

Part II The Japanese government's response to COVID-19

Chapter 4

State of emergency and soft lockdown

On April 7, 2020, Prime Minister Shinzo Abe announced a state of emergency at the government's COVID-19 response headquarters, stating the following:

“Deeming that a situation has occurred that may have a significant impact on the people's lives and the national economy due to the rapid and nationwide spread [of COVID-19], I am announcing a state of emergency based on the provisions of Article 32, Clause 1 of the revised Act on Special Measures for Pandemic Influenza and New Infectious Diseases Preparedness and Response.”

On top of that, he emphasized the fact that although an emergency was being declared, “we will not enforce lockdown of cities as seen overseas, but will prevent the spread of infection by preventing the Three Cs of closed spaces, crowded places, and close-range contact while maintaining as much as possible necessary economic and social services such as public transport.”

In this chapter, we will focus on the process leading up to the issuance of the state of emergency, the first in Japan's history regarding infectious diseases; the characteristics of Japan's legal system, which does not impose penalties, etc.; as well as clarify facts regarding the efforts of the national and local governments to change people's behavior.

1. Amendment of the Act on Special Measures for Pandemic Influenza and New Infectious Diseases

1.1. Selecting the legal framework for initial measures

Under the existing Japanese legal system, it was necessary to apply the Act on Special Measures for Pandemic Influenza and New Infectious Diseases Preparedness and Response in order to issue a “state of emergency” regarding infectious diseases at the national level. However, as of January, when the first case of COVID-19 infection was confirmed in Japan, the government took the view that the novel coronavirus was not covered under the special measures act,¹ assuming at that point that the virus would be dealt with based on the legal framework of the Infectious Diseases Control Law and the Quarantine Act. As a senior Health, Labor and Welfare Ministry official recalls,² “At this point, there were still only isolated cases in Japan and there wasn't much discussion about applying the special measures act to COVID-19.” At this juncture, the government had

not given serious consideration to the prospect that the future spread of infection would require a “state of emergency” for COVID-19 under the special measures act.

In fact, on January 27, Prime Minister Abe stated in the Lower House Budget Committee, “The government plans to designate the infectious disease related to the novel coronavirus as a designated infectious disease under the Infectious Diseases Control Law at the Cabinet meeting tomorrow so as to enable hospitalization measures for the infectious disease and appropriate medical care at public expense.” On the following day, the government ordinance for establishing COVID-19 as a designated infectious disease (government ordinance No.11, 2020) was promulgated. When the ordinance took effect for one year beginning February 1, the novel coronavirus disease became a “designated infectious disease” under the Infectious Diseases Act (Class-II equivalent) and a “quarantinable infectious disease” under Item 3, Article 2 of the Quarantine Act.³

As a result, hospitalization measures for patients suspected of being infected with COVID-19 became possible based on the Infectious Diseases Control Law,⁴ and medical examinations and tests at the time of entry to the country⁵ could be enforced based on the Quarantine Act. On the other hand, as a general rule, patients suffering from COVID-19 had to be admitted to a medical institution designated by the Infectious Diseases Control Law.⁶ It should be noted that there were no legal grounds under the Infectious Diseases Control Law to restrict the use of facilities or request voluntary restraint on people’s activities. In addition, since the quarantinable infectious disease laid down in Item 3, Article 2 of the Quarantine Act was not subject to the isolation or restriction on people’s movement⁷ permitted by the act, it was still not possible at this point to take such measures on people suspected of infection with the novel coronavirus entering Japan based on the Quarantine Act.

On February 12, the number of infected cases in China surged, and as the number of infections exceeded 1,000 in Zhejiang Province following the outbreak in Hubei Province, the need for more comprehensive and agile border measures increased. Therefore, from February 13, the government added foreigners who had been in Zhejiang Province to the scope of landing refusal measures, and on the following 14th, strengthened measures based on the Quarantine Act,⁸ paving the way for entrants suspected of COVID-19 to be isolated or their movement restricted under the act.

1.2. Transition of legal framework – Amendment of the special measures act

As described in Section 1.1., COVID-19 measures were initially started under the legal framework of the Infectious Diseases Control Law and the Quarantine Act. However, under the influence of a subsequent increase in social tension, the government had to review the legal framework and amended the special measures act so that it could be applied to COVID-19.⁹ The revised special measures act was promulgated on March 13, and came into effect on the following day.

