

Bills Committee on
Adaptation of Laws (No. 9) Bill

I. General issues

1. It is clearly stated in the Adaptation of Laws Programme - Guiding Principles and Guideline Glossary of Terms (“Guiding Principles”) that any amendment that is neither related to the Basic Law nor necessitated by Hong Kong’s new status are outside the scope of the Adaptation of Laws Programme. In the light of this principle, any amendment which merely involves policy change should not be dealt with in an Adaptation of Laws Bill.
2. The Administration understands that in the judgement of the Court of Final Appeal delivered on 29 January 1999, the Court of Final Appeal referred to a “new order” under the Basic Law. The Adaptation of Laws Programme is in fact the Administration’s response to the new constitutional order after Reunification. As it is stated in the Guiding Principles, the general principles of the Adaptation of Laws Programme are that the provisions when adapted should be consistent with the Basic Law and with the Hong Kong’s status as a Special Administrative Region of the People’s Republic of China. The concept of “new order” has already been taken into account when determining the principles to be applied in the Adaptation of Laws Programme.

II. Adaptation of the references to the “Crown” in the relevant provisions of the Ordinances under Adaptation of Laws (No. 9) Bill 1999

The general guiding principles for how to adapt references to the “Crown” in the Adaptation of Laws Programme have been set out in item No. 10 of Annex A to the Guiding Principles. The same principles were adopted in the Adaptation of Laws (No. 9) Bill 1999. Matters concerning the adaptation of all references to “Crown” in the relevant

provisions of the Ordinances in the Adaptation of Laws (No. 9) Bill 1999 are as follows -

- (a) (i) Section 13 of Schedule 1 (By-law 4(1), Cross-Harbour Tunnel By-laws (Cap. 203 sub. leg.))
 - (ii) Section 14 of Schedule 2 (By-law 4(1), Eastern Harbour Crossing Road Tunnel By-laws (Cap. 215 sub. leg.))
 - (iii) Section 12 of Schedule 10 (By-law 4(1), Tate's Cairn Tunnel By-laws (Cap. 393 sub. leg.))
-

(A) Before Reunification, these provisions exempted vehicles which carried persons in the public service of the Crown who were engaged on duty relating to the tunnel area from the payment of tolls. Fire service vehicles, ambulances, police vehicles and vehicles used for defence purposes are obvious examples of vehicles that might fall under such description. Subsection (2) of these provisions went on to further exempt these vehicles from compliance with some other bylaws in case they were being used in the course of urgent duty.

(B) The reference to "Crown" in these provisions is proposed to be adapted to "State".

(C) The proposed adaptation is in line with section 7 of Schedule 9 to the Interpretation and General Clauses Ordinance (Cap. 1) and appropriate in view of the context of the respective provisions.

(D) The actual effect of these provisions after adaptation will be the same as before i.e. only vehicles which carry persons in the public service of the State *who are engaged on duty relating to the tunnel area* will be exempted from toll payments. Members may wish to note that the relevant tunnel operators had been consulted and none of them expressed the view or concern that the proposed adaptation would widen the scope of application of the respective provisions.

- (b) (i) Section 14 of Schedule 1 (By-law 26, Cross Harbour Tunnel By-

laws (Cap. 203 sub. leg.))

- (ii) Section 15 of Schedule 2 (By-law 23, Eastern Harbour Crossing Road Tunnel By-laws (Cap. 215 sub. leg.))
 - (iii) Section 4 of Schedule 6 (Section 21, Road Tunnels (Government) Ordinance (Cap. 368))
 - (iv) Section 13 of Schedule 10 (By-law 23, Tate's Cairn Tunnel By-laws (Cap. 393 sub. leg.))
-

(A) The purpose of these provisions is to preserve those powers or duties the law had conferred or imposed on persons in the public service of the Crown which might be affected by the operation of the subject legislation. Whether such powers or duties did exist at the time these provisions came into force is a question of fact. As the function of a savings clause is to preserve what already exists as opposed to creating new rights or obligations, its presence in a legislation merely serves to establish beyond doubt that provisions therein are to be construed as additional to and not in derogation of existing law.

(B) The reference to "Crown" in these provisions is proposed to be adapted to "State".

