

# 立法會 *Legislative Council*

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

### **Background brief prepared by the Legislative Council Secretariat on proposed amendments to the Quarantine and Prevention of Disease Ordinance**

#### **Purpose**

This paper gives an account of the past discussions by the Panel on Health Services (the Panel) on the proposed amendments to the Quarantine and Prevention of Disease Ordinance (QPDO) (Cap. 141).

#### **Background**

2. The QPDO and its subsidiary legislation provide the legislative framework for the prevention and control of infectious diseases of public health importance in Hong Kong. The QPDO was first enacted in 1936 by amending and consolidating the relevant laws relating to the prevention and control of infectious diseases, taking into account the principles stipulated in the International Sanitary Convention (1926) (subsequently replaced by the International Health Regulations (IHR) (1969) of the World Health Organization (WHO)). The QPDO was amended subsequently to reflect various amendments to the IHR (1969).

3. Having regard to the experience of the outbreak of Severe Acute Respiratory Syndrome (SARS) in 2003, the Administration conducted a comprehensive review of the QPDO to ensure that the legal framework for the prevention of infectious diseases is up-to-date and is capable of supporting the Administration's strategy in the control of infectious diseases. Opportunity was also taken to comply with the IHR which have entered into force on 15 June 2007. The IHR (2005) are a set of legal regulations for WHO Member States (China is of them) in relation to global response to public health threats. Pursuant to Article 153 of the Basic Law (BL), compliance with the IHR (2005) extends to Hong Kong.

#### **Past discussions**

4. The Administration briefed the Panel on 12 February 2007 of its plan to bring the legislative provisions of the QPDO in line with the requirements in the IHR (2005) and to

ensure the effectiveness of the Hong Kong framework in preventing and controlling diseases.

5. Members were in general supportive of the Administration's proposals, major provisions of which are given in the **Appendix**.

6. Major views/concerns of members and the Administration's responses are set out in the ensuing paragraphs.

7. Dr KWOK Ka-ki expressed the view that to empower the Chief Executive (CE) in Council to decide on "state of public health emergency" in times of major outbreak in Hong Kong might delay the taking of effective measures to combat the situation.

8. The Administration advised that there was no cause for such concern, as the fundamental powers to prevent the spread and control of infectious diseases in Hong Kong were conferred upon the Department of Health (DH) under the QPDO. DH's legal powers for handling infectious disease outbreaks would be further strengthened by the proposed amendments to the QPDO. Moreover, the exercising of the power by CE in Council to decide on "state of public health emergency" would only be used under very exceptional circumstances when an outbreak had constituted a public health risk to other places through the international spread of disease and would potentially require a coordinated international response. Prior to deciding on Hong Kong being in a state of public health emergency, the advice of DH would first be sought.

9. The Administration also pointed out that it was not unprecedented in putting CE at the helm in the fight against major infectious disease outbreaks, albeit he would be advised by senior officials of policy bureaux/Government departments concerned and non-Government experts as circumstances warranted. For instance, under the Government's preparedness plan for influenza pandemic which included a three-level response system (Alert Response Level, Serious Response Level and Emergency Response Level), a Steering Committee chaired by CE would be set up at Emergency Response Level.

10. Dr Fernando CHEUNG remained of the view that powers to be conferred upon the Government would further exacerbate the already concentration of powers on the Government in handling infectious disease outbreaks, and provisions to counteract such should be included in the amendment bill.

11. Dr KWOK Ka-ki questioned whether the proposed amendment to provide for the use of private property by the Government during a state of public health emergency would contravene BL 105 which provided, inter alia, that "the Hong Kong Special Administrative Region shall, in accordance with the law, protect the right of individuals and legal persons to compensation for lawful deprivation of their property".

12. The Administration advised that legal advice would be sought to confirm that the requisitioning of private property by the Government during a state of public health

emergency was in compliance with the Basic Law. The relevant legal opinions would be provided to the Legislative Council (LegCo) when the amendment bill was introduced into the Council. The Administration would also specify the arrangements for implementing the proposed amendment, such as compensation to the parties providing the property.

13. Ms LI Fung-ying pointed out that all the proposed amendments to strengthen the powers of DH to handle infectious disease outbreaks would be greatly compromised, if the respective roles of the Hospital Authority (HA), DH and private doctors/hospitals in combating infectious diseases were not clearly spelt out in the QPDO.

