

# **立法會**

## ***Legislative Council***

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### **Bills Committee on Human Reproductive Technology (Amendment) Bill 2015**

#### **Background brief prepared by the Legislative Council Secretariat**

#### **Purpose**

This paper provides background information on the Human Reproductive Technology (Amendment) Bill 2015 ("the Amendment Bill") and gives a brief account of the discussion by the Panel on Health Services ("the Panel") on the legislative proposal.

#### **Background**

2. The Human Reproductive Technology Ordinance (Cap. 561) ("the Ordinance"), enacted in 2000, provides a statutory framework to regulate human reproductive technology ("RT") procedures and the use of embryos and gametes; to confine the provision of RT procedures to infertile couples; to regulate surrogacy arrangements; and to provide for matters connected therewith. The Council on Human Reproductive Technology ("CHRT") was established under section 4 of the Ordinance in April 2001 to implement the regulatory measures. CHRT has promulgated a Code of Practice on Reproductive Technology and Embryo Research to provide guidelines for RT service providers and embryo researchers.

3. Under section 15(3) of the Ordinance, sex selection using RT procedures is prohibited except for medical reasons to avoid the birth of a child suffering from a serious sex-linked genetic disease. A list of these serious sex-linked genetic diseases is set out in Schedule 2 to the Ordinance. This apart, sections 16 and 17 of the Ordinance respectively provide for prohibition against commercial dealings of gametes or embryos and commercial surrogacy arrangements, and prohibit advertisements relating to these commercial dealings. The Ordinance, however, does not prohibit advertisement promoting the use of RT procedures to achieve the purpose of sex selection.

4. According to the Administration, there has been an increase in local press advertisements and leaflets promoting sex selection services available in other countries in recent years. The medical profession has expressed concern on the increasingly aggressive promotional activities in this regard, and there is a call for prohibiting these activities by legislation. For the overall well-being of the society, the Administration considers it necessary to amend the legislation to rectify the above inconsistency in advertising prohibition.

## **The Bill**

5. The Administration introduced the Amendment Bill into the Legislative Council ("LegCo") on 18 March 2015 to amend the Ordinance to provide for a new offence in respect of publishing or distributing advertisements purporting to promote sex selection services through RT procedures, whether or not the services are provided in Hong Kong.

6. According to the LegCo Brief (File Ref: FH CR 1/6/3921/13), a person commits an offence if he/she causes to be published or distributed, or knowingly publishes or distributes, an advertisement purporting to promote services provided for selecting the sex of an embryo by means of a RT procedure, whether directly or indirectly. The proposed maximum penalty level for contravening the offence is a fine at level 4 and imprisonment for six months on a first conviction, and a fine at level 6 and imprisonment for two years on a subsequent conviction. The proposed level of penalty is in line with those relating to advertisements that promote commercial dealings of gametes or embryos and surrogacy arrangements. The key features of the proposed legislative amendments are set out in paragraphs 6 to 10 of the LegCo Brief.

## **Deliberations of the Panel**

7. The Panel was consulted on the legislative proposal on 15 December 2014. The deliberations and concerns of members are summarized in the following paragraphs.

### Prevalence of advertisements on sex selection services

8. While supporting in principle the legislative proposal, members were concerned about how prevalent the problem of promoting the use of RT procedures to achieve the purpose of sex selection was that warranted legislation to outlaw such activities.

9. According to the Administration, there was a total of 12 cases known to be related to promoting on local media the sex selection services available in other places during the period of January 2010 to November 2014. These included two press reports, eight advertisements and two leaflets. In response to the concern raised by the medical profession and other stakeholders over the increasingly aggressive promotional activities in this regard, the Administration considered it necessary to amend the Ordinance to prohibit such activities.

#### Scope of the proposed ban

10. Question was raised as to whether informing interested couples about the sex selection services available in other countries during individual face-to-face discussions in a seminar on RT; information soft-selling these services on the Internet; and provision of an email address or a hyperlink in a message posted on an online discussion forum to attract browsers to enquire such services, but did not by itself promote the services, would constitute an advertising activity on sex selection services.

11. The Administration advised that "advertisement" as defined under section 2 of the Ordinance included any form of advertising whether to the public generally, to any section of the public or individually to selected persons. Under the legislative proposal, any advertisements on sex selection services using RT procedures, irrespective of whether the services were provided within or outside Hong Kong, posted on the local media (including the Internet) would be prohibited. Whether a particular activity would constitute an advertisement purporting to promote sex selection services would depend on the evidence available and the circumstances of each case.

#### Enforcement of the proposed ban

12. Many members expressed concern about how the Administration could effectively enforce the proposed ban, in particular the advertisements posted on the Internet. Question was raised as to whether the legislation could catch those sex selection service providers which posted an advertisement targeting at local couples on a webpage under the management of overseas website hosts or operators. Concern was also raised about whether the overseas sex selection services providers which promoted its services in local media, or the local media agencies or companies providing the platform for these advertising activities (such as publisher of newspapers and magazines and webpage host or operator) would be held liable for such acts.

13. The Administration advised that the primary basis of criminal jurisdiction in Hong Kong was territorial. Enforcement actions could only be initiated against those contravening acts taking place in Hong Kong. Subject to

availability of evidence, it would be the local media agencies or companies which knowingly posted advertisements purporting to promote sex selection services on a newspaper, magazine or webpage under their management that would be held liable. Subject to the passage of the Amendment Bill, the Administration would step up publicity targeting the local media agencies and companies on the new offence.

14. As regards the concern about the adequacy of manpower for effective monitoring of all local media, in particular the Internet, on advertising in breach of the proposed ban on sex selection services using RT procedures, the Administration advised that the manpower for monitoring of these advertising activities would be absorbed within existing resources. Enforcement for the proposed ban would generally follow the existing arrangements for advertising on commercial dealings of gametes or embryos and commercial surrogacy arrangements. Upon receipt of complaints on advertising in relation to sex selection services using RT procedures, the Secretariat to CHRT would, if satisfied that an offence under the Ordinance might have been committed, refer the case to the Police for investigation as appropriate.

### **Relevant papers**

15. A list of the relevant papers on the LegCo website is in the **Appendix**.

Council Business Division 2  
Legislative Council Secretariat  
8 April 2015

**Relevant papers on the Human Reproductive Technology  
(Amendment) Bill 2015**

<b>Committee</b>	<b>Date of meeting</b>	<b>Paper</b>
Panel on Health Services	15.12.2014 (Item V)	<a href="#">Agenda</a>

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