

立法會  
*Legislative Council*

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**Panel on Security  
and  
Panel on Administration of Justice and Legal Services**

**Background brief prepared by the Legislative Council Secretariat**

**Proposals to implement Article 23 of the Basic Law**

**Purpose**

This paper gives a summary of relevant past discussions to assist Members to study the Administration's proposals to implement Article 23 of the Basic Law (BL 23).

**Background**

2. BL 23 provides that the Hong Kong Special Administrative Region (HKSAR) shall enact laws on its own to prohibit any acts of treason, secession, sedition, subversion against the Central People's Government, or theft of state secrets, to prohibit foreign political organizations or bodies from conducting political activities in the Region, and to prohibit political organizations or bodies of the Region from establishing ties with foreign political organizations or bodies.

**The Crimes (Amendment) (No. 2) Bill 1996 introduced into the Legislative Council on 4 December 1996**

3. The Crimes (Amendment) (No. 2) Bill 1996 (the Bill), introduced into the Legislative Council (LegCo) on 4 December 1996, sought to add the offences of subversion and secession into Part I of the Crimes Ordinance (Cap. 200) (the Ordinance) to bring it in line with BL 23 and to modify the existing provisions relating to the offences of treason and sedition in the Ordinance to reflect the common law position.

4. During the Second Reading of the Bill, the then Secretary for Security (S for S)

explained the background to and reasons for the introduction of the Bill. S for S said -

"This Bill deals with the concepts of treason, sedition, secession and subversion which are some of the concepts covered by Article 23 of the Basic Law.

Public concerns about the precise definition of these concepts have been building up since 1995. Honourable Members of this Council, who are elected to represent the community, have since then continued to impress on the Government the need to have clear legal definitions of these concepts on our statute books at the earliest opportunity before 1 July next year.

In response to this Council's and the community's expressed concerns, we passed proposals to amend the Crimes Ordinance to the Chinese side of the Joint Liaison Group (JLG) in July 1995. In July this year, we passed a draft Crimes (Amendment) Bill to the Chinese side covering the concepts of treason, sedition, secession and subversion. I also explained to the Legislative Council Information Policy Panel that, if we made no progress in our discussions with the Chinese side, we would explain to the public the circumstances of the disagreement.

In brief, the Chinese side considered that there is a clear difference between the adoption of existing Hong Kong laws as the laws of the Hong Kong Special Administrative Region (HKSAR), and the enactment of laws by the HKSAR on its own in accordance with Article 23 of the Basic Law. They made it clear that they did not believe that we should make significant amendments to the Crimes Ordinance at this stage to bring it into line with the Basic Law.

We hold a different view. It is quite clear that it is the view of the community, as reflected by this Council, that we should seek to have legislation on these concepts covered in Article 23 of the Basic Law in place before 1 July 1997. We also believe that there is no reason why we should not introduce appropriate legislative amendments to the Crimes Ordinance before 1 July 1997. By producing workable legislative proposals which will need only minimal adaptation to continue beyond the transfer of sovereignty, we will indeed be facilitating the task of the future HKSAR. This will not diminish the ability of the HKSAR, under Article 23 of the Basic Law, to make laws on its own, that is to say, not to have such laws made by the sovereign power. The fact is that Hong Kong already has laws on some areas covered by Article 23; neither the existence of those laws nor any amendments to them restricts the power of the HKSAR to legislate under Article 23.

If the Chinese side were able to agree to our view, then we would together have contributed much towards a smooth transition and allayed the concerns of Hong Kong people. Unfortunately, we have not been able to reconcile these two viewpoints. It has recently become clear that we will not be able to reach consensus in the JLG. Given the need to respond to the concerns of the

community, we have come to the view that we must take steps to fulfil our public commitments by introducing this Bill into the Legislative Council."

5. A copy of the Bill and a marked-up copy of the Ordinance as would have been amended by the Bill are in **Appendices I and II** respectively.

### **Bills Committee on the Crimes (Amendment) (No. 2) Bill 1996**

6. A Bills Committee was formed at the House Committee meeting on 6 December 1996 to study the Bill in detail. The Bills Committee held 13 meetings with the Administration. It had also met representatives from the Hong Kong Bar Association (Bar Association), Hong Kong Human Rights Monitor (HKHRM), Hong Kong Journalists Association (HKJA), JUSTICE and the Law Society of Hong Kong (Law Society) to listen to their views on the Bill and sought their comments on the amendments proposed by the Bills Committee. The major views/concerns of members of the Bills Committee and depositions are summarised in paragraphs 7 to 17 below.

#### Provisions on treason and treasonable offences

7. Members generally agreed that the provisions on treason and treasonable offences should not be reformed because of the constraint of time and resources. They considered that such work should be done by the Law Reform Commission.

8. Section 3 of the Ordinance provides as follows -

- (1) Any person who forms an intention to effect any of the following purposes, that is to say -
  - (a) to depose Her Majesty from the style, honour and royal name of the Crown of the United Kingdom or of any other of Her Majesty's dominions;
  - (b) to levy war against Her Majesty within the United Kingdom or any British territory in order by force or constraint to compel Her Majesty to change Her measures or counsels, or in order to put any force or constraint upon, or to intimidate or overawe, Parliament or the legislature of any British territory; or
  - (c) to instigate any foreigner with force to invade the United Kingdom or any British territory,

and manifests such intention by an overt act or by publishing any printing or writing, shall be guilty of an offence and shall be liable on conviction upon indictment to imprisonment for life.

- (2) It shall be no defence to a charge under this section that any act proved against the person charged amounts to treason under section 2; but no person convicted or acquitted of an offence under this section shall afterwards be prosecuted for treason under section 2 upon the same facts.

9. A majority of members agreed that section 3 should be repealed, as such an intention could not simply be deduced from an overt act and these provisions had the effect of criminalising speech or writing.

10. The Bar Association and the HKHRM supported, in principle, the liberalisation of the existing law on treason. JUSTICE considered that the modernisation and liberalisation of the provisions would do more harm than good because the provisions, once amended, would be regarded as new legislation and as a result, the benefit of past judicial interpretations might not be available to an accused person.

#### Offences of subversion and secession

11. A majority of members considered that the offences of subversion and secession should not be created. Since Hong Kong and most of the other common law jurisdictions did not have such offences and the offensive acts under the proposed provisions could be dealt with under the existing legislation, they were of the view that it was not necessary to add the two offences into statute. The Bills Committee unanimously agreed to move amendments to delete the provisions for creating the offences of subversion and secession.

12. The legal profession and other deputations also did not support the creation of the offence of subversion, as it was neither obligatory nor necessary for the Hong Kong Government to legislate on the offence. Some deputations, including the Bar Association, the HKHRM, HKJA and JUSTICE were not in support of the creation of the offence of secession. JUSTICE considered that section 2 of the Ordinance, in its unamended but appropriately adapted form, contained elements of subversion and secession as proposed in the Bill.

13. Although members belonging to the Democratic Party did not agree to the creation of the two offences, they considered that the concepts of subversion and secession should be incorporated into the provisions on treasonable offences, taking into consideration the political reality.

Offence of sedition

14. Some members considered that sections 9 and 10 of the Ordinance concerning seditious intention and offences should be repealed, as the offence on sedition was outdated and draconian. It also criminalised the expression of opinions. In addition, the provision on seditious intention could be so broadly interpreted that it was threatening to human rights.

15. Some other members supported, in principle, the deletion of the offence. However, in view of the political reality that the future legislature of the HKSAR would very likely legislate on the offence in accordance with BL23, these members were of the view that the provision on sedition should not be deleted at that stage, but should be amended by -

- (a) Narrowing the definition of seditious intention in section 9;
- (b) Providing an additional element of having the purpose of disturbing the "constituted authority" in section 9 to make prosecutions more difficult; and
- (c) Incorporating Principle 6 of the Johannesburg Principles on National Security, Freedom of Expression and Access to Information in section 10 for better protection of human rights.

16. Principle 6 of the Johannesburg Principles provides that expression may be punished as a threat to national security only if a government can demonstrate that -

- (a) the expression is intended to incite imminent violence;
- (b) it is likely to incite such violence; and
- (c) there is a direct and immediate connection between the expression and the likelihood or occurrence of such violence.

17. The Bar Association, Law Society and HKJA supported the repeal of sections 9 and 10 because they were in contravention of the basic rights enshrined in the International Covenant on Civil and Political Rights (ICCPR). In addition, the Law Society and JUSTICE considered that the offence of sedition was archaic, had notorious colonial connotations and was contrary to the development of democracy. It also criminalised speech or writing, and might be used as a weapon against legitimate criticism of the government.

18. A copy of the report of the Bills Committee is in **Appendix III** for Members' easy reference. The minutes of meetings of the Bills Committee are available on the Research and Library Information System (RLIS) and the LegCo website at <http://www.legco.gov.hk/yr96-97/english/bc/bc56/papers/bc56ppr.htm>.

**Resumption of Second Reading debate and Committee Stage of the Crimes (Amendment) (No. 2) Bill 1996 at the Legislative Council sitting of 23 June 1997**

Resumption of Second Reading debate and Committee Stage

19. The Second Reading debate on the Bill resumed at the LegCo sitting of 23 June 1997. During the Committee Stage, a number of amendments were moved separately by Hon Albert HO, Chairman of the Bills Committee, Hon James TO and Hon Emily LAU. The major Committee Stage amendments (CSAs), the Council's decision on these amendments, and the Council's decision on the original clauses are set out in paragraphs 20 to 36 below.

