

立法會
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**Paper for the House Committee Meeting
on 14 May 2010**

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 7 May 2010**

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Amendment to be made by : 9 June 2010 (or 30 June 2010 if extended by resolution)

PART I AIR POLLUTION CONTROL

Air Pollution Control Ordinance (Cap. 311)

Air Pollution Control (Motor Vehicle Fuel) Regulation (Cap. 311 sub. leg. L)

Air Pollution Control (Motor Vehicle Fuel) (Amendment) Regulation 2010 (L.N. 50)

Background

Under section 43(1)(p) of the Air Pollution Control Ordinance (Cap. 311), the Secretary for the Environment may, after consultation with the Advisory Council on the Environment (the Advisory Council), by regulation specify the kinds of fuel and the kinds of engine which may be used in the propulsion of motor vehicles.

2. The Air Pollution Control (Motor Vehicle Fuel) Regulation (Cap. 311 sub. leg. L) (the Principal Regulation) provides, among other matters, the specifications of motor vehicle diesel and unleaded petrol which are set out in Schedules 1 and 2 to the Principal Regulation respectively. Those specifications were tightened in 2002 and 2005 respectively to meet Euro IV standards.

3. The Principal Regulation was amended by the Air Pollution Control (Motor Vehicle Fuel) (Amendment) Regulation 2009 (L.N. 233 of 2009) (the 2009 Regulation) to provide for the specifications of biodiesel used as motor vehicle fuel so as to prevent adverse impact on the environment resulting from the use of substandard biodiesel for motor vehicles. The 2009 Regulation will come into operation on 1 July 2010.

4. Since January 2009, the European Union has implemented Euro V standards for both diesel and petrol to further reduce vehicle emissions. According to paragraph 3 of the LegCo Brief (File Ref: EP 21/L3/16) issued by the Environmental Protection Department in May 2010, the major difference between Euro IV and Euro V fuels is the tightening of the cap on sulphur content from 0.005% to 0.001%. Paragraph 11 of the LegCo Brief further states that Euro V motor vehicle fuel helps reduce about 80% sulphur dioxide emissions, 10% carbon monoxide, nitrogen oxides and hydrocarbons from petrol vehicles, and 5% respirable suspended particulates from diesel vehicles.

5. To encourage the early import of Euro V diesel and promote its local use, the Legislative Council passed a resolution on 14 November 2007 (L.N. 220 of 2007) under section 4(2) of the Dutiable Commodities Ordinance (Cap. 109) to reduce the duty of Euro V diesel to a concessionary duty rate of \$0.56 per litre from 1 December 2007 to 30 November 2009. By a further resolution passed on 12 July 2008 (L.N. 204 of 2008), the duty was waived with effect from 14 July 2008. According to paragraph 4 of the LegCo Brief, Euro V diesel is now being offered exclusively for diesel vehicles at all local filling stations. Euro V petrol has also become more widely available, its import volume having risen from 10% in 2008 to about 50% in 2009.

Air Pollution Control (Motor Vehicle Fuel) (Amendment) Regulation 2010 (L.N. 50)

6. L.N. 50 amends the Principal Regulation, as amended by the 2009 Regulation. Its main purpose is to further tighten the specifications of motor vehicle diesel and unleaded petrol to bring them in line with Euro V standards. To that end, section 7 of L.N. 50 replaces the existing Schedules 1 and 2 to the Principal Regulation with the new Schedules to impose stricter specifications for motor vehicle diesel and unleaded petrol in accordance with Euro V standards.

7. Under section 7 of the Principal Regulation, it is an offence for a person to knowingly supply, distribute, sell or offer for sale any substance (which is not motor vehicle diesel) as motor vehicle diesel. Section 4(2) of L.N. 50 inserts in section 7 new subsections (2A) and (2B). Under the new subsections, the person charged with the offence is presumed to have known that the substance he supplied, distributed, sold or offered for sale was not motor vehicle diesel unless there is evidence to the contrary. A person convicted of an offence under section 7 of the Principal Regulation is liable to a fine at level 5 (\$50,000).

8. Other amendments introduced by L.N. 50 relate to technical and textual changes to various provisions of the Principal Regulation. These include amendments:

- (a) to update references to technical documents to provide for the determination of certain technical data in accordance with documents published by the European Committee for Standardization;

- (b) to apply a gender-neutral drafting approach; and
- (c) to change the Chinese text of certain provisions.

9. The Legal Service Division has asked the Administration about certain terms relating to technical data referred to in both the existing and the new Schedules 1 and 2 which are defined under section 2 of the Principal Regulation. In its reply, the Administration agrees that since the manner for determining "cetane number", "research octane number" and "motor octane number" is already set out in Schedules 1 and 2, it is no longer necessary to define them in section 2 of the Principal Regulation. The Administration will consider removing these definitions from section 2 when the next appropriate amendment exercise arises.

