

**For discussion on
22 December 2009**

Sexual Minorities Forum

**Mention of Sex in Official Documents and
Births Registration**

Purpose

This paper provides information on the mention of sex in official documents and births registration.

Mention of Sex in Official Documents

2. There is no general requirement on whether sex should be mentioned in all forms, correspondences or documents used or issued by the Government. The personal particulars to be included in certain documents issued by the Government are specified in the respective legislation. For instance, the information to be furnished for the registration of an identity card is specified in the Registration of Persons Ordinance (Cap. 177) and the Registration of Persons Regulations (Cap. 177A). According to the relevant provisions, “sex” is one of the personal particulars that would be included on an identity card.

3. Under some circumstances, some service providers may need to identify the sex of persons concerned through relevant documents to facilitate the provision of services and facilities for the public. For instance, relevant parties would need to quickly identify the gender of the casualties or patients in emergency situations for the accurate delivery of medical treatment and diagnosis. In addition, sex would be an important piece of information for the proper performance of certain duties and functions. For example, in cases where there are body or otherwise close contacts between the relevant staff and the public, the cases can only be handled by a particular gender to avoid embarrassment and possible accusation of sexual harassment.

4. On the other hand, the mention of sex in documents is not required in certain scenarios in which gender of a person is not a matter of concern. In such cases, relevant bureaux and departments do not require the public to provide information on sex on such documents (e.g. in making submissions to the government in response to public consultation exercise).

Births Registration

5. Birth Certificate is an important type of official documents. Members have indicated interests to discuss the mention of sex on birth certificate. However, it is not the opportune time to discuss the issue as the Court will soon start legal proceedings on the registration of marriage for a transgendered person that there is a judicial review granted by the High Court.

6. To facilitate members to understand the existing practice as regards the mention of sex on birth certificate, the following paragraphs set out relevant provisions in relation to the registration of births in the Births and Deaths Registration Ordinance (“the BDRO”), Chapter 174.

7. Matters relating to the registration of births are provided for in the BDRO. The father of every child born alive in Hong Kong or persons specified in sections 7 and 8 of the BDRO has a duty to give information of the particulars required to be registered concerning the birth of such child to the Registrar of Births and Deaths (“the Registrar”). Under sections 4(1) and 4(2), the particulars required to be registered concerning any birth are specified in Form 1 in the Second Schedule to the BDRO (**Annex A**). The particulars are the factual information concerning the birth of the child, including the place and date of birth, name (if any) and sex of the child, and names of father and mother.

8. The information is deemed to be registered in the births register on the submission of the completed register form signed in the presence of the registrar, under section 9(1), (2) or (3) of the BDRO as the case may be. Under section 9(4), any person obtaining registration of any birth is entitled at the time of the registration to receive a certificate of such registration. The form of the certificate is prescribed in Form 3 in the Second Schedule to the BDRO (**Annex B**). It covers the surname, name and sex of the child and date of birth etc.

9. Section 27(1)(a) of the BDRO provides that no alteration in any births register shall be made except as authorised by the BDRO. Only clerical errors and errors of fact or substance may be corrected by the Registrar under section 27(1)(b) and (c) of the BDRO respectively. For an error of fact or substance, it may be corrected by the Registrar by entry in the margin without any alteration of the original entry.

10. Other than this, the name of any child whose birth has been registered with a name may be altered or added to before the child has attained the age of 11 years under section 13. The name or names desired to be substituted or added may be entered in the register book or computer record, as the case may be, without erasure of the previous entry. In 2008, more than 3 000 cases of alteration of name under section 13 of the BDRO were processed.

11. Extracts from the BDRO are at **Annex C**.

Advice Sought

12. Members are invited to **note** the content of this paper.

Constitutional and Mainland Affairs Bureau
Security Bureau
Immigration Department

December 2009

Annex AFORM 1
Register form of births

[section 4(1) & (2)]

出生登記表格

, , Births in the district of , Hong Kong.

