

# 立法會

## *Legislative Council*

LC Paper No. LS 34/02-03

**Paper for Panel on Security  
and  
Panel on Administration of Justice and Legal Services**

**Proposals to implement Article 23 of the Basic Law :  
Information Paper on Inchoate Offences**

### **I. Introduction**

Paragraph 4.13 of the Consultation Document proposes to provide that inciting others—

- (a) to commit the substantive offences of treason, secession or subversion;  
or
- (b) to cause violence or public disorder which seriously endangers the stability of the state or the HKSAR,

amounts to sedition.

2. Under paragraphs 2.13, 3.9 and 5.7 of the Consultation Document, the Administration proposes to provide expressly for statutory offences of attempting and conspiring the commission of the substantive treason, secession and subversion offences.

3. This Information Paper provides background information on inchoate or preliminary offences of incitement, conspiracy and attempt. These offences share a common rationale of providing a means for society to intervene before a criminal act is completed.

### **II. Background**

4. The three inchoate offences are general offences that apply to all criminal offences. The principles that govern liability for incitement, conspiracy or attempt to commit one particular crime are essentially the same as the liability for incitement, conspiracy or attempt to commit any other particular crime.

5. By the Crimes (Amendment) Ordinance 1996 (49 of 1996), the offences of conspiracy and attempt have been codified. Originally, the Administration proposed to codify the offence of incitement in the same bill. After deliberation with the Bills Committee, the Administration conceded that they were unable to convince the Bills Committee that it was timely to include incitement in the codification exercise, and the proposed offence of incitement was deleted from the bill at Committee Stage. As a result, incitement remains a common law offence.

### **III. Incitement**

#### *The act*

6. An inciter "is one who reaches and seeks to influence the mind of another to the commission of a crime"<sup>1</sup>. A person who incites or solicits another to commit a crime, or attempt to commit a crime, commits an indictable offence at common law<sup>2</sup>. It includes not only encouragement or persuasion, but also threats or pressure, and may be express or implied<sup>3</sup>. The offence is complete whether or not the inciter persuades another to commit or attempt to commit the offence<sup>4</sup>. The offence of incitement overlaps with the offences of secondary participation of aiding, abetting, counselling or procuring of a crime committed by the principal offender. However, an individual may only be convicted of such offences of secondary participation if the offence is actually committed. This is not necessary for the crime of incitement to be completed.

7. Incitement may be directed at an individual or at the world at large<sup>5</sup>. Incitement requires actual communication. Where the communication containing the incitement is not received, the accused is guilty of attempting to incite<sup>6</sup>. The act incited must be an act which when done would be a crime by the person incited<sup>7</sup>.

#### *The mental element*

8. The essence of incitement seems to be an intention to bring about the criminal result by the act of another. Smith and Hogan suggest that it must be proved that the defendant knew of or deliberately closed his eyes to all the circumstances of the act incited which are elements of the crime in question. An inciter must intend the consequences of the actus reus. There must probably be an element of persuasion or pressure, which is not necessary in the case of counselling or abetting.

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<sup>1</sup> per Holmes, JA in *Nkosiya* 1966(4) SA 655 at p.658, AD quoted in Smith & Hogan, Criminal Law, 10<sup>th</sup>ed 2002, page 290

<sup>2</sup> R v Gregory (1867) LR1 CCR77

<sup>3</sup> Race Relations Board v Applin [1973] QB 815 at 827 followed in *Invicta Plastics Ltd v Claire* [1976] RTR 251

<sup>4</sup> R v Higgins (1801) 2 East 5

<sup>5</sup> *Invicta Plastics Ltd v Claire*, ibid.

