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Panel on Constitutional Affairs

Updated background brief prepared by the Legislative Council Secretariat for the meeting on 19 October 2009

Administrative guidelines on promotion of racial equality

Purpose

This paper provides background information on the administrative guidelines on promotion of racial equality (the Administrative Guidelines) and gives a brief account of the recent discussions of the Panel on Constitutional Affairs (the Panel) on its draft as summarized in paragraphs 12 to 20.

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 on the Race Discrimination Bill (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 towards 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 (CS) 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 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 (SCMA) 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 (EDB), 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.

Consultation with the Panel

12. The Administration consulted the Panel on the draft Administrative Guidelines at its meeting on 7 July 2009. The issues raised by members are summarized in paragraphs 13 to 20 below.

Scope of application

13. Some members enquired why the coverage of the Administrative Guidelines did not include some public bodies, such as the Trade Development Council and the Hong Kong Mortgage Corporation Limited, and departments which interfaced with ethnic minorities such as the Police Force and the Housing Department.

14. The Administration explained that the Administrative Guidelines covered the key public services which were particularly relevant to meeting the special needs of ethnic minorities and facilitating their integration into the community, namely medical, education, vocational training, employment and major community services. The bureaux, departments and relevant public authorities concerned included EDB, Food and Health Bureau, Department of Health, Labour Department, HA, etc. The Administration would keep the scope of the application of the Administrative Guidelines under review. For bureaux, departments and public authorities which were not covered by the Administrative Guidelines, they were regulated by the Race Discrimination Ordinance (RDO) and the Code of Practice on Employment under RDO issued by the Equal Opportunities Commission which provided guidance on promotion of racial equality in the area of employment.

Effectiveness of the Administrative Guidelines

15. Some members queried the effectiveness of the Administrative Guidelines to promote racial equality on the grounds that -

- (a) the draft Administrative Guidelines were couched in abstract and broad terms and the content lacked substance;
- (b) the Administrative Guidelines would be implemented on a voluntary basis only; and
- (c) a high-level monitoring mechanism led by CS had not been set up in order to ensure compliance within the Government.

16. According to the Administration, under the Policy Committee led by CS, all relevant policy secretaries were aware of the need to implement the Administrative Guidelines. Relevant bureaux, departments and public authorities had the obligation to comply with the Administrative Guidelines even though it was not legally binding for them to do so. The Ombudsman was empowered to investigate maladministration cases of relevant bureaux and departments in relation to failure to apply government administrative guidelines, including the Administrative Guidelines, within the confines of The Ombudsman Ordinance. CMAB would maintain an overview on the implementation of the Administrative Guidelines within the Government and report progress to the Panel as appropriate. The Administration would take into account members' views in refining the Administrative Guidelines.

17. Some members reiterated their concern as to whether SCMA had the authority to press other policy secretaries to implement measures to promote racial equality as implementation of the Administrative Guidelines would involve various policy areas. They stressed that it was necessary to set up a high-level monitoring mechanism to be led by CS in order to ensure that the implementation of RDO including the Administrative Guidelines would achieve effective results.

Implementation of the Administrative Guidelines

18. The Administration informed the Panel that the Administrative Guidelines which were expected to commence operation in the fourth quarter of 2009 set out the key steps in formulating and implementing relevant policies and measures in various stages. Relevant bureaux, departments and public authorities were invited to draw up and publicize a checklist of measures that would assist in promoting racial equality and equal opportunity within their respective policy and programme areas.

19. Some members expressed concern whether adequate resources would be provided to individual bureaux and departments for implementing the Administrative Guidelines. They considered that the Administration should review the overall requirement for additional resources to implement RDO including the Administrative Guidelines and make the financial commitment accordingly.

20. The Administration explained that the resources required by relevant bureaux, departments and public authorities to promote racial equality were different. As the demand for public services from ethnic minorities was not huge given their small population, the relevant bureaux, departments and public authorities would deploy internal resources to implement the existing and new measures to promote racial equality and where necessary, they could bid for additional provision in the annual resource allocation exercise. The Administration would strive to provide the resources to meet the bid for additional funding from relevant policy bureaux/departments for the financial year 2010 - 2011 for the implementation of RDO and the Administrative Guidelines.

21. At members' request, the Administration undertook to brief the Panel on the implementation progress of the Administrative Guidelines and to provide the checklists of measures to the Panel.

Relevant papers

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

Council Business Division 2
Legislative Council Secretariat
16 October 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)] |
| Panel on Constitutional Affairs | 7 July 2009 | Administration's paper on "Administrative Guidelines on Promotion of Racial Equality" [LC Paper No. CB(2)2064/08-09(01)] Background brief on "Administrative guidelines on promotion of racial equality" prepared by the Legislative Council Secretariat [LC Paper No. CB(2)2064/08-09(02)] Joint submission from Hong Kong Human Rights Monitor and Hong Kong Unison Ltd [LC Paper No. CB(2)2151/08-09(01)] <i>(English version only)</i> Dr Hon Margaret NG's view on the Committee Stage amendments proposed to the Race Discrimination Bill on "General statutory duty of the Government" [LC Paper No. CB(2)2151/08-09(02)] Submission from the Society for Community Organization [LC Paper No. CB(2)2340/08-09(01)] <i>(English version only)</i> |