

立法會
Legislative Council

LC Paper No. CB(1)420/15-16
(These minutes have been seen
by the Administration)

Ref: CB1/SS/2/15/2

Subcommittee on Census and Statistics (2016 Population Census) Order

**Minutes of the second meeting on
Tuesday, 17 November 2015, at 4:30 pm
in Conference Room 1 of the Legislative Council Complex**

Members present : Hon Cyd HO Sau-lan, JP (Chairman)
Hon CHAN Kam-lam, SBS, JP
Hon Alan LEONG Kah-kit, SC
Hon Charles Peter MOK, JP
Hon CHAN Chi-chuen
Dr Hon Fernando CHEUNG Chiu-hung
Hon SIN Chung-kai, SBS, JP
Dr Hon CHIANG Lai-wan, JP

Members absent : Hon Emily LAU Wai-hing, JP
Hon Steven HO Chun-yin, BBS

Public officers attending : Mr Stephen LEUNG Kwan-chi
Commissioner for Census and Statistics (Acting)

Ms Marion CHAN Shui-yu
Assistant Commissioner for Census and Statistics
(Social)

Mr Leo YU Chun-keung
Senior Statistician for Census and Statistics (Census
Planning)¹

Ms Rebecca SIU Wai-fun
Senior Statistician for Census and Statistics (Census
Planning)²

Ms Esther LI So-fan
Senior Systems Manager for Census and Statistics
(Census System Services)

Ms Wendy CHUNG
Principal Assistant Secretary for Financial Services and
the Treasury (Financial Services)³

Mr Henry CHAN Ngai-him
Senior Government Counsel (Acting)
Department of Justice

**Attendance by
invitation** : **Deputations**

Liberal Party

Mr Peter SHIU
Vice Party Chairman

Rainbow of Hong Kong

YEUNG Chu Wing

Association for Transgender Rights

八爪

Rainbow Action

SHAM Tsz Jit

Individual

Arthur CHAN

Individual

Miss LAM Mei Kwan Annie

Next Generation Orientation

Mr Simon FUNG
Convener

Parents for The Family Association

Mr Howard LAI

Individual

Ms TSANG Yuet Ming

Individual

Ms TAM Chui Po Kiny

Individual

Ms TSANG Shui Ching

Clerk in attendance : Ms Connie SZETO
Chief Council Secretary (1)4

Staff in attendance : Miss Winnie LO
Assistant Legal Adviser 7

Miss Sharon LO
Senior Council Secretary (1)9

Ms Sharon CHAN
Legislative Assistant (1)4

I Meeting with deputations and the Administration

Meeting with deputations

(LC Paper No. CB(1)156/15-16(03) — Submission from Ms TSANG Shui Ching (Chinese version only)

- LC Paper No. CB(1)173/15-16(02) — Submission from Miss LAM Mei Kwan Annie (Chinese version only)
- LC Paper No. CB(1)173/15-16(03) — Submission from Next Generation Orientation (Chinese version only)
- LC Paper No. CB(1)173/15-16(04) — Submission from Parents for The Family Association (Chinese version only)
- LC Paper No. CB(1)173/15-16(06) — Submission from Arthur CHAN (Chinese version only)
- LC Paper No. CB(1)173/15-16(07) — Submission from Rainbow Action (Chinese version only)

Submissions/letters from organizations/individuals not attending the meeting

- (LC Paper No. CB(1)156/15-16(04) — Submission from 商務及會計專業關愛社團 (Chinese version only)(revised)
- LC Paper No. CB(1)156/15-16(05) — Submission from Hong Kong Unison Limited (English version only)
- LC Paper No. CB(1)156/15-16(06) — Submission from KWOK See Yuen (Chinese version only)
- LC Paper No. CB(1)156/15-16(07) — Submission from 性傾向條件家
校關注組 (Chinese version only)
- LC Paper No. CB(1)156/15-16(08) — Submission from The Voice of Righteousness (English version only)
- LC Paper No. CB(1)156/15-16(09) — Submission from 潘小姐 (Chinese version only)

