

LEGISLATIVE COUNCIL BRIEF

Prevention and Control of Disease Ordinance (Cap. 599)

PREVENTION AND CONTROL OF DISEASE ORDINANCE AMENDMENT REGULATIONS

INTRODUCTION

At the meeting of the Executive Council on 4 December 2020, the Council **ADVISED** and the Chief Executive **ORDERED** that the following three amendment regulations (“the Amendment Regulations”) should be made under section 8 of the Prevention and Control of Disease Ordinance (Cap. 599) (“the Ordinance”) for the purpose of preventing, combating or alleviating the effects of the current public health emergency and protecting public health in Hong Kong –

Annex A

- (a) the **Prevention and Control of Disease (Prohibition on Group Gathering) (Amendment) (No. 15) Regulation 2020** (at Annex A), which amended the Prevention and Control of Disease (Prohibition on Group Gathering) Regulation (Cap. 599G) to increase the amount of fixed penalty the payment of which would allow a person who has committed an offence of participating in a prohibited group gathering to discharge liability from \$2,000 to \$5,000;

Annex B

- (b) the **Prevention and Control of Disease (Wearing of Mask) (Amendment) (No. 3) Regulation 2020** (at Annex B), which amended the Prevention and Control of Disease (Wearing of Mask) Regulation (Cap. 599I) to –
- (i) increase the amount of penalty for the offence of failing to wear a mask during a period specified by the Secretary for Food and Health (“SFH”) on a public transport carrier or in an MTR paid area or a specified public place from a fine at level 2 (\$5,000) to that at level 3 (\$10,000);
 - (ii) increase the amount of fixed penalty the payment of which would allow a person who has committed an offence referred to in (i) above to discharge liability from \$2,000 to \$5,000; and
 - (iii) increase the amount of penalty for failing to comply with a requirement made by an authorized person, including a

requirement to disembark from the public transport carrier or to leave the MTR paid area/a specified public place when the person fails to comply with the requirement to wear a mask (under (i) above) from a fine at level 2 (\$5,000) to that at level 3 (\$10,000); and

Annex C

(c) the **Prevention and Control of Disease (Compulsory Testing for Certain Persons) (Amendment) Regulation 2020** (at Annex C), which amended the Prevention and Control of Disease (Compulsory Testing for Certain Persons) Regulation (Cap. 599J) to –

- (i) increase the amount of penalty for the offence of failing to comply with a requirement under a compulsory testing direction or a compulsory testing notice from a fine at level 1 (\$2,000) to that at level 3 (\$10,000); and
- (ii) increase the amount of fixed penalty the payment of which would allow a person who has committed an offence referred to in (i) above to discharge liability from \$2,000 to \$5,000.

JUSTIFICATIONS

Latest Local Situation

2. As of 2 December 2020, the Centre for Health Protection of the Department of Health (“DH”) had recorded a total of 6 500 cases of COVID-19. Over the preceding two weeks (19 November – 2 December 2020), a total of 1 020 cases were reported, with 927 local cases (of which 183 cases involved unknown sources of infection) and 91 imported cases and two cases with epidemiological link to imported cases. Over the same period, the 7-day moving average number of local cases had risen drastically from 2.7 to 84.4, with the 7-day moving average number of local cases with unknown sources increasing from 1.0 to 17.3. The fourth wave of the epidemic had arrived.

3. While no further new cases had been identified for the cluster relating to people participating in a “staycation” at a local hotel in early November, new clusters involving singing and/or dancing activities had emerged. These new clusters involved a large number of persons, with over 550 cases identified within two weeks. These cases also involved people who had been very active socially and participated in many group gatherings in various venues across different districts, resulting in widespread transmission of the virus when such people gathered without wearing masks.

The infection had further spread to other settings and clusters in places like construction sites had been identified. The resurgence of local cases coincided with the relaxation of social distancing measures in end October 2020 when we allowed essentially all activities to resume and extended the dine-in hours up to 2:00 in the morning. This showed that the community outbreaks were likely brought about by the increase in social activities that accompanied the relaxation of social distancing measures as well as the general epidemic fatigue that the community had been experiencing.

4. Meanwhile, the resurgence of cases globally continued to pose challenges to our local situation. While the 7-day moving average of imported cases had largely fluctuated between 5.4 and 7.3 during the period from 19 November 2020 to 2 December 2020 (at 6.0 on these two days), the dire epidemic situation globally continued to pose significant health risks to Hong Kong.

