

立法會
Legislative Council

LC Paper No. CB(2)1927/18-19
(These minutes have been seen
by the Administration)

Ref : CB2/BC/2/18

**Bills Committee on
Discrimination Legislation (Miscellaneous Amendments) Bill 2018**

**Minutes of meeting
held on Tuesday, 7 May 2019, at 4:30 pm
in Conference Room 3 of the Legislative Council Complex**

Members present : Hon Alice MAK Mei-kuen, BBS, JP (Chairman)
Dr Hon Elizabeth QUAT, BBS, JP (Deputy Chairman)
Hon Tommy CHEUNG Yu-yan, GBS, JP
Hon WONG Ting-kwong, GBS, JP
Hon Paul TSE Wai-chun, JP
Hon Claudia MO
Hon Frankie YICK Chi-ming, SBS, JP
Hon YIU Si-wing, BBS
Hon Charles Peter MOK, JP
Hon CHAN Chi-chuen
Hon KWOK Wai-keung, JP
Hon Dennis KWOK Wing-hang
Hon Christopher CHEUNG Wah-fung, SBS, JP
Dr Hon Fernando CHEUNG Chiu-hung
Dr Hon Helena WONG Pik-wan
Hon POON Siu-ping, BBS, MH
Dr Hon CHIANG Lai-wan, SBS, JP
Hon Alvin YEUNG
Hon Holden CHOW Ho-ding
Hon YUNG Hoi-yan
Hon CHAN Chun-ying, JP
Hon CHEUNG Kwok-kwan, JP
Hon HUI Chi-fung
Hon AU Nok-hin
Hon Vincent CHENG Wing-shun, MH

Members absent : Hon Mrs Regina IP LAU Suk-ye, GBS, JP
Hon Kenneth LEUNG
Hon CHU Hoi-dick
Hon SHIU Ka-chun
Hon LUK Chung-hung, JP
Dr Hon CHENG Chung-tai

Public Officers attending : Item II

Mr Andy CHAN Shui-fu, JP
Under Secretary for Constitutional and Mainland Affairs

Ms Judy CHUNG Sui-kei
Principal Assistant Secretary for Constitutional and
Mainland Affairs

Miss Celine KWOK Sin-ling
Assistant Secretary for Constitutional and Mainland Affairs

Miss Queenie WU Chung-yi
Senior Government Counsel (Acting)
Department of Justice

Miss Wendy HO Yuen-ting
Government Counsel
Department of Justice

Clerk in attendance : Miss Josephine SO
Chief Council Secretary (2) 2

Staff in attendance : Mr Kelvin LEE
Senior Assistant Legal Adviser 3

Ms Wendy LO
Senior Council Secretary (2) 2

Miss Cally LAI
Legislative Assistant (2) 2

I. Application for late membership
(LC Paper No. CB(2)1361/18-19(01))

The Chairman said that since Mr Vincent CHENG's late application for membership of the Bills Committee was not made on grounds of indisposition or absence from Hong Kong during the time when Members should signify membership, it would be for the Bills Committee to decide whether Mr CHENG's application should be accepted on sufficient grounds.

2. Dr Helena WONG and Mr HUI Chi-fung expressed concern about recent cases in which late applications for joining a committee made by Members belonging to the pro-democracy camp were rejected due to opposition from committee members belonging to the pro-establishment camp. Dr WONG opined that to encourage Members' participation in committees' business, a lenient approach should be adopted in considering late applications for membership.

3. In response to Ms Claudia MO's enquiry, Mr Vincent CHENG stated his grounds for joining the Bills Committee. Mr CHENG apprised that he had adjusted his work schedules for Council business and was newly appointed on 26 April 2019 as member of the Equal Opportunities Commission. He would like to join this Bills Committee and participate in the scrutiny work of the Discrimination Legislation (Miscellaneous Amendments) Bill 2018 ("the Bill").

