

**For information
on 8 April 2008**

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

**Response to Members' questions raised
at the meeting on 26 March 2008**

At the meeting on 26 March 2008, the Administration has undertaken to provide written response on the following:

- (a) Safeguards for persons placed under isolation / quarantine other than judicial means such as judicial review and *habeas corpus*;
- (b) Definition of “requisition”;
- (c) Justifications for not providing in the Bill that the Chief Executive (CE) in Council will declare a state of public health emergency and review the situation from time to time to decide whether the public health emergency still exists as in the Patents Ordinance (Cap 514);
- (d) Whether it is appropriate for the Legislative Council (LegCo) to vet the Public Health Emergency (PHE) Regulation through a negative vetting procedure given its impact on the public; and
- (e) Whether the Administration will consider providing compensation to people isolated / quarantined for the financial loss that they suffered during the period of isolation / quarantine, having regard to the practice in other jurisdictions.

Safeguards for persons placed under isolation / quarantine

2. Under the Bill, “health officer” includes the Director of Health;

the Deputy Director of Health; the Controller, Centre for Health Protection; and medical practitioners appointed by the Director of Health as health officers or port health officers. Before placing the person under isolation / quarantine, a health officer must have reason to believe that the person has been infected with or is a contact of 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 decision to place a person under isolation / quarantine will be made with due care and consideration. A health officer will make professional judgment having regard to the person's conditions, such as medical or contact history, clinical symptoms or signs, laboratory test results, etc. and discussions with the parties providing such information.

3. Under clause E4 of the draft provisions of the Prevention and Control of Disease Regulation (i.e. the regulation to be made by the Secretary for Food and Health under clause 7 of the Bill) submitted to the Bills Committee vide LC Paper No. CB(2)1304/07-08(02), an isolation / quarantine order must specify the terms of isolation / quarantine. We will provide safeguards in the terms of the order. A person placed under isolation / quarantine may request for a medical examination or test to be performed by a medical practitioner of his choice, in addition to the examination or test to which a health officer subjects the person. The person will also be subject to regular medical examination or test in order to review his health conditions. Last but not least, as explained at the last meeting, a person aggrieved by the decision of a health officer can seek remedy through the court by applying for judicial review or a writ of *habeas corpus*, or bringing proceedings for a violation of his right to liberty and security of person pursuant to the Hong Kong Bill of Rights Ordinance (Cap 383).

Definition of “requisition”

4. We will provide a proposed definition of “requisition” later after studying the definition of the term in other local legislation and consulting the Legal Service Division of the LegCo Secretariat.

Declaration and duration of a state of public health emergency

5. Under section 72B of the Patents Ordinance, the CE in Council may, for the purpose of applying sections 72C to 72J (provisions relating to import compulsory licences), by notice published in the Gazette declare a period of extreme emergency whenever the CE in Council considers it to be necessary or expedient in the public interest to do so to address any public health problem or threatened public health problem in Hong Kong. The CE in Council shall review from time to time, or cause to be reviewed from time to time, the public health problem or the threatened public health problem leading to the declaration. The period of extreme emergency continues to run until such a date as may be specified by the CE in Council by notice published in the Gazette terminating the period of extreme emergency.

6. Under clause 8 of the Bill, on any occasion which the CE in Council considers to be an occasion of a public health emergency, he may make regulations for the purpose of preventing, combating or alleviating the effects of the public health emergency and protecting public health. “Public health emergency” is clearly defined under clause 8(4). The CE in Council will repeal the PHE Regulation when it is considered that the state of public health emergency for which that particular PHE Regulation was made has ceased.

7. It can be seen that both the declaration of a period of extreme emergency under the Patents Ordinance and the making of the PHE Regulation under the Bill serve the same purpose: to trigger the machinery for handling an emergency situation that threatens the public health when the CE in Council considers that such a situation exists in Hong Kong. Therefore, a separate statutory declaration of public health emergency by the CE in Council under the Bill is not necessary for that purpose. The Government has the duty to notify the World Health Organization about the public health emergency under the International Health Regulations (2005), and the Government will make announcements to keep the public informed of the emergency situation.

8. Although we will not provide for the making of a declaration of public health emergency in the Bill, the CE in Council will make such a

declaration when there is a public health emergency.

9. Regarding the review of the public health emergency situation, given the significant impact of making the PHE Regulation on Hong Kong, it goes without saying that the Government will continuously review the situation and will repeal the Regulation once the state of public health emergency has ceased. However, to reassure the public that the PHE Regulation will not remain in force longer than necessary, we will consider providing in clause 8 of the Bill that the CE in Council will review or cause to be reviewed the public health emergency situation from time to time, in line with the provisions in the Patents Ordinance.

Vetting of the PHE Regulation by the LegCo

10. We must emphasize that it is of paramount importance to give the Government the necessary powers to control a public health emergency without any delay. The negative vetting procedure will allow the PHE Regulation to come into operation on the date of publication in the Gazette and at the same time allow the LegCo to scrutinize it. This procedure ensures timely implementation of the emergency powers.

