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**Report of the Bills Committee on  
Human Reproductive Technology Bill**

**Purpose**

This paper reports on the deliberations of the Bills Committee on the Human Reproductive Technology Bill.

**Background**

2. In 1987, a Committee on Scientifically Assisted Human Reproduction was appointed by the Secretary for Health and Welfare to consider the social, moral, ethical and legal issues arising from local developments of human reproductive technology (RT) and to advise Government on how to address these issues. Two consultation exercises conducted by the Committee in 1989 and 1993 indicated public support for statutory regulation of RT through a licensing system. In accordance with one of the recommendations of the Committee, the Secretary for Health and Welfare appointed a Provisional Council on Reproductive Technology (the Provisional Council) in December 1995 to advise on the drafting of legislation and a Code of Practice. The Provisional Council conducted further consultation on two issues arising from new technological developments. It also identified a number of other areas which warranted further consideration.

3. Following review of the various issues, the Administration made a number of changes to its original proposals and introduced a bill under the same name as the present one (the former bill) into the former Legislative Council on 15 January 1997. A Bills Committee was formed to study the bill but due to competing priorities, the Bills Committee was not activated before the dissolution of the former Legislative Council. The present Bill was introduced into the Legislative Council on 9 September 1998. The policy aspects of the two bills are broadly the same.

## **The Bill**

4. The Bill seeks to -
  - (a) regulate by means of licensing, the provision of RT procedures; the conducting of embryo research and the handling, storing and disposing of a gamete or embryo used in connection with a RT procedure or embryo research;
  - (b) regulate surrogacy arrangements, in particular, to make it unlawful to negotiate such arrangements on a commercial basis; and
  - (c) establish a Council on Human Reproductive Technology.

## **The Bills Committee**

5. At the House Committee meeting on 11 September 1998, Members agreed that a Bills Committee should be formed to study the Bill. The Bills Committee first met on 23 September 1998 and Hon Cyd HO Sau-lan was elected Chairman. The membership list of the Bills Committee is in **Appendix I**.

6. The Bills Committee has held 26 meetings with the Administration. It has also met representatives of the Department of Obstetrics and Gynaecology of the Chinese University of Hong Kong, the Department of Public and Social Administration of the Faculty of Humanities and Social Sciences of the City University of Hong Kong and the Family Planning Association of Hong Kong. In addition, the Bills Committee has received written submissions from eight other organizations and an individual.

## **Deliberations of the Bills Committee**

7. The main deliberations of the Bills Committee are summarized in the following paragraphs.

### Application of the Ordinance

8. The former bill under the same title introduced in early 1997 included a provision that "This Ordinance binds the Government" but there is no such provision in the present Bill. Members have questioned the reason for the change. The Administration's explanation is that since public hospitals under the Hospital Authority are not part of Government and the Department of Health is not equipped to provide RT service at present, the clause has been deleted as being redundant. Members consider that as there could be unexpected developments in the future, such a provision should be included in the Bill. On review, the Administration has agreed to move a Committee Stage amendment (CSA) to add a new clause 2A to that effect.

### Limiting RT services to infertile couples

9. A member has pointed out that when the Committee on Scientifically Assisted Human Reproduction discussed the usage of RT, it was agreed that RT procedures should only be used as a substitute for natural fertilization if a married couple was medically proven to be infertile. As this important principle is not covered in the Bill, he considers it necessary to add a provision to specify this point.

10. Members agree that for the welfare of the child, RT services should be limited to married infertile couples and that "infertility" should be defined in the Bill. They also agree that the infertility requirement should be spelt out at the outset.

11. Taking into consideration members' views, the Administration has recast the long title of the Bill to confine the provision of RT procedures to infertile couples, subject to any express provisions to the contrary in any code.

### Membership of the Council on Human Reproductive Technology (the Council)

12. Clause 3(2)(a) and (b) stipulates that the chairperson and deputy chairperson of the Council should not be registered medical practitioners.

