
Criminal Procedure (Amendment) Ordinance 2023

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HONG KONG SPECIAL ADMINISTRATIVE REGION

ORDINANCE NO. 21 OF 2023



John KC LEE
Chief Executive
13 July 2023

An Ordinance to amend the Criminal Procedure Ordinance to introduce mechanisms, and provide for the procedures, for the Secretary for Justice to appeal against rulings that a defendant has no case to answer made by the Court of First Instance in criminal trials with a jury, and against verdicts or orders of acquittal given in cases concerning offences endangering national security tried in the Court of First Instance without a jury by a panel of 3 judges; to make minor technical amendments to the Ordinance and its subsidiary legislation; and to provide for related matters.

[14 July 2023]

Enacted by the Legislative Council.

Part 1

Preliminary

1. Short title and commencement

- (1) This Ordinance may be cited as the Criminal Procedure (Amendment) Ordinance 2023.

- (2) Subject to subsection (3), this Ordinance comes into operation on the day on which it is published in the Gazette.
- (3) Sections 4, 7 and 9 and Part 2 of the Schedule come into operation on a day to be appointed by the Secretary for Justice by notice published in the Gazette.

2. Enactments amended

The enactments specified in Parts 2 and 3 and the Schedule are amended as set out in those Parts and that Schedule.

Part 2

Amendments to Criminal Procedure Ordinance (Cap. 221)

3. Section 80 amended (meaning of sentence)

(1) Section 80, heading—

Repeal

“Meaning of sentence”

Substitute

“Interpretation of Part IV”.

(2) Section 80(1), Chinese text, definition of 刑罰—

Repeal

“內。”

Substitute

“內；”.

(3) Section 80(1)—

Add in alphabetical order

“*HK National Security Law* (《香港國安法》) means the Law of the People’s Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region (a translation of “《中華人民共和國香港特別行政區維護國家安全法》”), as applied in the Hong Kong Special Administrative Region under the Promulgation of National Law 2020 (L.N. 136 of 2020);”.

4. Part IV, Division 3 added

Part IV, after section 81—

Add

“Division 3—Appeal against Ruling of No Case to Answer

81AA. Interpretation of Division 3

(1) In this Division—

acquittal guarantee (無罪保證)—see section 81AAD;

ruling (判定) includes a decision, determination, direction, finding, notice, order, refusal, rejection or requirement;

Secretary (司長) means the Secretary for Justice;

specified ruling (指明判定)—see section 81AAC(1);

subject offence (標的罪行)—see section 81AAC(2).

(2) If 2 or more defendants are charged jointly with the same offence, this Division applies as if the offence, so far as it relates to each of those defendants, were a separate offence for each defendant so that a reference in this Division to a ruling that relates to one or more offences includes a ruling that relates to one or more of those separate offences.

81AAB. Application of Division 3

This Division does not apply in relation to a case concerning offences endangering national security tried in the court without a jury by a panel of 3 judges under Article 46 of the HK National Security Law.

81AAC. Appeal against specified rulings

- (1) This section applies if the court makes a ruling during a trial that a defendant has no case to answer in relation to one or more offences (*specified ruling*).
- (2) The Secretary may, with the leave of the court or the Court of Appeal, appeal to the Court of Appeal against the specified ruling in relation to any of the offences (*subject offence*).
- (3) For the purpose of making an appeal under subsection (2), the Secretary must do all the acts specified in subsection (4) as soon as practicable after—
 - (a) the specified ruling is made; or
 - (b) if an adjournment is granted by the court under subsection (6)—the expiry of the period of adjournment.
- (4) The acts are—
 - (a) informing the court that the Secretary intends to appeal against the specified ruling;
 - (b) if the specified ruling is made in relation to 2 or more offences—informing the court which one or more of the offences are to be the subject offences; and
 - (c) giving an acquittal guarantee in relation to the appeal.
- (5) If the Secretary requires more time to consider whether to appeal against the specified ruling, the Secretary may, as soon as practicable after the specified ruling is made, request an adjournment to do so.

- (6) If a request is made by the Secretary under subsection (5), the court must grant an adjournment until at least the next business day.
- (7) On informing the court of the intention to appeal under subsection (4)(a), the Secretary may also include another ruling made by the court as the subject of the appeal if that other ruling also relates to the subject offence.
- (8) In subsection (6)—
business day (工作日) means a day other than a closure day as defined by section 71(2) of the Interpretation and General Clauses Ordinance (Cap. 1).

