

立法會
Legislative Council

LC Paper No. LS71/20-21

**Paper for the House Committee Meeting
on 21 May 2021**

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 7 May 2021**

Tabling in LegCo : Council meeting of 12 May 2021

Amendment to be made by : Council meeting of 9 June 2021 (or that of 30 June 2021 if extended by resolution)

PART I SUBSIDIARY LEGISLATION

**Dangerous Goods (Consignment by Air) (Safety)
(Amendment) Regulation 2021** (L.N. 55)

**Air Navigation (Hong Kong) Order 1995 (Amendment of
Schedule 16) Order 2021** (L.N. 56)

The Technical Instructions for the Safe Transport of Dangerous Goods by Air ("TIs"), which set out the requirements laid down by the International Civil Aviation Organization ("ICAO"), are given effect in Hong Kong through the Dangerous Goods (Consignment by Air) (Safety) Regulations (Cap. 384A) and Schedule 16 to the Air Navigation (Hong Kong) Order 1995 (Cap. 448C). The edition of TIs currently in force are the 2019-2020 edition.

2. L.N. 55 and L.N. 56 are made by the Chief Executive in Council under section 3 of the Dangerous Goods (Consignment by Air) (Safety) Ordinance (Cap. 384) and section 2A of the Civil Aviation Ordinance (Cap. 448). They respectively amend Cap. 384A and Cap. 448C to give effect to the amendments introduced by the 2021-2022 edition of the TIs approved and published by decision of the Council of ICAO mainly by replacing the references to the "2019-2020" edition of the TIs in Cap. 384A and Cap. 448C by the "2021-2022" edition.

3. According to paragraph 4 of the Legislative Council ("LegCo") Brief (File Ref: THB(T)CR 1/15/951/49) issued by the Transport and Housing Bureau on 5 May 2021, the 2021-2022 edition of the TIs mainly introduces a new approach to the training requirements for employees and agents of aircraft operators, shippers and freight forwarders in relation to the handling of dangerous goods ("Training Requirements").¹ The Training Requirements will become mandatory from 1 January 2023.

4 L.N. 55 and L.N. 56 also provide for transitional arrangements during the period beginning on 2 July 2021 (i.e. the commencement dates of L.N. 55 and L.N. 56) and ending on 31 December 2022 (i.e. the day before the Training Requirements become mandatory) for compliance with the Training Requirements.

5. The Legal Service Division ("LSD") has made enquiries with the Administration on the availability of the 2021-2022 edition of the TIs for public access and progress on the preparation of a Chinese text for Cap. 448C. In response, the Administration has explained that:

- (a) the 2021-2022 edition of the TIs is available at the Civil Aviation Department ("CAD") Headquarters Library for public inspection for free. The public may also purchase a copy of the 2021-2022 edition of the TIs through the ICAO website. In order to make it easier for air passengers and the air transport industry to comprehend the content of the 2021-2022 edition of the TIs, CAD has published "Packing Tips for Air Passenger" and "Major changes in the 2021-2022 Edition of the ICAO TIs" on its website, and has briefed the air transport industry on the key changes; and
- (b) CAD is now conducting preparatory work to amend Cap. 448C with a view to including the latest ICAO requirements/international practices into it and the Chinese version of Cap. 448C will be handled in the same legislative exercise.

6. According to paragraph 11 of the LegCo Brief, CAD consulted the Aviation Development and Three-runway System Advisory Committee ("Committee") on the legislative proposal on 19 January 2021. The stakeholders and the Committee generally supported the proposal.

¹ According to paragraph 4 of the LegCo Brief, personnel handling dangerous goods are classified into 12 categories under current approach, and each category of personnel is required to undergo a standard package of dangerous goods training. Under the new approach, those personnel will be required to receive dangerous goods training in accordance with their assigned responsibilities.

7. As advised by the Clerk to the Panel on Economic Development, the Panel was consulted on the legislative amendments to implement the latest requirements of ICAO for the safe transport of dangerous goods by air on 25 January 2021. Members were generally supportive of the amendments to safeguard aviation safety but urged the Administration to provide appropriate training to personnel handling dangerous goods and step up enforcement actions against carrying undeclared dangerous goods by air.

8. L.N. 55 and L.N. 56 come into operation on 2 July 2021.

**Telecommunications (Designation of Frequency Bands
subject to Payment of Spectrum Utilization Fee)
(Amendment) Order 2021** (L.N. 57)

**Telecommunications (Method for Determining Spectrum
Utilization Fee) (Code Division Multiple Access Mobile
Telecommunications Service) (Amendment) Regulation
2021** (L.N. 58)

**Telecommunications (Determining Spectrum Utilization
Fees by Auction) (Amendment) Regulation 2021** (L.N. 59)

**Telecommunications (Method for Determining Spectrum
Utilization Fee) (Spectrum for Auction) (Amendment)
Regulation 2021** (L.N. 60)

