

立法會
Legislative Council

LC Paper No. LS 131/01-02

**Paper for the House Committee Meeting
on 4 October 2002**

**Legal Service Division Report on
Subsidiary Legislation gazetted from 19 July 2002 to 27 September 2002**

Purpose of Paper

This paper annexes five Legal Service Division's reports on items of subsidiary legislation gazetted from 19 July 2002 to 27 September 2002. It explains the time frame for Members' scrutiny of these items, and highlights an item in respect of which Members may consider setting up a subcommittee.

Background

2. All items of subsidiary legislation currently submitted to Members, except L.N. 134, are subject to section 34 of the Interpretation and General Clauses Ordinance (Cap. 1). The section empowers the Council to amend an item of subsidiary legislation within a prescribed time frame. The items of subsidiary legislation included in this report have not been tabled as there has been no meeting of the Legislative Council since they were gazetted. These items, except L.N. 134, will be tabled at the Council meeting to be held on 9 October 2002, and this Council may by resolution amend them by 6 November 2002 or by 27 November 2002 if extended by resolution.

3. Copies of the relevant Gazette have been sent to Members by normal despatch. Members may also obtain a soft copy through the Research & Library Information System ("RLIS").

Comments

4. Amongst the items covered by this report, Members may wish to consider if it is necessary to consider the following in more detail:—

United Nations Sanctions (Afghanistan) (Amendment) Regulation 2002
(L.N. 134 of 2002) (Annex I)

The Amendment Regulation is not required to be laid before the Legislative Council and the Council has no power to amend it. Members may wish to note :

- (i) that it is doubtful whether the Amendment Regulation is within the regulation making powers of the United Nations Sanctions Ordinance (Cap. 537);
- (ii) certain sanctions imposed by the Amendment Regulation overlap provisions in the United Nations (Anti-Terrorism Measures) Ordinance (27 of 2002) which have come into operation on 23 August 2002; and
- (iii) the Amendment Regulation provides the Administration with wide powers of search and investigation.

Conclusion

5. Members may consider whether it is necessary to set up a subcommittee to study any of the items of subsidiary legislation covered by the five Legal Service Division's reports.

Encl

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2 October 2002

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立法會
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**Legal Service Division Report on
Subsidiary Legislation Gazetted on 19 July 2002**

Date of tabling in LegCo : 9 October 2002

Amendment to be made by : 6 November 2002 (or 27 November 2002 if extended by resolution)

PART I LEGAL PRACTITIONERS ORDINANCE

**Legal Practitioners Ordinance (Cap. 159)
Trainee Solicitors (Amendment) Rules 2002 (L.N. 128)**

These Amendment Rules amend the Trainee Solicitors Rules (Cap. 159 sub. leg.) to specify that it is the responsibility of a trainee solicitor to produce a trainee solicitor contract to the Secretary General of the Law Society for registration.

2. The Amendment Rules have come into operation on the day they were published in the Gazette. No difficulties relating to the legal and drafting aspects of the Amendment Rules have been identified.

**PART II LEGAL NOTICE NOT REQUIRED TO BE TABLED AT THE
LEGISLATIVE COUNCIL**

**United Nations Sanctions Ordinance (Cap. 537)
United Nations Sanctions (Afghanistan) (Amendment) Regulation 2002
(L.N. 134)**

3. This Amendment Regulation is made under section 3 of the United Nations Sanctions Ordinance (Cap. 537) ("the Ordinance") by the Chief Executive on the instruction of the Ministry of Foreign Affairs of the People's Republic of China and after consultation with the Executive Council. The section provides that sections 34 and 35 of the Interpretation and General Clauses Ordinance (Cap. 1) shall not apply to regulations so made. As a result, the Amendment Regulation is not required to be laid before the Legislative Council and the Council has no power to amend the Amendment Regulation.

4. The Amendment Regulation amends the Principal Regulation to :
- (a) continue prohibiting the making of funds available to Usama bin Ladin, the Al-Qaida Organization, the Taliban and their associates ("the relevant persons");
 - (b) prohibit the supply, delivery, exportation and carriage of arms and related material to the relevant persons (the sanction having ceased to apply since the expiry of the United Nations Sanctions (Afghanistan) (Arms Embargoes) Regulation ("the Expired Regulation"));
 - (c) prohibit the provision of related technical advice, assistance and training to the relevant persons (the sanction having ceased to apply since the expiry of the Expired Regulation);
 - (d) restrict the entry or transit of the relevant persons through the HKSAR;
 - (e) provide powers of search, investigation and obtaining information; and
 - (f) terminate the prohibition of aircrafts owned, leased or operated by or on behalf of the Taliban taking off from or land in the HKSAR.

