

For Information

LegCo Panel on Security

Impact on Rights and Entitlement to Public Services Resulting from Loss of Permanent Resident Status

Introduction

At the meeting of the Security Panel held on 8 July 2003, Members considered LC Paper No. CB(2)2677/02-03(03) on “operational arrangements on verification of loss of Hong Kong permanent resident status under paragraph 7 of Schedule 1 to the Immigration Ordinance”. The Administration was requested to provide an information paper setting out whether the loss of permanent resident status by virtue of the relevant provisions in Schedule 1 to the Immigration Ordinance (Cap. 115) will affect a person’s rights under the Basic Law and his entitlement to public services.

Rights of Permanent Residents under the Basic Law

2. Article 24(1) of the Basic Law provides that Hong Kong residents include permanent residents and non-permanent residents. Most fundamental rights and freedoms under the Basic Law, including equality before the law, freedom of speech and association and assembly, are enjoyed by, and safeguarded for, all Hong Kong residents. Certain specific rights such as the right to vote and to take up certain public office, can only be enjoyed by permanent residents. These rights and the relevant Basic Law provisions are set out at the Annex for members’ reference.

3. If a person who has lost his permanent resident status pursuant to Schedule 1 to the Immigration Ordinance returns to Hong Kong to resume his residence, he will be entitled to the rights and freedoms safeguarded for all Hong Kong residents. As noted above, this covers most of the fundamental rights and freedoms under the Basic Law.

Entitlement to Public Services

4. Entitlement to public services in Hong Kong is determined in accordance with the respective policies. In general, a resident's entitlement to the major public services does not depend on his enjoying permanent resident status, although length of residence in Hong Kong may be relevant in some cases. The eligibility criteria for these major services are summarized below.

Public housing

5. A Hong Kong resident aged 18 or above whose income and assets do not exceed the prescribed limits may apply for public housing. At least half of the household covered under his application must have lived in Hong Kong for seven years or more at the time of housing allocation. Children under the age of 18, disregarding their place of birth, will be deemed as having lived in Hong Kong for seven years or more for the purpose of the application if at least one of their parents have lived in Hong Kong for seven years or more.

Comprehensive Social Security Assistance (CSSA), Disability Allowance (DA) and Old Age Allowance (OAA)

6. With effect from 1 January 2004, a person applying for CSSA, DA or OAA must have been a Hong Kong resident for at least seven years and has resided in Hong Kong continuously for at least one year immediately before the date of application. Hong Kong residents aged below 18 applying for CSSA or DA will be exempted from any prior residence requirement. Persons who have become Hong Kong residents before 1 January 2004 will only be required to satisfy the requirement of one year's continuous residence in Hong Kong immediately before the date of application. The Director of Social Welfare will continue to have the discretionary power to waive the residence requirement for CSSA in cases of genuine hardship.

Welfare services

7. For welfare services such as child and family services, counseling services, rehabilitation services, generally speaking it is the applicant's entrenched need that will determine the eligibility for

such services. There is no distinction between permanent residents and non-permanent residents in terms of services available and eligibility for such services.

Health services

8. It is the Government's policy that no one should be denied adequate medical care due to lack of means. There is no distinction between permanent residents and non-permanent residents in terms of the provision of public health care services provided by the Hospital Authority and the Department of Health. However, patients who are not Hong Kong Identity Card holders are not eligible for subsidized care and will have to pay for the services they use at full cost.

Education

9. A person's eligibility for public sector school place is not determined on the basis of his permanent resident status. In general, all Hong Kong residents with valid identification documents indicating their resident status are eligible for admission to public sector schools. For persons who are not Hong Kong residents, admission to public sector schools is only restricted to those holding valid travel documents with specific endorsements from Immigration Department. Non-local persons holding student visas are only eligible for admission to private schools.

Security Bureau
February 2004

**Specific Rights enjoyed by Permanent Residents under the
Basic Law**

Article	
3	The executive authorities and legislature of the HKSAR shall be composed of PRs of HK in accordance with the relevant provisions of this law.
24(3)	HKSAR PRs shall have the right of abode in the HKSAR and shall be qualified to obtain, in accordance with the laws of the Region, permanent identity cards which state their right of abode.
26	HKSAR PRs shall have the right to vote and right to stand for election in accordance with law
44	The Chief Executive of HKSAR shall be a Chinese citizen of not less than 40 years of age who is a PR of the Region with no right of abode in any foreign country and has ordinarily resided in HK for a continuous period of not less than 20 years.
55(2)	Members of the ExCo shall be Chinese citizens who are PRs of the Region with no right of abode in any foreign country.
61	The principal officials of the HKSAR shall be Chinese citizens who are PRs of the Region with no right of abode in any foreign country and have ordinarily resided in HK for a continuous period of not less than 15 years.
101(1)	Only Chinese citizens among PRs of the Region with no right of abode in any foreign country may fill the following posts: the Secretaries and Deputy Secretaries of Departments, Directors of Bureaux, Commissioner Against Corruption, Director of Audit, Commissioner of Police, Director of Immigration and Commissioner of Customs and Excise.

Article	
67	<p>The Legislative Council of the HKSAR shall be composed of Chinese citizens who are PRs of the Region with no right of abode in any foreign country. However, PRs of the Region who are not of Chinese nationality or who have the right of abode in foreign countries may also be elected members of the Legislative Council of the Region, provided that the proportion of such members does not exceed 20 percent of the total membership of the Council.</p>
90(1)	<p>The Chief Justice of the Court of Final Appeal and the Chief Judge of the High Court of the HKSAR shall be Chinese citizens who are PRs of the Region with no right of abode in any foreign country.</p>
99(1)	<p>Public servants serving in all government departments of the HKSAR must be PRs of the Region, except where otherwise provided for in Article 101 of this Law regarding public servants of foreign nationalities and except for those below a certain rank as prescribed by law.</p>
101(1)	<p>The HKSAR Government may employ British and other foreign nationals previously serving in the public service in Hong Kong, or those holding permanent identity cards of the Region, to serve as public servants in government departments at all levels, but only Chinese citizens among permanent residents of the Region with no right of abode in any foreign country may fill the following posts: the Secretaries and Deputy Secretaries of Departments, Directors of Bureaux, Commissioner Against Corruption, Director of Audit, Commissioner of Police, Director of Immigration and Commissioner of Customs and Excise.</p> <p>The HKSAR Government may also employ British and other foreign nationals as advisers to government departments and, when required, may recruit qualified candidates from outside the Region to fill professional and technical posts in</p>

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	government departments. These foreign nationals shall be employed only in their individual capacities and shall be responsible to the government of the Region.