

For discussion on
15 April 2005

Panel on Security of the Legislative Council

Appointment of Civil Celebrants of Marriages: Proposal to amend the Marriage Ordinance, Cap.181

Purpose

This paper briefs Members on a proposal to amend the Marriage Ordinance, Cap.181 (“the Ordinance”) to provide for the appointment of civil celebrants of marriages (“civil celebrants”) and to enable marriages to be celebrated before them.

Background

2. Celebration of marriages in Hong Kong is currently governed by the Ordinance, under which marriages can be celebrated at marriage registries by the Registrar of Marriages¹ or deputy registrars (“the Registrar”) between 9 a.m. and 7 p.m., or at licensed places of public worship by competent ministers between 7 a.m. and 7 p.m.. Apart from these arrangements, the Chief Executive may grant a special one-off licence to authorize the celebration by the Registrar or a competent minister of a marriage for a couple at a place and time other than those specified above. Such licences will normally be granted to marrying parties, for example persons who are imprisoned or hospitalised, who are unable to celebrate their marriages at marriage registries or licensed places of public worship.

3. Under existing legislation, any person who intends to get married has to give a notice of intended marriage (“notice”) to the Registrar who shall then exhibit a copy of the notice at his office. One of the marrying parties also has to make affidavit before the Registrar that there is no impediment of kindred or alliance or any other lawful hindrance to the marriage. The Registrar will then issue a certificate of the Registrar under section 9 of the

¹ The Director of Immigration has been appointed by the Chief Executive as the Registrar of Marriages.

Ordinance so that celebration of marriage before the Registrar or a competent minister can proceed.

Appointment of Civil Celebrants

4. There is increasing public demand for the Government to provide more flexible marriage solemnization services and to make use of private sector resources in providing such services. After an in-depth study, we propose to meet this demand by enabling the Registrar to appoint eligible persons as civil celebrants to accept notices, take affidavit of no impediment for marrying parties, celebrate marriages and witness the parties taking declaration before a marriage is celebrated. The restrictions on the time and place for celebrating marriages will also be lifted under this proposal. Solicitors and notaries public who meet specified criteria at **Annex** will provide the pool of candidates for appointment at the initial stage, as their legal knowledge and familiarity with the administration of oaths and taking of declarations will enable them to perform the duties of a civil celebrant competently. We will also set up a mechanism to deal with appeals against decisions of the Registrar to refuse, cancel or suspend the appointment.

5. We have considered, but concluded against, setting up an appointment system which involves open examination and the independent monitoring of the situation pertaining to each candidate to ensure that they are persons of proper standing to carry out the functions of a civil celebrant. Such an approach will be costly and require substantial manpower and financial resources from the Registrar, and is difficult to justify at this early stage when the exact demand for the new service remains uncertain. Our proposed approach, which takes advantage of the capabilities of the Law Society of Hong Kong and Hong Kong Society of Notaries in the screening of appropriate candidates as well as monitoring of service standards², represents a cost-effective manner of kickstarting the civil celebrant arrangement in the near future.

Legislative Proposal

6. Accordingly, we propose to amend the Ordinance to-

² We have consulted the two professional bodies which have both agreed in principle that the performance of their members when acting in the capacity of civil celebrants will be covered by the codes of practice for the two professions.

- (a) empower the Registrar to appoint a civil celebrant and to renew his appointment if he meets the specified eligibility criteria. He is also empowered to refuse, cancel or suspend the appointment if, among other things, a celebrant ceases to meet the specified eligibility criteria, contravenes the code of practice issued by the Registrar or is convicted of an offence under the Ordinance;
- (b) charge all applicants an application fee and successful applicants an appointment fee;
- (c) set up a Civil Celebrant of Marriages Appointment Appeal Board (“the Appeal Board”) to consider, hear and determine appeals in relation to refusal, cancellation and suspension of appointment;
- (d) empower the Secretary for Security to make regulations to provide for the operation of the Appeal Board;
- (e) set out the duty and obligation of a civil celebrant³; and
- (f) provide for relevant penalty provisions to ensure that a civil celebrant properly discharges the functions of his office which may have serious implications for the marrying parties.⁴

Consultation

7. In 2003, the Immigration Department conducted a survey at four marriage registries to gauge the opinions of the marrying parties on the proposal for appointing civil celebrants. The response was generally positive. In the course of our study, we also consulted the Law Society of Hong Kong

³ For example, a civil celebrant may accept, and shall transmit to the Registrar, the notice of intended marriage from the marrying parties and the relevant written consent if one of the marrying parties is of or over 16 and under 21 years old.

⁴ For example, a civil celebrant will be guilty of an offence if he fails to provide such information as reasonably required by the Registrar or to notify the Registrar that he ceases to meet the specified eligibility criteria. In addition, any person falsely holding out as a civil celebrant commits an offence.

and the Hong Kong Society of Notaries, which indicated support to our proposal.

Legislative timetable

8. We aim to introduce an amendment bill into the Legislative Council within the current legislative session.

Advice sought

9. Members are invited to provide their views on the legislative proposal set out in this paper.

Security Bureau
8 April 2005

ELIGIBILITY CRITERIA FOR CIVIL CELEBRANTS

1. Being –
 - (a) a solicitor holding a current practising certificate and having not less than 7 years of post qualification experience; or
 - (b) a notary public holding a relevant practising certificate.

2. Has not been the subject of disciplinary action by the relevant professional bodies during the 3 years immediately preceding the date of the application for appointment as civil celebrant or renewal of appointment as civil celebrant.

3. Having completed such training as the Registrar may specify.