

立法會
Legislative Council

LC Paper No. LS77/19-20

**Paper for the House Committee Meeting
on 22 May 2020**

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 15 May 2020**

Tabling in LegCo : Council meeting of 20 May 2020

Amendment to be made by : Council meeting of 17 June 2020 (or that of 8 July 2020 if extended by resolution)

PART I ENHANCED REQUIREMENTS FOR LOCAL PLEASURE VESSELS

Merchant Shipping (Local Vessels) (Certification and Licensing) (Amendment) Regulation 2020 (L.N. 68)

Merchant Shipping (Local Vessels) (General) (Amendment) Regulation 2020 (L.N. 69)

Merchant Shipping (Local Vessels) (Safety and Survey) (Amendment) Regulation 2020 (L.N. 70)

Merchant Shipping (Local Vessels) (Fees) (Amendment) (No. 2) Regulation 2020 (L.N. 71)

L.N. 68 to L.N. 70 are made by the Secretary for Transport and Housing ("STH") under section 89 of the Merchant Shipping (Local Vessels) Ordinance (Cap. 548) to enhance the regulatory regime for Class IV vessels¹ (i.e. local pleasure vessels) in view of the rising safety requirements for Class IV vessels imposed by other jurisdictions in recent years.

L.N. 68

2. L.N. 68 amends the Merchant Shipping (Local Vessels) (Certification and Licensing) Regulation (Cap. 548D) mainly to:

¹ A Class IV vessel shall not be used otherwise than by the owner exclusively for pleasure purposes; or if it has been let to any person, by that person exclusively for pleasure purposes (section 6(1) of the Merchant Shipping (Local Vessels) (Certification and Licensing) Regulation (Cap. 548D)).

- (a) impose the requirement that the owner of a Class IV vessel must obtain the Director of Marine ("DM")'s prior approval and endorsement on the vessel's operating licence if it is to be let for hire or reward; and
- (b) provide that contravention of such requirement, by the vessel owner, the owner's agent or the vessel's coxswain, is an offence punishable by a fine at level 3 (i.e. \$10,000). A 12-month transitional period beginning on 1 August 2020 is provided for compliance with the requirement and thus contravention of the requirement during the transitional period does not constitute an offence.

L.N. 69

3. L.N. 69 amends the Merchant Shipping (Local Vessels) (General) Regulation (Cap. 548F) to:

- (a) make the requirements under Divisions 1 and 2 of Part 5A of Cap. 548F relating to automatic identification system ("AIS") and radar equipment respectively apply to Class IV vessels that are licensed to carry more than 100 passengers; and
- (b) make the requirements under Division 3 of Part 5A of Cap. 548F relating to radiotelephone equipment apply to Class IV vessels that are licensed to carry 13 to 60 passengers and are let for hire or reward; and Class IV vessels that are licensed to carry more than 60 passengers.

L.N. 70

4. L.N. 70 amends the Merchant Shipping (Local Vessels) (Safety and Survey) Regulation (Cap. 548G) mainly to:

- (a) extend the application of the plan approval requirements² and survey requirements under Parts 3 and 4 respectively of Cap. 548G to other Class IV vessels falling within specified descriptions;³
- (b) extend the application of radar requirements and AIS requirements under sections 80 and 80A respectively of Cap. 548G to Class IV vessels that are licensed to carry more than 100 passengers;

² Plans relating to certain aspects of the vessels including stability, structural fire protection and general arrangements must be approved by DM or a competent surveyor.

³ These vessels are (i) Class IV vessels that are not less than 24 metres in length, of not more than 150 gross tonnage and licensed for the first time on or after 1 August 2020 (and they do not fall within Class IV vessels that are of novel construction); and (ii) Class IV vessels that are not less than 24 metres in length, of more than 150 gross tonnage and licensed for the first time on or after 1 August 2020.

- (c) extend the application of radiotelephone equipment under section 80B of Cap. 548G to Class IV vessels that are licensed to carry 13 to 60 passengers and are let for hire or reward; and Class IV vessels that are licensed to carry more than 60 passengers;
- (d) add a new Table 8 in Part 2 of Schedule 3 to Cap. 548G to require certain Class IV vessels⁴ to provide lifebuoys; and
- (e) make miscellaneous amendments to the requirements including those relating to life-saving appliances and fire-fighting apparatus set out in Schedules 3 and 4 to Cap. 548G.

