

**The Administration's response to the issues raised  
at the Joint Meeting of the Panel on Security and  
Panel on Administration of Justice and Legal Services  
on 21 October 2002**

This note sets out the Administration's response to the queries raised at the joint panel meeting held on 21 October 2002.

**Updates of proposals in the Consultation Document**

2. As set out in the minutes of the above meeting, we have proposed the following updates to the consultation document:

- (a) Part XII of the Interpretation and General Clauses Ordinance (Cap. 1) has already set out safeguards regarding search and seizure of journalistic materials. We have undertaken to set out clearly that such safeguards should also apply to the proposed offences under Article 23 of the Basic Law.
- (b) Regarding the proposed financial investigation power in paragraph 8.6 of the Consultation Document, we have undertaken not to ask for additional financial investigation powers beyond the existing powers under Section 67 of the Police Force Ordinance (Cap. 232). Section 67 of Cap. 232 provides that the Commissioner of Police might, if he has reasonable cause to suspect 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.

**Monitoring mechanisms on the exercise of entry and search powers**

3. A comparison of procedures and monitoring mechanisms in relation to the exercise of police entry and search powers in Hong Kong, and the respective level of officers who can issue authorizations, is set out at **Annex A**. In addition to the mechanisms specific to the corresponding powers, the exercise of such police powers is subject to an independent complaints mechanism and is also judicially reviewable.

4. We have not been able to locate information on the monitoring mechanisms of police entry and search powers in overseas countries. Nevertheless, we are aware that there is statutory provision for oversight in

relation to similar powers in urgent cases under the UK Terrorism Act 2000, as set out at **Annex B**.

### **Certificate under Article 19 of the Basic Law and Official Secrets Ordinance**

5. The common law concepts of “act of state” and “certificate of fact concerning acts of state” have been clearly set out in paragraphs 4 to 6 of the Administration’s paper on “act of state” tabled at the joint panel meeting on 21 October 2002. Typical acts of state include declaration of war and peace and the recognition of an individual as a diplomat.

6. In the context of the Official Secrets Ordinance (Cap 521) (“OSO”), a certificate from the Chief Executive under Article 19 of the Basic Law (“BL 19”) on questions of fact concerning acts of state might be obtained, say, in the hypothetical case when an individual X is prosecuted for one of the offences under the OSO and X claims diplomatic immunity. In such case, the CE shall obtain a certifying document from the CPG as to whether X is recognised as a diplomat and thus enjoys diplomatic immunity from prosecution.

7. It is the Administration’s view that the term “act of state” has a very limited scope and can be interpreted in accordance with the common law. The above is one example showing how a certification under BL 19 could come into play in the context of the OSO.

8. However, with regard to the question as to whether or not certain information falls within a protected category such as “defence” or “international relations”, it shall be decided by the SAR courts in accordance with the definitions of such terms in the OSO. There is no question of the Mainland authorities issuing a certificate certifying that certain information belongs to a protected category and thus binding on the SAR courts. The Mainland classification that certain information is confidential is irrelevant for the purpose of deciding whether such information is protected information under the OSO.

### **Meaning of “PRC Government”**

9. As explained at footnote 18 of the Consultation Document, the term “PRC Government” represents “collectively the Central People’s Government and other state organs established under the Constitution”. While “Government” is ultimately formed by persons organized into a number of institutions, its meaning, as expressed in the Consultation Document, should be taken in a collective sense instead of construed as a particular person, group of persons or department space. The provision should be interpreted in the context.

10. As an analogous example, in the Interpretation and General Clauses Ordinance (Cap 1), the term “Government” is defined as “Government of the Hong Kong Special Administrative Region,” rather than any specific departments or systems.

11. As we have explained at the above joint panel meeting, the term “Central Authorities” as referred in paragraph 7.15 of the Consultation Document means the authorities at the state level but not those at provincial or other lower levels.

### **Procedures for obtaining court warrants**

12. The procedure and typical time required for a police officer to obtain a court warrant, and the roster system for magistrates responsible for issuing warrants are set out at **Annex C**.

Security Bureau  
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### Monitoring mechanisms on the exercise of powers to enter / search premises by the Police in Hong Kong

