

Working Draft

**PROPOSED COMMITTEE STAGE AMENDMENTS
TO
HUMAN ORGAN TRANSPLANT (AMENDMENT) BILL 2001**

[Shown in revision mode on the Gazette version of the Bill]

A BILL

To

Amend the Human Organ Transplant Ordinance.

Enacted by the Legislative Council.

1. Short title and commencement

(1) This Ordinance may be cited as the Human Organ Transplant (Amendment) Ordinance 2001.

(2) This Ordinance shall come into operation on a day to be appointed by the Secretary for Health ~~and Welfare~~, Welfare and Food by notice published in the Gazette.

2. Long title amended

The long title to the Human Organ Transplant Ordinance (Cap. 465) is amended by repealing "persons who are not genetically related, to regulate the importing of human organs intended for transplanting" and substituting "living persons and the transplanting of imported human organs,".

3. Interpretation

Section 2 is amended -

(a) by repealing the definition of "organ" and substituting -

"organ" (器官) -

Clause

Page

(a) means, except in relation to sections 5 to 7 -

(i) any human bodily part which -

(A) consists of a structured arrangement of tissues; and

(B) if wholly removed, cannot be regenerated by the body;

(ii) any human bodily part specified in the Schedule; or

(iii) any structured arrangement of tissues forming part of any human bodily part mentioned in subparagraph (i) or (ii);

(b) means, in relation to sections 5 to 7 -

Clause

Page

(i) any human bodily part mentioned in paragraph (a)(i) and not specified in the Schedule; or

(ii) any structured arrangement of tissues forming part of any human bodily part mentioned in subparagraph (i);";

(b) in the definition of "payment" -

(i) in paragraph (a), by repealing "; or" and substituting a semicolon;

(ii) by adding -

"(aa) the administrative cost incidental to the removal, transportation or preservation of the organ to be supplied; or";

(c) by adding -

"Appeal Board" (上訴委員會) means the Appeal Board established by section 9B;

"Director" (署長) means the Director of Health;

"donor" (捐贈人), in relation to an organ or tissue, means the person from whom the

Clause

Page

organ or tissue is, or is intended to be,
removed;

"function" (職能) includes a power and duty;

"perform" (執行), in relation to any function,
includes exercise and discharge;

"recipient" (受贈人), in relation to a donor,
means the person into whom an organ of
the donor is, or is intended to be,
transplanted;

"remove" (切除), in relation to an organ or
tissue, includes take out by any method;

"restricted organ removal" (受規限器官切除) means
the act of removing from a living person
an organ for the purpose of transplanting
it into another person;

"restricted organ transplant" (受規限器官移植)
means the act of transplanting into a
person an organ removed from another
person who was living at the time of the
removal. ~~i~~

"Secretary" (局長) means the Secretary for
Health, Welfare and Food."

4. Establishment, membership and procedure of Human Organ Transplant Board

Section 3(2), (3) and (4) is repealed and the following substituted -

"(2) The Secretary ~~for Health and Welfare~~ shall appoint 9 substantive members to the board as follows -

- (a) a chairman, who shall not be a registered medical practitioner;
- (b) a vice-chairman, who shall not be a registered medical practitioner;
- (c) 4 members from the medical sector, all of whom shall be registered medical practitioners;
- (d) 1 member from the social work sector, who shall be a registered social worker;
- (e) 1 member from the legal sector, who shall be a legally qualified person; and
- (f) 1 member from the non-medical sector, who shall not be a registered medical practitioner.

(3) The Secretary ~~for Health and Welfare~~ shall also appoint a panel consisting of -

- (a) 8 members from the medical sector, all of whom shall be registered medical practitioners;
- (b) 2 members from the social work sector, both of whom shall be registered social workers;
- (c) 2 members from the legal sector, both of whom shall be legally qualified persons; and

Clause

Page

(d) 2 members from the non-medical sector, neither of whom shall be a registered medical practitioner.

