

立法會
Legislative Council

LC Paper No. LS1/18-19

**Paper for the House Committee Meeting
on 12 October 2018**

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 5 October 2018**

Tabling in LegCo : Council meeting of 10 October 2018

Amendment to be made by : Council meeting of 7 November 2018 (or that of 28 November 2018 if extended by resolution)

**PART I SUBSIDIARY LEGISLATION RELATING TO THE
COMMISSIONING OF HEUNG YUEN WAI BOUNDARY
CONTROL POINT**

**Import and Export (Electronic Cargo Information)
(Amendment) Regulation 2018** (L.N. 158)

**Closed Area (Heung Yuen Wai Boundary Control Point)
Order** (L.N. 159)

**Heung Yuen Wai Boundary Control Point Closed Area
(Permission to Enter) Notice** (L.N. 160)

**Frontier Closed Area (Permission to Enter) (Amendment)
Notice 2018** (L.N. 161)

**Immigration (Places of Detention) (Amendment) (No. 2)
Order 2018** (L.N. 162)

**Immigration Service (Designated Places) (Amendment)
(No. 2) Order 2018** (L.N. 163)

L.N. 158

The Import and Export (Electronic Cargo Information) Regulation (Cap. 60L) prescribes the coverage and operation details of the Road Cargo System ("ROCARS"), an electronic cargo information system for customs clearance of road cargoes. Schedule 2 to Cap. 60L sets out the locations of customs clearance point to which ROCARS applies.¹

2. L.N. 158 is made by the Chief Executive ("CE") in Council under section 31 of the Import and Export Ordinance (Cap. 60) to add Heung Yuen Wai ("HYW") Boundary Control Point ("BCP") to Schedule 2 to Cap. 60L. The legal effect of L.N. 158 is that the Commissioner of Customs and Excise may designate an area within HYW BCP as a customs clearance point for the purpose of ROCARS operation pursuant to section 13 of Cap. 60L.

3. According to paragraph 3 of the Legislative Council ("LegCo") Brief (File Ref: CITB CR 89/14/21/1) issued by the Commerce and Economic Development Bureau in September 2018, the Development Bureau aims at substantial completion of the building structures of HYW BCP in end 2018, and HYW BCP will be a new location for customs clearance of road cargoes in Hong Kong upon its commissioning.

4. As advised by the Clerk to the Panel on Commerce and Industry, an information paper provided by the Administration entitled "Proposed Technical Amendment to Cap. 60L to tie in with the commissioning of the HYW BCP", which sought to inform the Panel of the Administration's proposal to amend Cap. 60L to extend its coverage to HYW BCP, was circulated to Panel members and all other Members vide LC Paper No. CB(1)1237/17-18(01) on 10 July 2018. Members had not made any requests for discussion on the subject at a Panel meeting

5. L.N. 158 comes into operation on a day to be appointed by the Secretary for Commerce and Economic Development ("SCED") by notice published in the Gazette.

¹ At present, such locations include Lok Ma Chau BCP, Man Kam To BCP, Sha Tau Kok BCP and the Clearance Area of the Shenzhen Bay Port Hong Kong Port Area. In addition, by L.N. 152 of 2017, made by CE in Council and gazetted on 6 October 2017, the Hong Kong-Zhuhai-Macao Bridge Hong Kong Port was added to Schedule 2 to Cap. 60L. L.N. 152 of 2017 comes into operation on a day to be appointed by the SCED by notice published in the Gazette.

L.N. 159 to L.N. 163

6. L.N. 159 to L.N. 163 are subsidiary legislation relating to the declaration of a closed area and setting aside of places of detention etc. for the purposes of HYW BCP. The relevant provisions are summarized below.

L.N. 159

7. L.N. 159 is made by CE under section 36(1) of the Public Order Ordinance (Cap. 245) after consultation with the Executive Council to declare certain areas located at HYW BCP, as described in Schedule 2 to L.N. 159 and shown in Plan 1 in Schedule 3 to L.N. 159, as a closed area ("Closed Area"). The legal effect of L.N. 159 is that no person shall enter or leave the Closed Area without a permit issued under section 37 of Cap. 245 or the general permission granted under section 38A of Cap. 245.

