

立法會
Legislative Council

LC Paper No. CB(2)2334/13-14
(These minutes have been seen
by the Administration)

Ref : CB2/BC/2/13

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

**Minutes of the eighth meeting
held on Monday, 16 June 2014, at 4:30 pm
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 Ronny TONG Ka-wah, SC
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 Paul TSE Wai-chun, JP
Hon YIU Si-wing
Hon MA Fung-kwok, SBS, JP
Hon Charles Peter MOK
Hon CHAN Chi-chuen
Dr Hon Fernando CHEUNG Chiu-hung
Hon Martin LIAO Cheung-kong, JP
Ir Dr Hon LO Wai-kwok, BBS, MH, JP
Hon Tony TSE Wai-chuen

Members absent : Dr Hon LEUNG Ka-lau
Hon Mrs Regina IP LAU Suk-ye, GBS, JP
Hon LEUNG Kwok-hung
Hon Gary FAN Kwok-wai
Hon KWOK Wai-keung
Dr Hon Helena WONG Pik-wan
Hon TANG Ka-piu
Hon Christopher CHUNG Shu-kun, BBS, MH, JP

**Public Officers : Item I
attending**

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

Staff in attendance : Mr Stephen LAM
Senior Assistant Legal Adviser 2

Miss Josephine SO
Senior Council Secretary (2) 6

Miss LEE Wai-yan
Clerical Assistant (2) 6

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I. Meeting with the Administration

(LC Paper Nos. CB(2)1803/13-14(01)&(02), CB(2)1811/13-14(01), CB(3)444/13-14, CB(2)1203/13-14(02)-(06), CB(2)1590/13-14(03), CB(2)1684/13-14(01), CB(2)1692/13-14(02) and CB(2)1708/13-14(01))

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

2. The Bills Committee noted the Administration's response (LC Paper No. CB(2)1803/13-14(02)) to issues raised by members at the meeting on 10 June 2014 and in Mr Tommy CHEUNG's letter dated 13 June 2014 (LC Paper No. CB(2)1811/13-14(01)).

Follow-up actions arising from the discussion

3. The Bills Committee noted that under the Marriage Ordinance (Cap. 181) ("MO"), marrying parties (regardless of nationality and residency) who wished to solemnize a marriage in Hong Kong would have to go through

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Admin

a number of procedures, including giving a Notice of Intended Marriage to the Registrar of Marriages and making an affidavit under section 12 of MO to affirm, among others, that there was no lawful hindrance to the marriage. The Bills Committee also noted that the Administration intended to amend the affidavit to specify the legal requirement under MO that every marriage must be the union of one man and one woman, and to set out that for persons who had received full sex re-assignment surgeries, they were to be treated as being of the sex to which they were re-assigned after the surgery, so as to make it clear to the marrying parties the need to meet such legal requirements at the point of marriage registration. The Administration was requested to provide, in writing, more detailed information on the procedures for marriage registration including the making of affidavit, as well as the Administration's proposed amendments to be made to the affidavit.

Clause-by-clause examination of the Bill

4. The Bills Committee started clause-by-clause examination of the Bill.
5. Members noted the two sets of draft Committee stage amendments ("CSAs") to the Bill provided by Ms Cyd HO, which were tabled at the meeting.

(Post-meeting note: The draft CSAs provided by Ms Cyd HO were issued to members vide LC Paper No. CB(2)1824/13-14(01) on 16 June 2014).

II. Any other business

Date of next meeting

6. The Chairman reminded members that the next meeting would be held on Tuesday, 17 June 2014, at 10:45 am.
7. There being no other business, the meeting ended at 6:31 pm.

Council Business Division 2
Legislative Council Secretariat
26 September 2014

**Proceedings of the eighth meeting of the
Bills Committee on Marriage (Amendment) Bill 2014
on Monday, 16 June 2014, at 4:30 pm
in Conference Room 3 of the Legislative Council Complex**

| Time marker | Speaker | Subject(s) | Action required |
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| <i>Agenda Item I - Meeting with the Administration</i> | | | |
| 000551 – 000850 | Chairman | Opening remarks | |
| 000851 – 001429 | Chairman Mr Tommy CHEUNG Mr YIU Si-wing Ms Emily LAU Admin | <p>Proposed legislative timetable, date of reporting to the House Committee ("HC") and deadline for giving notice of Committee stage amendments ("CSAs") to the Marriage (Amendment) Bill 2014 ("the Bill").</p> <p>Mr Tommy CHEUNG indicated that he did not support the Bill. He also indicated objection to the resumption of the Second Reading debate on the Bill at the Council meeting of 9 July 2014 and his intention to propose CSAs to the Bill.</p> <p>Mr YIU Si-wing expressed the view that the Bill which involved straightforward proposals should be dealt with in the current legislative session.</p> | |
| 001430 – 001910 | Chairman Admin | Briefing by the Administration on its response (LC Paper No. CB(2)1803/13-14(02)) to issues raised at the meeting on 10 June 2014 and in Mr Tommy CHEUNG's letter dated 13 June 2014. | |
| 001911 – 002435 | Chairman Mr CHAN Chi-chuen Admin | <p>Noting that the Administration had stressed that the purpose of the Bill was to implement the Court of Final Appeal ("CFA")'s Order made in the case of <i>W v the Registrar of Marriages (FACV 4/2012)</i> ("the W case"), which involved sex re-assignment from male to female, Mr CHAN Chi-chuen enquired about the justification for introducing the proposed new section 40A(2)(b) relating to sex re-assignment from female to male, which appeared to be outside the terms of CFA's Order.</p> <p>Referring to paragraphs 125 and 210 of CFA's judgment, the Administration advised that the main object of the Bill was to amend the Marriage Ordinance (Cap. 181) ("MO") to implement the declaration made by CFA to clearly reflect CFA's judgment that a transsexual person who had been issued with a certificate that his or her gender had been changed on the basis that the original genital organs had been removed and some form of the genital organs of the opposite sex had been constructed ought to qualify as a person entitled to marry in his or her acquired gender. It was considered necessary and appropriate for the Bill to also cover the situation of the female-to-male transsexual person, following the principles laid down in the W case.</p> | |

