

LEGISLATIVE COUNCIL BRIEF

Human Reproductive Technology Ordinance
(Chapter 561)

Human Reproductive Technology (Amendment) Bill 2015

**PROHIBITING ADVERTISEMENT OF
SEX SELECTION THROUGH
HUMAN REPRODUCTIVE TECHNOLOGY PROCEDURES**

INTRODUCTION

A At the meeting of the Executive Council on 24 February 2015, the Council ADVISED and the Chief Executive ORDERED that the Human Reproductive Technology (Amendment) Bill 2015 (at Annex A) should be introduced into the Legislative Council to provide for a new offence in respect of publishing or distributing advertisements purporting to promote sex selection services through human reproductive technology (RT) procedures, whether or not the services are provided in Hong Kong.

JUSTIFICATIONS

2. At present, section 15(3) of the Human Reproductive Technology Ordinance (HRTO) prohibits the use of RT procedures to select the sex of babies except for avoiding the birth of a child suffering from a serious sex-linked genetic disease, and Schedule 2 to the Ordinance provides a list of such sex-linked genetic diseases. In recent years, the Council on Human Reproductive Technology (CHRT), a statutory body established under section 4 of the HRTO, has observed an increase in local press advertisements and leaflets promoting sex selection services available in other countries and expressed concern about the existing regulatory regime. The medical profession also expressed concern on local advertisements promoting sex selection services and requested such promotional activities be stopped and prohibited by law.

3. Apart from prohibiting sex selection services using RT procedures for non-medical grounds under section 15, sections 16 and 17 of the HRTO contain provisions which prohibit commercial dealings of gametes/embryos and

commercial surrogacy arrangements respectively. In addition, these sections prohibit advertisements relating to commercial dealings of gametes/embryos and surrogacy arrangements. The HRTO does not contain similar provisions to prohibit advertisement on sex selection services through RT procedures. For the overall well-being of the society, we consider it necessary to amend the law in this regard.

OTHER OPTIONS

4. It may be argued that the legislation should be narrowed to cover advertising activities which promote the use of RT procedures to achieve the purpose of sex selection on non-medical grounds in order not to affect the rights of needy couples to receive the relevant information on sex-linked genetic diseases and relevant RT procedures like pre-implantation genetic diagnosis. We are of the view that the proposed ban on all advertisement on sex selection services using RT procedures will not restrict the right of persons with genuine medical reasons for obtaining sex selection services to receive such information, since patients with genuine medical need for use of RT procedures for sex selection would be under the care of healthcare professionals, who would offer proper advice and referral to treatments available in Hong Kong or other countries as appropriate.

5. Given the considerations above, we propose to prohibit all advertisements on sex selection services through RT procedures.

THE BILL

6. The main provisions of the Amendment Bill are as follows –

- (a) **Clause 3** - to amend section 15 of the HRTO to create a new offence in respect of publishing or distributing advertisements to promote sex selection services through RT procedures and define the meaning of sex selection services; and
- (b) **Clause 4** - to amend section 39 of HRTO to the effect that a contravention of the provision to prohibit advertisements on sex selection through RT procedures is an offence and is liable to the same level of penalty under section 39(1).

B The existing provisions being amended are at Annex B.

7. Regarding paragraph 6(a) above, we intend to prohibit advertising on sex selection services through RT procedures on all media, including the Internet. Subject to availability of evidence, local webpage hosts or operators who knowingly post advertisements purporting to promote sex selection services on a webpage under their management could be held liable.

8. The new offence is drafted to catch those who knowingly publish or distribute an advertisement purporting to promote sex selection services or cause the advertisement to be published or distributed. It is not specific to a class of persons yet our intention is to hold the following parties liable, where applicable -

- (a) companies that offer sex selection services and initiate the advertising activities;
- (b) agents that assist such companies to advertise sex selection services in Hong Kong; and
- (c) media agencies/companies that provide the platform for such advertisements (e.g. publisher of newspapers and magazines).

9. Enforcement for the proposed ban on advertising on sex selection services would generally follow the existing arrangements for sections 16 and 17 of the HRTO. Upon receipt of complaints on advertising in breach of the proposed ban on advertising on sex selection services using RT procedures, the Secretariat to the CHRT will, if satisfied that an offence under HRTO may have been committed, refer the case to the Police for investigation as appropriate. As the enforcement agency, the Police would seek assistance from the CHRT/Department of Health and seek legal advice on matters of prosecution, such as parties to be prosecuted, adequacy of evidence, as required. As in the case of other offences under the HRTO, under section 40 of the HRTO, proceedings for the new offence cannot be instituted except by or with the consent of the Secretary for Justice.

