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Legislative Council

LC Paper No. LS111/20-21

**Paper for the House Committee Meeting
on 27 August 2021**

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 20 August 2021**

Tabling in LegCo : Council meeting of 25 August 2021

Amendment to be made by : Council meeting of 15 September 2021 (or that of 13 October 2021 if extended by resolution)

PART I ELECTORAL MATTERS

Electoral Affairs Commission (Registration of Electors) (Rural Representative Election) (Amendment) Regulation 2021 (L.N. 162)

Electoral Procedure (Rural Representative Election) (Amendment) Regulation 2021 (L.N. 163)

L.N. 162

L.N. 162 is made by the Electoral Affairs Commission ("EAC") under section 7 of the Electoral Affairs Commission Ordinance (Cap. 541) to amend the Electoral Affairs Commission (Registration of Electors) (Rural Representative Election) Regulation (Cap. 541K). The major amendments made by L.N. 162 are summarized below:

- (a) inspection of a provisional register or a final register of electors of an Existing Village ("EV"), an Indigenous Village ("IV"), a Composite Indigenous Village ("CIV"), or a Market Town ("MT") within the meaning of the Rural Representative Election Ordinance (Cap. 576) is available to specified persons only (i.e. the press, political parties, validly nominated candidates, Heung Yee Kuk, Rural Committees of the concerned Rural Areas (i.e. EVs, IVs, CIVs and MTs), indigenous inhabitants of the concerned IVs or CIVs, and residents of the concerned EVs or MTs);
- (b) all new applications for voter registration in the provisional register of electors for EVs or MTs required to be compiled under section 17(1)(a) of Cap. 576 are subject to the address proof requirement; and

- (c) the statutory deadlines for (i) new voter registration in respect of three election types (i.e. Indigenous Inhabitant Representative ("IIR") elections, Resident Representative elections, and Kaifong Representative elections) and (ii) change of particulars for IIR elections are advanced by one month from 16 July to 16 June.

L.N. 163

2. L.N. 163 is made by EAC under section 7 of Cap. 541 to amend the Electoral Procedure (Rural Representative Election) Regulation (Cap. 541L). The major amendments made by L.N. 163 relating to Rural Representative ("RR") elections are summarized below:

- (a) the Home Affairs Department ("HAD") may set up polling-cum-counting stations by providing, in particular, that (i) counting may take place at polling stations that are designated by the Director of Home Affairs ("Director") as counting stations and (ii) a Returning Officer, a Presiding Officer of a counting station or an Assistant Returning Officer of a ballot paper sorting station may be the Officer-in-charge responsible for the counting of votes;
- (b) the Director is empowered to require certain premises (e.g. schools) for use as polling stations or counting stations;
- (c) the Presiding Officers of polling stations are empowered to make special arrangement for elderly persons, pregnant women and ill, injured or disabled persons to apply for ballot papers;
- (d) the use of electronic copy or extract of final registers is implemented for polling purpose; and
- (e) the requirements on disclosure of personal data of candidates in nomination forms are revised to enhance protection of the personal data of candidates.

3. According to paragraph 3 of the Legislative Council ("LegCo") Brief (no file reference) issued by HAD in August 2021, following the enhancement of the electoral procedures and arrangements for LegCo Elections, Election Committee Subsector Elections and District Council Elections pursuant to the Electoral Legislation (Miscellaneous Amendments) (No. 2) Ordinance 2019 (Ord. No. 11 of 2019) and the Improving Electoral System (Consolidated Amendments) Ordinance 2021 (Ord. No. 14 of 2021), the legislative amendments under L.N. 162 and L.N. 163 are for the purposes of enhancing the conduct of RR elections and aligning the electoral arrangements of RR elections with those of other public elections.

