

立法會
Legislative Council

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Paper for the House Committee meeting on 3 March 2000

**Report of the Bills Committee on
Adaptation of Laws (No. 9) Bill 1999**

Purpose

This paper reports on the deliberations of the Bills Committee on Adaptation of Laws (No. 9) Bill 1999 (the Bill).

The Bill

2. The purpose of the Bill is to effect necessary adaptations to 14 Ordinances relating to roads and tunnels and their subsidiary legislation to bring them into conformity with the Basic Law and with the status of Hong Kong as a Special Administrative Region of the People's Republic of China. The Bill, if enacted, shall be deemed to have come into effect on 1 July 1997. A list of the ordinances and subsidiary legislation is at **Appendix I**.

The Bills Committee

3. At the meeting of the House Committee on 16 April 1999, Members decided to form a Bills Committee to study the Bill. The membership list of the Bills Committee is at **Appendix II**.

4. Under the chairmanship of Hon Margaret NG, the Bills Committee held five meetings with the Administration.

Deliberations of the Bills Committee

5. The Bills Committee notes that the majority of the adaptations proposed in the Bill are straightforward technical amendments, with the exception of the following provisions:

- (a) provision relating to the granting of exemption to vehicles owned by the State from taking out third party insurance;

- (b) provisions relating to the granting of exemption to vehicles that carry persons in the service of the State from the payment of toll when they perform duties in relation to the Eastern Harbour Crossing and Tate's Cairn Tunnel; and
- (c) provisions saving and preserving the powers or duties the law has conferred or imposed on persons in the public service of the Crown which might be affected by the operation of the Eastern Harbour Crossing Road Tunnel By-laws (Cap. 215 sub. leg.), the Road Tunnels (Government) Ordinance (Cap. 368) and the Tate's Cairn Tunnel By-laws (Cap. 393 sub. leg.).

6. Detailed discussions have taken place in respect of the above provisions, a summary of which is set out in the following paragraphs.

Granting of exemption to vehicles owned by the State from taking out third party insurance (Section 3 of Schedule 5)

7. Section 4 of the Motor Vehicles Insurance (Third Party Risks) Ordinance (Cap. 272) obliges all users of motor vehicles to be insured against third party risks. Subsection (4) thereof, however, grants exemption 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". The Administration's proposal is to adapt the two references to "Her Majesty or the Government" to "the State" in the concerned provision.

8. According to the Administration, the concerned provision previously exempted motor vehicles owned by both the United Kingdom Government and the Hong Kong Government from taking out third party insurance. Before Reunification, motor vehicles of the British Forces were exempted from taking out third party insurance. The British Trade Commission was also not required to present third party insurance policy for the renewal of their vehicle licences. The proposed adaptation serves to grant the same exemption to the State after Reunification and therefore preserves the effect of the pre-existing law. No policy change is involved.

9. Members however have identified a number of concerns and examined in particular the following aspects:

- (a) whether the term "Her Majesty" can be taken to mean the "Crown" in the context of references to property of Her Majesty or the Government;
- (b) whether the exemption granted to the motor vehicles owned by the State from taking out third party insurance would contravene Article 22 of the Basic Law; and

- (c) whether there will be sufficient legal remedy against a State organ if motor vehicles owned by the latter is involved in a traffic accident.

Meaning of "Her Majesty"

10. Some members consider it inappropriate to adapt the term "Her Majesty or the Government" in the concerned provision to "the State" as "Her Majesty" in the context of the concerned provision cannot be taken to mean "the Crown". In their opinion, the expressions "Crown" and "Her Majesty" might bear the same meaning when reference is made to the armed forces. But the same interpretation cannot be applied to the present provision where reference is made to any motor vehicle which is the property of Her Majesty or the Government. In the concerned provision, "Her Majesty" may simply mean the Queen personally. The Administration however maintains that "Her Majesty" is sometimes used interchangeably with the "Crown" in the legislation. In such cases, "Her Majesty" does not merely mean the Queen personally, but is extended to mean all elements of her executive government.

