

The Administration's Responses to the Issues Raised at the Bills Committee Meeting on 27 May 2005

2 (a) adding "and Health" after "Medical" under clause 3;

We do not intend to amend the short title of the Ordinance. As explained in previous contexts, we consider that the short title mainly serves to identify a particular piece of legislation, and the title, as it is, is sufficiently clear for this purpose. We have proposed to amend the long title of the Ordinance to reflect precisely the scope of the Ordinance (when amended).

2 (b) improving the Chinese version of the definition of "orally consumed product" to make it more in line with its English version under clause 4;

Taking into consideration suggestions made by the Members, we consider that slight improvement to the Chinese version of the definition may be made, and a Committee Stage Amendment for the definition has been presented to Members separately.

2 (c) qualifying the term "any similar claim" under clause 5;

Taking into consideration suggestions made by the Members, we consider that slight improvement to the Chinese version of the definition may be made, and a Committee Stage Amendment for the definition has been presented to Members separately.

2 (d) specifying the rank/grade of public officer authorised to be an inspector for the purposes of carrying out the enforcement work under clause 8; and

3.(a) qualifications required of the inspector referred to in clause 8 and the powers given to the inspector under the same clause;

The public officers who may be authorised to be inspectors under Clause 8 are mainly staff from the professional grades including pharmacists, doctors, Chinese medicine practitioners. Given their registered status, professional qualifications and their knowledge in their respective fields, they should be in a good position to determine whether a certain health claim may contravene the requirements as set out in the schedule of the UMAO. Moreover, briefing will be arranged for them to ensure they are familiarized with the conduct of enforcement actions.

3 (b) circumstances under which the Administration had to pay for the taking of samples of packaging and labels and copies of advertisements under clause 8(2)(c).

The proposed section 8(2)(c) does not require the inspector to pay for the copies of advertisements which are taken as is reasonably necessary for the purpose of the inspection. We consider that this approach should be reasonable since the inspector only requires a small amount of copies of advertisements for the purposes of inspection. In the case where the inspector needs to obtain a product (such as medicine, orally consumed products, surgical appliances etc) to facilitate inspection, the Administration is prepared to pay for the products concerned.

4. The Administration undertook to provide some examples in the existing legislation which empowered public officers, on obtaining a magistrate's warrant, to enter and search premises and take possession of property for purposes of a prosecution.

Examples in the existing legislation which empower public officers, on obtaining a magistrate's warrant, to enter and search premises and take possession of property for purposes of a prosecution are cited at **Annex** (as highlighted).

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Chapter:	134	Title:	DANGEROUS DRUGS ORDINANCE	Gazette Number:	L.N. 362 of 1997
Section:	52	Heading:	Powers of authorized officers	Version Date:	01/07/1997

(1) For the purposes of this Ordinance, any police officer and any member of the Customs and Excise Service may-

- (a) stop, board and search any ship, aircraft, vehicle or train which has arrived in Hong Kong (not being a ship of war or a military aircraft), and remain thereon as long as it remains in Hong Kong;
- (b) search any person arriving in Hong Kong or about to depart from Hong Kong;
- (c) search any thing imported into or to be exported from Hong Kong;
- (d) stop, board and search any ship, aircraft, vehicle or train if he has reason to suspect that there is therein an article liable to seizure;
- (e) without a warrant issued under subsection (1E) where it would not be reasonably practicable to obtain such a warrant, enter and search any place or premises if he has reason to suspect that there is therein an article liable to seizure; or (Amended 62 of 1994 s. 8)
- (f) stop and search any person, and search the property of any person, if-
 - (i) he has reason to suspect that such person has in his actual custody an article liable to seizure; or
 - (ii) such person is found in any ship, aircraft, vehicle, train, place or premises in which an article liable to seizure is found.

