

立法會 *Legislative Council*

LC Paper No. CB(4)653/20-21

Ref : CB2/SS/4/20

Paper for the House Committee

Fifth 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 another eight items of subsidiary legislation which are in relation to compulsory testing, border control measures, contact tracing and requirements on disclosure of information and social distancing measures 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 ("the eight items of subsidiary legislation").

The eight items of subsidiary legislation

Items of subsidiary legislation in relation to compulsory testing, border control measures as well as contact tracing and requirements on disclosure of certain information

2. Five of the eight items of subsidiary legislation extend the expiry dates of the emergency regulations in relation to compulsory testing, border control measures as well as contact tracing and requirements on disclosure of certain information as detailed below:

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.

L.N. number	Title of subsidiary legislation	Relevant emergency regulation	Original expiry date of emergency regulation	Extended expiry date
Item of subsidiary legislation in relation to compulsory testing				
18 of 2021	Prevention and Control of Disease (Compulsory Testing for Certain Persons) (Amendment) Regulation 2021	Prevention and Control of Disease (Compulsory Testing for Certain Persons) Regulation (Cap. 599J) ²	Midnight on 14 February 2021	Midnight on 14 August 2021
Items of subsidiary legislation in relation to border control measures				
24 of 2021	Compulsory Quarantine of Certain Persons Arriving at Hong Kong (Amendment) Regulation 2021	Compulsory Quarantine of Certain Persons Arriving at Hong Kong Regulation (Cap. 599C) ³	Midnight on 31 March 2021	Midnight on 30 September 2021
26 of 2021	Compulsory Quarantine of Persons Arriving at Hong Kong from Foreign Places (Amendment)	Compulsory Quarantine of Persons Arriving at Hong Kong from Foreign Places		

² Cap. 599J introduces a mechanism for specified medical practitioners to issue compulsory testing 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"); for the Secretary for Food and Health ("SFH") to issue compulsory testing notices to require certain categories or descriptions of persons to undergo a specified test; and for SFH to make a restriction-testing declaration in respect of certain premises to subject persons who are on, or have entered, the premises to certain restrictions, including a requirement to stay on the premises, or a designated place to which they have been transferred until their test results for COVID-19 are ascertained.

³ In gist, Cap. 599C requires a person arriving at Hong Kong from a place in China other than Hong Kong to be placed under compulsory quarantine for a period specified by SFH (which must not exceed 28 days) from the date of arrival if the person has stayed in a certain place in China or a certain foreign place specified by SFH on the day of arrival at Hong Kong or during the relevant period before that day.

	Regulation 2021	Regulation (Cap. 599E) ⁴		
29 of 2021	Prevention and Control of Disease (Regulation of Cross-boundary Conveyances and Travellers) (Amendment) Regulation 2021	Prevention and Control of Disease (Regulation of Cross-boundary Conveyances and Travellers) Regulation (Cap. 599H) ⁵	Midnight on 31 March 2021	Midnight on 30 September 2021
Item of subsidiary legislation in relation to contact tracing and requirements on disclosure of certain information				
25 of 2021	Prevention and Control of Disease (Disclosure of Information) (Amendment) Regulation 2021	Prevention and Control of Disease (Disclosure of Information) Regulation (Cap. 599D) ⁶	Midnight on 31 March 2021	Midnight on 30 September 2021

Items of subsidiary legislation in relation to social distancing measures

Extending expiry date of relevant emergency regulations

3. The Prevention and Control of Disease (Requirements and Directions) (Business and Premises) (Amendment) Regulation 2021 (L.N. 27 of 2021), the Prevention and Control of Disease (Prohibition on Group Gathering) (Amendment) Regulation 2021 (L.N. 28 of 2021) and the Prevention and Control of Disease (Wearing of Mask) (Amendment) Regulation 2021 (L.N. 30 of 2021) were made to amend the Prevention and Control of Disease (Requirements and Directions) (Business and Premises) Regulation

⁴ In gist, Cap. 599E imposes a requirement similar to Cap. 599C except that the person subject to such requirement under Cap. 599E is a person arriving at Hong Kong from a place outside China.

⁵ In gist, Cap. 599H 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 types of persons on those conveyances.

⁶ In gist, Cap. 599D empowers an authorized officer to require a person to give any information that the 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.

(Cap. 599F)⁷, the Prevention and Control of Disease (Prohibition on Group Gathering) Regulation (Cap. 599G)⁸ and the Prevention and Control of Disease (Wearing of Mask) Regulation (Cap. 599I)⁹ respectively. Each of these three items of subsidiary legislation extends the expiry date of the relevant emergency regulations from midnight on 31 March 2021 to midnight on 30 September 2021.

