

立法會

Legislative Council

LC Paper No. LS27/07-08

Paper for the House Committee Meeting on 4 January 2008

Legal Service Division Report on Prevention and Control of Disease Bill

I. SUMMARY

- 1. Object of the Bill** To replace the Quarantine and Prevention of Disease Ordinance (Cap. 141) (the existing Ordinance) by a new Ordinance that is designed to bring the legislative basis for measures to control and prevent disease up-to-date and in line with the requirements of the International Health Regulations (2005).

- 2. Comments** The Bill:-
 - (a) provides for power of seizure, forfeiture and arrest in prescribed circumstances;
 - (b) empowers the Secretary for Food and Health, the Chief Executive in Council and the Director of Health to make subsidiary legislation in specified circumstances;
 - (c) specifies a list of infectious diseases and infectious agents; and
 - (d) provides for miscellaneous matters and consequential amendments.

- 3. Public Consultation** Various stakeholders were consulted on the legislative proposals and their response was positive.

- 4. Consultation with LegCo Panel** The Panel on Health Services (the Panel) was briefed on the legislative proposals at its meeting on 12 February 2007. Members were in general supportive of the proposals, though some members expressed concerns over some issues arising from the proposals.

- 5. Conclusion** The Bill contains important proposals on measures to control and prevent disease outbreaks in Hong Kong. Members of the Panel have already expressed concerns over a number of issues arising from the proposals. The Legal Service Division is still seeking clarification with the Administration on some legal and drafting points in the Bill. Members are recommended to form a bills committee to study the legislative proposals in detail.

II. REPORT

Object of the Bill

To replace the Quarantine and Prevention of Disease Ordinance (Cap. 141) (the existing Ordinance) by a new Ordinance to:-

- (a) provide for power of seizure, forfeiture and arrest in prescribed circumstances;
- (b) empower the Secretary for Food and Health (the Secretary), the Chief Executive in Council (the CE in Council) and the Director of Health (the Director) to make subsidiary legislation in specified circumstances;
- (c) specify a list of infectious diseases and infectious agents; and
- (d) provide for miscellaneous matters and consequential amendments.

LegCo Brief Reference

2. FH CR 4/3231/96 issued by the Food and Health Bureau in December 2007.

Date of First Reading

3. 19 December 2007.

Comments

Power of seizure, forfeiture and arrest

4. Clause 3 provides that a health officer may, with the approval in writing of the Director and for the purpose of the control or preventing the spread of any disease that poses a public health risk, seize any article that the health officer has reason to believe is an infectious agent or contains an infectious agent. The term "public health risk" is defined in the Bill to mean "a risk of serious and direct danger to the health of human beings".

5. Clause 4 provides that a health officer may forfeit any article that is taken into Hong Kong illegally.

6. Clause 5 provides for the power of a health officer, etc. to stop, detain or arrest a person who has committed or is committing an offence under the Bill or who

has obstructed or assisted in the obstruction of the health officer, etc. in the performance of statutory functions.

7. Clause 6 provides for the power to arrest a person who escapes from detention.

Power to make subsidiary legislation

8. Clause 7 empowers the Secretary to make regulation for the purpose of the prevention of any disease and the spread of any disease and contamination, in particular the application of measures in the light of any recommendation made by the World Health Organization (WHO) (other than those made pursuant to article 15 of the International Health Regulations (2005) (IHRs)). The regulation may provide that a contravention of any provision of the regulation is an offence punishable with a fine not exceeding level 3 (\$10,000) and a term of imprisonment not exceeding 6 months.

9. Clause 8 empowers the CE in Council to make public health emergency regulation for the purposes of preventing, combating or alleviating the effects of a public health emergency and protecting public health, in particular the requisitioning of property and matters relating to compensation for such requisition. The regulation may provide that a contravention of any provision of the regulation is an offence punishable with a fine not exceeding level 5 (\$50,000) and a term of imprisonment not exceeding 6 months. The term "public health emergency" is defined under the Bill to mean:-

- "(a) the occurrence of or the imminent threat of a disease, an epidemic or a pandemic;
- (b) the occurrence of a novel, or highly infectious, agent or matter; or
- (c) the widespread exposure or the imminent threat of widespread exposure of human beings to an infectious agent,

that has a high probability of causing a large number of deaths in the population or a large number of serious disabilities (whether or not long-term) in the population."

10. Clause 9 empowers the Director to prescribe by an order published in the Gazette any measure to be applied in the light of any temporary recommendation made by the WHO pursuant to articles 15, 17 and 18 of the IHRs. Article 15 of the IHRs empowers the Director-General of the WHO to issue temporary recommendations when there is a public health emergency. Article 17 of the IHRs provides for criteria for issuing temporary recommendations. Article 18 of the IHRs provides for the advice, to be included in the recommendations issued by the WHO, with respect to persons, baggage, cargo, containers, conveyances, goods and postal parcels.

