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## HUMAN REPRODUCTIVE TECHNOLOGY BILL

### COMMITTEE STAGE

#### Amendments to be moved by the Secretary for Health and Welfare

#### Clause

#### Proposed Amendment

2

- (a) In subclause (1), in the definition of “code”, by deleting “the” and substituting “a”.
- (b) In subclause (1), in the definition of “payment”, in paragraph (c)(ii), by adding “bona fide medical expenses arising from” before “pregnancy”.
- (c) In subclause (1), in the definition of “reproductive technology procedure”, by deleting “or obstetric procedure (whether or not it is provided to the public or a section of the public) for the purpose of” and substituting”, obstetric or other procedure (whether or not it is provided to the public or a section of the public)”.

(d) In subclause (1), by deleting the definition of “surrogate mother” and substituting -

““surrogate mother” ( ) means a woman who carries a child -

(a) pursuant to an arrangement -

(i) made before she began to carry the child;

and

(ii) made with a view to any child carried

pursuant to the arrangement being handed

over to, and the parental rights being

exercised (so far as practicable) by,

another person or persons; and

(b) conceived by a reproductive technology procedure.”.

(e) In subclause (1), by adding -

““negotiate” ( ), in relation to a surrogacy arrangement,

includes any bid or offer in relation to the arrangement;”.

(f) In subclause (4) -

(i) in paragraph (a), by deleting “paragraph (b)” and substituting

“paragraph (a)(ii)”;

(ii) in paragraph (c), by deleting “(a) of that definition as beginning to carry it at the time of the insemination or” and substituting “(a)(i) of that definition as beginning to carry it at the time”.

(g) By adding -

“(11) For the avoidance of doubt, it is hereby declared that the provisions of the Employment Ordinance (Cap. 57) shall not operate differently between a woman who is pregnant or confined as a result of a surrogacy arrangement (and whether or not the surrogacy arrangement is lawful) and a woman who is pregnant or confined otherwise than as the result of a surrogacy arrangement.”.

New

By adding -

**“2A. Application**

This Ordinance binds the Government.”.

3(2)(a) and

By deleting “who is not a registered medical practitioner”.

(b)

4(1)(c)(ii)

By deleting “being”.

- 7 (a) In subclause (1), by deleting “(including any surrogacy arrangement to which a relevant activity relates)”.
- (b) By deleting subclause (2).

8(b) By deleting “may” and substituting “shall”.

New By adding -

**“10A. Protection of members of Council,  
etc.**

(1) No person to whom this subsection applies, acting in good faith, shall be personally liable in damages for any act done or default made in the performance or purported performance of any function, or the exercise or purported exercise of any power, imposed or conferred on the Council under this Ordinance.

(2) The protection conferred under subsection (1) on any person to whom that subsection applies in respect of any act or default shall not in any way affect the liability of the Council for that act or default.

(3) The persons to whom subsection (1) applies are -

- (a) any member of the Council or a committee;
- (b) a designated public officer.”.

12 By deleting the clause and substituting -

**“12. Prohibition against using donated gametes in surrogacy arrangement**

Without prejudice to the operation of the Parent and Child Ordinance (Cap. 429), no person shall, for the purposes of a surrogacy arrangement, use gametes other than the gametes of 2 persons who are -

- (a) the parties to a marriage; and
- (b) the persons referred to in paragraph (a) (ii) of the definition of “surrogate mother” in so far as that arrangement is concerned.”.

13 (a) In subclause (3) -

- (i) by adding “, whether directly or indirectly,” after “selected”;
- (ii) in paragraph (a), by deleting “severe sex-linked genetic disease” and substituting “sex-linked genetic disease specified in Schedule 1A”;
- (iii) in paragraph (b), by adding “and such disease would be sufficiently severe to a person suffering it to justify such selection” after “purpose”.

(b) By adding -

“(6) Without prejudice to the operation of section 12, 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.”.

- 14(1)(a) (a) By adding “whether in Hong Kong or elsewhere,” before “make”.
- (b) By deleting”, whether in Hong Kong or elsewhere”.

15(1)(a) By adding “whether in Hong Kong or elsewhere,” before “make”.

21(2) By deleting paragraph (c) and substituting -

“(c) the individual has the prescribed qualifications, the character and experience of the individual are such as are required for the supervision of that activity and the individual will discharge the duty under section 22(1);”.

22(1) By deleting paragraph (d) and substituting -

“(d) that, in all the circumstances, proper practices are used in the course of that activity; and”.

25(5)(a) By deleting “character, qualifications and experience of the other individual are such as are required for the supervision of the relevant activity authorized by the licence and that” and substituting “the other individual has the prescribed qualifications, the character and experience of the individual are such as are required for the supervision of the relevant activity authorized by the licence and”.

