



中華人民共和國香港特別行政區政府總部食物及衛生局
Food and Health Bureau, Government Secretariat
The Government of the Hong Kong Special Administrative Region
The People's Republic of China

Our ref.: FH CR 4/3231/96 Pt.37
Your ref.: LS/B/3/07-08

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18 January 2008

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8 Jackson Road
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By fax (2877 5029)

Dear Mr Lam,

Prevention and Control of Disease Bill

Thank you for your letter of 31 December 2007 on the captioned Bill. Our response to your questions is provided below in their original order.

General observation

Two tables showing clauses of the Bill which are adopted or adapted from the Quarantine and Prevention of Disease Ordinance (Cap. 141) and reasons for not adopting or adapting other sections of the Ordinance is at **Annex**.

Clause 2

Definition of "article"

The term "article" that appears in clauses 3 and 4 are intended to cover both animals and plants, in addition to things and substances that accord with the "ordinary" meaning of "articles" (i.e. particular objects (The Concise Oxford Dictionary)). To avoid repeating "articles, animals and plants" in the Bill or the regulations, we have adopted the definition of "articles" in clause 2. The definition of "goods" under Article 1 of the International Health Regulations (IHR) (2005) of the World Health Organization (WHO) also includes animals and plants.

Definition of “building”

The definition of “building” in the Bill is the same as that in the Quarantine and Prevention of Disease Ordinance. This word needs to be separately defined in order not to overburden the definition of “premises”. Also, there may be circumstances where the word “building” needs be used in order to clearly define the place. For example, where disease control measures (such as cleansing or disinfection) are ordered to be carried out, they may be applied in respect of walls, gates, posts, pillars and frames standing on ground.

Definition of “premises”

Clauses 7(2)(l) and 7(2)(m) empower the making of regulations regarding power of entry and examination of premises. The definition of “premises” includes “any vessels lying within the waters of Hong Kong” is to enable the exercise of such power in such vessels.

Definition of “isolation”

The purpose of quarantine is to separate and detain any person, animal or plant (but not inanimate objects) that may have been exposed to a possible source of infection to ascertain whether he / it is infected to prevent the spread of disease to other people. In contrast, isolation applies to articles (including animals and plants) which or persons who are infected or contaminated. These definitions are in line with the standard usage of these two public health terms.

Definition of “medical surveillance”

Medical surveillance is a public health measure applicable to persons who may have been exposed to a possible source of infection to ascertain whether they are infected. The difference between medical surveillance and quarantine is that the former requires regular monitoring but does not restrict the movement of the persons concerned while the latter involves separation and detention. Isolation applies to persons who are infected in order to prevent the spread of disease to other people and it also involves separation and detention. As the definitions of these terms in the Quarantine and Prevention of Disease Ordinance do not reflect the standard usage of these public health terms, we have taken the opportunity to clarify their meaning in the Bill.

Definition of “vector”

In public health terms, infectious diseases can be classified by their modes of transmission, e.g. vector-borne diseases, food-borne diseases, water-borne diseases, diseases spread by human-to-human transmission, infected fomites, etc. To health professionals, vectors of diseases include rats, mosquitoes, flea,

mites, lice, etc. but not human beings. Diseases spread from human to human are not vector-borne diseases.

Clause 3

Clauses 7(2)(m)(iii) and 7(2)(s) empower the making of regulations with respect to seizure of articles. Our intention is that the power of seizure under the subsidiary legislation will be circumscribed by conditions and therefore may only be exercised under limited circumstances. However, the power of seizure under clause 3 of the Bill will allow an article to be seized if the health officer has reason to believe that it is an infectious agent or contains an infectious agent. In view of the scope of such power, approval of the Director of Health is required and the power is singled out to be included in the Bill.

Clause 7(2)(d) relates to the making of regulation with respect to the disposal, importation, transit, transshipment, exportation or removal of matters such as infected articles or human remains. It mainly deals with the regulation of trans-boundary movement of things which by their nature have a greater likelihood of posing a public health risk. The clause is not related to the power of seizure.

Clause 4

In line with Article 33 of IHR(2005), we normally do not subject articles (other than animals) in transit without transshipment to health measures.

Clause 5(2) & (3)

Examples of persons in the two sub-clauses include staff of the Hospital Authority, Civil Aid Service and Auxiliary Medical Service.

The matter would be included in the regulations to be made under the proposed clauses 7 and 8 of the Bill.

Clause 6(1)(b)

Examples of public officers in the sub-clause include members of the Immigration Service, health officers and the staff of the Department of Health.

The matter would be included in the regulations to be made under the proposed clauses 7 and 8 of the Bill.

Clause 7

We propose to transfer the regulation making power to the Secretary for Food and Health as the regulations made under the Bill provide for operational and technical matters relating to the prevention and control of diseases. Besides,

the proposed transfer would expedite the regulation making process so as to improve the responsiveness of our legal framework in case of disease outbreak.