<sup>6</sup> R v Banks (1873) 12 Cox CC 393, *Chelmsford Justices, exp Amos* [1973] Crim LR 437, DC

<sup>7</sup> R v Whitehouse [1977] 65 Cr App R 33

9. Another element that needs to be proved is the mens rea of the person incited. It is enough that the inciter intends the person incited to have the intent, and it is not necessary that the inciter should have the mens rea of the crime. An illustration provided by Smith and Hogan is: if D incites E to steal P's property, it is no defence that D intended to ensure that P would get his property back again— i.e. that D did not have the intent permanently to deprive P which is an element of the mens rea of theft. It is enough that D intends E to have that intent.<sup>8</sup>

### Defence of impossibility

10. The defence of impossibility at common law is limited to circumstances where the individual has the necessary guilty mind for the offence of incitement, but, because of some fact of which he is ignorant or about which he is mistaken, (a) the result he intends cannot be achieved, or (b) if the result is achieved, it will not give rise to the crime he believed he would have committed.

11. Into category (a) fall cases where the means used are inadequate to achieve the intended result and where the subject matter or victim of the intended offence does not exist. Category (b) comprises cases where some circumstance, which is an element of an intended crime, does not exist.

12. The accused does not commit the offence if he does not believe that the crime may be achieved in the manner in which he incites it (even if the person incited does so believe) although, if he does believe it is possible then the fact that it is impossible is no defence<sup>9</sup>.

13. Members of the Bills Committee on the Crimes (Amendment) Bill 1995 had considered whether the provision to remove the defence of impossibility for the offence of incitement should be retained in the Bill, which approach would be consistent with that adopted for the offences of conspiracy and attempt. They decided that there would be more merit in dealing with the proposal later within the same package of codification of the offence of incitement rather than on a piece-meal basis.

### Offences of incitement in the Crimes Ordinance

14. The offences of incitement to mutiny and incitement to disaffection are respectively set out in sections 6 and 7 of the Crimes Ordinance (Cap. 200) (see **Annex**). There is no discussion in the Consultation Document how these two offences are to be dealt with.

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<sup>8</sup> Smith & Hogan ibid at pages 294 and 295

<sup>9</sup> R v Brown [1899] 63 JP 790

15. Section 9(1)(f) of the Crimes Ordinance defines seditious intention as an intention to incite persons to violence. The second part of the proposed offence of sedition referred to in paragraph 1(b) of this Paper appears to cover this aspect.

*Offence of incitement in the Criminal Jurisdiction Ordinance*

16. Under section 6(2) of the Criminal Jurisdiction Ordinance (Cap. 461), a person may be guilty of incitement to commit various offences under the Crimes Ordinance or the Theft Ordinance (Cap. 210) if—

- (a) the incitement takes place in Hong Kong; and
- (b) the incitement would be triable in Hong Kong but for what the person charged had in view not being an offence triable in Hong Kong.

A person is guilty of an offence triable by virtue of section 6(2) only if what he had in view would involve the commission of an offence under the law in force where the whole or any part of it was intended to take place.

*Chinese rendition of incitement*

17. Members may note that the term "incitement" is rendered "煽惑" both in the Crimes Ordinance and the Criminal Jurisdiction Ordinance. We cannot find any cases in relation to section 6 or 7 of the Crimes Ordinance. In the context of the Criminal Jurisdiction Ordinance, the common law concept of incitement is applicable.

18. In paragraph 4.11 of the Consultation Document, the Administration explains that sedition carries essentially similar meanings under the Mainland laws and the common law jurisdictions by reference to the Chinese term of sedition (煽動叛亂) in Article 23 of the Basic Law. It is then proposed in paragraph 4.13 of the Consultation Document that inciting others (煽動他人) to do certain things amounts to sedition. There is no explanation whether the common law meaning of incitement is intended to apply to the proposed offence.

## **IV. Conspiracy**

*General*

19. Conspiracy differs from other inchoate offences in the nature of their respective objectives. For incitement and attempt, the objective must itself be an offence. For conspiracy, the objective is the agreement to commit an offence. The law relating to conspiracy is governed by sections 159A to 159F of the Crimes Ordinance. The offence of conspiracy at common law (including the conspiracy to corrupt public morals and conspiracy to outrage public decency) is abolished except in relation to conspiracy to defraud<sup>10</sup>.

