

立法會

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Subcommittee on Fugitive Offenders (Finland) Order

Background brief prepared by the Legislative Council Secretariat

Purpose

This paper provides background information relating to scrutiny by the Legislative Council (LegCo) of bilateral agreements in relation to the arrangements for the surrender of fugitive offenders signed between the Government of the Hong Kong Special Administrative Region (HKSAR) and other jurisdictions.

Background

2. The Fugitive Offenders Ordinance (Cap. 503) provides for the surrender to certain places outside Hong Kong of persons wanted for prosecution, or for the imposition or enforcement of a sentence. It also provides for the treatment of persons surrendered to Hong Kong. Section 3(1) of the Ordinance states that the Chief Executive in Council may, in relation to any arrangements for the surrender of fugitive offenders, by order direct that the procedures in the Ordinance shall apply as between Hong Kong and the place outside Hong Kong to which the arrangements relate, subject to the limitations, restrictions, exceptions and qualifications contained in the order.

3. An order for the surrender of fugitive offenders is subject to a mechanism of scrutiny by LegCo provided in section 3(2) to (6) of the Ordinance under which LegCo has the power only to repeal the order.

4. Section 3(9) of the Ordinance provides that the Chief Executive in Council shall not make an order under the Ordinance unless the arrangements for the surrender of fugitive offenders to which the order relates are substantially in conformity with the provisions of the Ordinance.

SFO Orders scrutinised by LegCo

5. LegCo has scrutinised the Fugitive Offenders (New Zealand) Order, the Fugitive Offenders (Sri Lanka) Order and the Fugitive Offenders (Portugal) Order since its first term. In addition to these three Orders, orders in relation to the bilateral arrangements for the surrender of fugitive offenders signed with 10 other foreign jurisdictions have been made under section 3(1) of the Ordinance. These jurisdictions are the Netherlands, Canada, Australia, Malaysia, the Philippines, the United States of America, India, Indonesia, the United Kingdom and Singapore.

The Finland Order

6. The Finland Order is made in consequence of the agreement to the arrangements for the surrender of fugitive offenders entered into by HKSAR and Finland which was signed on 20 May 2005. The Administration has confirmed that the agreement is substantially in conformity with the provisions of the Ordinance.

7. The commencement date of the Finland Order will be appointed by the Secretary for Security by notice in the Gazette which will coincide with the date on which the agreement enters into force. According to the Administration, the commencement date will be settled after consultation with Finland, and will depend upon when the necessary domestic procedures of Finland are completed.

Issues raised by the Subcommittee to Study Issues relating to the Sri Lanka Order (the Subcommittee on Sri Lanka Order)

Surrender of nationals

8. Under Article 3 of the HKSAR/Sri Lanka Agreement, the Government of Sri Lanka reserves the right to refuse the surrender of its citizens, and the HKSAR Government reserves the right to refuse the surrender of nationals of the People's Republic of China (PRC). Members may wish to note that the Finland Order contains an identical provision.

9. Members of the Subcommittee on Sri Lanka Order had queried why the HKSAR/Sri Lanka Agreement only provided the HKSAR Government the right to refuse the surrender of PRC nationals, while the right to refuse the surrender of permanent residents of HKSAR was not covered.

10. The Administration explained that it was not a practice for common law jurisdictions to refuse surrender of their nationals. It was also not a feature of Hong Kong's practice in extradition to refuse the surrender of its sovereign's nationals or Hong Kong permanent residents. Although section 13(4) of the Ordinance provided the right to refuse the surrender of PRC nationals, this

provision had so far not been invoked and was intended to be used very rarely. The main reason for such a provision in surrender of agreements for the surrender of fugitive offenders was to cover a situation in future where arrangements existed to permit the rendition of persons from HKSAR to the Mainland, and both PRC and the requesting foreign jurisdiction had jurisdiction concurrently over the same offence. Such a provision would enable priority to be given to a Mainland request for the rendition of a Mainland Chinese national over a foreign request for the extradition of the same person for the same offence. In the view of the Administration, reserving the right to refuse the surrender of HKSAR permanent residents would not result in practical benefits for them from being not surrendered, because it was not a practice for HKSAR to refuse surrender of its permanent residents.

Exceptions to the political offence restriction on surrender of fugitive offenders

11. The Subcommittee on Sri Lanka Order 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. The Subcommittee expressed concern 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 and The Law Society of Hong Kong on the exception provision. The Subcommittee noted the Bar Association's view that the exception provision was substantially in conformity with the Ordinance. The Subcommittee also noted that The Law Society had no objection to the proposed arrangement.

12. 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.

13. The Legal Service Division of the LegCo Secretariat has made enquiries with the Administration on the progress on the matter. It is the understanding of the Division 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.