

立法會
Legislative Council

LC Paper No. CB(2)2541/99-00
(These minutes have been
seen by the Administration and
cleared with Chairman)

Ref : CB2/BC/13/99

**Bills Committee on
Family Status Discrimination (Amendment) Bill 2000**

**Minutes of Meeting
held on Friday, 12 May 2000 at 12:45 pm
in Conference Room A of the Legislative Council Building**

Members Present : Dr Hon YEUNG Sum (Chairman)
Hon Cyd HO Sau-lan
Hon LEE Cheuk-yan
Hon LEE Kai-ming, SBS, JP
Hon Christine LOH
Hon CHAN Kwok-keung
Hon LAW Chi-kwong, JP
Hon CHAN Yuen-han

Members Absent : Hon Albert HO Chun-yan
Hon Margaret NG
Hon Ronald ARCULLI, JP
Dr Hon LEONG Che-hung, JP
Hon YEUNG Yiu-chung
Hon CHOY so-yuk

Public Officers Attending : Miss Helen TANG
Principal Assistant Secretary for Home Affairs (3)

Ms Roxana CHENG
Senior Assistant Solicitor General

Mr C M WONG
Assistant Secretary for Home Affairs

Clerk in Attendance : Miss Flora TAI
Chief Assistant Secretary (2) 6

Staff in Attendance : Mr Stephen LAM
Assistant Legal Adviser 4

Mrs Shirley NG
Senior Assistant Secretary (2) 9

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I. Election of Chairman

Dr YEUNG Sum was elected Chairman of the Bills Committee.

II. Meeting with the Administration

[Legislative Council Brief issued by the Home Affairs Bureau on 2 February 2000 (File Ref : S/F(2) in HAB/CR/1/2/34 Pt.5); LC Paper Nos. CB(2)1939/99-00(03) and CB(2)1991/99-00(01)]

2. Principal Assistant Secretary for Home Affairs (3) (PAS(HA)3) briefed members on the background and the purpose of the Bill as set out in the Legislative Council (LegCo) Brief. She also explained to members some draft Committee Stage amendments (CSAs) to be proposed by the Administration as described in a letter from the Secretary for Home Affairs [LC Paper No. CB(2)1939/99-00(03)]. The gist of discussion on the Bill and the draft CSAs is summarised below.

Affording benefits to immediate family members of employees

3. Mr LEE Kai-ming expressed support to the principle of the Bill. He pointed out that labour unions had expressed concern that Bill might have the effect of reducing existing benefits of employees. Mr. LEE asked whether the draft CSAs proposed by the Administration could address the concern. Assistant Legal Adviser 4 (ALA4) explained that the CSAs proposed by the Administration were on discrimination against applicants, employees, contract workers and commission agents. The question of whether existing benefits of the employees would be affected would need to be further discussed and clarified.

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4. Members noted the written submission from the Equal Opportunities Commission (EOC) which was tabled at the meeting and subsequently issued vide LC Paper No. CB(2)1991/99-00(01). Mr LEE Cheuk-yan expressed concern that employers might reduce existing benefits of their employees to avoid possible infringement of the Family Status Discrimination Ordinance (Cap. 527). He asked whether the Administration would consider limiting the scope of benefits which might constitute an act of discrimination if they were not given to all family members of the employees. PAS(HA)3 responded that the Administration had considered the proposal of drawing up an exemption list of benefits but concluded that it was not technically feasible. She explained that an exhaustive list of the benefits currently given by employers was not available. Even if such a list could be drawn up, stipulation of an exemption list in the legislation would limit the benefits which the employers might wish to give to their employees in the future. PAS(HA)3 added that the Administration had explained the rationale to EOC and the majority of EOC members agreed that such an exemption list should not be drawn up.

5. Members noted that EOC had received 11 complaints relating to compassionate leave under the Ordinance and a complainant in one of these cases was refused compassionate leave when his stepfather passed away because the employer only permitted compassionate leave for the passing away of a person directly related to the employee. Mr LEE Cheuk-yan asked whether the issue of compassionate leave would be left to the discretion of employers. PAS(HA)3 responded that it was not the Administration's intention that the Ordinance would require employers to afford benefits to all immediate family members of their employees if such benefits were granted. The Administration therefore did not intend to single out compassionate leave for different treatment.

Retrospective provisions of the Bill

6. Members noted that the Bill sought to amend the Ordinance to clarify that it was not unlawful for a person to afford benefits only to one or more immediate family members of his employees, and without affording the same to all immediate family members of the employees. To put beyond doubt that it had never been the Administration's intention to require an employer to provide benefits to every immediate family member of his employees, the amendments would be deemed to have come into operation when the Ordinance took effect on 21 November 1997. The Bill also expressly provided that relevant proceedings instituted under the Ordinance before 1 February 2000 were not to be affected.

7. In response to Miss Cyd HO's enquiry, PAS(HA)3 explained that when the Ordinance was enacted in 1997, it was not the intention that the Ordinance would require employers to afford benefits to all immediate family members in the care of their employees if such benefits were granted. However, there was

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a body of legal opinion which considered that according to the wording of the existing provisions of the Ordinance, there was an alternative way of interpreting the Ordinance, namely, it was unlawful for an employer to restrict benefits to only some immediate family members in the care of his employees. The purpose of the Bill was to put beyond doubt that it had never been the Administration's intention to require an employer to provide benefits to every immediate family member of his employees, the amendments should be deemed to have come into operation when the Ordinance took effect i.e. 21 November 1997. She added that the Administration was also mindful that some proceedings in respect of a former act (as defined in the Bill) might have already been instituted before the Bill was approved for introduction into LegCo. To preserve the rights of these claimants, the Administration proposed that proceedings initiated before the date of Executive Council's approval for the introduction of the Bill i.e. 1 February 2000, would not be affected. In this connection, ALA4 informed members that the Administration had confirmed that no proceedings had been initiated under the Ordinance before 10 February 2000.

8. Miss Cyd HO queried whether it was a correct approach of legislation if the Administration sought to amend the law with retrospective effect whenever it considered that the law had failed to reflect the original legislative intent. She asked whether there was a better way to address the problem. Responding to the Chairman, ALA4 said that the Legal Service Division of LegCo and the Administration had exchanged correspondence on the issue of retrospective effect of the Bill. He commented that legislation could be enacted to provide for retrospective effect in special circumstances.

9. Senior Assistant Solicitor General (SASG) advised that there was a rule against legislation with retrospective effect for criminal law but the rule was not applicable to civil law. The Administration considered that the retrospective provisions of the Bill were justified because the Bill aimed to clarify that the provision of benefits by a person to one or more immediate family members of his employees without affording the same to all immediate family members of the employees was never unlawful under the Ordinance. At Miss Christine LOH's request, SASG undertook to provide examples of retrospective provisions in civil law for members' reference.

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10. Miss Cyd HO asked and SASG confirmed that the Administration had not consulted the Hong Kong Bar Association and the Law Society of Hong Kong on the retrospective provisions of the Bill. At Miss HO's suggestion, members agreed that the Bills Committee should solicit views from these two legal professional bodies on the retrospective provisions of the Bill. The Chairman also suggested and members further agreed that the Bills Committee should invite trade unions and employers' associations to make submission on the Bill as well.

Clerk

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III. Date of Next Meeting

11. Members agreed that the Bills Committee would hold the next meeting on Thursday, 18 May 2000 at 4:30 pm. Members further agreed that the Bills Committee should reserve the time slot for Thursday, 25 May 2000 at 4:30 pm for further meeting if necessary.

12. The meeting ended at 1:35 pm.

Legislative Council Secretariat

8 August 2000