

Immigration (Amendment) Bill 2020

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A BILL

To

Amend the Immigration Ordinance to revise the procedures and requirements relating to the making and the handling of torture claims and appeals; to clarify the effect of making torture claims; to empower the Chairperson of the Torture Claims Appeal Board to delegate certain functions to a Deputy Chairperson; to revise the grounds for a revocation decision; to amend certain provisions relating to the lawfulness of detention; to enlarge the group of persons prohibited from taking employment under section 38AA and increase the penalty for employing such persons; to provide for the liability of connected persons in body corporates and partnerships when an offence under section 17I is committed; to increase the penalty for cases where aircraft passengers arrive in Hong Kong without valid travel documents; to empower the Secretary for Security to make regulations relating to the supply of information about persons on board carriers; to amend the Weapons Ordinance and the Firearms and Ammunition Ordinance to enable members of the Immigration Service to possess arms and weapons otherwise prohibited by those Ordinances; and to provide for transitional and other related matters.

Enacted by the Legislative Council.

Part 1

Preliminary

1. Short title and commencement

- (1) This Ordinance may be cited as the Immigration (Amendment) Ordinance 2020.
- (2) This Ordinance comes into operation on a day to be appointed by the Secretary for Security by notice published in the Gazette.

2. Enactments amended

- (1) The Immigration Ordinance (Cap. 115) is amended as set out in Part 2.
 - (2) The enactments specified in Part 3 are amended as set out in that Part.
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Part 2

Amendments to Immigration Ordinance

3. Section 6A added

Part II, after section 6—

Add

“6A. Regulations relating to persons on board carriers

- (1) The Secretary for Security may make regulations—
 - (a) to provide for the supply to the Director of information or data relating to a carrier, its passengers or members of its crew, as may be specified in the regulations; and
 - (b) to empower the Director to direct that a passenger or a member of the crew of a carrier may or may not be carried on board the carrier.
- (2) Without limiting subsection (1), regulations made under this section may—
 - (a) provide for the time at which, the means or systems through which, and the form and way in which, the information or data is to be supplied to the Director;
 - (b) provide for the handling or disposal of information or data collected under the regulations; and
 - (c) provide for the exercise or performance by the Director or any public officer of any powers or functions under the regulations.
- (3) Regulations made under this section may—

- (a) require the carrying out of any act by a person (wherever the person may be) and regulate any act or matter that may be done or happen wholly or partly outside Hong Kong;
 - (b) be of general application or make different provisions for different cases or classes of cases;
 - (c) empower the Director to exempt any person or carrier, or any class of persons or carriers, from any of the requirements under the regulations; and
 - (d) contain any incidental, consequential, evidential, transitional, saving or supplementary provisions that the Secretary for Security considers appropriate.
- (4) Regulations made under this section may provide that a contravention of a regulation (including a contravention in relation to any act, matter or omission that is done or happens wholly or partly outside Hong Kong) is an offence punishable by a fine not exceeding level 6.
- (5) In this section—
- carrier** (運輸工具) means an aircraft or any other means of transportation as may be specified in the regulations made under this section;
- member of the crew** (乘組人員), in relation to a carrier, means a person actually employed in the working or service of the carrier;
- passenger** (乘客) means a person carried, or to be carried, on board a carrier, other than a member of the crew.”.

4. Section 17I amended (offence to be employer of a person who is not lawfully employable)

(1) Section 17I(1)—

Repeal

everything after “is liable”

Substitute

“on conviction on indictment—

- (a) if the employee is not a prohibited employee—to a fine of \$350,000 and to imprisonment for 3 years; or
- (b) if the employee is a prohibited employee—to a fine of \$500,000 and to imprisonment for 10 years.”.

(2) After section 17I(4)—

Add

“(5) If—

- (a) a body corporate commits an offence under this section; and
- (b) it is proved that the offence was committed with the consent or connivance of, or was attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate,

the director, manager, secretary or other similar officer also commits the offence.

(6) If—

- (a) a partner in a partnership commits an offence under this section; and

(b) it is proved that the offence was committed with the consent or connivance of, or was attributable to any neglect on the part of, any other partner in the partnership or any other person concerned in the management of the partnership,

the other partner or the other person concerned in the management of the partnership also commits the offence.

(7) In this section—

prohibited employee (受禁僱員) means a person who is prohibited from taking any employment or establishing or joining in any business under section 38AA.”.

5. Section 32 amended (detention pending removal or deportation)

Section 32(4A)—

Repeal

everything after “all the circumstances”

Substitute

“that justify its length, including, in the case of a person being detained pending removal from Hong Kong—

(a) whether the number of other persons pending removal from Hong Kong is such that it is reasonable to take the time it is taking, or has taken, to remove the person;

- (b) whether the manpower and financial resources allocated for the removal of persons from Hong Kong under this Ordinance are such that it is reasonable to take the time it is taking, or has taken, to remove the person;
- (c) the extent to which it is possible to make arrangements to effect the person's removal;
- (d) whether the person's removal is directly or indirectly prevented or delayed by any action or lack of action of the person, including the person not obtaining, or not providing assistance to obtain, any authorization from the relevant authorities of a place outside Hong Kong that is required for the person's entry to that place;
- (e) the time required for the issue of the authorization referred to in paragraph (d); and
- (f) factors that directly or indirectly prevent or delay the person's removal that are not within the control of the Director.”.

