

立法會
Legislative Council

LC Paper No. LS27/16-17

**Paper for the House Committee Meeting
on 3 February 2017**

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 20 January 2017**

Tabling in LegCo : Council meeting of 8 February 2017

Amendment to be made by : Council meeting of 1 March 2017 (or that of 29 March 2017 if extended by resolution)

**Minimum Wage Ordinance (Amendment of Schedule 3)
Notice 2017** (L.N. 10)

**Employment Ordinance (Amendment of Ninth Schedule)
Notice 2017** (L.N. 12)

L.N. 10

L.N. 10 is made by the Chief Executive in Council ("CE in Council") under section 16(1) of the Minimum Wage Ordinance (Cap. 608) to amend Schedule 3 to Cap. 608 by specifying that, with effect from 1 May 2017, the prescribed minimum hourly wage rate (the "PMHW rate") in the Schedule shall be \$34.5.¹

2. Section 16 of Cap. 608 provides that CE in Council may, by notice published in the Gazette, amend Schedule 3 to Cap. 608. In exercising the power to amend under the section, CE in Council may have regard to any recommendation included in a report made by the Minimum Wage Commission ("MWC") pursuant to section 12(1) of Cap. 608 but is not bound by such recommendation. Further, by virtue of section 16(4) of Cap. 608, section 34(2) of the Interpretation and General Clauses Ordinance (Cap. 1) applies to L.N. 10 to the effect that if the Legislative Council ("LegCo") does not agree to L.N. 10, LegCo should, by resolution, wholly revoke L.N. 10 instead of amending it.

3. According to paragraph 17 of the LegCo Brief (File Ref.: LD SMW 86-1/2(C)) issued by the Labour and Welfare Bureau and the Labour Department in

¹ The existing PMHW rate is \$32.5 and has been effective since 1 May 2015.

January 2017, MWC has conducted intensive and extensive consultation, including a six-week public consultation and consultation meetings to collect views of stakeholders and members of public on the review of the PMHW rate. In its report submitted to CE in Council in October 2016, MWC recommended increasing the PMHW rate from \$32.5 to \$34.5. The Administration has considered the MWC's report and adopted its recommendation.

4. As advised by the Clerk to the Panel on Manpower, the Panel has not been consulted on L.N. 10 and L.N. 12. However, at the policy briefing cum meeting on 23 January 2017, the Panel was informed of the proposed revision of the PMHW rate from \$32.5 to \$34.5 with effect from 1 May 2017. Some members expressed concern about the review frequency of the PMHW rate, the level of the revised PMHW rate and the impact of the implementation of PMHW on inflation, employers and businesses.

5. L.N. 10 comes into operation on 1 May 2017.

L.N. 12

6. L.N. 12 is made by the Commissioner for Labour ("the Commissioner") under section 49A(6) of the Employment Ordinance (Cap. 57) to amend the Ninth Schedule to Cap. 57 by increasing the monetary cap on keeping records of hours worked specified in the Schedule (the "Monetary Cap") from \$13,300 per month to \$14,100 per month.

7. Section 49A(3)(ea) of Cap. 57 provides that an employer is required to keep records of the total number of working hours of an employee in a wage period if the employee is an employee within the meaning of Cap. 608 and if the wages payable to that employee in that wage period are less than the Monetary Cap (or a proportionate amount if the wage period concerned is not a month). Further, section 49A(6) of Cap. 57 provides that the Commissioner may, by notice published in the Gazette, amend the Ninth Schedule.

8. According to paragraph 2 of the LegCo Brief, the amendment in L.N. 12 is consequential to the amendment in L.N. 10 in that by increasing the PMHW rate from \$32.5 to \$34.5, the Monetary Cap will be proportionately increased from \$13,300 to \$14,100.

