

For discussion  
on 27 May 2004

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

**Draft Committee Stage Amendments – Part I**

**Purpose**

This paper highlights some of the main provisions in the set of draft Committee Stage Amendments (CSAs) at the Annex. The draft CSAs primarily seek to provide a statutory basis to allow accredited bodies to make arrangements and placement of infants for unrelated adoption.

**Accreditation and Accreditation Principles**

2. The amendments to Clause 31 of the Bill (new section 26) provide that the Director of Social Welfare (DSW) may accredit a body of persons in accordance with the principles set out in Schedule 4 in relation to local and intercountry adoption. The principles set out in Schedule 4 are basically adapted from the same accreditation principles set out in Articles 10 and 11 of the Convention on Protection of Children and Co-operation in respect of Intercountry Adoption (the Convention). New section 26A further requires the DSW to keep a register of accredited bodies.

**Assessment of Suitability to be Adoptive Parent**

3. The amendments to new section 27 (Clause 31) are now recast into sections 27 and 27A. These provide that prospective adoptive parent(s) may apply to the DSW or an accredited body for an assessment of his/her suitability to be an adoptive parent. These new sections cover both local and intercountry adoptions.

## **Matching and Placement**

4. The amendments to new section 29 (Clause 31) are now recast into sections 29 and 29A. These cover both local and intercountry adoptions. Section 29 concerns the decision on the suitability of an applicant to be an adoptive parent. The placement arrangements are stipulated in new section 29A. Accredited bodies that have prospective adopter(s) for matching with a particular child would participate in the matching process [new section 29A(2)] and the new section is wide enough to enable the involvement of independent persons to participate where appropriate. The DSW would take a decision having due regard to the opinions provided by the accredited bodies mentioned above. Routing the matching decision through the DSW would provide an additional degree of quality assurance to the process.

5. Once a decision is taken that an applicant for local adoption would be a suitable adoptive parent for a particular infant, and the placement of the infant with the applicant would be in the best interests of the infant, the DSW or the accredited body, as the case may be, may proceed with the placement [new section 29A(1)].

6. In the case where the birth parent has given a specific consent for the child to be adopted by a suitable adoptive parent(s) (i.e., someone who is assessed by the DSW or an accredited body as suitable to be a adoptive parent), no matching is required. As a quality assurance, the case would also be routed through the DSW.

7. New section 29A(5) & (6) provide for the termination of placement when such placement is not in the infant's best interests.

## **Review and Appeals**

8. A person who is aggrieved by the decisions of an accredited body in respect of suitability to be an adoptive parent or to terminate a placement may request the DSW to review such decisions (new section 29B). Separately, persons and accredited bodies who are aggrieved by the DSW's decisions may appeal to the Administrative Appeals Board (amendments to new section 30).

**Regulations**

9. New section 32 provides that the Secretary for Health, Welfare and Food may make regulations in relation to the procedures to be followed and the requirements to be observed in relation to assessment and approval of persons as suitable prospective parent, placement of infants and accredited bodies in participating in arrangements for adoption.

**Conclusion**

10. Members may wish to note the contents of this paper in going through the attached set of draft Committee Stage Amendments.

Health, Welfare and Food Bureau  
May 2004

## Annex

## Detailed Committee Stage Amendments – Part I

## 4. Interpretation

Section 2 is amended—

....

(f) by adding—

““accredited body” (獲認可機構) means a body of persons ~~approved-accredited as an accredited body, or the accreditation of which is renewed,~~ under section 26;  
"accreditation" (認可) means an accreditation granted or renewed under section 26.”.

## 9. Section added

The following is added before section 5A—

**“5AA. Applicant’s authorization for criminal record checking**

If a person lodging a notice referred to in section 5(7)(b) is not an applicant under section 27(1) or (2), he shall in the notice include his authorization to the Commissioner of Police in like terms as those set out in section ~~27A(2)27(3)(a) and~~(b), and all of the provisions of section 28 shall apply in relation to the person as if the authorization were ~~an application~~ submitted in accordance with section ~~27(3)27A(2)(b)~~.”.

