

立法會
Legislative Council

LC Paper No. LS10/20-21

**Paper for the House Committee Meeting
on 20 November 2020**

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 14 November 2020**

Tabling in LegCo : Council meeting of 18 November 2020

Amendment to be made by : Council meeting of 16 December 2020 (or that of 6 January 2021 if extended by resolution)

Prevention and Control of Disease (Compulsory Testing for Certain Persons) Regulation (L.N. 221)

L.N. 221 (i.e. Cap. 599J) is made by the Chief Executive in Council under section 8 of the Prevention and Control of Disease Ordinance (Cap. 599) with regard to the latest situation of public health emergency¹ relating to COVID-19.

2. L.N. 221 introduces a mechanism for specified medical practitioners to issue written direction to require persons clinically suspected to have contracted COVID-19 to undergo a test for ascertaining whether the person has contracted COVID-19 ("specified test"), and for the Secretary for Food and Health ("Secretary") to require certain categories or descriptions of persons to undergo a specified test by providing, among others, that:

- (a) the Secretary may, by notice published in the Gazette (such notice not being subsidiary legislation), specify a period of not more than 14 days, during which a specified medical practitioner may issue in writing a compulsory testing direction to require a person clinically suspected to have contracted COVID-19 to undergo a specified test;
- (b) no personal liability is incurred by a specified medical practitioner or a person acting under the direction of the medical practitioner in respect of any thing done or omitted to be done by the medical practitioner or person in good faith in the performance or purported performance of a

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 that has a high probability of causing a large number of deaths or serious disabilities (whether or not long-term) in the population.

function concerning the issuance of a compulsory testing direction to require a person clinically suspected to have contracted COVID-19 to undergo a specified test;

- (c) the Secretary may, by notice published in the Gazette (such notice not being subsidiary legislation) ("compulsory testing notice"), specify a category or description of persons who are required to undergo a specified test ("specified category/description"); and
- (d) if a prescribed officer² has reason to believe that a person has failed to undergo a specified test in compliance with a compulsory testing direction, or that a person falling within a specified category/description has failed to undergo a specified test in compliance with a compulsory testing notice, the prescribed officer may, by written order served on the person ("compulsory testing order"), require the person to undergo a specified test in compliance with the compulsory testing direction or notice.

3. L.N. 221 makes it an offence, punishable by a fine at level 1 (i.e. \$2,000), for failing to comply with a requirement under a compulsory testing direction or a compulsory testing notice. Further, it is an offence, punishable by a fine at level 4 (i.e. \$25,000) and imprisonment for six months, for failing to comply with a requirement under a compulsory testing order. In respect of these offences, L.N. 221 provides for statutory defences including that the person had lawful authority or reasonable excuse for the failure to comply with the requirement, and that the person could not comply with the requirement because of any physical or mental illness, impairment or disability.

4. L.N. 221 confers enforcement powers on prescribed officers which include the power to demand information and the power to enter and search premises with a search warrant issued by a magistrate. L.N. 221 also prescribes offences, punishable by a fine at level 3 (i.e. \$10,000), for delaying, obstructing, hindering or molesting a prescribed officer or a specified medical practitioner, or failing to comply with the requirements made by a prescribed officer, in the performance of a function under L.N. 221. The Schedule to L.N. 221 provides for matters relating to the payment of a fixed penalty of \$2,000 to discharge liability for the offence of failing to comply with a requirement under a compulsory testing direction or a compulsory testing notice under L.N. 221.

5. As at the date of this report, no Legislative Council ("LegCo") Brief has been issued by the Administration on L.N. 221.

² Prescribed officer is defined in section 2(1) of L.N. 221 to mean a health officer, or a public officer or a member of the Auxiliary Medical Service appointed for performing a function under L.N. 221 concerning a failure to comply with a requirement under a compulsory testing direction or a compulsory testing notice.

6. As advised by the Clerk to the Panel on Health Services, the Administration has not consulted the Panel on L.N. 221.
7. L.N. 221 came into operation on 15 November 2020 and expires at midnight on 14 February 2021.
8. The Legal Service Division is scrutinizing the legal and drafting aspects of L.N. 221 and will report further, if necessary.