6. Section 36 amended (recognizance as alternative to detention)

Section 36(1A)(c)—

Repeal

everything after “interviews”

Substitute

“as required by section 37ZAB.”.

7. Section 37V amended (when torture claim is finally determined)

(1) Section 37V(2)(b), after “when”—

Add

“a notice to withdraw the appeal under section 37ZTA is received by the Appeal Board or”.

- (2) Section 37V(4)(b), after “when”—

Add

“a notice to withdraw the appeal under section 37ZTA is received by the Appeal Board or”.

8. Section 37Y amended (submission of torture claim form)

Section 37Y(3)—

Repeal paragraph (b)

Substitute

- “(b) on being satisfied that the claimant—
- (i) has exercised, or had exercised, all due diligence to return a completed torture claim form within the period; but
 - (ii) will not be able to, or failed to, return a completed form within the period because of circumstances beyond the claimant’s control.”.

9. Section 37Z amended (effect of making a torture claim)

- (1) Section 37Z(2)(a)—

Repeal

“claimant; or”

Substitute

“claimant;”.

- (2) Section 37Z(2)(b)—

Repeal the full stop

Substitute

“; or”.

- (3) After section 37Z(2)(b)—

Add

“(c) preclude the Government from liaising with any party (including a torture risk State) after—

- (i) the torture claim is rejected under section 37ZI;
- (ii) a revocation decision under section 37ZL(1) is made in relation to the torture claim; or
- (iii) the torture claim is withdrawn,
for the purpose of making arrangements for the removal of the claimant.”.

10. Sections 37ZAB and 37ZAC added

After section 37ZA—

Add

“37ZAB. Claimant to attend interviews

- (1) A claimant must attend an interview at the date, time and place specified by an immigration officer in the written request referred to in section 37Y(1) to provide information and answer questions relating to the claimant’s torture claim.
- (2) The date of the interview must be a date after the expiry of the period for returning the completed torture claim form under section 37Y(2)(a).
- (3) If—

- (a) an immigration officer allows, under section 37Y(3), a further period for returning the completed torture claim form; and
 - (b) the date of the original interview specified in the written request is within the further period, the officer must change it to a date after the expiry of the further period.
- (4) A claimant must also attend any further interview required by an immigration officer at the date, time and place specified by the officer.

37ZAC. Language used for communications

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.”.

11. Section 37ZB amended (power to require information etc.)

- (1) Section 37ZB—

Repeal subsection (1)

Substitute

“(1) After a completed torture claim form is returned by a claimant, an immigration officer may require the claimant to provide the immigration officer with any information or evidence related to the claimant’s torture claim that the immigration officer specifies.”.

- (2) Section 37ZB(2)—

Repeal

“documentary”.

- (3) Section 37ZB(2)—

Repeal

“subsection (1)(a)”

Substitute

“subsection (1)”.

12. Section 37ZC amended (medical examination)

(1) After section 37ZC(1)—

Add

“(1A) For the purposes of subsection (1), the claimant must give any consent that is necessary to enable a medical examination to be arranged or conducted.”.

(2) Section 37ZC(2)—

Repeal

everything after “the claimant must”

Substitute

“undergo the examination at the date, time and place specified by the immigration officer and notified to the claimant in writing.”.

(3) Section 37ZC(3)—

Repeal

everything after “the Appeal Board”

Substitute

“the full medical report of any examination arranged for the claimant under this section within 3 working days after a request for the disclosure is made by the officer or the Board.”.

(4) After section 37ZC(3)—

Add

- “(4) If a claimant—
- (a) fails to comply with subsection (1A), (2) or (3); and
 - (b) fails to provide sufficient evidence in writing to satisfy an immigration officer or the Appeal Board that the claimant—
 - (i) had exercised all due diligence to comply with the subsection concerned; but
 - (ii) failed to comply with the subsection concerned because of circumstances beyond the claimant’s control,
 the officer or the Board may decide not to take into account the disputed physical or mental condition of the claimant.”.

13. Section 37ZD amended (credibility of claimant)

- (1) Section 37ZD(2)(d)—
 - Repeal**
 - “documentary”.
- (2) Section 37ZD(2)(d)—
 - Repeal**
 - “section 37ZB(1)(a)”
 - Substitute**
 - “section 37ZB(1)”.
- (3) Section 37ZD(2)(e)—
 - Repeal subparagraph (i)**
 - Substitute**
 - “(i) attend an interview as required by section 37ZAB; or”.

- (4) Section 37ZD(2)(e)(ii)—

Repeal

“the”

Substitute

“such an”.

- (5) Section 37ZD(2)(f)—

Repeal

everything after “the date”

Substitute

“of the first interview that the claimant is required by section 37ZAB to attend;”.

- (6) Section 37ZD(2)—

Repeal paragraph (g)**Substitute**

“(g) a failure, without reasonable excuse, to—

- (i) give consent as required by section 37ZC(1A);
- (ii) undergo a medical examination as required by section 37ZC(2); or
- (iii) disclose to an immigration officer or (on an appeal) the Appeal Board the full medical report as required by section 37ZC(3);”.

