

立法會
Legislative Council

LC Paper No. LS118/19-20

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 21 August 2020**

Tabling in LegCo : Council meeting of 14 October 2020

Amendment to be made by : Council meeting of 11 November 2020 (or that of 2 December 2020 if extended by resolution)

**PART I SUBSIDIARY LEGISLATION RELATING TO THE
COMMISSIONING OF HEUNG YUEN WAI BOUNDARY
CONTROL POINT**

**Closed Area (Heung Yuen Wai Boundary Control Point) Order
(Commencement) Notice** (L.N. 155)

**Cross-boundary Movement of Physical Currency and Bearer
Negotiable Instruments Ordinance (Amendment of Schedule 1)
Notice 2020** (L.N. 156)

**Import and Export (Electronic Cargo Information) (Amendment)
Regulation 2018 (Commencement) Notice** (L.N. 157)

L.N. 155 and L.N. 157

By L.N. 155 and L.N. 157, the Secretary for Security and the Secretary for Commerce and Economic Development respectively appoint 26 August 2020 as the day on which the following come into operation:

- (a) the Closed Area (Heung Yuen Wai Boundary Control Point) Order (Cap. 245N) (gazetted as L.N. 159 of 2018), which declares certain zones located at Heung Yuen Wai Boundary Control Point ("HYW BCP") as a closed area under the Public Order Ordinance (Cap. 245) ("Closed Area") so that no person shall enter or leave the Closed Area without a permit issued or the general permission granted under Cap. 245; and
- (b) the Import and Export (Electronic Cargo Information) (Amendment) Regulation 2018 (gazetted as L.N. 158 of 2018), under which the Commissioner of Customs and Excise ("the Commissioner") may

designate an area within HYW BCP as a customs clearance point¹ for the purpose of the operation of the Road Cargo System (i.e. an electronic cargo information system for customs clearance of road cargoes) pursuant to section 13 of the Import and Export (Electronic Cargo Information) Regulation (Cap. 60L).

2. No LegCo Brief has been issued in respect of L.N. 155 or L.N. 157.

L.N. 156

3. L.N. 156 is made by the Commissioner under section 33(1) of the Cross-boundary Movement of Physical Currency and Bearer Negotiable Instruments Ordinance (Cap. 629) to add HYW BCP to Schedule 1 to Cap. 629 as a specified control point.²

4. Under section 4 of Cap. 629, a person who arrives at a specified control point (i.e. places specified in Schedule 1 to Cap. 629) from a place outside Hong Kong ("traveller") and who is in possession of a large quantity of currency and bearer negotiable instruments ("CBNIs") in excess of the maximum value of HK\$120,000 as specified in Schedule 4 to Cap. 629 must make a declaration for the CBNIs in a form specified by the Commissioner. Any traveller who fails to make the declaration or makes a false declaration commits an offence and is liable on conviction to a fine of HK\$500,000 and to imprisonment for two years under section 4(8) of Cap. 629.

5. The legal effect of L.N. 156 is that the declaration requirement under section 4 of Cap. 629 applies to travellers arriving at HYW BCP.

6. According to paragraph 9 of the Legislative Council ("LegCo") Brief (File Ref.: NCR 3/1/16 S/F(U)G) issued by the Customs and Excise Department in August 2020, the amendment is a technical amendment to facilitate travellers arriving at specified control points (including HYW BCP) to make written declarations of CBNIs in accordance with Cap. 629. Members may refer to the LegCo Brief for further details.

¹ Before L.N. 157 came into operation on 26 August 2020, the five locations of customs clearance points to which the Road Cargo System applied included: (1) Lok Ma Chau Boundary Control Point ("BCP"), (2) Man Kam To BCP, (3) Sha Tau Kok BCP, (4) The Clearance Area of the Shenzhen Bay Port Hong Kong Port Area and (5) Hong Kong-Zhuhai-Macao Bridge Hong Kong Port.

² Before L.N. 156 came into operation on 26 August 2020, there were 15 specified control points specified in Schedule 1 to Cap. 629, including (1) Lo Wu Control Point, (2) Hung Hom Station, (3) Man Kam To BCP, (4) Sha Tau Kok BCP, (5) Hong Kong-Macau Ferry Terminal, (6) China Ferry Terminal, (7) Lok Ma Chau BCP, (8) Hong Kong International Airport, (9) Tuen Mun Ferry Terminal, (10) Shenzhen Bay Port Hong Kong Port Area, (11) Lok Ma Chau Spur Line Control Point, (12) Kai Tak Cruise Terminal, (13) Ocean Terminal, (14) West Kowloon Station of the Guangzhou-Shenzhen-Hong Kong Express Rail Link (other than the West Kowloon Station Mainland Port Area) and (15) Hong Kong-Zhuhai-Macao Bridge Hong Kong Port.

7. L.N. 156 came into operation on 26 August 2020.

8. As advised by the Clerks to the Panel on Security and the Panel on Commerce and Industry, the Panels have not been consulted on L.N. 155 to L.N. 157.

