

立法會
Legislative Council

LC Paper No. LS86/08-09

Paper for the House Committee Meeting on 19 June 2009

**Legal Service Division Report on
Domestic Violence (Amendment) Bill 2009**

I. SUMMARY

1. **Objects of the Bill**

To amend the Domestic Violence Ordinance (Cap. 189) (DVO) to extend the scope of protection provided under the DVO to cover a cohabitation relationship between 2 persons who live together as a couple in an intimate relationship.
2. **Comments**
 - (a) A new section is added to the DVO to enable a party to a cohabitation relationship (whether of the same sex or opposite sex and including such a relationship that has come to an end) to apply to the court for an injunction against molestation by the other party to the cohabitation relationship.
 - (b) The proposed remedies for persons in cohabitation relationships are similar to those that may be granted by the court to parties to marriages or former marriages and to persons in certain specified familial relationships under existing provisions of the DVO.
 - (c) The bilingual short title of the DVO is proposed to be changed to "Domestic and Cohabitation Relationships Violence Ordinance" and "家庭及同居關係暴力條例" to reflect the extended coverage of the DVO to persons in cohabitation relationships.
3. **Public Consultation**

The Administration has received over 1 100 submissions from different organizations and individuals of the public.
4. **Consultation with LegCo Panel**

The Administration consulted the Panel on Welfare Services (the Panel) on the legislative proposal at the Panel's meeting on 8 December 2008. The Panel held two special meetings on 10 and 23 January 2009 to receive public views. While some members of the Panel and deputations welcomed the legislative proposal, some other members and deputations expressed grave concerns that the proposed amendments to the DVO would cause ambiguity in the meaning of "family" and "marriage", and undermine the core values of family and marriage. Members of the Panel had indicated that a Bills Committee should be formed to study the legislative proposal.
5. **Conclusion**

In view of the public concerns and members' views expressed on the legislative proposal, members may wish to consider setting up a Bills Committee to study the Bill in detail.

II. REPORT

Objects of the Bill

To amend Domestic Violence Ordinance (Cap. 189) (DVO) to extend the scope of protection provided under the DVO to cover a cohabitation relationship between 2 persons (whether of the same sex or of the opposite sex) who live together as a couple in an intimate relationship; and to make consequential and technical amendments.

LegCo Brief Reference

2. LW/CR 1/3281/01 issued by the Labour and Welfare Bureau on 3 June 2009.

Date of First Reading

3. 17 June 2009.

Background

4. The DVO, enacted in 1986, provides civil remedies in the form of injunctions to protect individuals in spousal relationships and in heterosexual cohabitation relationships and their children against molestation by the other parties to such relationships. The scope of the DVO has been extended by the amendments introduced by the Domestic Violence (Amendment) Bill 2007 (the 2007 Bill) to include former spouses and former heterosexual cohabitants as well as persons in certain specified familial relationship so as to enhance the legal protection for victims of domestic violence. The 2007 Bill, enacted as the Domestic Violence (Amendment) Ordinance 2008, came into operation on 1 August 2008. The DVO, as amended by the Domestic Violence (Amendment) Ordinance 2008, does not apply to cohabitation between persons of the same sex.

5. During scrutiny of the 2007 Bill by the Bills Committee formed to study that Bill, members from various political parties and certain organizations urged the Administration to re-examine the feasibility of further extending the scope of the DVO to cover same-sex cohabitants in intimate relationship. They were of the view that expanding the protection under the DVO to include same-sex cohabitants merely sought to protect such persons from being molested by their partners, and should not be regarded as equivalent to giving legal recognition to same-sex relationships or providing legal entitlements to persons in such relationships. In response to the views expressed by members of the Bills Committee on the 2007 Bill, the Secretary for Labour and Welfare, in moving the resumption of Second Reading debate on the 2007 Bill on

18 June 2008, undertook to introduce a bill as soon as possible in the 2008-2009 legislative session to further amend the DVO to extend its scope to cover same-sex cohabitants.

Comments

6. The Bill seeks to amend the DVO to extend the protection provided under the DVO to cover same-sex cohabitants. Under the new section 3B of the DVO, the court may, on application by a party to a cohabitation relationship (the applicant), grant an injunction if it is satisfied that the applicant or a specified minor has been molested by the other party to the cohabitation relationship. The term "cohabitation relationship" is defined in the Bill to mean "a relationship between 2 persons who live together as a couple in an intimate relationship" and include "such a relationship that has come to an end". Under the new section, in determining whether two persons are in a cohabitation relationship, the court shall have regard to all the circumstances of the relationship including but not limited to certain specified factors that may be relevant in the particular case. These include whether the parties are living together in the same household and whether there is a sexual relationship between the parties. The proposed remedies for persons in cohabitation relationships are similar to those that may be granted by the court to parties to marriages or former marriages and to persons in certain specified familial relationships under the existing sections 3 and 3A of the DVO respectively.

7. The Bill also proposes to change the bilingual short title of the DVO to "Domestic and Cohabitation Relationships Violence Ordinance" and "家庭及同居關係暴力條例". According to the Administration, the proposed amendment seeks to highlight that the DVO, as to be amended by the Bill, is also applicable to persons in cohabitation relationships and to address the concern of certain religious and parents groups about the implications of the legislative proposal on "family" and "marriage" if the Chinese short title of the DVO remains unchanged.

8. Other proposed amendments relate to technical and consequential amendments.

9. If enacted, the Bill will come into operation on a day to be appointed by the Secretary for Labour and Welfare by notice published in the Gazette.

Public Consultation

10. According to paragraph 20 of the LegCo Brief, the Administration has received over 1 100 submissions from different organizations and individuals of the public expressing their views on the proposed amendments to the DVO.

Consultation with LegCo Panel

11. The Administration consulted the Panel on Welfare Services (the Panel) on the legislative proposal to extend the coverage of the DVO to cohabitation between persons of the same sex at the Panel's meeting on 8 December 2008. The Panel held two special meetings on 10 and 23 January 2009 to receive public views. The Panel also received written submissions expressing views on the proposed amendments. While some members of the Panel and deputations welcomed the legislative proposal, some other members and deputations expressed grave concerns that the proposed amendments to the DVO would cause ambiguity in the meaning of "family" and "marriage", and undermine the core values of family and marriage. Members of the Panel had indicated that a Bills Committee should be formed to study the legislative proposal when it was introduced into the Council.

Conclusion

12. The Legal Service Division is still scrutinizing the legal and drafting aspects of the Bill. In view of the public concerns and members' views expressed on the legislative proposal, members may wish to consider setting up a Bills Committee to study the Bill in detail.

Prepared by

YICK Wing-kin
Assistant Legal Adviser
Legislative Council Secretariat
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