

Proposed Amendments to

Human Organ Transplant Ordinance - a detailed explanation

Background

Further to our paper entitled “Proposed Amendments to Human Organ Transplant Ordinance (Cap.465)” discussed in the Legislative Council subcommittee on Human Organ Transplant Ordinance on 9 December 1998, we would like to explain in more detail our proposed amendments to cater for situations where the recipient is incapable of understanding the explanation required by section 5 of the existing Ordinance.

Proposed Amendments - a detailed explanation

Recipients incapable of understanding

2. 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.

3. 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, 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 condition of the recipient is such that it would not be in his best interests to wait any further; 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.

4. The requirements set out in paragraph 3 will have to be complied with, in cases where the recipient is incapable of understanding, irrespective of whether or not the Human Organ Transplant Board's approval is required.

5. 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 Board shall not give approval unless conditions described in paragraph 3(a)(b) & (c) have been met. 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. Anybody who knowingly or recklessly supplies information as required by paragraph 3 which is false or misleading will be guilty of an offence.

6. In cases where the Board's approval is not required, the medical practitioner who has transplanted the organ into the recipient should submit the information required by paragraph 3 to the Board after the transplant. Incompliance with this requirement will result in a fine.

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.

Heading of section 5 of the Ordinance

8. As regards the heading of section 5 of the Ordinance (“*Restriction on transplant between persons not genetically related*”), we propose to change it to “*Restriction on transplant between living persons*” to emphasize that provisions in section 5 apply not only to non-genetically related cases but, where relevant, all transplants involving live donors. This amendment can be made administratively as the heading is not a part of the legislation.

Health and Welfare Bureau

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