

Questions and Answers on the Prohibition on Face Covering Regulation

(For Public's Reference)

A. Purpose and legislative background of the Prohibition on Face Covering Regulation

1. What is the purpose of the Prohibition on Facial Covering Regulation?

The new legislation aims at prohibiting any people from using a facial covering that is likely to prevent identification at a “public meeting” or “public procession” regulated under the Public Order Ordinance (Cap. 245), or unlawful or unauthorised assembly.

2. Why is the Prohibition on Face Covering Regulation necessary?

It is imperative that the SAR Government should stop violence and curb disorder. We especially notice that almost all persons performing acts of serious violence in unlawful assemblies in the past few months concealed their identities under a facial covering, hence obstructing law enforcement by the Police and also making collection of evidence more difficult.

We believe that without a facial covering, some people will be more prudent about the lawfulness and reasonableness of their acts. The Prohibition on Face Covering Regulation will have some degree of deterrent effect, preventing people from committing serious crimes unscrupulously and impulsively.

3. What scenarios are covered under “public meeting” and “public procession” regulated by the Public Order Ordinance (Cap. 245) and “unlawful / unauthorised assembly”?

- **Unlawful assembly** : 3 or more people gathered together and whose conduct is likely to cause or provoke a breach of the peace.

- **Unauthorized assembly** : More than 50 people at a public meeting or more than 30 people at a public procession for which the Commissioner of Police has not been notified in advance, or has prohibited or objected to it.

- **Unauthorized assembly** : 3 or more people at a public meeting, procession or gathering who refuse to comply with an order given by Police under the Public Order Ordinance.

- **Notifiable public meeting*** : A public meeting of more than 50 people for which the Commission of Police has been notified in advance and he has not prohibited it.

- **Notifiable public procession** : A public procession of more than 30 people for which the Commissioner of Police has been notified in advance and he has not objected to it.

** A **meeting** does **not include** any gathering or assembly held exclusively for social, recreational, cultural, academic, educational, religious or charitable purposes; funeral purpose; purpose of any public body (e.g. public forum held by Government); or carrying out any duty under any ordinance.*

B. “Reasonable excuses” for Prohibition on Face Covering Regulation

4. Under the Prohibition on Face Covering Regulation, will I be granted exemption?

It is clearly stipulated in the provisions that there could be “reasonable excuses”, examples being : the person is engaged in a profession or employment (e.g. medical profession) and is using a facial covering for personal safety while performing an act or activity connected with the profession or employment; the person is using the facial covering for religious reasons or a pre-existing medical or health reason; etc.

5. The religion I follow obliges me to wear a veil in a public place. Will I commit an offence under the Prohibition on Face Covering Regulation and will it infringe my religious freedom?

It is stipulated in the provisions that religious reasons are “reasonable excuse”. Hence, wearing a veil for religion will not constitute an offence under the law. The Regulation does not infringe religious freedom. However, a Police officer may require any person in a public place to remove a facial covering to verify the identity of the person. After the identity verification, the person may wear

back the facial covering.

6. Will I be exempt if I am a healthcare worker?

It is a reasonable excuse for healthcare workers to wear a mask or protect the face for self-protection while they are working.

7. At what sizes would masks be regarded as a facial covering? What about sunglasses, hats, respirators?

“Facial covering” is defined under the Regulation, which means a mask or any other article of any kind (including paint) that covers all or part of a person’s face. Whether or not an article is a “facial covering” would depend on whether the definition is met. A user of facial covering will commit an offence when the facial covering is likely to prevent identification.

8. Will it be an offence for a person to cover his/her eyes, nose or mouth with transparent plastic wraps? Will it be an offence for a person to cover his/her forehead and neck and show only his/her face? Will it be an offence for a person to wear oversized sunglasses? Will it be an offence for a person to cover his/her forehead and cheeks with a scarf?

Please refer to answer to question 7.

9. The current Regulation also empowers Police officers to require any person in a public place to remove a mask or a facial covering. Will this be virtually amount to total prohibition on members of the public wearing a mask or facial covering in a public place, thus affecting other members of the public who have no intention to participate in a public meeting?

The Police has a statutory duty to protect law and order. If a Police officer finds a person covering his/her face in a public place and has reasons to believe that the identity of the person concerned will not be recognised, the Police officer may stop the person and request removal of the facial covering. This arrangement of the Police is for identity verification. The person concerned may put on the facial covering again upon completion of verification. It is only when a person fails to comply with the requirement would he/she be committing an offence. Hence, it is not a requirement of this Regulation that

people in a public place are prohibited from wearing a mask or a facial covering. As long as they remove masks or facial covering at the request of Police officers for the verification of their identity, they will not be infringing the law.

10. Will the Prohibition on Face Covering Regulation increase the risk of epidemic transmission during public meetings?

It is a reasonable excuse for a person having pre-existing medical or health conditions to wear a mask. The Regulation will not increase the risk of epidemic transmission during public meetings or in Hong Kong as a whole.

11. Does it mean that not even pregnant women or people with bronchial allergy or disorders in immunity system can wear a mask?

Please refer to answer to question 10.

12. Would it be contrary to the law to put on heavy make-up when participating in meetings and processions?

The main object of the provision is to prevent those who seek to avoid identification by way of face covering from undermining the ability of the Police to enforce the law. Hence, whether or not putting on heavy make-up would contravene the legislation would depend on the facts and circumstances of each case.

13. Would it be contrary to the law for members of the public to wear a mask when going out?

The provision proscribes facial covering at unlawful assemblies, unauthorized assemblies as well as public meetings and processions for which a letter of no objection has been issued. If a person is being requested by the Police to remove his/her mask, the person concerned may put on the mask again upon completion of verification of identity by the Police.

14. Would it constitute an offence if a person is found having possession of a mask when he/ she is being stopped by the Police?

No. The provision proscribes facial covering at unlawful assemblies,

unauthorized assemblies as well as public meetings and processions for which a letter of no objection has been issued.

15. Is it true that as long as it is not “likely to prevent identification”, it would not be against the law even if a mask is worn at meetings or processions?

The point at issue is whether the facial covering used is “likely to prevent identification”. In applying the objective test of “likely to prevent identification”, it should be appreciated that by prohibiting such act or omission, the regulation seeks to deter people from making law enforcement, investigation and prosecution more difficult, thus achieving the purpose of implementing the new enactment. It would be dangerous for any person to assume that by being well-known or possessing certain bodily features that person could circumvent the application of the legal requirement or have a reasonable excuse should he or she choose to wear a mask at a meeting or procession. Different modes and levels of concealment (including the use of a mask for facial covering) can invariably make it more difficult for the Police to verify the identity of a person and affect the quality of identification evidence in the criminal process. In particular, when a person appearing with his/her face covered among a crowd of people whose faces are similarly covered would make the objective test of “likely to prevent identification” more easily satisfied. Hence, members of the public should not risk breaking the law when they exercise their civil rights.

Disclaimer : This publication is for general information only and does not constitute any legal advice.