

**立法會**  
**Legislative Council**

LC Paper No. LS24/08-09

**Paper for the House Committee Meeting  
on 12 December 2008**

**Legal Service Division Report on  
Subsidiary Legislation Gazetted on 5 December 2008**

**Date of tabling in LegCo** : 10 December 2008

**Amendment to be made by** : 7 January 2009 (or 4 February 2009 if extended by resolution)

**Import and Export Ordinance (Cap. 60)**

**Import and Export (Strategic Commodities) Regulations (Amendment of Schedule 1) Order 2008 (L.N. 254)**

By this Order made by the Director-General of Trade and Industry under section 6B of the Import and Export Ordinance (Cap. 60) (the Ordinance), Schedule 1 to the Import and Export (Strategic Commodities) Regulations (Cap. 60 sub. leg. G) (the Regulations) is amended to reflect the latest changes in the control lists of strategic commodities adopted by various international non-proliferation regimes up to the end of 2007. Textual and editorial amendments were also made to improve the language of the Schedule.

2. Under section 6B of the Ordinance, this Order shall be subject to negative vetting by LegCo, which may only repeal the Order. The Order shall only come into operation on a day to be appointed by the Director-General of Trade and Industry by notice published in the Gazette after the expiry of the period in which LegCo may exercise the power to repeal.

3. The Regulations relate to the imposition of licensing control on the import, export, transshipment, and in some cases, transit of strategic commodities. The Schedule sets out the strategic commodities under such control, which include materials, equipment, software and technology capable of being used for both industrial and military purposes. It has been drawn up on the basis of the control lists adopted by various international non-proliferation regimes and convention.

4. According to the Administration, the Schedule is reviewed approximately every two years and is amended to take into account the most up-to-date control lists adopted by relevant international regimes and convention. It was last amended in mid 2006. Members may wish to refer to the LegCo Brief (File Ref: TRA CR 1506/2)

issued by the Trade and Industry Development on 3 December 2008 for background and further information.

**Road Traffic Ordinance (Cap. 374)**

**Road Traffic (Breath Analysing Instruments and Screening Devices) (Amendment) Notice 2008 (L.N. 255)**

5. By this Notice made by the Commissioner of Police under section 39F(1) of the Road Traffic Ordinance (Cap. 374), a device, namely Lion Alcolmeter 500, is approved as a pre-screening device for indicating whether or not the proportion of alcohol in a person's breath reaches such a level that it would be reasonable to suspect that such proportion is likely to exceed the prescribed limit. A screening device, namely AlcoQuant 3020, is removed from the Road Traffic (Breath Analysing Instruments and Screening Devices) Notice (Cap. 374 sub. leg. S) (the principal Notice) so that it will no longer be an approved screening device for the purpose of indicating whether the proportion of alcohol in a person's breath is likely to exceed the prescribed limit. The title of the principal Notice is also amended to include pre-screening devices to reflect its contents.

6. The Notice shall come into operation on 9 February 2009.

7. According to the Administration, the Police conducted a tender exercise for the selection of pre-screening devices. Lion Alcolmeter 500 was approved by the Home Office in the United Kingdom in January 2004 for the purpose of breath tests for the use of police forces in England, Wales and Scotland. The PolyU Technology and Consultancy Company Limited of the Hong Kong Polytechnic University conducted the accuracy and reliability test on Lion Alcolmeter 500 and confirmed that the instrument was functioning well within the tender specifications when the breath alcohol concentrations applied from the breathing model were within its measuring range. The factory setting of Lion Alcolmeter 500 is such that a signal will be activated when the preset alcohol level (i.e. 20 micrograms (mg) of alcohol in 100 milliliters (ml) of breath) is reached. The accuracy levels are within  $\pm 10\%$ . The Commissioner of Police has approved Lion Alcolmeter 500 as a pre-screening device.

8. Upon our enquiry, the Commissioner of Police has advised that the agent in Hong Kong through which AlcoQuant 3020 was purchased ceased operation in 2001. In order to ensure the integrity of all prosecution cases, which included calibration of the AlcoQuant 3020 and testifying for its accuracy in court, the Police stopped using AlcoQuant 3020 as the approved screening device under the principal Notice in mid 2001.

