

# 立法會

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### **Report of the Bills Committee on Domestic Violence (Amendment) Bill 2009**

#### **Purpose**

This paper reports on the deliberations of the Bills Committee on Domestic Violence (Amendment) Bill 2009.

#### **Background**

2. The Domestic Violence Ordinance (Cap. 189) (DVO), enacted in 1986, mainly provides for a civil remedy for victims of domestic violence to seek injunction from the court. Violence acts involving crime element are mainly dealt with by the Crimes Ordinance (Cap. 200) and the Offences Against the Person Ordinance (Cap. 212), while the protection of children and juvenile is dealt with under the Protection of Children and Juveniles Ordinance (Cap. 213). The Guardianship Board established under the Mental Health Ordinance (Cap. 136) is empowered to make an emergency guardianship order if it has reason to believe that a mentally incapacitated person is in danger, or is being or likely to be maltreated or exploited.

3. During the scrutiny of the Domestic Violence (Amendment) Bill 2007 (the 2007 Bill) by the relevant Bills Committee, members from various political parties and some organisations urged the Administration to re-examine the feasibility of further extending the scope of DVO from heterosexual cohabitants to cover also same-sex cohabitants in intimate relationship. They were of the view that expanding the protection under DVO to include same-sex cohabitants merely sought to protect such persons from being molested by their partners, and should not be regarded as equivalent to giving legal recognition to same-sex relationships or providing legal entitlements to persons in such relationships.

4. Having regard to members' views, the Administration had re-examined the matter and came to the view that the protection under DVO should be extended to cover cohabitation between persons of the same sex. It however emphasised that the proposed extension of the scope of DVO to cover such cohabitation was only introduced in response to the distinct and unique context of domestic violence. It remained the Administration's clear policy not to recognise same sex relationships as a

matter of legal status. Any change to this policy stance should not be introduced unless a consensus or a majority view was reached within the society. As the proposed amendment to DVO to include cohabitation between persons of the same sex in its coverage fell outside the scope of the 2007 Bill, the Administration would effect the proposed amendment by way of a separate amendment bill. The Administration's proposal was supported by the relevant Bills Committee comprising members from various political parties, who had strongly requested the Administration to undertake to introduce the further legislative amendments as soon as possible. Accordingly, the Secretary for Labour and Welfare (SLW), in moving the resumption of Second Reading debate on the 2007 Bill on 18 June 2008, undertook to introduce a bill as soon as possible in the 2008-2009 legislative session to further amend DVO to extend its scope to cover same-sex cohabitants.

5. In accordance with the agreed legislative timetable, the Administration consulted the Panel on Welfare Services (the Panel) on the legislative proposal to extend the scope of DVO to cover same-sex cohabitants on 8 December 2008. In the light of dissenting views expressed by some members during the Panel consultation, the Panel subsequently held two special meetings on 10 and 23 January 2009 to receive views from 105 deputations and 44 individuals. The Panel also received over 400 written submissions on the proposal. About two-thirds of those giving views to the Panel, mostly from religious and parent groups, objected strongly to the legislative proposal which, in their view, would cause ambiguity in the meaning or definition of "family" and "marriage", and hence undermine the morality of society. On the other hand, those in support, mainly from human rights groups, sexual minority groups, women's groups and the welfare sector, considered that same-sex cohabitants should be entitled to the same legal protection as heterosexual cohabitants under DVO.

### **The Bill**

6. The Domestic Violence (Amendment) Bill 2009 (the Bill) seeks to amend DVO to extend the scope of protection under DVO to cover a cohabitation relationship between two persons (whether of the same sex or of the opposite sex) who live together as a couple in an intimate relationship; and to make consequential and technical amendments.

### **The Bills Committee**

7. At the House Committee meeting on 19 June 2009, members agreed to form a Bills Committee to study the Bill. Under the chairmanship of Hon LEE Cheuk-yan, the Bills Committee held six meetings with the Administration and received views from 40 deputations at one of these meetings. The membership of the Bills Committee is in **Appendix I**. The list of deputations which have given views to the Bills Committee is in **Appendix II**.

