

**立法會**  
**Legislative Council**

LC Paper No. LS13/11-12

**Paper for the House Committee Meeting  
on 9 December 2011**

**Legal Service Division Report on  
Subsidiary Legislation Gazetted on 2 December 2011**

**Date of tabling in LegCo** : 7 December 2011

**Amendment to be made by** : 21 December 2011 (or 1 February 2012 if extended by resolution)

**Public Order Ordinance (Cap. 245)**  
**Frontier Closed Area Order (Cap. 245 sub. leg. A)**  
**Frontier Closed Area (Amendment) Order 2011 (L.N. 170)**

Under section 36 of the Public Order Ordinance (Cap. 245) (POO), the Chief Executive may, where he reasonably believes that it is necessary for the protection of national security or public safety, or the protection of public order or public health, by order declare any area or place to be a closed area. Under section 38 of POO, any person who enters or leaves a closed area without a permit or contravenes any condition to which such permit is subject shall be guilty of an offence and shall be liable on summary conviction to a fine of \$5,000 and to imprisonment for two years.

2. Pursuant to section 36 of POO, the Frontier Closed Area Order (Cap. 245 sub. leg. A) (the FCA Order) was made on 7 September 1984 and the current coverage of the Frontier Closed Area (FCA) is specified in the Schedule to the FCA Order.

3. According to the LegCo Brief (File Ref.: SBCR 4/10/1476/80) issued by the Security Bureau in November 2011, the Administration conducted a review of the coverage of the FCA in 2006, and announced in January 2008 its proposal to substantially reduce the FCA from about 2,800 hectares to about 400 hectares, being the minimum area necessary for the protection of public order whilst allowing more land to be released for public access and potential development. To implement the reduced FCA, it is necessary to construct a secondary boundary fence along the boundary patrol road (BPR), and new sections of the BPR and primary boundary fence for certain areas along the boundary. The required construction works are divided into four sections. The works started in the fourth quarter of 2009 and are

expected to be completed in the first quarter of 2015. According to the Administration, the construction works for sections 1 and 4 (i.e. Mai Po to Lok Ma Chau Boundary Control Point section and Lin Ma Hang to Sha Tau Kok section) have been completed.

4. L.N. 170 is made by the Chief Executive under section 36 of POO to substitute a new Schedule to the FCA Order to specify the reduced boundaries of the FCA after completion of the construction works for the Mai Po to Lok Ma Chau Boundary Control Point section and the Lin Ma Hang to Sha Tau Kok section. As regards the construction works for the other two sections, paragraph 6 of the LegCo Brief states that the Administration plans to introduce further amendments to the FCA Order at a later stage after completion of the relevant works.

5. Note 5 of the new Schedule states that the plans on the reduced FCA annexed to the Schedule are provided for information only. This approach for describing the FCA is different from that adopted in section 3 of the Shenzhen Bay Port Hong Kong Port Area Ordinance (Cap. 591) where the annexed maps are included as an integral part of the description of the Shenzhen Bay Port Hong Kong Port Area. Upon enquiry by the Legal Service Division, the Administration has replied that it is not necessary for the plans to be included as an integral part of the description of the reduced FCA which is clearly identified by the textual description and the coordinates listed in the Schedule. The Administration further clarifies that while Note 1, which states the grid system on which the coordinates are based, has legislative effect, Notes 2 to 5 are provided for information only and hence have no legislative effect. The Legal Service Division is considering the legal implications of the Administration's reply, and will issue a further report, if necessary.

6. L.N. 170 will come into operation on 15 February 2012.

7. According to paragraph 11 of the LegCo Brief, the Administration has consulted Heung Yee Kuk, the Town Planning Board, the Advisory Council on the Environment, North District Council, Yuen Long District Council, Ta Kwu Ling, Sha Tau Kok, Sheung Shui and San Tin Rural Committees. The Rural Committees and the District Councils are supportive of the reduction of the FCA.

8. The Panel on Security has not been specifically consulted on L.N. 170. However, in the papers on the financial proposal for the "Construction of a Secondary Boundary Fence and new sections of the Primary Boundary Fence and the Boundary Patrol Road", which were discussed at the meetings of the Panel held on 5 May 2009 and 3 May 2011, the Administration advised that it would amend the FCA Order to reduce the FCA boundaries in phases to tie in with the completion of the construction works. Members may refer to the minutes of the Panel meetings held on 5 May 2009 and 3 May 2011 (LC Papers Nos. CB(2)2055/08-09 and CB(2)2233/10-11) for further details.

**Mandatory Provident Fund Schemes Ordinance (Cap. 485)**  
**Mandatory Provident Fund Schemes (Contributions for Casual Employees)**  
**(Amendment) (No. 2) Order 2011 (L.N. 171)**

9. The Mandatory Provident Fund Schemes Ordinance (Amendment of Schedule 3) Notice 2011 (the Amendment Notice) was approved by the Legislative Council on 23 November 2011 and published in the Gazette on 25 November 2011 (L.N. 168 of 2011). It amends Schedule 3 to the Mandatory Provident Fund Schemes Ordinance (Cap. 485) by adjusting the maximum level of relevant income (Max RI) from \$20,000 to \$25,000 per month (and from \$650 to \$830 per day in respect of casual employees who are members of industry schemes) for contribution purposes under Cap. 485. The mandatory contribution to be made in respect of a casual employee who is a member of an industry scheme under different income bands is prescribed by the Mandatory Provident Fund Schemes Authority (the Authority) in the Mandatory Provident Fund Schemes (Contributions for Casual Employees) Order (Cap. 485 sub. leg. E) (the Order) with reference to the daily Max RI. On the basis of the existing Max RI of \$650 per day, the Order currently caps the amounts of mandatory contribution for casual employees as follows:

- (a) \$30 per day for casual employees who are paid relevant income daily or more than once a day; and
- (b) 5% of relevant income or \$32.50 per day (whichever is less) for casual employees who are paid less frequently than once a day.

