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HUMAN REPRODUCTIVE TECHNOLOGY BILL

COMMITTEE STAGE

Amendments to be moved by the Secretary for Health and Welfare

Clause

Proposed Amendment

Long title By adding "to confine the provision of reproductive technology procedures to infertile couples subject to any express provision to the contrary in any code;" after "gametes;".

2

(a) In subclause (1), in the definition of "code", by deleting "the" and substituting "a".

- (b) In subclause (1), in the definition of "payment", in paragraph (c)(ii), by adding "bona fide medical expenses arising from" before "pregnancy".
- (c) In subclause (1), in the definition of "reproductive technology procedure" -
 - (i) by deleting "or obstetric procedure (whether or not it is provided to the public or a section of the public) for the purpose of" and substituting ", obstetric or other procedure (whether or not it is provided to the public or a section of the public)";
 - (ii) by adding after paragraph (b) -
 - "(ba) the donation of gametes;".
- (d) In subclause (1), by deleting the definition of "surrogate mother" and substituting -
 - "surrogate mother" () means a woman who carries a child -
 - (a) pursuant to an arrangement -
 - (i) made before she began to carry the child; and
 - (ii) made with a view to any child carried pursuant to the

arrangement being handed over to, and the parental rights being exercised (so far as practicable) by, another person or persons; and

(b) conceived by a reproductive technology procedure."

(e) In subclause (1), by adding -

"negotiate" (), in relation to a surrogacy arrangement, includes any bid or offer in relation to the arrangement;".

(f) In subclause (4) -

(i) in paragraph (a), by deleting "paragraph (b)" and substituting "paragraph (a)(ii)";

(ii) in paragraph (c), by deleting "(a) of that definition as beginning to carry it at the time of the insemination or" and substituting "(a)(i) of that definition as beginning to carry it at the time".

(g) By adding -

"(11) For the avoidance of doubt, it is hereby declared that the provisions of the Employment Ordinance (Cap. 57) shall

not operate differently between a woman who is pregnant or confined as a result of a surrogacy arrangement (and whether or not the surrogacy arrangement is lawful) and a woman who is pregnant or confined otherwise than as the result of a surrogacy arrangement."

New

By adding -

"2A. Application

This Ordinance binds the Government."

3(2) (a) and
(b)

By deleting "who is not a registered medical practitioner".

4(1) (c) (ii)

By deleting "being".

7

(a) In subclause (1), by deleting "(including any surrogacy arrangement to which a relevant activity relates)".

(b) By deleting subclause (2).

8(b)

By deleting "may" and substituting "shall".

New

By adding -

**"10A. Protection of members of Council,
etc.**

(1) No person to whom this subsection applies, acting in good faith, shall be

personally liable in damages for any act done or default made in the performance or purported performance of any function, or the exercise or purported exercise of any power, imposed or conferred on the Council under this Ordinance.

(2) The protection conferred under subsection (1) on any person to whom that subsection applies in respect of any act or default shall not in any way affect the liability of the Council for that act or default.

(3) The persons to whom subsection (1) applies are -

- (a) any member of the Council or a committee;
- (b) a designated public officer."

12

By deleting the clause and substituting -

"12. Prohibition against using donated gametes in surrogacy arrangement

Without prejudice to the operation of the Parent and Child Ordinance (Cap. 429), no person shall, for the purposes of a surrogacy arrangement, use gametes other than the gametes of 2 persons who are -

- (a) the parties to a marriage; and
- (b) the persons referred to in paragraph (a)(ii) of the

definition of "surrogate mother" in so far as that arrangement is concerned."

13

(a) In subclause (3) -

- (i) by adding ", whether directly or indirectly (including by the implantation of an embryo of a particular sex in the body of a woman)," after "selected";
- (ii) in paragraph (a), by deleting "severe sex-linked genetic disease" and substituting "sex-linked genetic disease specified in Schedule 1A";
- (iii) in paragraph (b), by adding "and such disease would be sufficiently severe to a person suffering it to justify such selection" after "purpose".

(b) In subclause (5) -

- (i) by deleting "No" and substituting "Subject to subsections (6), (7) and (8), no";
- (ii) by deleting "except in the circumstances specified in regulations made under section 42(2)(e)".