年 月 日 , 香港 區出生登記。

Registration No. 登記編號	
When and where born 出生日期及地點	
Name, if any 名字(如有的話)	
Sex 性別	
Surname and name of father 父親姓名	
Maiden surname and name of mother 母親婚前姓氏及名字	
Signature, description and residence of informant 申報人簽署、身分及住址	
When registered 登記日期	
Signature of registrar 登記官員簽署	
Name, if added after registration of birth 名字 (如在出生登記後加上)	
Status of permanent resident of the Hong Kong Special Administrative Region under the Immigration Ordinance (Cap 115) (Established/Not established) 《入境條例》(第 115 章) 下的香港特別行政區永久性居民身分 (確定/未確定)	

FORM 3
Certificate of Registration of Birth
出生登記證明書

[section 9(4)]

Registration No. 登記編號	
Surname and name of child 出生者姓名	
Sex 性別	
Date of birth 出生日期	
Date registered 登記日期	
Maiden surname and name of mother 母親婚前姓氏及名字	
Address at birth 出生時地址	
Signature of registrar 登記官員簽署	

This certificate must be produced on demand by a police officer to prove that the name of the person entered has been registered.

如遇警務人員索閱時，必須將此證明書出示，以證明上述人名已經登記。

NO FEE IS PAYABLE FOR THIS CERTIFICATE.

領取此證明書無須繳費。

The Birth and Deaths Registration Ordinance (Chapter 174)

Extracts from Sections 4, 7, 8, 9, 13 and 27

Section: 4 Heading: Register forms Version Date: 27/08/2007

(1) The Registrar shall cause to be supplied to all register offices set out in the First Schedule register forms of births and register forms of deaths which shall be respectively in the prescribed form. (See Forms 1 & 2) (Amended 80 of 1997 s. 49; 8 of 2006 s. 10)

(2) The particulars required to be registered concerning any birth or death shall be the particulars specified in the said forms.

(3) The Registrar shall cause to be kept in his department-

(a) the register books of births and the register books of deaths kept at the general register office and district registry offices immediately prior to 6 November 1995;

(b) a births register, in which shall be recorded the particulars of the birth of any child that are registered under this Ordinance on or after 6 November 1995; and

(c) a deaths register, in which shall be recorded the particulars of the death of any person that are registered under this Ordinance on or after 6 November 1995. (Replaced 80 of 1997 s. 49)

(4) (a) The Registrar may cause the register books, whether in the form of paper or microfilm, or any part of them to be recorded in the form of digital image, and for the purposes of subsection (3)(a), the register books, whether in the form of paper or microfilm, or such part of them as the Registrar sees fit may be kept in the form of digital image.

(b) The births register and the deaths register shall be compiled from signed register forms which are recorded in the form of digital image in accordance with section 5. (Replaced 8 of 2006 s. 10)

(5) An entry of birth or death in the register shall, in the case of non-Chinese, be in the English language and in the case of Chinese shall be both in the English and the Chinese languages. (Added 80 of 1997 s. 49)

Section: 7 Heading: Duty of parent or Version Date: 30/06/1997
occupier to register
birth

The father of every child born alive in Hong Kong, or, in case of death, illness, absence, or inability of the father, the mother of such child, or in case of the death, illness, absence, or inability of the father and mother, the occupier of the house in which such child has been born, or any person present at the birth, shall, within 42 days after the day of such birth, give information to a registrar according to the best of his or her knowledge and belief, of the several particulars required to be registered, and shall, in the presence of such registrar, sign and submit to such registrar a register form completed with the information so given. (Amended 1 of 1965 s. 2; 67 of 1984 s. 2; 80 of 1997 s. 52)

[cf. 1874 c. 88 s. 1 U.K.]

Section: 8 Heading: Information respecting Version Date: 30/06/1997
living new-born child to
be given to a registrar

(1) In case any child is born in, or any new-born child is admitted to, any public institution, convent or other charitable or religious institution, it shall be the duty of the person having charge of such institution or convent to ascertain from the mother of such child or person bringing such child such information of the particulars required to be registered concerning the birth of such child as can be elicited and to cause such information to be given to a registrar within 42 days. (Amended 1 of 1965 s. 3)

(2) In case any living new-born child is found exposed, it shall be the duty of any person finding such child, and of any person in whose charge such child may be placed, to report such finding to a registrar, and within 42 days to give, to the best of his knowledge and belief, such information of the particulars required to be registered concerning the birth of such child as the informant possesses, and, in the presence of such registrar, to sign and submit to such registrar a register form completed with the information so given. (Amended 1 of 1965 s. 3; 80 of 1997 s. 53)

[cf. 1874 c. 88 s. 3 U.K.]