Other matters

Government notices made by the Secretary under the Prevention and Control of Disease (Requirements and Directions) (Business and Premises) Regulation (Cap. 599F)

Latest specification and directions in relation to catering business

9. By G.N. (E.) 199 of 2020 published in the Gazette on 14 November 2020, the Secretary has specified and directed that during the period of 11 days from 16 November 2020 to 26 November 2020, in respect of all catering businesses, except (i) those set out in Part 1 of Schedule 1 to Cap. 599F,³ or (ii) those designated by the Chief Secretary for Administration pursuant to section 7A(1) of Cap. 599F to be exempt from the requirements and directions under Cap. 599F, the selling or supplying of food or drink for consumption on the premises of the catering business must be ceased, and any such premises (or part thereof) where food or drink is sold or supplied for consumption on the premises must be closed, from 0:00 am to 4:59 am every day (as opposed to 2:00 am to 4:59 am every day under G.N. (E.) 187 of 2020 published in the Gazette on 11 November 2020). No more than four persons (as opposed to six persons under G.N. (E.) 187 of 2020) may be seated together at one table within any catering premises, and no more than two persons (as opposed to four persons under G.N. (E.) 187 of 2020) may be seated together or gathered at one table within bars or pubs. The number of customers at any catering premises at any one time when consumption on the premises may be allowed must not exceed 50% (as opposed to 75% under G.N. (E.) 187 of 2020) of the seating capacity of the premises. Other requirements and restrictions (e.g. wearing masks, body temperature screening and provision of hand sanitisers) continue to be effective.
10. Upon the commencement of G.N. (E.) 199 of 2020 on 16 November 2020, G.N. (E.) 187 of 2020, which specifies the application of the specification and directions in relation to catering business for the seven-day period from 13 November 2020 to 19 November 2020, has been suspended.

³ The relevant premises are (1) hospitals; (2) residential care homes; (3) treatment centres; (4) boarding schools; (5) premises controlled or managed by the Government; and (6) premises that have been constructed to be used, and are used, as private dwellings.

Latest directions in relation to scheduled premises

11. By G.N. (E.) 200 of 2020 published in the Gazette on 14 November 2020, the Secretary has directed that all 14 types of scheduled premises⁴ as set out in Part 1 of Schedule 2 to Cap. 599F may open for a period of 11 days from 16 November 2020 to 26 November 2020, subject to the requirements and restrictions detailed at Annex to G.N. (E.) 200 of 2020. Under G.N. (E.) 200 of 2020, the directions made by G.N. (E.) 188 of 2020 (published in the Gazette on 11 November 2020) in respect of the seven-day period from 13 November 2020 to 19 November 2020 continue to be effective for a period of 11 days from 16 November 2020 to 26 November 2020, subject to certain modifications⁵ to the specified requirements and restrictions. Upon the commencement of G.N. (E.) 200 of 2020 on 16 November 2020, the previous Government notice for the application of the requirements and restrictions (i.e. G.N. (E.) 188 of 2020 published in the Gazette on 11 November 2020) has been suspended.

Government notices made by the Secretary under the Prevention and Control of Disease (Prohibition on Group Gathering) Regulation (Cap. 599G)

12. By G.N. (E.) 201 of 2020 published in the Gazette on 14 November 2020, the Secretary has, pursuant to section 4(1) of Cap. 599G, specified the period of 11 days from 16 November 2020 to 26 November 2020 during which no group gatherings of more than four persons may take place in any public place under section 3(1) of Cap. 599G. Upon the commencement of G.N. (E.) 201 of 2020 on 16 November 2020, the previous Government notice for the application of the group gathering prohibition (i.e. G.N. (E.) 189 of 2020 published in the Gazette on 11 November 2020) for the period from 13 November 2020 to 19 November 2020 has been suspended.

Government notices made by the Secretary under the Prevention and Control of Disease (Wearing of Mask) Regulation (Cap. 599I)

13. By G.N. (E.) 202 of 2020 published in the Gazette on 14 November 2020, the Secretary has, pursuant to section 3(1) of Cap. 599I, specified the period of 11 days from 16 November 2020 to 26 November 2020 during which a person must wear a mask at all times while boarding or on board a public transport carrier, or entering or present in an MTR paid area or a specified public place, save for any outdoor public places in any country parks and special areas as defined in section 2 of the Country Parks Ordinance (Cap. 208). Upon the commencement of

⁴ Those scheduled premises are: (1) amusement game centre; (2) bathhouse; (3) fitness centre; (4) place of amusement; (5) place of public entertainment; (6) party room for social gatherings; (7) beauty parlour; (8) club-house; (9) club/nightclub; (10) karaoke establishment; (11) mahjong-tin kau premises; (12) massage establishment; (13) sports premises; and (14) swimming pool.

