

**Chemical Weapons (Convention) Bill –  
Supplementary information on issues relating to  
the status of permanent resident of the HKSAR**

At the Bills Committee meeting on 9 January 2003, Members requested supplementary information on the following:

- (a) Whether the provision about the loss of permanent resident status stated in paragraph 7 of Schedule 1 to the Immigration Ordinance was enacted upon the establishment of the HKSAR in July 1997;
- (b) As Article 24 of the Basic Law does not provide for the loss of permanent resident status after the person concerned has been absent from Hong Kong for a continuous period of not less than 36 months, whether the provision in paragraph 7 of Schedule 1 to the Immigration Ordinance contravenes the Basic Law and whether it has been challenged in court;
- (c) Whether a mechanism is in place for the bureau or department concerned to make the verification with the Immigration Department, and whether the personal data and privacy of the persons concerned would be protected during the verification process.

The following supplementary information, seriatim, is provided.

- (a) Yes. Paragraph 7 of Schedule 1 to the Immigration Ordinance (Cap. 115) was enacted and came into operation on 1 July 1997 - section 5 of the Immigration (Amendment) (No. 2) Ordinance 1997, Ord. No. 122 of 1997.
- (b) As with other constitutions, the Basic Law states general principles and expresses purposes without condescending to particularity and definition of terms. According to Article 73(1)

of the Basic Law, the Legislative Council has the power to enact, amend or repeal laws in accordance with the Basic Law and legal procedures. It is therefore constitutional for the Legislative Council to exercise its lawful legislative power under Article 73(1) of the Basic Law to provide details on the implementation of Article 24 such as in the case of Paragraph 7 of Schedule 1 to the Immigration Ordinance. The said provision has never been challenged in court.

- (c) Paragraph 7 of Schedule 1 to the Immigration Ordinance provides that a permanent resident falling within the category in paragraph 2(d) or (e) loses his permanent resident status if he has been absent from Hong Kong for a continuous period of not less than 36 months since he ceased to have ordinarily resided in Hong Kong; and that a permanent resident falling within the category in paragraph 2(f) loses his permanent resident status if he has been absent from Hong Kong for a continuous period of not less than 36 months after he obtained the right of abode in any place other than Hong Kong and has ceased to have ordinarily resided in Hong Kong. Whether a particular person has lost his permanent resident status pursuant to Paragraph 7 of Schedule 1 to the Immigration Ordinance can only be determined having regard to all relevant facts including whether and when he ceases to have ordinarily resided in Hong Kong. It is a question of fact as to whether a person has ceased to have ordinarily resided in Hong Kong which may only be decided on the particular circumstances of a case. The Immigration Department therefore would not have ready information on whether or not a person has lost his permanent resident status pursuant to Paragraph 7 of Schedule 1 to the Immigration Ordinance, and each case would have to be considered on its own merit if such a need arises.

Security Bureau  
17 January 2003