

L.N. 221 of 2020

Prevention and Control of Disease (Compulsory Testing for Certain Persons) Regulation

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Prevention and Control of Disease (Compulsory Testing for Certain Persons) Regulation

(Made by the Chief Executive in Council under section 8 of the Prevention and Control of Disease Ordinance (Cap. 599))

Part 1

Preliminary

1. Commencement

This Regulation comes into operation on 15 November 2020.

2. Interpretation

(1) In this Regulation—

compulsory testing direction (強制檢測指示) means a direction issued under section 4(2);

compulsory testing notice (強制檢測公告) means a notice published under section 10(1);

compulsory testing order (強制檢測令) means an order made under section 14(2);

fixed penalty (定額罰款) means the fixed penalty under section 24(1);

function (職能) includes power;

prescribed officer (訂明人員)—

- (a) in relation to a function under this Regulation concerning a failure to comply with a requirement under a compulsory testing direction, means—

(i) a health officer; or

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- (ii) a public officer or a member of the Auxiliary Medical Service appointed under section 3(1)(c);
or
- (b) in relation to a function under this Regulation concerning a failure of a person who falls within a category or description of persons specified under section 10(1)(a) to comply with a requirement under a compulsory testing notice, means—
 - (i) a health officer; or
 - (ii) a public officer or a member of the Auxiliary Medical Service appointed under section 10(1)(c)(ii) in relation to that category or description of persons;

registered medical practitioner (註冊醫生) means a medical practitioner who is registered in Part I or III of the General Register kept under section 6(1) of the Medical Registration Ordinance (Cap. 161);

Secretary (局長) means the Secretary for Food and Health;

specified disease (指明疾病) means the coronavirus disease 2019 (COVID-19), which is specified in item 8A of Schedule 1 to the Ordinance;

specified medical practitioner (指明醫生) means a registered medical practitioner who falls within a class of registered medical practitioners specified under section 3(1)(a);

specified person (指明人士) means a person who falls within a category or description of persons specified under section 10(1)(a);

specified test (指明檢測), in relation to a person, means a test for ascertaining whether the person has contracted the specified disease.

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- (2) In this Regulation, a reference to a member of the Auxiliary Medical Service is to be construed in accordance with the Auxiliary Medical Service Ordinance (Cap. 517).
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Part 2

Compulsory Testing for Persons Clinically Suspected to have Contracted Specified Disease

3. Secretary may issue notice

- (1) For preventing, protecting against, delaying or otherwise controlling the incidence or transmission of the specified disease, the Secretary may, by notice published in the Gazette—
 - (a) specify a class of registered medical practitioners for the purposes of this Part;
 - (b) specify a period for the purposes of section 4(1); or
 - (c) appoint any public officer or member of the Auxiliary Medical Service for performing a function under this Regulation concerning a failure to comply with a requirement under a compulsory testing direction.
- (2) A period specified under subsection (1)(b) must not exceed 14 days.
- (3) A notice published under subsection (1) is not subsidiary legislation.

4. Compulsory testing direction for persons clinically suspected to have contracted specified disease

- (1) This section applies during a period specified under section 3(1)(b).

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- (2) If a specified medical practitioner attends a person in the course of professional practice and clinically suspects that the person has contracted the specified disease, the medical practitioner may, by written direction issued to the person, require the person to undergo a specified test.
- (3) For the purposes of subsection (2), a specified medical practitioner clinically suspects that a person has contracted the specified disease if the medical practitioner, having exercised a professional judgment on the basis of the signs or symptoms that the person shows, suspects that the person has contracted that disease.
- (4) A compulsory testing direction—
 - (a) may require the person to submit, in the way specified in the direction, the result of a specified test that the person is required to undergo under the direction; and
 - (b) may include a statement to the effect that if the person has previously undergone, within a preceding period specified in the direction, a specified test that meets the conditions specified in the direction (regardless of whether or not the test was conducted for complying with the Ordinance), the test is taken to be a specified test that the person has undergone in compliance with the requirement under the direction.
- (5) A compulsory testing direction issued by a specified medical practitioner may only be revoked or varied by that medical practitioner.

