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Legislative Council

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**Paper for the House Committee meeting
on 11 February 2000**

**Report of the Bills Committee on
Human Reproductive Technology Bill**

Purpose

This paper reports on the deliberations of the Bills Committee on the Human Reproductive Technology Bill and seeks Members' support for the Second Reading debate on the Bill to be resumed.

Background

2. In 1987, a Committee on Scientifically Assisted Human Reproduction was appointed by the Secretary for Health and Welfare to consider the social, moral, ethical and legal issues arising from local developments of human reproductive technology (RT) and to advise Government on how to address these issues. Two consultation exercises conducted by the Committee in 1989 and 1993 indicated public support for statutory regulation of RT through a licensing system. In accordance with one of the recommendations of the Committee, the Secretary for Health and Welfare appointed a Provisional Council on Reproductive Technology (the Provisional Council) in December 1995 to advise on the drafting of legislation and a Code of Practice. The Provisional Council conducted further consultation on two issues arising from new technological developments. It also identified a number of other areas which warranted further consideration.

3. Following review of the various issues, the Administration made a number of changes to its original proposals and introduced a bill under the same name as the present one (the former bill) into the former Legislative Council on 15 January 1997. A Bills Committee was formed to study the bill but due to competing priorities, the Bills Committee was not activated before the dissolution of the former Legislative Council. The present Bill was

introduced into the Legislative Council on 9 September 1998. The policy aspects of the two bills are broadly the same.

The Bill

4. The Bill seeks to -
 - (a) regulate by means of licensing, the provision of RT procedures; the conducting of embryo research and the handling, storing and disposing of a gamete or embryo used in connection with a RT procedure or embryo research;
 - (b) regulate surrogacy arrangements, in particular, to make it unlawful to negotiate such arrangements on a commercial basis; and
 - (c) establish a Council on Human Reproductive Technology.

The Bills Committee

5. At the House Committee meeting on 11 September 1998, Members agreed that a Bills Committee should be formed to study the Bill. The Bills Committee first met on 23 September 1998 and Hon Cyd HO Sau-lan was elected Chairman. The membership list of the Bills Committee is in **Appendix I**.

6. The Bills Committee has held 25 meetings with the Administration. It has also met representatives of the Department of Obstetrics and Gynaecology of the Chinese University of Hong Kong, the Department of Public and Social Administration of the Faculty of Humanities and Social Sciences of the City University of Hong Kong and the Family Planning Association of Hong Kong. In addition, the Bills Committee has received written submissions from eight other organizations and an individual.

Deliberations of the Bills Committee

7. The main deliberations of the Bills Committee are summarized in the following paragraphs.

Application of the Ordinance

8. The former bill under the same title introduced in early 1997 included a provision that "This Ordinance binds the Government" but there is no such provision in the present Bill. Members have questioned the reason for the change. The Administration's explanation is that since public hospitals under the Hospital Authority are not part of Government and the Department of Health is not equipped to provide RT service at present, the clause has been deleted as being redundant. Members consider that as there could be unexpected developments in the future, such a provision should be included in the Bill. On review, the Administration has agreed to move a Committee Stage amendment (CSA) to add a new clause 2A to that effect.

Limiting RT services to infertile couples

9. A member has pointed out that when the Committee on Scientifically Assisted Human Reproduction discussed the usage of RT, it was agreed that RT procedures should only be used as a substitute for natural fertilization if a married couple was medically proven to be infertile. As this important principle is not covered in the Bill, he considers it necessary to add a provision to specify this point.

10. Members agree that for the welfare of the child, RT services should be limited to married infertile couples and that "infertility" should be defined in the Bill. They also agree that the infertility requirement should be spelt out at the outset.

11. Taking into consideration members' views, the Administration has recast the long title of the Bill to confine the provision of RT procedures to infertile couples, subject to any express provisions to the contrary in any code.

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

12. Clause 3(2)(a) and (b) stipulates that the chairperson and deputy chairperson of the Council should not be registered medical practitioners.

13. A member considers that there is no reason for prohibiting medical practitioners who are not involved in RT activities from being appointed chairperson and deputy chairperson. He has pointed out that someone who no longer practises medicine will have no conflict of interest. Other members consider that to avoid conflict of interest, the chairperson and deputy chairperson should not be registered medical practitioners. However, they agree that such prohibition could be arranged by administrative means instead of being expressly written in law. The Administration has accepted the suggestion and will move a CSA to remove the restriction.

