

Crimes Ordinance**(Cap. 200)****Contents**

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To consolidate certain penal enactments.

[19 November 1971]

Editorial Note:

This Ordinance consolidates, as at 31 December 1972, provisions which previously appeared in the following Ordinances—

- (1) Crimes Ordinance (Cap. 200, 1971 Ed.)
- (2) Crimes (Amendment) Ordinance 1972 (*No. 48 of 1972*)
- (3) Coinage Offences Ordinance (Cap. 204, 1964 Ed.)
- (4) Criminal Intimidation Ordinance (Cap. 205, 1964 Ed.)
- (5) Explosive Substances Ordinance (Cap. 206, 1966 Ed.)
- (6) False Personation Ordinance (Cap. 207, 1964 Ed.)
- (7) Falsification of Documents Ordinance (Cap. 208, 1964 Ed.)
- (8) Forgery Ordinance (Cap. 209, 1964 Ed.)
- (9) Perjury Ordinance (Cap. 214, 1970 Ed.)
- (10) Punishment of Incest Ordinance (Cap. 216, 1964 Ed.)
- (11) Sedition Ordinance (Cap. 217, 1970 Ed.)

1. Short title

This Ordinance may be cited as the Crimes Ordinance.

Part I

Treason

(Format changes—E.R. 4 of 2017)

2. Treason

- (1) A person commits treason if he—
- (a) kills, wounds or causes bodily harm to Her Majesty, or imprisons or restrains Her;
 - (b) forms an intention to do any such act as is mentioned in paragraph (a) and manifests such intention by an overt act;
 - (c) levies war against Her Majesty—
 - (i) with the intent to depose Her Majesty from the style, honour and royal name of the Crown of the United Kingdom or of any other of Her Majesty's dominions; or
 - (ii) in order by force or constraint to compel Her Majesty to change Her measures or counsels, or in order to put any force or constraint upon, or to intimidate or overawe, Parliament or the legislature of any British territory;
 - (d) instigates any foreigner with force to invade the United Kingdom or any British territory;
 - (e) assists by any means whatever any public enemy at war with Her Majesty; or

- (f) conspires with any other person to do anything mentioned in paragraph (a) or (c).
- (2) Any person who commits treason shall be guilty of an offence and shall be liable on conviction on indictment to imprisonment for life. (*Amended 24 of 1993 s. 2*)
[cf. 1351 c. 2 U.K.; 1795 c. 7 s. 1 U.K.; 1817 c. 6 s. 1 U.K.]

3. **Treasonable offences**

- (1) Any person who forms an intention to effect any of the following purposes, that is to say—
- (a) to depose Her Majesty from the style, honour and royal name of the Crown of the United Kingdom or of any other of Her Majesty's dominions;
 - (b) to levy war against Her Majesty within the United Kingdom or any British territory in order by force or constraint to compel Her Majesty to change Her measures or counsels, or in order to put any force or constraint upon, or to intimidate or overawe, Parliament or the legislature of any British territory; or
 - (c) to instigate any foreigner with force to invade the United Kingdom or any British territory,
- and manifests such intention by an overt act or by publishing any printing or writing, shall be guilty of an offence and shall be liable on conviction upon indictment to imprisonment for life. *[cf. 1848 c. 12 s. 3 U.K.]*
- (2) It shall be no defence to a charge under this section that any act proved against the person charged amounts to treason under section 2; but no person convicted or acquitted of an offence under this section shall afterwards be prosecuted for treason under section 2 upon the same facts. *[cf. 1848 c. 12 s. 7 U.K.]*

4. Limitations as to trial for treason, etc.

- (1) A person shall not be prosecuted for any offence under section 2 or 3 unless the prosecution is commenced within 3 years after the offence is committed. [*cf.* 1695 c. 3 s. 6 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

(Format changes—E.R. 4 of 2017)

6. Incitement to mutiny

Any person who knowingly attempts—

- (a) to seduce any member of the Chinese People's Liberation Army from his duty and allegiance to the People's Republic of China; or *(Replaced 2 of 2012 s. 3)*
- (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. Incitement to disaffection

(1) Any person who knowingly attempts to seduce—

- (a) *(Repealed 2 of 2012 s. 3)*
- (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 Hong Kong Auxiliary Police Force, *(Amended L.N. 362 of 1997)*

from his duty or allegiance to Her Majesty shall be guilty of an offence. [*cf.* 1934 c. 56 s. 1 U.K.]

- (1A) Any person who knowingly attempts to seduce any member of the Chinese People's Liberation Army from his duty or allegiance to the People's Republic of China is guilty of an offence. (*Added 2 of 2012 s. 3*)
- (2) Any person who—
- (a) knowing that any member or officer mentioned in subsection (1) or (1A) is about to desert or absent himself without leave, assists him in so doing; or (*Amended 2 of 2012 s. 3*)
 - (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) or (1A), 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) or (1A) would constitute such an offence, shall be guilty of an offence. (*Amended 2 of 2012 s. 3*) [*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 Secretary for Justice. (*Amended L.N. 362 of 1997*) [*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—
- (a) to enter the premises or place at any time within 1 month from the date of the warrant, if necessary by force;
 - (b) to search the premises or place and any person found therein; and
 - (c) to seize anything found on the premises or place or on any such person which the officer has reasonable ground for suspecting to be evidence of the commission of such an offence.
- (2) A woman shall not be searched, in pursuance of a warrant granted under subsection (1), except by a woman.
- (3) Notwithstanding anything contained in subsection (1)—
- (a) a warrant shall only be granted under subsection (1) in respect of an offence suspected to have been committed within the 3 months prior to the laying of the information thereof;

- (b) if a warrant under subsection (1) has been executed on any premises, the police officer who has conducted or directed the search shall—
 - (i) notify the occupier that the search has taken place, and supply him on request with a list of any documents or other objects which have been removed from the premises; and
 - (ii) where any documents have been removed from any other person, supply that person with a list of such documents;
- (c) anything seized under subsection (1) may be retained for a period not exceeding 1 month, or if within that period proceedings are commenced for an offence under section 7, until the conclusion of those proceedings; and
- (d) section 102 of the Criminal Procedure Ordinance (Cap. 221) (which makes provision for the disposal of property connected with offences) shall apply to property which has come into the possession of the police under this section as it applies to property which has come into the possession of the police in the circumstances mentioned in that section.

[cf. 1934 c. 56 s. 2(2) U.K.]

9. Seditious intention

- (1) A seditious intention is an intention—
 - (a) to bring into hatred or contempt or to excite disaffection against the person of Her Majesty, or Her Heirs or Successors, or against the Government of Hong Kong, or the government of any other part of Her Majesty's dominions or of any territory under Her Majesty's protection as by law established; or (*Replaced 28 of 1938 s. 2*)

- (b) to excite Her Majesty's subjects or inhabitants of Hong Kong to attempt to procure the alteration, otherwise than by lawful means, of any other matter in Hong Kong as by law established; or
 - (c) to bring into hatred or contempt or to excite disaffection against the administration of justice in Hong Kong; or
 - (d) to raise discontent or disaffection amongst Her Majesty's subjects or inhabitants of Hong Kong; or
 - (e) to promote feelings of ill-will and enmity between different classes of the population of Hong Kong; or
 - (f) to incite persons to violence; or (*Added 30 of 1970 s. 2*)
 - (g) to counsel disobedience to law or to any lawful order. (*Added 30 of 1970 s. 2*)
- (2) An act, speech or publication is not seditious by reason only that it intends— (*Amended 28 of 1938 s. 2*)
- (a) to show that Her Majesty has been misled or mistaken in any of Her measures; or
 - (b) to point out errors or defects in the government or constitution of Hong Kong as by law established or in legislation or in the administration of justice with a view to the remedying of such errors or defects; or
 - (c) to persuade Her Majesty's subjects or inhabitants of Hong Kong to attempt to procure by lawful means the alteration of any matter in Hong Kong as by law established; or
 - (d) to point out, with a view to their removal, any matters which are producing or have a tendency to produce feelings of ill-will and enmity between different classes of the population of Hong Kong. (*Amended 28 of 1938 s. 2*)
- (3) (*Repealed 74 of 1992 s. 2*)

(13 of 1938 s. 3 incorporated)

10. Offences

(1) Any person who—

- (a) does or attempts to do, or makes any preparation to do, or conspires with any person to do, any act with a seditious intention; or
- (b) utters any seditious words; or
- (c) prints, publishes, sells, offers for sale, distributes, displays or reproduces any seditious publication; or
- (d) imports any seditious publication, unless he has no reason to believe that it is seditious,

shall be guilty of an offence and shall be liable for a first offence to a fine of \$5,000 and to imprisonment for 2 years, and for a subsequent offence to imprisonment for 3 years; and any seditious publication shall be forfeited to the Crown. *(13 of 1938 s. 4 incorporated. Amended 22 of 1950 Schedule; 30 of 1970 s. 3)*

(2) Any person who without lawful excuse has in his possession any seditious publication shall be guilty of an offence and shall be liable for a first offence to a fine of \$2,000 and to imprisonment for 1 year, and for a subsequent offence to imprisonment for 2 years; and such publication shall be forfeited to the Crown. *(13 of 1938 s. 4 incorporated. Amended 22 of 1950 Schedule)*

(3) Where any person has been convicted of an offence under subsection (1) or (2) in respect of any seditious publication, the court may order the seizure and forfeiture of any copies of the seditious publication in the possession of—

- (a) the person convicted; or

- (b) any other person named in the order, if the court is satisfied by evidence on oath that the copies are in the possession of the other person for the use of the person convicted. *(60 of 1971 s. 19 incorporated) [cf. 1819 c. 8 ss. 1 & 2 U.K.]*
- (4) Any copies seized under subsection (3) shall be disposed of as the court may direct; but no copies shall be destroyed until the expiration of the period within which an appeal may be lodged or, if an appeal is lodged, until the appeal has been finally determined or abandoned. *(60 of 1971 s. 19 incorporated)*
- (5) In this section—
- sedition publication*** (煽動刊物) means a publication having a seditious intention;
- sedition words*** (煽動文字) means words having a seditious intention. *(13 of 1938 s. 2 incorporated)*

11. Legal proceedings

- (1) No prosecution for an offence under section 10 shall be begun except within 6 months after the offence is committed.
- (2) No prosecution for an offence under section 10 shall be instituted without the written consent of the Secretary for Justice. *(Amended L.N. 362 of 1997)*
- (13 of 1938 s. 5 incorporated)*

12. Evidence

No person shall be convicted for an offence under section 10 on the uncorroborated testimony of one witness.

(13 of 1938 s. 6 incorporated)

13. Search warrant

If a magistrate is satisfied by information on oath that there is reasonable cause to believe that an offence under section 10 has been or is about to be committed he may grant a search warrant authorizing any police officer to enter any premises or place named in the warrant, with such assistance as may be necessary, and if necessary by force, and to search the premises or place and every person found therein, and to seize anything found on the premises or place which the officer has reasonable ground for suspecting to be evidence of an offence under section 10.

(13 of 1938 s. 7 incorporated)

14. Power to remove seditious publications

- (1) Any police officer or public officer may—
 - (a) enter any premises or place;
 - (b) stop and board any vehicle, tramcar, train or vessel, and remove therefrom or obliterate any seditious publication.
- (2) Any police officer or public officer may—
 - (a) break open any outer or inner door of any premises or place which he is empowered by this section to enter;
 - (b) remove by force any person or thing obstructing any removal or obliteration which he is empowered by this section to make;
 - (c) detain any vehicle, tramcar, train or vessel until any seditious publication has been removed or obliterated therefrom;
 - (d) remove any person from any vehicle, tramcar, train or vessel while any seditious publication is removed or obliterated.

- (3) Notwithstanding anything contained in subsection (1)(a), the powers conferred thereby shall, if the seditious publication is not visible from a public place, only be exercised—
- (a) with the prior permission of the occupier of the premises or place; or
 - (b) under and in accordance with a warrant issued by a magistrate for such purpose.

(30 of 1970 s. 4 incorporated)

15. Unlawful oaths to commit capital offences

Any person who—

- (a) administers, or is present at and consents to the administering of, any oath or engagement in the nature of an oath, purporting to bind the person who takes it to commit an offence of murder, treason or piracy with violence; or *(Amended 24 of 1993 s. 3)*
- (b) takes any such oath or engagement, not being compelled to do so,

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

[cf. 1812 c. 104 ss. 1 & 6 U.K.]

16. Other unlawful oaths to commit offences

Any person who—

- (a) administers, or is present at and consents to the administering of, any oath or engagement in the nature of an oath, purporting to bind the person who takes it to act in any of the following ways, that is to say—
 - (i) to engage in any mutinous or seditious enterprise;
 - (ii) to commit any offence not punishable with death;

- (iii) to provoke a breach of the peace;
 - (iv) to be of any association or society, formed for the purpose of doing any act mentioned in subparagraph (i), (ii) or (iii);
 - (v) to obey the orders or commands of any committee or body of men not lawfully constituted, or of any leader or commander or other person not having authority by law for that purpose;
 - (vi) not to inform or give evidence against any associate or other person;
 - (vii) not to reveal or discover any unlawful association or society or any illegal act done or to be done, or any illegal oath or engagement that may have been administered or tendered to or taken by himself or any other person, or the import of any such oath or engagement; or
- (b) takes any such oath or engagement, not being compelled to do so,

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

[cf. 1797 c. 123 ss. 1 & 5 U.K.]

17. Compulsion in taking unlawful oaths

It shall be no defence to a charge under section 15 or 16 that the person charged was compelled to take any oath or engagement mentioned therein, unless—

- (a) within 14 days after taking it; or
- (b) if prevented by actual force or sickness, within 14 days after the termination of such prevention,

the person charged declares—

- (i) by information on oath before a magistrate; or
- (ii) if he is on actual service in Her Majesty's forces, either by such information or by informing his commanding officer,

of all he knows concerning the matter, including any person by whom and in whose presence, and the place where, and the time when, the oath or engagement was administered or taken.

[cf. 1797 c. 123 s. 2 U.K.; 1812 c. 104 s. 2 U.K.]

18. Unlawful drilling

(1) Any person who—

- (a) without the permission of the Governor or the Commissioner of Police, trains or drills any other person in the use of arms or the practice of military exercises or evolutions; or
- (b) is present at any meeting of persons, held without the permission of the Governor or the Commissioner of Police for the purpose of training or drilling any other persons in the use of arms or the practice of military exercises or evolutions,

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

(2) Any person who—

- (a) at any meeting mentioned in subsection (1) is trained or drilled in the use of arms or the practice of military exercises or evolutions; or

(b) is present at any such meeting for the purpose of being so trained or drilled,

shall be guilty of an offence and shall be liable on conviction upon indictment to imprisonment for 2 years.

[cf. 1819 c. 1 s. 1 U.K.]

Part III

Piracy and Other Offences at Sea

(Amended 89 of 1990 s. 2)

(Format changes—E.R. 4 of 2017)

19A. Interpretation (Part III)

In this Part—

Hong Kong ship (香港船舶) means a ship which is registered or licensed in Hong Kong; *(Added 13 of 1999 s. 3)*

resident of the Hong Kong Special Administrative Region (香港特別行政區居民) means—

- (a) a permanent resident of the Hong Kong Special Administrative Region; and
- (b) a person who is qualified to be issued with an identity card under the Registration of Persons Ordinance (Cap. 177) but has no right of abode in Hong Kong under the Immigration Ordinance (Cap. 115).

(Added 28 of 1998 s. 2)

19. Piracy with violence

Any person who with intent to commit or at the time of or immediately before or immediately after committing the offence of piracy in respect of any vessel—

- (a) assaults with intent to murder any person on board of or belonging to the vessel; or
- (b) wounds any such person; or
- (c) unlawfully does any act by which the life of any such person may be endangered,

shall be guilty of an offence and shall be liable on conviction on indictment to imprisonment for life. (*Amended 24 of 1993 s. 4*)

[*cf. 1837 c. 88 s. 2 U.K.*]

20. Piratical acts

(1) A person commits a piratical act if—

- (a) being a resident of the Hong Kong Special Administrative Region, he commits any piracy or robbery or any act of hostility or robbery against other residents of the Hong Kong Special Administrative Region on the sea under colour of any commission from any foreign state or under pretence of authority from any person whatever; or (*Amended 80 of 1982 s. 2; 23 of 1998 s. 2; 28 of 1998 s. 2*)
- (b) being on board any Hong Kong ship he— (*Amended 13 of 1999 s. 3*)
 - (i) turns pirate, enemy or rebel, and piratically runs away with the ship, or any boat, munitions or goods;
 - (ii) voluntarily yields up the ship, or any boat, munitions or goods to any pirate;
 - (iii) brings any seducing message from any pirate, enemy or rebel;
 - (iv) assaults the master of the ship in order to prevent him from fighting in defence of his ship and goods;
 - (v) confines the master of the ship; or
 - (vi) makes or endeavours to make a revolt in the ship.

(2) Any person who commits a piratical act shall be guilty of an offence and shall be liable on conviction upon indictment to imprisonment for life.

[cf. 1698 c. 7 ss. 7 & 8 U.K.]

21. Trading, etc., with pirates

Any person who knowingly—

- (a) trades with any pirate;
- (b) furnishes any pirate with any munitions or stores of any kind;
- (c) fits out any vessel with a design to trade with, supply or correspond with any pirate; or
- (d) conspires or corresponds with any pirate,

shall be guilty of an offence and shall be liable on conviction upon indictment to imprisonment for 10 years.

[cf. 1721 c. 24 s. 1 U.K.]

22. Being found on board piratical vessel and unable to prove non-complicity

- (1) Any person who is found within Hong Kong on board any vessel equipped for the purposes of piracy, shall be guilty of an offence and shall be liable on conviction upon indictment to imprisonment for 3 years.
- (2) It shall be a defence to a charge under subsection (1) if the person charged proves—
 - (a) that he was not on board the vessel willingly; or
 - (b) that he did not know that the vessel was equipped for the purposes of piracy.

23. Regulations

- (1) The Chief Executive in Council may make regulations for all or any of the following matters— (*Amended 13 of 1999 s. 3*)

- (a) searching vessels and persons for the prevention of piracy;
 - (b) imposing such restrictions on the movements and actions of vessels and persons as may seem to him desirable in order to render such search effective; and
 - (c) such other measures as may seem to him desirable for the prevention of piracy.
- (2) Regulations made under this section may provide that a contravention of specified provisions thereof shall be an offence, and may prescribe penalties therefor not exceeding a fine of \$5,000 and imprisonment for 6 months.

23A. Interpretation (sections 23A to 23C)

In this section and in sections 23B and 23C—

act (作為) means an act of commission or an act of omission and includes a series of acts;

hovercraft (氣墊船) means a vehicle designed to be supported when in motion wholly, or partly, by air expelled from that vehicle to form a cushion of which the boundaries include the ground, water or other surface beneath the vehicle;

indictable offence (可公訴罪行) means any offence other than an offence which is triable only summarily;

ship (船舶) includes every description of vessel used in navigation and, subject to section 23B(7), also includes a hovercraft.

(Added 89 of 1990 s. 2. Amended 28 of 1998 s. 2; 13 of 1999 s. 3)

23B. Application of criminal law to Hong Kong ships on high seas etc.

- (1) Any act of any person which—

- (a) takes place on board a Hong Kong ship on the high seas; and
 - (b) apart from this section is not an offence; and
 - (c) would, were it to take place in Hong Kong, constitute an offence under the law of Hong Kong,shall, subject to subsections (5) and (7), whatever the citizenship or nationality of the person, constitute that offence.
- (2) Any act of any person which—
 - (a) takes place in the waters of Hong Kong on board, or is committed in such waters by means of, a ship which is not a Hong Kong ship; and
 - (b) would, were the ship a Hong Kong ship, constitute an indictable offence under the law of Hong Kong,shall, subject to subsections (5) and (7), whatever the citizenship or nationality of the person, constitute that offence. [*cf.* 1878 c. 73 U.K.]
- (3) Where—
 - (a) an act of any resident of the Hong Kong Special Administrative Region takes place— (*Amended 28 of 1998 s. 2*)
 - (i) on board a Hong Kong ship in any port or harbour outside Hong Kong; or
 - (ii) on board a ship which is neither a Hong Kong ship nor a ship to which the person belongs;
 - (b) apart from this subsection the act does not constitute an offence; and
 - (c) the act would, if it took place in Hong Kong, constitute an offence under the law of Hong Kong,

then, subject to subsections (5) and (7), the act shall constitute that offence. [*cf.* 1894 c. 60 s. 686 U.K.]

- (4) Where an offence against the person or against property is committed, either ashore or afloat, in any place outside Hong Kong by any master, seaman or apprentice who at the time when the offence is committed is, or at any time within the previous 3 months was, employed in any Hong Kong ship, the matter may be inquired into, and the person by whom the offence was committed may be punished and otherwise dealt with in the same manner as if the offence had been committed in Hong Kong. [*cf.* 1894 c. 60 s. 687 U.K.]
- (5) Nothing in this section applies to any act which is expressly or impliedly authorized by or under any law of Hong Kong when occurring outside Hong Kong or in Hong Kong waters or which, when so occurring, is expressly or impliedly exempted or excluded from, or otherwise not subject to or covered by, a prohibition, restriction, requirement or other provision imposed or made by or under any such law or otherwise contained in any such law.
- (6) Where an act constitutes an offence by virtue of this section and legal proceedings are taken for the offence and the court in which the proceedings are brought has not apart from this subsection jurisdiction to hear and determine the proceedings, then for the purpose of conferring such jurisdiction the act shall be treated as having occurred in Hong Kong.
- (7) This section applies to—
 - (a) a hovercraft if, and only for so long as, it is either above or on the surface of or in the water; and
 - (b) an act taking place on board a hovercraft if, and only if, when it takes place the hovercraft is either above or on the surface of or in the water.

