

**立法會**  
**Legislative Council**

LC Paper No. LS86/10-11

**Paper for the House Committee Meeting  
on 8 July 2011**

**Legal Service Division Report on  
Subsidiary Legislation Gazetted on 30 June 2011**

**Date of tabling in LegCo** : 6 July 2011

**Amendment to be made by** : The second meeting of LegCo in the next session (or the first meeting of LegCo not earlier than the twenty-first day after the day of the second meeting in the next session if extended by resolution)

**PART I SUBSIDIARY LEGISLATION**

**Residential Care Homes (Persons with Disabilities) Ordinance (12 of 2011)**

**Residential Care Homes (Persons with Disabilities) Regulation (L.N. 111)**

**Residential Care Homes (Persons with Disabilities) Ordinance (Commencement) Notice 2011 (L.N. 112)**

L.N. 112

By L.N. 112, the Secretary for Labour and Welfare (SLW) appoints 18 November 2011 as the day on which the Residential Care Homes (Persons with Disabilities) Ordinance (12 of 2011) (the Ordinance) (except Part 2) will come into operation.

2. The Residential Care Homes (Persons with Disabilities) Bill (enacted as the Ordinance) was passed by the Legislative Council on 16 June 2011 and the enacted Ordinance was published in the Gazette on 30 June 2011. The Ordinance provides for the control of residential care homes for persons with disabilities (RCHDs) through a licensing scheme administered by the Director of Social Welfare (DSW). The licensing scheme is modelled on that provided in the Residential Care Homes

(Elderly Persons) Ordinance (Cap. 459). It provides for the application, issue, renewal, cancellation, suspension and refusal of licences, appeal mechanism and supervision of RCHDs, and creates the offence of operating a RCHD without a licence.

3. According to paragraph 6 of the LegCo Brief (File Ref. LWB 9/3939/97) issued by the Labour and Welfare Bureau on 28 June 2011, Part 2 of the Ordinance, which provides for, among others, the offence of operating RCHDs without a licence, has not been brought into operation in order to allow sufficient time for individual RCHDs to put in place suitable arrangements for application for a new licence or certificate of exemption and for DSW to process the applications. The Administration will gazette another commencement notice to bring Part 2 of the Ordinance into operation 18 months after the commencement of other parts of the Ordinance.

#### L.N. 111

4. L.N. 111 (the Regulation) is made by SLW under section 24 of the Ordinance. It provides for, among other things –

- (a) classification of RCHDs into three categories, namely, high care level home, medium care level home and low care level home;
- (b) registration of health workers for the purpose of employment at RCHDs;
- (c) duties of RCHD operators, including the employment of staff, maintenance of staff records, provision of plans of RCHD premises to DSW and information required to be contained in advertisements for promoting RCHDs;
- (d) duties of RCHD home managers, including submission of a list of staff to DSW, maintenance of records, provision of information concerning RCHDs to DSW, the requirement to report to DSW a case of scheduled infectious disease as defined in section 2 of the Prevention and Control of Disease Ordinance (Cap. 599) if the home manager reasonably suspects or knows of such a case;
- (e) requirements on location, design, staffing, area of floor space per resident, accessibility, fire safety matters, medical examination of residents of RCHDs, etc.; and

- (f) offences and penalties for breach of the requirements provided under the Regulation.

5. L.N. 111 will come into operation on the day appointed for the commencement of section 24 of the Ordinance, i.e. 18 November 2011.

6. The Bills Committee formed to study the Bill had examined the draft Residential Care Homes (Persons with Disabilities) Regulation (the draft Regulation) to be made by SLW after enactment of the Bill. Members made various comments on the drafting aspect of the draft Regulation and raised concerns about the spatial requirement for each resident in a RCHD. The Administration agreed to revisit the level of minimum area of floor space for each RCHD resident and the criteria for determining the area in a RCHD for the purpose of the spatial requirement under the Regulation. Members considered that the Regulation should be examined in detail after its gazettal.

7. The Bills Committee had also considered agreeable the Administration's proposed legislative timetable of gazetting the Regulation and the Commencement Notice for the Ordinance on 30 June 2011 and bringing the Ordinance (except Part 2) and the Regulation into operation in November 2011 (i.e. after expiry of the period of negative vetting by the Legislative Council). Members may wish to refer to the report of the Bills Committee (LC Paper No. CB(2)1997/10-11) for further information.