1.2.1. Expert panel news conference and heightened tension

On February 21, the number of infected people in Japan exceeded 100, and as shown in Chapter 3, Section 1.3.2., on the following day, the government's Expert Meeting on the Novel Coronavirus Disease Control held a news conference expressing the view that the nation was at "a crucial juncture" in the battle against the novel coronavirus, social tension over COVID-19 suddenly increased, and the government announced a set of behavior-changing policies such as requesting self-restraint in organizing events and the simultaneous closure of schools nationwide.¹⁰

Amid this growing awareness of a crisis, from around the end of February, there was concern especially at the Prime Minister's Office that the Infectious Diseases Control Law and the Quarantine Act alone would not enable the government to take measures such as a legally-based request for people to stay at home, and that it would not be possible to respond to a spread of infections.¹¹ Preparing a legal framework to respond to COVID-19 was pursued at the initiative of the Prime Minister's Office.¹²

Even if a state of emergency was declared under the special measures act, its authority was limited and it was not possible to implement powerful isolation measures such as the compulsory blockade of cities introduced in Wuhan and Europe. Therefore, the government had the option of pursuing a stronger new law, which carried penalties to enforce restrictions in the use of facilities or people's activities and behavior. Since deliberating a new law in the Diet was a lengthy process, however, creation of such a powerful new law did not come to the forefront of discussions within the government. Instead, a revision to the special measures law to explicitly include COVID-19 as its target was considered as a legislative measure that could be taken at the shortest possible time.¹³ People at the Prime Minister's Office also thought it was highly likely that the opposition parties would respond favorably to amending the special measures act given that the law was created under the administration led by the Democratic Party of Japan.¹⁴ Another possible option was to define the spread of COVID-19 infections as a "disaster" under the Basic Act on Disaster Countermeasures so as to implement stay-indoors measures based on the act and enforce a ban on entry to alert areas with penalties.¹⁵ However, application of the act was never seriously discussed by the government in the process of exploring legal measures against COVID-19.¹⁶

Under these circumstances, Prime Minister Abe ordered the government's COVID-19 response headquarters on February 27 to promptly prepare necessary legislation "to curb the spread of infection and minimize the impact on people's lives and the economy." At this point, it became clear that a new legal framework for measures against COVID-19 would be considered in addition to the Infectious Diseases Control Law and the Quarantine Act.

On February 28, the day after the meeting of the government headquarters, Hokkaido Governor Naomichi Suzuki issued a "state of emergency" over the prefecture.

This state of emergency was a political declaration that had no legal authority, but according to Governor Suzuki, it was issued in the wake of receiving a report from the health ministry's cluster taskforce dispatched to Hokkaido that infections could be quickly put under control if proactive measures were taken such as reducing people's contact with others as much as possible in the next week or two – but that the infections could potentially spread rapidly throughout the prefecture if no actions were taken.¹⁷ This move in Hokkaido was widely reported nationwide, and public sense of crisis over COVID-19 further increased.

1.2.2. Amendment of the special measures act

At the March 7 meeting of the government's response headquarters, Yasutoshi Nishimura, minister in charge of the COVID-19 response, officially announced that the government was preparing an amendment to make COVID-19 subject to the special measures act. Amending the special measures act was also included in the second round of emergency measures for COVID-19 announced by the headquarters on March 10. On the same day a bill to partially revise the special measures act was adopted by the Cabinet and submitted to the Diet, and the bill was approved by the Lower House on February 12 and the Upper House on the 13th, clearing the Diet with unusual speed. It was promulgated and came into effect on the 14th.

1.3. Establishment of response headquarters based on the revised special measures act

In order to clarify its limited timeframe, the revised special measures act, which came into effect on March 14, did not change the main text of the original legislation but instead stipulated in a supplementary provision that COVID-19 would be considered among the “pandemic influenza and new infectious diseases” for a certain period from the date of its enforcement. According to a Cabinet Secretariat official, the act was revised by way of attaching a supplementary provision rather than amending its main text in order to shorten as much as possible the time required for the amendment.¹⁸

Moreover, the revised act stipulated that government, prefectural and municipal action plans, etc. against pandemic influenza and new infectious diseases – which had already been established based on the original special measures act prior to revision – would be considered as applicable to COVID-19, and as a result, action plans for existing infectious diseases and so on would be applied as they were to COVID-19.

Under the revised act, the health minister was required to report to the prime minister “when there was deemed to be a high risk of the spread of COVID-19,” and the prime minister, upon receiving such a report, was to establish a response headquarters in

the Cabinet except when the severity of the patients' conditions was found to be less than or equal to seasonal flu. On March 23, the government newly established the Office for Novel Coronavirus Disease Control in the Cabinet Secretariat for the purpose of coordinating with related ministries and agencies in order to appropriately respond to the expanding COVID-19 infection. Hideki Tarumi, director of the health ministry's Pharmaceutical Safety and Environmental Health Bureau, was appointed as chief of the office, some 50 staff members being assigned thereto. Then, on March 26, health minister Kato reported to Prime Minister Abe that "there is a high risk of the spread of COVID-19," and on the same day, based on Article 15 of the special measures act, a government response headquarters was established.¹⁹ On the following day, a meeting of the advisory committee on basic action policy was also held to formulate the government's action policy.

