

立法會
Legislative Council

LC Paper No. CB (2)1334/15-16
(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 eighth meeting
held on Wednesday, 30 March 2016, at 8:45 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** : Ms Wendy AU Wan-sze
Deputy Secretary for Food and Health (Health) 2
(Acting)
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

Ms Louisa YU
Legislative Assistant (2) 5

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I. Meeting with the Administration

[LC Paper Nos. CB(2)1188/14-15(06), CB(2)2153/14-15(01), CB(2)90/15-16(01), CB(2)521/15-16(01) to (02), CB(2)1057/15-16(01) and CB(3)493/14-15]

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

2. The Bills Committee considered the latest draft Committee stage amendments ("CSAs") proposed by the Administration as set out in the Annex to LC Paper No. CB(2)1057/15-16(01).

3. The Bills Committee noted that the word "private" in the proposed new section 15A(3)(c) of the Human Reproductive Technology Ordinance (Cap. 561) would be given its ordinary dictionary meaning which included "belonging to or for the use of one particular person or group of people only", "not connected with one's work or official position" and "relating to or denoting a transaction between individuals and not involving commercial organizations" according to the Oxford Dictionary. Hence, posts on social media platforms which were of the above nature would fall under the expression "private correspondence" under the proposed new section 15A(3)(c), even when the sharing or privacy setting of the personal user account concerned was set as "Public". The Bills Committee also noted the Administration's explanation that the new section 15A(3)(c) had to be read in

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conjunction with the new section 15A(4)(a), which stated the condition that such correspondence was not "published or distributed in the course of a business of promoting sex selection services".

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4. Against the above, the Administration was requested to refine the drafting of the proposed new section 15A(3)(c) to make clear the legislative intent that in proceedings for an offence under the proposed new section 15A(1), it was also a defence for the accused to prove that the advertisement concerned was contained in a post on a social media platform of the above private nature, unless the correspondence was published or distributed in the course of a business of promoting sex selection services, or the advertisement was accessible through a hyperlink provided in the correspondence and the person charged with the offence devised the contents of the advertisement or selected, added to, modified or otherwise exercised control over the contents of the advertisement.

5. The Bills Committee noted that subject to the response to be provided by the Administration under paragraph 4 above, Mr CHAN Chi-chuen had indicated his intention to move CSAs to improve the drafting of the proposed new section 15A(3)(c) to better reflect the above legislative intent. The Chairman suggested that a decision would be made at the next meeting on whether the CSAs so proposed, if any, should be moved in the name of the Bills Committee. Members did not raise any objection.

II. Any other business

6. The Bills Committee agreed to hold the next meeting on Monday, 18 April 2016, at 9:00 am to consider the draft CSAs to be proposed by the Administration and/or individual members.

7. 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 CSAs to the Secretariat as soon as practicable for the consideration of the Bills Committee at the next meeting.

8. There being no other business, the meeting ended at 9:35 am.

**Proceedings of the eighth meeting of
the Bills Committee on Human Reproductive Technology (Amendment) Bill 2015
held on Wednesday, 30 March 2016, at 8:45 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>			
000120 - 000403	Chairman	Opening remarks	
000404 - 000630	Chairman Admin	Briefing by the Administration on its response to issues raised at the meeting on 12 January 2016 and its revised set of draft Committee stage amendments ("CSAs") to the Human Reproductive Technology (Amendment) Bill 2015 ("the Bill") [LC Paper No. CB(2)1057/15-16(01)].	
000631 - 001859	Chairman SALA3 Mr CHAN Chi-chuen Admin	<p>The Legal Adviser to the Bills Committee's concern that it was uncertain as to whether social media platform (such as Facebook) and mobile applications would fall under the term "website" in the newly added proposed new section 15A(8) of the Human Reproductive Technology Ordinance (Cap. 561) ("HRTO"), which sought to provide protection for administrators of discussion forum on the Internet and webpage hosts who had no control on what other persons might post on the openly assessable platform under their ownership, management or control.</p> <p>Mr CHAN Chi-chuen's concern about whether hyperlinks and posts posted on a social network (e.g. Facebook, Twitter and Weibo), where the sharing setting of the user account concerned was set to "Public", would be regarded as private correspondence under the proposed new section 15A(3)(c) of HRTO.</p> <p>The Chairman's view that, apart from providing under the proposed new section 15A(3)(c) a defence for those sex selection services advertisements contained in a private correspondence and an exception under the proposed new section 15A(8) for those persons who owned, managed or controlled a website which was used by other persons to effect the publication or distribution of such advertisements, the legislation should also provide protection for information or advertisements shared on social media platforms and mobile applications by a person who did not intend to contravene the new offence under the proposed new section 15A(1) of HRTO.</p> <p>The Administration's advice that:</p> <p>(a) there was no legal definition for the term "website". Hence, any location connected to the Internet, including social media platforms and mobile applications, would fall under the term "website" in the proposed new section 15A(8);</p> <p>(b) in the absence of a definition, the word "private" would be given its ordinary dictionary meaning. According to the</p>	

