

立法會
Legislative Council

LC Paper No. CB(2) 393/99-00

(These minutes have been seen by the
Administration)

Ref: CB2/SS/8/98

**Subcommittee on
resolution under the Immigration Ordinance**

**Minutes of meeting
held on Thursday, 8 July 1999, at 8:30 am
in the Chamber of the Legislative Council Building**

Members present : Hon Ambrose LAU Hon-chuen, JP (Chairman)
Hon David CHU Yu-lin
Hon HO Sai-chu, SBS, JP
Hon Cyd HO Sau-lan
Hon NG Leung-sing
Hon Maragret NG
Hon Mrs Selina CHOW LIANG Shuk-ye, JP
Hon James TO Kun-sun
Hon Ambrose CHEUNG Wing-sum, JP
Hon HUI Cheung-ching
Hon CHAN Kam-lam
Hon Jasper TSANG Yok-sing, JP
Hon Howard YOUNG, JP
Hon Emily LAU Wai-hing, JP
Hon CHOY So-yuk

Members attending : Hon Martin LEE Chu-ming, SC, JP
Hon MA Fung-kwok

Members absent : Hon Albert HO Chun-yan
Hon Mrs Miriam LAU Kin-ye, JP

- Public Officers attending** : Mrs Regina IP, JP
Secretary for Security
- Mr Timothy TONG
Deputy Secretary for Security
- Miss Cathy CHU
Principal Assistant Secretary for Security
- Mr Andy CHAN
Assistant Secretary for Security
- Mr Ian WINGFIELD, GBS, JP
Law Officer (Civil Law)
- Mr Gilbert MO
Deputy Law Draftsman
- Mr T K LAI
Assistant Director of Immigration
- Attendance by Invitation** : Hong Kong Bar Association
- Mr Philip DYKES, SC
Council Member
- The Law Society of Hong Kong
- Mr Anthony W K CHOW
President
- Mr Rogderick B WOO
Council Member
- Mr Raymond C K HO
Council Member
- Clerk in attendance** : Mrs Sharon TONG
Chief Assistant Secretary (2)1

Staff in attendance : Mr Jimmy MA, JP
Legal Adviser

Mr Raymond LAM
Senior Assistant Secretary (2)5

Action

I. Meeting with deputations and the Administration

The Administration's proposed amendments to the resolution

At the invitation of the Chairman, Deputy Law Draftsman (DLD) presented the Administration's proposed amendments (tabled at the meeting and issued to all Legislative Council (LegCo) Members vide LC Paper No. CB(3) 1914/98-99) to the Resolution under the Immigration Ordinance (Cap. 115) (IO) as follows -

- (a) the term "born to" be replaced by "born of" in the English version of proposed paragraph 2(c) of Schedule 1 to IO (the Schedule) to achieve consistency with paragraph 2(e);
- (b) the phrase "中國籍人士" in the Chinese version of proposed paragraph 2(c) be replaced by "中國籍子女" to bring the text in line with that of the relevant provisions in the Basic Law (BL); and
- (c) the phrase "before or after the establishment of the Hong Kong Special Administrative Region", which was found in the Standing Committee of the National People's Congress (NPCSC)'s interpretation, be incorporated in proposed paragraph 2(c) of the Schedule.

Meeting with representatives of the Law Society of Hong Kong (the Law Society)

2. At the invitation of the Chairman, Mr Anthony CHOW presented the views of the Law Society on the Resolution. He said that the Constitutional Affairs Committee of the Law Society had come to the conclusion that the proposed amendments to the Schedule were acceptable. The proposed amendment to paragraph 1(2) of the Schedule was not controversial as it reflected the Court of Final Appeal (CFA)'s decision on the status of children born out of wedlock. Although there were reservations about the proposed time reference of 1 July 1987 in proposed paragraph 2(a), the proposed date was possibly the best one in the circumstances. Proposed paragraph 2(c) merely reflected the

Action

interpretation of NPCSC.

