

**For discussion  
on 12 May 2025**

**Legislative Council Panel on Security and  
Panel on Administration of Justice and Legal Services**

**Making of  
Subsidiary Legislation for Safeguarding National Security**

**Purpose**

This paper aims to brief Members on the proposal of the Government of the Hong Kong Special Administrative Region (HKSAR) to make subsidiary legislation under section 110 of the Safeguarding National Security Ordinance (SNSO) for the needs of safeguarding national security and the better carrying into effect of the provisions in Chapter V of the Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region (HKNSL) concerning the mandate of the Office for Safeguarding National Security of the Central People's Government in the Hong Kong Special Administrative Region (OSNS), and to declare certain premises of the OSNS as prohibited places under section 42 of the SNSO.

**Introduction**

***Mechanism for making subsidiary legislation for safeguarding national security under the SNSO***

2. With the commencement of the SNSO on 23 March 2024, the HKSAR has fulfilled its constitutional responsibility and historic mission of legislating for Article 23 of the Basic Law. While the HKNSL, the SNSO and other law of the HKSAR on safeguarding national security have ensured the effective protection of national security in the HKSAR, according to the Decision of the National People's Congress on Establishing and Improving the Legal System and Enforcement Mechanisms for the Hong Kong Special

Administrative Region to Safeguard National Security (5.28 Decision) and the HKNSL<sup>1</sup>, the HKSAR still has the constitutional duty to continue to improve the legal system and enforcement mechanisms for safeguarding national security so as to continue to prevent, suppress and punish acts and activities endangering national security effectively.

3. Comprehensive measures to safeguard national security require the empowerment of the executive authorities to formulate implementation details and administrative matters. Moreover, national security risks can emerge all of a sudden and cannot be predicted. As such, section 110 of the SNSO empowers the Chief Executive in Council to make subsidiary legislation to provide for the specific implementation details of the requirements under the HKNSL, the Interpretation by the Standing Committee of the National People's Congress of Article 14 and Article 47 of the Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region (NPCSC's Interpretation) and the SNSO, so that the mechanisms for safeguarding national security can be implemented more effectively, and national security risks can be prevented and addressed

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<sup>1</sup> Article 3 of the 5.28 Decision provides that it is the HKSAR's constitutional responsibilities to safeguard national sovereignty, unity and territorial integrity. The HKSAR must complete the national security legislation stipulated in the Basic Law of the HKSAR at an earlier date. The HKSAR's administrative, legislative and judicial organs must, in accordance with relevant laws and regulations, effectively prevent, stop and punish acts and activities endangering national security; Article 4 provides that the HKSAR shall establish and improve the institutions and enforcement mechanisms for safeguarding national security, strengthen the enforcement forces for safeguarding national security, and step up enforcement to safeguard national security. Article 3 of the HKNSL provides that the Central People's Government has an overarching responsibility for national security affairs relating to the HKSAR. It is the duty of the HKSAR under the Constitution to safeguard national security and the HKSAR shall perform the duty accordingly. The executive authorities, legislature and judiciary of the HKSAR shall effectively prevent, suppress and impose punishment for any act or activity endangering national security in accordance with the HKNSL and other relevant laws; Article 7 requires that the HKSAR shall complete, as early as possible, legislation for safeguarding national security as stipulated in the Basic Law and shall refine relevant laws.

in a timely manner.

4. Any subsidiary legislation made under section 110 of the SNSO may provide that a contravention of the subsidiary legislation is an indictable offence and may prescribe penalties for it of a fine not exceeding \$500,000 and imprisonment not exceeding 7 years.

***HKSAR's responsibility to further improve the legal system and enforcement mechanisms for safeguarding national security***

5. Safeguarding national security is within the purview of the Central Authorities. The Central Authorities have an overarching responsibility for national security affairs relating to the HKSAR, and possess comprehensive legislative, executive and judicial powers in respect of such matters. This is in line with the common practice of countries around the world on safeguarding national security. However, having regard to the special nature of “one country, two systems” and the actual situation of the HKSAR, the Central Authorities authorise, through the HKNSL, the HKSAR to assume primary responsibility for safeguarding national security in the HKSAR, while the Central Authorities bear the ultimate responsibility of the last resort for dealing with issues that are difficult to be resolved at the HKSAR level. The HKNSL has innovatively provided for enforcement mechanisms for safeguarding national security at two levels, i.e. the Central Authorities level and the HKSAR level.