L.N. 160

8. L.N. 160 is made by the Commissioner of Police ("CP") under section 38A of Cap. 245 to grant general permission to five categories of persons leaving or entering Hong Kong via HYW BCP to enter or leave the Closed Area declared by L.N. 159 at any time subject to certain conditions specified in L.N. 160. These permitted persons include the driver of and cross-boundary passenger on a road vehicle to the Mainland of China (leaving Hong Kong via HYW BCP), the driver of and cross-boundary passenger on a road vehicle from the Mainland of China (entering Hong Kong via HYW BCP), and a person who leaves or enters Hong Kong via the Passenger Terminal Building (other than a cross-boundary passenger on a road vehicle to or from the Mainland of China, leaving or entering Hong Kong via HYW BCP).

L.N. 161

9. According to paragraph 3 of the LegCo Brief (File Ref: SBCR 2/1/2098/13) issued by the Security Bureau in October 2018, the five cross-boundary bridges of HYW BCP are located within the existing frontier closed area ("FCA") declared under the Frontier Closed Area Order (Cap. 245A).

10. L.N. 161 is made by CP under section 38A(1) of Cap. 245 to amend the Schedule to the Frontier Closed Area (Permission to Enter) Notice (Cap. 245H) by adding a new item 2G to Part 1 of the Schedule to grant permission to persons who leave or enter Hong Kong via HYW BCP to enter or leave FCA subject to certain conditions specified in L.N. 161. The permitted persons covered in L.N. 161 are the same as those provided in L.N. 160.

L.N. 162

11. L.N. 162 is made by the Secretary for Security ("S for S") under section 35(1) of the Immigration Ordinance (Cap. 115) to amend Schedule 3 to the Immigration (Places of Detention) Order (Cap. 115B) by adding the area within the Passenger Terminal Building at HYW BCP that is set aside as detention quarters for use by the Immigration Department. The legal effect of L.N. 162 is that the newly added area becomes a place at which a person required or authorized to be detained by or under Cap. 115 may be so detained.

L.N. 163

12. L.N. 163 is made by S for S under section 13A(9) of the Immigration Service Ordinance (Cap. 331) to amend the Schedule to the Immigration Service (Designated Places) Order (Cap. 331B) by adding the area within the Passenger Terminal Building at HYW BCP that is set aside as detention quarters for use by the Immigration Department. The legal effect of L.N. 163 is that the newly added area becomes a designated place for the purposes of section 13A of Cap. 331 (in relation to detention of persons arrested by members of the Immigration Service).

13. Members may refer to the LegCo Brief (File Ref: SBCR 2/1/2098/13) on L.N. 159 to L.N. 163 issued by the Security Bureau in October 2018 for further details.

14. As advised by the Clerk to the Panel on Security, an information paper entitled "Subsidiary Legislation relating to Security Matters of the HYW BCP" provided by the Administration has been circulated to Panel members and all other non-Panel members vide LC Paper No. CB(2)1942/17-18(01) on 17 August 2018. Members are advised of the Administration's plan to table the relevant subsidiary legislation at the LegCo for negative vetting upon the commencement of the 2018-2019 legislative session.

Commencement of L.N. 159 to L.N. 163

15. L.N. 159 comes into operation on a day to be appointed by S for S by notice published in the Gazette. L.N. 160 to L.N. 163 come into operation on the day on which L.N. 159 comes into operation.

PART II SUBSIDIARY LEGISLATION RELATING TO THE TRADE DESCRIPTION ORDINANCE

**Trade Descriptions (Place of Origin) (Watches)
(Amendment) Order 2018 (L.N. 164)**

Trade Descriptions (Place of Manufacture) (Piece-Knitted Garments) (Amendment) Order 2018 (L.N. 165)

Trade Descriptions (Place of Manufacture) (Textile Made-up Articles) (Amendment) Order 2018 (L.N. 166)

Trade Descriptions Ordinance (Amendment of Schedule 1) (No. 2) Notice 2018 (L.N. 167)

L.N. 167

16. Under section 2A(3) of the Trade Descriptions Ordinance (Cap. 362), the rules of origin for the goods qualified for preferential tariff treatment under a trade arrangement specified in Schedule 1 to Cap. 362 apply for the purpose of determining the place of manufacture or production of those goods.

