

立法會
Legislative Council

LC Paper No. CB(4)1726/20-21

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seen by the Administration)

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

**Minutes of the fourth meeting
held on Wednesday, 16 December 2020, at 3:55 pm
in Conference Room 3 of the Legislative Council Complex**

Members present : Dr Hon CHIANG Lai-wan, SBS, JP (Chairman)
Hon YIU Si-wing, BBS (Deputy Chairman)
Hon Mrs Regina IP LAU Suk-ye, GBS, JP
Hon Frankie YICK Chi-ming, SBS, JP
Hon CHAN Han-pan, BBS, JP
Hon Elizabeth QUAT, BBS, JP
Hon SHIU Ka-fai, JP
Hon Wilson OR Chong-shing, MH
Dr Hon Pierre CHAN
Hon CHAN Chun-ying, JP
Dr Hon CHENG Chung-tai

Members absent : Hon POON Siu-ping, BBS, MH
Hon LUK Chung-hung, JP

Public Officers attending : Item III

Dr CHUI Tak-yi, JP
Under Secretary for Food and Health

Ms Ellen CHAN Sheung-man
Principal Assistant Secretary for Food and Health (Health)
Food and Health Bureau

Mr Michael KWAN Ke-lin
Principal Assistant Secretary for Food and Health (Health)
Special Duties
Food and Health Bureau

Ms Tiffany CHUNG Wai-ting
Principal Assistant Secretary for Food and Health (Health)
Special Duties 2
Food and Health Bureau

Dr Heston KWONG Kwok-wai, JP
Head, Emergency Response and Programme Management
Branch
Department of Health

Dr WONG Chi-hong
Senior Medical & Health Officer (Epidemiology)2
Department of Health

Mr Manuel NG Man-chun
Acting Senior Assistant Law Draftsman
Department of Justice

Miss Elaine NG Pui-kei
Senior Government Counsel
Department of Justice

Clerk in attendance : Ms Maisie LAM
Chief Council Secretary (2) 5

Staff in attendance : Miss Joyce CHAN
Assistant Legal Adviser 1

Miss Rachel DAI
Assistant Legal Adviser 2

Mr Alvin CHUI
Assistant Legal Adviser 3

Miss Evelyn LEE
Assistant Legal Adviser 10

Miss Kay CHU
Senior Council Secretary (2) 5

Mr Ronald LAU
Council Secretary (2) 5

Miss Maggie CHIU
Legislative Assistant (2) 5

Kent CHAN
Clerical Assistant (2) 5

Action

I. Application for late membership
[LC Paper No. CB(2)495/20-21(01)]

Members agreed to accept the application for late membership from Mr CHAN Han-pan.

II. Election of Deputy Chairman

2. Mr YIU Si-wing was elected Deputy Chairman of the Subcommittee.

III. Meeting with the Administration

[File Ref.: L.N. 221 to 223, 235, 241 to 251 of 2020, Legislative Council Briefs issued by the Food and Health Bureau on 20 and 26 November, 4 December and in December 2020, LC Paper Nos. LS10 to LS11/20-21, LS19/20-21, LS21 to LS22/20-21, CB(2)446/20-21(01) to (05), CB(2)517/20-21(01) to (15)]

3. The Subcommittee deliberated (index of proceedings attached at **Annex**).

Extension of scrutiny period

4. Members noted that the Chairman had:

- (a) moved a resolution at the Council meeting of 2 December 2020 to extend the scrutiny period of the Prevention and Control of Disease (Compulsory Testing for Certain Persons) Regulation (L.N. 221 of 2020) to the Council meeting of 6 January 2021;

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- (b) moved a resolution at the Council meeting of 16 December 2020 to extend the scrutiny period of (i) the Prevention and Control of Disease (Requirements and Directions) (Business and Premises) (Amendment) (No. 7) Regulation 2020 (L.N. 222 of 2020); and (ii) the Prevention and Control of Disease (Prohibition on Group Gathering) (Amendment) (No. 13) Regulation 2020 (L.N. 223 of 2020) to the Council meeting of 13 January 2021; and
- (c) moved another resolution at the Council meeting of 16 December 2020 to extend the scrutiny period of the Prevention and Control of Disease (Prohibition on Group Gathering) (Amendment) (No. 14) Regulation 2020 (L.N. 235 of 2020) to the Council meeting of 20 January 2021.

