

立法會
Legislative Council

LC Paper No. LS107/20-21

**Paper for the House Committee Meeting
on 20 August 2021**

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 13 August 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)

PART I USE OF ROAD TUNNELS AND CONTROL AREAS BY BUSES

Road Tunnels (Government) (Amendment) Regulation 2021 (L.N. 147)

Tsing Ma Control Area (General) (Amendment) Regulation 2021 (L.N. 160)

Tsing Sha Control Area (General) (Amendment) Regulation 2021 (L.N. 161)

Under regulation 14(1) of the Road Tunnels (Government) Regulations (Cap. 368A), section 22(1) of the Tsing Ma Control Area (General) Regulation (Cap. 498B) and section 20(1) and (2) of the Tsing Sha Control Area (General) Regulation (Cap. 594A), a person shall not, in any Government tunnel¹, Tsing Ma Control Area or Tsing Sha Control Area ("Control Area") drive a vehicle with length exceeding 12 metres or width exceeding 2.5 metres unless with a permit issued by the Commissioner for Transport ("CT") or an operator for the passage of that vehicle ("permit requirements"). Buses with length and width exceeding the above limits ("oversized buses") are subject to similar requirements when they are used on roads. Under regulation 6 of and the First Schedule to the Road Traffic (Construction and Maintenance of Vehicles) Regulations (Cap. 374A), oversized buses cannot be used on roads unless with a permit issued or an exemption granted by CT ("Cap. 374A approval").

2. L.N. 147, L.N. 160 and L.N. 161 amend Cap. 368A, Cap. 498B and Cap. 594A respectively to exempt an oversized bus from the permit requirements

¹ Schedule 1 to the Road Tunnels (Government) Ordinance (Cap. 368) set out the relevant tunnels including Cross-Harbour Tunnel, Eastern Harbour Crossing, Lion Rock Tunnel etc.

for using Government tunnels and Control Areas if there is in force a Cap. 374A approval in relation to the width and length of the bus, and the Cap. 374A approval applies in relation to the use of the Government tunnels and Control Areas by the bus and does not contain a term or condition to the effect that such use is restricted.

3. In addition, L.N. 147 amends regulation 12AAB of Cap. 368A to allow exempted oversized buses to pay tolls at toll booths of the tunnels or through autotoll lanes in the same manner as other vehicles.

4. According to paragraphs 5 and 7 of the Legislative Council ("LegCo") Brief (File Ref: THB(T) CR 4/2/4651/83) issued by the Transport and Housing Bureau ("THB") on 11 August 2021, the exemption of oversized buses from the permit requirements will facilitate the use in Government tunnels and Control Areas of oversized franchised and non-franchised buses introduced by operators to meet passenger needs and service demands without compromising the safety and structural integrity of the Government tunnels and Control Areas.

5. According to paragraph 18 of the LegCo Brief, the Administration consulted the transport trades (e.g. trucking industry associations, non-scheduled public light bus associations, public bus associations and franchised buses operators) on the legislative proposals in June 2018. The transport trades raised no objection to the proposals.

6. As advised by the Clerk to the Panel on Transport, the Panel was consulted by the Administration on the proposed exemption of franchised buses from the permit requirements on 17 November 2017. Members raised no objection to the proposal and requested the Administration to consider extending the proposal of exempting oversized franchised buses from the requirement to apply for permits for using Government tunnels and Control Areas to all other types of commercial vehicles, including non-franchised buses.