Meeting with representative of the Hong Kong Bar Association (the Bar)

3. At the invitation of the Chairman, Mr Philip DYKES highlighted the following observations about the Resolution -

- (a) the proposed Resolution would introduce a gloss to IO. Each gloss would increase the risk of further arguments as to whether the gloss was proper. Legislation should facilitate the enjoyment of rights guaranteed under BL, or the recognition of rights, but not narrow the rights of a person; and
- (b) BL24(2)(1) stated that Chinese citizens born in Hong Kong before or after the establishment of the Hong Kong Special Administrative Region (HKSAR) were permanent residents of HKSAR. There was no reference to any immigration limitation. Paragraph 1 of the Opinions of the Preparatory Committee (PC's Opinions) only referred to "Chinese citizens born in Hong Kong as provided in Category (1) of paragraph (2) of Article 24 of the Basic Law refer to people who are born during which either one or both of their parents were lawfully residing in Hong Kong". Lawful residence in HK could be achieved without having settled and being entirely free from immigration restrictions. Paragraph 2 of PC's Opinions seemed to recognize the fact that the parent needed not be settled in Hong Kong. The incorporation of the "settlement" requirement in proposed paragraph 2(a)(ii) was questionable. The concept of "settlement" was not found in BL24(2)(1), PC's Opinions or NPCSC's interpretation.
- (c) The time reference of 1 July 1987 in proposed paragraph 2(a) of the Schedule was chosen because of the introduction of the concept of "right of abode" on that date.

4. Responding to the views expressed by the deputations, Law Officer (Civil Law) (LO(CL)) made the following points -

- (a) when IO was amended to reflect NPCSC's interpretation, it was essential for the provisions within IO to be consistent with one another. It might not be possible to adopt the precise wording used in NPCSC's interpretation. This was consistent with the normal practice regarding a subsequent amendment to a piece of legislation; and

Action

- (b) the requirement in respect of persons who were born in Hong Kong after 1 July 1987 had not been changed in paragraph 2(a). There were already legal proceedings in respect of the interpretation of the provision. The consistency of the concept of settlement with the provisions of BL would be determined by the court.

5. LO(CL) added that the gloss referred to by Mr DYKES concerned the difference between the provisions of BL24 and those of IO. The proposed amendments did not increase that gloss. Insofar as it related to persons born in Hong Kong after 1 July 1987, it merely reproduced the provisions in IO. BL was not a comprehensive code. IO sought to expand and elaborate on those provisions while ensuring consistency with BL. To fill the obvious gap in relation to ROA of persons and to fill in the provisions in relation to transitional arrangements which benefited people who had ROA immediately before 1 July 1987, the Administration regarded the additional provision essential.

6. Secretary for Security (S for S) said that although there was no doubt about the legal effect of NPCSC's interpretation, the provisions in local legislation as amended by CFA had become incomplete and inconsistent with NPCSC's interpretation. The Administration had a responsibility to maintain clarity in local legislation so that people would know whether they were entitled to ROA. With clarity in the amended Schedule, the Administration would be able to promulgate the application procedure for Certificate of Entitlement (C of E). It was not appropriate to defer amendment of the Schedule until other legislative amendments to IO were introduced.

Issue of whether reference could be made to PC's Opinions in the interpretation of BL

7. Mr Martin LEE pointed out that PC had not stated that its opinions were made in relation to the legislative intent of BL24(2). It only provided opinions for HKSAR to formulate the detailed implementation rules in respect of BL. He questioned whether the court had to make reference to PC's Opinions in dealing with cases of other categories of persons under BL24(2) in the future. He had not come across any document not admissible to the court as evidence under the common law but could subsequently become a part of the laws of Hong Kong. He expressed concern that the PC's Opinions had become the fourth source of law in Hong Kong. LO(CL) responded that in the Administration's view, the PC's Opinions was not a piece of legislation or an interpretation of BL under BL158. It was an authoritative statement confirmed by NPCSC. In this connection, Mr Martin LEE said that the PC's Opinions was made in 1996, while BL was enacted in 1990. Under the common law, CFA could not have made reference to the PC's Opinions. LO(CL) responded that the PC's Opinions was in the evidence before the courts in each of the cases which had been considered. It was also in the evidence in the two cases on which CFA gave its judgment on

Action

29 January 1999.

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8. LO(CL) added that the PC's Opinions was evidence of consensus reached by the Sino-British Joint Liaison Group (JLG). It was extrinsic material from which the court derived assistance in interpretation. Mr Martin LEE said that even if it was extrinsic material, it did not come into existence until six years after the enactment of BL. LO(CL) responded that under the common law, it was permissible under certain circumstances to look at subsequent events and materials for the purpose of discerning the true meaning of a particular provision. At Mr Martin LEE's request, LO(CL) agreed to provide the authorities of his proposition.

