

Give us your views

Name : _____

Organization* : _____

(*if applicable)

Address# : _____

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#Optional

Note: (1) Names of individuals or organizations that send submissions may be published in the consultation report. If you do not wish your name to be published, please indicate by checking the box below. Please note that the contact details of individuals and organizations will not be published in any event.

I do not wish my/our name to be published in the consultation report.

(2) All personal data submitted will only be used for purposes related to the present public consultation exercise, and will be destroyed within 12 months after the close of the public consultation exercise.

Please give us your views in the spacing under the respective consultation question below. You may give us your views on separate sheets where necessary.

CHAPTER 1: RATIONALE AND PRINCIPLES OF THE REVIEW

(Page No. as per Public Consultation document)

Consultation Question 1 P.26

Do you think that, in reforming the current discrimination laws, the Government should consolidate all the existing Discrimination Ordinances into a single modernized Discrimination Ordinance?

CHAPTER 2: GOALS OF THE LEGISLATION AND PROTECTED CHARACTERISTICS

Consultation Question 2 P.29
Do you think that a clause at the commencement of the discrimination legislation should be incorporated to set out its purpose or goals?

Consultation Question 3 P.30
Do you think that in relation to the protected characteristic of sex, neutral language of “a person” should be used?

Consultation Question 4 P.32
Do you think there should be express reference to protection from discrimination during maternity leave?

Consultation Question 5 P.32
Do you think there should be protection from discrimination on grounds of potential pregnancy?

Consultation Question 6 P.37

Do you think that the protected characteristic of marital status should be amended to apply to “relationship status” and expressly protect persons in de facto relationships? If so, how should de facto relationships be defined? Should it be defined to include protection for both heterosexual relationships and same-sex relationships? Should this also be extended to protection from discrimination relating to former de facto relationships?

Consultation Question 7 P.40

Do you think that the current definition and scope of what constitutes a disability is appropriate and proportionate? Or should it be amended in any way, for example by qualifying that the physical or mental impairment must be substantial and/ or likely to last a certain period?

Consultation Question 8 P.43

Do you think that the protected characteristic of family status should be redefined as “family responsibilities” in order to clarify that it relates to persons who have responsibility for the care of immediate family members?

Consultation Question 9 P.44

Do you think that the scope of family status discrimination should be expanded to include protection where persons in de facto relationships care for immediate family

members? If so, how should de facto relationships be defined? Further, do you think the protection should be extended to situations where a person cares for an immediate family member from a former marriage or de facto relationship?

Consultation Question 10 P.44

Do you think that there should be express reference in the definition of family status to include breastfeeding women?

Consultation Question 11 P.50

In relation to the protected characteristic of race, do you think that any or all of the characteristics of nationality, citizenship, residency or related status should be added as protected characteristics?

Consultation Question 12 P.50

In relation to residency status or related status, if you think there should be protection, how should it be defined?

Consultation Question 13 P.51

Do you think that the exception to race discrimination on the grounds of permanent residency and right of abode in Hong Kong under section 8(3)(b)(i) and (ii) should be repealed?

Consultation Question 14 P.51

Do you think that the exception to race discrimination on the grounds of length of residence in Hong Kong under section 8(3)(c) should be repealed?

Consultation Question 15 P.51

Do you think that the exception to race discrimination on the grounds of nationality, citizenship or resident status of a person in another country under section 8(3)(d) should be repealed?

Consultation Question 16 P.51

Do you think that consideration should be given to an exception to discrimination on grounds of residency status, but only where the relevant requirement is for a legitimate aim and is proportionate?

CHAPTER 3: FORMS OF PROHIBITED CONDUCT

Consultation Question 17 P.57

Do you think that the definition of direct discrimination should be amended to:

- include any less favourable treatment on grounds of a protected characteristic;
- and
- made clear that for direct disability discrimination a comparison can be made

with persons without that particular disability (including persons with a different disability)?

