

立法會
Legislative Council

LC Paper No. CB(2)1134/07-08
(These minutes have been seen
by the Administration)

Ref : CB2/BC/2/06

**Bills Committee on
Race Discrimination Bill**

**Minutes of meeting
held on Thursday, 13 December 2007, at 8:30 am
in Conference Room A of the Legislative Council Building**

- Members present** : Hon Margaret NG (Chairman)
Dr Hon LUI Ming-wah, SBS, JP
Hon James TO Kun-sun
Hon CHEUNG Man-kwong
Hon CHAN Yuen-han, SBS, JP
Hon Jasper TSANG Yok-sing, GBS, JP
Hon Howard YOUNG, SBS, JP
Dr Hon YEUNG Sum, JP
Hon Emily LAU Wai-hing, JP
Hon CHOY So-yuk, JP
Hon LI Fung-ying, BBS, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon Jeffrey LAM Kin-fung, SBS, JP
Dr Hon Fernando CHEUNG Chiu-hung
- Members absent** : Hon Abraham SHEK Lai-him, SBS, JP (Deputy Chairman)
Hon LEE Cheuk-yan
Hon Martin LEE Chu-ming, SC, JP
Hon Bernard CHAN, GBS, JP
Hon Albert CHAN Wai-yip
Hon Daniel LAM Wai-keung, SBS, JP
Hon Alan LEONG Kah-kit, SC
Hon WONG Ting-kwong, BBS
Hon Ronny TONG Ka-wah, SC
Hon TAM Heung-man

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- Public Officers attending** : Mr Arthur HO
Deputy Secretary for Constitutional and Mainland Affairs (1)
- Mr Victor NG
Principal Assistant Secretary for Constitutional and Mainland Affairs (5)
- Mr Stanley NG
Assistant Secretary for Constitutional and Mainland Affairs (5)A
- Miss Betty CHEUNG
Senior Government Counsel
- Miss Shandy LIU
Senior Government Counsel
- Clerk in attendance** : Miss Flora TAI
Chief Council Secretary (2)2
- Staff in attendance** : Mr KAU Kin-wah
Assistant Legal Adviser 6
- Ms Joanne MAK
Senior Council Secretary (2)2
- Ms Anna CHEUNG
Legislative Assistant (2)2

Action

I. Meeting with the Administration

Clause-by-clause examination of the Bill

LC Paper No. CB(3)176/06-07 - The Bill

LC Paper No. LS14/07-08 - Discussion drafts of Committee Stage amendments (CSAs) prepared by the legal adviser to the Bills Committee

The Bills Committee examined Clauses 7 to 14 and Schedule 2 of the Bill. (Index of proceedings attached in **Annex**).

Action

Clause 7

- Admin 2. The Administration was requested to consider whether Clause 7(2) should also cover environment in which a person carried out recreational activities.

Clause 8(2) and Clause 8(3)

- Admin 3. The Administration was requested to address the general concern expressed by members that Clause 8(2) and Clause 8(3)(d) would have the effect of exempting any blatant racial discriminatory act claimed to be done on the ground of a person's "nationality".

Clause 10(3)

- Admin 4. The Administration was requested to provide the number of companies in Hong Kong hiring not more than five employees.

Clause 12

- Admin 5. The Administration was requested to review the drafting of Clause 12 to ensure that it could achieve clearly the policy intent of providing for an exception for employment intended to provide training in skills to be exercised outside Hong Kong for the benefit of the employees as described.

Clause 13

- Admin 6. The Administration was requested to provide written information on the consultation conducted by the Education Bureau with stakeholders including school sponsoring bodies on Clause 13 in connection with the employment of Native-speaking English Teachers and any implementation difficulties envisaged.

Clause 14 and Schedule 2

- Admin 7. On Schedule 2, the Administration undertook to -
- (a) move CSAs to paragraphs 9 and 11(b) and any other provisions in the Bill where reference was made to the Education and Manpower Bureau (EMB) substituting EMB with the Education Bureau;
 - (b) consider whether it was appropriate to include judicial officers as employees given that judicial officers were not regarded as "employees" under the law; and

Action

- (c) provide a separate paper to explain the rationale for adopting the dates in paragraphs 3(a)(i) & (b)(i), 4(a)(i), 4(b)(i), and 5(a) respectively.

Other issues

Admin

8. Regarding Clause 80(2), the Administration was requested to provide information on how the Equal Opportunities Commission (EOC) had exercised its powers to initiate legal proceedings on behalf of victims under the existing anti-discrimination laws in Hong Kong.