## 9A. Freeing infant for adoption

Section 5A(4)(b) is repealed and substituted by –

"(b) the Director or an accredited body may place, subject to the provisions of this Ordinance, the infant for adoption;".

## 10. Revocation of section 5A order

Section 5B is amended—

- (a) in subsection (1)(b), by repealing “獲安置給某人領養” and substituting “為領養的目的而獲交託給某人”;
- (b) In subsection (2), ~~by repealing “安置幼年人接受領養” and substituting “為領養的目的而將幼年人交託”~~ by adding "and any accredited body" before "shall not place";
- (c) in subsection (4), by repealing “for the welfare” and substituting “in the best interests”.

## 13. Functions of Court as to adoption orders

Section 8 is amended—

- (a) in subsection (1)—
  - (i) in paragraph (a), by adding “(other than a birth parent referred to in section 5(1)(c) if the adoption order is applied for ~~under by virtue of~~ that section)” after “every person”;
  - (ii) in paragraph (b)—
    - (A) by repealing “for the welfare” and substituting “in the best interests”;
    - (B) by adding “and opinions” after “the wishes”;
    - (C) by repealing “and” at the end;
  - (iii) by adding—
    - “(ba) that section 5AA or ~~27A(2)27(3)~~ (as the case may be) has been complied with and that, taking into account the information obtained by the Director from the Commissioner of Police, the applicant is a fit and proper person to be granted the adoption order; and”;

- (b) in subsection (1A), by repealing “true” and substituting “original”.

## 27. Prohibition of certain payments

Section 22 is amended—

- (a) in subsection (1), by repealing everything after “of an infant” and substituting—
- “, except—
- (a) in consideration of the professional services of a qualified barrister or solicitor within the meaning of the Legal Practitioners Ordinance (Cap. 159);
- (b) payment to an accredited body for its cost and expenses reasonably incurred in connection with the adoption or proposed adoption of an infant **in such amount as may be approved by the Director.**”;
- (b) in subsection (2), by repealing “of \$2,000” and substituting “at level 6”.

## 29. Sections added

The following are added—

### “23A. Restriction on arranging adoption and placing of infant for adoption

- (1) **Subject to subsection (1A) and (1B), no person other than —**

- (a) the Director; or
- (b) an accredited body acting under and in accordance with its accreditation; or
- (c) a person acting in pursuance of an order of the Court,

~~any person authorized by the Director for the purposes of this subsection, a person~~ shall ~~not~~ make arrangements for the adoption of an infant, or place an infant for adoption.;

(1A) Subsection (1) shall not apply if ~~unless~~ the prospective adopter, or (where ~~2 spouses are~~ the prospective adopters ~~are husband and wife~~) either of the prospective adopters, is –

- (a) a parent or relative of the infant; or
- (b) a person who is married to a birth parent of the infant. ~~the person is acting in pursuance of an order of the Court.~~

(1B) If an arrangement leads to the placement of an infant from a place that lies outside Hong Kong but within the People's Republic of China with a person resident in Hong Kong, and the arrangement –

- (a) is made by a person duly authorized by a competent authority of that place to perform functions of making or participating in arrangements for the adoption of infants; and
- (b) is made pursuant to any requirement under the law of adoption of that place,

then subsection (1) shall not apply to the arrangement and the placement.

(2) A person who—

- ~~(a) takes part in the management or control of a body of persons (corporate or unincorporate) which—~~
  - ~~(i) exists wholly or partly for the purpose of making arrangements for the adoption of infants; and~~

~~(ii) — is not a person authorized by the Director for the purposes of subsection (1);~~

- ~~(ab)~~ contravenes subsection (1); or
- ~~(be)~~ receives an infant placed with him in contravention of subsection (1),

shall be guilty of an offence and shall be liable to a fine at level 6 and to imprisonment for 6 months.