Licensee and person responsible

14. Clause 21(2) of the Bill prohibits the licensee and the person responsible for carrying out RT activity to be the same person.

15. The Administration's view is that requiring the licensee and the person responsible to be two separate persons will facilitate a check and balance system which will safeguard the interests of all parties concerned. Members note that the Provisional Council has discussed the issue and holds the view that under certain circumstances, the licensee and the person responsible could be the same person.

16. A majority of members support the provision. However, Dr Hon LEONG Che-hung supports the view of the Provisional Council and will move a CSA to make it possible for the licensee and the person responsible to be the same person.

Prohibitions against selection of sex and provision of RT procedures to unmarried persons

Selection of sex

17. Members support in principle that sex selection should be allowed on medical grounds only. They note that the Provisional Council has deliberated the matter in detail. Initially it considered that a list of severe sex-linked genetic diseases would help to prevent the possibility of abuse if sex selection was allowed on medical grounds. However, advice from the relevant medical bodies was that it would be difficult to define the severity of diseases. On review, the Provisional Council agreed that it would be difficult to draw up an exhaustive list of severe sex-linked diseases because the risks and severity level of a sex-linked disease varied from person to person and from case to case. It therefore recommended that a non-exhaustive list of sex-linked genetic diseases be provided in the Code of Practice without defining the severity of the diseases for reference purpose.

18. Members also note that a couple who wish to make use of sex selection by means of a RT procedure are required to meet the two criteria in clause 13(3). Firstly, the purpose of such selection is to avoid a severe sex-linked genetic disease which may prejudice the health of the embryo and secondly, not less than two registered medical practitioners state in writing that such selection is for that purpose.

19. Some members consider that the proposed control is too loose. In response to their proposal to tighten up the control, the Administration has agreed to move CSAs to -

- (a) incorporate a list of sex-linked genetic diseases in a new Schedule 1A; and
- (b) provide that the registered medical practitioners each states in writing that such selection is to avoid a listed sex-linked genetic disease and such disease would be sufficiently severe to a person suffering from it to justify such selection.

Termination of RT procedures on change of marital status

20. Clause 13(5) stipulates that no person shall provide a RT procedure to persons who are not parties to a marriage except in the circumstances specified in regulations made under section 42(2)(e). Members have discussed with the Administration whether and when RT procedures will be discontinued when one of the parties has died. Members note that given the complexities and potential consequences of posthumous use of gametes or embryos, the draft Code of Practice stipulates that stored sperm or embryos should not be used to bring about a posthumous child. Members are concerned about where and when the line should be drawn in cases in which the RT procedures have already begun.

21. To address members' concern, the Administration has proposed to add a new sub-clause (7) to clause 13. The new sub-clause provides that subsection (5) shall not operate to prohibit the continuation of a RT procedure provided to persons who were parties to a marriage when gametes were, or an embryo was, placed in the body of a woman pursuant to that procedure. However, the above shall not operate to permit any further gametes or further embryo to be placed in the body of that woman pursuant to that procedure.

Surrogacy arrangements

Definition of surrogate mother

22. Members have expressed grave concern that the present definition of surrogate mother in clause 2(1) will carry a connotation that various permutations of surrogacy will be permitted by the law. They share the view that only a woman who conceives a child in consequence of a RT procedure with the genetic materials coming from the commissioning couple can be regarded as a surrogate mother.

23. The Administration has explained that by making the definition as broad as possible, the Bill can regulate every possible form of commercial dealings in the act of paying a woman to carry a child and to have the child handed over to the commissioning couple after the child is born. If the definition is narrowed down to that suggested by members, the effect of the Bill in regulating surrogacy arrangement will be greatly reduced.

24. To address members' concern, the Administration has, on review, agreed to amend the definition of surrogate mother in clause 2 to make it clear that the child must have been conceived by a RT procedure.

Marital status of surrogate mother

25. With the exception of Hon CHAN Yuen-han, members support surrogacy by RT procedures as a means for an infertile couple to have a baby. They note that the suitability of a woman to be a surrogate mother will be spelt out in the Code of Practice, which will take into account considerations such as marital status, history of pregnancy and physical and mental fitness to carry a baby.

