

LEGISLATIVE COUNCIL BRIEF

HUMAN ORGAN TRANSPLANT ORDINANCE (CAP. 465)

HUMAN ORGAN TRANSPLANT (AMENDMENT) BILL 2018

INTRODUCTION

At the meeting of the Executive Council on 24 April 2018, the Council ADVISED and the Chief Executive ORDERED that the Human Organ Transplant (Amendment) Bill 2018 (“Bill”), at **Annex**, should be introduced into the Legislative Council to expressly provide for paired and pooled donation arrangements under the Human Organ Transplant Ordinance (“HOTO”) (Cap. 465).

Annex

JUSTIFICATIONS

2. Section 5D of the HOTO sets out the general requirements to be satisfied for organ transplants in all cases with a living donor (except that the requirement in section 5D(1)(d) thereunder may be waived in certain cases). One of the general requirements set out in section 5D(1)(c) of HOTO is that the donor has given (and has not subsequently withdrawn) the donor’s consent to the proposed organ removal without coercion or the offer of inducement.

3. Under a paired or pooled donation arrangement, a donor donates an organ to a stranger in exchange for the donation of an organ to the donor’s intended recipient (“the beneficiary” as defined under the Bill). As the term “inducement” is not specifically defined, it is considered necessary to amend the law so that the fact that consent has 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 constitute an offer of inducement.

THE BILL

4. The main provision of the Bill is **clause 3**, which adds a new section 5DA regarding the consent given in a paired or pooled donation arrangement.

5. We intend to provide that, for the purposes of an approval of the Human Organ Transplant Board (“HOTB”) under section 5C¹, a donor is not to be regarded as having given consent required by section 5D(1)(c)² with the offer of inducement only because the donor’s consent has been given in consideration of a proposed transplant into the donor’s intended beneficiary under a paired or pooled donation arrangement.

6. In order to better describe the paired and pooled donation arrangements, we intend to introduce a new concept of a dyad, which is a group of two persons consisting of a donor and a beneficiary. The definitions for paired and pooled donation arrangements are also expressly set out. To avoid any impression or possibility that different types of organs could be exchanged under such arrangements, organs to be removed and transplanted under the arrangements are restricted to be of the same kind and every removal and transplant is to be carried out by a registered medical practitioner in Hong Kong.

7. Paired or pooled donation arrangement is between living non-related persons and therefore prior approval from HOTB is required. For HOTB to give approval to such arrangements, applications, which must be submitted by the medical practitioners, have to satisfy the requirements as set out under section 5D, including that no payment prohibited by HOTO has been made, or is intended to be made.

LEGISLATIVE TIMETABLE

8. The legislative timetable is as follows –

Publication in the Gazette

27 April 2018

¹ According to section 5C(2)(b), for organ transplants with prior approval of HOTB, it is one of the requirements that HOTB may give its approval, if it is satisfied that the donor has been interviewed, in the absence of the donor’s recipient, by an interviewer, and the interviewer has reported to the board that the donor has understood all aspects of the proposed organ removal listed under section 5D(1)(b) and that the donor has given the donor’s consent as described in section 5D(1)(c).

² Section 5D(1)(c) requires that the donor has given the donor’s consent to the proposed organ removal without coercion or the offer of inducement and has not subsequently withdrawn the donor’s consent.

First Reading and commencement of
Second Reading debate

9 May 2018

Resumption of Second Reading debate, Committee
Stage and Third Reading To be notified

IMPLICATIONS OF THE PROPOSAL

9. The proposal is in conformity with the Basic Law, including the provisions concerning human rights. It has insignificant family implications and has no financial, civil service, economic, environmental, competition, gender or sustainability implications. The Bill will not affect the current binding effect of HOTO.