Article 22 of the Basic Law

11. The Bills Committee notes that Article 22 of the Basic Law provides that "All offices set up in the Hong Kong Special Administrative Region by departments of the Central Government, or by provinces, autonomous regions, or municipalities directly under the Central Government, and the personnel of these offices shall abide by the laws of the Region". In this respect, Miss Margaret NG has expressed grave concern that the proposed adaptation may be in contravention of the Article. She considers that in view of this Article, there is no reason for granting such a privilege to the State upon the implementation of the Basic Law in Hong Kong. Some members, however, are of the view that the exemption granted to motor vehicles owned by the State from taking out third party insurance cannot be regarded as a privilege. The fact that State organs are excluded from the application of the Ordinance does not mean that they are immune from tortious liabilities arising from traffic accidents. They will have to pay for the compensation themselves if they are found to be liable.

12. The Administration is of the view that the provisions of Ordinances and subsidiary legislation may, apart from imposing duties and obligations, confer rights and provide for exemptions. Article 22 of the Basic Law does not dictate whether a particular piece of Ordinance or subsidiary legislation applies to the State organs. One must refer to the particular legislation to determine the extent to which it applies to the State organs. Article 22 does not provide, explicitly or impliedly, that only duties and liabilities can be imposed but no rights or exemptions can be conferred on or provided to the State organs. On this basis, the Administration is of the opinion that a proposal to provide that a particular piece of legislation does not apply to the State organs will not contravene Article 22 nor is it inconsistent with the Article.

The question of remedy

13. Regarding the possible lack of legal remedy against a State organ in case motor vehicles owned by the latter is involved in a traffic accident, the Administration advises that the Motor Vehicle Insurance (Third Party Risks) Ordinance (Cap. 272) is not to provide for a channel to seek damages in the event of traffic accidents. This aspect is regulated by other laws. The Ordinance only aims to ensure that once a person's liability to pay compensation to third parties is established, that person has the means to satisfy the claim. The fact that State organs are excluded from the application of the Ordinance does not mean that they are immune from tortious liabilities arising from traffic accidents. The consequence of their exclusion from the Ordinance is that if they are found to be liable, they will have to pay for the compensation themselves. Similarly, the Government's liabilities under traffic accidents are not required to be insured. There is no question that the Government could escape such liabilities.

The Administration's counter proposal

14. In view of the divergent views between the Bills Committee and the Administration over, in particular, the claiming and enforcing judgment against the State organs in traffic accidents involving motor vehicles owned by State organs, the Bills Committee has at one stage considered, and decided by majority vote moving a Committee Stage amendment (CSA) to adapt the reference "Her Majesty or the Government" to "the Government" in the concerned provision. The effect of the intended CSA is that only Government vehicles will be exempted from taking out third party insurance. All users of other motor vehicles, including those owned by subordinate organs of the Central People's Government, are required to be insured against third party risks.

15. The Administration, in response, reiterates that the proposed amendment would involve complex policy and legal implications and should more appropriately be tackled outside the context of the Bill. To address the concern of the Bills Committee, the Administration proposes to withdraw the adaptation of the concerned provision from the Bill. It also undertakes to conduct a review in the meantime and take into account the views expressed by the Bills Committee and the affected State organs before reverting to the Council in the context of an Omnibus Bill which will deal with all deferred proposals under the adaptation of laws programme.

16. As vehicles owned by the State organs in Hong Kong are all currently covered by third party insurance despite the exemption, the majority of the Bills Committee members consider the Administration's proposal acceptable subject to a concrete timetable on the review, the consultation exercise and the introduction of the subsequent legislative proposal. The Bills Committee however considers it not appropriate to deal with the deferred item in the form of an Omnibus Bill. As all technical amendments should have been dealt with under the present Adaptation of Laws Programme, outstanding items which involve complex policy issues should be brought before the respective Panels or Bills Committee and be considered separately.

17. The Administration subsequently agrees to revert in the form of a separate bill. It also undertakes to commence the review with relevant Government departments in January 2000 and start consultation with the State organs in March 2000 with a view to reverting to the Legislative Council at the next legislative session.

18. The Administration's counter proposal has the support of the majority of the Bills Committee members. Miss Margaret NG however remains of the view that if the concerned provision is not adapted in the current exercise, there may be a case whereby the court will be required to give its opinion on the interpretation of the concerned provision. Given the ambiguity of the concerned provision, she has reservation on the Administration's proposal to defer consideration of the subject matter, pending an overall review on the deferred items under the Adaptation of Laws Programme. In her opinion, the requirement for all users of motor vehicles, including those owned by the State organs, to be insured against third party risks is well accepted by the community and is beyond doubt. This is a matter of general public interest. There is no reason why the State organs could be treated differently. To this end, she will consider moving a CSA on her own.

