

立法會
Legislative Council

LC Paper No. LS93/19-20

**Further Report by Legal Service Division on
L.N. 98 to L.N. 111 Gazetted on 29 May 2020
regarding waiver of registration and related fees
for healthcare professionals**

Members may recall from LC Paper No. LS89/19-20 which was issued to Members on 4 June 2020 that the Legal Service Division ("LSD") was seeking clarifications on certain drafting issues regarding L.N. 98 to L.N. 111. The Administration has since provided further information on the relevant issues. Details of LSD's enquiries and the Administration's response at **Annex** are summarized below.

2. To recap, L.N. 98 to L.N. 111 provide for fee concessions to certain healthcare professionals with the effect that the statutory fees payable in respect of their registration or enrolment, and/or the issuance or renewal of their relevant practising certificates and other related fees are waived from 1 July 2020 to 30 June 2023 ("concession period"). According to the relevant Legislative Council Brief, such fee concessions are not intended to apply in cases where a person's name has been removed or deleted from a register or roll and the person applies during the concession period for his or her name to be re-entered onto the register or roll concerned ("Disapplication").

3. It is, however, noted that despite the above policy intent, the Disapplication is not expressly provided for in some of the legal notices (such as L.N. 101 to L.N. 110) where the relevant Ordinances under which they are made have separately provided for the restoration of names onto the relevant register or roll, for which restoration fees are payable. That said, while the Medical Registration Ordinance (Cap. 161) under which L.N. 100 is made provides for a separate fee payable for restoring a person's name onto the Specialist Register kept under Cap. 161 ("SR Restoration Fee"),¹ section 4(3) of L.N. 100 nonetheless expressly provides for the Disapplication in relation to a person whose name has been removed from the Specialist Register.

¹ See item 5 of the Schedule to the Medical Registration (Fees) Regulation (Cap. 161C).

4. Upon our enquiry on the reason for expressly providing for the Disapplication in L.N. 100 but not in L.N. 101 to L.N. 110, the Administration has replied that:

- (a) with respect to L.N. 101 to L.N. 110, as the fee concessions do not cover any restoration fees payable under the relevant Ordinances, it is not necessary to specify the Disapplication in these legal notices; and
- (b) insofar as L.N. 100 is concerned, as a medical practitioner can only have his name included under one specialty of the Specialist Register at any one time, a specialist doctor who wishes to change his specialty will need to have his name removed from the Specialist Register for the original specialty and apply for his name to be included in the Specialist Register under the new specialty that he wishes to practise. Since the aforesaid change does not involve any restoration, the SR Restoration Fee does not apply. However, the change of specialty is considered an inclusion of a person's name under a new specialty onto the Specialist Register (for which an inclusion fee is payable under Cap. 161).² As the inclusion fee payable is waived during the concession period by virtue of section 4(1) of L.N. 100, the Administration considers it necessary to provide for the Disapplication in section 4(3) of L.N. 100 to reflect the policy intent that the waiver does not apply to the inclusion of a person's name in the Specialist Register pursuant to a change in the person's specialty.

5. Subject to Members' views on the above matters, no legal and drafting difficulties have been identified in relation to L.N. 98 to L.N. 111.

Encl

Prepared by

Evelyn LEE
Assistant Legal Adviser
Legislative Council Secretariat
11 June 2020

² See item 4 of the Schedule to the Medical Registration (Fees) Regulation (Cap. 161C).



中華人民共和國香港特別行政區
Hong Kong Special Administrative Region of the People's Republic of China



立法會秘書處 法律事務部
LEGAL SERVICE DIVISION
LEGISLATIVE COUNCIL SECRETARIAT

來函檔號 YOUR REF :
本函檔號 OUR REF : LS/S/37/19-20
電 話 TELEPHONE : 3919 3513
圖文傳真 FACSIMILE : 2877 5029
電 郵 EMAIL : elee@legco.gov.hk

By Fax (2840 0467)

3 June 2020

Mr Michael KWAN
Prin AS for Food and Health (Health) SD
Food and Health Bureau
19/F, East Wing, Central Government Offices
2 Tim Mei Avenue
Tamar
Hong Kong

Dear Mr KWAN,

**L.N. 98 to L.N. 111 gazetted on 29 May 2020 regarding fee concessions
provided to certain medical professionals**

We are scrutinizing the captioned items of subsidiary legislation with a view to advising Members on its legal and drafting aspects. We should be grateful if you would provide the following information.

