

C008-E

Amend the Dutiable Commodities Ordinance.

Enacted by the Legislative Council.

1. Short title and commencement

(1) This Ordinance may be cited as the Dutiable Commodities (Amendment) Ordinance 2001.

(2) This Ordinance shall come into operation on a day to be appointed by the Secretary for Commerce and Industry by notice published in the Gazette.

2. Interpretation

Section 2(1) of the Dutiable Commodities Ordinance (Cap. 109) is amended by adding---

"electronic record" (電子紀錄) has the meaning given to that term in section 2(1) of the Electronic Transactions Ordinance (Cap. 553);

"information" (資料) has the meaning given to that term in section 2(1) of the Electronic Transactions Ordinance (Cap. 553);

"information system" (資訊系統) has the meaning given to that term in section 2(1) of the Electronic Transactions Ordinance (Cap. 553);

"recognized electronic service" (認可服務) means a service for the interchange of electronic records that is provided by a specified electronic service provider;

"security device" (保安裝置) means a device issued to a person to be used for authenticating that person as the sender of information using a recognized electronic service;

"specified electronic service provider" (指明服務提供者) means a person specified under section 3A(1);

"specified eligible agent" (指明合資格代理人) means a person specified under section 3A(2);".

3. Part added

The following is added---

"PART IA

Use of Electronic Records and Procedures

3A. Specified electronic service providers and eligible agents

(1) The Secretary for Commerce and Industry may, by notice published in the Gazette, specify a person to be a provider of a recognized electronic service under this Ordinance.

(2) The Secretary for Commerce and Industry may, by notice published in the Gazette, specify a person who is eligible to accept appointment to act as an agent

for any person---

(a) in sending information to the Commissioner under this Ordinance using a recognized electronic service; or

(b) in receiving information that has been sent by the Commissioner under this Ordinance using a recognized electronic service.

(3) A notice issued under subsection (1) or (2) is not subsidiary legislation.

3B. Presumption regarding information sent by recognized electronic service

(1) Where information received by the Commissioner was sent using a recognized electronic service, evidence that shows that the identity of the sender of the information was authenticated by the use of a security device is, in the absence of evidence to the contrary, proof that the person issued with the security device--

(a) furnished the information; or

(b) made any statement or declaration contained in the information.

(2) Where information received by the Commissioner was sent using a recognized electronic service by a specified eligible agent who has obtained an authorization in accordance with section 3D, a person named in the information as the person who furnished the information or who made a statement or declaration contained in the information is, in the absence of evidence to the contrary, regarded for the purposes of this Ordinance as the person who---

(a) furnished the information; or

(b) made the statement or declaration contained in the information.

3C. Safe-keeping of security device

(1) A person who has been issued with a security device shall not authorize or allow any other person to use the device in connection with the sending of information to the Commissioner under this Ordinance using a recognized electronic service.

(2) A person who has been issued with a security device shall take all reasonable steps and exercise due diligence to prevent any other person from using the device in connection with the sending of information to the Commissioner under this Ordinance using a recognized electronic service.

(3) A person who contravenes subsection (1) or (2) commits an offence and is liable to a fine at level 5 and to imprisonment for 6 months.

3D. Duty of specified eligible agent

(1) A specified eligible agent shall not send on behalf of any person information using a recognized electronic service unless the agent has obtained from the person an authorization in writing to do so.

(2) A person who contravenes subsection (1) commits an offence and is liable to a fine at level 3."

4. Regulations

Section 6(1) is amended by adding---

"(ea) the Commissioner to specify any form or requirement for giving information required to be given in respect of any goods to which this Ordinance applies;".

5. Grant of licences and permits

Section 7(1)(b)(iii) is amended by repealing "either personally or by registered post".

6. Applications for licences and permits

Section 8(b) is amended by repealing "either personally or in writing".