Granting of exemption to vehicles that carry persons in the service of the State from the payment of toll

(Section 14 of Schedule 2 and section 12 of Schedule 10)

19. The Bills Committee notes that section 14 of Schedule 2 and section 12 of Schedule 10 aim at amending by-law 4(1) of the Eastern Harbour Crossing Road Tunnel By-laws (Cap. 215 sub. leg.) and by-law 4(1) of the Tate's Cairn Tunnel By-laws (Cap. 393 sub. leg.) respectively. The two By-laws 4(1) provide that a vehicle that carries a person in the public service of the Crown when he is engaged on duty relating to the road tunnel areas is exempted from the payment of a toll. The Bill proposes to adapt the term "Crown" therein to "State". The effect of the proposed adaptation in the Bill is that vehicles that carry persons in the service of the subordinate organs of the Central People's Government will be entitled to exemption from the payment of toll if they perform duties in relation to the relevant tunnels.

20. Similar to the exemption provision relating to the third party insurance, a view has been expressed that all organs of the State shall abide by the laws of Hong Kong and that no privileges shall be granted to them after the Basic Law has come into effect. Some other members, however, are of the view that the provisions shall be wide enough to cover all situations where vehicles which carry persons in assisting the Hong Kong Government to discharge public duties in tunnel areas shall be exempted from the payment of tolls.

21. The Administration explains that in proposing the adaptation, consideration has been given to the legislative intent of the original provision, which is to exempt those vehicles and persons engaged on duty relating to the tunnel area from the payment of tolls. Since vehicles used for defence purposes may qualify as vehicles as such, it is appropriate to adapt the term "Crown" to "State" in the circumstance. After adaptation, the scope of such exemption will still remain limited as the precondition for exemption is that the persons or vehicles involved have to be engaged on duty relating

to the tunnel area.

22. In examining the adapted provisions, members have also identified inconsistencies between the proposed adaptation of "person or vehicle in the service/public service of the Crown" in this Bill and other tunnel legislation, viz the Tsing Ma Control Area Ordinance (Cap. 498), the Western Harbour Crossing By-laws (Cap. 436 sub. leg.) and the Tai Lam and Yuen Long Approach Road By-laws (Cap. 474 sub. leg.). Members have noticed that the decision to change references to "Crown" in the provisions concerned to "Government" in other tunnel legislation before Reunification has indicated that the Administration is aware of the two implied meanings of the term "Crown", viz, Crown in right of the Hong Kong Government and Crown in right of the United Kingdom Government. Hence, suitable amendments have in fact been made for individual ordinances based on the Administration's interpretation of the meaning of the Crown as the case may be.

23. The Administration's explanation is that their proposed amendments are in line with section 7 of Schedule 9 to the Interpretation and General Clauses Ordinance (Cap. 1). The inconsistencies rest with the original drafting of the legislation rather than from the adaptation of laws exercise. Given that the legislature passed the relevant legislation with clear reference to the "Crown" and "Government" under different tunnel legislation, there is no latitude, for the purpose of the adaptation exercise, for the Administration to attribute legislative intention to the legislature beyond the clear words of the law. Any such changes are policy changes which will have to be dealt with outside the Adaptation of Laws Programme. The proposed adaptation is also intended to cater for all situations where persons in the public service of the State may be engaged on duty relating to the tunnel area, e.g. for national defence purposes.

The Administration's counter proposal

24. In view of the divergent views between the Administration and the Bills Committee, the Bills Committee has also considered and decided by majority vote moving a CSA to adapt all references to "Crown" to "Government" in the concerned provisions so as to make the provisions consistent with similar provisions in other tunnel legislation. Similar to the exemption provision relating to the third party insurance, the Administration suggests withdrawing the adaptation of the concerned provisions. It also undertakes to conduct a review and consult the affected tunnel companies before March 2000 with a view to reverting to the Council at the next legislative session.

