

Proposed Committee Stage Amendments
to the National Security (Legislative Provisions) Bill

Preliminary draft : 3.6.2003

List of affected provisions

1. Proposed section 9A in clause 6
2. Proposed section 9C in clause 6
3. Proposed section 18A in clause 7
4. Proposed section 18B in clause 7
5. Proposed new section 8A
6. Proposed clause 9
7. Proposed new clause 14A
8. Proposed section 2A in clause 14
9. Proposed section 8C in clause 15
10. Proposed section 8D in clause 15
11. Proposed section 8E in clause 15
12. Proposed new section 8F in clause 15

9A. Seditious

(1) A person commits seditious if, subject to section 9D, he -

(a) intentionally incites others to commit an offence under section 2 (treason), 2A (subversion) or 2B (secession); or

(b) intentionally incites others to engage, in Hong Kong or elsewhere, in violent public disorder that would seriously endanger the stability of the People's Republic of ~~China.~~ China,

and the nature of the incitement and the circumstances in which the incitement is made are such that another person is likely to be induced to (where paragraph (a) applies) commit the offence or to (where paragraph (b) applies) engage in violent public disorder.

(2) A person who -

(a) commits seditious by doing an act referred to in subsection (1)(a) is guilty of an offence and is liable on conviction on indictment to imprisonment for life;

(b) commits seditious by doing an act referred to in subsection (1)(b) is guilty of an offence and is liable on conviction on indictment to a fine and to imprisonment for 7 years.

9C. Handling seditious publication

(1) In this section, "seditious publication" means a publication that is likely to induce a person to commit~~cause the commission of~~ an offence under section 2 (treason), 2A (subversion) or 2B (secession).

(2) Subject to section 9D, a person who -

(a) publishes, sells, offers for sale, distributes or displays any seditious publication;

(b) prints or reproduces any seditious publication;
or

(c) imports or exports any seditious publication, with intent to incite others, by means of the publication, to commit an offence under section 2 (treason), 2A (subversion) or 2B (secession) is guilty of an offence and is liable on conviction on indictment to a fine of \$500,000 and to imprisonment for 7 years.

(3) No prosecution for an offence under section 9C(2) shall be commenced after 3 years from the date of commission of the offence.

**18A. Enforcement, etc. of Parts I and II
and this Part to be consistent
with Basic Law**

The provisions of Parts I and II and this Part are to be interpreted, applied and enforced in a manner that is consistent with Chapter III Article 39 of the Basic Law.

18B. Investigation power

(1) If a police officer of or above the rank of assistant commissioner~~chief superintendent~~ of police reasonably believes that -

- (a) an offence under section 2 (treason), 2A (subversion), 2B (secession), 9A (sedition) or 9C (handling seditious publication) has been committed or is being committed;
- (b) anything which is likely to be or likely to contain evidence of substantial value to the investigation of the offence is in any premises, place or conveyance; and
- (c) unless immediate action is taken, such evidence would be lost and the investigation of the offence would be seriously prejudiced as a result,

he may direct any police officer to exercise any power conferred by subsection (2) in relation to the premises, place or conveyance.

(2) A police officer acting under a direction given under subsection (1) in relation to any premises, place or conveyance -

- (a) may enter the premises or place and, if necessary, break open any door or window of the premises or place for that purpose;
- (b) may stop and board the conveyance;
- (c) may search the premises, place or conveyance or any person found therein;
- (d) may seize, detain or remove anything found in the premises, place or conveyance which appears to him to be or to contain evidence of an offence under section 2 (treason), 2A (subversion), 2B (secession), 9A (sedition) or 9C (handling seditious publication);
- (e) may detain the conveyance for such time as may be necessary for his exercise of the power conferred by paragraph (c) or (d); and
- (f) may remove by force any person or thing obstructing him in the exercise of any power conferred by this subsection.

(3) If requested, a police officer shall produce his police warrant card for inspection before exercising any power conferred by subsection (2).

(4) A person may be searched under subsection (2)(c) only by a police officer of the same sex.

(5) For the avoidance of doubt, it is declared that section 83 of the Interpretation and General Clauses Ordinance (Cap. 1) and other provisions of Part XII of that Ordinance apply to subsection (2) and any power conferred by it.

(6) For the purposes of this section -

(a) "conveyance" means any vehicle, tramcar, train, vessel or aircraft;

(b) "premises" includes any structure.

8A. Section added

The Official Secrets Ordinance (Cap. 521) is amended by adding -

**"1A. Enforcement, etc. of this
Ordinance to be
consistent with Basic Law**

The provisions of this Ordinance are to be interpreted,
applied and enforced in a manner that is consistent with Chapter
III of the Basic Law.

~~9. Section added~~

~~The following is added—~~

~~"12A. Enforcement, etc. of Part III
to be consistent with
Basic Law~~

~~The provisions of this Part are to be interpreted, applied
and enforced in a manner that is consistent with Article 39 of
the Basic Law."~~

14A. Prohibition of operation of
societies

Section 8(1)(a) is amended by repealing "national security or".

