

L.N. 149 of 2020

**Prevention and Control of Disease (Wearing of Mask)
(Public Transport) (Amendment) Regulation 2020**

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Prevention and Control of Disease (Wearing of Mask) (Public Transport) (Amendment) Regulation 2020

(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 23 July 2020.

2. Prevention and Control of Disease (Wearing of Mask) (Public Transport) Regulation amended

The Prevention and Control of Disease (Wearing of Mask) (Public Transport) Regulation (Cap. 599 sub. leg. I) is amended as set out in sections 3 to 12.

3. Title amended

The title—

Repeal

“(Public Transport)”.

4. Section 2 amended (interpretation)

(1) Section 2(1), definition of *public transport carrier*—

Repeal

“the Schedule”

Substitute

“Schedule 1”.

(2) Section 2(1), definition of *specified period*—

Repeal

everything after “means”

Substitute

“—

- (a) in section 4(1)—a period specified under section 3(1)(b); or
 - (b) in section 5A(1)—a period specified under section 3(1)(c);”.
- (3) Section 2(1), Chinese text, definition of **港鐵已付車費區域**—

Repeal the full stop

Substitute a semicolon.

- (4) Section 2(1)—

Add in alphabetical order

“*authorized public officer* (獲授權公職人員) means a public officer appointed under section 6D(1);

fixed penalty (定額罰款) means the fixed penalty under section 6A(1);

public place (公眾地方)—

- (a) means any place to which for the time being the public or a section of the public may or are permitted to have access, whether on payment or otherwise; but
- (b) does not include a public transport carrier or an MTR paid area;

specified public place (指明公眾地方) means a public place, or a public place that is of a category or description, specified under section 3(1)(a).”.

5. Section 3 amended (period specified by Secretary for Food and Health)

(1) Section 3, heading—

Repeal

“Period specified”

Substitute

“Specification”.

(2) Section 3(1)—

Repeal

everything after “published in the”

Substitute

“Gazette—

(a) specify any or all public places, or a category or description of public places, for the purposes of this Regulation;

(b) specify a period for the purposes of section 4(1); and

(c) specify a period for the purposes of section 5A(1).”.

(3) Section 3(2)—

Repeal

“subsection (1)”

Substitute

“subsection (1)(b) or (c)”.

6. Section 4 amended (requirement to wear mask in public transport carrier and MTR paid area during specified period)

(1) Section 4(3)(e), Chinese text—

Repeal subparagraph (ii)

Substitute

“(ii) 用藥；”.

(2) Section 4(3)(e)(iii)—

Repeal

“or”.

(3) Section 4(3)(f)—

Repeal

“wearing.”

Substitute

“wearing; or”.

(4) After section 4(3)(f)—

Add

“(g) it is reasonably necessary for the person not to wear a mask for such verification of the person’s identity as is reasonably necessary for business purposes.”.

7. Section 5 heading amended (powers exercisable if mask not worn)

Section 5, heading, after “worn”—

Add

“in public transport carrier and MTR paid area”.

8. Sections 5A and 5B added

After section 5—

Add

“5A. Requirement to wear mask in specified public place during specified period

- (1) During a specified period, a person must wear a mask at all times when the person is entering or present in a specified public place.
- (2) However, subsection (1) does not apply to—
 - (a) a person who is under the age of 2;
 - (b) a person who has lawful authority or reasonable excuse for not wearing a mask; and
 - (c) a person participating in proceedings in any court, statutory tribunal or statutory board who is directed or permitted by the court, tribunal or board not to wear a mask.
- (3) Without limiting the scope of the reasonable excuse referred to in subsection (2)(b), a person has a reasonable excuse for not wearing a mask if—
 - (a) the person cannot put on, wear or remove a mask—
 - (i) because of any physical or mental illness, impairment or disability; or
 - (ii) without severe distress;
 - (b) the person is accompanying, or providing assistance to, another person who relies on lip reading to communicate with the person;

