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Bills Committee on United Nations (Anti-Terrorism Measures) Bill

**Background paper prepared by the Legislative Council Secretariat on
prohibition of publication of false news**

Purpose

This paper provides brief background information on past legislation prohibiting the publication of false news. Members had requested the information at the meeting on 3 June 2002 to facilitate their consideration of clause 10 of the United Nations (Anti-Terrorism Measures) Bill, which prohibits persons from making false threats of terrorist acts.

Background

2. Prohibition against publication of false news was originally contained in section 6 of the Control of Publications Consolidation Ordinance (Cap. 268) (the Ordinance) enacted in 1951. The purpose of the Ordinance was twofold -

- (a) to embody in the substantive laws the provisions of the 1938 Emergency Regulations for the control and suppression of newspapers; and
- (b) to consolidate the existing legislation relating to the registration, printing and publication of newspapers.

The Ordinance therefore consisted of two distinct sets of provisions : the first set was related to the control and suppression of newspapers, and the second set to their registration.

3. In response to much public criticism about the Ordinance, a review on the need to retain the control and suppression provisions of the Ordinance as set out in sections 3 to 6 and 8 to 10 (a summary of the relevant sections is in **Appendix I**) was conducted by the Administration in 1986. As a result of the review, the Administration introduced the Control of Publications

Consolidation (Amendment) Bill 1986 and the Public Order (Amendment) Bill 1986 (the two Bills) into the Legislative Council (LegCo) on 7 January 1987.

Control of Publications Consolidation (Amendment) Bill 1986

4. The Control of Publications Consolidation (Amendment) Bill 1986 sought to repeal all the provisions relating to the control and suppression of local newspapers, retain with amendments those provisions relating to the registration of local newspapers and news agencies in the Ordinance, and retitle the Ordinance as the Registration of Local Newspapers Ordinance.

5. According to the LegCo Brief on the two Bills, the control and suppression provisions in the Ordinance had been used most sparingly since 1951, and not at all since 1967 when three local newspapers were suspended for six months following the conviction of their publishers, printers and editors on sedition charges. The Administration pointed out that it was difficult to envisage circumstances which would justify their use other than in an emergency situation. It was also pointed out that the Emergency Regulations under section 2 of the Emergency Regulations Ordinance (Cap. 241) which contained provisions for the censorship, control and suppression of publications already provided similar powers should they be required. A copy of the existing section 2 of the Emergency Regulations Ordinance is in **Appendix II**.

Public Order (Amendment) Bill 1986

6. Section 6 of the Ordinance prohibited publication of false news likely to alarm public opinion or disturb public order. Since the provision under section 6 was not covered in other legislation and as this aspect of control was related to the maintenance of public order, the Administration therefore proposed in the Public Order (Amendment) Bill 1986 to retain it as a new section 27 in the Public Order Ordinance (Cap. 245).

Views of LegCo Members on the proposed new section 27 of the Public Order Ordinance

7. Having considered the views of the LegCo Ad hoc Group set up to study the two Bills, and the comments made by the Hong Kong Journalists Association and other deputations regarding the proposed new section 27 of the Public Order Ordinance, the Administration agreed to amend the section. The revised wording of the proposed new section 27 presented in a marked-up format is in **Appendix III**.

8. Major concerns raised by Members during the resumption of the Second Reading debate on the two Bills on 11 March 1987 were focussed on the following two areas -

- (a) whether there was a need to retain section 6 of the Control of Publications Consolidation Ordinance and transfer it to the Public Order Ordinance as the proposed new section 27; and
- (b) if it was thought necessary, whether the onus of proof regarding knowledge of the false news should continue to rest with the accused.

9. Some Members opposed the proposed new section 27 on the ground that legislative provisions against the publication of false news were no longer necessary since they had remained dormant for years. Other Members, however, were of the view that the absence of cases which involved the invocation of legislative provisions against the publication of false news could be attributable to two factors. Firstly, it served to confirm that journalists had exercised self-discipline in their reporting. And secondly, it demonstrated clearly the effectiveness of such provisions in deterring irresponsible reporting. These Members therefore considered that the Administration had struck a right balance in upholding free press and freedom of speech and safeguarding public order.

10. As regards the issue of onus of proof, some Members felt that the proposed new section 27 represented a departure from the common law principle that an accused was presumed innocent until his guilt was proven beyond reasonable doubt. Moreover, this new section constituted an undue suppression of press freedom. They also argued that professional ethics within the journalist profession required journalists to maintain the confidentiality of the source of information. Furthermore, in cases where the truth or the authenticity of the news was not immediately or readily available, the new section would pose an almost impossible burden on the accused, and would unduly inhibit further investigation by the media which might eventually bring out important and material facts in the interests of the whole community. To put the burden of proof squarely on the prosecution, Hon Martin LEE moved an amendment to the proposed new section 27, but it was negatived.

11. Some other Members agreed with the Administration that it was necessary to place the burden of proof on the defendant as it was extremely difficult to establish what was in the mind of the person publishing the false news. They had pointed out that the "false news" offence was not unique in imposing the burden of proof on the defendant. Section 126 of the Banking Ordinance (Cap. 155) and section 26 of the Trade Descriptions Ordinance (Cap. 362) were cases in point. Moreover, the standard of proof was on balance of probabilities.

Review to be conducted

12. The two Bills and the Committee Stage amendment to the proposed new section 27 of the Public Order Ordinance moved by the Administration were passed by LegCo on 11 March 1987. The Administration undertook to review whether section 27 should be retained in two years' time.

