

LRC releases consultation paper on miscellaneous sexual offences

The following is issued on behalf of the Law Reform Commission:

The Review of Sexual Offences Sub-committee of the Law Reform Commission today (May 16) released a consultation paper making preliminary proposals for the reform of law concerning miscellaneous sexual offences. The consultation will last for three months.

These offences include incest, exposure, voyeurism, bestiality, necrophilia and acts done with intention to commit a sexual offence. It also includes a review of homosexual or homosexual-related buggery and gross indecency offences in the Crimes Ordinance. The paper is the third and final part of the overall review of the substantive sexual offences.

Speaking at a press conference, the Chairman of the Review of Sexual Offences Sub-committee, Mr Peter Duncan, SC, said that apart from making recommendations to reform some of the existing sexual offences, the Sub-committee also recommends introducing a number of new specific sexual offences.

These sexual offences are largely concerned with the protective principle, gender neutrality, respect for sexual autonomy, and avoidance of distinctions based on sexual orientation.

The main recommendations contained in the paper are:

- (1) the retention of the specific offence of incest, but with elements of the offence being reformed. Further, the Hong Kong community should consider the extent of the sexual conduct which would constitute incest and whether the offence should extend to adoptive parents;
- (2) the proposed creation of a new offence of sexual exposure to cover exposure of one's genitals in private or public in a sexual manner targeting a specific victim;
- (3) the proposed creation of a new offence of voyeurism to criminalise acts of non-consensual observation or visual recording (for example, a photograph, videotape, or digital image) of another person done for a sexual purpose;
- (4) the existing offence of bestiality be replaced by an offence of sexual intercourse with an animal;
- (5) the proposed creation of a new offence of sexual activity on a dead person;
- (6) the proposed creation of a new offence of administering a substance for sexual purposes to replace the existing offence of administering drugs to obtain or facilitate an unlawful sexual act;

(7) the proposed creation of a new offence of committing an offence with intent to commit a sexual offence to replace the existing offence of assault with intent to commit buggery;

(8) the proposed creation of a new offence of committing an offence of trespass with intent to commit a sexual offence to replace the existing offence of burglary (with intent to rape); and

(9) the proposed abolition of some of the existing homosexual or homosexual-related offences: assault with intent to commit buggery; procuring others to commit homosexual buggery; gross indecency by man with man otherwise than in private; and procuring gross indecency by man with man.

Mr Duncan said that the recommendations in the consultation paper are intended to facilitate discussion and do not necessarily represent the Sub-committee's final conclusions. He added that the Sub-committee would welcome views, comments and suggestions on any issues discussed in the consultation paper.

The Review of Sexual Offences Sub-committee was formed in 2006 and has since completed a consultation paper and a report on the issue of a register of sex offenders. It has also completed a report recommending the abolition of the common law presumption that a boy under 14 is incapable of sexual intercourse. The Statute Law (Miscellaneous Provisions) Ordinance 2012 was enacted in July 2012 to implement the relevant recommendation.

In September 2012, the Sub-committee published a consultation paper on rape and other non-consensual sexual offences which represents the first of the three consultation papers published by the Sub-committee on the overall review of the substantive sexual offences. In November 2016, the Sub-committee published the second consultation paper on sexual offences involving children and persons with mental impairment.

Copies of the consultation paper are available on request from the Secretariat of the Law Reform Commission at 4/F, East Wing, Justice Place, 18 Lower Albert Road, Central, Hong Kong. The consultation paper can also be accessed on the Commission's website at www.hkreform.gov.hk.

All the views should be addressed to the Secretary, Review of Sexual Offences Sub-committee, Law Reform Commission (4/F, East Wing, Justice Place, 18 Lower Albert Road, Central) by mail, by fax (3918 4096) or by email (hklrc@hkreform.gov.hk) on or before August 15, 2018.

