

立法會
Legislative Council

LC Paper No. LS83/16-17

**Paper for the House Committee Meeting
on 23 June 2017**

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 16 June 2017**

Tabling in LegCo : Council meeting of 21 June 2017

Amendment to be made by : Second meeting of LegCo in the next session
(or the first meeting held not earlier than the
21st day after the second meeting of the next
session if extended by resolution)

**Pension Benefits Ordinance (Established Offices)
(Amendment) Order 2017**

(L.N. 121)

L.N. 121 is made by the Chief Executive ("CE") under section 2(1) of the Pension Benefits Ordinance (Cap. 99) after consultation with the Executive Council to amend and update the list of established offices for the purposes of Cap. 99 in Schedules 1 and 2 to the Pension Benefits Ordinance (Established Offices) Order (Cap. 99J) by:

- (a) adding one new civil service rank (Deputy Government Economist) to Schedule 1;
- (b) adding one new shadow rank¹ (Cluster General Manager (Human Resources (HA)) to Schedule 2; and
- (c) amending the Chinese text of "Member, Lands Tribunal (土地審裁處審裁委員)" in Schedule 1 by substituting "成員" for "審裁委員".

¹ According to footnote 1 of the LegCo Brief (File Ref: CSBCR/AP/4-075-004/3 Pt. 12), shadow ranks are created to accommodate officers who have been transferred to the Hospital Authority and Vocational Training Council but retained their status as civil servants. The objective of the shadow ranks is to preserve the promotion prospects and pension benefits of these civil servants so long as they remain in the civil service, even though they are not working in a government department.

2. The effect of the declaration of the two ranks mentioned in (a) and (b) above as "established offices" is that the officers confirmed to those established offices will enjoy greater pension benefits over those confirmed to non-established offices.² The effective dates from which each of these new ranks is deemed to be an established office, as specified in L.N. 121, are 13 May 2016 and 17 July 2014 respectively to tie in with the dates of creation of the relevant ranks.

3. According to paragraph 4 of the Legislative Council ("LegCo") Brief (File Ref: CSBCR/AP/4-075-004/3 Pt. 12) issued by the Civil Service Bureau ("CSB") dated 14 June 2017, the creation of the new civil service rank has already been approved by the Finance Committee ("FC") of LegCo, while the creation of the new shadow rank has been approved by the Director of Health under authority delegated by FC. According to paragraph 8 of the LegCo Brief, CSB does not consider it necessary to consult the public or the staff side of the civil service as the making of L.N. 121 is an updating exercise to reflect approved changes to civil service ranks and grades.

4. The Clerk to the Panel on Public Service advised that the Panel has not been consulted by the Administration on L.N. 121.

Rules of the High Court (Amendment) Rules 2017 (L.N. 122)

5. L.N. 122 is made by the Rules Committee of the High Court under section 54 of the High Court Ordinance (Cap. 4) to introduce various amendments to the Rules of the High Court (Cap. 4A).

Amendments relating to civil appeals to the Court of Appeal

6. L.N. 122 amends Order 59 as follows:

- (a) empowering the Court of First Instance ("CFI") to extend the time limit for applying for leave to appeal to the Court of Appeal ("CA") before or after the expiry of the time limit (rule 3 of L.N. 122).
- (b) providing for a clearer framework for fixing the date for hearing an appeal after the appeal has been set down (rules 4 and 5 of L.N. 122).

² See regulation 4 of the Pension Benefits Regulations (Cap. 99A).

- (c) enhancing the court's case management powers by advancing the deadline for serving a supplementary notice to amend a notice of appeal or respondent's notice from "not less than three weeks before the date fixed for the hearing of the appeal" to "before the date when a hearing date of the appeal is fixed" (rule 6 of L.N. 122); and
- (d) providing that an application for extending or abridging the time limit for serving notice of appeal or for making an ex parte application to CA may be made before or after the time limit (rule 7 of L.N. 122).

Amendment relating to appeals against orders made by the Solicitors Disciplinary Tribunal

7. At present, neither the Legal Practitioners Ordinance (Cap. 159) nor the Solicitors Disciplinary Tribunal Proceedings Rules (Cap. 159C) contain any provision that expressly requires non-disclosure of a solicitor's name in disciplinary proceedings. However, according to Order 106, rule 12(1) of Cap. 4A, the solicitor is not to be named in the title of the notice of originating motion for bringing an appeal against an order made by the Solicitors Disciplinary Tribunal.

