

Bills Committee on Marriage (Amendment) Bill 2014

Draft Committee Stage Amendments to be Proposed by Cyd Ho

Marriage (Amendment) Bill 2014

COMMITTEE STAGE

Amendments to be moved by Hon Cyd Ho

<u>Clause</u>	<u>Amendments Proposed</u>
Long Title	By deleting everything after “for determining the” and substituting “gender of the parties to a marriage, a person is of the gender with which the person identifies under certain circumstances; and to provide for related matters.”.
3	<p>By deleting the proposed section 40A and substituting—</p> <p>“40A. Persons to be regarded as being of the gender with which they identify</p> <p>(1) For the purposes of this Ordinance, a person is of the gender with which the person identifies if expert medical or psychological evidence indicates that the person either—</p> <p>(a) (i) has gender dysphoria; and</p> <p>(ii) has assumed and intends to maintain the gender identity of members of the gender with which that person identifies, or</p> <p>(b) where, but only to the extent that, the circumstances of the case permit,</p> <p>(i) has undergone or is undergoing treatment for the purpose of transitioning to the gender with which the person identifies; or</p> <p>(ii) that such treatment has been prescribed or planned for that person,</p> <p>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</p>

Matrimonial Causes Ordinance (Cap. 179), are construed accordingly.

(2) In this section, “treatment” includes, but is not limited to, psychological, medicinal, hormonal, surgical and other treatment medically assessed to be appropriate for an individual for the purpose of transitioning to the gender with which the individual identifies.”.

3

In the English text, in the proposed section 40B(1), by deleting “sex” wherever it appears and substituting “gender”.

Mark-up version

Long Title

Amend the Marriage Ordinance to provide that, for determining the sex *gender* of the parties to a marriage, a person who has received a full sex re-assignment surgery is to be treated as being of the sex to which the person is re-assigned *is of the gender with which the person identifies under certain circumstances*; and to provide for related matters.

Clause 3

After section 40—

Add

~~“40A. Re-assigned sex status-~~

- ~~(1) If a person has received a full sex re-assignment surgery, the person is, for the purposes of this Ordinance, to be treated as being of the sex to which the person is re-assigned after the surgery, 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), are construed accordingly.”~~
- ~~(2) A full sex re-assignment surgery is a surgical procedure that—~~
- ~~(a) has the effect of re-assigning the sex of a person from male to female by—~~
- ~~(i) — removing the person’s penis and testes; and~~
- ~~(ii) — constructing a vagina in the person; or~~
- ~~(b) has the effect of re-assigning the sex of a person from female to male by—~~
- ~~(i) removing the person’s uterus and ovaries; and~~
- ~~(ii) constructing a penis or some form of a penis in the person.~~

40A. *Persons to be regarded as being of the gender with which they identify*

- (1) *For the purposes of this Ordinance, a person is of the gender with which the person identifies if expert medical or psychological evidence indicates that the person either—*
- (a) (i) *has gender dysphoria; and*
- (ii) *has assumed and intends to maintain the gender identity of members of the gender with which that person identifies; or*
- (b) *where, but only to the extent that, health conditions permit.*

(i) has undergone or is undergoing treatment for the purpose of transitioning to the gender with which the person identifies; or

(ii) that such treatment has been prescribed or planned for that person,

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), are construed accordingly.

(2) In this section, "treatment" includes, but is not limited to, psychological, medicinal, hormonal, surgical and other treatment medically assessed to be appropriate for an individual for the purpose of transitioning to the gender with which the individual identifies.

40B. Presumption

- (1) For section 40(2), in the absence of evidence to the contrary, the ~~sex~~ ***gender*** of a party to a marriage as shown on an identification document of the party at the time of the marriage is presumed to be the ~~sex~~ ***gender*** of the party.
- (2) An identification document is an identity card, or a valid travel document, within the meaning of section 2(1) of the Immigration Ordinance (Cap. 115).".

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Amendments to be moved by Hon Cyd Ho

Clause

Amendments Proposed

Long Title By deleting everything after “surgery,” and substituting “unless it is unreasonable in the circumstances of the case to so require, is to be treated as being of the sex to which the person is reassigned or with which the person identifies; and to provide for related matters.”.

3 In the proposed section 40A(1), by deleting “to be treated as being”.

3 By adding –

“40AA. Section 40A does not apply in certain circumstances

Notwithstanding section 40A, a person is of the sex with which the person identifies if expert medical or psychological evidence indicates that—

- (a) the person has gender dysphoria;
- (b) the person has assumed and intends to maintain the gender identity of members of the sex with which that person identifies; and

it is unreasonable in the circumstances of the case to require the person to receive a full sex re-assignment surgery,

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), are construed accordingly.”.

Mark-up version

Long Title

Amend the Marriage Ordinance to provide that, for determining the sex of the parties to a marriage, a person who has received a full sex re-assignment surgery, unless it is unreasonable in the circumstances of the case to so require, is to be treated as being of the sex to which the person is re-assigned or with which the person identifies; and to provide for related matters.

Clause 3

After section 40—

Add

“40A. Re-assigned sex status

- (3) If a person has received a full sex re-assignment surgery, the person is, for the purposes of this Ordinance, ~~to be treated as being of the sex to which the person is re-assigned after the surgery,~~ 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), are construed accordingly.
- (4) A full sex re-assignment surgery is a surgical procedure that—
- (a) has the effect of re-assigning the sex of a person from male to female by—
 - (i) removing the person’s penis and testes; and
 - (ii) constructing a vagina in the person; or
 - (b) has the effect of re-assigning the sex of a person from female to male by—
 - (i) removing the person’s uterus and ovaries; and
 - (ii) constructing a penis or some form of a penis in the person.

40AA. Section 40A does not apply in certain circumstances

Notwithstanding section 40A, a person is of the sex with which the person identifies if expert medical or psychological evidence indicates that—

(a) the person has gender dysphoria;

(b) the person has assumed and intends to maintain the gender identity of members of the sex with which that person identifies; and

(c) it is unreasonable in the circumstances of the case to require the person to receive a full sex re-assignment surgery,

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), are construed accordingly.

40B. Presumption

- (1) For section 40(2), in the absence of evidence to the contrary, the sex of a party to a marriage as shown on an identification document of the party at the time of the marriage is presumed to be the sex of the party.
- (2) An identification document is an identity card, or a valid travel document, within the meaning of section 2(1) of the Immigration Ordinance (Cap. 115).”.