(c) By adding -

"(6) Without prejudice to the operation of section 12, subsection (5) shall not apply in the case of a reproductive technology procedure provided to a person who is to be a surrogate mother where the procedure is provided pursuant to the surrogacy arrangement under which she is to be the surrogate mother.

(7) It is hereby declared that -

- (a) subject to paragraph (b), subsection (5) shall not operate to prohibit the continuation of a reproductive technology procedure provided to persons who were the parties to a marriage when gametes were, or an embryo was, placed in the body of a woman pursuant to the procedure;
- (b) paragraph (a) shall not operate to permit any further gametes or further embryo to be placed in the body of that woman

pursuant to that
procedure.

(8) Subsection (5) shall not apply
in the case of the reproductive
technology procedure referred to in
paragraph (ba) of the definition of
"reproductive technology procedure" in
section 2(1)."

- 14(1) (a) (a) By adding "whether in Hong Kong or elsewhere,"
before "make".
- (b) By deleting ", whether in Hong Kong or
elsewhere".

15(1) (a) By adding "whether in Hong Kong or elsewhere,"
before "make".

- 21 (a) In subclause (2) -
- (i) in paragraph (a), by adding "subject
to subsection (2A)," before "the
application";
- (ii) by deleting paragraph (c) and
substituting -
- "(c) the individual referred to
in paragraph (a)(i) has
the prescribed
qualifications, the
character and experience

of the individual are such as are required for the supervision of that activity and the individual will discharge the duty under section 22(1);";

(iii) in paragraph (f), by adding "referred to in paragraph (a)(i)" after "individual".

(b) By adding -

"(2A) The Council may grant a licence to an applicant notwithstanding that the applicant is an individual who is to be the person responsible if the Council is satisfied that, in all the circumstances of the case, the fact that the licensee and the person responsible are the same person will not prejudice the discharge of the duty under section 22(1) by the person responsible.

(2B) Where subsection (2A) is applicable to a licence, references in this Ordinance to a licensee shall be construed with all necessary modifications to take account of the fact that the licensee and the person responsible are the same person."

22(1) By deleting paragraph (d) and substituting -
"(d) that, in all the circumstances, proper practices are used in the course of that activity; and".

25 (a) In subclause (5)(a), by deleting "character, qualifications and experience of the other individual are such as are required for the supervision of the relevant activity authorized by the licence and that" and substituting "other individual has the prescribed qualifications, the character and experience of the individual are such as are required for the supervision of the relevant activity authorized by the licence and".

(b) By adding -
"(7) For the avoidance of doubt, it is hereby declared that the revocation of a licence may be subject to such conditions, if any, as the Council thinks fit specified in the notice effecting the revocation."

27 (a) In subclause (3), by adding "except as specified in any conditions to which the suspension is subject" after "effect".

(b) By adding -

"(5) For the avoidance of doubt, it is hereby declared that -

- (a) a notice under this section may be subject to such conditions, if any, as the Council thinks fit specified in the notice;
- (b) a notice under this section may be revoked and replaced by another notice under this section whether or not any conditions specified in the first-mentioned notice have been contravened;
- (c) a licence the subject of a notice under this section may be revoked under section 25 whether or not any conditions specified in the notice have been contravened."

New

By adding -

"29A. Voluntary surrender of licence

(1) Without prejudice to the generality of section 25(4) but subject to this section,

a licensee may surrender his licence by lodging it at the office of the Council.

(2) The surrender of a licence under subsection (1) shall not have effect until the licensee is served with a notice by the Council stating that the Council accepts the surrender of the licence subject to such conditions, if any, as the Council thinks fit specified in the notice.

(3) The Council may refuse to accept the surrender of a licence under subsection (1) where the licensee has been served a notice under section 26(2) in relation to the revocation of the licence, or the Council has reasonable grounds to suspect that there are grounds for revoking the licence under section 25, unless and until the Council -

- (a) revokes the licence; or
- (b) gives notice to the licensee that it will not revoke the licence.

(4) Immediately upon the surrender of a licence under subsection (1) having effect in accordance with subsection (2), the licensee shall cease to be licensed but shall remain liable for -

- (a) any act or omission done, caused, permitted or made by him prior to the surrender; and
- (b) any liability incurred by him under this Ordinance prior to the surrender."