6. At the Central Authorities level, Article 48 of the HKNSL provides that the Central People's Government shall establish in the HKSAR the OSNS, which shall perform its mandate for safeguarding national security in accordance with the law. Chapter V of the HKNSL provides for the mandate of the OSNS, including overseeing, guiding, coordinating with, and providing support to the HKSAR in the performance of its duties for safeguarding

national security. Also, the OSNS may directly exercise jurisdiction over a case concerning offence endangering national security under the HKNSL in a circumstance specified in Article 55 of the HKNSL. The OSNS's exercise of jurisdiction pursuant to Article 55 of the HKNSL targets a very small number of cases that are of a serious and egregious nature and involve a significant impact. At the HKSAR level, a holistic system for safeguarding national security is established, including the establishment of the Committee for Safeguarding National Security of the HKSAR (CSNS) to handle specific matters pertaining to safeguarding national security in accordance with the law. In general, the HKSAR has jurisdiction over most of the cases concerning offences endangering national security under the HKNSL. The two enforcement mechanisms are clearly delineated in terms of division of duties and jurisdiction over cases, and at the same time form a complementary, collaborative and coordinated relationship, jointly constituting a comprehensive system and mechanism for safeguarding national security in the HKSAR. This has fully demonstrated not only the fact that national security is a matter under the purview of the Central Authorities but also the Central Authorities' high degree of trust in and respect for the HKSAR.

7. Chapter V of the HKNSL sets out the mandate of the OSNS. According to Article 49 of the HKNSL, the OSNS shall perform the following mandate:

- (a) analysing and assessing developments in relation to safeguarding national security in the HKSAR, and providing opinions and making proposals on major strategies and important policies for safeguarding national security;
- (b) overseeing, guiding, coordinating with, and providing support to the HKSAR in the performance of its duties for safeguarding national security;

- (c) collecting and analysing intelligence and information concerning national security;
- (d) handling cases concerning offence endangering national security in accordance with the law.

8. Article 61 of the HKNSL provides that the relevant departments of the HKSAR Government shall provide necessary facilitation and support to the OSNS in performing its mandate in accordance with the HKNSL, and shall stop any act obstructing the performance of such mandate and hold those who commit such act liable in accordance with the law. Section 111 of the SNSO provides that the Chief Executive may issue an administrative instruction to any department or agency of the HKSAR Government or any public servant to give directions in relation to the provision of rights, exemptions, facilitation and support that are necessary for the OSNS in performing its mandate under Chapter V of the HKNSL in accordance with the law. Section 114(2) of the SNSO further provides that a public servant must provide any department or agency that is responsible for the work on safeguarding national security, and its personnel (i.e. including the OSNS and its staff), in the HKSAR, with all reasonable facilitation, support, backing and protection in a timely manner.

9. It is evident from the above provisions of the HKNSL and of the SNSO that it shall be the duty of the HKSAR Government to provide, for the OSNS's performance of its mandate under the HKNSL, all necessary and reasonable assistance, facilitation, support, backing and protection. The HKSAR Government shall fulfil its constitutional duty for enacting local legislation to provide for specific details of the provisions in Chapter V of the HKNSL concerning the mandate of the OSNS, in order to further improve the legal system and enforcement mechanisms for safeguarding national security. As such, the HKSAR Government considers that it is necessary to make subsidiary legislation under section 110 of the SNSO and to declare, under section 42 of the SNSO, certain premises of the OSNS as prohibited places,

thereby better carrying into effect the abovementioned requirements under the HKNSL. The making of subsidiary legislation can provide the OSNS with better support and protection in performing effectively and in accordance with the law its mandate to safeguard national security.

### **Proposal of making subsidiary legislation for safeguarding national security**

10. According to the proposal of the HKSAR Government, the subsidiary legislation for safeguarding national security will mainly cover the following aspects:

#### **(A) The OSNS's overseeing and guiding the HKSAR in the performance of the HKSAR's duties for safeguarding national security**

