

**立法會**  
**Legislative Council**

LC Paper No. LS32/17-18

**Paper for the House Committee Meeting  
on 9 February 2018**

**Legal Service Division Report on  
Subsidiary Legislation Gazetted on 2 February 2018**

**Tabling in LegCo** : Council meeting of 7 February 2018

**Amendment to be made by :** Council meeting of 28 February 2018 (or that of 28 March 2018 if extended by resolution)

**Air Navigation (Hong Kong) Order 1995 (Amendment of  
Schedule 16) Order 2018** (L.N. 13)

**Dangerous Goods (Consignment by Air) (Safety)  
Regulations (Amendment of Schedule) Order 2018** (L.N. 19)

L.N. 13 is made by the Chief Executive ("CE") in Council under section 2A of the Civil Aviation Ordinance (Cap. 448) to amend Schedule 16 to the Air Navigation (Hong Kong) Order 1995 (Cap. 448C) so as to give effect to certain amendments introduced by the 2017-2018 edition of the Technical Instructions for the Safe Transport of Dangerous Goods by Air ("TIs") approved and published by decision of the Council of the International Civil Aviation Organization. Under these amendments:

- (a) the operator of an aircraft who accepts for carriage any dangerous goods must be able to identify the person who performed an acceptance check in accordance with the TIs, and retain a record of the identification of the person (section 3(5), (6), (7) and (14) of L.N. 13);
- (b) the operator of an aerodrome, and the operator of an aircraft or its handling agent, must notify passengers as to which categories of dangerous goods may not be taken on board (whether as checked or carry-on baggage) in accordance with the TIs (section 3(8) of L.N. 13); and

- (c) the operator of an aircraft must describe the system of notifying passengers of the matters mentioned in (b) in its operations manual and/or another manual it considers appropriate (section 3(10) of L.N. 13).

2. L.N. 19 is made by the Director-General of Civil Aviation under regulation 9 of the Dangerous Goods (Consignment by Air) (Safety) Regulations (Cap. 384A) to update Part 1 of its Schedule so as to apply the 2017-2018 edition of the TIs to the consignment by air of dangerous goods.

3. According to paragraph 12 of the Legislative Council ("LegCo") Brief (File Ref: THB(T)CR 1/15/951/49) issued by the Transport and Housing Bureau ("THB") on 31 January 2018, the Civil Aviation Department has written to stakeholders to provide details of the proposed amendments, briefed the air cargo industry and consulted the Aviation Development and Three-runway System Advisory Committee ("the Committee"). The stakeholders and the Committee generally supported the proposed amendments.

4. As advised by the Clerk to the Panel on Economic Development, the Panel was consulted on the legislative proposal on 21 July 2017. Members supported the proposed amendments and noted that the relevant requirements had already been put into practice administratively. To ensure compliance, members urged the Administration to inform all affected parties of the new requirements. Details of the measures taken by the Administration and the Airport Authority are provided in LC Paper No. CB(4)1569/16-17(01).

5. L.N. 13 and L.N. 19 come into operation on 31 March 2018.

**Fixed Penalty (Criminal Proceedings) (Amendment)  
Regulation 2018**

**(L.N. 14)**

**Fixed Penalty (Traffic Contraventions) (Amendment)  
Regulation 2018**

**(L.N. 15)**

6. By a resolution passed by LegCo on 17 January 2018 (L.N. 6 of 2018), the fixed penalties for five congestion-related offences<sup>1</sup> specified in the Schedule to the Fixed Penalty (Criminal Proceedings) Ordinance (Cap. 240) will be increased by 25% from \$320 and \$450 to \$400 and \$560 respectively with effect from 1 June 2018.

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<sup>1</sup> These five offences are unlawfully entering box junction; picking up/setting down passengers in restricted zone; "U" turn causing obstruction; unauthorized stopping at bus stop/public light bus stand/taxi stand/public light bus stopping place; and stopping public bus, public light bus or taxi longer than necessary when picking up/setting down passengers.