Committee Stage amendments and original clauses

*Clause 2 (Treason)*

20. A CSA moved by Hon James TO to repeal section 2(1)(a), (b), (c) and (f) of the Ordinance concerning conspiracy to harm Her Majesty or cause her bodily harm, intention to do such act and overt act of an offence of rebellion, declaration of war against Her Majesty or against the United Kingdom from being acts of treason was negatived.

21. The original clause 2 to replace the inapplicable reference to Her Majesty by the reference to the state, i.e. the United Kingdom, in section 2(1)(c) of the Ordinance was also negatived.

*Clause 3 (Treasonable offences)*

22. A CSA moved by Hon Albert HO on behalf of the Bills Committee to repeal section 3 of the Ordinance (see paragraph 9 above) was carried.

23. A CSA moved by Hon James TO to incorporate the concepts of subversion and secession into the provisions on treasonable offences (see paragraph 13 above) was negatived.

*Clause 4 (Subversion)*

24. CSAs moved by Hon Albert HO on behalf of the Bills Committee to repeal the proposed creation of offence of subversion (see paragraph 11 above) were carried.

*Clause 5 (Secession)*

25. A CSA moved by Hon Albert HO on behalf of the Bills Committee to repeal the proposed creation of offence of secession (see paragraph 11 above) was carried.

*Clause 7 (Seditious intention)*

26. A CSA moved by Hon Albert HO on behalf of the Bills Committee to narrow down the definition of seditious intention in section 9 of the Ordinance, and to provide an additional element of having the purpose of disturbing the "constituted authority" in section 9 to make prosecutions more difficult (see paragraph 15(a) and (b) above) was negatived.

27. A CSA moved by Hon Emily LAU to repeal section 9 concerning seditious intention (see paragraph 14 above) was negatived.

28. The original clause 7 to replace the reference to Her Majesty's dominions, etc by reference to Hong Kong residents in section 9 was also negatived.

*Clause 8 (Offence of sedition)*

29. A CSA moved by Hon Albert HO on behalf of the Bills Committee to add a provision to section 10 concerning the offence of sedition by incorporating Principle 6 of the Johannesburg Principles on National Security, Freedom of Expression and Access to Information for better protection of human rights (see paragraph 15(c) above) was negatived.

30. A CSA moved by Hon Emily LAU to repeal the offences of sedition in section 10 (see paragraph 14 above) was negatived.

31. The original clause 8 to modify the offences of sedition by adding the element "with the intention of causing violence or creating public disorder or a public disturbance" to reflect the common law was carried.

*Clause 9 (Legal proceedings)*

32. A CSA proposed by Hon Emily LAU to delete the legal proceedings for offences of sedition was withdrawn because her amendments to clauses 7 and 8 were negatived.

33. The original clause 9 to amend the legal proceedings for offences of sedition was carried.

*Clause 12 (Power to remove seditious publications)*

34. A CSA moved by Hon Emily LAU to repeal section 14 of the Ordinance regarding the power to remove seditious publications was negatived.

35. The original clause 12 to delete reference to "public officer" to remove seditious publications in section 14 was carried.

*Clauses 1, 6, 10 and 13*

36. Clause 1 on short title and commencement, clause 6 to repeal section 7(6) concerning incitement to disaffection, clause 10 to amend section 12 on evidence by replacing "section 10" with "Part I or this Part" and clause 13 to repeal section 32(1)(h) of the Post Office Ordinance (Cap. 98) relating to seditious publications were carried.

**Third Reading of the Bill**

37. The Bill as amended was passed at the LegCo sitting of 23 June 1997. As a result, the provisions on treasonable offences in section 3 were repealed, the Administration's proposed creation of offences on subversion and secession was repealed, and the Administration's proposal to modify the offences of sedition was passed.

**Crimes (Amendment) (No. 2) Ordinance 1997 (Ordinance No. 89 of 1997)**

38. The Bill as passed by LegCo was assented to by the then Governor and gazetted on 27 June 1997 as Crimes (Amendment) (No. 2) Ordinance 1997 (Ordinance No. 89 of 1997). Under section 1 of this Ordinance, S for S was empowered to appoint a commencement date for this Ordinance. However, no such commencement date has been appointed.

39. A copy of the Crimes (Amendment) (No. 2) Ordinance 1997 and a marked-up copy of the Ordinance as would have been amended by the Crimes (Amendment) (No. 2) Ordinance 1997 are in **Appendices IV and V** respectively.

**Other discussions on Article 23 held by Members in Panels**

Discussions held by Panels

40. The issue of enactment of laws to implement BL23 was raised at meetings of different Panels, including the Panel on Administration of Justice and Legal Services, Panel on Home Affairs and Panel on Security. Some members of the Panel on Home Affairs expressed concern about the human rights aspects, while those of the Panel on Administration of Justice and Legal Services and Panel on Security raised questions about the details of proposed legislation and legislative timetable respectively. A summary of the deliberations at the Panel meetings is given in paragraphs 41 to 47 below.



Meeting of Panel on Home Affairs on 13 March 2000

41. In its Concluding Observations issued on 4 November 1999 on the report of the HKSAR submitted under the ICCPR, the United Nations Human Rights Committee (UNHRC) expressed concern that the offences of treason and sedition under the Crimes Ordinance were defined in overly broad terms, thus endangering freedom of expression guaranteed under Article 19 of ICCPR. UNHRC also stated in its Concluding Observations that all laws enacted under BL23 must be in conformity with ICCPR.

42. At the meeting of the Panel on Home Affairs held on 13 March 2000 to discuss the Concluding Observations, the Administration provided the following response to members' question about the legal and policy considerations of the enactment of laws to implement BL23 and the timetable for introducing them into LegCo -

- (a) BL23 involved complex issues that required careful study and there would be particular regard to the provisions of the ICCPR. The Security Bureau (SB) and the Department of Justice (D of J) were undertaking policy and legal research on the subjects; and
- (b) The legislative proposals for the implementation of BL23 would have to be consistent with the provisions of the ICCPR, the continued application of which to the HKSAR was guaranteed under BL39. When the legislative proposals were ready, there would be extensive public consultation.

43. The minutes of the Panel meeting are available on the RLIS and the LegCo website at <http://www.legco.gov.hk/yr99-00/english/panels/ha/minutes/ha130300.pdf>.

Meeting of Panel on Administration of Justice and Legal Services on 16 October 2000

44. At the meeting of the Panel on Administration of Justice and Legal Services on 16 October 2000, the Secretary for Justice provided the following information in response to a member's question about the progress of legislative proposals to give effect to BL23 and the involvement of D of J in preparing the draft consultation document -

- (a) Legislative proposals and enforcement to deal with the prohibited acts stated in BL23 fell within the policy responsibility of SB. This included the preparation of consultation documents for the purpose of wide public debate on such matters. SB would seek advice from D of J on legal policy issues as well as the drafting of the consultation documents. Acting on an agreed policy, D of J was responsible for drafting the necessary legislation;
- (b) Law drafting concerning BL23 had not commenced yet; and

- (c) D of J had made a comparison of the existing laws with the requirements in BL23. The Administration's view was that the HKSAR should enact new laws because of the inadequacies of the laws currently in force. For example, the concept of secession and subversion against the Central People's Government as well as theft of state secrets was unknown in existing legislation.

45. The minutes of the Panel meeting are available on the RLIS and the LegCo website at <http://www.legco.gov.hk/yr00-01/english/panels/ajls/minutes/aj161000.pdf>.

#### Meeting of Panel on Security on 19 October 2000

46. At the meeting of the Panel on Security on 19 October 2000, a member asked about the Administration's timetable for the enactment of legislation to implement BL23. S for S stated that the Administration had a responsibility to enact legislation to implement BL23. S for S also stated that as the subject was complicated and sensitive, much time was needed for the examination of its policy and legal aspects.

47. The minutes of the Panel meeting are available on the RLIS and the LegCo website at <http://www.legco.gov.hk/yr00-01/english/panels/se/minutes/se191000.pdf>.

#### **Question raised in Council**

48. At the Council meeting on 12 April 2000, Hon SZETO Wah asked the following oral question on BL23 -

"It is learnt that the Government is studying how BL23 can be given effect by way of legislation. In this connection, will the Government inform this Council :

- (a) Of the estimated timetable and current progress of the whole study and legislative process;
- (b) Whether, before submitting the relevant Bill to this Council, it will consult the people of Hong Kong and the Central People's Government; if it will, how and through what channels the consultations will be carried out; and
- (c) Whether it has studied if the definition for "foreign political organisations or bodies" in the above-mentioned Article includes those political organisations or bodies in Taiwan and the Macao Special Administrative Region."

49. S for S made the following points in reply -

- (a) Under BL23, the HKSAR Government was required to enact laws on the seven types of acts listed therein. Laws on these acts were found all over the world. Thus, the HKSAR Government was duty-bound to conduct detailed studies on this matter and work out its own proposals through an appropriate procedure. The work was absolutely essential;
- (b) The Administration was studying how to implement the requirements of BL23. The study was at an early stage and the Administration was in the process of conducting research on the laws and law reform proposals of other jurisdictions, and studying relevant human rights principles. The Administration did not have a firm timetable for completion of the whole process;
- (c) The Administration intended to consult the public after it had drawn up tentative legislative proposals for implementing BL23. This would take place before detailed legislation was prepared. Given that the implementation of BL23 involved questions of national sovereignty, unification and territorial integrity, the Administration envisaged that it would need to exchange views with relevant departments of the Central People's Government before the tentative proposals were finalised. However, no views had been reached regarding the detailed format or time scale of such discussion; and
- (d) As Taiwan and Macao were parts of China, the Administration's understanding was that the "foreign political organisations or bodies" as referred to in BL23 did not include political organisations or bodies in these two places.

