

中華人民共和國香港特別行政區政府總部衛生福利局的信頭  
Health and Welfare Bureau  
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人類生殖科技條例草案委員會秘書  
陳曼玲女士

陳女士：

草案委員會在第二次會議後要求提供的資料

就閣下在十月十五日致本局梁永立先生的來信中的要求，現提供以下資料以供參考。

其他國家在持牌人和負責人的問題上所採用的「監察及制衡」機制

英國 1990 年人類受精及胚胎學法案（簡稱英國法案）並沒有要求「持牌人」和「負責人」須為兩人。雖然如此，在回答臨時生殖科技管理局的詢問時，英國人類受精及胚胎學管理局建議「持牌人」和「負責人」須為兩人是相當重要的。

在澳洲，每個省的做法都不同。有些州規定所有參與生殖科技程序的人士，包括臨床醫生、科學家及顧問都必須持牌。這種所有參與者都受到監察的做法背後精神，與我們提出的「監察與制衡」的機制十分相近。

## 在其他國家合資格從事生殖科技程序的醫療專業人士的種類

根據英國的管理局提供的資料，雖然沒有特別規定，大部份的「負責人」都是醫生。有些進行體外受精和採用捐精進行人工授精的中心的「負責人」，可以是醫院經理、護士或胚胎學家。此外，那些只負責儲存配子或胚胎的中心的「負責人」一般都是科學家，而只進行研究的中心的「負責人」則是學術顧問或科學家。

在澳洲，一般來講持牌者是須要特定資歷的。生殖科技評檢委員會是爲了澳洲及紐西蘭的生殖科技服務所設立的一個自我規管的組織。根據它所設定的指引，進行臨床程序的責任應由醫生承擔。

在美國，只要有一個醫療牌照（用於一般醫療業務）就可以進行生殖科技的工作。另一方面，一個生殖科技實驗室的其中一部份可以因受到一個聯邦計劃的管轄而須要一個實驗室總監來負責管理。對於研究員的資歷並無特別要求。

## 其他國家對於捐精者身份保密及賦於任何人權利去究查自己是否藉生殖科技而誕生及取得捐精者某些不能被辨認出其身份的資料的做法

在英國，任何年滿 18 歲而又是藉生殖科技而生的人，有權索取載於一個登記冊內關於捐精者的不能辨認其身份的資料。

在澳洲的其中一個省，任何年滿 18 歲及藉生殖科技而生的人，甚至有權索取可辨認捐精者身份的資料，其背後精神並非因爲考慮到亂倫的風險，而是每個人都有權去知道自己的根源。

美國大部份的州只着眼於藉生殖科技所生的兒童的父母／子女關係的問題，卻不是該兒童是否有途徑去取得捐精者的資料。有些州除非因緊急醫學理由而由法庭頒令，否則必須保密捐精者的身份，也沒有給予該兒童權力去取得捐精者的資料。

## 父母及子女條例（第 429 章）

我附上第 429 章 9 至 12 條以供參考。他們主要爲那些藉醫療程序而懷孕或出生的個案中有關子女的「母親」和「父親」加以定義。

- 任何從生殖科技而懷孕的女子視爲該子女的母親。
- 曾與上述女子一起接受生殖科技服務的該女子的丈夫或男性伴侶，被視爲其子女的父親。捐精者並不被視爲其子女的父親。

另外，根據第 429 章 12 條，法庭可發出命令，判一名子女在法律上被視爲婚姻雙方的子女，即使該子女曾被婚姻雙方中的妻子以外的一名女子懷有。法庭可頒發命令的其中一個條件是該胚胎是使用丈夫及妻子或其中一人的配子所產生的。

希望以上的資料能對議員們有所幫助。

衛生福利局局長  
(郭黃穎琦 代行)

一九九八年十月二十六日

## PART V

DETERMINATION OF PARENT WHERE BIRTH OR PREGNANCY  
RESULTS FROM MEDICAL TREATMENT9. Meaning of “mother” where birth or pregnancy  
results from medical treatment

(1) The woman who is carrying or has carried a child as a result of the placing in her of an embryo or of sperm and eggs, and no other woman, is to be regarded as the mother of the child.

