

立法會
Legislative Council

LC Paper No. LS16/07-08

**Paper for the House Committee Meeting
on 23 November 2007**

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 16 November 2007**

Date of tabling in LegCo : 21 November 2007

Amendment to be made by : 19 December 2007 (or 9 January 2008 if extended by resolution)

**Merchant Shipping (Prevention and Control of Pollution) Ordinance (Cap. 413)
Merchant Shipping (Prevention and Control of Pollution) (Fees) (Amendment)
Regulation 2007 (L.N. 211)**

Members may recall that the Merchant Shipping (Prevention of Air Pollution) Regulation (L.N. 149 of 2007), which gives effect to Annex VI to the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating to that Convention, was made by the Secretary for Transport and Housing and published in the Gazette on 6 July 2007. A subcommittee was formed to study L.N. 149 and the Subcommittee supported L.N. 149 in principle. During the scrutiny, Subcommittee members urged the Administration to examine the feasibility of tightening the emission standards on sulphur oxide for local vessels in the long run having regard to local circumstances. As Subcommittee members had identified a number of issues relating to the policies and measures for improving the overall air quality in Hong Kong, the Subcommittee considered it advisable for these issues to be followed up by the Environmental Affairs Panel as appropriate. The Subcommittee raised no objection to L.N. 149 and some members addressed the Legislative Council on L.N. 149 at the Council meeting on 7 November 2007.

2. L.N. 211 amends the Merchant Shipping (Prevention and Control of Pollution) (Fees) Regulation (Cap. 413 sub. leg. L) (“the principal Regulation”) to provide for the fees for the services to be provided by the Government under L.N. 149. The fees for an initial survey, renewal survey, intermediate survey, annual survey or additional survey and the issue of International Air Pollution Prevention Certificates or Hong Kong Air Pollution Prevention Certificates by the Director of Marine under

L.N. 149 will be the same as those currently charged for similar service under the Merchant Shipping (Prevention of Pollution by Sewage) Regulation (Cap. 413 sub. leg. K).

3. L.N. 211 also amends the principal Regulation to reflect the extended office hours on Mondays to Fridays under the arrangement for five-day week in the Government service.

Prescribed fees for surveys and certification services under Cap. 413 sub. leg. L

Survey services within Hong Kong	Hourly Rate
First Hour	\$3,270
Subsequent hours	\$1,115
Survey services outside Hong Kong	Rate for a 24-hour period
A 24-hour period	\$7,645
Additional fees for survey services outside office hours	Hourly Rate
Weekday, between 7 a.m. and 9 a.m. or between 5 p.m. and 7 p.m.	\$1,115
Saturday, between 7 a.m. and 9 a.m.	\$1,115
Weekday, before 7 a.m. or after 7 p.m.	\$2,215
Saturday, before 7 a.m.	\$2,215
Saturday, between the hours from noon to midnight	\$3,270
Sunday	\$3,270
General Holiday	\$3,270
Issue of Certificates	Fees
Issue of certificate	\$565
Issue of a certified true copy of a certificate	\$565
Alteration to a certificate	\$565

4. The Panel on Economic Services (now the Panel on Economic Development) was consulted on the proposed amendments to Cap. 413 sub. leg. L at its meeting on 27 February 2006. Members expressed support for the proposals in general. Concern was raised about the cost incurred by ship operators for meeting the relevant survey and certification requirements. The Administration was urged to consider lowering the fees for survey services to ships.

5. Members may refer to the LegCo Brief (ref: MA 90/6/1) issued by the Transport and Housing Bureau on 14 November 2007 for background about this piece of subsidiary legislation.

6. L.N. 211 will come into operation on a day to be appointed by the Secretary for Transport and Housing by notice published in the Gazette.