## **Deliberations of the Bills Committee**

8. The main purpose of the Bill is to extend the protection of DVO to same-sex cohabitants. To this effect, the Administration has introduced a new definition of "cohabitation relationship" under DVO, which is gender neutral and is devoid of any references to, or linkages between "marriage", "spouse", "husband and wife", and same sex cohabitation. Further provisions are also included in the Bill directing the court to have regard to all the circumstances of each application, including but not limited to a number of factors set out in DVO. The Administration has also proposed structural changes to DVO by removing heterosexual cohabitations from the coverage of section 3. While section 3A will remain intact to deal with applications from persons in immediate or extended familial relationships, a new section 3B is introduced to deal with applications from parties to cohabitation relationships. To reflect the presentational changes made to the structure of the Ordinance, and to highlight that the amended DVO is also applicable to persons in cohabitation relationships, the short title of DVO will be amended from "Domestic Violence Ordinance" to "Domestic and Cohabitation Relationships Violence Ordinance".

9. Members support the object of the Bill to extend protection under DVO to same-sex cohabitants. Deputations which have given views to the Bills Committee also express support for the spirit and the arrangement of the Bill in general. The Bills Committee has focused its deliberations on the proposed definition of "cohabitation relationship", the factors for determining whether two persons are in a cohabitation relationship and the complementary measures to tie in with the implementation of the amended DVO. The deliberations of the Bills Committee on these and related issues are set out below.

### Need for a new definition of "cohabitation relationship"

10. Under the Bill, "cohabitation relationship" means a relationship between two persons who live together as a couple in an intimate relationship, and includes such a relationship that has come to an end. To ensure that the new section 3B applies to cohabitation relationship exclusively, a new definition of "party to a cohabitation relationship" is also proposed under the Bill so as to exclude a person who is or was the spouse of the other party to that relationship. Further provisions are included in the new section 3B(2) directing the court to have regard to all the circumstances of the case in determining whether a relationship in question has the quality that is required of a cohabitation relationship to which DVO is applicable.

11. Some members have questioned about the rationale and the need for introducing a new definition of "cohabitation relationship", given that "the cohabitation of a man and woman" to which DVO has all along applied, is not defined under DVO. Some members have also enquired about the need to state expressly that married persons will not be eligible under new section 3B, given that persons who are in a spousal relationship or former spousal relationship will apply for injunction order against their spouses or former spouses under section 3.

12. The Administration has explained to the Bills Committee that since the enactment of DVO in 1986, section 3 has extended injunction protection to "a party to a marriage" against molestation by his/her spouse. The injunctions were described by the then Attorney General as measures to obviate the need for a married applicant to initiate divorce proceedings in order to avail himself/herself of the court's protective jurisdiction. Apart from "a party to a marriage", by virtue of section 2(2), DVO is also applicable to "the cohabitation of a man and a woman" as it applies to marriage. The rationale is to extend injunction protection to people who, though not married, have established long-standing relationships which may involve children for whom the protection afforded under the divorce laws is not available. The policy intent and legislative effect of the provision is to extend the applicability of the injunctive relief under DVO to quasi-marital relationships.

13. The Administration has further explained that "cohabitation of a man and a woman" needs no explicit definition under DVO, as this concept (in the context of a relationship akin to a marriage) has been widely applied in the common law and is well understood by the court. It does not simply refer to a man and a woman residing under the same roof. Rather, it encompasses the very essence of a relationship between a man and a woman living together as husband and wife. There are established case laws to make reference to when determining whether such a relationship exists between a man and a woman. The case laws clearly rule out casual or transient relationships. A relationship between a man and a woman living together as husband and wife has thus become the eligibility threshold for injunction applications under DVO by applicants falling under the category of "the cohabitation of a man or woman". The Administration has stressed that this eligibility threshold has remained intact to date, and the established standard of the threshold will continue to underpin the current legislative proposal to extend the scope of DVO from covering only a man and a woman in cohabitation to also persons in same-sex cohabitation.

14. The Administration has drawn the attention of the Bills Committee to the concerns raised by the religious and parent groups that the definition of "cohabitation relationship" should not have the effect of equating, or linking in any way, same-sex cohabitation with "marriage", "spouse" or "husband and wife". The Administration has reiterated the view that the proposed definition of "cohabitation relationship", which is gender neutral, has sought to address these concerns, while achieving at the same time the policy objective of rendering the same level of protection against molestation to both heterosexual and same-sex cohabitants.

15. The Law Society of Hong Kong (the Law Society) has questioned whether the definition of "cohabitation relationship" may cover same sex couples. The Law Society points out that according to the New Oxford Dictionary of English, "couple" can mean "two people who are married, engaged, or otherwise closely associated romantically or sexually". If the rule of *ejusdem generis* is applied, the phrase "or otherwise closely associated romantically or sexually" could arguably refer to two

persons of the opposite sex but not otherwise. It recommends that a clear and unambiguous reference to "same sex couples" should be made in the Bill.