27 (a) In subclause (1), by adding”, subject to such conditions, if any, as the Council thinks fit specified in the notice,” after “suspend the licence”.

(b) In subclause (3), by adding “except as specified in any conditions to which the suspension is subject” after “effect”.

New By adding -

**“29A. Voluntary surrender of licence**

(1) Without prejudice to the generality of section 25(4) but subject to this section, a licensee may surrender his licence by lodging it at the office of the Council.

(2) The surrender of a licence under subsection (1) shall not have effect until the licensee is served with a notice by the Council stating that the Council accepts the surrender of the licence subject to such conditions, if any, as the Council thinks fit specified in the notice.

(3) The Council may refuse to accept the surrender of a licence under subsection (1) where the licensee has been served a notice under section 26(2) in relation to the revocation of the licence, or the Council has reasonable grounds to suspect that there are grounds for revoking the licence under section 25, unless and until the Council -

(a) revokes the licence; or

(b) gives notice to the licensee that it will not revoke the licence.

(4) Immediately upon the surrender of a licence under subsection (1) having effect in accordance with subsection (2), the licensee shall cease to be licensed but shall remain liable for -

(a) any act or omission done, caused, permitted or made by him prior to the surrender; and



- (b) any liability incurred by him under this Ordinance prior to the surrender.”.

30(2) By deleting the clause and substituting -

“(2) Information falls within this subsection if -

- (a) it relates to the provision of a reproductive technology procedure where a child born or intended to be born in consequence of the procedure would not be created from the gametes solely of the parties to a marriage who it is proposed will be the parents of the child; and
- (b) the child, any of the parties to the marriage, or any individual whose gametes have been used, or any combination thereof, can be identified from the information.”.

31 By deleting the clause and substituting -

**“31. Secrecy**

- (1) No person who is or has been -
  - (a) an authorized person; or

(b) a person to whom a licence applies or a licensee, shall disclose any information contained or required to be contained in Register A.

(2) Subsection (1) shall not apply to any disclose of information made -

- (a) to a person as an authorized person;
- (b) to a person to whom a licence applies, or a licensee, for the purposes of his functions as such;
- (c) so that no individual to whom the information relates can be identified;
- (d) in accordance with section 30;
- (e) pursuant to an order under section 32(1);
- (f) to the Registrar within the meaning of section 33 pursuant to a request under that section; or
- (g) for the purposes of establishing, in any proceedings relating to an application for an order under section 12(1) of the Parent and Child Ordinance (Cap. 429), whether the condition specified

in paragraph (a) or (b) of that section is met.

(3) In the case of information relating to the provision of a reproductive technology procedure for an identifiable individual, subsection (1) shall not apply to a disclosure made -

- (a) with the consent in writing of the individual or, if the disclosure cannot be made without disclosing information relating to the provision of a reproductive technology procedure to another identifiable individual, with the consent in writing of both individuals; or
- (b) by a person who is satisfied on reasonable grounds that it is necessary to make the disclosure to save or significantly extend the life of the individual or another individual.

(4) In the case of information which shows an identifiable individual was, or may have been, born in consequence of a reproductive technology procedure, subsection (1) shall not apply to a disclosure which is

necessarily incidental to disclosure under subsection (3).

(5) This section shall not apply to a disclosure to an individual of information which relates only to that individual or, in the case of an individual treated with another, only to that individual and that other.”.

32(1) By deleting “falling within section 30(2)(i) or (ii)” and substituting “which may identify any individual by virtue of whose gametes the information falls within section 30(2)”.

34(4) and (5) By deleting “licensee under” and substituting “holder of”.

36(1) By adding”, or any condition specified in a notice under section 27(1) or 29A(2),” after “15(1) or (2)”.

42(1) By deleting paragraph (e) and substituting -

“(e) imposing restrictions on the disclosure of information which is not information falling within section 31(1) but is information obtained by an authorized person, a person to whom a licence applies, or a licensee, on terms or in

circumstances requiring it to be held in confidence.”.

- 42(2) (a) By adding -
- “(aa) the qualifications to be met by an individual designated in an application for a licence as the person under whose supervision the relevant activity to be authorized by the licence is to be carried out;”.
- (b) In paragraphs (b)(i) and (ii) and (c)(i)(A) and (B), by deleting “licensee under” and substituting “holder of”.
- (c) By deleting paragraph (e) and substituting -
- “(e) specifying the circumstances in which a reproductive technology procedure may be provided to persons who are not the parties to a marriage;
  - (ea) specifying the maximum period or periods of storage of embryos, gametes or other biological material used or to be used for the purposes of a relevant activity, including specifying the means of disposal of such embryos, gametes or material;
  - (eb) regulating (including prohibiting in whole or in part) the importation or

exportation of sperm or other biological material used or  
to be used for the purposes of a relevant activity;”.

