

立法會
Legislative Council

LC Paper No. CB(2)504/09-10
(These minutes have been
seen by the Administration)

Ref : CB2/BC/6/08

Bills Committee on Domestic Violence (Amendment) Bill 2009

**Minutes of the sixth meeting
held on Tuesday, 17 November 2009, at 8:30 am
in Conference Room A of the Legislative Council Building**

- Members present** : Hon LEE Cheuk-yan (Chairman)
Dr Hon Margaret NG
Hon Miriam LAU Kin-ye, GBS, JP
Hon Emily LAU Wai-hing, JP
Hon TAM Yiu-chung, GBS, JP
Hon LI Fung-ying, BBS, JP
Hon Frederick FUNG Kin-kee, SBS, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon Alan LEONG Kah-kit, SC
Hon Ronny TONG Ka-wah, SC
Hon Cyd HO Sau-lan
Hon Starry LEE Wai-king
Dr Hon Priscilla LEUNG Mei-fun
Hon CHEUNG Kwok-che
Hon WONG Sing-chi
- Members absent** : Hon James TO Kun-sun
Hon Albert CHAN Wai-yip
Hon LEUNG Kwok-hung
Hon Paul CHAN Mo-po, MH, JP
Hon Paul TSE Wai-chun
- Public Officers attending** : Miss Eliza LEE
Deputy Secretary for Labour and Welfare (Welfare)1
- Mrs Alison LAU
Principal Assistant Secretary for Labour and Welfare
(Welfare)2

Mrs Anna MAK
Assistant Director for Social Welfare
(Family and Child Welfare)

Ms Fanny IP
Senior Assistant Law Draftsman

Clerk in attendance : Miss Betty MA
Chief Council Secretary (2) 4

Staff in attendance : Mr YICK Wing-kin
Assistant Legal Adviser 8

Miss Florence WONG
Senior Council Secretary (2)5

Miss Maggie CHIU
Legislative Assistant (2)4

Action

I. Meeting with the Administration

[The Bill, Legislative Council Brief, LC Paper Nos. CB(2)279/09-10(01) to (02) and CB(2)251/09-10(01) to (03)]

The Bills Committee deliberated (index of proceedings attached at **Annex**).

2. Members completed the clause-by-clause examination of the Bill.

Committee Stage amendments (CSAs) proposed to the Bill

3. Deputy Secretary for Labour and Welfare (Welfare)¹ took members through the draft CSAs to be moved by the Administration (LC Paper No. CB(2)251/09-10(01)). Members agreed to the proposed amendments.

4. Members noted at the meeting that Dr Margaret NG gave a prior notice to propose an amendment to the proposed definition of "cohabitation relationship" to the effect that "cohabitation relationship includes a cohabitation relationship between two persons of the same sex and such a relationship which has come to an end". Although Dr NG did not invite the Bills Committee to consider or show support for her proposed amendment to the Bill, members requested the Administration and the legal adviser to the Bills Committee to provide written opinions on the proposed amendment upon receipt of a copy of it.

Action

Commencement date of the amended Domestic Violence Ordinance (DVO)

5. The Administration advised that it would publish the Commencement Notice in the Gazette on 31 December 2009 if the Bill received its Second and Third Reading at the Council meeting on 16 December 2009. As for the commencement date, the Administration had put forward two options, viz. 1 January or 4 February 2010. The Administration's intention was to appoint 1 January 2010 as the commencement date of the amended DVO. However, as the Commencement Notice would only be tabled at the Council meeting on 6 January 2010, to allow time for the scrutiny of the Commencement Notice in accordance with the Interpretation and General Clauses Ordinance (Cap. 1), the Administration proposed 4 February 2010 as an alternative commencement date.

6. Members considered that the amended DVO should come into operation as early as practicable, i.e. 1 January 2010. As it would be for the House Committee (HC) to decide whether a subcommittee should be formed to study the Commencement Notice after it was tabled in the Legislative Council, members agreed to recommend to HC that no subcommittee should be formed to study the Commencement Notice. Members noted that should HC agree with the Bills Committee's recommendation, the Administration would publish in the Gazette the commencement of the amended DVO on 1 January 2010.