25. In view of the response of the Administration, the majority of the Bills Committee members support the Administration's counter proposal. Miss Margaret NG, however, indicates that all organs of the State shall abide by the laws of Hong Kong and that no privileges shall be granted to them after the Basic Law has come into effect. As such, she will consider moving CSAs to the concerned provisions on her own.

Savings provisions for persons in the service of the State

(Section 15 of Schedule 2, Section 4 of Schedule 6 and Section 13 of Schedule 10)

26. The Bills Committee notes that adaptation is also proposed for a number of savings provisions, viz. by-law 23 of the Eastern Harbour Crossing Road Tunnel By-laws (Cap. 215 sub. leg.), section 21 of the Road Tunnels (Government) Ordinance (Cap. 368) and by-law 23 of the Tate's Cairn Tunnel By-laws (Cap. 393 sub. leg.). These provisions save and preserve the powers or duties the law has conferred or imposed on persons in the public service of the Crown which may be affected by the operation of the relevant legislation. They do not create new rights or obligations. The Bill proposes to adapt the term "Crown" in these provisions to "State".

27. As the subject matter in the savings provisions is closely related to the exemption provisions as mentioned above, the Bills Committee considers that references to "Crown" in the savings provisions shall be adapted in the same manner as the exemption provisions. Since the Bills Committee has accepted the Administration's proposal to withhold consideration of the concerned exemption provisions, pending the completion of an overall review, the Administration will move a corresponding CSA to delete the proposed adaptations to the concerned savings provisions as well. The majority of the Bills Committee members support the Administration's proposal in this regard.

Application provisions for vehicles and persons in the service of the State

(Section 16 of Schedule 2 and Section 14 of Schedule 10)

28. The Administration advises that the above provisions expressly apply the Eastern Harbour Crossing Road Tunnel By-laws (Cap. 215 sub. leg.) and Tate's Cairn Tunnel By-laws (Cap. 393 sub. leg.) to vehicles and persons in the public service of the Crown unless otherwise stated in the By-laws. Before Reunification, vehicles and persons in the public service of the Crown would have to observe the By-laws which mainly deal with traffic control, prohibited and restricted traffic within the respective tunnel areas as well as the payment of tolls. The reference to "Crown" in these provisions is proposed to be adapted to "State". 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.

29. The Bills Committee generally agrees that binding provisions as such shall be applied to vehicles owned by the State. Hence, it raises no objection to the Administration's proposal to adapt the term "Crown" to "State" in the concerned provisions. The Administration, however, advises that these application clauses shall be treated equally with the exemption and savings provisions in the same legislation. Given that the exemption and savings provisions are proposed to be dealt with outside the adaptation of laws programme, the adaptation amendments to the application clauses are proposed to be withdrawn at the same time. The majority of the Bills Committee members support the Administration's CSA to this effect.

Other issues

30. Apart from the above provisions, the Bills Committee has also taken note of the following issues:

Section 1 of Schedules 2, 10, 11 and 12 - Section 2(3) of Cap. 215, Cap. 393, Cap. 436 and Cap. 474

31. The Bills Committee notes that the existing provisions provide for a subjective test of "urgency" and this is consistent with Article X of the Royal Instructions, according to which the then Governor could exercise similar power if "in his judgment" the matters were too urgent to be submitted to the ExCo for advice. Article 56(2) of the Basic Law, however, does not contain express wordings as to whether the test of "emergencies" is subjective or objective. The proposed deletion of the words "of the opinion that" from the concerned provisions is therefore intended to bring the provisions in line with Article 56(2) of the Basic Law. Upon adaptation, an objective test is to be adopted when deciding the question of whether a matter is one of emergency so that the Chief Executive may exercise any function to be exercised by the Chief Executive in Council under the respective Ordinances.

Schedule 1

32. The Bills Committee notes that the Cross Harbour Tunnel Ordinance (Cap. 203) had been repealed by the Revenue Ordinance 1999 from 1 September 1999. As such, the Administration will move a CSA to delete all proposed adaptations in Schedule 1 to this Bill in respect of that Ordinance and its subsidiary legislation.

Committee Stage Amendments

33. Apart from the CSAs mentioned above, the Administration will also move a number of CSAs to improve the drafting of the Bill. These CSAs are mainly technical in nature. The draft CSAs to be proposed by the Administration are in **Appendix III**.

