

LEGISLATIVE COUNCIL BRIEF

IMMIGRATION (AMENDMENT) REGULATION 1999

INTRODUCTION

A At the meeting of the Executive Council on 2 November 1999, the Council ADVISED and the Chief Executive ORDERED that the Immigration (Amendment) Regulation 1999, at Annex A, should be made under section 59 of the Immigration Ordinance, to introduce a Schedule dealing specifically with section 2AD appeals.

BACKGROUND AND ARGUMENT

General Background

B 2. Prior to the introduction of the certificate of entitlement scheme in 1997, the jurisdiction of the Immigration Tribunal (the Tribunal) was solely to determine appeals made under section 53A of the Immigration Ordinance against removal orders made by the Director of Immigration, the Deputy Director of Immigration and any Assistant Director of Immigration. The practice and procedure on an appeal to the Tribunal under section 53A is regulated by regulation 9A of the Immigration Regulations and Schedule 3 to which the regulation refers. An extract of the regulation and the Schedule is at Annex B.

3. When the Immigration (Amendment) (No. 3) Ordinance 1997 (124 of 1997) was enacted in July 1997 to introduce the certificate of entitlement scheme, no consequential amendment was made to the Immigration Regulations to include appeals under section 2AD. As a consequence, regulation 9A and Schedule 3, as they now stand, do not apply to section 2AD appeals. As the practice and procedure for appeals under section 2AD differ from those prescribed for section 53A appeals, it is necessary to amend the

Immigration Regulations to provide for section 2AD appeals.

THE REGULATION

4. Section 59 of the Immigration Ordinance confers on the Chief Executive in Council the power to make regulations for the purposes of, among others, providing for any matter or thing which is to be or may be prescribed under the Ordinance. Section 53G of the same Ordinance provides that the practice and procedure on appeals under section 2AD or 53A and of the Tribunal shall be such as prescribed and provided for under section 59. The Immigration Regulations relating to the practice and procedure of the Immigration Tribunal on appeals under section 2AD are therefore to be made under section 59. An extract of the relevant provisions is at Annex C.

C

5. Section 2 of the Immigration (Amendment) Regulation 1999 adds a new regulation 9B which is similar to regulation 9A and refers to a new Schedule 4 (section 3). The new Schedule is similar to Schedule 3 with changes to take account of the different circumstances of appeals under section 2AD.

PUBLIC CONSULTATION

6. As the amendment is technical in nature, public consultation is considered unnecessary.

HUMAN RIGHTS IMPLICATIONS

7. The Department of Justice advises that the Regulation is consistent with the human rights provisions of the Basic Law.

FINANCIAL AND STAFFING IMPLICATIONS

8. The Immigration Department estimates that there will be about 370 appeal cases per annum in connection with the certificate of entitlement scheme. Additional resources have been provided to the Department to create

12 additional posts at an annual staff cost of \$9.7 million to handle the additional workload arising from implementation of the Amendment Regulation.

LEGISLATIVE TIMETABLE

9. The legislative timetable approved by the Chief Executive in Council is:

Publication in the Gazette	12 November 1999
Tabling at the Legislative Council	17 November 1999

PUBLICITY

10. As approved by the Chief Executive in Council, no press release is necessary since the amendment is only technical in nature.

ENQUIRIES

11. For any enquiries on the Regulation, please contact Mr K S So, Principal Assistant Secretary (Security) at 2810 2506.

Security Bureau
10 November 1999