10. It is noted that in the context of the rebuttable presumption under the new section 7(2A) and (2B) of the Principal Regulation, a person "is" (as opposed to "shall be") presumed to have the requisite knowledge. However, the expressions "shall ... be" are still being used in the context of the rebuttable presumptions under the existing sections 3(3), 3(4), 8(3), 8(4) and 9(2) of the Principal Regulation. The Legal Service Division has asked the Administration to consider also amending these existing sections of the Principal Regulation to change all references to "shall ... be" to "is" to achieve consistency. In its reply, the Administration agrees that for the sake of consistency, it is better to change the references to "shall... be" to "is" in the above context. However, since these existing sections do not appear under the same section as the new section 7(2A) and (2B), the Administration will consider effecting the drafting change when the next appropriate amendment exercise arises.

Consultation

11. Paragraphs 13 and 14 of the LegCo Brief state that the oil companies, The Motor Traders Association of Hong Kong and the Advisory Council have been consulted, and they have no objection to the proposal.

12. The proposal was also discussed by the Panel on Environmental Affairs at its meeting held on 23 November 2009. While supporting the use of cleaner fuels to help reduce vehicular emissions, members expressed various concerns, including the compatibility of Euro V fuels with Euro I, II, III and IV vehicles, whether the transport trades supported the switch, the possible introduction of a concessionary fuel duty for Euro V petrol (as well as diesel) to encourage the switch, and the need for additional safeguards to avoid profiteering by oil companies. Members may refer to the minutes of the meeting (LC Paper No. CB(1)914/09-10) for further details.

Commencement

13. L.N. 50 will come into operation on 1 July 2010, i.e. the same day on which the 2009 Regulation will come into operation.

PART II COMMENCEMENT NOTICES

Legal Practitioners (Amendment) Ordinance 2010 (2 of 2010)

Legal Practitioners (Amendment) Ordinance 2010 (Commencement) Notice 2010 (L.N. 51)

14. The Legal Practitioners (Amendment) Ordinance 2010 (2 of 2010) (LPAO), which was published in the Gazette on 29 January 2010, grants higher rights of audience to solicitors before the High Court and the Court of Final Appeal in civil and criminal proceedings (higher rights).

15. By L.N. 51, the Secretary for Justice appoints 2 July 2010 as the day on which sections 1 to 3, section 4 (insofar as it relates to sections 39E, 39F and 39G of the new Part IIIB of the Legal Practitioners Ordinance (Cap. 159)) and sections 5 to 11 of the LPAO come into operation. These provisions deal with the establishment of the Higher Rights Assessment Board (the Board), the terms of appointment of members of the Board, the procedures for meetings of the Board, the consequences of the unlawful exercise of higher rights, the making of rules relating to solicitor advocates, the Board's power to delegate its powers or duties, and consequential amendments.

16. The remaining provisions of the LPAO which are not being brought into operation by L.N. 51 are those in section 4 relating to sections 39H to 39R of the new Part IIIB of Cap. 159. These provisions relate to the Board's determination of an application for higher rights, the eligibility requirements, the conditions for granting the application, the loss of higher rights, the cessation and re-acquisition of higher rights, the keeping of a list of solicitors having higher rights, and the issuance of higher rights certificates and a code of conduct for solicitor advocates.

17. During the scrutiny of the Legal Practitioners (Amendment) Bill 2009 (which was enacted as LPAO), the Administration informed the Bills Committee on the Bill that the Board was expected to become operational within one month after the LPAO was brought into force, and to be in a position to invite applications for higher rights about 12 months after the enactment of the LPAO. Members may refer to the Report of the Bills Committee (LC Paper No. CB(2)666/09-10) for further details.

The Ombudsman Ordinance (Amendment of Schedule 1) Order 2009 (L.N. 217 of 2009)

The Ombudsman Ordinance (Amendment of Schedule 1) Order 2009 (Commencement) Notice (L.N. 52)

18. The Ombudsman Ordinance (Amendment of Schedule 1) Order 2009 (L.N. 217 of 2009) (the Order) includes four public bodies in the list of organizations which are subject to The Ombudsman's investigatory powers under section 7(1) of The Ombudsman Ordinance (Cap. 397). These bodies are the Auxiliary Medical Service and the Civil Aid Service (as raised and maintained under section 3 of the Auxiliary Medical Service Ordinance (Cap. 517) and the Civil Aid Service Ordinance (Cap. 518) respectively), the Consumer Council and the Estate Agents Authority.

19. By L.N. 52, the Director of Administration appoints 2 July 2010 as the day on which the Order comes into operation.

20. The Panel on Administration of Justice and Legal Services was informed at its meeting held on 27 April 2009 that after consulting the relevant bureaux and public bodies, it was agreed that the four public bodies referred to in paragraph 18 above should come under The Ombudsman's jurisdiction.

Concluding observation

21. Subject to Members' views on paragraphs 9 and 10, no difficulties have been observed in the legal and drafting aspects of the above items of subsidiary legislation.

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