5. The object of the Amendment Regulation is to give effect to the United Nations Security Council Resolution ("UNSCR") 1390 of 16 January 2002. UNSCR 1390 seeks to continue, amend and terminate certain sanctions imposed against the Taliban under UNSCR 1267 and against Usama bin Ladin, the Al-Qaida Organization and the Taliban under UNSCR 1333.

6. Members may recall that UNSCR 1267 has been given effect by the United Nations Sanctions (Afghanistan) Regulation ("the Principal Regulation"), and UNSCR 1333 by the United Nations Sanctions (Afghanistan) (Arms Embargoes) Regulation which expired on 18 January 2002.

7. UNSCRs 1267 and 1333 were made at the time when Afghanistan was still under the control of the Taliban. Although the targets remain to be Usama bin Ladin, the Al-Qaida Organization and the Taliban, the Amendment Regulation no longer imposes sanctions against a place (i.e. the territory of Afghanistan) as such as a result of the changing situations in Afghanistan. Since "sanction" is defined in the Ordinance as "mandatory measures decided by the United Nations Security Council implemented against a place outside the People's Republic of China", it is doubtful whether the Amendment Regulation is within the regulation making powers of the Ordinance.

8. Members may also note that the sanctions in paragraph 4(a) and (b) above overlap certain provisions in the United Nations (Anti-Terrorism Measures) Ordinance (27 of 2002) ("the Anti-Terrorism Ordinance") which came into operation on 23 August 2002. The Administration holds the view that the Amendment Regulation and the

Anti-Terrorism Ordinance are two separate exercises implementing two different UNSCRs, and considers it appropriate to implement UNSCR 1390 under separate legislation.

9. Insofar as prohibition of the supply of weapons is concerned, the new sections 3B, 3C and 3E added by the Amendment Regulation impose strict liability subject to the availability of a statutory defence while section 9 of the Anti-Terrorism Ordinance requires the proof of mens rea. According to the Administration, in the event that an offence is caught under both the Anti-Terrorism Ordinance and the Amendment Regulation, the prosecution will decide on the appropriate proceedings to be initiated having regard to the circumstances pertaining to each individual case.

10. In addition, Members may note that the new sections 3F, 3G, 3H, 3I, 3J and 3K provide the Administration with wide powers of search and investigation. The Administration explains that these powers facilitate the enforcement of the new sections 3B, 3C and 3E. All of the new sections are modelled on the United Nations Sanctions (Liberia) Regulation (Cap. 537 sub. leg.) which expired in May 2002.

11. The Amendment Regulation has come into operation on the day it was published in the Gazette i.e. 19 July 2002.

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**Paper for the House Committee Meeting
on 4 October 2002**

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 9 August 2002**

Date of Tabling in LegCo : 9 October 2002

Amendment to be made by : 6 November 2002 (or 27 November 2002 if extended by resolution)

**Legal Practitioners Ordinance (Cap. 159)
Admission and Registration (Amendment) Rules 2002 (L.N. 136)**

By these Amendment Rules made under section 72 of the Legal Practitioners Ordinance (Cap. 159) by the Chief Justice, the declaration in Form 4 of the Schedule to the Admission and Registration Rules (Cap. 159 sub. leg.) is amended in the following manner:-

	repealing	substituting
Paragraph 9 in part (a)	I have complied with the requirements of the Continuing Professional Development Scheme.	I have accumulated the number of CPD accreditation points that is required by section 5 of the Continuing Professional Development Rules (Cap. 159 sub. leg.) to be accumulated by the end of my period of employment as a trainee solicitor.

2. Section 5 of the Continuing Professional Development Rules (Cap. 159 sub. leg.) requires a trainee solicitor to accumulate 30 CPD accreditation points by the end of his period of employment as a trainee solicitor. The amendment effected by these Amendment Rules makes the declaration in Form 4 specific as to the compliance with that requirement. The amendment is technical in nature and by itself does not involve any change in policy.

