

**立法會**  
**Legislative Council**

LC Paper No. CB(2)948/20-21  
(These minutes have been seen  
by the Administration)

Ref : CB2/BC/3/20

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

**Minutes of third meeting**  
**held on Wednesday, 3 March 2021, at 2:30 pm**  
**in Conference Room 3 of the Legislative Council Complex**

**Members present** : Hon Elizabeth QUAT, BBS, JP (Chairman)  
Hon CHAN Hak-kan, BBS, JP  
Dr Hon Priscilla LEUNG Mei-fun, SBS, 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

**Members absent** : Hon Paul TSE Wai-chun, JP  
Hon Michael TIEN Puk-sun, BBS, JP

**Public Officers attending** : Item I  
Mr Sonny AU Chi-kwong, PDSM, PMSM, JP  
Under Secretary for Security  
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-ao  
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 Priscilla LAU  
Council Secretary (2) 1

Miss Lulu YEUNG  
Clerical Assistant (2) 1

---

## **I. Meeting with the Administration**

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

## **II. Any other business**

2. The Chairman said that pending the Administration's provision of proposed amendments to the Bill, the Bills Committee had completed the clause-by-clause examination of the Bill. Members agreed that the Administration's proposed amendments to the Bill would be circulated for consideration. A further meeting with the Administration would be scheduled if necessary.

3. There being no other business, the meeting ended at 4:30 pm.

Council Business Division 2  
Legislative Council Secretariat  
8 April 2021

**Proceedings of third meeting of the  
Bills Committee on Immigration (Amendment) Bill 2020  
held on Wednesday, 3 March 2021, at 2:30 pm  
in Conference Room 3 of the Legislative Council Complex**

Time marker	Speaker	Subject(s) / Discussion	Action Required
000736 - 001020	Chairman	<p>Opening remarks</p> <p>The Chairman said that as at the end of February 2021, the Bills Committee had received 30 submissions on the Immigration (Amendment) Bill 2020 ("the Bill"), which had been issued to members. The Administration's response to various issues raised at the last meeting, including its response to the submissions, was issued vide LC Paper No. CB(2)820/20-21(02) on 25 February 2021.</p> <p>The Chairman further said that a letter from the Refugee Concern Network requesting the Bills Committee to hold public hearing was received on 2 March 2021 (LC Paper No. CB(2)840/20-21(01)). The Chairman pointed out that in the light of the COVID-19 epidemic situation and that the Subcommittee to Follow Up Issues Relating to the Unified Screening Mechanism for Non-refoulement Claims formed under the House Committee had received public views at one of its meetings, the Bills Committee agreed at previous meetings that public hearing on the Bill would not be held. That said, members of the public were welcome to provide written views on the Bill.</p>	
001021 - 001332	Chairman Admin	Briefing by the Administration on its response to issues raised at the meeting on 5 February 2021 (LC Paper No. CB(2)820/20-21(02))	
001333 - 002654	Chairman Mr YIU Si-wing Admin	<p>Mr YIU Si-wing considered that the decision of not holding public hearing on the Bill based on the current pandemic situation was appropriate.</p> <p>Mr YIU was concerned about paragraph 7 of the Administration's response, specifically various operational issues after coming into force the proposed amendments to sections 32(4A) and 37ZK of the Immigration Ordinance (Cap. 115) ("IO"), which aimed to enhance transparency and provide unequivocal legal backing to the immigration officers in considering and determining the detention period.</p>	

Time marker	Speaker	Subject(s) / Discussion	Action Required
		<p>The Administration explained that the proposed amendments to sections 32(4A) and 37ZK of IO, which sought to clearly reflect the established detention policy and set out the factors in determining the reasonableness of the detention period, was in line with the existing practice in exercising detention power. In addition, IO had specifically set out that a claimant could be detained under the authority of the Director of Immigration, the Deputy Director of Immigration or any assistant director of immigration, and in that regard, the <i>Hardial Singh</i> principles would continue to apply to the exercising of detention power by the relevant authorities. Under the existing practice, the Immigration Department ("ImmD") would take into account all relevant facts and circumstances of the particular case before making a determination on detention. Each case was to be considered on its own facts and merits. The relevant detention policy had also been published on ImmD's website and posted at the Castle Peak Bay Immigration Centre ("CIC"). The person concerned would be served with a notice of detention and notified in writing of the review results through the assistance of an interpreter as appropriate. Detention would be kept under regular review and would also be reviewed when there was a material change of circumstances.</p> <p>The Administration further pointed out that the maximum capacity of CIC was 500, while only about 250 detainees pending removal were currently accommodated at CIC due to the COVID-19 pandemic. The Tai Tam Gap Correctional Institution ("TGCI") had been renovated and would be re-commissioned for detaining claimants shortly. It would provide an additional detention capacity of 160, hence increasing the overall capacity of detention by one-third.</p>	
002655 - 003823	Chairman Dr CHENG Chung-tai Admin	Dr CHENG Chung-tai was concerned about the proposed new section 37ZAC which stipulated that "an immigration officer may direct a claimant to communicate in a language that the officer reasonably considers the claimant is able to understand and communicate in." He said that "understanding a language" and "communicating in a language" appeared to be two different requirements, and it might not be appropriate to be adopted as a requirement under the proposed new section 37ZAC. He sought information about the factors to be taken to determine	