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<sup>10</sup> Section 159E of the Crimes Ordinance (Cap. 200)

The act

20. Section 159A provides that a person who agrees with any other person or persons that a course of conduct shall be pursued which, if the agreement is carried out in accordance with their intentions, either—

- (a) will necessarily amount to or involve the commission of any offence or offences by one or more of the parties to the agreement; or
- (b) would do so but for the existence of facts which render the commission of the offence or any of the offences impossible,

he is guilty of conspiracy to commit the offence or offences in question. The term "offences" is defined as any offence triable in Hong Kong, and includes murder notwithstanding that the murder in question would not be so triable if committed in accordance with the intentions of the parties to the agreement.

21. The offence is complete when the parties agree to commit the offence and it is not necessary to prove that the conspirators did anything further to carry out their agreement<sup>11</sup>. A conspiracy does not end with the agreement but endures as long as there are more than two members of the conspiracy intending to carry it out. There is no defence of withdrawal or impossibility<sup>12</sup>.

22. While it is necessary that all members of the conspiracy agree, it is not necessary that they all have to agree with each and every other member or that all of the conspirators be in direct communication with, or even know, each of the other conspirators<sup>13</sup>.

Mental element

23. Conspiracy requires proof of an intention to be a party to an agreement and recklessness will not suffice. It is not necessary to prove that the accused knew that the act that they agreed to commit was unlawful<sup>14</sup>.

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<sup>11</sup> R v Bishop [1918] 1 KB 310, R v Bolton (1992) 94 Cr App Rep 74

<sup>12</sup> In *HKSAR v Saifudeen Abdul Wahid* [1997] 3 HKC 729, CA, a case determined on the basis of the law which applied before the enactment of the Crimes Ordinance section 159A(1)(b), the Court of Appeal followed *R v Bennett* (1978) 68 CR App Rep 168, CA (Eng), and held that impossibility at common law is very narrow and is confined to crimes which are legally or physically impossible to commit and the mere fact that one of the conspirators becomes either unwilling or unable to carry out the conspiracy does not render the conspiracy impossible at common law.

<sup>13</sup> R v Griffiths and others [1965] 2 All ER 448, Director of Public Prosecutions v Doot and others [1973] 1 All ER 940

<sup>14</sup> Churchill v Walton [1967] 1 All ER 497

Exemptions from liability for conspiracy

24. Under section 159B of the Crimes Ordinance, a person cannot be guilty of conspiracy to commit an offence if:

- (a) he is an intended victim of that offence;
- (b) the other person with whom he agrees is his spouse, a person under the age of criminal responsibility (i.e. a person below 7 years old<sup>15</sup>) or an intended victim of that offence.

25. A husband and wife are guilty of conspiracy if they agree with a third person to commit an offence. However, the spouse must know that there are other members of the conspiracy other than his or her spouse<sup>16</sup>.

Procedural matters

26. Where an offence is committed and prosecution may not be instituted because it is outside the time limit applicable for instituting proceedings for that offence, no proceedings can be instituted for conspiracy to commit that offence<sup>17</sup>.

27. The words and acts of members of the conspiracy are admissible against other members of the conspiracy if there is reasonable evidence of the existence of the conspiracy<sup>18</sup>. Section 159E(4) provides that a person shall not be entitled to be acquitted of, or to have quashed his conviction for, the offence of conspiracy for the reason only that the only other person or persons with whom he is alleged, in the indictment or charge sheet, to have entered into that conspiracy are or have been acquitted. Any rule of law or practice inconsistent with the provisions of section 159E(4) is abolished.