5. Notification and provision of information in relation to compulsory testing direction

- (1) A specified medical practitioner who issues a compulsory testing direction must, as soon as reasonably practicable after doing so—
 - (a) send, or cause to be sent, to the Director a notification of the issue of the direction; and
 - (b) provide the Director with, or cause the Director to be provided with, any other information that is—
 - (i) within the knowledge, in the possession or under the control of the medical practitioner; and
 - (ii) relevant to the identification and tracing of the person to whom the direction is issued.
- (2) A specified medical practitioner who revokes or varies a compulsory testing direction must, as soon as reasonably practicable after doing so, send, or cause to be sent, to the Director a notification of the revocation or variation (as the case may be).

6. Testing under compulsory testing direction

A person to whom a compulsory testing direction is issued must, in compliance with the requirement under the direction—

- (a) undergo a specified test in accordance with the procedure specified in the direction; or
- (b) undergo a specified test—
 - (i) that is otherwise arranged by the person himself or herself; and
 - (ii) that meets the conditions specified in the direction.

7. Requirements specified in compulsory testing direction

- (1) A compulsory testing direction must specify—
 - (a) in relation to the test mentioned in section 6(a)—the procedure to be followed for the test;
 - (b) in relation to the test mentioned in section 4(4)(b) or 6(b)—the conditions that the test must meet, including where or by whom the test is to be conducted;
 - (c) the deadline by which the person to whom the direction is issued must take all actions that are to be taken by the person for him or her to undergo the test mentioned in section 6(a) or (b);
 - (d) if the result of a specified test is required to be submitted under section 4(4)(a)—
 - (i) the way in which the test result must be submitted; and
 - (ii) the deadline by which the test result must be submitted; and
 - (e) if the direction includes the statement mentioned in paragraph (b) of section 4(4)—the preceding period mentioned in that paragraph.
- (2) A compulsory testing direction may also specify any other requirements that the person must comply with in relation to that person's undergoing of a specified test.

8. Non-compliance with compulsory testing direction

- (1) A person who fails to comply with a requirement under a compulsory testing direction commits an offence and is liable on conviction to a fine at level 1.
- (2) It is a defence for a person charged under subsection (1) to establish that—

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- (a) the person had lawful authority or reasonable excuse for the failure to comply with the requirement; or
- (b) without limiting paragraph (a), the person could not comply with the requirement because of any physical or mental illness, impairment or disability.

9. Immunity from personal liability of specified medical practitioner

- (1) No personal liability is incurred by a specified medical practitioner or a person acting under the direction of the medical practitioner in respect of any thing done or omitted to be done by the medical practitioner or person in good faith in the performance or purported performance of a function under section 4(2).
 - (2) Subsection (1) does not in any way affect any liability of the Government in respect of any thing done or omitted to be done by a specified medical practitioner or a person acting under the direction of the medical practitioner.
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Part 3

Compulsory Testing for Specified Persons

10. Secretary may issue compulsory testing notice

- (1) If the Secretary, having regard to the extent and pattern (whether general or specific) of the spread of the specified disease in Hong Kong or anywhere else in the world and the need to alleviate the effects of that disease on the carrying out of social or economic activities in Hong Kong, is satisfied that the specified condition is met under subsection (2) in relation to a category or description of persons, the Secretary may, by notice published in the Gazette—
 - (a) specify that category or description of persons for the purposes of this Part;
 - (b) require every person who falls within that category or description to undergo a specified test in compliance with the requirement under the notice; and
 - (c) in relation to that category or description of persons—
 - (i) specify a period for the purposes of section 14(3)(b); and
 - (ii) appoint any public officer or member of the Auxiliary Medical Service for performing a function under this Regulation concerning a failure to comply with a requirement under the notice.