14. Section 37ZG amended (deemed withdrawal of torture claim on failure to return completed torture claim form)

Section 37ZG(3)—

Repeal

everything after “satisfy an immigration officer that”

Substitute

“the person—

- (a) had exercised all due diligence to return a completed torture claim form as required under section 37Y(2); but
- (b) failed to return a completed form as required under the section because of circumstances beyond the person’s control.”.

15. Section 37ZI amended (decision on torture claim)

(1) Section 37ZI—

Repeal subsection (2)

Substitute

- “(2) A decision may be made by an immigration officer under subsection (1) even if a claimant—
- (a) has failed to attend an interview as required by section 37ZAB;
 - (b) has failed to comply with section 37ZC(1A), (2) or (3); or
 - (c) has otherwise failed to proceed with the claim in accordance with this Part.”.

(2) Section 37ZI(4), English text—

Repeal

“the substantial grounds for belief”

Substitute

“substantial grounds for the belief”.

16. Section 37ZK amended (detention pending final determination)

(1) Section 37ZK—

Renumber the section as section 37ZK(1).

(2) After section 37ZK(1)—

Add

“(2) The detention of a claimant under this section is not unlawful by reason of the period of the detention if that period is reasonable having regard to all the circumstances that justify its length, including—

- (a) whether the number of other torture claims pending final determination is such that it is reasonable to take the time it is taking, or has taken, to have the claimant’s torture claim finally determined;
- (b) whether the manpower and financial resources allocated for carrying out the work involved in making such final determinations are such that it is reasonable to take the time it is taking, or has taken, to have the claimant’s torture claim finally determined;
- (c) whether the making of—
 - (i) a decision by an immigration officer under section 37ZI;
 - (ii) a revocation decision; or
 - (iii) a decision by the Appeal Board in relation to an appeal made under section 37ZR,
is directly or indirectly prevented or delayed by any action or lack of action of the claimant; and
- (d) factors that are not within the control of the Director.”.

17. Section 37ZN amended (grounds for revocation decision)

(1) Section 37ZN(a)—

Repeal

“documentary”.

- (2) Section 37ZN(c)—

Repeal

everything after “ceased to exist”

Substitute a semicolon.

- (3) After section 37ZN(c)—

Add

“(d) having regard to the prevailing circumstances, the claim should not be accepted as substantiated.”.

18. Section 37ZS amended (notice of appeal)

- (1) Section 37ZS(2)(a)—

Repeal

“and”.

- (2) After section 37ZS(2)(a)—

Add

“(ab) duly completed and signed; and”.

- (3) After section 37ZS(2)—

Add

“(3) No action may be taken in relation to a notice of appeal that does not comply with subsection (2)(a) or (ab).

- (4) On receiving a notice of appeal referred to in subsection (3), the Appeal Board must, by written notice, inform the person filing the notice of the non-compliance and that no further action will be taken in relation to the notice.”.

19. Section 37ZT amended (late filing of notice of appeal)

- (1) Section 37ZT(1)(b)—

Repeal

“any documentary evidence”

Substitute

“all available evidence”.

- (2) Section 37ZT(2)—

Repeal

everything after “take account of”

Substitute

“the statement of reasons stated in the application for late filing of the notice of appeal and the evidence relied on in support of the reasons.”.

- (3) Section 37ZT—

Repeal subsections (3) and (4)**Substitute**

- “(3) The Appeal Board may allow the late filing of the notice of appeal if the person filing the notice provides sufficient evidence in writing to satisfy the Board that the person—
- (a) had exercised all due diligence to file the notice within the period specified in section 37ZS(1); but
 - (b) failed to file the notice within the period because of circumstances beyond the person’s control.
- (4) For the purposes of subsection (3), the fact that a person attempted to file one or more notices of appeal that do not comply with section 37ZS(2)(a) or

(ab), whether within the period specified in section 37ZS(1) or otherwise, must not be taken as evidence that the person had exercised all due diligence to file a notice of appeal within the period.

- (5) If the Appeal Board allows the late filing of the notice of appeal, it must, by written notice to the person filing the notice, inform the person of the Board's decision.
- (6) If the Appeal Board does not allow the late filing of the notice of appeal, it must, by written notice to the person filing the notice—
 - (a) inform the person that the Board refuses the notice as it is filed out of time; and
 - (b) give reasons for the refusal.”.

20. Section 37ZTA added

After section 37ZT—

Add

“37ZTA. Withdrawal of appeal

- (1) A person who has filed a notice of appeal under section 37ZS (or section 37ZT if late filing is allowed) may, at any time before the Appeal Board determines the appeal, withdraw the appeal by filing a written notice with the Board.
- (2) An appeal against a decision is withdrawn once a notice to withdraw the appeal is received by the Appeal Board and no further notice of appeal may be filed in relation to the decision.”.

21. Section 37ZV amended (notices)

- (1) Section 37ZV(1)(b)(ii)—

Repeal

“business; or”

Substitute

“business;”.

- (2) After section 37ZV(1)(b)—

Add

“(ba) if the person is held in custody, detained or imprisoned, by leaving it for the person, or by sending it by post addressed to the person, at the place where the person is held in custody, detained or imprisoned; or”.