4. As advised by the Clerk to the Panel on Home Affairs, the Panel has not been consulted on L.N. 162 and L.N. 163.

5. L.N. 162 and L.N. 163 come into operation on 1 January 2022.

PART II DESIGN AND CONSTRUCTION OF LIGHT BUSES

Road Traffic (Construction and Maintenance of Vehicles) (Amendment) Regulation 2021

(L.N. 164)

6. The Road Traffic (Construction and Maintenance of Vehicles) Regulations (Cap. 374A) provide, among others, for the requirements in respect of the construction, maintenance and equipment of light buses.¹ At present, under regulation 67(1) of Cap. 374A, a light bus is required to have (a) not less than two exits² (one of which may be an emergency exit)³ which shall not both be situated on the same side of the vehicle and shall be situated to the rear of the driver's seat; or (b) one exit in the back of the vehicle.

7. L.N. 164 is made by the Secretary for Transport and Housing under section 9 of the Road Traffic Ordinance (Cap. 374) to amend Cap. 374A mainly to:

- (a) provide that a driver's door of a light bus is an emergency exit if certain conditions (including the provision of an emergency window and escape hatch)⁴ are satisfied;
- (b) provide for the requirements in respect of the design, position, height and width, etc. of an emergency window and escape hatch on a light bus; and
- (c) repeal regulation 67(1)(b) of Cap. 374A which allows a vehicle to have only one exit at the rear without any other exits.

8. According to paragraphs 7 and 8 of the LegCo Brief (File Ref: THB(T)L 3/2/4) issued by the Transport and Housing Bureau ("THB") on 18 August 2021, the introduction of alternative means of emergency exit on light buses will allow flexibility

¹ Under section 2 of Cap. 374, a light bus is a motor vehicle constructed or adapted for use solely for the carriage of a driver and not more than 19 passengers and their personal effects, but does not include an invalid carriage, motor cycle, motor tricycle, private car or taxi.

² Under regulation 2 of Cap. 374A, "exit" means any aperture or space provided to enable passengers to leave a vehicle.

³ The term "emergency exit" is defined in regulation 2 of Cap. 374A to mean an exit on a vehicle which is provided for use only in case of emergency as required by Cap. 374A.

⁴ Under section 3(3) of L.N. 164, "emergency window" means a window on a vehicle that is provided for use only in case of emergency for leaving the vehicle; and "escape hatch" means an opening at the roof of a vehicle that is provided for use only in case of emergency for leaving the vehicle.

in the design of emergency exits of light buses that provide the same level of safety as the existing emergency door, and the existing regulation 67(1)(b) of Cap. 374A is repealed as the design referred thereunder is outdated and no longer used in Hong Kong.

9. According to paragraphs 14 and 15 of the LegCo Brief, the Administration has consulted the vehicle manufacturers and public light bus trades on the legislative proposal. The Administration also consulted the Transport Advisory Committee on 23 February 2021 and its members did not raise any objection to the legislative proposal.

10. As advised by the Clerk to the Panel on Transport, the Administration consulted the Panel on the legislative proposal to introduce alternative means of emergency exits for light buses on 19 February 2021. Members raised no objection to the proposal and suggested that the Administration should enhance the safety of light buses and step up enforcement actions against dangerous driving and speeding by light buses drivers.

11. L.N. 164 comes into operation on 15 October 2021.

PART III SUBSIDIARY LEGISLATION RELATING TO THE COMMISSIONING OF THE THIRD RUNWAY OF THE THREE-RUNWAY SYSTEM AT THE HONG KONG INTERNATIONAL AIRPORT

Airport Authority Ordinance (Map of Restricted Area) (Amendment) Order 2021 (L.N. 165)

Airport Authority Ordinance (Map of Airport Area) (Amendment) Order 2021 (L.N. 166)

Hong Kong Airport (Control of Obstructions) (No. 2) Order 1997 (Amendment) Order 2021 (L.N. 167)

Hong Kong Airport (Control of Obstructions) (Exemption) Order (Repeal) Order (L.N. 168)

Shipping and Port Control Regulations (Amendment of Fifth Schedule) Notice 2021 (L.N. 173)

12. L.N. 165 to L.N. 168 and L.N. 173 are items of subsidiary legislation which are made in preparation for the commissioning of the Third Runway of the Three-Runway System ("3RS") at the Hong Kong International Airport ("HKIA") scheduled for 2022.

L.N. 165 and L.N. 166

13. L.N. 165 and L.N. 166 are made by the Director-General of Civil Aviation ("DGCA") under section 37 of the Airport Authority Ordinance (Cap. 483) after consultation with the Airport Authority ("AA").