(Added 89 of 1990 s. 2)

23C. Certain proceedings to be instituted only with consent of Chief Executive

- (1) Proceedings to which this section applies shall be instituted only with the consent in writing of the Chief Executive who shall give such consent only if, in his opinion, their institution is expedient.
- (2) This section applies to any proceedings for an indictable offence, other than piracy, which is alleged to have been committed—
 - (a) within the waters of Hong Kong;
 - (b) by a person who is not a Chinese citizen; and (*Amended 28 of 1998 s. 2*)
 - (c) on board, or by means of, a ship which is not a Hong Kong ship.
- (3) (*Repealed 13 of 1999 s. 3*)

(Added 89 of 1990 s. 2. Amended 13 of 1999 s. 3)

[cf. 1878 c. 73 s. 3 U.K.]

Part IV

Intimidation

(Format changes—E.R. 4 of 2017)

24. Certain acts of intimidation prohibited

Any person who threatens any other person—

- (a) with any injury to the person, reputation or property of such other person; or
- (b) with any injury to the person, reputation or property of any third person, or to the reputation or estate of any deceased person; or
- (c) with any illegal act,

with intent in any such case—

- (i) to alarm the person so threatened or any other person; or
- (ii) to cause the person so threatened or any other person to do any act which he is not legally bound to do; or
- (iii) to cause the person so threatened or any other person to omit to do any act which he is legally entitled to do,

shall be guilty of an offence.

(13 of 1920 s. 2 incorporated)

[cf. Indian Penal Code s. 503]

25. Assaults with intent to cause certain acts to be done or omitted

Any person who beats or uses any violence or force to any person with intent in any such case to cause such person or any other person to do any act which he is not legally bound to do, or to omit to do any act which he is legally entitled to do, shall be guilty of an offence.

(5 of 1924 s. 18 incorporated)

26. No defence to prove that the threat was not made directly

It shall be no defence to a charge under section 24 to prove that the threat was not addressed directly to the person whose person, reputation or property was to be injured, or to the person (if any) against whom the illegal act was to be committed, or to the person whom it was intended to alarm, or to the person whose conduct was intended to be affected, if the threat was made or published in some manner with the intention that it should reach the person whom it was intended to alarm, or (as the case may be) whose conduct was intended to be affected, and that it did reach such person.

(13 of 1920 s. 3 incorporated. Amended 5 of 1924 s. 18)

27. Penalties

Any person who commits an offence against section 24 or 25 shall be liable on summary conviction to a fine of \$2,000 and to imprisonment for 2 years and shall be liable on conviction upon indictment to imprisonment for 5 years.

(13 of 1920 s. 4 incorporated. Amended 5 of 1924 s. 18; 22 of 1950 Schedule)

Part V

Perjury

(Format changes—E.R. 4 of 2017)

28. Interpretation

In this Part—

Judicial proceeding (司法程序) includes a proceeding before any court, tribunal or person having by law power to hear, receive and examine evidence on oath.

(21 of 1922 s. 3(2) incorporated)

29. Extracurial statements on oath made for purposes of a judicial proceeding

- (1) Where a statement made for the purposes of a judicial proceeding is not made before a court, tribunal or person having by law power to hear, receive and examine evidence on oath but is made on oath before a person authorized by law to administer an oath to the person who makes the statement and to record or authenticate the statement, it shall be deemed for the purposes of this Part to have been made in a judicial proceeding.
- (2) A statement made by a person lawfully sworn in Hong Kong for the purposes of a judicial proceeding elsewhere shall be deemed for the purposes of this Part to have been made in a judicial proceeding in Hong Kong.

(45 of 1967 s. 3 incorporated)

30. Materiality of a statement is a question of law

The question whether a statement on which any offence against this Part is assigned was material is a question of law to be determined

by the court.

(45 of 1967 s. 3 incorporated)

31. Perjury

If any person lawfully sworn as a witness or as an interpreter, either generally or in a particular judicial proceeding, wilfully makes a statement in any judicial proceeding which is material in that proceeding and which he knows to be false or does not believe to be true, he shall be guilty of perjury and shall be liable on conviction upon indictment to imprisonment for 7 years and to a fine.

(21 of 1922 s. 3 incorporated. Amended 45 of 1967 s. 4)

[cf. 1911 c. 6 s. 1 U.K.]

32. False statements on oath made otherwise than in a judicial proceeding

If any person being required or authorized by law to make any statement on oath for any purpose and being lawfully sworn (otherwise than in a judicial proceeding) wilfully makes a statement which is material for that purpose and which he knows to be false or does not believe to be true, he shall be guilty of an offence and shall be liable on conviction upon indictment to imprisonment for 7 years and to a fine.

(21 of 1922 s. 4 incorporated)

[cf. 1911 c. 6 s. 2 U.K.]

32A. False unsworn statement under certain Ordinances

If any person, in giving evidence otherwise than on oath pursuant to section 10 of the Mutual Legal Assistance in Criminal Matters Ordinance (Cap. 525), or where required to do so by an order under section 76 of the Evidence Ordinance (Cap. 8) or that section

76 as extended by section 77B of the Evidence Ordinance (Cap. 8), makes a statement— (*Amended 23 of 2003 s. 22*)

- (a) which he knows to be false in a material particular; or
- (b) which is false in a material particular and which he does not believe to be true,

he commits an offence and is liable on conviction on indictment to imprisonment for 2 years and to a fine of \$5,000.

(*Added 2 of 1977 s. 4*)

[*cf. 1975 c. 34 s. 8(1) U.K.*]

33. False written statements in criminal proceedings

Any person who in a written statement—

- (a) handed to the court under section 80C(1) of the Magistrates Ordinance (Cap. 227); (*Amended 57 of 1988 s. 28*)
- (b) tendered in evidence under section 65B of the Criminal Procedure Ordinance (Cap. 221); or (*Amended 57 of 1988 s. 28*)
- (c) served and delivered under section 6, 13 or 21 of the Complex Commercial Crimes Ordinance (Cap. 394), (*Added 57 of 1988 s. 28*)

wilfully makes a statement material to the proceedings which he knows to be false or does not believe to be true, shall be guilty of an offence and liable on conviction to imprisonment for 2 years and to a fine of \$10,000.

(*Replaced 48 of 1983 s. 6*)

34. False statements, etc., with reference to marriage

Any person who—

- (a) for the purpose of procuring a marriage, or a certificate or licence for marriage, knowingly and wilfully makes a false oath or makes or signs a false declaration, notice or certificate required under any enactment for the time being in force relating to marriage; or
- (b) knowingly and wilfully makes, or knowingly and wilfully causes to be made, for the purpose of being inserted in any register of marriage, a false statement as to any particular required by law to be known and registered relating to any marriage; or
- (c) forbids the issue of any certificate or licence for marriage by falsely representing himself to be a person whose consent to the marriage is required by law knowing such representation to be false; or
- (d) knowingly and wilfully—
 - (i) makes a false statement in an application; or
 - (ii) furnishes false information,for the purpose of or in connexion with the registration of a customary marriage or a validated marriage under section 9 of the Marriage Reform Ordinance (Cap. 178),
(*Added 87 of 1970 s. 2*)

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

(21 of 1922 s. 5 incorporated. Amended 5 of 1924 Schedule)

[cf. 1911 c. 6 s. 3 U.K.]

35. False statements, etc., as to births or deaths

Any person who—

- (a) wilfully makes any false answer to any question put to him by any registrar of births or deaths relating to the particulars required to be registered concerning any birth

or death, or wilfully gives to any such registrar any false information concerning any birth or death or the cause of any death; or

- (b) wilfully makes any false certificate or declaration under or for the purposes of any enactment relating to the registration of births or deaths, or knowing any such certificate or declaration to be false, uses the same as true or gives or sends the same as true to any person; or
- (c) wilfully makes, gives or uses any false statement or declaration as to a child born alive as having been still-born, or as to the body of a deceased person or a still-born child in any coffin, or falsely pretends that any child born alive was still-born; or
- (d) makes any false statement with intent to have the same inserted in any register of births or deaths,

shall be guilty of an offence and shall be liable—

- (i) on conviction upon indictment to imprisonment for 7 years and to a fine; and
- (ii) on summary conviction to a fine of \$250.

(21 of 1922 s. 6 incorporated. Amended 5 of 1924 Schedule; 52 of 1972 s. 2)

[cf. 1911 c. 6 s. 4 U.K.]

36. False statutory declarations and other false statements without oath

Any person who knowingly and wilfully makes (otherwise than on oath) a statement false in a material particular, such statement being made—

- (a) in a statutory declaration; or
- (b) in an abstract, account, balance sheet, book, certificate, declaration, entry, estimate, inventory, notice, report,

return or other document which he is authorized or required to make, attest or verify, by any enactment for the time being in force; or

- (c) in any oral declaration or oral answer which he is required to make by, under or in pursuance of any enactment for the time being in force,

shall be guilty of an offence and shall be liable on conviction upon indictment to imprisonment for 2 years and to a fine.

(21 of 1922 s. 7 incorporated. Amended 5 of 1924 Schedule)

[cf. 1911 c. 6 s. 5 U.K.]

37. False declarations, etc., to obtain registration, etc., for carrying on a vocation

Any person who—

- (a) procures or attempts to procure himself to be registered on any register or roll kept under or in pursuance of any enactment for the time being in force of persons qualified by law to practise any vocation or calling; or
- (b) procures or attempts to procure a certificate of the resignation of any person on any such register or roll as aforesaid,

by wilfully making or producing or causing to be made or produced either verbally or in writing any declaration, certificate or representation which he knows to be false or fraudulent, shall be guilty of an offence and shall be liable on conviction upon indictment to imprisonment for 12 months and to a fine.

(21 of 1922 s. 8 incorporated. Amended 5 of 1924 Schedule)

[cf. 1911 c. 6 s. 6 U.K.]

38. Aiders, abettors, suborners, etc.

- (1) Any person who aids, abets, counsels, procures or suborns

another person to commit an offence against this Part shall be liable to be proceeded against, indicted, tried and punished as if he were a principal offender.

- (2) Any person who incites or attempts to procure or suborn another person to commit an offence against this Part shall be guilty of an offence punishable upon indictment.

(21 of 1922 s. 9 incorporated)

[cf. 1911 c. 6 s. 7 U.K.]

39. Contradictory statements on oath

Where 2 or more contradictory statements of fact or alleged fact, material to the issue or matter in question, have been wilfully made on oath by one and the same witness in any judicial proceeding or proceedings, whether before the same court or tribunal or person or not, and whether the respective truth or falsehood of the said statements can be ascertained or not, an indictment may be preferred against him charging him with having wilfully made the said contradictory statements, and on conviction thereof, either in whole or in part, such witness shall be liable to imprisonment for 7 years and to a fine.

(21 of 1922 s. 10 incorporated)

40. Using false affidavits

Any person who wilfully uses for any purpose any affidavit which he knows to be false or does not believe to be true, wherever such affidavit may have been sworn, shall be guilty of an offence and shall be liable on conviction upon indictment to imprisonment for 7 years and to a fine.

(21 of 1922 s. 11 incorporated. Amended 5 of 1924 Schedule)

41. *(Repealed 13 of 1999 s. 3)*

42. Form of indictment**(1) In an indictment—**

- (a) for making any false statement or false representation punishable under this Part; or
- (b) for unlawfully, wilfully, falsely, fraudulently, deceitfully, maliciously or corruptly taking, making, signing or subscribing any oath, affirmation, solemn declaration, statutory declaration, affidavit, deposition, notice, certificate or other writing; or
- (c) for wilfully making contradictory statements on oath in a judicial proceeding or proceedings; or
- (d) for wilfully using a false affidavit,

it is sufficient to set forth the substance of the offence charged and before which court or person (if any) the offence was committed, without setting forth the proceedings or any part of the proceedings in the course of which the offence was committed, and without setting forth the authority of any court or person before whom the offence was committed.

(2) In an indictment for aiding, abetting, counselling, procuring or suborning any other person to commit any offence mentioned in subsection (1), or for conspiring with any other person, or for inciting or attempting to procure or suborn any other person, to commit any such offence, it is sufficient—

- (a) where such offence has been committed, to allege that offence and then to allege that the defendant procured the commission of that offence; and
- (b) where such offence has not been committed, to set forth the substance of the offence charged against the defendant without setting forth any matter or thing which it is unnecessary to aver in the case of an

indictment for a false statement or false representation punishable under this Part.

(21 of 1922 s. 13 incorporated)

[cf. 1911 c. 6 s. 12 U.K.]

43. Corroboration

A person shall not be liable to be convicted of any offence against this Part, or of any offence declared by any other enactment to be perjury or subornation of perjury or to be punishable as perjury or subornation of perjury, solely upon the evidence of one witness as to the falsity of any statement alleged to be false.

(21 of 1922 s. 14 incorporated)

[cf. 1911 c. 6 s. 13 U.K.]

44. Certified copy of record of court proceedings

A document purporting to be a copy of the record of any proceedings before a court and purporting to be certified by an officer having the custody of the records of that court as a true copy of that record shall be admitted in evidence in proceedings for an offence against section 31, 38 or 39 on its production by the prosecution without further proof, and— *(Amended L.N. 162 of 1993)*

- (a) until the contrary is proved, the court before which such document is produced shall presume—
 - (i) that the document is certified by such officer;
 - (ii) that the document is a true copy of the record of those proceedings; and
 - (iii) that the evidence taken in those proceedings and recorded therein was duly taken; and

- (b) such document shall be prima facie evidence of the evidence taken in those proceedings and recorded therein and of all other matters contained therein.

(21 of 1922 s. 15 incorporated. Replaced 45 of 1967 s. 5)

45. Form of oath

For the purposes of this Part, the forms and ceremonies used in administering an oath are immaterial, if the court or person before whom the oath is taken has power to administer an oath for the purpose of verifying the statement in question and if the oath has been administered in a form and with ceremonies which the person taking the oath has accepted without objection, or has declared to be binding on him.

(21 of 1922 s. 16 incorporated)

[cf. 1911 c. 6 s. 15 U.K.]

46. Savings

- (1) Where the making of a false statement is not only an offence under this Part but also by virtue of some other enactment is a corrupt practice or corrupt conduct or subjects the offender to any forfeiture or disqualification or to any penalty other than imprisonment or fine, the liability of the offender under this Part shall be in addition to and not in substitution for his liability under such other enactment. *(Amended 10 of 2000 s. 47)*
- (2) Where the making of a false statement is made punishable by any other enactment proceedings may be taken either under such other enactment or under this Part.

(21 of 1922 s. 17 incorporated)

[cf. 1911 c. 6 s. 16 U.K.]

Part VI

Incest

(Format changes—E.R. 4 of 2017)

47. Incest by men

- (1) Any man who has sexual intercourse with a woman, who is to his knowledge his granddaughter, daughter, sister or mother, shall be guilty of an offence and shall be liable on conviction upon indictment to imprisonment for 14 years:

Provided that if, on an indictment for any such offence, it is alleged in the indictment and proved—

- (a) that the woman is under the age of 16 years but is of or above the age of 13 years, he shall be liable to imprisonment for 20 years;
- (b) that the woman is under the age of 13 years, the same punishment may be imposed as may be imposed under section 123. *(Amended 5 of 1924 Schedule; 33 of 1939; G.N. 840 of 1940 Supp. Schedule)*
- (2) It is immaterial that the sexual intercourse was had with the consent of the woman.
- (3) Any man who attempts to commit any such offence as aforesaid, or who incites a girl under the age of 16 years, who is to his knowledge his granddaughter, daughter or sister, to have sexual intercourse with him, shall be guilty of an offence triable summarily or upon indictment and shall be liable on conviction to imprisonment for 10 years. *(Amended 5 of 1924 Schedule; 22 of 1950 s. 3)*
- (4) On the conviction before any court of any man of an offence under this section, or of an attempt to commit the same,

against any woman under 21 years of age, or of inciting a woman under that age, who is to his knowledge his granddaughter, daughter or sister, to have sexual intercourse with him, it shall be in the power of the court to divest the offender of all authority over such female, and if the offender is the guardian of such woman, to remove the offender from such guardianship, and in any such case to appoint any person or persons to be the guardian or guardians of such woman during her minority or any less period:

Provided that the Court of First Instance may at any time vary or rescind the order by the appointment of any other person as such guardian, or in any other respect. (*Amended 25 of 1998 s. 2*)

(*3 of 1916 s. 2 incorporated. Amended 1 of 1978 s. 2; 31 of 1997 s. 2*)

[*cf. 1908 c. 45 s. 1 U.K.*]

48. Incest by women of or over 16

Any woman of or above the age of 16 years who with consent permits her grandfather, father, brother or son to have sexual intercourse with her (knowing him to be her grandfather, father, brother or son, as the case may be) shall be guilty of an offence and shall be liable on conviction upon indictment to imprisonment for 14 years.

(*3 of 1916 s. 3 incorporated. Amended 1 of 1978 s. 3; L.N. 387 of 1987; 31 of 1997 s. 3*)

[*cf. 1908 c. 45 s. 2 U.K.*]

49. Test of relationship

- (1) In this Part, **brother** (兄弟) and **sister** (姐妹) respectively include half-brother and half-sister, and the provisions of this Part shall apply whether the relationship between the

person charged with an offence under this Part and the person with whom the offence is alleged to have been committed is or is not traced through lawful wedlock. *(3 of 1916 s. 4 incorporated. Amended 5 of 1924 s. 13)*

- (2) The use in any provision of this Part of the word “man” without the addition of the word “boy” shall not prevent the provision applying to any person to whom it would have applied if both words had been used, and similarly with the words “woman” and “girl”. *(Added 1 of 1978 s. 4)*

[cf. 1908 c. 45 s. 3 U.K.]

50. Prosecution of offences

- (1) If on the trial of any indictment for rape the jury are satisfied that the defendant is guilty of an offence under this Part but are not satisfied that the defendant is guilty of rape, the jury may acquit the defendant of rape and find him guilty of an offence under this Part, and he shall be liable to be punished accordingly.
- (2) If on the trial of any indictment for an offence under this Part the jury are satisfied that the defendant is guilty of any offence under section 123, 124 or 125, but are not satisfied that the defendant is guilty of an offence under this Part, the jury may acquit the defendant of an offence under this Part and find him guilty of an offence under section 123, 124 or 125, as the case may be, and he shall be liable to be punished accordingly. *(Amended 5 of 1924 Schedule; 1 of 1978 s. 5)*

(3 of 1916 s. 5 incorporated)

[cf. 1908 c. 45 s. 4 U.K.]

51. Sanction of Secretary for Justice

No prosecution for an offence under this Part shall be instituted without the consent of the Secretary for Justice.

Crimes Ordinance

Part VI

6-8

Section 51

Cap. 200

*(3 of 1916 s. 7 incorporated. Amended 33 of 1939; G.N. 840 of
1940 Supp. Schedule; L.N. 362 of 1997)
[cf. 1908 c. 45 s. 6 U.K.]*

Part VII

Explosive Substances

(Format changes—E.R. 4 of 2017)

52. Interpretation

In this Part—

explosive substance (爆炸品) shall be deemed to include any materials for making any explosive substance; also any apparatus, machine, implement or materials used, or intended to be used, or adapted for causing, or aiding in causing, any explosion in or with any explosive substance; also any part of any such apparatus, machine or implement.

(23 of 1913 s. 2 incorporated. Amended 5 of 1924 s. 13)

[cf. 1883 c. 3 s. 9(1) U.K.]

53. Causing explosion likely to endanger life or property

Any person who unlawfully and maliciously causes by any explosive substance an explosion of a nature likely to endanger life or to cause serious injury to property shall, whether any injury to person or property has been actually caused or not, be guilty of an offence and shall be liable on conviction upon indictment to imprisonment for life.

(23 of 1913 s. 3 incorporated. Amended 5 of 1924 Schedule)

[cf. 1883 c. 3 s. 2 U.K.]

54. Attempt to cause explosion, or making or keeping explosive with intent to endanger life or property

Any person who unlawfully and maliciously—

- (a) does any act with intent to cause by an explosive substance, or conspires to cause by an explosive substance, an explosion of a nature likely to endanger life or to cause serious injury to property; or
- (b) makes or has in his possession or under his control any explosive substance with intent by means thereof to endanger life or cause serious injury to property, or to enable any other person by means thereof to endanger life or cause serious injury to property,

shall whether any explosion does or does not take place and whether any injury to person or property has been actually caused or not, be guilty of an offence and shall be liable on conviction upon indictment to imprisonment for 20 years, and the explosive substance shall be forfeited.

(23 of 1913 s. 4 incorporated)

[cf. 1883 c. 3 s. 3 U.K.]

55. Making or possession of explosive

- (1) Any person who makes an explosive substance or, whether or not he knows it to be an explosive substance, knowingly has in his possession or custody or under his control anything which is an explosive substance shall, unless he can show that he made it or has it in his possession or custody or under his control for a lawful object, be guilty of an offence and shall be liable on conviction upon indictment to imprisonment for 14 years, and the explosive substance shall be forfeited.
- (2) Where in any prosecution for an offence under subsection (1) it is proved that the accused knowingly had in his possession or custody or under his control anything whatsoever, other than premises, containing any explosive substance, then, unless the accused can show that he had reasonable grounds for believing that the thing did not contain anything or

contained only something other than an explosive substance, he shall be presumed knowingly to have had in his possession or custody or under his control the explosive substance contained in that thing.

- (3) No prosecution for an offence under subsection (1) shall be instituted without the consent of the Secretary for Justice.
(Amended L.N. 362 of 1997)

(23 of 1913 s. 5 incorporated. Replaced 1 of 1966 s. 2)

56. Position of accessories

Any person who by the supply of or solicitation for money, the providing of premises, the supply of materials or in any manner whatsoever procures, counsels, aids, abets, or is accessory to, the commission of any offence under this Part, shall be guilty of an offence and shall be liable to be tried and punished for that offence as if he had been guilty as a principal.

(23 of 1913 s. 6 incorporate)

[cf. 1883 c. 3 s. 5 U.K.]

57. Exclusion of public during hearing of proceedings for offence under this Part

In addition and without prejudice to any powers that a court or magistrate may possess to order the exclusion of the public from any proceedings if, in the course of proceedings, including proceedings on appeal, before a court or magistrate in respect of an offence under this Part, application is made by the prosecution, on the ground that the publication of any evidence to be given or of any statement to be made in the course of the proceedings would be prejudicial to the public safety, that all or any portion of the public shall be excluded during any part of the hearing, the court or magistrate may make an order to that effect, but the passing of sentence shall in any case take place in public.

