

For information  
on 18 March 2004

**Bills Committee on  
Adoption (Amendment) Bill 2003**

**Effects of Adoption Order**

**Purpose**

This paper provides background information on the effects of an adoption order.

**Background**

2. At the meetings on 7 January, 4 March<sup>1</sup> and 11 March<sup>2</sup> 2004, Members requested for information on, among others, whether -
- (a) the parental responsibilities of adoptive parents were the same as those of birth parents; and
  - (b) the rights of adopted children were the same as those of birth children born in lawful wedlock.

**Parental Responsibilities**

3. In recent decades, there has been a shift in the concept from parental rights (with proprietorial connotations) towards parental responsibilities (which is a more enlightened view emphasizing that children are persons rather than possessions). The acquisition of parental responsibilities is crucial in determining which persons have decision-making authority concerning the child. In the Consultation Paper published by the Sub-

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<sup>1</sup> when the paper on “Adoption Orders made outside Hong Kong – Question of Recognition in Hong Kong” was considered (Paper Ref.:LC Paper No. CB(2)1566/03-04(01))

<sup>2</sup> when the paper on “Arrangements for Adoptions between the HKSAR and the Mainland” was considered (Paper Ref.:LC Paper No. CB(2) 1661/03-04(01))

Committee on Guardianship and Custody in December 1998, the Law Reform Commission of Hong Kong recommended amending the legislation to make separate provision for parental responsibilities and parental rights<sup>3</sup>.

4. Pending such a change being made, the concept of parental responsibility is defined by referring to all the rights, claims, duties, powers, responsibilities or authority, which statute and common law for the time being confer upon parents. The legislation does not provide a list of these rights et al, as it would be practically impossible. The list must change from time to time to meet differing needs and circumstances. A decided case in the UK shows that it must also vary with the age and maturity of the child and the circumstances of each individual case.

### **Adoption**

5. Section 13(1) of the Adoption Ordinance (Cap. 290) provides that the effect of an adoption order is the complete severance of legal ties with the birth family and creation of new legal ties with the adopter's family. As from the grant of an adoption order, the following applies :

- (a) under section 13(1) of the Adoption Ordinance, upon an adoption order being made, all rights, duties, obligations and liabilities of the parents or guardians of the child in relation to the future custody, maintenance and education of the child, including all rights to appoint a guardian to consent or give notice of dissent to marriage, shall be extinguished, and all such rights, duties, obligations and liabilities shall vest in and be exercisable by and enforceable against the adopter, as if the child were a child born to the adopter in lawful wedlock; and in respect of the matters aforesaid the infant shall stand to the adopter exclusively in the position of a child born to the adopter in lawful wedlock;
- (b) pursuant to section 15 of the Adoption Ordinance, where after the making of an adoption order, the adopter or the adopted person or any other person dies intestate in respect of any property, that property shall devolve in all respects as if the adopted person were the child of the adopter born in lawful wedlock and were not the child of any other person;

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<sup>3</sup> Definition of parental rights is retained to provide a guide to parents, children and the Court of the parameters of their rights and powers.

- (c) under the Matrimonial Proceedings and Property Ordinance (Cap. 192), the definition of “a child of the family” includes an adopted child; and
- (d) other parental responsibilities and rights provided in local enactments in domestic law<sup>4</sup> or under the common law are also applicable.

### **Practical differences**

6. To the adopted children vis-à-vis the birth children born in lawful wedlock, examples of the practical differences include -

- (a) **Know his/her Birth Parents** – According to section 18(1) of the Adoption Ordinance, every adoption order contains a direction to the Registrar responsible for administering the Adopted Children Register (defined as the Registrar of Births and Deaths in section 2 of the Ordinance and is currently the Director of Immigration) to make the relevant entries in the Adopted Children Register. An adopted person is usually given a new name (and surname), which will be specified in the adoption order under section 19(2)(b) of the Ordinance and be reflected as an entry in the Adopted Children Register<sup>5</sup>. He/she will, upon application, be issued an adoption certificate as evidence of the adoption to which it relates and, where it contains the date or country of his/her birth, shall also be taken as evidence of that date or country. The child's original birth entry will be marked with the word "adopted".

