

立法會
Legislative Council

LC Paper No. LS18/06-07

**Paper for the House Committee Meeting
on 15 December 2006**

**Legal Service Division Report on
Race Discrimination Bill**

I. SUMMARY

1. **Objects of the Bill**
 - (a) To render racial discrimination, harassment and vilification unlawful; and to prohibit serious racial vilification of persons;
 - (b) to extend the jurisdiction of the Equal Opportunities Commission to cover such unlawful acts; and to confer on it the function of eliminating such discrimination, harassment and vilification and promoting equality and harmony between different races;
 - (c) to extend unlawful sexual harassment under the Sex Discrimination Ordinance to cover conduct rendering the environment in which a person works, studies or undergoes training sexually hostile or intimidating;
 - (d) to make other consequential and related amendments to legislation; and for related purposes.

2. **Comments**
 - (a) The Bill is modelled on the English Race Relations Act 1976.
 - (b) A number of exceptions with local coloration are made to preserve the existing state of affairs.
 - (c) The limitation period for instituting proceedings is generally 24 months, but EOC may not investigate a complaint made 12 months after the act complained of.

3. **Public Consultation & Consultation with LegCo Panel**

The Administration conducted public consultation on "Legislating Against Racial Discrimination" during the period between 16 September 2004 and 8 February 2005. The Panel was briefed on the results of the public consultation exercise and the main provisions of the Bill at its meetings on 8 July 2005 and 10 February 2006 respectively.

4. **Conclusion**

Since the Bill is the first major legislation against racial discrimination, it is recommended that a Bills Committee be formed to study the Bill in detail.

II. REPORT

Objects of the Bill

- (a) To render discrimination, harassment and vilification, on the ground of race, unlawful; and to prohibit serious vilification of persons on that ground;
- (b) to extend the jurisdiction of the Equal Opportunities Commission (EOC) to include such unlawful acts; and to confer on EOC the function of eliminating such discrimination, harassment and vilification and promoting equality and harmony between people of different races;
- (c) to extend unlawful sexual harassment under the Sex Discrimination Ordinance (Cap. 480) (SDO) to cover rendering the environment in which a person works, studies or undergoes training sexually hostile or intimidating;
- (d) to make other consequential and related amendments to legislation; and for related purposes.

LegCo Brief Reference

2. File Ref.: HAB/CR/1/19/102 issued by the Home Affairs Bureau dated 29 November 2006.

Date of First Reading

3. 13 December 2006.

Comments

4. The Bill is modelled on the English Race Relations Act 1976 (the Act). It has 9 parts and 5 schedules:-.

Part	Brief Description of Contents
1	Short title, interpretation and application
2	Key concepts and terms of discrimination and harassment on the ground of race
3	Specific provisions and exceptions for the employment field
4	Discrimination and harassment relating to education, provision of goods, facilities, services and premises, voluntary bodies and cemeteries and their respective exceptions
5	Other unlawful acts
6	General exceptions
7	Functions, powers and duties of EOC in relation to racial discrimination and harassment
8	Procedures and means of enforcing the provisions of the Bill

9	Miscellaneous matters including consequential amendments to other legislation and the amendments to SDO
---	---

The Bill, if enacted, will come into operation on a date to be appointed by the Secretary for Home Affairs by notice published in the Gazette.

5. Although most of the provisions of the Bill have followed the Act closely, the Bill also contains a number of exceptions of local coloration, the purpose of which appears to be the preservation of the existing state of affairs. Some of the more significant exceptions are:-

