

立法會
Legislative Council

LC Paper No. LS34/14-15

**Paper for the House Committee Meeting
on 30 January 2015**

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 23 January 2015**

Tabling in LegCo : Council meeting of 28 January 2015

Amendment to be made by : Council meeting of 25 February 2015 (or that of 18 March 2015 if extended by resolution)

**Air Pollution Control (Non-road Mobile Machinery)
(Emission) Regulation** **(L.N. 12)**

L.N. 12 is made by the Secretary for the Environment (SEN) under section 43¹ of the Air Pollution Control Ordinance (Cap. 311) after consultation with the Advisory Council on the Environment to introduce a new scheme of statutory control on the emissions of air pollutants from non-road mobile machinery² (NRMM).

2. Sections 4 to 6 of L.N. 12 seek to impose control on the sale, lease and use of NRMMs by requiring NRMMs to be approved by the Authority (i.e. the Director of the Environmental Protection Department). The Authority may approve a NRMM if the Authority is satisfied that the emission from the machine complies with the emission standard specified in Schedule 1 to L.N. 12. The emission standards are set by making reference to those of the European Union, the United States and Japan. Under sections 9 and 11 of L.N. 12, the Authority may exempt from complying with the prescribed emission standards

¹ Section 43(1)(b), (h) and (r) empowers SEN to make regulation for the prohibition and control of the emission of air pollutants into the atmosphere, adoption of precautions against the emission of air pollutants from any polluting process, etc., and the application of standards in relation to the control of the emission of air pollutants from motor vehicles.

² NRMM includes a wide range of mobile machines (including transportable industrial equipment), or vehicles powered by internal combustion engines used primarily off-road. Some examples of popular types of NRMMs are crawler cranes, excavators and air compressors and etc. (see paragraph 2 of the LegCo Brief).

certain new NRMMs under specified circumstances and existing NRMMs which are already in Hong Kong on or before 30 November 2015. An approved or exempted NRMM must be affixed with an appropriate label prescribed in Schedule 2 to L.N. 12 for identification purpose. Failure to comply with any requirement under L.N.12 is an offence and is liable to fine and imprisonment³. According to section 3, L.N. 12 does not apply to NRMMs which are not for local use such as goods in transit.

3. L.N. 12 comes into operation on 1 June 2015 except that section 4 comes into operation on 1 September 2015, and sections 5 and 6 come into operation on 1 December 2015. According to paragraph 5 of the LegCo Brief (File Ref: EP150/NV/7/6) issued by the Environmental Protection Department in January 2015, the phased commencement is to allow grace periods for the relevant persons including the owners and suppliers of NRMMs to apply for exemption from the Authority. According to paragraphs 11 to 13 of the LegCo Brief, the Administration commenced consultation with the stakeholders including manufacturers and suppliers of NRMMs on the regulatory proposal in 2011 and briefing sessions on the further details of the proposal were conducted in 2014. The trade in general had no objection to the proposal but requested more time to apply for exemption of the existing NRMMs. Members may refer to the LegCo Brief for further information.

4. As advised by the Clerk to the Panel on Environmental Affairs, the Panel was consulted on the legislative proposal at its meetings on 27 February 2012 and 27 October 2014. At the latter meeting, the Panel was briefed on the Administration's progress in preparing L.N. 12 to give effect to the proposal. Members were supportive of the Administration's proposal to control the air pollutant emissions of NRMMs. Noting that the prescribed emission standards provided under L.N. 12 would only apply to new NRMMs, some members doubted the need to exempt the existing NRMMs, which were in use before L.N. 12 took effect, from complying with the prescribed emission standards. They urged the Administration to introduce incentive measures to encourage early replacement of existing NRMMs. There were also concerns about the enforcement of L.N. 12, availability of NRMMs meeting the prescribed emission standards in the market and other measures to control emissions of NRMMs.

³ The maximum level of fine is \$200,000 and that of imprisonment is 6 months.

