

立法會

Legislative Council

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**Paper for the House Committee Meeting
on 16 May 2008**

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 9 May 2008**

Date of tabling in LegCo : 14 May 2008

Amendment to be made by : 11 June 2008 (or 2 July 2008 if extended by resolution)

PART I FEES, CHARGES AND RELATED MATTERS

Sewage Services Ordinance (Cap. 463)

Sewage Services (Trade Effluent Surcharge) (Amendment) Regulation 2008 (L.N. 106)

The Amendment Regulation was made by the Chief Executive in Council under section 12 of the Sewage Services Ordinance (Cap. 463) to amend the Sewage Services (Trade Effluent Surcharge) Regulation (Cap. 463 sub. leg. B) (the principal Regulation).

2. A water consumer whose premises are connected to a public sewer has to pay a sewage charge (SC) on the basis of the volume of water supplied to his premises other than water supplied for flushing purposes. Trade effluent surcharge (TES) is an additional charge on top of SC applying to 30 trades for the additional cost incurred in treating effluents of strength stronger than domestic sewage. The strength of effluent is measured by the chemical oxygen demand (COD) reading of wastewater. The higher the COD value the higher the treatment cost and hence the higher TES rate. Individual members of a trade are entitled to a lower TES rate if they can demonstrate that the effluent they discharge is weaker than the prescribed COD value.

3. Two phases of effluent survey (the Survey) were completed at the end of 2007 by the Environmental Protection Department and the Hong Kong Productivity

Council on the 30 trades under the existing TES scheme. The amendments to the principal Regulation are based on the findings of the Survey.

4. The Survey reveals that three of the 30 trades, "Bleaching and dyeing of garments", "Textile stencilling and printing", and "Laundries" have been found to discharge effluent not stronger than domestic sewage. They are removed from the principal Regulation.

5. The TES rates are also recalculated based on the results of the Survey. The Amendment Regulation amends the Principal Regulation by setting out the new TES rates applicable to the remaining 27 trades. The TES rates of 13 trades will be reduced with effect from 1 August 2008 to reflect the revised COD values and to achieve full recovery of the attributable operating costs. The TES rate of one trade will be increased on 1 August 2008. For the remaining 13 trades, the TES rate will be increased by two consecutive increments on 1 August 2008 and 1 August 2009 respectively. The increment is to reflect the revised COD values on the premises of recovering full attributable operating cost by 2009-2010. The COD values of those 27 trades are also amended as a result of the Survey.

6. The proposed changes to the TES was discussed by the Panel on Environmental Affairs on 18 March 2008. Deputations had been invited to express their views. In general, the restaurant trade welcomed the proposed reduction of TES rates but considered that the rates should be further adjusted downward. A clear and transparent mechanism in deriving the generic COD value should also be put in place.

7. While supporting the recovery of cost in relation to the provision of sewage services in accordance with the polluter-pays principle, Members were concerned about the charging mechanism of TES as reflected by the high successful rate of appeal to the Administrative Appeal Board for a lower TES rate. Besides, small restaurants might not be able to afford an appeal, which might not be recovered even if the appeal was successful. To provide incentive to those smaller restaurants which were reluctant to lodge appeals on grounds of cost, the Administration was urged to consider including in the subsidiary legislation to be introduced a provision for the award of the cost of appeal to the successful appellants.

8. The Amendment Regulation shall come into operation on 1 August 2008.

9. Members may refer to the LegCo Brief issued by the Environmental Protection Department on 9 May 2008 (File Ref. : EP(CR) 9/35/16) and the Background Brief on the Trade Effluent Surcharge Scheme prepared by the LegCo Secretariat (LC Paper No. CB(1)1046/07-08(05)) for further information.

10. No difficulties relating to the legal and drafting aspects have been identified.

Telecommunications Ordinance (Cap. 106)

Telecommunications (Determining Spectrum Utilization Fees by Auction) Regulation (L.N. 108)

Telecommunications (Designation of Frequency Bands Subject to Payment of Spectrum Utilization Fee) (Amendment) Order 2008 (L.N. 109)

11. L.N. 108 is made by the Secretary for Commerce and Economic Development (the Secretary) under section 32I of the Telecommunications Ordinance (Cap. 106) (the principal Ordinance). The Regulation, among other things, –

- (a) specifies auction as the method for determining the spectrum utilization fee to be paid by the user of the spectrum which falls within the frequency bands set out in Part 4 of the Schedule to the Telecommunications (Designation of Frequency Bands subject to Payment of Spectrum Utilization Fee) Order (Cap. 106 sub. leg. Y);
- (b) empowers the Secretary to specify the minimum amount of the spectrum utilization fee to be paid by the user of the spectrum; and
- (c) empowers the Telecommunications Authority to hold an auction and specify the terms and conditions of an auction.

