

立法會
Legislative Council

LC Paper No. CB(2)499/10-11
(These minutes have been seen
by the Administration)

Ref : CB2/BC/5/09

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

**Minutes of the first meeting
held on Tuesday, 9 November 2010, at 2:30 pm
in Conference Room B of the Legislative Council Building**

- Members present** : Hon IP Kwok-him, GBS, JP (Chairman)
Dr Hon Margaret NG
Hon James TO Kun-sun
Hon LAU Kong-wah, JP
Hon Cyd HO Sau-lan
Hon CHAN Hak-kan
Dr Hon Priscilla LEUNG Mei-fun
Hon WONG Kwok-kin, BBS
Hon Paul TSE Wai-chun
- Member absent** : Hon Andrew LEUNG Kwan-yuen, GBS, JP
- Public Officers attending** : Agenda item II
Security Bureau

Ms Carol YIP, JP
Deputy Secretary for Security

Mr David LAU Kam-kuen
Principal Assistant Secretary for Security

Action

Department of Justice

Ms Francoise LAM
Senior Government Counsel

Clerk in attendance : Miss Odelia LEUNG
Chief Council Secretary (2)6

Staff in attendance : Mr Jimmy MA
Legal Adviser

Ms Clara TAM
Assistant Legal Adviser 9

Ms Catherina YU
Senior Council Secretary (2)7

Miss Jenny LEE
Legislative Assistant (2)6 (Acting)

Action

I. Election of Chairman

Dr Margaret NG, the member who had the highest precedence in the Council among those who were present at the meeting, presided over the election of Chairman.

2. Mr IP Kwok-him was nominated by Mr WONG Kwok-kin and the nomination was seconded by Mr CHAN Hak-kan. There being no other nominations, Mr IP Kwok-him was elected Chairman of the Bills Committee.

3. The Bills Committee deliberated (index of proceedings attached at **Annex**).

II. Meeting with the Administration

4. The Chairman drew to members' attention a paper provided by the Administration which was tabled at the meeting (circulated to members after the meeting vide LC Paper No. CB(2)255/10-11 on 10 November 2010).

Action

5. At the invitation of the Chairman, Deputy Secretary for Security ("DS for S") briefed members on the purpose and nature of the Bill which covered the adaptation of 136 provisions in 85 ordinances and subsidiary legislation (collectively as "Ordinances"). She highlighted that military-related references in the laws of Hong Kong previously in force had been construed in accordance with the interpretative principles set out in the Interpretation and General Clauses Ordinance (Cap. 1) since 1 July 1997, as decided by the Standing Committee of the National People's Congress on 23 February 1997 ("the Decision"). In the interest of legal certainty of the laws of Hong Kong, it was still necessary to adapt those military-related references 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. She stressed that the adaptation proposals set out in the Bill did not affect the binding effect or applicability of the existing provisions of the legislation. In accordance with Article 10 of the Law of the People's Republic of China on the Garrisoning of the Hong Kong Special Administrative Region ("the Garrison Law"), the Administration had consulted the Hong Kong Garrison on the Bill. DS for S added that the adaptation proposals could be broadly grouped into five categories, namely, land-related, healthcare-related, transport-related, security-related and miscellaneous. Subject to specified exceptions, the Bill would be deemed to come into operation on 1 July 1997, in line with the commencement arrangements for the adaptation proposals in previous law adaptation exercises.

6. Noting from the information paper provided by the Administration to the Panel on Security (LC Paper No. CB(2)1409/09-10(03)) that the adaptation proposals would cover 86 Ordinances but the Bill covered only 85 Ordinances, the Chairman sought clarification from the Administration.

7. DS for S explained that there had been adjustment in the process. Schedule 1 to the Bill covered 85 Ordinances and Schedule 2 provided for consequential amendments to three Ordinances. Hence, the adaptation proposals in the Bill covered a total of 88 Ordinances.