**Builders' Lifts and Tower Working Platforms (Safety)
(Fees) (Amendment) Regulation 2015**

(L.N. 13)

5. L.N. 13 is made by the Secretary for Financial Services and the Treasury under section 50(3)⁴ of the Builders' Lifts and Tower Working Platforms (Safety) Ordinance (Cap. 470) to increase eight items of fees which are specified in the Schedule to the Builders' Lifts and Tower Working Platforms (Safety) (Fees) Regulation (Cap. 470A). Those items concern the respective fees for registration as a registered examiner or a registered contractor and the renewal of any of the aforesaid registration and fees for examination of reports and certificates of test and examination issued by registered examiners under Cap. 470.

6. According to paragraphs 3 to 5 of the Legislative Council (LegCo) Brief issued by the Development Bureau in January 2015 (with no file reference), the increases in the relevant fees by L.N. 13 range from 9.7% to 10.6% in order to achieve full cost recovery gradually and to avoid a steep fee increase. The fees were last revised in February 2001. Members may refer to the LegCo Brief for details.

7. The Clerk to the Panel on Development has advised that at the meeting on 25 November 2014, the Administration briefed the Panel on the proposed revision of fees under L.N. 13. Members did not raise any question or objection to the proposed revision of fees.

8. L.N. 13 comes into operation on 27 March 2015.

**Construction Workers Registration (Amendment)
Ordinance 2014 (Commencement) Notice 2015**

(L.N. 14)

**Construction Workers Registration (Fees) (Amendment)
Regulation 2015**

(L.N. 15)

9. The Construction Workers Registration (Amendment) Ordinance 2014 (22 of 2014) (the Amendment Ordinance) was passed on 18 December 2014 and gazetted on 24 December 2014. It amends the Construction Workers Registration Ordinance (Cap. 583) to modify the construction workers

⁴ Section 3 of the Interpretation and General Clauses Ordinance (Cap. 1) defines Financial Secretary to mean the Financial Secretary of the Hong Kong Special Administrative Region (HKSAR) and the Secretary for Financial Services and the Treasury.

registration scheme by changing the basis of registration from "trade" to "trade division" and providing arrangements for senior construction workers so as to implement the remaining phase of prohibition on carrying out construction work without proper registration and other related matters.

L.N. 14

10. By L.N. 14 made under section 1(2) of the Amendment Ordinance, the Secretary for Development (SDEV) has appointed 1 April 2015 as the day on which the Amendment Ordinance (except sections 4 to 10, 26 and 36) comes into operation.

11. Under section 1(3) of the Amendment Ordinance, sections 4 to 10, 26 and 36 come into operation on the expiry of the period of 24 months beginning on the day on which section 2 comes into operation⁵, i.e. 1 April 2017. Sections 4 to 10, 26 and 36 are provisions relating to prohibitions on carrying out construction work without proper registration.

12. During the deliberation of the Bills Committee on the Construction Workers Registration (Amendment) Bill 2014, the Administration advised members that the target commencement date of the legislative amendments, to be appointed by SDEV by notice published in the Gazette, was two to three months after the passage of the Bill. Members of the Bills Committee did not raise objection to or comment on the target commencement date.

L.N. 15

13. L.N. 15 is made by the Construction Industry Council (CIC), with the approval of SDEV, under section 63 of Cap. 583 to amend the Construction Workers Registration (Fees) Regulation (Cap. 583B) to revise the fee charging scheme prescribed for registration of the construction workers.

14. Consequential upon the enactment of the Amendment Ordinance, L.N. 15 correspondingly amends the references of "designated trade" in Cap. 583B to "designated trade division" and sets the assessment fee for the one-off grandfathering arrangement for senior workers at \$50. To implement the extension of maximum validity period of registration and its renewal from 4 years to 6 years, while the registration fee is maintained at the existing amount of \$100, new Schedules 1 and 2 are added to set out the pro-rata registration fees for validity periods less than 4 years so that the existing refunding arrangement under Part 5 of Cap. 583B may be replaced. L.N. 15 also makes other amendments to modify the existing registration arrangements.

⁵ Under section 1(4) of the Amendment Ordinance, such period may be extended by SDEV by notice published in the Gazette.

15. L.N. 15 comes into operation on the day on which section 2 of the Amendment Ordinance comes into operation, i.e. 1 April 2015.

