

**立法會**  
*Legislative Council*

LC Paper No. LS21/20-21

**Paper for the House Committee Meeting  
on 11 December 2020**

**Legal Service Division Report on  
Subsidiary Legislation Gazetted on 4 December 2020**

**Tabling in LegCo** : Council meeting of 9 December 2020

**Amendment to be made by** : Council meeting of 6 January 2021 (or that of 27 January 2021 if extended by resolution)

**PART I SUBSIDIARY LEGISLATION AND GOVERNMENT NOTICE  
RELATING TO THE PREVENTION AND CONTROL OF  
COVID-19**

**Prevention and Control of Disease (Prohibition on Group  
Gathering) (Amendment) (No. 15) Regulation 2020** (L.N. 241)

**Prevention and Control of Disease (Wearing of Mask)  
(Amendment) (No. 3) Regulation 2020** (L.N. 242)

**Prevention and Control of Disease (Compulsory Testing for  
Certain Persons) (Amendment) Regulation 2020** (L.N. 243)

At present, fixed penalty schemes are provided for certain offences under the Prevention and Control of Disease (Prohibition on Group Gathering) Regulation (Cap. 599G), the Prevention and Control of Disease (Wearing of Mask) Regulation (Cap. 599I) and the Prevention and Control of Disease (Compulsory Testing for Certain Persons) Regulation (Cap. 599J). Under each of these fixed penalty schemes, any person who commits any offence to which a fixed penalty scheme is applicable may, in accordance with the regulation concerned, discharge the person's liability for the offence by paying the applicable fixed penalty specified therein.

2. L.N. 241 to L.N. 243 are made by the Chief Executive ("CE") in Council under section 8 of the Prevention and Control of Disease Ordinance

(Cap. 599) with regard to the latest situation of public health emergency<sup>1</sup> relating to COVID-19 mainly to increase the fines and/or fixed penalties provided under Cap. 599G, Cap. 599I and Cap. 599J as follows:

- (a) L.N. 241 amends Cap. 599G to increase from \$2,000 to \$5,000 the fixed penalty imposed under section 8(1) of Cap. 599G on any person who participates in a prohibited group gathering;<sup>2</sup>
- (b) L.N. 242 amends Cap. 599I to increase—
  - (i) from level 2 (i.e. \$5,000) to level 3 (i.e. \$10,000) the fines imposed for the following offences under Cap. 599I:
    - (A) failing to wear a mask during a specified period when the person is boarding or on board a public transport carrier, entering or present in a Mass Transit Railway ("MTR") paid area or a specified public place<sup>3</sup>; or
    - (B) failing to comply with an authorized person's requirement to disembark from the public transport carrier, or to leave the MTR paid area or specified public place (or any part thereof) concerned if the person concerned fails to wear a mask as required by the authorized person;<sup>4</sup> and
  - (ii) from \$2,000 to \$5,000 the fixed penalty payable for discharging liability for the offence of not wearing a mask in a public transport carrier, an MTR paid area or a specified public place

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<sup>1</sup> 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 pandemic that has a high probability of causing a large number of deaths or serious disabilities (whether or not long-term) in the population.

<sup>2</sup> The term "prohibited group gathering" is defined in section 2 of Cap. 599G to mean a group gathering the taking place of which is prohibited under section 3 of Cap. 599G. From 2 to 15 December 2020, any group gathering of more than two persons is prohibited at a public place and at any premises in relation to which a direction issued under section 6 or 8 of the Prevention and Control of Disease (Requirements and Directions) (Business and Premises) Regulation (Cap. 599F) is in force, and in relation to which a relevant requirement or restriction is not complied with (please see G.N. (E.) 227 of 2020 and sections 2, 3 and 6(1)(a) of Cap. 599G).

<sup>3</sup> The term "specified public place" is defined in section 2 of Cap. 599I to mean a public place, or a public place that is of a category or description, specified by the Secretary for Food and Health by notice published in the Gazette under section 3(1)(a) of Cap. 599I.

<sup>4</sup> Under section 5(6) and 5B(4) of Cap. 599I, an authorized person is defined to include a police officer, the driver, conductor, inspector or ticket collector of a public transport carrier, or the manager or owner of a specified public place.

during a specified period as mentioned in paragraph 2(b)(i)(A) above; and

- (c) L.N. 243 amends Cap. 599J to increase—
- (i) from level 1 (i.e. \$2,000) to level 3 (i.e. \$10,000) the fines imposed on any person who fails to comply with any requirement under a compulsory testing direction ("CTD") issued by a specified medical practitioner, or a compulsory testing notice ("CTN") issued by the Secretary for Food and Health ("Secretary"), to undergo a test for ascertaining whether the person has contracted COVID-19; and
  - (ii) from \$2,000 to \$5,000 the fixed penalty payable for discharging liability for the offence of failing to comply with any requirement under a CTD or CTN.

3. As at the time of issuing this report, no Legislative Council Brief has been issued for L.N. 241 to L.N. 243. As advised by the Clerk to the Panel on Health Services, the Panel has not been consulted on L.N. 241 to L.N. 243.

4. L.N. 241 to L.N. 243 come into operation on 11 December 2020.

## **Other matters**

### Government notice made by the Secretary under Cap. 599J

5. Pursuant to section 10(1) of Cap. 599J, the Secretary has specified by G.N. (E.) 230 of 2020 published in the Gazette on 5 December 2020 that any person who intends to, at any time during the period from 25 December 2020 to 23 January 2021, drive a vehicle registered as a taxi under the Road Traffic Ordinance (Cap. 374) ("taxi driver") must, among others:

- (a) undergo a polymerase chain reaction-based nucleic acid test for COVID-19 from 9 to 22 December 2020; and
- (b) keep the test report or the SMS (mobile phone text message) notification containing the test result for checking by a prescribed officer.<sup>5</sup>

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<sup>5</sup> In exercise of her power under section 10(1)(c) of Cap. 599J, the Secretary has by G.N. (E.) 230 of 2020 appointed police officers and checking officers (compulsory testing) of the Transport Department as prescribed officers who may perform a function under Cap. 599J concerning a taxi driver's failure to comply with a requirement under G.N. (E.) 230 of 2020.