81AAD. Acquittal guarantee

- (1) For the purposes of section 81AAC(4)(c), an acquittal guarantee is given by the Secretary in relation to the appeal when the Secretary informs the court of the matter specified in subsection (2).
- (2) The matter is that the Secretary agrees that the defendant charged with the subject offence is to be acquitted of the offence if—
 - (a) leave to appeal against the specified ruling is not granted; or
 - (b) whether or not leave to appeal against the specified ruling is granted—the appeal is abandoned by the Secretary before it is determined by the Court of Appeal.
- (3) If either of the conditions of the acquittal guarantee mentioned in subsection (2)(a) and (b) is met, the court or the Court of Appeal (as the case requires) must order that the defendant be acquitted of the subject offence.

81AAE. Specified ruling to have no effect pending appeal

- (1) If the Secretary requests an adjournment under section 81AAC(5) to consider whether to appeal against a specified ruling, the specified ruling is to have no effect until the expiry of the period of adjournment.
- (2) If the Secretary informs the court under section 81AAC(4)(a) that the Secretary intends to appeal against a specified ruling in relation to a subject offence, the specified ruling is to have no effect in relation to the subject offence until the appeal is determined by the Court of Appeal or abandoned by the Secretary in relation to that offence.
- (3) To avoid doubt, if a specified ruling has no effect under this section—
 - (a) any consequences of the ruling are also to have no effect;
 - (b) the court may not take any steps in consequence of the ruling; and
 - (c) even if the court has taken any steps, they are also to have no effect.

81AAF. Expedited and non-expedited appeals

- (1) If the Secretary informs the court under section 81AAC(4)(a) that the Secretary intends to appeal against a specified ruling, the court must decide whether or not the appeal is to be expedited.
- (2) If the court decides that the appeal is to be expedited, it may order an adjournment.
- (3) If the court decides that the appeal is not to be expedited, it may—

- (a) order an adjournment; or
 - (b) discharge the jury of the trial concerned.
- (4) The decision of the court to expedite an appeal may be reversed by the court or the Court of Appeal and, if the decision is reversed, the court may act as mentioned in subsection (3)(a) or (b).

81AAG. Continuation of proceedings for offences not affected by appeal

If—

- (a) a trial mentioned in section 81AAC(1) is instituted for 2 or more offences; and
- (b) one or more of the offences (*other offences*) are not the subject offences,

the trial or any proceedings relating to the trial may be continued in relation to those other offences.

81AAH. Determination of appeal by Court of Appeal

- (1) On an appeal under section 81AAC, the Court of Appeal may confirm, reverse or vary the ruling that is the subject of the appeal.
- (2) However, the Court of Appeal may only reverse or vary a ruling if it is satisfied that the ruling involved an error of law or principle.
- (3) If the Court of Appeal confirms a specified ruling made in relation to an offence, it must order that the defendant be acquitted of that offence.
- (4) If the Court of Appeal reverses or varies a specified ruling made in relation to an offence, it must order that—

- (a) the proceedings for that offence be resumed in the court;
 - (b) the defendant may be retried in the court for that offence; or
 - (c) the defendant be acquitted of that offence.
- (5) However, the Court of Appeal may not make an order under subsection (4)(c) unless it considers that the defendant could not receive a fair trial if an order is made under subsection (4)(a) or (b).
- (6) The Court of Appeal may also give all such necessary and consequential directions as it considers appropriate.

81AAI. Restrictions on reports of proceedings relating to appeals under this Division

- (1) This section applies if the court makes a specified ruling in relation to a defendant during a trial.
- (2) Subject to subsections (3) and (4), a person must not publish in Hong Kong a written report, or broadcast in Hong Kong a report, of—
 - (a) any steps taken under section 81AAC, 81AAD, 81AAF or 81AAH for the purpose of an appeal under section 81AAC against the specified ruling;
 - (b) the application of section 81AAE in relation to the specified ruling;
 - (c) an appeal under section 81AAC against the specified ruling;
 - (d) an appeal under section 31 of the Hong Kong Court of Final Appeal Ordinance (Cap. 484) against an order made by the Court of Appeal

- under section 81AAH(3) or (4) in relation to the specified ruling;
- (e) an application for leave to appeal for an appeal mentioned in paragraph (c) or (d); or
 - (f) any order or direction made by the court, the Court of Appeal or the Court of Final Appeal in relation to an appeal mentioned in paragraph (c) or (d) or an application for leave to appeal mentioned in paragraph (e).
- (3) Subsection (2) does not apply if the report is published or broadcast after the conclusion of the trial, or any retrial ordered under section 81AAH(4)(b), of the defendant or any other defendant in the trial (whichever is the latest).
- (4) Subsection (2) does not apply to a report that only contains one or more of the following matters—
- (a) the identity of the court and the name of the judge;
 - (b) the names of the defendant and witness;
 - (c) the offence with which the defendant is charged;
 - (d) the names of counsel and solicitor in the proceedings;
 - (e) if the proceedings are adjourned—the date and place to which they are adjourned;
 - (f) any arrangements as to bail;
 - (g) whether, for the purpose of the proceedings, representation was provided to the defendant or any of the defendants under the Legal Aid in Criminal Cases Rules (Cap. 221 sub. leg. D).

