

LEGISLATIVE COUNCIL BRIEF

Civil Aviation Ordinance
(Chapter 448)

AIR NAVIGATION (HONG KONG) ORDER 1995 (AMENDMENT OF SCHEDULE 16) ORDER 2003

INTRODUCTION

At the meeting of the Executive Council on 7 October 2003, the Council ADVISED and the Chief Executive ORDERED that the Air Navigation (Hong Kong) Order 1995 (Amendment of Schedule 16) Order 2003 at **Annex A**, be made under Section 2A of the Civil Aviation Ordinance (Cap.448).

Annex A

JUSTIFICATIONS

2. The International Civil Aviation Organization (ICAO)¹ requirements on transportation of dangerous goods (DG)² by air (which cover aspects such as classification, packing, marking, labelling and loading of DG) are given legal effect in Hong Kong through Schedule 16 to the Air Navigation (Hong Kong) Order 1995 (Cap. 448 sub. leg. C) which is cited as the Air Navigation (Dangerous Goods) Regulations (“the Regulations”). The Regulations make direct reference to provisions in a set of Technical Instructions which are updated and published by ICAO every two years. The 2003-2004 edition came into effect on 1 January 2003.

3. When compared with the 2001-2002 edition, there are only minor changes which are all technical in nature. These changes are described in the following paragraphs.

¹ ICAO was established by the Convention on International Civil Aviation and is the world’s most important organization in the field of civil aviation. At present, it has 188 Contracting States and China is one of them. Its objectives are to promote the development of international civil aviation in a safe and orderly manner, and to ensure that international air transport services may be established on the basis of equality of opportunity and operated soundly and economically.

² DG include explosives, flammable liquids and solids, oxidizing substances, toxic and infectious substances, radioactive material and corrosives, etc.

New definition of DG

4. In the new Technical Instructions, the definition of DG is revised to include those articles or substances which are capable of posing a risk to the environment in addition to those posing a risk to health, safety and property. The new definition also removes the ambiguity of defining a “significant risk” by replacing the term with “a risk”.

Exempting the carriage of medical aid to patient

5. Certain DG intended for emergency uses during flight, including medical aid to a patient carried on an aircraft, are exempt from the provisions of the Technical Instructions. The new Technical Instructions clarify that the exemption of medical aid is applicable only when approval has been obtained from the aircraft operator to load it on aircraft. It also clarifies that the exemption is applicable only to medical aid carried for patient’s use and not for other passengers.

Provision of DG information to pilot-in-command

6. The new Technical Instructions specify that DG information must be prepared before the departure of aircraft. The information itself must be provided in a written or printed format to the pilot-in-command. The DG information must also be readily available to the pilot-in-command during flight and accessible to the aerodromes of last departure and next scheduled arrival point.

7. To bring the regulatory regime for the transport of DG in Hong Kong in line with the new international standards, it is necessary to amend the Regulations.

THE 2003 ORDER

8. The main provisions of the 2003 Order are as follows:

- (a) Section 1(a) and (b)(i) updates the definitions of “dangerous goods” and “Technical Instructions”;
- (b) Section 1(b)(ii) gives effect to the relevant part of the Technical Instructions which clarify the exemption in relation to the carriage of medical aid to a patient; and

- (c) Section 1(c) gives effect to the relevant parts of the Technical Instructions regarding the requirements on the provision of information about DG to the pilot-in-command.

Annex B

The existing provisions being amended are at **Annex B**.

9. The 2003 Order will come into effect on the day it is published in the Gazette. This will enable Hong Kong to adopt as soon as possible the latest international requirements for the transport of DG by air.

LEGISLATIVE TIMETABLE

10. The legislative timetable will be –

Publication in the Gazette	10 October 2003
Tabling at the Legislative Council	15 October 2003

IMPLICATIONS OF THE PROPOSAL

11. The proposal is in conformity with the Basic Law, including the provisions concerning human rights. It will not affect the current binding effect of the Regulations. It has no financial and civil service, economic, productivity, environmental or sustainability implications.

