

立法會
Legislative Council

LC Paper No. LS5/19-20

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

Tabling in LegCo : Council meeting of 23 October 2019

Amendment to be made by : Council meeting of 20 November 2019 (or that of 11 December 2019 if extended by resolution)

PART I MARINE SAFETY ENHANCEMENT MEASURES

Shipping and Port Control (Amendment) (No. 2) Regulation 2019 (L.N. 140)

Merchant Shipping (Local Vessels) (General) (Amendment) (No. 2) Regulation 2019 (L.N. 141)

Under regulation 19(3) of the Shipping and Port Control Regulations (Cap. 313A) and section 9(3) of the Merchant Shipping (Local Vessels) (General) Regulation (Cap. 548F), vessels (both local and non-local) are not allowed to proceed at speeds exceeding five knots while plying in any restricted zone specified in the Eighteenth Schedule to Cap. 313A ("Speed Restricted Zones"). At present, 22 Speed Restricted Zones ("SRZs") are specified in the Eighteenth Schedule to Cap. 313A. The speed restriction applies between the hours of 8:00 a.m. and 12 midnight, on any Saturday or public holiday or on any day during the period from 1 July to 15 September (both dates inclusive) in any year ("the restriction period").

L.N. 140

2. L.N. 140 is made by the Chief Executive in Council ("the CE in Council") under section 80 of the Shipping and Port Control Ordinance (Cap. 313). It amends Cap. 313A to:

- (a) establish four additional SRZs in Tai Po District and another four in Sai Kung District to which the restriction period applies;
- (b) extend the restriction period of 12 SRZs to cover the period from 1 April to 31 October inclusive in any year;

- (c) extend the restriction period of one SRZ, namely Hebe Haven, to all year round;
- (d) extend the existing boundary of East Kiu Tsui Chau SRZ;
- (e) increase the penalty level for contravening regulation 19(3) of Cap. 313A from a maximum fine at level 1 (\$2,000) to level 3 (\$10,000); and
- (f) update the co-ordinates specifying the location of certain SRZs from those based on the Hayford Geodetic Datum to those based on the World Geodetic System 1984 (WGS 84).

L.N. 141

3. L.N. 141 is made by the Secretary for Transport and Housing under section 89 of the Merchant Shipping (Local Vessels) Ordinance (Cap. 548). It amends Cap. 548F to (a) apply the measures stated in paragraph 2(a) to (d) above to local vessels¹; and (b) increase the penalty level for contravening section 9(3) of Cap. 548F from a maximum fine at level 1 (\$2,000) to level 3 (\$10,000).

4. According to paragraphs 5 and 10 of the Legislative Council ("LegCo") Brief (File Ref: THB(T)PML CR 8/10/60/16) issued jointly by the Transport and Housing Bureau ("THB") and Marine Department in October 2019, L.N. 140 and L.N. 141 are made to enhance marine safety in view of the increasing frequency of water sports activities in certain districts.

5. According to paragraph 16 of the LegCo Brief, the Local Vessel Advisory Committee, the Traffic and Transport Committee of the Tai Po District Council, Sai Kung Area Committee, relevant trade and fishery associations of the Southern and the Island districts were consulted between 2015 and 2018 and they supported the proposals.

6. As advised by the Clerk to the Panel on Economic Development ("the ED Panel"), the Panel was consulted at the meeting on 19 December 2018 on a series of legislative proposals to enhance marine safety, including establishing eight additional SRZs and extending the restriction period and/or boundary of 14 existing SRZs. Members were generally supportive of the proposals.

¹ According to section 2 of Cap. 548, *local vessels* include vessels solely used within the waters of Hong Kong (whether registered in or outside Hong Kong), vessels registered in Hong Kong, Macau or Mainland China which are regularly employed in trading to or from Hong Kong, and vessels used for pleasure purposes in the waters of Hong Kong.

