

LEGISLATIVE COUNCIL BRIEF

Prevention and Control of Disease Ordinance (Cap. 599)

PREVENTION AND CONTROL OF DISEASE (COMPULSORY TESTING FOR CERTAIN PERSONS) REGULATION

INTRODUCTION

Annex At the meeting of the Executive Council on 13 November 2020, the Council **ADVISED** and the Chief Executive **ORDERED** that **the Prevention and Control of Disease (Compulsory Testing for Certain Persons) Regulation** (“the Regulation”) (at Annex) should be made under section 8 of the Prevention and Control of Disease Ordinance (Cap. 599) (“the Ordinance”) to empower the Government to require certain categories of persons and to empower medical practitioners to require symptomatic patients to undergo COVID-19 testing if necessary for the purpose of preventing, combating or alleviating the current public health emergency and protecting public health in Hong Kong.

JUSTIFICATIONS

Latest Local Situation

2. As of 12 November 2020, the Centre for Health Protection (“CHP”) of the Department of Health (“DH”) had recorded a total of 5 431 cases of COVID-19. Over the past two weeks (30 October – 12 November 2020), a total of 117 cases were reported, with 26 local cases (of which eight cases involved unknown sources of infection) and 87 imported cases and four cases with epidemiological link to imported cases.

3. The third wave of the epidemic in Hong Kong, which began in early July 2020, has subsided by late September, but new local cases especially those with unknown sources continue to be reported. While the slight rebound in early October 2020 has subsided, the number of new local cases and that with unknown sources have shown signs of rebound again in recent

days. The 7-day moving average number of local cases dropped to its recent trough at 0.4 on 31 October and 1 November 2020 but rose to hit 2.1 on 12 November 2020. The 7-day moving average number of local cases with unknown sources showed a similar trend, dropping to its recent trough at 0.3 on 31 October and 1 November 2020 and rebounding to reach 1.7 on 12 November 2020.

4. A new cluster relating to people participating in a “staycation” at a local hotel was reported in early November with further cases being identified through contact tracing. The identification of cases who reside in Tai Po with unknown source of infection (local cases who reside in Tai Po constitute over half of the total local cases identified in the past two weeks) also points to the possibility of extended silent transmission chains in that area though we are not yet able to draw any conclusion on such possibility as all the cases confirmed recently have visited many different places within Hong Kong conducting various activities. The persistence of local cases with unknown sources of infection and the fact that they constitute almost half of the local cases in the past two weeks are worrying, indicating on-going silent transmission chains in the community.

5. Meanwhile, the number of imported cases has been increasing steadily in the past week, with 7-day moving average number of imported-related cases increasing from 3.9 on 4 November 2020 to 8.6 on 12 November 2020. The increase of imported cases in tandem with that of new cases identified globally shows that the worsening of the global epidemic situation would continue to pose significant public health risk to Hong Kong.

6. In overall terms, there are signs of rebound of the epidemic situation in Hong Kong, with undetected transmission chains in the community, and the threat of such silent transmissions or newly imported cases rekindling large-scale local outbreaks remains very real. It is extremely important to remain vigilant at this point in time in all aspects of epidemic control measures.

TESTING MEASURES

7. To curb transmission of the virus within the community during the third wave, we had drastically tightened social distancing measures in late July including closure of catering and other premises. This has taken a heavy toll on the society and caused great hardship to the relevant trade and practitioners. With the relaxation of social distancing measures since late

August especially in the recent weeks, members of the public appear to become less alert to combating the epidemic and non-compliance with infection control-related requirements and restrictions at some premises was observed in particular during recent festive celebrations.

8. This calls for the need to adjust our epidemic control strategy. Instead of a one-size-fits-all approach under which the operation of all premises regulated under the Prevention and Control of Disease (Requirements and Directions) (Business and Premises) Regulation (Cap. 599F) is required to be significantly reduced, our latest strategy is to allow social and economic activities in the community to be resumed to such an extent as the epidemic situation permits so as to help safeguard the livelihood of those engaged in the relevant sectors and trades and to mitigate epidemic fatigue, which is becoming increasingly pronounced after the fight against the pandemic for almost a year amidst the increasingly high stakes as the holiday season approaches. Having regard to the above, it is imperative that we enhance our measures in preventing transmission within the community in addition to our social distancing measures.

9. Virus testing is an integral part of our epidemic control strategy. It helps to cut silent transmission chains as far and as early as possible and achieve the objective of early identification, early isolation and early treatment and slow down the transmission of the virus in the community. After the peak of the third wave of the epidemic and the conclusion of the Universal Community Testing Programme (“UCTP”) in September 2020, the Government has continued to enhance the strategy on disease surveillance and virus testing. Hong Kong has since January conducted more than 3.87 million tests, including 3.5 million tests conducted since July 2020. Amongst the 3.87 million tests conducted, around 1.42 million tests were conducted by the DH and the Hospital Authority (“HA”), some 650 000 tests were conducted under the Targeted Group Testing Scheme (“TGTS”)¹ and around 1.78 million tests conducted via the UCTP. This means, on average around 516 000 tests were conducted per million population and some 716 tests were carried out per confirmed case. On this basis the volume of tests conducted in Hong Kong is higher than places like Singapore, Australia, the United Kingdom, New Zealand, South Korea and Japan and the use of testing as a tool for disease prevention and control has yielded certain positive results.