PUBLIC CONSULTATION

12. The Aviation Advisory Board (AAB), which includes representatives from shippers, airlines and freight forwarders, was consulted on the proposal at its meeting on 16 June 2003. AAB members supported the proposal. Members of the Economic Services Panel of the Legislative Council were consulted on 23 June 2003. They raised no objection.

PUBLICITY

13. A press release will be issued on 8 October 2003.

ENQUIRIES

14. For enquiries on this brief, please contact Mr Simon Chean, Senior Safety Officer (Civil Aviation), at 2182 1233.

Economic Development and Labour Bureau
October 2003
(EDB CR 15/951/49)

AIR NAVIGATION (HONG KONG) ORDER 1995 (AMENDMENT OF
SCHEDULE 16) ORDER 2003

(Made by the Chief Executive in Council under section 2A of the
Civil Aviation Ordinance (Cap. 448))

**1. The Air Navigation (Dangerous Goods)
Regulations**

Schedule 16 to the Air Navigation (Hong Kong) Order 1995 (Cap.
448 sub. leg. C) is amended -

(a) in Regulation 2(1) -

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

"dangerous goods" means any article or
substance which -

(a) is capable of posing a
risk to health,
safety, property or
the environment; and

(b) is -

(i) classified
as dangerous
goods
according to
Part 2 of the
Technical
Instructions
; or

(ii) shown in the
list of
dangerous
goods in Part 3
of the
Technical
Instructions;"
;

(ii) in the definition of "Technical
Instructions", by repealing "2001-2002"
and substituting "2003-2004";

(b) in Regulation 3 -

(i) in paragraph (2), by repealing "goods
capable of posing significant risk to
health, safety or property when carried
by air" and substituting "dangerous
goods";

(ii) by repealing paragraph (3)(d) and
substituting -

"(d) placed on board with the
approval of the operator of an
aircraft to provide during the
flight medical aid to a
patient;"

(c) in Regulation 8 -

(i) by repealing paragraph (1) and
substituting -

"(1) The operator of an aircraft
in which dangerous goods are to be
carried shall -

- (a) as early as practicable before departure of the aircraft, provide the commander of the aircraft with accurate and legible written or printed information in respect of the dangerous goods in accordance with the provisions of Chapters 4.1.1, 4.1.2, 4.1.4, 4.1.7 and 4.1.8 of Part 7 of the Technical Instructions;
- (b) ensure that the information is readily available to the commander during the flight; and
- (c) preserve a copy of the information for not less than six months.

(1A) The commander shall indicate on a copy of the information provided to him under paragraph (1)(a), or in some other way, that he has received the information.

(1B) The operator shall ensure that -

- (a) a legible copy of the information which has an indication on it, or with it, that the commander has received the information is retained on the ground; and
- (b) the copy, or the information contained in it, is readily accessible to the aerodromes of last departure and next scheduled arrival point until after the flight to which the information refers.";

- (ii) in paragraph (2), by repealing "baggage or maintains areas to assemble passengers to board the aircraft" and substituting "passengers or maintains areas to assemble passengers to board the aircraft, and at any other location where passengers are checked in";
- (d) in Regulation 9(d), by adding "or printed" after "written".

Clerk to the Executive Council

COUNCIL CHAMBER

2003

Explanatory Note

This Order amends Schedule 16 to the Air Navigation (Hong Kong) Order 1995 (Cap. 448 sub. leg. C) to give effect to the 2003-2004 edition of the Technical Instructions for the Safe Transport of Dangerous Goods by Air approved and published by decision of the Council of the International Civil Aviation Organization.

Chapter:	448C	AIR NAVIGATION (HONG KONG) ORDER 1995	Gazette Number	Version Date
Schedule:	16	THE AIR NAVIGATION (DANGEROUS GOODS) REGULATIONS	L.N. 234 of 2001	09/11/2001

Remarks:

Adaptation amendments retroactively made - see 36 of 1999 s. 3

Article 44

1. Citation

These Regulations may be cited as the Air Navigation (Dangerous Goods) Regulations.

