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**Legislative Council**

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**Panel on Security**

**Information note prepared by the Legislative Council Secretariat  
for the meeting on 7 January 2014**

**Court of Final Appeal order in the Judicial Review case  
*W v Registrar of Marriages***

The Court of Final Appeal order in the Judicial Review case *W v Registrar of Marriages* (FACV 4/2012) ("the CFA order") per se has not been discussed by the Panel on Security ("the Panel"). However, information relating to the CFA order has been provided as part of the Administration's reply to a written question on medical services provided for gender identity disorders patients raised at the Council meeting of 9 October 2013 and the Administration's response during the motion debate on transgender marriage at the Council meeting of 30 October 2013. The relevant question and the Administration's reply are in **Appendix I** and an extract from the official record of proceedings of the relevant motion debate is in **Appendix II**.

**Latest development**

2. The Administration has included the Marriage (Amendment) Bill, which seeks to follow up on the CFA order, in its Legislative Programme 2013-2014. The Administration will brief the Panel on its follow-up work on the CFA order at the meeting on 7 January 2014.

Council Business Division 2  
Legislative Council Secretariat  
31 December 2013

## Press Releases

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LCQ22: Medical services provided for Gender Identity Disorders patients

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Following is a question by the Hon Chan Chi-chuen and a written reply by the Secretary for Food and Health, Dr Ko Wing-man, in the Legislative Council today (October 9):

Question:

Some overseas studies show that transgender people generally account for about 0.3 per cent of the adult population, and on the basis of this, the transgender community in Hong Kong estimates that there are about 18 700 transgender people in the city. At present transgender medical diagnosis services are provided only by two sex clinics in Hong Kong, located respectively in the Prince of Wales Hospital in Sha Tin and Castle Peak Hospital in Tuen Mun (the clinics). Some transgender people have pointed out that these clinics do not provide comprehensive diagnosis services, and it takes time to wait for consultation appointments. Moreover, as qualified doctors with relevant diagnosis experience will retire one after another in the next few years, some transgender people are worried about the succession problem. In this connection, will the Government inform this Council:

(a) of the number of attendances for medical services of transgender people at the aforesaid clinics in the past five years, and the average waiting time for new cases at present;

(b) of the current number of healthcare personnel (including plastic surgeons, psychiatrists and clinical psychologists) working at the aforesaid clinics who possess the experience or qualifications in transgender diagnosis and those who will retire in the coming five years;

(c) whether there is any plan to increase the resource input for training healthcare personnel with qualifications in transgender diagnosis; if so, of the number of healthcare personnel of various professions (including plastic surgeons, psychiatrists and clinical psychologists) who will receive training in the coming five years; if not, whether the Government will undertake to draw up contingency plans in the coming year to address the manpower shortage;

(d) whether no less than two clinics in public hospitals will be established to provide comprehensive transgender diagnosis services by healthcare personnel with relevant qualifications; and

(e) given the judgment handed down earlier by the Court of Final Appeal on the civil appeal filed by a transsexual regarding marriage registration and the court's recommendation that the legislature introduce legislation similar to the United Kingdom's Gender Recognition Act 2004 to set up a machinery for an expert panel to vet gender recognition claims and grant gender recognition certificates which recognise successful applicants in his/her new sex, whether the Government has worked out a roadmap and a timetable for setting up the machinery?

Reply:

President,

At present, the Hospital Authority (HA) provides medical services for people with Gender Identity Disorders (GID) through its psychiatric specialist outpatient (SOP) clinics in various clusters. In general, counselling services and treatment will be arranged for GID patients according to their individual conditions, and a small number of them may need to receive sex reassignment surgery (commonly known as "transsexual operation").

My reply to the various parts of the question is as follows:

(a) and (b) The psychiatric SOP clinics in various HA clusters provided medical services for a total of 95 persons with GID in 2012-13. The psychiatric SOP clinics will arrange medical appointments for new patients based on the urgency of their clinical conditions, which is determined with regard to the patients' clinical history and presenting symptoms. The date of medical appointment for different new patients therefore varies depending on the patient's actual clinical conditions. The psychiatric departments of the HA do not have a breakdown of the average waiting time of new cases of specific diseases. In 2012-13, the median waiting time for new cases of the psychiatric departments of the HA is seven weeks.

