

立法會
Legislative Council

LC Paper No. LS59/02-03

**Paper for the House Committee Meeting
on 14 February 2003**

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 7 February 2003**

Date of Tabling in LegCo : 12 February 2003

Amendment to be made by : 12 March 2003 (or 2 April 2003 if extended by resolution)

Legislative Council Ordinance (Cap. 542)
District Councils Ordinance (Cap. 547)
Registration of Electors (Appeals) (Amendment) Regulation 2003 (L.N. 26)

Chief Executive Election Ordinance (Cap. 569)
Election Committee (Registration) (Voters for Subsectors) (Members of Election Committee) (Appeals) (Amendment) Regulation 2003 (L.N. 27)

The Electoral Provisions (Miscellaneous Amendments) Ordinance 2002 (33 of 2002) ("the Ordinance") was passed on 18 December 2002 to make provisions, amongst other things, to adjust the cycle for the compilation and publication of:

- (a) electoral registers for geographical constituencies and functional constituencies under the Legislative Council Ordinance (Cap. 542); and
- (b) registers of voters for Election Committee subsectors under the Chief Executive Election Ordinance (Cap. 569).

2. Consequential to the arrangements made by the Ordinance relating to the revised cycle for the compilation and publication of the respective registers, the Registration of Electors (Appeals) (Amendment) Regulation 2003 and the Election Committee (Registration) (Voters for Subsectors) (Members of Election Committee) (Appeals) (Amendment) Regulation 2003 ("the Amendment Regulations") are made to amend the respective periods provided in the Registration of Electors (Appeals) Regulation (Cap. 542 sub. leg.) and the Election Committee (Registration) (Voters for Subsectors) (Members of Election Committee) (Appeals) Regulation (Cap. 569 sub. leg.) in which:

- (a) hearings of appeals against decisions of the Electoral Registration Officer not to register persons as authorized representatives of corporate electors or corporate voters, and claims or objections regarding entries or registration in a geographical constituencies register, a functional constituencies register or a subsector register are held;
- (b) rulings on the appeals, claims and objections are notified to the Electoral Registration Officer; and
- (c) such rulings are reviewed by the Revising Officer.

3. Members may refer to the LegCo Brief issued by the Constitutional Affairs Bureau on 7 February 2003 (File Ref.: CAB A1/30/5/1 & C5/7/1) for further information on the amended periods as provided in the Amendment Regulations. The Amendment Regulations have not been referred to any LegCo Panel.

4. The Amendment Regulations will come into operation on 4 April 2003.

5. No difficulties relating to the legal and drafting aspects of the Amendment Regulations have been identified.

Fugitive Offenders Ordinance (Cap. 503)
Fugitive Offenders (Sri Lanka) Order (L.N. 28)

6. This Order is made by the Chief Executive in Council under section 3 of the Fugitive Offenders Ordinance (Cap. 503) (the Ordinance). Section 3(2) of the Ordinance requires the Order to be gazetted and be laid on the table of LegCo at the next sitting day after its publication. Under section 3(3), LegCo may, within 28 days from the date of its being tabled, by resolution repeal the Order. Before the period expires, it may be extended to the next LegCo sitting.

7. The Order implements the bilateral agreement signed with the Democratic Socialist Republic of Sri Lanka for the surrender of fugitive offenders. Its content is the same as the Order previously gazetted as L.N. 203 of 2001 (the previous Order). The Order will come into operation on a date to be appointed by the Secretary for Security.

8. The previous Order was gazetted on 12 October 2001 and was tabled in LegCo on 17 October 2001. The House Committee decided that a Subcommittee should be formed to study that Order. The Subcommittee reported on 16 November 2001 and recommended that that Order be repealed as there were issues which needed to be further discussed. The previous Order was duly repealed by a LegCo resolution on 21 November 2001. Another Subcommittee comprising the same members was formed to study the outstanding issues. The Subcommittee reported to the House Committee on 18 October 2002 that it had no objection to the re-gazettal of

the previous Order. Members may wish to refer to the LegCo Brief (Ref: SBCR 1/2716/89 (98) Pt.19) issued by the Security Bureau in January 2003 for further information. The report of the latter Subcommittee (Ref: LC Paper No. CB(2)78/02-03) is attached to the LegCo Brief as Annex B.

9. In the circumstances, the Order may be taken to have been studied and accepted by Members.

Public Health and Municipal Services Ordinance (Cap. 132)
Public Health and Municipal Services Ordinance (Public Pleasure Grounds)
(Amendment of Fourth Schedule) Order 2003 (L.N. 29)

10. Section 106 of the Public Health and Municipal Services Ordinance (Cap. 132) ("the Ordinance") empowers the Director of Leisure and Cultural Services ("the Director"), by order, to amend, or add to or delete from the Fourth Schedule of the Ordinance places to be set aside for use as public pleasure grounds.

