

**立法會**  
***Legislative Council***

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**Bills Committee on National Security (Legislative Provisions) Bill**

**Background brief prepared by the Legislative Council Secretariat**

**National Security (Legislative Provisions) Bill**

**Purpose**

This paper gives a summary of the issues and concerns raised by Members on the Administration's proposals in the National Security (Legislative Provisions) Bill.

**Background**

2. Article 23 of the Basic Law (BL23) provides that the Hong Kong Special Administrative Region (HKSAR) shall enact laws on its own to prohibit any act of treason, secession, sedition, subversion against the Central People's Government, or theft of state secrets, to prohibit foreign political organizations or bodies from conducting political activities in the Region, and to prohibit political organizations or bodies of the Region from establishing ties with foreign political organizations or bodies.

3. On 24 September 2002, the Administration issued a Consultation Document on "Proposals to implement Article 23 of the Basic Law." Following a three-month public consultation exercise on the Administration's proposals to implement BL23 which ended on 24 December 2002, the Administration issued a Compendium of Submissionss on 28 January 2003. On 12 February 2003, the Administration announced that it would introduce the National Security (Legislative Provisions) Bill into the Legislative Council (LegCo) on 26 February 2003. The Bill was gazetted on 14 February 2003.

## **Issues and concerns raised by Members**

### Public consultation exercise

4. The Panel on Security and the Panel on Administration of Justice and Legal Services held five joint meetings between 26 September 2002 to 17 January 2003 (26 September, 21 October and 19 December 2002, and 7 and 17 January 2003) to discuss the Consultation Document with the Administration. In addition, the two Panels held another seven joint meetings in November and December 2002 (7, 15, 21 and 28 November, and 5, 14 and 19 December 2002) to listen to views of deputations on the Consultation Document.

5. Members and deputations raised various concerns and queries about the Administration's proposals to implement BL23. Some deputations expressed opposition to enact legislation to implement BL23. Some Members and some deputations considered that it was presently not an appropriate time to enact laws to implement BL23. Some Members and some deputations were of the view that there was no need to pass any legislative proposals in haste, especially in view of the fact that there had not been any cases of treason or sedition in the past five years. These Members and deputations urged that the Administration should, after the consultation period, issue a white bill in early 2003 setting out the details of legislative provisions for public consultation, before introducing a blue bill.

6. Some other deputations expressed support for the enactment of legislation to implement BL23 and considered that there was no need to issue a white bill. However, some of these deputations had also raised concerns about various proposals in the Consultation Document.

7. The major areas of concern expressed by Members and deputations included the following -

- (a) the human rights implications of the Administration's proposals;
- (b) the proposal to make misprision of treason a statutory offence;
- (c) the extra-territorial application of the offences of treason, secession, sedition and subversion to HKSAR permanent residents;
- (d) the offences of sedition and possession of seditious publications;
- (e) the proposals to protect information relating to relations between the Central Authorities and the HKSAR, and to create a new offence of unauthorized disclosure of protected information by unauthorized access;

- (f) restriction of freedom of expression, freedom of the press and freedom of association;
  - (g) the proposal to provide the police with emergency power of entry, search and seizure without a warrant for investigation of certain BL23 offences; and
  - (h) the proposed mechanism to proscribe a local organization by the Secretary for Security on the basis of a proscription by the Central Authorities of a Mainland organization to which the local organization is affiliated.
8. Members may wish to refer to the following papers, which are also available at the LegCo website, for further details -
- (a) the minutes of the joint meetings held up to and including 5 December 2002 (LC Paper Nos. CB(2)461/02-03, CB(2)618/02-03, CB(2)701/02-03, CB(2)762/02-03, CB(2)956/02-03, CB(2)957/02-03 and CB(2)933/02-03);
  - (b) the summary of concerns and queries raised by Members at the joint meetings on 26 September 2002, 21 October 2002, 19 December 2002 and 7 January 2003 prepared by the LegCo Secretariat (LC Paper No. CB(2)1082/02-03(01));
  - (c) the summary of views expressed and suggestions made by organizations and individuals on the Administration's proposals to implement BL23 prepared by the LegCo Secretariat (LC Paper No. CB(2) 896/02-03(01) and CB(2)1376/02-03(01)); and
  - (d) background papers issued by the Legal Service Division relating to the proposals in the Consultation Document (LC Paper Nos. LS6/02-03 (Existing Legislation relevant to the proposals to implement Article 23 of the Basic Law), LS34/02-03 (Information Paper on Inchoate Offences) and LS44/02-03 (Legal Service Division's Comments on the Administration's Response made to the Panels)).

