

LCQ19: Establishing alternative framework for same-sex partnerships

Following is a question by the Hon Mrs Regina Ip and a written reply by the Secretary for Constitutional and Mainland Affairs, Mr Erick Tsang Kwok-wai, in the Legislative Council today (May 29):

Question:

It has been reported that the Court of Final Appeal (CFA) delivered its judgment on September 5 last year in the case of Sham Tsz Kit v Secretary of Justice, ruling that the Government had failed to fulfil its positive obligation to establish an alternative means for same-sex couples to have their marital relationship recognised and to give appropriate rights to same-sex couples. The CFA also made an order on October 27 last year, requiring the Government to establish an alternative framework for same-sex partnerships (alternative framework) within two years from that date, so that same-sex partnerships could be legally recognised. In this connection, will the Government inform this Council:

- (1) of the current progress of the work relating to the formulation of the alternative framework;
- (2) as the CFA has allowed the Government to apply to the Court for an extension of the deadline for the implementation of the alternative framework for compelling reasons, whether the Government has assessed if, given the current progress, it will be able to complete the formulation of the alternative framework within the two-year time frame; if it has, of the estimated legislative timetable; if it has not, how the Government ensures that the work can be completed within that time frame;
- (3) whether the Government will draw up criteria to assist it in determining if a same-sex partnership meets the application threshold under the alternative framework, so as to prevent abuse of the alternative framework; if so, of the factors to be considered; if not, the reasons for that; and
- (4) given that, as pointed out in paragraph 181 of the judgment handed down by the CFA on September 5 last year in the aforesaid case, the Government should provide for the "core" of rights necessary for same-sex partnerships in formulating the alternative framework, whether the Government has considered how to define and distinguish between the core rights and the "supplementary" rights that may be included in the alternative framework?

Reply:

President,

In consultation with the Department of Justice (DoJ), the consolidated reply to the question raised by the Hon Mrs Regina Ip is as follows:

In the case of *Sham Tsz Kit v Secretary for Justice* (FACV 14/2022), the Court of Final Appeal ruled that the Government has positive obligation to establish an alternative framework, so that same-sex relationship would be provided legal recognition (alternative framework), and also to provide for the appropriate rights and obligations arising from the recognition of same-sex relationship. The Court furthermore directed its judgment to be suspended for a period of two years from the date of its final order (i.e. October 27, 2023).

As the subject involves complexity and a wide spectrum of issues, we are now following the Court's relevant judgment and timetable, conducting detailed study with the DoJ and relevant bureaux on the mechanism relating to the legal recognition of same-sex relationship, thresholds of recognition, eligibilities, conditions, how to effectively avoiding abuses of the alternative framework, etc, as well as the rights and obligations arisen, including "core rights" and "supplementary rights", and formulating implementation.

Currently, we are actively taking forward the relevant work. We will seek the views of the Legislative Council in due course when there are concrete recommendations.