**Equal Opportunities Commission's submission to**
**the Meeting of the Bills Committee on Race Discrimination Bill**
**on 10 January 2008**

1 The Equal Opportunities Commission (EOC) has been invited by the Legislative Council (LegCo) to give its views on the discussion drafts of Committee Stage Amendments to the Race Discrimination Bill (Bill).

2 The discussion drafts are set out in a paper under the reference of LC Paper No.LS14 / 07-08. They follow from the policy objectives and options identified in paragraphs 29 and 30 of the LegCo Secretariat's earlier paper on the scrutiny progress of the Bill (LC Paper No. CB(2)2501 / 06-07(01)).

2.1 The discussion drafts relate to the following issues:-

2.1.1 Application to Government – there are 3 drafting options relating to this issue (Option A, B and C in Appendix I to LC Paper No.LS14 / 07-08).

2.1.2 Definition of Racial Discrimination – there are 2 drafting options relating to this issue (Option A and B in Appendix II to LC Paper No.LS14 / 07-08).

2.1.3 New arrivals from the Mainland – there are 2 drafting options (Option A and B in Appendix III to LC Paper No.LS14 / 07-08).

2.1.4 The Language Exemption – there are 2 drafting options (Option A and B in Appendix IV to LC Paper No.LS14 / 07-08).

Application to Government

Option A

3 This option replaces the present cl.3 of the Bill with:-

"*This Ordinance binds the Government.*"

4 The Sex Discrimination Ordinance (SDO), the Disability Discrimination Ordinance (DDO) and the Family Status Discrimination Ordinance (FSDO) all have the same identically worded provision.[1] At first glance, this option seems to be in line with these ordinances.

5 However, each of the SDO, DDO and FSDO also have specific additional provisions (SDO s.21 and s.38; DDO s.21 and s.36; FSDO s.17 and s.28) stating clearly that it is unlawful under those ordinances for the Government to discriminate *"in the performance of its functions or the exercise of its powers"*.

6 There are no corresponding additional provisions in the Bill. The Bill will only apply to specified fields of activities, such as Employment, Education, and Provision of Goods, Facilities and Services.

7 This may mean that the scope of the Bill is narrower than the SDO, DDO and FSDO.

7.1 For instance, sex discrimination in the school places allocation system operated by the Education Department clearly falls within the SDO, but racial discrimination in the same system may arguably fall outside the scope of the Bill.

7.1.1 While cl.27(2)(h) of the Bill may already bring many Government activities within the meaning of facilities and services, it was held in the UK case of *In Re Amin* [1983] 2 AC 818 that a similar provision regarding goods, services and facilities in the Sex Discrimination Act 1975, when applied to the Crown, was restricted only to acts that might be done by a private person. This means that cl.27(2)(h) may not cover discrimination in the school places allocation system.

8 This option may not be sufficient to cover all Government functions and activities and, if the legislative intention is to cover these matters, further consideration may be given to include provisions parallel to SDO s.21 and s.38; DDO s.21 and s.36; FSDO s.17 and s.28.

<u>Option B</u>

[1] SDO s.3; DDO, s.5; and FSDO s.3.

9 Under this option, in relation to the Government, the Bill's application is restricted to acts similar to acts done by a private person, and within the specified fields of activities (such as Employment, Education, and Provision of Goods, Facilities and Services). There is an additional provision (cl.3(2)) clarifying that the Government is still bound by the Hong Kong Bill of Rights Ordinance (Cap.383) (HKBORO).

10 If this option is adopted, there would be significant differences between the Bill and the other 3 existing anti-discrimination ordinances (SDO, DDO and FSDO).

10.1 The SDO, DDO and FSDO all apply generally to the whole range of Government functions and powers. In particular, through the EOC's various functions (e.g., investigations and legal assistance), they provide complainants with a meaningful redress mechanism against discrimination by the Government. This has proven to be effective in many circumstances, including:-

10.1.1 Under DDO, cases concerning the recruitment by disciplinary forces of officers whose family have a history of mental illnesses;

10.1.2 Under SDO, cases arising from the school places allocation system

10.2 In contrast, the Bill under this option does not apply to the whole range of Government functions and powers. Discrimination by the Government will not be within the jurisdiction of the EOC. Individuals suffering from discrimination by the Government will not be able to take legal action under the Bill and will not be able to turn to the redress mechanism operated by the EOC.

