

LN158-E

Merchant Shipping (Local Vessels)
(Dwelling Vessels) Regulation
(Made under section 89 of the Merchant Shipping
(Local Vessels) Ordinance (Cap. 548))

1. Commencement

This Regulation shall come into operation on the day appointed for the commencement of the Merchant Shipping (Local Vessels) Ordinance (Cap. 548).

2. Interpretation

In this Regulation, unless the context otherwise requires---

"closed area" (禁區) means an area of the waters of Hong Kong specified in Schedule 1;

"licence" (牌照) means---

(a) a licence issued under the repealed Regulations and in force immediately before the commencement of this Regulation; or

(b) a licence issued under this Regulation;

"licensed dwelling vessel" (已領牌住家船隻) means a dwelling vessel in respect of which a licence has been issued and is for the time being in force, and "unlicensed dwelling vessel" (未領牌住家船隻) shall be construed accordingly;

"licensee" (持牌人) means---

(a) a person to whom a licence for the time being in force is issued; or

(b) a person to whom a licence for the time being in force is transferred under section 7;

"period of validity" (有效期), in relation to a licence, means the period from the date of issue of the licence up to and including the date of expiry of the licence, both dates as specified in the licence;

"prescribed area" (訂明範圍) means an area of the waters of Hong Kong specified in Schedule 2;

"repealed Regulations" (已廢除規例) means the Shipping and Port Control (Dwelling Vessels) Regulations (Cap. 313 sub. leg.).

3. Licensing of dwelling vessels

(1) A licence issued under the repealed Regulations and in force immediately before the commencement of this Regulation shall, subject to the provisions of this Regulation, continue in force until the expiry of its period of validity.

(2) No person shall use a vessel as a dwelling vessel in a prescribed area, or cause or permit a dwelling vessel to enter or remain in a prescribed area, unless---

(a) a licence has been issued in respect of the vessel and is for the time being in

force; and

(b) the provisions of this Regulation and the conditions specified in the licence are complied with.

(3) A person who, without reasonable excuse, contravenes subsection (2) commits an offence and is liable on conviction to a fine at level 2 and to imprisonment for 6 months.

(4) If an unlicensed dwelling vessel enters or remains in a prescribed area, or if a licensed dwelling vessel enters or remains in a prescribed area in contravention of any provision of this Regulation or any condition specified in the licence issued in respect of the vessel for the time being in force, the person in control of the vessel commits an offence and is liable on conviction to a fine at level 2 and to imprisonment for 6 months.

(5) The Director may, on the issue of a licence under section 4(3)(a) pursuant to an application for renewal or under section 7(6)(a) pursuant to an application for transfer, specify in the licence such conditions as he considers necessary or desirable in the interests of safety or discipline.

(6) The Director may, at any time while a licence is in force, make such amendments or additions to the conditions specified in the licence as he considers necessary or desirable in the interests of safety or discipline and request that the licence be delivered to him for amendments or additions to be made under this subsection.

(7) A person who, without reasonable excuse, fails to comply with a request made by the Director under subsection (6) commits an offence and is liable on conviction to a fine at level 2 and to imprisonment for 6 months.

4. Renewal of licences

(1) The licensee of a licensed dwelling vessel may, at any time during the period of 3 months immediately before the expiry of the period of validity of the licence issued in respect of the vessel, apply for the licence to be renewed.

(2) An application for the renewal of a licence shall be made to the Director in a form specified by him, and shall give such particulars regarding the applicant, the owner of the vessel in respect of which the licence is issued, and every person normally dwelling on the vessel at the time of the making of the application, as the Director may require.

(3) The Director may determine an application for the renewal of a licence made under subsection (1)---

(a) by issuing a licence to the applicant in accordance with subsection (5); or
(b) by refusing to renew the licence.

(4) If an application for the renewal of a licence is made under subsection (1) and the period of validity of the licence expires before the determination of the

application, the licence shall continue in force until the determination of the application, the withdrawal of the application or the cancellation of the licence under section 8, whichever occurs first.

