Parent and Child Ordinance

(Cap. 429)

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An Ordinance to reduce the legal disabilities associated with illegitimacy, to consolidate and amend certain aspects of the law relating to paternity, legitimacy and legitimation, to provide for the determination of parentage in cases where birth or pregnancy results from medical treatment services, to provide for the use of scientific tests in determining parentage in court proceedings, and for connected purposes.

[19 March 1993]

(Format changes—E.R. 4 of 2019)

(Enacting provision omitted—E.R. 4 of 2019)

Part I

Introduction

1. Short title

(Amended E.R. 4 of 2019)

(1) This Ordinance may be cited as the Parent and Child Ordinance.

(2) *(Omitted as spent—E.R. 4 of 2019)*

2. Interpretation

In this Ordinance—

bodily sample (身體樣本) means a sample of bodily fluid or bodily tissue taken for the purpose of scientific tests;

court (法院) means the High Court or the District Court;

judicial separation (裁判分居) includes a legal separation obtained outside Hong Kong and recognized in Hong Kong; *(Amended L.N. 315 of 1998)*

legitimated person (獲確立婚生地位人士) means a person legitimated or recognized as legitimated by or under any law;

scientific tests (科學測試), when used in connection with a direction given under Part VI, means scientific tests carried out with the object of ascertaining the inheritable characteristics of bodily fluids or bodily tissue;

treatment services (助孕服務) means medical, surgical or obstetric services administered for the purpose of assisting a woman to carry a child.

Part II

General Principle in relation to Illegitimacy

3. Relationships to be determined without regard to illegitimacy

(1) In any—

(a) Ordinance or publication of the Government in the Gazette having legal effect (whenever enacted or published); or

(b) other instrument or document, made after the commencement* of this section,

references (whether express or implied) to any relationship between 2 persons shall, unless the contrary intention appears, be construed without regard to whether or not either of them, or any person through whom the relationship is deduced, is or was at any time an illegitimate person.

(2) The use, without more, of the word ***heir*** or ***heirs*** in a disposition by will does not show a contrary intention for the purposes of subsection (1).

(3) Notwithstanding any rule of law, a disposition made by will executed before the commencement of this section shall not be treated for the purposes of subsection (1) as made after that commencement by reason only that the will is confirmed by a codicil executed after that commencement.

(4) Nothing in this section shall affect any rights under the intestacy of a person dying before the commencement of this section.

[cf. 1987 c. 42 s. 1 U.K.]

Editorial Note:

* Commencement date: 19 June 1993.

4. Meaning of *legitimate* and *illegitimate*

(1) In this Ordinance and Ordinances enacted after the commencement* of this section, and unless the contrary intention appears—

(a) references to a legitimate person include references to any person to whom this section applies; and

(b) references to an illegitimate person do not include references to any person to whom this section applies,

and cognate references shall be construed accordingly.

(2) This section applies to any person who—

(a) is a legitimated person;

(b) is deemed to be or treated as legitimate under the Legitimacy Ordinance (Cap. 184);

(c) is an adopted person under an adoption order under the Adoption Ordinance (Cap. 290) or any adoption recognized as valid by the law of Hong Kong; or

(d) is otherwise treated in law as legitimate.

[cf. 1987 c. 42 s. 1 U.K.]

Editorial Note:

* Commencement date: 19 June 1993.

Part III

Presumptions as to Paternity and Legitimacy

5. Presumptions

(1) A man shall be presumed to be the father of a child—

(a) if he was married to the mother of the child at any time and if there arises by virtue of that marriage a presumption of law that the child is the legitimate child of that man; or

(b) where no man is presumed to be the father under paragraph (a), and subject to section 10(3), if he has been registered as the father of the child by an entry made after the commencement* of this section in any register of births kept by the Registrar of Births and Deaths under any Ordinance.

(2) Any presumption under subsection (1) may be rebutted by proof on a balance of probabilities.

