

## PROTECTION OF THE HARBOUR BILL

## COMMITTEE STAGE

Amendments to be moved by the Hon Mr CHAN Wai-yip, Albert

<u>Clause</u>	<u>Amendment Proposed</u>
2	By deleting the definition of "harbour" (海港) and substituting -  ""central harbour" (中央海港) means the waters of Hong Kong within the boundaries specified in Schedule 1;"
3	In subclause (1), by adding "central" before "harbour" wherever it appears.
4	By adding "central" before "harbour" wherever it appears.
New	By adding -

## SCHEDULE 1

[s.2]

## BOUNDARIES OF THE CENTRAL HARBOUR

On the east - a straight line drawn from the extreme south-east point of Hung Hom adjacent to Kowloon Bay to the extreme north point of Hong Kong island at North Point;

ClauseAmendment Proposed

On the west - a line following the course of the easternmost conduit of the tunnel defined in section 2 of the Western Harbour Crossing Ordinance (Cap. 436).".

EQUAL OPPORTUNITIES (FAMILY RESPONSIBILITY,  
SEXUALITY AND AGE) BILL

**COMMITTEE STAGE**

Amendments to be moved by the Hon LAU Chin-shek

<u>Clause</u>	<u>Amendment Proposed</u>
Long title	By deleting "family responsibility or family status, sexuality, or age" and substituting "sexuality or age".

1 By deleting the clause and substituting -

**"1. Short title and commencement**

(1) This Ordinance may be cited as the Equal Opportunities (Sexuality and Age) Ordinance.

(2) Section 90 shall come into operation on the day the Ordinance is published in the Gazette.

(3) The Governor may, by notice in the Gazette, appoint -

(a) a day; or

(b) different days in respect of different provisions,

ClauseAmendment Proposed

for the coming into operation of this Ordinance (other than section 90) and such a day, or the later or last of such different days, shall be a day no later than 1 January 1998.

(4) Subject to subsection (3), this Ordinance (other than section 90) shall come into operation on 1 January 1998."

- 2
- (a) In paragraph (a), by deleting "family responsibility or family status, sexuality, or age" and substituting "sexuality or age".
  - (b) In paragraph (b), by deleting "educational institutions" and substituting "educational establishments".
  - (c) In paragraph (c), by adding "and" at the end.
  - (d) In paragraph (d), by deleting the semicolon and substituting a full stop.
  - (e) By deleting paragraphs (e) and (f).
- 3(1)
- (a) By deleting the definition of "charitable benefits".
  - (b) In the definition of "合約工作者", by deleting "進行工作的任何人" and substituting "而替該另一人工作的人".
  - (c) By deleting the definitions of "educational authority" and "educational institution" and substituting -

""educational establishment" (教育機構) has the same meaning as in section 2 of the Sex Discrimination Ordinance (Cap. 480);".

ClauseAmendment Proposed

- (d) By deleting the definition of "employment" and substituting -

"employment" (僱用) means employment under -

(a) a contract of service or of apprenticeship; or

(b) a contract personally to execute any work or labour,

and related expressions shall be construed accordingly;"

- (e) By deleting the definition of "family responsibility or family status".

- (f) In the definition of "voluntary body", by deleting paragraph (b) and substituting -

"(b) a body whose recurrent expenditure is funded wholly or in part by the Government; or".

- (g) By adding -

"pupil" (見習大律師), "pupillage" (見習職位), "tenancy" (租賃) and "tenant" (承租人) have the meanings commonly associated with their use in the context of a set of barristers' chambers;"

4

- By deleting the clause and substituting -

**"4. Act done for 2 or more reasons**

If -

- (a) an act is done for 2 or more reasons; and

ClauseAmendment Proposed

- (b) one of the reasons is the sexuality or age of a person (whether or not it is the dominant or a substantial reason for doing the act),

then, for the purposes of this Ordinance, the act shall be taken to be done for the reason specified in paragraph (b)."

- 5 (a) In the heading, by deleting "**Crown**" and substituting "**Government**".

- (b) By deleting "Crown" and substituting "Government".

- 6 By deleting the clause

- 7 By deleting subclause (3).

Part II By deleting the Part.

- 27 By deleting subclauses (2), (3) and (4) and substituting -

"(2) For the purposes of this Ordinance, a person ("the discriminator") discriminates against another person ("the aggrieved person") on the ground of that person's sexuality if the discriminator applies to the aggrieved person a requirement or condition which the discriminator applies or would apply equally to a person who is not of the same sexuality as the aggrieved person but -

<u>Clause</u>	<u>Amendment Proposed</u>
	<ul style="list-style-type: none"><li>(a) which is such that the proportion of persons of the same sexuality as the aggrieved person who can comply with it is considerably smaller than the proportion of persons who are not of the same sexuality who can comply with it;</li><li>(b) which the discriminator cannot show to be justifiable irrespective of the sexuality of the person to whom it is applied; and</li><li>(c) which is to the aggrieved person's detriment because he or she cannot comply with it."</li></ul>
35	By deleting "educational authority" wherever it appears and substituting "educational establishment".
38	By deleting subclause (3) and substituting -  "(3) Nothing in this section applies to or in respect of -  (a) the provision of accommodation in premises if -  (i) the person who provides or proposes to provide the accommodation or a near relative of that person ("the relevant occupier") resides, and intends to continue to reside, on those premises;

ClauseAmendment Proposed

(ii) there is on the premises, in addition to the accommodation occupied by the relevant occupier, accommodation (not being storage accommodation or means of access) shared by the relevant occupier with other persons residing on the premises who are not members of the relevant occupier's household; and

(iii) the premises are small premises; or

(b) accommodation provided by a religious body.

(4) Premises shall be treated for the purposes of subsection (3) as small premises if -

(a) in the case of premises comprising residential accommodation for one or more households (under separate letting or similar agreements) in addition to the accommodation occupied by the relevant occupier, there is not normally residential accommodation for more than 2 such households and only the relevant occupier and any members of his or her household reside in the accommodation occupied by him or her;



ClauseAmendment Proposed

- (b) in the case of premises not falling within paragraph (a), there is not normally residential accommodation on the premises for more than 6 persons in addition to the relevant occupier and any members of his or her household.

(5) The Governor in Council may, by notice in the Gazette, amend subsection (4) (b) by substituting another number for the number appearing in that subsection."

42 By deleting "皇室".

New By adding -

**"42A. Barristers**

(1) It is unlawful for a barrister or a barrister's clerk, in relation to any offer of a pupillage or tenancy, to discriminate against a person on the ground of the person's sexuality -

- (a) in the arrangements which are made for the purposes of determining to whom the pupillage or tenancy should be offered;
- (b) in respect of any terms on which the pupillage or tenancy is offered; or
- (c) by refusing, or deliberately omitting, to offer the pupillage or tenancy to the person.

ClauseAmendment Proposed

(2) It is unlawful for a barrister or a barrister's clerk, in relation to a person who is a pupil or tenant in the chambers concerned, to discriminate against the person on the ground of the person's sexuality -

- (a) in respect of any terms applicable to the person as a pupil or tenant;
- (b) in the opportunities for training, or gaining experience, which are afforded or denied to the person;
- (c) in the benefits, facilities or services which are afforded or denied to the person; or
- (d) by terminating the person's pupillage or by subjecting the person to any pressure to leave the chambers or any other detriment.

(3) It is unlawful for any person, in relation to the giving, withholding or acceptance of instructions to a barrister, to discriminate against a person on the ground of the person's sexuality."

44 By deleting "educational institution" wherever it appears and substituting "educational establishment".

New By adding -

**"53A. Insurance**

ClauseAmendment Proposed

Nothing in this Part renders it unlawful for a person to discriminate against a person who is of a particular sexuality on the ground of person's sexuality with respect to the terms on which an annuity, a life assurance policy, a policy of insurance against accident or any other policy of insurance is offered to or may be obtained by the person of that sexuality if that discrimination -

- (a) is based upon actuarial or statistical data from a source on which it is reasonable to rely or, if there are no such data, on such other data as may be available; and
- (b) is reasonable having regard to the data referred to in paragraph (a), if any, and any other relevant factors."

