

立法會
Legislative Council

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Paper for the House Committee

**First report of the Subcommittee on Subsidiary Legislation
Relating to the Prevention and Control of Disease**

Purpose

This paper reports on the deliberations of the Subcommittee on Subsidiary Legislation Relating to the Prevention and Control of Disease ("the Subcommittee") on 22 items of subsidiary legislation under its study which are in relation to measures in respect of border control, social distancing and disclosure of information implemented by the Administration in response to development of the epidemic situation of coronavirus disease 2019 ("COVID-19") in Hong Kong ("the 22 items of subsidiary legislation").

Background

2. Under section 8 of the Prevention and Control of Disease Ordinance (Cap. 599), the Chief Executive in Council may make regulations for the purposes of preventing, combating or alleviating the effects of a public health emergency¹ and protecting public health on an occasion of a public health emergency. Since February 2020, a number of items of subsidiary legislation were made under section 8 of the Ordinance having regard to the then situation of public health emergency relating to COVID-19 in Hong Kong.

¹ Under section 8(5) of the Prevention and Control of Disease Ordinance, "public health emergency" is defined 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 in the population or a large number of serious disabilities (whether or not long-term) in the population.

The 22 items of subsidiary legislation

Subsidiary legislation items in relation to border control measures

3. The Compulsory Quarantine of Certain Persons Arriving at Hong Kong (Amendment) (No. 5) Regulation 2020 (L.N. 144 of 2020), the Compulsory Quarantine of Certain Persons Arriving at Hong Kong (Amendment) (No. 6) Regulation 2020 (L.N. 158 of 2020) and the Compulsory Quarantine of Certain Persons Arriving at Hong Kong (Amendment) (No. 7) Regulation 2020 (L.N. 198 of 2020) were published in the Gazette on 22 July, 21 August and 29 September 2020 respectively to extend the expiry date of the Compulsory Quarantine of Certain Persons Arriving at Hong Kong Regulation (Cap. 599C)² and empower the Secretary for Food and Health ("the Secretary") to exclude certain categories of persons specified by the Secretary arriving from certain Category 2 specified places in China from compulsory quarantine requirement provided that they meet conditions specified by the Secretary. These three items of subsidiary legislation came into operation on 23 July, 22 August and 30 September 2020 respectively. Pursuant to L.N. 198 of 2020, Cap. 599C will expire at midnight on 31 December 2020.

4. The Compulsory Quarantine of Persons Arriving at Hong Kong from Foreign Places (Amendment) (No. 3) Regulation 2020 (L.N. 146 of 2020) and the Compulsory Quarantine of Persons Arriving at Hong Kong from Foreign Places (Amendment) (No. 4) Regulation 2020 (L.N. 199 of 2020) were published in the Gazette on 22 July and 29 September 2020 respectively to extend the expiry date of Cap. 599E³ and empower the Secretary to exclude certain categories of persons specified by the Secretary arriving from certain Category 2 specified places outside China from compulsory quarantine provided that they meet conditions

² Under Cap. 599C, persons arriving at Hong Kong from a place in China other than Hong Kong who has stayed in any place specified by the Secretary for Food and Health before the persons' arrival are placed under compulsory quarantine for 14 days from the date of arrival. This quarantine requirement does not apply to a person who has stayed in any place that is a Category 2 specified place in China or a Category 2 specified foreign place as defined by section 2 of the Compulsory Quarantine of Persons Arriving at Hong Kong from Foreign Places Regulation (Cap. 599E) before arrival if certain specified conditions are met. The Secretary may, by notice published in Gazette, specify any place in China other than Hong Kong as a Category 1 or a Category 2 specified place in China under section 12 of Cap. 599C and specify any place outside China as a Category 1 or a Category 2 specified foreign place under section 12 of Cap. 599E.

