

立法會
Legislative Council

LC Paper No. LS68/20-21

**Paper for the House Committee Meeting
on 30 April 2021**

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 27 April 2021**

Tabling in LegCo : Council meeting of 28 April 2021

Amendment to be made by : Council meeting of 26 May 2021 (or that of 16 June 2021 if extended by resolution)

Prevention and Control of Disease (Requirements and Directions) (Business and Premises) (Amendment) (No. 2) Regulation 2021 (L.N. 52)

Prevention and Control of Disease (Prohibition on Group Gathering) (Amendment) (No. 3) Regulation 2021 (L.N. 53)

L.N. 52 and L.N. 53 are made by the Chief Executive in Council under section 8 of the Prevention and Control of Disease Ordinance (Cap. 599) having regard to the latest situation of public health emergency relating to COVID-19 ("disease").

L.N. 52

2. L.N. 52 amends the Prevention and Control of Disease (Requirements and Directions) (Business and Premises) Regulation (Cap. 599F) mainly to:

- (a) empower the Secretary for Food and Health ("Secretary") to issue directions by notice published in the Gazette (such notice not being subsidiary legislation) imposing requirements or restrictions for different categories or descriptions of persons entering or present on any catering business premises or any scheduled premises;
- (b) require a person who enters, or is present on, any catering business premises or any scheduled premises to comply with any directions issued by the Secretary;

- (c) empower the manager¹ of the catering business premises and scheduled premises to require persons who enter or are present on those premises to provide records, documents or information that is necessary for compliance with the directions and to inspect and examine such records, documents or information;
- (d) provide that a person who contravenes the requirements as stated in (b) above commits an offence and is liable on conviction to a fine at level 3 (\$10,000) and provide for the payment of a fixed penalty to discharge the liability of the offence; and
- (e) provide that a person commits an offence and is liable on conviction to a fine at level 3 (\$10,000) if the person knowingly or recklessly provides any record, document or information that is false or misleading in a material particular to an authorized officer (i.e. a public officer appointed by the Secretary for the purposes of Cap. 599F).

L.N. 53

3. L.N. 53 amends the Prevention and Control of Disease (Prohibition on Group Gathering) Regulation (Cap. 599G) mainly to provide for additional exempted group gatherings which are participated by persons who meet certain conditions specified by the Secretary by notice published in the Gazette (which is not subsidiary legislation) ("qualified persons"). These exempted group gatherings are set out below:

- (a) group gathering during a wedding ceremony at which no food or drink is served (except as part of a religious ritual) and is participated by not more than 50 persons (if held at an indoor place) and 100 persons (if held at an outdoor place) (as opposed to 20 persons under item 9A of Part 1 of Schedule 1 to Cap. 599G);
- (b) group gathering during a specified business meeting (i.e. a meeting of a body or shareholders' meeting of a listed company held in accordance with any Ordinance or other regulatory instrument) that no food or drink is served at the meeting and is participated by 50 persons (if held indoor) and 100 persons (if held outdoor)

¹ The manager is defined to mean the person who is responsible for the management or is in charge or control of the premises and includes a person authorized by a manager (section 2 of Cap. 599F).

(as opposed to 20 persons under item 11 of Part 1 of Schedule 1 to Cap. 599G);

- (c) group gathering during a religious activity (other than a wedding ceremony) that is held at a place of worship (including a church, monastery or nunnery, mosque, synagogue and temple) where no food or drink is served in the activity (except as part of a religious ritual) and the number of participants in the activity is restricted to not more than 50% (if held on indoor premises) and 100% (if held on outdoor premises) of the number of persons that may normally be accommodated (as opposed to 30% under item 17 of Part 1 of Schedule 1 to Cap. 599G); and
- (d) group gathering during a tour of not more than 30 persons organized by a licensed travel agent under the Travel Agents Ordinance (Cap. 218) and registered with the Travel Industry Council of Hong Kong ("the licensee"), in which each of staff member participants of the tour (e.g. the licensee's employees, agents or contractors) is a qualified person except when taking place at any premises in relation to which a direction under Cap. 599F is in place.

