

立法會
Legislative Council

LC Paper No. LS6/16-17

**Paper for the House Committee Meeting
on 28 October 2016**

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 21 October 2016**

Tabling in LegCo : Council meeting of 26 October 2016

Amendment to be made by : Council meeting of 23 November 2016 (or that of 14 December 2016 if extended by resolution)

PART I FEE REVISIONS

Mines (Safety) (Amendment) Regulation 2016 (L.N. 159)

Dangerous Goods (General) (Amendment) Regulation 2016 (L.N. 160)

Dangerous Goods (Government Explosives Depots) (Amendment) Regulation 2016 (L.N. 161)

At present, there are 27 items of fees or charges relating to the services ("the Services") provided by the Government in respect of mine blasting, manufacture, storage and discharge of dangerous goods, and storage and delivery of explosives. These fees or charges are provided in three regulations made by the Chief Executive ("CE") in Council, namely, the Mines (Safety) Regulations (Cap. 285B), the Dangerous Goods (General) Regulations (Cap. 295B) and the Dangerous Goods (Government Explosives Depots) Regulations (Cap. 295D) respectively.

2. L.N. 159 to L.N. 161 are made by the Secretary for Financial Services and the Treasury ("SFST") under section 29A of the Interpretation and General Clauses Ordinance (Cap. 1)¹ to amend respectively the Third Schedule

¹ In gist, section 29A (1) of Cap. 1 provides that where the amount of any fee or charge is specified in, or otherwise fixed or determined by, subsidiary legislation made by CE in Council, the Financial Secretary ("FS") may by similar subsidiary legislation increase or decrease, or otherwise vary, the amount of the fee or charge. Under section 3 of Cap. 1, FS is defined to mean FS of the Hong Kong Special Administrative Region and the SFST.

to Cap. 285B, the Table to regulation 183(1) of Cap. 295B and the Schedule to Cap. 295D to adjust 26 items of the above fees or charges ("the 26 adjusted items") in relation to—

- (a) the issue or renewal of mine blasting certificates, and the replacement of worn, defaced or lost mine blasting certificates (L.N. 159);
- (b) the grant or renewal of licences or permits relating to the manufacture, storage, movement or discharge of certain dangerous goods in category 1 (explosives and blasting agents), the issue of a duplicate of those licences or permits, and the making of an alteration or addition to, or endorsement on, those licences or permits (L.N. 160); and
- (c) the storage of explosives and explosive accessories in a Government Explosives Depot and the delivery by the Government of explosives and explosive accessories from such depot to any other place (L.N. 161).

3. It is noted that the fee charged for the endorsement of a mine blasting certificate (which is specified in item 4 of the Third Schedule to Cap. 285B) remains unchanged in this legislative exercise. It is also noted that two items out of the 26 adjusted items are reduced by 8% to 9% whereas the remaining 24 items are increased by 6% to 20%. Save for three items which were last revised in January 2015, the relevant items of fees or charges were last revised in January 2016. Members may refer to Annex 1 to the Legislative Council ("LegCo") Brief issued by the Development Bureau in October 2016 (with no file reference) for details of the fees and charges revision. According to paragraph 4 of the LegCo Brief, the adjustment of the fees and charges are made after a review of the cost of providing the Services, with a view to achieving full cost recovery gradually and to avoiding a steep increase.

4. As advised by the Clerk to the Panel on Development, on 21 June 2016, the Administration briefed the Panel on the proposed revision of fees under L.N. 159 to L.N. 161. Members did not raise any objection to the revision of the fees. Some members suggested that the Administration should continue its efforts in streamlining the relevant work procedures with electronic means as appropriate, so as to contain the costs of providing the services. The Administration took note of members' views.

5. L.N. 159 to L.N. 161 come into operation on 1 January 2017.

PART II COMMENCEMENT NOTICE

Judiciary (Five-day Week) (Miscellaneous Amendments) Ordinance 2016 (Commencement) Notice

(L.N. 162)

6. L.N. 162 is made by the Chief Justice under section 1(2) of the Judiciary (Five-day Week) (Miscellaneous Amendments) Ordinance 2016 (Ord. No. 18 of 2016) to appoint 3 January 2017 as the day on which Ord. No. 18 of 2016 comes into operation.

