

立法會
Legislative Council

LC Paper No. LS38/11-12

**Paper for the House Committee Meeting
on 2 March 2012**

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 24 February 2012**

Date of tabling in LegCo : 29 February 2012

Amendment to be made by : 28 March 2012 (or 18 April 2012 if extended
by resolution)

Smoking (Public Health) Ordinance (Cap. 371)
Smoking (Public Health) (Designation of No Smoking Areas) Notice
(Cap. 371 sub. leg. D)
Smoking (Public Health) (Designation of No Smoking Areas) (Amendment)
Notice 2012 (L.N. 29)

Section 3(1AB) of the Smoking (Public Health) Ordinance (Cap. 371) (SPHO) empowers the Director of Health (DH) to designate as a no smoking area (NSA) the whole or a part of :

- (a) any area that consists of the termini of two or more modes of public transport and is used for effecting and facilitating interchange between them: or
- (b) any bus terminus of more than one specified route as defined in section 2 of the Public Bus Services Ordinance (Cap. 230).

Each of these public transport interchanges and bus terminus is referred to as a "public transport facility" in the Smoking (Public Health) (Designation of No Smoking Areas) Notice (Cap. 371 sub. leg. D) (the Designated Notice). The designated NSAs in public transport facilities are set out in the Schedule to the Designated Notice.

2. Under section 7(1) of the SPHO, any person who smokes or carries a lighted cigarette, cigar or pipe in an NSA commits an offence and is liable on summary conviction to a fine of \$5,000. Smoking in an NSA is also a

scheduled offence in respect of which a public officer may give the offender a notice under section 3 of the Fixed Penalty (Smoking Offences) Ordinance (Cap. 600) offering him an opportunity to discharge his liability to conviction for the offence by payment of a fixed penalty (currently fixed at \$1,500) within 21 days from the date of the notice.

3. L.N. 29 amends the Schedule to the Designation Notice to designate new NSAs in 9 public transport facilities, amend the boundaries of existing NSAs in 13 public transport facilities, and remove the designation of NSAs in 2 public transport facilities under section 3(1AB) of SPHO. The actual boundaries of the new and amended NSAs are delineated on respective plans signed by DH and deposited in the Land Registry. The relevant plans were also published in the Gazette on 24 February 2012 (G.N. 1002).

4. Members may refer to the LegCo Brief (no file reference provided) issued by the Food and Health Bureau in February 2012 for background information. According to paragraph 13 of the LegCo Brief, an information note on the details of the proposed amendments together with relevant plans of the public transport facilities has been issued to 18 District Councils for their information. In response to the Legal Service Division's query the Administration has stated that except for an enquiry from a District Council on the criteria of designation of public transport facilities as NSAs under SPHO, the Administration has not received any comments from the District Councils on the proposed amendments.

5. The Panel on Health Services has not been consulted on L.N. 29.

6. L.N. 29 will come into operation on 1 June 2012.

7. No difficulties have been identified in the legal and drafting aspects of L.N. 29.

Prepared by

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