

立法會
Legislative Council

LC Paper No. LS 11/00-01

**Paper for the House Committee Meeting
of the Legislative Council
on 27 October 2000**

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 20 October 2000**

Date of Tabling in LegCo : 25 October 2000

Amendment to be made by : 22 November 2000 (or 29 November 2000 if extended by resolution)

Fixed Penalty (Criminal Proceedings) Ordinance (Cap. 240)

Fixed Penalty (Criminal Proceedings) (Amendment) (No. 2) Regulation 2000 (L.N. 282)

Section 2 of the Amendment Regulation amends the Schedule to the Fixed Penalty (Criminal Proceedings) Regulations (Cap. 240 sub. leg.) by repealing code numbers 50 to 55 inclusive and substituting new code numbers 50 to 55B inclusive. The new code numbers reflect the new offences to carry fixed penalties by virtue of the amendments made to the Schedule to the Fixed Penalty (Criminal Proceedings) Ordinance (Cap. 240) (under a resolution made and passed by the Legislative Council on 22 June 2000 and gazetted on 23 June 2000 (L.N. 219 of 2000)) in consequence of the amendments made to the Road Traffic (Safety Equipment) Regulations (Cap. 374 sub. leg.). It also makes some technical amendments to the Chinese text of code numbers 37 to 39.

Section 3 of the Amendment Regulation repeals the Fixed Penalty (Criminal Proceedings) (Amendment) Regulation 2000 (L.N. 159 of 2000) which was gazetted on 19 May 2000 and tabled in the Legislative Council on 24 May 2000. As the amendments introduced by L.N. 159 should be consequential upon the amendments to the Schedule to the Fixed Penalty (Criminal Proceedings) Ordinance (L.N. 219 of 2000), we had written to the Administration seeking clarification of the legal basis for making the amendments in L.N.159 before the motion to amend the Schedule to the Fixed Penalty (Criminal Proceedings) Ordinance was passed by the Legislative Council (Legal Service Division Report reference: LC Paper No LS 142/99-00). As a result of which, the Administration has agreed to gazette a revised amendment regulation after the motion to amend the Schedule to the Fixed Penalty (Criminal Proceedings) Ordinance is passed by the Legislative Council, and the revised amendment regulation would repeal L.N. 159.

Regarding the Amendment Regulation, we have also sought clarification from the Administration about the differences in certain aspects of the content between the Amendment Regulation and L.N. 159. The Administration explains that L.N. 159 has duplicated certain offences already set out in the Schedule to the Fixed Penalty (Criminal Proceedings) Ordinance. Therefore, in the Amendment Regulation, the Administration corrects the textual anomaly to make the amendments correspond to those made to the Schedule to the Fixed Penalty (Criminal Proceedings) Ordinance. Copies of the correspondence are annexed for Members' reference.

Members may refer to LegCo Brief File Reference: TRAN 3/9/13 of 18 October 2000 from Transport Bureau for background information.

The Amendment Regulation will come into operation on 1 January 2001.

Fixed Penalty (Criminal Proceedings) Ordinance (Cap. 240)

Fixed Penalty (Criminal Proceedings) (Amendment) (No. 3) Regulation 2000 (L.N. 283)

Fixed Penalty (Criminal Proceedings) Ordinance (L.N. 206 of 2000)

Resolution of the Legislative Council (L.N. 206 of 2000) (Commencement) Notice 2000 (L.N. 286)

The Fixed Penalty (Criminal Proceedings) (Amendment) (No. 3) Regulation 2000 (L.N. 283) amends the Schedule to the Fixed Penalty (Criminal Proceedings) Regulations (Cap. 240 sub. leg.) as corresponding amendment to the Resolution made and passed by the Legislative Council on the increase of the fixed penalty in relation to emission of excess smoke or visible vapour by vehicles from \$450 to \$1000. The resolution was published in the gazette as L.N. 206 of 2000. The Amendment Regulation will come into operation on 1 December 2000.

The Legislative Council (L.N. 206 of 2000) (Commencement) Notice 2000 (L.N. 286) appoints 1 December 2000 as the date on which the Resolution of the Legislative Council (L.N. 206 of 2000) will come into operation. The resolution is made and passed by the Legislative Council to increase the fixed penalty for "smoky vehicle" from \$450 to \$1000.

Members may refer to LegCo Brief File Reference: EFB 9/55/01/127 (2000) Pt. 3 of October 2000 from Environment and Food Bureau for background information on these items.

Securities and Futures Commission Ordinance (Cap. 24)

Financial Resources (Amendment) Rules 2000 (L.N. 284)

The Amendment Rules amend the Financial Resources Rules (Cap. 24 sub. leg.) by-

- (a) adding the reference to "adviser" in the definition of "approved subordinated loan" so that when computing net tangible assets, the approved subordinated loans will be excluded from the adviser's total liabilities;
- (b) repealing "Eurex" and substituting "Deutsche Börse AG" as a stock market.

