

立法會
Legislative Council

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by the Administration)

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Bills Committee on
Marriage (Amendment) Bill 2014

Minutes of the ninth meeting
held on Tuesday, 17 June 2014, at 10:45 am
in Conference Room 1 of the Legislative Council Complex

Members present	: Hon IP Kwok-him, GBS, JP (Chairman) Hon Dennis KWOK (Deputy Chairman) 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-yee, GBS, 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 Hon KWOK Wai-keung Dr Hon Fernando CHEUNG Chiu-hung Dr Hon Helena WONG Pik-wan 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 James TO Kun-sun Hon Ronny TONG Ka-wah, SC Dr Hon LEUNG Ka-lau Hon LEUNG Kwok-hung Hon Gary FAN Kwok-wai

**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 Meisy KWOK
Legislative Assistant (2) 6

Action

I. Meeting with the Administration

(LC Paper Nos. CB(3)444/13-14, CB(2)1203/13-14(02),
CB(2)1803/13-14(03), CB(2)1824/13-14(01) and CB(2)1841/13-14(01)
and (02))

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

2. The Bills Committee noted the Administration's response to issues raised by members at the meeting on 16 June 2014 regarding the procedures for marriage registration including the making of affidavit (LC Paper No. CB(2)1841/13-14(01)).

Clause-by-clause examination of the Bill

3. The Bills Committee completed clause-by-clause examination of the Marriage (Amendment) Bill 2014 ("the Bill").

Action

Committee stage amendments ("CSAs")

4. The Bills Committee noted the Administration's draft CSA to the Bill (LC Paper No. CB(2)1841/13-14(02)).

5. The Bills Committee also noted the respective draft CSAs proposed by Mr Dennis KWOK (LC Paper No. CB(2)1803/13-14(03)) and Ms Cyd HO (LC Paper No. CB(2)1824/13-14(01)).

6. Mr Tommy CHEUNG indicated his intention to propose CSAs to the Bill 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. A vote was taken on whether the CSAs proposed by Mr CHEUNG should be moved in the name of the Bills Committee. The result of the vote was that two members voted in favour of and six members against moving the proposed CSAs in the name of the Bills Committee. The Bills Committee decided by a majority vote that the proposed CSAs should not be moved in the name of the Bills Committee.

7. The Bills Committee also noted Mr CHAN Chi-chuen's intention to move CSAs in relation to the full SRS requirement proposed in the Bill.

Resumption of Second Reading debate on the Bill

8. The Administration informed the Bills Committee of its intention to resume the Second Reading debate on the Bill at the Council meeting of 9 July 2014.

9. Given the diverse views expressed by members, a vote was taken on whether the Bills Committee should support the Administration's proposal to resume the Second Reading debate on the Bill at the Council meeting of 9 July 2014. The Chairman put to vote the question that the Administration's proposed resumption date be supported. Mr CHAN Chi-chuen requested a division.

The following members voted in favour of the question:

Ms Starry LEE, Mr CHAN Kin-por, Mrs Regina IP, Mr YIU Si-wing, Mr Martin LIAO, Ir Dr LO Wai-kwok, Mr Christopher CHUNG and Mr Tony TSE.

(8 members)

Action

The following members voted against the question:

Ms Emily LAU, Mr Tommy CHEUNG, Ms Cyd HO, Mr CHAN Chi-chuen and Dr Helena WONG.

(5 members)

The Bills Committee decided by a majority vote that the Administration's proposed date of resumption of Second Reading debate should be supported.

Legislative timetable

10. The Chairman concluded that the Bills Committee had completed scrutiny of the Bill. Members noted that the Bills Committee would make a verbal report on its deliberations to the House Committee on 20 June 2014. The Chairman reminded members that the deadline for giving notice of moving CSAs to the Bill, if any, was 28 June 2014.