7. L.N. 147, L.N. 160 and L.N. 161 come into operation on 8 October 2021.

PART II IMPLEMENTATION OF INTERNATIONAL CONVENTIONS RELATING TO SHIPS

Merchant Shipping (Safety) (Construction and Survey) (Amendment) Regulation 2021 (L.N. 148)

Merchant Shipping (Safety) (Cargo Ship Construction and Survey) (Ships Built Before 1 September 1984) (Amendment) Regulation 2021 (L.N. 149)

Merchant Shipping (Safety) (Cargo Ship Construction and Survey) (Ships Built On or After 1 September 1984) (Amendment) Regulation 2021 (L.N. 150)

Merchant Shipping (Safety) (Fire-fighting Appliances and Fire Protection) (Amendment) Regulation 2021 (L.N. 151)

Merchant Shipping (Safety) (Life-Saving Appliances and Arrangements, Musters and Training) (Amendment) Regulation 2021 (L.N. 152)

Merchant Shipping (Prevention of Air Pollution) (Amendment) Regulation 2021 (L.N. 153)

8. L.N. 148 to L.N. 153 are made by the Secretary for Transport and Housing ("STH") under various sections of the Merchant Shipping (Safety) Ordinance (Cap. 369) and sections 3 and 3A of the Merchant Shipping (Prevention and Control of Pollution) Ordinance (Cap. 413). Their purposes are to implement the updated technical requirements of the International Convention for the Safety of Life at Sea, 1974 ("SOLAS") and the International Convention for the Prevention of Pollution from Ships, 1973 ("MARPOL") adopted by the International Maritime Organization ("IMO") as amended from time to time and applicable to Hong Kong.

L.N. 148

9. L.N. 148 amends the Merchant Shipping (Safety) (Construction and Survey) Regulation (Cap. 369BD) to give effect to the latest requirements of Chapters II-1 and XI-1 of the Annex to SOLAS on specified ocean-going vessels ("OGVs"). The amendments require the owner of a passenger ship constructed before 1 January 2014 to provide operational information to the master for safe return to port after flooding casualty by means of onboard stability computer or shore-based support. The amendments also include the requirement for the conduct of an intermediate survey of a cargo ship within a specific period by a Government surveyor appointed under section 5 of Cap. 369.

L.N. 149 and L.N. 150

10. The Merchant Shipping (Safety) (Cargo Ship Construction and Survey) (Ships Built Before 1 September 1984) Regulations (Cap. 369R) and the Merchant Shipping (Safety) (Cargo Ship Construction and Survey) (Ships Built On or After 1 September 1984) Regulations (Cap. 369S) provide for the requirements regarding, among others, the construction, structure, safety operation and surveys of specified cargo ships constructed before 1 September 1984 and those built on or after that date and before 1 July 2002 respectively.

L.N. 149 and L.N. 150 amend Cap. 369R and Cap. 369S respectively to implement regulation 2-1 of Chapter XI-1 of the Annex to SOLAS by requiring an intermediate survey of a specified cargo ship in respect of which a cargo ship safety construction certificate ("Certificate") has been issued to be carried out within the period commencing three months before the second anniversary date of the Certificate and ending three months after the third anniversary date of the Certificate.

L.N. 151

11. The Merchant Shipping (Safety) (Fire-fighting Appliances and Fire Protection) Regulation (Cap. 369BE) provides for the requirements on fire protection, fire detection and fire-fighting on specified OGVs. L.N. 151 amends Cap. 369BE to give effect to the latest requirements of Chapter II-2 of the Annex to SOLAS. The major requirements are summarized below:

- (a) a ship must not carry in its cargo spaces (subject to certain exceptions) motor vehicles with fuel in their tanks for their own propulsion unless specified conditions are satisfied. Under the new section 15A(2) of Cap. 369BE, non-compliance with this requirement by the owner or the master of the ship is an offence punishable by a fine at level 4 (\$25,000) and imprisonment for two years; and
- (b) a ship constructed on or after 1 January 2020 that has a helicopter landing area shall be provided with foam firefighting appliances. Non-compliance with this requirement is an offence under section 44 of Cap. 369 which provides that the owner of the vessel concerned who is convicted of such an offence is liable to a fine of \$50,000 and to imprisonment for two years and the master of the vessel concerned who is convicted of such an offence is liable to a fine of \$10,000 and to imprisonment for six months.

