

立法會
Legislative Council

LC Paper No. CB(2)2466/10-11
(The 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 seventh meeting
held on Thursday, 19 May 2011, at 4:30 pm
in Conference Room A 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
Hon CHAN Hak-kan
Dr Hon Priscilla LEUNG Mei-fun
Hon WONG Kwok-kin, BBS
Hon Paul TSE Wai-chun

Public Officers attending : Item I
Ms Carol YIP, JP
Deputy Secretary for Security

Mr David LAU
Principal Assistant Secretary for Security

Ms Francoise LAM
Senior Government Counsel
Department of Justice

Clerk in attendance : Mrs Sharon TONG
Principal Council Secretary (2)

Staff in attendance : Mr Jimmy MA
Legal Adviser

Ms Clara TAM
Assistant Legal Adviser 9

Ms Catherina YU
Senior Council Secretary (2) 6

Ms Camy YOONG
Clerical Assistant (2) 7

I. Meeting with the Administration

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))

2. The Administration was requested to take the following actions and revert to the Bills Committee -

Registration of Persons Regulations (Cap.177 sub. leg. A)
Regulation 25 - Exemptions

- (a) to provide information on whether the persons serving in the Chinese People's Liberation Army were all soldiers;
- (b) to check if information could be provided on whether there were any spouse and children of members of the Hong Kong Garrison residing in Hong Kong;
- (c) to provide information on whether the spouse and children of members of the Hong Kong Garrison were required to undergo immigration clearance;
- (d) to provide information on whether measures implemented by local hospitals in relation to the provision of obstetrics services for Mainland women applied to the wives of members of the Hong Kong Garrison;

- (e) to consider reviewing the proposed adaptation of "服役" to "服務" in the Chinese text of regulation 25(b)(i) having regard to members' view;

Defences (Firing Areas) Ordinance (Cap.196)

Section 8 - Penalty for offences

Section 9 - Officers authorized to arrest or remove trespassers, etc.

- (f) to review the proposed adaptations of "officer" to "person" in sections 8 and 9 having regard to members' views;
- (g) to explain in detail the justifications for adapting "warrant officer, non-commissioned officer or military policeman" to "soldier" in section 9(b), and the corresponding ranks under the establishment of the Hong Kong Garrison;

Crimes Ordinance (Cap.200)

Section 6 - Incitement to mutiny

Section 7 - Incitement to disaffection

- (h) to provide information on the status of allegiance for the non-military groups after the Reunification;
- (i) to consider the appropriateness of the proposed adaptations to section 7 of Cap. 200 having regard to the non-military groups;
- (j) to consider whether the adaptation proposals of Cap. 200 should be excluded from the current exercise and be dealt with in a separate exercise;

Crimes Ordinance (Cap.200)

Section 158 - Application of ss. 156 and 157 to trials by courts-martial

- (k) to consider adapting section 158 by substituting the relevant Acts of the United Kingdom with the corresponding provisions of the Hong Kong Garrison and to seek the advice of the Department of Justice in this regard; and
- (l) to explain the provisions of section 156 in the context.

II. Date of next meeting

3. Members agreed to reschedule the next meeting originally scheduled for 30 May 2011 to 9 June 2011 at 10:45 am.
4. The meeting ended at 6:28 pm.

