LC Paper No. CB(2) 814/02-03(01)

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

Summary of concerns and queries raised by Members at the joint meetings on 26 September, 21 October and 19 December 2002

A. General issues

Major area	Concerns and queries raised by Members	Administration's response
1. Timing to enact laws to implement Article 23 of the Basic Law	(a) The phrase "enact laws on its own" in Article 23 of the Basic Law (BL23) meant that the Hong Kong Special Administrative Region (HKSAR) could decide when and how local legislation was to be introduced. It was presently not an appropriate time to enact laws to implement BL23. (b) There was no need to pass any legislative proposals in a hurry, especially in view of the fact that there had not been any cases of treason or sedition in the past five years after Reunification.	(i) With matters of principle having been discussed and the detailed proposals being made available, and with sufficient time to examine professional views, there was no reason why the legislation to be proposed could not be enacted in July 2003, especially under the principle that any matter should be dealt with efficiently. It was undesirable to leave a gap in the legislation of Hong Kong.
	(c) What was the way forward and timetable regarding the Administration's proposals to implement BL23.	(ii) The Administration intended to issue a report setting out the pattern of views received in the public consultation exercise. The submissions received would be made public, unless requested otherwise, with the report. The Administration also hoped to make public the way forward, both in terms of the timetable and its latest position on the proposals in the Consultation Document.

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		(iii) It was the Administration's intention that the draft legislative provisions would be supplemented by explanations in layman terms to facilitate the public's understanding of the provisions.
	(d) Whether legislation to implement BL23 must be enacted by July 2003.	(iv) While the Administration hoped that legislation to implement BL23 would be enacted by July 2003, it was not a deadline for the enactment of such legislation.
	(e) What was the timetable for the issuing of the draft provisions.	(v) The Administration hoped to issue the report on the consultation exercise in January 2003 and introduce a blue bill in February 2003.
2. Consultation with the Central People's Government	(a) Whether the Administration had discussed and reached an agreement with the Mainland regarding its proposals and legislative timetable to implement BL23.	(i) Consultation had been made with the Central People's Government (CPG) on matters of principle and concepts such as national security, territorial integrity and unity. Technical issues, points of law and enforcement aspects would be dealt with by the HKSAR on its own. (ii) The common wish regarding the legislative timetable was that the proposals to implement BL23 should be enacted as soon as possible.

A. General issues		
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3. Issuing of a white bill	(a) The Administration should, after the consultation period, issue a white bill in early 2003 setting out the details of legislative proposals to implement BL23 for a consultation period of a few months before introducing a blue bill in mid-2003.	(i) It was not the Administration's usual practice to issue a white bill before the introduction of a blue bill.
	(b) From a constitutional point of view, a white bill differed from a blue bill in that the Administration had not taken a position on the provisions to be enacted and the legislative process had not yet commenced.	(ii) The introduction of a blue bill after the consultation period would be the most efficient way to deal with the matter. A blue bill and a white bill could equally serve the purpose of providing details about the legislative proposals.
	(c) Why the Administration would not issue the draft legislative provisions in the form of a white bill, which would set out the draft provisions clearly while providing room for public discussion. (d) A white bill differed from a blue bill in that the Administration did not take a stand on the proposals in a white bill, while it took a stand on the proposals in a blue bill. After a blue bill was introduced into LegCo, it would be up to the Bills Committee formed to study the bill to decide how to carry out public consultation, including the scope and period of consultation.	(iii) It was the Administration's general practice to issue a blue bill after a public consultation exercise. Over the past 18 years, only 18 white bills had been introduced, among which three were subsequently withdrawn. The Administration considered that what could be achieved by way of a white bill could also be achieved by way of a blue bill. (iv) The Administration did not take a stand on a white bill. However, the issuing of a blue bill did not mean that the Administration had taken a stand on the blue bill.

