

Amend the Marine Fish Culture Ordinance.

Enacted by the Legislative Council.

1. Short title

This Ordinance may be cited as the Marine Fish Culture (Amendment) Ordinance 2002.

2. Interpretation

Section 2 of the Marine Fish Culture Ordinance (Cap. 353) is amended by adding---

"proof of identity" (身分證明文件) has the meaning assigned to it by section 17B(1) of the Immigration Ordinance (Cap. 115);

"relevant proceeds" (有關售賣得益) means proceeds from the sale of relevant property under section 18(2);

"relevant property" (有關財產) means a raft or other thing seized and detained under section 17;

"withdrawal" (撤回) includes abandonment."

3. Grant of licences and renewal thereof

Section 8 is amended---

(a) in subsection (3), by adding "upon payment of the prescribed fee and" after "renewed,";

(b) by repealing subsection (5).

4. Section added

The following is added---

"8A. Transfer of licences

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

(2) An application for the transfer of a licence shall be---

(a) made to the Director by the licensee in such form and manner as the Director may specify; and

(b) accompanied by the prescribed fee.

(3) The Director may determine an application under subsection (2) by

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(a) approving the transfer of the licence to the intended transferee subject to such reasonable variation of the conditions of the licence as the Director thinks fit; or

(b) refusing to approve the transfer of the licence---

(i) on any ground specified in section 8(6) which would have entitled him to refuse to grant or renew a licence;

(ii) on the ground that the licensee has contravened any provision of this Ordinance or any regulation made under this Ordinance or any conditions of the licence, as the case may be;

(iii) if the licence was held by the licensee for less than

2 years;

(iv) in the case where the intended transferee is or was a holder of a licence, on the ground that the intended transferee has contravened any provision of this Ordinance or any regulation made under this Ordinance or any conditions of the licence mentioned in this subparagraph, as the case may be;

(v) if the Director reasonably concludes that false or misleading inf

ormation was furnished by the licensee or the intended transferee in connection with the application.

(4) Where the Director refuses to approve the transfer of a licence under subsection (3)(b), he shall send to the licensee a notice of the refusal and state in the notice the reasons for the refusal.

(5) A licence the subject of an application under subsection (2) (including a licence to which subsection (6) applies) shall continue in force against the licensee unless and until the licence is transferred to the intended transferee under subsection (3)(a).

(6) Where but for this subsection a licence the subject of an application under subsection (2) would expire before the determination of the application under subsection (3), then the licence shall continue in force according to its terms and conditions until---

- (a) the application is withdrawn;
- (b) the licence is cancelled under section 9; or
- (c) the determination of the application under subsection (3), whichever first occurs."

#### 5. Sections substituted

Sections 16, 17, 18 and 19 are repealed and the following substituted---

"16. Right of Appeal

(1) Any person aggrieved by a decision made in respect of him by the Director to---

- (a) refuse to grant or renew a licence under section 8(6);
  - (b) refuse to approve the transfer of a licence under section 8A(3)(b);
  - (c) cancel a licence under section 9(1);
  - (d) refuse to grant a permit under section 14(1); or
  - (e) cancel or refuse to renew a permit under section 14(2),
- may appeal to the Administrative Appeals Board against that decision.

(2) Where an appeal is made under subsection (1) against a decision of the Director to---

- (a) cancel a licence or permit, the decision shall not become effective pending;
- (b) refuse to renew a licence or permit, the licence or permit (if expired) shall be deemed to continue in force according to its terms and conditions until; or
- (c) refuse to grant the transfer of a licence (including a licence to which section 8A(6) applies), the licence shall continue in force pending, the determination of the appeal by the Administrative Appeals Board.

(3) Where---

- (a) an appeal has been made under this section; and
- (b) the period of validity of the licence or permit to which the appeal relates would have expired but for subsection (2)(b) or (c), then the licensee or permittee, as the case may be, shall be liable for the fee prescribed---
- (c) for the period from the day the licence or permit would have expired to the day of the determination of the Administrative Appeals Board or withdrawal of the appeal, whichever first occurs; and
- (d) on a pro rata basis, irrespective of the outcome of the appeal.

