

LCQ6: Laws listed in Annex III to Basic Law

Following is a question by the Hon Claudia Mo and a reply by the Secretary for Justice, Ms Teresa Cheng, SC, in the Legislative Council today (July 15):

Question:

Certain provisions of the Basic Law, which make references to the common law, stipulate among other things that: the laws previously in force in Hong Kong which shall be maintained include the common law (Article 8), reference may be made to precedents of other common law jurisdictions in the adjudication of cases in accordance with the laws (Article 84), and the Court of Final Appeal may as required invite judges from other common law jurisdictions to sit on the Court of Final Appeal (Article 82). On the other hand, pursuant to Article 18 of the Basic Law, the Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region (the National Security Law) was added to the list of national laws in Annex III to the Basic Law and applied in Hong Kong by promulgation on the 30th of last month. In this connection, will the Government inform this Council:

(1) whether it has studied if the aforesaid Basic Law provisions, which are related to the common law, are applicable to the criminal proceedings instituted under the national laws (including the National Security Law) listed in Annex III to the Basic Law; and

(2) of the justifications for the Secretary for Justice to make the following statement: "it is impracticable and unreasonable to expect that everything in a national law, the National Security Law, will be exactly as what a statute in the Hong Kong Special Administrative Region common law jurisdiction would be like"?

Reply:

President,

The National People's Congress (NPC) adopted the Decision of the National People's Congress on Establishing and Improving the Legal System and Enforcement Mechanisms for Safeguarding National Security in the Hong Kong Special Administrative Region (Decision) on May 28, 2020. Paragraph 6 of the Decision authorises the Standing Committee of the NPC (NPCSC) to enact relevant laws on establishing and improving the legal system and enforcement mechanisms for safeguarding national security in the Hong Kong Special Administrative Region (HKSAR). The NPCSC adopted unanimously on June 30, 2020 The Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region (HKNSL) in accordance with the

Constitution, the Basic Law and the NPC Decision, and added it to Annex III to the Basic Law in accordance with Article 18 of the Basic Law on the same day after consulting the Basic Law Committee and the HKSAR Government. The Chief Executive then gave notice that the HKNSL applied in the HKSAR from 11 pm on the same day.

Article 1 of the HKNSL declares at the outset that the HKNSL is enacted for the purpose of "ensuring the resolute, full and faithful implementation of the policy of One Country, Two Systems under which the people of Hong Kong administer Hong Kong with a high degree of autonomy; safeguarding national security; preventing, suppressing and imposing punishment for the offences of secession, subversion, organisation and perpetration of terrorist activities, and collusion with a foreign country or with external elements to endanger national security in relation to the HKSAR; maintaining prosperity and stability of the HKSAR; and protecting the lawful rights and interests of the residents of the HKSAR".

The HKNSL is divided into six chapters: general principles; the duties and the government bodies of the HKSAR for safeguarding national security; offences and penalties; jurisdiction, applicable law and procedure; office for safeguarding national security of the Central People's Government in the HKSAR; and supplementary provisions, with 66 sections in total. It is a comprehensive piece of legislation comprising substantive law, procedural law and organisation law.

The Department of Justice now provides the following detailed reply to the questions raised by the Hon Claudia Mo.

(1) Article 41, paragraph 1, of the HKNSL provides that the HKNSL and the laws of the HKSAR shall apply to procedural matters, including those related to criminal investigation, prosecution, trial, and execution of penalty, in respect of cases concerning offence endangering national security over which the Region exercises jurisdiction. Article 45 provides that unless otherwise provided by the HKNSL, magistrates' courts, the District Court, the High Court and the Court of Final Appeal shall handle proceedings in relation to the prosecution for offences endangering national security in accordance with the laws of the HKSAR.

The HKSAR largely applies existing local laws and procedure when exercising jurisdiction over offences endangering national security in accordance with the HKNSL. It is true that the HKNSL makes different provisions for the legal procedure under certain special circumstances, but they are necessary for the prevention of, suppression of, and imposition of punishment for acts endangering national security given the special nature of cases involving national security.

The Basic Law was enacted by the NPC in accordance with Articles 31 and 62 of the Constitution. It is a national law that applies in Hong Kong, prescribing the systems to be practised in the HKSAR, in order to ensure the implementation of the basic policies of the People's Republic of China regarding Hong Kong. The HKNSL is a national law enacted by the NPCSC in

accordance with the authority delegated by the NPC Decision specifically for the establishment and improvement of the legal system and enforcement mechanisms for safeguarding national security in the HKSAR. It is listed in Annex III to the Basic Law by the NPCSC and applies in the HKSAR by way of promulgation.