11. According to Article 49 of the HKNSL, the mandate of the OSNS includes overseeing and guiding the HKSAR in the performance of its duties for safeguarding national security. Article 53 of the HKNSL provides that the OSNS shall establish a mechanism of coordination with the CSNS to oversee and provide guidance on the work of the HKSAR for safeguarding national security. The NPCSC's Interpretation elucidates that the CSNS assumes statutory duties and functions for safeguarding national security in the HKSAR and has the power to make judgements and decisions on the question whether national security is involved; information relating to its work is not subject to disclosure; decisions made by the CSNS are not amenable to judicial review and have enforceable legal effect; no institution, organisation or individual in the HKSAR shall interfere with the work of the CSNS; they shall all respect and implement the decisions of the CSNS. According to section 112 of the SNSO, if the law of the HKSAR confers any function on a person, any person, in making any decision in the performance of the function, must respect, and implement in accordance with the law, the judgements and

decisions of the CSNS. Nearly five years having passed since the implementation of the HKNSL, our society has gained a certain degree of understanding of the power of the CSNS to make judgements and decisions on issues concerning national security and the binding effect of such judgements and decisions. The OSNS oversees and guides the HKSAR in the performance of its duties for safeguarding national security, and the CSNS makes decisions on giving effect to the opinions of the OSNS on the OSNS's oversight and guidance, demonstrating the overarching responsibility of the Central Authorities for national security affairs relating to the HKSAR and the constitutional duty of the HKSAR to safeguard national security.

12. In order to make clearer the CSNS's role in making an overall plan of, and coordinating, the implementation of the OSNS's oversight and guidance among relevant agencies and organisations, the HKSAR Government considers that the subsidiary legislation should include provisions on the role of the CSNS and its secretariat in giving effect to the opinions provided by the OSNS on overseeing and guiding the HKSAR's work on safeguarding national security.

**(B) Matters in respect of the OSNS's handling of cases concerning offences endangering national security**

13. Article 40 of the HKNSL provides that the HKSAR shall have jurisdiction over cases concerning offences under the HKNSL, except under the circumstances specified in Article 55 of the HKNSL. According to Article 55 of the HKNSL, the OSNS shall, upon approval by the Central People's Government of a request made by the HKSAR Government or by the OSNS itself, exercise jurisdiction over a case concerning offence endangering national security under the HKNSL, if any of the three special circumstances

<sup>2</sup> set out in that Article exists. The OSNS's exercise of jurisdiction pursuant to Article 55 of the HKNSL targets a very small number of cases that are of a serious and egregious nature and involve a significant impact, and would be in strict accordance with statutory procedures. Although the possibility of the OSNS exercising jurisdiction pursuant to Article 55 of the HKNSL is quite low, the HKSAR Government must plan ahead and establish a mechanism at the local law level to enable the OSNS to effectively perform its mandate under Article 55 of the HKNSL as and when necessary, thereby improving the mechanism for safeguarding national security effectively.

14. The decision to activate the mechanism under Article 55 of the HKNSL must be made in accordance with the strict procedures under that Article and after careful and rigorous consideration. Article 57 of the HKNSL provides that the Criminal Procedure Law of the People's Republic of China and other related national laws shall apply to procedural matters, including those related to criminal investigation, examination and prosecution, trial, and execution of penalty, in respect of cases over which jurisdiction is exercised pursuant to Article 55 of the HKNSL. When exercising jurisdiction over cases pursuant to Article 55 of the HKNSL, the OSNS shall exercise powers in accordance with the law. The legal documents issued by the OSNS on its decisions to take mandatory and investigation measures shall

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<sup>2</sup> The three special circumstances set out in Article 55 of the HKNSL are:

- (a) the case is complex due to the involvement of a foreign country or external elements, thus making it difficult for the HKSAR to exercise jurisdiction over the case;
- (b) a serious situation occurs where the HKSAR Government is unable to effectively enforce the HKNSL;
- (c) a major and imminent threat to national security has occurred.



have legal force in the HKSAR. The institutions, organisations and individuals concerned must comply with measures taken by the OSNS in accordance with the law.

15. For the better carrying into effect of the above provisions in the HKNSL and for making explicit the relevant responsibilities of the HKSAR Government and its personnel, the HKSAR Government proposes providing in the subsidiary legislation that any department or agency of the HKSAR Government or any public servant must, on request of the OSNS, provide, for the OSNS's effective performance of its mandate of exercising jurisdiction over a case in a circumstance specified in Article 55 of the HKNSL, all necessary and reasonable assistance, facilitation, support, backing and protection in accordance with the law and in a timely manner.

16. Legal documents issued by the OSNS under Article 57 of the HKNSL shall have legal force in the HKSAR and must be complied with by the institutions, organisations and individuals concerned. Refusal or failure to enforce such legal documents by the institutions, organisations and individuals concerned would seriously affect the handling of cases concerning offences endangering national security by the OSNS pursuant to Article 55 of the HKNSL and would lead to very severe consequences. To enhance the enforceability of the legal documents of the OSNS in the HKSAR and to ensure that the documents concerned are to be properly enforced, the HKSAR Government proposes providing in the subsidiary legislation that a person commits an offence if the person, without reasonable excuse, fails to comply with a legal document issued by the OSNS under Article 57 of the HKNSL and served on the person.