17. Power of search, seizure, etc.

(1) Where a magistrate is satisfied by information on oath that there are reasonable grounds for suspecting that any vessel, raft or impoundment within the waters of Hong Kong is being or has been used in connection with any offence under this Ordinance, he may issue a warrant authorizing the Director or any authorized officer to---

(a) board and search any such vessel or raft, or enter any such impoundment; and

(b) seize and detain any such raft or any thing which the Director or an authorized officer reasonably suspects to be, or to contain, evidence of the commission of such an offence.

(2) The Director or an authorized officer may exercise any of the powers referred to in subsection (1)(a) or (b) without a warrant issued under this section if---

(a) he has reasonable grounds for suspecting that any vessel, raft or impoundment is being or has been used in connection with any offence under this Ordinance; and

(b) it would not be reasonably practicable to obtain such a warrant in respect of the vessel, raft or impoundment before exercising those powers.

(3) Subsections (1) and (2) shall not apply to---

(a) any ship required to be provided with a certificate referred to in section 3(1) of the Merchant Shipping Ordinance (Cap. 281); and

(b) any vessel for the time being used for any purpose by the Central People's Government, the Government or any state.

(4) If any raft or impoundment is found sunken, stranded, abandoned or adrift within or outside a fish culture zone, the Director or an authorized officer may seize and detain such raft or any thing found on or in such raft or within or forming part of such impoundment.

(5) The Director or an authorized officer may exercise any of the powers under this section with the assistance of any other persons as he thinks fit.

(6) Within 14 days of the seizure and detention under this section of any raft or any other thing, the Director or an authorized officer shall---

(a) subject to paragraph (b), serve a notice on the person whom he believes to be the owner thereof; or

(b) if the identity and address of the owner thereof is not known to him, publish a notice in the Gazette, in which he shall specify---

(c) his intention to apply for forfeiture of the raft or thing, or the proceeds thereof if the same has been sold under section 18(2); and

(d) the owner may, within 30 days from the date of service or publication, as the case may be, of the notice, submit a claim in writing to the Director for the return of the raft or thing, or the proceeds thereof, as the case may be.

(7) In this section---

"thing" (物件) includes---

(a) any fish, equipment or other thing found on board the vessel or on or in the raft or within the impoundment, as the case may be; and

(b) any net or structure forming part of the impoundment, upon which the Director or an authorized officer has exercised his power under su

bsection (1) or (2).

18. Power of sale and forfeiture

(1) Subject to subsections (3) and (7), any relevant property is liable to forfeiture whether or not any person has been charged with an offence under this Ordinance which relates to the relevant property.

(2) If the Director or an authorized officer reasonably concludes that any relevant property is of a perishable nature or of such a nature that it is difficult to store or is likely to deteriorate before the conclusion of any proceedings under this Ordinance, then he may cause the relevant property to be sold in such manner as he thinks fit, irrespective of whether a claim for its return has been made under section 17(6)(d).

(3) Without prejudice to the generality of subsection (2), on receipt of a claim under section 17(6)(d), the Director or an authorized officer may return to the owner---

(a) any relevant property, upon payment of any reasonable expenses or disbursement incurred in respect of the seizure and detention of the relevant property; or

(b) any relevant proceeds, after deduction of any reasonable expenses or disbursement incurred in respect of the seizure, detention and sale of the relevant property concerned.

(4) After the expiry of the period for making a claim under section 17(6), the Director or an authorized officer may, in proceedings where an offence under this Ordinance is prosecuted or in separate proceedings under this Ordinance, apply to a magistrate for the forfeiture of any relevant property or relevant proceeds where---

(a) no such claim is made; or

(b) the relevant property or relevant proceeds have not been returned under subsection (3).

(5) Upon hearing an application under subsection (4), a magistrate may order that any relevant property or relevant proceeds---

(a) be forfeited to the Government if the magistrate is satisfied that an offence against this Ordinance has been committed;

(b) be returned to the owner subject to such conditions that the magistrate may specify in the order; or

(c) be disposed of in such manner and subject to such conditions that the magistrate may specify in the order.

