

立法會
Legislative Council

LC Paper No. LS24/13-14

**Paper for the House Committee Meeting
on 24 January 2014**

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 17 January 2014**

Tabling in LegCo : Council meeting of 22 January 2014

Amendment to be made by : Council meeting of 19 February 2014 (or that of 19 March 2014 if extended by resolution)

Air Pollution Control (Marine Light Diesel) Regulation (L.N. 2)

L.N. 2 is made by the Secretary for the Environment under section 43 of the Air Pollution Control Ordinance (Cap. 311) after consultation with the Advisory Council on the Environment.

2. At present, the quality of fuels supplied to marine vessels is not regulated. According to the Administration, L.N. 2 is aimed to regulate the quality of marine light diesel (MLD) so as to reduce the emission of air pollutants.

3. Under L.N. 2, locally supplied MLD must comply with the requirements specified in Schedule 1 to the Regulation, which include a requirement that the MLD must not contain more than 0.05% sulphur by weight. Any person who supplies or causes to supply any MLD which does not comply with the Schedule commits an offence and is liable on conviction to a fine of \$50,000 and imprisonment for 3 months. Further, an MLD importer is required to submit monthly reports to the Director of Environmental Protection and the importer and an MLD supplier are also required to keep certain records. Any such importer or supplier who, without reasonable excuse, fails to comply with any of the requirements commits an offence and is liable on conviction to a fine of \$50,000 and imprisonment for 1 month. However, L.N. 2 does not apply to any MLD which is goods in transit, transshipment goods¹ or solely for export or

¹ The terms "goods in transit" and "transshipment" are respectively defined in L.N. 2.

re-export and the restriction on supply of MLD does not apply to a warship or any other vessel on military service.

4. According to the Administration, it has consulted MLD importers and suppliers and local trades which use marine fuels. They have no objection in principle to the proposal but some vessel operators have expressed concerns about the possible cost implications. Members may wish to refer to LegCo Brief (File Ref: Annex 4 to EP 150/NV/24) issued by the Environmental Protection Department in January 2014 for background information.

5. As advised by the Clerk to the Panel on Environmental Affairs, on 25 March 2013, the Panel was consulted on the proposal to upgrade the standard of MLD with a view to reducing emissions from local vessels. On 22 July 2013, the Panel received public views on the proposal. Members were supportive of the general principles of the proposal which was meant to protect the environment, but they held different views on the implementation details. There were concerns about the possible increase in fuel prices if low sulphur diesel (LSD) with a sulphur limit of 0.05% was the only kind of vessel fuel that could be used in Hong Kong, the resultant increase in the operating cost of ferry operators, the pollution associated with the use of lower grade diesel by river-trade vessels plying between the Pearl River Delta and Hong Kong ports, as well as the compatibility of LSD with two other engine models which were used by about 10% of the fishing trades but which had not been tested.

6. L.N. 2 comes into operation on 1 April 2014.

**Food and Drugs (Composition and Labelling)
(Amendment) Regulation 2014**

(L.N. 3)

7. L.N. 3 is made by the Director of Food and Environmental Hygiene (DFEH) under section 55(1) of the Public Health and Municipal Services Ordinance (Cap. 132) to introduce a reduced application fee for any application submitted by electronic means for an exemption or a renewal of such exemption specified in Part 2 of Schedule 6 to the Food and Drugs (Composition and Labelling) Regulations (Cap. 132W).

8. Under Cap. 132W, unless exempted, any prepackaged food which satisfies the definition in section 2 is required to be labeled and marked in the prescribed manner. A food manufacturer or importer of any such kind of food with annual sales volume in Hong Kong not exceeding 30,000 units and which does not carry nutrition claims on its label or in any advertisement may apply to the DFEH for an exemption (known as small volume exemption) pursuant to Part 2 of Schedule 6. An application fee of \$345 is payable for the application

for the exemption and \$335 is payable for a renewal application of the exemption. Further, applications may be made by conventional means or by electronic means through an online communication system (known as the Food Import Control System) (FICS) provided by the DFEH. L.N. 3 introduces reduced fees for applications made by such electronic means as follows –

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|-----|---|-------|
| (a) | application for small volume exemption | \$265 |
| (b) | renewal application for the exemption in item (a) above | \$250 |

9. According to the LegCo Brief (File Ref: FH CR 1/4/3231/13) issued by the Food and Health Bureau and Food and Environmental Hygiene Department in January 2014, the Administration has consulted members of the trade through a Trade Consultation Forum on 18 December 2013 and the traders present were content. Members may refer to the LegCo Brief for background information.

