

立法會 *Legislative Council*

立法會CB(2)2217/99-00號文件

檔案：CB2/BC/3/98

2000年6月9日內務委員會會議文件

《人類生殖科技條例草案》委員會的進一步報告

目的

本文件旨在匯報《人類生殖科技條例草案》委員會對政府當局進一步提出的若干委員會審議階段修正案(下稱“修正案”)進行的商議工作。

背景

2. 在1998年9月11日的內務委員會會議席上，議員決定成立法案委員會研究本條例草案。法案委員會在完成審議工作後，於2000年2月11日向內務委員會匯報，並建議恢復條例草案的二讀辯論(立法會CB(2)999/99-00號文件)。議員察悉政府當局尚未決定恢復二讀辯論的日期，並會於稍後發出通知。

3. 由於政府當局進一步就條例草案提出委員會審議階段修正案，內務委員會在2000年5月26日決定，法案委員會應重新展開工作，審議政府當局建議的新修正案。

法案委員會

4. 法案委員會於2000年6月1日重新展開工作，討論新的修正案。

法案委員會的商議事項

“生殖科技程序”的定義

5. 關於條例草案第2條在上述定義下第(b)段後新增的第(ba)段，政府當局建議將原有的“捐贈配子”，更改為“取得配子”。政府當局指出，“取得”是一個更為恰當的用字，因為條例草案旨在規管生殖科技中心，而非捐贈人。議員察悉，在若干情況下，精子或許並非來自捐贈人，例如某男性在接受化療前欲先貯存其精子，供其本人日後使用。

人類生殖科技管理局(下稱“管理局”)的成員組合

6. 梁智鴻議員已要求政府當局刪除條例草案第3(3)(a)(ii)條的限制，即牌照負責人或持牌人不得獲委任為管理局成員，因為他認為該等人士的專業知識對管理局有裨益。他同意在某些情況下會出現利益衝突，但最重要的是有關人士會否申報涉及的利益衝突。

7. 政府當局與梁智鴻議員進一步商討後，答應動議一項修正案以刪除該條款。

禁止進行性別選擇

8. 政府當局已建議在條例草案第13(3)條加入一新句，明確訂明何種程序可被視為進行性別選擇。

持牌人及負責人

9. 條例草案第21(2)條禁止由同一人出任持牌人及負責人。

10. 生殖科技臨時管理局曾討論此事，並認為在若干情況下，持牌人及負責人可為同一人。梁智鴻議員支持臨時管理局的見解，法案委員會於上一份報告中指出梁智鴻議員會提出一項修正案，令持牌人及負責人可為同一人。

11. 政府當局現建議在條例草案第21條加入新的第2A及2B款，授權管理局容許持牌人及負責人為同一人，但管理局須信納是項安排不會影響負責人履行其負責人的責任。政府當局解釋，鑒於香港家庭計劃指導會及大學學部等機構，或許難以物色不同人選分別擔任持牌人及負責人，當局因而提出新的修正案。

12. 鑒於政府當局擬動議上述新的修正案，梁智鴻議員已表示不會提出其擬議的修正案。

撤銷牌照

13. 政府當局建議在條例草案第25條加入新的第(7)款，訂明牌照的撤銷可受管理局認為合適並於撤銷牌照的通知指明的條件規限。條例草案第36條亦會相應作出修正，使違反第25(7)條即屬犯罪。議員知悉，有關吊銷牌照的類似修正案已獲委員會同意，並已納入條例草案第27條內。

14. 政府當局亦指出，關於將條例草案第34(4)及(5)條的“牌照持牌人”改為“牌照持有人”的修正案，當局認為並無需要，故此已在最新的修正案擬稿中予以刪除。

委員會審議階段修正案

15. 政府當局建議的新修正案擬稿載於**附錄I**，標明條例草案相關條文所作出的新修正案的文本載於**附錄II**(只備英文本)。

16. 議員察悉及支持上述修正案。法律事務部證實修正案並無問題。

建議

17. 法案委員會支持本條例草案，並建議在2000年6月21日恢復條例草案的二讀辯論。

徵詢意見

18. 請議員察悉上文第17段所載的建議。

立法會秘書處
2000年6月7日

《人類生殖科技條例草案》

委員會審議階段

由衛生福利局局長動議的修正案

<u>條次</u>	<u>建議的修正案</u>
2	<p>(c) 在第(1)款中，在“生殖科技程序”的定義中 —</p> <p style="padding-left: 40px;">(ii) 在(b)段之後加入 —</p> <p style="padding-left: 80px;">“(ba) 取得配子；”。</p>
3	<p>刪去第(3)(a)(ii)款。</p>
13	<p>(a) 在第(3)款中 —</p> <p style="padding-left: 40px;">(i) 在“使”之前加入“(包括將某一性別的胚胎植入一名女性的體內)而直接或間接”；</p>
21	<p>(a) 在第(2)款中 —</p> <p style="padding-left: 40px;">(i) 在(a)段中，在“有關”之前加入“除第(2A)款另有規定外，”；</p> <p style="padding-left: 40px;">(b) 加入 —</p> <p style="padding-left: 80px;">“(2A) 如申請人屬個人，而管理局信納在有關個案的所有情況下，持牌人亦為負責人是不会影響其按照第22(1)條的規定履行負責人的責任的，則儘管該申請人將會成為負責人，該局仍可向該申請人發給牌照。</p> <p style="padding-left: 80px;">(2B) 凡第(2A)款適用於某牌照，則本條例中對持牌人的提述，須在經顧及持牌人亦為負責人此事實而作出所有必要的變通的情況下解釋。”。</p>
25	<p>(b) 加入 —</p>

