

立法會
Legislative Council

LC Paper No. LS71/13-14

**Paper for the House Committee Meeting
on 4 July 2014**

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 27 June 2014**

Tabling in LegCo : Council meeting of 2 July 2014

Amendment to be made by : 2nd Council meeting in the next session (or the 1st Council meeting after 21 days from that 2nd Council meeting if extended by resolution)

**Road Traffic (Construction and Maintenance of Vehicles)
(Amendment) (No. 2) Regulation 2014** (L.N. 96)

Road Traffic (Amendment) Ordinance 2012 (Commencement) Notice (L.N. 102)

Background

Passed on 29 March 2012 and gazetted on 13 April 2012, the Road Traffic (Amendment) Ordinance 2012 (6 of 2012) (Amendment Ordinance) amends the Road Traffic Ordinance (Cap. 374) and its subsidiary legislation to introduce a package of measures to improve the safety of operation of public light buses.

2. Upon the gazettal of the Amendment Ordinance, most of the measures have come into operation except the following legal requirements -

- (a) mandatory attendance at and completion of a pre-service course by applicants of public light bus (PLB) driving licence (excluding renewal) provided under Part 4 of the Amendment Ordinance which comes into operation on a day to be appointed by the Secretary for Transport and Housing (the Secretary) by notice in the Gazette; and
- (b) every PLB that is of a description specified (which is yet to be specified) in Schedule 18 to the Road Traffic (Construction and Maintenance of Vehicles) Regulations (Cap. 374A) is to be fitted with an approved electronic data recording device (EDRD).

3. Members may wish to refer to the LegCo Brief (File Ref: THB(T) CR5/14/3231/00) issued by the Transport and Housing Bureau in June 2014 for more background information.

L.N. 96

4. The Amendment Regulation is made by the Secretary under section 9 of Cap. 374 to add to Schedule 18 to Cap. 374A a description "a public light bus that is first registered on or after 1 December 2014". The effect of the description is that every PLB that is first registered on or after 1 December 2014, is required to be fitted with an approved EDRD.

5. According to paragraph 7 of the LegCo Brief, since PLB owners are allowed to register their PLBs at any time within 4 months after passing the vehicle examination, the effective date of the requirement in paragraph 2(b) above is set on 1 December 2014, a date which is not less than 4 months after the gazettal of the Regulation.

6. As advised by the Clerk to the Panel on Transport, the Panel was not consulted on the Regulation.

7. L.N. 96 comes into operation on 1 December 2014.

L.N. 102

8. Under section 1(3) of Amendment Ordinance, the Secretary appoints 1 June 2015 as the day on which Part 4 of the Amendment Ordinance comes into operation.

9. The effect of this Notice is that an applicant who applies for a PLB driving licence on or after 1 June 2015 will be required to have attended and completed a pre-service course before he/she is issued with a PLB licence (excluding renewal).

10. As advised by the Clerk to the Panel on Transport, the Panel was not consulted on the Commencement Notice. The Bills Committee on Road Traffic (Amendment) (No. 2) Bill 2011 did not have any comments about the commencement of the Bill.

11. According to paragraphs 18 and 19 of the LegCo Brief, the PLB trade does not have problem for installation of EDRD but expressed worries that the requirement of pre-service course may reduce the number of applicants for PLB bus driving licence, which will further aggravate the existing recruitment difficulties and ageing problem of incumbent drivers.

Protection of Endangered Species of Animals and Plants (Exemption for Appendices II and III Species) (Amendment) Order 2014 (L.N. 97)

Protection of Endangered Species of Animals and Plants Ordinance (Amendment of Schedules 1 and 3) Order 2014 (L.N. 98)

Background

12. L.N. 97 and L.N. 98 are made by the Secretary for the Environment respectively under section 47(2)¹ and section 48² of the Protection of Endangered Species of Animals and Plants Ordinance (Cap. 586) to, among others, reflect the changes made in March 2013 to the resolutions adopted by the Conference of Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) and the listings of endangered species in Appendices I and II to CITES. CITES has been implemented in Hong Kong since 1976 by Cap. 586.

L.N. 97

13. The Protection of Endangered Species of Animals and Plants (Exemption for Appendices II and III Species) Order (Cap. 586B) contains exemptions for certain specimens of species listed in Schedule 1 to Cap. 586.

14. The Amendment Order amends section 5 of and the Schedule to Cap. 586B to revise the description of "specimen" and to provide for the quantitative limits to the exemption of "specimens of agarwood" in relation to personal and household effects. The Amendment Order also makes certain textual amendments.

L.N. 98

15. The Amendment Order amends Schedules 1 (which covers the species listed in Appendices I, II and III³ to CITES) and 3 (which sets out CITES instruments, as amended from time to time and as applied to Hong Kong) to Cap. 586 to give effect to -

¹ Section 47(2) provides that the Secretary for Environment may, by order published in the Gazette, exempt any person from the restriction on Appendix II species or Appendix III species for the purpose of enabling any part of CITES relating to an exemption.

² Section 48(1) of Cap. 586 provides that the Secretary for the Environment may, by order published in the Gazette, amend any Schedule.

³ Appendix I: Species which are highly endangered and threatened with extinction.

Appendix II: Species which, unless trade is controlled, could become threatened with extinction.

Appendix III: Species identified by any parties to CITES as requiring protection from over-exploitation through international trade.

