

立法會
Legislative Council

LC Paper No. LS64/19-20

**Further Report by Legal Service Division on
Compulsory Quarantine of Certain Persons Arriving at Hong Kong
Regulation (L.N. 12) and Prevention and Control of Disease
(Disclosure of Information) Regulation (L.N. 13)
Gazetted on 7 February 2020**

Members may recall from LC Paper No. LS43/19-20 dated 9 March 2020 and issued to Members vide LC Paper No. CB(2)674/19-20 that the Legal Service Division ("LSD") was seeking clarifications from the Administration on certain matters relating to L.N. 12 and L.N. 13. This report sets out LSD's enquiries and the Administration's response which we received on 1 April 2020.

2. To recap, L.N. 12 and L.N. 13 are made by the Chief Executive in Council under section 8 of the Prevention and Control of Disease Ordinance (Cap. 599) having regard to the then situation of public health emergency relating to the Coronavirus Disease-19 ("the disease"). 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 stayed in the Mainland during the 14 days before the date of arrival. L.N. 13 mainly empowers a 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. L.N. 12 and L.N. 13 came into operation on 8 February 2020 and expire at midnight on 7 May 2020.

3. Our enquiries and the Administration's response are summarized in the following paragraphs.

The mandatory quarantine for a period of 14 days under section 3(1) of L.N. 12

4. 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 ("proportionality test").

5. The Administration has explained that the mandatory quarantine 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 further explained that a person who enters Hong Kong from the Mainland or who has been to the Mainland in the past 14 days has a higher risk of being exposed to the infection of the disease. Given that the disease is highly infectious and the incubation period can last around 14 days, it is not arbitrary or unreasonable or disproportionate for the Government to put these travellers under quarantine. For those travellers who are not Hong Kong residents, it is a matter of free choice for the person to decide whether to accept the quarantine in order to be permitted to enter Hong Kong. As for those travellers who are Hong Kong residents, the duration of the quarantine requirement of 14 days is on par with those who are visitors travelling from the Mainland. In the light of the above, 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 right to liberty, and the mandatory quarantine requirement does not result in an unacceptably harsh burden on those persons affected.

The criteria for granting exemption from the mandatory quarantine requirement under L.N. 12

6. LSD has asked the Administration to clarify the criteria for deciding whether a person's or persons' entry into Hong Kong serves the public interest of Hong Kong, which is one of the criteria upon which the Chief Secretary for Administration may exempt any person or category of persons from the quarantine requirement under section 4(1) of L.N. 12.

7. 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 factors relevant to the public interest of Hong Kong. Public interest may entail, but not limited to, the following factors or considerations:

- (a) the objective of L.N. 12 and any impacts if the exemption is granted, e.g. level of health risks and effectiveness of the public health measures;
- (b) 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;

- (c) whether any interest or benefit that 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;
- (d) for category of persons seeking exemption, the size of the group of persons; and
- (e) any similar exempted cases.

The powers of an authorized officer under L.N. 12

8. As the powers of an authorized person under section 7 of L.N. 12 to restrain and detain a person placed under quarantine in a place assigned by the authorized person do not seem to apply to a person who is quarantined in a place nominated by the person, LSD has asked why a different approach is adopted. The Administration has explained that the reason for not applying the powers under section 7 of L.N. 12 to persons quarantined in a nominated place is mainly due to the risk assessment that persons subject to compulsory quarantine under L.N. 12 are usually persons with a lower risk of infection. Hence, these persons may be quarantined at home or at the temporary accommodation they have in Hong Kong, unless they do not have any accommodation in Hong Kong and would have to be quarantined in an assigned place which will be manned and regulated by the Government.

The mandatory requirement to provide information under section 3(1) of L.N. 13

9. In relation to the offence for failing to comply with the requirement in section 3(1) of L.N. 13 relating to giving information relevant to the handling of a state of the public health emergency, section 3(3) provides a defence if the person charged can prove that the information required to be given was not within his knowledge, in his possession or under his control, and could not reasonably have been ascertained or obtained by him. LSD has asked the Administration to clarify the following:

- (a) since the requirement to give information under section 3(1) of L.N. 13 affects a person's right to privacy, whether it could satisfy the proportionality test; and
- (b) with respect to the defence under section 3(3) of L.N. 13, the relevant burden and standard of proof.

10. In reply, the Administration has explained as follows:

- (a) the interference with the right to privacy under the requirement to provide information under section 3(1) of L.N. 13 is reasonable and not arbitrary. It is rationally connected to the legitimate aim of protection of public health and can reasonably be justified as no more than is necessary to accomplish that aim. Besides, the powers conferred on the health officer can only be invoked in specified circumstances. The scope of the information required to be disclosed is narrowly confined and does not go beyond what is relevant to the handling of the public health emergency. 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 right to privacy, and the requirement to provide information under section 3(1) of L.N. 13 does not result in an unacceptably harsh burden on those persons affected; and
- (b) section 3 of L.N. 13 imposes a strict liability on all persons to comply with the requirement to give information to a health officer. The use of the word "prove" in section 3(3) of L.N. 13 denotes that a legal burden is imposed on a defendant, i.e. he/she has to prove the statutory defence on the balance of probabilities.

11. Subject to Members' views on the matters set out in paragraphs 4 to 10 above, no legal and drafting difficulties have been identified in relation to L.N. 12 and L.N. 13.

Prepared by

Alvin CHUI
Assistant Legal Adviser
Legislative Council Secretariat
9 April 2020