

Information paper on
4 October 2005

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

Proposed Committee Stage Amendments

Introduction

Proposed Committee Stage Amendments (CSAs) to amend Clauses 3, 4, 6, 7, 9, 12, 13, 16, 21, 22, 23, 24, 26, 50, 51, 52, 57 and 58 and to add new clauses 52A, 57A, 57B and 60 are enclosed at **Annex**. Members are requested to comment on the proposed CSAs.

Purpose of proposed CSAs

2. The purpose of the proposed CSAs are explained below –
 - (a) Clause 3 – to clarify that notices given or published by the Registrar of Marriages (“the Registrar”) for the purpose of announcing the granting or cancellation of a licence for a place of public worship, appointment/reappointment of a civil celebrant of marriage (“civil celebrant”), a code of practice and its commencement date, cancellation and suspension of an appointment of a civil celebrant under section 5, the proposed sections 5A(4)(c), 5C(3), 5D(6)(a) and 5E(7) or a notice given by the Secretary for Security under section 5J(5) are not subsidiary legislation;

- (b) Clause 4 – (paras a, b, f & m) to amend “general notice in the Gazette” to read as “notice in the Gazette” in the proposed sections 5A(4)(c), 5C(3), 5D(6)(a) and 5E(7);
- (c) Clause 4 – (paras c & d) to refine the drafting of the proposed section 5D(3)(a) (for the English version);
- (d) Clause 4 – (paras e & g) to spell out more clearly the period within which a person may submit his representation after the Registrar has issued a written notice of his intention to cancel or suspend his appointment as a civil celebrant under the proposed sections 5D(4)(b)(ii) and 5E(3)(b)(ii);
- (e) Clause 4 – (paras h, i, j & k) to refine the drafting of the proposed sections 5E(5)(a)(i), 5E(5)(a)(ii), 5E(5)(b)(i) and 5E(5)(b)(ii);
- (f) Clause 4 – (para l) to refine the drafting of the proposed section 5E(6) by expressly providing that an appointment suspended under section 5E shall not be regarded as valid during the period of suspension;
- (g) Clause 4 – (para n) to make it clear that the operation of the proposed section 5F is without prejudice to the operation of section 27(3);
- (h) Clause 4 – (para o) to spell out more clearly the purpose of the Registrar’s request for information under the proposed section 5H(1) is for the purpose of investigating and obtaining evidence of any suspected offence under the Ordinance or any suspected breach of a code of practice;

- (i) Clause 6 – to delete the proposed section 6A(2) so as to remove the proposed restriction that a civil celebrant shall not charge any fee for any acceptance, collection and transmission under the proposed section 6A;
- (j) Clause 7 – to delete clause 7 as section 8 of the Ordinance already enables the Registrar to provide forms to civil celebrants;
- (k) Clause 9 – to refine the drafting of the proposed section 12(1)(b)(i) by deleting “not any impediment of kindred or alliance” and substituting “no impediment of kindred or affinity”;
- (l) Clause 12 – to expressly provide that a civil celebrant shall not act as a witness to a marriage celebrated by him;
- (m) Clause 13 and new Schedule 5 – to amend section 27 by setting out the restrictions on ground of kindred or affinity in a Schedule and to refine the drafting of the original clause 13 concerning section 27(2) of the Ordinance without changing the policy;
- (n) Clause 16 – (paras a to c) to add a reasonable excuse defence for the offences in the proposed sections 31A(1) and 31A(3) and to reflect a consequential amendment (following amendment proposed in clause 6);
- (o) Clause 21 – to rectify typos in the Chinese text by replacing “婚姻現況” by “婚姻狀況” in the proposed Form 1 and by deleting “我” after “可被” in the proposed Form 5;

