

立法會
Legislative Council

LC Paper No. LS56/17-18

**Paper for the House Committee Meeting
on 11 May 2018**

**Legal Service Division Report on
Human Organ Transplant (Amendment) Bill 2018**

I. SUMMARY

- 1. The Bill**

The Bill seeks to amend the Human Organ Transplant Ordinance (Cap. 465) 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.
- 2. Public Consultation**

The Administration consulted medical professionals and patients' groups on 14 June 2017 on the pilot paired organ donation programme by the Hospital Authority. There was an overwhelming support for the programme and the Administration was urged to complete the legislative exercise to provide legal backing for such programme.
- 3. Consultation with LegCo Panel**

The Panel on Health Services was consulted on 15 January 2018. Members generally supported the legislative proposal but expressed certain concerns.
- 4. Conclusion**

In view of the concerns expressed by members of the Panel on Health Services, Members may wish to consider whether a Bills Committee should be formed to study the Bill in detail.

II. REPORT

The date of First Reading of the Bill is 9 May 2018. Members may refer to the Legislative Council ("LegCo") Brief (File Ref: FH CR 1/3231/98) issued by the Food and Health Bureau, Department of Health and Hospital Authority ("HA") on 25 April 2018 for further details.

Object of the Bill

2. The Bill seeks to amend the Human Organ Transplant Ordinance (Cap. 465) 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.

Background

3. Cap. 465, among other things, prohibits commercial dealings in human organs intended for transplanting, and restricts the transplanting of human organs between living persons and the transplanting of imported human organs. Under section 5 of Cap. 465, except as provided in section 5A(1), 5B(1) or 5C(1) of Cap. 465, it is an offence for a person to carry out a restricted organ removal (i.e. the act of removing from a living person an organ for the purpose of transplanting it into another person) or a restricted organ transplant (i.e. the act of transplanting into a person an organ removed from another person who was living at the time of the removal).¹

4. Under section 5C of Cap. 465, a registered medical practitioner may carry out a restricted organ removal or a restricted organ transplant or both if the Human Organ Transplant Board ("the Board") has given its approval in writing. Sections 5C, 5D and 5E of Cap. 465 set out the requirements to be satisfied in order for the Board to give its approval. One of the requirements as provided in section 5D(1)(c) is that the donor concerned has given his consent to the proposed organ removal without coercion or the offer of inducement and has not subsequently withdrawn his consent.

¹ A person who commits such an offence is punishable with, as maximum penalties, a fine at level 5 (currently \$50,000) and an imprisonment for three months on a first conviction, and a fine at level 6 (currently \$100,000) and an imprisonment for one year on a subsequent conviction.

Provisions of the Bill

5. The Bill proposes to add a new section 5DA to Cap. 465 which would apply in determining, for the purposes of the Board's approval in writing under section 5C of Cap. 465, whether the donor of a dyad in a paired donation arrangement or a pooled donation arrangement has given consent without the offer of inducement as required by section 5D(1)(c) of Cap. 465. A dyad is defined in the new section 5DA(3) to mean a group of two persons consisting of a donor and a beneficiary, who would be the person chosen by the donor to have the organ transplant under a paired or pooled donation arrangement. In gist, the new section 5DA proposes that:

- (a) the donor would not 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 a paired or pooled donation arrangement;
- (b) a paired donation arrangement, as defined in the proposed new section 5DA(3) of Cap. 465, would be an arrangement between two dyads under which an organ would be removed from each dyad's donor for transplant into the beneficiary of the other dyad;
- (c) a pooled donation arrangement, as defined in the proposed new section 5DA(3) of Cap. 465, would be an arrangement among three or more dyads. It would operate in a manner similar to that of a paired donation arrangement in that an organ would be removed from a dyad's donor for transplant into the beneficiary of any other dyad such that in each dyad, there would be an organ removal and an organ transplant; and
- (d) in both a paired donation arrangement and a pooled donation arrangement, each removal and each transplant of an organ would be carried out by a registered medical practitioner in Hong Kong and the organs to be removed and transplanted would be of the same kind.

6. The Bill, if passed, would come into operation on the day on which it is published in the Gazette as an Ordinance.

Public Consultation

7. According to paragraphs 10, 12 and 13 of the LegCo Brief, the Administration held a meeting with medical professionals and patients' groups on 14 June 2017 to gauge their views on, among other things, the pilot paired organ donation programme by HA. According to the Administration, there was an overwhelming support for the programme and the Administration was urged to complete the legislative exercise to provide legal backing for such programme given the legal ambiguities surrounding paired and pooled donation arrangements. On 12 March 2018, the Administration held a briefing session with the relevant stakeholders on the legislative amendment and the pilot Paired Kidney Donation Programme ("the Programme") to be conducted by HA and the attendees expressed support to the Programme. The Administration also consulted the Board on 28 March 2018 and the Board supported the Programme.

Consultation with LegCo Panel

8. As advised by the Clerk to the Panel on Health Services, the Administration briefed the Panel on 15 January 2018 on the legislative proposal. Members generally supported the proposal, but raised concerns on whether the definitions of paired and pooled donation arrangements would be clear enough to avoid commercial dealings in organ transplants between living persons, and how the Board would consider cases of such arrangements.

Conclusion

9. In view of the concerns expressed by members of the Panel on Health Services, Members may wish to consider whether a Bills Committee should be formed to study the Bill in detail.

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