

**For discussion on
8 July 2003**

LegCo Panel on Security

**Operational arrangements on verification of loss of Hong
Kong permanent resident status under Paragraph 7 of
Schedule 1 to the Immigration Ordinance**

Introduction

At the meeting of the Bills Committee on Chemical Weapons (Convention) Bill (“the Bills Committee”) on 21 January 2003, Members expressed concern about the operational arrangements for the Administration to verify whether a permanent resident of the HKSAR might have lost his or her permanent resident status under the conditions specified in Paragraph 7 of Schedule 1 to the Immigration Ordinance (Cap. 115)¹, and the measures for protecting the personal data and privacy of the persons concerned during the verification. The issues have been referred to the Security Panel for further discussion.

Background

2. As stated in paragraph 3 of LC Paper No. CB(1)486/02-03(03) submitted to the Bills Committee, the Government does not conduct regular checks on which and how many permanent residents of the HKSAR might have lost their permanent resident status under the conditions specified in Paragraph 7 of Schedule 1 to the Immigration Ordinance. Such a check would only take place when a situation arises which obliges the Administration to verify a person’s permanent resident status, such as when a person applies for a facility and the person’s permanent resident status is relevant to the determination of that application. An example is where a Bureau or Department needs to ascertain whether an applicant for a civil service post is a Hong Kong permanent resident.

¹ Paragraph 7 of Schedule 1 to the Immigration Ordinance provides that a permanent resident falling within paragraph 2(d) or (e) of Schedule 1 loses his permanent resident status if he has been absent from Hong Kong for a continuous period of not less than 36 months since he ceased to have ordinarily resided in Hong Kong; and that a permanent resident falling within paragraph 2(f) loses his permanent resident status if he has been absent from Hong Kong for a continuous period of not less than 36 months after he obtained the right of abode in any place other than Hong Kong and has ceased to have ordinarily resided in Hong Kong.

Operational Arrangements

3. When a Government Bureau or Department needs to ascertain an applicant's permanent resident status, it will normally ask the applicant to state in the application whether he or she is a Hong Kong permanent resident under the terms of the Immigration Ordinance, or require the applicant to make a declaration to this effect where appropriate. If, following such a statement or declaration, the Bureau or Department concerned sees a need for further verification to ensure that the applicant's permanent resident status has not been lost under the Ordinance, it will obtain the agreement of the applicant before asking the Immigration Department for the necessary verification. Alternatively, the Bureau or Department concerned may ask the applicant to approach the Immigration Department direct for the verification, and the Immigration Department will issue a notice informing the applicant of the outcome of verification which the applicant can then show to the Bureau or Department concerned.

4. The above arrangement is in line with the provisions of the Personal Data (Privacy) Ordinance. Except where exemptions under the Ordinance apply, in each case the consent of the applicant has been obtained before the Bureau or Department concerned is provided with information on his or her permanent resident status.

5. As stated in our paper to the Bills Committee (LC Paper No. CB(1)762/02-03(02)), whether a particular person has lost his permanent resident status pursuant to Schedule 1 to the Immigration Ordinance can only be determined having regard to all relevant facts, including whether and when he ceases to have ordinarily resided in Hong Kong. It is a question of fact as to whether a person has ceased to have ordinarily resided in Hong Kong which may only be decided on the particular circumstances of the case. The Immigration Department therefore would not have ready information on whether or not a person has lost his or her permanent resident status pursuant to Paragraph 7 of Schedule 1 to the Immigration Ordinance, and each case would have to be considered on its own merit if such a need arises. An interview with the person concerned to collect the relevant facts of the case may be necessary for the purpose.

Conclusion

6. The existing operational arrangements to verify the permanent resident status of the HKSAR have been in place since the handover of sovereignty. The arrangements are considered satisfactory and effective. There are also adequate measures to protect personal data and privacy of the persons concerned during the verification process.

Security Bureau
July 2003