

立法會
Legislative Council

LC Paper No. LS4/15-16

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

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

Tabling in LegCo : Council meeting of 28 October 2015

Amendment to be made by : Council meeting of 25 November 2015 (or
16 December 2015 if extended by resolution)

PART I SUBSIDIARY LEGISLATION

Schedule of Routes (Citybus Limited) Order 2015 (L.N. 202)

**Schedule of Routes (Citybus Limited) (North Lantau
and Chek Lap Kok Airport) Order 2015** (L.N. 203)

**Schedule of Routes (Kowloon Motor Bus Company
(1993) Limited) Order 2015** (L.N. 204)

**Schedule of Routes (Long Win Bus Company Limited)
Order 2015** (L.N. 205)

**Schedule of Routes (New Lantao Bus Company (1973)
Limited) Order 2015** (L.N. 206)

**Schedule of Routes (New World First Bus Services
Limited) Order 2015** (L.N. 207)

L.N. 202 to L.N. 207 are made by the Chief Executive (CE) in Council under section 5(1) of the Public Bus Services Ordinance (Cap. 230) to update the schedules of bus routes operated by five franchised bus companies.

2. Under section 5(1) of Cap. 230, the CE in Council may grant to the existing franchised public bus companies the right to operate public bus service on such routes as specified by order. Section 15(1) of Cap. 230 provides that the Commissioner for Transport may, after consultation with the bus companies, require them to introduce new routes and make alterations to specified routes on a temporary basis. Such changes

may take effect for a period up to 24 months unless they are specified in orders made by the CE in Council under section 5(1) before expiry of the relevant period. According to the LegCo Brief (File Ref: THB(T)L 2/4/115) issued by the Transport and Housing Bureau on 20 October 2015, L.N. 202 to L.N. 207 were made to enable the service changes introduced under section 15(1) between 1 January 2014 and 31 March 2015 to continue to take effect.

3. L.N. 202 to L.N. 207 repeal the existing Schedule of Routes Orders made in 2013 and 2014, i.e. L.N. 58 of 2013 and L.N. 63 to L.N. 67 of 2014, and update the schedule of bus routes of the five franchised bus companies. According to paragraph 4 the LegCo Brief, the updates are respectively -

- (a) Citybus Limited introduced one new route, cancelled five routes and made alterations to 18 routes in respect of its franchise for Hong Kong Island and cross-harbour bus services; and made alterations to two routes in respect of its franchise for north Lantau and Chek Lap Kok Airport bus services (L.N. 202 and L.N. 203);
- (b) The Kowloon Motor Bus Company (1933) Limited introduced 14 new routes, cancelled 12 routes and made alterations to 93 routes (L.N. 204);
- (c) Long Win Bus Company Limited introduced one new route, cancelled one route and made alterations to five routes (L.N. 205) ;
- (d) New Lantao Bus Company (1973) Limited made alterations to 12 routes (L.N. 206); and
- (e) New World First Bus Services Limited cancelled one route and made alterations to 15 routes (L.N. 207).

4. As stated in paragraph 7 of the LegCo Brief, the District Councils (DCs) concerned had been consulted on the major service changes before such changes were introduced. According to the Administration, the DCs' suggestions had been taken on board where justified and explanations were given to DCs on suggestions which could not be taken on board.

5. As advised by the Clerk to the Panel on Transport, the Panel has not been consulted by the Administration regarding L.N. 202 to L.N. 207.

6. L.N. 202 to L.N. 207 come into operation on 31 December 2015.

Census and Statistics (2016 Population Census) Order (L.N. 208)

7. L.N. 208 is made by the Chief Executive in Council under section 9 of the Census and Statistics Ordinance (Cap. 316) to direct the Commissioner for Census and

Statistics (the Commissioner) to take a census of population of Hong Kong from 30 June 2016 to 2 August 2016 (the 2016 Census) to obtain information on the demographic, social and economic characteristics of the population of Hong Kong at the time of the taking of the census.

8. Under Section 7 of L.N. 208, the Commissioner must destroy all completed schedules¹ collected or received by census officers for the 2016 Census, and all copies of the schedules, not later than 29 June 2017.

9. Members may refer to the LegCo Brief (File Ref.: C&SD/1/11(2014) Pt.2) issued by the Financial Services and the Treasury Bureau on 14 October 2015 for background information.

10. As advised by the Clerk to the Panel on Financial Affairs, the Panel was consulted on 2 December 2013 on the planned approach for conducting the 2016 Census. Members made suggestions on the data topics to be included in the 2016 Census, including floor area of quarters, sexual orientation, and information on persons with disabilities, sub-divided units and children born in Hong Kong to Mainland parents.

11. The Legal Service Division has written to the Administration to seek clarification in relation to certain aspects of L.N. 208 and will report further, if necessary.