(1A) For the purposes of enabling a person to be searched under subsection (1)(f)(i), a police officer of or above the rank of inspector or a member of the Customs and Excise Service of or above the rank of inspector may request a registered medical practitioner or nurse registered or enrolled or deemed to be registered or enrolled under the Nurses Registration Ordinance (Cap 164), to examine the body cavities of that person. (Added 40 of 1982 s. 3)

(1B) A medical practitioner or nurse requested to examine the body cavities of a person under subsection (1A) may search the rectum, vagina, ears and any other body cavity of that person. (Added 40 of 1982 s. 3)

(1C) A medical practitioner or nurse carrying out an examination of a person at the request, under subsection (1A), of a police officer or member of the Customs and Excise Service who appears to be lawfully engaged in the performance of his duty shall not be bound to inquire whether or not the police officer or member is acting lawfully or within the scope of his duty. (Added 40 of 1982 s. 3)

(1D) A police officer or member of the Customs and Excise Service may detain a person in respect of whom a request is to be or has been made to a medical practitioner or nurse under subsection (1A) for such time as may reasonably be necessary to permit a medical practitioner or nurse to complete an examination of the body cavities of that person under this section. (Added 40 of 1982 s. 3)

(1E) Where it appears to any magistrate upon the oath of any person that there is reasonable cause to suspect that in any place there is an article liable to seizure under this Ordinance, or with respect to which an offence has been committed or is about to be committed against the provisions of this Ordinance, the magistrate may, by his warrant directed to any police officer or to any member of the Customs and Excise Service, empower such officer or member by day or by night to enter the place named in the warrant and there to search for and seize, remove and detain any such article. (Added 62 of 1994 s. 8)

(2) For the purpose of enabling a ship or aircraft to be searched under subsection (1)-

(a) the Commissioner of Customs and Excise or the Commissioner of Police may by order in writing under his hand detain a ship for not more than 12 hours or an aircraft for not more than 6 hours; and (Amended 40 of 1985 s. 9)

(b) the Chief Secretary for Administration may, by order in writing under his hand, detain a ship or aircraft for further periods of not more than 12 hours in the case of a ship or not more than 6 hours in the case of an aircraft. (Amended L.N. 362 of 1997)

Any order made under this subsection shall state the times from which and for which the order is effective.

(3) Any public officer may seize, remove and detain any thing if he has reason to suspect that such thing is an article liable to seizure.

(4) Any public officer authorized in writing by the Director may uproot, seize, remove and destroy any plant of the genus cannabis or the opium poppy.

(5) For the purposes of this Ordinance, any public officer authorized in writing by the Director may-

(a) enter, inspect and search any place or premises occupied by-

(i) a person authorized by virtue of section 22(1)(a), (b) or (c) or (5A) or by virtue of section 24(1); (Amended 2 of 1992 s. 11)

(ii) a person whose authorization as aforesaid has been withdrawn under section 33 and the withdrawal suspended;

(iii) a person by whom any such person as aforesaid is employed; or

(iv) a person to whom a licence has been issued under this Ordinance;

(b) require the production of, and inspect, any register, record, book, prescription or other document kept or made pursuant to the requirements, or for the purposes, of this Ordinance or any other document relating to dealings in a dangerous drug by or on behalf of any such person as aforesaid; and

(c) inspect any stocks of a dangerous drug in the possession of any such person as aforesaid.

(6) For the purposes of this Ordinance, any public officer authorized in writing by the Director may-

(a) enter, inspect and search a hospital or institution specified in the Second Schedule or any place or premises occupied for the purposes of any such hospital or institution;

(b) require the production of, and inspect, any register, record, book, prescription or other document kept or made in any such hospital or institution pursuant to the requirements, or for the purposes, of this Ordinance or any other document relating to dealings in a dangerous drug for the purposes of such hospital or institution; and

(c) inspect any stocks of a dangerous drug in any such hospital or institution or in

any such place or premises.

(7) An authorization given by the Director under this section may be given to a police officer, member of the Customs and Excise Service or public officer by name or may be given to any police officer, member of the Customs and Excise Service or other public officer for the time being holding such rank or public office as the Director may specify, and may extend to all the powers specified in subsection (2), (4) or (5), as the case may be, or to such of those powers as the Director may specify.

(8) Any public officer may-

- (a) break open any outer or inner door of or in any place or premises which he is empowered by this section to enter and search;
- (b) forcibly board any ship, aircraft, vehicle or train which he is empowered by this section to board and search;
- (c) remove by force any person or thing who or which obstructs any entry, search, inspection, seizure, removal or detention which he is empowered by this section to make;
- (d) detain every person found in any place or premises which he is empowered by this section to search until the same has been searched; and
- (e) detain every person on board any ship, aircraft, vehicle or train which he is empowered by this section to search, and prevent any person from approaching or boarding such ship, aircraft, vehicle or train, until it has been searched.

(9) (a) (i) An examination of the body cavities of a person under this section shall, unless that person otherwise consents, be carried out by a medical practitioner or nurse of the same sex as that person.

