

立法會
Legislative Council

LC Paper No. LS66/10-11

**Paper for the House Committee Meeting
on 27 May 2011**

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 20 May 2011**

Date of tabling in LegCo : 25 May 2011

Amendment to be made by : 22 June 2011 (or 13 July 2011 if extended by resolution)

PART I PUBLIC HEALTH AND MUNICIPAL SERVICES

Public Health and Municipal Services Ordinance (Cap. 132)

Public Health and Municipal Services (Designation of Public Swimming Pool) Order 2011 (L.N. 90)

Public Health and Municipal Services Ordinance (Amendment of Fourteenth Schedule) Order 2011 (L.N. 91)

Public Health and Municipal Services (Setting Aside Places and Cessation of Setting Aside Place for Use as Public Pleasure Grounds) Order 2011 (L.N. 92)

Public Health and Municipal Services Ordinance (Amendment of Fourth Schedule) Order 2011 (L.N. 93)

L.N. 90 to L.N. 93 are made by the Director of Leisure and Cultural Services (the Director) for designating a public swimming pool; setting aside places for use as public pleasure grounds; and cessation of setting aside a place for use as a public pleasure ground, under sections 42A and 106 of the Public Health and Municipal Services Ordinance (Cap. 132) (the Ordinance) respectively.

L.N. 90 and L.N. 91

2. L.N. 90 designates the Ping Shan Tin Shui Wai Swimming Pool as a public swimming pool. L.N. 91 adds this swimming pool to the Fourteenth Schedule to the Ordinance to reflect the designation of the new public

swimming pool. The effect of both Orders is to vest the management and control of the designated public swimming pool in the Director as the Authority under the Ordinance.

L.N. 92 and L.N. 93

3. L.N. 92 sets aside 19 places in Hong Kong Island, Kowloon and the New Territories for use as public pleasure grounds. It also provides that the Ma Tin Road 5-a-side Football Pitch ceases to be set aside for use as a public pleasure ground. L.N. 93 updates the list of public pleasure grounds in the Fourth Schedule to the Ordinance (the Fourth Schedule) to reflect these changes.

4. The effect of L.N. 92 and L.N. 93 is that the management and control of the 19 new public pleasure grounds is vested in the Director as the Authority under the Ordinance; and the Director is no longer required to manage the Ma Tin Road 5-a-side Football Pitch.

5. Members may refer to the LegCo Briefs (File Ref: L/M No. (1) in LCS 19/HQ 813/00(15) and File Ref : L/M No. (1) in LCS 19/HQ 813/00(15)) issued by the Leisure and Cultural Services Department in April 2011.

6. The Panel on Home Affairs has not been consulted on these four Orders.

7. L.N. 90 to L.N. 93 have come into operation on the date of gazettal, i.e. 20 May 2011.

PART II WASTE DISPOSAL

Waste Disposal Ordinance (Cap. 354)

Waste Disposal Ordinance (Application of Section 16) Notice 2011 (L.N. 94)

Waste Disposal (Amendment) Ordinance 2006 (Commencement) Notice 2011 (L.N. 95)

8. The Waste Disposal Ordinance (Cap. 354) (WDO) provides, among others, for the control and regulation of the production, storage, collection and disposal of waste of any class or description. WDO was amended by the Waste Disposal (Amendment) Ordinance 2006 (6 of 2006) (the Amendment Ordinance), which was enacted in April 2006, to provide for the legal framework for implementing the Clinical Waste Control Scheme (the

Control Scheme) which regulates the handling, collection, delivery and disposal of clinical waste. The detailed regulatory requirements of the Control Scheme and the charge levied for the disposal of clinical waste are set out in the Waste Disposal (Clinical Waste) (General) Regulation (Cap. 354 sub. leg. O) (the General Regulation) and the Waste Disposal (Charge for Disposal of Clinical Waste) Regulation (Cap. 354 sub. leg. P) (the Charging Regulation). Certain provisions of the Amendment Ordinance and the General Regulation were brought into operation on 19 November 2010 to enable clinical waste collectors and disposal facility operators to obtain the relevant licences before the operation of the Control Scheme.

9. By L.N. 95, the Secretary for the Environment appoints 1 August 2011 as the day on which the uncommenced provisions (i.e. sections 3, 5 and 6) of the Amendment Ordinance come into operation. Sections 3 and 5 of the Amendment Ordinance relate to the collection of chemical waste or clinical waste in special circumstances and the prohibition of collection of waste (unless licensed or authorized). Section 6 of the Amendment Ordinance amends section 16 of WDO to make the prohibition provided in that section against the use of land or premises for the disposal of waste apply to clinical waste.