⁵ For example, under G.N. (E.) 200 of 2020, the number of persons to be allowed at any one time must not exceed 50% (as opposed to 75% under G.N. (E.) 188 of 2020) of the designed capacity of the swimming pool.

G.N. (E.) 202 of 2020 on 16 November 2020, the previous Government notice for the application of the requirement to wear masks (i.e. G.N. (E.) 190 of 2020 published in the Gazette on 11 November 2020) for the period from 13 November 2020 to 19 November 2020 has been suspended.

Government notice made by the Secretary under the Compulsory Quarantine of Certain Persons Arriving at Hong Kong Regulation (Cap. 599C)

14. By G.N. (E.) 191 of 2020 published in the Gazette on 11 November 2020, the Secretary has specified, with effect from 23 November 2020, for the purposes of Cap. 599C:

- (a) all places in China outside Hong Kong, Guangdong and Macao as Category 1 specified places in China;
- (b) Guangdong and Macao as Category 2 specified places in China; and
- (c) category of persons (i.e. Hong Kong residents) and conditions (e.g. to produce documentary proof on a negative polymerase chain reaction ("PCR")-based nucleic acid test result for COVID-19) set out in the Annex to G.N. (E.) 191 of 2020 for Guangdong and Macao.

The effect of the specifications under (b) and (c) above is that Hong Kong residents returning from Guangdong or Macao who meet the conditions set out in the Annex are exempt from the 14-day compulsory quarantine requirement under section 3(1) of Cap. 599C.

15. Upon the commencement of G.N. (E.) 191 of 2020 on 23 November 2020, the previous Government notice for the application of the compulsory quarantine requirement on certain persons arriving at Hong Kong with effect from 5 June 2020 (i.e. G.N. (E.) 54 of 2020 published in the Gazette on 2 June 2020) will be suspended.

Government notice made by the Secretary under the Compulsory Quarantine of Persons Arriving at Hong Kong from Foreign Places Regulation (Cap. 599E)

16. By G.N. (E.) 192 of 2020 published in the Gazette on 11 November 2020, the Secretary has specified, with effect from 22 November 2020, for the purposes of Cap. 599E:

- (a) all places outside China except Singapore as Category 1 specified foreign places;
- (b) Singapore as a Category 2 specified foreign place; and
- (c) conditions (e.g. to produce documentary proof on a negative PCR-based nucleic acid test result for COVID-19) set out in the Annex to G.N. (E.) 192 of 2020 for Singapore.

The effect of the specifications under (b) and (c) above is that travellers from Singapore who meet the conditions set out in the Annex are exempt from the 14-day compulsory quarantine requirement under section 3(1) of Cap. 599E.

17. Upon the commencement of G.N. (E.) 192 of 2020 on 22 November 2020, the previous Government notice for the application of the compulsory quarantine requirement on persons arriving at Hong Kong from foreign places with effect from 5 June 2020 (i.e. G.N. (E.) 55 of 2020 published in the Gazette on 2 June 2020) will be suspended.

Government notice made by the Secretary under the Prevention and Control of Disease (Regulation of Cross-boundary Conveyances and Travellers) Regulation (Cap. 599H)

18. By G.N. (E.) 193 of 2020 published in the Gazette on 11 November 2020, the Secretary has specified all countries except China as places⁶ to which Cap. 599H is applicable and a set of conditions (e.g. to produce documentary proof on a negative nucleic acid test result for COVID-19 and confirmation of at least 14 days' room reservation in a hotel in Hong Kong) applicable in respect of a person who, on the day of boarding a civil aviation aircraft that arrives or is about to arrive at Hong Kong, or during the 14 days before that day, has stayed in any of the specified places. A note is included in respect of part (C) of G.N. (E.) 193 of 2020 to the effect that from 22 November 2020, a person who arrives at Hong Kong from Singapore and meets all conditions specified for Singapore as a Category 2 specified foreign place by the Secretary under section 12(2) of Cap. 599E is not subject to the requirement to produce confirmation of room reservation in a hotel in Hong Kong for not less than 14 days starting on the day of arrival in Hong Kong. Upon the commencement of G.N. (E.) 193 of 2020 on 22 November 2020, the previous Government notice for the regulation of cross-boundary conveyances and travellers with effect from 13 November 2020 (i.e. G.N. (E.) 182 of 2020 published in the Gazette on 3 November 2020) will be suspended.

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⁶ The specified places are Bangladesh, Belgium, Ethiopia, France, India, Indonesia, Kazakhstan, Nepal, Pakistan, the Philippines, Russia, South Africa, Turkey, United Kingdom, United States of America, and all other countries except China.