

立法會

Legislative Council

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Bills Committee on Human Organ Transplant (Amendment) Bill 2018

Background brief prepared by the Legislative Council Secretariat

Purpose

This paper provides background information and summarizes relevant discussion of the Panel on Health Services ("the Panel") on the proposed amendments to the Human Organ Transplant Ordinance (Cap. 465) ("the Ordinance") which seek to expressly provide for paired and pooled donation arrangements under the Ordinance.

Background

Organ transplants in Hong Kong

2. End-stage organ failure was one of the common end results of many common chronic illnesses. According to the Administration, there are more than 2 000 patients waiting for organs transplant. Organ transplant is regulated under the Ordinance which, inter alia, prohibits commercial dealings in human organs intended for transplanting; restricts the transplanting of human organs between living persons unless under specified circumstances; and restricts the transplanting of imported organs. The Human Organ Transplant Board ("the Board") is established under the Ordinance to perform the regulatory functions.

3. Organs used for transplant come from two sources: living and cadaveric donations. Cadaveric organs are the main source of organs for transplant. Only persons who are certified brain dead can be cadaveric donors. There are seven types of organs or tissues for which transplants are conducted in public hospitals, namely kidneys, liver, heart, lungs, corneas, bones and skin. Corneal transplant is conducted in some private hospitals or clinics. A breakdown, by type of organ or tissue, of the number of patients waiting for organ or tissue transplant and the number of donations in public hospitals from 2015 to 2017 is in **Appendix I**.

Organ transplants between living persons

4. Under sections 5A and 5C of the Ordinance, a registered medical practitioner may carry out a restricted organ removal or a restricted organ transplant or both¹ if he is satisfied that the recipient of the organ concerned is genetically related² to its donor, or is, at the time of the transplant, the spouse of the donor and their marriage has subsisted for not less than three years; or if the Board has given its approval in writing. For both cases, it is required under section 5D of the Ordinance that (a) the donor concerned must have reached the age of 18 years; (b) a registered medical practitioner has, in the absence of the recipient concerned, explained to the donor, and the donor has understood, the procedure and the risk involved of the proposed organ removal, and the donor's entitlement to withdraw consent to that removal at any time; (c) the donor has given his consent to the proposed organ removal without coercion or the offer of inducement and has not subsequently withdrawn his consent; (d) a registered medical practitioner has, in the absence of the donor, explained to the recipient, and the recipient has understood, the procedure and the risk involved of the proposed organ transplant, and the recipient's entitlement to withdraw consent to that transplant at any time; and (e) no payment prohibited by the Ordinance³ has been made, or is intended to be made.⁴ According to the International Registry in Organ Donation and Transplantation, Hong Kong's living organ donation rate as measured by the number of donors per million people was 6.9 in 2017.

5. For cases in which the patient who is eligible for an organ transplant and have a living related donor who is willing but unable to donate because of an incompatible blood type or tissue type, paired donation is an option to overcome this barrier. In paired donation, both medically approved incompatible donor-patient pairs donate organs to the other pair so that both patients receive compatible organs. In some places, the practice of paired donation has gone

¹ Under the Ordinance, "restricted organ removal" means the act of removing from a living person an organ for the purpose of transplanting it into another person. "Restricted organ transplant" means the act of transplanting into a person an organ removed from another person who was living at the time of the removal.

² Under section 5A(2) of the Ordinance, a person is regarded as genetically related only to (a) his natural parents and natural children; (b) his siblings of the whole or half blood; (c) the siblings of the whole or half blood of either of his natural parents; and (d) the natural children of any of the siblings mentioned in (b) and (c) above.

³ Under the Ordinance, "payment" means payment in money or money's worth but does not include any payment for defraying or reimbursing (a) the cost of removing, transporting or preserving the organ to be supplied; (b) the administrative cost incidental to the removal, transportation or preservation of the organ to be supplied; and (c) any expenses or loss of earnings incurred by a person and attributable to is supplying an organ from his body.

⁴ The registered medical practitioner who makes the explanation under item (b) or (d) shall not be the registered medical practitioner who is to carry out the restricted organ removal or the restricted organ transplant. The requirement in item (d) is waived under the circumstances specified in section 5E of the Ordinance.

further to pooled donation, which involves more than two pairs of donors and recipients.

Cadaveric organ donations

6. At present, Hong Kong adopts an opt-in system based on voluntary decisions of people to donate and the family consent to the donation after death. Persons who wish to donate their organs and/or tissues after death could voluntarily register, by means of the Internet, mail and fax, their wish in the Centralised Organ Donation Register ("CODR"), which was launched by the Department of Health ("DH") in November 2008 to make it more convenient for prospective donors to register their wish, and for such wish to be more reliably kept and retrieved by authorized persons, such as Organ Donation Coordinators (formerly known as Transplant Coordinators) of the Hospital Authority ("HA")⁵, to facilitate arrangement of organ transplants. This apart, prospective donors who prefer not to register in CODR could express their wish by signing and carrying organ donation cards. For both cases, the family of the deceased has to sign a consent form to confirm the organ or tissue to be removed for transplant purpose. For deceased persons who had not indicated their wish by registering in CODR or signing the organ donation card, their organs or tissues can still be donated with the consent of their family members.

7. According to the International Registry in Organ Donation and Transplantation, there were 6 cadaveric organ donors per million people in Hong Kong in 2017. As at 11 May 2018, there were more than 283 000 registrations recorded in CODR. A breakdown of the numbers of prospective donors registered in CODR from 2015 to 2017 is in **Appendix II**.

