

Information paper on
25 October 2005

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

Amendments to Proposed Committee Stage Amendments

Introduction

Pursuant to the discussion at the Bills Committee meeting held on 4 October, we propose to amend Clauses 4, 13, 16, 17, 24, 27, 35, and to add new clauses 3A and 17A in our proposed Committee Stage Amendments (CSAs). Other than these amended clauses, other proposed CSAs remain the same as those set out in the information paper LC Paper No. CB(2) 2655/04-05(4). Members are requested to comment on the latest draft of the CSAs at **Annex**.

Purposes of amendments

2. The purposes of the amendments to the CSAs are explained below –
 - (a) New clause to add clause 3A – to introduce a new section 2A to clarify that a notice under section 5, 5A(4)(c), 5C(3), 5D(6)(a), 5E(7) or 5J(5) is not subsidiary legislation;
 - (b) Clause 4 – (paras c, d, t & u) to refine the drafting of the proposed sections 5D(1)(a) and 5H(2) in the English text to achieve consistency with the drafting of the proposed section 5D(3)(a) as amended;
 - (c) Clause 4 – (paras g, h, j & k) to add sections 5D(4A), 5D(4B), 5E(3A) and 5E(3B) to make it expressly clear

when the Registrar of Marriages (“the Registrar”) may cancel or suspend the appointment of a civil celebrant of marriages (“civil celebrant”), including the time allowed for the affected civil celebrant to make representation;

- (d) Clause 13 and new Schedule 5 – to refine the drafting of the proposed section 27(2) without changing the policy, e.g. to make it expressly clear that a marriage shall be null and void if at the time of its celebration any party is under 16 years of age; and to replace the expression “void” by “null and void” in paragraphs 4 and 6 in the new Schedule 5 in the English text to achieve consistency with the drafting of clause 13 and other paragraphs in Schedule 5;
- (e) Clause 16 – (para d) to add a reasonable defence provision for the proposed offence in section 31A(5);
- (f) Clause 17 – (para a) to revise the proposed section 33A by raising the penalty for the offence of providing false information to the Registrar to procure appointment or renewal of appointment as a civil celebrant or to avoid cancellation or suspension of appointment etc. to level 5 fine and 2-year imprisonment in order to maintain internal consistency with other penalty provisions in the proposed CSAs;
- (g) Clause 17 – (para b) to revise the proposed section 33B by raising the penalty for the offence of falsely holding out as a civil celebrant to level 5 fine and 2-year imprisonment in order to maintain internal consistency with other penalty provisions in the proposed CSAs;
- (h) New clause to add clause 17A – to introduce a new section 34A to specify that proceedings for an offence against the proposed sections 29, 30(a), 30(b), 32, 33, 33A(1), 33B, 39(3)(a) or 39(3)(b) may be brought within 6 months after the act or omission alleged to be

constituting the offence is discovered by or comes to the notice of the prosecutor;

- (i) Clause 24 – (para a) to refine paragraphs 1(a)(i) of the new Schedule 4 to the effect that a practicing certificate issued under section 6 of the Legal Practitioners Ordinance (Cap. 159) having a condition requiring the compliance with the Legal Practitioners (Risk Management Education) Rules (Cap. 159 sub.leg.z) will be considered as unconditional since all solicitors will be required by the Law Society of Hong Kong (“Law Society”) to undertake a mandatory risk management education course;
- (j) Clause 24 – (para b) to refine the drafting of paragraph 1(a)(ii) to spell out more expressly that relevant experience of an in-house solicitor will be counted towards the post-qualification experience required;
- (k) Clause 27 – to introduce consequential amendments; and
- (l) Clause 35 – to clarify that the Registrar shall produce only Part I of a notice of intended marriage (as amended in clause 21(2)) for inspection under section 7(4) of the Ordinance.

Proposed section 29 in Clause 50

3. The Bills Committee has requested us to consider whether a person should be guilty of an offence under the proposed section 29 when a written consent under section 14 in respect of the marriage of a party under 21 years of age had not been “produced” or when the written consent had not been “obtained”. After consideration, we prefer to stick with the present formulation in the proposed section 29 (i.e. failure to produce a written consent may constitute an offence) since it provides a more unequivocal indication to all civil celebrants as to what constitutes an offence. Besides, such a formulation is consistent with the drafting of the proposed section 14(1A) in clause 10 of the Bill which requires

that a written consent shall be “produced” before a certificate of the Registrar or a special licence may be issued or granted.

Security Bureau
22 October 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

New

The following is added -

"3A. Section added

The following is added -

**"2A. Certain notices are not
subsidiary legislation**

A notice under section 5, 5A(4)(c), 5C(3),
5D(6)(a), 5E(7) or 5J(5) 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(1)(a) by deleting "at".
- (d) In the proposed section 5D(1)(a)(i) and (ii), by adding "at" before "the time".

- (e) In the proposed section 5D(3)(a), by deleting "at".
- (f) In the proposed section 5D(3)(a)(i) and (ii), by adding "at" before "the time".
- (g) In the proposed section 5D(4), by deleting everything after ", the" and substituting "Registrar shall give the person a written notice of the intention and the reason for the proposed cancellation."
- (h) In the proposed section 5D, by adding -
 - "(4A) If the Registrar gives a notice to a person under subsection (4), the person may, within 14 days after the date of the notice or such longer period as the Registrar may allow, make representation to the Registrar in the manner specified in the notice.
 - (4B) The Registrar shall not cancel the appointment of a person until -
 - (a) the 14-day period or longer period (if any) referred to in subsection (4A) has expired and the person has not made any representation; or
 - (b) the person has made representation and the Registrar has considered the representation."
- (i) In the proposed section 5D(6)(a), by deleting "general".

