



政制及內地事務局
政府總部

香港添馬添美道 2 號
政府總部東翼

CONSTITUTIONAL AND MAINLAND AFFAIRS BUREAU
GOVERNMENT SECRETARIAT

EAST WING
CENTRAL GOVERNMENT OFFICES
2 TIM MEI AVENUE, TAMAR
HONG KONG

本局檔號 OUR REF. : CMAB/CR 1/19/1
來函檔號 YOUR REF. : CB2/BC/2/18
電話號碼 TEL NO. : 2810 2159
圖文傳真 FAXLINE : 2840 0657

30 December 2019

Ms Josephine SO
Clerk to Bills Committee
Council Business Division 2
Legislative Council Secretariat
The Legislative Council Complex
1 Legislative Council Road,
Central, Hong Kong

Dear Ms SO,

Discrimination Legislation (Miscellaneous Amendments) Bill 2018

Thank you for your letter dated 10 December 2019. This letter responds to the follow-up actions arising from the discussion at the meeting of the Bills Committee on Discrimination Legislation (Miscellaneous Amendments) Bill 2018 (the **Bill**) on 9 December 2019 as set out therein.

Draft amendments to Part 5 of the Bill

2. In response to member's earlier views, we suggested in our letter dated 29 November 2019 that the proposed definition of ***workplace participant*** in Part 5 of the Bill be amended, such that the scope of protection from harassment at a common workplace covers persons working at or attending a workplace as ***intern*** or ***volunteer***.

3. At the meeting on 9 December, we explained in detail our policy intent for revising the Bill, and heard members' views on the draft amendments, particularly concerns over the definition of interns and volunteers. Having reviewed the content of the draft amendments, we

shall adjust the wording used to define *internship* in order to more clearly express the definition of *intern*. We shall also respond to members' enquiry regarding the expression of "volunteer work" in the ensuing paragraphs.

Concerning the proposed definition of volunteer

4. For the purpose of Part 5 of the Bill, *volunteer* means "a person who performs volunteer work other than in the capacity of an employer or employee". The wording of this definition aims to describe the identity of a volunteer, and to make clear distinction from employers and employee, such that the concept of *employment* under existing anti-discrimination ordinances is not affected.

5. We suggested adopting the expression "volunteer work" so that emphasis is placed on the identity of a volunteer, and persons performing work of voluntary nature outside an employment relationship can be broadly included. In comparison, the expression "voluntary work" focuses more on the nature of work, particularly on the element of whether there is payment for the said work. As we have previously reiterated, *employment*, under the definition in existing anti-discrimination ordinances, means "employment under a contract of service or of apprenticeship; or a contract personally to execute any work or labour", and cannot be determined merely on the factor of payment.

6. Since the work arrangement for a volunteer tends to be more flexible and varied (for example, an employer or employee of a company may voluntarily take part in volunteer activities organized by their company, or some participants of volunteer activities may receive souvenirs or transport subsidies in return), the aforementioned proposed definition of *volunteer* can give a wider interpretation for the protection of persons working at or attending a workplace as a volunteer.

Concerning the proposed definition of intern

7. Regarding our proposed definition of internship, members opined that the phrasing, particularly that of the Chinese text, was rather convoluted. We had suggested in our written reply of 29 November 2019 that *intern* shall mean "a person who is engaged by another person for an internship but is not an employee of that other person", while *internship* means –

- (a) *a period of work the completion of which is required for attaining a professional or academic qualification and includes a pupillage*”; or
- (b) *any other period of work that is usually described as an internship.*

8. In order to more clearly express the definitions, we suggest revising the Chinese text such that **internship** (實習) means –

- (a) 在一段期間從事的工作，而在該期間完成該等工作，是取得某專業或學術資格所必需的，並包括見習職位；或
- (b) 通常稱為實習的任何其他期間的工作；

and to make corresponding to the English text to read **internship** means –

- (a) *a period of work the completion of which is required for attaining a professional or academic qualification and includes a pupillage; or*
- (b) *any other period of work that is usually described as an internship.*

9. We hope that the above revision can improve the clarity of the definitions, while keeping to our original policy intent to cover both specifically any work arrangement that must be completed for attaining a professional or academic qualification (for example: fieldwork placement for social work students, pupillage for pupils of barristers, or professional practicum for education students), and generally any other work that is usually described as an internship. Meanwhile, wording of the proposed definition of **intern** would not be affected.