(1 of 1966 s. 3 incorporated)

[cf. 1920 c. 75 s. 8(4) U.K.]

58. Provisions of this Part not to exempt from proceedings under other provisions of laws

This Part shall not exempt any person from any indictment or proceeding for any offence which is punishable at common law or by Ordinance other than this Part, but no person shall be punished twice for the same criminal act.

(23 of 1913 s. 7 incorporated)

[cf. 1883 c. 3 s. 7(4) U.K.]

Part VIIA

Unmarked Plastic Explosives

(Part VIIA added 52 of 1994 s. 2)

(Format changes—E.R. 4 of 2017)

58A. Manufacture of unmarked plastic explosive

Any person who manufactures any plastic explosive that is not marked with a designated detection agent commits an offence and is liable to imprisonment for 14 years.

58B. Possession etc. of unmarked plastic explosive

- (1) Any person who, not being authorized for the purpose under this section, knowingly has in his possession or custody or under his control any unmarked plastic explosive commits an offence and is liable to imprisonment for 14 years.
- (2) The Government Chemist or any member of the Chinese People's Liberation Army or police officer designated for the purpose of this subsection by the Commander of the Hong Kong Garrison or the Commissioner of Police respectively are authorized to have possession or custody of unmarked plastic explosive, or to have such explosive under their control, if they do so— *(Amended 2 of 2012 s. 3)*
 - (a) in the course of their duties; and
 - (b) solely for—
 - (i) use in research, development or testing of new or modified explosives;

- (ii) use in training in explosives detection or the development or testing of explosives detection equipment; or
 - (iii) forensic science purposes.
- (3) Subsection (1) is subject to section 58F.

58C. Transfer of possession etc. of unmarked plastic explosive

- (1) Any person who transfers possession, custody or control of any unmarked plastic explosive to any person, other than a person authorized under section 58B to have such possession or custody or to have such explosive under his control, commits an offence and is liable to imprisonment for 14 years.
- (2) It shall be a defence to a charge under subsection (1) that the person transferring possession, custody or control of the unmarked plastic explosive believed on reasonable grounds that the other person was a person authorized under section 58B to have such possession or custody or to have such explosive under his control.

58D. Import and export of unmarked plastic explosive

- (1) Any person who imports into or exports from Hong Kong any unmarked plastic explosive commits an offence and is liable to imprisonment for 14 years.
- (2) This section shall not apply to—
 - (a) the importation into Hong Kong by—
 - (i) any member of the Chinese People's Liberation Army acting with the written authorization of the Commander of the Hong Kong Garrison;

- (ii) any police officer acting with the written authorization of the Commissioner of Police, of such quantity of unmarked plastic explosive as may be required by the Commander of the Hong Kong Garrison or the Commissioner of Police respectively for a use or purpose specified in section 58B(2)(b)(i) to (iii); or (*Amended 2 of 2012 s. 3*)
- (b) the export from Hong Kong, by any person referred to in paragraph (a)(i) or (ii), of any unmarked plastic explosive that was being held in Hong Kong immediately prior to the commencement of this Part, where such explosive is to be used by military or police authorities outside Hong Kong in the course of their duties.

58E. Forfeiture, seizure and destruction of unmarked plastic explosive

- (1) Where a person is convicted of an offence under this Part, any unmarked plastic explosive seized in connection with the offence shall become forfeited.
- (2) Any unmarked plastic explosive not lawfully in the possession, custody or control of any person may be seized by the Commissioner of Police and shall upon such seizure become forfeited.
- (3) Any unmarked plastic explosive forfeited under or by virtue of this section shall, as soon as reasonably practicable after such forfeiture, unless required by the Commander of the Hong Kong Garrison or the Commissioner of Police for a use or purpose specified in section 58B(2)(b)(i) to (iii), be destroyed by the Commissioner of Police. (*Amended 2 of 2012 s. 3*)

58F. Exemption period for police officers and members of Chinese People's Liberation Army

(Amended 2 of 2012 s. 3)

Notwithstanding section 58B, during the period of 15 years beginning from the commencement of this Part it shall not be an offence under that section for any member of the Chinese People's Liberation Army or police officer designated for the purpose of this section by the Commander of the Hong Kong Garrison or the Commissioner of Police respectively to have in his possession or custody or under his control, in the course of and solely for the purpose of the performance of his duties, any unmarked plastic explosive that was being held in Hong Kong immediately prior to such commencement.

(Amended 2 of 2012 s. 3)

58G. General provisions applicable to this Part

(1) In this Part—

designated detection agent (指定辨認劑) means a substance designated in subsection (4) for use as a detection agent;

plastic explosive (塑膠炸藥) means any explosive that is commonly known as such, whether in flexible or elastic sheet or other form, and which—

- (a) is formulated with one or more high explosives having in their pure form a vapour pressure of less than 10^{-4} Pa at a temperature of 25°C;
- (b) is formulated with a binder material; and
- (c) is, as a mixture, malleable or flexible at room temperature,

where ***high explosive*** (高性能炸藥) means a substance specified below, or any other explosive substance having similar properties, namely—

Scientific name	Common name
cyclotetramethylenetetranitramine	HMX
pentaerythritol tetranitrate	PETN
cyclotrimethylenetrinitramine	RDX

unmarked plastic explosive (無添加辨認劑的塑膠炸藥) means a plastic explosive that is not marked with a designated detection agent.

- (2) Subject to subsection (3), a plastic explosive shall not be regarded as marked with a designated detection agent for the purpose of this Part unless the detection agent was introduced at the time of manufacture—
- (a) in such a manner as to achieve a homogeneous distribution in the finished product; and
- (b) in such quantity that the concentration of the detection agent in the finished product at the time of manufacture was at or above the minimum concentration specified in subsection (4) for that detection agent.
- (3) An explosive which, as a result of its normal formulation, contains any designated detection agent at or above the minimum concentration specified in subsection (4) for that detection agent shall be deemed to be marked.
- (4) The substances designated for use as a detection agent, and the minimum concentration for each such detection agent, are—

Name of detection agent	Molecular formula	Molecular weight	Minimum concentration
Ethylene glycol dinitrate (EGDN)	$C_2H_4(NO_3)_2$	152	0.2% by mass
2, 3-Dimethyl-2, 3-dinitrobutane (DMNB)	$C_6H_{12}(NO_2)_2$	176	0.1% by mass
para-Mononitrotoluene (p-MNT)	$C_7H_7NO_2$	137	0.5% by mass
ortho-Mononitrotoluene (o-MNT)	$C_7H_7NO_2$	137	0.5% by mass

- (5) The Secretary for Security may by order published in the Gazette—
- amend subsection (1) in the definition of ***plastic explosive*** (塑膠炸藥) by adding or deleting any substance specified in that subsection to be a high explosive;
 - amend subsection (4) by adding or deleting any substance designated for use as a detection agent and by specifying the minimum concentration for such agent.
- (6) For the purpose of this Part, a certificate purporting to be signed by the Government Chemist stating that a particular explosive substance has properties similar to a substance specified in the definition of ***plastic explosive*** (塑膠炸藥) in subsection (1) to be a high explosive shall be admissible as evidence of the fact so stated.

Part VIII

Criminal Damage to Property

(Format changes—E.R. 4 of 2017)

59. Interpretation

(1) In this Part, **property** (財產) means—

- (a) property of a tangible nature, whether real or personal, including money and—
 - (i) including wild creatures which have been tamed or are ordinarily kept in captivity, and any other wild creatures or their carcasses if, but only if, they have been reduced into possession which has not been lost or abandoned or are in the course of being reduced into possession; but
 - (ii) not including mushrooms growing wild on any land or flowers, fruit or foliage of a plant growing wild on any land; or
- (b) any program, or data, held in a computer or in a computer storage medium, whether or not the program or data is property of a tangible nature.

In this subsection, **mushroom** (菌類植物) includes any fungus and **plant** (植物) includes any shrub or tree. (Replaced 23 of 1993 s. 3)

(1A) In this Part, **to destroy or damage any property** (摧毀或損壞財產) in relation to a computer includes the misuse of a computer.

In this subsection, **misuse of a computer** (誤用電腦) means—

- (a) to cause a computer to function other than as it has been established to function by or on behalf of its

owner, notwithstanding that the misuse may not impair the operation of the computer or a program held in the computer or the reliability of data held in the computer;

- (b) to alter or erase any program or data held in a computer or in a computer storage medium;
- (c) to add any program or data to the contents of a computer or of a computer storage medium,

and any act which contributes towards causing the misuse of a kind referred to in paragraph (a), (b) or (c) shall be regarded as causing it. *(Added 23 of 1993 s. 3)*

- (2) Property shall be treated for the purposes of this Part as belonging to any person—
 - (a) having the custody or control of it;
 - (b) having in it any proprietary right or interest (not being an equitable interest arising only from an agreement to transfer or grant an interest); or
 - (c) having a charge on it.
- (3) Where property is subject to a trust, the persons to whom it belongs shall be so treated as including any person having a right to enforce the trust.
- (4) Property of a corporation sole shall be so treated as belonging to the corporation notwithstanding a vacancy in the corporation.

(Added 48 of 1972 s. 3)

[cf. 1971 c. 48 s. 10 U.K.]

60. Destroying or damaging property

- (1) A person who without lawful excuse destroys or damages any property belonging to another intending to destroy or damage any such property or being reckless as to whether any such

property would be destroyed or damaged shall be guilty of an offence.

- (2) A person who without lawful excuse destroys or damages any property, whether belonging to himself or another—
- (a) intending to destroy or damage any property or being reckless as to whether any property would be destroyed or damaged; and
 - (b) intending by the destruction or damage to endanger the life of another or being reckless as to whether the life of another would be thereby endangered,
- shall be guilty of an offence.
- (3) An offence committed under this section by destroying or damaging property by fire shall be charged as arson.

(Added 48 of 1972 s. 3)

[cf. 1971 c. 48 s. 1 U.K.]

61. Threats to destroy or damage property

A person who without lawful excuse makes to another a threat, intending that that other would fear it would be carried out,—

- (a) to destroy or damage any property belonging to that other or a third person; or
- (b) to destroy or damage his own property in a way which he knows is likely to endanger the life of that other or a third person,

shall be guilty of an offence.

(Added 48 of 1972 s. 3)

[cf. 1971 c. 48 s. 2 U.K.]

62. Possessing anything with intent to destroy or damage property

A person who has anything in his custody or under his control

intending without lawful excuse to use it or cause or permit another to use it—

- (a) to destroy or damage any property belonging to some other person; or
- (b) to destroy or damage his own or the user's property in a way which he knows is likely to endanger the life of some other person,

shall be guilty of an offence.

(Added 48 of 1972 s. 3)

[cf. 1971 c. 48 s. 3 U.K.]

63. Punishment of offences

- (1) A person guilty of arson under section 60 or of an offence under section 60(2) (whether arson or not) shall be liable on conviction upon indictment to imprisonment for life.
- (2) A person guilty of any other offence under this Part shall be liable on conviction upon indictment to imprisonment for 10 years.

(Added 48 of 1972 s. 3)

[cf. 1971 c. 48 s. 4 U.K.]

64. Without lawful excuse

- (1) This section applies to any offence under section 60(1) and any offence under section 61 or 62 other than one involving a threat by the person charged to destroy or damage property in a way which he knows is likely to endanger the life of another or involving an intent by the person charged to use or cause or permit the use of something in his custody or under his control so to destroy or damage property.
- (2) A person charged with an offence to which this section applies shall, whether or not he would be treated for the

purposes of this Part as having a lawful excuse apart from this subsection, be treated for those purposes as having a lawful excuse—

- (a) if at the time of the act or acts alleged to constitute the offence he believed that the person or persons whom he believed to be entitled to consent to the destruction of or damage to the property in question had so consented, or would have so consented to it if he or they had known of the destruction or damage and its circumstances; or
- (b) if he destroyed or damaged or threatened to destroy or damage the property in question or, in the case of a charge of an offence under section 62, intended to use or cause or permit the use of something to destroy or damage it, in order to protect property belonging to himself or another or a right or interest in property which was or which he believed to be vested in himself or another, and at the time of the act or acts alleged to constitute the offence he believed—
 - (i) that the property, right or interest was in immediate need of protection; and
 - (ii) that the means of protection adopted or proposed to be adopted were or would be reasonable having regard to all the circumstances.
- (3) For the purpose of this section, it is immaterial whether a belief is justified or not if it is honestly held.
- (4) For the purposes of subsection (2), a right or interest in property includes any right or privilege in or over land, whether created by grant, licence or otherwise.
- (5) This section shall not be construed as casting doubt on any defence recognized by law as a defence to criminal charges.

(Added 48 of 1972 s. 3)

[cf. 1971 c. 48 s. 5 U.K.]

65. Search for things intended for use in committing offences of criminal damage

- (1) If it is made to appear by information on oath before a magistrate that there is reasonable cause to believe that any person has in his custody or under his control or on his premises anything which there is reasonable cause to believe has been used or is intended for use without lawful excuse—
 - (a) to destroy or damage property belonging to another; or
 - (b) to destroy or damage any property in a way likely to endanger the life of another,the magistrate may grant a warrant authorizing a police officer not below the rank of inspector, together with any other police officers, to search for and seize that thing.
- (2) Any police officer who is authorized under this section to search premises for anything, may enter (if need be by force) and search the premises accordingly and may seize anything which he believes to have been used or to be intended to be used as aforesaid.
- (3) Section 102 of the Criminal Procedure Ordinance (Cap. 221) (which makes provision for the disposal of property connected with offences) shall apply to property which has come into the possession of the police under this section as it applies to property which has come into the possession of the police in the circumstances mentioned in that section.

(Added 48 of 1972 s. 3)

[cf. 1971 c. 48 s. 6 U.K.]

66. Evidence in connexion with offences under this Part

A person shall not be excused, by reason that to do so may

incriminate that person or the wife or husband of that person of an offence under this Part—

- (a) from answering any question put to that person in proceedings for the recovery or administration of any property, for the execution of any trust or for an account of any property or dealings with property; or
- (b) from complying with any order made in any such proceedings,

but no statement or admission made by a person in answering a question put or complying with an order made as aforesaid shall, in proceedings for an offence under this Part, be admissible in evidence against that person or (unless they married after the making of the statement or admission) against the wife or husband of that person.

(Added 48 of 1972 s. 3)

[cf. 1971 c. 48 s. 9 U.K.]

67. Abolition of common law arson

The common law offence of arson is abolished.

(48 of 1972 s. 4(3) incorporated)

Part IX

Forgery and Related Offences

(Part IX replaced 49 of 1992 s. 2)

(Format changes—E.R. 4 of 2017)

68. Interpretation

(1) In this Part, unless the context otherwise requires— *(Added 89 of 1993 s. 31)*

customs officer (關員職系人員) has the meaning assigned to that term in section 2 of the Customs and Excise Service Ordinance (Cap. 342);

die (印模) includes any plate, type, tool, chop or implement and also any part of any die, plate, type, tool, chop or implement, and any stamp or impression thereof or any part of such stamp or impression;

immigration officer (入境事務主任) has the meaning assigned to that term in section 2 of the Immigration Ordinance (Cap. 115);

instrument (文書) means—

- (a) any document whether of a formal or informal nature;
- (b) any postage stamp or revenue stamp;
- (c) any seal or die; and
- (d) any disc, card, tape, microchip, sound track or other device on or in which information is recorded or stored by mechanical, electronic, optical or other means;

postage stamp (郵資印花) means—

- (a) any stamp issued or sold by the Post Office; and

- (b) any mark denoting payment of postage which is authorized by the Postmaster General to be used instead of an adhesive stamp;

revenue stamp (稅收印花) means a stamp used or intended for use for the purpose described in paragraph (b) of the definition of **stamp** (印花) in section 2 of the Stamp Duty Ordinance (Cap. 117) and includes any mark or indication intended to achieve the same purpose;

seal (印章) includes any stamp or impression of a seal or any stamp or impression made or apparently intended to resemble the stamp or impression of a seal, as well as the seal itself;

stamp (印花) includes a stamp impressed by means of a die as well as an adhesive stamp.

- (2) In any Ordinance, unless the context otherwise requires, **forgery** (偽造) shall be construed in accordance with this Part. (*Added 89 of 1993 s. 31*)

69. Meaning of *false* (虛假) and *making* (製造)

For the purpose of this Part—

- (a) an instrument is false if it purports to have been—
 - (i) made in the form in which it is made by a person who did not in fact make it in that form;
 - (ii) made in the form in which it is made on the authority of a person who did not in fact authorize its making in that form;
 - (iii) made in the terms in which it is made by a person who did not in fact make it in those terms;
 - (iv) made in the terms in which it is made on the authority of a person who did not in fact authorize its making on those terms;

- (v) altered in any respect by a person who did not in fact alter it in that respect;
 - (vi) altered in any respect on the authority of any person who did not in fact authorize its alteration in that respect;
 - (vii) made or altered on a date on which or place at which or otherwise in circumstances in which it was not in fact made or altered; or
 - (viii) made or altered by an existing person but he did not in fact exist;
- (b) a person is to be treated as making a false instrument if he alters an instrument so as to make it false in any respect, whether or not it is false in some other respect apart from that alteration.

70. Meaning of *prejudice* (不利) and *induce* (誘使)

- (1) Subject to subsections (2) and (4), an act or omission intended to be induced is to a person's prejudice if, and only if, it is one which, if it occurs, will—
- (a) result in his permanent or temporary loss of property;
 - (b) result in his being deprived of an opportunity to earn remuneration or greater remuneration;
 - (c) result in his being deprived of an opportunity to gain a financial advantage otherwise than by way of remuneration;
 - (d) result in somebody being given an opportunity to earn remuneration or greater remuneration from him;
 - (e) result in somebody being given an opportunity to gain a financial advantage from him otherwise than by way of remuneration; or

- (f) be the result of his having accepted a false instrument as genuine, or a copy of a false instrument as a copy of a genuine one, in connection with his performance of any duty.
- (2) For the purpose of this section, an act which a person has an enforceable duty to do and an omission to do an act which a person is not entitled to do shall be disregarded.
- (3) References in this Part to inducing somebody to accept a false instrument as genuine, or a copy of a false instrument as a copy of a genuine one, include references to inducing a machine to respond to an instrument or copy as if it were a genuine instrument, or, as the case may be, a copy of a genuine one.
- (4) Where subsection (3) applies, the act or omission intended to be induced by the machine responding to the instrument or copy shall be treated as an act or omission to a person's prejudice.
- (5) In subsection (1)(a) **loss** (損失) includes a loss by not getting what one might get, as well as a loss by parting with what one has.

71. The offence of forgery

A person who makes a false instrument, with the intention that he or another shall use it to induce somebody to accept it as genuine, and by reason of so accepting it to do or not to do some act to his own or any other person's prejudice, commits the offence of forgery and is liable on conviction on indictment to imprisonment for 14 years.

72. The offence of copying a false instrument

A person who makes a copy of an instrument which is, and which

he knows or believes to be, a false instrument, with the intention that he or another shall use it to induce somebody to accept it as a copy of a genuine instrument, and by reason of so accepting it to do or not to do some act to his own or any other person's prejudice, commits an offence and is liable on conviction on indictment to imprisonment for 14 years.

73. The offence of using a false instrument

A person who uses an instrument which is, and which he knows or believes to be, false, with the intention of inducing somebody to accept it as genuine, and by reason of so accepting it to do or not to do some act to his own or any other person's prejudice, commits an offence and is liable on conviction on indictment to imprisonment for 14 years.

74. The offence of using a copy of a false instrument

A person who uses a copy of an instrument which is, and which he knows or believes to be, a false instrument, with the intention of inducing somebody to accept it as a copy of a genuine instrument, and by reason of so accepting it to do or not to do some act to his own or any other person's prejudice, commits an offence and is liable on conviction on indictment to imprisonment for 14 years.

75. Offences of possessing a false instrument

- (1) A person who has in his custody or under his control an instrument which is, and which he knows or believes to be, false, with the intention that he or another shall use it to induce somebody to accept it as genuine, and by reason of so accepting it to do or not to do some act to his own or any

other person's prejudice, commits an offence and is liable on conviction on indictment to imprisonment for 14 years.

- (2) A person who, without lawful authority or excuse, has in his custody or under his control an instrument which is, and which he knows or believes to be, false, commits an offence and is liable on conviction on indictment to imprisonment for 3 years.

76. The offence of making or possessing equipment for making a false instrument

- (1) A person who makes or has in his custody or under his control a machine or implement, or any paper or other material, which to his knowledge is or has been specially designed or adapted for the making of any instrument, with the intention that he or another shall make a false instrument and that he or another shall use that false instrument to induce somebody to accept it as genuine, and by reason of so accepting it to do or not to do some act to his own or any other person's prejudice, commits an offence and is liable on conviction on indictment to imprisonment for 14 years.
- (2) A person who, without lawful authority or excuse, makes or has in his custody or under his control a machine or implement, or any paper or other material, which to his knowledge is or has been specially designed or adapted for the making of any false instrument, commits an offence and is liable on conviction on indictment to imprisonment for 3 years.

77. Criminal possession

Where under this Part it is an offence for any person to have in his

custody or under his control any instrument or thing, a person shall be deemed to have such instrument or thing in his custody or under his control, notwithstanding that it is not in his personal custody or possession, if he knowingly and wilfully has it in the actual custody or possession of some other person, or in any building, lodging, apartment, field or other place, whether open or enclosed, whether occupied by himself or not, and whether the instrument or thing is in such custody, possession or place for the use of such person or for the use or benefit of another person.

78. Powers of search, forfeiture, etc.

- (1) If it appears to a magistrate, from information given him on oath, that there is reasonable cause to believe that a person has in his custody or under his control—
- (a) any thing which he or another has used after the commencement of the Crimes (Amendment) Ordinance 1992 (49 of 1992) for the making of any false instrument or copy of a false instrument, in contravention of section 71 or 72;
 - (b) any false instrument or copy of a false instrument which he or another has used after the commencement of the Crimes (Amendment) Ordinance 1992 (49 of 1992) or intends to use, in contravention of section 73 or 74; or
 - (c) any thing which under section 75 or 76 it is an offence for that person to have in his custody or under his control without lawful authority or excuse,

the magistrate may issue a warrant authorizing a police officer, customs officer or immigration officer to search for and seize that thing, instrument or copy, and for that purpose to enter any premises specified in the warrant.