4. Mr Tommy CHEUNG, Dr Elizabeth QUAT, Dr CHIANG Lai-wan and Mr CHEUNG Kwok-kwan expressed support for Mr Vincent CHENG's late application for membership.

5. At Dr CHIANG Lai-wan's suggestion, the Chairman put the question of whether to accept Mr Vincent CHENG's late application for membership to vote. Eight members voted for and no member voted against the question, and three members abstained from voting. The Chairman declared that Mr CHENG's late application for membership was accepted.

II. Meeting with the Administration

(The Bill, Legislative Council Brief issued by the Constitutional and Mainland Affairs Bureau on 28 November 2018, LC Paper Nos. LS28/18-19, CB(2)578/18-19(02), CB(2)1192/18-19(01), CB(2)1263/18-19(01) and CB(2)1327/18-19(01))

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

Action

7. The Bills Committee commenced and completed clause-by-clause examination of the Bill.

Follow-up actions required of the Administration

8. The Administration was requested to provide a written response to issues raised by members at the meeting, as set out in **Annex B**.

III. Any other business

Meeting arrangement

9. Members were informed vide LC Paper No. CB(2)1205/18-19 issued on 15 April 2019 that two meetings were scheduled in June 2019. Since the Administration undertook to submit for members' consideration at the next meeting the relevant draft amendments to the Bill having regard to members' suggestions, the Bills Committee agreed that to allow sufficient time for the Administration to prepare the draft amendments, the Chairman would, in consultation with the Administration, decide on when the Bills Committee should next meet. Members would be informed of the meeting arrangement once a decision was made.

(Post-meeting note: Members were informed vide LC Paper Nos. CB(2)1421/18-19 and CB(2)1585/18-19 respectively issued on 10 May and 3 June 2019 that the two meetings originally scheduled for June 2019 were cancelled and the fifth meeting of the Bills Committee be held on 12 July 2019, Friday, at 10:45 am. On 3 July 2019, members were further informed vide LC Paper No. CB(2)1774/18-19 that given the serious damage caused by the storming of the Legislative Council Complex by some protesters on 1 July 2019 and due to safety and security reasons, the Chairman had decided to cancel the meeting on 12 July 2019.)

10. There being no other business, the meeting ended at 5:49 pm.

**Proceedings of the meeting of the Bills Committee on
Discrimination Legislation (Miscellaneous Amendments) Bill 2018
on Tuesday, 7 May 2019, at 4:30 pm
in Conference Room 3 of the Legislative Council Complex**

Time marker	Speaker	Subject(s)/Discussion	Action Required
000726-001954	Chairman Deputy Chairman Mr Tommy CHEUNG Ms Claudia MO Dr Helena WONG Dr CHIANG Lai-wan Mr CHEUNG Kwok-kwan Mr HUI Chi-fung Mr Vincent CHENG	Consideration of and voting on Mr Vincent CHENG's late application for membership of the Bills Committee.	
001955 - 002859	Chairman Admin	The Administration's briefing on its consolidated response (LC Paper No. CB(2)1327/18-19(01)) to issues raised at the meeting on 26 March 2019 and also in Mr HUI Chi-fung's letter dated 17 April 2019 (LC Paper No. CB(2)1263/18-19(01)).	
002900 - 003232	Chairman Mr HUI Chi-fung Admin	<p>Mr HUI Chi-fung's expression of support for the Administration's plan to introduce a separate bill for the purpose of outlawing harassment on the ground of breastfeeding ("the separate bill").</p> <p>The Administration's advice on its preliminary plan to submit by the end of 2019 the separate bill for scrutiny by this Bills Committee in parallel. Regarding the suggestion of outlawing harassment on the ground of breastfeeding in other situations outside the prescribed areas under the Sex Discrimination Ordinance (Cap. 480) ("SDO"), the Administration clarified that a holistic review would be the preferred approach. This could be considered at a later stage together with the Equal Opportunities Commission ("EOC")'s study on sexual harassment issues, following expeditious action to address members' suggestion by proposing legislative amendments to introduce protection from harassment on the ground of breastfeeding within the existing prescribed areas under SDO.</p> <p>The Administration was requested to:</p> <p>(a) explain in writing the proposed scope</p>	<p>Admin (item 1 of Annex B)</p>

