

立法會
Legislative Council

LC Paper No. LS43/19-20

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 7 February 2020**

Tabling in LegCo : Council meeting of 19 February 2020

Amendment to be made by : Council meeting of 18 March 2020 (or that of 22 April 2020 if extended by resolution)

**Compulsory Quarantine of Certain Persons Arriving
at Hong Kong Regulation** (L.N. 12)

**Prevention and Control of Disease (Disclosure of
Information) Regulation** (L.N. 13)

Under section 8 of the Prevention and Control of Disease Ordinance (Cap. 599), the Chief Executive ("CE") in Council may make regulations for the purposes of preventing, combating or alleviating the effects of a public health emergency and protecting public health on an occasion of a public health emergency.¹ L.N. 12 and L.N. 13 are made by CE in Council under section 8 of Cap. 599 having regard to the current situation of public health emergency relating to the disease specified in item 34AAA of Schedule 1 to Cap. 599, namely, severe respiratory disease associated with a novel infectious agent, which is also known as the 2019-nCoV acute respiratory disease ("the disease").

L.N. 12

2. L.N. 12 introduces a temporary system of compulsory quarantine for two categories of persons, namely, persons arriving at Hong Kong from the Mainland, and persons arriving at Hong Kong from other places but having

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; or the occurrence of a novel, or highly infectious, agent or matter that has a high probability of causing a large number of deaths or a large number of serious disabilities (whether or not long-term) in the population.

stayed in the Mainland during the 14 days before the date of arrival (collectively referred to as "the target persons"). Under the quarantine system:

- (a) an authorized officer appointed by the Director of Health ("DH") may by written order ("order") place the target persons under quarantine for a period of 14 days beginning on the date of arrival;
- (b) the Chief Secretary for Administration is empowered to designate any person ("designated person") or category of persons ("designated category") to be exempt from the quarantine requirement if certain criteria are satisfied;
- (c) an authorized officer is empowered to restrain the target persons, and convey them to a place of quarantine assigned by the authorized officer, and detain the target persons in such place; and
- (d) certain restrictions are imposed on the target persons during quarantine which include prohibition against leaving the place of quarantine without the permission given by an authorized officer and contravening the terms of quarantine specified in the order.

3. Under L.N. 12, a person commits an offence and is liable on conviction to a fine at level 4 (i.e. \$25,000) and to imprisonment for six months if the person:

- (a) misrepresents to any public officer that the person is a designated person;
- (b) knowingly or recklessly gives any information that is false or misleading in a material particular to any public officer with a view to making the officer believe that the person falls within a designated category;
- (c) without reasonable excuse, contravenes the restrictions during quarantine as stated in paragraph 2(d) above; or
- (d) knowingly or recklessly gives any information that is false or misleading in a material particular to an authorized officer in connection with the performance of the officer's function under L.N. 12.

L.N. 13

4. L.N. 13 empowers a health officer (i.e. DH, Deputy DH, the Controller of the Centre for Health Protection, or a medical practitioner appointed by DH as a health officer or port health officer) 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 ("the requirement"). Failing to comply with the requirement or giving false or misleading information to a health officer is an offence punishable by a fine at level 3 (i.e. \$10,000) and imprisonment for six months.

5. L.N. 13 also makes it an offence if a person, when attended by a medical practitioner, knowingly gives to the medical practitioner any false or misleading information of the person that is relevant to the risk of exposure to or contracting the disease.

Enquiries with the Administration

6. The Legal Service Division ("LSD") has made enquiries with the Administration on certain matters relating to L.N. 12 and L.N. 13. Since the mandatory quarantine system will affect a person's liberty, LSD has made enquiry with the Administration on whether it could satisfy the four-step proportionality test as laid down in the case of *Hysan Development Co Ltd v Town Planning Board* (2016) 19 HKCFAR 372. Other issues that LSD has asked the Administration to clarify include the criteria for granting exemption from the mandatory quarantine requirement and whether the power of an authorized officer under L.N. 12 to restrain the target persons, etc. as stated in paragraph 2(c) above applies to a person who is not quarantined in a place assigned by the authorized officer and if not, why.

Consultation

7. According to paragraph 28 of the Legislative Council Brief (File Ref: FH CR 4/3231/96) issued by the Food and Health Bureau in February 2020, the Administration is of the view that given the exigency of the situation, public consultation is not feasible.

8. As advised by the Clerk to the Panel on Health Services, the Panel was not consulted on L.N. 12 and L.N. 13.

Commencement and expiry

9. L.N. 12 and L.N. 13 came into operation on 8 February 2020 and expire at midnight on 7 May 2020.

Concluding observations

10. As at the date of issue of this report, we have not received the Administration's reply to our enquiries in paragraph 6 above. A further report will be made after we have received the Administration's reply.

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