

# LCQ3: Fugitive Offenders and Mutual Legal Assistance in Criminal Matters Legislation (Amendment) Bill 2019

Following is a question by the Dr Hon Kwok Ka-ki and a reply by the Secretary for Security, Mr John Lee, in the Legislative Council today (May 22):

Question:

For the purpose of handling a homicide case involving Hong Kong residents which happened in Taiwan last year (the Taiwan homicide case), the Government submitted to this Council last month proposed legislative amendments, which sought to enable the Government to transfer suspects under a case-based approach to jurisdictions (including Mainland China) with which Hong Kong has not entered into any long-term surrender arrangements. Some members of the public have pointed out that upon passage of the proposed amendments, Hong Kong residents may be sent, for trial, to places where a fair and open judicial system is lacking, thus depriving them of the human rights protection under the Basic Law. In this connection, will the Government inform this Council:

(1) whether it will transfer the suspect of the Taiwan homicide case to Taiwan only on the condition that the Taiwan side acknowledges that Taiwan is part of China; if so, whether it has sought confirmation from the Taiwan side on its acceptance or otherwise of this condition; if so, of the outcome; if the outcome is in the negative, how the Government handles the situation;

(2) as some Members of this Council have suggested that a sunset clause be made in respect of the proposed legislative amendments, or that the Offences against the Person (Amendment) (Extra-territoriality) Bill 2019 be enacted to handle the Taiwan homicide case, whether it has studied the feasibility of these options; if it has studied and the outcome is in the negative, of the justifications for that; and

(3) since the Government has, in response to the concerns of the business sector, decided earlier within a short period of time to reduce the categories of offences covered by the proposed legislative amendments from all the 46 categories set out in the Fugitive Offenders Ordinance to 37, whether the Government will withdraw the proposed legislative amendments in response to the strong opposition expressed by the 130 000 people who took to the street to join a march last month?

Reply:

President,

The Fugitive Offenders and Mutual Legal Assistance in Criminal Matters Legislation (Amendment) Bill 2019 proposed by the Government aims to amend the Fugitive Offenders Ordinance (FOO) and the Mutual Legal Assistance in Criminal Matters Ordinance (MLAO) to deal with two practical issues:

First, a homicide case happened in Taiwan in early 2018 involving a Hong Kong resident killing another Hong Kong resident, and the homicide suspect fled to Hong Kong. However, there is at present no legal provision to provide the mutual legal assistance or surrender the fugitive offenders to Taiwan.

Second, it is necessary to simultaneously plug the loopholes in Hong Kong's overall co-operation mechanism in criminal and juridical assistance matters, including the geographical restrictions, i.e. being inapplicable to Mainland China, Macao and Taiwan, and the impractical operational requirements under the existing ordinances.

There is a time issue under the first point because the suspect in the homicide case was sentenced to 29 months of imprisonment for four counts of money laundering and could be released as early as October this year. We hope to enact the legislation before his release so that he can be surrendered to Taiwan for the legal sanction that he deserves. As regards the second point, we have to address the shortcomings and loopholes of our existing mechanism for surrender of fugitive offenders. The Government's proposed amendments, which have been thoroughly and prudently considered, ensure that serious crime offenders cannot elude liability by taking advantage of a legal vacuum while protecting the safety of the public and the society.

My reply to the three parts of Dr Hon Kwok's question is as follows:

(1) The Hong Kong Special Administrative Region (HKSAR) Government has been communicating with the Taiwan side on its request in a pragmatic and respected manner, without any preconceived condition and with focus on the case itself only.

At present, there is no law in Hong Kong to deal with this serious murder case. So relevant laws must be enacted. We are aware that the Taiwan side has also agreed that the suspect should be brought to justice, and expressed that the door for negotiation on the mutual juridical assistance remains open. Under the mutual consensus that the suspect should face justice, we will continue to communicate with the Taiwan side patiently, explaining our legal vacuum and working hard to push forward the co-operation in the case to uphold justice.