LC Paper No. CB(1)173/15-16(01) — Submission from 醫護界關愛社群組 (Chinese version only)

LC Paper No. CB(1)173/15-16(05) — Submission from Women Coalition of HKSAR (Chinese version only)

Matters arising from previous meeting

(LC Paper No. CB(1)156/15-16(01) — List of follow-up actions arising from the discussion at the meeting on 9 November 2015

LC Paper No. CB(1)156/15-16(02) — Administration's response to issues raised at the meeting on 9 November 2015)

Other relevant papers

(File Ref: C&SD/1/11(2014)Pt.2 — Legislative Council Brief

L.N. 208 of 2015 — Census and Statistics (2016 Population Census) Order

LC Paper No. LS4/15-16 — Legal Service Division Report

LC Paper No. CB(1)124/15-16(01) — Background brief on the Census and Statistics (2016 Population Census) Order prepared by the Legislative Council Secretariat

LC Paper No. CB(1)124/15-16(02) — Letter dated 27 October 2015 from Legal Service Division to the Administration

LC Paper Nos. CB(1)124/15-16(03) and (04) — Administration's responses dated 28 and 29 October 2015 to Assistant Legal Adviser's letter of 27 October 2015

LC Paper No. CB(1)124/15-16(05) — Letter dated 30 October 2015 from Legal Service Division to the Administration

LC Paper No. CB(1)124/15-16(06) — Administration's response dated 6 November 2015 to Assistant Legal Adviser's letter of 30 October 2015

LC Paper No. CB(1)124/15-16(07) — Administration's paper on supplementary information regarding the statistical information on sexual minorities for the 2016 Population By-census)

The Chairman welcomed representatives of the Administration and deputations/individuals to the meeting. She reminded the deputations/individuals that their written submissions provided to the Subcommittee and views presented at the meeting would not be covered by the protection and immunity provided under the Legislative Council (Powers and Privileges) Ordinance (Cap. 382).

Discussion

2. The Subcommittee received views from 11 deputations/individuals attending the meeting, and noted the eight written submissions provided by organizations/individuals which/who had not attended the meeting (Index of proceedings attached at **Appendix**).

(Post meeting note: A written submission received from an individual 關先生 after the meeting on 19 November 2015 (Chinese version only) was issued to members vide LC Paper No. CB(1)179/15-16(01) on 20 November 2015.)

Admin Follow-up actions to be taken by the Administration

Options available under the data topic "marital status"

3. For the 2016 Population By-census, respondents were required to indicate their "marital status" among the answer options "never married", "now married", "widow", "divorced" and "separated". Some members expressed concern about the legal liability of respondents who had registered their same sex marriage in other jurisdictions in choosing the options. The Administration was requested to provide information on:

- (a) how such respondents should answer the question;
- (b) the legal liability of these respondents if they chose the option "never married", in particular whether they would contravene section 16 of the Census and Statistics Ordinance (Cap. 316) as they knew that the information they provided was false or they did not believe to be true; and
- (c) the legal liability of these respondents if, to the best of their knowledge and belief, they chose the option "now married".

4. Some members were of the view that respondents who had registered their same sex marriage in other jurisdictions would be willing to disclose their same sex relationship status. The Administration was requested to explain why answer options like "same sex relationship" and "same sex co-habitation" were not provided under the data topic "marital status". The Administration was also requested to consider including an answer option "partners (伴侶)" under the data topic "marital status" or allowing respondents with registered same sex marriage to indicate their relationship as "spouse (配偶)".

Options available under the data topic "sex"

5. The Administration was requested to provide supplementary information to address some members' concern as:

- (a) how respondents could indicate their "sex" if they were holding a foreign passport with a third sex other than male or female given that it might be infeasible for or disrespectful to persons having a third sex (e.g. a transgender/transsexual person) to indicate their "sex" as either male or female; and
- (b) the legal liability of these respondents if they refused to indicate their "sex" as an appropriate answer option was not available in the questionnaire.

