

For discussion  
on 27 May 2004

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

**Draft Committee Stage Amendments – Part II**

**Purpose**

This paper highlights two main provisions in the enclosed second batch of draft Committee Stage Amendments (CSAs). They relate to the adoption of a female child by a sole male applicant and provisions relating to step parent adoption. Most of the other draft CSAs are textual amendments.

**Adoption of a Female Child by a Sole Male Applicant**

2. At present, section 5(3) of the Adoption Ordinance provides that ‘an adoption order shall not be made in respect of an infant who is a female in favour of a sole applicant who is a male, unless the Court is satisfied that there are special circumstances which justify as an exceptional measure the making of an adoption order.’ Clause 8 of the Bill seeks to repeal section 5(3), so that the Court would consider whether an adoption order should be granted having regard to the best interest of the child. Such proposed deletion removes this seemingly discriminatory provision. It was noted that a similar provision in the English Adoption Act was removed in 1975 and a recommendation had also been made in New Zealand to remove a similar restriction stipulated in their statute. Of the remaining major common law jurisdictions, only the Singaporean legislation contains a provision similar to our section 5(3).

3. In considering the proposed deletion, Members have expressed concern and questioned whether such deletion might erode the protection rendered to young female adoptees from possible sexual abuse by a sole male applicant. Members noted that notwithstanding the general limitation on adoption by a sole male applicant under the Ordinance, the court may still make an adoption order in respect of a sole male applicant

and a female adoptee provided that there are special circumstances which justify as an exceptional measure the making of such order.

4. One of the CSAs in respect of Clause 8 seeks to reinstate section 5(3). However, retaining section 5(3) constitutes a statutory presumption that in adoption, the starting point is in general, it is inappropriate for single men to parent a female child, and conveys such a message to members of the community. Single fathers raising young daughters on their own may take exception to such a view. In such circumstances, a general prohibition against certain classes of persons adopting a child may not be the best approach. Hence in examining this CSA, Members may wish to reconsider whether, instead of adhering to a legal criterion of eligibility, one could rely on professional assessment of suitability because the suitability of applicants to become adoptive parents would be assessed either by the Social Welfare Department or Accredited Bodies, and such adoption orders could ultimately only be made by the Court.

### **Adoption by Step Parents**

5. At present, section 5 of the Adoption Ordinance has the effect that a birth parent who re-marries has to apply to adopt his/her own child from a former marriage if his/her new spouse wishes to adopt the child. Such arrangement has been criticized as 'downgrading' the status of a birth parent to that of an adoptive parent. As a by-product of such existing regime however, where an infant born outside wedlock undergoes the adoption process with his/her birth parent as one of the adoptive parent, the illegitimate status of the child vis a vis his/her birth parent would be removed. Through the process, the birth parent would become the adoptive parent and the child shall stand as a child of the adopter born in lawful wedlock.

6. Clause 8 of the Bill now seeks to amend section 5(1)(c) to enable a step-parent to apply as a sole applicant if his/her spouse is the birth parent of the child. The purpose is to preserve the status of the birth parent who re-marries as mentioned in paragraph 5 above. New section 5(1)(c) provides that the Court shall not make an adoption order unless the applicant is a person who is married to a person who is a birth

parent of the infant and to whom the infant was born in lawful wedlock. This 'lawful wedlock' requirement seeks to ensure that where an infant born outside wedlock is adopted, his/her birth parent would also be required to apply as a joint applicant with the step-parent, thereby the status of the illegitimate child would be changed after the adoption process and stand to the birth parent as a child born in lawful wedlock.

7. In the light of Members' concern over the need for imposing the 'lawful wedlock' requirement in section 5(1)(c)(ii), we have examined the provisions in the Bill carefully in consultation with the Department of Justice. We are of the view that we can do away with the 'lawful wedlock' requirement. The illegitimacy status can still be removed by virtue of the amended section 13 of the Ordinance which provides that in the case of sole application by a step-parent, the child would stand to the step-parent adopter as well as the birth parent as a child born to them in lawful wedlock. A CSA is therefore proposed to remove the redundant requirement in section 5(1)(c)(ii).