17. L.N. 167 is made by the SCED under section 2A(4) of Cap. 362 to amend Schedule 1 to Cap. 362 by adding the following free trade agreements or arrangements ("FTAs") so that section 2A(3) of Cap. 362 applies:

- (a) Mainland and Hong Kong Closer Economic Partnership Arrangement signed on 29 June 2003 (including the annexes signed on 29 September 2003) ("CEPA");
- (b) Hong Kong, China – New Zealand Closer Economic Partnership Agreement signed on 29 March 2010 ("HKC-NZ CEP");
- (c) Hong Kong Special Administrative Region and Macao Special Administrative Region Closer Economic Partnership Arrangement signed on 27 October 2017 ("HK-MACAO CEPA"); and
- (d) Hong Kong, China – Georgia Free Trade Agreement signed on 28 June 2018 ("HKC-Georgia FTA").

18. L.N. 167 also makes textual amendments to the Chinese text of the references to certain trade arrangements in Schedule 1 to Cap. 362.

19. According to paragraphs 4 and 5 of the LegCo Brief (File Ref: TRA CR 1327/1/14) issued by the Commerce and Economic Development Bureau, the Trade and Industry Department and the Customs and Excise Department in October 2018, under the HKC-Georgia FTA signed on 28 June 2018, a set of preferential rules of origin has been formulated under which preferential tariff treatment is accorded to goods of Hong Kong origin. According to the Administration, L.N. 167 adds HKC-Georgia FTA to Schedule 1 to Cap. 362 to enable Hong Kong traders to apply the preferential

rules of origin under HKC-Georgia FTA, and it also updates Schedule 1 to Cap. 362 by adding other FTAs (specified in items (a), (b) and (c) in paragraph 17 above) that the Administration has signed but have yet to be incorporated in Schedule 1.

20. In addition, according to paragraph 9 of the LegCo Brief, after the addition of the FTAs to Schedule 1 to Cap. 362 by L.N. 167, Schedule 1 would set out all the FTAs that Hong Kong has signed. In particular, in respect of CEPA and HKC-NZ CEP, greater clarity will be provided as the trade and the public will not need to make reference to the different Orders made under Cap. 362 or its provisions to understand the special origin marking requirements under the relevant FTAs.

L.N. 164 to L.N. 166

21. L.N. 164, L.N. 165 and L.N. 166, made by the Commissioner of Customs and Excise under section 2(2)(b)(ii) of Cap. 362, repeal the origin marking requirements in respect of certain watches, certain piece-knitted garments and certain textile made-up articles exported from Hong Kong under CEPA and HKC-NZ CEP specified in the Trade Descriptions (Place of Origin) (Watches) Order (Cap. 362D), the Trade Descriptions (Place of Manufacture) (Piece-Knitted Garments) Order (Cap. 362H) and the Trade Descriptions (Place of Manufacture) (Textile Made-up Articles) Order (Cap. 362I) respectively.

22. According to paragraph 8 of the LegCo Brief (File Ref: TRA CR 1327/1/14), as a result of the adding of CEPA and HKC-NZ CEP to Schedule 1 to Cap. 362 by L.N. 167, the current provisions in Cap. 362D, Cap. 362H and Cap. 362I regarding the special origin marking requirements under these FTAs for watches, piece-knitted garments and textile made-up articles are no longer required and should be repealed accordingly.

23. As advised by the Clerk to the Panel on Commence and Industry, the Panel has not been consulted on L.N. 164 to L.N. 167.