11 The Government has pointed out that[2]:

11.1 It is already bound by the equality provisions in the Basic Law and HKBORO.

11.2 Racial discrimination by the Government and public authorities can be challenged in Court.

[2] See Government papers LC Paper No. CB(2)2753 / 06-07(01) at paragraph 10, and LC Paper No. CB(2)173 / 07-08(01) at paragraph 7.

11.3 Complainants may complain through various channels (such as the Ombudsman or the Complaints Against Police Office).

11.4 Complainants may apply for legal aid to take legal action against the Government or public authorities.

12 Nevertheless, drawing on experiences from sex and disability discrimination issues, there is a view that specific anti-discrimination ordinances, applying to the whole range of Government activities and providing for EOC's various redress functions, are desirable and effective tools in rectifying public sector discrimination, even when the Basic Law and HKBORO and the various other complaint channels already exist.

12.1 As Professor Petersen pointed out[3], the HKBORO had no practical impact on sex discrimination in the school places allocation system, and it was not until after the SDO came into force that this issue was brought to light and rectified.

13 With regard to the distinction drawn between Government acts which are similar to an act done by a private person and Government acts which are not so similar, it is observed that:

13.1 The origin of the distinction lies in the UK case of *In Re Amin* [1983] 2 AC 818, where the House of Lords held by a majority that the provision regarding goods, services and facilities in the Sex Discrimination Act 1975, when applied to the Crown, was restricted only to acts that might be done by a private person.

13.2 In Hong Kong, this restriction on the scope of anti-discrimination law was not adopted when LegCo enacted the SDO, DDO and FSDO.

13.3 Even in the UK, it appears that this distinction has already been removed by the 2000 amendment to the Race Relations Act 1976, whereby it became unlawful for a public authority to discriminate.

14 Despite there being a body of UK case law on the distinction[4], each case will

[3] Professor Petersen's submission to LegCo, LC Paper No. CB(2)2232 / 06-07(01) at p.8.

[4] For example, *In Re Amin* [1983] 2 AC 818; *Farah v Commissioner of Police of the Metropolis* [1997] 2

have to be examined on its own to ascertain whether a given Government act can be regarded as similar to an act done by a private person. There is plenty of scope for argument on this issue, giving rise to potential dispute and uncertainty, which can be avoided if the whole range of Government functions and powers generally are placed within the scope of the Bill in line with the SDO, DDO and FSDO.

14.1 For example, a private person does not normally employ police officers. It is conceivably arguable that racial discrimination arising from the employment of police officers would not be covered by the Bill. In contrast, sex and disability discrimination arising from employment of police officers would be covered by SDO and DDO.

15 While the Government and public authorities are already bound by the Basic Law and HKBORO, and that cl.27(2)(h) already brings many although not all Government activities within the Bill, the general inclusion of the whole range of Government functions and powers within the scope of the Bill will have an advantage of enabling the public to make use of the redress mechanism provided under the Bill to deal with discrimination by the Government and public authorities, just as they are able to do under SDO, DDO and FSDO. It will also ensure regulatory consistency when the facts of a complaint involve discrimination on different grounds, for example, both race and sex discrimination.

Option C

16 This option adds 2 clauses (cl.34A and cl.49A) to the Bill. The overall effect of this addition is:-

16.1 To make it unlawful for a public authority to discriminate when carrying out its functions;

16.2 To make it unlawful for the Government or officials to discriminate in connection with appointments for posts and offices which are not regarded as employment;

17 Cl.34A and cl.49A are essentially modeled on s.19B and s.19C and s.76 of the

Race Relations Act 1976 in the UK (RRA). Their contents are very detailed and comprehensive. Cl.49A, for instance, covers not only appointments but also both recommendations and negative recommendations for appointments.

18 This option will clearly widen the scope of the Bill so that it will cover the exercise of public functions, circumventing the restriction in the present cl.3 of the Bill. It is likely to have at least the same effect as the existing drafting of the SDO, DDO and FSDO which bind the Government in the performance of its functions and the exercise of its power.

19 In fact, as the term used under this option is *"public authority"*, it may even be regarded as wider in coverage than the term *"Government"* adopted in the SDO, DDO and FSDO.

19.1 It is conceivable that the latter term does not cover entities operating independently from the Government. If their activities also do not come within the specified fields, it is arguable that these independent entities are not covered by the existing anti-discrimination ordinances.

