

**L.N. 14 of 2022**

# **Prevention and Control of Disease (Vaccine Pass) Regulation**

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# Prevention and Control of Disease (Vaccine Pass) 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 10 February 2022.

#### 2. Interpretation

(1) In this Regulation—

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

*fixed penalty* (定額罰款) means the fixed penalty under section 18(1);

*function* (職能) includes a power and a duty;

*person in charge* (掌管人)—

- (a) in relation to any specified premises, means the person who is responsible for the management or is in charge or control of the premises; or
- (b) in relation to a specified public transport carrier, means—
  - (i) its owner or charterer; or
  - (ii) a grantee or holder of a franchise or licence under which the carrier is operated;

**public transport carrier** (公共交通工具) includes—

- (a) a public bus, public light bus, private bus, private light bus, school private light bus, taxi, train, light rail vehicle, tramcar, cable car and ferry when in public service; and
- (b) any part of a public transport carrier mentioned in paragraph (a);

**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 exemption certificate** (指明醫學豁免證明書) means a medical certificate that is issued in compliance with section 17;

**specified premises** (指明處所) means any premises that fall within a category of premises specified in a vaccine pass direction;

**specified public transport carrier** (指明公共交通工具) means any public transport carrier that falls within a category of public transport carriers specified in a vaccine pass direction;

**vaccine** (疫苗) has the meaning given by section 2 of the Prevention and Control of Disease (Use of Vaccines) Regulation (Cap. 599 sub. leg. K), and **vaccinated** and **vaccination** are to be construed accordingly;

**vaccine pass direction** (疫苗通行證指示) means a direction issued under section 3(1).

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- (2) For the purposes of this Regulation, a person who has been administered with a type of vaccine has been vaccinated in the specified manner for the purposes of a vaccine pass direction if all the conditions specified under section 4(1)(a) in that direction in relation to that type of vaccine are met.
-

## Part 2

### Vaccine Pass Direction

#### 3. Secretary may issue vaccine pass direction

- (1) The Secretary may issue, in relation to any category of premises or public transport carriers, a direction for the purposes of this Regulation if the Secretary, having regard to the factors set out in subsection (2), is satisfied that—
  - (a) the specified conditions are met under subsection (3) in relation to that category of premises or carriers; and
  - (b) issuing the direction is necessary for preventing, protecting against, delaying or otherwise controlling the incidence or transmission of the specified disease.
- (2) For the purposes of subsection (1), the factors are—
  - (a) the extent and pattern (whether general or specific) of the spread of the specified disease in Hong Kong or anywhere else in the world;
  - (b) the uses and effects of vaccination on reducing the health risks of persons contracting the specified disease; and
  - (c) the need to alleviate the effects of the specified disease on the social or economic activities in Hong Kong.
- (3) For the purposes of subsection (1)(a), the specified conditions are met in relation to any category of premises or public transport carriers if—
  - (a) persons who will be present on any premises or public transport carrier falling within that category will be, or will likely be, exposed to a significant risk

- of contracting the specified disease, having regard to any relevant factors, including—
- (i) the number of persons present on the premises or carrier;
  - (ii) the distance between persons present on the premises or carrier;
  - (iii) the duration of presence of persons on the premises or carrier;
  - (iv) the ventilation of the premises or carrier; and
  - (v) for premises—the activities to be carried out on the premises;
- (b) persons who will be present on any premises or public transport carrier falling within that category will, or will likely, carry a risk of spreading the specified disease if they have contracted the disease or are carriers of the causative agent of the disease, having regard to any relevant factors including those mentioned in paragraph (a); or
- (c) persons who will be present on any premises or public transport carrier falling within that category, if contracting the specified disease, will, or will likely, face considerable health risks owing to a personal factor such as age or health condition.
- (4) The vaccine pass direction takes effect on a date specified in the direction.
- (5) If a vaccine pass direction is issued in relation to any category of premises or public transport carriers—

- (a) the Secretary must, as soon as reasonably practicable after issuing the direction, publish a copy of the direction on the website of the Food and Health Bureau; and
  - (b) if the direction is issued in relation to any category of premises, the person in charge of the specified premises must cause a notice in a form specified in the direction to be displayed in a prominent position at or near every entrance to the premises.
- (6) A vaccine pass direction—
- (a) must be published in the Gazette; and
  - (b) is not subsidiary legislation.
- (7) The Secretary may revoke a vaccine pass direction if the Secretary, having regard to all the circumstances, is satisfied that revoking the direction serves the public interest of Hong Kong.
- (8) A revocation under subsection (7) must be signified and published in a way the Secretary considers appropriate.