Scope of law adaptation

8. Dr Margaret NG expressed grave concern about the content of the Bill which covered more than adaptation proposals. She elaborated that the fundamental principle of law adaptation was not to amend the law. There should be no change to the meaning or effect of the provisions. She pointed out a number of proposals in the Bill which went beyond law

Action

adaptation. These included the addition of a definition of four terms in Cap. 1, the addition of two provisions to section 17 of the Probate and Administration Ordinance (Cap. 10), the expansion of the scope of paragraph 4 in Part I in the Schedule to the Defamation Ordinance (Cap. 21) and the change of the term "officers" to "members of the Chinese People's Liberation Army" ("CLPA") in section 5(j) of the Jury Ordinance (Cap. 3). However, the reference to "Commonwealth" in paragraph 5 in Part I in the Schedule to Cap. 21 was not adapted.

Admin

9. Dr Margaret NG stressed that the addition of a definition of terms in Cap. 1 had impact not only on the Ordinances covered in the Bill but also on other Ordinances in which such terms appeared. For example, the adaptation of military-related references would have implications on Part II (i.e. Incitement to mutiny) of the Crimes Ordinance (Cap. 200) but no adaptation was proposed to that part in the Bill. She requested the Administration to provide a list of the ordinances and the provisions where those four terms appeared. While she was not worried about the powers conferred to the Hong Kong Garrison as it was provided in the Garrison Law, she was concerned about the changes that would be brought about by the adaptation proposals to the meaning, application and effect of the Ordinances. She asked about the approach to be taken in scrutinizing the Bill.

10. In response, DS for S said that the Bill dealt with adaptations of military-related references only. In the course of study with the Department of Justice ("DoJ"), when it was considered that amendments to certain military-related references might involve law reform, such amendments had not been included in the Bill. DS for S further said that the Administration prepared the adaptation proposals in accordance with the context and the legislative intent of the relevant provisions, and the provision of a definition of the four terms in Cap. 1 was necessary to provide clarity to the adaptation of provisions involved. She assured members that the definition of the four terms in Cap. 1 would not create new rights or obligations.

11. Senior Government Counsel ("SGC") supplemented that the terms "Commander of the Hong Kong Garrison" and "military hospital" appeared only in the Ordinances covered in the Bill, whereas the other two terms i.e. "Hong Kong Garrison" and "member of the Hong Kong Garrison" appeared in other ordinances as well and their meaning as defined in Cap. 1 would apply to those ordinances.

12. At the invitation of the Chairman, Legal Adviser ("LA") advised

Action

that as Cap. 1 applied to all existing ordinances and ordinances to be enacted in future, the definition of certain terms provided therein would apply to some legislative provisions yet to be enacted. In his view, such an approach could be considered as going beyond the scope of law adaptation. The Legal Service Division had raised a number of queries with the Administration in the light of the guiding principles for the adaptation of law programme and was studying its written response.

Admin

13. In response to Dr Margaret NG's request for deleting the proposed definition of the four terms in Cap. 1, SGC said that as those terms appeared in the 85 Ordinances covered in the Bill, the Administration had taken the straight-forward approach of providing a definition in Cap. 1 instead of specifying their meaning repeatedly in each of the Ordinances. The Administration noted certain members' concern on this approach and would consider their views.

Admin

14. Ms Cyd HO was worried that as the Bill involved 85 Ordinances, the Bills Committee might not be able to complete its scrutiny before the end of the term. To assess the impact of the adaptation proposals not only on the 85 Ordinances but also on other related ordinances, she requested the Administration to provide written information on the role, rights and obligations of the Hong Kong Garrison as stipulated in the Mainland laws, the Garrison Law and the Sino-British Joint Declaration vis-à-vis those of the British forces stationed in Hong Kong before the handover.

