

For discussion  
13 June 2000

**Bills Committee on Witness Protection Bill**

**Administration's Response to Issues Raised at  
the Bills Committee Meeting on 5 June 2000**

**Clauses 13 & 14 – the review system**

The Chairman suggested that an appeal made against the decision of the approving authority under clause 13 should be determined by an appeal board.

2. The Administration has reviewed this proposal carefully and has come to the view that it should be accepted so as to enhance the credibility of the review mechanism. It is anticipated that the composition and operation of the appeal boards would be similar to those adopted by the existing Police Witness Protection Appeal Board. For each hearing, the board will be chaired by an officer designated by the Commissioner concerned who is more senior to the approving authority. Members would comprise persons appointed by the Chief Executive for such purpose and at least two of them are not public officers. The draft Committee Stage Amendments (CSAs) are being prepared and will be circulated for Members' comment once available.

**Offences under clause 17(1)(b)**

3. Worrying that the current drafting of clause 17(1)(b) may have implications on the freedom of press, the Chairman suggested that a provision be included in the Bill to stipulate that no prosecution shall be instituted without the consent of the Secretary for Justice.

4. We have consulted the Department of Justice and have been advised that there is no established policy or practice for including such consent requirements in legislation. However, in some circumstances, (e.g. it is not possible to define the offence too precisely, there is a need to

ensure that mitigating factors have been taken into account, it involves the use of the criminal law in sensitive or controversial areas), such requirements are included in a number of ordinances to ensure that prosecutions are not brought in inappropriate circumstances. Some examples are at Annex A for easy reference. With the consent of the Department of Justice, we would revise the Bill by adding a similar “consent” provision. Details are set out in the relevant extract of the bilingual draft CSAs at Annex B.

Security Bureau

June 2000

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88. 將正本文件存檔

當案件最終獲處置後，司法事務官須將交付審判的裁判官所傳送給他的案件的所有正本文件在其辦事處存檔或按法庭指示以其他方式處理。  
(由 1954 年第 6 號第 8 條代替)

88. Filing of original documents

When a case has been finally disposed of, the Registrar shall file in his office or otherwise deal with as the court may direct, all the original documents in that case which have been transmitted to him by the committing magistrate.  
(Replaced 6 of 1954 s. 8)

第 V 部

法律程序的各方

PART V

PARTIES

89. 協助犯，教唆犯及從犯

任何人協助，教唆，慫恿或促使另一人犯任何罪行，即屬就同一罪行有罪。  
(由 1971 年第 5 號第 7 條代替)  
[比照 1861 c. 94 s. 8 U.K.; 比照 1952 c. 55 s. 35 U.K.]

89. Aiders, abettors and accessories

Any person who aids, abets, counsels or procures the commission by another person of any offence shall be guilty of the like offence.  
(Replaced 5 of 1971 s. 7)  
[cf. 1861 c. 94 s. 8 U.K.; 1952 c. 55 s. 35 U.K.]

90. 協助罪犯的罰則

(1) 如某人犯可逮捕的罪行，而任何其他人知悉或相信該人就該罪行或另一可逮捕罪行有罪，並在無合法權力依據或合理辯解的情況下，作出任何作為而意圖妨礙拘捕或檢控該人，即屬有罪。

(2) 如在循公新程序審訊可逮捕的罪行時，陪審團信納有人已犯被控告的罪行(或被控人就該控罪或被裁斷有罪的另一罪行)，但裁斷被控人就該罪行無罪，而陪審團如信納該人就該控告的罪行(或該另一罪行)而言，犯第(1)款所訂的任何罪行，則可裁斷該人就第(1)款所訂的任何罪行有罪。

(3) 任何人就第(1)款所訂的罪行有罪——

(a) 如循公新程序定罪，可處監禁 10 年；或

(b) 如循簡易程序定罪，可處罰款 \$5,000 及監禁 2 年。

(4) 除經律政司司長同意外，不得就第(1)款所訂的罪行提起法律程序。(由 1997 年第 362 號法律公告修訂)

(5) 第(4)款不阻止就第(1)款所訂的罪行逮捕或發出逮捕令以逮捕任何人，亦不阻止將被控告該罪行的人押解留或予以保釋。

(由 1971 年第 5 號第 7 條代替)  
[比照 1967 c. 58 s. 4 U.K.]

90. Penalties for assisting offenders

(1) If a person has committed an arrestable offence, any other person who, knowing or believing him to be guilty of the offence or of some other arrestable offence, does, without lawful authority or reasonable excuse, any act with intent to impede his apprehension or prosecution shall be guilty of an offence.

(2) If on the trial of an indictment for an arrestable offence the jury are satisfied that the offence charged (or some other offence of which the accused might on that charge be found guilty) was committed, but find the accused not guilty of it, they may find him guilty of any offence under subsection (1) of which they are satisfied that he is guilty in relation to the offence charged (or that other offence).