**Telecommunications (Level of Spectrum Utilization Fee)
(Administratively Assigned Spectrum) Regulation** (L.N. 61)

Background

9. According to paragraphs 3 and 4 of the LegCo Brief (File Ref: CCIB/B 480-20-8-1-10) issued by the Commerce and Economic Development Bureau and Office of the Communications Authority ("CA") on 5 May 2021, the Secretary for Commerce and Economic Development ("SCED") and CA issued Joint Statements on 30 March 2021 promulgating the arrangements for the assignment of the spectrum in the 600 MHz, 700 MHz and 4.9 GHz bands and reassignment of the spectrum in the 850 MHz and 2.5/2.6 GHz bands, which could be used for providing the fifth generation mobile services in Hong Kong, by way of auction. Also, CA plans to assign more spectrum in the 26 GHz and 28 GHz bands administratively to mobile network operators for the provision of large-scale public mobile services.

10. L.N. 57 to L.N. 61, which are made to effect the decisions on the assignment/re-assignment of the spectrum mentioned in paragraph 9 above, are summarized below.

L.N. 57

11. L.N. 57 is made by CA under section 32I(1) of the Telecommunications Ordinance (Cap. 106) after carrying out the consultation required under section 32G(2) of Cap. 106. It adds new Parts 9 and 10 to the Schedule to the Telecommunications (Designation of Frequency Bands subject to Payment of Spectrum Utilization Fee) Order (Cap. 106Y) in order to designate eight additional frequency bands² in which the use of spectrum is subject to the payment of spectrum utilization fee ("SUF") by users of the spectrum.

L.N. 58 and L.N. 59

12. The Telecommunications (Method for Determining Spectrum Utilization Fee) (Code Division Multiple Access Mobile Telecommunications Service) Regulation (Cap. 106AB) provides for the methods for determining SUF for the use of the spectrum that falls within the frequency bands set out in Part 3 of the Schedule to Cap. 106Y (i.e. 825-832.5 MHz and 870-877.5 MHz). L.N. 58 is made by SCED under section 32I of Cap. 106 to amend Cap. 106AB to provide to the effect that Cap. 106AB only applies in relation to the above spectrum on or before 19 November 2021.

13. L.N. 59 is made by SCED under section 32I of Cap. 106 to amend the Telecommunications (Determining Spectrum Utilization Fees by Auction) Regulation (Cap. 106AC) to provide for the application of the method for determining SUF under section 3(1) of Cap. 106AC as follows:

- (a) in relation to spectrum falling within the frequency bands set out in the new Schedule 4 to Cap. 106AC (i.e. 2.5/2.6 GHz bands), section 3(1) of Cap. 106AC only applies in relation to the use of such spectrum on or before 30 March 2024; and
- (b) in relation to spectrum falling within the frequency band 678-686 MHz, section 3(1) of Cap. 106AC only applies in relation to the use of such spectrum on or before 2 July 2021.

² Namely, 617-652 MHz, 663-678 MHz, 686-698 MHz, 703-738 MHz, 758-793 MHz, 4800-4840 MHz and 4920-4960 MHz for Part 9 and 24250-28350 MHz for Part 10.

14. Upon LSD's enquiry, the Administration explained that L.N. 58 refers to the completion date of current assignment of the 850 MHz band whereas L.N. 59 refers to that of the 2.5/2.6 GHz bands and 678-686 MHz band.

L.N. 60

15. L.N. 60 is made by SCED under section 32I of Cap. 106 to amend the Telecommunications (Method for Determining Spectrum Utilization Fee) (Spectrum for Auction) Regulation (Cap. 106AG) to:

- (a) add certain frequency bands to the Schedule to Cap. 106AG (i.e. spectrum in the 600 MHz, 700 MHz, 850 MHz, 2.5/2.6 GHz and 4.9 GHz bands) so that SUP for using the spectrum that falls within such frequency bands is to be determined by auction; and
- (b) provide for payment of SUP by instalment for using a spectrum that falls within the newly added frequency bands as set out in the Schedule to Cap. 106AG.

L.N. 61

16. L.N. 61 is a new regulation made by SCED under section 32I(2) of Cap. 106. L.N. 61 mainly prescribes the levels of SUF payable by a licensed spectrum user for using the radio spectrum in a frequency band set out in the new Part 10 of the Schedule to Cap. 106Y (i.e. spectrum falling within the 24250-28350 MHz frequency band) which is assigned under a licence, and provides for the mechanism for the payment of SUF.

Consultation

17. According to paragraph 14 of the LegCo Brief, SCED and CA jointly conducted public consultations between July and November 2020 in relation to frequency allocation, assignment and re-assignment arrangements and the related SUF for the spectrum in the 600 MHz, 700 MHz, 850 MHz, 2.5/2.6 GHz and 4.9 GHz bands. Public consultations in relation to the spectrum in 26 GHz and 28 GHz bands were conducted in 2018. Respondents in general supported the proposed assignment and re-assignment of spectrum for public mobile use.

