

Opening remarks by SJ at press conference on Fugitive Offenders and Mutual Legal Assistance in Criminal Matters Legislation (Amendment) Bill 2019 (with video)

The Secretary for Justice, Ms Teresa Cheng, SC; the Secretary for Security, Mr John Lee; and representatives of the Department of Justice and the Security Bureau held a press conference on the Fugitive Offenders and Mutual Legal Assistance in Criminal Matters Legislation (Amendment) Bill 2019 yesterday afternoon (May 7). Following is the English translation of the opening remarks by Ms Cheng at the press conference:

Thank you for coming to the press conference this afternoon. In regard to the different views recently expressed in the community on the Fugitive Offenders and Mutual Legal Assistance in Criminal Matters Legislation (Amendment) Bill, we would like to reiterate the policy objectives and the directions of the amendments as well as respond to those views. Let me first invite the Secretary for Security to speak on the policy objectives. (Please refer to the opening remarks by the Secretary for Security.)

Thank you, Secretary for Security. I will supplement briefly on the Secretary's remarks on the directions of the amendments. There are three directions. Firstly, the current approach to initiate the procedure of vetting by the Legislative Council will be replaced by a certificate to be issued by the Chief Executive. Secondly, the amendments proposed to change the 46 items of offences and offences punishable with imprisonment for more than one year to 37 items of offences and offences punishable with imprisonment for more than three years. Thirdly, the proposed amendments are to be applicable to any jurisdiction. These three points are the major directions.

I would also like to take this opportunity to respond to some views expressed recently. You may have heard that there are suggestions on amending the Criminal Jurisdiction Ordinance or Offences against the Person Ordinance, or trying Hong Kong residents locally. We understand that these suggestions are aimed at dealing with the murder case that happened in Taiwan. However, they cannot serve the purpose for the following reasons.

Firstly, Hong Kong has a common law system and adopts the territoriality principle in respect of criminal jurisdiction. Generally, our jurisdiction will apply only when the whole or part of the criminal act takes place within the territory. Practical problems in the collection of evidence and tendering of evidence in court will arise if extraterritorial jurisdiction is adopted.

Secondly, the Taiwan murder case could not be dealt with even if the ordinances are amended. Since the suggested amendments will turn acts in other jurisdictions into crimes under the Hong Kong law, the related provisions can only be applicable to crimes committed after the (amendment) ordinance has come into force. Therefore, the suggestion cannot serve the purpose of handling the Taiwan murder case.

Thirdly, if a provision is added to provide for retrospectivity, it will be in violation of Article 12(1) of the Hong Kong Bill of Rights, which stipulates that criminal offences or penalties shall not have retrospective effect. This is an important and fundamental problem which cannot be solved by amending the ordinances.

There are also views on whether there exists an exception based on Article 12(2) of the Hong Kong Bill of Rights. I would like to let everyone here know that this suggestion is not sound. The provision originated from Article 15(2) of the International Covenant on Civil and Political Rights (ICCPR). According to authoritative commentaries on the ICCPR, the concept of "criminal according to the general principles of law recognised by the community of nations" actually refers to crimes committed under international treaty law and customary international laws. One example of crimes under international treaty law would be the crime of genocide under Article 1 of the Convention on the Prevention and Punishment of the Crime of Genocide in 1946. In customary international law, we can find examples of war crimes, crimes against humanity and peace, etc. If we look at whether Article 12(2) of the Hong Kong Bill of Rights is an exemption, and whether it can cover a situation like murder, the answer is that it cannot. Therefore, this suggestion is not sound.

Having looked at the above points, it is obvious to all that these suggestions and opinions will not solve the case in Taiwan.

Further, there is recently a saying or suggestion on whether we can adopt "trying Hong Kong residents locally" when dealing with this case. In fact, this idea also has the same problem of criminal retroactivity which I mentioned just now. Even if an ordinance providing for it was enacted, it could only apply to crimes committed after the ordinance has come into force. It cannot apply retroactively to the murder case that occurred in Taiwan last year.

