

LEGISLATIVE COUNCIL BRIEF

Shipping and Port Control Ordinance
(Chapter 313)

SHIPPING AND PORT CONTROL (FERRY TERMINALS) (AMENDMENT) REGULATION 2004

BOUNDARIES OF FERRY TERMINALS (REPEAL) ORDER

BOUNDARIES OF RESTRICTED AREAS OF FERRY TERMINALS (REPEAL) NOTICE

INTRODUCTION

At the meeting of the Executive Council on 20 April 2004, the Council ADVISED and the Chief Executive ORDERED that -

- (a) the Shipping and Port Control (Ferry Terminals) (Amendment) Regulation 2004 (amendment regulation), at Annex A, should be made by the Chief Executive in Council under section 80 of the Shipping and Port Control Ordinance (Cap. 313); and
- (b) the Boundaries of Ferry Terminals (Repeal) Order (repeal order), at Annex B, should be made by the Chief Executive under regulation 3 of the Shipping and Port Control (Ferry Terminals) Regulations (Cap. 313 sub. leg. H).

2. Together with the Boundaries of Restricted Areas of Ferry Terminals (Repeal) Notice (repeal notice), at Annex C, made by the Director of Marine under regulation 11 of the Shipping and Port Control (Ferry Terminals) Regulations (Cap. 313 sub. leg. H), the amendment regulation and repeal order establish a new cross-boundary ferry terminal at the existing Tuen Mun Ferry Pier, and simplify the legal framework within which the boundaries of cross-boundary ferry terminals and their restricted areas are set out.

JUSTIFICATIONS

3. Following an open tender exercise, we signed a tenancy agreement with a private company, the Hong Kong North West Express Limited (North West), in late December 2003 in regard to the occupation, modification and use of part of the existing Tuen Mun Ferry Pier for the operation of cross-boundary passenger ferry services to Macau and Mainland ports. The tenancy is for seven years certain and may be extended on terms and conditions to be agreed between the Government and the tenant. North West plans to complete the pier modification works and start providing ferry services to Macau by December 2004.

4. In order to ensure vessel and passenger safety as well as effective control, we need to set out the boundaries of the new ferry terminal and the restricted area within the terminal under the Shipping and Port Control (Ferry Terminals) Regulations (Cap. 313 sub. leg. H) before the terminal becomes operational.

5. The boundaries of the two existing cross-boundary ferry terminals, i.e. China Ferry Terminal in Tsim Sha Tsui and Hong Kong-Macau Ferry Terminal in Sheung Wan, were declared through orders made by the then Governor under regulation 3 of the Shipping and Port Control (Ferry Terminals) Regulations (Cap. 313 sub. leg. H). The restricted areas of these terminals were declared through notices made by the Director of Marine under regulation 11 of the same Regulations. The provisions relevant to the two existing terminals are presently contained in the following five pieces of subsidiary legislation -

- (a) Shipping and Port Control (Ferry Terminals) Regulations (Cap. 313 sub. leg. H);
- (b) Hong Kong-Macau Ferry Terminal Boundaries Order (Cap. 313 sub. leg. L);
- (c) Hong Kong-Macau Ferry Terminal Restricted Area Boundaries Notice (Cap. 313 sub. leg. M);
- (d) China Ferry Terminal Boundaries Order (Cap. 313 sub. leg. P);
and
- (e) China Ferry Terminal Restricted Area Boundaries Notice (Cap. 313 sub. leg. W).

6. We consider that this legal framework may not be entirely satisfactory. We propose to amend Cap. 313 sub. leg. H so that the boundaries of the new Tuen Mun Ferry Terminal (TMFT) and its restricted area, as well as the boundaries of the two existing terminals and their restricted areas, can all be set out in a new schedule to Cap. 313 sub. leg. H. In future, the establishment of new ferry terminals and their restricted areas, as well as changes to the boundaries of any existing ferry terminal or restricted area, can be conveniently effected by amending the schedule. We propose that the Director of Marine be empowered to amend the boundaries of existing ferry terminals and restricted areas, which are primarily operational matters, while the power to establish new ferry terminals and their restricted areas should continue to rest with the Chief Executive in Council.