(3) The presumption of law as to a child's legitimacy arising by virtue of the marriage of the child's mother at a time related to the conception or birth of the child may be rebutted by proof on a balance of probabilities.

(4) Subsection (1)(a), and the presumption referred to in subsection (3), shall apply in the case of a void or voidable marriage as they apply in the case of a valid marriage.

[cf. 1986 c. 9 s. 5 Scot]

Editorial Note:

* Commencement date: 19 June 1993.

Part IV

Declarations of Status

6. Declarations of parentage, legitimacy or legitimation

(1) Any person may apply to the court for a declaration that—

(a) a person named in the application is or was in law his parent;

(b) he is the legitimate child of his parents; or

(c) he has become, or has not become, a legitimated person.

(2) A court shall only have jurisdiction to entertain an application under this section if, at the date of the application, the applicant—

(a) is domiciled in Hong Kong;

(b) has been habitually resident in Hong Kong throughout the period of 1 year ending with that date; or

(c) has a substantial connection with Hong Kong.

(3) Where on an application for a declaration under this section the truth of the proposition to be declared is proved to the satisfaction of the court, the court shall make that declaration unless to do so would manifestly be contrary to public policy.

(4) Where a declaration is made on an application under subsection (1)(a) or (b), the Registrar of the court shall notify the Registrar of Births and Deaths, in such manner and within such period as may be prescribed, of the making of that declaration.

(5) Any declaration made under this section shall be binding on the Crown and all other persons.

(6) The court, on the dismissal of an application for a declaration under this section, shall not have power to make any declaration for which the application has not been made.

(7) No declaration which may be applied for under this section may be made otherwise than under this section by any court.

(8) No declaration may be made by any court, whether under this section or otherwise, that any person is or was illegitimate.

[cf. 1986 c. 55 ss. 56 & 58 U.K.; 1987 c. 42 s. 22 U.K.]

7. Provisions relating to the Secretary for Justice

(1) On an application for a declaration under this Part the court may at any stage of the proceedings, of its own motion or on the application of any party to the proceedings, direct that all necessary papers in the matter be sent to the Secretary for Justice.

(2) The Secretary for Justice, whether or not he is sent papers in relation to an application for a declaration under this Part, may—

(a) intervene in the proceedings on that application in such manner as he thinks necessary or expedient; and

(b) argue before the court any question in relation to the application which the court considers it necessary to have fully argued.

(3) Where any costs are incurred by the Secretary for Justice in connection with any application for a declaration under this Part, the court may make such order as it considers just as to the payment of those costs by parties to the proceedings.

(Amended L.N. 362 of 1997)

[cf. 1986 c. 55 s. 59 U.K.]

8. Supplementary provisions as to declarations

(1) Any declaration made under this Part, and any application for such a declaration, shall be in the form prescribed by rules under this Ordinance.

(2) No proceedings under this Part shall affect any final judgment or decree already pronounced or made by any court of competent jurisdiction.

(3) The court hearing an application under this Part may direct that the whole or any part of the proceedings shall be heard in camera, and an application for a direction under this subsection shall be heard in camera unless the court otherwise directs.

[cf. 1986 c. 55 s. 60 U.K.]

Part V

Determination of Parent where Birth or Pregnancy Results from Medical Treatment

9. Meaning of *mother* where birth or pregnancy results from medical treatment

(1) The woman who is carrying or has carried a child as a result of the placing in her of an embryo or of sperm and eggs, and no other woman, is to be regarded as the mother of the child.

(2) Subsection (1) does not apply to any child to the extent that the child is regarded by virtue of adoption as not being the child of any person other than the adopter or adopters.

(3) Subsection (1) applies whether the woman was in Hong Kong or elsewhere at the time of the placing in her of the embryo or the sperm and eggs.

[cf. 1990 c. 37 s. 27 U.K.]