5. In overall terms, the surge in local cases in recent days showed that there had been extensive silent transmission of the virus in the community and there was no sign that we were anywhere near the peak of the fourth wave. It was extremely important to heighten vigilance at that point in time in all aspects of epidemic control measures, especially measures on social distancing and border control.

THE MEASURES

6. Based on our experience from the third wave, the mortality rate of those above 65 of age is significantly higher than that of the general population, with the former at over 9% and the latter at about 2%. It is, therefore, imperative that we ensure that transmission of the virus does not get so rampant within the community that it will result in infections in residential care homes for the elderly (“RCHEs”) or nursing homes where any outbreak would take a heavy toll, both in terms of human lives lost and the stress that it would place on our healthcare system and quarantine facilities.

7. Having regard to the resurgence of local cases set out in paragraphs 2 and 3 above, we were of the view that the public health risk level at the time was extremely high. In response, we already drastically tightened our social distancing measures implemented under the relevant Cap. 599 regulations with effect from 2 December 2020, including, inter alia –

- (a) reducing the number of persons allowed in group gatherings in public places under Cap. 599G from no more than four to no more than two;

- (b) removing the exemptions under Cap. 599G for religious gatherings and local tours;
- (c) shortening the hours during which dine-in services would be allowed at catering premises to end at 10:00 pm and reducing the number of persons per table to no more than two;
- (d) closing amusement game centres, bathhouses, places of amusement, places of public entertainment except performance venues, party rooms, clubs/nightclubs, karaoke establishments, mah-jong-tin kau establishments and swimming pools; and
- (e) tightening restrictions concerning masking and number of persons allowed per group at fitness centres, sports premises, beauty parlours and massage establishments.

8. Given that there are likely to be extensive silent transmission chains within the community, it is of vital importance that members of the public maintain social distance and personal hygiene as well as undergo testing should they have symptoms or be considered likely to have been exposed to the virus. To this end, the level of compliance with the requirements under the relevant regulations would have a great impact on the effectiveness of the relevant measures and in turn the extent to which we may contain the spread of COVID-19 in the community and protect the high-risk and vulnerable groups as well as maintaining the integrity of our healthcare system.

9. However, as evident from the situation in many public places over the past few weekends, the general public is experiencing epidemic fatigue and, on many instances, does not fully adhere to the relevant requirements for group gatherings and wearing of masks. We have also been issuing compulsory testing notices under Cap. 599J in response to the outbreaks identified in many premises all over the territory and, given that persons subject to such notices are considered to be having a higher risk of infection or that the consequences of them getting infection are likely to be serious (such as workers of RCHEs), the compliance with the relevant testing requirements would also be extremely important to our efforts to identify those infected early so as to isolate them in a timely manner to prevent the virus from further spreading in the community.

10. In this regard, in order to achieve the needed deterrence effect, the fixed penalties under Cap. 599G, Cap. 599I and Cap. 599J should be increased by several times, from \$2,000 to \$5,000. The detailed proposal and considerations are set out in the ensuing paragraphs.

Penalty Levels under Cap. 599G, Cap. 599I and Cap. 599J Prior to the Legislative Amendments

11. Pursuant to section 6 of Cap. 599G, a person who (a) participates in a prohibited group gathering, (b) organises a prohibited group gathering, or (c) owns, controls or operates the place in which a prohibited group gathering takes place and knowingly allows such group gathering to take place, commits an offence and is liable on conviction to a fine at level 4 (\$25,000) and imprisonment for 6 months. Under section 8 of Cap. 599G prior to the legislative amendments, a person who committed an offence of participating in a prohibited group gathering may discharge liability for the offence by paying a fixed penalty of \$2,000.

12. Under Cap. 599I, a person is required to wear a mask when the person is (a) boarding or on board a public transport carrier; (b) entering or present in an MTR paid area; or (c) entering or present in a specified public place, during a period specified by SFH. Prior to the legislative amendments, if a person failed to wear a mask under these circumstances, he/she committed an offence and was liable on conviction to a fine at level 2 (\$5,000). The person may discharge liability for the offence by paying a fixed penalty of \$2,000.

