

**立法會**  
**Legislative Council**

Ref : CB2/BC/2/07

LC Paper No. CB(2)1642/07-08  
(These minutes have been seen  
by the Administration)

**Bills Committee on  
Prevention and Control of Disease Bill**

**Minutes of the sixth meeting  
held on Tuesday, 8 April 2008, at 10:45 am  
in Conference Room A of the Legislative Council Building**

- Members present** : Hon Vincent FANG Kang, JP (Chairman)  
Hon Margaret NG  
Hon LI Fung-ying, BBS, JP  
Hon Audrey EU Yuet-mee, SC, JP  
Hon LI Kwok-ying, MH, JP  
Hon Alan LEONG Kah-kit, SC  
Dr Hon KWOK Ka-ki
- Members absent** : Dr Hon Joseph LEE Kok-long, JP (Deputy Chairman)  
Hon Mrs Sophie LEUNG LAU Yau-fun, GBS, JP  
Hon WONG Yung-kan, SBS, JP  
Hon Andrew CHENG Kar-foo
- Public Officers attending** : Mr Patrick NIP, JP  
Deputy Secretary for Food and Health(Health)1
- Mr Bruno LUK  
Principal Assistant Secretary for Food and Health(Health)3
- Dr Thomas TSANG  
Controller, Centre for Health Protection  
Department of Health
- Dr Sarah CHOI  
Principal Medical and Health Officer(4)  
Department of Health

Dr Henry KONG  
Chief Port Health Officer  
Department of Health

Mr Allen LAI  
Senior Government Counsel  
Department of Justice

Miss Angie LI  
Government Counsel  
Department of Justice

**Clerk in attendance** : Miss Mary SO  
Chief Council Secretary (2) 5

**Staff in attendance** : Mr Stephen LAM  
Assistant Legal Adviser 4

Ms Janet SHUM  
Senior Council Secretary (2)8

Ms Sandy HAU  
Legislative Assistant (2)5

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Action

**I. Meeting with the Administration**

The Bills Committee deliberated (index of proceedings at **Annex**).

Compensation

2. The Administration undertook to provide a response in writing to the following -

- (a) the principles that would be adopted by the Director of Health in deciding whether or not to pay compensation and the amount of compensation under clause 12(1) of the Bill. Clause 12(1) provided that "Where any article is damaged, destroyed, seized, surrendered or is submitted to any person pursuant to this Ordinance, the Director may order the payment of such compensation as is just and equitable in the circumstances";

- (b) relationship and/or differences between clause 12(1) and the compensation for the requisitioning of property under clause 8(2)(c) of the Bill; and
  - (c) how section 17(2) of the Quarantine and Prevention of Disease Ordinance (Cap. 141) was implemented in practice. Section 17(2) provided that "Any dispute as to the amount of compensation shall, in default of agreement, be determined by arbitration in accordance with the provisions of the Arbitration Ordinance (Cap 341)".
3. Assistant Legal Adviser 4 requested the Administration to also provide an explanation on the need for clause 12(2), as it would be up to the parties to decide whether to resort to arbitration. Clause 12(2) provided that "Any dispute as to whether compensation is payable or the amount of compensation may, in default of agreement, be resolved or determined by arbitration in accordance with the Arbitration Ordinance (Cap 341)".

#### Clause-by-clause examination of the Bill

##### *Clause 2 - Interpretation*

4. At the request of Ms Margaret NG, the Administration undertook to provide a response in writing to the following -

- (a) to provide the provisions of the Bill and the draft provisions of the Prevention and Control of Disease Regulation in which the definitions of "article" and "vector" appeared; and
  - (b) to consider deleting the phrase "(other than a human being)" from the definition of "article" under clause 2 of the Bill.
5. Members noted that for clarity purpose, the Administration planned to delete the definitions of "isolation" and "quarantine" from the Bill and to provide the circumstances under which isolation and quarantine would be carried out in the Prevention and Control of Disease Regulation to be made under clause 7 of the Bill.

##### *Clause 5 - Powers of arrest*

6. The Chairman queried whether police officers had the necessary knowledge to arrest any person who had committed or was committing an offence under the Bill. The Chairman wondered whether it might be more appropriate for such act by the police officers to be carried out in the presence of a health officer. Dr KWOK Ka-ki expressed similar views.

7. The Administration responded that although clause 5(1) provided police officers with the power to arrest without warrant any person who had committed or was committing an offence under the Bill, such arrest would in most instances be carried out at the request of health officers. Moreover, it was unlikely that police officers would act alone without first consulting health officers. The Administration further said that the reason for providing police officers with the power to arrest without warrant any person who had committed or was committing an offence under the Bill was to ensure swift and timely action to prevent any spread of disease.

8. Members noted that "a person appointed under this Ordinance" to arrest without warrant any person who obstructed a health officer, etc. in the performance of statutory functions under clause 5(2) would include any member of the Auxiliary Medical Service, Civil Aid Service and staff of the hospital.