9. Mr Philip DYKES said that under certain circumstances, *ex post facto* materials could be used to construe a piece of legislation. As far as the common law was concerned, there was only a very limited range of materials. However, he had not come across any material which came into being six years after the enactment of a provision that could reflect the legislative intent of the provision. Judges would always treat with caution any *ex post facto* material put before the court. This was because circumstances might develop after the promulgation of the legislation and it might be in the interests of a particular party to make a certain interpretation of the legislative intent.

Interpretation of NPCSC's interpretation by the court

10. Mr James TO asked whether the court could make its own interpretation of NPCSC's interpretation and whether such interpretation by the court was within the limits of the autonomy of HKSAR. He said that this would affect whether BL158(2) or (3) would apply and whether CFA would have to resort to NPCSC for interpretation of NPCSC's previous interpretation. LO(CL) replied that it was the court which interpreted the NPCSC's interpretation during the proceedings of a particular case. Its interpretation in the course of adjudication of a case was binding in respect of that case. He said that circumstances could arise in the consideration of a case by CFA that engaged BL158(3). It would then be necessary to consider not only whether the case related to the relationship between HKSAR and the central authorities or the powers of the Central People's Government, but also whether it was going to affect the outcome of a particular case.

11. Miss Margaret NG expressed doubt about the Administration's view that the court's interpretation of NPCSC's interpretation would be binding in respect of that case only. She said that if this was the case, the Administration would have no obligation to follow the interpretation made by the court. When the court made a judgment on the interpretation of a piece of legal instrument in the past, the judgment remained valid until it was overturned. LO(CL) said that his view was made in relation to the procedure for seeking interpretation under

Action

BL158. In that context, he was just summarizing what BL158 provided. In terms of the decisions of the lower courts, there was no provision for seeking an interpretation from NPCSC. Once a matter was referred to CFA, the question of interpretation might arise under certain circumstances. In those circumstances, the earlier adjudication of the courts would stand as far as the litigants were concerned. A decision of the Court of First Instance was only binding on the parties. This was not an issue that arose particularly in relation to BL. Mr Philip DYKES said that subject to appeal, it would appear to be the case. There could be litigation proceeding on the same point in two different cases that result in different consequences.

12. LO(CL) said that the Administration usually decided not to appeal against a court's decision if it accepted the interpretation of a statute. If the Administration did not accept an interpretation by the Court of First Instance in a particular case, it would appeal against that decision and the issue would be determined by a higher court. The judgment would subsequently be binding on all lower courts.

13. On the question of whether the court could make its own interpretation of NPCSC's interpretation, Mr Philip DYKES said that, intellectually, one was still interpreting BL because what one was looking at was the particular article of BL with that interpretation alongside it. Thus, the interpretation would be on the article rather than the interpretation itself. LO(CL) added that it was similar to a court looking at the previous decision of another court.

Question of whether NPCSC's interpretation was in order

14. Miss Emily LAU asked whether NPCSC's interpretation, which confirmed PC's Opinions, was in order. She also asked whether the proposed legislative amendments and the creation of a fourth source of law in Hong Kong were acceptable. Mr Philip DYKES responded that a court would normally refer to materials that came into existence before the enactment of the legislation to support an interpretation based on the ordinary meaning of the words in question. NPCSC's interpretation was unusual in that in explaining the legislative intent, it referred to an *ex post facto* statement made six years later by a body not associated with the law-making process. NPCSC might have looked at other documents which predated the coming into effect of BL. However, the only document referred to was the PC's Opinions that came into existence six years later. That was not one of the classes of documents which the court might look at to ascertain the legislative intent even though they came into existence after the making of the law.