L.N. 152

12. The Merchant Shipping (Safety) (Life-Saving Appliances and Arrangements, Musters and Training) Regulation (Cap. 369AY) provides for the requirements on life-saving appliances and arrangements, musters and training on ships. L.N. 152 amends Cap. 369AY to require that the master of a passenger ship must ensure that the damage control drills mentioned in Chapters II-1 and III of SOLAS are conducted on the passenger ship in the manner and at the frequency set out in Chapter II-1 of SOLAS. Under the amended section 4B(7) of Cap. 369AY, the master of a ship concerned who contravenes this requirement commits an offence and is liable to a fine at level 3 (\$10,000) and to imprisonment for six months.

L.N. 153

13. The Merchant Shipping (Prevention of Air Pollution) Regulation (Cap. 413P) provides for the prevention and control of air pollution by ships. L.N. 153 amends Cap. 413P to give effect to the amendments made to Annex VI to MARPOL. The amendments include requiring owners and masters of ships of 400 gross tonnage or above to ensure that the requirements on in-use fuel oil sampling point set out in Annex VI to MARPOL are complied with. Under the amended section 56(1) of Cap. 413P, contravention of this requirement by the owner or the master of a ship is an offence punishable by a fine at level 6 (\$100,000) on conviction on indictment and at level 3 (\$10,000) on summary conviction.

Direct reference approach

14. It is noted that the Administration has, pursuant to section 112B of Cap. 369 and sections 3 and 3A of Cap. 413, adopted the direct reference approach in L.N. 148 to L.N. 153 by referring directly to SOLAS and MARPOL, as updated from time to time by IMO. According to paragraph 12 of the LegCo Brief (File Ref.: THB(T)PML CR 8/10/90/1) issued by THB and the Marine Department in August 2021, this approach allows the local legislation to remain up-to-date as far as practicable.

Consultation

15. According to paragraph 15 of the LegCo Brief, the Hong Kong Fleet Operation Advisory Committee of the Marine Department was consulted in November 2019 and September 2020 on the legislative proposals relating to SOLAS. The Hong Kong Fleet Operation Advisory Committee and the Local Vessels Advisory Committee of the Marine Department were consulted in November 2020 on the legislative proposal relating to MARPOL. Members of the committees supported the proposals.

16. As advised by the Clerk to the Panel on Economic Development, the Administration consulted the Panel on 10 December 2019 and 25 January 2021 on a series of legislative proposals to incorporate the latest requirements of IMO into local legislation, including proposals in L.N. 148 to L.N. 153. Members were generally supportive of the proposals. Issues on implementation and enforcement of the proposals were discussed.

Commencement

17. L.N. 148 to L.N. 152 come into operation on 15 October 2021 and L.N. 153 comes into operation on 1 April 2022.

PART III DRIVING INSTRUCTORS' LICENCES

Road Traffic (Driving Licences) (Amendment) Regulation 2021

(L.N. 154)

18. L.N. 154 is made by STH under section 8(1) of the Road Traffic Ordinance (Cap. 374) to amend the Road Traffic (Driving Licences) Regulations (Cap. 374B). It mainly introduces a quota mechanism for issuing private driving instructors ("PDIs") licences and imposes additional conditions on persons applying for or renewing driving instructors' licences (with a limited exception).²

19. The major amendments by L.N. 154 are summarized below:

- (a) providing for a mechanism under which CT may determine for a particular group of motor vehicles (group 1, 2 or 3 motor vehicles)³ a quota of new PDI licences to be issued to certain classes of persons;
- (b) requiring a person applying for a driving instructor's licence (with the limited exception), among other conditions:
 - (i) to be the holder of a full driving licence to drive private cars and light goods vehicles and to have held the licence for at least six years immediately before the date of application;
 - (ii) to have completed the driving instructor's induction course; and
 - (iii) not to have been convicted of a dangerous driving offence under section 37 of Cap. 374 during the five years, or a careless driving offence under section 38 of Cap. 374 during the two years, immediately before the date of application;
- (c) requiring a person applying for renewal of a driving instructor's licence (with the limited exception), among other conditions, to complete a driving instructor's refresher course;
- (d) providing for the driving instructor's induction and refresher courses, and the authorization of trainers to provide such courses;

² The exception is where the licence applied for is subject to the condition that the person may only give driving instruction on behalf of the organization specified in the licence (e.g. a franchised bus company). The effect is that the additional conditions would apply in relation to PDIs and restricted driving instructors of driving schools.

