

For discussion
on 25 March 2004

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

**Local Adoption – Choice for Birth and Prospective Adoptive Parents
and the Participation of NGOs**

Purpose

This paper examines how more choices in terms of the agencies providing adoption services could be made available to birth parents who wish to make an adoption plan for their child (birth parents) and prospective adoptive parents (adoptive parents).

Background

2. In its submission to the Bills Committee on the Adoption (Amendment) Bill (the Bill), one NGO suggested allowing licensed bodies other than those authorized by Social Welfare Department (SWD) to make adoption arrangements so as to give more choices to birth parents and adoptive parents. The Bills Committee has requested the Administration to explore how more choices could be provided. This paper focuses on unrelated adoption, as the Bill would not affect the existing regime in respect of adoption of related persons¹.

Present Arrangement

3. Adoptive children can be generally fall under two categories: Director of Social Welfare (DSW) wards and non-DSW wards. At present, NGOs do not participate in local adoption of DSW wards by unrelated persons. Adoption of non-DSW wards by unrelated persons may be handled by private arrangement or referred to SWD for assistance. Again at present, NGOs do not participate in adoption arrangements of non-DSW wards, even though there is no inhibition against it. Where a child is a ward of the DSW under the Protection of Children and Juveniles Ordinance (Cap.213), DSW is the child's legal guardian and has a statutory responsibility to take care of the

¹ At present, both SWD and NGOs and other individuals can make adoption arrangements in respect of related persons.

child's best interest.

Proposals in the Bill

4. The Bill proposes to prohibit private arrangements (including placements) of unrelated adoptions. This would have the effect of channelling all birth parents, adoptive parents and adoptive children to SWD for local adoption arrangements. The rationale for adopting such an approach have been explained in paper "Changes arising from the Adoption (Amendment) Bill 2003 – Impact on the Current Arrangements on Local Adoption" (Ref : CB(2)1566/03-04(02)).

Need for More Choices

5. While agency choice for birth and adoptive parents is one factor for consideration in the adoption process, the best interests of the child is the guiding principle, as stated in the Bill. Where the birth parent has not designated a specific adoptive home or where adoption by related persons is not an option, a crucial element of best interests of the child is to provide the child with the widest opportunity to be matched with the most suitable adoptive parent(s) in the shortest time span. In this connection, it is prudent to take into account the following factors-

- (a) NGOs wishing to contribute to the adoption process would need to comply with certain authorisation and on-going conditions to ensure professionalism and quality of services;
- (b) given the relative small number of privately arranged adoption arrangements at present, a very elaborate authorisation regime should be avoided; and
- (c) providing more choices for birth parents should not be at the expense of the choice of adoptive parents for the children and should not result in delay in the adoption process. Delay in the adoption process is likely to prejudice the best interests of the child, when adoption is considered the best option amongst all available options as regards the long-term welfare plan for the child.

Possible Options

6. There are basically three possible arrangements to provide more choices to birth and adoptive parents :

- (a) authorised NGOs (NGOs) and SWD would each maintain their own lists of adoptive parents and birth parents. They would conduct their own assessments, matching of those on their lists of adoptive parents and children, arrange placement procedures and process all adoption procedures. Such arrangement would give the widest agency choice to both birth and adoptive parents, since they can choose to approach NGOs instead of SWD. However, since each agency maintains its own list and conducts its own matching, adoptive parents may have a smaller pool of adoptive children to match and in the same token, adoptive children would be left with a smaller pool of parents for matching;
- (b) as a variation of (a) above, NGOs and SWD can share their respective list of adoptive parents for matching purpose. While this may give the widest parent choice for the adoptive child, it may also give rise to the possibility of the same adoptive parent(s) being matched with different children handled by different agencies at the same time. Unwinding such double matching would likely require an arbitration mechanism and result in delay in the adoption process; or
- (c) as a variation of (a) above, NGOs and SWD can jointly establish two common lists of child and prospective adoptive parents, both SWD and NGOs contribute to the matching process². This arrangement would give the widest agency choice to the birth and prospective adoptive parents as they can approach either NGOs or SWD, and the widest prospective adoptive parents choice for the children. Duly authorised NGOs will be able to participate in local adoption arrangements, if they wish to do so, on a self-financing basis without government funding.

7. We have sought the views of the two NGOs currently engaged in

² NGOs be involved in the matching process when the adoptive parents from their lists are involved. Where a specific consent has been given by a birth parent, no matching would be required and the NGO would handle the adoption arrangements by itself.

intercountry adoption arrangements. Both agreed that option (c) above is worth pursuing. This would have the following features-

- (a) an adoptive parent may either choose an NGO or SWD to apply for local adoption. Where an adoptive parent approaches an NGO, it would provide screening, assessment, home study and recommendation of the adoptive parents to be placed in common home pool. Along the same vein, if the adoptive parent approaches SWD, the Department would conduct the screening etc.;
- (b) birth parents who want to make an adoption plan for their children may approach either NGOs or SWD for assistance. Should the birth parent(s) has/have a designated adoptive home in mind and approach(es) an NGO, the case will be handled solely by the relevant NGO. No matching is required;
- (c) if the birth parents have no designated adoptive home in mind, the NGOs will refer the case to SWD for the relinquishment procedures for freeing the child for adoption. These children will be made wards of DSW;
- (d) both NGOs and SWD will be involved in the matching process (footnote 2 above is relevant); and
- (e) if a child is matched with the prospective adoptive parents recruited by an NGO, the case will be passed to that NGO. DSW, being the guardian ad litem of the child, may, upon the agreement with that NGO, appoint that NGO as his agent for the purpose of carrying out the duties under Rule 13(b) of the Adoption Rules.

Conclusion

8. Members' comment on the above revised arrangement is sought. Subject to Members' comments, we would develop the principles further. We would need to address possible problems relating to appeal mechanism and other regulatory issues separately.

Health, Welfare and Food Bureau
March 2004