54

By deleting subclauses (2), (3) and (4) and substituting -

"(2) For the purposes of this Ordinance, a person ("the discriminator") discriminates against another person ("the aggrieved person") on the ground of that person's age if the discriminator applies to the aggrieved person a requirement or condition which the discriminator applies or would apply equally to a person who is not of the same age but -

- (a) which is such that the proportion of persons of the same age as the aggrieved person who can comply with it is considerably smaller than the proportion of persons who are not of the same age who can comply with it;
- (b) which the discriminator cannot show to be justifiable irrespective of the age of the person to whom it is applied; and

ClauseAmendment Proposed

- (c) which is to the aggrieved person's detriment because he or she cannot comply with it."
  
- 62
  - (a) In subclauses (1), (2) and (3), by deleting "educational authority" wherever it appears and substituting "educational establishment".
  - (b) In subclause (4), by deleting "educational institution" where it twice appears and substituting "educational establishment".
  - (c) In subclause (4) by adding "訂定" after "該計劃".
  
- 65
  - By deleting subclause (3) and substituting -
    - "(3) Nothing in this section applies to or in respect of -
      - (a) the provision of accommodation in premises if -
        - (i) the person who provides or proposes to provide the accommodation or a near relative of that person ("the relevant occupier") resides, and intends to continue to reside, on those premises;

ClauseAmendment Proposed

(ii) there is on the premises, in addition to the accommodation occupied by the relevant occupier, accommodation (not being storage accommodation or means of access) shared by the relevant occupier with other persons residing on the premises who are not members of the relevant occupier's household; and

(iii) the premises are small premises;

(b) accommodation provided by a religious body;

(c) accommodation provided by a charitable or other voluntary body solely for persons of a particular age; or

(d) the provision of bona fide benefits, including concessions, to a person by reason of his or her age.

(4) Premises shall be treated for the purposes of subsection (3) as small premises if -

(a) in the case of premises comprising residential accommodation for one or more households (under separate letting or similar agreements) in addition to the accommodation occupied by the relevant occupier, there is not normally residential accommodation for more than 2 such households and only the relevant occupier and any members of his or her household reside in the accommodation occupied by him or her;

ClauseAmendment Proposed

- (b) in the case of premises not falling within paragraph (a), there is not normally residential accommodation on the premises for more than 6 persons in addition to the relevant occupier and any members of his or her household.

(5) The Governor in Council may, by notice in the Gazette, amend subsection (4) (b) by substituting another number for the number appearing in that subsection."

71 By deleting "皇室".

New By adding -

**"71A. Barristers**

(1) It is unlawful for a barrister or a barrister's clerk, in relation to any offer of a pupillage or tenancy, to discriminate against a person on the ground of the person's age -

- (a) in the arrangements which are made for the purposes of determining to whom the pupillage or tenancy should be offered;
- (b) in respect of any terms on which the pupillage or tenancy is offered; or
- (c) by refusing, or deliberately omitting, to offer the pupillage or tenancy to the person.

ClauseAmendment Proposed

(2) It is unlawful for a barrister or a barrister's clerk, in relation to a person who is a pupil or tenant in the chambers concerned, to discriminate against the person on the ground of the person's age -

- (a) in respect of any terms applicable to the person as a pupil or tenant;
- (b) in the opportunities for training, or gaining experience, which are afforded or denied to the person;
- (c) in the benefits, facilities or services which are afforded or denied to the person; or
- (d) by terminating the person's puillage or by subjecting the person to any pressure to leave the chambers or any other detriment.

(3) It is unlawful for any person, in relation to the giving, withholding or acceptance of instructions to a barrister, to discriminate against a person on the ground of the person's age."

New

By adding -

**"77A. Further exceptions for statutory authority**

(1) Nothing in this Part affects the operation of a provision specified in the Schedule.

(2) Nothing in this Part renders unlawful any act done by a person if it was necessary for that person to do it in order to comply with a requirement of a provision specified in the Schedule .

ClauseAmendment Proposed

(3) The Governor in Council may, by notice in the Gazette, amend the Schedule.

(4) A notice under subsection (3) shall be subject to the approval of the Legislative Council."

83 (a) In subclause (5), by deleting "94" and substituting "91".

(b) By deleting subclause (7).

84 By deleting the clause and substituting -

**"84. Charities**

(1) Nothing in this Ordinance shall -

(a) be construed as affecting a provision to which this subsection applies; or

(b) render unlawful an act which is done in order to give effect to such a provision.

(2) Subsection (1) applies to a provision for conferring benefits on persons of a particular sexuality or age (disregarding any benefits to other persons which are exceptional or are relatively insignificant), being a provision which is contained in a charitable instrument.

(3) In applying this section, account shall be taken of section 88 of the Inland Revenue Ordinance (Cap. 112).



ClauseAmendment Proposed

(4) In this section -

"charitable instrument" (慈善文書) means an enactment or other instrument so far as it relates to charitable purposes;

"charitable purposes " (慈善目的) means purposes which are exclusively charitable according to any enactment or rule of law."

85

By deleting the clause and substituting -

**"85. Voluntary bodies**

(1) Nothing in this Ordinance shall be construed as rendering unlawful -

(a) the restriction of membership of a voluntary body to persons of a particular sexuality or age (disregarding any minor exceptions) where such restriction is reasonable having regard to the main object of the body; or

(b) the provision of benefits, facilities or services to members of a voluntary body where the membership is so restricted,

even though membership of the body is open to the public, or to a section of the public.

(2) Nothing in this Ordinance shall -

(a) be construed as affecting a provision to which this subsection applies; or

ClauseAmendment Proposed

- (b) render unlawful an act which is done in order to give effect to such a provision.

(3) Subsection (2) applies to a provision for conferring benefits on persons of a particular sexuality or age (disregarding any benefits to other persons which are exceptional or relatively insignificant), being a provision which constitutes the main object of a voluntary body."

87 By deleting "educational institution" wherever it appears and substituting "educational establishment".

88 By deleting the clause.

91 By deleting the clause and substituting -

**"91. Claims under this Ordinance**

(1) A claim by any person ("the claimant") that another person ("the respondent") -

- (a) has committed an act against the claimant which is unlawful by virtue of Part III or IV, or section 82;
- (b) has committed an act which is unlawful by virtue of section 49 or 83; or
- (c) is by virtue of section 99, 100 or 101 to be treated as having committed such an act against the claimant,

may be made the subject of civil proceedings in like manner as any other claim in tort.

ClauseAmendment Proposed

(2) Subsection (1) shall not apply to a claim under section 33 or 60 of an act in respect of which an appeal, or proceedings in the nature of an appeal, may be brought under any enactment.

(3) Proceedings under subsection (1) shall be brought in the District Court but all such remedies shall be obtainable in such proceedings as, apart from this subsection, would be obtainable in the High Court.

(4) Without limiting the generality of the power conferred by subsection (3), the District Court may -

- (a) make a declaration that the respondent has engaged in conduct, or committed an act, that is unlawful under this Ordinance, and order that the respondent shall not repeat or continue such unlawful conduct or act;
- (b) order that the respondent shall perform any reasonable act or course of conduct to redress any loss or damage suffered by the claimant;
- (c) order that the respondent shall employ or re-employ the claimant;
- (d) order that the respondent shall promote the claimant;
- (e) order that the respondent pay to the claimant damages by way of compensation for any loss or damage suffered by reason of the respondent's conduct or act;

ClauseAmendment Proposed

- (f) order that the respondent shall pay to the claimant punitive or exemplary damages; or
- (g) make an order declaring void in whole or in part and either ab initio or from such date as may be specified in the order, any contract or agreement made in contravention of this Ordinance.

(5) By virtue of this subsection and notwithstanding any law, the District Court shall have jurisdiction to hear and determine any proceedings under subsection (1) and shall have all such powers as are necessary or expedient for it to have in order to provide, grant or make any remedy, injunction or order mentioned in this Ordinance.

(6) For the avoidance of doubt, it is hereby declared that damages in respect of an unlawful act against the claimant may include compensation for injury to feelings whether or not they include compensation under any other head."

92 By deleting the clause.

94 By deleting the clause.

100 By adding -

"(5) For the avoidance of doubt, it is hereby declared that this section shall not apply for the purposes of any criminal proceedings."

ClauseAmendment Proposed

New

By adding -

"SCHEDULE

[s. 77A]

PROVISIONS SPECIFIED FOR  
PURPOSES OF SECTION 77A

1. Section 31R (1) (b) of the Employment Ordinance (Cap. 57).
2. Employees' Compensation Ordinance (Cap. 282).
3. Pneumoconiosis (Compensation) Ordinance (Cap. 360).
4. Occupational Deafness (Compensation) Ordinance (Cap. 469).".