Schedule 1

- (a) Deletion of 7 species from Appendix I;
- (b) Deletion of 10 species from Appendix II;
- (c) Transfer of 4 species from Appendix I to Appendix II;
- (d) Transfer of 6 species from Appendix II to Appendix I; and
- (e) Inclusion of 46 species in Appendix II (including some species transferred from Appendix III to II).

Schedule 3

- (a) exclusion of certain substances from the meaning of "specimens of a scheduled species";
- (b) changes on the meaning of "the date on which a specimen is acquired" regarding pre-Convention certificates;
- (c) changes in respect of the requisite information and documents for permits and certificates issued by the state not party to the Convention; and
- (d) other textual amendments.

16. Members may wish to refer to Annexes C and D to the LegCo Brief (File Ref: EP 86/25/01 (08)) issued by the Environmental Protection Department in June 2014 for further details of the amendments.

17. As advised by the Clerk to the Panel on Environmental Affairs, the Panel was informed of the proposed amendments by way of an information paper and no request for discussion was received from members.

18. L.N. 97 and L.N. 98 come into operation on 28 November 2014.

Rules of the High Court (Amendment) (No. 2) Rules 2014 (L.N. 99)

Rules of the District Court (Amendment) Rules 2014 (L.N. 100)

Background

19. Under Order 17 of the Rules of the High Court (Cap. 4A) and the Rules of the District Court (Cap. 336H), a person, e.g. a bailiff, who is under a liability in respect of a debt or in respect of any money, goods or chattels and he/she is, or

expects to be, sued for that debt by two or more persons making adverse claims, the person may apply to the court for an order requiring the claimants to litigate their differences and to abide by the court's final order in respect of the property concerned (interpleader proceedings).

20. In both the Court of First Instance and the District Court, an interpleader issue may be determined by a judge or a master and by a summary determination or after a trial. In the case of a determination of an interpleader issue by a master, the right of appeal lies to either the Court of First Instance or the Court of Appeal depending on whether the issue is determined by summary determination or after trial and, in case of a determination by trial, whether the trial is conducted with or without the consent of the parties. The procedures in the Court of First Instance and the District Court are substantially the same⁴.

21. In 2011, the Court of Appeal in *Chun Sang Plastics Company Limited v. The Commissioner of Police and Ors* (CACV 37 of 2011), identified the unsatisfactory position under the existing Cap. 4A that an appeal against a master's decision of an interpleader issue tried without the parties' consent lies to a judge of the Court of First Instance where the appeal would be heard *de novo*, i.e. entirely a fresh hearing where witnesses would have to be called and cross-examined again. The Court expressed concern that such an appeal procedure would cause an unnecessary duplication of efforts and costs. According to the LegCo Brief (File Ref: SC 261/1/2/2) issued by the Judiciary Administration in June 2014, the Judiciary agreed with the Court's views and proposed to amend Cap. 4A and Cap. 336H as well to allow the parties to interpleader proceedings to appeal to the Court of Appeal direct against a master's decision after a full trial of an interpleader issue conducted without the parties' consent. The proposal will make uniform the appeal mechanism after trials of interpleader issues whether they have taken place before a judge or a master, with or without consent of parties.

L. N. 99

22. The Amendment Rules are made by the Rules Committee of the High Court under section 54 of Cap. 4 to amend rule 2 of Order 58 to Cap. 4A so that an appeal from a judgment or order of a master of the High Court on the trial of an interpleader issue lies to the Court of Appeal.

L. N. 100

23. The Amendment Rules are made by the District Court Rules Committee under section 72 of Cap. 336 to amend rule 2 of Order 58 to Cap. 336H so that an appeal from a judgment or order of a master of the District Court on the trial of an interpleader issue lies to the Court of Appeal.

⁴ The only difference is that in the District Court, for an interpleader issue tried before a master with the consent of the parties, leave is required for an appeal to the Court of Appeal.

24. As advised by the Clerk to the Panel on Administration of Justice and Legal Services, the Panel on 5 May 2013 circulated the Judiciary Administration's paper on the Judiciary's proposed legislative amendments to give the parties to interpleader proceedings a right of appeal to the Court of Appeal directly from a master's decision given after a full trial. Members were invited to notify the Clerk should any of them consider the Panel should be briefed on the subject. By the deadline of 16 May 2014, no member indicated that they wished to be briefed.

25. L.N. 99 and L.N. 100 come into operation on 1 December 2014.

**Mutual Legal Assistance in Criminal Matters (Spain) Order
(Commencement) Notice**

(L.N. 101)

26. Under section 1 of the Mutual Legal Assistance in Criminal Matters (Spain) Order (L.N. 35 of 2014) (the Order), the Acting Secretary for Security appoints 20 July 2014 as the day on which the Order comes into operation.

27. The Order sets out the scope and procedures in relation to the provision of mutual legal assistance in criminal matters applicable between Hong Kong and Spain, and the modifications to the Mutual Legal Assistance in Criminal Matters Ordinance (Cap. 525). The Order is made in consequence of the agreement for mutual legal assistance entered into by Hong Kong and Spain, which was signed on 15 November 2012.

28. As advised by the Clerk to the Panel on Security, the Panel has not been consulted on the Notice. However, the Order has been scrutinized by a Subcommittee which recommended that the Order be supported. Members may wish to refer to the report of the Subcommittee to the House Committee (LC Paper No. CB(2)914/13-14) for further information. The Legislative Council approved the Order on 19 March 2014.

Concluding Observations

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

Prepared by

TAM Shuk-fong, Clara
Assistant Legal Adviser
Legislative Council Secretariat
2 July 2014