The Human Organ Transplant (Amendment) Bill 2018

8. The Administration introduced the Human Organ Transplant (Amendment) Bill 2018 ("the Bill") into the Legislative Council ("LegCo") on 9 May 2018 to add a new section 5DA to the Ordinance to provide that a donor is not to be regarded as having given consent to a proposed organ removal with the offer of inducement only because the consent has been given in consideration of a proposed organ transplant into a person chosen by the donor under a paired or pooled donation arrangement. Details of the Bill are set out in paragraphs 4 to 7 of the LegCo Brief issued by the Food and Health Bureau, DH and HA on 25 April 2018 (File Ref: FH CR 1/3231/98).

⁵ There are currently nine Organ Donation Coordinators who are responsible for, among others, liaise organ transplant matters at public hospitals, promoting organ donation among healthcare staff and providing support and co-ordination for external organ donation promotional activities.

Deliberations of the Panel

9. The Panel was consulted on the legislative proposals on 15 January 2018. The deliberations and concerns of members are summarized in the following paragraphs.

Paired or pooled organ donation arrangement

10. Members generally supported the legislative proposal. However, they considered it necessary to ensure that the paired or pooled organ donation arrangements would not result in commercial dealings in human organs. There was also a view that the ethical principles underlying the existing regulatory regime for organ donation should be upheld after the introduction of paired or pooled organ donation arrangements.

11. The Administration advised that as stipulated in section 5D(1)(c) of the Ordinance, the donor had to give his consent to the proposed organ removal without coercion or the offer of inducement and has not subsequently withdrawn his consent before any organ transplant between living persons could take place. To remove the legal ambiguities surrounding paired and pooled donation arrangements, it was necessary to amend the Ordinance so that the fact that consent had been given in consideration of a proposed organ transplant into a person chosen by the donor under the paired or pooled donation arrangement would not in itself constituted an offer of inducement. At the same time, the Board would continue to assess and approve the applications for, inter alia, paired or pooled organ transplant to prohibit commercial dealings in human organs intended for transplanting.

12. Members were further advised that HA would implement a pilot Paired Kidney Donation Programme under which participation was voluntary. Subject to the experience gained, HA would explore developing a pooled donation mechanism that would involve more than two pairs of donors and recipients and expanding the programme to cover liver.

Promotion of organ donation

13. Members were concerned about the slow growth in the number of people willing to donate their organs after death. They noted that as revealed by a thematic household survey conducted by the Census and Statistics Department, only about 34% respondents supported the implementation of an "opt-out" system (i.e. the deceased was presumed to have agreed to organ donation unless he or she had indicated any preference of not donating his or her organs before death) in Hong Kong. Members called on the Administration to allocate more resources to step up the promotion of organ donation, including organizing more

outreach campaigns in the community and setting up promotional counters at various frontline government offices. There was a suggestion that the Administration should set up a dedicated fund to provide financial support to relevant organizations to promote organ donation.

14. The Administration advised that the Committee of Promotion of Organ Donation set up under the Food and Health Bureau would devise promotional strategies for the promotion of organ donation and coordinate the promotional activities of different sectors in the society. It would examine how to encourage more people to register their wish to donate organs after death and make reference to the findings of the survey in considering the way forward.

15. On members' concern that nearly 44% of the respondents of the aforesaid thematic household survey did not support the idea that family member(s) could overturn the "registered" wish of the deceased to donate organs after death, the Administration advised that the Committee would study the feasibility of giving an option such that a deceased donor's wish to donate organs after death would be respected in all circumstances.

Relevant papers

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

Appendix I

Number of patients waiting for organ/tissue transplant and the number of organ/tissue donations from 2015 to 2017

Year <i>(as at 31 December)</i>	Organ/Tissue	No. of patients waiting for organ/tissue transplant	No. of donations
2015	Kidney	1 941	81
	Heart	36	14
	Lung	16	13
	Liver	89	59
	Cornea (piece)	374	262
	Bone	NA ^{Note}	4
	Skin		10
2016	Kidney	2 047	78
	Heart	50	12
	Lung	19	9
	Liver	89	73
	Cornea (piece)	298	276
	Bone	NA ^{Note}	1
	Skin		10
2017	Kidney	2 153	78
	Heart	48	13
	Lung	20	13
	Liver	87	74
	Cornea (piece)	273	367
	Bone	NA ^{Note}	3
	Skin		11

Note:

NA = Not Applicable. Patients waiting for skin and bone transplant are spontaneous and emergency in nature. Since substitutes will be used if no suitable piece of skin or bone is identified for transplant, patients in need of skin and bone transplant are not included in the organ/tissue donation waiting list.

Source: The Administration's replies to Members' initial written questions during the examination of estimates of expenditure 2018-2019

**Numbers of registrations made in the
Centralised Organ Donation Register from 2015 to 2017**

Year	2015	2016	2017
Number of persons newly registered	29 357	52 550	37 285
Total number of persons registered	188 839	241 389	278 674

Source: The Administration's replies to Members' initial written questions during the examination of estimates of expenditure 2018-2019

Appendix III

Relevant papers on the legislative proposal on paired and pooled organ donation

Committee	Date of meeting	Paper
Panel on Health Services	15.1.2018 (Item IV)	Agenda

Council Business Division 2
Legislative Council Secretariat
24 May 2018