## **Conclusion**

8. 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

## Detailed Committee Stage Amendments – Part II

### 4. Interpretation

Section 2 is amended—

...

(b) by repealing the definition of “Court” and substituting—

““Court” (法院) means—

(a) subject to paragraph (b), the Court of First Instance or the District Court;

(b) in Part 5 and section 23B, the Court of First Instance;”;

...

### 7. Commencement and transfer of adoption applications

Section 4A(1) is amended—

(a) by repealing “An application made under section 4 or 20” and substituting “Subject to section 20C(3), an application made under section 4”;

(b) by repealing “開始” and substituting “展開”.

### 8. Restrictions on making adoption orders

Section 5 is amended—

(a) by repealing subsections (1), (2), ~~(3)~~ and (4) and substituting—

“(1) The Court shall not make an adoption order authorizing a sole applicant to adopt ~~in~~

~~respect of~~ an infant ~~under section 4(a)~~ unless the applicant—

- (a) is the mother or father of the infant;
- (b) is a relative of the infant and has attained the age of 21 years;
- (c) is a person who is married to a ~~birth parent of the infant;~~ a ~~person—~~
  - (i) ~~who is a birth parent of the infant;~~ and
  - (ii) ~~to whom the infant was born in lawful wedlock;~~
- or
- (d) has attained the age of 25 years.

(2) The Court shall not make an adoption order ~~authorizing applicants who apply jointly as 2 spouses to adopt in respect of~~ an infant ~~under section 4(b)~~ unless—

- (a) one of the applicants is the mother or father of the infant; or
  - (b) the condition set out in subsection (1)(b) or (d) is satisfied in the case of one of the applicants and the other applicant has attained the age of 21 years.”;
- (b) in subsection (5)(a)—
- (i) by adding “but subject to section 20C(4),” after “in any case,”;

- (ii) by repealing “infant or who” and substituting “infant, or who”;

...

- (g) by repealing subsection (8) and substituting—

“(8) For the purposes of subsection (7), continuous actual custody shall not be regarded as broken during any period when the infant—

- (a) is an in-patient in a hospital;
- (b) resides at a boarding school either in or outside Hong Kong;
- or
- (c) receives full-time education outside Hong Kong.”.

(9) Subject to subsection (8), in computing the period of continuous actual custody for the purposes of subsection (7), the Court shall take into account all circumstances of the case to determine whether any period should or should not be included.

## 12. Evidence of consent of parent or guardian

Section 7(3) is amended—

- (a) by repealing “the mother of an infant” and substituting “a parent of an infant ~~any person whose consent is required by section 5(5)(a)~~”;
- (b) in paragraph (a)—
  - (i) by repealing “6 weeks” and substituting “4 weeks”;
  - (ii) by repealing “該” and substituting “有關”.

## 16. Rights and duties of parents and capacity to marry

Section 13(1) and (2) is repealed and the following substituted—

- “(1) Upon an adoption order being made—
- (a) all rights, duties, obligations and liabilities of the parents (other than a birth parent referred to in section 5(1)(c) if the order is applied for ~~under by virtue of~~ that section) or guardians of the infant in relation to the future custody, maintenance and education of the infant (in this section referred to as “the relevant matters”), including all rights to appoint a guardian to consent or give notice of dissent to marriage, shall be extinguished;
  - (b) all the relevant matters shall vest in and be exercisable by and enforceable against the adopter, as if—
    - (i) where the order is applied for ~~by virtue of under~~ section 5(1)(c), the infant were a child born to the adopter and the birth parent referred to in that section in lawful wedlock;
    - (ii) in any other case, the infant were a child born to the adopter in lawful wedlock; and
  - (c) in respect of the relevant matters—
    - (i) where the order is applied for ~~by virtue of under~~ section 5(1)(c), the infant shall stand to the adopter and that parent exclusively in the position of a child born to them in lawful wedlock;
    - (ii) in any other case, the infant shall stand to the adopter exclusively in the position of a child born to the adopter in lawful wedlock.

...

