

立法會
Legislative Council

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Paper for the House Committee meeting on 26 February 2021

**Report of the Bills Committee on
Sex Discrimination (Amendment) Bill 2020**

Purpose

This paper reports on the deliberations of the Bills Committee on Sex Discrimination (Amendment) Bill 2020 ("the Bills Committee").

Background

Discrimination Legislation (Miscellaneous Amendments) Bill 2018

2. The Administration introduced in December 2018 the Discrimination Legislation (Miscellaneous Amendments) Bill 2018 ("the 2018 Bill") to amend the four existing anti-discrimination ordinances¹ for taking forward eight recommendations among the 73 recommendations as set out in the Equal Opportunities Commission ("EOC")'s "Discrimination Law Review Submissions to the Government" ("EOC's Submissions")², in order to enhance protection from discrimination and harassment under the existing anti-discrimination ordinances. One of the recommendations taken forward in the

¹ The four existing anti-discrimination ordinances are the Sex Discrimination Ordinance (Cap. 480), the Disability Discrimination Ordinance (Cap. 487), the Family Status Discrimination Ordinance (Cap. 527) and the Race Discrimination Ordinance (Cap. 602).

² EOC launched the Discrimination Law Review to review comprehensively the four existing anti-discrimination ordinances and published the "Discrimination Law Review Submissions to the Government" in March 2016. EOC's Submissions contained a total of 73 recommendations, including 27 recommendations which were considered to be of higher priority. According to EOC, the 27 recommendations of higher priority can be divided into two parts, with 22 recommendations belonging to Part I and five belonging to Part II. The 22 recommendations in Part I are "generally easier to implement and less complex in application", whereas those in Part II require "further consultation and research" by the Government. The issues in both Parts I and II are, however, "of equal importance and should be promptly tackled by the Government".

2018 Bill concerns the introduction of express provisions in the Sex Discrimination Ordinance (Cap. 480) ("SDO") prohibiting direct and indirect discrimination against a woman on the ground of breastfeeding.³

3. Upon completion of scrutiny by the relevant Bills Committee, the 2018 Bill was passed by the Legislative Council ("LegCo") on 11 June 2020 and the enacted Ordinance, i.e. the Discrimination Legislation (Miscellaneous Amendments) Ordinance 2020 (Ord. No. 8 of 2020), was published in the Gazette on 19 June 2020. Part 2 of the enacted Ordinance, which relates to discrimination on the ground of breastfeeding, will commence after 12 months upon gazettal (i.e. on 19 June 2021) to allow time for promotion and institution of breastfeeding-friendly measures.

4. During the course of scrutinizing the 2018 Bill, a number of members of the relevant Bills Committee expressed concerns about:

- (a) the 2018 Bill prohibiting only discrimination, but not harassment, on the ground of breastfeeding; and
- (b) the current definition of "sexual harassment" under section 2(5) of SDO,⁴ which refers to "conduct of a sexual nature", not being broad enough to cover breastfeeding harassment because the relevant conduct complained of might not necessarily be of a sexual nature.

These members strongly requested the Administration to consider, among others, enhancing the protection for breastfeeding women from being harassed. In response to members' concerns and requests, the Constitutional and Mainland Affairs Bureau ("CMAB") has agreed to introduce another bill to amend SDO to prohibit acts of harassment towards breastfeeding women, as any amendment to the 2018 Bill to the effect of introducing this distinct form of harassment on ground of breastfeeding would, according to CMAB, fall outside the scope of the 2018 Bill.

³ The new section 8A(2)(a) of SDO provides that a woman is breastfeeding if she is engaged in the act of breastfeeding a child or expressing breast milk, or feeds a child with her breast milk.

⁴ The current definition prohibits unwelcome sexual advance, unwelcome request for sexual favours, or other unwelcome conduct of a sexual nature in relation to a woman, in circumstances in which a reasonable person, having regard to all the circumstances, would have anticipated that the woman would be offended, humiliated or intimidated; or conduct of a sexual nature which creates a hostile or intimidating environment for a woman.

