

LEGISLATIVE COUNCIL BRIEF

Human Organ Transplant Ordinance (Chapter 465)

HUMAN ORGAN TRANSPLANT (AMENDMENT) BILL 2001 (Stage II Amendment)

INTRODUCTION

At the meeting of the Executive Council on 29 May 2001, the Council ADVISED and the Chief Executive ORDERED that the Human Organ Transplant (Amendment) Bill (Annex) should be introduced into the Legislative Council. The Bill sets out, among other things, the refined definitions of “organ” and “payment”, the appointment of panel members for substituting for substantive members of the Human Organ Transplant Board (the Board), the requirements for transplanting organs previously removed for therapeutic purposes and the role of the Board in relation to imported organs.

BACKGROUND AND ARGUMENT

General background

2. The Human Organ Transplant Ordinance was first enacted in 1995 to prohibit commercial dealings in human organs intended for transplant, restrict the transplant of human organs between living persons, and regulate the importing of human organs intended for transplant. The Human Organ Transplant (Amendment) Ordinance 1999 (Amendment Ordinance) was enacted by the Legislative Council on 10 February 1999. The Amendment Ordinance specifies, among other things, the

circumstances in which an organ transplant involving a live donor may still be carried out in cases where the recipient is incapable of understanding the explanation required to be given to him under the Ordinance. During this last legislative amendment exercise, it was agreed that a comprehensive review of the Ordinance should be conducted following the enactment of the Amendment Ordinance. Where appropriate, further amendments should be introduced as Stage II amendment to the Ordinance.

Present Position

3. The Health and Welfare Bureau has subsequently undertaken the review. On the basis of the comments collected and in the light of the operating experience of the Ordinance, some elements were identified that may prevent the Board from discharging its duties effectively. These elements mainly relate to the definitions of “organ” and “payment”, the appointment of temporary members to the Board, handling of transplant related to organs previously removed for therapeutic purposes and the handling of imported organs. Apart from these, other minor problems noted include the need to formalize the appointments of secretary and legal adviser, possible delay in transplant due to the requirement of the same interviewer for donor and recipient, lack of sanction for non-compliance with certain provisions, absence of protection of members and officers of the Board from personal liability and the need to rearrange the different requirements in the existing section 5 under more distinct categories.

The Proposal

4. In the light of the problems identified, we proposed to introduce amendments to the Ordinance as follows:

Definitions of “organ” and “payment”

5. The definition of “organ” is not entirely satisfactory as there are different views on whether certain tissues like blood and bone marrow would fall within the definition. It is desirable to clarify that commercial dealings in those human bodily parts are prohibited by the

Ordinance but transplants of them are not restricted for the purposes of Sections 5 to 7 of the Ordinance. Those bodily parts are proposed to be set out in a Schedule to the Ordinance. Taking into account the rapid pace of technology advancement in the medical field, some tissues that cannot be transplanted at present may be transplantable in future. To allow flexibility in catering for such changes, it is proposed that the Secretary for Health and Welfare (SHW) be empowered, after consultation with the Board, to amend the Schedule by notice published in the Gazette. A notice amending the Schedule will be regarded as subsidiary legislation and will be subject to negative vetting by the Legislative Council.

6. It is also proposed that the definition of “payment” be amended so that payment for the administrative cost incidental to the removal, transportation or preservation of the organ to be supplied will not be prohibited by the Ordinance.

Board membership

7. To ensure that the Board can function properly and efficiently even when the Chairman and some substantive members are not available, there has to be a sufficient pool of temporary members for replacement. It is proposed that a vice-chairman and a panel comprising fourteen members from the four categories of members, namely, registered medical practitioner, social worker, legally qualified person and other members, shall be appointed by SHW. These panel members will stand in for substantive members who are unable to perform their duties for reasons such as travel outside Hong Kong. However, panel members shall not participate in the making of any regulation by the Board under the Ordinance.

Appointment of secretary and legal adviser

8. For the avoidance of doubt, it is proposed to state explicitly in the Ordinance that there are a secretary and a legal adviser assigned to the Board.

Transplant of organs previously removed for therapeutic purposes

9. Under the existing Ordinance, transplant operations are required to be preceded by some stipulated procedures as set out in Section 5 of the Ordinance, such as explanation of procedures and interviews. In practice, there are cases where an organ to be used for the transplant, such as bone fragment, was removed previously from a person for the purpose of therapy of that person and not for the subsequent transplant which could take place many months later. The recipient of the organ is not readily identifiable at the time of removal of the organ. It may be difficult to locate the whereabouts of the donor when his/her organ previously removed for his/her own therapy is now being used for transplant into another person. In view of the practical difficulties, it is proposed that transplants of this type are not subject to the requirements set out in Section 5 of the Ordinance.

