

立法會
Legislative Council

LC Paper No. CB(2)2046/14-15

(These minutes have been
seen by the Administration)

Ref : CB2/BC/2/14

Bills Committee on Human Reproductive Technology (Amendment) Bill 2015

**Minutes of the fifth meeting
held on Monday, 6 July 2015, at 8:30 am
in Conference Room 2A of the Legislative Council Complex**

Members present : Dr Hon KWOK Ka-ki (Chairman)
Prof Hon Joseph LEE Kok-long, SBS, JP, PhD, RN
Hon Cyd HO Sau-lan, JP
Hon Charles Peter MOK, JP
Hon CHAN Chi-chuen
Dr Hon Fernando CHEUNG Chiu-hung

Members absent : Dr Hon LEUNG Ka-lau
Hon CHAN Han-pan, JP
Dr Hon Helena WONG Pik-wan
Hon CHUNG Kwok-pan

Public Officers attending : Mr Davey CHUNG Pui-hong
Deputy Secretary for Food and Health (Health) 2
Food and Health Bureau

Ms Wendy AU Wan-sze
Principal Assistant Secretary for Food and Health (Health)
Special Duties 1
Food and Health Bureau

Dr Kellie SO Pui-sheung
Principal Medical and Health Officer (3)
Department of Health

Mr Jonathan LUK King-hang
Government Counsel
Department of Justice

Clerk in attendance : Ms Maisie LAM
Chief Council Secretary (2) 5

Staff in attendance : Miss Mimi CHANG
Assistant Legal Adviser 11

Ms Priscilla LAU
Council Secretary (2) 5

Ms Michelle LEE
Legislative Assistant (2) 5

Miss Sandra SIU
Legislative Assistant (2) 10

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I. Meeting with the Administration

[LC Paper Nos. CB(2)1188/14-15(02) to (06), CB(2)1309/14-15(04), CB(2)1337/14-15(02), CB(2)1426/14-15(01), CB(2)1561/14-15(01), CB(2)1838/14-15(01) and CB(3)493/14-15]

The Bills Committee deliberated (index of proceedings attached at **Annex**).

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2. The Bills Committee requested the Administration to -

- (a) consider the suggestions from members and the Legal Adviser to the Bills Committee as to whether Committee stage amendments ("CSAs") should be moved to the Bill to expressly provide that the proposed new section 15(3A) would not apply to -
 - (i) activities and publications which were of a purely academic and technical character, and correspondence on the Internet which was of a private nature and not intended for commercial purposes;
 - (ii) employees of advertising, media or relevant organizations

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who were assigned to take part in the advertising process of sex selection services in the course of their employment; and;

- (iii) Internet operators and webpage hosts that provided platform for advertising the relevant advertisements.
- (b) provide information on the legislative intent for incorporating in the Smoking (Public Health) Ordinance (Cap. 371) an exemption clause for those tobacco advertisements which were contained in private correspondence on the Internet and was not for commercial purposes;
- (c) provide a written response on whether the scenarios cited by a member concerning the medical practitioners' provision of factual information on sex selection services available in countries where it was entirely lawful to provide the treatments on non-medical grounds, or referral of patients to receive such services would fall within the scope of the proposed new section 15(3A); and
- (d) provide a written response to the discussion draft of a set of proposed CSAs to the Bill prepared by Mr CHAN Chi-chuen as set out in LC Paper No. CB(2)1865/14-15(01).

Clerk/
ALA11

3. The Secretariat undertook to provide information on the relevant provisions in the Undesirable Medical Advertisement Ordinance (Cap. 231) and the Smoking (Public Health) Ordinance concerning defence for healthcare professionals and exemption clause for private correspondence on the Internet respectively for members' reference.

Members

4. The Chairman invited members who intended to propose CSAs to the Bill and wished their CSAs to be considered by the Bills Committee to forward such proposed CSAs to the Secretariat as soon as practicable for the consideration of the Bills Committee at the next meeting.

II. Any other business

5. In order to allow more time for the Administration to look into the issues raised by members, members agreed that the next meeting of the Bills Committee would be held after the summer recess. As some of the members of the Bills Committee would join the respective duty visits of the Panel on Food Safety and Environmental Hygiene and the Panel on Education after

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mid September 2015, the Chairman said that he would discuss with the Clerk and the Administration on the date of the next meeting to avoid clashing with the duty visits as far as possible. Members would be informed of the meeting arrangements in due course.