- 103 (a) By deleting "**Consequential Amendments**" and "**Hong Kong Bill of Rights Ordinance**" before the clause.
- (b) By deleting the clause.

## HOUSING (AMENDMENT) (NO. 3) BILL 1996

**COMMITTEE STAGE**Amendments to be moved by the Hon LEUNG Yiu-chungClauseAmendment Proposed

Long title  
and  
enactment

By adding the following as the Chinese text of the long title  
and enactment formula -

"本條例草案

旨在

修訂《房屋條例》。

由香港總督參照立法局意見並得該局同意而制定。".

1

By adding the following as the Chinese text of the clause -

"1. 簡稱及生效日期

(1) 本例可引稱為《1996 年房屋(修訂) (第 3 號)條例》。

(2) 本條例自房屋司以憲佈公告指定的日期起實施。".

ClauseAmendment Proposed

2

By adding the following as the Chinese text of the clause -

## "2. 屋邨內土地的租契

房屋條例(第 283 章)第 16 條現予修訂，加入 —

“(1A)(a) 在 1996 年房屋(修訂)(第 3 號)條例(1996 年第 號)生效之後，任何由委員會根據第(1)(a)款就出租作住宅用途的屋邨內的任何土地類別所作出租金的釐定，須於就該同一土地類別的任何上次的釐定三年後才生效。

(b) 如根據(a)段就某該土地類別所釐定的租金數額，超過就該同一土地類別上次的釐定所釐定的租金數額，則該增幅以百分率表達，不得高於在三年期間內，以百分率表達的每月甲類消費物價指數年與年增長總計的十二分之一，而該期間以最接近首述釐定時間前已公布每月甲類消費物價指數的月份終結。”.

## HOUSING (AMENDMENT) (NO. 3) BILL 1996

**COMMITTEE STAGE**Amendments to be moved by Hon Mr LEE Wing-tat

<u>Clause</u>	<u>Amendment Proposed</u>
2	<p>(a) By deleting the proposed subsection (1A)(a) and substituting -</p> <p>"(a) Any determination of variation of rent after the commencement of the Housing (Amendment) (No. 3) Ordinance 1996 ( of 1997) by the Authority under subsection (1)(a) in respect of any class (whether determined by the nature of the land or status of the lessee) of land in an estate for residential purposes shall only take effect at least 3 years from the date on which any immediately preceding determination in respect of the same such class of land came into effect."</p> <p>(b) By deleting the proposed subsection (1A)(b) and substituting -</p> <p>"(b) The rent determined under paragraph (a) shall be of such amount -</p> <p>(i) that the excess by which the amount so determined in respect of any such class of land exceeds that determined under the immediately preceding determination in respect of the same class of land, when expressed as a percentage, shall not be greater than the accumulative rate of inflation less 2% for every 12 months; or</p>



ClauseAmendment Proposed

- (ii) that the median rent to income ratio in respect of all classes of land in all estates let for residential purposes as determined by the Authority shall not exceed 10%,

whichever is less."

- (c) For the purposes of subsection (1A)(b)(i), the accumulative rate of inflation shall be assessed by the Authority be reference to the Consumer Price Index (A) within the period -
  - (i) of such number of months as equal to the number of complete months that fall between the day immediately before that on which the immediately preceding determination took effect and the day on which the first mentioned determination is to take effect; and
  - (ii) ending in the month to which the monthly Consumer Price Index (A) published nearest in time to the determination made under subsection (1A)(a) relates."

## HOUSING (AMENDMENT) (NO. 3) BILL 1996

**COMMITTEE STAGE**Amendments to be moved by Hon CHAN Kam-lamClauseAmendment Proposed

- 2 (a) By deleting the proposed subsection (1A)(a) and substituting -

"Any determination of variation of rent after the commencement of the Housing (Amendment) (No. 3) Ordinance 1996 ( of 1997) by the Authority under subsection (1)(a) in respect of any class (whether determined by the nature of the land or the status of the lessee) of land in an estate let for residential purposes, shall take effect at least 2 years from the date on which any immediately preceding determination in respect of the same such class of land came into effect.";

- (b) By deleting the proposed subsection (1A)(b) and substituting -

"(b) The rent determined under paragraph (a) in respect of any such class of land shall be of such amount that the median rent to income ratio in respect of all classes of land in all estates let for residential purposes, as determined by the Authority, shall not exceed 10%.".

## HOUSING (AMENDMENT) (NO. 3) BILL 1996

**COMMITTEE STAGE**Amendments to be moved by Hon Bruce LIU Sing-lee

<u>Clause</u>	<u>Amendment Proposed</u>
2	<p>(a) By deleting the proposed subsection (1A)(a) and substituting -</p> <p>"(a) Any determination of variation of rent after the commencement of the Housing (Amendment) (No. 3) Ordinance 1996 ( of 1997) by the Authority under subsection (1)(a) in respect of any class (whether determined by the nature of the land or status of the tenant) of land in an estate let for residential purposes shall take effect at least 2 years from the date on which any immediately preceding determination in respect of the same such class of land came into effect.";</p> <p>(b) By deleting the proposed subsection (1A)(b) and substituting -</p> <p>"(b) The rent determined under paragraph (a) shall be of such amount:</p> <p>(i) that the excess by which the amount so determined in respect of any such class of land exceeds that determined under the immediately preceding determination in respect of the same class of land, when expressed as a percentage, shall not be greater than the accumulative rate of inflation, assessed by the Authority by reference to the Consumer Price Index (A), within the period from the day on which the immediately preceding determination took effect to the day on which the first mentioned determination is to take effect; or</p>

Clause

Amendment Proposed

- (ii) that the median rent to income ratio in respect of all classes of land in all estates let for residential purposes as determined by the Authority shall not exceed 10%,

whichever is less."

## INTERCEPTION OF COMMUNICATIONS BILL

## COMMITTEE STAGE

Amendments to be moved by the Hon James TO Kun-sun

<u>Clause</u>	<u>Amendment Proposed</u>
Long title	By deleting "orally, or".
2	<p>(a) In the definition of "authorized officer" by deleting "or, intercept any oral communication by means of" and substituting "through the use of".</p> <p>(b) In the definition of "electro-magnetic, acoustic, mechanical or other device", by deleting "or oral communication".</p> <p>(c) In the definition of "intercept", by deleting "or oral communication" and substituting "or telecommunication".</p> <p>(d) By deleting the definition of "intercepted material" and substituting -</p> <p style="padding-left: 40px;">""intercepted material" means the contents of any postal communication or telecommunication that has been obtained through interception;"</p> <p>(e) By deleting the definition of "oral communication".</p> <p>(f) By adding -</p> <p style="padding-left: 40px;">""communication" means postal or telecommunication;"</p>

ClauseAmendment Proposed

- 3
- (a) In subclause (1), by deleting "or, intentionally intercepts any oral communication by means of any electro-magnetic, acoustic, mechanical or other device".
  - (b) In subclause (2)(a), by deleting ", oral or otherwise,".
  - (c) In subclause (3)(a) and (b), by deleting ", oral or otherwise,".
  - (d) In subclause (4), by deleting "or to the security of Hong Kong,".
- 4
- (a) In subclause (1), by deleting ", or by means of any electro-magnetic, acoustic, mechanical or other device".
  - (b) By deleting subclause (2) and substituting -  

"(2) An order shall not be made under this section unless it is necessary for the purpose of preventing, detecting or investigating a serious crime."
- 6
- (a) In subclause (4), by deleting "30" and substituting "60".
  - (b) By deleting subclause (5).
  - (c) By deleting subclause (6).
  - (d) In subclause (8), by deleting "30" and substituting "60".

ClauseAmendment Proposed

- 7
- (a) In subclause (2), by deleting everything after "to" where it first appears and substituting "the prosecutor where the latter intends to tender the intercepted material as evidence in criminal proceedings."
  - (b) In subclause (3), by deleting "the prosecution intends to rely on" and substituting "the prosecutor intends to tender the".
  - (c) In subclause (5), by deleting everything after "shall" where it first appears and substituting -

"inform the authorized officer of its intention to -

- (a) destroy the intercepted material in the sealed packet; and
- (b) notify the person named in the order that his communications have been intercepted,

and shall give the authorized officer 5 days to inform the court whether or not he wishes to challenge the court's intentions."