15. Mr Philip DYKES said that he did not know about the standards and norms of NPCSC when they made an interpretation. In the cases referred to, there was expert evidence put forward by the Government about how the PC's

Action

Opinions would be used under the Mainland system to assist in identifying legislative intent, although this was not found under the common law principles. He was therefore not in a position to answer whether it was proper. However, it was extraordinary to endorse a document like this as reflecting the legislative intent.

16. Mr Raymond HO said that the Law Society considered that NPCSC's interpretation was lawful. It stated specifically that from the date of promulgation of the interpretation, courts of HKSAR should adhere to the interpretation when dealing with the relevant provisions in BL. The interpretation itself had legal force in Hong Kong. It was necessary to recognize NPCSC's function under BL158 and the authority of NPCSC in the Constitution of the Peoples' Republic of China. It would be an interpretation to which Hong Kong courts had to adhere. It was also necessary for CFA to observe NPCSC's interpretation in adjudicating cases. He added that Hong Kong was entering the interface of the common law system in Hong Kong and the legal system in PRC.

17. Miss Emily LAU asked whether the Law Society accepted PC's Opinions as a new source of law under the existing common law system in Hong Kong. In response, Mr Anthony CHOW said that the PC's Opinions was not acceptable under the common law system. However, it was a document produced and used under a different legal system. The Law Society accepted that the interpretation process was a lawful one. As stated by Mr Philip DYKES, an expert in Chinese national laws had stated that it was acceptable, although one could argue that it was not acceptable under the common law. It would be necessary to look at the entire situation and determine the future equilibrium.

Time reference in proposed paragraph 2(a) of the Schedule

18. Mr CHAN Kam-lam asked whether the introduction of the time reference of 1 July 1987 in proposed paragraph 2(a) would lead to future litigation in the court. He considered that if the provision had become more generous, it was unlikely to be challenged in the court. Mr Philip DYKES responded that the possibility of litigation could not be excluded because no temporal reference was found in BL24(2)(1). A gloss, regardless of whether it was a reference to a date or the status of being "settled", would be open to challenge because someone might consider that the inclusion of a qualification not found in BL24(2)(1) was unconstitutional. He said that proposed paragraph 2(a) was more generous than the existing provision, but less generous than the provision in BL24(2)(1). The legislature had to be guided by what it believed to be the best evidence of legislative intent and reference was normally made to the drafting materials of BL. Not much assistance was provided by the PC's Opinions. The reference to the date of 1 July 1987 did expand upon the existing provision and was an improvement. However, its consistency with BL24(2)(1) was arguable.

Action

19. Mrs Selina CHOW asked whether the deputations agreed to the points made in the draft speech by S for S. Mr Philip DYKES said that the Bar had made known its views about the constitutional propriety of seeking an interpretation of BL without reference to legislative history. The draft speech was descriptive of what had happened and merely set out what was proposed to give effect to NPCSC's interpretation. To that effect, it was non-controversial. If the premise that NPCSC's interpretation was binding was accepted, there would probably be no difficulty in accepting the Resolution. Mr Raymond HO said that apart from reservations on the time reference imported into paragraph 2(a), the Constitutional Affairs Committee of the Law Society had no objection to the rationale behind the proposed amendments to the Schedule.