2. Interpretation

(1) In these Regulations:-

"appropriate authority" means any authority designated, or otherwise recognized by a State concerned to perform specific functions related to provisions contained in the Technical Instructions; (L.N. 179 of 1999)

"consignment" means one or more packages of dangerous goods accepted by an operator from one shipper at one time and at one address receipted for in one lot and moving to one consignee at one destination address;

"dangerous goods" means any article or substance which is capable of posing significant risk to health, safety or property when carried by air and which is classified in Part 2 or 3 of the Technical Instructions; (L.N. 234 of 2001)

"dangerous goods transport document" means a document, not being an air waybill, which is required by Regulation 4 of these Regulations to accompany a consignment of dangerous goods;

"package" means the packaging and the articles and substances contained therein including one or more packages which have been consolidated by one shipper into one container or enclosure for convenience in handling;

"packing" means the art and operation whereby articles and substances are wrapped up, enclosed in containers or otherwise secured, and "packed" shall be construed accordingly;

"States concerned" has the same meaning as it has in Chapter 1.1.2 of Part 1 of the Technical Instructions; (L.N. 179 of 1999; L.N. 234 of 2001)

"Technical Instructions" means the 2001-2002 English language edition of the Technical Instructions for the Safe Transport of Dangerous Goods by Air approved and published by decision of the Council of the International Civil Aviation Organization; (L.N. 150 of 1997; L.N. 179 of 1999; L.N. 234 of 2001)

"unit load device" means any type of freight container including any container designed for loading on an aircraft.

(2) For the avoidance of doubt, any instructions or limitations contained in the Technical Instructions for the carriage of dangerous goods on passenger or cargo aircraft, as therein defined, shall for the purpose of these Regulations be interpreted as applying also to the carriage of such goods beneath passenger or cargo aircraft respectively.

3. Carriage of dangerous goods

(1) An aircraft shall not carry or have loaded therein or suspended thereunder any

dangerous goods, unless such goods are carried, loaded or suspended;

- (a) with the written permission of the Chief Executive and in accordance with any conditions to which such permission may be subject; and (36 of 1999 s. 3)
 - (b) in accordance with the Technical Instructions and any conditions specified therein.
- (2) A person shall not-
- (a) take or cause to be taken on board,
 - (b) suspend or cause to be suspended beneath, or
 - (c) deliver or cause to be delivered for loading on or suspension beneath (L.N. 179 of 1999)

an aircraft any goods which he knows or ought to know or suspect to be goods capable of posing significant risk to health, safety or property when carried by air, unless the provisions of these Regulations are complied with.

(3) These Regulations shall not apply to dangerous goods of a type specified in Chapter 1.1.3(a), 1.1.3(b), 1.1.3(d), 1.1.3(e), 1.1.3(f) or 2.2 of Part 1 or Chapter 1.1.2 of Part 8 of the Technical Instructions which are carried, loaded or suspended in accordance with the provisions of such Chapters, and which are- (L.N. 179 of 1999; L.N. 234 of 2001)

- (a) articles and equipment which are required to be carried on an aircraft by or under the Order or are otherwise intended for use on an aircraft for the purpose of the good order of the flight in accordance with normal practice whether or not, in either case, such articles and equipment are required to be carried or intended to be used on that particular flight;
- (b) solely intended for the use of passengers or crew members or for sale to the passengers or crew members of the aircraft during the flight in question;
- (c) to provide during the flight veterinary aid or a humane killer for an animal; (L.N. 179 of 1999)
- (d) to provide during the flight medical aid to a person; (L.N. 179 of 1999)
- (e) to provide, during flight, aid in connection with search and rescue operations; (L.N. 179 of 1999; L.N. 234 of 2001)
- (ea) required for the airworthiness, safe operation or propulsion of the aircraft or the operation of its specialized equipment during flight; or (L.N. 234 of 2001)
- (f) vehicles which are carried in aircraft designed or modified for vehicle ferry operations: (L.N. 179 of 1999)

