

**The Administration's Response to the Issues Raised by the  
Legislative Council Assistant Legal Advisor in her letter of 27 March 2003  
(Second Batch)**

**Introduction**

Further to our earlier response on 9 May 2003, this note sets out the Administration's response to a number of remaining issues raised by the Legislative Council Assistant Legal Advisor in her letter of 27 March 2003. The questions are reproduced in italics and followed by our response.

**A. General Observations**

*Definitional issues*

*A1. Would the Administration inform the Bills Committee expressions used in the Bill which are not provided with a definition, but in respect of which there are relevant judicial authorities on their respective meanings? It would be appreciated if those judicial authorities, if any, could be provided to the Committee.*

Response

As set out in the Consultation Document issued in September 2002, we have proposed to implement Article 23 of the Basic Law on the basis of the existing laws where possible. For example, the terms "overthrow", "compel", "intimidate" are adopted from existing provisions in the Crimes Ordinance, whereas the proposed offence of sedition is based on the common law concept of incitement.

In the proposed offence of handling seditious publications, the various terms used in the provision, such as "publish", "distribute" or "display", are also commonly found in other ordinances in Hong Kong. The other terms used in the Bill which are not specifically defined will follow their natural meanings, in accordance with the general principles in legal interpretation.

**B. Amendments to the Crimes Ordinance (Cap. 200)  
Clauses 3 to 7, paragraphs 13 to 15 of the Schedule**

*New section 2C Conspiracy and attempt to do acts outside Hong Kong*

*B12. Section 159D provides where an offence has been committed in pursuance of any agreement and proceedings may not be instituted for that offence because the time limit applicable to the institution of such proceedings have expired, proceedings for conspiracy under section 159A to commit that offence shall not be instituted against any person on the basis of that agreement. Since the Administration does not propose any time limit for prosecuting the offences of subversion and secession, please clarify the policy of section 2C(1)(b) in providing section 159D to have effect.*

Response

Sections 159A to 159E codify general principles relating to the law of conspiracy. The intention is that these codified principles should apply to persons who in Hong Kong, conspire to commit subversion or secession offences outside Hong Kong. It is true that some of these principles may not have any relevance to the proposed section 2C(1) (e.g. section 159C(4), (5), (6) and section 159E(2), (3) and (7)). However, it does no harm to refer to these provisions in that section.

New section 9D Certain acts are not incitement

*B20. Please explain why "different classes of population" is rendered "人口中不同組別".*

Response

“Different classes of population” is rendered as “人口中不同組別” because we are referring to a matter that produces feelings of ill-will between different classes of the population. Depending on the nature of the matter, the criteria for the classification will differ. “不同組別” thus refers to the different groups of people when such a matter exists. As the population may be divided into different classes on the basis of race, religion, income etc., a more general expression (組別) is considered appropriate.

New section 18B Investigation power

*B25. Section 18 of the Police Force Ordinance (Cap. 232) provides that the warrant card is only evidence of his appointment under that Ordinance. Should section 18B(3) also require the police officer to produce evidence of direction made by a police officer of or above the rank of chief superintendent?*

## Response

It may not be practicable at all times for a police officer who is exercising the proposed emergency investigation power to produce written evidence of direction so given. In particular, it should be noted that a prerequisite for the exercise of such emergency powers is that evidence of substantial value to the investigation of a relevant offence would be lost unless immediate action is taken, and that the loss of such evidence would seriously prejudice the investigation of the offence.

### **C. Amendments to the Official Secrets Ordinance (Cap. 521) Clauses 8 to 12, paragraphs 32 to 34 of the Schedule**

#### Section 18 Unauthorized disclosures or illegal access

C4. Please consider whether the expression "而落入他的管有或維持由他管有" in section 18(5A) could be improved in terms of drafting. One suggestion for your consideration is "而給他管有或繼續由他管有".

## Response

“落入他的管有” is preferred because the information “comes into” a person’s possession by his committing an offence under the provisions specified in the section. “給他” seems to suggest that the information is given to that person by another person which may not be the case.

According to 《現代漢語詞典》，維持 means (a) 使繼續存在下去 or (b) 保護；維護支持 and is a proper rendition of “remains” in the context of the provision in question.

### **D. Amendments to the Societies Ordinance (Cap. 151) Clauses 13, 14 and 15, paragraphs 6 to 12 of the Schedule**

#### New section 8B Procedural requirements

D8. Why does the new section 8B(3) require the Secretary to affix a copy of the order at the nearest police station of the police district in which the building or premises which appear to him to be occupied or used as a place of meeting of the organization?

## Response

Since the effect of a proscription is that the activities of the organization are prohibited, it is appropriate that a copy of the order should be affixed at the police station that is nearest to the premises of that organization. This may help to inform local residents of the proscription.

## Section 2 Interpretation

*D19. It would be helpful if you could provide a list of the office title of the bodies of persons in the Schedule which the Administration regards as falling within the new definition of "office-bearers".*

## Response

According to section 2 of the Societies Ordinance, an “officer-bearer” is defined as “any person who is the president, or vice-president, or secretary or treasurer of such society or any branch thereof, or who is a member of the committee or governing body of such society or any branch thereof, or who holds in such society or any branch thereof any office or position analogous to any of those mentioned above or in the case of a triad society, any person holding any rank or office in the triad society other than that of any ordinary member.”

The proposed amendment is intended to clarify that this same definition applies to an organization proscribable under the new section 8A.

## **E. Consequential Amendments** **Remaining paragraphs of the Schedule**

### Paragraph 26 of the Schedule Second Schedule of the Magistrates Ordinance (Cap. 227)

*E6. Please explain the policy for repealing item 5 of Parts I and III of the Second Schedule. Is it intended that a special magistrate or permanent magistrate may deal with indictable offences under Parts I and II of the Crimes Ordinance summarily?*

By paragraphs 26(1) and (2) of the Schedule to the Bill we have deleted Parts I and II of the Crimes Ordinance from Parts I and III of the second schedule of the Magistrates Ordinance.

Part I of the second schedule to the Magistrates Ordinance sets out the exceptions to section 92 of that ordinance. Section 92 allows a magistrate to deal with indictable offences. This would include the less serious offences under Parts I and II of the Crimes Ordinance. This will allow a magistrate to deal with incitement to mutiny, incitement to disaffection, unlawful drilling as well as the new offence of handling seditious publications and the second leg of the sedition offence under the new section 9A(1)(b). This accords with the policy intention.

However a magistrate would still be precluded from dealing with the more serious offences. Specific provision is made under section 18D so that offences of treason, subversion, secession and sedition (under 9A(2)(a) only) must stand trial before the CFI.

Part III of the second schedule lists indictable offences which are excluded from transfer by a magistrate to a District Court upon application under section 88(1). The less serious offences referred to in paragraph 3 are not excluded and may be transferred to the District Court. The more serious offences as explained in paragraph 4 must be tried in the CFI. This accords with the policy intent. Special provisions separately give effect to the right to elect for a jury trial.

Security Bureau  
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