

L.N. 207 of 2022

**Prevention and Control of Disease (Vaccine Pass)
(Amendment) Regulation 2022**

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Prevention and Control of Disease (Vaccine Pass) (Amendment) 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 26 October 2022.

2. Prevention and Control of Disease (Vaccine Pass) Regulation amended

The Prevention and Control of Disease (Vaccine Pass) Regulation (Cap. 599 sub. leg. L) is amended as set out in sections 3 to 13.

3. Section 2 amended (interpretation)

Section 2(1)—

Add in alphabetical order

“*transitional certificate* (過渡證明書) means a document issued by the Secretary under section 5A(1);”.

4. Section 4 amended (what can be directed under vaccine pass direction)

After section 4(1)—

Add

“(1A) To avoid doubt, and without limiting the scope of a vaccine pass direction, the direction may provide for transitional arrangements for a person who, during a period, does not meet the conditions specified under subsection (1)(a) in the direction in relation to whichever type of vaccine, including what conditions

the person must meet in order for the person to be issued with a transitional certificate.”.

5. Section 5 amended (requirement for persons entering, boarding or remaining on specified premises or specified public transport carriers)

(1) After section 5(2)(b)—

Add

“(ba) the person holds a transitional certificate;”.

(2) Section 5(5)(a), after “(b),”—

Add

“(ba),”.

6. Section 5A added

After section 5—

Add

“5A. Secretary may issue transitional certificates

(1) The Secretary may, for the purposes of section 5(2)(ba), issue a document to a person who—

(a) during a period, does not meet the conditions specified under section 4(1)(a) in a vaccine pass direction in relation to whichever type of vaccine; but

(b) meets the conditions provided for under section 4(1A) in the direction that apply to the person.

(2) The Secretary may issue a transitional certificate in such terms as the Secretary considers appropriate.

(3) The Secretary may at any time revoke a transitional certificate.”.

7. Section 8 amended (powers of persons in charge as regards vaccine pass direction)

(1) Section 8(2)—

Repeal

“or a specified medical exemption certificate”

Substitute

“, a specified medical exemption certificate or a transitional certificate”.

(2) Section 8(3)(a) and (b)—

Repeal

“or the specified medical exemption certificate”

Substitute

“, the specified medical exemption certificate or the transitional certificate”.

8. Part 4 heading amended (miscellaneous)

Part 4, heading—

Repeal

“Miscellaneous”

Substitute

“Specified Medical Exemption Certificate”.

9. Section 16A added

Part 4, before section 17—

Add

“16A. Interpretation (Part 4)

In this Part—

group invalidation declaration (整體失效宣告) means a declaration made under section 17B(1);

individual invalidation declaration (個別失效宣告) means a declaration made under section 17A(1);

invalidation declaration (失效宣告) means—

- (a) an individual invalidation declaration; or
- (b) a group invalidation declaration;

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).”.

10. Section 17 amended (specified medical exemption certificate)

(1) Section 17(1)—

Repeal

“For”

Substitute

“Subject to subsection (1A), for”.

(2) After section 17(1)—

Add

“(1A) A medical certificate is not a specified medical exemption certificate if—

- (a) it ceases to be a specified medical exemption certificate under section 17A(7) or 17B(8)(b); or
- (b) it is issued by a registered medical practitioner to whom section 17B(8)(a) applies for the time being.”.

(3) Section 17—

Repeal subsection (3).

11. Sections 17A to 17G added

After section 17—

Add

“17A. Invalidation of individual medical certificate

- (1) If the Secretary has reasonable grounds to suspect that a registered medical practitioner has issued a medical certificate to a person without conducting a clinical assessment on the person to form the basis of an opinion for the purposes of section 17(1)(a), the Secretary may make a declaration that—
 - (a) identifies the medical practitioner and describes the certificate; and
 - (b) declares the certificate as an invalidated certificate.
- (2) The individual invalidation declaration takes effect on a date specified in the declaration, which must not be earlier than 14 days beginning on the date of the declaration.
- (3) The individual invalidation declaration must be published in a way the Secretary considers appropriate.

- (4) The Secretary must, as soon as reasonably practicable after making the individual invalidation declaration, serve a written notice of the declaration on the registered medical practitioner.
- (5) The registered medical practitioner may, within 7 days beginning on the date of the notice under subsection (4) (*7-day period*), make written representations to the Secretary as to why the individual invalidation declaration should not be made.
- (6) If any such written representations are received by the Secretary after the expiry of the 7-day period, the Secretary may—
 - (a) disregard the representations; or
 - (b) if the Secretary is satisfied that there are reasonable grounds in the representations as to why the individual invalidation declaration should not be made, still consider the representations.
- (7) If the Secretary makes an individual invalidation declaration in relation to a medical certificate under subsection (1), the certificate ceases to be a specified medical exemption certificate for the purposes of this Regulation once the declaration takes effect.

17B. Invalidation of medical certificates issued by registered medical practitioner

- (1) If the Secretary, on the basis of all information and records available, considers that it is in the public interest that all specified medical exemption certificates issued by a registered medical practitioner

cease to be specified medical exemption certificates, the Secretary may make a declaration that—

- (a) identifies the medical practitioner and describes the certificates; and
 - (b) declares the certificates as invalidated certificates.
- (2) Before making the group invalidation declaration, the Secretary must have regard to all relevant factors, including—
- (a) the possible adverse consequence of the integrity and robustness of the regime of vaccine pass direction established under this Regulation being compromised;
 - (b) whether there are reasonable grounds for suspecting that the registered medical practitioner has issued any medical certificate without conducting a clinical assessment to form the basis of an opinion for the purposes of section 17(1)(a);
 - (c) the number of medical certificates issued by the registered medical practitioner for the purposes of this Regulation within a particular span of time;
 - (d) the pattern and mode of issue of medical certificates by the registered medical practitioner for the purposes of this Regulation; and
 - (e) the advice of the Director (if any).
- (3) The group invalidation declaration takes effect on a date specified in the declaration, which must not be earlier than 14 days beginning on the date of the declaration.