Relaxing social distancing measure

4. In addition to the extension of the expiry date, L.N. 28 of 2021 amends Cap. 599G to: (a) relax the number of persons constituting a "group gathering" prohibited under Cap. 599G from more than two to more than four; and (b) adjust the number of persons constituting gatherings that may be dispersed under section 10 of Cap. 599G to more than four as well.

Empowering the Commissioner for Labour to perform a function

5. Apart from the aforesaid purposes, both L.N. 28 and L.N. 30 of 2021, by adding "the Commissioner for Labour" to the definition of "Authority" in Schedule 2 to Cap. 599G and Cap. 599I respectively, empower the Commissioner to perform a function under the Schedule concerned (including serving on a person a demand notice demanding payment of the outstanding fixed penalty).

Gazettal, commencement and tabling of eight items of subsidiary legislation

6. L.N. 18 of 2021 and the other seven items of subsidiary legislation were published in the Gazette on 9 and 23 February 2021 respectively. They came into operation on the day after their respective gazettal dates. All the eight items of subsidiary legislation were tabled before the Legislative Council ("LegCo") at its meeting on 24 February 2021 and are subject to negative vetting by LegCo.

⁷ In gist, Cap. 599F imposes certain requirements or restrictions, and enables specifications and directions to be issued by SFH, in respect of any catering business and certain scheduled premises as set out in Part 1 of Schedule 2 to Cap. 599F.

⁸ Cap. 599G prohibits group gathering of more than a certain number of persons in any public place or in a Cap. 599F premises in relation to which a direction regarding group gathering is not complied with during a period specified by SFH by notice published in the Gazette, and provides for certain exemptions.

⁹ Cap. 599I 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 SFH.

The Subcommittee

7. At its meetings on 19 and 26 February 2021, the House Committee agreed to refer L. N. 18 of 2021 and the other seven items of subsidiary legislation respectively to the Subcommittee for study.

8. Under the chairmanship of Dr CHIANG Lai-wan, the Subcommittee has held one meeting with the Administration to discuss the eight items of subsidiary legislation.

Deliberations of the Subcommittee

COVID-19 testing

9. Members are concerned about the Administration's capacity for conducting polymerase chain reaction-based nucleic acid tests for COVID-19 ("COVID-19 tests") and the quality of such tests. They ask for statistics on the usage (by industry) of the testing services at the Community Testing Centres ("CTCs") and on recognized COVID-19 testing institutions. They also enquire whether measures have been put in place to increase the testing capacity (e.g. the Administration to set up and operate COVID-19 testing institutions or engage more private testing institutions for conducting such tests) and monitor the quality of such tests.

10. According to the Administration, over 5 million tests have been conducted since the start of the fourth wave of COVID-19. The daily testing quota at CTCs is around 32 000 and the quota has not been used up. The Administration has also set up mobile specimen collection stations for persons subject to compulsory testing or in targeted groups. Members of the public could also take such tests by collecting the COVID-19 specimen packs, leaving their specimens in the bottles and returning them to the collection points. The maximum number of daily distribution is between 40 000 and 60 000 packs. The daily return is 25 000 to 30 000 packs.

11. Regarding usage (by industry) of testing services at CTCs, the Administration has advised that the 19 CTCs across the territory provide self-paid testing services to the public for general community or private purposes (such as certification for travelling or work); and free testing services for persons subject to compulsory testing or targeted groups requiring testing. From 15 November 2020 (commencement date of first four CTCs) to 5 March 2021, more than 540 000 persons were provided with self-paid testing service at CTCs, of which 639 samples tested preliminarily positive (0.12 per cent). Starting from December 2020, the Administration has been gradually providing free voluntary testing service at CTCs for

various targeted groups based on the latest epidemic risk assessment to encourage them to actively participate in testing to safeguard their health and that of their families and co-workers. Starting from mid-February 2021, the Administration has also been providing free testing service to relevant targeted groups at CTCs to tie in with the testing requirement introduced in relation to the relaxation of restrictions imposed on the operation of catering business premises and the re-opening of specified scheduled premises, as well as the arrangements concerning resumption of face-to-face classes at schools, etc. as part of its efforts to step up epidemic control. As at 5 March 2021, over 33 000 free tests were provided at CTCs to foreign domestic helpers, around 1 300 tests to couriers (including takeaway food couriers), around 270 000 to construction site workers, around 14 000 to security and guarding personnel, around 8 000 to teachers and staff of schools, around 66 000 to staff of scheduled premises and around 200 000 to staff of catering business premises.