Through this series of measures, an organizational system was established to issue an "emergency declaration" under the special measures act under the authority of the head of the government's response headquarters, that is, the prime minister.²⁰

2. Declaring a state of emergency

2.1. Lessening of self-restraint mood

Public stress from COVID-19 was already approaching certain limits around mid-March when the revised special measures act was enacted.

On March 9, the Expert Meeting on the Novel Coronavirus Disease Control announced the findings of its analysis in its views on COVID-19 countermeasures that Japan's novel coronavirus infection, which it earlier said was at a critical stage, had not spread explosively and was holding out to a certain extent. In the same document, the expert panel said that "behavioral change by citizens" was a pillar of Japan's basic strategy to combat the novel coronavirus,²¹ and reminded the public to avoid the "Three Cs." However, this gave an impression to the public, who were in a state of so-called "self-restraint fatigue," that the pace of the spread of infection had slowed. The number of new COVID-19 infections in Japan in the week of March 15 fell from the previous week, and on March 19, the state of emergency in Hokkaido was lifted as an initially-feared explosive increase in infections and collapse of the medical care system were averted. The countermeasures taken in the prefecture attracted a great deal of attention nationwide as "success of the Hokkaido model."

Such a series of changes in the situation affected the public's sense of crisis, and as optimism grew that the pace of infection had slowed down, people went outdoors in greater numbers in various parts of the country. In fact, Governor Suzuki of Hokkaido recalls, "From March 19, Hokkaido attracted attention from all over the country as the prefecture that had quickly escaped from the novel coronavirus disease. The news that

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the Hokkaido model was successful may have influenced the public awareness of the crisis nationwide, even though we had to continue the efforts to prevent infection.”²²

It was in these circumstances that the March 19 meeting of the expert panel was held, and a new “Situation analysis and recommendations for COVID-19 countermeasures” was announced. While the expert panel said that, in light of the examples of other countries, Japan could experience a large-scale epidemic with an explosive spread of infection at any time, it did not directly convey an imminent sense of crisis, such as by highlighting an immediate danger of an explosive increase in infections in certain regions of the country. The “analysis and recommendations” also referred to the success of COVID-19 measures taken in Hokkaido, while noting that appropriate behavioral changes by the public throughout Japan was effective in combating COVID-19, with the number of positive cases falling slightly.

According to a member of the expert panel, none of the panel's members at the time was thinking of “relaxing” caution against the novel coronavirus, and they still shared a strong sense of crisis at least within the panel. However, it cannot be denied that the content of the “analysis and recommendations” as a whole could be taken as condoning the then growing trend of easing the public atmosphere of self-restraint. One of the participants in the panel's meeting, who was concerned about expressions that could dampen the self-restraint mood, said after the meeting, “That kind of phrasing will set everyone at ease. You know it's going to be reported, so you need to properly convey a sense of crisis,” thereby sounding a warning to the panel's vice-chair Shigeru Omi.²³

Although the revised special measures act came into effect on March 14, the government did not believe that a state of emergency should be issued immediately due to the prevailing social situation at the time and the nature of the special measures act to restrict private rights.²⁴ In the Lower House Cabinet Committee,²⁵ where the revision of the special measures act was deliberated, COVID-19 minister Nishimura said, “We will first do our best to put the infections under control so that we can get away without using the state of emergency as a last resort.” As Nishimura's words indicate, the government took the step of revising the special measures act as a legal framework just in case.²⁶

At the government's COVID-19 response headquarters on March 20, Prime Minister Abe, after repeatedly explaining the contents of the “analysis and recommendations” by the expert panel announced the day before, instructed officials to consider a concrete policy for reopening schools, which were about to start a new semester. This policy of reopening schools was widely reported in the media with headlines like “No extension of the request for nationwide school closure,” which further accelerated the public trend away from self-restraint. At the Upper House Budget Committee on March 23, the prime minister once again quoted the expert panel as saying that the measures already taken “have been effective” in that the number of new infection cases had slightly declined.

This trend for a falloff in the mood of self-restraint cultivated through the above process directly led to an increase in public outings across the country to mainly cherry-

blossom viewing spots – as the long weekend from March 20 to 22 overlapped with the cherry-blossom viewing season. For example, the number of people at cherry blossom viewing spots in Tokyo such as Ueno Park and Yoyogi Park increased by more than 50% on the previous week, and the number of people at major stations nationwide was higher than the previous week. Furthermore, in the Tokyo metropolitan area, the amusements parks of Toshimaen, Seibuen, and so on resumed operations on March 21, and on the following 22nd, a large-scale K-1 martial arts event was held, gathering some 6,500 people spectators.

2.2. “Lockdown” and the critical phase of explosive infection growth

Although the mood of self-restraint had receded nationwide from mid-March, some experts from the health ministry's cluster taskforce continued to hold severe prospects for the novel coronavirus.²⁷ Around this time, the ministry forecast the number of people infected in each prefecture/municipality using a mathematical model created mainly by Professor Hiroshi Nishiura of the Hokkaido University Graduate School of Medicine, working to convey the results to local governments where an explosive increase in infections was feared.