**"2A. Enforcement, etc. to be consistent
with Basic Law**

The provisions of this Ordinance are to be interpreted,
applied and enforced in a manner that is consistent with Article
39-Chapter III of the Basic Law."

8C. Prohibition of participating in the activities of proscribed organization

(1) Any person who -

(a) is or acts as an office-bearer or professes to be or claims to be an office-bearer of;

(b) manages or assists in the management of;

(c) is or acts as a member of;

(d) attends a meeting of; or

(e) pays money to or gives any other form of aid to,

~~a proscribed organization~~ a local organization after it has been proscribed under section 8A is guilty of an offence and is liable on conviction to a fine at level 6 and to imprisonment for 3 years.

(2) It is a defence for a person charged with an offence under subsection (1) if he proves that at the time of the alleged offence he did not know and had no reason to believe that the organization in question has been proscribed under section 8A.

(3) Without prejudice to subsection (2), it is a defence for a person charged with an offence under subsection (1) -

(a) in relation to his being or acting as an office-bearer of a proscribed organization if he proves that he had taken all reasonable steps to cease to be such office-bearer;

(b) in relation to his being or acting as a member of a proscribed organization if he proves that he had taken all reasonable steps to cease to be such member.

8D. Appeal against proscription

(1) Any office-bearer or member of an organization proscribed under section 8A who is aggrieved by the proscription may appeal to the Court of First Instance against the proscription within 30 days after the proscription takes effect.

(2) Lodging an appeal under subsection (1) and doing any incidental act shall not be regarded for the purposes of section 8C as acting as an office-bearer or member.

(3) On an appeal lodged under subsection (1) against a proscription, the Court of First Instance shall -

(a) if it is not satisfied that -

- (i) the Secretary for Security has ~~not~~ correctly applied the law in the proscription;
- (ii) the evidence is ~~insufficient~~ sufficient to prove that the organization in question falls within section 8A(2)(a), (b) or (c); or
- (iii) the evidence is ~~insufficient~~ sufficient to justify a reasonable belief that the proscription -
 - (A) is necessary in the interests of national security; and
 - (B) is proportionate for such purpose,

set aside the proscription; or

(b) if it is ~~not~~-so satisfied, dismiss the appeal.

(4) A proscription set aside under subsection (3) shall be deemed to have never been made.

(5) If in the course of any proceedings before the Court of First Instance the Court is satisfied, upon application by the Secretary for Justice, that the publication of any evidence to be given or any statement to be made in the course of the proceedings might prejudice national security, the Court may order that all or any portion of the public shall be excluded during any part of the hearing so as to avoid such publication.

(6) In the hearing of an appeal, the Court of First Instance may admit such evidence as may be provided for in regulations~~rules~~ made under section 8E and rules made under section 8F including evidence that would, but for such regulations and rules, not be admissible in a court of law.

8E. ~~Chief Justice~~ Secretary for Security may make ~~regulations~~rules for appeals

(1) The Secretary for Security ~~Chief Justice~~ may make regulations ~~rules~~ to provide for the handling of appeals under section 8D including matters which are incidental to or arise out of the hearing of such appeals.

~~(a) the lodgement, hearing and withdrawal of appeals under section 8D;~~

~~(b) costs in respect of such appeals;~~

~~(c) the practice and procedure concerning the hearing of such appeals;~~

~~(d) admissibility of evidence; and~~

~~(e) such other matters which are incidental to or arise out of the hearing of such appeals.~~

(2) In making regulations~~rules~~ under this section, the Secretary for Security~~Chief Justice~~ shall have regard, in particular, to -

- (a) the need to secure that proscriptions which are the subject of appeals are properly reviewed; and
- (b) the need to secure that information is not disclosed to the detriment of national security.

(3) Regulations ~~Rules~~ made under this section may make provision -

- (a) enabling proceedings to take place without the appellant being given full particulars of the reasons for the proscription in question;
- (b) enabling the Court of First Instance to hold proceedings in the absence of any person, including the appellant and any legal representative appointed by him; and
- (c) enabling the Court of First Instance to give the appellant a summary of any evidence taken in his absence.

(4) Where ~~rules~~ regulations made under this section enable the Court of First Instance to hold proceedings in the absence of the appellant and any legal representative appointed by him, the rules shall make provision for -

- (a) a power to appoint a legal practitioner to act in the interests of the appellant; and
- (b) the function and responsibility of such legal practitioner."

8F. Rules Committee may make rules for appeal

The Rules Committee constituted under section 55 of the High Court Ordinance (Cap. 4) may, subject to the regulations made under section 8E, make rules of court to provide for -

- (a) the lodgement, hearing and withdrawal of appeals under section 8D;
- (b) costs in respect of such appeals;
- (c) the practice and procedure concerning the hearing of such appeals;
- (d) admissibility of evidence; and
- (e) such other procedural matters which are incidental to or arise out of the hearing of such appeals.