13. A member considers that there is no reason for prohibiting medical practitioners who are not involved in RT activities from being appointed chairperson and deputy chairperson. He has pointed out that someone who no longer practises medicine will have no conflict of interests. Other members consider that to avoid conflict of interests, the chairperson and deputy chairperson should not be registered medical practitioners. However, they agree that such prohibition could be arranged by administrative means instead of being expressly written in law. The Administration has accepted the suggestion and will move a CSA to remove the restriction.

14. Clause 3(3)(a)(ii) provides that the Chief Executive shall not appoint the person responsible under a licence or the licensee to be a member of the Council.

15. A member has asked the Administration to remove the restriction as he considers that the expertise of such persons useful to the Council. He agrees that there could be conflict of interests in some circumstances but the important point is whether the person concerned will declare such conflict of interests.

16. Following a review of the provision, the Administration has agreed to move a CSA to delete the subclause.

#### Licensee and person responsible

17. Clause 21(2) of the Bill prohibits the licensee and the person responsible for carrying out RT activity to be the same person.

18. The Administration's view is that requiring the licensee and the person responsible to be two separate persons will facilitate a check and balance system which will safeguard the interests of all parties concerned. Members note that the Provisional Council has discussed the issue and holds the view that under certain circumstances, the licensee and the person responsible could be the same person.

19. Following a review of the provision, the Administration now proposes to add new subclauses 2A and 2B to clause 21 to empower the Council to allow the licensee and the person responsible to be the same person if the Council is satisfied that such arrangement will not prejudice the discharge of duty by the person responsible. The Administration explains that the CSAs have been proposed after taking into account that some organizations such as the Family Planning Association of Hong Kong and university departments may have difficulty in finding two separate persons to be the licensee and person responsible respectively.

#### Prohibitions against selection of sex and provision of RT procedures to unmarried persons

##### *Selection of sex*

20. Members support in principle that sex selection should be allowed on medical grounds only. They note that the Provisional Council has deliberated the matter in detail. Initially it considered that a list of severe sex-linked genetic diseases would help to prevent the possibility of abuse if sex selection was allowed on medical grounds. However, advice from the relevant medical

bodies was that it would be difficult to define the severity of diseases. On review, the Provisional Council agreed that it would be difficult to draw up an exhaustive list of severe sex-linked diseases because the risks and severity level of a sex-linked disease varied from person to person and from case to case. It therefore recommended that a non-exhaustive list of sex-linked genetic diseases be provided in the Code of Practice without defining the severity of the diseases for reference purpose.

21. Members also note that a couple who wish to make use of sex selection by means of a RT procedure are required to meet the two criteria in clause 13(3). Firstly, the purpose of such selection is to avoid a severe sex-linked genetic disease which may prejudice the health of the embryo and secondly, not less than two registered medical practitioners state in writing that such selection is for that purpose.

22. Some members consider that the proposed control is too loose. In response to their proposal to tighten up the control, the Administration has agreed to move CSAs to -

- (a) incorporate a list of sex-linked genetic diseases in a new Schedule 1A; and
- (b) provide that the registered medical practitioners each states in writing that such selection is to avoid a listed sex-linked genetic disease and such disease would be sufficiently severe to a person suffering from it to justify such selection.

*Termination of RT procedures on change of marital status*

23. Clause 13(5) stipulates that no person shall provide a RT procedure to persons who are not parties to a marriage except in the circumstances specified in regulations made under section 42(2)(e). Members have discussed with the Administration whether and when RT procedures will be discontinued when one of the parties has died. Members note that given the complexities and potential consequences of posthumous use of gametes or embryos, the draft Code of Practice stipulates that stored sperm or embryos should not be used to bring about a posthumous child. Members are concerned about where and when the line should be drawn in cases in which the RT procedures have already begun.

24. To address members' concern, the Administration has proposed to add a new sub-clause (7) to clause 13. The new sub-clause provides that subsection (5) shall not operate to prohibit the continuation of a RT procedure provided to persons who were parties to a marriage when gametes were, or an embryo was, placed in the body of a woman pursuant to that procedure. However, the above

shall not operate to permit any further gametes or further embryo to be placed in the body of that woman pursuant to that procedure.

