

**立法會**  
**Legislative Council**

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(These minutes have been seen  
by the Administration)

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**Bills Committee on Immigration (Amendment) Bill 2020**

**Minutes of second meeting**  
**held on Friday, 5 February 2021, at 9:00 am**  
**in Conference Room 3 of the Legislative Council Complex**

- Members present** : Hon Elizabeth QUAT, BBS, JP (Chairman)  
Hon CHAN Hak-kan, BBS, JP  
Hon Mrs Regina IP LAU Suk-ye, GBS, JP  
Hon Paul TSE Wai-chun, JP  
Hon Michael TIEN Puk-sun, BBS, JP  
Hon YIU Si-wing, BBS  
Dr Hon Junius HO Kwan-yiu, JP  
Hon SHIU Ka-fai, JP  
Hon YUNG Hoi-yan, JP  
Hon CHAN Chun-ying, JP  
Hon LUK Chung-hung, JP  
Dr Hon CHENG Chung-tai
- Member attending** : Hon Holden CHOW Ho-ding
- Member absent** : Dr Hon Priscilla LEUNG Mei-fun, SBS, JP
- Public Officers attending** : Item II  
Ms Hanny LAM Shuk-ye, JP  
Deputy Secretary for Security 3  
Mr Cyrus CHEUNG Ho-chi  
Principal Assistant Secretary for Security (Review)

Mr Ronald HO Tze-tao  
Assistant Secretary for Security (Review) 1

Mr CHAN Wai-lit  
Assistant Director of Immigration (Enforcement)

Ms Sally CHEUNG Sau-yin  
Assistant Director of Immigration  
(Removal Assessment and Litigation)

Ms Monica LAW Man-yuen  
Senior Assistant Law Draftsman  
Department of Justice

Mr Alan CHONG Ka-ning  
Senior Government Counsel  
Department of Justice

**Clerk in attendance** : Miss Betty MA  
Chief Council Secretary (2) 1

**Staff in attendance** : Miss Joyce CHAN  
Assistant Legal Adviser 1

Ms Gloria TSANG  
Senior Council Secretary (2) 7

Miss Lulu YEUNG  
Clerical Assistant (2) 1

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## **I. Application for late membership**

Members accepted the application for late membership from Ms YUNG Hoi-yan in accordance with Rule 23 of the House Rules.

## **II. Meeting with the Administration**

2. The Bills Committee deliberated (index of proceedings attached at **Annex**).

3. The Bills Committee requested the Administration to provide the following information before the next meeting:

- (a) details in respect of the proposed amendments to the Firearms and Ammunition Ordinance (Cap. 238) and the Weapons Ordinance (Cap. 217) to designate the Immigration Service as one of the classes of persons who may possess arms, ammunition and weapons, including the historical factors, existing challenges encountered by Immigration officers deployed at the Castle Peak Bay Immigration Centre as well as rationale and justifications for the proposed amendments;
- (b) factors which have been considered in relation to the detention of non-refoulement claimants and response to members' views in this regard;
- (c) written responses to various issues raised in the submissions received from deputations/individuals on the Immigration (Amendment) Bill 2020 ("the Bill"); and
- (d) the major differences between the amendment proposals in the Bill and the proposed legislative amendments previously discussed at various meetings of the Panel on Security and the Subcommittee to Follow Up Issues Relating to the Unified Screening Mechanism for Non-refoulement Claims formed under the House Committee.

### **III. Any other business**

4. The Chairman said that another meeting would be scheduled to continue discussion with the Administration, and members would be informed of the meeting date in due course.

5. There being no other business, the meeting ended at 10:34 am.

**Proceedings of second meeting of the  
Bills Committee on Immigration (Amendment) Bill 2020  
held on Friday, 5 February 2021, at 9:00 am  
in Conference Room 3 of the Legislative Council Complex**