Penalties

28. A person guilty of conspiracy to commit any offence or offences shall be liable on conviction on indictment to the following sentence—

- (a) for murder or any other offence the sentence for which is mandatory life imprisonment, or an offence for which a sentence extending to imprisonment for life is provided: life imprisonment;
- (b) for an offence punishable with imprisonment: imprisonment for a term not exceeding the maximum term provided for that offence or, where

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<sup>15</sup> Section 159B(3) of the Crimes Ordinance (Cap. 200) and section 3 of the Juveniles Offenders Ordinance (Cap. 226)

<sup>16</sup> R v Lovick [1993] Crim LR 890; R v Chrastny (No. 1) [1992] 1 All ER 189

<sup>17</sup> Section 159D of the Crimes Ordinance (Cap. 200)

<sup>18</sup> R v Au Shui Yuen Alick [1993] 2 HKC 219

more than one such offence is in question, for any one of those offences (taking the longer or the longest term as the limit where the terms provided differ);

- (c) in any other case: a fine<sup>19</sup>.

### Application

29. Section 159F of the Crimes Ordinance provides that sections 159A to 159E of that Ordinance shall apply to an agreement which falls within section 6 of the Criminal Jurisdiction Ordinance (Cap. 461). Under section 6 of the Criminal Jurisdiction Ordinance, a person may be guilty of conspiracy to commit various offences under the Crimes Ordinance or the Theft Ordinance, or of conspiracy to defraud if —

- (a) a party to the agreement constituting the conspiracy, or a party's agent, did anything in Hong Kong in relation to the agreement before its formation; or
- (b) a party to it became a party in Hong Kong (by joining it either in person or through an agent); or
- (c) a party to it, or a party's agent, did or omitted anything in Hong Kong in pursuance of it,

and the conspiracy would be triable in Hong Kong but for the offence or fraud which the parties to it had in view not being intended to take place in Hong Kong.

## **V. Attempt**

### General

30. The law relating to attempt is governed by sections 159G to 159K of the Crimes Ordinance. By virtue of section 159K(1), the offence of attempt at common law is abolished for all purposes not relating to acts done before 2 August 1996, the date of commencement of Part XIA of the Crimes Ordinance.

### The act

31. Section 159G(1) provides that a person who, intending to commit an offence to which that section applies, does an act that is more than merely preparatory to the commission of the offence is guilty of attempting to commit the offence. Under section 159G(5), the offence of attempting to aid, abet, counsel or procure the commission of an offence (which if it were completed, would be triable in Hong Kong)

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<sup>19</sup> Section 159C of the Crimes Ordinance (Cap. 200)

is abolished. The effect of this section is that a person may be convicted for aiding and abetting an attempted offence but cannot be indicted for an attempt to aid and abet an offence<sup>20</sup>.

32. The issue of whether there is sufficient evidence to support a finding that the defendant's acts were more than merely preparatory is a question of law for the judge. The issue of whether in fact the act constitutes an attempt is a question of fact for the jury to decide. A judge can therefore decide that there is not enough evidence as a matter of law to leave the question to the jury. In interpreting the phrase "more than merely preparatory", the courts have confirmed that the correct approach is to consider the natural meaning of the words<sup>21</sup>. Little account should be taken of the previous conflicting authorities as to what constitutes an attempt.

33. A person may be guilty of attempting to commit an offence even though the facts are such that the commission of the offence is impossible<sup>22</sup>. Where a person is charged with an offence, he may be convicted of having attempted to commit that offence even though he was not charged with the attempt<sup>23</sup>.

#### Mental element

34. The mental element required is an intention to commit the offence. Where recklessness with respect to a circumstance suffices for the substantive offence, then recklessness as to those specific circumstances would be enough for the offence of attempt<sup>24</sup>.

