

立法會
Legislative Council

LC Paper No. LS99/02-03

**Paper for the House Committee Meeting
on 25 April 2003**

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 17 April 2003**

Date of tabling in LegCo : 30 April 2003

Amendment to be made by : 28 May 2003 (or 18 June 2003 if extended by resolution)

**Quarantine and Prevention of Disease Ordinance (Cap. 141)
Prevention of the Spread of Infectious Diseases (Amendment) Regulation 2003
(L. N. 107)**

This Regulation is made by the Chief Executive in Council under section 8 of the Quarantine and Prevention of Disease Ordinance (Cap. 141) and came into operation on the date of gazettal, i.e. on 17 April 2003.

2. The Regulation empowers a health officer to make a written direction prohibiting a person from leaving Hong Kong if he has reason to believe or suspect that the person is suffering from Severe Acute Respiratory Syndrome (SARS) or has been exposed to the risk of infection of that disease by contact with a person suffering from that disease or is a carrier of that disease.

3. It is an offence punishable with a fine of \$5,000 and imprisonment of 6 months for a person to leave Hong Kong in contravention of a direction made by a health officer.

4. The Regulation also empowers certain public officers to stop and detain a person seeking to leave Hong Kong in contravention of a health officer's direction.

5. Further, the Regulation empowers an authorized person to take the body temperature of a person arriving in or leaving Hong Kong, and empowers a health officer or an authorized medical practitioner to carry out a medical examination on a person arriving in or leaving Hong Kong for the purpose of ascertaining whether the person is likely to be infected with SARS.

6. At the meeting of the Subcommittee on Quarantine and Prevention of Disease Ordinance (Amendment of First Schedule) Order 2003 and Prevention of the Spread of Infectious Diseases Regulation (Amendment of Form) Order 2003 on 7 April 2003, Hon Margaret NG asked the Administration to provide a paper setting out all the measures being taken so far to combat SARS and the relevant authority as provided in the Ordinance and its subsidiary legislation. Miss NG also suggested that an overall review of the Ordinance should be made and amendments proposed where necessary. The Administration agreed to provide the paper requested and to consider whether further amendments to the Ordinance were necessary and revert to members within two weeks.

7. Measures to combat SARS were further discussed at the meeting of the Panel on Health Services on 14 April 2003. Members asked the Administration why the proposed measure of requiring departing passengers at the Airport to have their body temperature taken announced a few days before was not yet implemented. They urged the Administration to implement the measure as soon as possible and to extend the requirement to all incoming and outgoing passengers by air, land or sea. The Administration agreed to consider their suggestion.

8. Members may refer to the LegCo Brief (File ref.: HWF/H/21/4 Pt.5 96) issued by the Health, Welfare and Food Bureau dated 16 April 2003 for details. According to the Brief, the Administration had consulted the Airport Authority and airlines on the proposal to require all persons leaving Hong Kong to take body temperature. They have shown support for the proposed requirement.

Public Order Ordinance (Cap. 245)

Frontier Closed Area (Permission to Enter) (Amendment) Notice 2003 (L. N. 108)

9. Under section 38A(1) of the Public Order Ordinance (Cap. 245), the Commissioner of Police may by notice published in the Gazette grant permission to persons of any class to enter or leave a closed area during the times and subject to conditions as are specified in the notice.

10. The main purpose of this Notice is to amend the Schedule to the Frontier Closed Area (Permission to Enter) Notice (Cap. 245 sub. leg. H) so that a general permission is granted to-

- (a) drivers and passengers on road vehicles to or from the Mainland of China via Lok Ma Chau Boundary Control Point to enter or leave the Frontier Closed Area at any time subject to the conditions specified in the Notice; and

- (b) drivers of taxis and public light buses on a scheduled service who enter or leave the Frontier Closed Area for the purpose of carrying persons entering or leaving Lok Ma Chau Boundary Control Point, and the passengers on those vehicles who enter, or intend to leave, Hong Kong via that Control Point from 0000 hours to 0630 hours each day subject to the conditions specified in the Notice.

11. The Panel on Transport and the Panel on Security had held two joint meetings on 6 and 14 January 2003 to discuss "the Trial Schemes for Taxi and Green Minibus Operation at Lok Ma Chau Control Point during the extended period". A site visit was conducted by the two Panels on 10 January 2003 to review the proposed arrangements. The Environment, Transport & Works Bureau informed members vide an information Paper (CB(1)1127/02-03(01)) on 13 March 2003 that the Schemes would commence operation at 0000 hours on 20 March 2003. The joint Panels conducted another site visit that night to observe the implementation of the schemes.

12. This Notice commenced operation on the date of gazettal, i.e. on 17 April 2003. We have sought clarification from the Administration on the legal and drafting aspects of the Notice, in particular, under what legal authority were taxis and green minibuses allowed to enter or leave the frontier closed area during the interim period as from 20 March 2003. The Administration explained that they had made every effort to arrange for gazettal of the general permission but they had taken a bit of time to finalise the wording of the permission in the Notice. They had no intention to take retrospective legal action against taxis and green minibuses for accessing the Lok Ma Chau Boundary Control Point during the interim period (see Annex).

Encl.