15. DS for S pointed out that the interpretative principles for provisions relating to the rights, exemptions and obligations of military forces stationed in Hong Kong as promulgated by the Decision had been included in Cap. 1 by the enactment of the Hong Kong Reunification Ordinance (No. 110 of 1997). Section 2A(2)(c) of Cap.1 stipulated that "*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, 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*". The duties of the Hong Kong Garrison were clearly spelt out in Chapter 2 of the Garrison Law. The Administration would provide a list setting out the relevant information including the guiding principles for the adaptation of law programme for members' easy reference.

Action

16. Mr James TO echoed Dr Margaret NG's view that law adaptation should not change the meaning of the provisions concerned. He noted a number of military-related references in the relevant Ordinances such as "naval, military or air services of Her Majesty", "Armed Forces of Her Majesty", "Her Majesty's forces", "the Ministry of Defence", "officers employed on full pay in the naval, military or air services of Her Majesty" etc, and the different adaptations of these terms. He also noted that some references were adapted to non-military references such as section 10D(1)(a) of the Pilotage Ordinance (Cap. 84) where the expression "ships belonging to Her Majesty" was 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". To facilitate scrutiny, he requested the Administration to provide an explanatory note listing out the terms and concepts to be adapted and the reasons for the proposed adaptations.

Admin

17. DS for S explained that military-related references needed to be adapted to different specific expressions depending on the context and the legislative intent of the relevant provisions. For example, the original meaning of section 10D(1)(a) of Cap. 84 included ships of the Crown, and the provision was therefore adapted to include ships used either by the CPLA or the Central People's Government ("CPG"). Schedule 8 to Cap. 1 spelt out the construction on and after 1 July 1997 of words and expressions in laws previously in force and how any reference to Her Majesty, the Crown, the British Government or the Secretary of State should be construed. For instance, "the Crown" could be adapted as the Hong Kong Special Administrative Region ("HKSAR") Government, the CPG or the Hong Kong Garrison, depending on the context of the provisions. It was therefore necessary to look at individual provision to decide on the appropriate adaptations. DS for S reiterated that the Administration had examined the proposed adaptations and concluded that they would not change the legal effect and the original meaning of the legislation concerned. Examples illustrating the adaptation proposals for some of the common military-related references in the laws of Hong Kong had been provided in Annex B to the LegCo Brief. Nevertheless, the Administration would provide the requisite information to members.

Admin

18. Dr Priscilla LEUNG opined that apart from the provision of the requisite information, the Administration should also explain the adaptation proposals in each of the Ordinances at future meetings. DS for S said that the relevant policy bureaux would attend the meetings if necessary to explain to members the details of the adaptation proposals in

Action

each of the Ordinances. The Administration would also explain in the context of its response to the queries raised by the Legal Service Division.

19. Dr Margaret NG said that law adaptation should be a technical and mechanical exercise and should involve substitution of words and expressions only. Anything outside this scope was not law adaptation. She was concerned that the Administration had included its interpretative principles in the present law adaptation exercise which might have changed the original meaning of the legislation. She acknowledged that owing to the change of Hong Kong's status as a Special Administrative Region, certain provisions in ordinances might need to be amended but this should be achieved by legislative amendment and not law adaptation. One such example was whether exemption from compulsory pilotage previously applied to ships belonging to Her Majesty under the Pilotage Ordinance (Cap. 84) should apply to ships belonging to CPLA or CPG.

Admin

20. Dr Margaret NG considered it unnecessary to adapt the expressions "Commander of the Hong Kong Garrison", "Hong Kong Garrison", "member of the Hong Kong Garrison" and "military hospital". She reiterated her concern about the implications of providing definitions in Cap. 1 which applied to existing Ordinances and ordinances enacted in future alike. The Bill, once enacted, would have retrospective effect from 1 July 1997. She strongly urged the Administration to consider deleting the proposed definitions in Cap. 1. She also requested the Administration to provide written information on the meaning of both the original and the adapted terms such as "officers employed on full pay in the naval, military or air services of Her Majesty" and "members of the Chinese People's Liberation Army" so that members could understand the reasons for the proposed adaptations.