7. L.N. 140 and L.N. 141 come into operation on 1 April 2020.

PART II MATTERS RELATING TO ELECTIONS OF THE LEGISLATIVE COUNCIL AND DISTRICT COUNCILS

Declaration of Geographical Constituencies (Legislative Council) Order 2019 (L.N. 142)

8. L.N. 142 is made by the CE in Council under sections 18 and 19 of the Legislative Council Ordinance (Cap. 542) to declare areas of Hong Kong to be geographical constituencies ("GCs") for the purpose of electing Members for the seventh term of office of the Legislative Council ("the Seventh LegCo"), give names to those GCs and specify the number of Members to be returned for each of those GCs.

9. The effect of L.N. 142 is that the delineation, name and the number of Members to be returned for each of the existing five GCs remain unchanged for the Seventh LegCo. The name and number of Members to be returned for each GC are set out in the table below:

Name of GC	Number of Members
Hong Kong Island	6
Kowloon West	6
Kowloon East	5
New Territories West	9
New Territories East	9

10. L.N. 142 comes into operation on 1 January 2020.

11. According to paragraphs 11 to 19 of the LegCo Brief (File Ref: CMAB C1/30/8) issued by the Constitutional and Mainland Affairs Bureau dated 16 October 2019, the Electoral Affairs Commission ("EAC") conducted a public consultation exercise on its provisional recommendations on the boundaries and names of GCs and allocation of seats for the 2020 LegCo General Election from 8 May to 6 June 2019. EAC then submitted its final recommendations for consideration by the CE in Council which accepted all the recommendations. Members may refer to the LegCo Brief for further information relating to L.N. 142.

12. As advised by the Clerk to the Panel on Constitutional Affairs ("CA Panel"), the Panel was consulted on 20 May 2019 on EAC's provisional recommendations on the boundaries and names of GCs for the 2020 LegCo General Election. Some members expressed concern that the percentage

deviation of the population from the resulting number for New Territories West ("NTW") GC would be close to the statutory limit in 2020 and would likely exceed the statutory permissible range in 2024 in light of the current trend of increases in population size in NTW. The Administration explained that while the percentage deviation of the population from the resulting number for NTW GC in 2020 would still be within the statutory permissible range, in view of the possibility that the population of individual GCs might exceed the statutory permissible range by 2024 and the population size amongst certain District Council ("DC") constituency areas might continue to increase by 2023, the Administration undertook that it would review and address the abovementioned issues.

**Electoral Affairs Commission (Electoral Procedure) (L.N. 143)
(Legislative Council) (Amendment) Regulation 2019**

**Electoral Affairs Commission (Electoral Procedure) (District (L.N. 144)
Councils) (Amendment) Regulation 2019**

13. L.N. 143 and L.N. 144 are made by EAC under section 7 of the Electoral Affairs Commission Ordinance (Cap. 541) to amend the Electoral Affairs Commission (Electoral Procedure) (Legislative Council) Regulation (Cap. 541D) and the Electoral Affairs Commission (Electoral Procedure) (District Councils) Regulation (Cap. 541F) respectively to:

- (a) replace the requirement of disclosing the "principal residential addresses" of candidates with "addresses" in LegCo and DC elections in nomination forms and various public notices including those required to be published in the Gazette; and
- (b) remove the requirement of including on ballot papers the addresses of the candidates in LegCo and DC elections.

14. L.N. 143 comes into operation on 1 January 2020.

15. L.N. 144 came into operation on the day on which it was published in the Gazette, i.e. 18 October 2019. According to paragraph 8 of the LegCo Brief (File Ref: REO/NM/Gen/5/1/C) issued by the Registration and Electoral Office on 18 October 2019, L.N. 144 came into operation on 18 October 2019 such that the notice of valid nominations in the 2019 DC Ordinary Election to be published in the Gazette on 30 October 2019 will state only the address chosen by each validly nominated candidate.