10. Meaning of *father* where birth or pregnancy results from medical treatment

(1) This section applies in the case of a child who is being or has been carried by a woman as the result of the placing in her of an embryo or of sperm and eggs or her artificial insemination.

(2) If—

(a) at the time of the placing in her of the embryo or the sperm and eggs or her insemination, the woman was a party to a marriage; and

(b) the creation of the embryo carried by her was not brought about with the sperm of the other party to the marriage,

then, subject to subsection (5), the other party to the marriage shall be regarded as the father of the child unless it is shown that he did not consent to the placing in her of the embryo or the sperm and eggs or to her insemination (as the case may be).

(3) If no man is regarded, by virtue of subsection (2), as the father of the child but—

(a) the woman and her male partner together obtained treatment services in the course of which the embryo or the sperm and eggs were placed in the woman or she was artificially inseminated; and

(b) the creation of the embryo carried by her was not brought about with the sperm of that man,

then, subject to subsection (5), that man shall be regarded as the father of the child.

(4) Where a person is regarded as the father of the child by virtue of subsection (2) or (3), no other person is to be regarded as the father of the child.

(5) Subsections (2) and (3) do not apply to—

(a) any child who, by virtue of any Ordinance or other rule of law, is regarded as the child of the parties to a marriage; or

(b) any child to the extent that the child is regarded by virtue of adoption as not being the child of any person other than the adopter or adopters.

(6) Where the sperm of a man other than—

(a) the other party to the marriage; or

(b) the man referred to in subsection (3),

was used, that man is not to be regarded as the father of the child.

(7) For the purposes of the law of succession, where—

(a) the sperm of a man was used after his death; or

(b) any embryo was used after the death of the man with whose sperm the embryo was created,

that man is not to be regarded as the father of the child.

(8) The references in subsection (2) to the parties to a marriage at the time there referred to—

(a) are to the parties to a marriage subsisting at that time, unless a judicial separation was then in force; but

(b) include the parties to a void marriage if either or both of them reasonably believed at that time that the marriage was valid; and for the purposes of this subsection it shall be presumed, unless the contrary is shown, that one of them reasonably believed at that time that the marriage was valid.

(9) This section applies whether the woman was in Hong Kong or elsewhere at the time of the placing in her of the embryo or the sperm and eggs or her artificial insemination.

[cf. 1990 c. 37 s. 28 U.K.]

11. Effect of sections 9 and 10

(1) Where by virtue of section 9 or 10 a person is to be regarded as the mother or father of a child, that person is to be regarded in law as the mother or, as the case may be, father of the child for all purposes.

(2) Where by virtue of section 9 or 10 a person is not to be regarded as the mother or father of a child, that person is to be regarded in law as not being the mother or, as the case may be, father of the child for any purpose.

(3) Where subsection (1) or (2) has effect, references to any relationship between 2 persons in any Ordinance, instrument

or document (whenever enacted or made) shall, unless the contrary intention appears, be read accordingly.

[cf. 1990 c. 37 s. 29 U.K.]

12. Parental orders in favour of gamete donors

(1) The court may make an order providing for a child to be regarded in law as the child of the parties to a marriage (referred to in this section as ***the husband*** and ***the wife***) if—

(a) the child has been carried by a woman other than the wife as the result of the placing in her of an embryo or sperm and eggs or her artificial insemination;

(b) the gametes of the husband or the wife, or both, were used to bring about the creation of the embryo; and

(c) the conditions in subsections (2) to (7) are satisfied.

(2) The husband and the wife must apply for the order within 6 months of the birth of the child or, in the case of a child born before the commencement* of this section, within 6 months of such commencement.

(3) At the time of the application and of the making of the order—

(a) the child's home must be with the husband and the wife or either of them; and

(b) the husband or wife, or both of them, must—

(i) be domiciled in Hong Kong;

(ii) have been habitually resident in Hong Kong throughout the immediately preceding period of 1 year; or

(iii) have a substantial connection with Hong Kong.