(3) A person guilty of an offence under subsection (1) shall be liable—

(a) on conviction on indictment, to imprisonment for 10 years; or

(b) on summary conviction, to a fine of \$5,000 and to imprisonment for 2 years.

(4) No proceedings shall be instituted for an offence under subsection (1) except with the consent of the Secretary for Justice. (Amended L.N. 362 of 1997)

(5) Nothing in subsection (4) shall prevent the arrest, or the issue of a warrant for the arrest, of any person for an offence under subsection (1), or the remand in custody or on bail of a person charged with such an offence.  
(Replaced 5 of 1971 s. 7)  
[cf. 1967 c. 58 s. 4 U.K.]

P. 04

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## 156. 申訴人身分的保密

(1) 除第(9)(a)款另有規定外，在有人指稱發生指明性罪行後，凡相當可能會致使公眾識別與該項指稱有關的申訴人身分的事項，除依據本條所發出的指示許可者外，不得在香港可供公眾閱讀的審判中發布或在香港廣播。

(2) 任何人被控犯指明性罪行的審訊開始前，該人或預期在審訊中被申訴人提出證據指證的其他人，如依據本款向法官申請發出指示，並使法官信納——

- (a) 該指示需予發出以誘使相當可能需要他在審訊中擔任證人的人前來作證；及
- (b) 如不發出該指示，相當可能會在實質上不利於申訴人在審訊中所作的辯護，

則雖有指稱有上述罪行的指控，法官須指示第(1)款並不憑藉該項指控而適用於申訴人。

(3) 任何人被控犯指明性罪行的審訊開始後，如有命令就該罪行重新審訊該人，則就第(2)款而言，無須理會以往該人被控該罪行的審訊曾開始進行。 [比照 1976 c. 82 s. 5(2) U.K.]

(3A) 凡為尋求可致使對指稱的指明性罪行須負責任的人被逮捕的資料，或基於公眾利益的其他理由，而需發出指示，規定第(1)款不適用於指示內指明的申訴或事項，則——

- (a) 在申訴人以書面同意下，指示可由高級警司或以上職級的警務人員發出；或
- (b) 在其他情況下，指示可由律政司司長發出。 (由 1997 年第 362 號法律公告修訂)

並須在憲報刊登該指示的公告。 (由 1980 年第 26 號第 2 條增補)

(4) 在任何人被控犯指明性罪行的審訊中，法官、區域法院法官、裁判官或少年法庭(視屬何情況而定)如信納第(1)款的規定會有對審訊中法律程序的報導施加實質而不合理限制的效果，並信納解除或放寬該項限制有利公眾利益，則法官、區域法院法官、裁判官或少年法庭(視屬何情況而定)須指示第(1)款不適用於指示內指明與申

## 156. Anonymity of complainants

(1) Subject to subsection (9)(a), after an allegation is made that a specified sexual offence has been committed no matter likely to lead members of the public to identify any person as the complainant in relation to that allegation shall either be published in Hong Kong in a written publication available to the public or be broadcast in Hong Kong except as authorized by a direction given in pursuance of this section.

(2) If, before the commencement of a trial at which a person is charged with a specified sexual offence, he or another person against whom the complainant may be expected to give evidence at the trial applies to a judge for a direction in pursuance of this subsection and satisfies the judge—

- (a) that the direction is required for the purpose of inducing persons to come forward who are likely to be needed as witnesses at the trial; and
- (b) that the conduct of the applicant's defence at the trial is likely to be substantially prejudiced if the direction is not given,

the judge shall direct that subsection (1) shall not, by virtue of the accusation alleging the offence aforesaid, apply in relation to the complainant.

(3) If after the commencement of a trial at which a person is charged with a specified sexual offence a new trial of the person for that offence is ordered, the commencement of any previous trial at which he was charged with that offence shall be disregarded for the purposes of subsection (2). [cf. 1976 c. 82 s. 5(2) U.K.]

(3A) A direction that subsection (1) shall not apply in relation to such complaint or such matter as is specified in the direction may be given, where it is necessary for the purpose of seeking information which may lead to the arrest of a person responsible for an alleged specified sexual offence, or is for any other reason in the public interest—

- (a) by a police officer of the rank of Senior Superintendent or above, where the complainant consents in writing to such a direction being given; or
- (b) by the Secretary for Justice in any other case. (Amended L.N. 362 of 1997)

and notice of any such direction shall be published in the Gazette. (Added 26 of 1980 s. 2)

(4) If at a trial at which a person is charged with a specified sexual offence the judge or, as the case may be, the District Judge, magistrate or juvenile court, is satisfied that the effect of subsection (1) is to impose a substantial and unreasonable restriction upon the reporting of proceedings at the trial and that it is in the public interest to remove or relax the restriction, the judge or, as the case may be, the District Judge, magistrate or juvenile court, shall direct that subsection (1) shall not apply to such matter relating to the complainant as is specified in the direction; but a direction shall be

P.06  
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新入有關的事項；但不得僅因被告人在審訊中被裁定罪名不成立，而依據本款發出指示。(由 1998 年第 25 號第 2 條修訂)