The second problem of this suggestion is the same as the first point I made. In other words, the scope of the proposed "trying Hong Kong residents locally" is more extensive than the amendment of one or two offences. It may be necessary to turn the 46 items of offences under the Fugitive Offenders Ordinance into the mode of "trying Hong Kong residents locally". This involves a fundamental change in our criminal law and system, and Hong Kong's established "territoriality principle". Therefore, this proposal cannot be adopted lightly.

Thirdly, as mentioned earlier, it may bring practical problems in its actual operation, such as collection of evidence, the handling of relevant

evidence during prosecution proceedings, and discharge of duty by the prosecution. Generally speaking, the five proposals are in fact not feasible and the proposal put forward by the Security Bureau and the Government is a desirable option.

I have made some key responses just now. I hope, as the Secretary for Security has said, that we can discuss the various amendments and related issues rationally at the Legislative Council's Bills Committee as soon as possible.

SCED speaks on US-China Economic and Security Review Commission's report

Following is the transcript of remarks by the Secretary for Commerce and Economic Development, Mr Edward Yau, on the US-China Economic and Security Review Commission's report at a media session today (May 8):

Reporter: The US-China Economic and Security Review Commission report has highlighted a number of concerns. Would the Government take these concerns seriously? And how would you respond to these concerns?

Secretary for Commerce and Economic Development: First of all, I must say that I do not want to step over to portfolios beyond mine because the Secretary for Security and the Secretary for Justice have been handling the whole issue of the fugitive amendment bill (the Fugitive Offenders and Mutual Legal Assistance in Criminal Matters Legislation (Amendment) Bill 2019).

On the worries and anxieties raised by some other bodies and also the report, I would say that it has long been Hong Kong's practice to tackle all these through an objective and systematic way of handling legislative proposals. The very purpose of the fugitive amendment bill is to put criminal offenders to legal justice by allowing them to undergo a legal extradition process. There is a loophole that we are intending to plug. If there are any questions, queries or misunderstanding arising from this bill, I think it is the job of the Government to explain and articulate. And there is nothing better than having the Bills Committee as the proper way to examine, scrutinise and discuss the details of the bill, so that we can make the bill workable and we can allow different views to be expressed. That is exactly the reason why the Secretary for Justice and the Secretary for Security spent time yesterday, before the Bills Committee is actually put in action, to further explain the major clauses (of the bill) and to ease certain anxieties. I believe my colleagues will continue to do so. And in my own capacity, if I hear any other views, I am happy to pass them on. In the past my colleague, the Secretary for Security, has talked to various organisations and groups who have expressed views. I believe the process will

carry on. Thanks.

(Please also refer to the Chinese portion of the transcript.)

Two fresh beef samples found to contain sulphur dioxide

The Centre for Food Safety (CFS) of the Food and Environmental Hygiene Department announced today (May 8) that two fresh beef samples were found to contain sulphur dioxide, a preservative which is not permitted to be used in fresh meat. The CFS is following up on the cases.

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A spokesman for the CFS said, "Subsequent to announcing earlier that fresh beef samples taken from stalls in Quarry Bay Market and Lai Wan Market were detected with sulphur dioxide, the CFS took another two fresh beef samples from the two stalls for testing during follow-up investigations. Similar irregularities were detected with the test results showing that the two samples contained sulphur dioxide at levels of 150 parts per million (ppm) and 600 ppm respectively."

According to the Preservatives in Food Regulation (Cap 132BD), it is an offence to add sulphur dioxide to fresh or chilled meat. The maximum penalty is a \$50,000 fine and six months' imprisonment.

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The CFS has informed the vendors concerned of the above-mentioned irregularities. Prosecution will be instituted should there be sufficient evidence.

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Sulphur dioxide is a commonly used preservative in a variety of foods including dried fruits, pickled vegetables and meat products such as sausages and grilled burgers, but under the Regulation it is not permitted in fresh or chilled meat. Nonetheless, individual meat traders may illegally use sulphur dioxide to make meat look fresher. This preservative is of low toxicity. As it is water soluble, most of it can be removed through washing and cooking. However, susceptible individuals who are allergic to this preservative may experience breathing difficulties, headache and nausea.