(Post-meeting note: With the concurrence of the Chairman, the sixth meeting of the Bills Committee has subsequently been scheduled for 5 October 2015 at 10:45 am.)

6. There being no other business, the meeting ended at 9:57 am.

Council Business Division 2
Legislative Council Secretariat
25 August 2015

**Proceedings of the fifth meeting of
the Bills Committee on Human Reproductive Technology (Amendment) Bill 2015
held on Monday, 6 July 2015, at 8:30 am
in Conference Room 2A of the Legislative Council Complex**

Time marker	Speaker	Subject(s)/Discussion	Action required
<i>Agenda item I: Meeting with the Administration</i>			
000256 - 000524	Chairman	Opening remarks	
000525 - 001033	Admin Chairman	Briefing by the Administration on its response to issues raised by members at the meeting on 2 June 2015. [LC Paper No. CB(2)1838/14-15(01)]	
001034 - 002053	Chairman Mr CHAN Chi-chuen Admin ALA11	<p>The Chairman and Mr CHAN Chi-chuen's expression of support for the Administration's proposal to move Committee stage amendments ("CSAs") to delete the expression "purporting to" in the English and Chinese texts of the proposed new section 15(3A) of the Human Reproductive Technology Ordinance (Cap. 561) ("the Ordinance").</p> <p>Mr CHAN Chi-chuen's expression of disagreement with the Administration's rationale that the inclusion of a "financial gain" element in the proposed offence would make the provision ineffective and virtually unenforceable for the reason that payment for the advertisement concerned could be deferred to a much later point of time in order to avoid the presence of proof of "financial gain" or "profit" during the time of investigation; and the Chairman's concern that in the absence of a "financial gain" element, persons who shared information on sex selection services by hyperlinking to existing websites but without any types of financial incentives or profits would be caught by the proposed new section 15(3A).</p> <p>The Administration's advice that before convicting an accused of the proposed offence, the Court would have to be satisfied that all the necessary elements had been fulfilled beyond reasonable doubt. The Canadian case <i>Crookes v Newton</i> 2011 SCC 47 provided a useful point of reference that a hyperlink, by itself, should never be seen as "publication" of the content to which it referred.</p> <p>In response to the Chairman's enquiry about whether "financial gain" was included as an element of offences relating to advertisements in other ordinances, the Administration's advice that according to the search results on the Bilingual Laws Information System, the term "financial gain" was not found in other provisions relating to prohibiting advertisements. Reference to this term was mainly found in those offences relating to offering bribes and accepting advantages. The Legal Adviser to the Bills Committee's advice that -</p> <p>(a) under the Undesirable Medical Advertisements Ordinance</p>	

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		<p>(a) given the much wider scope of the prohibition against tobacco advertisement on the Internet, it was understandable to include an exemption clause in the Smoking (Public Health) Ordinance. To provide members with a better understanding of the legislative intent in this regard, the Administration would look into the records relating to this provision and provide a written response after the meeting; and</p> <p>(b) given that the establishment of the offence in the proposed new section 15(3A) required not only the actus reus and mens rea for committing the offence and the actus reus and mens rea had to coincide, it did not envisage that the provision would catch those persons who inadvertently involved in the distribution of advertisements and promotional materials on the Internet.</p>	Admin
004118 - 010125	Chairman Mr CHAN Chi-chuen Admin	<p>Mr CHAN Chi-chuen's enquiry about whether the following situations would fall within the scope of the proposed new section 15(3A): (a) a medical practitioner who, upon enquiry, provided information on sex selection services offered by overseas service providers to those patients who wished to receive such treatment on non-medical grounds; (b) a medical practitioner displaying information on sex selection services offered by overseas service providers in his or her clinics; and (c) the sending of promotional emails from an overseas sex selection service provider to a list of local recipients who had subscribed to receive such information.</p> <p>The Administration's advice that -</p> <p>(a) communication and information dissemination to the public and patients in compliance with the principles set out in the Code of Professional Conduct for the Guidance of Registered Medical Practitioners issued by the Medical Council of Hong Kong generally would not amount to a promotional activity. Hence, providing factual information on sex selection service or referring patients with medical need to receive sex selection service in the course of care would not be liable as such activities would not amount to "promotion" of such services. The Administration would provide a written response with regard to the specific scenarios cited by Mr CHAN Chi-chuen; and</p> <p>(b) the term "advertisement" was defined in the Ordinance to include "any form of advertising whether to the public generally, to any section of the public or individually to selected persons". In a general sense, emails promoting sex selection services to a group of local target audience should be considered as advertisements.</p> <p>The Chairman's concern that the proposed offence would have an adverse impact on the free flow of information through private correspondence on the Internet; and his reiteration of the need to provide clauses of exemption or defences under the</p>	Admin

