

**For information
on 18 April 2008**

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

Power of Arrest under the Bill

This paper explains the reasons for giving the power of arrest to public officers and persons other than police officers, e.g. health officers, staff of hospitals, under the Bill, and how the arrest power under clause 5 will be exercised in practice.

General

2. Powers of arrest are provided under clauses 5 and 6. In brief, clause 6(1) empowers health officers, police officers, appointed public officers, staff of hospital or a place of isolation / quarantine and members of the Auxiliary Medical Service (AMS) or Civil Aid Service (CAS) to arrest a person who escapes from a place of isolation / quarantine. Clause 5(1) gives the arrest power to health officers and police officers to deal with circumstances other than that under clause 6(1). Clause 5(2) empowers all health officers, police officers, and public officers and persons enforcing the legislation to arrest any person who obstructs or assist in obstructing their lawful exercise of power.

3. In most cases, a police officer arrests a person under the Bill upon receiving information from a health officer. Police officers also provide assistance to health officers and other officers / persons given the arrest power to exercise such power. Where a person arrested by a non-health officer is suspected to be infected with a specified infectious disease, the person may be handed over to a health officer for conducting the necessary medical examination or test to ascertain his health conditions.

4. While a general arrest power is given to staff of hospitals or places of isolation / quarantine under clause 6(1), the management of these places will decide on the internal arrangements and draw up the necessary procedures.

Power of arrest under clause 5(1)

5. Clause 5(1) provides that if a health officer or a police officer reasonably suspects that a person has committed or is committing an offence under the Ordinance, the health officer or the police officer may stop, detain or arrest that person without warrant.

6. The draft Prevention and Control of Disease Regulation (draft Regulation) submitted to the Bills Committee on 11 March 2008 provides for power of the health officers to implement a range of measures for controlling the spread of diseases. For instance, clause E2 empowers a health officer to place an article which he has reason to believe is infected with a specified infectious disease under isolation, and clause E3 empowers the Director of Health to isolate a place if it is necessary for the prevention of the spread of a specified infectious disease. To implement these measures effectively, the draft Regulation provides that no person shall remove an article under isolation (clause E2(4)), or bring any article in / take away any article from a place under isolation (clause E7(1)) without the permission of a health officer. Usually, an article or a place under isolation will be under the supervision of health officers, and assistance of the Police will be sought as and when required. Thus, it is necessary to give the power to a health officer to arrest a person who has removed or is removing the article while seeking assistance from the Police in parallel. Without clause 5(1), the health officer will not have the legal power to stop, detain or arrest the person before a police officer arrives at the scene.

7. Another example is the carrying out of disease control measures provided under clauses G1 and G2. Clauses G1 and G2 empower a health officer to require disease control measures (i.e. cleansing, deratting disinfection, disinsection and decontamination) to be carried out with respect to points of entry, conveyances or premises. In order to carry

out these measures, a health officer may close the premises or remove any person from it (clause G1(3)); or stop, detain or close any conveyance or remove any person from it (clauses G2(2)). The closure of premises or conveyances and removal of persons are carried out by health officers. Similar to the cases in paragraph 6 above, should any person enter the closed premises or conveyance or try to remove the conveyance before the required disease control measure has been carried out satisfactorily, a health officer needs to have the power to arrest the person while seeking assistance from the Police.

8. Although health officers and the Police work closely together in enforcing the legislation, it is still necessary to give health officers the arrest power for effective prevention and control of infectious diseases in case there is no police officer at the scene. Letting a person leave the scene unhindered while he is removing an infected article because a health officer does not have the power to legally arrest him would pose serious public health risk.

9. Please note that except for the particular case provided for under clause 6(1) (more details below), the power to arrest a person who has committed or is committing an offence under clause 5(1) is only given to health officers and police officers. This reflects the policy that health officers and police officers are the main enforcement officers of the legislation, and that arrest power will be given only when absolutely required and fully justified.

Power of arrest under clause 6(1)

10. Clause 6(1) provides for the arrest power in a specific situation where a person who is detained under the Ordinance escapes. In such case, the person can be arrested by any member of the staff of the hospital, the reception place, or the place of isolation or quarantine from which he escaped; any public officer appointed under the Ordinance; any police officer; or any member of AMS or CAS. The person may be conveyed to the place from which he escaped or any other place authorized by a health officer and detained in that place.

11. Under the draft Regulation, a person can be detained –
- (a) for isolation or quarantine (clause E5);
 - (b) when he is infected with SARS, Influenza A (H2, H5, H7 or H9) or Extensively Drug-Resistant Tuberculosis seeking to leave Hong Kong in contravention of a health officer's order prohibiting him from leaving Hong Kong within a specified period (clause L3); or
 - (c) in the case of a traveller, for measuring his body temperature (clause L4).

12. In the above cases, there is a need to give the power of arrest to a wider scope of public officers / persons in addition to health officers and police officers. These people include those who may be deployed to manage the place of isolation / quarantine or the place where the person is detained, e.g. public officers on duty at holidays camp used as a place of isolation / quarantine, members of AMS and CAS, members of the Immigration Service (for arresting a person seeking to leave Hong Kong in contravention of a health officer's order at a point of entry), hospital staff, etc. Similarly, while they are usually assisted by police officers, the Bill has to give them the power so that they can arrest a person placed under isolation / quarantine who is trying to escape from the place of isolation / quarantine before a police officer arrives. This can ensure that swift and timely actions can be taken against the spread of infectious disease.

Power of arrest under clause 5(2)

13. Clause 5(2) provides that if a person obstructs a health officer, a police officer, or a public officer or a person appointed under the Ordinance, or assists in any such obstruction, the health officer, the police officer, or the public officer or the person appointed under the Ordinance may arrest that person without warrant.

14. This clause ensures that all public officers and persons enforcing the legislation can carry out their duties unobstructed, including the exercise of their arrest power under clauses 5(1) and 6(1).

Safeguards of the rights of persons arrested

15. The rights of a person arrested by a person other than a police officer will be fully safeguarded. Under clause 5(3) of the Bill, the person will be delivered to a police officer as soon as practicable, who will then handle the person in accordance with established procedures. The usual safeguards applicable to an arrested person, e.g. the right to be informed of the reason for arresting him, the right to trial or to release within a reasonable time, the right to take proceedings before a court, etc. will also be applicable to persons arrested under clauses 5 and 6. Suitable training will be provided to public officers and persons authorized to exercise the power of arrest under the Bill to ensure that they understand the proper arrest procedures and the rights of the arrested person.

Food and Health Bureau
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