

Proposals to implement Article 23 of the Basic Law - Comparison of Offences and Penalties

Existing Offences	Proposed Offences (Note 1)	Comparable / Similar Offences in Other Jurisdictions			
		UK	USA	Singapore	Canada
Treason					
Kill, wound or cause bodily harm to the head of state (Cap 200 s 2 – <i>life imprisonment</i>)	To repeal – no longer applicable under the constitutional situation of the HKSAR.	Compass or imagine the death of the King (Treason Act 1351 – <i>life imprisonment</i>)	Kill or attempt to kill or assault the President (18 USCS §1751- <i>death penalty or life imprisonment</i>)	Imagine or intend the death of or hurt to the President (s 121A of the Penal Code – <i>death penalty and fine</i>)	Kill or do bodily harm to Her Majesty (s 46 of the Criminal Code – <i>life imprisonment</i>)
Levy war to depose or compel the sovereign or intimidate the legislature (Cap 200 s 2 - <i>life imprisonment</i>)	Levy war by joining force with a foreigner to overthrow or compel or intimidate the PRC Government (<i>Life imprisonment</i>)	Levy war against the King (Treason Act 1351 – <i>life imprisonment</i>)	Whoever, owing allegiance to US, levies war against them.	Wage war against the Government (s 121 of the Penal Code – <i>death penalty or life imprisonment and fine</i>)	Levy war against Canada (s 46 of the Criminal Code - <i>life imprisonment</i>)
Instigate a foreigner to invade the PRC (Cap 200 s 2 - <i>life imprisonment</i>)	Instigate a foreign armed force to invade the PRC (<i>Life imprisonment</i>)	Stir any foreigner or stranger with force to invade the UK or other dominions (s 3 of the Treason Felony Act 1848 - <i>life imprisonment</i>)	(18 USCS §2381 - <i>death penalty or not less than 5 years and/or fine</i>)	(s 121 of the Penal Code – <i>death penalty or life imprisonment and fine</i>)	Assist an enemy at war or armed forces in hostilities (s 46 of the Criminal Code – <i>life imprisonment</i>)
Assist public enemy at war (Cap 200 s 2 - <i>life imprisonment</i>)	Assist public enemy at war (<i>Life imprisonment</i>)	Adherent to the King’s enemies, giving to them aid and comfort (Treason Act 1351 – <i>life imprisonment</i>)	Adhere to the enemies giving them aid and comfort, giving false report to promote success of enemy (18 USCS §2381 / 2388 – <i>death penalty / up to 20 years and / or fine</i>)	Abet the waging of war against the Government (s 121 of the Penal Code – <i>death penalty or life imprisonment and fine</i>)	Form an intention to do treasonable acts and manifest that intention by overt act (s 46 of the Criminal Code – <i>life imprisonment</i>)
Treasonable Offence - Manifest the intention to levy war or instigate invasion by overt acts. (Cap 200 s 3 - <i>life imprisonment</i>)	To repeal – existing offence is not clearly defined.				
Inchoate and accomplice offences (Common Law / ss 159A and 159G of Cap 200 - <i>life imprisonment</i>)	To codify the inchoate and accomplice offences of treason. (<i>Life imprisonment</i>)	(cont’d) - 1 - Express, utter or declare intention to levy war or stir invasion by any overt	(cont’d) Whoever owing allegiance to US and having knowledge of commission of treason, does not disclose to	(cont’d) Attempt to wage war against the Government	(cont’d) Do any preparatory act or conspire to levy war (s 46 of the Criminal

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<p>Misprision of treason</p> <p>(Knowing that treason is being planned or committed but did not disclose this to a proper authority within a reasonable time)</p> <p>(Common law offence - 7 years and a fine)</p>	<p>Proposed Offences (Note 1)</p>				