Consultation Question 18 P.59

Do you think that there should be a different test for direct pregnancy discrimination which states:

“on the ground of her pregnancy, sickness or other characteristic that appertains generally to women who are pregnant or potentially pregnant a person treats her unfavourably”?

Consultation Question 19 P.59

How to protect pregnant staff from dismissal after maternity leave on the pretext that the temporary replacement performed better?

Consultation Question 20 P.62

Do you think that the definition of indirect discrimination should be amended to:

- refer to a “provision, requirement or practice”; and
- set out the meaning of “justifiable” as where a provision, requirement or practice “serves a legitimate objective and bears a rational and proportionate connection to the objective”?

Consultation Question 21 P.66

Do you think that there is a need for introducing specific equal pay for equal value provisions?

Consultation Question 22 P.67

Do you think that discrimination due to being accompanied by assistance animal should be added as a category of disability discrimination?

Consultation Question 23 P.70

Do you think that a new category of discrimination arising from disability should be introduced?

Consultation Question 24 P.73

Do you think that new distinct duty to make reasonable accommodation for persons with disabilities should be introduced in the discrimination legislation and that it should be based on the United Kingdom model?

Consultation Question 25 P.76

Do you think that harassment should be prohibited in relation to the protected characteristics of sex, pregnancy, family status and marital status?

Consultation Question 26 P.78

Do you think that the definition for harassment for all protected characteristics should be “A person (A) harasses another (B) if—

- (a) A engages in unwanted conduct related to a relevant protected characteristic, and
- (b) the conduct has the purpose or effect of—
 - (i) violating B’s dignity, or
 - (ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.”?

Consultation Question 27 P.79

Do you think there should be protection from harassment for all protected characteristics?

Consultation Question 28 P.79

In relation to sexual harassment, do you think that the definition should be the same as other forms of harassment, other than stating in addition that it is unwanted conduct of a sexual nature?

Consultation Question 29 P.81

Do you think that there should be provisions on intersectional direct and indirect discrimination, as well as harassment? If so, do you think that there should be protection from intersectional discrimination on the basis of two or more protected characteristics?

Consultation Question 30 P.84

Do you think that:

- there should be protection from direct and indirect discrimination, and harassment by association across all the protected characteristics;
- and if so, do you think “association” should be broadly defined to include association by immediate family, other relatives, caring responsibilities, friendships or working relationships?

Consultation Question 31 P.85

Do you think that there should be express protection from direct and indirect discrimination, and harassment by perception and imputation across all the existing protected characteristics?

Consultation Question 32 P.87

Do you think that there should be a defence for principals to liability from unlawful conduct of agents, where the principal took reasonably practicable steps to prevent the unlawful conduct?

Consultation Question 33 P.88

Do you think that the prohibition on requesting information for a discriminatory purpose relating to disability discrimination should be extended to all existing

protected characteristics?

CHAPTER 4: FIELDS OF PROHIBITED CONDUCT

Consultation Question 34 P.91

Do you think that there should be express provisions in the discrimination laws that it applies to all public authorities, and that it is unlawful for them to discriminate in the performance of their functions and exercise of their powers?

Consultation Question 35 P.93

Do you think that there should be protection from racial discrimination in the exercise of the Government’s functions and powers?

Consultation Question 36 P.94

Do you think that for reasons of consistency there should be an express prohibition on disability discrimination in relation to election and voting of members to public bodies? If so, do you think that there should be an exception permitting disability discrimination but only where it is for a legitimate aim and proportionate?

Consultation Question 37 P.96

Do you think that the current express protection from disability discrimination in

sporting activity should be extended to all the protected characteristics?

Consultation Question 38 P.98

Do you think that the limitations on the operation of the RDO in the education and vocational training sectors regarding the exception on the medium of instruction should be repealed?