<b>Time marker</b>	<b>Speaker</b>	<b>Subject(s) / Discussion</b>	<b>Action Required</b>
000640 - 000703	Chairman	Application for late membership	
000704 - 001143	Chairman Mr SHIU Ka-fai Clerk Mr YIU Si-wing	Mr SHIU Ka-fai's enquiry and the Clerk's response regarding receiving public views on the Immigration (Amendment) Bill 2020 ("the Bill") via Zoom videoconferencing.  The Chairman pointed out that it was agreed at the last meeting that written views on the Bill be invited by posting a notice on the website of the Legislative Council. The submissions received had been issued to members and forwarded to the Administration for written response. The Administration was requested to provide relevant responses before the next meeting.	<b>Admin</b>
001144 - 002007	Chairman Mr Michael TIEN Admin	Mr Michael TIEN expressed concern about the proposed legislative amendments to the Firearms and Ammunition Ordinance (Cap. 238) ("FAO") and the Weapons Ordinance (Cap. 217) ("WO") to designate the Immigration Service as one of the classes of persons who might possess arms, ammunition and weapons on behalf of the Government. He was particularly concerned that the proposed amendments were not merely confined to officers deployed at the Castle Peak Bay Immigration Centre ("CIC") and that new firearms and weapons, such as rifles, would also be exempted to be possessed by the Immigration Service under the amendments.  The Administration responded that the Immigration Department ("ImmD") had all along decided on the use of suitable weapons and anti-riot equipment based on the operational needs and actual circumstances. While ImmD had no plan to change the existing policy and practice for officers at CIC to be provided with suitable anti-riot equipment, it would keep in view the future needs and suitably adjust the policy and practice as and when necessary taking into account the evolving situation and operational needs.	

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002008 - 003559	Chairman Mr YIU Si-wing Admin	<p>Mr YIU Si-wing's enquiries regarding:</p> <ul style="list-style-type: none"> <li>(a) any quantitative criteria in respect of the proposed factors which could justify detention for a longer period, as some of the factors appeared to be subjective and vague;</li> <li>(b) number of members currently appointed to the Torture Claims Appeal Board ("TCAB"); and</li> <li>(c) how the treatment rendered to claimants in terms of human rights protection in Hong Kong after the legislative amendments compared with that in western countries.</li> </ul> <p>The Administration responded that:</p> <ul style="list-style-type: none"> <li>(a) in accordance with the detention policy, the period of detention was considered having regard to the specific circumstances and facts of the individual case. Although ImmD would as necessary seek extra manpower resources when there was a large number of claims pending screening, there might be situations beyond the control of ImmD (e.g. some countries needed more time to issue travel documents). It was thus proposed that three additional factors be included in the Immigration Ordinance (Cap. 115) ("IO") in relation to the consideration on whether a period of detention was reasonable and lawful. As with the current practice, ImmD needed to state clearly the factors that had been taken into account for each individual case. The court would also adopt a stringent approach in assessing whether the detention period was reasonable or not, as well as whether the delay of a case was attributable to ImmD's handling procedure or claimants themselves. It was highlighted that ImmD would continue to adhere to the <i>Hardial Singh</i> principle in exercising its detention power;</li> <li>(b) the screening time of a claim by ImmD had reduced from around 25 weeks before to about 10 weeks now. The handling time of an appeal by TCAB had also been reduced to 26 weeks now and hopefully would be further reduced after the backlog was cleared later this year. With the appeal procedures streamlined under the Bill, it was expected that the handling time could be further reduced;</li> </ul>	

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		<p>(c) TCAB was substantially expanded in the past years to handle the heavy caseload and there were 92 TCAB members as at 31 October 2020. As the number of pending appeal cases has been substantially reduced (about 1 700 cases now), some existing members would be retired upon expiry of their current appointment term. As at 1 February 2021, there were 76 TCAB members; and</p> <p>(d) in proposing the legislative amendments, the Government had made reference to other countries in handling claims or asylum requests, such as the languages used in screening interview and the considerations to be taken into account when assessing the uncontrollable circumstances. It was especially pointed out that the existing publicly-funded legal assistance ("PFLA") provided to claimants at the screening stage was without upper limit, which was different from the majority of western countries where a statutory limit was set. That said, the Government was reviewing the provision of PFLA and whether a similar cap should be imposed like the practice in Canada or the United Kingdom, etc. Nevertheless, members' attention was drawn to the high standards of fairness as required by the court in the handling of non-refoulement claims.</p> <p>As a matter of public accountability, Mr YIU was of the view that a cap should be imposed on PFLA. The Chairman requested the Administration to report to the Legislative Council upon the completion of the review on the provision of PFLA.</p>	
003600 - 004909	Chairman Dr CHENG Chung-tai Admin	<p>Dr CHENG Chung-tai's concerns regarding:</p> <p>(a) the proposed legislative amendments to FAO and WO to designate the Immigration Service as one of the classes of persons who might possess arms, ammunition and weapons on behalf of the Government would give an impression that the Administration had a plan to detain claimants in a large-scale manner;</p> <p>(b) details and clarification of paragraph 4 of the Administration's reply to the letter from the Assistant Legal Adviser, specifically the statement that "the Government will not disclose to such authorities whether the person concerned has lodged</p>	