13. Authorized persons may also require the person to wear a mask and, if the persons fails to comply with such requirement, may further require that person to disembark from the public transport carrier or leave that area/place. Prior to the legislative amendments, if the person, without reasonable excuse, failed to comply with such requirement to disembark or leave, he/she committed an offence and was liable on conviction to a fine at level 2 (\$5,000).

14. Under Cap. 599J, prior to the legislative amendments, if a person failed to comply with a requirement under a compulsory testing direction issued by a specified medical practitioner, he/she committed an offence and was liable on conviction to a fine at level 1 (\$2,000). If a person belonging to a category of persons specified by SFH under a compulsory testing notice failed to comply with a requirement under the said notice, he/she committed an offence and was liable on conviction to a fine at level 1 (\$2,000). Prior to the amendment, a person committing either of the offences above may discharge liability for the offence by paying a fixed penalty of \$2,000. The amount of both the penalty for the original offence and the fixed penalty was the same under Cap. 599J as it was considered that a person who refused to undergo testing (which was free for those required to undergo testing as long as they opted for testing provided by the public sector) would likely refuse to do so as a result of the time and efforts involved and such a person would

also likely wish to avoid the need to appear in court proceedings due to the more time-consuming and onerous process involved albeit the possibility of being fined a lesser amount upon making a mitigation plea, and hence a fine at level 1 may cast sufficient deterrence.

Considerations

15. The legislation on fixed penalties primarily aims to provide an administrative measure to speedily deal with offenders and to obviate the need for the relevant persons to appear in court proceedings. Prior to the legislative amendments, fixed penalties under various enactments ranged from \$320 to \$2,000, i.e. the fixed penalties under Cap. 599G, Cap. 599I and Cap. 599J were already among the highest imposed.

16. In considering raising the fixed penalty level, we were mindful of the possible unintended consequence that, should the fixed penalty level be so high that it became considerably burdensome to the person concerned, the person may instead choose to go through the concerned judicial process, including trial, in the hope of being fined a lesser amount, despite possible stigma arising from a conviction, upon making a mitigation plea. This would in turn pose burdens to the judicial system.

17. A higher fixed penalty may also result in enforcement difficulties in some cases where the person not complying with the relevant requirements may react strongly when approached by law enforcement agents in anticipation of being issued a fixed penalty ticket for a significant sum of money. It would likely result in more disputes, arguments or even assaults on authorised persons under the relevant Cap. 599 regulations. Inevitably, more manpower would need to be engaged in subsequent court proceedings arising from disputed fixed penalty notices.

18. The above would have to be balanced against the importance of members of the public complying with the relevant measures put in place to combat the epidemic and the importance of sending a strong signal to the public on the importance of complying with the measures at the critical stage now. Given that many of those infected do not display symptoms, maintaining social distance, avoiding group gatherings and wearing masks are extremely important to our efforts to minimise the transmission of the virus within the community. The same goes for compliance with the testing requirements pursuant to Cap. 599J – the categories of persons who are identified for compulsory testing carry a higher risk of having been infected or their infection is more likely to affect vulnerable groups hence their compliance with the testing requirement would be crucial to our efforts to prevent the spread of COVID-19 and to protect vulnerable groups as well as

our healthcare system.

Adjustment to Penalty Levels

19. Having regard to the considerations set out in paragraphs 15 – 18 above, the fixed penalties under Cap. 599G, Cap. 599I and Cap. 599J have been increased from \$2,000 to \$5,000. Correspondingly, under Cap. 599I, the original penalty for the offence (i) for not wearing a mask on a public transport carrier or in an MTR paid area/a specified public place, as well as (ii) for failing to comply with a requirement made by an authorized person, including a requirement to disembark from the public transport carrier or to leave the MTR paid area/specified public place when the person fails to comply with the requirement to wear a mask (under (i)), has been increased from level 2 (\$5,000) to level 3 (\$10,000), such that the amount of fixed penalty will be lower than the amount of the original fine.

20. As for Cap. 599J, despite our considerations when Cap. 599J was introduced as set out in paragraph 14, there is room to further increase the original penalty for the offence of failing to comply with a requirement under a compulsory testing direction or a compulsory testing notice so as to emphasise the importance for persons who have received a compulsory testing direction or who fall under the category of persons specified by SFH to undergo testing with a view to helping cut silent transmission chains in the community. Same as the offences under Cap. 599I stated in paragraph 19 above, the original penalty has been increased from a fine at level 1 (\$2,000) to that at level 3 (\$10,000).

