

立法會
Legislative Council

LC Paper No. LS115/19-20

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 27 July 2020**

Tabling in LegCo : Next LegCo meeting after the gazettal of the subsidiary legislation on 27 July 2020 ("first-mentioned meeting")

Amendment to be made by : LegCo meeting held not later than 28 days after the first-mentioned meeting ("second-mentioned meeting"), or the first LegCo meeting held not earlier than the 21st day after the second-mentioned meeting if extended by resolution

Prevention and Control of Disease (Requirements and Directions) (Business and Premises) (Amendment) (No. 5) Regulation 2020 (L.N. 150)

Prevention and Control of Disease (Prohibition on Group Gathering) (Amendment) (No. 9) Regulation 2020 (L.N. 151)

L.N. 150 and L.N. 151 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 emergency¹ relating to COVID-19.

L.N. 150

2. L.N. 150 amends the Prevention and Control of Disease (Requirements and Directions) (Business and Premises) Regulation (Cap. 599F)² to:

¹ Public health emergency is defined in section 8(5) of Cap. 599 to mean, among others, the occurrence of or the imminent threat of a disease, an epidemic or a pandemic that has a high probability of causing a large number of deaths in the population or a large number of serious disabilities (whether or not long-term) in the population.

² Cap. 599F's expiry date is extended from midnight on 31 August 2020 to midnight on 31 December 2020 pursuant to L.N. 147, which came into operation on 23 July 2020. Please refer to Legal Service Division's report (LC Paper No. LS114/19-20 issued on 31 July 2020) for more details.

- (a) empower the Chief Secretary for Administration ("CS") to designate certain catering business and scheduled premises, if satisfied that such designation is necessary for governmental operation or otherwise serves the public interest of Hong Kong because of the exceptional circumstances of the case, to be exempt from the directions issued by the Secretary for Food and Health ("Secretary") in respect of matters including the mode of operation of the relevant business or premises, the closing or opening hours of the relevant business or premises under sections 6(1) and 8(1) of Cap. 599F respectively;
- (b) provide that if seating or tables are made available for customers of a catering business in an area adjacent to the premises of the business or in an area that forms part of any premises within which the premises of the business are situated, the area is to be regarded as part of the premises of the business, and that the person providing those seating or tables or a manager of the premises must comply with any requirement imposed under section 3(1) of Cap. 599F for the period specified by the Secretary pursuant to section 4(1) of Cap. 599F; and
- (c) add "sports premises" and "swimming pool"³ to Part 1 of Schedule 2 to Cap. 599F to include such places as scheduled premises to the effect that certain temporary measures may be imposed by the Secretary concerning the operation of such premises.

L.N. 151

3. Section 3(1) of the Prevention and Control of Disease (Prohibition on Group Gathering) Regulation (Cap. 599G)⁴ prohibits group gatherings of more than four persons in any public place.⁵ L.N. 151 amends Cap. 599G to:

³ The definitions of "sports premises" and "swimming pool" are provided in section 9(4) of L.N. 150. In sum, "sports premises" covers any premises (other than a fitness centre, a place of amusement and a swimming pool) designed for indoor or outdoor sporting activities to which the public have access or that is operated by any organization. "Swimming pool" means any artificially constructed pool used for swimming or bathing (other than a pool specifically designed for treatment purpose and a bathhouse) to which the public have access or that is operated by any organization.

⁴ Cap. 599G's expiry date is extended from midnight on 31 August 2020 to midnight on 31 December 2020 pursuant to L.N. 148, which came into operation on 23 July 2020. Please refer to LC Paper No. LS114/19-20 issued on 31 July 2020 for more details.

⁵ "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.

- (a) reduce the number of persons constituting a group gathering prohibited under Cap. 599G from more than four persons to more than two persons; and
- (b) correspondingly amend the meaning of "dispersable gathering" under section 10(2) to the effect that if the distance between any two gatherings in a public place is less than 1.5 m, then both gatherings may be dispersed by an authorized officer.

Government notice made by the Secretary under Cap. 599G

4. In respect of the prohibition of group gatherings, by G.N. (E.) 92 of 2020 published in the Gazette on 27 July 2020 pursuant to section 4(1) of Cap. 599G, the Secretary has specified the period of seven days from 29 July 2020 to 4 August 2020 for the purposes of the prohibition of group gatherings of more than two persons in a public place under section 3(1) of Cap. 599G. By G.N. (E.) 100 of 2020 published in the Gazette on 3 August 2020, the period specified for the purposes of the above prohibition is extended for a period of seven days from 5 August 2020 to 11 August 2020.

Consultation

5. As advised by the Clerk to the Panel on Health Services, the Panel has not been consulted on L.N. 150 and L.N. 151.

Commencement

6. L.N. 150 and L.N. 151 came into operation on 29 July 2020.

7. As of the date of this report, no LegCo Brief has been issued by the Administration on L.N. 150 and L.N. 151.

Concluding observations

8. No difficulties have been identified in relation to the legal and drafting aspects of L.N. 150 and L.N. 151.

Other matters

9. Members may wish to note that the Secretary has, pursuant to Cap. 599F, issued various directions in relation to catering business⁶ and

⁶ G.N. (E.) 43, G.N. (E.) 49, G.N. (E.) 56, G.N. (E.) 62, G.N. (E.) 68, G.N. (E.) 75, G.N. (E.) 78, and G.N. (E.) 84 of 2020 published in the Gazette on 19 May, 26 May, 2 June, 16 June, 30 June, 9 July, 13 July, and 20 July 2020 respectively.

scheduled premises⁷. The latest directions made by the Secretary are summarized in paragraphs 10 to 13 below.