LCQ1: Improving effectiveness of work

of Joint Office on handling water seepage complaints

Following is a question by the Hon Yung Hoi-yan and a reply by the Secretary for Development, Mr Michael Wong, in the Legislative Council today (May 16):

Question:

The Buildings Department (BD) and the Food and Environmental Hygiene Department (FEHD) set up a Joint Office (JO) in 2006 to handle reports on water seepage in buildings. However, the Audit Commission and the Office of The Ombudsman released reports in 2016 and 2018 respectively, pointing out certain inadequacies in the work of JO. In addition, in recent years, I have received from time to time complaints from residents and District Council members in New Territories East that JO has been very slow in following up reports on water seepage, leaving residents troubled by water seepage nuisance in misery. In this connection, will the Government inform this Council:

(1) of a breakdown by District Council district of the following: the number of reports received by JO, the numbers of reports handled by JO as classified by handling results, the number of entry warrants granted by the Court, and the respective numbers of cases in which the persons concerned were prosecuted and convicted (to be set out one by one by the legislation involved), in each of the past three years; the average and longest handling time for those cases the handling of which was completed, and the respective numbers of personnel deployed by BD and FEHD to station in JO, in each of the past three years;

(2) whether the Development Bureau and the Food and Health Bureau have conducted a value-for-money assessment on the performance of JO since its establishment; if so, of the criteria adopted for and the outcome of the assessment; if not, whether they will conduct such an assessment; how the authorities will improve the performance of JO by addressing areas such as manpower, resources, case handling procedure, internal division of work, and law enforcement powers of JO; and

(3) of the locations selected, the commissioning dates, the number of personnel to be deployed and the estimated annual expenditure, in respect of the four regional joint offices planned to be set up by JO; given that FEHD has planned to form a special team to conduct a comprehensive review on JO's procedural guidelines and explore the feasibility of setting up a tribunal to deal with water seepage cases, of the details, including the composition and operation of the special team, and the expected time for the completion of the relevant feasibility study; how BD and FEHD will complement each other in order to enhance the performance of JO?

Reply:

President,

Water seepage in buildings is generally caused by the defective fabric or installations of buildings and the lack of proper maintenance. Proper management, maintenance and repair of buildings, including resolving water seepage problems, are the responsibilities of building owners and occupiers and require the co-operation of the owners and occupiers concerned. In general, if water seepage occurs in private buildings, the owners should first arrange their own investigation of the cause of seepage and, as appropriate, co-ordinate with the occupiers and other owners concerned for repair works.

Nevertheless, the Government recognised that owners will encounter difficulties in dealing with water seepage problems. Before the setting up of the Joint Office (JO), the investigation and enforcement actions taken by different departments according to their respective policy focus and professional expertise sometimes rendered us unable to provide better services to the public. In view of this, "Team Clean" initiated in December 2004 the setting up of JO by the Food and Environmental Hygiene Department (FEHD) and the Buildings Department (BD) to improve inter-departmental co-ordination and deal with building water seepage in a swift and effective manner. JO started to provide service to the public in 2006 through 19 districts in Hong Kong.

Once the source of seepage and nuisance have been identified during investigation, JO will issue "nuisance notice" to the person concerned under the Public Health and Municipal Services Ordinance (Cap 132), requiring the abatement of nuisance within a specified period of time and instigate prosecution against non-compliance with the "nuisance notice". If a building safety problem or waste of water caused by defective water supply pipes is found during investigation, JO will also refer the case to BD and the Water Supplies Department for follow-up and enforcement action in accordance with relevant legislation.

JO is now facing many challenges including the high number of water seepage reports, difficulties in gaining entry into premises for investigation as well as the limitations imposed by the tests. Nonetheless, such difficulties have not held us back; we strive to seek solutions for which I will introduce in my reply later.

The Development Bureau (DEVB) and the Food and Health Bureau (FHB) provide a joint reply to the three parts of the question as follows:

(1) The geographical statistics on water seepage reports received by JO, reports handled, investigation results and enforcement actions taken from 2015 to 2017 are set out at Annex I. Overall speaking, in the past three years, the JO received an average of some 34 000 water seepage reports per year, in which 28 000 cases have been handled and investigation completed including cases that needed not be dealt with due to, for instance, cease of water seepage during investigation. The JO had issued some 5 200 "nuisance notice" annually over the same period, with majority of the "nuisance notice" complied with. Over the same period, the JO instigated about 90 prosecutions

under the Public Health and Municipal Services Ordinance annually.

