification, the then Governor or the Commander British Forces could appoint any person to guard a closed area. Regarding the term "Governor", as the right conferred by the provision concerned is exercised by CE after the Reunification, the Administration proposes to adapt the term to "Chief Executive". As for the term "the Commander British Forces", as the closed area which is occupied by the Hong Kong Garrison or for CPG would only be guarded by members of CPLA after the Reunification, it is proposed to add a subsection (ba) to reflect the legislative intent and the scope of application of the provision.

98. The Bills Committee has sought clarification on whether the Central Barracks located at Tamar is regarded as closed area under section 36 of Cap. 245, and information on the closed areas or other places occupied for other purposes of CPG. The Administration has explained that according to Article 12 of the Garrison Law, the Hong Kong Garrison shall delimit military restricted zones in conjunction with the HKSAR Government. The locations and boundaries of the military restricted zones shall be declared by the HKSAR Government. Sections 36(1) and 39(4) give authority to establish Military Installations Closed Areas Order (Cap. 245B), and declaring some areas and buildings as closed areas. At present, military sites (including the Central Barracks located at Tamar) are declared as closed areas under Cap. 245B. Hence, the Central Barracks located at Tamar is regarded as closed area under section 36 of Cap. 245. After the Reunification, other than military sites, the Hong Kong Garrison has neither occupied any areas nor places for other purposes of CPG.

Indemnity to persons acting under Ordinance (section 53)

99. Section 53 of Cap. 245 provides exemption for members of the then naval, military, air force, Government Flying Service, Hong Kong Auxiliary Police Force from being held liable for paying compensation for damages. Under the Bill, the reference to "Crown in any capacity, whether naval, military, air force or civil" is proposed to be adapted to "Government in any capacity, or be a member of the Chinese People's Liberation Army". On the Bills Committee's enquiry about the rationale for the proposed adaptation, the Administration has advised members that as CPLA already includes naval, army and air forces elements, it is proposed to adapt the relevant reference as "the Chinese People's Liberation Army". As the term "Crown" in the provision covers the then Hong Kong Government, it should have been adapted as "特區政府" in the Chinese text in accordance with the definition in Cap. 1. Given that the term "政府" has been used in other existing provisions for references relating to the HKSAR Government in Cap. 245, the proposed adaptation to "政府" is to ensure consistency.

100. Hon James TO has pointed out the wide exemption provided under section 53, particularly the provision for the persons so specified not to be liable in damage for any act done or purported to be done in the public interest. He has suggested that the Administration should review the extent of the exemption in section 53 in a separate exercise in future.

Proposed adaptation to the Massage Establishments Ordinance (section 82 of Schedule 1 to the Bill)

101. The Massage Establishments Ordinance (Cap. 266) makes provisions for the regulation and licensing of massage establishments. Section 3 provides exemption to the then hospitals or maternity homes maintained by the Crown before the Reunification. On the justifications for the adaptation proposals, the Administration has advised members that as the reference to "Crown" in the provision covers the then Hong Kong Government and the former British Forces stationed in Hong Kong, it is proposed to adapt the relevant reference to include the HKSAR Government and the hospital or maternity homes of the Hong Kong Garrison. Given that the hospital of the Hong Kong Garrison is called military hospital, which does not cover maternity home or massage facilities in other barracks of the Hong Kong Garrison, it is therefore proposed to adapt the relevant reference as "a military hospital or a maternity home of the Hong Kong Garrison".

102. Hon James TO has sought clarification on whether maternity home is one of the facilities in the military hospital of the Hong Kong Garrison, and raised query as to the need for the inclusion of "a maternity home of the Hong Kong Garrison" in the adaptation proposal. According to the Administration, the re-provisioning of the military hospital in accordance with the Exchange of Notes included the provision of obstetrics facilities. Further, each of the barracks of the Hong Kong Garrison has been provided with clinic facilities. To ensure that 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 Cap. 266, the Administration considers it necessary to include the reference "a maternity home of the Hong Kong Garrison" in the adaptation proposal.

