

**立法會**  
**Legislative Council**

LC Paper No. CB(2)1712/13-14  
(These minutes have been seen  
by the Administration)

Ref : CB2/BC/2/13

**Bills Committee on  
Marriage (Amendment) Bill 2014**

**Minutes of the first meeting  
held on Tuesday, 1 April 2014, at 8:30 am  
in Conference Room 3 of the Legislative Council Complex**

- Members present** :
- Hon IP Kwok-him, GBS, JP (Chairman)
  - Hon Dennis KWOK (Deputy Chairman)
  - Hon James TO Kun-sun
  - Hon Emily LAU Wai-hing, JP
  - Hon Tommy CHEUNG Yu-yan, SBS, JP
  - Hon Cyd HO Sau-lan
  - Hon Starry LEE Wai-king, JP
  - Hon CHAN Kin-por, BBS, JP
  - Dr Hon Priscilla LEUNG Mei-fun, SBS, JP
  - Hon Mrs Regina IP LAU Suk-ye, GBS, JP
  - Hon Paul TSE Wai-chun, JP
  - Hon LEUNG Kwok-hung
  - Hon YIU Si-wing
  - Hon Gary FAN Kwok-wai
  - Hon MA Fung-kwok, SBS, JP
  - Hon Charles Peter MOK
  - Hon CHAN Chi-chuen
  - Hon KWOK Wai-keung
  - Dr Hon Fernando CHEUNG Chiu-hung
  - Hon Martin LIAO Cheung-kong, JP
  - Hon TANG Ka-piu
  - Ir Dr Hon LO Wai-kwok, BBS, MH, JP
  - Hon Christopher CHUNG Shu-kun, BBS, MH, JP
  - Hon Tony TSE Wai-chuen
- Members absent** :
- Hon Ronny TONG Ka-wah, SC
  - Dr Hon LEUNG Ka-lau
  - Dr Hon Helena WONG Pik-wan

**Public Officers** : Item II  
**attending**

Mr LAI Tung-kwok, SBS, IDSM, JP  
Secretary for Security

Ms Maggie WONG Siu-chu, JP  
Deputy Secretary for Security 3

Mr Billy WOO Tak-ying  
Principal Assistant Secretary for Security D

Mr David CHIU Wai-kai, IDSM  
Assistant Director (Personal Documentation)  
Immigration Department

Mr Alan CHONG Ka-ning  
Senior Government Counsel  
Department of Justice

**Clerk in** : Ms Amy YU  
**attendance** Chief Council Secretary (2) 6

**Staff in** : Mr Stephen LAM  
**attendance** Assistant Legal Adviser 11

Miss Josephine SO  
Senior Council Secretary (2) 6

Miss Meisy KWOK  
Legislative Assistant (2) 6

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**I. Election of Chairman and Deputy Chairman**

Election of Chairman

Ms Emily LAU, the member who had the highest precedence in Council among members of the Bills Committee present, presided over the election of the Chairman. She invited nominations for the chairmanship of the Bills Committee.

2. Mr Dennis KWOK was nominated by Ms Cyd HO and the nomination was seconded by Mr Charles MOK. Mr Dennis KWOK accepted the nomination.

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3. Mr IP Kwok-him was nominated by Dr Priscilla LEUNG and the nomination was seconded by Mr CHAN Kin-por. Mr IP Kwok-him accepted the nomination. There was no other nomination.

4. Ms Cyd HO proposed that each candidate should present his election platform. As there were divided views among members, a vote was taken on Ms HO's proposal. Six members voted in favour of the proposal and 13 members voted against it, and three members abstained from voting. Ms Emily LAU declared that the proposal was negated.

5. Ms Emily LAU then proceeded with the election and announced that voting be conducted by secret ballot. After all the members had cast their votes, Ms LAU invited Ms Cyd HO and Dr Priscilla LEUNG, who had nominated the two candidates, to monitor the counting of votes.

6. Ms Emily LAU announced that eight and 15 members voted for Mr Dennis KWOK and Mr IP Kwok-him respectively. Ms LAU declared Mr IP Kwok-him elected as the Chairman of the Bills Committee. Mr IP Kwok-him then took the chair.