L.N. 71

5. L.N. 71, made by the Secretary for Financial Services and the Treasury under section 88 of Cap. 548, amends the Merchant Shipping (Local Vessels) (Fees) Regulation (Cap. 548J) to make amendments consequential to those made to Cap. 548G by L.N. 70. It makes the fees provisions under Cap. 548J apply to the application for approval of plans by DM and survey conducted for the issue of certificates of inspection or survey in relation to Class IV vessels mentioned in paragraph 4(a) above.

Commencement

- 6. L.N. 68 and L.N. 71 come into operation on 1 August 2020.
- 7. Save for section 6 (relating to the application of the requirements regarding radiotelephone equipment to certain Class IV vessels) which will come into operation on a day to be appointed by STH by notice published in the Gazette, L.N. 69 comes into operation on 1 August 2020.
- 8. Subject to the following, L.N. 70 comes into operation on 1 August 2020:
 - (a) section 16 which relates to the application of the requirements regarding radiotelephone equipment to certain Class IV vessels, comes into operation on a day to be appointed by STH by notice published in the Gazette; and

⁴ These vessels are (i) Class IV vessels that are licensed before 1 August 2020 to carry not more than 60 passengers and are let for hire or reward (except Class IV vessels that are open cruisers); (ii) Class IV vessels that are open cruisers licensed to carry not more than 60 passengers and are let for hire or reward; and (iii) Class IV vessels of more than 150 gross tonnage and are licensed before 1 August 2020.

- (b) section 17(3) which relates to the requirement on certain Class IV vessels to provide adequate lifebuoys, comes into operation on 1 April 2021.

9. Upon enquiry on the proposed schedule for bringing into operation of the uncommenced provisions, i.e. section 6 of L.N. 69 and section 16 of L.N. 70, the Administration has responded that the later commencement of the provisions concerned would allow sufficient qualified crew members on board the vessel for operating very high frequency ("VHF") radio in the trade. This arrangement is similar to that adopted for implementing the requirements regarding VHF radio for Class I vessels which came into operation on 1 February 2020 (see L.N. 136 of 2019 and L.N. 137 of 2019).

PART II IMPROVEMENT OF SURVEY REGIME RELATING TO PREVENTION AND CONTROL OF POLLUTION FOR LOCAL VESSELS

**Merchant Shipping (Prevention of Oil Pollution)
(Amendment) Regulation 2020 (L.N. 72)**

**Merchant Shipping (Prevention of Air Pollution)
(Amendment) Regulation 2020 (L.N. 73)**

L.N. 72

10. Under regulation 7(1) of the Merchant Shipping (Prevention of Oil Pollution) Regulations (Cap. 413A), in relation to certain Hong Kong ships, DM, must, on receipt of a declaration of survey conducted by the Government surveyor, issue to the ships a Hong Kong Oil Pollution Prevention ("HKOPP") Certificate.

11. L.N. 72 is made by STH under section 3 of the Merchant Shipping (Prevention and Control of Pollution) Ordinance (Cap. 413) to amend regulation 7 of Cap. 413A to empower DM to issue a HKOPP Certificate in respect of a Hong Kong ship under regulation 7 of Cap. 413A based on satisfactory results of surveys conducted not only by Government surveyors but also by an organization recognized ("RO") under regulation 3B of Cap. 413A. L.N. 72 applies to a Hong Kong ship that (a) is an oil tanker of 150GT and above or any other ship of 400GT and above; and (b) is not engaged in voyages to ports or offshore terminals under the jurisdiction of other Parties to the International Convention for the Prevention of Pollution from Ships, 1973.

L.N. 73

12. Under section 59(3) of Merchant Shipping (Prevention of Air Pollution) Regulation (Cap. 413P) in relation to certain Hong Kong ships, DM, must on receipt of a declaration of survey conducted by the Government surveyor, issue to the ships a Hong Kong Air Pollution Prevention ("HKAPP") Certificate. Section 95 of Cap. 413P provides that DM may recognize an RO for making endorsements on certain certificates that are issued by RO.