7. The Judiciary (Five-day Week) (Miscellaneous Amendments) Bill 2016 ("the Bill") was passed by LegCo on 2 June 2016 and the enacted Ordinance (Ord. No. 18 of 2016) was published in the Gazette on 10 June 2016. The Ordinance amends various legislation to complete the last phase of implementation of a five-day week ("FDW") arrangement (which is implemented in three phases)² for the Judiciary of Hong Kong and to revise certain provisions regarding the computation of time in relation to judicial proceedings or about the opening time of courts or court offices. No Bills Committee on the Bill was formed.

8. No LegCo Brief on L.N. 162 is issued. Members may refer to the LegCo Brief (File Ref: CSO/ADM CR 3/3231/13) on the Judiciary (Five-day Week) (Miscellaneous Amendments) Bill 2016 issued by the Administration Wing of the Chief Secretary for Administration's Office and the Judiciary Administration on 24 February 2016 for background information.

9. As advised by the Clerk to the Panel on Administration of Justice and Legal Services, on 21 December 2015, the Panel was consulted by the Judiciary Administration on the legislative proposals to implement the final phase (the third phase) of the said FDW arrangement in the Judiciary. Members were generally supportive of the legislative proposals and the related operational arrangements. The Panel has not been consulted on L.N. 162.

PART III NON-LEGISLATIVE INSTRUMENT

Sixth Technical Memorandum for Allocation of Emission Allowances in Respect of Specified Licences

(S.S. No. 5 to Gazette No. 42/2016)

² See paragraph 3 of the LegCo Brief (File Ref: CSO/ADM CR3/3231/13) on the Judiciary (Five-day Week) (Miscellaneous Amendments) Bill 2016 issued by the Administration Wing of the Chief Secretary for Administration's Office and the Judiciary Administration on 24 February 2016.

10. The Sixth Technical Memorandum ("TM") for Allocation of Emission Allowances in Respect of Specified Licences ("Sixth TM") is issued by the Secretary for the Environment ("SE") under section 26G of the Air Pollution Control Ordinance (Cap. 311). The Sixth TM, which supersedes the Fifth TM, allocates for each emission year from 1 January 2021 the quantities of emission allowances for three specified pollutants, namely sulphur dioxide ("SO₂"), nitrogen oxides ("NO_x") and respirable suspended particulates ("RSP") for each of the four power plants³ and possible new electricity works in Hong Kong. It also requires SE to review in 2017 the quantity of emission allowances for each type of specified pollutant for each specified licence set out or determined in accordance with the Sixth TM after its commencement.

11. The scrutiny mechanism for the Sixth TM is set out in section 37B of Cap. 311, which is the same as that for subsidiary legislation provided in section 34 of Cap. 1, i.e. the negative vetting procedure. Under section 37C of Cap. 311, the Sixth TM shall commence to have effect upon the expiry of the 28-day initial amendment period or the period as extended if LegCo does not pass a resolution to amend it. In the case where LegCo passes a resolution amending the Sixth TM, it shall commence to have effect on the day of the publication in the Gazette of such resolution.

12. According to paragraph 15 of the LegCo Brief (with no file reference) issued by the Environmental Protection Department in October 2016, as compared with the emission allowances for 2020 set under the Fifth TM, the Sixth TM will see a further tightening of 8% for SO₂, 3% for NO_x and 6% for RSP for the electricity sector.

13. As advised by the Clerk to the Panel on Environmental Affairs, on 24 October 2016, the Panel was consulted on the Administration's proposal to reduce emission allowances for SO₂, NO_x and RSP for power plants starting from 1 January 2021 by way of issuing the Sixth TM. Members did not raise any objection to the proposal. Members enquired about the feasibility of setting emission caps for PM2.5⁴ in respect of power plants under TMs, and expressed concerns over the potential impact on electricity tariffs arising from the investments in new gas-fired electricity generating units by the two power companies while achieving the target of increasing the proportion of natural gas generation to around 50% in 2020. They also urged the Administration to consider more proactive ways to (i) reduce carbon emissions from power plants and (ii) encourage the power companies to step up efforts in energy savings and reducing local electricity consumption.

³ The four existing power plants are Lamma Power Station and Lamma Power Station Extension, Black Point Power Station, Castle Peak Power Station and Penny's Bay Gas Turbine Power Station.

⁴ PM2.5 refers to the fine particulate matter that can be found in air.

Concluding Observations

14. No difficulties have been identified in the legal and drafting aspects of L.N. 159 to L.N. 162 and the Sixth TM.

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