Full set of the finalised draft amendments to the Bill

10. Upon incorporating the amendment mentioned in paragraph 8 above, and correcting the minor typographical error in the English text (i.e. “an volunteer”) as pointed out by the Legal Adviser to the Bills Committee, the full set of finalised amendments to the Bill to be introduced by the Government can be found at **Annex**. We would be grateful for members’ consideration and incorporation into the Bills Committee’s report.

11. Should members find the finalised draft amendments agreeable, we will commence procedures for resuming second reading debate on the Bill in hopes of completing the legislative exercise and expanding protection afforded by the anti-discrimination ordinances as soon as possible.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'Judy Chung', written in a cursive style.

(Ms Judy CHUNG)
for Secretary for Constitutional and Mainland Affairs

Discrimination Legislation (Miscellaneous Amendments) Bill 2018

Committee Stage

Amendments to be moved by the Secretary for Constitutional and Mainland Affairs

<u>Clause</u>	<u>Amendment Proposed</u>
4(2)	In the proposed definition of <i>breastfeeding</i> , by deleting “—see section 8A(2);” and substituting “means breastfeeding within the meaning of section 8A(2)(a);”.
7	In the proposed section 8A(2)(a)(i), by deleting “her child or expressing breast milk to feed her child” and substituting “a child or expressing breast milk”.
7	In the proposed section 8A(2)(a)(ii), by deleting “her child” and substituting “a child”.
New	<p>In Part 5, in Division 1, by adding—</p> <p>“18A. Section 2 amended (interpretation)</p> <p>Section 2(1)—</p> <p>Add in alphabetical order</p> <p><i>“intern</i> (實習人員)—see section 23A(2);</p> <p><i>internship</i> (實習)—see section 23A(2);</p> <p><i>pupillage</i> (見習職位)—see section 36(4);</p> <p><i>volunteer</i> (義工)—see section 23A(2);”.</p>
19	<p>In the proposed section 23A(2), in the definition of <i>workplace participant</i>, by deleting paragraphs (f) and (g) and substituting—</p> <p>“(f) the principal, within the meaning of section 20(1), of a commission agent;</p> <p>(g) a partner in a firm;</p> <p>(h) an intern; or</p> <p>(i) a volunteer.”.</p>

19

In the proposed section 23A(2), by adding in alphabetical order to the proposed definitions—

“*intern* (實習人員) means a person who is engaged by another person for an internship but is not an employee of that other person;

internship (實習) means—

(a) a period of work the completion of which is required for attaining a professional or academic qualification and includes a pupillage; or

(b) any other work that is usually described as an internship;

volunteer (義工) means a person who performs volunteer work other than in the capacity of an employer or employee;”.

New

In Part 5, in Division 1, by adding—

“19A. Section 46A added

After section 46—

Add

“46A. Liability of persons engaging interns and volunteers

(1) This section applies for the purposes of section 23A.

(2) For the avoidance of doubt, this section does not apply for the purposes of any criminal proceedings.

(3) An act done by an intern in the course of an internship is to be treated as an act done—

(a) by the intern; and

(b) by the person who engaged the intern for the internship, whether or not the act was done with the knowledge or approval of that person.

(4) In proceedings brought under this Ordinance against a person in respect of an act alleged to have been done by an intern engaged by the person, it is a defence for the person to prove that the person took reasonably practicable steps to prevent the intern—

(a) from doing that act; or

(b) from doing acts of that description in the course of the internship.