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		<p>Oxford Dictionary, "private" meant "belonging to or for the use of one particular person or group of people only", "not connected with one's work or official position" and "relating to or denoting a transaction between individuals and not involving commercial organizations". Under the proposed new section 15A(9) (re-numbered from section 15A(8) of the previous set of draft CSAs proposed by the Administration as set out in LC Paper No. CB(2)521/15-16(02)), "correspondence" included correspondence in electronic form, and thereby included social media platforms and mobile applications; and</p> <p>(c) the drafting of subsections (3) and (4) of the proposed new section 15A would enable the application of the defence to, among others, all private correspondence, except for correspondence published or distributed in the course of a business of promoting sex selection services, or advertisement accessible through a hyperlink provided in the correspondence and the person charged with the offence devised the contents of the advertisement or selected, added to, modified or otherwise exercised control over the contents of the advertisement as specified under the proposed new section 15A(4)(a) and (b) of HRTO.</p> <p>In response to Mr CHAN Chi-chuen's enquiry, the Administration's affirmation that the proposed new section 15A(8)(b) of HRTO would not impose a responsibility on administrators of discussion forum on the Internet and webpage hosts to actively monitor whether there were any sex selection services advertisement on their platforms. As long as they had removed such advertisement as soon as practicable after they were aware of or informed of the publication or distribution, they would not be held liable for the offence.</p>	
001900 - 003144	Chairman Mr CHAN Chi-chuen Admin SALA3	<p>Mr CHAN Chi-chuen's view that the expression "private correspondence" in the proposed new section 15A(3)(c) of HRTO could not clearly reflect the legislative intent; and his suggestions to add the element "publishing or distributing the advertisement publicly in any manner", or using the expression "non-business correspondence" or "personal correspondence" in the aforesaid section so as to ease the concern of members of the public on the application of the proposed defence to public posts posted on the social media platforms.</p> <p>At the invitation of the Chairman, the Legal Adviser to the Bills Committee's remarks that the meaning of the word "private" in the expression "private correspondence" might be ambiguous when interpreted in the context of "private versus public". Consideration could be given to replacing "private" with "non-business" or "non-commercial".</p> <p>The Administration's response that:</p> <p>(a) the use of the expression "private correspondence" in the proposed new section 15A(3)(c) could achieve a proper balance between protecting the freedom of communication</p>	

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		<p>of members of the public and holding those persons involved in the business of promoting sex selection services liable;</p> <p>(b) it should be noted that the dictionary meaning of "personal" was narrower than that of "private", as the former meant "belonging to or affecting a particular person rather than anyone else" according to the Oxford Dictionary; and</p> <p>(c) to replace the word "private" in the proposed new section 15A(3)(c) with "non-business" would have the effect of limiting the application of the defence to correspondence which involved no financial gain or loss, irrespective of whether the business concerned was for promoting sex selection services or not.</p>	
003145 - 003301	Chairman Admin SALA3	<p>In response to the Chairman's enquiry as to whether the word "website" in the proposed new section 15A(8) of HRTO should be replaced by "internet platform" so as to expand the coverage of the exception, the Administration's reiteration that the dictionary meaning of "website" meant "a location connected to the Internet that maintains one or more pages on the World Wide Web". As such, the word "website" covered various online platforms including, among others, social media platforms and mobile applications.</p> <p>The Legal Adviser to the Bills Committee's remarks that if the Bill was passed, it would be for the court to interpret the provision and decide whether a particular online platform fell into the meaning of "website".</p>	
003302 - 004314	Chairman Mr CHAN Chi-chuen Admin	<p>The Chairman and Mr CHAN Chi-chuen's enquiry as to whether the Bill could provide, as for the case of administrators of discussion forum on the Internet and webpage hosts, an exemption (instead of a defence to a charge under the proposed new section 15A(1)) for sex selection services advertisements contained in a private correspondence.</p> <p>The Administration's explanation that the purpose of the proposed new section 15A(3)(c) and 15A(4)(a) was to provide a defence for a person charged under the proposed new section 15A(1) for knowingly published or distributed an advertisement promoting sex selection services, or caused the advertisement to be published or distributed, to prove that the advertisement was contained in a private correspondence which was not published or distributed in the course of a business of promoting sex selection services. The purpose of the proposed new section 15A(8) was to provide an exception for, among others, administrators of discussion forum on the Internet and webpage hosts who did not have the actus reus and mens rea to publish or distribute the advertisement on the website owned, managed or controlled by them. Hence, the two circumstances should be dealt with separately under different provisions.</p> <p>The Chairman and Mr CHAN Chi-chuen's reiteration of their concern over the use of the expression "private correspondence";</p>	

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		<p>and their call for the Administration to refine the drafting of the proposed new section 15A(3)(c) of HRTO, which would become a precedent bringing significant impacts on future regulation over activities on the Internet, to clearly reflect the legislative intent.</p> <p>The Administration's reiteration that the current drafting of the relevant provisions had ensured that a proper balance had been struck.</p>	Admin
<i>Agenda item II: Any other business</i>			
004315 - 005053	Chairman Mr CHAN Chi-chuen Admin	Way forward Date of the next meeting	

Council Business Division 2
Legislative Council Secretariat
20 April 2016