

Supplementary written evidence submitted by Witness E (VIS0002)

[Note: This evidence has been redacted by the Committee. *** represents redacted text.]

Introduction

1. The Home Affairs Select Committee (“HASC”) invited evidence to be provided during a closed private evidence session on 06.01.2021 in relation to Hong Kong, and the Home Office’s new upcoming visa scheme for British Nationals (Overseas) (“BNOs”). Towards the end of the evidence session, the Chair requested written evidence in relation to a proposal for a workable scheme which might be put in place to assist 18-23 year olds, who may find themselves left out of the BNO visa scheme which begins operation from 31.01.2021.
2. This document was started soon after the private evidence session, and whilst drafting the document, the Clerk to the HASC, [***] formally requesting written evidence to especially address the following points:
 - Any information on the estimated number of people, particularly the younger cohort, from Hong Kong who are seeking asylum in the UK, or who are here through other routes;
 - Possible solutions to the issues affecting 18-23 year olds in terms of legal or visa routes to the UK;
 - Whether [the] country policy and information note, from November 2020, addresses concerns raised about the Hong Kong CPIN [of February 2020];
 - Whether you have any indications as to whether there are particular places in the UK in which people moving from Hong Kong may look to settle, and for what reasons;
 - Any thoughts you have on preparations by the Home Office and local authorities with regards to integration and settlement in the UK. What are you aware of being done already; what would you recommend be done in advance of arrivals from HK; and any concerns you have.

3. In addition to the 5 specific questions asked by the HASC panel, [***] , I have addressed herein some of the topics which were discussed during the evidence session with additional information, which I hope will assist the HASC panel with more information in relation to background and context, as well as set out various legal provisions to which my evidence refers.
4. This document does not necessarily touch upon every topic of discussion raised during the private oral evidence session on 06.01.2021 in this document, and any omission should not be construed as a lack of support for the evidence given on 06.01.2021, simply that I may not feel that I can provide any more assistance to the HASC panel in relation to those issues.
5. It is hoped that the HASC panel will consider this document containing my written evidence in conjunction with the oral evidence provided during the private evidence session of 06.01.2021.

Answers to specific questions asked as per the Clerk's email [***]

Any information on the estimated number of people, particularly the younger cohort, from Hong Kong who are seeking asylum in the UK, or who are here through other routes

6. The Home Office's own data is cited below at **paragraph 56** provides a breakdown of asylum claims made, and the age group of applicants.

Possible solutions to the issues affecting 18-23 year olds in terms of legal or visa routes to the UK

7. Please see **paragraphs 117-122** below.

Whether [the] country policy and information note, from November 2020, addresses concerns raised about the Hong Kong CPIN [of February 2020]

8. Please see **paragraphs 60-67** below.

Whether you have any indications as to whether there are particular places in the UK in which people moving from Hong Kong may look to settle, and for what reasons

9. From speaking to Hongkongers via social media, there seems to be a few locations which seem to carry more favour for those coming from Hong Kong. Major cities such as London, Manchester, Liverpool, and Birmingham seem to be popular cities

for Hongkongers resettling in the UK. These cities are also known to have a relatively large concentration of Chinese population.

10. Choices made as to where to live can often be influenced by social media, for example [***].¹
11. There are, of course, other [***] social media sources (Hongkongers refer to social media sources of information as KOLs - key opinion leaders), which discuss in Cantonese about resettling in the UK. The Home Office might be assisted by considering Cantonese and Chinese language sources on social media platforms.

Any thoughts you have on preparations by the Home Office and local authorities with regards to integration and settlement in the UK. What are you aware of being done already; what would you recommend be done in advance of arrivals from HK; and any concerns you have

12. See **paragraphs 82-86** below.

¹ [***]

Supplementary notes on topics discussed

Vetting

13. It was suggested that HM Government should look at the idea of vetting in order to prevent those who may have ties to the Hong Kong Police (“HKPF”), or may be pro-Beijing to be eligible for a BNO visa. Whilst of course emotions are running high, very much understandably, especially with everything that has happened since the protests began in June 2019, as a lawyer, I cannot condone this sentiment without further qualification, as this could be tantamount to revoking someone’s eligibility for the BNO visa based on their political opinion, or their job.

14. The threat which is posed to pro-democracy supporters by pro-Beijing elements is real, in the UK² and abroad.³ I myself have been threatened physically at a protest whilst covering the event as a freelance photographer by pro-Beijing elements who surrounded me and demanded I speak Mandarin to them, and when I explained I would simply rather speak English since I grew up in the UK, I was confronted by 3 or 4 people closely surrounding me, and one of the pro-Beijing supporters saying, “Are you refusing to speak Mandarin because you’re actually from Hong Kong?” Despite having been on the receiving end of threatening behaviour and understanding why some would ask for this, any kind of vetting has to be framed within the context of whether an applicant’s exclusion from the UK is considered “conducive to public good”, or due to national security reasons.

15. A vetting process which focuses on whether an applicant is merely pro-Beijing without reference to any kind of action or intelligence which may indicate their presence in the UK to be “not conducive to the public good” or a risk to national security, in effect discriminates on the basis of one’s political opinion. Equally, I cannot imagine that every single member of the HKPF has been complicit in human

² <https://www.theguardian.com/uk-news/2019/oct/18/hong-kong-protesters-uk-pro-beijing-intimidation>, accessed on 06.01.2021.

³ <https://www.abc.net.au/radio/programs/pm/hong-kong-police-urged-to-punish-chinese-australians/12445076>, accessed on 06.01.2021.

rights abuse, even though we have a lot of evidence simply in the media that members of the HKPF have carried out acts of police brutality in policing the protest. But this is not the same as suggesting every member of HKPF has behaved thus.

16. Part 9 of the Immigration Rules allows for the Home Office to refuse leave to enter / remain, or the Entry Clearance Officer to refuse entry clearance (visa) to those whose presence in the UK is not conducive to the public good. Rules 9.3.1 and 9.3.2 provide for the following:

9.3.1. An application for entry clearance, permission to enter or permission to stay must be refused where the applicant's presence in the UK is not conducive to the public good because of their conduct, character, associations⁴ or other reasons (including convictions which do not fall within the criminality grounds).

9.3.2. Entry clearance or permission held by a person must be cancelled where the person's presence in the UK is not conducive to the public good.

17. These provisions are very broad, and the BNO visa scheme requires those applying to not fall foul of any ground of refusal in Part 9 of the Immigration Rules. For example, Rule HK 2.1 of the Immigration Rules to come into force on 31.01.2021 provides for the following:

HK 2.1. The applicant must not fall for refusal under Part 9: grounds for refusal.

Such provisions in relation to not falling foul of Part 9 of the Immigration Rules are

⁴ "Association" in this context would, in my view, be a reference usually to, say, an organisation which had been declared criminal, or an organisation which has been proscribed as a terrorist organisation, which the Chinese Communist Party, the Hong Kong Government, or the HKPF have not. It would be difficult to say someone should be banned from entry by association with a group of people which had not been proscribed. It should be noted, however, that even in the case of membership of proscribed organisations, personal conduct would still need to be taken into account. In the case of *JS (Sri Lanka), R (on the application of) v Secretary of State for the Home Department (Rev 1)* [2010] UKSC 15, dealing with whether someone should be excluded from protection under the Refugee Convention by reference to his membership of the LTTE, Lord Brown at paragraph 38 of just judgment stated, "Put simply, I would hold an accused disqualified under article 1F if there are serious reasons for considering him voluntarily to have contributed in a significant way to the organisation's ability to pursue its purpose of committing war crimes, aware that his assistance will in fact further that purpose."

repeated throughout the various classes of BNO applications from the status holder beneficiary to dependants and family members.