### Surrogacy arrangements

#### *Definition of surrogate mother*

25. Members have expressed grave concern that the present definition of surrogate mother in clause 2(1) will carry a connotation that various permutations of surrogacy will be permitted by the law. They share the view that only a woman who conceives a child in consequence of a RT procedure with the genetic materials coming from the commissioning couple can be regarded as a surrogate mother.

26. The Administration has explained that by making the definition as broad as possible, the Bill can regulate every possible form of commercial dealings in the act of paying a woman to carry a child and to have the child handed over to the commissioning couple after the child is born. If the definition is narrowed down to that suggested by members, the effect of the Bill in regulating surrogacy arrangement will be greatly reduced.

27. To address members' concern, the Administration has, on review, agreed to amend the definition of surrogate mother in clause 2 to make it clear that the child must have been conceived by a RT procedure.

#### *Marital status of surrogate mother*

28. With the exception of Hon CHAN Yuen-han, members support surrogacy by RT procedures as a means for an infertile couple to have a baby. They note that the suitability of a woman to be a surrogate mother will be spelt out in the Code of Practice, which will take into account considerations such as marital status, history of pregnancy and physical and mental fitness to carry a baby.

29. Members note that as clause 13(5) stipulates that no person shall provide a RT procedure to persons who are not parties to a marriage, a surrogate mother must be a party to a marriage. They consider that it is not necessary for a surrogate mother to be party to a marriage but she should have the experience of a successful normal pregnancy. As the mother or sister of a commissioning couple is likely to act as the surrogate mother and since they may have difficulty in meeting the marital status requirement if they are widowed or divorced, members have asked the Administration to relax the requirement in respect of surrogate mothers.

30. The Administration has accepted members' proposal and will add a new sub-clause (6) to clause 13 to provide that subsection (5) shall not apply in the case of a RT procedure provided to a person who is to be a surrogate mother.

#### *Surrogacy arrangements*

31. The Administration has informed the Bills Committee that clause 2(4) is intentionally drafted to cover every possible permutation of surrogacy arrangements so that it will be extremely difficult for people to come up with an arrangement which will fall outside the regulation of the Bill. It has also informed members that the surrogacy aspect of the Bill is modelled on the Surrogacy Arrangements Act 1985 of the United Kingdom (UK).

32. A number of members have pointed out that since the object of the Bill is to regulate RT procedures, the regulation of surrogacy arrangements should be limited to those arrangements involving RT procedures only and clause 2(4) is therefore not necessary. The Administration has explained that although there are two different Acts for RT and surrogacy arrangements in the UK, it is the policy decision in Hong Kong to cover RT and surrogacy arrangements in one bill and for this reason, non-RT surrogacy arrangement has also been included in the Bill.

33. Hon CHAN Yuen-han has expressed strong reservation about including surrogacy arrangements in the Bill. She has pointed out that there are divergent views on the matter put forward by some sectors of the community and that there has not been sufficient discussion of the subject by the community. She therefore proposes that all the provisions relating to surrogacy arrangements in the Bill be taken out to allow an opportunity for the community to discuss the subject in detail. If there is a need, the Administration could introduce a separate bill on surrogacy arrangements at a later stage.

34. In response to the above concern, the Administration has pointed out that while it does not advocate surrogacy, it considers it necessary to regulate surrogacy arrangements to prevent abuse and to keep all parties involved in the arrangements informed of the risks and consequences. If all references to surrogacy arrangements are taken out, such arrangements will remain unregulated, which is unsatisfactory.

35. In view of the reasons outlined in paragraph 33 above, Hon CHAN Yuen-han will move CSAs to remove the provisions relating to surrogacy arrangements.

#### Revocation of licence

36. The Administration proposes to add a new subclause (7) to clause 25 so that a licence can be revoked subject to any specified conditions. Clause 36 is amended accordingly so that it will be an offence if clause 25(7) is contravened.



### Temporary suspension of licence

37. Members are concerned about the arrangements for the preservation of the stored embryos in the event that the licence is suspended or revoked by the Council. To address members' concern, the Administration will move amendments to clause 27 to provide that a notice under the section may be subject to such conditions, if any, as the Council thinks fit. In addition, the licence may also be revoked under section 25 whether or not any conditions specified in the notice have been contravened.