12. As regards statistics on recognized COVID-19 testing institutions and measures taken to monitor the quality of COVID-19 tests, the Administration has advised that the number of private laboratories on Department of Health ("DH")'s list of "Local COVID-19 nucleic acid testing institutions recognised by the Hong Kong SAR Government" (www.coronavirus.gov.hk/pdf/List_of_recognised_laboratories.pdf) has increased from 15 as of July 2020 to 23 at present. All these laboratories have met DH's criteria for Laboratory Recognition Scheme for SARS-CoV-2 Testing (LRS), including having attained certification of SARS-CoV-2 Quality Assurance Programme ("QAP") from the Centre for Health Protection, and attained medical laboratory accreditation from the College of American Pathologists, Hong Kong Accreditation Service or its Mutual Recognition Arrangements partners. According to the Administration's record, 11 accredited laboratories have provided testing services to various Government departments. Generally speaking, the procurement process of testing services is open for participation by all qualified testing institutions. As private laboratories have accumulated sufficient experience on SARS-CoV-2 nucleic acid test over the last year, to gradually enhance the quality of the services provided by private laboratories, DH has requested that SARS-CoV-2 nucleic acid test must be included in the scope of accreditation for new applicants to LRS since 1 January 2021. For existing private laboratories under LRS, their scope of accreditation must cover SARS-CoV-2 nucleic acid test by 31 December 2021, otherwise they may be disenrolled from DH's list of recognised laboratories.

Border control measures

13. Some members are concerned that if domestic cruises resume operation when the COVID-19 epidemic situation subsides further, whether Cap. 599C or Cap. 599E will be applicable to persons on domestic cruise ships which have travelled into the high seas. They also enquire whether the Administration will extend the Return2hk Scheme, which is currently applicable to Hong Kong residents in Guangdong Province and Macao, to other provinces (such as Fujian). The Administration is also requested to resume its discussion with Singapore on the arrangement of Hong Kong-Singapore Air Travel Bubble.

14. The Administration has explained that the current epidemic situation does not permit domestic cruises to resume operation. As regards the applicability of Cap. 599C and Cap. 599E to persons on domestic cruise ships when such cruise operations may resume, under the regulations, the quarantine requirement is applicable to a person who arrives at Hong Kong from a place in China other than Hong Kong or from a place outside China if the person has stayed in a Category 1 or Category 2 place specified by SFH under Cap. 599C or Cap. 599E.¹⁰ Currently, a person who travelled on an aeroplane or on a ship having entered the space over or waters of a place, without stopping over and leaving the conveyance or boarding on another conveyance there, will not be regarded as having stayed in such a place for the purpose of deciding if the person has stayed in any Category 1 or Category 2 specified place under Cap. 599C or Cap. 599E or has to be quarantined under the respective regulations. Following the above, the high seas are a place not intended to be a Category 1 or Category 2 place specified under Cap. 599C or Cap. 599E and a person who has merely travelled on the high seas after departing Hong Kong may be regarded as not having stayed in any Category 1 or Category 2 place so specified and hence not subject to any quarantine requirement under section 3 of Cap. 599C or Cap. 599E. Meanwhile, relevant bureaux will explore the feasibility of extension of the Return2hk Scheme and will continue the discussion on the Air Travel Bubble with Singapore.

15. Some members have expressed concern that some Hong Kong residents encounter difficulties in returning to Hong Kong as boarding

¹⁰ Section 12(1)(a) of Cap 599C empowers SFH to specify any place in China other than Hong Kong as a Category 1 specified place in China. Section 12(1)(b) thereof empowers her to specify any place in China other than Hong Kong that is not in the aforesaid Category as a Category 2 specified place in China. Section 12(1)(a) of Cap 599E empowers SFH to specify any place outside China as a Category 1 specified foreign place. Section 12(1)(b) thereof empowers her to specify any place outside China that is not in the aforesaid Category as a Category 2 specified foreign place.

restrictions have been imposed on the places where these persons are currently located. These members ask whether the Administration would provide assistance to these people.

16. The Administration points out that the boarding restrictions are imposed in view of the development of the global COVID-19 epidemic situation, particularly the fact that cases of people contracting the more transmissible new virus variant are found in an increasing number of places. It will review these boarding restrictions regularly and make adjustments as necessary.

Social distancing measures

Scanning LeaveHomeSafe venue QR code and COVID-19 testing of staff

17. Some members observe that some operators of catering business premises are sloppy in taking the infection control measure to ensure that, before entering catering business premises, users scan the "LeaveHomeSafe" ("LHS") venue QR code or register their names, contact telephone numbers as well as the dates and times of their visits. These members are also concerned whether operators of catering business premises have taken the infection control measure to arrange for all staff involved in the operation of the premises to undergo a COVID-19 test once every 14 days. These members ask whether the Administration has conducted inspections to ensure proper implementation of these measures.

