

## **Dangerous Goods (Amendment) Bill 2000**

### **Information requested by the Bills Committee at its meeting held on 8 March 2001 (1<sup>st</sup> part)**

#### **Prosecution**

The number of prosecution cases against wholesalers and retailers for excessive storage of dangerous goods in consumer packs without a licence in 1996–2000 are as follows -

Year 1996	Year 1997	Year 1998	Year 1999	Year 2000
11	18	14	12	19

2. The dangerous goods involved in the above cases include paints, thinners, caustic soda solution, bleaching solutions and cleansing solvents. The fines imposed vary from \$500 to \$25,000, with an average of \$5,530.

3. As regards the prosecution policy, it is one of the responsibilities of the Fire Services Department (FSD) to enforce the provisions under the Dangerous Goods Ordinance (DGO), Cap. 295. There is no rule that prosecution must automatically take place if a suspected offence is established against an individual. There are two stages in the decision to prosecute. The first stage involves a consideration of the evidence. The second stage involves a consideration of the public interest. Each case will have to be considered in the light of its own circumstances. If there is any doubt with respect to a case, FSD would seek advice from the Department of Justice. No person will be prosecuted by FSD unless it is in the public interest to do so. For a minor offence, FSD may consider issuing a warning letter to the offender notifying him of the contravention and to allow him to take appropriate remedial actions. Should the offender still fail to rectify the situation, FSD may then consider instituting criminal proceedings against him.

#### **Risk Assessment**

4. We have made an extensive search ourselves and through our consultants and cannot identify any comprehensive scientific research, of Hong Kong or overseas,

on the inherent risks of excessive storage of dangerous goods in consumer pack form vis-a-vis that in raw form. But as explained in paragraph 4 of our “Response to the Submission of the Hong Kong Retail Management Association”, whether a substance is classified in the IMDG Code as dangerous goods is determined by its nature and characteristics. If it is so classified, then whether it is found in bulk or in consumer packs may affect the control measure applicable.

5. One prominent measure is that storage and conveyance of a dangerous substance are subject to licensing control, unless the quantity stored or conveyed is below a certain limit (the exempted quantity). We are reviewing the appropriate exempted quantities for different dangerous goods and are minded to propose a general increase in exempted quantities for storage and conveyance of dangerous goods in the subsidiary legislation under preparation, taking into account the improvements of fire safety provisions over time and the relative risk of the substance concerned.

6. As explained in paragraph 9 of our “Response to the Submission of the Hong Kong Retail Management Association”, we are critically considering the feasibility of further raising the exempted quantities for storage and conveyance of household chemicals that are caught by the DGO, on top of the proposed general increase. To help our review exercise, we have commissioned a consultant to further assess the risk level posed by dangerous goods which are packaged in consumer packs for sale in the retail market and to work out the appropriate exempted quantities to be proposed for such products and the practical measures to improve the existing controls over them. The study is expected to be completed by mid 2001.

7. Meanwhile we would continue our intensive dialogue with the trade to help with the identification of dangerous goods among consumer goods and to discuss with them how best to formulate reasonable control measures in the subsidiary legislation to strike a balance between ensuring public safety and facilitating business. As an illustration, we have compiled a table in Annex A setting out a list of popular consumer goods which have been identified to be dangerous goods, the exempted quantities stipulated in the current subsidiary legislation and possible new exempted quantities being considered for consumer packs. The new exempted quantities to be proposed in the future revision to the subsidiary legislation will be subject to the consultancy findings and further discussion with the trade.

## **Defence Provision**

8. Section 6 of DGO prohibits any person from manufacturing, storing, conveying or using any dangerous goods, except in accordance with a licence or in some specific circumstances set out in the proviso. This is an offence of strict liability. We have carefully reviewed the need for a due diligence defence provision. We are minded that the objective of DGO is to protect public safety, which is an issue of social concern. It is thus justifiable under public policy to make it an offence of strict liability. We are satisfied that the imposition of strict liability, at least since 1956 when the current DGO was enacted, has been effective to promote the objects of DGO by encouraging greater vigilance to prevent the commission of the prohibited act. We observe that the full vigour of the offence provision on ordinary people has been significantly mitigated by the exemption quantity provisions in the subsidiary legislation. In other words, ordinary, personal use of daily products which are dangerous goods would unlikely be caught by section 6 because the quantities involved would unlikely be above the exempted quantities granted in the subsidiary legislation, especially after the proposed relaxation of the exempted quantities (see paragraph 7 above). Furthermore, in respect of detailed control measures stipulated in the subsidiary legislation, there are already special defences provisions. See regulations 179 and 180 of the Dangerous Goods (General) Regulations at Annex B. We consider that there is no need to upset the present statutory framework by introducing a due diligence defence provision in relation to section 6 of the principal ordinance.