Council Business Division 2
Legislative Council Secretariat
1 August 2011

**Proceedings of the seventh meeting of the
Bills Committee on Adaptation of Laws (Military References) Bill 2010
on Thursday, 19 May 2011, at 4:30 pm
in Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action required
000000 - 000305	Chairman	Welcoming remarks	
000306 - 000426	Chairman Admin	<u>Wild Animals Protection Ordinance (Cap.170)</u> <u>Section 13 - Entry in restricted areas</u> Explanation by the Administration on the proposed adaptation.	
000427 - 001022	Chairman Admin LA	<u>Registration of Persons Regulations (Cap.177 sub. leg. A)</u> <u>Regulation 25 - Exemptions</u> The Chairman's enquiry on the justifications for adapting "服役" to "服務" in regulation 25(b)(i). The Administration's explanation that the adaptation proposal was to reflect the actual situation in the Chinese People's Liberation Army ("CPLA"). LA's remarks on the request of the Hong Kong Bar Association ("HKBA") for the clarification on whether exemptions previously accorded to family members of members of the British Forces stationed in Hong Kong should be maintained presumably family members of members of the Hong Kong Garrison did not reside with them while they were serving in Hong Kong as detailed in paragraph 17(g) of its submission to the Bills Committee (LC Paper No. CB(2)736/10-11(01)). The Administration's explanation on the retention of the relevant provisions in regulation 25.	
001023 - 001734	Chairman Mr James TO Admin	Mr James TO's enquiry on whether the persons serving in CPLA were all soldiers; and his concern about the proposed adaptation of "服役" to "服務" in the Chinese text of regulation 25(b)(i) would widen the scope of exemption. Request for the Administration to provide a written response to Mr TO's enquiry.	Admin
001735 - 003014	Chairman Dr Margaret NG Admin LA	Dr Margaret NG's objection to the proposed adaptation for regulation 25(b)(i) and her remarks that the proposed adaptation had "mutilated" the laws. Dr NG's comments that "服役" and "服務" carried	

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		<p>different meanings.</p> <p>Dr NG's views that the proposed adaptation had not taken into account the fact that family members of members of the Hong Kong Garrison would not reside in Hong Kong and that the Hong Kong Garrison should abide by the Law of the People's Republic of China on the Garrisoning of the Hong Kong Special Administrative Region ("the Garrison Law").</p> <p>The Administration's explanation on the justifications for the adaptation proposals which were in line with the principles of adaptation of laws, the Basic Law, the Garrison Law and actual situation of the Hong Kong Garrison.</p> <p>Dr NG's enquiry on whether the spouse and children of members of the Hong Kong Garrison could come to Hong Kong for visiting purposes, the duration of their stay and whether they were required to apply for an identity card under such circumstances.</p> <p>The Administration's response to Dr NG's enquiry and its comments that the relevant legal provisions governing the duration of stay of family members visiting members of Hong Kong Garrison was not within the scope of the Adaptation Bill.</p>	
003015 - 004227	Chairman Mr James TO Admin Dr Margaret NG	<p>The Chairman's remarks on regulation 25(d)(ii) which provided the exemption for persons who did not intend to remain in Hong Kong for more than 180 days.</p> <p>The Administration's explanation that regulation 25(d)(ii) did not apply to the Hong Kong Garrison.</p> <p>The Administration's clarification that the Garrison Law did not stipulate whether members of the Hong Kong Garrison could bring along their spouse and children while they were serving in Hong Kong on rotation.</p> <p>The Administration's remarks that the adaptation proposal was made in accordance with the principles of adaptation of laws and any changes beyond the scope of the adaptation should be dealt with separately.</p> <p>Dr Margaret NG's request for the Administration to check if information could be provided on whether there were any spouse and children of members of the Hong Kong Garrison residing in Hong Kong.</p> <p>Mr James TO's concern about the enforcement of regulation 25 given the tremendous size of CPLA and hence the large number of their family members</p>	Admin