26. Members note that as clause 13(5) stipulates that no person shall provide a RT procedure to persons who are not parties to a marriage, a surrogate mother must be a party to a marriage. They consider that it is not necessary for a surrogate mother to be party to a marriage but she should have the experience of a successful normal pregnancy. As the mother or sister of a commissioning couple is likely to act as the surrogate mother and since they may have difficulty in meeting the marital status requirement if they are widowed or divorced, members have asked the Administration to relax the requirement in respect of surrogate mothers.

27. The Administration has accepted members' proposal and will add a new sub-clause (6) to clause 13 to provide that subsection (5) shall not apply in the case of a RT procedure provided to a person who is to be a surrogate mother.

Surrogacy arrangements

28. The Administration has informed the Bills Committee that clause 2(4) is intentionally drafted to cover every possible permutation of surrogacy arrangements so that it will be extremely difficult for people to come up with an arrangement which will fall outside the regulation of the Bill. It has also informed members that the surrogacy aspect of the Bill is modelled on the Surrogacy Arrangements Act 1985 of the United Kingdom (UK).

29. A number of members have pointed out that since the object of the Bill is to regulate RT procedures, the regulation of surrogacy arrangements should

be limited to those arrangements involving RT procedures only and clause 2(4) is therefore not necessary. The Administration has explained that although there are two different Acts for RT and surrogacy arrangements in the UK, it is the policy decision in Hong Kong to cover RT and surrogacy arrangements in one bill and for this reason, non-RT surrogacy arrangement has also been included in the Bill.

30. Hon CHAN Yuen-han has expressed strong reservation about including surrogacy arrangements in the Bill. She has pointed out that there are divergent views on the matter put forward by some sectors of the community and that there has not been sufficient discussion of the subject by the community. She therefore proposes that all the provisions relating to surrogacy arrangements in the Bill be taken out to allow an opportunity for the community to discuss the subject in detail. If there is a need, the Administration could introduce a separate bill on surrogacy arrangements at a later stage.

31. In response to the above concern, the Administration has pointed out that while it does not advocate surrogacy, it considers it necessary to regulate surrogacy arrangements to prevent abuse and to keep all parties involved in the arrangements informed of the risks and consequences. If all references to surrogacy arrangements are taken out, such arrangements will remain unregulated, which is unsatisfactory.

32. In view of the reasons outlined in paragraph 30 above, Hon CHAN Yuen-han will move CSAs to remove the provisions relating to surrogacy arrangements.

Temporary suspension of licence

33. Members are concerned about the arrangements for the preservation of the stored embryos in the event that the licence is suspended or revoked by the Council. To address members' concern, the Administration will move amendments to clause 27 to provide that a notice under the section may be subject to such conditions, if any, as the Council thinks fit. In addition, the licence may also be revoked under section 25 whether or not any conditions specified in the notice have been contravened.

Access to information

Register A

34. Clause 30 requires the Council to keep information in a register (Register A) where RT procedures involve donated gametes or donated embryos, and regulates the circumstances under which information may be disclosed.

35. Members note that the policy decision is that Register A should only keep information relating to RT procedures involving the use of donated gametes or embryos, which is the most sensitive and will be subject to the strictest secrecy provision in the legislation.

36. In response to members' request, the Administration will move a CSA to clause 30(2) make the intent of the clause clearer and easier to understand.

Secrecy

37. Clause 31 provides for restrictions on the disclosure by authorized persons of information contained or required to be contained in Register A or which is otherwise confidential.

38. Members have considered at length whether disclosure of a donor's identity should be allowed in special circumstances, e.g. when it is necessary to make the disclosure to save or significantly extend the life of an individual.

39. The Administration has pointed out that the welfare of the child born in consequence of a RT procedure must be taken into account in the legislation. It would be unfair to such a child in the event that he/she needs an organ transplant for survival, is deprived of the chance of finding his/her genetic parents. Under the present provision, it is not against the law for the staff of the RT centre to approach the donor to convey to him the precarious health condition of the child to whom he/she has donated the gametes and to seek his/her consent to make the disclosure. It will also not be an offence for the licensee to approach the donor under clause 31(3)(a), having regard to the fact that the licensee holds the information on the donor in the first place and is acting with good intention.