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- (2) For the purposes of subsection (1), the specified condition is met in relation to a category or description of persons if ascertaining whether persons who fall within that category or description have contracted the specified disease—
- (a) is necessary for preventing, protecting against, delaying or otherwise controlling the incidence or transmission of that disease because such persons have been, or are likely to have been, exposed to a considerable risk of contracting that disease owing to a personal factor such as presence at a particular place, occupation or place of residence or work;
 - (b) is necessary for protecting the health of other persons because—
 - (i) owing to a personal factor such as occupation, persons who fall within that category or description are likely to be in close proximity to such other persons frequently; and
 - (ii) if such other persons contract that disease, considerable health risks are likely to be posed to them owing to a personal factor such as age or health condition;
 - (c) is necessary for preventing, protecting against, delaying or otherwise controlling the incidence or transmission of that disease because such persons are likely to be in close proximity to other persons frequently owing to a personal factor such as occupation;
 - (d) is necessary for ensuring—
 - (i) a proper supply of goods or services required for the normal operation of Hong Kong or the daily needs of the people of Hong Kong; or

- (ii) proper governmental operation,
because such a supply or such operation (as the case may be) is likely to be significantly hindered if a considerable proportion of such persons are exposed to a considerable risk of contracting that disease; or
 - (e) is necessary for preventing, protecting against, delaying or otherwise controlling the spread of that disease into Hong Kong from a place outside Hong Kong because such persons are persons who have recently arrived at Hong Kong from such a place.
- (3) A compulsory testing notice—
 - (a) may require the specified person to undergo a specified test at the frequency specified in the notice;
 - (b) may require the specified person to submit, in the way specified in the notice, the result of a specified test that the person is required to undergo under the notice; and
 - (c) may include a statement to the effect that if the specified person has previously undergone, within a preceding period specified in the notice, a specified test that meets the conditions specified in the notice (regardless of whether or not the test was conducted for complying with the Ordinance), the test is taken to be a specified test that the person has undergone in compliance with the requirement under the notice.
- (4) If a compulsory testing notice is published, the Secretary must, as soon as reasonably practicable after publishing the notice, cause a copy of the notice to be published in 2 newspapers (one being an English language newspaper and the other being a Chinese language newspaper) chosen by the Secretary to maximize the likelihood of the notice coming to the attention of a specified person.

(5) A compulsory testing notice is not subsidiary legislation.

11. Testing under compulsory testing notice

A specified person who is required under a compulsory testing notice to undergo a specified test must, in compliance with the requirement under the notice—

- (a) undergo a specified test in accordance with the procedure specified in the notice; or
- (b) undergo a specified test—
 - (i) that is otherwise arranged by the person himself or herself; and
 - (ii) that meets the conditions specified in the notice.

12. Requirements specified in compulsory testing notice

- (1) A compulsory testing notice must specify—
 - (a) in relation to the test mentioned in section 11(a)—the procedure to be followed for the test;
 - (b) in relation to the test mentioned in section 10(3)(c) or 11(b)—the conditions that the test must meet, including where or by whom the test is to be conducted;
 - (c) the deadline by which or the date on which a person who falls within a category or description of persons specified in the notice must take all actions that are to be taken by the person for him or her to undergo the test mentioned in section 11(a) or (b);
 - (d) if the result of a specified test is required to be submitted under section 10(3)(b)—
 - (i) the way in which the test result must be submitted; and

- (ii) the deadline by which or the date on which the test result must be submitted; and
 - (e) if the notice includes the statement mentioned in paragraph (c) of section 10(3)—the preceding period mentioned in that paragraph.
- (2) Without limiting subsection (1), a deadline or date mentioned in that subsection may be specified by reference to a computation of time on the basis of the date on which an event happens or an act is done.
- (3) A compulsory testing notice may also specify any other requirements that the specified person must comply with in relation to that person's undergoing of a specified test.