9. Subject to the passage of the Dangerous Goods (Amendment) Bill 2000 and the amendments to the subsidiary legislation to be introduced in due course, we will step up publicity to remind the trade of the scope of the application of the amended Dangerous Goods Ordinance. In particular, the Director of Fire Services and Director of Marine will, pursuant to the new section 5A proposed by the Bill, issue Codes of Practice for the purposes of providing practical guidance in respect of the requirements of the amended Ordinance.

## **Provisions for exempted quantities and related control measures**

10. We have carefully examined the empowering provisions in the new sections 5(1)(b) and (ba) as proposed by the Bill in consultation with DoJ. To ensure that the scope of the empowering provisions is broad enough to cover all the envisaged circumstances under which an exemption would need to be made, we will consider Committee Stage Amendments for this purpose as necessary and appropriate.

11. We have also considered whether details of the control measures in respect of dangerous goods found in consumer packs should be provided in the principal ordinance or subsidiary legislation. In our view, the current legislative framework of DGO is satisfactory and in line with those of many other ordinances, in that the main provisions setting out the principles and key features of the control system can be found in the principal ordinance whereas details of the control measures, which are largely technical in nature, would be given in the subsidiary legislation. As a matter of principle, we do not consider it appropriate to subject dangerous goods found in consumer packs to different statutory treatment and will suggest no change to the current arrangements of setting out details of the control measures in the subsidiary legislation.

Security Bureau  
May 2001

	<b>Products</b>  <b>(1)</b>	<b>Classification<sup>†</sup> and general exempted quantity under existing DGO</b>  <b>(2)</b>	<b>Classification under the amended DGO<sup>**</sup> and new exempted quantity being considered for dangerous goods found in consumer packs</b>  <b>(3)</b>	
			<b><u>For Retail Outlets</u></b> <b>(a)</b>	<b><u>For General Warehouses</u></b> <b>(b)</b>
1.	Aerosols other than those using liquefied petroleum gas as propellant (e.g. insecticide gas, hair spray, etc.)	Category 2 2 cylinders	<p align="center"><i>Class 2</i></p> <ul style="list-style-type: none"> <li>◆ Toxic/corrosive: Nil (uncommon in consumer pack)</li> <li>◆ Flammables: 130 litres</li> <li>◆ Others: 300 litres</li> </ul> <p align="center">(Capacity*: not exceeding 1 litre)</p>	<p align="center"><i>Class 2</i></p> <ul style="list-style-type: none"> <li>◆ Toxic/corrosive: Nil (uncommon in consumer pack)</li> <li>◆ Flammables: 450 litres</li> <li>◆ Others: 1,000 litres</li> </ul> <p align="center">(Capacity: not exceeding 1 litre)</p>
2.	Adhesives, glue, rubber cement, etc. with flammable liquid base	<i>Category 5</i> 20 litres	<i>Class 3</i> 500 litres (Capacity: not exceeding 500 ml)	<i>Class 3</i> 1,750 litres (Capacity: not exceeding 500 ml)
3.	Disinfectant alcohol or correction liquid, nail lacquers, metal polish liquid, etc. with flammable liquid base	<i>Category 5</i> 20 litres	<i>Class 3</i> 500 litres (Capacity: not exceeding 250 ml)	<i>Class 3</i> 1,750 litres (Capacity: not exceeding 250 ml)
4.	Perfumery products with flammable liquid base	<i>Category 5</i> 20 litres	Class 3 500 litres (Capacity: not exceeding 250 ml)	Class 3 1,750 litres (Capacity: not exceeding 250 ml)

\* 'Capacity' in columns(2), (3)(a) & (3)(b) refer to the maximum capacity of each receptacle concerned.