40. Members have strong reservation about the provisions of the clause. A member, who is against the release of identifying information regarding the donor under any circumstances, considers that the welfare of the child born in consequence of a RT procedure is already adequately safeguarded by the relevant provisions in the Parents and Child Ordinance (Cap. 429). Should the child need an organ transplant for survival, he/she can appeal to the public for donation of the organ. He has also pointed out that the proposed arrangements will deter potential donors from making donations and that it is unfair to place a moral burden on the donor in the special circumstances envisaged.

41. To address members' concern, the Administration has redrafted clause 31. The new sub-clause (3) provides that disclosure can only be made in accordance with -

- (a) the consent in writing of the individual given before the provision of the procedure; or
- (b) the consent in writing of the individual given after the provision of the procedure if, and only if, the consent were obtained in accordance with a permission in writing given by the individual -
 - (i) before the provision of the procedure; and
 - (ii) to the effect that the individual may be contacted after the provision of the procedure for the purpose of ascertaining whether or not the individual will consent to a disclosure of information relating to the provision of the procedure to the individual, either generally or in circumstances specified in the permission.

Code of Practice

42. The Bills Committee has also briefly examined the Draft Code of Practice on Reproductive Technology and Embryo Research (the Code) drawn up by the Provisional Council, in particular the sections relating to the welfare of children and counselling. Members note that the Code sets minimum standards which aim to support best clinical and scientific practice, to safeguard the health and interests of service users and to protect the welfare of children born through RT. Professionals concerned should still follow the codes of practice and professional ethics of their individual disciplines.

43. Members also note that although the Code is not legally binding, the Council may take into account any observance of or failure to observe the provisions of the Code when considering renewal, variation, suspension or revocation of licences.

Committee Stage amendments

44. The CSAs to be moved by the Secretary for Health and Welfare are in **Appendix II**. These CSAs are supported by the Bills Committee. The CSAs to be moved by Hon CHAN Yuen-han and Dr Hon LEONG Che-hung are in **Appendices III and IV**. Members are invited to note that there may be some textual adjustments before the final versions are produced.

Recommendation

45. The Bills Committee recommends that the Second Reading debate on the Bill be resumed on a date to be notified by the Administration.

Advice sought

46. Members are invited to note the recommendation in paragraph 45 above.

Legislative Council Secretariat

9 February 2000

《人類生殖科技條例草案》委員會
Bills Committee on Human Reproductive Technology Bill

議員名單
Membership List

| | |
|------------|-------------------------------|
| 何秀蘭議員 (主席) | Hon Cyd HO Sau-lan (Chairman) |
| 何敏嘉議員 | Hon Michael HO Mun-ka |
| 陳婉嫻議員 | Hon CHAN Yuen-han |
| 梁智鴻議員 | Dr Hon LEONG Che-hung, JP |
| 楊耀忠議員 | Hon YEUNG Yiu-chung |
| 劉漢銓議員 | Hon Ambrose LAU Hon-chuen, JP |
| 鄧兆棠議員 | Dr Hon TANG Siu-tong, JP |
| 羅致光議員 | Hon LAW Chi-kwong, JP |

合共 : 八位議員
Total : 8 Members

日期 : 1999年5月3日
Date : 3 May 1999

Appendix II

GFOX:DMA#7161 v14
1st draft: 3.2.99
2nd draft: 12.2.99
3rd draft: 19.2.99
4th draft: 13.4.99
5th draft: 22.4.99
6th draft: 28.4.99
7th draft: 7.6.99
8th draft: 14.10.99
9th draft: 1.11.99
10th draft: 12.11.99
11th draft: 17.11.99
12th draft: 26.11.99
13th draft: 17.12.99
14th draft: 4.1.00
15th draft: 10.1.00
16th draft: 13.1.00
17th draft: 17.1.00
18th draft: 18.1.00

HUMAN REPRODUCTIVE TECHNOLOGY BILL

COMMITTEE STAGE

Amendments to be moved by the Secretary for Health and
Welfare

Clause

Proposed Amendment

| | |
|------------|---|
| Long title | By adding "to confine the provision of reproductive technology procedures to infertile couples subject to any express provision to the contrary in any code;" after "gametes;". |
|------------|---|

2

- (a) In subclause (1), in the definition of "code", by deleting "the" and substituting "a".
- (b) In subclause (1), in the definition of "payment", in paragraph (c)(ii), by adding "bona fide medical expenses arising from" before "pregnancy".
- (c) In subclause (1), in the definition of "reproductive technology procedure" -
 - (i) by deleting "or obstetric procedure (whether or not it is provided to the public or a section of the public) for the purpose of" and substituting ", obstetric or other procedure (whether or not it is provided to the public or a section of the public)";
 - (ii) by adding after paragraph (b) -
 - (ba) the donation of gametes;".

