

立法會
Legislative Council

LC Paper No. LS58/14-15

**Paper for the House Committee Meeting
on 17 April 2015**

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 10 April 2015**

Tabling in LegCo : Council meeting of 15 April 2015

Amendment to be made by : Council meeting of 13 May 2015 (or that of 3 June 2015 if extended by resolution)

Merchant Shipping (Prevention of Pollution by Garbage) Regulation (L.N. 74)

Merchant Shipping (Prevention of Pollution by Garbage) Regulation (Repeal) Regulation (L.N. 75)

L.N. 74 and L.N. 75 are made by the Secretary for Transport and Housing under section 3 of the Merchant Shipping (Prevention and Control of Pollution) Ordinance (Cap. 413). L.N. 74 implements a new set of Merchant Shipping (Prevention of Pollution by Garbage) Regulation and L.N. 75 repeals the existing Merchant Shipping (Prevention of Pollution by Garbage) Regulation (Cap. 413J).

2. According to the Administration, the International Maritime Organization (IMO) has adopted the International Convention for the Prevention of Pollution from Ships (known as MARPOL) to stipulate certain regulations which aim at preventing and minimising pollution from ships. Annex V to MARPOL (which concerns regulations for the prevention of pollution by garbage from ships) entered into force in 1988, was implemented in Hong Kong under the existing Cap. 413J. In view of the amendments that IMO has introduced to Annex V by virtue of Resolution MEPC.201(62) which came into effect on 1 January 2013, the Administration has repealed Cap. 413J by L.N. 75 and substituted it with the new regulation provided in L.N. 74 to implement the latest version of Annex V. Members may refer to the LegCo Brief (File Ref: THB(1) PML 8/10/90/8) issued by the Transport and Housing

Bureau dated 8 April 2015 and Annex D to the LegCo Brief for background information on L.N. 74 and L.N. 75.

3. L.N. 74 consists of five parts. Part 1 provides for the commencement and application of the L.N. 74 and the definitions used in L.N. 74. In relation to a ship, L.N. 74 applies to a Hong Kong ship¹ wherever it may be and a non-Hong Kong ship within the waters of Hong Kong, but does not apply to a warship, a naval auxiliary or any other ship owned or operated by a government and used only on government non-commercial service. Further, the term "garbage" is, in gist, defined in Part 1 of L.N. 74 to include nine categories of substances generated during the normal operation of a ship (or a fixed or a floating platform), including food wastes, domestic wastes, operational wastes, all plastics, cargo residues, incinerator ashes, cooking oil, fishing gear and animal carcasses. Such categories are respectively defined in L.N. 74.

4. Part 2 concerns the prohibitions on discharge of garbage from a ship or a fixed or floating platform and the exceptions to the prohibitions. In gist, in relation to a fixed or floating platform, except for a fixed or floating platform that is located more than 12 nautical miles from the nearest land and the garbage that is discharged from the platform is treated food wastes, the discharge of garbage from a fixed or floating platform into the sea is prohibited². In relation to a ship, unless exempted, the discharge of garbage from a ship within a special area³ is prohibited. The discharge of garbage from a ship outside a special area is permitted if certain conditions are satisfied.

5. Part 3 sets out the respective requirements that are imposed on a ship or a fixed or floating platform. Such requirements include the duty to display a placard to notify the relevant parties in respect of the applicable discharge requirements, the duty to have on board a Garbage Management Plan⁴, the duty to keep a Garbage Record Book and the duty to report or record any information that is required under L.N. 74.

6. Part 4 contains provisions to empower the Director of Marine to grant exemption and provisions which concern the appointment and powers of Government surveyors. Such powers include, subject to certain conditions being satisfied, the power to inspect and examine a ship or a fixed or floating platform, the

¹ See section 3 of the L.N. 74.

² See section 8 of L.N. 74.

³ L.N. 74 refers to regulation 1 of Annex V to MARPOL. Special area is defined under regulation 1 to mean a sea area where for recognized technical reasons in relation to its oceanographic and ecological condition and to the particular character of its traffic the adoption of special mandatory methods for the prevention of sea pollution by garbage is required. Such areas include the Mediterranean Sea area, the Baltic Sea area and the Antarctic area. Members may refer to footnote 1 of the LegCo Brief and Resolution MEPC.201(62) for further information.