³ Under Cap. 599E, persons arriving at Hong Kong from a place outside China who has stayed in any place specified by the Secretary before the person's arrival are placed under compulsory quarantine for 14 days from the date of arrival. This quarantine requirement does not apply to a person who has stayed in any place that is a Category 2 specified foreign place or a Category 2 specified place in China under Cap. 599C before arrival if certain specified conditions are met.

specified by the Secretary. These two items of subsidiary legislation came into operation on 23 July and 30 September 2020 respectively. Pursuant to L.N. 146 of 2020, Cap. 599E will expire at midnight on 31 December 2020.

5. The Prevention and Control of Disease (Regulation of Cross-boundary Conveyances and Travellers) Regulation (L.N. 142 of 2020) (i.e. Cap. 599H) and the Prevention and Control of Disease (Regulation of Cross-boundary Conveyances and Travellers) (Amendment) Regulation 2020 (L.N. 202 of 2020) were published in the Gazette on 13 July and 29 September 2020 respectively. L.N. 142 of 2020 is a new regulation which provides a mechanism under which regulatory measures may be imposed on cross-boundary conveyances (i.e. aircraft or vessels) arriving (or about to arrive) at Hong Kong from a place outside Hong Kong and certain persons on those conveyances. L.N. 202 of 2020 extends the expiry date of Cap. 599H. These two items of subsidiary legislation came into operation on 15 July and 30 September 2020 respectively. Pursuant to L.N. 202 of 2020, Cap. 599H will expire at midnight on 31 December 2020.

Subsidiary legislation items in relation to social distancing measures

6. The Prevention and Control of Disease (Requirements and Directions) (Business and Premises) (Amendment) (No. 4) Regulation 2020 (L.N. 147 of 2020), the Prevention and Control of Disease (Requirements and Directions) (Business and Premises) (Amendment) (No. 5) Regulation 2020 (L.N. 150 of 2020) and the Prevention and Control of Disease (Requirements and Directions) (Business and Premises) (Amendment) (No. 6) Regulation 2020 (L.N. 200 of 2020) were published in the Gazette on 22 July, 27 July and 29 September 2020 respectively to, among others, extend the expiry date of the Prevention and Control of Disease (Requirement and Directions) (Business and Premises) Regulation (Cap. 599F),⁴ empower the Chief Secretary for Administration ("the Chief Secretary") to designate certain catering business and scheduled premises to be exempted from the directions issued by the Secretary in respect of matters under sections 6(1) and 8(1) of Cap. 599F respectively, require the person providing seating or tables for customers of a catering business (in an area adjacent to the premises of the business or in an area that forms part of any premises within which the premises of the business are situated) and manager of the premises to comply with any requirement imposed under section 3(1) of Cap. 599F for the period specified by the Secretary, and add "sports premises" and

⁴ Cap. 599F mainly imposes certain requirements, and enables directions to be issued by the Secretary, in respect of any catering business and certain scheduled premises as set out in Part 1 of Schedule 2 to Cap. 599F relating to, among others, the sale or supply of food or drink for consumption on the premises of any catering business, and the closure of the relevant premises or part thereof.

"swimming pool"⁵ to Part 1 of Schedule 2 to Cap. 599F to include such places as scheduled premises. These three items of subsidiary legislation came into operation on 23 July, 29 July and 30 September 2020 respectively. Pursuant to L.N. 147 of 2020, Cap. 599F will expire at midnight on 31 December 2020.