(4) At the time of the making of the order both the husband and the wife must have attained the age of 18 years.

(5) The court must be satisfied that both the father of the child (including a person who is the father by virtue of section 10), where he is not the husband, and the woman who carried the child have freely, and with full understanding of what is involved, agreed unconditionally to the making of the order.

(6) Subsection (5) does not require the agreement of a person who cannot be found or is incapable of giving agreement and the agreement of the woman who carried the child is ineffective for the purposes of that subsection if given by her less than 6 weeks after the child's birth.

(7) The court must be satisfied that no money or other benefit (other than for expenses reasonably incurred) has been given or received by the husband or the wife for or in consideration of—

(a) the making of the order;

(b) any agreement required by subsection (5);

(c) the handing over of the child to the husband and the wife; or

(d) the making of any arrangements with a view to the making of the order,

unless authorized or subsequently approved by the court.

(8) Subsection (1)(a) applies whether the woman was in Hong Kong or elsewhere at the time of the placing in her of the embryo or the sperm and eggs or her artificial insemination.

(9) Where an order is made under subsection (1), the Registrar of the court shall notify the Registrar of Births and Deaths, in such manner as may be prescribed, of the making of that order.

[cf. 1990 c. 37 s. 30 U.K.]

Editorial Note:

* Commencement date: 19 June 1993.

Part VI

Use of Scientific Tests in Determining Parentage

13. Court may give direction for use of scientific tests

(1) In any civil proceedings in which the parentage of any person falls to be determined, the court may, either of its own motion or on an application by any party to the proceedings, give a direction—

(a) for the use of scientific tests showing whether a party to the proceedings is or is not the father or mother of that person; and

(b) for the taking of bodily samples from that person or any party to the proceedings,

and the court may at any time revoke or vary a direction previously given under this subsection.

(2) The person responsible for carrying out scientific tests in pursuance of a direction under subsection (1) shall make to the court a report in which he shall state—

(a) the results of the tests; and

(b) the value of the results in determining whether any party to whom the report relates is or is not the father or mother of the person whose parentage is to be determined,

and the report shall be received by the court as evidence in the proceedings of the matters stated in it.

(3) Where the proceedings in which the parentage of any person falls to be determined are proceedings on an application under Part IV, any reference in this section to any party to the

proceedings shall include a reference to any person named in the application.

(4) Where a report has been made to a court under subsection (2), any party to the proceedings may, with the leave of the court, or shall, if the court so directs, obtain from the person who made the report a written statement explaining or amplifying any statement made in the report, and that statement shall be deemed for the purposes of this section to form part of the report made to the court.

[cf. 1969 c. 46 s. 20 U.K.; 1987 c. 42 s. 23 U.K.]

14. Consents required for taking of bodily samples

(1) Subject to subsections (3) and (4), a bodily sample which is required to be taken from any person for the purpose of giving effect to a direction under section 13 shall not be taken from that person except with his consent.

(2) The consent of a minor who has attained the age of 16 years to the taking from himself of a bodily sample shall be as effective as it would be if he were of full age; and where a minor has by virtue of this subsection given an effective consent to the taking of a bodily sample it shall not be necessary to obtain any consent for it from any other person.

(3) A bodily sample may be taken from a person under the age of 16 years, not being a person referred to in subsection (4), if the person who has the care and control of him consents.

(4) A bodily sample may be taken from a person who is suffering from mental disorder within the meaning of the Mental Health Ordinance (Cap. 136) and is incapable of understanding the nature and purpose of scientific tests if the person who has the care and control of him consents and has certified that the taking of a bodily sample from him will not be prejudicial to his proper care and treatment.

(5) This section is without prejudice to section 15.

[cf. 1969 c. 46 s. 21 U.K.]