A. General issues		
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	(e) A white bill differed from a blue bill in that the former could not be enacted by LegCo.	
4. Human rights implications	(a) Whether the enacted legislation would override existing provisions in the Hong Kong Bill of Rights Ordinance (BORO).	(i) The enacted legislation would not override the provisions in BORO. Under BL39, the laws enacted by the HKSAR ought to be consistent with the provisions in International Covenant on Civil and Political Rights (ICCPR).
	(b) Whether the proposed proscription mechanism would restrict freedom of association. (c) Whether the increase in Police power arising from the proposed emergency powers for investigating some BL23 offences would undermine the human rights of the people of Hong Kong.	(ii) The human rights enjoyed by the people of Hong Kong, such as the freedom of speech, freedom of expression, freedom of association and freedom of assembly, would not be undermined. Where an act had gone beyond the limits and was in breach of local legislation, it would become an offence and it would no longer be a matter of freedom.
	(d) The Chief Executive of the HKSAR (CE) had emphasised on 24 September 2002 that the Administration's proposals would not undermine in any way the existing human rights and civil liberties enjoyed by the people of Hong Kong. With the proposals regarding secession and the proposed proscription of organisations affiliated with a proscribed Mainland organisation, how	(iii) Holding or expression of opinions would not constitute an offence under the Administration's proposals. Thus, the rights as guaranteed under the ICCPR would not be undermined. (iv) In respect of the legislation to be proposed on secession, there would not be any extension of the existing criminal law in relation to acts or

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	CE could conclude that the existing human rights enjoyed by the people of Hong Kong would not be undermined.	speech of people.
	(e) The last sentence of paragraph 1.11 of the Consultation Document indicated that the proposals would impose restrictions on human rights and freedoms. Whether this indicated that the rights and freedoms enjoyed by the people of Hong Kong would be infringed.	(v) The rights enshrined in ICCPR could be restricted in certain circumstances, such as for the purpose of national security. The proposals in the Consultation Document were therefore not infringing ICCPR or human rights.
5. Rendition-related issues	(a) Whether people who committed offences such as subversion, sedition or theft of state secrets in the Mainland and escaped to Hong Kong might be surrendered to the Mainland for trial, after legislation to implement BL23 was enacted and a rendition agreement was reached between the Mainland and Hong Kong. (b) Whether the Administration would take steps to ensure that the offences under legislation to implement BL23 would not be covered by the rendition agreement, if any, to be reached between the Mainland and Hong Kong.	(i) There was not yet a rendition agreement between the Mainland and the HKSAR. (ii) None of the extradition agreements entered into by Hong Kong and other countries covered such offences. A person could be extradited only if the offence concerned fell within the list under the agreement and that it was an offence in both jurisdictions. It was not a practice at the international level to extradite individuals for offences endangering national security.

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6. Proscription of local organisations	(a) While the Societies Ordinance (SO) sought to prohibit the operation of a society which had a connection with a foreign political organisation or a political organisation of Taiwan, the Administration proposed to extend the coverage to a society which had a connection or affiliation with a proscribed Mainland organisation. (b) BL23 provided, among others, that the HKSAR should enact laws to prohibit foreign political organisations or bodies from conducting political activities in the HKSAR. It was doubtful whether the proposed proscription of an organisation affiliated to a proscribed Mainland organisation was within the scope BL23, as it was not a foreign organisation.	(i) SO was not only restricted to a society which had connection with a foreign political organisation or a political organisation of Taiwan. Existing provisions in SO already provided for the Societies Officer to recommend to the Secretary for Security (S for S) the making of an order prohibiting the operation or continued operation of a society on the grounds of national security, public safety or public order (ordre public). (ii) Even after S for S had proscribed a local organisation, the proscription would not come into force until the appeal process was concluded. Where a proscription came into force, it only involved prohibiting the operation of an organisation but not the arrest of persons.
	(c) Proscriptions made by the Central Authorities were based on rule of man rather than common law principles. The proposed proscription mechanism might result in the introduction of Mainland's rule of man and legal system into Hong Kong. This would undermine the rule of law and the legal system in Hong Kong.	(iii) As the continental law system was adopted in the Mainland, a decision of the Central Authorities to proscribe a Mainland organisation in the Mainland was not made in accordance with the common law. It was a lawful decision made in accordance with national laws on the ground that the particular Mainland organisation endangered national security.