Legislative timetable

7. Members noted that the Administration would provide a paper outlining the measures taken by the Police to tie in with the implementation of the amended DVO after the meeting. Members agreed that the paper would be considered by circulation and no further meeting would be held unless any member had further queries on the paper. Subject to members having no comments on the outstanding issues, the Bills Committee would make a report on its deliberations on the Bill to HC on 4 December 2009. Members supported the resumption of the Second Reading debate on the Bill at the Council meeting on 16 December 2009. The Chairman added that the deadline for giving notice to move CSAs was 7 December 2009.

II. Any other business

8. There being no other business, the meeting ended at 10:30 am.

**Proceedings of the sixth meeting of the
Bills Committee on Domestic Violence (Amendment) Bill 2009
on Tuesday, 17 November 2009, at 8:30 am
in Conference Room A of the Legislative Council Building**

Time marker	Speaker(s)	Subject(s)	Action required
<i>Agenda item I – Meeting with the Administration</i>			
000000 - 000312	Chairman Administration	Opening remarks	
000313 - 000509	Chairman Administration	<u>Continuation of the clause-by-clause examination</u> Members raised no question on clauses 14 and 15	
000510 - 001414	Chairman Administration Ms Audrey EU ALA8	<u>Clause 16 – Saving provision</u> The Administration's explanation that the saving provision expressly stated that the proceedings that had been commenced and court orders that were made before the commencement date of the amended Domestic Violence Ordinance (DVO) would remain in force in accordance with the pre-amended Ordinance. Furthermore, the pre-amended Ordinance would also apply to any further applications made under DVO after the commencement date in relation to an order made before or after that date Ms Audrey EU held reservation about the need for the saving provision which, in her view, was redundant as renumbering of provisions could be dealt with under the Interpretation and General Clauses Ordinance (Cap. 1) The Administration's response that apart from the renumbering of provisions, the formulation of the text for determining a cohabitation relationship was not the same as the pre-amended Ordinance, hence there was the need for the saving provision.	
001415 - 001448	Administration	Members raised no question on Part 4 of the Bill (clauses 17 to 19)	
<i>Proposed Committee Stage amendments (CSAs) to the Bill</i>			
001449 - 002713	Chairman Administration	Briefings on CSAs proposed by the Administration [LC Paper No. CB(2)251/09-10(01)] [LC Paper No. CB(2)279/09-10(02)] Members agreed to the CSAs proposed by the Administration	
002714 - 004622	Administration Chairman Ms LI Fung-ying Ms Audrey EU Ms Miriam LAU	The Administration's response to a suggestion for it to review the proposed definition of "cohabitation relationship" by deleting paragraph (b) and incorporating into the relevant provisions under the Bill the expression "former cohabitation relationship" [LC Paper No. CB(2)279/09-10(01)]	

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		<p>Invitation of views on another option proposed by the Administration under which paragraph (b) of the proposed definition of "cohabitation relationship" was reworded to read as "includes a relationship falling within paragraph (a) that has come to an end", and the word "and" between paragraphs (a) and (b) be deleted</p> <p>Ms Audrey EU's view that it remained unclear as to whether former cohabitants ought to live together for satisfying the test of cohabitation relationship under both options put forward by the Administration, although she acknowledged the legislative intent and was not insistent on the alternative drafting approach she had proposed.</p> <p>The Administration explained that whether or not parties to a former cohabitation relationship live together after the relationship had come to an end was irrelevant to the court's determination of the existence of a cohabitation relationship at the material time.</p> <p>Ms Miriam LAU's views that she saw no ambiguity in the Administration's proposed definition and saw no need for amendments. She considered both the original definition and the Administration's alternative options acceptable but she preferred the original text set out in the Bill</p>	
004623 - 004749	Dr Margaret NG Chairman	Prior notice given by Dr Margaret NG that she would propose an amendment to the proposed definition of "cohabitation relationship"	
004750 - 010309	Chairman Ms Audrey EU ALA8 Ms Miriam LAU Administration Ms Audrey EU	<p>Whether the word "and" should be deleted between paragraphs (a) and (b) of the proposed definition of "cohabitation relationship"</p> <p>The Administration's explanation that paragraph (a) of the proposed definition set out the test of "cohabitation relationship" for the purpose of the Bill. Paragraph (b) of the proposed definition did not concern the test, but its effect was to extend the meaning of "cohabitation relationship" so that the application of the amended DVO would extend to a cohabitation relationship that had come to an end. In the light of members' views, the Administration would make no change to the proposed definition of "cohabitation relationship" in this respect</p> <p>Ms Audrey EU remained of the view that it was not clear as to whether former cohabitants ought to live together for satisfying the test of cohabitation relationship</p>	
010310 - 013437	Dr Priscilla LEUNG Ms Miriam LAU Chairman Administration Mr Ronny TONG ALA8	Dr Priscilla LEUNG's proposal to add "to the exclusion of others" to the proposed definition of "cohabitation relationship" to remove the ambiguity that a cohabitation relationship involving more than 2 persons would fall under the proposed definition of "cohabitation relationship" [LC Paper No.	