Commencement of L.N. 164 to L.N. 167

24. L.N. 164 to L.N. 167 come into operation on 1 January 2019.

PART III COMMENCEMENT NOTICE

**Hong Kong Civil Aviation (Investigation of Accidents)
(Amendment) Regulation 2017 (Commencement) Notice (L.N. 168)**

**Air Navigation (Hong Kong) Order 1995 (Amendment)
Order 2017 (Commencement) Notice (L.N. 169)**

L.N. 168 and L.N. 169

25. By L.N. 168 and L.N. 169, the Secretary for Transport and Housing ("STH") appoints 3 December 2018 as the day on which the Hong Kong Civil Aviation (Investigation of Accidents) (Amendment) Regulation 2017 (L.N. 115 of 2017) and the Air Navigation (Hong Kong) Order 1995 (Amendment) Order 2017 (L.N. 116 of 2017), which were gazetted on 9 June 2017 and tabled in the LegCo on 14 June 2017, come into operation.

26. L.N. 115 of 2017 and L.N. 116 of 2017 were made by CE in Council under the Civil Aviation Ordinance (Cap. 448). L.N. 115 of 2017 amends the Hong Kong Civil Aviation (Investigation of Accidents) Regulation (Cap. 448B) to implement the latest requirements of the International Civil Aviation Organization on aircraft accident and incident investigation, which include transferring the air accident investigation-related powers of the Director-General of Civil Aviation to an independent aviation accident investigation authority comprising the future Chief Inspector (who is directly accountable to STH) and Inspectors and amending definitions relevant to civil aviation accident investigation (including "accident" and "incident") and adding a new definition of "serious incident". L.N. 116 of 2017 amends the Air Navigation (Hong Kong) Order 1995 (Cap. 448C) to revise certain cross-references relating to Cap. 448B as a result of the amendments made by L.N. 115 of 2017 to Cap. 448B.

27. A subcommittee was formed in June 2017 to scrutinize L.N. 115 of 2017 and L.N. 116 of 2017. Members may refer to the report of the Subcommittee dated 27 September 2017 (LC Paper No. CB(4)1621/16-17) for further details.

28. No LegCo Brief has been issued in respect of L.N. 168 and L.N. 169.

29. As advised by the Clerk to the Panel on Economic Development, the Panel was not consulted specifically on L.N. 168 and L.N. 169. The subcommittee formed to scrutinize L.N. 115 of 2017 and L.N. 116 of 2017 supported the amendments to Cap. 448B and Cap. 448C.

**PART IV SUBSIDIARY LEGISLATION RELATING TO EMPLOYEES
RETRAINING**

**Employees Retraining Ordinance (Amendment of
Schedule 2) Notice 2018 (L.N. 170)**

30. Schedule 2 to the Employees Retraining Ordinance (Cap. 423) contains a list of training bodies that may provide or conduct retraining courses

for the purposes of Cap. 423. Under Cap. 423, these training bodies are eligible for payments from the Employee Retraining Fund for retraining courses attended by trainees eligible to receive retraining allowances.

31. L.N. 170, made by the Employee Retraining Board ("ERB") under section 31(2) of Cap. 423, amends Schedule 2 to Cap. 423 by removing the names of seven training bodies from the list² as they are no longer the training bodies of the ERB, and amending the English and Chinese names of one training body of ERB³ to reflect the latest registered name of the training body.

32. Members may refer to the LegCo Brief (File Ref: QA/TBM/09 Part 5) issued by the Employees Retraining Board Executive Office dated 3 October 2018 for further details.

33. As advised by the Clerk to the Panel on Manpower, the Panel has not been consulted on L.N. 170.

34. L.N. 170 came into operation on the day of its publication in the Gazette (i.e. 5 October 2018).

Concluding observations

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

Prepared by

Rachel DAI
Assistant Legal Adviser
Legislative Council Secretariat
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LS/S/1/18-19

² The seven training bodies are Leo Hair & Beauty Training Centre, Electronic Communication Technical Staff Union, Fire and Security Engineering Employees Association, Union of Hong Kong Electrical and Mechanical Engineering Assistants, The Federation of Hong Kong Electrical & Mechanical Industries Trade Unions, Hong Kong Air-conditioning and Refrigerating Trades Workers General Union, and Kwan Sang Catering Professional Employees Association.

³ The name of "Logistics Cargo Supervisors Association" under item 149 of Schedule 2 to Cap. 423 is repealed and substituted by "Logistics Practitioners Union".