3. The Panel for Administration of Justice and Legal Services has not been briefed on these Amendment Rules.

4. The legal and drafting aspects of these Amendment Rules are in order.

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**Legal Service Division Report on
Subsidiary Legislation Gazetted on 23 August 2002**

Date of tabling in LegCo : 9 October 2002

Amendment to be made by : 6 November 2002 (or 27 November 2002 if extended by resolution)

United Nations (Anti-Terrorism Measures) Ordinance (27 of 2002)
United Nations (Anti-Terrorism Measures) Ordinance (27 of 2002)
(Commencement) Notice 2002 (L.N. 137)

United Nations (Anti-Terrorism Measures) Ordinance (27 of 2002) ("the Ordinance") was passed by the Legislative Council on 12 July 2002 to implement measures for the prevention of terrorist acts. By this Notice, the Secretary for Security has appointed 23 August 2002 as the day on which the provisions of the Ordinance, which do not require subsidiary legislation to be made, come into operation :

2. Members may refer to the LegCo Brief (Ref.: SBCR 2/16/1476/74) issued by the Security Bureau dated 21 August 2002 for the sections covered by this Notice and further information.

3. The sections which have not come into operation are :

- (a) section 10 (prohibition on recruitment, etc. to persons specified in notices under sections 4(1) and (2)); and
- (b) the sections in respect of which subsidiary legislation is required to be made.

4. The Administration has stated in the LegCo Brief its intention to publish a further Commencement Notice in respect of the sections mentioned in item (b) of paragraph 3 above after the relevant subsidiary legislation has been made by the Administration and approved by the Legislative Council. As to section 10, the Administration has confirmed that it will propose amendment to section 10 in due course and will not commence operation of the section in its present form.

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**Legal Service Division Report on
Subsidiary Legislation Gazetted on 6 September 2002**

Date of tabling in LegCo : 9 October 2002

Amendment to be made by : 6 November 2002 (or 27 November 2002 if extended by resolution)

**Shipping and Port Control Ordinance (Cap. 313)
China Ferry Terminal Restricted Area Boundaries Notice (L.N. 138)**

This Notice declares an area within the China Ferry Terminal to be a restricted area for the purposes of the Shipping and Port Control (Ferry Terminals) Regulations (Cap. 313 sub. leg.). The effect of this Notice is that no person shall enter or remain in the declared restricted area unless he has on his person a valid pass issued to him in respect of that restricted area or is being escorted by an authorized officer having the authority of the Director of Marine to escort persons into that restricted area.

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**Legal Service Division Report on
Subsidiary Legislation Gazetted on 27 September 2002**

Date of tabling in LegCo : 9 October 2002

Amendment to be made by : 6 November 2002 (or 27 November 2002 if extended by resolution)

COMMENCEMENT NOTICES

Land Registration (Amendment) Ordinance 2002 (20 of 2002)
Land Registration (Amendment) Ordinance 2002 (20 of 2002) (Commencement)
Notice 2002 (L.N. 139)

This Notice appoints 12 December 2002 as the day on which:—

- (a) sections 1 and 2; and
- (b) section 5 (in respect of sections 63, 65, 67, 68(b), 70, 73, 74, 75(b) and 77 of the Schedule),

of the Land Registration (Amendment) Ordinance (20 of 2002) will come into operation.

2. Sections 1 and 2 relate to commencement of the Land Registration (Amendment) Ordinance 2002 ("the Amendment Ordinance") and certificate to be provided by the Land Registrar under section 26A of the Principal Ordinance. The provisions in section 5 which come into operation are related to consequential amendments to the Land Registration Regulations (Cap. 128 sub. leg.).

3. The other provisions of the Amendment Ordinance have not yet come into operation.

Mutual Legal Assistance in Criminal Matters (Switzerland) Order (Cap. 525 sub. leg.)

Mutual Legal Assistance in Criminal Matters (Switzerland) Order (Cap. 525 sub. leg.) (Commencement) Notice 2002 (L.N. 140)

4. This Notice appoints 16 October 2002 as the day on which the Mutual Legal Assistance in Criminal Matters (Switzerland) Order (Cap. 525 sub. leg.) will come into operation. A Subcommittee has been formed to study the Order and was in support of it.

5. The legal and drafting aspects of both Commencement Notices are in order.

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