

立法會
Legislative Council

LC Paper No. LS18/16-17

**Paper for the House Committee Meeting
on 16 December 2016**

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 9 December 2016**

Tabling in LegCo : Council meeting of 14 December 2016

Amendment to be made by : Council meeting of 11 January 2017 (or that of 8 February 2017 if extended by resolution)

**Declaration of Mental Hospital (Consolidation)
(Amendment of Schedule) Order 2016**

(L.N. 185)

L.N. 185 is made by the Chief Executive under section 3 of the Mental Health Ordinance (Cap. 136) after consultation with the Executive Council. It amends the Schedule to the Declaration of Mental Hospital (Consolidation) Order (Cap. 136B) to declare the fourth floor of Blocks L and M of the Kwai Chung Hospital as part of the Kwai Chung Psychiatric Observation Unit which has been declared to be a mental hospital under section 3 of Cap. 136.

2. Members may refer to the LegCo Brief (File Ref: FH CR 1/3261/14) issued by the Food and Health Bureau on 7 December 2016 for background information.

3. As advised by the Clerk to the Panel on Health Services, an information paper provided by the Administration on the legislative proposal (LC Paper No. CB(2)258/16-17(01)) was circulated on 29 November 2016 and members of the Panel were invited to consider whether the proposal should be discussed at a meeting of the Panel. No such request was received by the deadline on 5 December 2016.

4. L.N. 185 comes into operation on 10 February 2017.

**Merchant Shipping (Local Vessels) (General) (Amendment)
Regulation 2016**

(L.N. 186)

**Merchant Shipping (Local Vessels) (Safety and Survey)
(Amendment) Regulation 2016**

(L.N. 187)

5. L.N. 186 and L.N. 187 are made by the Secretary for Transport and Housing ("SFH") under section 89 of the Merchant Shipping (Local Vessels) Ordinance (Cap. 548).

6. L.N. 186 amends the Merchant Shipping (Local Vessels) (General) Regulation (Cap. 548F) to:

- (a) impose the requirements in relation to the operation and maintenance of radar equipment fitted on certain Class I vessels¹;
- (b) prescribe the requirements in relation to the operation and maintenance of an automatic identification system fitted on certain Class I vessels and certain Class II vessels;
- (c) provide for the requirements in relation to the operation and maintenance of radiotelephone equipment and very high frequency ("VHF") radiotelephone communication for certain Class I vessels;
- (d) revise the flash point of flammable liquid on local vessels in respect of which the requirements relating to flying a red flag and exhibiting a red light provided under section 37(2) of Cap. 548F are to apply; and
- (e) provide for offences to be committed upon failure to comply with the relevant requirements.

7. L.N. 187 amends the Merchant Shipping (Local Vessels) (Safety and Survey) Regulation (Cap. 548G) to:

- (a) extend the current requirement on radar equipment under section 80 of Cap. 548G to certain Class I vessels that are licensed to carry more than 100 passengers;
- (b) require certain Class I vessels and certain Class II vessels to be fitted with an automatic identification system and to require the storage and maintenance of prescribed information in the system;
- (c) provide that certain Class I vessels must have on board radiotelephone equipment for prescribed VHF radiotelephone communication which

¹ Local vessels are classified into Classes I, II, III and IV vessels under the Merchant Shipping (Local Vessels) (Certification and Licensing) Regulation (Cap. 548D). Generally speaking, Class I vessels are passenger vessels while Class II vessels are cargo vessels.

must be operable from the navigational bridge or steering position of the vessel concerned;

- (d) amend the current requirement on the minimum flash point for fuel oil to be used on engines of certain vessels under section 81 of Cap. 548G and to revise the flash points for cargoes carried on board certain vessels; and
- (e) provide for offences to be committed in the event of contravention of the relevant requirements.

8. According to paragraph 2 of the LegCo Brief (File Ref: THB(T) PML 8/10/70/16) issued jointly by the Transport and Housing Bureau and the Marine Department in December 2016, L.N. 186 and L.N. 187 are made mainly in response to the recommendations of the Commission of Inquiry appointed by the Chief Executive in Council subsequent to the vessel collision incident near Lamma Island on 1 October 2012 to enhance navigational and communications equipment on local vessels.

9. According to paragraph 17 of the LegCo Brief, the Administration consulted the Local Vessels Advisory Committee on 25 April 2014 and the members endorsed the legislative proposal.