10. Regarding paragraph 6(b) above, the proposed level of penalty is in line with those relating to commercial dealings of gametes/embryos and surrogacy arrangements under section 39(1) of the HRTO, as we regard the moral culpability for contravention to be similar. The penalty on first

conviction is pitched at a level-4 fine and imprisonment for six months; on a subsequent conviction at a level-6 fine and imprisonment for two years.

LEGISLATIVE TIMETABLE

- 11. The legislative timetable will be –
 - Publication in the Gazette 6 March 2015
 - First Reading and commencement of Second Reading debate 18 March 2015
 - Resumption of Second Reading debate, Committee Stage and Third Reading To be notified

IMPLICATIONS OF THE PROPOSAL

12. The proposal is in conformity with the Basic Law, including the provisions concerning human rights. It has insignificant sustainability implications and has no civil service, economic, family, productivity, or environmental implications. On financial implication, any penalties collected from conviction will be credited to the Government Revenue Account. The Amendment Bill will not affect the current binding effect of the HRTO.

PUBLIC CONSULTATION

13. In 2013, we briefed the CHRT on the Government’s plan to amend the HRTO to prohibit advertisements on sex selection through RT procedures. Council Members supported the proposal, including the need to cover advertisement and promotional materials on the Internet.

14. We conducted a stakeholders consultation in mid-2014, covering RT treatment centres licensed by the CHRT, public and private hospitals, medical, health and legal related professional bodies, specialists in Obstetrics and Gynaecology, Reproductive Medicine and Surgery (Urology), the academia, family and social services organisations, the Consumer Council and media associations. Majority of the respondents supported the proposal to amend the HRTO.

15. The Panel on Health Services of the Legislative Council was consulted on the proposed legislative amendments on 15 December 2014. Panel Members supported the proposal and raised concern on the effectiveness of enforcement over advertisements on the Internet and related liability issues.

PUBLICITY

16. A press release will be issued when the Bill is gazetted on 6 March 2015.

BACKGROUND

17. In 1996, a public consultation exercise was launched to seek the public's views on the proposed Human Reproductive Technology Bill, which aimed to regulate 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, including the prohibition of sex selection using RT procedures. Except for a few respondents who suggested that sex selection should be prohibited completely, majority of the respondents agreed that sex selection should not be allowed except on genuine medical grounds. They were concerned that allowing sex selection for babies involving RT procedures would create social problems such as perpetuating sex discrimination, adverse effect on other child/children of the family and encouragement of eugenics, and upsetting the sex ratio in the population.

18. The HRTO was enacted in 2000 to regulate 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. Under section 15(3) of the HRTO, 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.

19. The CHRT is a statutory body established under section 4 of the HRTO to regulate the provision of RT procedures; the conducting of embryo research; the handling, storing or disposing of gametes or embryos used or intended to be used in connection with a RT procedure or embryo research and surrogacy arrangements. To provide detailed guidelines for RT service providers and embryo researchers, the CHRT has promulgated the Code of Practice on Reproductive Technology and Embryo Research (COP).

20. At present, there are 15 RT treatment centres licensed by the CHRT under the HRTO. Among them, 12 licensed treatment centres provide in vitro fertilisation (IVF) services, of which three treatment centres are licensed to perform sex selection through PGD with sex-selective embryo transfer, a RT procedure involving both IVF and genetic testing, which allows the gender of the embryo to be selected for avoidance of the birth of a child with a severe sex-linked genetic disease. Under the COP, PGD should only be used for the detection of serious genetic conditions or abnormalities on medical grounds in compliance with the requirements and the ethical guidelines on PGD. In addition, a licensed treatment centre providing such services is required to provide counselling to couples concerned, and to report such cases to the CHRT within three months after the procedure has taken place.

21. In 2012, a total of 2 106 live births involving the use of IVF treatments were recorded. In 2009, a licensed RT treatment centre conducted two rounds of PGD treatment for a married couple involving sex selection having regard to their family history on a sex-linked genetic disease. According to the report from the licensed centre, the treatments were not successful.

ENQUIRY

22. Enquiries on this brief may be directed to Ms Wendy AU, Principal Assistant Secretary for Food and Health (Health) Special Duties 1, Food and Health Bureau, at 3509 7913.

Food and Health Bureau
4 March 2015

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 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 15 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

- “(3A) A person must not cause to be published or distributed, or knowingly publish or distribute, an advertisement purporting to promote sex selection services, whether or not the services are provided in Hong Kong.

(3B) In subsection (3A)—

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).”.

4. Section 39 amended (offences)

Section 39(1), after “(3)—

Add

“, (3A)”.

Explanatory Memorandum

The object of this Bill is to amend the Human Reproductive Technology Ordinance (Cap. 561) (*Ordinance*) to provide for a new offence in respect of publishing or distributing advertisements purporting to promote sex selection services.