~~— (3) — In any proceedings for an offence under subsection (2)(a), proof of things done or of words written, spoken or published (whether or not in the presence of any party to the proceedings) by any person taking part in—~~

- ~~(a) — the management or control of a body of persons (corporate or unincorporate); or~~
- ~~(b) — making arrangements for the adoption of infants on behalf of the body,~~

~~shall be admissible as evidence of the purpose for which that body exists.~~

(34) For the purposes of this section, a person shall be deemed to make arrangements for the adoption of an infant if—

- (a) he enters into any agreement, or makes any arrangement, for ~~;~~ ~~or for facilitating,~~ the adoption of the infant by any other person, ~~whether in the case where~~ the adoption is effected, or is intended to be effected, in Hong Kong or ~~in a place outside the People's Republic of China~~ elsewhere;
- (b) he initiates or takes part in any negotiations of which the purpose or effect is the conclusion of any agreement, or the making of any arrangement, as referred to in paragraph (a); or
- (c) he causes another person to do an act specified in paragraph (a) or (b).

[cf. 1976 c.36 s.11 U.K.; 1976 c.36 s.72(3) U.K.]



**23C. Restriction on removal of infant with a view to adoption**

(1) Except under the authority of an order under section 23B, it shall not be lawful for any person to take or send an infant residing in Hong Kong to any place outside Hong Kong with a view to the adoption of the infant by any person not being a parent or **natural** relative of the infant.

(2) Any person who takes or sends an infant out of Hong Kong to any place in contravention of subsection (1), or makes or takes part in any arrangement for placing an infant with any person for the purpose of adoption as referred to in that subsection, shall be guilty of an offence and shall be liable to a fine at level 6 and to imprisonment for 6 months.

(3) For the purpose of subsection (2), a person shall be deemed to take part in an arrangement for placing an infant with a person if—

- (a) he facilitates the placing of the infant with that person;
- (b) he initiates or takes part in any negotiations of which the purpose or effect is the conclusion of any agreement or the making of any arrangement for such placement; or
- (c) he causes another person to do an act specified in paragraph (a) or (b).”.

[*c.f.* 1976 c. 36 s. 56 U.K.]

**30. ~~Part heading added~~Adoption to be effected under the Ordinance**

~~The following is added immediately before section 25—“PART 7~~

~~MISCELLANEOUS”.~~Section 25 is re-numbered as [section 33].

**31. Sections added**

The following are added –

**"PART 7  
ACCREDITED BODIES, SUITABILITY ASSESSMENT OF  
PROSPECTIVE ADOPTERS, AND PLACEMENT, ETC**

**25. Interpretation of Part 7**

(1) In this Part, unless the context otherwise requires –

"Convention adoption" (公約領養) has the meaning assigned to it by section 20A(1)(a);

"local adoption" (本地領養) means the adoption of an infant resident in Hong Kong by a person resident in Hong Kong;

"non-Convention adoption" (非公約領養) means –

- (a) the adoption of an infant resident in a place outside the People's Republic of China by a person resident in Hong Kong, other than a Convention adoption;  
or
- (b) the adoption of an infant resident in Hong Kong by a person resident in a place outside the People's Republic of China, other than a Convention adoption.

"adoption of overseas children" (海外兒童領養) means an adoption within the meaning of paragraph (a) of the definition of "non-Convention adoption".

**“26. Accredited bodies**

(1) The Director may, in accordance with the principles set

out in Schedule 4, ~~approve-accredit~~, or renew the accreditation, of a body of persons (corporate or unincorporate) as an accredited body in relation to -

- (a) Convention adoption;
- (b) non-Convention adoption; or
- (c) local adoption.

~~in accordance with the principles set out in Articles 10 and 11 of the Convention.~~

(2) An accreditation may be subject to such conditions as the Director may reasonably impose.

(3) The Director may, at any time by notice in writing served on the accredited body, amend or revoke any such condition, or impose new conditions, as may be reasonable in the circumstances.

(4) The Director may, at any time by notice in writing served on an accredited body, revoke or suspend its accreditation if -

- (a) in his opinion, the accredited body is operated in a manner that is inconsistent with the principles set out in Schedule 4; or
- (b) on the ground that any condition of the accreditation has not been or is not being complied with by the accredited body.

(5) An accredited body may, while acting under and in accordance with its accreditation and subject to the provisions of this Ordinance, make arrangements for the adoption of infants or place infants for adoption.