#### **4. What can be directed under vaccine pass direction**

- (1) Without limiting the scope of a vaccine pass direction—
- (a) the direction may specify what conditions must be met in relation to a particular type of vaccine before a person who has been administered with that type of vaccine is regarded for the purposes of the direction as having been vaccinated in the specified manner, by reference to any relevant factors, including—
    - (i) the age of the person;
    - (ii) the medical condition of the person;



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- (iii) the type, specification and number of doses of the vaccine; and
      - (iv) the date and place of the vaccination;
    - (b) the direction may require a person falling within any category of persons not to—
      - (i) enter or remain on any specified premises unless the person has been vaccinated in the specified manner; or
      - (ii) board or remain on any specified public transport carrier unless the person has been vaccinated in the specified manner; and
    - (c) the direction may require the person in charge of any specified premises or specified public transport carrier to do any or all of the following—
      - (i) adopt any measures conducive to ensuring that—
        - (A) any person entering or remaining on the premises has been vaccinated in the specified manner; or
        - (B) any person boarding or remaining on the carrier has been vaccinated in the specified manner;
      - (ii) for the purposes of section 5(3), collect the personal particulars, address and means of contact of any person entering, boarding or remaining on the premises or carrier (as the case may be).
  - (2) A vaccine pass direction may—
    - (a) impose different requirements on different categories of persons; and

- (b) impose different requirements in relation to different specified premises or specified public transport carriers.

**5. Requirement for persons entering, boarding or remaining on specified premises or specified public transport carriers**

- (1) A person must not—
  - (a) enter or remain on any specified premises unless the person has been vaccinated in the specified manner for the purposes of a vaccine pass direction in relation to the premises; or
  - (b) board or remain on any specified public transport carrier unless the person has been vaccinated in the specified manner for the purposes of a vaccine pass direction in relation to the carrier.
- (2) Subsection (1) does not apply to a person who falls within the description of any of the following paragraphs and meets the condition prescribed in subsection (3)—
  - (a) the person is under the age specified for the purposes of this paragraph in the relevant vaccine pass direction;
  - (b) the person holds a specified medical exemption certificate;
  - (c) the person enters the specified premises only for—
    - (i) placing an order for takeaway of food or drink, or taking such food or drink, on the premises;
    - (ii) delivering or picking up an article on the premises; or
    - (iii) performing necessary repairs on the premises;

- (d) the person enters the specified premises only for receiving vaccination or medical treatment, or undergoing a specified test, that is provided on the premises;
- (e) the person passes through the specified premises or boards the specified public transport carrier only for receiving vaccination or medical treatment, or undergoing a specified test, that is provided in a place other than the premises or carrier;
- (f) the person enters or passes through the specified premises only for receiving essential government service (including any government service that enables compliance with any legal requirement) that is provided on the specified premises or any premises in the same building as the specified premises;
- (g) the person enters or passes through the specified premises only for appearing as a party, or a representative of a party, to any proceedings in any court, statutory tribunal or statutory board that are held on the specified premises or any premises in the same building as the specified premises;
- (h) the person is designated, or falls within a category of persons designated, under section 6(1);
- (i) it is reasonably necessary for the person to enter the specified premises or board the specified public transport carrier in order to avoid any physical harm to the person or any other person inside the premises or carrier;
- (j) the person is required by a public officer (who is performing a function of the officer) to enter the specified premises or board the specified public transport carrier;

- (k) subject to section 20, the person has lawful authority or reasonable excuse for—
  - (i) entering or remaining on the specified premises without having been vaccinated in the specified manner; or
  - (ii) boarding or remaining on the specified public transport carrier without having been vaccinated in the specified manner.
- (3) The condition is if a person enters or remains on any specified premises, or boards or remains on any specified public transport carrier, the person has, on the request of the person in charge of the premises or carrier (or the employee or agent of the person in charge), provided the personal particulars, address and means of contact to the person in charge, employee or agent.
- (4) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 3.
- (5) In criminal proceedings for an offence under subsection (4)—
  - (a) the burden of establishing the matter mentioned in subsection (2)(a), (b), (c), (d), (e), (f), (g), (h), (i), (j) or (k) lies on the person; and
  - (b) the person is taken to have established a matter if—
    - (i) there is sufficient evidence to raise an issue with respect to that matter; and
    - (ii) the contrary is not proved by the prosecution beyond reasonable doubt.

(6) In this section—

*specified test* (指明檢測) has the meaning given by section 2(1) of the Prevention and Control of Disease (Compulsory Testing for Certain Persons) Regulation (Cap. 599 sub. leg. J).

