

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

**Minutes of meeting
held on Tuesday, 31 October 2000 at 10:45 am
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 James TO Kun-sun
Hon Andrew WONG Wang-fat, JP
Hon Howard YOUNG, JP
Hon LAU Kong-wah

Member absent : Hon Mrs Selina CHOW LIANG Shuk-ye, JP

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

Ms Linda K P SO
Principal Assistant Secretary for Security

Mr Andy CHAN
Assistant Secretary for Security

Mr Anthony WU
Deputy Law Officer (Civil Law)

Mr Gilbert MO
Deputy Law Draftsman

Dr LAW Man-ye, Betty
Senior Chemist

Mr SIU Chung-kit
Assistant Director of Immigration

Mr TSOI Hon-kuen
Principal Immigration Officer

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. Election of Chairman

Mr Ambrose LAU was elected Chairman of the Bills Committee.

2. Members agreed to accept the late membership of Mrs Selina CHOW and Mr Andrew WONG.

II. Meeting with the Administration

(LegCo Brief Ref SBCR 12/2091/99, LC Paper Nos. LS 3/00-01 and CB(2)134/00-01)

3. At the invitation of the Chairman, Deputy Secretary for Security 3 (DS for S3) briefed members on the Immigration (Amendment) Bill 2000 (the Bill). He informed members that the Department of Justice (D of J) and the Independent Commission Against Corruption (ICAC) had been consulted on the proposed procedures for verification of parentage. He said that the Criminal Technology Division of the Guangdong Provincial Public Security Department and the Government Laboratory of Hong Kong had finished testing the technical aspects of the proposed system. A comprehensive simulation test would soon be carried out on the entire process, including the taking of samples, documentation, the exchange of test results and issue of test reports. He added that, subject to the passage of the Bill by the Legislative Council (LegCo), the proposed genetic test procedure could be implemented by the end of 2000.

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4. Referring to the LegCo Brief, Mr Howard YOUNG asked about the criteria for assessing whether an applicant for a Certificate of Entitlement (C of E) would be required to undergo a genetic test. DS for S3 responded that whether a genetic test should be required would be determined by the Director of Immigration (D of Imm) having regard to whether documents submitted were sufficient for proving the claimed parentage. Assistant Director of Immigration added that in the examination of documentary evidence, documents such as birth certificate, identity card and travel documents would be examined. Where necessary, assistance from the Mainland authorities would be sought in the verification of documents issued by the Mainland. The Immigration Department (ImmD) would scrutinize each application in accordance with the guidelines. It would also consider the recommendation of the Mainland authorities on whether a genetic test would be required. He assured members that the proposed system would be closely monitored to ensure fair and accurate assessments.

5. Mr Howard YOUNG asked whether the parent of an applicant could refuse to undergo a genetic test. DS for S3 responded that the parent of an applicant could refuse to undergo a genetic test and would be given the opportunity to explain his or her reasons for refusal. D of Imm would have regard to these in making his decision on the application. AD of Imm added that genetic tests would be required when there was insufficient documentary evidence to substantiate the parentage claims. If an applicant or parent refuse to undergo a genetic test, D of Imm might draw adverse inferences from such a refusal as he considered appropriate and determined the application accordingly.

6. Mr Howard YOUNG and Miss Margaret NG asked why applicants residing in places other than the Mainland and whose claimed parentage was in doubt had to come to Hong Kong to undergo genetic tests. Miss Margaret NG considered that such an arrangement would result in much inconvenience to these applicants. She said that there were many internationally accredited laboratories throughout the world. It would be unfair to require these applicants to travel to Hong Kong for undergoing genetic tests.

7. AD of Imm said that the reliability of genetic test results depended not only on the standard of the laboratory concerned, but also on whether the entire sample-taking and testing process was safeguarded against fraud. As there were many laboratories in different countries, it was difficult to ensure that the entire process adopted by these laboratories were all in order. As it was also difficult to assess where most applicants resided, it was not possible to enter into arrangements similar to those with the Mainland with other countries. All these applicants were therefore required to undergo genetic tests in Hong Kong. DS for S3 added that the proposed requirement was to prevent fraud.

8. Mr Howard YOUNG asked about the estimated fee for a genetic test. DS for S3 responded that the fee would be determined on the basis of full recovery of cost. The estimated fee for a genetic test in Hong Kong was HK\$2,600 per person. To his

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knowledge, the fee for a genetic test in the Mainland, which was estimated to be in the region of RMB 1,100 per person, was also determined on the basis of full recovery of cost.

