

**For information
on 25 October 2005**

**Legislative Council Panel on Security
Subcommittee on Review of Existing Statutory Provisions
On Search and Seizure of Journalistic Material**

**Administration's response to the issues raised by Members
at the Subcommittee meeting on 10 May 2005**

Purpose

This paper sets out the Administration's response to the issues raised by Members at the Subcommittee meeting on 10 May 2005 regarding the search and seizure of journalistic material. The Administration was requested to –

- (a) provide information on the impact of the recent enactment of the Serious Organized Crime and Police (SOCP) Act 2005 in the United Kingdom (UK) on the powers of law enforcement agencies in relation to the search and seizure of journalistic material;
- (b) list the relevant paragraphs in the judgment on the case of *R v Leeds Crown Court, ex parte Switalski* and the judgment delivered by the Court of Appeal on the case of *So Wing-keung v Sing Tao Limited and Hsu Hiu Yee* which were consistent with the Administration's views; and
- (c) draw reference from the terms used in existing legislation for different levels of likelihood and consider amending the word "may" in section 85 of the Interpretation and General Clauses Ordinance (IGCO) (Cap. 1) along the lines of words such as "likely" or "very likely".

Impact of SOCP Act in the UK

2. In so far as it concerns search and seizure of journalistic material, the SOCP Act has the following effects on the Police and Criminal Evidence (PACE) Act 1984 when it comes into force -

- (a) Sections 60 to 70 of the SOCP Act seek to introduce a two-tier

approach (disclosure notice and search warrant) on access to information relating to the offences set out in section 61 of the SOCP Act.

- (b) The disclosure notice and search warrant procedures under the SOCP Act apply to journalistic material, except the "excluded material" as defined in section 11 of PACE Act 1984 (which includes journalistic material held in confidence). In respect of such journalistic material to which they apply, the procedures under the SOCP Act provide a channel of access in addition to the existing channel under Schedule 1 of PACE Act 1984.
- (c) Apart from the above, the existing channel of access under Schedule 1 of PACE Act 1984 will also be expanded upon the commencement of the SOCP Act. First, the scope of premises to be covered by the procedures under Schedule 1 of PACE 1984 will be expanded. Secondly, in relation to special procedure material only (i.e. journalistic material other than "excluded material"), the procedures under Schedule 1 of PACE 1984 will then apply if there are reasonable grounds for believing that "an indictable offence" (instead of "serious arrestable offence") has been committed.

Judgment on R v Leeds Crown Court, ex parte Switalski and judgment on So Wing-keung v Sing Tao Limited and Hsu Hiu Yee

3. In *R v Leeds Crown Court, ex parte Switalski*, the Court did not say that the test should be "substantial probability". It was the prosecutor's submission that it was not practicable to communicate with any person to grant entry to the premises to which the applications for search warrants were related because it would alert the persons who were the subjects of the investigation with the consequence and substantial probability of the loss or destruction of the material to which the applications were related. Neill LJ said he accepted the submission, not that that was the test. Please see pages 7 and 8 of the relevant judgment. This was explained by the Court of Appeal in *So Wing-keung v Sing Tao Limited and Hsu Hiu Yee*. Please see pages 67 to 70 of the relevant judgment.

"May" v "likely" or "very likely"

4. The word "may" in this context, i.e. may seriously prejudice the investigation (section 85(5)(c)), is appropriate and there is no need to change it.

There is no need to qualify the word either as the prejudice that is to occur has been qualified and it must be serious. So what may happen has to be that the investigation is seriously prejudiced. Thus the word “may” satisfies what is sought to be achieved, for a search warrant is necessary because a notice of a production order may seriously prejudice the investigation.

Security Bureau
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