Since the number of cases of sex reassignment surgery is very small each year (around four to five cases per year in the past three years), at present, sex reassignment surgery is mainly performed at the Department of Surgery of Ruttonjee Hospital (RH). The only consultant surgeon responsible for sex reassignment surgery in the hospital will retire in 2015. Since the psychiatric SOP clinics in various HA clusters provide medical services not only to GID patients, but also patients suffering from other psychiatric diseases, HA does not maintain statistics on the number of healthcare personnel who provide treatment specifically for GID patients.

(c) and (d) To cater for the needs of GID patients for medical services, the HA has reviewed the existing service arrangements and is planning to rationalise its future services.

As the treatment of GID patients requires the involvement of a multi-disciplinary team which comprises professionals including psychiatrists, surgeons, endocrinologists, clinical psychologists and other allied health professionals, the HA plans to adopt the mode of a multi-disciplinary service centre in rationalising the relevant services. A service centre (the Centre) will be set up in Prince of Wales Hospital (PWH) under the New Territories East (NTE) cluster to co-ordinate various specialised services for GID patients.

Under this approach, whilst all other services will be provided by the Centre, surgery services will be provided at both the Centre and RH. PWH will provide surgery service for conversion between two sexes and RH will continue to provide sex re-assignment surgery for male to female conversion. The arrangement is to build on the expertise and experience already developed at RH over the years as well as to help share the volume of male to female re-assignment surgery in the NTE cluster.

HA has formed a Task Force with members from the management,

concerned clinical and allied health disciplines in September 2013 to look into the service re-organisation. HA is identifying potential candidates of the multi-disciplinary team to provide the services and will bid for the necessary additional resources for service re-organisation through the annual planning exercise in 2015-16.

(e) The Hong Kong Government respects the judgment handed down by the Court of Final Appeal (CFA) in the case of "W" and the Security Bureau (SB) plans to follow up with the CFA's orders in this legislative year. Given the complex policy and legal issues involved in the recommendations mentioned in the judgment, the SB is working with relevant policy bureaux, departments and the Department of Justice on how best to follow up the matters.

Ends/Wednesday, October 9, 2013  
Issued at HKT 16:36

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 LEGISLATIVE COUNCIL — 30 October 2013
 

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**MEMBERS' MOTIONS**

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**TRANSGENDER MARRIAGE**

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**SECRETARY FOR SECURITY** (in Cantonese): Deputy President, the motion debate proposed by Mr CHAN Chi-chuen today is about how to implement and follow up on the earlier judgment of the Court of Final Appeal (CFA) on the judicial review of W's registration of marriage. Ms Cyd HO, Dr Helena WONG and Dr Priscilla LEUNG have proposed various amendments respectively. First of all, let me spend some time introducing the background of the case.

Miss W was registered as male at birth, and was subsequently diagnosed as suffering from gender identity disorder. In 2008, she successfully underwent sex reassignment surgery (SRS) at hospitals managed by the Hospital Authority, and was thereafter issued with a letter from her attending doctor certifying that her sex had been reassigned. Later, she was also issued with a new identity card giving her sex as female from a Registration of Persons Office.

Afterwards, Miss W wanted to register her intended marriage with her male partner in her female identity. At that time, the Registrar of Marriages took the view that according to the legislative intent of the Marriage Ordinance (MO), the biological sexual constitution of an individual was fixed at birth and could not be changed by surgical means. Given the definition of marriage as the voluntary union for life of one man and one woman under the MO, the Registrar of Marriages was not empowered to celebrate the marriage between persons of the same biological sex. As a result, Miss W applied to the Court for a judicial review.

The review was dismissed by the Court of First Instance and the Court of Appeal in 2010 and 2011 respectively. Miss W then lodged an appeal with the CFA. In May this year, the CFA handed down its final judgment, allowing Miss W's appeal. The CFA held that the Registrar of Marriages had not erred in construing the meanings of "man" and "woman" in the MO by using biological sex as the basis of marriage pursuant to the English case of Corbett. However, as the relevant provisions in the Matrimonial Causes Ordinance (MCO) and MO denied a post-operative transsexual woman like Miss W the right to marry a man, the CFA held that the relevant provisions were inconsistent with the right to marry protected by Article 37 of the Basic Law and Article 19(2) of the Hong Kong Bill of Rights.

