

立法會
Legislative Council

LC Paper No. LS76/03-04

**Paper for the House Committee Meeting
on 21 May 2004**

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 7 May 2004**

Date of Tabling in LegCo : 12 May 2004

Amendment to be made by : 9 June 2004 (or 30 June 2004 if extended by resolution)

PART I NEW SUBSIDIARY LEGISLATION

Education Ordinance (Cap. 279)

Education (Exemption) (Private Schools Offering Non-formal Curriculum) Order (L.N. 76)

This Order exempts an exempted school and its personnel from certain requirements of the provisions of the Education Ordinance (Cap. 279) and Education Regulations (Cap. 279 sub. leg. A).

2. "An exempted school" is defined to mean a school that provides any educational course other than nursery, kindergarten, primary, secondary or post secondary education; and is not funded wholly or partly by any subsidy from the Government (section 2 of the Order).

3. An exempted school and its owners, managers, supervisor, principal and teachers are exempted from the requirements of certain provisions of the Education Ordinance and Education Regulations in respect of the grounds for refusal to register a school, and method of payment of and approval for change in inclusive fee for an educational course, etc. (section 3 of and Schedule 1 to the Order).

4. Subject to certain exceptions, an exempted school and its managers, supervisor and principal are exempted from the requirements of certain provisions of the Education Ordinance in respect of the employment of teachers, in particular application for permit to teach (section 4 of and Schedule 2 to the Order).

5. Subject to certain exceptions, the teachers of an exempted school are exempted from the requirements of certain provisions of the Education Ordinance in respect of the qualifications of teachers (section 5 of and Schedule 3 to the Order).

6. The managers, supervisor, principal and teachers of an exempted school are exempted from the requirements of certain provisions of the Education Ordinance in respect of the approval and functions of the principal (section 6 of and Schedule 4 to the Order).

7. An exempted school and its managers, supervisor and principal are exempted from the requirements of certain provisions of the Education Regulations in respect of notification of holidays and hours of instruction (section 7 of and Schedule 5 to the Order).

8. The Administration consulted the Panel on Education ("the Panel") on its proposal on changes in the regulatory control of private schools offering non-formal curriculum (PSNFCs) at the meeting of the Panel on 15 December 2003 (LC Paper No. CB(2)312/03-04(01)). The Administration explained that due to resource constraints, the Education and Manpower Bureau would not be able to monitor the operation and services of some 2 100 PSNFCs in the market. The proposed changes were aimed at enhancing administrative efficiency in regulatory control of PSNFCs, and establishing a regulatory framework in which parents/students and PSNFCs could develop a good provider-consumer relationship in the long run.

9. Some members were concerned that the proposed changes in regulatory control, in particular the proposed exemption from provisions of fees and collections, would create loopholes for malpractices, leading to abuses in collection of fees and sudden closures of PSNFCs. One member expressed support for the proposed changes on the condition that the Administration should carefully plan the implementation so that parents and students would not be adversely affected.

10. The Panel requested the Administration to explore the feasibility of establishing an industry compensation fund to provide compensation to students in the event of the closure of PSNFCs. In its recent response to the Panel (LC Paper No. CB(2)2238/03-04), the Administration has pointed out that the Hong Kong Federation of Private Educators (HKFPE), which has been exploring a Student Protection Scheme for its members, has found the scheme not feasible because it is too demanding and expensive for the participating members. On being consulted again in January 2004, HKFPE decided that it would drop the request for collecting more than one month's fee as it was too difficult to come up with a workable Student Protection Scheme.

11. As the sector is not yet ready for self-regulation, the Administration considers that it is premature and not feasible to establish an industry compensation fund. The Administration has also informed the Panel that the proposal of allowing PSNFCs to collect more than one month but not more than three months' course fee will be excluded from the proposed Education (Exemption) (Private Schools Offering Non-formal Curriculum) Order. Instead, collection of course fee on an equal monthly basis will be maintained. Now according to paragraph 1 of Part 2 of Schedule 1 to the Order, the inclusive fees for an educational course shall be calculated on an equal monthly basis. Other than the first instalment, each instalment of the fees shall be collected on or after the first school day of each month of the period during which the educational course is conducted.