(5) 任何人被裁定罪名成立，並就該項裁定向上訴法庭發出上訴的通知或發出申請上訴許可的通知後，如依據本款向上訴法庭申請發出指示，並使上訴法庭傳訊——

- (a) 該指示需予發出以取得證據支持該項上訴；及
- (b) 如不發出該指示，相當可能會在實質上對申請人不公平。

則雖有指示內指明的指明性罪行的指稱，上訴法庭須指示第(1)款並不憑藉該項指稱而適用於指示內指明的申請人。(由 1998 年第 25 號第 2 條修訂)

(6) 第(5)款適用於第 155(3)條所述的循簡易程序審訊的罪行的定罪，但應用時，該款中凡提述上訴法庭時，須代之以提述法官，而凡提述發出申請上訴許可的通知時，則予以省略。(由 1998 年第 25 號第 2 條修訂) [比照 1976 c. 82 s. 5(3) U.K.]

(7) 就本條而言，凡有下列情形，即為作出指明性罪行的指稱——

- (a) 向警務人員作出款項指稱；或
- (b) 向裁判官作出申訴或在裁判官席前提出告發，指稱某人曾對申訴人犯指明性罪行；或
- (c) 某人在裁判官或法庭席前，被控對申訴人犯指明性罪行；或
- (d) 某人因一項指稱對申訴人犯指明性罪行的控罪，被交付原訟法庭審判；或
- (e) 一項公訴在源訟法庭席前提出，指稱某人對申訴人犯指明性罪行。

而在本條中，凡提述指明性罪行的指稱時，亦須據此解釋。(由 1998 年第 26 號第 2 條修訂)

(8) 在本條中——

“申訴人”(complainant)就指明性罪行的指稱而言，指被指稱為所犯罪行的對象的人；

“書刊”(written publication)包括影片、聲帶及其他永久形式的紀錄，但不包括公訴書或為供某一法律程序使用而擬備的其他文件；及

“廣播”(broadcast)指透過無線電訊供大眾接收的聲音或影像廣播。

given in pursuance of this subsection by reason only of an acquittal of a defendant at the trial.

(5) If a person who has been convicted of an offence and given notice of an appeal to the Court of Appeal against the conviction, or notice of an application for leave so to appeal, applies to the Court of Appeal for a direction in pursuance of this subsection and satisfies the Court—

- (a) that the direction is required for the purpose of obtaining evidence in support of the appeal; and
- (b) that the applicant is likely to suffer substantial injustice if the direction is not given.

the Court shall direct that subsection (1) shall not, by virtue of such allegation of a specified sexual offence as is specified in the direction, apply in relation to a complainant so specified.

(6) Subsection (5) shall apply in relation to a conviction of an offence tried summarily as mentioned in section 155(3), and, in so applying for references to the Court of Appeal there shall be substituted references to a judge and the reference to notice of an application for leave to appeal shall be omitted. [cf. 1976 c. 82 s. 5(3) U.K.]

(7) For the purposes of this section an allegation of a specified sexual offence is made if—

- (a) it is made to a police officer; or
- (b) a complaint is made to or an information is laid before a magistrate alleging that a person has committed a specified sexual offence against the complainant; or
- (c) a person appears before a magistrate or a court charged with a specified sexual offence against the complainant; or
- (d) a person is committed for trial at the Court of First Instance on a charge alleging a specified sexual offence against the complainant; or
- (e) an indictment charging a person with a specified sexual offence against the complainant is preferred before the Court of First Instance.

and references in this section to an allegation of a specified sexual offence shall be construed accordingly. (Replaced 26 of 1980 s. 2. Amended 25 of 1998 s. 2)

(8) In this section—

“broadcast” (廣播) means a broadcast by wireless telegraphy of sound or visual images intended for general reception;

“complainant” (申訴人), in relation to an allegation of a specified sexual offence, means the person against whom the offence is alleged to have been committed; and

“written publication” (書刊) includes a film, a sound track and any other record in permanent form but does not include an indictment or other document prepared for use in particular legal proceedings.

P.06  
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## (9) 本條並無規定——

- (a) 禁止由於指明性罪行的指稱而就只包括關於法律程序(但任何人被控該罪行的審訊的法律程序,或旨在引致該審訊的法律程序,或因該審訊而產生的上訴的法律程序則除外)的報導事項作發布或廣播;或
- (b) 影響憑藉其他成文法則而施加於任何發布或廣播的禁制或限制,而依據本條發出的指示,並不影響在指示發出前任何時間第(1)款的施行。
- (由 1978 年第 25 號第 4 條增補。由 1979 年第 32 號第 3 條修訂;由 1980 年第 26 號第 2 條修訂;由 1991 年第 90 號第 23 條修訂)

[比照 1976 c. 82 s. 4 U.K.]

