

# LEGISLATIVE COUNCIL BRIEF

## Prevention and Control of Disease Ordinance (Cap. 599)

### PREVENTION AND CONTROL OF DISEASE (COMPULSORY TESTING FOR CERTAIN PERSONS) (AMENDMENT) REGULATION 2021

#### INTRODUCTION

At the meeting of the Executive Council on 9 February 2021, the Council **ADVISED** and the Chief Executive **ORDERED** that, in view of the continued public health emergency arising from the COVID-19 epidemic situation both globally and locally, the **Prevention and Control of Disease (Compulsory Testing for Certain Persons) (Amendment) Regulation 2021** (“the Amendment Regulation”) (at Annex), which amended the Prevention and Control of Disease (Compulsory Testing for Certain Persons) Regulation (Cap. 599J), should be made under section 8 of the Prevention and Control of Disease Ordinance (Cap. 599) (“the Ordinance”) to extend the expiry date of Cap. 599J from midnight of 14 February 2021 to midnight of 14 August 2021 for the purpose of preventing, combating or alleviating the effects of the current public health emergency and protecting public health in Hong Kong.

Annex

#### PRESENT SITUATION AND CONSIDERATION

##### Latest Global Situation

2. As of 7 February 2021, a total of 222 countries, territories or areas, including the Mainland China, had reported over 105.7 million COVID-19 cases with over 2.3 million deaths. The number of cases had been on a rapid and continuous rising trend and such number had seen a steep increase in recent months. From late March 2020 to mid-May 2020, about 70 000 to 100 000 new cases had been reported every day. The number of cases had increased to about 160 000 to 180 000 new cases per day in late June 2020 and to around 220 000 to 290 000 in late July 2020, and further increased to reach a new height of around 460 000 to 880 000 since early November 2020. The number of new cases per day began to decrease gradually since mid-January 2021 to around 400 000 to 500 000 in early February 2021.

## **Latest Situation in Mainland and Macao**

3. By late April to early May 2020, the number of cases in the Mainland had decreased to a very low level with less than five cases on most days. In the past two weeks (25 January – 7 February 2021), 591 confirmed cases (398 local cases and 193 imported cases) were reported in the Mainland. Among them, 38 confirmed cases (all imported cases) were reported in Guangdong Province.

4. In Macao, the last case of local infection, who was a close contact of an imported case, was reported on 28 March 2020. As of 7 February 2021, a total of 48 cases had been reported in Macao. Notably, no new local cases were reported between late June 2020 (when the 46th case was reported) and early February 2021 (the 47th and 48th cases were imported cases).

## **Latest Local Situation**

5. As of 7 February 2021, the Centre for Health Protection of the Department of Health had recorded a total of 10 636 cases of COVID-19. Over the past two weeks (25 January – 7 February 2021), a total of 550 cases were reported, with 510 local cases (of which 183 cases involved unknown sources of infection) and 40 imported cases. Over the same period, the 7-day moving average number of local cases had decreased from 67.0 to 23.6, with the 7-day moving average number of local cases with unknown sources decreasing from 28.7 to 7.1. The fourth wave of the epidemic is subsiding.

6. Notably, the proportion of local cases with unknown infection sources, albeit dropping from 36.7% to 35.9% in the past 14 days, still stood at a high level. The real-time effective reproductive number for local cases as estimated by the School of Public Health of the University of Hong Kong, having gone over 1.0 on 7 January 2021, peaked at 1.37 on 13 January 2021 and had dropped below 1.0 since 20 January 2021.

## **Testing on a Compulsory Basis**

7. According to the World Health Organization (“WHO”), testing is an important tool in the overall epidemic control strategy in fighting the global emergency of the COVID-19 pandemic. Administering testing in a systematic and efficient manner as part of epidemiological tracing, disease surveillance and targeted screening enables effective early detection, early isolation and early treatment of infected persons, thereby curbing early the transmission chains and preventing further infections.

