

**For information
on 11 March 2008**

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

**Response to Members' questions raised at the meeting
on 28 February 2008**

Circumstances under which powers proposed in the Prevention and Control of Disease Bill ("the Bill") would be exercised and the respective authorities

The object of the Bill is to replace the Quarantine and Prevention of Disease Ordinance (Cap 141) by a new Ordinance that is designed to bring the legislative basis for measures to control and prevent disease up-to-date and into line with the requirements of the International Health Regulations ("IHR")(2005) of the World Health Organization ("WHO"). The Bill contains fundamental and enabling provisions, such as those providing for the power of arrest, seizure and forfeiture of health officers; the making of regulations by the Secretary for Food and Health ("SFH") and Chief Executive ("CE") in Council; the power of the Director of Health to prescribe measures to be applied in the light of any temporary recommendation made by WHO pursuant to IHR(2005), etc. Provisions that are operational in nature, such as the notification of cases of infectious disease, disease prevention, isolation and quarantine of persons, etc. will be included in a new subsidiary legislation, to be named the Prevention and Control of Disease Regulation ("the PCD Regulation"), which will be made by SFH under clause 7 of the Bill after its enactment. The PCD Regulation will provide a holistic plan of measures for the prevention, surveillance and control of infectious diseases and cross-boundary spread of disease in respect of Hong Kong residents, travellers, goods and cross-boundary conveyances.

2. All the powers in the Bill and the PCD Regulation, except for the power of the CE in Council to make the Public Health Emergency Regulation ("PHE Regulation") under clause 8 of the Bill for handling a

public health emergency, can be exercised both in peacetime and during a state of public health emergency for the prevention and control of disease. The power of the CE in Council to make the PHE Regulation under clause 8 will only be exercised during a public health emergency. The PHE Regulation will provide additional powers to the Government to contain the disease outbreak within the shortest possible time. Such powers may include the power of access and disclosure of information, requisitioning of properties, etc. The PHE Regulation will be repealed once the state of public health emergency ceases to exist.

3. Authorities exercising the powers proposed in the Bill are shown below:

Clause	Proposed power	Authority exercising the power
3	Seize an article that is believed to be an infectious agent or containing an infectious agent	Health officer, with the written approval of Director of Health
4	Forfeit an article that is taken into Hong Kong illegally	Health officer
5(1)	Stop, detain and arrest a person who has committed or is committing an offence under the Bill	Health officer or police officer
5(2)	Arrest a person who has obstructed or assisted in the obstruction of health officers, etc. in the performance of statutory functions	The health officer, the police officer, or the public officer or the person appointed under the Bill who are being obstructed
6	Arrest a person who escapes from detention	Member of the staff of the hospital, place of isolation, etc. from which the person escapes; public officer appointed under the Bill; police officer; member of the Auxiliary Medical

Clause	Proposed power	Authority exercising the power
		Service or Civil Aid Service
7	Make regulations for the purposes of the prevention of the introduction into, the spread in and the transmission from, Hong Kong of any disease, source of disease or contamination, and the prevention of any disease	SFH
8	Make public health emergency regulations	CE in Council
9	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 the IHR	Director of Health
15	Amend Schedules 1 and 2 of the Bill by way of a notice published in the Gazette	Director of Health

Defining “requisition” in the Bill

4. Members suggested adding a definition for “requisition” in the Bill to cover both deprivation of and interference with property. As explained at the meeting, the authorities cited in footnote 8 of LC Paper No. LS55/07-08 prepared by the Legal Service Division of the Legislative Council Secretariat show that “requisition” is not a technical legal term, and that it may refer to the taking of property in full ownership, the taking of possession of property, and the acquisition of a right to have property used in a particular manner without any taking of possession (*Australian United Steam Navigation Co v Shipping Control Board* [1945] CLR 508, 521, per Latham CJ, as cited in the above footnote). It is clear from these authorities that “requisition” in its ordinary meaning will cover deprivation of and interference with property, depending on the state of things in a particular case. An explicit

definition of the term in the Bill does not seem to be necessary.

5. That said, to avoid doubt, we will provide a definition for “requisition” in the PHE Regulation with reference to the definitions of the term in other local legislation.

Compensation scheme for requisition of properties in the PHE Regulation

6. Members suggested including in the PHE Regulation a compensation scheme for requisition of properties. In footnote 16 of LC Paper No. LS55/07-08 prepared by the Legal Service Division of the Legislative Council Secretariat, some examples of a “compensation scheme” in the existing legislation were referred to, namely sections 6 – 8 of the Oil Pollution (Land Use and Requisition) Ordinance (Cap 247) and section 9 of the Oil (Conservation and Control) Ordinance (Cap 264). These provisions provide for how compensation in cases of requisition will be determined, being “such compensation as is just having regard to all the circumstances of the case” in the case of Cap 247, and “such compensation as may be agreed or as may, in default of agreement, be determined by arbitration to be just having regard to all the circumstances of the particular case” in the case of Cap 264. Sections 6 – 8 of Cap 247 also provide for the procedure for making claims for compensation.

7. The PHE Regulation will provide for a similar compensation scheme in respect of requisition of properties. It will provide that any person who sustains loss or damage in consequence of or arising out of the exercise of any requisition power, or is entitled to the use of or rent from any requisitioned property, is entitled to recover such compensation as is just and equitable in the circumstances. It will also include the procedure for making claims for compensation, and a provision similar to clause 12(2) of the Bill, providing for resolution or determination of any dispute as to whether compensation is payable or the amount of compensation.

8. Like the compensation schemes provided for in Cap 247 and Cap 264, the compensation scheme in the PHE Regulation will not put a cap on the amount of compensation. The measure of compensation that it

provides for (namely, such compensation as is just and equitable in the circumstances) ensures that it is sufficiently flexible to allow for different situations encompassing deprivation cases under Article 105 of the Basic Law (“BL 105”) and cases of mere interference with property rights. In deprivation cases under BL 105, there is already a constitutional requirement for real value compensation to owners of deprived properties, and the measure of compensation will be guided by the principles of determining the “real value” as decided by local courts and mentioned in paragraphs 11 – 13 of LC Paper No. CB(2)1170/07-08(02) prepared by the Administration. In cases of mere interference with property rights, compensation will be determined having regard to the “fair balance test” as explained in paragraph 14 of the same paper.

Definition of “article” in clause 2 of the Bill

9. On the definition of “article” in clause 2 of the Bill, Members requested the Administration to clarify the reason for placing the phrase “and, to avoid doubt, includes mail of any kind” outside the parenthesis in paragraph (c) as “mail” is a type of “movable property”.

10. The phrase in question qualifies paragraphs (a), (b) and (c) of the definition of “article”. The current drafting is to cater for the unusual cases where animals (such as insects) or plants (including leaves or seeds) are sent to Hong Kong by post. If the phrase is placed inside the parenthesis, “mail” will only mean the mailing of inanimate objects referred to in paragraph (c).

Framework of the PHE Regulation

11. We will provide the framework of the PHE Regulation for Members’ information later.

Food and Health Bureau
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