

For discussion
on 9 April 2001

**LegCo Panel on Health Services
Meeting of 9 April 2001**

**Proposed Amendments to
the Human Organ Transplant Ordinance (Cap 465)
(Stage II Amendments)**

Introduction

This paper sets out, for Members' comments, the Administration's proposed amendments to the Human Organ Transplant Ordinance (the Ordinance).

Background

2. Members will recall that the Human Organ Transplant (Amendment) Ordinance 1999 was enacted by the Legislative Council on 10 February 1999 and brought into effect on 19 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.

Proposed Amendments to the Human Organ Transplant Ordinance

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, we propose to introduce further amendments to the Ordinance as follows :

Definition of Organ

4. 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. 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 to provide the Secretary for Health and Welfare (SHW) the power to make a Schedule setting out organs that are not to be covered by the Ordinance. SHW will consult the Human Organ Transplant Board (the Board) in drawing up and amending the Schedule, which is regarded as a subsidiary legislation to the Ordinance. SHW would be empowered to amend the Schedule as he sees fit, subject to the negative vetting procedures of the Legislative Council.

Board membership

5. 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 consisted of 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. The roles and authority of these panel members are, however, restricted to receiving, evaluating and approving/disapproving organ transplant applications and applications in relation to imported organs.

Appointment of secretary and legal adviser

6. 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.

Transplanting organs removed for therapeutic purposes

7. 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 organs to be used for the transplant, such as bone fragments, are removed previously for therapeutic purposes not directly connected to the subsequent transplant. 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 therapeutic purpose is now being used for transplant. 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.

8. 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 primarily for therapeutic purpose of the donor.

Interview of donor and recipient

9. To avoid delay in transplantation due to the possible difficulties of having one interviewer or one medical practitioner to interview and give comprehensive explanations 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.

Criminal sanctions

10. In the case where transplants take place between living related persons and that the Board's approval is not required, it is proposed to specify clearly in the Ordinance that it is a criminal offence for non-compliance with section 5(4)(b) – (e) by the person removing the organ, that is, satisfying himself that the procedures related to explanation of procedures, obtaining consent, interview, ensuring no payment is involved and age limit are complied with. In addition, it is also a criminal offence to provide falsified information on genetic relationship as per Section 5(2) of the Ordinance.

The role of the Board in relation to imported organs

11. There have been expressed concerns over the role of the Board in handling imported organ for transplantation purpose. Section 7 of the Ordinance does not empower the Board to influence the import or transplantation of organ regardless whether the information required in Section 7(1)(a) – (e) is properly furnished or not.

12. 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 the imported organ must be accompanied by a certificate which is signed by a person in the country of origin who is acceptable to the Board; and the information contained in the certificate as specified in Section 7(1)(a) to (e) must be satisfied by the Board before the import of the organ for the purpose of transplanting it into a person in Hong Kong.

Indemnity provision

13. It is proposed to accord indemnity to individual substantive members, panel members and officers of the Board insofar as they act in good faith in the exercise of the powers conferred to them by the Ordinance.

The Way Forward

14. We have consulted the Board and the Hospital Authority, and they are generally in support of the proposed amendments. Subject to the progress of the drafting of the Bill, we intend to introduce it into the Legislative Council within this legislative year.

Advice Sought

15. Members are invited to comment on the proposed amendments set out in paragraphs 4 to 13.

Health and Welfare Bureau
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