(2) Some legislators proposed amending the Offences Against the Person Ordinance to extend the criminal jurisdiction of the courts of HKSAR, so that the courts may conduct trials for homicide offences committed by Hong Kong people abroad. There are also views suggesting that the Taiwan homicide case should be handled by means of a sunset clause.

First, handling the Taiwan homicide case by amending the Offences Against the Person Ordinance will result in a suspect being punished for an

act that was not an offence under Hong Kong laws when it was committed, violating the provisions under Article 12: "No retrospective criminal offences or penalties" of the Hong Kong Bill of Rights Ordinance. Furthermore, we will also have to remove the geographical restrictions under MLA0 to obtain evidence through co-operation. Even if restrictions are removed under MLA0, given that the crime took place outside Hong Kong, our prosecution authorities will face considerable difficulties in gathering evidence and summoning witnesses, and will not be able to ensure that such evidence will be accepted by Hong Kong courts. This may even give rise to legal problems pertaining to disclosure of information, thereby resulting in challenge for depriving the right of the defendant for fair trial. If he is acquitted in Hong Kong owing to the evidence failing to meet standard of proof, under the rule against double jeopardy, he will not be legally responsible for which he deserves and this situation will be undesirable.

As for handling the Taiwan homicide case by means of a sunset clause, this can only handle a single homicide case, not a second, third or any other future homicide cases and serious criminal cases, which will each entail enactment of new legislation. This proposal is simply unable to plug the loophole in the current surrender mechanism. We cannot and should not turn a blind eye to the loopholes in the current mechanism as this would make Hong Kong a shelter for offenders.

(3) We have undergone careful deliberation in drawing up the legislative proposals. I have just explained clearly the policy objectives, and the Government will not withdraw the bill. The HKSAR Government understands that the public has different views on the proposed legislative amendments, with supports and criticisms. The Government team has been devouring to explain the legislative proposals to the public and listening to the views from different sectors, during which we have come across many people who are not familiar with the provisions of the amendment bill and the actual operation of the regime. To this end, the Government will continue to explain to the public to enhance their understanding of the proposed amendments. On the other hand, having exchanged views and listening to the comments from various sectors of the community, the Government has refined the proposals in order to strike a reasonable balance by specifying the categories of offences to be handled to 37 items, covering those with the most serious or relatively serious nature, involving the upholding of justice and compliance with obligations under international conventions, etc. The considerations for excluding the 9 categories of offences are that they were seldom come across or have never been dealt with in the past surrender requests; as for the computer related offences, they have been shelved owing to the legal definition problem, which was not sorted out at that time.

President, I hope we can go back and stick to the original objective of surrender of fugitives. The United Nations (UN) passed a resolution in 1997, recognising that surrender of fugitives is an effective means in the joint effort against organised crimes and serious offences. The legislative amendments will not change our current regime for surrender of fugitive offenders under the cautious gatekeeping by the Government and the courts. It

remains our key policy objective to enter into long-term co-operation agreements with different jurisdictions. Nevertheless, it takes as long as years on average to negotiate a long-term agreement. Should the Bill be passed, we could effectively supplement the inadequacy with case-based arrangement in the absence of a long-term agreement. In the existing F00, we have made reference to the UN model treaty on surrender of fugitives, which is in compliance with the international practice with sufficient human rights and legal procedural safeguards. The concerned individuals have the rights to appeal, apply habeas corpus and file judicial review up to the level of Court of Final Appeal. The proposed case-based surrender arrangement will be no longer applicable once a long-term agreement has been signed. The proposed legislative amendments will definitely not affect any long-term agreements in force.

The freedom and rights of Hong Kong is fully protected under the Basic Law. The proposed legislative amendments are in line with the Basic Law, and will definitely not affect the existing legal rights and freedom.

Thank you, President.