### Compendium of Submissionss

9. On 28 January 2003, the Administration announced the outcome of the consultation exercise and issued the Compendium of Submissionss. The Panel on Security and the Panel on Administration of Justice and Legal Services held a joint meeting on 6 February 2003 to discuss the Compendium with the Administration.

10. Some Members were dissatisfied with the way the Administration dealt with the submissions received in compiling the Compendium. These

Members considered that the Administration should not simply classify the views received into three categories, namely -

- (a) supportive of legislation to implement BL23;
- (b) opposed to introducing legislation to implement BL23; and
- (c) not identified as supportive or opposed.

11. These Members considered that the Administration should also analyze and summarize the views expressed. They also pointed out that some organizations had complained that their submissions were either not included in the Compendium or wrongly classified.

12. Some other Members, however, considered that the Administration should focus efforts on the drafting of the Bill, rather than summarized the views received.

13. The Administration had apologized for the errors made in the Compendium, and called on those who did not agree with the classification of their submissions to notify the Security Bureau in writing by 20 February 2003 so that amendments could be made. The Administration informed Members that a corrigendum would be issued and a CD-ROM on the updated Compendium would be prepared and made available to the public. The updated Compendium would also be available on the Security Bureau's webpage.

#### National Security (Legislative Provisions) Bill

14. Following the statement made by Secretary for Security on the National Security (Legislative Provisions) Bill at the Council meeting on 12 February 2003, the two Panels held a joint meeting on 15 February 2003 to receive a briefing by the Administration on the provisions of the Bill. The Administration has informed the two Panels that it has made a number of changes to its proposals as reflected in the provisions in the Bill, having regard to the view received in the consultation exercise. These include the following -

- (a) the common law offence of misprision of treason would be abolished;
- (b) the offence of possession of seditious publications would be abolished;
- (c) the definition of "unauthorized access" to protected information would be strictly limited to access through criminal means, such as hacking, theft or bribery;

- (d) protection of information relating to relations between the Central Authorities and the HKSAR would be limited to information on matters concerning the HKSAR that are within the responsibility of the Central Authorities under the Basic Law, and disclosure of such information would only be an offence if it is damaging to interests of national security;
- (e) the power to proscribe a local organization would apply to a local organization which is subordinate to a Mainland organization, the operation of which has been prohibited on the ground of protecting the security of the PRC, as officially proclaimed by means of an open decree by the Central Authorities under the law of the PRC;
- (f) to further protect freedom of the press, a judicial warrant will be required for any search or seizure of journalistic materials when conducting investigations of certain BL23 offences;
- (g) no additional financial investigation powers would be proposed;
- (h) only police officers at the rank of Chief Superintendent of Police or above would be able to authorize the exercise of investigation powers under emergency circumstances; and
- (i) the offence of treason would only apply to Chinese nationals; outside the HKSAR, the offence will apply to Chinese nationals who are permanent residents of the HKSAR.

15. Some Members do not find the changes adequate and consider that there are still serious problems with the Bill, for example, the lack of public interest defence, the provisions relating to the proscription of local organizations and unauthorized disclosure of protected information. Some Members remain opposed to the introduction of the Bill.

16. In anticipation of a Bills Committee to be formed, the two Panels have requested the Administration to provide its response in writing to issues raised and information sought by Members at the joint meeting on 15 February 2003 to facilitate the scrutiny of the Bill. A list of the issues raised and information sought by Members on 15 February 2003 and at previous joint meetings to which the Administration's response is still awaited is in **Appendix I** for Members' reference.

### **First Reading, moving of Second Reading of the Bill and formation of Bills Committee**

17. The Bill was introduced into the Council on 26 February 2003 and a

Bills Committee was formed to study the Bill at the House Committee meeting on 28 February 2003.

## **Related information**

### Council questions

18. A number of questions relating to the Administration's proposals to implement BL23 were raised by Members at the Council meetings on 23 October, 6 November, 13 November and 11 December 2002 and 15 January 2003. A list of these questions is in **Appendix II**.