Repeal of section 27 of the Public Order Ordinance

13. The Administration introduced the Public Order (Amendment) Bill 1988 into LegCo on 14 December 1988 to repeal section 27 of the Public Order Ordinance. The main reason given by the Administration during the resumption of the Second Reading debate on the Bill was that the existence of section 27 had caused public concern out of proportion to the value to the community of keeping it. The Administration had therefore concluded that the repeal of section 27 was a logical final step in the process of liberalising control over publications which started two years before. The Bill was subsequently passed by LegCo without amendment on 11 January 1989.

A summary of control and suppression provisions in the Control of Publications Consolidation Ordinance (Cap. 268)

Section 3 makes it an offence to print or publish a publication which induces the commission of a crime or a person to join an unlawful society.

Section 4 permits a court to suppress a newspaper after the conviction of its printer, publisher or editor for certain specified crimes such as treason, criminal libel and other offences relating to the maintenance of public order and safety.

Section 5 provides powers to prohibit the importation of publications which are likely to harm local security or adversely affect public order, safety, health or morals.

Section 6 makes it an offence maliciously to publish in any local newspaper false news which is likely to alarm public opinion or disturb public order.

Sections 8 and 9 allow the Registrar of Newspapers to refuse or to suspend the registration of newspaper or news agencies which are connected with newspapers which have been suppressed under section 4.

Section 10 provides for the seizure and forfeiture of printing presses used in contravention of regulations made under the Ordinance.

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Section of Enactment

Chapter : 241 Title : EMERGENCY REGULATIONS ORDINANCE Gazette Number : 71 of 1999
Section : 2 Heading : **Power to make regulations** Version Date : 01/07/1997

Remarks:

Adaptation amendments retroactively made - see 71 of 1999 s. 3

(1) On any occasion which the Chief Executive in Council may consider to be an occasion of emergency or public danger he may make any regulations whatsoever which he may consider desirable in the public interest.

(2) Without prejudice to the generality of the provisions of subsection (1), such regulations may provide for- (Amended 5 of 1924 s.9; 8 of 1949 s. 2)

(a) censorship, and the control and suppression of publications, writings, maps, plans, photographs, communications and means of communication;

(b) arrest, detention, exclusion and deportation;

(c) control of the harbours, ports and waters of Hong Kong, and the movements of vessels;

(d) transportation by land, air or water, and the control of the transport of persons and things;

(e) trading, exportation, importation, production and manufacture;

(f) appropriation, control, forfeiture and disposition of property, and of the use thereof;

(g) amending any enactment, suspending the operation of any enactment and applying any enactment with or without modification; (Replaced 8 of 1949 s. 2)

(h) authorizing the entry and search of premises; (Replaced 8 of 1949 s. 2)

(i) empowering such authorities or persons as may be specified in the regulations to make orders and rules and to make or issue notices, licences, permits, certificates or other documents for the purposes of the regulations; (Replaced 8 of 1949 s. 2)

(j) charging, in respect of the grant or issue of any licence, permit, certificate or other document for the purposes of the regulations such fees as may be prescribed by the regulations; (Added 8 of 1949 s. 2)

(k) the taking of possession or control on behalf of the Chief Executive of any property or undertaking; (Added 8 of 1949 s. 2)

(l) requiring persons to do work or render services; (Added 8 of 1949 s. 2)

(m) payment of compensation and remuneration to persons affected by the regulations and the determination of such compensation; and (Added 8 of 1949 s. 2)

(n) the apprehension trial and punishment of persons offending against the regulations or against any law in force in Hong Kong, (Added 8 of 1949 s. 2. Amended 40 of 1949 s. 2)

and may contain such incidental and supplementary provisions as appear to the Chief Executive to be necessary or expedient for the purposes of the regulations. (Added 8 of 1949 s. 2)

(3) Any regulations made under the provisions of this section shall continue in force until repealed by order of the Chief Executive in Council.

(4) A regulation or any order or rule made in pursuance of such a regulation shall have effect notwithstanding anything inconsistent therewith contained in any enactment; and any provision of an enactment which may be inconsistent with any regulation or any such order or rule shall, whether that provision shall or shall not have been amended, suspended or modified in its operation under subsection (2), to the extent of such inconsistency have no effect so long as such regulation, order or rule shall

remain in force. (Added 8 of 1949 s. 2)

(5) Every document purporting to be an instrument made or issued by the Chief Executive or other authority or person in pursuance of this Ordinance or of any regulation made hereunder and to be signed by or on behalf of the Chief Executive or such other authority or person, shall be received in evidence, and shall, until the contrary is proved, be deemed to be an instrument made or issued by the Chief Executive or that authority or person. (Added 8 of 1949 s. 2)

(Amended 71 of 1999 s. 3)

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Appendix III

Revised wording of the proposed new section 27 of the Public Order Ordinance

"27. (1) Any person who maliciously publishes **false news which is likely to cause alarm to the public or a section thereof** in any local newspaper ~~false news which is likely to alarm public opinion~~ or disturb public order shall be guilty of an offence and shall be liable -

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(a) on summary conviction, to a fine of \$30,000 and to imprisonment for ~~1 year~~ 6 months; ~~and~~

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(b) on conviction on indictment, to a fine of \$100,000 and to imprisonment for ~~3~~ 2 years;
and

~~(2) For the purposes of this section, malice shall be presumed in default of evidence showing that, prior to publication, the accused took reasonable measures to verify the truth of the news.~~

(2) It shall be a defence to a charge under subsection (1) for the person charged to prove that he had reasonable grounds for believing that the news to which the charge relates was true.

(3) No prosecution for an offence under this section shall be commenced without the consent of the Attorney General."

~~(4) In this section "local newspaper" has the meaning assigned to it in the Registration of Local Newspaper Ordinance."~~