

Press Release

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S for S speaks in Legco

Following is a translation of the statement made by the Secretary for Security, Mrs Regina Ip, in the Legislative Council today (February 12):

Madam President,

I'm very pleased today to report, on behalf of the Hong Kong Special Administrative Region Government (HKSARG), to Honourable Members on the progress made in our legislative work relating to the implementation of Article 23 of the Basic Law.

The HKSARG has released on September 24 last year a consultative document on "Proposals to implement Article 23 of the Basic Law", and has made legislative proposals concerning the prohibition of seven kinds of activities that endanger national security as stipulated under Article 23.

During the three-month consultation period, there was enthusiastic response from various sectors of the community. When the consultation period ended on December 24 last year, we received over 100 000 submissions.

Those who submitted views to us include individuals, organisations, local residents and people living outside Hong Kong. The submissions came from a wide range of sectors and strata, including district organisations, professional and business bodies, local and foreign chambers of commerce, clansmen's groups, religious sector, businessmen, women's groups, students, staff and faculty members of tertiary institutes, cultural and arts sector, legal sector and publication sector.

This public consultation can be said to be the most extensive, most thorough, and one which most deeply involved the community. The Government hopes to get a better understanding of the public's views, concerns and worries through the consultation exercise. In this respect, I think we have achieved our goal as a result of the three-month consultation.

The Government is happy to see that many Hong Kong residents support in principle the enactment of local legislation to implement Article 23 of the Basic Law so that the HKSAR could fulfil its constitutional duty as soon as possible. At the same time, through the enthusiastic response made by members of the community, we have been able to acquire a good grasp of the concerns of the public over specific concepts or aspects of our proposals. We are also very happy to have received very valuable advice from some legal experts and other professionals, which has helped us to improve our proposals.

After taking into account all the views expressed, the HKSARG has made a positive and quick response on January 28 by issuing a leaflet on the way forward for implementing Article 23 of the Basic Law. We have made nine important clarifications on policy directions and have set out in more definite and clearer terms various definitions and concepts. There has been a positive response to the Government's clarifications after the release of the leaflet.

From the experience of the past four months, the HKSARG fully understands the public's wish to see details of the draft legislation. We believe some people's worries have in fact arisen from the lack of legislative details, which have made it difficult for some people to assess accurately how the proposals would affect them, thus giving rise to unnecessary misunderstandings.

In order to allay public concerns, the HKSARG has been working at full steam to prepare the drafting of the legislative provisions. I am happy to report, on behalf of the HKSARG, to Honourable Members, that we have finished drafting the Bill to implement Article 23 of the Basic Law. In accordance with the usual procedure, the National Security (Legislative Provisions) Bill, which has been approved by the Chief Executive-in-Council yesterday, will be introduced into the Legislative Council for scrutiny.

Before explaining the content of the Bill to members, I wish to stress two points.

First, as we pointed out in the consultation document, we are not introducing a radically new, specific piece of legislation. In implementing Article 23 of the Basic Law, we are amending three existing Ordinances, namely the Crimes Ordinance, the Official Secrets Ordinance and the Societies Ordinance, and are definitely not extending Mainland laws or concepts to Hong Kong

Second, one of the important principles in drafting the Bill is that we try to make it clear, simple and concise so that the public will clearly know what acts, according to the draft legislation, would constitute offences under Article 23. We are confident that after the publication of the Bill, people will understand that the legislation to implement Article 23 will not affect their daily lives and that Hong Kong will continue to be a free and open society and remain a world metropolis enjoying free flow of information. The Bill has in fact abolished some existing offences, which have been in our statutes before and after Reunification, e.g. the offence of possession of seditious publications and the offence of misprision of treason. In addition, the Bill has also sought to narrow down the scope of some current offences. Take the treason offence as an example, it will be stipulated that the offence will not be applicable to non-Chinese nationals.

Now, I would like to introduce to members content of the Bill.

Treason

According to the Bill, a Chinese national will commit the offence of treason if he -

(i) joins foreign armed forces at war with the People's Republic of China with the intent to overthrow or intimidate the Central People's Government, or to compel the Central People's Government to change its policies or measures;

(ii) instigates foreign armed forces to invade China with force; or

(iii) assists a public enemy at war with China with an intent to prejudice the position of the country in the war.

As I have mentioned earlier, the offence of treason will only apply to Chinese nationals. For clarity, various concepts involved are clearly defined. For example, "public enemy" is defined to mean foreign governments at war with China or foreign armed forces. "A state of war" is defined to mean only open armed conflict between armed forces or publicly declared war. General demonstrations or riots are not considered war.