Time marker	Speaker	Subject(s) / Discussion	Action Required
		<p>whether a claimant was able to understand and communicate in a language.</p> <p>The Administration advised that under the existing practice, ImmD would, as far as possible, arrange interpreters to assist in conducting screening interviews in a language that the claimant used to communicate. In doing so, ImmD had hired 11 full-time interpreters to offer services in six languages used by about 80% of claimants. Where necessary, ImmD had engaged local part-time interpreters to provide support for 24 relatively less-used languages. Such arrangement should be able to satisfy the language need of almost all claimants. The proposed new section 37ZAC mainly sought to tackle the situation where a claimant who understood and was able to communicate in another language, but insisted on using a specific rare tribal dialect as an excuse to delay the processing of the case.</p> <p>When considering whether a claimant could reasonably understand and communicate in a language, ImmD would collect objective evidence demonstrating the claimant's proficiency in that language.</p> <p>The Administration further pointed out that in accordance with the applicable legal principles, the Government's acts should be reasonable and rational, and the proportionality test would be applied to assess their constitutionality. Any determination made by ImmD would follow such principles and the claimants and their legal representatives would be able to assess whether it was reasonable. In addition, similar practice in relation to the languages used in screening interview was adopted in other countries/places such as Germany, the United Kingdom and the European Union. The Administration had taken into account the overseas practice and ImmD's experience in claims screening when drawing up the proposed new section 37ZAC.</p>	
003824 - 004606	Chairman Mr CHAN Chun-ying Admin	<p>Mr CHAN Chun-ying's enquiries regarding:</p> <p>(a) whether ImmD was considering providing officers with steel extendible batons, but not other weapons regulated under the Weapons Ordinance (Cap. 217) ("WO") for the time being;</p>	

Time marker	Speaker	Subject(s) / Discussion	Action Required
		<p>(b) ImmD's storage of weapons, arms and ammunition upon passage of the Bill; and</p> <p>(c) the reasons why the proposed legislative amendments did not handle the three circumstances relating to medical examination (i.e. failure to give consent for medical examination, failure to undergo an arranged medical examination, and failure to disclose the medical report in full after examination) in one go.</p> <p>The Administration responded that:</p> <p>(a) ImmD officers were, as necessary, equipped with non-steel extendible batons at present. Upon passage of the Bill, ImmD would be one of the designated departments authorized to possess regulated weapons, which was on par with most other disciplinary services. Steel extendible batons was a weapon subject to control under WO and ImmD officers could be equipped with such batons as and when necessary depending on the operational needs;</p> <p>(b) ImmD officers deployed at CIC were equipped with suitable anti-riot equipment, which were properly stored and managed by the authorized officers. ImmD would continue to ensure the storage security of weapons, arms and ammunition; and</p> <p>(c) as required by the Hospital Authority/Department of Health, separate consent from the claimant was needed for the arrangement of medical examination and also the disclosure of the full medical report to ImmD or the Torture Claims Appeal Board ("TCAB") owing to privacy issue. Hence, it might not be practical for the legislative amendments to handle the three separate steps relating to medical examination in one go.</p>	
004607 - 005749	Chairman Dr Junius HO Admin	<p>Dr Junius HO asked whether consideration would be given to including provisions under the Bill to empower the Secretary for Security/Director of Immigration to detain all claimants for the sake of public interests.</p> <p>The Administration pointed out that the current legislative amendments mainly sought to address</p>	