4. In specifying the set of conditions regarding qualified persons, the Secretary may make reference to relevant factors. These factors include whether the person has been administered a vaccine within a certain time, whether the person has previously contracted the disease within a certain time, whether the person has undergone a test within a certain time for ascertaining whether the person has contracted the disease, whether the person is clinically assessed to be unfit to be administered a vaccine, and the age of the person.

5. L.N. 53 also amends Cap. 599G to:

- (a) confer powers on a person who organizes the additional exempted group gatherings to require the participants and the staff member participants (in the case of tour gathering) to provide any record, document or information proving that the participant concerned is a qualified person and to inspect and examine such documents, information or records;
- (b) provide for defences for persons who are charged with an offence for participating or organizing a prohibited group gathering that would have been an exempted group gathering if each of the persons participating in the gathering was a qualified person; and
- (c) provide that a person commits an offence and is liable on conviction to a fine at level 3 (\$10,000) if the person knowingly or recklessly

provides any record, document or information that is false or misleading in a material particular to an authorized officer (i.e. a public officer appointed by the Director of Health).

6. As at the time of issuing this report, no Legislative Council Brief has been issued for L.N. 52 and L.N. 53. As advised by the Clerk to the Panel on Health Services, the Panel has not been consulted on L.N. 52 and L.N. 53.

7. L.N. 52 and L.N. 53 come into operation on 29 April 2021.

8. The Legal Service Division is scrutinizing the legal and drafting aspects of L.N. 52 and L.N. 53 and will report further, if necessary.

Other matters

Government notice made by the Secretary under Cap. 599F

Latest requirements and directions in relation to catering business

9. By G.N. (E.) 249 of 2021 published in the Gazette on 28 April 2021, the Secretary has specified and directed that, during the period of 14 days beginning on 29 April to 12 May 2021, all catering business (except bars or pubs and the parts of a catering premises selling or supplying intoxicating liquors which are subject to other requirements and those exempted under Cap. 599F) must operate according to one or more of the operating mode(s) specified in G.N. (E.) 249 of 2021, namely, Type A, B, C or D mode of operation. The specific measures required for Types A and B modes of operation are the same as those adopted before 29 April 2021. As regards Types C and D, the specific measures are set out below:

- (a) Type C Mode of Operation:
 - (i) all staff have received the first dose of COVID-19 vaccine and keep the vaccination record as proof of vaccination;
 - (ii) a "Designated Zone C" may be delineated and no more than six persons seated together at one table;
 - (iii) all customers in the "Designated Zone C" scan the "LeaveHomeSafe" QR code using the "LeaveHomeSafe" mobile application on their mobile phones;
 - (iv) the number of customers at the catering premises at any one time must not exceed 50% of the seating capacity of the

premises; and

(v) selling or supplying of food or drink for consumption on the premises must be ceased from 0:00 a.m. to 4:59 a.m.

(b) Type D Mode of Operation:

(i) all staff have completed the COVID-19 vaccination course and keep the vaccination record as proof of vaccination;

(ii) a "Designated Zone D" may be delineated and it must be ensured that all customers in the zone have received the first COVID-19 vaccine dose and scan the "LeaveHomeSafe" QR code using the "LeaveHomeSafe" mobile application on their mobile phones;

(iii) no more than eight persons can be seated together at one table in "Designated Zone D";

(iv) the selling or supplying of food or drink for consumption on the premises must be ceased from 2:00 a.m. to 4:59 a.m.; and

(v) the number of customers at the catering premises at any one time must not exceed 75% of the seating capacity of the premises.

Latest requirements and directions in relation to scheduled premises

10. By G.N. (E.) 250 of 2021 published in the Gazette on 28 April 2021, the Secretary has directed that, for a period of 14 days from 29 April to 12 May 2021:

(a) five types of scheduled premises (i.e. bathhouse, party room for hire for holding social gatherings, club or nightclub, karaoke establishment, and mahjong-tin kau premises) as set out in Part 1 of Schedule 2 to Cap. 599F may operate in the specified mode of operation if they have adopted the specified measures and the requirements detailed in G.N. (E.) 250 of 2021 (e.g. all staff members involved in the operation of the premises and customers have received the first dose of COVID-19 vaccine), otherwise they must be closed; and

(b) 10 types of scheduled premises (i.e. amusement game centre, fitness centre, place of amusement, place of public entertainment, beauty parlour, club-house, massage establishment, sports premises,

swimming pool, and hotel and guesthouse) are 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.) 250 of 2021.