21. DS for S explained that the expression "on full pay" had been taken away in the proposed adapted terms in section 5(1)(j) and (p) of Cap. 3 because there were no employment conditions in CPLA stipulating whether one was on full pay or not. She stressed the need to examine the legislative intent and the context of the provisions in considering the appropriate adapted terms, based on the principle that the adapted terms would not change the legal effect of the provisions.

22. At the invitation of the Chairman, LA explained that law adaptation exercises had started in 1996 and there were agreed guiding principles for law adaptation. The scrutiny of law adaptation proposals had all along been in accordance with those agreed principles. Since the process would inevitably involve interpretation of certain terms and

Action

expressions according to the Administration's understanding of law adaptation, it was necessary for members to scrutinize thoroughly the adaptation proposals. LA further said that given the broad scope of military-related references, it would be prudent to examine the adaptation proposals Ordinance by Ordinance covered in the Bill instead of by batches under different categories.

23. Dr Margaret NG pointed out that in the scrutiny of adaptation proposals in the past, where it was identified that the proposals were beyond the scope of adaptation, the proposals concerned would be deleted from the relevant law adaptation bills and dealt with in separate legislative amendment exercises.

24. Mr LAU Kong-wah considered it not necessary to argue at the present stage whether the proposals in the Bill were solely adaptation proposals. In his view, the best approach was to examine in-depth the adaptation proposals Ordinance by Ordinance covered in the Bill, taking into account the context and the legislative intent of the provisions. Should any proposals be found to be beyond the scope of law adaptation, the Bills Committee could consider taking out such proposals from its scrutiny.

25. LA said that given that the object of the Bill as introduced by the Administration was to adapt certain military-related references, the scope of scrutiny of the Bills Committee must be clear and should confine strictly to adaptation of such references. Otherwise, it would be difficult for Members who had not participated in the scrutiny of the Bill to consider proposing amendments which were relevant to the subject matter of the Bill. Any proposals beyond law adaptation should be outside the scope of scrutiny and should be dealt with by other legislative amendments and not in the context of the Bill.

26. The Chairman said that the principle agreed by members was that the Bill should contain only adaptation proposals. The Bills Committee would examine in-depth the adaptation proposals Ordinance by Ordinance covered in the Bill. Should members identify any proposals beyond the scope of law adaptation in the process, such proposals could be deleted from the Bill by way of Committee Stage amendments.

27. DS for S explained that the purpose of categorizing the adaptation proposals into five different groups was to provide members with a useful reference of Ordinances in which the same terms or expressions appeared. She said that even with the categorization, it was still necessary to examine each and every adaptation proposal Ordinance by Ordinance as covered in

Action

a certain category. The Administration had an open mind with regard to the approach in scrutinizing the Bill.

28. Ms Cyd HO agreed that the Bills Committee needed to examine the adaptation proposals Ordinance by Ordinance covered in the Bill and should any adaptation proposals entail policy changes, they should be taken out from scrutiny. Referring to the expression "officers employed on full pay" in section 5(1)(j) and (p) of Cap. 3, she pointed out that the British Government employed both Gurkha and civilians in Hong Kong. Their loyalty to the British Government and that of CPLA to CPG should be different. The mere adaptation of the expression as "members of the Chinese People's Liberation" might not be appropriate. It was therefore necessary for the Administration to explain clearly the reasons for each and every adaptation proposal and the basis for the proposed adaptations.