13. L.N. 73 is made by STH under section 3 of Cap. 413 to amend sections 59 and 95 of Cap. 413P so that (a) DM may issue a HKAPP Certificate in respect of a Hong Kong ship under section 59 of Cap. 413P based on satisfactory results of surveys conducted not only by Government surveyors but also by an RO under section 95 of Cap. 413P; and (b) an RO may make endorsement on HKAPP Certificates that are issued by DM.

Commencement

14. L.N. 72 and L.N. 73 come into operation on 1 August 2020.

Public Consultation relating to L.N. 68 to L.N. 73

15. According to paragraph 23 of the Legislative Council ("LegCo") Brief (with no file reference) issued by the Transport and Housing Bureau ("THB") and the Marine Department in May 2020, the Administration consulted the stakeholders concerned on the legislative proposals, including the Local Vessels Advisory Committee and the relevant trade associations during the period from 2016 to 2018. All the parties concerned supported the legislative proposals.

Consultation with LegCo Panel relating to L.N. 68 to L.N. 73

16. As advised by the Clerk to the Panel on Economic Development, the Administration consulted the Panel on 23 April 2018 on the proposal relating to the reform of the regulatory regime for Class IV vessels. Members noted the trade's concern on difficulties in compliance as reflected in its submission. Members requested the Administration to provide supplementary information and passed a motion urging the Administration to further discuss details of the proposal with the trade. The Administration's response was issued to members vide LC Paper No. CB(4)1124/17-18(01). At the meeting of 19 December 2018, the Administration briefed the Panel on the refined proposal which was generally supported by members. Members also noted that the trade had reached a consensus with the Administration on the refined proposal.

PART III WAIVER OF STAMP DUTY

Stamp Duty Ordinance (Amendment of Schedule 8) Regulation 2020

(L.N. 74)

17. Under section 19(1) of the Stamp Duty Ordinance (Cap. 117), a person who effects any sale or purchase of Hong Kong stock as principal or agent is required to make and execute a contract note and cause the note to be stamped under head 2(1) (i.e. 0.1% ad valorem duty of the contract value) or 2(2) (i.e. fixed duty of \$5 on a contract note) in the First Schedule to Cap. 117. Schedule 8 to Cap. 117 set out the types of transactions relating to an exchange traded fund ("ETF") that are excluded from the requirements of section 19(1).

18. L.N. 74 is made by the Financial Secretary under section 63(c) of Cap. 117 to amend Schedule 8 to Cap. 117 to waive the stamp duty on the following transactions:

- (a) a purchase of Hong Kong stock made by a market maker⁵ for the allotment of a share or unit an ETF, that is settled within the allotment period (i.e. the period between the day on which the order for the allotment is placed by the market maker and the day on which the allotment is settled);
- (b) a sale of Hong Kong stock made by a market maker for the redemption of a share or unit of an ETF, that is effected within the redemption period (i.e. the period between the day on which the order for redemption is placed by a market maker and the trading day immediately after the day on which the relevant Hong Kong stock is delivered to the market maker for the redemption); and
- (c) both the sale and purchase of a transaction of Hong Kong stock between a market maker of an ETF and a participating dealer of the ETF made for the allotment or redemption of a share or unit of the ETF upon fulfilment of specified conditions.

19. According to paragraphs 1 and 22 of the LegCo Brief (File Ref: SF&C/1/2/57/1C) issued by the Financial Services and the Treasury Bureau and the Inland Revenue Department on 13 May 2020, L.N. 74 is made to implement an initiative as announced in the 2020-21 Budget. The Administration had taken into account the views received from the stakeholders during the 2020-21 Budget consultation process in formulating the proposal.

⁵ Market maker, in relation an ETF, means a person approved by or registered with the Stock Exchange Company for performing, in accordance with rules made by the Stock Exchange Company, market making or liquidity providing activities in respect of the shares or units of the fund (section 3(2) of L.N. 74).

20. As advised by the Clerk to the Panel on Financial Affairs, the Administration has provided an information paper to the Panel on the proposal to extend stamp duty waiver to market makers in the course of creating and redeeming ETF units listed in Hong Kong. The paper was circulated to Panel members vide LC Paper No. CB(1)537/19-20(02) on 14 April 2020. No member has raised enquiries on the paper.