10. As advised by the Clerk to Panel on Food Safety and Environmental Hygiene, the Panel was consulted at its meeting on 10 December 2013 on the Administration's proposal to amend Cap. 132W to introduce reduced fees for small volume exemption applications and renewal applications submitted by electronic means through the FICS. Members raised no objection to the legislative proposal.

11. L.N. 3 comes into operation on 24 March 2014.

**Road Traffic (Construction and Maintenance of Vehicles)
(Amendment) Regulation 2014**

(L.N. 4)

12. L.N. 4 is made by the Secretary for Transport and Housing under section 9 of the Road Traffic Ordinance (Cap. 374) to amend the Road Traffic (Construction and Maintenance of Vehicles) Regulations (Cap. 374A). In gist, L.N. 4 provides that every new goods vehicle which is neither a certain type of tractor nor a trailer and is first registered on or after the commencement date of L.N. 4 must be fitted with a reversing video device (RVD). Further, it specifies the installation and performance requirements of an RVD and requires that any RVD installed must be maintained in good working order and provides a defence² for a contravention of the requirement. In addition, any camera unit of an RVD which is installed on the vehicle is not to be taken into account when determining the vehicle's overall length.

² L.N. 4 provides a defence for the contravention if a person can prove that the defect of the RVD occurred in the course of the journey during which the contravention was detected or when the contravention was detected, steps have already been taken to have the defect remedied with all reasonable expedition. A similar defence can be found in Regulations 24A and 24C of Cap. 374A, which concern speed display devices and electronic data recording devices respectively.

13. According to the LegCo Brief (File Ref: THB(T) 3/10/36) issued by Transport and Housing Bureau in January 2014, an RVD may assist a driver in reversing a goods vehicle. Further, vehicle suppliers, RVD suppliers, vehicle body builders and the goods vehicle trade have been consulted. In particular, the goods vehicle trade generally resisted mandatory installation of RVD because of a number of concerns, including "the legal liabilities when RVD malfunctions"³. According to the Administration, the concern has been taken into account by including a defence in L.N. 4. Members may wish to refer to the LegCo Brief for background information.

14. According to the Clerk to Panel on Transport, the Panel was consulted by the Administration in May 2007, June 2011 and May 2012 regarding the proposal to mandate the installation of RVD on goods vehicle. Members were generally in support of the proposal and urged for its early implementation. In the course of deliberation, various concerns had been raised, including the effectiveness and reliability of RVD under different circumstances, the proposed mandatory installation of RVD on the vehicles concerned and the financial impact on the transport trade, and the appropriateness of the proposed defence for the requirement of RVD. The Panel did not specifically recommend that a Subcommittee should be formed.

15. L.N. 4 comes into operation on 1 October 2014.

Import and Export (Fees) (Amendment) Regulation 2014 (L.N. 5)

**Chemical Weapons (Convention) Ordinance
(Amendment of Schedule 4) Order 2014** (L.N. 6)

16. L.N. 5 and L.N. 6 are made by the Secretary for Financial Services and the Treasury (SFST) under section 31 of the Import and Export Ordinance⁴ (Cap. 60) and section 40(2) of the Chemical Weapons (Convention) Ordinance⁵ (Cap. 578) respectively to adjust the fees specified in the respective Schedules to the Import and Export (Fees) Regulations (Cap. 60B) and Cap. 578 as follows –

³ See paragraph 10 of the LegCo Brief.

⁴ Section 31(1)(x) of Cap. 60 provides that the Chief Executive in Council may make regulations for prescribing fees to be collected by the Director-General of Trade and Industry in respect of any matter arising under Cap. 60. Such fees include those that are adjusted under L.N. 5. Section 29A(1) of the Interpretation and General Clauses Ordinance (Cap. 1) provides that such fees may be varied by the Financial Secretary (the FS), which, by virtue of section 3 of the Cap. 1, means the SFST as well.

⁵ Section 40(2) of Cap. 578 provides that the FS may by order amend Schedule 4 to Cap. 578 and section 3 of Cap. 1 also applies to the SFST.