9. In response to Mr Howard YOUNG's question about whether assistance from the Mainland authorities would be sought in verifying the documents issued by the Mainland, AD of Imm said that as applications for a C of E and One-way Permit were submitted in the Mainland at the same time, the documents would be verified in the processing of One-way Permit applications.

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10. Mr James TO asked whether it was technically possible for a parent to undergo a genetic test in Hong Kong and provide his own sample in place of that of his claimed son for genetic test in the Mainland. Senior Chemist (SC) said that under such a situation, the results of the genetic tests would indicate no parentage but that the samples belonged to the same person. At Mr TO's request, SC agreed to provide members with the results of simulated tests conducted by the Government Laboratory and the relevant Mainland authorities.

11. SC said that if the DNA information of another son of a parent was provided in place of that of his claimed son for genetic test in the Mainland, the results would confirm parentage. However, procedures and measures would be established to prevent such an act. In response to the Chairman's question about whether two persons who were brothers would have the same DNA profiles, SC said that these persons would not possess the same DNA profiles unless they were twins.

12. DS for S3 said that the Administration considered it very important to prevent fraud. He drew members' attention to the measures to be taken by the Mainland authorities against fraud, as set out in Annex C to the LegCo Brief. AD of Imm added that a retest might be carried out if any fraud was suspected.

13. Referring to paragraph (c) of Annex C to the LegCo Brief, Mr LAU Kong-wah asked about the quality of genetic tests conducted by the Mainland Public Security authorities. He also asked whether random genetic tests would be performed on incoming C of E holders.

14. DS for S3 reiterated that D of J and ICAC had been consulted on the proposed procedures. SC added that the genetic testing procedures to be adopted by the Mainland authorities would be the same as those currently adopted by the Government Laboratory, which had received international accreditation. AD of Imm said that the process of specimen taking and testing in the Mainland would be conducted within the same building to ensure direct delivery of the specimens to the laboratory. Specimens would be labelled only with bar codes supplied by Hong Kong and put into security envelopes with tamper-proof seals. He added that random checks would also be made on the specimen taking process.

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15. As regards the suggestion of performing random genetic tests at immigration control points, Deputy Law Draftsman (DLD) said that the Human Rights Unit of D of J had advised that such random tests might contravene a person's privacy. If any person was suspected of fraud, a DNA sample could be taken under the Dangerous Drugs, Independent Commission Against Corruption and Police Force Ordinance (Amendment) Ordinance 2000. DS for S3 added that in the event of fraud, ImmD had the power to carry out investigations and, where justified, revoke the C of E and repatriate the person concerned to the Mainland.

16. In response to Mr LAU Kong-wah's question about the steps taken by the Administration to prevent fraud, DS for S3 said that the proposed procedures had been accepted by ICAC. The Security Bureau and the Mainland Public Security authorities would monitor the situation closely and review the process regularly.

17. Miss Cyd HO asked whether an applicant could volunteer to undergo a genetic test before his application was considered. She said that as DNA information was conclusive, it should not be necessary for the applicant to provide documentary evidence once a genetic test was carried out. She expressed concern that genetic tests might be used to delay the issue of C of E to an applicant.

18. DS for S3 said that an applicant could volunteer to undergo a genetic test before his application was considered by D of Imm. However, the results from such a test could not substitute essential documentary evidence, such as evidence indicating the applicant's date and place of birth, whether the applicant was living in the claimed address and whether the applicant was a Chinese.

19. Miss Margaret NG expressed concern about the proposed section 2AB(8) of IO which allowed D of Imm to draw such adverse inferences from the failure of a C of E applicant or his claimed parents to undergo the prescribed genetic tests as he considered proper. She questioned why an adverse inference should be drawn merely for such a failure. She considered that the provision was inconsistent with legal principles. She said that as the burden of proof was already on the applicant and D of Imm was empowered to determine whether a C of E should be issued to an applicant, the proposed section was unnecessary. She added that in criminal proceedings, an adverse inference was not drawn on a person merely for his refusal to give evidence in court.

