

LEGISLATIVE COUNCIL BRIEF

Marriage Ordinance
(Chapter 181)
Marriage Reform Ordinance
(Chapter 178)

MARRIAGE (CERTIFICATE OF ABSENCE OF MARRIAGE RECORD) BILL 1998

INTRODUCTION

At the meeting of the Executive Council on 20 October 1998, the Council ADVISED and the Acting Chief Executive ORDERED that the Marriage (Certificate of Absence of Marriage Record) Bill 1998 at the Annex should be introduced into the Legislative Council.

BACKGROUND AND ARGUMENT

2. Under section 26 of the Marriage Ordinance and section 13 of the Marriage Reform Ordinance, the Registrar of Marriages may issue a certificate to the effect that there is no record of a marriage between certain named persons having taken place or having been registered. The certificate is known as a “Certificate of Absence of Marriage Record” and is required by some jurisdictions to establish that Hong Kong residents are free to marry their nationals. The certificate states that there is no record of a marriage having taken place between the person named in the certificate, i.e. the Hong Kong resident and any other person.

3. A review completed by the Immigration Department this year revealed that, while the wording of the certificate was in line with the Chinese texts of section 26 of the Marriage Ordinance and section 13 of the Marriage Reform Ordinance, it was inconsistent with the original English texts of these sections which provide that the certificate may be issued to the effect that “there is no record of a marriage between certain persons named”. This has resulted in the validity of the wording of the certificate being questioned.

4. To remove this anomaly and any doubt arising from it, we consider that it is necessary to amend the English texts of section 26 of the Marriage Ordinance and section 13 of the Marriage Reform Ordinance. To put beyond doubt the validity of certificates already issued, we propose to amend the two Ordinances to provide that certificates issued prior to enactment of the amendment bill are deemed to be valid.

THE BILL

5. The major provisions of the Marriage (Certificate of Absence of Marriage Record) Bill 1998 are as follows-

- (a) Clause 2 amends section 13 of the Marriage Reform Ordinance to bring the wording of the enabling provision in line with the wording now adopted in the certificates and to deem certificates issued before this amendment valid.
- (b) Clause 3 amends section 26 of the Marriage Ordinance to bring the wording of the enabling provision in line with the wording now adopted in the certificates and to deem certificates issued before this amendment valid.

PUBLIC CONSULTATION

6. Public consultation is considered not necessary as the proposed amendments will not involve any change in the issue of certificates.

HUMAN RIGHTS IMPLICATIONS

7. The Department of Justice advises that the proposed Bill has no human rights implications.

FINANCIAL AND STAFFING IMPLICATIONS

8. The proposed amendments will not have any financial and staffing implications.

LEGISLATIVE TIMETABLE

9. The legislative timetable will be

Publication in the Gazette	30 October 1998
First Reading and commencement of Second Reading debate	11 November 1998
Resumption of Second Reading debate, committee stage and Third Reading	to be notified

ENQUIRIES

10. For any enquiry on the Marriage (Certificate of Absence of Marriage Record) Bill 1998, please contact Miss Cathy Chu, Principal Assistant Secretary (Security) at 2810 2330.

Security Bureau
27 October 1998

A BILL

To

Amend the Marriage Reform Ordinance and the Marriage Ordinance.

Enacted by the Legislative Council.

1. Short title

This Ordinance may be cited as the Marriage (Certificate of Absence of Marriage Record) Ordinance 1998.

Marriage Reform Ordinance

2. Searches may be made and certified copies granted

Section 13 of the Marriage Reform Ordinance (Cap. 178) is amended -

- (a) by renumbering it as section 13(1);
- (b) in subsection (1) by repealing “a marriage between certain named persons” and substituting “any marriage of the person named”;
- (c) by adding -

“(2)A certificate issued or purporting to be issued under this section before the commencement of the Marriage (Certificate of Absence of Marriage Record) Ordinance 1998 (of 1998) shall be deemed to have been issued as if that Ordinance had been in force at the time of its issue.”.

Marriage Ordinance

3. Searches may be made, and certified copies granted

Section 26 of the Marriage Ordinance (Cap. 181) is amended -

- (a) by renumbering it as section 26(1);
- (b) in subsection (1) by repealing “a marriage between certain persons” and substituting “any marriage of the person”;
- (c) by adding -

“(2)A certificate issued or purporting to be issued under this section before the commencement of the Marriage (Certificate of Absence of Marriage Record) Ordinance 1998 (of 1998) shall be deemed to have been issued as if that Ordinance had been in force at the time of its issue.”.

Explanatory Memorandum

This Bill amends section 13 of the Marriage Reform Ordinance (Cap. 178) and section 26 of the Marriage Ordinance (Cap. 181) to put beyond doubt the validity of the practice of the Registrar of Marriages issuing certificates to the effect that there is no record of any marriage of a person named in the certificate.