## 157. 罪行及法律程序

- (1) 凡違反第 156(1) 條而發布或廣播任何事項,下列的人即屬犯罪——
- (a) 如該事項在報章或期刊發布,則有關報章或期刊的任何所有人、編輯及出版人;
- (b) 如該事項在其他刊物發布,則出版該刊物的人;及
- (c) 如廣播該事項,則播送或提供作該項廣播的節目的法團,以及為該節目執行相當於報章編輯職能的人,
- 一經定罪,可處罰款 \$10,000 及監禁 6 個月。
- (2) 如第(1)款所訂罪行是由法團所犯,並經證明所犯罪行獲得該法團的董事、經理、秘書或其他相類人員,或其意是以上述身分行事的人的同意或縱容,或可歸咎於上述的人的疏忽,則該人與該法團均屬犯該罪行,並可據此遭受起訴及懲處。
- (3) 凡法團事務是由其成員管理,則第(2)款適用於成員的與其管理職能相關的作為及過失,猶如該成員是法團的董事一樣。
- (4) 第(1)款所訂罪行(包括憑藉第(2)款但不論是否同時憑藉第(3)款而指稱已犯的罪行)的法律程序,除由律政司司長提出或總律政司司長同意外均不得提出;該

## (9) Nothing in this section—

- (a) prohibits the publication or broadcasting, in consequence of an allegation of a specified sexual offence, of matter consisting only of a report of legal proceedings other than proceedings at, or intended to lead to, or on an appeal arising out of, a trial at which a person is charged with that offence; or
- (b) affects any prohibition or restriction imposed by virtue of any other enactment upon a publication or broadcast,
- and a direction in pursuance of this section does not affect the operation of subsection (1) at any time before the direction is given.
- (Added 25 of 1978 s. 4. Amended 32 of 1979 s. 3; 26 of 1980 s. 2; 90 of 1991 s. 23)
- [cf. 1976 c. 82 s. 4 U.K.]

## 157. Offences and proceedings

- (1) If any matter is published or broadcast in contravention of section 156(1), the following persons, namely—
- (a) in the case of a publication in a newspaper or periodical, any proprietor, any editor and any publisher of the newspaper or periodical;
- (b) in the case of any other publication, the person who publishes it; and
- (c) in the case of a broadcast, any body corporate which transmits or provides the programme in which the broadcast is made and any person having functions in relation to the programme corresponding to those of an editor of a newspaper,
- shall be guilty of an offence and shall be liable on conviction to a fine of \$10,000 and to imprisonment for 6 months.
- (2) When an offence under subsection (1) which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity, he as well as the body corporate shall be guilty of that offence and be liable to be proceeded against and punished accordingly.
- (3) Where the affairs of a body corporate are managed by its members subsection (2) shall apply in relation to the acts and defaults of a member in connexion with his functions of management as if he were a director of the body corporate.
- (4) Proceedings for an offence under subsection (1) (including such an offence which is alleged to have been committed by virtue of subsection (2), whether or not by virtue also of subsection (3)) shall not be instituted except by or with the consent of the Secretary for Justice; and where a person is c

控犯此項罪行的人，如證明在所指稱的罪行發生時，他不知悉，沒有懷疑亦無理由懷疑所發布或廣播的事項是屬於第 156(1) 條所述者，即可以此作為免責辯護。(由 1997 年第 362 號法律公告修訂)

(由 1978 年第 25 號第 4 條增補)  
[比照 1976 c. 82 ss. 4(5), 5(4)-(5) & 6(6) U.K.]

with such an offence it shall be a defence to prove that at the time of the alleged offence he was not aware, and neither suspected nor had reason to suspect, that the publication or broadcast in question was of such matter as is mentioned in section 156(1). (Amended L.N. 362 of 1997)

(Added 25 of 1978 s. 4)  
[cf. 1976 c. 82 ss. 4(5), 5(4)-(5) & 6(6) U.K.]

158. 第 156 及 157 條對軍事法庭審訊的適用範圍

158. Application of ss. 156 and 157 to trials by courts-martial

(1) 第 156 條經以下修改後對於依據 (1957 年海軍軍紀法令)\* (1957 c. 53 U.K.)、(1955 年陸軍法令)† (1955 c. 18 U.K.) 或 (1955 年空軍法令)‡ (1955 c. 19 U.K.) 的條文而被控犯指明性罪行的人，具有效力——

(1) In relation to a person charged with a specified sexual offence in pursuance of any provision of the Naval Discipline Act 1957 (1957 c. 53 U.K.), the Army Act 1955 (1955 c. 18 U.K.) or the Air Force Act 1955 (1955 c. 19 U.K.), section 156 shall have effect with the following modifications, namely—

- (a) 凡提述審訊或高等法院進行的審訊時，須解釋作提述軍事法庭審訊；
- (b) 凡第 156(2) 條中提述法官時，須代之以提述獲授權召開或已召開軍事法庭以就該罪行進行審訊的人員(倘憑藉其職位召開軍事法庭的人員，在召開軍事法庭後不再擔任該職位，則為擔任該職位的人員)，又凡第 156(4) 條提述大法官時，須代之以提述上述法庭；
- (c) 凡第 156(5) 條提述上新法院時，須代之以提述軍事法庭上新庭；及
- (d) 第 156(7)(a) 至 (d) 條，由下列文字代替：“該人依據 (1957 年海軍軍紀法令)\* (1957 c. 53 U.K.)、(1955 年陸軍法令)† (1955 c. 18 U.K.) 或 (1955 年空軍法令)‡ (1955 c. 19 U.K.) 的條文被控犯指明性罪行”。

