

## LCQ9: Surrogacy arrangements

Following is a question by the Dr Hon Dennis Lam and a written reply by the Acting Secretary for Health, Dr Libby Lee, in the Legislative Council today (May 24):

Question:

There are views that although the situation of low fertility rate in Hong Kong has lit up a red light of alert, the Government has not yet included improving the policy on surrogacy as one of its major tasks currently. Regarding surrogacy arrangements, will the Government inform this Council:

- (1) whether it will review if the eligibility criteria for subsidised assisted reproductive services are overly stringent, and if the relevant requirements regarding surrogacy arrangements have dampened the desire of couples with fertility problems to bear children through lawful surrogacy arrangements;
- (2) given that in reply to a question raised by a Member of this Council on the 26th of last month, the Secretary for Health indicated that at present, the Council on Human Reproductive Technology (the Council) had issued 12 licences to public healthcare institutions and 24 private healthcare institutions had been licensed to provide assisted reproductive services, whether such healthcare institutions provide surrogacy arrangements;
- (3) of the total number of cases concerning lawful surrogacy arrangements received by the Council in each of the past five years and, among them, the number of cases in which the "intended parents" were finally determined by the court to be the legal parents of the babies born through surrogacy arrangements;
- (4) as it is learnt that the surrogate mothers will become the legal mothers of the babies whose legal parentage with "intended parents" cannot be determined by the court, whether the Government has formulated a monitoring mechanism for the arrangements for the growth, welfare, etc of such babies; and
- (5) of the percentage of surrogacy arrangements in the total number of cases of assisted reproductive services in each of the past five years, and set out in the table below a breakdown of surrogacy arrangements?

Year: \_\_\_\_\_

Number of applications for surrogacy arrangements	Age group to which the applicant belonged	Reason of application	Number of live births	Whether the applicant was determined to be the legal parent of the baby	Medical expenditure involved

Reply:

President,

The consolidated reply to the four parts of the question raised by the Dr Hon Dennis Lam is as follows:

People's decision to bear a child hinges on various factors, including personal preference, lifestyle, economic conditions and prevailing social circumstances. Childbearing is a personal choice of members of the public, and assisted reproductive healthcare service is generally not a primary factor of consideration in making the decision of childbearing. Currently, both public and private healthcare systems in Hong Kong have been offering assisted reproductive services, including in-vitro fertilisation (IVF), storage of oocytes, to support couples in need. While the Government's prevailing policy stance is neither to oppose nor to actively encourage the use of surrogacy arrangements, the Government nevertheless considers it necessary to regulate surrogacy arrangements to safeguard the role of families and welfare of children born as well as prevent abuse of the arrangement, and to ensure that all parties involved in the relevant arrangements are aware of the risks and consequences that they should bear.

Since reproductive technology (RT) activities involve complex social, moral, ethical and legal issues, the Government formulated the Human Reproductive Technology Ordinance (Cap. 561) (HRTO) in 2000 not only to ensure the proper conduct of RT service providers and researchers, but also to safeguard the role of families, the rights of service users and the welfare of the children born as a result of RT. The HRTO provides a statutory framework to, among others, regulate human RT procedures and the use of embryos and gametes; confine the provision of RT procedures to infertile couples; and regulate surrogacy arrangements. At the same time, established under section 4 of the HRTO in April 2001 and comprising members from different sectors of the community, the Council on Human Reproductive Technology (CHRT) is tasked to regulate matters related to human RT; formulate the Code of Practice on Reproductive Technology and Embryo Research (CoP); and provide members of the public with relevant information.

Sections 17 and 18 of the HRTO stipulate the prohibition against surrogacy arrangements on a commercial or enforceable basis and advertisements relating to such commercial dealings. Prohibiting surrogacy

arrangements on a commercial basis is the decision upon extensive deliberations by the Legislative Council prior to the enactment of the HRT0. On the other hand, surrogacy arrangements on a non-commercial or unenforceable basis are permitted only with gametes from married couples under section 14 of the HRT0, and is one of the specified activities that can be provided under the treatment licence issued by the CHRT. As at May 1 this year, a total of 12 public and 24 private healthcare institutions in Hong Kong were licensed by the CHRT to provide assisted reproductive services. While 16 of these institutions are treatment licence holders, none of them are allowed to provide surrogacy arrangements as a specified activity. Hence, the CHRT has not obtained any information on cases of surrogacy arrangements so far.

Although there is yet to be any RT centre providing surrogacy arrangements as a specified activity in Hong Kong, the CoP has provided clear guidelines on such arrangements. According to the CoP, applicant institutions which intend to provide surrogacy arrangements or holders of the relevant licence must comply with the requirements and regulations on surrogate arrangements set out in Chapter XII thereof. In particular, paragraph 12.2 mandates that the wife commissioning surrogate arrangements is required to prove that there is no other practicable and feasible alternative option for her to be pregnant till term, whereas paragraph 12.7 mandates RT centres to set up a multi-disciplinary expert team which shall provide counselling for the commissioning couple, surrogate mother and her husband (if married) to ensure that all parties concerned understand the medical, social, legal, moral and ethical implications of surrogacy.

In assessing the suitability of the surrogate mother and the commissioning couple for surrogacy, the welfare of the child to be born is of paramount importance. Hence, key assessment factors such as their commitment to caring for and bringing up the child and their ability to provide a stable and supportive environment for the development of the child born as a result of treatment are detailed in the CoP. Pursuant to section 9 of the Parent and Child Ordinance (Cap. 429), a woman who is pregnant as a result of surrogacy arrangements is the legal mother of the child to be born. However, it is also stipulated in section 12 of Cap. 429 that the commissioning couple may apply for a court order within six months of the birth of the child in order to become the parents of the child. Regarding the above arrangements, the CoP requires the commissioning couple, the surrogate mother and her husband (if married) to sign a standard consent form before such arrangements are made, demonstrating their understanding of the legal process involved in the arrangements concerned.

The policy of assisted reproductive healthcare services should reflect the opinion of the community towards the issue as a whole and consider the resource allocation implications within the healthcare system. Over the years, the CHRT has been receiving feedback and suggestions pertaining to regulatory and licensing matters under the HRT0, covering not only medical science technology and clinical procedures but also extensive and highly contentious ethical and social issues on which the community has yet to reach a sufficient consensus. In view of the Government's stance of not advocating

surrogacy, the Government has no plan to subsidise citizens for such services with public funds. The Government and the CHRT will closely monitor public opinions on surrogacy arrangements, consider stakeholders' feedback and the CHRT's operating experience, and examine various issues when necessary.