(2) Subsection (1) does not apply to any child to the extent that the child is regarded by virtue of adoption as not being the child of any person other than the adopter or adopters.

(3) Subsection (1) applies whether the woman was in Hong Kong or elsewhere at the time of the placing in her of the embryo or the sperm and eggs.  
[*cf.* 1990 c. 37 s. 27 U.K.]

10. Meaning of “father” where birth or pregnancy  
results from medical treatment

(1) This section applies in the case of a child who is being or has been carried by a woman as the result of the placing in her of an embryo or of sperm and eggs or her artificial insemination.

(2) If—

- (a) at the time of the placing in her of the embryo or the sperm and eggs or her insemination, the woman was a party to a marriage; and
- (b) the creation of the embryo carried by her was not brought about with the sperm of the other party to the marriage,

## 第 V 部

## 藉醫療懷孕或出生的個案中有關子女的父母身分如何斷定

9. 對於藉醫療懷孕或出生的個案中的有關子女，  
“母親”一詞的意義

(1) 任何正在或曾經懷有子女的女子，若是因胚胎或精子和卵子被放置其體內而懷孕的，則除她以外，別無其他女子被視為該子女的母親。

(2) 若任何子女因被領養而被視為只屬其領養父母的子女，則在此程度上，第(1)款對其並不適用。

(3) 不論該女子在胚胎或精子和卵子放置於其體內時是否身在香港，第(1)款一概適用。

[ 比照 1990 c. 37 s. 27 U.K.]

10. 對於藉醫療懷孕或出生的個案中的有關子女，  
“父親”一詞的意義

(1) 凡任何正在或曾經懷有子女的女子是因胚胎或精子和卵子被放置其體內而懷孕的，或因接受人工受精而懷孕的，本條即適用。

(2) 若——

- (a) 在胚胎或精子和卵子被放置該女子體內時，或她接受人工受精時，她是婚姻的一方；及
- (b) 她所懷的胚胎，並不是由於該婚姻另一方的精子而產生的，

hen, subject to subsection (5), the other party to the marriage shall be regarded as the father of the child unless it is shown that he did not consent to the placing in her of the embryo or the sperm and eggs or to her insemination (as the case may be).

(3) If no man is regarded, by virtue of subsection (2), as the father of the child but—

- (a) the woman and her male partner together obtained treatment services in the course of which the embryo or the sperm and eggs were placed in the woman or she was artificially inseminated; and
- (b) the creation of the embryo carried by her was not brought about with the sperm of that man,

then, subject to subsection (5), that man shall be regarded as the father of the child.

(4) Where a person is regarded as the father of the child by virtue of subsection (2) or (3), no other person is to be regarded as the father of the child.

(5) Subsections (2) and (3) do not apply to—

- (a) any child who, by virtue of any Ordinance or other rule of law, is regarded as the child of the parties to a marriage; or
- (b) any child to the extent that the child is regarded by virtue of adoption as not being the child of any person other than the adopter or adopters.

(6) Where the sperm of a man other than—

- (a) the other party to the marriage; or
- (b) the man referred to in subsection (3),

was used, that man is not to be regarded as the father of the child.

(7) For the purposes of the law of succession, where—

- (a) the sperm of a man was used after his death; or
- (b) any embryo was used after the death of the man with whose sperm the embryo was created,

that man is not to be regarded as the father of the child.

(8) The references in subsection (2) to the parties to a marriage at the time there referred to—

- (a) are to the parties to a marriage subsisting at that time, unless a judicial separation was then in force; but
- (b) include the parties to a void marriage if either or both of them reasonably believed at that time that the marriage was valid; and for the purposes of this subsection it shall be presumed, unless the contrary is shown, that one of them reasonably believed at that time that the marriage was valid.

(9) This section applies whether the woman was in Hong Kong or elsewhere at the time of the placing in her of the embryo or the sperm and eggs or her artificial insemination.

[cf. 1990 c. 37 s. 28 U.K.]

