

立法會
Legislative Council

LC Paper No. CB(2)167/15-16
(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 sixth meeting
held on Monday, 5 October 2015, at 10:45 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 Charles Peter MOK, JP
Hon CHAN Chi-chuen

Members absent : Hon Cyd HO Sau-lan, JP
Dr Hon LEUNG Ka-lau
Hon CHAN Han-pan, JP
Dr Hon Fernando CHEUNG Chiu-hung
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

Dr Sarah CHOI Mei-yee, JP
Assistant Director of Health (Special Health Services)
Department of Health

Dr Sammy NG Ping-sum
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 : Mr Kelvin LEE
Senior Assistant Legal Adviser 3

Ms Priscilla LAU
Council Secretary (2) 5

Miss Sandra SIU
Legislative Assistant (2) 5

Action

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), CB(2)1865/14-15(01), CB(2)2153/14-15(01) and CB(3)493/14-15]

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

Admin

2. The Administration undertook to -

- (a) provide the first batch of the draft Committee stage amendments ("CSAs") to be proposed by the Administration concerning -
 - (i) the removal of 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);
 - (ii) the provision of a defence for presence of an advertisement promoting sex selection services using reproductive technology ("RT") procedures in activities and publications which were of an academic or technical character targeted to specific persons; and
 - (iii) the provision of a defence for a defendant to establish that he or she did not have control over the content of the advertisement accessible in the hyperlink he or she published or distributed;

Action

- (b) examine, with reference to the Smoking (Public Health) Ordinance (Cap. 371), the provision of a notice-and-take-down mechanism under the Bill such that Internet operators and webpage hosts would not be liable for the proposed offence if they had, within a reasonable period of time, removed those contents which promoted sex selection services using RT procedures from their service platforms upon notice; and where appropriate, provide the draft CSAs in this regard for members' consideration; and
- (c) further examine, with reference to the defence for employees as provided for under the existing ordinances (including but not limited to the Food Safety Ordinance (Cap. 612) and the Unsolicited Electronic Messages Ordinance (Cap. 593)), whether it was appropriate to provide under the Bill a defence for employees of advertising, media or relevant organizations who were assigned to take part in the advertising process of sex selection services using RT procedures in the course of their employment.

3. In response to members' concern about the development of social media platform in recent years, the Administration advised that it would, riding on the future legislative exercise on regulation of electronic cigarettes, review whether it was necessary to introduce amendments to the Smoking (Public Health) Ordinance (Cap. 371) concerning advertisements contained in any private correspondence on the Internet and not intended for commercial purposes.

II. Any other business

4. The Chairman suggested that to allow sufficient time for members to consider whether to propose CSAs to the Bill, he would decide on the date of the next meeting of the Bills Committee after receipt of the Administration's written response and the draft CSAs to be proposed by the Administration. Members would be informed of the meeting arrangements accordingly. Members agreed.

5. There being no other business, the meeting ended at 11:58 am.

**Proceedings of the fifth meeting of
the Bills Committee on Human Reproductive Technology (Amendment) Bill 2015
held on Monday, 5 October 2015, at 10:45 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>			
000326 - 000417	Chairman	Opening remarks	
000418 - 000942	Admin Chairman	Briefing by the Administration on its response to issues raised by members at the meeting on 6 July 2015. [LC Paper No. CB(2)2153/14-15(01)]	
000943 - 001827	Chairman Mr CHAN Chi-chuen Admin	<p>Mr CHAN Chi-chuen's expression of support for the Administration's proposals to introduce Committee stage amendments ("CSAs") to (a) 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"); and (b) provide defences for presence of an advertisement in activities and publications which were of an academic or technical character, and sharing of a hyperlink to an advertisement the content of which was out of the control of the defendant respectively.</p> <p>Mr CHAN Chi-chuen's view that whether he would move the set of proposed CSAs to the Bill as set out in the discussion draft he provided to the Bills Committee [LC Paper No. CB(2)1865/14-15(01)] would depend on the drafting of the above CSAs to be introduced by the Administration; and the exemption provision in the Smoking (Public Health) Ordinance (Cap. 371) for advertisements contained in any private correspondence on the Internet and not intended for commercial purposes was outdated given the popularity of different social media platforms nowadays and needed to be reviewed.</p> <p>Making reference to the Food Safety Ordinance (Cap. 612) and the Unsolicited Electronic Messages Ordinance (Cap. 593), Mr CHAN Chi-chuen and the Chairman's stress of the need to provide defence for employees of advertising, media or relevant organizations who were assigned to take part in the advertising process of sex selection services in the course of their employment. The Chairman's expression of disagreement with the Administration's stand that the provision of a defence for employees could create a loophole for employers to shift the blame to their employees and evade from liability.</p> <p>The Administration's advice that -</p> <p>(a) it would examine whether it was necessary to introduce amendments to the Smoking (Public Health) Ordinance concerning advertisements contained in any private</p>	