Election of Deputy Chairman

7. The Chairman called for nominations for the deputy chairmanship of the Bills Committee. Mr Dennis KWOK was nominated by Ms Emily LAU and the nomination was seconded by Ms Cyd HO. Mr Dennis KWOK accepted the nomination. There being no other nomination, Mr Dennis KWOK was elected the Deputy Chairman of the Bills Committee.

**II. Meeting with the Administration**

(LC Paper Nos. CB(3)444/13-14, LS34/13-14, CB(2)1203/13-14(02)-(07) and File Ref: SB CR 1/3231/13)

8. The Bills Committee deliberated (index of proceedings attached at **Annex**).

Follow-up actions arising from the discussion

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9. The Bills Committee requested the Administration to provide the following information/advise in writing -

- (a) the administrative guidelines for considering applications to change the sex entry on a Hong Kong Identity Card;

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- (b) the number of persons in Hong Kong who had received relevant treatment for gender identity disorder (such as hormonal treatment and going through a real-life experience living in the opposite sex) in public or private hospitals in Hong Kong in past years; and among such persons, the respective numbers of those who had and had not subsequently gone through full sex re-assignment surgery ("SRS"), and in the case of the latter, the reasons for non-completion of the process;
- (c) the number of transsexual persons who received SRS outside Hong Kong;
- (d) whether the Administration had conducted any consultation with any parties or professional bodies in drafting the Marriage (Amendment) Bill 2014 ("the Bill") and if yes, the parties consulted and the details; and
- (e) whether the Bill as presently drafted, which required that a person had to have gone through a full SRS before his or her sex could be re-assigned for the purpose of marriage, would violate the Hong Kong Bill of Rights (for example Article 14) or international human rights laws including the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (for example Article 16), the International Covenant on Civil and Political Rights (for example Article 7), and the European Convention on Human Rights (for example Articles 3 and 8).

10. Noting that the United Kingdom ("UK") Government had set up an Interdepartmental Working Group on Transsexual People in 1999 to review the problems facing transsexuals and that the Gender Recognition Act was passed in UK in 2004 to make provision for and in connection with change of gender, the Bills Committee requested the Administration to provide for members' reference relevant information on UK's experience in addressing problems facing transsexuals in relevant areas of law and in dealing with issues relating to gender recognition, including areas studied/deliberated and issues of contention.

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### **III. Any other business**

#### Invitation for public views

11. The Bills Committee agreed to receive public views on the Bill in the morning of Wednesday, 23 April 2014 and depending on the number of

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deputations attending, to schedule another meeting, if necessary, in the morning of Tuesday, 29 April 2014 for interested parties to present their views.

12. Members discussed whether a meeting of the Bills Committee should be scheduled for Monday, 14 April 2014, at 10:45 am to continue discussion on the Bill before receiving public views. The Chairman instructed the Clerk to seek members' views after the meeting on whether such a meeting should be scheduled.

*(Post-meeting note: Members' views were sought vide LC Paper No. CB(2)1234/13-14 dated 2 April 2014. As the majority of members did not support scheduling a meeting on 14 April 2014 at 10:45 pm, the Chairman had decided that the meeting would not be held.)*