- (a) any reference to a trial or a trial before the High Court shall be construed as a reference to a trial by court-martial;
- (b) for any reference in section 156(2) to a judge there shall be substituted a reference to the officer who is authorized to convene or has convened a court-martial for the trial of the offence (or, if after convening it he has ceased to hold the appointment by virtue of which he convened it, the officer holding that appointment) and for any reference in subsection (4) of that section to such a judge there shall be substituted a reference to the court;
- (c) for any reference in section 156(5) to the Court of Appeal there shall be substituted a reference to the Courts-Martial Appeal Court; and
- (d) in section 156(7) for paragraphs (a) to (d) there shall be substituted the words “he is charged with a specified sexual offence in pursuance of any provision of the Naval Discipline Act 1957 (1957 c. 53 U.K.), the Army Act 1955 (1955 c. 18 U.K.) or the Air Force Act 1955 (1955 c. 19 U.K.)”;

而第 157 條亦據此適用。(由 1979 年第 32 號第 3 條修訂)  
(2) 如任何人依據第 (1) 款所指明法令的條文被控犯指明性罪行，在該人被裁定罪名成立，並發出就該項裁定而向軍事法庭上新庭提出上訴的通知或發出申請上訴許可的通知後，如軍事法庭上新庭法官發出指示，規定雖有一項指稱有指明性罪行的指控(在該指示內所指明者)，但第 156(1) 條並不憑藉該項指控而適用於該指示內指明的申訴人，則該指示須當作由軍事法庭上新庭依據第 156(5) 條(該條文按本條經修改)而發出。(由 1979 年第 32 號第 3 條修訂) [比照 1976 c. 82 s. 5(6) U.K.]

and section 157 shall apply accordingly. (Amended 32 of 1979 s. 3)

(2) In relation to a person who, having been charged with a specified sexual offence in pursuance of any provision of any of the Acts specified in subsection (1), has been convicted of an offence and has given notice of an appeal to the Courts-Martial Appeal Court against the conviction, or notice of an application for leave so to appeal, a direction given by a judge of that Court that section 156(1) shall not, by virtue of an accusation which alleges a specified sexual offence and is specified in the direction, apply in relation to a complainant so specified, shall be deemed to be a direction given by the Courts-Martial Appeal Court in pursuance of subsection (5) of that section (as modified by this section). (Amended 32 of 1979 s. 3) [cf. 1976 c. 82 s. 5(6) U.K.]

13-JUN-2000 15:14 FROM E DIVISION SB TO 28778024

\* “(1957 年海軍軍紀法令)” 乃 “Naval Discipline Act 1957” 之譯名。  
† “(1955 年陸軍法令)” 乃 “Army Act 1955” 之譯名。  
‡ “(1955 年空軍法令)” 乃 “Air Force Act 1955” 之譯名。

P. 08  
99X  
+852 2810 7702  
13-JUN-2000 15:24

(b) 他相信，並且有合理理由相信，他有權就該財產採取該項行動，除因他的疏忽而造成的損失外，他不須對他的行動所引致的損失向任何人負責。

(2) 接管人的薪酬及開支，如沒有款項可供司法常務官根據第 18(5) 條支付，須由檢控官支付；在沒有提起審訊指明的罪行的法律程序的情況下，則該等開支須由提出申請而就此申請引致接管人被委任的人支付。

[比照 1986 c. 32 s. 18 U.K.]

(b) believing, and having reasonable grounds for believing, that he is entitled to take that action in relation to that property, he shall not be liable to any person in respect of any loss or damage resulting from his action except in so far as the loss or damage is caused by his negligence.

(2) Any amount due in respect of the remuneration and expenses of a receiver so appointed shall, if no sum is available to be applied in payment of it under section 18(5), be paid by the prosecutor or, in a case where proceedings for a specified offence are not instituted, by the person on whose application the receiver was appointed.

[cf. 1986 c. 32 s. 18 U.K.]