14. L.N. 165 amends the Schedule to the Airport Authority Ordinance (Map of Restricted Area) Order (Cap. 483L) mainly to specify the new boundaries of the Restricted Area of HKIA to:

- (a) reflect the changes of the boundaries relating to the Intermodal Transfer Terminal and Passenger Terminal Building at HKIA;
- (b) include the Third Runway and associated infrastructure ("3rd Runway Structure"); and
- (c) include the Intermodal Transfer Terminal Bonded Vehicular Bridge ("Bridge") and the Hong Kong Boundary Crossing Facilities Staging Area ("Staging Area").

15. L.N. 166 amends the Airport Authority Ordinance (Map of Airport Area) Order (Cap. 483F) mainly to specify the new boundaries of the Airport Area delineated under Cap. 483 to:

- (a) include the 3rd Runway Structure;
- (b) reflect the changes of the boundaries relating to the infrastructure completed at and in the vicinity of HKIA; and
- (c) include the Bridge and Staging Area.

16. Members may refer to the LegCo Briefs on L.N. 165 and L.N. 166 (both with the File Reference: THB(T) CR 2/935/95 and 60/952/12) issued by THB in August 2021 for further details. According to paragraph 15 of the LegCo Brief on L.N. 165 and paragraph 12 of the LegCo Brief on L.N. 166, AA has consulted the relevant stakeholders on the proposed amendments and will continue to engage stakeholders.

17. L.N. 165 and L.N. 166 come into operation as follows:

- (a) Except the specifications relating to the 3rd Structure (which come into operation on 31 May 2022) and those relating to the Bridge and the Staging Area (which come into operation on 19 September 2022), L.N. 65 comes into operation on 30 April 2022.

- (b) Except the specifications relating to the Bridge and the Staging Area (which come into operation on 19 September 2022), L.N. 166 comes into operation on 31 May 2022.

L.N. 167 and L.N. 168

18. L.N. 167 and L.N. 168 are made by the Secretary for Development under section 3(1AA) and (1A) of the Hong Kong Airport (Control of Obstructions) Ordinance (Cap. 301) and section 3(3A) of Cap. 301 respectively on DGCA's advice.

19. The Hong Kong Airport (Control of Obstructions) (No. 2) Order 1997 (Cap. 301D) specifies, among others, the prescribed areas to which the restriction of heights of buildings in the interest of the safety of aircrafts (known as Airport Height Restrictions) ("AHRs") are applicable and the buildings to which Cap. 301D does not apply. The Hong Kong Airport (Control of Obstructions) (Exemption) Order (Cap. 301E) exempts certain pieces of land ("exempted land") from the AHRs under Cap. 301D.

20. L.N. 167 mainly amends Cap. 301D to update the AHRs arising from the development of HKIA into a 3RS and the latest developments in international aviation standards by (a) replacing the existing plans specified in section 3(2) of Cap. 301D with new plans in which new prescribed areas or new AHRs are delineated; (b) specifying the types of buildings⁵ to which Cap. 301D does not apply; and (c) amending the cut-off dates in the disapplication provisions with the effect that the new AHRs do not apply to certain buildings that have been erected before, or are erected in accordance with building plans approved or endorsed before the new AHRs come into operation on 31 May 2022.

21. L.N. 168 repeals Cap. 301E. According to paragraph 9 of the LegCo Brief (File Ref: DEVB (PL-L)35/19/21) issued by the Development Bureau in August 2021, as all the buildings on the exempted lands have already been erected and are to fall outside the scope of application of Cap. 301D under section 5(1)(a) of Cap. 301D as amended by L.N. 167, the exemptions specified in Cap. 301E are no longer required and hence repealed.

22. Upon enquiry made by the Legal Service Division ("LSD"), the Administration has confirmed that no public consultation has been conducted on L.N. 167 and L.N. 168.

23. L.N. 167 and L.N. 168 come into operation on 31 May 2022.

⁵ Including certain structures the construction of which are minor works or designated exempted works under the Buildings Ordinance (Cap. 123).

