

C072-E

A Bill To

Amend the Dangerous Goods Ordinance.

Enacted by the Legislative Council.

1. Short title and commencement

(1) This Ordinance may be cited as the Dangerous Goods (Amendment) Ordinance 2000.

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

2. Interpretation

Section 2 of the Dangerous Goods Ordinance (Cap. 295) is amended---

(a) in the definition of "dangerous goods", by repealing "goods or substances" and substituting "substances, materials or articles";

(b) by repealing the definition of "explosive" and substituting---

""explosive" (爆炸品) means---

(a) any solid or liquid substance or any mixture of solid or liquid substances, or both, which is---

(i) capable by chemical reaction in itself of producing gas at such a temperature and pressure and at such a speed as could cause damage to surroundings; or

(ii) designed to produce an effect by heat, light, sound, gas or smoke, or a combination of these, as a result of non-detonative self-sustaining exothermic chemical reactions; or

(b) any article containing any substance or mixture referred to in paragraph (a);";

(c) by repealing the definition of "vessel" and substituting---

""vessel" (船隻) includes---

(a) any ship, junk, boat, dynamically supported craft, seaplane, or any other description of vessel used in navigation; and

(b) any other description of vessel in Hong Kong or in the waters of Hong Kong not used in navigation or not constructed or adapted for use in navigation;";

(d) by adding---

""IMDG Code" (《規則》) means the International Maritime Dangerous Goods Code published by the International Maritime Organization, as amended or revised by the Organization from time to time;".

3. Application

Section 3 is amended by repealing everything from "This" to "section 5" and substituting---

"This Ordinance shall apply to---

(a) explosives;

- (b) gases;
- (c) flammable liquids or solids;
- (d) substances liable to spontaneous combustion;
- (e) substances that, in contact with water, emit flammable gases;
- (f) oxidizing substances;
- (g) organic peroxides;
- (h) toxic substances;
- (i) infectious substances;
- (j) radioactive material;
- (k) corrosive substances; and
- (l) such substances, materials or articles to which the Ordinance is applied by the Chief Executive in Council under section 5".

4. Regulations

Section 5 is amended---

(a) in subsection (1)---

- (i) in paragraph (a), by adding ", materials" after "substances";
- (ii) in paragraph (b), by adding ", material" after "substance";
- (iii) by adding---

"(ba) the application to or exemption from---

- (i) any section of this Ordinance; or
- (ii) any provision of the regulations,

in respect of dangerous goods on land or dangerous goods at sea;"

(iv) in paragraph (d), by repealing "storage," and substituting "handling, loading, unloading, stowage, storage, carriage,"

(v) in paragraph (e)---

(A) by adding ", placard, mark or sign" after "label";

(B) by adding ", freight container" after "case";

(vi) by adding---

"(ga) the implementation of all or part of the IMDG Code, any other publication issued by the International Maritime Organization or any other international agreement dealing with dangerous goods, including the utilization of---

(i) a system of classification of dangerous goods;

(ii) testing requirements used to determine whether or not a substance, material or article constitutes dangerous goods to which regulations should apply, contained in such code, publication or other international agreement;"

(vii) in paragraph (h)---

(A) by adding "and declaration" after "information" where it twice appears;

(B) by adding "and other persons" after "public officers";

(viii) in paragraph (i), by adding "and warning signs" after "signals";

(ix) by adding---

"(ma) empowering the Director of Marine to grant an exemption from all or any of the provisions of a regulation relating to vessels, and such an exemption may be made---

(i) by regulation in respect of a class of cases; or

(ii) by order published in the Gazette in respect of a specific case;

(mb) the detention of any vessel in respect of which any contravention of a provision of this Ordinance or regulations made under this Ordinance is believed to have occurred;

(mc) prohibiting or controlling 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 dangerous goods, for the purpose of ensuring proper standards are maintained in the course of any such activity;

(md) the imposition of duties on drivers of vehicles carrying dangerous goods;";
(b) in subsection (2), in the proviso, by repealing "of \$25,000" and substituting "at level 6";

(c) by adding---

"(3) For the avoidance of doubt, an order made under subsection (1)(ma)(ii) is not subsidiary legislation."

5. Section added

The following is added before Part II---

"5A. Codes of practice

(1) In this section, "Director" (處長) means the Director of Fire Services or the Director of Marine, as the case may be.

(2) For the purpose of providing practical guidance in respect of any one or more of the requirements of this Ordinance or of regulations made under this Ordinance, the Director may issue such codes of practice (whether prepared by the Director or not) as the Director considers appropriate.

(3) The Director may amend or revoke a code of practice issued by him under subsection (2).

(4) Where the Director exercises a power under subsection (2) or (3), he shall, as soon as may be reasonably practicable, publish notice thereof in the Gazette and the notice shall be in such form as the Director considers appropriate.

(5) A failure by any person to observe a provision of such a code shall not of itself cause him to incur any criminal liability, but where---

(a) in any criminal proceedings the defendant is alleged to have committed an offence either---

(i) by reason of a contravention of or a failure to comply with, whether by act or omission, this Ordinance or regulations made under this Ordinance; or

(ii) by reason of a failure to discharge or perform a duty imposed by this Ordinance or such regulations; and

(b) the matter to which the alleged contravention or failure relates is one to which, in the opinion of the court, such a code relates, then subsection (6) shall apply as regards the proceedings.