9. L.N. 12 comes into operation on the day on which L.N. 10 comes into operation (i.e. 1 May 2017).

Pharmacy and Poisons (Amendment) Regulation 2017

(L.N. 11)

10. L.N. 11 is made by the Pharmacy and Poisons Board ("PPB") under section 29(1B) of the Pharmacy and Poisons Ordinance (Cap. 138) with the approval

of the Secretary for Food and Health. It amends the Pharmacy and Poisons Regulations (Cap. 138A) by:

- (a) adding four items of substances to Division A of Schedule 1 to Cap. 138A, Division A of Schedule 3 to Cap. 138A and Division A of Part 1 of the Poisons List set out in Schedule 10 to Cap. 138A ("Poisons List");
- (b) adding one item of a class of substances (including sodium chloride 0.9% and water) relating to "pharmaceutical products for human parenteral administration" ("new class") to the Divisions mentioned in subparagraph (a) above; and
- (c) reallocating one existing item as an entry under the new class.

11. The effect of the above amendments is that the substances included in Schedule 1 to Cap. 138A are subject to restrictions concerning their sale, supply, labelling and storage, and the substances in Schedule 3 to Cap. 138A can only be sold by retail upon a prescription given by a registered medical practitioner, registered dentist or registered veterinary surgeon. Further, the substances included in the Poisons List can only be sold on registered premises of an authorized seller of poisons by a registered pharmacist or in the presence and under the supervision of a registered pharmacist.

12. According to paragraph 6 of the LegCo Brief (File Ref: FHB/H/23/4) issued by the Food and Health Bureau in January 2017, PPB considers that the amendments are appropriate in view of the potency, toxicity and potential side effects of the substances. Members may refer to Annexes B to D to the LegCo Brief for details of the substances.

13. As advised by the Clerk to the Panel on Health Services, the Administration has not consulted the Panel on L.N. 11.

14. Save for sections 3(5), 4(5) and 5(5) (collectively known as "the remaining provisions"), L.N. 11 will come into operation on the expiry of six months beginning on the day on which L.N. 11 is published in the Gazette (i.e. 20 July 2017). The remaining provisions, which add sodium chloride 0.9% and water to the Divisions mentioned in paragraph 10(a) above, will come into operation on the expiry of 12 months beginning on the day on which L.N. 11 is published in the Gazette (i.e. 20 January 2018). According to paragraph 6 of the LegCo Brief, the commencement arrangement is implemented with a view to allowing the trade to have sufficient time to prepare for the changes in sale control of the substances concerned.

**Import and Export (General) Regulations
(Amendment of Schedule 7) Notice 2017**

(L.N. 13)

15. L.N. 13 is made by the Director-General of Trade and Industry under regulation 7(2) of the Import and Export (General) Regulations (Cap. 60A) to add "Venezuela, Bolivarian Republic of" ("Venezuela") to Schedule 7 to Cap. 60A. The effect is that trade in rough diamonds with Venezuela under the Kimberley Process Certification Scheme² ("Scheme") may be lawfully carried on in Hong Kong.

16. Part 6 of and Schedule 7 to Cap. 60A implement the Scheme in Hong Kong. Section 6DE in Part 6 of Cap. 60A provides, among other things, that no person shall import rough diamonds from, or export rough diamonds to, a country or place other than a specified country or place. Schedule 7 specifies the countries and places for which the Scheme is effective, and other countries and places that are permitted by the Kimberley Process to trade rough diamonds with those countries and places.

17. According to paragraph 3 of the LegCo Brief (File ref.: TRA CR 1651/3/1) issued by the Trade and Industry Department on 18 January 2017, the Scheme has been implemented in Hong Kong since 2 January 2003 by way of legislation in order to safeguard Hong Kong's interest as a trading hub of rough diamonds in the region, and to minimize disruption to the local diamond industry.

18. As advised by the Clerk to the Panel on Commerce and Industry, the Panel has not been consulted on L.N. 13.

19. L.N. 13 comes into operation on 1 April 2017.

Concluding Observations

20. No difficulties have been identified in the legal and drafting aspects of L.N. 10 to L.N. 13.

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² In gist, the Scheme, which was developed by the Kimberley Process, seeks to stop trade in rough diamonds used by rebel movements or their allies to finance conflicts aimed at undermining legitimate government. Under the Scheme, participating economies cannot trade rough diamonds with non-participants.