Clerk

9. At Ms Emily LAU's suggestion, members agreed that that the Bills Committee should make reference to the proposal of EOC put forward in 1999 to amend the existing anti-discrimination laws when relevant parts/provisions were examined. In this connection, the Clerk was requested to circulate the proposed amendments to members for reference.

[*Post-meeting note*: relevant information on the proposed amendments was circulated vide LC Paper No. CB(2)658/07-08 dated 19 December 2007.]

II. Any other business

Date of next meeting

Admin

10. Members noted that the next meeting would be held on Thursday, 10 January 2008, from 9:00 am to 12:00 noon to receive views from deputations on the paper entitled "Discussion drafts of Committee Stage amendments for Members' Consideration" prepared by the legal adviser to the Bills Committee [LC Paper No. LS14/07-08]. The Chairman said that the Bills Committee would also listen to the views of the Administration on the various options set out in the paper at the meeting on 10 January 2008.

11. There being no other business, the meeting ended at 10:35 am.

Council Business Division 2
Legislative Council Secretariat
22 February 2008

**Proceedings of the meeting of Bills Committee on
Race Discrimination Bill
on Thursday, 13 December 2007, at 8:30 am
in Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subject	Action required
000000 - 000522	Chairman ALA6 Admin	Clause-by-clause examination of the Bill <u>Clause 7</u> ALA6's view that Clause 7(2) should also cover environment in which a person carries out recreational activities or receives services.	Admin to consider ALA6's view. (para. 2 of minutes)
000523 - 001856	Admin Ms Audrey EU ALA6 Chairman Dr YEUNG Sum	<u>Clause 8</u> <i>Clause 8(1)(a)</i> Ms EU's enquiry of whether the definition of "race" in the Bill was consistent with the relevant case law in the United Kingdom (UK). ALA6's advice that the definition of "race" in the UK Race Relations Act 1976 (RRA) did not contain provisions equivalent to Clause 8(1)(a) and (c) in the Bill, and "nationality" was included in the definition of "race" in RRA. ALA6's reference to the concern raised by the Hong Kong Bar Association that the definition of discrimination on the ground of descent in Clause 8(1)(c) was unduly restrictive. <i>Clause 8(2) and 8(3)</i> Discussion about the options to include new arrivals from the Mainland within the scope of the Bill as set out in Appendix III to the paper entitled "Discussion drafts of Committee Stage amendments for Members' Consideration" (CSAs) prepared by the legal adviser to the Bills Committee [LC Paper No. LS14/07-08].	Admin to express its views at the next meeting on the discussion drafts of CSAs prepared by the legal adviser to the Bills Committee (para. 10 of minutes)
001857 - 002126	Ms LI Fung-ying ALA6 Chairman	Ms LI's concern that proposed new Clause 5A(2) of Option A in Appendix III to LC Paper No.	

Time marker	Speaker	Subject	Action required
		<p>LS14/07-08 could be interpreted as covering "illegal immigrants".</p> <p>ALA6's advice that the wording of proposed new Clause 5A(2) could be slightly amended to dispel the possibility of such interpretation.</p>	
002127 - 003232	Chairman Admin ALA6	<p>The Chairman's concern that Clause 8(2) and Clause 8(3)(d) as currently drafted would have the effect of exempting all blatant racial discriminatory acts claimed to be done on the ground of a person's "nationality" and preempting the Court in determining whether an act constituted discrimination on the ground of race on the basis of the facts of individual cases.</p> <p>The Administration's explanation that Clause 8(2) and Clause 8(3) were necessary for the purpose of clarity of law -</p> <p>(a) a discriminatory act done merely on the ground of "nationality" (e.g. the nationality of the United States of America (USA)) should not constitute racial discrimination under Clause 4 because people of different races could be of the same nationality and people of the same race could be of different nationality; but</p> <p>(b) if an act had the effect of rendering persons of a particular racial origin (e.g. Caucasians of USA nationality) in a less favourable situation than persons of other racial origin who were of the same nationality (e.g. non-Caucasians of USA nationality), the act might be regarded as indirect discrimination.</p> <p>ALA6's concern that Clause 8(2) and Clause 8(3) as currently drafted would provide a defence for carrying out discriminatory act de facto on the ground of race.</p> <p>ALA6's advice that, although the definition of "race" in the relevant legislation of some overseas jurisdictions also did not include</p>	

