

立法會
Legislative Council

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seen by the Administration)

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**Bills Committee on
Human Reproductive Technology Bill**

**Minutes of the 23rd meeting
held on Friday, 24 December 1999 at 8:30 am
in Conference Room B of the Legislative Council Building**

Members Present : Hon Cyd HO Sau-lan (Chairman)
Hon Michael HO Mun-ka
Hon CHAN Yuen-han
Dr Hon LEONG Che-hung, JP
Hon YEUNG Yiu-chung
Dr Hon TANG Siu-tong, JP

Members Absent : Hon Ambrose LAU Hon-chuen, JP
Hon LAW Chi-kwong, JP

Public Officers Attending : Mr Gregory LEUNG Wing-lup, JP
Deputy Secretary for Health and Welfare

Mr Eddie POON
Principal Assistant Secretary for Health and Welfare (Medical) 3

Mr Rick CHAN
Assistant Secretary for Health and Welfare (Medical) 6

Dr Thomas CHUNG Wai-hung
Principal Medical and Health Officer (3)

Mr G A FOX
Senior Assistant Law Draftsman

Miss Frances HUI
Government Counsel

Clerk in Attendance : Ms Doris CHAN
Chief Assistant Secretary (2) 4

Staff in Attendance : Mr LEE Yu-sung
Senior Assistant Legal Adviser

Ms Joanne MAK
Senior Assistant Secretary (2) 4

I. Meeting with the Administration

In response to Mr Michael HO Mun-ka's question, Senior Assistant Law Draftsman (SALD) said that the Surrogacy Arrangements Act of the United Kingdom provided that surrogacy arrangements, no matter whether they involved human reproductive technology (RT) procedures or not, were unlawful if they were carried out on a commercial basis.

2. SALD pointed out that as the object of the Bill was to regulate RT procedures, only surrogacy arrangements involving RT procedures would fall within the regulation of the Bill. In other words, the Administration's policy decision was that surrogacy arrangements carried out on a commercial basis would be unlawful if RT procedures were involved in the arrangements.

CSAs to be moved by the Administration

(LC Paper No. CB(2)684/99-00(01))

Clause 31(3) - Secrecy

3. Further to the discussion in the last meeting, the Administration came up with another proposal. It was proposed that at the time of making donations, a donor should be requested to indicate his wish with regard to the following options -

- (a) that he did not want to be contacted under any circumstances after the provision of the RT procedure; or
- (b) he did not object to being contacted again in special circumstances.

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Deputy Secretary for Health and Welfare (DSHW) said that if the proposal was agreeable to members, the Administration would re-draft the clause along these lines.

Adm 4. The Chairman considered that that the new proposal did not fully reflect the views of Miss CHAN Yuen-han expressed at the last meeting and suggested the Administration to consult Miss CHAN on the proposal. Dr LEONG Che-hung took the view that the new proposal was worth considering. He further suggested that in the case that the Council on Human Reproductive Technology (the Council) had to approach a donor (who had given his consent in writing) later on, this should be done by designated officers of the Council only. He also suggested that the Adm Administration should consider whether in such a case, the Council should first apply for permission from the court for contacting the donor.

5. Addressing Dr LEONG's concerns about the information to be furnished by the Council under clause 30(4)(a) of the Bill, Principal Medical and Health Officer (3) (PMHO3) said that this would be further decided by the Council and the information to be furnished would be specified by subsidiary legislation. Referring to clauses 30(4) and 30(5), PMHO3 pointed out that the disclosure of information would be subject to the principle that in any case the Council could not disclose the identifying information regarding the donor concerned.

6. In response to the Chairman's question, PMHO3 said that the Council would not be required to keep information regarding the donor's siblings.

Clause 42(2) - Regulations - general

7. Dr LEONG Che-hung was concerned about the proposed CSA to clause 42(2)(e) which would allow a RT procedure to be provided to persons who were not the parties to a marriage. He considered that the proposed arrangement was totally contradictory to the legislative intent of the Bill, which was primarily concerned about safeguarding the welfare of a child born in consequence of a RT procedure. For this reason, provisions had been made in the Bill to restrict that RT procedures should be provided to married couples only.

8. In response, DSHW explained that the proposed CSA was meant to address special situations. He said that for example, a married couple had started to receive a RT procedure; but unfortunately when the couple was halfway through the process, the husband died. He pointed out that the wife, now widowed, was no longer a party to a marriage legally. So the purpose of the draft CSA was to allow the continuation of the RT procedure provided to the wife in the circumstances. He pointed out that it was difficult to define at which stage that the provision of a RT procedure should be regarded as "having started".

9. Dr LEONG Che-hung recalled that the Draft Code of Practice on Reproductive Technology and Embryo Research (the Code) drawn up by the Provisional Council on Human Reproductive Technology had stipulated that stored sperms or embryos should not be used by a divorced couple or when one of the parties had died. He considered that the draft CSA was therefore contradictory to the Code. He also considered that the proposed control was too loose and it might open the floodgates to abused use of RT procedures by persons who were not the parties to a marriage.

10. Senior Assistant Legal Adviser (SALA) invited members to note that the original clause 42(2)(e) in the Bill specified that a RT procedure might continue to be provided to "persons who were the parties to a marriage". It had already addressed the situation where the marital status of the man/woman involved had changed due to the death of one of the parties to the marriage or divorce. On the other hand, the draft CSA under discussion allowed the provision of a RT procedure to persons who were not the parties to a marriage. He considered that in so drafting, the Administration was actually relaxing the control on the eligibility for receiving RT procedures.