L.N. 173

24. L.N. 173 is made by the Director of Marine under regulation 72(1) of the Shipping and Port Control Regulations (Cap. 313A) to amend the Fifth Schedule to Cap. 313A to make adjustments to the boundaries of Hong Kong International Airport Approach Area ("HKIAAA") No. 3 and HKIAAA No. 7 following the expansion of HKIA into a 3RS.

25. The effect of L.N. 173 is that vessels navigating to or through the adjusted boundaries of the above HKIAAAs will be subject to certain restrictions (for example, entry and height restrictions) under regulations 23 to 24 of Cap. 313A. Members may refer to Annex B of the LegCo Brief (no file reference) issued by THB and the Marine Department in August 2021 for details.

26. According to paragraph 8 of the LegCo Brief, AA has consulted the relevant stakeholders on the proposed amendments and they had no objection to the proposal.

27. L.N. 173 comes into operation on 31 May 2022.

28. As advised by the Clerk to the Panel on Economic Development, the Administration consulted the Panel at its meeting on 26 April 2021 on a series of legislative proposals to facilitate the commissioning of the Third Runway and the 3RS. Members has raised no objection to the proposals and their submission to LegCo for negative vetting.

PART IV DESIGNATED NO SMOKING AREAS

Smoking (Public Health) Ordinance (Amendment of Schedule 2) Order 2021 (L.N. 169)

Smoking (Public Health) (Designation of No Smoking Areas) (Amendment) Notice 2021 (L.N. 172)

29. Under section 3(1) of the Smoking (Public Health) Ordinance (Cap. 371), the areas specified in Part 1 of Schedule 2 to Cap. 371 are designated no smoking areas ("NSAs"). Under section 3(1AB) of Cap. 371, the Director of Health ("DH") may, by notice published in the Gazette, designate the whole or part of any area that consists of the termini of two or more modes of public transport and is used for effecting and facilitating interchange between them; or any bus terminus of more than one specified route as defined in section 2 of the Public Bus Services Ordinance (Cap. 230) as an NSA.

30. L.N. 169 is made by the Secretary for Food and Health under section 16A of Cap. 371 to amend Part I of Schedule 2 to Cap. 371 by (a) updating the descriptions relating to two existing NSAs, namely, the Cross-Harbour Tunnel Bus Interchange and Eastern Harbour Crossing Bus Interchange; and (b) designating three bus interchanges ("BIs") and their adjoining facilities, namely Fanling Highway Bus Interchange; Tseung Kwan O Tunnel Bus Interchange and Tuen Mun-Chek Lap Kok Tunnel Bus Interchange, as NSAs.

31. L.N. 172 is made by DH under section 3(1AB) of Cap. 371 mainly to amend the Schedule to the Smoking (Public Health) (Designation of No Smoking Areas) Notice (Cap. 371D) by:

- (a) adding two new public transport facilities ("PTFs"), namely, Sau Mau Ping (Central) Bus Terminus and Chun Yeung Estate Public Transport Interchange, Fo Tan, to the Schedule to Cap. 371D with the effect that such facilities are designated as NSAs in PTFs under Cap. 371;
- (b) updating the details of four PTFs which are already specified in the Schedule to Cap. 371D as NSAs, i.e. Wong Chuk Hang Temporary Bus Terminus, Kwun Tong Station Public Transport Interchange, Siu Hong Court Bus Terminus, Tuen Mun, and Tai Po Market Station Public Transport Interchange; and
- (c) removing Yue Man Square Temporary Bus Terminus, Kwun Tong and LOHAS Park Station Public Transport Interchange specified in the Schedule to Cap. 371D with the effect that these areas ceased to be designated NSAs in PTFs under Cap. 371.

32. The effect of L.N. 169 and L.N. 172 is that any person who smokes or carries a lighted cigarette, cigar or pipe in the NSAs commits an offence under section 7(1) of Cap. 371 and is liable on summary conviction to a fine of \$5,000. Smoking in an NSA is also a scheduled offence under the Fixed Penalty (Smoking Offences) Ordinance (Cap. 600) in respect of which a public officer may give the offender a notice under section 3 of Cap. 600 offering him an opportunity to discharge his liability to conviction for the offence by payment of a fixed penalty (currently fixed at \$1,500) within 21 days from the date of giving the notice.

