

立法會
Legislative Council

LC Paper No. LS61/12-13

**Paper for the House Committee Meeting
on 21 June 2013**

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 14 June 2013**

Date of tabling in LegCo : 19 June 2013

Amendment to be made by : 17 July 2013 (or the 1st meeting of the next session if extended by resolution)

PART I CONTROL MEASURES IN RESPECT OF SPECIFIED DISEASE

**Prevention and Control of Disease Ordinance (Cap. 599)
Prevention and Control of Disease (Amendment) Regulation 2013 (L.N. 103)
Prevention and Control of Disease Ordinance (Amendment of Schedules 1 and 2) Notice 2013 (L.N. 104)**

L.N. 103

L.N. 103 was made by the Secretary for Food and Health under section 7 of the Prevention and Control of Disease Ordinance (Cap. 599) to amend section 56 of the Prevention and Control of Disease Regulation (Cap. 599 sub. leg. A) (the Regulation) by renaming "Severe Respiratory Disease associated with Novel Coronavirus" as "Middle East Respiratory Syndrome" (MERS).

2. At present, for the purpose of Part 12 of the Regulation, section 56 of the Regulation prescribes four "scheduled infectious diseases" as "specified diseases" (including "Severe Respiratory Disease associated with Novel Coronavirus"). Under section 2 of Cap. 599, "scheduled infectious diseases" means an infectious disease specified in Schedule 1 to Cap. 599.

3. Under section 57 of the Regulation, if a health officer has reason to believe that a person is suffering from a specified disease or has been exposed to the risk of infection of a specified disease, a health officer may, by order in writing, prohibit the person from leaving Hong Kong without the written permission of a health officer during a period specified in the order. A person, who knowingly contravenes the order or fails to comply with a condition attached to the permission, commits an offence and is liable on conviction to a fine at level 2 (\$5,000) and to imprisonment for six months.

L.N. 104

4. L.N. 104 amends Schedule 1 (scheduled infectious diseases) to Cap. 599 by repealing "Severe Respiratory Disease associated with Novel Coronavirus" from the list of infectious diseases and replacing it by "Middle East Respiratory Syndrome". It also amends Schedule 2 (scheduled infectious agents) to Cap. 599 by repealing "Novel Coronavirus associated with Severe Respiratory Disease" from the list of infectious agents and replacing it by "Middle East Respiratory Syndrome Coronavirus" (MERS Coronavirus).

5. The effect of L.N. 104 is that:

- (a) a medical practitioner is required under section 4 of the Regulation to notify the Director of Health (the Director) immediately if the medical practitioner has reason to suspect the existence of a case of MERS; and
- (b) the owner or the person in charge of a laboratory is required under section 43 of the Regulation to notify the Director immediately if it comes to the knowledge of that person that there is a leakage of MERS Coronavirus that may pose a public health risk.

6. A person who fails to notify the Director as required or gives false information to the Director under sections 4 and 43 of the Regulation commits an offence and is liable on conviction to a fine at level 2 (\$5,000) and to imprisonment for six months.

7. L.N. 103 and L.N. 104 have come into operation upon gazettal on 14 June 2013.

8. Members may refer to the LegCo Brief (File Ref: FH CR 4/3231/96) issued by Department of Health, Food and Health Bureau in June 2013 for background information. According to the LegCo Brief, "Severe Respiratory Disease associated with Novel Coronavirus" was added to section 56 of the Regulation and Schedule 1 to Cap. 599 and, "Novel Coronavirus associated with Severe Respiratory Disease" was added to Schedule 2 to

Cap. 599 with effect from 28 September 2012. According to the Administration, the renaming of the disease and the virus to MERS and MERS Coronavirus respectively is necessary to reflect the latest nomenclature adopted by the World Health Organization concerning the disease and the virus.

9. According to the Clerk to the Panel on Health Services, the Panel has not been consulted on L.N. 103 and L.N. 104.

Part II CESSATION OF DECLARATION OF MARKETS AND DESIGNATION AS PUBLIC MARKETS

Public Health and Municipal Services Ordinance (Cap. 132)

Declaration of Markets (Amendment) Notice 2013 (L.N. 105)

Public Health and Municipal Services Ordinance (Public Markets) (Amendment of Tenth Schedule) Order 2013 (L.N. 106)

10. The Director of Food and Environmental Hygiene (DFEH) is empowered under section 79(1) of the Public Health and Municipal Services Ordinance (Cap. 132) to declare a market to which Cap. 132 applies. Any market so declared may be designated by DFEH as a public market under section 79(3) of Cap. 132. The designated public markets are specified in the Tenth Schedule to Cap. 132 (Tenth Schedule). Under section 79(5) of Cap. 132, DFEH may, by order, published in the Gazette, amend, add to or delete from the Tenth Schedule.

11. L.N. 105 amends the Schedule to the Declaration of Markets Notice (Cap. 132 sub. leg. AN) (the Notice) to cease the declaration of Kwong Choi Market (KCM) and Mong Kok Market (MKM) as markets to which Cap. 132 applies.

12. L.N. 106 provides that KCM and MKM cease to be designated as public markets and amends the Tenth Schedule accordingly.

13. L.N. 105 and L.N. 106 will come into operation on 1 November 2013.

14. Members may refer to the LegCo Brief (File Ref: FH CR 3/3801/06) issued by Food and Health Bureau in June 2013 for background information.

