

立法會
Legislative Council

LC Paper No. CB(1)944/00-01
(These minutes have been
seen by the Administration)

Ref: CB1/BC/2/00/2

**Bills Committee on
Dangerous Goods (Amendment) Bill 2000**
**Meeting on
Tuesday, 6 February 2001, at 8:30 am
in Conference Room A of the Legislative Council Building**

Members present : Hon James TO Kun-sun (Chairman)
Hon HUI Cheung-ching
Hon LAU Kong-wah
Hon Mrs Miriam LAU Kin-ye, JP
Hon Audrey EU Yuet-mee, SC, JP

Member absent : Hon Mrs Selina CHOW LIANG Shuk-ye, JP

Public officers attending : Mr D WONG
Principal Assistant Secretary for Security

Mr J K KWOK
Chief Fire Officer (Headquarters Command)
Fire Services Department

Mr K S LAU
Chief Fire Officer (Licensing and Control Command)
Fire Services Department

Mr K M LEE
Assistant Director of Marine

Mr D J HOWELLS
Assistant Director of Civil Engineering

Mr Y C LEUNG
Senior Geotechnical Engineer/Mines

Mr W B MADDAFORD
Senior Assistant Law Draftsman

Miss LEE Choy-mei
Assistant Secretary for Security

Clerk in attendance : Mr Andy LAU
Chief Assistant Secretary (1)2

Staff in attendance : Mr Stephen LAM
Assistant Legal Adviser 4

Mrs Mary TANG
Senior Assistant Secretary (1)2

I Confirmation of minutes of meeting

(LC Paper No. CB(1)523/00-01 - Minutes of meeting held on
6 December 2000)

The minutes of meeting on 6 December 2000 were confirmed.

II Meeting with the Administration

(LC Paper No. CB(1)531/00-01)

2. At the invitation of the Chairman, the Principal Assistant Secretary for Security (PAS/S) briefed members on the Administration's response to the Bill Committee's concerns raised at the meeting on 18 January 2001 regarding the requirements of vessels carrying dangerous goods (DG), as set out in LC Paper No. CB(1)531/00-01(01). Members noted that the requirements of ocean-going vessels and local vessels carrying DG were controlled by two separate ordinances with the former by the Merchant Shipping (Safety) (Dangerous Goods and Marine Pollutants) Regulation (Cap. 413) (section 16), and the latter by the Dangerous Goods (Shipping) Regulations (Cap. 295 sub. leg.) (regulation 12(1)&(3)).

3. Regarding the application of the requirements of vessels carrying DG to boathouses, the Assistant Director of Marine (ADM) advised that under regulation 12(1) of the Dangerous Goods (Shipping) Regulations (Cap. 295 sub. leg.), any vessels, be they used in navigation or not, trading exclusively within the waters of Hong Kong, and required to be registered or licensed pursuant to the provisions of the Merchant Shipping Ordinance (Cap. 281), was required to obtain the written permission in respect of such vessel, i.e. a "declaration of fitness" from the Director of Marine for the conveyance of DG. In other words, DG should not be taken on board boathouses unless prior approval was given by the Director of Marine in the form of a "declaration of fitness" or the amount so carried was within the limit of the exempted quantities for DG.

4. Noting that some of the household items might be classified as DG, Mrs Miriam LAU was concerned about the safety implications when such items were shipped to outlying islands. She was also worried that ferry operators or the frontline staff might not be aware of the inherent risks of such goods nor did they know the changing classification of DG or the exempted quantities for the conveyance of DG on board vessels as provided for in the legislation.

5. In response, ADM drew members' attention to his earlier statement made at the meeting on 18 January 2001 that there were no exempted quantities for DG on board vessels, and clarified that local vessels, unlike ocean-going vessels, did have exempted quantities for DG. The Director of Marine could also exercise discretion to waive certain fire safety requirements of vessels used for the purpose of conveying household items containing DG, such as kerosene and liquefied petroleum gases. In future, with the introduction of the new classification system, owners of these vessels would be encouraged to upgrade the safety requirements of their vessels. He agreed with the Chairman on the need to review the present arrangement and to conduct publicity programmes on the new classification system for DG. PAS/S added that in formulating the subsidiary legislation, the Administration would review the exempted quantities for DG on board local vessels in consultation with the Director of Marine, taking into account the need to maintain a balance between safety and convenience.

