

立法會

Legislative Council

LC Paper No. LS72/02-03

Paper for the Subcommittee on the Draft Criminal Jurisdiction Ordinance (Amendment of Section 2(2)) Order 2002

At the last meeting of the Subcommittee, members asked the Administration to identify the parts of the Consultation Document on proposals to implement Article 23 of the Basic Law that are related to the draft Criminal Jurisdiction Ordinance (Amendment of Section 2(2)) Order 2002 ("the draft Order"). Since the meeting, the National Security (Legislative Provisions) Bill ("the Bill") was submitted to the Legislative Council. The Security Bureau has subsequently issued a paper entitled "LegCo Subcommittee on the draft Criminal Jurisdiction Ordinance (Amendment of Section 2(2)) Order 2002" (LC Paper No. CB(2)1324/02-03(01)). Paragraph 24 of the paper informs members that clause 11 of the Bill is related to the computer offences in the draft Order.

Clause 11

2. Clause 11 proposes to add a new subsection 5A to section 18 of the Official Secrets Ordinance (Cap. 521). Section 18 concerns with information resulting from unauthorized disclosures or illegal access or information entrusted in confidence. The proposed subsection 5A defines what would be illegal access to information or a document or article. Under the subsection, a person would have illegal access to information if the information comes into or remains in his possession by virtue of an offence under, inter alia, section 27A (unauthorized access to computer by telecommunications) of the Telecommunications Ordinance (Cap. 106) and section 161 (access to computer with criminal or dishonest intent) of the Crimes Ordinance (Cap. 200). The two offences are among the three computer offences that the draft Order is proposing to add to the Criminal Jurisdiction Ordinance (Cap. 461). A marked-up copy of section 18 of the Official Secrets Ordinance is in Annex I.

Clause 4

3. Apart from clause 11, clause 4 may also be related to computer crimes. Clause 4 proposes amendments to the Crimes Ordinance (Cap. 200). In the proposed new offence of treason (proposed new section 2), one of the elements is "assist any public enemy at war with the People's Republic of China by doing any act with intent to prejudice the position of the People's Republic of China in the war". Presumably, the "act" above include the use of a computer. The new offence applies to any Chinese national who is a Hong Kong permanent resident in relation to an act done outside Hong Kong.

4. In the proposed offence of subversion (proposed new section 2A), one of the elements of the offence is using force or serious criminal means that seriously endangers the stability of the People's Republic of China. In the proposed section 2A(4)(b), "serious criminal means" include seriously interferes with or disrupts an electronic system.

5. In the proposed offence of secession (proposed new section 2B), one of the elements of the offence is using force or serious criminal means that seriously endangers the territorial integrity of the People's Republic of China, and "serious criminal means" has the same meaning as in the proposed section 2A(4)(b). Subversion and succession would apply to any Hong Kong permanent resident in relation to an act done outside Hong Kong. A marked-up copy of proposed new sections 2, 2A and 2B is in Annex II.

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Encls.

18. ~~Information resulting from unauthorized disclosures or information entrusted in confidence~~

(1) A person who comes into possession of any information, document or other article in circumstances mentioned in subsection (2) commits an offence if he discloses it without lawful authority and knowing, or having reasonable cause to believe, that—

- (a) it is protected against disclosure by any of sections 13 to 17; and
- (b) it has come into his possession as mentioned in subsection (2).

(2) The circumstances referred to in subsection (1) are where any information, document or other article protected against disclosure by any of sections 13 to 17 has come into a person's possession as a result of it having been—

- (a) disclosed (whether to him or another) by a public servant or government contractor without lawful authority;
- (b) entrusted to him by a public servant or government contractor on terms requiring it to be held in confidence or in circumstances in which the public servant or government contractor could reasonably expect that it would be so held; ~~or~~
- (c) disclosed (whether to him or another) without lawful authority by a person to whom it was entrusted as mentioned in paragraph (b); ^{or}

(3) In the case of information or a document or article protected against disclosure by sections 13 to 16, a person does not commit an offence under this section unless—

- (a) the disclosure by him is damaging; and
- (b) he makes it knowing, or having reasonable cause to believe, that it would be damaging.

(4) The question whether a disclosure of information or of a document or other article is damaging shall be determined for the purposes of subsection (3) as it would be determined in relation to a disclosure of that information, document or article by a public servant in contravention of section 14, 15

or 16.

△ Information resulting from unauthorized disclosures or illegal access or information entrusted in confidence

□ (d) acquired by means of illegal access (whether by himself or another) to it, and for the purposes of paragraphs (a) and (b), "public servant or government contractor" includes a person who was formerly a public servant or government contractor where the information, document or article came into his possession when he was such a public servant or government contractor.

↑ 16A'

↓ 16 or 16A'

(5) A person does not commit an offence under this section in respect of information or a document or other article that has come into his possession as a result of it having been disclosed—

- (a) as mentioned in subsection (2)(a) by a government contractor; or
 - (b) as mentioned in subsection (2)(c),
- unless that disclosure was by a British national or Hong Kong permanent resident or took place in Hong Kong.

(6) For the purposes of this section, information or a document or article is protected against disclosure by any of sections 13 to 17 if—

- (a) it relates to security or intelligence, defence [↑] or international relations or is such as is mentioned in section 16(1)(b); or
- (b) it is information or a document or article to which section 17 applies,

and information or a document or article is protected against disclosure by sections 13 to 16 if it falls within paragraph (a).

(7) No person shall be convicted for both an offence under this section and an offence under any of sections 13 to 17 in relation to the disclosure by him of any information or document or other article.

[*cf.* 1989 c. 6 s. 5 U.K.]