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		<p>any non-refoulement claim in Hong Kong when making arrangements for removal"; and</p> <p>(c) whether the requirements relating to the collection of personal data appearing in the travel documents of passengers and crew members while they were still at the departure places under the proposed Advance Passenger Information ("API") system would breach the local legislation of the respective overseas countries, as well as the operation details of the API system.</p> <p>The Administration responded that:</p> <p>(a) the proposed amendments to FAO and WO aimed to provide flexibility to ImmD and remove the administrative burden on the departments concerned. There was no plan to extensively upgrade the anti-riot equipment currently provided to officers deployed at CIC;</p> <p>(b) the Government had no plan to widely expand the number of claimants to be detained. In fact, CIC was the only detention facility currently in use which could accommodate about 500 detainees pending removal. The Tai Tam Gap Correctional Institution ("TGCI") to be commissioned shortly would provide an additional detention capacity of 160. The figure represented only a small portion of the some 13 000 claimants still remaining in Hong Kong;</p> <p>(c) "such authorities" in paragraph 4 of the Administration's reply referred to the authorities in the source countries. Under the proposed legislative amendments, when a claim was rejected by ImmD, the Government could in parallel liaise with relevant authorities for the purpose of making arrangements for removal (such as issuance of travel documents which very often took some time). Nevertheless, ImmD would not execute the removal of a claimant with a pending appeal to TCAB. ImmD would also temporarily suspend removal of an unsuccessful claimant if the person had filed an application for leave to judicial review. Such arrangement sought to save time and to facilitate the removal of the claimants concerned as soon as practicable when the legal proceedings had been disposed of; and</p>	

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		<p>(d) the proposed API system was a requirement of the International Civil Aviation Organization ("ICAO") introduced in 2018 and there were so far over 90 countries having implemented the requirement. The Government proposed to empower the Secretary for Security to make regulations under IO to implement API in Hong Kong. The Government had been studying how API system should be implemented in Hong Kong, having regard to ICAO's requirements and the operational experience worldwide. It was pointed out that the data of passengers and crew members to be collected through the proposed API system should be no different from the personal information that ImmD would have access to when relevant persons were presented to ImmD officers for immigration clearance upon their arrival in Hong Kong. ImmD would continue to handle the personal data collected with care and in full compliance with the requirements of the Personal Data (Privacy) Ordinance (Cap. 486).</p>	
004910 - 010242	Chairman Ms YUNG Hoi-yan Admin	<p>Ms YUNG Hoi-yan's concerns and suggestions regarding:</p> <p>(a) further improvement to the procedures of TCAB, including PFLA arrangement during appeal, should be considered with a view to further expediting the handling of appeal cases; and</p> <p>(b) in addition to combating unlawful employment, detaining claimants, who posed a threat to public security and public interests, in detention centres would be an effective measure to further reduce the number of claimants entering and staying at Hong Kong. She called on the Administration to consider including such additional factor(s) for the determination of the reasonableness of the detention period under the Bill.</p> <p>The Administration responded that:</p> <p>(a) there were over 6 500 cases pending appeal at the peak period. With additional manpower support and TCAB's effort, it was expected that TCAB would be able to complete the processing and decide on the pending appeals (about 1 700 cases as at 31 October 2020) by mid-2021 the earliest;</p>	



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		<p>(b) PFLA was provided to claimants at ImmD's screening stage. Whether PFLA would continue to be provided during the appeal stage would be assessed by the same lawyer responsible for the previous screening process based on the case merits. Such arrangement was considered to be reasonable and fair to claimants;</p> <p>(c) in accordance with the prevailing detention policy, ImmD had all along taken into account the threat to public security and the possibility of abscondence when deciding whether to detain or continue to detain a person and as such, these factors were not proposed to be specifically set out in IO. The proposed legislative amendments were drawn up after making reference to current IO and case law in dealing with the detention arrangement for Vietnamese boat-people in the past, which were considered to conform to the high standards of fairness; and</p> <p>(d) apart from expediting the repatriation of unsubstantiated claimants, the Administration pointed out that an additional 160 detention spaces would be provided at TGCI for detaining claimants in the near future. The Administration would continue identifying suitable detention facilities for detaining claimants as appropriate.</p> <p>Ms YUNG pointed out that the detention arrangement for non-refoulement claimants and Vietnamese boat-people were not comparable due to different circumstances. She reiterated her suggestion of including whether a claimant would pose a threat to the public security as a factor for determining the reasonableness of the detention period under the Bill. The Administration undertook to further consider the suggestion.</p>	
010243 - 011309	Chairman Dr Junius HO Admin	<p>Dr Junius HO concurred with Ms YUNG Hoi-yan's view and suggestions.</p> <p>Dr HO expressed his view about the handling of non-refoulement claimants in Hong Kong and his suggestions regarding:</p> <p>(a) consideration should be given to the discontinuance of issuing recognizance forms to non-refoulement claimants and detaining them in detention centres,</p>	