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		<p>correspondence on the Internet and was not intended for commercial purposes riding on the future legislative exercise on regulation of electronic cigarettes; and</p> <p>(b) to establish the proposed offence under the proposed new section 15(3A), the prosecution had to prove not only the actus reus but also the mens rea and that the actus reus and mens rea coincided. It did not envisage that an employee who took part in the advertising process would have mens rea for committing an offence under the proposed new section 15(3A). Hence, it did not propose to provide a defence for employees of a company under the proposed offence.</p>	
001828 - 003738	Chairman Mr Charles Peter MOK Admin Mr CHAN Chi-chuen	<p>Mr Charles Peter MOK's view that while the Administration would introduce CSAs to provide a defence for a person to establish that he or she did not have control over the content of the advertisement contained in the hyperlink he or she published or distributed on social media, he could not see the reason for not providing a similar defence for employees of a company, as well as Internet operators and webpage hosts which only provided a platform for information sharing and did not have control over the content of the information. In particular, the latter merely acted as a conduit of information provided by third parties and should remain neutral in order to facilitate the free flow of information on the Internet. Such principle was reflected in the Telecommunications Ordinance (Cap. 106).</p> <p>The Administration's assurance to members that in the absence of the mens rea to get the advertisements concerned published or distributed, employees of advertising, media or relevant organizations, Internet operators and webpage hosts would not be held liable. However, the provision of defences for them under the proposed offence might give rise to enforcement difficulties and create a loophole for the real culprits of the offence to evade from the liability.</p> <p>The view of the Chairman, Mr Charles Peter MOK and Mr CHAN Chi-chuen that the Bill as currently drafted would cast the net so wide that innocent persons might be unnecessarily caught, impede the free flow of information on the Internet and set a precedent for regulation of such activities. If the legislative intent of the Bill was to catch those who caused an advertisement promoting sex selection services using reproductive technology ("RT") procedures to be published or distributed or knowingly publish or distribute such advertisement, a defence for the proposed offence should be provided for employees of a company, Internet operators and webpage hosts. In their view, the real culprits of the offence could hardly rely on the defence to evade from the liability.</p>	
003739 - 004841	Chairman Mr CHAN Chi-chuen Mr Charles Peter MOK Admin	Making reference to the Copyright (Amendment) Bill 2014, Mr CHAN Chi-chuen and Mr Charles Peter MOK's view that safe harbour provisions or a notice-and-take-down mechanism should be incorporated into the Bill to protect the Internet	