Fugitive Offenders Ordinance (Cap. 503)

Fugitive Offenders (Australia) (Amendment) Order 2007 (L.N. 212)

7. L.N. 212 was made by the Chief Executive in Council under section 3 of the Fugitive Offenders Ordinance (Cap. 503). It amends the Fugitive Offenders (Australia) Order (Cap. 503 sub. leg. C) to implement in Hong Kong the protocol entered into by the Government of the Hong Kong Special Administrative Region of the People's Republic of China and the Government of Australia and signed in Hong Kong on 19 March 2007 ("the Protocol"). The Protocol amends the agreement signed in Hong Kong on 15 November 1993, as set out in the existing Schedule to Cap. 503 sub. leg. C. Section 4 of L.N. 212 adds a new Schedule to Cap. 503 sub. leg. C to set out the terms of the Protocol.

8. This amendment order is subject to a mechanism of scrutiny by the Legislative Council provided in section 3(2) to (6) of Cap. 503. The mechanism is similar to that provided in section 34 of the Interpretation and General Clauses Ordinance (Cap. 1) except that under section 3(3) of Cap. 503 the Legislative Council's power is only to repeal the amendment order.

9. The amendments effected in L.N. 212 were not referred to the Panel on Security. Members may refer to the LegCo Brief (ref: SBCR 1/2716/89(98) Pt.23) issued by the Security Bureau on 14 November 2007 for background about this piece of subsidiary legislation.

10. L.N. 212 shall come into operation on a day to be appointed by the Secretary for Security by notice published in the Gazette.

Public Health and Municipal Services Ordinance (Cap. 132)

Designation of Libraries Order 2007 (L.N. 213)

11. L.N. 213 provides for the relocation of the Shun Lee Estate Public Library from Units F1 and F2 on the podium floor of Lee Foo House and designates the third floor of the Shun Lee Tsuen Sports Centre, Shun Lee Tsuen Road, Kwun Tong, Kowloon, to which that library is to be relocated, as a library under the Public Health and Municipal Services Ordinance (Cap. 132).

12. As a result of the designation, the management and control of the relocated Shun Lee Estate Public Library will be vested in the Director of Leisure and Cultural Services and he may exercise the functions under Cap. 132 in relation to that library.

13. L.N. 213 shall come into operation on 28 December 2007.

Electronic Transactions Ordinance (Cap. 553)

Electronic Transactions Ordinance (Amendment of Schedule 3) Order 2007 (L.N. 214)

Electronic Transactions (Exclusion) (Amendment of Schedules) Order 2007 (L.N. 215)

14. The Electronic Transactions Ordinance (Cap. 553), which gives electronic records and electronic digital signatures used in electronic transactions the same legal status as that of their paper-based counterparts, was passed in January 2000 and came into operation in April 2000.

15. L.N. 214 adds two provisions, namely, the Electricity Ordinance (Cap. 406) and the Inland Revenue Ordinance (Cap. 112), to Schedule 3 to Cap. 553. The effect is that a document required or permitted to be served on a person by personal service or post under these two provisions may be served in the form of an electronic record. The electronic record must be sent to an information system designated by the person, and the information in it must be accessible for subsequent reference.

16. The statutory provisions excluded from the application of sections 5 and 6 of Cap. 553 are listed in Schedules 1 and 2 to the Electronic Transactions (Exclusion) Order (Cap. 553 sub. leg. B) respectively. Section 5 of Cap. 553 provides that if a rule of law requires or permits information to be or given in writing, the use of electronic records satisfies the requirement. Section 6 of Cap. 553 provides that if a rule of law requires a signature of a person on a document, the use of electronic signature by that person or (if that person is acting on behalf of a government entity) the use of digital signature satisfies the requirement. L.N. 215 deletes a number of statutory provisions from the Schedules so that these provisions will no longer be so excluded and electronic records and electronic or digital signatures can be used for the purposes of sections 5 and 6 of Cap. 553 respectively.