The Sex Discrimination (Amendment) Bill 2020

5. The Sex Discrimination (Amendment) Bill 2020 ("the Bill"), published in the Gazette on 31 January 2020, received First Reading at the LegCo meeting of 9 December 2020.⁵ The Bill seeks to amend SDO to:

- (a) render it unlawful for a person to harass a breastfeeding woman; and
- (b) make related amendments.

The Bills Committee

6. At the House Committee meeting on 11 December 2020, Members formed a Bills Committee to study the Bill. The membership list of the Bills Committee is in **Appendix I**.

7. Under the chairmanship of Hon Alice MAK, the Bills Committee has held one meeting with the Administration. The Bills Committee has invited written views on the Bill, but no written submission has been received.

Deliberations of the Bills Committee

Scope of protection provided under the Bill

8. Members note that under the proposed new section 2A of SDO sought to be added by clause 5 of the Bill, a person would harass a breastfeeding woman if, on the ground that the woman is breastfeeding, the person: (a) engages in unwelcome conduct, in circumstances in which a reasonable person, having regard to all the circumstances, would have anticipated that the woman would be offended, humiliated or intimidated by that conduct; or (b) alone or together with other persons, engages in conduct that creates a hostile or intimidating environment for the woman. Members also note that for the purposes of the proposed new section 2A, "conduct" would include making an oral or written statement to a woman or in her presence. However, as pointed out by the Legal Adviser to the Bills Committee, the act of breastfeeding involves two people, i.e.

⁵ The Bill was originally scheduled for First Reading at the Council meeting of 12 February 2020, but the relevant Council meeting was not held due to the COVID-19 outbreak. On 21 February 2020, the Administration informed the Clerk to LegCo that the First Reading of the Bill would be rescheduled to a later date to be notified. The Administration subsequently gave notice on 25 November 2020 that the First Reading of the Bill be scheduled for the Council meeting of 9 December 2020.

the woman and the child. A question has therefore been raised on whether a breastfed child, if bullied or harassed, would be protected under the Bill.

9. The Administration has advised that in proposing amendments to SDO through the Bill so as to prohibit harassment against breastfeeding women, the Administration's policy intent is to protect women who choose to provide child care through breastfeeding. According to the Administration, this is conducive to creating a more enabling environment for breastfeeding women to continue their full and equal social and economic participation, including staying in or re-joining the workforce while breastfeeding. Under the existing protection framework of SDO, the proposed new provisions to prohibit harassment of breastfeeding women would only be applicable to the woman subject to harassment herself. However, as breastfeeding women would be afforded legal protection from harassment after passage of the Bill, this is naturally beneficial to breastfed children as well.

Prohibiting harassment among workplace participants

10. Members note that under Ord. No. 8 of 2020, the protection for women from sexual harassment also applies in relation to harassment between persons working in a common workplace and harassment by the management of a club. Clarification has been sought as to whether the Administration will propose amendments to the Bill under scrutiny to amend the relevant new provisions of SDO (e.g. sections 23A (sexual harassment at workplace) and 39A (sexual harassment by clubs)) so that these new sections in the amended SDO would apply to both sexual harassment and harassment of breastfeeding women.

11. The Administration has confirmed that the policy intent is that the protection for breastfeeding women from harassment shall also apply in the new prescribed areas introduced to SDO through Ord. No. 8 of 2020, including harassment between participants of a common workplace, as well as harassment by a club's management committee (or its members) against a member or applicant to that club. Hence, the Administration will propose amendments to the Bill to further amend SDO to replace references to "sexual harassment" and "sexually harass" by "harassment" and "harass" in the new provisions (i.e. sections 23A and 39A) added by Ord. No. 8 of 2020 such that relevant provisions of the amended SDO would apply to both sexual harassment and harassment of breastfeeding women.