7. The Prevention and Control of Disease (Prohibition on Group Gathering) (Amendment) (No. 7) Regulation 2020 (L.N. 141 of 2020), the Prevention and Control of Disease (Prohibition on Group Gathering) (Amendment) (No. 8) Regulation 2020 (L.N. 148 of 2020), the Prevention and Control of Disease (Prohibition on Group Gathering) (Amendment) (No. 9) Regulation 2020 (L.N. 151 of 2020), the Prevention and Control of Disease (Prohibition on Group Gathering) (Amendment) (No. 10) Regulation 2020 (L.N. 162 of 2020), the Prevention and Control of Disease (Prohibition on Group Gathering) (Amendment) (No. 11) Regulation 2020 (L.N. 201 of 2020) and the Prevention and Control of Disease (Prohibition on Group Gathering) (Amendment) (No. 12) Regulation 2020 (L.N. 209 of 2020) were published in the Gazette on 13 July, 22 July, 27 July, 8 September, 29 September and 20 October 2020 respectively. These six items of subsidiary legislation aim to, among others, adjust the number of persons constituting a group gathering prohibited under the Prevention and Control of Disease (Prohibition on Group Gathering) Regulation (Cap. 599G) and correspondingly amend the meaning of "dispersable gathering" under section 10(2) of Cap.599G;⁶ extend the expiry date of Cap. 599G; provide that a group gathering at premises subject to a direction issued under section 6 or 8 of Cap. 599F is exempted from the prohibition under Cap. 599G if during such a group gathering, all requirements and restrictions as specified in the relevant Cap. 599F direction are complied with; add an exemption for religious activities (other than a wedding ceremony) held at places of worship subject to certain conditions and make a corresponding adjustment to the exemption of group gathering during a wedding ceremony; relax a condition for the exemption for group gatherings during wedding ceremonies and certain meetings at which no food or drink is served; and add an exemption for group gatherings of not more than 30 persons during a local tour which is organized by a licensed travel agent under the Travel Agents Ordinance (Cap. 218) and registered with the Travel Industry Council of Hong Kong. Provisions of these subsidiary legislation items came into operation on 15 July, 23 July, 29 July, 11 September, 30 September, 2 October and 23 October 2020 respectively. Pursuant to L.N. 148 of 2020, Cap. 599G will expire at midnight on 31 December 2020.

⁵ The definitions of "sports premises" and "swimming pool" are provided in Part 2 of Schedule 2 to Cap. 599F.

⁶ Cap. 599G prohibits group gathering as set out in section 3 of the Regulation. Schedule 1 to Cap. 599G sets out the types of group gatherings which are exempted from the prohibition.

8. The Prevention and Control of Disease (Wearing of Mask) (Public Transport) Regulation (L.N. 143 of 2020) (i.e. Cap. 599I), the Prevention and Control of Disease (Wearing of Mask) (Public Transport) (Amendment) Regulation 2020 (L.N. 149 of 2020), the Prevention and Control of Disease (Wearing of Mask) (Amendment) Regulation 2020 (L.N. 160 of 2020) and the Prevention and Control of Disease (Wearing of Mask) (Amendment) (No. 2) Regulation 2020 (L.N. 203 of 2020) were published in the Gazette on 13 July, 22 July, 25 August and 29 September 2020 respectively. L.N. 143 of 2020 is a new regulation which requires a person, subject to certain exceptions, to wear a mask which includes any covering designed or made to be worn over the nose and mouth to provide the wearer protection against infections or air pollution) at all times when the person is boarding or on board a public transport carrier⁷ or is entering or present in an MTR paid area during a period specified by the Secretary. L.N. 149, L.N. 160 and L.N. 203 of 2020 amend Cap. 599I to, among others, extend the scope of application of Cap. 599I to also require a person, subject to certain exceptions, to wear a mask at all times in any public place⁸ specified by the Secretary, provide that a person has a reasonable excuse for not wearing a mask if the person is engaged in any physical activity (including exercise) that may reasonably be regarded as strenuous for the person in a place that is not indoor, and extend the expiry date of Cap. 599I. These four items of subsidiary legislation came into operation on 15 July, 23 July, 28 August and 30 September 2020 respectively. Pursuant to L.N. 203 of 2020, Cap. 599I will expire at midnight on 31 December 2020.

Subsidiary legislation items in relation to disclosure of information

9. The Prevention and Control of Disease (Disclosure of Information) (Amendment) (No. 2) Regulation 2020 (L.N. 145 of 2020) and the Prevention and Control of Disease (Disclosure of Information) (Amendment) (No. 3) Regulation 2020 (L.N. 159 of 2020) were published in the Gazette on 22 July and 21 August 2020 respectively to, among others, extend the expiry date of the Prevention and Control of Disease (Disclosure of Information) Regulation (Cap. 599D),⁹ provide

⁷ The Schedule to L.N. 143 of 2020 sets out a list of public transport carriers to which the requirement applies.