16. The Administration has advised that the *ejusdem generis* rule as cited by the Law Society concerning the proposed definition of "cohabitation relationship" is a rule of interpretation that the court would apply in the construction of the legal effect of a particular provision in a statute or legal document. The Law Society has in its submission applied the rule to the dictionary meaning of the word "couple", rather than the proposed definition of "cohabitation relationship". Even if the Law Society were to apply the rule to the definition, the precise meaning of the word "couple" under the amended DVO should, and could only, be determined when read in context and in accordance with the legislative intent. The Administration has stated clearly that the legislative intent of the Bill is to extend protection to cohabitants of the same sex in its long title and Explanatory Memorandum as well as the Legislative Council (LegCo) Brief. All these serve to put beyond doubt the legislative intent of the Bill, and it does not see the need for amending the proposed definition of "cohabitation relationship" as per the Law Society's recommendation.

17. The legal adviser to the Bills Committee has affirmed the explanations made by the Administration in respect of the legislative intent of the Bill and the irrelevance of the *ejusdem generis* rule in the context of the proposed definition of "cohabitation relationship" as set out in the Bill.

18. Members consider the Administration's explanations acceptable. At the suggestion of the Bills Committee, the Administration agrees to amend the proposed definition by adding the expression "whether of the same sex or of the opposite sex" so as to tally with the long title of the Bill.

Need for the expression "as a couple" in the proposed definition of "cohabitation relationship"

19. Some members have opined that the Administration should review the need for the expression "as a couple" in the proposed definition of "cohabitation relationship", which, in their view, is redundant. Moreover, the term is not defined in DVO or in the Bill.

20. The Administration considers the inclusion of the expression "as a couple" an essential and integral component to reflect the special qualities of the relationship to be covered under the amended DVO. It also has the effect of declaring unequivocally that other "intimate relationships" (e.g. those between carers and patients, between very good friends, between a mistress and a man who visits her occasionally, between persons in dating relationships, etc.) will not be covered under the amended DVO.

21. The Administration has advised that the policy intent is to maintain, or at least to pitch as close as possible to the established standard, the eligibility threshold for

injunction applications under the amended DVO, i.e. a relationship akin to that between a husband and wife. The current formulation as a whole, viz "two persons who live together as a couple in an intimate relationship" is a precise delineation of the kind of cohabitation relationships that are intended to be covered under the amended DVO, irrespective of the gender of the cohabitants.

22. Dr Margaret NG finds the English term "couple" acceptable, but has pointed out that the Chinese equivalent of "a couple" as "情侶" is inappropriate. In her view, the English equivalent of the term "情侶" is "lovers", and the inclusion of the term "情侶" in the definition means that when considering injunction applications from parties to a cohabitation relationship, the court would have to consider whether the two persons are in love, and that will involve subjective judgement.

23. The Administration has stressed that there is a need to adopt under the amended DVO an eligibility threshold that is comparable to the present standard of the "husband and wife" test in the proposed definition of "cohabitation relationship". Removing "as a couple" from the proposed definition of "cohabitation relationship" or adopting an alternative Chinese rendition of "couple", e.g. "伴侶" (whose dictionary meaning includes good friends) will fail to unequivocally declare that other "intimate relationships", such as those quoted in paragraph 20 above, fall outside the coverage of the amended DVO. The Administration has also pointed out that the deputations attending the Bills Committee meeting of 30 July 2009 were consulted on the need for the expression of "作為情侶" in the definition, and the response was in the affirmative.

24. Dr Margaret NG remains unconvinced of the Administration's explanation. She objects strongly to the rendition of a "couple" as "情侶" in the Bill. The Administration explains that in light of Dr NG's views, it has striven to trawl for other possible renditions of a "couple" and none is found to be able to better meet the policy intent than "情侶" in the Bill. The Administration would welcome suggestions from Dr NG and the Bills Committee. None is forthcoming however. Dr NG comes to the view that it is unnecessary to make reference to the expression "as a couple in an intimate relationship" in the proposed definition of "cohabitation relationship" and considers that the meaning of cohabitation relationship is commonly understood and the court is guided by the new section 3B(2) in determining whether a cohabitation relationship exists. Dr NG has given a prior notice that she would 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". But Dr NG did not invite the Bills Committee to consider or show support of her proposed amendment to the Bill.

