

# **JUST IMMIGRATION SOLICITORS**

Note: 7<sup>th</sup> July 2020

## **Hong Kong's new security law. British Nationals Overseas Citizens in Hong Kong to be given residence rights in the UK**

### **The Sino British Joint Declaration and the Basic Law**

Hong Kong was a British colony. The Sino British Joint Declaration is a treaty signed between the UK and China on Hong Kong. Signed on 19 December 1984 in Beijing, it stipulates the administrative arrangements of Hong Kong after 1 July 1997, when sovereignty of Hong Kong returned to China. The declaration stipulates:

Article 3 (2) - The Hong Kong Administrative Region will enjoy a high degree of autonomy.

Article 3 (3) - The Hong Kong Special Administrative Region will be vested with executive, legislative and independent judicial power, including final adjudication.

Article 3 (5) - The current social and economic system in Hong Kong, including rights and freedoms of persons, of speech, of press, of assembly, of association, of travel, of movement will remain unchanged.

This is reinforced by the Basic Law, which sets out China's basic policies on Hong Kong in accordance with the Joint Declaration and its commitment to the principle of 'one country two systems'. Article 27 states that Hong Kong residents shall have freedom of speech, of the press and publication, freedom of association, of assembly, of procession and demonstration.

### **Hong Kong New Security law:**

On 28 May 2020, the China's National People's Congress voted in support of the establishment of national security legislation in Hong Kong. The law was drafted and approved swiftly in Beijing. The text of the new legislation was issued by the Hong Kong Government at 11:00pm on Tuesday 30 June 2020, after weeks of secrecy surrounding its details and came into effect immediately.

This short note looks at some of its draconian provisions and the UK's response to this.

## **Provisions of the New Hong Kong Security Law:**

In addition to terrorism offences, the new security law introduces the offences of secession, subversion and collusion with foreign countries or elements.

### **Secession: Article 20**

Secession includes a person who organises, plans, commits or participates in separating the Hong Kong Special Administrative Region (HKSAR) or any other part of China from the People's Republic of China.

The offence carries a maximum sentence of life imprisonment or fixed term imprisonment of not less than 10 years.

### **Subversion: Article 22**

Subversion includes a person who organises, plans, commits or participates in overthrowing or undermining the basic system or the central power of the People's Republic of China.

The offence carries a maximum sentence of life imprisonment or fixed term imprisonment of not less than 10 years.

### **Article 29: Collusion with a Foreign Country or with External Elements to Endanger National Security**

This includes anyone who conspires with foreigners to provoke hatred of the Chinese government or authorities in Hong Kong.

A person who commits the offence shall be sentenced to a fixed term imprisonment of not less than 3 years, but not more than 10 years.

### **Article 41: Trials can be held in secret**

Article 41 provides for all or part of the trial to be closed to the media and the public where it involves state secrets or public order. The terms, state secrets or public order, are not clearly defined.

### **Article 44: Judges to be chosen by the Chief Executive**

Under Article 44, judges will be designated by the Chief Executive to handle cases concerning offences endangering national security.

A person will be disqualified if he or she is regarded as having made any statement or behaved in any manner which endangers national security. This opens up the real possibility of excluding human rights lawyers who advocate for civil and political rights in Hong Kong.

### **Article 46: Trial Without A Jury**

Under Article 46, a person can be tried without a jury on grounds of involvement of foreign factors in the case

### **Article 42: No presumption of bail for suspects**

There is no presumption of bail for suspects. Article 42 does not specify a time limit for detention, only that cases concerning offences of national security will be handled in a 'fair and timely' manner.

### **Article 46: Office for Safeguarding National Security of the Central People's Government in the Hong Kong Special Administrative Region**

Under Article 46, the Central People's Government will establish in the Hong Kong SAR an Office for Safeguarding National Security. The staff of the office will be dispatched by the Central People's Government.

### **Article 55: The Office for Safeguarding National Security of the Central People's Government in the Hong Kong Special Administrative Region can take over the investigation of a case**

Under Article 55, the Office for Safeguarding National Security of the Central People's Government in the Hong Kong SAR can, upon approval by the Central People's Government, exercise jurisdiction over a case concerning an offence endangering national security.

## **Article 56 and Article 57: A Case can be tried in China under Chinese law:**

In exercising jurisdiction over a case concerning an offence endangering national security, the Office for Safeguarding National Security will initiate an investigation into the case, the Supreme People's Procuratorate will designate a prosecuting body to prosecute it, and the Supreme People's Court will designate a court to adjudicate it.

Under Article 57, the criminal procedure law of the People's Republic of China will apply to cases which are taken over by the Office for Safeguarding National Security. This includes all procedural matters relating to the criminal investigation, the examination and prosecution, the trial as well as the execution of the penalty in such cases.

## **Article 36 and Article 37: Scope of its Application**

The law applies to offences committed by any person in Hong Kong, including those who are permanent residents of the Hong Kong SAR, as well as companies and organisations which are set up in Hong Kong.

## **Article 38: Offences can be committed outside Hong Kong**

Under Article 38, the law can also apply to offences committed against the Hong Kong SAR by those outside Hong Kong.

## **Article 16: Police Force to be Staffed by Personnel from China**

Under Article 16, the Police Force of the Hong Kong SAR is required to establish a department for safeguarding national security law with enforcement capacity. The department may recruit professionals and technical personnel from outside Hong Kong Special Administrative Region to provide assistance in the performance of their duties.

The term 'professionals and technical personnel from outside the Hong Kong Special Administrative Region' is not defined. However, this opens up the possibility of incorporating personnel from the People's Liberation Army stationed in Hong Kong, who are not supposed to interfere with local affairs or have any dealing with the maintenance of public order in Hong Kong.

## **The British Government's Response to the New Security Law in Hong Kong:**

In response to the imposition of the new security law in Hong Kong, the Foreign Secretary Dominic Raab reported to the House of Commons on 1 July 2020 that the enactment constitutes a clear and serious breach of the Joint Declaration and a flagrant assault on 'Hong Kongers' right to freedom of speech and freedom of peaceful protest. In light of the British historic commitment to the people of Hong Kong, the British Government will develop an immigration route for British Nationals (Overseas) Citizens (BNOs) in Hong Kong and their dependants, to enable them to live and work in the UK and to give them the opportunity to apply for British Citizenship after 5 years. The proposals are:

- i) BNOs and their dependants to be given 5 years limited leave with the right to work and study
- ii) After 5 years, they will be able to apply for settled status/indefinite leave to remain and
- iii) After a further 12 months with settled status/indefinite leave to remain, they will be able to apply for citizenship.

British National (Overseas) Citizens (BNOs) in Hong Kong were former British Overseas Territories Citizens who had a connection with Hong Kong, and who were able to register as BNOs before 1 July 1997, when the sovereignty of Hong Kong returned to China. As of 24 February 2020, it is estimated that there are currently 2.9 million BNOs in Hong Kong.

### **China's Response:**

China reacted angrily to the British proposals. It accuses the UK of gross interference over Hong Kong and threatens retaliation. The fear is that it will refuse to recognise the rights of BNOs and impose travel restrictions. If this occurs, it will truly mark the end of Hong Kong that we all know.

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If you would like advice or assistance on any of the issues raised in this note/article, please contact Agnes Lai by email at

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