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		<p>domiciling in Hong Kong, particularly when the family members did not possess a document of identity.</p> <p>Mr TO's reiteration of his concern over the large number of persons being exempted as a result of the proposed adaptation.</p> <p>The Chairman's remarks on whether family members of members of the Hong Kong Garrison were required to apply for an identity card was policy issues and should be excluded from the current adaptation exercise.</p> <p>Mr TO's enquiry on the enforcement of regulation 25 and the consequences if the proposed adaptation of regulation 25 not being supported by members.</p> <p>Mr TO's remarks on his approach towards the Administration's proposed adaptations involving policy changes.</p> <p>The Chairman's remarks on the possible enforcement difficulties brought about by the proposed adaptation.</p> <p>Mr TO's enquiry on the need for family members of members of the Hong Kong Garrison to undergo immigration clearance.</p> <p>The Administration's explanation that the adaptation proposal would not change the legal effect of the provision concerned.</p> <p>Request for the Administration to provide a written response to Mr TO's enquiry.</p>	Admin
004228 - 004735	Chairman Ms Cyd HO Admin	<p>Ms Cyd HO's enquiry on whether the measures implemented by public hospitals in relation to the provision of obstetrics services for Mainland women would apply to the wives of members of the Hong Kong Garrison, and her concern about the right of abode of the children of members the Hong Kong Garrison born in Hong Kong.</p> <p>Ms HO's request for a written response to her enquiry.</p> <p>Mr LAU Kong-wah's view that Ms HO's concern was not within the scope of adaptation of laws and his suggestion for the Administration to obtain the information from the relevant bureau.</p>	Admin
004736 - 005138	Chairman Dr Margaret NG Admin	<p>Dr Margaret NG's comments on the basis of members' consideration for some of the adaptation proposals were on the understanding that family members of members of the Hong Kong Garrison would not reside</p>	

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		<p>in Hong Kong and the need to change such basis if it was actually not the case. Dr NG's request for the Administration to provide information on whether there were any family members of members of the Hong Kong Garrison residing in Hong Kong.</p> <p>Dr NG's grave concern about the Administration's approach in introducing adaptation proposal without due regard to the impact on the legislation as a whole and her view that adaptation of laws should be considered in conjunction with the amendments which would involve law reform and according to the actual situation.</p> <p>Dr NG's comments on the Administration's approach in the adaptation of laws would damage the laws of Hong Kong.</p> <p>The Chairman's summary on the written information requested by members and the request for the Administration to review the proposed adaptation of "服役" to "服務" in the Chinese text of regulation 25(b)(i) having regard to members' view.</p>	<p>Admin</p> <p>Admin</p>
005139 - 005642	Chairman Admin Dr Margaret NG LA	<p><u>Defences (Firing Areas) Ordinance (Cap.196)</u> <u>Section 4 - Firing programme and notices</u></p> <p>The Administration's explanation on the adaptation proposal.</p> <p>Dr Margaret NG's enquiry on the person to which "such officer" referred in section 4(2) and (3).</p> <p>The Administration's response to Dr NG's enquiry that "such officer" meant "Commander, British Forces".</p> <p>LA's concurrence with the Administration's interpretation of "such officer".</p>	
005643 - 010349	Chairman Admin Dr Priscilla LEUNG	<p><u>Defences (Firing Areas) Ordinance (Cap.196)</u> <u>Section 8 - Penalty for offences</u> <u>Section 9 - Officers authorized to arrest or remove trespassers, etc.</u></p> <p>The Administration's explanation on the adaptation proposals.</p> <p>Dr Priscilla LEUNG's view on the distinction between "persons" and "officers" and her concern about the change in the meaning of the original provision by replacing "officers" with "persons".</p> <p>Dr LEUNG's reservations about replacing "officers" by "persons" and her view to retain "officers" in the</p>	

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		<p>provisions.</p> <p>The Administration's explanation on the justifications for using "persons" as the term accurately reflected the context of the relevant provisions.</p>	
010350 - 010957	Chairman Dr Margaret NG Admin	<p>Dr Margaret NG's view that the persons mentioned in sections 9 (b) and (c) could not be any person but an officer and that the proposed adaptation was inappropriate.</p> <p>Dr NG's remarks on the important principle of preserving the legal effect in the translation of the provisions and her disagreement to the proposed adaptations in sections 8 and 9.</p> <p>The Administration's explanation that the category of officers mentioned in section 9 included persons who did not have officer rank in the British Forces and the adaptation proposals were appropriate.</p> <p>Dr NG's criticism on the inconsistency of the Administration in applying the principles of the adaptation of laws and her view that the proposal was not adaptation of laws and adapting the term "officer" was unnecessary.</p>	
010958 - 011411	Chairman LA Dr Margaret NG Mr James TO Admin	<p>The Chairman's view on maintaining "officers" in sections 8 and 9 and his request for the Administration to review the proposed adaptations of "officer" to "person" having regard to members' views.</p> <p>LA's comments that the term "soldier" was not used in the Garrison Law and his suggestion for the Administration to explain in detail the justifications for adapting "warrant officer, non-commissioned officer or military policeman" to "soldier" in section 9(b) to facilitate members' consideration.</p> <p>Dr Margaret NG's enquiry on the basis of the proposed adaptation for section 9(b).</p> <p>Mr James TO's concern about the extension of the authorization to persons not covered by the original provisions.</p> <p>The Administration's response to Dr NG's question that the adaptation proposals were to ensure the clarity of the provisions concerned.</p> <p>Dr NG's comments on the contradictory justifications for some of the adaptations proposed by the Administration in the Bill.</p>	<p>Admin</p> <p>Admin</p>

