

**Reply to paragraph (b) of the letter from Clerk to Bill Committee**  
**dated 9 December 1998**

**Introduction**

The Human Reproductive Technology Bill provides, inter alia, for the prohibition against surrogacy arrangement on commercial basis. There are, however, concerns on the enforcement of this provision in relation to the situations - (a) where a woman comes to Hong Kong, receives RT procedure and leaves the place carrying the child in somewhere else; and (b) where payments are made or received outside Hong Kong. This paper sets out some proposed amendments to the existing Bill to cater for the above situations.

**Proposed amendments**

2. The existing Bill defines a surrogate mother as a woman who carries a child pursuant to a surrogacy arrangement. After further consideration, we propose to confine a surrogate mother to a woman who is a Hong Kong permanent resident within the meaning assigned to it in the Immigration Ordinance (Cap. 115) in order to further enhance the enforcement of prohibiting surrogacy agreement on commercial basis. This arrangement, however, will make it not possible for persons outside Hong Kong, who are not involved in any commercial dealing, to take advantage of our advanced technology.
  
3. Regarding receiving or making payment outside Hong Kong, it is believed that if any part of the act is committed in Hong

Kong, it would be caught by the Bill. Nevertheless, we may consider to include provisions to further clarify our intention, for example to provide that there would be a contravention notwithstanding that payment is made outside Hong Kong.

*Definition of payment relating to surrogacy arrangements*

4. Regarding the definition of payment, according to the existing Bill, payment in relation to surrogacy arrangement means any expenses incurred by the surrogate mother for (i) any reproductive technology procedure; or (ii) pregnancy and delivery of a child born pursuant to the arrangement.

5. There are, however, concerns that this definition is so loose that it fails to point out whether some specific behaviours, such as providing better accommodation to the surrogate mother during her pregnancy, should be regarded as payment.

6. There are basically two ways of dealing with the above problem. First, the future Council on Reproductive Technology may be authorised to expand on the term “payment” when making the Regulation. Secondly, we can simply leave any problematic cases involving payments to the court. The first suggestion, however, cannot resolve all the problems as the Council will have similar difficulties in trying to define “payment”.

Health and Welfare Bureau

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