Time marker	Speaker	Subject(s)/Discussion	Action Required
		<p>and content of the separate bill, as well as the approach with which to introduce new provisions to the relevant anti-discrimination ordinance(s) such that acts of harassment on the ground of breastfeeding should be unlawful; and</p> <p>(b) advise on the timetable for introducing the separate bill into the Legislative Council ("LegCo").</p>	refers)
003233 - 003734	Chairman Dr Helena WONG Admin	Dr Helena WONG suggested that the Administration should consider adding provisions in relevant anti-discrimination ordinances to specifically protect management staff of a club from sexual, disability and racial harassment by members or applicants for membership of the club. The Administration's advice that it would consider this suggestion, which went beyond the recommendations in EOC's Discrimination Law Review, at a later stage.	
003735 - 004244	Chairman Deputy Chairman Admin SALA3	<p>The Deputy Chairman's view that the Administration should introduce the separate bill as early as possible.</p> <p>The Chairman's advice that there was a precedent case in 2017 in which two bills introduced into the Council at different points of time were referred to the same Bills Committee for scrutiny. It should be noted that it was up to the House Committee to decide whether the separate bill should be referred to this Bills Committee for scrutiny in parallel.</p> <p>In response to the Chairman's enquiry, the Legal Adviser to the Bills Committee advised that there were precedent cases where a Bills Committee decided to hold in abeyance the consideration of a bill, pending the Administration's response to outstanding issues. In some of those cases, the House Committee released the slot to accommodate the activation of the next Bills Committee on the waiting list.</p> <p>Members noted the Administration's plan to include "intern"/"unpaid trainee" and "volunteer" in the proposed definition of</p>	

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		<p>"workplace participant" as set out in Part 5 of the Bill by proposing amendments to the proposed new section 23A of SDO, new section 22A of the Disability Discrimination Ordinance (Cap. 487) ("DDO") and new section 24A of the Race Discrimination Ordinance (Cap. 602) ("RDO"). The Administration was requested to provide relevant draft amendments to the Bill for members' consideration at the next meeting.</p> <p>Members agreed that as the Administration needed time to prepare the draft amendments, the Chairman would liaise with the Administration and determine the date and time of the next meeting.</p> <p>Members agreed that if clause-by-clause examination of the Bill could be completed at this meeting, the Bills Committee would consider at the next meeting (a) the Administration's response to issues raised at this meeting as well as (b) the draft amendments proposed to the Bill from the Administration and individual members (if any).</p> <p>If a separate bill for the purpose of outlawing harassment on the ground of breastfeeding was to be introduced by the Administration in end-2019, this Bills Committee would consider at the next meeting the procedural issues involved.</p>	<p>Admin (item 2 of Annex B refers)</p>
<i>Clause-by-clause examination of the Bill</i>			
004245 - 004419	Chairman Admin	<p>Clause-by-clause examination of the Bill, with the aid of the blue Bill and the Chinese version of the marked-up copy of the Bill (LC Paper No. CB(2)578/18-19(02))</p> <p><u>Part 1 - Preliminary</u></p> <p><i>Clause 1 - Short title and commencement</i></p> <p><i>Clause 2 - Enactments amended</i></p>	
004420 - 005335	Chairman Deputy Chairman Admin SALA3	<p>Part 2 - Amendments to Sex Discrimination Ordinance (Cap. 480) Relating to Discrimination on the Ground of <u>Breastfeeding</u></p>	

