

**For information
on 26 March 2008**

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

**Response to Members' questions raised
at the meeting on 11 March 2008**

Safeguards for the rights of persons arrested

Under clause 5(3), a person arrested under clause 5 of the Bill by a public officer or person other than a police officer will be delivered to a police officer as soon as practicable, who will then handle the person according to the established procedures. (Clause C7 of the draft Prevention and Control of Disease Regulation submitted to the Bills Committee on 11 March 2008 further provides that the person arrested under clause 5 can also be subject to medical examination or test by a health officer to cater for the situation where the person arrested is suspected to be infected.)

2. A person who is arrested under clause 6 will be conveyed to the place from which he escapes or any other place authorized by a health officer and detained in that place (so that he can continue to be isolated / quarantined).

3. The usual safeguards applicable to an arrested person under Article 28 of the Basic Law¹ and the Hong Kong Bill of Rights (e.g. the right to be informed, at the time of arrest, of the reasons for his arrest and be promptly informed of any charges against him; the right to trial or to release within a reasonable time; the right to take proceedings before a court, etc.) will also apply to persons arrested under clauses 5 and 6 of the Bill. Suitable training will also be provided to public officers and persons authorized to exercise the power of arrest under the Bill to ensure

¹ Article 28 of the Basic Law: The freedom of the person of Hong Kong residents shall be inviolable. No Hong Kong resident shall be subjected to arbitrary or unlawful arrest, detention or imprisonment. Arbitrary or unlawful search of the body of any resident or deprivation or restriction of the freedom of the person shall be prohibited. Torture of any resident or arbitrary or unlawful deprivation of the life of any resident shall be prohibited.

that they understand the proper arrest procedures and the rights of the arrested persons.

Safeguards for the rights of persons put under isolation / quarantine

4. Under clauses E1 and E4 of the draft Prevention and Control of Disease Regulation, a person may be put under isolation / quarantine only if a health officer has reason to believe that he is a contact of or is infected with a specified infectious disease (i.e. an infectious disease specified in Schedule 1 to the Bill or a disease caused by an infectious agent specified in Schedule 2 to the Bill). The order made by a health officer to place the person under isolation / quarantine must be in writing and will specify both the reason for isolation / quarantine and the terms of isolation / quarantine. The person will be released from isolation / quarantine as soon as a health officer considers that he is not infectious (e.g. when he is effectively treated as indicated by medical test results, or on the lapse of the incubation period for the disease concerned) or the isolation / quarantine can be replaced by medical surveillance, which is less restrictive than isolation / quarantine.

5. Whether a person is a contact of or is infected with a specified infectious disease is a matter of professional judgment of a health officer based on medical and epidemiological information, including medical or contact history, clinical symptoms or signs, laboratory test results, etc. The health conditions of a person under isolation / quarantine will also be continuously monitored and he will be released from isolation / quarantine as soon as a health officer considers that he is not infectious or the isolation / quarantine can be replaced by medical surveillance. Any person who is aggrieved by the decision of a health officer to isolate / quarantine him may apply for judicial review, or a writ of *habeas corpus*. He may also bring proceedings for a violation of his right to liberty and security of person pursuant to section 6 of the Hong Kong Bill of Rights Ordinance (Cap. 383), which enables a court to grant such remedy or relief in respect of a violation of the Bill of Rights as it considers appropriate and just in the circumstances.

Requisition of properties in circumstances other than a public health emergency

6. A Member suggested that the Administration should consider amending the Bill to provide for the power to requisition private properties in an emergency situation which was less serious than a “public health emergency” as defined in clause 8 of the Bill so that the situation could be controlled as quickly as possible.

7. Section 16 of the existing Quarantine and Prevention of Disease Ordinance (Cap. 141) provides that, where on any occasion it appears to the Director of Health necessary for the carrying out of any of the provisions of the Ordinance, he may in writing authorize any health officer to requisition temporarily any vehicle or vessel for such period as in the opinion of the health officer is necessary for the carrying out on that occasion of such provision.

8. Clause 8 of the Bill expands the scope of private properties that can be requisitioned from vehicles and vessels only to any properties. Although not stated explicitly in the Bill, we anticipate that the additional properties that may be requisitioned include vaccines, medicine, personal protective gear, building, etc. Given the implications of requisition on property rights protected under Articles 6 and 105 of the Basic Law, our policy is that we will only exercise the requisition power in a public health emergency as defined under clause 8 of the Bill (the same policy applies to other powers that can be provided under the Public Health Emergency Regulation). Where an emergency situation falls short of a public health emergency, the Government will make use of its existing resources to handle the situation.

Defining “requisition” in the Bill

9. Since our policy is that the power of requisitioning private properties will only be exercised during a public health emergency as explained in paragraph 8 above, we are of the view that the definition of “requisition” should be best placed in the Public Health Emergency Regulation under which the requisition power will be exercised. However, having regard to Members’ request, we will consider providing a definition of the term under clause 8 of the Bill.

Banning of backyard poultry farming versus requisition of properties / seizure of articles under the Bill

10. Members referred to the banning of backyard poultry keeping activities in 2006 where the Government did not provide any compensation and asked whether the same household would be compensated if the Bill were enacted.

11. The Administration banned backyard poultry keeping activities in February 2006 by amending the Waste Disposal Ordinance (Cap. 354) and the Public Health (Animals and Birds)(Licensing of Livestock Keeping) Regulation (Cap. 139, sub. leg. L) to remove the exemption from licensing or authorization requirements for keeping not more than 20 poultry. To enforce the new legislation, households conducting backyard poultry keeping activities were requested to dispose of the poultry themselves or by surrendering voluntarily to the public authorities. The advice of the Department of Justice (submitted to the Legislative Council Subcommittee vetting the legislative amendments vide LC Paper No. CB(2)1226/05-06(04)) was that, the legislative amendments did not involve de facto deprivation of properties and were considered to be consistent with the property rights guaranteed under Article 105 of the Basic Law. As such, the Government was not obliged to provide compensation under the legislative amendments.

12. Against the above background, it can be seen that the case of banning backyard poultry keeping activities should be distinguished from requisition of private properties during a public health emergency or seizure of articles that are believed to be or contain an infectious agent under clause 3 of the Bill. Under the Bill, in cases of requisition of properties or seizure of articles that involve de facto deprivation of or interference with property rights, compensation as is just and equitable in the circumstances will be paid under the Public Health Emergency Regulation (for requisition of private properties) or section 12(1) of the Bill (for seizure of articles).