In mid-July this year, the CFA made orders declaring that section 20(1)(d) of the MCO and section 40 of the MO must be read to include within the meaning of the words "woman" and "female" a post-SRS person whose gender has been certified by an appropriate medical expert to have changed from male to female, and that she is eligible to marry a man in her female identity. At the same time, the CFA decided to suspend the operation of the relevant orders for a period 12 months, so as to allow ample time for the Government and the Legislative Council to discuss and make legislative amendments.

In addition to the aforesaid orders, the CFA also raised some questions in its judgment, including how to define the sex of other transgender people apart from post-operative transsexuals, and other legal issues that transgender people may face. Instead of ruling on these complicated legal, medical and social issues, the CFA suggested that the Government should draw reference from other places such as the Gender Recognition Act 2004 of the United Kingdom, and consider how to safeguard the various rights of transgender people, and clarify complex legal issues.

Deputy President, the SAR Government fully respects the CFA's judgment, and its other opinions and suggestions. We understand that transgender people face enormous pressure during their growth and in life. It is often the case that even their closest family members may not understand the pains they suffer. It is a tremendously long and arduous journey for them to receive diagnoses and treatments including "real life experience", administration of hormones of the opposite sex, and SRS. Moreover, there is much room for the community to have a greater understanding of transgender people.

In W's case, the CFA has ruled that as the legislative intent of section 20(1) of the MCO and section 40 of the MO does not allow Miss W to marry a man in her female identity, they are inconsistent with the Basic Law and the Hong Kong Bill of Rights. Therefore, we have commenced preliminary work to amend the aforesaid provisions on the basis of the CFA's judgment. We aim to introduce amendment bills to the Legislative Council in early 2014 as a follow-up to the CFA's judgment, with a view to completing the relevant legislative amendments within the one-year time frame set by the CFA.

As for other related issues faced by transgender people as referred to in the judgment, including how Hong Kong should safeguard the various rights of transgender people and the matter of enacting legislation on "gender recognition", the SAR Government, the Legislative Council and the community at large all need to gain a better understanding of them and think them over. As complex legal and policy issues are involved, the relevant Policy Bureaux and departments of the SAR Government, as well as the Department of Justice, must study them carefully so as to decide how to follow them up. I note that the original motion of Mr CHAN Chi-chuen calls for immediate enactment of legislation on gender recognition. Prior to any in-depth studies by the relevant Policy Bureaux and departments of the Government, and before different sectors of the community have an opportunity to become aware of the implications of such legislation for their lives and rights, it is inappropriate for the Legislative Council to jump to a hasty conclusion.

Ms Cyd HO's amendment proposes that apart from transgender people, other sex minorities should also be entitled to the right to marry according to their sexual orientation. So this involves the issue of same-sex marriage. As indicated by the findings of the recent public opinion survey commissioned by Ms HO herself, 33.3% of the respondents supported the legalization of same-sex marriage, while 43.1% objected to it. This shows that same-sex marriage is still an extremely controversial topic. I must point out that W's case is about the right of a transsexual who has completed SRS to marry a person of the opposite sex in her new gender identity. The CFA's judgment clearly states that the Court does not address the question of same-sex marriage in W's case. Even Miss W herself makes it clear in her grounds for appeal that the review case in question has nothing to do with same-sex marriage. In today's motion debate, Honourable Members really should not mix up the two concepts.

(THE PRESIDENT resumed the Chair)

President, in respect of safeguarding the marriage right of transsexuals who have completed SRS, the Government has commenced preliminary work. Later, we will consult the Legislative Council Panel on Security on our proposed bill. Today, we will listen carefully to Honourable Members' opinions on the motion and the amendments, and we will respond shortly afterwards.

President, I so submit.

