

**The Administration's response to questions**  
**raised by Hon James TO on 30 December 2002**

**Introduction**

This note sets out the Administration's response to the questions raised by Hon James TO on 30 December 2002.

**Replies to questions**

**Sedition**

Para. 4.13(b)

- 1.1 As acts causing "violence or public disorder which seriously endangers the stability" of a region (instead of a country) are classified as an element of offence, please give examples of similar provisions in other jurisdictions.

*Administration's reply to 1.1*

In Australia, section 24C of the Crimes Act 1914 provides that it is an offence to engage in a seditious enterprise with the intention of causing violence, or creating public disorder or a public disturbance. There is no requirement that the intended violence or public disorder must be of such a magnitude that would threaten the whole country.

In New Zealand, section 82 of the Crimes Act 1961 provides that it is unlawful to be a party to any seditious conspiracy (which is defined as an agreement between two or more persons to carry into execution any seditious intention). A "seditious intention" includes an intention to incite, procure, or encourage the commission of any offence that is prejudicial to the public safety or the maintenance of public order, and an intention to incite, procure, or encourage violence, lawlessness or disorder.

Para. 4.17

- 1.2 Regarding the defence of "reasonable excuse" in the offence of dealing with seditious publications, how is "news reporting" defined? For example, is investigative journalism included?

1.3 Regarding the defence of “reasonable excuse” in the offence of dealing with seditious publications, how is “news reporting” defined? For example, are commentaries of academics in newspapers included, regardless of them appearing in the news pages, in the commentaries pages or in the features pages?

*Administration’s reply to 1.2 and 1.3*

“Reasonable excuse” refers to any excuse deemed “reasonable” by the court, including academic research and news reporting.

“Reasonable” is a well-established concept in common law. As the law cannot provide for all possibilities, such as the circumstantial factors of the individual cases, it is necessary in many cases to provide flexibility for the court to decide whether an excuse is reasonable from the angle of an average person, based on all the circumstances of the case.

The express provision that “academic research” and “news reporting” are reasonable excuses is merely meant to be a guidance for the court when it considers what constitutes reasonable excuses. This will not exclude other reasons to be accepted as reasonable excuses.

**Theft of State Secrets**

Para. 6.14

1.4 The paragraph pointed out that Article 23 should not be interpreted as implying that information other than state secrets needs no protection. How does the Administration get this understanding? On this understanding, beside “state secrets”, which categories of information need to be protected on the basis of Article 23, although not belonging to “state secrets”? Please explain in details by listing out the examples.

*Administration’s reply to 1.4*

Article 23 is a directive clause requiring the HKSAR to enact laws. In particular, it stipulates that the HKSAR shall enact laws to prohibit theft of state secrets. Nowhere does the Article require or imply that any existing laws would be invalidated, or, so far as protection of information is concerned, that protection should not be afforded to information that are not state secrets. As a result, as long as the HKSAR is satisfied that the information protected by the existing Official Secrets Ordinance adequately

covers “state secrets”, the obligations under Article 23 are fulfilled.

Para. 6.15

- 1.5 There are comments saying that the definition of “information related to international relations” protected under the Official Secrets Ordinance is too broad and may be inconsistent with human rights standard. Is the Government aware of the source of such comments? What is the Government’s response to them?

*Administration’s reply to 1.5*

The compatibility of the Official Secrets Ordinance with the Hong Kong Bill of Rights Ordinance and hence the International Covenant on Civil and Political Rights (ICCPR) has been considered during the scrutiny of the Official Secrets Bill in 1997. So far as Part III of that Bill was concerned, the Administration concluded that "to the extent that the provisions of Part III of the Bill constitute restrictions on freedom of information those restrictions are narrowly tailored to protect security and public order (ordre public). The provisions may properly be regarded as a proportionate means to achieve a legitimate purpose within the meaning of Article 19 of the ICCPR. There is certainly nothing in the international jurisprudence to indicate otherwise".

Para. 6.19

- 1.6 It is proposed that “information relating to relations between the Central Authorities of the PRC and the HKSAR” should be protected. Please make a list of other countries where relations between central and regional governments are classified as protected information for the purposes of protecting “state secrets” and cite the relevant legislation thereof.

*Administration’s reply to 1.6*

In the UK, section 3 of the Official Secrets Act 1989 provides, inter alia, that it is an offence to make a damaging disclosure of any information relating to international relations. “International relations” is defined to include any matter relating to a state other than the UK with another state which is capable of affecting the relations of the UK with another state. References to a state other than the UK include references to any territory (i.e. including UK’s colonies (e.g. pre-1997 Hong Kong) outside the UK.

## Foreign Political Organizations

Para. 7.15

1.7 With reference to the mechanism of proscribing an organization mentioned in paragraph 7.15, please make a list of those countries having such mechanism and the relevant legislation thereof.

### Administration's reply to 1.7

In Australia, section 30A of the Crimes Act 1914 declares, inter alia, the following to be unlawful associations, namely:

- (1) (a) any body of persons, incorporated or unincorporated, which by its constitution or propaganda or otherwise advocates or encourages:
    - (i) the overthrow of the Constitution of the Commonwealth by revolution or sabotage;
    - (ii) the overthrow by force or violence of the established government of the Commonwealth or of a State or of any other civilized country or of organized government;or which is, or purports to be, affiliated with any organization which advocates or encourages any of the doctrines or practices specified in this paragraph;
  - (b) any body of persons, incorporated or unincorporated, which by its constitution or propaganda or otherwise advocates or encourages the doing of any act having or purporting to have as an object the carrying out of a seditious intention as defined in section 24A.
- (2) Any branch or committee of an unlawful association, and any institution or school conducted by or under the authority or apparent authority of an unlawful association, shall, for all the purposes of this Act, be deemed to be an unlawful association.

Security Bureau  
February 2003