20. DS for S3 said that the proposed section 2AB(8) of IO should be read in conjunction with the proposed sections 2AB(7a) and 2AB(9). These provisions indicated that genetic tests would be required when documentary evidence appeared inadequate. As the proposed section 2AB(8) only stated that D of Imm "may draw" such adverse inferences "as he considers proper", D of Imm might not necessarily draw adverse inferences in each case. If specific reasons for failure to undergo genetic tests were explained to D of Imm, the latter would certainly have regard to the reasons provided. He stressed that as genetic tests would be required when documentary

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evidence submitted by an applicant appeared insufficient, failure to undergo a genetic test might put the applicant in a more unfavourable position. The provision only sought to clarify such a situation.

21. DLD said that the burden of proof was on the prosecution in criminal proceedings, whereas the burden of proof was on the applicants in C of E applications. They were not entirely comparable. Deputy Law Officer (Civil Law) (DLO(CL)) added that the provision only sought to clarify that the results of genetic tests conducted in accordance with the Bill would be acceptable whereas the results of genetic tests conducted not in accordance with the Bill would not be acceptable. Miss Margaret NG said that if the genetic test results of even the best overseas laboratory were not acceptable to the Administration, she would oppose the Bill.

22. Mr James TO shared the views of Miss Margaret NG. He said that D of Imm should not be empowered to draw adverse inferences merely for failure to undergo a genetic test. He further said that there might be many reasons, such as family problems or a high fee charged for a genetic test, that result in failure to undergo genetic tests. It would be particularly unfair to an applicant if adverse inferences were drawn on him merely because he refused to undergo a genetic test, although the documentary evidence supplied was sufficient. He added that the proposed provision was not found in any existing legislation on other applications. It indicated a fundamental change in legal policy.

23. DLO(CL) said that there was no fundamental change in legal policy. As the burden of proof of parentage was on an applicant, failure to provide documentary evidence that was sufficient would already put the applicant in an unfavourable position. Under such circumstances, it was natural to question why an applicant refused to undergo a genetic test to prove his claimed parentage when given the opportunity to do so. He added that whether D of Imm would draw adverse inferences from an applicant's failure to undergo genetic tests would depend on the circumstances of each case.

24. Mr Andrew WONG shared the view that the provision was unnecessary. He said that the provision should be drafted in a more positive way that allowed an applicant to undergo a genetic test to establish his parentage when insufficient documentary evidence was available. He further said that the father of an applicant born out of wedlock might be forced by his wife to abandon undergoing a genetic test. A person might not attend a genetic test merely because of sickness. Mr Howard YOUNG shared the view that the provision should be drafted in a more positive way. DLO(CL) said that D of Imm might not draw adverse inferences in such situations. The provision as currently drafted had already allowed flexibility in dealing with exceptional cases.

25. Referring to the Chinese text of the proposed section, Miss Margaret NG pointed out that the provision as currently drafted clearly indicated that refusal to

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undergo a genetic test was already sufficient for the drawing of adverse inferences. She said that whether an adverse inference was proper was subject to the subjective judgement of D of Imm. DLO(CL) said that the word "proper" indicated that D of Imm could draw adverse inferences only when it was proper to do so. He reiterated that the proposed section as currently drafted had already provided flexibility for dealing with special circumstances such as the sudden death of an applicant's parent.

26. DS for S3 said that as a genetic test would be required only when documentary evidence provided was insufficient for verifying the applicant's parentage, there was already the possibility of drawing adverse inferences at that stage.

27. Mr LAU Kong-wah asked whether favourable inferences could be drawn on an applicant who provided insufficient documentary evidence and refused to undergo a genetic test. DS for S3 said that under such circumstances, D of Imm could only base on the insufficient documentary evidence supplied and the refusal to undergo genetic test to determine the application in accordance with the proposed section 2AB(8).

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28. Mr James TO requested the Administration to consider deleting the proposed section 2AB(8) of IO. DS for S3 undertook to consider the suggestion having regard to the need for a balance between an applicant's right and the prevention of fraud.

Adm

29. Mr LAU Kong-wah requested the Administration to provide information on the codes of practice adopted by the Mainland authorities and the relevant authorities in Hong Kong for monitoring the genetic testing procedures.

III. Date of next meeting

30. Miss Cyd HO suggested that legal professional bodies and interested parties be invited to give their views on the Bill. She said that there were reports in the South China Morning Post quoting the views of an academic and an expert that the proposed genetic testing procedures were technically flawed. Members agreed to invite views from the Law Society of Hong Kong, the Hong Kong Bar Association and the public on the Bill.

31. Members also agreed that the next meeting be held on 28 November 2000 at 10:45 am to meet with interested parties on the Bill.

32. There being no other business, the meeting ended at 12:50 pm.

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12 December 2000