12. L.N. 109 is made by the Telecommunication Authority designating the frequency bands in Part 4 of the Schedule to the Telecommunications (Designation of Frequency Bands subject to Payment of Spectrum Utilization Fee) Order (Cap. 106 sub. leg. Y) which may be assigned by the Telecommunications Authority to licensees for the provision of Broadband Wireless Access (BMA) services.

13. At the meeting of the Panel on Information Technology and Broadcasting held on 10 December 2007, the Administration briefed Members on the outcome of the public consultation on the provision of radio spectrum for BMA services and its legislative proposal to enable the release of the frequency spectrum by auction. The Panel supported in principle the Administration's legislative proposal.

14. No LegCo Brief has been issued for L.N. 108 and L.N. 109. Members may refer to the Statement on Providing Radio Spectrum for Broadband Wireless Access Services issued by the Office of the Telecommunications Authority on 3 December 2007 (LC Paper No. CB(1)383/07-08(03)) and the minutes of meeting on the Panel on Information Technology and Broadcasting on 10 December 2007 (LC Paper No. CB(1)659/07-08) for further information.

15. L.N. 108 and L.N. 109 shall come into operation on 4 July 2008.

16. The Legal Service Division is making inquiries with the Administration on the drafting aspects of L.N. 108 and will report further if necessary. Regarding L.N. 109, no difficulties relating to the legal and drafting aspects have been identified.

PART II MISCELLANEOUS

The English Schools Foundation Ordinance (Cap. 1117)

The English Schools Foundation (General) Regulation (L.N. 107)

17. The General Regulation was made under section 24 of the English Schools Foundation Ordinance (Cap. 1117) as amended by the English Schools Foundation (Amendment) Ordinance (No. 5 of 2008). The General Regulation makes provisions for the practice and procedure of the Board of Governors, the School Councils, the parent teacher association, etc., and makes provisions for other miscellaneous matters.

18. The Bills Committee on the English Schools Foundation (Amendment) Bill 2007 had considered the draft regulations, and had not expressed any views. Members may refer to paragraphs 37 and 38 the Report of the Bills Committee (LC Paper No. CB(2)1248/07-08) for further information. The General Regulation is substantially the same as the draft regulation submitted to the Bills Committee but there are changes, which are mostly minor and technical.

19. The Panel on Education has not been consulted on the General Regulation.

20. The General Regulation has come into effect on 9 May 2008.

21. The Legal Service Division is making inquiries with the English Schools Foundation on the drafting aspects of the General Regulation and will report further if necessary.

Child Abduction and Custody Ordinance (Cap. 512)

Child Abduction and Custody (Parties to Convention) (Amendment) Order 2008 (L.N. 110)

22. The Amendment Order is made by the Chief Executive under section 4 of the Child Abduction and Custody Ordinance (Cap. 512) after consultation with the Executive Council to update the Child Abduction and Custody (Parties to Convention)

Order (Cap. 512 sub. leg. A) (the Order) by adding Ukraine to the list of Contracting States to the Convention on the Civil Aspects of International Child Abduction (the Convention).

23. The Convention, which was signed at the Hague in 1980 and is now in force in 80 States, provides an effective mechanism for the swift return of children wrongfully removed from their place of habitual residence to another Contracting State in violation of custodial rights. The Convention does not apply to the Mainland but an agreement was reached at the Sino-British Joint Liaison Group in September 1996 on the continued application of the Convention to Hong Kong after 30 June 1997 and that the declaration of acceptance of new accessions would be made by the Central People's Government (CPG) on behalf of Hong Kong.

24. Ukraine acceded to the Convention in June 2006. CPG deposited its acceptance on behalf of the Hong Kong Special Administration Region of the accession of Ukraine on 10 March 2008. The Administration considered it necessary to add Ukraine to the Order. Accordance to Article 38 of the Convention¹, the Convention will come into force between HKSAR and Ukraine on 1 June 2008. The Order shall therefore come into operation on 1 June 2008.