The staff establishment of J0 in the past three financial years is set out at Annex II.

In general, J0 staff will contact the informant within six working days upon receipt of a water seepage report to arrange for inspection in the building concerned. With the co-operation of the owners or occupants concerned, the investigation can normally be completed within 90 working days and the informant will be advised of the outcome. If the investigation cannot be completed within 90 working days, J0 will notify in writing the informant of the investigation progress.

Outlined above is only the normal processing time. The time required for processing a water seepage case largely depends on the complexity of the case and the extent of co-operation of the parties concerned. For complicated cases which for instance involve multiple seepage sources, recurring or intermittent water seepage, J0 staff will have to conduct different, ongoing or repeated tests and monitoring. As these tests take time and require full co-operation of the owners or occupants concerned, the processing of such cases generally takes more time. The processing time for cases involving vacant units or uncooperative owners or occupants would be even longer. J0 does not compile statistics on the time for investigating water seepage cases.

(2) and (3) The main objective of J0 is to provide a one-stop service to the public by setting up a working team with both the legal authority of FEHD and the building survey expertise of BD. FEHD and BD have drawn up clear operational guidelines on the investigation, enforcement and prosecution procedures and plan on division of labour for handling water seepage cases since the establishment of J0.

To strengthen internal co-ordination and case monitoring, FEHD and BD have been maintaining close liaison through regular meetings at all levels. The meetings discuss how best to tackle complicated seepage cases and review guidelines and procedures governing the handling of water seepage reports, so as to enhance the efficiency and effectiveness in handling seepage cases. J0 has increased the manpower to tackle the increasing number of reports. The number of FEHD's staff has increased from 81 in 2006 to 224 at present. The number of BD's staff has increased over the same period, and the spending on appointment of consultants for carrying out of stage III professional investigation has substantially increased from \$1.4 million to \$34 million over the same period. In addition, most of the posts of the two departments at J0 has turned from non-civil service contract posts at the beginning into permanent civil service ones gradually.

The Audit Commission conducted a value-for-money audit on the joint operations on water seepage in buildings in 2016 and made a series of recommendations for J0 on handling water seepage. The FHB and DEVB have been closely supervising the two departments to actively follow up the various improvement measures so as to enhance the effectiveness of J0.

On the tests adopted by the JO in investigating water seepage, the consultant engaged by BD has, upon examining and researching into the latest technological methods, identified various methods for identifying sources of water seepage, conducted field tests and is now formulating detailed technical guidelines. JO is in parallel arranging full application of these new technological methods in pilot districts. JO will evaluate their effectiveness and consider whether to extend such methods to all districts of Hong Kong. We anticipate that the new technologies can increase the chance of identifying the sources of water seepage and suitably relieve the stress of frontline staff.

To further improve the handling of water seepage cases, a task force led by Coordinator of FEHD and a senior professional officer of BD is formed to comprehensively review the current operation of JO. FHB and DEVB will closely steer the review.

To enhance the communication between JO staff of the two departments and to improve the overall efficiency of JO, JO is seeking assistance of the Government Property Agency to identify suitable office space for setting up of four regional joint offices for co-location of JO staff of the two departments. According to the current progress, the four regional joint offices are expected to be set up in the second half of 2019. The staff establishment and estimated expenditure of JO in 2018-19 are set out at Annex III.

President, the above measures aim to enhance the overall efficiency of JO and our service to the public.

Research Grants Council to present public lecture on “Fintech and Artificial Intelligence” on May 19

The following is issued on behalf of the University Grants Committee:

The Research Grants Council (RGC) will present its first public lecture this year under the theme "Fintech and Artificial Intelligence" on May 19 (Saturday) at the Hong Kong Science Museum.