10. As advised by the Clerk to the Panel on Economic Development, the Panel was consulted on the proposal at its meeting on 27 May 2015. Members in general supported the proposal for enhancing the navigational and communication equipment on local vessels. As crew members had to undergo training in order to acquire licence to operate the equipment, a member relayed the trade's concerns about the content of curriculum and language proficiency requirements of the relevant training courses. The Administration advised that the training courses offered to local crew members had been suitably adjusted to suit the circumstances.

11. Except for the following provisions which will commence on the dates specified below, L.N. 186 and L.N. 187 come into operation on 1 April 2017:

- (a) provisions in respect of matters stated in paragraphs 6(a) and 7(a) are to come into operation on 1 December 2017;
- (b) provisions dealing with matters explained in paragraphs 6(b) and 7(b) for Class II vessels are to come into operation on 1 March 2018; and
- (c) provisions regarding matters specified in paragraphs 6(c) and 7(c) are to come into operation on a day to be appointed by SFH by notice published in the Gazette.

**Construction Workers Registration (Exemption)
Regulation**

(L.N. 188)

**Construction Workers Registration Ordinance
(Amendment of Schedules 1 and 1A) Notice 2016**

(L.N. 189)

Background

12. The Construction Workers Registration Ordinance (Cap. 583) was amended by the Construction Workers Registration (Amendment) Ordinance 2014 (Ord. No. 22 of 2014) ("the Amendment Ordinance") which modifies the construction workers registration scheme. The modification is reflected in provisions including sections 3(2), 3A, 4, 4A and 48(1)(b) of Cap. 583.

13. Section 3(2) of Cap. 583 prohibits a person from personally carrying out, without proper registration, on a construction site construction work that involves any skills described in column 3 of Schedule 1 to Cap. 583 opposite a trade division set out in column 2 of that Schedule ("a designated trade division"). Schedule 1 to Cap. 583 sets out 139 designated trade divisions. Sections 3A and 4 of Cap. 583 provide for exceptions to the prohibition. Section 3A allows a registered skilled worker for a designated trade division to carry out works involving skills required for another trade division, if the two trade divisions are related as set out in the new Schedule 1A to Cap. 583 ("work across arrangement"). Section 4 allows a registered construction worker who is not registered for a designated trade division to carry out on a construction site construction work that involves the applicable skills under the instruction and supervision of a registered skilled or semi-skilled worker for the trade division.

14. Section 4A of Cap. 583 imposes a duty to implement measures for identification of relevant skilled workers on the employers of certain registered construction workers and the principal contractors for the relevant construction sites. Under section 48(1)(b) of Cap. 583, the requirements relating to registration card apply to a registered skilled or semi-skilled construction worker for a designated trade division.

15. Except Schedule 1 to Cap. 583 which came into operation on 1 April 2015, the above provisions come into operation on 1 April 2017 pursuant to section 1(3) of the Amendment Ordinance. The commencement date may further be extended by the Secretary for Development ("SDEV") by notice published in the Gazette under section 1(4) of the Amendment Ordinance.

L.N. 188

16. L.N. 188 is made by SDEV under section 63A Cap. 583 to exempt from the application of sections 3(2), 3A, 4 and 48(1)(b) of Cap. 583:

- (a) certain emergency construction work, certain small scale construction work, and certain small value construction work the value of which does not exceed \$100,000; and
- (b) a registered construction worker who personally carries out on a construction site certain construction work and has been granted a relevant exemption.

17. L.N. 188 further exempts the employer of a person personally carrying out the construction work mentioned in paragraph 16 above and the principal contractor for the relevant construction site from the application of section 4A of Cap. 583.

18. Except items 25 and 31 of Schedule 1 and items 14 and 18 of Schedule 3, L.N. 188 comes into operation on the day on which section 3(2) of Cap. 583 comes into operation. The above items come into operation on the expiry of 24 months beginning on the day on which section 3(2) of Cap. 583 comes into operation. These items concern two designated trade divisions, namely, "False Ceiling Installer" and "Partition (Metal Frame) Installer" and the exemption mentioned in paragraph 16(a) above in respect of these two designated trade divisions comes into operation on the expiry of the said 24 months.