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011412 - 011533	Chairman Dr Priscilla LEUNG Admin	Dr Priscilla LEUNG's views on the need for the Administration to provide the corresponding terms under the establishment of the Hong Kong Garrison for the officers mentioned in section 9(b) given "soldier" was a general term .	Admin
011534 - 011633	Chairman Dr Margaret NG	<u>Defences (Firing Areas) Ordinance (Cap.196)</u> <u>Section 10 - Exemptions</u> Dr Margaret NG's view on Her Majesty's aircraft and her disagreement to the proposed adaptation to section 10(1)(e).	
011634 - 012032	Chairman Dr Margaret NG Admin LA	<u>Crimes Ordinance (Cap.200)</u> <u>Section 6 - Incitement to mutiny</u> <u>Section 7 - Incitement to disaffection</u> Dr Margaret NG's view on the relationship between the legislation to implement Article 23 of the Basic Law and the relevant provisions in Cap. 200 and the adaptation for Cap. 200 should be handled in conjunction with the legislation to implement Article 23 of the Basic Law. The Administration's explanation that the adaptation proposals were straight military references and as such should be included in the current adaptation exercise. Dr NG's enquiry on the reasons why "Her Majesty" in section 7 (d) was not adapted. The Administration's response to Dr NG's enquiry that new section 7(1A) was proposed to adapt section 7(1)(a). Dr NG's criticism on the problematic approach of the Administration in the adaptation of laws and the negative impact on the interpretation of the provisions so caused. Background information provided by LA on HKBA's comments on the exclusion of Cap. 200 from the adaptation of laws as detailed in paragraph 17(r) of its submission to the Bills Committee (LC Paper No. CB(2)736/10-11(01)).	
012033 - 013041	Chairman Mr LAU Kong-wah Admin LA	Mr LAU Kong-wah's enquiry on the justifications for adding section 7(1A) to Cap. 200, the difference between sections 6(a) and 7(1A) in Cap. 200 and how the provisions in section 7(1) concerning the allegiance to Her Majesty would be handled. The Administration's response to Mr LAU's enquiry that sections 6(a) and 7(1A) were similar, but with	

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		<p>difference such as the level of the offence, and the adaptation proposals adhered to the principles of adaptation of laws and would not change the legal effect of the provisions concerned.</p> <p>Mr LAU's enquiry on the feasibility of adapting section 7(1)(a) with CPLA.</p> <p>The Chairman's views on the use of the term "CPLA" in section 7(1)(a).</p> <p>The Administration's explanation on the need to add section 7(1A) in view of the actual situation of the Hong Kong Garrison.</p> <p>Mr LAU's enquiry on the adaptation of the allegiance of Hong Kong Auxiliary Police Force, police officers and the Government Flying Service and their allegiance.</p> <p>The Administration's response to Mr LAU's enquiry that only military-related references should be included in the current exercise and the adaptation proposals had not altered the legal effect.</p> <p>Request for the Administration to provide information on the status of allegiance for the non-military groups after the Reunification.</p> <p>LA's views on the issues relating to allegiance after the Reunification and the need for the Administration to clarify in this regard.</p> <p>The Chairman's views on the confusion caused by the adaptation proposals and his request for the Administration to review the appropriateness of the adaptation proposals to section 7 having regard to the non-military groups.</p> <p>Request for the Administration to consider whether the adaptation proposals of Cap. 200 should be excluded from the current exercise and be dealt with in a separate exercise.</p>	<p>Admin</p> <p>Admin</p> <p>Admin</p>
013042 - 013616	Dr Margaret NG Chairman Admin Mr LAU Kong-wah	<p>Dr Margaret NG's opposition to the inclusion of section 7(1A) in Cap. 200 as it would create a new statutory offence.</p> <p>The Administration's disagreement with Dr NG's view as the offence had already existed in the original provision.</p> <p>Dr NG's view on the concept of allegiance under the British monarchy system and the People's Republic of</p>	