20 In relation to racial harassment, it is observed that cl.34A does not make it unlawful for a person to commit racial harassment in carrying out functions of a public authority. By way of contrast,

20.1 Cl.49A(11) makes it unlawful for an official to harass a person appointed or is seeking to be appointed or is under consideration for appointment.

20.2 Racial harassment is unlawful in the field of Employment and other fields under specified clauses of the Bill[5];

20.3 Parallel UK legislation (RRA) makes it unlawful under s.19B(1A) for a public authority to subject a person to harassment.

21 Consideration may be given to including harassment in cl.34A.

22 In relation to exclusion from coverage under *"public authority"* (cl.34A(2)(b)), it seems to be anticipated that excluded authorities will be:-

[5] Cl.24, 25, 38 and 39, while racial harassment is defined in cl.7.

22.1 LegCo;

22.2 The Executive Council; and

22.3 Other unspecified authorities exercising functions specified in the Basic Law.

23 By way of comparison, the parallel UK provision (s.19B(3) of the RRA) excludes:-

23.1 Either House of Parliament;

23.2 Persons exercising functions in connection with parliamentary proceedings;

23.3 The Security Service;

23.4 The Secret Intelligence Service;

23.5 The Government Communications Headquarters (GCHQ); and

23.6 Military units assisting GCHQ.

24 The underlying rationale of the UK provision seems to be twofold: legislative flexibility and national security.

25 There is a clear parallel between the anticipated exclusion for LegCo under cl.34A(2)(b) of the Bill and the exclusion for Parliament and parliamentary proceedings under s.19B(3) of the RRA.

26 However, the anticipated exclusion for the Executive Council and other authorities under cl.34A(2)(b) has no obvious correspondence with the UK, except perhaps when they are exercising functions connected to legislative proceedings, e.g., working on legislative proposals. In fact, their general exclusion may be contrary to the objective of making the Bill generally binding on the Government and public authorities.

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Definition of Racial Discrimination

Option A

27 This option adds cl.4(1A) to the Bill. The idea is to enhance the concept of indirect discrimination.

28 At present, cl.4(1)(b) provides the same formulation for indirect discrimination as in the SDO, DDO and FSDO. This existing formulation makes use of the term "requirement or condition" as the fundamental element of indirect discrimination. It also uses what is essentially a numeric comparison of proportions to determine whether the requirement or condition has an adverse effect on a minority group. This formulation has the following features:-

28.1 The term "requirement or condition" has been narrowly interpreted to exclude criteria which, even though having an adverse impact on the minority group, do not absolutely prevent an individual of the group from obtaining the relevant benefit[6];

28.2 The comparison of proportions sometimes results in fine argument on statistical evidence and interpretation[7], and statistical evidence is often difficult to obtain.

28.3 The above may lead to deserving cases falling outside the law for technical reasons.

29 The new formulation under this option circumvents the term "requirement or condition" by including "provision, criterion or practice", and makes the numeric comparison of proportions unnecessary by providing simply that an individual of the minority group need only to show that the group would be disadvantaged when compared with other people, and that the individual himself is among disadvantaged.

[6] *Perera v Civil Service Commission* [1983] IRLR 428 and *Meer v London Borough of Tower Hamlets* [1988] IRLR 399; the same point has been made by Professor Petersen in her submission to LegCo, LC Paper No. CB(2)2232 / 06-07(01) at p.10.

[7] See by analogy to the sex discrimination case of *London Underground v Edwards* (No.2) [1999] ICR 494

30 This new formulation is the same as that adopted in European jurisdictions, including the UK. The UK has adopted it in the RRA in addition to its old formulation (which is materially the same as the existing formulation in the Bill), similar to the way cl.4(1A) is added to cl.4.

31 A body of case law is already building up in the UK on the new formulation, which has demonstrated that it is broader in scope and less technical.[8] This new formulation can be regarded as an improvement on the original formulation. The original formulation is presently in use in the SDO, DDO and FSDO. Adoption of the new formulation in the Bill may lead to amendments in other anti-discrimination legislation.

32 In relation to the justification defence to indirect discrimination, it is noted that at present cl.4(2) to (5) of the Bill elaborated on the issue of justification.

32.1 In particular, cl.4(5) may arguably lead to a conclusion that a requirement or condition is justifiable, so long as any alternatives to it (in other words, accommodation to minority groups) would involve expenditure that would not be otherwise incurred.

