

立法會
Legislative Council

LC Paper No. LS51/14-15

**Paper for the House Committee Meeting
on 20 March 2015**

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 13 March 2015**

Tabling in LegCo : Council meeting of 18 March 2015

Amendment to be made by : Council meeting of 15 April 2015 (or that of 6 May 2015 if extended by resolution)

**Air Pollution Control (Ocean Going Vessels) (Fuel at Berth)
Regulation**

(L.N. 51)

L.N. 51 is made by the Secretary for the Environment under section 43 of the Air Pollution Control Ordinance (Cap. 311) after consultation with the Advisory Council on the Environment (ACE).

2. According to the Administration, marine vessels are the largest local air pollution emission source. An ocean going vessel (OGV) generally runs on heavy fuel oil (HFO) and when it is at berth, its auxiliary engines, boilers and generators would continue running on HFO to power onboard utilities. As assessed by the Administration, the sulphur dioxide (SO₂) emissions of an OGV at berth account for about 40% of the total SO₂ emissions of an OGV when staying in Hong Kong. In order to improve the air quality, particularly around the port areas, the Administration considers it necessary to require an OGV to switch to cleaner fuel while at berth.

3. L.N. 51 provides the legislative scheme for regulating the use of fuel by a vessel¹ while at berth as follows -

¹ L.N. 51 applies to a vessel that holds the certificate set out in section 3(1)(a) or (b) or is of 500 gross tonnage or over and holds the certificate specified in section 3(1)(c) (except the one plying exclusively within river trade limits). Such a vessel is generally an OGV. The term "vessel" has the meaning given by section 2 of the Shipping and Port Control Ordinance (Cap. 313).

- (a) a vessel must not, during the prohibition period (i.e. the period that it is at berth, excluding the first hour upon arrival and the last hour before departure), use non-compliant fuel for combustion purposes for operating any of its specified machinery; contravention of the prohibition is an offence (section 4);
 - (b) non-compliant fuel means any fuel other than low sulphur marine fuel, liquefied natural gas or any other fuel approved by the air pollution control authority appointed pursuant to section 4(1) of Cap. 311 (the Authority) (section 2(1));
 - (c) there are defences to the offence mentioned in paragraph 3(a); (section 5);
 - (d) the Authority may exempt a vessel from the prohibition on using non-compliant fuel and may also revoke the exemption; an application for such exemption can be made by the owner, master or agent of a vessel and it is an offence to provide false or misleading information or document in the application (sections 6 and 7);
 - (e) the particulars regarding a vessel's arrival and departure and the fuel switch operations must be recorded in a log book of the vessel concerned; it is an offence for contravening the requirement without reasonable excuse (section 8);
 - (f) the bunker delivery note(s) and the relevant log book(s) of the vessel concerned must be kept on board in accordance with the prescribed requirements; failure to observe any of such requirements without reasonable excuse is an offence (section 9);
 - (g) the Authority may, by notice in writing, require the owner or master of a vessel to submit to the Authority copies of the documents mentioned in paragraph 3(f); failure to comply with such a notice without reasonable excuse is an offence; it is also an offence to submit false or misleading copies (section 10); and
 - (h) L.N. 51 does not apply to a warship or any other vessel on military service, a vessel that does not arrive at any berth or a vessel entering the waters of Hong Kong solely for specified purposes (section 3(2) and (3)).
4. L.N. 51 comes into operation on 1 July 2015.

5. Members may refer to the LegCo Brief (File Ref: EP 150/NV/26) issued by the Environmental Protection Department in March 2015 for further information.

6. As stated in paragraph 20 of the LegCo Brief, the Administration consulted the relevant stakeholders in 2013 and they raised no objection to the Administration's proposal. Some of them have urged for early implementation of L.N. 51 while others have asked for a longer lead time for their preparation. Some stakeholders were concerned that the additional cost arising from mandating fuel switch might affect the competitiveness of Hong Kong port. According to paragraph 21 of the LegCo Brief, ACE discussed and supported the proposal in July 2013.