(C) The proposed adaptation is in line with section 7 of Schedule 9 to the Interpretation and General Clauses Ordinance (Cap. 1) and appropriate in view of the context of the respective provisions.

(D) There is no change in the effect of these provisions after adaptation.

- (c) (i) Section 16 of Schedule 2 (By-law 24, Eastern Harbour Crossing Road Tunnel By-laws (Cap. 215 sub. leg.))
 - (ii) Section 14 of Schedule 10 (By-law 24, Tate's Cairn Tunnel By-laws (Cap. 393 sub. leg.))
-

(A) These provisions expressly apply the By-laws to vehicles and persons in the public service of the Crown unless otherwise stated in the By-laws. Before Reunification, this means that

vehicles of and persons serving any emanation of the Crown would have to observe the By-laws which mainly concerned with traffic control, prohibited and restricted traffic within the respective tunnel areas as well as the payment of tolls.

- (B) The reference to “Crown” in these provisions is proposed to be adapted to “State”.
 - (C) The proposed adaptation is in line with section 7 of Schedule 9 to the Interpretation and General Clauses Ordinance (Cap. 1) and appropriate in view of the context of the respective provisions.
 - (D) The proposed adaptation will best preserve the pre-existing law. The By-laws continue to apply to vehicles and persons in the public service of the State. It is submitted that these application clauses should be treated equally with the exemption and savings provisions in the same legislation (see sections (a) and (b) of this Part).
- (d) Section 1 of Schedule 3 (Section 3, Fixed Penalty (Traffic Contraventions) Ordinance (Cap. 237))
-

- (A) Before Reunification, this application clause provided that the Fixed Penalty (Traffic Contraventions) Ordinance (Cap. 237) applied to motor vehicles owned by the Crown and to persons in the public service of the Crown.
- (B) The reference to “Crown” in these provisions is proposed to be adapted to “State”.
- (C) The relevant general adaptation principle adopted is section 7 of Schedule 9 to the Interpretation and General Clauses Ordinance (Cap. 1), but the adaptation must be considered in the context of the particular Ordinance concerned.
- (D) The actual effect of the relevant provisions after adaptation will be the same as before, i.e. the provisions that are applied by the

above provisions to the “Crown” will now apply to the “State”.

(e) Section 2 of Schedule 6 (Section 16(3)(b)(ii) and (5), Road Tunnels (Government Ordinance (Cap. 368))

(A) Section 16 deals with the disposal of abandoned vehicles at government tunnels. It provides that any vehicle so abandoned which remains unclaimed shall become the property of “the Crown” and may be sold or otherwise disposed of as the Authority (defined to mean the Commissioner for Transport) thinks fit. Before Reunification, vehicles as such would become property of the Crown in right of the Hong Kong Government and any proceeds of sale would be paid into the general revenue.

(B) The reference to “Crown” in this provision is proposed to be adapted to “Government”.

(C) The proposed adaptation is in accordance with section 2 of Schedule 8 to the Interpretation and General Clauses Ordinance (Cap. 1).

(D) The effect of the provision both before and after the adaptation is the same. The matters governed by these provisions remain the sole responsibility of the local government.

(f) Sections 1, 2, 11, 12, 15, 16, 17(a), 18, 19, 20 and 21 of Schedule 7 (Sections 3(2), 4(3), 19(1), 21(4), 25, 26, 27(1), 28(4), 29(6)(a), 34(b) and 42(4), Roads (Works, Use and Compensation) Ordinance (Cap. 370))

(A) The Roads (Works, Use and Compensation) Ordinance (Cap. 370) deals with matters relating to the works on and the use of roads in Hong Kong as well as compensation in connection with such works. Before Reunification, these were matters under the sole responsibility of the Crown in right of the Hong Kong

Government.