Time marker	Speaker	Subject(s) / Discussion	Action Required
		<p>issues relating to the handling of non-refoulement claims. The Administration further drew members' attention to the fact that in considering enhancing detention, the Government had to take into account various practical issues such as land resource, infrastructure, manpower, management, and legal considerations, etc. Having said that, in accordance with the existing section 37ZK of IO, a claimant could be detained under the authority of the Director of Immigration pending final determination of the claimant's torture claim.</p> <p>Pursuant to the proposed new section 37ZK(2)(d) of IO, "factors that are not within the control of the Director" was added when considering whether a period of detention was reasonable and lawful. This provision had set out the various "factors" which might justify a longer detention. In addition, upon passage of the Bill, the court could more comprehensively consider the cases based on the proposed new section 37ZK(2)(d) when a claimant applied for <i>habeas corpus</i> to challenge ImmD's detention decision.</p>	
005750 - 010205	Chairman Ms YUNG Hoi-yan Admin	<p>Ms YUNG Hoi-yan was concerned about paragraphs 10 to 14 of the Administration's response (LC Paper No. CB(2)820/20-21(02)) on the feasibility of setting up reception centres or closed camps to detain all claimants. She said that the Administration should not use "land resource" as a reason not to detain claimants posing higher security risks to the society, and urged the Administration to identify suitable detention facilities for detaining claimants as appropriate.</p> <p>The Administration advised that Ms YUNG's view was in line with the established detention policy. ImmD had all along taken into account the threat or security risk to the community, and the possibility of abscondence/re-offending when deciding whether to detain or continue to detain a person. While it was challenging to identify immediate and sizeable land for building detention centres, the Administration reiterated claimants posing higher security risks to the society would be detained as far as practicable subject to the facts and merits of individual cases.</p>	



Time marker	Speaker	Subject(s) / Discussion	Action Required
010206 - 010917	Chairman Admin Dr Junius HO Ms YUNG Hoi-yan	<p>In response to the Chairman's enquiry about the feasibility of transforming vacant government premises into detention centres, the Administration noted members' suggestions and views, and said that it would continue to improve the procedures of handling non-refoulement claims and identify suitable detention facilities in future.</p> <p>As a follow-up issue to the last meeting, the Administration sought members' views on adding the likelihood of a claimant posing security threat as a factor for determining the reasonableness of the detention period under the proposed sections 32(4A) and 37ZK (i.e. clauses 5 and 16 of the Bill).</p> <p>The Chairman, Dr Junius HO and Ms YUNG Hoi-yan expressed support for the aforesaid proposed amendment to the Bill. Dr HO further reiterated his suggestion of including provisions under the Bill to detain all claimants for the sake of public interests.</p> <p>The Administration noted members' views and undertook to propose a relevant amendment to the Bill. The Administration would provide the draft amendment for members' consideration as soon as practicable.</p>	Admin
010918 - 011135	Chairman Dr Junius HO Admin	<p>Dr Junius HO did not agree with the observation that it might require 24 hectares of land for setting up detention facilities to accommodate 2 400 claimants. Instead, multi-storey hostels could be an option.</p> <p>The Administration noted Dr HO's view and said that it would keep the issue under review.</p>	
011136 - 011314	Chairman Admin	<p>Commencement of clause-by-clause examination of the Bill.</p> <p>Examination of clauses 1 and 2 of the Bill.</p>	
011315 - 012652	Chairman Admin ALA1	<p>Examination of clause 3 of the Bill.</p> <p>Assistant Legal Adviser 1 ("ALA1") referred to the Administration's written reply to the Legal Service Division's letter of enquiry (LC Paper No. CB(2)740/20-21(01)) and the Annex to the Administration's response to issues raised at the meeting on 5 February 2021 ((LC Paper No. CB(2)820/20-21(02)), and sought further details regarding:</p>	

Time marker	Speaker	Subject(s) / Discussion	Action Required
		<p>(a) ImmD's existing practice in handling personal data collected for immigration clearance upon passengers and crew members arriving at Hong Kong; and</p> <p>(b) whether the proposed new power under clause 3 would expand the scope of the power of the Director of Immigration to prohibit any person to enter or leave Hong Kong, and whether such power conformed to the relevant requirements under the Basic Law ("BL").</p> <p>The Administration responded that:</p> <p>(a) pursuant to the existing IO, an immigration officer or a chief immigration assistant could require the captain of a ship/an aircraft to provide the prescribed particulars of the passengers and crew members, which had been stipulated under the Immigration Regulations (Cap. 115A), on their arrival at Hong Kong. The prescribed particulars of passengers were required to be provided when necessary. For crew members, in order to verify their immigration status, aircrew identity cards and a name list had to be provided;</p> <p>(b) clause 3 sought to fulfill the international obligation under the Convention on International Civil Aviation. Under the Convention, it was a mandatory requirement for Hong Kong to put in place the Advance Passenger Information ("API") system to request airlines to provide passenger and crew member information to relevant immigration authorities of the destination before flight departure. It was highlighted that API would only apply to flights bound for Hong Kong. So far, 97 countries/places already had the API system in place. The data to be collected through the proposed API system would be similar to the personal information that ImmD would have access to when relevant persons presented themselves to ImmD for immigration clearance upon arrival in Hong Kong. Besides, ImmD would continue handling the personal data collected with care and in full compliance with the Personal Data (Privacy) Ordinance (Cap. 486); and</p> <p>(c) Hong Kong residents' freedom to travel and right to enter or leave Hong Kong were guaranteed</p>	

