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Panel on Security

**Background brief prepared by the Legislative Council Secretariat
for the meeting on 8 May 2007**

Issue of Mainland women giving birth in Hong Kong and related measures

Purpose

This paper gives a summary of past discussions held by Members on the issue of Mainland women giving birth in Hong Kong and related measures.

Background

2. On 20 July 2001, the Court of Final Appeal (CFA) ruled against the Director of Immigration in his appeal against the claim of CHONG Fung-yuen that he was a permanent resident of the Hong Kong Special Administrative Region by virtue of the provisions contained in Article 24(2)1 of the Basic Law as his paternal grandfather had been residing in Hong Kong since 1978. CFA ruled that Chinese citizens born in Hong Kong had the right of abode in Hong Kong according to the Basic Law regardless of the status of their parents. CHONG Fung-yuen was born on 29 September 1997, shortly after his parents came to Hong Kong on a Two-way Permit. His parents were lawfully in Hong Kong at that time, but neither his father nor his mother was settled in Hong Kong or had right of abode in Hong Kong at the time of his birth or subsequently.

3. At the Council meeting on 15 May 2002, the Secretary for Security moved a resolution under section 59A of the Immigration Ordinance (Cap.115) to amend Schedule 1 to the Ordinance to reflect the judgment of CFA in *Director of Immigration v. Chong Fung-yuen*. The resolution was carried.

4. According to information provided by the Administration, the number of births given by Mainland women in Hong Kong had increased by 92.9% from 10 128 in 2003 to 19 538 in 2005. Among babies born to Mainland women in 2003, there were 2 070

whose fathers were non-Hong Kong residents. The number increased to 9 273 in 2005 and 12 678 in the first 10 months of 2006.

Discussions by the Panel on Security and Panel on Health Services

Meeting of the Panel on Health Services on 13 December 2004

5. At the meeting of the Panel on Health Services on 13 December 2004, the Administration briefed members on a number of possible measures under consideration to address the increasing use of public medical services by non-residents of Hong Kong. These included raising the charges for non-eligible persons (NEPs) at public hospital and clinics to above costs, introducing a minimum package charge for obstetric admissions, increasing the deposit for hospital admissions and imposing a surcharge on outstanding fees.

6. Members were very concerned that the increasing use of public medical services by NEPs had created very heavy pressure on the frontline staff of the obstetrics and gynaecology departments of public hospitals and agreed that it was necessary to address the problem. However, members expressed doubt about the effectiveness of some of the proposed measures, such as increasing medical fees and imposing a surcharge on outstanding fees. Members urged the Administration to explore other more effective measures, such as not to issue a birth certificate to a newborn or to forbid a defaulter from leaving Hong Kong until the relevant medical charges had been settled. Other suggestions included enlisting the assistance of Mainland authorities in recovering the outstanding fees and forbidding Mainland women in a late stage of pregnancy from entering Hong Kong, unless they could produce proof of arrangements made for admission to private hospitals in Hong Kong.

7. Members shared the view that it would be necessary for the Health, Welfare and Food Bureau (HWFB) to collaborate with the Security Bureau (SB) in tackling the problem of increasing number of Mainland women coming to Hong Kong for childbirth and bad debts arising from such cases.

8. The Administration advised that HWFB had been liaising with SB in tackling the problems in question. The Administration would need more time to carefully consider the legal implications of the suggested measures, and legislative amendments would be necessary for their implementation.

9. Members unanimously supported a motion requesting the Administration to set up an inter-bureau working group to address the problems brought about by non-Hong Kong residents coming to Hong Kong for childbirth.

10. In response to the request, the Administration pointed out that HWFB and SB had been working closely in addressing the problems and would continue to do so. The

two Bureaux would also consult the Department of Justice as necessary. As such, the Administration saw no need for the proposed working group at that point in time.

Meetings of the Panel on Health Services on 17 May and 13 June 2005

11. At the meetings of the Panel on Health Services on 17 May and 13 June 2005, the Administration briefed members on a new proposed minimum package fee for NEPs giving birth in public hospitals and a proposed revision of private service consultation fees.

12. While expressing support for the proposed introduction of a new minimum package fee of \$20,000 for obstetric services for NEPs at public hospitals, members were doubtful whether it could reduce the number of NEPs giving birth in Hong Kong. Some members were of the view that the proposed package charge could lead to an increase in the number of cases of defaulting payment and worsen the bad debt situation.

