

立法會
Legislative Council

LC Paper No. LS36/19-20

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 8 January 2020**

Tabling in LegCo : Council meeting of 15 January 2020

Amendment to be made by : Council meeting of 12 February 2020 (or that of 18 March 2020 if extended by resolution)

Prevention and Control of Disease Ordinance (Amendment of Schedule 1) Notice 2020 (L.N. 3)

Prevention and Control of Disease (Amendment) Regulation 2020 (L.N. 4)

L.N. 3

The Prevention and Control of Disease Ordinance (Cap. 599) and its subsidiary legislation provide a statutory framework for the control and prevention of diseases that pose public health risks in Hong Kong. The infectious diseases and infectious agents that are subject to the control of Cap. 599 are specified in Schedules 1 and 2 to Cap. 599 respectively. Under section 15 of Cap. 599, the Director of Health ("Director") may by notice published in the Gazette amend Schedules 1 and 2.

2. L.N. 3 is made by the Director under section 15 of Cap. 599 to amend Schedule 1 to Cap. 599 by adding "Severe respiratory disease associated with a novel infectious agent" ("Severe Disease") to the list of scheduled infectious diseases. The effect of L.N. 3 is that the Severe Disease is subject to the control of Cap. 599 and its subsidiary legislation. Under section 4 of the Prevention and Control of Disease Regulation (Cap. 599A), a medical practitioner is required to notify the Director immediately if he has reason to suspect the existence of a case of a scheduled infectious disease. Failure to comply with the requirement or knowingly giving the Director any information that is false in a material particular is an offence punishable by a fine at level 2 (i.e. \$5,000).

L.N. 4

3. L.N. 4 is made by the Secretary for Food and Health under section 7 of Cap. 599 to amend section 56 of Cap. 599A by adding the Severe Disease to the list of specified diseases. The effect of L.N. 4 is that the Severe Disease is subject to the control of Cap. 599A. Under section 57 of Cap. 599A, 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, the 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 (i.e. \$5,000) and to imprisonment for six months.

Commencement

4. L.N. 3 and L.N. 4 came into operation on the day on which they were published in the Gazette, i.e. 8 January 2020.

Enquiries with the Administration

5. According to paragraph 6 of the Legislative Council ("LegCo") Brief (File Ref: FH CR 4/3231/96) issued by the Food and Health Bureau and the Department of Health ("DH") on 7 January 2020, the Severe Disease refers to a cluster of pneumonia cases of unknown aetiology with serious clinical condition in some cases which started in Wuhan in December 2019. However, L.N. 3 and L.N. 4, as drafted, appear to apply irrespective of the origin of the Severe Disease and whether the persons suffering from the Severe Disease have travelled to Wuhan. The Legal Service Division has asked the Administration the reasons for drafting the Severe Disease in wide and general terms, and the measures adopted by the Administration to enable members of the public and the medical practitioners to understand the Severe Disease. The gist of the Administration's reply is provided below:

- (a) the Severe Disease refers to a cluster of pneumonia cases of unknown aetiology with serious clinical condition in some cases which started in Wuhan in December 2019, but does not refer to persons suffering from any severe respiratory disease unrelated to the clusters of pneumonia cases in Wuhan. While the literal meaning of the Severe Disease is relatively wide and general, given the limited understanding of the novel disease, it is intended that the addition of the Severe Disease to Cap. 599 and Cap. 599A would ensure that all cases of the novel disease,

suspected or otherwise, will be subject to the control measures set out in Cap. 599 and Cap. 599A so as to prevent the import and spreading of the disease in this critical period;

- (b) in case there is evidence of definite human-to-human transmission, the case definition in relation to the Severe Disease (which was issued by the Centre for Health Protection ("CHP") to doctors in Hong Kong on 7 January 2020¹) might be revised to cover those who have not travelled to Wuhan within a designated period before onset of symptoms, subject to the criteria to be drawn up by DH. This explains why the name of the Severe Disease cannot be confined by referring to Wuhan so as to narrow the scope of the application of L.N. 3 and L.N. 4. As stated in paragraph 14 of the LegCo Brief, once the specific infectious agent is identified, the name of the Severe Disease will be revised in Cap. 599 and Cap. 599A. This arrangement is similar to that adopted in the past in response to the emergence of a new disease;
- (c) the Administration therefore considers that the current arrangement strikes a balance between ensuring the prompt and urgent implementation of stringent preventive and control measures in case of outbreak of a serious disease and ensuring clarity and certainty in amending Cap. 599 and Cap. 599A; and
- (d) to facilitate medical practitioners and the public in understanding the Severe Disease, the Administration has adopted various administrative measures, including issuing letters and press release and briefing medical practitioners associations.

6. The Administration has also stated that once a specific infectious agent related to the Severe Disease is identified, the name of the Severe Disease in Schedule 1 to Cap. 599 will be revised and the identified infectious agent will be added to Schedule 2 to Cap. 599.

Consultation with LegCo Panel

7. As advised by the Clerk to the Panel on Health Services, the Panel had not been consulted on L.N. 3 and L.N. 4 before they were gazetted. However, in the course of discussing the Administration's response measures for the emergence of a cluster of pneumonia cases in Wuhan, the Panel noted at its meeting held on 10 January 2020 that the addition of the Severe Disease as a scheduled infectious

¹ It is noted that the case definition in relation to the Severe Disease has been revised and issued to doctors and posted on CHP's website on 20 January 2020.

disease was important to the effective prevention, surveillance and control of the Severe Disease as this would empower the health officers to effectively handle the suspected or confirmed cases when the patients concerned were uncooperative and refused to be isolated or quarantined.

Conclusion

8. Subject to Members' views on the matters set out in paragraphs 5 and 6 above, no difficulties have been identified in relation to the legal and drafting aspects of L.N. 3 and L.N. 4.

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