Clause	Summary of exception	Remarks
10(3) & (8)	Employment of not exceeding 5 persons is excepted for 3 years from discrimination in employment.	The Chief Executive in Council would be empowered under clause 10(10) to vary the number of employees and the end date of the exception.
10(7)	Racial discrimination relating to employment to perform domestic duties on the employer's or his or her near relative's residence is excepted.	This exception has no time limit.
14(1)(a)	Employees of existing employment specified in Schedule 2 may enjoy overseas terms of employment which is different from local terms of employment.	The provisions in Schedule 2 have the effect of preserving the status quo.
14(1)(b)	Differential treatments of employees on overseas terms of employment according to different nationality are allowed.	This exception has no time limit.
30	Small premises, i.e. residential accommodation for not exceeding 2 households or 6 persons in addition to the landlord or his or her near relative, are excepted.	This exception has no time limit and the Chief Executive in Council would be empowered under clause 30(3) to vary the number of persons in sub-clause (2).
32	Cemetery, crematorium and columbarium are excepted.	No time limit.
55	Part 3, 4 or 5 does not affect any immigration legislation governing the entry into, stay in and departure from Hong Kong of a person not having the right to enter and remain in Hong Kong.	No time limit.
57	Matters governed by and the operation of New Territories Ordinance (Cap. 97) and New Territories Leases (Extension) Ordinance (Cap. 150) are excepted.	No time limit.

58	The use or failure to use any language in any circumstances would not be an unlawful act.	No time limit.
----	---	----------------

The exceptions contained in the Bill are listed and briefly explained in a table attached as Annex B to the LegCo Brief.

6. Legal proceedings for the enforcement of the provisions of the Bill (other than criminal prosecution) must generally be brought within 24 months of when the act complained of was done or if there is a report made under clause 68, of the day on which the report is published or made available for inspection (Clause 81). However, if a complaint is only made after 12 months has elapsed from the time when the act complained of was done, EOC has the discretion to decide not to conduct an investigation into the act complaint of (clause 79(4)(c)).

7. Some provisions of the Bill have made clear that they would apply to matters arising prior to the commencement of the enacted Bill. The Bill does not intend to have retrospective effect, but whether any conduct is continuing after the commencement date would be a question of fact in each case.

Public Consultation

8. The Administration issued a consultation paper entitled “Legislating Against Racial Discrimination” (the consultation paper) for public comments on 16 September 2004. According to the LegCo Brief, when the public consultation ended on 8 February 2005, 240 submissions had been received and the Administration had attended a total of 67 meetings with or briefings for advisory and statutory bodies, business and employers’ associations, non-governmental organizations, representatives of ethnic minorities, human rights groups, the media and District Councils. The majority expressed support for the legislative proposal.

Consultation with LegCo Panel

9. The Panel on Home Affairs was briefed by the Administration on the consultation paper and on the results of the public consultation exercise at its meetings on 9 November 2004 and 8 July 2005 respectively. The Panel also received views from 22 deputations including EOC, the British Chamber of Commerce, the Employers’ Federation of Hong Kong, ethnic minority bodies and concern groups on the consultation paper at its meeting on 11 December 2004. Deputations unanimously expressed support in principle for legislating against racial discrimination.

10. At the Panel’s request, the Administration briefed the Panel on the main provisions of the Bill on 10 February 2006. Some members were of the view that the scope of the Bill should be extended to cover discrimination against new arrivals from

the Mainland. They considered that such discrimination, which very often arose from differences in cultural backgrounds and language barrier, was similar to racial discrimination in nature. They expressed concern that, as the problem of discrimination against new arrivals from the Mainland was serious, failure to enact legislation would encourage discriminatory acts against them.

11. Some members queried the need to exempt small companies and employers having less than 6 employees for 3 years after enactment of the Bill. They considered that a transitional period of one year was adequate because a code of practice would be issued to provide practical guidance on compliance with the enacted Bill. Reservations were also expressed about the proposed exception provided for immigration legislation.

12. Some members considered that there were still voices in the community questioning the credibility of EOC, because of past controversies surrounding EOC. They urged the Administration to take measures to restore EOC's credibility and enhance the transparency of the process of appointment of the EOC Chairperson. Members may wish to refer to the minutes of the Panel meetings on 9 November 2004, 11 December 2004, 8 July 2005 and 10 February 2006 (issued vide LC Paper Nos. CB(2)343/04-05, CB(2)1001/04-05, CB(2)465/05-06 and CB(2)1294/05-06 respectively) for details of the discussions.

Conclusion

13. Since the Bill is the first major legislation against racial discrimination and, if enacted, will have significant impact on the legal environment for various businesses and services in Hong Kong, it is recommended that a Bills Committee be formed to study the Bill in detail.

Prepared by

KAU Kin-wah
Assistant Legal Adviser
Legislative Council Secretariat
11 December 2006