9. Neither the Panel on Transport nor the Panel on Security has been consulted on the Notice. However, during the Administration's consultation with the Panel on Transport on the legislative proposals under the Road Traffic Legislation (Amendment) Bill 2008 (the Bill) on 18 December 2007 and in the course of deliberations of the Bills Committee on the Bill, the introduction of a new pre-screening device for conducting random breath tests (RBTs) was discussed. Members in general

were concerned about the margin of error of the new pre-screening device and its reliability. The Bills Committee supported the introduction of the new device to reduce inconvenience to motorists during RBT operations, but considered that a driver should not be required to conduct a Screening Breath Test (SBT) just because he was found to have any alcohol in his body irrespective of the level of alcohol concentration in his breath specimen as detected by the pre-screening device. In response to the Bills Committee's concerns, the Administration proposed that the pre-screening device be calibrated to activate a signal, if 20 or more mg of alcohol in 100 ml of breath was detected. The reason for setting the calibration at this level was that it was close to the existing prescribed limit (i.e. 22 mg of alcohol in 100 ml) and formed a basis for the Police to establish reasonable suspicion that the person's alcohol concentration in his body was likely to exceed the prescribed limit, and the driver should then be required to conduct a SBT.

10. Members may wish to refer to the LegCo Brief (File Ref: LM (1/08) in CP/T 135/6) issued by the Hong Kong Police Force in December 2008 for background and further information.

**Road Traffic Legislation (Amendment) Ordinance 2008 (23 of 2008)**

**Road Traffic Legislation (Amendment) Ordinance 2008 (Commencement) Notice (L.N. 256)**

11. This Notice made by the Secretary for Transport and Housing under section 2 of the Road Traffic Legislation (Amendment) Ordinance 2008 (23 of 2008) (the Amendment Ordinance) appoints 9 February 2009 as the day on which the Amendment Ordinance, other than Part 1 and sections 4, 5(1), 46, 47 and 65, is to come into operation. Under section 2(2) of the Amendment Ordinance, Part 1 and sections 4, 5(1), 46, 47 and 65 came into operation on the day on which the Amendment Ordinance was published in the Gazette, that is, 4 July 2008.

12. The Amendment Ordinance is to amend the Road Traffic Ordinance (Cap. 374) (the Ordinance), the Road Traffic (Driving Licences) Regulations (Cap. 374 sub. leg. B) and other subsidiary legislation under the Ordinance and the Road Traffic (Driving-offence Points) Ordinance (Cap. 375) so as to —

- (a) increase the term of imprisonment of the offence of causing death by dangerous driving under section 36 of the Ordinance;
- (b) increase the penalties on offences under sections 39, 39A, 39B and 39C of the Ordinance (which offences relate to driving a motor vehicle under the influence of drink or drugs, driving, attempting to drive or being in charge of a motor vehicle with alcohol concentration above the prescribed limit, failing to provide a specimen of breath for a screening breath tests and failing to provide specimens of breath for analysis or a specimen of blood or urine for laboratory test) and provide police officers with a general power to conduct screening breath tests;

- (c) introduce a pre-screening device for the purposes of the new section 39B(1)(a) of the Ordinance;
- (d) provide that certain traffic offenders are required to attend driving improvement courses;
- (e) extend the probationary driving licence scheme to novice drivers of private cars and light goods vehicles;
- (f) provide for the review by a Transport Tribunal of certain decisions made by the Commissioner for Transport to refuse to issue, reissue or renew driving licences or driving instructor's licences or to cancel those licences; and
- (g) make related, consequential and other minor amendments.

13. Before the passage of Road Traffic Legislation (Amendment) Bill 2008 (the Bill) at the Council meeting of 26 June 2008, the Bill had been scrutinized by a Bills Committee. Members may wish to refer to the report of the Bills Committee (LC Paper No. CB(1)1948/07-08) for further information.

***Concluding observation***

14. No difficulties have been identified in the legal or drafting aspects of the above items of subsidiary legislation. Neither the public nor any LegCo Panel has been consulted on the subsidiary legislation reported above.

Prepared by

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