7. Register of requisitions and permits

Section 9 is amended by repealing---

"entered in a book or books in the office of the officer authorized to issue the permit, and the absence of a requisition or copy therefrom"
and substituting---

"kept under the control of the officer authorized to issue the permit, and the absence of any requisition or copy from its usual place of keeping".

8. Books and documents, etc. in non-legible form

(1) Section 11A(2) is amended---

(a) by repealing "book or document" where it first appears and substituting "licence, permit, book or other document was issued or";

(b) by repealing "book or document" where it secondly and last appears and substituting "licence, permit, book or other document".

(2) Section 11A is amended by adding---

"(3) Without affecting the generality of subsection (2), where any premises or place have been entered under section 11(1)(a), a power conferred by this Ordinance---

(a) to require the production of any licence, permit, book or other document shall be construed as including the power to require that any information of a kind specified in subsection (4) and relating to such licence, permit, book or other document be produced in the premises or place in a legible form;

(b) to inspect, remove and detain for the purposes of examination, or to examine and copy, any licence, permit, book or other document shall be construed as including the power---

(i) to require that any information of a kind specified in subsection (4) and relating to such licence, permit, book or other document be produced in a form in which it can be taken away and in which it is either legible or capable of being retrieved on a computer; and

(ii) to take away the material so produced.

(4) The information specified for the purposes of subsection (3) is information that is---

(a) stored in the form of an electronic record in or accessible from the premises or place entered under section 11(1)(a); or

(b) contained in any device found in the premises or place entered under section 11(1)(a) and that is capable of being retrieved in the form of an electronic record.".

9. Import and export statements

(1) Section 22(1) is amended by repealing "7" and substituting "14".

(2) Section 22(2) is amended by repealing "7" and substituting "14".

(3) Section 22 is amended by adding---

"(7) The requirement under subsection (1) to furnish a statement in relation to goods to which this Ordinance applies that are imported or exported in any ship, aircraft or vehicle shall be regarded as having been complied with if---

(a) a manifest of the cargo imported or exported in the ship, aircraft or vehicle is lodged for the purposes of regulation 11 or 12 (as may be appropriate) of the Import and Export (Registration) Regulations (Cap. 60 sub. leg.) using services provided by a specified body;

(b) the manifest contains such particulars in relation to the goods as is required to be contained in a statement furnished to the Commissioner under subsection (1); and

(c) the manifest is lodged within the period specified in subsection (1) for the furnishing of a statement under that subsection in relation to the goods.

(8) Despite subsection (7), the Commissioner may, by notice in writing given to any person to whom subsection (1) applies, require that a statement as required under subsection (1) be furnished and, if such a notice is given---

(a) a statement as required under subsection (1) shall be furnished to the Commissioner within 14 days after service of the notice but otherwise in accordance with that subsection;

(b) subsection (5) shall apply in relation to a failure to comply with this subsection as it applies in relation to a failure to comply with subsection (1).

(9) The requirement under subsection (2) to furnish a statement in relation to goods to which this Ordinance applies in the case of a ship or aircraft that arrives in or departs from Hong Kong shall be regarded as having been complied with if--

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(a) a manifest of the cargo imported or exported in the ship or aircraft is lodged for the purposes of regulation 11 or 12

(as may be appropriate) of the Import and Export (Registration) Regulations (Cap. 60 sub. leg.) using services provided by a specified body; and

(b) the manifest is lodged within the period specified in subsection (2) for the furnishing of a statement under that subsection in relation to the goods.

(10) Despite subsection (9), the Commissioner may, by notice in writing given to any person to whom subsection (2) applies, require that a statement as required under subsection (2) be furnished and, if such a notice is given---

(a) a statement as required under subsection (2) shall be furnished to the Commissioner within 14 days after service of the notice but otherwise in accordance with that subsection;

(b) subsection (5) shall apply in relation to a failure to comply with this subsection as it applies in relation to a failure to comply with subsection (2).".