13. There being no other business, the meeting ended at 10:37 am.

Council Business Division 2  
Legislative Council Secretariat  
6 June 2014

**Proceedings of the first meeting of the  
Bills Committee on Marriage (Amendment) Bill 2014  
on Tuesday, 1 April 2014, at 8:30 am  
in Conference Room 3 of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action required
<i>Agenda Item I - Election of Chairman and Deputy Chairman</i>			
000049 – 000130	Ms Emily LAU	Opening remarks; tabling of the membership list of the Bills Committee	
000131 – 002006	Ms Emily LAU Ms Cyd HO Mr Charles MOK Mr Dennis KWOK Dr Priscilla LEUNG Mr CHAN Kin-por Mr IP Kwok-him Clerk Mr Paul TSE ALA Mr Martin LIAO Dr Priscilla LEUNG Mr LEUNG Kwok-hung	Nominations for the chairmanship of the Bills Committee  Ms Cyd HO's proposal for presentation of platform by the candidates nominated for the chairmanship  Election of Chairman	
002007 – 002110	Chairman Ms Emily LAU Ms Cyd HO Mr Dennis KWOK	Election of Deputy Chairman	
<i>Agenda Item II - Meeting with the Administration</i>			
002111 – 003502	Chairman Ms Cyd HO Admin Ms Emily LAU	Briefing by the Administration on the Marriage (Amendment) Bill 2014 ("the Bill") [LC Paper No. CB(2)1221/13-14(01)]	
003503 – 003841	Chairman Deputy Chairman ALA Mr CHAN Chi-chuen Dr Priscilla LEUNG	The Deputy Chairman enquired about the legal consequences in the event that the Bill was not passed by 16 July 2014 (i.e. the expiry date of the 12-month suspension period of the Declarations granted in the Court of Final Appeal ("CFA")'s order in the case of <i>W v the Registrar of Marriages (FACV 4/2012)</i> ("the W case").  The legal adviser to the Bills Committee advised that –  (a) in the order, CFA had granted both parties the liberty to apply in relation to the period of suspension. However, the Court had also made it clear that it must not be assumed that any application for an extension would be viewed favourably in the absence of compelling reasons; and  (b) even if the Bill was not passed by 16 July 2014, the Appellant would still be entitled to marry in her post-operative re-assigned sex after the expiry of the 12-month suspension period.	

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003842 – 004737	Chairman Mr MA Fung-kwok Admin	<p>Mr MA Fung-kwok made the following enquiries -</p> <p>(a) whether sex re-assignment surgeries ("SRS") performed outside Hong Kong would be recognized for the purpose of ascertaining a person's gender in marriage registration, and if so, whether the surgical requirements were the same as those specified in the proposed new section 40A(2); and how the Administration would verify the medical proof with relevant overseas authorities; and</p> <p>(b) the position of transsexual persons who, due to psychological or other special reasons, could not receive full or any SRS.</p> <p>The Administration responded that -</p> <p>(a) while a person could receive SRS in Hong Kong or overseas, he/she must produce medical proof certifying that the surgeries he/she had received met the requirements stipulated in the proposed new section 40A(2), so as to be qualified as a person in the re-assigned sex for the purpose of marriage;</p> <p>(b) to verify the authenticity of a medical proof on SRS undergone outside Hong Kong, the Registrar of Marriages could request the party concerned to, among others, have the medical proof certified by the relevant embassy in Hong Kong; and</p> <p>(c) a person who had not received any or full SRS as defined under the proposed new section 40A(2), even if he/she had been legally recognized in his/her acquired gender in places outside Hong Kong, would not meet the requirements under the Bill for a transsexual person to qualify as a person in the re-assigned sex for the purpose of marriage. A high level inter-departmental working group on gender recognition ("IWG"), chaired by the Secretary for Justice, had been formed to conduct a comprehensive review of the legal issues concerning the rights of transsexual persons in Hong Kong.</p>	
004738 – 005715	Chairman Mr CHAN Chi-chuen Admin	<p>Mr CHAN Chi-chuen expressed disappointment that the Administration, in introducing the proposed amendments to the Marriage Ordinance (Cap. 181) ("MO"), had merely adopted a minimalist approach in implementing the CFA's order in the W case, instead of introducing a gender recognition ordinance to thoroughly address the various issues associated with gender recognition which carried wide-ranging policy implications.</p> <p>Mr CHAN also enquired about the rationale for adopting the full SRS requirement, and queried whether</p>	