25. The Administration strongly objects to Dr Margaret NG's proposed amendment. The Administration has reiterated that the current formulation of the definition as a whole, viz "2 persons who live together as a couple in an intimate relationship" is a

precise delineation of the kind of cohabitation relationships that are intended to be covered under the amended DVO, irrespective of the gender of the cohabitants. The Bill will deviate from its legislative and policy intent should individual components of the current formulation or even the definition as a whole be removed from the Bill as per Dr NG's proposed amendment. The Administration stresses that "情侶" should be read in the context of the definition as a whole. It is the most pertinent Chinese equivalent to a "couple" to reflect unequivocally the kind of intimate relationships to be covered by the amended DVO. In the absence of a better alternative which is agreed by both the Administration and the legislature, the Administration proposes to retain "as a couple" and "情侶" in the definition so as to accurately reflect its policy intent. As regards the reference to the new section 3B(2), the Administration has explained that "2 persons who live together as a couple in an intimate relationship" sets out the "test" of the proposed definition of "cohabitation relationship", and the factors listed in the new section 3B(2) serve as guidance to the court in their application of the test (paragraphs 26 to 29 below). In other words, the eight signposts listed in the new section 3B(2) must be construed by reference to the test, i.e. "2 persons who live together as a couple in an intimate relationship" as set out in the proposed definition of "cohabitation relationship". If the "test" is removed as per Dr NG's amendment, the court would have no basis against which to measure the eight signposts set out in new section 3B(2). The scope of coverage of the amended DVO will be much less certain. The Administration also stresses that the test provided in the proposed definition embraces an integral concept and the court, in applying the test, would be guided by the new section 3B(2). The individual components of the formulation of the test are not to be singled out separately when the test is applied.

#### Qualities required of a cohabitation relationship

26. Members have examined the essential qualities for satisfying the eligibility threshold under the proposed definition of "cohabitation relationship". Ms Audrey EU raises the concern whether living together is a prerequisite for a cohabitation relationship that has come to an end. If so, the Administration should review the drafting of paragraph (b) of the proposed definition, viz the clause "includes such a relationship that has come to an end", as parties concerned may no longer live together. Ms EU suggests that the Administration may consider an alternative drafting approach by deleting paragraph (b) of the proposed definition and incorporating into the relevant provisions under the Bill suitable language to bring out its policy intent that protection under the amended DVO will be available to persons in former cohabitation relationships.

27. The Administration has explained to the Bills Committee that paragraph (a) of the proposed definition sets out the test of "cohabitation relationship" for the purpose of the Bill. The court is guided by the new section 3B(2) in its application of the test, which requires the court to have regard to all the circumstances of the relationship, including the factors listed in that section. The new section 3B(2)(a) to (h) spells out, in the present tense, factors that are relevant to a cohabitation relationship. If a relationship satisfies the test set out in paragraph (a) of the proposed definition, it

qualifies as a cohabitation relationship under the amended DVO. Members note that paragraph (b) of the proposed definition does not concern the test, but its effect is to extend the meaning of "cohabitation relationship" so that the application of the amended DVO will extend to a cohabitation relationship that has come to an end. The Administration has advised that by virtue of paragraph (b) of the proposed definition, the extended meaning of "cohabitation relationship" covers a past relationship. If, during its existence, a relationship satisfies the test, then even though it has come to an end, it qualifies as a cohabitation relationship for the purpose of the amended DVO. Under the current drafting approach, the test of cohabitation relationship is clearly presented, and the policy intent of extending the application of the amended Ordinance to former cohabitation relationship is achieved simply by including paragraph (b) in the proposed definition. Should Ms Audrey EU's proposal be adopted, the changes would entail more than adding the references of "former cohabitation relationship" to each reference of "cohabitation relationship" under the new section 3B. The relevant factors set out in the new section 3B(2) would need to be expressed in both the present and the past tenses in appropriate places in view of the use of both references in that section. The Administration is of the view that the present drafting approach is clearer and more concise.

28. Notwithstanding the above, the Administration has put forward for members' consideration another option under which paragraph (b) of the proposed definition of "cohabitation relationship" is reworded to read as "includes a relationship falling within paragraph (a) that has come to an end". In addition, the word "and" between paragraphs (a) and (b) will be deleted.

29. Members consider that the original text sets out in the Bill will better reflect the policy intent. Ms Audrey EU remains of the view that it is not clear as to whether former cohabitants ought to live together for satisfying the test of cohabitation relationship under the current drafting of paragraph (b) of the proposed definition of "cohabitation relationship", although she fully acknowledges the legislative intent and is not insistent on the alternative drafting approach she has proposed. The Administration explains that whether or not parties to a former cohabitation relationship live together after the relationship has come to an end is irrelevant to the court's determination of the existence of a cohabitation relationship at the material time. In the light of members' views, the Administration will make no change to the proposed definition of "cohabitation relationship" in this respect.