Consultation Question 39 P.108

Do you think that new harassment provisions should be introduced for all the protected characteristics which provide:

- (1) employer liability for harassment of employees by customers, tenants or any other third parties not in an employment relationship where an employer is put on notice of the harassment and fails to take reasonable action;
- (2) common workplace liability on the person harassing but there is no employer/employee relationship (e.g. volunteers harassed by another volunteer);
- (3) liability on educational establishments where they are put on notice of harassment between students and fail to take reasonable action;
- (4) liability of service users for harassing the service providers;
- (5) liability of service users for harassing other service users;
- (6) liability for harassment on ships and aircraft in relation to the provision of goods, facilities and services;
- (7) liability of tenants and subtenants for harassing other tenants or subtenants; and
- (8)** liability of the management of clubs for harassing members or prospective members?

CHAPTER 5: PROMOTING AND MAINSTREAMING EQUALITY

Consultation Question 40 P.115

Do you think that:

- Special measures provisions should be conceptualized and positioned within the discrimination legislation as measures to promote substantive equality rather than exceptions to non-discrimination; and
- The definition of special measures should be made clearer as suggested in paragraph 5.18 in terms of their purpose, circumstances in which they can be used and when they should end?

Consultation Question 41 P.122

Do you think that there should be duties on all public authorities to promote equality and eliminate discrimination in all their functions and policies, and across all protected characteristics?

CHAPTER 6: ASPECTS OF COURT PROCEEDINGS, POWERS AND CONSTITUTION OF THE EOC

Consultation Question 42 P.126

Do you think there should be provisions introduced which indicate that once the claimant establishes facts from which discrimination can be inferred, the burden of proof shifts to the respondent to show there was no discrimination?

Consultation Question 43 P.127

Do you think that, consistent with indirect disability discrimination provisions, damages should be able to be awarded for indirect sex, pregnancy, marital status, family status and race discrimination, even where there was no intention to discriminate?

Consultation Question 44 P.129

Do you think that the discrimination laws should be amended to ensure the EOC can recover its legal costs where claimants are awarded costs?

Consultation Question 45 P.130

Do you think that for reasons of consistency with its other powers, the EOC should be able to initiate proceedings in its own name for discriminatory practices?

Consultation Question 46 P.132

Do you think that the discrimination laws should contain an express power that the EOC may produce non-statutory guidance?

Consultation Question 47 P.135

Do you think that the formal investigation provisions should set out more clearly the distinction between general and specific investigations?

Consultation Question 48 P.136

Do you think that for reasons of consistency with the EOC's other powers, the EOC should be able to issue enforcement notices relating to discriminatory practices against persons with disabilities?

Consultation Question 49 P.136

Do you think that in relation to formal investigations provisions, permitting voluntary binding undertakings should be introduced and be enforceable by the EOC?

Consultation Question 50 P.136

Do you think that the discrimination laws should expressly provide that the EOC has powers to conduct research and education in relation to all the protected characteristics?

Consultation Question 51 P.138

Do you think that reformed discrimination laws should expressly provide that the EOC has powers to monitor and advise:

- The Government on relevant existing and proposed legislation and policy; and
- On the Government's compliance with international human rights obligations relating to equality and discrimination?

Consultation Question 52 P.139

Do you think there should be an express power of the EOC to apply to intervene in or appear as amicus curiae in court proceedings relating to any relevant discrimination issue?

Consultation Question 53 P.140

Do you think that the EOC's power to institute judicial review proceedings should be more clearly set out as a separate power of the EOC?

Consultation Question 54 P.141

Do you think that the EOC should be required to produce a Strategic Plan in consultation with the public that sets out its strategic priority areas of work over several years?

Consultation Question 55 P.144

Do you think that a provision should be included in reformed discrimination laws providing for the maintenance of the independence of the EOC from the Government?

Consultation Question 56 P.144

Do you think that in relation to Board members, applications should be openly invited and an independent panel established to interview and make recommendations for appointments?

