

立法會

Legislative Council

LC Paper No. LS95/09-10

**Paper for the House Committee Meeting
on 8 October 2010**

Legal Service Division Report on Adaptation of Laws (Military References) Bill 2010

I. SUMMARY

- 1. Objects of the Bill** The main object of the Bill is to adapt certain military references in, and other related provisions of, the laws of Hong Kong 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.
- 2. Comments** The adaptation proposals set out in the Bill involve 85 pieces of legislation across different policy areas. The adaptation proposals are formulated in accordance with the principles as set out in section 2A(2)(c), and sections 1 and 2 of Schedule 8 to the Interpretation and General Clauses Ordinance (Cap. 1). Broadly speaking, general references to "Her Majesty's forces", for example, will be adapted as "the Chinese People's Liberation Army" since "Her Majesty's forces" covered the British forces garrisoned in Hong Kong and other members of the British forces before 1 July 1997. References specific to the British armed forces stationed in Hong Kong will be adapted as "the Hong Kong Garrison". Examples illustrating the adaptation proposals for some of the common military-related references in the laws of Hong Kong are at **Annex**.
- 3. Commencement** If enacted, most of the proposed amendments in the Bill will take retrospective effect from 1 July 1997, subject to Article 12 (no retrospective criminal offences or penalties) of the Hong Kong Bill of Rights set out in Part II of the Hong Kong Bill of Rights Ordinance (Cap. 383), to ensure that there is consistency in the interpretation of all laws on and after 1 July 1997. Other proposed amendments will come into operation on dates as specified in clause 2(3) to (5) of the Bill.
- 4. Public Consultation** There has not been any public consultation on the Bill.
- 5. Consultation with the Hong Kong Garrison** In accordance with Article 10 of the Garrison Law of the Hong Kong Special Administrative Region, the Administration has consulted the Garrison on the Bill.
- 6. Consultation with LegCo Panel** The Administration briefed the Panel on Security on the proposals in the Bill at its meeting on 4 May 2010. Members were mainly concerned about the Administration's slow progress in adapting the military-related references in the laws of Hong Kong.
- 7. Conclusion** The Legal Service Division has written to the Administration requesting clarification on certain drafting and legal aspects of the Bill. We are still awaiting the Administration's reply. In the meantime, members may wish to decide whether a Bills Committee be formed to study the proposed amendments in detail.

II. REPORT

Objects of the Bill

The main object of the Bill is to adapt certain military references in, and other related provisions of, the laws of Hong Kong 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.

LegCo Brief

2. Members may refer to the LegCo Brief issued by the Security Bureau dated 7 July 2010 (File Ref: SBCR 4/1162/97) for further information.

Date of First Reading

3. 14 July 2010.

Comments

4. The adaptation proposals set out in the Bill involve 85 pieces of legislation across different policy areas. Members may refer to names of the adapted legislation in the Explanatory Memorandum of the Bill published in the Gazette on 9 July 2010. The adaptation proposals are formulated in accordance with the following principles as set out in the Interpretation and General Clauses Ordinance (Cap. 1) –

- (a) provisions relating to the rights, exemptions and obligations of the 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 (the Garrison Law), continue to have effect and apply to the military forces stationed in the Hong Kong Special Administrative Region by the Central People's Government (CPG) of the People's Republic of China (section 2A(2)(c) of Cap. 1);
- (b) any reference in any provision to Her Majesty, the Crown, the British Government or the Secretary of State (or to similar names, terms or expressions) where the content of the provision –
 - (i) relates to title to land in the Hong Kong Special Administrative Region;

- (ii) involves affairs for which the CPG of the People's Republic of China has responsibility;
- (iii) involves the relationship between the Central Authorities and the Hong Kong Special Administrative Region,

shall be construed as a reference to the CPG or other competent authorities of the People's Republic of China (section 1 of Schedule 8 to Cap. 1); and

- (c) any reference in any provision to Her Majesty, the Crown, the British Government or the Secretary of State (or to similar names, terms or expressions) in contexts other than those specified in (b) above shall be construed as a reference to the Government of the Hong Kong Special Administrative Region (section 2 of Schedule 8 to Cap. 1).

