

Information paper on
7 September 2005

**Bills Committee of the Legislative Council
Marriage (Introduction of Civil Celebrants of Marriages and
General Amendments) Bill**

**Miscellaneous issues on the Marriage (Introduction of Civil
Celebrants of Marriages and General Amendments) Bill
("the Bill") raised at the meeting on 13 July 2005**

Background

Pursuant to the Bills Committee's request, this paper provides our response to the following submissions and suggestions–

- (a) the submission from the Hong Kong Bar Association (LC Paper No. CB(2) 2266/04-05(01));
- (b) the submission from Mr Yip Ming (LC Paper No. CB(2) 2239/04-05(01));
- (c) suggestion of stipulating in the legislation that a civil celebrant of marriage ("civil celebrant") should not solemnize and witness a marriage at the same time;
- (d) suggestion of including a schedule to the Marriage Ordinance (Cap.181) ("the Ordinance") to specify the impediment of kindred or alliance or any other lawful hindrance to the marriage referred to in section 12;
- (e) whether schedule 4 to the Bill would be amended to include ministers as being eligible for appointment as civil celebrants; and
- (f) moving Committee Stage amendments to amend the proposed section 12(1)(b)(i), and to delete clause 7 and the new section 6(A)2 under clause 6.

Submission from the Bar Association

2. Our response to the submission from the Bar Association is set out at **Annex A**.

Submission from Mr Yip Ming

3. Our response to the submission from Mr Yip is set out at **Annex B**.

Kindred and affinity

4. Section 12 of the Ordinance provides that one of the parties to an intended marriage shall appear personally before the Registrar of Marriages (“the Registrar”) and make an affidavit that he or she believes that there is no impediment of kindred or alliance or any other lawful hindrance to the marriage. Section 27(1) further stipulates that no marriage shall be valid which would be null and void on the ground of kindred or affinity in England or Wales. The Registrar has been, in accordance with the requirement stipulated in section 27(1), referring to the laws of England and Wales in this regard in advising marrying parties whether their proposed marriage would fall within the prohibited degrees of kindred or affinity. We are considering the feasibility of setting out in a schedule to the Ordinance the prohibited degrees of kindred or affinity referred to in section 12 and section 27(1) of the Ordinance.

Eligibility criteria

5. We do not think it is appropriate to amend Schedule 4 (Eligibility Criteria for Civil Celebrants) in clause 24 of the Bill to include ministers as being eligible for appointment as civil celebrants. Our proposal for appointing civil celebrants caters specifically for secular marriages, which are different from marriages celebrated by ministers according to the rites or usages of marriage observed in their respective religions. Other reasons for not considering ministers as eligible civil celebrants have been elaborated in paragraphs 5 and 6 of our information paper to the Bills Committee (LC Paper No. CB(2) 2251/04-05(01)) on 13 July 2005. Nevertheless, we propose to review the arrangement in a year’s time after implementation.

Other suggestions

6. We agree to provide draft Committee Stage amendments for Members' comments in due course to reflect the following-

- (a) expressly stipulate that a civil celebrant should not solemnize and witness a marriage at the same time;
- (b) amend the proposed section 12(1)(b)(i) in clause 9 of the English text of the Bill to read as “that the party believes that there is **no** impediment of kindred or alliance or any other lawful hindrance to the marriage; and”;
- (c) delete the proposed section 6A(2) in clause 6 of the Bill;
and
- (d) delete the amendments proposed in clause 7.

Security Bureau
5 September 2005

Government's response to the Bar Association's comments on the Bill

Item	Clause/Section	Bar Association's comments	Government's response
1	Clause 4, Section 5D(4)	The registered celebrant should not be permitted to perform any ceremony after being served with a written notice of intended cancellation of appointment.	<ul style="list-style-type: none">- The proposed section 5D(4) in clause 4 of the Bill provides that if the Registrar intends to cancel the appointment of a civil celebrant, he shall serve a written notice stating the intention and the reason for the proposed cancellation to the civil celebrant. The Registrar shall not cancel an appointment until (i) the expiry of a period of 14 days after the date of posting the notice; and (ii) he has considered the representation (if any) made by the civil celebrant. - The legislative intent of the above provision is that a civil celebrant will be given an opportunity to make representation before the Registrar makes a decision on whether or not to cancel his appointment. The appointment of a civil celebrant who has been served with a notice of intended cancellation will remain valid until the Registrar gives a notice of cancellation under the proposed section 5D(6). A civil celebrant may celebrate marriages while his appointment is valid.

