

**Bills Committee on the
Adaptation of Laws (No 2) Bill 1998**

**The Administration's Response to
points raised by the Hon Margaret Ng**

Below is the Administration's response, in seriatim, to questions raised by the Hon. Margaret Ng at Annex.

Offences Against the Person Ordinance (Cap. 212)

2. In Kenny's Outline of Criminal Law, it is stated that petit treason was committed "when one subject of the Crown killed another who was his superior" and "was therefore really a murder, made more atrocious by the duty of allegiance which the murderer owed to his victim: as when a feudal vassal slew his lord, a priest his bishop, or a wife her husband". "Petit treason" is therefore an archaic offence at common law and different from "treason" which is an offence against the state.

3. The repeal of section 6 of Cap. 212 thus has no bearing on the provisions in Parts I and II of the Crimes Ordinance relating to treason.

Firearms and Ammunition Ordinance (Cap. 238)

4. Notices made under section 4(2) of Cap. 238 for a class or description of persons, other than a particular person, for the exemption from the prohibition of possession of arms and ammunition without licence have legislative effects and hence are subsidiary legislation within the meaning of the Interpretation and General Clauses Ordinance (Cap. 1). They have legislative effects because they are of general application and interests affected are more extensive. The power should therefore be exercised by the Chief Executive in Council in order to comply with Article 56 of the Basic Law.

Public Order Ordinance (Cap. 245)

5. In section 31(6)(b), there are references to “Royal Hong Kong Auxiliary Police Force” and “Royal Hong Kong Auxiliary Police Force Ordinance” (Cap. 233). The amendment to the first reference has already been covered by the Declaration of Change of Titles (General Adaptation) Notice 1997 (LN 362/1997). This amendment will be incorporated into the future edition of the Loose-leaf Edition of the Laws of Hong Kong. The amendment to the second reference, which is the short title of Cap. 233, will be dealt with in another Adaptation of Laws Bill.

6. Regarding the military references in sections 31(6)(f) and (m) as well as section 37(1), they will be dealt with in the Adaptation of Laws (the Garrison) Bill. We have so far identified 80 Ordinances or pieces of subsidiary legislation in Hong Kong laws which contain references to the British Forces or the military. We need to study them in detail and formulate necessary adaptations to bring them in line with the provisions of the Basic Law and the Garrison Law. It is therefore decided that all such amendments should be dealt with in the Adaptation of Laws (the Garrison) Bill. Meanwhile, the UK military references in these sections will be construed in accordance with section 2A(2)(c) of Cap. 1 which provides that rights, exemptions and obligations of the UK forces stationed in Hong Kong will continue to be applied to military forces stationed by the Central People’s Government in the HKSAR.

7. The “Chief Executive in Council” is defined in section 3 of Cap.1 as the Chief Executive acting after consultation with the Executive Council. It refers to a person and accordingly he may “reasonably believe” so.

Organised and Serious Crime Ordinance (Cap. 455)

8. The Chief Executive is empowered under Article 48(12) of the Basic Law to pardon persons convicted of criminal offences. Under section 2(16)(d) of the Ordinance, the grant of pardon is an event which marks the conclusion of proceedings for an offence. The exercise of the power to pardon is on a case by case basis.

9. Section 28(10) is adapted to provide that an order requiring any officer of a public body to produce documents to be served as if the

proceedings were civil proceedings against the Government. The unadapted Cap. 300 shall be construed in accordance with the principles set out in the Hong Kong Reunification Ordinance and covers proceedings involving the HKSAR Government.

General

10. The Crown Proceedings Ordinance will be construed in accordance with principles laid down in the Hong Kong Reunification Ordinance pending textual amendments for the purpose of adaptation.

11. The Adaptation of Laws (No.2) Bill does not affect the current binding effect of the existing provisions of the various Ordinances covered by the Bill. The study of the binding effect of each Ordinance scheduled is a separate exercise which is beyond the scope of this Bill.

Security Bureau
November 1998

LETTERHEAD OF ???

10th November, 1998

Mrs. Sharon Tong
Clerk to the Bills Committee
on the Adaptation of Laws (No.2) Bill of 1998

Dear Mrs. Tong,

With reference to the last meeting of the Bills Committee, I set out hereinbelow my requests to the Administration. These are in addition to the points raised by members at the last meeting. I should be grateful if you would forward them to the appropriate official, and to circulate them for the information of members of the Bills Committee subject to the Chairman's direction.

Cap. 212

- s. 6 - 1) What is the current effect of this section?
2) Would its repeal have any bearing on the unamended provisions in Parts I and II?

Cap. 238

- s. 4(2) It appears that the effect of the amended version is different from the current provision. What is the reason for requiring the Chief Executive to exercise his power with the concurrence of the Executive Council where the exemption is for a "class or description of persons"?

Cap. 245

- S.31(6) 1) Of (b) "Royal" Hong Kong Auxiliary Police Force (2 occurrences);
(f) "Her Majesty's forces" --
why no amendment is proposed.
2) Of (m) "the Ministry of Defence" and "Army Department Pass" --
It is intended that they refer to the Ministry of Defence and the Army Department Pass of the PRC.

s.36(1) Can “the Chief Executive in Council” “reasonably believe”? How is the power intended to be exercised under the proposed amendment?

s.36(2) Consequential upon 36(1) above.

s.37(1) No amendment appears to be proposed on the references to “Her Majesty’s forces” “purposes of the Crown in right of Her Majesty’s government in the United Kingdom” etc. --is this an omission? If not, how are these terms to be construed?

Cap. 455

s.2(16)(d) Of the amendment of “Her Majesty’s pardon” to the “the Chief Executive’s pardon” --what are the circumstances envisaged in which such a pardon is granted; and why is it appropriate for the C.E. to exercise the power?

s.28(10): Since the Crown Proceedings Ordinance has not yet been “adapted”, what is the effect of amended “civil proceedings against the Crown” to against “the Government”?

Generally: 1)What is the effect of the Crown Proceedings Ordinance remaining as yet unamended?

2)For each of the Ordinances scheduled: Is the Ordinance binding on the State?
If not, why not?

Yours sincerely,

Margaret Ng

MN/fl