7. L.N. 14 and L.N. 15 are made by the Secretary for Transport and Housing under section 11 of Cap. 240 and section 25 of the Fixed Penalty (Traffic Contraventions) Ordinance (Cap. 237). L.N. 14 amends the Fixed Penalty (Criminal Proceedings) Regulations (Cap. 240A) to, among others, update the Fixed Penalty Notice in Form 1 in the Schedule to Cap. 240A to reflect the increased fixed penalties provided in L.N. 6 of 2018.

8. Further, L.N. 14 and L.N. 15 amend Cap. 240A and the Fixed Penalty (Traffic Contraventions) Regulations (Cap. 237A) respectively to:

- (a) repeal certain references related to the magistracies so that all fixed penalties payable under Cap. 240 and Cap. 237 may no longer be paid at the magistracies;
- (b) specify that all fixed penalties payable under Cap. 240 and Cap. 237 may be paid through the phone-banking service provided by banks;
- (c) update the URL addresses of the Treasury and Hongkong Post's websites in Form 1 and Form 2 in the Schedules to Cap. 237A and Cap. 240A; and
- (d) provide for transitional arrangements so that fixed penalty notices issued before 1 June 2018 may continue to be paid at any magistracy specified in the notice within the period stated in the notice until 21 June 2018.

9. According to paragraph 5 of the LegCo Brief issued by THB (File Ref: THB(T)(L) 1/12/65) in January 2018, the Judiciary considers that, in view of its institutional independence, it would not be appropriate for the Magistrates' Courts to collect fixed penalty payments in respect of traffic contraventions before any court proceedings are initiated as this may affect the neutrality of the Judiciary, perceived or real.

10. As advised by the Clerk to the Panel on Administration of Justice and Legal Services, the Panel has not been consulted on L.N. 14 and L.N. 15. However, THB and the Judiciary Administration tabled an information paper regarding "Judiciary's Proposed Removal of the Payment Collection Functions of Magistrates' Courts for Fixed Penalty in respect of Traffic Contraventions not Involving Court Proceedings" (LC Paper No. CB(4)1386/16-17(01)) at the Panel meeting on 18 July 2017. Members of the Panel noted the proposal and raised no objection to the proposal.

11. L.N. 14 and L.N. 15 come into operation on 1 June 2018.

**Mines (Safety) (Amendment) Regulation 2018 (L.N. 16)**

**Dangerous Goods (General) (Amendment) Regulation 2018 (L.N. 17)**

**Dangerous Goods (Government Explosives Depots) (Amendment) Regulation 2018 (L.N. 18)**

12. At present, 27 items of fees or charges ("Fees") apply to the services ("Services") provided by the Government in respect of mine blasting, manufacture, storage, movement and discharge of dangerous goods, and storage and delivery of explosives. These Fees are set out in three regulations made by CE in Council, namely, the Mines (Safety) Regulations (Cap. 285B), the Dangerous Goods (General) Regulations (Cap. 295B) and the Dangerous Goods (Government Explosives Depots) Regulations (Cap. 295D) respectively.

13. L.N. 16 to L.N. 18 are made by the Secretary for Financial Services and the Treasury ("SFST") under section 29A of the Interpretation and General Clauses Ordinance (Cap. 1)<sup>2</sup> to amend respectively the Third Schedule to Cap. 285B, the Table in regulation 183(1) of Cap. 295B and the Schedule to Cap. 295D to adjust 26 items of the Fees ("26 adjusted items") in relation to:

- (a) the issue or renewal of mine blasting certificates ("MBCs"), and the replacement of worn, defaced or lost MBCs (L.N. 16);
- (b) the grant or renewal of licences or permits relating to the manufacture, storage, movement or discharge of certain dangerous goods (explosives and blasting agents), the issue of a duplicate of those licences or permits, and the making of alterations or additions to, or endorsements on, those licences or permits (L.N. 17); and
- (c) the storage of explosives and explosive accessories in a Government Explosives Depot and their delivery by the Government from such depot to any other place (L.N. 18).