- (3) Section 37ZV(2)—

Repeal paragraph (b)**Substitute**

“(b) if it is left at a place or an address, on the second working day after it was so left.”.

22. Section 37ZZ amended (savings and transitional arrangements)

- (1) Section 37ZZ—

Renumber the section as section 37ZZ(1).

- (2) After section 37ZZ(1)—

Add

“(2) Schedule 5 provides for the savings and transitional arrangements that apply on, or relate to, the commencement of the Immigration (Amendment) Ordinance 2020 (of 2020).”.

23. Section 38AA amended (prohibition of taking employment and establishing business, etc.)

(1) Section 38AA(1)(a)—

Repeal

“or”.

(2) Section 38AA(1)(b)—

Repeal the comma**Substitute a semicolon.**

(3) After section 38AA(1)(b)—

Add

“(c) who, having been given permission to land in Hong Kong under section 11(1), remains in Hong Kong in breach of the limit of stay imposed under section 11(2) in relation to the permission; or

(d) who was refused permission to land in Hong Kong under section 11(1),”.

24. Section 40 amended (aircraft passengers arriving without valid travel document)

Section 40—

Repeal

“3”

Substitute

“6”.

25. Schedule 1A amended (Torture Claims Appeal Board)

(1) Schedule 1A, section 1(1), definition of *member*—

Repeal the full stop**Substitute a semicolon.**

- (2) Schedule 1A, section 1(1)—

Add in alphabetical order

“*claimant* (聲請人)—

- (a) in relation to an appeal made under section 37ZR, means the person who has lodged the appeal; and
- (b) in relation to an application for a revocation decision under section 37ZM, means the person who has been served with a notice of application under subsection (4) of the section;

notice of hearing (聆訊通知) means a notice of the date, time and place of a hearing served under section 13 of this Schedule.”

- (3) Schedule 1A, after section 5—

Add

“5A. Delegation by Chairperson

- (1) The Chairperson may delegate to a Deputy Chairperson any of the Chairperson’s powers and functions under the following provisions—
 - (a) section 6 of this Schedule;
 - (b) section 7 of this Schedule;
 - (c) section 16 of this Schedule (but only in so far as it relates to giving directions in a particular case).
 - (2) A delegation may be subject to any terms and conditions that the Chairperson considers appropriate.
 - (3) The Chairperson may revoke a delegation.”
- (4) Schedule 1A, section 6—

Repeal subsection (3)

Substitute

“(3) In exercising the power under subsection (2), the Chairperson must nominate one of the 3 members to be the presiding member.”.

- (5) Schedule 1A, section 9(1)—

Repeal

“person who has lodged the appeal”

Substitute

“claimant”.

- (6) Schedule 1A, section 9(1)(c)—

Repeal

“person who made the claim”

Substitute

“claimant”.

- (7) Schedule 1A, section 9(1)(c)(ii)—

Repeal

“person”

Substitute

“claimant”.

- (8) Schedule 1A, section 9(1)(c)(iii)—

Repeal

“person’s”

Substitute

“claimant’s”.

-
- (9) Schedule 1A, section 9(1)(c)(iv)—
Repeal
“person”
Substitute
“claimant”.
- (10) Schedule 1A, section 9(1)(d)—
Repeal
“a person’s”
Substitute
“the claimant’s”.
- (11) Schedule 1A, section 9(1)(d)(i)—
Repeal
“person”
Substitute
“claimant”.
- (12) Schedule 1A, section 9(1)(d)(ii)—
Repeal
“person”
Substitute
“claimant”.
- (13) Schedule 1A, section 11(2)—
Repeal paragraphs (a) and (b)
Substitute
“(a) the Appeal Board may direct a claimant to address the Board in a language that the Board reasonably considers the claimant is able to understand and communicate in;

(b) the Appeal Board may direct a witness in proceedings before the Board to testify in a language that the Board reasonably considers the witness is able to understand and communicate in; and”.

(14) Schedule 1A—

ReNUMBER section 13 as section 13(1).

(15) Schedule 1A, after section 13(1)—

Add

“(2) Despite subsection (1), the Appeal Board may give less than 28 days’ notice to the parties if it considers appropriate to do so in a particular case, but in any event the notice period must not be less than 7 days.

(3) To avoid doubt, this section does not apply to—

(a) a hearing that is rescheduled under section 15(5) of this Schedule; or

(b) a further hearing of an appeal.”.

(16) Schedule 1A, after section 13—

Add

“13A. Director’s attendance at hearing

(1) The Director need not attend a hearing unless required to do so by a notice of hearing.

(2) If, having regard to the particular circumstances of an appeal, the Appeal Board considers that the Director’s attendance at the hearing of the appeal is necessary, the Board may, by the notice of hearing, require the Director to attend the hearing.

(3) The Director may also attend a hearing on the Director’s own initiative.