11. In response, PMHO3 explained that the draft CSA was necessary not only to cater for the special cases as mentioned by DSHW but also for situations where unmarried women acted as surrogate mothers. He pointed out that as members had earlier agreed, it was not necessary for a surrogate mother to be a married woman. He explained that the purpose of the proposed CSA was only to provide for continuation of a RT procedure provided to persons who were the parties to a marriage at the time when gametes were, or an embryo was, placed in the body of a woman pursuant to that procedure. He pointed out that if the provision of a RT procedure to the couple had not started (i.e. the gametes, or embryo, had not yet been placed in the body of the woman) before the husband died, the RT procedure would not be provided to the woman anyway. He said that this principle had remained unchanged.

12. Dr LEONG Che-hung said he agreed that the provision of RT procedures to a woman should not be discontinued if the stored gametes or embryo had already been placed in the body of the woman before her husband died. However, he remained of the view that the proposed CSA was unacceptable as it would greatly relax the control. Moreover, he considered that it would not be appropriate to confer the Council with such great power as to decide under what circumstances that a RT procedure could be provided to persons who were not the parties to a marriage. The Chairman also shared Dr LEONG's views that the proposed CSA might open the floodgates to abuses of the use of RT procedures.

13. SALD hypothesized a case where a couple planned to have a child using RT and suddenly the husband was found suffering from cancer and had to receive radiation treatment. Since radiation could render a man infertile, the husband had his

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sperms stored before getting the radiation treatment. Then the man died but the woman might still want to conceive using the stored sperms. SALD said that this might be the situation that the Bill should take account of.

14. However, Dr LEONG pointed out that the Code had already addressed such cases by stipulating that stored sperms or embryos should not be used to bring about a posthumous child. As regards the case hypothesized by SALD, Dr LEONG said that, in accordance with the Code, if the husband showed no signs of recovery and died eventually, the stored sperms would be disposed of and, in fact, a consent form to this effect had been included in the Code. Dr LEONG pointed out that the Code also stipulated that RT procedures should not be provided to a woman whose husband was receiving radiation treatment until he had recovered. He explained that the intent of the policy was for safeguarding the welfare of the child born in consequence of a RT procedure.

Adm

15. Mr Michael HO Mun-ka took the view that it was inadequate just to spell out the circumstances under which RT procedures could and could not be provided to a couple in the Code. He suggested that details of these circumstances should be laid down in the regulations to be made by the Council provided under clause 42. Moreover, the regulations should be subject to positive vetting. Dr LEONG considered that the proposed CSA was not acceptable even if the relevant regulations were to be made subject to positive vetting.

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16. The Chairman considered that if the proposed CSA mainly served the purpose of giving a legal basis to an unmarried woman acting as a surrogate mother, the CSA should be re-drafted to reflect more specifically the intent. She agreed with Dr LEONG that the proposed control would be too loose if the proposed CSA was adopted. DSHW said that he would further discuss with PMHO3 to clarify whether, from the medical perspective, it was regarded as having completed the provision of a RT procedure once the gametes or embryo had been placed in the body of a woman. He agreed to revert later on the issue.

17. Members agreed that in any case, after the gametes of an embryo had been successfully implanted in the body of a woman, the provision of RT procedures to the woman should not be discontinued. However, if the implantation was unsuccessful and that the husband had died, RT procedures would cease to be provided to the woman and the stored gametes/embryo would be disposed of.

18. In response to the Chairman, DSHW said that the regulations to be made by the Council as provided under this section would be subject to negative vetting, except for those provided under clause 42(2)(e) which would be further discussed by the Bills Committee.

Counselling service for couples seeking provision of RT procedures

19. Miss CHAN Yuen-han proposed that provisions should be made to stipulate that appropriate counselling must be provided by the medical practitioners concerned to the commissioning couple seeking provision of RT procedures. She suggested that reference could be made to the Human Organ Transplant Ordinance (HOTO) which had made similar provisions. However, members in general expressed reservations about the proposal. They considered that it would be difficult to define what was meant by "appropriate counselling" in the law. DSHW pointed out that the case of HOTO was different as there were many specific risks involved in the relevant operations which should be explained clearly to the parties concerned. Dr LEONG agreed and pointed out that there were actually a variety of RT procedures each involving different kinds of risks. He considered that it would be impossible to spell out the different cases, which were inexhaustive, in the Bill. Mr Michael HO Mun-ka added that the word "counselling" might carry the connotation that it was not adequate even if the medical practitioners had given the advice but that they had also to ensure that the advice was "comfortably" received by the recipient in accordance with the techniques of counselling.

20. Ms CHAN reiterated that the purpose of her proposal was to ensure that the commissioning couple had adequate understanding of the control imposed by the Ordinance and the relevant implications. She quoted that, for example, paragraph 13.4 in the Code had set out some very important points which the commissioning couple should be advised to take account of in considering the use of a RT procedure. She took the view that as the Code was not legally binding, it was necessary to stipulate in the Bill that professionals concerned should advise service users these important points. To facilitate members' deliberations, Ms CHAN agreed to provide a list of the points covered in the Code which she considered should be included in the Bill. Members would further discuss the issue on receipt of the information.

Miss
CHAN
Yuen-han

Date of further meetings

21. Members noted that the next meeting would be held on 30 December 1999 at 8:30 am. They agreed to conduct additional meetings on 17, 18 and 21 January 2000 at 8:30 am.

22. The meeting ended at 10:45 am.

Legislative Council Secretariat
30 May 2000