³ The relevant groups of motor vehicles are: (i) group 1 - private cars and light goods vehicles; (ii) group 2 - light buses and buses; and (iii) group 3 - medium goods vehicles, heavy goods vehicles and articulated vehicles.

- (e) providing for the issue and display and other requirements regarding PDI identity plates, and making it an offence for a PDI not to display the PDI identity plate (punishable by a fine of \$2,000); and
- (f) providing for transitional arrangements.

20. According to paragraph 8 of the LegCo Brief (File Ref.: THB(T)L3/7/18) issued by THB and the Transport Department ("TD") in August 2021, TD has consulted the driving instructors' industry. Associations mainly representing PDIs for groups 2 and 3 motor vehicles and restricted driving instructors generally supported the amendments, whilst the majority of those representing PDIs for group 1 motor vehicles opposed them. Four driving schools and five franchised bus companies were consulted and have no comments.

21. As advised by the Clerk to the Panel on Transport, the Panel was consulted on 24 April 2020 on the comprehensive review of PDI licences. Most members supported the proposal of quotas for PDI licences. Some members agreed that the allocation of 25% of new group 1 PDI licences as driving instructor quota could better utilize the driving competence and training experience of groups 2 and 3 PDIs to enhance the overall quality of driver training for private cars and light goods vehicles. However, a few members expressed that quota allocation would be against the principles of equitability and openness.

22. L.N. 154 comes into operation on 1 December 2021.

PART IV COMMENCEMENT NOTICES

Chemical Weapons (Convention) Ordinance (Amendment of Schedule 1) Order 2021 (Commencement) Notice (L.N. 155)

Import and Export (Strategic Commodities) Regulations (Amendment of Schedules 1 and 2) Order 2021 (Commencement) Notice (L.N. 156)

L.N. 155

23. By L.N. 155, the Secretary for Commerce and Economic Development appoints 17 September 2021 as the day on which the Chemical Weapons (Convention) Ordinance (Amendment of Schedule 1) Order 2021 (L.N. 88 of 2021) comes into operation.

24. L.N. 88 of 2021 was published in the Gazette on 11 June 2021. It mainly amends the Chemical Weapons (Convention) Ordinance (Cap. 578), which implements the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction

("Convention"), by adding certain toxic chemicals to its Schedule 1 to reflect the latest changes as adopted under Schedule 1 in the Annex on Chemicals to the Convention.

L.N. 156

25. By L.N. 156, the Director-General of Trade and Industry appoints 17 September 2021 as the day on which the Import and Export (Strategic Commodities) Regulations (Amendment of Schedules 1 and 2) Order 2021 (L.N. 89 of 2021) comes into operation.

26. L.N. 89 of 2021 was published in the Gazette on 11 June 2021. It mainly amends Schedules 1 and 2 to the Import and Export (Strategic Commodities) Regulations (Cap. 60G) to reflect the latest changes in the control lists of strategic commodities (including the toxic chemicals added to Schedule 1 to Cap. 578 by L.N. 88 of 2021) adopted by various international non-proliferation regimes and the Convention.

27. No subcommittee was formed to study L.N. 88 and L.N. 89 of 2021. Members may refer to paragraphs 9 to 16 of the Legal Service Division's report on L.N. 88 and L.N. 89 of 2021 (LC Paper No. LS80/20-21) for further information.

28. No LegCo Brief has been issued in respect of L.N. 155 and L.N. 156.

29. As advised by the Clerk to the Panel on Commerce and Industry, the Panel has not been consulted on L.N. 155 and L.N. 156.

Mercury Control Ordinance (Commencement) Notice (L.N. 157)

30. L.N. 157 is made by the Secretary for the Environment to appoint 1 December 2021 as the day on which the Mercury Control Ordinance (Cap. 640) comes into operation.

