

For discussion on  
4 May 2010

## **Legislative Council Panel on Security**

### **Adaptation of Military-related References in the Laws of Hong Kong**

#### **Purpose**

This paper briefs Members on the principles to be adopted for adapting the military-related references in the laws of Hong Kong and the work progress regarding the adaptation of such military-related references.

#### **Background**

2. On 23 February 1997, the Standing Committee of the National People's Congress 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, the laws previously in force in Hong Kong are adopted as the laws of the Hong Kong Special Administrative Region in accordance with Articles 8 and 160 of the Basic Law<sup>1</sup>. The decision of the Standing Committee of the National People's Congress also spelt out the interpretative principles for provisions relating to the rights, exemptions and obligations of military forces stationed in Hong Kong by the United Kingdom and references to "Her Majesty", "the Crown", "the British Government" and "the Secretary of State", etc.

3. The interpretative principles promulgated by the Standing Committee of the National People's Congress have been enacted as part

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<sup>1</sup> Article 8 of the Basic Law stipulates: "The laws previously in force in Hong Kong, that is, the common law, rules of equity, ordinances, subordinate legislation and customary law shall be maintained, except for any that contravene this Law, and subject to any amendment by the legislature of the Hong Kong Special Administrative Region."

Article 160(1) of the Basic Law stipulates: "Upon the establishment of the Hong Kong Special Administrative Region, the laws previously in force in Hong Kong shall be adopted as laws of the Region except for those which the Standing Committee of the National People's Congress declares to be in contravention of this Law. If any laws are later discovered to be in contravention of this Law, they shall be amended or cease to have force in accordance with the procedure as prescribed by this Law."

of Hong Kong law by 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). In line with these general principles, more detailed principles of interpretation have been added to the Interpretation and General Clauses Ordinance (Cap. 1) by the amendments made under the Adaptation of Laws (Interpretative Provisions) Ordinance (No. 26 of 1998).

4. Therefore, since 1 July 1997, military-related provisions in the laws of Hong Kong have been construed in accordance with the interpretative principles set out in the Interpretation and General Clauses Ordinance (Cap. 1). Nevertheless, in the interest of legal certainty of the laws of Hong Kong, we are prepared to adapt these military-related provisions and brief Members on our proposal.

### **Adaptation of Military-related References**

5. There are a substantial number of military-related references in the laws of Hong Kong which require adaptation to bring them into conformity with the Basic Law and Hong Kong's status as a Special Administrative Region of the People's Republic of China. Such military-related references include direct military references (e.g. "Her Majesty's forces", "armed forces of the Crown", etc.), references that are to be construed as including the Chinese People's Liberation Army or the Hong Kong Garrison<sup>2</sup> and references in a military context (e.g. national defence)<sup>3</sup>.

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<sup>2</sup> For example, section 33(6)(a) of the Employment Ordinance (Cap. 57) stipulates:

"For the purposes of this section –

(a) the expression "hospital" (醫院) means a hospital or specialist clinic maintained by the Crown, a public hospital within the meaning of the Hospital Authority Ordinance (Cap 113) or a hospital in respect of which a person is registered under the Hospitals, Nursing Homes and Maternity Homes Registration Ordinance (Cap 165);"

The reference to "the Crown" is to be construed as meaning the Government of the Hong Kong Special Administrative Region and the Hong Kong Garrison.

<sup>3</sup> For instance, section 2A(3) of the Civil Aviation Ordinance (Cap. 448) stipulates:

"No order may be made under subsection (2)(s) for prohibiting aircraft from flying over any area in Hong Kong –

(a) by reason of national defence; or

(b) during a state of emergency or state of war,

except on an instruction of a Secretary of State issued as described in subsection (4)."

6. The adaptation of military-related references will be formulated in accordance with the following principles –

(a) Provisions relating to the rights, exemptions and obligations of military forces stationed in Hong Kong by the United Kingdom shall, subject to the provisions of the Basic Law and the Garrison Law of the Hong Kong Special Administrative Region of the People's Republic of China (hereafter referred to as the Garrison Law), continue to have effect and apply to the military forces stationed in the Hong Kong Special Administrative Region by the Central People's Government of the People's Republic of China<sup>4</sup>;

(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 Hong Kong Special Administrative Region;

(ii) involves affairs for which the Central People's Government of the People's Republic of China has responsibility;

(iii) involves the relationship between the Central Authorities and the Hong Kong Special Administrative Region,

shall be construed as a reference to the Central People's Government or other competent authorities of the People's Republic of China<sup>5</sup>; 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 Hong Kong Special Administrative Region<sup>6</sup>. For example, the reference to “the Crown” in section 33(6)(a) of the Employment

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<sup>4</sup> See section 2A(2)(c) of the Interpretation and General Clauses Ordinance (Cap. 1)

<sup>5</sup> See section 1 of Schedule 8 to the Interpretation and General Clauses Ordinance (Cap. 1)

<sup>6</sup> See section 2 of Schedule 8 to the Interpretation and General Clauses Ordinance (Cap. 1)

Ordinance (Cap. 57) (see footnote 2 above) is to be construed as meaning the Government of the Hong Kong Special Administrative Region and the Hong Kong Garrison.