13. As for the suggestions made by members at the meeting on 13 December 2004, the Administration said that some of the proposals had legal and administrative implications and it would need more time to deliberate the viable options. One possible option being considered was to refuse re-entry of NEP women from the Mainland who had defaulted payment of charges after giving birth in public hospitals in Hong Kong.

14. Members considered that the situation of an increasing number of NEPs coming to Hong Kong for childbirth should be controlled at source through joint efforts with the Mainland authorities. The Administration should hold discussions with the Mainland authorities on finding solutions to the problem and enlist their assistance in recovering the outstanding fees. The Administration should also draw reference from the experience of other countries in considering appropriate measures to be adopted.

Meeting of the Panel on Security on 19 January 2005

15. At the meeting of the Panel on Security on 19 January 2005, issues relating to Mainland women giving birth in Hong Kong were raised during the briefing by the Secretary for Security on the Chief Executive's Policy Address 2005.

16. Members expressed concern about the sharp increase in the number of cases where both parents of the babies born to Mainland women in Hong Kong were non-Hong Kong residents. They were concerned that many of these Mainland women had not settled their hospital fees after giving birth in Hong Kong, thus creating a heavy burden on the medical system in Hong Kong. They asked whether the Administration had discussed with the Mainland authorities the measures which might be adopted, such as restricting the issue of exit permits to such persons, to address the problem.

17. The Administration advised the Panel that after CFA delivered its judgment on the case of CHONG Fung-yuen, the Administration had anticipated that such a problem would arise. At that time, the Administration had discussed with the Mainland authorities the measures to address the problem. The Mainland authorities subsequently prohibited the visits of pregnant Mainland women to Hong Kong. However, the measure was discontinued when the Mainland authorities found that they could not refuse an exit permit application from a Mainland woman solely on the ground that she was pregnant. In practice, it was difficult for officers at control points to determine whether a woman was pregnant.

18. The Administration informed the Panel that for the first 11 months of 2004, about 72% of the fathers of babies born to Mainland women in Hong Kong were Hong Kong residents. The major problem associated with Mainland women giving birth in Hong Kong was with the non-settlement of hospital fees. The Administration was examining measures to require such Mainland women to settle all payment before their discharge from hospitals. The Administration would further discuss the problem with the Mainland authorities, but stressed that any measure to be introduced would have to be reasonable and lawful.

19. The Administration advised the Panel that it had no plan to amend the Basic Law to address the problem of Mainland women giving birth in Hong Kong.

Meeting of the Panel on Health Services on 8 January 2007

20. The impact of the use of obstetric services by Mainland women on public hospital resources was discussed at the meeting of the Panel on Health Services on 8 January 2007.

21. The Administration informed the Panel that the increasing trend of births by NEPs in public hospitals had exerted pressure on the obstetric services in public hospitals. According to projections of the Hospital Authority (HA), the number of births that public hospitals were expected to handle would grow to between 44 000 and 45 600 in 2007, representing an increase between 7.3% and 11.2% over 2006. To address the problem, the following measures had been/would be implemented by HA -

- (a) expanding HA's obstetric services;
- (b) giving priority service to local mothers;
- (c) increasing the minimum amount of NEP obstetric package charge; and
- (d) implementing a number of measures to enhance the collection of medical fees.

22. Some members considered that increasing obstetric charges for NEPs alone would not be adequate to restrict the number of Mainland women giving birth in Hong Kong, if some of them planned on not settling their medical bills. They asked whether consideration would be given to refusing re-entry of NEP women from the Mainland who had defaulted payment of charges after giving birth in public hospitals in Hong Kong.

23. The Administration advised that a number of measures to enhance the collection of medical fees had already been implemented by HA. To complement the introduction of the revised NEP Obstetric Package Charge, a number of improvement measures, such as providing Eligible Persons and NEPs with outstanding fees with emergency services only and imposing administrative charge for late payments, had recently been endorsed by HA for implementation. The Administration further advised that the rate of default by Mainland pregnant women in using obstetric services in public hospitals was not significant in terms of the total amount of medical fees in default to HA.

24. The Panel requested the Administration to report the effectiveness of the new measures taken by HA to address the increased demand for its obstetric services to the Panel in three months' time.

New obstetric service arrangements and complementary immigration measures

25. On 16 January 2007, the Administration announced new measures, which would take effect on 1 February 2007, on obstetric services and immigration control on non-local women giving birth in Hong Kong. The relevant press release issued by the Administration is in **Appendix I**.