50. Regarding whether any legislation thus drawn up would result in retrogression in the current freedom of speech and actions enjoyed by the public, S for S advised that any legislation enacted to implement BL23 had to comply with the provisions of BL39. The Administration would do nothing which might affect the existing human rights and freedoms enjoyed by the people of Hong Kong.

51. On the question of whether the enactment of local legislation for the implementation of BL23 would create more circumstances unique to Hong Kong that curtailed the current human rights protection, S for S stated that the reservations made when international human rights covenants were first applied to Hong Kong would not be further extended because of legislation enacted to implement BL23. S for S stressed that while the Administration had to consider the unique circumstances of Hong Kong and the need for national security, it also had to ensure that the statutory human rights and freedoms stipulated in BL would not be curtailed.

52. On the issue of whether the Administration would disclose the advice given by the Central People's Government to the HKSAR Government and whether the latter would enact laws on its own, S for S advised that the HKSAR would enact laws on its own. Public consultation would be made and the legislative proposal would be tabled before LegCo for open debate and endorsement. The legislative proposal should also be acceptable to the people of Hong Kong. However, it was not the Administration's practice to disclose the views exchanged between the HKSAR Government and the relevant authorities of the Central People's Government.

53. Regarding the question of whether there would be room for the seven types of crimes referred to in BL23 to be defined differently from those in the Mainland, S for S stated that the intent of the BL drafters was to allow the HKSAR Government to enact the laws on its own, and to determine for itself what kinds of laws could both safeguard national security and take account of the unique circumstances of Hong Kong. Thus, the HKSAR Government would have adequate room in the legislative process to study similar laws in other jurisdictions before making any proposals and deciding the types of laws most suitable for Hong Kong.

54. The official record of proceedings of the Council meeting is available on the RLIS and the LegCo website at <http://www.legco.gov.hk/yr99-00/english/counmtg/hansard/000412fe.pdf>.

Council Business Division 2  
Legislative Council Secretariat  
25 September 2002

**CRIMES (AMENDMENT) (NO. 2)  
BILL 1996**

**1996 年刑事罪行(修訂)(第 2 號)  
條例草案**

C2930 CRIMES (AMENDMENT) (NO. 2) BILL 1996

**CRIMES (AMENDMENT) (NO. 2) BILL 1996**

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**1996 年刑事罪行(修訂)(第 2 號)條例草案**

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## A BILL

## To

Amend the Crimes Ordinance and provide for a related matter.

Enacted by the Governor of Hong Kong, with the advice and consent of the Legislative Council thereof.

### 1. Short title and commencement

(1) This Ordinance may be cited as the Crimes (Amendment) (No. 2) Ordinance 1996.

(2) This Ordinance shall come into operation on a day to be appointed by the Secretary for Security by notice in the Gazette.

### 2. Treason

Section 2 of the Crimes Ordinance (Cap. 200) is amended—

- (a) in subsection (1)(c) by repealing “against Her Majesty” and substituting “against the United Kingdom”;
- (b) by repealing subsection (1)(c)(i) and substituting—  
“(i) with the intention of overthrowing the Government of the United Kingdom; or”;
- (c) in subsection (1)(c)(ii) by repealing “Her Majesty to change Her measures or counsels” and substituting “the Government of the United Kingdom to change its policies or actions”;
- (d) in subsection (1)(e) by repealing “Her Majesty” and substituting “the United Kingdom”.

### 3. Treasonable offences

Section 3 is amended—

- (a) by repealing subsection (1)(a);
- (b) in subsection (1)(b)—

- (i) by repealing “Her Majesty” where it first appears and substituting “the United Kingdom”;
- (ii) by repealing “Her Majesty to change Her measures or counsels” and substituting “the Government of the United Kingdom or of such territory to change its policies or actions”.

### 4. Section substituted

Section 5 is repealed and the following substituted—

#### “5. Subversion

A person who—

- (a) does any unlawful act with the intention of overthrowing the Government of the United Kingdom by force;
- (b) incites or conspires with any other person to overthrow the Government of the United Kingdom by force; or
- (c) attempts to overthrow the Government of the United Kingdom by force,

is guilty of subversion and liable on conviction on indictment to imprisonment for 10 years.”

### 5. Section added

The following is added—

#### “5A. Secession

A person who incites or conspires with any other person or who attempts to supplant by force the lawful authority of the Government of the United Kingdom in respect of any part of the United Kingdom or in respect of any British dependent territory is guilty of secession and liable on conviction on indictment to imprisonment for 10 years.”

### 6. Incitement to disaffection

Section 7(6) is repealed.

### 7. Seditious intention

Section 9 is amended—

## 本條例草案

## 旨在

修訂《刑事罪行條例》和就一項有關事宜訂定條文。

由香港總督參照立法局意見並得該局同意而制定。

### 1. 簡稱及生效日期

- (1) 本條例可引稱為《1996年刑事罪行(修訂)(第2號)條例》。
- (2) 本條例自保安司以憲報公告指定的日期起實施。

### 2. 叛逆

《刑事罪行條例》(第200章)第2條現予修訂——

- (a) 在第(1)(c)款中，廢除“向女皇陛下”而代以“向聯合王國”；
- (b) 廢除第(1)(c)(i)款而代以——

“(i) 意圖推翻聯合王國政府；或”；

- (c) 在第(1)(c)(ii)款中，廢除“女皇陛下改變其措施或意見”而代以“聯合王國政府改變其政策或行動”；

(d) 在第(1)(e)款中，廢除“女皇陛下”而代以“聯合王國”。

### 3. 叛逆性質的罪行

第3條現予修訂——

- (a) 廢除第(1)(a)款；
- (b) 在第(1)(b)款中——

- (i) 廢除“向女皇陛下”而代以“向聯合王國”；

- (ii) 廢除“女皇陛下改變其措施或意見”而代以“聯合王國政府或該屬土政府的政府改變其政策或行動”。

### 4. 取代條文

第5條現予廢除，代以——

#### “5. 顛覆

任何人——

- (a) 作出任何非法作為，意圖以武力推翻聯合王國政府；
- (b) 煽惑他人或與他人串謀以武力推翻聯合王國政府；或

(c) 企圖以武力推翻聯合王國政府；

即屬犯顛覆罪，一經循公訴程序定罪，可處監禁10年。”

### 5. 加入條文

現加入——

#### “5A. 分裂國家

任何人煽惑他人、與他人串謀或企圖以武力篡奪聯合王國政府在聯合王國任何部分方面或任何英國屬土方面的合法權限，即屬犯分裂國家罪，一經循公訴程序定罪，可處監禁10年。”

### 6. 煽惑離叛

第7(6)條現予廢除。

### 7. 煽動意圖

第9條現予修訂——

- (a) in subsection (1)(a) by repealing everything after "against" where it first appears and substituting—  
"Her Majesty, the Government of the United Kingdom or the Government of Hong Kong; or";
- (b) in subsection (1)(b) and (d) by repealing "Her Majesty's subjects or inhabitants of Hong Kong" and substituting "Hong Kong residents";
- (c) by repealing subsection (2)(a) and substituting—  
"(a) to show that the Government of the United Kingdom or the Government of Hong Kong is mistaken in any of its policies or actions; or";
- (d) in subsection (2)(c) by repealing "Her Majesty's subjects or inhabitants of Hong Kong" and substituting "Hong Kong residents".

#### 8. Offences

Section 10(1) is amended by adding after "who"—  
", with the intention of causing violence or creating public disorder or a public disturbance".

#### 9. Legal proceedings

Section 11(2) is amended by repealing "section 10" and substituting "Part I or this Part".

#### 10. Evidence

Section 12 is amended by repealing "section 10" and substituting "Part I or this Part".

#### 11. Search warrant

Section 13 is repealed.

#### 12. Power to remove seditious publications

Section 14(1) and (2) is amended by repealing "or public officer".

- (a) 在第(1)(a)款中，廢除在“藐視”之後的所有字句而代以“女皇陛下、聯合王國政府或香港政府，或激起對其離叛；或”；
- (b) (i) 在第(1)(b)款中，廢除“女皇陛下子民或”；  
(ii) 在第(1)(d)款中，廢除“女皇陛下子民間或”；
- (c) 廢除第(2)(a)款而代以——  
“(a) 顯示聯合王國政府或香港政府在其任何政策或行動上犯錯誤；或”；
- (d) 在第(2)(c)款中，廢除“女皇陛下子民或”。

#### 8. 罪行

第10(1)條現予修訂，在“即屬”之前加入“意圖導致暴力或製造擾亂公安或公眾騷亂，”。

#### 9. 法律程序

第11(2)條現予修訂，廢除“10條”而代以“1部或本部”。

#### 10. 證據

第12條現予修訂，廢除“10條”而代以“1部或本部”。

#### 11. 搜查令

第13條現予廢除。

#### 12. 移走煽動刊物的權力

第14(1)及(2)條現予修訂，廢除“或公職人員”。

### Post Office Ordinance

#### 13. Prohibited articles

Section 32(1)(h) of the Post Office Ordinance (Cap. 98) is repealed.