16. According to paragraph 4 of the LegCo Brief, the amendments to replace the requirements to disclose the principal residential addresses of candidates in the gazette notices in LegCo and DC elections are made to protect the privacy of candidates. Further, as explained in paragraph 6 of the LegCo Brief, EAC considers that the requirements to state the principal residential addresses of candidates on ballot papers in both elections are not necessary, given that other particulars of candidates are printed on those papers. Accordingly, L.N. 143 and L.N. 144 are made to remove such requirements.

17. As mentioned in paragraph 12 of the LegCo Brief, EAC has taken into account members' relevant views expressed at the meeting of CA Panel on 14 February 2018 during the briefing made by the Privacy Commissioner for Personal Data on his work in connection with the proposal. It is not mentioned in the LegCo Brief that public consultation has been conducted.

18. As advised by the Clerk to the CA Panel, the Panel has not been consulted on L.N. 143 and L.N. 144.

PART III PILOTAGE MATTERS

Pilotage (Dues) (Amendment) Order 2019 (L.N. 146)

Pilotage Ordinance (Amendment of Schedule 2) Notice 2019 (L.N. 147)

19. Under the Pilotage Ordinance (Cap. 84), certain ships must be under the pilotage of a licensed pilot or pilots while navigating in the waters of Hong Kong. Schedule 2 to Cap. 84 currently contains five pilot boarding stations. Under section 10F(a) of Cap. 84, the Pilotage Authority ("the Authority"), who is the Director of Marine, may by notice in the Gazette amend Schedule 2. Pursuant to section 22 of Cap. 84, the Authority may by order published in the Gazette provide for the amount of pilotage dues charged by pilots for the provision of pilotage services after consultation with the Pilotage Advisory Committee ("PAC"). The existing pilotage dues, including the standard pilotage dues and additional pilotage dues where applicable, are those specified in the Schedule to the Pilotage (Dues) Order (Cap. 84D).

L.N. 147

20. L.N. 147 is made by the Authority to amend Schedule 2 to Cap. 84 to specify three areas of water in Mirs Bay as pilot boarding stations, namely, the area off Ping Chau, the area off Crooked Island and the area off Shek Ngau Chau. It also makes technical amendments to that Schedule to the effect that the geographical co-ordinates based on the World Geodetic System 1984 (WGS 84) are adopted.

21. According to paragraphs 6, 7 and 11 of the LegCo Brief (File Ref: THB(T)PML 8/10/50/1) issued by THB in October 2019, the new pilot boarding stations are established to facilitate the provision of pilotage services in the Mirs Bay area given its marine traffic conditions, and that the geographical co-ordinates based on the World Geodetic System 1984 (WGS 84) are adopted because it is the present geodetic system used for marine charting.

L.N. 146

22. L.N. 146 is made by the Authority to amend the Schedule to Cap. 84D to provide for:

- (a) an additional pilotage due of \$10,350 or \$12,150 for requiring a pilot to board, or disembark from, a ship at any of the three new pilot boarding stations in Mirs Bay (i.e. as added by L.N. 147);
- (b) an additional pilotage due equal to 50% overall of the standard pilotage dues for boarding, or disembarking from, a ship in Mirs Bay on notice of less than five hours;
- (c) a pilotage due of \$4,700 for cancelling the engagement of a pilot within three hours before the last stated time of a requirement for pilotage services in Mirs Bay; and
- (d) an additional pilotage due of \$300 for altering the engagement of a pilot:
 - (i) within three to five hours before the last stated time of a requirement for pilotage services in Mirs Bay; or
 - (ii) within one to three hours before the last stated time of a requirement for pilotage services elsewhere.

23. L.N. 146 also makes other textual amendments to Cap. 84D.

24. According to paragraph 9 of the LegCo Brief, the proposal on pilotage dues is made taking into account the remoteness of and the rough sea conditions in Mirs Bay. Further, as stated in paragraph 16 of the LegCo Brief, the Authority derived the proposal after examining the views of the relevant stakeholders and at the meeting of PAC in December 2017, most of its members had no objection to the proposal.

