

**Human Reproductive Technology (Amendment) Bill 2015
Revised Draft Committee Stage Amendments**

At the meeting on 12 January 2016, the Bills Committee discussed the draft Committee Stage Amendments (CSAs) proposed by the Government and made some suggestions. We have taken into consideration the concerns of the members and revised the draft CSAs. Explanations of the respective CSAs and the information requested by members at the previous meeting are set out in the ensuing paragraphs.

Statistics on prosecutions made and parties prosecuted under sections 52 and 53 of the Food Safety Ordinance (Cap. 612)

2. The Food Safety Ordinance (“FSO”) is to establish a registration scheme for food importers and food distributors; to require the keeping of records by persons who acquire, capture, import or supply food and to enable food import controls to be imposed etc. The liability of employers and principals and the relevant defence for employees are set out in detail in sections 52 and 53 of the FSO. There are no prosecution cases involving employee or authorised agent having regard to sections 52 and 53 of FSO.

Protection for Internet Webpage Administrators and Hosts

3. At previous meetings, Members requested the Government to offer protection for internet webpage administrators and hosts so that they would not be liable for the proposed offence. A notice-and-takedown mechanism of purely administrative nature was proposed but Members requested the Government to spell out the details of the mechanism in the Bill. It is considered that the key to address Members’ concern regarding protection of such parties that have no control on what other persons may post on the openly accessible platform under their ownership, management or control (e.g. responsible person of an online discussion forum that is openly accessible to the public) is to provide a relief to these persons. On the other hand, there must be measures to ensure that the objectionable advertisements are removed promptly. Taking the above into account, the provision will be in the form of

an exception provided for a person who owns, manages or controls a physical space or website (“relevant person”) if –

- (a) the physical space or website is used by another person (other than an officer, employee or agent of the relevant person) to effect the publication or distribution; and
- (b) the relevant person has removed the advertisement from the physical space or website as soon as practicable after the relevant person becomes aware of the publication or distribution.

4. The condition set out in paragraph 3(b) above protects the relevant person from being liable for the publication or distribution of the objectionable advertisement and at the same time ensures that the exception would not be used to continue to disseminate such advertisement.

5. The revised version of the draft CSAs is at **Annex** for members’ information. Technical revisions have been made to accommodate the revision made to the draft the Government submitted for discussion at the previous meeting. The draft CSAs may be subject to further refinement.

**Food and Health Bureau
Department of Health
Department of Justice
March 2016**

Human Reproductive Technology (Amendment) Bill 2015

Draft Committee Stage Amendments

Marked-up Version of the Amendment Bill¹

A BILL

To

Amend the Human Reproductive Technology Ordinance to provide for a new offence in respect of publishing or distributing advertisements ~~purporting to promote~~ promoting sex selection services.

Enacted by the Legislative Council.

1. Short title and commencement

- (1) This Ordinance may be cited as the Human Reproductive Technology (Amendment) Ordinance 2015.
- (2) This Ordinance comes into operation on a day to be appointed by the Secretary for Food and Health by notice published in the Gazette.

2. Human Reproductive Technology Ordinance amended

The Human Reproductive Technology Ordinance (Cap. 561) is amended as set out in sections 3 and 4.

3. Section 15A ~~added~~ amended (~~prohibitions in connection with embryos, against sex selection and against the provision of reproductive technology procedures to unmarried persons~~)

After section 15~~(3)~~—

Add

“15A. Prohibition against publishing or distributing advertisements promoting sex selection services

~~“(3A1)~~ A person must not cause to be published or distributed, or knowingly publish or distribute, an advertisement

¹ The proposed CSAs arising from the discussion of the Bills Committee meeting on 12 January 2016 are highlighted yellow (■).

~~purporting to promote~~ promoting sex selection services, whether or not the services are provided in Hong Kong.

(2) For the purposes of subsection (1), publishing or distributing an advertisement includes publishing or distributing a hyperlink that gives access to an advertisement.

(3) It is a defence for a person charged with an offence for contravening subsection (1) to show that the advertisement was—

(a) contained in a publication of a technical character for circulation amongst specified persons;

(b) published or distributed for academic teaching, or academic discussion, for specified persons; or

(c) contained in a private correspondence.

(4) Subsection (3)(c) does not apply if—

(a) the correspondence was published or distributed in the course of a business of promoting sex selection services (whether or not carried on by the person charged with the offence); or

(b) the advertisement was accessible through a hyperlink provided in the correspondence and the person charged with the offence (whether by the person or by any officer, employee or agent of the person)—

(i) devised the contents of the advertisement, either in whole or in part; or

(ii) selected, added to, modified or otherwise exercised control over the contents of the advertisement.

(5) It is a defence for a person charged with an offence for contravening subsection (1) to show that—

(a) the conduct was engaged in by the person—

(i) in the course of the person's employment; and

(ii) in accordance with instructions given by the person's employer in the course of that employment; and

(b) at the time the conduct was engaged in, the person was not in a position to make or influence a decision regarding the conduct.

(6) For the purposes of this section—

(a) conduct engaged in by an employee in the course of employment is to be treated as engaged in by the employer, as well as by the employee (whether or not the conduct was engaged in with the employer's knowledge or approval); and

(b) conduct engaged in by an agent with the authority of the principal is to be treated as engaged in by the principal, as well as by the agent (whether the authority was express or implied, and whether the authority is precedent or subsequent).

(7) If the employer or principal is charged with an offence for contravening subsection (1) in respect of conduct alleged to have been engaged in by the employee or agent (as the case may be), it is a defence for the employer or principal to show that the employer or principal took all such steps as were reasonable and exercised all due diligence to prevent the employee or agent (as the case may be) from—

(a) engaging in the conduct; or

(b) engaging in conduct of that description in the course of the employee's employment or the agent's authority.

(8) To avoid doubt, for a person who owns, manages or controls a physical space or website (*relevant person*), subsection (1) does not apply to the publication or distribution of the advertisement on the physical space or website if—

(a) the physical space or website is used by another person (other than an officer, employee or agent of the relevant person) to effect the publication or distribution; and

(b) the relevant person has removed the advertisement from the physical space or website as soon as practicable after the relevant person becomes aware of the publication or distribution.

(3B9) In subsection (3A) this section—

conduct (行為) includes acts and omissions;

correspondence (通訊) includes correspondence in electronic form;

sex selection services (性別選擇服務) means services provided for selecting the sex of an embryo by means of a

reproductive technology procedure, whether directly or indirectly (including by the implantation of an embryo of a particular sex in the body of a woman);”.

specified person (指明人士) means any of the following persons—

(a) registered medical practitioners;

(b) the medical and para-medical staff of—

(i) premises to which a licence relates;

(ii) a hospital or maternity home to which the Hospitals, Nursing Homes and Maternity Homes Registration Ordinance (Cap. 165) applies;

(iii) a clinic to which the Medical Clinics Ordinance (Cap. 343) applies;

(iv) a hospital, maternity home or clinic maintained by the Government, The Chinese University of Hong Kong or the University of Hong Kong;

(v) a hospital, maternity home or clinic managed or controlled by the Hospital Authority established under the Hospital Authority Ordinance (Cap. 113).”.

4. Section 39 amended (offences)

Section 39(1), after “(35),”—

Add

“~~(3A)~~15A(1).”

Repeal

“~~(3) or (5),”~~

Substitute

“~~(3), (5) or (9),”~~