18. Rather than separate provisions being provided for vetting on the BNO visa scheme, Part 9 of the Immigration Rules could be used to screen out elements which may be considered “not conducive to the public good”, which clearly would also include those who would have an adverse impact on our national security. But this would of course have to be intelligence led, rather than simply a blanket ban on those who may be pro-Beijing, with ties to the Beijing or Hong Kong Governments, or with ties to the HKPF. In relation to ties to the Beijing or Hong Kong Governments, it has to be remembered that civil servants in Hong Kong are now expected to swear an oath of loyalty to the Hong Kong Government,⁵ and therefore any blanket bans may affect people with ties to the Hong Kong Government and / or who are simply forced to swear the oath of loyalty to said Government in order to bring food to the table. Blanket bans may work to preclude people who are not a part of any human rights abuse and draconian measures taking place. Blank bans, rather than intelligence led refusals, would be inviting litigation against HM Government.
19. Whether HM Government seeks intelligence from the usual intelligence sources, or invites for the provision of intelligence from those on the ground, is a matter which is probably best suited to be answered by those who specialise in the laws and regulations surrounding use and gathering of intelligence.

Criminality

20. It would be helpful to touch upon the issue of criminality at this point, whilst provisions relevant to Part 9 of the Immigration Rules are being discussed. In addition to the broad provisions which allow for the refusal of leave to enter / remain, or refusal of entry clearance on the basis of the applicant’s presence in the UK being “not conducive to the public good”, Part 9 further provides for situations where it is

⁵ <https://www.reuters.com/article/us-hongkong-security/hong-kong-civil-servants-given-four-weeks-to-pledge-loyalty-to-the-government-idUSKBN29K1HY>, accessed on 18.01.2021.

mandatory for an application to be refused if the applicant has received a custodial sentence of 12 months or more. Paragraph 9.4.1 provides for the following:

9.4.1. An application for entry clearance, permission to enter or permission to stay must be refused where the applicant:

- (a) has been convicted of a criminal offence in the UK or overseas for which they have received a custodial sentence of 12 months or more; or*
- (b) is a persistent offender who shows a particular disregard for the law; or*
- (c) has committed a criminal offence, or offences, which caused serious harm.*

Paragraph 9.4.2 provides for a mandatory revocation of leave to enter / remain, or entry clearance on the same criteria.

21. In addition to the mandatory criminality grounds for refusal cited above, paragraph 9.4.3 of the Immigration Rules provides the basis of refusal of leave to enter / remain, or entry clearance on a discretionary basis if the applicant has received a custodial sentence of less than 12 months.

9.4.3. An application for entry clearance, permission to enter or permission to stay may be refused (where paragraph 9.4.2. and 9.4.4. [9.4.4 relates to those applying for leave as a visitor or those who are applying for leave for a period of less than 6 months] do not apply) where the applicant:

- (a) has been convicted of a criminal offence in the UK or overseas for which they have received a custodial sentence of less than 12 months; or*
- (b) has been convicted of a criminal offence in the UK or overseas for which they have received a non-custodial sentence, or received an out-of-court disposal that is recorded on their criminal record.*

22. The Home Office's own policy on criminality being a ground of refusal, published on 01.12.2020,⁶ provides for the following in relation to overseas convictions at pages 16

to 17 of the policy document:

The rules apply equally to overseas convictions and these should be considered in the same way as the broad equivalent in the UK context, even where there may be no direct match.

An example of where there is no direct match would be a New Zealand 'home detention order'. This is a non-custodial sentence and similar to UK civil orders.

Some overseas convictions will be for conduct that is not criminal in the UK, including homosexuality or membership of a trade union. Other convictions will have received sentences that are higher than the UK maximums for the same conduct. If you are unsure of the status of an overseas conviction you should seek legal advice.

If the person has received a conviction for an offence not recognised in the UK you should not refuse or cancel permission solely on the grounds of that conviction.

23. The problem with the issue of criminality is that the authorities in Hong Kong or China are not going to charge people specifically with “peaceful protest”, but for other criminal offences, such as “money laundry” or “rioting”,⁷ both of which are also crimes under English law. In these cases, there may be a risk where Home Office caseworkers, who are under a lot of pressure already, may simply see this as a tick box exercise without delving into the details as to the reasons for which the applicant has accrued these convictions.

24. Witness F, giving evidence alongside me during the private evidence session on 06.01.2021 used Joshua Wong as an example of how concern relating to criminality

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/939952/criminality-v1.0.pdf, accessed on 06.01.2021.

⁷ <https://www.rfa.org/cantonese/news/htm/hk-riot-01182021021141.html>, accessed on 18.01.2021. Chan, a volunteer first aider was charged and convicted of rioting, despite the defence stating that “there was no evidence to show that he was violent, possessed offensive weapons, and any act of inciting and convening the masses at the time of the case.” Translation via Google Translate for the HASC panel’s convenience. Chan was sentenced to 4 years’ imprisonment.

may materialise. On 02.12.2020, Mr Wong was sentenced to 13 months' imprisonment for "organising and inciting others to attend an unlawful assembly outside the police headquarters in June 2019".⁸ Whilst there is no precise UK equivalent, my colleagues who practise in criminal law have commented to me that there may be "broad equivalent" offences in English law, for example in the Public Order Act 1986, which means that such a conviction could be considered in line with the Home Office's policy, and could result in a mandatory ban for Mr Wong should he wish to enter the UK for any reason.

25. In light of how complex certain criminality scenarios may be in terms of having to explore the reasons for the convictions, rather than simply the existence of convictions. Considering how quickly the situation in Hong Kong is deteriorating, as the HASC panel already noted on 06.01.2021 with the mass arrests of pro-democracy figures, and the Hong Kong authorities considering holding pro-democracy camp election primaries to be subversion of state power, there may be merit in the Home Office having a dedicated Hong Kong team in order to process the BNO visa applications quickly, especially the entry clearance applications for those requiring a visa to leave Hong Kong on the BNO visa route.
26. With offences under China's National Security Law for Hong Kong, I do not believe that the UK has any such draconian laws, and therefore a conviction under the National Security Law would unlikely be considered as a reason for refusing entry clearance, or leave to enter / remain.
27. Although the HASC evidence session on 06.01.2021 focused on the upcoming BNO visa scheme, the issue of criminality vis-à-vis politically motivated charges is a concern which affects all applicants for entry clearance and leave to enter / remain, and therefore there may be a need to specifically address this issue in the existing criminality policy across the board, since it is likely that politically motivated prosecutions are going to be using real and existing offences, rather than a regime simply saying that an applicant was charged and convicted for "protest".

⁸ <https://www.theguardian.com/world/2020/dec/02/hong-kong-activist-joshua-wong-jailed-over-protest-police-hq>, accessed 11.01.2021.

