

立法會
Legislative Council

LC Paper No. LS22/20-21

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

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 8 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)

**Compulsory Quarantine of Certain Persons Arriving at
Hong Kong (Amendment) (No. 8) Regulation 2020** (L.N. 244)

**Prevention and Control of Disease (Disclosure of
Information) (Amendment) (No. 4) Regulation 2020** (L.N. 245)

**Compulsory Quarantine of Persons Arriving at Hong Kong
from Foreign Places (Amendment) (No. 5) Regulation 2020** (L.N. 246)

**Prevention and Control of Disease (Requirements and
Directions) (Business and Premises) (Amendment) (No. 8)
Regulation 2020** (L.N. 247)

**Prevention and Control of Disease (Prohibition on Group
Gathering) (Amendment) (No. 16) Regulation 2020** (L.N. 248)

**Prevention and Control of Disease (Regulation of
Cross-boundary Conveyances and Travellers) (Amendment)
(No. 2) Regulation 2020** (L.N. 249)

**Prevention and Control of Disease (Wearing of Mask)
(Amendment) (No. 4) Regulation 2020** (L.N. 250)

**Prevention and Control of Disease (Compulsory Testing for
Certain Persons) (Amendment) (No. 2) Regulation 2020** (L.N. 251)

L.N. 244 to L.N. 251 are 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.

L.N. 244 to L.N. 250

2. L.N. 244 to L.N. 250 extend the expiry dates of the following regulations respectively from midnight on 31 December 2020 to midnight on 31 March 2021:

- (a) the Compulsory Quarantine of Certain Persons Arriving at Hong Kong Regulation (Cap. 599C), which mainly provides for a temporary system of mandatory quarantine for persons arriving at Hong Kong (i) from any specified place in China (including the Mainland, Taiwan and Macao); and (ii) from other places but having stayed in the places in China referred to in (i) during the 14 days before the date of the person's arrival;
- (b) the Prevention and Control of Disease (Disclosure of Information) Regulation (Cap. 599D), which mainly empowers a health officer² 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;
- (c) the Compulsory Quarantine of Persons Arriving at Hong Kong from Foreign Places Regulation (Cap. 599E), which mainly provides for a temporary system of compulsory quarantine for: (i) persons arriving at Hong Kong from any specified place outside China; and (ii) persons who have stayed in any specified place referred to in (i) for any period of time during the 14 days before the date of the person's arrival;
- (d) the Prevention and Control of Disease (Requirements and Directions) (Business and Premises) Regulation (Cap. 599F), which mainly imposes certain requirements, and enables directions to be issued by the Secretary for Food and Health ("Secretary"), in respect of any catering business and certain scheduled premises (such as amusement game centres, bathhouses and fitness centres) relating to, among others, the sale or supply of food or drink for

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 in the population or a large number of serious disabilities (whether or not long-term) in the population.

² A health officer 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.

consumption on the premises of any catering business, and the closure of the relevant premises or part thereof;

- (e) the Prevention and Control of Disease (Prohibition on Group Gathering) Regulation (Cap. 599G), which mainly prohibits group gathering of more than a certain number of persons³ in any public place⁴ during a period specified by the Secretary by notice published in the Gazette, and provides for certain exemptions;
- (f) the Prevention and Control of Disease (Regulation of Cross-boundary Conveyances and Travellers) Regulation (Cap. 599H), which mainly provides for 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; and
- (g) the Prevention and Control of Disease (Wearing of Mask) Regulation (Cap. 599I), which mainly requires a person, subject to certain exceptions, to 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 (including any place 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) during a period specified by the Secretary.

L.N. 251

3. The Prevention and Control of Disease (Compulsory Testing for Certain Persons) Regulation (Cap. 599J) introduces a mechanism for specified medical practitioners to issue written directions 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 to require certain categories or descriptions of persons to undergo a specified test. Members may refer to the Legal Service Division ("LSD")'s report issued on 19 November 2020 (LC Paper No. LS10/20-21) for further details on Cap. 599J.

4. L.N. 251 amends Cap. 599J by adding a new Part 4A to the effect that the Secretary may make a restriction-testing declaration in respect of certain

³ Under Cap. 599G as further amended by L.N. 235 of 2020, subject to certain exemptions, the maximum number of persons permitted to gather in a public place is reduced from four to two with effect from 2 December 2020.

⁴ The term "public place" is defined in section 2 of Cap. 599G to mean a place to which the public or a section of the public may or are permitted to have access from time to time, whether by payment or otherwise.

premises to restrict persons who are on, or have entered, the premises to be required to stay on the premises, or a designated place to which they have been transferred, until their test results for COVID-19 are ascertained. The new Part 4A has the following key features:

- (a) the Secretary is empowered to:
 - (i) make a restriction-testing declaration in relation to certain premises ("restricted premises") if the Secretary is satisfied that certain conditions (e.g. considerable number of persons who have recently contracted COVID-19 have recently been present on the premises) are met in relation to the premises; and
 - (ii) direct persons on the restricted premises to be transferred to a designated place and making it a criminal offence for any person who fails to comply with such directions without lawful authority or reasonable excuse (such person is liable to a fine at level 4, i.e. \$25,000 and to imprisonment for six months);
- (b) during the effective period of a restriction-testing declaration, prescribed officers⁵ are empowered to (i) require persons found on the restricted premises to undergo tests for COVID-19, (ii) require persons to stay in a particular area on the restricted premises, and (iii) require any person to provide any information for performing a function under the new Part 4A;
- (c) imposing exit and entry restrictions for restricted premises and making it a criminal offence for any person to contravene such restrictions (such person is liable to a fine at level 4, i.e. \$25,000 and to imprisonment for six months);
- (d) providing for the conditions under which the restriction-testing declaration may be revoked and its maximum effective period of seven days; and
- (e) providing for the Government's duty to ensure that persons on the restricted premises are provided with basic necessities (including goods and services) where the duration of the restriction exceeds 12 hours.