## 6. Secretary may designate certain persons

- (1) The Secretary may, with the Chief Executive's approval, designate any person or category of persons for the purposes of section 5(2)(h) if the Secretary is satisfied that the designation—
  - (a) is necessary for governmental operation; or
  - (b) because of the exceptional circumstances of the case, otherwise serves the public interest of Hong Kong.
- (2) The Secretary may, if considered necessary, attach conditions to a designation.
- (3) The Secretary may cancel a designation or vary a condition attached to a designation.
- (4) A designation, attachment of conditions, cancellation or variation under this section must be made in writing.
- (5) A designation, attachment of conditions, cancellation or variation under this section is not subsidiary legislation.

## 7. Persons in charge must comply with vaccine pass direction

- (1) The person in charge of any specified premises or specified public transport carrier must comply with any requirement made under section 4(1)(c) in a vaccine pass direction in relation to the premises or carrier.
- (2) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 5 and to imprisonment for 6 months.

- (3) It is a defence for a person charged with an offence under subsection (2) to establish that at the time of the alleged offence, the person had taken all reasonable steps to secure compliance with subsection (1).

## **8. Powers of persons in charge as regards vaccine pass direction**

- (1) The person in charge of any specified premises or specified public transport carrier may, for securing compliance with section 5(1) or 7(1)—
  - (a) require a person who enters, boards or remains on the premises or carrier (as the case may be) to provide any record, document or information that is necessary for securing compliance with that section; and
  - (b) inspect and examine such record, document or information.
- (2) Subsection (3) applies if a person in charge of any specified premises or specified public transport carrier is required under section 4(1)(c) to scan any QR code that is on or being a vaccination record or a specified medical exemption certificate of any person who—
  - (a) in relation to any specified premises—enters or remains on the premises; or
  - (b) in relation to any specified public transport carrier—boards or remains on the carrier.
- (3) The person in charge of any specified premises or specified public transport carrier, or the employee or agent of the person in charge, may—
  - (a) for securing compliance with section 7(1), scan the QR code mentioned in subsection (2) to save the vaccination record or the specified medical exemption

certificate on a mobile device by using a mobile application specified by the Secretary; and

- (b) on an authorized officer's request, for the identification and tracing of any person who may have been exposed to the risk of contracting the specified disease, upload the vaccination record or the specified medical exemption certificate to an information system specified by the officer for storing and retrieving such record or certificate.
- (4) Subsections (1) and (3) do not limit any rights of a person in charge of any specified premises or specified public transport carrier under any law or contract.

**9. Powers to deny entry or boarding etc. by authorized officers and persons in charge**

- (1) This section applies if—
  - (a) a person fails to comply with a requirement made to that person under section 8(1) or contravenes section 5(1); or
  - (b) a person refuses or neglects to enable a person in charge of any specified premises or specified public transport carrier, or the employee or agent of the person in charge, to do an act under section 8(3).
- (2) An authorized officer, the person in charge of any specified premises or specified public transport carrier or the employee or agent of the person in charge may—
  - (a) if the person mentioned in subsection (1) is entering the premises or boarding the carrier—deny entry to the premises, or boarding to the carrier, to that person; or

- (b) if the person mentioned in subsection (1) is present on the premises or on board the carrier—require that person to leave the premises or disembark the carrier.
- (3) If a person fails to comply with a requirement made under subsection (2)(b), a police officer may—
- (a) remove the person from the premises or carrier; and
  - (b) use reasonable force in the removal.
- (4) Subsection (2) does not limit any rights of a person in charge of any specified premises or specified public transport carrier under any law or contract.
- (5) A person is not entitled to a refund of, or to deny the liability to pay, any entrance fee of any specified premises or any transportation fee of any specified public transport carrier only because the person is, under subsection (2)(b) or (3)—
- (a) required to leave, or removed, from the premises; or
  - (b) required to disembark, or removed, from the carrier.
- (6) The exercise of a power under subsection (2) by a taxi driver in good faith does not by itself constitute a contravention of regulation 37(a), (b) or (c) of the Road Traffic (Public Service Vehicles) Regulations (Cap. 374 sub. leg. D).
- (7) In this section—
- entrance fee** (入場費), in relation to any specified premises, means any money paid or charged for the entry of a person to the premises;
- taxi driver** (的士司機) means the driver of a taxi within the meaning of the Road Traffic Ordinance (Cap. 374);



**transportation fee** (交通費), in relation to any specified public transport carrier, means any money paid or charged for the carriage of a person by the carrier.