Urgency in passing the Resolution

20. Miss Margaret NG said that members had been told by S for S that there was urgency in passing the Resolution because once the Resolution was passed, the Director of Immigration (D of ImmD) could publish a gazette notice about the application procedure for C of E. This would enable the reinstatement of the old scheme which permitted the Administration to require C of E to be affixed onto the One-way Permit. She asked whether the amended Schedule together with the gazette notice would provide for the re-linkage of the C of E to the One-way Permit system. In response, Mr Philip DYKES said that the proposed amendments to the Schedule would allow cross-reference to be made between IO and the gazette notice. It was not necessary for S for S to copy exactly the wording in paragraph 1 of NPCSC's interpretation when preparing the gazette notice. Nevertheless, it might be of interest for LegCo Members to know the Administration's proposal regarding the implementation of the consequences of the legislative amendments. Mr Raymond HO said that the draft speech of S for S spelt out the proposed legislative process following the passage of the Resolution. It would involve the reintroduction of the previous application procedure relating to C of E. With NPCSC's interpretation, it would put the part of the Schedule to IO declared by CFA to be unconstitutional, Form 12, the gazette notice and application procedure in its proper legal position. Without having studied the draft gazette notice, it would be premature to make any comment on it. Miss Margaret NG said that the linkage could not be found in the Schedule or the gazette notice. It could only be found in other provisions of IO, the amendments to which would not be introduced into LegCo until the latter part of 1999. The Resolution would not make the application process complete. Mr Philip DYKES said that the amendments proposed must facilitate the enjoyment of right of eligible persons, be efficient in recognizing the right, and ensure the exercise of that right as quickly as possible. Mr Raymond HO said that the interpretation by NPCSC that entry from other parts of the Mainland to Hong Kong would continue to be regulated by BL22(4) might confer support for the re-linkage.

Action

Issue of whether the Administration could promulgate the application procedure without the Resolution

21. Referring to page 3 of the draft speech of S for S, Mr James TO asked whether the Administration could promulgate the application procedure as scheduled without moving the Resolution while relying on NPCSC's interpretation to deal with litigation in the court. As there was still litigation before the court, he asked whether the Resolution would affect the cases in the court. He also asked whether the proposed amendments would create more confusion in law. In response, Mr Philip DYKES said that he could not understand why the Administration had chosen the legislative technique of incorporating the provisions of BL in IO with a gloss. An interpretation had legal effect once it was made by a court or NPCSC. The Administration had complicated the issue by introducing a gloss. He considered that the introduction of more gloss would create more opportunities for litigation. If one accepted the constitutional validity of an interpretation, any local legislation enacted as a gloss of that could not have any greater effect or reach a further extent than the interpretation. Mr Anthony CHOW said that if NPCSC's interpretation was accepted, it would be of help to amend the Schedule to reflect the decision of CFA and NPCSC's interpretation, so as to avoid the situation to be placed in a state of flux. Otherwise, it would create difficulties not just for the lawyers, but also for the judiciary.

22. Mr James TO expressed concern about whether the passing of the Resolution would impose additional requirements which affected the rights of litigants of existing court cases relating to the issue. Mr Philip DYKES said that if the constitutional validity of NPCSC's interpretation was accepted, any local legislation enacted as a gloss of the interpretation could not have any effect if it was fully compatible with the interpretation.

Question of whether the proposed legislative amendments were necessary

23. Mr Ambrose CHEUNG said that under the common law, interpretation of statutes should be made by the court. His understanding was that after NPCSC had interpreted BL 22 and BL24, the interpretation should be directly applied to the courts. The Resolution and forthcoming legislative amendments were interpretation of NPCSC's interpretation. He questioned whether the legislative amendments were necessary. NPCSC had made it clear that its interpretation would not affect ROA acquired under the judgement of CFA on the relevant cases on 29 January 1999 by the parties concerned in the relevant legal proceedings. However, the "parties concerned" were to be determined by the Administration rather than by the court. This was unusual under the common law system of Hong Kong. He expressed concern about the Administration's piece-meal approach in introducing the legislative amendments, especially when

Action

he had no knowledge of the forthcoming legislative amendments that would be proposed. He asked whether it would be more appropriate to allow NPCSC's interpretation to be applied directly in the court. Mr Philip DYKES said that any interpretation made by the Administration of NPCSC's interpretation would be open to judicial review.

24. Mr Raymond HO said that the Law Society accepted NPCSC's interpretation as part of the law. IO would serve the function of putting all relevant requirements together into one complete set of immigration legislation. Thus, the legislature would have to give due regard to the interpretation as being part of the law and to incorporate the amendments into IO as a comprehensive set of law. Consistency should be maintained between the interpretation and the legislation to be passed by LegCo. Having all relevant provisions in domestic legislation would bring certainty to the law and facilitate members of the public to know the law. The benefit of domestic legislation passed in line with the interpretation was to enable the legislation to be operated in a smoother and more efficient manner.