~~(2) Without prejudice to the operation of section 20E(4), an accredited body may, subject to the prior authorization of the Director, make arrangements for —~~

- ~~(a) the adoption in a place outside Hong Kong of an infant residing in Hong Kong, and in so acting~~

~~pursuant to the prior authorization, the accredited body shall be regarded as a person authorized by the Director for the purposes of sections 23A(1) and 23B(1);~~

~~(b) the adoption in Hong Kong of an infant residing out of Hong Kong, or place such an infant for such an adoption, and in so acting pursuant to the prior authorization, the accredited body shall be regarded as a person authorized by the Director for the purposes of section 23A(1),~~

~~whether the adoption is a Convention adoption (as defined in section 20A(1)) or otherwise.~~

## **26A Register of accredited bodies**

(1) The Director shall cause to be kept, in such form as he may specify, a register of accredited bodies containing-

- (a) the name and address of every accredited body; and
- (b) such other particulars as the Director thinks fit.

(2) The Director shall make such amendment to the register as may be necessary for the purpose of maintaining the accuracy of the register.

(3) The register may be inspected at the office of the Director during office hours by any member of the public.

(4) A certificate purporting to be signed by or for the Director that a body of persons is or is not an accredited body shall be evidence of the facts stated in the certificate until the contrary is proved.

(5) A copy of an entry in the register kept under subsection (1) purporting to be certified under the hand of the Director shall, until the contrary is proved, be admitted in evidence as proof of the facts stated in the certificate as at the date of such certified copy.

**27. ~~Application-Duty to apply~~ for assessment of suitability to be an adoptive parent**

(1) Subject to subsection (2), a person resident in Hong Kong who intends to adopt any infant, other than a person who is –

- (a) a parent or relative of the infant; or
- (b) married to a birth parent of the infant,

~~may shall~~ apply in accordance with section 27A(1) and (2) ~~to the Director~~ for assessment of his suitability to be an adoptive parent ~~of any infant of whom he is neither a parent nor a relative.~~

(2) ~~Where A~~ a person habitually resident in Hong Kong who intends to make an application ~~for Convention adoption under Article 14 of the Convention in accordance with section 20E(2), the person~~ shall apply in accordance with section 27A(1) and (2) ~~to the Director~~ for assessment of his suitability to be an adoptive parent. ~~of any infant who habitually resides in a Contracting State described in that section.~~

**27A. Application for suitability assessment and authorization for checking criminal record, etc.**

(1) An application under section 27 shall be made in a form specified by the Director and submitted –

- (a) in the case of local adoption, to the Director or an accredited body accredited for that purpose;
- (b) in the case of adoption of overseas children or Convention adoption, to the Director or an accredited body authorized by the Director in that

behalf.

(23) ~~An~~The application ~~under subsection (1) or (2)~~ shall be ~~made in writing~~ submitted together with—

- (a) such information as the Director or the accredited body (as the case may be) may reasonably require; and
- (b) a written authorization ~~notice~~ from the applicant to the Commissioner of Police authorizing the Commissioner of Police—
  - (i) to inform the Director whether or not the applicant has at any time been convicted of any offence in Hong Kong or elsewhere; and
  - (ii) if the applicant has a previous conviction, to release to the Director the particulars of the conviction.

(3) On receiving an authorization submitted under subsection (2), the accredited body shall forthwith pass the authorization to the Director for him to proceed in accordance with section 28.

(44) The Director or the accredited body (as the case may be) may refuse to consider an application in respect of which subsections (13) and (2) ~~is~~ are not complied with.

~~(5) On receipt of an application for an assessment under subsection (1) or (2), the Director may—~~

- ~~(a) designate an accredited body to collect such information as the Director may reasonably require to enable him to make the assessment;~~
- ~~(b) in making his assessment, take into account any recommendation made by that body on the basis of such information.~~ *Note : this subsection is turned into*

*the new section 29(2).*

**28. Duty to proceed with criminal record checking, and etc.**

(1) On receipt of *an authorization under section 27A(2)(b), an application submitted to him in accordance with section 27(3)*, the Director shall make inquiries with the Commissioner of Police to ascertain whether or not the applicant has been convicted of any offence in Hong Kong or elsewhere.