In the morning of March 19, the health ministry informed Governor Hirofumi Yoshimura of Osaka Prefecture and Governor Toshizo Ido of Hyogo Prefecture that the number of infected cases could increase by about 15 times if no measures were taken and things were left to stand as they were. Yoshimura, who was shocked by this prediction, hurriedly requested that people refrain from unnecessary and non-urgent travel between Osaka and Hyogo during the long weekend starting from the following day. Ido, who had received no prior consultation from the Osaka governor, also held a news conference that night, expressing discomfort that Yoshimura limited the subject of self-restraint to travel with Hyogo, but he, too, announced a policy of calling on people to refrain from unnecessary and non-urgent travel to Osaka Prefecture.

Around the same time, the health ministry also informed Governor Yuriko Koike of Tokyo that the number of infected cases could exceed 10,000 by the end of March. Given that in addition to this forecast, the number of new infections in Tokyo increased during the long weekend from March 20 as more people went outdoors, Koike held an urgent news conference at 11:25 a.m. on March 23 with a total of six other people, including Masataka Inoguchi, vice chairman of the Tokyo Medical Association, and Takao Omagari, director of the Disease Control and Prevention Center at the National Center for Global Health and Medicine in addition to Vice Governor Hiroshi Kajiwara.

Governor Koike emphasized the sense of crisis by sitting in the middle of the six attendees in black suits, stating that “the next three weeks will be an important juncture as to whether there will be an overshoot (an explosive increase in infections).” Approximately 10 minutes after the news conference began, and when Koike's opening remarks were about to end, a slide entitled “Avoid a Lockdown” suddenly appeared on

the monitor, and the atmosphere at the venue changed completely. “There is a possibility that we will have to take strong measures such as a blockade of the city, a so-called lockdown, depending on future development in the situation,” the governor said, calling for further vigilance from the citizens of Tokyo by referring to the “lockdown” that was taking place in Europe and New York at the time.

This sudden use of the words “city blockade” and “lockdown” by Governor Koike had a great impact on the entire nation, and in an abrupt change from the weakening of the self-restraint mood seen during the long weekend earlier in the month, it had the effect of suddenly raising tensions. In addition, grocery hoarding occurred in various supermarkets, and around the end of March, a message of unknown origin spread on SNS saying “Lockdown will happen in Tokyo from April 1,” causing a social turmoil. Under the special measures act, it was not possible to take measures to prohibit people from leaving homes with penalties, so it was impossible in Japan to take the same steps as in Europe and New York. An official of the metropolitan government recalled that a “lockdown” was never discussed but the word was used to “put the emphasis on accurately conveying that we were in a critical situation.”²⁸

On March 24, one night after the news conference, Prime Minister Abe announced that the Tokyo Olympic and Paralympic Games would be postponed for about a year. On the following day, the cumulative number of infected cases in Tokyo exceeded 200, and Governor Koike once again held an emergency news conference. Attending the news conference with the six experts and officials and after finishing a series of explanations about the infection situation in Tokyo and the request to refrain from events, she held up a signboard with a message “Spread of infection in a serious phase” and summarized the status of infection at the time as being in a “serious phase” of an explosive growth in infection. The messages of “explosive infection” and “serious phase” announced by Governor Koike on this day were reported in various media following the governor’s “lockdown” remark on March 23, further adding to the public's sense of crisis.

2.3. Declaring a state of emergency

2.3.1. Impact of “lockdown” remarks

As stated in the preceding Section 2.1., the government did not expect to declare a state of emergency immediately after the revision of the special measures act. However, due to the increase in the number of infected cases and the growing social sense of crisis after the long weekend in March, the momentum for issuing a state of emergency was gradually growing within the government. For example, Prime Minister Abe told COVID-19 minister Nishimura around March 28, “I get the feeling it would be better to declare it earlier,” and Nishimura also said, “I think it would be better to put it out early.”²⁹ However, at this point, the government's ideas were not unified, and inside the

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government and the Prime Minister's Office, there was also deep-rooted caution about the state of emergency due to concerns for adverse effects on the economy, led by Chief Cabinet Secretary Yoshihide Suga.

Discussions were also held at the expert panel with an eye on a state of emergency from around the end of March at the latest, but the views of the experts were mixed. Some supported declaration of a state of emergency, but there were various other opinions, such as that the measures taken thus far were sufficient since a cluster-based approach had been successful. Some of the experts questioned the feasibility of a state of emergency because it was not possible to completely blockade a city under the special measures act. As a result, no unified view from the expert panel was coming out.³⁰

The government's consideration of a state of emergency was greatly affected by the "lockdown" remark by Governor Koike on March 23. In response to this "lockdown" remark, people at the Prime Minister's Office were alarmed by the signs of turmoil such as people buying up food and the spread of baseless information, and there was widespread concern that the public might panic even more if an "emergency declaration" was issued. In particular, the most fearful scenario was that by declaring a state of emergency, the people of metropolitan Tokyo would misunderstand this as a "lockdown" similar to ones enforced in Europe and the United States and try to "evacuate" to other parts of the country, spreading novel coronavirus infections from urban to rural areas.

