

Legislative Council Bills Committee on Race Discrimination Bill

**Administration's response to issues raised by Members
related to new arrivals from the Mainland**

Purpose

This paper addresses the questions raised by Member relating to new arrivals from the Mainland. Specifically, it –

- (a) explains the application of the seven-year residence requirement for public housing and social security benefits and the impact which may arise from waiving the requirement for new arrivals from the Mainland;
- (b) provides information on overseas practices regarding the residence requirements for social security benefits and the number of cases that the Director of Social Welfare (DSW) exercised his discretion to waive the residence requirement under the Comprehensive Social Security Assistance (CSSA) Scheme in 2006-07;
- (c) provides information on the ethnic groups in the People's Republic of China and on whether people belonging to these ethnic groups would be protected under the Race Discrimination Bill ("the Bill");

- (d) explains the application of the Bill to new arrivals from the Mainland and comparison with application to ethnic minorities; and
- (e) explains the policy measures or circumstances which would be covered by Clause 8(2) and (3) of the Bill and the need for keeping this clause in the Bill.

Residence requirement for public housing

2. One of the eligibility criteria for public rental housing (PRH) is that at least half of the family members included in the application must have lived in Hong Kong for seven years and are still living in Hong Kong at the time of allocation of a public rental flat (the Residence Rule, or RR). Over the years, the HA had reviewed and relaxed the RR on a number of occasions:

- (i) Since 1999, families on the Waiting List (WL) have become eligible for PRH flats if at least half (previously it was more than half) of their family members (including the applicants) meet the seven-year RR at the time of flat allocation. It has made it easier for families with an even number of members (such as two-person or four-person families) to meet the requirement. Moreover, family members under the age of 18 have been considered as having fulfilled the RR as long as one of their parents has lived in Hong Kong for at least seven years.

As a result, more families with children born outside Hong Kong have become eligible for PRH;

- (ii) Since 2001, to help single-parent families headed by a new immigrant, such families have been allowed to apply for PRH if at least half of their family members have lived in Hong Kong for at least seven years, even if the applicant has not;
- (iii) Since 2005, to help new arrival families affected by loss of parent or separation of parents, children under the age of 18 with Hong Kong birth status and confirmed as permanent residents have been deemed to have fulfilled the seven-year RR, regardless of their length of residence in Hong Kong and their father's or mother's residence status.

3. With the above measures, there has been a significant reduction in the number of applications failing to meet the RR and hence withheld from processing. As at January 2008, of the 110 000-plus applications on the WL, only about 9 800 PRH applications from families of two persons or above were frozen due to non-compliance with the RR. Nevertheless, the frozen period will still be counted towards the waiting time of these applications. Moreover, those who have imminent and pressing housing needs may be considered for flat allocation under the Compassionate Rehousing Scheme where flexibility may be exercised in applying the RR on the merit of individual cases.

4. Given the limited public housing resources in Hong Kong and the 110,000-plus applications on the WL, there is a need to establish a reasonable order of priority in the allocation of PRH flats. The existing RR, formulated after a series of relaxation as mentioned above, has struck a balance between effectively allocating public housing resources and addressing the housing needs of those low-income families with new immigrant members. Removing the RR would result in a significantly longer waiting time for those families with longer period of residence in Hong Kong.

5. It should be noted that the RR applies to all applicants, irrespective of their race.

Residence requirement for social security benefits

6. Social security benefits are financed entirely from general revenue. The seven-year residence requirement was one of the recommendations in the Report of the Task Force on Population Policy published in 2003. The seven-year residence requirement was implemented on 1 January 2004. Under the requirement, an applicant has to meet the seven-year residence rule to become eligible for non-contributory social benefits, including the CSSA Scheme and the Social Security Allowance (SSA) Scheme comprising the Old Age Allowance and the Disability Allowance (DA). The seven-year residence requirement does not apply to persons who have acquired Hong

Kong resident status before 1 January 2004. Children aged below 18 are also exempted from any prior residence requirement.

7. Most developed countries impose residence requirement as a condition for the receipt of non-contributory welfare benefits. A summary of the findings of a research conducted by the Social Welfare Department is at Annex.

8. The seven-year residence requirement provides a rational basis on which our public resources are allocated and helps sustain a non-contributory social security system with increasing demand. This requirement aims to encourage new arrivals who can work to be self-reliant rather than relying on welfare assistance. It also underlines the need for potential immigrants to plan carefully and ensure that they have sufficient means to be self-supporting before settling in Hong Kong.