Whether the amended DVO will be applicable to a cohabitation relationship involving more than two persons

30. Dr Priscilla LEUNG has proposed to add "to the exclusion of others" to the proposed definition of "cohabitation relationship" to remove the ambiguity that more than two persons may claim to fall under the definition of "a couple" by making different applications to the court for injunction under the new section 3B.

31. The legal adviser to the Bills Committee has advised that by virtue of the



proposed definition of "cohabitation relationship" and the new section 3B(1), the court may not have a basis to entertain an application in respect of a cohabitation relationship involving more than two persons who live together as "multiple couples" because the intended applicant would not be "a party to a cohabitation relationship". However, procedurally, the Bill would not prohibit such a party from making an application to the court under the new section 3B. Making reference to the LegCo Brief on the Bill and the Administration's response to members' views on the proposed definition of "cohabitation relationship", the Administration has explained that a relationship between a man and a woman living together as husband and wife is the eligibility threshold for injunction applications under DVO by applicants falling under the category of the cohabitation of a man and a woman, and the established standard of this eligibility threshold will continue to underpin the Administration's legislative proposal to extend the scope of DVO from covering only a man and a woman in cohabitation to also persons in same sex cohabitation. In the light of the above, the legal adviser is of the view that it is clear that multi-parties/multi-couples cohabitation in intimate relationship is not intended to be protected under DVO.

32. The Administration objects to Dr Priscilla LEUNG's proposed amendment. The Administration has affirmed the legal adviser's views that the policy and legislative intent is not to cover a cohabitation relationship involving more than two persons. Express provisions in the proposed definition of "cohabitation relationship" specifying a relationship between "2 persons" serves to affirm such policy and legislative intent. Nevertheless, it is a fundamental right of an individual to have access to court. Any person, including a person in a relationship involving more than two partners, can make an application to the court for injunction protection under both the existing DVO and the amended DVO. It is up to the court to decide whether the person is in a cohabitation relationship in respect of which such an injunction may be granted against the other party to the cohabitation relationship. In the views of the Administration and some members, Dr LEUNG's proposed amendment will inevitably tighten the eligibility threshold for application for an injunction order and narrow the applicability of the amended DVO. The Administration finds the amendment totally unacceptable as it runs counter to the legislative and the policy intent of the Bill, which is to extend the scope of protection of the DVO.

33. Members generally consider the Administration's explanations acceptable. Members take the view that it will be for Dr Priscilla LEUNG to decide whether to take forward her own proposed amendment.

#### Factors for determining whether two persons are in a cohabitation relationship

34. While the introduction of the proposed definition of "cohabitation relationship" seeks to achieve the policy objective of rendering the same level of protection against molestation to both heterosexual and same-sex cohabitants, members note that with a new definition of "cohabitation relationship", the established case laws on "cohabitation of a man and woman" may not be readily applicable in the court's future consideration of applications for injunctions by cohabitants. The Administration

considers it necessary to provide clear guidance to the court in determining whether a relationship in question has the qualities that are required of a cohabitation relationship to which the amended DVO is applicable. The following eight factors are set out under the new section 3B(2) –

- (a) whether the parties are living together in the same household;
- (b) whether the parties share the tasks and duties of their daily lives;
- (c) whether there is stability and permanence in the relationship;
- (d) the arrangement of sharing of expenses or financial support, and the degree of financial dependence or interdependence, between the parties;
- (e) whether there is a sexual relationship between the parties;
- (f) whether the parties have any children and how they act towards each other's children;
- (g) the motives of the parties in living together; and
- (h) whether such a relationship exists between the parties in the opinion of a reasonable person with normal perceptions.

35. While recognising that the eight signposts will help give guidance to the court of the policy intent and assist the court in determining the scope of applicability of the amended DVO to the parties concerned, some members have enquired about the origin of these factors given that similar guidance has not been provided to the court in determining whether a cohabitation relationship exists between a man and a woman. Some members consider the eight signposts listed in the new section 3B(2) unnecessary given that there are established case laws on "cohabitation relationship". Moreover, the court should not be restricted by the factors under the new section 3B(2) when determining the existence of a cohabitation relationship.

36. The Administration has stressed that the factors spelt out in the new section 3B(2) are not exhaustive and serve to provide guidance to the court, and the court shall have regard to all the circumstances of each particular case. These factors serve merely as pointers to assist the court in determining the scope of applicability of DVO to the parties concerned in accordance with the policy intent.