## 18. Intestacies, wills and settlements

Section 15 is amended—

(a) by repealing subsection (1) and substituting—

“(1) Where, at any time 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—

(a) subject to paragraph (b), as if the adopted person were the child of the adopter born in lawful wedlock and were not the child of any other person; and

(b) where the order was applied for ~~by virtue of under~~ section 5(1)(c), as if the adopted person were the child of the adopter and the birth parent referred to in that section born in lawful wedlock and were not the child of any other person.”;

(b) in subsection (2)(b)—

(i) by adding “subject to subsection (3),” before “any reference”;

(ii) by repealing “natural” and substituting “birth”;

(c) in subsection (2)(c), by repealing everything after “would



be related to” and substituting—

“the adopted person in that degree—

- (i) subject to subparagraph (ii), if the adopted person were the child of the adopter;
- (ii) where the order was applied for ~~by virtue of under~~ section 5(1)(c), if the adopted person were the child of the adopter and the birth parent referred to in that section, born in lawful wedlock and were not the child of any other person.”;

(d) by adding—

“(3) Where the order was applied for ~~by virtue of under~~ section 5(1)(c), subsection (2)(b) shall not apply in relation to the birth parent referred to in that section.”.

## Adoption Rules

### 2. Form of statement and consent

—Rule 10(2)(a) is amended ~~by repealing "or Form 4A" and substituting ", Form 4A or Form 4B—~~

~~(a) in subparagraph (b), by repealing “and”;~~

~~(b) in subparagraph (c), by repealing the full stop and substituting “; and”;~~

~~(c) by adding—~~

~~“(d) the spouse of the applicant where the application for the adoption order is made by virtue of under section 5(1)(c) of the Ordinance, be in Form 4B.”.~~

4. **Forms**

The First Schedule is amended—

- (a) In Form 1—
  - (i) by repealing the year reference of “, 19”;
  - (ii) by adding at the end—

“ANNEX TO FORM 1

*Authorization for Criminal Record Check*

To: Commissioner of Police

In connection with my application for assessment of suitability to be an adoptive parent under Section 5AA\*/27\* of the Adoption Ordinance (Cap. 290), I hereby authorize you, or your designate, to conduct criminal record check on myself and to inform and release to the Director of Social Welfare the particulars of my previous conviction(s) (if any) in Hong Kong or elsewhere.

For the purpose of criminal record check, I also agree to attend before a public officer authorized by you, who may take and record my fingerprints for checking against police records.

For the purpose of conducting the criminal record check, please note my particulars as follows—

Name in full (Block letters) .....

HKID Number .....

Travel Document Number .....

Chinese Character Code .....

Date of Birth (Day/month/year) .....

Place of Birth .....

Signature of

Applicant .....

Signature of

Witness(1) .....

Post title of

Witness .....

Date .....

\* Delete as appropriate

*Note:*

- (1) The witness should be a solicitor practising in Hong Kong, a notary public, or a registered social worker registered under the Social Workers' Registration Ordinance (Cap. 505) working with the Social Welfare Department or an accredited body accredited under the Adoption Ordinance (Cap. 290). ~~a public officer of the Social Welfare Department, HKSAR.~~”;
  - (b) in Form 2—
    - (i) by repealing “19 ,No.” and substituting “20 ,No.”;
    - (ii) by repealing the year reference of “,19”;
  - (c) in Form 3—
    - (i) by repealing the year references of “19” wherever it appears;
    - (ii) by repealing the year references of “,19” where it twice appears;
    - (iii) in paragraph 10, by repealing "care and possession"

- wherever it appears and substituting "actual custody";
- (iii) in the Annex to Form 3, in Notes (5) and (7), by repealing "illegitimate" and substituting "born out of wedlock";
- (d) in Form 4—
- (ia) by repealing "茲因" and substituting "由於";
- (ib) by repealing "因" and substituting "由於";
- (i) by repealing "6 weeks" and substituting "4 weeks";
- (ii) by repealing the year reference of "19";
- (iia) by repealing paragraph (1) and substituting "I understand that the effect of an adoption order is that a parent or guardian will lose all his rights in respect of the maintenance and upbringing of the infant";
- (iii) by repealing "[on condition that the religious persuasion in which the infant is brought up is .....](7)";
- (iv) by repealing "she fully" and substituting "he/she\* fully";
- (v) by repealing "was prepared to surrender her child" and substituting "agreed to the placement of the infant";
- (va) in note (6), by repealing everything before "In all cases" and substituting "The document will not be admissible as evidence unless the signature is attested by a commissioner for oaths (or, if executed outside Hong Kong, by any person for the time being authorized by law in that place to administer an oath for any judicial or other legal purpose, as mentioned in rule 29 of the Adoption

Rules (Cap. 290 sub. leg. A)."