9. It should be noted that the seven-year residence requirement for CSSA and SSA applies equally to all applicants, irrespective of their race. Furthermore, under the CSSA Scheme, the DSW has discretion to grant CSSA to those who do not satisfy the residence requirement but are in genuine hardship. In 2006-07, 1 383 such waivers were granted by the DSW.

Ethnic groups in China

10. According to the 5th National Census of the People's Republic of China, there are 56 recognised ethnic groups in the Mainland. The largest of these groups is the Han, which total 1,159.4 million and make up 91.6% of the country's population. The other 55 ethnic groups, which total 106.43 million and make up the remaining 8.41% of the population, are customarily referred to as the ethnic minorities. They comprise Zhuang, Manchu, Hui, Miao, Uygur, Yi, Tujia, Mongolian, Tibetan, Bouyei, Dong, Yao, Korean, Bai, Hani, Li, Kazak, Dai, She, Lisu, Gelao, Lahu, Dongxiang, Va, Sui, Naxi, Qiang, Tu, Xibe, Mulam, Kirgiz, Daur, Jingpo, Salar, Maonan, Blang, Tajik, Pumi, Achang, Nu, Ewenki, Gin, Jino, Deang, Ozbek, Russian, Yugur, Bonan, Monba, Oroqen, Derung, Tatar, Hezhen, Gaoshan and Lhoba.

11. Any people of these ethnic groups, if they are in Hong Kong, are protected under the Bill.

Application of the RDB to new arrivals from the Mainland

12. Any individual of any racial group who suffers discrimination on the ground of race, while he/she is in Hong Kong, will be protected by the Bill. Whether or not he/she did suffer discrimination on the ground of race, or should be treated as being member of a distinct racial group, will be a matter for the Court, depending on the facts and circumstances of the case, taking into account relevant overseas jurisprudence.

13. The Bill protects all persons in Hong Kong against racial discrimination, regardless of their time of arrival or length of stay. To define by statute new arrivals as a distinct racial group would be arbitrary and inconsistent with the definition of race in the Bill, which is in line with that widely adopted internationally.

Policies and measures covered by Clause 8(2) and (3)

14. Clause 8(2) of the Bill provides that “an act done on the ground of any matter specified in subsection (3) does not constitute an act done on the ground of the race, colour, descent or national or ethnic origin of a person; and section 4(1)(b) does not apply to a requirement or condition as to any matter specified in subsection (3)”. Matters specified in Clause 8(3) include, inter alia, Hong Kong permanent resident status, right of abode, length of residence in Hong Kong and the nationality, citizenship or resident status of the person under the law of any country.

15. Clause 8(2) and (3) does not provide exemptions to narrow the definition of race. It has been included to make it clear that such matters concerning permanent resident status and length of residence etc do not come within the definition of race as stated in Clause 8(1)(a). The definition of race in Clause 8, including the clarifications set out in Clause 8(2) and (3), is consistent with the internationally accepted definition of race under the International Convention on the Elimination of All Forms of Racial Discrimination. Any suggestion to delete Clause

8(2) and (3) would create uncertainty as to whether these matters fall within the meaning of race. This would run against the objective that the Bill should be clear to avoid unnecessary litigations which will be disruptive to the society.

Presentation

16. This paper has been prepared in response to items (1) and (4) to (8) under Section III, “Meaning of “on the ground of race” and application to new arrivals from the Mainland of the “List of issues raised by members” (LC Paper No. CB(2)513 /07-08(03)).

Constitutional and Mainland Affairs Bureau

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**Comparison of the residence requirements for CSSA, OAA and DA with
non-contributory schemes of a similar nature in other countries**