### Motion debates

#### *Council meeting of 11 December 2002*

19. At the Council meeting of 11 December 2002, Hon James TO moved a motion expressing the view that enacting laws according to the proposals in the Consultation Document would reduce the rights and freedoms enjoyed by the people of Hong Kong and damage the rule of law and 'One Country, Two Systems'. Hon Mrs Sophie LEUNG also moved amendments to the motion. The wording of the motion and the amendments is in **Appendix III**.

20. The motion moved by Hon James TO and the amendments moved by Hon Mrs Sophie LEUNG were negatived.

#### *Council meeting on 26 February 2003*

21. At the Council meeting on 26 February 2003, Hon SIN Chung-kai moved a motion condemning the Administration for compiling the Compendium in a slipshod, incomplete and inequitable manner, and distorting the views expressed by the public and organizations. Hon Howard YOUNG and Dr Hon YEUNG Sum also moved amendments to the motion. The wording of the motion and the amendments is in **Appendix IV**.

22. The motion moved by Hon SIN Chung-kai and the amendments moved separately by Hon Howard YOUNG and Dr Hon YEUNG Sum were all negatived.

**National Security (Legislative Provisions) Bill**

**A. Issues raised and information sought by Members on the Bill at the joint meeting of the Panel on Security and Panel on Administration of Justice and Legal Services on 15 February 2003**

Proscription of local organizations

1. To explain the basis for empowering the Secretary for Security to proscribe any local organization if she reasonably believes that the proscription is necessary in the interests of national security and is proportionate for such purpose, without a requirement for the organization to commit an offence.
2. To provide a comparison of the mechanism for the specification of terrorists under the United Nations (Anti-Terrorism Measures) Ordinance and that for the proscription of local organizations under the Bill, including the powers, procedures and appeals concerned.
3. To explain the inadequacies of the existing provisions in the Societies Ordinance in terms of proscription of local organization and why additional proscription power is needed.
4. In relation to the rules for appeals against proscription under the new section 8E(3) of the Societies Ordinance -
  - (a) to provide justifications for the Court of First Instance to hold proceedings in the absence of the appellant;
  - (b) to provide information on similar practices in overseas jurisdictions and explain why they should be adopted in Hong Kong;
  - (c) to explain the common law principle and provide the relevant case law regarding the exclusion of the appellant and any legal representative appointed by him from any part of the hearing;
  - (d) to advise whether similar proceedings in Canada and the United Kingdom are confined to immigration-related cases; and
  - (e) to confirm whether the rules made under the new section 8E apply only to appeal against proscription under the new section 8D.

5. To confirm whether Article 10 of the Hong Kong Bill of Rights set out in the Bill of Rights Ordinance (BORO), which concerns equality before courts and right to fair and public hearing, is applicable to the procedure for appeal against proscription.
6. To explain whether and how the proposed mechanism for appeal against proscription complies with the provisions in the Basic Law, BORO and the principles of natural justice under the common law in terms of human rights protection.
7. To explain why the Administration considers that proscription of local organization is an administrative procedure bearing in mind that the appeal proceedings are judicial proceedings.
8. To explain the difference between an appeal against proscription under the new section 8D(3) of the Societies Ordinance and a judicial review.
9. To explain whether the proposed provisions relating to proscription would be applicable to any body of persons falling within the definition of "society".
10. To review the definition of the term "society" in the Societies Ordinance, having regard to the Chinese and English versions.
11. To explain the meaning of the term "substantial" in the new section 8A(5)(h)(i) of the Societies Ordinance.

#### Theft of state secrets

12. To provide a comparison of the existing provisions in the Official Secrets Ordinance (OSO) and the proposed amendments to OSO, and explain the inadequacies of the existing OSO in dealing with theft of state secrets.
13. To explain why a public interest defence is not provided for the offence relating to unauthorized disclosure of protected information.
14. To advise whether there is any information, document or other article falling within the scope of information related to Hong Kong affairs which, under the Basic Law, are within the responsibility of the Central Authorities in the new section 16A (1)(a) of OSO, other than information relating to defence and foreign affairs.



**B. Information sought by Members in relation to the Compendium of Submissions at the joint meeting of the Panel on Security and Panel on Administration of Justice and Legal Services on 15 February 2003**

1. In relation to the Compendium of Submissions, to provide -
  - (a) classification of organizations and individuals who have expressed their views on the issuance of a blue bill or a white bill;
  - (b) categorisation of views of organizations and individuals on -
    - (i) the proscription mechanism proposed in paragraph 7.15(c) of the Consultation Document;
    - (ii) the proposed offence of unauthorized disclosure of protected information obtained by unauthorized access to it; and
    - (iii) the provision of a public interest defence for the offences relating to unauthorized disclosure of protected information.