Information paper for the Panel on Security

26. In its paper for the Panel on Security in February 2007, the Administration advised that frontline staff of ImmD had by and large experienced not much difficulties in stepping up arrival checking of pregnant visitors, most of whom were well aware of the new obstetric service arrangements. From 24 January to 15 February 2007, 2 064 pregnant visitors were invited for secondary examination; 81 of them were denied permission to enter for various reasons. All these pregnant visitors returned to their place of origin voluntarily.

Meeting of the Panel on Health Services on 16 April 2007

27. The effectiveness of HA's new obstetric service arrangements was discussed at the meeting of the Panel on Health Services on 16 April 2007. The Administration informed the Panel that -

- (a) after the new arrangements were introduced, the number of non-booked obstetric cases by NEPs in public hospitals had dropped significantly. In the nine weeks since 1 February 2007, a total of 371 non-local pregnant women sought emergency hospital admission through Accident and Emergency Departments, which gave a daily average that was 75.5% lower than the same period in 2006 and 67% lower than January 2007;
- (b) in the nine weeks since the implementation of the new arrangements, the total number of births by non-local women in Hong Kong was 3 825, which gave a daily average that was about 4.1% lower than the same period in 2006 and 28% lower than January 2007;
- (c) in the nine weeks since 1 February 2007, the number of births by non-local women in public hospitals dropped on average by 35.9% as compared with the same period in 2006 and by 33% as compared with January 2007;
- (d) in order to ensure that local women would have adequate access to the necessary obstetric services in public hospitals, HA would continue to closely monitor the booking situation and stand ready to adjust the quota for booking by NEPs accordingly and, if necessary, open new obstetric units in public hospitals to meet increased demand by local pregnant women; and
- (e) in respect of settlement of medical charges at public hospitals, the overall settlement rate by NEP pregnant women in the first two months since 1 February 2007 was 85.4%, which was slightly lower than the settlement rate of 87.2% for the first 10 months in 2006-2007. HA would step up debt recovery efforts to improve the settlement rate by NEPs.

Related information

Questions

28. A number of questions relating to Mainland women giving birth in Hong Kong were raised by Members at the Council meetings on 12 May 2004, 7 July 2004, 27 October 2004, 10 November 2004, 8 June 2005, 5 July 2006, 25 October 2006, 15 November 2006 and 6 December 2006. A list of these questions is in **Appendix II**.

Motion

29. At the Council meeting on 10 January 2007, Dr Hon Joseph LEE moved a motion urging the Government to expeditiously formulate feasible and effective policies and measures to re-allocate public resources to resolve the problem brought about by non-local pregnant women giving birth in Hong Kong. Dr Hon KWOK Ka-ki and Hon Andrew CHENG moved amendments to the motion. The motion as amended by the two Members was carried. The motion carried by the Council is in **Appendix III**.

Relevant papers

30. Members may wish to refer to the following minutes and papers for further details of the discussions -

Minutes

- (a) Minutes of the meeting of the Panel on Health Services held on 13 December 2004 (LC Paper No. CB(2)534/04-05);
- (b) Minutes of the meeting of the Panel on Health Services held on 17 May 2005 (LC Paper No. CB(2)1474/04-05);
- (c) Minutes of the meeting of the Panel on Health Services held on 13 June 2005 (LC Paper No. CB(2)2259/04-05);
- (d) Minutes of the meeting of the Panel on Security held on 19 January 2005 (LC Paper No. CB(2)1248/04-05);
- (e) Minutes of the meeting of the Panel on Health Services held on 8 January 2007 (LC Paper No. CB(2)1043/06-07);

Papers

- (f) Administration's paper for the meeting of the Panel on Health Services on 13 December 2004 (LC Paper No. CB(2)337/04-05(04));
- (g) Administration's paper for the meeting of the Panel on Health Services on 17 May 2005 (LC Paper No. CB(2)1530/04-05(05));
- (h) Administration's paper for the meeting of the Panel on Health Services on 13 June 2005 (LC Paper No. CB(2)1748/104-05(03));

- (i) Administration's paper for the meeting of the Panel on Security on 19 January 2005 (LC Paper No. CB(2)654/04-05(03));
- (j) Administration's paper for the meeting of the Panel on Health Services on 8 January 2007 (LC Paper No. CB(2)761/06-07(03));
- (k) Administration's paper for the Panel on Security (LC Paper No. CB(2)1130/06-07(01)); and
- (l) Administration's paper for the meeting of the Panel on Health Services on 16 April 2007 (LC Paper No. CB(2)1552/06-07(01)).