35. On a charge involving an attempt to commit an offence of strict liability, it would be necessary to prove a specific intent<sup>25</sup>. Prior to 1996, the then section 101B(1) of the Criminal Procedure Ordinance (Cap. 221) deemed that a provision in any Ordinance, which created or resulted in the creation of an offence, included an attempt to commit that offence. Section 101B(1) used to be the basis upon which attempts to commit offences of strict liability were held to have the same mens rea as the completed offences, but it was repealed by the Crimes (Amendment) Ordinance 1996.

36. Section 159G(4) of the Crimes Ordinance provides that in any case where—

- (a) other than that subsection a person's intention would not be regarded as having amounted to an intent to commit an offence;

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<sup>20</sup> R v Dunnington [1984] 1 All ER 676

<sup>21</sup> R v Jones [1990] 3 All ER 886

<sup>22</sup> Section 159G(2) of the Crimes Ordinance (Cap. 200)

<sup>23</sup> Section 159G(3) of the Crimes Ordinance (Cap. 200)

<sup>24</sup> R v Khan [1990] 2 All ER 783

<sup>25</sup> R v Mohan [1975] 2 All ER 193



- (b) but if the facts of the case had been as he believed them to be, his intention would be so regarded,

then, for the purposes of the offence of attempt, he shall be regarded as having had an intent to commit the offence.

Offences of attempt under other enactments

37. Subject to any inconsistent provision in any other enactment, the principles outlined in paragraphs 30 to 36 of this Paper apply for the purpose of determining whether a person is guilty of "an attempt under a special statutory provision". Section 159I of the Crimes Ordinance defines "an attempt under a special statutory provision" as an attempt created by an enactment other than section 159G of the Crimes Ordinance, including an enactment passed after 1996, and is expressed as an offence of attempting to commit another offence. The principles do not have effect in relation to an act done before 2 August 1996, the date of commencement of Part XIIA of the Crimes Ordinance.

Offences which may not be attempted

38. It is interesting to note that Smith and Hogan<sup>26</sup> have suggested there are certain types of offences where no attempt is possible, such as:

- (a) where any act done with the appropriate intent amounts to the complete crime: the offence of treason by compassing the Queen's death requires proof of an overt act but it seems that any act done with intent to kill the Queen would be enough;
- (b) a crime defined as an omission where the actus reus does not include any consequence of the omission, as in the case of misprision of treason.

Offence of attempt in the Criminal Jurisdiction Ordinance

39. Under section 6(2) of the Criminal Jurisdiction Ordinance (Cap. 461), a person may be guilty of attempt to commit various offences under the Crimes Ordinance or the Theft Ordinance if—

- (a) the attempt takes place in Hong Kong; and
- (b) the attempt would be triable in Hong Kong but for what the person charged had in view not being an offence triable in Hong Kong.

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<sup>26</sup> Smith & Hogan *ibid* at page 340

A person is guilty of an offence triable by virtue of section 6(2) only if what he had in view would involve the commission of an offence under the law in force where the whole or any part of it was intended to take place.

Penalties

40. Under section 159J(1) of the Crimes Ordinance, a person guilty of attempting to commit an offence shall—

- (a) if the offence attempted is murder or any other offence the sentence for which is mandatory life imprisonment, be liable on conviction on indictment to imprisonment for life;
- (b) if the offence attempted is indictable but does not fall within paragraph (a), be liable on conviction on indictment to any penalty to which he would have been liable on conviction on indictment of that offence; and
- (c) if the offence attempted is triable on indictment or summarily, be liable on summary conviction to any penalty to which he would have been liable on summary conviction of that offence.

41. Materials referred to in the footnotes of this Paper may be obtained from the Legal Service Division.

Encl

Prepared by

Legal Service Division  
Legislative Council Secretariat  
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(2) 若案件中所指稱公開的作為是殺死女皇陛下或直接企圖危害女皇陛下的生命，則本條對該案並不適用。 [比照 1800 c. 93 s. 1 U.K.]

(3) 叛逆或隱匿叛逆的審訊程序，與審訊謀殺的程序相同。 [比照 1967 c. 58 s. 12(6) U.K.]

