

For information
on 26 February 2004

Bills Committee for Adoption (Amendment) Bill 2003

Adoption: Current Arrangements

Purpose

As requested by Members at the meeting on 7 January 2004, this paper informs Members of the current arrangements on adoption.

Background

2. Adoption involves the complete severance of the legal relationship between the child and his/her birth parents, and the establishment of a new one between the child and his/her adoptive parents. Adoption in HKSAR is governed by the provisions in the Adoption Ordinance (Cap. 290). The Administration introduced the Adoption (Amendment) Bill 2003 to LegCo in June 2003. The Bill contains provisions which seek to further improve the local adoption arrangements and give effect to the Hague Convention on Protection of Children and Cooperation in respect of Intercountry Adoption (the Hague Convention).

3. The aim of the adoption service is to find a suitable and permanent home for a child whose parents are unable or unwilling to take care of him/her, so that he/she can experience a normal and healthy childhood in a family environment. Therefore, consideration should always be given to **the best interests of the child** in the adoption process.

4. The Adoption Unit of the Social Welfare Department (SWD) is responsible for handling adoption of local children. SWD provides a full range of services, including counseling services for birth parents, assessing adoptability of the children, preparing prospective adoptive parents and the children for adoption, assessment of the suitability of the prospective adoptive parents and their homes, matching of prospective adoptive parents to the children, placement of children in prospective adopters' homes and

subsequent supervision of placement, and participating in the legal proceeding for adoptions with the aim of safeguarding the best interests of the children throughout the process.

Present Position

5. At present, there are primarily two types of adoptions: adoptions for children who are wards of the Director of Social Welfare (DSW)¹ and privately arranged adoptions.

(A) Adoption of DSW Wards

6. SWD provides pre-adoption services by providing counseling to birth parents wishing to relinquish their children for adoption, helping them to consider the alternatives in child care arrangements available and the long-term implications of the choice they make, and formulate appropriate plans. SWD also provides statutory supervision to children relinquished by their parents, abandoned children and orphans, and understands views of the children as appropriate to their age and understanding and prepares them for adoption.

7. An adoption order shall not be made except with the consent of the parents, guardians or a person who is liable by virtue of any order or agreement to contribute to the maintenance of the infant, to relinquish the child for adoption (general consent through Form 4A).² SWD may take up the roles of the legal guardians of these children, say by taking the legal steps to make them DSW wards. Where the Court is satisfied that consent of a person required by law should be dispensed with (e.g. a parent or guardian who has abandoned the child, parent cannot be found despite reasonable steps taken to trace him/her), it may make an order declaring the child free for adoption.

¹ A DSW ward means a child or juvenile to whom DSW has been appointed his legal guardian under section 34(1)(a) of the Protection of Children and Juveniles Ordinance (Cap. 213).

² The case of specific consent through Form 4 is covered under Section (B) below.

8. Normally, DSW is the guardian ad litem (GAL)³ for the child (who will represent the child in the legal proceedings for adoption to safeguard his/her interests, including supervising the adoption placement and making a report on all relevant matters to the Court), unless the Court approves/appoints another person to be the GAL.⁴ These DSW wards may be adopted by local adoptive parents or overseas adoptive parents.

(a) By Local Adoptive Parents

9. Local persons interested in adopting a child who is a DSW ward can apply to SWD who will first brief them on the objectives, requirements, meaning and commitment, criteria and procedures involved in adoptions. Subsequent to the applicants' submission of an application form, an assessment on the suitability of the applicants to become adoptive parents through assessment interviews and home visits will be followed. Suitable applicants are put into a pool and matched with prospective adoptive children having regard to the needs of the children and strengths of the prospective adopters. Following the matching process, the child is placed in the prospective adopters' homes and SWD supervises the placements and assists the prospective adopters in the legal proceedings for adoption.⁵

10. The prospective adoptive parent(s) should lodge with DSW their notice of intention to apply for an adoption order in respect of the child (Form 1)⁶, at least 6 months before the date of the Order or such shorter period as the Court may allow. The child will be placed under their care for

³ Adoption, which results in a complete and final severance of all ties between a child and his/her birth parents, is a radical change in status with a significant impact on them. Every possible precaution should be taken to ensure that adoption is in the best interests of the child before an adoption order is considered by the Court. A guardian ad litem (GAL) is required in all adoption proceedings to safeguard and promote the interests of a prospective adoptive child during the Court process. Save for certain scenarios (Rule 9 of the Adoption Rules), normally DSW is the GAL in all adoption proceedings (see section 5(5F) of the Ordinance and Rule 8 of the Adoption Rules). In this regard, SWD takes up the duty of GAL to investigate as fully as possible all circumstances relevant to the proposed adoption and make a report to the Court for that purpose.