第 V 部

雜項

PART V

MISCELLANEOUS

處理已知或相信為代表從可公訴罪行的得益的財產

(1) 除第 25A 條另有規定外，如有人知道或有合理理由相信任何財產全部或部分直接或間接代表任何人從可公訴罪行的得益而仍處理該財產，即屬犯罪。

(2) 在檢控任何人犯第 (1) 款所訂的罪行的法律程序中，被告人可證明以下事情為免責辯護——

(a) 他曾意圖就違反第 (1) 款的有關作為而向獲授權人披露第 25A(1) 條所述的知識、懷疑或事宜；及

(b) 他未能按照第 25A(2) 條作出披露是有合理辯解的。

(3) 任何人犯第 (1) 款所訂的罪行——

(a) 循公新程序定罪後，可處罰款 \$5,000,000 及監禁 14 年；或

(b) 循簡易程序定罪後，可處罰款 \$500,000 及監禁 3 年。

(4) 在本條及第 25A 條中，凡提述可公訴罪行之處，包括若在香港發生即會構成公新罪行的行為。

(由 1995 年第 90 號第 22 條代替)

25. Dealing with property known or believed to represent proceeds of indictable offence

(1) Subject to section 25A, a person commits an offence if, knowing or having reasonable grounds to believe that any property in whole or in part directly or indirectly represents any person's proceeds of an indictable offence, he deals with that property.

(2) In proceedings against a person for an offence under subsection (1), it is a defence to prove that—

(a) he intended to disclose to an authorized officer such knowledge, suspicion or matter as is mentioned in section 25A(1) in relation to the act in contravention of subsection (1) concerned; and

(b) there is reasonable excuse for his failure to make disclosure in accordance with section 25A(2).

(3) A person who commits an offence under subsection (1) is liable—

(a) on conviction upon indictment to a fine of \$5,000,000 and to imprisonment for 14 years; or

(b) on summary conviction to a fine of \$500,000 and to imprisonment for 3 years.

(4) In this section and section 25A, references to an indictable offence include a reference to conduct which would constitute an indictable offence if it had occurred in Hong Kong.

(Replaced 90 of 1995 s. 22)

P. 09  
TO 28778024  
FROM E DIVISION SB  
13-JUN-2000 15:14

P. 09  
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13-JUN-2000 15:24



**25A. 對財產是代表從可公訴罪行的得益等的知悉或懷疑的披露**

- (1) 凡任何人知道或懷疑任何財產是——
  - (a) 全部或部分，直接或間接代表任何人從可公訴罪行的得益；
  - (b) 曾在與可公訴罪行有關的情況下使用；或
  - (c) 擬在與可公訴罪行有關的情況下使用。

該人須在合理範圍內盡快將該知悉或懷疑，連同上述知悉或懷疑所根據的任何事宜，向獲授權人披露。

(2) 已作出第(1)款所指的披露的人如作出(不論是在作出該項披露之前或之後)違反第 25(1)條的作為，而該項披露與該作為有關，則只要已符合以下條件，該人並沒有犯該條所訂的罪行——

- (a) 該項披露是在他作出該作為之前作出的，而且他作出該作為是得到獲授權人的同意的；或
- (b) 該項披露——
  - (i) 是在他作出該作為之後作出的；
  - (ii) 是由他主動作出的；及
  - (iii) 是在合理範圍內盡快作出的。
- (3) 第(1)款所指的披露——
  - (a) 不得視為違反合約或任何成文法例、條守規則或其他條文對披露資料所施加的任何限制；
  - (b) 不得令作出披露的人須對以下事情所引致的任何損失負上支付損害賠償的法律責任——
    - (i) 該項披露；
    - (ii) 該項披露所引致的就有關財產而作出的作為或不作為。

(4) 如任何人在有關時間是受僱的，則凡該人是按其僱主所定下的程序向適當的人作出披露的，本條就該項披露具有效力的情況，一如就向獲授權人作出披露具有效力一般。

(5) 任何人如知道或懷疑已有任何披露根據第(1)或(4)款作出，而仍向其他人披露任何相當可能損害或者會為跟進首述披露而進行的偵查的事宜，即屬犯罪。

(6) 在檢控任何人犯第(5)款所訂的罪行的法律程序中，被告人可證明以下事情作為免責辯護——

**25A. Disclosure of knowledge or suspicion that property represents proceeds, etc. of indictable offence**

- (1) Where a person knows or suspects that any property—
  - (a) in whole or in part directly or indirectly represents any person's proceeds of;
  - (b) was used in connection with; or
  - (c) is intended to be used in connection with,

an indictable offence, he shall as soon as it is reasonable for him to do so disclose that knowledge or suspicion, together with any matter on which that knowledge or suspicion is based, to an authorized officer.

(2) If a person who has made a disclosure referred to in subsection (1) does any act in contravention of section 25(1) (whether before or after such disclosure), and the disclosure relates to that act, he does not commit an offence under that section if—

- (a) that disclosure is made before he does that act and he does that act with the consent of an authorized officer; or
- (b) that disclosure is made—
  - (i) after he does that act;
  - (ii) on his initiative; and
  - (iii) as soon as it is reasonable for him to make it.

(3) A disclosure referred to in subsection (1)—

- (a) shall not be treated as a breach of any restriction upon the disclosure of information imposed by contract or by any enactment, rule of conduct or other provision;
- (b) shall not render the person who made it liable in damages for any loss arising out of—
  - (i) the disclosure;
  - (ii) any act done or omitted to be done in relation to the property concerned in consequence of the disclosure.