(d) In subclause (1), by deleting the definition of "surrogate mother" and substituting -

"surrogate mother" () means

a woman who carries a child -

(a) pursuant to an arrangement -

(i) made before she began to carry the child; and

(ii) made with a view to any child carried pursuant to the arrangement being handed over to, and the parental rights being exercised (so far as practicable) by, another

person or
persons; and

(b) conceived by a
reproductive
technology
procedure."

(e) In subclause (1), by adding -

"negotiate" (), in
relation to a surrogacy
arrangement, includes any
bid or offer in relation to
the arrangement;".

(f) In subclause (4) -

(i) in paragraph (a), by
deleting "paragraph (b)"
and substituting "paragraph
(a)(ii)";

(ii) in paragraph (c), by
deleting "(a) of that
definition as beginning to
carry it at the time of the
insemination or" and
substituting "(a)(i) of
that definition as
beginning to carry it at
the time".

(g) By adding -

"(11) For the avoidance of doubt, it is hereby declared that the provisions of the Employment Ordinance (Cap. 57) shall not operate differently between a woman who is pregnant or confined as a result of a surrogacy arrangement (and whether or not the surrogacy arrangement is lawful) and a woman who is pregnant or confined otherwise than as the result of a surrogacy arrangement."

New

By adding -

"2A. Application

This Ordinance binds the Government."

3(2)(a) and

By deleting "who is not a registered medical

(b)

practitioner".

4(1)(c)(ii)

By deleting "being".

7 (a) In subclause (1), by deleting
"(including any surrogacy arrangement
to which a relevant activity
relates)".

(b) By deleting subclause (2).

8(b) By deleting "may" and substituting
"shall".

New By adding -

**"10A. Protection of members of
Council,
etc.**

(1) No person to whom this
subsection applies, acting in good
faith, shall be personally liable in
damages for any act done or default
made in the performance or purported
performance of any function, or the
exercise or purported exercise of any
power, imposed or conferred on the
Council under this Ordinance.

(2) The protection conferred
under subsection (1) on any person to
whom that subsection applies in
respect of any act or default shall
not in any way affect the liability

of the Council for that act or default.

(3) The persons to whom subsection (1) applies are -

(a) any member of the Council or a committee;

(b) a designated public officer."

12 By deleting the clause and substituting -

"12. Prohibition against using donated gametes in surrogacy arrangement

Without prejudice to the operation of the Parent and Child Ordinance (Cap. 429), no person shall, for the purposes of a surrogacy arrangement, use gametes other than the gametes of 2 persons who are -

(a) the parties to a marriage; and

(b) the persons referred to in paragraph (a)(ii) of the definition of "surrogate mother" in

so far as that
arrangement is
concerned."

13

(a) In subclause (3) -

- (i) by adding ", whether directly or indirectly," after "selected";
- (ii) in paragraph (a), by deleting "severe sex-linked genetic disease" and substituting "sex-linked genetic disease specified in Schedule 1A";
- (iii) in paragraph (b), by adding "and such disease would be sufficiently severe to a person suffering it to justify such selection" after "purpose".

(b) In subclause (5) -

- (i) by deleting "No" and substituting "Subject to subsections (6), (7) and (8), no";
- (ii) by deleting "except in the circumstances specified in

regulations made under
section 42(2)(e)".

(c) By adding -

"(6) Without prejudice to
the operation of section 12,
subsection (5) shall not apply
in the case of a reproductive
technology procedure provided to
a person who is to be a
surrogate mother where the
procedure is provided pursuant
to the surrogacy arrangement
under which she is to be the
surrogate mother.

(7) It is hereby declared
that -

(a) subject to
paragraph (b),
subsection (5)
shall not operate
to prohibit the
continuation of a
reproductive
technology
procedure
provided to
persons who were

the parties to a marriage when gametes were, or an embryo was, placed in the body of a woman pursuant to the procedure;

(b) paragraph (a) shall not operate to permit any further gametes or further embryo to be placed in the body of that woman pursuant to that procedure.

(8) Subsection (5) shall not apply in the case of the reproductive technology procedure referred to in paragraph (ba) of the definition of "reproductive technology procedure" in section 2(1)."

