

立法會
Legislative Council

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(These minutes have been seen by
the Administration)

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**Bills Committee on
Immigration (Amendment) Bill 2000**

**Minutes of meeting
held on Tuesday, 6 February 2001 at 4:30 pm
in Conference Room A of the Legislative Council Building**

Members present : Hon Ambrose LAU Hon-chuen, JP (Chairman)
Hon Cyd HO Sau-lan
Hon Margaret NG
Hon Howard YOUNG, JP
Hon LAU Kong-wah
Hon Audrey EU, SC, JP

Members absent : Hon James TO Kun-sun
Hon Andrew WONG Wang-fat, JP

Public Officers attending : Mr Timothy TONG, JP
Deputy Secretary for Security 3

Ms Linda K P SO
Principal Assistant Secretary for Security

Ms Winnie NG
Assistant Secretary for Security

Mr Anthony WU
Deputy Law Officer (Civil Law)

Mr Gilbert MO
Deputy Law Draftsman

Dr C M LAU
Chief Chemist

Dr LAW Man-ye, Betty
Senior Chemist

Mr SIU Chung-kit
Assistant Director of Immigration (Visa & Policies)

Mr TSOI Hon-kuen
Assistant Director of Immigration (Personal Documentation)

Clerk in attendance : Mrs Sharon TONG
Chief Assistant Secretary (2)1

Staff in attendance : Mr Arthur CHEUNG
Assistant Legal Adviser 5

Mr Raymond LAM
Senior Assistant Secretary (2)5

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I. Meeting with the Administration

The Chairman welcomed Ms Audrey EU who had recently joined the Bills Committee as a new member.

2. Members noted that a paper provided by Miss Cyd HO had been issued vide LC Paper No. CB(2) 803/00-01 on 5 February 2001. Miss Cyd HO requested the Administration to provide a written response to the points raised in the paper.

Administration's response to issues raised at the meeting held on 19 December 2000
(LC Paper No. CB(2) 701/00-01(01))

3. At the invitation of the Chairman, Deputy Secretary for Security 3 (DS for S3) briefed members on the paper provided by the Administration.

4. On the question of whether the Immigration Tribunal (the Tribunal) could

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accept test results provided by private laboratories as evidence relating to a case, members noted that according to the Administration's written response issued vide LC Paper No. CB(2) 511/00-01(01) on 14 December 2000, the Tribunal could receive and consider the results of genetic tests conducted by private laboratories.

5. Ms Audrey EU pointed out that the Law Society of Hong Kong (the Law Society) had stated in its written submission that as the existing law already put the onus on the right of abode (ROA) claimant to establish his or her ROA, there was no need to empower the Director of Immigration (D of Imm) to draw adverse inference from the failure of a claimant or his claimed parents to undergo a prescribed genetic test. In view of this, the Law Society suggested that the proposed section 2AB(8) should be deleted. She asked whether D of Imm and the Tribunal could draw such an inference even without the proposed section 2AB(8).

6. DS for S3 responded that the Law Society, the Hong Kong Bar Association and Mr James TO had expressed different views in respect of the proposed section 2AB(8). The Administration's proposed amendments to the proposed section had achieved a balance between the different views expressed. The proposed amendments would guide a Certificate of Entitlement (C of E) applicant and his claimed parents to undergo the prescribed genetic test while making it clear that any inference drawn by D of Imm had to be justified.

7. Ms Audrey EU asked whether it was permissible from a legal point of view for D of Imm to draw any inference without the proposed section 2AB(8). She said that the proposed section seemed to force C of E applicants and their claimed parents to undergo the prescribed genetic test. Deputy Law Officer (Civil Law) (DLO(CL)) responded that in general, D of Imm could still draw any inference even without the proposed section 2AB(8). He said it was a general practice that when expert opinion was needed for a case brought before the court, both sides would usually present their respective expert opinions. However, the case with genetic tests differed in that if a C of E applicant or his claimed parents did not undergo the prescribed genetic test but only genetic tests conducted by a private laboratory, expert opinion would only be available from one side. The proposed section sought to make it clear that proper inference based on the circumstances and facts of each case could be drawn in the event that only result provided by a private laboratory was available. The proposed section was appropriate in view of the fact that the genetic testing results had to be accurate and free from fraud. He added that under the proposed section 2AB(9), D of Imm was obligated to inform a person who was required to undergo the genetic test the provision in proposed section 2AB(8).