Promotion and publicity

12. Members have expressed appreciation of the Administration's positive response to the request of members of the Bills Committee scrutinizing the 2018 Bill by introducing the Bill under scrutiny to prohibit acts of harassment

towards breastfeeding women. While expressing support for the Bill, some members, including the Chairman, Ms Elizabeth QUAT and Dr CHENG Chung-tai, hope that the Administration would step up publicity and education to raise the public awareness of the key contents of this Bill as well as Ord. No. 8 of 2020. They consider that this will help prevent inadvertent commission of offences relating to harassment and discrimination on the ground of breastfeeding within relevant prescribed areas, particularly in a common workplace.

13. According to the Administration, EOC has already stepped up its promotional and publicity efforts to facilitate implementation of the legislative amendments in this Bill as well as Ord. No. 8 of 2020.⁶ A number of promotional leaflets and guidance, including those on harassment or breastfeeding discrimination in common workplace, have been produced and are available on EOC's website. EOC would continue to organize workshops and seminars on various issues, including the new protections from discrimination and harassment on the ground of breastfeeding, for business owners and employees in both public and private sectors, such that they can better understand the scope and effect upon implementation.

Amendments to the Bill

14. The proposed amendments to be moved by the Administration to the Bill as mentioned in paragraph 11 above are in **Appendix II**. Members raise no objection to these proposed amendments.

15. The Bills Committee will not propose any amendments to the Bill.

Resumption of Second Reading debate

16. Subject to the Administration moving the proposed amendments to the Bill, the Bills Committee supports the resumption of the Second Reading debate on the Bill. The Administration has informed the Bills Committee of its intention to resume the Second Reading debate on the Bill at the Council meeting of 17 March 2021.

⁶ The Bill, if passed, would come into operation on the commencement date of Part 2 of the Discrimination Legislation (Miscellaneous Amendments) Ordinance 2020 (Ord. No. 8 of 2020) (i.e. 19 June 2021).

Advice sought

17. Members are invited to note the deliberations of the Bills Committee.

Council Business Division 2
Legislative Council Secretariat
24 February 2021

Bills Committee on Sex Discrimination (Amendment) Bill 2020

Membership list

Chairman	Hon Alice MAK Mei-kuen, BBS, JP
Members	Hon Elizabeth QUAT, BBS, JP Hon YUNG Hoi-yan, JP Dr Hon CHENG Chung-tai Hon Vincent CHENG Wing-shun, MH, JP (Total : 5 members)
Clerk	Miss Josephine SO
Legal Adviser	Mr Bonny LOO
Date	15 January 2021

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Sex Discrimination (Amendment) Bill 2020

Committee StageAmendments to be moved by the Secretary for Constitutional and Mainland Affairs

<u>Clause</u>	<u>Amendment Proposed</u>
New	<p>By adding—</p> <p>“6A. Section 23A amended (sexual harassment at workplace)</p> <p>(1) Section 23A, heading—</p> <p style="padding-left: 2em;">Repeal</p> <p style="padding-left: 2em;">“Sexual harassment”</p> <p style="padding-left: 2em;">Substitute</p> <p style="padding-left: 2em;">“Harassment”.</p> <p>(2) Section 23A(1)—</p> <p style="padding-left: 2em;">Repeal</p> <p style="padding-left: 2em;">“sexually”.”.</p>
New	<p>By adding—</p> <p>“7A. Section 39A amended (sexual harassment by clubs)</p> <p>(1) Section 39A, heading—</p> <p style="padding-left: 2em;">Repeal</p> <p style="padding-left: 2em;">“Sexual harassment”</p> <p style="padding-left: 2em;">Substitute</p> <p style="padding-left: 2em;">“Harassment”.</p> <p>(2) Section 39A—</p> <p style="padding-left: 2em;">Repeal</p> <p style="padding-left: 2em;">“sexually”.”.</p>