The deadlines for giving notice of amendment, if any, to L.N. 221 of 2020, L.N. 222 and L.N. 223 of 2020, and L.N. 235 of 2020 would be 29 December 2020, 6 January 2021, and 13 January 2021 respectively.

5. Members further noted that as agreed at the House Committee meeting held on 11 December 2020, the following 11 items of subsidiary legislation should be studied by the Subcommittee:

- (a) the Prevention and Control of Disease (Prohibition on Group Gathering) (Amendment) (No. 15) Regulation 2020 (L.N. 241 of 2020);
- (b) the Prevention and Control of Disease (Wearing of Mask) (Amendment) (No. 3) Regulation 2020 (L.N. 242 of 2020);
- (c) the Prevention and Control of Disease (Compulsory Testing for Certain Persons) (Amendment) Regulation 2020 (L.N. 243 of 2020);
- (d) the Compulsory Quarantine of Certain Persons Arriving at Hong Kong (Amendment) (No. 8) Regulation 2020 (L.N. 244 of 2020);
- (e) the Prevention and Control of Disease (Disclosure of Information) (Amendment) (No. 4) Regulation 2020 (L.N. 245 of 2020);
- (f) the Compulsory Quarantine of Persons Arriving at Hong Kong from Foreign Places (Amendment) (No. 5) Regulation 2020 (L.N. 246 of 2020);
- (g) the Prevention and Control of Disease (Requirements and Directions) (Business and Premises) (Amendment) (No. 8) Regulation 2020 (L.N. 247 of 2020);

Action

- (h) the Prevention and Control of Disease (Prohibition on Group Gathering) (Amendment) (No. 16) Regulation 2020 (L.N. 248 of 2020);
- (i) the Prevention and Control of Disease (Regulation of Cross-boundary Conveyances and Travellers) (Amendment) (No. 2) Regulation 2020 (L.N. 249 of 2020);
- (j) the Prevention and Control of Disease (Wearing of Mask) (Amendment) (No. 4) Regulation 2020 (L.N. 250 of 2020); and
- (k) the Prevention and Control of Disease (Compulsory Testing for Certain Persons) (Amendment) (No. 2) Regulation 2020 (L.N. 251 of 2020).

Members agreed that the Chairman would give notice to move a proposed resolution at the Council meeting of 6 January 2021 to extend the scrutiny period of these items of subsidiary legislation to the Council meeting of 27 January 2021. Members noted that if the scrutiny period was extended, the deadline for giving notice of amendment, if any, to these items of subsidiary legislation would be 20 January 2021.

Examination of 14 items of subsidiary legislation

6. The Subcommittee completed the examination of the provisions of L.N. 221 to L.N. 223, L.N. 235, and L.N. 241 to L.N. 250 of 2020.

Arrangement for the next meeting

7. The Chairman decided that L.N. 251 of 2020 would be examined at the next meeting of the Subcommittee upon receipt of the Administration's response to the letter dated 15 December 2020 from the Assistant Legal Adviser responsible for advising members on the legal and drafting aspects of this item of subsidiary legislation [LC Paper No. CB(2)517/20-21(12)].