8. Since Cap. 599J came into effect on 15 November 2020, the

Government has exercised the power under the regulation multiple times to issue compulsory testing notices (“CTNs”) with a view to fully implementing the virus testing strategy of testing on a compulsory basis. As at 7 February 2021, the following groups or categories of persons had been required to undergo testing by the specified deadlines –

- (a) persons who had been to 392 specified premises (including dance clubs/venues, restaurants, residential buildings, construction sites, department store and hospitals) and 23 restricted areas;
- (b) symptomatic persons clinically suspected to have contracted COVID-19<sup>1</sup>;
- (c) staff members of residential care homes for the elderly (RCHEs), residential care homes for persons with disabilities (RCHDs) and nursing homes, day service units attached to the premises of residential care homes<sup>2</sup>;
- (d) taxi drivers<sup>3</sup>; and
- (e) airport staff.

9. On residential buildings, the Government has actively expanded the coverage of testing on a compulsory basis in a proactive and gradual manner –

- (a) Starting from early December 2020, in all districts in Hong Kong, the Government had issued CTNs to residential buildings (including buildings for both commercial and residential uses) which had four or more units with confirmed cases in the past 14 days and the units concerned had cases not epidemiologically linked to each other. Persons who had been present at the relevant buildings in the past 14 days for two hours or more were required to undergo compulsory testing. Having regard to our epidemic control strategy and risk assessment, starting from 30 December 2020, this threshold for issuing CTNs was lowered whereby testing would be required when there were two or more confirmed cases not epidemiologically linked to each other, or when sewage samples tested positive for a sustained period of time. Subsequently, with effect from 1 February 2021, the threshold is

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<sup>1</sup> During the period 28 November 2020 – 25 January 2021, a total of over 67 000 symptomatic persons were issued a compulsory testing direction by private medical practitioners requiring them to undergo testing. 385 positive cases were recorded (0.57 per cent).

<sup>2</sup> Under six rounds of compulsory testing for staff members of RCHEs, RCHDs and nursing homes, a total of more than 215 000 staff members have undergone testing at community testing centres or mobile specimen collection stations, of which 11 preliminarily positive cases were recorded (0.005 per cent).

<sup>3</sup> Under the one-off compulsory testing scheme for taxi drivers from 9 December 2020 to 22 December 2020, a total of more than 46 000 taxi drivers underwent testing, three of which tested positive (0.006 per cent).

further lowered to one or more new confirmed cases with unknown sources, or when sewage samples tested positive. We announced on 6 February 2021 that residential buildings would be subject to compulsory testing if there is one confirmed case, regardless of whether the case is epidemiologically linked to another or not;

- (b) As a number of confirmed cases were recently continuously found in certain districts, for example, Yau Ma Tei and Jordan, over a short period of time, starting from mid-January, the Government has delineated specified areas having regard to risk assessment, and accord priority to the testing of sewage discharge from buildings in the areas. If there is one or more new confirmed cases (regardless of whether the source is known or not) found in the residential buildings (including buildings for both commercial and residential uses) in these areas, or there are sewage samples which are tested positive, the buildings will be subject to testing under a CTN. As at 2 February, there were four such specified areas in Jordan, Sham Shui Po, Yau Ma Tei / Mong Kok, and Hung Hom; and
- (c) Subject to the epidemic development and the need to enhance infection control, the Government will also delineate “restricted areas” and make “restriction-testing declarations” (“RTDs”). Persons within the areas are required to stay in their premises and undergo compulsory testing in accordance with the arrangement by the Government, and can only leave after the relevant test results are mostly ascertained. All buildings within the restricted areas, whether or not confirmed cases were found therein, would be included in the CTN. Persons who had been present in buildings in the restricted area for more than two hours in the past 14 days, even if they were not present in the “restricted area” at the time when the RTD took effect, also have to undergo compulsory testing. From 23 January to 7 February 2021, restricted areas had been delineated in Jordan, Yau Ma Tei, Mong Kok, Tsim Sha Tsui, Sham Shui Po, North Point, Chai Wan, Kwun Tong, To Kwa Wan, Hung Hom, Yuen Long and Tuen Mun with RTDs issued.