Approach for the introduction of legislative amendments

25. Mr Ambrose CHEUNG asked whether it would be more appropriate to examine all legislative amendments together, given that some of the wording in the amended Schedule was different from that of PC's Opinions and NPCSC's interpretation. In response, Mr Philip DYKES said that ideally, it was desirable from a legislative point of view to examine legislative proposals presented as a package. However, such an approach could not prevent legal challenge that part of the package was unconstitutional. Mr Anthony CHOW shared the view that ideally, it would be desirable to examine the whole package at the same time. He said that it was up to the legislature to determine whether it was appropriate to do so under the circumstances.

26. In response to Mr TSANG Yok-sing, Mr Philip DYKES and Mr Anthony CHOW said that regardless of the approach adopted by the Administration introducing the legislative amendments, it was eventually the court which would decide whether the Administration's legislative amendments were consistent with BL or NPCSC's interpretation.

27. Responding to Mr James TO's question about the merits and drawbacks of passing the legislative amendments separately, Mr Philip DYKES said that an early amendment of the Schedule would bring about certainty. However, once the Administration had recognized that a certain category of people was eligible, the following step was purely an administrative one of verification. From an administrative point of view, the Administration could start to verify claims that were made by individuals. Mr Anthony CHOW said that an early amendment of

Action

the Schedule would provide certainty to a certain category of people, so that they knew clearly of their legal rights.

Urgency in the amendment of the Schedule

28. Mr James TO asked whether, from a legal point of view, there was urgency to amend the Schedule first. Mr Philip DYKES responded that he did not consider there to be any urgency. NPCSC's interpretation of BL had taken effect from the time it was made. Mr Anthony CHOW said that there was no urgency from a legal point of view. However, the legal situation was very different from the political situation in Hong Kong. Certain categories of people might argue that there was an urgency.

29. Mr Ambrose CHEUNG considered that there was no urgency in passing the Resolution. Once the legality of NPCSC's interpretation was accepted, its legal effect would be very clear. The Administration's position on the categories of persons who had ROA had also been made very clear. The Administration could actually start accepting and processing applications even without the Resolution. He considered that it would be more cautious to examine all the legislative amendments at the same time.

30. Mr TSANG Yok-sing said that while the deputations considered that there was no urgency in amending the Schedule, they had not identified any drawbacks of amending the Schedule. Furthermore, it was eventually up to the court to decide whether the Administration's legislative amendments were consistent with NPCSC's interpretation. Inconsistency between provisions in existing legislation and NPCSC's interpretation would be undesirable, especially when there was much controversy about the interpretation. He expressed support for the proposed amendments to the Schedule.

31. Miss Margaret NG commented that before the court made its interpretation of NPCSC's interpretation and how it should be implemented, the Administration had interpreted it through enactment of legislation. The Bar and Law Society had made it clear that litigation might arise if there was inconsistency between the proposed legislative amendments and NPCSC's interpretation. She expressed concern that the Administration might seek interpretation from NPCSC again if the court ruled that the legislative amendments in question were inconsistent with NPCSC's interpretation. She could not see any benefits in passing the Resolution.

Members' conclusion on the Resolution

32. Mr HO Sai-chu said that after listening to the views expressed, he was in support of the Resolution.

Action

33. Mrs Selina CHOW said that consideration should be given to the following in deciding whether to support the Resolution -

- (a) whether the Resolution would make the situation more confusing;
- (b) whether a piece-meal approach should be adopted for the legislative amendments; and
- (c) whether NPCSC's interpretation would adequately deal with litigation in the court without the Resolution.

She said that according to the draft speech of S for S, the Resolution also sought to implement CFA's judgment besides implementing NPCSC's interpretation. She considered that clarity in legislation should not have brought about any adverse effect. Legislative amendments relating to ROA had been made to IO in the past in a piece-meal manner. The Liberal Party considered that if the Subcommittee had fully examined the issues relating to the Resolution, it was already adequate for making a decision on whether to support the Resolution.

34. Miss Emily LAU said that the Frontier was opposed to the Resolution and doubted whether it was appropriate for the Chief Executive of HKSAR to seek NPCSC's interpretation of BL. The current situation regarding ROA was confusing. The proposed amendments would not make the situation clearer. She added that the Frontier was opposed to the approach adopted by the Administration in dealing with the issue.