IV. Any other business

8. There being no other business, the meeting ended at 5:28 pm.

**Proceedings of the fourth meeting of the
Subcommittee on Subsidiary Legislation
Relating to the Prevention and Control of Disease
on Wednesday, 16 December 2020, at 3:55 pm
in Conference Room 3 of the Legislative Council Complex**

Time marker	Speaker	Subject(s)/Discussion	Action required
<i>Agenda item I: Application for late membership</i>			
000123 - 000221	Chairman	Mr CHAN Han-pan's late application for membership of the Subcommittee	
<i>Agenda item II: Election of Deputy Chairman</i>			
000222 - 000331	Chairman Mr CHAN Chun-ying Mr YIU Si-wing Mrs Regina IP	Election of Deputy Chairman	
<i>Agenda item III: Meeting with the Administration</i>			
000332 - 000623	Chairman	Extension of the scrutiny period of 11 items of subsidiary legislation (L.N. 241 to 251 of 2020)	
000624 - 000928	Chairman Admin	Briefing by the Administration on 15 items of subsidiary legislation (L.N. 221 to 223, 235, 241 to 251 of 2020)	
000929 - 001422	Chairman Dr Pierre CHAN Admin	In response to Dr Pierre CHAN's concern, the Administration assured members that it would strive to provide relevant papers including the Legislative Council Brief for meetings of the Subcommittee in a timely manner. Pointing out that specimen quality might affect the result of virus tests, Dr Pierre CHAN sought explanation from the Administration for the rationale of allowing different specimen collection methods for certain persons under compulsory testing, including collection of deep throat saliva and through combined nasal and throat swabs. The Administration explained that there were advantages and limitations to different specimen collection methods for coronavirus disease 2019 test. The collection of deep throat saliva was convenient and could minimize the intrusion on the human body, but the quality of the specimens collected might vary. To ensure the consistency of samples collected, it would continue to review the logistical arrangements for compulsory testing with a view to moving towards the direction of using combined nasal and throat swabs performed by designated personnel as the standard specimen collection method.	
001423 - 002215	Chairman Dr CHENG Chung-tai Admin	Dr CHENG Chung-tai pointed out that a patient from Hong Kong arriving in Beijing who was confirmed positive after the end of his 14-day quarantine period was classified as an imported case by the Mainland, while a patient under similar circumstances arriving in Hong Kong earlier was classified as a local case by the Administration. In his view, this discrepancy in classification might result in different follow-up actions, including quarantine of close contacts and compulsory testing	

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		<p>for persons in the same residence.</p> <p>The Administration advised that while the average incubation period for coronavirus disease 2019 ranged from one to 14 days, there were some confirmed cases where the incubation period was longer than 14 days. Whether a patient who was confirmed positive after the quarantine period should be classified as a local or imported case would be determined by, among others, the travel history of the patient in particular that after the end of the 14-day quarantine period and the viral load in the specimen collected.</p>	
002216 - 002957	Chairman Mr YIU Si-wing Admin	<p>Mr YIU Si-wing urged the Administration to (a) clarify whether hotels and guesthouses would be held liable in respect of a prohibited group gathering taking place in a guestroom or rental unit therein, and non-compliance by guests under quarantine pursuant to quarantine orders (such as leaving their guestroom or suite during the quarantine period); (b) take stringent enforcement actions in tandem with the increase in fines and/or fixed penalties in order to achieve the needed deterrent effect and send a strong message to members of the public on the importance of complying with social distancing measures; and (c) clarify the circumstances under which diners were exempted from wearing a mask in a catering premises, and whether law enforcement officers could exercise any discretion in their enforcement actions. He suggested requiring persons under quarantine to sign an undertaking to protect hotels and guesthouses from being held liable for their non-compliance.</p> <p>The Administration advised that it was the responsibility of hotels and guesthouses to take all reasonable steps to ensure that persons under quarantine and any accompanying carers comply with the requirements on quarantine, while dedicated staff would be deployed by the Administration to conduct inspections in different hotels to ensure compliance. More than 100 fixed penalty notices had been issued since the penalty for discharging liability under the Prevention and Control of Disease (Prohibition on Group Gathering) Regulation (Cap. 599G) and the Prevention and Control of Disease (Wearing of Mask) Regulation (Cap. 599I) was raised from \$2,000 to \$5,000. The Administration would continue to step up publicity and enforcement.</p>	
002958 - 003949	Chairman Mr CHAN Chun-ying Admin Mrs Regina IP	<p>Mr CHAN Chun-ying enquired (a) why the Secretary for Food and Health ("SFH"), instead of the Director of Health as in other legislation, was authorized to make a restriction-testing declaration ("the declaration") under the Prevention and Control of Disease (Compulsory Testing for Certain Persons) Regulation (Cap. 599J); (b) the difference between the declaration and the isolation order under the Prevention and Control of Disease Regulation (Cap. 599A), and under what circumstances would such declaration be made; and (c) why the declaration would cease to have effect on the expiry of seven days, which was not in tandem with the quarantine period of 14 days.</p> <p>Mrs Regina IP surmised that SFH was authorized to make the</p>	