- (d) In subclause (6), by deleting everything after "court's" and substituting -

"intentions stated in subsection (5)(a) or (b), he shall in writing provide the judge with his reasons for opposing the court's said intentions and it shall remain within the judge's discretion whether or not to accept these reasons."

Clause

Amendment Proposed

(e) By deleting subclause (7) and substituting -

"(7) Where -

- (a) the authorized officer does not inform the court of his intention to challenge the court's intentions stated in subsection (5)(a) or (b) within 5 days; or
- (b) after considering the authorized officer's reasons for preventing the court from carrying out its intentions, the court decides not to accept his reasons,

the court shall order that all intercepted material in the sealed packet be destroyed immediately and shall notify the person named in the order that his communications have been intercepted, providing in the notice details on -

- (i) the type of communication that was intercepted;
- (ii) the time and date of each interception; and
- (iii) the reasons for conducting the interception."



ClauseAmendment Proposed

(f) By adding -

"(8) Where the judge exercises his discretion not to order the destruction of intercepted material, he may make an order to specify the period for which the intercepted material will remain undestroyed."

New

By adding -

"PART IVA

SAFEGUARDS FOR INTERCEPTED MATERIAL

**7A. Safeguards**

An authorized officer shall make arrangements to ensure that the following requirements are satisfied -

- (a) that the following are limited to the minimum that is necessary having regard to the purposes specified in section 4(2) -
  - (i) the extent to which the intercepted material is disclosed,
  - (ii) the number of persons to whom any of the intercepted material is disclosed;
  - (iii) the extent to which the intercepted material is copied; and

Clause

Amendment Proposed

(iv) the number of copies made of  
any of the intercepted material,  
and

(b) the intercepted material is destroyed as  
soon as its retention is not necessary for  
any of those purposes, including any  
criminal proceedings arising from any of  
those purposes or an order is made under  
section 7(7).".

8 In subclause (1), by deleting, oral or otherwise,".

New By adding -

"PART VA  
REMEDIES

**8A. Remedies**

(1) This Part applies to an interception of a  
communication in the course of its transmission by post or by  
means of telecommunication system through the use of any  
electro-magnetic, acoustic, mechanical or other device in  
contravention of section 3.

(2) For the purposes of this Part, a person is an  
aggrieved person if and only if -

(a) the person was a party to the  
communication, or

(b) the communication was made on the  
person's behalf.

ClauseAmendment Proposed

(3) If a person ("the defendant") -

- (a) intercepted a communication in contravention of section 3; or
- (b) disclosed intercepted material to another person in contravention of section 8(1) or (5),

a court may, on the application of an aggrieved person, grant the aggrieved person remedial relief in respect of the interception or, the disclosure of intercepted material by making such orders against the defendant as the court considers appropriate.

(4) If a court convicts a person ("the defendant") of -

- (a) an offence under section 3; or
- (b) an offence under section 8(1) or (5),

the court may, on the application of an aggrieved person, grant the aggrieved person remedial relief in respect of the interception or the disclosure of the intercepted material by making such orders against the defendant as the court considers appropriate.

(5) Without limiting the orders that may be made under this section against a person ("the defendant"), a court may make an order of one or more of the following kinds -

- (a) an order declaring the interception or the disclosure of intercepted material, as the case requires, to have been unlawful,

Clause

Amendment Proposed

(b)      an order that the defendant pay to the aggrieved person such damages, including punitive damages, as the court considers appropriate; or

(c)      an order in the nature of an injunction.

(6)      Without limiting the orders that may be made by a court under this section an order may -

(a)      include such provisions as the court considers necessary for the purposes of the order; and

(b)      be made either unconditionally or subject to such terms and conditions as the court determines.

(7)      A court may revoke or vary an order in the nature of an injunction made by the court under this section.

(8)      An application under subsection (3) for the grant of remedial relief is to be made within 6 years from the date on which the aggrieved person discovered the interception, or the disclosure of the intercepted material, as the case may be.

(9)      An application under subsection (4) for the grant of remedial relief is not subject to any limitation period, but must be made as soon as practicable after the conviction concerned."

ClauseAmendment Proposed

New By adding -

**"Post Office Regulations**

**13A. Regulation amended**

Regulation 10 of the Post Office Regulations (Cap. 98 sub. leg.) is amended by repealing ", 12, or 13" and substituting "or 12"".

New By adding after the heading **"Telecommunication Ordinance"** -

**"13B. Penalty for contravention of  
order under section 33**

Section 30 of the Telecommunication Ordinance (Cap. 106) is repealed."

14 By deleting "of the Telecommunication Ordinance (Cap. 106)".

Schedule (a) In item 8, by adding -

"section 2 treason

section 3 treasonable offences

section 6 incitement to mutiny

section 7 incitement to disaffection

section 19 piracy with violence

Clause

Amendment Proposed

section 20                      piratical acts

section 21                      trading, etc., with pirates".

(b)    By adding -

**"14. Official Secrets Ordinance  
(62 of 1997)**

section 3                                      spying".

INTERCEPTION OF COMMUNICATIONS BILL

COMMITTEE STAGE

Amendments to be moved by the Hon James TO Kun-sun

<u>Clause</u>	<u>Amendment Proposed</u>
Long title and enactment formula	<p>By adding the following as the Chinese text of the Long title and enactment formula -</p> <p>"本條例草案</p> <p>旨在</p> <p>為截取以口頭、或郵遞或透過電訊系統傳送的通訊提供法律監管，並廢除《電訊條例》第33條。</p> <p>由香港總督參照立法局意見並得該局同意而制定。".</p>
PART I heading	<p>By adding the following as the Chinese text of the heading of the Part -</p> <p>"第I部</p> <p>導言".</p>
1	<p>By adding the following as the Chinese text of the clause -</p> <p>"1. 簡稱及生效日期</p> <p>(1) 本條例可引稱為《截取通訊條例》。</p> <p>(2) 本條例自總督以憲報公告指定的日期起實施。".</p>

ClauseAmendment Proposed

2

- (a) In the definition of "authorized officer" by adding "( 獲授權人員 )" after "'authorized officer'".
- (b) In the definition of "electro-magnetic, acoustic, mechanical or other device" by adding "( 電磁、傳音、機構或其他裝置 )" after "'electro-magnetic, acoustic, mechanical or other device'".
- (c) In the definition of "intercept" by adding "( 截取 )" after "'intercept'".
- (d) In the definition of "intercepted material" by adding "( 被截取的材料 )" after "'intercepted material'".
- (e) In the definition of "law enforcement officer" by adding "(執法人員)" after "'law enforcement officer'".
- (f) In the definition of "oral communication" by adding "( 口頭通訊 )" after "'oral communication'".
- (g) In the definition of "person" by adding "(人)" after "'person'".
- (h) In the definition of "serious crimes" by adding "( 嚴重罪行 )" after "'serious crimes'".
- (i) In the definition of "telecommunication" by adding "(電訊)" after "'telecommunication'".
- (j) In the definition of "communication" by adding "(通訊)" after "communication".



<u>Clause</u>	<u>Amendment Proposed</u>
2	<p>(a) By adding the following as the Chinese text of the clause -</p> <p>"2. 釋義</p> <p>在本條例中，除文意另有所指外 —".</p> <p>(b) By adding the following as the Chinese text of the clause -</p> <p>" “人” (person) 包括任何組織及任何團體或個人的組成；".</p> <p>(c) By adding the following as the Chinese text of the clause -</p> <p>" “口頭通訊” (oral communication)指某人所說的說話或聲音，而該人有理由期望他所說的說話或聲音在當時的情況下是不應被截取的；".</p> <p>(d) By adding the following as the Chinese text of the clause -</p> <p>" “獲授權人員” (authorized officer)指獲法庭命令授權的人員，該人員獲授權以任何電磁、傳音、機械或其他裝置截取以郵遞或透過電訊系統傳送的通訊，或截取口頭傳送的通訊；".</p> <p>(e) By adding the following as the Chinese text of the clause -</p> <p>" “電磁、傳音、機械或其他裝置” (electro-magnetic, acoustic, mechanical or other device)指任何用作或可以用作截取通訊或口頭通訊的裝置或儀器，但不包括用以改正低於正常聽覺至不高於正常聽覺的助聽器；".</p>

ClauseAmendment Proposed

- (f) By adding the following as the Chinese text of the clause -

" “截取” (interception)指以聽覺或以電磁、傳音、機械或其他裝置的方法獲得郵遞通訊、透過電訊系統傳送的通訊或口頭通訊的內容；”.

