

**For information
on 18 April 2008**

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

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

At the meeting on 11 April 2008, the Administration has undertaken to provide written response on the following:

- (a) To provide information on the definition of “requisition” in other local legislation and to consider replacing “person” in “the person requisitioning it” in the definition of “requisition” proposed in LC Paper No. CB(2)1573/07-08(02) by either “Government” or “authority”; and
- (b) To consider revising the drafting of clause C1 of the draft Prevention and Control of Disease Regulation (draft Regulation) to provide for the magistrate to issue a warrant to a health officer for entering or breaking into any premises.

Definition of “requisition”

2. “Requisition” is defined in the following local legislation:

- a) *Section 2 of Oil Pollution (Land Use and Requisition) Ordinance (Cap 247)*

In relation to any property, means to require the use of the property, or to require the property to be placed at the disposal of the authority or officer requisitioning it, or to take possession of the property.

(Note: “The authority” refers to a “competent authority”, which is defined in the Ordinance to mean a public officer appointed by the Chief Executive for the purpose of the Ordinance, the Director of Civil Engineering and Development and the Director of Marine.)

b) Section 2 of Oil (Conservation and Control) Ordinance (Cap 264)

In relation to any oil, take possession of the oil or require the oil to be placed at the disposal of the Director [of Oil Supplies].

3. Taking account of Members’ advice, we propose to revise the definition of “requisition” to be provided under clause 8 of the Bill as follows:

For the purposes of the regulation providing for matters specified in subsection (2)(c), property may be requisitioned by –

- (a) requiring a person to place it either temporarily or permanently at the disposal of the public officer requisitioning it; or*
- (b) taking possession of it by the public officer requisitioning it either temporarily or permanently.*

Empowering the magistrate to issue a warrant to health officer for entering or breaking into any premises

4. Clause C1(4) of the draft Regulation only provides that a magistrate can issue a warrant to a health officer for entering or breaking into a residential premises. In order to avoid hindering the effective investigation by a health officer of an infection or a leakage of a scheduled infectious agent in a premises because of dispute on whether the premises that a health officer intended to enter or break into under clause C1(1) was a residential premises, a Member suggested that we should consider revising the drafting of clause C1 to provide for the magistrate to issue a warrant to a health officer for entering or breaking into any premises.

5. In the actual situation, one of the following two scenarios can happen when a health officer seeks to enter a premises under clause C1(1):

- (a) If the occupier or the person appearing to be in charge of the premises, be it residential or non-residential, allows the health officer to enter, then no warrant is required;
- (b) If the occupier or the person appearing to be in charge of the premises refuses the health officer's entry without a warrant, in case the health officer has reason to suspect that the premises may fall under the definition of "residential premises" under clause C1(6), i.e. a place or part of a place that is used wholly or principally for dwelling purposes and constitutes a separate household unit, he will proceed to apply for a warrant under clause C1(4). Otherwise, he is empowered to enter or break into the premises without a warrant under clause C1(3).

6. We consider that the present drafting of clause C1 should serve the purpose and that there is no need to revise it to empower the magistrate to issue a warrant to a health officer for entering or breaking into any premises. The purpose of the Member's suggestion is to deal with the scenario described in paragraph 5(b) above. However, the procedures set out in that paragraph has already ensured that a health officer can enter any premises.

7. Having said that, to avoid doubt, we will amend clause C1(4) to provide that, in addition to the information to be provided to a magistrate provided under subsection (a) to (c) of that clause, a health officer has to have reason to suspect that the premises is a residential premises and has been refused entry.