THE AMENDMENT REGULATION, REPEAL ORDER AND REPEAL NOTICE

7. The main provisions of the amendment regulation are -
- (a) section 2 which amends the definitions of several expressions that are used in Cap. 313 sub. leg. H;
 - (b) sections 3 and 4 which respectively amend regulations 3 and 11 of Cap. 313 sub. leg. H so that the boundaries of all terminals and restricted areas can be set out in a new Schedule 1;
 - (c) section 6 which adds a new regulation 38 that empowers the Director of Marine to change the boundaries of existing terminals and restricted areas; and
 - (d) section 7 which adds the new Schedule 1.

The existing provisions that are to be amended are at Annex D. The amendment regulation shall come into operation on a day to be appointed by the Secretary for the Environment, Transport and Works, after completion of the negative vetting process by the Legislative Council.

8. Consequent upon the commencement of the amendment regulation, Cap. 313 sub. leg. L and P, under which the boundaries of the Hong Kong-Macau Ferry Terminal and the China Ferry Terminal are presently set out, will not be required. The repeal order repeals these two pieces of subsidiary legislation. Similarly, the repeal notice made by the Director of Marine repeals Cap. 313 sub. leg. M and W, under which the

boundaries of the restricted areas of the two existing terminals are presently set out. The repeal order and repeal notice shall come into operation on the same date appointed for the commencement of the amendment regulation.

9. The commissioning of the new TMFT will also necessitate amendments to two other pieces of subsidiary legislation, i.e. the Immigration (Places of Detention) Order (Cap. 115 sub. leg. B) and the Immigration Service (Designated Places) Order (Cap. 331 sub. leg. B), in order to designate a place of detention within the terminal for detaining persons under the Immigration Ordinance (Cap. 115) and the Immigration Service Ordinance (Cap. 331) (e.g. persons who are pending further examination or removal, etc.). To this end, the Secretary for Security has made the Immigration (Places of Detention) (Amendment) Order 2004 and the Immigration Service (Designated Places) (Amendment) Order 2004. The two amendment orders shall come into operation on the same date appointed for the commencement of the amendment regulation.

LEGISLATIVE TIMETABLE

10. The legislative timetable for the amendment regulation, repeal order and repeal notice is as follows -

Publication in the Gazette	23 April 2004
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Tabling at the Legislative Council	28 April 2004
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The two amendment orders made by Secretary for Security mentioned in paragraph 9 above will follow the same legislative timetable.

IMPLICATIONS OF THE PROPOSAL

11. The proposed establishment of the TMFT has financial, civil service and economic implications as set out at Annex E. It has no significant sustainability implications and no productivity or environmental implications. The proposed legislative amendments are in conformity with the Basic Law, including the provisions concerning human rights, and do not affect the binding effect of the legislation to be amended.

PUBLIC CONSULTATION

12. The proposed legislative amendments were presented to the Legislative Council Panel on Transport at its meeting on 30 January 2004. Panel Members did not make any comments.

PUBLICITY

13. A press release will be issued on 23 April 2004 when the amendment regulation, repeal order and repeal notice are published in the Gazette. A spokesman will be available to answer public and media enquiries.

BACKGROUND

14. The Tuen Mun Ferry Pier is currently used for the operation of domestic passenger ferry services to and from Tung Chung and Tai O. It has three spare berths which can be made available for operation of other ferry services. The private sector has proposed to make use of these berths to operate cross-boundary passenger ferry services to Macau and Mainland ports. In view of the benefits that a new cross-boundary ferry terminal in Tuen Mun will bring (e.g. further enhancing Hong Kong's linkage with the Mainland and making it more convenient for residents in the Northwest New Territories to travel to Macau and Mainland ports), as well as the support of the public and the Legislative Council, we agreed to pursue the idea if there was proven interest from the private sector in implementing the proposal.

