

立法會
Legislative Council

LC Paper No. CB(2)1354/10-11
(These minutes have been seen
by the Administration)

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

**Minutes of the fourth meeting
on Thursday, 10 February 2011, at 10:45 am
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 Andrew LEUNG Kwan-yuen, GBS, JP
Hon Cyd HO Sau-lan
Dr Hon Priscilla LEUNG Mei-fun
Hon Paul TSE Wai-chun

Members absent : Hon CHAN Hak-kan
Hon WONG Kwok-kin, BBS

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

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

Mrs Sharon TONG
Principal Council Secretary (Complaints)

Ms Clara TAM
Assistant Legal Adviser 9

Ms Catherina YU
Senior Council Secretary (2)7

Action

I. Meeting with the Administration

[LC Paper No. CB(2)944/10-11(01) -- List of follow-up actions arising from the discussion at the third meeting on 18 January 2011

LC Paper No. CB(2)944/10-11(02) -- The Administration's response to issues raised at the third meeting on 18 January 2011

Clause-by-clause examination of the Bill

LC Paper No. CB(3)924/09-10 -- The Bill

LC Paper No. CB(2)228/10-11(05) -- Marked-up copy of the proposed amendments to the Ordinances prepared by the Legal Service Division

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- LC Paper No. LS13/10-11 -- Paper entitled "Issues relating to the Scope of Adaptation of Laws Bills" prepared by the Legal Service Division of the Legislative Council Secretariat
- LC Paper No. CB(2)479/10-11(03) -- Paper entitled "Adaptation of Laws Programme - Guiding Principles and Guideline Glossary of Terms" provided by the Department of Justice in November 1998 to the Bills Committee on Adaptation of Laws Bill 1998 (the first Bills Committee formed to study an Adaptation of Laws Bill)
- LC Paper No. CB(2)479/10-11(02) -- The Administration's response to issues raised at the first meeting on 9 November 2010
- LC Paper No. CB(2)813/10-11(02) -- The Administration's response to issues raised at the second meeting on 14 December 2010]

Members noted the Administration's response to issues raised at the last meeting as outlined in its paper (LC Paper No. CB(2)944/10-11(02)).

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

Clause-by-clause examination of the Bill
[LC Paper No. CB(2)228/10-11(05)]

Cap. 1 - Interpretation and General Clauses Ordinance

3. Deputy Secretary for Security ("DS for S") briefed members on the proposed addition of the definitions in Cap. 1.

Member of the Hong Kong Garrison

4. DS for S highlighted that the proposed definition would expressly exclude any locally employed personnel, agents or servants of the Hong Kong Garrison as members of the Hong Kong Garrison.

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5. Mr James TO was concerned about ways to identify a member of the Hong Kong Garrison "for the time being serving with the Hong Kong Garrison" and whether "locally employed personnel, agents or servants of the Hong Kong Garrison" were Hong Kong people or people from the Mainland.

6. DS for S responded that members of the Hong Kong Garrison practised regular rotation, hence the need to specify its members being those serving with the Hong Kong Garrison. According to the Law of the People's Republic of China on the Garrisoning of the Hong Kong Special Administrative Region ("the Garrison Law"), only the military forces stationed by the Central People's Government ("CPG") in the Hong Kong Special Administrative Region ("HKSAR") were the Hong Kong Garrison. As such, locally employed personnel, agents or servants of the Hong Kong Garrison, who could be Hong Kong residents or residents from other places, were not its members. The Hong Kong Garrison had its own proof of identity.

7. Senior Government Counsel supplemented that as the adaptation proposals in the Bill covered 88 ordinances and some of them concerned the duties and roles of the Hong Kong Garrison, it would be appropriate to specify in the proposed definition that members of the Hong Kong Garrison included those in service only.

8. Mr James TO was of the view that if members of the Hong Kong Garrison meant only those members stationed in Hong Kong, it would not be necessary to include the expression "for the time being serving with the Hong Kong Garrison" in the proposed definition.

