

立法會
Legislative Council

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**Paper for the House Committee Meeting
on 15 April 2011**

**Legal Service Division Report on
Subsidiary Legislation and Non-legislative Instrument
Gazetted on 8 April 2011**

Date of tabling in LegCo : 13 April 2011

Amendment to be made by : 11 May 2011 (or 1 June 2011 if extended by resolution)

PART I SUBSIDIARY LEGISLATION

Dangerous Drugs Ordinance (Cap. 134)

Dangerous Drugs Ordinance (Amendment of Second Schedule) Order 2011 (L.N. 56)

Dangerous Drugs Ordinance (Amendment of Fourth Schedule) Order 2011 (L.N. 57)

L.N. 56

Under section 22(1)(f) of the Dangerous Drugs Ordinance (Cap. 134) (DDO), a nursing sister for the time being in charge of a ward, theatre or other department in a prescribed hospital is authorized to possess and supply a dangerous drug so far as it is necessary for the practice or exercise of his profession, function or employment. A prescribed hospital is defined to mean, among other things, a hospital or institution specified in the Second Schedule to the DDO. The Secretary for Security may by order published in the Gazette amend the Second Schedule pursuant to section 50(2) of the DDO.

2. A new nursing home, ELCHK, Grace Court, has come into operation. According to the Administration, the treatment of elderly patients by the nursing home may involve the use of narcotics and benzodiazepines¹, which are both subject to the control of the DDO. L.N. 56 adds the nursing home in the Second Schedule to meet its operational needs in accordance with section 22 of the DDO. After such addition, the nursing sister of the nursing home is authorized to possess and supply all the dangerous drugs as listed in Part I (except those specified in paragraphs 8 to 11) of the First Schedule to the DDO subject to the provisions of the DDO.

L.N. 57

3. Under section 49B of the DDO, the Central Registry of Drug Abuse (Registry) collects, collates and analyses confidential information supplied by reporting agencies and publishes statistical information on drug abuse. Reporting agencies means those institutions specified in the Fourth Schedule to the DDO. Confidentiality of records kept by reporting agencies and the Registry is protected under Part VIIA of the DDO. The Secretary for Security may amend the Fourth Schedule by order published in the Gazette by virtue of section 49I of the DDO.

4. In order to broaden the reporting base and ensure confidentiality of records, L.N. 57 adds five institutions, namely, Christian New Life Association Limited, Glorious Praise Fellowship (Hong Kong) Limited, Hong Kong Sheng Kung Hui Welfare Council, Mission Ark Limited, and Tung Wah Group of Hospitals, as new reporting agencies. According to the Administration, these five institutions have agreed to be included in the Fourth Schedule. L.N. 57 also updates the names of two existing reporting agencies in the Fourth Schedule.

5. L.N. 56 and L.N. 57 will come into operation on 4 June 2011.

6. Members may refer to the LegCo Brief (with no file reference) issued by the Narcotics Division of the Security Bureau dated 6 April 2011 for further information.

7. The Panel on Security has not been consulted on L.N. 56 and L.N. 57.

8. No difficulties in the legal and drafting aspects of L.N. 56 and L.N. 57 have been identified.

¹ Upon our enquiry with the Administration, narcotics and benzodiazepines are general descriptions of certain drugs specified in Part 1 of the First Schedule to the DDO, e.g. heroin and morphine.

**Legislative Council (Powers and Privileges) Ordinance (Cap. 382)
Administrative Instructions for Regulating Admittance and Conduct of
Persons (Amendment) Instructions 2011 (L.N. 58)**

9. Under section 8(3) of the Legislative Council (Powers and Privileges) Ordinance (Cap. 382) (LCPPO), the President of the Legislative Council (LegCo) may from time to time issue such administrative instructions as he may deem necessary or expedient for regulating the admittance of persons (other than Members or officers of the LegCo) to, and the conduct of such persons within, the Chamber and the precincts of the Chamber. The administrative instructions currently in force are contained in the Administrative Instructions for Regulating Admittance and Conduct of Persons (Cap. 382 sub. leg. A) (AIs).

10. L.N. 58 makes the necessary amendments to the AIs in view of the relocation of LegCo to the new LegCo Complex at Tamar. It also makes other minor amendments to the AIs.

Relocation of the LegCo to the New LegCo Complex at Tamar

11. Currently under section 1 of the AIs, the definition of "Building" could be interpreted to refer to the LegCo Building on 8 Jackson Road. L.N. 58 therefore revises the definition of "Building" to mean the building or premises in which the Chamber is situated and marked as such on the plan. It also amends other provisions in the AIs made necessary by the relocation.

Other Minor Amendments

12. In order to obviate the need for amending the AIs in cases of changes in usage of facilities in future, L.N. 58 replaces the specific facilities reserved for Members and representatives of the press, radio and television in sections 4 and 14 of the AIs with general terms "areas reserved for Members" and "areas reserved for representatives of the press, radio and television" respectively.

13. L.N. 58 also amends sections 9(1) and 15 of the AIs to reflect technological advance. It substitutes "tape recorders and cameras" with "audio or video recording devices or cameras" in section 9(1). For section 15, it revises the provision so that, in addition to the ban on photography, video making during a sitting of the LegCo or a committee is prohibited except with authorization. The use of video lighting is also not permitted.