- (c) it is reasonably necessary for the person not to wear a mask in order to avoid any physical harm to the person or others;
- (d) it is reasonably necessary for the person to enter or be present in the specified public place in order to avoid any physical harm to the person but the person does not have a mask;
- (e) the person is not wearing a mask in order to do any of the following acts (only if the act is lawful in the circumstances)—
 - (i) eat or drink;
 - (ii) take medication;
 - (iii) maintain personal hygiene;
- (f) the person is required by a public officer (who is performing a function of the officer) to remove a mask the person is otherwise wearing;
- (g) it is reasonably necessary for the person not to wear a mask for such verification of the person's identity as is reasonably necessary for business purposes;
- (h) the person—
 - (i) is entering or present on premises in relation to which a relevant Cap. 599F direction is in force; and
 - (ii) is not wearing a mask in circumstances permitted under the direction;
- (i) the person is carrying out, in the course of employment, an activity that reasonably requires that no mask may be worn, or that it must be removed in order that other equipment may be worn or used, to carry out that activity; or

- (j) the person is undergoing a procedure that reasonably requires that no mask may be worn during its administration, such as dental treatment or a personal appearance service (except hairdressing) concerning any part of the face.
- (4) If a person is entering or present on premises in relation to which a relevant Cap. 599F direction is in force, and in breach of the direction the person does not wear a mask in order to eat or drink on the premises, then despite subsection (3)(e)(i), eating or drinking is not regarded as a reasonable excuse for the purposes of subsection (2)(b).
- (5) In this section—
relevant Cap. 599F direction (相關《第 599F 章》指示) means a direction issued under section 6 or 8 of the Prevention and Control of Disease (Requirements and Directions) (Business and Premises) Regulation (Cap. 599 sub. leg. F).

5B. Powers exercisable if mask not worn in specified public place

- (1) If an authorized person reasonably considers that another person (*that person*) is, in contravention of section 5A(1), not wearing a mask, the authorized person may—
 - (a) if that person is entering a specified public place or a part of it—deny entry to that place or part to that person; or
 - (b) if that person is present in a specified public place or a part of it—
 - (i) require that person to wear a mask; and

- (ii) if that person fails to comply with the requirement made under subparagraph (i)—require that person to leave that place or part.
- (2) An authorized person may exercise a power under subsection (1)(b) only if the authorized person reasonably considers it necessary and proportionate to ensure compliance with section 5A(1).
- (3) A person is not entitled to a refund of, or to deny the liability to pay, any money paid or charged for entry to a specified public place, or a part of it, only because the person is, under subsection (1)(b), required to leave that place or part.
- (4) In this section—
 - authorized person* (獲授權人士), in relation to a specified public place or a part of it, means—
 - (a) a police officer;
 - (b) an authorized public officer;
 - (c) the manager or owner of that place or part; or
 - (d) a person authorized by that manager or owner;

manager (管理人), in relation to a specified public place or a part of it, means a person who is responsible for the management or is in charge or control of that place or part.”

9. Section 6 amended (offences)

- (1) Section 6(1), after “section 4(1)”—

Add

“or 5A(1)”.

- (2) Section 6(2), after “section 5(1)(b)(ii)”—

Add

“or 5B(1)(b)(ii)”.

- (3) After section 6(2)—

Add

- “(3) In criminal proceedings for an offence under subsection (1) or (2)—

(a) the burden of establishing that a person has lawful authority or reasonable excuse referred to in section 4(2)(b) or 5A(2)(b) or in subsection (2) lies on the person; and

(b) the person is taken to have established the lawful authority or reasonable excuse if—

(i) there is sufficient evidence to raise an issue with respect to the lawful authority or reasonable excuse; and

(ii) the contrary is not proved by the prosecution beyond reasonable doubt.”.

10. Sections 6A to 6E added

After section 6—

Add

“6A. Fixed penalty in discharge of liability under section 6(1)

(1) If a person commits an offence under section 6(1), the person may, in accordance with Schedule 2, discharge liability for the offence by paying a fixed penalty of \$2,000.