The Registrar keeps registers and books to make traceable the connection between the original birth entry and the new entry in the Adopted Children Register. These registers and books are, however, not open to public inspection or search. Nor would the Registrar furnish any person with any information contained therein except with a court order.

So, unlike the birth child born in or out of wedlock, the adopted person, particularly if he/she was adopted when he/she was a small baby or a very young child, might not know who his/her birth

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<sup>4</sup> What we mean by local enactments in domestic law is that we have generally left aside the national law and the Basic Law.

<sup>5</sup> or as amended under section 20 of the Ordinance and so reflected as an entry in the Adopted Children Register

parents are<sup>6</sup>.

Currently, the Social Welfare Department (SWD) assists the adopted persons in root tracing upon request. The adopted person may also apply to the Court under section 18(4)<sup>7</sup> of the Ordinance for an Order for the Registrar to disclose tracing information between the register of births and the Adopted Children Register. With the proposed introduction of an administrative root tracing system, more systematic arrangements will be put in place to facilitate the adopted persons to access their birth information. Under this system, the adopted person can obtain his/her birth and adoption records under certain circumstances<sup>8</sup>.

- (b) **Prohibition in Marriage** - as regards marriage, according to section 13(3) of the Ordinance, the adopted person is deemed to be within the prohibited degrees of consanguinity to the adopter<sup>9</sup>, i.e. a marriage between the adopter and the adopted person will be regarded as void, though the adopted person is not included in the same prohibited degrees to the children and other relatives of the adopter. The adopted person is also regarded as remaining in the same prohibited degrees to his birth parents and their other relatives; and

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<sup>6</sup> unless he/she knows his/her birth name and his/her birth parents' names, and performs a record search and obtains a certified true copy of his/her original birth certificate under section 22(1) and (2) of the Births and Deaths Registration Ordinance

<sup>7</sup> Section 18(4) of the Adoption Ordinance provides that "the Registrar shall, in addition to the Adopted Children Register and the index thereof, keep such other registers and books, and make such entries therein, as may be necessary to record and make traceable the connection between any entry in the registers of births which has been marked "Adopted" or "受領養" pursuant to section 19 and any corresponding entry in the Adopted Children Register; but the registers and books kept under this subsection shall not be, nor shall any index thereof be, open to public inspection or search, nor, except under an order of the Court, shall the Registrar furnish any person with any information contained in or with any copy or extract from any such registers or books."

<sup>8</sup> The information can be disclosed provided (a) in the case of an adopted child under the age of 18, the adoptive parents have given their consent and (b) insofar as the identifying information of the birth parents is concerned, the birth parents have not exercised a power of veto on the release of such identifying information. Further details are set out in paragraph 35 of the LegCo Brief.

<sup>9</sup> A marriage of persons within the prohibited degrees of kindred or affinity is void – section 20(1) of the Matrimonial Causes Ordinance (Cap. 179) and section 27 of the Marriage Ordinance (Cap. 181). Kindred refers to blood relations, such as parent and child, or brother or sister. These relationships are also known as consanguinity. Affinity refers to a relationship created by marriage. Relatives by affinity include the spouse of one's own relative, and relatives of one's spouse, e.g. in-laws and step-relatives.

- (c) **Right of Abode** - As explained in the paper on “Arrangements for Adoptions between the HKSAR and the Mainland” (Ref : LC Paper No. CB(2) 1661/03-04(01)), persons adopted by HKSAR permanent residents who are Chinese citizens referred to in Article 24(2)(1) or 24(2)(2) of the Basic Law, unlike birth children of such permanent residents, are not eligible for right of abode under Article 24(2)(3) of the Basic Law.

## **Presentation**

7. Members may wish to note the above background information for reference.

Health, Welfare and Food Bureau  
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