

**立法會**  
**Legislative Council**

LC Paper No. LS113/19-20

**Legal Service Division Report on  
Subsidiary Legislation Gazetted on 13 July 2020**

**Tabling in LegCo** : Council meeting of 15 July 2020

**Amendment to be made by** : Second meeting of the Council in the next session (or the first meeting held not earlier than the 21st day after the second meeting of the next session if extended by resolution)

**Prevention and Control of Disease (Prohibition on Group Gathering) (Amendment) (No. 7) Regulation 2020** (L.N. 141)

**Prevention and Control of Disease (Regulation of Cross-boundary Conveyances and Travellers) Regulation** (L.N. 142)

**Prevention and Control of Disease (Wearing of Mask) (Public Transport) Regulation** (L.N. 143)

L.N. 141 to L.N. 143 are made by the Chief Executive in Council under section 8 of the Prevention and Control of Disease Ordinance (Cap. 599) with regard to the latest situation of public health emergency relating to COVID-19 ("the disease").

L.N. 141

2. Section 3(1) of the Prevention and Control of Disease (Prohibition on Group Gathering) Regulation (Cap. 599G) prohibits group gatherings of more than 50 persons in any public place<sup>1</sup>, and Schedule 1 to Cap. 599G sets out the types of group gatherings which are exempted from the prohibition.

3. L.N. 141 mainly amends Cap. 599G to reduce the number of persons constituting a group gathering prohibited under Cap. 599G from more than 50 persons to more than four persons and correspondingly amends the total number of participants of a gathering that may be dispersed by an authorized officer under section 10 of Cap. 599G from more than 50 to more than four.

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<sup>1</sup> "Public place" is defined in section 2 of Cap. 599G to mean a place to which the public or a section of the public may or are permitted to have access from time to time, whether by payment or otherwise.

4. L.N. 141 also amends Schedule 1 to Cap. 599G to:
- (a) reinstate the exempted group gathering of not more than 20 persons during a wedding ceremony at which no food or drink is served<sup>2</sup> (new item 9A of Schedule 1);
  - (b) revise the exempted group gathering in certain meetings (i.e. a meeting of a body or a shareholders' meeting of a listed company held in accordance with any Ordinance or other regulatory instrument) to the effect that if more than 20 persons are present at the meeting, the participants must be separated in different rooms or partitioned areas, each accommodating not more than 20 persons (amended item 11 of Schedule 1); and
  - (c) repeal the exempted group gathering during religious activities held at a place of worship (e.g. a church, monastery, nunnery, mosque, synagogue or temple) under item 14 of Schedule 1.

*Government notice made by the Secretary for Food and Health*

5. By G.N. (E.) 80 of 2020 published in the Gazette on 13 July 2020 pursuant to section 4(1) of Cap. 599G, the Secretary for Food and Health ("Secretary") has specified the period of 14 days from 15 July 2020<sup>3</sup> to 28 July 2020 for the purposes of the prohibition of group gatherings of more than four persons in a public place under section 3(1) of Cap. 599G.

L.N. 142

6. L.N. 142 (i.e. Cap. 599H) is a new regulation which provides a mechanism under which regulatory measures may be imposed on cross-boundary conveyances (i.e. aircraft or vessels) arriving (or about to arrive) at Hong Kong from a place outside Hong Kong ("specified conveyances") and certain persons on those conveyances. These measures are summarized below:

- (a) the Secretary may by notice published in the Gazette specify the conditions relating to the prevention and control of the disease or protection of public health for any traveller ("relevant traveller") who, on the day of boarding a specified conveyance or during the

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<sup>2</sup> This exempted group gathering had originally been provided under L.N. 32 of 2020 and was subsequently repealed under L.N. 125 of 2020.

<sup>3</sup> G.N. (E.) 70 of 2020 which specifies the effective period from 3 July 2020 to 16 July 2020 for the prohibition of group gatherings of more than 50 persons in a public place has been suspended upon the commencement of the directions under G.N. (E.) 80 of 2020 on 15 July 2020.

