

Fugitive Offenders and Mutual Legal Assistance in Criminal Matters Legislation (Amendment) Bill 2019 to be submitted to LegCo

The Chief Executive-in-Council today (March 26) endorsed the submission of the Fugitive Offenders and Mutual Legal Assistance in Criminal Matters Legislation (Amendment) Bill 2019 to the Legislative Council. The Bill will be published in the Gazette on March 29 (Friday), with First Reading on April 3.

The objectives of the Bill are to address the Taiwan homicide case and to plug the loopholes in Hong Kong's overall mechanism in juridical assistance.

A spokesman for the Security Bureau (SB) said that the legislative amendments were proposed within the existing framework of the Fugitive Offenders Ordinance (FOO) (Cap. 503) and the Mutual Legal Assistance in Criminal Matters Ordinance (MLAO) (Cap. 525), with the aim of removing loopholes and distinguishing the case-based co-operation mechanism clearly from general long-term arrangements. All existing human rights and procedural safeguards provided for in the FOO and the MLAO will be maintained.

The spokesman stated that references were drawn to similar case-based surrender arrangements which have been practised in other jurisdictions (such as the United Kingdom and Canada) for years.

The key proposals of the Bill are as follows:

In the FOO

- (1) To differentiate case-based surrender arrangements (to be defined as "special surrender arrangements" in the proposal) from general long-term surrender arrangements;
- (2) To stipulate that special surrender arrangements will be applicable to Hong Kong and any place outside Hong Kong, and they will only be considered if there are no applicable long-term surrender arrangements;
- (3) To specify that special surrender arrangements will cover 37 of the 46 items of offences based on their existing description in Schedule 1 of the FOO, and the offences are punishable with imprisonment for more than three years and triable on indictment in Hong Kong. A total of nine items of offences will not be dealt with under the special surrender arrangements (see Annex);

(4) To specify that the procedures in the F00 will apply in relation to special surrender arrangements (except that an alternative mechanism for activating the surrender procedures by a certificate issued by the Chief Executive is provided), which may be subject to further limitations on the circumstances in which the person may be surrendered as specified in the arrangements;

(5) To provide that a certificate issued by or under the authority of the Chief Executive is conclusive evidence of there being special surrender arrangements, such that the certificate will serve as a basis to activate the surrender procedures. Such activation does not mean that the fugitive will definitely be surrendered as the request must go through all statutory procedures, including the issuance of an authority to proceed by the Chief Executive, the committal hearing by the court and the eventual making of the surrender order by the Chief Executive. Other procedural safeguards, such as application for habeas corpus, application for discharge in case of delay, and judicial review of the Chief Executive's decision, as provided under the F00 will remain unchanged;

In the MLA0

(1) To lift the geographical restriction on the scope of application of the Ordinance; and

(2) To provide that case-based co-operation premised on the undertaking of reciprocity will be superseded by the long-term MLA arrangements once the latter have been made and become effective.

During the period of public consultation, the SB received around 4,500 written submissions, of which around two-thirds were in support of the proposal.