

LEGISLATIVE COUNCIL BRIEF

Human Organ Transplant Ordinance (Cap. 465) HUMAN ORGAN TRANSPLANT (AMENDMENT) (NO.2) REGULATION 1999

INTRODUCTION

The Human Organ Transplant (Amendment) Ordinance 1999 (the “Amendment Ordinance”), except section 2(a), came into operation on 19 February 1999. Section 2(a) stipulates that the marriage relationship between the donor and the recipient and its subsistence should be established by such means, or in accordance with such guidelines, as may be prescribed by regulations made by the Human Organ Transplant Board (the “Board”). The Human Organ Transplant (Amendment) (No.2) Regulation 1999 (the “Amendment Regulation”) (at Annex) was made by the Board for such purposes on 17 June 1999. It will come into operation together with section 2(a) of the Amendment Ordinance on 2 July 1999.

BACKGROUND AND ARGUMENT

2. The Human Organ Transplant Ordinance (the “Ordinance”) stipulates that it is necessary to seek the Board’s approval before carrying out an organ transplant operation if the donor and the recipient are neither genetically related nor married for at least 3 years. The Ordinance also empowers the Board to prescribe means to establish the genetic relationship between the donor and the recipient by making regulation. But the Board is not empowered to prescribe means to establish the marriage relationship for the purposes of the Ordinance.

3. The Amendment Ordinance was made on 10 February 1999. It mainly 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 Ordinance. Section 2(a) of the Amendment Ordinance also empowers the Board to prescribe means or guidelines to establish the marriage relationship between the donor and the recipient and the subsistence of the marriage.

THE AMENDMENT REGULATION

4. The Amendment Regulation amends the Human Organ Transplant Regulation to –

- (a) make minor drafting changes to section 2 (“Establishment of genetic relationship for transplant from live donor”) to make it more closely parallel the wording of section 5(2) of the Ordinance; and
- (b) add a new section 2A specifying the means by which it shall be established, for the purposes of section 5 of the Ordinance, 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 3 years.

FINANCIAL AND STAFFING IMPLICATIONS

5. There are no financial or staffing implications.

BINDING EFFECT

6. The amendments will not affect the current binding effect of the principal Regulation.

PUBLIC CONSULTATION

7. The Hospital Authority has been consulted and is content with the proposed amendments.

PUBLICITY

8. The Amendment Regulation will be gazetted on 2 July 1999. The Secretary of the Board will be available to handle enquiries and inform relevant medical professionals and organizations of the amendments.

ENQUIRY

9. For any enquiry on this brief, please contact Mr Eddie Poon, Principal Assistant Secretary for Health and Welfare, on 2973 8107.

HUMAN ORGAN TRANSPLANT (AMENDMENT) (NO. 2) REGULATION 1999

(Made by the Human Organ Transplant Board under section 5(2) and (2A) of the Human Organ Transplant Ordinance (Cap. 465))

1. Establishment of genetic relationship for transplant from live donor

Section 2 of the Human Organ Transplant Regulation (Cap. 465 sub. leg.) is amended -

- (a) by repealing "a medical practitioner who" and substituting "where a medical practitioner";
- (b) by repealing "may establish the fact of genetic relationship" and substituting "the fact of the genetic relationship shall be established".

2. Section added

The following is added -

"2A. Establishment of marriage that has subsisted for not less than 3 years

For the purposes of section 5 of the Ordinance, where a medical practitioner is

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- (a) to remove an organ from a living person with the intention of it being transplanted into another person who is, at the time of the transplant, the spouse of the person from whom the organ is to be removed and the marriage has subsisted for not less than 3 years; or

- (b) to transplant the organ referred to in paragraph (a) into such spouse of such marriage,
the fact of such relationship shall be established by means of -
 - (i) any document or documents -
 - (A) issued under the Marriage Ordinance (Cap. 181) or the Marriage Reform Ordinance (Cap. 178) which shows or show that the 2 persons are the parties to -
 - (I) a marriage celebrated or contracted in accordance with the provisions of the Marriage Ordinance (Cap. 181) ;
 - (II) a modern marriage validated by the Marriage Reform Ordinance (Cap. 178) ;
or
 - (III) a customary marriage declared to be valid by the Marriage Reform Ordinance (Cap. 178); or
 - (B) equivalent to any document or documents issued under the Marriage Ordinance (Cap. 181) or the Marriage Reform Ordinance (Cap. 178) which shows or show that the 2 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
- (ii) a statutory declaration by either of the 2 persons to the effect that the marriage has subsisted for not less than 3 years."

Chairman,
Human Organ Transplant Board

17 June 1999

Explanatory Note

This Regulation amends the Human Organ Transplant Regulation (Cap. 465 sub. leg.)

to -

- (a) make minor drafting changes to section 2 ("Establishment of genetic relationship for transplant from live donor") to make it more closely parallel the wording of section 5(2) of the Human Organ Transplant Ordinance (Cap. 465) (section 1) ; and
- (b) add a new section 2A specifying the means by which it shall be established, for the purposes of section 5 of the Human Organ Transplant Ordinance, 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 3 years (section 2).