

Proposed Changes to the Committee Stage Amendments
discussed at the meeting on 7 June 2004

31 (a) By adding before the proposed section 26 –

"PART 7

ACCREDITED BODIES, SUITABILITY ASSESSMENT OF
PROSPECTIVE ADOPTERS, AND PLACEMENT, ETC.

25. Interpretation of Part 7

In this Part [and Schedule 4](#), unless the context otherwise requires –

"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";

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

"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."

- (b) By deleting the proposed sections 26, 27, 28 and 29 and substituting –

"26. Accredited bodies

(1) The Director may, in accordance with the principles set out in ~~Schedule 4~~Articles 10 and 11 of the Convention (as defined in section 20A(1)), accredit, or renew the accreditation, of a body of persons (corporate or unincorporate) as an accredited body in relation to –

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

~~(2) The Director may, in accordance with the principles set out in Schedule 4, accredit, or renew the accreditation, of a body of persons (corporate or unincorporate) as an accredited body in relation to local adoption.~~

~~(32)~~ An accreditation may be subject to such conditions as the Director may reasonably impose.

~~(43)~~ Unless revoked or suspended, an accreditation shall be valid for a period of ~~four~~4 years or such lesser period as the Director may determine when he grants or renews the accreditation.

~~(54)~~ 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.

(6) 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 and proceed with their placement for adoption.

26A. Revocation or suspension of accreditation

~~(5)~~—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 [in accordance with which it is accredited under section 26\(1\) or \(2\) set out in Schedule 4](#); or
- (b) any condition of the accreditation has not been or is not being complied with by the accredited body.

26BA. 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. 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 parent of the infant,

shall apply in accordance with section 27A(1) and (2) for assessment of his suitability to be an adoptive parent.

(2) A person habitually resident in Hong Kong

who intends to make an application for Convention adoption shall apply in accordance with section 27A(1) and (2) for assessment of his suitability to be an adoptive parent.

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.

(2) The application shall be 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 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.

(2A) In the case of local adoption where the application is submitted to an accredited body, the applicant may, in the authorization, designate the accredited body in substitution of the Director for the purposes of sub-paragraphs (i) and (ii) of subsection (2)(b).

(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.

(4) The Director or the accredited body (as the case may be) may refuse to consider an application in respect of which subsections (1) and (2) are not complied with.

28. Criminal record checking, ~~and~~ etc.

(1) On receipt of an authorization under section 27A(2)(b), the Director shall forthwith pass to make inquiries with the Commissioner of Police –

(a) the authorization; and

(b) (if an accredited body is designated in

~~the authorization pursuant to section 27A(2A)) the Director's certification to the effect that the authorization is submitted in support of an application for adoption. 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 may be required 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 or an accredited body may, for a purpose connected with a person's proposed adoption of an infant, release any information on the person that the

Director [or the accredited body](#) has obtained pursuant to section 27A(2)(b) [\(as read with section 27A\(2A\)\)](#) to –

- (a) the Government, or a government in a place outside the People's Republic of China;
- (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;
- (e) the Administrative Appeals Board.

29. Suitability assessment

(1) After considering an application made under section 27A(1)(a) for local adoption, the Director or (if the application is submitted to an accredited body) the accredited body may decide that the applicant is suitable, or is not suitable, to be an adoptive parent.

(2) After considering an application made under section 27A(1)(b) for adoption of overseas children or

Convention adoption, the Director may decide that the applicant is suitable, or is not suitable, to be an adoptive parent.

(3) 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 local adoption where specific consent is given

(1) This section applies to local adoption where consent for the adoption of an infant is given in the prescribed specific form of consent.

(2) If a person is named in the consent as the prospective adopter for the infant and the person applies with the Director for an assessment under section 29(1), then ~~the Director,~~ as and when the Director ~~he~~ has assessed ~~(on the person's application)~~ the person to be a suitable adoptive parent ~~under section 29(1),~~ the Director may proceed with the infant's placement.

(3) If a person is named in the consent as the

prospective adopter for the infant and the person applies with an accredited body for an assessment under section 29(1), then ~~an accredited body~~, as and when ~~it the accredited body~~ has assessed ~~(on the person's application)~~ the person to be a suitable adoptive parent ~~under section 29(1)~~, the accredited body may proceed with the infant's placement.

29B. Placement of infants for local adoption where general consent is given

(1) This section applies to local adoption where consent for the adoption of an infant is given in the prescribed general form of consent.