- (5) Subsections (6) and (7) apply if a volunteer is engaged by another person to perform volunteer work.
- (6) An act done by a volunteer in the course of performing volunteer work is to be treated as an act done—
 - (a) by the volunteer; and
 - (b) by the person who engaged the volunteer to perform the work, whether or not the act was done with the knowledge or approval of that person.
- (7) In proceedings brought under this Ordinance against a person in respect of an act alleged to have been done by a volunteer engaged by the person, it is a defence for the person to prove that the person took reasonably practicable steps to prevent the volunteer—
 - (a) from doing that act; or
 - (b) from doing acts of that description in the course of performing volunteer work.”.

19B. Section 47 amended (aiding unlawful acts)

After section 47(2)—

Add

- “(2A) For the purposes of subsection (1), if a person who engaged an intern—
 - (a) is liable under section 46A for an act done by the intern; or
 - (b) would be liable under section 46A for the act but for section 46A(4),
 the intern is deemed to aid the doing of the act by that person.
- (2B) For the purposes of subsection (1), if a person who engaged a volunteer—
 - (a) is liable under section 46A for an act done by the volunteer; or

(b) would be liable under section 46A for the act but for section 46A(7),

the volunteer is deemed to aid the doing of the act by that person.”.

19C. Section 76 amended (claims under Part 3 or 4)

Section 76(1)(d)—

Repeal

“46”

Substitute

“46, 46A”.”.

20 By renumbering the clause as clause 20(3).

20 By adding—

“(1) Section 2(1), English text, definition of *unjustifiable hardship*—

Repeal the full stop

Substitute a semicolon.

(2) Section 2(1)—

Add in alphabetical order

“*intern* (實習人員)—see section 22A(2);

internship (實習)—see section 22A(2);

pupillage (見習職位)—see section 33(4);

volunteer (義工)—see section 22A(2).”.”.

21 In the proposed section 22A(2), in the definition of *workplace participant*, by deleting paragraphs (f) and (g) and substituting—

“(f) the principal, within the meaning of section 20(1), of a commission agent;

(g) a partner in a firm;

(h) an intern; or

(i) a volunteer.”.

21

In the proposed section 22A(2), by adding in alphabetical order to the proposed definitions—

“*intern* (實習人員) means a person who is engaged by another person for an internship but is not an employee of that other person;

internship (實習) means—

(a) a period of work the completion of which is required for attaining a professional or academic qualification and includes a pupillage; or

(b) any other work that is usually described as an internship;

volunteer (義工) means a person who performs volunteer work other than in the capacity of an employer or employee;”.

New

In Part 5, in Division 2, by adding—

“21A. Section 48A added

After section 48—

Add

“48A. Liability of persons engaging interns and volunteers

- (1) This section applies for the purposes of section 22A.
- (2) For the avoidance of doubt, this section does not apply for the purposes of any criminal proceedings.
- (3) An act done by an intern in the course of an internship is to be treated as an act done—
 - (a) by the intern; and
 - (b) by the person who engaged the intern for the internship, whether or not the act was done with the knowledge or approval of that person.
- (4) In proceedings brought under this Ordinance against a person in respect of an act alleged to have been done by an intern engaged by the person, it is a defence for the person to prove that the person took reasonably practicable steps to prevent the intern—
 - (a) from doing that act; or
 - (b) from doing acts of that description in the course of the internship.

- (5) Subsections (6) and (7) apply if a volunteer is engaged by another person to perform volunteer work.
- (6) An act done by a volunteer in the course of performing volunteer work is to be treated as an act done—
 - (a) by the volunteer; and
 - (b) by the person who engaged the volunteer to perform the work, whether or not the act was done with the knowledge or approval of that person.
- (7) In proceedings brought under this Ordinance against a person in respect of an act alleged to have been done by a volunteer engaged by the person, it is a defence for the person to prove that the person took reasonably practicable steps to prevent the volunteer—
 - (a) from doing that act; or
 - (b) from doing acts of that description in the course of performing volunteer work.”.