As we have pledged earlier, we would not only drop the proposal to codify the common law offence of misprision of treason, but would also make clear in the Bill that the offence of misprision of treason will be abolished altogether.

Secession

The offence of secession is defined as withdrawing any part of the People's Republic of China from its sovereignty by using force or serious criminal means that seriously endangers the territorial integrity of the People's Republic of China, or to do so by engaging in war.

"Serious criminal means" refers to criminal acts that will endanger a person's life, cause serious injury to a person, create serious risks to public health or safety, lead to serious damage to property or serious interference with electronic system, essential service, facility or system.

Therefore, only acts that involve engaging in war, using force or serious criminal means akin to terrorist activities that seriously endanger the territorial integrity of the People's Republic of China will be regarded as secession.

After considering public views, the references to "threat of force" and "resisting the exercise of sovereignty" as stated in the consultation document will not be included in the secession offence. "Force" and "serious criminal means" used must be of such a scale that it endangers the territorial integrity of the country before the relevant offence is committed.

Subversion

A person would commit subversion if he -

(i) disestablishes the basic system of the People's Republic of China as established by the constitution;

(ii) overthrows the Central People's Government; or

(iii) 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.

As with the offence of secession, only acts that involve engaging in war, using force or serious criminal means akin to terrorist activities will be regarded as subversion. After considering public views, the reference to "threat of force" will not be included in the Bill. Only the actual use of force or serious criminal acts similar to terrorist activities that endanger national security will constitute a subversion offence.

Sedition

An offence of sedition means to -

(i) incite others to commit the offence of treason, subversion or secession; or

(ii) incite others to engage in violent public disorder that would seriously endanger the stability of the People's Republic of China.

In relation to seditious publications, we have explained in public that section 10 of the existing Crimes Ordinance already criminalizes the possession of seditious publications. Taking into account concerns raised by librarians, journalists and other members of the public, we have decided to abolish the offence of possession of seditious publications so as to protect the freedoms of speech and academic research.

As regards the handling of seditious publications, the Bill states that apart from the actual act, there must also be a necessary element of "intention" before anyone would be convicted of the crime. In other words, 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.

Theft of State Secrets

As explained in the Consultation Document, we would make use of the existing Official Secrets Ordinance to protect state secrets. We are only proposing two amendments to the Ordinance.

The first of these amendments is purely adaptation of laws. Information relating to relations between the Mainland and Hong Kong has always been protected, both before and after Reunification, under the category of "international relations." After Reunification, it would not be appropriate to continue to protect such information under the rubric of "international relations." We have therefore proposed in the Consultation Document that a separate category of protected information, "relations between the Central Authorities and the HKSAR", should be identified, independent of "international relations."

During the three-month consultation, there are views that the scope of "relations between the Central Authorities and the HKSAR" is not clear enough, and concerns that the free flow of information might be affected. After careful consideration, we have decided to clearly specify in the Bill that this category of protected information should be defined as : affairs concerning the HKSAR which are within the responsibilities of the Central Authorities under the Basic Law.

In addition, disclosure of such protected information would only be penalized if the relevant person knew, or had reasonable grounds to believe, that the unauthorized disclosure of the information would likely endanger national security. The Bill would specify that it shall be a defence if a person did not know or had no reason to believe that the information belongs to a protected category, or that disclosure of which would endanger national security. The meaning of "national security" will follow the existing definition in local laws, that is the "safeguarding of the territorial integrity and independence of the People's Republic of China."

The second amendment is to plug an existing loophole. According to existing laws, it is an offence to make a damaging disclosure of information which has in turn been disclosed without authority by public servants or government contractors. However, it is not an offence to make a damaging disclosure of the same information if it had been obtained by illegal means, such as stealing from a confidential government file registry.

This is clearly a loophole. We therefore consider it necessary to make it an offence to make a damaging unauthorized disclosure of protected information which had been obtained by unauthorized access.

One of the views raised during public consultation is that the scope of "unauthorized access" of protected information is too wide. For example, news reporters might not be able to verify on each occasion whether a person who provides information has been authorized to do so. We have therefore decided to define the relevant activities more precisely to mean "illegal access" of protected information, which would only mean specified criminal acts, that is unauthorized access to computer by telecommunication, access to computer with criminal or dishonest intent, theft, robbery, burglary or bribery.

Foreign Political Organizations

Article 23 of the Basic Law sets out to prohibit foreign political organizations or bodies from conducting political activities in the HKSAR, and to prohibit HKSAR political organizations or bodies from establishing ties with foreign political organizations or bodies.