#### 10. Requirements for responsible persons for vulnerable persons

- (1) A responsible person for a vulnerable person must use the responsible person's best endeavours to ensure that the vulnerable person complies with section 5(1).
- (2) A person who contravenes 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 with an offence under subsection (2) to establish that—
  - (a) the person had lawful authority or reasonable excuse for contravening subsection (1); or
  - (b) without limiting paragraph (a), section 5(1) does not apply to the vulnerable person.
- (4) In this section—

**child** (兒童) means a person who is under the age of 12;

**mentally incapacitated person** (精神上無行為能力的人) means a person who is mentally disordered, or mentally handicapped, within the meaning of the Mental Health Ordinance (Cap. 136);

**responsible person** (責任人), in relation to a vulnerable person, means—

- (a) a father or mother of the person, including an adoptive father, adoptive mother, stepfather or stepmother; or

- (b) the following person—
  - (i) for a child—a person who is assuming guardianship over the child under the Guardianship of Minors Ordinance (Cap. 13); or
  - (ii) for a mentally incapacitated person—a guardian of the person within the meaning of the Mental Health Ordinance (Cap. 136);

***vulnerable person*** (需照顧者) means—

- (a) a child; or
  - (b) a mentally incapacitated person.
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## Part 3

### Enforcement Powers

#### 11. Authorized officers

- (1) The Secretary may, in writing, appoint a public officer to be an authorized officer for the purposes of any provisions of this Regulation.
- (2) An authorized officer must, if so required, produce written proof of the officer's appointment before performing a function under this Regulation.
- (3) No personal liability is incurred by an authorized 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.
- (4) Subsection (3) does not in any way affect any liability of the Government in respect of any thing done or omitted to be done by an authorized officer or a person acting under the officer's direction.

#### 12. Power to demand information or assistance

- (1) An authorized officer may, for performing a function under this Regulation (including the ascertaining of whether or not a requirement is imposed by or under this Regulation on a particular person), require any person (*inquired person*) to provide any information if—
  - (a) the officer has reason to believe that the information is within the knowledge, in the possession or under the control of the inquired person; and
  - (b) it is not reasonably practicable to perform the function if the information is not obtained.

- (2) An authorized officer may require a person in charge or occupier of any specified premises or specified public transport carrier to provide the officer with any assistance that the officer reasonably considers necessary to enable the officer to perform a function under this Regulation.
- (3) An authorized officer may, for the identification and tracing of any person who may have been exposed to the risk of contracting the specified disease, provide the information obtained under subsection (1) to the Director or any other person as the Director considers necessary.
- (4) 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.
- (5) It is a defence for a person charged with an offence under subsection (4) 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.

- (6) 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.

### **13. Power to demand information for suspected offence**

- (1) If an authorized officer has reason to believe that a person is committing or has committed an offence under this Regulation, the officer may do any or all of the following—
  - (a) require the person to—
    - (i) provide 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;
  - (b) seize, remove or detain any thing that appears to the officer to be evidence of the offence.
- (2) A person who fails to comply with a requirement made under subsection (1)(a) commits an offence and is liable on conviction to a fine at level 3.
- (3) It is a defence for a person charged with an offence under subsection (2) to establish that the person had reasonable excuse for the failure to comply with the requirement.
- (4) A person who, in purported compliance with a requirement made under subsection (1)(a), 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.

(5) 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).

#### **14. Powers to enter and inspect specified premises etc.**

- (1) An authorized officer may do any or all of the following for ascertaining whether section 5(1) or 7(1) is being or has been complied with—
  - (a) at any reasonable time as the officer considers necessary—
    - (i) enter and inspect any specified premises;
    - (ii) board and inspect any specified public transport carrier; or
    - (iii) enter and inspect any premises that are designated for any specified public transport carrier to park, berth or stop to pick up or set down passengers;
  - (b) require the person in charge of any specified premises or specified public transport carrier—
    - (i) to produce a book, document or any other article in the person in charge's possession that relates to the operation or management of the premises or carrier or to any other activity in respect of the premises or carrier; or
    - (ii) to provide any information in the person in charge's possession that relates to the operation, management or activity;
  - (c) inspect, examine and copy any book, document, article or information described in paragraph (b);
  - (d) conduct any examination and inquiry that the officer considers necessary;

- (e) require any person to provide the officer with any assistance or information in the person's possession that the officer reasonably considers necessary to enable the officer to perform a function under this Regulation.
- (2) A person who, in purported compliance with a requirement made under subsection (1)(b)(ii) or (e), 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.

**15. 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 an authorized 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.