14(1)(a) (a) By adding "whether in Hong Kong or elsewhere," before "make".

(b) By deleting ", whether in Hong Kong or elsewhere".

15(1)(a) By adding "whether in Hong Kong or elsewhere," before "make".

21(2) (a) By deleting paragraph (c) and substituting -

"(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);".

(b) In paragraph (f), by adding "referred to in paragraph (a)(i)" after "individual".

22(1) By deleting paragraph (d) and substituting -

"(d) that, in all the circumstances, proper practices are used in the course of that activity; and".

25(5)(a) By deleting "character, qualifications and experience of the other individual are such as are required for the supervision of the relevant activity authorized by the licence and that" and substituting "other individual has the prescribed qualifications, the character and experience of the individual are such as are required for the supervision of the relevant activity authorized by the licence and".

27 (a) In subclause (3), by adding "except as specified in any conditions to which the suspension is subject" after "effect".

(b) By adding -

"(5) For the avoidance of doubt, it is hereby declared that -

(a) a notice under this section may be subject to

such conditions,
if any, as the
Council thinks
fit specified in
the notice;

(b) a notice under
this section may
be revoked and
replaced by
another notice
under this
section whether
or not any
conditions
specified in the
first-mentioned
notice have been
contravened;

(c) a licence the
subject of a
notice under this
section may be
revoked under
section 25
whether or not
any conditions
specified in the

notice have been
contravened.".

New

By adding -

"29A. Voluntary surrender of licence

(1) Without prejudice to the generality of section 25(4) but subject to this section, a licensee may surrender his licence by lodging it at the office of the Council.

(2) The surrender of a licence under subsection (1) shall not have effect until the licensee is served with a notice by the Council stating that the Council accepts the surrender of the licence subject to such conditions, if any, as the Council thinks fit specified in the notice.

(3) The Council may refuse to accept the surrender of a licence under subsection (1) where the licensee has been served a notice under section 26(2) in relation to the revocation of the licence, or the Council has reasonable grounds to suspect that there are grounds for

revoking the licence under section 25, unless and until the Council -

(a) revokes the licence;

or

(b) gives notice to the licensee that it will not revoke the licence.

(4) Immediately upon the surrender of a licence under subsection (1) having effect in accordance with subsection (2), the licensee shall cease to be licensed but shall remain liable for -

(a) any act or omission done, caused, permitted or made by him prior to the surrender; and

(b) any liability incurred by him under this Ordinance prior to the surrender."

(a) By deleting subclause (2) and substituting -

"(2) Information falls
within this subsection if -

- (a) it relates to the provision of a reproductive technology procedure where a child born or intended to be born in consequence of the procedure would not be created from the gametes solely of the parties to a marriage who it is proposed will be the parents of the child; and
- (b) the child, any of the parties to the marriage, or any individual whose gametes have been used, or any

combination
thereof, can be
identified from
the
information."

(b) In subclause (6), by deleting "50"
and substituting "80".

31

By deleting the clause and substituting -

"31. Secrecy

(1) No person who is or has
been -

(a) an authorized person;
or

(b) a person to whom a
licence applies or the
holder of a licence,

shall disclose any information
contained or required to be contained
in Register A.

(2) Subsection (1) shall not
apply to any disclose of information
made -

(a) to a person as an
authorized person;

(b) to a person to whom a
licence applies, or a

licensee, for the purposes of his functions as such;

- (c) so that no individual to whom the information relates can be identified;
- (d) in accordance with section 30;
- (e) pursuant to an order under section 32(1);
- (f) to the Registrar within the meaning of section 33 pursuant to a request under that section; or
- (g) for the purposes of establishing, in any proceedings relating to an application for an order under section 12(1) of the Parent and Child Ordinance (Cap. 429), whether the condition specified in paragraph

(a) or (b) of that
section is met.

(3) Subject to subsection (4),
in the case of information relating
to the provision of a reproductive
technology procedure for an
identifiable individual, subsection
(1) shall not apply to a disclosure
made in accordance with -

(a) the consent in writing
of the individual
given before the
provision of the
procedure; or

(b) the consent in writing
of the individual
given after the
provision of the
procedure if, and only
if, the consent were
obtained in accordance
with a permission in
writing given by the
individual -

(i) before the
provision of
the

procedure;

and

(ii) to the effect that the individual may be contacted after the provision of the procedure for the purpose of ascertaining whether or not the individual will consent to a disclosure of information relating to the provision of the

procedure to
the
individual,
either
generally or
in
circumstance
s specified
in the
permission.