	Hong Kong	Australia	New Zealand	Canada	United Kingdom
Income Support	<p><i>Comprehensive Social Security Assistance Scheme (CSSA)</i></p> <ul style="list-style-type: none"> • must have been a Hong Kong resident for at least seven years; and • must have resided in Hong Kong continuously for at least one year immediately before the date of application. <p><u><i>Exemptions</i></u></p> <ul style="list-style-type: none"> • Persons who have acquired Hong Kong resident status before 1 January 2004 are exempted from the seven-year residence requirement. • Hong Kong residents aged below 18 are not required to satisfy prior residence requirement. 	<p><i>Newstart Allowance</i></p> <p><i>Youth Allowance</i></p> <ul style="list-style-type: none"> • must be an Australia citizen or the holder of a permanent resident visa; and • must have resided in Australia for at least two years. 	<p><i>Unemployment Benefit</i></p> <p><i>Sickness Benefit</i></p> <ul style="list-style-type: none"> • must be a New Zealand citizen or permanent resident; • must have resided in New Zealand for at least two years at one time. <p><i>Invalids Benefits</i></p> <ul style="list-style-type: none"> • must be a New Zealand citizen or permanent resident; • must have resided in New Zealand for at least two years at one time. <p><i>Independent Youth Benefits</i></p> <ul style="list-style-type: none"> • must have resided in New Zealand continuously for two years or more at one time. 	<p><i>Social Assistance</i></p> <ul style="list-style-type: none"> • must be a Canadian citizen or a permanent resident of Canada. A permanent resident is one who lives in Canada for 730 days (two years) of every five years. 	<p><i>Income Support</i></p> <p><i>Jobseeker's Allowance</i></p> <ul style="list-style-type: none"> • must have a right to reside and are 'habitually resident' in the United Kingdom. <p>(The term 'habitually resident' is not defined in the legislation but determined with reference to subjective criteria to do with the person's intentions, reasons for coming to the United Kingdom, employment record, past residence and future intentions).</p>

	Hong Kong	Australia	New Zealand	Canada	United Kingdom
Old Age Benefit	<p><i>Old Age Allowance under the Social Security Allowance Scheme</i></p> <ul style="list-style-type: none"> • must have been a Hong Kong resident for at least seven years; and • must have resided in Hong Kong continuously for at least one year immediately before the date of application. <p><u><i>Exemptions</i></u></p> <ul style="list-style-type: none"> • Persons who have acquired Hong Kong resident status before 1 January 2004 are exempted from the seven-year residence requirement. 	<p><i>Age Pension</i></p> <ul style="list-style-type: none"> • must be an Australia citizen or the holder of a permanent resident visa; and • must have resided in Australia for a total of at least 10 years, at least five of these years in one continuous period. 	<p><i>New Zealand Superannuation</i></p> <ul style="list-style-type: none"> • must be a New Zealand citizen or permanent resident; • must have resided in New Zealand for not less than five years since the age of 50 and for a total of at least 10 years since the age of 20. 	<p><i>Old Age Security Pension</i></p> <ul style="list-style-type: none"> • must be a Canadian citizen or a legal resident of Canada; • must have resided in Canada for at least 10 years since the age of 18. 	<p><i>Over 80 Pension</i></p> <ul style="list-style-type: none"> • must be resident in the United Kingdom; • must have resided in the UK for a total of 10 years or more in any continuous period of 20 years before or after the age of 80.

	Hong Kong	Australia	New Zealand	Canada	United Kingdom
Disability Benefit	<p><i>Disability Allowance under the Social Security Allowance Scheme</i></p> <ul style="list-style-type: none"> • must have been a Hong Kong resident for at least seven years; and • must have resided in Hong Kong continuously for at least one year immediately before the date of application. <p><u><i>Exemptions</i></u></p> <ul style="list-style-type: none"> • Persons who have acquired Hong Kong resident status before 1 January 2004 are exempted from the seven-year residence requirement. • Hong Kong residents aged below 18 are not required to satisfy any prior residence requirement. 	<p><i>Disability Support Pension</i></p> <ul style="list-style-type: none"> • must be an Australia citizen or the holder of a permanent resident visa; and • must have resided in Australia for a total of at least 10 years, at least five of those years in one continuous period (no prior residence requirement if the inability to work occurs while the person is an Australian resident). 	<p><i>Disability Allowance</i></p> <ul style="list-style-type: none"> • No period of residence is required. 	<p><i>No non-contributory disability benefits in Canada.</i></p>	<p><i>Severe Disablement Allowance / Disability Living Allowance</i></p> <ul style="list-style-type: none"> • must be resident in the United Kingdom; • must have resided in the UK for 26 weeks in the last 12 months; • for those applicants who do not have to pay income tax in UK, they must have resided in UK for 156 weeks in the 4 years before they stop paying income tax, or if an applicant has earnings but is not required to pay tax, he/she must have resided in UK for 156 weeks in the 4 years before those earnings started.