

立法會
Legislative Council

LC Paper No. LS75/12-13

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 30 August 2013**

Date of tabling in LegCo : 9 October 2013

Amendment to be made by : 6 November 2013 (or 27 November 2013 if extended by resolution)

PART I

Pilotage Ordinance (Cap. 84)

Pilotage (Amendment) Regulation 2013 (L.N. 142)

Pilotage (Amendment) Ordinance 2013 (2 of 2013)

Pilotage (Amendment) Ordinance 2013 (Commencement) Notice (L.N. 143)

L.N. 142 is made by the Chief Executive (CE) in Council under section 21 of the Pilotage Ordinance (Cap. 84).

2. L.N. 142 amends regulation 6 of the Pilotage Regulations (Cap. 84 sub. leg. A) to prescribe a fee which must be paid by the applicant for exemption from compulsory pilotage where an officer of the Marine Department (MD) has visited a ship or other site for assisting the Pilotage Authority in considering whether or not to grant an exemption under section 10D(5) of Cap. 84. The new subsection (5) was added to section 10D of Cap. 84 by section 5 of the Pilotage (Amendment) Ordinance 2013 (2 of 2013) (the Amendment Ordinance).

3. According to paragraph 5 of the LegCo Brief on L.N. 142 issued by the Transport and Housing Bureau on 28 August 2013 (File ref.: MA 50/1), the fee level is the same as that currently levied under regulation 7 of the Merchant Shipping (Fees) Regulations (Cap. 281 sub. leg. F), according to which MD has been charging a fee where a visit has been made before the new section 10D(5) of Cap. 84 as indicated in paragraphs 3 and 4 of the LegCo Brief was enacted.

4. L.N. 142 comes into operation on the day on which section 5 of the Amendment Ordinance comes into operation, i.e. 1 December 2013 (see paragraph 5 below).

5. By L.N. 143 made under section 1(3) of the Amendment Ordinance, the Secretary for Transport and Housing has appointed 1 December 2013 as the day on which section 5 of the Amendment Ordinance comes into operation.

6. The Pilotage (Amendment) Bill 2013 was passed by the Legislative Council on 22 May 2013. The Amendment Ordinance, except section 5, came into operation on the day on which it was published in the Gazette, i.e. 31 May 2013. No Bills Committee had been formed to study the Bill.

7. As advised by the Clerk to the Panel on Economic Development, the Panel was not consulted on L.N. 142 and L.N.143, but when the Panel deliberated the policy aspects of the Pilotage (Amendment) Bill 2013 on 26 November 2012, members noted the proposed fee for applying for exemption from compulsory pilotage (which is now provided in L.N. 142) and raised no objection to the legislative proposal.

8. Members may wish to refer to the LegCo Brief on L.N. 143 issued by the Transport and Housing Bureau on 28 August 2013 (File ref.: MA 50/1) for background and further information.

PART II SUBSIDIARY LEGISLATION NOT REQUIRED TO BE TABLED AND NOT SUBJECT TO AMENDMENT

United Nations Sanctions Ordinance (Cap. 537)

United Nations Sanctions (Libya) Regulation 2011 (Amendment) Regulation 2013 (L.N. 144)

United Nations Sanctions (Sudan) Regulation 2013 (L.N. 145)

United Nations Sanctions (Sudan) Regulation (Repeal) Regulation (L.N. 146)

9. L.N. 144, L.N. 145 and L.N. 146 are made by CE under section 3 of the United Nations Sanctions Ordinance (Cap. 537) on the instructions of the Ministry of Foreign Affairs of the People's Republic of China and after consultation with the Executive Council.

L.N. 144

10. According to paragraphs 3 and 4 of the LegCo Brief on L.N. 144 issued by the Commerce and Economic Development Bureau in August 2013 (with no file

ref), the United Nations Sanctions (Libya) Regulation 2011 (Cap. 537 sub. leg. AW) was made in June 2011 to implement a range of sanctions against Libya in view of the concern over the serious violations of human rights and attacks against civilians.

11. As indicated in paragraph 5 of the LegCo Brief, due to the positive development in Libya, the Security Council of the United Nations (UNSC) adopted UNSC Resolution (UNSCR) 2095 on 14 March 2013 to relax certain sanctions against Libya in relation to the licensing requirements for the supply, sale, transfer or carriage of certain goods and the provision of certain assistance or training. L.N. 144 makes amendments to that effect as well as certain textual amendments.

12. L.N. 144 came into operation on the date of publication in the Gazette, i.e. 30 August 2013.

L.N. 145 and L.N. 146

13. According to the LegCo Brief on L.N. 145 and L.N. 146 issued by the Commerce and Economic Development Bureau in August 2013 (with no file ref), UNSC has passed a number of UNSCRs since 2004 to impose a range of sanctions against Sudan in view of the acts of violence and violations of human rights and international humanitarian law in the Darfur area of Sudan. These sanctions have been implemented in Hong Kong through the United Nations Sanctions (Sudan) Regulation (Cap. 537 sub. leg. W) (the Sudan Regulation) since April 2005.

14. Noting that the situation in Sudan continues to pose a threat to international peace and security in the region, UNSC adopted UNSCR 2035 on 17 February 2012 and decided, inter alia, to remove the exemptions relating to the Comprehensive Peace Agreement set out in UNSCR 1591. According to the Administration, as the structure and style of the Sudan Regulation are very different from other regulations made under Cap. 537, the Administration considers that a new regulation should be made instead of amending the Sudan Regulation. L.N. 145 is therefore made to implement UNSCR 2035.

15. With L.N. 145 in place, the Sudan Regulation is no longer needed. L.N. 146 is made to repeal the Sudan Regulation.

16. L.N. 145 and L.N. 146 came into operation on 6 September 2013.

17. Under section 3(5) of Cap. 537, sections 34 and 35 of the Interpretation and General Clauses Ordinance (Cap. 1) do not apply to regulations made under Cap. 537. Accordingly, L.N. 144, L.N. 145 and L.N. 146 are not required to be tabled at the Legislative Council and are not subject to amendment by the Legislative Council. However, they come within the terms of reference of the Subcommittee to

Examine the Implementation in Hong Kong of Resolutions of the United Nations Security Council in relation to Sanctions (the Subcommittee). As advised by the Clerk to the Subcommittee, L.N. 144, L.N. 145 and L.N. 146 have been circulated to members of the Subcommittee and all other Members of the Legislative Council vide LC Paper Nos. CB(1) 1753/12-13(01) and (02) on 2 September 2013. Members may refer to the two LegCo Briefs on L.N. 144, and L.N. 145 and L.N. 146 respectively for further information.

Concluding Remarks

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

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