

立法會
Legislative Council

LC Paper No. LS36/05-06

**Paper for the House Committee Meeting
on 24 February 2006**

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 17 February 2006**

Date of Tabling in LegCo : 22 February 2006

Amendment to be made by : 22 March 2006 (or 26 April 2006 if extended by resolution)

Fugitive Offenders Ordinance (Cap. 503)
Fugitive Offenders (Finland) Order (L.N. 23)

The Fugitive Offenders (Finland) Order (“the Finland Order”) is made by the Chief Executive in Council under section 3 of the Fugitive Offenders Ordinance (Cap. 503) (“the Ordinance”). By this Order, it is directed that the procedures in the Ordinance for the surrender of fugitive offenders shall apply as between Hong Kong and the Republic of Finland. The Finland Order is made in consequence of the arrangements for the surrender of fugitive offenders entered into by Hong Kong and the Republic of Finland and signed in Hong Kong on 20 May 2005. The terms of those arrangements are recited in the Schedule to the Order. Under section 2(1) of the Order, the relevant procedures are subject to the limitations, restrictions, exceptions and qualifications contained in the terms of the arrangements recited.

2. The Finland Order is subject to a mechanism of scrutiny by the Legislative Council provided in section 3(2) to (6) of the Ordinance. The mechanism is similar to that provided in section 34 of the Interpretation and General Clauses Ordinance (Cap. 1), except that section 3(3) of the Ordinance restricts the Legislative Council’s power to only repeal the Order.

3. Article 6(1)(a) of the Finland Order provides that a person shall not be surrendered if the Requested Party has substantial grounds for believing that the offence of which that person is accused or was convicted is an offence of a political character. This restriction on surrender is based on section 5(1)(a) of the Ordinance. Article 6(2) limits the scope of Article 6(1)(a) by providing to the effect that certain offences are not considered to be political offences. These relate to offences in respect of which both Parties have an obligation in accordance with a multilateral agreement either to surrender the person sought or to submit the case to their competent authorities for decision as to prosecution. Members may note that the existing fugitive offenders orders in respect of the bilateral arrangements with Australia and the Philippines also contain an identical

provision. Provisions of similar effect can also be found in other existing fugitive offenders orders such as the Fugitive Offenders (Sri Lanka) Order (Cap. 503 sub. leg. V) (“the Sri Lanka Order”).

4. Members may recall that during the deliberations of the Subcommittee to study issues relating to the Sri Lanka Order in 2002, the Subcommittee noted that the Sri Lanka Order contained a provision which provided for exceptions to the political offence restriction on surrender of fugitive offenders (“the exception provision”), although the Ordinance did not appear to provide for the power to make such exceptions. Members of the Subcommittee expressed concern on whether the Sri Lanka Order was substantially in conformity with the provisions of the Ordinance or had otherwise exceeded the authorisation under the Ordinance. The Subcommittee had consulted the Hong Kong Bar Association (“HKBA”) and The Law Society of Hong Kong (“The Law Society”) on the exception provision, and noted HKBA’s view that the exception provision was substantially in conformity with the Ordinance and that The Law Society had no objection to the proposed arrangement. As suggested by the Subcommittee, the Administration undertook to consider amending the Ordinance to give a clearer mandate for future orders to specify exceptions to the political offence restriction on surrender contained in section 5(1)(a) of the Ordinance, although the Administration did not consider such a mandate necessary. The Administration pointed out that a number of previous fugitive offenders orders which contained such exceptions had been validly made in accordance with section 3(1) and (9) of the Ordinance, and stressed that such an amendment, if made, would be for the avoidance of doubt. The Legal Service Division has made enquiries with the Administration on the progress on this matter. We understand that the Administration is prepared to amend the Ordinance to achieve the above purpose at an appropriate time in future and will brief the Panel on Security when the amendment is ready.

5. The Panel on Security has not been consulted on the Finland Order. Members may refer to the LegCo Brief (File Ref.: SBCR 3/5691/95 Pt. 34 and SBCR 1/2716/89(98) Pt. 21) issued by the Security Bureau on 15 February 2006 for background information.

6. The Finland Order will come into operation on a day to be appointed by the Secretary for Security by notice published in the Gazette.

Prepared by

FUNG Sau-kuen, Connie
Assistant Legal Adviser
Legislative Council Secretariat
21 February 2006