32.2 This conclusion is contrary to established principles on justification that:-

32.2.1 A requirement or condition is not justifiable simply because alternatives to it would involve expenditure not otherwise required;

32.2.2 Only if the expenditure involved in providing alternatives becomes unjustifiable could it be said that the requirement or condition is justifiable and that there is no obligation to provide alternatives.

33 It is observed that cl.4(2) to (5) are only applicable to cl.4(1)(b)(ii). They do not appear to be applicable to the new cl.4(1A)(c) (which is the corresponding justification defence to an indirectly discriminatory provision, criterion or practice).

33.1 Under the new cl.4(1A)(c), a defence can only be established if the discriminator can show the provision, criterion or practice in question is a proportionate means of achieving a legitimate aim. This is likely to

[8] See for example the sex discrimination case of *British Airways v Starmer* [2005] IRLR 862

involve a balancing exercise requiring consideration of adopting alternatives even if they may involve additional expenditure, so long as such expenditure is not unjustifiable in all the circumstances. This is in line with established principles and will avoid the potential inconsistency in paragraphs 32.1 to 32.2.2 above.

Option B

34 This option refers to the Promotion of Equality and Prevention of Unfair Discrimination Act 2000 of the Republic of South Africa.

35 Without the benefit of knowledge on the relevant jurisprudence of South Africa and the implementation mechanisms and experience in that country, at this stage the EOC is unable to offer mature views on this option, save to observe that the relevant extracts set out in Appendix V to LC Paper No.LS14/07-08 represent an entirely different approach to anti-discrimination legislation (and against a very different political, historical and social background) compared to the approach adopted in Hong Kong in the SDO, DDO and FSDO.

New arrivals from the Mainland

Option A

36 This option adds cl.5A and cl.7A to the Bill. The language used in the drafting does not appear to have been modeled on any similar precedents, but it is quite clear that the intention is to specifically deal with the issue of discrimination and harassment against new arrivals from the Mainland.

37 It is observed that, as a matter of policy, there is as yet no consensus in LegCo on whether there should be provisions in the Bill to deal with this issue. There are different views as to how these provisions may affect the integration of Mainland arrivals in Hong Kong. In any event, as the EOC have an implementation role in the Bill, the EOC would make some initial observations and ask some questions to clarify matters from the implementation perspective.

38 Cl.5A and cl.7A seeks to protect people of Chinese origin from discrimination on the ground that:-

38.1 They are not permanent residents of Hong Kong (cl.5A(2)(a)(i));

38.2 They do not have the right of abode in Hong Kong (cl.5A(2)(a)(ii));

38.3 Their length of residence in Hong Kong is different from other people (cl.5A(2)(b));

38.4 They are regarded as having been granted one way permit by the relevant Mainland authorities to come to Hong Kong and have recently come to settle in Hong Kong from the Mainland (cl.5A(2)(c)).

39 To establish discrimination under cl.5A, it is necessary to compare between the situations of different individuals or different groups. One important issue would be to identify the comparator. It is observed that:

39.1 It is not clear whether the comparator (or group of comparators) under cl.5A needs to also have Chinese origin.

39.2 If Chinese origin is not required, the comparator would only need to be:-

39.2.1 For cl.5A(2)(a)(i), a Hong Kong permanent resident, where as the victim is not;

39.2.2 For cl.5A(2)(a)(ii), a person having the right of abode whereas the victim does not;

39.2.3 For cl.5A(2)(b), a person having a different length of residence in Hong Kong than the victim.

39.2.4 For cl.5A(2)(c), a person not regarded as having been granted one way permit and recently come to settle in Hong Kong from the Mainland, whereas the victim is so regarded.

40 It appears that the grounds under cl.5A(2) can operate independently. Furthermore, the victim only has to be of Chinese origin, he does not need to have actually come from the Mainland.

41 In relation to the lack of permanent residency and right of abode, a person of

Chinese origin may come from Thailand, Vietnam or any other parts of the world. Is it the intention of cl.5A(2)(a) to cover such a person?

41.1 People of Chinese origin coming from other parts of the world may already be protected under racial (national origin) discrimination, is it the intention that there may be overlap between racial (national origin) discrimination and cl.5A(2)(a)?