9. Ms Cyd HO enquired whether the persons stationed in Shenzhen who were not responsible for the defence of Hong Kong but providing support services such as the supply of non-staple food to the Hong Kong Garrison were considered as members of the Hong Kong Garrison.

10. DS for S explained that it was expressly stated in Article 2 of the Garrison Law that the Hong Kong Garrison referred to members of the Chinese People's Liberation Army ("CPLA") stationed by the CPG in HKSAR for defence. A member of CPLA had to be stationed in Hong Kong in order to be regarded as members of the Hong Kong Garrison.

11. Legal Adviser ("LA") advised that the stationing place of the military forces at a certain point of time should not affect their status as the Hong Kong Garrison provided that they were responsible for the defence

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of Hong Kong. In other words, members of the CPLA could station in Shenzhen but were the Hong Kong Garrison.

12. DS for S responded that whether a member of the CPLA belonged to the establishment of the Hong Kong Garrison was the determining factor. She considered it necessary to take into account the context of the individual Ordinances to decide whether the reference should be CPLA or the Hong Kong Garrison.

13. Dr Margaret NG reiterated her view that it was unnecessary to provide a definition in Cap. 1. In her view, it would be sufficient to specify that members of the Hong Kong Garrison did not include locally employed personnel, agents or servants of the Hong Kong Garrison if a definition was considered necessary by the Administration. The Garrison Law had already provided for the composition, functions, responsibilities, obligations and discipline, etc. in relation to the Hong Kong Garrison. It would be dangerous for the Administration to interpret the articles of the Garrison Law in Cap. 1.

Admin

14. The Chairman considered the expression "for the time being serving with the Hong Kong Garrison" confusing and requested the Administration to review the definition. Members also requested the Administration to provide information on the circumstances under which a member of the CPLA would be regarded as serving as a member of the Hong Kong Garrison.

Admin

15. LA pointed out that under the laws of Hong Kong, the Hong Kong Garrison might not have the legal capacity to be an employer. The Administration would need to clarify whether the Hong Kong Garrison was the employer of the locally employed personnel, agents or servants under the laws of Hong Kong. DS for S undertook to discuss the matter with the Department of Justice.

Commander of the Hong Kong Garrison

16. LA drew members' attention to the functional description of the "Commander of the Hong Kong Garrison" in the proposed definition. Instead of referring to the post-holder in the rank, the Commander of the Hong Kong Garrison meant the officer for the time being in command of the Hong Kong Garrison under the proposed definition.

17. Noting members' concern that the proposed definition would create doubts and uncertainty as "the officer for the time being in command of the

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Admin

Hong Kong Garrison" might not be the post holder of "Commander of the Hong Kong Garrison", the Administration agreed to consider addressing members' concern.

Admin

18. Dr Margaret NG noted from the Administration's response to the issues raised at the last meeting (LC Paper No. CB(2)944/10-11(02)) that it could not provide the size of the Hong Kong Garrison as it was a defence matter and involved military information. She enquired about the availability of any mechanism to keep the HKSAR, say, the Chief Executive, informed of the size or the changes in the size of the Hong Kong Garrison. DS for S considered the requisite information not of relevance to the current adaptation proposal but agreed to revert to the Bills Committee.

19. To conclude, the Chairman requested the Administration to consider members' views.

Cap. 3 - Jury Ordinance

Section 5 - Exemptions from service

20. Dr Margaret NG opined that the proposed adaptation had departed from the principle of adaptation of laws. Since only local residents could serve as jurors, it was not necessary to provide exemption from service to members of CPLA who were not ordinary residents in Hong Kong under section 2(4)(a)(viii) of the Immigration Ordinance (Cap. 115). Moreover, the Garrison Law had provided that the Hong Kong Garrison should not interfere in the local affairs of HKSAR. She considered that it was a policy matter to decide whether members of CPLA or their spouses could serve as jurors.

21. Ms Cyd HO was concerned whether serving as a juror was a privilege or an obligation and the reasons for adapting section 5(1)(j) to CPLA instead of the Hong Kong Garrison and for removing the concept of full pay in the proposed adaptation.