8. The Legal Service Division is scrutinizing the Regulation and will make a further report, if necessary.

## **PART II LEGAL NOTICES NOT REQUIRED TO BE TABLED AND NOT SUBJECT TO AMENDMENT**

### **United Nations (Sanctions) Ordinance (Cap. 537)**

#### **United Nations Sanctions (Côte d'Ivoire) (No. 2) Regulation 2011 (L.N. 113)**

#### **United Nations Sanctions (Libya) Regulation 2011 (L.N. 114)**

9. L.N. 113 and L.N. 114 were made by the Chief Executive under section 3 of the United Nations Sanctions Ordinance (Cap. 537) (UNSO) on the instruction of the Ministry of Foreign Affairs and after consultation with the Executive Council.

L.N. 113 - Côte d'Ivoire

10. Since 2004, the United Nations Security Council (UNSC) has made several resolutions imposing sanctions against Côte d'Ivoire or renewing certain of these sanctions upon their expiry. These resolutions have been implemented by regulations made under UNSO, the last one being the United Nations Sanctions (Côte d'Ivoire) Regulation 2011 (Cap. 537 sub. leg. AS), which expired at midnight on 31 April 2011.

11. United Nations Sanctions (Côte d'Ivoire) (No. 2) Regulation 2011 was made to implement UNSC Resolution 1980 adopted on 28 April 2011 to renew until 30 April 2012 the prohibitions against –

- (a) the supply, sale, transfer or carriage of arms or related materiel to Côte d'Ivoire;
- (b) the provision of advice, assistance or training related to military activities in certain circumstances;
- (c) importation of rough diamonds from Côte d'Ivoire;
- (d) making available to, or for the benefit of, certain persons or entities any funds or other financial assets or economic resources;
- (e) dealing with funds or other financial assets or economic resources owned by or otherwise belonging to, or held by, certain persons or entities; and
- (f) entry into or transit through Hong Kong by certain persons.

12. A new provision has been added to L.N. 113 to the effect that the supply, sale, transfer or carriage of vehicles to the Ivorian security forces without a licence is prohibited.

13. Apart from the provisions mentioned in paragraph 12 above, the provisions of L.N. 113 are similar to the provisions in the expired United Nations Sanctions (Côte d'Ivoire) Regulation 2011.

14. L.N. 113 has come into operation when it was published in the Gazette on 30 June 2011. It will expire at midnight on 30 April 2012.

L.N. 114 - Libya

15. In February 2011, UNSC expressed concerns over the situation at Libya (formally known as Libyan Arab Jamahiriya) and condemned the Libyan authorities for the violence and use of force against Libyan civilians. Resolution 1970 of 2011 was adopted by UNSC on 26 February 2011 imposing sanctions against the Libyan authorities, and certain Libyan persons and entities.

16. In March 2011, UNSC expressed concerns over the failure of the Libyan authorities to comply with Resolution 1970, the deteriorating situations, the escalation of violence, and the heavy civilian casualties. Resolution 1973 of 2011 was adopted on 17 March 2011, imposing additional sanctions, and to modify certain sanctions imposed by Resolution 1970.

17. L.N. 114 was made to implement Resolutions 1970 and 1973 by providing for the prohibition against –

- (a) the supply, sale, transfer or carriage of arms and related materiel to Libya;
- (b) the provision of assistance or training related to military activities, in certain circumstances;
- (c) procurement of arms or related materiel from Libya;
- (d) making available to, or for the benefit of, certain persons or entities any funds or other financial assets or economic resources;
- (e) dealing with funds or other financial assets or economic resources owned by or otherwise belonging to, or held by, certain persons or entities;
- (f) entry into or transit through Hong Kong by certain persons;
- (g) aircraft registered in Hong Kong from flying into Libya;
- (h) aircraft carrying arms or related materiel or armed mercenary personnel to take off from or land in Hong Kong, or fly within Hong Kong air space; and

- (i) Libyan aircraft to take off from or land in Hong Kong, or fly within Hong Kong air space.

18. The relevant provisions implementing prohibitions set out in subparagraphs (a) to (f) above are similar to those implementing similar UNSC sanctions in other regulations made under UNSO.

19. Members may refer to the two sets of information papers prepared by the Commerce and Economic Development Bureau in June 2011 for the Subcommittee to Examine the Implementation in Hong Kong of Resolutions of the United Nations Security Council in relation to Sanctions (the Subcommittee) (LC Paper No. CB(1)2642/10-11(01) and (02)) for further information.

20. Under section 3(5) of UNSO, sections 34 and 35 of the Interpretation and General Clauses Ordinance (Cap. 1) shall not apply to regulations made under UNSO. Therefore, both regulations are not subject to amendment by the Legislative Council. However, they come within the terms of reference of the Subcommittee. Members may consider referring the two regulations to the Subcommittee for its consideration. The two regulations and the relevant information papers have already been circulated to members of the Subcommittee on 4 July 2011.

21. No difficulties in the legal and drafting aspects of L.N. 113 and L.N. 114 have been identified.

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7 July 2011