

# A BILL

## To

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 is to be treated as being of the sex to which the person is re-assigned; and to provide for related matters.

Enacted by the Legislative Council.

### **1. Short title and commencement**

- (1) This Ordinance may be cited as the Marriage (Amendment) Ordinance 2014.
- (2) This Ordinance comes into operation on a day to be appointed by the Secretary for Security by notice published in the Gazette.

### **2. Marriage Ordinance amended**

The Marriage Ordinance (Cap. 181) is amended as set out in sections 3 and 4.

### **3. Sections 40A and 40B added**

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.

**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).”.

**4. Schedule 1 amended (forms)**

- (1) Schedule 1—

- (a) Form 1;
- (b) Form 2;
- (c) Form 4;
- (d) Form 6;
- (e) Form 7—

**Repeal**

“Widower”

**Substitute**

“Widowed person”.

- (2) Schedule 1—
  - (a) Form 1;
  - (b) Form 2;
  - (c) Form 4;
  - (d) Form 6;
  - (e) Form 7—

**Repeal**

“鰥夫”

**Substitute**

“喪偶”.

- (3) Schedule 1—
  - (a) Form 1;
  - (b) Form 2;
  - (c) Form 4;
  - (d) Form 6;
  - (e) Form 7—

**Repeal**

“Widow”

**Substitute**

“Widowed person”.

- (4) Schedule 1—
  - (a) Form 1;
  - (b) Form 2;
  - (c) Form 4;
  - (d) Form 6;
  - (e) Form 7—

**Repeal**

“寡婦”

**Substitute**

“喪偶”.

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### Explanatory Memorandum

The main object of this Bill is to amend the Marriage Ordinance (Cap. 181) (*Ordinance*) to implement an order made by the Hong Kong Court of Final Appeal in the case of *W v The Registrar of Marriages (FACV 4/2012)* and provide for related matters.

2. Clause 1 sets out the short title and provides for commencement.
3. Clause 3 adds to the Ordinance—
  - (a) a new section 40A which—
    - (i) provides that, for construing the references to man and woman in section 40(2) of the Ordinance and the references to male and female in section 20(1)(d) of the Matrimonial Causes Ordinance (Cap. 179), 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; and
    - (ii) defines what a full sex re-assignment surgery is; and
  - (b) a new section 40B which provides for a presumption.
4. Clause 4 contains related amendments.