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		<p>declaration in view of the power she could exercise. She wondered why the Administration did not use the term "lockdown order" in describing the declaration as it would be easier for the public to understand the legal requirement.</p> <p>The Administration advised that the declaration was different from a quarantine order in that individuals subject to the latter had to stay at designated places including quarantine centres and hotels. Separately, the isolation order under Cap. 599A referred to the placing of a person under quarantine or isolation in a hospital or similar establishments. This was by nature different from the declaration, which had the purpose of conducting testing for certain persons within a defined area. The Administration said it would exercise its power under Cap. 599J to make the declaration not solely based on the number of cases identified on particular premises, but also how the construction and design of the premises concerned could relate to an outbreak. In some cases, quarantining persons under high risk and testing those with relatively lower risk could serve the need of infection control without making the declaration.</p>	
003950 - 004606	Chairman Mr Wilson OR Admin	Mr Wilson OR requested the Administration to ensure that close contacts of confirmed cases would be promptly transferred to quarantine centres for quarantine, and to enhance the dissemination of the latest anti-epidemic information to members of the public. The Administration explained that the daily number of new confirmed cases remained high since late November 2020. Hence, there had been an exceptional increase in the number of close contacts that ranged from 200 to 300 persons each day. The Department of Health would work with the Auxiliary Medical Service to ensure that close contacts would be escorted to quarantine centres as soon as possible once a quarantine order was made.	
004607 - 005220	Chairman Mr YIU Si-wing Admin	<p>Pointing out that the removal of the exemption for group gatherings for local tours under Cap. 599G had dealt a severe blow to the tourist sector which had already been hard hit by the epidemic, Mr YIU Si-wing sought information on the conditions under which the above tightened measure could be relaxed. He also urged the Administration to lay down criteria for different arrangements for premises under high risk of outbreak, including transferring persons on the premises to a designated place to wait for test result, and requiring persons to stay in the premises until all such persons had undergone testing and the test results were ascertained.</p> <p>The Administration advised that it would make suitable adjustments taking into account all relevant factors when considering whether there was room for gradual relaxation of the social distancing measures as far as the public health risk assessment permitted. Considerations would first be given to lifting restrictions on those activities which were, or the operation which was, essential to the public at large. As regards the arrangements for high-risk premises, there was no strict standard but consideration would be given to whether environmental contamination factor existed on site and the</p>	

