

AG's good news is simply all bad news

AS the continuing saga surrounding Section 27 of the Public Order Ordinance enters another phase, let one thing be clearly stated. This newspaper will always argue against, and oppose, any Machiavellian mechanism, any dubious device or any straightforward control of either freedom of expression or of freedom of the press in Hongkong.

Freedom of information, which is the natural consequence of free speech and a free press, is the lifeblood of Hongkong, an absolute requirement of a dynamic economy and a flourishing society.

Since no one in his right mind can advocate collective suicide, opposition to the unnecessary restriction of these freedoms is mandatory. For this simple but compelling reason, we could not accept the legislation enshrined in the Public Order (Amendment) Bill before and after it was passed. So we cannot accept the guidelines from the Attorney General which have now been published as a way of explaining what the new Section 27 really intends.

There can be no simple, happy ending to a bad law. Earlier, an editorial in this newspaper likened the new Section 27 to "giving a society AIDS in exchange for suppressing the common cold". To carry the analogy further, the guidelines merely mean that the Government, to the best of its ability, will try to be celibate. The virus remains.

That said, it is pleasing to note that, belatedly, the Government has at least reacted positively to the sustained outcry against Section 27. This at least means that public opinion does, after all, count for something. As official spokesmen stuck doggedly to the line that the new ordinance did not infringe upon freedom of expression and freedom of the press, and that there was nothing to worry about; we were beginning to doubt even that.

It is also a mild source of satisfaction that the guidelines so greatly restrict any conceivable operation of Section 27 that they must constitute a considerable deterrent to any counsel in the prosecutions division exercising their skills in the cause of implementation.

But if the guidelines mollify, they do not end the affair.

For a start, the guidelines have "no status in law". They are not binding. Authority to consent to a prosecution for the publication of "false news" is reserved to the Attorney General "personally". In short, the present Attorney General could change his mind or a successor could change the guidelines. Thus a minimum demand is that, should any such change be contemplated, the Government must guarantee that there will be full and immediate disclosure.

Yet that is only another way of saying

that despite, and even because of, the guidelines, the "virus" can still do its deadly work. For the guidelines clearly support what the critics have been saying all along — that Section 27 was sloppily drafted, bereft of proper definition and without clear and justifiable intent.

Let one example suffice. Speaking to Hongkong publishers on Friday the President of the Bar Association, Mr Dennis Chang, said that as he interpreted the law "even if the defendant shows that he honestly believed that the news was true, he may still be convicted" under Section 27. Yet the guidelines assert, to the contrary, that "even if the prosecution is able to prove beyond reasonable doubt that the accused published the news in question, that it was false, and that it was likely to cause public alarm and disorder, the case will nevertheless fail if the defendant can show on a balance of probabilities that he had reasonable grounds for believing that the news was true".

The only safe conclusion would seem to be that the guidelines are not in line with Section 27, or that if the bill is valid, the guidelines are not. Faced with such chicken-and-egg calculations, only one conclusion is permissible. As Mr Chang also says, "in principle, a law which is defective should not be cured by administrative guidelines but by amendment or repeal".

Amendment could take the form of "the insertion of a definition section, which will remove ambiguities so that no question will be raised as to the correspondence between any stated prosecution policy and the letter, spirit and wording of the ordinance".

Now that the guidelines are out, would it be that simple? The distinct possibility arises that either the guidelines-cum-definitions would have to be changed to suit Section 27, or else the section would need change to align with the definitions.

So there really is no choice. The guidelines, far from clarifying the law as it stands, only emphasise what a worthless piece of legislation Section 27 was, is and always will be.

The Government is faced with the alternative of being able to legislate a virus of disaffection out of existence — or of sinking ever deeper in the mire of an undesirable and damaging controversy which the guidelines are almost certain to increase.

It is to be hoped therefore that a new Governor, seeking a fresh mandate of confidence, and seeing that face and prestige will both be gained by decisive action rather than prolonged agony, will come to see Section 27 much as Oliver Cromwell once viewed the Rump Parliament: "(It) has sat too long here for any good that (it) has been doing. Depart, I say, and let us have done with (it). In the name of God, go!"