

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

Preliminary draft : 3.6.2003

1st draft : 6.6.2003

List of affected provisions

1. Clause 6 Proposed section 9A
2. Clause 6 Proposed section 9C(1) and (3)
3. Clause 7 Proposed section 18A
4. Clause 7 Proposed section 18B(1)
5. Proposed new
clause 8A
6. Clause 9
7. Proposed new
clause 14A
8. Clause 14 Proposed section 2A
9. Clause 15 Proposed section 8C(1)
10. Clause 15 Proposed section 8D
11. Clause 15 Proposed section 8E
12. Clause 15 Proposed new section 8F
13. Clause 15 Proposed new section 8G
14. Schedule Paragraph 2
15. Proposed new
paragraph 7A
16. Schedule Paragraph 12
17. Proposed new
paragraph 12A
18. Schedule Paragraph 13

19. Schedule Paragraph 29

20. Proposed new
paragraph 36

[Clause 6 of the Bill]

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.

(1A) An incitement shall not constitute an offence under subsection (1) unless the nature of the incitement and the circumstances in which the incitement is made are such that -

(a) one or more persons incited are likely to be induced; or

(b) an ordinary person would likely be induced, to (where subsection (1)(a) applies) commit the offence or to (where subsection (1)(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.

[Clause 7 of the Bill]

**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.

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[New Clause]

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."

[Clause 9 of the Bill]

~~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."~~

[New Clause]

14A. Prohibition of operation of

societies

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

[Clause 14 of the Bill]

**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.

[Clause 15 of the Bill]

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 any evidence that would, but for this subsection, not be admissible in a court of law. ~~such evidence as may be provided for in rules made under section 8E.~~

(7) A party to an appeal lodged under subsection (1) may appeal to the Court of Appeal against the decision of the Court of First Instance on any ground involving a question of law.

(8) An appeal may only be lodged under subsection (7) with leave to appeal granted by the Court of First Instance or, where the Court of First Instance refuses to grant such leave, by the Court of Appeal.

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~~ regulations 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; and
- (d) such other procedural matters which are incidental to or arise out of the hearing of such appeals.

8G. Matters following proscription

Schedule 2 has effect in relation to the proscription of an organization under section 8A.

[Schedule]

~~2. Section added~~

~~The Companies Ordinance (Cap. 32) is amended by adding after section 291A—~~

~~“291AAA. Registrar shall strike proscribed
company off register~~

~~(1) Where a company is proscribed under section 8A of the Societies Ordinance (Cap. 151), the Registrar shall—~~

~~(a) strike its name off the register; and~~

~~(b) publish a notice thereof in the Gazette,~~

~~and upon the publication of the notice the company shall be dissolved.~~

~~(2) The Registrar may defer taking action under subsection (1) if he is satisfied that the right to take legal action against the proscription has not been exhausted.”.~~

[New]

7A. References to "Schedule"

In sections 2(2), 2(2B), 2(3), 9(1) and 14A(2), by repealing "Schedule" wherever it appears and substituting "Schedule 1".

[Schedule]

12. **Schedule amended**

The Schedule is amended -

~~(a) by repealing "[s. 2]" and substituting "[ss. 2 & 8A(5)(f)]";~~

(a) by repealing -

"SCHEDULE [s. 2]"

and substituting -

"SCHEDULE 1 [ss. 2, 8A, 9 & 14A]"

(b) in the heading, by adding "EXCEPT IN CONNECTION WITH PROSCRIPTION OF ORGANIZATION" after "NOT APPLY".

[New]

12A. Schedule added

The following is added -

"SCHEDULE 2 [s. 8F]

Matters following proscription of an
organization under section 8A

1. Companies registered under
the Companies Ordinance

(1) If a company registered under the Companies Ordinance
(Cap. 32) is proscribed under section 8A of the Ordinance, the
Registrar of Companies shall -

(a) strike the name of such company off the register
kept by the Registrar; and

(b) publish a notice of the striking off in the
Gazette,

and upon the publication of the notice such company shall be
dissolved.

(2) The Registrar of Companies may defer taking action
under subsection (1) if he is satisfied that the right to take
legal action against the proscription has not been exhausted.

(3) On the application of the Registrar of Companies to the
Court of First Instance, a company struck off the register under
subsection (1) shall be wound up and sections 360D to 360M of the
Companies Ordinance (Cap. 32) shall apply to such company as if
such company were a company struck off the register under section
360C of the Companies Ordinance (Cap. 32).

2. Unregistered companies under the Companies Ordinance

(1) An unregistered company within the meaning of section 326(1) of the Companies Ordinance (Cap. 32) which is proscribed under section 8A of this Ordinance shall for the purpose of section 327(3) of the Companies Ordinance (Cap. 32) be regarded as having been dissolved.

(2) On an application of the Registrar of Companies to the Court of First Instance, the company referred to in subsection (1) shall be wound up and Part X of the Companies Ordinance (Cap. 32) shall apply to such company.

3. Other types of organizations

(1) If an organization that is proscribed under section 8A of the Ordinance is not an organization referred to in sections 1 or 2 but is registered under any other Ordinance, the appropriate authority shall -

(a) cancel the registration of that organization and (if applicable under that other Ordinance) remove or strike its name off the relevant register or any other similar record; and

(b) publish a notice of the cancellation in the Gazette,

and upon the publication of the notice -

(c) that organization shall be dissolved for the purposes of that other Ordinance and all other purposes; and

(d) the provisions (if any) of that other Ordinance applicable to -

(i) the dissolution of that organization shall apply as if it was dissolved under that other Ordinance;

(ii) the winding up of organizations shall apply to that organization.

(2) Subject to section 1(d), an organization referred to in subsection (1) shall, on an application of the appropriate authority to the Court of First Instance, be wound up and Part X of the Companies Ordinance (Cap. 32) shall apply as if such organization were an unregistered company within the meaning of section 326(1) of the Companies Ordinance (Cap. 32).

(3) The appropriate authority may defer taking action under subsection (1) if he is satisfied that the right to take legal action against the proscription has not been exhausted.

(4) In this section, "appropriate authority" means -

(a) where a person has authority under the relevant Ordinance to cancel the registration of the relevant organization under that Ordinance, that person; or

(b) in any other case, the Registrar of Companies.

[Schedule]

13. Sections repealed

Sections 3, 4, 5, 7(6), 9, 10, 11, 14, 15, 16 and 17 of the Crimes Ordinance (Cap. 200) are repealed.

[Schedule]

29. **Authority for search**

Section 5 of the Organized and Serious Crimes Ordinance (Cap. 455) is amended by adding -

“(9) Subsection (8) does not apply in relation to an organized crime or a specified offence which is an offence under -

(a) section 8C (participating in the activities of proscribed organization) of the Societies Ordinance (Cap. 151); or

(b) section 2 (treason), 2A (subversion), 2B (secession), 9A (sedition) or 9C (handling seditious publication) of the Crimes Ordinance (Cap. 200), ~~or~~

~~(c) section 13, 14, 15, 16, 16A, 17, 18, 19 or 20 of the Official Secrets Ordinance (Cap. 521),~~

and accordingly entry, search and seizure under this section concerning such organized crime or specified offence are subject to section 83 of the Interpretation and General Clauses Ordinance (Cap. 1) and other provisions of Part XII of that Ordinance.”.

[New]

36. Repeal of the Crimes (Amendment)
(No. 2) Ordinance 1997

The Crimes (Amendment)(No. 2) Ordinance (Ord. No. 89 of 1997) is
repealed.