- (2) A police officer, customs officer or immigration officer, at any time after seizing an object suspected of being a thing, instrument or copy to which subsection (1) applies (whether or not the seizure was effected by virtue of a warrant under that subsection) may apply to a magistrate for an order under this subsection with respect to that object, and the magistrate, if satisfied that—
- (a) the object is a thing, instrument or copy to which subsection (1) applies; and
 - (b) it is in the public interest to do so,
- may, subject to subsection (4), make such order as he thinks fit for the forfeiture of the object and its subsequent destruction or disposal.
- (3) Subject to subsection (4), the court by or before which a person is convicted of an offence under this Part may order any object which it is satisfied relates to the commission of the offence to be forfeited and either destroyed or dealt with in such other manner as the court may direct.
- (4) If any person claiming to be the owner of or otherwise interested in any object liable to be forfeited under subsection (2) or (3) applies to be heard by a court or magistrate, as the case may be, the court or magistrate shall not order the object to be forfeited unless an opportunity has been given to that person to show cause why the order should not be made.

Editorial Note:

See also 49 of 1992 s. 4.

79. Abolition of offence of forgery at common law

The offence of forgery at common law is abolished for all purposes relating to offences committed after the commencement of the

Crimes Ordinance

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9-18

Section 80

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Crimes (Amendment) Ordinance 1992 (49 of 1992).

80-83. *(Repealed 49 of 1992 s. 2)*

Part X

False Certification and Personation

(Format changes—E.R. 4 of 2017)

84. Making false entry in contract for sale of shares

Any person, whether principal, broker or agent, who wilfully inserts, in any contract, agreement or token of sale and purchase made or entered into for the sale or transfer, or purporting to be for the sale or transfer, of any share, stock or other interest in the capital stock of any bank, body corporate, company or society, established by charter or by, under or by virtue of any Ordinance, issuing shares or stock transferable by any deed or written instrument, any false entry of the numbers by which the same are distinguished on the registers or books of such company, or any names other than those of the persons in whose name such shares, stock or interest stand as registered proprietors thereof in the books of such company, shall be guilty of an offence and shall be liable on conviction upon indictment to a fine of \$5,000 and to imprisonment for 3 years.

(33 of 1935 s. 4 incorporated. Amended 22 of 1950 Schedule; 13 of 1999 s. 3)

[cf. 1867 c. 29 s. 1 U.K.]

85. Making false entry in bank book, etc.

- (1) Any person who, with intent to defraud— *(Amended 23 of 1993 s. 4)*
 - (a) makes any false entry or alters any word or figure in any of the books of account kept at any bank in Hong Kong or by any body corporate, company or society, established by charter or by, under, or by virtue of any

Ordinance, in which books the accounts of the owners of any money deposited in such bank or of any stock of any such body corporate are entered and kept; or
(*Amended 13 of 1999 s. 3*)

- (b) in any manner falsifies any of the accounts of any such owners in any of the said books; or
- (c) makes any transfer of any share or interest in any such deposit or stock in the name of any person not being the true and lawful owner of such share or interest,

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

- (2) In subsection (1), **books** (簿冊) includes any disc, card, tape, microchip, sound track or other device on or in which information is recorded or stored by mechanical, electronic, optical or other means. (*Added 23 of 1993 s. 4*)

(*33 of 1935 s. 5 incorporated*)

[*cf. 1861 c. 98 s. 5 U.K.*]

86. Bank clerk making out false dividend warrant

Any person who, being a clerk or servant of, or other person employed or entrusted by, any bank in Hong Kong or any such body corporate, company or society as is mentioned in section 85, with intent to defraud makes out or delivers any dividend warrant, or warrant for payment of any interest or money for a greater or less amount than the amount to which the person on whose behalf such warrant is made out is entitled, shall be guilty of an offence and shall be liable on conviction upon indictment to imprisonment for 7 years.

(*33 of 1935 s. 6 incorporated*)

[*cf. 1861 c. 98 s. 6 U.K.*]

87. Uttering, delivering or acting under false copy or certificate of record or process of court

Any person who—

- (a) being the clerk of any court or other officer having the custody of the records of any court, or being the deputy of any such clerk or officer, utters any false copy or certificate of any record knowing the same to be false; or
- (b) delivers or causes to be delivered to any person any paper falsely purporting to be any process of court or a copy thereof, or to be any judgment, decree or order of any court, or a copy thereof, knowing the same to be false; or
- (c) acts or professes to act under any such false process, knowing the same to be false,

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

(33 of 1935 s. 7 incorporated)

[cf. 1861 c. 98 s. 28 U.K.]

88. Making false entry in register of births, etc.

Any person who—

- (a) knowingly and unlawfully inserts or causes or permits to be inserted in any register of births, baptisms, marriages, deaths or burials which is by law authorized or required to be kept in Hong Kong or in any certified copy thereof, any false entry of any matter relating to any birth, baptism, marriage, death or burial; or *(Amended 13 of 1999 s. 3)*

- (b) knowingly and unlawfully gives any false certificate relating to any birth, baptism, marriage, death or burial; or
- (c) certifies any writing to be a copy of or extract from any such register, knowing such writing, or the part of such register whereof such copy or extract is so given, to be false in any material particular; or
- (d) offers, utters, disposes of or puts off any such register, entry, certified copy or certificate, knowing the same to be false; or
- (e) offers, utters, disposes of or puts off any copy of any entry in any such register, knowing such entry to be false,

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

(33 of 1935 s. 8 incorporated. Amended 48 of 1972 Schedule)

[cf. 1861 c. 98 s. 36 U.K.]

89. Making false entry in copy of register sent to registrar

Any person who—

- (a) knowingly inserts, or causes or permits to be inserted in any copy of any register directed or required by law to be transmitted to any registrar or other officer any false entry of any matter relating to any baptism, marriage or burial; or
- (b) signs or verifies any copy of any register so directed or required to be transmitted as aforesaid, which copy is false in any part thereof, knowing the same to be false; or

- (c) for any fraudulent purpose takes from its place of deposit or conceals any such copy of any register,
(*Amended 48 of 1972 Schedule*)

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

(33 of 1935 s. 9 incorporated)

[cf. 1861 c. 98 s. 37 U.K.]

90. Unlawful assumption of character of member of Customs and Excise Service

Any person who, not being a member of the Customs and Excise Service as defined in the Dutiable Commodities Ordinance (Cap. 109), takes or assumes the name, designation or character of such member for the purpose of thereby obtaining admission into any house or other place, or of doing or procuring to be done any act which he would not be entitled to do or procure to be done of his own authority, or for any other unlawful purpose, shall in addition to any other punishment to which he may be liable for the offence, be liable on summary conviction to imprisonment for 3 months.

(34 of 1935 s. 2 incorporated)

[cf. 1890 c. 21 s. 12 U.K.]

91. Acknowledging recognizance, etc., in name of another

Any person who, without lawful authority or excuse, in the name of any other person, acknowledges any recognizance, bail, judgment, deed or other instrument, before any court, judge or other person lawfully authorized in that behalf, shall be guilty of an offence and shall be liable on conviction upon indictment to imprisonment for 7 years.

(34 of 1935 s. 5 incorporated)

[cf. 1861 c. 98 s. 34 U.K.]

92. Intent to defraud particular person not necessary

Where an intent to defraud is one of the constituent elements of an offence punishable under this Part, it shall not be necessary to prove an intent to defraud any particular person, but it shall be sufficient to prove that the accused did the act charged with intent to defraud.

(33 of 1935 s. 10; 34 of 1935 s. 6 incorporated)

[cf. 1861 c. 98 s. 44 U.K.]

93. Aiders and abettors

Any person who knowingly and wilfully aids, abets, counsels or procures the commission of an offence punishable under this Part shall be liable to be dealt with, indicted, tried and punished as a principal offender.

(33 of 1935 s. 11; 34 of 1935 s. 7 incorporated. Amended 50 of 1991 s. 4)

[cf. 1861 c. 98 s. 49 U.K.]

94. Fines and sureties for keeping the peace

- (1) Whenever any person is convicted of an offence under section 84, the court or magistrate, in addition to or in lieu of any of the punishments authorized by this Part, may fine the offender, and may require him to enter into his own recognizances, and to find sureties, both or either, for keeping the peace and being of good behaviour.
- (2) In all cases of any other offences other than an offence under section 90, the court or magistrate may require the offender to enter into his own recognizances, and to find sureties, both or either, for keeping the peace in addition to any of the punishments authorized by this Part.

- (3) No person shall be imprisoned under this section for more than 1 year for not finding sureties.

(33 of 1935 s. 12; 34 of 1935 s. 8 incorporated)

[cf. 1861 c. 98 s. 51 U.K.]

Part XI

Counterfeiting and Kindred Offences

(Part XI replaced 49 of 1992 s. 3)

(Format changes—E.R. 4 of 2017)

95. Interpretation

In this Part, unless the context otherwise requires—

customs officer (關員職系人員) has the meaning assigned to that term in section 2 of the Customs and Excise Service Ordinance (Cap. 342);

immigration officer (入境事務主任) has the meaning assigned to that term in section 2 of the Immigration Ordinance (Cap. 115);

Monetary Authority (金融管理專員) means the Monetary Authority appointed under section 5A of the Exchange Fund Ordinance (Cap. 66). *(Added 82 of 1992 s. 26)*

96. Meaning of **currency note** (流通紙幣) and **protected coin** (受保護硬幣)

In this Part, unless the context otherwise requires—

currency note (流通紙幣) means—

(a) a note which—

- (i) has been lawfully issued in Hong Kong;
- (ii) is or has been customarily used as money in Hong Kong; and
- (iii) is payable on demand; or

(b) a note which—

- (i) has been lawfully issued elsewhere than in Hong Kong; and
- (ii) is or has been customarily used as money in the country or territory where it was issued; (*Amended 80 of 1997 s. 80*)

protected coin (受保護硬幣) means any coin which is—

- (a) customarily used as money in any country or territory; or
- (b) designated as a protected coin by the Monetary Authority under section 107. (*Amended 82 of 1992 s. 27*)

97. Meaning of *counterfeit* (偽製品)

(1) For the purpose of this Part—

- (a) a thing is a counterfeit of a currency note or of a protected coin, if it is—
 - (i) not a currency note or protected coin but resembles a currency note or protected coin (whether on one side only or on both) to such an extent that it is reasonably capable of passing for a currency note or protected coin of that description; or
 - (ii) a currency note or protected coin which has been so altered that it is reasonably capable of passing for a currency note or protected coin of some other description;
- (b) a thing consisting of one side only of a currency note, with or without the addition of other material, is capable of being a counterfeit of such note;
- (c) a thing consisting of—
 - (i) parts of 2 or more currency notes; or

- (ii) parts of a currency note, or parts of 2 or more currency notes, with the addition of other material, is capable of being a counterfeit of a currency note.
- (2) References in this Part to passing or tendering a counterfeit of a currency note or of a protected coin are not to be construed as confined to passing or tendering it as legal tender.

98. Offences of counterfeiting notes and coins

- (1) A person who makes a counterfeit of a currency note or protected coin, intending that he or another shall pass or tender it as genuine, commits an offence and is liable on conviction on indictment to imprisonment for 14 years.
- (2) A person who makes a counterfeit of a currency note or protected coin, without lawful authority or excuse, commits an offence and is liable on conviction on indictment to imprisonment for 3 years.

99. Offences of passing, etc. counterfeit notes and coins

- (1) A person who—
 - (a) passes or tenders as genuine any thing which is, and which he knows or believes to be, a counterfeit of a currency note or of a protected coin; or
 - (b) delivers to another any thing which is, and which he knows or believes to be, such a counterfeit, intending that the person to whom it is delivered, or another, shall pass or tender it as genuine,commits an offence and is liable on conviction on indictment to imprisonment for 14 years.
- (2) A person who delivers to another, without lawful authority or excuse, any thing which is, and which he knows or believes to be, a counterfeit of a currency note or of a protected coin,

commits an offence and is liable on conviction on indictment to imprisonment for 3 years.

100. Offences involving the custody or control of counterfeit notes and coins

- (1) A person who has in his custody or under his control any thing which is, and which he knows or believes to be, a counterfeit of a currency note or of a protected coin, intending either to pass or tender it as genuine or to deliver it to another with the intention that he or another shall pass or tender it as genuine, commits an offence and is liable on conviction on indictment to imprisonment for 14 years.
- (2) A person who has in his custody or under his control, without lawful authority or excuse, any thing which is, and which he knows or believes to be, a counterfeit of a currency note or of a protected coin, commits an offence and is liable on conviction on indictment to imprisonment for 3 years.
- (3) For the purposes of this section it is immaterial that a coin or note is not in a fit state to be passed or tendered or that the making or counterfeiting of a coin or note has not been finished or perfected.

101. Offences involving the making or custody or control of counterfeiting materials and implements

- (1) A person who makes, or has in his custody or under his control, any thing which he intends to use or permit any other person to use for the purpose of making a counterfeit of a currency note or of a protected coin with the intention that it be passed or tendered as genuine, commits an offence and is liable on conviction on indictment to imprisonment for 14 years.
- (2) A person who, without lawful authority or excuse, makes, or has in his custody or under his control, any thing which, to

his knowledge, is or has been specially designed or adapted for the making of a counterfeit of a currency note, commits an offence and is liable on conviction on indictment to imprisonment for 3 years.

- (3) Subject to subsection (4), a person who makes, or has in his custody or under his control, any implement which, to his knowledge, is capable of imparting to any thing a resemblance to the whole or part—

- (a) of either side of a protected coin; or
- (b) of the reverse of the image on either side of a protected coin,

commits an offence and is liable on conviction on indictment to imprisonment for 3 years.

- (4) It shall be a defence for a person charged under subsection (3) to show that he—

- (a) made the implement or, as the case may be, had it in his custody or under his control, with the consent in writing of the Monetary Authority; or (*Amended 82 of 1992 s. 28*)
- (b) had some other lawful authority, or a lawful excuse, for making it or having it in his custody or under his control.

102. Criminal possession

Where under this Part it is an offence for any person to have in his custody or under his control anything which is, and which he knows or believes to be, a counterfeit of a currency note or of a protected coin, a person shall be deemed to have such thing in his custody or under his control, notwithstanding that it is not in his personal custody or possession, if he knowingly and wilfully has it in the actual custody or possession of some other person, or in any building, lodging, apartment, field or other place, whether open

or enclosed, whether occupied by himself or not, and whether the instrument or thing is in such custody, possession or place for the use of such person or for the use or benefit of another person.

103. The offence of reproducing Hong Kong currency notes

- (1) A person who, without the consent in writing of the Monetary Authority, reproduces on any substance whatsoever, and whether or not to the correct scale, any Hong Kong currency note or any part of a Hong Kong currency note, commits an offence and is liable on summary conviction to imprisonment for 6 months and a fine of \$20,000. (*Amended 82 of 1992 s. 29*)
- (2) In this section, ***Hong Kong currency note*** (香港流通紙幣) means a currency note of the kind described in paragraph (a) of the definition of ***currency note*** in section 96.

104. Offences of making, etc. imitation Hong Kong coins

- (1) A person who, in connection with a scheme intended to promote the sale of any product or with the making of contracts for the supply of any service, and without the previous consent in writing of the Monetary Authority to the sale or distribution of imitation Hong Kong coins in connection with that scheme— (*Amended 82 of 1992 s. 30*)
 - (a) makes an imitation Hong Kong coin;
 - (b) sells or distributes any imitation Hong Kong coin; or
 - (c) has in his custody or under his control any imitation Hong Kong coin with a view to selling or distributing it,commits an offence and is liable on summary conviction to imprisonment for 6 months and a fine of \$20,000.
- (2) In this section—

Hong Kong coin (香港硬幣) means any coin which is legal tender in Hong Kong;

imitation Hong Kong coin (香港硬幣的仿製品) means anything which resembles a Hong Kong coin in shape, size and the substance of which it is made.

105. Prohibition of importation and exportation of counterfeit notes and coins

A person who without the consent in writing of the Monetary Authority— (*Amended 82 of 1992 s. 31*)

- (a) imports, lands or unloads a counterfeit of any currency note or protected coin; or
- (b) exports a counterfeit of any currency note or protected coin,

commits an offence and is liable on conviction on indictment to imprisonment for 10 years.

106. Powers of search, forfeiture, etc.

- (1) If it appears to a magistrate, from information given him on oath, that there is reasonable cause to believe that a person has in his custody or under his control any thing which—
 - (a) is a counterfeit of a currency note or protected coin;
 - (b) is a reproduction made in contravention of section 103 or 104; or
 - (c) he or another has used after the commencement of the Crimes (Amendment) Ordinance 1992 (49 of 1992) or intends to use, for the making of any such counterfeit or of any such reproduction,

the magistrate may issue a warrant authorizing a police officer, customs officer or immigration officer to search

for and seize that thing, and for that purpose to enter any premises specified in the warrant.

- (2) A police officer, customs officer or immigration officer, at any time after seizing an object suspected of being a thing to which subsection (1) applies (whether or not the seizure was effected by virtue of a warrant under that subsection) may apply to a magistrate for an order under this subsection with respect to that object and the magistrate, if satisfied that—
- (a) the object is a thing to which subsection (1) applies; and
 - (b) it is in the public interest to do so,
- may, subject to subsection (4), make such order as he thinks fit for the forfeiture of the thing and its subsequent destruction or disposal.
- (3) Subject to subsection (4), the court by or before which a person is convicted of an offence under this Part may order any object which it is satisfied relates to the commission of the offence to be forfeited and either destroyed or dealt with in such other manner as the court may direct.
- (4) If any person claiming to be the owner of or otherwise interested in any object liable to be forfeited under subsection (2) or (3) applies to be heard by a court or magistrate, as the case may be, the court or magistrate shall not order the object to be forfeited unless an opportunity has been given to that person to show cause why the order should not be made.

Editorial Note:

See also 49 of 1992 s. 4.

107. Designation of protected coins

The Monetary Authority may by order designate any coin, whether or not customarily used as money in any country or territory, as a

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protected coin for the purpose of this Part.

(Amended 82 of 1992 s. 32)

108-116. *(Repealed 49 of 1992 s. 3)*

Part XII

Sexual and Related Offences

(Format changes—E.R. 2 of 2012)

Interpretation

117. Interpretation

(1) In this Part, unless the context otherwise requires—

closure order (封閉令) means an order made under section 153A(2); *(Added 69 of 1990 s. 2)*

forfeiture order (沒收令) means an order made under section 153F(4); *(Added 69 of 1990 s. 2)*

mentally incapacitated person (精神上無行為能力的人) means a mentally disordered person or a mentally handicapped person (within the meaning of the Mental Health Ordinance (Cap. 136)) whose mental disorder or mental handicap, as the case may be, is of such a nature or degree that that person is incapable of living an independent life or guarding himself against serious exploitation, or will be so incapable when of an age to do so; *(Added 81 of 1997 s. 59)*

owner (擁有人) in relation to any premises means any person holding the premises direct from the Government, whether under lease, licence or otherwise, any mortgagee in possession and any person receiving the rent of the premises, solely or with another and on his behalf or that of any person, or who would receive the same if such premises were let to a tenant, and, where such owner as above defined cannot be found or ascertained, or is absent from Hong Kong or is under disability, also includes the agent of such owner; *(Amended 29 of 1998 s. 105)*

prostitute (娼妓) means a prostitute of either sex; (*Added 90 of 1991 s. 2*)

public place (公眾地方) means—

- (a) any place to which for the time being the public or a section of the public are entitled or permitted to have access, whether on payment or otherwise; and
- (b) a common part of any premises notwithstanding that the public or a section of the public are not entitled or permitted to have access to that common part or those premises; (*Added 90 of 1991 s. 2*)

rape offence (強姦罪行) means any of the following, namely, rape, attempted rape, aiding, abetting, counselling or procuring rape or attempted rape, and incitement to rape; (*Added 25 of 1978 s. 2*) [*cf. 1976 c. 82 s. 7(2) U.K.*]

specified sexual offence (指明性罪行) means any of the following, namely, rape, non-consensual buggery, indecent assault, an attempt to commit any of those offences, aiding, abetting, counselling or procuring the commission or attempted commission of any of those offences, and incitement to commit any of those offences; (*Added 90 of 1991 s. 2*)

suspension order (暫停執行令) means an order made under section 153I(4). (*Added 69 of 1990 s. 2*)

- (1A) For the purposes of this Part a person does an unlawful sexual act if, and only if, that person—
- (a) has unlawful sexual intercourse;
 - (b) commits buggery or an act of gross indecency with a person of the opposite sex with whom that person may not have lawful sexual intercourse; or
 - (c) commits buggery or an act of gross indecency with a person of the same sex. (*Added 90 of 1991 s. 2*)

- (1B) For the avoidance of doubt, it is declared that for the purposes of sections 118, 119, 120 and 121 and without affecting the generality of any other provisions of this Part, ***unlawful sexual intercourse*** (非法性交、非法的性交) does not exclude sexual intercourse that a man has with his wife. (*Added 23 of 2002 s. 11*)
- (2) The use in any provision of this Part of the word “man” without the addition of the word “boy”, or vice versa, shall not prevent the provision applying to any person to whom it would have applied if both words had been used, and similarly with the words “woman” and “girl”.
- (3) Premises, vessel or any place shall not be treated as a vice establishment for the purposes of this Part unless—
- (a) the premises, vessel or place are or is used wholly or mainly by 2 or more persons for the purposes of prostitution; or (*Amended 90 of 1991 s. 2*)
 - (b) the premises, vessel or place are or is used wholly or mainly for or in connexion with the organizing or arranging of prostitution.
- (*Added 1 of 1978 s. 6. Amended 81 of 1997 s. 59*)
[*cf. 1956 c. 69 s. 45 U.K.*]

Sexual offences

118. Rape

- (1) A man who rapes a woman shall be guilty of an offence and shall be liable on conviction on indictment to imprisonment for life. [*cf. 1956 c. 69 s. 1 U.K.*]
- (2) A man who induces a married woman to have sexual intercourse with him by impersonating her husband commits rape.