33. Members may refer to the LegCo Briefs on L.N. 169 and L.N. 172 (both with the same File Reference: FH CR 6/52/581/89) issued by the Food and Health Bureau and the Department of Health on 18 August 2021 or further details. According to paragraph 6 of the LegCo Brief on L.N. 172, the two new PTFs are added because they meet the criteria specified in section 3(1AB) of Cap. 371. Further, the details of four PTFs already listed in the Schedule to Cap. 371D are updated owing to changes in their physical features and settings on the ground. In addition, two PTFs are removed from the Schedule to Cap. 371D because they no longer meet the criteria owing to changes in transport arrangement.

34. According to paragraph 14 of the LegCo Brief on L.N. 169 and paragraph 13 of the LegCo Brief on L.N. 172, information papers on the details of the amendments has been issued to 18 District Councils. Further, all plans of NSAs of BIs and adjoining facilities, and all plans of NSAs in PTFs, have been deposited in the Land Registry for inspection by the public. They will also be posted on the Tobacco and Alcohol Control Office's website before L.N. 169 and L.N. 172 come into operation.

35. As advised by the Clerk to the Panel on Health Services, the Panel has not been consulted on L.N. 169 and L.N. 172.

36. L.N. 169 and L.N. 172 come into operation on 31 December 2021.

PART V RULES OF THE HIGH COURT AND THE DISTRICT COURT

Rules of the High Court (Amendment) Rules 2021 (L.N. 170)

Rules of the District Court (Amendment) (No. 2) Rules 2021 (L.N. 171)

37. Under Order 14 of the Rules of the High Court (Cap. 4A) or Order 14 of the Rules of the District Court (Cap. 336H), a plaintiff in an action begun by writ, or the defendant in the case of a counterclaim, may apply to the High Court or the District Court for a summary judgement⁶ against the other party on the ground that the other party has no defence to the claim (or a part of the claim) ("Order 14 Application"). However, Order 14 Application is not applicable to certain actions such as an action which includes a claim by the plaintiff based on an allegation of fraud (see Order 14 rule 1(2)(b) of Cap. 4A and Cap. 336H) ("fraud exception rule").

38. L.N. 170 and L.N. 171 are made by the Rules Committee of the High Court under section 54 of the High Court Ordinance (Cap. 4) and the District Court Rules Committee under section 72 of the District Court Ordinance (Cap. 336) respectively to amend Order 14 of Cap. 4A and Cap. 336H respectively mainly to (a) remove the fraud exception rule applicable to Order 14 Application; and (b) provide for transitional arrangements for Order 14 Applications made and pending before the commencement of L.N. 170 and L.N. 171.

39. According to paragraph 5 of the LegCo Brief (no file reference) issued by the Judiciary Administration in August 2021, there is no practical need to retain the fraud exception rule as there is no right to trial by jury in a fraud case in Hong Kong. Members may refer to paragraphs 6 to 8 of the LegCo Brief for further details of other justifications for the amendments.

⁶ The application, if successful, would enable the relevant plaintiff or defendant to obtain judgement without going through a full trial and thereby saving legal costs.

40. According to paragraphs 13 of the LegCo Brief, the Judiciary Administration consulted the Hong Kong Bar Association and the Law Society of Hong Kong in October 2019 on the legislative proposals to remove the fraud exception rule. They indicated support to the proposed amendments.

41. As advised by the Clerk to the Panel on Administration of Justice and Legal Services ("AJLS Panel"), the Judiciary Administration provided an information paper to the AJLS Panel on 12 August 2021 with regard to the proposed legislative amendments which was circulated to members for reference on the same day (LC Paper No. CB(4)1358/20-21(01)). As the next AJLS Panel meeting is scheduled for 31 August 2021, members have not considered the information paper at a meeting.

42. L.N. 170 and L.N. 171 come into operation on 1 December 2021.

Concluding Observations

43. The Legal Service Division is scrutinizing the legal and drafting aspects of the above items of subsidiary legislation, and a further report will be made if necessary.

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