

立法會
Legislative Council

LC Paper No. LS55/20-21

**Further Report by Legal Service Division on
Dangerous Goods (Control) Regulation and Dangerous Goods (Application and
Exemption) Regulation 2012 (Amendment) Regulation 2021
Gazetted on 19 February 2021**

Members may recall that the Legal Service Division ("LSD") reported on the Dangerous Goods (Control) Regulation (L.N. 20) and the Dangerous Goods (Application and Exemption) Regulation 2012 (Amendment) Regulation 2021 (L.N. 21) at the House Committee meeting on 26 February 2021 (LC Paper No. LS37/20-21). It was stated in our report that LSD was scrutinizing L.N. 20 and L.N. 21 and would make a further report if necessary.

2. To recap, L.N. 20 is made by the Chief Executive in Council ("CE in Council") under section 5 of the Dangerous Goods Ordinance (Cap. 295) to replace the existing Dangerous Goods (General) Regulation (Cap. 295B) mainly to align the existing regulatory framework of dangerous goods with the amendments to the International Maritime Dangerous Goods Code. L.N. 21 is made by CE in Council under section 5 of Cap. 295 to amend the Dangerous Goods (Application and Exemption) Regulation 2012 (Cap. 295E) mainly to update the lists of dangerous goods specified in Schedules 1, 2, 3 and 5 to Cap. 295E, enhance the safety of the manufacture, storage, conveyance and use of dangerous goods through a risk-based approach and introduce certain exemptions.

3. LSD has completed the scrutiny of L.N. 20 and L.N. 21. No difficulties have been identified in relation to the legal and drafting aspects of L.N. 21. In relation to L.N. 20, LSD has made certain enquiries on its legal and drafting aspects. LSD's enquiries and the Administration's response are summarized in the ensuing paragraphs.

Meaning of "public transport carrier" under section 81 of L.N. 20

4. Section 81(1) of L.N. 20 provides that a person must not carry any Class 1 dangerous goods specified in Schedule 1 to Cap. 295E while the person is on board a public transport carrier. "Public transport carrier" is defined in section 81(3) to mean a public bus, public light bus, taxi, train, light rail vehicle, tramcar or any other carrier that is used in or for publicly available services for the transportation of persons.

5. In response to LSD's enquiry on the meaning of "any other carrier", the Administration has replied that as expressly provided in section 81(3), the category or genus of "public transport carrier" is "used in or for publicly available services for the transportation of persons". Hence, private buses which are not used in or for publicly available services for the transportation of persons may not be regarded as "any other carrier" for the purposes of section 81(3).

Defence of "reasonable personal use" under section 160 of L.N. 20

6. Under section 142 of L.N. 20, a person must not store or convey, or cause or permit to be stored or conveyed, dangerous goods specified in Schedule 2 to Cap. 295E ("S2DG") unless the packing, marking and labelling requirements specified in Schedule 6 are complied with. Contravention of the relevant requirement is an offence, but a defence is provided under section 160(2) for a person charged with such offence to establish that the S2DG concerned is for the reasonable personal use of the defendant or the person to whom the S2DG is delivered, and the quantity is sufficient only for that purpose.

7. In response to LSD's enquiry on what will constitute the defence of "reasonable personal use" under section 160(2) of L.N. 20, the Administration has provided two scenarios for illustrating the application of the defence, namely, medical use (e.g. an oxygen cylinder with compressed oxygen brought by a tourist who suffers from chronic obstructive pulmonary disease for self-use) and domestic use (e.g. storage of some paint left after household refurbishment in a container) of S2DG.

Drafting issues

8. In response to LSD's enquiries on the disparity between the English and Chinese texts relating to the definitions of "Commissioner", "Director" and "Secretary" under section 2(1) of L.N. 20, the Administration's reply is summarized below:

- (a) "Commissioner" and "Director" refer to "Commissioner of Mines" and "Director of Fire Services" respectively in the English text. It would be confusing for a Chinese reader to distinguish whether "處長" means "礦務處處長" or "消防處處長" if the short form (i.e. 處長) is adopted. It was the Administration's conscious decision to use the long forms "礦務處處長" and "消防處處長" in the Chinese text (in the relevant provisions which contain the reference of "Commissioner" and "Director" in its English text) for clarity and legal certainty; and

- (b) for "Secretary", which is defined as "Secretary for Home Affairs" in the English text of section 2(1), the Administration has similarly adopted the long form for the post title in the Chinese text. The Administration has considered that no amendments should be made to provide corresponding Chinese equivalents since no confusion would arise from the present drafting.

9. Subject to Members' views on the matters set out in paragraphs 4 to 8 above, no legal and drafting difficulties have been identified in relation to L.N. 20.

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