- (B) The reference to “Crown” in these provisions is proposed to be adapted to “Government”.
- (C) The proposed adaptation is in accordance with section 2 of Schedule 8 to the Interpretation and General Clauses Ordinance (Cap. 1).
- (D) After adaptation, the effect of these provisions will be the same as before. Matters governed by this Ordinance are still under the sole responsibility of the local government.
- (g) (i) Section 2 of Schedule 8 (Section 3(1) and (2), Road Traffic Ordinance (Cap. 374))
(ii) Section 44 of Schedule 8 (Regulation 4(1), Road Traffic (Driving Licences) Regulations (Cap. 374 sub. leg.))
(iii) Section 65 of Schedule 8 (Regulation 62, Road Traffic (Traffic Control) Regulations (Cap. 374 sub. leg.))
(iv) Section 67 of Schedule 8 (Regulation 3(1), Road Traffic (Parking on Private Roads) Regulations (Cap. 374 sub. leg.))
(v) Section 69 of Schedule 8 (Regulation 3, Road Traffic (Expressway) Regulations (Cap. 374 sub. leg.))
-
- (A) The purpose of these application clauses is to provide that certain provisions of the Road Traffic Ordinance and its subsidiary legislation shall apply to the vehicles and persons in the public service of the Crown.
- (B) The reference to “Crown” in these provisions is proposed to be adapted to “State”.
- (C) The relevant general adaptation principle adopted is section 7 of Schedule 9 to the Interpretation and General Clauses Ordinance (Cap. 1), but the adaptation must be considered in the context of the particular Ordinance concerned.

- (D) The actual effect of the relevant provisions after adaptation will be the same as before, i.e. the provisions that are applied by the above provisions to the “Crown” will now apply to the “State”.
- (h) Section 8 of Schedule 8 (Section 11(1), Road Traffic Ordinance (Cap. 374))
- (A) Before Reunification, section 11(1) of the Road Traffic Ordinance (Cap. 374) empowered the Secretary for Transport to make regulations to exempt the “Crown” and public officer from liability in respect of the school crossing patrol.
- (B) The reference to “Crown” in this provision is proposed to be adapted to “Government”.
- (C) The relevant general adaptation principle adopted is section 2 of Schedule 8 to the Interpretation and General Clauses Ordinance (Cap. 1), but the adaptation must be considered in the context of the particular Ordinance concerned.
- (D) This section should be read together with section 34 of the Road Traffic (Traffic Control) Regulation (Cap. 374, sub. leg.) that provides for exemption of the Commissioner of Police from the liability of damage or injury caused to the school crossing patrol. As the Commissioner of Police is the only target of exemption, and matters related to school crossing patrol are affairs for which only the government of the HKSAR has responsibility, the original effect of the relevant provision will be retained by adapting the reference to “Crown” to “Government”.
- (i) (i) Sections 16, 22 and 29 of Schedule 8 (Sections 51(2), 87 and 96(4), Road Traffic Ordinance (Cap. 374))
- (ii) Section 61 of Schedule 8 (Regulation 5(2), Road Traffic (Safety Equipment) Regulations (Cap. 374 sub. leg.))
- (iii) Section 63 of Schedule 8 (Regulation 15B(8), Road Traffic (Traffic Control) Regulations (Cap. 374 sub. leg.))

(iv) Section 68 of Schedule 8 (Regulation 12(1)(a)(ii)(A) and (2)(b)(i), Road Traffic (Parking on Private Roads) Regulations (Cap. 374 sub. leg.))

- (A) These provisions concerned with the forfeiture of property to the “Crown”.
- (B) The reference to “Crown” in this provision is proposed to be adapted to “Government”.
- (C) The relevant general adaptation principle adopted is section 2 of Schedule 8 to the Interpretation and General Clauses Ordinance (Cap. 1), but the adaptation must be considered in the context of the particular Ordinance concerned.
- (D) The actual effect of the relevant provisions after adaptation will be the same as before. The subject matters of these provisions are still under the sole responsibility of the HKSARG.

(j) Sections 20, 23, 25 and 27 of Schedule 8 (Sections 77I, 88(7), 88I and 88Q, Road Traffic Ordinance (Cap. 374))

- (A) Before Reunification, these provisions provided that no one could rely on the fact a place was designated as a vehicle emission testing centre, a vehicle examination centre, a car testing centre or a driving school as the only reason for instituting proceedings in tort against the Crown or a public officer.
- (B) The reference to “Crown” in this provision is proposed to be adapted to “Government”.
- (C) The relevant general adaptation principle adopted is section 2 of Schedule 8 to the Interpretation and General Clauses Ordinance (Cap. 1), but the adaptation must be considered in the context of the particular Ordinance concerned.
- (D) The actual effect of the relevant provisions after adaptation will

be the same as before. Designation matters are still under the sole responsibility of the HKSARG.