PART II SUBSIDIARY LEGISLATION RELATING TO THE PREVENTION AND CONTROL OF DISEASE ORDINANCE

Compulsory Quarantine of Certain Persons Arriving at Hong Kong (Amendment) (No. 6) Regulation 2020 (L.N. 158)

Prevention and Control of Disease (Disclosure of Information) (Amendment) (No. 3) Regulation 2020 (L.N. 159)

9. L.N. 158 and L.N. 159 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 emergency³ relating to COVID-19.

L.N. 158

10. The Compulsory Quarantine of Certain Persons Arriving at Hong Kong Regulation (Cap. 599C) mainly provides for a temporary system of mandatory quarantine for persons arriving at Hong Kong from a place in China other than Hong Kong who have stayed in any place specified by the Secretary for Food and Health ("the Secretary") for any period during the 14 days before the date of arrival at Hong Kong.⁴ L.N. 158 amends Cap. 599C to extend the expiry date of Cap. 599C from midnight on 7 September 2020 to midnight on 7 October 2020.

L.N. 159

11. The Prevention and Control of Disease (Disclosure of Information) Regulation (Cap. 599D) mainly empowers a health officer⁵ to require a person to give any information that the health officer reasonably believes is within the knowledge, in the possession or under the control of the person, and is relevant to the handling of the public health emergency concerning COVID-19.⁶ L.N. 159 amends Cap. 599D to:

³ 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 or serious disabilities (whether or not long-term) in the population.

⁴ Members may refer to LC Papers No. LS43, 60, 64, 68, 91, 108 and 114/19-20 previously issued by the Legal Service Division ("LSD") for further details of Cap. 599C.

⁵ A health officer is defined in section 2 of Cap. 599 to mean the Director of Health, the Deputy Director of Health, the Controller of the Centre for Health Protection, or a medical practitioner appointed by the Director of Health as a health officer or port health officer.

⁶ Members may refer to LC Papers No. LS43, 64, 68 and 114/19-20 previously issued by LSD for further details of Cap. 599D.

- (a) empower the Director of Health to appoint any public officer as an authorized officer for the purposes of Cap. 599D;
- (b) provide that no personal liability is incurred by an authorized officer or a person acting under the officer's direction in respect of any thing done or omitted to be done by the officer or person in good faith in the performance or purported performance of a function under Cap. 599D;
- (c) provide that an authorized officer may, for preventing and controlling the transmission of COVID-19, require a person to give any information that the authorized officer reasonably believes is within the knowledge, in the possession or under the control of the person, and is relevant to the identification and tracing of any person who may have been exposed to the risk of contracting COVID-19; and
- (d) make it an offence, punishable by a fine at level 3 (i.e. \$10,000) and imprisonment for six months, for failing to give information required by an authorized officer, or knowingly giving to an authorized officer any information that is false or misleading in a material particular.

12. The Legal Service Division ("LSD") has sought clarifications from the Administration on certain matters regarding the appointment of authorized officer, including examples of public officers who may be appointed as authorized officers and persons who may act under the authorized officer's directions, how such directions are to be given, and the reason for granting a person acting under the authorized officer's direction exemption from personal liability in respect of any thing done or omitted to be done by the person in good faith in the performance or purported performance of a function under Cap. 599D. As at the date of this report, no response from the Administration has been received.

Consultation

13. According to the Clerk to the Panel on Health Services, the Administration has not consulted the Panel on L.N. 158 or L.N. 159.

Commencement

14. L.N. 158 and L.N. 159 came into operation on 22 August 2020.

Concluding observations

15. LSD is seeking clarifications from the Food and Health Bureau ("FHB") in relation to L.N. 159 on the matters set out in paragraph 12 above and, upon considering FHB's reply, will report further, if necessary. No difficulties have been identified in relation to the legal and drafting aspects of L.N. 155 to L.N. 158.

Other matters

16. Members may also wish to note that the Secretary has pursuant to section 5 of the Prevention and Control of Disease (Regulation of Cross-boundary Conveyances and Travellers) Regulation (Cap. 599H)⁷ issued G.N. (E.) 116 of 2020⁸ to specify:

- (a) a total of 10 places to which Cap. 599H is applicable with the effect that from 28 August 2020 onwards, any aircraft or vessel from Ethiopia arriving or about to arrive at Hong Kong is also subject to the regulatory measures provided under Cap. 599H in addition to any aircraft or vessel arriving, or about to arrive, at Hong Kong from the nine places⁹ specified in the previously issued G.N. (E.) 103 of 2020, which has been suspended upon the commencement of G.N. (E.) 116 of 2020 on 28 August 2020; and
- (b) a set of conditions applicable in respect of a person who, on the day of boarding a civil aviation aircraft that arrives or is about to arrive at Hong Kong, or during the 14 days before that day, has stayed in any of the 10 places mentioned in paragraph 16(a) above ("relevant traveller"). These conditions (details of which are set out in part (B) of G.N. (E.) 116 of 2020) include requiring a relevant traveller, before being checked-in for the flight to Hong Kong on that aircraft, to produce documentary proof on (i) a negative nucleic acid test result for COVID-19; and (ii) confirmation of at least 14 days' room reservation in a hotel in Hong Kong.

Prepared by

Rachel DAI
Assistant Legal Adviser
Legislative Council Secretariat
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⁷ Members may refer to LC Paper No. LS113/19-20 previously issued by LSD for further details of Cap. 599H.

⁸ By virtue of section 5(4) of Cap. 599H, G.N. (E.) 116 of 2020 is not subsidiary legislation and, as such, is not required to be tabled before, or subject to amendment by, LegCo.

⁹ The other nine places are Bangladesh, India, Indonesia, Kazakhstan, Nepal, Pakistan, the Philippines, South Africa and United States of America.