**16. Obstruction of authorized officer etc. prohibited**

- (1) A person must not delay, obstruct, hinder or molest an authorized officer who is performing a function under this Regulation.
  - (2) A person must comply with a requirement made by an authorized 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 with an offence under subsection (3) to establish that the person had reasonable excuse for contravening subsection (1) or (2).
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## Part 4

### Miscellaneous

#### 17. Specified medical exemption certificate

- (1) For the purposes of this Regulation, a medical certificate is a specified medical exemption certificate only if the medical certificate—
  - (a) contains an opinion from a registered medical practitioner that the person to whom it is issued is clinically assessed to be unsuitable for being vaccinated with whichever type of the specified vaccines;
  - (b) specifies a period within which the certificate is valid;
  - (c) shows the date of issue of the certificate;
  - (d) is in a form specified by the Director; and
  - (e) if the certificate is in hard copy form, is signed by the registered medical practitioner issuing the certificate.
- (2) To avoid doubt, the opinion under subsection (1)(a) must not be confined to any particular type of the specified vaccines.
- (3) In this section—

*registered medical practitioner* (註冊醫生) has the meaning given by section 2(1) of the Medical Registration Ordinance (Cap. 161);

*specified vaccines* (指明疫苗) means the vaccines that are currently available in Hong Kong and are—

- (a) authorized under section 3(1) of the Prevention and Control of Disease (Use of Vaccines) Regulation (Cap. 599 sub. leg. K); or

- (b) registered under regulation 36 of the Pharmacy and Poisons Regulations (Cap. 138 sub. leg. A).

**18. Fixed penalty in discharge of liability under section 5(4)**

- (1) If a person commits an offence under section 5(4), the person may, in accordance with the Schedule, discharge liability for the offence by paying a fixed penalty of \$5,000.
- (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.

**19. Defence**

A person is taken to have established a matter that needs to be established for a defence under section 7(3), 10(3), 12(5), 13(3) or 16(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.

**20. Circumstances not constituting reasonable excuse under section 5(2)(k)**

For the purposes of section 5(2)(k), a person does not have a reasonable excuse only because—

- (a) the person has to enter any specified premises that are the person's place of work for the purposes of work; or
- (b) the person has to board any specified public transport carrier that is the person's place of work for the purposes of work.

**21. Director may specify form of documents**

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

**22. Expiry**

This Regulation expires at midnight on 31 December 2022.

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## Schedule

[s. 18]

### Fixed Penalty

#### Part 1

#### Interpretation

##### 1. Interpretation

In this Schedule—

*Authority* (當局) means a person specified under section 18(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 21.

#### 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 5(4).

- (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 5(4).
- (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 5(4); 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 5(4).
- (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 5(4)—
  - (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 5(4); or
  - (b) a person has been given leave under section 11(2) of this Schedule to dispute liability for an offence under section 5(4).
- (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

8 February 2022

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### Explanatory Note

The object of this Regulation is to introduce a mechanism for restricting a person who has not been vaccinated against the coronavirus disease 2019 (COVID-19) from entering or remaining on certain premises or boarding or remaining on certain public transport carriers.

2. Part 1 prescribes the commencement date and contains the definitions used in the Regulation.
3. Part 2 empowers the Secretary for Food and Health (*Secretary*) to issue a direction (*vaccine pass direction*) in relation to certain premises or public transport carriers. Specifically, that Part—
  - (a) empowers the Secretary to specify what conditions must be met in relation to a particular type of vaccine before a person who has been administered with that type of vaccine is regarded for the purposes of the vaccine pass direction as having been vaccinated in the specified manner for entering, boarding or remaining on certain premises or public transport carriers (section 4);
  - (b) imposes certain requirements on any person entering, boarding or remaining on certain premises or public transport carriers (section 5);
  - (c) provides for certain offences in relation to the failure to comply with the requirements under subparagraph (b) (sections 5(4) and 7(2)); and
  - (d) confers certain powers on authorized officers and the persons in charge of certain premises or public transport carriers to enforce a vaccine pass direction (sections 8 and 9).

## Prevention and Control of Disease (Vaccine Pass) Regulation

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4. Part 3 confers general enforcement powers on authorized officers and provides for offences for obstructing authorized officers.
5. Part 4 provides for miscellaneous matters such as the requirements for a medical exemption certificate, the specification of form of documents and the expiry of the Regulation.
6. The Schedule provides for fixed penalty in respect of the offence for not having been vaccinated in the specified manner when entering or remaining on the premises, or boarding or remaining on the public transport carriers, in relation to which the vaccine pass direction applies.