- (p) Clauses 22 & 23 – to reflect that the Schedule concerned should be quoted as “SCHEDULE 2” and “SCHEDULE 3”;
- (q) Clause 24 – to revise paragraph 1(a)(ii) of Schedule 4 to expressly provide that a solicitor is eligible for appointment as a civil celebrant if he holds a certificate issued by the Law Society of Hong Kong certifying that he has practiced as a solicitor for a period or periods in aggregate of not less than 7 years;
- (r) Clause 26 – to reflect a consequential amendment (following amendment proposed in clause 6);
- (s) Clause 50 – to revise the penalty for the offence under section 29 of the Ordinance from 2-year imprisonment to a fine at level 5 and 2-year imprisonment;
- (t) Clause 51 – to revise the fine for the offence under section 30 of the Ordinance from a fine at level 1 or 2-year imprisonment to a fine at level 5 and 2-year imprisonment;
- (u) Clause 52 – to revise the penalty for the offence under section 32 of the Ordinance from a fine at level 1 and 6-month imprisonment to a fine at level 5 and 2-year imprisonment;
- (v) New clause – to add clause 52A to amend section 33 to include a fine at level 5 for the offence in that section;
- (w) Clause 57 – (para a) to reflect a consequential amendment (following amendments proposed in clause 13);

- (x) Clause 57 – (para b) to revise the penalty for the offences under sections 39(3)(a) and (b) from a fine at level 1 or 2-year imprisonment to a fine at level 5 and 2-year imprisonment;
- (y) New clause – to add clause 57A to replace “均屬” by “須是” in the Chinese text of section 40(1) of the Ordinance in order to remove a discrepancy in meaning between the two texts;
- (z) New clause – to add clause 57B to introduce a saving provision; and
- (aa) Clause 58 – to refine the drafting of the Chinese text of the proposed Form 2.

Security Bureau
30 September 2005

MARRIAGE (INTRODUCTION OF CIVIL CELEBRANTS
OF MARRIAGES AND GENERAL AMENDMENTS) BILL

COMMITTEE STAGE

Amendments to be moved by the
Secretary for Security

Clause

Amendment Proposed

3

(a) By renumbering the clause as clause 3(2).

(b) By adding -

"(1) Section 2 of the Marriage Ordinance
(Cap. 181) is amended by renumbering the
section as subsection (1)."

(c) In subclause (2), by deleting "Section 2 of the
Marriage Ordinance (Cap. 181)" and substituting
"Section 2(1)".

(d) By adding -

"(3) Section 2 is amended by adding -

"(2) In section 5, 5A(4)(c), 5C(3),
5D(6)(a), 5E(7) and 5J(5), "notice" means
a general notice which is not subsidiary
legislation."."

- 4
- (a) In the proposed section 5A(4)(c), by deleting "general".
 - (b) In the proposed section 5C(3), by deleting "general".
 - (c) In the proposed section 5D(3)(a), by deleting "at";
 - (d) In the proposed section 5D(3)(a)(i) and (ii), by adding "at" before "the".
 - (e) In the proposed section 5D(4)(b)(ii), by adding "within the 14 day period referred to in subparagraph (i) or such longer period as may be allowed by the Registrar" after "person".
 - (f) In the proposed section 5D(6)(a), by deleting "general".
 - (g) In the proposed section 5E(3)(b)(ii), by adding "within the 14 day period referred to in subparagraph (i) or such longer period as may be allowed by the Registrar" after "person".
 - (h) In the proposed section 5E(5)(a)(i), by deleting "was" and substituting "is".
 - (i) In the proposed section 5E(5)(a)(ii), by adding "subsequently" after "is".
 - (j) In the proposed section 5E(5)(b)(i), by deleting "was" and substituting "is".
 - (k) In the proposed section 5E(5)(b)(ii), by adding "subsequently" after "is".
 - (l) In the proposed section 5E(6), by adding ", during the suspension period," after "shall not".

- (m) In the proposed section 5E(7), by deleting "general".
- (n) In the proposed section 5F, by deleting "The" and substituting "Without prejudice to the generality of section 27(3), the".
- (o) By deleting the proposed section 5H(1) and substituting -

“(1) For the purpose of investigating and obtaining evidence of any suspected offence under this Ordinance or of any suspected contravention of a code of practice, the Registrar may request a civil celebrant to provide information in relation to the practice of the civil celebrant. The civil celebrant shall provide such information as soon as practicable upon receiving the request of the Registrar.”.