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The spokesman reminded the food trade to comply with the law and not to sell fresh or chilled meat adulterated with sulphur dioxide. Members of the public should purchase meat from reliable market stalls or fresh provision shops. They should avoid buying or consuming meat which is unnaturally red and maintain a balanced diet to avoid malnutrition or excessive exposure to chemicals from a small range of food items.

The CFS will continue to follow up on the cases and take appropriate

action. Investigation is ongoing.

Public consultation on Legislative Council General Election geographical constituency boundaries and names starts today

The following is issued on behalf of the Electoral Affairs Commission:

The Electoral Affairs Commission (EAC) today (May 8) released for public consultation its provisional recommendations on the boundaries and names of geographical constituencies for the 2020 Legislative Council (LegCo) General Election. The public consultation period will last for 30 days until June 6.

The Commission's Chairman, Mr Justice Barnabas Fung Wah, said at a press conference today, "The 2020 LegCo General Election will be held in the third quarter of next year. The Commission recommends adopting the existing boundaries of the five geographical constituencies and allocating the 35 seats of LegCo according to the projected population in each of the constituencies.

"The Commission proposes to allocate six seats each for Hong Kong Island and Kowloon West, five seats for Kowloon East, and nine seats each for New Territories West and New Territories East, the same as for the 2016 LegCo General Election."

The provisional recommendations were drawn up by the EAC in accordance with the provisions of the Legislative Council Ordinance and the criteria under the Electoral Affairs Commission Ordinance, as well as a set of established working principles.

According to the Legislative Council Ordinance, the number of geographical constituencies for the 2020 LegCo General Election is five. It also stipulates that a total of 35 Members are to be returned for the five geographical constituencies and the number of Members to be returned for each geographical constituency is to be a number which is not less than five nor greater than nine.

According to the population projections made by an inter-departmental Ad Hoc Subgroup set up in the Planning Department, Hong Kong will have a total population of 7 558 100 on June 30, 2020. Accordingly, on average, in terms of population, each geographical constituency seat will correspond to 215 946 people (known as the "population quota").

The Electoral Affairs Commission Ordinance provides that the population in each geographical constituency should not exceed or fall short by more than 15 per cent of the "resulting number", which is obtained by multiplying the "population quota" with the number of seats in that geographical constituency.

Having strictly adhered to the statutory requirement on the number of Members to be returned for each geographical constituency, the calculation result was that the percentage deviations of the populations from the resulting number for the existing five geographical constituencies are all within the statutory permissible range. Therefore, adjustment to their existing boundaries will not be necessary in principle.

Mr Justice Fung said, "Notwithstanding that, the Commission has also examined other options for adjusting the existing geographical constituency boundaries. Some options will yield a smaller percentage deviation of population from the resulting number for individual geographical constituencies than that adopting the existing five geographical constituency boundaries. However, these options will either split up Lantau Island into different geographical constituencies or involve the transfer of an administrative district in the New Territories to the Hong Kong Island geographical constituency or geographical constituency in Kowloon, deviating from the EAC's working principle of treating Hong Kong Island, Kowloon and the New Territories separately as far as possible having regard to the statutory criteria under the Electoral Affairs Commission Ordinance (see attachment).

"From the experience in past delineation exercises, especially the delineation of constituencies for the 2019 District Council Ordinary Election, the public has prevalently advocated maintenance of the status quo of District Council constituency boundaries as far as possible. The EAC also notes that the existing geographical constituency boundaries have been adopted since the first term of LegCo in 1998. The EAC considers that adjusting the existing boundaries simply for the sake of reducing the percentage deviations of the population among the five geographical constituencies where the population does fall within the statutory permissible range does not accord with the EAC's working principle, and would alter the accustomed geographical constituency boundaries for members of the public. Having carefully weighed the pros and cons, the EAC proposes the adoption of the boundaries of the existing five geographical constituencies."

Members of the public are welcome to send in written representations on the provisional recommendations to the Commission's Secretariat by post at 10/F, Harbour Centre, 25 Harbour Road, Wan Chai, Hong Kong. Submissions by fax (2511 1682) or email (eacenq@eac.hk) are also welcome. All representations must reach the Commission by June 6. Late representations will not be considered.

