

**National Security (Legislative Provisions) Bill:
Sections 18(5) and 23 and the proposed section 16A(1)
of the Official Secrets Ordinance**

Introduction

This paper sets out the Administration's response to questions raised regarding the existing sections 18(5) and 23 and the proposed section 16A(1) of the Official Secrets Ordinance (OSO), during the meetings of the Bills Committee on 20 and 24 May 2003.

Sections 18(5) and 23

2. The Administration was asked “to explain the effect of sections 18(5) and 23 of OSO in relation to a Chinese national who was not a Hong Kong permanent resident.”

3. Section 18(5) of the OSO provides that -

“A person does not commit an offence under this section in respect of information or a document or other article that has come into his possession as a result of it having been disclosed-

(a) as mentioned in subsection (2)(a) by a government contractor; or

(b) as mentioned in subsection (2)(c),

unless that disclosure was by a *British national* or Hong Kong permanent resident or took place in Hong Kong.” (italics added)

4. Section 18(5) provides certain exemptions to the offence under that section. After Reunification, the term “British national” in the section should be construed as “Chinese national” in accordance with the principles as set out in an earlier paper entitled “Issues on Adaptation of Laws.” (Paper No. 28)

5. As a result, a disclosure by a Chinese national, regardless of whether he is a permanent resident of the HKSAR or whether the specified disclosure took place in the HKSAR, does not qualify as a disclosure specified by that part of the section.

6. Section 23 of the OSO specifies the extraterritorial effect of the relevant sections of the Ordinance -

“Any act done by a *British national*, a Hong Kong permanent resident or a public servant outside Hong Kong shall, if it would be an offence

by that person under any provision of this Part other than section 22(1), (4) or (5) when done by him in Hong Kong, be an offence under that provision.” (italics added)

7. Again the term “British national” above should be construed as “Chinese national”. It therefore follows that the relevant provisions of the OSO as specified are applicable to the acts done by a Chinese national outside Hong Kong, regardless of whether he is a permanent resident of the HKSAR.

8. The Bill does not propose any change to these provisions.

Section 16A

9. The Administration was asked “to explain whether new section 16A(1) of OSO covered information relating to the work or activities of the Ministry of State Security in Hong Kong.”

10. The scope of section 16A is limited to information that relates to affairs concerning the HKSAR which are, under the Basic Law, within the responsibility of the Central Authorities. The coverage of the section has been explained in a separate paper entitled “Proposed section 16A(1)(a) of the Official Secrets Ordinance: Responsibility of Central Authorities.” (Paper No. 61)

11. It should be noted that the offence under section 16A(1) covers information which is or has been in the possession of a public servant or government contractor by virtue of his position as such. “Public servant” is limited to those of the HKSAR. Mainland officials are not included in the new definition.

Security Bureau
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