

立法會
Legislative Council

LC Paper No. LS60/08-09

**Paper for the House Committee Meeting
on 8 May 2009**

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 24 April 2009**

Date of tabling in LegCo : 29 April 2009

Amendment to be made by : 27 May 2009 (or 17 June 2009 if extended by resolution)

Fixed Penalty (Smoking Offences) Ordinance (26 of 2008)

Fixed Penalty (Smoking Offences) Regulation (L.N. 66)

Fixed Penalty (Smoking Offences) (Specification of Authorities and Public Officers) Notice (L.N. 67)

The Fixed Penalty (Smoking Offences) Ordinance (26 of 2008) (the Ordinance) provides for a fixed penalty to be payable for certain offences in contravention of the Smoking (Public Health) Ordinance (Cap. 371), for the recovery of the fixed penalty, and for related matters.

2. Section 3(1) of the Ordinance provides that a public officer may give a person who is committing or has committed a scheduled offence (currently there is only one, namely, smoking in areas designated as no smoking areas or in public transport carriers) a notice in the prescribed form offering him an opportunity to discharge his liability to conviction for the offence by payment of the fixed penalty for the offence within 21 days from the date of the giving of the notice. Section 6(2) of the Ordinance provides that where a person fails to pay the fixed penalty for the scheduled offence specified in the notice given under section 3(1) within the time specified or refuses to accept the notice, the specified Authority shall serve on the person a notice in the prescribed form (a) demanding payment of the fixed penalty for the scheduled offence; (b) informing the person that if he wishes to dispute liability for the offence he should notify the Authority in writing; and (c) stating that the payment or notification shall be made within 10 days from the date of the notice so served.

3. L.N. 66 prescribes the forms of the notices under section 3(1) and section 6(2) of the Ordinance, and the form of a certificate of non-payment to be produced to magistrates as evidence in proceedings for recovery of fixed penalty under the Ordinance. It also specifies the manner of payment of fixed penalty in respect of those notices.

4. In relation to the scheduled offence of smoking in areas designated as no smoking areas or in public transport carries, L.N. 67 specifies the persons and classes of public officers respectively as the "Authority" and "public officer" referred to in the provisions of the Ordinance relating to that scheduled offence.

5. The Panel on Health Services (the Panel) discussed the implementation of fixed penalty for smoking offences on 20 April 2009. The Panel noted and did not raise any query on the proposed introduction of L.N. 66 and L.N. 67.

6. L.N. 66 and L.N. 67 will come into operation on a day to be appointed by the Secretary for Food and Health by notice published in the Gazette. According to the Administration's schedule, the Fixed Penalty System will commence operation on 1 September 2009.

Import and Export (General) Regulation (Cap. 60 sub. leg. A)
Import and Export (General) Regulations (Amendment of Fourth and Fifth Schedules) Order 2009 (L.N. 68)

7. This Order amends the Fourth and the Fifth Schedules to the Import and Export (General) Regulations (Cap. 60 sub. leg. A) (the principal Regulations) so that traders exporting textiles products to the Member States of the European Union (EU) will no longer need to register under the textiles trader registration provided for under regulation 5A of the principal Regulations and cut-and-sewn garments produced for export to the Member States of EU will no longer be subject to the production notification requirement under Part IIA of the Import and Export Ordinance (Cap. 60). In the LegCo Brief, the Trade and Industry Department explains that the relaxation is due to the reclassification of EU as a "non-sensitive" market. It also advises that after this Order comes into operation, all textiles exported to Member States of the EU would only need to be covered by either consignment-specific export licences or comprehensive export licences that are valid for one year to cover multiple shipments.

8. Members may refer to the LegCo Brief (File Ref.: CR EIC 110/10/2/17) issued by the Trade and Industry Department in April 2009 for background information.

9. This Order will come into operation on 29 June 2009.

10. This Order has not been discussed by the Panel on Commerce and Industry.

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

Prepared by

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