18. On catering business premises alone (not inclusive of bars), the Administration has explained that since 18 February 2021, the Food and Environmental Hygiene Department has conducted 14 778 inspections and initiated prosecutions on 16 cases. The prosecutions are not related to the use of the LHS mobile app nor the compulsory testing requirement for staff of catering business premises. It first started with an educational and advisory phase, during which the Administration conducted publicity work on these two new measures and advised the operators concerned to implement the new requirements. During the past few weeks, the Administration has met with representatives of the trade, issued advisory letters and provided answers to Frequently Asked Questions ("FAQs") to the trade. Later on, the Administration will proceed to an enforcement phase where enforcement actions will be taken on these two measures.

Dedicated staff for cleaning-up duties

19. Some members have expressed concern that the requirement on arrangement of dedicated staff for cleaning-up duties will place an

operational burden on catering business premises. They opine that such requirement is not practicable for small catering business premises as only a small number of frontline staff work in the premises.

20. The Administration has advised that if the catering business could not arrange dedicated staff for clearing used utensils and cleaning and disinfecting tables and partitions, the operator must ensure that the staff carrying out any of the cleaning-up duties must adopt hand hygiene measures before switching to perform other duties.

Fresh air supply to catering business premises

21. Some members point out that restaurant operators have already been required under the Public Health and Municipal Services Ordinance (Cap. 132) to provide ventilation system for supplying sufficient fresh air to the restaurants concerned. Nevertheless, arising from the experts' suggestion that the outbreak of COVID-19 in a restaurant in Tsim Sha Tsui might be caused by poor ventilation therein, the Administration plans to impose an additional requirement on air change to restaurants on infection control grounds in SFH's directions under Cap. 599F. These members are therefore concerned that restaurant operators might have difficulties in meeting the additional requirement and request the Administration to explore other ways to deal with the problem.

22. The Administration has clarified that the requirement of provision of ventilation systems for restaurants under Cap. 132 was not based on a policy intent of infection control when it was first formulated and enacted. The proposed additional requirement of a higher air change level or the alternative of using air purifiers as an infection control measure will have its own defined effective period under Cap. 599F, which itself is an emergency regulation. The Administration will discuss with the industry, experts, the Hong Kong Institute of Engineers and relevant stakeholders details of the proposed additional requirement and will release such details in due course.

Wearing of masks

23. Some members are concerned that section 5A(3)(e) of Cap. 599I may be construed as providing a reasonable excuse for a person on a public transport carrier not to wear a mask in order to eat or drink. They consider that eating or drinking in such circumstances should not be exempted from the mandatory mask-wearing requirement imposed under Cap. 599I. Regarding the current requirement of disallowing live performance in catering business premises, some members consider that such performance should be allowed if the performer wears a mask in the course of the performance.

24. The Administration has advised that it will review the relevant requirements from time and time and adjust them based on, inter alia, the relevant risk assessments.

Vaccination programme

Suspected serious adverse events following COVID-19 vaccination

25. Some members are concerned that there are suspected serious adverse events (including deaths) following COVID-19 vaccination. They ask about the Administration's follow-up action.

26. The Administration has advised that investigations into such incidents are underway. The investigation results will be released in a timely manner. Chronic patients, particularly those suffering from serious chronic diseases, who intend to receive vaccination should seek medical advice beforehand on whether they could do so.

Community Vaccination Centres

27. Some members seek the Administration's clarification as to whether the operators of the Community Vaccination Centres ("CVC") were selected by open tender or by invitation and enquire about details of the criteria for such selection or invitation. They also enquire whether the Administration will set up more CVCs to cope with the demand and, if so, how the operators of such CVCs will be selected.

28. The Administration has advised that it will set up 29 CVCs in Hong Kong to provide COVID-19 vaccination services for citizens. As at 10 March 2021, 15 CVCs have commenced operations. To mobilise sufficient medical manpower to support the smooth operations of CVCs, the Administration has partnered with the Hospital Authority and a number of healthcare professional bodies, medical organizations and private hospitals (collectively as "partner healthcare organizations") to take charge of the medical-related tasks at CVCs. The partner healthcare organizations participating in the operation of CVCs must be of a certain scale with medical network, ability to mobilise staff as well as resources. The Administration had earlier issued invitations to 40-plus healthcare organizations which meet the aforesaid criteria (not including public medical organizations) and chose the partner healthcare organizations out of the 17 proposals received. The Administration will continuously monitor the implementation of the vaccination programme and make adjustments as necessary.

Recommendation

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

Advice sought

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

Council Business Division 4
Legislative Council Secretariat
17 March 2021