41.2 If people not coming from the Mainland are also protected, the true nature of the cl.5A(2)(a) appears closer to a provision on discrimination against immigrants generally, rather than discrimination specifically against new arrivals from Mainland. Questions may be asked as to why the protection should be limited to people of Chinese origin, why not all people who are immigrants? Presumably, the answer is that all other people are likely to be already protected under racial (national origin) discrimination.

42 In relation to the ground "length of residence":-

42.1 Are people born in Hong Kong and have lived their lives in Hong Kong regarded as having different lengths of residence? Is it intended that discrimination by length of residence between people born in Hong Kong would also be covered by cl.5A(2)(b)?

42.2 Difference in length of residence may enable a complaint by someone with a longer length of residence when compared to a person with a shorter length of residence. For the sake of argument, someone with 45 years of residence may complain of discrimination as compared to some of 44 or 46 years of residence. Cl.5A(3) which defines the word "recently" in cl.5A(2)(c) does not prevent such a comparison under cl.5A(2)(b).

43 In relation to cl.5A(2)(c), it does not appear to require the victim to actually have been granted one way permit and have come recently to settle in Hong Kong, it only requires the victim to be so regarded (presumably by the discriminator). It may be that a person who is born and has lived in Hong Kong can in some situations be regarded, treated or harassed as if he were a new arrival from the Mainland. Is it intended that people will fall within this clause so long as that they are regarded as a new arrival from the Mainland even if he is not actually?

44 If the specific intention of cl.5A is to protect new arrivals from the Mainland, an alternative approach may be to limit the victims to people who are actually new arrivals from the Mainland (say, by reference to the one way permit scheme) rather than using criteria (lack of permanent residency, right of abode or length of residence) which may also apply to other people.

45 In relation to the comparator, if he is not required to be of Chinese origin, is it intended that there may be overlap between racial (ethnic origin) discrimination and cl.5A?

45.1 A person of Chinese origin who is not a permanent resident in Hong Kong may complain under cl.5A that he is discriminated against when compared to a person who is a permanent resident but not of Chinese origin. Such a situation may already be covered by racial (ethnic origin) discrimination under cl.4.

46 In relation to the exception in item 2 of Schedule 5, it is observed that this may exclude the Bill from applying to, say, a scheme whereby a public authority charges pregnant women who are of Chinese origin but are not permanent residents more than other pregnant women (who may or may not be of Chinese origin) for similar medical and maternity care, but a private provider may not do so by relying on the same exclusion. Is it intended that there should be such difference between private sector and public sector providers?

Option B

47 This option does not explicitly state whether or not the legislative intention is to make unlawful discrimination on the ground of new arrival from the Mainland. It simply removes the references to permanent residency, right of abode and length of residence from the exclusion to the meaning of race, so that it is open to argument that these matters may give rise to racial discrimination. But this alone does not necessarily mean that new arrival from the Mainland must be regarded as a ground of race.

48 There is now much controversy and uncertainty over the issue whether people newly arrived from the Mainland can be regarded as a separate ethnic group in the context of Hong Kong, so as to fall within the scope of the Bill. From an implementation perspective, it is preferable for LegCo to make it clear beyond

argument whether or not the Bill will cover them. Both the EOC and the Courts will be much assisted by a clear expression of legislative intent.

Language Exemption

Option A

49 This option adds cl.58(1A), (1B) and (1C) to the exception for languages (cl.58) in the Bill. The use or failure to use any language is still excepted generally, but this exception would not apply to:-

49.1 Vocational training specifically provided for persons speaking a particular vernacular (cl.58(1A));

49.2 Medical treatment within the specified meaning (cl.58(1B)).

50 For vocational training, cl.58(1A) imposes an obligation not to discriminate on the ground of race in the use of or failure to use any language only when a course is provided specifically for persons speaking a particular vernacular. But, in the light of cl.20(2) of the Bill, it seems that it would be up to the provider to decide whether to provide such a course in the first place. Is it the intention that Cl.58(1A) in itself does not impose an obligation on the provider to provide any such course in the first place?

51 For medical treatment, it is observed that, for example, treatment provided by dentists, pharmacists and others are not within the specified meaning[9]. It appears that these practitioners will be able to take advantage of the exception in cl.58(1) and are free to use or fail to use any language.

52 For medical treatment within the specified meaning, there must not be racial discrimination in the use of or failure to use any language. Racial discrimination through the use of or failure to use any language is most likely indirect discrimination, i.e., using a language (say, Chinese) for all people, but which racial minority may not understand. The effect of cl.58(1B) would seem to be that providers of medical treatment must provide accommodation to racial minority who cannot understand the provider's language, such as alternatives using different languages like interpreters or translations.