### Access to information

#### *Register A*

38. Clause 30 requires the Council to keep information in a register (Register A) where RT procedures involve donated gametes or donated embryos, and regulates the circumstances under which information may be disclosed.

39. Members note that the policy decision is that Register A should only keep information relating to RT procedures involving the use of donated gametes or embryos, which is the most sensitive and will be subject to the strictest secrecy provision in the legislation.

40. In response to members' request, the Administration will move a CSA to clause 30(2) make the intent of the clause clearer and easier to understand.

#### *Secrecy*

41. Clause 31 provides for restrictions on the disclosure by authorized persons of information contained or required to be contained in Register A or which is otherwise confidential.

42. Members have considered at length whether disclosure of a donor's identity should be allowed in special circumstances, e.g. when it is necessary to make the disclosure to save or significantly extend the life of an individual.

43. The Administration has pointed out that the welfare of the child born in consequence of a RT procedure must be taken into account in the legislation. It would be unfair to such a child in the event that he/she needs an organ transplant for survival, is deprived of the chance of finding his/her genetic parents. Under the present provision, it is not against the law for the staff of the RT centre to approach the donor to convey to him the precarious health condition of the child to whom he/she has donated the gametes and to seek his/her consent to make the disclosure. It will also not be an offence for the

licensee to approach the donor under clause 31(3)(a), having regard to the fact that the licensee holds the information on the donor in the first place and is acting with good intention.

44. Members have strong reservation about the provisions of the clause. A member, who is against the release of identifying information regarding the donor under any circumstances, considers that the welfare of the child born in consequence of a RT procedure is already adequately safeguarded by the relevant provisions in the Parents and Child Ordinance (Cap. 429). Should the child need an organ transplant for survival, he/she can appeal to the public for donation of the organ. He has also pointed out that the proposed arrangements will deter potential donors from making donations and that it is unfair to place a moral burden on the donor in the special circumstances envisaged.

45. To address members' concern, the Administration has redrafted clause 31. The new sub-clause (3) provides that disclosure can only be 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.

#### Code of Practice

46. The Bills Committee has also briefly examined the Draft Code of Practice on Reproductive Technology and Embryo Research (the Code) drawn up by the Provisional Council, in particular the sections relating to the welfare of children and counselling. Members note that the Code sets minimum standards which aim to support best clinical and scientific practice, to safeguard the health and interests of service users and to protect the welfare of children born through RT. Professionals concerned should still follow the codes of practice and professional ethics of their individual disciplines.

47. Members also note that although the Code is not legally binding, the Council may take into account any observance of or failure to observe the provisions of the Code when considering renewal, variation, suspension or revocation of licences.

### **Committee Stage amendments**

48. The CSAs to be moved by the Secretary for Health and Welfare are in **Appendix II**. These CSAs are supported by the Bills Committee. The CSAs to be moved by Hon CHAN Yuen-han are in **Appendix III**.

### **Consultation with the House Committee**

49. The Bills Committee consulted the House Committee on 11 February 2000 and 9 June 2000 and obtained its support for the Second Reading debate on the Bill to be resumed on 21 June 2000.

Legislative Council Secretariat

14 June 2000

《人類生殖科技條例草案》委員會  
Bills Committee on Human Reproductive Technology Bill

議員名單  
Membership List

何秀蘭議員 (主席)	Hon Cyd HO Sau-lan (Chairman)
何敏嘉議員	Hon Michael HO Mun-ka
陳婉嫻議員	Hon CHAN Yuen-han
梁智鴻議員	Dr Hon LEONG Che-hung, JP
楊耀忠議員	Hon YEUNG Yiu-chung
劉漢銓議員	Hon Ambrose LAU Hon-chuen, JP
羅致光議員	Hon LAW Chi-kwong, JP
鄧兆棠議員	Dr Hon TANG Siu-tong, JP

合共 : 八位議員  
Total : 8 Members

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