

Proposed new Regulation 22(6)

In response to Members' comments made at the last meeting, we now propose replacing Regulation 22(6) with Regulations 22(6), (6A) and (6B) at Annex.

2. New Regulation 22(6) at Annex empowers the Commissioner to allow the submission of applications for a permit in paper mode as an alternative to their submission in electronic form. This caters for the situation where the computer system breaks down partially for an extended period.

3. New Regulation 22(6A) at Annex empowers the Commissioner to require the use of paper mode only in submitting applications for a permit. This caters for the situation where the computer system breaks down completely for an extended period. It will also allow the Government to declare a new type of dutiable commodity without having to enhance the computer system in advance, thus maintaining confidentiality. We have taken on board one Member's suggestion of inserting the condition "where it is not practicable" to ensure that the power can only be used where necessary.

4. As regards the question of when a period of use of paper form under these provisions will end, we envisage that it will only last for a short period of time. Our policy aim is to encourage the use of electronic submission. We would only revert to paper submission under exceptional circumstances as outlined above. There is therefore no question of the Commissioner 'abusing' the power to revert to paper submission for an indefinite period.

5. At the last meeting, a Member also asked whether there was a need to empower the Commissioner to revert to electronic submission again after exercising the power under the new Regulation 22(6). By virtue of section 46 of the Interpretation and General Clauses Ordinance (Cap. 1), the power conferred on the Commissioner under Regulation 22(6) is deemed to include related powers that would enable the Commissioner to bring to an end the use of the paper mode as and when appropriate.

Proposed new Regulation 106

6. We have reviewed the drafting approach of new Regulation 106 in the light of the transitional provisions in, say, the Import and Export (Registration)(Amendment) Regulation 1999.

7. We understand what is being proposed for our consideration is a phased approach, which would involve doing away Regulation 106 altogether. Instead it is suggested that we should amend Regulation 22 to provide for submission of applications in either paper or electronic form as a first step. At a later stage, Regulation 22 would again be amended to remove the paper form option so that only electronic submission would be allowed.

8. We have carefully considered this suggestion. Both the existing approach in the new Regulations 22(3) and 106 and the proposed approach in paragraph 7 above would have much the same effect in practical terms. The final choice should depend on which approach best reflects the policy intention.

9. Our policy intention is that ultimately all applications for dutiable commodity permits should be in electronic form, subject to a reasonable transitional period during which both paper and electronic applications are allowed. This is reflected in the new Regulations 22(3) and 106.

10. We do not think that a phased approach described in paragraph 7 above is necessary or appropriate in the present case. By way of background, electronic data interchange (EDI) services for processing trade-related documents were first rolled out in 1997. At that time the use of electronic services to submit trade-related documents was in its infancy and potential users were unfamiliar with the concept. One of the initial services was the import and export declaration service, and the number of users for this service was large (about 60,000 users). Time was needed to educate users on using the new service. It was also difficult to predict the likely 'transitional period'. It was therefore considered prudent to adopt a gradual, phased approach.

11. The present situation is quite different. The trading community is more familiar with the mature operation of EDI services. Since 1997, four types of EDI services have been rolled out for different trade-related documents in stages. The service provider, Tradelink, has gained valuable experience in running the service. The number of DCP users is relatively small (about 2000 users). The trade has even urged the Government to go compulsory in using electronic applications for dutiable commodity permits six-months after the roll out of the service in January 2002.

12. The planned transitional period is therefore six months. We have, however, decided not to specify a fixed period in the Regulation as we would like to assess the actual take-up rate by traders as well as the smooth running of the computer system after the roll out of the service. This would provide the Administration with the flexibility in educating and assisting some traders who, for one reason or another, may not be willing to take up the electronic services. In addition, we could make use of the time to fine-tune the system to ensure its best performance.

Commerce and Industry Bureau
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DUTIABLE COMMODITIES (AMENDMENT) REGULATION 2001

Revised Regulation 22(6)

- (6) (a) The Commissioner may by notice published in the Gazette specify that an application for a permit may be submitted in paper form.
- (b) Where a notice under paragraph (a) has effect in relation to an application for a permit, the application shall either be submitted in paper form or be in the form of an electronic record that is submitted using a recognized electronic service.
- (6A) (a) Where the Commissioner considers that it is not practicable for an application for a permit to be in the form of an electronic record that is submitted using a recognized electronic service he may, by notice published in the Gazette, specify that the application shall be submitted in paper form.
- (b) Where a notice under paragraph (a) has effect in relation to an application for a permit, the application shall be submitted in paper form only.

(6B) For the purposes of an application for a permit that is submitted in paper form pursuant to a notice under subregulation (6) or (6A), subregulations (4) and (5) shall apply subject to the terms of the notice.

Note: Subreg. (3) and (7) to be amended also, by adding “or(6A)” after “(6)”.