

立法會
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**Paper for the House Committee Meeting
on 9 May 2008**

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 2 May 2008**

Date of tabling in LegCo : 7 May 2008

Amendment to be made by : 4 June 2008 (or 25 June 2008 if extended by resolution)

PART I FUGITIVE OFFENDERS

Fugitive Offenders Ordinance (Cap. 503)
Fugitive Offenders (Ireland) Order (L.N. 96)

The Fugitive Offenders (Ireland) Order (the Order) is made by the Chief Executive in Council under section 3 of the Fugitive Offenders Ordinance (Cap. 503) (the Ordinance).

2. By the Order, it is directed that the procedures in the Ordinance for the surrender of fugitive offenders shall apply between Hong Kong and Ireland. The Order is made in consequence of the arrangements for the surrender of fugitive offenders entered into by Hong Kong and Ireland and signed in Dublin on 5 October 2007 (the Agreement). The Agreement is recited in the Schedule to the Order. Under section 2 of the Order, the relevant procedures are subject to the limitations, restrictions, exceptions and qualifications contained in the Agreement.

3. The Order is subject to a mechanism of scrutiny by LegCo provided in section 3(2) to (6) of the Ordinance. The mechanism is similar to that provided in section 34 of the Interpretation and General Clauses Ordinance (Cap. 1), except that section 3(3) of the Ordinance restricts LegCo's power to only repeal the Order.

4. The Order will come into operation on a day to be appointed by the Secretary for Security by notice published in the Gazette.

5. Members may refer to the LegCo Brief (File Ref: SBCR 3/5691/95 Pt.41 and SBCR 1/2716/89(98) Pt.24) issued by the Security Bureau on 30 April 2008 for background information.

Fugitive Offenders Ordinance (Cap. 503)

Fugitive Offenders (Piracy and Armed Robbery Against Ships) Order (L.N. 97)

6. The Fugitive Offenders (Piracy and Armed Robbery Against Ships) Order (the Order) is made by the Chief Executive in Council under section 3 of the Ordinance.

7. By the Order, it is directed that the procedures in the Ordinance for the surrender of fugitive offenders shall apply as between Hong Kong and the places outside Hong Kong to which the Order relates. The Order is made to implement the extradition arrangements under Article 12 of the Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia (the Regional Agreement) entered into force in respect of China, including Hong Kong, on 26 November 2006. The Regional Agreement is recited in the Schedule to the Order. Under section 2 of the Order, the relevant procedures are subject to the limitations, restrictions, exceptions and qualifications contained in the Regional Agreement.

8. The Order is subject to a mechanism of scrutiny by LegCo provided in section 3(2) to (6) of the Ordinance. The mechanism is similar to that provided in section 34 of the Interpretation and General Clauses Ordinance (Cap. 1), except that section 3(3) of the Ordinance restricts LegCo's power to only repeal the Order.

9. The Order will come into operation on a day to be appointed by the Secretary for Security by notice published in the Gazette.

10. On 8 January 2008, the Panel on Security was briefed on the Administration's proposal to implement the extradition arrangements under the Regional Agreement. A member expressed support for the Administration's proposal. Another member pointed out that those countries with which Hong Kong had not concluded agreements on surrender of fugitive offenders might not be implementing surrender safeguards regarding, for instance, human rights, political offences or death penalty. The member considered that care should be exercised to prevent the abuse of the Order for political purposes. The Administration responded that the Regional Agreement provided that extradition should be carried out subject to the national laws and regulations of the requested party. Surrender requests involving offences of a political character would be refused in accordance with section 5(1) of the Ordinance.

11. Members may refer to the LegCo Brief (File Ref: SBCR 1/2716/89(98)) issued by the Security Bureau on 30 April 2008 for background information.

PART II PUBLIC HEALTH AND MUNICIPAL SERVICES

Public Health and Municipal Services Ordinance (Cap. 132) Colouring Matter in Food (Amendment) Regulation 2008 (L.N. 98)

12. The Colouring Matter in Food (Amendment) Regulation 2008 (the Amendment Regulation) is made by the Director of Food and Environmental Hygiene under section 55(1) of the Public Health and Municipal Services Ordinance (Cap. 132).

13. The Amendment Regulation removes the entry relating to Red 2G (a synthetic dye) from the list of permitted colouring matters in Part I of the First Schedule to the Colouring Matter in Food Regulations (Cap. 132 sub. leg. H).

14. According to the Administration, the Joint Food and Agriculture Organization of the United Nations / World Health Organization Expert Committee on Food Additives evaluated the safety of Red 2G in 1981 and did not consider the use of Red 2G in food a safety concern. Nevertheless, in the past decade, the metabolite of Red 2G aniline, has raised safety concern. In July 2007, the European Food Safety Authority (EFSA) concluded that aniline caused gene damages in experimental animals, and carcinogenic risk for man could not be excluded due to the similar metabolism of aniline in animals and humans. Hence, EFSA decided that it was prudent to regard the use of Red 2G in food as a safety concern and withdrew the Acceptable Daily Intake for Red 2G which was previously established by the European Commission (EC). A new regulation to suspend the use of Red 2G in food was subsequently adopted by the EC on 26 July 2007 and came into force on 28 July 2007. The regulation permits Red 2G containing food which is placed on the market before 28 July 2007 to be marketed until their "use by" date or date of minimum durability. In addition, the use of Red 2G as a colouring matter in food is also not permitted in countries including the USA, Canada, Australia, China, Japan and Singapore. The Codex Committee on Food Additives under the Codex Alimentarius Commission has been discussing the maximum levels of Red 2G allowed in some food items. In view of the latest scientific evidence, the international situation and the availability of other red food colouring matter, the removal is made as a precautionary measure.

15. The Amendment Regulation will come into operation on 1 December 2008 so as to allow a period of six months for the trade to comply with the amendments.

16. The effect of the Amendment Regulation is that on or after 1 December 2008 a person commits an offence if he sells, consigns or delivers, or imports into Hong Kong, any food intended for sale for human consumption that contains Red 2G, or sells or advertises for sale Red 2G for use in food.

17. In January 2008, the Panel on Food Safety and Environmental Hygiene discussed the proposal and indicated general support for the proposed amendment. In September 2007 and January 2008, the food trade was consulted at the Trade Consultation Forum organized by the Food and Environmental Hygiene Department. According to the Administration, trade representatives supported the proposal.

18. Members may refer to the LegCo Brief (File Ref: FH CR 4/3231/07) issued by the Food and Health Bureau in April 2008 for further information.

PART III REVISION OF FEES AND CHARGES

Merchant Shipping (Prevention and Control of Pollution) Ordinance (Cap. 413) Merchant Shipping (Prevention and Control of Pollution) (Charges for Discharge of Polluting Waste) (Amendment) Regulation 2008 (L.N. 99)

19. The Merchant Shipping (Prevention and Control of Pollution) (Charges for Discharge of Polluting Waste) (Amendment) Regulation 2008 (the Amendment Regulation) is made by the Secretary for Financial Services and the Treasury under section 29A of the Interpretation and General Clauses Ordinance (Cap. 1) by virtue of section 3(2A) of the Merchant Shipping (Prevention and Control of Pollution) Ordinance (Cap. 413).

20. The Amendment Regulation increases the charges payable to the Director of Marine for the use of reception facilities provided by the Chemical Waste Treatment Centre for the purpose of discharging polluting waste from a sea-going ship with regard to -

- (a) collection charge for sludge and all other types of polluting waste; and
- (b) disposal charge for liquid oil waste or any other mixtures which contain oil, sludge and noxious liquid substance or any other mixtures which contain residue of any noxious liquid substance.

21. On 25 February 2008, the Panel on Environmental Affairs was consulted on the Administration's proposed fees and charges revisions. Members of the Panel generally have no objection to the proposed revisions but urged the Administration to consult the affected trades and to address their concerns before implementing the revisions. A member opined that consideration could be given to waiving the charges for the collection and disposal of waste oils from ships to prevent illegal dumping of waste oils on the one hand and facilitate recycling on the other.

22. According to the Administration's paper CB(1)844/07-08(05) presented to the Panel, the percentage increases of the relevant fees in the present revision vary from 23% to 39%. They were last revised in March 2006.

23. According to the LegCo Brief (File Ref: EP161/C3/292 (XVI)) issued by the Environmental Protection Department in May 2008, the charges under the Merchant Shipping (Prevention and Control of Pollution) (Charges for Discharge of Polluting Waste) Regulation (Cap. 413 sub. leg. I) for the provision of reception facilities by the Chemical Waste Treatment Centre for the purpose of discharging polluting waste will be gradually increased to achieve full recovery of the variable operation cost by four phases, beginning in March 2006. The Administration is implementing the second phase by the Amendment Regulation.

24. It is also mentioned in the LegCo Brief that the Port Operations Committee of the Marine Department was consulted by circulation of documents in relation to the proposed revision of charges to its members between 10 December 2007 and 4 January 2008 and they raised no objection to the proposed revision of charges. The Advisory Council on the Environment was also consulted on 10 March 2008 and it supported the proposal.

25. The Amendment Regulation will come into operation on 1 July 2008.

Noise Control Ordinance (Cap. 400)

Noise Control (General) (Amendment) Regulation 2008 (L.N. 100)

Noise Control (Air Compressors) (Amendment) Regulation 2008 (L.N. 101)

Noise Control (Hand Held Percussive Breakers) (Amendment) Regulation 2008 (L.N. 102)

26. The Noise Control (General) (Amendment) Regulation 2008 (L.N. 100), the Noise Control (Air Compressors) (Amendment) Regulation 2008 (L.N. 101) and the Noise Control (Hand Held Percussive Breakers) (Amendment) Regulation 2008 (L.N. 102) (collectively referred to as the Amendment Regulations) are made by the Secretary for the Environment under section 27 of the Noise Control Ordinance (Cap. 400) (the Ordinance) after consultation with the Advisory Council on the Environment.

27. L.N. 100 increases the application fees for construction noise permits by about 20% in respect of -

- (a) the use of powered mechanical equipment in construction work (other than percussive piling);
- (b) the carrying out of prescribed construction work; and
- (c) the carrying out of percussive piling.

28. L.N. 101 and L.N. 102 increase the application fee for a noise emission label for an air compressor and a hand held percussive breaker respectively by about 10%. All of the affected fees were last revised in January 2006.

29. According to the LegCo Brief, in line with the "user pays" principle and to avoid a very steep fee increase, the Administration proposes to continue to adopt the following general lines for fee increases under the Ordinance, based on the outcome of a recent costing exercise -

- (a) to achieve full cost recovery (where existing recovery rate is less than 40% of target) within seven years through an increase of about 20%; and
- (b) to achieve full cost recovery (where existing recovery rate is over 70% of target) within one to three years through an increase of about 10%.

30. On 25 February 2008, the Panel on Environmental Affairs was consulted on the Administration's proposed fees and charges revisions. Members of the Panel generally have no objection to the proposed revisions but urged the Administration to consult the affected trades and to address their concerns before implementing the revision.

31. The Amendment Regulations will come into operation on 1 July 2008.

32. Members may refer to the LegCo Brief (File Ref: EP161/C3/292 (XVI)) issued by the Environmental Protection Department in May 2008 for further information. It is noted in paragraph 12 of the LegCo Brief that the Advisory Council on the Environment was consulted on 10 March 2008 and it supported the proposal.

PART IV PENSIONS

Pensions Ordinance (Cap. 89)

Pensions Ordinance (Established Offices) (Amendment) Order 2008 (L.N. 103)

33. This Order is made by the Chief Executive under section 2(1) of the Pensions Ordinance (Cap. 89) after consultation with the Executive Council.