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**SECRETARY FOR SECURITY** (in Cantonese): President, I am very grateful that more than 20 Members have spoken on today's motion, and many of them share the same view and goal with the Government. Hong Kong is a diversified, free and open society, and should therefore accommodate, accept and care about different communities. Earlier, a number of Members have mentioned the difficulties and hurdles encountered by transgender people in society, of which I am fully aware.

As I have explained to Members in my opening speech, the Court of Final Appeal (CFA) handed down a judgment on the case of W in July 2013. We are therefore expected to submit a report to the Legislative Council Panel on Security and table the relevant amendment bill at the Legislative Council in early 2014 to give an account of how the Matrimonial Causes Ordinance (MCO) and the Marriage Ordinance (MO) will be amended to enable Miss W and people of similar situation to get married in their new gender. Meanwhile, the relevant

Policy Bureaux and the Department of Justice will also look into the other recommendations in the judgment. After listening to Members' views, I would like to make a brief response.

Mr CHAN Chi-chuen's original motion urges the Government to expeditiously enact a gender recognition ordinance. Some Members have expressed their support, but some have reservation about it.

Here, let me share with Members again some important points about the gender recognition ordinance. United Kingdom's Gender Recognition Act 2004 has not only defined the sexual identity of transgender people, but has also laid down specifically the status of such identity in different legal perspectives. Apart from marriage, there are specific provisions on other areas such as family relationship, anti-discrimination, inheritance of estate, social security, pensions as well as the participation in sports events and honours.

According to the British law, the criterion for determining sexual identity is pretty loose: After at least two years of real-life experience, a transgender person may apply for a change in sexual identity without having to undergo any surgery.

We opine that before discussing on the need to enact gender recognition ordinance, our society must have a good understanding and knowledge of the relevant issues, including the problem faced by transgender people, how the sexual identity of people who have not completed sex reassignment surgeries would be determined, the legal status of transgender people who have successfully changed their sexual identity, as well as the implications on transgender people and society at large. After that, there will be a thorough discussion on the way forward.

I believe Members may recall that when we debated on the motion on "Equal rights for people of different sexual orientations" last year, religious bodies had expressed strong views and grave concern. Although the topic under discussion today only involves gender identity but not sexual orientation, we still have to be very cautious. If we proceed too hastily, it may be even more difficult to achieve any progress.

I wish to point out that the legislative process of United Kingdom's Gender Recognition Act 2004 had dragged on for more than six years from policy planning, consultation, drafting, endorsement to final implementation. We can

therefore see that achieving social consensus is an important cornerstone which, if fail, may be counter-productive.

Today's discussion is a very good start, but many people still have much misunderstanding about transgender people, and do not know much about them. Nor have they ever considered what should be done to help these people enjoy the protection provided to them in the social and legal aspects. The society needs to obtain a greater understanding of, for example, the sex reassignment surgeries, before we can remove the hurdles for them.

The SAR Government has attached great importance to CFA's opinions and recommendations, and will look squarely at the issue of gender identity. The relevant Policy Bureaux and the Department of Justice are exploring the follow-up actions to be taken. It is inappropriate to hastily jump to any conclusion at this stage. Therefore, we cannot accede to the request made by Mr CHAN Chi-chuen in his original motion to expeditiously enact a gender recognition ordinance.

At present, the Commissioner of Registration allows people who have undergone sex reassignment surgery to change the sexual identity on their identity cards, and relevant guidelines have been formulated on the basis of medical advice. This arrangement is in line with the situation of Miss W in the judicial review case. According to CFA's judgment, and as a number of Members have agreed, transgender people who have biologically completed the sex reassignment surgeries may change the sexual identity on their identity cards and marry someone of the opposite sex with the new identity. This is indisputable.

Different parts of the world have adopted different policies and statutes to deal with problems concerning people who have not undergone or have not completed the sex reassignment surgeries and the issue of gender identity. For example, Japan, South Korea, Singapore and Taiwan have required transgender people to first undergo sex reassignment surgery before they are allowed to change the sexual identity of their household registration. Contrarily, European countries such as the United Kingdom and Germany accepted all applications for gender change from people confirmed to have gender identity disorder regardless of whether they have undergone or completed the relevant surgery. So far, not many countries have enacted comprehensive legislation on the gender recognition system.