11. There being no other business, the meeting ended at 12:53 pm.

Council Business Division 2
Legislative Council Secretariat
26 September 2014

**Proceedings of the ninth meeting of the
Bills Committee on Marriage (Amendment) Bill 2014
on Tuesday, 17 June 2014, at 10:45 am
in Conference Room 1 of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action required
<i>Agenda Item I - Meeting with the Administration</i>			
001145 – 001238	Chairman	Opening remarks	
<i>Clause-by-clause examination of the Bill</i>			
001239 – 003915	Chairman Mr Tommy CHEUNG Admin SALA2 Mr CHAN Chi-chuen	<u>Clause 3 – the proposed new sections 40A and 40B</u> <p>Mr CHAN Chi-chuen considered that the requirement of constructing "some form of penis" in the female-to-male sex re-assignment surgery ("SRS") under the proposed new section 40A(2)(b)(ii) was unclear.</p> <p>The legal adviser to the Bills Committee sought clarification on whether there was any procedure for certifying that the requirement of constructing "some form of a penis" under the proposed new section 40A(2)(b)(ii) was met for transsexual persons holding foreign passports who had undergone SRS outside Hong Kong.</p> <p>The Administration responded that -</p> <ul style="list-style-type: none"> (a) for the construction of a penis or some form of a penis in the female-to-male SRS, there were different ways of surgery to achieve the outcome, depending on the desire of the person, as detailed in paragraph 4 of the Administration's response (LC Paper No. CB(2)1684/13-14(01) to the letter of the legal adviser to the Bills Committee dated 22 May 2014; and (b) the personal identification document of a person would be <i>prima facie</i> evidence of the sex of the person at the time of marriage registration, unless there were reasonable grounds for any doubt. If in doubt, the Registrar of Marriages would request a party to an intended marriage to provide medical proof. The medical proof issued by overseas doctors would be accepted if it contained the relevant information supporting the application. Where there were doubts about the medical proof issued by an overseas doctor, the Registrar of Marriages might consult the Hospital Authority for medical opinions. <p>Mr CHAN Chi-chuen pointed out that a transsexual person who had performed full SRS and changed the sex entry on his/her Hong Kong Identity Card ("HKIC") might no longer meet the full SRS requirement when he/she subsequently married (e.g. a female-to-male transsexual might have his penis or some form of penis removed either intentionally or after an accident after he had changed the sex entry on his HKIC). He and Mr Tommy CHEUNG sought clarification</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>on whether such a transsexual person would still be eligible to marry in his/her re-assigned sex and whether there was any requirement of certification by an appropriate medical authority that the full SRS criterion was met before marriage registration.</p> <p>The Administration responded that –</p> <ul style="list-style-type: none"> (a) as stated in the Court of Final Appeal ("CFA")'s judgment in the case of <i>W v Registrar of Marriages</i> (FACV 4 of 2012) ("the W case"), SRS involved irreversible changes to a person's physical state; (b) in cases where a transsexual person who had completed full SRS subsequently became physically incapacitated and had to have his/her genital organ(s) removed (e.g. a female-to-male transsexual might have his penis amputated after an accident), his/her eligibility to marry in his/her re-assigned sex should not be affected; and (c) 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 give a Notice of Intended Marriage to the Registrar of Marriages and make an affidavit under section 12 of MO to affirm, among others, that there was no lawful hindrance to the marriage. 	
003916 - 004639	Chairman Mr Tommy CHEUNG Admin	Mr Tommy CHEUNG's enquiry and the Administration's response on whether the surgical requirements for persons who performed SRS outside Hong Kong were the same as those for persons who performed their surgeries in Hong Kong, for the purpose of ascertaining a person's gender in marriage registration.	
004640 - 005341	Chairman Mr YIU Si-wing Admin	<p>Mr YIU Si-wing sought clarification on whether gender change would be recognized after completion of SRS or change of sex entry in HKIC.</p> <p>The Administration responded that –</p> <ul style="list-style-type: none"> (a) currently, there was no gender recognition law in Hong Kong. Whether such law should be introduced was to be studied by the Inter-departmental Working Group on Gender Recognition ("IWG"); and (b) persons who had completed SRS should change their HKIC to reflect their re-assigned sex as soon as possible. Under Regulations 18(1)(a) and 19 of the Registration of Persons Regulations (Cap.177A), any person who, without reasonable excuse, failed to report a change of particulars (including his/her sex) previously submitted for the purpose of registering and applying for an HKIC was guilty of an offence. 	

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005342 - 011727	Chairman Mr CHAN Chi-chuen Admin Dr Priscilla LEUNG	<p>Further discussions on whether a transsexual person who had performed full SRS and changed the sex entry on his/her HKIC but subsequently no longer met the full SRS requirement would still be eligible to marry in his/her re-assigned sex.</p> <p>In response to Dr Priscilla LEUNG and Mr CHAN Chi-chuen, the Administration explained, with examples, the meaning of "evidence to the contrary" in the proposed new section 40B(1).</p>	
011728 – 012454	Chairman Mr Paul TSE Admin	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 SRS.	
012455 - 012842	Chairman Dr Priscilla LEUNG	Dr Priscilla LEUNG expressed concern that if transsexual persons who had not received full or any SRS were qualified as persons in the re-assigned sex for the purpose of marriage, it might open up legal challenges on the definition of man and woman in different legal contexts.	
012843 - 013123	Chairman Mr CHAN Chi-chuen Admin	<p>Mr CHAN Chi-chuen reiterated that he did not see the need to add the proposed new section 40A(2) to MO, given that the full SRS requirements stipulated therein were the same as those set out in the administrative guidelines for applications to change sex entry in HKIC.</p> <p>The Administration reiterated the need to state clearly in statute law CFA's ruling that a transsexual person who had his/her gender 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 should qualify as a person entitled to marry in his/her acquired gender.</p>	
013124 – 013607	Chairman Admin Mr CHAN Chi-chuen Mr Christopher CHUNG	<p><u>Clause 4 - amendments to various Forms in Schedule 1 to MO</u></p> <p>The Administration advised that it would propose to make technical amendments to various Forms in Schedule 1 to MO to change the terms "a widow" (寡婦) or "a widower" (鳏夫) to the gender neutral term "a widowed person" (喪偶), on the ground that a widowed person with a full SRS and intended to re-marry might not be appropriately described as "a widow" (寡婦) or "a widower" (鳏夫).</p> <p>Mr CHAN Chi-chuen sought clarification on whether it was more appropriate to use the term "喪偶者" instead of "喪偶" as the Chinese rendition of the term "widowed person", given that the term "喪偶" was an adjective rather than a noun, so as to better tally with the original Chinese terms of "寡婦" and "鳏夫".</p> <p>The Administration explained that –</p>	

