

**Legislative Council Panel on Security and
Panel on Administration of Justice and Legal Services**

**Proposals to Implement Article 23 of the Basic Law -
Police Investigation Powers**

Introduction

This note sets out a comparison of emergency entry and search powers proposed for the Police in the Public Consultation document, and similar statutory provisions in Hong Kong as well as a number of other jurisdictions.

The Proposed Emergency Entry and Search Powers

2. The existing general investigation powers may not always be adequate to cater for the special nature of some offences under Article 23 of the Basic Law. While a number of other Ordinances (e.g. Fire Arms and Ammunitions Ordinance, Dangerous Drugs Ordinance) provide *emergency* entry and search powers for the police to deal with specific cases, similar emergency powers will be needed for the police in the investigation of some of the more serious Article 23 offences.

3. We therefore propose that an emergency entry, search and seizure power should be provided to the police for investigating some Article 23 offences. In order to provide safeguards against abuse and to comply with the constitutional protection of the inviolability of private premises under Article 29 of the Basic Law, the emergency power should only be exercised by a sufficiently senior police officer (e.g. a superintendent), and when he reasonably believes that -

- (a) a relevant offence has been or is being committed; and
- (b) unless immediate action is taken evidence of substantial value to

- the investigation of the offence would be lost; and
- (c) the investigation of the relevant offence would be seriously prejudiced as a result.

Emergency Entry and Search Powers in Hong Kong and some other Jurisdictions

4. Similar emergency entry and search powers are found in other Hong Kong laws and in many other common law jurisdictions. A table setting out such statutory provisions in our laws and those in the United Kingdom, Canada, New Zealand, Australia, Ireland, Malaysia and Singapore is enclosed.

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[p(f)/b123/entry-search-comp]

Statutory provisions of Hong Kong and other jurisdictions empowering emergency entry and search without judicial warrant

Hong Kong

Provisions	Offence/suspicion	Investigation powers	Normal case	Urgent case	Remark
<p>s.11, Official Secrets Ordinance, Cap. 521 [enacted in June 1997]</p>	<p>... reasonable ground for suspecting that an offence under Part II of the Ordinance (espionage) has been or is about to be committed.</p>	<ul style="list-style-type: none"> - to enter at any time any premises or place named in the warrant, if necessary by force; - to search the premises or place and every person found therein; and - to seize anything that is evidence of an offence under Part II 	<p>magistrate's warrant authorizing any police officer to exercise the powers (s.11(1)).</p>	<p>Where it appears to a superintendent of police that the case is one of great emergency and it is in the interest of the UK and HK immediate action is necessary, he may by a written order give to any police officer the like authority as may be given by the warrant of a magistrate (s.11(2)).</p>	<p>Modeled on s.9 of UK Official Secrets Act 1911.</p>
<p>s.52(1)(e), Dangerous Drugs Ordinance, Cap. 134 [amended in 1994]</p>	<p>... has reason to suspect that there is therein an article liable to seizure under the Ordinance.</p>	<ul style="list-style-type: none"> - to enter and search any place or premises 	<p>magistrate's warrant authorizing any police or C&E officer to exercise the powers (s.52(1E))</p>	<p>Any police or C&E officer may do so without a warrant under subsection (1E) where it would not be reasonably practicable to obtain such a warrant (s.52(1)(e)).</p>	<p>The current version of s.52(1)(e) was introduced in 1994 after the decision of Jerome Chan J in <i>R v Yu Yem-Kin</i> (1994) 4 HKPLR 75, which held (p.98, line 20) that:- "A provision in the statute that such warrantless search and seizure is only to be permissible if it would not be reasonably practicable to</p>

Provisions	Offence/suspicion	Investigation powers	Normal case	Urgent case	Remark
					obtain a warrant would bring the operation of the section within the bounds of reason and necessity.”
s.40, Firearms and Ammunition Ordinance, Cap. 238	... there is reasonable ground for suspecting that an offence under the Ordinance has been, is being, or is about to be committed.	- to enter at any time any place, premises, vessel, vehicle, train or aircraft, if necessary by force, and to search the same and every person found there	magistrate’s warrant authorizing a police or C&E officer to exercise the powers (s.40(1)).	If a police/C&E officer of or above the rank of Superintendent is satisfied (a) that there is reasonable ground for suspecting that an offence under this Ordinance has been, is being, or is about to be committed, and (b) that – (i) the exercise of the powers in subsection (1), or any of them, is necessary; (ii) there would be delay in obtaining a warrant under subsection (1); and (iii) the delay may defeat the purposes of the entry, he may in writing give authority to any police/ C&E officer to exercise the said powers (s.40(2)).	