35. Mr James TO considered that legislative amendments to IO should be examined together as a package. The proposed amendments to the Schedule would only result in confusion and the introduction of a time reference would create an additional requirement. The test of the legal effect of NPCSC's interpretation was in the court. The Democratic Party was not in support of the Resolution. While he had considered at one time the possibility of supporting only the proposed amendments implementing CFA's decision, he considered it inappropriate as there was litigation relating to the issue before the court.

Gazette notice on the application procedure for Certificate of Entitlement

36. Mr James TO asked when the draft gazette notice regarding the application procedure for C of E could be provided to members. S for S said that discussion of the application procedure with the relevant authorities in the Mainland was not yet completed. Information on the proposed procedure had been provided in a paper for the Subcommittee, although no member had raised any question in relation to the paper. Subject to a consensus reached by D of Imm and the Mainland authorities at a meeting on the next day, the drafting of

Action

the gazette notice should be completed in the beginning of the following week. She could provide the draft gazette notice to members when it was available. However, there would not be scope for amendments, as the procedures would have been agreed by the two sides. She stressed that D of Imm was empowered under IO to gazette the application procedure. She stressed that the gazette notice could not be amended by a delay in deciding on the issue or the convening of two more meetings. While the amendment of the Schedule was not a prerequisite for the gazetting of the application procedure for C of E, she considered it inappropriate to promulgate the application procedure when there was a lack of clarity in local legislation. It was more appropriate for the application procedure to be gazetted after the amendment of the Schedule. Miss Margaret NG protested against S for S for using "delay" and "convening two more meetings" in referring to the Subcommittee. She said that the Subcommittee requested for the information merely because it was discharging its duties.

37. Miss Emily LAU asked whether the draft gazette notice could be provided to members before 14 July 1999. She enquired about the Administration's plan in respect of DNA test and whether the test would be carried out in the Mainland or Hong Kong. S for S responded that whether the draft gazette notice could be provided at the beginning of the following week would depend on whether a consensus could be reached at the meeting between D of Imm and the Mainland authorities on the following day. Discussion with the Mainland authorities on the verification of DNA, which was not part of the application procedure for C of E, was still under way. It would be dealt with under the future legislative amendments relating to parentage verification. The DNA test for the parent who was in Hong Kong would have to be carried out in Hong Kong.

Issue of whether further meetings should be convened to study the draft gazette notice

38. Mr James TO suggested that a further meeting of the Subcommittee be held when the draft gazette notice was available. Miss Emily LAU supported the suggestion. Miss Cyd HO added that Annex H only provided a broad direction for the application procedure for C of E. The details were not provided. There had been complaints about unfairness in the queuing system for application for C of E. She considered that the Administration should provide the detailed application procedures to members. S for S responded that unfairness in the queuing system and the application procedure for C of E were two different matters. Miss Cyd HO said that if the queuing system was unfair, the Administration had a responsibility to raise the issue with the Mainland authorities.

39. Mr CHAN Kam-lam considered that there was no need to convene another meeting to study the draft gazette notice as the gazette notice was based

Action

on the amended Schedule and there was no scope for amendment of the application procedure. Mrs Selina CHOW said that the gazette notice would be outside the purview of the Subcommittee. She considered that the Subcommittee could report its deliberations on the Resolution, while deferring a decision on whether to convene another meeting to study the draft gazette notice until the latter was received.

40. Members then proceeded to vote on Miss Emily LAU's proposal of convening a further meeting to study the draft gazette notice. The proposal was voted down by a majority of seven to four. Mr James TO suggested that the issue be followed up by the Security Panel.

Report to the House Committee

41. As members had completed scrutiny of the Resolution, the Chairman said that some members were in support of the Resolution while some were opposed to the Resolution. The deliberations of the Subcommittee would be reported to the House Committee at its meeting on 9 July 1999. Miss Margaret NG suggested that the Subcommittee should stress in its report that it had tried its best to address all issues and had held a number of meetings under very tight time constraints.

42. The meeting ended at 11:08 am.

Legislative Council Secretariat
1 November 1999