

立法會
Legislative Council

LC Paper No. LS55/19-20

**Further Report by Legal Service Division on
Compulsory Quarantine of Persons Arriving at Hong Kong from
Foreign Places Regulation (L.N. 24) Gazetted on 18 March 2020**

Members may recall from LC Paper No. LS52/19-20 dated 9 April 2020 and issued to Members vide LC Paper No. CB(2)813/19-20 that the Legal Service Division ("LSD") was seeking clarifications from the Administration on certain legal and drafting matters relating to L.N. 24. This report sets out LSD's enquiries and the Administration's response which we received on 16 April 2020.

2. To recap, L.N. 24 is made by the Chief Executive in Council under section 8 of the Prevention and Control of Disease Ordinance (Cap. 599) relating to the Coronavirus Disease-19 ("the disease") for the purpose of extending the compulsory quarantine system to two categories of persons, namely, persons arriving at Hong Kong from any place outside China as may be specified by the Secretary for Food and Health ("SFH") by notice published in the Gazette under section 12(1) of L.N. 24 ("specified place") (section 3(1)(a)) and persons who have stayed in a specified place for any period of time during the 14 days before the date of arrival (section 3(1)(b)). By G.N. (E.) 12 of 2020 gazetted on the same date as L.N. 24 (i.e. 18 March 2020), SFH specifies "all places outside China" as specified places for the purpose of section 3(1)(a). L.N. 24 came into operation on 19 March 2020 and expires at midnight on 18 June 2020.

Mandatory quarantine

3. Since the mandatory quarantine requirement ("Requirement") under section 3(1) of L.N. 24 will affect a person's freedoms of person and movement under Articles 28 and 31 of the Basic Law as well as Articles 5 and 8 of the Hong Kong Bill of Rights, LSD has made enquiries with the Administration on whether it could satisfy the four-step proportionality test as laid down in *Hysan Development Co Ltd v Town Planning Board* [2016] 19 HKCFAR 372 ("proportionality test").

4. The Administration replies that the Requirement is a reasonable, rational and necessary measure to combat the public health emergency situation and to protect public health, which is a legitimate aim. The Administration

explained that at the time when L.N. 24 was made, there was clearly an outbreak of the disease globally with widespread local transmission and deaths recorded in many places outside China, and the Administration has reasonable ground to believe that a person who enters Hong Kong from places outside China or who has been to any of these places in the past 14 days has a high risk of being exposed to the infection of the disease. Given that the disease is highly infectious and the incubation period can last up to 14 days, the Administration takes the view that in order to minimize the chance of spreading the disease to the local community, it is not arbitrary or unreasonable for the Government to put these travellers (whether Hong Kong residents or not) under quarantine for 14 days, which is not unreasonably long or disproportionate. Also considering that L.N. 24 is valid for a limited period of three months, the Administration is of the view that a reasonable balance has been struck between the societal benefits of the restriction and the inroads made into the liberties of person and movement and that the Requirement does not result in an unacceptably harsh burden on those persons affected.

Criteria for granting exemption from the mandatory quarantine requirement

5. LSD has also asked the Administration to clarify the criteria for exempting any person or category of persons from the Requirement on the ground of the public interest of Hong Kong under section 4(1) of L.N. 24.

6. In response, the Administration has explained that the exemption would be considered on a case-by-case basis having regard to the exceptional circumstances of the particular case and the factors/considerations relevant to the public interest of Hong Kong, which may entail the objective of L.N. 24 and any impacts if the exemption is granted (e.g. level of health risks and effectiveness of the public health measures); whether any interest, rights or well-being of the person or the category of persons or of the general public will be significantly affected if the exemption is not granted; whether any interest or benefit may be brought to the category of persons, any sector of the public or the public at large by the person's or category of person's entry if the exemption is granted; and the size of the category of persons seeking exemption.

Powers of an authorized officer

7. LSD has further made enquiries with the Administration on the different enforcement powers conferred on the authorized officers regarding any person to be quarantined in a place assigned by an authorized officer ("assigned place") under section 7 of L.N. 24 as opposed to any person to be quarantined in a place nominated by the person himself or herself. In response, the Administration has explained that the difference in approach is mainly due to the risk assessment that persons subject to compulsory quarantine under L.N. 24

are usually persons with a lower risk of infection who may be quarantined at home or any temporary accommodation (e.g. hotels) they have in Hong Kong. However, if they do not have any accommodation in Hong Kong, they would have to be quarantined in an assigned place which will be manned and regulated by the Government.

Drafting issues relating to the specification of places outside China

8. LSD has raised two drafting issues in relation to the specification of places under section 12 of L.N. 24. As regards whether the reference to "section 3(1)(a)" in section 12(1) should be amended to "section 3(1)" to reflect that a specification under section 12(1) relates to, and affects, the Requirement under section 3(1)(a) and (b), the Administration is of the view that the present drafting of section 12(1) is in order because it is clear that if SFH specifies a place under section 12(1) for the purpose of section 3(1)(a), the specification would also apply in relation to section 3(1)(b) when paragraphs (a) and (b) of section 3(1) are read together in context. As to whether the words "by notice published in the Gazette" should appear in the header in section 12(1) rather than in section 12(1)(a) so as to make clear that the gazettal requirement also applies to a revocation or an amendment of a specification under section 12(1)(b), the Administration replied that since a notice of specification is not subsidiary legislation under section 12(2), any revocation or amendment of a specification is also not intended to have legislative effect. As such, there is no statutory requirement¹ as regards the manner of their publication but it is the intention of the Administration to publish any such revocation or amendment in the Gazette.

9. Subject to Members' views on the matters set out above, no legal and drafting difficulties have been identified in relation to L.N. 24.

Prepared by

Clara TAM
Assistant Legal Adviser
Legislative Council Secretariat
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¹ The gazettal requirement under section 28(2) of the Interpretation and General Clauses Ordinance (Cap. 1) only applies to subsidiary legislation.