“(7) 為免生疑問，現宣布：牌照的撤銷可受管理局認為合適並於撤銷牌照的通知指明的條件(如有的話)規限。”。

36(1)

在“條”之後加入“，或違反第25(7)條所述的通知指明的任何條件，或違反第27或29A(2)條所指的通知指明的任何條件，或違反第31(7)條指明的條件”。

HUMAN REPRODUCTIVE TECHNOLOGY BILL

Extract of

(Mark-up copy incorporating the new draft CSAs)

2. Interpretation

"reproductive technology procedure" (生殖科技程序) means a medical, surgical, **obstetric or other procedure (whether or not it is provided to the public or a section of the public)** assisting or otherwise bringing about human reproduction by artificial means, and includes -

- (a) in vitro fertilization;
- (b) artificial insemination;
- (ba) the obtaining of gametes;**
- (c) manipulation of embryos or gametes outside the body;
- (d) a procedure specified in a notice under subsection (2)(a)(ii) to be a reproductive technology procedure; and
- (e) a gender selection achieved or intended to be achieved by means of a procedure which falls within this definition,

but excludes a procedure specified in a notice under subsection (2)(b)(ii) not to be a reproductive technology procedure;

3. Establishment of Council on Human Reproductive Technology

(3) The Chief Executive -

- (a) shall not appoint -
 - (i) a public officer to be a member of the Council under subsection (2)(a) or (b);
- (b) shall ensure that less than half the membership of the Council from time to time are public officers.

13. Prohibitions in connection with embryos, against sex selection and against the provision of reproductive technology procedures to unmarried persons

(3) No person shall, by means of a reproductive technology procedure, cause the sex of an embryo to be selected, **whether directly or indirectly (including by the implantation of an embryo of a particular sex in the body of a woman)**, except where -

21. Determination of application

(2) The Council shall not grant a licence to an applicant unless it is satisfied that -

- (a) **subject to subsection (2A)**, the application concerned is -
 - (i) for a licence designating an individual, not being the applicant, as the person under whose supervision the relevant activity to be authorized by the licence is to be carried on; and
 - (ii) made with the consent of the individual;
- (b) the applicant is a suitable person to hold the licence and that the applicant will discharge the duty under section 22(2);
- (c) **the individual referred to in paragraph (a)(i) has the prescribed qualifications, the character and experience of the individual are such as are required for the supervision of that activity and the individual will discharge the duty under section 22(1);**
- (d) the premises in respect of which the licence is to be granted are suitable for that activity;
- (e) all other requirements of this Ordinance in relation to the granting of the licence are satisfied; and
- (f) in all the circumstances, the applicant and the individual **referred to in paragraph (a)(i)**, if the licence is granted, would be capable of complying with the requirements under this Ordinance with which it is their respective duty to comply.

(2A) The Council may grant a licence to an applicant notwithstanding that the applicant is an individual who is to be the person responsible if the Council is satisfied that, in all the circumstances of the case, the fact that the licensee and the person responsible are the same person will not prejudice the discharge of the duty under section 22(1) by the person responsible.

(2B) Where subsection (2A) is applicable to a licence, references in this Ordinance to a licensee shall be construed with all necessary modifications to take account of the fact that the licensee and the person responsible are the same person.

(3) The Council shall not grant a licence where 2 or more individuals are to be the person responsible unless it specifies in the licence which of the functions and powers imposed or conferred on a person responsible under this Ordinance shall be performed or exercised, as the case may be, in relation to that licence, by -

- (a) any such individual alone;
- (b) any such individuals jointly;
- (c) each such individual,

and, in any such case, the provisions of this Ordinance shall be read and have effect with such modifications as are necessary to take into account any such licence.

(4) Neither this section nor this section as read with sections 26(5) and (6) and 38 shall operate so as to require the Council, under any circumstances, to grant a licence where 2 or more individuals are to be the

responsible person, and whether or not the Council is satisfied as to the matters referred to in subsection (2).

25. Revocation and variation of licence

(7) For the avoidance of doubt, it is hereby declared that the revocation of a licence may be subject to such conditions, if any, as the Council thinks fit specified in the notice effecting the revocation.

36. Offences

(1) A person who contravenes section 11, 12, 13(1), (2), (3) or (5), 14(1) or (2) or 15(1) or (2) , ***or any condition specified in a notice mentioned in section 25(7) or under section 27 or 29A(2), or the condition specified in section 31(7),*** commits an offence and is liable -

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 - (c) the individual referred to in paragraph (a)(i) has the prescribed qualifications, the character and experience of the individual are such as are required for the supervision of that activity and the individual will discharge the duty under section 22(1);**
 - ~~(e) the character, qualifications and experience of the individual are such as are required for the supervision of that activity and that the individual will discharge the duty under section 22(1);~~
 - (d) the premises in respect of which the licence is to be granted are suitable for that activity;
 - (e) all other requirements of this Ordinance in relation to the granting of the licence are satisfied; and
 - (f) in all the circumstances, the applicant and the individual **referred to in paragraph (a)(i)**, if the licence is granted, would be capable of complying with the requirements under this Ordinance with which it is their respective duty to comply.

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