⁸ "Public place" for the purposes of Cap. 599I is defined under section 2 to mean any place to which for the time being the public or a section of the public may or are permitted to have access, whether on payment or otherwise, but does not include a public transport carrier or an MTR paid area.

⁹ Cap. 599D mainly empowers a health officer (who is defined in section 2 of Cap. 599 to mean the Director of Health, the Deputy Director of Health, the Controller of the Centre for Health Protection, or a medical practitioner appointed by the Director of Health 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 concerning COVID-19.

that an authorized officer may, for preventing and controlling the transmission of COVID-19, require a person to give any information that the authorized officer reasonably believes is within the knowledge, in the possession or under the control of the person, and is relevant to the identification and tracing of any person who may have been exposed to the risk of contracting COVID-19, and make it an offence for failing to give information required by an authorized officer or knowingly giving to an authorized officer any information that is false or misleading in a material particular. These two items of subsidiary legislation came into operation on 23 July and 22 August 2020 respectively. Pursuant to L.N. 145 of 2020, Cap. 599D will expire at midnight on 31 December 2020.

10. L.N. 141 to L.N. 143; L.N. 144 to L.N. 151, L.N. 158 to L.N. 160, L.N. 162 and L.N. 198 to L.N. 203; and LN. 209 of 2020 were tabled before the Legislative Council ("LegCo") at its meetings of 15 July, 14 October and 21 October 2020 respectively and are subject to negative vetting by LegCo.

The Subcommittee

11. At the House Committee meeting on 16 October 2020, Members agreed to form a Subcommittee to study L.N. 141 to L.N. 151, L.N. 158 to L.N. 160, L.N. 162, and L.N. 198 to L.N. 203 of 2020. With the gazettal and the tabling in LegCo of L.N. 209 on 21 October 2020, the House Committee agreed at its meeting on 23 October 2020 to refer this item of subsidiary legislation to the Subcommittee for study. Dr Hon CHIANG Lai-wan was elected Chairman of the Subcommittee.¹⁰ The membership list of the Subcommittee is in the **Appendix**.

12. To allow sufficient time for the Subcommittee to study L.N. 141 to L.N. 143 of 2020, the Chairman of the House Committee gave notice to move a proposed resolution at the Council meeting of 21 October 2020 to extend the scrutiny period of these three items of subsidiary legislation to the Council meeting of 11 November 2020. However, the proposed resolution was not dealt with at the Council meeting of 21 October 2020 before the adjournment of the meeting. As such, the period for amending these three items of subsidiary legislation expired at the said Council meeting.

13. At its first meeting on 2 November 2020, the Subcommittee agreed that two resolutions should be moved at the relevant Council meetings to extend the scrutiny period of L.N. 144 to L.N. 151, L.N. 158 to L.N. 160, L.N. 162 and L.N. 198 to L.N. 203 of 2020 to the Council meeting of 2 December 2020 ("the

¹⁰ Prof Hon Joseph LEE was the Chairman of the Subcommittee from 2 to 10 November 2020. Dr Hon Helena WONG was the Deputy Chairman of the Subcommittee from 2 to 12 November 2020.

first proposed resolution"), and to extend the scrutiny period of L.N. 209 of 2020 to the Council meeting of 9 December 2020 ("the second proposed resolution"). However, the first proposed resolution was not dealt with before adjournment of the Council meeting of 11 November 2020. As such, the period for amending those 18 items of subsidiary legislation expired at the said Council meeting. The second proposed resolution was passed at the Council meeting of 18 November 2020 to extend the scrutiny period of L.N. 209 of 2020 to the Council meeting of 9 December 2020.

14. With the gazettal and the tabling in LegCo of L.N. 221 on 14 November and 18 November 2020 respectively, as well as L.N. 222 and L.N. 223 of 2020 on 18 November and 25 November 2020 respectively, the House Committee agreed at its meetings on 20 November and 27 November 2020 to refer these three items of subsidiary legislation to the Subcommittee for study.

