

立法會
Legislative Council

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**Paper for the House Committee Meeting
on 12 December 2014**

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 5 December 2014**

Tabling in LegCo : Council meeting of 10 December 2014

Amendment to be made by : Council meeting of 7 January 2015 (or that of 28 January 2015 if extended by resolution)

PART I REVISION OF FEES

It is government policy that fees charged for services by the Government should in general be set at levels sufficient to recover the full cost of providing the services. In the 2013-2014 Budget Speech, the Financial Secretary emphasized the need to review fees and charges systematically for upholding the "user pays" principle, with priority given to those fees that had not been revised for years and did not directly affect people's livelihood, as well as items which had low cost recovery rates. A number of fees are accordingly amended with the respective commencement dates as stated in the ensuing paragraphs.

**Chinese Nationality (Miscellaneous Provisions) Ordinance
(Amendment of Schedule) Order 2014**

(L.N. 144)

2. L.N. 144 is made by the Chief Executive in Council under section 7 of the Chinese Nationality (Miscellaneous Provisions) Ordinance (Cap. 540). It amends the Schedule to Cap. 540 to revise the fees payable for applications for naturalization as a Chinese national under the Nationality Law of the People's Republic of China.

3. According to paragraph 4 of the LegCo Brief, a recent costing review conducted at 2014-2015 prices shows that the existing fees (which were last revised in June 2006) for processing applications for naturalization as a Chinese national only recover 89% of the full cost of providing the service. In order to achieve full cost recovery gradually and avoid a steep fee increase, a 10% increase in the fees payable for these applications is made. Details are set out below: -

| | | Existing Fee (last revision date) | Cost recovery level at 2014-15 price level | Proposed Fee | Proposed Revision (rate of increase) | Cost Recovery Rate after the Proposed Revision |
|-----|--|--|---|---------------------|---|---|
| (a) | Application for naturalization as a Chinese national - on application | \$1,570 (Jun 2006) | 89% | \$1,730 | +\$160 (10%) | 98% |
| (b) | Application for naturalization as a Chinese national - on demand for a certificate | \$1,570 (Jun 2006) | 89% | \$1,730 | +\$160 (10%) | 98% |

4. L.N. 144 comes into operation on 9 February 2015.

5. Members may refer to the LegCo Brief (File Ref.: SBCR 3/3231/66) issued by the Security Bureau in December 2014 for background information.

6. The Clerk to the Panel on Security (the Security Panel) has advised that an information paper provided by the Administration on its proposals to revise a number of fees and charges for services provided by the Immigration Department (relating to L.N. 144 to 146 and 149) was circulated to the Security Panel and copied to all other non-Panel Members on 5 June 2014, and no comment on the paper has been received from members.

**Marriage Ordinance (Amendment of Schedule 2)
Order 2014**

(L.N. 146)

7. L.N. 146 is made by the Chief Executive in Council under section 36 of the Marriage Ordinance (Cap. 181). It amends Schedule 2 to Cap. 181 to revise the fees payable for: -

- (a) processing an application for the appointment as a civil celebrant of marriages or for the renewal of such an appointment;
- (b) the appointment as such a civil celebrant; and
- (c) the renewal of an appointment as such a civil celebrant.

8. According to paragraph 4 of the LegCo Brief, a recent costing review conducted at 2014-2015 prices shows that the existing fees (which have not been revised since March 2006) related to the appointment and renewal for appointment as a civil celebrant only recover 56% to 79% of the full cost of providing the service. In order to achieve full cost recovery gradually and avoid a steep fee increase, a 10% to 16% increase in these fees is made. Details are set out below: -

| | | Existing Fee (last revision date) | Cost recovery level at 2014-15 price level | Proposed Fee | Proposed Revision (rate of increase) | Cost Recovery Rate after the Proposed Revision |
|-----|--|--|---|---------------------|---|---|
| (a) | Processing application for appointment as civil celebrant or for renewal of such appointment | \$650 (Mar 2006) | 79% | \$715 | +\$65 (10%) | 86% |
| (b) | Appointment as civil celebrant | \$350 (Mar 2006) | 56% | \$405 | +\$55 (16%) | 65% |
| (c) | Renewal of appointment as civil celebrant | \$350 (Mar 2006) | 56% | \$405 | +\$55 (16%) | 65% |

9. L.N. 146 comes into operation on 9 February 2015.

10. Members may refer to the LegCo Brief (File Ref.: SBCR 3/3231/66) issued by the Security Bureau in December 2014 for background information.