- (3) A man commits rape if—
- (a) he has unlawful sexual intercourse with a woman who at the time of the intercourse does not consent to it; and
 - (b) at that time he knows that she does not consent to the intercourse or he is reckless as to whether she consents to it. *(Added 25 of 1978 s. 3) [cf. 1976 c. 82 s. 1(1) U.K.]*
- (4) It is hereby declared that if at a trial for a rape offence the jury has to consider whether a man believed that a woman was consenting to sexual intercourse, the presence or absence of reasonable grounds for such a belief is a matter to which the jury is to have regard, in conjunction with any other relevant matters, in considering whether he so believed. *(Added 25 of 1978 s. 3) [cf. 1976 c. 82 s. 1(2) U.K.]*
- (5) In relation to such a trial as is mentioned in subsection (4) which is a trial in the District Court or a summary trial before a magistrate or in a juvenile court, references to the jury in that subsection shall be construed as references to the District Court, the magistrate or the juvenile court, as the case may be. *(Added 25 of 1978 s. 3) [cf. 1976 c. 82 s. 7(3) U.K.]*
- (Added 1 of 1978 s. 6)*

118A. Non-consensual buggery

A person who commits buggery with another person who at the time of the buggery does not consent to it shall be guilty of an offence and shall be liable on conviction on indictment to imprisonment for life.

(Added 90 of 1991 s. 3)

118B. Assault with intent to commit buggery

A person who assaults another person with intent to commit buggery shall be guilty of an offence and shall be liable on conviction on indictment to imprisonment for 10 years.

(Added 90 of 1991 s. 3)

118C. Homosexual buggery with or by man under 16

(Amended 18 of 2014 s. 3)

A man who—

- (a) commits buggery with a man under the age of 16; or
- (b) being under the age of 16 commits buggery with another man,

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

(Added 90 of 1991 s. 3. Amended 18 of 2014 s. 3)

118D. Buggery with girl under 21

A man who commits buggery with a girl under the age of 21 shall be guilty of an offence and shall be liable on conviction on indictment to imprisonment for life.

(Added 90 of 1991 s. 3)

118E. Buggery with mentally incapacitated person

- (1) Subject to subsections (2) and (3), a man who commits buggery with a mentally incapacitated person shall be guilty of an offence and shall be liable on conviction on indictment to imprisonment for 10 years.
- (2) A man who commits buggery with another person is not guilty of an offence under this section if he does not know and has no reason to suspect the other to be a mentally incapacitated person.
- (3) A man who commits buggery with a woman is not guilty of an offence under this section if he is, or believes on reasonable grounds that he is, married to that woman.

(Added 90 of 1991 s. 3. Amended 81 of 1997 s. 59)

118F. *(Repealed 18 of 2014 s. 4)*

118G. Procuring others to commit homosexual buggery

A person who procures a man to commit an act of buggery with a third person, who is another man, shall be guilty of an offence and shall be liable on conviction on indictment to imprisonment for 2 years.

(Added 90 of 1991 s. 3)

118H. Gross indecency with or by man under 16

(Amended 18 of 2014 s. 5)

A man who—

- (a) commits an act of gross indecency with a man under the age of 16; or
- (b) being under the age of 16 commits an act of gross indecency with another man,

shall be guilty of an offence and shall be liable on conviction on indictment to imprisonment for 2 years.

(Added 90 of 1991 s. 3. Amended 18 of 2014 s. 5)

118I. Gross indecency by man with male mentally incapacitated person

- (1) Subject to subsection (2), a man who commits an act of gross indecency with another man who is a mentally incapacitated person shall be guilty of an offence and shall be liable on conviction on indictment to imprisonment for 2 years.
- (2) A man who commits an act of gross indecency with another man is not guilty of an offence under this section if he does not know and has no reason to suspect the other to be a mentally incapacitated person.

(Added 90 of 1991 s. 3. Amended 81 of 1997 s. 59)

118J. Gross indecency by man with man otherwise than in private

- (1) A man who commits an act of gross indecency with another man otherwise than in private shall be guilty of an offence and shall be liable on conviction on indictment to imprisonment for 2 years.
- (2) An act which would otherwise be treated for the purposes of this section as being done in private shall not be so treated if done—
 - (a) *(Repealed 18 of 2014 s. 6)*
 - (b) in a lavatory or bathhouse to which the public have or are permitted to have access, whether on payment or otherwise.
- (3) In this section, ***bathhouse*** (浴室) means any premises or part of any premises maintained for the use of persons requiring a sauna, shower-bath, Turkish bath or other type of bath.

(Added 90 of 1991 s. 3)

118K. Procuring gross indecency by man with man

A person who procures a man to commit an act of gross indecency with a third person, who is another man, shall be guilty of an offence and shall be liable on conviction on indictment to imprisonment for 2 years.

(Added 90 of 1991 s. 3)

118L. Bestiality

A person who commits buggery with an animal shall be guilty of the crime of bestiality and shall be liable on conviction on indictment to a fine of \$50,000 and to imprisonment for 10 years.

(Added 90 of 1991 s. 3)

118M. Abolition of buggery at common law

The offence of buggery at common law is abolished.

(Added 90 of 1991 s. 3)

118N. Past offences of buggery and gross indecency by males

- (1) No person shall be prosecuted for an offence—
 - (a) of buggery; or
 - (b) under the former section 51 of the Offences against the Person Ordinance (Cap. 212) (offences relating to gross indecency by male with male),
committed before the commencement of the Crimes (Amendment) Ordinance 1991 (90 of 1991) except in respect of an act that would have been an offence had the Crimes (Amendment) Ordinance 1991 (90 of 1991) been in operation at the time of the act.
- (2) In this section, a reference to a former section is a reference to a section repealed by the Crimes (Amendment) Ordinance 1991 (90 of 1991).
- (3) In this section, *an offence* (罪、罪行) includes attempting, inciting and conspiring to commit an offence, and aiding, abetting, counselling and procuring the commission or attempted commission of an offence.

(Added 90 of 1991 s. 3)

118O. Abolition of presumption that boy under 14 incapable of sexual intercourse etc.

- (1) The presumption of law that a boy under the age of 14 is

incapable of sexual intercourse, buggery or bestiality is abolished.

- (2) Subsection (1) does not apply in relation to any act done before the commencement date of this section.
- (3) For the purposes of subsection (2), if an act is alleged to have been done between 2 dates, one before and one after the commencement date of this section, the act is alleged to have been done before that commencement date.

(Added 26 of 2012 s. 12)

119. Procurement by threats

- (1) A person who procures another person, by threats or intimidation, to do an unlawful sexual act in Hong Kong or elsewhere shall be guilty of an offence and shall be liable on conviction on indictment to imprisonment for 14 years.
(Amended 90 of 1991 s. 4)
- (2) *(Repealed 43 of 2000 s. 3)*

(Added 1 of 1978 s. 6)

[cf. 1956 c. 69 s. 2 U.K.]

120. Procurement by false pretences

- (1) A person who procures another person, by false pretences or false representations, to do an unlawful sexual act in Hong Kong or elsewhere shall be guilty of an offence and shall be liable on conviction on indictment to imprisonment for 5 years. *(Amended 90 of 1991 s. 5)*
- (2) For the purposes of subsection (1), ***pretence*** (藉口) or ***representation*** (申述) includes a pretence or representation relating to the past, the present or the future and any pretence or representation as to the intention of the person using the pretence or representation or any other person.

(3) *(Repealed 43 of 2000 s. 3)*

(Added 1 of 1978 s. 6)

[cf. 1956 c. 69 s. 3 U.K.]

121. Administering drugs to obtain or facilitate unlawful sexual act

(1) A person who applies or administers to, or causes to be taken by, another person any drug, matter or thing with intent to stupefy or overpower that other person so as thereby to enable anyone to do an unlawful sexual act with that other person shall be guilty of an offence and shall be liable on conviction on indictment to imprisonment for 14 years. *(Amended 90 of 1991 s. 6)*

(2) *(Repealed 43 of 2000 s. 3)*

(Added 1 of 1978 s. 6)

[cf. 1956 c. 69 s. 4 U.K.]

122. Indecent assault

- (1) Subject to subsection (3), a person who indecently assaults another person shall be guilty of an offence and shall be liable on conviction on indictment to imprisonment for 10 years.
- (2) A person under the age of 16 cannot in law give any consent which would prevent an act being an assault for the purposes of this section.
- (3) A person is not, by virtue of subsection (2), guilty of indecently assaulting another person, if that person is, or believes on reasonable grounds that he or she is, married to that other person. *(Replaced 90 of 1991 s. 7)*
- (4) A woman who is a mentally incapacitated person cannot in law give any consent which would prevent an act being an assault for the purposes of this section, but a person is only to be treated as guilty of indecently assaulting a mentally

incapacitated person by reason of that incapacity to consent, if that person knew or had reason to suspect her to be a mentally incapacitated person. (*Amended 81 of 1997 s. 59*)

(Added 1 of 1978 s. 6. Amended 90 of 1991 s. 7)

[cf. 1956 c. 69 s. 14 U.K.]

123. Intercourse with girl under 13

A man who has unlawful sexual intercourse with a girl under the age of 13 shall be guilty of an offence and shall be liable on conviction on indictment to imprisonment for life.

(Added 1 of 1978 s. 6)

[cf. 1956 c. 69 s. 5 U.K.]

124. Intercourse with girl under 16

- (1) Subject to subsection (2), a man who has unlawful sexual intercourse with a girl under the age of 16 shall be guilty of an offence and shall be liable on conviction on indictment to imprisonment for 5 years.
- (2) Where a marriage is invalid under section 27(2) of the Marriage Ordinance (Cap. 181) by reason of the wife being under the age of 16, the invalidity shall not make the husband guilty of an offence under this section because he has sexual intercourse with her, if he believes her to be his wife and has reasonable cause for the belief.

(Added 1 of 1978 s. 6)

[cf. 1956 c. 69 s. 6 U.K.]

125. Intercourse with mentally incapacitated person

- (1) Subject to subsection (2), a man who has unlawful sexual intercourse with a woman who is a mentally incapacitated person shall be guilty of an offence and shall be liable on

conviction on indictment to imprisonment for 10 years.
(*Amended 68 of 1995 s. 49*)

- (2) A man is not guilty of an offence under this section because he has unlawful sexual intercourse with a woman if he does not know and has no reason to suspect her to be a mentally incapacitated person.

(*Added 1 of 1978 s. 6. Amended 31 of 1997 s. 4; 81 of 1997 s. 59*)

[*cf. 1956 c. 69 s. 7 U.K.*]

126. Abduction of unmarried girl under 16

- (1) A person who, without lawful authority or excuse, takes an unmarried girl under the age of 16 out of the possession of her parent or guardian against the will of the parent or guardian shall be guilty of an offence and shall be liable on conviction on indictment to imprisonment for 10 years.
- (2) In subsection (1), **guardian** (監護人) means any person having the lawful care or charge of the girl.

(*Added 1 of 1978 s. 6. Amended 31 of 1997 s. 5*)

[*cf. 1956 c. 69 s. 20 U.K.*]

127. Abduction of unmarried girl under 18 for sexual intercourse

- (1) A person who takes an unmarried girl under the age of 18 out of the possession of her parent or guardian against the will of the parent or guardian with the intention that she shall have unlawful sexual intercourse with men or with a particular man shall be guilty of an offence and shall be liable on conviction on indictment to imprisonment for 7 years.
- (2) In subsection (1), **guardian** (監護人) means any person having the lawful care or charge of the girl.

(*Added 1 of 1978 s. 6*)

[*cf. 1956 c. 69 s. 19 U.K.*]

128. Abduction of mentally incapacitated person from parent or guardian for sexual act

- (1) Subject to subsection (2), a person who takes a mentally incapacitated person out of the possession of her or his parent or guardian against the will of the parent or guardian with the intention that the mentally incapacitated person shall do an unlawful sexual act shall be guilty of an offence and shall be liable on conviction on indictment to imprisonment for 10 years. (*Amended 31 of 1997 s. 6*)
- (2) A person who takes another out of the possession of a parent or guardian is not guilty of an offence under this section if that person does not know and has no reason to suspect the other to be a mentally incapacitated person.
- (3) In this section, **guardian** (監護人) means any person having the lawful care or charge of the mentally incapacitated person.

(Replaced 90 of 1991 s. 8. Amended 81 of 1997 s. 59)

[cf. 1956 c. 69 s. 21 U.K.]

Exploitation of other persons for sexual purposes**129. Trafficking in persons to or from Hong Kong**

- (1) A person who takes part in bringing another person into, or taking another person out of, Hong Kong for the purpose of prostitution shall be guilty of an offence and shall be liable on conviction on indictment to imprisonment for 10 years.
- (2) It shall not be a defence to a charge under this section to prove that the other person consented to being brought into or taken out of Hong Kong whether or not she or he knew it was for the purpose of prostitution or that she or he received any advantage therefor.

(Added 1 of 1978 s. 6. Amended 90 of 1991 s. 9; 31 of 1997 s. 7)

130. Control over persons for purpose of unlawful sexual intercourse or prostitution

(1) A person who—

- (a) harbours another person or exercises control or direction over another person with the intention that that person shall do unlawful sexual acts with others; or
- (b) harbours another person or exercises control, direction or influence over another person for the purpose of or with a view to that person's prostitution,

shall be guilty of an offence and shall be liable on conviction on indictment to imprisonment for 14 years. (*Replaced 90 of 1991 s. 10*)

(2) (*Repealed 43 of 2000 s. 3*)

(*Added 1 of 1978 s. 6*)

131. Causing prostitution

(1) A person who—

- (a) procures another person to become, in Hong Kong or elsewhere, a prostitute; or
- (b) procures another person to leave Hong Kong, intending that other person to become, elsewhere, an inmate of or frequent any premises, vessel or place kept as a vice establishment; or
- (c) procures another person to leave her or his usual place of abode in Hong Kong, intending that other person to become an inmate of or frequent any premises, vessel or place kept as a vice establishment, in Hong Kong or elsewhere, for the purpose of prostitution,

shall be guilty of an offence and shall be liable on conviction on indictment to imprisonment for 10 years.

(2) *(Repealed 43 of 2000 s. 3)*

(Added 1 of 1978 s. 6. Amended 90 of 1991 s. 11; 31 of 1997 s. 8)
[cf. 1956 c. 69 s. 22 U.K.]

132. Procurement of girl under 21

(1) A person who procures a girl under the age of 21 to have unlawful sexual intercourse in Hong Kong or elsewhere with a third person shall be guilty of an offence and shall be liable on conviction on indictment to imprisonment for 5 years.

(2) *(Repealed 43 of 2000 s. 3)*

(Added 1 of 1978 s. 6)
[cf. 1956 c. 69 s. 23 U.K.]

133. Procurement of mentally incapacitated person

(1) Subject to subsection (2), a person who procures a woman who is a mentally incapacitated person to have unlawful sexual intercourse in Hong Kong or elsewhere with a third person shall be guilty of an offence and shall be liable on conviction on indictment to imprisonment for 10 years.
(Amended 31 of 1997 s. 9)

(2) A person shall not be guilty of an offence under this section because he procures a mentally incapacitated person to have unlawful sexual intercourse, if he does not know and has no reason to suspect her to be a mentally incapacitated person.

(3) *(Repealed 43 of 2000 s. 3)*

(Added 1 of 1978 s. 6. Amended 81 of 1997 s. 59)
[cf. 1956 c. 69 s. 9 U.K.]

134. Detention for intercourse or in vice establishment

(1) A person who in any manner or by any means detains another person against her or his will—

- (a) with the intention that the other person shall do an unlawful sexual act; or (*Replaced 90 of 1991 s. 12*)
 - (b) on any premises or vessel, or in any place, kept as a vice establishment,
- shall be guilty of an offence and shall be liable on conviction on indictment to imprisonment for 14 years.
- (2) Where a person is on any premises or vessel for the purpose of doing an unlawful sexual act or is on any premises or vessel, or in any place, kept as a vice establishment, another person shall be deemed for the purposes of subsection (1) to detain that person there if, with the intention of compelling or inducing that person to remain there, the other person—
 - (a) withholds from that person any of that person's clothes or other property; or
 - (b) threatens that person with legal proceedings in the event of that person taking away clothes provided for that person by the other person or on the other person's directions. (*Replaced 90 of 1991 s. 12*)
- (3) A person shall not be liable to any legal proceedings, whether civil or criminal, for taking away or being found in possession of any clothes she or he needed to enable her or him to leave premises or a vessel on which she or he was being detained for the purpose of doing an unlawful sexual act or to leave any premises, vessel or place kept as a vice establishment.

(Added 1 of 1978 s. 6. Amended 90 of 1991 s. 12)

[cf. 1956 c. 69 s. 24 U.K.]

135. Causing or encouraging prostitution of, intercourse with, or indecent assault on, girl or boy under 16

- (1) A person who causes or encourages the prostitution of or an unlawful sexual act with a girl or boy under the age of

16 for whom that person is responsible shall be guilty of an offence and shall be liable on conviction on indictment to imprisonment for 10 years. (*Replaced 90 of 1991 s. 13. Amended 31 of 1997 s. 10*)

- (2) Where a girl or boy is a prostitute or has done an unlawful sexual act, a person shall be deemed for the purposes of this section to have caused or encouraged the same if that person knowingly allowed the girl or boy to consort with, or to enter or continue in the employment of, any prostitute or person of known immoral character. (*Replaced 90 of 1991 s. 13*)
- (3) Subject to subsection (4), the persons who for the purposes of this section are to be treated as responsible for a girl or boy are—
- (a) any person who is her or his parent or legal guardian;
 - (b) any person who has actual possession or control of her or him, or to whose charge she or he has been committed by her or his parent or legal guardian or by a person having the custody of her or him; and
 - (c) any other person who has the custody, charge or care of her or him.
- (4) In subsection (3), **parent** (父母) does not include, in relation to any girl or boy, a person deprived of her or his custody by order of a court of competent jurisdiction but, subject to that, in the case of a girl or boy who has been adopted under the Adoption Ordinance (Cap. 290) means her or his adopters and in the case of a girl or boy who is illegitimate, and has not been so adopted, means her or his mother and any person who has been adjudged to be her or his putative father.

(*Added 1 of 1978 s. 6. Amended 90 of 1991 s. 13*)

[*cf. 1956 c. 69 s. 28 U.K.*]

136. Causing or encouraging prostitution of mentally incapacitated person

- (1) Subject to subsection (2), a person who causes or encourages the prostitution in Hong Kong or elsewhere of a mentally incapacitated person shall be guilty of an offence and shall be liable on conviction on indictment to imprisonment for 10 years. (*Amended 90 of 1991 s. 14*)
- (2) A person who causes or encourages the prostitution of another is not guilty of an offence under this section if that person does not know and has no reason to suspect the other to be a mentally incapacitated person. (*Replaced 90 of 1991 s. 14*)

(Added 1 of 1978 s. 6. Amended 81 of 1997 s. 59)

[cf. 1956 c. 69 s. 29 U.K.]

137. Living on earnings of prostitution of others

- (1) A person who knowingly lives wholly or in part on the earnings of prostitution of another shall be guilty of an offence and shall be liable on conviction on indictment to imprisonment for 10 years.
- (2) For the purposes of subsection (1), a person who lives with or is habitually in the company of a prostitute, or who exercises control, direction or influence over another person's movements in a way which shows he or she is aiding, abetting or compelling that other person's prostitution with others, shall be presumed to be knowingly living on the earnings of prostitution, unless he or she proves the contrary.

(Added 1 of 1978 s. 6. Amended 90 of 1991 s. 15; 31 of 1997 s. 11)

[cf. 1956 c. 69 s. 30 U.K.]

138. (*Repealed 90 of 1991 s. 16*)

138A. Use, procurement or offer of persons under 18 for making pornography or for live pornographic performances

- (1) Any person who uses, procures or offers another person who is under the age of 18 for making pornography, or for a live pornographic performance, in which that other person is or is to be pornographically depicted, commits an offence and is liable on conviction on indictment—
 - (a) if the offence is committed in relation to a person under the age of 16, to a fine of \$3,000,000 and to imprisonment for 10 years;
 - (b) if the offence is committed in relation to a person of the age of 16 or above but under 18, to a fine of \$1,000,000 and to imprisonment for 5 years.
- (2) It is a defence to a charge of using or procuring a person of the age of 16 or above but under 18 for making pornography for the defendant to establish that—
 - (a) at the time of the alleged offence, the person pornographically depicted for making pornography consented to being so depicted; and
 - (b) the pornography so made is solely for the personal use of the defendant and the person depicted.
- (3) It is a defence to a charge of using or procuring a person of the age of 16 or above but under 18 for a live pornographic performance for the defendant to establish that—
 - (a) at the time of the alleged offence, the person pornographically depicted for the performance consented to being so depicted; and
 - (b) the audience of the performance consisted of the defendant only.

(4) For the purposes of this section, to depict a person pornographically means—

- (a) to visually depict a person as being engaged in explicit sexual conduct, whether or not the person is in fact engaged in such conduct; or
- (b) to visually depict, in a sexual manner or context, the genitals or anal region of a person or, in the case of a female person, her breast,

but, for the avoidance of doubt, a depiction for a genuine family purpose does not, merely because it depicts any part of the body referred to in paragraph (b), fall within that paragraph.

(5) In this section—

live pornographic performance (真人色情表演) includes any play, show, exhibition, act, entertainment, presentation, display or other performance of any kind in which a person is pornographically depicted;

pornography (色情物品) means—

- (a) a photograph, film, computer-generated image or other visual depiction that depicts a person pornographically, whether it is made or generated by electronic or any other means and whether or not it has been modified; or
- (b) anything that incorporates a photograph, film, image or depiction referred to in paragraph (a),

and includes data stored in a form that is capable of conversion into a photograph, film, image or depiction referred to in paragraph (a) and anything containing such data.