- (g) By adding the following as the Chinese text of the clause -

" “被截取的材料” (intercepted material)指以截取方式取得的郵遞通訊、透過電訊系統傳送的通訊或口頭通訊；”.

- (h) By adding the following as the Chinese text of the clause -

" “執法人員” (law enforcement officer)指警員及下列人員 —

- (a) 根據《香港海關條例》（第342章）獲委任；
- (b) 根據《總督特派廉政專員公署條例》（第204章）第8條獲委任；
- (c) 由人民入境事務處委任；或
- (d) 由懲教署委任；”.

ClauseAmendment Proposed

- (i) By adding the following as the Chinese text of the clause -

" "嚴重罪行" (serious crime)指在本條例附件列明的罪行".

- (j) By adding the following as the Chinese text of the clause -

" "電訊" (telecommunication)指在《電訊條例》(第106章)第2條所指的電訊。".

PART II  
heading

By adding the following as the Chinese text of the heading of the Part -

"第II部

禁止截取通訊".

3

- (a) By adding the following as the Chinese text of the clause -

"3. 禁止截取

(1) 除本條另有規定外，任何人故意在郵遞通訊、透過電訊系統傳送的通訊過程中截取該通訊，或用電磁、傳音、機械或其他裝置截取口頭通訊，即屬犯罪，一經循簡易程序定罪，可處第4級罰款及監禁2年。".

- (b) By adding the following as the Chinese text of the clause -

"(2) 任何人根據本條不屬犯罪，如 —

ClauseAmendment Proposed

- (a) 是根據第4條批准的法令截取通訊；或
- (b) 該人有合理理由相信接受該通訊的人或發出該通訊的人已同意該截取。".
- (c) By adding the following as the Chinese text of the clause -
  - "(3) 任何人根據本條不屬犯罪，如 —
  - (a) 是根據《郵政署條例》（第98章）截取口頭或其他方式傳送的通訊；或
  - (b) 是根據《電訊條例》（第106章）截取口頭或其他方式傳送的通訊。".
- (d) By adding the following as the Chinese text of the clause -
  - "(4) 在根據本條對任何人提出起訴的訴訟過程中，被控人可藉證明該截取是真誠地為公開一項對香港的公共秩序或安全或公眾的健康或安全的嚴重威脅而進行，以此作為免責辯護。".

**PART III**  
**heading**

By adding the following as the Chinese text of the heading of the Part -

"第III部

授權截取通訊".

<u>Clause</u>	<u>Amendment Proposed</u>
4	<p>(a) By adding the following as the Chinese text of the clause -</p> <p>"4. 授權截取</p> <p>(1) 除這條另有規定外，高等法院的法官可發出法令授權在法令內被指明的任何人對在郵遞通訊、透過電訊系統傳送的通訊過程中，或用電磁、傳音、機械或其他裝置截取在法令內被指明的通訊。".</p> <p>(b) By adding the following as the Chinese text of the clause -</p> <p>"(2) 除在以下需要的情況外，否則法院不可根據本條發出法令—</p> <p>(a) 為防止或偵查一項嚴重罪行；或</p> <p>(b) 為香港的安全的利益。".</p> <p>(c) By adding the following as the Chinese text of the clause -</p> <p>"(3) 該法官在決定是否需要發出法令時須裁定 —</p> <p>(a) 有合理理由相信有罪行正在進行，已進行或將進行；</p> <p>(b) 有合理理由相信在第(a)段所指的罪行的資料將可從該截取中獲得；</p> <p>(c) 已嘗試其他調查方法並已失敗，或很有可能不會成功；及</p>

ClauseAmendment Proposed

(d) 有理由相信該截取將導致定罪。".

5

By adding the following as the Chinese text of the clause -

"5. 申請授權

(1) 只有下列人士可向高等法院申請法令以進行根據第4條授權的截取通訊 —

- (a) 皇家香港警隊警司級或以上的人員；
- (b) 根據《香港海關條例》（第342章）第2條指明的任何海關高級人員；
- (c) 根據《總督特派廉政專員公署條例》（第204章）第8條委任的獲廉政專員授權的任何調查人員；
- (d) 人民入境事務署任何高級人員；或
- (e) 懲教署任何高級人員。

(2) 申請授權可單方面以書面向在內庭的高等法院法官提出，並須附上誓章，述及以下事項 —

- (a) 申請人員的姓名及職級；
- (b) 在調查中的罪行的詳情；
- (c) 相信已犯有、正犯有或將犯有第(b)段所述罪行的人的姓名及地址，而截取該人的通訊是為調查該罪行；

ClauseAmendment Proposed

- (d) 被截取通訊的地方或有關設備的地點及性質的描述；

- (e) 將被截取通訊的形式及使用截取的方法；

- (f) 申請人是否欲獲得一名根據《郵政署條例》（第98章）或《電訊條例》（第106章）授權的人協助他進行截取；

- (g) 其他已嘗試的調查方法及其失敗或很有可能不會成功的原因；

- (h) 截取的期限；及

- (i) 在任何以前申請中涉及相同人士的詳情。

(3) 凡在出現對死亡或人身傷害有嚴重威脅及不可能根據第2款申請按權截取通訊的情況，在獲得以下人士的書面批准下，第(1)款列明的人員可在未獲得授權下載取通訊—

- (a) 若涉及皇家警隊人員，由警務處處長批准；

- (b) 若涉及香港海關的高級人員，由海關總監批准；

- (c) 若涉及總督特派廉政專員公署的人員，由廉政專員批准；

- (d) 若涉及人民入境事務處的人員，由人民入境事務處處長批准；或

- (e) 若涉及懲教署的人員，由懲教署長批准。

ClauseAmendment Proposed

(4) 凡根據第(3)款進行截取，除有關人員在開始截取後的48小時內，根據第(1)及第(2)款申請授權，並列明 —

(a) 在截取前未有提出申請的原因；及

(b) 下列人士的書面批准的副本；

(i) 若涉及皇家警隊人員，由警務處處長批准；

(ii) 若涉及香港海關的高級人員，由海關總監批准；

(iii) 若涉及總督特派廉政專員公署的人員，由廉政專員批准；

(iv) 若涉及人民入境事務處的人員，由人民入境事務處處長批准；或

(v) 若涉及懲教署的人員，由懲教署長批准，

否則該截取被視為在第3條下屬非法。

(5) 任何根據第(3)款進行的截取須在已獲得所需要的通訊或申請授權不獲批准時立即停止，而以兩者中較早的日子為準。

(6) 凡根據第(4)款申請授權不獲批准時，被截取的材料須被立即毀滅。".



<u>Clause</u>	<u>Amendment Proposed</u>
PART IV heading	By adding the following as the Chinese text of the heading of the Part -  "第IV部  法令".
6	(a) By adding the following as the Chinese text of the clause -  "6. 法令的範圍  (1) 根據第4條發出授權截取通訊的法令須列明 —  (a) 獲授權人員的姓名及職級；  (b) 與該將被截取通訊有關的罪行；  (c) 將被截取通訊的人的姓名及地址；  (d) 將被截取通訊的形式及截取該通訊的方法；  (e) 獲授權人員可否任用根據《郵政署條例》（第98章）或《電訊條例》（第106章）授權的人協助他進行截取；  (f) 將被截取通訊的地方或有關設備的地點及性質的描述；  (g) 獲授權截取的期限；及  (h) 除第8條另有規定外，可向其披露

被截取的材料的人士。".

Clause

Amendment Proposed

- (b) By adding the following as the Chinese text of the clause -

"(2) 就第(1)(h)款而言，法官可授權向調查在第(1)(b)款所指罪行的其他執法人員披露被截取的材料。".

- (c) By adding the following as the Chinese text of the clause -

"(3) 任何不遵守法官在法令內的規定的截取，即在第3條下屬非法。".

- (d) By adding the following as the Chinese text of the clause -

"(4) 任何在法令下授權的截取只在有需要達至該截取的目的，或在任何情況，不超過30日之下，屬有效，否則除根據第(8)款獲授權續期外，在這以後的截取，即被視為在第3條下屬非法。".

- (e) By adding the following as the Chinese text of the clause -

"(5) 獲授權人員須向授權法官提交每周報告，詳列透過該截取所獲得的調查進度。".