(k) Sections 23 and 28 of Schedule 8 (Sections 88(6) and 94(2), Road Traffic Ordinance (Cap. 374))

(A) Before Reunification, these sections provided that money and penalty due under certain provisions were recoverable as debts due to the Crown.

(B) The reference to “Crown” in this provision is proposed to be adapted to “Government”.

(C) The relevant general adaptation principle adopted is section 2 of Schedule 8 to the Interpretation and General Clauses Ordinance (Cap. 1), but the adaptation must be considered in the context of the particular Ordinance concerned.

(D) The actual effect of the relevant provisions after adaptation the same as before. The subject matters of these provisions are still under the sole responsibility of the HKSARG.

(l) (i) Sections 32, 33, 40 and 41 of Schedule 8 (Sections 106, 107(3)(b)(ii) and (5), 121(2)(i) and 129(1) and (2), Road Traffic Ordinance (Cap. 374))
(ii) Section 52 of Schedule 8 (Regulation 27D(3), Road Traffic (Parking) Regulations (Cap. 374 sub. leg.))

(A) These provisions concerned with the making of certain vehicles, expressway plant and equipment, and disabled persons’ parking permits as becoming or being the property of the Crown.

(B) The reference to “property of the Crown” is proposed to be adapted to “property of the Government”.

(C) The relevant general adaptation principle adopted is section 2 of

Schedule 8 to the Interpretation and General Clauses Ordinance (Cap. 1), but the adaptation must be considered in the context of the particular Ordinance concerned.

(D) The actual effect of the relevant provisions after adaptation the same as before. The subject matters of these provisions are still under the sole responsibility of the HKSARG.

(m) Section 51 of Schedule 8 (Regulation 3, Road Traffic (Parking) Regulations (Cap. 374 sub. leg.))

Reg. 3(1) of the Road Traffic (Parking) Regulations (Cap. 374 sub. leg.) is an application clause. It applies the Regulations to vehicles and persons in the public service of the “Crown”. They should now apply to those in the public service of the “State” according to section 7(1) of Schedule 9 to Cap. 1.

Reg. 3(2) provides that no fee is payable for the use of certain designated car parks by a vehicle owned by and in the public service of the “Crown”. This subregulation is not an application clause nor a binding effect clause as such. No car parks have been designated under the relevant provisions since 1984 when the management and operation of the Transport Department Multi-storey Car Parks were contracted out to the private sector. The Department does not have any record showing that the British forces had used the relevant designated car parks, let alone any record that they had been exempted from payment of parking fees before the reunification. Reg. 3(2) is therefore adapted to the effect that the relevant car parking fee is not payable by vehicles owned by and in the public service of the “Government”.

(n) (i) Section 62 of Schedule 8 (Regulation 2(1), Road Traffic (Traffic Control) Regulations (Cap. 374 sub. leg.))
(ii) Section 64 of Schedule 8 (Regulation 41(2)(a), Road Traffic (Traffic Control) Regulations (Cap. 374 sub. leg.))

The phrase “person in the public service of the Crown” is defined in Reg. 2(1) of the Road Traffic (Traffic Control) Regulations (Cap. 374 sub. leg.) for the purpose of that Regulation as to include the military forces. It is therefore proposed to adapt “Crown” in that phrase to “State”.

(o) Section 66 of Schedule 8 (Regulation 6, Traffic Wardens (Discipline) Regulations (Cap. 374, sub. leg.))

(A) Regulation 6 of the Traffic Wardens (Discipline) Regulations (Cap. 374 sub. leg.) provided that a defaulter of the Regulations was allowed to have access to certain public documents which were necessary to enable him to prepare for his defence, with the exception of those records for which the “Crown” claimed privilege.

(B) The reference to “Crown” in this provision is proposed to be adapted to “Government”.

(C) The relevant general adaptation principle adopted is section 2 of Schedule 8 to the Interpretation and General Clauses Ordinance (Cap. 1), but the adaptation must be considered in the context of the particular Ordinance concerned.

(D) The actual effect of the relevant provisions after adaptation is the same as before. The disciplinary proceedings of traffic wardens is still under the sole responsibility of the HKSARG.