	Products  (1)	Classification <sup>†</sup> and general exempted quantity under existing DGO  (2)	Classification under the amended DGO <sup>**</sup> and new exempted quantity being considered for dangerous goods found in consumer packs  (3)	
			<u>For Retail Outlets</u>  (a)	<u>For General Warehouses</u>  (b)
5.	Potable spirits	<b>Category 5</b> <ul style="list-style-type: none"> <li>◆ If stored or used in premises protected throughout by automatic sprinkler installations: 12,500 litres (Capacity: not exceeding 5 litres)</li> <li>◆ If stored or used in premises not protected throughout by automatic sprinkler installations: 6,250 litres (Capacity: not exceeding 5 litres)</li> <li>◆ If stored or used in any premises: 2,500 litres (Capacity: exceeding 5 litres)</li> </ul>	Class 3 As in column (2)	Class 3 As in column (2)
6.	Pesticides, flammable	<i>Category 5</i> 20 litres	Class 3 500 litres (Capacity: not exceeding 1 litre)	Class 3 1,750 litres (Capacity: not exceeding 1 litre)
7.	Pesticides, toxic	Category 4 Pentachlorophenol: 5 kg	Class 6.1 500 litres/kg (Capacity: not exceeding 1 litre/kg)	Class 6.1 1,750 litres/kg (Capacity: not exceeding 1 litre/kg)
8.	Synthetic camphor	Not classified as dangerous goods.	Class 4.1 1,000 kg (not in flake or powder form) (Capacity: not exceeding 3 kg)	Class 4.1 3,500 kg (not in flake or powder form) (Capacity: not exceeding 3 kg)
9.	Naphthalene balls	<i>Category 8</i> 50 kg	Class 4.1 1,000 kg (not in flake or powder form) (Capacity: not exceeding 3 kg)	Class 4.1 3,500 kg (not in flake or powder form) (Capacity: not exceeding 3 kg)

	Products  (1)	Classification <sup>†</sup> and general exempted quantity under existing DGO  (2)	Classification under the amended DGO <sup>**</sup> and new exempted quantity being considered for dangerous goods found in consumer packs  (3)	
			<u>For Retail Outlets</u>  (a)	<u>For General Warehouses</u>  (b)
10.	Bleaching powder (with 10% or more available chlorine by mass)	<i>Category 4</i>  250 kg	<i>Class 5.1</i>  1,000 kg  (Capacity: not exceeding 3 kg)	<i>Class 5.1</i>  3,500 kg  (Capacity: not exceeding 3 kg)
11	Bleaching solution (with 10% or more available chlorine by mass or pH value $\geq$ 11.5)	<i>Category 4</i>  250 litres	<i>Class 8</i>  1,000 litres  (Capacity: not exceeding 3 litres)	<i>Class 8</i>  3,500 litres  (Capacity: not exceeding 3 litres)
12.	Hydrogen peroxide solution	<i>Category 7</i>  <ul style="list-style-type: none"> <li>◆ Solutions of a strength greater than 35% and not exceeding 60% by weight: Nil</li> <li>◆ Solutions of a strength greater than 6% and not exceeding 35% by weight: 25 litres</li> </ul>	<i>Class 5.1</i>  <ul style="list-style-type: none"> <li>◆ Aqueous solution, with not less than 20% but not more than 60% hydrogen peroxide (stabilized as necessary): 200 litres  (Capacity: not exceeding 250 ml)</li> <li>◆ Aqueous solution, with not less than 8% but less than 20% hydrogen peroxide (stabilized as necessary): 500 litres  (Capacity: not exceeding 250 ml)</li> </ul>	<i>Class 5.1</i>  <ul style="list-style-type: none"> <li>◆ Aqueous solution, with not less than 20% but not more than 60% hydrogen peroxide (stabilized as necessary): 700 litres  (Capacity: not exceeding 250 ml)</li> <li>◆ Aqueous solution, with not less than 8% but less than 20% hydrogen peroxide (stabilized as necessary): 1,750 litres  (Capacity: not exceeding 250 ml)</li> </ul>
13.	Caustic potash (cleansing liquid)	<i>Category 3</i>  50 litres	<i>Class 8</i>  500 litres  (Capacity: not exceeding 3 litres)	<i>Class 8</i>  1,750 litres  (Capacity: not exceeding 3 litres)
14.	Caustic soda (cleansing liquid)	<i>Category 3</i>  50 litres	<i>Class 8</i>  500 litres  (Capacity: not exceeding 3 litres)	<i>Class 8</i>  1,750 litres  (Capacity: not exceeding 3 litres)