(4) The Secretary ~~for Health and Welfare~~ shall publish in the Gazette notice of every appointment made under subsection (2) or (3).

(5) The substantive members of the board and the panel members shall be appointed on such terms and for such period as the Secretary ~~for Health and Welfare~~ shall specify on appointing them.

(6) If a substantive member from a particular sector is unable to perform his functions during any period, the board may, according to its procedure, appoint a panel member from that sector to act as a substitute for that substantive member in the board during that period, except that the panel member shall not -

(a) be regarded as a substantive member mentioned in subsections (7), (8) and (9); or

(b) participate in the making of any regulation by the board under this Ordinance.

(7) If the chairman of the board is unable to perform his functions during any period, the following person shall act as chairman during that period -

(a) the vice-chairman of the board; or

(b) if the vice-chairman is unable to act as chairman during that period, a person who

Clause

Page

complies with subsection (8) and who shall
be -

- (i) appointed by the chairman or, if the
chairman has failed to make the
appointment, by the vice-chairman;
or
- (ii) elected by the following persons
among themselves if both the
chairman and the vice-chairman have
failed to make the appointment -
 - (A) all remaining substantive
members in the board; and
 - (B) any panel member who is for the
time being acting as a
substitute in the board under
subsection (6).

(8) For the purpose of subsection (7)(b), a person who
is to act as chairman of the board -

- (a) shall not be a registered medical
practitioner; and
- (b) shall be a substantive member of the board
unless all remaining substantive members in
the board are registered medical
practitioners, in which case that person may
be a panel member who is for the time being
acting as a substitute in the board under
subsection (6).

Clause

Page

(9) If a substantive member from a particular sector is acting as chairman of the board during any period, the board may, according to its procedure, appoint a panel member from that sector to act as a substitute for that substantive member in the board during that period.

(10) The Secretary ~~for Health and Welfare~~ shall appoint to the board a secretary and a legal adviser on such terms and for such period as the Secretary ~~for Health and Welfare~~ shall specify on appointing them.

(11) The board may determine its own procedure, whether to be followed in general situations or in a particular case, but the procedure shall not be inconsistent with any provision in this Ordinance or in any regulation made under this Ordinance.

(12) Part VII of the Interpretation and General Clauses Ordinance (Cap. 1) applies to the board and the panel, and to appointments to the board and the panel, except in so far as that Part is inconsistent with any provision in this Ordinance or in any regulation made under this Ordinance.".

5. Sections substituted

Section 5 is repealed and the following substituted -

"5. Restriction on organ transplants between living persons

(1) Except as provided in section 5A(1), 5B(1) or 5C(1), no person shall carry out a restricted organ removal or a restricted organ transplant.

Clause

Page

(2) A person who contravenes subsection (1) commits an offence and is liable -

(a) on a first conviction, to a fine at level 5 and to imprisonment for 3 months; and

(b) on a subsequent conviction, to a fine at level 6 and to imprisonment for 1 year.

5A. Organ transplants between spouses or genetically related persons

(1) A registered medical practitioner may carry out a restricted organ removal or a restricted organ transplant or both if he is satisfied that -

(a) the recipient of the organ concerned -

(i) is genetically related to its donor; or

(ii) is, at the time of the transplant, the spouse of the donor and their marriage has subsisted for not less than 3 years; and

(b) either -

(i) all the requirements in section 5D are complied with; or

(ii) all the requirements in section 5D are complied with except that the requirement in section 5D(1)(d) is waived in accordance with section 5E.

(2) For the purpose of this section, a person is regarded as genetically related only to -

- (a) his natural parents and natural children;
- (b) his siblings of the whole or half blood;
- (c) the siblings of the whole or half blood of either of his natural parents; and
- (d) the natural children of any of the siblings mentioned in paragraphs (b) and (c).

(3) Two persons shall not be regarded as genetically related in any of the ways described in subsection (2) unless the fact of that relationship has been established by such means as may be prescribed by the board by regulation.