| Time marker | Speaker | Subject(s) | Action required |
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| 002436 – 002950 | Chairman Mr YIU Si-wing Admin | Mr YIU Si-wing's enquiry and the Administration's response on the legal implications of the CFA's Order made in the W case in the event that the scrutiny of the Bill could not be completed before 16 July 2014. | |
| 002951 – 004011 | Chairman Mr Tommy CHEUNG Ms Starry LEE Admin | <p>Mr Tommy CHEUNG and Ms Starry LEE considered that the Administration should address the legal concern raised by some religious bodies that, upon passage of the Bill, if a minister refused to celebrate a marriage when the minister reasonably believed that one of the parties to the marriage was a post-operative transsexual, such act might be considered to be discriminatory under the Disability Discrimination Ordinance (Cap. 487) ("DDO").</p> <p>Ms Starry LEE pointed out the need to address other legal issues relating to the rights of transsexual persons (such as right under the small house policy) in a holistic manner.</p> | |
| 004012 – 004642 | Chairman Mr Paul TSE Admin | <p>Mr Paul TSE declared that he was a board member of the Equal Opportunities Commission. He considered it necessary for the Administration to make it clear whether post-operative transsexuals fell under the definition of disability under DDO.</p> <p>Mr Paul TSE reiterated his concern that the proposed new section 40A(1) as currently worded might have the effect of limiting the right of transsexual persons to marry in their preferred sex to only those who had completed full sex re-assignment surgery ("SRS"). He queried the need to include the second part of the proposed new section 40A(1), which read "..... , and the references to man and woman in section 40(2), and the references to male and female in section 20(1)(d) of the Matrimonial Causes Ordinance (Cap. 179) ("MCO") are construed accordingly".</p> <p>The Administration responded that given that section 20(1)(d) of MCO and section 40 of MO had been conclusively declared by CFA as incompatible with Article 37 of the Basic Law and Article 19(2) of the Hong Kong Bill of Rights, the Administration had the obligation to state clearly the meaning of man and woman in these provisions, so as to align the statute law with CFA's judgment.</p> | |
| 004643 – 005936 | Chairman Mr James TO Admin Mr CHAN Chi-chuen | <p>In response to Mr James TO, the Administration further explained its views on whether religious organizations' refusal to celebrate marriages of post-operative transsexuals might be considered to be discriminatory act under the Sex Discrimination Ordinance (Cap. 480) and DDO, as set out in paragraphs 6 to 8 of its paper ((LC Paper No. CB(2)1803/13-14(02)).</p> <p>Mr CHAN Chi-chuen enquired whether a transsexual person who had changed his/her sex entry in his/her Hong Kong Identity Card after undergoing SRS was under any</p> | |

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| | | <p>legal obligation under the existing law to disclose his/her previous gender.</p> <p>The Administration responded that it was not aware of any existing legislation governing the position of a transsexual person in matters concerning disclosure of his/her previous gender.</p> | |
| 005937 – 011222 | Chairman Mr Paul TSE Admin Mr Tommy CHEUNG | <p>Mr Paul TSE asked whether the Administration would consider drawing reference to the United Kingdom's Civil Partnership Act to include in the Bill an exemption provision to the effect that religious bodies would not be obliged to celebrate marriages for post-operative transsexuals if they did not wish to do so on religious ground.</p> <p>The Administration advised that as the suggestion of including an exemption clause concerned the applicability of anti-discrimination laws which involved complicated and controversial issues, it was not appropriate to deal with this matter in the context of the Bill. The Administration would refer the matter, amongst other views on gender recognition issues raised by CFA, to the attention of the Inter-departmental Working Group on Gender Recognition ("IWG") for consideration.</p> <p>Mr Tommy CHEUNG expressed dissatisfaction that the Administration attempted to rush through the Bill before 16 July 2014, despite the many unresolved concerns about the Bill. He stressed that gender recognition issues should be considered in a holistic manner.</p> | |
| 011223 – 011802 | Chairman Ms Cyd HO Admin | <p>Ms Cyd HO expressed dissatisfaction that the Administration, in introducing the proposed amendments to MO, merely adopted a minimalist approach in implementing the CFA's Order in the W case without paying due regard to the judgment as a whole, instead of introducing a more widely based gender recognition ordinance to thoroughly address the various issues associated with gender recognition. Ms HO considered that the Administration should consider making an application to CFA for an extension of the suspension period of the Order.</p> <p>Ms Cyd HO shared the view that the Administration should make it clear whether post-operative transsexuals fell under the definition of disability under DDO.</p> <p>The Administration reiterated that it had taken proactive follow-up actions on two fronts in parallel. First, with the CFA's judgment, the Administration had an obligation to introduce the Bill to align the statute law with the judgment. Second, the Administration had set up IWG to consider legislation and incidental administrative measures that</p> | |