⁴ Under Rule 9 of the Adoption Rules, an applicant may apply to the Court to appoint a person other than DSW as the GAL; or the Court may appoint the Official Solicitor to be the GAL of the child in lieu of DSW.

⁵ Overseas adoptive placements may also be arranged, when local placements are not available (see paragraphs 11 and 12 below).

⁶ under section 5(7)(b) of the Ordinance and Rule 3 of the Adoption Rules.

adoption placement, namely continuously in their custody for the following period immediately preceding the date of the Order -

- (i) at least 6 consecutive months, if the applicant(s) is/are not a birth parent of the child; and
- (ii) at least 13 weeks, if the applicant(s) is/are a birth parent of the child.

They should apply to the Court for an adoption order by filing an originating summons on application for an adoption order (Form 2), a statement in support of application for an adoption order (Form 3) and general consent to an adoption order (Form 4A) etc., within 4 months of lodging Form 1. The GAL is required to submit to the Court a detailed report, accompanied by a completed prescribed form⁷, to inform the Court of the circumstances relating to the adoption and his recommendation on the application. An appointment for a hearing will be obtained, and the GAL will serve a notice of hearing of application for an adoption order (Form 6) on the relevant parties where applicable, i.e. those whose consent is required and DSW (unless he is the GAL). The Court may decide whether to grant an adoption order (Form 7); or postpone the decision and make an interim order (Form 8), giving the custody of the child to the applicants for a period of not exceeding 2 years; or refuse the application. When an interim order is made, the applicant shall obtain an appointment for a further hearing at least 2 months before the expiry of the period specified in the interim order.

(b) By Overseas Adoptive Parents

11. If local placements are not available, placement for adoption by overseas prospective adoptive parents may be arranged. The children involved are usually those who have special needs, such as older in age, with handicaps, health problems or hard family background. Where the possibility of matching a local adoptive home for the child has been exhausted, the adoption of the child by an overseas adoptive home may be arranged. However, under the parallel matching scheme (with local and

⁷ The form is prescribed in the Second Schedule to the Adoption Rules and sets out the detailed information of the applicant, the child and the parents required by the Court to make a decision on the proposed adoption.

overseas adoptive homes), should a local adoptive home become available before a formal matching proposal is made to overseas adopters, the case will be retrieved for such local placement.

12. SWD works with the NGOs (the International Social Service – Hong Kong Branch, and the Mother’s Choice Ltd⁸) to arrange overseas adoption for wards of DSW in six countries (i.e. the USA, Canada, the UK, Australia, New Zealand and Singapore). Through the NGOs, reports on home studies made by the overseas Government(s) or the overseas licensed adoption agency(ies) will be assessed by SWD. The matching has to be approved by SWD. Children placed for overseas adoption are made wards of the High Court⁹ to enable their departure to overseas countries for adoption. During the adoption placement period before an adoption order is granted in the overseas jurisdiction, the pre-existing parental rights are vested in the Court of the HKSAR; the overseas Government or the overseas licensed adoption agency(ies) undertake to assume responsibility as may be necessary for the welfare of the child; and the overseas prospective adoptive parents are merely given care and control.

(B) Privately Arranged Adoptions

13. Besides adoption of DSW’s wards which normally involves prospective adoptive parents unrelated to the children, there may also be privately arranged adoptions whereby the birth parents directly place their children into the care of the prospective adoptive parents and give their written consent to relinquish the child for adoption by a specified prospective adoptive parent(s) (specific consent through Form 4). The types of such adoptions include :

⁸ Mother’s Choice Ltd is only responsible for adoption arrangement in the USA

⁹ Wards of Court – section 26 of the High Court Ordinance (Cap. 4) empowers the High Court to make a child a ward of the Court. The effect of wardship proceedings is to vest the pre-existing parental rights in the Court. All important decisions in the child’s life such as education, upbringing and marriage become matters for the Court’s decision, thereby enabling the Court to exercise physical and moral protection over the child, until an Adoption Order is granted by the Court of the overseas jurisdiction.