Proposed adaptation to the Shipping and Port Control Ordinance (section 97 of Schedule 1 to the Bill)

103. Section 70 of the Shipping and Port Control Ordinance (Cap. 313) provides for members of Her Majesty's forces in uniform and on duty to be exempted from obtaining permission of the owner of the ship before boarding the ship concerned. The Bills Committee has been advised by the Administration that before the Reunification, members of Her Majesty's forces could board ships and conduct search for the maintenance of public order. Under BL, maintenance of public order is the responsibility of the HKSAR Government. The Hong Kong Garrison does not perform such duties, including boarding other ships in Hong Kong waters, and would exercise those responsibilities in the provision concerned only under the conditions stipulated in Article 14 of the Garrison Law, i.e. providing the requested assistance in the maintenance of public order or in disaster relief. It is therefore proposed that the reference to "Her Majesty's forces in uniform and on duty" be adapted to "the Chinese People's Liberation Army in uniform and acting under Article 14 of the Law 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)".

104. The Bills Committee has sought information on the procedures involved should the HKSAR Government request CPG for assistance from the Hong Kong Garrison in the maintenance of public order or in disaster relief under the Garrison Law. According to the Administration, as provided in BL14 and Article 14 of the Garrison Law, the HKSAR Government may, when necessary, ask CPG for assistance from the Hong Kong Garrison in the maintenance of public order and in disaster relief. Should the HKSAR Government consider there is a need for CPG's assistance, it would make such request to CPG via the Hong Kong and Macao Affairs Office of the State Council.

Proposed adaptation to the Civil Aviation Ordinance (section 120 of Schedule 1 to the Bill)

105. The Civil Aviation Ordinance (Cap. 448) makes provisions for the implementation of the Chicago Convention. Before the Reunification, the then Governor in Council could make orders prohibiting aircrafts from flying over specific areas in Hong Kong under section 2A(2)(s). Under section 2A(3), except on the instruction of a Secretary of State of UK issued under section 2A(4), the then Governor in Council could not make any order prohibiting aircrafts from flying over any area in Hong Kong by reason of national defence or during a state of emergency or state of war. Section 2A(4) provides that the then Governor in Council should comply with the instruction made, repealed or amended by the Secretary of State by reason of national defence or state of war in accordance with

section 2A(2)(s). Under section 2A(8), "state of emergency" means a state of emergency declared by a Secretary of State for the purposes of the Ordinance by reason of turmoil within Hong Kong which endangers national unity or security and is beyond the control of the HKSAR Government. It is proposed in the Bill that the reference to "Secretary of State" be adapted to "the Central People's Government" in section 2A(3) and (4), while the reference to "Secretary of State" in section 2A(8) be adapted to "the Standing Committee of the National People's Congress". The Bills Committee has sought justifications for the adaptation proposals.

106. The Administration has explained that according to section 1 of Schedule 8 to Cap. 1, any reference in any provision to the Secretary of State where the content of the provision involves affairs for which CPG has responsibility shall be construed as a reference to CPG or other competent authorities of PRC. Under BL14, CPG shall be responsible for the defence of the HKSAR. The Administration therefore proposes to adapt the reference to "Secretary of State" in section 2A(3) and (4) to "the Central People's Government". Under BL18, it is for SCNPC to declare that the HKSAR is in a state of emergency. It is therefore proposed to adapt the reference to "Secretary of State" in section 2A(8) to "the Standing Committee of the National People's Congress". The proposed adaptation to section 2A(8) is in line with the provisions in BL18.

107. Hon Cyd HO has expressed concern about the proposed adaptation of reference to "Secretary of State" in section 2A(3) and (4), and sought information on the relevant procedures for the enforcement of the orders under the section by the responsible departments of CPG. According to the Administration, after the Reunification, CPG shall be responsible for the defence of the HKSAR under BL14 and the relevant departments of 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 made in accordance with the principles of adaptation of laws and section 1 of Schedule 8 to Cap. 1. The Administration has stressed that the adaptation proposals will not alter the scope of the provisions concerned.

Proposed adaptation to the Air Navigation (Hong Kong) Order 1995 (section 124 of Schedule 1 to the Bill)

108. Section 64(3)(c) of the Air Navigation (Hong Kong) Order 1995 (Cap. 448 sub. leg. C) ("1995 Order") provides that any pilot in command who was acting as a member of Her Majesty's forces and was in the course of his duty in accordance with the Military Flying Regulations issued by the Secretary of State of the UK Government would not be regarded as not complying with the Rules of the Air. It is proposed in the Bill that section 64(3)(c) be adapted to "It shall be lawful for the Rules of the Air to be departed from to the extent necessary from

complying with regulations or directives issued by the Central People's Government in relation to an aircraft of which the pilot in command is acting as such in the course of his duty as a member of the Chinese People's Liberation Army". The Bills Committee has requested the Administration to provide examples of the regulations or directives issued by CPG under the section.