31. Cap. 640 was published in the Gazette as Ord. No. 19 of 2021 on 2 July 2021 after the Mercury Control Bill was passed by LegCo on 23 June 2021. It implements the Minamata Convention on Mercury by regulating the export, import, keeping and use of mercury, mercury mixtures and mercury compounds, and controlling the export, import, manufacture, supply of certain mercury-added products and certain manufacturing processes in which mercury or mercury compounds are used. No Bills Committee was formed to study the Mercury Control Bill.

32. No LegCo Brief has been issued on L.N. 157.

33. As advised by the Clerk to the Panel on Environmental Affairs, the Panel has not been consulted on L.N. 157.

PART V REGULATION OF PRIVATE HEALTHCARE FACILITIES

Private Healthcare Facilities Ordinance (Amendment of Schedule 3) Notice 2021 (L.N. 158)

Private Healthcare Facilities Ordinance (Commencement) Notice 2021 (L.N. 159)

Background

34. The Private Healthcare Facilities Ordinance (Cap. 633) was published in the Gazette as Ord. No. 34 of 2018 on 30 November 2018 following the passage of the Private Healthcare Facilities Bill ("Bill") by LegCo on 15 November 2018. It provides for a new regulatory regime for four types of private healthcare facilities ("PHFs"): hospitals, day procedure centres ("DPCs"), clinics and health services establishments ("HSEs"). A Bills Committee was formed to study the Bill. Members may refer to the Report of the Bills Committee (LC Paper No. CB(2)209/18-19) for further information.

L.N. 158

35. L.N. 158 is made by the Secretary for Food and Health ("Secretary") under section 123 of Cap. 633 to clarify the meaning of the medical procedure "major plexus block" in column 2 of Schedule 3 to Cap. 633 by adding "cervical" in the brackets following that term. Schedule 3 prescribes the scheduled medical procedures which can only be performed in hospitals or DPCs. The effect of the amendment introduced by L.N. 158 is that any non-hospital premises providing cervical plexus block service is required to obtain a DPC licence under Cap. 633 and to comply with the Code of Practice for DPCs issued by the Director of Health under Cap. 633.

36. L.N. 158 comes into operation on 1 January 2022.

L.N. 159

37. L.N. 159 is made by the Secretary under section 1(2) of Cap. 633 to appoint 30 June 2022 as the day on which section 10(1) (in so far as it relates to a PHF that is a DPC) and (3)(b) of Cap. 633 comes into operation. These provisions relate to the prohibition on operating a DPC without a licence under Cap. 633 and the related penalty.

38. According to paragraph 3 of the LegCo Brief (File Ref.: FHB/H/53/6) issued by the Food and Health Bureau in August 2021, the Department of Health ("DH") is implementing Cap. 633 in phases. Provisions relating to matters including applications for licences, various obligations and complaint mechanism in respect of private hospitals and those for DPCs commenced on 2 July 2019 and 2 January 2020 respectively, whilst provisions relating to the offence of operating a hospital without a licence (section 10(1), in so far as it relates to a PHF that is a hospital, and 3(a)) commenced on 1 January 2021 (see L.N. 85 of 2019).

39. According to paragraphs 4 and 5 of the LegCo Brief, it is expected that by mid-2022, all DPCs in operation which satisfy the licensing requirements would be either holding a provisional or full licence under Cap. 633. In view of the implementation progress of DPCs, the Administration considers it opportune to commence the penalty provisions regarding DPCs on 30 June 2022.

40. According to paragraph 11 and footnote 8 of the LegCo Brief, the regulatory regimes for clinics and HSEs will commence at a later stage. In view of the need to redeploy staff of DH for COVID-19 related duties, the Administration estimates that the provisions relating to applications for clinic licences and requests for letters of exemption will commence in 2023 the earliest.

41. As advised by the Clerk to the Panel on Health Services, the Panel has not been consulted on L.N. 158 and L.N. 159.

Concluding observations

42. No difficulties have been identified in relation to the legal and drafting aspects of the above items of subsidiary legislation.

Prepared by

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