30

(a) By deleting subclause (2) and substituting -

"(2) Information falls within this subsection if -

- (a) it relates to the provision of a reproductive technology procedure where a child born or intended to be born in consequence of the procedure would not be created from the gametes solely of the parties to a marriage who it is proposed will be the parents of the child; and
- (b) the child, any of the parties to the marriage, or any individual whose gametes have been used, or any combination thereof,

can be identified from the
information."

- (b) In subclause (6), by deleting "50" and
substituting "80".

31

By deleting the clause and substituting -

"31. Secrecy

(1) No person who is or has been -

- (a) an authorized person; or
- (b) a person to whom a licence
applies or the holder of a
licence,

shall disclose any information contained or
required to be contained in Register A.

(2) Subsection (1) shall not apply to
any disclose of information made -

- (a) to a person as an authorized
person;
- (b) to a person to whom a licence
applies, or a licensee, for the
purposes of his functions as
such;
- (c) so that no individual to whom
the information relates can be
identified;
- (d) in accordance with section 30;
- (e) pursuant to an order under
section 32(1);

- (f) to the Registrar within the meaning of section 33 pursuant to a request under that section; or
- (g) for the purposes of establishing, in any proceedings relating to an application for an order under section 12(1) of the Parent and Child Ordinance (Cap. 429), whether the condition specified in paragraph (a) or (b) of that section is met.

(3) Subject to subsection (4), in the case of information relating to the provision of a reproductive technology procedure for an identifiable individual, subsection (1) shall not apply to a disclosure made in accordance with -

- (a) the consent in writing of the individual given before the provision of the procedure; or
- (b) the consent in writing of the individual given after the provision of the procedure if, and only if, the consent were obtained in accordance with a

permission in writing given by
the individual -

- (i) before the provision
of the procedure; and
- (ii) to the effect that
the individual may be
contacted after the
provision of the
procedure for the
purpose of
ascertaining whether
or not the individual
will consent to a
disclosure of
information relating
to the provision of
the procedure to the
individual, either
generally or in
circumstances
specified in the
permission.

(4) If a disclosure cannot be made under subsection (3) in relation to an identifiable individual without a disclosure of information relating to the provision of a reproductive technology procedure to another identifiable individual, then the first-mentioned

disclosure shall not be made under that subsection unless the second-mentioned disclosure can also be made under that subsection.

(5) In the case of information which shows an identifiable individual was, or may have been, born in consequence of a reproductive technology procedure, subsection (1) shall not apply to a disclosure which is necessarily incidental to disclosure under subsection (3).

(6) This section shall not apply to a disclosure to an individual of information which relates only to that individual or, in the case of an individual treated with another, only to that individual and that other.

(7) It shall be deemed to be a condition of every licence that a reproductive technology procedure that may be provided pursuant to the licence shall not be provided for an identifiable individual unless the individual has, before the provision of the procedure, given or refused to give -

(a) a consent referred to in subsection (3)(a); or

(b) a permission referred to in subsection (3)(b)."

32(1) By deleting "falling within section 30(2)(i) or (ii)" and substituting "which may identify any individual by virtue of whose gametes the information falls within section 30(2)".

36(1) By adding ", or any condition specified in a notice mentioned in section 25(7) or under section 27 or 29A(2), or the condition specified in section 31(7)," after "15(1) or (2)".

42(1) By deleting paragraph (e) and substituting -

"(e) imposing restrictions on the disclosure of information which is not information falling within section 31(1) but is information obtained by an authorized person, a person to whom a licence applies, or a licensee, on terms or in circumstances requiring it to be held in confidence."

42(2) (a) By adding -

"(aa) the qualifications to be met by an individual designated in an application for a licence as the person under whose supervision the relevant activity to be authorized

by the licence is to be carried
out;"

(b) In paragraphs (b) (i) and (ii) and (c) (i) (A)
and (B), by deleting "licensee under" and
substituting "holder of";

(c) By deleting paragraph (e) and substituting -
"(e) specifying the maximum period or
periods of storage of embryos,
gametes or other biological material
used or to be used for the purposes
of a relevant activity, including
specifying the means of disposal of
such embryos, gametes or material;

(ea) regulating (including prohibiting in
whole or in part) the importation or
exportation of sperm or other
biological material used or to be
used for the purposes of a relevant
activity;"

43 By adding "or 1A" after "Schedule 1".

New By adding -

"SCHEDULE 1A [ss. 13(3)(a)
& 43]