Provisions	Offence/suspicion	Investigation powers	Normal case	Urgent case	Remark
<p>s.17 Prevention of Bribery Ordinance, Cap. 201 [added in 1996]</p>	<p>... there is reasonable cause to believe that in any premises or place there is anything which is or contains evidence of an offence under this Ordinance.</p>	<p>- to enter such premises or place, by force if necessary, and search the same</p>	<p>a warrant issued by a magistrate or the CFI authorizing an investigating officer of the ICAC to exercise the powers (s.17(1A)).</p>	<p>Where the Commissioner is satisfied that there is reasonable cause to believe:- (a) that in any premises or place there may be anything which is or contains evidence of an offence under this Ordinance, and (b) that the making of an ex parte application under subsection (1) would seriously impede an investigation into or proceedings relating to, an offence suspected to have been committed under this Ordinance, the Commissioner may empower such officer to enter such premises or place, by force if necessary, and search the same (s.17(1B)).</p>	
<p>s.56(1A)(e) Immigration Ordinance, Cap. 115 [added in 1995]</p>	<p>... has reason to suspect that there is therein any thing which may be seized under this Ordinance.</p>	<p>- to enter and search any premises or place</p>	<p>magistrate's warrant authorizing the police or immigration officer to exercise the</p>	<p>An immigration officer or immigration assistant may exercise the powers without a warrant where it would not be reasonably practicable to obtain one (s.56(1A)(e)).</p>	

Provisions	Offence/suspicion	Investigation powers	Normal case	Urgent case	Remark
			powers (s.56AA)		
s.123, Copyright Ordinance, Cap. 528 [enacted in May 1998]	... reasonably suspects that there is:- (A) an article which is infringing copy of a copyright work; (B) an article specifically designed or adapted for making copies of a particular copyright work which article is used or intended to be used for making infringing copies of any such work; or (C) anything which appears to him to be or to contain, or to be likely to be or to contain, evidence of an offence under Part II of the Ordinance.	- to enter and search any place	magistrate's warrant authorizing a C&E officer to exercise the powers (s.123(1))	A C&E officer may exercise the powers without a warrant if the delay necessary to obtain a warrant could result in the loss or destruction of evidence or for any other reason it would not be reasonably practicable to obtain a warrant (s.123(3)).	

Provisions	Offence/suspicion	Investigation powers	Normal case	Urgent case	Remark
s.19 Prevention of Copyright Piracy Ordinance, Cap. 544 [enacted in May 1998]	... reasonably suspects that there is:- (i) any optical disc which has been manufactured in contravention of Part II (manufacturing of optical disc) ; or (ii) any machinery, equipment or other thing which may be or may contain, or which may likely be or contain, evidence of an offence under this Part II.	- to enter and search any place	magistrate's warrant authorising a C&E officer to exercise the powers (s.19(1))	A C&E officer may exercise the power without a warrant if the delay necessary to obtain a warrant could result in the loss or destruction of evidence or for any other reason it would not be reasonably practicable to obtain a warrant (s.19(3)).	
s.12(3) Dangerous Goods Ordinance, Cap. 295	...reasonable grounds for suspecting that there may be any of the following liable to seizure:- (i) anything with respect to which such officer or member may have reasonable grounds for suspecting that any offence against this Ordinance has been committed; or	- enter and search any part of any premises used solely for dwelling purposes.	magistrate's warrant authorizing police officer and officers of the specified government departments to exercise the powers (s.12(3)(a))	to exercise the powers without warrant, where such officer is of the opinion having regarding to the circumstances that the purpose of the entry or the search would be defeated by application for such warrant (s.12(3)(b)).	Under s.12(1)(c), warrant is not required if the premises to be searched are not used solely for dwelling purposes.