34. In discussing the Administration's proposal to withdraw the adaptation amendments to the outstanding provisions as mentioned in the report, pending the completion of an overall review, a member has suggested to defer consideration of the whole Bill. However, the majority of the Bills Committee members tend to support the Administration's proposal.

Recommendation

35. The Bills Committee supports the Bill subject to the amendments to be moved by the Administration, and recommends resumption of the Second Reading debate of the Bill.

Advice Sought

36. Members are invited to note the deliberations of the Bills Committee and support the recommendation in paragraph 35 above.

Legislative Council Secretariat

29 February 2000

List of Ordinances affected by the Adaptation of Laws (No. 9) Bill 1999

Item No. Ordinances and subsidiary legislation

1. Cross-Harbour Tunnel Ordinance (Cap. 203) and its subsidiary legislation
2. Eastern Harbour Crossing Ordinance (Cap. 215) and its subsidiary legislation
3. Fixed Penalty (Traffic Contraventions) Ordinance (Cap. 237)
4. Fixed Penalty (Criminal Proceedings) Ordinance (Cap. 240)
5. Motor Vehicles Insurance (Third Party Risks) Ordinance (Cap. 272) and its subsidiary legislation
6. Road Tunnels (Government) Ordinance (Cap. 368)
7. Road (Works, Use and Compensation) Ordinance (Cap. 370)
8. Road Traffic Ordinance (Cap. 374) and its subsidiary legislation
9. Road Traffic (Driving-offence Points) Ordinance (Cap. 375)
10. Tate's Cairn Tunnel Ordinance (Cap. 393) and its subsidiary legislation
11. Western Harbour Crossing Ordinance (Cap. 436) and its subsidiary legislation
12. Tai Lam Tunnel and Yuen Long Approach Road Ordinance (Cap. 474)
13. Tsing Ma Control Area Ordinance (Cap. 498)
14. Discovery Bay Tunnel Link Ordinance (Cap. 520)

**Bills Committee on
Adaptation of Laws (No. 9) Bill 1999**

**Membership list
(As at 26 April 1999)**

Hon Margaret NG (Chairman)

Hon James TO Kun-sun

Hon HUI Cheung-ching

Hon Andrew WONG Wang-fat, JP

Hon Jasper TSANG Yok-sing, JP

Hon LAU Kong-wah

Hon Mrs Miriam LAU Kin-ye, JP

Total : 7 Members

ADAPTATION OF LAWS (NO. 9) BILL 1999

COMMITTEE STAGE

Amendments to be moved by the Secretary for Transport

<u>Clause</u>	<u>Amendment Proposed</u>
Schedule 1	By deleting the Schedule.
Schedule 2, section 5	By deleting ", Environment".
Schedule 2	(a) By deleting section 6. (b) By deleting the subheading before section 14. (c) By deleting sections 14, 15 and 16.
Schedule 5	By deleting section 3(a).
Schedule 6	By deleting section 4.
Schedule 8, sections 1, 35, 43, 45, 46, 47, 57 and 58	By deleting "or territory" and substituting "or place".
Schedule 8, section 6(a)	By deleting "or territories" and substituting "or places".
Schedule 8, section 49	By deleting "OR TERRITORIES" and substituting "OR PLACES".

<u>Clause</u>	<u>Amendment Proposed</u>
Schedule 8, section 50	<p>By deleting it and substituting -</p> <p>"50. The Ninth Schedule is amended, in Form 1 -</p> <p style="padding-left: 40px;">(a) in the heading on Page 1, by repealing "HONG KONG" and substituting "THE HONG KONG SPECIAL ADMINISTRATIVE REGION OF THE PEOPLE'S REPUBLIC OF CHINA";</p> <p style="padding-left: 40px;">(b) by adding "or place" after "country" wherever it appears;</p> <p style="padding-left: 40px;">(c) by adding "or places" after "countries" where it twice appears."</p>
Schedule 8, section 55	By deleting "or territory" where it twice appears and substituting "or place".
Schedule 8	By deleting section 60.
Schedule 10	<p>By adding -</p> <p>"4A. Section 16(3) is amended by repealing "Secretary for Lands and Works" and substituting "Secretary for Planning and Lands"."</p>
Schedule 10	<p>(a) By deleting the subheading before section 12.</p> <p>(b) By deleting sections 12, 13 and 14.</p>