

立法會 *Legislative Council*

LC Paper No. LS78/13-14

Paper for the House Committee Meeting on 3 October 2014

Legal Service Division Report on Subsidiary Legislation gazetted between 4 July and 19 September 2014

This paper annexes three Legal Service Division's reports (the Reports) covering two groups of subsidiary legislation as follows -

- (a) one report on eight items gazetted on 4 July 2014 (L.N. 103 to L.N. 110) which were tabled in the Legislative Council (LegCo) on 9 July 2014 (**Annex A**); and
- (b) one report on an item (L.N. 111) gazetted on 18 July 2014 and another report on two items (L.N. 112 and L.N. 113) gazetted on 25 July 2014. These items are not required to be tabled and not subject to amendment (**Annex B**).

2. In accordance with section 34 of the Interpretation and General Clauses Ordinance (Cap. 1), LegCo may amend the items of subsidiary legislation tabled on 9 July 2014 by the LegCo meeting of **15 October 2014** (or by that of 5 November 2014 if extended by resolution).

3. The Reports have been separately submitted to Members during the summer recess to enable Members to consider the relevant subsidiary legislation as soon as possible. They are submitted again in this bundle to facilitate consideration by the House Committee.

4. Members will note that the Reports include items of subsidiary legislation to which section 34 of Cap. 1 does not apply and are therefore not required to be tabled and not subject to amendment by LegCo. There are three such items, namely -

- (a) Volunteer and Naval Volunteer Pensions Ordinance (Amendment of Schedules) Order 2014 (L.N. 111);

- (b) Tai Lam Tunnel and Yuen Long Approach Road Ordinance (Amendment of Schedule 1) Notice 2014 (L.N. 112); and
- (c) Western Harbour Crossing Ordinance (Amendment of Schedule 1) Notice 2014 (L.N. 113).

5. The Secretariat has circulated to Members the issues of the Gazette which contain the subsidiary legislation covered by the Reports in the usual manner. Members may also view the relevant issues of the Gazette at <http://www.gld.gov.hk/egazette/>.

6. The Reports have stated that no difficulties relating to the legal and drafting aspects of the items covered by the reports have been identified.

Encl

Prepared by
Legal Service Division
Legislative Council Secretariat
30 September 2014

**Legal Service Division Report on
Subsidiary Legislation gazetted on 4 July 2014 and
tabled in the Legislative Council on 9 July 2014**

<u>L.N. No</u>	<u>Items</u>
L.N. 103	Fire Service (Installation Contractors) (Amendment) Regulation 2014
L.N. 104	Fire Services Department (Reports and Certificates) (Amendment) Regulation 2014
L.N. 105	Dangerous Goods (General) (Amendment) Regulation 2014
L.N. 106	Timber Stores (Amendment) Regulation 2014
L.N. 107	Dangerous Drugs Ordinance (Amendment of First Schedule) Order 2014
L.N. 108	Control of Chemicals Ordinance (Amendment of Schedule 2) Order 2014
L.N. 109	Declaration of Markets (Amendment) Notice 2014
L.N. 110	Public Health and Municipal Services Ordinance (Public Markets) (Amendment of Tenth Schedule) Order 2014

Annex B

**Legal Service Division Reports on
Subsidiary Legislation gazetted on 18 July and 25 July 2014
which is not required to be tabled and not subject to amendment**

<u>L.N. No</u>	<u>Items</u>
L.N. 111	Volunteer and Naval Volunteer Pensions Ordinance (Amendment of Schedules) Order 2014
L.N. 112	Tai Lam Tunnel and Yuen Long Approach Road Ordinance (Amendment of Schedule 1) Notice 2014
L.N. 113	Western Harbour Crossing Ordinance (Amendment of Schedule 1) Notice 2014

立法會
Legislative Council

LC Paper No. LS72/13-14

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 4 July 2014**

Tabling in LegCo : Council meeting of 9 July 2014

Amendment to be made by : Council meeting of 15 October 2014 (or that of 5 November 2014 if extended by resolution)