- (vi) by repealing note (7);
  - (vii) by repealing note (8).
- (e) in Form 4A—
- (i) by repealing—
    - “\*(3) I desire that the infant shall be brought up in the ..... religion.
    - \* (4) I do not desire to express a wish with respect to the religious upbringing of the infant.
    - \*Delete (3) or (4).”;
  - (ii) by repealing “was prepared to surrender the infant for adoption and” and substituting “agree to the placement of the infant for adoption and relinquish”;
  - (iii) in Note (4), by repealing **everything before "In all cases" and substituting "The document will not be admissible as evidence unless the signature is attested by a commissioner for oaths (or, if executed outside Hong Kong, by any person for the time being authorized by law in that place to administer an oath for any judicial or other legal purpose, as mentioned in rule 29 of the Adoption Rules (Cap. 290 sub. leg. A)."**~~Where the consenting party is the mother of the infant, the"~~ and substituting **"The"**;
  - (iv) by repealing note (5).
- (f) by adding—

*Specific consent to an adoption order on the application of a step-parent (as sole applicant) in respect of an infant named A.B.(1)*

Whereas an application (by a sole applicant) is to be made [by ..... being the step-parent of the said infant .....] or [ (2)under the serial number .....];

[Whereas the said .....(hereinafter called the infant) is not less than 4 weeks old, having been born in ..... on the ..... ; and is the person to whom the birth certificate(3) now produced and shown to be marked “A” relates](4):

I, the undersigned ..... of .....being the father/mother\* of the infant [as well as the spouse of the said .....](5) hereby state as follows:—

(1) I understand that the effect of an adoption order (6 ) **is that I** will/will not\* ~~deprive~~lose all my rights as a parent in respect of the maintenance and upbringing of the infant.

(2) I understand that, when the application for an adoption order in respect of the said .....

.....  
is heard by the judge, this document may be used as evidence of my consent to the making of the order unless I have notified the court that I no longer consent(7).

(3) I hereby consent to the making of an adoption order in pursuance of the said application.

.....  
(Signature)

Signed at (8) ..... on .....  
..... by the said .....  
.....who satisfied me that he/she\* fully understood the nature of the foregoing statement and the effect of an adoption order.

Before me (Signature) .....

(Address) .....

.....  
(Description)(7) .....

\* Delete as appropriate

Notes:

- (1) Insert name as known to the consenting party.
- (2) Where a serial number has been obtained for the application under rule 6 of the Adoption Rules (Cap. 290 sub. leg. A), complete the entry contained in the second square brackets.
- (3) If the infant has previously been adopted, a certified

copy of the entry in the Adopted Children Register should be attached, and not a certified copy of the original entry in the registers of births; and the description of the consenting party should include the words “by adoption” or “經領養” where appropriate.

- (4) Delete the words in square bracket except where the consenting party is the mother of the infant.
- (5) Delete the words in square bracket except where the consenting party is the spouse of the applicant.
- (6) Except where the consenting party is the spouse of the applicant AND the birth parent of the infant, the effect of an adoption order **is that a parent will lose all his will deprive a parent of all** rights in respect of the maintenance and upbringing of the infant.
- (7) The document will not be admissible as evidence unless the signature is attested by a Commissioner for Oaths [or, if executed outside Hong Kong, by **any person for the time being authorized by law in that place to administer an oath for any judicial or other legal purpose, as mentioned in rule 29 of an officer authorized by** the Adoption Rules (Cap. 290 sub. leg. A) **—see note (8)**]. In all cases the document if so attested will be admissible without further proof of execution.

~~(8) —Where the document is executed outside Hong Kong, attestation in accordance with rule 29 of the Adoption Rules (Cap. 290 sub. leg. A), has the same effect as attestation by a Commissioner for Oaths.”;~~