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		<p>such requirement would amount to a violation of international human rights laws including the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.</p> <p>The Administration responded that -</p> <p>(a) the objective of the Bill was to give effect to the CFA's order handed down in the W case, which concerned the right of a person who had received full SRS to be treated as being of the sex to which he/she was re-assigned after the surgery for the purpose of marriage registration under MO; and</p> <p>(b) as regards the comments made by CFA in its judgment on problems facing transsexuals in other areas of law and treatment of persons who had not received any or full SRS in these areas, they involved complicated legal, medical and social issues which called for comprehensive study and wide public consultation. IWG was established to consider legislation and incidental administrative measures that might be required to protect the rights of transsexual persons and to make such recommendations for reform as might be appropriate.</p>	
005716 – 010136	Chairman Deputy Chairman Admin	<p>The Deputy Chairman considered that the Bill should be considered from a holistic perspective, taking into account the direction of IWG's work. He suggested that IWG should be invited to meet with the Bills Committee.</p> <p>Referring to the long title of the Bill, the Administration reiterated that the purpose of the Bill was to implement the CFA's order in the W case and that gender recognition fell outside the scope of the Bill.</p>	
010137 – 010840	Chairman Ms Emily LAU Admin	<p>Ms Emily LAU asked whether the Administration had consulted the Equal Opportunities Commission ("EOC") in drafting the Bill.</p> <p>The Administration replied in the negative. The Administration explained that the purpose of the Bill was only to amend the MO to bring it up to date with what had been decided by CFA, while the wider review on gender recognition would be undertaken by IWG, which would conduct consultations and engage the assistance of relevant experts as and when appropriate.</p> <p>In response to Ms LAU, the Administration advised that the United Kingdom ('UK') Government had set up an Interdepartmental Working Group on Transsexual People in 1999 to review the problems facing</p>	



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		<p>transsexuals and that the Gender Recognition Act was passed in 2004 in UK to make provision for and in connection with gender change. The whole process had taken more than six years to complete.</p> <p>Ms Emily LAU requested the Administration to provide for members' reference relevant information on UK's experience in addressing problems facing transsexuals in relevant areas of law and in dealing with issues relating to gender recognition, including areas studied/deliberated and issues of contention.</p>	<p><b>Admin</b></p>
010841 – 011552	Chairman Dr Priscilla LEUNG	<p>Dr Priscilla LEUNG expressed the following views –</p> <p>(a) CFA had made it clear that nothing in its judgment on the W case was intended to address the question of same sex marriage. The judgment did not change the existing law on the institution of marriage in Hong Kong, which was based on the monogamous union of one man and one woman;</p> <p>(b) the scope of CFA's order concerned only transsexual persons in W's situation who had gone through full SRS;</p> <p>(c) the various issues relating to gender recognition, including whether or not legislation modeled on the Gender Recognition Act 2004 of UK was suitable for Hong Kong, should be carefully considered by the legislature and the society at large, having regard to prevailing social values and circumstances in Hong Kong; and</p> <p>(d) she opposed broadening the scope of the Bill to the effect that transsexual persons who had not received full or any SRS were qualified as persons in the re-assigned sex for the purpose of marriage.</p>	
011553 – 012447	Chairman Mr Paul TSE Admin	<p>Noting that the criteria for completion of SRS were set out in the administrative guidelines for considering applications to change the sex entry on a Hong Kong Identity Card ('HKIC'), Mr Paul TSE sought clarification whether the definition of full SRS could be effected by way of amendments to the administrative guidelines.</p> <p>The Administration advised that if the Bill was enacted, the definition of full SRS, for the purpose of marriage registration, would be that as stipulated in the proposed new section 40A(2). At the request of Mr TSE, the Administration undertook to provide the administrative guidelines for members' reference.</p>	<p><b>Admin</b></p>