¹ TGTS has been integrated and regularised as part of sentinel surveillance and as a main tier of the “Enhanced Laboratory Surveillance Programme” of CHP of DH since mid-September.

10. In view of the volatile local epidemic situation, there are merits in stepping up testing of certain groups of persons, such as symptomatic patients, persons living or working in places with cluster outbreak and persons of a higher risk of contracting the virus/of a higher exposure to the virus, etc., to cut transmission of the virus in the community such that we would have more room to allow social and economic activities to resume to a certain extent during the time when we need to co-exist with the virus under the new normal. However, despite repeated appeals to the public, it is observed that there are members of the public who are reluctant to undergo testing. Given the importance of early identification, early isolation and early treatment of those infected, we consider it necessary to introduce a legal framework to allow us to require certain persons to undergo testing if necessary. Such framework would also allow us to divert testing resources to relatively more effective uses.

Legal Framework for Compulsory Testing

Compulsory Testing for Persons Clinically Suspected to Have Contracted COVID-19

11. The legal framework allows the Secretary for Food and Health (“SFH”) to specify, by notice published in the Gazette (“Gazette notice”), a class of registered medical practitioners to enable them to exercise the power conferred by the Regulation, for a period of not more than 14 days as specified in the Gazette notice, to require symptomatic patients to undergo testing. Specifically, a specified medical practitioner may, by written direction issued to a person, require the person whom he clinically suspects has contracted COVID-19 to undergo testing. Such direction would specify the procedures for the test as well as the deadline by which such test is to be completed. Such tests can either be conducted by DH’s laboratory or a private laboratory of the person’s choice provided that the test (such as, a nucleic acid test) and the laboratory meet specified conditions (such as, having been equipped with the IT platform to facilitate enforcement).

12. While medical practitioners may be empowered rather than required by the Regulation to require persons to undergo testing, they are required to send or cause to be sent to the Director of Health a written notification of the issue of a direction. It remains the medical practitioners’ professional judgment as to whether a patient should be subject to testing, having regard to their professional responsibility towards the patient and public health. Immunity is provided in respect of anything done or omitted to be done by

a medical practitioner in good faith in the exercise of his function to require patients whom he clinically suspects has contracted COVID-19 to undergo testing.

13. To encourage members of the public, including symptomatic individuals to undergo testing, we will further streamline the logistical arrangements for the distribution and collection of specimen bottles by DH and HA. We will also facilitate private medical practitioners to order COVID-19 testing for patients and report such orders to the Government by providing an IT system. We will closely monitor the testing ordered by private doctors with these facilitation measures, and where the epidemic situation warrants, invoke the compulsory testing mechanism for symptomatic patients through conferring the necessary power on medical practitioners under the Regulation.

Compulsory Testing for Specified Persons

14. The framework also empowers SFH to require a certain category or description of persons to undergo a test by specifying the details by a notice published in the Gazette, having regard to the extent and pattern of the spread of COVID-19 in Hong Kong or anywhere else in the world and the need to alleviate the effects of COVID-19 on the carrying out of social and economic activities in the interest of the society. Such categories or description of persons cover —

- (1) in response to an outbreak or cluster of cases —
 - (a) persons who live or work in the premises concerned; and
 - (b) persons of a particular occupation;
- (2) for the purpose of protecting vulnerable groups, cutting possible transmission chains in the community through early detection of the virus, and/or ensuring normal operation of the society —
 - (c) persons who regularly come into contact with persons with considerable health risks (e.g. workers at residential care homes for the elderly);
 - (d) persons who, owing to their occupation, come into contact with a large number of people on a regular basis hence are more likely to be exposed to COVID-19; and
 - (e) persons involved in the provision of essential goods and services in Hong Kong (e.g. those working at the Kwai Chung Container Terminal, the Sheung Shui Slaughterhouse, etc.); and

- (3) for the purpose of preventing the transmission of the virus from those entering Hong Kong from a place outside Hong Kong —
 - (f) persons who have recently arrived at Hong Kong (e.g. those who are close to completion of the compulsory 14-day quarantine upon their arrival at Hong Kong).

15. SFH's notice to be published in the Gazette would specify the procedures for the test as well as the deadline by which such test is to be completed. Such tests can be one-off or multiple. Similar to the testing required by medical practitioners, tests required under SFH's notice can either be conducted by DH's laboratory or a private laboratory of the person's choice provided that the test and the laboratory meet specified conditions.

Sanctions

16. Any person who fails to comply with the testing direction or testing notice commits an offence and may be fined a fixed penalty of \$2,000. The person would also be issued with a compulsory testing order requiring him/her to undergo testing within a specified timeframe. The order would specify the procedures for the test, the deadline by which such test is to be completed and any other requirements that must be complied with by the person in relation to undergoing a test. Failure to comply with the order is an offence and the offender would be liable to a fine at level 4 and to imprisonment for 6 months.

