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Panel on Constitutional Affairs

**Background brief prepared by the Legislative Council Secretariat
for the meeting on 7 July 2009**

Administrative guidelines on promotion of racial equality

Purpose

This paper provides background information on the Administration's plan of drawing up administrative guidelines on promotion of racial equality and gives a brief account of the relevant discussions of the former Bills Committee on Race Discrimination Bill (the Bills Committee).

Background

Use of language in the provision of goods, facilities and services

2. "Race" is defined in the Race Discrimination Bill as meaning the race, colour, descent or national or ethnic origin of a person. As language is not a ground of race, the Bill has imposed no obligation on any person to use any particular language in communication with others. Specifically, the Bill has included an exemption in Clause 58 for the use, or failure to use, of particular languages in regard to the provision of goods, services and facilities^{Note}.

3. Some members of the Bills Committee expressed strong dissatisfaction with the exemption provided for in Clause 58 given that language was a major barrier for ethnic minorities to gain access to essential public services, particularly medical services. They queried the reason why it was not practicable for Government departments to use an official language i.e. English, in their provision of goods, facilities and services to the public. These members stressed that discrimination by use of language was a real issue which excluded certain racial groups from essential public services and benefits, including vocational training opportunities and medical treatment.

4. Concerned organizations and ethnic minority groups submitting views to the Bills Committee stressed that ethnic minorities faced great difficulties in gaining

^{Note} This original Clause 58 has not been incorporated as part of the Race Discrimination Ordinance.

access to vocational training resources and medical services. They complained in particular that ethnic minorities were unable to obtain appropriate and necessary medical treatment because of the lack of interpretation services at hospitals.

5. The Administration's position was that the most effective way of addressing the needs of those members of ethnic minorities who had difficulties using English or Chinese would be through enhanced support in vocational education/training and through provision of interpretation for access to public services. According to the Administration, a two-pronged approach was adopted. Substantial resources had been devoted through the education system to promote the teaching and learning of non-Chinese speaking students and organize language training classes through the Race Relations Unit of the Constitutional and Mainland Affairs Bureau (CMAB) for members of the ethnic minorities to learn the local language. On the other hand, the Administration would arrange interpretation services at various front-line units, including hospitals, job centres and welfare service units as necessary. Four regional support service centres would be established for ethnic minorities, especially to provide telephone interpretation services for ethnic minorities to facilitate their access to public services. The Hospital Authority (HA) would also arrange various measures to enhance its interpretation support for ethnic minorities in gaining access to medical services.

Proposed statutory equality plan put forward by the Bills Committee

6. The majority of members, however, considered that the supporting services to enable racial minorities to have access to vital public services were still sketchy and sporadic, and fell short of effectively eradicating existing forms of discrimination. They were of the view that the Administration should adopt a programmatic approach toward the goal of eradicating racial discrimination. These members requested the Administration to consider imposing a statutory duty on the Government and specified public authorities to draw up a Race Equality Scheme for the purpose of eliminating racial discrimination and promoting racial harmony.

7. The Administration was of the view that drawing up a Race Equality Scheme would involve significant resource and manpower requirements, and the means for achieving this and the implications of the mechanism involved would need to be carefully examined. As a counter proposal, the Administration undertook to compile administrative guidelines on promotion of racial equality within the Government for the key Bureaux and Departments to follow in their formulation and implementation of their relevant policies and measures, focusing on the key services including medical, education, vocational training, employment and major community services.

8. The majority of the members expressed disappointment at the Administration's plan which, in their view, demonstrated clearly the lack of the Government's commitment and determination to eliminate racial discrimination. These members were dissatisfied that the Administration had refused to make an undertaking to allocate additional resources for the implementation of measures formulated with

reference to the administrative guidelines and set up a separate mechanism to oversee the implementation within the Government as a whole. They considered that, as the implementation of the administrative guidelines would involve various policy areas, it was necessary to set up a high-level monitoring mechanism to be led by the Chief Secretary for Administration in order to ensure that its implementation would achieve effective results. Some members, however, found the Administration's undertaking of drawing up the proposed administrative guidelines acceptable.