⁴ According to section 10(4) of L.N. 74, the plan must provide for the procedures for minimizing the volume of, collecting, storing, processing and the discharge of, garbage and the use of equipment on board. Further, the plan must comply with the relevant requirements which are provided under L.N. 74.

power to seize and remove any article from the ship or platform concerned and to detain the article or substance.

7. Part 5 provides for offences, penalties and defences under L.N. 74.

8. Section 3A of Cap. 413 provides that for the purpose of giving effect to any provisions of any international agreements applicable to Hong Kong as in force from time to time; and so far as the agreement relates to any matter for or in relation to which provision may be made by regulations made under Cap. 413, any such regulation may set out or refer to any of those provisions and specify amendments, modifications or adaptations subject to which those provisions shall have effect (Direct Reference Approach (DRA)). However, section 3A does not provide for any factor that may or must be taken into account for the said purpose. Paragraph 9 of the LegCo Brief sets out the factors which, according to the Administration, have been taken into account⁵ in deciding to exercise the power conferred by section 3A in respect of L.N. 74.

9. According to the Administration, it has consulted the Shipping Consultative Committee, the Local Vessel Advisory Committee and the High Speed Craft Consultative Committee, which comprise various stakeholders in the shipping industry, and they raised no objection to the proposal. Members may refer to paragraph 14 of the LegCo Brief for further details.

10. As advised by the Clerk to the Panel on Economic Development, the Administration consulted the Panel at the meeting on 16 December 2014 on the proposed amendments to Cap. 413J. Noting that the proposed amendments would apply to all ships within Hong Kong waters and all Hong Kong ships wherever they were, some Panel members suggested that the Administration should carry out early and wide publicity on the proposed amendments. In particular, the fishing trade should be well informed about the requirement of displaying placards to notify the crew and passengers of the applicable disposal requirements imposed on ships of 12 metres or more in length overall. The Administration took note of the suggestion. The Administration did not brief the Panel on L.N.75.

11. L.N. 74 and L.N. 75 come into operation on 1 July 2015.

⁵ Members may refer to paragraphs 15 to 22 of the Report of the Bills Committee on the Merchant Shipping (Seafarers) (Amendment) Bill 2013 (LC Paper No. CB(1)69/13-14) for information on DRA and the relevant factors to be considered. According to the Report, the Administration has referred to Cap. 413 as an example of a piece of marine-related legislation which "has been enacted by adopting DRA". The Administration has assured members of the Bills Committee that "any subsidiary legislation which seeks to adopt DRA for the implementation of international agreements must be submitted to the LegCo for scrutiny". Further, members of the Bills Committee have suggested the Administration to include in the relevant LegCo Brief for subsidiary legislation to be made "a detailed explanation of the provisions in the subsidiary legislation where DRA is adopted, and provide extracts of the requirements in the Convention (where appropriate) as appendices to the LegCo Brief". The Administration has accepted the proposed arrangement.

**Solicitors (General) Costs (Amendment) Rules 2014
(Commencement) Notice**

(L.N. 76)

12. L.N. 76 is made by the President of The Law Society of Hong Kong under rule 1 of the Solicitors (General) Cost (Amendment) Rules 2014 (L.N. 93 of 2014) (the Amendment Rules) to appoint 13 July 2015 as the day on which the Amendment Rules come into operation.

13. The Amendment Rules repeal paragraph 1 of the Third Schedule to the Solicitors (General) Cost Rules (Cap. 159G), which provides for costs for copying documents, and substitute it with a new paragraph 1 to –

- (a) remove obsolete types of copies (such as stencilled or carbon copy);
- (b) provide that copies may be provided in the form of "photographic copy, printed (including laser printed) copy or scanned printed copy"; and
- (c) specify the costs for providing copies printed in black ink or colour ink and in different quantities.

14. The Amendment Rules further provide that, for the purpose of the new paragraph 1, if two or more pages of documents are reduced in size and printed on one page, the costs of copying is to be charged as one page. Members may refer to LegCo Brief (with no file reference) issued by the Law Society of Hong Kong dated 30 March 2015 for further information.

15. No subcommittee has been formed to scrutinize the Amendment Rules. Further, as advised by the Clerk to Panel on Administration of Justice and Legal Services, the Panel has not been consulted on the Amendment Rules nor on L.N. 76.

Concluding observations

16. No difficulties have been identified in the legal and drafting aspects of L.N. 75 and L.N. 76. The Administration has been requested to clarify certain legal and drafting issues in relation to L.N. 74 and a further report may be made, if necessary.

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