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		<p>operators or webpage hosts such that they would not be liable for the proposed offence if they had, within a reasonable period of time, removed those contents which promoted sex selection services using RT procedures from their service platforms.</p> <p>In response to Mr CHAN Chi-chuen's enquiry about the enforcement against tobacco advertisement on the Internet under the Smoking (Public Health) Ordinance, the Administration's advice that inspectors were empowered under the Smoking (Public Health) Ordinance to order Internet operators or webpage hosts to remove any tobacco advertisement on the Internet which they reasonably suspected that an offence under the Smoking (Public Health) Ordinance had been or was being committed. The Administration undertook to consider providing a notice-and-take-down mechanism for advertisements on the Internet in the Bill with reference to the current arrangements provided for in the Smoking (Public Health) Ordinance.</p>	Admin
004842 - 005719	Chairman Mr CHAN Chi-chuen SALA3 Mr Charles Peter MOK Admin	<p>The Legal Adviser to the Bills Committee's remark that the approach of the proposed notice-and-take-down mechanism was different from that of the current proposed legislative amendments under which a simple prohibition on advertisements on sex selection through RT procedures would be introduced. Who would be liable under the notice-and-take-down mechanism would depend on the drafting of the Administration's proposed CSAs in this regard. Having said that, it was likely that the person who failed to comply with the notice to take down the advertisement would be liable under this approach.</p> <p>The Chairman and Mr Charles Peter MOK's reiteration of the need to provide a defence for those innocent employees of advertising, media or relevant organizations who were assigned to take part in the advertising process of sex selection services using RT procedures in the course of their employment; and Mr CHAN Chi-chuen's indication that he would propose CSAs to the Bill to provide a defence for employees of a company if the Administration did not take heed of members' views on this issue.</p> <p>The Administration's undertaking to -</p> <p>(a) provide the first batch of draft CSAs to be proposed by the Administration concerning the removal of the expression "purporting to" and provision of defences in circumstances specified in paragraphs 6 of LC Paper No. CB(2)2153/14-15(01); and</p> <p>(b) examine, with reference to the Smoking (Public Health) Ordinance, the provision of a notice-and-take-down mechanism for Internet operators and webpage hosts if considered appropriate; and with reference to defence for employees as provided for under the existing ordinances (including but not limited to the Food Safety Ordinance and the Unsolicited Electronic Messages Ordinance),</p>	Admin

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		<p>whether it was appropriate to provide under the Bill a defence for employees of advertising, media or relevant organizations who were assigned to take part in the advertising process of sex selection services using RT procedures in the course of their employment.</p> <p>In response to Mr CHAN Chi-chuen's enquiry, the Legal Adviser to the Bills Committee's advice that the mechanism of removal and disposal of tobacco advertisement was provided for under section 14A of the Smoking (Public Health) Ordinance.</p>	
005720 - 011348	<p>CHAN Chi-chuen SALA3 Chairman Admin</p>	<p>The Chairman's view that to avoid healthcare professionals contravening the proposed offence when providing information on sex selection services using RT procedures to patients under their care, consideration should be given to providing a defence for healthcare professionals whose acts were in compliance with the relevant codes of professional conduct promulgated by the relevant professional regulatory bodies. To preserve the principle of professional autonomy, the power to investigate and award discipline for any alleged acts of professional misconduct should remain with the professional regulatory bodies.</p> <p>The Legal Adviser to the Bills Committee's elaboration that the Bill should expressly provide that any healthcare professionals whose acts were respectively in compliance with the codes of professional conducts promulgated by the relevant professional regulatory bodies (such as the Code of Professional Conduct for the Guidance of Registered Medical Practitioners ("the Code") issued by the Medical Council of Hong Kong) should not be regarded as contravening the proposed new section 15(3A).</p> <p>The Administration's advice that in general, factual information on sex selection services or referring patients with medical indications to receive sex selection treatment involving RT procedures by registered medical practitioners in the course of care without promoting the service would not be caught under the proposed new section 15(3A). In addition, the Code had a section dedicated to set out rules and requirements concerning pre-natal diagnosis and intervention; scientifically assisted reproduction and related technology with which all registered medical practitioners were required to comply. Hence, it was considered not appropriate to subject registered medical practitioners to a different requirement under the Bill.</p> <p>On the Chairman's enquiry about the provision of defence under the Undesirable Medical Advertisements Ordinance (Cap. 231), the Administration's advice that under section 5 of the Undesirable Medical Advertisements Ordinance, it was a defence to prove that the advertisement to which the proceedings related was made only in a publication of a technical character intended for circulation mainly amongst specified persons. It should be noted that the CSAs to be</p>	

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		proposed by the Administration to the Bill concerning the provision of a defence for advertisement made in a publication of a technical character for circulation amongst specified persons as set out in paragraph 6(a) of LC Paper No. CB(2)2153/14-15(01) was modeled largely on the Undesirable Medical Advertisements Ordinance.	
<i>Agenda item II: Any other business</i>			
011349 - 011411	Chairman Admin	Arrangements for the next meeting The Chairman's request for the early provision of the draft CSAs to be proposed by the Administration for members' consideration.	

Council Business Division 2
Legislative Council Secretariat
30 October 2015