12. L.N. 208 comes into operation on 17 December 2015.

Mines (Safety) (Amendment) Regulation 2015 (L.N. 209)

Dangerous Goods (General) (Amendment) Regulation 2015 (L.N. 210)

Dangerous Goods (Government Explosives Depots) (Amendment) Regulation 2015 (L.N. 211)

13. L.N. 209 to L.N. 211 are made by the Secretary for Financial Services and the Treasury under section 29A of the Interpretation and General Clauses Ordinance (Cap. 1) to amend respectively Schedule 3 to the Mines (Safety) Regulations (Cap. 285B), the Table to regulation 183(1) of the Dangerous Goods (General) Regulations (Cap. 295B) and the Schedule to the Dangerous Goods (Government Explosives Depots) Regulations (Cap. 295D) to increase by 9.1% to 20.2% 23 items of fees and charges in relation to -

- (a) the issue or renewal of mine blasting certificate, and the replacement of worn, defaced or lost mine blasting certificate (L.N. 209);

¹ "Schedule" (統計表格) is defined in section 2 of Cap. 316 as "any form or other document issued by the Commissioner for collecting statistical information in any statistical inquiry".

- (b) the grant or renewal of licences or permits relating to the manufacture, storage, movement or discharge of certain dangerous goods in category 1 and the making of an alteration or addition to, or endorsement on those licences or permits (L.N. 210); and
- (c) the storage of explosives and explosive accessories in a Government Explosive Depot and the delivery by the Government of explosives and explosive accessories from such depot to any other place (L.N. 211).

14. Members may refer to the LegCo Brief issued by the Development Bureau in October 2015 (no file reference provided) for details of the fees and charges revision and a comparison of the existing and revised fees and charges. According to paragraphs 4 and 5 of the LegCo Brief, the relevant fees and charges are increased with a view to achieving full cost recovery gradually and to avoiding a steep increase. The relevant fees and charges were last revised in January 2015.

15. As advised by the Clerk to the Panel on Development, the Administration provided an information paper (LC Paper No. CB(1)1114/14-15(01) on 15 July 2015 on the proposed revision of fees which was circulated to members for information.

16. L.N. 209 to L.N. 211 come into operation on 1 January 2016.

Banking (Capital) (Amendment) Rules 2015

(L.N. 212)

17. L.N. 212 is made by the Monetary Authority under section 97C of the Banking Ordinance (Cap. 155) after consultation with the Financial Secretary, the Banking Advisory Committee, the Deposit-taking Companies Advisory Committee, The Hong Kong Association of Banks and The Hong Kong Association of Restricted Licence Banks and Deposit-taking Companies (the Statutory Consultees) to amend the Banking (Capital) Rules (Cap. 155L). The main purpose of L.N. 212 is to bring certain aspects of Cap. 155L into conformity with the relevant standards issued by the Basel Committee on Banking Supervision (the Basel Committee) in view of the assessments conducted by the Basel Committee in 2014 and 2015 on the extent of compliance of Hong Kong capital standards with the Basel Committee standards.

18. The major amendments in L.N. 212 are summarized below -

- (a) there will no longer be an option available to authorized institutions² (AIs) to use the approach adopted by their parent banks to calculate the regulatory capital for market risk (sections 6, 7, 9 and 10 of L.N. 212);

² Under section 2(1) of Cap. 155, "authorized institution" (認可機構) means a bank, a restricted licence bank or a deposit-taking company.

- (b) preferential risk-weights will no longer be applicable to an AI's domestic currency exposures³ to certain sovereigns (sections 11 and 16 of L.N. 212);
- (c) exchange rate contracts which has an original maturity of not more than 14 calendar days excluded in an AI's regulatory capital calculation will now be included (sections 12 and 17 of L.N. 212); and
- (d) unrated debt securities issued by securities firms will not be recognised as collateral for the purposes of calculating the risk-weighted amount of an AI's exposure (sections 14 and 28 of L.N. 212).

19. Members may refer to the LegCo Brief (File Ref: B&M/2/1/63C) issued by the Financial Services and the Treasury Bureau and Hong Kong Monetary Authority on 20 October 2015 for further information.

20. According to paragraph 12 of the LegCo Brief, the banking industry has been engaged in formulating L.N. 212 and an industry consultation was conducted on the purposes of the amendments in May 2015. The Statutory Consultees were consulted on the draft provisions of L.N. 212 in September 2015. According to the Administration, the responses received indicate support for the amendments.

21. As advised by the Clerk to the Panel on Financial Affairs, the Panel has not been consulted on L.N. 212. During the briefing on the work of the Hong Kong Monetary Authority (HKMA) at the Panel meeting on 4 May 2015, HKMA informed members of its plan to make amendments to Cap. 155L to address issues identified during the assessment by the Regulatory Consistency Assessment Programme established by the Basel Committee. Members raised no objection to the plan.