7. The adaptation of military-related references will also take into account the two sets of guiding principles on the adaptation of laws which were tabled by the Administration in the Legislative Council in 1998, namely, Guiding Principles and Guideline Glossary of Terms for the Adaptation of Laws Programme (LC Paper No. CB(2)739/98-99(01)) and Principles on the adaptation of references to the “Crown” (LC Paper No. CB(2)532/98-99(01)).

8. Broadly speaking, in accordance with the principles and guidelines mentioned above, general references to “Her Majesty’s forces”, for example, will be adapted as “Chinese People’s Liberation Army” as “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”. Examples illustrating how some of the common military-related references in Hong Kong laws may be adapted are tabulated at **Annex A**. When formulating the actual adaptation proposals, we will also take into account the context and the legislative intent of the relevant provisions. A list of the legislation to be covered by this adaptation of laws exercise is at **Annex B**.

## **Way Forward**

9. Article 10 of the Garrison Law provides that the Hong Kong Special Administrative Region shall consult the Hong Kong Garrison when formulating any policy or drafting any legislation which concerns the Hong Kong Garrison. We are consulting the Hong Kong Garrison on the detailed adaptation proposal for the military-related references in the relevant legislation. We will introduce the bill into the Legislative Council once ready.

Security Bureau  
April 2010

**Examples illustrating the adaptation of military-related references  
in the laws of Hong Kong**

**TABLE 1: Adaptation of military references**

<b><u>Existing expression</u></b>	<b><u>Expression after adaptation</u></b>
Commander, British Forces	Commander of the Hong Kong Garrison
Commissioned officer in Her Majesty's forces	Member of the Chinese People's Liberation Army of or above the rank of second lieutenant (or ensign)
Her Majesty's forces (and equivalent expressions) <sup>1</sup>	Chinese People's Liberation Army
Her Majesty's forces (in relation to land vested in or occupied by)	Hong Kong Garrison
Her Majesty's ships of war	Ships of war of the Chinese People's Liberation Army
Member/officer of Her Majesty's forces	(1) Member/officer/soldier of the Chinese People's Liberation Army; or (2) Member/officer/soldier of the Hong Kong Garrison
Ministry of Defence	Ministry of National Defence in the Central People's Government
Royal Hong Kong Auxiliary Air Force	Government Flying Service
Ships used by Her Majesty's	(1) Ships used by the Central People's

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<sup>1</sup> Such expressions include "armed forces of the Crown", "armed forces of Her Majesty", "British Forces", "Her Majesty's armed forces" and "Her Majesty's naval, military or air forces", etc.

<u>Existing expression</u>	<u>Expression after adaptation</u>
Government	Government; or (2) Ships used by the Central People's Government or the Chinese People's Liberation Army
Warships used by Her Majesty's Government	Warships used by the Chinese People's Liberation Army

**TABLE 2: Adaptation of other references<sup>2</sup>**

<u>Existing expression</u>	<u>Expression after adaptation</u>
Crown	Government/Central People's Government/Chinese People's Liberation Army (or Hong Kong Garrison)
Governor	Chief Executive
Her Majesty	Government/Central People's Government/Chinese People's Liberation Army (or Hong Kong Garrison)
Secretary of State	Central People's Government

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<sup>2</sup> These references are to be adapted since they either can be construed as including the Chinese People's Liberation Army or the Garrison (as applicable) or are used in a military context (e.g. national defence).

**Legislation to be covered in the legislative exercise  
on the adaptation of military-related references**

<b><u>Item</u></b>	<b><u>Legislation</u></b>
1.	Jury Ordinance (Cap. 3)
2.	Probate and Administration Ordinance (Cap. 10)
3.	Defamation Ordinance (Cap. 21)
4.	Antiquities and Monuments Ordinance (Cap. 53)
5.	Employment Ordinance (Cap. 57)
6.	Import and Export (Registration) Regulations (Cap. 60 sub. leg. E)
7.	Pilotage Ordinance (Cap. 84)
8.	Pensions Regulations (Cap. 89 sub. leg. A)
9.	Public Service Commission Ordinance (Cap. 93)
10.	Pension Benefits Regulations (Cap. 99 sub. leg. A)
11.	“Star” Ferry Company, Limited By-laws (Cap. 104 sub. leg. E)
12.	Telecommunications Ordinance (Cap. 106)
13.	Tramway Ordinance (Cap. 107)
14.	Dutiable Commodities Ordinance (Cap. 109)
15.	Inland Revenue Ordinance (Cap. 112)
16.	Immigration Ordinance (Cap. 115)
17.	Immigration (Places of Detention) Order (Cap. 115 sub. leg. B)
18.	Authorization by the Governor issued under section 58A (Cap. 115 sub. leg. F)
19.	Rating Ordinance (Cap. 116)
20.	Buildings Ordinance (Cap. 123)
21.	Lands Resumption Ordinance (Cap. 124)
22.	Land Acquisition (Possessory Title) Ordinance (Cap. 130)
23.	Funeral Parlours Regulation (Cap. 132 sub. leg. AD)
24.	Hong Kong Cemetery, Happy Valley, Rules (Cap. 132 sub. leg. AJ)
25.	Dangerous Drugs Ordinance (Cap. 134)
26.	Dangerous Drugs Regulations (Cap. 134 sub. leg. A)
27.	Pharmacy and Poisons Ordinance (Cap. 138)
28.	Air Passenger Departure Tax Ordinance (Cap. 140)
29.	Dentists Registration Ordinance (Cap. 156)
30.	Medical Registration Ordinance (Cap. 161)
31.	Midwives Registration Ordinance (Cap. 162)
32.	Nurses Registration Ordinance (Cap. 164)
33.	Hospitals, Nursing Homes and Maternity Homes Registration Ordinance (Cap. 165)