25. Members may refer to the LegCo Brief issued by the Labour and Welfare Bureau on 7 May 2008 (File Ref. : LWR CR 1/3281/86(07)) for further information.

26. No difficulties relating to the legal and drafting aspects have been identified.

PART III LEGAL NOTICE NOT REQUIRED TO BE TABLED AND NOT SUBJECT TO AMENDMENT

United Nations Sanctions Ordinance (Cap. 537)

United Nations Sanctions (Iran) (Amendment) Regulation 2008 (L.N. 111)

27. The United Nations Sanctions (Iran) (Amendment) Regulation 2008 (the 2008 Regulation) was made by the Chief Executive under section 3 of the United Nations Sanctions Ordinance (Cap. 537) on the instruction of the Ministry of Foreign Affairs of the People's Republic of China and after consultation with the Executive Council to give effect to certain decisions of the Security Council of the United Nations (UNSC) in Resolution 1803 (2008) as adopted by UNSC on 3 March 2008.

¹ Article 38 of the Convention provides that the Convention shall enter into force for a State acceding to it on the first day of the third calendar month after the deposit of its instrument of accession.

28. In December 2006 and March 2007, UNSC adopted Resolutions 1727 and 1747 respectively imposing sanctions on Iran. To implement the sanctions in the two resolutions, the United Nations Sanctions (Iran) Regulation (Cap. 537 sub. leg. AF) (the principal Regulation) was made. The sanctions include –

- (a) prohibition against the direct or indirect sale, supply or transfer of certain items, material, equipment, goods or technologies to Iran;
- (b) prohibition against the procurement of certain arms or related materials, items or equipment from Iran;
- (c) prohibition against the provision or transfer of certain assistance, training, services or resources to Iran; and
- (d) prohibition against making available to or for the benefit of certain persons or entities any funds or other financial assets or economic resources.

29. On 3 March 2008, UNSC adopted Resolution 1803 under which it is decided that the following additional sanctions should apply to Iran –

- (a) prevention of the entry into or transit (except in certain specified circumstances) through State's territories of individual designated in Annex II to the Resolution 1803 as well as of additional persons designated by UNSC or the Committee established by paragraph 18 of Resolution 1737 (the Committee);
- (b) extension of the financial measures specified in paragraphs 12 to 15 of Resolution 1737 to the persons and entities listed in Annexes I and III to Resolution 1803, those acting on their behalf or owned or controlled by them, and other persons or entities as determined by UNSC or the Committee; and
- (c) extension of the prohibition of sale, supply or transfer (with some exceptions) to Iran of nuclear-related material to all items, materials, equipment, goods and technology set out in INFCIRC/254/Rev. 7/Part 2 of document S/2006/814 and in 19.A.3 of Category II of document S/2006/815.

30. The Amendment Regulation amends the principal Regulation by –

- (a) amending the definition of "regulated prohibited item" in section 1 of the principal Regulation to include the additional items and technologies;

- (b) amending the requirements for the granting of a licence for the supply, delivery, transfer or carriage of certain "specified prohibited items" defined in section 1 of the principal Regulation;
- (c) extending the prohibition against making available to or for the benefit of certain persons and entities any funds or other financial assets or economic resources to additional persons and entities; and
- (d) providing for the prohibition against the entry into or transit through the Hong Kong Special Administrative Region by certain persons.

31. Members may refer to the information paper (CB(1)1512/07-08(01)) issued by the Commerce and Economic Development Bureau in May 2008 to the Subcommittee to Examine the Implementation in Hong Kong of Resolutions of the United Nations Security Council in relation to Sanctions (the Subcommittee) for further information.

32. By virtue of section 3(5) of the principal Ordinance, the Amendment Regulation is not subject to the scrutiny of the Legislative Council under sections 34 and 35 of the Interpretation and General Clauses Ordinance (Cap. 1). However, since it comes within the terms of reference of the Subcommittee, Members may consider referring it to the Subcommittee for further consideration.

33. The Amendment Regulation has come into operation on 9 May 2008.

34. No difficulties relating to the legal and drafting aspects of the Amendment Regulation have been identified.

Prepared by

LEE Ka-yun, Kelvin
Assistant Legal Adviser
Legislative Council Secretariat
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