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Prevention and Control of Disease (Compulsory Testing for Certain Persons) (Amendment) (No. 2) Regulation 2022

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Prevention and Control of Disease (Compulsory Testing for Certain Persons) (Amendment) (No. 2) Regulation 2022

(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 31 March 2022.

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

The Prevention and Control of Disease (Compulsory Testing for Certain Persons) Regulation (Cap. 599 sub. leg. J) is amended as set out in sections 3 to 13.

3. Section 2 amended (interpretation)

(1) Section 2(1), English text, definition of *specified test*—

Repeal the full stop

Substitute a semicolon.

(2) Section 2(1)—

Add in alphabetical order

“*child* (兒童) means a person who is under the age of 10;

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 (負責人), in relation to a vulnerable person, means—

- (a) a father or mother of the person, including an adoptive father, adoptive mother, stepfather or stepmother;
- (b) the following person—
 - (i) for a child—a person who is assuming guardianship of 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); or
- (c) any other person who has the custody or care of the vulnerable person, such as a domestic helper, or a relative of the vulnerable person, who has such a custody or care;

vulnerable person (需照顧者) means—

- (a) a child; or
- (b) a mentally incapacitated person.”.

4. Section 8 amended (non-compliance with compulsory testing direction)

Section 8(1)—

Repeal

“level 3”

Substitute

“level 4 and to imprisonment for 6 months”.

5. Section 13 amended (non-compliance with compulsory testing notice)

Section 13(1)—

Repeal

“level 3”

Substitute

“level 4 and to imprisonment for 6 months”.

6. Section 16 amended (non-compliance with compulsory testing order)

Section 16(1)—

Repeal

“level 4”

Substitute

“level 5”.

7. Section 19E amended (power to require test)

Section 19E(3)—

Repeal

“level 4”

Substitute

“level 5”.

8. Section 19L amended (functions related to vulnerable persons)

(1) Section 19L(3)—

Repeal

“level 3”

Substitute

“level 4”.

(2) Section 19L—

Repeal subsection (7).

9. Section 22A added

After section 22—

Add

“22A. Responsible persons to ensure compliance

- (1) This section applies in relation to a requirement imposed on a vulnerable person under—
 - (a) a compulsory testing direction;
 - (b) a compulsory testing notice; or
 - (c) a compulsory testing order.
- (2) A responsible person for the vulnerable person must use the responsible person’s best endeavours to ensure that the vulnerable person complies with the requirement.
- (3) A person who contravenes subsection (2) commits an offence and is liable on conviction to a fine at level 4.
- (4) It is a defence for a person charged under subsection (3) to establish that—
 - (a) the person had lawful authority or reasonable excuse for the failure to use the person’s best endeavours to ensure compliance with the requirement; or
 - (b) without limiting paragraph (a)—
 - (i) the person did not know, and could not with reasonable diligence have discovered, the requirement; or

- (ii) the person reasonably believed that—
 - (A) the requirement was not imposed on the vulnerable person;
 - (B) the vulnerable person had lawful authority or reasonable excuse for the failure to comply with the requirement; or
 - (C) the vulnerable person could not comply with the requirement because of any physical or mental illness, impairment or disability.”.

10. Section 24 amended (fixed penalty in discharge of liability under section 8(1) or 13(1))

(1) Section 24, heading—

Repeal

“or 13(1)”

Substitute

“, 13(1) or 22A(3)”.

(2) Section 24(1)—

Repeal

“or 13(1)”

Substitute

“, 13(1) or 22A(3)”.

11. Section 25 amended (defence)

Section 25—

Repeal

“or 21(4)”

Section 12

Substitute

“, 21(4) or 22A(4)”.

12. Section 28 amended (expiry)

Section 28—

Repeal

“31 March”

Substitute

“30 September”.

13. Schedule amended (fixed penalty)

The Schedule—

- (a) section 2(1);
- (b) section 3(1);
- (c) section 4(1)(a)(i);
- (d) section 5(1);
- (e) section 6(1);
- (f) section 12(1)(a) and (b)—

Repeal

“or 13(1)”

Substitute

“, 13(1) or 22A(3)”.

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Wendy LEUNG
Clerk to the Executive Council

COUNCIL CHAMBER

29 March 2022

Explanatory Note

This Regulation amends the Prevention and Control of Disease (Compulsory Testing for Certain Persons) Regulation (Cap. 599 sub. leg. J) (*principal Regulation*) mainly to—

- (a) increase the penalties for the offences under section 8(1) (failing to comply with a requirement under a compulsory testing direction) and under section 13(1) (failing to comply with a requirement under a compulsory testing notice) of the principal Regulation from a fine at level 3 (\$10,000) to a fine at level 4 (\$25,000) and imprisonment for 6 months;
- (b) increase the penalties for the offences under section 16(1) (failing to comply with a requirement under a compulsory testing order) and under section 19E(2) (failing to comply with a requirement under a restriction-testing declaration) of the principal Regulation from a fine at level 4 (\$25,000) and imprisonment for 6 months to a fine at level 5 (\$50,000) and imprisonment for 6 months;
- (c) increase the penalty of a responsible person for a vulnerable person for the offence under section 19L(3) of the principal Regulation (failing to use the responsible person's best endeavours to ensure that the vulnerable person complies with a requirement imposed by or under Part 4A of the principal Regulation) from a fine at level 3 (\$10,000) to a fine at level 4 (\$25,000);
- (d) make it an offence under the new section 22A(3) for a responsible person for a vulnerable person for failing to use the responsible person's best endeavours to ensure that the vulnerable person complies with a

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requirement under a compulsory testing direction, a compulsory testing notice or a compulsory testing order (*section 22A(3) offence*), and provide for certain defences;

- (e) provide that a person may discharge liability for a section 22A(3) offence by paying a fixed penalty of \$10,000; and
- (f) extend the expiry of the principal Regulation from midnight on 31 March 2022 to midnight on 30 September 2022.