



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.38
Your ref.: LS/B/3/07-08

Tel no: 2973 8117
Fax no: 2840 0467

15 February 2008

Mr Stephen LAM
Assistant Legal Adviser
Legal Service Division
Legislative Council Secretariat
8 Jackson Road
Central
Hong Kong

By fax (2877 5029)

Dear Mr Lam,

Prevention and Control of Disease Bill

Thank you for your letter of 24 January 2008 on the captioned Bill. Our response to your questions is provided below in their original order.

Definition of “premises”

Clauses 7(2)(l) and (m) provide for the power of entry of a health officer into residential premises and other places, and actions that he may take after entry. “Place” is defined in clause 2 to include a conveyance.

Definition of “isolation”

It is difficult to precisely define the boundary of an area or a place that is infected or contaminated. As an area or place will not be subject to quarantine, no confusion will arise from the definition of “isolation” in the Bill in such cases.

Our original intention is to provide for the particular circumstances where a place, person or article may be subject to isolation in the substantive provisions in the regulations to be made under the Bill. For the avoidance of doubt, we

will consider amending the definition of “isolation” with respect to a person or an article under clause 2 to clarify its meaning.

Definition of “medical surveillance”

The function of a definition is to explain the meaning and nature of a term or expression. It does not provide the substantive circumstances in which the term or expression will be applied. The definition of “medical surveillance” will not therefore provide the circumstances under which a person may be subject to medical surveillance or the matters relating to the surveillance. Such circumstances and matters should be provided for in the substantive provisions. Such provisions will be contained in the regulation to be made under the Bill.

The concept of requiring a person to sign a bond as a condition of subjecting him to medical surveillance in replacement of isolation as provided in the existing Quarantine and Prevention of Disease Ordinance (QPDO) (Cap. 141) has become obsolete. For effective prevention and control of disease, the decision of whether to subject a person to medical surveillance, quarantine or isolation should solely be a professional decision made by a health officer, regardless of whether a bond is signed.

Under clause 7(2)(h), the Secretary for Food and Health is empowered to make regulations to provide for subjecting any person to medical surveillance. To subject a person to medical surveillance, the provision necessarily implies the power to specify conditions, arrest and detain a person *for the purpose of* the surveillance, because they are the means necessary to achieve the objective of subjecting a person to medical surveillance. Section 19 of the Interpretation and General Clauses Ordinance (Cap. 1), which provides that an Ordinance shall receive such fair, large and liberal construction and interpretation as will best ensure the attainment of the object of the Ordinance according to its true intent, meaning and spirit, supports such an interpretation of clause 7(2)(h).

Definition of “vector”

As explained in our last reply, the term “vector” is well understood in the public health field as not including human beings. It is also clear from the context in which the term is used in the Bill that it does not include human beings.

The definition of “vector” cannot be restricted to insects only as besides the fact that rodents are vectors for plague, there are reports that domestic pets, particularly cats and dogs, may also carry plague-infected wild rodent fleas and transmit the disease to humans.

Clauses 3, 7(2)(m)(iii) and 7(2)(s)

Under clause 3, a health officer, with the written approval of the Director of Health, may seize any article or part of an article if the health officer has reason to believe the article or the part is an infectious agent or contains an infectious agent. Our intention is that a health officer's power of seizure in the subsidiary legislation will be of a more limited scope and be circumscribed by more restrictive conditions.

Clause 8(2)(c)

- (a) The regulation made under clause 8 may provide for the requisitioning of property and matters relating to compensation for such requisition. As pointed out in paragraph 10 of the LegCo Brief, the proposal to explicitly provide for compensation for the requisition of any property in the present proposed legislation is to address the possible interference with or, in some cases, *de facto* deprivation of property rights when measures for preventing and controlling the spread of diseases are carried out. It is our policy that such compensation as is just and equitable in the circumstances of the case will be paid in respect of the requisitioned property, whether or not it is a case of interference with property rights or deprivation of the owner's property.
- (b) A person aggrieved by a decision made by the Director of Health can seek remedy from the courts, e.g. by seeking leave to judicially review it.
- (c) The regulation made under clause 8 will include a provision similar to clause 12(2) to provide for the adjudicating mechanism in case there is any dispute as to whether compensation is payable or the amount of compensation.
- (d) As compared to section 16 of the QPDO, the Bill actually removes the Government's power to requisition private properties during "peacetime". The power to requisition will only be exercised during a public health emergency where it is necessary for the Government to have the surge capacity to contain an outbreak within the shortest possible time.

Whether the requisition is "temporary" will depend on the nature of the article requisitioned. For example, vehicles and vessels will normally be returned to the persons from whom they were requisitioned after use. However, from our experience during the SARS outbreak, it may be necessary to requisition personal protection equipment, medicines, etc, in which case only the unused materials can be returned.

Clause 9

Section 20 of the QPDO gives effect to the old health regime in the International Health Regulations (IHR)(1969) under which States were empowered to decide on the health measures to be applied against an infected area in respect of three quarantinable diseases (cholera, the plague and yellow fever), provided that these measures are required to be notified to the World Health Organization (WHO). Under the new health regime in the IHR(2005), WHO is empowered to make, *inter alia*, temporary recommendations in respect of a public health emergency of international concern (Article 15). Given the differences between the old and new regimes, we propose the enactment of clause 9 to give effect to temporary recommendations to be issued by the WHO instead of relying on a clause similar to section 20 of the QPDO.

The list of measures that WHO may recommend in respect of persons and articles, having regard to the circumstances of the public health emergency of international concern, are summarized in Article 18 of IHR(2005), and cover a wide range of measures relating to places, persons and goods. While some measures may be implemented by health officers through the exercise of “routine” powers to be conferred by way of regulations made pursuant to clause 7 of the Bill (e.g. reviewing the travel history of travellers in affected areas; isolation of individual affected persons; placing individual suspect persons under public health observation, etc), measures which have a wider impact on travellers, such as refusal of entry of travellers to Hong Kong where Hong Kong has become an affected area, will be implemented by an order to be made by the Director of Health under clause 9 in light of the temporary recommendations made by WHO.

Clause 12(1) and (2)

These provisions do not prejudice the right of a person aggrieved by a decision made by the Director of Health to seek leave to judicially review it. The judicial review proceedings would relate to the manner by which the decision was reached, not the decision itself, as the court in judicial review proceedings does not function as an appellate body looking into the merits of the decision as such.

Clause 12(3)

Clause 12(1) has already provided that the Director of Health may order such compensation that is just and equitable in the circumstances for any article damaged etc. pursuant to the Bill (including regulations to be made under clauses 7 and 8)¹. There is no need to repeat such wording in clause 12(3). Clause 12(3) clearly states that clause 12(1) does not apply to “cases” for

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.

which compensation is provided for by regulations made under clause 8. The “case” where compensation matters will be provided separately in a regulation to be made under clause 8 is the case of requisition, which is not covered under clause 12(1).

Clause 13(1)

“In honest belief” means that to secure immunity from personal liability, the public officer concerned must be able to demonstrate that he honestly believed that the exercise of the power was necessary. Where a public officer has exercised a power “in good faith”, he will be able to show that he exercised the power because he believed that the criteria for its exercise had been met and that such exercise was necessary. The choice of the formulation of “in good faith” reflects our policy intent.

Yours sincerely,



(Bruno LUK)

for Secretary for Food and Health

c.c.

DoJ (Attn: Mr Allen LAI)

DH (Attn: Dr Sarah CHOI)