

立法會
Legislative Council

LC Paper No. LS52/19-20

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 18 March 2020**

Tabling in LegCo : Council meeting of 25 March 2020

Amendment to be made by : Council meeting of 22 April 2020 (or that of 13 May 2020 if extended by resolution)

Compulsory Quarantine of Persons Arriving at Hong Kong from Foreign Places Regulation (L.N. 24)

In early February 2020, having regard to the then situation of public health emergency relating to the Coronavirus Disease-19 ("COVID-19"),¹ the Chief Executive ("CE") in Council made the Compulsory Quarantine of Certain Persons Arriving at Hong Kong Regulation (L.N. 12) (Cap. 599C) under section 8 of the Prevention and Control of Disease Ordinance (Cap. 599).² Cap. 599C introduces a temporary system of compulsory quarantine for persons arriving at Hong Kong from the Mainland³ or a place outside the Mainland but has stayed in the Mainland during 14 days before the date of arrival. Cap. 599C came into operation on 8 February 2020 for a period of three months and will expire on 7 May 2020. Members may wish to refer to the report of the Legal Service Division ("LSD") on L.N. 12 i.e. Cap. 599C (LC Paper No. LS43/19-20) for further details.

2. In view of latest global spread of COVID-19,⁴ L.N. 24 is made by CE in Council under section 8 of Cap. 599 for the purpose of extending the temporary system of compulsory quarantine to persons arriving at Hong Kong from any specified place outside China ("specified place") (section 3(1)(a)), and persons who have stayed in a specified place for any period of time during the

¹ The disease was specified as "severe respiratory disease associated with a novel infectious agent" in item 34AAA of Schedule 1 to Cap. 599 (L.N. 3 of 2020).

² Section 8(1) of Cap. 599 empowers CE in Council to make regulations for the purposes of preventing, combating or alleviating the effects of a public health emergency and protecting public health. "Public health emergency" is defined in section 8(5) of Cap. 599 to mean, among others, the occurrence of or 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.

³ "Mainland" is defined in section 2 of Cap. 599C as the part of China other than Hong Kong, Macao and Taiwan.

⁴ The World Health Organization declared COVID-19 a pandemic on 11 March 2020.

14 days before the date of arrival (section 3(1)(b)). Under section 12 of L.N. 24, the Secretary for Food and Health ("SFH") is empowered, for the purposes of section 3(1)(a), to specify any place outside China or to revoke or amend such specification by a notice published in the Gazette, which is not subsidiary legislation. By G.N. (E.) 12 of 2020 gazetted on the same date as L.N. 24, SFH specifies "all places outside China" for the purposes of section 3(1)(a) of L.N. 24 with effect from 19 March 2020.

3. The quarantine arrangements provided under L.N. 24, which are largely modelled on those under Cap. 599C, are summarized as follows:

- (a) an authorized officer appointed by the Director of Health must, by written order, place the persons referred to in paragraph 2 above (collectively "target persons") under quarantine for a period of 14 days beginning on the date of arrival and a quarantine order must specify the terms of quarantine (section 3);
- (b) the Chief Secretary for Administration ("CS") is empowered to designate any person or category of persons to be exempt from the quarantine requirement if certain criteria are satisfied, for example, if the entry of such person or persons is necessary for the supply of goods and services required for the normal operation of Hong Kong or the daily needs, or for the protection of the safety or health, of the people of Hong Kong (section 4);
- (c) target persons may serve their quarantine in a place assigned by an authorized officer ("assigned place") or, if an authorized officer considers it prudent and appropriate in the circumstances of the case, in a place nominated by the target person ("nominated place") (section 6);
- (d) an authorized officer is empowered to restrain the target persons and convey them to an assigned place, and detain the target persons in such place (section 7); and
- (e) certain restrictions are imposed on the target persons during quarantine which include prohibition against leaving the place of quarantine without permission given by an authorized officer and against contravening the terms of quarantine (section 8).

4. L.N. 24 creates certain offences in relation to the giving of false or misleading information to an authorized officer (section 5(3) and section 9) and contravention of the quarantine restrictions (section 8(5)). A person who commits any such offence is liable on conviction to a fine at level 4 (i.e. \$25,000) and to imprisonment of six months.

5. According to paragraph 19 of the Legislative Council ("LegCo") Brief (no file reference) issued by the Food and Health Bureau in March 2020, L.N. 24 is made as an enhanced measure for preventing, combating and alleviating the effects of the public health emergency in view of the public health risk of the global spread of COVID-19 posed to Hong Kong. In setting out any specified place or revoking or amending such specification pursuant to section 12 of L.N. 24 by way of a notice in the Gazette, SFH must have regard to the extent of the spread of COVID-19 in the foreign places concerned and the public health risks posed to Hong Kong by people arriving from or having stayed in such places.

Enquiries with the Administration

6. LSD has sought the Administration's clarification on certain matters arising from sections 3, 4 and 7 of L.N. 24 (similar to those raised previously on the corresponding provisions in L.N. 12) including whether the quarantine measures provided under L.N. 24 would satisfy the proportionality test laid down in the case of *Hysan Development Co Ltd v Town Planning Board* [2016] 19 HKCFAR 372, the criteria for granting exemption to certain persons from the mandatory quarantine requirement, and the different enforcement powers conferred on the authorized officers regarding persons to be quarantined in an assigned place as opposed to a nominated place. In addition, LSD has raised certain drafting issues in relation to the empowering provision for the specification of places outside China under section 12 of L.N. 24.

7. As at the date of the issue of this report, LSD is still awaiting the response from the Administration in relation to L.N. 24. However, the Administration has replied to LSD in relation to L.N. 12. In view of the Administration's response relating to the proportionality of the quarantine requirement under L.N. 12 (which is summarized in LSD's further report on L.N. 12 and L.N. 13 of 2020 (LC Paper No. LS64/19-20)), similar quarantine requirements on target persons under L.N. 24 could be considered as reasonable, rational, necessary and proportionate having regard to the public health risk posed by the global spread of COVID-19 and the limited duration of the quarantine requirement.

Consultation

8. According to paragraph 25 of the LegCo Brief, the Administration is of the view that given the exigency of the situation, public consultation is not feasible.

9. As advised by the Clerk to the Panel on Health Services, the Panel has not been consulted on L.N. 24.

Commencement and expiry

10. L.N. 24 came into operation on 19 March 2020 and expires on 18 June 2020.

Concluding observations

11. As mentioned in paragraph 7 above, we are awaiting the Administration's reply to our enquiries on L.N. 24. Upon considering the reply from the Administration, we shall report further, if necessary.

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