2	Clause 4, Section 5D(8)	The period of 3 years is too short and should be not less than 5 years.	<ul style="list-style-type: none"> - The proposed section 5D(8) in clause 4 of the Bill provides that a civil celebrant whose appointment has been cancelled will be prohibited from applying for appointment as a civil celebrant for a period not longer than 3 years. - The proposed maximum prohibition period for application is considered appropriate because - <ul style="list-style-type: none"> (a) the main deterrent lies in the cancellation of appointment itself and that the proposed prohibition aims to prevent a person whose appointment has been cancelled from immediately re-applying for appointment during the specified period subsequent to cancellation; and (b) the proposed prohibition period is consistent with the second criterion in the eligibility criteria for civil celebrants specified in the proposed Schedule 4 in clause 24 of the Bill, which stipulates that an applicant shall not be the subject of a valid order made by the
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			<p>respective professional disciplinary tribunals during the 3 years immediately preceding the date of application for appointment or renewal of appointment.</p>
3	Clause 4, Section 5E(3)	<p>The registered celebrant should not be permitted to perform any ceremony after being served with a written notice of suspension of appointment¹.</p>	<ul style="list-style-type: none"> - The proposed section 5E(3) in clause 4 of the Bill provides that if the Registrar intends to suspend the appointment of a civil celebrant, he shall serve a written notice stating the intention, the reason for the proposed suspension and the length of the proposed suspension period to the civil celebrant. The Registrar shall not suspend the appointment until (i) the expiry of a period of 14 days after the date of posting the notice; and (ii) he has considered the representation (if any) made by the civil celebrant. - The legislative intent of the above provision is that a civil celebrant will be given an opportunity to make representation before the Registrar makes a decision on whether or not to suspend his appointment. The

¹ The written notice under the proposed section 5E(3) in clause 4 of the Bill refers to the notice of intended suspension whereas the written notice under the proposed section 5E(1) in clause 4 of the Bill refers to the notice of suspension.

			<p>appointment of a civil celebrant who has been served with a notice of intended suspension will remain valid until the Registrar gives a notice of suspension under the proposed section 5E(1). A civil celebrant may celebrate marriages while his appointment is valid.</p>
4	Clause 4, Section 5E(4)	The period of 18 months is too short and should be not less than 3 years.	<ul style="list-style-type: none"> - The proposed section 5E(4) in clause 4 of the Bill provides that the Registrar may suspend the appointment of a civil celebrant for a period not longer than 18 months. - The proposed maximum suspension period is appropriate because - <ul style="list-style-type: none"> (a) it reflects that contraventions leading to suspension (as opposed to cancellation) are relatively minor in nature; and (b) it is not unduly short as an appointment is valid for 5 years only.

5	5E(5)	The appointment should be cancelled (not suspended) if a celebrant has been convicted of a professional disciplinary offence.	<ul style="list-style-type: none"> - The proposed section 5E(5) in clause 4 of the Bill provides that if a civil celebrant is suspended from practice by the respective professional disciplinary tribunals for a certain period, his appointment as a civil celebrant shall be suspended during that period. - Whether the appointment of a civil celebrant should be cancelled if he has been convicted of a professional disciplinary offence should depend on facts of individual cases. If circumstances so warrant, the Registrar may by virtue of the proposed section 5D(2) cancel his appointment notwithstanding that the appointment has already been suspended under section 5E.
6	Clause 21, Schedule 1 – Form 5	The declaration should include an additional paragraph that the person is not lawfully married to any other person.	<ul style="list-style-type: none"> - Under section 21(1) of the Marriage Ordinance, each of the marrying parties shall sign a written declaration (Form 5 in Schedule 1) before a marriage is celebrated. By signing the declaration, he/she acknowledges that he /she understands that he/she shall become legally married and bound to the other to create a marriage which cannot be