Time marker	Speaker	Subject	Action required
		<p>"nationality", "nationality" had not been explicitly excluded as one of the grounds of discrimination so that the Court could determine on the basis of the facts of each case whether discrimination on ground of nationality was in fact race discrimination.</p>	
003233 - 003654	Miss CHOY So-yuk Admin Chairman	<p>Miss CHOY's view that the drafting of Clauses 8(2) and 8(3) was far from satisfactory and would defeat the purposes of the Bill.</p> <p>The Administration's explanation that Clauses 8(2) and 8(3) were needed to deal with specific circumstances. For example, certain clubs and trade organisations might have to make different arrangements for persons of different nationalities.</p>	
003655 - 005915	Mr Jasper TSANG ALA6 Chairman Admin Miss CHOY So-yuk	<p>Mr TSANG's query of the need to exclude expressly "nationality" from the definition of "race" on the grounds that -</p> <ul style="list-style-type: none"> (a) the two concepts were difficult to differentiate; and (b) provisions similar to Clauses 54 and 55 could serve the purpose of catering specifically for the needs of certain clubs or trade organisations. <p>The Chairman's reiteration of her concern that Clause 8(2) and (3) as currently drafted would have the effect of "legitimising" any racial discriminatory act claimed to be done solely on the ground of "nationality".</p> <p>ALA6's reiteration of his view that Clause 8(2) and Clause 8(3) would be subject to abuse for the purpose of covering up de facto racial discriminatory acts.</p> <p>The Administration's explanation about the need to distinguish between race and nationality -</p> <ul style="list-style-type: none"> (a) the Court in a precedent in UK took the view that, while a person's race was determined at birth which could not be changed over life, his 	

Time marker	Speaker	Subject	Action required
		<p>nationality might be acquired by satisfying certain requirements; and</p> <p>(b) if Clause 8(2) and Clause 8(3) were not included in the Bill, the definition of "race" might be subject to abuses by people challenging existing practices of certain organisations which gave favourable treatment to people of certain nationality as discriminatory acts and disputes might arise as to whether national origin should cover nationality or citizenship.</p> <p>Miss CHOY's suggestion that, instead of including Clause 8(2) and Clause 8(3), Part 6 could provide more clauses to exempt specifically matters over which existing acceptable differential treatment imposed on people of different nationality was meant to be maintained.</p> <p>The Chairman's expression of view that, unless the Administration agreed to review the drafting of Clause 8(2) and Clause 8(3), she would consider moving CSAs to delete the clauses should the Bills Committee decide not to do so.</p>	<p>Admin to review the drafting of Clause 8(2) and 8(3) (para. 3 of minutes)</p>
005916 - 010002	Admin Chairman	<p><i>Clause 9</i></p> <p>The Chairman's remarks that the UK RRA had no provisions equivalent to this clause, but she raised no specific comments on it.</p>	
010003 - 010957	Admin Ms LI Fung-ying Chairman	<p><i>Part 3</i> <i>Clause 10</i></p> <p>Ms LI's query of the need to provide for a three-year grace period for small employers with not more than five employees under Clause 10(8).</p> <p>The Administration's explanation that the proposed grace period was needed to allow time for these small employers (mostly small and medium enterprises) to make preparation for compliance with the Bill, taking into account the time required for the Equal Opportunities Commission (EOC) to draw up codes of practice.</p>	

Time marker	Speaker	Subject	Action required
010958 - 011544	Ms Emily LAU Admin Chairman	<p>Ms LAU's enquiry of the number of companies in Hong Kong hiring not more than five employees.</p> <p>The Administration's agreement to provide the information.</p> <p>Ms LAU's concern that claims in respect of discrimination, harassment or vilification had to be initiated by the victim concerned at his own expenses under Clause 71. The Administration's explanation that an alternative was for the victim to lodge a complaint with EOC under Clause 79 and EOC upon the application of the victim might initiate proceedings on his behalf after having considered the factors listed under Clause 80(2).</p> <p>Ms LAU's request for information on how EOC had exercised its power under the relevant provisions to initiate proceedings on behalf of victims.</p>	<p>Admin to provide the requisite figure, and to provide information on how EOC had initiated legal proceedings on behalf of complainants in the past (paras. 4 and 8 of minutes)</p>
011545 - 011835	Miss CHOY So-yuk Admin	<p>The Administration's clarification that Clause 58 did not affect liability under Clause 10 and hence did not apply to the imposition of language requirement on job applicants.</p>	
011836 - 012406	Miss CHAN Yuen-han Admin	<p>Miss CHAN's comments about the adequacy of assistance provided by EOC to complainants.</p> <p>The Administration's offer to follow up on cases referred by Miss CHAN alleging that EOC had failed to provide adequate assistance to complainants.</p>	
012407 - 012440	Ms Emily LAU Chairman	<p>Ms LAU's suggestion that the Bills Committee should make reference to the amendments proposed by EOC to existing anti-discrimination ordinances when the Bills Committee examined relevant parts/provisions of the Bill.</p>	<p>Clerk to circulate relevant amendments previously proposed by EOC to members for reference (para. 9 of minutes)</p>
012441 - 012529	Chairman Admin	<p>The Chairman's enquiry and the Administration's confirmation that the commencement notice to be made under Clause 10(10) would be subject to negative vetting of the Legislative Council.</p>	