Government notices made by the Secretary under Cap. 599G

11. In respect of the prohibition on group gathering, the Secretary has, pursuant to section 4(1) of Cap. 599G, specified by G.N. (E.) 251 of 2021 published in the Gazette on 28 April 2021 the 14-day period from 29 April to 12 May 2021, during which no group gatherings of more than four 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.

12. By G.N. (E.) 252 of 2021 published in the Gazette on 28 April 2021, the Secretary has specified the conditions for "qualified persons" for the purposes of Part 3 of Cap. 599G. Such conditions include all participants of the group gathering (for exempted group gathering during wedding ceremony, specified business meeting or religious activity) aged 6 and above but below 16 have produced to the organizer(s) of the group gathering a negative result for polymerase chain reaction-based nucleic test for the disease ("specified test"), all participants aged 16 or above have received the first dose of a COVID-19 vaccine; and all staff member participants during the tour gathering of not more than 30 persons have received the first dose of a COVID-19 vaccine prior to participating in the tour gathering etc.

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

13. By G.N. (E.) 245 of 2021 published in the Gazette on 26 April 2021, the Secretary has specified, with effect from 29 April 2021, for the purposes of section 3 of Cap. 599C:

- (a) all places in China outside Hong Kong, the Mainland (excluding places in the Mainland which are designated as "medium risk" and "high risk" as set out in the list, at the time of the person's arrival, published by the Department of Health on its website ("medium and high risk places")) and Macao as Category 1 specified places in China;
- (b) the Mainland (excluding medium and high risk places) and Macao as Category 2 specified places in China; and
- (c) category of persons and conditions set out in the Annex for Category 2 specified places in China.

14. The effect of specifications under paragraph 13(b) and (c) above is that Hong Kong residents or temporary residents with limit of stay expired on or after 1 January 2020 who return to Hong Kong from the Mainland (excluding medium and high risk places) or Macao and who meet the conditions set out in the Annex (e.g. to produce documentary proof on a negative result for the specified test and the person has been allocated a quota for entering Hong Kong) are exempt from the 14-day compulsory quarantine requirements under section 3(1) of Cap. 599C.

15. Upon the commencement of G.N. (E.) 245 of 2021 on 29 April 2021, the previous Government notice for the application of the compulsory quarantine requirement on certain persons arriving at Hong Kong with effect from 23 November 2020 (i.e. G.N. (E.) 210 of 2020 published in the Gazette on 21 November 2020) will be suspended.

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

16. In respect of the requirement to wear masks, the Secretary has, pursuant to section 3(1) of Cap. 599I, specified by G.N. (E.) 253 of 2021 published in the Gazette on 28 April 2021 the 14-day period from 29 April to 12 May 2021, 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).

Government notices made by the Secretary under the Prevention and Control of Disease (Compulsory Testing for Certain Persons) Regulation (Cap. 599J)

17. By G.N. (E.)s 224 to 226, 228, 231 to 238, 240 to 244, 246, 248 and 254 of 2021 published in the Gazette from 15 to 28 April 2021, the Secretary has specified the following categories of persons to be persons who must undergo a specified test within the periods as specified in the relevant Government notices:

- (a) persons who (i) were present in any capacity (e.g. residents, visitors and workers) at certain specified premises during certain specified periods, and (ii) when a restriction-testing declaration involving those premises became effective, were either present or not present in the restricted area identified in the declaration;
- (b) persons employed by and on duty, engaged to provide service, or intending to work or provide hired service at residential care homes for the elderly and for persons with disabilities (including day service unit attached to such residential care homes), and nursing homes during certain specified periods; and

- (c) persons aged 6 or above who arrive at Hong Kong on or after certain specified dates via any land boundary control points or the Hong Kong International Airport and are placed under quarantine pursuant to quarantine orders.

18. The Secretary has also specified certain periods as the periods during which a compulsory testing order may be issued under Cap. 599J for non-compliance with the relevant Government notices.

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