			<p>dissolved during their joint lives except by a valid judicial decree and that bigamy is an offence.</p> <ul style="list-style-type: none"> - It is not necessary for the above declaration to include an additional paragraph that the person concerned is not lawfully married to another person because one of the marrying parties has already made an affidavit before the Registrar under section 12 of the Ordinance that there is no impediment of kindred or alliance or any other lawful hindrance to the marriage. Lawful hindrance includes that at the time of marriage, either party was already lawfully married to another person.
7	Clause 24, Schedule 4 – S.1(a)	A solicitor should have not less than 12 years of post-qualification experience.	<ul style="list-style-type: none"> - The proposed Schedule 4 in clause 24 of the Bill provides for the eligibility criteria for civil celebrants. Section 1(a) stipulates that a solicitor should have not less than 7 years of post-qualification experience. - Our proposal is already a prudent one which will allow the appointment of experienced solicitors with proven track record as civil celebrants. Apart

			<p>from the above, the 7-year post-qualification experience for solicitors is set with reference to the post-qualification experience for notaries public, as the latter are primarily solicitors having not less than 7 years of post-qualification experience. As indicated at the Bills Committee meeting on 4 July, we will review this criterion in future, say one year after implementation.</p>
8	Schedule 4 – S.2	The period should be 5 years to be consistent with section 5D(8) of the Bill.	<ul style="list-style-type: none"> - The proposed section 2 of Schedule 4 in clause 24 of the Bill requires that an applicant has not been the subject of a valid order made by the respective professional disciplinary tribunals during the 3 years immediately preceding the date of application of appointment or renewal of appointment. - The proposed sanitization period is already effective in excluding those applicants who are the subject of disciplinary action by the respective professional disciplinary tribunals and is considered reasonable having regard to our proposal that an appointment is only valid for 5 years.

Government’s response to Mr YIP Ming’s comments on the Bill

Item	Clause²	Section³	Mr. YIP’s comments	Government’s response
1	3	2	<ul style="list-style-type: none">- To repeal the definition of “Secretary” (局長)- To add the definition of “marriage” (婚姻) means a contract ordained by a ceremony recognized by the law, or by way of a proper legal procedure, between a man and a woman who at the time of the contract being made, are free in law to marry and to be married, as involving the voluntary union for life of that man and that woman.	<ul style="list-style-type: none">- The proposed amendment is concerned with drafting style rather than substance of the matter.- Section 40 of the Marriage Ordinance (the Ordinance) already provides for the meaning of “a Christian marriage or the civil equivalent of a Christian marriage”
2	5	6	To amend s.6(1) to read as “Whenever any persons desire to marry, one of the proposed parties to the intended marriage shall, either in person or through a civil celebrant, give a	<ul style="list-style-type: none">- The writer seems to agree to our proposal that a party to the intended marriage shall give a notice of intended marriage “either directly or through a civil celebrant” as set out in clause 5 of the Bill.

² “Clause” refers to the clause number found in the Bill, except those additional clauses proposed by Mr Yip.

³ “Section” refers to the section number found in the Ordinance or in the Bill, except otherwise stated.

			notice of intended marriage to the Registrar in Form 1 in Schedule 1 and at the same time, produce his or their identity cards or travel documents for inspection, the photocopy of identity card or travel document of the absent party, or absolute decree (if appropriate).	<p>However, his proposal for a party to give a notice “in person” would in effect restrict persons from abroad who wish to celebrate their marriage in Hong Kong from giving the notice by mail, which is permissible under the Ordinance.</p> <ul style="list-style-type: none"> - There is no need to set out administrative requirements in the Bill.
3	12(7)	21(4)(a)	To amend s.21(4)(a) to read as “A marriage celebrated by the Registrar or a civil celebrant shall be conducted in English, Cantonese, Putonghua or other language (including sign language) or dialect chosen by the parties to the marriage and shall take place in the presence of 2 or more witnesses and in the following manner –”	<ul style="list-style-type: none"> - The proposed sections 21(4A) and 21(4B) in clause 12 of the Bill have adequately dealt with the language issues.
4	12(10)	21(4)(a)(i)	To replace “man” by “husband”.	<ul style="list-style-type: none"> - The proposed amendment is concerned with drafting style rather than substance of the matter.