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	(d) Whether it was appropriate for S for S to proscribe a local organisation on the basis of a proscription by the Central Authorities of a Mainland organisation to which it was affiliated.	(iv) There was no reason why Hong Kong should not consider whether such a decision made in accordance with the law by the Central Authorities, especially under the "one country" principle, would impact on Hong Kong. (v) Before proscribing a local organisation affiliated with a proscribed Mainland organisation, S for S had to be satisfied by evidence that it was affiliated to the proscribed organisation in the Mainland, and there was a threat to national security that it was both necessary and proportionate to proscribe the local organisation. S for S's power of proscription was subject to the safeguards of appeal to an independent tribunal on points of fact and the court on points of law, and the ordinary remedy of judicial review.
	(e) Whether S for S or the court could come to the decision that a local organisation should not be proscribed, if the CPG had certified that a Mainland organisation to which the local organisation was affiliated had been proscribed on the ground of national security.	(vi) The proscription of a Mainland organisation by the Central Authorities would be a fact that the court must accept. However, sufficient evidence admissible to the court would have to be presented by the prosecution to prove that the local affiliated organisation was a threat to national security.

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	(f) Why an independent tribunal was to be established to consider points of fact while the court would only consider points of law.	(vii) It was an established practice to establish tribunals to handle appeals on points of facts, while appeals regarding points of law were dealt with by the court. The decision of the tribunal was subject to judicial review.
	(g) It would be very difficult for an accused to defend himself, if information heard by the independent tribunal was confidential.	(viii) As the nature of evidence likely to be considered in an appeal was highly confidential, the establishment of an independent tribunal was appropriate. Special tribunals were also established in many other jurisdictions to deal with similar matters.
	(h) If the CPG certified that a Mainland organisation was proscribed on national security ground, and that a certain organisation in Hong Kong was affiliated to that proscribed organisation, the proscription and certification would be an act of state over which the courts of Hong Kong had no jurisdiction.	(ix) A certification by the Mainland authorities of the proscription of a Mainland organisation would be conclusive evidence that the Mainland organisation had been proscribed in the Mainland on the grounds of national security. It would not be conclusive for any other purpose.

A. General issues

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	(i) Whether the "points of fact" as referred to in paragraph 7.18 of the Consultation Document were "facts concerning acts of state" as referred to in BL19.	(x) In relation to a Mainland proscription, the Administration was proposing a system of certification which was similar to that referred to in BL19. However, it did not mean that the proposed system would operate under BL19. It only meant that the court must accept the fact that the Mainland organisation had been proscribed, if there was a certificate to such effect. (xi) While a decision by the Mainland to proscribe a Mainland organisation would be based on the interpretation of national security in the Mainland, S for S would make an independent decision as to whether a local organisation was a threat to national security.
	(j) Whether a local organisation would be automatically proscribed, once any of the three pre-conditions set out in paragraph 7.15 of the Consultation Document was satisfied.	(xii) The proscription was not automatic. If S for S proscribed a local organisation merely on the basis of one of the three pre-conditions without examining whether the local organisation was a threat to national security as defined in the laws of Hong Kong, the decision might be struck down by the court.