15. The Subcommittee has held three meetings as of 27 November 2020. Two of the meetings were attended by the Administration. The Subcommittee has completed the scrutiny work on the 22 items of subsidiary legislation. It would hold further meeting(s) to scrutinize L.N. 221 to L.N. 223 of 2020.

Deliberations of the Subcommittee

Border control measures

16. In accordance with Cap. 599C and Cap. 599E, except for persons who have stayed in any place that is a Category 2 specified place in China as defined by section 2 of Cap. 599C or a Category 2 specified foreign place as defined by section 2 of Cap. 599E within the 14 days before arrival and provided that certain specified conditions are met, all persons having stayed in any places outside Hong Kong for any period during the 14 days preceding arrival in Hong Kong are subject to compulsory quarantine for 14 days from the date of arrival. Under section 4 of Cap. 599C and Cap. 599E, the Chief Secretary is empowered to designate any person or category of persons to be exempted from the compulsory quarantine requirement under the above two Regulations if certain criteria are met. Members have sought information about the respective average daily number of persons arriving in Hong Kong who satisfied the criteria and were exempted from the compulsory quarantine requirements in each month since the introduction of the exemption arrangement, with breakdown by their last stayed places and the boundary control points concerned.

17. The Administration has advised that exempted persons arriving at the Hong Kong International Airport ("HKIA") are mostly aircrew. According to the daily average number of exempted persons arriving at Hong Kong at HKIA in

mid-November 2020, air crew members account for 93% of such persons and represent the largest group amongst all. Sea crew members arriving in Hong Kong for crew change currently make up around 5% of exempted persons arriving from HKIA. The remaining 2% represents other exempted persons, such as officers of Consulates General and other government officials. As regards exempted persons under Cap. 599C arriving at land boundary control points, the largest proportion constitutes cross-boundary goods vehicle drivers whose operation is necessary for meeting Hong Kong's essential needs. On average, over 10 000 trips were made by these drivers on each working day. It is estimated that cross-boundary goods vehicle drivers also account for, on average, around 80% of the daily medical surveillance notices issued by the Department of Health ("DH") at land boundary control points.¹¹

18. The Administration has stressed that all persons arriving at HKIA, including exempted persons, are required to conduct testing for COVID-19 upon their arrival at Hong Kong. All ordinary travellers are required to undergo the "test-and-hold" arrangement to wait for their test results at a designated location. As for land boundary control points, certain groups of exempted persons entering Hong Kong via land boundary control points are subject to testing. With effect from 18 and 22 November 2020, it has respectively tightened the testing and isolation arrangement for consular and diplomatic officers; and crew members of aircraft and other exempted persons who are exempted from quarantine arrangement upon arriving Hong Kong, particularly those who have visited very high risk places (which have been specifically named under the specifications made pursuant to Cap. 599H) in order to strengthen the prevention of imported cases as well as avoiding the respective exempted persons' contact with the local community during the exemption period. In addition, to further mitigate the risk of virus spreading, persons currently exempted by the Chief Secretary from compulsory quarantine upon return from the Mainland must possess a valid negative COVID-19 nucleic acid test result when entering Hong Kong at land boundary control points in order to be exempted from compulsory quarantine with effect from 23 November 2020.

19. Members are concerned that at the time of the discussion with the Administration on 16 November 2020, while most of the newly daily confirmed cases have been imported cases since early November 2020, there are still sporadic local cases with unknown sources of infection, indicating that the transmission chains have yet to be cut off in the community. They note that starting from 13 November 2020, those arriving in Hong Kong by air from any

¹¹ According to the Administration, medical surveillance notices are only issued to cross-boundary goods vehicle drivers every 14 days in view of their frequent travel pattern. Persons under medical surveillance are required to wear masks and check their body temperature twice daily, and they should report to DH if feeling unwell.

places outside China or who have stayed in any places outside China during the 14 days before the date of the person's arrival (except for those in transit or exempted persons under Cap. 599E), who are tested negative under the "test-and-hold" arrangement, are subject to compulsory quarantine in hotels which they have made the reservation. In the Administration's view, the above arrangement could help centralize management and reduce the possibility of spreading the virus to household members during home quarantine should the travellers have contracted COVID-19 but the post-arrival test has not yet detected the virus under the "test-and-hold" arrangement.

