

立法會
Legislative Council

LC Paper No. LS24/18-19

**Paper for the House Committee Meeting
on 7 December 2018**

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 30 November 2018**

Tabling in LegCo : Council meeting of 5 December 2018

Amendment to be made by : Council meeting of 12 December 2018 (or that of 23 January 2019 if extended by resolution)

**Road Tunnels (Government) (Amendment) (No. 2)
Regulation 2018** (L.N. 237)

**Tsing Ma Control Area (Tolls, Fees and Charges)
(Amendment) Regulation 2018** (L.N. 238)

**Tsing Sha Control Area (Tolls, Fees and Charges)
(Amendment) Regulation 2018** (L.N. 239)

The tolls payable for the use of Government tunnels, the Lantau Link¹ of the Tsing Ma Control Area and the toll area of the Tsing Sha Control Area are provided respectively in the Road Tunnels (Government) Regulations (Cap. 368A), the Tsing Ma Control Area (Tolls, Fees and Charges) Regulation (Cap. 498A) and the Tsing Sha Control Area (Tolls, Fees and Charges) Regulation (Cap. 594B) made by the Chief Executive ("CE") in Council under the Road Tunnels (Government) Ordinance (Cap. 368), the Tsing Ma Control Area Ordinance (Cap. 498) and the Tsing Sha Control Area Ordinance (Cap. 594) respectively.

2. L.N. 237 to L.N. 239 are made by CE in Council to amend Cap. 368A, Cap. 498A and Cap. 594B respectively. They exempt buses franchised under the Public Bus Services Ordinance (Cap. 230) ("franchised buses") from payment of tolls for using seven government tunnels, namely, Aberdeen Tunnel, Cross-Harbour Tunnel, Eastern Harbour Crossing, Lion Rock Tunnel, Shing Mun Tunnels, Tate's Cairn Tunnel and

¹ Formerly known as the "Lantau Fixed Crossing", the Lantau Link comprises the Tsing Ma Bridge, the Ma Wan Viaduct, the Kap Shui Mun Bridge, and any adjacent area: see section 2 of Cap. 498.

Tseung Kwan O Tunnel², as well as two government roads, namely, the Lantau Link³ and the toll area of the Tsing Sha Control Area⁴.

3. According to paragraph 2 of the Legislative Council ("LegCo") Brief (File Ref.: THB(T)CR 1/4651/2018) issued by the Transport and Housing Bureau on 28 November 2018, L.N. 237 to L.N. 239 are made to implement the toll waiver announced by CE in her Policy Address 2018⁵ for franchised buses using government tolled tunnels as well as the Tsing Ma and Tsing Sha Control Areas with a view to relieving fare increase pressure and benefiting the general public. According to Annex E to the LegCo Brief, the revenue forgone by this toll exemption is about \$280 million per year based on 2017 figures.

4. As advised by the Clerk to the Panel on Transport, the Panel was consulted on the toll-waiving proposal together with other initiatives in the 2018 Policy Address on 19 October and 16 November 2018. Members in general welcomed the proposal to waive tolls for franchised buses using tunnels. Some members further proposed that other public transport means like non-franchised buses and mini-buses should also be included in the toll-waiving initiative.

5. L.N. 237 to L.N. 239 come into operation on 17 February 2019.

Fugitive Offenders (France) Order

(L.N. 240)

6. L.N. 240 is made by CE in Council under section 3 of the Fugitive Offenders Ordinance (Cap. 503) in consequence of the agreement for the surrender of fugitive offenders ("SFO") entered into by the Government of the Hong Kong Special Administrative Region and the Government of the French Republic and signed in Hong Kong on 4 May 2017 ("the Agreement"). By L.N. 240, it is directed that in relation to the Agreement the terms of which are recited in the Schedule to L.N. 240, the procedures for SFO in Cap. 503 apply as between Hong Kong and France subject to the limitations, restrictions, exceptions and qualifications contained in the terms so recited.

7. L.N. 240 is subject to a mechanism of scrutiny by LegCo under section 3(2) to (6) of Cap. 503. The mechanism is similar to that under section 34 of the Interpretation and General Clauses Ordinance (Cap. 1), except that under section 3(3) of Cap. 503, LegCo may only repeal but not amend L.N. 240.

² Under section 20(1)(p) of Cap. 368, CE in Council may by regulation provide for the exemption of vehicles or any class thereof from the operation of any regulation whether by permit or otherwise.

³ Section 27(1) of Cap. 498 does not expressly provide for the power to exempt tolls. However, under section 29(1) of the Interpretation and General Clauses Ordinance (Cap. 1), any subsidiary legislation making provision in respect of fees or other charges may provide for exemption or waiver of fees or charges.

⁴ Under section 26(1)(h) of Cap. 594, CE in Council may make regulations to provide for, among others, the exemption of tolls.

⁵ See paragraph 259.

8. It is noted that following the relevant approach proposed by the Security Bureau ("SB") to the Panel on Security in April 2005⁶ and subsequently adopted by the Fugitive Offenders (Czech Republic) Order (Cap. 503AI), L.N. 240 does not list the offences for which SFO is to be granted under the Agreement. According to SB, this approach is preferred by European countries such as France and Switzerland because the "list" approach used in previous SFO orders is not compatible with their domestic law and practice which generally permit extradition in respect of all criminal offences with a penalty above a certain threshold. Under Article 2(3) of the Agreement, each Party shall inform the other in writing of the offences for which surrender may be granted under its law no later than the date on which it notifies the other Party that its requirements for the entry into force of the Agreement have been complied with. Upon enquiry by the Legal Service Division, SB has replied that the list of offences set out in Schedule 1 to Cap. 503 will be provided to France under the Agreement. It is also noted that under Article 20, the Agreement applies to requests for surrender or transit made after its entry into force regardless of the date of the commission of the offence or offences set out in the request. In other words, the Agreement may apply retrospectively to offences committed before the Agreement enters into force.

9. As advised by the Clerk to the Panel on Security, the Panel has not been consulted on L.N. 240.

10. L.N. 240 comes into operation on a day to be appointed by the Secretary for Security by notice published in the Gazette. According to paragraph 11 of the LegCo Brief (File Ref.: SBCR 6/1/2716/80 and SBCR 50/22/581/87) issued by SB in November 2018, the commencement date will coincide with that on which the Agreement enters into force. Article 20 of the Agreement provides that it shall enter into force 30 days after the day on which the Parties have notified each other in writing of the completion of their respective internal procedures required for entry into force of the Agreement.

Concluding observations

11. No difficulties have been identified in relation to the legal and drafting aspects of L.N. 237 to L.N. 239. Our scrutiny of L.N. 240 is continuing and a further report will be issued in due course, if necessary.

Prepared by

LOO Chi-pong, Bonny
Assistant Legal Adviser
Legislative Council Secretariat
6 December 2018

LS/S/10/18-19

⁶ See LC Paper No. CB(2)1409/04-05(02).