A. General issues		
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	(k) Why the proposal in paragraph 7.15(c) of the Consultation Document was needed and whether the proposals in paragraph 7.15(a) and (b) would already be adequate in relation to the power to proscribe a local organisation.	(xiii) Existing provisions in SO provided for the Societies Officer to recommend to S for S the making of an order prohibiting the operation or continued operation of a society on the grounds of national security, public safety or public order (ordre public). In the event that there was serious social instability in the Mainland, which had not occurred in the past 53 years, the HKSAR, as a part of the PRC, had a responsibility to consider whether it was necessary to take actions for national security reasons against a local organisation affiliated to a Mainland organisation which had been proscribed in the Mainland.
	(l) Whether the proposed certification by the CPG would only be confined to the proscription of a Mainland organisation in the Mainland on national security grounds.	(xiv) The proposed certification by the CPG would only be confined to the proscription of a Mainland organisation in the Mainland on national security grounds.
	(m) It seemed that Mr David PANNICK had not considered whether the proposed proscription of a local organisation affiliated to a Mainland organisation proscribed in the Mainland was necessary and proportionate to the requirements relating to foreign political organisations in BL23.	(xv) The proscription of a local organisation was directed at activities endangering national security and therefore within the ambit of BL23. The proposal on the proscription of an organisation was related to BL23 generally. As Mr David PANNICK was an expert in human rights, he would not have overlooked whether

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	(n) Whether Mr PANNICK's opinion had addressed the question of whether the proposed proscription mechanism was necessary for the purpose of national security.	the proposals were justified as necessary and proportionate. The proposal could be justified because it was limited in application to situations where proscription was necessary and proportionate.
	(o) If the proscription of an organisation was mainly based on whether the organisation endangered national security and had to be made in accordance with the laws of Hong Kong, the determination of whether an organisation was affiliated to a Mainland organisation proscribed in the Mainland might be unnecessary.	(xvi) The proposal in paragraph 7.15(c) of the Consultation Document was necessary for triggering off the proscription of a local organisation which had not yet endangered national security but where there were clear indications that it would do so.
	(p) Why the proscription of a local organisation only involved prohibiting the operation of an organisation but not the arrest of persons.	(xvii) After the proscription of an organisation had come into force, it would be an offence to organise or support activities of the proscribed organisation. The concept of "support" included, for example, being a member of; providing financial assistance, other property or facilitation to; and carrying out the policies and directives of the proscribed organisation.

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	(q) What was the Administration's position regarding the opinion of some people that the proposed establishment of an independent tribunal to consider points of fact while the court would consider points of law implied disrespect for the court.	(xviii) The proposed establishment of a tribunal would provide a mechanism for handling appeals on points of fact in a fast and simple manner. The proposal would not imply any disrespect for the court or undermine the power of the court. Under the current laws, there was normally no appeal to the court on facts. The proposal only involved the creation of an additional channel for handling appeals on matters of fact. The Administration was considering the suggestion of leaving appeals on points of fact to the court.

B. Issues specific to major areas in the Consultation Document

Major area	Concerns and queries raised by Members	Administration's response
1. Treason	No specific concern or query was raised	
2. Secession	(a) In the event that the Mainland decided to reunite with Taiwan with the use of force, whether a person would be in breach of the legislation on secession if he expressed the opinion that the Mainland should not use force to reunite with Taiwan or that any resistance by Taiwan under such a situation was legitimate.	(i) Holding or expressing opinion, which were different from incitement, would not amount to an offence of secession.
3. Sedition	(a) Examples should be provided to illustrate contents that would render a document falling into the definition of a seditious publication.	(i) The Administration proposed to narrow down the definition of seditious publications to publications that would incite the crime of treason, secession or subversion. (ii) Distinguishing whether a publication was seditious was not in practice very difficult.
	(b) Whether giving speeches or donation to support peaceful civil disobedience in the Mainland which caused serious disruption of an essential service would be in breach of provisions relating to sedition.	(iii) Adequate and effective safeguards would be in place to protect the freedoms of demonstration and assembly, etc. as guaranteed by BL, including peaceful assembly or advocacy. Thus, peaceful assembly or peaceful advocacy should not amount to an offence of secession. However, whether a specific act would amount to an offence would depend on the facts of each case.