(4) If a disclosure cannot be made under subsection (3) in relation to an identifiable individual without a disclosure of information relating to the provision of a reproductive technology procedure to another identifiable individual, then the first-mentioned disclosure shall not be made under that subsection unless the second-mentioned disclosure can also be made under that subsection.

(5) In the case of information which shows an identifiable individual was, or may have been, born in consequence of a reproductive technology procedure, subsection (1) shall not apply to a disclosure which

is necessarily incidental to disclosure under subsection (3).

(6) This section shall not apply to a disclosure to an individual of information which relates only to that individual or, in the case of an individual treated with another, only to that individual and that other.

(7) It shall be deemed to be a condition of every licence that a reproductive technology procedure that may be provided pursuant to the licence shall not be provided for an identifiable individual unless the individual has, before the provision of the procedure, given or refused to give -

(a) a consent referred to in subsection (3)(a);

or

(b) a permission referred to in subsection (3)(b)."

32(1)

By deleting "falling within section 30(2)(i) or (ii)" and substituting "which

may identify any individual by virtue of whose gametes the information falls within section 30(2)".

34(4) and By deleting "licensee under" and substituting
(5) "holder of".

36(1) By adding ", or any condition specified in a notice under section 27 or 29A(2) or the condition specified in section 31(7)," after "15(1) or (2)".

42(1) By deleting paragraph (e) and substituting -

"(e) imposing restrictions on the disclosure of information which is not information falling within section 31(1) but is information obtained by an authorized person, a person to whom a licence applies, or a licensee, on terms or in circumstances requiring it to be held in confidence."

42(2) (a) By adding -

"(aa) the qualifications to be met by an individual designated in an application for a licence as the person under whose supervision the relevant activity to be authorized by the licence is to be carried out;"

(b) In paragraphs (b)(i) and (ii) and (c)(i)(A) and (B), by deleting "licensee under" and substituting "holder of";

(c) By deleting paragraph (e) and substituting -

"(e) specifying the maximum period or periods of storage of embryos, gametes or other biological material used or to be used for the purposes of a relevant activity, including specifying the means of disposal of such embryos, gametes or material;

(ea) regulating (including prohibiting in whole or in part) the importation or exportation of sperm or other biological material used or to be used for the purposes of a relevant activity;".

43 By adding "or 1A" after "Schedule 1".

New By adding -

"SCHEDULE 1A [ss. 13(3)(a)
& 43]

SEX-LINKED GENETIC DISEASES

Addison's disease with cerebral
sclerosis

Adrenoleucodystrophy

Adrenal hypoplasia

Agammaglobulinaemia, Bruton type

Agammaglobulinaemia, Swiss type

Albinism, ocular

Albinism-deafness syndrome

Aldrich syndrome

Alport syndrome

Amelogenesis imperfecta, hypoplastic
type

Amelogenesis imperfecta,
hypomaturation type
Anaemia, hereditary hypochromic
Angiokeratoma (Fabry's disease)
Cataract, congenital
Cerebellar ataxia
Cerebral sclerosis, diffuse
Charcot-Marie-Tooth peroneal muscular
atrophy
Choroideraemia
Choroidoretinal degeneration
Coffin-Lowry syndrome
Colour blindness, Deutan type
Colour blindness, Protan type
Diabetes insipidus, nephrogenic
Diabetes insipidus, neurohypophyseal
Dyskeratosis congenita
Ectodermal dysplasia, anhidrotic
Ehlers-Danlos syndrome, type V
Faciogenital dysplasia, (Aarskog
syndrome)
Focal dermal hypoplasia (x-linked
dominant, male lethal)
Glucose 6-phosphate dehydrogenase
deficiency
Glycogen storage disease, type VIII
Gonadal dysgenesis (XY female type)