31. The above minutes and papers are also available on the website of the Legislative Council (<http://www.legco.gov.hk>).

Council Business Division 2
Legislative Council Secretariat
2 May 2007

Appendix I

Press Release

New measures on obstetric services and immigration control
announced

The Government today (January 16) announced new arrangements for medical services and supporting immigration measures, aimed at ensuring that local pregnant women would be provided with proper and priority obstetric services and restricting the number of non-local pregnant women giving birth in Hong Kong to a level that can be supported by Hong Kong's healthcare system.

"The new measures can also deter dangerous behaviour by non-local pregnant women in seeking last-minute hospital admission before delivery through the Accident and Emergency Departments," a government spokesman said.

The Secretary for Health, Welfare and Food, Dr York Chow, and the Secretary for Security, Mr Ambrose Lee, have already explained the Government's policy and measures for dealing with this issue in a motion debate at the Legislative Council meeting on January 10.

In respect of medical services, the Hospital Authority will implement a central booking system for obstetric services starting from February 1. Under the booking system, all pregnant women, including Mainland women planning to deliver in Hong Kong, must make prior arrangements with hospitals here and undergo antenatal examinations.

The Hospital Authority will reserve sufficient places for local pregnant women to ensure that they have priority over Non-eligible Persons (NEPs) (i.e. persons not holding Hong Kong Identity Cards) in the booking of obstetric services. If extra places are available, the authority will accept bookings from non-local pregnant women. However, once service capacity is reached, the authority will stop making bookings for non-local pregnant women.

With the new service arrangement, hospitals would be better placed to manage their obstetric services and make appropriate preparations and deployment before the pregnant women are admitted.

With effect from February 1, the authority will increase the minimum amount of the Obstetric Package Charge for NEPs - \$39,000 for those with a booking, and \$48,000 for those without one. The fee has to be paid in full at the time of booking. The authority will issue a booking confirmation certificate to NEPs who have secured a booking and made payment.

The Government has already discussed the new measures with the Hospital Authority and private hospitals. All private hospitals offering obstetric services support the new measures. They will similarly issue a booking confirmation certificate to pregnant women who have secured a booking and paid a deposit for the necessary inpatient services.

In addition, the authority would expand service and strengthen manpower to cope with the increasing demand for obstetric services and neonatal care. The authority would

ensure that local women would be provided with proper and priority obstetric services.

In respect of supporting immigration measures, the Immigration Department will step up arrival clearance checks for all non-local pregnant women who are at an advanced stage of pregnancy. To minimise disputes, women who have been pregnant for seven months (i.e. 28 weeks) or above will be deemed to be at an advanced stage of pregnancy. Final decision on the entry of a particular visitor or otherwise will rest with relevant officers.

Starting from February 1, pregnant Mainland women who are suspected of entering Hong Kong to give birth will be asked by immigration officers upon entry to produce the booking confirmation certificates issued by Hong Kong hospitals to prove that a local hospital has confirmed the arrangements for their admission to the hospital. Those who fail to do so may be denied entry. The Government will continue to discuss the arrangements with the Mainland authorities concerned.

As for non-local pregnant women from places other than the Mainland, given that there are only isolated cases of such women giving birth in Hong Kong, the Government will not request them to produce a booking confirmation certificate before approving their entry applications at this stage. Nevertheless, arrival clearance checks on these women will be increased.

The staff of the Immigration Department will be assisted by medical staff to implement the new measures at the control points, for instance, providing advice on the physical condition of pregnant women.

Ends/Tuesday, January 16, 2007
Issued at HKT 17:44

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Information provided by the Administration in response to issues raised by Members at Council Meetings

Council meeting on 12 May 2004

At the Council meeting on 12 May 2004, Dr Hon David CHU asked a question on the number of non-Hong Kong residents giving birth in Hong Kong and the number of cases involving default in payment of hospital charges. The question and the reply are available at <http://www.legco.gov.hk/yr03-04/english/counmtg/hansard/cm0512ti-translate-e.pdf>.