14 days before that day, has stayed<sup>4</sup> in any place outside Hong Kong as specified by the Secretary by notice in the Gazette, or who belongs to a type of persons specified by the Secretary by notice in the Gazette; and such notices made by the Secretary are not subsidiary legislation (section 5 of Cap. 599H);

- (b) if any of the conditions specified by the Secretary are not met in relation to any relevant traveller on a specified conveyance, or a health officer reasonably suspects that there is on board the specified conveyance any person who has contracted the disease or who has been, or is likely to have been, exposed to a significant risk of contracting the disease, the health officer or an authorized officer acting on the advice of a health officer may, among others, prohibit the aircraft from landing in Hong Kong or the vessel from entering or staying in the waters of Hong Kong, or prohibit the disembarkation of any person, or the unloading of any article, from the specified conveyance (section 3 of Cap. 599H); and
- (c) a health officer or an authorized officer acting on the advice of a health officer may require (i) an operator (e.g. the owner, charterer, pilot in command, master, or the person in charge) of a specified conveyance to provide any information concerning the meeting of the specified conditions for the relevant travellers on the conveyance; the travel record of the conveyance or the health conditions of the persons on the conveyance, or (ii) a relevant traveller to provide any information concerning his/her health condition, travel history or any matter concerning any condition specified by the Secretary (sections 6 and 7 of Cap. 599H).

7. To enforce the above measures, L.N. 142 makes it an offence if an operator of a specified conveyance fails to comply with any condition specified by the Secretary or any requirement to provide information to health officers or authorized officers. The maximum penalty for such offence is a fine at level 5 (i.e. \$50,000) and imprisonment for six months. It is also an offence if a relevant traveller fails to comply with the requirement to provide information as required by a health officer or authorized officer. The maximum penalty is a fine at level 3 (\$10,000) and imprisonment for six months.

8. L.N. 142 expires at midnight on 14 October 2020.

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<sup>4</sup> A person is not regarded as having stayed in a specified place if after the person boarded, in a place, a specified conveyance, he/she stopped in a specified place but did not leave the conveyance in that specified place and his/her journey ended subsequently outside that specified place (section 2(2) of Cap. 599H).

L.N. 143

9. L.N. 143 (i.e. Cap. 599I) is a new regulation which introduces a requirement that a person must wear a mask at all times when he/she is boarding or on board a public transport carrier or is entering or present in an MTR paid area during a period specified by the Secretary. The Schedule to Cap. 599I sets out a list of public transport carriers to which the requirement applies (including public buses, public light buses, private buses, taxis, trains, light rail vehicles, tramcars, and ferries).

10. The statutory requirement to wear a mask (i.e. any covering worn over the nose and mouth to provide protection against infections or air pollution) does not apply to, among others, a person who is under the age of two or who has lawful authority or reasonable excuse for not wearing a mask. Section 4(3) of Cap. 599I sets out certain examples of reasonable excuse for not wearing a mask including where:

- (a) the person cannot put on, wear or remove a mask because of any physical or mental illness or without severe distress;
- (b) the person is accompanying, or providing assistance to, another person who relies on lip reading to communicate with the person;
- (c) it is reasonably necessary for the person not to wear a mask in order to avoid any physical harm to the person or others;
- (d) the person is not wearing a mask in order to eat or drink, take medication or maintain personal hygiene (only if the act is lawful and reasonably necessary in the circumstances); or
- (e) the person is required by a public officer performing an official function to remove a mask the person is otherwise wearing.

11. Under section 5 of Cap. 599I, an authorized person (e.g. a police officer, or the driver, conductor, inspector or owner of a public transport carrier, or the MTR Corporation Limited in relation to an MTR paid area) is empowered to deny boarding to the carrier or entry to the paid area to a person not wearing a mask, or require a person to wear a mask and, if such person fails to comply with the requirement, to require that person to disembark from the carrier or leave the area concerned. Under section 6 of Cap. 599I, a person who fails to comply with the requirement to wear a mask or a requirement by an authorized person commits an offence punishable by a fine at level 2 (i.e. \$5,000).

12. L.N. 143 expires at midnight on 14 October 2020.

*Government notice made by the Secretary*

13. By G.N. (E.) 81 of 2020 published in the Gazette on 13 July 2020, the Secretary has, pursuant to section 3(1) of Cap. 599I, specified the period of 14 days from 15 July 2020 to 28 July 2020 for the purposes of the requirement to wear a mask on a public transport carrier and in an MTR paid area under section 4(1) of Cap. 599I.