10. As for workplace, if the Centre for Health Protection considers that there is a cluster outbreak in a particular workplace, such as a construction site, apart from requiring suspension of operation and disinfection, a CTN will also be made to require persons who had been to the same workplace premises as the confirmed case to undergo testing. As part of our efforts to enhance testing, starting from 1 February, the Government has lowered the testing threshold for workplaces. If two or more confirmed cases are found

in the workplace, it will be subject to compulsory testing under a CTN.

11. In addition, taking into account experts' advice, we will strengthen testing for close contacts of confirmed cases in order to cut the transmission of virus swiftly, preferably at the "source" of infection. Apart from swiftly tracing close contacts of each confirmed case and subjecting them to quarantine, the Government also issued a CTN on 2 February 2021 to require household members of persons placed under quarantine to undergo testing.

### **Targeted Testing on an Obligatory Basis**

12. For targeted testing, the Government continues to arrange testing for targeted groups based on risk assessment. Testing is currently arranged on a continuous basis for targeted groups including school teachers, staff of restaurants and bars, designated frontline employees of Kwai Tsing Container Terminals, etc., and new targeted groups including foreign domestic helpers<sup>4</sup>, construction site workers and couriers (including takeaway food couriers) have been added. A total of 289 000 tests were carried out under testing for targeted groups from 15 November 2020 to 30 January 2021, equivalent to a daily average of around 3 800 tests. The Government will regularly review the coverage and frequency of targeted group testing with reference to the latest epidemic risk assessment.

### **Testing on a Voluntary Basis**

13. To encourage and facilitate testing on a voluntary basis, the Government continues to provide convenient testing service to the public through various channels, including free testing through 188 distribution points (namely designated general outpatient clinics of the Hospital Authority, 121 post offices, and vending machines at 20 MTR stations) and 83 collection points to facilitate individuals who perceive themselves as having a higher risk of exposure or experience mild discomfort to submit deep throat saliva specimen. The above three channels can distribute over 40 000 specimen collection packs per day. We have also set up a total of 19 community testing centres ("CTCs"), with a total daily capacity of more than 20 000 tests. From 15 November 2020 (commencement date of first four CTCs) to 30 January 2021, more than 420 000 persons were provided self-paid testing service at CTCs, of which 597 samples tested preliminarily positive (0.14 per cent).

14. All in all, we will continue to expand and enhance the

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<sup>4</sup> During the period from 18 December 2020 to 31 January 2021, the Government provides one-off free testing for about 400 000 foreign domestic helpers in Hong Kong.

implementation of testing on a compulsory basis, targeted testing on an obligatory basis and testing on a voluntary basis, and provide more convenient testing services to encourage members of the public to undergo testing.

## **THE MEASURES**

15. As we would continue to rely on the legal framework under Cap. 599J to provide statutory backing to require certain groups of persons to undergo testing on a compulsory basis and to make RTDs with a view to minimising transmission of the virus in the community, we would need to extend the expiry date of Cap. 599J. Before vaccines become available and are administered to an extent that allows the community as a whole to achieve herd immunity, testing remains a key tool in our efforts to combat COVID-19. As such, we propose extending Cap. 599J for another six months, until 14 August 2021.

## **OTHER OPTIONS**

16. Section 8 of the Ordinance is the specific empowering provision to make regulations on the present occasion of a public health emergency and there is no other appropriate option that may enable the implementation of the measures.

## **THE AMENDMENT REGULATION**

17. The provision of the Amendment Regulation is set out in paragraph 1 above.

## **LEGISLATIVE TIMETABLE**

18. The legislative timetable is as follows –

Publication in the Gazette	9 February 2021
Commencement	10 February 2021
Tabling at the Legislative Council	24 February 2021

## **IMPLICATIONS OF THE PROPOSAL**

19. The proposal under the Amendment Regulation is in conformity with

the Basic Law, including the provisions concerning human rights.

## **PUBLIC CONSULTATION**

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

## **PUBLICITY**

21. We gazetted the Amendment Regulation and issued a press release on 9 February 2021. A spokesperson was also made available to respond to public or media enquiries.