(6) Where an application is made under subsection (4) for the forfeiture of any relevant property or relevant proceeds, otherwise than in proceedings where an offence under this Ordinance is prosecuted, the Director or an authorized officer shall forthwith notify in writing the owner thereof, unless the owner has indicated in writing to the Director that notification is not required or if the identity and address of the owner is not known to him.

(7) Notwithstanding subsections (1) to (6), if the Director or an authorized officer reasonably concludes that any relevant property is of no appreciable value or of small value, he may cause the relevant property to be destroyed or otherwise disposed of in such manner as he thinks fit.

(8) Any relevant property ordered to be forfeited under this section may be destroyed or otherwise disposed of as determined by the Director or an aut

authorized officer.

19. Power of inspection and arrest

(1) If the Director or an authorized officer has reasonable grounds for suspecting that a person has committed or is about to commit an offence under this Ordinance, he may, without warrant and on proof of his identity, stop the person or, where the person is on board a vessel, stop and board the vessel for the purposes of requiring that person to---

- (a) give his name and address; and
- (b) produce his proof of identity for inspection.

(2) A person who, without reasonable excuse, fails to give his name and address or to produce his proof of identity when required to do so under subsection (1) or gives a false or misleading name or address commits an offence.

(3) The Director or an authorized officer may, without warrant, arrest a person who---

- (a) contravenes subsection (2); or
- (b) is reasonably suspected to have committed or is about to commit an offence under section 6 or 11.

(4) If any person who may be arrested under this section forcibly resists the endeavour to arrest him, or attempts to evade the arrest, the Director or an authorized officer may use all means necessary to effect the arrest.

(5) Where the Director or an authorized officer arrests a person under this section, he shall forthwith take the person to the nearest police station or hand him over to the custody of a police officer to be dealt with in accordance with the Police Force Ordinance (Cap. 232)."

6. Section substituted

Section 21 is repealed and the following substituted---

"21. Penalties

(1) Any person who commits an offence under section 6 or 7 is liable to a fine at level 6 and to imprisonment for 1 year, and in the case of a continuing offence to a further daily penalty of \$1,500.

(2) Any person who commits an offence under section 11 is liable to a fine at level 6 and to imprisonment for 1 year.

(3) Any person who commits an offence under section 12, 13 or 20 is liable to a fine at level 4 and to imprisonment for 6 months.

(4) Any person who commits an offence under section 19(2) is liable to a fine at level 2."

7. Regulations

Section 22 is amended---

(a) in subsection (1), by repealing paragraphs (a) and (b) and substituting--

-(a) the application for and the grant, renewal and transfer of licences, and the fees payable in respect thereof;

(aa) the application for and the grant and renewal of permits, and the fees payable in respect thereof;

(b) the period of validity for which---

(i) licences may be granted, renewed or transferred; and

(ii) permits may be granted or renewed;"

(b) in subsection (2)---

- (i) by repealing "of \$3,000" and substituting "at level 3";
- (ii) by repealing "\$100" and substituting "\$300".

8. Section added

The following is added---

"24. Transitional

(1) Any right of appeal subsisting under section 16 immediately before the commencement of this section shall be treated as being a right of appeal to the Administrative Appeals Board under section 16 as amended by the Marine Fish Culture (Amendment) Ordinance 2002 ( of 2002) ("the amending Ordinance").

(2) Any appeal pending under section 16 immediately before the commencement of this section shall be treated and disposed of as if it were an appeal pending to the Administrative Appeals Board under section 16 as amended by the amending Ordinance."

9. Consequential amendments

The enactments specified in the Schedule are amended as set out in the Schedule.

SCHEDULE [s. 9]

Consequential Amendments

Marine Fish Culture Regulations

1. Applications for licences and permits

Regulation 3(1) of the Marine Fish Culture Regulations (Cap. 353 sub. leg.) is amended by adding "in such form and manner as he may specify" after "the Director".

2. Regulation added

The following is added---

"3A. Transfer of licence

(1) Upon receipt of an application under section 8A(2) of the Ordinance, the Director may require the applicant or the intended transferee to furnish such further information in connection with the application as he thinks necessary.