(4) For the purpose of this section, two persons shall not be regarded as spouses whose marriage has subsisted for not less than 3 years unless the fact of that relationship has been established by such means as may be prescribed by the board by regulation.

(5) If a registered medical practitioner who intends to carry out a restricted organ transplant under subsection (1) is satisfied that the requirement in section 5D(1)(d) is waived in accordance with section 5E, he shall -

- (a) ensure that he has received a copy each of the certificates mentioned in section 5E(1)(a) and
- (b) before he carries out that transplant;
- (b) within 30 days after the transplant, or within such longer period as the board on application may allow, submit to the board -

Clause

Page

- (i) a copy each of those certificates;
and
- (ii) a copy of the medical report
mentioned in section 5E(1)(c); and
- (c) provide the board with any further information
that it may reasonably require.

(6) Any person who, in purported compliance with any regulation made for the purpose of subsection (3) or (4), supplies information that he knows to be false or misleading in a material respect, or recklessly supplies information that is false or misleading in a material respect, commits an offence and is liable on conviction to a fine at level 5 and to imprisonment for 3 months.

(7) A registered medical practitioner who, without reasonable excuse, fails to comply with subsection (5) commits an offence and is liable on conviction to a fine at level 5.

**5B. Transplants involving organs
removed for donors' therapy**

(1) A registered medical practitioner may carry out a restricted organ transplant if he is satisfied that at the time when the organ concerned was removed from its donor, it was intended to be removed for the therapy of the donor and not for transplanting it into any specific recipient.

Clause

Page

(2) Subject to subsection (2A), a registered medical practitioner who carries out a restricted organ transplant under subsection (1) shall -

~~(a) make a declaration in writing that, to his best knowledge—~~

~~— (i) he is not aware that any payment prohibited by this Ordinance has been made or is intended to be made; and~~

~~— (ii) at the time when the organ concerned was removed from its donor, it was intended to be removed for the therapy of the donor and not for transplanting it into any specific recipient;~~

(a) make a declaration in writing to the effect that -

— (i) he has checked the related documents before he carried out that transplant;

— (ii) he is satisfied that at the time the organ concerned was removed from its donor, it was removed for the therapy of the donor and not for transplant into any specific recipient; and

(iii) to the best of his knowledge and belief, no payment prohibited by this Ordinance has been made or is intended to be made;

- (b) submit that declaration to the board within 30 days after the transplant, or within such longer period as the board may on application allow; and
- (c) provide the board with any further information that it may reasonably require.

(2A) A registered medical practitioner who carries out a restricted organ transplant under subsection (1) is not required to comply with subsection (2) if the organ concerned was removed from the donor before the commencement of this section.

(2B) In this section, "related documents" (相關文件), in relation to a restricted organ transplant, means -

- (a) a certificate issued by the registered medical practitioner who removes the organ concerned from its donor, certifying that the organ is removed for the therapy of the donor and not for transplant into any specific recipient; and
- (b) a declaration by that practitioner in writing to the effect that to the best of his knowledge and belief, no payment prohibited by

this Ordinance has been made or is intended to be made.

(3) Despite section 13 of the Oaths and Declarations Ordinance (Cap. 11), the declaration mentioned in subsection (2) or (2B) of this section is not required to be made and signed in the manner provided by section 14 of that Ordinance.

(4) A registered medical practitioner who, without reasonable excuse, fails to comply with subsection (2) commits an offence and is liable on conviction to a fine at level 5.

(5) A registered medical practitioner who, in purported compliance with subsection (2) or (2B), makes a declaration that he knows to be false or misleading in a material respect, or recklessly makes a declaration that is false or misleading in a material respect, commits an offence and is liable on a conviction to a fine at level 5 and to imprisonment for 3 months.

(6) This section shall not be construed to derogate from the offence in section 4(5).