109. According to the Administration, before the Reunification, under section 64(3) of the 1995 Order, it was regarded as lawful for the pilot in command 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 Her Majesty's forces. After the Reunification, according to BL14, CPG shall be responsible for the defence of the HSKAR. The adaptation proposal is straight-forward to ensure that after the Reunification, the pilot in command will continue to enjoy the exemption to depart from the Rules of the Air as long as he is acting in the course of his duty as a member of CPLA 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 that such activities are safely conducted.

Proposed adaptation of the reference "Secretary of State" ("國務大臣"/"工貿大臣") in the Civil Aviation Ordinance, Air Navigation (Hong Kong) Order 1995, Aviation Security Ordinance and Registered Designs Ordinance (sections 120, 126, 127, 128, 135, 136 and 137 in Schedule 1 to the Bill)

110. The Bills Committee has suggested that the adaptation proposals for the reference "Secretary of State" ("國務大臣" / "工貿大臣" in the Chinese text) in the Bill (namely, the Civil Aviation Ordinance, Air Navigation (Hong Kong) Order 1995, Aviation Security Ordinance (Cap. 494) and Registered Designs Ordinance (Cap. 522)) should be uniformly adapted and to adapt such reference as "the Central People's Government" to replace the adaptations such as "the Central People's Government"⁴ / "by or on behalf of the Central People's Government"⁵ / "competent authority"⁶ in the Bill. The Bills Committee considers that the reference "the Central People's Government" has already encompassed the meaning of "by or on behalf of the Central People's Government" and "competent authority".

111. Having considered the views of the Bills Committee, the Administration has agreed to uniformly adapt the reference "Secretary of State" ("國務大臣" / "

4 Sections 120(1) and (2), 126, 127(4) and 136 of Schedule 1 to the Bill

5 Sections 128(3) and 135 of Schedule 1 to the Bill

6 Section 137 of Schedule 1 to the Bill

工貿大臣" in the Chinese text) as "Central People's Government" and deleting references such as "by or on behalf of" and "competent authority" in the Bill. The relevant CSAs will be moved by the Administration.

112. However, Administration has pointed out that the uniform approach to adapt the reference to "Secretary of State" cannot apply to the reference to "Secretary of State" in section 2A(8) of the Civil Aviation Ordinance⁷. The provision concerned involves the power to declare a state of emergency and such power is vested with SCNPC as stipulated in BL18(4)⁸. It is necessary to adapt the reference "Secretary of State" to "the Standing Committee of the National People's Congress" to ensure compliance with BL.

Proposal to adapt "服役" to "服務" in the Chinese texts of the Immigration Ordinance, Registration of Persons Regulations and Public Bus Services Regulations, (sections 20, 45 and 65 of Schedule 1 to the Bill)

113. In scrutinizing the adaptation proposals to the Immigration Ordinance (Cap. 115), Registration of Persons Regulations (Cap. 177A) and Public Bus Services Regulations (Cap. 230A), the Bills Committee is concerned that the proposed adaptation of the reference to "服役" in the Chinese version to "服務" in the relevant provisions may expand the legal effect of the legislation concerned. The Bill Committee has suggested that the reference to "服役" in the Chinese version of the original provisions should be retained. The Administration accepts that the retention of the reference to "服役" will better reflect the principles of the adaptation of laws, and will propose CSAs to delete the reference to "服務" in the Chinese text of the relevant provisions in the Bill.

Proposal to adapt "當值中" to "正在執行職務" in the Chinese text of the "Star" Ferry Company, Limited, Bylaws (section 14 of Schedule 1 to the Bill)

114. As for the proposed adaptation of the reference "在當值中的英軍成員" in the Chinese text of the "Star" Ferry Company, Limited, Bylaws (Cap. 104E) to "正在執行職務的中國人民解放軍人員", the Bills Committee has suggested retaining the reference to "當值中" in the original provision. According to the Administration, its legal advice obtained is that the legal protection conferred by the existing provision will not be affected even without adapting the reference to

7 Section 120(3) of Schedule 1 to the Bill

8 BL 18 provides, "In the event that the Standing Committee of the National People's Congress decides to declare a state of war or, by reason of turmoil within the Hong Kong Special Administrative Region which endangers national unity or security and is beyond the control of the government of the Region, decides that the Region is in a state of emergency, the Central People's Government may issue an order applying the relevant national laws in the Region."

