

L.N. 32 of 2020

Prevention and Control of Disease (Prohibition on Group Gathering) Regulation

Contents

Section	Page
1. Commencement	B541
2. Interpretation	B541
3. Prohibition on group gathering during specified period	B543
4. Period specified by Secretary	B543
5. Chief Secretary for Administration may permit group gathering	B543
6. Offence if prohibited group gathering takes place	B545
7. Defence for offence under section 6	B545
8. Fixed penalty in discharge of liability under section 6(1)(a)	B547
9. Power to demand personal details and inspect proof of identity	B547
10. Power to disperse prohibited group gathering etc.	B549
11. Power to enter and inspect public place	B551
12. Power to enter and search premises with warrant for investigation	B553
13. Obstruction of authorized officer etc. prohibited	B555

Prevention and Control of Disease (Prohibition on Group Gathering) Regulation

L.N. 32 of 2020
B539

Section	Page
14. Authorized officers	B555
15. Notices and certificates	B555
16. Expiry	B555
Schedule 1 Exempted Group Gatherings	B557
Schedule 2 Fixed Penalty	B561

Prevention and Control of Disease (Prohibition on Group Gathering) Regulation

(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 March 2020.

2. Interpretation

In this Regulation—

authorized officer (獲授權人員) means an authorized officer appointed under section 14(1);

fixed penalty (定額罰款) means the fixed penalty under section 8(1);

group gathering (羣組聚集) means a gathering of more than 4 persons;

prohibited group gathering (受禁羣組聚集) means a group gathering the taking place of which is prohibited under section 3;

public place (公眾地方) means a place to which the public or a section of the public may or are permitted to have access from time to time, whether by payment or otherwise;

Secretary (局長) means the Secretary for Food and Health;

specified disease (指明疾病) means the disease specified in item 34AAA of Schedule 1 to the Ordinance;

specified period (指明期間) means a period specified under section 4(1).

- 3. Prohibition on group gathering during specified period**
 - (1) No group gathering may take place in any public place during a specified period.
 - (2) Subsection (1) does not apply to—
 - (a) an exempted group gathering specified in Schedule 1; and
 - (b) a group gathering that is permitted under section 5(1).

- 4. Period specified by Secretary**
 - (1) For preventing, protecting against, delaying or otherwise controlling the incidence or transmission of the specified disease, the Secretary may, by notice published in the Gazette, specify a period for the purposes of section 3(1).
 - (2) Any period specified under subsection (1) must not exceed 14 days.
 - (3) Any notice published under subsection (1) is not subsidiary legislation.

- 5. Chief Secretary for Administration may permit group gathering**
 - (1) The Chief Secretary for Administration (*Chief Secretary*) may permit any group gathering for the purposes of section 3(2)(b) if satisfied that the taking place of the gathering—
 - (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 Chief Secretary may, if considered necessary, attach conditions to a permission.

- (3) The Chief Secretary may cancel a permission or vary a condition attached to a permission.
- (4) A permission, attachment of conditions, cancellation or variation under this section must be made in writing.

6. Offence if prohibited group gathering takes place

- (1) If a prohibited group gathering takes place, each of the following persons commits an offence—
 - (a) a person who participates in the gathering;
 - (b) a person who organizes the gathering;
 - (c) a person who—
 - (i) owns, controls or operates the place in which the gathering takes place; and
 - (ii) knowingly allows the taking place of the gathering.
- (2) A person who commits an offence under subsection (1) is liable on conviction to a fine at level 4 and to imprisonment for 6 months.

7. Defence for offence under section 6

- (1) It is a defence for a person who is charged with an offence under section 6(1) in respect of a prohibited group gathering to establish that, at the time of the alleged offence, the person had lawful authority or reasonable excuse—
 - (a) for a person charged under section 6(1)(a)—for participating in the gathering;
 - (b) for a person charged under section 6(1)(b)—for organizing the gathering; or

- (c) for a person charged under section 6(1)(c)—for allowing the taking place of the gathering.
- (2) A person is taken to have established a matter that needs to be established for a defence under this section 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.

8. Fixed penalty in discharge of liability under section 6(1)(a)

- (1) If a person commits an offence under section 6(1)(a), 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.

9. Power to demand personal details and inspect proof of identity

- (1) This section applies if an authorized officer has reason to believe that a person is committing or has committed an offence under section 6(1).
- (2) The authorized 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).

10. Power to disperse prohibited group gathering etc.

(1) An authorized officer may disperse a gathering in a public place if—

- (a) the officer reasonably believes that the gathering is a prohibited group gathering; or
- (b) the gathering is a dispersable gathering within the meaning of subsection (2).

(2) For subsection (1)(b), if the distance between any participant of a gathering in a public place and any participant of another gathering in the place is less than 1.5 m, and the total number of participants of the gatherings is more than 4, then each of the gatherings is a dispersable gathering.

(3) For the purposes of exercising a power conferred by subsection (1), an authorized officer may—

- (a) give any order that the officer reasonably considers necessary or expedient;
- (b) use any force that is reasonably necessary to disperse a gathering that the officer reasonably believes to be a prohibited group gathering; and

- (c) enter any public place in which the officer reasonably believes that a prohibited group gathering or a dispersable gathering is taking place.
- (4) A person who, without reasonable excuse, refuses or wilfully neglects to obey an order given under subsection (3)(a) commits an offence and is liable on conviction to a fine at level 4 and to imprisonment for 6 months.