43 By adding “or 1A” after “Schedule 1”.

New By adding -

“SCHEDULE 1A [ss. 13(3)(a)  
& 43]

#### SEX-LINKED GENETIC DISEASE

Addison’s disease with cerebral sclerosis

Adrenoleucodystrophy

Adrenal hypoplasia

Agammaglobulinaemia, Bruton type

Agammaglobulinaemia, Swiss type

Albinism, ocular

Albinism-deafness syndrome

Aldrich syndrome

Alport syndrome

Amelogenesis imperfecta, hypoplastic type

Amelogenesis imperfecta, hypomaturation type

Anaemia, hereditary hypochromic

Angiokeratoma (Fabry’s disease)

Cataract, congenital

Cerebellar ataxia

Cerebral sclerosis, diffuse

Charcot-Marie-Tooth peroneal muscular atrophy

Choroideraemia  
Choroidoretinal degeneration  
Coffin-Lowry syndrome  
Colour blindness, Deutan type  
Colour blindness, Protan type  
Diabetes insipidus, nephrogenic  
Diabetes insipidus, neurohypophyseal  
Dyskeratosis congenita  
Ectodermal dysplasia, anhidrotic  
Ehlers-Danlos syndrome, type V  
Faciogenital dysplasia, (Aarskog syndrome)  
Focal dermal hypoplasia (x-linked dominant, male lethal)  
Glucose 6-phosphate dehydrogenase deficiency  
Glycogen storage disease, type VIII  
Gonadal dysgenesis (XY female type)  
Granulomatous disease (chronic)  
Haemophilia A  
Haemophilia B  
Hydrocephalus (aqueduct stenosis)  
Hypophosphataemic rickets  
Ichthyosis (steroid sulphatase deficiency)  
Incontinentia pigmenti (x-linked dominant, male lethal)  
Kallmann syndrome  
Keratosis follicularis spinulosa  
Lesch-Nyhan syndrome (hypoxanthine-guanine-phosphoribosyl transferase deficiency)  
Lowe (oculocerebrorenal) syndrome

Macular dystrophy of the retina

Menkes syndrome

Mental retardation, FRAXE type

Mental retardation, FMRI type

Mental retardation, MRXI type

Microphthalmia with multiple anomalies (Lenz syndrome)

Mucopolysaccharidosis II (Hunter syndrome)

Muscular dystrophy, Becker type

Muscular dystrophy, Duchenne type

Muscular dystrophy, Emery-Dreifuss type

Myotubular myopathy

Night blindness, congenital stationary

Norrie's disease (pseudoglioma)

Nystagmus, oculomotor or 'jerky'

Ornithine transcarbamylase deficiency (type I hyperammonaemia)

Orofaciodigital syndrome (type I, x-linked dominant, male lethal)

Perceptive deafness, with ataxia and loss of vision

Perceptive deafness, DNFZ type

Phosphoglycerate kinase deficiency

Phosphoribosylpyrophosphate (PRPP) synthetase deficiency

Reifenstein syndrome

Retinitis pigmentosa

Retinoschisis

Spastic paraplegia



Spinal muscular atrophy

Spondyloepiphyseal dysplasia tarda

Testicular feminization syndrome

Thrombocytopenia, hereditary

Thyroxine-binding globulin, absence or variants of

Xg blood group system”.

Schedule 2 (a) By adding immediately after the heading **“Sex Discrimination Ordinance”** -

**“1A. Reproductive technology**

Section 56B(2) of the Sex Discrimination Ordinance (Cap. 480) is repealed and the following substituted -

“(2) In this section, “reproductive technology procedure” ( ) has the meaning assigned to it by section 2 of the Human Reproductive Technology Ordinance ( of 1999).”.

(b) Section 2 is amended by repealing “to the Sex Discrimination Ordinance (Cap. 480)”.

(c) by adding -

**“Offences Against the Person Ordinance**

**4. Medical termination of pregnancy**

Section 47A(8) of the Offences Against the Person Ordinance (Cap. 212)

is repealed and the following substituted -

“(8) For the purposes of sections 46 and 47, anything done with intent to procure a woman’s miscarriage (or, in the case of a woman carrying more than one foetus, her miscarriage of any foetus) is unlawfully done unless authorized by virtue of the provisions of this section and, in the case of a woman carrying more than one foetus, anything done with intent to procure the miscarriage of any foetus is authorized by those provisions if -

- (a) the ground for termination of the pregnancy specified in subsection (1)(b) applies in relation to any foetus and the thing is done for the purpose of procuring the miscarriage of that foetus;  
or
- (b) any of the other grounds for termination of the pregnancy specified

in those provisions applies.”.