8. Rule 10 of L.N. 122 repeals Order 106, rule 12(1) of Cap. 4A to remove the automatic anonymity and the other requirements regarding the title of the notice of originating motion.

9. According to paragraph 14 of the LegCo Brief (File Ref: SC 19/1/23) dated 14 June 2017 issued by the Judiciary Administration ("JA"), the purpose of the removal of the automatic anonymity requirement is to uphold the interest of open justice and make the arrangements on a par with the other professionals, particularly barristers. The court's current discretion to order anonymity in individual cases as the circumstances may require remains unaffected.

Amendments relating to the expression "(HK)"

10. Rule 13 of L.N. 122 repeals the expression "(HK)" in various provisions of Cap. 4A.

11. According to paragraphs 27 to 30 of the LegCo Brief, the expression "(HK)" was originally included in Cap. 4A to indicate that the provisions were specific to Hong Kong. However, as the provisions of Cap. 4A have been amended over the years, it has become less clear which

provisions should be considered as specific to Hong Kong. The expression is therefore removed to avoid confusion to statute readers or users.

Other amendments

12. Rules 8, 9, 11 and 12 introduce certain minor textual amendments to Cap. 4A.

Commencement

13. L.N. 122 comes into operation on 1 December 2017.

Consultation

14. According to paragraph 36 of the LegCo Brief, the Judiciary has consulted various stakeholders, including the Hong Kong Bar Association, The Law Society of Hong Kong and the Privacy Commissioner for Personal Data, on the relevant parts of the amendments to Cap. 4A, and they are supportive of the relevant amendments.

15. As advised by the Clerk to the Panel on Administration of Justice and Legal Services, the Panel noted at its meetings on 27 February 2017 and 22 May 2017 that information papers on the legislative amendments to Cap. 4A³ were provided by JA. The information papers were circulated to members of the Panel. No member raised any questions on the papers at those meetings.

Declaration of Increase in Pensions Notice 2017 (L.N. 123)

Widows and Orphans Pension (Increase) Notice 2017 (L.N. 124)

16. L.N. 123 and L.N. 124 are made by CE under section 4 of the Pensions (Increase) Ordinance (Cap. 305) and section 3(3) of the Widows and Orphans Pension (Increase) Ordinance (Cap. 205) respectively after consultation with the Executive Council to declare, with effect from 1 April 2017, a 2.1% increase in:

- (a) the basic pensions payable to ex-officers and dependants eligible for pension under various pieces of pension legislation specified in Schedule 1 to Cap. 305; and

³ Two information papers entitled "Miscellaneous Amendments to the Rules of the High Court" (LC paper No. CB(4)592/16-17(01)) and "Proposed Legislative Amendments relating to the Procedures of Civil Appeals to the Court of Appeal" (LC paper No. CB(4)1033/16-17(01)) were issued on 21 February 2017 and 15 May 2017 respectively.

- (b) the pensions payable to widows and orphans as defined under the Widows and Orphans Pension Ordinance (Cap. 94).

17. Under section 4 of Cap. 305 and section 3 of Cap. 205, if the average monthly Consumer Price Index (A) ("CPI(A)") of a period of 12 months ending on 31 March of a year exceeds the average monthly CPI(A) of the immediately preceding 12 months by more than 0.1%, CE shall declare a percentage of increase in the relevant pensions equal to the excess expressed as a percentage as soon as practicable by notice in the Gazette, and specify in the notice the effective date for such an increase.

18. According to paragraph 4 of the LegCo Brief (File Ref: CSBCR/AP/4-075-005/5 Pt. 20) issued by CSB dated 14 June 2017, L.N. 123 and L.N. 124 are made to reflect the increase in the average monthly CPI(A) for the 12 months that ended on 31 March 2017, as compared with the average monthly CPI(A) for the immediately preceding 12 months.

19. According to paragraph 8 of the LegCo Brief, no consultation with pensioners and dependants is required as pension increase in accordance with increase in CPI(A) is a statutory entitlement for pensioners and dependants, and L.N. 123 and L.N. 124 are made in accordance with the relevant statutory provisions as well as established policy and procedures.

20. The Clerk to the Panel on Public Service advised that the Administration has not consulted the Panel on L.N. 123 and L.N. 124.

Concluding Observations

21. No difficulties have been identified in the legal and drafting aspects of the above items of subsidiary legislation.

Prepared by

Rachel DAI
Assistant Legal Adviser
Legislative Council Secretariat
21 June 2017