⁵ Prescribed officer is defined in section 2(1) of Cap. 599J to mean a health officer, or a public officer or a member of the Auxiliary Medical Service appointed for performing a function under Cap. 599J concerning a failure to comply with a requirement under a compulsory testing direction or a compulsory testing notice.

5. L.N. 251 also amends provisions under Cap. 599J relating to compulsory testing direction, compulsory testing notice, and compulsory testing order to the effect that persons subject to the direction/notice/order may be required to comply with certain specified requirements, such as the requirement not to leave or enter a particular place without the permission of a prescribed officer until their test results for COVID-19 are ascertained.

Consultation

6. As advised by the Clerk to the Panel on Health Services, the Panel has not been consulted on L.N. 244 to L.N. 251.

Commencement

7. L.N. 244 to L.N. 251 came into operation on 9 December 2020.

8. As of the date of this report, no Legislative Council Brief has been issued by the Administration on L.N. 244 to L.N. 251.

Concluding observations

9. No difficulties have been identified in relation to the legal and drafting aspects of L.N. 244 to L.N. 250. LSD is studying the legal and drafting aspects of L.N. 251 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)

10. Members may wish to note that the Secretary has, pursuant to Cap. 599F, imposed and issued various requirements and directions in relation to catering business and scheduled premises. The latest requirements and directions are summarized in paragraphs 11 to 13 below.

Latest requirements and directions in relation to catering business

11. By G.N. (E.) 232 of 2020 published in the Gazette on 8 December 2020, the Secretary has specified and directed that for a period of 14 days from 10 to 23 December 2020, in respect of all catering businesses, except (i) those set out in Part 1 of Schedule 1 to Cap. 599F,⁶ or (ii) those designated by the

⁶ 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 constructed to be used, and used, as private dwellings.

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 and 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 6:00 pm to 4:59 am of the subsequent day, with the result that dine-in services can now only operate until 5:59 pm (as opposed to 9:59 pm under G.N. (E.) 223 of 2020 published in the Gazette on 30 November 2020) every night. No more than two persons may be seated together at one table within any catering premises. No live performance, dancing, karaoke or mahjong-tin kau activities are allowed. Protective measures (e.g. wearing masks except when consuming food or drink at a table, body temperature screening, provision of hand sanitisers and display of the LeaveHomeSafe venue QR code obtained at the entrance of the premises) are required. G.N. (E.) 223 of 2020 has been suspended upon the commencement of the specification and directions of G.N. (E.) 232 of 2020 on 10 December 2020.

Latest requirements in relation to scheduled premises

12. By G.N. (E.) 233 of 2020 published in the Gazette on 8 December 2020, the Secretary has directed that, for a period of 14 days from 10 to 23 December 2020:

- (a) 13 types of scheduled premises⁷ as set out in Part 1 of Schedule 2 to Cap. 599F must be closed; and
- (b) two types of scheduled premises (i.e. club-house and hotel/guesthouse) as set out in Part 1 of Schedule 2 to Cap. 599F may open subject to the requirements and restrictions detailed at Annex to G.N. (E.) 233 of 2020.⁸

13. G.N. (E.) 224 of 2020 published in the Gazette on 30 November 2020 has been suspended upon the commencement of the directions specified in G.N. (E.) 233 of 2020 on 10 December 2020.

⁷ Those scheduled premises are: (1) amusement game centre; (2) bathhouse; (3) fitness centre; (4) place of amusement; (5) place of public entertainment; (6) premises (commonly known as party room) that are maintained or intended to be maintained for hire for holding social gatherings; (7) beauty parlour; (8) establishment (commonly known as club or nightclub) that is open late into the night, usually for drinking, and dancing or other entertainment; (9) karaoke establishment; (10) mahjong-tin kau premises; (11) massage establishment; (12) sports premises; and (13) swimming pool.

⁸ Such requirements and restrictions include for example the requirement that a person must wear a mask at all times within any club-house except when taking a shower, and that any part(s) of the hotel/guesthouse being used or operated as bathhouse must be closed.

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

14. In respect of the prohibition on group gatherings, the Secretary has, pursuant to section 4(1) of Cap. 599G, specified by G.N. (E.) 234 of 2020 published in the Gazette on 8 December 2020 the 14-day period from 10 to 23 December 2020, during which no group gatherings of more than two persons may take place at a public place and at any premises in relation to which a direction issued under section 6 or 8 of Cap. 599F is in force. G.N. (E.) 234 of 2020 replaces the previous Government notice on the period for the application of the group gathering prohibition (i.e. G.N. (E.) 227 of 2020 published in the Gazette on 1 December 2020).

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

15. In respect of the requirement to wear masks, the Secretary has, pursuant to section 3(1) of Cap. 599I, specified by G.N. (E.) 235 of 2020 published in the Gazette on 8 December 2020 the 14-day period from 10 to 23 December 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). G.N. (E.) 235 of 2020 replaces the previous Government notice on the period for the application of the requirement to wear masks (i.e. G.N. (E.) 225 of 2020 published in the Gazette on 30 November 2020).

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