Application costs

28. There are concerns with regard to the application process. Aside from worries about timescales in which an application might be decided, there are ongoing concerns about the full cost of the visa scheme, especially considering this scheme is designed to allow Hongkongers to leave Hong Kong quickly as a lifeboat scheme.

29. The current projected costs for the BNO visa is £180 for a 2.5-year visa, and £250 for a 5-year visa. The application will also be accompanied by a need to pay the immigration health surcharge (“IHS”), which stands at £1,560 for a 2.5-year visa, and £3,120 for a 5-year visa.

30. If, for example, a family with 2 parents and 2 under-18 children are applying for the BNO visa as a family unit, the costs can be broken down as follows:

<u>Chargeable item</u>	<u>Cost per person</u>	<u>Total</u>
Parent's application fee for a 5-year BNO visa	£250	£500
IHS per parent for a 5-year BNO visa (£624 per year)	£3,120	£6,240
Child's application fee for a 5-year BNO visa	£250	£500
IHS per child for a 5-year BNO visa (£470 per year)	£2,350	£4,700

Grand total: £11,940

31. For the same family make-up, if applying for a 2.5-year visa, then the costs can be broken down as follows:

<u>Chargeable item</u>	<u>Cost per person</u>	<u>Total</u>
Parent's application fee for a 5-year BNO visa	£180	£360
IHS per parent for a 5-year BNO visa (£624 per year)	£1,560	£3,120
Child's application fee for a 5-year BNO visa	£250	£360
IHS per child for a 5-year BNO visa (£470 per year)	£1,175	£2,350

Grand total: £6,190

32. If the aim of the BNO visa is for the UK to fulfil her moral duty to Hong Kong following China's unilateral breach of the 1984 Sino-British Joint Declaration, and as some kind of humanitarian process, then the Home Office may consider some kind of fee-waiver system in place. The current fee-waiver system is means tested, requiring an applicant to submit documents in relation to financial means, and may result in a total waiver of either the application fees and IHS separately or both, or may result in a part waiver of either the application fees and IHS or both.

33. A fee-waiver is not incompatible with the requirement to show an ability to support and accommodate oneself for 6 months. A family may have the adequate means to survive in terms of income, and / or some savings, but may not be in a position to pay

for the application for an entire family in one lump sum in advance, bearing in mind families would have to apply together. It is not outside of the realm of possibility that an applicant may have enough to support oneself and one's family for at least 6 months, but leaving very little beyond that amount to be put towards the application fees and the IHS.

34. Therefore it is urged for the Home Office to consider whether the fee-waiver programme might also be opened to those applying for a visa under the upcoming BNO visa scheme.

Education fees

35. At present, the fees in higher education is structured so that higher education institutes are prohibited by Regulations from charging higher fees to certain classes of people, what is commonly known as “home” and “international” students, in effect a fee capping system. The Regulations do not, however, prohibit higher education institutes from charging “foreign” students “home” rates by discretion.
36. The cap on fees are set out in Regulations, for example the The Education (Fees and Awards) (England) Regulations 2007⁹ and The Higher Education (Fee Limit Condition) (England) Regulations 2017.¹⁰ Each constituent country of the UK will have her own applicable Regulations on fees. In the 2 Regulations cited, classes of people who cannot be charged above the cap on fees are defined in Schedule 1 of both those Regulations. Among the classes of people who are beneficiary to a cap on fees include refugees and their family members.
37. If the BNO visa scheme is to be seen as a humanitarian scheme, BNO visa beneficiaries could be added to the relevant Regulations, similarly to how the Regulations have a provision for refugees and their family members to be included in the classes of people to be beneficiary to the fees cap.

⁹ <https://www.legislation.gov.uk/uksi/2007/779/contents>, accessed on 11.01.2021.

¹⁰ <https://www.legislation.gov.uk/uksi/2017/1189/contents>, accessed on 11.01.2021.

38. Concerns were also communicated to the HASC panel in relation to access student finance in addition to the issue of “home” vs “international” student fees for university education. Similarly, BNO visa beneficiaries could be included on any list of eligible classes of people in the relevant Regulations on student finance support.

Leave to remain contributing towards 5 years’ continuous residency requirement for settlement on the BNO visa scheme

39. The HASC panel heard indications that 18-23-year-olds may be helped if leave accrued under Tiers 4 and 5 of the Immigration Rules could be considered towards the 5 years’ continuous residency requirement for settlement. Other immigration routes can lead to settlement in their own right, for example an Innovator visa, may allow an applicant to be eligible for settlement in 3 years. The current system does not consider Tiers 4 and 5 to be leading to settlement, save in the accumulation of 10 years’ continuous residence under paragraph 276B of the Immigration Rules.
40. A Tier 5 Youth Mobility visa is only granted for up to 2 years in any event, and not extendable, and therefore a Tier 5 visa would not provide adequate leave to enter / remain to mirror the 5-year continuous residence requirement of the BNO visa scheme before being eligible for settlement.
41. The BNO scheme provides for the following in relation to eligibility for settlement:
- HK 62.1. The applicant must have spent a continuous period of 5 years with permission on a route in these rules under which a person can settle, of which the most recent grant of permission must have been on the Hong Kong BN(O) route.*
- (emphasis added)
42. Such a proposal may not be as helpful as initially meets the eye since in order to qualify for settlement, one would need to apply for the BNO visa route in any event. It

would help a very limited class of people, namely those who have been in the United Kingdom for at least 2.5 years.

43. An example may be of assistance to the HASC panel to illustrate why this proposal may not be as helpful as first thought. If a student from Hong Kong, eligible for a class of BNO visa, has been in the United Kingdom for 1 year, then said student would have to apply for another 4 years' leave to remain under the BNO scheme before making up the 5 years' continuous residence requirement for eligibility for settlement. In this example, since the BNO visa only comes as 2.5 years or 5 years visas, the student would need to apply for 2.5 years twice, or 5 years once in any event.
44. Any student who has been in the United Kingdom for at least 2.5 years might benefit from only requiring a 2.5-year BNO visa to accrue 5 years' continuous residence, but they will still need to apply for, and be granted, the BNO visa in the first place.
45. The gateway to settlement remains within the BNO visa scheme, and therefore simply allowing Tier 4 and Tier 5 leave to be counted towards the 5 years' continuous residency for BNO settlement will not, **on its own**, will not have as dramatic effect as first hoped to help 18-23-year-olds. The issue of 18-23-year-olds is further addressed below at paragraphs 117-122.

Asylum

46. Unfortunately there are many myths and untruths circulated around the asylum process in the UK which makes it difficult for those in need to necessarily make a claim for asylum at the first instance, at the port of entry. [***]. Another hindrance tying into the issue of myths and untruths is that many arrivals who may wish to claim asylum would not have been able to access legal advice before arriving, and therefore may not be aware of how the UK asylum system actually operates.

47. The matter is furthermore complicated by the Covid-19 pandemic, where many countries had closed borders, not allowing entry to foreign nationals at a time when Hongkongers needed to flee due to the National Security Law, and a worry that Hongkongers may be prevented from leaving Hong Kong. The Foreign Secretary has been cited in *The Guardian*, on 02.07.2020,¹¹ as having indicated that there is little which could be done if China blocks Hongkongers from coming to the UK.