**Fire Service (Installation Contractors)
(Amendment) Regulation 2014** (L.N. 103)

**Fire Services Department (Reports and
Certificates) (Amendment) Regulation 2014** (L.N. 104)

**Dangerous Goods (General) (Amendment)
Regulation 2014** (L.N. 105)

Timber Stores (Amendment) Regulation 2014 (L.N. 106)

L.N. 103 and L.N. 104

L.N. 103 and L.N. 104 are respectively made by virtue of section 25 of the Fire Services Ordinance (Cap. 95). L.N. 103 amends the Second Schedule to the Fire Service (Installation Contractors) Regulations (Cap. 95A) to increase the fees payable for registration as a fire service installation contractor and related matters. According to the LegCo Brief, the percentage increase in the fees ranges from 11% to 15%. Further, the fees were last revised in July 2006.

2. L.N. 104 amends the Table to regulation 3 of the Fire Services Department (Reports and Certificates) Regulations (Cap. 95C) to increase the fees payable for the making and issue of a report on fire or other calamity attended by the Fire Services Department and the making and issue of a

certificate required for compliance with various pieces of legislation. According to the LegCo Brief, the percentage increase in the fees ranges from 10% to 20%. Further, the fees were last revised in July 2006.

L.N. 105

3. L.N. 105 is made by virtue of section 5 of the Dangerous Goods Ordinance (Cap. 295) to amend the Table to regulation 183(1) of the Dangerous Goods (General) Regulations (Cap. 295B) to increase the fees payable for the grant, renewal, amendment of or endorsement on licences or issue of duplicate licences relating to the storage, manufacture and conveyance of various categories of dangerous goods. According to the LegCo Brief, the percentage increase in the fees ranges from 15% to 20%. Further, the fees were last revised in July 2006.

L.N. 106

4. L.N. 106 is made by virtue of section 12 of the Timber Stores Ordinance (Cap. 464) to amend the Schedule to the Timber Stores Regulation (Cap. 464A) to increase the fees payable for the grant, renewal, transfer and amendment of a licence, and issue of a duplicate licence. According to the LegCo Brief, the percentage increase in the fees ranges from 15% to 16%. Further, the fees were last revised in July 2006.

5. Members may refer the LegCo Brief (File Ref: SEC 9/6/10) issued by the Security Bureau in June 2014 for background information on the above pieces of subsidiary legislation. In particular, the changes are made as a result of a recent costing review and details are set out in Annex E to the LegCo Brief. The increase is made with a view to achieving full cost recovery gradually.

6. According to the Clerk to Panel on Security, an information paper provided by the Administration on the above revision of fees was circulated to members of the Panel on Security and all other Legislative Council Members vide LC Paper No. CB(2) 1062/13-14(01) on 14 March 2014. No comment on the paper has been received from members.

7. L.N. 103 to L.N. 106 come into operation on 28 November 2014.

**Dangerous Drugs Ordinance
(Amendment of First Schedule) Order 2014 (L.N. 107)**

**Control of Chemicals Ordinance
(Amendment of Schedule 2) Order 2014 (L.N. 108)**

L.N. 107

8. L.N. 107 is made by the Chief Executive under section 50(1) of the Dangerous Drugs Ordinance (Cap. 134) after consultation with the Executive Council to impose control on methoxetamine (MXE) and its relevant derivatives (except tiletamine) by adding them to Part I of the First Schedule to Cap. 134 so that their trafficking, manufacture, possession, supply, import and export would be subject to control under Cap. 134.

9. According to the LegCo Brief (File Ref.: NCR 2/1/8 S/F 9) issued by the Narcotics Division of the Security Bureau in July 2014, the Administration has consulted the Action Committee Against Narcotics (the Committee), the relevant traders and the respective licensees under Cap. 134, the Control of Chemicals Ordinance (Cap. 145) and the Pharmacy and Poisons Ordinance (Cap. 138). The said traders and licensees raised no objection to the proposal and the Committee supported the legislative proposal. Members may refer to the LegCo Brief for further details.