5C. Organ transplants with prior approval of board

(1) A registered medical practitioner may carry out a restricted organ removal or a restricted organ transplant or both if the board has given its approval in writing.

Clause

Page

(2) The board may give its approval under subsection (1) only if it is satisfied that -

- (a) the proposed operation is referred to the board for its approval by a registered medical practitioner who has clinical responsibility for the donor concerned;
- (b) the donor has been interviewed, in the absence of his recipient, by an interviewer, and the interviewer has reported to the board that the donor has understood all aspects of the proposed organ removal listed under section 5D(1)(b) and that the donor has given his consent as described in section 5D(1)(c); and
- (c) subsection (3) or (4) is applicable.

(3) For the purpose of subsection (2)(c), this subsection is applicable only if -

- (a) all the requirements in section 5D are complied with; and
- (b) the recipient has been interviewed, in the absence of the donor, by an interviewer, and the interviewer has reported to the board that the recipient has understood all aspects of the proposed organ transplant listed under section 5D(1)(d).

(4) For the purpose of subsection (2)(c), this subsection is applicable only if -

Clause

Page

- (a) all the requirements in section 5D (except section 5D(1)(d)) are complied with;
 - (b) the requirements in subsection (3)(b) and in section 5D(1)(d) are waived in accordance with section 5E; and
 - (c) the following documents and information have been submitted to the board -
 - (i) a copy each of the certificates mentioned in section 5E(1)(a) and (b);
 - (ii) a copy of the medical report mentioned in section 5E(1)(c); and
 - (iii) any further information that the board may reasonably require.
- (5) For the purposes of subsections (2)(b) and (3)(b) -
- (a) an interviewer shall be a person whom the board considers to be suitably qualified to conduct an interview under those subsections but shall not be the registered medical practitioner who makes the explanation under section 5D(1)(b) or (d); and
 - (b) the interviewer who interviews the donor under subsection (2)(b) may but need not be the same interviewer who interviews the recipient under subsection (3)(b).

5D. General requirements to be satisfied for purposes of sections 5A and 5C

(1) For the purposes of sections 5A and 5C, the requirements in this section are as follows -

(a) the donor concerned ~~has reached the age of 18 years;~~

~~(i) has reached the age of 18 years; or~~

~~(ii) has reached the age of 16 years and is married;~~

(b) a registered medical practitioner has, in the absence of the recipient concerned, explained to the donor, and the donor has understood, the following aspects of the proposed organ removal -

(i) the procedure;

(ii) the risk involved; and

(iii) the donor's entitlement to withdraw consent to that removal at any time;

(c) the donor has given his consent to the proposed organ removal without coercion or the offer of inducement and has not subsequently withdrawn his consent;

(d) a registered medical practitioner has, in the absence of the donor, explained to the recipient, and the recipient has understood, the following aspects of the proposed organ transplant -

Clause

Page

- (i) the procedure;
- (ii) the risk involved; and
- (iii) the recipient's entitlement to withdraw consent to that transplant at any time;

(e) no payment prohibited by this Ordinance has been made, or is intended to be made.

(2) The registered medical practitioner who makes the explanation under subsection (1)(b) or (d) shall not be the registered medical practitioner who is to carry out the restricted organ removal or the restricted organ transplant.

(3) The registered medical practitioner who makes the explanation to the donor under subsection (1)(b) may but need not be the same registered medical practitioner who makes the explanation to the recipient under subsection (1)(d).