The UK foreign secretary, Dominic Raab, has admitted there is little Britain can do to “coercively force” China if it tries to block Hongkongers from coming to the UK.

48. I am aware that some people have fled to the UK initially as the UK was one of the few countries without travel bans last year, whereby they have entered as a visitor, hoping that Taiwan, Australia, or Canada would open their borders before their leave as a visitor expires to allow them to make onward journeys, since these countries have also promised dedicated Hong Kong immigration schemes. In effect, these Hongkongers are using the UK as a transit point due to the urgency of having to leave Hong Kong first, rather than wait for any possible exit bans, which has been seen to be an integral part of the Chinese Communist Party’s modus operandi within Mainland China.

49. This is coupled with the Hong Kong Government currently pushing through Hong Kong’s Legislative Council a Bill which would amend Hong Kong’s Immigration Ordinance, adding a section 6A, including a provision for the Secretary for Security to make Regulations “*to empower the Director [of Immigration] to direct that a passenger or a member of the crew of a carrier may or may not be carried on board the carrier.*”¹²

50. As is well publicised, the UK’s asylum procedures are drawn out, and many claimants wait years for a decision in their case[***].¹³

¹¹ <https://www.theguardian.com/world/2020/jul/02/china-could-prevent-hongkongers-moving-to-uk-says-dominic-raab>, accessed on 12.01.2021.

¹² Immigration (Amendment) Bill 2020, section 3, <https://www.elegislation.gov.hk/hk/2020/12/04/supp3/1!en>, accessed on 12.01.2021.

¹³ [***]

51. Granted that these are issues which asylum claimants from any country face when they make an asylum claim in the UK, however, it should be noted that the key difference between Hongkongers and claimants for asylum from other countries is that Hongkongers are being offered immigration routes to other countries, for example Taiwan, Canada, and Australia, which do not require them to claim asylum, even though those countries recognise that those fleeing may be eligible to make a claim for asylum. Therefore the choice is that of asylum in the UK, or an immigration route which is tailored to Hongkongers in other countries in light of the deteriorating situation. The only obstacle at present for them to benefit from other countries' immigration routes is travel restrictions due to the Covid-19 pandemic.
52. If one were to simply think about the possible benefits to the UK economy, then HM Government might consider mirroring some of the policies of our international partners in relation to Hongkongers in order to keep them here in a capacity to contribute towards the economy, bearing in mind that asylum seekers are not allowed to work in the UK, and even if permission to work were granted after a year's wait for a decision, that permission to work would only allow one to work in a field which is covered by the shortage occupations list.¹⁴ Since the UK is a country which has not closed her borders, this could be of economic benefit to the UK, and may assist those who are left out of the BNO visa scheme (please also see paragraphs 117-122 below).
53. Some information on the Canadian route for Hongkongers can be found at <https://www.canada.ca/en/immigration-refugees-citizenship/news/2020/11/canada-announces-immigration-measures-supporting-hong-kong-residents-and-canadians-in-hong-kong.html> and <https://www.canada.ca/en/immigration-refugees-citizenship/corporate/publications-manuals/operational-bulletins-manuals/service-delivery/hong-kong.html>.

¹⁴ <https://www.gov.uk/guidance/immigration-rules/immigration-rules-appendix-shortage-occupation-list>, accessed on 12.01.2021.

54. Some information on the Australian immigration route for Hongkongers can be found at <https://immi.homeaffairs.gov.au/news-media/archive/article?itemId=415#:~:text=Current%20temporary%20skilled%20visa%20holders,end%20of%20that%205%20years>.

55. Please note that I am not able to comment on the finer details of the Taiwanese, Canadian, or Australian policies as I am not an expert in the immigration laws of Taiwan, Canada, or Australia, and can only provide information which is available to the general public. It may be that the other witnesses can assist the HASC panel with more information on the immigration routes offered by other countries to Hongkongers.

56. The Home Office's own data in relation to asylum claims for the third quarter of 2020 showed 34 asylum claims were made by Hongkongers. The Home Office data on recent asylum claims made by Hongkongers¹⁵ has been extracted and replicated below for the HASC panel's convenience.

<u>Time period</u>	<u>2019 Q2</u>	<u>2019 Q3</u>	<u>2019 Q4</u>	<u>2020 Q1</u>	<u>2020 Q2</u>	<u>2020 Q3</u>
<u>Under 18</u>						1
<u>18-29</u>			4	2	3	19
<u>30-49</u>	1	3	2		4	9
<u>50-69</u>			1	1		5
<u>Total number of asylum claims lodged</u>	1	3	7	3	7	34

<u>Time period</u>	<u>2019 Q2</u>	<u>2019 Q3</u>	<u>2019 Q4</u>	<u>2020 Q1</u>	<u>2020 Q2</u>	<u>2020 Q3</u>
<u>Grant of protection / asylum</u>					1	
<u>Refused</u>		1	1			
<u>Withdrawn</u>		1		4		5
<u>Total</u>		2	1	4	1	5

57. [***]

58. It is not possible to identify from the data set alone whether the 5 asylum claims which were withdrawn in 2020 Q3 were necessarily made during 2020 Q3. However, it is known that the Home Office has been writing to Hongkongers who have claimed asylum inviting them to withdraw their claims and transfer to the BNO visa scheme if they feel they are eligible for the BNO visa scheme, and the associated leave outside the Rules policy before the full BNO visa scheme goes live on 31.01.2021.

59. The next data set will be available from the Home Office on 25.02.2021, [***].

60. The HASC panel has specifically made enquiries as to whether the November 2020 country policy and information note from the Home Office on Hong Kong¹⁶ addresses concerns about the country policy and information note published in February 2020.¹⁷

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/944237/C hina- Hong Kong National Security Law- v1.0.pdf, accessed on 13.01.2021.

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/864856/C hina - Hong Kong Protests - CPIN - v1.0 - Feb 2020 - EXT.pdf, accessed on 13.01.2021.

61. There have been some concerns regarding the Home Office's policy note of February 2020 that it does not reflect the reality of what has been happening in Hong Kong, and that this guidance will be relied upon by Home Office officials deciding on asylum claims made by Hongkongers.
62. For example, at paragraph 2.4.14 of the February 2020 report, it is stated that:
- ... Whilst people have been arrested and detained for their involvement in anti-government protests and there have been reports of mistreatment during these arrests, the treatment incurred is not sufficiently serious by its nature and repetition as to amount to a generalised risk of persecution or serious harm.*
63. The February 2020 Home Office policy note also cites an Amnesty International report titled *Hong Kong: Arbitrary arrests, brutal beatings and torture in public detention revealed*,¹⁸ documenting instances of what can only be described as police brutality and torture, which is subject to an unqualified prohibition under Article 3 of the European Convention on Human Rights, enshrined in our own domestic law in the form of the Human Rights Act 1998.
64. Hongkongers feel that the Home Office is suggesting that torture and police brutality is not considered political persecution, and that the Home Office's apparent public position that the police brutality or torture being experienced by Hongkongers is somehow "not sufficiently serious" for international protection to be granted.
65. At paragraph 2.4.13, the Home Office's February 2020 report suggests that "[t]here is no suggestion from the objective country evidence that the law is being disproportionately applied or applied in a discriminatory way, and not to the level that it could constitute persecution or serious harm". Hongkongers however have seen members of the Judiciary sympathising those attacking protesters,¹⁹ or the Justice

¹⁸ <https://www.amnesty.org/en/latest/news/2019/09/hong-kong-arbitrary-arrests-brutal-beatings-and-torture-in-police-detention-revealed/>, accessed on 13.01.2021.