The local laws of the HKSAR consists of the laws previously in force in Hong Kong referred to in Article 8 of the Basic Law, that is, the common law, rules of equity, ordinances, subordinate legislation and customary law, except for any that contravene the Basic Law, and subject to any amendment by the legislature of the HKSAR. On February 23, 1997, the NPCSC adopted a Decision on the treatment of the laws previously in force in Hong Kong in accordance with Article 160 of the Basic Law. According to that Decision, some of the ordinances and subordinate legislation previously in force in Hong Kong were not adopted as the laws of the HKSAR. In addition, local laws also include laws enacted by the legislature of the HKSAR in exercise of the legislative power under Article 73 of the Basic Law.

Article 62 of the HKNSL provides that the HKNSL shall prevail where the provisions of the local laws of the HKSAR are inconsistent with the HKNSL. As stated above, local laws of the HKSAR mean the laws previously in force in Hong Kong, including the common law, referred to in Article 8 of the Basic Law as well as laws enacted by the legislature of the HKSAR. Hence, in accordance with the provisions of Article 8 of the Basic Law, Article 84 provides that precedents of other common law jurisdictions may be referred to by the courts of the HKSAR when adjudicating cases. Article 82 of the Basic Law which provides that the Court of Final Appeal may as required invite judges from other common law jurisdictions to sit on the Court continues to apply.

(2) The HKNSL is a special and innovative national law because it comprises three different types of laws, namely, an organisation law which establishes the relevant responsible bodies, a substantive law which provides for offences and penalties, and a procedural law in relation to law enforcement, prosecution and trial. Although the HKNSL is a national law enacted by the NPCSC, it has taken into account the differences between the legal systems of the State and the HKSAR. Many provisions are included to ensure that the HKNSL and local laws are reconcilable, compatible and complementary with each other. The common purpose of these two major characteristics is to ensure that the laws on safeguarding national security can be fully and effectively enforced in the HKSAR. Hence, one cannot demand that the legal provisions of the HKNSL are drafted in the language of Hong Kong common law.

Thank you, President.

Toy shop owner convicted of wrongly accepting payment

A toy shop owner was sentenced to imprisonment for 16 days suspended for one year at Kowloon City Magistrates' Courts today (July 15) following earlier conviction for wrongly accepting payment in the course of selling toy models, in contravention of the Trade Descriptions Ordinance (TDO). He was also ordered to offer a total of \$31,560 in compensation to the victims involved.

Hong Kong Customs earlier received information alleging that a toy shop owner had engaged in unfair trade practices in the sale of toy models through a social media platform page.

After investigation, it was revealed that the owner had sold a total of 75 types of toy models to seven consumers through the page. Being well aware of his inability to procure and supply the toy models due to financial difficulties of his business, the owner still accepted payments from consumers and eventually failed to provide the relevant goods to the consumers.

Customs reminds traders to comply with the requirements of the TDO and consumers to procure products at reputable shops.

Under the TDO, any trader commits an offence if at the time of acceptance of payment, the trader intends not to supply the product or intends to supply a materially different product, or there are no reasonable grounds for believing that the trader will be able to supply the product within a specified or reasonable period. The maximum penalty upon conviction is a fine of \$500,000 and imprisonment for five years.

Members of the public may report any suspected violations of the TDO to Customs' 24-hour hotline 2545 6182 or its dedicated crime-reporting email account (crimereport@customs.gov.hk).

LCQ19: Encouraging wider use of private healthcare services

Following is a question by the Hon Chan Han-pan and a written reply by the Secretary for Food and Health, Professor Sophia Chan, in the Legislative Council today (July 15):

Question:

By implementing the Elderly Health Care Voucher Scheme (EHV Scheme) and promoting the Voluntary Health Insurance Scheme (VHIS), the Government has encouraged members of the public to make wider use of private healthcare services, with a view to alleviating the pressure on the public healthcare system. In this connection, will the Government inform this Council:

(1) whether it knows the number of VHIS policies as at May 31 this year, with a breakdown by the age group to which the policy holders belonged (i.e. aged 0 to 9, followed by groups covering 10 years each, and aged 60 or above);