Provided that goods specified in sub-paragraph (c), (d), (e) or (ea) shall only be carried if- (L.N. 179 of 1999; L.N. 234 of 2001)

- (i) they are or may be required for use during the flight;
- (ii) they are or may be required for use during a subsequent flight by the same aircraft and it will not be practicable to load the goods on the aircraft in the intervening period before the commencement of that subsequent flight; or
- (iii) they were used or might have been required for use during a previous flight by the same aircraft and it has not been practicable to unload them from the aircraft since that flight: (L.N. 179 of 1999)

Provided that goods specified in sub-paragraph (f) shall only be carried if all the following requirements are met-

- (i) authorizations have been given by the appropriate authorities of the States concerned, and the appropriate authorities of the States concerned have prescribed specific terms and conditions for the particular operator's operation;
- (ii) vehicles are secured in an upright position;
- (iii) fuel tanks are so filled as to prevent spillage of fuel during loading, unloading and transit; and
- (iv) adequate ventilation rates are maintained in the aircraft compartment in which the vehicle is carried. (L.N. 234 of 2001)

(4) Save for Regulations 3(1)(a), 7(1) but only to the extent that it refers to the provisions in Chapter 2.1 of Part 7 of the Technical Instructions and 7(2) and 8(3) of these Regulations, these Regulations shall not apply to dangerous goods of the classifications specified in Chapter 2.4 of

Part 1 of the Technical Instructions provided that: (L.N. 234 of 2001)

- (a) the dangerous goods do not exceed the appropriate quantity limitations specified therein; and
- (b) such other conditions as are specified therein are complied with.

4. Documentation

(1) An aircraft shall not carry dangerous goods as cargo unless the shipper of the goods has furnished the operator of the aircraft with a dangerous goods transport document, except that such a document shall not be required in respect of such categories of dangerous goods as may be specified in the Technical Instructions as being goods in respect of which a dangerous goods transport document is not required.

(2)-(3) (Repealed L.N. 234 of 2001)

(4) The operator of an aircraft shall preserve for not less than six months any dangerous goods transport document or other document in respect of dangerous goods which has been furnished to him in accordance with this Regulation.

5. (Repealed L.N. 234 of 2001)

6. Operator's responsibilities

(1) The operator of an aircraft in which any package or unit load device containing dangerous goods is to be carried shall satisfy himself by making an inspection:

- (a) that the package is marked and labelled in accordance with the provisions of these Regulations, such provisions of Part 4 and Chapters 2 and 4 of Part 3 as relate to marking and labelling, and Chapters 1.6, 1.7, 1.8, 2 and 3 of Part 5 of the Technical Instructions before accepting the package; (L.N. 150 of 1997; L.N. 234 of 2001)
- (b) that the package is not leaking or damaged so that the contents may escape-
 - (i) before accepting the package;
 - (ii) before loading or causing the package to be loaded on board the aircraft or before suspending or causing the package to be suspended beneath the aircraft, as the case may be;
 - (iii) upon loading the package from or from beneath the aircraft;
- (c) that the unit load device is free from any evidence of leakage from or damage to any dangerous goods contained therein before loading or causing the unit load device to be loaded on board the aircraft or before suspending or causing the unit load device to be suspended beneath the aircraft, as the case may be.

(2) (a) For the purpose of each of the inspections required by paragraph (1)(a) and (1)(b)(i) of this Regulation, an acceptance check list shall be used and the results of that inspection shall be recorded in accordance with the form thereof.

(b) The acceptance check list shall be in such form and shall provide for the entry of such details as will enable the relevant inspection to be fully and accurately made by reference to and completion of that list.

(c) The operator of an aircraft shall preserve for not less than six months a record of any acceptance check list completed in accordance with this Regulation. The record shall be in a legible or a non-legible form so long as the recording is capable of being reproduced in legible form.

