

Human Organ Transplant Ordinance
and unconscious recipients

Background

The Human Organ Transplant Ordinance (the Ordinance) was enacted on 23 February 1995. It is intended to prohibit commercial dealings in human organs intended for transplanting, restrict the transplanting of human organs between persons not genetically related, regulate the importing of human organs intended for transplanting and for supplementary purposes connected with those matters.

2. Section 3 of the Ordinance, which provides for the establishment of the Human Organ Transplant Board (the Board) appointed by the Secretary for Health and Welfare, came into operation on 15 February 1996. The Board was appointed on the same date. The Board is tasked *inter alia* with making regulations, which were duly made on 19 December 1997. The remaining sections of the Ordinance were brought into effect on 1 April 1998.

An outstanding problem - unconscious recipients

3. Human Organ Transplant Ordinance requires both the donor and recipient to receive explanation from a medical practitioner and understand the procedure, the risk involved in an organ transplant and

their entitlement to withdraw consent at any time. A valid consent from the donor is also required.

4. By making sure that the donor and the recipient have expressed their willingness to carry out the transplant is necessary as organ transplant between living people is a high risk medical operation. However, this requirement poses a problem in the case of recipients who are unconscious as a result of their illness (unconscious recipient). Unconscious recipients are not able to be interviewed and to understand the procedure of the transplant. The Board should not approve the applications under such circumstances.

Allowing next-of-kin to give consent on behalf of the unconscious recipient

5. The outstanding problem above may be solved by amending the Ordinance to allow the next-of-kin of the unconscious recipient (providing such person is not himself the donor) to receive explanation and give consent on his behalf.

6. There are some potential problems with this new arrangement. First, after receiving the organ and regaining his consciousness, the recipient may strongly object to have received the organ from such donor, especially if the operation has caused harm to the donor. Secondly, the next-of-kin of the unconscious recipient may find it very difficult to make such a crucial decision on behalf of the recipient.

Allowing the Board to have more discretion

7. Another alternative is allowing the Board to approve the application in cases where the unconscious patient has not received explanation and given consent before the transplant, and where the next-of-kin has given consent for the patient to receive a transplant from a particular donor.

8. This poses the first problem in paragraph 6. The Board, however, will have to take full responsibility and all the blame in these cases by having such discretion.

Conclusion

9. Members may wish to take the above consideration in their discussion of this item.

Health and Welfare Bureau
November 1998