則除非第(5)款適用，或除非能證明該婚姻的另一方不同意將胚胎或精子和卵子放置她體內或不同意她接受人工受精，該婚姻另一方須被視為該子女的父親。

(3) 若無男子憑藉第(2)款被視為該子女的父親，而——

- (a) 在該女子與她的男性伴侶共同接受助孕服務的過程中，胚胎或精子和卵子被放置她體內，或她接受人工受精；及
- (b) 她所懷的胚胎，並不是由於該男子的精子而產生的，

則除非第(5)款適用，否則該男子須被視為該子女的父親。

(4) 凡憑藉第(2)或(3)款的規定已將某人視為該子女的父親，則無其他人可被視為該子女的父親。

(5) (a) 若任何子女憑藉任何條例或其他法律規定而視為婚姻雙方的子女，第(2)及(3)款對該子女不適用；及

(b) 若任何子女因被領養而視為只屬其領養父母的子女，則在此程度上，第(2)及(3)款對該子女不適用。

(6) 凡一名男子的精子被使用，而該男子並非——

- (a) 該婚姻的另一方；或
- (b) 第(3)款所述的男子，

則該男子不被視為該子女的父親。

(7) 就繼承法而言，凡——

- (a) 一名男子的精子是在他死後才被使用；或
- (b) 使用一名男子的精子而產生的胚胎，是在該男子死後才被使用的，

則該男子不被視為該子女的父親。

(8) 第(2)款中有關當其時婚姻雙方的提述——

- (a) 指在當其時他們之間是有婚姻存續的雙方，除非雙方當其時處於司法分居中；但
- (b) 該提述包括無效婚姻的雙方，只要婚姻的任何一方或雙方當其時合理地相信其婚姻是有效的；同時，為了本款的規定，他們其中一人須推定為在當其時合理地相信其婚姻是有效的，除非證明並非如此。

(9) 不論該女子在胚胎或精子和卵子放置其體內時，或她接受人工受精時，是否身在香港，本條一概適用。

[比照1990 c. 37 s. 28 U.K.]

**11. Effect of sections 9 and 10**

(1) Where by virtue of section 9 or 10 a person is to be regarded as the mother or father of a child, that person is to be regarded in law as the mother or, as the case may be, father of the child for all purposes.

(2) Where by virtue of section 9 or 10 a person is not to be regarded as the mother or father of a child, that person is to be regarded in law as not being the mother or, as the case may be, father of the child for any purpose.

(3) Where subsection (1) or (2) has effect, references to any relationship between 2 persons in any Ordinance, instrument or document (whenever enacted or made) shall, unless the contrary intention appears, be read accordingly.

[cf. 1990 c. 37 s. 29 U.K.]

**12. Parental orders in favour of gamete donors**

(1) The court may make an order providing for a child to be regarded in law as the child of the parties to a marriage (referred to in this section as “the husband” and “the wife”) if—

- (a) the child has been carried by a woman other than the wife as the result of the placing in her of an embryo or sperm and eggs or her artificial insemination;
- (b) the gametes of the husband or the wife, or both, were used to bring about the creation of the embryo; and
- (c) the conditions in subsections (2) to (7) are satisfied.

(2) The husband and the wife must apply for the order within 6 months of the birth of the child or, in the case of a child born before the commencement of this section, within 6 months of such commencement.

(3) At the time of the application and of the making of the order—

- (a) the child’s home must be with the husband and the wife or either of them; and
- (b) the husband or wife, or both of them, must—
  - (i) be domiciled in Hong Kong;
  - (ii) have been habitually resident in Hong Kong throughout the immediately preceding period of 1 year; or
  - (iii) have a substantial connection with Hong Kong.

(4) At the time of the making of the order both the husband and the wife must have attained the age of 18 years.

(5) The court must be satisfied that both the father of the child (including a person who is the father by virtue of section 10), where he is not the husband, and the woman who carried the child have freely, and with full understanding of what is involved, agreed unconditionally to the making of the order.