11. Our proposal is in line with the practice provided under the public health legislation of overseas jurisdictions such as Australia¹, Canada², Singapore³ and the United Kingdom (UK)⁴. Under their legislation, the emergency declarations / orders / regulations come into operation as soon as they are made / signed, and are at the same time subject to the scrutiny of the legislature.

12. In the event of a public health emergency, we will brief the LegCo after the PHE Regulation has been made, and provide LegCo with updates on its implementation until it is repealed by the CE in Council.

¹ Australian Capital Territory Public Health Act 1997

² Quebec Public Health Act

³ Infectious Diseases (Amendment) Bill 2008

⁴ Civil Contingencies Act 2004

Compensating for financial loss suffered by people isolated / quarantined

13. We have studied the public health legislation of Australia⁵, Canada⁶, the Macao Special Administrative Region⁷, New Zealand⁸, Singapore⁹, UK¹⁰, and the United States¹¹. All the legislation does not have provision on compensation specifically to be paid to persons placed under isolation / quarantine.

14. The Public Health (Control of Disease) Act 1984 of the UK currently contain a general compensation clause, which provides that a local authority shall make full compensation to any person who has sustained damage by reason of the exercise by the authority, in relation to a matter as to which that person has not himself been in default, of any of their powers under a relevant provision of this Act. The Act also requires a local authority to compensate a person who suffers loss by complying with a request from the authority to stay off work. Subsequent to a consultation on a review of the Act in March 2007, the Department of Health of the UK has proposed to amend the relevant clauses so that in principle no compensation should be provided to the subject of an order by the local authority for any loss sustained by having to take such action. However, a Justice of the Peace (a lay magistrate) will have discretion as to whether to require the local authority to compensate a person for all or part of the losses as a result of complying with the order. The Bill to amend the Act has not yet been introduced into the Parliament.

15. The Bills Committee also requested us to refer to the following provisions from two Australian legislation quoted in LC Paper No. CB(2)1170/07-08(01) prepared by the Administration for the meeting on 28 February 2008. These provisions seem to imply that compensation would be provided to persons placed under isolation.

⁵ Quarantine Act 1908 (last amended 2007)

⁶ Quarantine Act 2005

⁷ Prevention, Control and Treatment of Infectious Diseases Law 2004

⁸ Public Health Bill 2007

⁹ Infectious Disease Act 1977 and Infectious Disease (Amendment) Bill 2007

¹⁰ Public Health (Control of Disease) Act 1984

¹¹ Model State Public Health Act 2003

(a) *Victoria Health Act s125*

Any person affected by a seizure of any land, building or thing is entitled to compensation for that seizure unless the need for that seizure arose from some action or fault on the part of that person.

(b) *Australian Capital Territory Public Health Act s122*

A person may apply to the Minister for compensation in relation to any loss or damage suffered by him as a result of anything done in the exercise of a function under public health emergency, being a function exercised while an emergency declaration was in force.

16. Section 125 of the Victoria Health Act concerns seizure of land, building or thing. Under section 124 of the same Act, during a public health emergency, the Secretary to the Department of Health Services may make an order to seize land, buildings or things in the area to which the proclamation of emergency applies to be (a) used in connection with stopping, limiting or preventing the spread of diseases; or (b) disinfected; or (c) damaged or destroyed if the land, building or thing is contributing to the spread of disease. The land, building or things seized should be returned if possible and where no longer required for the purpose it was seized. It appears that section 125 of the Act concerns more about seizure or requisition of land, building or thing rather than isolation of an area. In our case, compensation is provided under clause 12 of the Bill and the PHE Regulation made under clause 8 of the Bill for seizure of articles and requisition of properties respectively.

17. Regarding section 122 of the Australian Capital Territory Public Health Act, under section 120 of the same Act, things that can be done during a public health emergency include segregation or isolation of any persons in an area, the prevention of access to an area, etc. Therefore, it seems that a person suffering from loss or damage as a result of isolation may apply to the Minister for compensation under the Act. However, one should note the right to compensation provided under section 122 of the Act is only in relation to acts performed when a public health emergency declaration is in force. The Act does not provide for compensating a person placed under isolation when there is no public health emergency.

18. To conclude, we maintain our view not to compensate for the financial loss suffered by persons who are lawfully isolated / quarantined under the proposed legislation. This position is in line with most of the legislation in other jurisdictions that we have studied. Any person who is believed to be infected with or a contact of a specified infectious disease also has a general duty to avoid exposing others to the risk of infection. Isolation / quarantine of a person whom a health officer has reason to believe is infected with or is a contact of a specified infectious disease is an essential measure for protecting public health. The period of isolation / quarantine will not be long, and the person will be released as soon as a health officer considers that the person is not infectious or the isolation / quarantine can be substituted with medical surveillance.

19. Having said that, in the case of a public health emergency where a large number of people may be affected, the fact that the Government is not liable for their financial loss does not preclude the introduction of relief measures on compassionate ground. A recent example is the Trust Fund set up after the SARS outbreak in 2003 to provide special ex-gratia relief payment or financial assistance.

Food and Health Bureau
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