- (f) By adding the following as the Chinese text of the clause -

"(6) 法官須基於根據(5)款所提交的報告，而決定該截取的目的是否已達到，如他決定已達到目的，他可立即終止該法令。".

ClauseAmendment Proposed

- (g) By adding the following as the Chinese text of the clause -

"(7) 獲授權人員可單方面連誓章以書面向在內庭的高等法院法官申請法令的續期，誓章須列明 -

- (a) 要求續期的理由及期限；
- (b) 在法令下進行的截取的詳細時間、日期及形式，及該截取所獲得的資料；及
- (c) 在以前的申請中涉及相同的人士的詳情。".

- (h) By adding the following as the Chinese text of the clause -

"(8) 法官可批准一次不超過30日的續期，在這以後，繼續截取，即被視為在第3條下屬非法。".

7

- (a) By adding the following as the Chinese text of the clause -

"7. 法令的終止

(1) 凡被法官終止或已逾期仍未續期的法令，在該法令下獲得的被截取的材料須放在一包裏內，由獲授權人員封蓋，而該包裏須放在公眾取不到的地方。".

- (b) By adding the following as the Chinese text of the clause -

ClauseAmendment Proposed

"(2) 凡在法令內被指明的人被控，獲授權人員須通知法官，以便控方欲依據被截取的材料作為證據時，該法官可發出命令把被截取的材料交予控方。".

- (c) By adding the following as the Chinese text of the clause -

"(3) 凡控方欲在訴訟過程中依據被截取的材料作為證據，他須在審訊日期前10日通知被告這意圖及提供予被告 —

(a) 根據第5條提出的申請書的副本；

(b) 法令的副本；

(c) 如有，法令續期申請書的副本。".

- (d) By adding the following as the Chinese text of the clause -

"(4) 在假若沒有該截取的情況下，任何截取所獲得的資料，不用享有保密特權的人的同意，若該資料已受該特權涵蓋將繼續受涵蓋及不被接納為證據。".

- (e) By adding the following as the Chinese text of the clause -

"(5) 凡在法令終止後90日內，在法令內被指明的人未被控罪，法院須命令立即銷毀所有放在封蓋包裹內的被截取的材料，及通知獲授權人員法院欲通知在法令內被指明的人他曾被截取通訊的意圖，及給予獲授權人員5日限期以通知法院他是否欲反對法院的該意圖。".

ClauseAmendment Proposed

- (f) By adding the following as the Chinese text of the clause -

"(6) 凡獲授權人員欲反對法院欲通知在法令內被指明的人的意圖，他須向法官以書面提出其反對的公共利益理由，由法官酌情決定是否接納該些理由。".

- (g) By adding the following as the Chinese text of the clause -

"(7) 凡沒有反對法官決定通知申請書內被指明的人，或獲授權人員提出反對未獲批准，法院須通知在法令內被指明的人他曾被截取通訊，並在通告內提供以下詳情 —

- (a) 被截取通訊的形式；
- (b) 每次截取的日期及時間；
- (c) 進行截取的理由。".

PART V  
heading

By adding the following as the Chinese text of the heading of the Part -

"第V部

資料披露及接納證據".

8

By adding the following as the Chinese text of the clause -

"8. 資料披露及接納為證據

ClauseAmendment Proposed

(1) 任何人意圖向其他任何人披露被截取的材料，而他是知道或有理由相信該材料是在違反第3條下透過以口頭或其他方式截取所獲得，即屬犯罪，一經循簡易程序定罪，可處罰第4級罰款及監禁不超過2年。

(2) 在訴訟過程中，如法庭獲指示控方依據被截取的材料作為指控被告的證據，是在違反第3條下獲得的，除控方證明無合理疑點下，法院該信納該材料不是按前述所指所獲得的，否則法院須取消該材料作為證據。

(3) 法院可自行要求控方證明被截取的材料不是在違反第3條下獲得的。

(4) 任何人根據第4條獲授權截取口頭或其他通訊，不可向其他任何人（在第6(1)(h)條下所指的在法令內被指明的人除外）披露被截取的材料。

(5) 任何人根據第6(1)(h)條收取任何被截取的材料，並故意向任何其他沒有在第6(1)(h)條下被指明的人披露該材料，即屬犯罪，可處第4級罰款或監禁2年或兩者。

(6) 任何人根據《郵政署條例》（第98章）或《電訊條例》（第106章）截取電訊，除在履行職務或協助在法令內獲授權人員之外，故意向任何人披露任何被截取的材料，即屬犯罪。

(7) 第(1)、(4)、(5)及(6)款不適用於任何人為在訴訟過程中提供證據而披露被截取的材料。

(8) 在任何訴訟過程中，法院在考慮所有情況，包括授權截取的理由及申請授權的程序，覺得接納證據會對訴訟過程的公平性有不利效果，以至法院不應接納為證據時，法院可拒絕接納被截取的材料為證據。".

ClauseAmendment Proposed

PART VI heading By adding the following as the Chinese text of the heading of the Part -

"第VI部

獲取資料的權力".

9 By adding the following as the Chinese text of the clause -

"9. 獲取資料的權力

立法局可於任何時間要求保安司在任何指定期限內  
提供以下資料 —

- (a) 獲授權及被拒絕的截取的數目；
- (b) 被截取通訊的地方及有關設備的性質及地點；
- (c) 使用截取作為調查方法的重要罪行；
- (d) 截取方法的形式；
- (e) 截取所導致被逮捕及定罪的人數；
- (f) 每次截取的平均期限；及
- (g) 要求續期及被拒續期的次數。".

PART VII heading By adding the following as the Chinese text of the heading of the Part -

"第VII部

附表的修訂".

Clause

Amendment Proposed

10 By adding the following as the Chinese text of the clause -

"10. 附表的修訂

在立法局的同意下，總督會同行政局可下令修訂該附表。".

Consequential  
Amendments  
heading

By adding the following as the Chinese text of the heading of the Consequential amendments -

"相應修訂

郵政署條例".

11 By adding the following as the Chinese text of the clause -

"11. 布政司批出開啟和延遲處理郵包的手令

廢除《郵政署條例》（第98章）第13條。".

12 By adding the following as the Chinese of the clause -

"12. 對根據第10或12條開啟的郵包的處置

第14條現予修訂，廢除“第10、12或13條”而代以“第10或12條”。".

13 By adding the following as the Chinese text of the clause -

"13. 第12及14條引伸適用於不可藉郵遞傳送的物品

第15條現予修訂，廢除“第12，13及14條”而代以“第12及14條”。".



ClauseAmendment Proposed

Telecommunication By adding the following as the Chinese text of the heading  
Ordinance of the Part -  
heading

"電訊條例".

14

By adding the following as the Chinese text of the clause -

"14. 總督禁止發送訊憩等的權力

廢除《電訊條例》（第106章）第33條。".

SCHEDULE By adding the following as the Chinese text of the Schedule -

"附表 (第2及10款)  
與“嚴重罪行”的定義有關的罪行

普通法罪行

1. 謀殺
2. 誤殺
3. 綁架
4. 非法禁錮
5. 串謀詐騙

法定罪行

罪行

述要

6. 《進出口條例》  
(第60章)

第6A條

輸入或輸出戰略商品

第6C條

輸入某些禁制物品

第6D(1)及(2)條

輸出某些禁制物品

第6E條

在香港水域內訂明的物品的運載

	等	
	第14條	船隻、飛機或車輛改裝以作走私用途
	途	
<u>Clause</u>	<u>Amendment Proposed</u>	
	罪行	述要
	第14A條	建造船隻作走私用途等
	第18條	輸入或輸出未列艙單貨物
	第18A條	協助輸出未列艙單貨物等
	第35A條	協助運載禁制物品等
7.	《危險藥物條例》 (第134章)	
	第4(1)條	危險藥物的販運
	第4A(1)條	販運宣稱危險藥物的物質
	第5(1)條	向未獲授權人供應危險藥物或為
	未	獲授權人獲取危險藥物
	第9(1)、(2)及(3)條	關於大麻植物或鴉片罌粟的罪行
	第35(1)條	經營或管理煙窟以供人在其內吸食
	食	危險藥物
	第37(1)條	准許處所非法販運、製造或儲存危險藥物之用
8.	《刑事罪行條例》 (第200章)	
	第24條	蓄意威脅他人
	第25條	襲擊他人意圖導致其作出或不作
	出	某些作為
	第53條	引起可能危害生命財產的爆炸
	第54條	企圖引起爆炸或製造、藏有炸藥意圖危害生命或令財物受損
	第55條	製造或管有炸藥
	第98(1)條	仿製鈔票及硬幣意圖不軌
	第99(1)條	以仿製鈔票及硬幣亂真
	第100(1)條	保管或控制仿製鈔票及硬幣意圖不軌
	第105條	輸入及輸出仿製鈔票及硬幣
	第118條	強姦

