

L.N. 52 of 2021

Prevention and Control of Disease (Requirements and Directions) (Business and Premises) (Amendment) (No. 2) Regulation 2021

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Prevention and Control of Disease (Requirements and Directions) (Business and Premises) (Amendment) (No. 2) 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 29 April 2021.

2. Prevention and Control of Disease (Requirements and Directions) (Business and Premises) Regulation amended

The Prevention and Control of Disease (Requirements and Directions) (Business and Premises) Regulation (Cap. 599 sub. leg. F) is amended as set out in sections 3 to 16.

3. Section 2 amended (interpretation)

- (1) Section 2, definition of *scheduled premises*, after “Schedule 2”—

Add

“, or any part of them”.

- (2) Section 2, Chinese text, definition of 餐飲業務負責人—

Repeal

“經理。”

Substitute

“經理；”。

- (3) Section 2—

Add in alphabetical order

Section 4

“*authorized officer* (獲授權人員) means a public officer appointed under section 11(1);

catering business premises (餐飲業務處所) means premises (whether or not used for consumption of food or drink) of a catering business that sells or supplies food or drink for consumption on its premises, or any part of them;

fixed penalty (定額罰款) means the fixed penalty under section 13B(1);”.

4. Section 6 amended (directions of Secretary in relation to catering business)

(1) Section 6(1), Chinese text—

Repeal

“事宜”

Substitute

“各項”.

(2) Section 6(1)—

Repeal paragraphs (a) and (b)

Substitute

“(a) any catering business that sells or supplies food or drink for consumption on its premises or any activity carried out by any person on any catering business premises, including the mode of operation of the business or activity;

(b) the closing of any catering business premises;”.

(3) Section 6(3)—

Repeal

everything after “restrictions”

Substitute

“under subsection (1) for—

- (a) different categories or descriptions of catering businesses; and
- (b) different categories or descriptions of persons entering or present on any catering business premises.”.

5. Section 7 amended (person responsible for carrying on a catering business must comply with directions of Secretary)

Section 7(1), English text—

Repeal

“is applicable”

Substitute

“applies”.

6. Sections 7AA and 7AAB added

After section 7—

Add

“7AA. Persons entering or present on catering business premises must comply with directions

- (1) A person who enters, or is present on, any catering business premises must comply with any direction issued under section 6(1) that applies in relation to the person.
- (2) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 3.

- (3) A person who, in purported compliance with a direction issued under section 6(1), provides any record, document or information that is false or misleading in a material particular is to be regarded as not having complied with the direction.

7AAB. Powers of managers and police officers as regards directions for catering business

- (1) The manager of any catering business premises may, for securing compliance with any direction issued under section 6(1) as required under section 7(1) or 7AA(1)—
 - (a) require a person who enters, or is present on, the premises to provide any record, document or information that is necessary for securing compliance with the direction; and
 - (b) inspect and examine such record, document or information.
- (2) If a person fails to comply with a requirement made to the person under subsection (1) or contravenes section 7AA(1), the manager of the catering business premises may—
 - (a) deny entry to the premises to the person; or
 - (b) require the person to leave the premises.
- (3) If the person fails to leave the premises when required to do so under subsection (2)(b), a police officer may—
 - (a) remove the person from the premises; and
 - (b) use reasonable force in the removal.

(4) Subsections (1) and (2) do not limit any rights of a manager of catering business premises under any law or contract.

(5) In this section—

manager (管理人) includes a person authorized by a manager for the purposes of this section.”.

7. Section 8 amended (directions of Secretary in relation to scheduled premises)

(1) Section 8(1)—

Repeal paragraphs (a) and (b)

Substitute

“(a) any business carried on, or any activity carried out, by any person on any scheduled premises, including the mode of operation of the business or activity;

(b) the closing of any scheduled premises;”.

(2) Section 8(3)—

Repeal

everything after “restrictions”

Substitute

“under subsection (1) for—

(a) different categories or descriptions of scheduled premises; and

(b) different categories or descriptions of persons entering or present on any scheduled premises.”.

8. Section 9 amended (manager of scheduled premises must comply with directions of Secretary)

Section 9(1), English text—

Repeal

“is applicable”

Substitute

“applies”.

9. Sections 9AA and 9AAB added

After section 9—

Add

“9AA. Persons entering or present on scheduled premises must comply with directions

- (1) A person who enters, or is present on, any scheduled premises must comply with any direction issued under section 8(1) that applies in relation to the person.
- (2) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 3.
- (3) A person who, in purported compliance with a direction issued under section 8(1), provides any record, document or information that is false or misleading in a material particular is to be regarded as not having complied with the direction.