Clause-by-clause examination

6. Members continued to examine the Bill clause by clause.

Clause 4

7. Members noted that the new section 5(1)(ma) empowered the Director of Marine to grant an exemption from all or any of the provisions of a regulation relating to vessels as some of them, in particular local vessels, would not be able to meet the requirements of the International Maritime Dangerous Goods (IMDG) Code.

8. Mr LAU Kong-wah sought clarification on the legislative intent of the new section 5(1)(mb) which provided that the Chief Executive in Council might by regulation provide for the detention of any vessel in respect of which any contravention of a provision of the Dangerous Goods Ordinance (Cap. 295) (the Ordinance) or regulations made under the Ordinance was believed to have occurred. He asked if this was a reflection of the inadequacies in the existing arrangements for detention of vessels. ADM replied that the power to detain vessels was already provided for in the principal Ordinance and the new section 5(1)(mb) merely sought to empower the Administration to do the same by means of a regulation, thereby saving the need for exercising the power under the principal Ordinance. He said that the proposed arrangement would allow greater flexibility and facilitate enforcement actions. On the levels of penalties imposed under the regulations, they would be lighter than those in the principal Ordinance.

9. Mr LAU queried the rationale behind the proposal as he considered that a higher level of penalty would deter against smuggling of DG such as explosives, fish

bombs and fireworks which was rampant in the waters of Hong Kong.

10. ADM clarified that enforcement actions against smuggling of DG were undertaken by the Customs and Excise Department and the Marine Police. Whilst the Director of Marine was empowered to detain vessels under different legislation, officers of the Marine Department were not granted with search powers under the existing Ordinance. As such, a searching operation could not be initiated by marine officers unless it had the consent of ship owners/the crew on board vessels. Alternatively, officers from the Marine Department must be escorted by the Marine Police or other enforcement agencies for the purpose of searching on board vessels. PAS/S added that the proposed amendment to section 12 of the Ordinance would extend the general power of entry, search, seizure and detention currently given to enforcement departments to the Marine Department also.

11. The Chairman pointed out that if the amendments to section 12 had provided for the powers of detention of vessels, then there might not be a need for the inclusion of section 5(1)(mb). PAS/S said that section 5(1)(mb) was considered necessary as it sought to provide the power to make more extensive regulations for the necessary detention of vessels when a contravention of the Ordinance was believed to have occurred. Mrs Miriam LAU added that the power provided under the existing section 12(2)(e) was merely to enable the enforcement agencies to detain a vessel after it had been searched. Given the inherent dangers of smuggling DG on board vessels and the significant implications of the continued detention of vessels, the Chairman requested the Administration to consider if it would be more appropriate for the provisions relating to the power of detention of vessels to be included in the principal Ordinance rather than in the subsidiary legislation.

Admin.

12. Noting that the powers of entry, search and detention in respect of vessels, vehicles and aircraft were given under the existing section 12, Mrs Miriam LAU queried why the new section 5(1)(mb) only provided the power to make regulations in respect of the detention of vessels but not vehicles and aircraft. The Chief Fire Officer (Licensing and Control Command), Fire Services Department (CFO(LCC)) said that under section 12, officers of the Fire Services Department were empowered to stop and search vehicles if they had reasonable grounds for suspecting that any offence against the provisions of the Ordinance had been committed. They could proceed to seize goods and take prosecution actions where necessary. It would not be necessary to detain the vehicle under the circumstances. Therefore, the power to make regulations to provide for the detention of vehicles was not required. In view of the concerns raised by members on the detention of vessels, the Administration was requested to provide an information paper to explain why similar provision was not necessary in the case of detention of vehicles and aircraft.