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- (5) If a report is published or broadcast in contravention of subsection (2), each of the following persons commits an offence—
- (a) for a publication of a written report as part of a newspaper or periodical publication—the proprietor, editor, publisher or distributor of the newspaper or publication;
 - (b) for a publication of a written report otherwise than as part of a newspaper or periodical publication—the person who publishes or distributes it;
 - (c) for a broadcast of a report in a programme—
 - (i) the person who transmits or provides the programme; or
 - (ii) the person who has functions in relation to the programme that correspond to those of the editor of a newspaper or periodical publication.
- (6) A person who commits an offence under subsection (5) is liable on conviction to a fine at level 5 and to imprisonment for 6 months.
- (7) Proceedings for an offence under this section must not be instituted without the consent of the Secretary.
- (8) In this section—
- broadcast** (廣播) means sounds or visual images broadcast by wireless telegraphy, or by means of a high frequency distribution system over wires, or other paths provided by a material substance and intended for general reception;

publish (發布), in relation to a report, means publish the report, either by itself or as part of a newspaper or periodical publication, for distribution to the public.

81AAJ. Court may relax restrictions on reports

- (1) The court, the Court of Appeal or the Court of Final Appeal may order that section 81AAI(2) is not to apply, or is not to apply to a specified extent, to a report of any proceedings before it.
- (2) If the court, the Court of Appeal or the Court of Final Appeal intends to make an order under subsection (1), the defendant in the proceedings concerned may make an objection against the making of the order.
- (3) If a defendant makes an objection under subsection (2), the court, the Court of Appeal or the Court of Final Appeal (as the case requires) may only make the order if it is satisfied, after considering the representations of the defendant, that it is in the interests of justice to do so.
- (4) If an order is made under subsection (3), the order is not to apply to the extent that a report deals with any of the objections or representations.”.

5. Part IV, Division 6 added

Part IV, after section 81D—

Add

“Division 6—Appeal by Way of Case Stated**81DA. Appeal by way of case stated against verdict of acquittal given by the court without jury**

- (1) This section applies if—
 - (a) the court tries a case concerning offences endangering national security without a jury by a panel of 3 judges under Article 46 of the HK National Security Law; and
 - (b) the court gives a verdict or order of acquittal (including an order quashing or dismissing a charge for an alleged defect in the charge or for want of jurisdiction) in relation to a defendant in the case.
- (2) The Secretary for Justice (*Secretary*) may appeal to the Court of Appeal against the verdict or order.
- (3) The appeal may only relate to matters of law.
- (4) For the purpose of making an appeal under subsection (2), the Secretary must make an application in writing to the court requesting the court to state a case for the opinion of the Court of Appeal.
- (5) An application under subsection (4) may only be made before the expiry of the following period—
 - (a) within 14 clear days after the reasons for the verdict or order have been recorded; or
 - (b) if the Court of Appeal extends the period mentioned in paragraph (a) before or after the expiry of the period—within the extended period.

- (6) If the Secretary makes an application under subsection (4) before the expiry of the period specified in subsection (5), the court must state the case.
- (7) A case stated under subsection (6) must set out—
 - (a) the facts and the grounds on which the verdict or order was arrived at or given; and
 - (b) the grounds on which the verdict or order is questioned.
- (8) Sections 106, 107, 108, 109 and 115 of the Magistrates Ordinance (Cap. 227) (*applicable provisions*) apply, with necessary modifications, to the preparation and amendment of the case stated and the setting down of the appeal.
- (9) Without limiting subsection (8), the applicable provisions apply with the following modifications—
 - (a) a reference to “magistrate” in the applicable provisions is a reference to the court; and
 - (b) a reference to “judge” in the applicable provisions is a reference to the Court of Appeal.

81DB. Defendant may be detained in custody or admitted to bail immediately after verdict of acquittal

- (1) If, immediately after the court gives a verdict or order mentioned in section 81DA(1)(b) in relation to a defendant, the Secretary for Justice informs the court that the Secretary intends to appeal against the verdict or order under section 81DA(2), the court may—

- (a) on the application of the Secretary, order that the defendant be detained in custody pending the determination of the appeal by the Court of Appeal; or
 - (b) admit the defendant to bail.
- (2) To avoid doubt, subsection (1) is subject to Article 42 of the HK National Security Law.