Time marker	Speaker	Subject(s)	Action required
		<ul style="list-style-type: none"> (a) the term "喪偶" was used so as to tally with the parts of speech of the other Chinese terms i.e. "未婚" and "離婚" used in the relevant Forms; and (b) the term "喪偶" had also been used in other ordinances to refer to a person whose spouse had deceased. 	
013608 – 013811	Chairman Admin	<p><u>Proposed Committee stage amendment ("CSA") by the Administration</u></p> <p>Briefing by the Administration on its proposed draft CSA to the Bill (LC Paper No. CB(2)1841/13-14(02)) which sought to specify the commencement date of the Marriage (Amendment) Ordinance 2014 as 17 July 2014 (i.e. same as the effective date of the CFA's Order), instead of to be further decided by the Secretary for Security by notice published in the Gazette separately.</p>	
013812 – 015938	Chairman Dr Priscilla LEUNG Mr CHAN Chi-chuen Admin Mr Christopher CHUNG SALA2 Mr Tommy CHEUNG	<p><u>Proposed CSAs by individual members</u></p> <p>Members noted the respective draft CSAs proposed by Mr Dennis KWOK (LC Paper No. CB(2)1803/13-14(03)) and Ms Cyd HO (LC Paper No. CB(2)1824/13-14(01)).</p> <p>Dr Priscilla LEUNG expressed objection to the draft CSAs proposed by Mr Dennis KWOK which sought to include a sunset clause to the Bill and to specify that the Secretary for Justice should conduct a public consultation exercise on issues concerning the rights of transsexual persons and submit to the Legislative Council before 1 August 2017 a report on the results of the consultation with recommendations on any legislative proposals arising therefrom. Dr LEUNG considered that the proposed incorporation of a sunset clause into the Bill would create uncertainty and confusion on the requirements under MO. She also considered it unlikely that the community could reach any consensual view on gender recognition issues in three years' time.</p> <p>Mr Christopher CHUNG queried the appropriateness of the proposed CSAs by Mr Dennis KWOK which sought to mandate the Administration to conduct a public consultation by a certain date.</p> <p>The Administration advised that –</p> <ul style="list-style-type: none"> (a) it did not consider it appropriate to include a sunset clause in the Bill, as it would render the statute law incongruous with the CFA's Order in the W case after the expiry date specified in the sunset clause, creating confusion to the marrying parties and the public; and (b) IWG would conduct a comprehensive study and public consultation on the broad issues involved and it was considered not necessary or appropriate to make statutory provisions for such review and consultation. 	

Time marker	Speaker	Subject(s)	Action required
		<p>Mr CHAN Chi-chuen opined that the Administration should provide a timetable for drawing up a gender recognition ordinance in Hong Kong.</p> <p>The Bills Committee noted Ms Cyd HO's and Mr CHAN Chi-chuen's intention respectively to move CSAs in relation to the full SRS requirement proposed in the Bill.</p> <p>Mr Tommy CHEUNG indicated his intention to propose CSAs to the Bill 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. A vote was taken on whether the CSAs proposed by Mr CHEUNG should be moved in the name of the Bills Committee.</p> <p>In response to Mr CHAN Chi-chuen's enquiry on Ms Cyd HO's proposed CSAs, the Administration advised that the proposed CSAs were beyond the scope of CFA's judgment in the W case, and hence were outside the scope of the Bill.</p> <p>The meeting was extended for 15 minutes.</p>	
015939 – 020705	Chairman Admin Mr CHAN Chi-chuen Ms Emily LAU	<u>Resumption of Second Reading debate</u> <p>A vote was taken on the question of whether the Bills Committee should support the Administration's proposal to resume the Second Reading debate on the Bill at the Council meeting of 9 July 2014.</p>	
020706 – 020813	Chairman	Completion of scrutiny work; date to report to the House Committee; deadline for giving notice to move CSAs to the Bill.	

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26 September 2014