20. However, members consider that the arrangement still could not effectively avoid contacts of confinees with the community during the quarantine period. It would be most desirable if the Administration arranges compulsory quarantine for all confinees in designated hotels to facilitate monitoring and provides point-to-point transportation to take them to the hotels by coaches. In the meantime, the Administration should further tighten the relevant quarantine measures, including making it a mandatory requirement on hotel operators that guestrooms for confinees and other guests have to be segregated on different floors and restricting confinees to receive any visitors into their guestrooms during the quarantine period. Given that hotels in Hong Kong in general only allow minors under 16 years old (18 years old for some hotels) to stay if they are accompanied by adults, Mr YIU Si-wing goes further to suggest that it should be made a mandatory requirement that minor confinees under the age of 18 years have to be accompanied by adults in the guestroom at all times during the quarantine period as it is expected that a large number of students studying abroad will return to Hong Kong during Christmas holidays.

21. Subsequent to the above discussion, the Administration has advised the Subcommittee that it had gazetted on 18 November 2020 amendments to Cap. 599F to, among others, add "hotel or guesthouse" to Part 1 of Schedule 2 to Cap. 599F as a new type of scheduled premises so that requirements or restrictions as specified in a relevant direction issued by the Secretary under Cap. 599F is applicable to hotels and guesthouses. This provides the legal framework for it to promulgate relevant measures later to strengthen the infection prevention and control in hotels or guesthouses. The Administration has assured members that it is seriously considering their suggestion of requiring operators of hotels to arrange for persons under compulsory quarantine to be segregated from other persons not under quarantine. It will further discuss with the hotel and guesthouse industries separately to formulate the details and the effective date of the measures for strengthening infection prevention and control in hotels or guesthouses. In addition, starting from 18 November 2020, DH has tightened the requirement to disallow visitors of any person under compulsory quarantine in hotels during the quarantine period. If a minor requires the company of a carer while under quarantine in a hotel, with the prior permission from DH, the carer

also has to be quarantined in the same guestroom until the end of the quarantine period. It should be noted that breaking quarantine orders, including leaving quarantine places without permission or allowing visitors to enter quarantine guestrooms, is a criminal offence and offenders are subject to a maximum imprisonment of six months and a fine of \$25,000.

22. Members have urged the Administration to step up enforcement to ensure that members of the public strictly comply with the quarantine orders. Mr YIU Si-wing has remarked that the tightened requirement could not prevent family members and friends of the confinees from having face-to-face contact with the confinees at the Arrivals Hall of HKIA or the Holding Centre for Test Result¹², as the case may be. The Administration has undertaken that it would continue to review the various measures in place from time to time in accordance with the development of the epidemic situation, and make suitable adjustments taking into account all relevant factors.

Social distancing measures

Tightening of the social distancing measures

23. The local epidemic situation has worsened rapidly and drastically in the latter half of November 2020. Apart from the large outbreak cluster caused by group gathering activities in dancing or singing venues, there has been a number of locally infected cases with unknown source for consecutive days, indicating the existence of many silent transmission chains in the community. During the discussion with the Administration on 24 November 2020, members have strongly requested the Administration to tighten social distancing measures, targeting those closed, crowded, closely-contacted, and mask-off leisure and entertainment group activities, such as "staycation" activities in guestrooms of hotels and dancing parties in catering and entertainment premises. Ms Elizabeth QUAT is concerned that apart from public places, the number of confirmed cases associated with social activities with persons outside co-living family members in private premises has continued to emerge. She is of the view that the Administration should urge the public to avoid taking part in such kind of activities to prevent getting themselves infected and subsequent transmission to their family members, and consider enacting legislation to prohibit group gathering activities in private premises if the epidemic situation further worsened.

