

立法會
Legislative Council

LC Paper No. LS238/98-99

**Paper for the Meeting of the Subcommittee
on resolution under the Immigration Ordinance
on 30 June 1999**

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

The Secretary for Security has given notice to move a motion at the meeting of the Legislative Council on 14 July 1999 under section 59A of the Immigration Ordinance (Cap. 115) to amend certain provisions in its Schedule 1.

2. The background to the proposed amendments is already well known to Members. A gist of this may be found in the draft speech by the Secretary for Security for moving the motion.

3. This report will focus on the issues, as we can detect from our scrutiny so far of the draft resolution, that may need clarification from the Administration.

4. In implementing the interpretation by the Standing Committee of the National People's Congress of the provisions of category (3) of Article 24(2) of the Basic Law, paragraph 1(2)(a) and (b) of Schedule 1 is repealed and replaced, but paragraph 1(2)(c) is left intact. Could it be possible that by the wording of the interpretation "both parents of such persons, whether born before or after the establishment of the Hong Kong Special Administrative Region, or either of such parents must have fulfilled the condition prescribed by category (1) or (2) of Article 24(2) of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China at the time of their birth", there is an implication as to the parent necessarily having to have the status of a natural parent?

5. The Administration explains that the changes made to paragraph 2(a) and (c) of Schedule 1 are to correct an inadvertent error because the term "right of abode" was only introduced into the Immigration Ordinance on 1 July 1987.

6. However, paragraph 2(a) in fact refers to 2 alternative conditions, i.e. either the parent “was settled” or “had the right of abode” in Hong Kong at the time of the birth of the person or at any later time. So if the “right of abode” is not applicable in some cases, the condition “was settled” will come into play and still make the subparagraph workable. It could therefore be argued that there may not be any justification on the ground of error to amend paragraph 2(a).

7. If that argument is right, then the amendment that should be made should perhaps be the addition of the alternative condition of “was settled” to paragraph 2(c).

8. Alternatively speaking, the Administration must clarify the absence of the “was settled” element from the proposed new paragraph 2(a)(i), as this would represent a change of the legal effect of the present provision that has nothing to do with the error argument.

9. A table juxtaposing the relevant existing legislation, the Court of Final Appeal’s amendments, the Interpretation by the Standing Committee of the National People’s Congress and the draft resolution is attached.

Prepared by

Legal Service Division
Legislative Council Secretariat
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(Revised)