29. Mr James TO noted a number of terms and concepts introduced in the adaptation proposals and considered them confusing. By way of illustration, he pointed out that in section 4 (2) of the Road Traffic (Driving Licences) Regulations (Cap. 374 sub. Leg. B), the expression "any member of the Chinese People's Liberation Army" and "any person who is employed by the Chinese People's Liberation Army" were used. The terms such as "servant", "agent", "locally employed" etc. were also used in the Bill. He was concerned about the difference in meaning among all these terms. Mr TO believed that the Administration must have some guiding principles for the adaptation proposals in different context and it was important for the Bills Committee to be apprised of these guiding principles before starting to scrutinize the adaptation proposals. He reiterated his request for the information in paragraph 16 above. He added that information such as the structure of the British forces and CPLA should also be provided to the Bills Committee.

Admin

30. DS for S responded that there were local individuals who were hired by the Hong Kong Garrison through management companies for undertaking certain tasks such as cleansing and those individuals were not counted in the establishment of the Hong Kong Garrison. It was therefore proposed to add a definition of "member of the Hong Kong Garrison" in Cap. 1 to make it clear that such persons were excluded. The Administration noted members' concerns and would provide a paper which would set out the various terms and expressions to be adapted in the Ordinances involved, and the justifications for the proposed adaptations. The Administration would provide the information by batches to facilitate the discussion of the Bills Committee.

Admin

Action

31. Mr LAU Kong-wah opined that the scrutiny would be more effective if members could tackle the related concepts under different categories first before proceeding to consider the adaptation proposals Ordinance by Ordinance. However, he considered the categorization in the Administration's paper (LC Paper No. CB(2)255/10-11(01)) too simple.

Admin

32. Dr Margaret NG expressed disappointment with the Administration for disregarding the impact of the adaptation proposals. In her view, the Administration had incorrect understanding of the concept of law adaptation. Law adaptation should restrict solely to adaptation of direct references to terms and expressions without changing the meaning and effect of the relevant provisions. Any policy changes should be handled by legislative amendments. She did not subscribe to the Administration's view that the legislative intent of the laws could be considered as the legislative intent of the provisions then was to apply to the British forces. She opined that the proposed adaptation of section 5(1)(j) was not adaptation but touched on the policy as to whether members of CPLA should be exempt from jury service. She requested the Administration to conduct a comprehensive review of the scope and definition of law adaptation and provide members with a paper in this regard including whether it agreed to the principles and scope of law adaptation adopted in the past law adaptation exercises. She stressed that if the Administration had a different yardstick for law adaptation, there would be no common ground for discussion.

33. DS for S responded that the adaptation proposals were formulated in accordance with the interpretative principles promulgated by the Decision and as set out in Cap. 1. These interpretative principles formed the basis of the adaptation proposals. In the Administration's view, interpretation of certain terms and expressions was unavoidable in the adaptation process, but the adaptation proposals should not change the legislative intent and legal effect of the provisions concerned. DS for S stressed that the relevant policy bureaux and DoJ had thorough discussions before drawing up the adaptation proposals. The adaptation proposals were prepared based on the fundamental adaptation principles that they would not change the legal effect of the provisions concerned and proposals which were beyond the scope of law adaptation were not included in the current exercise.

Admin

34. Dr Margaret NG remained of the view that many adaptation proposals in the Bill were outside the scope of adaptation. She requested the Administration to provide members with its written views on the principles and scope of law adaptation and whether it agreed to the

Action

principles and scope of law adaptation adopted in the past law adaptation exercises.

35. Ms Cyd HO supported Dr Margaret NG's request. She was concerned if there were any adaptation proposals in the Bill which might go beyond the scope of the Garrison Law. She was also concerned about situations where the roles or persons mentioned in certain Ordinances no longer existed. She enquired how the Administration would deal with these situations.

36. In response, DS for S said that the Administration was open-minded on the ways to adapt military references, whether through the current exercise or other legislative amendment exercises where appropriate.

37. LA remarked that laws enacted by the Council should not contravene the Basic Law.

38. Mr LAU Kong-wah considered that while law adaptations might not be purely mechanical, they should not be ambiguous. The scope and the principles of law adaptation as confirmed by the Administration would serve as the yardstick for future law adaptation exercises.