#### Explanatory Memorandum

The purpose of this Bill is to amend Parts I and II of the Crimes Ordinance (Cap. 200) in such a way that they are capable of being readily adapted for the change of sovereignty on 1 July 1997. The existing structure of Parts I and II is retained, but with the following modifications—

- (a) offences of subversion and secession are added, based partly on existing section 3(1)(a) (which is repealed);
- (b) references to Her Majesty are amended to refer to the United Kingdom or the Government of the United Kingdom except where the person of Her Majesty is meant;
- (c) section 5 (assaults on Her Majesty) is repealed;
- (d) references to Her Majesty's dominions, etc., are deleted where that can be done without removing necessary protection for Hong Kong;
- (e) the offence of sedition is modified to reflect the common law;
- (f) sections 11 and 12 (legal proceedings and evidence) are amended to apply generally to offences under Parts I and II, and section 7(6) is repealed consequentially;
- (g) section 13 (search warrant) is repealed as search warrants may be issued under section 50(7) of the Police Force Ordinance (Cap. 232);
- (h) the reference to "public officer" in section 14 is deleted.
2. In addition, section 32(1)(h) of the Post Office Ordinance (Cap. 98) relating to seditious publications is repealed.

### 《郵政署條例》

#### 13. 禁寄物品

《郵政署條例》(第98章)第32(1)(h)條現予廢除。

#### 摘要說明

本條例草案的目的為修訂《刑事罪行條例》(第200章)第I及II部，使該等部分能輕易進行適應化，以配合香港主權在1997年7月1日移交。第I及II部的現時結構予以保留，但作以下修改——

- (a) 加入顛覆及分裂國家罪行，有關條文部分是以建議廢除的第3(1)(a)條為基礎；
- (b) 除用意在提述英女皇本人之處外，提述英女皇之處修訂為提述聯合王國或聯合王國政府；
- (c) 第5條(襲擊英女皇)予以廢除；
- (d) 在能夠刪除提述英女皇領土之處而不致削弱對香港的保障的範圍內，作出該等刪除；
- (e) 修訂煽動罪行，以反映有關的普通法原則；
- (f) 第11及12條(法律程序及證據)予以修訂，使其在一般情況下適用於第I及II部所訂的罪行，而第7(6)條相應地予以廢除；
- (g) 第13條(搜查令)予以廢除，因為可根據《警隊條例》(第232章)第50(7)條發出搜查令；
- (h) 第14條中提述“公職人員”之處予以刪除。
2. 此外，與煽動性刊物有關的《郵政署條例》(第98章)第32(1)(h)條予以廢除。

## CHAPTER 200

CRIMES (AMENDMENT) (NO. 2)  
BILL 1996

## CRIMES

## 2. Treason

- (1) A person commits treason if he—
- (a) kills, wounds or causes bodily harm to Her Majesty, or imprisons or restrains Her;
  - (b) forms an intention to do any such act as is mentioned in paragraph (a) and manifests such intention by an overt act;
  - (c) levies war ~~against Her Majesty~~—
    - (i) ~~with the intent to depose Her Majesty from the style, honour and royal name of the Crown of the United Kingdom or of any other of Her Majesty's dominions; or~~
    - (ii) in order by force or constraint to compel ~~Her Majesty to change Her measures or counsels~~, or in order to put any force or constraint upon, or to intimidate or overawe, Parliament or the legislature of any British territory;
  - (d) instigates any foreigner with force to invade the United Kingdom or any British territory;
  - (e) assists by any means whatever any public enemy at war with ~~Her Majesty~~; or
  - (f) conspires with any other person to do anything mentioned in paragraph (a) or (c).
- (2) Any person who commits treason shall be guilty of an offence and shall be liable on conviction on indictment to imprisonment for life. *(Amended 24 of 1993 s. 2)*  
[*cf. 1351 c. 2 U.K.; 1795 c. 7 s. 1 U.K.; 1817 c. 6 s. 1 U.K.*]

↑ against the United Kingdom

△ (i) with the intention of overthrowing the Government of the United Kingdom; or

△ the Government of the United Kingdom to change its policies or actions

↓ the United Kingdom

## 3. Treasonable offences

- (1) Any person who forms an intention to effect any of the following purposes, that is to say—
- (a) ~~to depose Her Majesty from the style, honour and royal name of the Crown of the United Kingdom or of any other of Her Majesty's dominions;~~
  - (b) to levy war against Her Majesty ~~within the United Kingdom or any British territory~~ in order by force or constraint to compel ~~Her Majesty to change Her measures or counsels~~, or in order to put any force or constraint upon, or to intimidate or overawe, Parliament or the legislature of any British territory; or
  - (c) to instigate any foreigner with force to invade the United Kingdom or any British territory,
- and manifests such intention by an overt act or by publishing any printing or writing, shall be guilty of an offence and shall be liable on conviction upon indictment to imprisonment for life. [*cf. 1848 c. 12 s. 3 U.K.*]
- (2) It shall be no defence to a charge under this section that any act proved against the person charged amounts to treason under section 2, but no person convicted or acquitted of an offence under this section shall afterwards be prosecuted for treason under section 2 upon the same facts. [*cf. 1848 c. 12 s. 7 U.K.*]

↑ the United Kingdom

↓ the Government of the United Kingdom or of such territory to change its policies or actions



|| 5. Assaults on the Queen

Any person who wilfully—

△ > (a) produces or has near Her Majesty any arms or destructive or dangerous thing with intent to use the same to injure Her Majesty;

(b) with intent to alarm or to injure Her Majesty, or to provoke a breach of the peace or whereby a breach of the peace is likely to be caused—

(i) discharges, or points, aims or presents any arms at or near Her Majesty;

(ii) causes any explosive substance to explode near Her Majesty;

(iii) assaults Her Majesty; or

(iv) throws anything at or upon Her Majesty.

shall be guilty of an offence and shall be liable on conviction upon indictment to imprisonment for 7 years.

[cf. 1842 c. 51 s. 2 U.K.]

||  
□ >

△ 5. Subversion

A person who—

(a) does any unlawful act with the intention of overthrowing the Government of the United Kingdom by force;

(b) incites or conspires with any other person to overthrow the Government of the United Kingdom by force; or

(c) attempts to overthrow the Government of the United Kingdom by force,

is guilty of subversion and liable on conviction on indictment to imprisonment for 10 years."

□ 5A. Secession

A person who incites or conspires with any other person or who attempts to supplant by force the lawful authority of the Government of the United Kingdom in respect of any part of the United Kingdom or in respect of any British dependent territory is guilty of secession and liable on conviction on indictment to imprisonment for 10 years."

7. Incitement to disaffection

(1) Any person who knowingly attempts to seduce—

(a) any member of Her Majesty's forces;

(b) *(Repealed 20 of 1997 s. 25)*

(ba) any member of the Government Flying Service; *(Added 54 of 1992 s. 19)*

(c) any police officer; or

(d) any member of the Royal Hong Kong Auxiliary Police Force, from his duty or allegiance to Her Majesty shall be guilty of an offence. [cf. 1934 c. 56 s. 1 U.K.]

(2) Any person who—

(a) knowing that any member or officer mentioned in subsection (1) is about to desert or absent himself without leave, assists him in so doing; or

(b) knowing such member or officer to be a deserter or absentee without leave, conceals him or assists him in concealing himself or assists in his rescue from custody,

shall be guilty of an offence.

(3) Any person who, with intent to commit or to aid, abet, counsel or procure the commission of an offence under subsection (1), has in his possession any document of such a nature that the dissemination of copies thereof among the members or officers mentioned in subsection (1) would constitute such an offence, shall be guilty of an offence. [cf. 1934 c. 56 s. 2(1) U.K.]

(4) Any person guilty of an offence under this section shall be liable on conviction upon indictment to a fine of \$5,000 and to imprisonment for 2 years. [cf. 1934 c. 56 s. 3(1) U.K.]

(5) The court by or before which a person is convicted of an offence under this section may order any documents connected with the offence to be destroyed or dealt with in such other manner as may be specified in the order; but no documents shall be destroyed before the expiration of the period within which an appeal may be lodged, and if an appeal is lodged no document shall be destroyed until after the appeal has been finally determined or abandoned. [cf. 1934 c. 56 s. 3(4) U.K.]

|| ~~(6) No prosecution for an offence under this section shall be instituted without the consent of the Attorney General. [cf. 1934 c. 56 s. 3(2) U.K.]~~

## 9. Seditious intention

- (1) A seditious intention is an intention—
- (a) ~~to bring into hatred or contempt or to excite disaffection against the person of Her Majesty, or Her Heirs or Successors, or against the Government of Hong Kong, or the government of any other part of Her Majesty's dominions or of any territory under Her Majesty's protection as by law established, or~~ ↑ Her Majesty, the Government of the United Kingdom or the Government of Hong Kong; or  
*(Replaced 28 of 1938 s. 2)*
- (b) ~~to excite Her Majesty's subjects or inhabitants of Hong Kong to attempt to procure the alteration, otherwise than by lawful means, of any other matter in Hong Kong as by law established;~~ ↓ Hong Kong residents  
 or
- (c) to bring into hatred or contempt or to excite disaffection against the administration of justice in Hong Kong; or
- (d) to raise discontent or disaffection amongst ~~Her Majesty's subjects or inhabitants of Hong Kong;~~ ↑ Hong Kong residents  
 or
- (e) to promote feelings of ill-will and enmity between different classes of the population of Hong Kong; or
- (f) to incite persons to violence; or *(Added 30 of 1970 s. 2)*
- (g) to counsel disobedience to law or to any lawful order. *(Added 30 of 1970 s. 2)*
- (2) An act, speech or publication is not seditious by reason only that it intends— *(Amended 28 of 1938 s. 2)*
- △ (a) ~~to show that Her Majesty has been misled or mistaken in any of Her measures; or~~ △ (a) to show that the Government of the United Kingdom or the Government of Hong Kong is mistaken in any of its policies or actions; or
- (b) to point out errors or defects in the government or constitution of Hong Kong as by law established or in legislation or in the administration of justice with a view to the remedying of such errors or defects; or
- (c) ~~to persuade Her Majesty's subjects or inhabitants of Hong Kong to attempt to procure by lawful means the alteration of any matter in Hong Kong as by law established; or~~ ↓ Hong Kong residents  
 or
- (d) to point out, with a view to their removal, any matters which are producing or have a tendency to produce feelings of ill-will and enmity between different classes of the population of Hong Kong. *(Amended 28 of 1938 s. 2)*
- (3) *(Repealed 74 of 1992 s. 2)* *(13 of 1938 s. 3 incorporated)*

