

**立法會**  
***Legislative Council***

LC Paper No. LS5/16-17

**Paper for the House Committee Meeting  
on 21 October 2016**

**Further Report by Legal Service Division on  
subsidiary legislation (L.N. 133 to L.N. 143)  
gazetted on 7 October 2016**

Members may recall that at the House Committee meeting on 14 October 2016, the Legal Service Division ("LSD") reported that we were scrutinizing L.N. 133 to L.N. 143 i.e. subsidiary legislation made to implement the requirements under the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (the "STCW Convention") as revised by the "Manila Amendments" adopted by the International Maritime Organization in 2010 (the "Revised STCW Convention") and would report further, if necessary.

L.N. 133 to L.N. 143

2. LSD has sought clarification from the Administration on certain issues in relation to L.N. 133 to L.N. 143 but has not raised any queries on L.N. 142. The issues raised are mainly:

- (a) reason for the time gap between 1 December 2016 (the commencement date of L.N. 134, 136, 137 and 138 to introduce the updated requirements of the Manila Amendments) and 1 January 2017 (the commencement of L.N. 144 to L.N. 148 to repeal the existing requirements in the subsidiary legislation made under the Merchant Shipping (Seafarers) Ordinance (Cap. 478) in consequence of the making of L.N. 134, 136, 137 and 138);
- (b) whether two sets of similar legislation (i.e. on one hand, Cap. 478K, Cap. 478W, Cap. 478Y, Cap. 478AC and Cap. 478Z, and on the other hand, L.N. 134, 136, 137 and 138) are applicable from 1 December 2016 to 1 January 2017;
- (c) reason for providing for transitional provisions in L.N. 135 after its commencement on 1 December 2016; and

- (d) reason for removing the existing right of appeal against a decision of the Seafarers' Authority under section 8(2) of the Merchant Shipping (Seafarers) (Certification of Officers) Regulation (Cap. 478J) to refuse to issue a certificate from the Administrative Appeals Board Ordinance (Cap. 442) as amended by the Administrative Appeals Board Ordinance (Amendment of Schedule) Order 2016 (L.N. 143), and for not including in Cap. 442 as amended by L.N. 143 the right of appeal under certain circumstances arising from L.N. 133 to L.N. 138.

3. In relation to the issue in paragraph 2(a), the Administration explained that bringing L.N. 134, 136, 137 and 138 into operation on 1 December 2016 was to enable the Seafarers' Authority (i.e. the Director of Marine) to issue new certificates to seafarers working on sea-going ships to carry out certain designated duties or posts from that date such that seafarers would be able to obtain their new certificates and fulfilled the relevant requirements under the Revised STCW Convention by 1 January 2017.

4. In relation to the issue in paragraph 2(b), the Administration confirmed that two sets of similar legislation co-existed but the Administration explained that a transitional provision was provided respectively in L.N. 134, 136, 137 and 138 and the effect of this is that during the transitional period between 1 December 2016 and 31 December 2016, contravention of the new requirements would not trigger the offence provisions in the above items of subsidiary legislation. The Administration further confirmed that in substance, there would be only one set of enforceable requirements during the transitional period i.e. those under the existing Cap. 478K, Cap. 478W, Cap. 478Y, Cap. 478AC and Cap. 478Z.

5. In relation to the issue in paragraph 2(c), the Administration explained that although L.N. 135 would come into operation on 1 December 2016, it was necessary to provide for a transitional period from 1 December 2016 to 31 December 2016 to enable the Seafarers' Authority to issue the relevant certificates of proficiency to seafarers from 1 December 2016 onwards to work as electro-technical ratings. Under the transitional provisions, contravention of the new requirement would not trigger the offence provision during the transitional period.

6. In relation to the issue in paragraph 2(d), the Administration explained that the right of appeal under section 8(2) of Cap. 478J was reprovioned in the new section 7B of Cap. 478J referred to under the amended item 53(a) of the Schedule to Cap. 442 in L.N. 143, which covered all certificates of competency under Cap. 478J. Further, the Administration explained that the right of appeal under certain circumstances arising from L.N. 133 to L.N. 138 were included in the Schedule to Cap. 442 as amended by L.N. 143.

7. Having considered the Administration's replies, LSD has no further comments on the legal and drafting aspects of L.N. 133 to L.N. 143.

8. Members may wish to note that the scrutiny period for amending L.N. 133 to L.N. 143 under section 34(2) of the Interpretation and General Clauses Ordinance (Cap. 1) will expire at the Council meeting of 9 November 2016 (or that of 30 November 2016 if extended by resolution).

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