39. Dr Margaret NG said that the approach taken by the Administration in the present law adaptation exercise was different from that in the past. DS for S explained that in the past, adaptations were done on the basis of a specific policy area or confined to an individual ordinance. During the briefing to LegCo on the Adaptation of Laws exercise in 1998, DoJ 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 was one such subject and as such was taken forward under the current Bill.

40. Dr Margaret NG said that she would not disagree to the approach of introducing an omnibus bill. What she disagreed was to introduce legislative changes under the name of law adaptation.

41. In concluding the discussions, the Chairman said that it had been agreed that the Bill should deal with adaptation of military-related references in the laws of Hong Kong. Should the Bills Committee identify any adaptation proposals involving policy changes or beyond the scope of adaptation, such proposals would be taken out from scrutiny. He invited LA to draw members' attention to any such proposals and to any deviation

Action

from the principles adopted in the past in the course of scrutiny.

LA

42. Dr Margaret NG requested LA to provide members with a paper explaining in detail the fundamental principles of law adaptation vis-à-vis legislative amendment, the factors to be considered, the procedures involved and their impact.

III. Any other business

Date of next meeting

43. Members agreed to hold the next meeting on 14 December 2010 at 4:30 pm.

44. The meeting ended at 4:25 pm.

Council Business Division 2
Legislative Council Secretariat
7 December 2010

**Proceedings of the first meeting of the
Bills Committee on Adaptation of Laws (Military References) Bill 2010
on Tuesday, 9 November 2010, at 2:30 pm
in Conference Room B of the Legislative Council Building**

Time marker	Speaker	Subject	Action required
000000 - 000229	Dr Margaret NG Mr LAU Kong-wah Ms Cyd HO Mr CHAN Hak-kan Mr WONG Kwok-kin Mr IP Kwok-him Mr Paul TSE	Election of Chairman	
000230 - 000959	Chairman Admin	<p>Briefing by the Administration on the Bill.</p> <p>The Chairman pointed out the difference in the number of Ordinances covered in the Bill as advised during the consultation with the Panel on Security by the Administration and sought clarification.</p> <p>DS for S's response that Schedule 1 to the Bill covered 85 Ordinances and Schedule 2 provided for consequential amendments to three Ordinance/Subsidiary Legislation ("Ordinances"). The adaptation proposals in the Bill covered a total of 88 Ordinances.</p>	
001000 - 002625	Chairman Dr Margaret NG Admin LA	<p>Dr Margaret NG raised the following views and concerns -</p> <ul style="list-style-type: none"> (a) the fundamental principle of law adaptation was not to change the original meaning or effect of the provisions; (b) a number of proposals in the Bill went beyond law adaptation; (c) the addition of a definition of terms in Cap. 1 had impact not only on the Ordinances covered in the Bill but also on other Ordinances in which such terms appeared; (d) the adaptation of military-related references would have implications on Part II (i.e. Incitement to mutiny) of the Crimes Ordinance (Cap. 200) but no adaptation was proposed to that part in the Bill; and (e) the Administration should consider deleting the proposed definition of the four terms in Cap. 1. <p>Dr Margaret NG requested the Administration to provide a list of the ordinances and the provisions where the four terms appeared.</p> <p>DS for S's explanation that the Bill dealt with adaptations of military references only. When it was considered that the</p>	Admin

