

## Criminal Procedure (Amendment) Bill 2023 to be introduced into LegCo

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The Government will introduce the Criminal Procedure (Amendment) Bill 2023 into the Legislative Council (LegCo) to provide for statutory appeal procedures for the prosecution to appeal against rulings of no case to answer (no-case rulings) made by the Court of First Instance (CFI) in criminal trials with a jury; and to appeal by way of case stated against a verdict or order of acquittal given by the CFI constituted by a panel of three judges to try a case concerning offences endangering national security without a jury under Article 46 of the Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region (NSL).

A spokesman for the Department of Justice said today (May 23) that the proposed new statutory appeal mechanisms are necessary, legitimate and timely responses to address lacunae in the criminal appeal system due to the prosecution's inability to appeal against any no-case rulings and acquittals by professional judges of the CFI that are erroneous, so as to prevent possible miscarriage of justice.

### (1) No Case to Answer Appeal Proposal

Under the current statutory regime, if a CFI judge makes a no-case ruling and directs the jury to acquit the defendant, even if the judge has plainly erred, there is at present no statutory procedure for the prosecution to appeal, and the acquitted defendant cannot be retried. The Bill provides for an appeal mechanism in such circumstances.

### (2) NSL 46 Appeal Proposal

As in criminal cases tried by professional judges such as judges of the District Court and magistrates, if a case concerning offences endangering national security is tried by a three-judge panel in the CFI without a jury, the panel will give reasons for its verdict. However, the prosecution does not have a right to appeal to the Court of Appeal if the defendant is acquitted by the panel even though its reasons for verdict may disclose an error of law. This is contrasted with an acquittal by a judge of the District Court or a magistrate which is subject to appeal by way of case stated under the District Court Ordinance or the Magistrates Ordinance. The Bill provides for an

appeal by way of case stated mechanism in such circumstances.

The legislative amendments under the two proposals, being procedural in nature, will apply to rulings, verdicts or orders given after the legislative amendments come into operation.

The Bill does not undermine a defendant's right to a fair trial, and does not contravene the principle against double jeopardy.

The LegCo Panel on Administration of Justice and Legal Services was consulted on the two proposals on February 27 and May 22 respectively. The Panel expressed support for the legislative proposal.

The Bill will be gazetted on Thursday (May 25) and introduced into the LegCo on May 31.

Ends/Tuesday, May 23, 2023