(Post meeting note: The Administration's written response was issued to members vide LC Paper No. CB(1)181/15-16(02) on 23 November 2015.)

II Any other business

Date of next meeting

6. The Chairman said that the Subcommittee would hold another meeting to discuss the supplementary information provided by the Administration (i.e. LC Paper No. CB(1)156/15-16(02)) and conduct a clause-by-clause scrutiny of the Census and Statistics (2016 Population Census) Order. She would work out the date of the meeting with the Clerk and inform members in due course.

(Post-meeting note: The third meeting was scheduled for Tuesday, 24 November 2015, from 11:00 am to 1:00 pm.)

7. There being no other business, the meeting ended at 6:15 pm.

Council Business Division 1
Legislative Council Secretariat
12 January 2016

**Proceedings of the second meeting of the
Subcommittee on Census and Statistics (2016 Population Census) Order
on Tuesday, 17 November 2015, at 4:30 pm
in Conference Room 1 of the Legislative Council Complex**

Time Marker	Speaker	Subject(s)	Action Required
000210 – 000616	Chairman	Introductory remarks	
Presentation of views by deputations/individuals and the Administration's initial responses			
000617 – 000925	Liberal Party ("LP")	<p>Presentation of views as highlighted below –</p> <p>(a) LP supported implementation of the 2016 population by-census ("16BC") and the Administration's decision not to provide a third option on "sex" besides male and female; and</p> <p>(b) the community at large showed understanding and was accommodating to people with different sexual orientations though it in general did not support same sex co-habitation relationship.</p>	
000926 – 001236	Rainbow of Hong Kong ("RHK")	<p>Presentation of views as highlighted below –</p> <p>(a) RHK was opposed to the Administration's decision of not collecting information on transgender/transsexual people and same sex co-habitation relationship in 16BC;</p> <p>(b) the Census and Statistics Department ("C&SD") had the responsibility to provide timely statistics (including those relating to different social groups and minorities) to facilitate planning and decision making within the Government and for information of the community; and</p> <p>(c) while same sex co-habitation relationship was covered by the Domestic and Cohabitation Relationships Violence Ordinance (Cap. 189), the lack of relevant data on sex minorities had hindered the Government, in particular the Social Welfare Department, in developing preventative measures against domestic violence in same sex co-habitation relationships and strengthening support for the victims concerned.</p>	

