

# 立法會

## *Legislative Council*

LC Paper No. LS 74/10-11

### **Subcommittee to Study Issues Relating to the Power of the Legislative Council to Amend Subsidiary Legislation**

#### **Information Note on remedial measures for subsidiary legislation not tabled in LegCo after gazettal**

#### **Background**

At the meeting of the Subcommittee on Ozone Layer Protection (Controlled Refrigerants) Regulation (Commencement) Notice (OLPCN) 1998 (L.N. 391 of 1998) held on 21 January 1999, members noted that the original OLPCN 1993 (which was gazetted as a General Notice, G.N. 4794 of 1993) had not been tabled in LegCo. It was also noted that 19 items of subsidiary legislation gazetted respectively on 27 June 1997 and 30 June 1997 (listed in **Appendix I**) had similarly not been tabled. The OLPCN Subcommittee reported the matter to the House Committee on 22 January 1999. Members agreed to form a subcommittee to study the legal and procedural issues relating to subsidiary legislation gazetted but not tabled in the Legislative Council (LegCo).

#### **Validity of the subsidiary legislation gazetted but not tabled**

2. The Subcommittee to study issues relating to the tabling of subsidiary legislation in LegCo concluded that the legislative process was considered completed upon publication of the subsidiary legislation in the Gazette. Non-tabling would therefore not affect its validity. On this basis, the Subcommittee examined the issue whether tabling of subsidiary legislation should be made an integral part of the legislative process. Members were satisfied that the existing law needed not be changed to

require the tabling of subsidiary legislation as an integral part of the legislative process for the making of subsidiary legislation.

### **Mechanism to be adopted for tabling of subsidiary legislation**

3. The Subcommittee took the view that the responsibility for tabling of subsidiary legislation should rest with the maker of the subsidiary legislation. The sending by the Government Printer of the Gazette would not constitute sufficient notice to the Clerk to LegCo in compliance with the requirements of section 34(1) of the Interpretation and General Clauses Ordinance (Cap. 1)). For the purpose of ensuring all that need to be tabled are tabled in the future, a new mechanism was agreed, at members' suggestion, between the Administration and the LegCo Secretariat. Under the new arrangement, the Legal Supplement No. 2 of the Gazette will be divided into two parts; Part A will include items which are required to be tabled pursuant to section 34(1) of Cap. 1 and Part B will contain all those which are not so required. The Director of Administration would send a one-off written notice to the Clerk to LegCo to confirm that with effect from a certain date, all items contained in Part A of the Legal Supplement No. 2 of the Gazette shall be tabled in the next following LegCo meeting. (The new arrangement has been put into effect since 11 June 1999.)

### **Rectification**

4. Although the OLPCN Subcommittee and the Subcommittee to study issues relating to the tabling of subsidiary legislation in LegCo both concluded that the validity of the pieces of subsidiary legislation gazetted was not affected by non-tabling, the Administration wanted to remove any doubts on the validity of the subsidiary legislation not tabled in LegCo. This was done by means of Part XIII of the Statute Law (Miscellaneous Provisions) Bill 1999. It contained provisions deeming the 19 items of subsidiary legislation, as well as OLPCN 1993 to have been duly laid on the table of the Legislative Council in accordance with the requirements of section 34(1) of Cap. 1. An indemnity provision had been included to indemnify all persons against any possible liability

for the common law offence of contempt of statute (for which the penalty is imprisonment or a fine, or both). Further, in order to remove the confusion caused by the publication of two Commencement Notices in respect of the Ozone Layer Protection (Controlled Refrigerants) Regulation, i.e. OLPCN 1993 and OLPCN 1998, the latter Commencement Notice was declared "to be and always to have been of no force and effect". The Bill was enacted on 31 May 2000 as the Statute Law (Miscellaneous Provisions) Ordinance 2000 (32 of 2000). The provisions become respectively sections 43, 44 and 45 of the Ordinance. (A list of relevant documents is at **Appendix II** for Members' reference.)