Time marker	Speaker	Subject(s) / Discussion	Action Required
		<p>under Article 31 of BL. The Administration stated that the Bill conformed to BL and the Hong Kong Bill of Rights Ordinance (Cap. 383). While the Director of Immigration would carefully exercise the proposed new powers under the regulations to be made under clause 3, the provisions mainly sought to prevent potential claimants, such as those who had been previously issued with a removal order or a deportation order, from entering Hong Kong again.</p>	
012653 - 012744	Chairman Admin	Examination of clause 4 of the Bill.	
012745 - 014146	Chairman Admin ALA1 Dr Junius HO	<p>Examination of clauses 5 and 16 of the Bill.</p> <p>ALA1 sought clarifications as to whether clauses 5 and 16, which set out some additional factors to be taken into account in deciding whether a period of detention was reasonable and lawful, could conform to the <i>Hardial Singh</i> principles, in particular the proposed justifications such as the number of claimant pending removal/final determination and the manpower and financial resources allocated for removal/final determination, which were not unforeseen circumstances, as well as the proposed new justification of "factors that are not within the control of the Director".</p> <p>The Administration stressed that the proposed additional factors to be included in IO to determine the reasonableness of the detention period conformed to the <i>Hardial Singh</i> principles. In considering the detention period, there might be situations beyond the control of ImmD, for instance, time required to issue travel documents by the source countries, difficulty in making removal flight arrangement due to the epidemic outbreak, etc. The Administration further pointed out that the proposed amendments were modelled on existing section 13D of IO, which was introduced to deal with the detention arrangement for Vietnamese boat-people in the past and it was also in compliance with relevant legal principles.</p> <p>Dr Junius HO considered that the proposed amendments under clauses 5 and 16, which set out relevant factors to be considered for detention pending removal or deportation, and final determination of claim, were in compliance with the <i>Hardial Singh</i></p>	

Time marker	Speaker	Subject(s) / Discussion	Action Required
		<p>principles. In his opinion, the Legislative Council always had the function of amending the law to make it clearer and more applicable to the situation of Hong Kong, and in this regard, the proposed amendments aimed to provide legal backing to the immigration officers in considering and determining the detention period. Moreover, he pointed out that the right to freedom of movement should not be applicable to persons entering Hong Kong illegally, no matter whether the persons were illegal immigrants, asylum seekers or non-refoulement claimants.</p> <p>The Administration thanked Dr HO for his comments, and said that the Government had taken into account different views and legal advice in formulating the proposed amendments.</p>	
014147 - 014718	Chairman Admin	Examination of clauses 6 to 16 of the Bill.	
014719 - 014839	Admin Chairman	<p>Examination of clause 17 of the Bill.</p> <p>In response to the Chairman's enquiry regarding the grounds for revocation decision, the Administration said that ImmD would review the substantiated claims on a regular basis to ascertain whether the claims should continue to be accepted as substantiated under the prevailing circumstances.</p>	
014840 - 014957	Chairman Admin	Examination of clauses 18 and 19 of the Bill.	
014958 - 015054	Chairman Admin	<p>Examination of clause 20 of the Bill.</p> <p>In response to the Chairman's enquiry regarding the existing practice of withdrawal of appeal, the Administration said that currently, if a person decided to withdraw an appeal, the person concerned would submit in writing to TCAB. Upon consideration of the withdrawal notice, TCAB would confirm with the person in writing and inform him/her that no further action would be taken on the appeal. The proposed amendment under clause 20 sought to rationalize the current practice.</p>	
015055 - 015208	Chairman Admin	Examination of clauses 21 and 22 of the Bill.	

<b>Time marker</b>	<b>Speaker</b>	<b>Subject(s) / Discussion</b>	<b>Action Required</b>
015209 - 015323	Chairman Admin	Examination of clause 23 of the Bill.  The Administration noted the Chairman's concern about counterfeit recognizance forms.	
015324 - 015646	Chairman Admin	Examination of clauses 24 to 26 of the Bill.	
015647 - 015756	Chairman Admin	Examination of clauses 27 and 28 of the Bill.	
015757 - 020425	Chairman Admin ALA1	The Administration said that apart from the proposed amendment to the Bill to include the likelihood of a claimant posing a threat or security risk as one of the factors for determining the reasonableness of the detention period, the Administration also proposed to make a further amendment to specify 1 August 2021 as the commencement date of the Bill.  The Chairman suggested and members agreed on the follow-up arrangement of the Administration's proposed amendments to the Bill.  Closing remarks	