To gather views on the provisional recommendations, the Commission will

hold a public forum from 7pm to 9pm on May 16 (Thursday) at Lai Chi Kok Community Hall, 863 Lai Chi Kok Road, Sham Shui Po, Kowloon.

Maps showing the proposed boundaries and names of geographical constituencies can be viewed from the Commission's website (www.eac.hk), or inspected at the Home Affairs Enquiry Centres of all district offices, the Registration and Electoral Office, Philatelic Offices of Hongkong Post, management offices of public housing estates, and major and district public libraries.

For enquiries, please call 2827 1269.

LCQ 13: Persons remanded in custody

Following is a question by the Hon Dennis Kwok and a written reply by the Secretary for Security, Mr John Lee, in the Legislative Council today (May 8):

Question:

It is learnt that as the Lai Chi Kok Reception Centre and the Tai Lam Centre for Women are often full, from time to time male and female persons on remand pending trial need to be transferred to other correctional institutions (e.g. the Stanley Prison). In this regard, will the Government inform this Council, in each of the past five years:

(1) of the average and maximum length of time for which persons pending trial were held on remand; and

(2) of the number of persons on remand pending trial who were transferred from the aforesaid centres to another correctional institution because the former were full?

Reply:

President,

The Government's consolidated response to the two parts of the Hon Kwok's question, based on information gathered from relevant departments, is as follows:

(1) The Correctional Services Department (CSD) is responsible for, inter alia, the operation of correctional institutions for the custody of offenders sentenced to imprisonment by the court and persons ordered by the court to be held on remand pending trial. It does not maintain statistics on the average and maximum length of time for which persons pending trial were held on

remand in the past five years.

Under section 9D(1) of the Criminal Procedure Ordinance (Cap. 221), a defendant is entitled to be admitted to bail pending trial. A defendant may be refused bail if, as provided under section 9G(1) of Cap. 221, it appears to the court that there are substantial grounds for believing that the defendant would:

- (a) fail to surrender to custody as the court may appoint; or
- (b) commit an offence while on bail; or
- (c) interfere with a witness or pervert or obstruct the course of justice.

In deciding whether or not to refuse bail, the court may have regard to the following factors, as set out in section 9G(2) of Cap. 221:

- (a) the nature and seriousness of the alleged offence and, in the event of conviction, the manner in which the accused person is likely to be dealt with;
- (b) the behaviour, demeanour and conduct of the accused person;
- (c) the background, associations, employment, occupation, home environment, community ties and financial position of the accused person;
- (d) the health, physical and mental condition and age of the accused person;
- (e) the history of any previous admissions to bail of the accused person;
- (f) the character, antecedents and previous convictions, if any, of the accused person;
- (g) the nature and weight of the evidence of the commission of the alleged offence by the accused person;
- (h) any other thing that appears to the court to be relevant.

(2) CSD is committed to providing a secure, safe, humane, decent and healthy custodial environment for persons in custody (PICs) in all correctional institutions.

Generally, CSD detains adult males and females on remand at Lai Chi Kok Reception Centre (LCKRC) and Tai Lam Centre for Women (TLCW) respectively. In order to alleviate the occasional overcrowding situation in these institutions, since August 2016, some male remand PICs were transferred from LCKRC to Stanley Prison, while since January 2017, some female remand PICs were transferred from TLCW to Lo Wu Correctional Institution (LWCI). The numbers of male and female remand PICs transferred to Stanley Prison and LWCI respectively as at the end of the past three years (i.e. 2016 to 2018) are tabulated below:

Year (As at December 31)	Number of male remand PICs in Stanley Prison transferred from LCKRC	Number of female remand PICs in LWCI transferred from TLCW
2016	201	—
2017	227	52
2018	335	79

CSD will continue its efforts to deploy resources flexibly having regard to the changing penal population, and plan and implement various measures to improve and upgrade ageing facilities (including redeveloping relevant correctional facilities to increase the capacity as necessary).