

立法會
Legislative Council

LC Paper No. LS1/14-15

**Paper for the House Committee Meeting
on 10 October 2014**

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 3 October 2014**

Tabling in LegCo : Council meeting of 15 October 2014

Amendment to be made by : Council meeting of 12 November 2014 (or that of 3 December 2014 if extended by resolution)

**Summary Disposal of Complaints (Solicitors)
(Amendment) Rules 2014**

(L.N. 116)

Under section 9A(1A) of the Legal Practitioners Ordinance (Cap. 159), if the conduct of a solicitor, a foreign lawyer, a trainee solicitor or an employee of a solicitor or foreign lawyer involves an alleged breach of a provision of Cap. 159, a practice direction issued by The Law Society of Hong Kong (Law Society), or a principle of professional conduct contained in The Hong Kong Solicitors' Guide to Professional Conduct, prescribed in rules made by the Council of the Law Society (Council) and the Council considers that the matter is suitable for summary disposal by the Tribunal Convenor of the Solicitors Disciplinary Tribunal Panel under section 9AB of Cap. 159, the Council may submit the matter to the Tribunal Convenor for summary disposal subject to the conditions mentioned in section 9AB(1) being satisfied. The provisions, practice directions and principles of professional conduct prescribed for the purposes of section 9A(1A) of Cap. 159 are set out in the Schedule to the Summary Disposal of Complaints (Solicitors) Rules (Cap. 159AD).

2. L.N. 116, made by the Council under section 73 of Cap. 159 subject to the prior approval of the Chief Justice, amends Cap. 159AD by adding to the Schedule three provisions (i.e. sections 5(1), 6(1) and 7(2)) of the Legal Practitioners (Risk Management Education) Rules (Cap. 159Z). These provisions relate to the completion requirements in respect of general core courses, principal's core courses and elective courses on risk management

(RME courses) respectively. The effect of such amendment is to enable complaints against an alleged breach of the requirement to complete RME courses (RME obligations) to be dealt with under the summary disposal procedure provided in Cap. 159AD without the necessity to proceed to a full disciplinary hearing. Under the summary disposal procedure, the Tribunal Convenor may impose a fixed penalty of \$10,000 and a fixed investigation cost of \$15,000 on the relevant practitioner who admits liability for the breach and agrees to the matter being disposed of by the Tribunal Convenor.

3. L.N. 116 also amends the reference to "Practice Directions 1990" in the Schedule to Cap. 159AD to "Practice Directions". According to the LegCo Brief issued by the Law Society on 3 October 2014, as new Practice Directions have been issued since the consolidated Practice Directions were first issued in 1990, this amendment is necessary to avoid confusion as to the effective date of the newly issued Practice Directions.

4. In response to our enquiries on the reasons for making breaches of sections 5(1), 6(1) and 7(2) of Cap. 159Z subject to the summary disposal procedure and whether members of the Law Society have been consulted on such amendment, the Law Society has replied as follows -

- (a) breaches of RME obligations are technical in nature and it is therefore inappropriate to refer them to a full hearing by the Solicitors Disciplinary Tribunal. It would be expeditious and economical to deal with such breaches by way of summary disposal with fixed penalty imposed;
- (b) very few breaches of RME obligations were referred by the Council to the Solicitors Disciplinary Tribunal since most practitioners would be granted an extension of time to comply with their RME obligations. In fact, according to the records of the Law Society, no disciplinary action has been instituted in the past four years in relation to breaches of RME obligations; and
- (c) the proposal has been considered by various committees of the Law Society on which a cross section of solicitors' firms are represented.

5. As advised by the Clerk to the Panel on Administration of Justice and Legal Services, the Panel has not been consulted on L.N. 116.

6. L.N. 116 comes into operation on a day to be appointed by the President of the Law Society by notice published in the Gazette.

**Smoking (Public Health) (Designation of No Smoking Areas)
(Amendment) Notice 2014**

(L.N. 117)

7. Under section 3(1AB) of the Smoking (Public Health) Ordinance (Cap. 371), the Director of Health (DH) may, by notice published in the Gazette, designate as a no smoking area (NSA) the whole or a part of -

- (a) any area that consists of the termini of two or more modes of public transport and is used for effecting and facilitating interchange between them; or
- (b) any bus terminus of more than one specified route as defined in section 2 of the Public Bus Services Ordinance (Cap. 230).

8. Each of these termini and bus terminus is referred to as a "public transport facility" in the Smoking (Public Health) (Designation of No Smoking Areas) Notice (Cap. 371D) (the Designation Notice). The designated NSAs in public transport facilities are set out in the Schedule to the Designation Notice.

9. L.N. 117 is made by DH to amend the Schedule to the Designation Notice to reflect changes in the boundaries of seven public transport facilities currently designated as NSAs. The revised boundaries of the NSAs are delineated on respective plans signed by DH and deposited in the Land Registry.

10. Under section 7(1) of Cap. 371, any person who smokes or carries a lighted cigarette, cigar or pipe in an NSA commits an offence and is liable on summary conviction to a fine of \$5,000. Smoking in an NSA is also a scheduled offence in respect of which a public officer may give the offender a notice under section 3 of the Fixed Penalty (Smoking Offences) Ordinance (Cap. 600) offering him an opportunity to discharge his liability to conviction for the offence by payment of a fixed penalty (currently fixed at \$1,500) within 21 days from the date of the notice.

11. Members may refer to the LegCo Brief (File Ref: FH CR 52/581/89) issued by the Food and Health Bureau in October 2014 for background information. According to paragraph 12 of the LegCo Brief, an information note on the details of the amendments has been issued to the 18 District Councils and the plans of the NSAs of the public transport facilities concerned will be posted on the website of the Tobacco Control Office for public information before the designation takes effect.

12. As advised by the Clerk to the Panel on Health Services, the Panel has not been consulted on L.N. 117.

13. L.N. 117 comes into operation on 31 December 2014.

14. No difficulties have been identified in the legal and drafting aspects of L.N. 116 and L.N. 117.

Prepared by

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