- (ii) Where a female has consented, under sub-paragraph (i), to an examination of her body cavities by a medical practitioner or nurse of the opposite sex, such examination shall be in the presence of another female.
- (b) Subject to paragraph (a), no female shall be searched under this section except by a female.
- (c) No person shall be searched under this section in a public place if he objects to being so searched. (Replaced 40 of 1982 s. 3)

(9A) The provisions of this Ordinance (including section 56) which could, but for this subsection, apply to a thing seized under this section shall not apply to the thing if it has been so seized on the ground that it is suspected to be specified property referred to in paragraph (d) of the definition of "article liable to seizure". (Added 89 of 1995 s. 35)

(9B) For the avoidance of doubt, it is hereby declared that where a thing referred to in subsection (9A) is released under section 24C(4) of the Drug Trafficking (Recovery of Proceeds) Ordinance (Cap 405), that subsection shall not operate to prevent the application of the provisions of this Ordinance (including this section and section 56) to that thing at any time on or after such release. (Added 89 of 1995 s. 35)

(10) In this section-

"article liable to seizure" (可予扣押的物件) means-

- (a) any dangerous drug referred to in section 55;
- (b) any money or thing liable to forfeiture under this Ordinance or forfeiture or confiscation under a corresponding law; (Amended 89 of 1995 s. 35)
- (c) any thing which is or contains evidence of-
 - (i) an offence under this Ordinance or a corresponding law;
 - (ii) a drug trafficking offence within the meaning of the Drug Trafficking (Recovery of Proceeds) Ordinance (Cap 405); (Replaced 89 of 1995 s. 35)
- (d) any specified property within the meaning of Part IVA of the Drug Trafficking (Recovery of Proceeds) Ordinance (Cap 405); (Added 89 of 1995 s. 35)

"Commissioner of Customs and Excise" (香港海關關長) includes a Deputy Commissioner of Customs and Excise and an Assistant Commissioner of Customs and Excise; (Added 40 of 1985 s. 9. Amended L.N. 362 of 1997)

"Commissioner of Police" (警務處處長) includes a deputy or assistant commissioner of police.

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Chapter: 303 Title: RADIATION ORDINANCE Gazette Number:
 Section: 16 Heading: Appointment and powers Version Date: 30/06/1997
 of inspectors

- (1) The Board may from time to time appoint persons by name or office to be inspectors for the purposes of this Ordinance.
- (2) Any inspector may, on producing, if so required, a duly authenticated document showing his authority, enter and inspect at all reasonable hours any premises, vehicle, vessel or aircraft in which there is any radioactive substance or irradiating apparatus in respect of which a licence is for the time being in force under this Ordinance or in respect of which a licence under this Ordinance is not required by virtue of section 7(3) or any exemption made by regulation under section 13. (Amended 46 of 1990 s. 9)
- (3) If a magistrate is satisfied from information on oath of any inspector that-

- (a) entry into any premises, vehicle, vessel or aircraft in exercise of the powers conferred by subsection (2) has been refused; or
- (b) there are reasonable grounds for suspecting that an offence against this Ordinance has been or is being committed in or in connection with any premises, vehicle, vessel or aircraft, (Amended 46 of 1990 s. 9)

the magistrate may, by warrant under his hand, authorize any person named in the warrant together with any police officer, to enter and search such premises, vehicle, vessel or aircraft, if necessary by force.

- (4) In the exercise of the powers of entry and inspection under subsection (2) or of entry and search under a warrant granted under subsection (3), any inspector may-

- (a) take without payment such samples of any substance which he believes to be a radioactive substance as are necessary for the examination and testing thereof;
- (b) examine and calibrate any irradiating apparatus or any apparatus which he believes to be an irradiating apparatus;
- (c) seize, remove and detain anything with respect to which he may have reasonable grounds for suspecting that any offence against this Ordinance has been committed. (Amended 46 of 1990 s. 9)

- (5) Where it is not practicable to remove an irradiating apparatus pursuant to subsection (4)(c) an inspector may-

- (a) if it is possible to do so without causing permanent damage to the irradiating

apparatus, render it inoperable; or

(b) seal the apparatus so as to prevent the use of the apparatus without breaking the seal. (Added 46 of 1990 s. 9)

(6) Where it is not practicable to remove a radioactive substance pursuant to subsection (4)(c) an inspector may seal an article or place so as to prevent the use of the radioactive substance without breaking the seal. (Added 46 of 1990 s. 9)

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