11. The Clerk to the Security Panel has advised that an information paper provided by the Administration on its proposals to revise a number of fees and charges for services provided by the Immigration Department (relating to L.N. 144 to 146 and 149) was circulated to the Security Panel and copied to all other non-Panel Members on 5 June 2014, and no comment on the paper has been received from members.

**Port Control (Cargo Working Areas) (Amendment)
Regulation 2014**

(L.N. 148)

12. L.N. 148 is made by the Secretary for Financial Services and the Treasury (SFST) under section 29A of the Interpretation and General Clauses Ordinance (Cap. 1) by virtue of section 6 of the Port Control (Cargo Working Areas) Ordinance (Cap. 81). It amends the Schedule to the Port Control (Cargo Working Areas) Regulations (Cap. 81A) to increase the Operation Area Permit (OAP) fee of the Public Cargo Working Areas (PCWAs) in two phases.

13. According to paragraph 4 of the LegCo Brief, to meet the increased cost of providing the services and facilities at PCWAs and taking into account the accumulative increase of the Composite Consumer Price Index by about 10.1% from 1999 to 2012, an increase of 10% for OAP fee (which has not been revised since its introduction in 1999) from \$10 to \$11 per square metre per month is made in two phases (i.e. to increase the OAP fee from \$10 to \$10.5 per square metre per month from 1 February 2015, and further increase the OAP fee from \$10.5 to \$11.0 per square metre per month from 1 August 2015), with a view to minimizing the possible impact on the trade.

14. Members may refer to the LegCo Brief (no file reference) issued by the Transport and Housing Bureau and the Marine Department on 2 December 2014 for background information. Members may note that the percentages of the cost recovery level before and after the proposed fee revisions are not provided.

15. According to paragraph 10 of the LegCo Brief, the Marine Department consulted the trade through the PCWA Management Committee Meeting held in March 2014 on the proposal to increase the OAP fee from \$10 to \$11 per square metre per month. Four written submissions were received regarding the proposed increase. Taking account of the trade's feedback, the proposal is refined by introducing a phased increase (i.e. the proposed \$1 increase to be introduced in two stages, with an increase of \$0.5 per square metre per month in early 2015, and another increase of \$0.5 per square metre per month six months thereafter). At a further meeting of the Committee in June 2014, the attending representatives raised no objection to the phased increase proposal.

16. The Clerk to the Panel on Economic Development (the EDEV Panel) has advised that the Administration consulted the EDEV Panel at the meeting held on 27 October 2014 on the proposal to increase the OAP fee of the PCWAs prescribed in item 16 of the Schedule to Cap. 81A. The Panel did not raise objection to the proposed phased increase of the OAP fee. In response to members' concerns and suggestions, the Administration advised that it would consider, in the context of the comprehensive review for the allocation of PCWA berths, different ways to reduce the overall operation cost of PCWAs, such as continuing contracting out some of the

PCWAs' management tasks and changing the vehicle entry ticket charges from an hourly to a half-hourly basis. The Administration undertook to report the outcome of the review to the Panel in due course.

Registration of Persons (Amendment) Regulation 2014

(L.N. 149)

17. L.N. 149 is made by the SFST under section 29A of Cap. 1 by virtue of section 7 of the Registration of Persons Ordinance (Cap. 177). It amends Schedule 2 to the Registration of Persons Regulations (Cap. 177A) to revise the fees payable for: -

- (a) replacing a lost or destroyed identity card;
- (b) replacing a damaged or defaced identity card;
- (c) replacing an identity card requiring alteration; and
- (d) furnishing a certificate or a certified copy.

18. According to paragraph 5 of the LegCo Brief, a recent costing review conducted at 2014-2015 prices shows that some existing fees (which were last revised in June 2006) in relation to identity cards only recover 82% to 84% of the full cost of providing the services. In order to achieve full cost recovery gradually and avoid a steep fee increase, the fees payable for these services are proposed to be increased by 10%. Details are set out below: -

| | | Existing Fee (last revision date) | Cost recovery level at 2014-15 price level | Proposed Fee | Proposed Revision (rate of increase) | Cost Recovery Rate after the Proposed Revision |
|-----|---|--|---|---------------------|---|---|
| (a) | Lost or destroyed identity card replaced | \$335 (Jun 2006) | 83% | \$370 | +\$35 (10%) | 91% |
| (b) | Damaged or defaced identity card replaced | \$335 (Jun 2006) | 83% | \$370 | +\$35 (10%) | 91% |