It was out of such concerns that a cautious argument spread within the government for withholding a "state of emergency" until social unrest over a "lockdown" had subsided, and as a result, Prime Minister Abe and Chief Cabinet Secretary Suga ended up having to repeatedly explain to the public that a state of emergency was not going to be a lockdown like the ones enforced overseas. A staff member in the Cabinet Secretariat recalled that the timing of the state of emergency would have been pushed forward by another week had it not been for Governor Koike's lockdown remarks, acknowledging that her remarks had had a great impact,³¹ and COVID-19 minister Nishimura also recalled that "that [Governor Koike's remark] became a huge turning point," and "I believe that, as a result, the declaration of a state of emergency was delayed."

On the other hand, even as the government was struggling to deal with the repercussions of Governor Koike's "lockdown" remarks, there were growing calls outside the government for an early declaration of a state of emergency. Osaka Governor Yoshimura posted on Twitter on March 29 that "a declaration should be made before (the infection) increases exponentially," and Governor Koike, the very person who had made the "lockdown" remark, met with Prime Minister Abe on March 31 and applied pressure by speaking to the media, "I think a judgment by the state is now required." On April 1, the Japan Medical Association also issued a "medical crisis situation declaration," expressing strong concern that maintaining the medical care provision system was in a critical situation, and the expert panel released data that the COVID-19 infection doubling rate³² for Tokyo during the 10 days from March 21 to 30 was about the same as that of Europe and the U.S.,³³ so there was growing social demand as well for an early issuance

of a state of emergency.³⁴

Furthermore, on April 3, Professor Nishiura of the health ministry's cluster taskforce released a trial calculation (so-called 80% model) that advocated reducing people's contact with others by 80 percent, saying, "If we do not promptly take measures to restrict people's outings similar to what is done in Europe and the U.S., we will not be able to prevent an explosive increase in infected cases." Professor Nishiura's estimation was widely taken up by the media and further raised public interest in the need for a state of emergency.

2.3.2. Declaring the state of emergency

It was around April 4, a few days before the actual issuance of the state of emergency, that the government finally settled on it. Within the government, there was still some caution against declaring a state of emergency, but the final decision was made by Prime Minister Abe.³⁵ A senior official in the Cabinet Secretariat looked back on Abe's decision, "I thought the prime minister would have to make the final decision in an unknown situation like this," and COVID-19 minister Nishimura also recalled that it was a moment when he felt the leadership of Prime Minister Abe the most strongly.

On April 6, after Prime Minister Abe explained his intention to support business continuity and protect employment with economic measures of ¥108 trillion on a project scale, he announced that he would issue a state of emergency the next day based on opinions from the Advisory Committee on Basic Action Policy based on Article 18-4 of the special measures act.

On the morning of the following day, a meeting of the advisory committee was held, and when the draft basic action policy including the issuance of a state of emergency was endorsed, the government's COVID-19 response headquarters officially announced the Basic action policy in the evening. On the same day, the Cabinet decided on the "emergency economic measures for COVID-19," and announced various economic steps, including the expansion of employment adjustment subsidies and the Subsidy Program for Sustaining Businesses

At around 7 p.m. on the same day, Prime Minister Abe held a news conference in the large hall of the Prime Minister's Office, and at the beginning, declared with a determined expression in front of a large number of media reporters, "I issue a declaration of a state of emergency based on Article 32 of the special measures act." At the news conference, which lasted more than an hour, Abe explained the target area and length of the state of emergency, said that the situation in Japan and overseas was completely different and there would be no lockdown under the state of emergency, that they would support households and small and medium-sized businesses facing difficulties with economic measures of ¥108 trillion, which corresponded to 20% of the nation's GDP, and above all, emphasized his determination to overcome, together with the people, this

greatest postwar crisis of the novel coronavirus. Shigeru Omi, deputy chair of the expert panel, also participated in the news conference, because it was deemed that it would be effective for the public's understanding to have Omi directly explain the recommendations of the experts, on which the government's decision was premised.³⁶

Prime Minister Abe emphasized that it was necessary to “reduce contact between people by at least 70% and as close as possible to 80%” as a way to peak out the increase in the number of infected cases at an early stage. This was based on the so-called 80% model mentioned in Section 2.3.1. However, Abe did not accept the 80% model as it was, but added a new standard of “at least 70%” in consideration of the enormous impact on the economy predicted by an “80% reduction.” On this point, a senior official in the Cabinet Secretariat looked back on those days, “I don't think it (the figure of an 80% reduction) was accepted in scientific terms, but rather used politically and was used as an action theory in asking for public efforts.”³⁷ At midnight of the same day, an extra issue of the Official Gazette was posted at the National Printing Bureau to issue a state of emergency. At that moment, the first state of emergency over an infectious disease in the history of Japan came into effect.³⁸