13. Non-compliance with compulsory testing notice

- (1) A specified person who fails to comply with a requirement under a compulsory testing notice commits an offence and is liable on conviction to a fine at level 1.
 - (2) It is a defence for a person charged under subsection (1) to establish that—
 - (a) the person had lawful authority or reasonable excuse for the failure to comply with the requirement; or
 - (b) without limiting paragraph (a)—
 - (i) the person did not know, and could not with reasonable diligence have discovered, the requirement;
 - (ii) the person reasonably believed that the requirement was not imposed on him or her; or
 - (iii) the person could not comply with the requirement because of any physical or mental illness, impairment or disability.
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Part 4

Compulsory Testing Order

- 14. Compulsory testing order for non-compliance with compulsory testing direction or compulsory testing notice**
- (1) This section applies if a prescribed officer has reason to believe that—
 - (a) a person has failed to undergo a specified test in compliance with the requirement under a compulsory testing direction; or
 - (b) a person—
 - (i) falls within a category or description of persons specified under section 10(1)(a); and
 - (ii) has failed to undergo a specified test in compliance with the requirement under the relevant compulsory testing notice.
 - (2) During the specified period mentioned in subsection (3), the prescribed officer may, by written order served on the person, require the person to undergo a specified test in compliance with the requirement under the compulsory testing direction or compulsory testing notice (as the case may be) mentioned in subsection (1) (as modified by the order under section 15).
 - (3) The specified period is—
 - (a) for a person mentioned in subsection (1)(a)—the 30-day period immediately after the deadline that is specified under section 7(1)(c) in the relevant compulsory testing direction; or

- (b) for a person mentioned in subsection (1)(b)—a period specified under section 10(1)(c)(i) in relation to the category or description of persons mentioned in subsection (1)(b)(i).
- (4) A compulsory testing order may be served on a person personally or by sending it by post to, or leaving it at, the person's last known place of residence or work.
- (5) If a compulsory testing order (*pre-existing order*) has been served on a person in relation to a failure to undergo a specified test in compliance with the requirement under a compulsory testing direction or compulsory testing notice, no prescribed officer may serve another compulsory testing order on the person in relation to that failure unless the officer has reason to believe that the person has failed to comply with the requirement under a pre-existing order.

15. Requirements specified in compulsory testing order

- (1) A compulsory testing order served on a person must—
 - (a) for a person mentioned in section 14(1)(a)—specify a deadline in substitution of a deadline that is specified under section 7(1) in the relevant compulsory testing direction; or
 - (b) for a person mentioned in section 14(1)(b)—specify a deadline or date in substitution of a deadline or date that is specified under section 12(1) in the relevant compulsory testing notice.
- (2) A compulsory testing order may also specify any other requirements that the person must comply with in relation to that person's undergoing of a specified test.

16. Non-compliance with compulsory testing order

- (1) A person who fails to comply with a requirement under a compulsory testing order commits an offence and is liable on conviction to a fine at level 4 and to imprisonment for 6 months.
 - (2) It is a defence for a person charged under subsection (1) to establish that—
 - (a) the person had lawful authority or reasonable excuse for the failure to comply with the requirement; or
 - (b) without limiting paragraph (a)—
 - (i) the person did not know, and could not with reasonable diligence have discovered, the requirement; or
 - (ii) the person could not comply with the requirement because of any physical or mental illness, impairment or disability.
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Part 5

Enforcement Powers

17. Interpretation (Part 5)

In this Part—

target person (目標人士) means a person on whom a compulsory testing order may be served under section 14(2).

18. Power to demand certain information from persons believed to be target persons

- (1) If a prescribed officer has reason to believe that a person is a target person, the officer may, for ascertaining whether the person is a target person, require the person to provide any information relevant to that purpose.
- (2) A person who fails to comply with a requirement made under subsection (1) commits an offence and is liable on conviction to a fine at level 3.
- (3) It is a defence for a person charged under subsection (2) to establish that—
 - (a) the person had reasonable excuse for the failure to comply with the requirement; or
 - (b) without limiting paragraph (a), the information required to be provided was not within the knowledge, in the possession or under the control of the person, and could not reasonably have been ascertained or obtained by the person.

- (4) A person who, in purported compliance with a requirement made under subsection (1), knowingly or recklessly provides any information that is false or misleading in a material particular commits an offence and is liable on conviction to a fine at level 3.