## **BACKGROUND**

22. 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 requirements on arrivals as well as to enhance social distancing in the community.

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

24. Section 8 of the Ordinance empowers the Chief Executive in Council to make regulations on an occasion of a public health emergency for the purposes of preventing, combating or alleviating the effects of the public health emergency and protecting public health. Among others, the occurrence of a novel infectious disease or the imminent threat of an epidemic that has a high probability of causing a large number of deaths or

serious disabilities (whether or not long term) in the population constituted a public health emergency.

### **Cap. 599J**

25. Cap. 599J approved by the Chief Executive in Council on 13 November 2020 and came into force on 15 November 2020 empowers the Secretary for Food and Health (“SFH”), to –

- (a) specify, for preventing, protecting against, delaying or otherwise controlling the incidence or transmission of COVID-19, a period of not more than 14 days by Gazette notice during which specified registered medical practitioners are empowered to require a person whom the medical practitioner clinically suspects to have contracted COVID-19 to undergo testing by a compulsory testing direction issued to that person; and
- (b) issue, 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, a compulsory testing notice by publication in the Gazette to require a certain category or description of persons to undergo testing. Such categories or description of persons may cover (i) persons in an outbreak or cluster situation related to their presence in a place or occupation; (ii) persons with frequent contact with other persons with considerable health risks; (iii) persons in high-exposure groups which come frequently into contact with a large number of people; (iv) persons involved in the provision of essential goods and services; and (v) persons who have recently arrived in Hong Kong.

26. At the meeting of 8 December 2020, the Chief Executive in Council approved amendments to Cap. 599J to –

- (a) allow us to specify requirements in relation to preventive and social distancing measures under compulsory testing directions, compulsory testing notices or compulsory testing orders; and
- (b) introduce a new part to allow restriction on movement-cum-testing arrangements to be put in place.

27. Under paragraph 26(b) above, SFH may make a restriction-testing declaration when (a) a considerable number of persons who have recently contracted the disease have recently been present on the premises; and/or (b) a person who has recently contracted the disease and who has recently been



present on the premises is likely to have been in close proximity to a considerable number of other persons on the premises. Once a restriction-testing declaration is made, no person who is on the premises would be allowed to leave the premises until all such persons have undergone testing and the test results are ascertained, at which point the declaration would be revoked<sup>5</sup>. Reasonable excuse is provided for leaving the premises, such as where there is a need to receive urgent medical treatment. Furthermore, in permitting a person to leave the premises, the person has to comply with any direction that a prescribed officer reasonably consider necessary for the purpose of infection control. At the same time, no person may enter the premises, unless, for example, the person is returning to his/her residence and such person would be subject to the same restrictions applicable to other persons on the premises upon entry, i.e. the person would not be allowed to leave the premises until all persons thereon have undergone testing and the test results are ascertained.

28. Given the potential hardship that persons under the restriction-testing declaration may have to endure as a result of such measure, the legal framework also requires that, should the declaration be in place for more than 12 hours, the Government has the obligation to ensure that all persons on the premises should be provided with any basic necessities (including goods and services) that the Government reasonably considers appropriate.

## **ENQUIRIES**

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

**Food and Health Bureau**  
**February 2021**

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<sup>5</sup> A restriction-testing declaration that is not revoked would cease to have effect seven days after the declaration takes effect.

**Prevention and Control of Disease (Compulsory Testing for Certain Persons) (Amendment) Regulation 2021**

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

**1. Commencement**

This Regulation comes into operation on 10 February 2021.

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

The Prevention and Control of Disease (Compulsory Testing for Certain Persons) Regulation (Cap. 599 sub. leg. J) is amended as set out in section 3.

**3. Section 28 amended (expiry)**

Section 28—

**Repeal**

“February”

**Substitute**

“August”.

Clerk to the Executive Council

COUNCIL CHAMBER

2021

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### **Explanatory Note**

This Regulation amends the Prevention and Control of Disease (Compulsory Testing for Certain Persons) Regulation (Cap. 599 sub. leg. J) to extend its expiry date from 14 February 2021 to 14 August 2021.