Miscellaneous matters and consequential amendments

11. Clause 10 requires the Commissioner of Police to furnish police assistance on the request of a health officer.
12. Clause 11 provides for the offence (punishable with a fine at level 2 (\$5,000) and imprisonment for 2 months) of obstructing or assisting in the obstruction of a health officer, etc. in the performance of statutory duties.
13. Clause 12(1) provides that the Director may order just and equitable compensation to be paid for any article that is damaged, destroyed, seized, surrendered or is submitted to any person pursuant to statutory authority. Clause 12(2) provides that any dispute as to whether compensation is payable or on the amount of compensation may, in default of agreement, be resolved or determined by arbitration in accordance with the Arbitration Ordinance (Cap. 341). Clause 12(3) provides that sub-clause (1) does not apply to cases for which compensation is provided for by regulations made by the CE in Council under clause 8.
14. Clause 13 provides for the immunity from any personal liability in respect of anything done or omitted to be done in good faith by a health officer or any public officer or persons acting under the direction of the health officer.
15. Clause 14 provides that the Bill does not affect the internal management of vessels or aircraft of war of the Chinese People's Liberation Army or of foreign vessels or aircraft of war, or their freedom of movement.
16. Clause 15 empowers the Director to amend the Schedules to the Bill.
17. Clauses 16 and 17 repeal the existing Ordinance and its subsidiary legislation except for the Boats and Wharves (Supply of Water) Regulation (Cap. 141 sub. leg. A).
18. Clause 18 makes consequential amendments to other ordinances.
19. Schedule 1 provides for a list of infectious diseases.
20. Schedule 2 provides for a list of infectious agents.

Public Consultation

21. According to paragraphs 17-18 of the LegCo Brief, the Administration has consulted various stakeholders on the legislative proposals and their response was positive. Some expressed concerns over the impacts of the proposed measures on their business operations, and pointed out the need for the Director to provide

guidelines in due course for the implementation of health measures. The Administration undertakes to work closely with the relevant stakeholders to address such concerns and to ensure smooth implementation of the proposed measures.

Consultation with LegCo Panel

22. The Administration briefed the Panel on Health Services (the Panel) at its meeting on 12 February 2007 on the legislative proposals. Members were in general supportive of the proposals. Some of them however had the following concerns or suggestions:-

- (a) empowering the CE in Council to decide on "state of public health emergency" in times of major outbreak of infectious disease in Hong Kong might delay the taking of effective measures to combat it;
- (b) the requisitioning of private property (including vaccines, drugs, personal protective gears, vehicles, shipping containers and vacant residential facilities) by the Government during a state of public health emergency might contravene Article 105 of the Basic Law;
- (c) roles of the Hospital Authority, the Department of Health (DH) and the private doctors or hospitals in combating infectious diseases should be clearly spelt out in the Bill;
- (d) express provisions should be added to the Bill to ensure compliance by medical practitioners to provide information that was within their knowledge relating to cases of infectious disease to facilitate investigation and contact tracing, and compliance by sick persons, contacts and carriers of infectious diseases placed under medical surveillance;
- (e) the Administration should make clear in the Bill that to enable the Director to recruit the assistance of unregistered but qualified health care personnel during an emergency was not to allow the Director to recruit anyone as he saw fit; and
- (f) powers to be conferred upon the Government would further exacerbate the already concentration of powers on the Government in handling infectious disease outbreaks, and provisions to counteract such phenomenon should be included in the Bill.

23. At the request of the Panel, the Administration undertook to address the following issues either in the LegCo Brief or at the bills committee to be formed to study the Bill:-

- (a) how do the proposed amendments differ from the relevant provisions in the existing Ordinance and to what extent would the handling of infectious disease outbreaks be enhanced as a result of enacting these proposed amendments;¹
- (b) what are the practices and legislative measures adopted by other jurisdictions in dealing with public health emergency and how did these practices and legislative measures differ from the proposed amendments;² and
- (c) whether there is any contingency measure should the CE and members of the Executive Council also become infected during a public health emergency.³

24. The Administration also advised that the new powers to be conferred upon the Government, the CE in Council, the Director and DH in handling infectious disease outbreaks would be conferred by way of subsidiary legislation.

Conclusion

25. The Bill contains important proposals on measures to control and prevent disease outbreaks in Hong Kong. Members of the Panel have already expressed concerns over a number of issues arising from the proposals. The Legal Service Division is still seeking clarification with the Administration on certain legal and drafting points in the Bill. Members are recommended to form a bills committee to study the legislative proposals in detail. In the meantime, the Legal Service Division will continue to scrutinise the technical aspects of the Bill.

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¹ Members may refer to Annex B to the LegCo Brief which contains a comparison table showing major deletion and addition of powers under the Bill and the existing Ordinance. Members may further refer to paragraphs 2-10 of the LegCo Brief which contain the merits of the proposed amendments in the Bill.

² The Administration will explain this issue in detail at the bills committee to be formed to study the Bill.

³ The Administration will explain this issue in detail at the bills committee to be formed to study the Bill.