

Legislative Council Panel on Constitutional Affairs

Race Discrimination (Proceedings by Equal Opportunities Commission) Regulation

Purpose

This paper seeks Members' views on the proposed Race Discrimination (Proceedings by Equal Opportunities Commission) Regulation ("the proposed Regulation"), which empowers the Equal Opportunities Commission (EOC) to bring certain proceedings under the Race Discrimination Ordinance (RDO) in its own name.

Background

2. The RDO was enacted in July 2008. Under section 83 of the RDO (extract at **Annex I**), which has commenced operation on 3 October 2008, the Secretary for Constitutional and Mainland Affairs may make regulations to empower the EOC, in case where a victim of racial discrimination, harassment and vilification may bring proceedings under section 70 of the RDO but has not done so, to bring proceedings as if the EOC were that person (extract of section 70 is at **Annex II**). Such regulations shall be subject to the approval of the Legislative Council.

The Regulation

3. The proposed Regulation at **Annex III** is modeled on the Sex Discrimination (Proceedings by Equal Opportunities Commission). The following provisions are included in the proposed Regulation -

- (a) Circumstances under which the EOC may bring proceedings

The EOC may bring proceedings before a court as if it were a person who may bring such proceedings under section 70 of the RDO, where

- (i) the case raises a question of principle; and
- (ii) it is in the interests of justice to do so, and it appears to the EOC that the claim of the person is well founded.

(b) Remedies which the EOC may seek in such proceedings

Any remedy available to a claimant under section 70(3) of the RDO may be applied for by the EOC.

Way forward

4. We intend to give notice to move a motion in March 2009 for approval of the proposed Regulation by the Legislative Council. Subject to the scrutiny by the Legislative Council, we aim to bring the proposed Regulation and all the provisions of the RDO into operation at the same time.

Constitutional and Mainland Affairs Bureau
February 2009


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Chapter: 602 Title: RACE DISCRIMINATION ORDINANCE Gazette Number: L.N. 222 of 2008
 Section: 83 Heading: **Regulations to empower Commission to bring certain proceedings** Version Date: 03/10/2008

(1) The Secretary for Constitutional and Mainland Affairs may make regulations—

- (a) where any person may bring proceedings under section 70 but has not done so, empowering the Commission, in such circumstances as are specified in the regulations, to bring and maintain those proceedings as if the Commission were that person;
- (b) specifying which of the remedies referred to in section 70(3) shall be obtainable by the Commission in any such proceedings;
- (c) for the purposes of enabling the Commission to bring and maintain any such proceedings (including any related purposes), specifying modifications to which any provisions of this Ordinance (including any subsidiary legislation) shall be read.

(2) Any regulations made under this section shall be subject to the approval of the Legislative Council.

(3) This section is without prejudice to the Commission's power to bring proceedings by way of judicial review, in relation to this Ordinance or any other law, pursuant to its functions under section 59(1).

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Chapter: 602 Title: RACE DISCRIMINATION Gazette Number:
ORDINANCE
Section: 70 Heading: **Claims in respect of** Version Date:
discrimination, harassment and
vilification

Remarks:
not yet in operation

(1) A claim by or on behalf of any person (“the claimant”) that another person (“the respondent”)—

- (a) has committed an act of discrimination against the claimant which is unlawful by virtue of Part 3 or 4;
- (b) has committed an act of harassment against the claimant which is unlawful by virtue of Part 3 or 4;
- (c) has committed an act which is unlawful by virtue of section 45; or
- (d) is to be treated, by virtue of section 47 or 48, as having committed an act of discrimination or harassment referred to in paragraph (a) or (b) against the claimant or an act referred to in paragraph (c);

may be made the subject of civil proceedings in like manner as any other claim in tort.

(2) Subsection (1) does not apply to a claim under section 19(1) of an act in respect of which an appeal, or proceedings in the nature of an appeal, may be brought under any enactment.

(3) Proceedings under subsection (1) are to be brought in the District Court but all such remedies shall be obtainable in such proceedings as, apart from this subsection and section 69(1), would be obtainable in the Court of First Instance.

(4) Without limiting the power conferred by subsection (3), the District Court may—

- (a) make a declaration that the respondent has engaged in conduct, or committed an act, that is unlawful under this Ordinance and order that the respondent shall not repeat or continue such unlawful conduct or act;
- (b) order that the respondent shall perform any reasonable act or course of conduct to redress any loss or damage suffered by the claimant;
- (c) order that the respondent shall employ or re-employ the claimant;
- (d) order that the respondent shall promote the claimant;
- (e) order that the respondent shall pay to the claimant damages by way of compensation for any loss or damage suffered by reason of the respondent’ s conduct or act;
- (f) order that the respondent shall pay to the claimant punitive or exemplary damages; or

(g) make an order declaring void in whole or in part and either ab initio or from such date as may be specified in the order, any contract or agreement made in contravention of this Ordinance.

(5) By virtue of this subsection and notwithstanding any law, the District Court has jurisdiction to hear and determine any proceedings under subsection (1) and has all such powers as are necessary or expedient for it to have in order to provide, grant or make any remedy, injunction or order mentioned in this Ordinance.

(6) In respect of an unlawful act of discrimination falling within section 4(1)(b), no award of damages is to be made if the respondent proves that the requirement or condition concerned was not applied with the intention of treating the claimant unfavourably on the ground of the race of the claimant.

(7) For the avoidance of doubt, it is declared that damages in respect of an unlawful act of discrimination or harassment, or an act which is unlawful by virtue of section 45, may include compensation for injury to feelings whether or not they include compensation under any other head.

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RACE DISCRIMINATION (PROCEEDINGS BY EQUAL OPPORTUNITIES COMMISSION) REGULATION

(Made by the Secretary for Constitutional and Mainland Affairs under section 83 of the Race Discrimination Ordinance (29 of 2008) subject to the approval of the Legislative Council)

1. Commencement

This Regulation comes into operation on a day to be appointed by the Secretary for Constitutional and Mainland Affairs by notice published in the Gazette.

2. Circumstances in which Commission may bring proceedings

The circumstances in which the Commission may bring proceedings for the purposes of section 70(1) of the Ordinance (as if it were a person who may have brought proceedings under that section but has not done so) are where –

- (a) the case raises a question of principle; and
- (b) it is in the interests of justice to do so,

and it appears to the Commission that the claim of the person is well-founded.

3. Remedies Commission may seek in proceedings brought by it

In any proceedings brought under section 2, the Commission may apply for any remedy available to a claimant under section 70(3) of the Ordinance, including a declaration that the act which is the subject of the proceedings is an unlawful act or an injunction in respect of such act or both a declaration and an injunction.

Secretary for Constitutional and
Mainland Affairs

2009

Explanatory Note

Section 70 of the Race Discrimination Ordinance (29 of 2008) (“the Ordinance”) sets out the matters in respect of which a person may bring civil proceedings under the Ordinance. Section 83 of the Ordinance empowers the Secretary for Constitutional and Mainland Affairs to specify in regulations –

- (a) the circumstances in which the Equal Opportunities Commission (“the Commission”) may bring proceedings if a person who is entitled to bring proceedings under section 70 of the Ordinance does not do so; and
- (b) the remedies which the Commission may seek to obtain in such proceedings.

2. Accordingly, this Regulation empowers the Commission –

- (a) to bring such proceedings where a question of principle is involved and it is in the interests of justice to do so and it appears that the claim is well-founded; and
- (b) in any such proceedings to seek any remedy available under section 70(3) of the Ordinance, including a declaration or an injunction or both.