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Legislative Council

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Panel on Welfare Services

**Updated background brief prepared by the Legislative Council Secretariat
for the meeting on 12 March 2018**

Child custody and access in Hong Kong

Purpose

This paper gives an account of Members' past discussions on child custody and access in Hong Kong.

Background

2. In 1995, the then Attorney General and Chief Justice requested the Law Reform Commission ("LRC") to consider the law relating to guardianship and custody of children and to recommend appropriate changes to the law. In 1998, a subcommittee, which was set up under LRC to consider the matters, published a consultation paper on guardianship and custody covering its reform proposals. Following the consultation, LRC published a series of four reports. One of the reports, viz, the Report on Child Custody and Access ("the Report"), made 72 recommendations on arrangements relating to child custody and access. These recommendations suggested, among other things, that Hong Kong should follow other jurisdictions such as England and Wales, and Australia in adopting a new parental responsibility model ("the Model") to replace the existing custody and access arrangements in family law. LRC considered that the Model would enable both parents to continue to play an active part in the life of their children after divorce.

3. The Administration launched a public consultation exercise in December 2011 to gauge public views on whether to implement the Model by legislative means as recommended by LRC. The Panel on Welfare Services ("the Panel") was briefed on the consultation paper and received views from deputations at its meetings on 9 January and 25 February 2012 respectively. At its meeting on 8 July 2013, the Panel was briefed on the results of the public consultation and

the proposed follow-up work of the Report. Noting that there were concerns on how the Model was to be implemented in practice, the Administration would work out the legislative proposals and proposed support measures. Upon working out the proposals, the Labour and Welfare Bureau ("LWB") would further engage stakeholders and interested parties before embarking on legislation.

4. In consultation with the Department of Justice ("DoJ"), the Home Affairs Bureau ("HAB"), the Social Welfare Department ("SWD"), the Judiciary and other relevant bureaux/departments, LWB had prepared the draft Children Proceedings (Parental Responsibility) Bill ("the draft Bill") and set out relevant support measures in a public consultation paper to collect public views from November 2015 to March 2016. The Panel was briefed on the consultation paper and received relevant views from deputations at its meetings on 14 December 2015 and 22 February 2016 respectively. At its meetings on 8 May and 4 October 2017, the Panel was briefed on the outcome of the public consultation and received relevant views from deputations respectively.

Members' deliberations

Whether to implement a new parental responsibility model by legislative means

5. Some Members expressed reservations about the introduction of the Model by legislative means as the court could grant a joint custody order where appropriate. They were concerned that the consent and notification requirements might be used by hostile parents to obstruct and harass their former spouses after divorce. This would also lead to legal disputes and cause distress to their children and eventually impede their development. Some Members cast doubt on whether the introduction of the Model could adequately deal with the disagreements and settle the parental arrangements for the child during divorce proceedings. They expressed concern that implementation of the Model without sufficient support services would inflict further harm on divorced parents who could no longer cooperate with each other, in particular those parents who were victims of family violence.

6. The Administration advised that the existing family law defined parent-child relationship in terms of the "rights and authority" that parents had over their children, whilst the Model attempted to introduce the concept of continuing parental responsibilities of both parents even after divorce/separation. In addition, LRC had put forward in Part C of the recommendations of the Report a set of supplementary recommendations in response to the concerns expressed by some respondents to the 1998 public consultation that the Model could be used by perpetrators of domestic violence to further harass and abuse the ex-spouse and their children. For example, LRC had recommended that the court would have express power to make the most

appropriate orders/directions upon considering factors affecting the children and taking into account the circumstances of individual cases. A statutory checklist of factors was included in Part 2 of the draft Bill to assist the court in determining what would be in the best interests of the child in children proceedings. Besides, the option of "no order" was available for those cases where both parties consented to no order being made by the court and the court considered that making no order would be in the best interests of the child. The court would also have the express power to vary or dispense with any of the consent or notification requirements where necessary.

7. Some other Members expressed support for the implementation of the Model as it helped foster the continuing responsibilities of both parents toward their children which was conducive to the healthy upbringing and development of the children. They took the view that the Administration should take actions to address the concerns about the need for providing concrete support services for divorced families prior to the enactment of the relevant legislative proposals and effect policy changes to housing and welfare services to tie in with the implementation of the legislative proposals. Public education on parental responsibility and parental rights should also be strengthened. Some Members called on the Administration to formulate concrete work plans to promote the concept of co-parenting, regardless of whether the Model would be implemented through legislative means.