- (4) If the Director intends to attend a hearing on the Director's own initiative, the Director must notify the Appeal Board and the claimant in writing as soon as practicable of the intention.”.
- (17) Schedule 1A, section 14, heading—
Repeal
“before hearing”.
- (18) Schedule 1A, section 14(1)—
Repeal
everything after “receiving”
Substitute
“a notice of hearing, serve on the Appeal Board, with a copy to the claimant, a bundle of all the documents relating to the torture claim concerned.”.
- (19) Schedule 1A, section 14(2)(a), after “hearing”—
Add
“together with other information or evidence relating to the appeal that the Board considers necessary”.
- (20) Schedule 1A, after section 14(2)—
Add
“(3) The statements, information, evidence and list referred to in subsection (2) must be filed and served within the period specified by the Appeal Board.”.
- (21) Schedule 1A—
Repeal section 15
Substitute

“15. Claimant’s absence from hearing

- (1) If a claimant does not attend a hearing in person, irrespective of whether the claimant is represented at the hearing by a legal representative, the Appeal Board may hear the appeal in the absence of the claimant.
- (2) If a claimant referred to in subsection (1) wishes the Appeal Board to fix another hearing date for the appeal, the claimant must, within 3 working days after the date of the hearing, submit a written request to the Appeal Board to fix another hearing date.
- (3) The request must contain a written explanation of the claimant’s absence from the hearing together with all available evidence supporting the explanation.
- (4) The Appeal Board must proceed to determine the appeal by making a decision under section 23(1) of this Schedule if—
 - (a) no request is made under subsection (2); or
 - (b) where a request is made under subsection (2), the Board is not satisfied, on the basis of the written explanation and supporting evidence submitted with the request, that the claimant—
 - (i) had exercised all due diligence to attend the hearing; but
 - (ii) was absent from the hearing because of circumstances beyond the claimant’s control.

- (5) The Appeal Board may fix another date, time and place for hearing the appeal if the Board is satisfied, on the basis of the written explanation and supporting evidence submitted with the request, that the claimant—
- (a) had exercised all due diligence to attend the hearing; but
 - (b) was absent from the hearing because of circumstances beyond the claimant’s control.”.
- (22) Schedule 1A, section 18(2)(a), after “made;”—
- Add**
- “or”.
- (23) Schedule 1A, section 18(2)—
- Repeal paragraph (b)**
- Substitute**
- “(b) the evidence relates to matters that occurred before the decision being appealed against was made, and the claimant provides sufficient evidence in writing to satisfy the Board that the claimant—
- (i) had exercised all due diligence to provide the evidence to an immigration officer before the decision was made; but
 - (ii) failed to provide the evidence to an immigration officer before the decision was made because of circumstances beyond the claimant’s control.”.
- (24) Schedule 1A, section 18(2)—
- Repeal paragraph (c).**
- (25) Schedule 1A, section 19—
- Repeal subsections (1) and (2)**

Substitute

- “(1) A claimant who wishes to present any evidence under section 18(2) of this Schedule at a hearing must within 7 days after filing a notice of appeal under section 37ZS (or section 37ZT if late filing is allowed)—
- (a) file with the Appeal Board a written notice to that effect; and
 - (b) serve a copy of the notice on the Director.
- (2) The written notice must—
- (a) indicate the nature of the evidence; and
 - (b) explain how the evidence supports the torture claim.
- (3) If the evidence falls within the description in section 18(2)(b) of this Schedule, the written notice must also—
- (a) state the circumstances leading to the failure referred to in that section;
 - (b) explain how, and to what extent, the circumstances led to the failure;
 - (c) state the steps that the claimant had taken with a view to providing the evidence to an immigration officer before the decision being appealed against was made and, in particular, the steps taken to deal with the circumstances; and
 - (d) be accompanied by all available evidence relied on in support of the claimant’s case.

- (4) A written notice filed after the expiry of the period specified in subsection (1) may not be accepted by the Appeal Board unless the claimant provides sufficient evidence in writing to satisfy the Board that the claimant—
- (a) had exercised all due diligence to file the notice before the expiry of the period; but
 - (b) failed to file the notice before the expiry of the period because of circumstances beyond the claimant's control.”.

26. Schedule 5 added

After Schedule 4—

Add

“Schedule 5

[s. 37ZZ]

**Savings and Transitional Provisions in respect of
Immigration (Amendment) Ordinance 2020**

1. Interpretation

(1) In this Schedule—

Amendment Ordinance (《修訂條例》) means the Immigration (Amendment) Ordinance 2020 (of 2020);

appeal period (上訴期) means the period specified in section 37ZS(1) of the pre-amended Ordinance for filing a notice of appeal with the Appeal Board;

commencement date (生效日期) means the date on which the Amendment Ordinance comes into operation;

notice of appeal (上訴通知) means a notice of appeal under section 37ZS(1) of the pre-amended Ordinance;

pre-amended Ordinance (《原有條例》) means this Ordinance as in force immediately before the commencement date;

withdrawn torture claim (已撤回的酷刑聲請) means a torture claim that is—

- (a) withdrawn under section 37ZE before the commencement date; or
 - (b) treated as withdrawn under section 37ZG before the commencement date.
- (2) An expression used in this Schedule has the same meaning as in Part VIIC.

2. Amended Ordinance applies to torture claim under pre-amended Ordinance

Except as provided in this Schedule, on and after the commencement date, this Ordinance as amended by the Amendment Ordinance applies in relation to a torture claim made under the pre-amended Ordinance.