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		<p>Mr TSE enquired about the impact of a legally recognized gender change on an existing marriage and whether the gender change would provide a ground for annulment of the marriage.</p>	
<p>012448 – 013408</p>	<p>Chairman Ms Cyd HO Admin</p>	<p>Ms Cyd HO expressed concern that under the legislative proposals, transsexual persons had to endure great physical pain in undergoing full SRS before they were eligible to marry in their re-assigned sex.</p> <p>Ms HO enquired whether the Administration had conducted any consultation with any parties or professional bodies (such as human rights organizations and the medical profession) in drafting the Bill and if so, the parties consulted and the details.</p> <p>Ms HO also sought information on -</p> <p>(a) the number of persons in Hong Kong who had received relevant treatment for gender identity disorder (such as hormonal treatment and going through a real-life experience living in the opposite sex) in public or private hospitals in Hong Kong in the past years; and among such persons, the respective numbers of those who had and had not subsequently gone through full SRS, and in the case of the latter, the reasons for non-completion of the process; and</p> <p>(b) the number of transsexual persons who received SRS outside Hong Kong.</p> <p>In response to Ms HO's enquiry on the reasons for the long lead time taken by the Administration to introduce the Bill to LegCo, the Administration advised that given the complexity of the matter, longer time was needed to study the issues involved before the Administration could come to a decision on the way forward. The Administration had briefed the Panel on Security in January 2014 on its follow-up actions to the CFA's order in the W case before proceeding to the drafting of the Bill, which was submitted to LegCo on 21 March 2014. In parallel, IWG was set up in January 2014 to conduct an in-depth study on gender recognition.</p>	<p><b>Admin</b></p> <p><b>Admin</b></p>
<p>013409 – 014139</p>	<p>Chairman Mr TANG Ka-piu Admin</p>	<p>Referring to the comments made by the Chairman of EOC, Mr TANG Ka-piu expressed concern whether the full SRS requirement proposed in the Bill was inhumane and would add to the sufferings of transsexual persons, as they were required to suffer excruciating physical pain in undergoing SRS before they could be granted the right to marry. He also sought information on whether any countries which had similar SRS requirement in the past had abolished it.</p>	

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		<p>The Administration responded that –</p> <p>(a) the purpose of the Bill was to implement the CFA's order made in the W case. The Bill, if enacted, would enable transsexual persons who had completed full SRS to marry in his/her post-operative re-assigned sex; and</p> <p>(b) CFA's comments that consideration be given to enacting legislation to deal with various issues relating to gender recognition would be followed up by IWG. Drawing reference to the experience of European countries such as UK, the degree of social acceptance of transsexualism was a principal factor in considering the need for a gender recognition ordinance and it was important that the society must first have a thorough discussion on the complicated legal, medical and social issues involved.</p>	
014140 – 014939	Chairman Mr Christopher CHUNG Admin	<p>Mr Christopher CHUNG sought clarification on the meaning of the phrase "in the absence of evidence to the contrary" in the proposed new section 40B(1), which provided that the sex of any party to a marriage as stated on a person's identification document at the time of the person's marriage should, in the absence of evidence to the contrary, be presumed as the sex of that party.</p> <p>The Administration advised that the personal identification document of a person would be prima facie evidence of the sex of the person at the time of marriage registration, unless there were reasonable grounds for doubt. If in doubt (e.g. the record of the Immigration Department indicated that the person was of a different sex), the Registrar of Marriages would request the person concerned to provide relevant medical proof showing that he/she had undergone full SRS.</p>	
014940 – 020030	Chairman Dr Fernando CHEUNG Admin	<p>Dr Fernando CHEUNG sought clarification whether the Bill as presently drafted, which required that a person had to have gone through a full SRS before his/her sex could be re-assigned for the purpose of marriage, would violate the Hong Kong Bill of Rights or international human rights laws, including the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the International Covenant on Civil and Political Rights, and the European Convention on Human Rights.</p> <p>Dr CHEUNG was concerned how the Administration would deal with the various issues concerning transsexual persons who had not received full or any SRS, and expressed support for meeting with IWG. He</p>	<b>Admin</b>

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		<p>was also concerned whether the Bill might be heading in the wrong direction if issues concerning gender recognition were not considered in a holistic manner.</p> <p>The Administration reiterated that –</p> <p>(a) the Bill was intended to implement what had been conclusively decided by CFA in its order made in the W case in respect of the full SRS requirement, so as to ensure clarity in statute law; and</p> <p>(b) as regards treatment of transsexuals who had not received full or any SRS, the question was, among other issues relating to gender recognition, left open in the CFA judgment. Given that the subject of gender recognition involved complicated legal, medical and social issues and carried wide-ranging policy implications, the Administration considered it more appropriate and prudent to consider the matter outside the current legislative exercise. IWG would conduct a detailed study in this regard.</p>	
<i>Agenda Item III - Any other business</i>			
020031 – 020823	Chairman Ms Emily LAU Mr CHAN Chi-chuen Dr Priscilla LEUNG Ms Cyd HO Mr Paul TSE	Invitation for public views on the Bill  Scheduling of meetings	