5	12(11)	21(4)(a)(ii) & 21(4)(a)(iii)	<ul style="list-style-type: none"> - To amend 21(4)(a)(ii) as “the male party shall then say to the female party in the language or dialect chosen :” - To amend 21(4)(a)(iii) as “the female party shall then say to the male party in the language or dialect chosen :” 	- Same comments as for item 3.
6	12(12)	21(4)(b)	To amend s.21(4)(b) to read as “where the Registrar or the civil celebrant is satisfied the parties and most of the witnesses understand the language or dialect the parties chosen, the marriage shall be celebrated in that language or dialect.”	- Same comments as for item 3.
7	12(13)	21(4A)	To amend s.21(4A) to read as “where either party or both of the parties to the marriage cannot convey the statement required either by section 4(a)(ii) or (iii), verbally or by sign language, the Registrar or the civil celebrant shall convey the statement on behalf of either or both parties. Either or both parties shall signify, in whatever manner and by whatever	- Same comments as for item 3.

			means, to the satisfaction of the Registrar or the civil celebrant, as the case may be, that he or she approves the statement.”	
8	14	30	<p>To amend s.30 to read as</p> <p>“A minister or civil celebrant who –</p> <p>(a) knowing that –</p> <p>(i) a consent under section 14 is required in respect of the marriage of a party under 18 years of age; and</p> <p>(ii) no such consent has been produced in accordance with section 14(1A) in respect of the party,</p> <p>willfully celebrates the marriage of the party,</p> <p>(b) willfully celebrates a marriage contrary to any other provision of this ordinance; or</p> <p>(c) willfully celebrates a marriage knowing that any provision of this ordinance has not been complied with, commits an offence and shall be liable on summary</p>	<p>- According to the Ordinance, both parties to the marriage must reach 16 years of age at the time of marriage celebration. In case either of the marrying parties is of or over 16 and under 21 years of age and is not a widower or widow, a written consent of the relevant person(s) has to be produced to the Registrar. Whether the age at which a marriage can be celebrated without the written consent of the relevant person(s) can be lowered to 18 years of age is a subject for law reform and falls outside the scope of the Bill, which provides for the appointment of civil celebrants and regulation of their practice.</p> <p>- The proposed amendment in sub-section (c) is concerned with drafting style rather than substance of the matter.</p>

			conviction to a fine at level 1 and to imprisonment for 2 years.”	
9	15	31	To amend s.31 to read as (1) A minister who fails to transmit a certificate of marriage to the Registrar in accordance with section 20(3), commits an offence and shall be liable on summary conviction to a fine at level 1. (2) A civil celebrant who - commits an offence and shall be liable on summary conviction to a fine at level 1.	- The proposed amendments are concerned with drafting style rather than substance of the matter.
10	16	31A	To replace “Any” by “A” and “shall be guilty of” by “commits” and add “on summary conviction” after “liable”. (Note: S.31A provides for the offences for failure to transmit certificate etc.)	- The proposed amendments are concerned with drafting style rather than substance of the matter.
11	17	33A(1) & 33B	To replace “Any” by “A” and “shall be guilty of” by “commits” and add “on summary conviction” after “liable”.	- The proposed amendments are concerned with drafting style rather than substance of the matter.

			(Note: S.33A(1) and s.33B are offence provisions.)	
12	18 & 19	42 & 42A	To replace “The Secretary” by “The Secretary for Security”. (Note: S.42 and s.42A empower the S for S to make certain regulations and schedules.)	- The proposed amendments are concerned with drafting style rather than substance of the matter.
13	23	Schedule 3	To replace - “21” by “18” and “schedule 3” by “SCHEDULE 3”. (Note: Schedule 3 lists out the relevant person who may give written consent if either party to the intended marriage, not being a widower or widow, is of or over 16 and under 21 years of age.)	- Same comments as for item 8. We will propose Committee Stage Amendments to replace “schedule 2” by “SCHEDULE 2” in clause 22 and “schedule 3” by “SCHEDULE 3” in clause 23.
14	27A (proposed addition)	34(6) (Cap. 213)	To replace “21” by “18” in s.34(6) of the Protection of Children and Juvenile Ordinance, Cap. 213.	- Same comments as for item 8.