Section: 9 Heading: Registration of births, Version Date: 31/10/1997
certificates of birth

(1) In every case where the information required by sections 7 and 8 is given within 42 days of the birth of any child, exclusive of the day of birth, such birth shall be registered without any fee and shall be deemed to be registered in the births register on the submission of the signed register form. (Amended 1 of 1965 s. 4)

(2) When such information is given after the expiration of the said 42 days and within 12 months after the said birth, exclusive of the day of birth, the birth shall be registered on payment by the informant of a fee of \$140 and shall be deemed to be registered in the births register on the submission of the signed register form together with the fee. (Amended 34 of 1939 s. 2; 1 of 1965 s. 4; 48 of 1975 s. 2; 67 of 1984 s. 3; 51 of 1986 s. 2; L.N. 73 of 1991; L.N. 196 of 1993; L.N. 362 of 1994; L.N. 241 of 1995; L.N. 283 of 1996; L.N. 452 of 1997)

(3) No birth shall be registered after the expiry of 12 months from the date thereof except with the consent of the Registrar and then only on payment by the informant of a fee of \$680, and the fact of such consent having been given shall be noted in the signed register form, and if such consent has been given, such birth shall be deemed to be registered in births register on the submission of the signed register form together with the fee. (Amended 34 of 1939 s. 2; 1 of 1965 s. 4; 48 of 1975 s. 2; 67 of 1984 s. 3; 51 of 1986 s. 2; L.N. 73 of 1991; L.N. 196 of 1993; L.N. 362 of 1994; L.N. 241 of 1995; L.N. 283 of 1996; L.N. 452 of 1997)

(4) Any person obtaining registration of any birth under any subsection of this section shall be entitled at the time of registration to receive free a certificate of such registration in the prescribed form. (See Form 3) (Amended 80 of 1997 s. 54)

Section: 13 Heading: Registration of name of Version Date: 27/08/2007
child or of alteration of
name

(1) Subject to subsection (3A), in every case where it is desired after registration to alter or add to the name of any child whose birth has been registered with a name, or to give a name or names to any child whose birth has been registered without a name, the parent or guardian of such child may make a declaration in writing before a registrar in the prescribed form: (See Forms 4 & 5) (Amended 52 of 1979 s. 2) Provided that whenever it is shown to the satisfaction of the registrar that, owing to death or absence from Hong Kong or other reasonable cause, the parent or guardian is unable to attend to make a declaration in writing in accordance with this section, it shall be lawful for the registrar, in his discretion, upon such evidence as he may in the circumstances deem sufficient, to act in all respects as if a declaration in writing had been made under this subsection before him personally. (Amended 67 of 1984 s. 4)

(2) The registrar shall, without erasure of the previous entry, forthwith-

- (a) if the birth has been registered in a register book, subject to subsection (6), enter in the register book; or
- (b) if the particulars of the registration have been recorded in the computer record, enter in the computer record, the name or names desired to be substituted or added and the date when such substitution or addition is entered, and the substituted name or the added name is regarded as registered on that date. (Replaced 80 of 1997 s. 57)

(2A) On the alteration or addition of name under this section, the registrar shall, if requested, on payment of a fee of \$140, issue a certificate in the prescribed form to any person making the request. (See Forms 6 & 7) (Added 80 of 1997 s. 57. Amended L.N. 452 of 1997)

(3) For every such entry made within a period of 42 days from the date of the birth no fee shall be paid. For every such entry made after such 42 days a fee of \$425 shall be paid. (Amended 1 of 1965 s. 7; 48 of 1975 s. 3; 67 of 1984 s. 4; 51 of 1986 s. 3; L.N. 73 of 1991; L.N. 196 of 1993; L.N. 362 of 1994; L.N. 241 of 1995; L.N. 283 of 1996; L.N. 452 of 1997)

(3A) No alteration or addition to the name or names of a child shall be made under this section after the child has attained the age of 11 years. (Added 52 of 1979 s. 2. Amended 80 of 1997 s. 57)

(4) In this section, "name" (名) or (名字) does not include "surname" (姓氏).

(5) (Repealed 8 of 2006 s. 13)

(6) Where subsection (2)(a) applies and the register book or the relevant part of it in which the birth has been registered has been recorded in the form of digital image for the purpose of section 4(3)(a), the name or names desired to be substituted or added and the date when such substitution or addition was entered shall be recorded on the relevant digital image. (Added 80 of 1997 s. 57. Amended 8 of 2006 s. 13)

(7) Where subsection (2)(b) applies, the Registrar shall cause the alteration or addition of name (as may be appropriate) to be recorded on the relevant digital image. (Replaced 8 of 2006 s. 13)

[cf. 1874 c. 88 s. 8 U.K.]