## 10. Offences

- (1) Any person who ~~↑~~ ↑ , with the intention of causing violence or creating public disorder or a public disturbance
- (a) does or attempts to do, or makes any preparation to do, or conspires with any person to do, any act with a seditious intention; or
- (b) utters any seditious words; or
- (c) prints, publishes, sells, offers for sale, distributes, displays or reproduces any seditious publication; or
- (d) imports any seditious publication, unless he has no reason to believe that it is seditious.
- shall be guilty of an offence and shall be liable for a first offence to a fine of \$5,000 and to imprisonment for 2 years, and for a subsequent offence to imprisonment for 3 years; and any seditious publication shall be forfeited to the Crown. *(13 of 1938 s. 4 incorporated. Amended 22 of 1950 Schedule; 30 of 1970 s. 3)*
- (2) Any person who without lawful excuse has in his possession any seditious publication shall be guilty of an offence and shall be liable for a first offence to a fine of \$2,000 and to imprisonment for 1 year, and for a subsequent offence to imprisonment for 2 years; and such publication shall be forfeited to the Crown. *(13 of 1938 s. 4 incorporated. Amended 22 of 1950 Schedule)*
- (3) Where any person has been convicted of an offence under subsection (1) or (2) in respect of any seditious publication, the court may order the seizure and forfeiture of any copies of the seditious publication in the possession of—
- (a) the person convicted; or
- (b) any other person named in the order, if the court is satisfied by evidence on oath that the copies are in the possession of the other person for the use of the person convicted. *(60 of 1971 s. 19 incorporated) [cf. 1819 c. 8 ss. 1 & 2 U.K.]*
- (4) Any copies seized under subsection (3) shall be disposed of as the court may direct; but no copies shall be destroyed until the expiration of the period within which an appeal may be lodged or, if an appeal is lodged, until the appeal has been finally determined or abandoned. *(60 of 1971 s. 19 incorporated)*
- (5) In this section—
- “seditious publication” (煽動刊物) means a publication having a seditious intention;
- “seditious words” (煽動文字) means words having a seditious intention. *(13 of 1938 s. 2 incorporated)*

## 11. Legal proceedings

- (1) No prosecution for an offence under section 10 shall be begun except within 6 months after the offence is committed.
- (2) No prosecution for an offence under ~~section 10~~ shall be instituted without the written consent of the Attorney General.

↑ Part I or this Part

*(13 of 1938 s. 5 incorporated)*

## 12. Evidence

- No person shall be convicted for an offence under ~~section 10~~ on the uncorroborated testimony of one witness.

↓ Part I or this Part

*(13 of 1938 s. 6 incorporated)*~~13. Search warrant~~

If a magistrate is satisfied by information on oath that there is reasonable cause to believe that an offence under section 10 has been or is about to be committed he may grant a search warrant authorizing any police officer to enter any premises or place named in the warrant, with such assistance as may be necessary, and if necessary by force, and to search the premises or place and every person found therein, and to seize anything found on the premises or place which the officer has reasonable ground for suspecting to be evidence of an offence under section 10.

*(13 of 1938 s. 7 incorporated)*

## 14. Power to remove seditious publications

- (1) Any police officer or ~~public officer~~ may—
- enter any premises or place;
  - stop and board any vehicle, tramcar, train or vessel, and remove therefrom or obliterate any seditious publication.
- (2) Any police officer or ~~public officer~~ may—
- break open any outer or inner door of any premises or place which he is empowered by this section to enter;
  - remove by force any person or thing obstructing any removal or obliteration which he is empowered by this section to make;
  - detain any vehicle, tramcar, train or vessel until any seditious publication has been removed or obliterated therefrom;
  - remove any person from any vehicle, tramcar, train or vessel while any seditious publication is removed or obliterated.
- (3) Notwithstanding anything contained in subsection (1)(a), the powers conferred thereby shall, if the seditious publication is not visible from a public place, only be exercised—
- with the prior permission of the occupier of the premises or place; or
  - under and in accordance with a warrant issued by a magistrate for such purpose.

*(30 of 1970 s. 4 incorporated)*

## 32. Prohibited articles

- (1) No person shall post, tender for posting or send by post—
- any postal packet consisting of or containing anything which might expose postal officials to danger or which might soil or damage any other postal packet;
  - any explosive, inflammable or dangerous substance;
  - any animal or insect, live or dead, except as provided for in any regulations made under this Ordinance;
  - (Repealed 34 of 1971 s. 3)*
  - any opium or any other drug to which the Dangerous Drugs Ordinance (Cap. 134) applies; *(Amended 33 of 1939; G.N. 840 of 1940 Supp. Schedule. See 2 of 1946 Schedule 1 Proc. No. 13)*
  - any obscene, immoral, indecent, offensive or libellous writing, picture or other thing;
  - anything whatsoever of which the importation or circulation is forbidden in Hong Kong or in the country of destination (provided that such country is included in the Universal Postal Union); *(Amended 1 of 1987 s. 8)*
  - ~~any seditious publication within the meaning of any enactment relating to sedition;~~ *(Replaced 33 of 1939; G.N. 840 of 1940 Supp. Schedule)*
  - any postal packet which without lawful authority or excuse contains or bears any imitation or representation of any postage stamp; *(Amended 23 of 1998 s. 2)*
  - any postal packet which purports to be prepaid with any postage stamp which in fact has been used or appears to have been used to prepay any other postal article;
  - any imitation of any envelope, wrapper, card, form or document issued by any postal authority; *(Amended 23 of 1998 s. 2)*
  - any postal packet bearing any imitation of any words, letters or other marks used by any postal authority; *(Amended 23 of 1998 s. 2)*
  - any postal packet bearing without lawful authority any words, letters or other marks calculated to convey the impression that such postal packet has been sent on Her Majesty's service or on Government service; *(Amended 80 of 1997 s. 39)*
  - any lottery ticket, document or other thing relating to an unlawful lottery, other than a lottery promoted, conducted or managed outside Hong Kong; or *(Replaced 46 of 1992 s. 4. Amended 38 of 1994 s. 6)*
  - (Repealed 46 of 1992 s. 4)*
  - anything the sending of which by post is prohibited by any regulation made under this or any other Ordinance.

Ref: CB2/BC/6/96

**Paper for the House Committee  
meeting on 13 June 1997**

**Report of the Bills Committee on the  
Crimes (Amendment)(No. 2) Bill 1996**

## **Purpose**

This paper reports on the deliberations of the Bills Committee on the Crimes (Amendment)(No. 2) Bill 1996 and seeks Members' support for the Bill to resume Second Reading debate on 23 June 1997.

## **Background**

2. Article 23 of the Basic Law (Article 23) provides that the Hong Kong Special Administrative Region (HKSAR) shall enact laws on its own to prohibit, inter alia, any acts of treason, secession, sedition, subversion against the Central People's Government. The LegCo Brief on the Bill has provided the Administration's account of the consultation with the Chinese side of the Joint Liaison Group on the proposals contained in the Bill and the justifications for introducing the Bill.

## **The Bill**

3. The main objects of the Bill are to add the offences of subversion and secession into Part I of the Crimes Ordinance (Cap 200)(the Ordinance) to bring it in line with Article 23 and to modify the existing provisions relating to the offences of treason and sedition in the Ordinance to reflect the common law position.

## **The Bills Committee**

4. At the House Committee meeting on 6 December 1996, Members agreed that a Bills Committee should be formed to study the Crimes (Amendment) (No. 2) Bill 1996. The Bills Committee first met on 18 December 1996 and Hon Albert HO was elected Chairman. The membership list of the Bills Committee is at Appendix I.

5. The Bills Committee has held 13 meetings. In addition to meetings with the Administration, the Bills Committee has met representatives of the Hong Kong Bar Association (the Bar Association), the Law Society of Hong Kong (the Law Society), Justice, Hong Kong Human Rights Monitor and the Hong Kong Journalists Association to listen to their views on the Bill and has sought their comments on the amendments proposed by the Bills Committee.

## **Deliberations of the Bills Committee**

6.The Bills Committee notes that the Administration believes that it has proposed realistic, reasonable and workable amendments to the Ordinance which are, within the context of the Basic Law, consistent with the International Covenant on Civil and Political Rights (ICCPR) and the local legislation. It also believes that the duly amended legislation, after adaptation, could in principle, straddle the Handover. At the same time it emphasizes that it does not intend to bring about any degradation in the existing rights and freedom enjoyed in Hong Kong as a result of the introduction of the Bill.

7.Members also note that the majority of the deputations' view is that Article 23 only imposes a constitutional duty on HKSAR to enact laws to prohibit any acts of treason, secession, sedition and subversion and that it does not itself create statutory offences or prohibit the acts of subversion and secession. In the absence of clear statutory provisions on the offences of subversion and secession, there could not be such offences.

8.The main issues considered by the Bills Committee are summarized in the following paragraphs.

