

立法會
Legislative Council

LC Paper No. LS17/15-16

**Paper for the House Committee Meeting
on 18 December 2015**

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 11 December 2015**

Tabling in LegCo : Council meeting of 16 December 2015

Amendment to be made by : Council meeting of 13 January 2016 (or that of 3 February 2016 if extended by resolution)

**Pharmacy and Poisons (Amendment) (No. 6) Regulation
2015** (L.N. 234)

**Pharmacy and Poisons (Amendment) (No. 7) Regulation
2015** (L.N. 235)

L.N. 234 and L.N. 235 are made by the Pharmacy and Poisons Board (the Board) under section 29(1B) of the Pharmacy and Poisons Ordinance (Cap. 138) with the approval of the Secretary for Food and Health (SFH).

L.N. 234

2. L.N. 234 amends the Pharmacy and Poisons Regulations (Cap. 138A) by —

- (a) removing certain preparations containing nicotine (the Substance) from Division B of Schedule 2 to Cap. 138A; and
- (b) adding to paragraph (e) of Division A of Part 2 of Schedule 10 to Cap. 138A (the Poisons List) certain nicotine-containing pharmaceutical products intended to be used in nicotine replacement therapy.

3. The effects of the above amendments are that —

- (a) the Substance will no longer be exempted from the restrictions imposed under Cap. 138 and Cap. 138A relating to sale, supply, labelling and storage;

- (b) to tighten the control over nicotine-containing pharmaceutical products (other than chewing gum or lozenges, intended to be used in nicotine replacement therapy and containing not more than 4 mg of nicotine per piece and patches for external application).

L.N. 235

4. L.N. 235 amends Cap. 138A by —

- (a) adding seven substances (the Seven Substances) to Division A of Schedule 1 and Division A of Schedule 3.
- (b) adding the Seven Substances to Division A of Part 1 of the Poisons List; and
- (c) amending the Poisons List to relax the control over "Clotrimazole; its salts" when contained in pharmaceutical products labelled only for the treatment of tinea pedis or tinea cruris, or both by reclassifying the substance from Part 1 poisons to Part 2 poisons.

5. Substances included in Schedule 1 to Cap. 138A are subject to restrictions concerning their sale, supply, labelling and storage. Substances included in Schedule 3 to Cap. 138A can be sold by retail only upon a prescription given by a registered medical practitioner, registered dentist or registered veterinary surgeon. Poisons containing substances listed in Part 1 of the Poisons List can only be sold on registered premises of an authorized seller of poisons by a registered pharmacist or in the presence and under the supervision of a registered pharmacist.

6. According to paragraph 4 of the LegCo Brief on L.N. 234 and paragraph 5 of the LegCo Brief on L.N. 235 (both with file ref: FHB/H/23/4) issued by the Food and Health Bureau in December 2015, the Board considers the amendments appropriate in view of the potency, toxicity and potential side effects of the above substances. Members may refer to Annex B of the LegCo Brief on L.N. 235 for details on the Seven Substances.

7. L.N. 234 and L.N. 235 came into operation on the date of publication in the Gazette, i.e. 11 December 2015.

8. As advised by the Clerk to the Panel on Health Services, the Panel has not been consulted on L.N. 234 and L.N. 235.

Dangerous Drugs Ordinance (Amendment of Second Schedule) Order 2015

(L.N. 236)

9. L.N. 236 is made by the Secretary for Security under section 50(2) of the Dangerous Drugs Ordinance (Cap. 134) to amend the list of hospitals and institutions (known as prescribed hospitals) as specified in the Second Schedule to Cap. 134 by —

- (a) adding nine institutions, which are mainly nursing or elderly homes, to the Schedule;
- (b) updating the names of four hospitals and four institutions in the Schedule; and
- (c) removing three institutions from the Schedule due to their closure.

10. Under section 22(1)(e) and (f) of Cap. 134, a registered pharmacist or an approved person who is employed or engaged at a prescribed hospital and whose duties include the dispensing or supply of medicines for such a hospital, or a sister in charge of a ward, theatre or other department in a prescribed hospital, may, subject to other provisions of Cap. 134, possess and supply dangerous drugs so far as it is necessary for the practice or exercise of his or her profession, function or employment.

11. Members may refer to Annexes B, C and D of the LegCo Brief (with no reference number) issued by Security Bureau dated 9 December 2015 for further information.

12. As advised by the Clerks to the Panel on Health Services and Panel on Security, the Panels have not been consulted on L.N. 236.

13. L.N. 236 comes into operation on 5 February 2016.

Smoking (Public Health) Ordinance (Amendment of Schedule 2) Order 2015

(L.N. 237)

14. Under section 3(1) of the Smoking (Public Health) Ordinance (Cap. 371), the areas described in Part 1 of Schedule 2 are designated as no smoking areas (NSAs). Under section 16A of Cap. 371, the Secretary for Food and Health (SFH) may, by order published in the Gazette, amend the Schedules to Cap. 371. Under section 7(1) of Cap. 371, any person who smokes or carries a lighted cigarette, cigar or pipe in a NSA commits an offence and is liable on summary conviction to a fine of \$5,000. A public officer may issue a fixed penalty notice under section 3 of the Fixed Penalty (Smoking Offences) Ordinance (Cap. 600) in place of prosecution.