21. L.N. 74 comes into operation on 1 August 2020.

PART IV PUBLIC PLEASURE GROUNDS

Public Health and Municipal Services Ordinance (Public Pleasure Grounds) (Amendment of Fourth Schedule) (No. 2) Order 2020

(L.N. 75)

22. L.N. 75 is made by the Director of Leisure and Cultural Services ("Director") under section 106 of the Public Health and Municipal Services Ordinance (Cap. 132) to:

- (a) set aside 57 places specified in Schedule 1 to L.N. 75 for use as public pleasure grounds with the effect that the general management and control of these public pleasure grounds is vested in the Director; and
- (b) update the list of public pleasure grounds specified in the Fourth Schedule to Cap. 132 to reflect the above changes and the change of the names of the five existing public pleasure grounds to tie in with the change of land status from temporary land allocation to permanent land allocation or to make reference to the official names of the roads where the venues are located.⁶

23. According to paragraph 4 of the LegCo Brief (with no file reference) issued by the Leisure and Cultural Services Department on 14 May 2020, the proposal to set aside 57 venues as pleasure grounds will enable the Director to enforce the Pleasure Grounds Regulation (Cap. 132BC) in those venues. No information has been provided as to whether public consultation has been conducted in respect of L.N. 75.

⁶ "High West Picnic Area (temporary)" has been renamed as "High West Picnic Area"; "Lok Hing Lane Temporary Sitting-out Area" has been renamed as "Lok Hing Lane Sitting-out Area"; "Smithfield Road Children's Playground" has been renamed as "Smithfield Children's Playground"; "Waterloo Road/Wylie Road Sitting-out Area" has been renamed, in Chinese only, from "窩打老道／衛理道休憩處" to "窩打老道／衛理道休憩處"; and "Mody Road Garden" has been renamed, in Chinese only, from "摩地道花園" to "麼地道花園".

24. As advised by the Clerk to the Panel on Home Affairs, the Panel has not been consulted on L.N. 75.

25. L.N. 75 came into operation on the day of publication in the Gazette, i.e. 15 May 2020.

PART V SUBSIDIARY LEGISLATION UNDER THE ROAD TRAFFIC ORDINANCE (CAP. 374)

Road Traffic (Breath Analysing Instruments, Screening Devices and Pre-screening Devices) (Amendment) Notice 2020 (L.N. 76)

26. L.N. 76 is made by the Commissioner of Police ("Commissioner") under section 39F(1)(a) of the Road Traffic Ordinance (Cap. 374). It amends Schedule 1 to the Road Traffic (Breath Analysing Instruments, Screening Devices and Pre-screening Devices) Notice (Cap. 374S) by:

- (a) adding "SAF'IR Evolution manufactured by Alcohol Countermeasure Systems Corp., Toronto, Canada" ("SAF'IR Evolution") as an approved breath analysing instrument for analysing the proportion of alcohol in a specimen of a person's breath; and
- (b) making textual amendments to the Chinese text of that Schedule to achieve consistency.

27. According to paragraph 5 of the LegCo Brief (File Ref: LM (2/19 in CP SUP T/3-70/30/1)) issued by the Hong Kong Police Force ("HKPF") on 13 May 2020, the Department of Chemistry of The Hong Kong University of Science and Technology has been engaged to conduct accuracy and reliability tests on SAF'IR Evolution. As stated in paragraph 6 of the LegCo Brief, the Police, on the basis of the test results and noting that SAF'IR Evolution has been deployed in some other jurisdictions for drink driving enforcement, is satisfied that SAF'IR Evolution is an accurate and reliable instrument suitable for performing evidential breath tests.