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		Bill with reference to the arrangements provided for under UMAO and the Smoking (Public Health) Ordinance.	
010126 - 011939	Chairman Mr CHAN Chi-chuen Admin	<p>Mr CHAN Chi-chuen's elaboration on the discussion draft of a set of proposed CSAs to the Bill (LC Paper No. CB(2)1865/14-15(01)), which sought to carve out acts not constituting publishing or distributing an advertisement on sex selection services and were modeled on the proposed new section 28A(5) and (6) of the Copyright Ordinance (Cap. 528) as introduced under the Copyright (Amendment) Bill 2014. In his view, (a) persons who merely forwarded or shared a hyperlink on a webpage or other Internet platforms to facilitate location of information already made available elsewhere on the Internet to the public; (b) persons who were hired to distribute leaflets containing the relevant advertisements; and (c) Internet operators and webpage hosts that provided platform for advertising the relevant advertisements should not be regarded as publishing or distributing, or causing to be published or distributed, an advertisement.</p> <p>In response to Mr CHAN Chi-chuen's enquiry, the Administration's advice that an Internet search engine operator or owner who merely provided a search engine for identifying or trawling online information of a topic to be specified by a user would not possess the mens reas for committing an offence under the proposed new section 15(3A), since the search results were generated through an automated process of the search engine without specific knowledge to the operator or owner. Mr CHAN Chi-chuen's further view that safe harbor provisions should be introduced under the Bill to limit Internet operators' liability for providing platforms for advertising the relevant advertisements.</p> <p>The Chairman's request for the Administration to consider introducing CSAs to address members' concern; and the Administration's advice that it would make reference to section 5(1) of UMAO in considering whether similar clauses of defence for healthcare professionals should be included in the Bill. On members' concern about the liability of employees, it should be noted that from 2012 to 30 April 2015, there were a total of 31 advertisements involved in prosecution action and conviction of contravening UMAO, and none of the parties convicted were employees of the companies concerned.</p>	
011940 - 012200	Chairman ALA11 Admin	<p>The Legal Adviser to the Bills Committee's concern that the proposed new section 15(3A) would likely infringe the freedom of expression; and her enquiry about how the medical professionals and the needy couples could receive the relevant information on sex selection services if all such advertisements were to be prohibited.</p> <p>The Administration's advice that -</p> <p>(a) the current legislative proposal would not restrict the right of persons with genuine medical reasons for obtaining sex selection services to receive such</p>	

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		<p>information as these persons would be under the care of healthcare professionals who would offer appropriate advice and referral to treatments available in Hong Kong or other countries as appropriate; and</p> <p>(b) to address the concerns about the advertisements on sex selection services using RT procedures available on the Internet as raised by the relevant stakeholders during the consultation exercise on the legislative proposal, it was considered necessary for the proposed offence to cover advertisements published or distributed on all media, including the Internet.</p>	
012201 - 012608	Admin Chairman Mr CHAN Chi-chuen Ms Cyd HO	<p>The Administration's undertaking to provide a written response to the discussion draft of a set of proposed CSAs to the Bill prepared by Mr CHAN Chi-chuen; and the suggestions from members and the Legal Adviser to the Bills Committee as to whether CSAs should be moved to expressly provide that the proposed new section 15(3A) did not apply to activities and publications which were of a purely academic and professional nature, and correspondence on the Internet which was of a private nature and not intended for commercial purposes.</p> <p>Mr CHAN Chi-chuen's request for the information on the relevant provisions in UMAO and the Smoking (Public Health) Ordinance concerning defence for healthcare professionals and exemption clause for private correspondence on the Internet respectively.</p> <p>The Chairman invited members who intended to propose CSAs to the Bill and wished their CSAs to be considered by the Bills Committee to forward such proposed CSAs to the Secretariat as soon as practicable for the consideration of the Bills Committee at the next meeting.</p>	Admin Clerk/ ALA11
<i>Agenda item II: Any other business</i>			
012609 - 012840	Chairman Admin Mr CHAN Chi-chuen Ms Cyd HO Dr Fernando CHEUNG	Date of next meeting	