Regarding the above-mentioned process leading up to the declaration of a state of emergency, Prime Minister Abe remembers the difficulties the government faced. “The most difficult decision was to issue a state of emergency. There was a lot of controversy. There was quite a lot of cautious argument in light of the economy. And because Governor Koike used the term lockdown, I had to resolve the misunderstanding and dispel it once and for all. Under that law, (efforts to contain the infections) would be useless if we failed to gain the cooperation all the people. To make sure the measure would prove effective, we needed to synchronize our efforts with the sentiments of the people. That was the difficult part.”³⁹

2.4. Exchanges between the Tokyo Metropolitan Government and the national government over requests to suspend business under the state of emergency

The period of the state of emergency was initially set at 29 days from April 7 to May 6, target areas being Saitama, Chiba, Tokyo, Kanagawa, Osaka, Hyogo and Fukuoka prefectures. It was expanded nationwide on April 16.

The Basic action policy revised on April 7 with the issuance of the state of emergency aimed to reduce people's contact opportunities by “at least 70% and as close as possible to 80%” to prevent the spread of COVID-19. In order to realize this, each prefectural governor was to request people's cooperation in refraining from going out, restrictions on the use of facilities, and self-restraint on holding events based on the special measures act. On the other hand, the national government would support smooth activities by business operators, keep calling on people to avoid the “Three Cs” and refrain from going out, strengthen the system for the cluster-based approach, and beef up border measures and so on. Thus the action policy provided for division of roles between

central and local governments.

However, the distribution of authority between local and central governments under the special measures act was ambiguous, and as mentioned above, the prefectural governors were given broad authority to take steps to prevent the spread of infections and secure medical care systems.⁴⁰ The prime minister was granted the authority to “coordinate comprehensively” the measures taken by the prefectural governors based on the Basic action policy.⁴¹ But the perimeter of this “comprehensive coordination authority” was not legally clear. A senior Cabinet Secretariat official admitted that “the government had no clear answer on what would happen if opinions were divided with the prefectural governor until the very end,” also revealed that the government had made adjustments in negotiations with the prefectures so that any conflict would not continue to the very end.⁴² This ambiguity in the division of authority between the government and prefectures soon became evident in the exchanges between the Tokyo Metropolitan Government and the national government over the request for business operators to temporarily close their shops after the state of emergency was issued.

Assuming that an emergency declaration would soon be issued, the metropolitan government around April 5 compiled its own set of draft measures to be taken in case the state of emergency is declared, based on the Basic action policy (before the revision) adopted by the government's headquarters on March 28. According to the plan, the metropolitan government would i) issue business suspension requests, along with the request for voluntary curbs on people's outings, immediately after the state of emergency is declared and ii) request a wider range of facilities to suspend business that exceed the provisions of Clause 2, Article 45 of the special measures act and Article 11 of the act's enforcement ordinance, which were the basis of the request for suspension of business.

This was explained to the Tokyo Metropolitan Assembly on the following day, but the metropolitan government did not formally coordinate with the national government on this plan, since the special measures act states that requests for restrictions on the use of facilities can be made under the authority of the prefectural governor.⁴³ Around the same day, the national government obtained a copy of the draft plan through the metropolitan assembly. The metropolitan government's plan was nothing if not a “surprise” for the national government, which, in order to avoid direct curbs on economic activities as much as possible, planned to first request self-restraint in people's outings and then proceed with the requests for restricting the use of facilities only if the first step did not produce sufficient effects.⁴⁴

The national government and metropolitan government immediately began making adjustments to reconcile their intentions, but the metropolitan government had a strong sense of crisis regarding the increase in the number of infections, and its position did not change on issuing a request for business suspension of a wide range of sectors at the same time as requesting people to stay home.⁴⁵

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Under the special measures act, the prefectural governor can request a facility manager to cease operations either according to Clause 2, Article 45 of the act or a general “request for cooperation” stipulated in Clause 9, Article 24 of the act. Issuing of the requests based on Clause 2, Article 45, according to Article 11 of the act’s enforcement ordinance, are limited to facilities with a fixed total floor area of more than 1,000 square meters, except for schools and nursery schools. The metropolitan government thought that it would not actually be effective unless it also requested the suspension of the use of facilities smaller in size,⁴⁶ and with a view to requesting cooperation to cease business based on Article 24, Clause 9 of the special measures act, was in fact contemplating asking for cooperation in the closure even of facilities such as barber shops and restaurants, which generally have a floor space less than 1,000 sq. meters.⁴⁷ On the other hand, the national government was of the view that, even if cooperation was to be requested based on Article 24, Clause 9, the targets will be limited to the same as in the case of applying Article 45, Clause 2, and that therefore you cannot request suspension of business for restaurants and other shops with a floor space less than 1,000 sq. meters.⁴⁸