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		testing capacity for persons therein. Exact details would be worked out once a declaration was made.	
005221 - 005600	Chairman Mr CHAN Chun-ying Admin	<p>Mr CHAN Chun-ying asked (a) why SFH was authorized to make the declaration; (b) why the declaration ceased to have effect after seven days instead of 14 days to align with the quarantine period; (c) whether the Administration would supply basic necessities to persons who were required to stay in certain premises under Cap. 599J; and (d) whether the Administration would form a cross-department support team to provide immediate assistance to members of the public under the current epidemic situation.</p> <p>The Administration advised that in light of the magnitude of the epidemic situation which spanned a number of aspects and levels of work, it was more appropriate for a higher ranking official to be empowered to invoke certain powers under Cap. 599J. Inter-departmental meetings had been held in preparation for various response measures including subjecting certain premises to restriction-testing declarations and arranging compulsory testing for persons therein.</p>	
005601 - 010105	Chairman Admin	On the Chairman's enquiries, the Administration advised that only sporadic confirmed cases had been identified after the 14-day quarantine period. The source of infection of confirmed patients, which would be ascertained on a case-by-case basis, were mostly lack of social distancing, poor hand hygiene and environmental factors. The Chairman urged the Administration to consider prohibiting group gatherings on private premises ahead of the upcoming festive season.	
010106 - 010303	Chairman	Commencement of examination of the Chinese text of the provisions of L.N. 221 to 223, 235 and 241 to 250 of 2020	
010304 - 011325	Chairman Admin ALA2	<p><u>Examination of L.N. 221 of 2020</u></p> <p>At 5:00 pm, the Chairman informed members of her decision to extend the meeting for not more than 15 minutes.</p> <p>Further to the Administration's reply [CB(2)446/20-21(04)] to her letter dated 26 November 2020 [CB(2)446/20-21(05)], the Legal Adviser to the Subcommittee responsible for advising members on the legal and drafting aspects of L.N. 221 of 2020 sought elaboration on what constituted "lawful authority" referred to in the new section 8(2)(a) of Cap. 599J which provided that it was a defence for a person charged with non-compliance with compulsory testing direction to establish that the person had lawful authority or reasonable excuse for the failure to comply with the requirement. The Administration advised that the defence of lawful authority might be established if the failure to comply with the requirement was justified by a conduct under the law. It was not feasible to identify an exhaustive list of the circumstances that might constitute a lawful authority. An example was that the person concerned had been placed under quarantine or isolation in accordance with a quarantine or isolation order made by a health officer under Cap. 599A.</p>	

Time marker	Speaker	Subject(s)/Discussion	Action required
		The Legal Adviser confirmed that no difficulties relating to the legal and drafting aspects of the English text of L.N. 221 had been identified.	
011326 - 011718	Chairman Admin	<u>Examination of L.N. 222 of 2020</u>	
011719 - 011754	Chairman ALA3	The Legal Adviser to the Subcommittee responsible for advising members on the legal and drafting aspects of L.N. 222 of 2020 confirmed that no difficulties relating to the legal and drafting aspects of the English text of L.N. 222 of 2020 had been identified.	
011755 - 012008	Chairman Admin	<u>Examination of L.N. 223 of 2020</u>	
012009 - 012026	Chairman ALA3	The Legal Adviser to the Subcommittee responsible for advising members on the legal and drafting aspects of L.N. 223 of 2020 confirmed that no difficulties relating to the legal and drafting aspects of the English text of L.N. 223 of 2020 had been identified.	
012027 - 012051	Chairman	At 5:14 pm, the Chairman informed members of her decision to extend the meeting for not more than 15 minutes.	
012052 - 012257	Chairman Admin	<u>Examination of L.N. 235 of 2020</u>	
012258 - 012319	Chairman Admin ALA2	The Legal Adviser to the Subcommittee responsible for advising members on the legal and drafting aspects of L.N. 235 of 2020 confirmed that no difficulties relating to the legal and drafting aspects of the English text of L.N. 235 of 2020 had been identified.	
012320 - 012353	Chairman Admin	<u>Examination of L.N. 241 of 2020</u>	
012354 - 012411	Chairman ALA10	The Legal Adviser to the Subcommittee responsible for advising members on the legal and drafting aspects of L.N. 241 of 2020 confirmed that no difficulties relating to the legal and drafting aspects of the English text of L.N. 241 of 2020 had been identified.	
012412 - 012500	Chairman Admin	<u>Examination of L.N. 242 of 2020</u>	
012501 - 012512	Chairman ALA10	The Legal Adviser to the Subcommittee responsible for advising members on the legal and drafting aspects of L.N. 242 of 2020 confirmed that no difficulties relating to the legal and drafting aspects of the English text of L.N. 242 of 2020 had been identified.	
012513 - 012605	Chairman Admin	<u>Examination of L.N. 243 of 2020</u>	
012606 - 012618	Chairman ALA10	The Legal Adviser to the Subcommittee responsible for advising members on the legal and drafting aspects of L.N. 243 of 2020 confirmed that no difficulties relating to the legal and drafting aspects of the English text of L.N. 243 of 2020 had been identified.	