22. L.N. 212 comes into operation on 1 January 2016.

Antiquities and Monuments (Declaration of Monuments and Historical Buildings) (Consolidation) (Amendment) Notice 2015

(L.N. 213)

23. L.N. 213 declares the following places to be historical buildings for the purposes of the Antiquities and Monuments Ordinance (Cap. 53) -

- (a) the Signal Tower (訊號塔) at Blackhead Point, Tsim Sha Tsui;
- (b) the Race Course Fire Memorial (馬場先難友紀念碑) at So Kon Po; and

³ Under section 2(1) of Cap. 155L, "domestic currency exposures" means an AI's exposure which is denominated in the local currency of the obligor in respect of the exposure and funded by liability entered into by the institution in that currency.

- (c) the façade of the Old Mental Hospital (舊精神病院立面) at High Street, Sai Ying Pun.

24. The legal effect of the declaration is that each of the above buildings will become a "monument" as defined in section 2 of Cap. 53 and as such, will enjoy the protection under section 6(1) which prohibits the carrying out of such activities as excavation, building or other works and demolition in the buildings except in accordance with a permit granted by the Secretary for Development. Under section 19(2) of Cap. 53, any person who contravenes section 6(1) of Cap. 53 shall be guilty of an offence and shall be liable on conviction to a fine of \$100,000 and imprisonment for one year.

25. Members may refer to the LegCo Brief issued by the Development Bureau dated 20 October 2015 (File Ref.: DEVB/CHO/1B/CR 141) for background information. According to paragraph 11 of the LegCo Brief, the relevant buildings have been accorded with a Grade 1 status (which denotes historical buildings of outstanding merit) by the Antiquities Advisory Board (AAB) having regard to the recommendations of an independent assessment panel under the existing administrative grading mechanism. AAB has been consulted on the proposed declaration as required under section 3(1) of Cap. 53 and rendered its support. Paragraph 12 of the LegCo Brief states that in relation to the Race Course Fire Memorial which is situated on a private lot, the Administration has obtained the explicit agreement of the owner to the declaration proposal.

26. As advised by the Clerk to the Panel on Development, at the meeting of the Panel on Development on 23 June 2015, the Administration updated members on the progress of its work on heritage conservation, including the intended declaration of the buildings concerned as historical buildings. Members did not make any comments.

27. L.N. 213 came into operation on the day it was published in the Gazette, i.e. 23 October 2015.

PART II NON-LEGISLATIVE INSTRUMENT

Fifth Technical Memorandum for Allocation of Emission Allowances in Respect of Specified Licences

(S.S. No. 5 to Gazette No. 43/2015)

28. The Fifth Technical Memorandum for Allocation of Emission Allowances in Respect of Specified Licences (the Fifth TM) is issued by the Secretary for the Environment under section 26G of the Air Pollution Control Ordinance (Cap. 311). The Fifth TM seeks to allocate for each emission year from 1 January 2020 the quantities of emission allowances for three specified pollutants, namely sulphur dioxide (SO₂), nitrogen oxides (NO_x) and respirable suspended particulates (RSP) for each of

the four power plants⁴ and possible new electricity works⁵ in Hong Kong. It also requires the Secretary for the Environment to review in 2016 the quantity of emission allowances for each type of specified pollutant for each specified licence set out or determined in accordance with the Fifth TM after its commencement.

29. The scrutiny mechanism for the Fifth TM is set out in section 37B of Cap. 311, which is the same as that for subsidiary legislation provided in section 34 of Cap. 1, i.e. the negative vetting procedure. Under section 37C of Cap. 311, the Fifth TM shall commence to have effect upon the expiry of the 28-day initial amendment period or the period as extended if LegCo does not pass a resolution to amend it. In the case where LegCo passes a resolution amending the Fifth TM, it shall come into effect on the day of the publication in the Gazette of such resolution.

30. According to paragraph 15 of the LegCo Brief (no file reference provided) issued by the Environmental Protection Department in October 2015, as compared with the emission allowances for 2019 set under the Fourth Technical Memorandum, the Fifth TM will see a further tightening of 17% for both SO₂ and NO_x as well as 16% for RSP for the electricity sector.

31. As advised by the Clerk to the Panel on Environmental Affairs, the Panel was consulted at its meeting on 29 September 2015 on the proposal to reduce emission allowances for power plants starting from 1 January 2020 by way of issuing the Fifth TM. While members did not raise any objection to the proposal, some members urged the Administration to diversify the source of natural gas supply and encourage the power companies to step up efforts in energy conservation.

Concluding Observations

32. The Legal Service Division is still scrutinizing L.N. 212 and is seeking clarification from the Administration in respect of L.N. 208. No difficulties have been identified in the legal and drafting aspects of the other items of subsidiary legislation and the Fifth TM.

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⁴ The four existing power plants are: Lamma Power Station and Lamma Power Station Extension, Po Lo Tsui, Lamma Island; Black Point Power Station at Yung Long Road, Lung Kwu Tan, Tuen Mun, New Territories; Castle Peak Power Station at Lung Yiu Street, Tuen Mun, New Territories; and Penny's Bay Gas Turbine Power Station, Penny's Bay, Lantau Island, New Territories.

⁵ "New Electricity Works" is defined in the Fifth TM to mean any electrical works, other than the existing electrical works, which comes into existence after the commencement of the Fifth TM.