	Products  (1)	Classification <sup>‡</sup> and general exempted quantity under existing DGO  (2)	Classification under the amended DGO <sup>**</sup> and new exempted quantity being considered for dangerous goods found in consumer packs  (3)	
			<u>For Retail Outlets</u>  (a)	<u>For General Warehouses</u>  (b)
15.	Ammonia solution, with more than 10% but not more than 35% ammonia by mass (floor wax remover, cleansing liquid, etc.)	Category 4  50 litres	Class 8  1,000 litres  (Capacity: not exceeding 3 litres)	Class 8  3,500 litres  (Capacity: not exceeding 3 litres)
16.	Toilet bowl, drainage, tile & oven cleanser, etc.	Category 3 <ul style="list-style-type: none"> <li>◆ Hydrochloric acid (muriatic acid, spirits of salt): 25 litres</li> <li>◆ Sulphuric acid (containing not less than 10% sulphuric acid by weight): 10 litres</li> <li>◆ Nitric acid: 10 litres</li> </ul>	Class 8 <ul style="list-style-type: none"> <li>◆ Hydrochloric acid (muriatic acid, spirits of salt): 500 litres</li> <li>◆ Sulphuric acid, with not more than 51% acid: 500 litres</li> <li>◆ Nitric acid, other than red fuming, all concentration: 500 litres</li> </ul> (Capacity: not exceeding 2 litres)	Class 8 <ul style="list-style-type: none"> <li>◆ Hydrochloric acid (muriatic acid, spirits of salt): 1,750 litres</li> <li>◆ Sulphuric acid, with not more than 51% acid: 1,750 litres</li> <li>◆ Nitric acid, other than red fuming, all concentration: 1,750 litres</li> </ul> (Capacity: not exceeding 2 litres)
17.	Mothballs (containing > 90% of para-dichlorobenzene by mass)	Category 4  25 kg	Class 9  2,000 kg  (Capacity: not exceeding 3 kg)	Class 9  7,000 kg  (Capacity: not exceeding 3kg)

‡ Category 2 Compressed Gases  
Category 3 Corrosive Substances  
Category 4 Poisonous Substances  
Category 5 Substances giving off inflammable vapour  
Category 7 Strong supporters of combustion  
Category 8 Readily combustible substances

\*\* Class 2 Gases  
Class 3 Flammable liquids  
Class 4.1 Flammable solids, self-reactive substances and solid desensitised explosives  
Class 5.1 Oxidizing substances  
Class 6.1 Toxic substances  
Class 8 Corrosive substances  
Class 9 Miscellaneous dangerous substances and articles



**BLIS ON  
INTERNET**

**Section of Enactment**

---

▼  
Chapter: 295B Title: DANGEROUS GOODS Gazette  
(GENERAL) Number:  
REGULATIONS  
Regulation: **179** Heading: **Special defences relating to** Version Date: 30/06/1997  
**warehouse owners and**  
**carriers**

No warehouse owner or carrier, acting in such capacity, who is accused of an offence under these regulations relating to the contents of any container or the inner packing of any dangerous goods or the labelling of any such inner packing shall be convicted thereof if he shows, to the satisfaction of the court, that he did not know the true nature of the contents of the container or the manner in or the extent to which the container was filled or the true nature of or the labelling of the inner packing of such goods, as the case may be, and that he could not, with reasonable diligence, have obtained such knowledge.

**BLIS ON  
INTERNET**

**Section of Enactment**

---

▼  
Chapter: 295B Title: DANGEROUS GOODS Gazette  
(GENERAL) Number:  
REGULATIONS  
Regulation: **180** Heading: **Special defences relating** Version Date: 30/06/1997  
**to the transport of**  
**dangerous goods**

No person who is accused of an offence under these regulations relating to the conveyance, storage or packing of dangerous goods shall be convicted thereof if he shows, to the satisfaction of the court, that he was conveying, storing or packing such dangerous goods for his reasonable personal use and that the quantity thereof was sufficient only for such use, or that he was transporting such goods for delivery to some other person for such use and in such quantity.

---