21B. Section 49 amended (aiding unlawful acts)

After section 49(2)—

Add

- “(2A) For the purposes of subsection (1), if a person who engaged an intern—
- (a) is liable under section 48A for an act done by the intern; or
 - (b) would be liable under section 48A for the act but for section 48A(4),
- the intern is deemed to aid the doing of the act by that person.
- (2B) For the purposes of subsection (1), if a person who engaged a volunteer—
- (a) is liable under section 48A for an act done by the volunteer; or

(b) would be liable under section 48A for the act but for section 48A(7),

the volunteer is deemed to aid the doing of the act by that person.”.

21C. Section 72 amended (claims under Part 3 or 4)

Section 72(1)(d)—

Repeal

“48”

Substitute

“48, 48A”.”.

New

In Part 5, in Division 3, by adding—

“21D. Section 2 amended (interpretation)

(1) Section 2(1), English text, definition of *training*—

Repeal the full stop

Substitute a semicolon.

(2) Section 2(1)—

Add in alphabetical order

“*intern* (實習人員)—see section 24A(2);

internship (實習)—see section 24A(2);

pupillage (見習職位)—see section 35(4);

volunteer (義工)—see section 24A(2).”.”.

22

In the proposed section 24A(2), in the definition of *workplace participant*, by deleting paragraphs (f) and (g) and substituting—

“(f) the principal, within the meaning of section 22(1), of a commission agent;

(g) a partner in a firm;

(h) an intern; or

(i) a volunteer.”.

22

In the proposed section 24A(2), by adding in alphabetical order to the proposed definitions—

“*intern* (實習人員) means a person who is engaged by another person for an internship but is not an employee of that other person;

internship (實習) means—

- (a) a period of work the completion of which is required for attaining a professional or academic qualification and includes a pupillage; or
- (b) any other work that is usually described as an internship;

volunteer (義工) means a person who performs volunteer work other than in the capacity of an employer or employee;”.

New

In Part 5, in Division 3, by adding—

“23A. Section 47A added

After section 47—

Add

“47A. Liability of persons engaging interns and volunteers

- (1) This section applies for the purposes of section 24A.
- (2) For the avoidance of doubt, this section does not apply for the purposes of any criminal proceedings.
- (3) An act done by an intern in the course of an internship is to be treated as an act done—
 - (a) by the intern; and
 - (b) by the person who engaged the intern for the internship, whether or not the act was done with the knowledge or approval of that person.
- (4) In proceedings brought under this Ordinance against a person in respect of an act alleged to have been done by an intern engaged by the person, it is a defence for the person to prove that the person took reasonably practicable steps to prevent the intern—
 - (a) from doing that act; or
 - (b) from doing acts of that description in the course of the internship.

- (5) Subsections (6) and (7) apply if a volunteer is engaged by another person to perform volunteer work.
- (6) An act done by a volunteer in the course of performing volunteer work is to be treated as an act done—
 - (a) by the volunteer; and
 - (b) by the person who engaged the volunteer to perform the work, whether or not the act was done with the knowledge or approval of that person.
- (7) In proceedings brought under this Ordinance against a person in respect of an act alleged to have been done by a volunteer engaged by the person, it is a defence for the person to prove that the person took reasonably practicable steps to prevent the volunteer—
 - (a) from doing that act; or
 - (b) from doing acts of that description in the course of performing volunteer work.”.

23B. Section 48 amended (aiding unlawful acts)

After section 48(2)—

Add

- “(2A) For the purposes of subsection (1), if a person who engaged an intern—
 - (a) is liable under section 47A for an act done by the intern; or
 - (b) would be liable under section 47A for the act but for section 47A(4),
 the intern is deemed to aid the doing of the act by that person.
- (2B) For the purposes of subsection (1), if a person who engaged a volunteer—
 - (a) is liable under section 47A for an act done by the volunteer; or

(b) would be liable under section 47A for the act but for section 47A(7),

the volunteer is deemed to aid the doing of the act by that person.”.

23C. Section 70 amended (claims in respect of discrimination, harassment and vilification)

Section 70(1)(d)—

Repeal

“47”

Substitute

“47, 47A”.”.