### **The offences of subversion and secession**

9.The legal profession and the other deputations do not support the creation of the offence of subversion on grounds as follows -

- a. It is neither obligatory nor necessary for the Hong Kong Government to legislate on the offence. There is no such offence as subversion and secession in other common law jurisdictions;
- b. Public order is sufficiently safeguarded by a variety of measures and offences including those in the Public Order Ordinance; and
- c. Section 2 of the Ordinance, in its unamended but appropriately adapted form, contains elements of subversion and secession as proposed in the new sections 5 and 5A.

10.As regards the offence of secession, the Law Society, while not directly rejecting the need for legislation, suggests that if the offence is to be created, exclusion provisions should be provided to clarify the areas of activity which are not liable for prosecution and overt acts referred to in the provision should be qualified by the need to establish "clear and present danger" in order to prove the offence. The other deputations do not support the creation of the offence for the same reasons as the offence of subversion. In addition, the Bar Association has pointed out that it is not a criminal offence to plan to supplant the lawful authority of the Government of the United Kingdom by force in respect of any part of the United Kingdom or any dependant territory other than in a treasonable context. The Hong Kong Journalists Association considers that Article 23 should be amended to excise the concepts of subversion and secession which would pose serious threats to the freedom of expression.

11.In the light of the deputations' views and after deliberations, a majority of members conclude that the offences of subversion and secession should not be created. Following further discussion, the Bills Committee unanimously agree to move amendments to delete clauses 4 and 5. They note that in accordance with Article 8 of the Basic Law, the laws previously in force in Hong Kong, inter alia, the common law, shall be maintained after the transfer of sovereignty. Since Hong Kong and most of the other common law jurisdictions do not have such offences and the offensive acts under the

proposed provisions can be dealt with under the existing legislation, it is not necessary to add the two offences into the statute.

12. Although the Democratic Party (DP) does not agree to create the two new offences and maintains that Article 23 should be amended to take out subversion and secession, it nevertheless proposes to incorporate the concepts of subversion and secession into the provisions on treasonable offences, taking into consideration the political reality. It considers that the proposal must be in full compliance with the ICCPR and the Hong Kong Bill of Rights Ordinance (BORO) and after due adaptation, would be workable after the transfer of sovereignty. Therefore the future legislature of HKSAR need not legislate on these offences again and hence the removal of the uncertainty that the present freedom and rights enjoyed in Hong Kong, in particular, the freedom of expression, may be limited or taken away by future legislation.

13. Other members consider that there is no need to set benchmarks or concede the principle for the sake of satisfying the requirements of Article 23. They agree that Article 23 on its own does not have the effect of creating the offences and no case has been made for an immediate need to add such offences in the statute. Furthermore, full and searching discussions in the Bills Committee have failed to reveal any formulation of these offences which does not endanger the rights and freedom of Hong Kong people.

### **Provisions on treason and treasonable offences**

14. Members note that although the Bar Association and Hong Kong Human Rights Monitor support, in principle, the liberalization of the existing law on treason, Justice considers that the modernization and liberalization of the provisions will do more harm than good because the provisions, once amended, will be regarded as new legislation and as a result, the benefit of past judicial interpretations may not be available to an accused person.

15. Members generally agree that the provisions on treason and treasonable offences should not be reformed because of the constraint of time and resources. Such work should be done by a law reform commission instead of a bills committee. Instead the Administration's proposals, which are relatively minor and which would not have a significant impact on the existing understanding of the legal concepts, should be adopted.

16. In order to prepare the legislation for easy adaptation, the Administration proposes in clause 2 to replace the inapplicable reference to Her Majesty by the reference to the state, i.e. the United Kingdom, in section 2(1)(c). A majority of members support the proposal. However, one member considers that section 2(1)(c)(i) should remain intact because the meaning of the substitution is not clear and therefore its legal effects are uncertain. A majority of members agree that section 2(1)(d) and (f) and section 2(2) should remain unchanged while the reference to Her Majesty in section 2(1)(e) should likewise be replaced by the reference to the United Kingdom as proposed by the Administration.

17. Members note that under the existing section 3, the manifestation of an intention to effect any one of the purposes set out in subsection (1)(a) - (c) by an overt act or by publishing any printing or writing shall be guilty of an offence. Since an intention cannot simply be deduced from an overt act and the provision criminalises speech or writing, a majority of members agree to repeal the section.

### **The offence of sedition**

18. Members note that the Bar Association, the Law Society and the Hong Kong Journalists

Association support the repeal of sections 9 and 10 on seditious intention and offences because they are in contravention of the basic rights enshrined in the ICCPR. In addition, both the Law Society and Justice consider that the offence of sedition is archaic, has notorious colonial connotations and is contrary to the development of democracy. It criminalises speech or writing and may be used as a weapon against legitimate criticism of the government. Justice also points out that the offence of sedition has been progressively narrowed by judicial interpretations over the years and that the Administration's proposed addition of the new element to section 10, i.e., an intention to cause violence, create public disorder or public disturbance, makes the provision more restrictive.

19. Following deliberations in the Bills Committee, Hon Emily LAU proposes to repeal sections 9 and 10 because the offence is outdated and draconian. It criminalises expression and the provision on seditious intention can be so broadly interpreted that it is threatening to human rights. She also considers that the Public Order Ordinance already contains adequate provisions on public meetings and processions for the maintenance of public order. Her proposal is supported by Hon Christine LOH, Hon Margaret NG and Hon Mrs Elizabeth WONG.

20. Members of the DP and the Association for Democracy and People's Livelihood (ADPL) hold different views from the above. Although the DP supports, in principle, the deletion of the offence, in view of the political reality that the future legislature of HKSAR would very likely legislate on the offence in accordance with Article 23 and since the offence also exists in some other common law jurisdictions, it considers it desirable to formulate the baseline for the offence which can comply with the ICCPR and the BORO. It therefore proposes that the provision on sedition should not be deleted at the present stage but should instead be amended by -

- a. narrowing the definition of seditious intention in section 9:
- b. providing an additional element of having the purpose of disturbing the "constituted authority" in section 9 to make prosecutions more difficult; and
- c. incorporating Principle 6 of the Johannesburg Principles on National Security, Freedom of Expression and Access to Information (the Johannesburg Principles) in section 10 for better protection of human rights.

Members note that the term "constituted authority" appears in a common law case dealing with provisions similar to section 9(1)(d) and (e) where no target or purpose is stated. In order to give the provisions some meaning and to narrow the scope of the otherwise broad concept, it has been held that the raising of discontent or disaffection, or the promotion of feelings of ill-will and enmity, is for the purpose of disturbing the "constituted authority". Although the term is used in the case laws of other common law jurisdictions such as Australia and Canada, it has remained undefined. For this reason, members consider that if it is agreed that the Bills Committee should move amendments along these lines, the draft amendments should be referred to legal profession and the other deputations for comments.

21. The ADPL also considers that the provision on sedition should not be deleted but should instead be amended by incorporating the Johannesburg Principles and by bringing it in line with the ICCPR so that speech or writing will not be criminalised. It is of the view that any further amendments should be left to the future legislature of HKSAR.

22. As the DP and the ADPL's proposed amendments are similar and they represent the majority view of the Bills Committee, members agree that the Chairman should, on behalf of the Bills Committee, move amendments to sections 9 and 10. They note that Hon Emily

LAU will move amendments to repeal sections 9 and 10.

### **Members' concluding remarks**

23. Members wish to put on record that although they unanimously decide against the proposal to introduce the offences of subversion and secession, they would like to reiterate their support for the introduction of the Bill by the Administration as it has provided the text for discussion and has allowed the public the opportunity to be aware of the discussion

### **Committee Stage Amendments (CSAs)**

24. Copies of the CSAs to be moved by Hon Albert HO, Chairman, on behalf of the Bills Committee are at Appendix II while the CSAs to be moved by the DP and Hon Emily LAU are at Appendices III and IV respectively.

### **Recommendation**

25. The Bills Committee recommends that the Second Reading debate on the Bill be resumed on 23 June 1997.

### **Advice Sought**

26. Members are invited to support the recommendation of the Bills Committee in paragraph 25 above.

LegCo Secretariat  
13 June 1997



**Bills Committee on the Crimes (Amendment)(No. 2) Bill 1996**

**Membership List**

Hon Albert HO Chun-yan (Chairman)

Hon CHEUNG Man-kwong

Hon Frederick FUNG Kin-kee

Hon Emily LAU Wai-hing

Hon James TO Kun-sun

Hon Christine LOH Kung-wai

Hon Andrew CHENG Kar-foo

Hon Bruce LIU Sing-lee

Hon Margaret NG

Hon TSANG Kin-shing

Hon Mrs Elizabeth WONG

Total : 11 Members

## Crimes (Amendment) (No. 2) Bill 1996

## COMMITTEE STAGE

Amendments to be moved by Hon Albert HO Chun-yan

<u>Clause</u>	<u>Amendment Proposed</u>
3	By deleting the clause and substituting - “3. <b>Treasonable offences</b> Section 3 is repealed.”.
4	By deleting the clause and substituting - “4. <b>Assaults on the Queen</b> Section 5 is repealed.”.
New	By adding - “4A. <b>Limitations as to trial for treason, etc.</b> Section 4(1) is amended by repealing “or 3”.”.
5	By deleting the clause.
7	(a) By adding - “(aa) in subsection (1) by repealing “A seditious intention” and substituting “Subject to subsection (3), a seditious intention”.”.