6. The Secretary has also by G.N. (E.) 230 of 2020 specified, in relation to any taxi driver, the 30-day period from 25 December 2020 to 23 January 2021 as the period during which a compulsory testing order may be issued under section 14(1) of Cap. 599J upon non-compliance with a requirement under the Government notice.

## **PART II MISCELLANEOUS**

**Shipping and Port Control (Amendment) (No. 2) Regulation 2020 (L.N. 236)**

**Merchant Shipping (Local Vessels) (General) (Amendment) (No. 2) Regulation 2020 (L.N. 237)**

7. L.N. 236 and L.N. 237 are made by the CE in Council under section 80 of the Shipping and Port Control Ordinance (Cap. 313) and the Secretary for Transport and Housing under section 89 of the Merchant Shipping (Local Vessels) Ordinance (Cap. 548) respectively. They amend the Shipping and Port Control Regulations (Cap. 313A) and the Merchant Shipping (Local Vessels) (General) Regulation (Cap. 548F) respectively to relax the restriction on the height of vessels that may enter or pass through the Tsing Ma Bridge Area.

8. The legal effect of L.N. 236 and L.N. 237 is that, except with the permission of the Director of Marine, the following vessels (including ocean-going vessels and local vessels) are prohibited from entering or passing through the Tsing Ma Bridge Area:

- (a) vessels with a height exceeding 57 metres above sea level (instead of 53 metres above sea level under the existing Cap. 313A and Cap. 548F); and
- (b) vessels with a height exceeding 54.6 metres, but not exceeding 57 metres, above sea level, except during the hours of a day specified in a notice published by the Director of Highways (or an officer authorized by the Director of Highways) as the hours during which the space for the travelling of the movable gantries underneath the Tsing Ma Bridge between the Tsing Yi Tower and the Ma Wan Tower will not be occupied for inspection or maintenance of the Tsing Ma Bridge or related purposes.

9. According to paragraph 17 of the Legislative Council ("LegCo") Brief (File Ref: THB(T)PML CR 8/10/220/40) jointly issued by the Transport and Housing Bureau, the Marine Department and the Highways Department in December 2020, the Hong Kong Maritime and Port Board was consulted in September 2019. It supported the above relaxation.

10. As advised by the Clerk to the Panel on Economic Development, the Administration has consulted the Panel on 26 November 2019 on the various initiatives to develop Hong Kong's port and maritime industry, including the above relaxation to create a business-friendly environment for the industry. Members were generally supportive of the initiatives.

11. L.N. 236 and L.N. 237 come into operation on 28 January 2021.

**Tax Reserve Certificates (Rate of Interest) (Consolidation)  
(Amendment) (No. 4) Notice 2020 (L.N. 238)**

12. L.N. 238 is made by the Secretary for Financial Services and the Treasury under rule 7(2)(h) of the Tax Reserve Certificates (Fourth Series) Rules (Cap. 289A). It amends the Schedule to the Tax Reserve Certificates (Rate of Interest) (Consolidation) Notice (Cap. 289B) by specifying that the rate of interest payable on tax reserve certificates issued on or after 7 December 2020 shall be 0.1500% per annum. The rate of interest was last fixed at 0.2000% per annum and took effect on 29 May 2020 (L.N. 113 of 2020).

13. No LegCo Brief has been issued for L.N. 238. Upon enquiry by the Legal Service Division, the Administration has advised that the adjustment is a routine exercise to update the interest rate payable on tax reserve certificates, and the Administration considers it unnecessary to issue a LegCo Brief or to consult the public.

14. As advised by the Clerk to the Panel on Financial Affairs, the Panel has not been consulted on L.N. 238.

15. L.N. 238 came into operation on the date of its publication in the Gazette, i.e. 4 December 2020.

**Broadcasting and Telecommunications Legislation  
(Amendment) Ordinance 2020 (Commencement) Notice (L.N. 239)**

16. By L.N. 239, the Secretary for Commerce and Economic Development appoints 5 February 2021 as the day on which the Broadcasting and Telecommunications Legislation (Amendment) Ordinance 2020 (Ord. No. 23 of 2020) comes into operation.

17. Ord. No. 23 of 2020 was published in the Gazette on 6 November 2020 after the Broadcasting and Telecommunications Legislation (Amendment) Bill

2019 ("Bill") was passed by LegCo on 29 October 2020. It amends the Broadcasting Ordinance (Cap. 562) and the Telecommunications Ordinance (Cap. 106) to introduce measures to facilitate the operation of the television and sound broadcasting industries,<sup>6</sup> and to remove obsolete provisions relating to the repealed Television Ordinance (Cap. 52). Before the enactment of Ord. No. 23 of 2020, a Bills Committee was formed to scrutinize the Bill. Members may refer to the Report of the Bills Committee (LC Paper No. CB(1)835/19-20) for further details.

18. No LegCo Brief has been issued for L.N. 239.

19. As advised by the Clerk to the Panel on Information Technology and Broadcasting, the Panel has not been consulted on L.N. 239.

### **Concluding observations**

20. No difficulties have been identified in relation to the legal and drafting aspects of the above items of subsidiary legislation.

Prepared by

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10 December 2020

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<sup>6</sup> The measures include relaxing the restrictions against cross-media ownership and foreign control of domestic free television programme service licensee.