

立法會
Legislative Council

LC Paper No. CB (2)1550/15-16
(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 ninth meeting
held on Monday, 18 April 2016, at 9:00 am
in Conference Room 2 of the Legislative Council Complex**

- Members present** : Dr Hon KWOK Ka-ki (Chairman)
Prof Hon Joseph LEE Kok-long, SBS, JP, PhD, RN
Dr Hon LEUNG Ka-lau
Hon Charles Peter MOK, JP
Hon CHAN Chi-chuen
Hon CHUNG Kwok-pan
- Members absent** : Hon Cyd HO Sau-lan, JP
Hon CHAN Han-pan, JP
Dr Hon Fernando CHEUNG Chiu-hung
Dr Hon Helena WONG Pik-wan
- 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

Action

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 Chairman concluded that the sole remaining issue of concern of the Bills Committee was whether there was any alternative to the expression "private correspondence" contained in the proposed new section 15A(3)(c) of the Human Reproductive Technology Ordinance (Cap. 561), to more precisely reflect the Administration's legislative intent that for posts with the presence of sex selection services advertisement posted on a social network, where the sharing setting of the user account concerned was set to "Public", the persons charged with the proposed offence could rely on the defence provided for under the proposed new section 15A(3)(c), except that the correspondence was being published or distributed in the course of a business of promoting sex selection services (whether or not carried on by the person charged with the proposed offence). Given that the Administration had maintained its position that the current drafting of the proposed new section 15A(3)(c) could achieve a proper balance between protecting the freedom of communication of members of the public and holding those persons involved in the business of promoting sex selection services liable, members who held different views with the Administration might move a Committee stage amendment ("CSA") to the Bill. Members noted that Mr CHAN Chi-chuen might move a CSA in this regard.

Action

3. Members agreed that the Bills Committee would report its deliberations to the House Committee at its meeting on 6 May 2016. The Bills Committee noted the Administration's intention to resume the Second Reading debate on the Bill at the Council meeting of 25 May 2016 and no members raised objection. Members noted that the deadline for giving notice of moving CSAs to the Bill, if any, was 16 May 2016.

II. Any other business

4. There being no other business, the meeting ended at 9:50 am.

Council Business Division 2
Legislative Council Secretariat
23 May 2016

**Proceedings of the ninth meeting of
the Bills Committee on Human Reproductive Technology (Amendment) Bill 2015
held on Monday, 18 April 2016, at 9:00 am
in Conference Room 2 of the Legislative Council Complex**

Time marker	Speaker	Subject(s)/Discussion	Action required
<i>Agenda item I: Meeting with the Administration</i>			
000858 - 001041	Chairman	Opening remarks	
001042 - 001131	Chairman Admin	On the concern raised by members at the last meeting as to whether posts on those social media platforms 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 the Human Reproductive Technology Ordinance (Cap. 561) ("HRTO"), the Administration's advice that the current drafting of the proposed new section 15A(3)(c), including the use of the expression "private correspondence", had already taken into account of the need to protect freedom of communication on the part of members of the public.	
001132 - 001239	Chairman SALA3	The Legal Adviser to the Bills Committee's advice that "private" could refer to things that belong to a person and its meaning was similar to "personal". However, the ordinary dictionary meaning of both the Chinese and English text of "personal" was narrower than that of "private".	
001240 - 001420	Chairman Mr CHAN Chi-chuen	Mr CHAN Chi-chuen's remarks that during the past discussion of the Bills Committee, the Administration had agreed to move various Committee stage amendments ("CSAs") to the Bill to address the concerns raised by members. The sole remaining issue of concern was whether there was any alternative to the expression "private correspondence" contained in the proposed new section 15A(3)(c) of HRTO to more precisely reflect the legislative intent.	
001421 - 001524	Chairman	Suspension of meeting	
001525 - 002549	Chairman Mr CHAN Chi-chuen Admin	Mr CHAN Chi-chuen's call for the Administration to consider refining the drafting of the proposed new section 15A(3)(c), as the Bill would set a precedent for regulation of Internet activities. In his view, reference could be made to the Copyright (Amendment) Bill 2014 whereby the proposed new section 28A(5) and 28A(6) provided that a person did not communicate a work to the public if the person did not determine the content of the communication. A person did not determine the content of a communication only because the person took one or more steps for the purpose of (a) gaining access to what was made available by someone else in the communication; or (b) receiving the electronic transmission of which the communication consisted.	

Time marker	Speaker	Subject(s)/Discussion	Action required
		<p>The Administration's response that the scope of the proposed offence was confined specifically to advertisements promoting sex selection services using reproductive technology procedures as set out under the proposed new section 15A(1) of HRTO. The proposed new section 15A(3)(c) had provided a defence for, among others, those private correspondence (including correspondence in electronic form as stipulated in the proposed new section 15A(9)) which was not published or distributed in the course of a business of promoting sex selection services (whether or not carried out by the person charged with the proposed offence), thus there was no need to refine the drafting of the relevant provisions.</p>	
002550 - 003721	<p>Chairman Mr CHAN Chi-chuen Admin SALA3</p>	<p>Mr CHAN Chi-chuen's reiteration of his concern about whether hyperlinks and posts posted on a social media platform (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); and his suggestion of deleting the word "private" in the above provision.</p> <p>The Chairman's expression of similar concern; and his enquiry about the meaning of "advertisement" under HRTO.</p> <p>The Administration's advice that:</p> <p>(a) "advertisement", as defined under section 2(1) of HRTO, included any form of advertising whether to the public generally, to any section of the public or individually to selected persons; and</p> <p>(b) if the word "private" was deleted from the proposed new section 15A(3)(c), the coverage of the defence concerned would be too wide and hence, would render the proposed prohibition of publishing or distributing, or causing the publication or distribution of, sex selection services advertisements futile.</p> <p>The Legal Adviser to the Bills Committee's remarks that given that section 2(1) of HRTO had only set out the form of advising, what constituted an advertisement would rely on the dictionary meaning of "advertisement".</p>	
003722 - 004124	<p>Chairman Mr Charles MOK Admin</p>	<p>Mr Charles MOK's concern about (a) whether the expression "private correspondence" in the proposed new section 15A(3)(c) would provide a loophole for those mass promotional mails or emails deliberately marked as private mails or emails addressed to a particular individual; and (b) whether a person who was interested in issues relating to sex selection services through reproductive technology procedures frequently shared, not for gain, such information with his/her friends through emails or social media platforms would contravene the proposed offence.</p> <p>The Administration's advice that:</p>	

Time marker	Speaker	Subject(s)/Discussion	Action required
		<p>(a) for the first scenario, according to the proposed new section 15A(4)(a), the defence under the proposed new section 15A(3)(c) could not be relied upon as the correspondence concerned was published or distributed in the course of a business of promoting sex selection services; and</p> <p>(b) the persons referred to in the second scenario would not be held liable under the proposed offence if the relevant correspondence was not published or distributed in the course of a business of promoting sex selection services.</p>	
004125 - 004925	Chairman Mr CHAN Chi-chuen Admin	<p>Mr CHAN Chi-chuen indicated that he might move CSAs to the Bill to improve the drafting of the proposed new section 15A(3)(c) of HRTO.</p> <p>The way forward for the Bills Committee</p> <p>Legislative timetable</p>	
<i>Agenda item II: Any other business</i>			
004926 - 004941	Chairman	Closing remarks	