2. According to paragraph 3 of the Legislative Council Brief, it seems that the policy intent of the captioned notices is that the fee concessions provided thereunder would not be applicable to a person whose name has been removed or deleted from a register when the person applies during the concession period to re-enter his name on the register ("Disapplication"). However, the Disapplication is only expressly provided for in some of the captioned legal notices (see, for example, L.N. 98 to L.N. 100 and L.N. 111). We also note that restoration fees are payable under certain Ordinances under which some of the legal notices (see, for example L.N. 101 to L.N. 110) are made. In this regard:

- (a) Please explain the reason for not expressly providing for the Disapplication in relation to the registration and enrollment fees in L.N. 101 to L.N. 110. Is it because re-registration or re-enrolment is, in effect, restoration for which the applicant must pay under the relevant Ordinances a restoration fee which is not to be waived under the relevant legal notices, so that there is no need to expressly provide for the Disapplication in these legal notices?
 - (b) Please also explain why section 4(3) of L.N. 100 expressly provides for the Disapplication in relation to a person whose name has been removed from the Specialist Register kept in accordance with the Medical Registration Ordinance (Cap. 161) although a separate fee for restoration to the Specialist Register is payable under item 5 of the Schedule to the Medical Registration (Fees) Regulation (Cap. 161C); and
 - (c) Subject to your explanation provided in sub-paragraphs (a) and (b) above, please consider whether, for the avoidance of doubt, express Disapplication provisions should also be included in the other legal notices where the relevant Ordinances also provide for restoration and the payment of restoration fees.
5. Please let us have your reply in both Chinese and English as soon as possible.

Yours sincerely,



(Evelyn LEE)
Assistant Legal Adviser

c.c. Department of Justice

(Attn: Ms Amy CHAN, Sr Asst Law Draftsman (Fax:3918 4613);

Mr Salvador TSANG, Govt Counsel (Fax: 3918 4613))

LA

SALA3



中華人民共和國香港特別行政區政府總部食物及衛生局
Food and Health Bureau, Government Secretariat
The Government of the Hong Kong Special Administrative Region
The People's Republic of China

Our Ref.: FHB/H/16/123/7
Your Ref.: LS/S/37/19-20

Tel: 3509 8940
Fax: 2840 0467

4 June 2020

Miss Evelyn LEE
Assistant Legal Adviser
Legislative Council Secretariat
Legislative Council Complex
1 Legislative Road
Central
Hong Kong

Dear Miss LEE,

**L.N. 98 to L.N 111 gazetted on 29 May 2020 regarding fee concessions
provided to certain medical professionals**

Thank you for your letter of 3 June 2020. I am authorised to reply as follows.

As mentioned in paragraph 3 of the Legislative Council Brief, it is our policy intention that for a person whose name has been removed or deleted from the register under the relevant ordinances, the waiver would not apply when the person applies during the concession period for their name to be re-entered into the register.

Regarding the question in paragraph 4(a) of your letter, as specific restoration fees are prescribed under the relevant Regulations for re-registration or re-enrolment for the corresponding healthcare professions (e.g. item 5 in the Schedule to the Medical Registration (Fees) Regulation ("Cap. 161C")), and that such restoration fees are not covered under the proposed waiver, it is not necessary to specify in L.N. 101 to 110

that the waiver is not applicable in cases of re-registration or re-enrolment.

Regarding the question in paragraph 4(b) of your letter, there are situations where the inclusion of a name in the Specialist Register (“SR”) after its removal is regarded as an inclusion and not a restoration, and therefore the restoration fee provided for under item 5 of the Schedule to Cap. 161C is not applicable. For instance, as provided under section 20J of the Medical Registration Ordinance (Cap. 161), a medical practitioner (“specialist doctor”) can only have their name included under one specialty of the SR at any one time. As such, should a specialist doctor wishes to be included under a different specialty under the SR, they will have to apply for the removal of their name from the SR under the original specialty before they may apply for the inclusion of their name in the SR under another specialty. To reflect the policy intent of not covering under the waiver such inclusion of a name under the SR after removal, where item 4 of the Schedule to Cap. 161C is applicable, it is necessary to specify in section 4(3) of L.N. 100 that the waiver for the fee for the inclusion of a name in the SR is not applicable to a person whose name has been removed from the SR.

In view of the above, we do not consider the Disapplication provisions suggested in paragraph 4(c) of your letter to be necessary in other legal notices.

Yours sincerely,



(Ricky WU)

for Secretary for Food and Health