Time Marker	Speaker	Subject(s)	Action Required
001237 – 001518	Association for Transgender Rights ("ATR")	<p>Presentation of views as highlighted below –</p> <p>(a) ATR did not agree with the Administration's view that the topics on sexual orientation and gender identity were conceptually complicated and/or sensitive to be covered in 16BC;</p> <p>(b) transgender/transsexual people (and their families) should have already noticed their sex and sexual orientation when they were born or received diagnoses and treatments on these matters;</p> <p>(c) it was disrespectful to the transgender/transsexual people if an answer option of "third sex" was not provided for the data topic "sex", and it would be difficult for a respondent holding a foreign passport with a third sex when answering the question on sex;</p> <p>(d) ATR suggested providing the below answer options for the data topic "sex" –</p> <ul style="list-style-type: none"> - sex according to birth certificate; - sex according to identity card; - self-identified sex; and - third sex. 	
001519 – 001822	Rainbow Action	Presentation of views [LC Paper No. CB(1)173/15-16(07)]	
001823 – 002130	Arthur CHAN	Presentation of views [LC Paper No. CB(1)173/15-16(06)]	
002131 – 002230	Miss LAM Mei Kwan Annie	Presentation of views [LC Paper No. CB(1)173/15-16(02)]	
002231 – 002456	Next Generation Orientation	Presentation of views [LC Paper No. CB(1)173/15-16(03)]	
002457 – 002804	Parents for The Family Association	Presentation of views [LC Paper No. CB(1)173/15-16(04)]	
002805 – 003110	Ms TSANG Yuet Ming	<p>Presentation of views as highlighted below –</p> <p>(a) Ms TSANG did not agree providing an additional answer option on the data topic "sex" besides male and female as respondents should indicate their sex</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>according to one's biological sex at birth or the re-assigned sex if they had undergone full sex re-assignment surgeries;</p> <p>(b) sexual orientation was difficult to define and respondents would have difficulties in answering such questions, and hence such data topics should not be included in population censuses/by-censuses, particularly because the enumerators were temporary staff and mostly students without practical experience in conducting surveys; and</p> <p>(c) she did not agree adding answer options like "same sex partnership" or "same sex co-habitation" for the data topic "marital status" as the legal marriage in Hong Kong is the union of one man and one woman.</p>	
003111 – 003329	Ms TAM Chui Po Kiny	<p>Presentation of views as highlighted below –</p> <p>(a) Ms TAM supported the Administration's decision of not including data topics on sex minorities in 16BC as there were concerns about the reliability and creditability of the data to be collected;</p> <p>(b) it was not necessary to provide other answer options for the data topic "sex" besides male and female as respondents should indicate their sex according to their identity cards;</p> <p>(c) data topics like sexual orientation and gender identity should not be included in population censuses/by-censuses as these might confuse the public, and the distribution of female and male in the population might not be truly reflected as a result.</p>	
003330 – 003458	Ms TSANG Shui Ching	<p>Presentation of views [LC Paper No. CB(1)156/15-16(03)]</p>	
003459 – 004119	Chairman Administration	<p>The Administration's initial responses to deputations' views are as follows –</p> <p>(a) in response to repeated requests from organizations providing assistance and</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>support to sexual minorities, C&SD had agreed in 2013 to explore the feasibility of including data topics on sexual minorities in 16BC;</p> <p>(b) before finalizing the 16BC questionnaire, C&SD had consulted relevant Government bureaux/departments, the Panel on Financial Affairs, and about 180 non-government organizations;</p> <p>(c) after considering the priority and feasibility on the proposed new data topics, C&SD decided that data topics on sexual minorities should not be included as it was anticipated that the figures on sexual minorities would be grossly under-estimated given their sensitive nature. The mandatory requirement of 16BC which obliged respondents to provide truthful information could cause difficulties to respondents who were unwilling to respond to questions on sexual minorities, and might attract legal liability for them;</p> <p>(d) transgender/transsexual people should choose the answer option of male or female under the data topic "sex" according to the prominent sex or the sex they believed they belonged to; and</p> <p>(e) if respondents had registered their same sex marriage in other jurisdictions, they should choose the answer option "never married" under the data topic "marital status" as "married" for the purpose of 16BC referred to persons married to the opposite sex. They might choose the option "others" and specify their relationship as "same sex partners" under the data topic "relationship to the household head".</p>	
004120 – 004841	Chairman Dr CHIANG Lai-wan Administration	Dr CHIANG asked whether it would be an offence for respondents if they refused to answer any questions in 16BC or provided false answers knowingly. She opined that if a household consisted of members of the same sex, the question on the relationship to the household head might shed light on the sexual orientation of household members.	