(5A) For the purposes of subsection (2), a person has illegal access to information or a document or article if—

- (a) the information, document or article, as the case may be, comes into or remains in his possession by virtue of an offence under—
 - (i) section 27A (unauthorized access to computer by telecommunications) of the Telecommunications Ordinance (Cap. 106);
 - (ii) section 161 (access to computer with criminal or dishonest intent) of the Crimes Ordinance (Cap. 200); or
 - (iii) section 9 (theft), 10 (robbery) or 11 (burglary) of the Theft Ordinance (Cap. 210),
 committed by him in relation to the information, document or article, as the case may be; or
- (b) the information, document or article, as the case may be, comes into or remains in his possession in exchange for an advantage the offer or acceptance of which is an offence under section 4 (bribery) of the Prevention of Bribery Ordinance (Cap. 201).

↑ , international relations or affairs concerning the Hong Kong Special Administrative Region which are, under the Basic Law, within the responsibility of the Central Authorities

↓ 'to 16A'

See page 137 for section 27A of the Telecommunications Ordinance (Cap. 106), page 144 for section 161 of the Crimes Ordinance (Cap 200), page 146 for sections 9, 10 and 11 of the Theft Ordinance (Cap. 210) and page 145 for section 4 of the Prevention of Bribery Ordinance (Cap. 201).

PART I

TREASON

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.]

SUBVERSION AND SECESSION

2. Treason

- (1) A Chinese national commits treason if he—
- (a) with intent to—
 - (i) overthrow the Central People's Government;
 - (ii) intimidate the Central People's Government; or
 - (iii) compel the Central People's Government to change its policies or measures,
 joins or is a part of foreign armed forces at war with the People's Republic of China;
 - (b) instigates foreign armed forces to invade the People's Republic of China with force; or
 - (c) assists any public enemy at war with the People's Republic of China by doing any act with intent to prejudice the position of the People's Republic of China in the war.
- (2) A Chinese national who commits treason is guilty of an offence and is liable on conviction on indictment to imprisonment for life.
- (3) Subsections (1) and (2) apply also to any Chinese national who is a Hong Kong permanent resident in relation to any act referred to in subsection (1) done by him outside Hong Kong.
- (4) For the purposes of this section—
- (a) "foreign armed forces" means—
 - (i) armed forces of a foreign country;
 - (ii) armed forces which are under the direction or control of the government of a foreign country; or
 - (iii) armed forces which are not based in, and are not armed forces of, the People's Republic of China;
 - (b) "public enemy at war with the People's Republic of China" means—
 - (i) the government of a foreign country at war with the People's Republic of China; or
 - (ii) foreign armed forces at war with the People's Republic of China;

For the definition of "Chinese national", see pages 131, 161 [Nationality Law of the PRC] and 162

[Explanations by the Standing Committee of the National People's Congress].

For the definition of "Central People's Government", see page 81. For the definitions of "People's Republic of China" and "State", see page 131.

For the definition of "Hong Kong permanent resident", see pages 138 and 139 [Schedule 1 of the Immigration Ordinance (Cap. 115)].

- (c) a state of war exists when—
 - (i) open armed conflict between armed forces is occurring; or
 - (ii) war has been publicly declared, and “at war” is to be construed accordingly.
- (5) The common law offence of misprision of treason is abolished.
- (6) The common law offence of compounding treason is abolished.

2A. Subversion

- (1) A person commits subversion if he—
 - (a) disestablishes the basic system of the People’s Republic of China as established by the Constitution of the People’s Republic of China;
 - (b) overthrows the Central People’s Government; or
 - (c) intimidates the Central People’s Government,
 by using force or serious criminal means that seriously endangers the stability of the People’s Republic of China or by engaging in war.
- (2) A person who commits subversion is guilty of an offence and is liable on conviction on indictment to imprisonment for life.
- (3) Subsections (1) and (2) apply also to any Hong Kong permanent resident in relation to any act referred to in subsection (1) done by him outside Hong Kong.
- (4) For the purposes of this section—
 - (a) the expression “engaging in war” is to be construed by reference to the meaning of the expression “at war” in section 2(4)(c);
 - (b) “serious criminal means” means any act which—
 - (i) endangers the life of a person other than the person who does the act;
 - (ii) causes serious injury to a person other than the person who does the act;
 - (iii) seriously endangers the health or safety of the public or a section of the public;
 - (iv) causes serious damage to property; or
 - (v) seriously interferes with or disrupts an electronic system or an essential service, facility or system (whether public or private),
 and—
 - (vi) is done in Hong Kong and is an offence under the law of Hong Kong; or
 - (vii) (A) is done in any place outside Hong Kong; (B) is an offence under the law of that place; and (C) would, if done in Hong Kong, be an offence under the law of Hong Kong.

For the definition of “terrorist act” in section 2 of the United Nations (Anti-Terrorism Measures) Ordinance (Cap. 575), see page 160.

2B. Secession

(1) A person commits secession if he withdraws any part of the People's Republic of China from its sovereignty by—

(a) using force or serious criminal means that seriously endangers the territorial integrity of the People's Republic of China; or

(b) engaging in war.

(2) A person who commits secession is guilty of an offence and is liable on conviction on indictment to imprisonment for life.

(3) Subsections (1) and (2) apply also to any Hong Kong permanent resident in relation to any act referred to in subsection (1) done by him outside Hong Kong.

(4) For the purposes of this section—

(a) the expression "engaging in war" is to be construed by reference to the meaning of the expression "at war" in section 2(4)(c);

(b) "serious criminal means" has the same meaning as in section 2A(4)(b).