<b><u>Item</u></b>	<b><u>Legislation</u></b>
34.	Wild Animals Protection Ordinance (Cap. 170)
35.	Registration of Persons Regulations (Cap. 177 sub. leg. A)
36.	Defences (Firing Areas) Ordinance (Cap. 196)
37.	Crimes Ordinance (Cap. 200)
38.	Country Parks and Special Areas Regulations (Cap. 208 sub. leg. A)
39.	Aerial Ropeways (Operation and Maintenance) Regulations (Cap. 211 sub. leg. A)
40.	Weapons Ordinance (Cap. 217)
41.	Summary Offences Ordinance (Cap. 228)
42.	Traffic Accidents Victims (Assistance Fund) Ordinance (Cap. 229)
43.	Public Bus Services Regulations (Cap. 230 sub. leg. A)
44.	Undesirable Medical Advertisements Ordinance (Cap. 231)
45.	Fixed Penalty (Traffic Contraventions) Ordinance (Cap. 237)
46.	Firearms and Ammunition Ordinance (Cap. 238)
47.	Public Order Ordinance (Cap. 245)
48.	Protected Places (Safety) Ordinance (Cap. 260)
49.	Protected Places (Safety) (Authorized Guards) Order (Cap. 260 sub. leg. C)
50.	Peak Tramway By-laws (Cap. 265 sub. leg. B)
51.	Massage Establishments Ordinance (Cap. 266)
52.	Merchant Shipping Ordinance (Cap. 281)
53.	Employees' Compensation Ordinance (Cap. 282)
54.	Housing (Traffic) By-laws (Cap. 283 sub. leg. A)
55.	Housing (Traffic Contraventions) (Fixed Penalty) Bylaw (Cap. 283 sub. leg. C)
56.	Mining Ordinance (Cap. 285)
57.	Mining (General) Regulations (Cap. 285 sub. leg. A)
58.	Adoption Rules (Cap. 290 sub. leg. A)
59.	Dangerous Goods Ordinance (Cap. 295)
60.	Dangerous Goods (Shipping) Regulations (Cap. 295 sub. leg. C)
61.	Shipping and Port Control Ordinance (Cap. 313)
62.	Shipping and Port Control Regulations (Cap. 313 sub. leg. A)
63.	Census and Statistics Ordinance (Cap. 316)
64.	Industrial Training (Clothing Industry) Ordinance (Cap. 318)
65.	Lifts and Escalators (Safety) Ordinance (Cap. 327)
66.	Motor Vehicles (First Registration Tax) Ordinance (Cap. 330)
67.	Medical Clinics Ordinance (Cap. 343)
68.	Supplementary Medical Professions Ordinance (Cap. 359)
69.	Pneumoconiosis and Mesothelioma (Compensation) Ordinance (Cap. 360)
70.	Kowloon-Canton Railway Corporation By-laws (Cap. 372 sub. leg. B)



<b><u>Item</u></b>	<b><u>Legislation</u></b>
71.	Road Traffic (Driving Licences) Regulations (Cap. 374 sub. leg. B)
72.	Road Traffic (Parking) Regulations (Cap. 374 sub. leg. C)
73.	Road Traffic (Registration and Licensing of Vehicles) Regulations (Cap. 374 sub. leg. E)
74.	Road Traffic (Traffic Control) Regulations (Cap. 374 sub. leg. G)
75.	Road Traffic (Parking on Private Roads) Regulations (Cap. 374 sub. leg. O)
76.	Road Traffic (Expressway) Regulations (Cap. 374 sub. leg. Q)
77.	Pension Benefits (Judicial Officers) Regulations (Cap. 401 sub. leg. A)
78.	Merchant Shipping (Prevention and Control of Pollution) Ordinance (Cap. 413)
79.	Civil Aviation Ordinance (Cap. 448)
80.	Air Navigation (Hong Kong) Order 1995 (Cap. 448 sub. leg. C)
81.	Security and Guarding Services Ordinance (Cap. 460)
82.	Occupational Deafness (Compensation) Ordinance (Cap. 469)
83.	Merchant Shipping (Seafarers) Ordinance (Cap. 478)
84.	Aviation Security Ordinance (Cap. 494)
85.	Carriage by Air Ordinance (Cap. 500)
86.	Registered Designs Ordinance (Cap. 522)