PUBLIC CONSULTATION

10. On 14 June 2017, we held a meeting with medical professionals and patients' groups to gauge their views on several topics related to organ donation, including the pilot paired organ donation programme by the Hospital Authority ("HA"). There was an overwhelming support for the programme as it would increase the supply of organs and reduce the waiting time for an organ transplant. Given the legal ambiguities surrounding paired and pooled donation arrangements, they urged the Government to complete the legislative exercise to provide legal backing for such programme.

11. We also consulted the Legislative Council Panel on Health Services on 15 January 2018. Members were supportive of the legislative amendment to allow paired donation arrangements and suggested that the logistics for such programme should be set out.

12. We also held a briefing session with the relevant stakeholders on 12 March 2018 on the legislative amendment and the pilot Paired Kidney Donation Programme to be conducted by HA. Attendees expressed support to the Programme.

13. We consulted HOTB on 28 March 2018. HOTB supported the Programme.

PUBLICITY

14. A press release will be issued when the Bill is gazetted on 27 April 2018.

ENQUIRIES

15. Enquires on this brief can be addressed to Miss Carol WONG, Assistant Secretary for Food and Health (Heath) 7, at 3509 8961.

**Food and Health Bureau
Department of Health
Hospital Authority
25 April 2018**

A BILL

To

Amend the Human Organ Transplant 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 donation arrangement.

Enacted by the Legislative Council.

1. Short title

This Ordinance may be cited as the Human Organ Transplant (Amendment) Ordinance 2018.

2. Human Organ Transplant Ordinance amended

The Human Organ Transplant Ordinance (Cap. 465) is amended as set out in section 3.

3. Section 5DA added

After section 5D—

Add

“5DA. Consent given in donation arrangement

- (1) This section applies in determining, for the purposes of the board’s approval in writing under section 5C, whether the donor of a dyad in a donation arrangement has given the donor’s consent without the offer of inducement as required by section 5D(1)(c).

- (2) The donor is not to be regarded as having given consent with the offer of inducement only because the donor’s consent has been given in consideration of a proposed transplant into the beneficiary of the dyad of an organ removed from the donor of another dyad in the donation arrangement.

- (3) In this section—

beneficiary (受益人), in relation to a dyad in a donation arrangement, means a person who is chosen by the dyad’s donor as the recipient in relation to the donor of another dyad in the arrangement;

donation arrangement (捐贈安排) means a paired donation arrangement or a pooled donation arrangement;

dyad (兩人組合) means a group of 2 persons consisting of a donor and a beneficiary;

paired donation arrangement (配對捐贈安排) means an arrangement between 2 dyads under which—

- (a) an organ is to be removed from each dyad’s donor for transplant into the beneficiary of the other dyad;
- (b) each removal and each transplant is to be carried out by a registered medical practitioner in Hong Kong; and
- (c) the organs to be removed and transplanted are of the same kind;

pooled donation arrangement (匯集捐贈安排) means an arrangement among 3 or more dyads under which—

- (a) for each dyad—
 - (i) an organ is to be removed from the dyad’s donor for transplant into the beneficiary of any other dyad; and

- (ii) an organ is to be transplanted into the dyad's beneficiary from the donor of any other dyad;
 - (b) each removal and each transplant is to be carried out by a registered medical practitioner in Hong Kong; and
 - (c) the organs to be removed and transplanted are of the same kind.”.
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Explanatory Memorandum

Under the Human Organ Transplant Ordinance (Cap. 465) (*Ordinance*), one requirement for a transplant with the prior approval of the Human Organ Transplant Board is that the donor has given consent to the proposed organ removal without offer of inducement (sections 5C(2)(b) and 5D(1)(c) of the Ordinance). The object of this Bill is to amend the Ordinance to provide that a donor is not to be regarded as having given consent with an 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.

2. Clause 1 sets out the short title.
3. Clause 3 adds a new section 5DA to the Ordinance to provide that a dyad's donor in a paired or pooled donation arrangement 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 transplant into the dyad's beneficiary of an organ removed from the donor of another dyad in the arrangement.