- (a) under L.N. 5 and in relation to Cap. 60B -
 - (i) to decrease the fee for the issue of a certificate of accuracy of any copy of, or extract from, official records (except where an appropriate fee is prescribed in any other enactment) from \$300 to \$135;
 - (ii) to increase the fee prescribed for the issue of a delivery verification certificate for the certification of delivery of strategic commodities into Hong Kong from \$285 to \$315; and
 - (iii) to increase the fee for the issue of an international import certificate from \$96 to \$105; and
- (b) under L.N. 6 and in relation to Cap. 578, to increase the application fee for a permit to operate a facility from \$235 to \$260.

17. According to the Administration, the adjustments are intended to recover or reflect the full costs of providing the relevant services. Members may refer to the LegCo Brief (File Ref: CITB CR 13/39/3) issued by the Commerce and Economic Development Bureau in January 2014 for background information.

18. According to the Clerk to the Panel on Commerce and Industry, the Administration has issued an information paper on "Proposed Adjustment to Fees and Charges under the Purview of the Trade and Industry Department" (LC Paper No. CB(1)394/13-14(01)) in relation to fee adjustment for three strategic commodities-related fee items. The paper was circulated to members of the Panel and all other Hon Members of the Legislative Council for reference on 28 November 2013. No comment was received from Members.

19. L.N. 5 and L.N. 6 come into operation on 21 March 2014.

Designation of Libraries (Amendment) Order 2014 (L.N. 7)

20. L.N. 7 is made by the Director of Leisure and Cultural Services under section 105K of Cap. 132 to repeal the address of Pak Tin Public Library, which is specified in the Schedule to the Designation of Libraries Order (Cap. 132O) as "Units No. 1 to 6, ground floor, Commercial Centre, Pak Tin Estate, Kowloon", and substitute it with "The seventh floor of Shek Kip Mei Estate Ancillary Facilities Block, 100 Woh Chai Street, Shek Kip Mei, Sham Shui Po, Kowloon".

21. According to the Administration, the Pak Tin Public Library will be closed and cease operation upon the commissioning of the Shek Kip Mei Public Library, which is located in the substituted address and will be open for public use from 28 March 2014. Further, the Sham Shui Po District Council has requested the early commissioning of the Shek Kip Mei Public Library. Members may refer to the LegCo Brief (with no file reference number) dated 6 January 2014 issued by Leisure and Cultural Services Department for background information.

22. According to the Clerk to Panel on Home Affairs, the Panel has not been consulted on the Order.

23. L.N. 7 comes into operation on 28 March 2014.

Prisons (Amendment) Order 2014 (L.N. 8)

Rehabilitation Centres (Appointment) (Amendment) Order 2014 (L.N. 9)

Training Centre (Consolidation) (Amendment) Declaration 2014 (L.N. 10)

24. L.N. 8 and L.N. 9 are made by the Secretary for Security under section 4 of the Prisons Ordinance (Cap. 234) and section 3 of the Rehabilitation Centres Ordinance (Cap. 567) respectively and they relate to the Lai Chi Rehabilitation Centre (LCRC) and the Sha Tsui Correctional Institution (STCI). In gist, under L.N. 8 and L.N. 9, the address of LCRC is changed to the address where the parts and buildings of the STCI (which are situated at 35 Shek Pik Reservoir Road, Lantau Island except those parts of the buildings that are known as Blocks A, B and F) that are currently serving as a prison are located and vice versa. L.N. 10 is made by the Secretary for Security under section 3 of the Training Centres Ordinance (Cap. 280) to cease the function of the STCI as a Training Centre.

25. According to the LegCo Brief (File Ref: SEC 2/1/21) issued by the Security Bureau in January 2014, although the whole STCI is designated as prison, it is a multi-functional institution, some parts of which are also designated as Detention Centre or Training Centre. According to the Administration, the number of young male persons who were sentenced to Training Centre has decreased in recent years whereas the places for prisoners are insufficient to cope with the rising number of young male prisoners. As such, the Administration has made the arrangements under L.N. 8 to L.N. 10. Members may refer to the LegCo Brief for background information.

26. According to the Clerk to Panel on Security, the Panel has not been consulted on the Orders and the Declaration.

27. L.N. 8 to L.N. 10 come into operation on 26 March 2014.

Concluding Observations

28. No difficulties have been identified in the legal and drafting aspects of the above items of subsidiary legislation.

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