Time Marker	Speaker	Subject(s)	Action Required
		<p>The Administration advised that –</p> <p>(a) results of the 2011 Population Census indicated that there were some 7,000 households comprising members of the same sex who were unrelated to the household head. These households should have included people with same-sex relationship;</p> <p>(b) it would be an offence if the respondents refused to answer any questions or provided false answers knowingly in 16BC;</p> <p>(c) while it would be inappropriate to collect information on sex minorities in population censuses/by-censuses, such information could be collected through other channels, e.g. studies/research conducted by academia.</p>	
<p>004842 – 005553</p>	<p>Dr Fernando CHEUNG Administration Chairman</p>	<p>Dr CHEUNG's views that the data topic "sex" could be classified into "biological sex" and "gender identity", and "gender identity" could include options of "male", "female", "third sex" and "others". Some jurisdictions like India had provided "third sex" as an answer option in their population censuses. He considered that collecting information on different minority groups (e.g. sexual minorities, people with disabilities, ethnic minorities and new arrivals) could assist the Government in formulating relevant social and economic policies.</p> <p>Regarding the statistics on ethnic minorities, Dr CHEUNG shared the view of the Hong Kong Unison Limited [LC Paper No. CB(1)156/15-16(05)] that due to the small population size of the ethnic minorities in Hong Kong, C&SD should provide a larger sample size for the ethnic minorities in 16BC so as to ensure sufficient and accurate data would be collected from the ethnic minorities. He also asked if C&SD would collect information about people with mental illness in 16BC or had worked out the appropriate method for collecting such information.</p> <p>The Administration responded that –</p> <p>(a) C&SD had not received any request from Government bureaux/departments on the</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>need to collect data on "gender identity" in 16BC; and</p> <p>(b) Hong Kong did not have a dedicated sampling frame for the ethnic minorities as the case in some overseas jurisdictions. C&SD considered that the current sampling method adopted for 16BC could ensure a sufficient number of ethnic minorities households would be selected and the accuracy of the statistical information collected, thus providing reliable information on the situations of ethnic minorities in Hong Kong.</p>	
005554 – 010056	Chairman Mr CHAN Kam-lam	<p>Mr CHAN expressed his views that –</p> <p>(a) given the purpose of population censuses/by-censuses was to obtain up-to-date information on the general socio-economic characteristics of the Hong Kong population, it was reasonable that relatively minor data topics should not be included having regard that 16BC had already included 45 data topics, and the need to keep the census questionnaire to a reasonable length; and</p> <p>(b) excluding the data topics on sexual minorities should not be taken as a disrespect to the sexual minorities. It should be noted that while some overseas jurisdictions did include such data topics in their population censuses, some did not; and</p> <p>(c) there were diverse views in the community as whether sensitive data topics like sexual orientation and third sex should be included in 16BC.</p>	
010057 – 011057	Mr CHAN Chi-chuen Rainbow Action Chairman Assistant Legal Adviser 7 ("ALA7") Administration	<p>Mr CHAN expressed the following views –</p> <p>(a) C&SD had decided not to include the data topics on sexual minorities in 16BC merely due to concerns about technical issues (e.g. the reliability of the statistics collected);</p> <p>(b) the purpose of including data topics on sexual minorities in 16BC was to collect</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>information on these people. It had nothing to do with social values or moral standards of society nor did it imply any acceptance/support for these people;</p> <p>(c) taking into account that 16BC would be a mandatory survey and it would be infeasible for or disrespectful to transgender/transsexual respondents to indicate their "sex" as either male or female, appropriate answer options, like "third sex", should be provided in the 16BC questionnaire; and</p> <p>(d) the Administration should consider providing answer options, like "others" and "not applicable" for questions related to sex, sexual orientation and same sex relationship as such answer options were also provided for some questions in 16BC.</p> <p>In response to ALA7's enquiry, the Administration clarified that the maximum fine under section 14 of the Census and Statistics Ordinance (Cap. 316) ("CSO") should be \$2,000. Section 23(1) of CSO specified that the fine for a person who had committed an offence under section 13, 14, 15 or 19(a) of the CSO was liable to a fine of \$500. However, under section 113C of the Criminal Procedure Ordinance (Cap.221) ("CPO"), a fine expressed as an amount of \$500 was deemed to be a fine at level 1 (i.e. \$2,000 according to Schedule 8 to the CPO). Hence the maximum fine for the contravention of section 14 of CSO was \$2,000.</p> <p>In response to enquiries by Mr CHAN and Mr SHAM of Rainbow Action, the Administration explained that if the respondents who had registered their same sex marriage in other jurisdictions and chose the answer option "never married" under the data topic "marital status", they would not be regarded as having contravened section 16 of CSO. It was because the meaning of "married", for the purpose of 16BC, referred to people married to the opposite sex. On the other hand, if these respondents chose the option "now married" as they believed it was true, they would not be regarded as having contravened section 16 of CSO and a defence of</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>"reasonable excuse" was available under the provision.</p> <p>The Administration was requested to provide supplementary information on –</p> <ul style="list-style-type: none"> (a) how respondents who had registered their same sex marriage in other jurisdictions should choose answer options under the data topic "marital status"; (b) the legal liability of these respondents if they chose the option "never married", in particular if they would contravene section 16 of CSO as they knew that the information they provided was false or they did not believe to be true; and (c) the legal liability of these respondents if, to the best of their knowledge and belief, they chose the option "now married". 	<p>The Administration to take action as paragraph 3 of the minutes</p>
<p>011058 – 012338</p>	<p>Chairman Mr CHAN Chi-chuen Administration</p>	<p>Mr CHAN was of the view that respondents who had registered their same sex marriage in other jurisdictions would not mind disclosing their same sex relationship status. Those respondents who did not wish to disclose such information to their families could choose to provide the information through the e-questionnaire.</p> <p>The Administration re-iterated that the figures on respondents with same sex relationship status would be grossly under-estimated as it was anticipated that a considerable number of respondents were unwilling to disclose such information, and the mandatory requirement of 16BC might cause difficulties to these respondents who might attract legal liability as a result.</p> <p>The Chairman requested the Administration to explain why answer options like "same sex relationship" and "same sex co-habitation" were not provided for the data topic "marital status". The Administration was also requested to consider including an answer option "partners (伴侶)" under the data topic "marital status" or allowing respondents with registered same sex marriage to indicate their relationship as "spouse (配偶)".</p>	<p>The Administration to take action as paragraph 4 of the minutes</p>