Consultation Question 57 P.144

Do you think that there should be a provision in the legislation requiring Board members to have suitable experience in any relevant area of discrimination or promoting equality?

Consultation Question 58 P.145

Do you think that there should be a provision protecting EOC members and staff from personal liability where they act in good faith in relation to the DDO and FSDO, as is the case for the SDO and RDO?

Consultation Question 59 P.145

Do you think that there should be express provision restricting disclosure of information arising from complaint handling in accordance with the principles of confidentiality?

Consultation Question 60 P.147

Do you think that Hong Kong should establish a Human Rights Commission fully

compliant with the Paris Principles? If so what structure and mandate should the Human Rights Commission have?

CHAPTER 7: EXCEPTIONS

Consultation Question 61 P.149
Do you think that all the exceptions should be contained in one section (Schedules) of the discrimination laws in order that the law is clearer?

Consultation Question 62 P.152
Do you think that the definition of genuine occupational qualifications (GOQs) should be reformed and made consistent across all the protected characteristics by defining them as:

- “- There is an occupational requirement which relates to a protected characteristic;
- the application of the requirement is a proportionate means of achieving a legitimate aim;
- the applicant or worker does not meet the requirement; or, the employer has reasonable grounds for not being satisfied that the applicant or worker meets the requirement.

In relation to the protected characteristic of disability, the exception does not apply where a reasonable accommodation can be made to perform the occupational requirement.”?

Consultation Question 63 P.153

Do you think that the discriminatory training exceptions are unnecessary and should be repealed and incorporated within the scope of the definition of special measures?

Consultation Question 64 P.153

Do you think that the charities exceptions should be amended to require a legitimate aim and proportionality in order to be lawful?

Consultation Question 65 P.154

Do you think that the Government should conduct a review of its New Territories small house policy?

Consultation Question 66 P.156

Do you think that the Government should as soon as possible repeal the exceptions in the SDO relating to sex and:

- requirements for height or weight;
- granting pension benefits to surviving spouses and children of deceased public officers?

Consultation Question 67 P.156

Do you think that the exception for numbers of men and women employed in the Correctional Services Department is unnecessary and should be repealed?

Consultation Question 68 P.157

Do you think that the national security exception relating to sex is necessary, and if so do you agree that it should be amended to require proportionality?

Consultation Question 69 P.158

Do you think that the exception permitting sex discrimination in employment and qualification bodies for religious purposes should be extended to permit marital status discrimination?

Consultation Question 70 P.158

Do you think that the exception relating to providing benefits differentially based on marital status should be amended to provide equality between persons who are married and persons in a de facto relationship?

Consultation Question 71 P.160

Do you think that:

- the Human Reproductive Technology Ordinance should be amended to remove a requirement that a person is married to be provided with IVF treatment; and
- the exception in the SDO relating to reproductive technology should then be repealed?

Consultation Question 72 P.160

Do you think that the exception relating to adoption and marital status is no longer necessary because of amendments to the Adoption Ordinance and should be repealed?

Consultation Question 73 P.161

Do you think that the exception to discrimination relating to the provision of public housing permitting discrimination on grounds of marital status should be repealed?

Consultation Question 74 P.162

Do you think that the exception relating to family status which permits difference in insurance premiums based on family status should be repealed?

Consultation Question 75 P.163

Do you think that the system under the Minimum Wage Ordinance by which persons with disabilities can assess their productivity has worked effectively? Do you think that the exceptions under Items 1 to 3 of Schedule 5 of the DDO should therefore be retained and/or reformed in any way or repealed?

Consultation Question 76 P.165

Do you think that the exception permitting discrimination in employment conditions for persons from overseas with special skills, knowledge or experience should be repealed?

Consultation Question 77 P.165

Do you think that the exception which permits differences in terms of employment for overseas and local staff for specified posts should be reviewed by the Government?

Any other views:
