

立法會
Legislative Council

LC Paper No. LS40/04-05

**Paper for the House Committee Meeting
on 11 March 2005**

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 4 March 2005**

Date of tabling in LegCo : 9 March 2005

Amendment to be made by : 6 April 2005 (or 27 April 2005 if extended by resolution)

PART I UPDATING OF SPECIFIED PUBLIC OFFICERS LIST

Fixed Penalty (Public Cleanliness Offences) Ordinance (Cap. 570)

Fixed Penalty (Public Cleanliness Offences) Ordinance (Amendment of Schedule 2) Order 2005 (L.N. 20)

By this Order made by the Chief Executive in Council under section 19 of the Fixed Penalty (Public Cleanliness Offences) Ordinance (Cap. 570) (the Ordinance), Schedule 2 to the Ordinance is amended by repealing the list of public officers in column 3 of the entry relating to Scheduled Offences 2, 3, 4, 7 and substituting an updated list of the relevant public officers.

2. A public officer specified in Schedule 2 to the Ordinance is empowered by section 3 of the Ordinance to issue a “fixed penalty notice” to a person whom he has reason to believe is committing or has committed an offence described in Schedule 1 to the Ordinance. The amendment is necessitated by the ambiguity in the existing list, which has not specified the grades of the public officers listed, as well as the fact that as a result of changes in the establishment of the Leisure and Cultural Services Department, some of the ranks of public officers listed have become obsolete and should be deleted.

Magistrates Ordinance (Cap. 227)

Magistrates Ordinance (Amendment of Fourth Schedule) Order 2005 (L.N. 21)

3. By this Order made by the Chief Executive in Council under section 135

of the Magistrates Ordinance (Cap. 227) (the Ordinance), the Fourth Schedule to the Ordinance is amended by repealing the entry relating to the Leisure and Cultural Services Department and substituting updated lists of public officers and specifying in the opposite column 2 the offences for which the officers are empowered.

4. A public officer specified in the Fourth Schedule to the Ordinance is empowered by section 8A of the Ordinance to serve a notice to appear before a magistrate to be dealt with according to law on a person whom he reasonably suspected to have committed an offence specified in the corresponding column 2 of that Schedule. The amendment is necessitated by the same reasons as those for the amendment Order reported immediately above.

5. Since the two amendment Orders are technical in nature and are meant to clarify the legislative intention of the relevant provisions, the Administration is of the view that public consultation is not necessary. Members may refer to the LegCo Brief (Ref.: SF(1) in HAB/R&SD 4010/9/1) issued by the Home Affairs Bureau on 2 March 2005 for further and background information on the two amendment Orders.

PART II TELECOMMUNICATIONS

Telecommunications Ordinance (Cap. 106)

Telecommunications (Telecommunications Apparatus) (Exemption from Licensing) (Amendment) Order 2005 (L.N. 22)

6. By this Order made by the Chief Executive in Council under section 39 of the Telecommunications Ordinance (Cap. 106) (the Ordinance), Schedules 1 and 2 to the Telecommunications (Telecommunications Apparatus) (Exemption from Licensing) Order (Cap. 106 sub. leg. Z) are repealed and substituted by new Schedules respectively.

7. Schedule 1 specifies the technical criteria for apparatus used etc. as mobile earth stations. The new Schedule includes a variation of a frequency band specification and the addition of a frequency band specification. Schedule 2 specifies the technical criteria for apparatus used etc. other than as mobile earth stations. The new Schedule specifies additional technical criteria to enable types of telecommunications apparatus to be exempted from the licensing requirement under the Ordinance. These additional types of telecommunication apparatus include: radio frequency identification (RFID) apparatus (which use radio waves to identify and track product items automatically), mobile earth stations for mobile-satellite service and wireless local area network equipment, automotive radar systems (which use radio waves to detect conditions of vehicles within 100 metres) and control apparatus for model aircrafts. Members may refer to the LegCo Brief (Ref.: CTB(CR) 7/5/14/2 (05) Pt. 5) issued by the Communications and Technology Branch of the Commerce, Industry and Technology Bureau on 4 March 2005 for further information. The Order will come into operation on a date to be appointed by the

Telecommunication Authority (TA) by notice published in the Gazette.

8. The Panel on Information Technology and Broadcasting was briefed on the amendment Order at its meeting on 13 December 2004 and the Panel chairman concluded that members had no objection to the proposal. No specific public consultation has been conducted but according to the Administration, TA has taken into account the latest technological application and market situation through its regular contact with the industry.

Telecommunications Ordinance (Cap. 106)

Telecommunications (Amendment) Regulation 2005 (L.N. 23)

Telecommunications (Carrier Licences) (Amendment) Regulation 2005 (L.N. 24)

9. The Telecommunications (Amendment) Regulation 2005 is made under section 29A of the Interpretation and General Clauses Ordinance (Cap. 1) by the Secretary for Financial Services and the Treasury (SFST) to vary the annual fees specified in paragraphs 1(d) and (e) respectively in Part II of Schedule 1 to the Telecommunications Regulations (Cap. 106 sub. leg. A) under the heading “Public Radiocommunications Service Licence” by reducing them from \$4000 and \$2000 to \$3600 and \$1800 respectively. The Financial Secretary is empowered by section 29A of Cap. 1 to increase or decrease, or otherwise vary, the amount of any fee or charge for the time being specified in subsidiary legislation made by the Chief Executive in Council (CE in C). “Financial Secretary” has been defined in section 3 of Cap. 1 to include SFST. The annual fees were last amended by regulation made by CE in C under section 37 of the Telecommunications Ordinance (Cap. 106) (the Ordinance) in March 2004.

10. By the Telecommunications (Carrier Licences) (Amendment) Regulation 2005 made by the Secretary for Commerce, Industry and Technology (SCIT) under section 7(2) of the Ordinance, the annual fees specified in paragraphs 1(d) and (e) respectively in Part 3 of Schedule 3 to the Telecommunications (Carrier Licences) Regulation (Cap. 106 sub. leg. V) are reduced from \$4000 and \$2000 to \$3600 and \$1800 respectively.

11. Since licence fees are collected by the Office of the Telecommunications Authority to recover its costs in administering the licences and the relevant administration costs per station have decreased as a result of the growth in the number of mobile stations, the Administration has decided to reduce the annual licence fees for mobile stations. Both of the amendment Regulations will come into operation on 1 May 2005.

12. According to the Administration, a public consultation exercise was launched on 7 January 2005 in compliance with the requirements of section 7(3) of the Ordinance. SCIT has by notice in the Gazette consulted members of the public who are interested in the matter and considered the representations received. The 11

submissions received were generally supportive of the proposed fee reduction. Members may refer to the LegCo Brief (Ref: CTB(CR) 7/5/1 (04) Pt. 5) issued by the Communications and Technology Branch of the Commerce, Industry and Technology Bureau on 2 March 2005 for further information.

13. The Information Technology and Broadcasting Panel has been briefed on the proposal on 4 February 2005 and is supportive of the proposal.

PART III MISCELLANEOUS

Tax Reserve Certificates (Fourth Series) Rules (Cap. 289 sub. leg. A) Tax Reserve Certificates (Rate of Interest) Notice 2005 (L.N. 25)

14. By this Notice made under section 7(2)(h) of the Tax Reserve Certificates (Fourth Series) Rules (Cap. 289 sub. leg. A), the Secretary for Financial Services and the Treasury has prescribed the rate of interest of tax certificates issued on or after 7 March 2005 to be 0.2000% per annum (the new rate). Accordingly, the Schedule to the Tax Reserve Certificates (Rate of Interest) (Consolidation) Notice (Cap. 289 sub. leg. B) is amended by adding "and before 7 March 2005" at the end of item 144 and the new rate as item 145.