14. The Administration responded that the objective of the QPDO was to provide a legislative framework for the prevention and control of infectious diseases among humans, and not to set out the respective roles of HA, DH and private doctors/hospitals in infectious disease control which came under the ambit of the Centre for Health Protection (CHP). The CHP, set up on 1 June 2004 as a new public health infrastructure under DH on the recommendation of the SARS Expert Committee, had the responsibility, authority and accountability for the prevention and control of communicable diseases. It was also responsible for maintaining close working relationships with national and international agencies for communicable disease control.

15. To allay members' concern that the Director of Health would not recruit the assistance of anyone as he saw fit during a public health emergency, the Administration was requested to make clear in the amendment bill that the Director would only recruit the assistance of unregistered but qualified health care personnel during a public health emergency.

16. Whilst noting that it would be mandatory for medical practitioners to provide information that was within their knowledge relating to cases of infectious disease and for sick persons, contacts and carriers of infectious diseases to be placed under medical surveillance, Dr Joseph LEE was of the view that express provisions should be added to the amendment bill to ensure compliance.

17. At the request of the Panel, the Administration agreed to address the following issues raised by members either in the LegCo Brief or to the bills committee concerned -

- (a) how the proposed amendments differed from the relevant provisions in the QPDO and to what extent would the handling of infectious disease outbreaks be enhanced as a result of enactment of these proposed amendments;
- (b) what were the practices and legislation adopted by other jurisdictions in dealing with public health emergency and how did these practices and legislation differ/compare with the proposed amendments; and
- (c) whether there was any contingency measure should CE and members of the Executive Council also become infected during a public health emergency.

**Relevant papers**

18. Members are invited to access LegCo's website (<http://www.legco.gov.hk>) for details of the relevant papers and minutes of the meeting.

Council Business Division 2  
Legislative Council Secretariat  
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**Major proposed amendments to the  
Quarantine and Prevention of Disease Ordinance (Cap. 141)**

- A. Prevention of the spread of diseases of international concern into/out of Hong Kong
- (a) to require operators to take reasonable steps to ensure that points of entry and cross-boundary conveyances were kept in sanitary condition, and where necessary, to require measures to be implemented, including but not limiting to disinfection, disinsection and deratting;
  - (b) to empower the Department of Health (DH) to require provision of information by operators concerning cases of infectious disease or contamination on board a cross-boundary conveyance or at a point of entry,
  - (c) to empower DH to inspect points of entry and cross-boundary conveyances and issue relevant certificates as required by the IHR (2005);
  - (d) in case of an outbreak in Hong Kong or elsewhere, to empower DH -
    - (i) to require travellers entering Hong Kong to produce proof of vaccination or prophylaxis and to require relevant health declarations;
    - (ii) to conduct necessary medical examination or tests on travellers and to order isolation/quarantine of a traveller who was believed to be a sick person, contact, carrier of infectious diseases or a contaminated person;
    - (iii) to refuse departure or entry of things, which appeared to be infectious or contaminated and to seize and destroy them, where necessary; and
    - (iv) having regard to WHO recommendations, to refuse exit of any traveller whom a health officer had reason to believe was a sick person, contact, carrier of infectious diseases or a contaminated person;

B. Prevention and control of spread of infectious diseases in Hong Kong

- (e) to update and expand the list of notifiable diseases to include infectious diseases of public health concern having regard to the current local epidemiology of infectious diseases;
- (f) to require notification of any release of dangerous infectious agents and empower DH to require the surrender of such agents for proper disposal;
- (g) to empower the Director of Health (D of Health) to order submission of specimens, organisms or agents and to cause tests to be performed on the same to gather further information on the disease;
- (h) to require medical practitioners to provide information that was within his knowledge relating to cases of infectious disease;
- (i) to empower DH to place sick person, contact and carrier of infectious disease under medical surveillance;
- (j) to clarify DH's power to order isolation/quarantine of person who was believed to be a sick person, contact or carrier of infectious disease; and

C. Public health emergency

- (k) in case of a major outbreak in Hong Kong -
  - (i) to empower the Chief Executive in Council to decide on "state of public health emergency";
  - (ii) to empower the Administration to access and disclose necessary information to the public relating to the state of public health emergency;
  - (iii) to provide for the use of private property, including vaccines, drugs, personal protective gears, vehicles, shipping containers and vacant residential facilities, by the Government during a state of public health emergency; and
  - (iv) to enable unregistered but qualified health care personnel to perform necessary tasks and duties under the direction of D of Health during an emergency.