(Added 31 of 2003 s. 14)

139. Keeping a vice establishment

- (1) A person who on any occasion— (*Amended 69 of 1990 s. 3*)
- (a) keeps any premises, vessel or place as a vice establishment; or
 - (b) manages or assists in the management, or is otherwise in charge or control, of any premises, vessel or place kept as a vice establishment,
- shall be guilty of an offence and shall be liable—
- (i) on summary conviction to imprisonment for 3 years; or
 - (ii) on conviction on indictment to imprisonment for 10 years.
- (2) Where—
- (a) a charge under this section is preferred against a person or is withdrawn; or
 - (b) a person is acquitted or convicted of, or successfully appeals against a conviction for, an offence under this section,

section 145A applies. (*Added 69 of 1990 s. 3*)

(*Added 1 of 1978 s. 6. Amended 31 of 1997 s. 12*)

[*cf. 1956 c. 69 s. 33 U.K.*]

Use of premises, etc. for illicit sexual purposes**140. Permitting girl or boy under 13 to resort to or be on premises or vessel for intercourse**

An owner or occupier of any premises or vessel, and any person who manages or assists in the management or control of any premises or vessel, who induces or knowingly suffers a girl or boy

under the age of 13 to resort to or be on such premises or vessel for the purpose of doing an unlawful sexual act or for the purpose of prostitution shall be guilty of an offence and shall be liable on conviction on indictment to imprisonment for life.

(Added 1 of 1978 s. 6. Amended 90 of 1991 s. 17)

[cf. 1956 c. 69 s. 25 U.K.]

141. Permitting young person to resort to or be on premises or vessel for intercourse, prostitution, buggery or homosexual act

An owner or occupier of any premises or vessel, and any person who manages or assists in the management or control of any premises or vessel, who induces or knowingly suffers—

- (a) a girl under the age of 16 to resort to or be on such premises or vessel for the purpose of having unlawful sexual intercourse with a man or for the purpose of prostitution;
- (b) a girl or boy under the age of 21 to resort to or be on such premises or vessel for the purpose of committing buggery with a man; or
- (c) a boy under the age of 21 to resort to or be on such premises or vessel for the purpose of committing an act of gross indecency with a man,

shall be guilty of an offence and shall be liable on conviction on indictment to imprisonment for 14 years.

(Replaced 90 of 1991 s. 18)

142. Permitting mentally incapacitated person to resort to or be on premises or vessel for intercourse, prostitution or homosexual act

- (1) Subject to subsection (2), an owner or occupier of any premises or vessel, and any person who manages or assists

in the management or control of any premises or vessel, who induces or knowingly suffers—

- (a) a woman who is a mentally incapacitated person to resort to or be on such premises or vessel for the purpose of having unlawful sexual intercourse with a man or for the purpose of prostitution; or
- (b) a man who is a mentally incapacitated person to resort to or be on such premises or vessel for the purpose of committing buggery with a man or an act of gross indecency with a man,

shall be guilty of an offence and shall be liable on conviction on indictment to imprisonment for 10 years.

- (2) A person who induces or knowingly suffers another to resort to or be on any premises or vessel is not guilty of an offence under this section if that person does not know and has no reason to suspect the other to be a mentally incapacitated person.

(Replaced 90 of 1991 s. 19. Amended 81 of 1997 s. 59)

143. Letting premises for use as a vice establishment

- (1) A person who, being the owner or tenant of any premises or his agent— *(Amended 69 of 1990 s. 3)*
 - (a) lets the whole or part of the premises with the knowledge that it is to be kept, in whole or in part, as a vice establishment; or
 - (b) where the whole or part of the premises is used as a vice establishment, is wilfully a party to that use continuing,shall be guilty of an offence and shall be liable on conviction on indictment to imprisonment for 7 years.
- (2) Where—

- (a) a charge under this section is preferred against a person or is withdrawn; or
- (b) a person is acquitted or convicted of, or successfully appeals against a conviction for, an offence under this section,

section 145A applies. (*Added 69 of 1990 s. 3*)

(*Added 1 of 1978 s. 6. Amended 31 of 1997 s. 13*)

[*cf. 1956 c. 69 s. 34 U.K.*]

144. Tenant etc. permitting premises or vessel to be kept as a vice establishment

- (1) A person who— (*Amended 69 of 1990 s. 3*)

- (a) being the tenant or occupier, or person in charge, of any premises permits or suffers the whole or part of the premises to be kept as a vice establishment; or
- (b) being the owner, or the master or other person in charge, of any vessel permits or suffers the whole or part of the vessel to be kept as a vice establishment,

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

- (2) Where—

- (a) a charge under this section is preferred against a person or is withdrawn; or
- (b) a person is acquitted or convicted of, or successfully appeals against a conviction for, an offence under this section,

section 145A applies. (*Added 69 of 1990 s. 3*)

(*Added 1 of 1978 s. 6. Amended 31 of 1997 s. 14*)

[*cf. 1956 c. 69 s. 35(1) U.K.*]

145. Tenant etc. permitting premises or vessel to be used for prostitution

- (1) A person who— (*Amended 69 of 1990 s. 3*)
- (a) being the tenant or occupier, or person in charge, of any premises permits or suffers the whole or part of the premises to be used for the purposes of habitual prostitution; or
 - (b) being the owner, or the master or other person in charge, of any vessel permits or suffers the whole or part of the vessel to be used for the purpose of habitual prostitution,
- shall be guilty of an offence and shall be liable on conviction on indictment to imprisonment for 7 years.
- (2) Where—
- (a) a charge under this section is preferred against a person or is withdrawn; or
 - (b) a person is acquitted or convicted of, or successfully appeals against a conviction for, an offence under this section,

section 145A applies. (*Added 69 of 1990 s. 3*)

(*Added 1 of 1978 s. 6. Amended 31 of 1997 s. 15*)

[*cf. 1956 c. 69 s. 36 U.K.*]

145A. Notification of charge, conviction etc.

- (1) Where a charge under section 139, 143, 144 or 145 is preferred against a person or is withdrawn, the Commissioner of Police shall as soon as reasonably practicable send to the appropriate person a notice in writing stating that fact and the date on which it occurred and setting out the specified information.

(2) Where a person is acquitted or convicted by a court or magistrate of, or successfully appeals against a conviction for, an offence under section 139, 143, 144 or 145, the court or magistrate or the appellate court (as the case may be) shall as soon as reasonably practicable send a notice in writing to the appropriate person stating that fact and the date on which it occurred and setting out the specified information.

(3) In this section—

appropriate person (適當的人) means—

- (a) in the case of an offence alleged or proved to have been committed in relation to any premises or place other than a vessel, the Land Registrar; and (*Amended 8 of 1993 s. 3*)
- (b) in the case of an offence alleged or proved to have been committed in relation to a vessel, the Director of Marine;

specified information (指明的資料) means the address of the premises or place, or the identity of the vessel, in relation to which the offence is or was alleged or proved to have been committed and, where the alleged offence or the offence related to part of any premises, place or vessel, the location of that part.

(*Added 69 of 1990 s. 4*)

Miscellaneous offences and provisions

146. Indecent conduct towards child under 16

- (1) Subject to subsection (3), a person who commits an act of gross indecency with or towards a child under the age of 16, or who incites a child under the age of 16 to commit such an act with or towards him or her or another, shall be guilty of an offence and shall be liable on conviction on indictment to

imprisonment for 10 years. (*Amended 90 of 1991 s. 20; 31 of 1997 s. 16*)

- (2) It shall not be a defence to a charge under this section to prove that the child consented to the act of gross indecency.
- (3) A person who commits an act of gross indecency with or towards a child or who incites a child to commit such an act with or towards him or her is not guilty of an offence under this section if that person is, or believes on reasonable grounds that he or she is, married to the child. (*Added 90 of 1991 s. 20*)

(*Added 1 of 1978 s. 6*)

[*cf. 1960 c. 33 s. 1(1) U.K.*]

147. **Soliciting for an immoral purpose**

- (1) A person who in a public place or in view of the public—
 - (a) solicits for any immoral purpose; or
 - (b) loiters for the purpose of soliciting for any immoral purpose,shall be guilty of an offence and shall be liable on conviction to a fine of \$10,000 and to imprisonment for 6 months. (*Amended 69 of 1990 s. 5*)
- (2) For the purposes of subsection (1) but without prejudice to the generality of the expression ***any immoral purpose***, each of the following is immoral—
 - (a) buggery by a man with another man;
 - (b) an act of gross indecency by a man with another man. (*Added 90 of 1991 s. 21*)

(*Added 1 of 1978 s. 6*)

147A. Prohibition of signs advertising prostitution

- (1) Any person who publicly displays, or causes or permits the public display of, a sign that advertises, or may reasonably be understood to advertise, the services of a prostitute or of a person who organizes or arranges prostitution shall be guilty of an offence and shall be liable on conviction to imprisonment for 12 months. (*Amended 31 of 1997 s. 17*)
- (2) Where a sign displayed in contravention of subsection (1) advertises, or may reasonably be understood to advertise, that the services of a prostitute or of a person who organizes or arranges prostitution are available at a place, any person who keeps, or manages or is otherwise in charge or control of, that place shall, until the contrary is proved, be presumed to have caused the display of the sign.
- (3) For the purposes of this section—
 - (a) a sign is publicly displayed if, and only if, it can be seen from—
 - (i) any place to which for the time being the public or a section of the public are entitled or permitted to have access, whether on payment or otherwise; or
 - (ii) a common part of any premises notwithstanding that the public or a section of the public are not entitled or permitted to have access to that common part or those premises; and
 - (b) in deciding how a sign may reasonably be understood regard may be had to—
 - (i) all aspects of the sign, including its size, colour, shape and design;
 - (ii) the location of the sign;

- (iii) the user of any place that the sign advertises; and
 - (iv) the services offered by any person whose services the sign advertises,
- and to any other relevant circumstances.

(Added 69 of 1990 s. 6)

147B. Removal of signs advertising prostitution

- (1) Without prejudice to section 152 or 153, where a police officer of the rank of chief inspector or above reasonably believes that a sign is displayed in contravention of section 147A, he may in writing authorize any other police officer to cause the sign to be taken away or effaced.
- (2) A police officer authorizing another police officer under subsection (1) to cause a sign to be taken away may in writing authorize him to cause any structure supporting the sign to be taken away and, where he does so, a reference in this section or in section 147C, 147D, 147E or 147F to a sign shall include a reference to the supporting structure.
- (3) A police officer authorized under subsection (1), and any person whose assistance he may require, may take such measures as are necessary in order to take away or efface the sign, as the case may be, but may enter any premises or place by virtue of this subsection only under a warrant issued under subsection (4).
- (4) A magistrate may, if satisfied by information on oath that—
 - (a) there is reasonable cause to believe that a sign is displayed in contravention of section 147A; and
 - (b) entry into any premises or place is reasonably necessary in order to take away or efface that sign,

issue a warrant authorizing a police officer, and any person whose assistance that officer may require, to enter such premises or place, by force if necessary.

- (5) Where a sign is taken away under subsection (3), the Commissioner of Police—
- (a) may, subject to paragraph (b) and sections 147C and 147D, detain the sign;
 - (b) shall give possession of the sign to any person who satisfies the Commissioner that—
 - (i) he is the owner of the sign or was, before the sign was taken away, entitled to possession of the sign; and
 - (ii) the sign was not, before being taken away, being displayed in contravention of section 147A;
 - (c) may, if—
 - (i) he has detained the sign for at least one month;
 - (ii) he is not obliged under paragraph (b) or section 147C or 147D to give possession of the sign to any person; and
 - (iii) he is not aware of any pending application under section 147C for the recovery of the sign, or of any pending charge under section 147A,order the sign to be destroyed, sold or otherwise disposed of as he thinks fit.
- (6) Where a sign is sold under subsection (5)(c) the sale proceeds shall be paid into the general revenue.

(Added 69 of 1990 s. 6)

147C. Application for recovery of sign

- (1) Where a sign has been taken away under section 147B,

a person claiming to be the owner of the sign or to be entitled to possession of the sign may, within one month after the removal, apply to a magistrate for an order that the Commissioner of Police give possession of the sign to him.

- (2) Upon receipt of an application under this section, the magistrate shall—
 - (a) fix a date for the hearing of the application; and
 - (b) notify the Commissioner of Police of the application and of the date of the hearing.
- (3) A magistrate may order the Commissioner of Police to give possession of the sign to the applicant if, after hearing an application under this section and any representations made by or on behalf of the Commissioner of Police, the magistrate is satisfied that—
 - (a) the applicant is the owner of the sign or was, before the sign was taken away, entitled to possession of the sign; and
 - (b) the sign was not, before being taken away, being displayed in contravention of section 147A.

(Added 69 of 1990 s. 6)

147D. Order concerning sign following acquittal under section 147A

Where a sign has been taken away under section 147B and a person is acquitted of an offence under section 147A in respect of that sign, the court or magistrate by whom he is acquitted may order that the Commissioner of Police give possession of the sign to him or any other person if (but only if) the court or magistrate is satisfied that—

- (a) he or that other person, as the case may be, is the owner of the sign or was, before the sign was taken away, entitled to possession of the sign; and

- (b) the sign was not, before being taken away, being displayed in contravention of section 147A.

(Added 69 of 1990 s. 6)

147E. Recovery of expenses from convicted person

- (1) Where expense is incurred—
 - (a) in taking away a sign under section 147B; or
 - (b) in carrying out remedial works to a building that were reasonably necessary as a result of a sign being so taken away,

a court or magistrate may, on the conviction of any person for an offence under section 147A in respect of that sign, order that person to pay to the person who incurred the expense such amount in respect of the expense as it or he thinks reasonable.

- (2) A court may enforce payment of any amount ordered to be paid under subsection (1) in the same manner as if it were a judgment debt.

(Added 69 of 1990 s. 6)

147F. Obstruction

Any person who obstructs, or fails to comply with any reasonable requirement of, any police officer acting, or any person assisting a police officer, under section 147B(3) or under a warrant issued under section 147B(4) shall be guilty of an offence and shall be liable to a fine of \$10,000 and to imprisonment for 6 months.

(Added 69 of 1990 s. 6)

148. Indecency in public

- (1) A person who, without lawful authority or excuse, in any public place or in view of the public indecently exposes any

part of his body shall be guilty of an offence and shall be liable on conviction to a fine of \$1,000 and to imprisonment for 6 months.

- (2) A person under the age of 12 shall not be guilty of an offence under subsection (1) by reason only of his bathing unclothed.

(Added 1 of 1978 s. 6)

149. Conviction for offence other than that charged

- (1) If on the trial of a charge for an offence specified in the second column of Schedule 1 the accused is acquitted, but it is proved that the accused is guilty of any offence specified opposite thereto in the third column of Schedule 1 or of being party to any such offence, he shall be convicted of such offence or of being a party to any such offence and shall be liable to be punished accordingly. *(Amended 31 of 2003 s. 15)*
- (2) Nothing in this section shall exclude the application to any offence of any other law authorizing a court to find a person guilty of an offence other than that with which he is charged.

(Added 1 of 1978 s. 6)

150. Proof of exceptions

Where in any section in this Part the description of an offence is expressed to be subject to exceptions mentioned in the section, proof of the exception is to lie on the person relying on it.

(Added 1 of 1978 s. 6)

[cf. 1956 c. 69 s. 47 U.K.]

151. Power of search in case of living on another's earnings of prostitution

Where it is made to appear to a magistrate by information on oath that there is reasonable cause to suspect that any premises or vessel is used by a person for the purpose of prostitution, and that another

person residing in or frequenting the premises or vessel is living wholly or in part on that person's earnings, the magistrate may issue a warrant authorizing a police officer to enter and search such premises or vessel and to arrest that other person.

(Added 1 of 1978 s. 6. Amended 90 of 1991 s. 22)

[cf. 1956 c. 69 s. 42 U.K.]

152. General power of search and seizure

- (1) If a police officer of the rank of superintendent or above has reason to suspect that an offence under this Part has been or is being committed in or in respect of or in connexion with any premises or place or any vessel, he may in writing authorize any police officer for the purposes of this section.
- (2) A police officer authorized under subsection (1) for the purposes of this section, and any other police officer assisting him may—
 - (a) enter, by force if necessary, the premises or place or vessel specified in the authorization and search the same;
 - (b) search any person found in such premises or place or vessel;
 - (c) seize and detain anything found in such premises or place or vessel which appears to him to be or to contain evidence of an offence under this Part.
- (3) No person shall be searched under subsection (2) except by a person of the same sex.

(Added 1 of 1978 s. 6)

153. Seizure and forfeiture in respect of vice establishment

- (1) Without prejudice to section 152, if a police officer reasonably suspects that any premises, vessel or place is being kept as a

vice establishment, he may seize and detain anything found in such premises, vessel or place, or on any person found in such premises, vessel or place, which appears to him to have been used in or for or in connexion with the commission of an offence under section 139.

- (2) If, in any proceedings for an offence under section 139, 143 or 144 or otherwise on application by or on behalf of the Commissioner of Police, a court or magistrate is satisfied that anything in the possession of the court or magistrate or the police, not being immovable property, has been used in or for or in connexion with the commission of an offence under section 139, the court or magistrate may order that it be forfeited to the Government, whether or not any person has been convicted of an offence under section 139. (*Amended 13 of 1999 s. 3*)

(*Added 1 of 1978 s. 6*)

Closure of premises and forfeiture of vessel in respect of which certain offences committed

153A. Closure of premises in respect of which certain offences committed

- (1) Where—

- (a) a person is convicted by a court or magistrate of an offence under section 139, 143, 144 or 145 of this Ordinance, in relation to any premises or place other than a vessel; and
- (b) the court or magistrate is satisfied—
 - (i) that the offence was committed within a period beginning 4 months after and ending 16 months after a conviction of that or any other person for an offence under any of the provisions referred to

in paragraph (a) in relation to the whole or a part of those premises or that place (whether or not a closure order was made on the basis of that and any other conviction); and

- (ii) that within 2 weeks after the date of the conviction referred to in subparagraph (i), a notice complying with subsection (4) was—
 - (A) affixed to a conspicuous part of the premises or place to which that conviction related; and
 - (B) published in one newspaper published in Hong Kong in the English language and one newspaper so published in the Chinese language,

this section applies to the premises or place referred to in paragraph (a).

- (2) Where this section applies to any premises or place the court or magistrate shall—
 - (a) in accordance with section 153B, make a closure order in respect of the premises or place;
 - (b) as soon as reasonably practicable, send a copy of the order, sealed with the seal of the court or signed by the magistrate, to the Land Registrar; (*Amended 8 of 1993 s. 3*)
 - (c) have the same power to sentence or otherwise deal with the convicted person as if a closure order were not being made; and
 - (d) leave the closure order out of account in determining the appropriate sentence or other manner of dealing with the convicted person.
- (3) For the purposes of subsection (1), where—

- (a) under section 143 a person who is the owner or tenant of any premises or his agent; or
 - (b) under section 144 or 145 a person who is the tenant or occupier, or person in charge, of any premises,
- is convicted of an offence in respect of part of those premises, the conviction shall be treated as relating only to that part of those premises.
- (4) A notice complying with this subsection shall—
- (a) be addressed to the tenant and the owner of the premises or place to which the conviction referred to in subsection (1)(b)(i) relates (it being unnecessary to name those persons);
 - (b) state that a person has been convicted of an offence in relation to the premises or place and state the nature, date, and the name and address of the person convicted, of the offence;
 - (c) state that if, within a period beginning 4 months after the date of that conviction and ending 16 months after that date, any person commits an offence under section 139, 143, 144 or 145 of this Ordinance, in relation to the whole or a part of those premises or that place, a closure order will be made in respect of the premises or place to which that second offence relates; and
 - (d) set out the sections referred to in paragraph (c) or, if the notice is published contemporaneously with another notice under subsection (1)(b)(ii) in the same newspapers and the sections referred to in paragraph (c) are already set out in that notice, contain a direction to refer to that notice for the full text of those sections.
(Amended 32 of 2000 s. 13)
- (5) For the purposes of subsection (1)(b)(ii), a certificate purporting to be signed by a public officer who states in

that certificate that he affixed a notice in accordance with that subsection shall be evidence of the facts stated in the certificate relating to that affixing.

- (6) In sections 153B, 153I and 153J, ***premises*** (處所) means the premises or place to which the conviction referred to in subsection (1)(a) relates.

(Added 69 of 1990 s. 7)

153B. Closure order

- (1) A closure order shall—
- (a) identify the premises to which it relates;
 - (b) state that the premises are to be closed for 6 months and that any person who enters or is in the premises after they have been closed or who, without lawful authority or reasonable excuse, interferes with anything used to close the premises commits an offence;
 - (c) order the closure of the premises; and
 - (d) state that any person who is a mortgagee or chargee of the premises or who would, if the premises were not closed,—
 - (i) be entitled or permitted to occupy or possess the premises; or
 - (ii) be the immediate landlord of the occupier of the premises,may, in accordance with section 153I, apply for the order to be suspended.
- (2) A court or magistrate making a closure order in respect of any premises—

- (a) shall issue a warrant to any bailiff, commanding him to close the premises and to affix a copy of the closure order to a conspicuous part of the premises; and
 - (b) may direct that the warrant is not to be executed until after a specified period not exceeding 3 days.
- (3) A bailiff by whom a warrant issued under this section is executed in respect of any premises, and any person whose assistance may be necessary, may—
 - (a) enter (by force if necessary) any place in order to effect the closure;
 - (b) evict persons from the premises;
 - (c) use such reasonable force and take such reasonable measures as are necessary to effect the closure.

(Added 69 of 1990 s. 7)

153C. Protection of bona fide purchaser or mortgagee

- (1) Where a closure order has been made in respect of any premises or place, any person to whom this section applies may, in accordance with section 153L, apply in writing for the closure order to be rescinded.
- (2) This section applies to any person who became a bona fide purchaser, mortgagee or chargee for valuable consideration of an interest in the premises or place—
 - (a) after another person had been convicted of an offence or had been charged with an offence for which he was subsequently convicted, that conviction being one upon which the closure order was based; and
 - (b) before a notice relating to that conviction or charge was registered in accordance with section 153M.
- (3) An application under this section shall state the name, address and business or occupation of the applicant and, where the

applicant is an individual, be accompanied by a copy of a document which is proof of his identity for the purposes of Part IVA of the Immigration Ordinance (Cap. 115).