6 By deleting the proposed section 6A(2).

7 By deleting the clause.

9 In the proposed section 12(1)(b)(i), by deleting "not any impediment of kindred or alliance" and substituting "no impediment of kindred or affinity as provided in section 27(1)".

12 In subclause (16), by adding after the proposed section 21(7) -

"(8) For the avoidance of doubt, if a marriage is celebrated by a civil celebrant, the civil celebrant shall not act as a witness to that marriage."

13 By deleting the clause and substituting -

"13. Invalid marriages

(1) Section 27(1) is repealed and the following substituted -

"(1) A marriage shall be null and void on the ground of kindred or affinity as prescribed in Schedule 5."

(2) Section 27(2) is repealed and the following substituted -

"(2) A marriage shall be null and void -

(a) if -

(i) it is not

celebrated -

(A) by the Registrar
in the office of
the Registrar;

(B) by a competent
minister in a
licensed place

of worship; or

(C) by a civil celebrant in accordance with section 21(3A);

unless it is -

(D) authorized by a special licence;

(E) celebrated under paragraph (b) of the proviso to section 21(3);

or

(F) celebrated under section 39;

(ii) the marriage is celebrated under a false name;

(iii) no certificate of the Registrar has been issued and no special licence has been granted in respect of the marriage; or

(iv) at the time of its celebration any party is under 16 years of

age; and

(b) if both parties knowingly and wilfully acquiesce in its celebration."."

- 16 (a) In the proposed section 31A(1), by adding "without reasonable excuse" after "who".
- (b) In the proposed section 31A(3), by adding "without reasonable excuse" after "who".
- (c) By deleting the proposed section 31A(4).

- 21 (a) In subclause (2), in Part 1 of the proposed Form 1, by deleting "婚姻現況" and substituting "婚姻狀況".
- (b) In subclause (3), in paragraph (c) of the proposed Form 5, by deleting "我" after "可被".

22 In subclause (1) -

(a) by deleting -

"Second Schedule [s. 36]"

and substituting -

"SECOND SCHEDULE [s. 36]";

(b) by deleting -

"Schedule 2 [ss. 2 & 36]"

and substituting -

"SCHEDULE 2 [ss. 2 & 36]".

23 (a) By deleting -

"Third Schedule [ss. 14, 18A & 42]"
and substituting -

"THIRD SCHEDULE [ss. 14, 18A & 42]";

(b) by deleting -

"Schedule 3 [ss. 14, 18A & 42A]"
and substituting -

"SCHEDULE 3 [ss. 14, 18A & 42A]".

24 In the proposed Schedule 4, by deleting paragraph
1(a)(ii) and substituting -

"(ii) holding a certificate issued by the Law
Society of Hong Kong certifying that he has
practised as a solicitor for a period or
periods in aggregate of not less than 7 years;
or".

26 In subclause (2), by deleting -

"Section 31A(4) civil celebrant charging
prohibited fee".

50 By deleting the clause and substituting -

**"50. Marrying, etc., person under 21
without required consent**

Section 29 is repealed and the following
substituted -

**"29. Marrying, etc., person under
21 without required consent**

Any person who, knowing that -

(a) a consent under section 14 is required in respect of the marriage of a party under 21 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 any other person to marry the person referred to in paragraph (a) shall be guilty of an offence and shall be liable to a fine at level 5 and imprisonment for 2 years."."

51 (a) By renumbering the clause as subclause (1).

(b) By adding -

"(2) Section 30 is amended by repealing everything after "an offence" and substituting "and shall be liable to a fine at level 5 and imprisonment for 2 years"."

52 By deleting everything after "amended by" and substituting "repealing everything after "shall be" and substituting "guilty of an offence and shall be liable to a fine at level 5 and imprisonment for 2 years"."

New By adding -

"52A. Penalty on unauthorized person celebrating marriage

Section 33 is amended by repealing everything after "an offence" and substituting "and shall be liable to a fine at level 5 and imprisonment for 2 years."."

57 (a) By adding after subclause (1) -

"(1A) Section 39(1) is amended, in the proviso, in paragraph (c), by repealing "in England and Wales" and substituting "as provided in section 27(1)".

