

立法會
Legislative Council

LC Paper No. LS3/17-18

**Paper for the House Committee Meeting
on 20 October 2017**

**Legal Service Division Report on
Subsidiary Legislation and Non-legislative Instrument
Gazetted on 13 October 2017**

Tabling in LegCo : Council meeting of 18 October 2017

Amendment to be made by : Council meeting of 15 November 2017 (or that of 6 December 2017 if extended by resolution)

PART I SUBSIDIARY LEGISLATION

Waterworks (Amendment) (No. 2) Regulation 2017 (L.N. 165)

The Waterworks (Amendment) Regulation 2017 was published in the Gazette on 19 May 2017 as L.N. 81 of 2017 ("L.N. 81") and tabled at the Legislative Council ("LegCo") on 24 May 2017. L.N. 81 was made to revise the requirements relating to pipes or fittings installed in fire services or inside services, taking into account the recommendations made in the Report of the Commission of Inquiry into Excess Lead Found in Drinking Water. A subcommittee was formed to scrutinize L.N. 81. Members may refer to the Report of the Subcommittee on Waterworks (Amendment) Regulation 2017 ("the Subcommittee") (LC Paper No. CB(1)1255/16-17) for details of the Subcommittee's deliberations. In response to the views and suggestions of members of the Subcommittee, the Administration gave notice to move a motion ("the motion") at the Council meeting of 12 July 2017 to propose amendments to L.N. 81 ("Administration's proposed amendments"). However, the motion could not be dealt with by the Council before the expiry of the period within which LegCo may amend L.N. 81.

2. L.N. 165 is made by the Chief Executive ("CE") in Council under section 37 of the Waterworks Ordinance (Cap. 102) to incorporate the Administration's proposed amendments in the motion into the Waterworks

Regulations (Cap. 102A). The major amendments to Cap. 102A by L.N. 165 include:

- (a) setting out the conditions that must be met before the Water Authority approves the installation of a pipe or fitting that does not comply with a prescribed specification set out in Schedule 2 to Cap. 102A;
- (b) deleting cast iron from the relevant prescribed specifications set out in Part 1 of Schedule 2 to Cap. 102A to the effect that pipes and pipe flanges made of cast iron cannot be used in any pipe or fitting installed in fire services or inside services; and
- (c) stipulating that the prescribed specifications under Part 4 of Schedule 2 to Cap. 102A only apply to a water heater used for heating water not intended for human consumption, and related pipes and fittings.

3. According to paragraph 11 of the LegCo Brief (File Ref: DEVB(CR)(W) 1-10/49) issued by the Development Bureau on 11 October 2017, the Administration considers that further public consultation on the amendments is not necessary.

4. As advised by the Clerk to the Panel on Development, the Administration briefed the Panel on the proposed amendments in L.N. 81 and related amendments to Cap. 102 at its meeting on 24 January 2017. Members did not object to the amendments. The Panel has not been consulted on L.N. 165.

5. As advised by the Clerk to the Subcommittee, the Subcommittee supported the Administration's proposed amendments, most of which were addressing various concerns raised by Subcommittee members during the scrutiny of L.N. 81.

6. L.N. 165 comes into operation on 8 December 2017.

**Air Pollution Control (Volatile Organic Compounds)
(Amendment) Regulation 2017**

(L.N. 166)

7. The Air Pollution Control (Volatile Organic Compounds) Regulation (Cap. 311W) prohibits the manufacture and importation of certain regulated products if the volatile organic compounds ("VOC") content of the

product exceeds the maximum limit that is prescribed by Cap. 311W for that product. L.N. 166 is made by the Secretary for the Environment ("SE") under section 43 of the Air Pollution Control Ordinance (Cap. 311) after consultation with the Advisory Council on the Environment to extend certain prohibitions and requirements relating to VOC containing products under Cap. 311W to fountain solutions and printing machine cleaning agents ("newly regulated products").

8. The new Schedule 8 to Cap. 311W, as added by L.N. 166, sets out, among others, the maximum limit of VOC content for each of the newly regulated products ("prescribed limit") and the formula for determining the VOC content of the newly regulated products.