(2) given that as projected prior to the implementation of VHIS by an independent consultant engaged by the Government, about 1 million people would take out VHIS policies in the first two years after the implementation of VHIS, whether the Government has set target percentages of the policies (i) which migrated from individual indemnity hospital insurance plan (IHIP) policies effected before the implementation of VHIS and those (ii) which were newly issued, in the policies taken out by such people; if so, of the details; if not, the reasons for that;

(3) given that as at the end of September last year, 81 per cent of VHIS policies were policies migrated from individual IHIP policies effected before the implementation of VHIS, and only 19 per cent of VHIS policies were newly issued policies, of the Government's measures in place to encourage those who have not taken out any hospital insurance product to do so;

(4) given that currently people aged above 80 may be unable to take out policies through VHIS, whether the Government has studied the introduction of voluntary health insurance schemes for such people and chronic disease patients to take out policies; if so, of the details; if not, the measures in place to enhance the healthcare protection for these people;

(5) of the figures relating to the elderly (i.e. persons aged 65 or above) receiving the various healthcare services in 2018 and 2019 (set out in a table of the same format as Table 5 in the Report on the Review of the Elderly Health Care Voucher Scheme (the Report) published by the Food and Health Bureau in March last year); and

(6) as the findings of a survey cited in the Report have shown that only 24 per cent of the elderly agreed to reserve a portion of EHV for paying the fees of preventive care services (e.g. vaccinations, health checks and screenings), of the Government's measures to encourage the elderly to use EHV for such purposes, with a view to achieving the objective of making use of the EHV Scheme to promote preventive care?

Reply:

President,

Our reply to the question raised by the Hon Chan Han-pan is as follows:

(1) As at end-December 2019, the number of Voluntary Health Insurance Scheme (VHIS) policies was around 418 500. The number of insured persons involved by age is set out as follows:

Age of insured person	No. of policies (as at end-December 2019)
0 – 9	Around 50 700
10 – 19	Around 36 800
20 – 29	Around 56 900
30 – 39	Around 81 900
40 – 49	Around 80 000
50 – 59	Around 69 400
60 or above	Around 42 800
Overall	Around 418 500

(2) We did not set a target on the percentage of policies that were newly insured or migrated from existing policies.

(3) To enhance the public understanding of VHIS, ongoing publicity and promotion programs will be conducted, including advertisements through both conventional media and digital platform such as TV/ newspapers and social media/online advertising. The estimated expenditure for the publicity and promotion programmes is around \$13 million in 2020-21.

(4) The VHIS was implemented for about one year. We have been closely monitoring the implementation of VHIS and the market response. When more market data is available, we would review the effectiveness and attractiveness of the VHIS, taking into account the concerns and needs of different age groups, among other considerations.

(5) The Department of Health (DH) completed a review on the Elderly Health Care Voucher Scheme (EHVS) in early 2019. The relevant percentages of the types of healthcare services received by elders using vouchers under the EHVS from 2009 to 2017 are set out in the review report. The relevant figures are categorised by the principal reasons for consultation (namely preventive care, management of acute episodic condition, follow-up/monitoring of long term condition and rehabilitative care). The relevant percentages in 2018 and 2019 are set out in the table below:

	The percentages of healthcare services received by elders categorised by principal reasons for consultation (service providers may choose more than one reason)
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Year	Preventive Care	Management of acute episodic condition	Follow-up/ monitoring of long term condition	Rehabilitative care
2018	47%	66%	40%	16%
2019	42%	68%	41%	15%

(6) One of the policy objectives of the EHVS is to provide elders with additional choices with respect to private primary healthcare in addition to public healthcare services. With subsidies in the form of vouchers, elders can choose the private primary healthcare services that best suit their health needs. With a view to enabling elders to use the vouchers in a convenient and flexible manner, the EHVS does not restrict how elders apportion the use of the vouchers on preventive, curative or rehabilitative services.

The review on the EHVS completed by DH last year includes a cross-sectional study conducted in 2016 on 974 elders aged 70 or above. Out of the elders who indicated that the EHVS helped encourage them to use private primary healthcare services, 42 per cent claimed that the EHVS could encourage them to use more preventive care services. That said, the review also showed that with respect to strengthening primary healthcare, the EHVS still had room to improve in some areas, including not yet being able to more effectively facilitate healthcare service providers to provide and elders to use services which are in line with the Primary Healthcare Reference Framework, and enhance elders' awareness of prevention of various diseases and promote healthy living, etc. DH will continue to promote to elders the message that vouchers can be used for preventive care services (such as vaccinations, health checks and screenings) through different promotional activities and channels, including promotional videos and audio clips, promotional leaflets/pamphlets, advertisements on public transport, as well as mobilising its Visiting Health Teams to host health talks for elders, etc.