After consideration, we consider that the existing provisions of the Societies Ordinance are already adequate and appropriate in prohibiting these two categories of activities. We have thus decided to rely on existing legislation and will not propose any amendments.

Organizations Endangering National Security

It is commonly accepted that crimes seriously endangering national security are seldom perpetrated by a single individual, but are often carried out through an organised effort. We therefore consider that the Bill should empower the Secretary for Security to proscribe organizations that endanger national security. During the consultation period, the public was in particular concerned about the proscription of local organizations that are subordinate to Mainland organizations. I would now briefly explain the relevant stipulations in the Bill.

Before making a decision to proscribe a local organization, the Secretary for Security must consider a number of issues in accordance with the provisions of the Bill, which are -

- (i) that the relevant Mainland organization must have been prohibited by the Central Authorities on the ground of national security in accordance with Mainland laws;
- (ii) that the decision to prohibit a Mainland organization must be made through an open decree;
- (iii) that the local organization must be subordinate to the prohibited Mainland organization; and
- (iv) that the Secretary for Security must have reasonable grounds to believe that the proscription of the local organization is necessary in the interest of national security and is proportionate for such purpose.

As regards "subordination", it will be clearly defined in the Bill to mean -

- (i) the local organization solicits or accepts substantial financial contributions, financial sponsorships or loans from the Mainland organization;
- (ii) the local organization is directed or controlled by the Mainland organization; or
- (iii) the policies of the local organization are determined by the Mainland organization.

According to the Bill, unless a person continues to participate in the activities or acts as an office-bearer of the proscribed organization, proscription itself does not create a criminal offence.

It would not be an offence even though a person may be a member or office-bearer of a proscribed local organization, if he does not know or has no reason to believe that the organization has been so proscribed.

The Bill also provides for an appeal mechanism. Any person aggrieved by the Secretary for Security's decision to proscribe an organization could lodge an appeal to the Court of First Instance within 30 days of the proscription. After considering public's views, we agree to drop the proposal in the Consultation Document to

establish a special tribunal to deal with such appeals.

Emergency Investigation Powers

During the consultation period, we have received comments from quite a number of organizations and residents that the emergency investigation powers proposed in the Consultation Document would lead to unwarranted expansion of police powers.

After considering the views from various sectors, we agree that only police officers at the rank of chief superintendent or above, instead of superintendent, could authorize the exercise of emergency investigation powers. The Bill has also clearly specified that such powers could only be exercised under exigent circumstances as stipulated.

In addition, in order to safeguard the freedom of the press, the Bill has also specified that the search or seizure of journalistic materials in the investigation of Article 23 offences must be authorized by court warrants.

As we have pledged earlier, the Bill contains no new provisions to extend the existing financial investigation powers of law enforcement officers.

Trial by jury

In order to provide an additional safeguard for our citizens, the Bill stipulates that any person charged with the offences of treason, secession or subversion, which could attract a maximum penalty of life imprisonment, must be tried by a jury. Those charged with sedition or unlawful disclosure, which are punishable by a lesser penalty, may opt for trial by jury at the Court of First Instance, other than going through trials at the District Court or Magistracy under established procedures.

The Bill also stipulates that, for an accused who has opted for a jury trial and subsequently convicted, he shall not be sentenced by the trial judge at the Court of First Instance to any penalty that would be heavier than the penalty that could have been imposed by a District Court or a Magistrate, has he not opted for a jury trial in the first place.

Protection of Human Rights

The HKSARG has stressed on many occasions that the rights and freedoms enshrined under the Basic Law and enjoyed by Hong Kong residents will continue to be protected. The Bill specifically provides that the interpretation, application and enforcement of the provisions implementing Article 23 shall be consistent with Article 39 of the Basic Law, which includes compliance with international human rights standards.

Our Work Plan

The HKSARG will proceed with the legislative work in accordance with the usual procedures. The Bill will be gazetted on Friday and will be introduced into the Legislative Council for first and second reading on February 26.

As to when the Bill will be passed, it will be entirely a matter for the Legislative

Council. We sincerely request the Council to set up a Bills Committee soon to scrutinize the provisions in detail.

We hope that members of the community, after studying the Bill to be gazetted this Friday, will appreciate that the Government has really taken heed of public views and incorporated many useful suggestions collected during the three-month consultation exercise which was virtually unprecedented in scale and thoroughness. We are confident that we have struck a right balance between protecting national security and safeguarding people's rights and freedoms.

End/Wednesday, February 12, 2003

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