15. L.N. 237, made by SFH under section 16A of Cap. 371, amends Schedule 2 to Cap. 371 by designating eight tunnel bus interchanges and their adjoining facilities as new NSAs¹. The 8 new NSAs are as follows —

- (a) Lion Rock Tunnel Bus Interchange;
- (b) Cross-Harbour Tunnel Bus Interchange;
- (c) Eastern Harbour Crossing Bus Interchange;
- (d) Shing Mun Tunnels Bus Interchange;
- (e) Tate's Cairn Tunnel Bus Interchange;
- (f) Western Harbour Crossing Bus Interchange;
- (g) Tai Lam Tunnel Bus Interchange; and
- (h) Tsing Sha Highway Bus Interchange.

16. According to paragraph 7 of the LegCo Brief, the Administration have consulted the relevant parties including stakeholders, the relevant District Councils, tunnel operators, Mass Transit Railway Company Limited and bus companies.

17. As advised by the Clerk to the Panel on Health Services, the Panel has been consulted at its meeting on 18 May 2015 on the legislative proposal. No adverse comments were received by the Administration in relation to the amendments.

18. L.N. 237 comes into operation on 31 March 2016.

Legal Practitioners (Amendment) Ordinance 2012 (Commencement) Notice

(L.N. 238)

19. L.N. 238 was made under section 2 of the Legal Practitioners (Amendment) Ordinance 2012 (22 of 2012) (LPAO), the Secretary for Justice appoints 1 March 2016 (the commencement date) as the day on which LPAO comes into operation.

20. The Legal Practitioners (Amendment) Bill 2010 (enacted as LPAO) was passed by the Legislative Council on 12 July 2012. LPAO amends the Legal Practitioners Ordinance (Cap. 159) to introduce limited liability partnerships for law firms in Hong Kong. Members may refer to the Report of the Bills Committee (LC Paper No. CB(2)2254/11-12) for further information. In response to the Legal Service Division's enquiries, the Administration explained that LPAO has not been brought into operation pending the making of five items of related subsidiary legislation².

¹ The actual boundaries of the new NSAs are delineated on respective plans signed by the SFH and deposited in the Land Registry. The relevant plans were also published in the Gazette on 11 December 2015 (G.N. 9501).

² L.N. 101 of 2015; L.N. 102 of 2015; L.N. 103 of 2015; L.N. 175 of 2015 and L.N. 176 of 2015

21. According to the Administration, the Judiciary and Law Society of Hong Kong had been consulted on the proposed commencement date. The Administration also informed members of the Subcommittee on Rules of the High Court (Amendment) (No. 3) Rules 2015 (L.N. 175 of 2015) and Rules of the District Court (Amendment) Rules 2015 (L.N. 176 of 2015) at its meeting on 22 October 2015 of the commencement date. No adverse comment has been received by the Administration during the consultation.

22. As advised by the Clerk to the Panel on Administration of Justice and Legal Services, the Panel has not been consulted on L.N. 238.

SUBSIDIARY LEGISLATION NOT REQUIRED TO BE TABLED AND NOT SUBJECT TO AMENDMENT

United Nations Sanctions (Liberia) (No. 2) Regulation 2015 (L.N. 239)

United Nations Sanctions (Liberia) Regulation 2015 (Repeal) Regulation (L.N. 240)

23. L.N. 239 and L.N. 240 are made by the Chief Executive under section 3 of the United Nations Sanctions Ordinance (Cap. 537) on the instruction of the Ministry of Foreign Affairs of the People's Republic of China and after consultation with the Executive Council.

24. Since March 2001, the Security Council of the United Nations (UNSC) has adopted a series of resolutions imposing sanctions against Liberia in view of the country's support for armed rebel groups in neighbouring countries which constituted a threat to international peace and security in the region. These sanctions include travel ban measures, financial sanctions measures and arms-related sanctions. The relevant sanctions have been implemented by the United Nations Sanctions (Liberia) Regulation 2015 (Cap. 537BL). All provisions in the Cap. 537BL, except for those relating to financial sanctions, expired at midnight on 8 September 2015.

25. L.N. 239 is made to implement UNSCR 2237, as adopted by UNSC on 2 September 2015, in respect of Liberia by renewing the prohibitions or sanctions against —

- (a) the supply, sale, transfer or carriage of arms or related material to a person operating in the territory of Liberia; and
- (b) the provision of assistance, advice or training related to military activities to a person operating in the territory of Liberia.

26. L.N. 240 repeals the United Nations Sanctions (Liberia) Regulation 2015 (Cap. 537BL) consequential upon the making of L.N. 239.

27. L.N. 239 and L.N. 240 came into operation on the date of publication in the Gazette, i.e. 11 December 2015. The provisions in L.N. 239 will expire at midnight on 1 June 2016.

28. Under section 3(5) of Cap. 537, sections 34 and 35 of the Interpretation and General Clauses Ordinance (Cap. 1) shall not apply to regulations made under Cap. 537. Accordingly, L.N. 239 and L.N. 240 are not required to be tabled in the Legislative Council (LegCo) and are not subject to amendment by LegCo. However, since they come within the terms of reference of the Subcommittee to Examine the Implementation in Hong Kong of Resolutions of the United Nations Security Council in relation to Sanctions (the Subcommittee), Members may consider referring L.N. 239 and L.N. 240 to the Subcommittee for its consideration.

29. As advised by the Clerk to the Subcommittee, the LegCo Brief on L.N. 239 and L.N. 240 has been circulated to members of the Subcommittee and all other Members on 14 December 2015 (LC Paper No. CB(1) 290/15-16).

Concluding Observations

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

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