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## **Results of Language Proficiency Assessment for Teachers released**

A total of 1 495 candidates sat for the English Language papers in the Language Proficiency Assessment for Teachers (LPAT) 2019 in January while 1 749 sat for the Putonghua papers.

The results of the assessment are as follows:

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Listed below are the names of the persons who have been appointed to the various committees of the Board of Directors of the Corporation.

\* LPR = Language Proficiency Requirement

The Hong Kong Examinations and Assessment Authority (HKEAA) has sent the results notices to candidates by post. They are expected to reach the candidates tomorrow (May 23). Those who have not received the results by Friday (May 24) should contact the HKEAA on 3628 8860.

The Assessment Reports, which provide the chief examiners' observations on candidates' performance, including their strengths and areas for improvement, will be released in July through the websites of the HKEAA ([www.hkeaa.edu.hk](http://www.hkeaa.edu.hk)) and the Education Bureau ([www.edb.gov.hk](http://www.edb.gov.hk)) for the reference of candidates, schools and teacher education institutions. The question papers, together with a CD for the listening tests, suggested answers and Assessment Reports, will be available for sale in July.

Applications for re-checking of results will be accepted on or before May 29. Candidates will be informed individually of their appeal results by June 27.

Those who intend to attain the LPR in future can do so through assessment and/or exemption. The next calls for applications to sit for LPAT and for applications for exemption will be made in September 2019 and November 2019 respectively. The details will be made available through Education Bureau circular memoranda in the 2019/20 school year.

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## Stage 2 Public Engagement for the Pilot Study on Underground Space Development in Selected Strategic Urban Areas launched (with photo)

The Civil Engineering and Development Department and the Planning Department today (May 22) launched the Stage 2 Public Engagement for the Pilot Study on Underground Space Development in Selected Strategic Urban Areas.

The Study, which commenced in June 2015, aims to explore the potential for underground space development in four selected strategic urban areas (SUAs), namely Tsim Sha Tsui West, Causeway Bay, Happy Valley, and Admiralty/Wan Chai. As revealed by the Stage 1 Public Engagement completed in February 2017, the public generally agreed that the proper utilisation of underground space and provision of an all-weather pedestrian network could alleviate the overcrowded street-level walking environment and improve pedestrian connectivity. It could also provide diverse uses/facilities for the benefit of the community through a holistic planning approach. Among the conceptual schemes of the four SUAs, the Study recommends according priority to taking forward the Kowloon Park Conceptual Scheme in Tsim Sha Tsui West.

The Kowloon Park Conceptual Scheme comprises multi-purpose underground space for accommodating an all-weather and barrier-free underground pedestrian network. Various facilities such as community space, retail/food and beverage and car-parking facilities are also included in the Scheme to address imminent needs and enhance the use of underground space.

In formulating the proposed Kowloon Park Conceptual Scheme, consideration has been made to provide diversified space to enhance accessibility and walkability. The departments will also strive to minimise possible disruptions caused by underground space development to the park, retain Old and Valuable Trees in the park, and preserve built heritage and the Bird Lake. The proposed conceptual scheme will give improve the park area's appearance and re-establish a sustainable green park after the underground space construction.

The Stage 2 Public Engagement of the Study will last for three months to seek public views on the latest recommendations of the Study, including the proposed Kowloon Park Conceptual Scheme. Roving exhibitions, focus group meetings, weekend public events and consultations with key stakeholders will be held during the public engagement period. Virtual reality experiences will be introduced in some of the roving exhibitions to assist the public in understanding the future appearance of the proposed underground space and the rejuvenated Kowloon Park.