19. Power to demand information

- (1) A prescribed officer may, for exercising a power under section 14(2), require a person to provide any information if—
- (a) the officer has reason to believe that the information—
 - (i) is within the knowledge, in the possession or under the control of the person; and
 - (ii) is relevant to—
 - (A) ascertaining whether a person whom the officer has reason to believe to be a specified person is actually a specified person; or
 - (B) the identification and tracing of a person who is a target person; and
 - (b) it is not reasonably practicable to exercise that power in respect of the person mentioned in paragraph (a)(ii)(A) or (B) if the information is not obtained.
- (2) If a prescribed officer has reason to believe that a person has committed an offence under section 8(1), 13(1) or 16(1), the officer may, for issuing or serving a summons or other document in relation to the offence, require the person to—
- (a) provide the person's name, date of birth, address and contact telephone number (if any); and

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- (b) produce for inspection the person's proof of identity.
- (3) A person who fails to comply with a requirement made under subsection (1) or (2) commits an offence and is liable on conviction to a fine at level 3.
- (4) It is a defence for a person charged under subsection (3) to establish that—
 - (a) for a failure to comply with a requirement made under subsection (1)—
 - (i) the person had reasonable excuse for the failure to comply with the requirement; or
 - (ii) without limiting subparagraph (i), the information required to be provided was not within the knowledge, in the possession or under the control of the person, and could not reasonably have been ascertained or obtained by the person; or
 - (b) for a failure to comply with a requirement made under subsection (2)—the person had reasonable excuse for the failure to comply with the requirement.
- (5) A person who, in purported compliance with a requirement made under subsection (1) or (2), knowingly or recklessly provides any information that is false or misleading in a material particular commits an offence and is liable on conviction to a fine at level 3.
- (6) In this section—

proof of identity (身分證明文件) has the meaning given by section 17B of the Immigration Ordinance (Cap. 115).

20. Power to enter and search premises with warrant

- (1) If satisfied by information on oath that there are reasonable grounds for suspecting that there is on any premises any thing that is relevant to ascertaining whether this Regulation has been complied with, a magistrate may issue a search warrant in respect of the premises.
- (2) The search warrant may authorize a prescribed officer to—
 - (a) break into and forcibly enter the premises and search the premises;
 - (b) seize, remove or detain any thing that appears to the officer to be relevant to ascertaining whether this Regulation has been complied with; and
 - (c) require any person present on the premises to provide the officer with any assistance or information that the officer reasonably considers necessary to enable the officer to perform a function under this Regulation.

21. Obstruction of prescribed officer or specified medical practitioner etc. prohibited

- (1) A person must not delay, obstruct, hinder or molest a prescribed officer, or a specified medical practitioner, who is performing a function under this Regulation.
- (2) A person must comply with a requirement made by a prescribed officer in the performance of a function under this Regulation.
- (3) A person who contravenes subsection (1) or (2) commits an offence and is liable on conviction to a fine at level 3.

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- (4) It is a defence for a person charged under subsection (3) to establish that the person had reasonable excuse for the contravention.
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Part 6

Miscellaneous

- 22. Specified test not to be more intrusive or invasive than necessary**
- A power under section 4, 10 or 14 must not be exercised to require a person to undergo any specified test that is more intrusive or invasive than is necessary for ascertaining whether the person has contracted the specified disease.
- 23. Deadline or date postponed for inclement weather**
- If a deadline or date specified under section 7(1), 12(1) or 15(1) falls on a gale warning day, or a black rainstorm warning day, as defined by section 71(2) of the Interpretation and General Clauses Ordinance (Cap. 1), the deadline or date is taken to be postponed to the next following day, not being a gale warning day or black rainstorm warning day.
- 24. Fixed penalty in discharge of liability under section 8(1) or 13(1)**
- (1) If a person commits an offence under section 8(1) or 13(1), the person may, in accordance with the Schedule, discharge liability for the offence by paying a fixed penalty of \$2,000.
 - (2) The Schedule provides for matters relating to the fixed penalty.
 - (3) The Secretary may, by notice published in the Gazette, specify a person as the Authority for the purposes of the Schedule.
 - (4) A notice published under subsection (3) is not subsidiary legislation.

25. Defence

A person is taken to have established a matter that needs to be established for a defence under section 8(2), 13(2), 16(2), 18(3), 19(4) or 21(4) if—

- (a) there is sufficient evidence to raise an issue with respect to that matter; and
- (b) the contrary is not proved by the prosecution beyond reasonable doubt.

