

立法會

Legislative Council

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Bills Committee on Adoption (Amendment) Bill 2003

Background brief prepared by the Legislative Council Secretariat

The Administration's proposals to amend the Adoption Ordinance (Cap. 290)

Purpose

This paper gives a summary of the concerns raised by members of the Panel on Welfare Services on the Administration's proposals to amend the Adoption Ordinance.

The Administration's proposals

2. The Administration briefed the Panel on Welfare Services at its meeting on 14 April 2003 on the proposals to be included in the Adoption (Amendment) Bill 2003. The proposals, which sought to improve local adoption arrangements and to give effect to the Convention on Protection of Children and Co-operation in respect of Intercountry Adoption (the Hague Convention) in Hong Kong, included the following -

- (a) prohibiting private arrangements for the adoption of a child, with the exception of adoption of a child by his/her birth parent or relative, or save in pursuance of an order of the Court;
- (b) making it unlawful for a child to be removed out of Hong Kong for the purpose of adoption by an unrelated person without an order given by the Court under the Adoption Ordinance;
- (c) making criminal record checks of applicants a compulsory requirement;
- (d) enabling a step-parent to apply as a sole applicant if his/her spouse is the birth parent of the child born within wedlock; and

- (e) introducing new provisions to cater for the specific requirements and procedures in Hague Convention adoptions.

Concerns raised by Panel members

3. At the Panel meeting on 14 April 2003, members sought clarifications on a number of issues relating to private arrangements for adoption, consent for adoption, adoption by homosexual persons or partners as joint applicants, and records of adoption orders.

4. A member asked whether the Amendment Bill would address the issues arising from intra-country adoptions. The Administration explained that the Hague Convention, being an international treaty, would not apply to adoptions between different territorial units of the same State, i.e. intra-country adoptions such as adoptions between the Hong Kong Special Administrative Region, the Mainland and the Macao Special Administrative Region. The Administration pointed out that it was not aware of any practical problems arising from such adoptions and that a mechanism already existed to recognise adoptions outside Hong Kong, including the Mainland and Macao, under section 17 of the Adoption Ordinance.

5. A member expressed concern that given the complexity of the Bill, Members might not be able to complete the scrutiny of the Bill before the end of the current term. The member asked whether the Bill could be split into several bills in order to speed up the scrutiny process. The Administration explained that it had already simplified the Bill as far as possible. As the Bill had to deal with two areas, i.e. to improve local adoption arrangements and to give effect to the Hague Convention in Hong Kong, it was inevitable that the Bill would be complicated and voluminous.

6. Members may wish to refer to the extract from the minutes of the meeting of the Panel on 14 April 2003 in the **Appendix** for further details of the discussion.

**Extract from the minutes of meeting of the
Panel on Welfare Services held on 14 April 2003**

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Action

III. Adoption (Amendment) Bill 2003
(LC Paper No. CB(2)1739/02-03(03))

3. At the invitation of the Chairman, Deputy Secretary for Health, Welfare and Food (Welfare) (DSHWF) briefed members on the Administration's paper which set out the proposals to be included in the Adoption (Amendment) Bill 2003 to improve local adoption arrangements and to give effect to the Hague Convention on Protection of Children and Cooperation in respect of Intercountry Adoption in Hong Kong.

Private arrangements for adoption

4. Ms LI Fung-ying noted from paragraph 10 of the Administration's paper the proposal to amend the Adoption Ordinance (AO) (Cap. 290) to prohibit a person or an organisation, other than the Social Welfare Department (SWD) or adoption agencies authorised by SWD, to make arrangements for the adoption of a child, with the exception of adoption of a child by his/her relative, or save in pursuance of an order of the Court. She sought clarification on the definition of "relative".

5. In response, Assistant Director of Social Welfare (ADSW) clarified that "relative" in relation to an infant was defined in the AO and meant a grandparent, brother, sister, uncle or aunt, whether of full blood, of the halfblood or by affinity. Ms LI Fung-ying commented that the definition of "relative" was too broad. She suggested that for clarification purpose, "relative" should be defined as a person who had a tie of blood with the infant.

Step-parent adoption

6. Noting that the Administration had proposed in paragraph 17 of its paper to amend AO so that a step-parent could apply as a sole applicant if his/her spouse was the birth parent of the child born within wedlock, Ms LI Fung-yung criticized such an amendment as meaningless. She considered that since the step-parent was married to the child's birth parent who was tied to the child by blood, it was not necessary for the former to adopt the child.