28. L.N. 76 comes into operation on 10 July 2020.

29. As advised by the Clerk to the Panel on Transport ("TP"), the Administration has not consulted TP on L.N. 76.

Road Traffic (Rapid Oral Fluid Test Instruments) Notice (L.N. 77)

Road Traffic (Amendment) Ordinance 2011 (Commencement) Notice 2020 (L.N. 78)

30. Section 39N of Cap. 374, as added by section 14 of the Road Traffic (Amendment) Ordinance 2011 (Ord. No. 24 of 2011) ("RT(A)O")⁷, empowers a police officer to require a person who is driving or attempting to drive, or is in charge of, a motor vehicle on a road, to undergo a Rapid Oral Fluid Test ("ROFT") to detect whether any illicit drug specified in Schedule 1A to Cap. 374 is present in his or her oral fluid. Section 39N has yet to commence operation. According to paragraphs 34 to 36 of the Report of the Bills Committee on the Road Traffic (Amendment) Bill 2011 ("RT(A)B") (LC Paper No. CB(1)579/11-12), section 39N of Cap. 374 may commence operation later than other provisions of RT(A)B if passed, given that there is a need to search for and develop a ROFT device suitable for use in Hong Kong.

L.N. 78

31. L.N. 78 is made by STH under section 1(2) of RT(A)O to appoint 1 November 2020 as the day on which section 14 of RT(A)O (in so far as it relates to the new section 39N of Cap. 374) comes into operation.

L.N. 77

32. L.N. 77 is made by the Commissioner under section 39T(2) of Cap. 374 to specify "DrugWipe®6S manufactured by Securetec Detektions-Systeme AG, Germany" ("DrugWipe®6S") as an approved instrument for carrying out ROFT.

33. According to paragraphs 7 to 8 of the LegCo Brief (File Ref: THB(T)CR 4/14/3231/00) issued jointly by THB and HKPF on 13 May 2020, the Police is satisfied that DrugWipe®6S is a suitable and reliable instrument for detecting the presence of any specified illicit drug in a person's oral fluid, having regard to the Hospital Authority's assessment outcome published in 2017 and the fact that DrugWipe®6S has been deployed in some overseas jurisdictions for drug driving enforcement.

34. L.N. 77 comes into operation on 1 November 2020.

Consultation with LegCo

35. As advised by the Clerk to TP, the Administration has not consulted TP on L.N. 77 and L.N. 78.

⁷ By L.N. 2 of 2012, RT(A)O (except section 14 in so far as it relates to the new section 39N of Cap. 374) came into operation on 15 March 2012.

**PART VI SUBSIDIARY LEGISLATION NOT REQUIRED TO BE
TABLED AND NOT SUBJECT TO AMENDMENT**

**United Nations Sanctions (Central African Republic)
Regulation 2020 (L.N. 79)**

**United Nations Sanctions (Libya) Regulation 2019
(Amendment) Regulation 2020 (L.N. 80)**

**United Nations Sanctions (Yemen) Regulation 2019
(Amendment) Regulation 2020 (L.N. 81)**

36. L.N. 79 to L.N. 81 are made by the Chief Executive under section 3 of the United Nations Sanctions Ordinance (Cap. 537) on the instruction of the Ministry of Foreign Affairs of the People's Republic of China and after consultation with the Executive Council. They came into operation when they were published in the Gazette on 15 May 2020.

L.N. 79

37. Since 2013, the Security Council of the United Nations ("UNSC") has adopted several resolutions to impose or renew certain sanctions against the Central African Republic ("CAR"). These resolutions have been implemented by regulations made under Cap. 537, the last one being the United Nations Sanctions (Central African Republic) Regulation 2019 (Cap. 537CH) (as amended by the United Nations Sanctions (Central African Republic) Regulation 2019 (Amendment) Regulation 2019 (L.N. 175 of 2019)) which expired at midnight on 31 January 2020.

38. L.N. 79 implements certain decisions in Resolution 2507 (2020) adopted by UNSC on 31 January 2020 to renew the sanctions against CAR. It provides for, among others, the prohibitions against:

- (a) the supply, sale, transfer or carriage of arms or related materiel to CAR;
- (b) the provision of technical assistance, training or financial or other assistance related to military activities in certain circumstances;
- (c) making available to, or for the benefit of, certain persons or entities any funds or other financial assets or economic resources;
- (d) dealing with funds or other financial assets or economic resources belonging to, or owned or controlled by, certain persons or entities; and

- (e) entry into or transit through the Hong Kong Special Administrative Region ("HKSAR") by certain persons.