Enforcement

17. Public officers and certain persons (such as those serving the Auxiliary Medical Service) would be authorised to enforce the Regulation. The types of public officers/persons who would enforce the Regulation in respect of the testing of a particular group of target persons would be specified under the relevant notice made by SFH. For the purpose of issuing compulsory testing orders, such officers/persons would be empowered to demand information to ascertain whether a person belongs to the group of persons covered by a particular compulsory testing notice. Obstruction of such officers/persons would be an offence under the Regulation and offenders are liable to a fine at level 3.

OTHER OPTIONS

18. Currently, section 15 of Prevention and Control of Disease Regulation (Cap. 599A) provides that, if a health officer has reason to suspect that a person is a contact or is infected with a specified infectious disease or is contaminated, the health officer may subject the person to medical surveillance or a medical examination or a test. This power is currently invoked by DH in dealing with close contacts of confirmed cases but the threshold for triggering this power is relatively high and it cannot be invoked to mandate testing for people with mild symptoms or other persons being tested under TGTS.

19. As such, there is a need to implement a new legal framework for the current situation of public health emergency with flexibility for the Government to require different groups of persons to undergo testing should the epidemic situation so warrant. In this connection, section 8 of the Ordinance is the specific empowering provision for making 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 REGULATION

20. The main provisions of the Regulation are set out below –

- (a) Part 2 empowers a medical practitioner to, if the medical practitioner clinically suspects that a person attended by the medical practitioner during a specified period has contracted COVID-19, require the person to undergo a test for that disease by a written direction. A failure to comply with a requirement under the direction without lawful authority or reasonable excuse is a criminal offence punishable by fine;
- (b) Part 3 empowers SFH to, by notice published in the Gazette, specify a category or description of persons who are required to undergo a test for COVID-19. A failure to comply with a requirement under the notice without lawful authority or reasonable excuse is a criminal offence punishable by fine;
- (c) Part 4 empowers any “prescribed officer” (as defined in the Regulation) to, if the officer has reason to believe that a person

has failed to comply with a requirement under a direction issued by a medical practitioner or a notice published by SFH in the Gazette, require the person to undergo a test for COVID-19, by written order. 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;

- (d) Part 5 confers enforcement powers on prescribed officers, and prescribes offences for obstructing such officers or medical practitioners, etc.; and
- (e) 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.

LEGISLATIVE TIMETABLE

21. The legislative timetable is as follows –

Publication in the Gazette	14 November 2020
Commencement	15 November 2020
Tabling at the Legislative Council	18 November 2020

IMPLICATIONS OF THE PROPOSAL

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

PUBLIC CONSULTATION

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

PUBLICITY

24. We issued a press release and announced the Regulation at a press conference on 14 November 2020. A spokesperson was also made available to respond to public or media enquiries.

BACKGROUND

25. 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 or 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.

26. According to the World Health Organization, COVID-19 has been characterised as a 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.

27. 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.

ENQUIRIES

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

Food and Health Bureau
November 2020

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

Contents

Section	Page
Part 1	
Preliminary	
1. Commencement	1
2. Interpretation	1
Part 2	
Compulsory Testing for Persons Clinically Suspected to have Contracted Specified Disease	
3. Secretary may issue notice	4
4. Compulsory testing direction for persons clinically suspected to have contracted specified disease	4
5. Notification and provision of information in relation to compulsory testing direction	5
6. Testing under compulsory testing direction	6
7. Requirements specified in compulsory testing direction	6
8. Non-compliance with compulsory testing direction	7
9. Immunity from personal liability of specified medical practitioner	8

Section	Page
Part 3	
Compulsory Testing for Specified Persons	
10. Secretary may issue compulsory testing notice	9
11. Testing under compulsory testing notice	12
12. Requirements specified in compulsory testing notice	12
13. Non-compliance with compulsory testing notice	13
Part 4	
Compulsory Testing Order	
14. Compulsory testing order for non-compliance with compulsory testing direction or compulsory testing notice	14
15. Requirements specified in compulsory testing order	15
16. Non-compliance with compulsory testing order	16
Part 5	
Enforcement Powers	
17. Interpretation (Part 5)	17
18. Power to demand certain information from persons believed to be target persons	17
19. Power to demand information	18
20. Power to enter and search premises with warrant	19

Section	Page
21. Obstruction of prescribed officer or specified medical practitioner etc. prohibited	20
Part 6	
Miscellaneous	
22. Specified test not to be more intrusive or invasive than necessary	21
23. Deadline or date postponed for inclement weather	21
24. Fixed penalty in discharge of liability under section 8(1) or 13(1).....	21
25. Defence	22
26. Director may specify form of documents.....	22
27. Appointment of public officer or member of Auxiliary Medical Service.....	22
28. Expiry.....	22
Schedule Fixed Penalty	23

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

- (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.

- (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).

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).
- (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—
 - (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.
- (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.

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
 - (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.
 - (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).
- (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;
 - (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.
- (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.
- (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.

Clerk to the Executive Council

COUNCIL CHAMBER

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.
 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

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

Explanatory Note
Paragraph 6

34

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.