Time marker	Speaker	Subject(s)/Discussion	Action required
012619 - 012653	Chairman Admin	<u>Examination of L.N. 244 of 2020</u>	
012654 - 012706	Chairman ALA1	The Legal Adviser to the Subcommittee responsible for advising members on the legal and drafting aspects of L.N. 244 of 2020 confirmed that no difficulties relating to the legal and drafting aspects of the English text of L.N. 244 of 2020 had been identified.	
012707 - 012735	Chairman Admin	<u>Examination of L.N. 245 of 2020</u>	
012736 - 012746	Chairman ALA1	The Legal Adviser to the Subcommittee responsible for advising members on the legal and drafting aspects of L.N. 245 of 2020 confirmed that no difficulties relating to the legal and drafting aspects of the English text of L.N. 245 of 2020 had been identified.	
012747 - 012815	Chairman Admin	<u>Examination of L.N. 246 of 2020</u>	
012816 - 012826	Chairman ALA1	The Legal Adviser to the Subcommittee responsible for advising members on the legal and drafting aspects of L.N. 246 of 2020 confirmed that no difficulties relating to the legal and drafting aspects of the English text of L.N. 246 of 2020 had been identified.	
012827 - 012902	Chairman Admin	<u>Examination of L.N. 247 of 2020</u>	
012903 - 012913	Chairman ALA1	The Legal Adviser to the Subcommittee responsible for advising members on the legal and drafting aspects of L.N. 247 of 2020 confirmed that no difficulties relating to the legal and drafting aspects of the English text of L.N. 247 of 2020 had been identified.	
012914 - 012943	Chairman Admin	<u>Examination of L.N. 248 of 2020</u>	
012944 - 012951	Chairman ALA1	The Legal Adviser to the Subcommittee responsible for advising members on the legal and drafting aspects of L.N. 248 of 2020 confirmed that no difficulties relating to the legal and drafting aspects of the English text of L.N. 248 of 2020 had been identified.	
012952 - 013019	Chairman Admin	<u>Examination of L.N. 249 of 2020</u>	
013020 - 013028	Chairman ALA1	The Legal Adviser to the Subcommittee responsible for advising members on the legal and drafting aspects of L.N. 249 of 2020 confirmed that no difficulties relating to the legal and drafting aspects of the English text of L.N. 249 of 2020 had been identified.	
013029 - 013057	Chairman Admin	<u>Examination of L.N. 250 of 2020</u>	
013058 - 013105	Chairman ALA1	The Legal Adviser to the Subcommittee responsible for advising members on the legal and drafting aspects of L.N. 250 of 2020 confirmed that no difficulties relating to the legal and drafting aspects of the English text of L.N. 250 of 2020 had been identified.	

Time marker	Speaker	Subject(s)/Discussion	Action required
013106 - 013439	Chairman ALA1	At the invitation of the Chairman, the Legal Adviser to the Subcommittee responsible for advising members on the legal and drafting aspects of L.N. 251 of 2020 briefed members on her letter dated 15 December 2020 to the Administration concerning the subsidiary legislation item concerned [LC Paper No. CB(2)517/20-21(12)]. The Chairman's decision to examine L.N. 251 of 2020 at the next meeting.	
<i>Agenda item IV: Any other business</i>			
013440 - 013505	Chairman	Closing remarks	

Council Business Division 4
Legislative Council Secretariat
12 November 2021