

LS/B/3/07-08
2869 9468
2877 5029

By Fax (2840 0467)

3 April 2008

Mr LUK Kar Kin, Bruno
AS for Food & Health (Health)1
Food and Health Bureau
Health Branch
19/F, Murray Building
Garden Road
Hong Kong

Dear Mr LUK,

Prevention and Control of Disease Bill
Draft provisions of the Prevention and Control of Disease Regulation

We are scrutinising the legal and drafting aspects of the draft provisions of the Prevention and Control of Disease Regulation ("the draft Regulation"). We have some questions on the Draft Regulation at the Annexure to this letter for your clarification.

It is appreciated for your reply, in both languages, to reach us at your earliest opportunity.

Yours sincerely,

(Stephen LAM)
Assistant Legal Adviser

c.c. DoJ
(Attn : Mr Allen LAI, SGC) (Fax : 2869 1302)
LA
SALA1
CCS(2)5

General Observation

In facilitating members to scrutinise the Draft Regulation, would you compile a table to show whether any provisions of the Draft Regulation are taken or adapted from the existing Quarantine and Prevention of Disease Ordinance (Cap. 141) or the regulations made thereunder.

A2

In the definition of "traveller", why is it appropriate to use the formulation of "a person ... seeking to leave Hong Kong" instead of "a person ... leaving Hong Kong"? If it is appropriate to use the formulation of "a person ... seeking to leave Hong Kong", then would it also be appropriate to change the formulation, in the definition of "cross-boundary conveyance", from "a conveyance that is engaged on a journey ... leaving Hong Kong" to "a conveyance that is engaged on a journey ... seeking to leave Hong Kong", and in the definition of "cross-boundary public vehicle", from "a public vehicle that is engaged on a journey ... leaving Hong Kong" to "a public vehicle that is engaged on a journey ... seeking to leave Hong Kong"?

B3

Since non-compliance with B3(1) is a criminal offence, would it be appropriate to specify what exactly an operator is required to notify?

Would it be appropriate to provide for a defence to the operator (c.f. B6)?

B4

Since the scope of information required to be given under B4(1) is very wide, would it be appropriate to exempt the operator's criminal or civil liability from giving such information which may be subject to confidentiality?

B5

Is it intended that a traveller is required to give information under B5(1) at a point of entry? If so, would it be appropriate to make it clear in the provision?

C1

What is the reason for excluding the places referred to under C1(6)(a)-(d)?

C6(1)

Would you give examples in comparable overseas legislation using the formulation of subjecting a person to "medical surveillance or a medical examination or a test, which must be more intrusive or invasive than is necessary for ascertaining the person's health condition"?

C6(2)

Would you give examples of conditions to be specified in the provision?

E

We are given to understand that the Administration will overhaul the meaning of isolation and quarantine.

G3

Would it be appropriate to make it an offence for a person who takes water from the well before it has been cleansed or disinfected to the satisfaction of a health officer?

I1(3)(a)

Under what conditions will a health officer waive the requirement to submit a declaration in the form described as the "Model of Maritime Declaration of Health" in the International Health Regulations?

I2(2)(a)

Under what conditions will a health officer waive the requirement to submit a certificate that is in accordance with the form described as the "Model Ship Sanitation Control Exemption Certificate/Ship Sanitation Control Certificate" in the International Health Regulations? Are those conditions contained in I3 and I4?

I6(3)(a)

Under what conditions will a health officer waive the requirement to submit a declaration in the form described as the "Health Part of the Aircraft General Declaration" in the International Health Regulations?

J2(4)

Since the removal of a vessel from quarantine anchorage or anchorage without the permission of a health officer is a criminal offence, does the term "stress of weather" give clear criteria for the operator to know as to when he could remove the vessel from quarantine anchorage or anchorage?

J3(1)

Would the formulation of "an operator ... shall ensure that no person ..." is too vague for the operator to know the boundary of his duty in order to comply with the law, bearing in mind that failure to comply with the requirement is a criminal offence?

J5

Would there be any objective criteria for a health officer to assist him to form his opinion on whether or not a vessel is in a sanitary condition?

L2(3) and (4)

Failure to comply with a condition attached to the permission is a criminal offence. Therefore, controversy may arise as to what the permission and the condition are, if they are made orally instead of in writing. To avoid controversy, would it be appropriate for the permission in L2(3) and the condition in L2(4) to be made in writing?