L.N. 108

10. The Control of Chemicals Ordinance (Cap. 145) controls the possession, manufacture, distribution, transshipment, transport, supply, import and export of chemicals which are specified in Schedule 2 to Cap. 145. In gist, substances that are specified in Schedule 2 are subject to the control of a licensing scheme administered by the Customs and Excise Department.

11. L.N. 108 is made by the Secretary for Security under section 18A(1) of Cap. 145 to add alpha-phenylacetonitrile (APAAN) to the Schedule so that APAAN and its salts are subject to the control measures provided in Cap. 145. Members may refer to the LegCo Brief (File Ref: NCR 2/1/8 S/F 9) issued by the Narcotics Division of the Security Bureau in July 2014 for further details.

12. According to the Clerk to Panel on Security, at the meeting of the Panel on Security on 13 May 2014, the Administration briefed members on the said amendments to the respective schedules to Cap. 134 and Cap. 145 to impose control on MXE and its relevant derivatives and APAAN. The Panel supported in principle the Administration's introduction of legislative amendments to the two Ordinances.

13. L.N. 107 and L.N. 108 come into operation on 28 November 2014.

**Declaration of Markets
(Amendment) Notice 2014**

(L.N. 109)

**Public Health and Municipal Services
Ordinance (Public Markets) (Amendment of
Tenth Schedule) Order 2014**

(L.N. 110)

14. L.N. 109 and L.N.110 are respectively made by the Director of Food and Environmental Hygiene (DFEH) under section 79 of the Public Health and Municipal Services Ordinance (Cap. 132) to cease the declaration of Bridges Street Market to be a market to which Cap. 132 applies, and to cease the designation of the Market as a public market under Cap. 132.

15. Pursuant to section 79(1) of Cap. 132, the DFEH is empowered to declare a market to which Cap. 132 applies. Any market so declared may be designated by DFEH as a public market under section 79(3) of Cap. 132. The designated public markets are specified in the Tenth Schedule to Cap. 132 (Tenth Schedule). Under section 79(5) of Cap. 132, DFEH may by order published in the Gazette amend the Tenth Schedule.

16. According to the Administration, as the patronage of the Bridges Street Market had been decreasing and the vacancy rate of the stalls at the market had exceeded 70%, the Food and Environmental Hygiene Department resumed all the market stalls and the market ceased operation on 1 October 2013. Members may refer to the LegCo Brief (File Ref: FH CR3/3801/06) issued by the Food and Health Bureau in July 2014 for further information.

17. According to the Clerk to the Panel on Food Safety and Environmental Hygiene, the Panel discussed with the Administration on the review on the provision of public markets in Hong Kong at its meeting on 11 November 2008 and the Panel was informed by the Administration of the

planned closure of the Bridges Street Market. Members did not raise any particular views on this plan.

18. L.N. 109 and L.N. 110 come into operation on 24 November 2014.

Conclusion

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

Prepared by

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10 July 2014

LS/S/29/13-14

立法會
Legislative Council

LC Paper No. LS73/13-14

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 18 July 2014**

**LEGAL NOTICE NOT REQUIRED TO BE TABLED AND NOT
SUBJECT TO AMENDMENT**

**Volunteer and Naval Volunteer Pensions Ordinance (Amendment of
Schedules) Order 2014 (L.N. 111)**

The Volunteer and Naval Volunteer Pensions Ordinance (Cap. 202) makes provisions for, among other things, the payment of pensions, gratuities, and other allowances in connection with the disablement or death of officers and volunteers of the Hong Kong Volunteer Defence Corps and members of the Hong Kong Naval Volunteer Force who were called out on actual military service or actual service during the Second World War.