L.N. 189

19. L.N. 189 is made by SDEV under section 65 of Cap. 583 to amend Schedule 1 to Cap. 583 to increase the number of designated trade divisions to 142 by adding three trade divisions, namely, "False Ceiling Installer", "Partition (Metal Frame) Installer" and "Cable Jointer (Dead Cable)". It also makes transitional arrangements due to the amendments made to Schedule 1.

20. L.N. 189 further amends Schedule 1A to Cap. 583 to provide for certain work across arrangements. The effect of this amendment is that:

- (a) a registered skilled worker for the designated trade division "Joiner" may carry out construction work involving skills required for the designated trade division "False Ceiling Installer" or "Partition (Metal Frame) Installer";

- (b) a registered skilled worker for the designated trade division "Metal Worker" may carry out construction work involving skills required for the designated trade division "False Ceiling Installer" or "Partition (Metal Frame) Installer"; and
- (c) a registered skilled worker for the designated trade division "False Ceiling Installer" may carry out construction work involving skills required for the designated trade division "Partition (Metal Frame) Installer".

21. Except for the amendments to Schedule 1A of Cap. 583 which come into operation on the expiry of 24 months beginning on the day on which section 3(2) of Cap. 583 comes into operation, L.N. 189 comes into operation on 1 April 2017.

22. According to paragraphs 21 and 22 of the LegCo Brief (File Ref: DEVB(CR)(W)1-10/31) issued by the Development Bureau in December 2016, for L.N. 188, the Administration consulted the Construction Workers Registration Board as well as other key stakeholders in early 2016 before finalizing L.N. 188. For L.N. 189, the Construction Industry Council has conducted extensive discussions and consultation with the relevant industry stakeholders and reached consensus with the stakeholders before requesting SDEV to amend Cap. 583 for adding the three trade divisions.

23. As advised by the Clerk to Panel on Development, the Administration briefed the Panel at its meeting of 8 November 2016. With respect to L.N. 188, some members asked about the justifications for exempting certain emergency construction work and small scale construction work. With respect to L.N. 189, members supported the addition of the three proposed trade divisions. At the members' request, the Administration has provided supplementary information (LC Paper No. CB(1)163/16-17(01)) on L.N. 188 and L.N. 189 to all Members.

**Companies (Winding Up and Miscellaneous Provisions)
(Amendment) Ordinance 2016 (Commencement) Notice
2016**

(L.N. 190)

24. L.N. 190 appoints 13 February 2017 as the day on which the Companies (Winding Up and Miscellaneous Provisions) (Amendment) Ordinance 2016 (Ord. No. 14 of 2016) ("the 2016 Ordinance") (except Division 7 of Part 8) comes into operation.

25. The 2016 Ordinance amends the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) and its subsidiary legislation to enhance the protection for creditors, streamline the winding up process, strengthen regulation under the winding up regime and to make related, consequential and minor technical amendments. Before its enactment, a Bills Committee ("the Bills Committee") was formed to scrutinize the Companies (Winding Up and Miscellaneous Provisions) (Amendment) Bill 2015 ("the Bill"). As advised by the Clerk to the Bills Committee, the Bills Committee has not discussed the commencement of the Bill. Members may wish to refer to the report of the Bills Committee (LC Paper No. CB(1)788/15-16) for further information.

26. Provisions under Division 7 of Part 8 of the 2016 Ordinance ("the Relevant Provisions"), which have not been brought into operation, deal with the scenario where the relevant provisions of the Insurance Companies (Amendment) Ordinance 2015 (Ord. No. 12 of 2015) will be brought into operation before the commencement of the 2016 Ordinance. According to the letter dated 9 December 2016 from the Secretary for Financial Services and the Treasury to the Clerk to the House Committee (LC Paper No. CB(2)426/16-17(01)), as it is now confirmed that the 2016 Ordinance will commence before the commencement of the relevant provisions of Ord. No. 12 of 2015, L.N. 190 has therefore excluded the Relevant Provisions. The Administration has confirmed, upon our enquiry, that the Relevant Provisions will not be brought into operation.

27. As advised by the Clerk to the Panel on Financial Affairs, the Panel has not been consulted on L.N. 190.

28. No LegCo Brief has been issued on L.N. 190.

Concluding Observations

29. No difficulties have been identified in the legal and drafting aspects of L.N. 185 and L.N. 190. The Legal Service Division is scrutinizing L.N. 186 to L.N. 189 and a further report will be made if necessary.

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