Secession					
<p>Broadly covered by Treason - (Cap 200 s 2 - <i>life imprisonment</i>)</p>	<p>Secession - withdraw a part of the PRC from its sovereignty or resist the CPG in exercising its sovereignty over a part of China by levying war, force, threat of force or other serious unlawful means.</p> <p>(<i>Life imprisonment</i>)</p>	<p>Broadly covered by levying war under treason</p> <p>(Treason Act 1351 - <i>life imprisonment</i>)</p> <p>See also “Treasonable Offence” above</p>	<p>Offences relating to advocating the overthrow of the government of any US state or territory by force or violence</p> <p>(18 USCS §2385 - 20 years and / or fine)</p>	<p>Broadly covered by levying war against the Government</p> <p>(s 121 of the Penal Code – <i>death penalty or life imprisonment and fine</i>)</p> <p>Attempt to wage war against the Government</p> <p>(s 121 of the Penal Code – <i>death penalty or life imprisonment and fine</i>)</p>	<p>Broadly covered by levying war against Canada</p> <p>(s 46 of the Criminal Code – <i>life imprisonment</i>)</p> <p>Do any preparatory act or conspire to levy war</p> <p>(s 46 of the Criminal Code - <i>life imprisonment</i>)</p>
<p>Broadly covered by inchoate and accomplice offences of treason</p> <p>(Common Law / ss 159A and 159G of Cap 200 - <i>life imprisonment</i>)</p>	<p>To codify the inchoate and accomplice offences of secession</p> <p>(<i>Life imprisonment</i>)</p>				

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Sedition					
Incite others to commit treason (Common Law – same as substantive offence: <i>life imprisonment</i>)	Incite others to commit treason, secession or subversion (<i>life imprisonment</i>)	See “Treasonable Offence” above Publish seditious words or libel with a seditious intention. Incitement to disorder or violence necessary.	Print, publish, edit, etc any written or printed matter advocating or teaching the overthrow or destruction of the US government by force or violence (18 USCS §2385 - 20 years and / or fine)	Do or attempt / prepare / conspire with others to do any act which has a seditious tendency, or utter seditious words, or deal with seditious publications. (s 3-4 of Sedition Act - 3 years for first offence, 5 years for subsequent ones and / or fine)	Speak seditious words, publish seditious libel or is a party to seditious conspiracy. (s 61 of the Criminal Code - 14 years)
Do or attempt / prepare / conspire with others to do acts with a seditious intention, or utter seditious words. (Cap 200 s 10 – 2 years and \$5,000 for first offence and 3 years for subsequent offences)	Incite others to violence or public disorder that seriously endangers the stability of the state or the HKSAR. (7 years and unlimited fine)	(Common Law Offence - fine or imprisonment at court’s discretion)			
Deal with seditious publication– (i.e. publication having a seditious intention.) (Cap 200 s 10(1) - 2 years and \$5,000 for first offence and 3 years for subsequent ones. Publications to be forfeited)	Knowingly or having reasonable ground to suspect, and without reasonable excuse, deal with seditious publication (i.e. publication that would be likely to incite treason, secession or subversion.) (7 years and \$500,000. Publications to be forfeited)				
Possess seditious publications (Cap 200 s 10(2) - 1 year and \$2,000 for first offence and 2 years for subsequent ones. Publications to be forfeited)	Knowingly or having reasonable ground to suspect, and without reasonable excuse, possess seditious publication (1 year and \$50,000 for first offence and 2 years for subsequent ones. Publications to be forfeited)				
Posting of seditious publications (Cap 98, s 32 - 6 months and \$20,000)	To repeal – offence covered by seditious publications.				

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Subversion					
Treason – levy war to compel the sovereign to change measures or intimidate the legislature. (Cap 200 s 2 – <i>life imprisonment</i>)	To intimidate the PRC Government by levying war, force, threat of force or other serious unlawful means. (<i>life imprisonment</i>)	Treason - levy war to compel Her Majesty to change Her measures, or to intimidate Parliament by overt act or deed. (s 3 of the Treason Felony Act 1848 – <i>life imprisonment</i>)	Engage in any rebellion or insurrection against the authority of the US (18 USCS §2383 – <i>10 years and / or fine</i>)	Restrain or overawe by force the President / member of Parliament with the intention to compel him to exercise or refrain from exercise of his lawful powers. (s 124 of the Penal Code – <i>7 years and fine</i>)	Intimidate Parliament or legislature of a province by violence (s 51 of the Criminal Code – <i>14 years</i>)
Treason - levy war to depose the sovereign. (Cap 200 s 2 – <i>life imprisonment</i>)	To overthrow the PRC Government or disestablish the basic system of the state by levying war, force, threat of force or other serious unlawful means. (<i>life imprisonment</i>)	Treason – levy war to depose the Queen from the crown of the UK by any overt act or deed (s 3 of the Treason Felony Act 1848 - <i>life imprisonment</i>)	Seditious Conspiracy - Two or more persons conspire to overthrow by force the US Government or levy war against it etc. (18 USCS §2384 – 20 years and / or fine)	Deprive or depose the President from the sovereignty of Singapore (s 121B of the Penal Code - <i>life imprisonment and fine</i>)	Treason - use force or violence for the purpose of overthrowing the Government of Canada or a province (s 46 of the Criminal Code – <i>life imprisonment</i>)
Broadly covered by inchoate and accomplice offences of treason (Common Law / ss 159A and 159G of Cap 200 - <i>life imprisonment</i>)	To codify the inchoate and accomplice offences of subversion (<i>Life imprisonment</i>)	see also “Treasonable offence” above	see also “Seditious conspiracy” above	Attempt to wage war against the Government (s 121 of the Penal Code – <i>death penalty or life imprisonment and fine</i>)	Do any preparatory act or conspire to levy war (s 46 of the Criminal Code – <i>life imprisonment</i>)