5E. Circumstances in which requirements in sections 5C(3)(b) and 5D(1)(d) are waived

(1) The requirement in section 5D(1)(d) is waived for the purpose of section 5A(1)(b)(ii), and the requirements in sections 5C(3)(b) and 5D(1)(d) are waived for the purpose of section 5C(4)(b), if -

(a) a registered medical practitioner has issued a certificate certifying that -

- (i) the recipient concerned is in fact incapable of understanding the

Clause

Page

explanation required under section 5D(1)(d); and

(ii) that fact is attributable to one or more of the following reasons -

(A) his suffering any illness;

(B) his being a minor;

(C) his being a mentally incapacitated person within the meaning of the Mental Health Ordinance (Cap. 136);

(D) his suffering an impaired state of consciousness;

(b) a registered medical practitioner has issued a certificate certifying that it would not be in the best interests of the recipient to wait until he is capable of understanding the explanation required under section 5D(1)(d); and

(c) the registered medical practitioner who is to carry out the restricted organ transplant has kept a medical report in writing stating the reason why the requirement in section 5D(1)(d) cannot be complied with.

(2) The registered medical practitioner who issues a certificate under subsection (1)(a) or (b) shall not be the registered medical practitioner who is to carry out the restricted organ removal or the restricted organ transplant.

Clause

Page

(3) The registered medical practitioner who issues a certificate under subsection (1)(a) in respect of a recipient may but need not be the same registered medical practitioner who issues a certificate under subsection (1)(b) in respect of the same recipient.

(4) A registered medical practitioner who -

- (a) in purported compliance with subsection (1)(a) or (b), issues a certificate that he knows to be false or misleading in a material respect, or recklessly issues a certificate that is false or misleading in a material respect; or
- (b) in purported compliance with subsection (1)(c), keeps a medical report that he knows to be false or misleading in a material respect, or recklessly keeps a medical report that is false or misleading in a material respect,

commits an offence and is liable on conviction to a fine at level 5 and to imprisonment for 3 months."

6. Section substituted

Section 7 is repealed and the following substituted -

"7. Restrictions on transplants of imported organs

(1) No person shall in Hong Kong transplant an imported organ into a recipient unless -

- (a) the person who carries out the transplant is a registered medical practitioner;

Clause

Page

(b) that organ, when imported into Hong Kong, is accompanied by a certificate that complies with all the requirements in subsection (2) except those that have been waived by the board under subsection (4); and

(c) that registered medical practitioner or another person who is acceptable to the board has supplied the original of that certificate or a copy of it to the board.

(2) The certificate for an imported organ mentioned in subsection (1)(b) must -

(a) be signed in the specified place by a person who is acceptable to the board; and

(b) contain the following -

(i) a statement that, in obtaining the organ, all applicable laws of the specified place were complied with;

(ii) a statement that, at the time the donor of the organ was tested in the specified place, he was not shown to be infected with any disease that was known, at the time of the testing, to be transmissible to the recipient of the organ through transplanting;

(iii) a statement that the organ was removed in a hospital in which the

Clause

Page

government of the specified place has authorized organs to be removed for transplanting;

- (iv) a statement that no person in the specified place made or received a payment for supplying the organ; and
- (v) such other information as the board may, by regulation, require to be supplied.

(3) For the purpose of subsection (2)(b)(v), the board may require different information to be supplied in relation to different organs.

(4) The board may, by notice in writing, waive any of the requirements in subsection (2) in any particular case if it considers it appropriate to do so in the circumstances.

(5) A registered medical practitioner who has in Hong Kong transplanted an imported organ into a recipient ("the transplanting practitioner") shall -

- (a) ensure that the original or a certified true copy of the certificate mentioned in subsection (1)(b) is supplied to the board within 7 working days after the transplant if a copy of that certificate has been supplied to the board under subsection (1)(c); and
- (b) provide the board with any further information that it may reasonably require.

(5A) For the purpose of subsection (5)(a), a certified true copy of a certificate accompanying an imported organ must be a copy certified by the registered medical practitioner who imported the organ ("the importing practitioner") to be a true copy of that certificate.

(5B) If the transplanting practitioner of an imported organ is not its importing practitioner and a certified true copy is supplied under subsection (5)(a), the transplanting practitioner shall -

(a) make a declaration in writing to the effect that to the best of his knowledge and belief, the certified true copy was certified by the importing practitioner; and

(b) submit that declaration to the board within 7 working days after the transplant.