18. As advised by the Clerk to the Panel on Information Technology and Broadcasting, the Panel has been consulted on 19 April 2021 on the Administration's legislative proposals in relation to the spectrum assignment for the provision of public mobile telecommunications services. Members had no objection to the proposals.

Commencement

19. L.N. 57 to L.N. 60 come into operation on 2 July 2021. L.N. 61 comes into operation on a day to be appointed by SCED by notice published in the Gazette. Upon LSD's enquiry, the Administration explained that it intends to bring L.N. 61 into operation when 75% or more of the spectrum is occupied and thus the commencement date of L.N. 61 will depend on market response and it is not yet fixed at this stage.

Employees' Compensation (Amendment) Ordinance 2021 (Commencement) Notice

(L.N. 62)

20. L.N. 62 is made by the Secretary for Labour and Welfare under section 1(2) of the Employees' Compensation (Amendment) Ordinance 2021 (Ord. No. 4 of 2021) ("Amendment Ordinance") to appoint 2 July 2021 as the day on which the Amendment Ordinance comes into operation.

21. The Amendment Ordinance was published in the Gazette on 30 April 2021 after the Employees' Compensation (Amendment) Bill 2021 ("Bill") was passed by LegCo on 28 April 2021. It amends the Employees' Compensation Ordinance (Cap. 282) to extend employees' compensation protection to the situation where an employee sustains injury or dies as a result of an accident when the employee is travelling between the employee's place of residence and place of work within the period during which extreme conditions exist as specified in an extreme conditions announcement. Before the enactment of the Amendment Ordinance, a Bills Committee was formed to scrutinize the Bill. Members may refer to the Report of the Bills Committee (LC Paper No. CB(2)1014/20-21) for further information.

22. No LegCo brief has been issued on L.N. 62.

23. As advised by the Clerk to the Panel on Manpower, the Panel has not been consulted on L.N. 62. In the course of scrutinizing the Bill, members of the Bills Committee were advised that the intended commencement date of the Bill, if passed, would be end of June or early July 2021, i.e. before the typhoon season. The Bills Committee did not have any comments on the intended commencement date of the Bill.

PART II NON-LEGISLATIVE INSTRUMENT

Ninth Technical Memorandum for Allocation of Emission Allowances in Respect of Specified Licences

(S.S. No. 5 to Gazette No. 18/2021)

24. The Ninth Technical Memorandum for Allocation of Emission Allowances in Respect of Specified Licences ("Ninth TM") is issued by the Secretary for the Environment ("SE") under section 26G of the Air Pollution Control Ordinance (Cap. 311). The Ninth TM, which supersedes the Eighth Technical Memorandum for Allocation of Emission Allowances in Respect of Specified Licences ("Eighth TM"), allocates for each emission year from 1 January 2026 the quantities of emission allowances for three specified pollutants, namely sulphur dioxide ("SO₂"), nitrogen oxides ("NO_x") and respirable suspended particulates ("RSP") for each of the four power plants³ and possible new electricity works in Hong Kong. It also requires SE to review the quantity of emission allowances for each type of specified pollutant for each specified licence set out or determined in accordance with the Ninth TM not less than once every two years after its commencement.

25. Under section 37B(6) of Cap. 311, the Ninth TM is not subsidiary legislation. However, it is subject to a scrutiny mechanism which is similar to that for subsidiary legislation provided in section 34 of the Interpretation and General Clauses Ordinance (Cap. 1), i.e. the negative vetting procedure. Under section 37C of Cap. 311, the Ninth TM shall commence to have effect upon the expiry of the 28-day initial amendment period or the period as extended if LegCo does not pass a resolution to amend it. In the case where LegCo passes a resolution amending the Ninth TM, it shall commence to have effect on the day of the publication in the Gazette of such resolution.

26. According to paragraph 16 of the LegCo Brief (with no file reference) issued by the Environmental Protection Department in May 2021, as compared with the emission allowances for 2024 and 2025 set under the Eighth TM, the Ninth TM will see a further tightening of about 9% for SO₂, 10% for NO_x and 6% for RSP for the electricity sector.

27. As advised by the Clerk to the Panel on Environmental Affairs, the Panel was consulted at its meeting on 26 April 2021 on the proposal to reduce emission allowances for power plants in the Ninth TM. Members supported

³ The four existing power plants are: Lamma Power Station and Lamma Power Station Extension, Black Point Power Station, Castle Peak Power Station and Penny's Bay Gas Turbine Power Station.

the proposal and urged the Administration to set long-term strategies and measures for reducing emission from power generation, and expedite its work on various fronts for decarbonization. The Panel also discussed the implications of tightening power plants' emission allowances on electricity tariff, as well as the mechanism for monitoring compliance with the Ninth TM.

Concluding observations

28. Subject to Members' views on the matters set out in paragraph 5 above, no difficulties have been identified in the legal and drafting aspects of the above items of subsidiary legislation and S.S. No. 5 to Gazette No. 18/2021.

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