

LRC consultation paper proposes repealing excepted offences in Criminal Procedure Ordinance

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

The Law Reform Commission (LRC), chaired by the Secretary for Justice and comprising members including the Chief Justice of the Court of Final Appeal, published a consultation paper today (June 24) proposing the repealing of the excepted offences listed in Schedule 3 to the Criminal Procedure Ordinance (Cap 221) (the Ordinance).

Under the Ordinance, suspended sentence is prohibited from being imposed in respect of any of the excepted offences listed in the Schedule when a person is convicted of that offence.

The Secretary to the LRC, Mr Stephen Kai-yi Wong, said that the concept of suspended sentences was introduced to Hong Kong under the Criminal Procedure (Amendment) Bill 1971. The creation of excepted offences was the result of strong opposition to the Bill from the unofficial members of the Legislative Council, who expressed concern at the sharp increase in crime, and especially violent crime, since 1960.

The Commission believes that the public sentiments behind the creation of the excepted offences some 40 years ago have long gone. The original rationale for having exceptions therefore no longer applies.

The anomalies of the list of excepted offences are that some serious offences are not on the list while some less serious ones are. For instance, under the present regime, an offender convicted of unlawful intercourse with a girl under 13 years (which is currently not listed as an excepted offence) may be sentenced to a term of imprisonment but suspended. In contrast, the court has no discretion but to impose a term of immediate imprisonment for an offender convicted of attempt indecent assault (which is currently listed as an excepted offence) where a non-custodial sentence is not appropriate. Such a state of affairs can give rise to a general sense of unfairness and arbitrariness.

"It is desirable to allow judges and magistrates an appropriately wide degree of discretion to achieve a just and appropriate sentence depending on the circumstances of the case, with the option of suspending sentences.

“The Commission also believes that there is no cause to worry that the repealing will increase the risk of harm to the community. The Commission has full confidence in the judges and magistrates in Hong Kong who would appropriately exercise their sentencing discretion,” Mr Wong said.

Of the jurisdictions studied that have a similar suspended sentence power, none of them has maintained exceptions as wide and extensive as those in Hong Kong, Mr Wong added.

The Commission welcomes views, comments and suggestions on any issues discussed in the consultation paper. The consultation period will last until September 23, 2013. All the views should be addressed to the Secretary, The Law Reform Commission of Hong Kong, by mail (20/F, Harcourt House, 39 Gloucester Road, Wan Chai), by fax (2865 2902) or by email ([hklrc@hkreform.gov.hk](mailto:hklrc@hkreform.gov.hk)) on or before September 23, 2013.

The consultation paper is available on the Commission’s website: [www.hkreform.gov.hk](http://www.hkreform.gov.hk). Hard copies are available on request from the Commission’s Secretariat at 20/F Harcourt House, 39 Gloucester Road, Wanchai, Hong Kong.

End/ Monday, June 24, 2013