34. This Order amends paragraph 3 of the Pension Ordinance (Established Offices) Order (Cap. 89 sub. leg. C) to rectify the drafting defects. The original paragraph 3 refers to "the Schedule to the Pension Benefits Ordinance (Established Offices) Order (Cap 99 sub. leg.)" only. The amendment refers to both Schedules 1 and 2 to the Pension Benefits Ordinance (Established Offices) Order (Cap. 99 sub. leg. J) as regards the date from which the offices set out therein are deemed to be established offices in order to accurately reflect the information stated in Cap. 99 sub. leg. J.

35. Members may refer to the LegCo Brief (File Ref: CSBCR/PG/4-085-001/24 Pt.12) issued by the Civil Service Bureau on 30 April 2008 for further information.

Pension Benefits Ordinance (Cap. 99)

Pension Benefits Ordinance (Established Offices) (Amendment) (No. 2) Order 2008 (L.N. 104)

36. This Order is made by the Chief Executive under section 2(1) of the Pension Benefits Ordinance (Cap. 99) (the Ordinance) after consultation with the Executive Council.

37. This Order amends Schedules 1 and 2 to the Pension Benefits Ordinance (Established Offices) Order (Cap. 99 sub. leg. J) (the Schedules) by including Model Scale 1 (MOD 1) grades as established offices so as to enable MOD 1 staff to become Category A officers (i.e. officers appointed to and confirmed in established offices). MOD 1 staff are currently Category B officers (i.e. officers who hold non-established offices).

38. According to section 2(1) of the Ordinance, "established office" means, inter alia, an office declared to be such in an Order made by the Chief Executive and published in the Gazette. The Schedules list the offices which are established offices for the purposes of the Ordinance. Implementation of the conversion arrangements in relation to MOD 1 grades, therefore, requires an Order to be made by the Chief Executive under section 2(1) of the Ordinance to amend the Schedules to declare MOD 1 grades as established offices.

39. On 21 April 2008, the Panel on Public Service was consulted on the conversion arrangements *vide* LC Paper No. CB(1)1129/07-08(04). At the same meeting, the Panel also received oral views from the staff side of the MOD 1 Staff Consultative Council and five other staff associations and trade unions. The Panel noted that the staff side of the MOD 1 Staff Consultative Council had indicated acceptance of the conversion arrangements and expressed the wish for their early implementation. However, some staff associations and trade unions would like to continue to seek improvement to the employment terms and conditions of MOD 1 staff. They also commented that the existing consultation machinery through the MOD 1 Staff Consultative Council might not be able to gauge the views of all affected staff. The Panel urged the Administration to continue to liaise with the staff side on the conversion conditions and introduce appropriate measures to address their concern. According to the Administration, the Standing Commission on Civil Service Salaries and Conditions of Service expressed support for the conversion arrangements.

40. Members may refer to the LegCo Brief (File Ref: CSBCR/PG/4-085-001/24 Pt.12) issued by the Civil Service Bureau on 30 April 2008 for further information.

PART V COMMENCEMENT NOTICE

Foreign Lawyers Practice (Amendment) Rules 2007 (L.N. 6 of 2008)

Foreign Lawyers Practice (Amendment) Rules 2007 (Commencement) Notice (L.N. 105)

41. By this Notice made under section 1 of the Foreign Lawyers Practice (Amendment) Rules 2007 (L.N. 6 of 2008) (the Amendment Rules), the President of the Law Society of Hong Kong has appointed 30 June 2008 as the day on which the Amendment Rules will come into operation.

42. The Amendment Rules require the principal of a foreign firm which shares a building or common areas with another business to ensure that signs which distinguish the premises of the firm from the premises occupied by others are displayed in a conspicuous position at the main entrance of the premises of the firm.

Concluding observation

43. No difficulties have been identified in the legal or drafting aspects of the above items of subsidiary legislation.

Prepared by

LO Wing-yee, Winnie
Assistant Legal Adviser
Legislative Council Secretariat
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