

Note to Members of the Home Affairs Panel

RACE DISCRIMINATION BILL

INTRODUCTION

The Race Discrimination Bill is a private member's bill to be proposed by the Hon. Christine Loh. The Bill's purpose is to prohibit discrimination and harassment on racial grounds, and to provide civil remedies for victims of such conduct. The "racial grounds" which the Bill addresses are colour, race, nationality, descent, and ethnic or national origins.¹

2. The Bill's content is substantially based on Hong Kong's existing discrimination laws, the Sex Discrimination Ordinance [SDO], Disability Discrimination Ordinance [DDO] and Family Status Discrimination Ordinance [FSDO].² Some of the Bill's provisions are also modelled on provisions of the UK Race Relations Act 1976.³

CONDUCT MADE UNLAWFUL

3. The Bill makes it unlawful to discriminate on racial grounds in each area of activity to which it applies. The definition of discrimination is based on the UK Race Relations Act and closely resembles the SDO, DDO and FSDO definitions. Both direct discrimination and indirect discrimination are prohibited, and segregation on racial grounds is expressly declared to constitute direct discrimination.⁴

4. The Bill also prohibits harassment on racial grounds in the same areas of activity. Harassment is defined in substantially the same way as in the DDO, as unwelcome conduct, done on racial grounds, that a reasonable person would have anticipated would cause the victim to be offended, humiliated or intimidated.⁵

5. The Bill applies to the same comprehensive range of activities as the SDO, DDO and FSDO. Thus, the Bill prohibits discrimination and harassment in the employment field,⁶ and in other fields⁷ including education, the provision of goods, facilities, services, and premises, and in relation to advisory bodies, barristers, certain private associations, and government.

EXCEPTIONS PROVIDED

6. Like the SDO, DDO and FSDO, the Bill provides exceptions for certain activities, such as in relation to charities; insurance; voluntary bodies; immigration legislation; small dwellings; and measures to meet the special needs of a particular racial group or to achieve equality for the group.⁸ A temporary exception (for 3 years) is provided for small employers.⁹

¹Draft Bill, clause 2(1).

²Respectively Cap. 480, 487 and 527.

³1976c. 74. UK.

⁴Draft Bill, clauses 5 and 7.

⁵Draft Bill, clause 2(5); CE. DDO, section 2(6).

⁶Draft Bill, Part III (in relation to employers, contract workers, partnerships, trade and professional organizations, qualifying bodies, vocational training, employment agencies, commission agents and government).

⁷Draft Bill, part IV.

⁸Draft Bill, respectively clause 40:41:26(1)-(2); 18(2) and 32(2):24(2) and 25; and 39.

⁹Draft Bill, clause 8(3) and (5)-(7).

7. Limited exceptions are also provided for national schools,¹⁰ and for private associations which have as their main object the provision of benefits to a particular racial group¹¹ (e.g. a national club, or a benevolent organization for immigrants from a particular place or culture).

8. The Bill does not affect compliance with pre-existing legislation or (for avoidance of doubt) with the Basic Law.¹² Apart from the Bill, however, legislation that purports to authorise race discrimination may be subject to challenge under the Hong Kong Bill of Rights Ordinance (Cap. 383) and/or under the Basic Law.

9. To deal with any transitional problems, the Secretary for Home Affairs is empowered to provide temporary exceptions by regulation, subject to Legco approval.¹³

ENFORCEMENT & REMEDIES

10. Enforcement is by civil proceedings in the District Court, which has a similar jurisdiction under the Bill as under the SDO, DDO and FSDO.¹⁴ Any person may bring such proceedings and the usual civil remedies are obtainable (i.e., a declaration, an injunction, compensatory damages). The court specifically has power to order that a claimant be employed, re-employed or promoted, and to order punitive damages.

11. Apart from court enforcement, it is desirable that the Equal Opportunities Commission undertake functions in relation to the Bill—such as promoting racial equality and conciliating discrimination complaints—similar to the Commission's functions under the SDO, DDO and FSDO. Because of the Basic Law's restrictions on private member's bills,¹⁵ however, only a bill or amendment proposed by the Administration is capable of making such changes to the Commission's statutory functions.

LEGISLATIVE TIMETABLE

12. The English text of the Bill has been completed in draft and is being translated into Chinese. After the bilingual text is finalised, the Bill will be submitted for certification by the Government Law Draftsman, etc., as required by Standing Orders in preparation for introduction into the Legislative Council.

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¹⁰Draft Bill, clause 21(2).

¹¹Draft Bill, clause 26(3)-(4) and 31.

¹²Draft Bill, clause 45 and 46.

¹³Draft Bill, clause 48; cf. clause 47 and 54.

¹⁴Draft Bill, Part VII, in particular clause 50.

¹⁵Basic Law, article 74.