



中華人民共和國香港特別行政區政府總部食物及衛生局  
Food and Health Bureau, Government Secretariat  
The Government of the Hong Kong Special Administrative Region  
The People's Republic of China

**By Fax : 2509 0775**

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Legislative Council Secretariat  
8 Jackson Road  
Central  
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Dear Mr Lam,

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

Thank you for your letter of 3 April 2008 on the draft provisions of the Prevention and Control of Disease Regulation (draft Regulation). Our response to your questions is provided below in their original order.

General observation

A table comparing the draft Regulation and the existing Quarantine and Prevention of Disease Ordinance (QPDO) (Cap 141) and the Prevention of the Spread of Infectious Diseases Regulation (Cap 141 sub. leg. B) is at **Annex**.

A2

Section 27B of the Prevention of the Spread of Infectious Diseases Regulation also uses the formula “any person seeking to leave Hong Kong”. According to the Concise Oxford Dictionary, “seeking” means “attempting to do something”, which is applicable to a person.

We have no objection to changing the phrase “leaving Hong Kong” in the definitions of “cross-boundary conveyance” and “cross-boundary public vehicle” to “seeking to leave Hong Kong” for the sake of consistency.

### B3

Clause B3 only requires operators of cross-boundary conveyance to notify the Director of Health when he has reason to suspect the matters in subsection (1)(a) and (b), rather than providing information as required by a health officer as in Clauses B2, B4 and B5. We consider that a defence for the operators is not necessary.

The Department of Health (DH) will provide guidelines to operators of cross-boundary conveyance on notification of diseases.

### B4

Section 59 of the Personal Data (Privacy) Ordinance (PD(P)O) (Cap 486) provides that personal data relating to the physical or mental health of the data subject are exempt from the provision of data protection principle 3 (i.e. personal data shall not, without the prescribed consent of the data subject, be used for any purpose other than the purpose for which the data were to be used at the time of the collection of the data, or a purpose directly related to that purpose), if the application of the principle would be likely to cause serious harm to the physical or mental health of the data subject or any other individual.

As information to be given by an operator of a point of entry or cross-boundary conveyance to a health officer under clause B4(1) is for the purpose of investigating a suspected case or source of a specified infectious disease (which poses serious public health risk), we consider that the provision in the PD(P)O quoted above already exempts the operator's criminal or civil liability from giving personal data under clause B4(1). Furthermore, in the course of investigation, a health officer will only ask for information such as manifest, routing, proof of disease control measures taken, travel history of passengers, proof of vaccination or other prophylaxis of passengers, etc., which do not involve any information subject to legal privilege, we do not consider it necessary to expressly provide in clause B4 that the operator does not have a duty to furnish information subject to legal privilege as in section 3(9) of Organized and Serious Crime Ordinance (Cap 455).

### B5

While in most cases information will be collected from a traveller at the point of entry, there are cases where sick travellers will have to be taken quickly to hospitals before information can be collected. The current drafting provides this flexibility.

### C1

Places listed under clause C1(6) have one or more of the following characteristics:

- (a) the sharing of facilities over a prolonged period of time;
- (b) the concentration of a large group of people in a small place for a long time;
- (c) close and frequent contacts between the occupants;
- (d) the physical condition of the occupants which render them particularly vulnerable to infection; and
- (e) the nature and physical environment of the premises in question.

In the event that there is a case or source of infection in the places listed under clause C1(6), the outbreak potential is high. It is important for DH to have the power to carry out investigation immediately without delay when there is an outbreak or suspected outbreak in any of these places.

#### C6(1)

This provision is included having regard to the requirements under Articles 23 and 31 of the International Health Regulations (2005) of the World Health Organization (WHO) that medical examination applied on travellers should be the least intrusive and invasive that would achieve the public health objective of preventing the international spread of disease. We have included this provision as an important safeguard for the person's rights.

Clauses 90 to 93 of the Public Health Bill of New Zealand set out the overarching principles that must be taken into account by health officers and the courts in the management of conditions posing health risks. The principle set out in clause 91 is that where an officer or a court may apply alternative measures to an individual, preference must be given to the least restrictive measure that, in the judgment of the officer or court concerned, will achieve the objective of minimising the health risk posed by the individual.

#### C6(2)

Conditions to be observed by the person may include place, time or frequency of medical examination.

#### E

With our proposed deletion of the definitions of "isolation" and "quarantine" under clause 2 of the Bill, we will revise clause E1 to provide that where a health officer has reason to believe that a person is a contact of, or is infected with a specified infectious disease, the health officer, may by order in writing, place the person under quarantine or isolation respectively.

G3

We will consider adding a provision to make it an offence for people who take water from a well which a health officer has ordered to be filled up, or before it has been cleansed or disinfected to his satisfaction.

I1(3)(a) and I2(2)(a)

A health officer may waive the requirement to submit the Maritime Declaration of Health / Ship Sanitation Control Exemption Certificate / Ship Sanitation Control Certificate for ships entering Hong Kong waters to avoid stress of weather without embarking/disembarking any person or loading/unloading any cargo. Another example is in the case of the so-called river trade vessels (RTVs) which travel within the Pearl River Delta. They are relatively smaller vessels with a small crew size. Since RTVs enter Hong Kong waters frequently, up to a few times a day, it is not practicable to require them to submit a Declaration / Certificate every time they enter Hong Kong. Instead, DH has established an inspection system with Entry-Exit Inspection and Quarantine Bureaux of Guangdong, Shenzhen, and Zhuhai to monitor the sanitary condition of the RTVs and health condition of the crew.

I6(3)(a)

Under section 32 of QPDO, when required by a health officer, the master of any aircraft shall make and sign a true declaration (Health Part of the Aircraft General Declaration) as to the presence or prevalence of an infectious disease on board or during the voyage, all particulars regarding any disinsecting carried out before or during such voyage and any other particulars as may be required by the health officers. DH has not requested such routine declaration from aircraft in the last few decades, but the operator of an aircraft is required to notify DH as soon as practicable when there is any case of infectious disease on board. While DH has no intention to change the current practice, there is a need to retain the power to require the operator of a cross-boundary aircraft to submit the Health Part of the Aircraft General Declaration having regard to specific circumstances and recommendations of the WHO.

J2(4)

There is a similar provision in section 24 of the QPDO. There is no clear definition of bad weather. As a usual practice in the maritime field, a ship master is allowed to decide whether to leave the quarantine anchorage during bad weather for the sake of safety.

J3(1)

The vessel referred to in this clause has not been granted free pratique. It is an established international practice that disembarking of person or unloading of article is not allowed without the permission of the health/quarantine authority.

J5

DH will draw up guidelines on how to assess the sanitariness of a vessel. The guidelines will also be updated when guidelines / recommendations of WHO are available. As the minimum requirements, the vessel needs to have a valid Ship Sanitation Control Certificate or Ship Sanitation Control Exemption Certificate and there should be no indication of a case of infectious disease or contamination on the Maritime Declaration of Health.

L2(3) and (4)

We have no objection to making the permission in clause L2(3) and the condition in L2(4) in writing.

Yours sincerely,



(Bruno LUK)  
for Secretary for Food and Health

**Provisions of the draft Prevention and Control of Disease Regulation and similar provisions in the Quarantine and Prevention of Disease Ordinance (Cap 141) and the Prevention of the Spread of Infectious Diseases Regulations (Cap 141 sub. leg. B)**

Clause	Cap. 141 section	Cap. 141B section
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Clause	Cap. 141 section	Cap. 141B section
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