37. The Administration has further advised that the eight factors set out in the new section 3B(2) are drawn up with close reference to the rulings<sup>1</sup> made by the court of England and Wales regarding the factors taken into account by the court in determining the existence of a cohabitation relationship, viz the relationship of a man

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<sup>1</sup> For example, *Kimber v Kimber* [2000] 1 FLR 383, *Crake v Supplementary Benefits Commission*, *Butterworth v Supplementary Benefits Commission* [1829] 1 All ER 498

and a woman (not married to each other) living together as husband and wife. The Administration considers it appropriate to include all common signposts in totality in DVO without tinkering with the key words. If it exercises discretion to remove wording from a certain signpost, doubts or uncertainty may arise as to whether the court would regard the amended version as the same signpost and attach to it the same meaning as that of the original expression. The Administration has stressed that these factors have been commonly considered by the court in determining whether or not a cohabitation relationship exists between the parties concerned, and bearing in mind the policy intent to apply the established standard to the eligibility threshold for injunction applications under the amended DVO by cohabitants, the Administration considers it appropriate to replicate these factors in the amended DVO to provide guidance to the court as to its policy and legislative intent in considering the future applications.

38. While appreciating the Administration's explanation that the factors will assist the court in determining the scope of applicability of the amended DVO to the parties concerned, some members have expressed reservations about the relevance and usefulness of the signposts in determining whether a particular relationship amounts to a cohabitation relationship under the amended DVO. At the request of the Bills Committee, the legal adviser to the Bills Committee has prepared a paper providing information on the characteristics of a cohabitation relationship based on decided cases in other common law jurisdictions, viz the United Kingdom (UK), Canada, Australia and New Zealand.

39. Noting that the approach adopted by the courts of other major common law jurisdictions in determining the existence of a cohabitation relationship is similar to that proposed in the Bill, some members consider that there might be merits in adopting certain factors as codified in the statute of other common law jurisdictions, rather than drawing reference from a single court case as proposed under the new section 3B(2).

40. Taking into account members' comments, the Administration has reviewed the factors set out in the new section 3B(2) to ensure that all important elements are included and that the factors are presented in a user-friendly manner. Accordingly, the Administration proposes the following amendments to the Bill –

- (a) to amend the new section 3B(2)(f), by making reference to the approach adopted in New Zealand, to clarify that the court shall have regard to whether the parties share the care and support of a specified minor;
- (b) to amend the new section 3B(2)(g), by making reference to the approach adopted in Australia, to clarify that the court shall have regard to the parties' reasons for living together, and the degree of mutual commitment to a shared life; and

- (c) to amend the new section 3B(2)(h), by making reference to the approach adopted in New Zealand, to clarify that the court shall have regard to whether the parties conduct themselves as parties to a cohabitation relationship, and whether they are treated as such by their friends and relatives etc.

The Bills Committee considers the Administration's proposed amendments acceptable.

#### Other amendments to be moved by the Administration

41. In response to members' views and requests, the Administration has also undertaken to move the following amendments to the Bill –

- (a) to amend the Chinese text of the long title to DVO to tally with the English text, so that the Chinese term "關係" appears only once in the Chinese text as the equivalent of the English term "relationships" (which also appears only once in the English text); and
- (b) to introduce a new definition of "applicant" under clause 5(2)(b) to the effect that the term will be applicable to a party who makes an application under sections 3, 3A and 3B as the case will be. Because of the new definition of "applicant" proposed in clause 5(2)(b), there is a need to remove the parenthesis of ("the applicant") in sections 3A(1) and 3B(1) of DVO. Also, "該申請人" in section 3A(1) of DVO should be replaced by "申請人". Accordingly, "該" after "信納" in the Chinese text in that provision is deleted.

#### Scope of the Bill

42. Given that the Bill seeks to extend the scope of protection under DVO to cover a cohabitation relationship between two persons (whether of the same sex or of the opposite sex) who live together as a couple in an intimate relationship, Dr Priscilla LEUNG and a few deputations have expressed the view that the Administration should consider further extending the scope of DVO to persons living together under one roof, in order to protect the vulnerable groups especially the elderly from domestic violence acts.

43. The Administration has pointed out that in extending the scope of DVO under the 2007 Bill to cover former spouses, former heterosexual cohabitants and other immediate and extended familial relationships, it has already removed the "living-with" requirement originally provided for under DVO. Accordingly, the only eligibility criterion for protection under DVO is whether the victim and the abuser have a spousal, intimate or familial relationship as specified in the legislation. In other words, whether the victim is living with the abuser under the same roof is no longer a factor in deciding if the victim is entitled to the protection under DVO.