(6) In any criminal proceedings to which this subsection applies, the following namely---

(a) compliance with a provision of a code found by the court to be relevant to a matter to which a contravention or failure alleged in the proceedings relates;

(b) a contravention of or failure to comply with, whether by act or omission, any such provision so found,

may be relied on by any party to the proceedings as tending to establish or to negative any liability which is in question in the proceedings.

(7) In any criminal proceedings, any document which purports to be a copy of a particular code shall, in the absence of evidence to the contrary, be regarded by the court as being a true copy of that code."

6. Penalty for breach of licence

Section 9B is amended by repealing everything after "conviction" and substituting---

"---

(a) for a first offence, by a fine at level 5 and imprisonment not exceeding 1 month;

(b) for a subsequent offence, by a fine at level 6 and imprisonment not exceeding 3 months."

7. Marking of dangerous goods and giving of notice of their character

Section 10 is amended by repealing "No" and substituting "Except as otherwise provided in this Ordinance or regulations made under this Ordinance, no".

8. Power of entry, etc.

Section 12(1) is amended---

(a) by adding "and any officer of the Marine Department not below the rank of Marine Inspector II" after "Commissioner of Mines,";

(b) in paragraph (b), by adding ", material or article" after "substance".

9. Regulations for management of depots

Section 13E(2) is amended by repealing "of \$25,000" and substituting "at level 6".

10. Offences and penalties

Section 14 is amended---

(a) in subsection (1), by repealing everything from "Any" to "months" and substituting---

"Any person who contravenes---

(a) section 6 shall be guilty of an offence and shall be liable---

(i) for a first offence, to a fine at level 6 and to imprisonment for 6 months;

(ii) for a subsequent offence, to a fine of \$200,000 and to imprisonment for 12 months;

(b) section 7, 8 or 10 shall be guilty of an offence and shall be liable to a fine at level 6 and to imprisonment for 6 months";

(b) in subsection (2), by repealing "of \$1,000" and substituting "at level 2";

(c) in subsection (3), by repealing "of \$20,000" and substituting "at level 6".

11. Section added

The following is added---

"19A. Application of IMDG Code

(1) Where dangerous goods are being carried, or intended to be carried, on board a vessel and such goods are packed, marked and labelled in accordance with the 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 transporting them to or from any berth where the vessel on which they have been, or will be, conveyed is located.

(2) Where dangerous goods are passing through Hong Kong as part of an international journey and such goods are packed, marked and labelled in accordance with the 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."

Consequential Amendments

Shipping and Port Control Ordinance

12. Interpretation

Section 2 of the Shipping and Port Control Ordinance (Cap. 313) is amended by repealing the definition of "dangerous goods" and substituting---

"'dangerous goods' (危險品) means dangerous goods within the meaning of section 2 of the Dangerous Goods (Shipping) Regulations (Cap. 295 sub. leg.);".

Merchant Shipping (Safety) Ordinance

13. Interpretation

Section 2(1) of the Merchant Shipping (Safety) Ordinance (Cap. 369) is amended---

(a) by repealing the definition of "dangerous goods" and substituting---

"'dangerous goods' (危險品) means substances, materials or articles---

(a) that are classified in the IMDG Code as dangerous for carriage by sea;
(b) 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, unless such receptacles, tanks or cargo holds have, after such use, been---

(i) cleaned and dried;

(ii) gas freed or ventilated where appropriate; or

(iii) where the previous contents were radioactive materials, cleaned and adequately closed,

but does not include substances, materials or articles forming part of the equipment or stores of a vessel;"

(b) by adding---

"IMDG Code" (《規則》) means the International Maritime Dangerous Goods Code published by the International Maritime Organization, as amended or revised by the Organization from time to time;"

Merchant Shipping (Local Vessels) Ordinance

14. Interpretation

Section 2 of the Merchant Shipping (Local Vessels) Ordinance (Cap. 548) is amended by repealing the definition of "dangerous goods" and substituting---

"dangerous goods" (危險品) means dangerous goods within the meaning of section 2 of the Dangerous Goods (Shipping) Regulations (Cap. 295 sub. leg.);"

15. Interpretation

Section 37 is amended, in the definition of "修理", in paragraph (b), by repealing "貨物" and substituting "品".

Explanatory Memorandum

The purpose of this Bill is to make miscellaneous amendments to the Dangerous Goods Ordinance (Cap. 295) ("the Ordinance").

2. The Bill---

(a) revises the definitions of "dangerous goods", "explosive" and "vessel" and introduces a new definition of "IMDG Code" (clause 2);

(b) amends section 3 to reflect the terminology used in the IMDG Code to classify dangerous goods (clause 3);

(c) amends the regulation making section to provide for implementation of the IMDG Code, other publications issued by the International Maritime Organization and other international agreements, empower the Director of Marine to grant exemptions in respect of shipping and to set the maximum fine at level 6 (clause 4);

(d) enacts a new section empowering the Director of Fire Services and the Director

- of Marine to issue codes of practice (clause 5);
- (e) increases the penalties for breach of a licence (clause 6);
- (f) creates an exception to the notice, labelling and marking requirements in respect of dangerous goods (clause 7);
- (g) amends the search and seizure provisions to include officers of the Marine Department in the group of officers authorized to exercise the powers (clause 8);
- (h) amends sections to set the fines at various levels (clauses 9 and 10);
- (i) enacts a new section that provides for compliance with the International Maritime Dangerous Goods Code as an alternative to complying with the requirements under the Ordinance (clause 11);
- (j) makes consequential amendments to other Ordinances (clauses 12 to 15).