

**Extract from the Report of the Bills Committee on
Human Organ Transplant (Amendment) Bill 2001
(LC Paper No. CB(2)2802/03-04)**

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Transplant applications involving homosexual couples

43. Hon Cyd HO has asked the Administration to put it beyond doubt in the Ordinance that same sex marriage celebrated or contracted outside Hong Kong in accordance with the law in force at the time and in the place where the marriage was performed and domestic partnerships registered overseas should be treated on an equal footing with the marital relationship referred to in the proposed section 5A(1)(a)(ii).

44. The Administration has advised that the means for establishing the fact of a marriage are provided in section 2A of the Human Organ Transplant Regulation. The section 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 two 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 two 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 the place where the marriage was performed.

As section 2A of the Human Organ Transplant Regulation makes no distinction between opposite sex marriages and same sex marriages, it is therefore not necessary to expressly provide for same sex marriages recognised by law or by court outside Hong Kong in the proposed 5A of the Bill. SHWF is prepared, however, to put on record in his speech during the resumption of Second Reading debate of the Bill the proper interpretation of section 2A of the Human Organ Transplant Regulation in respect of same sex marriages celebrated outside Hong Kong. The Administration has also undertaken to liaise with the

doctors' associations and HA on ways to ensure that medical practitioners would be well informed of the proper interpretation of the section.

45. Ms HO has also proposed to expand the coverage of the proposed section 5A(1)(a)(ii) beyond married persons to persons in "partnership" recognised by law or by a court outside Hong Kong. The Administration has indicated that persons in domestic partnership 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). A proposed organ transplant between two persons in a registered domestic partnership would therefore require the prior written approval of the Board.

46. As the Administration does not agree to her request to put it beyond doubt that same sex marriage celebrated or contracted outside Hong Kong in accordance with the law in force at the time and in the place where the marriage was performed should be treated in the same manner as marital relationship referred to in the proposed section 5A(1)(a)(ii), Hon Cyd HO has indicated her intent to move CSAs to that effect.

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