The RGC has invited Associate Professor of the Department of Information Systems, Business Statistics and Operations Management at the Hong Kong University of Science and Technology Dr James Kwok and Associate Professor of the Department of Computer Science at the City University of Hong Kong Dr Andy Chun to share their research findings and knowledge with the public. Details are as follows:

Time: 2.30pm to 4.30pm

Venue: Lecture Hall, Hong Kong Science Museum

Language: Cantonese

Admission is free on a first-come, first-served basis.

Stock markets are fraught with ups and downs. However, financial institutions and financial market experts still make profits from stock markets with their knowledge and strategies. Artificial intelligence (AI) can learn from past experience, adjust to new data, and make decisions better and faster than humans. Dr Kwok will deliver a talk on "Can AI predict stock prices?" to explain how to train AI and turn it into a full-fledged financial market expert.

AI and Fintech bring benefits to our everyday life. Dr Chun will give a lecture entitled "AI/Fintech and their future impact to our daily lives" to provide an overview of the current and potential developments of AI and Fintech, as well as their potential risks to our daily lives. He will also explore the privacy, security and moral/ethical issues arising from the use of these technologies.

The public lectures of the RGC aim at arousing public interest in local research developments. Since 2009, the RGC has invited numerous leading scholars to speak at these lectures. For enquiries, please call 2524 3987 or visit the University Grants Committee webpage (www.ugc.edu.hk/eng/rgc/lectures/lectures.html).

LCQ21: Unmanned aircraft systems

Following is a question by the Hon Chan Hak-kan and a written reply by the Acting Secretary for Transport and Housing, Dr Raymond So Wai-man, in the Legislative Council today (May 16):

Question:

According to the existing legislation, any person must apply to the Civil Aviation Department before operating any unmanned aircraft system (UAS) weighing over seven kilogrammes (without fuel) or operating a UAS for reward. In recent years, while UASs have become increasingly versatile, the privacy and safety issues arising from the operation of UASs have aroused growing concern. In this connection, will the Government inform this Council:

(1) of the number of complaints about clandestine photo-taking by using UASs received by the authorities in the past three years; the follow-up actions taken by the authorities in respect of those complaints, and whether they have instituted prosecutions against the UAS operators concerned;

(2) as UASs are currently not allowed to be flown in areas such as the vicinity of an airport or aircraft approach and take-off paths and country parks, of the number of reports received by the authorities in the past three years about UASs intruding into the said no-fly zones; the follow-up actions taken by the authorities in respect of these cases, and whether they have instituted prosecutions against the UAS operators concerned; whether they will consider using new technological equipment (e.g. an electronic interference system) to prevent UASs from intruding into the no-fly zones; if so, of the details; if not, the reasons for that;

(3) given that more and more people operate UASs as a leisure activity, whether the authorities will consider relaxing the provision prohibiting the flying of UASs in country parks, or designating a park in which flying UASs is allowed; and

(4) given that UASs are currently deployed overseas for delivering goods by some companies, whether the authorities have plans to assist the relevant industry in Hong Kong in the development of that kind of service?

Reply:

President,

In Hong Kong, UAS are classified as aircraft and are governed, as far as aviation safety is concerned, by the civil aviation legislation. The Civil Aviation Department (CAD) is committed to ensuring aviation safety, including UAS operations, such that these operations are performed in compliance with flight safety rules. According to the prevailing laws, any operator of UAS, regardless of the weight of the UAS, must observe Article 48 of the Air Navigation (Hong Kong) Order 1995 (Cap. 448C). Under this provision, a person shall not recklessly or negligently cause or permit an aircraft to endanger any person or property. Articles 3, 7 and 100 of Cap. 448C also provide that any person must apply to the CAD for a Certificate of Registration and a Certificate of Airworthiness for any UAS weighing more than seven kilograms (without fuel) before he/she could operate such aircraft in Hong Kong. Furthermore, Regulation 22 of the Air Transport (Licensing of Air Services) Regulations (Cap. 448A) requires that, regardless of the weight of the UAS, if a person uses a UAS for reward, he/she must lodge an application with the CAD before operating such aircraft and abide by the conditions stipulated in the permit granted by the CAD in providing the service. Apart from operating in a safe manner in accordance with the applicable civil aviation legislation, operators must also observe other relevant laws of Hong Kong, such as the Telecommunications Ordinance (Cap. 106).