## 5. 襲擊女皇

任何人故意——

- (a) 在女皇陛下附近拿出或有任何武器或其破壞性或危險性的物品，意圖用以傷害女皇陛下；
- (b) (i) 用任何武器向女皇陛下或其附近發射，或以武器指向、瞄準或對著女皇陛下或其附近；
- (ii) 導致任何爆炸品在女皇陛下附近爆炸；
- (iii) 襲擊女皇陛下；或
- (iv) 將任何物品投向或投中女皇陛下，意圖使女皇陛下受驚或受傷，或意圖激使社會安寧遭破壞，或因而相當可能會導致社會安寧遭破壞，

即屬犯罪，一經循公訴程序定罪，可處監禁 7 年。

[比照 1842 c. 51 s. 2 U.K.]

## 第 II 部

### 其他反英皇罪行

## 6. 煽惑叛變

任何人明知而企圖——

- (a) 勸誘英軍成員放棄職責及放棄向女皇陛下效忠；或 (由 1992 年第 54 號第 19 條修訂；由 1997 年第 20 號第 25 條修訂)
- (b) 煽惑上述任何人——
- (i) 作出叛變的作為或作出叛逆或叛變性質的作為；或
- (ii) 召開或試圖召開叛變性質的集會，

即屬犯罪，一經循公訴程序定罪，可處終身監禁。

[比照 1797 c. 70 s. 1 U.K.]

(2) This section does not apply to cases in which the overt act alleged is the killing of Her Majesty, or a direct attempt to endanger the life of Her Majesty. [cf. 1800 c. 93 s. 1 U.K.]

(3) The procedure on trials for treason or misprision of treason shall be the same as the procedure on trials for murder. [cf. 1967 c. 58 s. 12(6) U.K.]

## 5. Assaults on the Queen

Any person who wilfully—

- (a) produces or has near Her Majesty any arms or destructive or dangerous thing with intent to use the same to injure Her Majesty;
- (b) with intent to alarm or to injure Her Majesty, or to provoke a breach of the peace or whereby a breach of the peace is likely to be caused—
- (i) discharges, or points, aims or presents any arms at or near Her Majesty;
- (ii) causes any explosive substance to explode near Her Majesty;
- (iii) assaults Her Majesty; or
- (iv) throws anything at or upon Her Majesty,

shall be guilty of an offence and shall be liable on conviction upon indictment to imprisonment for 7 years.

[cf. 1842 c. 51 s. 2 U.K.]

## PART II

### OTHER OFFENCES AGAINST THE CROWN

## 6. Incitement to mutiny

Any person who knowingly attempts—

- (a) to seduce any member of Her Majesty's forces from his duty and allegiance to Her Majesty; or (Amended 54 of 1992 s. 19; 20 of 1997 s. 25)
- (b) to incite any such person—
- (i) to commit an act of mutiny or any traitorous or mutinous act; or
- (ii) to make or endeavour to make a mutinous assembly,

shall be guilty of an offence and shall be liable on conviction upon indictment to imprisonment for life.

[cf. 1797 c. 70 s. 1 U.K.]