17. The proposals to make the amendments contained in L.N. 214 and 215 were not referred to the Panel on Commerce and Industry. Members may refer to the LegCo Brief (ref: GCIO/A 107/4/3 Pt. 20) issued by the Commerce and Economic Development Bureau in October 2007 for background about these two items of subsidiary legislation.

18. L.N. 214 and L.N. 215 shall come into operation on 11 January 2008.

Employees Retraining Ordinance (Cap. 423)

Employees Retraining Ordinance (Amendment of Schedule 2) Notice 2007 (L.N. 216)

19. L.N. 216 adds The Neighbourhood Advice-Action Council to the list of training bodies that may provide or conduct retraining courses for the purposes of the Employees Retraining Ordinance (Cap. 423).

20. L.N. 216 came into operation on the date it was published in the Gazette, i.e. 16 November 2007.

Non-local Higher and Professional Education (Regulation) Ordinance (Cap. 493)

Non-local Higher and Professional Education (Regulation) Ordinance (Amendment of Schedule 1) Notice 2007 (L.N. 217)

21. The Non-local Higher and Professional Education (Regulation) Ordinance (Cap. 493) provides for the regulation of courses of higher and professional education leading to the award of non-local qualifications conducted in Hong Kong. L.N. 217 replaces the references to “Hong Kong Shue Yan College” with “Hong Kong Shue Yan University” in Schedule 1 to that Ordinance.

22. L.N. 217 shall come into operation on 11 January 2008.

Chinese Medicine Ordinance (Cap. 549)

Chinese Medicine Ordinance (Commencement) Notice 2007 (L.N. 218)

Chinese Medicines Regulation (Cap. 549 sub. leg. F)

Chinese Medicines Regulation (Commencement) Notice 2007 (L.N. 219)

23. L.N. 218 appoints 11 January 2008 as the date on which the provisions relating to licensing regime of Chinese medicines traders in the Chinese Medicine Ordinance (Cap. 549) shall come into operation. L.N. 219 appoints 11 January 2008 as the date on which the provisions relating to the import and export control of Chinese medicines under the Chinese Medicines Regulation (Cap. 549 sub. leg. F) shall come into operation.

24. L.N. 218 provides that, inter alia, the following provisions in the Chinese Medicine Ordinance (Cap. 549) shall come into operation -

- (a) a licence shall be obtained for retail or wholesale dealings in Chinese herbal medicines, and for the manufacture of or wholesale dealings in proprietary Chinese medicines;

- (b) a licence shall be obtained for the possession of toxic Chinese herbal medicines;
- (c) a wholesale dealer in Chinese herbal medicines shall attach to or print on the container of Chinese herbal medicines an appropriate label;
- (d) a holder of a licence shall be liable for the act of his servants;
- (e) a magistrate may order the forfeiture of Chinese herbal medicines or proprietary Chinese medicines; and
- (f) penalty, defence and exemptions with respect to certain provisions shall apply.

25. L.N. 219 provides that, inter alia, the following provisions in the Chinese Medicines Regulation (Cap. 549 sub. leg. F) shall come into operation -

- (a) toxic Chinese herbal medicines shall only be sold by a wholesale dealer in Chinese herbal medicines to prescribed categories of persons or entities;
- (b) a wholesale dealer in Chinese herbal medicines shall attach to or print on the container of Chinese herbal medicines a label in the prescribed manner; and
- (c) penalty with respect to certain provisions shall apply.

26. The Administration briefed the Panel on Health Services on these commencement notices on 12 November 2007 and members generally supported them. Some members urged the Administration to step up publicity and educational activities to familiarise Chinese medicines traders with and to prepare them for the proposed commencement of the provisions on 11 January 2008, and to ensure that there would be adequate manpower to carry out the enforcement work.

27. Members may refer to the paper "*Commencement of Sections of Chinese Medicine Ordinance and Chinese Medicines Regulation*" (LC Paper No. CB(2)264/07-08(04)) issued to the Panel on Health Services by the Food and Health Bureau in November 2007 for background about these commencement notices.

Prepared by

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