Prepared by

Legal Service Division  
Legislative Council Secretariat  
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**List of subsidiary legislation gazetted on  
27 June 1997 and 30 June 1997 but not tabled in LegCo**

<b>Item</b>	<b>L.N. No.</b>	<b>Title</b>
1	359 of 1997	Births and Deaths Registration Ordinance (Amendment of Second Schedule) Order 1997
2	360 of 1997	Immigration (Places of Detention) (Amendment) Order 1997
3	361 of 1997	Immigration (Treatment of the Detainees) (Amendment) Order 1997
4	362 of 1997	Declaration of Change of Titles (General Adaptation) Notice 1997
5	363 of 1997	Declaration of Change of Titles (Deputy Director of Immigration, Assistant Director of Immigration, Immigration Officer, Immigration Tribunal and Immigration Service) Notice 1997
6	364 of 1997	Arbitration (Amendment) Ordinance 1996 (75 of 1996) (Commencement) Notice 1997
7	365 of 1997	Enduring Powers of Attorney Ordinance (17 of 1997) (Commencement) Notice 1997
8	366 of 1997	Powers of Attorney (Amendment) Ordinance 1997 (18 of 1997) (Commencement) Notice 1997
9	367 of 1997	Patents Ordinance (52 of 1997) (Commencement) Notice 1997
10	368 of 1997	Registered Designs Ordinance (64 of 1997) (Commencement) Notice 1997

Item	L.N. No.	Title
11	369 of 1997	Official Secrets Ordinance (62 of 1997) (Commencement) Notice 1997
12	370 of 1997	Labour Relations (Amendment) Ordinance 1997 (75 of 1997) (Commencement) Notice 1997
13	371 of 1997	Law Reform (Miscellaneous Provisions and Minor Amendments) Ordinance 1997 (79 of 1997) (Commencement) Notice 1997
14	372 of 1997	Fugitive Offenders (Australia) Order (L.N. 200 of 1997) (Commencement Notice) 1997
15	373 of 1997	Fugitive Offenders (Drugs) Order (L.N. 274 of 1997) (Commencement) Notice 1997
16	374 of 1997	Supreme Court Civil Procedure (Use of Language) Rules (L.N. 266 of 1997) (Commencement) Notice 1997
17	375 of 1997	Prison (Amendment) Rules 1997 (L.N. 275 of 1997) (Commencement) Notice 1997
18	376 of 1997	Drug Trafficking (Recovery of Proceeds) (Designated Countries and Territories) (Amendment) Order 1997 (L.N. 308 of 1997) (Commencement) Notice 1997
19	377 of 1997	Long-term Prison Sentences Review Ordinance (86 of 1997) (Commencement) Notice 1997

**N.B.** The above table is adapted from Paper for House Committee meeting on 7 May 1999 (LC Paper No. CB(1)1267/98-99).

## List of Documents

No.	Document/ Paper	L.C. Paper Ref. No.
1	Minutes of Meeting held on 21 Jan 1999 of the Subcommittee on Ozone Layer Protection (Controlled Refrigerants) Regulation (Commencement) Notice 1998	CB(1) 1146/98-99
2	<i>Paragraphs 44-49</i> , Minutes of House Committee Meeting held on 22 Jan 1999	CB(2) 1169/98-99
3	Report of the Subcommittee on Ozone Layer Protection (Controlled Refrigerants) Regulation (Commencement) Notice 1998 to the House Committee	CB(1) 857/98-99
4	Minutes of Meeting held on 2 Feb 1999 of the Subcommittee to study issues relating to the tabling of subsidiary legislation in the Legislative Council	CB(1) 1145/98-99
5	Minutes of Meeting held on 27 Apr 1999 of the Subcommittee to study issues relating to the tabling subsidiary legislation in Legislative Council	CB(1) 1940/98-99
6	<i>Paragraphs 31-32</i> , Minutes of the House Committee Meeting held on 7 May 1999	CB(2) 1950/98-99
7	<i>Paragraph 58</i> , Minutes of the House Committee Meeting held on 28 May 1999	CB(2) 2165/98-99
8	Report of the Subcommittee to study issues relating to the tabling of subsidiary legislation in Legislative Council to the House Committee	CB(1) 1267/98-99

<b>No.</b>	<b>Document/ Paper</b>	<b>L.C. Paper Ref. No.</b>
9	Second Report of the Subcommittee to study issues relating to the tabling of subsidiary legislation in Legislative Council to the House Committee	CB(1) 1371/98-99
10	Report of the Bills Committee on Statute Law (Miscellaneous Provisions) Bill 1999 to the House Committee	CB(2) 1989/99-00