3. Torture claim in relation to which appeal is pending

- (1) This section applies if, in relation to a torture claim, other than a torture claim referred to in section 4, 5, 6, 7, 8 or 9 of this Schedule, an appeal under section 37ZR of the pre-amended Ordinance is pending as at the commencement date.

- (2) The pre-amended Ordinance continues to apply in relation to the torture claim until the date on which the appeal is disposed of or withdrawn.

4. Torture claim in relation to which decision is pending

- (1) This section applies if a decision on a torture claim, other than a torture claim referred to in section 7, 8 or 9 of this Schedule, is pending under section 37ZI(1) of the pre-amended Ordinance as at the commencement date.
- (2) Subject to this section, the pre-amended Ordinance continues to apply in relation to the torture claim.
- (3) If the torture claim is accepted as substantiated by an immigration officer by a decision under section 37ZI(1)(a) of the pre-amended Ordinance, the pre-amended Ordinance applies until the date of the decision.
- (4) If the torture claim is rejected by an immigration officer by a decision under section 37ZI(1)(b) of the pre-amended Ordinance—
 - (a) where no notice of appeal against the decision is filed within the appeal period—the pre-amended Ordinance applies until the date of expiry of the period; or
 - (b) where a notice of appeal against the decision is filed within the appeal period—the pre-amended Ordinance applies until the date on which the appeal is disposed of or withdrawn.
- (5) If the torture claim is withdrawn under section 37ZE(1) of the pre-amended Ordinance before a decision is made by an immigration officer under section 37ZI(1) of the pre-amended Ordinance, the

pre-amended Ordinance applies until the date on which the written notice to withdraw is received by an immigration officer.

- (6) If the torture claim is treated as withdrawn under section 37ZF(1) or (3) of the pre-amended Ordinance before a decision is made by an immigration officer under section 37ZI(1) of the pre-amended Ordinance, the pre-amended Ordinance applies until the date on which the claimant or the person who has given notice to withdraw the torture claim leaves Hong Kong.
- (7) If the torture claim is treated as withdrawn under section 37ZG(1) of the pre-amended Ordinance before a decision is made by an immigration officer under section 37ZI(1) of the pre-amended Ordinance, the pre-amended Ordinance applies until the date of expiry of the period within which a completed torture claim form in respect of the torture claim is to be returned under section 37Y(2) of the pre-amended Ordinance.

5. Torture claim rejected or subject to revocation decision: appeal period expires on or after commencement date

- (1) This section applies if—
 - (a) a decision was made by an immigration officer under section 37ZI(1)(b) or 37ZL(1) of the pre-amended Ordinance in relation to a torture claim; and
 - (b) in relation to the decision, the appeal period expires on or after the commencement date.
- (2) Subject to this section, the pre-amended Ordinance continues to apply in relation to the torture claim.

- (3) If no notice of appeal against the decision is filed within the appeal period, the pre-amended Ordinance applies until the date of expiry of the period.
- (4) If a notice of appeal against the decision is filed within the appeal period, the pre-amended Ordinance applies until the date on which the appeal is disposed of or withdrawn.

6. Torture claim rejected or subject to revocation decision: application for late filing of notice of appeal pending

- (1) This section applies if—
 - (a) a decision was made by an immigration officer under section 37ZI(1)(b) or 37ZL(1) of the pre-amended Ordinance in relation to a torture claim; and
 - (b) an application for late filing of a notice of appeal against the decision under section 37ZT(1) of the pre-amended Ordinance is pending as at the commencement date.
- (2) Subject to this section, the pre-amended Ordinance continues to apply in relation to the torture claim.
- (3) If late filing is allowed, the pre-amended Ordinance applies until the date on which the appeal is disposed of or withdrawn.
- (4) If late filing is not allowed, the pre-amended Ordinance applies until the date on which a written notice under section 37ZT(4) of the pre-amended Ordinance is given to the person filing the notice of appeal.

7. Withdrawn torture claim pending decision as to re-opening

- (1) This section applies if a decision as to whether a withdrawn torture claim is to be re-opened is pending under section 37ZE(2) or 37ZG(3) of the pre-amended Ordinance as at the commencement date.
- (2) Subject to this section, the pre-amended Ordinance continues to apply in relation to the withdrawn torture claim.
- (3) If the torture claim is re-opened and is accepted as substantiated by an immigration officer by a decision under section 37ZI(1)(a) of the pre-amended Ordinance, the pre-amended Ordinance applies until the date of the decision.
- (4) If the torture claim is re-opened and is rejected by an immigration officer by a decision under section 37ZI(1)(b) of the pre-amended Ordinance—
 - (a) where no notice of appeal against the decision is filed within the appeal period—the pre-amended Ordinance applies until the date of expiry of the period; or
 - (b) where a notice of appeal against the decision is filed within the appeal period—the pre-amended Ordinance applies until the date on which the appeal is disposed of or withdrawn.
- (5) If an immigration officer makes a decision not to re-open the torture claim and no notice of appeal against the decision is filed within the appeal period, the pre-amended Ordinance applies until the date of expiry of the period.