As a Member has said earlier, there is a need to carefully examine the usage of public facilities by the relevant people in their daily living, such as changing rooms or toilets, the different rights and duties prescribed in the laws, as well as the protection and restriction pertaining to them and other people.

The SAR Government does not have any preconceived views about the gender identity of transgender people who have not undergone or have not completed the sex reassignment surgeries. And yet, before we have done all the necessary preparations and researches, and enabled the community to have a good understanding of the relevant issue, it is more desirable to remain *status quo*.

I believe when Members discuss the major topic about how gender identity should be dealt with in the future, they can consider in conjunction with how the gender of different types of transgender people should be determined in the law.

Regarding the protection of the sexual minorities and same sex marriage, many Members just now said that consideration should be given to prevent discrimination against transgender people.

It is the policy of the SAR Government to protect anyone from being discriminated on any ground (including sexual orientation or gender identity). It is our established belief that everyone is born equal and should enjoy equal opportunities and treatment. Also, we encourage the society to foster the culture of accommodation and mutual respect.

To eliminate discrimination and promote equal opportunities for people of different sexual orientations and transgender people, the Government has been promoting the relevant message through public education and publicity throughout the years, such as approving the Equal Opportunities (Sexual Orientation) Funding Scheme and subsidizing meaningful community activities, with a view to promoting equal opportunities for people of different sexual orientations and transgender people, or providing support to the sex minorities. In future, the SAR Government will increase the provision for the Scheme and provide financial assistance for the relevant community activities organized by interested institutions and groups. The SAR Government will publicize and promote the message of equal opportunities through different channels and media, and has planned to step up its effort in this regard by, for example, producing television APIs.

Furthermore, in order to examine and look into the discrimination against the sex minorities (including transgender people) in a more focused manner, the Secretary for Constitutional and Mainland Affairs has established the Advisory Group on Eliminating Discrimination against Sexual Minorities in June 2013. The Advisory Group advises the Secretary on matters relating to concerns about discrimination faced by the sex minorities in Hong Kong, notably the aspects and extent of discrimination faced by the sex minorities in Hong Kong, and the strategies and measures to tackle the problems identified with a view to eliminating discrimination and nurturing a culture of diversity, tolerance and mutual respect in the community. Members of the Advisory Group include representatives of the sex minorities and different stakeholders, including representatives of transgender people. Since its establishment, the Advisory Group has held two meetings and decided to carry out focused studies on the discrimination against the sex minorities, with a view to holding further discussions in light of the actual situation. It is believed that through members' interactions, the Advisory Group will come up with practicable recommendations. The SAR Government will actively co-operate with the Advisory Group and strive to create a more friendly and accommodating society.

However, as I have said in my opening speech, Ms Cyd HO's amendment involve the granting of marriage right to sex minorities according to their sexual orientation, it has nothing to do with the case of W and therefore should not be discussed together. Undoubtedly, the judgment did say that reliance on the absence of a majority consensus as a reason for rejecting a minority's claim is inimical in principle to fundamental rights. However, I must reiterate that the crux of the case of W has all along been whether a person who has completed sex reassignment surgery can register marriage with a person of the opposite sex in the new gender. Miss W requested that she should be recognized as a female, but not the biological sex of a man, in her marriage registration with another man. Both the CFA's judgment and Miss W have reiterated that the judicial review case has not ruled on same sex marriage. I therefore call on Members to oppose Ms Cyd HO's amendment.

President, to sum up, the SAR Government respects the CFA's judgment and proactive actions will be taken to follow up. The most pressing issue is to amend the MO and the MCO to enable Miss W and other people who have completed sex reassignment surgery like her to expeditiously exercise their marriage and other legal rights conferred on them by the CFA. I hope Members will support our work in this respect.

Meanwhile, we are actively considering how to follow up on other recommendations made in the judgment on gender identity, as well as the difficulties and challenges faced by transgender people. Over the past few months, the relevant Policy Bureaux and the Department of Justice have looked carefully into the matter and the SAR Government will report on the way forward in due course.

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