9. The new Part 5D of Cap. 311W, as added by L.N. 166, sets out the prohibitions and requirements relating to the newly regulated products manufactured in or imported into Hong Kong on or after 1 January 2018 by:

- (a) prohibiting the manufacture and importation of the newly regulated products with VOC content in excess of the prescribed limit;
- (b) requiring the manufacturers and importers of the newly regulated products to disclose certain specified information in certain documents relating to the product or on the packaging or containers of the product; and
- (c) requiring the manufacturers and importers of the newly regulated products to submit annual written reports containing certain specified information to the Air Pollution Control Authority.

10. Under the new section 17(11J), (11K) and (11L) of Cap. 311W, any person who contravenes the prohibition in paragraph 9(a) commits an offence, and the maximum penalty is a fine of \$200,000 and imprisonment for six months. Any person who fails to comply with the requirement in paragraphs 9(b) or (c) commits an offence, and the maximum penalty is a fine at level 5 (i.e. \$50,000) and imprisonment for three months.

11. According to paragraphs 16 and 17 of the LegCo Brief (with no file reference) issued by the Environmental Protection Department in October 2017, the Administration had consulted the relevant stakeholders on the proposed control on the newly regulated products from January to April 2016. The stakeholders were generally supportive of the proposed control.

12. As advised by the Clerk to the Panel on Environmental Affairs, the Panel was consulted on the proposal to control the VOC content of the newly regulated products that are imported into or manufactured in Hong Kong with effect from 1 January 2018 at its meeting on 28 November 2016. Members were generally supportive of the proposal. Various issues were discussed by the Panel, including the potential impact arising from the proposal on the printing industry, and how enforcement measures would be conducted against non-compliances.

13. L.N. 166 comes into operation on 1 January 2018.

**Pharmacy and Poisons (Amendment) (No. 5) Regulation
2017**

(L.N. 167)

14. L.N. 167 is made by the Pharmacy and Poisons Board ("the PP Board") 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 adding Netupitant and its salts ("the relevant substance") 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").

15. The effect of the above amendments is that the relevant substance is subject to restrictions concerning its sale, supply, labelling and storage, and can only be sold by retail upon a prescription given by a registered medical practitioner, registered dentist or registered veterinary surgeon. Further, the inclusion of the relevant substance in the Poisons List means that it 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.

16. According to paragraph 4 of the LegCo Brief (File Ref: FHB/H/23/4) issued by the Food and Health Bureau in October 2017, the PP Board considers the amendments appropriate in view of the potency, toxicity and potential side effects of the relevant substance. Members may refer to Annex B to the LegCo Brief for details of the relevant substance.

17. As advised by the Clerk to the Panel on Health Services, the Panel has not been consulted on L.N. 167.

18. L.N. 167 came into operation on the day of publication in the Gazette, i.e. 13 October 2017.

**Telecommunications (Level of Spectrum Utilization Fee)
(Fixed and Other Links) Regulation (L.N. 168)**

**Telecommunications (Designation of Frequency Bands
subject to Payment of Spectrum Utilization Fee)
(Amendment) Order 2017 (L.N. 169)**

L.N. 169

19. L.N. 169 is made by the Communications Authority under section 32I(1) of the Telecommunications Ordinance (Cap. 106) after carrying out the consultation required under section 32G(2) of Cap. 106. It adds a new Part 7 to the Schedule to the Telecommunications (Designation of Frequency Bands subject to Payment of Spectrum Utilization Fee) Order (Cap. 106Y) in order to designate six additional frequency bands ("six frequency bands") in which the use of spectrum is subject to the payment of the spectrum utilization fee by the users of the spectrum.

L.N. 168

20. L.N. 168 is made by the Secretary for Commerce and Economic Development under section 32I(2) of Cap. 106. It, among others, prescribes the levels of spectrum utilization fee payable for using any of the six frequency bands (set out in the new Part 7 of the Schedule to Cap. 106Y, as added by L.N. 169) assigned under a licence relating to an electronic news gathering or outside broadcast link, a fixed link, or a satellite uplink. The relevant prescribed fees are set out in the Schedule to L.N. 168. Further, L.N. 168 provides for the following transitional arrangements relating to the payment of the spectrum utilization fee between 2018 and 2021:

- (a) no spectrum utilization fee is payable for the 24 months beginning on 1 January 2018;
- (b) for the 12 months beginning on 1 January 2020, the spectrum utilization fee payable is reduced by 70%; and
- (c) for the 12 months beginning on 1 January 2021, the spectrum utilization fee payable is reduced by 30%.