15. We conducted an Expression of Interest (EOI) exercise in late 2002 to formally gauge the private sector's interest in the proposal. Briefly, the proposed scheme stated that the tenant company might use the three spare berths of the Tuen Mun Ferry Pier and associated areas to operate ferry services to Macau and Mainland ports. However, it would need to -

- (a) carry out the necessary pier modification works;
- (b) pay for the non-recurrent items such as systems, equipment and furniture required for the Government departments' operation;

- (c) pay the water and electricity charges to be incurred; and
- (d) pay an annual amount of not less than \$15 million to the Government.

16. The EOI exercise confirmed that there was genuine private sector interest in the scheme. Accordingly, we conducted an open tender exercise in June 2003. At the conclusion of the tender exercise, North West was selected as the successful tenderer and a tenancy agreement was signed in December 2003.

17. North West plans to use all three berths of the TMFT to provide daily ferry services to Macau initially, at a frequency of one sailing every 30 minutes from 11:00 a.m. to 2:00 a.m.. The company will consider providing ferry services to Mainland ports in the Pearl River Delta Region six months after the TMFT has begun operation. We understand that it has already started discussions with the relevant Mainland authorities.

ENQUIRIES

18. Enquiries about this brief should be addressed to Mr. Patrick Chan, Principal Assistant Secretary for the Environment, Transport and Works Bureau (telephone number: 2189 2186).

Environment, Transport and Works Bureau
23 April 2004

**SHIPPING AND PORT CONTROL (FERRY TERMINALS)
(AMENDMENT) REGULATION 2004**

(Made by the Chief Executive in Council under section 80 of the
Shipping and Port Control Ordinance (Cap. 313))

1. Commencement

This Regulation shall come into operation on a day to be appointed by the Secretary for the Environment, Transport and Works by notice published in the Gazette.

2. Interpretation

Regulation 2 of the Shipping and Port Control (Ferry Terminals) Regulations (Cap. 313 sub. leg. H) is amended –

- (a) in the definition of “pass holder”, in paragraph (a), by repealing everything after the comma and substituting “the authorized officer or the person to whom it is issued; and”;
- (b) by repealing the definition of “restricted area” and substituting –

““restricted area” (限制區域) means a restricted area
declared under regulation 11;”;

- (c) by repealing the definition of “terminal” and substituting –
““terminal” (終點碼頭) means a terminal declared
under regulation 3;”.

3. Regulation substituted

Regulation 3 is repealed and the following substituted –

“3. Declaration of terminals

- (1) Each area the name and boundaries of which are respectively specified in columns 2 and 3 of Schedule 1 is hereby declared as a terminal.

(2) For the purpose of this regulation, “area” (範圍) includes the land and water, and any building, street, pier or pontoon, within the boundaries of the area.”.

4. Regulation substituted

Regulation 11 is repealed and the following substituted –

“11. Declaration of restricted areas

Each area the boundaries of which are specified in column 4 of Schedule 1 is hereby declared as the restricted area of the terminal specified opposite to those boundaries in column 2 of that Schedule.”.

5. Fees

Regulation 37 is amended by repealing “the Schedule” and substituting “Schedule 2”.

6. Regulation added

The following is added –

“38. Amendment of Schedule 1

For the purpose of varying the boundaries of a terminal or restricted area, the Director may, by notice published in the Gazette, amend column 3 or 4 of Schedule 1.”.