¹⁹ <https://www.scmp.com/news/hong-kong/law-and-crime/article/3081513/hong-kong-judge-offers-sympathy-man-he-jails-stabbing>, accessed on 13.01.2021.

Secretary deciding not to prosecute those who have committed crimes against pro-democracy protesters and figures.²⁰

66. The November 2020 report by the Home Office focuses on the impact of the National Security Law on Hong Kong. It does not address the issues which Hongkongers feel are misrepresented by the February 2020 report, as per the examples given above.
67. Some Hongkongers have commented to me that the February 2020 report has made them worry about claiming asylum since the perception is the Home Office's position is that a protester is not at risk of harm.

Hongkongers with expiring leave to remain in the UK

68. As mentioned above, some Hongkongers have entered the UK as the UK was, and still is, one of the few places that have not closed borders to foreign nationals. Some have fled Hong Kong before the coming into force of the National Security Law at 11pm on 30.06.2020, whilst some have fled soon after, and before the Home Office announced the leave outside the Rules policy for BNO and their family members on 22.07.2020.²¹
69. As mentioned above, it is also important to note that the Hong Kong Government is also pushing through Hong Kong's Legislative Council an amendment to the Immigration Ordinance which would give the Secretary for Security the power to create Regulations "*to empower the Director [of Immigration] to direct that a passenger or a member of the crew of a carrier may or may not be carried on board the carrier.*"²²

²⁰ <https://www.scmp.com/news/hong-kong/law-and-crime/article/3097874/hong-kong-justice-secretary-assumes-conduct-case-bid>, and <https://hongkongfp.com/2020/11/09/hong-kong-justice-sec-intervenes-to-halt-democrats-assault-case-against-pro-beijing-rival/>, both accessed on 13.01.2021.

²¹ <https://www.gov.uk/guidance/british-nationals-overseas-in-hong-kong>, accessed on 13.01.2021. Original version was published on 22.07.2020.

²² Immigration (Amendment) Bill 2020, section 3, <https://www.elegislation.gov.hk/hk/2020/12/04/supp3/1!en>, accessed on 12.01.2021.

70. There are also some who have entered the UK shortly after the leave to remain outside the Rules policy was published 22.07.2020, whose 6 months' leave will expire before 31.01.2021.

71. The Immigration Rules provide certain grace periods where periods of overstaying may not be counted against the applicant for future applications. Paragraph 39E of the Immigration Rules provide for the following:

39E. This paragraph applies where:

(1) the application was made within 14 days of the applicant's leave expiring and the Secretary of State considers that there was a good reason beyond the control of the applicant or their representative, provided in or with the application, why the application could not be made in-time; or

(2) the application was made:

(a) following the refusal of a previous application for leave which was made in-time; and

(b) within 14 days of:

(i) the refusal of the previous application for leave; or

(ii) the expiry of any leave extended by section 3C of the Immigration Act 1971; or

(iii) the expiry of the time-limit for making an in-time application for administrative review or appeal (where applicable); or

(iv) any administrative review or appeal being concluded, withdrawn or abandoned or lapsing.

(3) the period overstaying was between 24 January and 31 August 2020.

72. It would be helpful if the Home Office, in providing guidance to officials considering BNO visa applications would explicitly explain that the gap between expiry of leave for those arriving on or after 22.07.2020 and 31.01.2021 is to be considered as being

covered by paragraph 39E(1) as it would not be reasonable to have expected those who arrived in that period to either leave the UK and re-enter at a time of pandemic, nor would it be reasonable to have expected them to pay for an application for leave to remain outside the Rules for a short period of time, and then have to pay for the BNO visa application on or after 31.01.2021. The Home Office may wish to consider announcing a window of say 14 days from 31.01.2021 to allow this class of people to file an application for the BNO visa without the period of no leave being taken against them for this and any future applications.

73. Perhaps further discussions could be undertaken with other countries, for example the Canadian and Australian Governments, to assess whether there is a facility for the authorities of other countries to consider visa applications for Hongkongers who have temporarily fled to the UK, and if granted, then the Home Office could offer Covid Assurance extensions, or other form of discretionary leave / leave outside the Rules until they are able to make onwards travel arrangements. A policy consideration explicitly dealing with how Home Office caseworkers should be dealing with the periods of overstaying in a favourable way, due to the exceptional humanitarian circumstances in light of the very rapid deterioration in the situation Hongkongers face, may also be necessary.

Sanctions

74. The HASC panel asked during the evidence session on 06.01.2021 whether the BNO scheme is enough, or should HM Government do more in relation to its relationship with the Chinese Communist Party.[***] Hong Kong Bill,²³ which is currently awaiting its Second Reading in the House of Commons, my personal opinion is that the BNO scheme is not enough to deal with the Chinese Communist Party's human rights abuse records. The Hong Kong Bill seeks, inter alia, to create a specific sanctions regime in relation to human rights abuse which may be carried out in Hong Kong, as well as consideration of human rights implications before entering into any trade agreements.

²³ <https://services.parliament.uk/bills/2019-21/hongkong.html>, accessed on 18.01.2021.

75. In addition, the Trade Bill²⁴ was amended by the House of Lords to allow our domestic Courts to consider whether a genocide is taking place, and to allow the revocation of any trade agreement if another signatory is a state found to be committing genocide.
76. The House of Lord's amendment to the Trade Bill is crucial, as with China being a permanent member of the United Nations Security Council, it would be hard pressed to obtain a declaration of genocide from the United Nations, despite the fact that experts and NGOs have already commented that a genocide is taking place against the Uyghur Muslims of the Xinjiang Autonomous Region, or East Turkestan as the Uyghurs refer to the region.
77. As Witness F commented to the HASC panel, as well as in his activist work regularly, the UK would benefit from working with international partners to create a cohesive system to punish those who are responsible for the system of repression and human rights abuses.
78. During an oral evidence session of the Business, Energy and Industrial Strategy Committee on 05.11.2020,²⁵ Ms Alicia Kearns, MP, asked of the representatives of the companies taking part in the evidence session the following question:
- Every company appearing before this inquiry today has expressed shock and regret at the situation in Xinjiang. Is any of you willing to declare on behalf of your company that what is happening is a genocide or, at minimum, that you sought legal advice on this matter?*
79. No answer was provided to Ms Kearns, MP, who commented, "*The silence speaks for itself.*"

²⁴ <https://services.parliament.uk/bills/2019-21/trade.html>, accessed on 18.01.2021.

²⁵ <https://committees.parliament.uk/oralevidence/1161/pdf/>, accessed on 14.01.2021.