44. In the view of the Administration and as shared by some members, the civil remedies provided for under DVO are tailored to the specific context arising from the intimate relationships between the abusers and the victims. If DVO is to be extended to cover persons who are unrelated but living under the same roof (e.g. employers and employees (such as domestic helpers), roommates in boarding schools, residents in residential homes for the elderly), this may give rise to some unreasonable scenarios and other complicated legal issues. For instance, a domestic helper may apply to the court for an injunction order to prohibit his/her employer from entering the latter's own residence, or a boarding school student may expel his/her roommate from the dormitory. As for unrelated elders who are abused or molested by their roommates, they should report the case to the Police and bring the perpetrator to justice and seek assistance from social workers. DVO is not a suitable avenue to resolve the conflicts of elderly roommates.

#### Establishing a specialised domestic violence court

45. The Bills Committee notes that a number of deputations have requested the Administration to follow up with the Judiciary on the suggestion of setting up a specialised domestic violence court to handle both civil and criminal cases relating to domestic violence.

46. The Administration has advised that currently, matters related to domestic violence cases would be dealt with by the Family Court on the civil side, whereas on the criminal side, injuries inflicted on family members are dealt with at various levels of courts, depending on the seriousness of the cases. The Family Court always gives priority to urgent applications relating to domestic violence cases, e.g. applications related to removal of children or injunction applications. For criminal domestic violence cases, the courts at various level can competently deal with them.

47. The Administration has advised that following consultation between the Department of Justice (DoJ) and the Judiciary, a mechanism has been put in place since October 2008 to enable expedited listing of suitable domestic violence cases. This mechanism has so far been found to be working satisfactorily and has addressed concerns over the timely handling of domestic violence cases. To set up another court would involve the consideration and resolution of a large number of legal and practical issues, and the Judiciary has concluded that it sees no real need for the establishment of a specialised domestic violence court.

#### Complementary measures

48. Apart from the legal implications of the Bill, members have also considered the readiness of the departments concerned to tie in with the implementation of the amended DVO. The Administration has informed members that it has put in place administrative arrangements to better support victims of domestic violence, mirroring on the UK experience. In addition to the expedited listing arrangement, the

Prosecutions Division of DoJ has also issued an internal guideline to all counsel in its Division and court prosecutors, requiring them to adopt certain administrative procedures so as to ensure that domestic violence cases are identified and processed in a prompt manner. These procedures include ensuring as far as possible that domestic violence cases are tried in Chinese, thereby minimising the need for translation of documents, and providing legal advice on domestic violence cases as soon as possible.

49. To strengthen support and safety assurance to victims and their children throughout the case enquiry and legal proceedings, the Police have also set up a protocol of Victim Management in May 2008 for victims of serious domestic violence cases, by way of constant contact with victims and close liaison with social workers. The protocol has been extended to victims of non-serious domestic violence cases handled by the crime units since January 2009. Besides, the Family and Child Protective Services Units of the Social Welfare Department has been providing a co-ordinated package of one-stop services including outreaching, social investigation, crisis intervention, statutory protection, intensive individual and group treatment to victims of child abuse and spouse battering, batterers and their family members. Referrals to various other services, e.g. legal aid, school placement, residential placement, will also be made whenever necessary.

50. Members have expressed concerns about the support and safety assurance to victims of domestic violence who are in a same-sex cohabitation relationship. Members have enquired about the preparatory work being undertaken by respective departments concerned to tie in with the commencement of the amended DVO.

51. The Administration has advised that after the enactment of the 2007 Bill, the Police have delivered a tailor-made training package to all frontline officers focusing primarily on professional sensitivity in handling domestic violence cases and relevant legislation. In order to enhance officers' professional sensitivity in handling and investigation of cases involving same-sex cohabitant, the Police will deliver a training package comprising powerpoint presentation, video clips and expert advice offered by Police Clinical Psychologist. The Police are in the process of finalising procedures for handling same-sex cohabitants by making reference to the existing domestic violence protocol.

52. The Administration has assured members that it will continue its efforts to increase public awareness of the expanded protection of DVO and to help victims of domestic violence, irrespective of the gender or sexual orientation, understand their rights, protection provided by law and support services available in the community.