14. Under section 1 of the AIs, "plan" is presently defined to mean the plan of the LegCo Building marked and signed by the Clerk to the LegCo and deposited in the Clerk's office. According to the definition of "precincts of the Chamber" in the LCPPO² and the AIs³, the "plan" should, subject to exceptions made by the President, cover the entire building in which the Chamber is situated and any forecourt, yard, garden, enclosure or open space adjoining or appertaining to such building and used or provided for the purposes of the Legislative Council during the whole of any day the Council or a committee is sitting. L.N. 58 revises the definition of "plan" in the AIs to align with the definition contained in the LCPPO.

15. L.N. 58 comes into operation on a day to be appointed by the President of the LegCo by notice published in the Gazette.

16. Members may refer to the LegCo Brief (with no file reference) issued by the Legislative Council Secretariat dated April 2011 for further information.

17. The Panel on Development was consulted on the proposed amendments to the AIs as set out in L.N. 58 at its meeting on 29 March 2011. Members expressed support for the proposed amendments.

18. No difficulties in the legal and drafting aspects of L.N. 58 have been identified.

PART II NON-LEGISLATIVE INSTRUMENT

Revised Code of Practice on Employment under the Disability Discrimination Ordinance (G.N. 2159)

19. Under section 65(1) of the Disability Discrimination Ordinance (Cap. 487) (Ordinance), the Equal Opportunities Commission (EOC) may issue codes of practice containing such practical guidance as it thinks fit for the

² Under section 2(1) of the LCPPO, "precincts of the Chamber" means the Chamber and offices of the LegCo and any adjacent galleries and places provided for the use or accommodation of members of the public and representatives of the press, television and radio, and subject to any exceptions made by the President under subsection (2) includes, during the whole of any day the LegCo or a committee is sitting, the entire building in which the Chamber is situated and any forecourt, yard, garden, enclosure or open space adjoining or appertaining to such building and used or provided for the purposes of the LegCo.

³ According to section 1 of the AIs, "precincts of the Chamber" means the Chamber and offices of the LegCo and any adjacent galleries, and places provided for the use or accommodation of members of the public and representatives of the press, radio and television, and subject to any exceptions made by the President includes, during the whole of any day the LegCo or a committee is sitting, the area marked as such on the plan.

purposes of the elimination of discrimination, the promotion of equality of opportunity between persons with a disability and persons without a disability generally, and the elimination of harassment and vilification. The EOC may also from time to time revise a code of practice issued and issue a revised code pursuant to section 65(11) of the Ordinance.

20. According to the LegCo Brief, the existing Code of Practice on Employment (Code) under the Ordinance was published by the EOC in January 1997. After more than a decade of operation, the EOC has reviewed and revised the Code to ensure that it continues to serve as a useful reference tool. EOC also plans to undertake review of the codes of employment under other anti-discrimination legislation. The revised Code was published in the Gazette on 8 April 2011.

21. The revised Code contains twelve chapters as follows:-

- (a) Chapter 1 explains the purpose, status, application of, and examples used in, the revised Code;
- (b) Chapter 2 outlines the application of the Ordinance in employment;
- (c) Chapters 3 to 5 elaborate on the meaning of disability, discrimination, inherent requirement, reasonable accommodation and unjustifiable hardship;
- (d) Chapters 6 to 8 provide guidelines on various human resources issues, namely, the managing of recruitment, disability related workplace absence and promotion, transfer and dismissal;
- (e) Chapter 9 deals with disability harassment and vilification;
- (f) Chapter 10 discusses the liabilities under the Ordinance and "reasonably practicable steps" as a defence to liability;
- (g) Chapter 11 illustrates measures to be taken by employers to promote and implement equality of opportunities in the workplace; and
- (h) Chapter 12 outlines how the EOC carries out its role and functions.

22. A sample policy on disability equality is also provided at the end of the revised Code for employers' reference.

23. A failure on the part of any person to observe any provision of the revised Code does not of itself render him liable to any proceedings. However, in any proceedings under the Ordinance, the revised Code is admissible in evidence, and if any provision of the revised Code appears to the court to be relevant to any question arising in the proceedings, such provision will be taken into account in determining that question.

24. Members may wish to note that the scrutiny period of and amendment procedure for the revised Code are substantially the same as those for subsidiary legislation subject to negative vetting under section 34 of the Interpretation and General Clauses Ordinance (Cap. 1). Members may amend the revised Code on or before 11 May 2011 or, if the scrutiny period is extended by resolution, 1 June 2011.

25. The revised Code will come into operation upon the expiration of 28 days after the LegCo at which it was laid, or upon the expiration of the period extended for scrutiny, or in the case where the LegCo passes a resolution amending the revised Code, upon the expiration of the day next preceding the day of the publication in the Gazette of such resolution.

26. Members may refer to the LegCo Brief (File Ref: LWB 8/3939/99 (CR)) issued by the EOC dated April 2011 for further information.

27. According to the LegCo Brief, the EOC has conducted a public consultation on the draft revised Code from 8 April 2010 to 8 July 2010.

28. The Panel on Constitutional Affairs received views from the public and discussed with the Chairman of the EOC on the draft revised Code at its meeting on 17 May 2010. Members made various comments on the draft revised Code with a view to enhancing its readability and consistency. The Chairman of the EOC agreed to further refine the draft revised Code to improve its comprehensibility. In response to a Member's comment that the Code should be updated from time to time, the Chairman of the EOC explained that the EOC intended to update the Code every two to three years. Members also raised issues relating to the provision of barrier-free access facilities to people with disabilities in workplaces and the responsibility of employers to provide reasonable accommodation to employees with disabilities.

Prepared by

KAN Wan-ye, Wendy
Assistant Legal Adviser
Legislative Council Secretariat
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