

**Proposed Amendments to**

**Human Organ Transplant Ordinance (Cap 465)**

**Background**

The Human Organ Transplant Ordinance (the Ordinance) was enacted on 23 February 1995. It seeks 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”. Following the making of appropriate Regulation, the entire Ordinance was brought into effect on 1 April 1998.

2. Under section 5 of the Ordinance, a registered medical practitioner, who is not the medical practitioner who will remove the organ from the donor or transplant the donor's organ into another person is required to explain to the donor and the recipient involved in a live organ transplant -

- (a) the procedure;
- (b) the risk involved; and
- (c) his entitlement to withdraw consent at any time.

Meeting these requirements poses a problem in cases where the recipient is incapable of understanding, giving consent or being interviewed. In

such cases, transplants cannot lawfully be carried out, with consequent adverse effects to the health of the intended recipient.

3. To overcome this problem, we propose to amend the Ordinance as described below.

### **Proposed Amendments**

#### Recipients incapable of understanding

4. We propose to add a new Subsection to Section 5 of the Ordinance to provide that the requirements relating to the recipient in Section 5(4)(c) be waived where circumstances have prevented compliance with these requirements, i.e. in cases where the recipient is incapable of understanding any explanation given to him.

5. The application of this new Subsection will be subject to :

- (a) a registered medical practitioner, who is not the medical practitioner who will remove the organ from the donor or transplant the donor's organ into another person, confirming in writing that the recipient is incapable of understanding;
- (b) a registered medical practitioner confirming in writing that the condition of the recipient is such that it would not be in his best interests to wait until he is capable of understanding; and

- (c) a medical report has been kept in writing by the medical practitioner who is to transplant the organ into the recipient explaining what circumstances have prevented the compliance of the requirements in Section 5(4)(c) in relation to the recipient.

6. In cases requiring the approval of the Human Organ Transplant Board (i.e. cases in which the donor and the recipient are not genetically related nor married for 3 years), the application should include an explanation why the exemption is required and what the circumstances are, together with any supporting documents. The Board will ensure that the conditions described in para 5(a)(b) & (c) have been followed. We do not intend that the Board needs to be satisfied with the justifications before giving approval, such as ascertaining whether the condition of the recipient is critical.

#### Establishing marriage relationship

7. Section 5(2) provides that the Board may prescribe the means of establishing genetic relationship by regulation, but similar provision is not made for establishing a marriage relationship. To address this situation, we propose to expand s.5(2) to provide a similar power for the Board to make regulation to establish that a marriage has subsisted for not less than three years.

Health and Welfare Bureau  
HW M/1/1 Pt 12  
9 December 1998