- (4) Upon receipt of an application under this section the court or magistrate shall—
- (a) appoint a date for the hearing of the application; and
 - (b) send a copy of the application and of the accompanying document of identity to the Commissioner of Police and inform him of the date of the hearing.
- (5) A court or magistrate—
- (a) after hearing an application under this section and after hearing any representations made by or on behalf of the Commissioner of Police;
 - (b) if satisfied that, at the time the applicant became a bona fide purchaser, mortgagee or chargee of an interest in the premises or place, he did not know of the charge or conviction (as the case may be) in relation to which a notice had not been registered in accordance with section 153M; and
 - (c) if satisfied that, having regard to all the circumstances, it would be unjust for the applicant to be affected by the closure order,
- may rescind the closure order.
- (6) A court or magistrate that rescinds a closure order under subsection (5) shall, as soon as reasonably practicable, send to the Land Registrar and to the Commissioner of Police a notice in writing, sealed with the seal of the court or signed by the magistrate, stating that fact. (*Amended 8 of 1993 s. 3*)

(Added 69 of 1990 s. 7)

153D. Forfeiture of vessels in respect of which certain offences committed

(1) Where—

- (a) a person is convicted by a court or magistrate of an offence under section 139, 144 or 145 of this Ordinance, in relation to a vessel or part of a vessel; and
- (b) the court or magistrate is satisfied—
 - (i) that the offence was committed within a period beginning 4 months after and ending 16 months after a conviction of that or any other person for an offence under any of the provisions referred to in paragraph (a) in relation to that vessel or any part of that vessel; and
 - (ii) that within 2 weeks after the date of the conviction referred to in subparagraph (i), a notice complying with subsection (3) was—
 - (A) served on the owner of the vessel; and
 - (B) published in the Gazette and in one newspaper published in Hong Kong in the English language and one newspaper so published in the Chinese language,

this section applies to that vessel.

- (2) Where this section applies to any vessel the court or magistrate shall—
- (a) on an application by the Commissioner of Police, declare that the vessel is liable to forfeiture;
 - (b) as soon as reasonably practicable, send a notice in writing to the Director of Marine identifying the vessel

- and stating that it has been declared under this section to be liable to forfeiture;
- (c) have the same power to sentence or otherwise deal with the convicted person as if the vessel were not so liable; and
 - (d) leave the liability to forfeiture out of account in determining the appropriate sentence or other manner of dealing with the convicted person.
- (3) A notice complying with this section shall—
- (a) be addressed to the owner of the vessel (it being unnecessary to name the owner);
 - (b) state that a person has been convicted of an offence in relation to the vessel and state the nature, date, and the name and address of the person convicted, of the offence;
 - (c) state that if, within a period beginning 4 months after the date of that conviction and ending 16 months after that date, any person commits an offence under section 139, 144 or 145 of this Ordinance, in relation to the vessel, and is convicted of that offence, the vessel will be liable to forfeiture; and
 - (d) set out the sections referred to in paragraph (c).
- (4) For the purposes of subsection (1)(b)(ii) and section 153E, a notice is duly served on the owner of a vessel if—
- (a) it is delivered to him, or to the person whom the Commissioner believes to be the owner;
 - (b) it is sent by registered post addressed to such person at the place of residence or business of such person, if any, known to the Commissioner; or
 - (c) where in the opinion of the Commissioner it is not practicable to serve the notice in accordance with

paragraph (a) or (b) the notice is exhibited in the Marine Department in a place to which the public have access for a period of not less than 7 days.

(Added 69 of 1990 s. 7)

153E. Procedure in respect of forfeiture of vessels

- (1) Where a court or magistrate declares that a vessel is liable to forfeiture under section 153D(2), the Commissioner may seize and detain the vessel or (if the vessel is already in his custody) continue to detain the vessel, and if he does so he shall, within 2 weeks of the seizure or declaration (whichever is the later), serve notice of the declaration on the owner of the vessel.
- (2) Within 7 days after the service of a notice under subsection (1), notice of the declaration shall be published—
 - (a) in the Gazette; and
 - (b) in one newspaper published in Hong Kong in the English language and one newspaper so published in the Chinese language.
- (3) Where a notice has been served under subsection (1), any person who has a claim (in this section and section 153F referred to as the claimant) may within 30 days after—
 - (a) the date of the notice, if it was served in accordance with section 153D(4)(a) or (b); or
 - (b) the first day on which the notice was exhibited, if it was served in accordance with section 153D(4)(c),give notice in writing to the Commissioner that he claims that the vessel should not be forfeited.
- (4) A notice under subsection (3) shall state an address within Hong Kong at which the claimant may be served in any proceedings relating to the forfeiture of the vessel and in

any such proceedings a document addressed to the claimant and sent by post to, or delivered at, that address shall for the purposes of this section and section 153F be deemed to be duly served on the claimant.

- (5) The Commissioner may, at any time before the end of the appropriate period of time specified in subsection (3) for the giving of a notice of claim, terminate the seizure of the vessel by serving notice to that effect on the owner in accordance with section 153D(4), or in a similar manner on the person in possession of the vessel at the time it was seized; and within 14 days of so terminating the seizure of the vessel, the Commissioner shall release the vessel to the owner or to such person and publish notice of the termination of the seizure in the manner provided in subsection (2).
- (6) If, at the end of the appropriate period of time specified in subsection (3) for the giving of a notice of claim, no such notice has been given in writing to the Commissioner, the vessel shall be forfeited.
- (7) A person has a claim for the purposes of this section and section 153F if—
 - (a) he is the owner of the vessel, or has an interest in the vessel, or is the agent of the owner; or
 - (b) he was in possession of the vessel at the time it was seized.

(Added 69 of 1990 s. 7)

153F. Determination of application for forfeiture

- (1) Where a notice of claim is given under section 153E(3) and the Commissioner does not terminate the seizure under section 153E(5), the Commissioner shall apply to a magistrate for the forfeiture of the vessel.

- (2) An application under subsection (1) is, for the purpose of section 8 of the Magistrates Ordinance (Cap. 227), a complaint.
- (3) When an application under subsection (1) is made to a magistrate, the magistrate shall issue a summons to any claimant requiring him to appear before a magistrate on the hearing of the application and shall cause a copy of the summons to be served on the Commissioner.
- (4) On the hearing of an application under subsection (1), the magistrate may order that the vessel—
 - (a) be forfeited;
 - (b) be released to the owner or his agent subject to any condition that he may specify in the order; or
 - (c) be disposed of in such manner and subject to such conditions as he may specify in the order.
- (5) On the hearing of an application made under subsection (1)—
 - (a) a certified true copy of the record of any proceedings, including the decision of the court, in respect of an offence committed in relation to the vessel shall be admissible in evidence;
 - (b) a certificate purporting to be signed by a public officer who states in the certificate that he effected service in accordance with section 153D(4) shall be evidence of the facts stated in the certificate and relating to that service; and
 - (c) Part IV of the Evidence Ordinance (Cap. 8) (which relates to the admissibility of hearsay evidence in civil proceedings) shall apply as if the proceedings were civil proceedings.

(Added 69 of 1990 s. 7)

153G. Claims for return of forfeited vessel

- (1) The owner of any vessel forfeited under section 153E or his agent may within 6 weeks after the vessel was forfeited give notice in writing to the Commissioner of his intention to submit to the Chief Executive a moral claim in respect of the forfeited vessel.
- (2) Where the owner of a vessel or his agent has given notice under subsection (1) and has submitted a moral claim to the Chief Executive by lodging it with the Chief Secretary for Administration within 1 month from the date of that notice, the Chief Executive may— (*Amended L.N. 362 of 1997*)
 - (a) order the return of the forfeited vessel to the claimant; or
 - (b) direct that the claim be referred to the Chief Executive in Council.
- (3) Where a claim is referred to the Chief Executive in Council under subsection (2) he may—
 - (a) order the return of the forfeited vessel to the claimant; or
 - (b) reject the claim.

(Added 69 of 1990 s. 7. Amended 13 of 1999 s. 3)

153H. Effect of appeals and applications on closure orders, and forfeiture orders and declarations

- (1) A closure order or forfeiture order shall be enforced and a declaration under section 153D(2) shall remain in effect even if an appeal is pending in respect of a conviction upon which it is based.

- (2) A closure order shall be enforced even if an application has been made under section 153C for the order to be rescinded or under section 153I for the order to be suspended.
- (3) Where a person successfully appeals against a conviction upon which a closure order, a declaration under section 153D(2) or a forfeiture order is based, the appellate court shall rescind the order or declaration unless—
- (a) that or any other person was convicted in the same proceedings of an offence of which he remains convicted and, as a result, the closure order, declaration or forfeiture order could have been made without reference to the first-mentioned conviction; or
 - (b) the appellate court substitutes a verdict of guilty of another offence upon which the closure order, declaration or forfeiture order could, if the person had originally been convicted of that offence, have been based.
- (4) Where a court rescinds a closure order under subsection (3), it shall as soon as reasonably practicable send a notice in writing, sealed with the seal of the court, to the Land Registrar stating that fact. (*Amended 8 of 1993 s. 3*)
- (5) Where a court rescinds a declaration under subsection (3), it shall as soon as reasonably practicable send a notice in writing, sealed with the seal of the court, to the Director of Marine stating that fact.

(Added 69 of 1990 s. 7)

153I. Suspension order

- (1) Where a closure order has been made in respect of any premises, any person who is a mortgagee or chargee of the premises or who would, if the premises were not closed,—

- (a) be entitled or permitted to occupy or possess the premises; or
- (b) be the immediate landlord of the occupier of the premises,

may, in accordance with section 153L, apply in writing for the closure order to be suspended.

(2) An application under this section shall state—

- (a) the name, address and business or occupation of the person who is proposed to be the occupier of the premises; and
- (b) the purpose for which it is proposed the premises be used,

during the suspension of the closure order and, where the proposed occupier is an individual, be accompanied by a copy of a document which is proof of his identity for the purposes of Part IVA of the Immigration Ordinance (Cap. 115).

(3) Upon receipt of an application under this section the court or magistrate shall—

- (a) appoint a date for the hearing of the application; and
- (b) send a copy of the application and of the accompanying document of identity to the Commissioner of Police and inform him of the date of the hearing.

(4) A court or magistrate may—

- (a) after hearing an application under this section and after hearing any representations made by or on behalf of the Commissioner of Police; and
- (b) if satisfied that the proposed user of the premises by the proposed occupier would not be likely to cause a nuisance or annoyance to any person residing nearby,

make an order suspending the closure order for 2 years (but not for a shorter period).

- (5) A court or magistrate making a suspension order—
- (a) shall attach a condition to the order to the effect that the premises are, during the suspension, to be used only for the purpose proposed and, when occupied, to be occupied by the person proposed; and
 - (b) may attach any other conditions to the order as it or he thinks fit, including the following conditions—
 - (i) that if there is a breach of the condition referred to in paragraph (a), a person will forfeit a specified sum of money;
 - (ii) that a person gives security, in such a manner and such amount as may be specified, in respect of any sum that he may forfeit as a result of a breach of the condition referred to in paragraph (a).
- (6) A court may enforce payment of any sum of money that is forfeited as a result of a breach of any condition attached to a suspension order in the same manner as if it were a judgment debt and any money recovered shall be paid into the general revenue.
- (7) Where a closure order is suspended and is not revived under section 153K, the order shall cease to have effect at the end of the 2-year period for which it was suspended.
- (8) A court or magistrate making a suspension order shall, as soon as reasonably practicable, send to the Land Registrar and to the Commissioner of Police a copy of the order, sealed with the seal of the court or signed by the magistrate.
(Amended 8 of 1993 s. 3)

(Added 69 of 1990 s. 7)

153J. Variation of conditions attached to suspension order

- (1) Any person specified in subsection (2) may, in accordance with section 153L, apply in writing for a variation of any condition attached to a suspension order and section 153I shall apply, with the necessary modifications, to such an application.
- (2) An application under subsection (1) may be made by—
 - (a) a person liable to be penalised in the event of a breach of a condition attached to the suspension order;
 - (b) a person who is a mortgagee or chargee of the premises or who is or would, if the variation applied for were granted, be—
 - (i) entitled or permitted to occupy or possess the premises; or
 - (ii) the immediate landlord of the occupier of the premises.

(Added 69 of 1990 s. 7)

153K. Revival of closure order

- (1) Where a closure order has been suspended under section 153I, any police officer of or above the rank of chief inspector may, in accordance with section 153L, apply in writing for the closure order to be revived on the basis that a condition attached to the suspension order has been broken.
- (2) Upon receipt of an application made under subsection (1) the court or magistrate shall—
 - (a) appoint a date for the hearing of the application; and
 - (b) issue a summons to the occupier of the premises, the immediate landlord of the occupier of the premises, and any person liable to be penalised in the event of a

breach of a condition attached to the suspension order, requiring them to appear before the court or magistrate on the hearing of the application.

- (3) An application under this section is, for the purposes of section 8 of the Magistrates Ordinance (Cap. 227), a complaint, but—
- (a) where the place of abode of the immediate landlord of the occupier of the premises is not known, a summons to him may be served on him by leaving it with any person at the premises; and
 - (b) where the identity of the immediate landlord is not known, a summons may be issued to him by reference to his status as such, without naming him.
- (4) On the hearing of an application under subsection (1), the court or magistrate may, if satisfied that a condition of the suspension order has been broken, make an order reviving the closure order.
- (5) Where a court or magistrate makes an order under subsection (4) reviving a closure order—
- (a) section 153B applies with the necessary modifications;
 - (b) the court or magistrate shall, as soon as reasonably practicable, send a copy of the order made under subsection (4), sealed with the seal of the court or signed by the magistrate, to the Land Registrar; and
(Amended 8 of 1993 s. 3)
 - (c) the period during which the closure order was suspended shall not count as part of the period for which the closure order is in force.

(Added 69 of 1990 s. 7)

153L. Applications under sections 153C, 153I, 153J and 153K

An application under section 153C, 153I(1), 153J(1) or 153K(1) shall—

- (a) where the closure order was made by a magistrate, be made to a magistrate and, so far as is practicable, be made to the magistrate who made the order;
- (b) where the closure order was made by the District Court, be made to the District Court and, so far as is practicable, be made to the judge who made the order;
- (c) where the closure order was made by the Court of First Instance, be made to the Court of First Instance and, so far as is practicable, be made to the judge who made the order. (*Amended 25 of 1998 s. 2*)

(Added 69 of 1990 s. 7)

153M. Registration of notices and orders relating to premises

- (1) Where the Land Registrar receives a notice sent to him under section 145A, 153C(6) or 153H(4), or a copy of an order sent to him under section 153A(2), 153I(8) or 153K(5), he shall as soon as reasonably practicable,— (*Amended 80 of 1997 s. 102*)
 - (a) prepare and verify a memorial of the notice or copy of an order, that memorial being in the form prescribed and containing the particulars required by or under the Land Registration Ordinance (Cap. 128); and
 - (b) register the notice or copy of an order.
- (2) A notice or copy of an order required to be sent to the Land Registrar under the provisions referred to in subsection (1) shall be deemed to be an instrument affecting land, but a

failure to register such a notice or copy of an order shall not, save as is provided in section 153C, affect its validity as against any person. (*Amended 8 of 1993 s. 3*)

- (3) A memorial prepared under subsection (1) shall be regarded as complying with the Land Registration Ordinance (Cap. 128).

(Added 69 of 1990 s. 7)

153N. Registration of notices and orders relating to vessels

Where the Director of Marine receives a notice sent to him under section 145A or 153H(5) or a copy of an order sent to him under section 153D(2) and the notice or order relates to a vessel certificated in accordance with regulations made or deemed to have been made under the Merchant Shipping (Local Vessels) Ordinance (Cap. 548), he shall as soon as reasonably practicable register the notice or copy of an order in a register maintained by him.

(Added 69 of 1990 s. 7. Amended 24 of 2005 s. 55)

153O. Obstruction

- (1) Any person who obstructs any person in the exercise of any function under section 153B(3) shall be guilty of an offence and shall be liable on conviction to a fine of \$10,000 and to imprisonment for 6 months.
- (2) Subject to subsection (3), any person who without lawful authority or reasonable excuse—
- (a) interferes with any lock, bar or other thing used to close any premises or place subject to a closure order; or
 - (b) enters or is in any premises or place that has been closed under a closure order,

shall be guilty of an offence and shall be liable on conviction to a fine of \$10,000 and to imprisonment for 6 months.

(3) Subsection (2) does not apply—

- (a) where the closure order is no longer in force or is suspended under section 153I;
- (b) to a public officer acting in the course of his duty;
- (c) to a person who has the permission in writing of a magistrate.

(Added 69 of 1990 s. 7)

**Certain sexual offences committed against
children outside Hong Kong; related
arrangements and advertisements**

(Added 31 of 2003 s. 16)

**153P. Extra-territorial effect of sexual offence provisions listed in
Schedule 2**

(1) Where—

- (a) (i) a person who is a Hong Kong permanent resident or who ordinarily resides in Hong Kong;
- (ii) a body corporate that is incorporated or registered in Hong Kong; or
- (iii) a body of persons, whether corporate or unincorporate, that has a place of business in Hong Kong,

commits any act outside Hong Kong; and

(b) the act—

- (i) would have constituted an offence under any of the provisions specified in Schedule 2 had it been committed in Hong Kong; and

- (ii) is committed in relation to a person under the age of 16 or, in the case of an offence under section 123 or 140, under the age of 13,

then the person or body shall be guilty of that offence.

- (2) Where any person or body of persons, whether corporate or unincorporate, commits any act outside Hong Kong that—
 - (a) would have constituted an offence under any of the provisions specified in Schedule 2 had it been committed in Hong Kong; and
 - (b) is committed in relation to a person who is a Hong Kong permanent resident or who ordinarily resides in Hong Kong and is—
 - (i) under the age of 16; or
 - (ii) in the case of an offence under section 123 or 140, under the age of 13,

then the person or body shall be guilty of that offence.

- (3) Where a defendant is charged with an offence that is an offence by virtue of subsection (1) or (2) and involves a sexual act done by him with or to another person, it is a defence for the defendant to establish that—
 - (a) at the time of the sexual act, there existed between the defendant and that other person a marriage that was valid, or recognized as valid, under the law of—
 - (i) the place where the marriage was solemnized;
 - (ii) the place where the sexual act was done; or
 - (iii) the place of the defendant's residence or domicile;
 - (b) when it was solemnized, the marriage was genuine; and
 - (c) at the time of the sexual act, that other person consented to the sexual act.

(Added 31 of 2003 s. 16)

153Q. Arrangement or advertisement relating to commission against a child of act outside Hong Kong that offends Schedule 2 provision

- (1) Any person who makes arrangements, whether wholly or partly in Hong Kong, for himself or another person to commit any act in relation to a person under the age of 16 that would constitute an offence under any of the provisions specified in Schedule 2 if it were committed in Hong Kong, commits an offence and is liable on conviction on indictment to a fine of \$3,000,000 and to imprisonment for 10 years.
- (2) Any person who publishes, distributes or publicly displays, or causes or permits the publication, distribution or public display of an advertisement for any arrangements referred to in subsection (1) commits an offence and is liable on conviction on indictment to a fine of \$3,000,000 and to imprisonment for 10 years.
- (3) For the purposes of subsection (2), **distribute** (分發) includes making any message or data available through any means of electronic transmission.
- (4) It is a defence to a charge under subsection (2) for the defendant to establish that he had not seen the advertisement and did not know, nor did he have any reasonable cause to suspect, it to be an advertisement mentioned in that subsection.

(Added 31 of 2003 s. 16)

153R. Amendment of Schedule 2

The Chief Executive in Council may, with the approval of the Legislative Council, amend Schedule 2 by order published in the Gazette.

(Added 31 of 2003 s. 16)

**Restrictions on evidence and on publishing
details regarding identity**

154. Restrictions on evidence at trials for rape etc.

- (1) If at a trial before the Court of First Instance any person is for the time being charged with a rape offence or indecent assault to which he pleads not guilty (whether or not at the trial he, or any other person, is for the time being charged with an offence which is not a rape offence or indecent assault), then, except with the leave of the judge, no evidence and no question in cross-examination shall be adduced or asked at the trial, by or on behalf of any defendant at the trial, about any sexual experience of a complainant with a person other than that defendant. *(Amended 32 of 1979 s. 2; 25 of 1998 s. 2)*
- (2) The judge shall not give leave in pursuance of subsection (1) for any evidence or question except on an application made to him in the absence of the jury by or on behalf of a defendant; and on such an application the judge shall give leave if and only if he is satisfied that it would be unfair to that defendant to refuse to allow the evidence to be adduced or the question to be asked.
- (3) In subsection (1) ***complainant*** (申訴人) means a woman upon whom, in a charge for a rape offence or indecent assault to which the trial in question relates, it is alleged that rape or indecent assault was committed, attempted or proposed. *(Amended 32 of 1979 s. 2)*
- (4) Nothing in this section authorizes evidence to be adduced or a question to be asked which cannot be adduced or asked apart from this section.

(Added 25 of 1978 s. 4)

[cf. 1976 c. 82 s. 2 U.K.]

155. Application of s. 154 to committal proceedings, District Court and summary trials

- (1) Where, on a hearing under Part III of the Magistrates Ordinance (Cap. 227), a magistrate inquires into a rape offence or indecent assault, then, except with the consent of the magistrate, evidence shall not be adduced and a question shall not be asked at the hearing which, if the hearing were a trial at which a person is charged with a rape offence or indecent assault and each of the accused at the hearing were charged at the trial with the offences of which he is accused at the hearing, could not be adduced or asked without leave in pursuance of section 154. (*Amended 32 of 1979 s. 3*)
- (2) On an application for consent in pursuance of subsection (1) for any evidence or question the magistrate shall—
 - (a) refuse the consent unless he is satisfied that leave in respect of the evidence or question would be likely to be given at a relevant trial;
 - (b) give the consent if he is so satisfied.
- (3) Where a person charged with a rape offence or indecent assault is tried for that offence either in the District Court or summarily before a magistrate under Part V of the Magistrates Ordinance (Cap. 227) or in a juvenile court under the Juvenile Offenders Ordinance (Cap. 226) section 154 shall have effect in relation to the trial as if— (*Amended 32 of 1979 s. 3*)
 - (a) the words “in the absence of the jury” in subsection (2) thereof were omitted; and
 - (b) for any reference to the judge there were substituted—
 - (i) in the case of a trial in the District Court, a reference to the District Judge before whom the trial takes place;

- (ii) in the case of a trial before a magistrate, a reference to the magistrate;
- (iii) in the case of a trial in a juvenile court, a reference to the juvenile court.