81DC. Court of Appeal may issue warrant for arrest of respondent

- (1) If the Secretary for Justice makes an application under section 81DA(4) for the purpose of making an appeal under section 81DA(2), the Court of Appeal may, on application made by the Secretary in chambers, issue a warrant addressed to police officers directing that the respondent of the appeal be arrested and brought before the Court of Appeal.
- (2) If the respondent is arrested under subsection (1), the Court of Appeal may—
 - (a) order that the respondent be detained in custody pending the determination of the appeal by the Court of Appeal; or
 - (b) admit the respondent to bail.
- (3) To avoid doubt, subsection (2) is subject to Article 42 of the HK National Security Law.

81DD. Determination of appeal by Court of Appeal

- (1) On an appeal against a verdict or order under section 81DA, whether or not the respondent of the appeal appears at the hearing of the appeal, the Court of Appeal—

- (a) if it is satisfied that there is no sufficient ground for interfering with the verdict or order—must dismiss the appeal; or
- (b) if it is satisfied that there are sufficient grounds for interfering with the verdict or order—must reverse the verdict or order, and direct that—
 - (i) the trial in which the verdict or order is given in relation to the respondent be resumed in the court; or
 - (ii) the respondent be retried in the court.
- (2) The Court of Appeal may also give all such necessary and consequential directions as it considers appropriate.”.

6. Section 83Y amended (powers of Court of Appeal under Part IV which are exercisable by single judge)

- (1) After section 83Y(2)(b)—

Add

“(ba) to extend the period within which an application may be made under section 81DA(4);”.

- (2) After section 83Y(2)(e)—

Add

“(ea) to issue a warrant under section 81DC(1);

(eb) to order that a respondent be detained in custody or admitted to bail under section 81DC(2);”.

- (3) Section 83Y(2)—

Repeal paragraph (i).

Part 3

Related Amendments to Costs in Criminal Cases Ordinance (Cap. 492)

7. Section 9AA added

After section 9—

Add

“9AA. Defence costs on unsuccessful appeal against ruling of no case to answer

If the Secretary for Justice informs the Court of First Instance under section 81AAC(4)(a) of the Criminal Procedure Ordinance (Cap. 221) that the Secretary intends to appeal against a specified ruling (as defined by section 81AAC(1) of that Ordinance), the Court of Appeal may order that costs be awarded to the defendant if—

- (a) leave to appeal under section 81AAC of that Ordinance against the specified ruling is not granted;
- (b) the appeal is abandoned by the Secretary before it is determined by the Court of Appeal; or
- (c) the Court of Appeal confirms the specified ruling.”.

8. Section 9A amended (defence costs where Court of Appeal dismisses appeal by way of case stated)

Section 9A, after “under”—

Add

“section 81DA of the Criminal Procedure Ordinance (Cap. 221) or”.

9. Section 13AA added

After section 13—

Add

“13AA. Prosecution costs on successful appeal against ruling of no case to answer

If an appeal is made under section 81AAC of the Criminal Procedure Ordinance (Cap. 221) against a specified ruling (as defined by section 81AAC(1) of that Ordinance), the Court of Appeal may order that costs be awarded to the Secretary for Justice if the Court of Appeal reverses or varies the specified ruling.”.

10. Section 13A amended (prosecution costs where Court of Appeal allows appeal by way of case stated)

Section 13A, after “under”—

Add

“section 81DA of the Criminal Procedure Ordinance (Cap. 221) or”.

Schedule

[s. 2]

Minor Technical Amendments to Criminal Procedure Ordinance (Cap. 221) and its Subsidiary Legislation

Part 1

Repeal of Cross-headings in, and Addition of Division Headings to, Part IV of Criminal Procedure Ordinance (Cap. 221)

1. **Cross-heading before section 80 repealed**

Cross-heading before section 80—

Repeal the cross-heading.

2. **Part IV, Division 1 heading added**

Before section 80—

Add

“Division 1—Interpretation”.

3. **Cross-heading before section 81 repealed**

Cross-heading before section 81—

Repeal the cross-heading.

4. **Part IV, Division 2 heading added**

Before section 81—

Add

“Division 2—Reservation of Question of Law”.

5. Cross-heading before section 81A repealed

Cross-heading before section 81A—

Repeal the cross-heading.

