

立法會
Legislative Council

LC Paper No. LS 47/01-02

**Paper for the House Committee Meeting
of the Legislative Council
on 25 January 2002**

**Legal Service Division Report on
Prevention of Child Pornography Bill**

Objects of the Bill

To—

- (a) create offences of making, producing, publishing, importing, exporting, distributing, advertising and possessing pornography that depicts children under the age of 16;
- (b) create an offence for any person who uses, procures or offers another person who is under the age of 18 for making pornography, or for a live pornographic performance, in which that other person is pornographically depicted;
- (c) extend the application of certain sexual offence provisions to acts committed against children outside Hong Kong and prohibiting the making of any arrangement relating to commission of those acts and advertisements for such arrangement; and
- (d) make consequential amendments to various Ordinances.

LegCo Brief Reference

- 2. SBCR 2/3231/2001 issued by the Security Bureau on 8 January 2002.

Date of First Reading

- 3. 23 January 2002.

Background

4. The Prevention of Child Pornography Bill and the Crimes (Amendment) Bill 1999 (the latter for tackling the problem of child sex tourism) were introduced into the Legislative Council on 7 July 1999, but lapsed at the end of the previous legislative term on 30 June 2000 before priority was accorded for the Bills to be scrutinized by the Legislative Council. In view of the common objective of protection of children against sexual exploitation, the Administration has decided that the two Bills should be combined as one to form the revised Prevention of Child Pornography Bill.

Comments

Prohibition of child pornography

5. The Bill creates offences of making, producing, publishing, importing, exporting, distributing, advertising and possessing pornography that depicts children under the age of 16 (clause 3). It defines the terms "child pornography" and "pornographic depiction" (clause 2(1)). It provides for defences to various charges under clause 3 (clause 4). It provides for entry into and search of any place, and seizure of child pornography and things relating to the commission of an offence under warrant issued by a magistrate (clauses 5, 6 and 7). It makes provision for the forfeiture of child pornography and other things seized under clause 5 or 7 (clauses 9,10 and 11). It empowers a public officer to apply to a magistrate for an order to remove or efface a child pornography publicly displayed on any building (clauses 12 and 13).

Prohibition of the use, procurement or offer of persons under 18 for making pornography or for live pornographic performances

6. The Bill amends the Crimes Ordinance (Cap. 200) by adding a new section 138A to make the use, procurement or offer of a person under the age of 18 for making pornography or live pornographic performances an offence. Certain defences in respect of offences committed against a child of the age of 16 but under 18 are also provided for (clause 14).

Extension of the application of certain sexual offences provisions to acts committed against children outside Hong Kong

7. The Bill further amends the Crimes Ordinance by adding a new section 153P to make it an offence for a person or corporation who or which has connections with Hong Kong to commit any act, which would have constituted an offence under any of the provisions specified in new Schedule 2 had it been committed in Hong Kong, outside Hong Kong. The extra-territorial effect will only apply to cases where victims are under the age of 16 except for sections 123 (intercourse with girl under 13) and 140 (permitting girl or boy under 13 to resort to or be on premises or vessel for

intercourse) of the Crimes Ordinance, which are applicable to victims under the age of 13. It also makes it an offence for a person or corporation to commit any act outside Hong Kong that would have constituted an offence under any of the provisions specified in new Schedule 2 had it been committed in Hong Kong; and is committed in relation to a person who has connections with Hong Kong and is under the age of 16; or in the case of an offence under section 123 or 140, under the age of 13. Certain defences are also provided for (clauses 16 and 18).

8. The Bill also amends the Crimes Ordinance by adding a new section 153Q to make it an offence for a person who makes arrangements, whether wholly or partly in Hong Kong, for himself or another person to commit any act in relation to a person under the age of 16 that would constitute an offence under any of the provisions specified in new Schedule 2 if it were committed in Hong Kong. It is also an offence for a person to publish an advertisement for any such arrangements. The offence covers any message sent through the internet, any other forms of electronic transmission or other means. Certain defences are also provided for (clause 16).

Miscellaneous consequential amendments

9. The Bill further makes consequential amendments to other Ordinances (clauses 19 to 26), mainly for the following purposes—

- (a) to extend the special procedures for vulnerable witnesses under Part IIIA of the Criminal Procedure Ordinance (Cap.221) to proceedings in respect of an offence under clause 3 of the Bill (amendment to the Criminal Procedure Ordinance);
- (b) to prohibit persons convicted of certain offences under the Bill from being childminders or registered social workers (amendments to the Child Care Services Ordinance (Cap. 243) and Social Workers Registration Ordinance (Cap. 505));
- (c) to require an Obscene Articles Tribunal to refuse to classify an article that, in its opinion, may be child pornography (amendments to the Control of Obscene and Indecent Articles Ordinance (Cap. 390));
- (d) to give additional power to members of the Customs and Excise Service to stop, search and arrest any person, without warrant, for an offence under the Prevention of Child Pornography Ordinance (upon enactment) (amendment to Customs and Excise Service Ordinance (Cap. 342)); and
- (e) to make it clear that sexual offences to which the Post-Release Supervision scheme applies cover those offences that are, by virtue of the Bill, constituted by acts committed outside Hong Kong (amendment to the Post-Release Supervision of Prisoners Regulation (Cap. 475 sub. leg.)).

Public Consultation

10. According to the Administration, a public consultation on the Bill was conducted in November 2001. The majority of comments received generally support the proposals in the Bill. There are, however, some diverse comments on the coverage and clarity of the definition of child pornography, and whether artistic merit and genuine family purpose should be defences.

Consultation with the LegCo Panel

11. The Administration also consulted the LegCo Security Panel about the proposals in the Bill at its meeting on 6 December 2001. Members in general supported the principles and spirit of the legislative proposals which offer better protection to children. Members also raised several concerns, including enforcement difficulties, over the Bill.

Conclusion

12. The Bill involves important policy and legal issues. Members of the Security Panel have already expressed concerns over certain aspects of the Bill. Members are recommended to form a Bills Committee to study in detail the legislative proposals. In the meantime, the Legal Service Division will continue to scrutinize the legal and drafting aspects of the Bill.

Prepared by

Lam Ping-man, Stephen
Assistant Legal Adviser
Legislative Council Secretariat
23 January 2002