

立法會
Legislative Council

LC Paper No. CB(2) 2203/00-01
(These minutes have been seen by
the Administration)

Ref : CB2/BC/1/00

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

**Minutes of meeting
held on Monday, 7 May 2001 at 4:30 pm
in Conference Room B of the Legislative Council Building**

Members present : Hon Ambrose LAU Hon-chuen, JP (Chairman)
Hon Cyd HO Sau-lan
Hon Margaret NG
Hon James TO Kun-sun
Hon Andrew WONG Wang-fat, JP
Hon Howard YOUNG, JP
Hon Audrey EU Yuet-mee, SC, JP

Member absent : Hon LAU Kong-wah

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

Ms Linda K P SO
Principal Assistant Secretary for Security C

Ms Winnie NG
Assistant Secretary for Security C

Mr Gilbert MO
Deputy Law Draftsman

Mr Wesley WONG
Acting Deputy Principal Government Counsel

Dr C M LAU
Chief Chemist

Mr LAW Yiu-tung
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

Revised draft Gazette notice and the Committee Stage amendments to be moved by the Administration

(LC Paper No. CB(2) 1449/00-01(01))

At the invitation of the Chairman, Deputy Secretary for Security 3 (DS for S3) briefed members on the revised draft Gazette notice and the Committee Stage amendments (CSAs) to be moved by the Administration.

2. Referring to the English version of the draft Gazette notice, Miss Margaret NG expressed concern that the words "shall attend" could be interpreted as an applicant or his claimed parent must undergo the prescribed genetic test in the manner as specified by the Director of Immigration (D of Imm) and could not take a self-arranged test.

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3. Deputy Secretary for Security 3 (DS for S3) responded that if an applicant or his claimed parent was requested to undergo a prescribed genetic test, and if he accepted it, he must undergo the test in the manner specified by D of Imm. Should an applicant choose not to take the test in the manner as specified, his application for Certificate of Entitlement (C of E) would still be considered by D of Imm. Under the circumstances, D of Imm would ask why the test was not taken in the manner as specified and might draw such inference as appropriate. He said that the Administration did not intend to make any further amendments to the draft Gazette notice.

Committee Stage amendments proposed by Miss Margaret NG and Ms Audrey EU for adoption by the Bills Committee
(LC Paper No. CB(2) 1469/00-01(01))

4. At the invitation of the Chairman, Miss Margaret NG and Ms Audrey EU briefed members on their proposed CSAs. They explained that the proposed CSA to the proposed section 2AB(12) sought to set out that the Gazette notices in respect of genetic test procedure and the fee for the test would be subsidiary legislation so that any change in the genetic test procedure, e.g. change in the designated laboratory in the Mainland, and any change in the fee for the test would be subject to the scrutiny of the Legislative Council (LegCo). Miss NG further explained that the proposed CSA to the Chinese text of the proposed section 2AB(7)(a) sought to avoid the interpretation that a C of E applicant or his claimed parent who was requested by D of Imm to take a genetic test must undergo the prescribed genetic test in the manner as specified by D of Imm. However, the English text of the proposed section 2AB(7)(a) did not have such a meaning. Miss NG added that the drafting of the CSAs could be further refined, where appropriate, if members agreed on the policy aspects of the CSAs.

5. DS for S3 said that the Administration was opposed to the CSAs proposed by Miss Margaret NG and Ms Audrey EU. As the genetic test procedure and the fee for the test were operational and administrative matters, they should be dealt with in the simplest manner. He added that the procedure for C of E application was also specified by a Gazette notice which was not subsidiary legislation. As regards the proposed amendment to the Chinese text of the proposed section 2AB(7)(a), DS for S3 reiterated that if an applicant or his claimed parent was requested to undergo a prescribed genetic test, and if he accepted the request, he must undergo the test in the manner specified by D of Imm.

6. Mr Andrew WONG said that there were many examples where fees and form of tests were set out in subsidiary legislation.

7. DS for S3 responded that the reasons for specifying that the Gazette notice in respect of the genetic test procedure and the fee for the test as referred to in the proposed section 2AB(7)(a) and 2AB(11) respectively was not subsidiary legislation had been explained at previous meetings. He added that the result of a self-arranged

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genetic test might not be accepted by the Mainland authorities responsible for issuing One-way Permits. Under such circumstances, an applicant might have to undergo another genetic test for his One-way Permit application.

8. Referring to the proposed section 2AB(12), Mr Howard YOUNG asked about the coverage of the notice under section 2AB(2)(a). DS for S3 responded that it was related to the procedure for application for C of E.

9. In response to Miss Margaret NG's question about the Chinese counterpart of the word "specify", Deputy Law Draftsman (DLD) said that "指明" was the standard Chinese counterpart of the word "specify" in law drafting.

10. Mr Howard YOUNG asked whether the proposed CSA in respect of the Chinese text of the proposed section 2AB(7)(a) would result in inconsistency between the Chinese and English versions.