15. Failure to comply with direction

(1) Where a court gives a direction under section 13 and any person fails to take any step required of him for the purpose of giving effect to the direction, the court may draw such inferences, if any, from that fact as appear proper in the circumstances.

(2) Where in any proceedings in which the parentage of any person falls to be determined by the court hearing the proceedings there is a presumption of law that that person is legitimate, then if—

(a) a direction is given under section 13 in those proceedings; and

(b) any party who is claiming any relief in the proceedings and who for the purpose of obtaining that relief is entitled to rely on the presumption fails to take any step required of him for the purpose of giving effect to the direction,

the court may adjourn the hearing for such period as it thinks fit to enable that party to take that step, and if at the end of that period he has failed without reasonable cause to take it the court may, without prejudice to subsection (1), dismiss his claim for relief despite the absence of evidence to rebut the presumption.

(3) Where any person named in a direction under section 13 fails to consent to the taking of a bodily sample from himself or from any person named in the direction of whom he has the care and control, he shall be deemed for the purposes of this section to have failed to take a step required of him for the purpose of giving effect to the direction.

[cf. 1969 c. 46 s. 23 U.K.]

Part VII

Miscellaneous

16. Transfer of proceedings to the High Court

Where an application under section 6 or 12 is made to the District Court, the District Court—

(a) may, if it considers that the case is one which for any reason ought to be dealt with by the High Court; or

(b) shall, if so ordered by the High Court,

transfer the matter to the High Court.

17. Regulations

The Governor in Council may by regulations provide for the better carrying out of the objects of this Ordinance generally; such regulations may prescribe any matter which is to be or may be prescribed other than by rules under the Ordinance.

18. Rules

(1) The Chief Justice may make rules—

(a) providing for the practice and procedure to be applied in any application under section 6 or 12;

(b) as to the manner of giving effect to directions under section 13; or

(c) providing for the transfer of applications to the High Court pursuant to section 16.

(2) Without limiting the generality of subsection (1), such rules may make provision—

(a) in respect of applications under section 6—

(i) as to the information required to be given by an applicant;

(ii) as to the persons who are to be parties to the proceedings;

(iii) requiring notice of an application to be served on the Secretary for Justice and on persons who may be affected by any declaration applied for; *(Amended L.N. 362 of 1997)*

[cf. 1986 c. 55 s. 60(2) U.K.; 1987 c. 42 Sch. 2 para. 96 U.K.]

(b) in respect of directions under section 13—

(i) providing that bodily samples shall not be taken except by such medical practitioners as may be specified in the rules;

(ii) prescribing the bodily samples to be taken;

(iii) regulating the taking, identification and transport of bodily samples;

(iv) requiring the production at the time when a bodily sample is to be taken of evidence of the identity of the person from whom it is to be taken, and providing for the nature of such evidence of identity;

(v) requiring any person from whom a bodily sample is to be taken to state in writing whether he has during a specified period suffered from any specified illness or condition or undergone any specified treatment or received a transfusion of blood; or, in such cases as may be prescribed, requiring any other person to so state in relation to himself or the person from whom the sample is to be taken;

(vi) providing that scientific tests shall not be carried out except by such persons, and at such places, as may be specified in the rules;

(vii) prescribing the scientific tests to be carried out and the manner in which they are to be carried out;

(viii) regulating the charges that may be made for the taking and testing of bodily samples and for the making of a report to a court;

(ix) making provision for securing that so far as practicable the bodily samples to be tested for the purpose of giving effect to a direction are tested by the same person;

(x) prescribing the form of the report to be made to a court;

[cf. 1969 c. 46 s. 22(1) U.K.; 1987 c. 42 Sch. 2 para. 23 U.K.]

(c) for any matter which is to be or may be prescribed by rules under this Ordinance.

(3) Rules made under this section may make different provision for different cases.

19. *(Omitted as spent—E.R. 4 of 2019)*

Schedule

(Omitted as spent—E.R. 4 of 2019)