The public engagement digest and details of activities are available on the Study website ([www.urbanunderground.gov.hk](http://www.urbanunderground.gov.hk)). Members of the public are invited to provide feedback through the following channels on or before August 21, 2019:

Website: [www.urbanunderground.gov.hk](http://www.urbanunderground.gov.hk)

E-mail: [info\\_urbanunderground@aecom.com](mailto:info_urbanunderground@aecom.com)

Fax: 2714 0247

Post: 11/F, Civil Engineering and Development Building,  
101 Princess Margaret Road, Homantin, Kowloon  
(Please specify "Underground Space Development"  
on envelope)



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## CSSA caseload for April 2019

The overall Comprehensive Social Security Assistance (CSSA) caseload in April showed a drop of 608 cases, representing a decrease of 0.3 per cent compared with that of March, according to the latest CSSA caseload statistics released by the Social Welfare Department today (May 22).

The total CSSA caseload at the end of April stood at 223 995 (see attached table), with a total of 318 774 recipients.

Analysed by case nature, low-earnings cases registered a month-to-month decrease of 1.2 per cent to 3 382 cases. Old age cases dropped by 0.4 per cent to 140 664 cases while single parent cases decreased by 0.3 per cent to 24 311 cases. Permanent disability cases slightly slipped by 0.1 per cent to 16 602 cases.

Both ill-health cases and unemployment cases increased by 0.3 per cent

to 23 103 cases and 11 734 cases respectively.

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## LCQ1: Conservation of the stilt houses at Tai O

Following is a question by the Hon Leung Che-cheung and a reply by the Secretary for Development, Mr Michael Wong, in the Legislative Council today (May 22):

Question:

The scale of the stilt houses at Tai O has become very small as a result of natural ageing and repeated damages caused by typhoons, rainstorms and fires, and the stringent control on the refurbishment and reconstruction of the stilt houses under the prevailing squatter control policy and Government Land Licences. Some members of the public have pointed out that the stilt houses are described on the website of the Hong Kong Tourism Board as an iconic feature of the fishermen's village in Tai O and one of the most unique scenic spots in Hong Kong. The Government should therefore regard the stilt houses as cultural heritage and conserve them properly, instead of regulating the stilt houses as squatters. In this connection, will the Government inform this Council:

(1) whether it will turn a blind eye to the disappearance of the stilt houses at Tai O through natural wastage; if not, whether it will formulate a new policy on the control and conservation of the stilt houses; if it will, of the objectives, details and implementation timetable of the new policy;

(2) whether it will change the stipulation that the stilt houses at Tai O may be succeeded to only by immediate family members, so as to facilitate the succession and preservation of the stilt houses; and

(3) whether it will take measures to improve the various systems of the stilt houses at Tai O concerning fire safety, water supply, sewage, electricity supply, public lighting, external access walkways, etc.; if not, of the reasons for that?

Reply:

President,

Currently, the stilt houses situated along the waterway of the Tai Oi Creek are mainly structures under Government Land Licences (hereinafter referred to as licensed structures) and surveyed squatter structures covered in the 1982 Squatter Control Survey (hereinafter referred to as surveyed

squatter structures).

I would like to first briefly explain the background of the Government's policies on licensed structures and surveyed squatter structures.

Government Land Licence (GLL) is land instrument issued by the Government in or before the 1970s mainly to regularise unauthorised structures erected on government land in rural areas at the time. Such licensed structures are tolerated on a temporary basis if they comply with the licence requirements, until they have to be cleared for development, environmental improvement or safety reasons, or phased out due to "natural wastage". "Natural wastage" generally refers to the situation where a licensee is deceased and the licence is not succeeded by an immediate family member.

Separately, the Government conducted a territory-wide Squatter Control Survey (SCS) in 1982 to record the locations, dimensions, building materials and uses of the unauthorised structures erected on government land and leased agricultural land at that time. Such records formed the basis for squatter control. If these structures are in accord with the records of the 1982 SCS, generally they are "tolerated" on a temporary basis until they have to be cleared for development, environmental improvement or safety reasons. For surveyed squatter structures, "natural wastage" generally refers to the situation where a structure is no longer occupied and has its squatter survey number cancelled.