11. Ms Audrey EU responded that the proposed CSA would result in more consistency between the English and Chinese versions of the proposed section 2AB(7)(a). She added that the Gazette notice in respect of the fee for the genetic test was proposed to be subsidiary legislation because of the concern that the designated laboratory in the Mainland might levy unreasonable charges for services provided.

12. DS for S3 clarified that the Gazette notice would not set out the amount of the fee to be charged by the designated laboratory in the Mainland. He said that the CSA proposed by Miss Margaret NG and Ms Audrey EU to the Chinese text of the proposed section 2AB(7)(a) might give some applicants or claimed parents the impression that undergoing a self-arranged genetic test would already be in compliance with D of Imm's request for taking a prescribed genetic test. Miss Margaret NG reiterated that she disagreed with the Administration's view that an applicant must take the prescribed genetic test in the manner specified by D of Imm when he was requested to do so.

13. Mr James TO asked about the effect on the court's interpretation of the English version of the proposed section 2AB(7)(a) after the Chinese version was amended. Assistant Legal Adviser 5 (ALA5) responded that the court's interpretation should not be affected by such an amendment. He added that there was not a Chinese counterpart for the word "conducted" in the revised version of the proposed section 2AB(7)(a). He further said that if members were concerned about the use of the word "須" in the proposed section 2AB(7)(a), consideration might be given to replacing it with "得".

14. Mr Andrew WONG said that if the meaning of the Chinese version of the proposed section 2AB(7)(a) was to fully reflect that of the English version, it might have to be amended along the line of "可要求申請人及該人接受一項按處長以憲報公告指明的方式進行的基因測試，以確立所聲稱的父母子女關係". He said that

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if the Chinese and English versions were inconsistent, the court might be faced with the problem of whether to adopt the meaning of the Chinese version or that of the English version.

15. Ms Audrey EU said that the proposed CSA only sought to clarify that an applicant or claimed parent could choose to take a self-arranged test when requested by D of Imm to undergo a genetic test.

16. DS for S3 reiterated that if an applicant or claimed parent was willing to undergo the prescribed genetic test, he must take the test in the manner as specified by D of Imm. If he chose not to take the test in the manner as specified, his application for a C of E would still be considered by D of Imm. Under the circumstances, D of Imm would ask why the test was not taken in the manner as specified and might draw such inference as appropriate.

17. Mr Howard YOUNG expressed concern that if the Gazette notice in respect of the genetic test procedure was subsidiary legislation, some Members might seek to amend the designated laboratories.

18. Miss Margaret NG said that while she had no strong views about the content of the draft Gazette notice, the Gazette notice in respect of the genetic test procedure and the fee for the test should be subsidiary legislation so that any change in the procedure and fee would be subject to the scrutiny of LegCo.

19. The Chairman invited members to vote on whether the CSAs proposed by Miss Margaret NG and Ms Audrey EU should be moved by the Bills Committee. The results were as follows -

- (a) Ms Cyd HO, Mr James TO, Miss Margaret NG and Ms Audrey EU voted in favour of the Bills Committee moving an amendment to the effect that the Gazette notice in respect of the genetic test procedure should be subsidiary legislation, Mr Howard YOUNG voted against and the Chairman abstained from voting;
- (b) Miss Cyd HO, Mr James TO, Miss Margaret NG and Ms Audrey EU voted in favour of the Bills Committee moving an amendment to the effect that the Gazette notice in respect of the fee for the genetic test should be subsidiary legislation, while the Chairman and Mr Howard YOUNG abstained from voting; and
- (c) Ms Cyd HO, Mr James TO, Miss Margaret NG and Ms Audrey EU voted in favour of the Bills Committee moving the CSA to the Chinese text of the proposed section 2AB(7)(a), Mr Howard YOUNG voted against and the Chairman abstained from voting.

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20. DLD said that from a technical point of view, the proposed section 2AB(12) should be deleted if the reference to subsections (7)(a) and (11) in that section was deleted. He pointed out that it had already been provided in section 2AB(4) of the Immigration Ordinance that the Gazette notice as referred to in subsection (2)(a) was not subsidiary legislation.

21. ALA5 said that an alternative was to expressly provide that a notice under subsection (7)(a) and (11) was subsidiary legislation. He added that in line with law drafting practice, the word "specify" in the proposed section 2AB(7)(a) and 2AB(11) would have to be replaced by "prescribe" if the notice was subsidiary legislation.

22. The Chairman requested ALA5 to examine the technical and drafting aspects of the CSAs.

Way forward

23. The Chairman concluded that subject to the CSAs to be moved respectively by the Administration and the Bills Committee, the Bills Committee supported the resumption of the Second Reading debate on the Bill at the LegCo meeting on 30 May 2001. A report would be made to the House Committee at its meeting on 18 May 2001. He reminded members that the deadline for giving notice of CSAs would be 21 May 2001.

(Post-meeting note : A further meeting was subsequently scheduled for 7 June 2001 at 4:30 pm to consider revised versions of the CSAs to be moved by the Bills Committee.)

24. The meeting ended at 5:30 pm.

Legislative Council Secretariat

21 August 2001