11. Power to enter and inspect public place

An authorized officer may do any or all of the following for ascertaining whether section 3(1) is being or has been complied with—

- (a) at any reasonable time enter and inspect any public place as the officer reasonably considers necessary;
- (b) require the person who owns, controls or operates the place—
 - (i) to produce any document or article in the person's possession that relates to any activity carried out in the place that the officer reasonably believes to be a prohibited group gathering; or
 - (ii) to furnish any information in the person's possession that relates to the activity;
- (c) inspect, examine and copy any such document or article;
- (d) conduct any examination and inquiry that the officer reasonably considers necessary;
- (e) require any person to provide the officer with the 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;

- (f) if an authorized officer reasonably believes that an offence has been committed under section 6(1) in respect of the place—seize, remove or detain any thing found in the place that appears to the officer to be evidence of the offence.

12. Power to enter and search premises with warrant for investigation

- (1) If satisfied by information on oath that there are reasonable grounds for suspecting that there is on any premises any thing that is or contains, or that is likely to be or to contain, evidence of an offence under this Regulation, 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 or to contain, or to be likely to be or to contain, evidence of an offence under this Regulation; 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.

13. 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, without reasonable excuse, contravenes subsection (1) or (2) commits an offence and is liable on conviction to a fine at level 3.

14. Authorized officers

- (1) The Director may appoint any public officer as an authorized officer for the purposes of this Regulation.
- (2) 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.

15. Notices and certificates

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

16. Expiry

This Regulation expires at midnight on 28 June 2020.

Schedule 1

[s. 3]

Exempted Group Gatherings

1. Group gathering for the purposes of or related to transportation
2. Group gathering for performing any governmental function
3. Group gathering for performing any function of a statutory body or an advisory body of the Government
4. Group gathering at a place of work for the purposes of work
5. Group gathering for obtaining or receiving hospital or healthcare service at a healthcare facility
6. Group gathering of persons living in the same household
7. Group gathering necessary for the conduct of proceedings in a court, magistrates' court or tribunal
8. Group gathering necessary for the proceedings in the Legislative Council or a District Council
9. Group gathering during a funeral, or during any other occasion for mourning for or remembering a deceased who has yet to be buried or cremated (including any ritual or ceremony held in the vicinity of the place where the deceased died or suffered fatal injury to mourn for the death of the deceased)

Prevention and Control of Disease (Prohibition on Group Gathering) Regulation

Schedule 1

L.N. 32 of 2020
B559

10. Group gathering of not more than 20 persons during a wedding ceremony at which no food or drink is served
 11. Group gathering at a meeting of a body that must be held within a specified period in order to comply with any Ordinance or other regulatory instrument that governs the operation of the body or its business
 12. Group gathering held for imparting information or skills, or handling supplies or items, that are conducive to the prevention and control of the specified disease
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Schedule 2

[s. 8]

Fixed Penalty

Part 1

Interpretation

1. Interpretation

In this Schedule—

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 15.

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 6(1)(a).
- (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 6(1)(a).
- (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. Director 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)(a); 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 Director 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 Director 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 Director 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 Director; 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)(a).
- (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 Director may withdraw a penalty notice given, or a demand notice served, in respect of an offence under section 6(1)(a)—
 - (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 Director 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 Director 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 Director 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 Director 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 Director 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 Director; 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 Director.
- (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 Director in accordance with a demand notice that the person wishes to dispute liability for an offence under section 6(1)(a); 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)(a).
- (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 Director

At any time, a magistrate may for good cause, on application by the Director, 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

28 March 2020

Explanatory Note

The object of this Regulation is to prohibit gatherings of more than 4 persons (*group gatherings*) in public places for preventing, protecting against, delaying or otherwise controlling the incidence or transmission of the disease specified in item 34AAA of Schedule 1 to the Prevention and Control of Disease Ordinance (Cap. 599).

2. Section 1 prescribes the commencement date.
3. Section 2 contains the definitions used in the Regulation.
4. Section 3 prohibits the taking place of a group gathering (unless exempted or permitted) in a public place during a period specified by the Secretary for Food and Health under section 4.
5. Section 5 empowers the Chief Secretary for Administration to permit group gatherings that satisfy certain criteria.
6. Section 6 prescribes offences for persons involved in a prohibited group gathering. Section 7 provides certain defences to those persons.
7. Section 8 provides for the payment of a fixed penalty to discharge the liability of an offence under section 6(1)(a).
8. Sections 9, 10, 11 and 12 confer enforcement powers on authorized officers.
9. Section 13 provides for offences for obstructing an authorized officer etc.

10. Section 14 makes provisions for authorized officers.
11. Section 15 empowers the Director of Health to specify the form of any notice or certificate for the purposes of the Regulation.
12. Section 16 prescribes the expiry date of the Regulation.
13. Schedule 1 provides for exempted group gatherings.
14. Schedule 2 provides for matters relating to the fixed penalty under section 8.