10. By bringing into operation the remaining provisions of the Amendment Ordinance, the remaining sections of the General Regulation and the Charging Regulation will also come into operation by virtue of section 1 of the two Regulations.

11. Notwithstanding the commencement of section 16 of WDO, as amended by section 6 of the Amendment Ordinance by virtue of L.N. 95, under section 38 of WDO, the prohibition provided in section 16 of WDO does not apply in relation to clinical waste until the day appointed by the Director by notice published in the Gazette which applies the relevant section to clinical waste.

12. L.N. 94, which is made by the Director under section 38 of WDO, appoints 1 August 2011 as the day on and from which section 16 of WDO is to apply in relation to clinical waste. According to paragraph 6 of the LegCo Brief (File Ref.: EP 86/03/144) issued by the Environmental Protection Department in May 2011, the application of section 16 of WDO to clinical waste is necessary to tie in with the commencement of the Control Scheme. Members may refer to the LegCo Brief for further information.

13. The Panel on Environmental Affairs has not been consulted on the above two Notices.

PART III MISCELLANEOUS

Director of Intellectual Property (Establishment) Ordinance (Cap. 412) Director of Intellectual Property (Establishment) Ordinance (Amendment of Schedule 1) Order 2011 (L.N. 88)

14. Under section 3 of the Director of Intellectual Property (Establishment) Ordinance (Cap. 412) (the Ordinance), the Chief Executive may appoint a Director of Intellectual Property (the Director) and such other officers to hold any of the offices specified in Schedule 1 to the Ordinance as may be required to assist the Director in the performance of his duties. Part 1 of Schedule 1 specifies the offices which must be held by legally qualified persons. Under section 6, the Chief Executive may, by order published in the Gazette, amend Schedule 1.

15. L.N. 88 is made by the Chief Executive under section 6 of the Ordinance to amend Part 1 of Schedule 1 by adding to that Part the office of Assistant Principal Solicitor (APS) to reflect the creation of this new legal rank in the Intellectual Property Department (IPD). The effect of this is that holders of the APS office may, subject to the instructions of the Director, exercise the powers or perform the duties of the Director.

16. At the meeting of the Panel on Commerce and Industry (CI Panel) held on 18 January 2011, the Administration briefed Panel members on the proposed upgrading of two permanent posts at Senior Solicitor rank to two APS posts at the DL1 rank in IPD. CI Panel members in general supported the staffing proposal. This proposal was subsequently approved by the Finance Committee on 15 April 2011.

17. Members may refer to the LegCo Brief (File Ref.: CITB 80/18/1) issued by the Commerce and Economic Development Bureau on 18 May 2011 for further information.

18. L.N. 88 will come into operation on 1 August 2011.

Construction Industry Council Ordinance (Cap. 587) Construction Industry Council Ordinance (Amendment of Schedule 2) Order 2011 (L.N. 89)

19. Section 9 of the Construction Industry Council Ordinance (Cap. 587) (the CIC Ordinance) provides that apart from the chairman and public officers, the Construction Industry Council (CIC) is to consist of not

more than 21 non-official members appointed by the Secretary for Development (the Secretary). These members represent, among others, employers, professionals or consultants connected with the construction industry, contractors, sub-contractors, materials suppliers or equipment suppliers in the construction industry and trade unions representing workers employed in the construction industry that are registered under the Trade Unions Ordinance (Cap. 332). Under section 9(5) of the CIC Ordinance, when appointing members representing the above sectors, the Secretary shall have regard to any nomination made for the purposes of such appointment by any one or more of the specified bodies as set out in Schedule 2 to the CIC Ordinance (Schedule 2).