80. Mr Nigel Adams, MP, the Foreign, Commonwealth and Development Office's Minister for Asia, even told MPs in a debate in the House of Commons on 16.12.2020²⁶ that there was a fear of "asset flight" should Chinese officials be sanctioned. This sadly seems to suggest that HM Government is happy for a genocide-situation to carry on, as long as the price is right, which surely cannot be the actual position of HM Government.
81. Although the reference to Ms Kearns, MP, and Mr Adams, MP, were in relation to what is considered a genocide of Uyghur Muslims, the concern is that without sanctions imposed, companies will simply turn a blind eye, and continue to self-censor in order to tap in to what is considered the lucrative Chinese market. Human rights abuse and persecution will continue since the Chinese Communist Party is able to carry on, with no real consequences, as if nothing is happening to the Uyghurs, Tibetans, Hongkongers, or other persecuted groups in China. We have seen this time and time again, more notably with the NBA,²⁷ and also Blizzard,²⁸ a video company which has a sizable presence in China.

Integration support for Hongkongers

82. Analysing this issue via the sphere of the existing UK Immigration Rules, the BNO visa scheme does not require any English language requirements for the initial grant of visa or leave to remain, unlike many other visa routes in the Immigration Rules, and this is perhaps indicative of how serious HM Government considers the situation to have deteriorated in Hong Kong, creating a need for a bespoke Hong Kong visa route which would allow applications to be made quickly.
83. Integration assistance will be key considering some Hongkongers have already fled at short notice due to encroaching interference in the education system, as well as fears

²⁶ <https://hansard.parliament.uk/Commons/2020-12-16/debates/5A8183C8-0467-4D58-8FAF-55AA109F40CD/UyghurSlaveLabourXinjiang>, accessed on 14.01.2021.

²⁷ <https://www.theguardian.com/sport/2020/feb/24/china-nba-hong-kong-protests-financial-costs-update>, accessed on 14.01.2021.

²⁸ <https://www.bbc.co.uk/news/technology-49971077>, accessed on 14.01.2021.

that Beijing may retaliate in somehow blocking exit from Hong Kong. This has probably not been helped by the Foreign Secretary's candid assessment that the UK could do little if China were to prevent people from leaving Hong Kong,²⁹ with exit bans being a well known modus operandi of the Chinese Communist Party in relation to Mainland China.

84. As far as I am aware, at the time of writing, there does not seem to be information from the Home Office or the local authorities in relation to any form of resettlement assistance for Hongkongers. It may be that because Hongkongers coming on the BNO visa scheme are considered and expected to be self-sufficient with no recourse to public funds, there is a feeling that there is no need for intervention in relation to integration assistance.
85. Some pro-democracy Hongkongers who are based in the UK have set up organisations which aim to assist Hongkongers resettle in the UK, [***].³⁰ As well-intentioned these organisations may be, they will require support and funding from central and local governments in order to effectively assist Hongkongers in relation to integration in UK society.
86. I defer to the evidence my fellow witnesses to the HASC panel for more details on this issue, but on the whole I do agree that central and local governments will need to consider provisions for support and integration for Hongkongers relocating on the BNO scheme which is separate to any notions of financial support since BNO visa beneficiaries have no recourse to public funds.

²⁹ <https://www.theguardian.com/world/2020/jul/02/china-could-prevent-hongkongers-moving-to-uk-says-dominic-raab>, accessed on 12.01.2021.

³⁰ [***]

³¹ [***]

(Un)intended loopholes

87. There are some loopholes which may or may not be intended by the Home Office in drafting the BNO visa scheme for the Immigration Rules. Out of completeness, I address below a couple of the loopholes, which in my mind stand out the most, in order to assist the HASC panel.

[***]

Addition concerns in relation to the tuberculosis test requirement

106. Whilst on the topic of the tuberculosis test requirement, the HASC panel may be interested to know of an issue which has been raised as a concern in relation to the requirement for a tuberculosis test. The UK has very few approved centres to carry out these tests. The Home Office list³² of approved tuberculosis test centres in the UK number only 8 centres on 13.01.2021. There are 2 centres are London, 1 in Birmingham, 1 in Manchester, 1 in Plymouth, 1 in Maidenhead, 1 in Glasgow, and 1 in Edinburgh. There is noticeably no approved test centres in Northern Ireland or Wales.

107. In addition to the dearth of UK-based approved tuberculosis test centres, and their limited locations, there are concerns that travel to carry out a tuberculosis test will be difficult, if not extremely risky, during the current Covid-19 crisis, especially with the new strain of the virus which scientists have already advised HM Government is more virulent. The Home Office is asked to consider whether alternative arrangements may be considered in relation to the tuberculosis test requirements of the BNO visa scheme.

108. The Immigration Rules provide for the following in relation to pre-existing tuberculosis test certificates:

³²

<https://www.gov.uk/government/publications/uk-tuberculosis-test-clinics-for-hong-kong-bno/tuberculosis-testing-in-the-uk>, accessed on 13.01.2021.

HK 7.2. In HK 7.1. a valid medical certificate is a certificate from an approved centre issued within the 6 months immediately before the date of application.

109. Some Hongkongers may have entered the UK more than 6 months before 31.01.2021, intending to benefit from the BNO visa scheme, and may have, on their initiative, carried out a tuberculosis test before coming to the UK, not having left the UK since their arrival. It is hoped that the Home Office may consider such certificates as being considered under HK 7.2 as cited above in order to prevent unnecessary travel during the Covid-19 crisis.

Classes of people left out by the BNO visa scheme

110. The HASC panel are already aware of the questions surrounding 18-23 year olds who may be left out of the BNO visa scheme due to their BNO parents not willing to resettle in the UK. The 18-23 year olds will be addressed subsequently, however, I also wish to reiterate my concern about other classes of people who are left out of the BNO visa scheme through no fault of their own.

Those who were minors on 30.06.1997

111. As the HASC panel is aware, BNO status was only available to Hongkongers by voluntary registration from 01.07.1987 to 30.06.1997.³³ Those who did not register for BNO status remained British Dependent Territories Citizens (“BDTCs”). Upon transfer of sovereignty of the territory of Hong Kong from HM Government to the Government of the People’s Republic of China at midnight on 01.07.1997, BDTCs of “Chinese descent” became Chinese citizens automatically, and their BDTC status lapsed. For those who were minors on 30.06.1997, the choice to register for BNO status was not theirs to make, but their ties to the UK were left to the whims of their parents.

³³ As provided for by the Hong Kong (British Nationality) Order 1996, <https://www.legislation.gov.uk/ukSI/1986/948/made>, accessed 18.01.2021.

112. I am personally aware of cases where parents had not registered their children, who were minors on 30.06.1997, and thus have left them without recourse to the BNO visa scheme despite their being born in a Crown colony under the administration of HM Government.
113. In an extreme case, . [***] there is a family of 4 siblings where 2 hold BNO status, and 2 do not, simply because of their parents' decision.
114. [***].
115. It may never be known why parents may or may not have registered their children for BNO status on or before 30.06.1997, however, it does not seem fair that such decisions are to be held against those who had no choice and no say in the decision of whether to maintain ties to the UK or not.
116. As such, it is hoped that the HASC and the Home Office might consider expanding the BNO visa scheme to those who were minors on 30.06.1997 and who do not have BNO status.