22. DS for S said that the policy intent was to exempt the officers employed on full pay in the naval, military or air services of Her Majesty and their spouses from service as jurors. The Administration therefore proposed to adapt the reference to member of CPLA, but not the locally employed personnel, agents or servants of the Hong Kong Garrison. The Administration considered the adaptation necessary as it could not preclude the possibility that a member of CPLA or his spouse was a Hong Kong resident. Unlike the Former British Forces stationed in Hong Kong where certain officers could be on the establishment but not on full-pay,

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the concept of full pay was proposed to be taken out as there were no employment conditions in CPLA stipulating whether an individual soldier was on full pay or not. The proposed adaptation would not change the legal effect of section 5 of Cap. 3 or the existing policy.

23. Mr Andrew LEUNG enquired whether the spouse of a member of CPLA who was a Hong Kong resident could serve as a juror if she or he so wished, and the consequence if he or she had served the jury. He was concerned about the adverse impact on the judicial system if the jury needed to be dissolved in the course of a trial because such a person should have been exempted from service as a juror.

Admin

24. DS for S responded that according to section 5 of Cap. 3 the provision, the spouse must be exempt from service as a juror. She would obtain further information from the policy bureau on how the exemption operated including whether the exemption was granted on application.

25. LA advised that under section 4(1) of Cap. 3, to serve as jurors was described as a legal responsibility in the Chinese text of the provision.

Admin

26. Dr Priscilla LEUNG noted that the expression "officers" and "members" were used in section (5)(1)(j) and (p) respectively. She was of the view that they might refer to different groups of persons. She pointed out that there were differences in meaning of "officers" and "members" in the Garrison Law and "officers" were translated as "軍官" in Articles 12 and 14 of the Garrison Law. The Administration should take note of the meaning and the Chinese translation of "officers" and "members" in the existing section 5(1)(j) and (p) of Cap. 3.

Admin

27. Dr Margaret NG echoed Dr Priscilla LEUNG's view and said that "officers employed on full pay" were not equivalent to "members of the Armed Forces of Her Majesty serving on full pay" and the Chinese translation of "officers" as "人員" in section 5(1)(j) was incorrect. She requested the Administration to clarify the meaning of "officers employed on full pay" in section 5(1)(j) and the reasons for exempting from jury service the spouses of "members of the Armed Forces of Her Majesty serving on full pay". She suggested that the Administration might consult the Hong Kong Bar Association ("HKBA") in this regard.

28. The Chairman was concerned whether "officers employed in the naval, military or air services of Her Majesty" in section 5(1)(j) should be mechanically adapted to "officers employed by CPLA" (受僱於中國人民

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解放軍的人員) instead of "members of the CPLA" as proposed in the Bill. He agreed with members' view on the need to clarify the legislative intent of the original provision.

29. LA drew members' attention to paragraph 17(a) of the submission of HKBA to the Bills Committee. HKBA was of the view that consideration might be given to adapting "Her Majesty's forces" and "officers employed on full pay in the naval, military or air services of Her Majesty" to "the Hong Kong Garrison" and "members of the Hong Kong Garrison". The Administration should clarify if provision was made for "other" members of the CPLA in Hong Kong. At the last meeting, members had requested the Administration to provide a written response to specific points contained in paragraph 17 of HKBA's submission but the Administration had only provided a general reply (LC Paper No. CB(2)944/10-11(02)). DS for S reiterated that the Administration had undertaken to continue preparing a detailed summary table explaining the justifications for each adaptation proposal.

Cap. 10 - Probate and Administration Ordinance
Section 17 - Saving as to estates of certain persons

30. DS for S explained that "Act" was a collective term for any Act of the Parliament of the United Kingdom ("UK") and "any Act" meant any law of the UK. The Administration therefore proposed to adapt "any Act" to "any law of the Mainland". It was necessary to add the definition of "Mainland" to mean "any part of China other than Hong Kong, Macau and Taiwan" as "Mainland" did not appear in Cap. 1. This was necessary as "China" meant the "People's Republic of China" in Cap. 1 which included Taiwan, Hong Kong and Macau. She added that the definition of "Mainland" appeared in other existing Ordinances, such as the Arbitration Ordinance (Cap. 341).