17. To ensure that the relevant institutions, organisations and individuals acting in good faith in compliance with the legal documents issued by the OSNS, or in co-operation with the OSNS in performing its mandate, have no

need for concern regarding the risk of incurring civil liability, the HKSAR Government proposes providing for immunity from civil liability in the subsidiary legislation. Similar provisions providing for immunity from civil liability are common in local legislation (e.g. section 199 of the Financial Institutions (Resolution) Ordinance (Cap. 628), section 380 of the Securities and Futures Ordinance (Cap. 571)).

18. Article 59 of the HKNSL provides that in a case over which jurisdiction is exercised by the OSNS pursuant to Article 55 of the HKNSL, any person who has information pertaining to an offence endangering national security under the HKNSL is obliged to testify truthfully. To prevent a witness who assists with an investigation of the OSNS from providing false or misleading information to the OSNS, the HKSAR Government proposes providing for an offence in the subsidiary legislation to prohibit a person from, in purported compliance with a legal document issued by the OSNS under Article 57 of the HKNSL, giving any testimony or making any statement or providing any information or document that is false or misleading in a material particular while knowing that, or being reckless as to whether, the testimony, statement, information or document is false or misleading in a material particular. Offences of providing false or misleading information to law enforcement agencies in the course of investigation are common in local legislation (e.g. section 3(14) of the Organized and Serious Crimes Ordinance (Cap. 455), section 184(2) of the Securities and Futures Ordinance (Cap. 571), sections 10(3) and 13(3) of the Anti-Money Laundering and Counter-Terrorist Financing Ordinance (Cap. 615)).

19. Paragraph 3 of Article 63 of the HKNSL provides that the relevant institutions, organisations and individuals who assist with the handling of a case shall keep confidential any information pertaining to the case. The OSNS's exercise of jurisdiction pursuant to Article 55 of the HKNSL targets a very small number of cases that are of a serious and egregious nature and

involve a significant impact. Unauthorised disclosure of information on the OSNS's handling of cases will impair the investigation of the OSNS and cause serious consequences endangering national security. To ensure that circumstances of the OSNS's handling of cases are kept in strict confidence, the HKSAR Government proposes to provide for an offence in the subsidiary legislation to prohibit a person who knows or suspects that the OSNS is handling a case from disclosing to any other person any information relating to that investigation without reasonable excuse or lawful authority.

**(C) Protections for the OSNO in the performance of its mandate**

20. For the better carrying into effect of Article 61 of the HKNSL and section 114 of the SNSO, the HKSAR Government proposes providing in the subsidiary legislation that, in the course of the OSNS's performance of its mandate under the HKNSL, any department or agency of the HKSAR Government or any public servant must, on request of the OSNS, provide all necessary and reasonable assistance, facilitation, support, backing and protection in accordance with the law and in a timely manner.

21. Article 60 of the HKNSL provides that the acts performed in the course of duty by the OSNS and its staff in accordance with the HKNSL shall not be subject to the jurisdiction of the HKSAR; in the course of performing duty, a holder of an identification document or a document of certification issued by the OSNS and the articles including vehicles used by the holder shall not be subject to inspection, search or detention by law enforcement officers of the HKSAR; and the OSNS and its staff shall enjoy other rights and immunities provided by laws of the HKSAR. For the better carrying into effect of Article 60 of the HKNSL, the HKSAR Government proposes including in the subsidiary legislation provisions to make clear that an identification document or a document of certification created or issued by the OSNS has the effect of proving facts such as the identity of a staff member of

the OSNS and certain acts are performed in the course of duty.

22. Article 61 of the HKNSL clearly stipulates that the HKSAR Government shall stop any act obstructing the OSNS's performance of its mandate in accordance with the HKNSL and hold those who commit such act liable in accordance with the law. The existing legislation in Hong Kong provides for offences of resisting or obstructing a public officer (e.g. section 23 of the Summary Offences Ordinance (Cap. 228), section 36 of the Offences against the Person Ordinance (Cap. 212), section 63 of the Police Force Ordinance (Cap. 232), section 50A of the Public Order Ordinance (Cap. 245)), and some of those offences also cover acts of obstructing others in assisting a public officer in the performance of a public duty. With reference to provisions in relevant local legislation, the HKSAR Government proposes creating offences of wilfully resisting or obstructing the OSNS in the performance of a duty, and wilfully resisting or obstructing others in assisting the OSNS in the performance of a duty.