Prepared by

HO Ying-chu, Anita
Assistant Legal Adviser
Legislative Council Secretariat
24 April 2003

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LS/S/28/02-03

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Annex

23 April 2003

Legislative Council Secretariat
Legal Service Division
Legislative Council Building
8 Jackson Road
Central
Hong Kong
(Attn : Miss Anita HO)

Dear Miss HO,

**Frontier Closed Area (Permission to Enter)
(Amendment) Notice 2003 (L.N. 108 of 2003)**

Thank you for your letter of 22 April.

On the time gap between the effective date of the trial scheme and the effective date of the above Notice, I would like to explain that we have made every effort to arrange for gazettal of the general permission for taxis and green minibuses to enter the Frontier Closed Area (FCA) as soon as practicable. The situation is that the trial scheme to allow taxis and green minibuses to operate at Lok Ma Chau Boundary Control Point during the extended hours from midnight to 6:30 a.m. has come into being within a short span of time. The proposal was first raised by the trades towards the end of December 2002 following announcement of 24-hour operation at this Control Point and the details of a trial arrangement were worked out after much consultation and discussion and reported to the Transport Panel and the Security Panel in mid-March 2003. To facilitate the implementation of the scheme, we consider it necessary to grant general permission to taxis and green minibuses to enter the FCA through an amendment to the FCA (Permission to Enter) Notice (Cap. 245, sub.leg. H). Since the trial scheme is entirely new, it has taken us a bit of time to finalize the wording of the

permission in the Notice. We have also taken the opportunity of the Amendment Notice to do some minor touching up, such as updating the names of the arrival and departure facilitates at the other two land boundary control points. While the ideal scenario is to have the effective date of the above Notice tie in with the commencement date of the trial scheme, I wish to confirm that this time gap has not affected actual operations. Police officers on the ground have been fully briefed on the arrangements beforehand. There is also no intention to take retrospective legal action against taxis and green minibuses for accessing the Lok Ma Chau Boundary Control Point during the interim period.

On the drafting aspects, we accept your point that the term ‘frontier’ would need to be examined. There is however a Frontier Closed Area Order (Cap. 245 sub. leg. A) delineating the exact boundaries of the FCA which is referred to in the Notice. The Order is made by the Chief Executive under section 36 of Cap. 245. It would not be appropriate for an amendment to this Order to be effected through the present Notice, which is made under section 38A of Cap. 245. Further, we have given an undertaking to the Security Panel to review the coverage of the FCA, as delineated in the FCA Order, and we shall look into the need to bring the Order up-to-date (including the terminology) in the light of the findings of our review.

On the second point about the Chinese translation of the word “through”, the difference in the rendition reflects the different modes of transport. We consider the Chinese translation of the word in column 2 of item 1 which refers to trains to be appropriate and propose no change. As for items 2, 2A and the new 2B, the word refers to road vehicles such as coaches, yellow buses, taxis or green mini-buses which all drop off their passengers for immigration clearance at the Control Point and there are no through vehicles as such. The revised translation of ‘過境’ more appropriately reflects this arrangement.

I hope the above information has clarified matters. The Chinese translation of this response will follow shortly. If you have any further questions, please feel free to contact the undersigned.

Yours sincerely,

(Mrs Margaret Chan)

for Secretary for Security

LS/S/28/02-03

2877 5029

Annex

Secretary for Security
(Attention: Ms Angelina Kwan,
Assistant Secretary (S)A2)
Security Bureau
6/F West and East Wings,
Central Government Offices
Central
Hong Kong

22 April 2003

BY FAX

Fax No. : 2524 3762
Total No(s) of page(s) : (2)

Dear Ms Kwan,

**Frontier Closed Area (Permission to Enter) (Amendment) Notice 2003
(L.N. 108 of 2003)**

I am scrutinising the legal and drafting aspects of the above Notice on behalf of the Members.

Since no Legislative Council Brief has been prepared for this Notice, I have referred to an Information Paper submitted to the Joint Panels on Security and Transport in March 2003 (LC Paper No. CB(1)1127/02-03(01)) entitled "Trial Schemes for Taxi and Green Minibus Operation at Lok Ma Chau Control Point during the extended period" as background information. According to that Paper, the schemes commenced operation on 20 March 2003. This Notice takes effect as from 17 April 2003. In the interim period, as from 20 March 2003, under what legal authority were taxis and green minibuses allowed to enter or leave the frontier closed area?

On drafting aspects, I would like to seek your clarification first on the use of the word "frontier". It is noted that the word "border" in the Schedule has been amended to "boundary" so as to bring the principal Notice into conformity with the status of Hong Kong as a Special Administrative Region of the People's Republic of China. Should the word "frontier" be similarly amended?

Secondly, in column 2 of item 1 of the Schedule, the word “through” has been rendered as “直通” in the Chinese version but in items 2, 2A and the new 2B, it is rendered as “過境”. Why is there a difference in the rendition? In item 2B, if the word "through" means “過境”, why is it necessary to mention "through" at all, as the meaning is already implied from the phrase "to and from the Mainland of China"?

I would appreciate it if you could let me have a reply in both Chinese and English as soon as possible so that I can prepare a report on this Notice to the House Committee before 25 April 2003.

Yours sincerely,

(Anita HO)
Assistant Legal Adviser

c.c. DoJ (Attn: Ms Rayne CHAI, GC)
LA