31. Dr Margaret NG asked whether there was a specific Act in UK dealing with the estates of a member of Her Majesty's forces who died in his service, irrespective of where he died. She requested the Administration to explain how the estates of deceased members of the Hong Kong Garrison would be dealt with under the Garrison Law in the absence of section 17 of Cap. 10.

32. DS for S explained that there was no provision in the Garrison Law concerning the administration of estates of deceased members of the Hong Kong Garrison. There was also no particular law governing the administration of the estates of deceased CPLA members in the Mainland.

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The administration of estates in the Mainland was governed by the law of inheritance which applied to citizens of PRC in general. Based on that understanding, the expression "any law of the Mainland" in Cap. 10 referred to the law of inheritance of the Mainland. When a member of the Hong Kong Garrison died in his service, his estate should be handled in accordance with the law of inheritance of the Mainland.

33. LA pointed out that the expression "laws of the Mainland" could cover the various levels of laws on the Mainland according to the meaning of laws as generally understood in Hong Kong. These included national laws, regulations and local regulations etc. The meaning of "any law of the Mainland" in the proposed section 17(2) should be made clear. The Chinese expression ".....在中國人民解放軍服務時去世的人....." in the proposed adaptation could mean CPLA members as well as other persons who were providing service in CPLA. There was also a discrepancy in the meaning of the existing English and Chinese versions of section 17. The English version did not include the concept of "服務時" in the Chinese version. Ms Cyd HO pointed out that the Chinese expression ".....在中國人民解放軍服務時去世的人....." had not specified whether or not the deceased was a member of the Hong Kong Garrison. Section 17 of Cap. 10 could apply to the deceased CPLA members who had estates in Hong Kong. She was concerned about the broad scope of the proposed adaptation and suggested that the specific law governing the administration of estates of deceased members of CPLA be expressly stipulated in section 17 of Cap. 10. Dr Margaret NG pointed out that the proposed adaptation of section 17 would have a broader coverage than the existing provision.

34. DS for S responded that the existing Chinese version was ".....在英軍服務時去世的人.....". The Administration proposed to adapt "英軍" to "中國人民解放軍" and retain the meaning of "去世的人". As the Administration could not preclude the possibility that there might be new laws concerning the administration of estates of persons dying in CPLA in the future, the Administration did not consider it appropriate to make reference to specific laws of the Mainland in section 17 of Cap. 10.

35. The Chairman echoed members' views on the scope of the expression "any law of the Mainland". He requested the Administration to review the proposed adaptation.

Admin

Action

Pilotage Ordinance (Cap. 84) and Pensions Regulations (Cap. 89 sub. leg. A)

36. Dr Margaret NG opined that the Administration's proposal to delete section 16 of the Pensions Regulations (Cap. 89 sub. leg. A) might not be appropriate as there might still be some British military officers receiving pension. Similar problems were found in the Pilotage Ordinance (Cap. 84). To facilitate effective discussions, she requested the Administration to explain in detail the operation of the regulations and the relevant legislation, the number of persons being affected and the implication of the proposed adaptation, etc. as soon as possible.

Admin

Date of meetings

37. Members agreed to hold the next two meetings on 28 February and 31 March 2011 respectively at 10:45 am.

II. Any other business

38. The meeting ended at 12:45 pm.

Council Business Division 2
Legislative Council Secretariat
25 March 2011

**Proceedings of the fourth meeting of the
Bills Committee on Adaptation of Laws (Military References) Bill 2010
on Thursday, 10 February 2011, at 10:45 am
in Conference Room B of the Legislative Council Building**