(2) Where an application under section 8A(2) of the Ordinance is granted---

(a) if the period of validity of the licence remains unexpired, the intended transferee shall hold the licence for the unexpired period from the day immediately following the day of the determination of the application by the Director; or

(b) if the period of validity of the licence expires before the determination of the application by the Director or would have expired but for section 8A(6) of the Ordinance, a new licence shall be issued to the intended transferee by the Director, upon payment of the fee payable for the grant of a licence prescribed by regulation 10(1), which shall take effect---

(i) on the day immediately following the day of the determination; and

(ii) for a period of 12 months or such lesser period as may be indicated by the Director at the time of the determination.

(3) If the period of validity of a licence the subject of an application under section 8A(2) of the Ordinance would have expired before the determination of the Director but for section 8A(6) of the Ordinance, then the licensee shall

ll be liable for the prescribed fee for the licence---

(a) for the period from the day when the licence would have expired until the day of the determination of the application by the Director, withdrawal of the application or cancellation of the licence under section 9 of the Ordinance, whichever ever first occurs; and

(b) on a pro rata basis, unless section 16(3) of the Ordinance applies."

3. Period of licences and permits and renewal thereof

Regulation 4(1) is amended by repealing "section 16(4)(b)" and substituting "sections 8A(6) and 16(2)(b) and (c)".

4. Fees

Regulation 10 is amended by adding---

"(1A) The fee payable for the application for the transfer of a licence shall be \$180."

5. Offences and penalties

Regulation 11 is amended---

(a) in paragraph (1)---

(i) by repealing "of \$500" and substituting "at level 1";

(ii) by repealing "\$50" and substituting "\$140";

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

Administrative Appeals Board Ordinance

6. Schedule amended

The Schedule to the Administrative Appeals Board Ordinance (Cap. 442) is amended by adding---

"59. Marine Fish Culture Ordinance (Cap. 353) A decision of the Director of Agriculture, Fisheries and Conservation---

(a) to refuse to grant or renew a licence under section 8(6);

(b) to refuse to grant the transfer of a licence under section 8A(3)(b);

(c) to cancel a licence under section 9(1);

(d) to refuse to grant a permit under section 14(1);

(e) to cancel or refuse to renew a permit under section 14(2)."

Explanatory Memorandum

The object of this Bill is to amend the Marine Fish Culture Ordinance (Cap. 353) ("the principal Ordinance") to---

(a) establish a mechanism for processing applications for transfer of fish culture licences by the Director of Agriculture, Fisheries and Conservation ("the Director") (clause 4);

(b) repeal and replace section 16 to provide that any appeals against a decision of the Director shall be made to the Administrative Appeals Board (clause 5);

(c) repeal and replace section 17, new section 17 provides that a warrant shall first be obtained from a magistrate before the Director or an authorized officer conducting a search on any vessel or raft unless it is not practicable to do so; and notification be given to the owner of any thing seized and detained (clause 5);

(d) repeal and replace section 18, new section 18 provides that applications shall be made to a magistrate for the forfeiture of any thing seized and detained or the proceeds thereof but the Director may, at his discretion, return such thi

- ng or proceeds to the owner or dispose of such thing under certain circumstances (clause 5);
- (e) repeal and replace section 19, new provisions are introduced to confer on the Director and authorized officers the power to require a person to give his name and address and to produce his proof of identity for inspection when investigating suspected offences under the principal Ordinance (clause 5);
  - (f) repeal and replace section 21 by adding a new penalty provision for the offence of failure to produce proof of identity and to revise the existing penalties to maintain the deterrent effect of the principal Ordinance (clause 6);
  - (g) amend section 22 by empowering the Chief Executive in Council to make regulations for the transfer of licences (clause 7);
  - (h) introduce transitional provisions to deal with appeals lodged before the amendment of section 16 of the principal Ordinance (clause 8); and
  - (i) make consequential amendments to the Marine Fish Culture Regulations (Cap. 353 sub. leg.) and the Administrative Appeals Board Ordinance (Cap. 442) (clause 9).