15	31	4	To amend s.4 to read as “The Registrar may – (a) by granting a licence in respect of any place of public worship..... (b) cancel any such licence at any time.”	- The power to license a place of public worship to be a place for the celebration of marriages and to cancel such licence vests with the Chief Executive (section 4 of the Ordinance). The Chief Executive has delegated the power to the Director of Immigration, who is appointed as the Registrar of Marriages. We have no intention to vary the existing arrangement.
16	32	5	To amend s.5 to read as “Whenever the Registrar grants or cancels any licence under section 4, he shall give public notice thereof in the Gazette.”	
17	34	6	To repeal the proposed amendments in clause 34 of the Bill.	- The writer proposed to re-arrange the amendments to Clause 5. - Same comments as for item 2.
18	35(2)	7(2)	To amend s.7(2) to read as “The Registrar shall post the copy of Part I of a notice of intended marriage to the Government Website for the	- The existing arrangement under which one copy of the notice of intended marriage is exhibited at the office of the Registrar is well accepted by the

			view of the public until he issues a certificate of Registrar or until the 3 months referred to in section 10 expire.”	public and is considered appropriate.
19	39	11	To amend s.11 to read as “(1) The Registrar may by granting a special licence in Form 3 in Schedule 1..... . (2) The Registrar may grant a special licence without”	- The power to grant a special licence vests with the Chief Executive (section 11 of the Ordinance). The Chief Executive has delegated the power to the Director of Immigration, Deputy Director of Immigration, and Assistant Director of Immigration who are appointed as the Registrar of Marriages and deputy registrars of marriages. We have no intention to vary the existing arrangement.
20	48A (proposed addition)	26	- To repeal s.26. (Note: S.26 allows searches to be made to marriage certificates, licences, registers and indexes and issue a certified copy of an entry therein or the issue of a certificate of no marriage record.)	- Search for marriage records and the issue of certified copies of marriage certificate or certificates of absence of marriage record, which are provided for under section 26 of the Ordinance, is not a matter of major public concern. Any issues of concern in relation to public registers will be dealt with in a separate review led by HAB, which is underway.

			<ul style="list-style-type: none"> - To repeal “in England or Wales” in s.27(1). (Note: S.27(1) provides that a marriage shall be null and void on the ground of kindred or affinity in England or Wales.) 	<ul style="list-style-type: none"> - As stated in paragraph 4 of the covering paper, we are considering the feasibility of setting out the prohibited degrees of kindred or affinity in a Schedule to the Ordinance.
21	50	29	<p>To amend s.29 to read as</p> <p>A person who, knowing that</p> <ul style="list-style-type: none"> (a) a consent under section 14 is required in respect of the marriage of a party under 18 years of age; and (b) no such consent has been produced in accordance with section 14(1A) in respect of the party, marries or assists or procures other person to marry the person referred to in paragraph (a), commits an offence and shall be liable on conviction to imprisonment for 2 years.” 	<ul style="list-style-type: none"> - Same comments as for item 8. - The proposed amendments in subsection (b) are concerned with drafting style rather than substance of the matter.
22	51	30	To repeal clause 51 of the Bill which provides for the amendment of s.30.	<ul style="list-style-type: none"> - Same comments as for item 8.

23	52	32	To replace “Any” by “A” and “this ordinance, commits an offence and shall be liable” by “this ordinance, commits an offence and shall be liable on summary conviction.” in s.32.	- The proposed amendments are concerned with drafting style rather than substance of the matter.
24	52A (proposed addition)	33	To replace “Any” by “A” and “shall be guilty of”	- The proposed amendments are concerned with drafting style rather than substance of the matter.
25	57(2A) (proposed addition)	39(1)(c)	To replace “affinity, in England or Wales” by “alliance.”	- As stated in paragraph 4 of the covering paper, we are considering the feasibility of setting out the prohibited degrees of kindred or affinity in a Schedule to the Ordinance.
	57(2B) (proposed addition)	39(3)	To replace “Any” by “A” and “shall be guilty of” by “commits” and add “on summary conviction” after “liable”.	- The proposed amendments are concerned with drafting style rather than substance of the matter.
26	57(3)	39(4)	To replace “Any” by “A” and “shall be guilty of” by “commits” and add “on summary conviction” after “liable”.	- The proposed amendments are concerned with drafting style rather than substance of the matter.