8. DS for S3 said that if subsections (7), (8) and (9) of the proposed section 2AB were read together, one would note that the provisions guided a C of E applicant and his claimed parents to undergo the prescribed genetic test. It sought to implement the Court of Final Appeal's decision in January 1999 in a way to ensure that the results were accurate and free from fraud. If a genetic test was conducted by a private

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laboratory, it would be very difficult to determine whether the result of the test was accurate and whether the process was free from fraud. He added that the Mainland authorities responsible for processing One-way Permit applications had indicated that they would accept the result of a prescribed genetic test.

9. Miss Margaret NG pointed out that the proposed amendment to the proposed section 2AB(8) provided that "The Director may draw an inference.....as he considers proper". She questioned why it was not drafted along the line that "The Director may draw such inferences as may be proper". Referring to the proposed section 2AD(6A), she commented that the use of the word "required" was inappropriate, if the prescribed genetic test was not mandatory. She considered that the word "required" should be replaced by "requested", especially given that its Chinese counterpart was "要求". There was no need to draft the provisions in such a way that seemed to force a C of E applicant or his claimed parents to undergo the prescribed genetic test.

10. DS for S3 responded that any inference as D of Imm considered proper had to be able to withstand legal challenges. As regards the proposed section 2AD(6A), he did not see any problem in using the word "required".

11. Regarding the purpose of the proposed section 2AD(6A), Deputy Law Draftsman (DLD) explained that as the proposed section 2AB(8) explicitly provided that D of Imm might draw any inference as he considered proper, the Tribunal should also be empowered to draw any inference as it considered proper. Miss Margaret NG considered that the Tribunal would consider all information and materials submitted even without the proposed provision.

12. Miss Margaret NG asked whether the Bill, if passed, would deprive the right of a C of E applicant to undergo a genetic test at a private laboratory. DS for S3 said that the Bill did not exclude an applicant or his claimed parent from submitting genetic test results conducted in private laboratory. However, the Administration much hoped that C of E applicants would undergo the prescribed genetic test, which would facilitate their applications to be processed in the most expedient manner. He added that a C of E applicant would save cost in undergoing the prescribed genetic test because the Mainland authorities responsible for processing One-way Permit applications had indicated that they would accept the results of the prescribed genetic test.

13. Miss Cyd HO asked whether a C of E applicant who had only undergone a genetic test provided by a private laboratory would be given equal treatment as an applicant who had undergone the prescribed genetic test. DS for S3 responded that under such circumstances, D of Imm would ask the person concerned the reasons for not undergoing the prescribed genetic test but a test conducted by a private laboratory. If the reasons were acceptable, D of Imm would decide on the application accordingly. He added that anyone who was aggrieved by the decision of D of Imm could lodge an

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appeal to the Tribunal. Miss Cyd HO considered that there was no equal treatment if the reasons given had to be acceptable to D of Imm before equal treatment was given.

14. Miss Margaret NG asked whether the Bill as presently drafted permitted a C of E applicant to undergo, instead of the prescribed genetic test, a genetic test by a private laboratory. She also asked whether D of Imm would have regard to the result of such a test in his decision of an application.

15. Assistant Legal Adviser 5 (ALA5) said that under the original version of the proposed section 2AB(8), D of Imm could draw adverse inference from the failure of a C of E applicant or his claimed parents to undergo a prescribed genetic test. Under the amendments to the proposed section 2AB(8) as proposed by the Administration, D of Imm might draw any inference as he considered proper from such failure. A C of E applicant who was prepared to take the risk of an adverse inference being drawn on him could choose to undergo a genetic test conducted by a private laboratory, as the Bill should not exclude a C of E applicant from submitting such evidence. He added that from a legal point of view, D of Imm was required to equally consider the result of a prescribed test and that of a test conducted by a private laboratory.

16. Miss Margaret NG sought clarification on whether a C of E applicant and his claimed parents could undergo a test conducted by a private laboratory but not the prescribed genetic test. Under the circumstances, D of Imm would have regard to the result of such a test and draw any inference as he considered proper. She also sought clarification on whether D of Imm could still make such an inference even without the proposed section 2AB(8). ALA5 said that the provisions basically had these effects.