Time marker	Speaker	Subject	Action required
012530 - 012747	Admin Chairman ALA6	<p><i>Clause 11</i></p> <p>The Chairman's query about the need for the provision.</p> <p>ALA's advice that UK RRA contained a similar provision.</p>	
012748 - 013810	Admin Ms LI Fung-ying Chairman ALA6	<p><i>Clause 12</i></p> <p>Ms LI's concern that the interpretation of the expression "ordinarily resident in Hong Kong" might exclude Hong Kong residents who were under the employment of Hong Kong companies but worked mainly outside Hong Kong (e.g. the Mainland) from the protection under Clause 10.</p> <p>The Administration's explanation as follows -</p> <ul style="list-style-type: none"> (a) there was no legal definition for the term "ordinarily resident" and the Court would determine on the basis of the facts of each case; (b) the UK RRA had provisions similar to this Clause; (c) the meaning of employment at establishment in Hong Kong was provided for under Clause 16, which was modeled on relevant provisions of the existing anti-discrimination ordinances of Hong Kong; and (d) acts to be exempted under Clause 12 were acts for the benefit of employees concerned. For example, a transnational company arranged its staff members who worked outside Hong Kong to come over to Hong Kong for a relatively short duration only to receive training. <p>The Chairman's request for the Administration to review whether the drafting of the Clause was clear enough to reflect the above policy intent as explained by the Administration.</p> <p>The Chairman's suggestion that Ms LI could provide examples to seek</p>	<p>Admin to review the drafting of Clause 12 to ensure that it was clear enough to reflect the policy intent (para. 5 of minutes)</p>

Time marker	Speaker	Subject	Action required
		the Administration's clarification of whether the examples would fall within the protection afforded by the Bill.	
013811 - 015431	Admin Chairman Ms Emily LAU ALA6	<p><i>Clauses 13 and 14</i></p> <p>The Chairman's enquiry and the Administration's response that Clause 13 provided for further exception to Clause 10 and related to an act (e.g. the offer of more favourable overseas terms) done for the benefit of a person with special skills not readily available in Hong Kong for employment.</p> <p>The Administration's explanation that Clause 14 was a "grandfathering" clause for existing employment made on local and overseas terms.</p> <p><i>Schedule 2</i></p> <p>The Administration would move amendments to paragraphs 9 and 11(b) to substitute "Education and Manpower Bureau" with "Education Bureau" and to any other provisions in the Bill containing the same reference.</p> <p>The Chairman's concern about whether it was appropriate to include a judicial officer as an "employee" given that judicial officers were not regarded as "employees" under the law.</p> <p>The Administration's agreement to address the concern.</p> <p>The Chairman's request for the Administration to provide a paper on the rationale for adopting the dates proposed in paragraphs 3(a)(i) & (b)(i), 4(a)(i), 4(b)(i), and 5(a).</p> <p>Ms LAU's concern about the impact of the Bill on the employment of Native-speaking English Teachers.</p> <p>The Administration's agreement to provide written information on the consultation that had been conducted by the Education Bureau with stakeholders including relevant school sponsoring bodies on Clause 13 in connection with the</p>	<p>Admin to move CSAs to relevant provisions (para. 7(a) of minutes)</p> <p>Admin to address the Chairman's concern (para. 7(b) of minutes)</p> <p>Admin to provide a paper to explain the bases of the dates adopted under the Schedule (para. 7(c) of minutes)</p> <p>Admin to provide written information on the consultation conducted by the Education Bureau</p>

Time marker	Speaker	Subject	Action required
		employment of Native-speaking English Teachers and any implementation difficulties envisaged.	(para. 6 of minutes)
015432 - 020039	Ms LI Fung-ying Admin Chairman	Concerns of the Chairman and Ms LI as to whether the scope of Schedule 2 was adequate to cover employees to be protected under Clause 14 as well as English teachers under the employment of non-government institutions and teachers of languages other than English. The Administration's confirmation that paragraphs 2 to 6 had covered all such employees to be protected.	
020040 - 020240	Mr Howard YOUNG Admin Chairman	Mr YOUNG's enquiry and the Administration's response that employment which took effect after enactment of the Bill and which met the conditions as specified under Clause 13 would be entitled to the exemption under the clause. Date of next meeting.	

Council Business Division 2
Legislative Council Secretariat
22 February 2008