¹² Under the "test-and-hold" arrangement, passengers arriving Hong Kong via HKIA whose test results for COVID-19 will not be available on the same day (usually passengers arriving in afternoons or at nights) can proceed with immigration procedures right after collecting their deep throat saliva samples at the Temporary Specimen Collection Centre set up in the restricted area of HKIA. They will subsequently be taken to the Holding Centre for Test Result of DH in hotel by coaches arranged by DH to wait for their test results.

24. The Administration has advised that given the serious epidemic situation, it will further tighten the social distancing measures and details will be announced in due course. Separately, pursuant to the Prevention and Control of Disease (Prohibition on Group Gathering) (Amendment) (No. 13) Regulation 2020 (L.N. 223 of 2020) which was gazetted on 18 November 2020, the scope of Cap. 599G has been extended to cover group gatherings at any premises in relation to which a direction issued under section 6 or 8 of Cap. 599F is in force whether the premises are a public place or not. The legal effect of the amendment is that a group gathering at any of these premises will be prohibited under Cap. 599G if any requirement or restriction that is specified in the relevant Cap. 599F direction and imposed in relation to a group gathering at the premises is not complied with. The Administration will continue to review the relevant measures from time to time in accordance with the epidemic situation, and will make suitable adjustments as and when necessary.

Enforcement actions

25. Members note with grave concern from media reports that in certain licensed catering premises, a number of customers were seen dancing without their masks on, but during which they were not eating or drinking at their tables. They have urged the Administration to step up inspections and take enforcement actions against offenders contravening Cap. 599F, so as to ensure that persons responsible for carrying on catering businesses and scheduled premises and the public strictly comply with relevant regulations so as to minimize any risk of transmission of COVID-19.

26. The Administration has assured members that efforts have been and would continuously be made by the Food and Environmental Hygiene Department ("FEHD") to do so. Should there be sufficient evidence, prosecution would be instituted against catering business operators suspected to have violated a direction under Cap. 599F relating to the requirement that their customers have to wear a mask within the premises except when consuming food or drink at a table therein, and upon conviction they are liable to a maximum fine of \$50,000 and imprisonment for six months. Since catering premises are public places, a customer who is not eating or drinking but fails to wear a mask commits an offence under Cap. 599I.

27. Members have expressed concern about whether adequate law enforcement manpower has been deployed to inspect catering business premises to ensure compliance with the requirements set out in the directions made by the Secretary under Cap. 599F, and to remind foreign domestic helpers gathered at public places of the prohibition of group gatherings imposed under Cap. 599G, where they perceive as having a relatively higher risk of the spread of the disease. The Administration has advised that pursuant to Cap. 599F and Cap. 599G, the

Secretary and the Director of Health have appointed respectively a total of 31 and 41 ranks of public officers from various enforcement departments, including DH, FEHD, the Lands Department, the Home Affairs Department, the Leisure and Cultural Services Department, the Housing Department, the Agriculture, Fisheries and Conservation Department and the Hong Kong Police Force as authorized officers.

Level of fixed penalty under Cap. 599G and Cap. 599I

28. Section 6 of Cap. 599G provides that 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 participates in or organizes a prohibited group gathering; or owns, controls or operates the place in which a prohibited group gathering takes place, and knowingly allows the taking place of the gathering. Section 8 of Cap. 599G further provides that the liability for the offence of participating in a prohibited group gathering may be discharged by the payment of a fixed penalty of \$2,000. Separately, section 6(1) of Cap. 599I provides that a person who fails to comply with the requirement to wear a mask in public transport carrier, MTR paid area or specified public place commits an offence and is liable on conviction to a fine at level 2 (i.e. \$5,000). Section 6A of Cap. 599I further provides that a person who commits an offence under section 6(1) may discharge liability for the offence by paying a fixed penalty of \$2,000.