Admin.

13. As for section 5(1)(mc), members noted that this was an enabling provision which prohibited or controlled the employment of any person or class of persons in connection with the manufacture, loading, unloading, shipment, transshipment, storage, carriage, movement, sale or use of DG, for the purpose of ensuring proper standards were maintained in the course of any such activity.

14. On section 5(1)(md), the Chairman said that apart from imposing duties on the drivers of vehicles carrying DG, there might also be a need to consider conferring power on these drivers to refuse to commence a journey unless they were satisfied that the arrangements for the conveyance of DG had met the safety requirements as set out in the legislation. He asked the Administration to consider his suggestion further.

15. Referring to section 5(3), the Chairman sought explanation on why an order made under section 5(1)(ma)(ii) was not a subsidiary legislation. The Senior Assistant Law Draftsman said that as the order made under section 5(1)(ma)(ii) would refer to a specific case and not a class of cases, it would not be made in the form of a subsidiary legislation.

Clause 5

16. Responding to the Chairman, PAS/S explained that Codes of Practice (COP) were provided for the purpose of providing practical guidance to the affected trades in complying with the requirements of legislation. Empowering provisions for the issue of COP were common in quite a number of legislation and similar provisions were made in the Road Traffic Ordinance (Cap. 374). The non-compliance of COP however would not incur criminal liability although it could be used as evidence in proceedings. The Director of Fire Services and the Director of Marine would be empowered under the Ordinance to issue COP to promulgate detailed guidelines and safety practices to be followed by the trade in the handling of DG. The COP would largely be in line with international practice but would include minor variations to suit local circumstances. CFO(LCC) added that detailed guidelines on safety, packaging and labelling requirements for the conveyance of DG would be set out in the COP.

Clause 6

17. Members noted that for a first time offence, the penalties for breaching any terms or conditions endorsed in the relevant licence would be a fine at level 5 and imprisonment not exceeding one month, and for a subsequent offence, the penalties would be a fine at level 6 and imprisonment not exceeding three months.

Clause 7

18. Members had no comments on the clause.

Clause 8

19. Members noted that the powers of entry and search had been extended to officers of the Marine Department who were hitherto omitted from the provisions of section 12. The inclusion of the powers would facilitate enforcement as officers of the Marine Department were well versed with IMDG Code.

Clause 9

20. Members noted that the maximum fines for breaching the regulations made under this section had been increased to level 6.

Clause 10

Admin. 21. Referring to the new section 14(2) which provided that "the occupier of any premises who fails to report an accident in contravention of the provisions of section 13 shall be guilty of an offence and shall be liable to a fine at level 2", the Chairman said that the penalty imposed did not appear to reflect the severity of the offence. Noting that the provision would only apply to occupiers of licenced storage premises and not the ordinary public, Mrs Miriam LAU shared the concern of the Chairman in that the penalty imposed was insufficient to achieve a deterrent effect. Taking into account the inherent dangers of explosives and the safety hazards posed to the general public, the Chairman requested the Administration to review the level of penalty and the need for introducing imprisonment terms.

Admin. 22. Referring to the levels of proposed penalties for breaching the requirements of sections 6,7,8 and 10 as set out in section 14(1)(a) and (b), Mr LAU Kong-wah was concerned if these were sufficient to deter against illegal storage and possession of explosives and fireworks. PAS/S said that the levels of penalties were proposed to adjust upward to reflect the inflation over the years. The Senior Geotechnical Engineer/Mines said that where the offence involved the use of explosives, prosecution actions could be taken under the Crimes Ordinance (Cap. 200) which carries heavier penalties. In response to members, the Administration agreed to provide information on the prosecution cases against offenders who had breached section 6 and other relevant sections in the Ordinance and the penalties imposed by the courts.

Clause 11

23. Members noted that the new section 19A which provided that "where DG are passing through Hong Kong as part of an international journey and such goods are packed, marked and labelled in accordance with IMDG Code, they shall be deemed to comply with the requirements of any regulations made under this Ordinance in respect of the packing, marking and labelling of such goods for conveyance by vessels or by vehicles across the territory" was intended to regularize the application of IMDG Code for use in Hong Kong.