Interest and Surcharge on Arrears of Maintenance Ordinance 2003 (18 of 2003) Interest and Surcharge on Arrears of Maintenance Ordinance 2003 (Commencement) Notice 2005 (L.N. 26)

15. By this Notice made by the Secretary for Home Affairs (SHA) under section 1(2) of the Interest and Surcharge on Arrears of Maintenance Ordinance 2003 (18 of 2003) (the Ordinance), 1 May 2005 has been appointed as the date on which the Ordinance shall come into operation.

16. The Ordinance is part of a package of legislative proposals to implement the recommendations of the "Interdepartmental working group on review of law and administrative measures affecting divorcees and children who are eligible for alimony". Under the Ordinance, the maintenance payer may be required to pay interest only upon an application by the maintenance payee in proceedings instituted for enforcing the maintenance order, and the amount of interest will be calculated according to a prescribed formula. The Ordinance was enacted on 21 May 2003 after the relevant Bill had been scrutinized by a Bills Committee set up for that purpose. Members may refer to the Bills Committee Report to the Legislative Council (LC paper No. CB(2)2025/02-03) for further information.

17. At the request of the Bills Committee, SHA undertook in his speech on the resumption of the Second Reading of the Bill on 21 May 2003 to develop a computer programme to calculate interest and surcharge on arrears of maintenance for reference

by interested parties, including social workers, legal professionals and maintenance payers and payees. He also undertook to present the programme to the Panel on Home Affairs (the Panel) before the commencement of the enacted Ordinance. The functions of the computer programme were presented to the Panel on 22 March 2004. In an information paper (LC Paper No. CB(2)776/04-05(01)) presented to the Panel in January 2005, the Administration stated that it expected the offline computer programme would be ready for use by the second quarter of 2005. SHA would appoint a commencement date for the Ordinance when the programme was ready. Upon enquiries made by the Legal Service Division with the responsible bureau officer on 8 March 2005, the officer repeated the Administration's expectation that such programme would be ready by the commencement date.

Concluding Observations

18. Apart from the consultations expressly mentioned, no public or any Panel of the Legislative Council has been consulted in respect of the subsidiary legislation reported above. No difficulties have been identified in the legal and drafting aspects of the subsidiary legislation.

PART IV NOTICE NOT REQUIRED TO BE LAID BEFORE LEGCO

United Nations Sanctions Ordinance (Cap. 537)

United Nations Sanctions (Democratic Republic of the Congo) Regulation

19. This Regulation is made under section 3 of the United Nations Sanctions Ordinance (Cap. 537) 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. It gives effect to a decision of the Security Council of the United Nations (the Security Council) in Resolution 1522 of 27 July 2004 and provides for the implementation of the sanctions imposed by the Security Council in Resolution 1493 of 28 July 2003. (The full text of the resolutions is available at <http://daccessdds.un.org/doc/UNDOC/GEN/N04/442/46/PDF/N0444246.pdf> and <http://daccessdds.un.org/doc/UNDOC/GEN/N03/443/15/PDF/N0344315.pdf> respectively.)

20. The sanctions imposed include prohibition against direct and indirect sales, supply and transfer of arms and related material to foreign and Congolese armed groups and militias operating in the territory of North and South Kivu and of Ituri, and to groups not being party to the Global and All Inclusive Agreement on the Transition in the Democratic Republic of the Congo signed in Pretoria on 17 December 2002; and against provision to such groups and militias of advice, assistance or training related to military activities. As the sanctions imposed will expire after 31 July 2005, the Regulation will also expire at midnight on that day.

21. Although the Regulation is not subject to scrutiny of the Legislative

Council under section 34 of Cap. 1, it does come within the terms of reference of the Subcommittee to Examine the Implementation in Hong Kong of Resolutions of the United Nations Security Council in relation to Sanctions. It is recommended that the Regulation be referred to the Subcommittee for further study. Neither the public nor any Panel of the Legislative Council has been consulted on the Regulation.

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