Furthermore, since last September, elders can use vouchers on services in District Health Centres (DHCs), including preventive care services. Vouchers will continue to support the Government's policy objectives in promoting primary healthcare, support elders' health needs, assist in enhancing their awareness on disease prevention and self-management of health, as well as complement the development of DHCs.

LCQ1: Scrutinising mechanism of

publications by CSD

Following is a question by the Hon Shiu Ka-chun and a reply by the Secretary for Security, Mr John Lee, in the Legislative Council today (July 15):

Question:

Rule 56 of the Prison Rules stipulates that "prisoners may receive such books, periodicals, newspapers or other publications from outside the prison as the Commissioner (of Correctional Services) may determine" (publications). However, a Superintendent of the Correctional Services Department (CSD) may withhold and dispose of a publication without forwarding it to the relevant person on remand or in custody if he has reasonable grounds to believe that such publication falls within the circumstances referred to in subrules (a) to (e) of the rule. I have received quite a number of complaints about the CSD's withholding, without explanation, some publications (including those about the "anti-extradition to China" movement). In this connection, will the Government inform this Council:

- (1) who determines whether or not to withhold individual publications; whether the CSD has maintained a list of publications which are prohibited from being forwarded; if so, of the number of publications on the list and the reasons for their inclusion on the list; how the family members of the persons on remand or in custody may know which publications will not be allowed for forwarding;
- (2) of the justifications for the CSD to point out to the media that certain publications about the "anti-extradition to China" movement are not conducive to the rehabilitation of the persons in custody or pose threats to the security of penal institutions and therefore need to be withheld; and
- (3) whether the CSD will establish a mechanism to handle review applications from persons who are dissatisfied with the CSD's withholding of publications; if not, of the reasons for that?

Reply:

President,

The Correctional Services Department (CSD) is committed to providing a secure, safe, humane, decent and healthy custodial environment for persons in custody (PICs). According to this principle, PICs are currently allowed to receive 6 books, periodicals or other publications (publications) per month through social visits. They may also be allowed to receive devotional books and textbooks on a need basis. However, in view of security considerations and the need to maintain discipline and order in the prisons as well as to ensure that PICs can rehabilitate in a beneficial environment, a scheme of controls need to be in place to regulate PICs' receipt of publications from

outside. Rule 56 of the Prison Rules (Cap. 234A) stipulates relevant controls and the CSD is responsible for handling publications received by PICs according to the law.

My reply to the Member's question is as follows:

(1) and (2) According to Rule 56 of the Prison Rules, PICs may receive such publications from outside the prison as the Commissioner of Correctional Services may determine, but the Superintendent of the institution may withhold and dispose of a publication or any relevant part thereof where he has reasonable grounds to believe that such publication or such part thereof, as the case may be:

(i) contains information on the manufacture of any arms, ammunition, weapon, explosive, harmful or deleterious substance, intoxicating liquor, or any dangerous drugs within the meaning of the Dangerous Drugs Ordinance (Cap.134);

(ii) depicts, describes or encourages violence in the prison, or the escape by any PIC from the prison;

(iii) is of such a nature as to facilitate gambling in the prison, or is otherwise detrimental to the rehabilitation of any of the PICs in the prison;

(iv) is of such a nature as to encourage the commission of any offence enumerated in Rule 61 (i.e. including disobeying any prison rules; committing any assault; having in possession any article that one is not authorised to have; fighting; in any way offending good order and discipline; obstructing an officer of the CSD in the execution of his duty, etc.) or of any criminal offence by any of the PICs in the prison; or

(v) is of such a nature as to pose a threat to any individual's personal safety or to the security, good order and discipline of the prison.

The CSD's rehabilitation work aims to help PICs develop a healthy life pattern with an organised schedule for work and rest, correct their perverted minds and foster a sense of responsibility and good work habits. Where hand-in publications (e.g. those containing behaviours or words that depict or encourage cruelty, abuse, violence, fight, crime, etc.) undermine PICs' achieving the above rehabilitation goals or are detrimental to their rehabilitation, such publications will be prohibited by the CSD according to the law.