Other remarks

25. As advised by the Clerk to the ED Panel the Administration consulted the Panel on 25 June 2018 regarding the proposal. While some members considered it unsatisfactory that the exemption to the pilotage requirement in Mirs Bay granted in 1998 was without legal backing and requested the Administration to rectify the problem, some members were concerned about the proposed legislation on the shipping industry and whether Hong Kong had adequate manpower to fulfill the new pilotage requirement. Views had been expressed that the Administration should explore the feasibility of mutual recognition of qualifications between pilots in Hong Kong and Shenzhen and using virtual pilots. Members also urged the Administration to formulate sustainable plan for port development. The Panel noted the latest petitions from the shipping industry raising objection to the legislative proposal after the meeting. The letters from the shipping industry together with the Administration's replies were circulated to members vide LC Paper Nos. CB(4)1559/17-18(01), CB(4)212/18-19(01), CB(4)491/18-19(01) and (02), CB(4)502/18-19(01) and CB(4)845/18-19(01).

26. L.N. 146 and L.N. 147 come into operation on 1 January 2020.

PART IV MISCELLANEOUS MATTERS

Pharmacy and Poisons (Amendment) (No. 4) Regulation 2019 (L.N. 145)

27. L.N. 145 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 ("SFH"). It amends the Pharmacy and Poisons Regulations (Cap. 138A) by:

- (a) adding 15 items² of substances ("the Substances") 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 ("the Poisons List"); and

² The 15 items are: (1) Dacomitinib; its salts; (2) Efinaconazole; its salts; (3) Erenumab; (4) Isavuconazole; its salts; its derivatives; their salts; (5) Latanoprostene bunod; its salts; (6) Lorlatinib; its salts; (7) Neratinib; its salts; (8) Nifuratel; its salts; (9) Nifuroxazide; its salts; (10) Nitrofurural; its salts; (11) Nitrofurantoin; its salts; (12) Nitroxoline; its salts; (13) Omega-3 fatty acids; their salts; their esters; when contained in pharmaceutical products intended to be used for the treatment of hypertriglyceridaemia; (14) Piracetam; its salts; and (15) Sugammadex; its salts; its esters; their salts.

- (b) removing, as a consequential amendment, one sub-item³ from the item relating to "Pharmaceutical products for human parenteral administration" in each of the Divisions mentioned in subparagraph (a) above.

28. The effect of L.N. 145 is that the Substances are subject to restrictions with respect to their sale, supply, labelling and storage, and that they 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 Substances in the Poisons List means that they 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.

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

30. As advised by the Clerk to the Panel on Health Services, the Panel has not been consulted on L.N. 145.

31. Save for sections 3(8), (9), (10), (12) and (13), 4(8), (9), (10), (12) and (13) and 5(8), (9), (10), (12) and (13) (collectively referred to as "the remaining sections")⁴, L.N. 145 came into operation on the day on which it was published in the Gazette, i.e. 18 October 2019. The remaining sections come into operation on 18 October 2020. According to the LegCo Brief, the later commencement of the remaining sections would give affected registration certification holders of pharmaceutical products that contain the substances concerned sufficient time to recall the affected products from the market and to re-label the affected products in order to comply with the labelling requirements due to changes in sales control.⁵

³ That sub-item is Piracetam, which is repealed in view of the addition of item 14 as stated in footnote 2 above.

⁴ The remaining sections relate to the addition of six items of substances, namely, (1) Nifuratel; its salts; (2) Nifuroxazide; its salts; (3) Nitrofurural; its salts; (4) Nitrofurantoin; its salts; (5) Nitroxoline; its salts; (6) Piracetam; its salts, and the removal of Piracetam from the item relating to "Pharmaceutical products for human parenteral administration".

⁵ Please refer to footnote 2 of the LegCo Brief.