Other matters

14. Members may wish to note that the Secretary has pursuant to the Prevention and Control of Disease (Requirements and Directions) (Business and Premises) Regulation (Cap. 599F) issued various directions in relation to catering business<sup>5</sup> and scheduled premises.<sup>6</sup>

*Latest directions in relation to catering business*

15. The previous directions issued by the Secretary in relation to catering business (by G.N. (E.) 75 of 2020<sup>7</sup> published in the Gazette on 9 July 2020) is due to expire on 24 July 2020. By G.N. (E.) 78 of 2020 published in the Gazette on 13 July 2020, the Secretary has made the following directions which take effect for a period of seven days from 15 July 2020 to 21 July 2020:

- (a) from 6:00 pm to 4:59 am of the subsequent day, the sale or supply of food or drink for consumption on the premises of any catering business must be ceased and any premises or any part of the premises on which food or drink is sold or supplied for consumption on the premises must be closed;<sup>8</sup>
- (b) implementation of previous protective measures at catering premises (e.g. wearing masks, body temperature screening, provision of hand sanitisers, and maintaining a distance of at least 1.5 metres or some form of partition serving as effective buffer between tables) is extended with modifications that the number of

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<sup>5</sup> G.N. (E.) 43, G.N. (E.) 49, G.N. (E.) 56, G.N. (E.) 62, G.N. (E.) 68, G.N. (E.) 75 and G.N. (E.) 78 of 2020 published in the Gazette on 19 May, 26 May, 2 June, 16 June, 30 June, 9 July and 13 July 2020 respectively.

<sup>6</sup> G.N. (E.) 44, G.N. (E.) 50, G.N. (E.) 57, G.N. (E.) 63, G.N. (E.) 69, G.N. (E.) 76, and G.N. (E.) 79 of 2020 published in the Gazette on 19 May, 26 May, 2 June, 16 June, 30 June, 9 July and 13 July 2020 respectively.

<sup>7</sup> G.N. (E.) 75 suspended G.N. (E.) 68 which was reported in LC Paper No. LS108/19-20.

<sup>8</sup> Under sections 3 and 5 of Cap. 599F, the Chief Secretary for Administration may, in writing, designate any catering business to be exempted from the requirement to cease selling or supplying food or drink for consumption on the business premises. On 16 July 2020, the Government announced that designated staff canteens and catering businesses providing meals for staff members to eat in will be exempted from the restrictions on dine-in services starting from that night ([https://www.news.gov.hk/eng/2020/07/20200716/20200716\\_181658\\_782.html?type=ticker](https://www.news.gov.hk/eng/2020/07/20200716/20200716_181658_782.html?type=ticker)).

customers at any catering premises at any one time must not exceed 50% (instead of 60%) of the normal seating capacity of the premises and that no more than four persons (instead of eight persons) may be seated together at one table within any such premises;

- (c) live performance and dancing must not be allowed, and all karaoke and mahjong-tin kau activities must be suspended, at any catering premises; and
- (d) any premises (commonly known as bar or pub), or any part of a catering business, that is exclusively or mainly used for the sale or supply of intoxicating liquors for consumption in the premises or that part must be closed.

16. G.N. (E.) 75 of 2020 is suspended upon the commencement of G.N. (E.) 78 of 2020 on 15 July 2020.

#### *Latest directions in relation to scheduled premises*

17. The previous directions issued by the Secretary in relation to scheduled premises (by G.N. (E.) 76 of 2020<sup>9</sup> published in the Gazette on 9 July 2020) is due to expire on 24 July 2020. By the directions issued by the Secretary (i.e. G.N. (E.) 79 of 2020 published in the Gazette on 13 July 2020), 12 types of scheduled premises<sup>10</sup> as set out in Part 1 of Schedule 2 to Cap. 599F must be closed for a period of seven days from 15 July 2020 to 21 July 2020. G.N. (E.) 76 of 2020 is suspended upon the commencement of G.N. (E.) 79 of 2020 on 15 July 2020.

#### Consultation

18. As advised by the Clerk to the Panel on Health Services, the Panel has not been consulted on L.N. 141 to L.N. 143.

#### Commencement

19. L.N. 141 to L.N. 143 came into operation on 15 July 2020.

20. As of the date of this report, no LegCo Brief has been issued by the Administration.

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<sup>9</sup> G.N. (E.) 76 suspended G.N. (E.) 69 which was reported in LC Paper No. LS108/19-20.

<sup>10</sup> Those scheduled premises include: (1) amusement game centre; (2) bathhouse; (3) fitness centre; (4) place of amusement; (5) place of public entertainment; (6) party room for social gatherings; (7) beauty parlour; (8) club or nightclub; (9) karaoke establishment; (10) mahjong-tin kau premises; (11) massage establishment; and (12) club-house (except catering premises).

## **Concluding observations**

21. The Legal Service Division is studying the legal and drafting aspects of L.N. 142 and L.N. 143 and will report further, if necessary. No difficulties have been identified in relation to the legal and drafting aspects of L.N. 141.

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