15. According to the Clerk to the Panel on Food Safety and Environmental Hygiene (the Panel), the Panel has not been consulted on L.N. 105 and L.N. 106. The Administration briefed the Panel on the outcome of the Administration's consultation with the District Councils on the preliminary findings of the review on the provision of public markets under the management of the Food and Environmental Hygiene Department at its meeting on 11 November 2008. Members may refer to LC Paper No. CB(2)217/08-09(03) for information.

PART III INCREASE IN BASIC PENSION AND WIDOWS AND ORPHANS PENSION

Pensions (Increase) Ordinance (Cap. 305)

Declaration of Increase in Pensions Notice 2013 (L.N. 107)

Widows and Orphans Pension (Increase) Ordinance (Cap. 205)

Widows and Orphans Pension (Increase) Notice 2013 (L.N. 108)

16. L.N. 107 and L.N. 108 are made by the Chief Executive respectively under section 4(1B) of the Pensions (Increase) Ordinance (Cap. 305) and section 3(3) of the Widows and Orphans Pension (Increase) Ordinance (Cap. 205). These Notices respectively declare and specify a 3.5% increase in the following pensions with effect from 1 April 2013-

- (a) basic pension payable to ex-officers and dependants eligible for pension under various pension ordinances as specified in Schedule 1 to Cap. 305; and
- (b) pensions described in Cap. 205 payable to widows and orphans under the Widows and Orphans Pension Ordinance (Cap. 94).

17. Under Cap. 305 and Cap. 205, if the average monthly Consumer Price Index (A) (Average Index) of a period of 12 months ending on 31 March of a year exceeds the Average Index of the immediately preceding 12 months by more than 0.1%, the Chief Executive shall declare or specify a percentage of increase in the relevant pensions equal to the excess as soon as practicable by notice in the Gazette.

18. According to paragraph 4 of the LegCo Brief (File Ref: CSBCR/AP/4-075-005/5 Pt. 16) dated 13 June 2013 issued by Civil Service Bureau, the Average Index of the 12 months ending on 31 March 2013 exceeds the Average Index of the immediately preceding 12 months by 3.5%. In accordance with the provisions in Cap. 305 and Cap. 205, L.N. 107 and L.N. 108 are made to declare and specify a 3.5% increase in the relevant pensions.

19. The effective date as provided in L.N. 107 and L.N. 108 is 1 April 2013. According to paragraph 4 of the LegCo Brief, the proposed date is in line with the usual practice of effecting a pension increase from 1 April of a year.

20. According to the Clerk to the Panel on Public Service, the Panel has not been consulted on the two Notices.

PART IV LEGAL NOTICE NOT REQUIRED TO BE TABLED AND NOT SUBJECT TO AMENDMENT

United Nations Sanctions Ordinance (Cap. 537)

United Nations Sanctions (Iran) (Amendment) Regulation 2013 (L.N. 109)

21. Since 2006, the United Nations Security Council (UNSC) has made several resolutions imposing a range of sanctions against Iran. In September 2007, the United Nations Sanctions (Iran) Regulation (Cap. 537 sub. leg. AF) (Iran Regulation) was made to implement sanctions specified in the UNSC Resolutions 1737 (2006) and 1747 (2007), and the Iran Regulation was amended in May 2008 and March 2011 to give effect to the UNSC Resolution 1803 (2008) and UNSC Resolution 1929 (2010) which expanded the sanctions regime against Iran. These sanctions include prohibition against the direct or indirect supply, sale, transfer and carriage of certain nuclear-related items, materials, equipment, goods and technology to Iran and prohibition against the procurement of certain nuclear-related items or equipment, or arms or related materials from Iran.

22. L.N. 109 is made by the Chief Executive under section 3 of the United Nations Sanctions Ordinance (Cap. 537) on the instruction of the Ministry of Foreign Affairs of the People's Republic of China and after consultation with the Executive Council. It amends the Iran Regulation to give effect to the decision of the Committee established by paragraph 18 of the UNSC Resolution 1737 to update the list of items, materials, equipment, goods and technology which are subject to sanctions specified in the relevant UNSC Resolutions. L.N. 109 also makes some textual amendments to the Iran Regulation.

23. L.N. 109 has come into operation upon gazettal on 14 June 2013.

24. Members may refer to LegCo Brief (without file reference) issued by the Commerce and Economic Development Bureau in June 2013 and circulated to Members vide LC Paper No. CB(1)1309/12-13(01) on 17 June 2013 for further information.

25. Under section 3(5) of Cap. 537, sections 34 and 35 of the Interpretation and General Clauses Ordinance (Cap. 1) shall not apply to regulations made under Cap. 537. Accordingly, L.N. 109 is not required to be tabled in the Legislative Council (LegCo) and is not subject to amendment by LegCo. However, it comes within the terms of reference of the Subcommittee to Examine the Implementation in Hong Kong of Resolutions of the United Nations Security Council in relation to Sanctions (the Subcommittee). As advised by the Clerk to the Subcommittee, the Subcommittee will study L.N. 109 at its meeting to be held in June or July 2013 (date to be confirmed).

Concluding observations

26. No difficulties have been identified in the legal and drafting aspects of the above items of subsidiary legislation.

Prepared by

LAM Ping-man, Stephen
Assistant Legal Adviser
Legislative Council Secretariat
18 June 2013