9. Dr KWOK Ka-ki questioned the appropriateness of conferring such wide powers of arrest to members of the Auxiliary Medical Service, Civil Aid Service and hospital staff, having regard to the large number of people involved, for instance, staff of the Hospital Authority already numbered some 50 000 and the fact that members of the Auxiliary Medical Service, Civil Aid Service and hospital staff were not public officers like health officers who were the leading enforcement agency and police officers who were trained in carrying out enforcement work. Dr KWOK further expressed concern about whether hospital staff would commit an offence if they refused to exercise the powers conferred on them under clause 5(2).

10. The Administration responded that it was necessary to also provide members of the Auxiliary Medical Service, Civil Aid Service and hospital staff with powers of arrest under clause 5(2), as the main intent of clause 5(2) was to prevent people from obstructing the exercise of powers under the Bill, including performance of isolation or quarantine function where members of the Auxiliary Medical Service, Civil Aid Service and hospital staff might be deployed to carry out or assist in carrying out such function. The Administration further said that no sanction would be imposed on persons not exercising the powers of arrests conferred on them under clause 5(2).

11. The Chairman pointed out that unlike members of the Auxiliary Medical Service and Civil Aid Service who would wear uniform whilst on duty, hospital staff might not in all instances. In the light of this, the Chairman expressed concern about whether this would impede the exercising of arrest by hospital staff provided under clause 5(2).

12. Mr Alan LEONG was of the view that provision of powers to arrest a person who had committed or was committing an offence under the Bill or who had obstructed or assisted in the obstruction of health officer, etc. in the

performance of statutory functions should best be confined to police officers to ensure that the arrest would not be challenged in the court for violation of natural justice. Mr LEONG further said that he would be prepared to accept the provision of powers of arrest to persons other than police officers if the exercising of such powers was required to be made under a well specified condition as in the case of clause 6 of the Bill.

13. Having regard to the views expressed by members, the Administration undertook to provide a paper explaining why it was necessary to confer powers of arrest to persons other than police officers and how clause 5 would be implemented in practice to ensure effective enforcement.

## **II. Date of next meeting**

14. The Chairman reminded members that the next meeting had been scheduled for 11 April 2008 at 8:30 am to continue clause-by-clause examination of the Bill from clause 8.

15. There being no other business, the meeting ended at 12:45 pm.

Council Business Division 2  
Legislative Council Secretariat  
16 April 2008

**Proceedings of the meeting of  
Bills Committee on Prevention and Control of Disease Bill  
on Tuesday, 8 April 2008, at 10:45 am  
in Conference Room A of the Legislative Council Building**

<b>Time marker</b>	<b>Speaker</b>	<b>Subject</b>	<b>Action required</b>
000000 - 000519	Chairman	Opening remarks	
000520 - 001524	Admin Chairman	Administration's response to issues raised by members at the meeting on 26 March 2008 (LC Paper No. CB(2)1503/07-08(01))	
001525 - 002017	Admin Chairman	Administration's response to a submission from the Hong Kong Bar Association (LC Paper No. CB(2)1513/07-08(01)) and a further submission from the Law Society of Hong Kong (LC Paper No. CB(2)1541/07-08(01))	
002018 - 004148	Hon Andrey EU Admin ALA4 Chairman	The Administration was requested to provide a response in writing to the following -  (a) the principles that would be adopted by the Director of Health in deciding whether or not to pay compensation and the amount of compensation under clause 12(1) of the Bill;  (b) relationship and/or differences between clause 12(1) and the compensation for the requisitioning of property under clause 8(2)(c) of the Bill;  (c) how section 17(2) of the Quarantine and Prevention of Disease Ordinance (Cap. 141) was implemented in practice; and  (d) an explanation on the need for clause 12(2), as it would be up to the parties to decide whether to resort to arbitration	✓ (Admin to provide written responses)
<b>Clause-by-clause examination of the Bill</b>			
004149 - 004347	Chairman Admin	<i>Clause 1 - Short title and commencement</i>	
004348 - 010020	Admin ALA4 Hon Margaret NG Hon LI Kwok-ying	<i>Clause 2 – Interpretation</i>  The Administration was requested -  (a) to provide the provisions of the Bill and the draft provisions of the Prevention and Control of Disease Regulation in which the definitions of "article" and "vector" appeared; and  (b) to consider deleting the phrase "(other than a human being)" from the definition of "article" under clause 2 of the Bill	✓ (Admin to provide written responses)
010021 - 010130	Admin Chairman	<i>Clause 3 - Power to seize articles</i>	
010131 - 010208	Admin	<i>Clause 4 - Forfeitures of articles</i>	
010209 -014415	Admin Chairman	<i>Clause 5 - Powers of arrest</i>	✓ (Admin to

<b>Time marker</b>	<b>Speaker</b>	<b>Subject</b>	<b>Action required</b>
	Dr Hon KWOK Ka-ki ALA4 Hon LI Fung-ying Hon Alan LEONG	The Administration undertook to provide a paper explaining why it was necessary to confer powers of arrest to persons other than police officers, and how clause 5 would be implemented in practice to ensure effective enforcement	provide a written response)
014416 - 014856	Admin Chairman Hon Alan LEONG	<i>Clause 6 - Escape from detention</i>	
014857 - 015804	Admin Hon LI Kwok-ying Chairman	<i>Clause 7 - Power to make regulation</i>	
015805 - 015909	Chairman	Date of next meeting	

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