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	<p>Ms LI Fung-ying Ms Cyd HO</p>	<p>CB(2)251/09-10(02)]. Dr LEUNG referred members to the opinion of the legal adviser to the Bills Committee on her proposed amendment [LC Paper No. CB(2)251/09-10(03)]</p> <p>Members' views on Dr Priscilla LEUNG's proposed amendment –</p> <p>(a) Ms Miriam LAU disagreed with the proposed amendment as the expression "to the exclusion of others" was an integral component of a marriage under section 40 of the Marriage Ordinance (Cap.181) (MO), which was not applicable to a cohabitation relationship. The amended Ordinance should not prevent victims of domestic violence, regardless of whether they were in multi-parties/multi-couple cohabitation relationship, from seeking civil remedies; and</p> <p>(b) Mr Ronny TONG strongly objected to the proposed amendment as it would pose more stringent threshold for application for an injunction order, which would deviate from the policy intent of the amended DVO</p> <p>The Administration objected to Dr Priscilla LEUNG's proposed amendment. It affirmed its agreement to the legal adviser's views that the proposed definition of a "cohabitation relationship" would not cover a relationship involving more than 2 persons and pointed out that Dr LEUNG's proposed amendment would inevitably tighten the eligibility threshold for application for an injunction order and narrow the applicability of the amended DVO. This ran counter to the policy and legislative intent of the Bill, which was to extend the scope of coverage of the DVO</p> <p>Members generally considered the Administration's explanations acceptable. It would be for Dr Priscilla LEUNG to decide whether to take forward her own proposed amendment</p>	
<p>013438 – 014958</p>	<p>Chairman Dr Priscilla LEUNG Administration Mr Ronny TONG Ms Cyd HO ALA8</p>	<p>CSA to be proposed by Dr Margaret NG</p> <p>The Administration's objection to Dr NG's amendments. The Administration advised that the current formulation as a whole, viz "2 persons who live together as a couple in an intimate relationship" under the proposed definition of "cohabitation relationship" was a precise delineation of the kind of cohabitation relationships that were intended to be covered under the amended DVO. The formulation embraced an integral concept which set out the "test" of the proposed definition of "cohabitation relationship". In applying the test, the court would be guided by the new section 3B(2). The individual components of the formulation of the test were not to be singled out separately when the test was applied. Noting Dr NG's objection to the proposed rendition of "as a couple" as</p>	

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		<p>"情侶" in Chinese, the Administration conveyed again its readiness to consider alternative wording that was accepted by both the Administration and the Bills Committee to reflect the integral concept of "cohabitation relationship" as proposed in the Bill. In the absence of such an alternative, the Administration's appeal for the Bills Committee to accept the rendition of "as a couple" as "情侶" in Chinese draft Bill.</p> <p>The Administration and ALA8 were requested to separately provide a written opinion on Dr Margaret NG's proposed amendment upon receipt of the wording of the proposed amendment</p>	<p>Admin ALA8</p>
014959 - 015700	<p>Chairman Administration Ms Cyd HO Ms LI Fung-ying Dr Priscilla LEUNG</p>	<p>Legislative timetable and commencement date of the amended Ordinance</p>	
015701 – 020002	<p>Chairman Administration Ms Cyd HO</p>	<p>The Administration's advice that a paper on the complementary measures taken by the Police in the light of the implementation of the amended DVO would be provided after the meeting</p> <p>Ms Cyd HO's suggestion that issues relating to the training for frontline Police officers to deal with domestic violence cases involving persons in same-sex cohabitation relationship should be referred to the Panel on Security for follow up</p>	