(a) ***related adoptions*** when the applicant(s) is/are a relative of the child¹⁰;
or

(b) ***unrelated adoptions*** where the applicant(s) is/are not a relative of the child (e.g. friends of birth parents, persons known through a third party, or child-minders of the child).

14. For such privately arranged adoptions, the roles of SWD and the procedures are similar to those for adoptions of DSW wards, with the exceptions set out below :

(a) Applicants may approach SWD for assistance. SWD will investigate as fully as possible all circumstances relevant to the adoption, with a view to safeguarding the interests of the child, and assist the prospective adoptive parents in the legal proceedings for adoption. However, applicants may choose not to apply through SWD, and/or apply to the Court to appoint a person other than DSW as the GAL.

(b) The procedures are similar to those set out in paragraph 10 above (with certain differences listed below) –

(i) As in the case of DSW wards, after the prospective adoptive parent(s) has(ve) lodged Form 1 with DSW, SWD may visit and examine the children so placed;

(ii) After filing Form 2, Form 3 and Form 4 in this case (rather than Form 4A in paragraph 6), the GAL should serve a notice of application for an adoption order (Form 5) on the birth parents/legal guardians who have signed Form 4, to inform

¹⁰ “Relative” is defined in the Adoption Ordinance as grandparent, brother, sister, uncle or aunt, whether of full-blood, half-blood or affinity, and includes :

(a) where an adoption order has been made in respect of the infant or any other person under this Ordinance, any person who would be a relative of the infant within the meaning of this definition if the adopted person were the child of the adopter born in lawful wedlock;

(b) where the infant is illegitimate, the father of the infant and any person who would be a relative of the infant within the meaning of this definition if the infant were the legitimate child of his mother and father.

them that they must not, without the permission of the Court, remove the child from the prospective adoptive parents;

- (iii) if the prospective adoptive parent(s) is/are the birth parent(s) (for example, in the case of step-parent adoption), adoption placement of only 13 weeks is required; and
- (iv) the GAL will serve Form 6 on DSW (if he is not the GAL), amongst others, who may appear before the Court to show cause why an adoption order should not be made.

Summary

14. The detailed procedures are summarized at Annex A. The statistics are summarized at Annex B.

Presentation

15. Members may wish to take note of the information above to facilitate their consideration of the Adoption (Amendment) Bill 2003.

Health, Welfare and Food Bureau
February 2004

Statistics on Adoption Cases Handled by the Adoption Units

Table 1: Adoption Order Granted/Received¹

	1997/98	1998/99	1999/00	2000/01	2001/02	2002/03	2003/04 (up to Dec 03)
Adoption of Director of Social Welfare (DSW) wards:							
Local adoption	109	118	116	114	101	89	76
Overseas adoption	19	21	19	19	14	51	16
Sub-total	128	139	135	133	115	140	92
Adoption by private arrangements:							
Step-adoption	43	57	22	33	22	15	7
Related adoption	37	19	16	14	9	14	8
Unrelated adoption	17	14	7	5	7	3	2
Sub-total	97	90	45	52	38	32	17
Total	225	229	180	185	153	172	109

¹ As it may take some time before an adoption order made overseas will be sent to the Social Welfare Department, we have used the date of actual receipt of the adoption order for compilation of the statistics above.

Table 2: Number of Director of Social Welfare wards available for adoption

	As at end of March 1998		As at end of March 1999		As at end of March 2000		As at end of March 2001		As at end of March 2002		As at end March 2003		As at end of Dec 2003	
Characteristics of DSW Wards	Local Adoption	Overseas Adoption	Local Adoption	Overseas Adoption	Local Adoption	Overseas Adoption	Local Adoption	Overseas Adoption	Local Adoption	Overseas Adoption	Local Adoption	Overseas Adoption	Local Adoption	Overseas Adoption
Normal & healthy	8	0	5	0	7	0	1	0	2	0	2	0	1	0
Hard background ²	13	24	5	25	5	15	3	11	7	9	10	4	11	5
Older age	5	19	2	17	1	16	1	11	0	8	3	8	2	8
Ill health	13	15	5	12	3	12	0	5	1	6	1	12	1	15
Disabled	0	84	0	91	0	86	0	86	0	74	0	54	0	51
Subtotal	39	142	17	145	16	129	5	113	10	97	16	78	15	79
Total	181		162		145		118		107		94		94	

² Infants with hard background refer to children born to parents with mental illness/retardation, having a history of drug addiction or alcoholism, or children born of rape/incest, or abandoned children etc.