**C. Issues raised and information sought by Members in relation to the Consultation Document at the joint meetings of the Panel on Security and Panel on Administration of Justice and Legal Services on 19 December 2002, 17 January 2003 and 6 February 2003**

Joint meeting on 19 December 2002

1. To provide information on the number of cases where the Police did not obtain a court warrant but had exercised the emergency powers provided under existing legislation.

Joint meeting on 17 January 2003

*Treason*

2. To explain the meaning of "levying war" and the activities that would amount to levy war, and the meaning of "joining forces to levy war".
3. To explain the meaning of "to instigate any foreigner with force to invade the entire territory of the state", in particular the definition of "foreigner" and whether it includes armed forces in Taiwan, what amounts to "invasion", the meaning of "acts of instigation", "entire territory of the state" and whether to invade a small part of the territory constitutes invasion.

4. To clarify the policy intent of making "assisting public enemy at war" an offence, the definition of "public enemy" and whether it is targetted at the nationals or the foreign country concerned, the acts that would be considered as "assistance" and would be prohibited, and how the line would be drawn in terms of "assistance".
5. To explain the scope of "non-violent attack", the meaning of "electronic sabotage", and whether e-mail "spam" would fall under the scope of "non-violent attack", and to clarify whether "non-violent attack" is the same as "non-violent threat".

*Others*

6. To clarify whether HKSAR permanent residents who have settled abroad would retain their permanent resident status.
7. To advise whether an assessment has been made on the number of HKSAR permanent residents in overseas places who would be affected by the proposed Article 23 legislation, the estimated number of such persons affected and how they would be consulted.
8. To advise the number of the Consultation Document on Proposals to implement Article 23 of the Basic Law distributed in overseas places and the number of submissions received therefrom.
9. To provide the views on the proposed Article 23 legislation of overseas Hong Kong residents received by the Secretary for Home Affairs in his trip to the United Kingdom concerning the consultation on the proposed election arrangements in the Village Representative Election Bill.

Joint meeting on 6 February 2003

10. To provide a paper on the provisions in the Johannesburg Principles which would not be adopted in Hong Kong due to enforcement difficulties and to explain such enforcement difficulties.
11. To explain whether the proposed appeal mechanism for proscribed organizations is a mechanism for appeal or review.

### Related Council questions raised by Members

A number of questions were raised by Members at previous Council meetings on the Administration's proposals to implement Article 23 of the Basic Law (BL23) and the relevant public consultation exercise.

Oral question raised by Hon Albert HO on the issue of a white bill on legislative proposals to implement Article 23 of the Basic Law at the Council meeting on 23 October 2002

2. At the Council meeting on 23 October 2002, Hon Albert HO raised an oral question on the criteria adopted by the Administration in deciding whether or not to issue a white bill on the legislation for implementing BL23 for public consultation, the reasons for not issuing a white bill and the reasons for the Administration's plan to conclude the process of enactment of legislation to implement BL23 by July 2003. The question and the reply are available at <http://www.legco.gov.hk/yr02-03/english/counmtg/hansard/cm1023ti-translate-e.pdf>.

Oral question raised by Hon Albert HO on proposals to implement Article 23 of the Basic Law at the Council meeting on 6 November 2002

3. At the Council meeting on 6 November 2002, Hon Albert HO raised an oral question on the compilation of a compendium of submissions received during the consultation period, revisions to proposals in the Consultation Document, formulation of policies on legislation implementing BL23 and preparation of the drafting instructions for the relevant bill. The question and the reply are available at <http://www.legco.gov.hk/yr02-03/english/counmtg/hansard/cm1106ti-translate-e.pdf>.

Oral question raised by Hon SZETO Wah, on behalf of Hon James TO, on proposals to implement Article 23 of the Basic Law in the Consultation Document at the Council meeting on 13 November 2002

4. At the Council meeting on 13 November 2002, Hon SZETO Wah, on behalf of Hon James TO who was absent, raised an oral question regarding the proposals in the Consultation Document on the protection of information relating to relations between the Central Authorities of the People's Republic of China and the Hong Kong Special Administrative Region and asked whether the Administration would not request the Central People's Government to issue a certifying document under BL19 that a Mainland organization had been proscribed in the Mainland on national security grounds. The question and the reply are available at <http://www.legco.gov.hk/yr02-03/english/counmtg/hansard/cm1113ti-translate-e.pdf>.