(j) In the proposed section 5E(3), by deleting everything after ", the" and substituting -
"Registrar shall give the person a written notice of -

- (a) the intention;
- (b) the reason for the proposed suspension; and
- (c) the length of the proposed suspension period."

(k) In the proposed section 5E, by adding -

"(3A) If the Registrar gives a notice to a person under subsection (3), the person may, within 14 days after the date of the notice or such longer period as the Registrar may allow, make representation to the Registrar in the manner specified in the notice.

(3B) The Registrar shall not suspend the appointment of a person until -

- (a) the 14-day period or longer period (if any) referred to in subsection (3A) has expired and the person has not made any representation; or
- (b) the person has made representation and the Registrar has considered the representation."

(l) In the proposed section 5E(5)(a)(i), by deleting

"was" and substituting "is".

(m) In the proposed section 5E(5)(a)(ii), by adding "subsequently" after "is".

(n) In the proposed section 5E(5)(b)(i), by deleting "was" and substituting "is".

(o) In the proposed section 5E(5)(b)(ii), by adding "subsequently" after "is".

(p) In the proposed section 5E(6), by adding ", during the suspension period," after "shall not".

(q) In the proposed section 5E(7), by deleting "general".

(r) In the proposed section 5F, by deleting "The" and substituting "Without prejudice to the generality of section 27(3), the".

(s) 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."

(t) In the proposed section 5H(2), by deleting "at".

(u) In the proposed section 5H(2)(a) and (b), by adding

"at" before "the time".

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(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 provided 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),

and it is not -

(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) it is celebrated under a
false name; or

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

and both parties knowingly and

wilfully acquiesce in its
celebration in such circumstances;
or

- (b) if at the time of its celebration
any party is under 16 years of
age."."

- 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).
 - (d) In the proposed section 31A(5), by adding "without reasonable excuse" after "who".

- 17
- (a) In the proposed section 33A, by deleting "1 year" and substituting "2 years".
 - (b) In the proposed section 33B, by deleting "level 4" and substituting "level 5 and imprisonment for 2 years".

New By adding -

"17A. Section added

The following is added -

"34A. Time limit for prosecution

Notwithstanding section 26 of the
Magistrates Ordinance (Cap. 227), proceedings

for an offence against section 29, 30(a), 30(b), 32, 33, 33A(1), 33B, 39(3)(a) or 39(3)(b) may be brought within 6 months after the act or omission alleged to be constituting the offence is discovered by or comes to the notice of the prosecutor."."

- 21 (a) In subclause (2), in Part I 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 "可被我" and substituting "可被".

- 22(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 (a) In the proposed Schedule 4, in paragraph 1(a)(i),
by adding "and the Legal Practitioners (Risk
Management Education) Rules (Cap. 159 sub. leg. Z)"
before "; and".
- (b) 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 -
(A) certifying that he has practised as
a solicitor; or
(B) upon a statutory declaration by him
in such form as the Council of the
Law Society of Hong Kong may
determine certifying that he has
been employed while his name is on
the roll of solicitors within the
meaning of the Legal Practitioners
Ordinance (Cap. 159) to provide
legal service to the employer,

for a period or periods in aggregate of not less than 7 years; or".

26(2) By deleting -

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

27 (a) In subclause (1), by deleting "(zo)" and substituting "(zp)".

(b) In subclause (2), by deleting "(zp)" and substituting "(zq)".

(c) In subclause (3), by deleting "(zq)" and substituting "(zr)".

35 By deleting subclauses (3) and (4) and substituting -

"(3) Section 7(3) is amended by repealing "the notices filed in his office under this section and copies" and substituting "all notices of intended marriage filed in his office under this section and copies of Part I".

(4) Section 7(4) is amended by repealing "filed under this section, produce to such person for inspection a copy" and substituting "of intended marriage filed under this section, produce to such person for inspection a copy of Part I".".

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 clause 51(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 -

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

(b) By adding -

"(2A) Section 39(3) is amended by repealing everything after "an offence" and substituting "and shall be liable to a fine at level 5 and to imprisonment for 2 years."."

New By adding after clause 57 -

"57A. Saving

The following is added -

"45. Saving

The amendments made to section 27 and paragraph (c) of the proviso to section 39(1) by the Marriage (Introduction of Civil Celebrants of Marriages 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(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 1

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 2; or

(b) solemnized between a woman and any person specified in the second column of Part 2,

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 3; or

(b) solemnized between a woman and any person specified in the second column of Part 3,

shall be null and void.

4. A marriage referred to in paragraph 3 shall not be null and 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 4; or

(b) solemnized between a woman and any person specified in the second column of Part 4,

shall be null and void.

6. A marriage referred to in paragraph 5 shall not be null and 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 2

Prohibited degrees of relationship referred to in paragraph 2 of Part 1

For men	For women
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 3

Degrees of affinity referred to in paragraphs 3 and 4 of Part 1

For men	For women
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 4

Degrees of affinity referred to in
paragraphs 5 and 6 of Part 1

For men	For women
Mother of former wife	Father of former husband
Former wife of son	Former husband of daughter".".