

LRC report proposes removing sentencing restrictions in
Criminal Procedure Ordinance

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

The Law Reform Commission (LRC) published a report today (February 25) proposing the repeal of the excepted offences listed in Schedule 3 to the Criminal Procedure Ordinance (Cap 221).

Under the Ordinance, suspended sentence is not a sentencing option in respect of the offences listed in the Schedule.

The Secretary of the LRC, Mr Stephen Wong, said that the concept of suspended sentences was introduced to Hong Kong under the Criminal Procedure (Amendment) Bill 1971. The creation of the excepted offences was the result of strong opposition to the Bill from the unofficial members of the Legislative Council at that time, who had expressed concern about the sharp increase in the crime rate.

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

The anomalies of the list of excepted offences are that under the present regime, some serious offences are not on the list while some less serious ones are. For instance, an offender convicted of unlawful intercourse with a girl under 13 (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 attempted indecent assault, where a non-custodial sentence is not appropriate, because it is listed as an excepted offence. Such a state of affairs can give rise to a general

sense of unfairness and arbitrariness.

The related concerns were first expressed by the Law Society of Hong Kong, which subsequently commissioned the Centre for Comparative and Public Law of the University of Hong Kong to research into this topic and compile a paper, in which the repeal of the excepted offences was recommended as one of the ways forward. This recommendation had been endorsed by the Law Society.

The LRC believes that judges and magistrates should not be restricted from exercising their discretion to achieve a just and appropriate sentence depending on the circumstances of the offence and the offender, including the option of suspending custodial sentences.

"The Commission also trusts that there is no cause to worry that the repeal will increase the risk of harm to the community, or send a wrong message to society in that excepted offences are not serious enough because custodial sentences can be suspended. It has full confidence in the judges and magistrates in Hong Kong who would appropriately exercise their sentencing discretion without any restrictions, considering the gravity of the offence and the circumstances of the offender," 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 currently in Hong Kong, he added.

Mr Wong also clarified that the proposed repeal of Schedule 3 is applicable to adult offenders, not just young offenders aged between 16 and 21 years of age.

The LRC published a consultation paper on this topic in June 2013 and the consultation period ended in September 2013. Those in favour of the proposal, including the Hong Kong Bar

Association and the Law Society, generally endorsed the consultation paper's rationale for repealing the entire Schedule 3.

The report is available on the LRC's website: www.hkreform.gov.hk. Hard copies are available on request from the Commission's Secretariat at 20/F Harcourt House, 39 Gloucester Road, Wan Chai, Hong Kong.

Ends/Tuesday, February 25, 2014