

Open Agenda

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Memorandum for Executive Council

SUBJECT

COMMISSION FOR EQUALITY AND HUMAN RIGHTS (AMENDMENT) BILL 2020

Memorandum by Chairman of the Social and Community
Development Committee

ADVICE SOUGHT

1. Council is asked to consider and advise whether the Commission for Equality and Human Rights (Amendment) Bill 2020, (Annex A) should be printed, published and presented as Government Business at the next formal meeting of the Legislative Council.

**BACKGROUND &
CONSIDERATIONS**

2. Schedule 1 of the Commission for Equality and Human Rights Ordinance 2015, details the procedure for appointments of Commissioners, the Chair and Deputy Chair. It also details the procedure for dismissal of Commissioners. At present these powers of appointment and dismissal are exercised by the Governor without any legal requirement for recommendations to be made to him.

3. Representations have recently been made by the Equality & Human Rights Commission (EHRC) for the Ordinance to be amended so that recommendations for these appointments and dismissals are made by the Judicial Services Commission (JSC). The EHRC has stated that they consider this will lead to a fairer selection procedure and be more in line with the Paris Principles (benchmarks for national human rights institutions adopted by the United Nations).

4. The Amendment Bill brings into effect the EHRC request and means that the Governor can only exercise these powers of appointment and dismissal following a recommendation from the JSC. However, the Governor does not have to accept the recommendation.

5. The JSC is established under Section 94 of the Constitution. It consists of the Chief Justice, the Attorney General, the Public Solicitor and a Lay member. The Chief Justice is the presiding member.

6. The Constitution gives the JSC the function of making recommendations to the Governor for appointment and removal of judicial officers and any other function conferred on it by Law. EHRC Commissioners do not fall under the definition of judicial officer in the Constitution. However, given the experience and

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expertise of the JSC in this area it is considered they are the appropriate body to make recommendations for appointments and dismissals of EHRC Commissioners. The Amendment Bill confers this further function on the JSC.

7. The EHRC has discussed this proposal with the Governor who has given his support. The Governor has further discussed the proposal with the Chief Justice who is content for the JSC to take on this role.

FINANCIAL IMPLICATIONS

8. There are no financial implications arising from this paper

ECONOMIC IMPLICATIONS

9. N/A

CONSISTENCY WITH INVESTMENT POLICY PRINCIPLES

10. N/A

PUBLIC / SOCIAL IMPACT

11. The proposed amendment will not give rise to any public/social impact.

ENVIRONMENTAL IMPACT

12. N/A

PREVIOUS CONSULTATION / COMMITTEE INPUT

13. The proposed amendment was considered and supported by the Social and Community Development Committee at its meeting on 11 December 2019.

PUBLIC REACTION

14. The public is likely to welcome the proposed amendment as it provides for a more considered and informed approach to appointments and dismissals to/from the Commission; the Governor will no longer be seen to be able to make these decisions *carte blanche*.

PUBLICITY

15. The decision will be covered in the media briefing following the Executive Council meeting.

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SUPPORT TO STRATEGIC OBJECTIVES

16. This paper supports the *Altogether Safer* Goal and the following Strategic Objective:

4.2 Care for vulnerable and disadvantaged groups in society such as people with disabilities, children, elderly people and low income earners.

LINK TO SUSTAINABLE ECONOMIC DEVELOPMENT PLAN GOALS

17. NA

OPEN /CLOSED AGENDA ITEM

18. This paper is for the open session.

AAG

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6 January 2020

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