2. Pursuant to section 35(2) of Cap. 202, the Secretary for Labour and Welfare has made the Volunteer and Naval Volunteer Pensions Ordinance (Amendment of Schedules) Order 2014 (L.N. 111) (the Order) to amend Schedules 3 to 8 to the Ordinance to adjust the rates for the payment of pensions, gratuities and other allowances payable under Cap. 202 in accordance with the percentage of increase declared in a notice made under section 4(1C) of the Pensions (Increase) Ordinance (Cap. 305).

3. By the Declaration of Increase in Pensions Notice 2014 (L.N. 87 of 2014) (the Notice) gazetted on 6 June 2014, it is declared that with effect from 1 April 2014 the percentage of increase for the basic pension is 5.1%. Accordingly, the rates set out in Schedules 3 to 8 to Cap. 202 are adjusted in accordance with the percentage of increase (5.1%) as declared in the Notice. The relevant rates were last revised in April 2013 (L.N. 141 of 2013).

4. Section 35(4) of Cap. 202 provides that an order made under section 35(2) shall take effect on the same date as specified in the relevant notice made under Cap. 305. As mentioned in paragraph 3 above, the Notice took effect on 1 April 2014. Accordingly, the Order is deemed to have come into operation on 1 April 2014.

5. Section 35(5) of Cap. 202 provides that section 34 of the Interpretation and General Clauses Ordinance (Cap. 1) does not apply to an order made under section 35(2) of Cap. 202. Accordingly, the Order is not required to be tabled at the Legislative Council and is not subject to amendment.

6. As advised by the Clerk to the Panel on Welfare Services, the Panel has not been consulted on the Order.

7. According to the LegCo Brief issued by the Labour and Welfare Bureau on 14 July 2014 (File Ref: LWB CR 8/3231/92 Pt 17), public consultation is considered not necessary as the adjustment of rates payable under Cap. 202 is a routine updating exercise.

8. No difficulties have been identified in the legal and drafting aspects of the above item of subsidiary legislation.

Prepared by

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24 July 2014

立法會
Legislative Council

LC Paper No. LS74/13-14

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 25 July 2014**

**SUBSIDIARY LEGISLATION NOT REQUIRED TO BE TABLED AND NOT
SUBJECT TO AMENDMENT**

**Tai Lam Tunnel and Yuen Long Approach Road Ordinance
(Amendment of Schedule 1) Notice 2014**

(L.N. 112)

L.N. 112 is made by the Commissioner for Transport (the Commissioner) under section 45(1) of the Tai Lam Tunnel and Yuen Long Approach Road Ordinance (Cap. 474) to replace Schedule 1 to that Ordinance with a new Schedule 1 to reflect the increase of statutory tolls payable for the use of the Tai Lam Tunnel and Yuen Long Approach Road (Route 3 (CPS)). L.N. 112 comes into operation on 1 August 2014.

2. Cap. 474 provides for a toll adjustment mechanism for Route 3 (CPS) as follows -

- (a) Route 3 (CPS) Company Limited (the Franchisee) may, during the franchise period and subject to the relevant requirements, apply in writing to the Secretary for Transport and Housing (the Secretary) to give effect to an anticipated toll increase on each of three specified dates (i.e. 1 January 2003, 1 January 2010 and 1 January 2017) (section 39);
- (b) if the Actual Net Revenue (ANR) of the Franchisee for any year which is not a year immediately preceding a year in which a specified date occurs is less than the Minimum Estimated Net Revenue (MENR) for that year as specified in Schedule 4, the Franchisee may apply to the Secretary to give effect to the next anticipated toll increase (section 40);
- (c) where the Franchisee has given effect to all the anticipated toll increases and its ANR for any year occurring before the expiry of the franchise period is less than its MENR for that year as stated in Schedule 4, it may apply to the Secretary to give effect to an additional toll increase (section 42);

- (d) the amounts of toll increase to which the Franchisee may give effect in respect of different categories of vehicles are set out in Schedule 2 (section 44(5));
- (e) where a toll is increased, the Commissioner must by notice published in the Gazette amend Schedule 1, with effect from the date on which the increase comes into effect, to vary the relevant toll (section 45(1)); and
- (f) section 34 of the Interpretation and General Clauses Ordinance (Cap. 1) does not apply in respect of any such notice; accordingly, any such notice, including L.N. 112, is not required to be tabled at, and is not subject to amendment by, the Legislative Council (section 45(3)).

