

**立法會**  
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**Subcommittee on  
Immigration (Unauthorized Entrants) (Amendment) Order 2016**

**Background brief prepared by the Legislative Council Secretariat**

**Purpose**

This paper provides background information and summarizes past discussions held by the Panel on Security ("the Panel") on issues relating to the Administration's proposed amendments to the Immigration (Unauthorized Entrants) Order (Cap. 115D).

**Background**

2. According to the Administration, the number of non-ethnic Chinese illegal immigrants ("NECIIs") intercepted has drastically increased in recent years, from 547 in 2011 to 3 819 in 2015, representing an almost six-fold increase. 99% of these NECIIs originated from Vietnam, Pakistan, Bangladesh, India, and Nepal. During the same period, the number of torture/non-refoulement claimants in Hong Kong has increased from 1 432 in 2011 to 4 634 in 2014 and 5 053 in 2015. At the end of 2015, amongst the 10 922 claimants in Hong Kong pending screening by the Immigration Department, over half (51%) are NECIIs. According to the Police's record, in 2015 there were 1 113 counts of arrest of non-ethnic Chinese persons on recognizance, who were mostly claimants, for serious crimes such as theft, physical assault, and drug trafficking, representing an increase of 67% over 2014.

**The Immigration (Unauthorized Entrants) (Amendment) Order 2016 ("the Amendment Order")**

3. The Amendment Order is made by the Chief Executive in Council under section 37B of the Immigration Ordinance ("IO") (Cap. 115) to amend the Immigration (Unauthorized Entrants) Order (Cap. 115D) to extend the scope of unauthorized entrants ("UEs") provided in Part VIIA of

IO to include persons resident or formerly resident in Afghanistan, Bangladesh, India, Nepal, Nigeria, Pakistan, Somalia and Sri Lanka. Under the Amendment Order, the smuggling of illegal immigrants from these countries is subject to the offence provisions under Part VIIA including those relating to arranging and assisting in carrying UEs and assisting UEs to remain in Hong Kong.

### **Deliberations of the Panel**

4. The Panel was consulted on the legislative proposal at the meeting on 12 April 2016. While members in general supported the Administration's legislative proposal, some members expressed doubt about its effectiveness. Some members were of the view that it would be more effective for the Administration and the Mainland authorities to jointly combat the problem at source.

5. According to the Administration, the legislative proposal was one of the proposed measures to address problems relating to non-refoulement claims and illegal immigration. The proposal sought to impose a heavier penalty on syndicates involved in the smuggling of NECIIs into Hong Kong. Members were advised that since February 2016, the relevant Mainland authorities had launched joint operations with the Hong Kong Police to combat human smuggling at the boundary, resulting in three human smuggling syndicates being neutralized and the arrest of about 2 900 NECIIs. Such joint operations would continue at least until the end of June 2017.

6. Noting that a large proportion of NECIIs came from Vietnam, which was already covered by sections 37C and 37D of IO, some members expressed doubt about the effectiveness of the Administration's proposal. Some members were concerned whether the Administration's legislative proposal would have any effect on NECIIs from Vietnam. Concern was also raised about whether the legislative proposal would lead to a change in a claimant's status and hence the chance of success in his claim.

7. Members were informed that besides NECIIs from Vietnam who were covered by existing legislation and mainly entered Hong Kong by land, there was a large number of NECIIs from other countries. The Administration's proposal sought to impose a heavier penalty on syndicates involved in the smuggling of NECIIs into Hong Kong. NECIIs who were being smuggled would not be subject to a heavier sentence even if they were declared as UEs.

8. Some members expressed concern about why the legislative proposal would apply to designated countries but not all countries. Queries were

raised as to why the Administration's proposal did not cover Indonesia, which was the country of origin of a number of claimants.

9. According to the Administration, the subsidiary legislation to be amended was directed at syndicates smuggling illegal immigrants from specified countries. Expanding the list to cover all countries might deviate from the original intent of the subsidiary legislation and required amendment of the principal Ordinance. The Administration had analysed the profile of NECIIs before proposing the list of countries to be covered under the legislative proposal. Claimants from Indonesia were mainly overstayers and there were very few NECIIs from Indonesia in the past few years.

10. Noting that the subsidiary legislation to be introduced would come into operation on the date of gazettal, some members expressed concern about the lack of sufficient time for scrutiny of the subsidiary legislation which would be subject to negative procedure.

### **Relevant papers**

11. A list of relevant questions raised at Council meetings and relevant papers on the Legislative Council website is in the **Appendix**.

Council Business Division 2  
Legislative Council Secretariat  
3 June 2016

**Relevant papers on  
Immigration (Unauthorized Entrants) (Amendment) Order 2016**

<b>Committee</b>	<b>Date of meeting</b>	<b>Paper</b>
Legislative Council	29.4.2015	<a href="#">Official Record of Proceedings (Question 16)</a>
Panel on Security	2.2.2016 (Item VI)	<a href="#">Agenda</a> <a href="#">Minutes</a>
Legislative Council	24.2.2016	<a href="#">Official Record of Proceedings (Question 18)</a>
Panel on Security	12.4.2016 (Item IV)	<a href="#">Agenda</a> <a href="#">Minutes</a>
Legislative Council	13.4.2016	<a href="#">Official Record of Proceedings (Question 18)</a>

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