7. Schedule 1 added

The following is added immediately after regulation 38 –

TERMINALS FOR USE BY FERRY VESSELS

Item	Name of terminal	Boundaries of terminal	Boundaries of restricted area
1.	China Ferry Terminal	The boundaries edged in red on the plans Serial Nos. DM23a and DM23a/1 to DM23a/6 dated 30 March 1992, signed by the Director and deposited in his office.	The boundaries that enclose an area coloured pink on the plans Serial Nos. DM24a/1 to DM24a/6 dated 5 March 2002, signed by the Director and deposited in his office.
2.	Hong Kong – Macau Ferry Terminal	The boundaries delineated in red on the plan Serial No. DM20 dated 2 February 1987, signed by the Director and deposited in his office.	The boundaries edged in red on the plan Serial No. DM17 dated 3 May 1985, signed by the Director and deposited in his office.
3.	Tuen Mun Ferry Terminal	The boundaries that enclose an area coloured pink on the plans Serial	The boundaries that enclose an area coloured pink on

Nos. DM25 and DM25/1 the plans Serial
to DM25/3 dated 20 Nos. DM26/1 to
February 2004, signed DM26/3 dated 20
by the Director and February 2004,
deposited in his office. signed by the
Director and
deposited in his
office.”.

8. Fees

The Schedule is renumbered as Schedule 2.

Clerk to the Executive Council

COUNCIL CHAMBER

2004

Explanatory Note

This Regulation amends the Shipping and Port Control (Ferry Terminals) Regulations (Cap. 313 sub. leg. H) (“principal Regulations”). The main purpose is to establish a new cross-boundary ferry terminal – the Tuen Mun Ferry Terminal. Further, the opportunity is taken to incorporate into the principal Regulations 4 pieces of subsidiary legislation (Cap. 313 sub. leg. L, M, P and W) that relate to the existing cross-boundary ferry terminals.

2. Section 2 amends the definitions of several expressions that are used in the principal Regulations.
3. Sections 3 and 4 respectively amend regulations 3 and 11 of the principal Regulations so that the boundaries of all such terminals and their restricted areas can be specified in a new Schedule 1.
4. Section 6 adds a new regulation 38 to the principal Regulations, which empowers the Director of Marine to vary the boundaries of such terminals and restricted areas.
5. Section 7 adds the new Schedule 1 to the principal Regulations.
6. Section 8 renumbers the Schedule to the principal Regulations as Schedule 2. Section 5 makes a consequential amendment to regulation 37 of the principal Regulations.

BOUNDARIES OF FERRY TERMINALS (REPEAL) ORDER

(Made under regulation 3 of the Shipping and Port Control (Ferry Terminals) Regulations (Cap. 313 sub. leg. H) after consultation with the Executive Council)

1. Commencement

This Order shall come into operation on the day appointed for the commencement of the Shipping and Port Control (Ferry Terminals)(Amendment) Regulation 2004 (L.N. of 2004).

Hong Kong – Macau Ferry Terminal Boundaries Order

2. Repeal

The Hong Kong – Macau Ferry Terminal Boundaries Order (Cap. 313 sub. leg. L) is hereby repealed.

China Ferry Terminal Boundaries Order

3. Repeal

The China Ferry Terminal Boundaries Order (Cap. 313 sub. leg. P) is hereby repealed.

Chief Executive

2004

Explanatory Note

This Order relates to the boundaries of the Hong Kong – Macau Ferry Terminal and the China Ferry Terminal, which are specified in the 2 pieces of subsidiary legislation mentioned in sections 2 and 3 of this Order.

2. With the commencement of the Shipping and Port Control (Ferry Terminals)(Amendment) Regulation 2004 (L.N. of 2004), those boundaries will be specified in the Shipping and Port Control (Ferry Terminals) Regulations (Cap. 313 sub. leg. H). The purpose of this Order is to repeal those 2 pieces of subsidiary legislation.

