

立法會
Legislative Council

LC Paper No. LS3/00-01

**Paper for the House Committee Meeting
of the Legislative Council
on 20 October 2000**

**Legal Service Division Report on
Immigration (Amendment) Bill 2000**

Object of the Bill

To empower the Director of Immigration to require genetic tests to be conducted to establish claimed parentage in applications for Certificates of Entitlement.

LegCo Brief Reference

2. SBCR 12/2091/99 dated 27 September 2000 issued by the Security Bureau.

Date of First Reading

3. 18 October 2000.

Comments

4. Under the Immigration Ordinance (Cap. 115), a person of Chinese nationality born outside Hong Kong to a parent who at the time of his birth was a Hong Kong permanent resident by virtue of his Chinese citizenship is a Hong Kong permanent resident. However, he may only exercise his right of abode after he has established his status as permanent resident by applying for a Certificate of Entitlement (CoE), unless he already holds a valid HKSAR

passport or a permanent identity card.

5. An applicant for CoE is required by the Director of Immigration to submit such proof as may be specified to establish his claimed parentage that would entitle him to permanent resident status.

6. The Bill now proposes that the Director be specifically empowered to require an applicant and his claimed parent to undergo a genetic test if the Director is not satisfied with the documentary proof submitted. The Director is also to specify the manner in which the test is to be conducted. If the applicant or the claimed parent refuses to be tested, the Director may draw such adverse inferences as may be appropriate. The Director may also charge a fee for the test.

7. According to the LegCo Brief (paragraph 2), relative to children born within wedlock, children born out of wedlock are less likely to be able to provide sufficient documentary evidence to substantiate their parentage claims.

8. For applicants from the Mainland, the Administration explains in the LegCo Brief how arrangements have been made with Mainland authorities to conduct the testing by the Bureau of Exit-entry Administration of the Ministry of Public Security.

Public Consultation

9. No mention is made in the Brief of any consultation other than with the Panel on Security of the last session of LegCo.

Consultation with LegCo Panel

10. The Panel on Security of the last session of LegCo was consulted on the proposed genetic test procedure on 1 June 2000. Paragraph 19 of the Brief contains a summary of the consultation.

Recommendation

11. The Administration has been asked to clarify the effect of certain provisions of the Bill and its response has been received. The relevant correspondence is attached.

12. As the Bill touches on a subject that has attracted much public attention, Members may wish to ensure that all aspects of the proposal are fully discussed.

Encl.

Prepared by

CHEUNG Ping-Kam, Arthur
Assistant Legal Adviser
Legislative Council Secretariat
16 October 2000

14 October 2000

Mr Arthur Cheung
Assistant Legal Advisor
Legal Service Division
Legislative Council Secretariat
Hong Kong

Dear Mr Cheung,

Thank you for your letter dated 9 October 2000.

Our response to the points you raised is set out below, seriatim –

- (a) Section 2AB(6) of the Immigration Ordinance provides that the Director of Immigration shall issue a Certificate of Entitlement to a person where the Director is satisfied the person is a permanent resident under para 2(c) of Schedule 1 to the Immigration Ordinance upon such *proof as specified* by the Director. This can include, amongst other things, proof in the form of a genetic test. This provision however does not provide for the *prescribed manner* in which such genetic test has to be conducted.

The Bill seeks to fill this gap by giving the Director statutory power to specify by notice in Gazette the manner in which a genetic test has to be conducted. If the prescribed genetic test procedure is not followed, the Director may then draw adverse inferences from this non-compliance as he considers proper.

There is a need for a prescribed genetic test procedure, for otherwise there will be no control over the integrity of the test procedure and the accuracy of the test results.

.../(b)

- (b) There is no question of inconsistency. The Director will either approve or reject an application based on all available evidence submitted for his consideration. As you have pointed out in your letter, the Director must, in the first instance, not be satisfied that an applicant is born of a Hong Kong permanent resident parent before he is required under the proposed section 2AB(7) to undergo a genetic test. It follows that the application is likely to be rejected based on available documentary proof if no new favourable evidence is available in the form of the genetic test result. This however does not mean that the Director would necessarily draw adverse inferences from the failure of an applicant to undergo the prescribed genetic test. The Director will consider the reasons for such failure of each case and will only draw adverse inferences where appropriate.
- (c) Yes, the applicant will be given an opportunity to explain his failure to undergo the prescribed test.
- (d) No, our law does not take effect in the Mainland. But we understand that the Bureau of Exit-entry Administration in the Mainland will like us charge a fee for the conduct of a genetic test on a full cost recovery basis.

Please let us know if you need further information.

Yours sincerely,

(Linda KP So)
for Secretary for Security

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By Fax (2147 3165) & By Post

9 October 2000

Secretary for Security
Security Bureau
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Room 645
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CGO
HONG KONG

Dear Madam,

Immigration (Amendment) Bill 2000

I would be grateful if you could clarify the following points concerning the Bill -

- (a) does section 2AB(6)(a) of the principal ordinance, which allows the Director of Immigration to specify proof, already enables him to ask for proof based on a genetic test to establish parentage? If so, why is it necessary to make the additional provisions as proposed in the new section 2AB(7)?
- (b) since the Director must, in the first instance, not be satisfied that the applicant is born of a person of whom the applicant claims to be born

before he can require a genetic test, it follows that if the applicant fails to undergo the test, the Director should maintain his previous stance for want of fresh proof. There seems to be an apparent inconsistency between the proposed section 2AB(7) and (8) as the latter subsection tries to give the Director the opportunity to change or not change his mind;

- (c) if the Director is allowed to draw adverse inferences, would the applicant be given any opportunity to explain his failure to undergo the test?
- (d) is the Director also empowered under the proposed section 2AB(10) to charge a fee for a genetic test which is conducted not by the Director but by the Bureau of Exit-entry Administration in the Mainland?

It would be helpful if your clarification could reach me by the end of this week to facilitate my reporting to Members.

Yours faithfully,

(Arthur CHEUNG)
Assistant Legal Adviser