

立法會
Legislative Council

LC Paper No. LS41/18-19

**Paper for the House Committee Meeting
on 25 January 2019**

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 18 January 2019**

Tabling in LegCo : Council meeting of 23 January 2019

Amendment to be made by : Council meeting of 20 February 2019 (or that of 20 March 2019 if extended by resolution)

**Minimum Wage Ordinance (Amendment of Schedule 3)
Notice 2019** (L.N. 8)

**Employment Ordinance (Amendment of Ninth Schedule)
Notice 2019** (L.N. 11)

L.N. 8

L.N. 8 is made by the Chief Executive ("CE") in Council under section 16(1) of the Minimum Wage Ordinance (Cap. 608) to amend Schedule 3 to Cap. 608 by specifying that the prescribed minimum hourly wage rate (the "PMHW rate") shall be \$37.5¹ with effect from 1 May 2019.

2. Under section 16 of Cap. 608, CE in Council may, by notice published in the Gazette, amend Schedule 3 to specify an hourly wage rate and its effective date. In exercising such power to amend Schedule 3, CE in Council may have regard to any recommendation included in a report made under section 12(1) of Cap. 608 but is not bound by the recommendation. Further, by virtue of section 16(4) of Cap. 608, section 34(2) of the Interpretation and General Clauses Ordinance (Cap. 1) applies to L.N. 8 to the effect that if the Legislative Council ("LegCo") disagrees with L.N. 8, LegCo may only, by resolution, wholly revoke L.N. 8 but not amend any part of it.

3. According to paragraph 17 of the LegCo Brief issued by the Labour and Welfare Bureau and the Labour Department in January 2019 (File Ref: LD SMW 86-

¹ The current PMHW rate is \$34.5 which has been effective since 1 May 2017.

1/2(C)), the Minimum Wage Commission ("MWC") has conducted extensive and intensive consultation, including a six-week public consultation and consultation meetings with stakeholders on the review of PMHW rate. In its report submitted to CE on 31 October 2018, MWC, by unanimous consensus, recommended that current PMHW rate of \$34.5 be adjusted to \$37.5. According to paragraph 9 of the LegCo Brief, the Administration considers that the analyses of MWC in its report show that the recommended PMHW rate strikes an optimum balance between the interests of employees and the affordability of employers. CE in Council has accepted and adopted MWC's recommendation rate of \$37.5 as the revised PMHW rate.

4. L.N. 8 comes into operation on 1 May 2019.

L.N. 11

5. L.N. 11 is made by the Commissioner for Labour ("the Commissioner") under section 49A(6) of the Employment Ordinance (Cap. 57) to amend the Ninth Schedule to Cap. 57 to increase the monetary cap on recording hours worked by an employee specified in the Schedule from \$14,100 per month to \$15,300 per month.

6. Section 49A(3)(ea) of Cap. 57 requires an employer to keep records of the total number of working hours of an employee in a wage period if the employee is an employee within the meaning of Cap. 608, and the wages payable to the employee for the wage period is less than the monetary cap specified in the Ninth Schedule to Cap. 57 (or a proportionate amount when the wage period concerned is not a month). Section 49A(6) of Cap. 57 provides that the Commissioner may, by notice published in the Gazette, amend the Ninth Schedule.

7. According to paragraphs 2 and 13 of the LegCo Brief, the amendment in L.N. 11 is consequential to the implementation of the revised PMHW rate in L.N. 8, and the increase in the monetary cap to \$15,300 per month is in proportion to the percentage increase (i.e. 8.7%) of the PMHW rate adjustment.

8. L.N. 11 comes into operation on the same day on which L.N. 8 comes into effect (i.e. 1 May 2019).

9. As advised by the Clerk to the Panel on Manpower, the Panel has not been consulted on L.N. 8 and L.N. 11.

Immigration (Amendment) Regulation 2019

(L.N. 9)

10. Under section 59 of the Immigration Ordinance (Cap. 115), CE in Council may make regulations to prescribe fees payable in respect of the issue or renewal of documents issued by or on behalf of the Director of Immigration or in respect of visas or any other matters arising under Cap. 115. Pursuant to section 29A

of Cap. 1, the Financial Secretary (which means also the Secretary for Financial Services and the Treasury ("SFST") under section 3 of Cap. 1) may vary fees which are specified in subsidiary legislation made by CE in Council.

11. L.N. 9 is made by SFST under section 29A of Cap. 1 by virtue of section 59 of Cap. 115. It amends Schedule 2 to the Immigration Regulations (Cap. 115A) to increase by 9% to 21% 18 items of fees payable for:

- (a) the issue of travel passes, visas, entry permits and re-entry permits (eight items);
- (b) the issue of seamen's identity books and the additional fee for delivering seamen's identity books or documents of identity to places outside Hong Kong (five items);
- (c) the issue and replacement of APEC business travel cards (two items); and
- (d) miscellaneous items (e.g. endorsement to travel documents, change of conditions of stay and other service charges) (three items).

12. According to paragraph 5 of the LegCo Brief issued by Security Bureau in January 2019 (File Ref.: SBCR 3/3231/66), a recent costing review conducted at 2018-2019 prices shows that the existing fees for the services mentioned in paragraph 11 above (which were last revised in June 2006 and February 2015) only recover 25% to 76% of the full cost of providing the services. In order to achieve full-cost recovery gradually, a 9% to 21% increase in the fees payable for these services is made. After the revision, the cost recovery rates of the 18 items of fees will range from 29% to 83%. Members may refer to Annex B to the LegCo Brief for details of the increase.

13. L.N. 9 comes into operation on 25 March 2019.

14. As advised by the Clerk to the Panel on Security, an information paper provided by the Administration entitled "Proposed revision of fees for services under the purview of the Immigration Department" was circulated to members of the Panel on Security and all non-Panel Members vide LC paper No. CB(2)337/18-19(01) on 28 November 2018. No members requested to discuss the fee revision proposals at a Panel meeting.

Pharmacy and Poisons (Amendment) (No. 2) Regulation 2019 (L.N. 10)

15. L.N. 10 is made by the Pharmacy and Poisons Board ("PPB") 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 "Baloxavir, its salt; its esters and ethers; their salts" ("the Substance") to Division A of Schedule 1, Division A of Schedule 3 and Division A of Part 1 of the Poisons List set out in Schedule 10 ("Poisons List").

16. The effect of L.N. 10 is that the Substance is subject to restrictions with respect to its sale, supply, labelling and storage, and that it 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 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.

17. According to paragraph 4 of the LegCo Brief (File Ref.: FHB/H/23/4) issued by the Food and Health Bureau in January 2019, PPB considers the amendments appropriate in view of the potency, toxicity and potential side effects of the Substance. Members may refer to Annex B to the LegCo Brief for details of the Substance.

18. As advised by the Clerk to the Panel on Health Services, the Administration has not consulted the Panel on L.N. 10.

19. L.N. 10 came into operation on the date of publication in the Gazette, i.e. 18 January 2019.

Concluding observations

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

Prepared by

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