27	57A (proposed addition)	40	To repeal s.40.	- Section 40 provides for the definition of a Christian marriage or the civil equivalent of a Christian marriage and should be retained.
28	58	Form 4 & 6 in Schedule 1	To repeal the items “Marital condition before marriage”, “Occupation”, “Residential address”, “Surname and name of father” and “Surname and name of mother” in Forms 4 and 6. (Note: Form 4 is the marriage certificate used for a marriage celebrated by a minister in a licensed place of worship whereas Form 6 is the marriage certificate used for a marriage of a dying person.)	- A review of a total of eight types of births, deaths and marriages related records (viz. Notice of Marriage, Certificate of Marriage, Register (Certificates of Marriage) for the registration of customary marriages and validated marriages, Register of Births, Special Register of Births, Adopted Children Register, Air Register Book of Births and Deaths, and Marine Register of Births and Deaths) is in progress. Pending the outcome of the review, we do not recommend changes to the forms in question at this stage. - In the meantime, we have taken the following administrative measures to enhance privacy protection - (i) A statement of purpose of collection is

				<p>incorporated in the notice of intended marriage form to make it clear that personal data are collected and used to compile and issue the marriage certificate;</p> <p>(ii) The requestor for a copy of marriage certificate who is not the data subject himself is served with a notice explaining that the intended use of the personal data on the marriage certificate should be subject to compliance with the Personal Data (Privacy) Ordinance; and</p> <p>(iii) Only partial address i.e. the street name and district, is displayed in the notice of intended marriage and marriage certificate.</p>
29	21	Form 7	<p>To repeal the items “Marital condition before marriage”, “Occupation”, “Residential address”, “Surname and name of father” and “Surname and name of mother” in Form 7.</p> <p>(Note: Form 7 is the marriage certificate used for marriage celebrated by the Registrar or the civil</p>	<p>- Same comments as for item 28.</p>

			celebrant.)	
30	58(5) (proposed addition)	Forms 5 & 6 in the Marriage Reform (Forms) Regulations (Cap. 178 sub. leg. C)	To repeal the items “Condition at the time of marriage”, “Rank (or profession) at the time of marriage”, “Residence at the time of marriage”, “Surname and name of father” and “Rank or profession of father” in Forms 5 and 6 in the Marriage Reform (Forms) Regulations, Cap. 178C. (Note: Form 5 in the Marriage Reform (Forms) Regulations (Cap. 178 sub. leg. C) is the marriage certificate used for a customary marriage celebrated in Hong Kong before 7 October 1971 in accordance with Chinese law and custom. Form 6 in the same Regulations is used for a modern marriage celebrated in Hong Kong before 7 October 1971 by open ceremony as a modern marriage and in the presence of 2 or more witness (S. 2 and s.7, Cap. 178).	- Same comments as for item 28.
31	13	27	To amend s.27 to read as “(1) A marriage is null and void :-	

			<p>(a) on grounds of kindred or alliance;</p> <p>(b) if at the time of its celebration any party is under 16 years of age;</p> <p>(c) if the marriage is celebrated under a false name;</p> <p>(d) if at the time of its celebration either party or both parties are not truly represented in sex against the identity card or travel document that either party or both parties are holding at that time;.....”</p>	<ul style="list-style-type: none"> - As stated in paragraph 4 of the covering paper, we are considering the feasibility of setting out the prohibited degrees of kindred or affinity in a Schedule to the Ordinance. - Same comments as for item 8. - Every marriage under the Ordinance shall be the voluntary union for life of one man and one woman. The sex of the marrying parties is determined by the individual’s biological sex at birth. Marriages in Hong Kong adhere to this principle.
32	10	14	<p>To amend s.14 to read as</p> <p>(1) This section applies in relation to an intended marriage if any proposed party to the intended marriage is of or over 16 and under 18 years of age as at the date of marriage;....</p>	<ul style="list-style-type: none"> - Same comments as for item 8.