Time Marker	Speaker	Subject(s)	Action Required
012339 – 013348	Mr Alan LEONG Administration Chairman	<p>In response to Mr LEONG's enquiry regarding consultation conducted in 2013-14 for 16BC, the Administration advised that –</p> <p>(a) in considering whether to include a new data topic, C&SD would take into account factors including respondents' willingness to and/or capability in providing the requested information (e.g. whether the data topics were conceptually complicated and/or sensitive, and the legal liability of respondents in answering the questions), relevant knowledge and skills of C&SD's enumerators in explaining the concepts (e.g. various types of disabilities) to the respondents in ensuring that accurate data would be collected;</p> <p>(b) instead of collecting the information through population census/by-censuses, Government bureaux/departments could propose subject areas to C&SD for collecting the required information through other channels, such as thematic/topical surveys; and</p> <p>(c) non-government organizations might put forward their suggestions to relevant Government bureaux/departments or committees of LegCo for consideration.</p>	
013349 – 013819	Chairman Administration	<p>In reply to the Chairman's enquiry, C&SD responded that organizations including the Tongzhi Community Joint Meeting (同志社區聯席會議), had proposed in 2011 and 2013 to include data topics on sexual minorities in population censuses/by-censuses. In view of the repeated requests, C&SD had agreed to consider the feasibility of including such data topics in 16BC.</p> <p>With regard to the knowledge/skills and necessary training enumerators were expected to have for handling complicated and/or sensitive survey topics, the Administration advised that training on interviewing techniques, e.g. how to lead the respondents to provide accurate information, and special training on concepts relating to a particular subject would be essential.</p>	

Time Marker	Speaker	Subject(s)	Action Required
013820 – 014307	Mr CHAN Chi-chuen Chairman	<p>Mr CHAN was of the view that despite the Administration faced a number of constraints, it should work out the appropriate method for collecting information on sexual minorities.</p> <p>At the request of Mr CHAN and the Chairman, the Administration was requested to provide supplementary information to address the following concerns raised by deputations and members –</p> <p>(a) how respondents could answer the question on "sex" if they were holding a foreign passport with a third sex other than male or female given that it might be infeasible for or disrespectful to persons having a third sex (e.g. a transgender/transsexual person) to indicate their "sex" as either male or female; and</p> <p>(b) the legal liability of these respondents if they refused to answer the question on "sex" as an appropriate answer option was not available in the questionnaire.</p>	The Administration to take action as paragraph 5 of the minutes
014308 – 014535	Chairman	Date of next meeting	