7. DSHWF replied that being a new parent to the child, the step-parent should be carefully assessed to ensure that he/she was suitable for adopting the child so as to protect the best interest of the latter. DSHWF supplemented that in most other jurisdictions, similar assessments were made on the step-parents before they were allowed to adopt their step-children. Ms LI Fung-ying maintained the view that it was not necessary for the step-parent to adopt the child. The Chairman said that he did not agree with Ms LI on this point.

Discriminatory provision

8. Ms CHOY So-yuk noted from paragraph 21 of the Administration's paper that there was a discriminatory provision under section 5(3) of AO prohibiting a male sole applicant from adopting a female infant which would be removed under the proposed amendment exercise. She asked whether adoption by homosexual persons or partners as joint applicants was allowed under AO.

9. In reply, ADSW clarified that AO did not prohibit a person from adopting a child because of his/her sexual orientation. He explained that the Court would take into consideration all the relevant factors before making an adoption order. DSHWF added that applications for adoption from homosexuals would be processed in accordance with normal procedures. It would be up to the Court to decide whether the adoption would be in the best interests of the child.

10. Senior Government Counsel (SGC) supplemented that homosexual couples were not recognized as spouses under the existing law in Hong Kong. Spouses would mean husbands and wives. Therefore homosexual couples could not apply for adoption under AO as spouses. However, homosexual individuals could apply as sole applicants and their individual applications would be considered by the Court.

Consent for adoption

11. Referring to section 7(3)(a) of AO which stipulated that the consent of a birth mother to relinquish the child for adoption was not admissible, unless the child was at least six weeks old, Mr Henry WU asked whether the consent of the birth father was also required for adoption. SGC responded that under section 5(5)(a) of AO, the consent of every person who was a parent or guardian of the infant, or who was liable by virtue of any order or agreement to contribute to the maintenance of the infant was required for adoption. In the case of an illegitimate child, consent would be sought from the birth father if he is entitled to exercise any right or authority in relation to the child by virtue of an order of the court under the Guardianship of Minors Ordinance (Cap. 13). She further

explained that the amendment proposed in paragraph 28 of the Administration's paper sought to also apply the proposed reduced minimum statutory consent period (i.e., four weeks) to all those person(s) whose consent was required for adoption under section 5(5)(a) of AO.

Records of adoption orders

12. Noting from paragraph 52 of the Administration's paper that intercountry adoption orders were to be recorded in the local Registers of Births and Adopted Children Register in both SWD and the Immigration Department (ImmD), Mr Henry WU sought information on the differences between and the duration of the records kept in these two departments. DSHWF explained that the case files of adoption were kept in SWD while the formal registration of adoption orders were kept in ImmD. He clarified that these records would not be destroyed.

13. In response to a further question from Mr Henry WU on the protection of the personal data of birth parents, DSHWF informed members that upon the request of an adopted person, the identifying information on his/her birth parents would be disclosed only with the consent of both birth parents. In case the birth parents had different views on the disclosure of information, only the identifying information on the parent who had not exercised the veto would be disclosed to the adopted person in future under the Root-tracing System detailed in Annex C to the Administration's paper. However, DSHWF pointed out that in most of these cases, only one parent, usually the mother, was registered as the birth parent.

Intra-country adoptions

14. Ms Cyd HO asked whether the Amendment Bill would address the issues arising from intra-country adoptions. DSHWF said that he was not aware of any practical problems arising from intra-country adoptions. He advised that under section 17 of AO, a mechanism did exist to recognize adoptions outside Hong Kong.

Legislative timetable

15. In response to a question from Ms Cyd HO on the legislative timetable for the Adoption (Amendment) Bill, DSHWF informed members that the Administration intended to introduce the Amendment Bill into the Legislative Council (LegCo) in two months' time. Ms Cyd HO expressed concern that given the complexity of the Bill, the scrutiny of the Bill might not be completed before the end of the current term and the enactment of the Bill might then be delayed. She asked whether the Bill could be split into several less complicated Bills in order to speed up the scrutiny process.

16. DSHWF assured members that the Administration had already simplified the Bill as far as possible. He explained that since the Bill had to address two areas, i.e., to improve local adoption arrangements and to give effect to the Hague Convention on Protection of Children and Cooperation in respect of Intercountry Adoption in Hong Kong, it was inevitable that the Bill would be complicated and voluminous.

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