At present, the CAD publishes safety guidelines and textual information in its website (www.cad.gov.hk/english/Unmanned_Aircraft_Systems.html) on areas where UAS should not be flown. Such guidance serves to protect aircraft as well as other people and properties (e.g. UAS should not be flown in populated and congested areas, UAS should be operated 50 metres away from

other person or structure, etc). In addition to the above, there may be other restrictions imposed by other government bureaux/departments, authorities or venue managers which may be applicable to UAS operations.

At the same time, the CAD will continue the promotion of safe UAS operations through various channels, including CAD's website, social media platform, etc. Since October 2016, the CAD has distributed over 33 800 safety leaflets to UAS operators as well as general public through major distributors, manufacturers, flying clubs/associations, Home Affairs Enquiry Centres of all 18 Districts. To reach out to a wider audience, the CAD launched a campaign to broadcast UAS safety messages through television and radio programmes in May 2017.

On the specific questions asked, our reply is as follows:

(1) to (2) The numbers of complaints of UAS operations received by the CAD in the past three years are as follows:

Name of Department/Organization	Year/No. of Complaint Case		
	2015	2016	2017
CAD	27	47	60

Note: The Hong Kong Police Force does not keep record on the number of complaints on UAS operations.

Since 2017, the CAD has started categorising complaints received in relation to UAS. Complaints received in the year mainly involved UAS being operated at an inappropriate time, location and/or height. In addition, nine out of 60 complaints in 2017 concerned or involved privacy-related issues.

At present, the safety guidelines of the CAD list out areas where UAS shall not be flown or areas not suitable for UAS operations, for example, populated and congested areas, the Hong Kong International Airport, helipads, Victoria Harbour and its coastal area, etc. In 2017, the CAD received 41 complaints which related to UAS operations in areas specified in the abovementioned safety guidelines.

Upon receipt of complaints, the CAD will take appropriate follow-up actions which may include obtaining further information from the parties concerned, urging the parties concerned to comply with UAS safety guidelines and rules published by the CAD, requesting the relevant Police division to step up patrol. When needed, the CAD will refer the complaint case to the Police for follow up. In addition, CAD has been liaising with the Police and providing technical support to the Police in its enforcement action.

As regards prosecution, as of the first quarter of 2018, in the past three years, the Hong Kong Police Force has initiated prosecution on two cases. One case (which took place in 2017) was convicted and one case (which took place in 2016) was under trial by the court.

(2) to (4) To assist the Government to review the appropriateness and effectiveness of the existing statutory requirements and in exploring ways to refine the prevailing regulatory regime with a view to accommodating the technological development and diversified uses of UAS while safeguarding public safety, the CAD engaged a consultant in March 2017 to conduct a study on the regulation of UAS. In early April 2018, the CAD published the consultancy report (www.cad.gov.hk/english/uas_view.html) and launched a 3-month public consultation on six key proposals regarding the UAS regulatory regime, including the establishment of a UAS registration system, risk-based classification of UAS operations, training and assessment requirements, drone maps for UAS operators, insurance requirements for UAS, and indoor operations of UAS. Members of the public can also express their views on other UAS related issues. The CAD will study the public's views in consultation with relevant government bureaux/departments, with the aim of striking an appropriate balance between facilitating usage and development of UAS on the one hand and protecting public safety on the other. Subject to the outcome of the public consultation, the CAD will formulate a detailed proposal on the way forward.

Effective Exchange Rate Index

The effective exchange rate index for the Hong Kong dollar on Wednesday, May 16, 2018 is 99.4 (up 0.4 against yesterday's index).