(3) The operator shall not load or cause to be loaded on an aircraft or suspend or cause to be suspended beneath an aircraft any package or unit load device containing dangerous goods which on inspection is found to be leaking or damaged so that the contents or the dangerous goods therein may escape or be damaged.

(4) The operator shall unload or cause to be unloaded any package containing dangerous goods which appears to be leaking or damaged on board or beneath an aircraft and shall ensure other cargo or baggage loaded or suspended beneath that aircraft is in a fit state for carriage by air and has not been contaminated.

(5) The operator shall after unloading inspect for signs of damage or contamination in any part of the aircraft, or any sling or other apparatus which has been used to suspend goods beneath the aircraft, in which:

- (a) a unit load device containing dangerous goods was stowed, or
- (b) any damaged or leaking package containing dangerous goods was loaded,

and the operator shall remove or repair any contamination or damage.

(6) The operator of an aircraft shall not permit it to fly for the purpose of carrying passengers or cargo if he knows or suspects radioactive materials to have leaked in or contaminated the aircraft or any sling or other apparatus attached to the aircraft unless the radiation level resulting from the fixed contamination at any accessible surface and the non-fixed contamination are not more than the values specified in Chapter 3.2 of Part 7 of the Technical Instructions. (L.N. 234 of 2001)

7. Method of loading by operator

(1) The operator shall ensure that any package containing dangerous goods is loaded, stowed and unloaded from or from beneath an aircraft in accordance with the provisions in Chapter 2 of Part 7 of the Technical Instructions which apply to that category of dangerous goods.

(2) An aircraft shall not carry any dangerous goods either in any compartment occupied by passengers or in the flight crew compartment, except in circumstances permitted by the provisions of Chapter 2.1 of Part 7 of the Technical Instructions.

(L.N. 234 of 2001)

8. Provisions of information and training programmes by operators

(1) The operator of an aircraft in which dangerous goods are to be carried shall, before the flight begins, provide the commander of the aircraft with written information specifying the matters required by the provisions of Chapter 4.1 of Part 7 of the Technical Instructions and shall preserve a copy thereof for not less than six months. (L.N. 234 of 2001)

(2) The operator of an aircraft in which passengers are to be carried or his agent shall notify them of the categories of dangerous goods which may not be taken on board an aircraft either as checked baggage or accompanying a passenger by the provision of information with each passenger ticket which shall be sufficient in prominence for this purpose and by displaying notices, sufficient in number and prominence for this purpose, at each of the places at an airport where the operator or his agent issues tickets, checks in baggage or maintains areas to assemble passengers to board the aircraft.

(3) The operator of an aircraft and his agent shall inform any of their respective employees whose duties include a function connected with the carriage of passengers or cargo by air of the provisions of the Technical Instructions and for this purpose shall establish and undertake training programmes, as required by Chapter 4 of Part 1 of the Technical Instructions, which shall be submitted to the Chief Executive for approval on such occasions as the Chief Executive may require and which shall be amended as the Chief Executive may require. (36 of 1999 s. 3; L.N. 234 of 2001)

9. Production of documents and records

The operator of an aircraft shall, within a reasonable time after being requested so to do by an authorized person, cause to be produced to that person such of the following documents as may have been requested by that person-

- (a) the written permission referred to in Regulation 3(1) of these Regulations;
- (b) the dangerous goods transport document or other document in respect of any dangerous goods referred to in Regulation 4 of these Regulations;
- (c) the completed acceptance check list in a legible form in respect of any dangerous goods, referred to in Regulation 6(2) of these Regulations;

(d) a copy of the written information provided to the commander of the aircraft in respect of any dangerous goods, referred to in Regulation 8(1) of these Regulations.

10. Dropping articles for agricultural, horticultural, forestry or pollution control purposes

Subject to the provisions of Regulation 3(1)(a) of these Regulations, nothing in these Regulations shall apply to any aircraft flying in order to drop articles for the purpose of agriculture, horticulture, forestry or pollution control.