Members may refer to LegCo Brief (without File Reference on it) of 19 October 2000 from the Securities and Futures Commission for background information.

Occupational Retirement Schemes Ordinance (Cap. 426)
Occupational Retirement Schemes (Recovery of Arrears) Rules (L.N. 285)

These Rules are made for the purposes of section 24A of the Occupational Retirement Schemes Ordinance (Cap. 426). They—

- (a) specify how the due date for contributions payable by the relevant employer is to be determined;
- (b) impose a duty on the designated person to report arrears of contributions to the Registrar;
- (c) provide for the issue of payment notices by the Registrar; and
- (d) provide for the manner of imposition of contribution surcharges and financial penalties by the Registrar.

Members may refer to LegCo Brief File Reference: FSB CR C13/4/12C(2000) of 18 October 2000 from Financial Services Bureau for background information.

The Rules will come into operation on 1 December 2000.

Encl

Prepared by

Lam Ping-man, Stephen
Assistant Legal Adviser
Legislative Council Secretariat
25 October 2000

Fax No. : 2104 7274

Tel No. : 2189 2182

(46) in TRAN 3/9/13 Pt 15

Fax : 2877 5029

24 October 2000

Mr Stephen Lam
Assistant Legal Adviser
Legislative Council Secretariat
Legal Service Division

Dear Mr Lam,

**Fixed Penalty (Criminal Proceedings)
(Amendment)(No. 2) Regulation 2000 (L.N. 282)**

Thank you for your letter of 20 October 2000.

The Fixed Penalty (Criminal Proceedings)(Amendment)(No.2) Regulation 2000 is a consequential amendment to the resolution to amend the Schedule to the Fixed Penalty (Criminal Proceedings) Ordinance (Cap.240) passed by the previous Legislative Council on 21 June 2000. The list of offences to be included in Form 1 of the Schedule as proposed in the Amendment Regulation is the same as the list in the resolution passed by LegCo.

As regards the content of the Amendment Regulation, you have rightly pointed out that it is different from that of L.N. 159 of 2000. You may wish to note that when we were preparing the resolution to amend the Schedule to the Fixed Penalty (Criminal Proceedings) Ordinance, we noticed that there was a mistake in L.N. 159 of 2000, i.e. the revised Code Numbers 50 and 51 duplicated the offences already set out under the existing Code Numbers 38 and 39 (driving private car when without being securely fastened with seat belt, and driving private car when front seat passenger not securely fastened with seat belt). As such, Code Numbers 50 and 51 in L.N. 159 of 2000 had to be deleted and the rest would need to be renumbered accordingly in the Schedule to Cap.240 and the amendment regulation. In addition, the Law Draftsman suggested that the Chinese version of Items 37 to 39 in the Schedule to the Ordinance should be made consistent with the Chinese version of the new offences to be included in the list. We have therefore taken the opportunity to rectify these inconsistencies in preparing the resolution and the Amendment Regulation.

I hope the above information could clarify the situation. If you need further information, please do not hesitate to contact the undersigned.

Yours sincerely,

(Brain Lo)
for Secretary for Transport

c.c. Department of Justice	(Attn : Mr Geoffrey Fox	
	Ms Betty Choi)	2869 1302
Commissioner of Police	(Attn : Mr William Tong)	2865 1058
Commissioner for Transport	(Attn : Mr H L Cheng)	2802 9595

LS/S/4/00-01
2869 9468
2877 5029

Transport Bureau
15/F - 16/F, Murray Building
Garden Road
Central
Hong Kong

20 October 2000

BY FAX

Fax No. : 2104 7274
Total no. of page(s) : 1

(Attn : Mr Brian Lo, PAS(T))

Dear Mr Lo,

**Fixed Penalty (Criminal Proceedings)
(Amendment) (No. 2) Regulation 2000 (L.N. 282)**

We are scrutinizing the legal and drafting of the captioned Amendment Regulation. We should be grateful for your clarification of the following points.

It is noted that the content of the Amendment Regulation is different substantially from that of L.N. 159 of 2000 which is to be repealed under section 3 of the Amendment Regulation. Notably, certain offences, for example, driving private car without being securely fastened with seat belt, driving taxi without being securely fastened with seat belt, etc., are omitted from the Amendment Regulation. Could you explain the reasons for the differences?

It is appreciated that your reply, in both languages, could reach us by 23 October 2000.

Yours sincerely,

(Stephen Lam)
Assistant Legal Adviser

c.c. Mr Geoffrey Fox, SALD
(Fax : 2869 1302)

Ms Betty Choi, SGC
(Fax : 2869 1302)