10. As a safeguard, the registered medical practitioner who is to transplant the organ is required to declare, to his best knowledge, that no payment prohibited by the Ordinance has been or is intended to be made, and that the organ is removed for the therapy of the donor.

Interview of donor and recipient

11. At present, the Ordinance requires the same person to interview both the donor and the recipient. To overcome the practical difficulty of having one interviewer or one medical practitioner to interview and give comprehensive explanation to both the donor and recipient, it is proposed to allow the donor and recipient to be interviewed by either the same or two different interviewers or medical practitioners.

Structure of Section 5

12. As the existing section 5 of the Ordinance covers numerous requirements applicable to different situations of live organ transplants, we propose to restructure that section so that the different requirements can be set out under more distinct categories.

Criminal sanctions

13. In the case where transplants take place between living related persons and that the Board's approval is not required, a person who is to carry out the operation must first be satisfied that the donor's age requirement, the procedures of explanations, obtaining consent and ensuring absence of prohibited payment are all complied with. As no criminal sanction is attached to this restriction at present, it is proposed that contravention of it be specifically made an offence. In addition, supplying falsified information on genetic relationship should also be made a criminal offence.

The role of the Board in relation to imported organs

14. There have been expressed concerns over the role of the Board in handling imported organ for transplantation purpose. At present Section 7 of the Ordinance does not empower the Board to require further information on the transplantation of an imported organ even if its accompanying certificate containing information required in Section 7(1)(a) – (e) is not properly furnished .

15. To specify clearly the role and functions of the Board in cases of imported organs, it is proposed to amend Section 7 to the effect that before the transplantation of an imported organ, a registered medical practitioner or a person who is acceptable to the Board must supply a certificate to the Board containing all the necessary information and statements. It will be a criminal offence for non-compliance with the above situation. Furthermore, it will also be an offence if a registered medical practitioner, who has transplanted an imported organ into a recipient in Hong Kong, fails to supply the original of the certificate to the Board within 7 days after the transplant, or fails to supply any other information the Board may require.

Protection of members and officers of the Board against personal liability

16. It is proposed to accord protection to individual substantive members, panel members and officers of the Board from personal

liability insofar as they act in good faith in the performance of their functions under the Ordinance.

THE BILL

17. The Bill sets out –
- (a) the revised definition of ‘organ’ [**Section 2 in clause 3(a)**], the human bodily parts listed in the proposed Schedule [**clause 8**], and the authority conferred upon SHW to amend the Schedule [**Section 10 in clause 7**];
 - (b) amendments to the definition of payment [**clause 3(b)**];
 - (c) the composition of Human Organ Transplant Board, including the appointment of a vice-chairman, panel members, secretary and legal adviser to the Board [**clause 4**];
 - (d) the interview requirement of donor and recipient, that is, interview to be conducted by either the same or two different interviewers or medical practitioners [**Sections 5C(5)(b) and 5D(3) in clause 5**];
 - (e) the re-structured Section 5 of the Ordinance to facilitate easier understanding of the organ transplant restrictions and requirements [**clause 5**];
 - (f) the criminal sanction for failure to satisfy certain general requirements for organ transplants between related persons and for supplying falsified information on genetic relationship [**Sections 5, 5A(1)(b) and 5A(6) in clause 5**];
 - (g) the exemption provided for the implantation of organs removed for therapeutic purposes and the reporting requirements on the part of the registered medical practitioner [**Section 5B in clause 5**];

- (h) the restriction on the transplants of imported organs, the requirement that a certificate accompanying each imported organ be supplied to the Board, and the offence for non-compliance [**clause 6**]; and
- (i) the protection for substantive and panel members, the secretary and public officers serving the Board against personal liability [**Section 9 in clause 7**].

LEGISLATIVE TIMETABLE

18. The legislative timetable approved by the Chief Executive in Council is as follows—

Publication in the Gazette	8 June 2001
First Reading and commencement of Second Reading debate	20 June 2001
Resumption of Second Reading debate, committee stage and Third Reading	To be notified

BASIC LAW IMPLICATIONS

19. The Department of Justice advises that the Bill does not conflict with those provisions of the Basic Law carrying no human rights implication.

HUMAN RIGHTS IMPLICATIONS

20. The Department of Justice advises that the proposed legislation is consistent with the human rights provisions of the Basic Law.

BINDING EFFECT OF THE LEGISLATION

21. The amendments will not affect the current binding effect of the Ordinance.

FINANCIAL AND STAFFING IMPLICATIONS

22. There are no financial or staffing implications.

PUBLIC CONSULTATION

23. We briefed the Legislative Council Panel on Health Services on the outline of the proposed legislative amendments on 9 April 2001. We have, so far, not received any adverse reaction to our proposals.

PUBLICITY

24. A press release was issued on 8 June 2001. A spokesman will be available to answer enquiries.

SUBJECT OFFICER

25. For enquires in relation to this Bill, please contact the following officer -

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Health and Welfare Bureau
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