12. This Order will come into operation on 1 July 2004.

Stamp Duty Ordinance (Cap. 117)

Stamp Duty (Specification of Instruments) Notice (L.N. 81)

13. Section 18F (added by the Stamp Duty (Amendment) Ordinance (21 of 2003)) of the Stamp Duty Ordinance (Cap. 117) ("the Ordinance") provides that a person may, in respect of an instrument to which Part IIA applies and being an instrument specified by the Collector of Stamp Revenue ("the Collector"), apply to the Collector for stamping the instrument without presenting it. The Stamp Duty (Amendment) Ordinance will come into operation on the same day as the Notice, i.e. 2 August 2004. The Commencement Notice of the Stamp Duty (Amendment) Ordinance is reported in paragraphs 18-19 below.

14. This Notice specifies the instruments in respect of which a person may apply to the Collector for stamping without presenting the instruments under section 18F of the Ordinance. In general, these instruments are

conveyance on sale chargeable with stamp duty under head (1) in the First Schedule to the Ordinance, agreement for sale chargeable with stamp duty under head 1(1A) in the First Schedule to the Ordinance and lease chargeable with stamp duty under head 1(2)(b) in the First Schedule to the Ordinance.

15. The Panel on Financial Affairs has not been consulted about the Notice. However, at the Bills Committee on the Stamp Duty (Amendment) Bill 2002 (after its enactment it becomes the Stamp Duty (Amendment) Ordinance), the Administration briefed the members in general terms about the types of instruments to be specified under the then proposed section 18F. Members did not raise any particular question about the proposed instruments.

16. This Notice will come into operation on 2 August 2004.

PART II COMMENCEMENT NOTICES

Particulars Relating to Candidates on Ballot Papers (Legislative Council) Regulation (L.N. 263 of 2003)

Particulars Relating to Candidates on Ballot Papers (Legislative Council) Regulation (L.N. 263 of 2003) (Commencement) Notice 2004 (L.N. 80)

17. This Notice appoints 2 July 2004 as the day on which Part 2 (about request to print particulars relating to candidates on ballot papers) of the Particulars Relating to Candidates on Ballot Papers (Legislative Council) Regulation (L.N. 263 of 2003) ("the Regulation") will come into operation. The other provisions of the Regulation came into operation on 6 February 2004.

Stamp Duty (Amendment) Ordinance 2003 (21 of 2003)

Stamp Duty (Amendment) Ordinance 2003 (21 of 2003) (Commencement) Notice 2004 (L.N. 82)

18. This Notice specifies 2 August 2004 as the day on which the Stamp Duty (Amendment) Ordinance 2003 (21 of 2003) ("the Amendment Ordinance") will come into operation.

19. The principal object of the Amendment Ordinance is to amend the Stamp Duty Ordinance (Cap. 117) to introduce an alternative system of stamping under which the Collector of Stamp Revenue may issue a stamp certificate in respect of certain instruments chargeable with stamp duty.

PART III MISCELLANEOUS AMENDMENTS

Registration of Persons Ordinance (Cap. 177)

Application for New Identity Cards (Persons Born in 1952 to 1957 and Cross-boundary Drivers) Order (L.N. 77)

20. This Order amends the Registration of Persons (Application for New Identity Cards) Order (Cap. 177 sub. leg. E) by directing Hong Kong residents born in 1952 to 1957 to apply for new identity cards within specified periods which will commence on 27 September 2004 and end on 12 March 2005. The Order also provides cross-boundary drivers (defined in section 2(b) of the Order) with an option, from 27 September 2004 onwards, to apply for new identity cards before the periods specified for their age groups or within the periods specified for their age groups.

21. Members may refer to LegCo Brief (with no file reference) of 7 May 2004 from Security Bureau for background information. According to paragraph 3 of the Brief, the arrangement for allowing the cross-boundary drivers to have an option to apply for new identity cards earlier will enable them to enjoy the convenience of the Automated Vehicle Clearance System to be introduced at the vehicular control points in phases by end of 2004.