The Amendment Notice makes it necessary to amend the Order.

10. L.N. 171 is made by the Authority under section 7A(6) of Cap. 485. It amends the scales of amounts of contributions prescribed in the Schedule to the Order which casual employees who are members of industry schemes and their employers are required to make as follows:

- (a) for a casual employee who is paid the relevant income daily or more than once a day, the contribution amounts for the income bands of "more than \$650 but not more than \$830" per day and "more than \$830" per day are \$37.50 and \$41.50 per day respectively; and
- (b) for a casual employee who is paid the relevant income less frequently than once a day, the contribution amounts for the income bands of "\$250 or more but not more than \$830" per day and "more than \$830" per day are 5% of the relevant income and \$41.50 per day respectively.

11. Members may refer to the LegCo Brief (no reference number provided) issued by the Authority on 29 November 2011 for further details as to how these proposed amounts are calculated.

12. L.N. 171 will come into operation on 1 June 2012 which is also the commencement date of the Amendment Notice. The new amounts of contributions will apply in relation to a contribution period that begins on or after that date. The Administration has explained to the Subcommittee on Mandatory Provident Fund Schemes Ordinance (Amendment of Schedule 3) Notice 2011 (the Subcommittee) that the proposed commencement date aims to allow reasonable time for both employers and employees to adjust to the new contribution levels. Members may refer to the Subcommittee's report to the House Committee dated 3 November 2011 (LC Paper No. CB(1)241/11-12) for details of its deliberations.

13. The Panel on Financial Affairs has not been specifically consulted on L.N. 171. However, the Panel held a special meeting on 20 April 2011 to receive views from concerned parties and members of the public on the proposed increases in the minimum and maximum levels of relevant income.

**Antiquities and Monuments Ordinance (Cap. 53)**  
**Antiquities and Monuments (Declaration of Historical Buildings) (No. 2) Notice 2011 (L.N. 172)**

14. Under section 3(1) of the Antiquities and Monuments Ordinance (Cap. 53), the Secretary for Development (the Secretary) as the Authority may, after consultation with the Antiquities Advisory Board (the Board) and with the approval of the Chief Executive, by notice in the Gazette, declare any place, building, site or structure, which she considers to be of public interest by reason of its historical, archaeological or palaeontological significance, to be a monument, historical building or archaeological or palaeontological site or structure. Once so declared, the place, building, site or structure in question will become a "monument" for the purposes of Cap. 53 and as such will enjoy the protection under section 6(1) which forbids anyone to excavate, carry on building or other works, plant or fell trees or deposit earth or refuse on or in the monument, or demolish, remove, obstruct, deface or interfere with it except in accordance with a permit granted by the Secretary. Under Cap. 53, anyone who contravenes section 6(1) shall be guilty of an offence and shall be liable on conviction to a fine of \$100,000 and imprisonment for one year.

15. L.N. 172 is made under section 3(1) of Cap. 53 to declare the following places to be historical buildings:

- (a) the School House of St. Stephen's College at the Remaining Portion of Rural Building Lot No. 432 and the Extensions thereto, 22 Tung Tau Wan Road, Stanley, Hong Kong, as delineated and shown edged red on Plan No. HKM9166a signed and deposited in the Land Registry under section 3(4) by the Secretary; and

- (b) the east, south and north wings of the school building together with parts of the retaining walls and boundary walls of King's College at 63A Bonham Road, Hong Kong, as delineated and shown edged red (other than the parts coloured green and marked with the letter "G"<sup>1</sup>) on Plan No. HKM7124 signed and deposited in the Land Registry under section 3(4) by the Secretary.

16. Members may refer to the LegCo Brief (File Ref: DEVB/C/30/32/1) issued by the Development Bureau on 30 November 2011 for background information. According to paragraph 15 of the LegCo Brief, the two buildings have been accorded with a Grade one status by the Board (i.e. buildings of outstanding merit, which every effort should be made to preserve if possible). Paragraph 19 of the LegCo Brief states that the Board, which was consulted on the proposed declaration as required under section 3(1) of Cap. 53, rendered its support to the declaration.

17. L.N. 172 has not been discussed by the Panel on Development.

18. L.N. 172 does not provide expressly for a commencement date. By virtue of section 20(2) of the Interpretation and General Clauses Ordinance (Cap. 1), L.N. 172 commenced on the day it was published in the Gazette, i.e. 2 December 2011. According to paragraph 17 of the LegCo Brief, the Administration prefers L.N. 172 to take immediate effect so as to render statutory protection to the buildings concerned as early as possible.

### **Concluding remarks**

19. Apart from the issues mentioned in paragraph 5 above, no difficulties have been identified in relation to the legal or drafting aspects of the above items of subsidiary legislation.

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<sup>1</sup> Upon enquiry by the Legal Service Division, the Administration has explained that the two areas coloured green and marked with the letter "G" are an open backyard paved with cement and a garden totally refurbished and reconstructed in around 2004 respectively, and as such are excluded from the declaration because they are renovated areas of no heritage significance.