Clause 7(1)(b)

The purpose of the long title is to set out the purposes of the Bill in general terms. Therefore, with respect to the prevention and control of diseases, it is preferable to add the words “among human beings”. Given that the scope of the Bill has been clearly set out in the long title, it is not necessary to state it again in individual provisions that the prevention of disease is in respect of human beings but not other animals, so as not to overburden individual provisions.

Clause 7(2)(d)(ii) & (iii)

As explained above, a human being is not a vector. Vectors refer to living organisms, mainly insects, which are capable of transporting an infectious agent from an infected person to a susceptible person. For example, *Aedes aegypti* (a kind of mosquito) is a vector of dengue fever; flea, mites and lice are vectors of typhus fever; etc. Our intention is to cover known vectors of diseases in clause 7(2)(d) without the requirement to prove that they are infected. Therefore, we need to distinguish between “infected articles” and “vectors”.

Clause 7(2)(g)

Deratting, disinsecting and disinfection under sections 8(2)(f) and (g) of the Quarantine and Prevention of Disease Ordinance are examples of disease control measures under clause 7(2)(o) of the Bill.

Clause 7(2)(h)

Medical surveillance involves the regular medical monitoring, observation, examination or testing of an individual in order to monitor his health condition, whereas “medical examination or test” is only a one-off examination or test for the purpose of disease investigation, and can be conducted outside the context of medical surveillance.

Clause 7(2)(l)

The actions that a health officer may take after having entered any premises are set out in clause 7(2)(m). The power of police officers to enter premises is regulated by sections 50(3) and 50(4) of the Police Force Ordinance (Cap. 232).

Clause 7(2)(t)

The kind of information that is required to be provided will be specified in the regulation and depends on the circumstances of individual cases. The power to require information will however be circumscribed by conditions provided in the regulations. Generally speaking, it is the kind of information that is needed for the prevention and control of diseases. For example, with respect to a traveller, the information that is required may be anything about his destination so that he may be contacted if necessary, and his itinerary so as to ascertain whether he has travelled in or near an area affected by disease or had any possible contacts with infected or contaminated persons or articles prior to arrival (cf. Article 23 of IHR(2005)).

Clause 7(2)(u)

Article 15 of IHR (2005) concerns the WHO's power to make temporary recommendations, which may include measures to be implemented by or against certain States Parties only, and will be in effect for a (relatively short) period as specified by the WHO having regard to the outbreak situation in the affected States Parties or globally. In view of their temporary nature, we consider it more appropriate to empower the Director of Health to implement the measures concerned by publishing an order in the Gazette under clause 9 of the Bill. Such mechanism is similar to the existing one under section 20 of the Quarantine and Prevention of Disease Ordinance for taking measures against infected place or infected port. In contrast, standing recommendations made by the WHO and other measures prescribed under the IHR(2005) are regular or routine measures that are less likely to change. Therefore, it would be more appropriate for Secretary for Food and Health to make regulations under clause 7(2)(u) of the Bill to implement these measures.

Clause 8(2)(c)

During a public health emergency, the Administration may need to requisition private properties such as vacant premises to be used as large-scale quarantine facilities, vaccines or drugs for outbreak control, or personal protective equipment for healthcare staff. Such requisition may interfere with property rights (for example, the temporary use of vacant private premises by public health authorities would temporarily interfere with the right of the owners to use or lease the properties), or deprive the owner's property rights (for example, the requisition of vaccine, drugs and personal protective equipment).

Clause 8(4)

Examples of "serious disabilities" include severe pneumonia caused by SARS and avian influenza, paralysis caused by poliomyelitis and severe bleeding caused by haemorrhagic fevers (e.g. Ebola).

Clause 9(2)

The effect of the instruments to be made under clauses 7(4) and 15 are to amend provisions of the Bill. There is no doubt as to their legislative effect. In contrast, since what will be contained in the temporary measures recommended by the WHO may or may not have legislative effect, clause 9(2) is included to make whatever measures to be prescribed by the Director of Health under clause 9 subsidiary legislation subject to negative vetting by the Legislative Council. It is therefore not merely for the purpose of avoiding doubt.

Clause 12(1)

In most cases, articles that are seized, surrendered or submitted are infected articles that pose a public health risk of spreading diseases to people exposed to them. In these circumstances, it is unlikely that compensation is payable under this clause because the economic value of such infected articles is likely to be negligible. However, there may also be situations where a health officer seizes or requires the surrender of articles which may not be infected as a prudent measure to the prevention and control of disease. These situations should not often arise, and if they do, it may be just and equitable for the Director of Health to order compensation to be paid to the owners of the articles under clause 12. Furthermore, clause 12 is to cover any provision (both in the Bill and regulations to be made under clause 7) that might require any person to surrender articles to the authority¹.