(6) A person who, without reasonable excuse, contravenes subsection (1)~~or~~, (5) or (5B) commits an offence and is liable on conviction to a fine at level 5 and to imprisonment for 3 months.

(7) In this section, "specified place" (指明地方), in relation to an imported organ, means the place outside Hong Kong where the organ was removed from its donor."

7. Sections added

The following are added -

- "9. Protection of members and officers of board against personal liability**

Clause

Page

(1) No person to whom this subsection applies, acting in good faith, shall be personally liable for any civil liability or any claim in respect of any act done or default made in the performance or purported performance of any function under this Ordinance.

(2) The protection given to a person by subsection (1) in respect of an act or default does not affect any liability of the board for that act or default.

(3) The persons to whom subsection (1) applies are -

- (a) any substantive member of the board;
- (b) any member of the panel while acting as a substitute in the board under section 3(6);
- (c) the secretary of the board; and
- (d) any public officer assisting the board in the performance or purported performance of any function under this Ordinance.

9A. Exemption from this Ordinance

(1) For the purposes of this section -

(a) "regulated product" means a product containing any structural arrangement of tissues that -

(i) falls within paragraph (a)(iii) of the definition of "organ" in section 2; and

(ii) has been subjected to processing;

(b) "processing", in relation to any structural arrangement of tissues -

- (i) means any activity that is performed on the tissues and that alters the biological characteristics, function or integrity of the tissues; and
- (ii) does not include recovering or preparing the tissues, preserving the tissues for storage, or removing the tissues from storage.

(2) In this section, a reference to a regulated product includes a reference to a particular type of regulated products.

(3) This Ordinance shall not apply to a regulated product to the extent that it is exempted by the Director under this section.

(4) The Director may, on application, exempt a regulated product from the application of this Ordinance if he is satisfied that -

- (a) using the product for transplant purposes is safe and has no adverse impact on public health;
- (b) either that donor has given his consent without coercion or the offer of inducement to the removal of the tissues concerned for the purpose of producing the regulated product, or the tissues are removed for the therapy of the donor;

(c) no payment prohibited has been made, or is intended to be made to that donor for his supplying the tissues from his body;

(d) all applicable laws have been complied with in obtaining and processing the tissues; and

(e) the circumstances and manner in which the tissues are obtained and processed are not affected by any matter that the Director may consider to be objectionable.

(5) Any person may apply for an exemption in respect of a regulated product under this section by submitting an application to the Director. The application must be in a form specified by the Director.

(6) The Director may specify the form for the purpose of an application under subsection (5).

(7) If the application form requires that -

(a) it be completed in a specified way;

(b) specified information be included in or attached to it; or

(c) it be submitted in a specified manner,

the form is not properly completed unless it is completed in that way, or includes or has attached to it that information, or it is submitted in that manner.

(8) The Director may, by written notice, require an applicant to provide additional information and documents as are reasonably necessary to enable the Director to determine the application after the receipt of -

- (a) a properly completed application form; or
- (b) additional information and documents already provided under this subsection.

(9) If such a requirement is not complied with within a reasonable time specified in the notice, the Director may reject the application.

(10) When the Director is satisfied that all the information and document he requires for determining the application have been submitted, he shall issue a written acknowledgement to the applicant confirming the receipt of all those information and documents.

(11) In determining an application for exemption, the Director shall -

- (a) make a decision on whether to approve or reject the application; and
- (b) give the applicant a written notice of the decision by registered post.

(12) If the Director approves an application for exemption under this section, he may subject the approval to any or all of the following restrictions -

- (a) the validity of the exemption may be limited to a specified period;
- (b) the exemption may be granted only for a particular occasion or for the purpose of a specified type of transplants;

(c) the exemption may be granted only in respect of the applicant or a specified person or class of persons;

(d) such conditions as the Director considers appropriate may be imposed.