Provisions	Offence/suspicion	Investigation powers	Normal case	Urgent case	Remark
	(ii) any other thing, which may appear to such officer or member likely to be, or to contain, evidence of any such offence.				
s29(3) Entertainment Special Effects Ordinance, Cap. 560 [enacted in Mar 2001]	... reasonable grounds for suspecting that there may be any of the following liable to seizure:- (i) anything with respect to which such officer may have reasonable grounds for suspecting that any offence against this Ordinance has been committed; or (ii) any other thing, which may appear to such officer likely to be, or to contain, evidence of any such offence.	- to enter and search any part of any premises used solely for dwelling purposes	magistrate's warrant authorizing police officer and the officers of specified government departments to exercise the powers (s.29(3)(a))	to exercise the powers without warrant, where such officer is of the opinion having regard to the circumstances that the purpose of the entry or the search would be defeated by application for such warrant (s.29(3)(b)).	Under s.29(1)(c), warrant is not required if the premises to be searched are not used solely for dwelling purposes.

Provisions	Offence/suspicion	Investigation powers	Normal case	Urgent case	Remark
s.14 Dutiable Commodities Ordinance, Cap. 109	... reasonable cause to believe that in any place there are concealed or deposited goods liable to forfeiture under this Ordinance, or with respect to which an offence has been committed or is about to be committed against this Ordinance.	- to enter and search any place	magistrate's warrant authorizing any police or C&E officer to exercise the powers (s.14(1))	to exercise the powers without warrant where the officer has reasonable grounds for believing that unless the place is searched forthwith the goods are likely to be removed (s.14(3)).	
s.23(1) Gambling Ordinance, Cap. 148	... reasonably suspects that any premises or place are or is a gambling establishment.	- to enter and search the premises or place	A police officer of or above the rank of superintendent may authorize in writing any police officer to exercise the powers.		

United Kingdom

Provisions	Offence/suspicion	Investigation powers	Normal case	Urgent case	Remark
s.9 Official Secrets Act 1911	... there is reasonable ground for suspecting that an offence under this Act has been or is about to be committed.	<ul style="list-style-type: none"> - to enter at any time any premises or place, if necessary, by force, and - to search the premises or place and every person found therein; and - to seize ... anything which is evidence of an offence under this Act having been or being about to be committed. 	a warrant issued by a justice of peace authorizing any constable to exercise the powers (s.9(1))	Where it appears to a superintendent of police that the case is one of great emergency and that in the interests of the State immediate action is necessary, he may by a written order under his hand give to any constable the like authority as may be given by the warrant of a justice (s.9(2)).	

Canada

Provisions	Offence/suspicion	Investigation powers	Normal case	Urgent case	Remark
s.11 Official Secrets Act	...reasonable ground for suspecting that an offence under this Act has been or is about to be committed.	<ul style="list-style-type: none"> - enter at any time any premises or place, if necessary by force, - to search the premises or place and every person found therein and - to seize ... anything that is evidence of an offence under this Act having been or being about to be committed 	a warrant issued by a justice of the peace authorizing any constable to exercise the powers (s.11(1))	Where it appears to an officer ... not below the rank of superintendent that a case is one of great emergency and that in the interest of the State immediate action is necessary, he may by a written order under his hand give to any constable the like authority as may be given by the warrant of a justice under this section (s.11(2)).	
ss.487 &487.11 Criminal Code, Chapter C-46	... reasonable grounds to believe that there is in a building, receptacle or place:- (a) anything on or in respect of which any offence against this Act or any other Act of Parliament has been or is suspected to have been committed, (b) anything that there are reasonable grounds to believe will afford evidence with respect	- to search the building, receptacle or place for any such thing and to seize it	a warrant issued by a justice authorizing a peace officer or a police officer to exercise the power (s.487(1)).	A peace officer, or a public officer ... may, in the course of his or her duties, exercise any of the powers described in subsection 487(1) ... without a warrant if the conditions for obtaining a warrant exist but by reason of exigent circumstances it would be impracticable to obtain a warrant (s.487.11).	In <i>Hunter v Southam</i> (1984) 11 D.L.R. 641, Dickson C.J. recognized the obvious fact that prior authorization is not feasible in every situation. By implication, he acknowledged that a warrantless search could be upheld as reasonable in some situations. There are many other provisions specifically authorizing the exercise of the powers of search and