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Theft of State Secrets					
Spying (Cap 521 ss 3 and 10 - 14 years)	Spying (retain existing penalty - 14 years)	Spying (s 1 of the 1911 Official Secrets Act and s 2 of 1920 Act - liable to penal servitude between 3-14 years)	Spying (18 USCS §793 and 794 - death penalty / life imprisonment / 10 years and / or fine)	Spying (ss 3 and 7 of the Official Secrets Act - 14 years and \$20,000)	Spying (ss 6 and 19 of the Security of Information Act, s 46 of the Criminal Code – life imprisonment / 10 years)
Harbouring spies and other espionage related offences (Cap 521 ss 4-8 and 10 - 2 years on indictment, 3 months and \$25,000 on summary conviction)	Harbouring spies and other espionage related offences (5 years on indictment, 3 years and \$100,000 on summary conviction)	Habouring spies (s 7 of the 1911 Official Secrets Act - 2 years on indictment, 3 months and / or fine on summary conviction)	Harbouring spies (18 USCS §792 - 10 years and / or fine)	Harbouring spies (s 11 of the Official Secrets Act - 2 years and \$2,000)	Habouring spies (s 21 of the Security of Information Act – 10 years)
Unlawful disclosure of information obtained by virtue of official position or unauthorized disclosure. (Cap 521 ss 13-20 and 25 - 2 years and \$500,000 on indictment, 6 months and \$50,000 on summary conviction)	Unlawful disclosure of information obtained by virtue of official position or unauthorized disclosure or unauthorized access . (5 years and \$500,000 on indictment, 3 years and \$50,000 on summary conviction)	Unlawful disclosure (ss 1-6 of the Official Secrets Act 1989 - 2 years and / or fine on indictment, 6 months and fine on summary conviction)	Unlawful disclosure of classified information (50 USCS §783 and 18 USCS §798 - 10 years and / or fine)	Unlawful disclosure (s 5 of the Official Secrets Act - 2 years and \$2,000)	Unlawful disclosure (ss 4, 13, 14, 16-18 of the Security of Information Act – life imprisonment / up to 14 years)
Failure to safeguard protected information or return documents. (Cap 521 ss 22 and 25 - 3 months and \$25,000)	Failure to safeguard protected information or return documents. (Retain existing offences - 3 months and \$25,000)	Failure to safeguard information or return documents (s 8 of the Official Secrets Act 1989 - 3 months and / or fine)		Failure to safeguard information or return documents (s 5 of the Official Secrets Act – 2 years and fine)	Failure to safeguard information or return documents (s 4 of the Security of Information Act – up to 14 years on indictment, 12 months and / or \$2,000 on summary conviction)

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Organized Crime against National Security		
<p>The Societies Ordinance already empowers the Secretary for Security to prohibit the operation of a society on grounds of, <i>inter alia</i>, national security. Such a society would become an unlawful society. It is then an offence to organize or support (e.g. being a member of or providing financial aids to) an unlawful society.</p> <p>(Cap 151 s 8 and ss 18-23 - <i>Up to 3 years and \$100,000</i>)</p>	<p>Organizing or supporting (e.g. being a member of or providing financial aids to) a proscribed organization</p> <p><i>(7 years and unlimited fine)</i></p>	<p>USA</p> <p>Organize any society which advocates the overthrow or destruction of any government in the US by force or violence; become members of such society knowing its purposes.</p> <p><i>(18 USCS §2385 - 20 years and / or fine)</i></p> <p>Singapore</p> <p>Managing or being a member of an unlawful society (i.e. an unregistered society. A society shall be refused registration if its registration would be contrary to the national interest)</p> <p><i>(s 14 of the Societies Act – 5 years or 3 years and / or \$3,000)</i></p>

Note 1: The proposals are based on amendments to existing ordinances, such as the Crimes Ordinance, the Societies Ordinance and the Official Secrets Ordinance. It is not our intention to introduce a new ordinance on national security.

Security Bureau
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