The Administration's plan on the proposed administrative guidelines

9. The Administration advised the Bills Committee that it aimed to produce a draft of the proposed administrative guidelines in the fourth quarter of 2008 and, subject to progress of consultation with relevant parties, issue the guidelines in the first quarter of 2009. The Administration undertook to consult the Panel on Constitutional Affairs on the draft of the proposed administrative guidelines and brief the Panel on the implementation progress.

10. In his speech during the resumption of the Second Reading debate on the Bill on 9 July 2008, the Secretary for Constitutional and Mainland Affairs further elaborated on the Administration's plan of drawing up the proposed administrative guidelines on promotion of racial equality as follows -

- (a) the guidelines were expected to cover HA, Department of Health, the Education Bureau, Labour Department, Social Welfare Department and the Home Affairs Department, and they were also expected to involve other organizations including Vocational Training Council, Employees Retraining Board and Construction Industry Council;
- (b) bureaux and departments would be invited to assess the impact of their policies and measures on racial equality, to consider the measures to be implemented to eliminate unlawful racial discrimination, to promote racial equality and to enhance support services to ethnic minorities in the light of such assessments, and to formulate performance pledges, targets, or indicators as appropriate;
- (c) an inter-departmental body would be set up to coordinate the preparation of the guidelines and CMAB would take an overview on the implementation in the Government as a whole;
- (d) relevant parties including the relevant ethnic minority groups would be consulted; and
- (e) bureaux and departments concerned would be asked to consider the resources required and, as needed, seek additional resources through appropriate channels and procedures.

11. According to the Administration, The Ombudsman can investigate whether relevant bureaux and departments have failed to apply government administrative guidelines, including the proposed administrative guidelines on promotion of racial equality, within the confines of The Ombudsman Ordinance (Cap. 397). The Administration plans to liaise with The Ombudsman further when drawing up the details of the proposed administrative guidelines.

Relevant papers

12. A list of relevant papers which are available on the LegCo website is in the **Appendix**.

Council Business Division 2
Legislative Council Secretariat
30 June 2009

Administrative Guidelines on Promotion of Racial Equality

Relevant documents

<u>Committee</u>	<u>Meeting Date</u>	<u>Paper</u>
Bills Committee on Race Discrimination Bill	12 March 2008	Letter dated 27 February 2008 from the Secretary for Constitutional and Mainland Affairs to Chairman of the Bills Committee on support measures for ethnic minorities and new arrivals and proposed amendments to the Bill [LC Paper No. CB(2)1221/07-08(01)]
	16 April 2008	Administration's paper on "Vocational training and interpretation services at hospitals for ethnic minorities" [LC Paper No. CB(2)1385/07-08(01)] Administration's paper on "Supplementary information in response to questions raised at the meeting held on 26 March 2008" [LC Paper No. CB(2)1600/07-08(01)]
	11 June 2008	Administration's paper on "Administrative guidelines on promotion of racial equality" [LC Paper No. CB(2)2219/07-08(01)]
	14 June 2008	Administration's paper on "Administration's response to the outstanding general issues raised by members of the Bills Committee" [LC Paper No. CB(2)2297/07-08(01)] Administration's paper on "Administration's response to views received from deputations on vocational training and on interpretation services at hospitals " [LC Paper No. CB(2)2297/07-08(02)]
	--	Letter dated 7 July 2008 from the Secretary for Constitutional and Mainland Affairs on support measures for ethnic minorities and new arrivals [LC Paper No. CB(2)2552/07-08(01)]

<u>Committee</u>	<u>Meeting Date</u>	<u>Paper</u>
	17 June 2008	Administration's paper on "Further information on the administrative guidelines on promotion of racial equality" [LC Paper No. CB(2)2301/07-08(01)]

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