(2) As and when the Director decides, having due regard to any opinion given to him pursuant to subsection (3), that –

- (a) an applicant assessed to be a suitable adoptive parent under section 29(1) 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.

(3) Before the Director makes a decision under subsection (2), he shall seek the opinion of each and every

accredited body that has proposed any prospective adopter for that particular infant and such other persons as the Director may consider appropriate.

29C. Placement of infants for adoptions other than local adoption

(1) This section applies to adoption of overseas children and Convention adoption.

(2) As and when the Director decides that –

(a) an applicant assessed to be a suitable adoptive parent under section 29(2) 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 may proceed with the placement, or authorize an accredited body to proceed with the placement.

29D. Termination of placement

(1) If at any time after the Director has proceeded with an infant's placement or authorized an accredited body to proceed with an infant's placement with a prospective adopter, the Director opines that to continue the placement 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.

(2) If at any time after an accredited body has

proceeded with an infant's placement with a prospective adopter for local adoption, pursuant to section 29A(3) or 29B(2), the accredited body opines that to continue the placement would not be in the best interests of the infant, then the accredited body may terminate the placement.

PART 8
MISCELLANEOUS

29E. 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."

- (c) In the proposed section 30 –
 - (i) by renumbering it as section 30(1);

- (ii) in subsection (1) –
 - (A) in paragraph (d), by deleting " the person's status as an accredited body" and substituting "his accreditation";
 - (B) by deleting everything after ", within" and substituting "(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.";
 - (C) by deleting "任何人如因署長以下" and substituting "如任何人因署長就以下各項作出";

- (iii) by adding –

"(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."

- (d) By adding –

"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 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 their placement; ~~and~~
- (c) to provide for matters related to the grant or renewal of accreditation; and
- (de) to provide for incidental and connected matters."

New

By adding –

"31A. Sections added

The following are added –

"34. Transitional provisions for section 23A

(1) If a person has filed, before the commencement of section 23A, a notice under section 5(7)(b) stating his intention to apply for an adoption order in respect of an infant, then section 23A shall not apply to any arrangement or placement for the adoption of the infant by the person.

(2) If an infant has been placed with a person for an adoption to be effected in a place outside the People's Republic of China and the adoption has not yet been effected as at the commencement of section 23A, then that section shall not apply to any arrangement or placement for the infant's adoption by the person.

35. Transitional provisions for Part 7

(1) Part 7 shall not apply in relation to any arrangement or placement for adoption referred to in section 34.

(2) If the Director has assessed that a person is suitable to be an adoptive parent and the assessment remains valid as at the commencement of section 27, then it may be taken as an assessment made by the Director under section 29, and accordingly, the provisions of Part 7 shall apply in relation to any decision made after that commencement for placing a particular infant with that person.

(3) If a prospective adopter for the adoption of

an infant has not filed, as at the commencement of Part 7, a notice under section 5(7)(b) stating his intention to apply for an adoption order in respect of the infant, then subject to subsection (2), the prospective adopter shall apply for an assessment under section 27 and accordingly, the provisions of that Part shall apply in relation to the proposed adoption in all respects."."

32

~~(a) In the proposed Schedule 3, in Chapter III, by deleting Articles 10 and 11.~~

~~(b) By adding –~~

"SCHEDULE 4 [ss. 25 & 26(2)]

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 tasks related to local adoption services, having regard to –

~~(a) the experience that it has in adoption services or child welfare services;~~

~~and~~

~~(b) its financial status and the resources (financial or otherwise) that may be made available for providing local adoption services.~~

~~properly the tasks with which it may be entrusted.~~

2. An accredited body ~~shall~~—

~~(a) shall be a charitable institution that is exempted from tax under section 88 of the Inland Revenue Ordinance (Cap. 112);~~

~~(b) shall ensure that its local adoption services are undertaken by a team of staff designated by it for such services, and directed by persons qualified by their ethical standards and by training or experience to work in the field of local adoption;~~

~~(c) shall ensure that the team so designated includes registered social workers (as defined in the Social Workers' Registration Ordinance (Cap. 505)), and that only those registered social workers may undertake home assessment and placement tasks; and~~

~~(d) shall establish effective internal procedures to supervise its operation related to local adoption.~~

~~(a) pursue only non-profit objectives according to such conditions and within such limits as may be~~

~~established by the competent authorities;~~

~~(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; and~~

~~(c) be subject to supervision by the competent authorities as to its composition, operation and financial situation."~~

Schedule By adding immediately before "**Adoption Rules**" –
"Employment Ordinance

1A. **Interpretation**

Section 2(1) of the Employment Ordinance (Cap. 57) is amended, in the definition of "issue";–

(a) ___ in paragraph (b), -by adding "~~(subject to paragraph (ba))~~" after "but";

(b) by adding –

"(ba) includes a child of the employee adopted by another person otherwise than under an adoption order granted under ~~paragraph (c) of~~ section 5(1)~~(e)~~ of the Adoption Ordinance (Cap. 290) where the employee is the

parent referred to in that paragraph."
after "another person".