(Added 25 of 1978 s. 4)

[cf. 1976 c. 82 s. 3 U.K.]

156. Anonymity of complainants

- (1) Subject to subsection (9)(a), after an allegation is made that a specified sexual offence has been committed no matter likely to lead members of the public to identify any person as the complainant in relation to that allegation shall either be published in Hong Kong in a written publication available to the public or be broadcast in Hong Kong except as authorized by a direction given in pursuance of this section.
- (2) If, before the commencement of a trial at which a person is charged with a specified sexual offence, he or another person against whom the complainant may be expected to give evidence at the trial applies to a judge for a direction in pursuance of this subsection and satisfies the judge—
 - (a) that the direction is required for the purpose of inducing persons to come forward who are likely to be needed as witnesses at the trial; and
 - (b) that the conduct of the applicant's defence at the trial is likely to be substantially prejudiced if the direction is not given,the judge shall direct that subsection (1) shall not, by virtue of the accusation alleging the offence aforesaid, apply in relation to the complainant.
- (3) If after the commencement of a trial at which a person is charged with a specified sexual offence a new trial of the

person for that offence is ordered, the commencement of any previous trial at which he was charged with that offence shall be disregarded for the purposes of subsection (2). [*cf. 1976 c. 82 s. 5(2) U.K.*]

- (3A) A direction that subsection (1) shall not apply in relation to such complaint or such matter as is specified in the direction may be given, where it is necessary for the purpose of seeking information which may lead to the arrest of a person responsible for an alleged specified sexual offence, or is for any other reason in the public interest—
- (a) by a police officer of the rank of Senior Superintendent or above, where the complainant consents in writing to such a direction being given; or
 - (b) by the Secretary for Justice in any other case, (*Amended L.N. 362 of 1997*)

and notice of any such direction shall be published in the Gazette. (*Added 26 of 1980 s. 2*)

- (4) If at a trial at which a person is charged with a specified sexual offence the judge or, as the case may be, the District Judge, magistrate or juvenile court, is satisfied that the effect of subsection (1) is to impose a substantial and unreasonable restriction upon the reporting of proceedings at the trial and that it is in the public interest to remove or relax the restriction, the judge or, as the case may be, the District Judge, magistrate or juvenile court, shall direct that subsection (1) shall not apply to such matter relating to the complainant as is specified in the direction; but a direction shall not be given in pursuance of this subsection by reason only of an acquittal of a defendant at the trial.
- (5) If a person who has been convicted of an offence and given notice of an appeal to the Court of Appeal against the conviction, or notice of an application for leave so to appeal,

applies to the Court of Appeal for a direction in pursuance of this subsection and satisfies the Court—

- (a) that the direction is required for the purpose of obtaining evidence in support of the appeal; and
- (b) that the applicant is likely to suffer substantial injustice if the direction is not given,

the Court shall direct that subsection (1) shall not, by virtue of such allegation of a specified sexual offence as is specified in the direction, apply in relation to a complainant so specified.

- (6) Subsection (5) shall apply in relation to a conviction of an offence tried summarily as mentioned in section 155(3), and, in so applying for references to the Court of Appeal there shall be substituted references to a judge and the reference to notice of an application for leave to appeal shall be omitted.
[cf. 1976 c. 82 s. 5(3) U.K.]
- (7) For the purposes of this section an allegation of a specified sexual offence is made if—
 - (a) it is made to a police officer; or
 - (b) a complaint is made to or an information is laid before a magistrate alleging that a person has committed a specified sexual offence against the complainant; or
 - (c) a person appears before a magistrate or a court charged with a specified sexual offence against the complainant; or
 - (d) a person is committed for trial at the Court of First Instance on a charge alleging a specified sexual offence against the complainant; or
 - (e) an indictment charging a person with a specified sexual offence against the complainant is preferred before the Court of First Instance,

and references in this section to an allegation of a specified sexual offence shall be construed accordingly. (*Replaced 26 of 1980 s. 2. Amended 25 of 1998 s. 2*)

(8) In this section—

broadcast (廣播) means a broadcast by wireless telegraphy of sound or visual images intended for general reception;

complainant (申訴人), in relation to an allegation of a specified sexual offence, means the person against whom the offence is alleged to have been committed; and

written publication (書刊) includes a film, a sound track and any other record in permanent form but does not include an indictment or other document prepared for use in particular legal proceedings.

(9) Nothing in this section—

(a) prohibits the publication or broadcasting, in consequence of an allegation of a specified sexual offence, of matter consisting only of a report of legal proceedings other than proceedings at, or intended to lead to, or on an appeal arising out of, a trial at which a person is charged with that offence; or

(b) affects any prohibition or restriction imposed by virtue of any other enactment upon a publication or broadcast, and a direction in pursuance of this section does not affect the operation of subsection (1) at any time before the direction is given.

(*Added 25 of 1978 s. 4. Amended 32 of 1979 s. 3; 26 of 1980 s. 2; 90 of 1991 s. 23*)

[*cf. 1976 c. 82 s. 4 U.K.*]

157. Offences and proceedings

(1) If any matter is published or broadcast in contravention of

section 156(1), the following persons, namely—

- (a) in the case of a publication in a newspaper or periodical, any proprietor, any editor and any publisher of the newspaper or periodical;
- (b) in the case of any other publication, the person who publishes it; and
- (c) in the case of a broadcast, any body corporate which transmits or provides the programme in which the broadcast is made and any person having functions in relation to the programme corresponding to those of an editor of a newspaper,

shall be guilty of an offence and shall be liable on conviction to a fine of \$10,000 and to imprisonment for 6 months.

- (2) When an offence under subsection (1) which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity, he as well as the body corporate shall be guilty of that offence and be liable to be proceeded against and punished accordingly.
- (3) Where the affairs of a body corporate are managed by its members subsection (2) shall apply in relation to the acts and defaults of a member in connexion with his functions of management as if he were a director of the body corporate.
- (4) Proceedings for an offence under subsection (1) (including such an offence which is alleged to have been committed by virtue of subsection (2), whether or not by virtue also of subsection (3)) shall not be instituted except by or with the consent of the Secretary for Justice; and where a person is charged with such an offence it shall be a defence to prove

that at the time of the alleged offence he was not aware, and neither suspected nor had reason to suspect, that the publication or broadcast in question was of such matter as is mentioned in section 156(1). (*Amended L.N. 362 of 1997*)

(*Added 25 of 1978 s. 4*)

[*cf. 1976 c. 82 ss. 4(5), 5(4)-(5) & 6(6) U.K.*]

158. (*Repealed 2 of 2012 s. 3*)

159. Transitional provisions

- (1) Sections 154 and 155 shall not have effect in relation to a trial or inquiry which begins before the coming into operation of the Crimes (Amendment) (No. 2) Ordinance 1978 (25 of 1978). (*Added 25 of 1978 s. 4. Amended 32 of 1979 s. 4*)
- (2) Sections 154 and 155 shall not have effect in relation to a trial or inquiry at which a person is charged with indecent assault which begins before the coming into operation of the Crimes (Amendment) Ordinance 1979 (32 of 1979). (*Added 32 of 1979 s. 4*)

[*cf. 1976 c. 82 s. 7(5) U.K.*]

Part XIIA

Preliminary Offences

(Part XIIA added 49 of 1996 s. 2)

(Format changes—E.R. 4 of 2017)

Conspiracy

159A. The offence of conspiracy

- (1) Subject to the following provisions of this Part, if a person 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.

- (2) Where liability for any offence may be incurred without knowledge on the part of the person committing it of any particular fact or circumstance necessary for the commission of the offence, a person shall nevertheless not be guilty of conspiracy to commit that offence by virtue of subsection (1) unless he and at least one other party to the agreement intend or know that that fact or circumstance shall or will exist at the time when the conduct constituting the offence is to take place.

- (3) In this section *offence* (罪行) means 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. (*Amended E.R. 4 of 2017*)

159B. Exemptions from liability for conspiracy

- (1) A person shall not by virtue of section 159A be guilty of conspiracy to commit any offence if he is an intended victim of that offence.
- (2) A person shall not by virtue of section 159A be guilty of conspiracy to commit any offence or offences if the only other person or persons with whom he agrees are (both initially and at all times during the currency of the agreement) persons of any one or more of the following descriptions—
- (a) his spouse;
 - (b) a person under the age of criminal responsibility; and
 - (c) an intended victim of that offence or of each of those offences.
- (3) A person is under the age of criminal responsibility for the purposes of subsection (2)(b) so long as it is conclusively presumed, by virtue of section 3 of the Juvenile Offenders Ordinance (Cap. 226), that he cannot be guilty of any offence.

159C. Penalties

- (1) A person guilty of conspiracy to commit any offence or offences by virtue of section 159A shall be liable on conviction on indictment—
- (a) in a case falling within subsection (3) or (4), to imprisonment for a term related in accordance with that subsection to the gravity of the offence or offences

in question (referred to in this section as *the relevant offence or offences*); and

- (b) in any other case, to a fine.
- (2) Subsection (1)(b) shall not be taken as prejudicing the application of section 113A of the Criminal Procedure Ordinance (Cap. 221) (power of court to fine) in a case falling within subsection (3) or (4).
- (3) Where the relevant offence or any of the relevant offences is an offence of any of the following descriptions—
 - (a) murder, or any other offence the sentence for which is mandatory life imprisonment; or
 - (b) an offence for which a sentence extending to imprisonment for life is provided,the person convicted shall be liable to imprisonment for life.
- (4) Where in a case other than one to which subsection (3) applies the relevant offence or any of the relevant offences is punishable with imprisonment, the person convicted shall be liable to imprisonment for a term not exceeding the maximum term provided for that offence or (where more than one such offence is in question) for any one of those offences (taking the longer or the longest term as the limit for the purposes of this section where the terms provided differ).
- (5) A person guilty of conspiracy to commit any offence or offences by virtue of section 159A shall, where the relevant offence or any of the relevant offences 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 relevant offence or any of the relevant offences.
- (6) A person convicted of the offence at common law of conspiracy to defraud shall be liable to imprisonment for 14 years.

- (7) Where any Ordinance confers a power of imposing pecuniary penalties or of forfeiture, seizure and search, or any powers and discretions to cancel, suspend or refuse to issue any licence, permit or other authorization, or imposes a duty which is to be exercised or performed consequent upon a conviction of a relevant offence or in relation to a person who is detained in custody for a relevant offence, then that power or duty shall be deemed to be also exercisable or performable consequent upon a conviction of a conspiracy to commit that relevant offence, but nothing in this subsection shall be deemed to authorize the imposition of any sentence of imprisonment otherwise than in default of payment of any pecuniary penalty which may be imposed by virtue of this subsection.

159D. Restriction on the institution of proceedings

- (1) Where— (*Amended 10 of 2005 s. 38*)
- (a) an offence has been committed in pursuance of any agreement; and
 - (b) proceedings may not be instituted for that offence because any time limit applicable to the institution of any such proceedings has expired,
- proceedings under section 159A for conspiracy to commit that offence shall not be instituted against any person on the basis of that agreement.
- (2) Any prohibition imposed by any enactment on the institution of proceedings for any offence otherwise than by, or on behalf or with the consent of, the Secretary for Justice or any other person also applies in relation to proceedings instituted under section 159A for conspiracy to commit that offence. (*Added 10 of 2005 s. 38*)

159E. Abolitions, savings and transitional provisions

- (1) Subject to the following provisions of this section, the offence of conspiracy at common law is abolished.
- (2) Subsection (1) shall not affect the offence of conspiracy at common law so far as relates to conspiracy to defraud.
- (3) If—
 - (a) a person agrees with any other person or persons that a course of conduct shall be pursued; and
 - (b) that course of conduct will necessarily amount to or involve the commission of any offence or offences by one or more of the parties to the agreement if the agreement is carried out in accordance with their intentions,the fact that it will do so shall not preclude a charge of conspiracy to defraud being brought against any of them in respect of the agreement.
- (4) 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.
- (5) Any rule of law or practice inconsistent with the provisions of subsection (4) is abolished.
- (6) The rules laid down by sections 159A and 159B shall apply for determining whether a person is guilty of an offence of conspiracy under any enactment other than section 159A, but conduct which is an offence under any such other enactment shall not also be an offence under section 159A.
- (7) Subsection (1) shall not affect—
 - (a) any proceedings commenced before the time when this Part comes into operation; or

- (b) any proceedings commenced after that time against a person charged with the same conspiracy as that charged in any proceedings commenced before that time.

159F. Application

Sections 159A to 159E shall apply to an agreement which falls within section 6 of the Criminal Jurisdiction Ordinance (Cap. 461).

Attempt

159G. Attempting to commit an offence

- (1) A person who, intending to commit an offence to which this 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.
- (2) A person may be guilty of attempting to commit an offence to which this section applies even though the facts are such that the commission of the offence is impossible.
- (3) 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.
- (4) In any case where—
 - (a) apart from this subsection a person's intention would not be regarded as having amounted to an intent to commit an offence; but
 - (b) 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 subsection (1), he shall be regarded as having had an intent to commit that offence.
- (5) This section applies to any offence which, if it were completed, would be triable in Hong Kong other than aiding,

abetting, counselling or procuring the commission of an offence.

159H. Application of procedural and other provisions to offences under section 159G

- (1) Any provision to which this section applies shall have effect with respect to an offence under section 159G of attempting to commit an offence as it has effect with respect to the offence attempted.
- (2) This section applies to provisions of any of the following descriptions made by or under any enactment (whenever passed)—
 - (a) provisions whereby proceedings may not be instituted or carried on otherwise than by, or on behalf or with the consent of, any person (including any provision which also makes other exceptions to the prohibition);
 - (b) provisions conferring power to institute proceedings;
 - (c) provisions as to the venue of proceedings;
 - (d) provisions whereby proceedings may not be instituted after the expiration of a time limit;
 - (e) provisions conferring a power to arrest or search;
 - (f) provisions conferring a power to seize and detain property;
 - (g) provisions conferring a power to impose pecuniary penalties;
 - (h) provisions conferring a power to forfeit, including any power to deal with anything liable to be forfeited;
 - (i) provisions conferring any powers and giving any discretions to cancel, suspend or refuse to issue any licence, permit or other authorization;

- (j) provisions imposing a duty;
- (k) provisions whereby a person may not be convicted or committed for trial on the uncorroborated evidence of one witness (including any provision requiring the evidence of not less than 2 credible witnesses);
- (l) provisions whereby, if an offence committed by a body corporate is proved to have been committed with the consent or connivance of another person, that person also is guilty of the offence.

159I. Offences of attempt under other enactments

- (1) Subsections (2) to (5) shall have effect, subject to subsection (6) and to any inconsistent provision in any other enactment, for the purpose of determining whether a person is guilty of an attempt under a special statutory provision.
- (2) For the purposes of this Ordinance an attempt under a special statutory provision is an offence which—
 - (a) is created by an enactment other than section 159G, including an enactment passed after this Part; and
 - (b) is expressed as an offence of attempting to commit another offence (in this section referred to as *the relevant full offence*).
- (3) A person is guilty of an attempt under a special statutory provision if, with intent to commit the relevant full offence, he does an act which is more than merely preparatory to the commission of that offence.
- (4) A person may be guilty of an attempt under a special statutory provision even though the facts are such that the commission of the relevant full offence is impossible.
- (5) In any case where—

- (a) apart from this subsection a person's intention would not be regarded as having amounted to an intent to commit the relevant full offence; but
- (b) 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 subsection (3), he shall be regarded as having had an intent to commit that offence.
- (6) Subsections (2) to (5) shall not have effect in relation to an act done before the commencement of this Part.

159J. Trial and penalties

- (1) A person guilty by virtue of section 159G 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.
- (2) Where, in proceedings against a person for an offence under section 159G, there is evidence sufficient in law to support a finding that he did an act falling within subsection (1) of that section, the question whether or not his act fell within that subsection is a question of fact.

- (3) Where, in proceedings against a person for an attempt under a special statutory provision, there is evidence sufficient in law to support a finding that he did an act falling within section 159I(3), the question whether or not his act fell within that subsection is a question of fact.
- (4) Any power conferred, discretion given, or duty imposed by virtue of section 159H(2)(e), (f), (g), (h), (i) or (j) which is to be exercised or performed consequent upon a conviction of an offence or in relation to a person who is detained in custody for an offence, then that power, discretion or duty shall be deemed to be also exercisable or performable consequent upon a conviction of an attempt to commit that offence, but nothing in this subsection shall be deemed to authorize the imposition of any sentence of imprisonment otherwise than in default of payment of any pecuniary penalty which may be imposed by virtue of this subsection.

159K. Effect on common law

- (1) The offence of attempt at common law is abolished for all purposes not relating to acts done before the commencement of this Part.
- (2) Except as regards offences committed before the commencement of this Part, references in any enactment passed before this Part which fall to be construed as references to the offence of attempt at common law shall be construed as references to the offence under section 159G.

Miscellaneous provisions

159L. Non-exclusivity of preliminary offences

Conviction of an offence under this Part or under another Ordinance is not precluded by the fact that the conduct in question constitutes an offence both under this Part and under that other Ordinance.

Part XIII

Miscellaneous Offences

(Format changes—E.R. 4 of 2017)

160. Loitering

- (1) A person who loiters in a public place or in the common parts of any building with intent to commit an arrestable offence commits an offence and is liable to a fine of \$10,000 and to imprisonment for 6 months. *(Replaced 74 of 1992 s. 3)*
- (2) Any person who loiters in a public place or in the common parts of any building and in any way wilfully obstructs any person using that place or the common parts of that building, shall be guilty of an offence and shall be liable on conviction to imprisonment for 6 months.
- (3) If any person loiters in a public place or in the common parts of any building and his presence there, either alone or with others, causes any person reasonably to be concerned for his safety or well-being, he shall be guilty of an offence and shall be liable on conviction to imprisonment for 2 years.
- (4) In this section ***common parts*** (共用部分), in relation to a building, means—
 - (a) any entrance hall, lobby, passageway, corridor, staircase, landing, rooftop, lift or escalator;
 - (b) any cellar, toilet, water closet, wash house, bath-house or kitchen which is in common use by the occupiers of the building;
 - (c) any compound, garage, carpark, car port or lane.

(Added 37 of 1979 s. 2)

161. Access to computer with criminal or dishonest intent

- (1) Any person who obtains access to a computer—
- (a) with intent to commit an offence;
 - (b) with a dishonest intent to deceive;
 - (c) with a view to dishonest gain for himself or another; or
 - (d) with a dishonest intent to cause loss to another,
- whether on the same occasion as he obtains such access or on any future occasion, commits an offence and is liable on conviction upon indictment to imprisonment for 5 years.
- (2) For the purposes of subsection (1) **gain** (獲益) and **loss** (損失) are to be construed as extending not only to gain or loss in money or other property, but as extending to any such gain or loss whether temporary or permanent; and—
- (a) **gain** (獲益) includes a gain by keeping what one has, as well as a gain by getting what one has not; and
 - (b) **loss** (損失) includes a loss by not getting what one might get, as well as a loss by parting with what one has.

(Added 23 of 1993 s. 5)

Schedule 1

[s. 149]

(Amended 31 of 2003 s. 17)

Other Offences of which Accused May Be Convicted

(Format changes—E.R. 4 of 2017)

Item	Offence charged	Other offences of which defendant may be convicted
1.	Rape (section 118)	Procurement of another person by threats (section 119) Procurement of another person by false pretences (section 120) Administering drugs to obtain or facilitate unlawful sexual act (section 121)
2.	Non-consensual buggery (section 118A)	Procurement of another person by threats (section 119) Administering drugs to obtain or facilitate unlawful sexual act (section 121) <i>(Amended 18 of 2014 s. 7)</i>
3.	Assault with intent to commit buggery (section 118B)	Indecent assault (section 122)

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Item	Offence charged	Other offences of which defendant may be convicted
4.	Homosexual buggery with or by man under 16 (section 118C)	Indecent assault (section 122) Gross indecency with or by man under 16 (section 118H) (<i>Amended 18 of 2014 s. 7</i>)
5.	Buggery with mentally incapacitated person (section 118E)	Gross indecency by man with male mentally incapacitated person (section 118I) Indecent assault (section 122) (<i>Amended 81 of 1997 s. 59</i>)
6.	<i>(Repealed 18 of 2014 s. 7)</i> <i>(Schedule 1 added 1 of 1978 s. 7. Amended 90 of 1991 s. 25)</i>	

Schedule 2

[ss. 153P, 153Q & 153R]

Sexual Offence Provisions That Have Extra-Territorial Effect*(Format changes—E.R. 4 of 2017)*

Section	Description of offence
118	Rape
118A	Non-consensual buggery
118B	Assault with intent to commit buggery
118C	Homosexual buggery with or by man under 16 <i>(Amended 18 of 2014 s. 8)</i>
118D	Buggery with girl under 21
118F	<i>(Repealed 18 of 2014 s. 8)</i>
118G	Procuring others to commit homosexual buggery
118H	Gross indecency with or by man under 16 <i>(Amended 18 of 2014 s. 8)</i>
118J	Gross indecency by man with man otherwise than in private
118K	Procuring gross indecency by man with man
119	Procurement by threats
120	Procurement by false pretences
121	Administering drugs to obtain or facilitate unlawful sexual act
122	Indecent assault
123	Intercourse with girl under 13
124	Intercourse with girl under 16

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Section	Description of offence
126	Abduction of unmarried girl under 16
130	Control over persons for purpose of unlawful sexual intercourse or prostitution
132	Procurement of girl under 21
134	Detention for intercourse or in vice establishment
135	Causing or encouraging prostitution of, intercourse with, or indecent assault on, girl or boy under 16
140	Permitting girl or boy under 13 to resort to or be on premises or vessel for intercourse
141	Permitting young person to resort to or be on premises or vessel for intercourse, prostitution, buggery or homosexual act
146	Indecent conduct towards child under 16

(Schedule 2 added 31 of 2003 s. 18)