8. The Administration explained that as noted from the custody orders which required assessment by SWD, the number of joint orders had increased notwithstanding that sole orders remained the majority. The Model emphasized the continuing responsibilities of both parents towards the children. SWD had been undertaking publicity measures and public education work relating to the Model in the past few years. For example, the broadcasting of announcements in the public interest entitled "Marriage may end but parenthood goes on" and distribution of a set of handbooks which provided more detailed information and guidance for separated/divorced parents and their children on co-parenting issues. A website had been rolled out in November 2015 to facilitate public access to information on parental responsibility. SWD had tailor-made a psycho-educational programme to instil the concept of continuing parental responsibility in separated/divorced parents. The Administration would strive to strengthen its efforts in public education to tie in with the introduction of the proposed legislation.

9. Some Members considered that the Administration should conduct studies on whether the implementation of the Model through legislative means would be effective in bringing about healthier and happier development of the children before introducing the legislative proposals.

10. The Administration advised that LRC had studied the legislative reforms undertaken in England and Wales, Scotland, Australia and New Zealand in the

Report. Evaluations of the law reforms in England and Wales and Australia showed that there was no dispute on the fundamental merits of implementing the principles of parental responsibility by legislative means, but some problems were identified in meeting the objectives of the Model, including increasing court disputes and abuse by trouble-making parents. Both England and Wales and Australia further amended their respective family law in 2006 to address the problems identified. In addition to these four western common law jurisdictions, the consultation paper in 2011 had also covered the experience of Singapore which had decided to promote the Model by non-legislative means. The Administration assured Members that it would take into consideration the unique circumstances of Hong Kong when deciding whether the Model should be implemented by legislative means.

11. In response to some Members' enquiries about the legislative timetable for the Children Proceedings (Parental Responsibility) Bill ("the Bill"), the Administration advised that in consultation with DoJ and other relevant bureaux and government departments, it was in the progress of revising the proposed legislation with reference to the comments received during the public consultation exercise. The Administration would then consider whether to implement the proposed legislation. If the proposed legislation were to be implemented, it could be introduced to the Legislative Council ("LegCo") in early 2018 at the earliest.

12. The Panel generally agreed that the concept of the Model should adopt the best interests of children as the basis. However, as there was currently no specific services for parents after divorce and no maintenance board to assist them in recovering maintenance payments, the Panel took the view that the Model had caused great concerns and worries to divorced parents from high-risk families with history of domestic violence. The Panel considered it not advisable to legislate hastily in the absence of sufficient complementary services. The Panel passed a motion at its meeting on 22 February 2016 objecting to making legislation at this stage.

Support services for families in need

13. Some Members had reservations about the smooth implementation of the Model in the absence of complementary support services, such as mediation and counselling services, to facilitate cooperative and continued parental responsibility. They were of the view that the Administration should provide more resources in this respect and enhance publicity on the availability of support services to divorced parents, irrespective of whether the Model would be implemented by legislative means.

14. According to the Administration, new measures would be implemented to address public concerns on the need to strengthen support for separated/divorced families and on the promotion of the concept of parental

responsibility. The Administration launched a two-year Pilot Project on Children Contact Service ("the Pilot Project") in September 2016, which aimed to provide a safe environment with social workers' support to facilitate the arrangement of children contact with the non-residing parent. Besides, "dedicated help service" would be provided to handle enquiries and requests for assistance from parents and the public during the initial one to two years after the Bill had come into effect. In addition to the new measures, the 65 Integrated Family Service Centres, two Integrated Services Centres and the Family and Child Protective Services Units ("FCPSUs") as well as non-governmental organizations ("NGOs") concerned would continue providing specialized services under their respective purviews to support separated/divorced/divorcing families. Six additional training programmes had been provided for frontline social workers to enrich their knowledge and understanding on parenting coordination as well as mediation services. The Administration would continue to strengthen support services for separated/divorced/divorcing families irrespective of whether the proposed legislation would be implemented.

15. Members considered that the Administration should take additional measures and provide more resources for divorced families. The Panel passed a motion at its meeting on 8 May 2017 urging the Administration to, inter alia, set up expeditiously "visitation centres" in various districts.¹ Members also asked whether the Administration would regularize the Pilot Project. The Administration advised that SWD would review the Pilot Project with a view to better addressing the needs of separated/divorced/divorcing parents and their children. SWD would collect stakeholders' views on the Pilot Project and evaluate its effectiveness for mapping out the way forward in mid-2018.

16. Some Members were concerned that cross-boundary divorced families with history of domestic violence were unable to put co-parental responsibility into practice, if the divorced mothers who were to raise their children did not have the right of abode in Hong Kong. The Administration was requested to provide support services for families in need to enable the implementation of the Model.

17. The Administration advised that that FCPSUs would follow up cases involving custody disputes referred by the courts, including those involved in domestic violence and cross-boundary families. As the courts had made more orders for joint custody in the past few years, the concept of parental responsibility was not entirely new to SWD staff. SWD staff had received relevant training to make suitable arrangements for divorced parents and their children. The Administration would pay attention to divorced families with parents who did not have the right of abode in Hong Kong and would engage volunteers to provide assistance for those families.