Section: 27 Heading: Correction of errors in Version Date: 27/08/2007
register

(1) With regard to the correction of errors in registers of births or deaths, the following provisions shall have effect- (Amended 80 of 1997 s. 64)

(a) no alteration in any such register shall be made except as authorized by this Ordinance;

(b) any clerical error which may be discovered in any such register shall, as soon as possible, be corrected by a registrar, who shall place his initials in the margin opposite the entry in which such error has been discovered;

(c) an error of fact or substance in any such register may be corrected by entry in the margin (without any alteration of the original entry) by a registrar on payment of the fee of \$425 and on production to him by the person requiring such error to be corrected of a declaration in the prescribed form setting forth the nature of the error and the true facts of the case, and made by 2 persons required by this Ordinance to give information concerning the birth or death with reference to which the error has been made, or, in default of such persons, then by 2 credible persons to the satisfaction of the registrar having knowledge of the truth of the case, and the registrar shall initial such marginal entry and shall add thereto the day and month and year when such correction is made; (See Form 19) (Amended 1 of 1965 s. 11; 48 of 1975 s. 6; 67 of 1984 s. 9; 51 of 1986 s. 5; L.N. 73 of 1991; L.N. 196 of 1993; L.N. 362 of 1994; L.N. 241 of 1995; L.N. 283 of 1996; 27 of 1997 s. 72; L.N. 452 of 1997)

(d) where an error of fact or substance (other than an error relating to cause of death) occurs in the information given to the Registrar by a coroner concerning a dead body upon which he has held an inquest, or in respect of which he has issued a burial or cremation order-

(i) that coroner or any other coroner may, if satisfied by evidence upon oath or statutory declaration that such error exists, certify under his hand to the Registrar the nature of the error and the true facts of the case as ascertained by him on such evidence; and

(ii) the error may thereupon be corrected by the Registrar in the register by entering in the margin (without any alteration of the original entry) the facts as so certified, and the Registrar shall initial such marginal entry and shall add thereto the day and month and year when such correction is made; (Replaced 27 of 1997 s. 72)

(e) where-

(i) an error of fact or substance relating to the cause of death occurs in the information given to the Registrar by a coroner concerning a dead body upon which he has held an inquest or in respect of which he has issued a burial or cremation order; and

(ii) that error is a clerical error,

then-

(A) that coroner or any other coroner may certify under his hand to the Registrar the clerical error; and

(B) the clerical error may thereupon be corrected by the Registrar in the register by entering in the margin (without any alteration of the

original entry) the clerical error as so certified, and the Registrar shall initial such marginal entry and shall add thereto the day and month and year when such correction is made; (Added 27 of 1997 s. 72)

(f) where-

(i) an error of fact or substance relating to the cause of death occurs in the information given to the Registrar by a coroner concerning a dead body upon which he has not held an inquest (including any case where he has issued a burial or cremation order); and

(ii) that error is not a clerical error,

then-

(A) that coroner, or any other coroner, who subsequently holds an inquest concerning the dead body may certify under his hand to the Registrar the nature of the error and the true facts of the case as ascertained by him under the inquest; and

(B) the error may thereupon be corrected by the Registrar in the register by entering in the margin (without any alteration of the original entry) the facts as so certified, and the Registrar shall initial such marginal entry and shall add thereto the day and month and year when such correction is made; (Added 27 of 1997 s. 72)

(g) where it comes to the attention of a coroner holding an inquest (either during the inquest or upon its conclusion) that an error of fact or substance (including an error relating to cause of death) has occurred in the information given to the Registrar by a coroner concerning the body of that person upon which an earlier inquest has been held, or in respect of which a coroner has issued a burial or cremation order-

(i) that first-mentioned coroner may certify under his hand to the Registrar the nature of the error and the true facts of the case as ascertained by him under the inquest so ordered; and

(ii) the error may thereupon be corrected by the Registrar in the register by entering in the margin (without any alteration of the original entry) the facts as so certified, and the Registrar shall initial such marginal entry and shall add thereto the day and month and year when such correction is made. (Added 27 of 1997 s. 72)

(2)-(3) (Repealed 8 of 2006 s. 16)

(4) Any correction of error made under this section on the births register or the death register shall be noted, using the same wording as that in which such correction is noted in the births register or the deaths register, on the computer record in the entry in which such error occurs. (Added 80 of 1997 s. 64)

[cf. 1874 c. 88 s. 36 U.K.]