26. Director may specify form of documents

The Director may specify the form of any direction, notice, notification, order or certificate for the purposes of this Regulation.

27. Appointment of public officer or member of Auxiliary Medical Service

Without limiting section 3(1)(c) or 10(1)(c)(ii), an appointment of any public officer or member of the Auxiliary Medical Service under that section may be made by reference to a rank or an office.

28. Expiry

This Regulation expires at midnight on 14 February 2021.

Schedule

[s. 24]

Fixed Penalty

Part 1

Interpretation

1. Interpretation

In this Schedule—

Authority (當局) means a person specified under section 24(3);

demand notice (繳款通知書) means a demand notice served under section 4(2) of this Schedule;

penalty notice (罰款通知書) means a penalty notice given under section 2(2) of this Schedule;

recovery order (追討令) means an order made under section 7(2) of this Schedule;

specified form (指明格式) means a form specified under section 26.

Part 2

Penalty Notice and Demand Notice

2. Prescribed officer may give penalty notice

- (1) This section applies if a prescribed officer has reason to believe that a person has committed an offence under section 8(1) or 13(1).

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- (2) The prescribed officer may give the person a penalty notice in the specified form offering the person an opportunity to discharge the person's liability for the offence by paying the fixed penalty within 21 days after the date on which the notice is given.
- (3) A penalty notice must be given by the prescribed officer personally to the person.

3. No prosecution or conviction if compliance with penalty notice

- (1) This section applies to a person who has been given a penalty notice in respect of an offence under section 8(1) or 13(1).
- (2) Subject to section 6 of this Schedule, the person is not liable to be prosecuted or convicted for the offence if the person has paid the fixed penalty within 21 days after the date on which the penalty notice is given.

4. Authority may serve demand notice in case of failure to pay fixed penalty etc.

- (1) This section applies if—
 - (a) a person—
 - (i) has been given a penalty notice in respect of an offence under section 8(1) or 13(1); and
 - (ii) fails to pay the fixed penalty within 21 days after the date on which the notice is given; or
 - (b) a person refuses to accept a penalty notice intended to be given to the person in respect of the offence.
- (2) The Authority may serve on the person a demand notice in the specified form—
 - (a) demanding payment of the fixed penalty;

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- (b) informing the person that the person must notify the Authority in writing if the person wishes to dispute liability for the offence; and
 - (c) stating that the payment or notification must be made within 10 days after the date on which the demand notice is served.
- (3) A demand notice may not be served later than—
- (a) if subsection (1)(a) applies—6 months after the date on which the penalty notice is given; or
 - (b) if subsection (1)(b) applies—6 months after the date on which the person refuses to accept the penalty notice.
- (4) A demand notice may be served by sending it by post to the person's address.
- (5) A certificate of posting in the specified form purporting to be signed by or for the Authority is admissible in evidence in any proceedings under this Regulation.
- (6) Unless there is evidence to the contrary, it is presumed that—
- (a) the certificate was signed by or for the Authority; and
 - (b) the demand notice to which the certificate relates was duly served.

5. No prosecution or conviction if compliance with demand notice

- (1) This section applies to a person on whom a demand notice has been served in respect of an offence under section 8(1) or 13(1).
- (2) Subject to section 6 of this Schedule, the person is not liable to be prosecuted or convicted for the offence if the

person has paid the fixed penalty within 10 days after the date on which the demand notice is served.

6. Withdrawal of penalty notice or demand notice

- (1) The Authority may withdraw a penalty notice given, or a demand notice served, in respect of an offence under section 8(1) or 13(1)—
 - (a) at any time before a recovery order is made; or
 - (b) at any time before any proceedings for the offence commence.
- (2) If a penalty notice or demand notice is withdrawn—
 - (a) the Authority must serve notice of the withdrawal on the person to whom, or on whom, the penalty notice or demand notice has been given or served; and
 - (b) on application by the person, the Authority must refund, through the Director of Accounting Services, any amount paid for the fixed penalty.
- (3) If a penalty notice or demand notice is withdrawn, proceedings for the offence may only be commenced where—
 - (a) the ground, or one of the grounds, on which the notice is withdrawn is that it contains incorrect information; and
 - (b) the incorrect information was provided by the person to whom, or on whom, the notice was given or served.