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		<p>where screening process could be conducted thereat. The arrangement could reduce the chance of claimants' delay tactics, expedite the handling of claims, minimize the security risk claimants might have posed to the society, reduce the public expenditure on the handling of claimants, as well as prevent the possibility that the claimants might be lured into committing illegal acts for monetary return;</p> <p>(b) if claimants were to be held in detention centres upon arriving at Hong Kong, consideration should be given to engaging non-governmental organizations to organize outdoor activities for claimants on a regular basis; and</p> <p>(c) whether further amendments would be made to IO regarding the proposed detention of all claimants upon their arrival in Hong Kong.</p> <p>The Administration thanked Dr HO for his suggestion and said that the option of setting up detention centres to hold all claimants had been discussed on various occasions including the Subcommittee to Follow Up Issues Relating to the Unified Screening Mechanism for Non-refoulement Claims and carefully considered. The Administration pointed out that the suggested approach involved many challenging issues in respect of readily available land supply, manpower, resources, security and management, etc.</p>	
011310 - 012759	Chairman Mr Michael TIEN Admin	<p>In response to Mr Michael TIEN's follow-up enquiry regarding whether the Immigration Service were required to apply to the Police for exemption to possess arms, ammunition and weapons (such as rifles), the Administration clarified that while it was ImmD's prerogative to decide on the types of firearms or weapons to be provided to its officers based on operational needs and circumstances, Police's approval for exemption of each individual officer concerned was required for the time being. After the legislative amendment, the licensing requirements under FAO and WO would no longer be applicable to the Immigration Service and hence approval for exemption by the Police would no longer be necessary. Mr TIEN expressed grave reservation about this.</p> <p>Mr TIEN sought further clarification regarding whether the proposed legislative amendments to FAO and WO</p>	

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		<p>would be merely confined to officers deployed at CIC and other detention centres. The Administration reiterated that ImmD would decide on the types of firearms or weapons to be provided to its officers based on operational needs and circumstances. Mr TIEN expressed dissatisfaction to the Administration's response.</p> <p>In view of the difficulties to arrange suitable interpreters as requested by some claimants, Mr TIEN asked whether consideration would be given to adopting virtual screening so that a suitable interpreter could provide service online. The Administration advised that the option had been explored but had not been further pursued due to the confidentiality requirement under the current screening mechanism and the issue of cyber security. The Administration further pointed out that with the appointment of 11 interpreters on non-civil service contract terms plus some outsourcing services, the challenges in screening language had been improved. Besides, in some special cases where claimants had special needs (such as emotional issues), ImmD had been processing those claims by way of written representations through the lawyers under PFLA to the claimants, instead of carrying out face-to-face screening interviews. Hence, for claimants who insisted on using rare tribal dialects, written representation could be an option if no suitable interpreter could be engaged timely.</p>	
012800 - 013235	Chairman Mr Paul TSE Admin	<p>Given the current challenges faced by frontline ImmD officers in the handling of non-refoulement claims, Mr Paul TSE considered that the proposed legislative amendments reasonable, despite the fact that it might be slightly favourable to ImmD in some respects (such as directing a claimant to communicate in a language that ImmD reasonably considered the claimant was able to understand). He also considered that granting ImmD with the same power as other disciplinary services in the possession of firearms and ammunitions for their execution of duties as a fair and sensible measure.</p> <p>The Administration thanked Mr TSE for his understanding and briefed the meeting of the historical background on why ImmD had not been included as of the departments authorized to possess firearms and weapons on behalf of the Government under FAO and WO in the past.</p>	

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013236 - 013352	Chairman Dr Junius HO	Dr Junius HO reiterated his earlier suggestion of further amending IO in respect of the detention power and urged the Administration to provide a response. Dr HO added that he would consider whether to propose amendments to the Bill in the light of the Administration's response.	
013353 - 013812	Chairman Admin	The Administration was requested to provide written responses to various issues raised at the meeting.  Arrangement of next meeting and closing remarks.	<b>Admin</b>

Council Business Division 2  
Legislative Council Secretariat  
8 March 2021