11. This Order:

- (a) sets aside the places specified in Schedule 1 to the Order for use as public pleasure grounds;
- (b) provides that the places specified in Schedule 2 to the Order cease to be set aside for use as public pleasure grounds;
- (c) renames some of the places specified in the Fourth Schedule of the Ordinance which have been set aside for use as public pleasure grounds; and
- (d) amends the Fourth Schedule of the Ordinance accordingly.

12. The main effect of this Order is to vest the management and control of those public pleasure grounds specified in Schedule 1 to the Order in the Director. It also enables the Director to exercise his other statutory functions under the Ordinance in respect of those public pleasure grounds.

13. No difficulties relating to the legal and drafting aspects of this Order have been identified.

Trade Marks Ordinance (Cap. 559)
Trade Marks Rules (L.N. 30)
Trade Marks Ordinance (Cap. 559) (Commencement) Notice 2003 (L.N. 31)

14. In May 2000, LegCo passed the Trade Marks Ordinance (Cap. 559) which repeals the existing Trade Marks Ordinance (Cap. 43). The new Ordinance

modernises Hong Kong's trade mark law. The Secretary for Commerce, Industry and Technology now appoints 4 April 2003 as the day on which the new Ordinance will come into operation (L.N. 31). To facilitate the implementation of the new regime, the Director of Intellectual Property, as Registrar of Trade Marks, has made the new Trade Mark Rules (the Rules) (L.N. 30) which will also come into operation on 4 April 2003.

15. The Rules set out the procedures relating to application, examination, publication, renewal and removal of registration of a trade mark. An application for registration of a trade mark consisting of representations, colours, sounds, smells, or shape of goods can be filed with the Registrar either in paper or in electronic form. Collective, certification and defensive trade marks can also be filed. The Registrar will examine an application for registration and will inform the applicant if the requirements for registration are not met, e.g. that the trade mark is not distinctive or that there is a conflict with an earlier mark. The applicant has to file written representations to establish that the requirements are met within 6 months and can apply for an extension for 3 more months (Rule 13). Where the Registrar accepts an application for registration of a trade mark, he will publish the particulars of the application in an official journal which will be on a website to be designated by the Registrar. A third party who wishes to institute opposition proceedings against a trade mark registration may then do so before the court or the Trade Marks Registry.

16. The fees in connection with trade mark applications and other related matters are prescribed in the Schedule. According to paragraph 7(b) of the LegCo Brief (File Ref.: CIB CR06/18/12) from the Commerce and Industry Branch of the Commerce, Industry and Technology Bureau dated 5 February 2003, the schedule of fees represents a substantial reduction vis-à-vis the current fees. An applicant who currently wishes to register a trade mark has to pay a total of \$5,400 before a certificate of registration is issued. Under the Rules, an applicant will need to pay a single application fee of \$1,300.

17. According to the Administration, the relevant legal and professional organisations and trade associations have been consulted several times on the proposed Rules. Comments received mainly focused on the time limits for filing representations and documents under the proposed Rules. The Administration has explained to the consultees why some time limits should remain unchanged.

18. The Panel on Commerce and Industry was consulted at its meetings on 11 November 2002 and 21 January 2003. Members suggested that a labelling requirement should be imposed on parallel-imported trade mark goods to help consumers identify the concerned parallel importers in order to protect consumers who have purchased defective parallel imported trade mark goods. The Administration has explained that the labelling requirement will not offer real consumer protection. Members had also sought clarification from the Administration on matters such as electronic filing of applications for registration of trade marks, fees, and publicity programmes.

19. At the Panel meeting on 21 January 2003, a letter from the Hong Kong Institute of Trade Mark Practitioners was tabled. The Institute reiterated their concerns over the draft Rules, in particular the time limits for taking certain steps in proceedings before the Registrar (such as those imposed by Rule 13) and the documents to be made available for public inspection (LC Paper No. 778/02-03 dated 22 January 2003). In its reply (LC Paper CB(1)845/02-03 dated 4 February 2003), the Administration stated that the proposed time frame is considered appropriate and has struck a balance between the interests of trade mark applicants, trademark agents and other stakeholders in the business community.

20. We are still scrutinising the Rules. Members may wish to set up a Subcommittee now to consider the Rules in detail and if necessary, the concerns of interested bodies.

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