(5) A licence issued under subsection (3)(a)---

(a) shall be in a form determined by the Director;

(b) shall be subject to such conditions as the Director may specify under section 3(5); and

(c) subject to the provisions of this Regulation, shall be in force for its period of validity, which shall expire on the first anniversary of the expiry of the period of validity of the licence sought to be renewed.

(6) No fee shall be payable in respect of the renewal of a licence.

(7) The licensee of a licensed dwelling vessel shall surrender the licence issued in respect of the vessel to the Director---

(a) upon the renewal of the licence under this section;

(b) upon the expiry of the period of validity of the licence or, where the licence continues in force by virtue of subsection (4) or section 7(5), upon the licence ceasing to be in force; or

(c) upon the cancellation of the licence under section 8, whichever occurs first.

(8) A licensee who contravenes subsection (7) commits an offence and is liable on conviction to a fine at level 2 and to imprisonment for 6 months.

5. Owner to notify Director of change in ownership

(1) If, at any time while a licence is in force, a change occurs in the ownership of the dwelling vessel in respect of which the licence is issued, the new owner of the vessel shall, within 72 hours after the occurrence of the change, notify the Director of the change in a form specified by the Director and deliver the licence to the Director for amendment.

(2) On receipt of a notification of a change in ownership given under subsection (1), the Director shall cause the particulars of the change to be noted, free of charge, on the licence issued in respect of the vessel concerned.

(3) A person who, without reasonable excuse, contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 2 and to imprisonment for 6 months.

6. Painting of licence number and other particulars on vessel

(1) The licensee of a licensed dwelling vessel shall, at all times while the licence issued in respect of the vessel is in force, ensure---

(a) that the licence number specified in the licence and such other particulars of the licence as the Director may specify are painted on the vessel; and

(b) that the painting of the licence number and other particulars on the vessel under paragraph (a) is done and maintained in such manner as the Director may specify.

(2) A licensee who contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 2 and to imprisonment for 6 months.

(3) A person who, without reasonable excuse, damages, obliterates or defaces the licence number or any of the particulars painted on a licensed dwelling vessel in accordance with subsection (1) commits an offence and is liable on conviction to a fine at level 2 and to imprisonment for 6 months.

7. Licence to be transferred only in certain circumstances

(1) A licence shall not be transferred, except as provided in this section.

(2) Where the licensee of a licensed dwelling vessel dies at any time during the period of validity of the licence issued in respect of the vessel, the surviving spouse, parent, parent-in-law, or eldest child over the age of 16 years, of the deceased licensee, in that order, may apply to the Director for the licence to be transferred to him until the expiry of its period of validity, if he was dwelling on the vessel at the time when a licence was first issued in respect of the vessel under the repealed Regulations.

(3) Where the persons dwelling on a licensed dwelling vessel comprise members of more than one family and the licensee of the vessel and members of his family cease to dwell on the vessel at any time during the period of validity of the licence issued in respect of the vessel, a person, other than the licensee or a member of his family, may apply to the Director for the licence to be transferred to him until the expiry of its period of validity, if he is nominated by the family or families continuing to dwell on the vessel so to apply and if he was dwelling on the vessel at the time when a licence was first issued in respect of the vessel under the repealed Regulations.

(4) Subject to subsection (6), the Director may determine an application for the transfer of a licence made under subsection (2) or (3)---

(a) by transferring the licence to the applicant until the expiry of its period of validity; or

(b) by refusing to transfer the licence.

(5) If an application for the transfer of a licence is made under subsection (2) or (3) and the period of validity of the licence expires before the determination of the application, the withdrawal of the application or the cancellation of the licence under section 8, whichever occurs first.

(6) If an application for the transfer of a licence is made under subsection (2) or (3) and the period of validity of the licence expires before the determination

of the application, the Director may determine the application---

(a) by issuing a licence to the applicant in accordance with subsection (7), in which case the Director shall be deemed to have determined the application in the manner provided in subsection (4)(a); or

(b) by refusing to issue such a licence, in which case the Director shall be deemed to have determined the application in the manner provided in subsection (4)(b).

