

Press Release

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Government further clarifies legislative proposals to implement BL 23

The Government has studied carefully each and every submission received during the public consultation exercise on proposals to implement Article 23 of the Basic Law, the Secretary for Security, Mrs Regina Ip, said today (January 28).

"We have received a total of 97 097 local submissions, involving 340 513 signatures. They are classified into four categories, namely submissions from organizations, and from individuals, and submissions in the form of standard letters/pre-printed opinion forms and signature forms.

"As members of the public are free to express their views, the format and content of the submissions are highly diversified. In compiling the submissions, we have tried to identify and collate the views received in as objective and comprehensive a manner as possible," Mrs Ip said.

"Out of each of the four categories of submissions, we have identified the general inclination into three types: those who support legislating on Article 23 or proposals in the consultation document (Category A); those who oppose legislating or the proposals (Category B); and those who did not give explicit views supporting or opposing legislating or the proposals (Category C).

"We have also tried to find out from the submissions whether the writer explicitly supports a blue bill or requests a white bill," Mrs Ip said.

Among the 1 067 submissions from organizations, 86.7% come under Category A, 6.1% under Category B and 7.2% under Category C. While 10.8% of them support a blue bill, 5.6% request a white bill. And 83.6% have not indicated any preference.

Of the 5 157 individual submissions, involving 8 394 signatures, 56% come under Category A, 27.7% under Category B and 16.3% under Category C. Among them, 6.8% support a blue bill and 15.1% ask for a white bill. And 78.1% have not indicated any preference.

Mrs Ip noted that many of the submissions were in the format of standard letters or pre-printed opinion forms.

"In total, we have found more than 400 versions of standard letters," she said.

Among the 81 027 standard letters, involving 85 987 signatures, 76.3% come under Category A, 20% under Category B and 3.7% under Category C. Of these submissions, 6.9% support a blue bill and 6.2% request a white bill. And 86.9% have not indicated any preference.

In total, there were 9 846 submissions in the format of signature forms, involving 246 132 signatures. Among them, 25.5% come under Category A, 72.2% under Category B and 2.3% under Category C. While 0.5% support a blue bill, 2.8% ask for a white bill. And 96.4% have not indicated any preference.

"No matter what stand the writer takes in making his or her submission, we study each view seriously and carefully," Mrs Ip said.

Mrs Ip stressed that the Government fully recognized the factors underpinning Hong Kong's success.

"The "One Country, Two Systems" principle and the rights and liberties enjoyed by Hong Kong residents are the foundations of our success and continued development. There is no question of us eroding the very cornerstone of our success," she said.

Having taken into account the views expressed, the Government would further clarify the proposals in order to put beyond doubt the intention and determination of the Government to implement Article 23 of the Basic Law, in full compliance with the provisions of the Basic Law, including those safeguarding fundamental rights and freedoms in Hong Kong, Mrs Ip said.

The clarifications are as follows:

1. More precise definitions and clearer concepts

The definitions in the provisions would be more clearly defined, including -

*clearly define "war" in the treason offence as actual war or armed conflicts. The same concept will be adopted in the reference to "secession" and "subversion" offences.

*delete the reference to "threat of force" in the secession and subversion offences;

*delete the reference to "resisting the exercise of sovereignty" in the secession offence;

2. Abolition of the offence of misprision of treason

The common law offence of misprision of treason will be abolished, and no new statutory offence will be created.

3. Abolition of the offence of possession of seditious publications

The offence of possession of seditious publications will be abolished.

In relation to the offence of dealing with seditious publications (such as printing, publishing or selling such publications), the prosecution will have to prove beyond reasonable doubt the intention of the person concerned to incite others to commit the offence of treason, secession or subversion.

4. Clearer definition of "Unauthorised Access" in offence relating to unauthorised disclosure of protected information

The definition of "unauthorized access" to protected information will be strictly limited to access through criminal means such as theft, robbery, burglary, hacking or bribery.

5. Clear definition of information relating to the Central Authorities and the HKSAR

Regarding the protection of information relating to "relations between the Central Authorities and the HKSAR", the information protected will be confined to information on matters concerning the HKSAR that are within the responsibility of the Central Authorities under the Basic Law. Moreover, disclosure of such information will constitute an offence only if it is damaging to the interests of national security.

6. Clear definition of the proscription mechanism

It will be explicitly provided that the Secretary for Security will give consideration to the possibility of proscribing a local organization only after a Mainland organization has been proscribed by the Mainland authorities by an "open decree" on grounds of national security, and where the local organization is subordinate to (not just merely connected with) that Mainland organization. In exercising her discretion, the Secretary will need to comply with international human rights standards applicable to Hong Kong.

7. More clearly circumscribed investigation powers

Emergency entry, search and seizure powers of law enforcement bodies for the purpose of stopping or investigating crime already exist in Hong Kong laws and in other jurisdictions. In view of concerns expressed about the level of the Police officer authorizing the exercise of such powers, it will be stipulated that only police officers at the rank of Chief Superintendent of Police or above could authorize the exercise of powers under emergency situations. In the vast majority of cases, judicial warrants must be applied for.

To further protect freedom of the press, the Government has undertaken to protect journalistic materials in accordance with Part XII of the Interpretation and General Clauses Ordinance when investigations under Article 23 offences are conducted. This will mean that a judicial warrant is required in respect of search or seizure of journalistic materials.

The Government has also pledged not to extend financial investigation powers.

8. Clear application of the treason offence

The application of the treason offence will be more clearly specified. Within the territorial boundaries of the HKSAR, the offence will only apply to Chinese nationals. The extra-territorial application of the offence will be limited to Chinese citizens who are permanent residents of the HKSAR. The offence will not apply to persons who are not Chinese nationals, whether within or outside the HKSAR.

9. Judicial safeguards

It will be stipulated that any person charged with treason, secession, sedition, subversion or any of the unlawful disclosure offences could opt for trial by jury. Whether anyone is convicted would ultimately be determined by the jury.

Regarding the appeal mechanism for proscribed organizations, the proposal to establish a special appeal tribunal will be dropped. Appeals, regardless of whether they are on points of fact or points of law, will be adjudicated by the courts.

"The Government attaches great importance to the views expressed during the consultation period and will prepare the draft legislation in accordance with the above direction.

"The relevant Bill, with all the legislative details, will be introduced into the Legislative Council as soon as possible.

"The Government will continue to welcome views from the public," Mrs Ip said.

Leaflets outlining the way forward for the implementation of Article 23 of the Basic Law are now available for collection at District Offices, Government Publications Centre at Queensway Government Offices, Central and Information Services Department's Marketing Office on 4/F., Murray Building, Garden Road, Hong Kong. The leaflets as well as the outcome of consultation can also be viewed at www.basiclaw23.gov.hk. Copies of the compendium of submissions will be available for inspection by the public at the District Offices from tomorrow.

End/Tuesday, January 28, 2003.

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