- (6) If an immigration officer makes a decision not to re-open the torture claim and a notice of appeal against the decision is filed within the appeal period—
- (a) where the Appeal Board reverses the decision and the claim is accepted as substantiated by an immigration officer by a decision under section 37ZI(1)(a) of the pre-amended Ordinance—the pre-amended Ordinance applies until the date of the last-mentioned decision;
 - (b) where the Appeal Board reverses the decision and the claim is rejected by an immigration officer by a decision under section 37ZI(1)(b) of the pre-amended Ordinance (*rejection decision*)—
 - (i) if no notice of appeal against the rejection decision is filed within the appeal period—the pre-amended Ordinance applies until the date of expiry of the period; or
 - (ii) if a notice of appeal against the rejection decision is filed within the appeal period—the pre-amended Ordinance applies until the date on which the appeal is disposed of or withdrawn; or
 - (c) where the Appeal Board confirms the decision—the pre-amended Ordinance applies until the date on which the decision is confirmed.

8. Re-opening of withdrawn torture claim not allowed: appeal period expires on or after commencement date

- (1) This section applies if—

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- (a) a decision not to re-open a withdrawn torture claim was made by an immigration officer under section 37ZE(2) or 37ZG(3) of the pre-amended Ordinance; and
 - (b) in relation to the decision, the appeal period expires on or after the commencement date.
- (2) Subject to this section, the pre-amended Ordinance continues to apply in relation to the withdrawn torture claim.
 - (3) If no notice of appeal against the decision is filed within the appeal period, the pre-amended Ordinance applies until the date of expiry of the period.
 - (4) If a notice of appeal against the decision is filed within the appeal period—
 - (a) where the Appeal Board reverses the decision and the torture claim is accepted as substantiated by an immigration officer by a decision under section 37ZI(1)(a) of the pre-amended Ordinance—the pre-amended Ordinance applies until the date of the last-mentioned decision;
 - (b) where the Appeal Board reverses the decision and the torture claim is rejected by an immigration officer by a decision under section 37ZI(1)(b) of the pre-amended Ordinance (*rejection decision*)—
 - (i) if no notice of appeal against the rejection decision is filed within the appeal period—the pre-amended Ordinance applies until the date of expiry of the period; or
 - (ii) if a notice of appeal against the rejection decision is filed within the appeal period—

the pre-amended Ordinance applies until the date on which the appeal is disposed of or withdrawn; or

- (c) where the Appeal Board confirms the decision— the pre-amended Ordinance applies until the date on which the decision is confirmed.

9. Re-opening of withdrawn torture claim not allowed: application for late filing of notice of appeal pending

- (1) This section applies if—
- (a) a decision not to re-open a withdrawn torture claim was made by an immigration officer under section 37ZE(2) or 37ZG(3) of the pre-amended Ordinance; and
 - (b) an application for late filing of a notice of appeal against the decision under section 37ZT(1) of the pre-amended Ordinance is pending as at the commencement date.
- (2) Subject to this section, the pre-amended Ordinance continues to apply in relation to the withdrawn torture claim.
- (3) If late filing is allowed and the Appeal Board reverses the decision, and the torture claim is accepted as substantiated by an immigration officer by a decision under section 37ZI(1)(a) of the pre-amended Ordinance, the pre-amended Ordinance applies until the date of the last-mentioned decision.
- (4) If late filing is allowed and the Appeal Board reverses the decision, and the torture claim is rejected by an immigration officer by a decision under section 37ZI(1)(b) of the pre-amended Ordinance (*rejection decision*)—

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- (a) where no notice of appeal against the rejection decision is filed within the appeal period—the pre-amended Ordinance applies until the date of expiry of the period; or
 - (b) where a notice of appeal against the rejection decision is filed within the appeal period—the pre-amended Ordinance applies until the date on which the appeal is disposed of or withdrawn.
- (5) If late filing is allowed and the Appeal Board confirms the decision, the pre-amended Ordinance applies until the date on which the decision is confirmed.
- (6) If late filing is not allowed, the pre-amended Ordinance applies until the date on which a written notice under section 37ZT(4) of the pre-amended Ordinance is given to the person filing the notice of appeal.”.
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Part 3

Amendments to Other Enactments

Division 1—Amendments to Weapons Ordinance (Cap. 217)

27. Section 3 amended (application)

(1) Section 3(b)(vi)—

Repeal

“and”.

(2) Section 3(b)(vii)—

Repeal the full stop

Substitute a semicolon.

(3) After section 3(b)(vii)—

Add

“(viii) the Immigration Service.”.

Division 2—Amendments to Firearms and Ammunition Ordinance (Cap. 238)

28. Section 3 amended (possession on behalf of the Government etc.)

(1) Section 3(b)(viii)—

Repeal the full stop

Substitute a semicolon.

(2) After section 3(b)(viii)—

Add

“(ix) the Immigration Service.”.

Explanatory Memorandum

The main object of this Bill is to amend the Immigration Ordinance (Cap. 115) (*Ordinance*) to enhance the efficiency of screening torture claims by the Immigration Department and processing appeals by the Torture Claims Appeal Board (*Appeal Board*), and to strengthen the capability of the Immigration Department in handling torture claim cases and taking enforcement actions, including removing unsuccessful claimants and detaining claimants pending final determination of their torture claims.