Provisions	Level that can issue authorization	Grounds for authorization / execution	Monitoring mechanism
Gambling Ordinance (Cap 148) s. 23 and s. 23A	Police officer of or above the rank of superintendent	The issuing officer reasonably suspects that any premises or place are or is a gambling establishment.	<ul style="list-style-type: none"> <li>● Police officers of superintendent or above are provided with serially numbered Authorization Forms for issuing authorizations.</li> <li>● An authorization shall be executed only by the police officer to whom it is issued, and is to be returned to the issuing officer if not executed within 10 days of issue.</li> <li>● An executed authorization may be treated as an exhibit.</li> </ul>
Crimes Ordinance (Cap 200) s. 152	Police officer of or above the rank of superintendent	The issuing officer has reason to suspect that an offence under that Part of the Ordinance has been or is being committed in or in connection with any premises.	
Protection of Children and Juveniles Ordinance (Cap 213) s. 16	Commissioner of Police, delegated to the Assistant Commissioner of Police (Crime) and Regional Commanders.	An <i>authorized</i> officer may enter any place which he has reason to believe is used as a lodging house for prostitutes or as a brothel or in connection with which he may have reason to believe that an offence has been committed under the Ordinance.	<ul style="list-style-type: none"> <li>● Authorizations should be issued subject to operational requirements, and to specific post holders, not named officers.</li> <li>● A Formation Commander will assign an officer, not below the rank of superintendent of police, to act as the Controlling Officer who is responsible for the issue, receipt and control of all authorizations in respect of posts within the Formation. A register will be maintained for the purpose.</li> </ul>
Firearms and Ammunition Ordinance (Cap 238) s. 40	Police officer of or above the rank of superintendent	Under emergency situations, the issuing officer is satisfied that: <ul style="list-style-type: none"> <li>● there is reasonable ground for suspecting that an offence under the Ordinance has been, is being or is about to be committed;</li> <li>● the exercise of the search powers is necessary;</li> <li>● there would be delay in obtaining a warrant from a magistrate; and</li> </ul>	

Provisions	Level that can issue authorization	Grounds for authorization / execution	Monitoring mechanism
		<ul style="list-style-type: none"> <li>● the delay may defeat the purposes of the entry.</li> </ul>	
Official Secrets Ordinance (Cap 521) s. 11	Police officer of or above the rank of superintendent	<p>Under emergency situations, the issuing officer is satisfied that:</p> <ul style="list-style-type: none"> <li>● there is reasonable ground for suspecting that an offence under Part II of the Ordinance has been or is about to be committed;</li> <li>● the case is of great emergency; and</li> <li>● in the interests of the PRC or HKSAR, immediate action is necessary.</li> </ul>	<ul style="list-style-type: none"> <li>● The issuing officer can issue a written authorization to any police officer to enter and search premises given that the statutory conditions are satisfied, and only when the circumstances do not allow sufficient time to obtain a court warrant.</li> <li>● Each Formation will maintain a register keeping all authorizations issued by any superintendent of police or above under its command.</li> </ul>

**Monitoring Mechanisms on the Exercise of Emergency Police Powers - UK**

<b>Provisions</b>	<b>Level of administrative authorization</b>	<b>Emergency power</b>	<b>Monitoring mechanism</b>
<p>Terrorism Act 2000, United Kingdom (Paragraph 15, Part I, Schedule V for England and Wales and Northern Ireland, and Paragraph 31(3), Part II, Schedule V for Scotland)</p>	<p>Police officer of at least the rank of superintendent.</p>	<p>The officer has reasonable grounds for believing -</p> <ul style="list-style-type: none"> <li>(a) that the case is one of great emergency, and</li> <li>(b) that immediate action is necessary, may by a written order give to any constable the authority-               <ul style="list-style-type: none"> <li>(a) to enter the premises specified in the warrant,</li> <li>(b) to search the premises and any person found there, and</li> <li>(c) to seize and retain any relevant material, i.e. material which the constable was reasonable grounds for believing that it is likely to be of substantial value to the investigation, and it must be seized in order to prevent it from being concealed, lost, damaged, altered or destroyed, which is found on the search,</li> </ul> </li> </ul> <p>for the purposes of terrorist investigation.</p>	<p>Where an order is made, particulars of the case shall be notified as soon as is reasonably practicable to the Secretary of State.</p>

## Procedures for Obtaining Court Warrant

### During Office Hours

- Procedure** :
- The police officer should complete an “Information for Search Warrant” form and a “Search Warrant” form in duplicate.
  - The officer should appear before a Magistrate either in open court or in chambers, and swear or affirm the information.
  - The officer has to answer any questions the Magistrate may have.
  - After the warrant is signed, it should be taken to the court office where it is stamped with the court seal and its details are recorded in the court register.

**Typical Time Required:** 1 hour 30 minutes to 3 hours

### Outside Office Hours

- Procedure** :
- The Chief Magistrate will provide the police with an updated Magistrates’ residential telephone list (divided into Hong Kong Island, Kowloon and New Territories regions) every six months. The list will be copied to the three Regional Command and Control Centres (“RCCC”).
  - In an urgent case where it is necessary to obtain a court warrant, the officer should inform the controller of RCCC (superintendent of police rank).
  - Telephone numbers of the Magistrates who are living in the same region as the requesting unit will be given to the officer who should then contact the Magistrates one by one.
  - If anyone of the Magistrates agrees to sign the warrant, the officer should proceed to the Magistrate’s residence with the completed “Information for Search Warrant” and “Search Warrant” for signature.

**Typical Time Required:** 2 to 4 hours