Granulomatous disease (chronic)
Haemophilia A
Haemophilia B
Hydrocephalus (aqueduct stenosis)
Hypophosphataemic rickets
Ichthyosis (steriod sulphatase
deficiency)
Incontinentia pigmenti (x-linked
dominant, male lethal)
Kallmann syndrome
Keratosis follicularis spinulosa
Lesch-Nyhan syndrome (hypoxanthine-
guanine-phosphoribosyl transferase
deficiency)
Lowe (oculocerebrorenal) syndrome
Macular dystrophy of the retina
Menkes syndrome
Mental retardation, FRAXE type
Mental retardation, FMRI type
Mental retardation, MRXI type
Microphthalmia with multiple
anomalies (Lenz syndrome)
Mucopolysaccharidosis II (Hunter
syndrome)
Muscular dystrophy, Becker type
Muscular dystrophy, Duchenne type

Muscular dystrophy, Emery-Dreifuss
type
Myotubular myopathy
Night blindness, congenital
stationary
Norrie's disease (pseudoglioma)
Nystagmus, oculomotor or 'jerky'
Ornithine transcarbamylase deficiency
(type I hyperammonaemia)
Orofaciodigital syndrome (type I, x-
linked dominant, male lethal)
Perceptive deafness, with ataxia and
loss of vision
Perceptive deafness, DNFZ type
Phosphoglycerate kinase deficiency
Phosphoribosylpyrophosphate (PRPP)
synthetase deficiency
Reifenstein syndrome
Retinitis pigmentosa
Retinoschisis
Spastic paraplegia
Spinal muscular atrophy
Spondyloepiphyseal dysplasia tarda
Testicular feminization syndrome
Thrombocytopenia, hereditary
Thyroxine-binding globulin, absence
or variants of

Xg blood group system".

Schedule 2 (a) By adding immediately after the heading "**Sex Discrimination Ordinance**" -

"1A. Reproductive technology

Section 56B(2) of the Sex Discrimination Ordinance (Cap. 480) is repealed and the following substituted -

"(2) In this section, "reproductive technology procedure" () has the meaning assigned to it by section 2 of the Human Reproductive Technology Ordinance (of 2000).".

(b) Section 2 is amended by repealing "to the Sex Discrimination Ordinance (Cap. 480)".

(c) by adding -

"Offences Against the Person

Ordinance

4. Medical termination of pregnancy

Section 47A(8) of the
Offences Against the Person
Ordinance (Cap. 212) is repealed
and the following substituted -

"(8) For the purposes
of sections 46 and 47,
anything done with intent
to procure a woman's
miscarriage (or, in the
case of a woman carrying
more than one foetus, her
miscarriage of any foetus)
is unlawfully done unless
authorized by virtue of the
provisions of this section
and, in the case of a woman
carrying more than one
foetus, anything done with
intent to procure the
miscarriage of any foetus
is authorized by those
provisions if -

(a) the ground
for
termination
of the
pregnancy

specified in
subsection

(1)(b)

applies in
relation to
any foetus
and the
thing is
done for the
purpose of
procuring
the
miscarriage
of that
foetus; or

(b) any of the
other
grounds for
termination
of the
pregnancy
specified in
those
provisions
applies."

authorized by the licence is to be carried on;

- (b) the individual is the applicant or -
 - (i) the application is made with the consent of the individual; and
 - (ii) the applicant is a suitable person to hold the licence and that the applicant will discharge the duty under section 22(2);".

(b) In paragraph (f), by deleting "applicant and the individual" and substituting "individual and, if different, the applicant".

- 22 (a) In subclause (2), by deleting "licensee" and substituting "nominal licensee, if any,".
- (b) In subclause (3)(b), by adding "nominal" before "licensee".

25(2)(a) By adding "nominal" before "licensee".
(ii) and
(b), (4)
and (5)
and 26(2),
(5)(a) and
(c) and

(6)(e)

27

(a) In subclause (2), by deleting "licensee under the licence to which the notice relates and the person responsible under the license (or, where the person responsible has died or appears to the Council to be unable because of incapacity to discharge the duty under section 22(1), to some other person to whom the licence applies) and the Council may by a further notice to the licensee and that person" and substituting "person responsible under the licence to which the notice relates or, where the person responsible has died or appears to the Council to be unable because of incapacity to discharge the duty under section 22(1), to some other person to whom the licence applies or the nominal licensee and the Council may, by a further notice so given".

(b) In subclause (3), by adding "nominal" before "licensee".

36(5) and

(8) and

42(2)(f)

By adding "nominal" before "licensee" wherever occurring.

Schedule 1 In Part I, in section 3(2), by adding "nominal"
before "licensee".