5. Broadly speaking, general references to "Her Majesty's forces", for example, will be adapted as "the Chinese People's Liberation Army" since "Her Majesty's forces" covered the British forces garrisoned in Hong Kong and other members of the British forces before 1 July 1997. References specific to the British armed forces stationed in Hong Kong will be adapted as "the Hong Kong Garrison". A list of terms illustrating adaptation of military-related references in the 85 pieces of legislation is shown at the **Annex** for members' reference.

Commencement

6. If enacted, most of the proposed amendments in the Bill will take retrospective effect from 1 July 1997, subject to Article 12 (no retrospective criminal offences or penalties) of the Hong Kong Bill of Rights set out in Part II of the Hong Kong Bill of Rights Ordinance (Cap. 383), to ensure that there is consistency in the interpretation of all laws on and after 1 July 1997.

7. According to paragraph 8(c) of the LegCo Brief, the proposed amendments relating to provisions, as set out in clause 2(3) of the Bill, may carry a negative impact and should not have retrospective effect. These provisions will come into operation on the day on which the Adaptation of Laws (Military References) Ordinance, if enacted, is published in the Gazette.

8. The proposed amendment to section 6(1) of the Airport Authority Bylaw (Cap. 483 sub. leg. A) is deemed to have come into operation on 16 January 1998 because the provision came into operation on that day (L.N. 41 of 1998).

9. The proposed amendment to section 22(d) of the Aviation Security Regulation (Cap. 494 sub. leg. A) is deemed to have come into operation on 22 June 1998 because the Regulation came into operation on that day (L.N. 247 of 1998).

Public Consultation

10. There has not been any public consultation on the Bill.

Consultation with the Hong Kong Garrison

11. In accordance with Article 10 of the Garrison Law, the Administration has consulted the Garrison on the Bill.

Consultation with LegCo Panel

12. The Administration briefed the Panel on Security on the proposals in the Bill at its meeting on 4 May 2010.

13. Members were mainly concerned about the Administration's slow progress in adapting the military-related references in the laws of Hong Kong.

14. The Administration advised that the adaptation of military-related references involved a significant number of policy bureaux and government departments and required consultation with the Hong Kong Garrison.

15. Members may wish to refer to the minutes of the meeting (LC Paper No. CB(2)1946/09-10) for further information.

Conclusion

16. The Legal Service Division has written to the Administration requesting clarification on certain drafting and legal aspects of the Bill. We are still awaiting the Administration's reply. In the meantime, members may wish to decide whether a Bills Committee be formed to study the proposed amendments in detail.

Encl

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LS/B/25/09-10

Adaptation of Laws (Military References) Bill 2010
Summary of the proposed amendments

TABLE 1: Adaptation of military references

| <u>Existing expression</u> | <u>Expression after adaptation</u> |
|---|--|
| Commander, British Forces (For example, s. 14(1)(b) of the Telecommunications Ordinance (Cap. 106) and para 5 of Second Schedule to the Air Passenger Departure Tax Ordinance (Cap. 140)) | Commander of the Hong Kong Garrison |
| Commissioned officer in Her Majesty's forces (For example, s. 50(4) of the Public Order Ordinance (Cap. 245)) | Member of the Chinese People's Liberation Army of or above the rank of second lieutenant (or ensign) |
| Her Majesty's forces (and equivalent expressions) ¹ (For example, s. 17 of the Probate and Administration Ordinance (Cap. 10) and s. 5(1)(j) of the Jury Ordinance (Cap. 3)) | Chinese People's Liberation Army |
| Her Majesty's forces (in relation to land vested in or occupied by) (For example, in para (b) of the definition of "private land" under s. 2 of the Antiques and Monuments Ordinance (Cap. 53) and s. 14(1)(b) of the Telecommunications Ordinance (Cap. 106)) | Hong Kong Garrison |
| Her Majesty's ships of war (For example, s. 118 of the Merchant Shipping Ordinance (Cap. 281) and s. 3 of the Dangerous Goods Ordinance (Cap. 295)) | Ships of war of the Chinese People's Liberation Army |