In fact, the CSD has set up libraries in various correctional institutions to provide appropriate books for PICs so as to cultivate their interest in reading. At present, the libraries in correctional institutions have a total collection of over 110 000 items of books. Correctional institutions acquire appropriate books for the libraries in accordance with the established procedures on procurement, having regard to factors such as reading interests and learning needs of PICs. In addition, the CSD borrows books from the Hong Kong Public Libraries to facilitate loans to PICs, and

replaces the borrowed books in batches on a regular basis. The CSD also receives books donated by outside organisations or individuals according to the established mechanism.

The CSD has an established mechanism on the specific arrangements for scrutinising the contents of hand-in publications. In every correctional institution, there is a publications adjudication committee which scrutinises publications suspected to have contravened the regulation. The committee is chaired by the head of the institution with members comprising a Chief Officer, staff in the security section, clinical psychologist, etc. The committee will make adjudications on publications suspected to have violated the restrictions under Rule 56 of the Prison Rules. As to whether a book, publication in question or the relevant part(s) thereof should be withheld or disposed of, each case will be considered individually having regard to the uniqueness of the individual institution, security considerations and the need to maintain good order and discipline, as well as whether the contents of the publication is detrimental to the rehabilitation of PICs, rather than considering solely the topics covered by the publication. The CSD does not maintain a so-called "list of publications which are prohibited from being forwarded".

Where a publication is adjudicated by the committee as having violated the restrictions under Rule 56 of the Prison Rules, the management of the institution concerned will inform the PIC of the result and the reason, which will be recorded in the PIC's penal record. The staff of the institution will, at the will of the PIC, return the publication to the visitor or keep it together with the PIC's property on a temporary basis or have it destroyed by the institution.

(3) Should PICs are not satisfied with the committee's adjudication result, they can complain through various channels. Internal channels include complaining to the directorate officers of the CSD Headquarters during their inspections to the institutions or to the Complaints Investigation Unit (CIU) of the CSD. The CIU is appointed by the Commissioner of Correctional Services. Being an investigation unit responsible for handling and investigating complaints, its operation is independent of other sections of the CSD. As for external channels, PICs may write to members of the Legislative Council, The Ombudsman, statutory bodies, other law enforcement agencies, government bureaux, etc. to lodge their complaints. Besides, they can choose to seek assistance from or complain to Justices of the Peace during the latter's surprise inspections to their institutions, and even apply to the court for judicial review. If the relatives and friends of PICs are not satisfied with the way the institutions have handled the hand-in publications, they can lodge their complaints with the institutional management, the CIU and through the aforesaid external channels.

The CSD reviews and enhances the complaint handling mechanism from time to time with a view to increasing the transparency and credibility of the mechanism and achieving the principle of handling complaints in an open, fair and impartial manner. To further enhance the complaint handling mechanism, the CSD Complaints Appeal Board (CSDCAB) was established in 2016. It operates

independently to provide an appeal channel to those who are not satisfied with the investigation outcome. To widen the structure of the CSDCAB and further strengthen the mechanism to scrutinise appeals, the number of members of the CSDCAB has been increased from 18 in April 2018 to 24 at present. Apart from Justices of the Peace, religious persons who are acquainted with correctional operations have also been appointed to the CSDCAB. The independence of CSDCAB ensures that appeal cases are handled fairly.

Thank you, President.

Lands Department releases figures on registered lease modifications, land exchanges and private treaty grants in second quarter of 2020

The Lands Department (LandsD) announced today (July 15) that it registered nine lease modifications and one land exchange in the Land Registry during the quarter ending June 2020, of which five were modifications of a technical nature involving nil premium.

Among these 10 land transactions, six are located on Hong Kong Island, two are in Kowloon and two are in the New Territories. The transactions exclude Small House cases.

A further three lots were granted by private treaty during the period. Two were granted to the Hong Kong Housing Authority for public housing developments in Diamond Hill and Tung Chung and the other one was granted to the West Kowloon Cultural District Authority for development of the West Kowloon Cultural District.

The above land transactions realised a total land premium of about \$573.626 million.

Transaction records of the lease modifications, land exchanges and private treaty grants, including those registered recently, are uploaded to the LandsD website (www.landsd.gov.hk) on a monthly basis. Details of the transactions may be obtained by searching the registered documents in the Land Registry.