18-23 year olds

117. The question of how best to assist the 18-23 year olds is not an easy one. The panel heard evidence that this group of people are those who are likely to be targeted, purely because many protesters and those are outspoken against the Chinese Communist Party's authoritarian rule over China and Hong Kong are most likely to be from this age group.
118. The figures from the HKPF for the arrest of juveniles (aged 10-15) and young people (aged 16-20)³⁴ show that in the first half of 2020, there were 2,306 arrests made, when

³⁴ https://www.police.gov.hk/ppp_en/09_statistics/csd.html, accessed on 14.01.2021.

compared to 1,234 for the first half of 2019. The figures for the second half of 2019, considering the pro-democracy protests in Hong Kong started in June 2019, show that 3,034 juveniles and young people were arrested. This is nearly a 2.5x increase compared to the first half of 2019 alone.

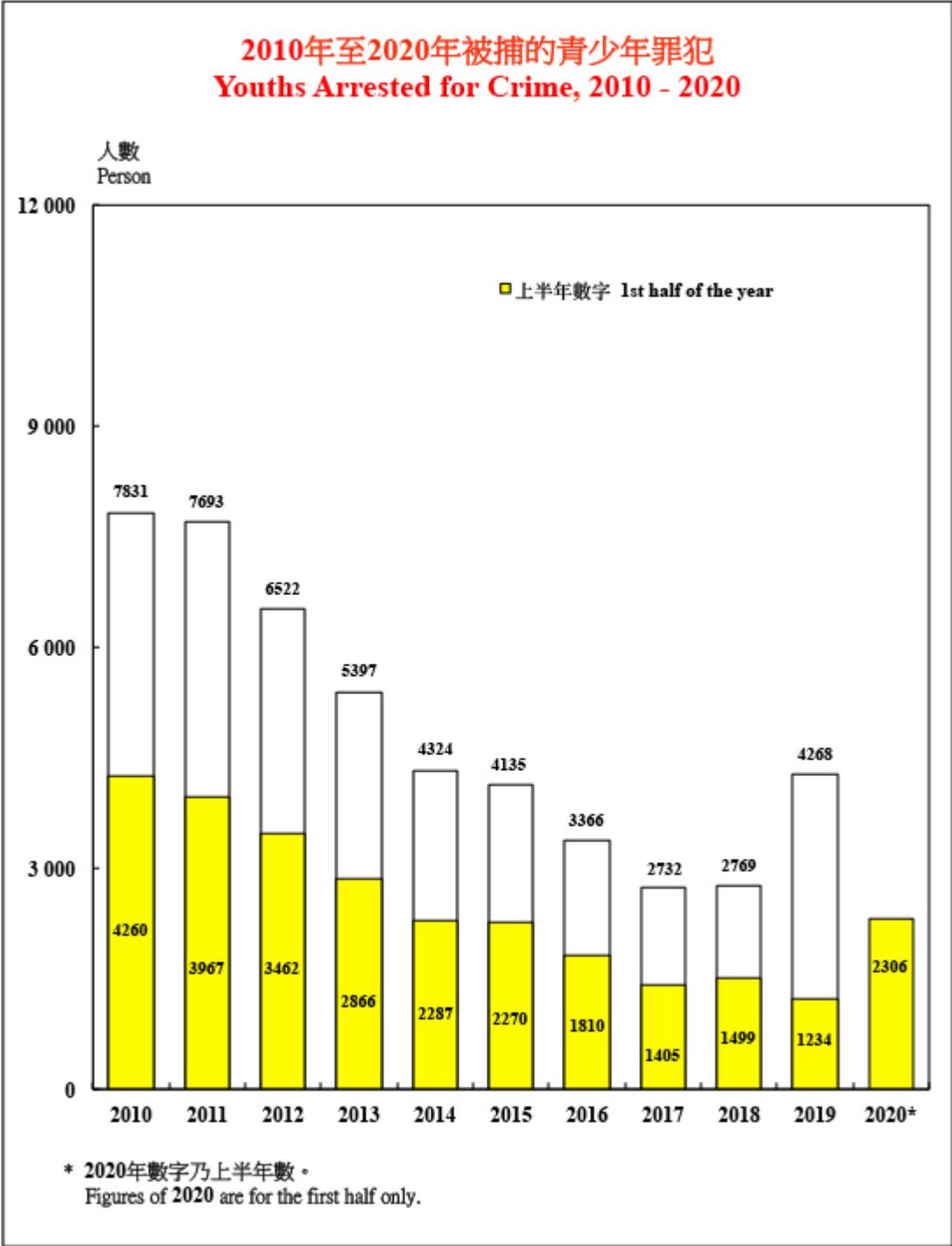


Table sourced from HKPF website.³⁵

³⁵ Ibid..

119. The UK could provide similar provisions as Taiwan, Australia, and Canada have adopted in order to attract talented youths from Hong Kong, although it may be that the Home Office would have concerns over cohesion of the Immigration Rules, where an integral principle which has been laid down is that Tiers 4 and 5 visas do not lead to any kind of settlement in their own right save for contributing towards 10 years' continuous residency pursuant to paragraph 276B of the Immigration Rules.
120. If the Home Office decides to adopt an approach similar to the Taiwan, Australian, or Canadian models, there may be a need for some kind of consideration of support for those who may not be able to afford education fees on an "international" fees basis, considering the age group which we are discussing.
121. A possible scheme which I had mooted before, and which has been quoted in debate by Mr Stephen Hammond, MP,³⁶ is that of a possible 2-stage visa for 18-30 year olds from Hong Kong. The first stage would be to apply for a 3-month probationary visa to enter the United Kingdom to look for work (without being limited to the shortage occupation list in the Immigration Rules), and then a renewal application will have to be made before the end of the 3-month "probation" period, with a requirement that such an application can only be made if an offer of work has been made to the applicant, with a realistic and reasonable minimum salary requirement, or proof of other viable sources of support from third parties, to ensure that applicants can support themselves and contribute to the UK economy. Eligibility for settlement can then be considered after 5 years' continuous residency under the scheme.
122. As the age group proposed mirrors that of the Youth Mobility Scheme, this scheme can then replace Hongkongers' eligibility for a visa under the Youth Mobility Scheme. This would therefore also maintain the cohesion of the Immigration Rules in that Tiers 4 and 5 still are not considered as routes leading to settlement.

³⁶ Hansard records, 29.01.2021, column 310WH, <https://hansard.parliament.uk/Commons/2020-01-29/debates/AC02FF56-64CB-4E14-92FD-D2EF59859782/details>, accessed on 18.01.2021.

Partners

123. The BNO visa scheme caters for partners of both BNO status holder sponsors, and BNO Household Member sponsors. The provisions of the Immigration Rules relating to partners of BNO status holder sponsors are as follows:

Relationship requirement for dependent partner on the BN(O) Status Holder route

HK 13.1. If the applicant is applying for permission to stay and they have permission as a dependent partner on the BN(O) Status Holder route on the date of application, they will meet the relationship requirement.

HK 13.2. If the applicant is applying for entry clearance or permission to stay and they have not previously had permission as a partner on the BN(O) Status Holder route they must meet the relationship requirement in HK 13.3. to HK 13.7.

HK 13.3. The applicant must be the partner of a person who is making an application for entry clearance or permission to stay on the BN(O) Status Holder route at the same time as the applicant.

HK 13.4. The applicant must be aged 18 or over at the date of application.