¹ Such expressions include "armed forces of the Crown", "armed forces of Her Majesty", "British Forces", "Her Majesty's armed forces" and "Her Majesty's naval, military or air forces", etc.

| <u>Existing expression</u> | <u>Expression after adaptation</u> |
|--|--|
| Member/officer of Her Majesty's forces (For example, para 5(a) of Second Schedule to the Air Passenger Departure Tax Ordinance (Cap. 140) and s. 29 of the Medical Registration Ordinance (Cap. 161)) | (1) Member/officer/soldier of the Chinese People's Liberation Army; or (2) Member/officer/soldier of the Hong Kong Garrison |
| Ministry of Defence (For example, para 5(a) of Second Schedule to the Air Passenger Departure Tax Ordinance (Cap. 140) and s. 31(6)(m) of the Public Order Ordinance (Cap. 245)) | Ministry of National Defence in the Central People's Government |
| Royal Hong Kong Auxiliary Air Force (For example, s. 19 of the Country Parks and Special Areas Regulations (Cap. 208 sub. leg. A) and s.6(6)(b) of the Traffic Accident Victims (Assistance Fund) Ordinance (Cap. 229)) | Government Flying Service |
| Ships used by Her Majesty's Government (For example, s. 3 and s. 11 of the Shipping and Port Control Ordinance (Cap. 313)) | (1) Ships used by the Central People's Government; or (2) Ships used by the Central People's Government or the Chinese People's Liberation Army |
| Warships used by Her Majesty's Government (For example, s. 11 and s. 15 of the Shipping and Port Control Ordinance (Cap. 313)) | Warships used by the Chinese People's Liberation Army |

TABLE 2: Adaptation of other references²

| <u>Existing expression</u> | <u>Expression after adaptation</u> |
|--|--|
| <p>Crown/a hospital maintained by the Crown/a health centre or clinic maintained by the Crown (For example, s.33(b)(a) of the Employment Ordinance (Cap. 57) and s. 5(3)(c) of the Dangerous Drugs Ordinance (Cap. 134))</p> | <p>Government/Central People's Government/Chinese People's Liberation Army (or Hong Kong Garrison)/a military hospital/a health centre or clinic of the Hong Kong Garrison</p> |
| <p>Governor (For example, s. 39(4)(b) of the Public Order Ordinance (Cap. 245) and Article 69(5) of the Air Navigation (Hong Kong) Order 1995 (Cap. 448 sub. leg. C))</p> | <p>Chief Executive</p> |
| <p>Her Majesty (For example, s. 10D(1)(a) of the Pilotage Ordinance (Cap. 84) and s. 13(1) of the Civil Aviation Ordinance (Cap. 448))</p> | <p>Government/Central People's Government/Chinese People's Liberation Army (or Hong Kong Garrison)</p> |
| <p>Secretary of State (For example, s. 2A(3) of the Civil Aviation Ordinance (Cap. 448) and Article 69(5) of the Air Navigation (Hong Kong) Order 1995 (Cap. 448 sub. leg. C))</p> | <p>Central People's Government/the Standing Committee of the National People's Congress</p> |
| <p>Government of the United Kingdom (For example, s. 3(4) of the Dutiable Commodities Ordinance (Cap. 109))</p> | <p>Central People's Government/Chinese People's Liberation Army</p> |
| <p>United Kingdom (For example, in the definition of "state of war" under s. 2A(8) of the Civil Aviation Ordinance (Cap. 448))</p> | <p>People's Republic of China</p> |
| <p>Governor in Council (For example, s. 2A(4) and s. 13(2) of the Civil Aviation Ordinance (Cap. 448))</p> | <p>Chief Executive in Council</p> |

² These references are to be adapted since some of them either can be construed as including the Chinese People's Liberation Army or the Garrison (as applicable) or are used in a military context (e.g. national defence).