**BOUNDARIES OF RESTRICTED AREAS OF FERRY
TERMINALS (REPEAL) NOTICE**

(Made under regulation 11 of the Shipping and Port Control (Ferry
Terminals) Regulations (Cap. 313 sub. leg. H))

1. Commencement

This Notice shall come into operation on the day appointed for the commencement of the Shipping and Port Control (Ferry Terminals)(Amendment) Regulation 2004 (L.N. of 2004).

**Hong Kong – Macau Ferry Terminal Restricted
Area Boundaries Notice**

2. Repeal

The Hong Kong – Macau Ferry Terminal Restricted Area Boundaries Notice (Cap. 313 sub. leg. M) is hereby repealed.

**China Ferry Terminal Restricted Area
Boundaries Notice**

3. Repeal

The China Ferry Terminal Restricted Area Boundaries Notice (Cap. 313 sub. leg. W) is hereby repealed.

Director of Marine

2004

Explanatory Note

This Notice relates to the boundaries of the restricted areas of the Hong Kong – Macau Ferry Terminal and the China Ferry Terminal, which are specified in the 2 pieces of subsidiary legislation mentioned in sections 2 and 3 of this Notice.

2. With the commencement of the Shipping and Port Control (Ferry Terminals)(Amendment) Regulation 2004 (L.N. of 2004), those boundaries will be specified in the Shipping and Port Control (Ferry Terminals) Regulations (Cap. 313 sub. leg. H). The purpose of this Notice is to repeal those 2 pieces of subsidiary legislation.

Annex D

Chapter:	313H	SHIPPING AND PORT CONTROL (FERRY TERMINALS) REGULATIONS	Gazette Number	Version Date
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Regulation:	2	Interpretation	64 of 1999	05/11/1999
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Remarks:

Adaptation amendments retroactively made - see 64 of 1999 s. 3

In these regulations, unless the context otherwise requires-

"authorized officer" (獲授權人員) means a public officer authorized in writing by the Director for the purposes of any of these regulations and any police officer on duty within a terminal;

"ferry vessel" (渡輪船隻) means a vessel which plies regularly from a terminal for the conveyance of passengers-

- (a) between Hong Kong and Macau; or
- (b) between Hong Kong and any other place in China; or (64 of 1999 s. 3)
- (c) between Hong Kong and any place outside Hong Kong other than a place referred to in paragraph (a) or (b), where-
 - (i) in the course of its voyage the vessel is at no time more than 200 nautical miles from a port or place in which the passengers and crew could be placed in safety; and
 - (ii) neither the distance between the last port of call in the country or territory in which the voyage begins and the final port of destination nor the return voyage exceeds 600 nautical miles,where "final port of destination" (最終目的港口) means the last port of call in the scheduled voyage at which the vessel commences its return voyage to the country or territory in which the voyage began,

whether or not the vessel also carries cargo; (L.N. 253 of 1994)

"pass" (通行證) means any pass issued under regulation 13 or a replacement pass issued under regulation 25;

"pass holder" (通行證持有人) means

- (a) in relation to a pool pass, the authorized officer to whom it is issued and includes any person using a pool pass by the authority of an authorized officer; and
- (b) in relation to a standard pass or a temporary pass, the person in whose name the pass is issued; (L.N. 253 of 1994)

"pool pass" (共用通行證) means a pool pass issued under regulation 13;

"restricted area" (限制區域) means an area declared under regulation 11 to be a restricted area;

"standard pass" (標準通行證) means a standard restricted area pass issued under regulation 13(1)(b) for a period of validity provided in regulation 16(c)(i); (L.N. 253 of 1994)

"temporary pass" (臨時通行證) means a temporary restricted area pass issued under regulation 13(1)(c) for a period of validity provided in regulation 16(c)(ii); (L.N. 253 of 1994)

"terminal" (終點碼頭) means a terminal the boundaries of which are declared under regulation 3;

"vehicle" (車輛) means any vehicle intended or adapted for use on roads.