Part 3

Recovery of Fixed Penalty

7. Recovery of fixed penalty

- (1) This section applies if a person on whom a demand notice has been served—
 - (a) fails to pay the fixed penalty in accordance with the notice; and
 - (b) fails to notify the Authority in accordance with the notice that the person wishes to dispute liability for the offence.
- (2) On application made in the name of the Secretary for Justice and production of the documents specified in subsection (3), a magistrate must order the person to pay, within 14 days after the date of service of notice of the order—
 - (a) the fixed penalty;
 - (b) an additional penalty equal to the amount of the fixed penalty; and
 - (c) \$300 by way of costs.
- (3) The documents are—
 - (a) a copy of the demand notice;
 - (b) a certificate of posting relating to the demand notice under section 4(5) of this Schedule; and
 - (c) a certificate under section 8 of this Schedule.
- (4) A magistrate must cause notice of a recovery order to be served on the person against whom it is made and it may be served by sending it by post to the person's address.

- (5) An application may be made in the absence of the person and the Secretary for Justice may appoint a person or class of persons to make an application.

8. Evidentiary certificate

- (1) A certificate in the specified form stating the matters in subsection (2) and purporting to be signed by or for the Authority is admissible in evidence in any proceedings under this Regulation.
- (2) The matters are—
- (a) that the person specified in the certificate had not, before the date of the certificate, paid the fixed penalty;
 - (b) that the person specified in the certificate had not, before the date of the certificate, notified the Authority that the person wished to dispute liability for the offence; and
 - (c) that the address specified in the certificate was, on the date specified in the certificate in relation to the address, the person's address.
- (3) Unless there is evidence to the contrary—
- (a) it is presumed that the certificate was signed by or for the Authority; and
 - (b) the certificate is evidence of the facts stated in it.

9. Consequences of compliance with recovery order or failure to do so

- (1) This section applies to a person against whom a recovery order is made.

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- (2) If the person has complied with the recovery order, the person is not liable to be prosecuted or convicted for the offence to which the order relates.
- (3) If the person fails to comply with the recovery order, the person—
 - (a) is to be regarded, for the purposes of section 68 of the Magistrates Ordinance (Cap. 227), as having failed to pay the sum adjudged to be paid by a conviction; and
 - (b) is liable to be imprisoned under that section.

10. Application for review of recovery order

- (1) A person against whom a recovery order is made may apply to a magistrate for review of the order.
- (2) An application must be made within 14 days after the date on which the recovery order first came to the personal notice of the applicant.
- (3) The applicant must give reasonable notice of the application to the Authority.
- (4) An application may be made in person or by counsel or solicitor.
- (5) For securing the attendance of witnesses and generally for conducting the proceedings, the magistrate has all the powers of a magistrate hearing a complaint under the Magistrates Ordinance (Cap. 227).

11. Outcome of review

- (1) On application under section 10 of this Schedule, a magistrate may rescind a recovery order if satisfied that the demand notice did not come to the personal notice of the applicant without any fault of the applicant.

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Regulation

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Section 11

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- (2) If the magistrate rescinds a recovery order, and the applicant wishes to dispute liability for the offence to which the order relates, the magistrate must give leave to that effect.
- (3) If the magistrate rescinds a recovery order, and the applicant does not wish to dispute liability for the offence to which the order relates, the magistrate—
 - (a) must order the applicant to pay the fixed penalty within 10 days after the date of an order made under this paragraph; and
 - (b) must order that, if the applicant fails to pay the fixed penalty within that period, the applicant must immediately pay—
 - (i) the fixed penalty;
 - (ii) an additional penalty equal to the amount of the fixed penalty; and
 - (iii) \$300 by way of costs.
- (4) Despite section 26 of the Magistrates Ordinance (Cap. 227), if a magistrate gives leave under subsection (2), proceedings may be commenced within 6 months after the date on which the magistrate gives the leave.
- (5) If the applicant fails to comply with the order under subsection (3)(b), the applicant—
 - (a) is to be regarded, for the purposes of section 68 of the Magistrates Ordinance (Cap. 227), as having failed to pay the sum adjudged to be paid by a conviction; and
 - (b) is liable to be imprisoned under that section.