**Pesticides Ordinance (Amendment of Schedule 2) Notice
2019**

(L.N. 148)

32. The Pesticides Ordinance (Cap. 133) provides for the registration and control of pesticides in Hong Kong, including those regulated under the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade ("Rotterdam Convention").⁶ Part 1 of Schedule 2 to Cap. 133 currently contains 37 items of pesticides subject to the regulation of the Rotterdam Convention ("Rotterdam Pesticides"). Section 8 of Cap. 133 provides that a person must not, subject to certain exceptions, import, export, manufacture, sale, supply, possession or use the Rotterdam Pesticides except with a permit. Pursuant to section 17(1) of Cap. 133, contravention of section 8 is an offence punishable by a fine at level 5 (\$50,000) and imprisonment for one year.

33. L.N. 148 is made by SFH under section 19A of Cap. 133 to amend Part 1 of Schedule 2 to Cap. 133 to add to that Part one pesticide, namely Phorate, that has recently become subject to the regulation of the Rotterdam Convention.

34. According to paragraph 9 of the LegCo Brief (with no file reference) issued jointly by FHB and the Agriculture, Fisheries and Conservation Department on 16 October 2019, the Administration informed relevant stakeholders, including holders of pesticides licences and permits under Cap. 133 as well as shipping and logistics companies, of the proposed amendments to Part 1 of Schedule 2 to Cap. 133 in June 2019. According to the Administration, no comments or concerns have been raised by the trade.

35. As advised by the Clerk to the Panel on Food Safety and Environmental Hygiene, the Panel has not been consulted on L.N. 148.

36. L.N. 148 comes into operation on 1 January 2020.

⁶ The Rotterdam Convention aims to promote shared responsibility and cooperative efforts among the parties to the Convention in the international trade of certain hazardous chemicals in order to protect human health and the environment from potential harm. According to paragraph 2 of the LegCo Brief, the People's Republic of China is a signatory to the Rotterdam Convention and in accordance with Article 153 of the Basic Law, the Central People's Government has applied the Convention to Hong Kong since 26 August 2008.

**Solicitor Advocates (Higher Rights of Audience Certificates)
Rules (Commencement) Notice**

(L.N. 149)

37. By L.N. 149, the President of The Law Society of Hong Kong ("Law Society") appoints 20 January 2020 as the day on which the Solicitor Advocates (Higher Rights of Audience Certificates) Rules (Cap. 159AM) gazetted on 10 May 2019 (L.N. 71 of 2019) come into operation.

38. Cap. 159AM provides for the forms of higher rights of audience⁷ ("HRA") certificates to be issued under section 39P of the Legal Practitioners Ordinance (Cap. 159) by the Council of the Law Society to solicitor advocates⁸ in respect of civil proceedings, criminal proceedings, or both, and who were previously granted HRA in respect of one class of proceedings (civil or criminal) and subsequently granted additional HRA for the other class of proceedings.

39. Members may refer to the LegCo Brief (without file reference) issued by the Law Society dated 18 October 2019 for more information on L.N. 149.

40. As advised by the Clerk to the Panel on Administration of Justice and Legal Services, the Panel has not been consulted on L.N. 149.

Concluding observations

41. The Legal Service Division is scrutinizing the legal and drafting aspects of L.N. 143 to L.N. 144 and will report further, if necessary. No difficulties have been identified in the legal and drafting aspects of the other items of subsidiary legislation.

Prepared by

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⁷ Section 39H(3) of Cap. 159 provides that for the purposes of Cap. 159, *higher rights of audience* means rights of audience to solicitors before the Competition Tribunal, the High Court and the Court of Final Appeal, whether in civil proceedings, criminal proceedings, or both, but does not include any of those rights that solicitors generally may from time to time have apart from Cap. 159.

⁸ Under section 2 of Cap. 159, a person who has HRA under Part IIIB of Cap. 159 is known as a solicitor advocate.