Time marker	Speaker	Subject(s)/Discussion	Action Required
		<p><i>Clause 3 - Long title amended</i></p> <p><i>Clause 4 - Section 2 amended (interpretation)</i></p> <p><i>Clause 5 - Section 4 amended (act done because of sex, etc. and for other reason)</i></p> <p>Discussion on the interpretation of section 4 of SDO as amended by the Bill.</p> <p><i>Clause 6 - Section 6 amended (sex discrimination against men)</i></p> <p><i>Clause 7 - Section 8A added</i></p> <p>Members raised no objection to the Administration's proposed amendments to the proposed definition of "breastfeeding" in the new section 8A(2) of SDO.</p> <p><i>Clause 8 - Section 10A added</i></p> <p><i>Clause 9 - Section 42 amended (discriminatory practices)</i></p> <p><i>Clause 10 - Section 48 amended (special measures)</i></p> <p><i>Clause 11 - Section 57 amended (acts done for purposes of protection of women)</i></p>	
005336 - 010057	Chairman Mr CHAN Chi-chuen Deputy Chairman Dr Helena WONG Admin SALA3	<p>Part 3 - Amendments to Race Discrimination Ordinance (Cap. 602) Relating to Discrimination and Harassment on the Ground of Race of Associate</p> <hr/> <p><i>Clause 12 - Section 2 amended (interpretation)</i></p> <p>In response to Mr CHAN Chi-chuen's enquiry, the Administration affirmed that same-sex partners (including persons in cohabiting relationships and same-sex marriages) living together on a genuine domestic basis could be covered under the definition of "associate" as defined in the amended section 2(1) of RDO.</p> <p><i>Clause 13 - Section 5 substituted</i></p> <p><i>Clause 14 - Section 7 amended (racial harassment)</i></p>	

Time marker	Speaker	Subject(s)/Discussion	Action Required
		<p><i>Clause 15 - Section 8 amended (meaning of race, on the ground of race, racial group and comparison of cases of persons or different racial groups)</i></p> <p><i>Clause 16 - Section 84 amended (amendment of Schedules 1, 2, 3, 4 and 5)</i></p> <p><i>Clause 17 - Schedule 6 added</i></p> <p>In response to the enquiries from the Deputy Chairman and Dr Helena WONG, the Administration advised that it had made reference to similar provisions in DDO in proposing that the Secretary for Constitutional and Mainland Affairs, might, by notice published in the Gazette, amend the proposed new Schedule 6 to specify a person/ an organization as a carer. Any proposed amendments to Schedule 6 in the future would be subject to negative vetting by LegCo.</p>	
010058 - 010307	Chairman Deputy Chairman Admin	<p>Part 4 - Amendments to Race Discrimination Ordinance (Cap. 602) Relating to <u>Discrimination by Imputation</u></p> <p><i>Clause 18 - Section 8 amended (meaning of race, on the ground of race, racial group and comparison of cases of persons or different racial groups)</i></p>	
010308 - 011104	Chairman Deputy Chairman Dr Helena WONG Admin	<p>Part 5 - Amendments Relating to <u>Harassment at Workplace</u></p> <p>Division 1 — Sex Discrimination Ordinance (Cap. 480)</p> <p><i>Clause 19 - Section 23A added</i></p> <p>Division 2 — Disability Discrimination Ordinance (Cap. 487)</p> <p><i>Clause 20 - Section 2 amended (interpretation)</i></p> <p><i>Clause 21 - Section 22A added</i></p> <p>In response to Dr Helena WONG's enquiry, the Administration advised that depending on actual circumstances of individual cases, sexual harassment between a private driving instructor and his/her student could be dealt with under (a) existing provisions of SDO in</p>	