- (6) If the applicant has complied with the order under subsection (3)(a) or (b), the applicant is not liable to be prosecuted or convicted for the offence to which the order relates.

Part 4

Proceedings if Person Disputes Liability

12. Dispute of liability for offence

- (1) This section applies if—
- (a) a person has notified the Authority in accordance with a demand notice that the person wishes to dispute liability for an offence under section 8(1) or 13(1); or
 - (b) a person has been given leave under section 11(2) of this Schedule to dispute liability for an offence under section 8(1) or 13(1).
- (2) A summons issued in any proceedings against the person for the offence may be served on the person in accordance with section 8 of the Magistrates Ordinance (Cap. 227).
- (3) If—
- (a) in consequence of the notification or leave, the person appears in any proceedings in answer to a summons; and
 - (b) the person is convicted of the offence after having offered no defence or a defence that is frivolous or vexatious,

the magistrate before whom the proceedings are heard must, in addition to any other penalty and costs, impose an additional penalty equal to the amount of the fixed penalty.

- (4) Any proceedings commenced against a person falling within subsection (1)(a) must terminate if the person pays in accordance with subsection (5)—
 - (a) the fixed penalty;
 - (b) an additional penalty equal to the amount of the fixed penalty; and
 - (c) \$500 by way of costs.
- (5) Payment under subsection (4) must be made at any magistrates' court not less than 2 days before the day specified in the summons for the person's appearance, and the summons must be produced at the time of the payment.
- (6) Neither a Saturday nor a public holiday may be included in the computation of the 2 days' period mentioned in subsection (5).

Part 5

General Provisions for Proceedings

13. Power to rescind order on application by Authority

At any time, a magistrate may for good cause, on application by the Authority, rescind—

- (a) an order for the payment of the fixed penalty; and
- (b) any other order made under this Schedule in the same proceedings.

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Wendy LEUNG
Clerk to the Executive Council

COUNCIL CHAMBER

13 November 2020

Explanatory Note

The objects of this Regulation are to—

- (a) empower a specified medical practitioner to require a person clinically suspected by the medical practitioner to have contracted the coronavirus disease 2019 (COVID-19) to undergo a test for that disease; and
 - (b) introduce a mechanism for requiring every person who falls within a certain category or description to undergo such a test.
2. Part 1 prescribes the commencement date and contains the definitions used in the Regulation.
 3. Part 2 empowers a specified medical practitioner to, if the medical practitioner clinically suspects that a person attended by the medical practitioner during a specified period has contracted the coronavirus disease 2019, by written direction require the person to undergo a test for that disease. A failure to comply with a requirement under the direction without lawful authority or reasonable excuse is a criminal offence punishable by fine.
 4. Part 3 empowers the Secretary for Food and Health to, by notice published in the Gazette, specify a category or description of persons who are required to undergo a test for the coronavirus disease 2019. A failure to comply with a requirement under the notice without lawful authority or reasonable excuse is a criminal offence punishable by fine.

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5. Part 4 empowers a prescribed officer to, if the officer has reason to believe that a person has failed to comply with a requirement under a direction issued by a specified medical practitioner, or a notice published by the Secretary for Food and Health in the Gazette, to undergo a test for the coronavirus disease 2019, by written order require the person to comply with the requirement. A failure to comply with a requirement under the order without lawful authority or reasonable excuse is a criminal offence punishable by fine and imprisonment.
6. Part 5 confers enforcement powers on prescribed officers and prescribes offences for obstructing prescribed officers or specified medical practitioners etc.
7. Part 6 provides for miscellaneous matters such as the postponement of deadlines or dates for inclement weather, the specification of form of documents and the expiry of the Regulation.
8. The Schedule provides for matters relating to fixed penalty for certain offences under the Regulation.