Oral question raised by Hon Cyd HO regarding drafting instructions on proposals to implement Article 23 of the Basic Law at the Council meeting on 11 December 2002

5. At the Council meeting on 11 December 2002, Hon Cyd HO asked an oral question regarding the preparation of drafting instructions on proposals to implement BL23. The question and the reply are available at [http:// www.legco.gov.hk/yr02-03/chinese/counmtg/floor/cm1211ti-confirm-c.pdf](http://www.legco.gov.hk/yr02-03/chinese/counmtg/floor/cm1211ti-confirm-c.pdf).

Written question raised by Hon Martin LEE regarding submissions on Proposals to implement Article 23 of the Basic Law, proposals that would be revised and related issues at the Council meeting on 15 January 2003

6. At the Council meeting on 15 January 2003, Hon Martin LEE asked, among other things, about submissions received during the consultation period, when a compendium of submissions would be published, whether the Administration would set out every undertaking made by officials concerned on various occasions during the consultation period, which of the proposals would be revised and whether the Administration would consult the Central People's Government on the enactment of legislation to implement BL23. The question and the reply are available at [http://www.legco.gov.hk/ yr02-03/chinese/counmtg/floor/ cm0115ti-confirm-c.pdf](http://www.legco.gov.hk/yr02-03/chinese/counmtg/floor/cm0115ti-confirm-c.pdf).

Legislative Council meeting of 11 December 2002

**Motion moved by Hon James TO Kun-sun -**

“That this Council considers that enacting laws according to the proposals in the ‘Consultation Document on Proposals to implement Article 23 of the Basic Law’ will reduce the rights and freedoms enjoyed by the people of Hong Kong and damage the rule of law and ‘One Country, Two Systems’.”

**Motion as amended by Hon Mrs Sophie LEUNG -**

“~~That this Council considers that enacting~~ *as the Government will proceed with the work for enacting* laws according to ~~the proposals in the ‘Consultation Document on Proposals to implement Article 23 of the Basic Law’ will reduce,~~ *this Council urges the Government, in drafting the relevant bill, to fully ensure that* the rights and freedoms enjoyed by the people of Hong Kong *will not be undermined* and ~~damage~~ the rule of law and ‘One Country, Two Systems’ *will not be damaged.*”

Legislative Council meeting of 26 February 2003

**Motion moved by Hon SIN Chung-kai -**

“That this Council condemns the authorities for compiling the Compendium of Submissions in respect of the enactment of laws to implement Article 23 of the Basic Law in a slipshod, incomplete and inequitable manner, distorting the views expressed by the public and organizations, and urges the authorities to commission an independent organization to analyze and summarize the views expressed by the public on the various proposals in the Consultation Document and to ensure that public opinions are fully and properly reflected and addressed.”

**Motion as amended by Hon Howard YOUNG -**

“That this Council ~~condemns~~ *expresses disappointment with* the authorities for compiling the Compendium of Submissions in respect of the enactment of laws to implement Article 23 of the Basic Law in a slipshod, *and* incomplete ~~and inequitable manner, distorting~~ *and for categorizing wrongly* the views expressed by the ~~public~~ *some members of the public* and organizations, and urges the authorities to ~~commission an independent organization to analyze and summarize the views expressed by the public on the various proposals in the Consultation Document and to ensure that public opinions are fully and properly reflected and addressed~~ *rectify the inaccuracies and omissions as soon as possible.*”

**Motion as amended by Dr Hon YEUNG Sum -**

“That this Council condemns the authorities for compiling the Compendium of Submissions in respect of the enactment of laws to implement Article 23 of the Basic Law in a slipshod, incomplete and inequitable manner, distorting the views expressed by the public and organizations, and urges the authorities to commission an independent organization to analyze and summarize the views expressed by the public on the various proposals in the Consultation Document and to ensure that public opinions are fully and properly reflected and addressed; *hence, this Council urges the authorities to shelf the continuation of the legislative procedures for the National Security (Legislative Provisions) Bill.*”