(7) A licence issued under subsection (6)(a)---

(a) shall be in a form determined by the Director;

(b) shall be subject to such conditions as the Director may specify under section 3(5); and

(c) subject to the provisions of this Regulation, shall be in force for its period of validity, which shall be of the same length as the portion of the period of validity of the licence sought to be transferred that remained unexpired at the time of the making of the application for transfer.

(8) If, in the circumstances described in subsection (2) or (3), there is no person who may apply for the transfer of the licence in question under the relevant subsection, the licence in question shall lapse and the Director may require any person in possession of that licence to surrender it.

8. Discretion to cancel licence

Without prejudice to section 12, the Director may, at any time while a licence is in force, cancel the licence for contravention of any condition specified in the licence or of any provision under this Regulation.

9. Licence to be kept on board and produced for inspection

(1) A licence shall, at all times while it is in force, be kept on board the dwelling vessel in respect of which it is issued and be produced on demand to any authorized officer by the licensee or any person normally dwelling on the vessel.

(2) A person who, without reasonable excuse, fails to produce a licence when called upon to do so by an authorized officer commits an offence and is liable on conviction to a fine at level 2 and to imprisonment for 6 months.

10. Issue of duplicate licence if original destroyed, etc.

Where a licence for the time being in force is destroyed, defaced or lost, the Director may, if he is satisfied as to the destruction, defacement or loss, issue a duplicate licence free of charge, and the duplicate licence shall have the same force and effect as the original licence and shall be regarded for all purposes of this Regulation as if it were the original licence.

11. Penalty for fraudulent alteration or use of licence

A person who fraudulently alters or uses a licence, or permits a licence to be fraudulently altered or used, commits an offence and is liable on conviction to a

fine at level 3 and to imprisonment for 6 months.

12. Contravention of condition of licence

If the licensee of a licensed dwelling vessel contravenes, without reasonable excuse, any condition specified in the licence issued in respect of the vessel for the time being in force, he commits an offence and is liable on conviction to a fine at level 2 and to imprisonment for 6 months.

13. Replacement of unsafe vessels

(1) The Director may permit the licensee of a licensed dwelling vessel to replace the vessel with another vessel if the Director is satisfied---

(a) that the vessel to be replaced is unsafe and will be surrendered to the Director for destruction or disposal under subsection (3);

(b) that the replacement vessel is safe;

(c) that the dimensions of the replacement vessel are no larger than those of the vessel to be replaced; and

(d) that the licensee and the persons normally dwelling on the vessel to be replaced provide a service to other vessels in the vicinity.

(2) The Director may require a replacement vessel to be examined, free of charge to the licensee, by a person authorized by him to ensure that it complies with paragraphs (b) and (c) of subsection (1).

(3) Where the Director permits the replacement of a vessel under this section, the vessel shall be surrendered by the licensee to the Director for destruction or disposal.

(4) A licensee who fails to surrender a vessel in accordance with subsection (3) commits an offence and is liable on conviction to a fine at level 2 and to imprisonment for 6 months.

14. Director may require information

(1) The Director may, from time to time, request the licensee of a licensed dwelling vessel to inform him of the name, age and identity card number of any person normally dwelling on the vessel at the time of the making of the request, and of the relationship of such person to the licensee.

(2) A licensee who, having been requested to give information under subsection (1), fails to do so or gives information which he knows or reasonably ought to know to be false in a material particular, commits an offence and is liable on conviction to a fine at level 2 and to imprisonment for 6 months.

15. Closed areas

(1) No person shall cause or permit a dwelling vessel to enter or remain in a closed area.

(2) A person who contravenes subsection (1) commits an offence and is liable on

conviction to a fine at level 2 and to imprisonment for 6 months.

16. Dwelling vessels in closed area or unlicensed dwelling vessels in prescribed area

(1) The Director may by notice order that a dwelling vessel in a closed area be removed from the closed area or that an unlicensed dwelling vessel in a prescribed area be removed from the prescribed area.