(13) Where the Director imposes any condition under subsection (12)(d), he may specify that the exemption concerned shall be revoked, varied or suspended on the breach of the condition. The Director may specify different consequences on the breach of different conditions.

(14) If the Director's approval for an application for exemption under this section is made subject to any restrictions mentioned in subsections (12) and (13), he shall specify those restrictions in the written notice given under subsection (11)(b).

(15) If the Director rejects an application for exemption under this section, he shall include in the written notice given under subsection (11)(b) a statement setting out the reasons for his decision.

(16) The Director may revoke, vary or suspend the exemption granted under this section on such ground as he considers appropriate.

(17) The Director shall give the person to whom the exemption concerned is granted a written notice of any decision in respect of that exemption under subsection (16) by registered post. The notice shall include a statement setting out the reasons for the decision.

(18) The Director shall maintain a register in a form he determines containing details of the exemptions granted, revoked, varied and suspended under this section.

(19) The Director shall make the register available for inspection by the public, free of charge, during ordinary business hours at his office.

(20) Any person who, in purported compliance with this section, supplies information that he knows to be false or misleading in a material respect, or recklessly supplies information that is false or misleading in a material respect, commits an offence and is liable on conviction to a fine at level 5 and to imprisonment for 3 months.

9B. Appeal to the Appeal Board against Director's decision on application for exemption

(1) There is established an Appeal Board for the purpose of hearing and determining an appeal specified in subsection (8).

(2) The Secretary shall appoint an Appeal Panel consisting of such persons as he considers suitable to serve as members of the Appeal Board. Those persons shall comprise -

(a) members from the medical sector, all of whom shall be registered medical practitioners;

(b) members from the legal sector, all of whom shall be legally qualified persons; and

(c) members from the unspecified sector, none of whom shall be registered medical practitioners or legally qualified persons.

(3) An appointment under subsection (2) shall be for a period which shall not exceed 3 years and which shall be determined by the Secretary at the time of the appointment.

(4) A member of the Appeal Panel may resign his office by giving notice in writing to the Secretary.

(5) A person who ceases to be a member of the Appeal Panel shall be eligible for reappointment to that panel.

(6) The Secretary shall publish in the Gazette a notice of every appointment under subsection (2).

(7) The Secretary shall also appoint a secretary to the Appeal Panel on such terms and for such period as the Secretary shall specify on appointing him.

(8) A person aggrieved by a decision of the Director made under section 9A may appeal to the Appeal Board except where the decision is based on the fact that the Director is not satisfied that the requirement in section 9A(4)(a) is complied with.

(9) A person exercising the right of appeal conferred by subsection (8) shall give notice of appeal in such manner and within such period as the Secretary may prescribe by regulation.

(10) Where a notice of appeal is given under subsection (9), the Secretary shall appoint 3 members from the Appeal Panel, one from each of the sectors mentioned in subsection

(2), to serve as members on the Appeal Board for the purpose of hearing and determining the appeal to which the notice relates.

(11) The Secretary shall appoint one of those 3 members to be the Chairman of the Appeal Board in the hearing of that appeal.

(12) The Secretary shall ensure that no person having a financial or other person interest in the matter involved in an appeal is to serve as a member on the Appeal Board for hearing and determining that appeal.

(13) In determining an appeal under this section, the Appeal Board may either -

(a) dismiss the appeal; or

(b) require the Director to reconsider his decision under appeal.

(14) The decision of the Appeal Board shall be final.

(15) The Secretary may by regulation provide for -

(a) the procedures to be followed in making an appeal under this section, including matters to be set out in or to accompany the notice of appeal;

(b) the hearing and determination of an appeal made under this section;

(c) the practice and procedure of the Appeal Board;

(d) any matter that by this section is required or permitted to be prescribed by regulation; and

Clause

Page

(e) any matter ancillary or incidental to those specified in paragraphs (a) to (d).