(b) By adding -

"(2A) Section 39(3) is amended by repealing "level 1 or" and substituting "level 5 and"."

New By adding after clause 57 -

"57A. Marriages under this Ordinance are Christian or equivalent thereto

Section 40(1) is amended by repealing "均屬" and substituting "須是".

57B. Saving

The following is added -

"45. Saving

The amendments made to sections 27
and 39(1)(c) by the Marriage

(Introduction of Civil Celebrants of
Marriage and General Amendments)

Ordinance (of 2005) shall not -

(a) validate a marriage which
would have been invalid,

or

(b) invalidate a marriage
which would have been
valid,

but for the enactment of that Ordinance.”.

58 In subclause (1), in the proposed Form 2, by deleting “就
下述人士擬締結的婚姻已於 年 月 日” and substituting
“於 年 月 日就下述人士擬締結的婚姻”.

New By adding -

“60. Schedule 5 added

The following is added -

“SCHEDULE 5 [s. 27]

KINDRED AND AFFINITY

Part I

1. In this Schedule -

“brother” (兄弟) includes a brother of the
half blood;

"child" (兒童) means a person under the age of 18;

"child of the family" (家庭子女), in relation to any person, means a child who has lived in the same household as that person and been treated by that person as a child of his family;

"sister" (姊妹) includes a sister of the half blood.

2. A marriage -

(a) solemnized between a man and any person specified in the first column of Part II; or

(b) solemnized between a woman and any person specified in the second column of Part II,

shall be null and void.

3. Subject to paragraph 4, a marriage -

(a) solemnized between a man and any person specified in the first column of Part III; or

(b) solemnized between a woman and any person specified in the second column of Part III,

shall be null and void.

4. A marriage referred to in paragraph

3 shall not be void by reason only of affinity if -

- (a) both the parties to the marriage have attained the age of 21 at the time of the marriage; and
- (b) the younger party has not at any time before attaining the age of 18 been a child of the family in relation to the other party.

5. Subject to paragraph 6, a marriage -

- (a) solemnized between a man and any person specified in the first column of Part IV; or
- (b) solemnized between a woman and any person specified in the second column of Part IV,

shall be null and void.

6. A marriage referred to in paragraph 5 shall not be void by reason only of affinity if -

- (a) both the parties to the marriage have attained the age of 21 at the time of the marriage; and
- (b) the marriage is solemnized -

- (i) in the case of a marriage between a man and the mother of a former wife of his, after the death of both the former wife and the father of the former wife;
- (ii) in the case of a marriage between a man and the former wife of his son, after the death of both his son and the mother of his son;
- (iii) in the case of a marriage between a woman and the father of a former husband of hers, after the death of both the former husband and the mother of the former husband; or
- (iv) in the case of a marriage between a woman and a former

husband of her
 daughter, after the
 death of both her
 daughter and the
 father of her
 daughter.

PART II

Prohibited degrees of relationship

<u>For men</u>	<u>For women</u>
Mother	Father
Adoptive mother or former adoptive mother	Adoptive father or former adoptive father
Daughter	Son
Adoptive daughter or former adoptive daughter	Adoptive son or former adoptive son
Father's mother	Father's father
Mother's mother	Mother's father
Son's daughter	Son's son
Daughter's daughter	Daughter's son
Sister	Brother
Father's sister	Father's brother
Mother's sister	Mother's brother
Brother's daughter	Brother's son
Sister's daughter	Sister's son

PART III

Degrees of affinity referred to in
paragraphs 3 and 4 of Part I

<u>For men</u>	<u>For women</u>
Daughter of former wife	Son of former husband
Former wife of father	Former husband of mother
Former wife of father's father	Former husband of father's mother
Former wife of mother's father	Former husband of mother's mother
Daughter of son of former wife	Son of son of former husband
Daughter of daughter of former wife	Son of daughter of former husband

PART IV

Degrees of affinity referred to in
paragraphs 5 and 6 of Part I

<u>For men</u>	<u>For women</u>
Mother of former wife	Father of former husband
Former wife of son	Former husband of daughter".".