Clause

Amendment Proposed

(b) By deleting paragraphs (c) and (d) and substituting -

“(c) by repealing subsection (2) and substituting -

“(2) An act, speech or publication is not seditious if it intends -

(a) to show that the Government of the United Kingdom or the Government of Hong Kong is mistaken in any of its policies or actions; or

(b) to point out errors or defects in the government or constitution of Hong Kong as by law established or in legislation or in the administration of justice with a view to the remedying of such errors or defects; or

(c) to persuade Hong Kong residents to attempt to procure by lawful means the alteration of any matter in Hong Kong as by law established; or

- 3 -

Clause

Amendment Proposed

(d) to point out, with a view to their removal, any matters which are producing or have a tendency to produce feelings of ill-will and enmity between different classes of the population of Hong Kong.”;

(c) By adding -

“(d) by adding -

“(3) Without affecting the generality of subsection (1), an intention referred to in paragraph (b) or (d) of that subsection is not established unless the purpose for exciting Hong Kong residents or raising discontent or disaffection amongst Hong Kong residents is to disturb the lawful functioning of a constituted authority in Hong Kong.

Clause

Amendment Proposed

- (4) In this section, "constituted authority ( ) means the Government of United Kingdom or the Government of Hong Kong as represented by a person or body holding public office or discharging some public function of the respective governments he or it represents and, in relation to the purpose to disturb within the meaning of subsection (3), at the time of the alleged offence, was acting in that representative capacity."

8

By deleting the clause and substituting -

**"8. Offences**

Section 10 is amended -

- (a) in subsection (1) by repealing "Any person who" and substituting "Subject to subsection (4A), any person who, with intention to cause violence";

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- 5 -

(b) by adding -

“(4A) A person has the intention to cause violence if, at the time of the alleged offence, his intention was only to incite any other person to violence, the occurrence of which was likely or imminent and there was a direct and immediate connection between the acts referred to in subsection (1) and such occurrence or likelihood of occurrence.”

10 May 1997

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CRIMES AMENDMENT (NO.2) BILL 1996

COMMITTEE STAGE

Amendments to be moved by a DP member

Clause

Amendments Proposed

2

By deleting the clause and substituting -

**"2. Treason**

Section 2 of the Crimes Ordinance (Cap. 200) is amended -

(a) in subsection (1) by deleting paragraphs (a), (b), (c) and (f);

(b) in subsection (1)(d), by deleting everything after "United Kingdom", and substituting -

"or part of its territory with the intention of causing an invasion, and where it is likely to cause an invasion;"

(c) in subsection (1)(e) by deleting everything after "assists", and substituting -

"any public enemy at war with the United Kingdom; or".

3

By deleting the clause and substituting -

**"3. Treasonable offences**

Section 3 is repealed and the following substituted -

**"3. Treasonable offences**

(1) Any person who, with the intention of overthrowing the Government of the United Kingdom, uses force or violence to

overthrow the Government of the United Kingdom and where the act is likely to cause the overthrow of the Government of the United Kingdom, shall be guilty of an offence and shall be liable on conviction on indictment to imprisonment for 10 years.

(2) Any person who, with the intention of taking permanent control of any part of the territory of Hong Kong, uses force or violence to take such control by supplanting the lawful authority of the Government of the United Kingdom, where the act is likely to succeed the such control, shall be guilty of an offence and shall be liable on conviction on indictment to imprisonment for 10 years.

(3) Any person who -

(a) attempts to commit an offence under subsections (1) or (2); or

(b) conspires with any other person to commit an offence under subsections (1) or (2),

shall be guilty of an offence and shall be liable on conviction on indictment to imprisonment for 10 years.

(4) No person shall be convicted of an offence under subsections (1), (2) or (3)(a) unless it is proved that the acts were committed in a manner which involved the activities of 2 or more persons associated together solely or partly for the purposes of commission; and where the acts involved substantial planning and organisation."."

4            Clause 4 is deleted.

5            Clause 5 is deleted.



Crimes (Amendment) (No. 2) Bill 1996

COMMITTEE STAGE

Amendments to be moved by Hon Emily LAU

<u>Clause</u>	<u>Amendment Proposed</u>
7	By deleting the clause and substituting - “7. <b>Seditious intention</b> Section 9 is repealed.”.
8	By deleting the clause and substituting - “8. <b>Offences</b> Section 10 is repealed.”.
9	By deleting the clause and substituting - “9. <b>Legal Proceedings</b> Section 11 is amended - (a) by repealing subsection (1); and  (b) in subsection (2) by repealing “section 10” and substituting “Part I or this Part”.”.

Clause

Amendment Proposed

12

By deleting this clause and substituting -

“12. Power to remove seditious publications  
Section 14 is repealed.”.

CRIMES (AMENDMENT) (NO. 2)  
ORDINANCE 1997

1997 年刑事罪行(修訂)(第 2 號)  
條例

A3070 Ord. No. 89 of 1997 CRIMES (AMENDMENT) (NO. 2)

CRIMES (AMENDMENT) (NO. 2) ORDINANCE 1997

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1997 年刑事罪行(修訂)(第 2 號)條例

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## HONG KONG

ORDINANCE No. 89 OF 1997

L.S.

I assent.

Christopher PATTEN,  
Governor.  
26 June 1997

## 香 港

1997年第89號條例

公印位置

本人批准。

彭定康、  
總督  
1997年6月26日

An Ordinance to amend the Crimes Ordinance and provide for a related matter.

本條例旨在修訂《刑事罪行條例》和就一項有關事宜訂定條文。

Enacted by the Governor of Hong Kong, with the advice and consent of the Legislative Council thereof.

由香港總督參照立法局意見並得該局同意而制定。

## 1. Short title and commencement

(1) This Ordinance may be cited as the Crimes (Amendment) (No. 2) Ordinance 1997.

(2) This Ordinance shall come into operation on a day to be appointed by the Secretary for Security by notice in the Gazette.

## 1. 簡稱及生效日期

(1) 本條例可引稱為《1997年刑事罪行(修訂)(第2號)條例》。

(2) 本條例自保安司以憲報公告指定的日期起實施。

## 2. Treasonable offences

Section 3 of the Crimes Ordinance (Cap. 200) is repealed.

## 2. 叛逆性質的罪行

廢除《刑事罪行條例》(第200章)第3條。

## 3. Assaults on the Queen

Section 5 is repealed.

## 3. 襲擊女皇

廢除第5條。

## 4. Limitations as to trial for treason, etc.

Section 4(1) is amended by repealing "or 3".

## 4. 對叛逆等的審訊的限制

第4(1)條現予修訂，廢除“或3”。

## 5. Incitement to disaffection

Section 7(6) is repealed.

## 5. 煽惑離叛

第7(6)條現予廢除。

## 6. Offences

Section 10(1) is amended by adding after "who"—  
", with the intention of causing violence or creating public disorder or a public disturbance".

## 6. 罪行

第10(1)條現予修訂，在“即屬”之前加入“意圖導致暴力或製造擾亂公安或公眾騷亂：”。

## 7. Legal proceedings

Section 11(2) is amended by repealing "section 10" and substituting "Part I or this Part".

## 7. 法律程序

第11(2)條現予修訂，廢除“10條”而代以“1部或本部”。

## 8. Evidence

Section 12 is amended by repealing "section 10" and substituting "Part I or this Part".

## 8. 證據

第12條現予修訂，廢除“10條”而代以“1部或本部”。

## 9. Search warrant

Section 13 is repealed.

## 9. 搜查令

第13條現予廢除。

## 10. Power to remove seditious publications

Section 14(1) and (2) is amended by repealing "or public officer".

## 10. 移走煽動刊物的權力

第14(1)及(2)條現予修訂，廢除“或公職人員”。

## Post Office Ordinance

## 《郵政署條例》

## 11. Prohibited articles

Section 32(1)(h) of the Post Office Ordinance (Cap. 98) is repealed.

## 11. 禁寄物品

《郵政署條例》(第98章)第32(1)(h)條現予廢除。

**3. Treasonable offences**

- (1) Any person who forms an intention to effect any of the following purposes, that is to say—
- to depose Her Majesty from the style, honour and royal name of the Crown of the United Kingdom or of any other of Her Majesty's dominions;
  - to levy war against Her Majesty within the United Kingdom or any British territory in order by force or constraint to compel Her Majesty to change Her measures or counsels, or in order to put any force or constraint upon, or to intimidate or overawe, Parliament or the legislature of any British territory; or
  - to instigate any foreigner with force to invade the United Kingdom or any British territory,
- and manifests such intention by an overt act or by publishing any printing or writing, shall be guilty of an offence and shall be liable on conviction upon indictment to imprisonment for life. [cf. 1848 c. 12 s. 3 U.K.]
- (2) It shall be no defence to a charge under this section that any act proved against the person charged amounts to treason under section 2, but no person convicted or acquitted of an offence under this section shall afterwards be prosecuted for treason under section 2 upon the same facts. [cf. 1848 c. 12 s. 7 U.K.]

## CRIMES (AMENDMENT) (NO. 2) ORDINANCE 1997

000002

**4. Limitations as to trial for treason, etc.**

- (1) A person shall not be prosecuted for any offence under section 2 ~~or 3~~ unless the prosecution is commenced within 3 years after the offence is committed. [cf. 1695 c. 3 s. 6 U.K.]
- (2) This section does not apply to cases in which the overt act alleged is the killing of Her Majesty, or a direct attempt to endanger the life of Her Majesty. [cf. 1800 c. 93 s. 1 U.K.]
- (3) The procedure on trials for treason or misprision of treason shall be the same as the procedure on trials for murder. [cf. 1967 c. 58 s. 12(6) U.K.]