(2) For the purposes of subsection (1), the Director may require the applicant to –

(a) attend before a public officer authorized by the Commissioner of Police for the purpose of subsection (3); and

(b) allow that officer to take and record his fingerprints.

(3) For the purpose of verifying whether or not the applicant has been convicted of an offence in Hong Kong or elsewhere, a public officer authorized by the Commissioner of Police for the purpose of this subsection may take and record the fingerprint impressions of the applicant for checking against police records, but any fingerprints obtained pursuant to this subsection shall be destroyed as soon as reasonably practicable after the record checking has been conducted.

(4) The Director may, *for a purpose connected with a person's proposed adoption of an infant*, release *to such person as the Director may consider appropriate* any information *on the person* that the Director has obtained *from the Commissioner of Police* pursuant to section 27A(2)(b)(~~3~~). to –

(a) *the Government, or a government in a place outside Hong Kong;*

(b) *an accredited body, or a person duly authorized (howsoever described) by a competent authority in a place outside the People's Republic of China to*

- make or participate in making arrangements for adoption of infants;
- (c) any court having jurisdiction to make the adoption order;
- (d) any other person who, in the opinion of the Director, reasonably requires the information to facilitate the process of the proposed adoption; or
- (e) the Administrative Appeals Board.

**29. Director's Suitability assessment  
; prospective adoptive parent and placement**

(1) After considering an application ~~made~~ under ~~section 27(1) or (2)~~ section 27A(1)(a) for local adoption, or under section 27A(1)(b) for adoption of overseas children or Convention adoption, the Director or the accredited body (as the case may be) may decide that the applicant is suitable, or is not suitable, ~~(as the case may be)~~, to be an adoptive parent.

(2) In relation to an application made under section 27A(1)(b) for adoption of overseas children or Convention adoption, the Director may -

- (a) designate an accredited body to collect such information as the Director may reasonably require to enable him to make the assessment;
- (b) in making his assessment, take into account any recommendation made by that body on the basis of such information.



## 29A. Placement of infants for adoption

(1) As and when the Director decides, having due regard to any opinion given to him pursuant to subsection (2), that –

- (a) an applicant for local adoption under section 27A(1)(a) would be a suitable adoptive parent for a particular infant; and
- (b) the placement of the infant with the applicant would be in the best interests of the infant,

the Director, or (if the application was made with an accredited body) the accredited body, may proceed with the placement.

(2) Before the Director makes a decision under subsection (1), he shall seek the opinion of each and every accredited body that has proposed any prospective adopter (being an applicant assessed to be a suitable adoptive parent under section 29(1)) for that particular child and such other persons as the Director may consider appropriate.

~~(23)~~ As and when ~~If~~ the Director decides that –

- (a) an applicant under ~~section 27(1) or (2)~~ ~~section~~ section 27A(1)(b) for adoption ~~from outside Hong Kong~~ of overseas children or Convention adoption would be a suitable adoptive parent for a particular infant; and ~~is suitable to be an adoptive parent,~~
- (b) the placement of the infant with the applicant would be in the best interests of the infant,

~~he~~ the Director may, ~~as and when the Director is of the opinion that the placement of a particular infant with the applicant would be in the best interests of that infant,~~ proceed with the placement or authorize an accredited body to proceed with the placement.

(4) No infant shall be placed for adoption unless a decision is made in respect of him in accordance with (in the case of local adoption) subsection (1) and (2) or (in the case of adoption of overseas children or

Convention adoption in respect of which Hong Kong acts as the receiving State) subsection (3).

~~(35) Subject to section 6(4), where an infant has been placed with the applicant pursuant to subsection (2) and, If at any time after the Director has placed an infant or authorized an accredited body to place an infant with a prospective adopter, the placement, the Director opines is of the opinion that the continued placement of the infant with the applicant would not be in the infant's best interests, then the Director may terminate the placement or direct the accredited body to terminate the placement.~~

(6) If at any time after an accredited body has placed an infant with a prospective adopter, the accredited body opines that the continued placement would not be in the infant's best interests, then the accredited body may terminate the placement.