Time marker	Speaker	Subject	Action required
		<p>amendments to certain military-related references might involve law reform, such amendments had not been included in the Bill. The Administration prepared the adaption proposals in accordance with the context and the legislative intent of the relevant provisions, and the provision of a definition of the four terms in Cap. 1 was necessary to provide clarity to the adaptation of provisions involved.</p> <p>SGC's explanation that the terms "Commander of the Hong Kong Garrison" and "military hospital" appeared only in the Ordinances covered in the Bill, whereas the other two terms i.e. "Hong Kong Garrison" and "member of the Hong Kong Garrison" appeared in other ordinances as well and their meaning as defined in Cap. 1 would apply to those ordinances. The Administration had taken the straight-forward approach of providing a definition in Cap.1 instead of specifying their meaning repeatedly in each of the Ordinances. The Administration noted certain members' concern on this approach and would consider their views .</p> <p>LA's advice that as Cap. 1 applied to all existing ordinances and ordinances to be enacted in future, the definition of certain terms provided therein would apply to some legislative provisions yet to be enacted. In his view, such an approach could be considered as going beyond the scope of law adaptation.</p>	Admin
002626 - 003323	Chairman Ms Cyd HO Admin	<p>Ms Cyd HO's concerns about the impact on the meaning and application of the legislation after the adaptation and requested for written information on the role, rights and obligations of the Hong Kong Garrison as stipulated in the Mainland laws, the Garrison Law and the Sino-British Joint Declaration vis-à-vis those of the British forces stationed in Hong Kong before the handover.</p> <p>DS for S's response that the interpretative principles for provisions relating to the rights, exemptions and obligations of military forces stationed in Hong Kong as promulgated by the Decision had been included in Cap. 1 by the enactment of the Hong Kong Reunification Ordinance (No. 110 of 1997). The duties of the Hong Kong Garrison were clearly spelt out in Chapter 2 of the Garrison Law. The Administration would provide the requisite information including the principles for the adaptation of law programme.</p>	Admin
003324 - 004937	Chairman Mr James TO Admin	<p>Mr James TO's view that law adaptation should not change the meaning of the provisions concerned. He requested an explanatory note listing out the terms and concepts to be adapted and the reasons for the proposed adaptations.</p> <p>DS for S's response that military-related references needed to be adapted to different specific expressions depending on the context and the legislative intent of the relevant provisions. Examples illustrating the adaptation proposals for some of the common military-related in the laws of Hong Kong were listed in Annex B to the LegCo Brief. The Administration would provide the relevant information.</p>	Admin Admin

Time marker	Speaker	Subject	Action required
004938 - 011329	Chairman Dr Priscilla LEUNG Dr Margaret NG	<p>Dr Priscilla LEUNG requested the Administration to explain the adaptation proposals in each of the Ordinances at future meetings.</p> <p>Dr Margaret NG's view that law adaptation should be a technical and mechanical exercise and should involve substitution of words and expressions only. Anything outside this scope was not law adaptation. She reiterated that it was unnecessary to add the definitions to Cap. 1.</p> <p>Dr Margaret NG's request for information on the meaning of the original terms and the adapted terms.</p>	Admin
011330 - 011810	Chairman Mr LAU Kong-wah LA Admin	<p>Mr LAU Kong-wah's view that the best approach was to examine in-depth the adaptation proposals Ordinance by Ordinance covered in the Bill, taking into account the context and the legislative intent of the provisions. Should any proposals be found to be beyond the scope of law adaptation, the Bills Committee could consider taking out such proposals from its scrutiny.</p> <p>LA's stressed that the scope of scrutiny of the Bills Committee must be clear and should confine strictly to adaptation of military-related references. Otherwise, it would be difficult for Members who had not participated in the scrutiny of the Bill to consider proposing amendments which were relevant to the subject matter of the Bill. Any proposals beyond law adaptation should be outside the scope of scrutiny and should be dealt with by other legislative amendments and not in the context of the Bill.</p> <p>DS for S's explanation that the purpose of categorizing the adaptation proposals into five different groups was to provide members with a useful reference and even with the categorization, it was still necessary to examine each and every adaptation proposal Ordinance by Ordinance as covered in a certain category.</p>	
011811 - 012119	Chairman Ms Cyd HO	<p>The Chairman and Ms Cyd HO's comment that the Bills Committee needed to examine the adaptation proposals Ordinance by Ordinance covered in the Bill and should any adaptation proposals entail policy changes, they should be deleted from the Bill by way of Committee Stage amendments.</p> <p>Ms Cyd HO's comment that the Administration should explain clearly the reasons for each and every adaptation proposal and the basis for the proposed adaptations.</p>	
012120 - 013619	Chairman Mr James TO Admin	<p>Mr James TO's comment that some terms and concepts introduced in the adaptation proposals were confusing. He requested the Administration to provide the guiding principles for the adaptation proposals and information on the structure of the British forces and CPLA.</p> <p>DS for S's response that the Administration would provide a paper to set out the various terms and expressions to be adapted in the Ordinances involved, and the justifications for the proposed adaptations.</p>	Admin Admin