2. Clause 1 sets out the short title and provides for commencement.
3. Clause 3 adds new section 15(3A) and (3B) to the Ordinance to create the new offence and define the meaning of *sex selection services*.
4. Clause 4 amends section 39(1) of the Ordinance to provide for the penalty of the new offence.

Extracts from Human Reproductive Technology Ordinance (Cap. 561)

**Provisions to be amended
by the Human Reproductive Technology (Amendment) Bill 2015**

Section:	15	Prohibitions in connection with embryos, against sex selection and against the provision of reproductive technology procedures to unmarried persons	L.N. 164 of 2007	01/08/2007
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- (1) No person shall-
 - (a) for the purposes of embryo research-
 - (i) bring about the creation of an embryo; or
 - (ii) combine human and non-human gametes or embryos or any part thereof such as to give rise to a 2 cell zygote;
 - (b) keep or use an embryo after the appearance of the primitive streak;
 - (c) place any non-human gametes or embryo or any part thereof in any human;
 - (d) place any human gametes or embryo or any part thereof in any animal;
 - (e) replace the nucleus of a cell of an embryo with a nucleus taken from any other cell; or
 - (f) clone any embryo.
- (2) No person shall, for the purposes of a reproductive technology procedure, keep or use any fetal ovarian, or fetal testicular, tissue.
- (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-
 - (a) the purpose of such selection is to avoid a sex-linked genetic disease specified in Schedule 2 which may prejudice the health of the embryo (including any foetus, child or adult which may arise from the embryo); and
 - (b) not less than 2 registered medical practitioners each state in writing that such selection is for that purpose and such disease would be sufficiently severe to a person suffering it to justify such selection.
- (4) For the purposes of subsection (1)(b), the primitive streak shall be taken to have appeared in an embryo not later than the end of the period of 14 days beginning with the day when the gametes are mixed, not counting any time during which the embryo is stored.
- (5) Subject to subsections (6), (7) and (8), no person shall provide a reproductive technology procedure to persons who are not the parties to a marriage.
- (6) Without prejudice to the operation of section 14, 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 (c) of the definition of "reproductive technology procedure" in section 2(1).

39	Offences	L.N. 164 of 2007	01/08/2007
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(1) A person who contravenes section 13, 14, 15(1), (2), (3) or (5), 16(1) or (2) or 17(1) or (2), or any condition specified in a notice mentioned in section 27(7) or under section 29 or 32(2), or the condition specified in section 34(7), commits an offence and is liable-

- (a) on a first conviction, to a fine at level 4 and to imprisonment for 6 months;
- (b) on a subsequent conviction, to a fine at level 6 and to imprisonment for 2 years.

(2) A person who, for the purposes of the grant of a licence, knowingly or recklessly provides any information which is false or misleading in a material particular commits an offence and is liable on conviction to a fine at level 4 and to imprisonment for 6 months.

(3) A person who discloses any information in contravention of section 34 commits an offence and is liable-

- (a) on a first conviction, to a fine at level 4 and to imprisonment for 6 months;
- (b) on a subsequent conviction, to a fine at level 6 and to imprisonment for 2 years.

(4) A person who-

- (a) fails to comply with a requirement made by virtue of section 37(1)(b) or (2)(b) or 38(2)(b)(ii) or (5)(b);
or

- (b) intentionally obstructs the exercise of any rights conferred by a warrant issued under section 38,

commits an offence and is liable on conviction to a fine at level 4 and to imprisonment for 6 months.

(5) A person to whom a licence applies or the licensee who gives or receives any money or other benefit, not authorized under this Ordinance, in respect of any supply of gametes or embryos, commits an offence and is liable on conviction to a fine at level 4 and to imprisonment for 6 months.

(6) It is a defence for a person ("the defendant") charged with an offence of doing a thing which, under section 13, cannot be done except pursuant to a licence to show-

- (a) that the defendant was acting under the direction of another; and
- (b) that the defendant believed on reasonable grounds-
 - (i) that the other person was at the material time the person responsible under a licence or a person designated by virtue of section 24(3)(b) as a person to whom a licence applied; and
 - (ii) that the defendant was authorized by virtue of the licence or directions to do that thing.

(7) It is a defence for a person charged with an offence against this Ordinance to show-

- (a) that at the material time he was a person to whom a licence applied; and
- (b) that he took all such steps as were reasonable and exercised all due diligence to avoid committing the offence.

(8) Where the person responsible under a licence has committed an offence against this Ordinance, the licensee shall be guilty of the like offence unless the licensee shows that the act or omission constituting the offence took place without his knowledge or consent.