## PART 8

### MISCELLANEOUS

#### 29B. Review of decisions of accredited bodies

- (1) If a person is aggrieved by an accredited body's decision –
  - (a) on the assessment of that person's suitability to be an adoptive parent; or
  - (b) to terminate a placement,

the person may, within (in the case of paragraph (a)) 28 days or (in the case of paragraph (b)) 7 clear days of receiving notice of the decision, lodge with the Director a written notice requesting the Director to review the decision.

(2) In any such review, the Director may confirm, vary or reverse the decision under review.

(3) A decision referred to in subsection (1) shall have immediate effect, or have effect from a date specified in the decision (if applicable), notwithstanding any review against the decision.

### 30. Appeals

- (1) If a person is aggrieved by the Director's decision—
- (a) on the assessment of that person's suitability to be an adoptive parent;
  - (b) to terminate a placement;
  - (c) on the person's application to become or continue to be an accredited body; or
  - (d) to suspend or revoke ~~his accreditation~~ ~~the person's status as an accredited body~~,

~~the person may~~, within (in the case of paragraph (b)) 7 clear days or (in other cases) 28 days of receiving notice of the decision, lodge a notice of appeal ~~with the~~ Administrative Appeals Board ~~to appeal against the decision.~~

(2) A decision referred to in subsection (1) shall have immediate effect, or have effect from a date specified in the decision (if applicable), notwithstanding any appeal against the decision.

### 31. Cessation of accreditation

(1) If an accreditation expires without having been renewed, or is revoked or suspended, the Director may, in relation to an adoption case handled by the accredited body concerned ("the defunct accredited body") under its accreditation –

- (a) take over the adoption case; or
- (b) designate any other accredited body to take over the

adoption case.

(2) The Director or an accredited body so designated (as the case may be) may exercise any function that the defunct accredited body would be entitled to exercise under this Ordinance in relation to the adoption case but for the expiration, revocation or suspension.

### **32. Regulation**

The Secretary for Health, Welfare and Food may make regulations –

- (a) to provide for the procedure to be followed, and the requirements to be observed, in relation to –
  - (i) assessment and approval of any person as suitable prospective adoptive parent;
  - (ii) placement of infants for the purpose of adoption;
- (b) in respect of the exercise by accredited bodies of their functions of making or participating in arrangements for the adoption of infants; and
- (c) to provide for incidental and connected matters.

### **32. Schedule substituted**

SCHEDULE 3

[s. 20B]

RELEVANT PROVISIONS OF CONVENTION ON PROTECTION OF  
CHILDREN AND CO-OPERATION IN RESPECT OF  
INTERCOUNTRY ADOPTION

*(Done at the Hague on 29 May 1993)*

....

*Article 10*

~~— Accreditation shall only be granted to and maintained by bodies demonstrating their competence to carry out properly the tasks with which they may be entrusted.~~

*Article 11*

~~— An accredited body shall—~~

- ~~(a) — pursue only non-profit objectives according to such conditions and within such limits as may be established by the competent authorities of the State of accreditation;~~
- ~~(b) — be directed and staffed by persons qualified by their ethical standards and by training or experience to work in the field of intercountry adoption; and~~
- ~~(c) — be subject to supervision by competent authorities of that State as to its composition, operation and financial situation.~~

## **Schedule 4**

### Accreditation principles

1. Accreditation shall only be granted to and maintained by a body of persons (corporate or unincorporate) that demonstrates its competence to carry out properly the tasks with which it may be entrusted.
2. An accredited body shall –
  - (a) pursue only non-profit objectives according to such conditions and within such limits as may be established by the Director;
  - (b) be directed and staffed by persons qualified by their ethical standards and by training or experience to work in the field of adoption in relation to which the accreditation is granted or renewed;
  - (c) be subject to supervision by the Director as to its composition, operation and financial situation; and
  - (d) (without affecting the generality of paragraph (b)), employ social workers registered under the Social Workers' Registration Ordinance (Cap. 505) to undertake home assessment and placement tasks in adoption.