

**Bills Committee on
Human Organ Transplant (Amendment) Bill**

Administration's Response

To consider Ms Cyd Ho's proposed Committee Stage amendments tabled at the meeting (on 11 June 2004).

Section 2A of the Human Organ Transplant Ordinance (Cap 465) provides that two persons shall not in any particular case be treated as spouses whose marriage has subsisted for less than three years unless the fact of the relationship has been established by such means, or in accordance with such guidelines. The means are provided in section 2A of the Human Organ Transplant Regulation, which provides that the fact of a marriage shall be established by means of any document or documents –

- (A) issued under the Marriage Ordinance (Cap 181) or the Marriage Reform Ordinance (Cap 178) which shows or show that the 2 persons are the parties to (i) a marriage celebrated or contracted in accordance with the provisions of the Marriage Ordinance; (ii) a modern marriage validated by the Marriage Reform Ordinance; or (iii) a customary marriage declared to be valid by the Marriage Reform Ordinance; or
- (B) equivalent to any document or documents issued under the Marriage Ordinance or the Marriage Reform Ordinance which shows or show that the 2 persons are the parties to a marriage celebrated or contracted outside Hong Kong in accordance with the law in force at the time and in place where the marriage was performed.

Section 2A of the Human Organ Transplant Regulation makes no distinction between opposite sex marriages and same sex marriages. It follows that if a same sex marriage was celebrated or contracted outside Hong Kong in accordance with the law in force at the time and in place where the marriage was performed, then the relevant marriage document(s) issued by the overseas

authorities could be used to establish a marital relationship for the purpose of section 5 of the Human Organ Transplant Ordinance or for the purpose of the proposed section 5A(1)(a)(ii) of the Bill.

Our legal advice is that the current wording of section 2A of the Human Organ Transplant Regulation is not ambiguous and that it is not necessary to expressly provide for same sex marriages recognised by law or by court outside Hong Kong in the proposed section 5A of the Bill. The Secretary for Health, Welfare and Food is prepared, however, to put on record in his speech for the resumption of second reading of the Bill at the Legislative Council the proper interpretation of section 2A of the Human Organ Transplant Regulation in respect of same sex marriages celebrated outside Hong Kong. We would also liaise with the doctors' associations and the Hospital Authority on ways to ensure that medical practitioners would be well informed of the proper interpretation of the section.

As for "partnerships", the Administration has indicated in its response issued on 11 June 2004 that persons in registered domestic partnerships would not be treated in the same manner as married persons for the purpose of the proposed section 5A(1)(a)(ii). Under section 2A of the Human Organ Transplant Regulation, the fact of a marriage has to be established by valid marriage document(s) issued by the relevant authorities. Other types of documents, such as those for registered domestic partnerships, would not be accepted for the purpose of the proposed section 5A(1)(a)(ii). Therefore, a proposed organ transplant between two persons in a registered domestic partnership would require the prior written approval of the Human Organ Transplant Board.

Health, Welfare and Food Bureau
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