Intestates' Estates Ordinance

1B. Interpretation

Section 2(2) of the Intestates' Estates Ordinance (Cap. 73) is amended –

(a) in subsection (2) –

(ia) in paragraph (b), by adding "or 20F" after "section 17";

(iib) by adding ", subject to subsection (2A)."
after "shall be treated";

(b) by adding –

"(2A) For the purposes of this Ordinance, a person adopted under an ~~or (if the adoption order was granted to the adopter~~ under paragraph (c) of section 5(1) of ~~that the Adoption~~ Ordinance (Cap. 290) shall be treated as the child of the adopter and the parent referred to in that paragraph, and not as the child of any other person, and all relationships to the adopted person shall be deduced accordingly." ~~after "the child of the adopter,"~~

Surviving Spouses' and Children's Pensions Ordinance

1C. Interpretation

Section 2(1) of the Surviving Spouses' and Children's Pensions

Ordinance (Cap. 79) is amended, in the definition of "child", by repealing everything after "in relation to" and substituting –

"a contributor –

(a) includes –

(i) an illegitimate child, a step-child and a child adopted by the contributor; and

(ii) a child of the contributor adopted by another person under an adoption order granted under ~~paragraph (c) of section 5(1) of the Adoption Ordinance (Cap. 290) where the contributor is the parent referred to in that paragraph; but~~

(b) subject to paragraph (a)(ii) ~~and~~ except as provided in subsection (5)(ac), does not include a child of the contributor adopted by another person;"

by adding "otherwise than under an adoption order granted under section 5(1)(c) of the Adoption Ordinance (Cap. 290)" after "another person".

Pensions Ordinance

1D. Pensions to dependants when an officer dies on duty

Section 18(3)(e)(~~†~~) of the Pensions Ordinance (Cap. 89) is amended =

(a) in subparagraph (i) –

(i) by adding "~~(subject to subparagraph (ia))~~" after "other than";

(ii) by repealing "and" at the end;

(b) by adding –

"(ia) any child of the officer adopted by another person under an adoption order granted under paragraph (c) of section 5(1) of the Adoption Ordinance (Cap. 290) where the officer is the parent referred to in that paragraph; and".

~~by repealing "other than a child of an officer adopted by another person" and substituting "except a child of an officer adopted by another person otherwise than under an adoption order granted under section 5(1)(c) of the Adoption Ordinance (Cap. 290)".~~

Widows and Orphans Pension Ordinance

1E. Interpretation

Section 2 of the Widows and Orphans Pension Ordinance (Cap. 94) is amended –

- (a) in subsection (1), in the definition of "child", by adding "or 20F" after "section 17";
- (b) in subsection (5), by repealing everything after "290)" and before ", –" and substituting "other than section 5(1)(c) of that Ordinance, or in such other manner as is referred to in section 17 or 20F of that Ordinance_→".

Pension Benefits Ordinance

1F. Interpretation

Section 2(1) of the Pension Benefits Ordinance (Cap. 99) is amended, in the definition of "child", by repealing everything after "in relation to" and substituting –

"an officer –

(a) includes –

(i) an illegitimate child, a step-child and a child adopted by the officer; and

(ii) a child of the officer adopted by another person under an adoption order granted under ~~paragraph (c) of~~ section 5(1) of the Adoption Ordinance (Cap. 290) where the officer is the parent referred to in that ~~paragraph; but~~

(b) subject to paragraph (a)(ii), does not include a child of the officer adopted by another person;".

~~adding "otherwise than under an adoption order granted under section 5(1)(c) of the Adoption Ordinance (Cap. 290)" after "another person".~~

Auxiliary Forces Pay and Allowances Ordinance

1G. Interpretation

Section 2(1) of the Auxiliary Forces Pay and Allowances Ordinance (Cap. 254) is amended, in the definition of "child"; =

(a) in paragraph (a); =

(i) by adding "~~(subject to paragraph (aa))~~" after "other than";

(ii) by repealing "or" at the end;

(c) by adding –

"(aa) any child of the member adopted by another person under an adoption order granted under paragraph (c) of section 5(1) of the Adoption Ordinance (Cap. 290) where the member is the parent referred to in that paragraph; or".