14. It is noted that the Fee for the endorsement of a MBC (i.e. item 4 of the Third Schedule to Cap. 285B) remains unchanged in this legislative exercise. It is further noted that one Fee (renewal of a MBC) out of the 26 adjusted items is reduced by 8% whereas the remaining 25 items are increased by 10% to 20%. The Fees of the 26 adjusted items were last revised in January 2017. Members

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<sup>2</sup> Under sections 3 and 29A of Cap. 1, the amount of any fee or charge specified in, or fixed or determined by, subsidiary legislation made by CE in Council may be varied, increased or decreased by similar subsidiary legislation made by the Financial Secretary or SFST.

may refer to Annex 1 to the LegCo Brief issued by the Development Bureau in January 2018 (no file reference) for details. According to paragraphs 4 and 5 of the LegCo Brief, the adjustment of the Fees is made after a review of the cost of providing the Services with a view to achieving full cost recovery gradually and to avoiding a steep increase, and after the implementation of the fee revision, the cost recovery rates of the Services will range from 38% to 104%.

15. As advised by the Clerk to the Panel on Development, the Panel was briefed on the proposed adjustment of the Fees on 31 October 2017. Members did not object to the proposal. In response to a member's suggestion that a bigger fee increase should be made to achieve full cost recovery in one step, the Administration explained that it had adopted a progressive approach to avoid drastic increases. The Administration took note of another suggestion that the Fees be reviewed every two to three years instead of annually to obviate the need for going through legislative amendment exercises too frequently.

16. L.N. 16 to L.N. 18 come into operation on 31 March 2018.

**Hospital Authority Ordinance (Amendment of Schedule 1)  
Order 2018**

**(L.N. 20)**

17. L.N. 20 is made by CE under section 20 of the Hospital Authority Ordinance (Cap. 113) to add the newly built Hong Kong Children's Hospital ("HKCH") to the list of hospitals in Schedule 1 to Cap. 113. The effect of L.N. 20 is that the management and control of HKCH will be vested in the Hospital Authority ("HA") under an agreement with the Government.

18. According to the LegCo Brief (File Ref: FH CR 24/3921/88 Pt.22) issued by the Food and Health Bureau in January 2018, HKCH will commence operation in the fourth quarter of 2018. The Administration considers that the addition of HKCH to Schedule 1 to Cap. 113 is procedural in nature and public consultation is not necessary. However, HA has been working with relevant stakeholders in universities, non-governmental organizations, patient groups, etc. to facilitate the planning and commissioning of HKCH, and plans to brief the Kowloon City District Council on HKCH's services in March 2018.

19. As advised by the Clerk to the Panel on Health Services, while the Panel has not been consulted on L.N. 20, the Panel received an update from the Administration on the progress of the development of HKCH on 15 June 2015.

20. L.N. 20 came into operation upon gazettal on 2 February 2018.

**Lifts and Escalators Ordinance (Commencement)  
Notice 2018**

**(L.N. 21)**

21. The Lifts and Escalators Ordinance (Cap. 618) was enacted in April 2012 to provide for lift and escalator safety, including the registration of contractors, engineers and workers for the purposes of carrying out lift and escalator works. The provisions of Cap. 618 (except sections 14, 15, 19, 20, 21, 23, 24, 25 and 26 of Schedule 16) came into operation by phases on 3 July 2012 (L.N. 85 of 2012), 17 December 2012 (L.N. 165 of 2012), 2 April 2013 (L.N. 166 of 2012) and 2 January 2014 (L.N. 164 of 2013).

22. By L.N. 21, the Secretary for Development appoints:

- (a) 1 May 2018 as the day on which sections 14, 15, 23 and 25 of Schedule 16 to Cap. 618 come into operation (these provisions relate to the phasing out of the transitional arrangements for registration as lift/escalator engineers with the qualifications of higher diploma or higher certificate and for registration as a lift/escalator worker with proof of qualifications from registered lift/escalator contractors on the sufficiency of applicant's relevant experience and training); and
- (b) 1 May 2023 as the day on which sections 19, 20, 21 and 26 of Schedule 16 to Cap. 618 come into operation (these provisions relate to the repeal of the transitional arrangement in relation to registration for one or more, but not all, kinds of lift/escalator works so as to upgrade the knowledge and skills of workers so that registered lift/escalator workers would be capable of performing all kinds of lift/escalator works to enhance work efficiency and safety).