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		<p>relation to provision of services or (b) the proposed new section 23A of SDO relating to "harassment at workplace" (if the parties involved were considered as workplace participants).</p> <p>Division 3 — Race Discrimination Ordinance (Cap. 602)</p> <p><i>Clause 22 - Section 24A added</i></p> <p><i>Clause 23 - Section 39 amended (other harassment)</i></p>	
011105 - 011331	Chairman Admin	<p><u>Part 6 - Amendments Relating to Harassment in Relation to Provision of Goods etc.</u></p> <p>Division 1 — Disability Discrimination Ordinance (Cap. 487)</p> <p><i>Clause 24 - Section 38 amended (harassment in relation to the provision of goods, services and facilities)</i></p> <p>Division 2 — Race Discrimination Ordinance (Cap. 602)</p> <p><i>Clause 25 - Section 39 amended (other harassment)</i></p>	
011332 - 011540	Chairman Admin	<p><u>Part 7 - Amendments Relating to Harassment Committed outside Hong Kong</u></p> <p>Division 1 — Disability Discrimination Ordinance (Cap. 487)</p> <p><i>Clause 26 - Section 40 amended (extent of Part 4)</i></p> <p>Division 2 — Race Discrimination Ordinance (Cap. 602)</p> <p><i>Clause 27 - Section 40 amended (extent of Part 4)</i></p>	
011541 - 011711	Chairman Admin	<p><u>Part 8 - Amendments Relating to Harassment by Clubs</u></p> <p>Division 1 — Sex Discrimination Ordinance (Cap. 480)</p> <p><i>Clause 28 - Section 39A added</i></p>	

Time marker	Speaker	Subject(s)/Discussion	Action Required
		<p>Division 2 — Disability Discrimination Ordinance (Cap. 487)</p> <p><i>Clause 29 - Section 2 amended (interpretation)</i></p> <p><i>Clause 30 - Section 38A added</i></p>	
011712 - 011903	Chairman Admin	<p>Part 9 - Amendments Relating to Award of <u>Damages</u></p> <p>Division 1 — Sex Discrimination Ordinance (Cap. 480)</p> <p><i>Clause 31 - Section 76 amended (claims under Part 3 or 4)</i></p> <p>Division 2 — Family Status Discrimination Ordinance (Cap. 527)</p> <p><i>Clause 32 - Section 54 amended (claims under Part III or IV)</i></p> <p>Division 3 — Race Discrimination Ordinance (Cap. 602)</p> <p><i>Clause 33 - Section 70 amended (claims in respect of discrimination, harassment and vilification)</i></p>	
011904 - 012235	Chairman Dr Helena WONG	<p>Completion of clause-by-clause examination of the Bill.</p> <p>The Chairman's closing remarks.</p>	

**Bills Committee on
Discrimination Legislation (Miscellaneous Amendments) Bill 2018**

**List of follow-up actions arising from the discussion
at the meeting on 7 May 2019**

As the Administration has indicated in its reply letter dated 29 April 2019 (LC Paper No. CB(2)1327/18-19(01)) that it plans to introduce a separate bill for the purpose of outlawing harassment on the ground of breastfeeding ("the separate bill") and hopes to submit the separate bill for scrutiny by this Bills Committee in parallel, the Administration was requested to:

- (a) explain in writing the proposed scope and content of the separate bill, as well as the approach with which to introduce new provisions to the relevant anti-discrimination ordinance(s) such that acts of harassment on the ground of breastfeeding should be unlawful; and
- (b) advise on the timetable for introducing the separate bill into the Legislative Council.

2. In the same reply letter, the Administration has advised that it would, in response to members' views and suggestion to expand the scope of protection to more effectively combat harassment in the workplace, study how to appropriately define "intern"/"unpaid trainee" and "volunteer", and, without affecting the interpretation of "employment" under the existing anti-discrimination ordinances, supplement these persons to the scope of "workplace participant" as set out in Part 5 of the Discrimination Legislation (Miscellaneous Amendments) Bill 2018 ("the Bill") by proposing amendments to the proposed definition of "workplace participant" under the proposed new section 23A of the Sex Discrimination Ordinance (Cap. 480), new section 22A of the Disability Discrimination Ordinance (Cap. 487) and new section 24A of the Race Discrimination Ordinance (Cap. 602). The Administration was requested to provide relevant draft amendments to the Bill for members' consideration at the next meeting.