Latest directions in relation to catering business

10. By G.N. (E.) 95 of 2020 published in the Gazette on 30 July 2020, the Secretary has directed that for a period of five days from 31 July 2020 to 4 August 2020, in respect of all catering businesses, except (i) those set out in Part 1 of Schedule 1 to Cap. 599F, or (ii) those designated by CS to be exempt from the directions made by the Secretary pursuant to section 7A(1) of Cap. 599F ("Specific Catering Businesses"), the selling or supplying of food or drink for consumption on the premises must be ceased from 6:00 pm to 4:59 am of the subsequent day (including from 0:00 am to 4:59 am of 31 July 2020 and from 6:00 pm to 11:59 pm of 4 August 2020). Protective measures (e.g. wearing masks, body temperature screening, provision of hand sanitisers) are extended with some modifications. Other restrictions, such as suspension of live performance, karaoke, and the closing of any premises or any part of a premises exclusively or mainly used for the sale or supply of intoxicating liquors for consumption in the premises or any part of it, continue to be effective. Upon the commencement of G.N. (E.) 95 of 2020 on 31 July 2020, G.N. (E.) 90 of 2020 (published in the Gazette on 27 July 2020), which mainly concerns the requirement for all catering businesses (except Specific Catering Businesses) to cease the sale or supply of food or drink for consumption on the premises for the whole day, has been suspended.

11. By G.N. (E.) 98 of 2020 published in the Gazette on 3 August 2020, the measures set out in G.N. (E.) 95 of 2020 are extended for a period of seven days from 5 August 2020 to 11 August 2020.

Latest directions in relation to scheduled premises

12. By G.N. (E.) 96 of 2020 published in the Gazette on 30 July 2020, the Secretary has directed that 14 types of scheduled premises⁸ as set out in Part 1 of Schedule 2 to Cap. 599F must be closed for a period of five days beginning on 31 July 2020 to 4 August 2020. G.N. (E.) 96 of 2020 replaces the previous directions made by the Secretary in relation to scheduled premises,

⁷ G.N. (E.) 44, G.N. (E.) 50, G.N. (E.) 57, G.N. (E.) 63, G.N. (E.) 69, G.N. (E.) 76, G.N. (E.) 79 and G.N. (E.) 85 of 2020 published in the Gazette on 19 May, 26 May, 2 June, 16 June, 30 June, 9 July, 13 July, and 20 July 2020 respectively.

⁸ 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; (12) sports premises; (13) swimming pool; and (14) club-house (except catering premises).

i.e. G.N. (E.) 85 of 2020⁹ and G.N. (E.) 91 of 2020¹⁰ published in the Gazette on 20 July 2020 and 27 July 2020 respectively.

13. By G.N. (E.) 99 of 2020 published in the Gazette on 3 August 2020, the measures set out in G.N. (E.) 96 of 2020 are extended for a period of seven days from 5 August 2020 to 11 August 2020.

Government notice made by the Secretary under the Prevention and Control of Disease (Wearing of Mask) Regulation (Cap. 599I)

14. In respect of the requirement to wear masks in public transport facilities and public places, the Secretary has, pursuant to section 3 of Cap. 599I, specified in G.N. (E.) 101 of 2020 published in the Gazette on 3 August 2020 that the wearing of mask is mandatory in all public places as defined in section 2(1) of Cap. 599I, as well as in public transport carriers and MTR paid areas for a period of seven days from 5 August 2020 to 11 August 2020. G.N. (E.) 101 of 2020 replaces the periods for the application of the requirement to wear masks specified in previous notices made by the Secretary under Cap. 599I, i.e. G.N. (E.) 88 of 2020¹¹ and G.N. (E.) 93 of 2020¹² published in the Gazette on 22 July 2020 and 27 July 2020 respectively.

Prepared by

Joyce CHAN
Assistant Legal Adviser
Legislative Council Secretariat
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⁹ By G.N. (E.) 85 of 2020, the Secretary has directed that 12 types of scheduled premises must be closed for the period from 22 July 2020 to 28 July 2020.

¹⁰ G.N. (E.) 91 of 2020 specifies that 14 types of scheduled premises must be closed for a period of seven days from 29 July 2020 to 4 August 2020.

¹¹ Please refer to paragraphs 6 and 7 of LC Paper No. LS114/19-20 for details.

¹² G.N. (E.) 93 of 2020 specifies a period of seven days from 29 July 2020 to 4 August 2020 during which the wearing of mask is mandatory in all public places, public transport carriers and MTR paid areas. G.N. (E.) 88 of 2020 has been suspended upon the commencement of G.N. (E.) 93 of 2020 on 29 July 2020.