¹ The wording of the motion is in **Appendix I**.

Maintenance board

18. Some Members were of the view that the ineffective system of maintenance had defeated the purpose of enforcing maintenance orders in helping divorced parents collect maintenance payments. The Administration was urged to take effective measures to improve the system. The Panel passed a motion at its meeting on 8 May 2017 urging the Administration to, inter alia, set up a maintenance board and enhance the support services for divorced families.²

19. According to the Administration, it had carefully examined the suggestion of setting up a maintenance board before and considered that the suggestion would unlikely bring, to either the maintenance payees or taxpayers, any significant benefits over and above those which could be achieved by improving the existing system. Measures taken to improve the system of maintenance included: (i) relaxing the requirement for the court to make Attachment of Income Orders to make the issuance procedure more flexible; (ii) imposing interest or even surcharge against defaulting maintenance payers; (iii) upon request from legal professionals who could provide sufficient information, allowing designated government departments (i.e. Immigration Department, Transport Department and Housing Department) to disclose the addresses of maintenance payers against whom legal actions would be taken to sue for arrears in maintenance free-of-charge; and (iv) launching publicity and education programmes to strengthen public understanding of the responsibilities of maintenance payers, rights of maintenance payees and services available to them when they were unable to receive maintenance payments.

20. The Administration further advised that since the information and statistics related to maintenance currently available were limited and there were some new developments in related issues, HAB would commission a study through the Family Council to examine various divorce-related issues including the collection of maintenance payment and enforcement of maintenance orders in Hong Kong with reference to overseas practices. The Administration would take into account the findings of the study in considering the way forward. It was expected that the study would commence in early 2018 and be completed in around mid-2019.

Safeguarding the interests of children of divorced families

21. In response to Members' enquiries on whether children's views on the Model had been sought and the means to collect their views, the Administration advised that in addition to consulting children concern groups, it intended to invite children of divorced families through NGOs to give views on the Model. Those children's views would be collected by means of small group discussions

² Ibid.

led by social workers.

22. Some Members were concerned that as there was no mechanism for children to express their disagreement about the custody and visitation arrangements, their interests could not be safeguarded. The Administration should have made reference to the United Nations Convention on the Rights of the Child in preparing the draft Bill. According to the Administration, under the proposed legislation, a court might make an order for the independent representation of a child's interests. The cost involved should be borne by the divorced parents concerned who could apply for legal aid if necessary.

Relevant papers

23. A list of the relevant papers on the LegCo website is in **Appendix II**.

Council Business Division 2
Legislative Council Secretariat
5 March 2018

福利事務委員會

**在 2017 年 5 月 8 日會議上就議程第 III 項
"落實法律改革委員會《子女管養權及探視權報告書》
建議的擬議法例及相關支援措施"
通過的議案**

鑒於公眾對於香港子女管養權及探視權的法律改革在未有足夠的服務支援下很有保留，本委員會認為政府應先成立"贍養費管理局"，協助單親家庭尋求財政支援，加強預防離異及支援離異家庭，並及早在各區設立"探視中心"，在具體服務上推動父母責任。

動議人：張超雄議員

(Translation)

Panel on Welfare Services

**Motion passed under agenda item III on
"The proposed legislation to implement the recommendations of
the Law Reform Commission Report on Child Custody and Access
and relevant support measures"
at the meeting on 8 May 2017**

Given that the public, in view of the insufficient provision of service support, has great reservation about the law reform on child custody and access in Hong Kong, this Panel considers that the Government should first set up a "maintenance board", assist single-parent families to seek financial support, enhance the prevention of divorce and support divorced families, and set up expeditiously "visitation centres" in various districts, so as to promote parental responsibilities through specific services.

Moved by : Dr Hon Fernando CHEUNG Chiu-hung

Appendix II

Relevant papers on child custody and access in Hong Kong

Committee	Date of meeting	Paper
Panel on Welfare Services	9 January 2012 (Item IV)	Agenda Minutes
Panel on Welfare Services	25 February 2012 (Item I)	Agenda Minutes
Panel on Welfare Services	8 July 2013 (Item III)	Agenda Minutes
Panel on Administration of Justice and Legal Services	27 May 2014 (Item III)	Agenda Minutes
Panel on Welfare Services	14 December 2015 (Item IV)	Agenda Minutes LC Paper No. CB(2)1931/15-16(01)
Panel on Welfare Services	22 February 2016 (Item I)	Agenda Minutes LC Paper No. CB(2)807/16-17(01)
Panel on Welfare Services	8 May 2017 (Item III)	Agenda Minutes LC Paper No. CB(2)1540/16-17(01)
Panel on Welfare Services	4 October 2017 (Item I)	Agenda Minutes