6. Part IV, Division 4 heading added

Before section 81A—

Add

**“Division 4—Review of Sentence on the Application
of the Secretary for Justice”.**

7. Cross-heading before section 81D repealed

Cross-heading before section 81D—

Repeal the cross-heading.

8. Part IV, Division 5 heading added

Before section 81D—

Add

“Division 5—Reference of Question of Law”.

9. Cross-heading before section 81E repealed

Cross-heading before section 81E—

Repeal the cross-heading.

10. Part IV, Division 7 heading added

Before section 81E—

Add

“Division 7—Appeal against Discharge”.

11. Cross-heading before section 82 repealed

Cross-heading before section 82—

Repeal the cross-heading.

12. Part IV, Division 8 heading added

Before section 82—

Add

**“Division 8—Appeal against Conviction on
Indictment”.**

13. Cross-heading before section 83E repealed

Cross-heading before section 83E—

Repeal the cross-heading.

14. Part IV, Division 9 heading added

Before section 83E—

Add

“Division 9—Retrial”.

15. Cross-heading before section 83G repealed

Cross-heading before section 83G—

Repeal the cross-heading.

16. Part IV, Division 10 heading added

Before section 83G—

Add

“Division 10—Appeal against Sentence”.

17. Cross-heading before section 83J repealed

Cross-heading before section 83J—

Repeal the cross-heading.

18. Part IV, Division 11 heading added

Before section 83J—

Add

“Division 11—Appeal in Cases of Insanity”.

19. Cross-heading before section 83M repealed

Cross-heading before section 83M—

Repeal the cross-heading.

20. Part IV, Division 12 heading added

Before section 83M—

Add

“Division 12—Unfitness to Stand Trial”.

21. Cross-heading before section 83O repealed

Cross-heading before section 83O—

Repeal the cross-heading.

22. Part IV, Division 13 heading added

Before section 83O—

Add

**“Division 13—Further Provisions Relating to Appeals
and Questions of Law Reserved”.**

23. Cross-heading before section 83P repealed

Cross-heading before section 83P—

Repeal the cross-heading.

24. Part IV, Division 14 heading added

Before section 83P—

Add

**“Division 14—Review by Court of Appeal of Cases
Tried on Indictment”.**

25. Cross-heading before section 83Q repealed

Cross-heading before section 83Q—

Repeal the cross-heading.

26. Part IV, Division 15 heading added

Before section 83Q—

Add

**“Division 15—Procedure from Notice of Appeal to
Hearing”.**

27. Cross-heading before section 83U repealed

Cross-heading before section 83U—

Repeal the cross-heading.

28. Part IV, Division 16 heading added

Before section 83U—

Add

“Division 16—The Hearing”.

29. Cross-heading before section 83W repealed

Cross-heading before section 83W—

Repeal the cross-heading.

30. Part IV, Division 17 heading added

Before section 83W—

Add

“Division 17—Other Matters Depending on Result of Appeal”.

31. Cross-heading before section 83Y repealed

Cross-heading before section 83Y—

Repeal the cross-heading.

32. Part IV, Division 18 heading added

Before section 83Y—

Add

“Division 18—Supplementary”.

Part 2

“報道” Substituted for “報導”

Division 1—Amendments to Criminal Procedure Ordinance (Cap. 221)

33. Section 9P amended (restriction on reports of bail proceedings)

(1) Section 9P, Chinese text, heading—

Repeal

“報導”

Substitute

“報道”.

(2) Section 9P(1), (2) and (3), Chinese text—

Repeal

“報導” (wherever appearing)

Substitute

“報道”.

(3) Section 9P(5), Chinese text, definition of 發布—

Repeal

“報導” (wherever appearing)

Substitute

“報道”.

**34. Section 16 amended (discharge of accused after committal
without a hearing)**

Section 16(7) and (8), Chinese text—

Repeal

“報導”

Substitute

“報道”.

Division 2—Amendments to Criminal Procedure (Appeal against Discharge) Rules (Cap. 221 sub. leg. F)

35. Rule 6 amended (restrictions on reports of appeals)

- (1) Rule 6, Chinese text, heading—

Repeal

“報導”

Substitute

“報道”.

- (2) Rule 6(1), (2) and (3), Chinese text—

Repeal

“報導”

Substitute

“報道”.

Division 3—Amendments to Criminal Procedure (Applications under Section 16) Rules (Cap. 221 sub. leg. G)

36. Rule 16 amended (written and broadcast reports)

- (1) Rule 16, Chinese text, heading—

Repeal

“報導”

Substitute

“報道”.

(2) Rule 16(1), (2) and (3), Chinese text—

Repeal

“報導”

Substitute

“報道”.