~~by repealing "other than a child of the member adopted by another person" and substituting "except a child of the member adopted by another person otherwise than under an adoption order granted under section 5(1)(c) of the Adoption Ordinance (Cap. 290)".~~

Employees' Compensation Ordinance

1H. Interpretation

Section 3(2) of the Employees' Compensation Ordinance (Cap. 282) is amended –

(a) in paragraph (a) –

(i) in subparagraph (ii); by repealing "of the Adoption Ordinance (Cap. 290)" and substituting "or 20F of that Ordinance" ~~after "section 17"~~;

(ii) in subparagraph ;(iii) by repealing "and" at the end;

(b) in paragraph (b) –

(i) -by adding "subject to paragraph (c)," before

"any person so adopted";

(ii) by repealing the full stop and substituting ";
and";

(c) by adding –

"(c) any person adopted under an
adoption order granted under
paragraph (c) of section 5(1) of the
Adoption Ordinance (Cap. 290) shall
be treated as the child of the adopter
and the parent referred to in that
paragraph, and not as the child of any
other person, and all relationships to
the adopted person shall be deduced
accordingly."

~~"or (if the adoption order was granted to the adopter under~~
~~paragraph (c) of section 5(1) of that Ordinance) as~~
~~the child of the adopter and the parent referred to in~~
~~that paragraph," after "the child of the adopter,"."~~

Schedule,
section 2

By deleting everything after "Rule 10(2)" and substituting "(a) is amended by repealing "or Form 4A" and substituting ", Form 4A or Form 4B".".

Schedule,
section 4

(a) In paragraph (a)(ii), in ~~Note (1) of~~ the proposed ANNEX TO FORM 1,

(i) by repealing "the Director of Social Welfare" and
substituting –

"the Director of Social Welfare*/(name of accredited

body*)² of _____
_____ (address)";

(ii) in Note (1), by deleting everything after "should be" and substituting "a solicitor practising in Hong Kong, a notary public, or a registered social worker working with the Social Welfare Department or an accredited body accredited under the Adoption Ordinance (Cap. 290).";

(iii) by adding under the heading of "Note:" the following –
"(2) If the proposed adoption is processed
by a body of persons accredited for local adoption
under the Adoption Ordinance (Cap. 290), the
applicant may insert the name of the accredited
body as the recipient of the information."

Schedule By adding immediately before "**Administrative Appeals Board Ordinance**" –

"Employees Compensation Assistance Ordinance

5A. Interpretation

Section 2(2) of the Employees Compensation Assistance Ordinance (Cap. 365) is amended –

- (a) in paragraph (a) =
- (i) in subparagraph (ii), by repealing "of the Adoption Ordinance (Cap. 290)" and substituting "or 20F of that Ordinance" ~~after~~ "section 17";
- (ii) in subparagraph (iii) by repealing "and" at

the end:

- (b) in paragraph (b), ~~–~~
- (i) by adding "subject to paragraph (c)," before "any person so adopted";
 - (ii) by repealing the full stop and substituting "; and";
- (c) by adding –
- "(c) any person adopted under an adoption order granted under paragraph (c) of section 5(1) of the Adoption Ordinance (Cap. 290) shall be treated as the child of the adopter and the parent referred to in that paragraph, and not as the child of any other person, and all relationships to the adopted person shall be deduced accordingly."
- ~~by adding "or (if the adoption order was granted to the adopter under paragraph (c) of section 5(1) of that Ordinance) as the child of the adopter and the parent referred to in that paragraph," after "the child of the adopter,".~~

Pension Benefits (Judicial Officers) Ordinance

5B. Interpretation

Section 2(1) of the Pension Benefits (Judicial Officers)

Ordinance (Cap. 401) is amended, in the definition of "child", by repealing everything after "in relation to" and substituting –

"an officer –

(a) includes –

(i) an illegitimate child, a step-child and a child adopted by the officer; and

(ii) a child of the officer adopted by another person under an adoption order granted under section 5(1)(c) of the Adoption Ordinance (Cap. 290) where the officer is the parent referred to in that section; and

(b) subject to paragraph (a)(ii), does not include a child of the officer adopted by another person;".

adding "otherwise than under an adoption order granted under section 5(1)(c) of the Adoption Ordinance (Cap. 290)" after "another person".".