21. According to paragraph 12 of the LegCo Brief (File Ref: CCIB/B 480-20-10-3/1) issued by the Commerce and Economic Development Bureau on 11 October 2017, the Administration informed spectrum users of the

implementation of the spectrum utilization fee charging scheme and explained the rationale of the scheme in April 2017.

22. As advised by the Clerk to the Panel on Information Technology and Broadcasting, the Administration informed the Panel of the proposed spectrum utilization fee charging scheme at its meeting on 8 May 2017. Members raised no objection to the proposed charging scheme.

23. L.N. 168 and L.N. 169 come into operation on 1 January 2018.

Antiquities and Monuments (Declaration of Monuments and Historical Buildings) (Consolidation) (Amendment) Notice 2017

(L.N. 170)

24. L.N. 170 is made by the Secretary for Development under section 3(1) of the Antiquities and Monuments Ordinance (Cap. 53) after consultation with the Antiquities Advisory Board ("the AA Board") and with the approval of CE. It declares the following buildings to be historical buildings for the purposes of Cap. 53 by adding them to paragraph 3 of the Antiquities and Monuments (Declaration of Monuments and Historical Buildings) (Consolidation) Notice (Cap. 53B):

- (a) the building known as Tung Lin Kok Yuen at 15 Shan Kwong Road, Happy Valley;
- (b) the building known as Kowloon Union Church at 4 Jordan Road, Yau Ma Tei; and
- (c) the building known as Yeung Hau Temple at Po Chue Tam, Tai O.

25. The effect of the above 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.

26. According to paragraph 13 of the LegCo Brief (File Ref: DEVB/CHO/1B/CR 141) issued by the Development Bureau on 12 October 2017, the relevant buildings have been accorded with Grade 1 status (which

denotes historical buildings of outstanding merit) by the AA Board having regard to the recommendations of an independent assessment panel under the existing administrative grading mechanism. Paragraph 14 of the LegCo Brief states that, as the relevant buildings are situated on private lands, the Administration has obtained the explicit agreement of the owners of the relevant buildings to the declaration proposal.

27. As advised by the Clerk to the Panel on Development, the Administration has not briefed the Panel on L.N. 170.

28. L.N. 170 came into operation on the day of publication in the Gazette, i.e. 13 October 2017.

PART II NON-LEGISLATIVE INSTRUMENT

Seventh Technical Memorandum for Allocation of Emission Allowances in Respect of Specified Licences (S.S. No. 5 to Gazette No. 41/2017)

29. The Seventh Technical Memorandum for Allocation of Emission Allowances in Respect of Specified Licences ("Seventh TM") is issued by SE under section 26G of Cap. 311. The Seventh TM, which supersedes the Sixth Technical Memorandum for Allocation of Emission Allowances in Respect of Specified Licences ("Sixth TM"), allocates for each emission year from 1 January 2022 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 plants¹ and possible new electricity works in Hong Kong. It also requires SE to review the quantity of emission allowances for each type of specified pollutant for each specified licence set out or determined in accordance with the Seventh TM not less than once every two years after its commencement.

30. Under section 37B(6) of Cap. 311, the Seventh TM is not subsidiary legislation. However, it is subject to a scrutiny mechanism which is similar to that for subsidiary legislation provided in section 34 of the Interpretation and General Clauses Ordinance (Cap. 1), i.e. the negative vetting procedure. Under section 37C of Cap. 311, the Seventh TM shall commence to have effect upon the expiry of the 28-day initial amendment period or the

¹ The four existing power plants are: Lamma Power Station and Lamma Power Station Extension, Black Point Power Station, Castle Peak Power Station and Penny's Bay Gas Turbine Power Station.

period as extended if LegCo does not pass a resolution to amend it. In the case where LegCo passes a resolution amending the Seventh TM, it shall commence to have effect on the day of the publication in the Gazette of such resolution.

31. According to paragraph 15 of the LegCo Brief (with no file reference) issued by the Environmental Protection Department in October 2017, as compared with the emission allowances for 2021 set under the Sixth TM, the Seventh TM will see a further tightening of 25% for SO₂, 15% for NO_x and 11% for RSP for the electricity sector.

32. As advised by the Clerk to the Panel on Environmental Affairs, the Panel was consulted on the proposal to reduce emission allowances for power plants starting from 1 January 2022 by way of issuing the Seventh TM at its meeting on 17 July 2017. Members did not raise objection to the proposal.

Concluding observations

33. No difficulties have been identified in the legal and drafting aspects of the above items of subsidiary legislation and non-legislative instrument.

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