53. The Bills Committee agrees that 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.

### Commencement date of the amended DVO

54. The Bill will come into operation on a day to be appointed by SLW by notice published in the Gazette. The Administration has advised that it will publish the Commencement Notice in the Gazette on 31 December 2009 if the Bill receives its Second and Third Reading at the Council meeting on 16 December 2009. As for the commencement date, the Administration has put forward two options, viz. 1 January or 4 February 2010. The Administration's intention is to appoint 1 January 2010 as the commencement date of the amended DVO. However, as the Commencement Notice will 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 has proposed 4 February 2010 as an alternative commencement date.

55. Members are aware that it will be for the House Committee to decide whether a subcommittee should be formed to study the Commencement Notice after it is tabled in LegCo. In order for the amended DVO to come into operation as early as practicable, the Bills Committee supports the commencement of the amended DVO on 1 January 2010.

### **Committee Stage amendments**

56. The Committee Stage amendments to be moved by the Administration are supported by the Bills Committee. The Bills Committee notes that Dr Margaret NG has indicated her intention to move an amendment to the proposed definition of "cohabitation relationship" and Dr Priscilla LEUNG may consider to amend the proposed definition of "cohabitation relationship".

### **Follow-up actions**

57. The Bills Committee has agreed to refer to the Panel on Security for follow up issues relating to the training for frontline Police officers to deal with domestic violence cases involving persons in same-sex cohabitation relationship (paragraph 53 refers).

### **Resumption of the Second Reading debate**

58. The Bills Committee supports the resumption of the Second Reading debate on the Bill at the Council meeting on 16 December 2009 and the commencement of the amended Ordinance on 1 January 2010.

### **Consultation with the House Committee**

59. The Bills Committee reported its deliberations to the House Committee on 4 December 2009.

Council Business Division 2  
Legislative Council Secretariat  
11 December 2009



**Bills Committee on Domestic Violence (Amendment) Bill 2009**

**Membership List**

<b>Chairman</b>	Hon LEE Cheuk-yan
<b>Members</b>	Dr Hon Margaret NG Hon James TO Kun-sun 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 Albert CHAN Wai-yip Hon Frederick FUNG Kin-kee, SBS, JP Hon Audrey EU Yuet-mee, SC, JP Hon Alan LEONG Kah-kit, SC Hon LEUNG Kwok-hung (since 29.6.09) Hon Ronny TONG Ka-wah, SC Hon Cyd HO Sau-lan Hon Starry LEE Wai-king Hon Paul CHAN Mo-po, MH, JP Dr Hon Priscilla LEUNG Mei-fun Hon CHEUNG Kwok-che Hon WONG Sing-chi Hon Paul TSE Wai-chun
	(Total : 20 Members)
<b>Clerk</b>	Miss Betty MA
<b>Legal adviser</b>	Mr YICK Wing-kin
<b>Date</b>	29 June 2009

**Bills Committee on Domestic Violence (Amendment) Bill 2009**

List of deputations which have given views to the Bills Committee

Amnesty International

Association Concerning Sexual Violence Against Women

Association for Concern for Legal Rights of Victims of Domestic Violence

Catholic Diocese of Hong Kong

Christian Fellowship of Alice Ho Miu Ling Nethersole Hospital

Civic Party

Civil Human Rights Front

Comrade Zone

Democratic Party's Women Committee

Diocesan Pastoral Commission for Marriage and the Family

Education Convergence

Federation of Parent-Teacher Associations of Yau, Tsim & Mongkok Districts Ltd.

For My Colors

Hong Kong Association for the Survivors of Women Abuse (Kwan Fook)

Hong Kong Christian Institute

Hong Kong Federation of Women's Centres

Hong Kong Human Rights Monitor

Hong Kong Lesbian and Gay Social Worker Network

Hong Kong Professional and Senior Executives Association

Hong Kong Sex Culture Society

Hong Kong Society for Politics and Policy

Midnight Blue

Parents for the Family Association

Professional Resources Centre

Rainbow Action

The Against Elderly Abuse of Hong Kong

The Association for the Advancement of Feminism

The Church of Living Stones (Kowloon)

The Conference of Mennonite Churches in Hong Kong

The Hong Kong Council of Social Service

The Society for Truth and Light

Thinking Academy

Tongzhi Community Joint Meeting (TCJM)

Unitarian Universalists Hong Kong

Women Coalition of HKSAR

Youth/Children Development Concern Group

Youth Professional Forum

反對居所暴力大聯盟

自由論壇

關注孩子同盟

Written submissions only

Parents' Concern Group of the Kowloon City

Postgraduate law students of the Chinese University of Hong Kong

Society for the Promotion of Family Ethics

Tai Wai Pastor Fellowship

The Law Society of Hong Kong

Ms Carmen