The difference between the metropolitan government and the national government in terms of the order between the request for people to stay home and the request for suspension of business, as well as over the range of facilities subject to that request, thus became clear. Meanwhile, the national government updated its Basic action policy on April 7 following the declaration of the state of emergency, and stipulated in the action policy that the request for people to stay home would be issued as the first step, and then further requests for restricting the use of facilities or self-restraint in organizing events would be issued as the second step only after the effects of the first step were reviewed – thus clarifying the government’s assumed order of the measures to be taken by prefectural governors. As mentioned above, the “general coordination authority” given to the head of the government’s response headquarters (or the prime minister) under Article 20 of the special measures act was based on the Basic action policy, and this revision was meant to put pressure on the metropolitan government regarding the timing and method of requesting suspension of business. A metropolitan government official recalled feeling that the revision of the Basic action policy was “a bit inconvenient” and said, “The metropolitan government just couldn’t ignore (the Basic action policy). That would be going beyond the bounds of the law, so we had to come to terms with it somehow.”⁴⁹

The metropolitan government and the national government continued negotiations thereafter, and after going through the working-level talks, the negotiations gradually escalated to higher levels and explored a point of compromise.⁵⁰ Finally, an agreement was reached through a direct meeting between Governor Koike and COVID-19 minister Nishimura, which was held from around 8 p.m. on April 9.

The final agreement announced on April 10 was that the national government would allow the metropolitan government to simultaneously issue a stay-home request and a request for cooperation on business suspension, while Tokyo narrowed down the sectors subject to the request on business cessation. For example, the metropolitan

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government initially planned to ask restaurants to cooperate in ceasing business, but eventually removed it from the list of targeted sectors – after it accepted the national government's position that restaurants were not subject to the request for restriction on the use of facilities under the special measures act and its enforcement ordinance – and merely requested that the hours for serving food and drinks be limited to 5 a.m. to 8 p.m.⁵¹ Meanwhile, facilities that the metropolitan government eventually requested the restriction on use, including cessation of business, included ones that are not to be targeted under Clause 2, Article 45 of the special measures act and Article 11 of its enforcement ordinance, and requests concerning such facilities were made as requests “outside of the law.”

Regarding the series of exchanges with the national government over the request for business cessation, Governor Koike expressed strong discomfort with the government's intervention, saying, “I thought I had the authority of a CEO, but I heard various voices from on high and felt like I'd become a middle manager.” On the other hand, COVID-19 minister Nishimura, recalls that it took time to understand how to use the special measures act, saying it was a law made on paper that had never been used before, so neither the Tokyo side nor the government side understood how far they could go with the law.⁵²

Concerning the business cessation request made by the Tokyo Metropolitan Government, other prefectures that were the subject of the state of emergency declared on April 7 were initially negative, with Kanagawa Governor Yuji Kuroiwa telling a meeting of the governors' association on April 8 that the prefecture has to face the issue of compensation to the business operators if it's going to ask them to close their shops. However, when the metropolitan government announced the facilities subject to the closure request after the talks with the national government, other prefectures followed in its footsteps, with Kanagawa Prefecture starting to making the business cessation request on April 11, followed by the others in quick succession.

Notes

1. The special measures act cites “new infectious diseases” as among the infectious diseases to which the law applies (Item 1, Article 2), but at the time, the government adopted the view that, since the causative virus had been identified, the novel coronavirus disease could not be deemed a “new infectious disease.”
2. Interview with a senior Health, Labor and Welfare Ministry official
3. Regarding the designation as a “quarantinable infectious disease” under the Quarantine Act, an ordinance to partially revise the Quarantine Act enforcement ordinance (ordinance No. 12, 2020) was promulgated.
4. Articles 19 and 20, Infectious Diseases Control Law
5. Clause 1, Article 13, Quarantine Act
6. Medical institutions designated for specified infectious disease or Category-I infectious diseases
7. Articles 15 and 16, Quarantine Act
8. Ordinance designating COVID-19 as an infectious disease under Article 34 of the Quarantine Act (Ordinance No. 28, 2020, promulgated on February 13 and enforced from the following day) was enacted. With the designation, the ordinance designating COVID-19 as a quarantinable infectious disease under Item 3, Article 2 of the Quarantine Act was revised once again, and COVID-19 was no