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	(c) Whether the possession of seditious publications by libraries or by individuals for personal use would not be an offence.	(iv) There were various suggestions on the proposals regarding the possession of seditious publications. These included the addition of a defence provision, providing an offence for the possession of a large number of the same seditious publication and repealing the offence of possession of seditious publications. However, the Administration had not reached a conclusion in respect of possession of seditious publications.
4. Subversion	No specific concern or query was raised	
5. Theft of state secrets	(a) Elaboration should be made on the type of information that would fall within the meaning of information relating to relations between the Central Authorities of the People's Republic of China (PRC) and the HKSAR.	(i) Information relating to relations between the Central Authorities of the PRC and the HKSAR could be defined in a manner similar to information related to international relations under section 16(1) of the Official Secrets Ordinance (OSO). (ii) While the scope of section 16(1) of OSO might appear broad, no person had been prosecuted for such an offence in the past.

B. Issues specific to major areas in the Consultation Document

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	(b) Whether certain information fell within the meaning of state secret was to be determined solely by Hong Kong or could also be determined by the Mainland. (c) Whether a Hong Kong court could determine that certain information was not state secret, if the Mainland had already determined that the information was state secret.	(iii) Whether certain information was state secret had to be determined in accordance with the laws of Hong Kong. Under sections 13 to 17 of OSO, four types of information were protected. The meaning of official secret as defined in the legislation of Hong Kong was determined by LegCo through the legislative process.
	(d) Whether the disclosure in Hong Kong of Mainland economic information regarded as state secret by the Mainland would be an offence under the proposals relating to theft of state secrets.	(iv) Cases that occurred in the Mainland were dealt with in accordance with Mainland laws, while cases that occurred in Hong Kong were dealt with in accordance with the laws of Hong Kong. Economic and technological information did not fall within the four types of protected information as set out in OSO. OSO further required the disclosure to be damaging and provided the meaning of a damaging disclosure. Thus, the disclosure of such kind of information in Hong Kong would not be an offence under OSO.

B. Issues specific to major areas in the Consultation Document		
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	(e) Where the Mainland had certified that certain information was state secret and that the disclosure of such information would endanger the State, whether the court would determine on its own whether such information was state secret.	(v) Whether a person had made an unlawful disclosure of protected information was to be determined by a Hong Kong court in accordance with the laws of Hong Kong. Even where a person in Hong Kong was accused of theft of state secret in the Mainland, it should be noted that there was not yet an agreement between the HKSAR and the Mainland on the surrender of fugitive offenders. (vi) The determination of whether certain information fell within the meaning of protected information and whether a disclosure was damaging was to be determined by the court in accordance with the laws of Hong Kong.
	(f) Whether Hong Kong would determine solely whether certain information fell within the meaning of information relating to relations between the Central Authorities of the PRC and the HKSAR.	(vii) Prior to Reunification, information relating to the relationship between Hong Kong and the Mainland was protected as "information relating to international relations". After Reunification, it would no longer be appropriate to protect such information under

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	(g) Whether a Hong Kong court would consider a certification by the Mainland that certain information was related to relations between the Central Authorities of the PRC and the HKSAR.	the rubric of "international relations". The protection of information relating to relations between the Central Authorities of the PRC and the HKSAR was proposed only as an adaptation of laws. (viii) A number of requirements, including the requirement that the disclosure had to be damaging, would have to be satisfied before a disclosure relating to relations between the Central Authorities of the PRC and the HKSAR could be classified as unlawful. (ix) All relevant information, including a certification by the Mainland and the view of the Administration, would be considered before a decision was made on whether to prosecute a person. Where the CPG had expressed its view about whether certain information was protected information, the HKSAR Government would certainly consider such a view. However, it was eventually the HKSAR Government which instituted the prosecution and the Hong Kong court which determined whether certain information was related to relations between the Central Authorities of the