16. As advised by the Clerk to the Panel on Development, the Administration has not briefed the Panel on L.N.15. However, during the deliberation of the Bills Committee on the Construction Workers Registration (Amendment) Bill 2014, members of the Bills Committee noted that: (a) a prescribed fee is payable to the CIC by a person who attends an assessment for the one-off grandfathering arrangement for senior workers under clause 18 of the Bill; and (b) the normal validity period of worker registration will be extended from 3 years to 5 years, whereas the maximum validity period of registration as a registered skilled/semi-skilled/general worker will be extended from 48 months to 72 months under clauses 21(1) and 21(2) of the Bill. Members of the Bills Committee raised no objection to these arrangements.

**Anti-Money Laundering and Counter-Terrorist Financing
(Financial Institutions) Ordinance (Amendment of
Schedule 2) Notice 2015**

(L.N. 16)

17. At present, Schedule 2 to the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance (Cap. 615) sets out the requirements relating to customer due diligence (CDD) and record-keeping for financial institutions⁶ that are defined in Schedule 1 to Cap. 615. According to the Administration, as an interim provision, any of the said financial institutions may carry out CDD measures by means of an intermediary⁷ that is specified in section 18(3)(a) of Schedule 2 to Cap. 615 if certain conditions are satisfied. According to section 18(5) of Schedule 2 to Cap. 615, section 18(3)(a) of Schedule 2 to Cap. 615 is due to expire at the end of 31 March 2015⁸.

⁶ According to Part 2 of Schedule 1 to Cap. 615, a financial institution is defined to mean any of the following parties: an authorised institution under the Banking Ordinance (Cap. 155), a licensed corporation under the Securities and Futures Ordinance (Cap. 571), an authorised insurer, an appointed insurance agent or an authorised insurance broker under the Insurance Companies Ordinance (Cap. 41), a licensed money service operator (which is defined to mean the holder of a licence as defined in section 24 of Cap. 615) and the Postmaster General.

⁷ Section 18(3)(a) specifies the following intermediaries: (i) a solicitor practising in Hong Kong, (ii) a certified public accountant practising in Hong Kong, (iii) a current member of The Hong Kong Institute of Chartered Secretaries practising in Hong Kong and (iv) a trust company registered under Part 8 of the Trustee Ordinance (Cap. 29) carrying on trust business in Hong Kong.

⁸ Section 18(5) of Schedule 2 to Cap. 615 provides that section 18(3)(a) of Schedule 2 to Cap. 615 expires at the end of three years beginning on the date of commencement of Cap. 615. As Cap. 615 commenced on 1 April 2012, section 18(3)(a) of Schedule 2 to Cap. 615 will expire at the end of 31 March 2015.

18. In the light of the said expiration, L.N. 16 is made by the Secretary for Financial Services and the Treasury under section 6 of Cap. 615 to amend section 18(5) of Schedule 2 to Cap. 615 so that section 18(3)(a) of Schedule 2 to Cap. 615 expires at midnight on 31 March 2018. Members may refer to the LegCo Brief (File Ref: G13/21C) issued by the Financial Services and the Treasury Bureau on 21 January 2015 for background information.

19. The Clerk to the Panel on Financial Affairs has advised that on 24 December 2014, the Administration provided an information paper to the Panel explaining the background of the proposed amendments in L.N. 16 and the Administration's plan to gazette L.N. 16 on 23 January 2015. The information paper (LC Paper No. CB(1)390/14-15(01)) was circulated to Panel members and copied to all other LegCo Members on 29 December 2014. No request for discussion or query on the information paper was received from Members.

20. According to paragraph 12 of the LegCo Brief, the Administration has consulted the relevant financial sectors and the professional bodies specified in section 18(3)(a) of Schedule 2 to Cap. 615 and they did not object to the proposed amendments.

21. L.N. 16 comes into operation on 1 April 2015.

**Toys and Children's Products Safety Ordinance
(Amendment of Schedules 1 and 2) Notice 2015**

(L.N. 17)

22. L.N. 17 is made by the Secretary for Commerce and Economic Development under section 37 of the Toys and Children's Products Safety Ordinance (Cap. 424) to update certain safety standards for toys and children's products that are specified in Schedules 1 and 2 to Cap. 424.

