

**National Security (Legislative Provisions) Bill:
Drafting issues in the proposed amendments
to the Crimes Ordinance**

Introduction

This paper sets out the Administration's response to two questions raised during the meetings of the Bills Committee on 8 April 2003 and 15 April 2003, regarding the drafting of the Bill.

Why the term “and” is used in the proposed section 2(4)(a)(iii) of the Crimes Ordinance?

2. The word “and” is used to emphasis that for an armed forces to come within the meaning of “foreign armed forces” in section 2(4)(a), that armed forces must satisfy both elements as set out in section 2(4)(a)(iii), that is –

- (a) the armed forces are not based in the People's Republic of China (the definition of “foreign armed forces” will therefore exclude armed forces based in the People's Republic of China, including that of Taiwan);
- (b) the armed forces are not armed forces of the People's Republic of China (the definition of “foreign armed forces” will therefore exclude armed forces of the People's Republic of China that are based outside the People's Republic of China).

To explain the meaning and scope of the term “disestablishes” and to provide case law if available

3. Please refer to the Administration's earlier response to the letter of 27 March from Legislative Council Assistant Legal Adviser. (Paper No. 42) (response to question B5). According to the Compact Edition of the Oxford English Dictionary, “disestablishes” means to deprive of the character of being established; to undo the position of anything instituted, settled, or fixed by authority or general acceptance. In the context of the proposed new section 2A, the use of the word “disestablishes” is proper. The coverage of the word

is also wider than the word “overthrow”, which, according to the said dictionary, means “to bring down or put an end by force to (an institution, a government)”. The coverage of the word “disestablishes” accords with the policy intent as compared with the word “overthrow”; “disestablishes” suits “basic system” better.

Department of Justice
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