**11. 第 9 及 10 條的效力**

(1) 如憑藉第 9 條有任何人被視為一名子女的母親，則在所有情況下該人在法律上均被視為該子女的母親；如憑藉第 10 條有任何人被視為一名子女的父親，則在所有情況下該人在法律上均被視為該子女的父親。

(2) 任何不能憑藉第 9 條被視為一名子女的母親的人，在任何情況下在法律上均不被視為該子女的母親；任何不能憑藉第 10 條被視為一名子女的父親的人，在任何情況下在法律上均不被視為該子女的父親。

(3) 如在第(1)或(2)款適用的情況下，有任何條例、文書或文件(不論是在何時制定或訂立)對兩個人之間的任何關係作出提述，該提述須按第(1)或(2)款的規定理解，除非出現相反用意。

[ 比照 1990 c. 37 s. 29 U.K.]

**12. 供應配子的人獲判定為父母的命令**

(1) 在以下情況，法院可發出命令，判一名子女在法律上被視為婚姻雙方的子女(婚姻雙方在本條中稱為“丈夫”及“妻子”)，——

- (a) 該子女並非由妻子所懷有，而是由另一名女子所懷有而該女子是因胚胎或精子和卵子被放置其體內或接受人工受精而懷有該子女的；
- (b) 胚胎是使用丈夫及妻子的配子或使用其中一人的配子所產生；及
- (c) 下述第(2)至(7)款的條件均已符合。

(2) 丈夫及妻子必須在該子女出生後 6 個月內申請命令，若該子女在本條生效日期前出生，則必須在本條生效日期後 6 個月內提出申請。

(3) 在提出申請時及發出命令時——

- (a) 該子女必須是與丈夫及妻子或兩者中的任何一人同屬一家；及
- (b) 丈夫及妻子，或其中一人必須——
  - (i) 以香港為其居籍；
  - (ii) 在提出申請及發出命令當日之前的 1 年期間，一直慣常居於香港；或
  - (iii) 與香港有密切聯繫。

(4) 在命令發出時，丈夫及妻子均須年滿 18 歲。

(5) 若丈夫並非該子女的父親，法院必須獲致信納該子女的父親(包括憑藉第 10 條而被視為父親的人)及懷有該子女的女子，在完全明白所涉事宜的情況下，均自主地和無條件地同意法院發出命令。

(6) Subsection (5) does not require the agreement of a person who cannot be found or is incapable of giving agreement and the agreement of the woman who carried the child is ineffective for the purposes of that subsection if given by her less than 6 weeks after the child's birth.

(7) The court must be satisfied that no money or other benefit (other than for expenses reasonably incurred) has been given or received by the husband or the wife for or in consideration of—

- (a) the making of the order;
- (b) any agreement required by subsection (5);
- (c) the handing over of the child to the husband and the wife; or
- (d) the making of any arrangements with a view to the making of the order,

unless authorized or subsequently approved by the court.

(8) Subsection (1)(a) applies whether the woman was in Hong Kong or elsewhere at the time of the placing in her of the embryo or the sperm and eggs or her artificial insemination.

(9) Where an order is made under subsection (1), the Registrar of the court shall notify the Registrar of Births and Deaths, in such manner as may be prescribed, of the making of that order.

[*cf.* 1990 c. 37 s. 30 U.K.]

(6) 第(5)款並不要求無法找到的人或無能力表示同意的人同意法院發出命令，同時，為了執行該款的規定，若懷有該子女的女子是在該子女出生後的6個星期內表示同意，該項同意是無效的。

(7) 法院必須獲致信納丈夫或妻子並無為下述事情付出或接受金錢或其他利益(合理招致的費用除外)——

- (a) 命令的發出；
- (b) 第(5)款要求的同意；
- (c) 將該子女交予丈夫和妻子；或
- (d) 為了使法院發出命令而作出的安排，

獲法院授權或獲法院其後准許付出或接受者除外。

(8) 不論該女子在胚胎或精子和卵子放置其體內時，或在她接受人工受精時，是否身在香港，第(1)(a)款一概適用。

(9) 若法院根據第(1)款發出命令，高等法院的司法常務官或地方法院的司法常務主任須以訂明的方式，將法院已發出該命令一事通知生死登記官。

[*比照* 1990 c. 37 s. 30 U.K.]