HK 13.5. If the applicant and the BN(O) Status Holder are not married or in a civil partnership, all the following requirements must be met:

(a) they must have been living together in a relationship similar to marriage or civil partnership for at least the two years before the date of application; and

(b) any previous relationship of the applicant or the BN(O) Status Holder with another person must have permanently broken down; and

(c) they must not be so closely related that they would not be allowed to marry in the UK.

HK 13.6. The relationship between the applicant and the BN(O) Status Holder must be genuine and subsisting.

HK 13.7. The applicant and the BN(O) Status Holder form part of the same household on the date of application and must intend to live together throughout the applicant's stay in the UK.

HK 13.8. In HK 13.7. A person will form part of the same household as the BN(O) Status Holder if they normally live with the BN(O) Status Holder.

124. Similar provisions are provided for in relation to the dependant partners of BNO Household Members:

Relationship requirements for dependent partner of a BN(O) Household Member

HK 35.1. If the applicant is applying for permission to stay and they have permission as a partner on the BN(O) Household Member route on the date of application, they will meet the relationship requirements.

HK 35.2. Where the applicant is applying for entry clearance or permission to stay and they have not previously had permission on the BN(O) Household Member route they must meet the relationship requirement as set out in HK 35.3. to HK 35.9.

HK 35.3. The applicant must be the partner of a person who is making an application for entry clearance or permission to stay on the BN(O) Household Member route at the same time as the applicant.

HK 35.4. The applicant and the BN(O) Household Member must both be aged 18 or over at the date of application.

HK 35.5. If the applicant and the BN(O) Household Member are not married or in a civil partnership, all the following requirements must be met:

(a) they must have been living together in a relationship similar to marriage or civil partnership for at least the two years before the date of application; and

(b) any previous relationship of the applicant or the BN(O) Household Member with another person must have permanently broken down; and

(c) they must not be so closely related that they would not be allowed to marry in the UK.

HK 35.6. The relationship between the applicant and the BN(O) Household Member must be genuine and subsisting.

HK 35.7. The applicant and the BN(O) Household Member must form part of the same household on the date of application.

HK 35.8 In HK 35.7. a person will form part of the same household as the BN(O) Household Member if they normally live with the BN(O) Household Member.

HK 35.9. The applicant and the BN(O) Household Member must intend to live together throughout the applicant's stay in the UK.

125. An article published in March 2020 by the *King's Student Law Review*,³⁷ an academic publication by the King's College London Dickson Poon School of Law, discusses a Hong Kong phenomenon where married couples do not live together, not out of choice, but out of a need due to not being able to afford accommodation in Hong Kong. If, due to reasons of not being able to afford accommodation together, and thus each member of the couple having to remain living with their respective families, a BNO status holder sponsor's dependant partner, or that of a BNO Household Member, would never be able to meet the requirements of being a member of the same household as per HK 13.7 and HK35.7 respectively.

³⁷ <https://blogs.kcl.ac.uk/kslr/?p=1448>, accessed on 18.01.2021.

126. If married partners are not able to afford living together, then the same will be true of unmarried partners, who are furthermore required to show that they have been living in a relationship akin to marriage for at least 2 years before the date of the application, as per HK 13.5 and HK 35.5.
127. In addition to the financial issues in relation to affording accommodation, unmarried partners are also traditionally and culturally less likely to live together before marriage, and therefore there may be some unmarried partners, despite the longevity of their relationship with their sponsor, who cannot benefit from the BNO visa scheme since they would also not be able to show that they are part of the same household and have lived together with their sponsors in a relationship akin to marriage for 2 years before the date of the application.
128. The Home Office may need to consider whether additional provisions or policies are needed in order to assist couples who have not been able to live together for reasons which particularly affect Hongkongers.

Same-sex partners

129. Although the provisions of the BNO visa scheme in relation to dependant partners cover same-sex partners too, I feel that same-sex partners require a dedicated mention in relation how the provisions of the BNO visa scheme may disproportionately affect them.
130. Hong Kong does not recognise same-sex marriage presently, and although same-sex relationships are not considered criminal in Hong Kong, there is nonetheless a fair amount of social stigma surrounding same-sex relationships in Hong Kong. [***].
131. If a same-sex couple in Hong Kong have never lived together due to social stigma and familial pressures, this means they can technically never qualify to benefit as a dependant partner under the BNO visa scheme since they would not be part of the

same household, let alone being able to show that they have lived together in a relationship akin to marriage for 2 years before the application as required of unmarried partners if they have not married abroad, since same-sex marriages cannot be carried out in Hong Kong.

132. The situation is more acute for those in a same-sex relationship where one partner is from Mainland China. Hong Kong and China have separate immigration systems, whereby there is still, presently, control of movement of people between Hong Kong and the Mainland. Although Hong Kong's immigration provisions recognise same-sex relationships in relation to applications for dependants, Hong Kong's immigration provisions in relation to dependants³⁸ state specifically that they do not apply to Chinese residents of Mainland China.³⁹

133. This means that if a Hongkonger is in a same-sex relationship with someone who happens to be from Mainland China, the Mainland Chinese partner would unlikely be able to live in Hong Kong as a dependant, and thus a situation where a couple have not been able to form a household as they are prevented from doing so by Hong Kong immigration provisions, putting aside any issue of social stigma or familial pressures. The Mainland Chinese partner would also unlikely be able to show that they were ordinarily resident in Hong Kong due to being barred from benefiting from dependants provisions in Hong Kong's immigration provisions, and so could be excluded from eligibility under the BNO visa scheme as a dependant partner.

134. If the BNO status sponsor decided to live in China in order to be able to live together with the Mainland Chinese partner, then they may fall foul of the ordinarily resident in Hong Kong requirement.

³⁸ https://www.immd.gov.hk/eng/services/visas/residence_as_dependant.html, accessed on 18.01.2021.

³⁹ Hong Kong's immigration provisions for dependants do not apply to Chinese residents of Mainland China "except for those whose sponsors have been admitted to take up employment (as professionals, for investment to establish/join in business, or for training) or studies (in full-time undergraduate or post-graduate local programmes in local degree-awarding institutions), or whose sponsors have been admitted as entrants under the Capital Investment Entrant Scheme, the Quality Migrant Admission Scheme or the Admission Scheme for the Second Generation of Chinese Hong Kong Permanent Residents". Although these provisions affect non-same-sex couples also, I simply wanted to highlight in this section how barriers can disproportionately stack up against same-sex couples.

135.[***].⁴⁰

[***]

Vote of thanks

149. I would like to formally record my gratefulness to the HASC panel for the invitation to assist the panel in providing evidence on the Hong Kong BNO visa scheme which will come into force on 31.01.2021, and for the panel's continued interest and continued concern as to the situation in Hong Kong.

150. The BNO visa scheme is a generous policy, honouring John Major's 1996 promise to Hongkongers that "if there were any suggestion of a breach of the Joint Declaration, [the UK] would have a duty to pursue every legal and other avenue available to us". Despite the BNO visa's scheme's generous nature, it is hoped that HM Government would also consider ways to assist Hongkongers who are not within classes of people who can benefit from the generous BNO visa scheme.

151. Due to the sensitive nature of the evidence provided to the HASC panel, I thank the panel for allowing the use of aliases in giving evidence to the panel in relation to the issues in relation to Hong Kong and the BNO visa scheme.

January 2021

⁴⁰ [***].