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		PRC and the HKSAR, and whether the disclosure was damaging. (x) Whether certain information fell within the definition of protected information under OSO was a question of law. The HKSAR Government and any other person could make submissions to the court. The final decision rested with the court.
	(h) Whether the defence and security-related information proposed to be protected under OSO was information relating to defence and foreign affairs referred to in BL19, in which Hong Kong had no jurisdiction. (i) Whether the Mainland could issue a certification stating that certain information was defence information, security information or information relating to international relations.	(xi) There was a provision in BL19 for certification in relation to questions of fact concerning act of state such as defence and foreign affairs. It was the Administration's view that the term "act of state" in BL19 had a very limited scope and could be interpreted in accordance with the common law to deal with the activities referred to in paragraph 5 of the Administration's paper on act of state. (xii) A certificate of fact would have to be related to these types of acts of state. This was different from the suggestion that a certification procedure would apply whenever an issue relating to defence or foreign affairs arose. Defence and international relations were defined in OSO, which had to be applied on its

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		own terms. In most unusual circumstances would there be a certification under BL19.
	(j) Besides the media, there were many people involved in gathering information in their work, including analysts and university researchers, who had expressed concerns about the proposals in the Consultation Document. Many people opposed to the proposal of including information relating to relations between the Central Authorities of the PRC and the HKSAR as protected information. The Administration should disclose to the public information about its communications with the CPG instead of classifying such information as protected information.	(xiii) The relationship between Hong Kong and the PRC fell within international relations before Reunification. After Reunification, it would no longer be appropriate to protect such information under "information relating to international relations". The protection of information relating to relations between the Central Authorities of the PRC and the HKSAR was proposed only as an adaptation of laws. (xiv) Although the HKSAR Government was more open than the former Hong Kong Government, there was a need to protect information communicated between the CPG and the HKSAR. (xv) The Administration was aware that besides the media, some people had expressed concerns about the proposals in the Consultation Document. For example, some librarians had expressed concerns about proposals relating to possession of seditious publications. The Administration considered that the maintenance

B. Issues specific to major areas in the Consultation Document		
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		of publications by libraries should not amount to possession of seditious publications.
	(k) Whether the Mainland or the HKSAR courts would decide whether a document issued by the Ministry of State Security fell within the meaning of security or intelligence information. (l) If it was within the jurisdiction of the HKSAR courts, what kinds of evidence would the prosecution introduce to prove that a document issued by the Central Authorities fell within the definition of security or intelligence. (m) Whether the Administration could confirm that it would never resort to a certificate under BL19 in prosecutions under OSO.	(xvi) Whether certain information fell within the meaning of security or intelligence was to be determined by the court in accordance with OSO. (xvii) Section 18 of OSO only made it an offence if a person knew or had reasonable cause to believe that the information was protected against disclosure by the relevant sections of OSO. BL19 was irrelevant to the classification of information for the purposes of OSO. The reference to defence and foreign affairs in BL19 did not mean that anything relating to defence and foreign affairs was an act of State. (xviii) Whether certain information fell within the protected categories should be determined by the HKSAR courts in accordance with the provisions in OSO. Under the proposals in the Consultation Document, there was no plan for any formal certification. Under the laws of evidence, one would need to introduce matters of fact rather than producing certificates. Certificates were not binding on HKSAR courts.

