

立法會
Legislative Council

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**Paper for the House Committee meeting
on 9 June 2000**

**Further report of the Bills Committee on
Human Reproductive Technology Bill**

Purpose

This paper reports on the deliberations of the Bill Committee on some further Committee Stage amendments (CSAs) proposed by the Administration.

Background

2. At the House Committee meeting on 11 September 1998, Members agreed that a Bills Committee should be formed to study the Bill. Upon completion of its scrutiny of the Bill, the Bills Committee reported to the House Committee on 11 February 2000 recommending that the Second Reading debate on the Bill be resumed (LC Paper No. CB(2)999/99-00). Members noted that the Administration had not yet decided on the date of resumption of the Second Reading debate and would give notice of resumption in due course.

3. As the Administration had proposed further CSAs to the Bill, the House Committee agreed on 26 May 2000 that the Bills Committee should be reactivated to consider the new CSAs proposed by the Administration.

The Bills Committee

4. The Bills Committee was reconvened on 1 June 2000 to discuss the new CSAs.

Deliberations of the Bills Committee

Definition of "reproductive technology procedure"

5. The Administration proposes to change the wording of the new paragraph (ba) to be added after paragraph (b) of the above definition in clause 2 from "the *donation* of gametes" to "the *obtaining* of gametes". The Administration points out that "obtaining" is a more appropriate expression since the Bill seeks to regulate reproductive technology centres rather than donors. Members note that in certain circumstances, the sperm may not come from a donor, such as in the case of a man who wishes to save his sperm for his own future use before receiving chemotherapy.

Membership of the Council on Human Reproductive Technology (the Council)

6. Dr Hon LEONG Che-hung has asked the Administration to remove the restriction in clause 3(3)(a)(ii) that the person responsible under a licence or the licensee cannot be appointed as a member of the Council as he considers that the expertise of such persons useful to the Council. He agrees that there could be conflict of interests in some circumstances but the important point is whether the person concerned will declare such conflict of interests.

7. After further discussion with Dr LEONG, the Administration has agreed to move a CSA to delete the subclause.

Prohibitions against sex selection

8. The Administration has proposed to add a new sentence to clause 13(3) to state explicitly what would be considered as a procedure to bring about sex selection.

Licensee and person responsible

9. Clause 21(2) of the Bill prohibits the licensee and person responsible to be the same person.

10. The Provisional Council on Human Reproductive Technology has previously discussed the issue and holds the view that under certain circumstances, the licensee and the person responsible could be the same person. Dr Hon LEONG Che-hung supports the view of the Provisional Council and the Bills Committee has indicated in its last report that Dr LEONG will move an amendment to make it possible for the licensee and the person responsible to be the same person.

11. The Administration now proposes to add new subclauses 2A and 2B to clause 21 to empower the Council to allow the licensee and the person responsible to be the same person if the Council is satisfied that such arrangement will not prejudice the discharge of duty by the person responsible. The Administration explains that the new CSAs have been proposed after taking into account that some organizations such as the Family Planning Association of Hong Kong and university departments may have difficulty in finding two separate persons to be the licensee and person responsible respectively.

12. In view of the new CSAs to be moved by the Administration, Dr LEONG has advised that he will not proceed with his proposed amendment.

Revocation of licence

13. The Administration proposes to add a new subclause (7) to clause 25 so that a licence can be revoked subject to any specified conditions. Clause 36 is amended accordingly so that it will be an offence if clause 25(7) is contravened. Members note that similar amendments have already been agreed and included in clause 27 regarding suspension of licence.

14. The Administration also points out that the amendments of "licensee under the licence" to "holder of the licence" in subclauses 34(4) and (5) are considered unnecessary and have been deleted from the latest draft.

Committee Stage amendments (CSAs)

15. The new draft CSAs proposed by the Administration are in **Appendix I** and a marked up copy of the relevant clauses of the Bill showing the new CSAs to be introduced is in **Appendix II** (English version only).

16. Members note and support the above CSAs. The Legal Service Division has confirmed that the CSAs are in order.

Recommendation

17. The Bills Committee supports the Bill and recommends that the Second Reading debate on the Bill be resumed on 21 June 2000.

Advice sought

18. Members are invited to note the recommendation in paragraph 17 above.

Legislative Council Secretariat

7 June 2000

HUMAN REPRODUCTIVE TECHNOLOGY BILL

COMMITTEE STAGE

Amendments to be moved by the Secretary for Health and Welfare

<u>Clause</u>	<u>Proposed Amendment</u>
2	<p>(c) In subclause (1), in the definition of "reproductive technology procedure" -</p> <p style="padding-left: 40px;">(ii) by adding after paragraph (b) -</p> <p style="padding-left: 80px;">"(ba) the obtaining of gametes;".</p>
3	<p>(b) By deleting subclause (3) (a) (ii).</p>
13	<p>(a) In subclause (3) -</p> <p style="padding-left: 40px;">(i) by adding ", whether directly or indirectly (including by the implantation of an embryo of a particular sex in the body of a woman), " after "selected";</p>
21	<p>(a) In <u>subclause (2)</u> -</p> <p style="padding-left: 40px;">(i) in <u>paragraph (a)</u>, by adding "subject to <u>subsection (2A)</u>," before "the application";</p> <p>(b) By adding -</p> <p style="padding-left: 80px;">"(2A) The Council may grant a licence to an applicant notwithstanding that the</p>

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."

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(b) By adding -

"(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(1)

By adding ", 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)," after "15(1) or (2)".

HUMAN REPRODUCTIVE TECHNOLOGY BILL

Extract of
(Mark-up copy incorporating the new draft CSAs)

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;

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.

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 -

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).

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.

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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 - (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);~~
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