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- (4) The group invalidation declaration must be published in a way the Secretary considers appropriate.
 - (5) The Secretary must, as soon as reasonably practicable after making the group invalidation declaration, serve a written notice of the declaration on the registered medical practitioner.
 - (6) The registered medical practitioner may, within 7 days beginning on the date of the notice under subsection (5) (*7-day period*), make written representations to the Secretary as to why the group invalidation declaration should not be made.
 - (7) If any such written representations are received by the Secretary after the expiry of the 7-day period, the Secretary may—
 - (a) disregard the representations; or
 - (b) if the Secretary is satisfied that there are reasonable grounds in the representations as to why the group invalidation declaration should not be made, still consider the representations.
 - (8) If the Secretary makes a group invalidation declaration—
 - (a) no medical certificate issued by the registered medical practitioner identified in the declaration after the making of the declaration is to be regarded as a specified medical exemption certificate for the purposes of this Regulation; and
 - (b) each of the medical certificates described in the declaration ceases to be a specified medical exemption certificate for the purposes of this Regulation once the declaration takes effect.

17C. Arrangements to be put in place when making invalidation declarations

The Secretary must, as soon as reasonably practicable after making an invalidation declaration and before the declaration takes effect, put in place arrangements to enable a person who holds a medical certificate to which the declaration relates to undergo a clinical assessment by a registered medical practitioner for determining whether the person is unsuitable for being vaccinated with whichever type of the specified vaccines.

17D. Rectification of errors in invalidation declarations

- (1) The Secretary may rectify a typographical or clerical error in an invalidation declaration.
- (2) A rectification under subsection (1) must be published in the way in which the invalidation declaration was published by the Secretary.
- (3) An error rectified under subsection (1) is regarded as having never existed in the invalidation declaration.

17E. Revocation of invalidation declarations

- (1) The Secretary may, at any time after an invalidation declaration is made, revoke the declaration if—
 - (a) for an individual invalidation declaration—the Secretary no longer has reasonable grounds to suspect that the registered medical practitioner issued the medical certificate without conducting a clinical assessment to form the basis of an opinion for the purposes of section 17(1)(a); or

- (b) for a group invalidation declaration—the Secretary no longer considers that it is in the public interest that all specified medical exemption certificates issued by the registered medical practitioner cease to be specified medical exemption certificates.
- (2) A revocation under subsection (1) must be published in the way in which the invalidation declaration was published by the Secretary.
- (3) The Secretary must, as soon as reasonably practicable after making the revocation, serve a written notice of the revocation on the registered medical practitioner.
- (4) If, after an invalidation declaration takes effect and immediately before the declaration is revoked, a medical certificate would have been a specified medical exemption certificate but for the declaration, the medical certificate resumes to be a specified medical exemption certificate for the purposes of this Regulation on and after the date of the revocation.
- (5) If the Secretary revokes a group invalidation declaration, section 17B(8)(a) ceases to apply to the registered medical practitioner identified in the declaration.
- (6) A revocation under subsection (1) does not affect the validity period of a medical certificate mentioned in section 17(1)(b).

17F. Service of notices

A written notice required to be served on a registered medical practitioner under this Part is to be regarded as duly served if—

- (a) it is delivered to the medical practitioner personally;
- (b) it is left at the medical practitioner's correspondence address last known to the Government; or
- (c) it is sent by electronic means to the medical practitioner's electronic mail address last known to the Government.

17G. Invalidation declarations are not subsidiary legislation

An invalidation declaration is not subsidiary legislation.”.

12. Part 5 heading added

Before section 18—

Add

“Part 5

Miscellaneous”.

13. Section 22 amended (expiry)

Section 22—

Repeal

“31 December 2022”

Substitute

“30 June 2023”.

Carmen KONG
Clerk to the Executive Council

COUNCIL CHAMBER

25 October 2022

Explanatory Note

This Regulation amends the Prevention and Control of Disease (Vaccine Pass) Regulation (Cap. 599 sub. leg. L) (*principal Regulation*) to—

- (a) empower the Secretary for Health (*Secretary*) to invalidate certain specified medical exemption certificates issued by a registered medical practitioner under certain circumstances;
 - (b) clarify the power to provide for transitional arrangements in a vaccine pass direction for a person who does not meet certain conditions specified in the direction; and
 - (c) extend its expiry date from 31 December 2022 to 30 June 2023.
2. For the invalidation of an individual specified medical exemption certificate, if the Secretary has reasonable grounds to suspect that a registered medical practitioner has issued a medical certificate to a person without conducting a clinical assessment on the person, the Secretary may invalidate the medical certificate by making a declaration.
3. Moreover, if the Secretary considers that it is in the public interest that all specified medical exemption certificates issued by a registered medical practitioner cease to be specified medical exemption certificates, the Secretary may invalidate the medical certificates by making a declaration. No medical certificate issued by the registered medical practitioner after the making of the declaration is to be regarded as a specified medical exemption certificate for the purposes of the principal Regulation.