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	(n) Whether the court would, in the determination of whether a document of the Central Authorities fell within the meaning of official secret, have regard to the classification of official secrets in the Mainland. If that was the case, it might lead to the introduction of the Mainland system of classification of official secrets into Hong Kong.	(xix) The Administration did not consider that the Mainland laws or Mainland system of classification was totally relevant. The term "official secret" did not appear in the laws of Hong Kong. The major issue to be determined was not whether certain information was classified in any jurisdiction, but whether the information fell within the definition of protected information in OSO.
	(o) In the case where Mainland information was disclosed, whether the Mainland authorities could determine that such information related to security or intelligence and whether the disclosure was damaging.	(xx) There was no plan to provide for any formal certification that would be binding on the court. Evidence would have to be presented as usual to prove either that the disclosure was damaging or was likely to be damaging.
6. Foreign political organisations	No specific concern or query was raised	
7. Investigation powers	(a) With the emergency power of entry, search and seizure provided to the Police for investigating some BL23 offences, no one would be willing to provide the media with any information, thus undermining press freedom.	(i) The emergency powers could only be exercised in relation to the offences set out in Annex 1 of the Consultation Document.

B. Issues specific to major areas in the Consultation Document

Major area	Concerns and queries raised by Members	Administration's response
	(b) How and who to decide whether an emergency situation had arisen.	(ii) The emergency powers were proposed to be exercised only by a sufficiently senior Police officer who had reasonable grounds to believe that - - a relevant offence had been committed or was being committed; - unless immediate action was taken, evidence of substantial value to the investigation of the offence would be lost; and - the investigation of the relevant offence would be seriously prejudiced as a result.
	(c) The proposed emergency powers should be exercised by a Police officer more senior than a Police superintendent. (d) Whether there would be a mechanism for monitoring the exercising of such powers and whether similar monitoring mechanisms were found in other jurisdictions.	(iii) The Administration was willing to consider suggestions regarding the rank of Police officers that should be authorised to exercise the proposed emergency powers. Monitoring procedures, such as requiring the submission of a written report to the Commissioner of Police (CP) or S for S, could be drawn up through administrative arrangements.

B. Issues specific to major areas in the Consultation Document		
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	(e) Whether the submission of a report to CP or S for S was required after the emergency powers provided under existing local legislation were exercised.	(iv) The Administration was willing to consider requiring the submission of a written report to CP or S for S when the proposed emergency investigating powers were exercised.
	(f) Whether the Police should be provided with the proposed emergency investigating powers should not merely be based on whether such a power was provided under existing legislation or overseas practice. As legislation to implement BL23 could become a means of political prosecution, the issue should be examined prudently. Attention should be focussed on the prevention of abuse rather than the remedies available after an abuse of power had occurred.	(v) The emergency powers of entry, search and seizure as provided under existing legislation were not exercised by Police officers, but also by other law enforcement officers such as immigration officers and officers of the Independent Commission Against Corruption. The Administration would examine whether the proposed ranking of senior Police officer authorised to exercise emergency investigating powers was appropriate and the safeguards on the exercising of such a power.
	(g) Why additional emergency investigating powers were proposed when such powers had already been provided in existing local legislation. (h) Whether the time needed for the court to issue a warrant was substantially longer than the issuing of a written order by a Police superintendent.	(vi) While the issuing of a warrant by the court might take two to four hours, the authorisation by a senior Police officer might only take five to ten minutes. (vii) This difference in time was substantial from an operational point of view, as evidence of substantial value might be lost if immediate action was not taken.

B. Issues specific to major areas in the Consultation Document

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	(i) It was noted from the Consultation Document that the proposed emergency powers would apply to the possession of seditious publications. In view of this, why the Administration could state that the media would not be affected.	(viii) Part XII of the Interpretation and General Clauses Ordinance (IGCO) (Cap. 1) had already set out provisions on the search and seizure of journalistic materials. Noting the media's concern about the possible impact of the proposed emergency powers on their operation, the Administration intended to set out clearly in the draft bill to be introduced that the provisions in Part XII of IGCO would also apply to BL23 offences. (ix) The proposed emergency powers of entry, search and seizure referred to in paragraph 8.5 of the Consultation Document would not be applicable to offences under OSO.
	(j) A warrant issued by the court differed from an authorisation by a senior Police officer in that the court was an independent body and would thus form a more objective view while an authorisation by a senior Police officer was only an internal authorisation within a law enforcement agency.	(x) The Administration had provided in its paper on Police investigation powers many examples under existing legislation where the emergency powers were authorised by senior officers of law enforcement agencies. The Administration disagreed with the view that an authorisation by a senior officer within a law enforcement agency was inadequate.