Provisions	Offence/suspicion	Investigation powers	Normal case	Urgent case	Remark
	to the commission of an offence, or will reveal the whereabouts of a person who is believed to have committed an offence, against this Act or any other Act of Parliament, (c) anything that there are reasonable grounds to believe is intended to be used for the purpose of committing any offence against the person for which a person may be arrested without warrant, or (c.1) any offence-related property.				seizure provided for in s.487 of the Criminal Code without a warrant “if the condition for obtaining a warrant exist but, by reason of exigent circumstances , it would not be feasible to obtain a warrant. Examples are:- s.31, Nuclear Safety and Control Act; s.15, Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act,; and s.39.2, Oceans Act.
s.11 Controlled Drugs and Substances Act	... reasonable grounds to believe that- (a) a controlled substance or precursor in respect of which this Act has been contravened, (b) any thing in which a controlled substance or precursor referred	- to search the place for any such controlled substance, precursor, property or thing and to seize it.	a justice’s warrant authorizing a peace officer (s.11(1))	A peace officer may exercise the powers without a warrant if the conditions for obtaining a warrant exist but by reason of exigent circumstances it would be impracticable to obtain one (s.11(7)).	

Provisions	Offence/suspicion	Investigation powers	Normal case	Urgent case	Remark
	<p>to in paragraph (a) is contained or concealed, (c) offence-related property, or (d) any thing that will afford evidence in respect of an offence under this Act is in a place.</p>				
s.111 Customs Act	<p>...reasonable grounds to believe that there will be found in a building, receptacle or place (a) any goods or conveyance in respect of which this Act or the regulations have been contravened or are suspected of having been contravened, (b) any conveyance that has been made use of in respect of such goods, whether at or after the time of the contravention, or (c) anything that there are reasonable grounds to believe will afford</p>	<p>- to search the building, receptacle or place for any such thing and to seize it</p>	<p>a warrant issued by a justice of peace authorizing an officer to exercise the powers (s.111(1)).</p>	<p>An officer may exercise the powers without a warrant if the conditions for obtaining the warrant exist but by reason of exigent circumstances it would not be practicable to obtain the warrant (s.111(6)).</p> <p>“Exigent circumstances” <i>include</i> circumstances in which the delay necessary to obtain a warrant under subsection (1) would result in danger to human life or safety or <i>the loss or destruction of anything liable to seizure</i> (s.111(7)).</p>	<p>There are many similar statutory provisions empowering the law enforcement officers to exercise the search and seizure powers without warrant in exigent circumstances.</p> <p>Examples are:- s.15(7), Competition Act; s.102.02(5), Immigration Act; s.19(3), Saguenay-St. Lawrence Marine Park Act; s.15(3), Chemical Weapons Convention Implementation Act.</p>

Provisions	Offence/suspicion	Investigation powers	Normal case	Urgent case	Remark
	evidence in respect of a contravention of this Act or the regulations.				

New Zealand

Provisions	Offence/suspicion	Investigation powers	Normal case	Urgent case	Remark
<p>s.78D Crimes Acts (1961-1999)</p>	<p>...reasonable ground for believing (a) that there is in any building, aircraft, ship, hovercraft, carriage, vehicle, box, receptacle, premises, or place-</p> <p>(i) anything upon or in respect of which an offence against s.78 (espionage) has been or is suspected of having been committed; or</p> <p>(ii) anything which there is reasonable ground to believe will be evidence as to the commission of any such offence; or</p> <p>(iii) anything which there is reasonable ground to believe is intended to be used for the purpose of committing any such offence ...</p>	<p>- to enter and search the building, aircraft, ship, carriage, vehicle, premises, or place with such assistants as may be necessary, and, if necessary, to use force for making entry, whether by breaking open doors or otherwise.</p>	<p>A search warrant issued by any District Court Judge or Justice or Community Magistrate or any Registrar authorizing any constable to exercise such powers (s.198 of the Summary Proceedings Act 1957)</p>	<p>Where a commissioned officer of the police is satisfied that there is reasonable ground for believing that ... the case is one of great emergency and that immediate action is necessary (s.78D(1)(b)), he may by a written order signed by him give to any member of the Police the like authority that may be given by a search warrant issued under s.198 of the Summary Proceedings Act 1957.</p>	