29. Some members including Dr CHIANG Lai-wan, Ms Elizabeth QUAT, Mr CHAN Chun-ying and Dr CHENG Chung-tai are of the view that there is a need to increase the amount of the fixed penalty in order to enhance the deterrent effect against non-compliance. There are also views in the community that it appears to be illogical if a person, who contracts COVID-19 due to participation in a prohibited group gathering or non-compliance with the requirement of wearing a mask in a specified public place, discharges the liability for the offence concerned by the payment of a fixed penalty of \$2,000 on the one hand, but on the other hand is provided with an one-off ex-gratia cash allowance of \$5,000 for locally confirmed COVID-19 patients.¹³ The Administration takes note of the suggestion on raising the level of fixed penalty.

¹³ According to the Administration, applicants for the one-off ex-gratia cash allowance for locally confirmed COVID-19 patients have to meet the eligibility criteria that (a) they are Hong Kong residents who are confirmed by the Department of Health to have contracted COVID-19 locally on or after 22 November 2020; and (b) they are currently employed but not entitled to paid sick leave or are self-employed and face financial hardship whilst being hospitalized in public hospitals for COVID-19 treatment.

Recommendation

30. The Subcommittee raises no objection to the 22 items of subsidiary legislation and will not propose any amendment to them.

Advice sought

31. Members are invited to note the deliberations of the Subcommittee.

Council Business Division 2
Legislative Council Secretariat
2 December 2020

**Subcommittee on Subsidiary Legislation
Relating to the Prevention and Control of Disease**

Membership list*

Chairman	Dr Hon CHIANG Lai-wan, SBS, JP
Members	Hon Mrs Regina IP LAU Suk-ye, GBS, JP Hon Frankie YICK Chi-ming, SBS, JP Hon YIU Si-wing, BBS Hon Elizabeth QUAT, BBS, JP Hon POON Siu-ping, BBS, MH Hon SHIU Ka-fai, JP Hon Wilson OR Chong-shing, MH Dr Hon Pierre CHAN Hon CHAN Chun-ying, JP Hon LUK Chung-hung, JP Dr Hon CHENG Chung-tai

(Total : 12 members)

Clerk	Ms Maisie LAM
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Legal Adviser	Mr Alvin CHUI Ms Wendy KAN
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Date	19 November 2020
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* Changes in membership are set out in Annex to Appendix

Annex to Appendix

Subcommittee on Subsidiary Legislation Relating to the Prevention and Control of Disease

Changes in membership

Member	Relevant date
Hon Jimmy NG Wing-ka, BBS, JP	Up to 4 November 2020
Hon Tony TSE Wai-chuen, BBS, JP	Up to 4 November 2020
Hon Andrew WAN Siu-kin	Up to 5 November 2020
Hon LAM Cheuk-ting	Up to 5 November 2020
Prof Hon Joseph LEE Kok-long, SBS, JP (Chairman)	Up to 10 November 2020
Hon Charles Peter MOK, JP	Up to 11 November 2020
Hon SHIU Ka-chun	Up to 11 November 2020
Hon HUI Chi-fung	Up to 11 November 2020
Hon Jeremy TAM Man-ho	Up to 11 November 2020
Dr Hon Helena WONG Pik-wan (Deputy Chairman)	Up to 12 November 2020
Hon WU Chi-wai, MH	Up to 12 November 2020
Hon James TO Kun-sun	Up to 12 November 2020
Hon KWONG Chun-yu	Up to 12 November 2020
Hon LEUNG Yiu-chung	Up to 15 November 2020
Dr Hon Fernando CHEUNG Chiu-hung	Up to 18 November 2020

Note 1 According to the announcement made by the Hong Kong Special Administrative Region Government on 11 November 2020 pursuant to the Decision of the Standing Committee of the National People's Congress on Issues Relating to the Qualification of the Members of the Legislative Council of the Hong Kong Special Administrative Region, Kenneth LEUNG, KWOK Ka-ki, Dennis KWOK Wing-hang and Alvin YEUNG were disqualified from being a member of the Legislative Council on 30 July 2020.

Note 2 Pursuant to section 15(1)(a) of the Legislative Council Ordinance (Cap. 542), HUI Chi-fung ceased to hold office as a member of LegCo upon his resignation on 12 November 2020.