10. Amendment of Schedule

(1) The Secretary ~~for Health and Welfare~~ may, after consultation with the board, amend the Schedule by notice published in the Gazette.".

(2) An amendment under subsection (1) is subject to the approval of the Legislative Council."

8. Schedule added

The following is added -

"SCHEDULE [ss. 2 & 10]

HUMAN BODILY PARTS

1. Blood (including cord blood)
2. Bone marrow".

9. Interpretation of sections 10 and 11

If an expression defined in section 2 of the principal Ordinance as amended by this Ordinance is used in sections 10 and 11, its meaning in sections 10 and 11 is the same as in that section 2.

10. Cessation of offices of existing board members

(1) A person who holds office as the chairman or a member of the board immediately before the commencement of section 4 ceases to hold that office on that commencement.

(2) Nothing in this section shall be construed as preventing the Secretary for Health ~~and Welfare~~, Welfare and Food from appointing a person mentioned in subsection (1) as a substantive member of the board, or a member of the panel, under section 3 of the principal Ordinance as amended by this Ordinance.

11. Transitional provisions

(1) In this section -

Clause

Page

"commencement date" (生效日期) means the date on which section 5 comes into operation;

"former section 5" (原有第5條) means section 5 of the principal Ordinance as in force immediately before the commencement date.

(2) If a person has referred a proposed operation to the board for its approval under the former section 5 but the board has not given its approval, or has declined to give its approval, before the commencement date, the board may only give its approval in respect of that operation in accordance with the principal Ordinance as amended by section 5.

(3) If the board has given its approval under the former section 5 in respect of a proposed operation but that operation has not been carried out before the commencement date, that approval shall be deemed to be an approval given by the board in accordance with the principal Ordinance as amended by section 5.

(4) If a person, on or after the commencement date, supplies information in accordance with section 3 of the Human Organ Transplant Regulation (Cap. 465 sub. leg.) in respect of -

(a) an organ removal that has been carried out before the commencement date, the information shall be supplied in Form 1 in the Schedule to that Regulation as in force immediately before the commencement date; or

(b) an organ transplant that has been carried out before the commencement date, the information shall

be supplied in Form 2 in the Schedule to that Regulation as in force immediately before the commencement date.

Consequential Amendments

Human Organ Transplant Regulation

12. Empowering section amended

The empowering section to the Human Organ Transplant Regulation (Cap. 465 sub. leg.) is amended by repealing "sections 5(2), 6(1) and 7(1)(e)" and substituting "sections 5A, 6 and 7".

13. Sections amended

Sections 2 and 2A are amended by repealing "section 5" and substituting "section 5A".

14. Information that must be supplied to the board and the persons who must supply it

Section 3(5) is amended -

- (a) by repealing "section 5(3)" and substituting "section 5C";
- (b) in paragraph (a), by repealing "caused the matter to be referred" and substituting "referred the proposed operation".

15. Additional information for imported organs

Section 4 is amended by repealing "section 7(1)" and substituting "section 7(2)".

16. Schedule amended

The Schedule is amended -

(a) in Form 1 -

(i) in paragraph (a)(i) and (ii) of Part I, by repealing everything after "satisfied" and substituting -

"that -

* all the requirements in section 5D of the Human Organ Transplant Ordinance have been complied with.

[OR]

* all the requirements in section 5D of the Human Organ Transplant Ordinance have been complied with except that the requirement in section 5D(1)(d) has been waived in accordance with section 5E of that Ordinance." ;

(ii) in Note 1, by repealing "caused the matter to be referred" and substituting "referred the proposed operation" ;

Clause

Page

(b) in Form 2, in Part II, by repealing "Section 7(1)" and substituting "section 7".

Mental Health Ordinance

17. Prohibition against organ transplant

Section 59ZBA(2) of the Mental Health Ordinance (Cap. 136) is amended by adding "contained in subparagraphs (i), (ii) and (iii) under paragraph (a) of the definition of "organ"" after "as".