10. Assessment of duty

Section 26(2) is amended---

(a) in paragraph (c), by repealing the full stop and substituting "; or";

(b) by adding---

"(d) if sent to him in the form of an electronic record.".

11. Misrepresentation, concealment, removal of goods, and defacement of licence or permit

Section 36(1) is amended by repealing "whether or not such statement, declaration or information is made verbally or in writing" and substituting "however made or furnished".

12. Section added

The following is added---

"42A. Proof of contents of electronic record

(1) A document---

(a) purporting to be a copy, produced from one of the Government's information systems, of the record of any information sent or received by a Government information system in the form of an electronic record; and

(b) purporting to be certified by the Commissioner, shall be admitted in any proceedings under this Ordinance before a court or magistrate on its production without further proof.

(2) Where a document is produced and admitted as evidence under subsection (1)---

(a) the court or magistrate before which it is produced shall, until the contrary is proved, presume that---

(i) it was certified under subsection (1)(b);

(ii) the document is a true copy of the record of information so sent; and

(iii) the record was duly made at the time referred to in the document; and

(b) the document is evidence of the contents of the information sent by the sender.

(3) Where a document is produced and admitted as evidence under subsection (1), the court or magistrate may, if it or he thinks fit, on its or his own motion or on the application of any party to the proceedings, summon the person who certified the document and examine him as to its subject-matter."

13. "文本" substituted for "副本"

Sections 11A(2), 42, 48A(9)(a) and 49 are amended by repealing "副本" wherever it appears and substituting "文本".

Explanatory Memorandum

The purpose of this Bill is to amend the Dutiable Commodities Ordinance (Cap. 109) ("the Ordinance") to allow for the use of a particular electronic service that is recognized by the Commissioner of Customs and Excise ("the Commissioner") in sending information, or receiving of information sent, under the Ordinance and to make other miscellaneous amendments relating to the use of electronic records generally under the Ordinance.

2. Clause 2 amends section 2(1) of the Ordinance to introduce and define certain terms relevant to the use of recognized electronic services.

3. Clause 3 adds new sections 3A to 3D to the Ordinance. Those sections provide for the specification of persons as providers of recognized electronic services under the Ordinance (new section 3A(1)), for the use of agents in sending information using a recognized electronic service (new sections 3A(2) and 3D), for aids to proof in relation to information received by the Commissioner that has been sent using a recognized electronic service (new section 3B) and for the use of security devices in connection with recognized electronic services (new section 3C).

4. Clause 4 amends the regulation-making power under the Ordinance (section 6). This amendment will allow regulations to be made in relation to the use of recognized electronic services for giving information in respect of goods to which the Ordinance applies.

5. Clause 5 amends section 7(1) of the Ordinance. The legal effect of this amendment is to provide for the issue of directions to licencees or holders of permits under that section in electronic form.

6. Clause 6 amends to section 8(b) of the Ordinance in relation to the form of applications for licences or permits in cases that are not specifically provided for by regulations.

7. Clause 7 amends section 9 of the Ordinance. The legal effect of this amendment is to allow for the keeping of a register of requisitions and permits in electronic form.

8. Clause 8 amends section 11A of the Ordinance to provide that the powers conferred under section 11(1)(b) of the Ordinance shall apply in relation to documents in

non-legible form.

9. Clause 9 amends section 22 of the Ordinance. The legal effect of this amendment is to allow for information in relation to import and export statements to be lodged in electronic form in certain circumstances.

10. Clause 10 amends section 26(2) of the Ordinance to provide for notices as to duty payable under that section to be issued in electronic form.

11. Clause 11 amends section 36(1) of the Ordinance, which prohibits the giving of false information for any purpose under the Ordinance. The legal effect of this amendment is to ensure that it covers information given in electronic form.

12. Clause 12 adds new section 42A to the Ordinance to facilitate the admission and proof of electronic records in court proceedings.