**5. Assaults on the Queen**

Any person who wilfully—

- (a) produces or has near Her Majesty any arms or destructive or dangerous thing with intent to use the same to injure Her Majesty;
- (b) with intent to alarm or to injure Her Majesty, or to provoke a breach of the peace or whereby a breach of the peace is likely to be caused—
  - (i) discharges, or points, aims or presents any arms at or near Her Majesty;
  - (ii) causes any explosive substance to explode near Her Majesty;
  - (iii) assaults Her Majesty; or
  - (iv) throws anything at or upon Her Majesty.

shall be guilty of an offence and shall be liable on conviction upon indictment to imprisonment for 7 years.

[cf. 1842 c. 51 s. 2 U.K.]

**7. Incitement to disaffection**

- (1) Any person who knowingly attempts to seduce—
  - (a) any member of Her Majesty's forces;
  - (b) (Repealed 20 of 1997 s. 25)
  - (ba) any member of the Government Flying Service; (Added 54 of 1992 s. 19)
  - (c) any police officer; or
  - (d) any member of the Royal Hong Kong Auxiliary Police Force,
 from his duty or allegiance to Her Majesty shall be guilty of an offence. [cf. 1934 c. 56 s. 1 U.K.]
- (2) Any person who—
  - (a) knowing that any member or officer mentioned in subsection (1) is about to desert or absent himself without leave, assists him in so doing; or
  - (b) knowing such member or officer to be a deserter or absentee without leave, conceals him or assists him in concealing himself or assists in his rescue from custody,
 shall be guilty of an offence.
- (3) Any person who, with intent to commit or to aid, abet, counsel or procure the commission of an offence under subsection (1), has in his possession any document of such a nature that the dissemination of copies thereof among the members or officers mentioned in subsection (1) would constitute such an offence, shall be guilty of an offence. [cf. 1934 c. 56 s. 2(1) U.K.]
- (4) Any person guilty of an offence under this section shall be liable on conviction upon indictment to a fine of \$5,000 and to imprisonment for 2 years. [cf. 1934 c. 56 s. 3(1) U.K.]
- (5) The court by or before which a person is convicted of an offence under this section may order any documents connected with the offence to be destroyed or dealt with in such other manner as may be specified in the order; but no documents shall be destroyed before the expiration of the period within which an appeal may be lodged, and if an appeal is lodged no document shall be destroyed until after the appeal has been finally determined or abandoned. [cf. 1934 c. 56 s. 3(4) U.K.]
- (6) No prosecution for an offence under this section shall be instituted without the consent of the Attorney General. [cf. 1934 c. 56 s. 3(2) U.K.]

## 10. Offences

- || (1) Any person who
- (a) does or attempts to do, or makes any preparation to do, or conspires with any person to do, any act with a seditious intention; or
  - (b) utters any seditious words; or
  - (c) prints, publishes, sells, offers for sale, distributes, displays or reproduces any seditious publication; or
  - (d) imports any seditious publication, unless he has no reason to believe that it is seditious,

shall be guilty of an offence and shall be liable for a first offence to a fine of \$5,000 and to imprisonment for 2 years, and for a subsequent offence to imprisonment for 3 years; and any seditious publication shall be forfeited to the Crown. (13 of 1938 s. 4 incorporated. Amended 22 of 1950 Schedule: 39 of 1970 s. 3)

(2) Any person who without lawful excuse has in his possession any seditious publication shall be guilty of an offence and shall be liable for a first offence to a fine of \$2,000 and to imprisonment for 1 year, and for a subsequent offence to imprisonment for 2 years; and such publication shall be forfeited to the Crown. (13 of 1938 s. 4 incorporated. Amended 22 of 1950 Schedule)

(3) Where any person has been convicted of an offence under subsection (1) or (2) in respect of any seditious publication, the court may order the seizure and forfeiture of any copies of the seditious publication in the possession of—

- (a) the person convicted; or
- (b) any other person named in the order, if the court is satisfied by evidence on oath that the copies are in the possession of the other person for the use of the person convicted. (60 of 1971 s. 19 incorporated) [cf. 1819 c. 8 ss. 1 & 2 U.K.]

(4) Any copies seized under subsection (3) shall be disposed of as the court may direct; but no copies shall be destroyed until the expiration of the period within which an appeal may be lodged or, if an appeal is lodged, until the appeal has been finally determined or abandoned. (60 of 1971 s. 19 incorporated)

(5) In this section—  
 "seditious publication" (煽動刊物) means a publication having a seditious intention;  
 "seditious words" (煽動文字) means words having a seditious intention. (13 of 1938 s. 2 incorporated)

↑ "with the intention of causing violence or creating public disorder or a public disturbance".

## 11. Legal proceedings

(1) No prosecution for an offence under section 10 shall be begun except within 6 months after the offence is committed.

|| (2) No prosecution for an offence under section 10 shall be instituted without the written consent of the Attorney General. (13 of 1938 s. 5 incorporated)

↑ Part I or this Part

## 12. Evidence

|| No person shall be convicted for an offence under section 10 on the uncorroborated testimony of one witness. (13 of 1938 s. 6 incorporated)

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~~13. Search warrant~~

If a magistrate is satisfied by information on oath that there is reasonable cause to believe that an offence under section 10 has been or is about to be committed he may grant a search warrant authorizing any police officer to enter any premises or place named in the warrant, with such assistance as may be necessary, and if necessary by force, and to search the premises or place and every person found therein, and to seize anything found on the premises or place which the officer has reasonable ground for suspecting to be evidence of an offence under section 10.

(13 of 1938 s. 7 incorporated)

14. Power to remove seditious publications

- || (1) Any police officer ~~or public officer~~ may—
  - (a) enter any premises or place;
  - (b) stop and board any vehicle, tramcar, train or vessel, and remove therefrom or obliterate any seditious publication.
- || (2) Any police officer ~~or public officer~~ may—
  - (a) break open any outer or inner door of any premises or place which he is empowered by this section to enter;
  - (b) remove by force any person or thing obstructing any removal or obliteration which he is empowered by this section to make;
  - (c) detain any vehicle, tramcar, train or vessel until any seditious publication has been removed or obliterated therefrom;
  - (d) remove any person from any vehicle, tramcar, train or vessel while any seditious publication is removed or obliterated.
- (3) Notwithstanding anything contained in subsection (1)(a), the powers conferred thereby shall, if the seditious publication is not visible from a public place, only be exercised—
  - (a) with the prior permission of the occupier of the premises or place; or
  - (b) under and in accordance with a warrant issued by a magistrate for such purpose.

(30 of 1970 s. 4 incorporated)

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32. Prohibited articles

- (1) No person shall post, tender for posting or send by post—
  - (a) any postal packet consisting of or containing anything which might expose postal officials to danger or which might soil or damage any other postal packet;
  - (b) any explosive, inflammable or dangerous substance;
  - (c) any animal or insect, live or dead, except as provided for in any regulations made under this Ordinance;
  - (d) ~~(Repealed 34 of 1971 s. 3)~~
  - (e) any opium or any other drug to which the Dangerous Drugs Ordinance (Cap. 134) applies; *(Amended 33 of 1939; G.N. 840 of 1940 Supp. Schedule. See 2 of 1946 Schedule 1 Proc. No. 13)*
  - (f) any obscene, immoral, indecent, offensive or libellous writing, picture or other thing;
  - (g) anything whatsoever of which the importation or circulation is forbidden in Hong Kong or in the country of destination (provided that such country is included in the Universal Postal Union); *(Amended 1 of 1987 s. 8)*
- || ~~(h) any seditious publication within the meaning of any enactment relating to sedition; (Replaced 33 of 1939; G.N. 840 of 1940 Supp. Schedule)~~
  - (i) any postal packet which without lawful authority or excuse contains or bears any imitation or representation of any postage stamp; *(Amended 23 of 1998 s. 2)*
  - (j) any postal packet which purports to be prepaid with any postage stamp which in fact has been used or appears to have been used to prepay any other postal article;
  - (k) any imitation of any envelope, wrapper, card, form or document issued by any postal authority; *(Amended 23 of 1998 s. 2)*
  - (l) any postal packet bearing any imitation of any words, letters or other marks used by any postal authority; *(Amended 23 of 1998 s. 2)*



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- (m) any postal packet bearing without lawful authority any words, letters or other marks calculated to convey the impression that such postal packet has been sent on Her Majesty's service or on Government service; (*Amended 80 of 1997 s. 39*)
  - (n) any lottery ticket, document or other thing relating to an unlawful lottery, other than a lottery promoted, conducted or managed outside Hong Kong; or (*Replaced 46 of 1992 s. 4. Amended 38 of 1994 s. 6*)
  - (o) (*Repealed 46 of 1992 s. 4*)
  - (p) anything the sending of which by post is prohibited by any regulation made under this or any other Ordinance.
- (2) No person shall post or tender for posting or send by post, in any particular kind of postal packet, anything if the sending of such thing by post in that kind of postal packet is prohibited by any regulation made under this Ordinance.
- (3) The importation by post of anything which is prohibited to be sent by post is prohibited.
- (4) (*Repealed 1 of 1987 s. 5*)
- (5) If any postal packet received by the Post Office from outside Hong Kong for delivery in Hong Kong contains anything the sending of which by post is prohibited by or under this Ordinance, it shall be lawful for a magistrate, upon such notice to the addressee as he may think reasonable, to order that such thing be forfeited to the Crown, and anything so forfeited shall be dealt with in such way as the Governor may direct. (*Amended 1 of 1987 s. 8*)
- (6) It shall be lawful for the Postmaster General to refuse to receive in the post or to refuse to forward anything which, by reason of its nature, contents or form or for any other reason, is not in accordance with any departmental rules made or adopted by him or any departmental practice followed in the Post Office.

[*cf. 1908 c. 48 s. 63 U.K.*]