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Major area	**Concerns and queries raised by Members**	**Administration's response**
	(k) It was proposed in paragraph 8.6 of the Consultation Document that the financial investigation power should enable CP to require a bank or a deposit-taking company to disclose to him information relevant to the investigation. However, the Administration had said that in respect of the proposed financial investigation power, it only proposed that CP might request banks and deposit-taking companies to provide information on whether any person under investigation had any accounts or property held in those institutions.	(xi) Section 67 of the Police Force Ordinance (PFO) (Cap. 232) already provided that CP might, if he reasonably believed that an indictable offence had been committed, request banks and deposit-taking companies to provide information on whether any person under investigation had any accounts or property held in those institutions. However, the Police was still required to obtain a court warrant for obtaining details of the accounts or property of the person concerned held by those institutions. Notwithstanding the proposals in paragraph 8.6 of the Consultation Document, the Administration had no intention to extend the financial investigation powers beyond the existing powers under section 67 of PFO.
	(l) The provision in existing legislation for law enforcement agencies to exercise emergency investigating powers reflected that legislative amendments should have been introduced to remove such powers since the enactment of BORO. The Police should not be given emergency investigating powers merely because of a few hours' difference in obtaining a court warrant. The time needed by the court could	(xii) The Administration disagreed with the view that the emergency investigating powers provided to law enforcement agencies under existing legislation should be removed.

B. Issues specific to major areas in the Consultation Document		
Major area	**Concerns and queries raised by Members**	**Administration's response**
	be shortened in urgent cases, if prior arrangements were made with the court.	
	(m) Whether there were independent mechanisms in place for monitoring the existing emergency powers. (n) There should be a more stringent requirement for the exercising of the proposed emergency investigating powers in respect of BL23 offences.	(xiii) It could be noted from existing legislation that, depending on the respective nature of the offences, different levels of senior law enforcement officers were authorised to exercise emergency investigating powers.
	(o) What amount of force was allowed in the exercising of the proposed emergency investigating powers.	(xiv) It was not possible to set out all possible circumstances in legislation. However, law enforcement officers would, as a general rule, use the minimum force as necessary in exercising their powers.
	(p) Why there was a substantial difference in the typical time required for obtaining a court warrant during and outside office hours.	(xv) The time needed for obtaining a court warrant depended, among others, on the travelling time needed to reach a magistrate and whether the magistrate was engaged in a trial at that time.

B. Issues specific to major areas in the Consultation Document		
Major area	**Concerns and queries raised by Members**	**Administration's response**
8. Procedural and miscellaneous matters	(a) With the Mainland authorities declaring organisations involved in the student movement as organisations that endangered national security and the absence of a time limit for bringing prosecutions, many persons who expressed support or gave donation to support the student movement in June 1989 would be liable to prosecution under the legislation to be enacted.	(i) Existing provisions in the Crimes Ordinance provided that prosecution against treason had to be instituted within three years, and that for sedition had to be brought within six months, after the offence was committed. This was very unusual for serious offences. Thus, it was proposed that the time limit for prosecution should be removed. (ii) The proposed removal of time limit for instituting prosecution only referred to the time after an offence was committed. The legislation to be enacted would not have any retrospective effect.
9. Application	(a) Whether a HKSAR permanent resident who participated in a civil disobedience event in the Mainland would be prosecuted after his return to Hong Kong.	(i) HKSAR permanent residents would be subject to the proposed legislation regardless of where they were. Since the offences of subversion and secession were as serious as treason, it was appropriate for such legislation to have extra-territorial effect.

Council Business Division 2
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