(L.N. 253 of 1994)

Regulation:	3	Designation of terminals	64 of 1999	05/11/1999
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Remarks:

Adaptation amendments retroactively made - see 64 of 1999 s. 3

(1) The Chief Executive may, by order published in the Gazette, declare the boundaries of

terminals to be used by ferry vessels arriving in or leaving the waters of Hong Kong. (64 of 1999 s. 3)

- (2) A terminal shall include-
- (a) all land and water within the boundaries of the terminal; and
 - (b) any building, street, pier or pontoon within the said boundaries.

Regulation:	11	Declaration of restricted areas	64 of 1999	05/11/1999
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PART III

RESTRICTED AREAS

The Director may, by notice published in the Gazette, declare any area within a terminal to be a restricted area.

Regulation:	37	Fees	64 of 1999	05/11/1999
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The fees prescribed under these regulations are set out in the Schedule.

Schedule:		SCHEDULE	64 of 1999	05/11/1999
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[regulation 37]

FEES

PART 1-PASSES

(a)	A	standard	\$
	pass		105
(b)	A	replacement	\$
	pass		180
(c)	(Repealed L.N. 253 of 1994)		

(L.N. 254 of 1992; L.N. 340 of 1993; L.N. 253 of 1994)

PART 2-BERTHING

(a)	For a ferry vessel, per ton for each berthing in the case of-	\$
	(i) a dynamically supported craft	3
	(ii) a ferry vessel, other than a dynamically supported craft	1.50
(b)	For a vessel, not being a ferry vessel, per ton for each berthing	3

(L.N. 168 of 1988; L.N. 97 of 1990; 40 of 1991 s. 2; L.N. 380 of 1992)

PART 3-PASSENGER EMBARKATION

		\$
(a)	For each passenger paying an amount exceeding \$12 for a single journey	18
(b)	For each passenger travelling free of charge on a complimentary ticket ..	18
(c)	For each passenger not failing within (a) or (b)	6

(L.N. 168 of 1988; L.N. 314 of 1989; L.N. 97 of 1990; 40 of 1991 s. 3; L.N. 380 of 1992; L.N. 148 of 1998)

IMPLICATIONS OF THE PROPOSAL

Financial and Civil Service Implications

The proposal will entail the creation of 72 civil service posts in the Immigration Department, Customs and Excise Department, Hong Kong Police Force and Marine Department at an annual staff cost of \$30.8 million. Staff cost aside, the departments concerned will incur other expenses amounting to \$8.3 million per annum.

2. North West will be required to pay for the costs of electricity and water charges as well as the maintenance and general management of the terminal, estimated to be about \$10.5 million annually. It will also be responsible for a one-off cost of about \$27 million for procuring the systems, equipment and furniture required for the relevant departments' operation.

3. On the revenue side, the Government will receive an annual amount of \$16.3 million from North West, after a rent-free period of 12 months from the beginning of the tenancy or after permission to commence operation of the ferry service is given by the Director of Marine, whichever is earlier. There will also be additional revenue in the form of berthing and embarkation fees. Under the tenancy agreement, the Government will also receive a share of the income arising from the operation of duty free shops, if any, in the new TMFT, to be agreed between the Government and the tenant.

Economic Implications

4. The establishment of a new cross-boundary ferry terminal in Tuen Mun will further facilitate travel between Hong Kong and Macau and Mainland ports in the Pearl River Delta Region, which will confer broader economic benefits to Hong Kong. It will render yet another choice, apart from the existing cross-boundary terminals in Sheung Wan and Tsim Sha Tsui, for the respective ferry trips, and will pose some competition to the respective ferry operators from those two ferry terminals. In particular, it will benefit residents in the Northwest New Territories, as they will save much time and also some money in travelling to and from Macau and Mainland ports.

5. According to North West, the pier modification works will generate 60 temporary jobs during the works period, and the operation of cross-boundary ferry services will create some 232 jobs (shipping company's office and site staff: 150; cleansing and security staff: 10; vessel crew: 72).