

**立法會**  
**Legislative Council**

LC Paper No. LS103/20-21

**Paper for the House Committee Meeting  
on 13 August 2021**

**Legal Service Division Report on  
Subsidiary Legislation Gazetted on 23 July 2021**

**Tabling in LegCo** : Council meeting of 18 August 2021

**Amendment to be made by** : Council meeting of 15 September 2021 (or that of 6 October 2021 if extended by resolution)

**Customs and Excise Service (Discipline) (Amendment) Rules 2012 (Commencement) Notice** (L.N. 128)

**Fire Services Ordinance (Amendment of Second Schedule) Regulation 2012 (Commencement) Notice** (L.N. 129)

**Government Flying Service (Discipline) (Amendment) Regulation 2012 (Commencement) Notice** (L.N. 130)

**Police (Discipline) (Amendment) Regulation 2012 (Commencement) Notice** (L.N. 131)

**Prison (Amendment) Rules 2012 (Commencement) Notice** (L.N. 132)

**Traffic Wardens (Discipline) (Amendment) Regulation 2012 (Commencement) Notice** (L.N. 133)

By L.N. 128 to L.N. 133, the Secretary for the Civil Service has appointed 15 October 2021 as the day on which the following six items of subsidiary legislation ("Amendment Regulations/Rules") come into operation respectively:

- (a) Customs and Excise Service (Discipline) (Amendment) Rules 2012 (L.N. 63 of 2012);
- (b) Fire Services Ordinance (Amendment of Second Schedule) Regulation 2012 (L.N. 58 of 2012);

- (c) Government Flying Service (Discipline) (Amendment) Regulation 2012 (L.N. 61 of 2012);
- (d) Police (Discipline) (Amendment) Regulation 2012 (L.N. 59 of 2012);
- (e) Prison (Amendment) Rules 2012 (L.N. 60 of 2012); and
- (f) Traffic Wardens (Discipline) (Amendment) Regulation 2012 (L.N. 62 of 2012).

2. In light of the Court of Final Appeal ("CFA")'s judgment in *Lam Siu Po v. Commissioner of Police* [2009] 4 HKLRD 575,<sup>1</sup> the Amendment Regulations/Rules were made in 2012 to amend six items of legislation governing the disciplined services, namely, the Fire Services Ordinance (Cap. 95), the Police (Discipline) Regulations (Cap. 232A), the Prison Rules (Cap. 234A), the Government Flying Service (Discipline) Regulation (Cap. 322A), the Customs and Excise Service (Discipline) Rules (Cap. 342B) and the Traffic Wardens (Discipline) Regulations (Cap. 374J) (collectively as "Disciplined Services Legislation"). In gist, the major amendments to the Disciplined Services Legislation include allowing an officer of the relevant disciplined service charged with a disciplinary offence ("accused") to have legal or other forms of representation at a disciplinary hearing where the principle of fairness so requires; stipulating that a written record of the proceedings of a disciplinary hearing is to be made; and stipulating that an adjudicating officer/tribunal may proceed with the disciplinary proceedings in the absence of an accused.

3. A subcommittee was formed to study the Amendment Regulations/Rules in May 2012. Members may refer to the Report of the Subcommittee on the Amendment Regulations/Rules (LC Paper No. CB(1)2152/11-12) for further information.

4. No Legislative Council Brief has been issued on L.N. 128 to L.N. 133.

5. Upon Legal Service Division's enquiry on the reasons for the time taken for bringing the Amendment Regulations/Rules into operation since their gazettal on 27 April 2012, the Administration explained that the Amendment Regulations/Rules had not been brought into operation at that time so as to allow

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<sup>1</sup> CFA in *Lam Siu Po* held that the prohibition against legal representation provided in regulation 9(11) and (12) of the Police (Discipline) Regulations (Cap. 232A) is inconsistent with Article 10 of the Hong Kong Bill of Rights, and is thus unconstitutional, null and void. CFA also held that legal representation is a matter for the disciplinary authority to consider under its discretion in accordance with the principle of fairness in common law and that the disciplinary authority ought to be able to exercise discretion to permit appropriate forms of representation other than legal representation, whether by fellow officers and other persons, at a disciplinary hearing.

the Government to further consult the management and staff sides of the disciplined services departments ("DSDs"). According to the Administration, the staff associations of DSDs were consulted in December 2017 and the first half of 2018, and they generally showed support and no objection to the commencement of the Amendment Regulations/Rules without further amendments. Moreover, the administrative arrangements which have been introduced (and enhanced) by some DSDs to pave way for the commencement of the Amendment Regulations/Rules have also been working smoothly. All DSDs are already ready to stipulate the administrative arrangements in the departmental manuals, standing procedures or internal guidelines as appropriate. The Administration considers it appropriate and ripe for the Amendment Regulations/Rules to commence operation on 15 October 2021.

6. As advised by the Clerk to the Panel on Public Service, an information paper provided by the Administration, which sought to inform the Panel of the Administration's plan to appoint 15 October 2021 as the commencement date for the Amendment Regulations/Rules, was circulated to Panel members vide LC Paper No. CB(4)1136/20-21(01) on 18 June 2021. Members' views were sought at the Panel meeting on 21 June 2021 on the need to discuss the matter with the Administration and no such request was made.

7. No difficulties have been identified in relation to the legal and drafting aspects of L.N. 128 to L.N. 133.

Prepared by

CHENG Kiu-fung, Vanessa  
Assistant Legal Adviser  
Legislative Council Secretariat  
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