17. DS for S3 agreed with the views of ALA5. He said that D of Imm would also ask why the C of E applicant did not undergo the prescribed test. He reiterated that it was important for the genetic test results to be accurate and the testing process to be free from fraud. The Administration much hoped that a C of E applicant and his claimed parents would undergo the prescribed test and the Bill had the effect of guiding them to do so. He stressed that D of Imm would treat all applications equally and have regard to the circumstances and facts of each case.

18. ALA5 pointed out that the Bill did not empower D of Imm to require a C of E applicant or his claimed parents to provide the reasons for not undergoing a prescribed genetic test. Such a requirement was an administrative one and the person concerned might choose not to comply with it.

19. Miss Margaret NG said that as the Administration had explained at the meeting that the result of self-arranged genetic test could be submitted as evidence and would be considered by D of Imm, she would reconsider whether to support the Bill. She added that the use of the word "required" in the proposed section 2AD(6A) should be further examined.

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20. Miss Audrey EU asked whether all the fees for a prescribed genetic test would be collected in Hong Kong. She expressed concern that according to the Bill, the fee for a prescribed genetic test would not be subject to the scrutiny of the Legislative Council (LegCo). She also expressed concern that some people might not be able to provide genetic test results if they could not afford to pay the testing fee. DS for S3 responded that the estimated fee for a genetic test in Hong Kong was about HK\$2,600 per person and the estimated fee for a genetic test in the Mainland was in the region of RMB 1,100 per person. Thus, the total fee for the genetic tests of a family would be in the region of HK\$4,600. In this connection, Senior Chemist added that the fee for a genetic test conducted by a laboratory in the United States was about US\$ 400 to US\$500. DS for S3 added that the fees were determined on the basis of full recovery of cost. No fee would be required for a re-test. Under the Public Finance Ordinance (Cap. 2), the Administration could consider waiving the fee for persons who had financial difficulties.

21. Miss Margaret NG asked whether the proposed section 2AB(7)(a) would limit a C of E applicant's right and freedom of undergoing a genetic test other than that specified in the proposed section. DS for S3 responded that the provision did not impose such a restriction.

22. Miss Margaret NG asked whether the Administration would, in considering whether to accept the result of a genetic test conducted by a private laboratory, also consider whether such test result would be accepted by the Mainland authorities responsible for processing One-way Permit applications. DS for S3 responded that the issue of a C of E was a matter solely within the responsibility of D of Imm. However, applicants should note that they would need both a C of E and a One-way Permit before they could come to Hong Kong.

23. Miss Cyd HO asked whether there was any restriction on a genetic test conducted by a private laboratory. DS for S3 responded that there was no restriction on such a test. Assistant Director of Immigration (Visa & Policies) said that in the processing of a C of E application, D of Imm would first verify the status of the parents of an applicant before verifying the parentage. The results of a genetic test would facilitate the verification of the parentage. He further said that the Administration had made much effort in developing quality assurance measures and designing procedures to ensure that the test results were accurate and free from fraud. He added that it was important to establish a chain of evidence in the sample-taking and testing process. Although a genetic test could be conducted by a private laboratory, it would be very difficult to verify whether the test result was accurate and free from fraud.

24. Miss Margaret NG said that if this was the case, overseas C of E applicants should be permitted to undergo genetic tests in overseas laboratories. She questioned why it was stated in the LegCo Brief that C of E applicants residing in overseas countries and whose claimed parentage was in doubt would be required to come to

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Hong Kong to undergo genetic tests conducted by the Government Laboratory.

25. DS for S3 responded that the Administration much hoped that these applicants would undergo the prescribed test in Hong Kong. He said that D of Imm would determine a case accordingly if he was satisfied that the genetic test result was accurate and free from fraud. However, it would be difficult for D of Imm to verify that the test result was accurate and free from fraud if a genetic test was conducted overseas. He added that there was only a small number of C of E applicants residing in overseas countries. Among about 200 C of E applications lodged in a year by persons not residing in the Mainland, most of the applicants were residing in Macau. It should not create a problem to these applicants if they were required to come to Hong Kong to undergo the tests conducted by the Government Laboratory.

II. Date of next meeting

26. Members agreed that the next meeting be scheduled for 6 March 2001 at 10:45 am to continue discussion with the Administration.

(Post-meeting note : The meeting was subsequently rescheduled to 26 March 2001 at 2:30 pm.)

27. The meeting ended at 6:15 pm.

Legislative Council Secretariat
19 July 2001