Australia – Commonwealth Consolidated Acts

Provisions	Offence/suspicion	Investigation powers	Normal case	Urgent case	Remark
s.3T Crimes Act 1914	...suspects, on reasonable grounds, that: (a) a thing relevant to an indictable offence is in or on a conveyance; and (b) it is necessary to exercise a power under subsection (2) in order to prevent the thing from being concealed, lost or destroyed; and (c) it is necessary to exercise the power without the authority of a search warrant because the circumstances are serious and urgent.	- stop and detain the conveyance; and - search the conveyance and any container in or on the conveyance, for the thing; and - seize the thing if he or she finds it there. “conveyance” includes an aircraft, vehicle or vessel (s. 3(1)).	a search warrant issued by a magistrate or a justice of peace authorizing a constable to search premises (s.3E) or, in an urgent case, a warrant by telephone, telex, fax or other electronic means (s.3R)	The constable may exercise the powers without a warrant where he suspects, on reasonable grounds, that it is necessary to exercise the power without the authority of a search warrant because the circumstances are serious and urgent (s.3T(1)(c)).	

Ireland

Provisions	Offence/suspicion	Investigation powers	Normal case	Urgent case	Remark
s.29 Offences against the State Act 1939	... reasonable ground for believing that documentary evidence of or relating to the commission or intended commission of an offence under any section of this Act or any document relating directly or indirectly to the commission or intended commission of treason is to be found.	<ul style="list-style-type: none"> - to enter, and if necessary by the use of force, any building or other place and - to search the said building or other place, and any person found therein, and - to seize any document or thing found in such building or other place or on such person which such member reasonably believes to be evidence of or to relate directly or indirectly to the commission or intended commission of an offence under any section of this Act or to the commission or intended commission of treason. 	A search warrant issued by an officer of the Gárda Síochána, not below the rank of chief superintendent, to a member of the Gárda Síochána not below the rank of inspector (s.29(1)).		

Provisions	Offence/suspicion	Investigation powers	Normal case	Urgent case	Remark
s.16 Official Secrets Act 1963	...reasonable grounds exist for suspecting that there has been or is about to be a contravention of section 9 (acts contrary to safety or preservation of State)	- to search any premises, place, vessel or aircraft	a warrant issued by a justice of the District Court authorizing any member of the Gárda Síochána to exercise the power (s.16(1))	Where an officer of the Gárda Síochána not below the rank of chief superintendent has reasonable grounds for believing that in the interest of the State immediate action is necessary , he may issue a search warrant having the same effect as a search warrant issued by a justice of the District Court (s.16(2)).	

Malaysia

Provisions	Offence/suspicion	Investigation powers	Normal case	Urgent case	Remark
s.19 Official Secrets Act 1972	...reasonable cause to believe that in any place there is concealed or deposited any evidence of the commission of an offence under this At, or of any prescribed offence.	- to enter any place, by force if necessary and there to search for, seize and detain any such evidence	Magistrate's warrant authorizing any police office to exercise such powers (s.19(1))	Where ... any police officer not below the rank of Inspector ... has reasonable grounds for believing that by reason of the delay in obtaining a search warrant the object of the search is likely to be frustrated , he may exercise the powers as if he were empowered to do so by a warrant issued under subsection (1) (s.19(2)).	

Singapore

Provisions	Offence/suspicion	Investigation powers	Normal case	Urgent case	Remark
s.15(1) Official Secrets Act (Chapter 213)	...reasonable ground for suspecting that an offence under this Act has been or is about to be committed.	<ul style="list-style-type: none"> - to enter at any time any premises or place, if necessary by force, and - to search the premises or place and every person found therein, and - to seize and retain ... anything which is or may be evidence of an offence under this Act having been or being about to be committed 	A warrant issued by a Justice of the Peace authorizing any police officer to exercise the power (s.15(1)).	Where it appears to an officer of police not below the rank of sergeant that the case is one of great emergency and that in the interests of Singapore immediate action is necessary, he may, by a written order under his hand, give to any constable the like authority as may be given by the warrant of a Justice of the Peace (s.15(5)).	
s.66(2) Internal Security Act 1989	...suspects that any article or material being evidence of commission of any offence under Part III of this Act (relating to Security Areas) is likely to be found	<ul style="list-style-type: none"> - to stop and search any vehicle, vessel, train, aircraft or individual (s.66(1)); - to enter and search any premises or place and seize any article or material so found (s.66(2)). 	Any police officer of or above the rank of corporal or any member of the security forces of or above the rating or rank of leading rate or non-commissioned officer (as the case may be) or any person authorized in writing to do so by the officer in charge of a division may exercise the power without a warrant (s.66(1)&(2)).		

Security Bureau

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