[9] S.2 of the Medical Clinics Ordinance (Cap.343).

53 The accommodation that can be provided will depend on any difficulty that the providers may have in providing it. Accommodation should therefore be subject to a defence of unjustifiable hardship.

54 Cl.58 of the Bill does not provide for a generally applicable defence of unjustifiable hardship in respect of the use of or failure to use any language. There is only cl.58(1C) which states that medical treatment providers:

54.1 Are not required to give the patient a verbatim translation of any communication or medicinal label (cl.58(1C)(a));

54.2 Are not required to provide a translator when the patient is receiving treatment (cl.58(C)(b)).

55 While it is useful to a certain extent for cl.58(1C) to state clearly what the law does not require medical treatment providers to do, it will be even more useful if the law can be more specific as to what kind of accommodation is expected of them, perhaps, by way of a list of examples. This type of legislative guidance will provide very practical help in the implementation of and compliance with the law.

56 In this connection, it is also desirable to consider an explicit reference to the defence of unjustifiable hardship for providers of medical treatments who cannot rely on the exception in cl.58(1), either by separate drafting (without prejudice to other provisions on justification [10] and preferably with an non-exhaustive list of the factors relevant to the application of the defence) or by way of reference to other provisions in the Bill (e.g., cl.4(1)(b)(ii) and cl.4(2) to (5), and cl.4(1A)(c)).

56.1 Given that language is a discreet issue in itself, separate drafting with an non-exhaustive list of the factors by way of legislative guidance is perhaps more desirable.

56.2 A non-exhaustive list may include, for example:-

56.2.1 The nature of the service;

[10] Such as cl.4(1)(b)(ii) and cl.4(2) to (5) and cl.4(1A)(c).

56.2.2 The language profile of the customers or users;

56.2.3 The number of the people likely to require the service in a particular language;

56.2.4 The resources required in making the accommodation required;

56.2.5 The resources available to the operators

57 Providers of vocational training also cannot rely on the exception in cl.58(1). If it is correct that there is no obligation for them to provide any course specifically for persons speaking any particular vernacular, the lack of an explicit defence of unjustifiable hardship is perhaps less important for them, because a provider is unlikely to decide to provide such a course in the first place if it has any difficulty to do so in the vernacular of the intended participants.

58 However, even for vocational training, it is desirable to consider including a defence of unjustifiable hardship, either by way of separate drafting or by reference to other provisions in the Bill as suggested above.

59 If the type of specific legislative guidance suggested above is adopted in the Bill, consideration may also be given to providing similar guidance in the SDO, DDO and FSDO.

<u>Option B</u>

60 This option deletes cl.58 altogether but adds cl.5B to the Bill. The essential effect appears to be:

60.1 The use of or failure to use a language may be regarded as discrimination under cl.4(1)(a) (commonly known as direct discrimination), if the result is that a person is treated less favourably than others (cl.5B(1). Presumably, the words “treated less favourably” do not refer to the language used itself but its consequences because the language used is likely to be the same for all people.

60.2 But if both English and Chinese languages have been used, there will be no

discrimination (cl.5B(3)). There is no need to provide other languages apart from English and Chinese.

60.2.1 Cl.5B(3) will no doubt be a relief for many employers and service providers, especially small-size operators, because they at least do not have to provide languages other than English and Chinese.

60.2.2 It will also reduce uncertainties in implementation to a large extent because as long as English and Chinese have been used, there is no contravention. There is no need to consider whether there is unjustifiable hardship for the operators not to use any other language.

61 But similar to cl.58(1A) to (1C) under Language Exemption Option A , providers of vocational training and medical treatment cannot rely on cl.5B(3) by reason of cl.5B(4) and (5).

62 Even for other providers who only need to provide both English and Chinese, some small operators may still have difficulties (street side food stall operators for example).

63 It is desirable to consider:-

63.1 Setting out a list of the examples of what kind of accommodation is expected of operators similar to the suggestion in paragraph 55 above;

63.2 Explicit reference to a defence of unjustifiable hardship, either by way of separate drafting or by reference to other provisions in the Bill, similar to the suggestion in paragraphs 56 to 56.2.5.

Equal Opportunities Commission
January 2008