第119條	以威脅促使他人與人性交
第120條	以欺詐促使他人與人性交
第129條	販運人口進入或離開香港
第130條	控制他人為使其作出非法的性行為 或賣淫

ClauseAmendment Proposed

	罪行	述要
	第131條	導致他人賣淫
	第134條	禁錮他人於賣淫場所使其作出非 的性行為
	第137條	依靠賣淫收入為生
	第139條	經營賣淫場所
9.	《防止賄賂條例》 (第201章)	
	第4(1)條	賄賂公職人員
	第5(1)條	為合約事務上給予協助等而作的賄賂
	第6(1)條	為使他人撤回投標而作的賄賂
	第9(2)條	賄賂代理人
10.	《盜竊罪條例》 (第210章)	
	第10條	搶劫
	第12(1)條	嚴重入屋犯法
11.	《侵害人身罪條例》 (第212章)	
	第17條	意圖造成身體嚴重傷害而射擊、企 圖射擊、傷人或打人
	第19條	傷人或對他人身體加以嚴重傷害
12.	《火器及彈藥條例》 (第238章)	
	第13條	無牌管有槍械或彈藥
	第14條	無牌經營槍械或彈藥
13.	《販毒(追討得益)條例》 (第405章)	
	第25(1)條	協助他人保留販毒利益".



## INTERCEPTION OF COMMUNICATIONS BILL

## COMMITTEE STAGE

Amendments to be moved by the Hon James TO Kun-sun

<u>Clause</u>	<u>Amendment Proposed</u>
Long title and enactment formula	<p>By adding the following as the Chinese text of the Long title and enactment formula -</p> <p style="text-align: center;">"本條例草案</p> <p style="text-align: center;">旨在</p> <p>為截取以郵遞或透過電訊系統傳送的通訊提供法律監管，並廢除《電訊條例》第33條。</p> <p>由香港總督參照立法局意見並得該局同意而制定。".</p>
2	<p>(a) By adding the following as the Chinese text of the clause -</p> <p style="padding-left: 40px;">" "獲授權人員" (authorized officer)指獲法庭命令授權的人員，該人員獲授權以任何電磁、傳音、機械或其他裝置截取以郵遞或透過電訊系統傳送的通訊；".</p> <p>(b) By adding the following as the Chinese text of the clause -</p> <p style="padding-left: 40px;">" "電磁、傳音、機械或其他裝置" (electro-magnetic, acoustic, mechanical or other device)指任何用作或可以用作截取通訊的裝置或儀器，但不包括用以改正低於正常聽覺至不高於正常聽覺的助聽器；".</p>

ClauseAmendment Proposed

(c) By adding the following as the Chinese text of the clause -

"“截取”(interception)指以聽覺或以電磁、傳音、機械或其他裝置的方法獲得郵遞通訊或透過電訊系統傳送的通訊的內容；”。

(d) By adding the following as the Chinese text of the clause -

"“被截取的材料”(intercepted material)指以截取方式取得郵遞通訊或透過電訊系統傳送的通訊的內容；”。

(f) By adding the following as the Chinese text of the clause -

"“通訊”(communication)指以郵遞或透過電訊系統傳送的通訊；”。

3

(a) By adding the following as the Chinese text of the clause -

"3. 禁止截取

(1) 除本條另有規定外，任何人故意在郵遞通訊、透過電訊系統傳送的通訊過程中截取該通訊，即屬犯罪，一經循簡易程序定罪，可處第4級罰款及監禁2年。 ”。

(b) By adding the following as the Chinese text of the clause -

"(2) 任何人根據本條不屬犯罪，如 —

(a) 是根據第4條批准的法令截取通訊；或

(b) 該人有合理理由相信接受該通訊的人或發出該通訊的人已同意該截取。 ”。

ClauseAmendment Proposed

- (c) By adding the following as the Chinese text of the clause -

"(3) 任何人根據本條不屬犯罪，如 —

(a) 是根據《郵政署條例》（第98章）  
截取通訊；或

(b) 是根據《電訊條例》（第106章）  
截取通訊。".

- (d) By adding the following as the Chinese text of the clause -

"(4) 在根據本條對任何人提出起訴的訴訟過程中，被控人可藉證明該截取是真誠地為公開一項對公共秩序或公眾的健康或安全的嚴重威脅而進行，以此作為免責辯護。".

4

- (a) By adding the following as the Chinese text of the clause -

"4. 授權截取

(1) 除這條另有規定外，高等法院的法官可發出法令授權在法令內被指明的任何人對在郵遞通訊或透過電訊系統傳送的通訊過程中截取在法令內被指明的通訊。".

- (b) By adding the following as the Chinese text of the clause -

"(2) 除為防止或偵查或調查一項嚴重罪行，否則法院不可根據本條發出法令。".

ClauseAmendment Proposed

- 6 (a) By adding the following as the Chinese text of the clause -

"(4) 任何在法令下授權的截取只在有需要達至該截取的目的，或在任何情況，不超過60日之下，屬有效，否則除根據第(8)款獲授權續期外，在這以後的截取，即被視為在第3條下屬非法。".

- (b) By adding the following as the Chinese text of the clause -

"(8) 法官可批准一次不超過60日的續期，在這以後，繼續截取，即被視為在第3條下屬非法。".

- 7 (a) By adding the following as the Chinese text of the clause -

"(2) 凡在法令內被指明的人被控，獲授權人員須通知法官，以便控方欲在訴訟中提交被截取的材料作為證據時，該法官可發出命令把被截取的材料交予控方。".

- (b) By adding the following as the Chinese text of the clause -

"(3) 凡控方欲在訴訟過程中提交被截取的材料作為證據，他須在審訊日期前10日通知被告這意圖及提供予被告 —

(a) 根據第5條提出的申請書的副本；

(b) 法令的副本；

(c) 如有，法令續期申請書的副本。".

- (c) By adding the following as the Chinese text of the clause -

"(5) 凡在法令終止後90日內，在法令內被指明的人未被控罪，法院須通知獲授權人員其意圖以 —



ClauseAmendment Proposed

- (a) 銷毀放在封蓋包裹內的被截取的材料；及
- (b) 通知在法令內被指明的人他曾被截取通訊，

及給予獲授權人員5日限期以通知法院他是否欲反對法院的該意圖。".

- (d) By adding the following as the Chinese text of the clause -

"(6) 凡獲授權人員欲反對法院在第5(a)或(b)款所述的意圖，他須向法官以書面提出其反對法院的該些意圖的理由，由法官酌情決定是否接納該些理由。".

- (e) By adding the following as the Chinese text of the clause -

"(7) 凡 —

- (a) 獲授權人員在5日內沒有通知法院其意圖反對法院在第(5)(a)或(b)款所述的意圖；或
- (b) 法院在考慮獲授權人員阻止法院實行其意圖的理由，並決定不接納其理由，

法院須命令立即銷毀所有放在封蓋的包裹內的被截取的材料，及通知在法令內被指明的人他曾被截取通訊，並在通告內提供以下詳情。

- (a) 被截取通訊的形式；
- (b) 每次截取的日期及時間；
- (c) 進行截取的理由。".

ClauseAmendment Proposed

(f) By adding the following as the Chinese text of the clause -

"(8) 凡法官行使其酌情權在不下令銷毀被截取的材料，他可命被截取的材料在指定期限內不被銷毀。".

PART IVA By adding the following as the Chinese text of the heading -  
Heading

"第IVA部

被截取的材料的保障".

7A By adding the following as the Chinese text of the clause -

"7A. 保障

獲授權人員須安排以滿足下列規定 —

(a) 在考慮第4(2)條指明的目的的情況下，在有需要時，限制以下的範圍至最低標準 —

(i) 披露被截取的材料的範圍；

(ii) 接受披露任何被截取的材料的人數；

(iii) 複製被截取的材料的範圍；及

(iv) 複製任何被截取的材料的數目；及

(b) 為任何目的，包括由於任何目的而產生的任何訴訟過程中，或根據第7(7)條發出的法令，而沒有需要保留被截取的材料時，須盡快銷毀該被截取的材料。".

ClauseAmendment Proposed

8 By adding the following as the Chinese text of the clause -

“8. 資料披露及接納為證據

(1) 任何人意圖向其他任何人披露被截取的材料，而他是知道或有理由相信該材料是在違反第3條下截取所獲得，即屬犯罪，一經循簡易程序定罪，可處罰第4級罰款及監禁不超過2年。

(2) 在訴訟過程中，如法庭獲指示控方依據被截取的材料作為指控被告的證據，是在違反第3條下獲得的，除控方證明無合理疑點下，法院該信納該材料不是按前述所指所獲得的，否則法院須取消該材料作為證據。

(3) 法院可自行要求控方證明被截取的材料不是在違反第3條下獲得的。

(4) 任何人根據第4條獲授權截取口頭或其他通訊，不可向其他任何人（在第6(1)(h)條下所指的在法令內被指明的人除外）披露被截取的材料。

(5) 任何人根據第6(1)(h)條收取任何被截取的材料，並故意向任何其他沒有在第6(1)(h)條下被指明的人披露該材料，即屬犯罪，可處第4級罰款或監禁2年或兩者。

(6) 任何人根據《郵政署條例》（第98章）或《電訊條例》（第106章）截取電訊，除在履行職務或協助在法令內獲授權人員之外，故意向任何人披露任何被截取的材料，即屬犯罪。

(7) 第(1)、(4)、(5)及(6)款不適用於任何人為在訴訟過程中提供證據而披露被截取的材料。

(8) 在任何訴訟過程中，法院在考慮所有情況，包括授權截取的理由及申請授權的程序，覺得接納證據會對訴訟過程的公平性有不利效果，以至法院不應接納為證據時，法院可拒絕接納被截取的材料為證據。”

ClauseAmendment Proposed

PART VA By adding the following as the Chinese text of the heading -  
heading

"第VA部

補救事宜".

8A By adding the following as the Chinese text of the clause -

"8A. 補救事宜

(1) 本部分適用於在違反第3條下載取郵遞通訊，或在使用任何電磁、傳音、機械或其他裝置透過電訊系統傳遞的通訊過程中截取通訊的情況。

(2) 就本部而言，如屬下述情況的任何人即屬受屈 —

(a) 該人為該通訊的一方；或

(b) 該通訊是為該人代表的。

(3) 如任何人（“被告人”）—

(a) 在違反第3條下載取通訊；或

(b) 在違反第8(1)或(5)條下向其他人披露被截取的材料，

法院在接受受屈人的申請下，如認為合適，可命令被告人就該截取或該披露被截取的材料，給予受屈人補償。

(4) 如法院根據下列情況將某人定罪（“被告人”）—

(a) 在第3條下的罪行；或

ClauseAmendment Proposed

- (b) 在第8(1)或(5)條下的罪行，

法院在接受受屈人的申請下，如認為合適，可命令被告人就該截取或該披露被截取的材料，給予受屈人補償。

(5) 在不限制根據這條向任何人（“被告人”）發出的法令的原則下，法院可發出以下的一項或多項法令 —

- (a) 宣布該截取、或該披露被截取的材料（視屬何情況而定）為非法的法令—
- (b) 如法院認為合適，要求被告人給予受屈人賠償，包括懲罰性的損害賠償的法令；或
- (c) 具禁制令性質的法令。

(6) 在不限制根據這條由法院發出的法令的原則下，某法令可 —

- (a) 可包括就該法令而言，的法院認為需要的條文；及
- (b) 可在無條件下發出或在法院規定的條款或條件下發出。

(7) 法院可撤銷或更改在這條下由法院發出的具禁制令性質的法令。

(8) 根據第3款申請補償批准的，要在受屈人發現該截取，或該披露被截取的材料的日子（視屬何情況而定）起6年內提出。

(9) 根據第4款申請補償批准的，不受任何期限限制，但須在定罪後的切實可行期限內盡快提出。".

ClauseAmendment Proposed

Post Office Regulations heading By adding the following as the Chinese text of the heading-

"郵政署規例".

13A By adding the following as the Chinese text of the clause -

"13A. 修訂規例

郵政署規例（第98章附屬法例）的第10條現予修訂，  
廢除“、12或13”而代以“或12”。

13B By adding the following as the Chinese text of the clause -

"13B. 違反根據第33條所作命令的罰則

《電訊條例》（第106章）第30條現予廢除。".

14 By adding the following as the Chinese text of the clause -

"14. 總督禁止發送訊戇等的權力

廢除第33條。".

Schedule (a) By adding the following as the Chinese text of item 8 of the Schedule -

"第2條 叛逆

第3條 叛逆性質的罪行

第6條 煽惑叛變

ClauseAmendment Proposed

第7條	煽惑離叛
第19條	有暴力的海盜行為
第20條	海盜作為
第21條	與海盜進行交易等".

(b) By adding the following as the Chinese text of the Schedule -

"14. 《官方機密條例》

( 由1997年第62號 )

第3條 諜報活動".

## INTERCEPTION OF COMMUNICATIONS BILL

**COMMITTEE STAGE**Amendments to be moved by the Hon Albert HO Chun-yan

<u>Clause</u>	<u>Amendment Proposed</u>
2	By deleting the definition of "serious crime" and substituting -  ""serious crime" means any offence punishable by a maximum period of imprisonment of not less than 7 years;"
6	(a) In subclause (4), by deleting "30" and substituting "90".  (b) In subclause (8), by deleting "30" and substituting "90".
7	(a) By deleting subclause (3).  (b) In subclause (5), by deleting everything after "shall" where it first appears and substituting -  "inform the authorized officer of its intention to destroy the intercepted material in the sealed packet and shall give the authorized officer 5 days to inform the court whether or not he wishes to challenge the court's intentions."  (c) In subclause (6), by deleting everything after "intention" and substituting -  "to destroy the intercepted material in the sealed packet, he shall in writing provide the judge with his reasons for opposing the court's said intention and it shall remain within the judge's discretion whether or not to accept these reasons."



(d) By deleting subclause (7) and substituting -

"(7) Where -

- (a) the authorized officer does not inform the court of his intention to challenge the court's intention to destroy the intercepte material in the sealed packet within 5 days; or
- (b) after considering the authorized officer's reasons for preventing the court from carrying out its said intention, the court decides not to accept his reasons,

the court shall order all intercepted material in the sealed packet to be destroyed immediately.".

## INTERCEPTION OF COMMUNICATIONS BILL

## COMMITTEE STAGE

Amendments to be moved by the Hon Albert HO Chun-yanClauseAmendment Proposed

- 2 (a) By adding the following as the Chinese text of the clause -
- " "嚴重罪行(serious crime)" 指最高刑罰可被判以不少於7年的罪行；".
- 6 (a) By adding the following as the Chinese text of the clause -
- "(4) 任何在法令下授權的截取只在有需要達至該截取的目的，或在任何情況，不超過90日之下，屬有效，否則除根據第(8)款獲授權續期外，在這以後的截取，即被視為在第3條下屬非法。".
- (b) By adding the following as the Chinese text of the clause -
- "(8) 法官可批准一次不超過90日的續期，在這以後，繼續截取，即被視為在第3條下屬非法。".
- 7 (a) By adding the following as the Chinese text of the clause -
- "(5) 凡在法令終止後90日內，在法令內被指明的人未被控罪，法院須通知獲授權人員法院欲銷毀放在封蓋包裹內的被截取的材料的意圖，及須給予獲授權人員5日限期以通知法院他是否欲反對法院的該意圖。".

ClauseAmendment Proposed

- (d) By adding the following as the Chinese text of the clause -

"(6) 凡獲授權人員欲反對法院欲銷毀放在封蓋包裹內的被截取的材料，他須向法官以書面提出反對法院的該些意圖的理由，由法官酌情決定是否接納該些理由。".

- (e) By adding the following as the Chinese text of the clause -

"(7) 凡 —

- (a) 獲授權人員在5日內沒有通知法院其意圖反對法院欲銷毀放在封蓋包裹內的被截取的材料之意圖；或
- (b) 法院在考慮獲授權人員阻止法院實行其意圖的理由，並決定不接納其理由，

法院須命令立即銷毀所有放在封蓋的包裹內的被截取的材料。".