| | | Existing Fee (last revision date) | Cost recovery level at 2014-15 price level | Proposed Fee | Proposed Revision (rate of increase) | Cost Recovery Rate after the Proposed Revision |
|-----|---|--|---|---------------------|---|---|
| (c) | Identity card requiring alteration replaced | \$420 (Jun 2006) | 84% | \$460 | +\$40 (10%) | 92% |
| (d) | Certificate or a certified copy furnished | \$385 (Jun 2006) | 82% | \$425 | +\$40 (10%) | 91% |

19. L.N. 149 comes into operation on 9 February 2015.

20. Members may refer to the LegCo Brief (File Ref.: SBCR 3/3231/66) issued by the Security Bureau in December 2014 for background information.

21. The Clerk to the Security Panel has advised that an information paper provided by the Administration on its proposals to revise a number of fees and charges for services provided by the Immigration Department (relating to L.N. 144 to 146 and 149) was circulated to the Security Panel and copied to all other non-Panel Members on 5 June 2014, and no comment on the paper has been received from members.

PART II IMMIGRATION REGULATIONS AND REVISION OF FEES

Immigration (Amendment) Regulation 2014

(L.N. 145)

22. L.N. 145 is made by the Chief Executive in Council under section 59 of the Immigration Ordinance (Cap. 115). It amends the Immigration Regulations (Cap. 115A) to: -

- (a) repeal regulation 3(d) (which provides for the power of the Director of Immigration (the Director) to issue and renew a visitor's permit for a resident of Macau) and the related items 12 and 13 of Schedule 2 (which are now obsolete in consequence of the cessation of issuance of a visitor's permit for a resident of Macau for multiple visits and single visit in 2000 and 2004 respectively);
- (b) repeal item 14A of Schedule 2 (which is now obsolete as the demand for iPermit, which was terminated in March 2014, has declined sharply following the launch of the free online arrangement for visitors from

Taiwan in September 2012, namely the Pre-arrival Registration for Taiwan Residents); and

- (c) revise various fees in Schedule 2 payable for the issue or renewal of documents issued by or on behalf of the Director and for visas and other matters.

23. According to paragraph 4 of the LegCo Brief, a recent costing review conducted at 2014-2015 prices shows that some existing fees (which were last revised in April 2001 and June 2006) for the issue, renewal, replacement, endorsement and delivery of visas/entry permits and travel documents and associated services only recover 22% to 73% of the full cost of providing the services. In order to achieve full cost recovery gradually and avoid a steep fee increase, an 11% to 21% increase in the fees payable for these services is made. Details are set out below: -

| | | Existing Fee (last revision date) | Cost recovery level at 2014-15 price level | Proposed Fee | Proposed Revision (rate of increase) | Cost Recovery Rate after the Proposed Revision |
|-----|---|--|---|---------------------|---|---|
| (a) | Seaman's identity book (whether of full or restricted validity) | \$215 (Jun 2006) | 38% | \$260 | +\$45 (21%) | 46% |
| (b) | Ordinary visa | \$160 (Jun 2006) | 22% | \$190 | +\$30 (19%) | 26% |
| (c) | Transit visa | \$84 (Jun 2006) | 22% | \$100 | +\$16 (19%) | 27% |
| (d) | Change of conditions of stay or extension of limit of stay | \$160 (Jun 2006) | 22% | \$190 | +\$30 (19%) | 26% |
| (e) | Entry permit valid for one entry | \$160 (Jun 2006) | 22% | \$190 | +\$30 (19%) | 26% |

| | | Existing Fee (last revision date) | Cost recovery level at 2014-15 price level | Proposed Fee | Proposed Revision (rate of increase) | Cost Recovery Rate after the Proposed Revision |
|-----|--|--|---|---------------------|---|---|
| (f) | Entry permit for multiple entries and valid for one year | \$325 (Jun 2006) | 22% | \$390 | +\$65 (20%) | 27% |
| (g) | Entry permit for multiple entries and valid for three years | \$650 (Jun 2006) | 22% | \$780 | +\$130 (20%) | 27% |
| (h) | Endorsement to a travel document for which no specific fee is provided | \$165 (Jun 2006) | 38% | \$200 | +\$35 (21%) | 46% |
| (i) | Service charge for supplying, on application, a copy of any document, or for making or forwarding, or both, a request or recommendation to any authority of a foreign state, for consular or nationality registration or for the issue or renewal of a passport or other travel document or of a document of identity or for the grant of a visa or entry permit | \$180 (Jun 2006) | 38% | \$215 | +\$35 (19%) | 45% |