Time marker	Speaker	Subject	Action required
013620 - 014549	Chairman Dr Margaret NG Admin	<p>Dr Margaret NG expressed her disappointment with the Administration for disregarding the impact of the adaptation proposals. In her view, the Administration had incorrect understanding of the concept of law adaptation. Law adaptation should restrict solely to adaptation of direct references to terms and expressions without changing the meaning and effect of the relevant provisions. Any policy changes should be handled by legislative amendments. She requested the Administration to conduct a comprehensive review of the scope and definition of law adaptation and provide members with a paper in this regard.</p> <p>DS for S's response that the relevant policy bureaux and DoJ had thorough discussions before drawing up the adaptation proposals and the adaptation proposals were prepared based on the fundamental adaptation principles that they would not change the legal effect of the provisions concerned.</p>	Admin
014550 - 015031	Chairman Ms Cyd HO Admin LA Dr Margaret NG	<p>Dr Margaret NG remained of the view that many adaptation proposals in the Bill were outside the scope of adaptation. She requested the Administration to provide its written views on the principles and scope of law adaptation and whether it agreed to the principles and scope of law adaptation adopted in the past law adaptation exercise.</p> <p>Ms Cyd HO's enquiry about whether there were any adaptation proposals in the Bill which might go beyond the scope of the Garrison Law. She was also concerned how the Administration would deal situations where the roles or persons mentioned in certain Ordinances no longer existed.</p> <p>DS for S's response that the Administration prepared the current proposals in line with the Garrison Law and other existing legislation. The Administration was open-minded on the ways to adapt the military references, whether through the current exercise or other legislative amendment exercises where appropriate.</p> <p>LA's remarks that laws enacted by the Council should not contravene the Basic Law.</p>	Admin
015032 - 015310	Chairman Mr LAU Kong-wah Admin Dr Margaret NG	<p>Mr LAU Kong-wah's view that law adaptation might not be purely mechanical but should not be ambiguous. The scope and the principles of law adaptation as confirmed by the Administration would serve as the yardstick for future law adaptation exercises.</p> <p>Dr Margaret NG's enquiry about the reason for the Administration taking a different approach in handling law adaptation.</p> <p>DS for S explained that in the past, adaptations were done on the basis of a specific policy area or confined to an individual ordinance. During the briefing to LegCo on Adaptation of Laws exercise in 1998, DoJ 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 was one such subject and as such was taken forward under the current Bill.</p>	

Time marker	Speaker	Subject	Action required
015311 - 015680	Chairman Dr Margaret NG	<p>The Chairman concluded that the Bill should deal with adaptation of military-related references in the laws of Hong Kong. Should the Bills Committee identify any adaptation proposals involving policy changes or beyond the scope of adaptation, such proposals would be taken out from scrutiny.</p> <p>Dr Margaret NG's request for LA to provide a paper explaining in detail the fundamental principles of law adaptation vis-à-vis legislative amendment, the factors to be considered, the procedures involved and their impact.</p>	LA
015681 - 015700	Chairman	Date of next meeting.	

Council Business Division 2
Legislative Council Secretariat
7 December 2010