

立法會
Legislative Council

LC Paper No. LS58/17-18

**Paper for the House Committee Meeting
on 18 May 2018**

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 11 May 2018**

Tabling in LegCo : Council meeting of 16 May 2018

Amendment to be made by : Council meeting of 13 June 2018 (or that of 4 July 2018 if extended by resolution)

**Pharmacy and Poisons (Amendment) (No. 3) Regulation
2018** **(L.N. 80)**

L.N. 80 is made by the Pharmacy and Poisons Board ("PP Board") under section 29(1B) of the Pharmacy and Poisons Ordinance (Cap. 138) with the approval of the Secretary for Food and Health ("SFH"). It amends the Pharmacy and Poisons Regulations (Cap. 138A) by adding five items of substances, namely desflurane, isoflurane, midostaurin and its salts, sarilumab, and sevoflurane ("the five 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").

2. The legal effect of L.N. 80 is that the five substances are subject to restrictions concerning their sale, supply, labelling and storage, and they 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 five substances in the Poisons List means that they 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.

3. According to paragraph 4 of the Legislative Council ("LegCo") Brief (File Ref: FHB/H/23/4) issued by the Food and Health Bureau in May 2018, the PP Board considers the amendments appropriate in view of the potency, toxicity and potential side effects of the five substances. Members may refer to Annex B to the LegCo Brief for details of the five substances.

4. As advised by the Clerk to the Panel on Health Services, the Panel has not been consulted on L.N. 80.

5. Save for sections 3(1), 3(2), 3(5), 4(1), 4(2), 4(5), 5(1), 5(2) and 5(5) (collectively known as "the remaining sections") relating to desflurane, isoflurane, and sevoflurane, L.N. 80 came into operation on the day on which it is published in the Gazette (i.e. 11 May 2018). The remaining sections come into operation on the expiry of 12 months beginning on the day on which L.N. 80 is published in the Gazette, i.e. 11 May 2019. According to the LegCo Brief, the commencement arrangement is implemented with a view to allowing the trade to have sufficient time to get prepared for the changes in sale control of the relevant substances.¹

Smoking (Public Health) Ordinance (Amendment of Schedule 2) Order 2018

(L.N. 81)

6. Under section 3(1) of the Smoking (Public Health) Ordinance (Cap. 371), the areas described in Part 1 of Schedule 2 are designated as no smoking areas ("NSAs"). Under section 16A of Cap. 371, SFH may, by order published in the Gazette, amend the Schedules to Cap. 371. Under section 7(1) of Cap. 371, any person who smokes or carries a lighted cigarette, cigar or pipe in a designated NSA commits an offence and is liable on summary conviction to a fine of \$5,000. A public officer may issue a fixed penalty notice under section 3 of the Fixed Penalty (Smoking Offences) Ordinance (Cap. 600) in place of prosecution.

7. L.N. 81, made by SFH under section 16A of Cap. 371, amends Schedule 2 to Cap. 371 by designating the following bus interchanges and their adjoining facilities as new NSAs²:

- (a) Aberdeen Tunnel Bus Interchange;
- (b) Lantau Toll Plaza Bus Interchange;
- (c) Tuen Mun Road Bus Interchange (Kowloon Bound); and
- (d) Tuen Mun Road Bus Interchange (Tuen Mun Bound).

¹ Please refer to Footnote 1 of the LegCo Brief.

² The actual boundaries of the new no smoking areas are delineated on the respective plans signed by the Secretary for Food and Health and deposited in the Land Registry. The relevant plans were also published in the Gazette on 11 May 2018 (see G.N. 3325).

8. According to paragraph 6 of the LegCo Brief (File Ref: FH CR 7/52/581/89) issued by the Food and Health Bureau and the Department of Health on 9 May 2018, there are 11 bus interchanges that lead to expressways or tunnels, of which eight were designated as NSAs in 2016. The remaining three bus interchanges are covered by L.N. 81.

9. According to paragraphs 8 and 15 of the LegCo Brief, an information paper on the details of the amendments has been issued to 18 District Councils and no adverse comments were received.

10. As advised by the Clerk to the Panel on Health Services, the Panel was consulted at its meeting on 24 April 2018 on the legislative proposal. Members generally supported the proposal but raised concerns on certain issues, including whether the use of heat-not-burn tobacco products would fall within the definition of "smoke" under the law and the measures to be put in place by the Administration to ensure effective enforcement of the smoking ban at NSAs. .

11. L.N. 81 comes into operation on 31 August 2018.

Practising Certificate (Solicitors) (Amendment) Rules 2018 (L.N. 82)

12. Under section 73 of the Legal Practitioners Ordinance (Cap. 159), the Council of The Law Society of Hong Kong ("the Council") may, subject to the prior approval of the Chief Justice, make rules regulating the issue to solicitors of practising certificates and providing for the fees payable for solicitors' practising certificates.

13. L.N. 82, made by the Council under section 73 of Cap. 159 with the prior approval of the Chief Justice, amends the Practising Certificate (Solicitors) Rules (Cap. 159L) to:

- (a) increase the fee payable for an application for a solicitor's practising certificate for any practice year beginning on or after 1 January 2019 from \$5,000 to \$6,500 (Rule 4);
- (b) amend the statutory form of the practising certificate for a solicitor (i.e. Form 2 in the Schedule to Cap. 159L) to a bilingual format to the effect that both English and Chinese versions can be printed on the same practising certificate (Rule 5); and
- (c) provide for transitional arrangements (Rule 3).

14. According to paragraph 1 under Part C of the LegCo Brief (with no file reference) issued by The Law Society of Hong Kong ("The Law Society") on 11 May 2018, the practising certificate fee has remained at \$5,000 since 2010. As the operating costs and expenses of The Law Society have been increased since 2010, its reserve has been depleted to HK\$192.4 million of which HK\$120.5 million comprised of non-current assets. The fee increase is proposed as the Council considers it urgent that the reserve be replenished as soon as possible to ensure that The Law Society is financially ready to fulfil its statutory regulatory role whenever it is required to do so.

15. As advised by Clerk to the Panel on Administration of Justice and Legal Services, the Panel has not been consulted on L.N. 82.

16. Save for Rules 4 and 5 (relating to the amendments as stated in paragraph 13(a) and (b) above) which come into operation on 1 January 2019, L.N. 82 came into operation on the day on which it is published in the Gazette (i.e. 11 May 2018).

Concluding observations

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

Prepared by

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