

Information paper on
4 October 2005

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

**Issues on the Marriage (Introduction of Civil
Celebrants of Marriages and General Amendments) Bill
("the Bill") raised at the meeting on 7 September 2005**

Background

Pursuant to the Bills Committee's request, this paper sets out our response to the following issues –

- (a) reviewing/revising the penalty in the proposed section 30 in clause 14 of the Bill to achieve overall consistency with that for other offences in the Bill, having regard to the severity of the offences; and
- (b) reviewing/revising the penalties for offences in other provisions in the Marriage Ordinance, (Cap.181) ("the Ordinance") which are not amended by the Bill to maintain overall consistency with those proposed in the Bill.

Penalty in the proposed section 30

2. Section 30 of the Ordinance provides that a minister shall be liable to a fine at level 1 (\$2,000) or to imprisonment for 2 years if he wilfully celebrates a marriage in the case of a minor¹ without a written consent; or wilfully celebrates a marriage contrary to any other provision of the Ordinance, or knowing that any provision of the Ordinance has not been complied with. The effect of the proposed amendment to section

¹ According to section 14 of the Ordinance, a written consent of the relevant person(s) must be produced to the Registrar if either party to the intended marriage, not being a widower or widow, is of or over 16 and under 21 years of age.

30 in clause 14 of the Bill is that if a civil celebrant commits the above offences, he shall also be liable for the same penalty as that for a minister. Considering the severity of the above offences for a civil celebrant and a minister vis-à-vis the other new offences proposed in the Bill, we propose to introduce a Committee Stage Amendment (CSA) to revise the penalty for the above offences for a civil celebrant and a minister to a fine at level 5 and to imprisonment for 2 years.

Penalties for existing offences

3. Following a review of the existing seven offences (summarized at **Annex**) vis-à-vis the other new offences proposed in the Bill, we propose to maintain the level of penalty for the offence in the proposed section 31(1) in clause 15 of the Bill (which is equivalent to section 31 of the Ordinance) and section 39(4) of the Ordinance. These provisions relate to non-compliance with procedural requirements, i.e. failure of a minister to transmit a certificate of marriage to the Registrar within 7 days after a marriage or after a marriage is celebrated under section 39 of the Ordinance. A fine at level 1 is considered appropriate.

4. The other five offences relate to circumstances involving deliberate act of fraud or deceit as follows-

- (a) a person, knowing that a written consent of the proper person has not been obtained, marries or assists or procures any other person to marry a person under the age of 21 years who is not a widow or widower (section 29 of the Ordinance);
- (b) a person wilfully removes or alters any notice, certificate or other documents kept or filed by the Registrar (section 32 of the Ordinance);
- (c) a person, not being legally competent, knowingly and wilfully celebrates or pretends to celebrate a marriage (section 33 of the Ordinance);

- (d) a person knowingly celebrates any marriage in purported pursuance of section 39 contrary to or not in accordance with any provision thereof (section 39(3)(a) of the Ordinance); and
- (e) a person, not being legally competent, celebrates a marriage under section 39 (section 39(3)(b) of the Ordinance).

5. Since the above offences are more serious in nature, and in order to maintain consistency with the proposed CSA for clause 14 as mentioned in paragraph 2 above, we propose to raise the level of penalty for all these offences to a fine at level 5 and to imprisonment for 2 years.

Security Bureau
29 September 2005

Summary of Other Offences under the Ordinance

	Other offences	Level of penalty
1.	<p>Section 29 of the Ordinance, to be slightly revised by Clause 50 of the Bill</p> <ul style="list-style-type: none"> • Any person, knowing that a written consent of the proper person has not been obtained, marries, or assists or procures any other person to marry a person under the age of 21 years, not being a widow or widower 	<p>2-year imprisonment <i>(propose a CSA to revise to level 5 (\$50,000) and 2-year imprisonment)</i></p>
2.	<p>Section 31(1), clause 15 of the Bill (equivalent to section 31 of the Ordinance)</p> <ul style="list-style-type: none"> • Failure of a minister to transmit a certificate of marriage to the Registrar within 7 days after a marriage 	<p>Level 1 fine (\$2,000)</p>
3.	<p>Section 32 of the Ordinance</p> <ul style="list-style-type: none"> • Any person wilfully removes or alters any notice, certificate, licence or other documents kept or filed by the Registrar 	<p>Level 1 fine (\$2,000) and 6-month imprisonment <i>(propose a CSA to revise to level 5 (\$50,000) and 2-year imprisonment)</i></p>
4.	<p>Section 33 of the Ordinance</p> <ul style="list-style-type: none"> • Any person, not being legally competent, knowingly and wilfully celebrates or pretends to celebrate a marriage 	<p>2-year imprisonment <i>(propose a CSA to revise to level 5 (\$50,000) and 2-year imprisonment)</i></p>
5.	<p>Section 39(3)(a) of the Ordinance</p> <ul style="list-style-type: none"> • Any person, knowingly celebrates any marriage in purported pursurance of s.39 contrary to or not in accordance with any provision thereof 	<p>Level 1 fine (\$2,000) or 2-year imprisonment <i>(propose a CSA to revise to level 5 (\$50,000) and 2-year imprisonment)</i></p>
6.	<p>Section 39(3)(b) of the Ordinance</p> <ul style="list-style-type: none"> • Any person, not being legally competent, celebrates any marriage under s.39 	<p>Level 1 fine (\$2,000) or 2-year imprisonment <i>(propose a CSA to revise to level 5 (\$50,000) and 2-year imprisonment)</i></p>

	Other offences	Level of penalty
7.	Section 39(4) of the Ordinance <ul style="list-style-type: none">• Failure of a minister to transmit a certificate of marriage to the Registrar within 7 days after a marriage under s.39	Level 1 fine (\$2,000)