Given that these structures were not erected in accordance with the relevant statutes and regulations, they are likely to be less than satisfactory in various aspects including structural, density, fire safety specifications, ventilation and hygiene standards. The purpose of the aforesaid policies on licensed structures and surveyed squatter structures is to freeze and gradually reduce the number of unauthorised structures in the society.

Having consulted the relevant departments, my reply to the three-part question is as follows:

(1) As far as stilt houses in Tai O are concerned, cases of cancellation of relevant GLL or squatter survey number due to "natural wastage" have not happened in the past two years.

The aforesaid policies on licensed structures and surveyed squatter structures are applicable to the entire Hong Kong. As regards conservation of stilt houses in Tai O, we believe the recently proposed \$1 billion Lantau Conservation Fund may bring about a new opportunity to the community. In view of the traits of Tai O stilt houses, the Government plans to explore in future whether the proposed Lantau Conservation Fund can be tapped to enable stilt houses returned to the Government to be used for purposes benefiting the community instead of being demolished. For instance, subject to local situation and views, those stilt structures which originally will be demolished may be handed to non-governmental organisations for revitalisation and management through an appropriate mechanism to facilitate culture

conservation and community support. The Government is considering such possibility.

As for licensed structures or surveyed squatter structures that are still being occupied, the licensees or occupants may apply for rebuilding or repairing the licensed structures or surveyed squatter structures concerned in accordance with the relevant policies. The Government will consider the applications in a reasonable manner.

(2) Under the prevailing policies, if the licensee of a GLL passes away, generally only an immediate family member of his or her may apply for succession of the GLL. For surveyed squatter structures, the Government does not control the identity of the occupants. Such structures may be "tolerated" on a temporary basis if they accord with the 1982 SCS record.

In respect of transfer, conditions of licensed structures stipulate that GLLs are not transferable, whereas surveyed squatter structures has no legal interest in land at all. As the purpose of the policies is to gradually reduce and prevent persistence of unauthorised structures which do not comply with relevant requirement and safety standards in the society, the Government does not plan to change the existing arrangement. If the Government were to permit lawful transfer of such structures, there would be far-reaching implications on the society.

(3) Government departments have been pressing ahead with various improvement works for the Tai O area and its stilt houses. On fire services, currently the two fire stations in Tai O have already made special firefighting arrangements to cater for the village paths and stilt houses in Tai O, and especially installed a number of "firefighting toolboxes" along the walkways near the stilt houses in Tai O. The Fire Services Department also regularly arranges fire safety talks and fire drills for local residents.

On water supply, the stilt houses in Tai O are provided with adequate potable water supply. The Water Services Department also plans to assist the stilt house residents in replacing the pipelines along the public walkways to enhance reliability of water supply in the area.

On sewerage, the Government has already drawn up a plan to improve Tai O's underground public sewerage network. The Government will extend the public sewer to the government land nearest to the stilt house areas and reserve space for terminal manholes to facilitate residents' sewer connection.

On electricity supply, CLP Power Hong Kong Limited regularly inspects the electricity supply facilities in the area and will also maintain contact with the residents to ensure stability and safety of electricity supply.

The Highways Department and the Lands Department have been undertaking repairs and maintenance for public lighting systems in the area. The Islands District Office also plans to install lights at public walkways in some stilt house areas in the second half of this year.

The Civil Engineering and Development Department is currently implementing the improvement works at Tai O in phases. Phase 1 of the project was completed in March 2013, comprising mainly the construction of a riverwall at Yat Chung and the associated drainage and sewerage improvement works to alleviate risk of flooding. Phase 2 Stage 1 of the project is currently under way, and the detailed design of Phase 2 Stage 2, which involves construction of two footbridges, will soon be carried out.

President, the relevant government departments would continue to review from time to time Tai O residents' needs for various kinds of social services, and make appropriate arrangements and improvements having regard to the needs of the area. Thank you, President.