| | | Existing Fee (last revision date) | Cost recovery level at 2014-15 price level | Proposed Fee | Proposed Revision (rate of increase) | Cost Recovery Rate after the Proposed Revision |
|-----|--|--|---|---------------------|---|---|
| (j) | APEC business travel card valid for a period of not more than five years | \$427 (Apr 2001) | 69% | \$490 | +\$63 (15%) | 79% |
| (k) | Replacement of an APEC business travel card for the remainder of its validity period | \$165 (Jun 2006) | 62% | \$190 | +\$25 (15%) | 71% |
| (l) | Travel pass valid for not more than three years | \$575 (Jun 2006) | 64% | \$660 | +\$85 (15%) | 73% |
| | Additional fee for delivering a seaman's identity book or a document of identity to a place outside Hong Kong by express despatch service: - | | | | | |
| (m) | Asia-Pacific | \$125 (Jun 2006) | 64% | \$145 | +\$20 (16%) | 74% |
| (n) | North America and Europe | \$180 (Jun 2006) | 73% | \$200 | +\$20 (11%) | 82% |
| (o) | Other places | \$250 (Jun 2006) | 69% | \$290 | +\$40 (16%) | 80% |

24. L.N. 145 comes into operation on 9 February 2015.

25. Members may refer to the LegCo Brief (File Ref.: SBCR 3/3231/66) issued by the Security Bureau in December 2014 for background information.

26. The Clerk to the Security Panel has advised that an information paper provided by the Administration on its proposals to revise a number of fees and charges for services provided by the Immigration Department (relating to L.N. 144 to 146 and 149) was circulated to the Security Panel and copied to all other non-Panel Members on 5 June 2014, and no comment on the paper has been received from members.

PART III DISTRICT COUNCIL ELECTION

Declaration of Constituencies (District Councils) Order 2014 (L.N. 147)

27. L.N. 147 is made by the Chief Executive in Council under section 6 of the District Councils Ordinance (Cap. 547), after accepting in the entirety the recommendations in the report submitted by the Electoral Affairs Commission (EAC) to the Chief Executive on the delineation and names for the constituencies for the District Council (DC) ordinary election in 2015, to declare the respective constituencies of the 18 Districts by delineating their areas and giving names to the constituencies for that election.

28. Members may refer to the LegCo Brief (File Ref: CMAB C2/11) issued by the Constitutional and Mainland Affairs Bureau on 3 December 2014 for the working principles adopted by the EAC in arriving at its provisional recommendations and, following public consultation on its provisional recommendations, the approach it adopted in drawing up its final recommendations for the declaration and delineation of constituencies. According to paragraphs 18 and 19 of the LegCo Brief, EAC, having regard to the representations received, adjusted its provisional recommendations in respect of 20 constituencies and the names of two constituencies in its final recommendations. The final recommendations were submitted to the Chief Executive on 5 November 2014.

29. 431 constituencies are declared in L.N. 147, which is the same number as the existing constituencies under the Declaration of Constituencies (District Councils) Order 2011 (Cap. 547F). The boundaries of 109 constituencies are proposed to be changed. 24 constituencies exceeds the 25% deviation limits in respect of the population quota, mainly due to the need to preserve community integrity and local ties.

30. According to the Clerk to the Panel on Constitutional Affairs (the CA Panel), the CA Panel has not discussed the Declaration of Constituencies (District Councils) Order 2014. However, during the discussion of the former Subcommittee

on DC Ordinance (Amendment of Schedule 3) Order 2013, some members suggested that the Administration should consider increasing the number of elected seats of Islands DC to cope with the rapid growth in population of Tung Chung. The Administration advised that the completion and in-take period for most of the new residential developments in Tung Chung would be beyond mid-2015. Hence, the projected increase in population brought about by the residential developments in Tung Chung should be dealt with in the context of the next review exercise by the EAC to recommend the delineation of DC constituencies for the DC ordinary election in 2015.