(p) Section 2 of Schedule 9 (Section 17, Road Traffic (Driving-Offence Points) Ordinance (Cap. 375))

(A) Before Reunification, this provision expressly applied the Road Traffic (Driving-offence Points) Ordinance (Cap. 375) to persons in the public service of the Crown, so that they were bound by the same law in respect of the recording of driving-offence points and disqualification from driving, etc.

- (B) The reference to “Crown” in this provision is proposed to be adapted to “State”.
- (C) The proposed adaptation is in line with section 7 of Schedule 9 to the Interpretation and General Clauses Ordinance (Cap. 1) and appropriate in view of the context of the provision concerned.
- (D) The adaptation preserves the effect of the pre-existing law.

III. Reference to persons or vehicles in the Public Service of the Crown

The following enactments make specific references to the expression “vehicles or persons in the public services of the Government”:-

- (i) sections 3, 26 and 27 of Western Harbour Crossing Bylaw (Cap. 436, sub. leg.);
- (ii) section 3, 26, 27 of Tai Lam Tunnel and Yuen Long Approach Road Bylaw (Cap. 474, sub. leg.); and
- (iii) section 31 of Tsing Ma Control Area Ordinance.

These provisions are unique in the sense that reference in other similar provisions in the Bill which read “persons or vehicles in the public services of the Crown” are invariably adapted to read “persons and vehicles in the public services of the State”. It is submitted that if this is considered to be an inconsistency, such inconsistency does not arise from the proposed adaptation in the No. 9 Bill as such. The reference to “Government” in the original legislation has clearly set out the scope of the application of the relevant tunnel legislation. Given that the legislature passed the relevant legislation with clear reference to the “Government”, there is no latitude, for the purpose of the adaptation of law exercise, for the Administration to attribute legislative intention to the legislature beyond the clear words of the law and change “Government” to “State”.

IV. Clause 3 of Schedule 5-Section 4(4) of the Motor Vehicle Insurance (Third Party Risks) Ordinance

Section 4 of the Ordinance obliges all users of motor vehicles to be insured against third party risks. Criminal liability is the sanction upon a failure to do so. Subsection (4) thereof, however, grants exemptions to certain categories of vehicles so that they are not required *by law* to take out third party insurance. One of the exempted categories is “any motor vehicle which is the property of Her Majesty or the Government upon any occasion upon which such vehicle is being used by a person authorized by Her Majesty or the Government to use the same on such occasion”.

Before Reunification, motor vehicles belonging to Her Majesty’s Government or the Hong Kong Government were exempted. In case a military vehicle was involved in a traffic accident, the victim might sue the driver at fault personally. However, he might not sue the UK Ministry of Defence in Hong Kong as the Crown Proceedings Ordinance (Cap. 300) did not authorize proceedings to be brought in Hong Kong against the Crown in right of the UK Government. In reality, the situation apparently was that claims arising from accidents involving military vehicles were normally settled through mediation. A victim of a traffic accident involving a local government vehicle could sue the driver at fault and the Hong Kong Government.

As the provision previously exempted both the UK Government and the Hong Kong Government from taking out third party insurance, the same exemption should therefore be granted to the State after Reunification. The proposed adaptation preserves the effect of the pre-existing law and there is no policy change involved. Certainly, the Basic Law, the Law of the PRC on the Garrisoning of the HKSAR as well as the Hong Kong Reunification Ordinance may be of relevance when considering the liability of the Hong Kong Government and other organs of the State in addition to Cap. 300.

As a background information, our record shows that apart from

military vehicles and Hong Kong Government vehicles, vehicles owned by other organs of the State in Hong Kong are all covered by third party insurance despite the exemption.

Turning to the question on BL 22, this article does not dictate whether a particular law applies to the State organs. It remains the Hong Kong legislature that must determine the extent to which it is appropriate for particular ordinances to apply to those organs. The adaptation merely reflects the fact that the exemption under S4(4)(a) of Cap. 272 continues in force but now applies to HKSARG and the relevant organs of PRC, not Her Majesty. Those PRC organs must still abide by the laws of the HKSAR in so far as they apply to these organs under the terms of the relevant legislation, just as the British and Hong Kong Governments were required to abide by such laws of Hong Kong before reunification, and the HKSARG is required to abide by them now. The adaptation of S4(4)(a) is not, therefore, inconsistent with BL 22.