(4) In the case of a person who was in employment at the relevant time, this section shall have effect in relation to disclosures to the appropriate person in accordance with the procedure established by his employer for the making of such disclosures as it has effect in relation to disclosures to an authorized officer.

(5) A person commits an offence if, knowing or suspecting that a disclosure has been made under subsection (1) or (4), he discloses to any other person any matter which is likely to prejudice any investigation which might be conducted following that first-mentioned disclosure.

(6) In proceedings against a person for an offence under subsection (5), it is a defence to prove—

P.10  
TO 28778024  
FROM E DIVISION SB  
13-JUN-2000 15:15

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13-JUN-2000 15:25

- P. 11  
TO 28778024
- (a) 他不知道亦沒有懷疑有關的披露相當可能會如該款所提述釀造成損害；或  
(b) 他有合法授權作出該項披露或對作出該項披露有合理辯解。
- (7) 任何人違反第(1)款，即屬犯罪，經定罪後，可處第5級罰款及監禁3個月。
- (8) 任何人犯第(5)款所訂的罪行——  
(a) 按公訴程序定罪後，可處罰款 \$500,000 及監禁3年；或  
(b) 循簡易程序定罪後，可處第6級罰款及監禁1年。  
(由 1995 年第 90 號第 22 條增補)

FROM E DIVISION SB  
13-JUN-2000 15:15

26. 限制將根據第 25A 條所作的披露公開

- 人——
- (1) 除第(2)款另有規定外，在任何民事或刑事法律程序中，不得迫使任何證人——  
(a) 公開有人曾經根據第 25A(1) 或 (4) 條作出披露；(由 1995 年第 90 號第 23 條修訂)  
(b) 公開某人為披露人；或  
(c) 回答任何問題，如答案會直接或間接引致公開 (a) 或 (b) 段所指的任何事情。
- (2) 在任何法律程序中，如有以下情況，則第(1)款不適用——  
(a) 所檢控的是第 25 或 25A 條或本條所訂的罪行；或 (由 1995 年第 90 號第 23 條修訂)  
(b) 法庭認為必須公開該項披露或某人為披露人，方能在各當事人之間秉行公正。
- (3) 除第(4)、(5)及(6)款另有規定外，無論何人，均不得出版或廣播任何引致以下後果的資料——  
(a) 公開或暗示有人曾經根據第 25A(1) 或 (4) 條作出披露；或 (由 1995 年第 90 號第 23 條修訂)  
(b) 公開或暗示某人為披露人。
- (4) 在第(3)款中，“資料”(information)——  
(a) 包括任何民事或刑事法律程序的報導；  
(b) 不包括為統計目的由政府出版或經政府批准而出版的資料。
- (5) 第(3)款不適用於——

- (a) that he did not know or suspect that the disclosure concerned was likely to be prejudicial in the way referred to in that subsection; or  
(b) that he had lawful authority or reasonable excuse for making that disclosure.
- (7) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 5 and to imprisonment for 3 months.
- (8) A person who commits an offence under subsection (5) is liable—  
(a) on conviction upon indictment to a fine of \$500,000 and to imprisonment for 3 years; or  
(b) on summary conviction to a fine at level 6 and to imprisonment for 1 year.
- (Added 90 of 1995 s. 22)

26. Restrictions on revealing disclosure under section 25A

- (1) Subject to subsection (2), no witness in any civil or criminal proceedings shall be obliged—  
(a) to reveal that a disclosure was made under section 25A(1) or (4); (Amended 90 of 1995 s. 23)  
(b) to reveal the identity of any person as the person making the disclosure; or  
(c) to answer any question if the answer would lead, or would tend to lead, to the revealing of any fact or matter referred to in paragraph (a) or (b).
- (2) Subsection (1) shall not apply in any proceedings—  
(a) for an offence under section 25 or 25A or this section; or (Amended 90 of 1995 s. 23)  
(b) where the court is of the opinion that justice cannot fully be done between the parties without revealing the disclosure or the identity of any person as the person making the disclosure.
- (3) Subject to subsections (4), (5) and (6), no person shall publish or broadcast any information so as to reveal or suggest—  
(a) that a disclosure was made under section 25A(1) or (4); or (Amended 90 of 1995 s. 23)  
(b) the identity of any person as the person making the disclosure.
- (4) In subsection (3), “information” (資料)—  
(a) includes a report of any civil or criminal proceedings;  
(b) does not include information published for statistical purposes by, or under the authority of, the Government.
- (5) Subsection (3) shall not apply in respect of proceedings—

