

**National Security (Legislative Provisions) Bill -
Proposed Removal of Time Limits for Prosecution**

This paper sets out the background to the existing time limits for prosecution under sections 4(1) and 11(1) of the Crimes Ordinance (Cap 200), and explains the reasons for the proposed removal of these limits.

The existing time limits for prosecution of treason and sedition offences

2. Section 4(1) of Cap. 200 has its origins in section 5 of the UK Treason Trials Act 1696. The latter provides that -

“... noe person or persons whatsoever shall bee indicted tried or prosecuted for any such treason as aforesaid or for misprison of such treason that shall be committed or done within the kingdome of England dominion of Wales or towne of Berwick upon Tweed unless the same indictment bee found by a grand jury within three years next after the treason or offence done and committed”

3. From the available commentaries on the 1696 Act, it is clear that the set of procedural safeguards introduced by the Act were meant to address a serious imbalance in the treason trial procedure that favoured the prosecution over the defence.¹ Prior to 1696, it was claimed that because the treasonous act directly threatened the safety and legitimacy of the king and because a covert conspiracy was especially difficult to prove, treason trials were strongly biased in favour of the prosecution.²

4. However, these commentaries did not discuss the rationale for the prosecution time limit. Moreover, none of the local libraries has in its collection old records of the UK Parliamentary debates³.

The rationale for removing time limits for prosecution

5. The time limit for the prosecution of treason has been criticised by the Canadian Law Reform Commission as lacking in principle. It said⁴,

¹ Alexander H. Shapiro, “Political Theory and the Growth of Defensive Safeguards in Criminal Procedure: The Origins of the Treason Trials Act of 1696”, *Law and History Review* 1993, Vol. 11, at p. 215.

² *Ibid*, at p 217.

³ The first semi-official reports of the UK Parliament’s debates were published in 1803 (see Jean Dane and Philip A. Thomas, *How to Use a Law Library: An Introduction to Legal Skills* (London: Sweet & Maxwell, 3rd ed., 1996), p 95.

⁴ Law Reform Commission of Canada, *Working Paper 49: Crimes against the State*, at pp. 36 – 7.

“One instance of this problem is 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. With this possible justification now obsolete, the continued existence of these provisions seems to suggest one of two things: either the conduct (that is, treason) is not really criminal at all because, unlike other serious crimes, it loses its reprehensibility merely by the passage of a little time; or treason is a political crime that loses its criminality when the political winds change. But surely if something is worth criminalizing at all, and especially if it is considered to warrant punishment by life imprisonment, as is treason, it should not lose its criminal character either because time has passed (certainly not so brief a time as sixteen days), or because the political leaders have changed.” (emphasis added)

6. While we have been unable to find any reference material directly on the point, we believe that the shorter time limit for prosecution of sedition (i.e. 6 months) was enacted for the same reason, i.e. to avoid the difficulties of witnesses trying to recollect the verbal seditious words. In its discussion of the 16th century treason statutes, the author of *History of English Law*⁵ mentions that -

“Of these provisions made to secure a fair trial of the prisoner there were two. Firstly, for the treasons which could be committed by **spoken words** a short period of limitation was in many cases provided. ...” (emphasis added)

7. At common law there are no time limits imposed on the institution of indictable offences.⁶ Similarly, time limits for indictable offences are rare in the laws of Hong Kong. It should be noted that many time limits in our legislation were enacted with a view to extend the prescribed 6 month period for prosecuting summary offences (which is laid down in section 26 of the Magistrates Ordinance (Cap. 227)), rather than to impose a time limit which would otherwise not exist.

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⁵ Vol. VI, at pp. 498 – 9.

⁶ *Halsbury’s Laws of Hong Kong*, Vol. 9, para 130.560.