SEX-LINKED GENETIC DISEASES

Addison's disease with cerebral sclerosis
Adrenoleucodystrophy

Adrenal hypoplasia
Agammaglobulinaemia, Bruton type
Agammaglobulinaemia, Swiss type
Albinism, ocular
Albinism-deafness syndrome
Aldrich syndrome
Alport syndrome
Amelogenesis imperfecta, hypoplastic type
Amelogenesis imperfecta, hypomaturational type
Anaemia, hereditary hypochromic
Angiokeratoma (Fabry's disease)
Cataract, congenital
Cerebellar ataxia
Cerebral sclerosis, diffuse
Charcot-Marie-Tooth peroneal muscular atrophy
Choroideraemia
Choroidoretinal degeneration
Coffin-Lowry syndrome
Colour blindness, Deutan type
Colour blindness, Protan type
Diabetes insipidus, nephrogenic
Diabetes insipidus, neurohypophyseal
Dyskeratosis congenita
Ectodermal dysplasia, anhidrotic
Ehlers-Danlos syndrome, type V
Faciogenital dysplasia, (Aarskog syndrome)
Focal dermal hypoplasia (x-linked dominant,
male lethal)

Glucose 6-phosphate dehydrogenase deficiency
Glycogen storage disease, type VIII
Gonadal dysgenesis (XY female type)
Granulomatous disease (chronic)
Haemophilia A
Haemophilia B
Hydrocephalus (aqueduct stenosis)
Hypophosphataemic rickets
Ichthyosis (steroid sulphatase deficiency)
Incontinentia pigmenti (x-linked dominant,
male lethal)
Kallmann syndrome
Keratosis follicularis spinulosa
Lesch-Nyhan syndrome (hypoxanthine-guanine-
phosphoribosyl transferase deficiency)
Lowe (oculocerebrorenal) syndrome
Macular dystrophy of the retina
Menkes syndrome
Mental retardation, FRAXE type
Mental retardation, FMRI type
Mental retardation, MRXI type
Microphthalmia with multiple anomalies (Lenz
syndrome)
Mucopolysaccharidosis II (Hunter syndrome)
Muscular dystrophy, Becker type
Muscular dystrophy, Duchenne type
Muscular dystrophy, Emery-Dreifuss type
Myotubular myopathy

Night blindness, congenital stationary
Norrie's disease (pseudoglioma)
Nystagmus, oculomotor or 'jerky'
Ornithine transcarbamylase deficiency (type I
hyperammonaemia)
Orofaciodigital syndrome (type I, x-linked
dominant, male lethal)
Perceptive deafness, with ataxia and loss of
vision
Perceptive deafness, DNFZ type
Phosphoglycerate kinase deficiency
Phosphoribosylpyrophosphate (PRPP) synthetase
deficiency
Reifenstein syndrome
Retinitis pigmentosa
Retinoschisis
Spastic paraplegia
Spinal muscular atrophy
Spondyloepiphyseal dysplasia tarda
Testicular feminization syndrome
Thrombocytopenia, hereditary
Thyroxine-binding globulin, absence or
variants of
Xg blood group system".

Schedule 2 (a) By adding immediately after the heading "**Sex
Discrimination Ordinance**" -
"1A. **Reproductive technology**

Section 56B(2) of the Sex Discrimination Ordinance (Cap. 480) is repealed and the following substituted -

"(2) In this section, "reproductive technology procedure" () has the meaning assigned to it by section 2 of the Human Reproductive Technology Ordinance (of 2000).".

(b) Section 2 is amended by repealing "to the Sex Discrimination Ordinance (Cap. 480)".

(c) by adding -

"Offences Against the Person Ordinance

4. Medical termination of pregnancy

Section 47A(8) of the Offences Against the Person Ordinance (Cap. 212) is repealed and the following substituted -

"(8) For the purposes of sections 46 and 47, anything done with intent to procure a woman's miscarriage (or, in the case of a woman carrying more than one foetus, her miscarriage of any foetus) is unlawfully done unless authorized by virtue of the provisions of this section and, in the case of a woman carrying more than one foetus,

anything done with intent to procure the miscarriage of any foetus is authorized by those provisions if -

- (a) the ground for termination of the pregnancy specified in subsection (1)(b) applies in relation to any foetus and the thing is done for the purpose of procuring the miscarriage of that foetus; or
- (b) any of the other grounds for termination of the pregnancy specified in those provisions applies."