P. 11  
99%  
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13-JUN-2000 15:25

- (a) 檢控被辦人犯第 25 或 25A 條所訂的罪行的法律程序；或 (由 1995 年第 90 號第 23 條修訂)
- (b) 審訊本條所訂的罪行的法律程序。
- (6) 法庭或裁判官如信納如此做法有利於司法公正，可藉命令將第 (3) 款的規限免除至命令內指明的限度。
- (7) 如有資料在違反第 (3) 款的情況下出版或廣播，以下各人都屬犯罪，經定罪後，可處第 5 級罰款及監禁 6 個月——
  - (a) (如果出版的資料是報章或期刊的一部分) 報章或期刊的東主、編輯、出版人及發行人；
  - (b) (如果出版的資料不是報章或期刊的一部分) 出版或發行該出版資料的人；
  - (c) (如果是廣播資料) 廣播資料的人，及在資料屬於節目內容的情況下，傳播或提供節目的人，以及在該節目中擔任相當於報章或期刊編輯的職能的人。
- (8) 未經律政司司長同意，不得提起檢控本條所訂的罪行的法律程序。(由 1997 年第 362 號法律公告修訂)
- (9) 在本條中——
  - “出版”(publish) 指以文字出版；
  - “廣播”(broadcast) 包括以無線電訊、電影、錄像帶或電視廣播。

- (a) against the person making the disclosure for an offence under section 25 or 25A; or (Amended 90 of 1995 s. 23)
- (b) for an offence under this section.
- (6) The court or a magistrate may, if satisfied that it is in the interests of justice to do so, by order dispense with the requirements of subsection (3) to such extent as may be specified in the order.
- (7) If information is published or broadcast in contravention of subsection (3), each of the following persons—
  - (a) in the case of publication as part of a newspaper or periodical publication, any proprietor, editor, publisher and distributor thereof;
  - (b) in the case of a publication otherwise than as part of a newspaper or periodical publication, any person who publishes it and any person who distributes it;
  - (c) in the case of a broadcast, any person who broadcasts the information and, if the information is contained in a programme, any person who transmits or provides the programme and any person having functions in relation to the programme corresponding to those of the editor of a newspaper or periodical publication,
 commits an offence and is liable on conviction to a fine at level 5 and to imprisonment for 6 months.
- (8) Proceedings for an offence under this section shall not be instituted except with the consent of the Secretary for Justice. (Amended L.N. 362 of 1997)
- (9) In this section—
  - “broadcast” (廣播) includes broadcast by radio, film, videotape or television;
  - “publish” (出版) means publish in writing.

27. 指明的罪行的判罰

- (1) 凡在區域法院或原訟法庭的法律程序中，有人就指明的罪行被定罪，本條即予適用。(由 1998 年第 25 號第 2 條修訂)
- (2) 控方可向法院提供關於下述全部或任何事項的資料——(由 1995 年第 90 號第 24 條修訂)
  - (a) 該人被如此定罪所據的作為直接或間接導致他人受損害的性質及程度；
  - (b) 因該作為而對該人或任何其他人士直接或間接帶來的利益或希望藉此帶來的利益(不論是否財務上的利益)的性質及程度；
  - (c) 該指明的罪行的普遍程度；

27. Sentencing in respect of specified offences

- (1) This section applies where, in proceedings in the District Court or the Court of First Instance, a person has been convicted of a specified offence. (Amended 25 of 1998 s. 2)
- (2) The prosecution may furnish information to the court regarding any or all of the following—
  - (a) the nature and extent of any harm caused, directly or indirectly, to any person by the act in respect of which the person has been so convicted;
  - (b) the nature and extent of any benefit, whether financial or otherwise, that accrued or was intended to accrue, directly or indirectly, to that or any other person from that act;
  - (c) the prevalence of that specified offence;

P.12  
TO 28778024  
FROM E DIVISION SB  
13-JUN-2000 15:16

P.12  
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13-JUN-2000 15:25

Annex B

"(c) not to establish a new identity for him as a participant,".

13(4) By adding "or not to establish a new identity for a participant" after "programme".

14 (a) In subsection (1), by deleting "such persons as are" and substituting "at least two persons not being public officers from the panel".

(b) By adding -

"(3) The Chief Executive shall for the purposes of subsection (1) appoint a panel of persons consisting of such number of public officers and persons not being public officers as he thinks fit.

(4) An appointment made under subsection (3) shall be notified in the Gazette."

15(b) By adding "in or outside Hong Kong" after "agency".

17 By adding -

"(5A) No proceedings shall be instituted for an offence under subsection (1) (b) except with the consent of the Secretary for Justice."

13(1)

(a) 在(a)段中，刪去“或”。

(b) 在(b)段中，刪去句號而代以“；或”。

(c) 加入 —

“(c) 不為身為參與者的他定立新身分。”。

13(4)

在“計劃內”之後加入“或不為某參與者定立新身分”。

14

(a) 在第(1)款中，在“意見”之後加入“的小組中最少兩名並非公職人員”。

(b) 加入 —

“(3) 行政長官須為第(1)款的施行委任他認為適當數目的公職人員及非公職人員組成一個小組。

(4) 根據第(3)款作出的委任須在憲報公布。”。

15(b)

在“執法機構”之前加入“在香港或香港以外的”。

17

加入 —

“(5A) 除經律政司司長同意外，不得就第(1)(b)款所訂的罪行提起法律程序。”。

~~19~~

~~(a) 在第(1)款中，刪去在(a)段之前的所有字句而代以 —~~