

Ref : CB2/SS/10/98

**Paper for the House Committee meeting  
on 8 October 1999**

**Report of the Subcommittee to study the  
Human Organ Transplant (Amendment) (No.2) Regulation 1999 and  
Human Organ Transplant (Amendment) Ordinance 1999 (7 of 1999)  
(Commencement) Notice 1999**

**Purpose**

This paper reports on the deliberations of the Subcommittee on the Human Organ Transplant (Amendment) (No.2) Regulation 1999 (the "Amendment Regulation") and Human Organ Transplant (Amendment) Ordinance 1999 (7 of 1999) (Commencement) Notice 1999 (the "Commencement Notice").

**The Subsidiary Legislation**

2. The Amendment Regulation was made by the Human Organ Transplant Board (the "Board") on 17 June 1999 and gazetted on 2 July 1999. The Amendment Regulation amends the Human Organ Transplant Regulation (HOTR) by providing that marital relationship between two persons can be established by -

- (a) (i) documents issued under the Marriage Ordinance (Cap. 181) or the Marriage Reform Ordinance (Cap. 178); or
- (ii) any document equivalent to any document issued under the above two Ordinances which shows that the two persons are the parties to a marriage celebrated or contracted outside Hong Kong in accordance with the law in force at the time and in the place where the marriage was performed; and
- (b) a statutory declaration by either of the two persons that the marriage has subsisted for not less than three years.

3. The Human Organ Transplant (Amendment) Ordinance 1999 (the "Amendment Ordinance"), except section 2(a), came into operation on 19 February 1999. By the Commencement Notice, which was also gazetted on 2 July 1999, the Secretary for Health and Welfare appointed 2 July 1999 as the day on which section 2(a) of the Amendment Ordinance was to come into operation.

### **The Subcommittee**

4. The House Committee at its meeting on 9 July 1999 agreed to form a Subcommittee to study the Amendment Regulation and Commencement Notice.

5. Under the chairmanship of Dr TANG Siu-tong, the Subcommittee has held one meeting with the Administration on 21 September 1999. A membership list of the Subcommittee is at the **Appendix**.

### **Deliberations of the Subcommittee**

6. The Administration has explained that the Amendment Ordinance specifies the circumstances in which an organ transplant involving a live donor may still be carried out in cases where the recipient is, for certain specified reasons, incapable of understanding the explanation required to be given to him under section 5(4)(c) of the Human Organ Transplant Ordinance (HOTO).

7. The Administration has further explained that section 2(a) of the Amendment Ordinance adds a new subsection (2A) to section 5 of the HOTO. By virtue of this new provision, the Board is empowered to prescribe regulation stipulating the means of establishing the marriage relationship between the donor and the recipient and its subsistence. The Amendment Regulation made by the Board seeks to amend the HOTO to -

- (a) make minor drafting changes to section 2 ("Establishment of genetic relationship for transplant from live donor") to make it more closely parallel with the wording of section 5(2) of the HOTO; and
- (b) add a new section 2A specifying the means by which it shall be established, for the purposes of section 5 of the HOTO, that the donor of an organ for transplant and the recipient of the organ are the parties to a marriage which has subsisted for not less than three years.

8. Members note that the Amendment Regulation was made in accordance with the suggestion by the Hospital Authority, which was supported by the Bills Committee formed to study the Amendment Ordinance.

9. The Senior Assistant Legal Adviser to the Subcommittee has raised a query on the proof of genetic relationship in section 2A(b) of the HOTR pursuant to change made by section 1(b) of the Amendment Regulation. The Administration has clarified that where the donor or recipient holds a document issued in Hong Kong, genetic relationship can be established by means of documents issued under the legislation prescribed under section 2(b)(i) of the HOTR, irrespective of whether the donor or recipient resides in or outside Hong Kong. Where the donor or recipient resides outside Hong Kong and is not in possession of any such documents, the genetic relationship can be established by means of documents that are equivalent to those prescribed under section 2(b)(i) of the HOTR and are issued by the relevant authority in the country concerned.

10. A member has pointed out that it would be difficult for a medical practitioner to verify the marriage relationship between the donor and the recipient if the supporting documents produced are in a foreign language.

11. The Administration has advised that in such a case, the medical practitioner should refer the application for organ transplant to the Board for consideration. The Board would consider whether the application would involve commercial dealing and it would not attempt to verify the authenticity of the document produced to establish the marriage relationship between the donor and the recipient. The Administration has further pointed out that a person who knowingly and wilfully supplies false information or forged documents would have committed an offence under the Crimes Ordinance (Cap. 200).

12. The Subcommittee has suggested that the statutory declaration required under paragraph (ii) of the new section 2A of the HOTR should be in a standard format for ease of preparation and to avoid ambiguity in the statutory declaration made. The Administration has undertaken to ask the Board to consider the suggestion.

13. Members have raised no queries on the Commencement Notice.

### **Recommendation**

14. The Subcommittee recommends that the Amendment Regulation made by the Board under section 5(2) and (2A) of the HOTO and the Commencement Notice made by the Secretary for Health and Welfare, both published in the Gazette on 2 July 1999, be supported.

**Advice Sought**

15. Members are invited to support the recommendation of the Subcommittee set out in paragraph 14 above.

Legislative Council Secretariat  
6 October 1999

**Subcommittee to study the  
Human Organ Transplant (Amendment) (No.2) Regulation 1999 and  
Human Organ Transplant (Amendment) Ordinance 1999  
(7 of 1999) (Commencement) Notice 1999**

**Membership List**

Dr Hon TANG Siu-tong, JP (Chairman)

Hon Cyd HO Sau-lan

Hon Michael HO Mun-ka

Hon CHAN Yuen-han

Dr Hon LEONG Che-hung, JP

Dr Hon YEUNG Sum

Hon YEUNG Yiu-chung

Total : 7 members