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| | | might be required to protect the rights of transsexual persons in all legal contexts. | |
| 011803 – 012318 | Chairman Dr Priscilla LEUNG | Dr Priscilla LEUNG considered that given the controversial and wide ranging nature of the issues relating to gender recognition, such issues should be carefully considered by the Legislature and society at large. | |
| 012319 – 012832 | Chairman Mr YIU Si-wing Admin | <p>Mr YIU Si-wing expressed concern as to how the Administration would address the legal issues arising from a married person receiving SRS (such as the impact on existing spousal rights) and other legal issues relating to the rights of transsexual persons (such as succession and right under the small house policy).</p> <p>The Administration reiterated that the legal impact of a married person receiving SRS and problems facing transsexuals in other areas of law were issues to be considered by IWG among other gender recognition issues.</p> | |
| 012833 – 014100 | Chairman Mr CHAN Chi-chuen Admin Mr Paul TSE Dr Priscilla LEUNG | <p>Mr CHAN Chi-chuen noted that under the proposed new section 40B(2), a valid travel document would be prima facie evidence of the sex of a person for the purposes of marriage. He expressed concern that a person holding a foreign passport who had legally changed his/her sex overseas might not have completed full SRS, and enquired whether there was any requirement for certification by an appropriate medical authority for such persons.</p> <p>The Administration advised that -</p> <p>(a) under MO, marrying parties who wished to solemnize a marriage in Hong Kong would have to go through a number of procedures, including giving a Notice of Intended Marriage to the Registrar of Marriages and making an affidavit under section 12 of MO to affirm, among others, that there was no lawful hindrance to the marriage; and</p> <p>(b) the Administration intended to amend the affidavit to specify the legal requirement under MO that every marriage must be the union of one man and one woman, and to set out that for persons who had received full SRS, they were to be treated as being of the sex to which they were re-assigned after the surgery, so as to make it clear to the marrying parties the need to meet such legal requirements at the point of marriage registration.</p> <p>Mr Paul TSE and Dr Priscilla LEUNG sought clarification on the procedures for marriage registration including the making of affidavit. The Administration was requested to provide, in writing, more detailed information in this regard, as well as the proposed amendments to be made to the affidavit.</p> | Admin |

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| | | <p>In response to Mr CHAN Chi-chuen and Dr Priscilla LEUNG, the Administration advised that in the event that the Bill was vetoed by the Legislative Council ("LegCo"), it was the Administration's intention to proceed with the proposed amendments to the affidavit, having regard to the fact that CFA's Order would come into effect after 16 July 2014 irrespective of whether the Bill was passed by LegCo then.</p> | |
| 014101 – 014205 | <p>Chairman Ms Cyd HO</p> | <p>Ms Cyd HO provided for the consideration of the Bills Committee two sets of draft CSAs which sought respectively (a) to delete the full SRS requirement and provided for an alternative requirement for recognition of gender change for marriage purposes; and (b) to provide for exemption from the full SRS requirement (LC Paper No. CB(2)1824/13-14(01)).</p> | |
| <i>Clause-by-clause examination of the Bill</i> | | | |
| 014206 – 014737 | <p>Chairman Admin Ms Cyd HO Mr CHAN Chi-chuen</p> | <p>Long title of the Bill</p> <p>Ms Cyd HO and Mr CHAN Chi-chuen questioned the need for the Administration to specify the requirement of full SRS in the long title of the Bill, which had narrowed the scope for moving amendments to the Bill in respect of the full SRS requirement.</p> | |
| 014738 – 020122 | <p>Chairman Admin Ms Cyd HO Clerk Mr Tommy CHEUNG Mr CHAN Chi-chuen Deputy Chairman Dr Priscilla LEUNG Mr Ronny TONG</p> | <p>Clause 1 - the commencement date of the Marriage (Amendment) Ordinance 2014.</p> <p>Proposed legislative timetable, date of reporting to HC and deadline for giving notice of CSAs to the Bill.</p> <p>Mr Tommy CHEUNG indicated his intention to move CSAs to provide an exemption provision for religious bodies to the effect that ministers were not obliged to celebrate marriage for a post-operative transsexual person on the ground of religious beliefs.</p> <p>Mr CHAN Chi-chuen also indicated his intention to move CSAs to the Bill.</p> | |
| 020123 – 020200 | <p>Chairman Ms Cyd HO</p> | <p>Closing remarks and date of next meeting.</p> | |