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- longer a quarantinable infectious disease under Item 3, Article 2, of the Quarantine Act.
9. Even after the revision of the special measures act, application of the Infectious Diseases Control Law and the Quarantine Act for COVID-19 did not change, and the revision of the special measures act had the significance in greatly strengthening anti-COVID-19 measures.
 10. Regarding the February 24, 2020 meeting of the expert panel, a Cabinet Secretariat staffer said the government began to place more emphasis on the views of the experts after their news conference, of whose content the government was not informed in advance, caused a major social reaction, and that the government was forced to take stricter measures than originally anticipated due to the rise in social momentum. (Interview with a Prime Minister's Office staff member)
 11. Interview with a Cabinet Secretariat official
 12. Interview with a Prime Minister's Office staff member
 13. Interview with a Cabinet Secretariat official
 14. Interview with a Prime Minister's Office staff member
 15. Basic Act on Disaster Countermeasures, Article 60, Clause 3; Article 63, Clause 1; Article 116, Clause 2, etc.
 16. At the Lower House Budget Committee of the 201st Diet on April 28, 2020, Yukio Edano called for the application of the Basic Act on Disaster Countermeasures for COVID-19, and after consultation with the Cabinet Legislation Bureau, Yasutoshi Nishimura, minister in charge of COVID-19 response, replied that it was difficult to interpret the spread of COVID-19 infection as a "disaster" under the disaster countermeasures act.
 17. Interview with Governor Naomichi Suzuki (Bungeishunju, August 2020 issue)
 18. Interview with a Cabinet Secretariat official
 19. The government's COVID-19 response headquarters was already established on January 30, 2020, but that was an ad hoc organization based on a Cabinet decision, and since the response headquarters was newly established based on the special measures act, both were operated in an "integrated" manner. With the establishment of the government response headquarters, each prefecture also set up its own response headquarters, and prefectural governors (serving as chief of the headquarters) were subsequently able to request on legal grounds public and private organizations or individuals for the necessary cooperation in implementing measures against pandemic influenza and new infectious diseases in the area based on Clause 9, Article 24 of the special measures act.
 20. The "state of emergency" based on the special measures act was implemented pursuant to the provisions of Clause 1, Article 32 of the same law. In the same clause, the chief of the government's response headquarters is authorized to issue a state of emergency. Therefore, it can be said that the systematic preparation for issuing a "state of emergency" was ready at this point due to the establishment of the government response headquarters as described above.
 21. In the document, the expert panel called for "early detection of and early response to clusters," "early diagnosis of patients, enhancement of intensive care for seriously ill patients and securing a medical care provision system," and "behavioral change by citizens," stating these are the three pillars of Japan's basic strategy for combating the novel coronavirus.
 22. Interview with Governor Suzuki (Bungeishunju, August 2020 issue)
 23. Interview with a member of the expert panel
 24. Interview with a Cabinet Secretariat official
 25. Lower House Cabinet Committee, No.3, 201st Diet (March 11, 2020)
 26. Interview with a Cabinet Secretariat official
 27. Interview with a member of the expert panel
 28. Interview with a Tokyo Metropolitan Government official
 29. Special Interview with Yasutoshi Nishimura, minister in charge of COVID-19 response (September 15, 2020)
 30. Interview with a member of the expert panel
 31. Interview with a Prime Minister's Office staffer
 32. The time it takes for the number of patients to double.
 33. However, the expert panel maintained that since there were many patients in Tokyo with nosocomial infections and whose infection links were being traced, it was necessary to keep an eye on whether the rise in doubling time in Tokyo was a temporary trend.

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34. This was also reflected in an April 10 poll by NHK on the timing of a state of emergency, with 17% saying it was “appropriate,” while 75% said it was “too late.”
35. Interview with a senior Cabinet Secretariat official
36. Special Interview with minister Nishimura (September 15, 2020)
37. Interview with a senior Cabinet Secretariat official
38. Clause 1, Article 32, of the special measures act states that when issuing a state of emergency, the period during which emergency measures on pandemic influenza and new infectious diseases would be implemented (No. 1); the area where the emergency measures would be implemented (No. 2); and the outline of emergency (No. 3) should be announced. An extra issue of the Official Gazette is issued when there is an item that needs to be urgently announced.
39. Interview with Prime Minister Shinzo Abe (September 11, 2020)
40. Clause 1, Article 20, the special measures act
41. Clause 9, Article 24 of the special measures act and Clause 2, Article 45, of the same act
42. Interview with a senior Cabinet Secretariat official
43. Interview with a Tokyo Metropolitan Government official
44. Interview with a senior Cabinet Secretariat official
45. Interview with a Tokyo Metropolitan Government official
46. Interview with a Tokyo Metropolitan Government official
47. Interview with a senior Cabinet Secretariat official
48. Special interview with minister Nishimura (September 15, 2020)
49. Interview with a Tokyo Metropolitan Government official
50. Interviews with a Tokyo Metropolitan Government official and a senior Cabinet Secretariat official
51. It should be noted that such a request to restaurants is not a request based on the special measures act, but a political communication.
52. Special interview with minister Nishimura (September 15, 2020)