3. According to paragraphs 7 and 8 of the LegCo Brief (File Ref: THB(T)CR 19/3/5591/91) issued by the Transport and Housing Bureau (THB) in July 2014, the Franchisee's ANR has, since the commissioning of Route 3 (CPS) in 1998, consistently fallen short of the level of MENR as stipulated in Schedule 4. By 19 June 2005, the Franchisee has effected all the anticipated toll increases and has since applied for and been permitted eight additional toll increases. The last statutory toll increase for Route 3 (CPS) came into effect on 1 August 2013.

4. The present increase as reflected in L.N. 112, which was applied by the Franchisee in August 2010, is the ninth additional toll increase. The amounts of increase are in accordance with the amounts stated in Schedule 2. It is based on the Franchisee's audited 2009/10 statement of ANR which shows that the Franchisee's ANR for 2009/10 was \$629 million, which is lower than MENR of \$1,863 million for that year as specified in Schedule 4.

5. According to paragraph 11 of the LegCo Brief, the Franchisee will continue to offer concessions to all categories of vehicles so that the current concessionary tolls¹ will be maintained notwithstanding the present increase in statutory tolls. Therefore, users of Route 3 (CPS) will not be affected by the changes in the statutory tolls.

6. A comparison of the Route 3 (CPS) statutory tolls before and after the increase under L.N. 112, and the applicable concessionary tolls, is at **Annex I**.

7. As advised by the Clerk to the Panel on Transport, the Administration has not consulted the Panel on L.N. 112.

8. No difficulties have been identified in relation to the legal and drafting aspects of L.N. 112.

¹ The current concessionary tolls took effect from 1 January 2013.

**Western Harbour Crossing Ordinance
(Amendment of Schedule 1) Notice 2014**

(L.N. 113)

9. L.N. 113 is made by the Commissioner under section 52(1) of the Western Harbour Crossing Ordinance (Cap. 436) to replace Schedule 1 to that Ordinance with a new Schedule 1 to reflect the increase of statutory tolls payable for the use of the Western Harbour Crossing (WHC). L.N. 113 comes into operation on 31 July 2014.

10. Cap. 436 provides for a toll adjustment mechanism for WHC which is similar to that for Route 3 (CPS) as described in paragraph 2 above as follows -

- (a) Western Harbour Tunnel Company Limited (the Company) may, during the franchise period and subject to the relevant requirements, apply in writing to the Secretary to give effect to an anticipated toll increase on each of six specified dates (i.e. 1 January 2001, 1 January 2005, 1 January 2009, 1 January 2013, 1 January 2017 and 1 January 2021) (section 45);
- (b) where in respect of any year which is not a year ending immediately before a specified date, the net revenue of the Company is less than MENR for that year as stipulated in Schedule 5, the Company may apply to the Secretary to give effect to the next anticipated toll increase (section 46);
- (c) where the Company has given effect to all the anticipated toll increases and its net revenue in respect of any year before the expiry of the franchise period is less than MENR for that year as specified in Schedule 5, the Company may apply to the Secretary to give effect to an additional toll increase (section 48);
- (d) the amounts of toll increase to which the Company may give effect to for different categories of vehicles on or after 1 January 2011 are set out in Schedule 3 (section 50);
- (e) where a toll is increased, the Commissioner must by notice published in the Gazette amend Schedule 1, with effect from the date on which the increase comes into effect, to vary the relevant toll (section 52(1)); and
- (f) section 34 of Cap. 1 does not apply in respect of any such notice; accordingly, any such notice, including L.N. 113, is not required to be tabled at, and is not subject to amendment by, the Legislative Council (section 52(3)).