(2) A notice given under subsection (1)---

(a) shall be addressed to the owner or licensee of the vessel or generally to all persons normally dwelling on the vessel;

(b) shall be served by affixing it to the mast or any other prominent part of the vessel;

(c) shall order the person or persons to whom the notice is addressed to remove the vessel or cause it to be removed from the closed area or the prescribed area, as the case may be, within such time (being not less than 14 days) as is specified in the notice; and

(d) shall give a brief description of the powers exercisable by the Director under this Regulation if the vessel is not removed as ordered by the notice.

(3) A person who, without reasonable excuse, fails to comply with a notice given under subsection (1) commits an offence and is liable on conviction to a fine at level 2 and to imprisonment for 6 months.

(4) If a vessel is not removed as ordered by a notice given under subsection (1), the Director may do any or all of the following---

(a) seize the vessel;

(b) remove the vessel or cause it to be removed from the closed area or the prescribed area, as the case may be;

(c) detain the vessel.

(5) Where a vessel has been seized and detained under subsection (4), and regardless of whether the vessel has been removed under that subsection, the Director may remove any person or property found on the vessel and may take possession of any property found on the vessel.

(6) As soon as practicable after seizing and detaining a vessel under subsection (4), and regardless of whether the vessel has been removed under that subsection, the Director shall serve a notice of the seizure and detention on the persons whom the Director believes to be the owner and the licensee of the vessel, and on every person whom the Director believes to be the owner or otherwise entitled to the possession of any property on board the vessel.

(7) A notice served under subsection (6) shall be deemed to have been duly served on the person on whom it is to be served---

(a) if the notice is delivered to the person concerned;

(b) if the notice is sent by registered post addressed to that person at the place of residence or business of that person, if any, last known to the Director; or
(c) (where it cannot be served in accordance with paragraph (a) or (b)) if the notice is published in the Gazette.

(8) A notice served under subsection (6) shall---

- (a) state the names (if known to the Director) of the persons whom the Director believes to be the owner and the licensee of the vessel;
- (b) state the name (if known to the Director) of every person whom the Director believes to be the owner or otherwise entitled to the possession of any property on board the vessel;
- (c) describe the vessel and the place at which it was seized;
- (d) describe the property on board the vessel;
- (e) give the reason for the seizure and detention of the vessel;
- (f) specify the position where the vessel is secured, anchored or moored during its detention;
- (g) specify the action (if any) required to secure the release of the vessel or any property on board the vessel; and
- (h) specify the period (being not less than 14 days) within which a claim may be submitted to the Director for the release of the vessel or any property on board the vessel, and the place at which such a claim may be submitted.

(9) The Director may, for the purposes of subsection (8)(g), specify any action required to secure the release of a vessel or any property on board the vessel, and any such action may include the payment of any expense incurred as a result of or in connection with any action taken or caused to be taken by the Director under this section in respect of the vessel or the property in question, as the case may be.

(10) A person who obstructs the Director in the exercise of any of the powers conferred by subsection (4) or (5) commits an offence and is liable on conviction to a fine at level 2 and to imprisonment for 6 months.

17. Release of detained vessels, etc.

(1) A claim for the release of a vessel that is the subject of a notice served under section 16(6), or for the release of any property on board the vessel, may be submitted to the Director, subject to compliance with the following requirements---

- (a) the claim shall be submitted, in the case of a claim for the release of the vessel, by the owner or licensee of the vessel and, in the case of a claim for the release of any property on board the vessel, by the person who is the owner or otherwise entitled to the possession of the property in question; and
- (b) the claim shall be submitted within the period and at the place specified in the notice.

(2) If a claim is submitted to the Director for the release of a vessel that is the subject of a notice served under section 16(6) or for the release of any property on board the vessel, and if the Director is satisfied that the claim is submitted in accordance with the requirements set out in subsection (1) and that the action specified in the notice under section 16(8)(g) in respect of the vessel or the property in question, as the case may be, has been carried out, then the Director shall release the vessel or the property in question, as the case may be, to the claimant.

18. Sale of detained vessels, etc.

(1) If a vessel that is the subject of a notice served under section 16(6) is not released pursuant to section 17(2), the Director may sell the vessel by public auction or otherwise as he thinks fit.