Council meeting on 7 July 2004

2. At the Council meeting on 7 July 2004, Dr Hon LAW Chi-kwong asked a question on the number of Mainland women giving birth in Hong Kong and the number among which the spouse was a Hong Kong resident. The question and the reply are available at <http://www.legco.gov.hk/yr03-04/english/counmtg/hansard/cm0707ti-translate-e.pdf>.

Council meeting on 27 October 2004

3. At the Council meeting on 27 October 2004, Hon LI Kwok-ying asked a question on the number of Mainland women giving birth in hospitals of HA, the resources involved and the number of cases in default of payment. The question and the reply are available at <http://www.legco.gov.hk/yr04-05/english/counmtg/hansard/cm1027ti-translate-e.pdf>.

Council meeting on 10 November 2004

4. At the Council meeting on 10 November 2004, Hon James TIEN asked a question on the percentage of Mainland people among the users of obstetrician and neonatal services provided in public hospitals in New Territories East and New Territories West and the adequacy of hospital manpower involved in the provision of such services. The question and the reply are available at <http://www.legco.gov.hk/yr04-05/english/counmtg/hansard/cm1110ti-translate-e.pdf>.

Council meeting on 8 June 2005

5. At the Council meeting on 8 June 2005, Dr Hon KWOK Ka-ki asked a question on the number of Mainland women who gave birth in public hospitals, the number of cases in which they defaulted in payment of medical charges and the measures adopted

to address the problem. The question and the reply are available at <http://www.legco.gov.hk/yr04-05/english/counmtg/hansard/cm0608ti-translate-e.pdf>.

Council meeting on 5 July 2006

6. At the Council meeting on 5 July 2006, Hon CHAN Kam-lam asked a question on Mainland women giving birth in Hong Kong and the impact of the increasing number of children born in Hong Kong to Mainland women on the society. The question and the reply are available at <http://www.legco.gov.hk/yr05-06/chinese/counmtg/floor/cm0705ti-confirm-c.pdf>.

Council meeting on 25 October 2006

7. At the Council meeting on 25 October 2006, Hon LI Fung-ying asked a question on Mainland women giving birth in public and private hospitals and the impact on public services of such children residing in Hong Kong. The question and the reply are available at <http://www.legco.gov.hk/yr06-07/chinese/counmtg/floor/cm1025-confirm-ec.pdf>.

Council meeting on 15 November 2006

8. At the Council meeting on 15 November 2006, Hon Albert CHAN, Dr Hon Joseph LEE and Dr Hon KWOK Ka-ki respectively asked questions relating to Mainland women giving birth in Hong Kong, the default of payment of hospital charges by such persons and the implications of such birth on long-term population policy. The questions and the replies are available at <http://www.legco.gov.hk/yr06-07/chinese/counmtg/floor/cm1115-confirm-ec.pdf>.

Council meeting on 6 December 2006

9. At the Council meeting on 6 December 2006, Dr Hon KWOK Ka-ki asked a further question on the implications of Mainland women giving birth in Hong Kong on long-term population policy. The question and the reply are available at <http://www.legco.gov.hk/yr06-07/chinese/counmtg/floor/cm1206-confirm-ec.pdf>.

**Motion on "Non-local pregnant women giving birth in Hong Kong"
carried at the Legislative Council meeting on 10 January 2007**

"That, as the number of Mainland pregnant women giving birth in Hong Kong has multiplied since the CHONG Fung-yuen case in 2001, public hospital services are so overloaded that local pregnant women are unable to receive the public health care services to which they are entitled, and Hong Kong's health care services, population, education, housing, social welfare, etc are also adversely affected, this Council urges the Government to immediately:

- (a) provide additional resources for the Hospital Authority to tackle the problems brought to Hong Kong's entire public health care system by the large number of Mainland pregnant women flocking to Hong Kong to give birth, as well as to alleviate the tremendous work pressure on frontline health care workers;
- (b) conduct a comprehensive study on the implications of the large number of Mainland pregnant women giving birth in Hong Kong on the territory's various public services and financial commitments, and formulate feasible and effective policies and measures to re-allocate public resources, so as to resolve the problems brought about by Mainland pregnant women giving birth in Hong Kong;
- (c) collect information in order to understand the future implications on the territory of the large number of non-local pregnant women giving birth in Hong Kong;
- (d) crack down on the syndicates which arrange for the Mainlanders to overstay in Hong Kong to wait for childbirth, so as to resolve the problems brought about by non-local pregnant women giving birth in Hong Kong; and
- (e) provide additional public resources to ensure that the health care services for local pregnant women will not be affected."