39. Sections 3, 4, 5, 6, 7, 9, 10 and 11 of L.N. 79 relating to the prohibitions mentioned in paragraph 38 above are in force until midnight on 31 July 2020.

40. Members may refer to the LegCo Brief (File Ref: CITB CR 75/53/8) issued by the Commerce and Economic Development Bureau ("CEDB") in May 2020 for further information. A marked-up version showing the changes made by L.N. 79 to the expired Cap. 537CH is at Annex C to the LegCo Brief.

L.N. 80

41. Since 2011, UNSC has adopted various resolutions to impose sanctions against Libya. These resolutions have been implemented by regulations made under Cap. 537, the last one being the United Nations Sanctions (Libya) Regulation 2019 (Cap. 537CF). Sections 4, 5, 10, 11, 13, 14, 15 and 21 of Cap. 537CF, which contain certain prohibitions against Libya, applied until midnight on 15 February 2020.

42. L.N. 80 amends Cap. 537CF to give effect to certain decisions in Resolution 2509 (2020) adopted by UNSC on 11 February 2020 to renew the expired prohibitions against Libya. These prohibitions, which are in force until midnight on 30 April 2021, are against:

- (a) the loading, transport or discharge of petroleum from Libya aboard certain ships;
- (b) engaging in any financial transaction related to any petroleum from Libya aboard certain ships;
- (c) the provision of certain services to ships under certain circumstances; and
- (d) certain ships entering HKSAR.

43. L.N. 80 also makes certain textual amendments to Cap. 537CF.

44. Members may refer to the LegCo Brief (File Ref: CITB CR 95/53/1) issued by CEDB in May 2020 for further information. A marked-up version showing the changes made by L.N. 80 to Cap. 537CF is at Annex C to the LegCo Brief.

L.N. 81

45. Since 2014, UNSC has adopted several resolutions to impose certain sanctions against Yemen. These resolutions have been implemented by regulations made under Cap. 537, the last one being the United Nations Sanctions (Yemen) Regulation 2019 (Cap. 537CI). Amongst the various prohibitions contained in Cap. 537CI, some of them applied until midnight on 26 February 2020.

46. L.N. 81 amends Cap. 537CI to give effect to certain decisions in Resolution 2511 (2020) adopted by UNSC on 25 February 2020 by:

- (a) renewing the expired prohibitions, namely, the prohibitions against making available of or dealing with economic assets, and the entry into or transit through HKSAR, and providing for new exemptions in respect of these prohibitions; and
- (b) providing for new exemptions in respect of the current prohibitions against the supply or carriage of arms or related materiel, and the provision of certain assistance.

47. Sections 5, 6 and 8 of Cap. 537CI as amended by L.N. 81 relating to the prohibitions and exemptions set out in paragraph 46(a) above are in force until midnight on 26 February 2021.

48. L.N. 81 also makes certain textual amendments to Cap. 537CI.

49. Members may refer to the LegCo Brief (File Ref: CITB CR 75/53/9) issued by CEDB in May 2020 for further information. A marked-up version showing the changes made by L.N. 81 to Cap. 537CI is at Annex D to the LegCo Brief.

Other information and remarks

50. Under section 3(5) of Cap. 537, sections 34 and 35 of the Interpretation and General Clauses Ordinance (Cap. 1) shall not apply to regulations made under section 3 of Cap. 537. Therefore, L.N. 79 to L.N. 81 are not required to be tabled in LegCo and are not subject to amendment by LegCo. However, since they come within the terms of reference of the Subcommittee to Examine the Implementation in Hong Kong of Resolutions of the United Nations Security Council in relation to Sanctions ("Subcommittee"), Members may consider referring L.N. 79 to L.N. 81 to the Subcommittee for its consideration.

51. As advised by the Clerk to the Subcommittee, the LegCo Briefs on L.N. 79 to L.N. 81 were circulated to members of the Subcommittee and all other Members vide LC Paper No. CB(1)638/19-20 on 15 May 2020.

Concluding observations

52. The Legal Service Division is scrutinizing the legal and drafting aspects of L.N. 70, L.N. 79 to L.N. 81 and will report further, if necessary. No difficulties have been identified in relation to the legal and drafting aspects of L.N. 68 to L.N. 69 and L.N. 71 to L.N. 78.

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