

shall not be construed so as to prevent any person who aids, abets, counsels or procures the commission by another person of an offence under section 5, 7, 9 or 13 of the principal Ordinance, as the case may be, being found guilty of any such like offence.

(2) In this section, a reference to “the principal Ordinance” means the Gambling Ordinance (Cap. 148) prior to its amendment by this Ordinance.

Explanatory Memorandum

The objects of this Bill are—

- (a) to add an extraterritorial element to the offence “bookmaking” under section 7 (clause 4, new section 7(1A)(a));
- (b) to not make it an offence under section 7 if the transaction which constitutes the bookmaking and the parties to the transaction are outside Hong Kong (clause 4, new section 7(1A)(b));
- (c) to add an extraterritorial element to the offence “betting with a bookmaker” under section 8 (clause 5, new section 8(2)(a));
- (d) to not make it an offence under section 8 if the person who makes the bet and the bookmaker with whom the bet is made are outside Hong Kong (clause 5, new section 8(2)(b));
- (e) to make it an offence to keep any premises or place—
 - (i) for the conduct of cash-sweeps, totalizator or pari-mutuel betting or the soliciting, receiving, negotiating or settling of bets on horse, pony or dog races or, for any activity which promotes or facilitates such conduct, save under and in accordance with the written permission of the Chief Secretary for Administration given under the Betting Duty Ordinance (Cap. 108);
 - (ii) for the conduct of competitions for money or the soliciting, receiving, negotiating or settling of bets for competitions for money involving the guessing or the estimating of the results of future events or of past events, the results of which are not generally known or, for any activity which promotes or facilitates such conduct, save under and in accordance with permission similarly given under the Betting Duty Ordinance (Cap. 108) or under section 22 of the principal Ordinance,
(clause 8, new sections 16A and 16B).

2. It will also be an offence for any person—
 - (a) being the owner, tenant, occupier or person in charge of any premises or place to knowingly permit or suffer such premises or place or any part thereof to be opened, kept or used for the promotion, conduct or management of any activity which constitutes an offence under new section 16A or 16B;
 - (b) to let or agree to let any premises or place with the knowledge that such premises or place or any part thereof is to be opened, kept or used for such purposes,
(clause 8, new section 16C).
3. A restriction is placed on broadcasts of forecasts, hints, odds or tips as to the results of horse, pony or dog races, unless the horse, pony or dog races are those in respect of which totalizator or pari-mutuel betting is conducted under and in accordance with the written permission of the Chief Secretary for Administration given under the Betting Duty Ordinance (Cap. 108). Provision is made for the restriction not to apply in the case of named events specified by the Secretary for Home Affairs by notice published in the Gazette (clause 8, new section 16D).
4. A new offence, namely, promoting and facilitating bookmaking is created (clause 8, new section 16E).
5. Persons who commit offences under new section 16A, 16B, 16C or 16E are liable on summary conviction to a fine of \$5,000,000 and to imprisonment for 2 years and on conviction on indictment to a fine of \$5,000,000 and to imprisonment for 7 years. An offence under new section 16D is punishable on summary conviction with a fine of \$1,000,000 and imprisonment to 2 years. On conviction on indictment, a fine of \$1,000,000 and 7 years imprisonment may be imposed.
6. A prosecution for an offence may not be instituted under new section 16A, 16B, 16C, 16D or 16E without the written consent of the Secretary for Justice (clause 8, new section 16F).
7. Amendments are also made to the definitions “bookmaking”, “gambling” and “gambling establishment” in section 2 and to section 26 (“forfeiture”) so as to bring any activity which constitutes an offence under new section 16A or 16B within the scope of those definitions and that section.
8. The concept of “assisting” is removed from the principal Ordinance having regard to recent court decisions which suggest that the concept may exclude the application of section 89 of the Criminal Procedure Ordinance (Cap. 221) insofar as it enables persons who assist to be charged with aiding and abetting the commission of the principal offence (clauses 3, 4(a), 6 and 7). A saving provision appears in clause 14.

9. The opportunity is taken to amend section 19 relating to presumptions to enhance the provisions' consistency with the Human Rights provisions of the Basic Law (clause 9).