23. The acts of impersonating a staff member of the OSNS and forging documents of the OSNS (such as legal documents and identification documents) may lead to serious consequences, and will undermine the public's willingness to support the OSNS in the performance of duty in accordance with the law. Section 22 of the Summary Offences Ordinance (Cap. 228) provides for the offence of "falsely pretending to be or be able to influence a public officer", and Part IX of the Crimes Ordinance (Cap. 200) provides for forgery and related offences. Considering the serious consequences that may arise from the acts of impersonating a staff member of the OSNS and forging documents of the OSNS, and in order to protect the OSNS in the performance of its mandate in accordance with the law as well as the lawful rights and interests of Hong Kong residents, the HKSAR Government is of the view that the subsidiary legislation should provide for offences in this regard to impose criminal liability to deter such acts,

regardless of the intentions of the offenders.

24. Some work-related information may be generated in the course of the OSNS's performance of its mandate. The disclosure of such information may prejudice the OSNS's performance of its mandate or adversely affect national security and the public interest. The HKSAR Government proposes including in the subsidiary legislation a provision to stipulate clearly as a matter of principle the obligation to keep confidential the work-related information in connection with the OSNS. It is also proposed to provide that a person must not obtain, possess or disclose the information unless the OSNS has made public the information or given lawful authority to the person.

#### **(D) Declaration of prohibited places**

25. Division 2 of Part 4 of the SNSO provides for offences in connection with espionage, including offences in connection with prohibited places, and provides for the definition of prohibited place, the authorisation of guards and the powers that may be exercised in relation to a prohibited place. Under section 42 of SNSO, the Chief Executive may, by order published in the Gazette, declare a place situated in the HKSAR as a prohibited place if, having regard to the matters specified in subsection (2) of that section <sup>3</sup>, the Chief Executive reasonably considers that it is necessary for safeguarding national security to declare the place as a prohibited place.

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<sup>3</sup> The matters are—

- (a) the use of the place;
- (b) the owner or occupier of the place;
- (c) the nature of any information kept, stored or processed in the place; and
- (d) the nature of any technology, equipment or material situated at the place.

26. The premises where the OSNS performs its mandate should undoubtedly be accorded appropriate protection in accordance with the law against unauthorised acts to approach or enter such premises in order to minimise national security risks, in particular risks associated with acts of espionage. In this regard, the HKSAR Government proposes that the Chief Executive declares, by order published in the Gazette, premises where the OSNS performs its mandate as prohibited places. The areas to be designated as prohibited places do not involve private residence, and the declaration will not cause any unreasonable impact on the surrounding community.

### **Legislative Timetable**

27. Amid the present complicated geopolitical situation, national security risks still exist. The OSNS's effective performance of its mandate in accordance with the law is an integral part of the legal system and enforcement mechanism of the HKSAR for safeguarding national security. It is the duty of the HKSAR to complete the making of the subsidiary legislation as early as possible in order to safeguard national security effectively – the earlier the better. Upon receiving the views of the Members, the HKSAR Government will finalise the subsidiary legislation to be made under section 110 of the SNSO and the order for declaration of prohibited places to be made under section 42 of the SNSO as soon as possible. The Government will publish the two pieces of subsidiary legislation in the Gazette and table them at the LegCo for negative vetting as soon as possible. Considering the necessity of making the two pieces of subsidiary legislation for safeguarding national security effectively, the HKSAR Government proposes that they should come into operation on the date of gazettal.

### **Advice Sought**

28. The making of the subsidiary legislation under section 110 of the

SNSO and the declaration of prohibited places under section 42 of the SNSO are for the better carrying into effect of the provisions in Chapter V of the HKNSL concerning the mandate of the OSNS, and the fulfilment of the constitutional duty of the HKSAR. The subsidiary legislation seeks to provide for specific details of the relevant requirements at the local law level, thereby better carrying into effect the provisions in Chapter V of the HKNSL concerning the mandate of the OSNS. The subsidiary legislation will not confer any new powers on the OSNS, nor will it affect the lives of the general public and the normal operation of any institution and organisation. The HKSAR Government will ensure the effective delivery of explanatory work so that members of the public will understand the importance of the subsidiary legislation in safeguarding national security. Members are invited to comment on the above proposal of making subsidiary legislation for safeguarding national security.

**Security Bureau**  
**Department of Justice**  
**May 2025**