20. L.N. 89 amends Schedule 2 to update the list of "specified bodies" that may make nominations in relation to the appointment of CIC members as follows -

- (a) deleting Kowloon-Canton Railway Corporation from the list of specified bodies in Part 1 (Employers);
- (b) in the list of specified bodies in Part 3 (Contractors, Subcontractors, Materials Suppliers and Equipment Suppliers), replacing The Association of Plastering Sub-contractors Limited; Hong Kong Bar-bending Contractors Association, Limited; Hong Kong & Kowloon Scaffolders General Merchants Association Limited; and The Hong Kong Marble & Granite Merchants Association, Limited by their trade federation, i.e. the Hong Kong Construction Sub-contractors Association Limited;
- (c) in the list of specified bodies in Part 4 (Trade Unions), replacing Hong Kong and Kowloon Electrical Engineering and Appliances Trade Workers Union, and Union of Hong Kong Electrical Engineering Assistants, by their trade federation, i.e. The Federation of Hong Kong Electrical and Mechanical Industries Trade Unions; and
- (d) in the list of specified bodies in Part 4 (Trade Unions), renaming Consultant Engineering Firm Resident Site Staff Association as Resident Site Staff Association.

21. Members may refer to paragraph 3 of the LegCo Brief (File Ref.: DEVB(CR)(W)1-10/22/01) issued by the Development Bureau on 16 May 2011 which sets out in detail the reasons for the above amendments. According to paragraph 7 of the LegCo Brief, the Administration has consulted the relevant trade organizations, trade unions and CIC in formulating the proposed

amendments. In response to the Legal Service Division's enquiry, the Administration has replied that the consultees are supportive of the amendments contained in L.N. 89.

22. L.N. 89 has not been discussed by the relevant LegCo Panel.

23. L.N. 89 will come into operation on 1 August 2011.

**Human Organ Transplant Ordinance (Cap. 465)
Human Organ Transplant (Amendment) Ordinance 2004 (Commencement)
Notice 2011 (L.N. 96)**

24. By L.N. 96, the Acting Secretary for Food and Health appoints 1 September 2011 as the date on and from which the uncommenced provisions of the Human Organ Transplant (Amendment) Ordinance 2004 (29 of 2004) (the Amendment Ordinance) come into operation.

25. The Human Organ Transplant Ordinance (Cap.465) (HOTO) was enacted in 1995 to prohibit commercial dealings in human organs intended for transplanting, and to restrict the transplanting of human organs between living persons and the transplanting of imported human organs. HOTO was amended by the Amendment Ordinance to amend the definition of "organ" and to provide for, among others, a mechanism for exempting these products from the application of HOTO, and to put in place an associated appeal mechanism to handle appeals against decisions on exemptions. The Amendment Ordinance has not been brought into full operation pending the making of regulations on the appeal procedure and other relevant matters.

26. The Human Organ Transplant (Amendment) Regulation 2010 (L.N. 143 of 2010) and the Human Organ Transplant (Appeal Board) Regulation (L.N. 144 of 2010), both gazetted on 29 October 2010, respectively amend the prescribed forms consequent upon the enactment of the Amendment Ordinance in order to facilitate compliance with the requirements for supplying information to the Human Organ Transplant Board as provided in the Amendment Ordinance, and provide for the procedures for appealing against a decision of the Director of Health on an application for exemption in respect of a regulated product for transplant purpose under HOTO.

27. The above Regulations will come into operation on the day appointed for the commencement of the relevant provisions of the Amendment Ordinance. During the scrutiny of the above Regulations by the Subcommittee formed to study the Regulations, the Administration informed the Subcommittee

that it intended to bring into operation those provisions of the Amendment Ordinance that had not come into operation and the two Regulations in the third quarter of 2011 (LC Paper No. CB(2)579/10-11).

28. The Panel on Health Services has not been consulted on L.N. 96.

**Legislative Council (Powers and Privileges) Ordinance (Cap. 382)
Administrative Instructions for Regulating Admittance and Conduct of
Persons (Amendment) Instructions 2011 (Commencement) Notice
(L.N. 97)**

29. By L.N. 97 made under section 1 of the Administrative Instructions for Regulating Admittance and Conduct of Persons (Amendment) Instructions 2011 (L.N. 58 of 2011) (the Amendment AIs), the President of the Legislative Council appoints 1 October 2011 as the day on which the Amendment AIs come into operation.

30. The Amendment AIs are made by the President of the Legislative Council under section 8(3) of the Legislative Council (Powers and Privileges) Ordinance (Cap. 382) to amend the Administrative Instructions for Regulating Admittance and Conduct of Persons (Cap. 382 sub. leg. A) to facilitate the relocation of Legislative Council Complex to the new Legislative Council Complex at Tamar.

31. L.N. 97 has not been discussed by the relevant LegCo Panel.

Concluding remarks

32. No difficulties relating to the legal and drafting aspects of the above items of subsidiary legislation have been identified.

Prepared by

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