23. No LegCo Brief has been issued in respect of L.N. 21. In response to the Legal Service Division's enquiries, the Administration has advised that:

- (a) the programme for bringing into operation the provisions stated in paragraph 22(b) above on 1 May 2023 was drawn up to suit the status of training and knowledge requirements of the current pool of workers in the industry. The Administration has also advised that the phasing-out arrangement had been discussed at various meetings with the trade and was supported by the Lift and Escalator Safety Advisory Committee<sup>3</sup> on 6 February 2017; and

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<sup>3</sup> The Lift and Escalator Safety Advisory Committee consists of members from the public, trade associations, worker union and professional organizations.

- (b) as regards the remaining uncommenced provision i.e. section 24 of Schedule 16 to Cap. 618 which relates to the repeal of transitional arrangement for registration as lift/escalator engineers with the qualifications of bachelor degree or equivalent, the Administration will review the timetable for such repeal to allow sufficient time for registered lift/escalator engineer applicants to obtain the required qualifications so as not to jeopardize the supply of registered lift/escalator engineers in meeting the market demand occasioned by the repeal.

24. As advised by the Clerk to the Panel on Development, the Administration briefed the Panel on the proposed commencement of the relevant sections regarding the phasing-out arrangement at the special meeting of the Panel on 31 October 2017. Members did not object to the phasing-out arrangement. Members noted that those qualifications recognized under the transitional arrangements would be repealed upon commencement of the relevant sections under Cap. 618. In response to members' queries, the Administration confirmed that the registration acquired by those registered engineers and workers with the qualifications recognized prior to the repeal would remain valid, and the existing route for professional members of some overseas professional bodies to become members of the Hong Kong Institution of Engineers and be registered as Registered Professional Engineers in Hong Kong would also not change. It is noted that the transitional arrangements have also been discussed by the Bills Committee on Lifts and Escalators Bill. Members may also refer to paragraphs 22 to 24 and 39 to 44 of the Report of the Bills Committee (LC Paper No. CB(1)1117/11-12).

**Road Traffic (Traffic Control) (Designation of Prohibited and Restricted Zones) (Amendment) Notice 2018**

**(L.N. 22)**

25. Schedule 1 to the Road Traffic (Traffic Control) (Designation of Prohibited and Restricted Zones) Notice (Cap. 374U) designates prohibited zones ("PZs") at the Hong Kong International Airport ("Airport") in which the driving of specified motor vehicles is prohibited. Part 1 of Schedule 2 to Cap. 374U designates restricted zones ("RZs") at the Airport in which drivers of specified motor vehicles are prohibited from picking up or setting down passengers, or loading or unloading goods.

26. L.N. 22 is made by the Airport Authority ("AA") with the approval of the Commissioner for Transport under regulation 14(1) of the Road Traffic (Traffic Control) Regulations (Cap. 374G), as modified by section 1 of Part V of Schedule 2 to the Airport Authority Bylaw (Cap. 483A). It amends:

- (a) Schedule 1 to Cap. 374U to repeal three PZs (items 2(h), 7(b) and 7(d)), update the plans of two PZs (items 5 and 7(a)), and relocate the Coach and Limousine Staging Area in another PZ (item 2(o)); and
  - (b) Part 1 of Schedule 2 to Cap. 374U to repeal three RZs (items 1(r), 1(z) and 4(e)) and add the access road to and from the Northern (Landside) Petrol Filling Station as a new RZ (item 1(z)).
27. According to paragraph 3 of the LegCo Brief (File Ref: THB(T)2/935/95) issued by THB in January 2018, the proposed amendments are made in light of the development of new roads and operational needs at the Airport. As stated in paragraph 4 of the LegCo Brief, the Coach and Limousine Staging Area is relocated to maintain the smooth operation of traffic and make room for the expansion of Terminal 2 ("T2 Expansion"), while the amendments referred to in paragraph 26(b) above are made in view of the T2 Expansion and relocation of the said petrol filling station. According to paragraph 8 of the LegCo Brief, AA has consulted relevant stakeholders on the legislative proposal but public consultation is not considered necessary given the operational and technical nature of the amendments.
28. As advised by the Clerk to the Panel on Transport, the Administration has not consulted the Panel on L.N. 22.
29. L.N. 22 comes into operation on 30 March 2018.

### **Concluding remarks**

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

Prepared by

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8 February 2018