

**The Administration's response to questions**  
**raised by Hon James TO on 4 December 2002 (Fourth Batch)**

**Introduction**

Further to our notes of 19 December 2002, 7 January 2003 and 16 January 2003, this note sets out the Administration's response to the remaining questions raised by the Hon James TO on 4 December 2002.

**Replies to questions**

**Procedural and Miscellaneous Matters**

**9.5**

- 28.1 What are the legal foreign precedents for time limits on the prosecution of treason and sedition offences, respectively?

*Administration's reply to 28.1*

Section 48 of the Canadian Criminal Code and sections 5 and 6 of the UK Treason Act 1695 provide for prosecution time limits of treason; but there is no express statutory provision providing for any time limit for prosecution of sedition.

- 28.2 What are the rationales behind the prosecution time limits for treason and sedition, respectively?

*Administration's reply to 28.2*

In its *Working Paper 49: Crimes Against the State*, the Law Reform Commission of Canada made the following comment in respect of the prosecution time limit of treason at page 36 – 37:

“... the imposition of time limitations of sixteen days for the prosecution of treason when evidenced by spoken words and three years for the prosecution of treason committed by using force to overthrow the government (*Code*, s. 48). Presumably one of the original purposes of

the sixteen-day limitation was to avoid the difficulties of witnesses trying to recollect treasonable words that they had overheard, but with today's electronic means of recording speech, this justification loses much of its force; and anyway, there is no similar rationale for the three-year time-limit.”

## **Annex 2**

29.1 How have the serious consequences regarding sedition changed for the offence of sedition that would warrant a marked increase in penalty?

### *Administration's reply to 29.1*

As explained in the Consultation Document, the threshold for the offence of sedition is substantially raised to cover situations where the stability of the state or the HKSAR is seriously endangered, compared with the existing formulation which broadly covers isolated incidents of limited violence or disturbance of public order. The penalty is increased in order to commensurate with the gravity of the offence.

29.2 What are the foreign precedents for the penalties?

### *Administration's reply to 29.2*

Please see Annex I.

29.3 Please provide a comparison between the increased penalties in Annex 2 and the penalties in the US, UK, Canada, Australia, and New Zealand criminal law for similar crimes.

### *Administration's reply to 29.3*

Please see Annex II.

Security Bureau  
February 2003

**Annex I**

<b>Proposed BL 23 offences</b>	<b>Comparable offences in other jurisdictions</b>			
	<b>UK</b>	<b>USA</b>	<b>Singapore</b>	<b>Canada</b>
Treason - Up to life imprisonment	Up to life imprisonment (s 3 of the Treason Act 1702, s 1 of the Treason Act 1814)	Up to death (18 USCS §1111)	Up to death and fine (s 121A of the Penal Code)	Up to life imprisonment (s 47(1) of the Criminal Code)
Misprision of treason - repealed	Imprisonment at court's discretion and a fine (common law offence - Halsbury's Laws of England)	Up to 7 years of imprisonment and/or a fine (18 USCS §2382)	Up to 7 years of imprisonment and/or a fine (s 121D of the Penal Code)	Up to 14 years of imprisonment (s 50 of the Criminal Code)
Secession - Up to life imprisonment	No express offence of secession, but reference could be drawn from the offence of treason			
Subversion - Up to life imprisonment	Up to life imprisonment (s 3 of the Treason Felony Act 1848)	Up to 20 years of imprisonment and/or a fine (18 USCS §2384)	Up to death (s 121 of the Penal Code)	Up to life imprisonment (s 47(2)(a) of the Criminal Code)
Organising or supporting a proscribed organisation - Up to 7 years of imprisonment and an unlimited fine		Up to 20 years of imprisonment and/or a fine (18 USCS §2385)	Up to 5 years of imprisonment (s 14 of the Societies Act)	

**Annex II**

<b>Proposed BL 23 offences for which penalties are to be increased</b>	<b>Comparable offences in other jurisdictions</b>			
	<b>UK</b>	<b>USA</b>	<b>Canada</b>	<b>Australia</b>
<p>(A) Incitement to violence or public disorder which seriously endangers the stability of the state or the HKSAR</p> <p>we suggest up to 7 years' imprisonment and an unlimited fine</p>	<p>common law offence of treasonable offence (publish seditious words or libel with a seditious intention) for which the penalty is a fine or imprisonment at court's discretion</p>	<p>18 USCS §2385 (print, publish, edit, etc, any written or printed matter advocating, teaching the overthrow or destruction of the US government by force or violence, etc) for which the penalty is up to 20 years' imprisonment and/or a fine and ineligible for employment by the US or any department or agency thereof for 5 years next following conviction</p>	<p>s 61 of the Criminal Code (speak seditious words, publish seditious libel or is a party to seditious conspiracy) for which the penalty is up to 14 years' imprisonment</p>	<p>s 24D of the Crimes Act 1914 (write, print, utter or publish any seditious words with the intention of causing violence or creating public disorder or a public disturbance) for which the penalty is up to 3 years' imprisonment</p>
<p>(B) Dealing with seditious publications -</p> <p>we suggest up to 7 years' imprisonment and a fine of HK\$500,000 and the publications should be forfeited</p>				

<b>Proposed BL 23 offences for which penalties are to be increased</b>	<b>Comparable offences in other jurisdictions</b>			
	<b>UK</b>	<b>USA</b>	<b>Canada</b>	<b>Australia</b>
(C) Unauthorized disclosure of protected information obtained by virtue of official position or unauthorized disclosure, etc - we suggest up to 5 years' imprisonment on conviction on indictment, and up to 3 years' imprisonment on summary conviction	ss 1-6 of the Official Secrets Act 1989 for which the penalty is up to 2 years' imprisonment and/or a fine (s 10(1))	50 USCS §783 and 18 USCS §798 for which the penalty is up to 10 years' imprisonment and/or a fine and ineligible to hold any office, or place of honour, profit, or trust created by the Constitution or laws of the US	ss 4, 13, 14, 16-18 of the Security of Information Act for which the penalty ranges from (A) up to 12 months' imprisonment and/or a fine on summary conviction (s 27) to (B) up to life imprisonment (ss 16 and 17)	ss 70 and 79 of the Crimes Act 1914 for which the penalty is up to 7 years' imprisonment

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