23. Under sections 3 and 5 of Cap. 424, no person shall manufacture, import or supply any toy or children's product unless the toy or product complies with all the requirements in at least one relevant standard specified in Schedule 1 or 2 to Cap. 424. Schedule 1 specifies the standards for toys and Schedule 2 specifies the standards for children's products. Further, sections 3(1) and 5(3) of Cap. 424 respectively provides that goods in transit, in the course of transshipment or manufactured for export are not subject to the said prohibition.

24. According to paragraph 4 of the LegCo Brief (File Ref: CITB CR 08/18/3) issued by the Commerce and Economic Development Bureau in

January 2015, certain standards for toys and some standards for certain classes⁹ of Schedule 2 products have been updated or amended by the standards institutions concerned. L.N. 17 amends the relevant Schedules to apply the updated versions of those standards.

25. According to paragraph 8 of the LegCo Brief, the Administration has consulted certain major trade associations and organisations advocating children welfare. The Administration has taken into account the requests for reasonable time for the trade to adjust to the requirements concerned and appointed 1 October 2015 to be the date on which L.N. 17 comes into operation. Members may refer to Annex B to the LegCo Brief for a summary on the major changes introduced by the latest standards.

26. The Clerk to the Panel on Economic Development has advised that the Panel has not been consulted on L.N. 17.

27. L.N. 17 comes into operation on 1 October 2015.

**Fugitive Offenders (Czech Republic) Order
(Commencement) Notice**

(L.N. 18)

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

(L.N. 19)

28. L.N. 18 and L.N. 19 are made by the Secretary for Security to appoint 13 February 2015 as the day on which the Fugitive Offenders (Czech Republic) Order (L.N. 166 of 2013) and the Mutual Legal Assistance in Criminal Matters (Czech Republic) Order (L.N. 37 of 2014) come into operation.

29. L.N. 166 of 2013 is made under section 3 of the Fugitive Offenders Ordinance (Cap. 503) to direct that the procedures in Cap. 503 for the surrender of fugitive offenders shall apply as between HKSAR and the Czech Republic. It is made in consequence of the arrangements for the surrender of fugitive offenders that were entered into by the Government of HKSAR and the Czech Republic and signed in March 2013 (Agreement). Under section 2 of L.N. 166 of 2013 the relevant procedures are subject to the limitations, restrictions, exceptions and qualifications contained in the Agreement.

⁹ The respective classes are babies' dummies, bunk beds for domestic use, child safety barriers for domestic use, children's cots for domestic use, children's high chairs and multi-purpose high chairs for domestic use, children's paints, playpens for domestic use and wheeled child conveyances.

30. L.N. 37 of 2014 is made under section 4 of the Mutual Legal Assistance in Criminal Matters Ordinance (Cap. 525) and in consequence of an agreement which was made between HKSAR and the Czech Republic on Mutual Legal Assistance in Criminal Matters that was signed in March 2013. Section 2 of L.N. 37 of 2014 directs that Cap. 525, subject to certain specified modifications, applies between HKSAR and the Czech Republic.

31. Members may refer to the LegCo Brief (with no file reference) issued by the Security Bureau on 23 January 2015 for background information.

32. The Clerk to the Panel on Security has advised that the Panel has not been consulted on L.N. 18 and L.N. 19. However, L.N. 166 of 2013 and L.N. 37 of 2014 had been scrutinized by a Subcommittee. In the course of examination of L.N. 166 of 2013, some members requested and the Administration undertook to publicize the offences to which L.N. 166 of 2013 are applicable before L.N. 166 of 2013 came into force. Members may wish to refer to the reports of the Subcommittee to the House Committee (LC Paper Nos. CB(2)583/13-14 and CB(2)914/13-14) as well as Annex C and Annex D to the LegCo Brief for further information.

Concluding observations

33. The Legal Service Division is still scrutinizing L.N. 12. No difficulties have been identified in the legal and drafting aspects of L.N. 13 to L.N. 19.

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29 January 2015

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