(2) The proceeds of sale of a vessel sold under subsection (1), after deducting all expenses incurred as a result of or in connection with the seizure, removal, detention and sale of the vessel, shall be paid to the owner of the vessel if he claims them within 1 year after the date of the sale, or forfeited to the Government if the owner of the vessel does not claim them within that period.

(3) A vessel that the Director is unable to sell under subsection (1) may be destroyed or otherwise disposed of as the Director thinks fit.

(4) If any property on board a vessel that is the subject of a notice served under section 16(6) is not released pursuant to section 17(2), such property shall become the property of the Government free from the rights of any person and may be disposed of by the Director as he thinks fit.

19. Appeals

(1) Any person aggrieved by a decision of the Director---

(a) to specify any condition in a licence under section 3(5);

(b) to make any amendment or addition to the conditions specified in a licence under section 3(6);

(c) to refuse to renew a licence under section 4(3)(b);

(d) to refuse to transfer a licence under section 7(4)(b);

(e) to cancel a licence under section 8;

(f) to refuse to permit the replacement of a vessel under section 13;

(g) to specify any action required to secure the release of a vessel or any property on board the vessel under section 16(9); or

(h) to refuse to release a vessel or any property on board the vessel under section 17(2),

may, within 14 days after the day on which he is informed of the decision, appeal to the Administrative Appeals Board against the decision.

(2) If a decision referred to in paragraph (a), (b), (c), (d), (e) or (f) of

subsection (1) is appealed against under that subsection, the decision concerned shall be suspended in its operation from the day on which notice of the appeal is lodged until the appeal is disposed of, withdrawn or abandoned, unless such suspension would, in the opinion of the Director, be contrary to the public interest and the notice of that decision contains a statement to that effect.

(3) If a decision referred to in paragraph (g) of subsection (1) is appealed against under that subsection, then, as against the person making the appeal---

(a) the period within which a claim may be submitted to the Director for the release of the vessel concerned or any property on board that vessel, specified in the notice served in respect of that vessel under section 16(6), shall not begin to run until the appeal is disposed of, withdrawn or abandoned; and

(b) the notice shall otherwise have effect subject to the outcome of the appeal.

(4) If a decision referred to in paragraph (h) of subsection (1) is appealed against under that subsection, the decision concerned shall be suspended in its operation from the day on which notice of the appeal is lodged until the appeal is disposed of, withdrawn or abandoned.

20. Amendment of Schedules

The Director may, by notice published in the Gazette, amend either or both of the Schedules.

SCHEDULE 1 [ss. 2 & 20]

Closed Areas

All waters of Hong Kong except Causeway Bay Typhoon Shelter and Cheung Chau Typhoon Shelter.

SCHEDULE 2 [ss. 2 & 20]

Prescribed Areas

Causeway Bay Typhoon Shelter

Cheung Chau Typhoon Shelter

Ms. Sandra LEE

Secretary for Economic Services

29 June 2001

Explanatory Note

This Regulation provides for the regulation and control of dwelling vessels in the waters of Hong Kong following the repeal of the Shipping and Port Control (Dwelling Vessels) Regulations (Cap. 313 sub. leg.) and the Shipping and Port Control (Dwelling Vessels) (Closed Areas) (Consolidation) Order (Cap. 313 sub. leg.).

2. Section 3 provides, inter alia, that a licence issued under the Shipping and Port Control (Dwelling Vessels) Regulations (Cap. 313 sub. leg.) and in force immediately before the commencement of this Regulation shall, subject to this Regulation,

continue in force until its expiry.

3. Section 4 provides for the manner in which a licence may be renewed.

4. Section 7 provides for the manner in which a licence may be transferred.

5. Sections 16 to 18 empower the Director of Marine ("the Director") to order that a dwelling vessel in a closed area, as defined in this Regulation, be removed from the closed area or that an unlicensed dwelling vessel in a prescribed area, as defined in this Regulation, be removed from the prescribed area, and confer on the Director the power to take certain specified action against the vessel if it is not so removed.

6. Section 19 sets out a mechanism for appeal to the Administrative Appeals Board.