Time marker	Speaker	Subject	Action required
000645 - 000712	Chairman Clerk Ms Cyd HO Dr Margaret NG	Opening remarks	
000713 - 000905	Chairman Admin	<u>"Member of the Hong Kong Garrison" in Cap.1</u> The Administration's explanation of the proposed definition.	
000906 - 001143	Chairman Mr James TO	Mr James TO's enquiry about the meaning of "for the time being serving with the Hong Kong Garrison" and the availability of any proof of identity of the Hong Kong Garrison.	
001144 - 001254	Chairman Admin	The Administration's response that whether a member of the CPLA belonged to the establishment of the Hong Kong Garrison was the determining factor.	
001255 - 001611	Mr James TO Admin Chairman	Mr James TO's view that it was not necessary to include the expression "at the time being serving with the Hong Kong Garrison" in the proposed definition. The Administration's response that as the adaptation proposals in the Bill covered 88 ordinances and some of them concerned the duties and roles of the Hong Kong Garrison, it would be appropriate to specify in the proposed definition that members of the Hong Kong Garrison included those in service only. The Chairman's views that the expression was confusing and requested the Administration to consider addressing members' concern.	Admin
001501 - 001611	Chairman Admin Mr James TO	Members requested the Administration to provide information on the circumstances under which a member of the CPLA would be regarded as serving as a member of the Hong Kong Garrison.	Admin
001612 - 001631	Chairman Dr Margaret NG	Dr Margaret NG's reiteration of views that it was unnecessary to provide new definitions in Cap. 1.	
001632 - 002124	Chairman LA	LA's views that the Hong Kong Garrison might not have the legal capacity to act as an employer under the law of Hong Kong.	

Time marker	Speaker	Subject	Action required
002125 - 002208	Chairman Ms Cyd HO	Ms Cyd HO's enquiry about whether CLPA members stationed in Shenzhen who were not responsible for the defence of Hong Kong but providing support services to the Hong Kong Garrison were considered as members of the Hong Kong Garrison.	
002209 - 002343	Chairman Admin	The Administration's explanation of Article 2 of the Garrison Law which had provided a definition of the Hong Kong Garrison.	
002344 - 002434	Chairman LA	LA's remarks that the stationing place of the military forces at a certain point of time should not affect their status as the Hong Kong Garrison provided that they were responsible for the defence of Hong Kong.	
002435 - 002509	Admin	The Administration's response that whether a member of the CPLA belonged to the establishment of the Hong Kong Garrison was the determining factor.	
002510 - 002740	Chairman Dr Margaret NG	Dr Margaret NG's view that it would be dangerous for the Administration to interpret the articles of the Garrison Law in Cap.1.	
002741 - 003216	Admin Chairman Dr Margaret NG Ms Cyd HO	<u>Commander of the Hong Kong Garrison</u> LA drew to members' attention the functional description of the "Commander of the Hong Kong Garrison" in the proposed definition.	
003217 - 003334	Chairman Mr James TO LA	Members' expression of concern about the possible scenarios of officer in command of the Hong Kong Garrison.	
003335 - 003421	Dr Margaret NG Mr James TO LA Chairman	Dr Margaret NG's concern about the availability of a mechanism to keep the Hong Kong Government informed of the size or changes in the size of the Hong Kong Garrison.	Admin
003422 - 003706	Chairman Admin Dr Margaret NG	<u>Cap. 3 - Jury Ordinance</u> <u>Section 5 - Exemption from service</u> Dr Margaret NG's views that the proposed adaptation had departed from the principle of adaptation of laws and it was not necessary for the proposed adaptation as members of the Hong Kong Garrison were not Hong Kong residents.	
003707 - 003759	Chairman Admin Dr Margaret NG	The Administration's explanation that the proposed adaptation was necessary as it could not preclude the possibility that a member of CPLA or his spouse was a Hong Kong resident.	