OTHER OPTIONS

21. Section 8 of the Ordinance is the specific empowering provision to make regulations on the present occasion of a public health emergency and there is no other appropriate option that may enable the implementation of the measures as set out in paragraph 1.

THE AMENDMENT REGULATIONS

22. The main provisions of the Amendment Regulations are set out in paragraph 1.

LEGISLATIVE TIMETABLE

23. The legislative timetable is as follows –

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| Publication in the Gazette | 4 December 2020 |
| Tabling at the Legislative Council | 9 December 2020 |
| Commencement | 11 December 2020 |

IMPLICATIONS OF THE PROPOSAL

24. The proposal is in conformity with the Basic Law, including the provisions concerning human rights.

PUBLIC CONSULTATION

25. Given the exigency of the situation, public consultation was not feasible.

PUBLICITY

26. We issued a press release on the adjustment to the fixed penalties under Cap. 599G, Cap. 599I and Cap. 599J on 4 December 2020. In addition, a spokesperson was made available to respond to public or media enquiries.

BACKGROUND

27. The COVID-19 pandemic has caused an unprecedented health challenge across the globe. The absence of an effective treatment or a vaccine combined with an exponential growth in infections have led many countries/ places to implement measures with far-reaching implications, including temporary border closures and stringent control measures, restrictions on non-essential travel, confinement and quarantine arrangements, with the objective of preventing the transmission of the disease from other places, and worse still, leading to a major community outbreak. For Hong Kong, the Government has been implementing measures under the two-pronged strategy to reduce population mobility in and out of Hong Kong including imposing quarantine and other related requirements on arrivals as well as to enhance social distancing in the community.

28. According to the World Health Organization, COVID-19 has been characterised as pandemic and may become just another endemic virus in our communities and this virus may never go away. As it is unrealistic to aim for eradication or elimination of the virus in the near future, countries and regions need to keep adjusting the intensity of their infection control measures taking account of their respective social and economic needs.

29. Section 8 of the Ordinance empowers the Chief Executive in Council to make regulation on an occasion of a public health emergency for the purposes of preventing, combating or alleviating the effects of the public health emergency and protecting public health. Among others, the occurrence of a novel infectious disease or the imminent threat of an epidemic that has a high probability of causing a large number of deaths or serious disabilities (whether or not long term) in the population constituted a public health emergency.

Cap. 599G

30. Cap. 599G was introduced in end March 2020 to prohibit group gathering of more than four persons in a public place during any period of not exceeding 14 days specified by SFH by a notice published in the Gazette, except for a list of exempted group gatherings. The Chief Secretary for Administration may permit certain group gatherings.

31. The number of persons allowed in a group gathering in a public place as well as the list of exempted group gatherings have been adjusted from time to time in response to the development of the epidemic situation. Having regard to the fourth wave of the epidemic, amongst others, the number of persons allowed in a group gathering in a public place has been reduced to no more than two persons and the exemptions for religious gatherings and local tours have been removed with effect from 2 December 2020.

Cap. 599I

32. Cap. 599I took effect on 15 July 2020 which empowers SFH to specify a period during which a person must wear a mask at all times when the person is boarding or on board a public transport carrier, or is entering or present in an MTR paid area. It has been amended to further empower SFH to impose such mask-wearing requirement on persons entering or present in specified public places (currently covering all indoor or outdoor public places, except outdoor public places in country parks and special areas as defined in the Country Parks Ordinance (Cap. 208)).

Cap. 599J

33. Cap. 599J took effect on 15 November 2020 and provides the legal framework for the Government to require certain categories of persons to undergo COVID-19 testing, and for specified medical practitioners to require symptomatic patients to undergo COVID-19 testing. As at 2 December 2020, 4 compulsory testing notices have been issued concerning premises with outbreaks and one such notice has been issued to require persons working at RCHE/residential care homes for the disabled or nursing homes to undergo testing. SFH also specified the 14-day period from 28 November – 11 December 2020 for the purpose of empowering specified medical practitioners to require, by a compulsory testing direction, a person whom the medical practitioner attends to in the course of professional practice and clinically suspects to have contracted COVID-19 to undergo testing.

ENQUIRIES

34. For enquiries on this brief, please contact the Food and Health Bureau at 3509 8765.

**Food and Health Bureau
December 2020**