2. Clause 1 sets out the short title and provides for commencement.
3. Clause 3 adds a new section 6A to the Ordinance to empower the Secretary for Security to make regulations to provide for the supply to the Director of Immigration (*Director*) of information relating to the passengers and crew members of a carrier. Such regulations may empower the Director to direct that any particular passenger or crew member may or may not be carried on board a carrier.
4. Clause 4 amends section 17I of the Ordinance to provide that if a corporation or a partner in a partnership commits an offence under the section, and it is proved that the offence is committed with the consent or connivance, or is attributable to any neglect, of any director or other partner, the director or partner also commits the same offence. It also increases the penalty that may be imposed on employers of persons prohibited from taking any employment or establishing or joining in any business under section 38AA of the Ordinance.

Clause 23 amends section 38AA to include overstaying visitors in the prohibition.

5. Sections 32 and 37ZK of the Ordinance deal with the detention of a person pending removal or final determination of the person's torture claim. Clauses 5 and 16 amend those sections respectively to set out some of the factors to be taken into account in deciding whether a period of detention is reasonable and lawful.
6. Section 37V of the Ordinance stipulates when a torture claim is finally determined. As a result of the addition by clause 20 of a new section 37ZTA to the Ordinance, which provides that an appeal may be withdrawn before a decision is made by the Appeal Board, section 37V is amended by clause 7. The effect is that for certain appeals, the torture claim is also finally determined when a notice to withdraw the appeal is received by the Board.
7. Clause 9 amends section 37Z of the Ordinance to make it clear that the making of a torture claim does not preclude the Government from liaising with any party after the claim is rejected etc. for making arrangements to remove the claimant.
8. Clause 10 adds a new section 37ZAB to the Ordinance to require claimants to attend interviews and adds a new section 37ZAC to the Ordinance to enable an immigration officer to specify the language to be used by a claimant for communications.
9. Clause 11 amends section 37ZB of the Ordinance to remove the word "documentary" from references to "documentary evidence" so as to widen the nature of the evidence that an immigration officer may require from a claimant.

10. Clause 12 amends section 37ZC of the Ordinance to require a claimant to give consents to enable a medical examination to be arranged and to provide that an immigration officer or the Appeal Board may decide not to take into account the disputed physical or mental condition of a claimant in certain circumstances.
11. Clause 15 amends section 37ZI of the Ordinance to provide, among others, that a decision may still be made by an immigration officer even if a claimant has failed to give consents to enable a medical examination to be conducted, to undergo a medical examination arranged or to disclose the full medical report, as required by section 37ZC of the Ordinance.
12. Clause 17 amends section 37ZN of the Ordinance to revise one of the existing grounds, and to add a new ground, on which an immigration officer or the Appeal Board may, under sections 37ZL(1) and 37ZM(1) respectively of the Ordinance, revoke a previous decision made by an immigration officer or the Board.
13. Clause 18 amends section 37ZS of the Ordinance to provide that no action may be taken in relation to a notice of appeal that is not in the specified form or is not duly completed or signed.
14. Clause 19 amends section 37ZT of the Ordinance to enable the Appeal Board to allow late filing of a notice of appeal against an immigration officer's decision mentioned in section 37ZR of the Ordinance if the lateness is due to circumstances beyond the control of the person filing the notice.

15. Clause 24 amends section 40 of the Ordinance to increase the penalty that may be imposed on the owner of an aircraft in which a passenger who does not have a valid travel document arrives in Hong Kong. The fine originally at level 3 (\$10,000) is increased to level 6 (\$100,000).
16. Clause 25 amends Schedule 1A to the Ordinance (which deals with the members and procedures relating to the Appeal Board) to—
- (a) empower the Chairperson of the Appeal Board to delegate certain powers and functions to a Deputy Chairperson (new section 5A of Schedule 1A);
 - (b) empower the Chairperson of the Appeal Board to nominate the presiding member when the Board hearing an appeal consists of 3 members (section 6 of Schedule 1A);
 - (c) empower the Appeal Board to specify the language to be used by a claimant or witness for communications in proceedings before the Board (section 11 of Schedule 1A);
 - (d) enable the Appeal Board to give less than 28 days' notice (but subject to a minimum of 7 days' notice) of a hearing to the parties if it considers appropriate to do so in a particular case (section 13 of Schedule 1A);
 - (e) deal with the Director's attendance at the hearing of an appeal (new section 13A of Schedule 1A);
 - (f) streamline the Appeal Board's procedures in determining an appeal where the claimant is absent from the hearing (section 15 of Schedule 1A); and

- (g) specify the time limit and the requirements for presenting new evidence to the Appeal Board (section 19 of Schedule 1A).
17. Clause 26 adds a new Schedule 5 to the Ordinance to provide for the savings and transitional arrangements for torture claims made under the Ordinance before the commencement of the Immigration (Amendment) Ordinance 2020.
18. Clauses 27 and 28 amend section 3 of the Weapons Ordinance (Cap. 217) and section 3 of the Firearms and Ammunition Ordinance (Cap. 238) respectively to provide that the prohibition on the possession of weapons, arms and ammunition under those Ordinances does not apply to a member of the Immigration Service.