9AAB. Powers of managers and police officers as regards directions for scheduled premises

- (1) The manager of any scheduled premises may, for securing compliance with any direction issued under section 8(1) as required under section 9(1) or 9AA(1)—

- (a) require a person who enters, or is present on, the premises to provide any record, document or information that is necessary for securing compliance with the direction; and
 - (b) inspect and examine such record, document or information.
- (2) If a person fails to comply with a requirement made to the person under subsection (1) or contravenes section 9AA(1), the manager of the scheduled premises may—
 - (a) deny entry to the premises to the person; or
 - (b) require the person to leave the premises.
- (3) If the person fails to leave the premises when required to do so under subsection (2)(b), a police officer may—
 - (a) remove the person from the premises; and
 - (b) use reasonable force in the removal.
- (4) Subsections (1) and (2) do not limit any rights of a manager of scheduled premises under any law or contract.
- (5) In this section—

manager (管理人) includes a person authorized by a manager for the purposes of this section.”.

10. Section 11 amended (authorized officers)

- (1) Section 11(1), after “of”—

Add

“any provisions of”.

- (2) Section 11(2)—

Repeal

“Part”

Substitute

“Regulation”.

(3) Section 11(3)—

Repeal

“Part”

Substitute

“Regulation”.

11. Section 12 amended (powers to enter and inspect specified premises)

(1) Section 12(1)(c)—

Repeal

“or article”

Substitute

“, article or information”.

(2) Section 12(1)(e)—

Repeal

“Part”

Substitute

“Regulation”.

(3) Section 12(2)—

Repeal

“an offence has been committed by a person”

Substitute

“a person is committing or has committed an offence”.

(4) Section 12(2)—

Repeal paragraph (a)

Substitute

“(a) require the person to—

- (i) give the person’s name, date of birth, address and contact telephone number (if any); and
- (ii) produce for inspection the person’s proof of identity;”.

(5) After section 12(2)—

Add

“(3) 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).”.

12. Section 12A amended (power to enter and search specified premises with warrant for investigation)

Section 12A(2)(c)—

Repeal

“Part”

Substitute

“Regulation”.

13. Section 13 amended (obstruction of authorized officers etc. prohibited)

(1) Section 13(1)—

Repeal

“Part”

Substitute

“Regulation”.

- (2) Section 13(2)—

Repeal

“Part”

Substitute

“Regulation”.

- (3) After section 13(3)—

Add

- “(4) A person who, in purported compliance with a requirement or request made by an authorized officer in the performance of a function under this Regulation, knowingly or recklessly provides any record, document or information that is false or misleading in a material particular commits an offence and is liable on conviction to a fine at level 3.”.

14. Section 13A amended (defence)

- (1) Section 13A(1)—

Repeal

“or 9(2)”

Substitute

“, 7AA(2), 9(2) or 9AA(2)”.

- (2) Section 13A(2)—

Repeal

“or 9(2)”

Substitute

“, 7AA(2), 9(2) or 9AA(2)”.

15. Sections 13B and 13C added

After section 13A—

Add

“13B. Fixed penalty in discharge of liability under section 7AA(2) or 9AA(2)

- (1) If a person commits an offence under section 7AA(2) or 9AA(2), the person may, in accordance with Schedule 3, discharge liability for the offence by paying a fixed penalty of \$5,000.
- (2) Schedule 3 provides for matters relating to the fixed penalty.
- (3) The Secretary may, by notice published in the Gazette, specify a public officer as an Authority for the purposes of Schedule 3.
- (4) A notice published under subsection (3) is not subsidiary legislation.

13C. Director may specify form of documents

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

16. Schedule 3 added

After Schedule 2—

Add

“Schedule 3

[s. 13B]

Fixed Penalty

Part 1

Interpretation

1. Interpretation

In this Schedule—

Authority (當局) means a public officer specified under section 13B(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 13C.

Part 2

Penalty Notice and Demand Notice

2. Authorized officer may give penalty notice

- (1) This section applies if an authorized officer has reason to believe that a person is committing or has committed an offence under section 7AA(2) or 9AA(2).
- (2) The authorized 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 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 7AA(2) or 9AA(2).
- (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 7AA(2) or 9AA(2); 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 7AA(2) or 9AA(2).
- (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 7AA(2) or 9AA(2)—
 - (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 7AA(2) or 9AA(2); or

- (b) a person has been given leave under section 11(2) of this Schedule to dispute liability for an offence under section 7AA(2) or 9AA(2).
- (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.”.

Wendy LEUNG
Clerk to the Executive Council

COUNCIL CHAMBER

27 April 2021

Explanatory Note

This Regulation amends the Prevention and Control of Disease (Requirements and Directions) (Business and Premises) Regulation (Cap. 599 sub. leg. F) (*principal Regulation*) mainly to—

- (a) require persons who enter, or are present on, any premises of a catering business that sells or supplies food or drink for consumption on its premises or any scheduled premises to comply with directions issued under section 6(1) or 8(1) of the principal Regulation;
- (b) create offences of contravening the requirement mentioned in subparagraph (a);
- (c) empower managers (and persons authorized by the managers) of those premises to—
 - (i) require persons who enter, or are present on, those premises to provide records, documents or information that is necessary for securing compliance with the directions; and
 - (ii) inspect and examine such records, documents or information;
- (d) create an offence of providing false or misleading record, document or information to authorized officers; and
- (e) provide for the payment of a fixed penalty to discharge the liability of offences mentioned in subparagraph (b).