(2) Schedule 2 provides for matters relating to the fixed penalty.

6B. Power to demand personal details and inspect proof of identity

- (1) This section applies if an authorized public officer has reason to believe that a person is committing or has committed an offence under section 6.
- (2) The authorized public officer may, for issuing or serving a summons or other document in relation to the offence, require the person to—
 - (a) supply 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, without reasonable excuse, fails to comply with a requirement made under subsection (2) commits an offence and is liable on conviction to a fine at level 3.
- (4) A person who, in purported compliance with a requirement made under subsection (2), supplies any information that the person knows to be false or misleading commits an offence and is liable on conviction to a fine at level 3.
- (5) In this section—
proof of identity (身分證明文件) has the same meaning as in section 17B of the Immigration Ordinance (Cap. 115).

6C. Obstruction of authorized public officer etc. prohibited

- (1) A person must not delay, obstruct, hinder or molest an authorized public officer who is performing a function under this Regulation.

- (2) A person must comply with a requirement made by an authorized public officer in the performance of a function under this Regulation.
- (3) A person who, without reasonable excuse, contravenes subsection (1) or (2) commits an offence and is liable on conviction to a fine at level 3.

6D. Authorized public officers

- (1) The Director may appoint any public officer as an authorized public officer for the purposes of this Regulation.
- (2) No personal liability is incurred by an authorized public officer or a person acting under the officer's direction in respect of any thing done or omitted to be done by the officer or person in good faith in the performance or purported performance of a function under this Regulation.

6E. Notices and certificates

The Director may specify the form of any notice or certificate for the purposes of this Regulation.”.

11. Schedule renumbered (public transport carriers)

The Schedule—

Renumber the Schedule as Schedule 1.

12. Schedule 2 added

After Schedule 1—

Add

“Schedule 2

[s. 6A]

Fixed Penalty

Part 1

Interpretation

1. Interpretation

In this Schedule—

Authority (當局) means—

- (a) the Director;
- (b) the Commissioner of Police;
- (c) the Director of Agriculture, Fisheries and Conservation;
- (d) the Director of Food and Environmental Hygiene;
- (e) the Director of Home Affairs;
- (f) the Director of Housing; or
- (g) the Director of Leisure and Cultural Services;

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 6E.

Part 2

Penalty Notice and Demand Notice

2. **Authorized public officer may give penalty notice**
 - (1) This section applies if an authorized public officer has reason to believe that a person is committing or has committed an offence under section 6(1).
 - (2) The authorized public 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 authorized public 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 6(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 6(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 6(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 6(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 supplied 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 6(1); or
 - (b) a person has been given leave under section 11(2) of this Schedule to dispute liability for an offence under section 6(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.”.

Prevention and Control of Disease (Wearing of Mask) (Public Transport)
(Amendment) Regulation 2020

L.N. 149 of 2020
B2767

Wendy LEUNG
Clerk to the Executive Council

COUNCIL CHAMBER

22 July 2020

Explanatory Note

This Regulation amends the Prevention and Control of Disease (Wearing of Mask) (Public Transport) Regulation (Cap. 599 sub. leg. I) (*principal Regulation*) to—

- (a) amend the title of the principal Regulation to “Prevention and Control of Disease (Wearing of Mask) Regulation”;
- (b) require a person (aged 2 or above) to wear a mask at all times in any public place specified by the Secretary for Food and Health (*specified public place*) during any period specified by the Secretary, unless the person is exempted (including if the person has lawful authority or reasonable excuse for not wearing a mask);
- (c) provide for the powers that may be exercised if the requirement mentioned in subparagraph (b) is not complied with, including the powers to deny entry to a specified public place, to require the person to wear a mask, and to require the person to leave the place;
- (d) empower the Director of Health to appoint public officers for enforcing the principal Regulation, and provide for the powers of those officers;
- (e) create certain new offences; and
- (f) introduce fixed penalty in respect of the offence under the principal Regulation for not wearing a mask in a specified public place, a public transport carrier or an MTR paid area.