Clause 12(3)

The objective of clause 12(3) is to provide for compensation where any article is damaged, destroyed, seized, surrendered or is submitted pursuant to the Bill and subsidiary legislation both in “peacetime” and during a public health emergency. However, during a public health emergency, there may be an exceptional need to requisition private properties to help deal with the emergency situation. Compensation for such requisition will be provided separately in a regulation made under clause 8 (cf clause 8(2)(c)).

Clause 13(1)

In clause 13(1), a person must prove that he did or omitted to do the relevant act in good faith in the exercise or purported exercise of a power, or performance or purported performance of a function under the Bill (or regulations to be made under clause 7 of the Bill) before he could be entitled to the immunity from personal liability. The usage of “in good faith” is consistent with precedents in other statutory provisions, such as section 6(1) of the Merchant Shipping (Registration) Ordinance (Cap. 415), section 75(1) of

¹ In light of section 3 of the Interpretation and General Clauses Ordinance, the reference to “Ordinance” in the Bill includes subsidiary legislation made under the Ordinance.

the Occupational Retirement Schemes Ordinance (Cap. 426), section 14(1) of the Electoral Affairs Commission Ordinance (Cap. 541) and section 47(1) of the Deposit Protection Scheme Ordinance (Cap. 581).

Clause 14

This clause is an adaptation of section 46 of the Quarantine and Prevention of Disease Ordinance. The words “Her Majesty’s” are adapted to “of the Chinese People’s Liberation Army”. “Internal management” should be understood by its literal meaning, i.e. the act of running and controlling the operation of a vessel or aircraft of war on board.

Clause 17

The provisions in the Boats and Wharves (Supply of Water) Regulations (Cap. 141 sub. leg. A) have to be retained for the purpose of keeping the supply of drinking water by water boats in a sanitary condition.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Pamela Lam', with a stylized flourish at the end.

(Miss Pamela LAM)
for Secretary for Food and Health

c.c.

DoJ (Attn: Mr Allen LAI)

DH (Attn: Dr Sarah CHOI)

Provisions in the Quarantine and Prevention of Disease Ordinance (Cap. 141) adopted or adapted in the Prevention and Control of Disease (PCD) Bill

PCD Bill Clause	Cap. 141 section
3	N/A
4	13
5	12
6	7
7	8
8	N/A
9	20
10	42
11	9
12	17
13	18
14	46
15	72
Schedule 1	First Schedule
Schedule 2	N/A

Provisions in the Quarantine and Prevention of Disease Ordinance not adopted or adapted in the PCD Bill

Section	Reasons for not adopting or adapting the provisions
2	The definitions in section 2(1) are either outdated or not used in the Bill. As IHR (2005) no longer restricts the scope of diseases subject to its regulation to cholera, yellow fever and plague, the concept of three “quarantinable diseases” and the definitions of infected / suspected vessel / aircraft in respect of the three quarantinable disease under sections 2(2) and 2(3) are no longer required.

Section	Reasons for not adopting or adapting the provisions
3	As IHR (2005) no longer restricts the scope of diseases to cholera, yellow fever and plague, the concept of three “quarantinable diseases” is no longer used, and the provision of incubation period of the three quarantinable diseases in section 3 is no longer required.
4-6	The matter will be dealt with in the new regulatory regime under a regulation to be made under clause 7 of the Bill.
10-11	The penalty for each offence in the Bill and regulation will be provided for in the individual sections.
14	Our intention is that under the new regime, only medical practitioners, operators of cross-boundary conveyances and operators of points of entry have the statutory duty to make reports. Section 5(2) of the Prevention of the Spread of Infectious Disease Regulations (Cap 141 sub. leg. B) will not be adopted / adapted either in the Bill or the regulation to be made under clause 7 of the Bill. Section 14 of Cap 141 will become obsolete as a result.
15	The matter will be implemented administratively.
16	The power to requisition may only be required in case of public health emergency, and will be separately provided for in regulation(s) which may be made under clause 8 of the Bill.
19	The matter will be dealt with in the new regulatory regime under a regulation to be made under clause 7 of the Bill.
21-41	The matter will be dealt with in the new regulatory regime under a regulation to be made under clause 7 of the Bill.
43	Under IHR(2005), postal parcels are no longer exempted from control.
44-45	The matter will be dealt with in the new regulatory regime under a regulation to be made under clause 7 of the Bill.

Section	Reasons for not adopting or adapting the provisions
47-68	As IHR(2005) no longer limit the scope of disease to the plague, yellow fever and cholera, these specific precautionary measures are no longer appropriate. New provisions will be included in a regulation to be made under clause 7 of the Bill to enable disease control measures to be taken with respect to scheduled infectious diseases and diseases caused by scheduled infectious agents.
69-70	The matter will be dealt with in the new regulatory regime under a regulation to be made under clause 7 of the Bill.
71	The provision is outdated. However, matters relating to the sanitary condition of cross-boundary conveyances and disease control measures will be provided for in a regulation to be made under clause 7 of the Bill.
Second Schedule	The matter will be dealt with in the new regulatory regime under a regulation to be made under clause 7 of the Bill.