"當值中" to "正在執行職務" in the Chinese text. Therefore, the Administration accepts the suggestion of the Bills Committee and will propose a CSA to retain the reference "當值中" in the original provision.

Commencement (clause 2 of the Bill)

115. Under clause 2(1) of the Bill, the Bill, if enacted, is deemed to have come into operation on 1 July 1997 except as provided in subclauses (3), (4) and (5). Clause 2(3) provides for various sections in Schedule 1 to the Bill to come into operation on the day on which the Bill, if enacted, is published in the Gazette. Hon James TO is concerned about the negative impact of taking retrospective effect of the 47 provisions covered in clause 2(1), and has queried about the justifications for setting different commencement dates. The Bills Committee has requested the Administration to re-examine each of the adaptation proposals included in clause 2(1), and advise whether any of them should be instead be included in clause 2(3).

116. In view of members' comments, the Administration has carefully studied the 47 provisions and provided the reasons for having those provisions coming into effect on 1 July 1997. In gist, the concerned provisions mainly involved rights, privileges and exemption of the Hong Kong Garrison and such provisions have been construed in accordance with Cap. 1 since 1 July 1997. The Bills Committee has taken note of the explanations provided by the Administration for setting the commencement date of the 47 provisions on 1 July 1997.

Savings and transitional provisions (clause 5 of the Bill)

117. Upon members' query on the need to single out five pieces of legislation in clause 5, the Administration explained that clause 5 of the Bill seeks to provide additional safeguards and to remove doubt as to the validity of the actions or proceedings initiated under the Defamation Ordinance, the right accrued or accruing under the Pensions Regulations (Cap. 89 sub. leg. A), the Pension Benefits Regulations (Cap. 99 sub. leg. A) and the Pension Benefits (Judicial Officers) Regulations (Cap. 401 sub. leg. A) and the documents or declarations executed or attested outside Hong Kong under the Adoption Rules (Cap. 290 sub. leg. A) .

118. In the view of members, instead of providing additional safeguards to the validity of these legislations, the savings and transitional clause has created doubt as to their validity. Members also raised concern about whether there would be any omission of relevant provisions from clause 5. Having considered members' views, the Administration agrees that even if no such savings and transitional clause is included in the Bill, it should not have actual impact on the proceedings under the relevant legislation and the interest accrued before the Reunification, as well as the validity of such documents or declarations. The Administration will introduce a CSA to repeal clause 5.

Other provisions requiring amendments

119. In the course of scrutiny of the Bill, members have identified a number of provisions requiring amendments which may involve law reform. Given that such amendments fall outside the scope of adaptation of laws and hence that of the Bill, members have requested the Administration to consider dealing with such amendment proposals in separate exercises. Examples are given in paragraphs 46 and 76 above.

Committee Stage amendments

120. The Administration has advised members that in accordance with Article 10 of the Garrison Law, it has consulted the Hong Kong Garrison on the proposed amendments to the Bill as discussed in the above paragraphs and obtained the Hong Kong Garrison's agreement.

Consultation with the House Committee

121. The Bills Committee consulted the House Committee on 13 January 2012 and obtained its support for the Second Reading debate on the Bill to be resumed at the Council meeting of 8 February 2012.

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

Membership list

Chairman Hon IP Kwok-him, GBS, JP

Members Dr Hon Margaret NG
Hon James TO Kun-sun
Hon LAU Kong-wah, JP
Hon Andrew LEUNG Kwan-yuen, GBS, JP
Hon Cyd HO Sau-lan
Hon CHAN Hak-kan
Dr Hon Priscilla LEUNG Mei-fun, JP
Hon WONG Kwok-kin, BBS
Hon Paul TSE Wai-chun, JP

(Total : 10 Members)

Clerk Mrs Sharon TONG

Legal Advisers Mr Jimmy MA

Ms Clara TAM

Date 4 July 2011