Time marker	Speaker	Subject	Action required
003800 - 003914	Ms Cyd HO Chairman Dr Margaret NG Admin	<p>Ms Cyd HO's enquiry on whether serving as a juror was a privilege or an obligation and the reasons for adapting section 5(1)(j) to CPLA instead of the Hong Kong Garrison and for removing the concept of full pay in the proposed adaptation.</p> <p>The Administration's response that the policy did not apply to the locally employed personnel, agents or servants. Unlike the Former British Forces stationed in Hong Kong where certain officers could be on the establishment but not on full-pay, the concept of full pay was proposed to be taken out as there were no employment conditions in CPLA stipulating whether an individual soldier was on full pay or not.</p>	
003915 - 004228	Mr Andrew LEUNG Admin LA	<p>Mr Andrew LEUNG's question on whether the spouse of a member of CPLA who was a Hong Kong resident could serve as a juror if he or she so wished, and the consequence if he or she had served the jury.</p> <p>The Administration's response that according to the section 5 of the Ordinance, the spouse should be exempt from service. The Administration would obtain further information from the policy bureau.</p> <p>LA's comments that according to section 4(1) of Cap. 3, to serve as jurors was described as a legal responsibility in the Chinese text of the provision.</p>	Admin
004229- 011132	Chairman Dr Priscilla LEUNG Dr Margaret NG Admin	<p>Dr Priscilla LEUNG and Dr Margaret NG's comments that "officers" and "members" had different meanings. It was inappropriate to adapt "officers employed on full pay in the naval, military or air services of Her Majesty" in section 5(1)(j) to "member of CPLA". Members requested the Administration to clarify the meaning of "officers employed on full pay" in section 5(1)(j) and to consider consulting the Hong Kong Bar Association.</p>	Admin
011133 - 013244	Chairman Dr Margaret NG Admin	<p>Dr Margaret NG's comments that the Administration's approach had changed the policy which had violated the principle of adaptation of laws.</p> <p>Dr Priscilla LEUNG's request for the Administration to take note of the meaning and the Chinese translation of "officers" and "members" in the existing section 5(1)(j) and (p) of Cap. 3.</p> <p>The Chairman's call on the Administration to clarify the legislative intent of the provision.</p>	Admin
013245- 013814	Chairman Dr Margaret NG Admin	<p><u>Cap. 10 - Probate and Administration Ordinance</u> <u>Section 17 - Saving as to estates of certain persons</u></p> <p>The Administration's explanation on the meaning of "Act" and the proposed adaptation.</p>	

Time marker	Speaker	Subject	Action required
013815 - 013852	Chairman Dr Margaret NG	Dr Margaret NG's enquiry on whether there were specific Acts in UK dealing with the estates of a member of Her Majesty's forces who died in his service and how the estates of deceased members of the Hong Kong Garrison would be dealt with under the Garrison Law in the absence of section 17 of Cap. 10.	
013853 - 014122	Chairman Admin Dr Margaret NG	The Administration's response that there was no provision in the Garrison Law and any particular laws in the Mainland concerning the administration of the estates of deceased members of the Hong Kong Garrison.	
014123 - 014256	Chairman LA Ms Cyd HO Admin	LA and Ms Cyd HO's comments that the proposed adaptation "在中國人民解放軍服務時去世的人" was unclear. The Administration's response to retain "去世的人" which was in the existing Chinese version.	
014257 - 014347	LA Chairman Admin	LA's advice that the expression "laws of the Mainland" could cover the various levels of laws on the Mainland according to the meaning of laws as generally understood in Hong Kong. These included national laws, regulations and local regulations etc, and there was a discrepancy in the meaning of the existing English and Chinese provision.	
014348 - 015808	Chairman Dr Margaret NG Ms Cyd HO Admin	Concern of the Chairman, Dr Margaret NG and Ms Cyd HO about the broad scope of the expression "any law of the Mainland". Ms Cyd HO's suggestion to mention expressly the law of inheritance of the Mainland in section 17 of Cap. 10. The Administration's response that as it could not preclude the possibility that there might be new laws concerning the administration of estates of persons dying in CPLA in the future, the Administration did not consider it appropriate to make reference to specific law of the Mainland in section 17 of Cap. 10.	
015809 - 020029	Chairman	Dr Margaret NG's request for information concerning the Pensions Regulations (Cap. 89) sub. leg. A and Pilotage Ordinance (Cap. 84). Date of the fifth and sixth meetings.	Admin