7. As advised by the Clerk to the Panel on Environmental Affairs, the Panel discussed the incentive scheme to reduce by half the port facilities and light dues charged on OGVs using low sulphur marine fuel (i.e. fuel with sulphur content not exceeding 0.5%) while at berth at its meetings on 28 May 2012 and 22 October 2012. The Panel was consulted on the proposal to mandate all OGVs to use cleaner fuel while at berth in Hong Kong waters at its meeting on 22 July 2013. The Subcommittee on Issues Relating to Air, Noise and Light Pollution, which was formed under the Panel, also touched on the subject of mandatory fuel switch at berth for OGVs when discussing issues relating to the legislation and administrative measures on the control of air pollution and the associated public expenditure at its meeting on 29 January 2013.

8. Members in general supported the principles of mandatory fuel switch at berth which would improve the air quality in Hong Kong. Members noted that the reason for requiring OGVs to switch to low sulphur marine fuel with sulphur content not exceeding 0.5% instead of 0.1% was that the latter was not readily available in Hong Kong. The Administration would, in the future, review the fuel standard taking into account the availability of fuel with lower sulphur content and the adaptability of the shipping trade. Members also noted that there were no technical difficulties for OGVs to switch to low sulphur fuel at berth. Some members however expressed concern that the additional cost implications arising from the mandatory fuel switch might affect the shipping industry of Hong Kong and undermine the competitiveness of Hong Kong port vis-à-vis neighbouring ports in the Pearl River Delta.

9. The Legal Service Division is still scrutinizing the legal and drafting aspects of L.N. 51 and will make a further report if necessary.

**Public Health and Municipal Services Ordinance (Public
Pleasure Grounds) (Amendment of Fourth Schedule) Order
2015**

(L.N. 52)

10. L.N. 52 is made by the Director of Leisure and Cultural Services (the Director) under section 106 of the Public Health and Municipal Services Ordinance (Cap. 132).

11. It sets aside the following 11 venues for use as public pleasure grounds and adds these venues to the list of public pleasure grounds in the Fourth Schedule to Cap. 132 (the Fourth Schedule) for updating purpose -

- (a) Chui Tin Street Sitting-out Area;
- (b) Fu Hong Street Pet Garden;
- (c) Mei Lam Sitting-out Area;
- (d) Sheung Shui Cycling Entry/Exit Hub;
- (e) Ta Kwu Ling Chuk Yuen Village Playground;
- (f) Tiu Keng Leng Sports Centre;
- (g) Lo So Shing Sitting-out Area;
- (h) Pak Kok Kau Tsuen Children's Playground;
- (i) Shek Kok Tsui Sitting-out Area;
- (j) Siu Sai Wan Sitting-out Area No. 1; and
- (k) Siu Sai Wan Sitting-out Area No. 2.

12. According to the Administration, the venues set out in paragraph 11 (a) to (f) are newly completed venues that are or will open for public use by the Leisure and Cultural Services Department (LCSD). The rest are venues that are taken over from the Home Affairs Department for management by LCSD. Pursuant to section 107 of Cap. 132, the effect of setting aside and including the venues in the Fourth Schedule is to vest the general management and control of them in the Director.

13. L.N. 52 further renames Lok Man Road Sitting-out Area, a public pleasure ground currently contained in the Fourth Schedule, as Lok Man Road Pet Garden because the venue, as explained by the Administration, has been converted from a sitting-out area into a pet garden.

14. According to paragraph 8 of the LegCo Brief (File Ref: L/M (4) in LCS 19/HQ 813/00) issued by LCSD on 4 March 2015, the Administration has consulted the respective District Councils and has their support for the proposals. As advised by the Clerk to the Panel on Home Affairs, the Panel has not been consulted on L.N. 52.

15. L.N. 52 came into operation on the date of publication in the Gazette, i.e. 13 March 2015.

16. No difficulties have been identified in the legal and drafting aspects of L.N. 52.

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