11. According to paragraphs 7 and 8 of the LegCo Brief (File Ref: THB(T)CR 1/4651/99) issued by THB in July 2014, the actual net revenue of the Company has, since the commissioning of WHC in 1997, consistently fallen short of the level of MENR as specified in Schedule 5. By 31 July 2006, the Company has effected five anticipated toll increases² and has since applied for and been permitted seven additional toll increases. The last statutory toll increase for WHC came into effect on 31 July 2013.

12. The present increase as reflected in L.N. 113, which was applied by the Company in August 2011, is the eighth additional toll increase. The amounts of increase are in accordance with the amounts stated in Schedule 3. It is based on the Company's audited 2010/11 statement of net revenue which shows that the Company's actual net revenue for 2010/11 was \$1,009 million, which is lower than MENR of \$1,892 million for that year as specified in Schedule 5.

13. According to paragraph 11 of the LegCo Brief, the Company will continue to offer concessions to all categories of vehicles so that the current concessionary tolls³ will be maintained notwithstanding the present increase in statutory tolls. Therefore, users of WHC will not be affected by the changes in the statutory tolls.

14. A comparison of the WHC statutory tolls before and after the increase under L.N. 113, and the applicable concessionary tolls, is at **Annex II**.

15. As advised by the Clerk to the Panel on Transport, the Administration has not consulted the Panel on L.N. 113.

16. No difficulties have been identified in relation to the legal and drafting aspects of L.N. 113.

Prepared by

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31 July 2014

² The Company has forfeited its right once to effect anticipated toll increase.

³ The current concessionary tolls took effect from 1 January 2013.

Tai Lam Tunnel and Yuen Long Approach Road Tolls

Category	Vehicle	Statutory tolls (\$)		Concessionary tolls (\$)
		Before increase	w.e.f. 1 August 2014	
1.	Motorcycles, motor tricycles	65	70	20
2.	Private cars, electrically powered passenger vehicles, taxis	70	75	36
3.	Public and private light buses	195	210	100
4.	(a) Light goods vehicles and special purpose vehicles of a permitted gross vehicle weight not exceeding 5.5 tonnes	195	210	38
	(b) In a vehicle specified in paragraph (a), each additional axle in excess of 2	75	80	0
5.	(a) Medium goods vehicles and special purpose vehicles of a permitted gross vehicle weight exceeding 5.5 tonnes but not exceeding 24 tonnes	205	220	43
	(b) In a vehicle specified in paragraph (a), each additional axle in excess of 2	75	80	0
6.	(a) Heavy goods vehicles and special purpose vehicles of a permitted gross vehicle weight exceeding 24 tonnes	225	240	48
	(b) In a vehicle specified in paragraph (a), each additional axle in excess of 2	75	80	0
7.	Public and private single-decked buses	195	210	115
8.	Public and private double-decked buses	210	225	135

Western Harbour Crossing Tolls

Category	Vehicle	Statutory tolls (\$)		Concessionary tolls (\$)
		Before increase	w.e.f. 31 July 2014	
1.	Motorcycles, motor tricycles	90	100	25
2.	Private cars, electrically powered passenger vehicles	165	180	55
	Taxis	165	180	50
3.	Public and private light buses	190	210	65
4.	(a) Light goods vehicles and special purpose vehicles of a permitted gross vehicle weight not exceeding 5.5 tonnes	240	260	65
	(b) In a vehicle specified in paragraph (a), each additional axle in excess of 2	165	180	30
5.	(a) Medium goods vehicles and special purpose vehicles of a permitted gross vehicle weight exceeding 5.5 tonnes but not exceeding 24 tonnes	350	385	90
	(b) In a vehicle specified in paragraph (a), each additional axle in excess of 2	165	180	30
6.	(a) Heavy goods vehicles and special purpose vehicles of a permitted gross vehicle weight exceeding 24 tonnes	500	545	120
	(b) In a vehicle specified in paragraph (a), each additional axle in excess of 2	165	180	30
7.	Public and private single-decked buses	190	210	100
8.	Public and private double-decked buses	280	310	140