31. L.N. 147 comes into operation on 30 January 2015 for the purposes relating to the District Council ordinary election in 2015, and in so far as it has not come into operation, on 1 January 2016 (i.e. the beginning of the fifth term of office of District Councils). The Declaration of Constituencies (District Councils) Order 2011 (Cap. 547F) will consequentially be repealed.

PART IV LEGISLATION PUBLICATION (REVISION) ORDER

Legislation Publication (Revision) Order 2014

(L.N. 150)

32. Section 17 of the Legislation Publication Ordinance (Cap. 614) empowers the Secretary for Justice (SJ) to, among other things, (a) make an alteration to an Ordinance for the purpose of securing uniformity in expression within the Ordinance or with another Ordinance, (b) organize the provisions of an Ordinance into, and assign numbers and headings to, groups of provisions, without changing the sequence of those provisions, (c) amend an Ordinance to effect the replacement of a reference to a date in the form of a description by the actual calendar date, and (d) amend an Ordinance to change the way of referring to a provision.

33. L.N. 150 is made by the SJ under section 17 of Cap. 614 to make amendments to various Ordinances and subsidiary legislation. According to paragraph 1 of the LegCo Brief (File Ref.: LDT 993/01/0), these amendments are to ensure that the relevant provisions are accurate, up-to-date and accord with current legislative drafting practices. L.N. 150 is divided into 5 parts: -

- (a) Part 1 provides for commencement;
- (b) Part 2 makes alterations to a number of Ordinances for the purpose of securing uniformity in expression, e.g. references to "《海關條例》" in the Chinese text of various enactments are substituted by "《香港海關條例》", "全職學生" in the Chinese text of the Public Health and Municipal Services (Fees and Charges) (Museums) Regulation

(Cap. 132CK) are substituted by "全日制學生", "揭發" in the Chinese text of the Road Traffic (Construction and Maintenance of Vehicles) Regulations (Cap. 374A) are substituted by "發覺";

- (c) Part 3 amends item 2(a) of the Table in Schedule 2 to the Business Registration Ordinance (Cap. 310) to replace a reference to a date in the form of a description by the actual calendar date;
- (d) Part 4 amends the following subsidiary legislation to change the way of referring to a provision, namely by substituting "paragraph" by "subrule" or "subregulation" as appropriate: -
 - (i) the Bankruptcy Rules (Cap. 6A);
 - (ii) the Prison Rules (Cap. 234A);
 - (iii) the Frontier Closed Area (Permission to Enter) Notice (Cap. 245H);
 - (iv) the Marine Fish (Marketing and Exportation) Regulations (Cap. 291A); and
 - (v) the Prison (Amendment) Rules 2012 (L.N. 60 of 2012); and
- (e) Part 5 amends the following Rules to organize the provisions of the Rules into, and assign numbers and headings to, groups of provisions: -
 - (i) the Bankruptcy Rules (Cap. 6A);
 - (ii) the Prison Rules (Cap. 234A);
 - (iii) the Patents (General) Rules (Cap. 514C); and
 - (iv) the Trade Marks Rules (Cap. 559A).

34. L.N. 150 comes into operation on 6 February 2015.

35. Members may refer to the LegCo Brief issued by the Department of Justice on 3 December 2014 for background information.

36. The Clerk to the Panel on Administration of Justice and Legal Services (the AJLS Panel) has advised that the AJLS Panel was briefed by the Administration on the Legislation Publication (Revision) Order 2012 at its meeting held on 26 March 2012. The AJLS Panel was also informed that in the future, revision orders will be

introduced on a regular basis. The AJLS Panel noted that during the scrutiny of the Legislation Publication Bill, the Administration agreed to tighten the scope of editorial powers in response to members' concern. For example, the power to omit provisions is limited to enacting, expired or spent provisions and the power to re-arrange items is limited to a list of definitions or unnumbered items only. Certain proposed editorial powers (e.g. amending a provision heading, changing a reference to a date, gender-neutral amendments) were also transferred to the regime of revision order under section 17 of Cap. 614 so that the amendments will be subject to negative vetting by the Legislative Council. On the basis of the aforesaid tightly-drawn scope of editorial powers and the overriding principle that any editorial amendment must not change the legal effect of a provision, the AJLS Panel shared the views of members of the then Bills Committee on Legislation Publication Bill that no scrutiny would be required for editorial amendments.

Concluding observations

37. The Legal Service Division is still scrutinizing L.N. 150 and a further report will be made, if necessary. No difficulties have been identified in the legal and drafting aspects of the other items of subsidiary legislation.

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