22. The Panel on Security has not been consulted about the Order.

23. This Order will come into operation on 1 July 2004.

Companies Ordinance (Cap. 32)

***Companies Ordinance (Amendment of Eighth Schedule) Order 2004 (L.N. 78)**

24. Part V of the Eighth Schedule to the Companies Ordinance (Cap. 32) ("the Ordinance") sets out the miscellaneous fees to be paid to the Registrar of Companies ("the Registrar"). To cater for the implementation of Phase One of the Integrated Companies Registry Information System ("ICRIS"), this Order repeals Part V of the Eighth Schedule and substitutes it with a new structure of fees payable to the Registrar for inspecting and obtaining documents and records kept by the Registrar under the Ordinance (section 2 of the Order). The Order also adds a new Part VI to the Eighth Schedule which contains those

* Levying of fees

fees items (relating to services other than inspecting and obtaining documents and records) transferred from the repealed Part V of the Eighth Schedule with no change in level of charges (section 2 of the Order).

25. Members may refer to LegCo Brief (File Ref.: C1/6/15(04) Pt 7) issued in May 2004 from Financial Services and the Treasury Bureau for background information. According to the Brief, ICRIS will replace all existing application systems currently running to support the Companies Registry's ("CR") core business activities and enable fully electronic service delivery. Members may also refer to Annex C to the Brief for a comparison table showing the level of charges for comparable services under the proposed system and the existing system.

26. At the Financial Affairs Panel's meeting on 7 July 2003, members noted that CR aimed to achieve an income level under ICRIS that was more or less the same as the existing level, i.e. the "revenue neutral" approach. Some members expressed views/concerns on the following issues—

- (a) As ICRIS would improve the cost-effectiveness of search services, it should result in lower costs, and therefore lower fees;
- (b) Whether CR has consulted its customers, including small and medium enterprises (SME) on the proposed fee levels; and
- (c) The need and viability of providing on-site searchers with on-line search facilities instead of hard copies of documents after the implementation of ICRIS.

27. On items (a) and (b) above, members were advised by the Administration that the fees for a majority of the service items would remain unchanged after the implementation of ICRIS. CR had consulted its Customer Liaison Group (CLG) on the charging proposals for the ICRIS search services in June 2003, and members of CLG generally considered the charging proposals to be fair and reasonable. There was a representative of SME customers in CLG. Nevertheless, the Administration undertook to review the ICRIS charging structure after implementation of the system and explore whether there was room for fee reduction.

28. As regards item (c) above, members were advised by the Administration that the result of a survey conducted by CR suggested that majority of on-site searchers needed hard copies of the relevant documents. While it was technically feasible to allow on-site searchers to have on-line viewing of the imaged records at CR, this would not be cost-effective and might

give rise to considerable operational problems and system security problems. The Administration considered that providing hard copies to on-site searchers was the most appropriate option.

29. Members may wish to refer to the minutes of the Financial Affairs Panel meeting on 7 July 2003 for details (LC Paper No. CB(1)2392/02-03).

30. This Order will come into operation on a day to be appointed by the Registrar by notice published in the Gazette.

Dangerous Drugs Ordinance (Cap. 134)

Dangerous Drugs Ordinance (Amendment of Second Schedule) Order 2004 (L.N. 79)

31. Section 52(6) of the Dangerous Drugs Ordinance (Cap. 134) ("the Ordinance") provides that for the purpose of the Ordinance, any public officer authorized by the Director of Health, Deputy Director of Health or an assistant director of Health may, among other things, enter, inspect and search a hospital or institution specified in the Second Schedule.

32. This Order amends the Second Schedule to the Ordinance by deleting Ma Tau Chung Nursing Home and the Lookout from, and adding eight institutions to, the list of prescribed hospitals and institutions in that Schedule.

33. The Panel on Security has not been consulted about the Order.

34. This Order will come into operation on 1 July 2004.

35. No difficulties relating to the legal and drafting aspects of all the above items of subsidiary legislation have been identified.

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20 May 2004