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		<p>China ("PRC").</p> <p>Dr NG's doubt on whether certain acts which were regarded as an incitement to disaffection to Her Majesty should also be regarded as an incitement to disaffection to PRC, and her comments on the need to make comparisons in this regard for the purpose of adaptations.</p> <p>The Chairman and Mr LAU Kong-wah's view on the concept of allegiance after the Reunification.</p>	
013617 - 013830	Mr LAU Kong-wah Chairman Admin LA	Comparison on the English text of sections 6(a) and 7(1A) in Cap. 200.	
013831 - 014015	Chairman Dr Margaret NG	<p>Dr Margaret NG's view on the difference in the meaning of "incitement to mutiny" and "incitement to disaffection" and a different interpretation of the latter nowadays.</p> <p>Dr NG's comments on the Chinese translation of the term "incitement to disaffection".</p>	
014016 - 014133	Chairman Admin	<p><u>Crimes Ordinance (Cap.200)</u> <u>Section 58B - possession etc. of unmarked plastic explosive</u></p> <p>Explanation by the Administration on the proposed adaptations.</p>	
014134 - 014222	Chairman Admin	<p><u>Crimes Ordinance (Cap.200)</u> <u>Section 58D - Import and export of unmarked plastic explosive</u> <u>Section 58E - Forfeiture, seizure and destruction of unmarked plastic explosive</u> <u>Section 58F - Exemption period for police officers and members of armed forces</u></p> <p>The Administration's explanation on the proposed adaptations.</p>	
014223 - 014412	Chairman Admin Mr LAU Kong-wah	<p><u>Crimes Ordinance (Cap.200)</u> <u>Section 158 - Application of ss. 156 and 157 to trials by courts-martial</u></p> <p>Mr LAU Kong-wah's enquiry on the reasons why sections 158(1), (2) and (3) were no longer applicable and how the offences contained therein would be dealt with.</p> <p>The Administration's response to Mr LAU's enquiry that the offences committed by members of the Hong</p>	

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		Kong Garrison, if any, would be handled according to Chapter 5 of the Garrison Law.	
014413 - 014934	Chairman Dr Margaret NG Admin LA Mr LAU Kong-wah	<p>Dr Margaret NG's remarks on the proper way to adapt sections 158(1), (2) and (3) and the need for the Administration to substitute these sections by appropriate provisions.</p> <p>The Chairman's request for the Administration to consider adapting section 158 by substituting the relevant Acts of the United Kingdom with the corresponding provisions of the Hong Kong Garrison.</p> <p>Mr LAU Kong-wah's request for the Administration's elaboration on the justifications for the omission of substitute provisions in Cap. 200.</p> <p>The Administration's response to Mr LAU's enquiry and its undertaking to discuss with the Department of Justice on the Chairman's request on adapting section 158 by substituting the Acts of the United Kingdom concerned with the corresponding provisions of the Hong Kong Garrison.</p>	<p>Admin</p> <p>Admin</p>
014935 - 015141	Chairman Dr Margaret NG LA	<p>Dr Margaret NG's request for the Administration to submit a paper explaining the provisions in relation to section 156 in the context and her suggestion for LA's comments on the Administration's paper.</p> <p>LA's remarks that section 158 involved court proceedings to protect the victims during the trials.</p>	Admin
015142 - 015249	Chairman	Date of next meeting	