## 7. 煽惑離叛

- (1) 任何人明知而企圖勸誘——
- (a) 英軍成員；
  - (b) (由 1997 年第 20 號第 25 條廢除)
  - (ba) 政府飛行服務隊的成員； (由 1992 年第 54 號第 19 條增補)
  - (c) 警務人員；或
  - (d) 皇家香港輔助警察隊的成員，
- 放棄職責或放棄向女皇陛下效忠，即屬犯罪。 [比照 1934 c. 56 s. 1 U.K.]
- (2) 任何人——
- (a) 知道第 (1) 款所述的成員、官員或人員行將棄職或擅離職守，仍協助該人作該行動；或
  - (b) 知道該成員、官員或人員是棄職者或擅離職守者，仍藏匿該人、協助該人藏匿或協助將該人從羈押中救出，
- 即屬犯罪。
- (3) 任何人意圖犯第 (1) 款所訂罪行，或意圖協助、教唆、慫使或促使犯第 (1) 款所訂罪行，而管有某種性質的文件，且將該種性質的文件的文本派發予第 (1) 款所述的成員、官員或人員是會構成第 (1) 款所述罪行的，即屬犯罪。 [比照 1934 c. 56 s. 2(1) U.K.]
- (4) 任何人犯本條所訂罪行，一經循公訴程序定罪，可處罰款 \$5,000 及監禁 2 年。 [比照 1934 c. 56 s. 3(1) U.K.]
- (5) 如某人由某法庭或在某法庭席前被裁定犯本條所訂罪行，該法庭可命令毀滅或按照命令所指明的其他方式處理與該罪行有關的文件；但在提出上訴的期限屆滿前不得毀滅任何文件，而如有人提出上訴，則在上訴獲最終裁定或被放棄前，不得毀滅任何文件。 [比照 1934 c. 56 s. 3(4) U.K.]
- (6) 未經律政司同意，不得就本條所訂罪行提出檢控。 [比照 1934 c. 56 s. 3(2) U.K.]

## 8. 搜查及防止發生第 7 條所訂罪行的權力

- (1) 如法官根據經宣誓而作的告發，信納有合理理由懷疑有人犯第 7 條所訂罪行，並信納會在告發所指明的處所或地方發現犯該罪證據，可批出搜查令，授權一名不低於督察職級的警務人員，連同任何其他警務人員——

## 7. Incitement to disaffection

- (1) Any person who knowingly attempts to seduce—
- (a) any member of Her Majesty's forces;
  - (b) (*Repealed 20 of 1997 s. 25*)
  - (ba) any member of the Government Flying Service; (*Added 54 of 1992 s. 19*)
  - (c) any police officer; or
  - (d) any member of the Royal Hong Kong Auxiliary Police Force,
- from his duty or allegiance to Her Majesty shall be guilty of an offence. [*cf. 1934 c. 56 s. 1 U.K.*]
- (2) Any person who—
- (a) knowing that any member or officer mentioned in subsection (1) is about to desert or absent himself without leave, assists him in so doing; or
  - (b) knowing such member or officer to be a deserter or absentee without leave, conceals him or assists him in concealing himself or assists in his rescue from custody,
- shall be guilty of an offence.
- (3) Any person who, with intent to commit or to aid, abet, counsel or procure the commission of an offence under subsection (1), has in his possession any document of such a nature that the dissemination of copies thereof among the members or officers mentioned in subsection (1) would constitute such an offence, shall be guilty of an offence. [*cf. 1934 c. 56 s. 2(1) U.K.*]
- (4) Any person guilty of an offence under this section shall be liable on conviction upon indictment to a fine of \$5,000 and to imprisonment for 2 years. [*cf. 1934 c. 56 s. 3(1) U.K.*]
- (5) The court by or before which a person is convicted of an offence under this section may order any documents connected with the offence to be destroyed or dealt with in such other manner as may be specified in the order; but no documents shall be destroyed before the expiration of the period within which an appeal may be lodged, and if an appeal is lodged no document shall be destroyed until after the appeal has been finally determined or abandoned. [*cf. 1934 c. 56 s. 3(4) U.K.*]
- (6) No prosecution for an offence under this section shall be instituted without the consent of the Attorney General. [*cf. 1934 c. 56 s. 3(2) U.K.*]

## 8. Power to search and prevent offences under section 7

- (1) If a judge is satisfied by information on oath that there is reasonable ground for suspecting that an offence under section 7 has been committed, and that evidence of the commission thereof is to be found at any premises or place specified in the information, he may grant a search warrant authorizing a police officer not below the rank of inspector, together with any other police officers—