Admin. 24. As reference to the term "an international journey" was made in section 19A(2), the Chairman enquired if this would include journeys between Hong Kong and Taiwan. ADM said that as a matter of practice, all journeys taken outside of Hong Kong waters were regarded as part of an international journey. Given the circumstances, the Chairman requested the Administration to consider the need for adapting the reference to the term "an international journey" to cover trips to Taiwan as well.

General

Admin. 25. As both the Dangerous Goods Ordinance (Cap. 295) and the Crimes Ordinance (Cap. 200) dealt with the illegal possession, conveyance and storage of explosives, fish bombs and fireworks, members were concerned about how enforcement actions would be taken and which provisions of these legislation would be invoked in the prosecution of offenders. The Administration agreed to provide a written response to address members' concerns.

Clause 12

26. Members noted that the definition of DG under the Shipping and Port Control Ordinance (Cap. 313) was different from that in the Dangerous Goods Ordinance (Cap. 295). ADM explained that since the control of DG on land and at sea were different, the definition of DG under different legislation would also differ. The IMDG Code would be followed strictly for controlling the conveyance of DG on board vessels except that the existing controls regarding diesel oil at sea, which was not classified as DG under IMDG Code, should be maintained. Under Cap. 313, the definition of DG had made reference to regulation 2 of the Dangerous Goods (Shipping) Regulations (Cap. 295 sub. leg.), which had yet to be introduced. The proposed provisions of section 2 would make reference to the control of DG under IMDG Code as well as the control of diesel oil at sea. PAS/S added that Cap. 313 was meant to control vessels in the waters of Hong Kong and therefore would include control of diesel at sea.

Clause 13

27. ADM advised that under the existing provisions of the Merchant Shipping (Safety) Ordinance (Cap. 369), DG was defined as any goods or substances to which the Dangerous Goods Ordinance (Cap. 295) applied. This was considered inadequate as Cap. 369 was meant to control ocean-going vessels. Due to recent incidents involving explosion in enclosed containers containing residues of volatile substances, the Administration considered it necessary to revise the definition of DG in Cap. 369 to include in (b), "substances, materials or articles, the properties of which would reasonably be considered to be dangerous when carried by sea, and includes empty receptacles and residues in tanks or cargo holds which have been used previously for the carriage of dangerous goods...." ADM said that the wording of (b) followed closely the scope of DG covered in the IMDG Code.

Admin. 28. In response to the Chairman, the Administration agreed to deposit a copy of IMDG Code with the Secretariat and provide relevant sections of the Code relating to the definition of DG for members' reference. The Chairman also requested the Administration to elaborate on the definition of DG under the Merchant Shipping (Safety) Ordinance (Cap. 369), particularly in respect of (b) therein so as to facilitate members' understanding of the application of the provision in real life situation. As regards Miriam LAU's concern about the control of the conveyance of enclosed containers containing residues of volatile substances on land, PAS/S said that this would be dealt with in the review of the Fire Services Ordinance.

Clauses 14 and 15

29. Members noted that under the Merchant Shipping (Local Vessels) Ordinance (Cap. 548), DG would be defined within the meaning of regulation 2 of the Dangerous Goods (Shipping) Regulations (Cap. 295 sub.leg.). The wording of the definition would be similar to that of Merchant Shipping (Safety) Ordinance (Cap. 369), except that it would include the control of diesel oil at sea, as Cap. 548 was meant to control local shipping.

30. Members agreed to meet with representatives of the Hong Kong Retail Management Association at the next meeting to be held in March 2001.

(Post-meeting note: In consultation with the Chairman and the Hong Kong Retail Management Association, the next meeting of the Bills Committee was scheduled for Thursday, 8 March 2001, at 2:30 pm.)

III. Any other business

31. There being no other business, the meeting ended at 10:30 am.

Legislative Council Secretariat
30 March 2001