

立法會
Legislative Council

LC Paper No. LS86/01-02

**Paper for the House Committee Meeting
on 3 May 2002**

**Legal Service Division Report on
Proposed Resolution under section 59A of the Immigration Ordinance (Cap. 115)**

The Secretary for Security has given notice to move a motion at the Council meeting on 15 May 2002. The motion seeks the Legislative Council to approve an amendment to Schedule 1 to the Immigration Ordinance (Cap.115) made by the Secretary for Security pursuant to section 59A of the Immigration Ordinance.

2. Under section 2(1) of the Immigration Ordinance, "Hong Kong permanent resident" means a person who belongs to a class or description of persons specified in Schedule 1 to the Immigration Ordinance. Under section 59A of the Immigration Ordinance, the Legislative Council may by resolution amend Schedule 1.

3. Paragraph 2(a) of Schedule 1 specifies the following class of people as permanent residents of the Hong Kong Special Administrative Region -

"A Chinese citizen born in Hong Kong -

(i) before 1 July 1987; or

(ii) on or after 1 July 1987 if his father or mother was settled or had the right of abode in Hong Kong at the time of his birth or at any later time".

4. The above provision was considered by the Court of Final Appeal in the case of *Director of Immigration v. Chong Fung-yuen* (FACV No. 26 of 2000). According to the draft speech of the Secretary for Security, the proposed amendment seeks to reflect the judicial decision of the Court of Final Appeal in *Chong Fung-yuen's case* that the definition of "permanent resident of the Hong Kong Special Administrative Region" in paragraph 2(a) of Schedule 1 should include a Chinese citizen born in Hong Kong before or after the establishment of the Hong Kong Special Administrative Region, irrespective of the status of his parent if he is born after such establishment. The effect of the proposed amendment is that the apparent distinction between Chinese citizens who were born in Hong Kong before and certain descriptions of Chinese citizens born after 1 July 1987 that still exists in the provision but has been held to be invalid will be removed from its text.

5. The relevant amendment shall come into operation on the day when it is published in the Gazette after being approved by the Legislative Council. According to the draft speech of the Secretary for Security, all relevant cases have in fact been handled by the Immigration Department in accordance with the Court of Final Appeal's decision in *Chong Fung-yuen's case* since the delivery of the judgment (i.e. 20 July 2001).

6. The policy issues consequential to the judicial decisions in *Chong Fung-yuen's case* and other right of abode cases were discussed at the special meeting of the LegCo Panel on Security held on 24 January 2002. There is no public consultation on this particular proposed amendment.

7. The amendment to Schedule 1 to the Immigration Ordinance as proposed in the draft resolution is in order from the legal point of view.

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2 May 2002