

L.N. 28 of 2004**MERCHANT SHIPPING (LOCAL VESSELS)
(TYPHOON SHELTERS) REGULATION****CONTENTS**

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**MERCHANT SHIPPING (LOCAL VESSELS)
(TYPHOON SHELTERS) REGULATION**

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

1. Commencement

This Regulation shall come into operation on a day to be appointed by the Secretary for Economic Development and Labour by notice published in the Gazette.

2. Interpretation

In this Regulation, unless the context otherwise requires—

- “endorsement” (批註), in the context of endorsement on an operating licence or a permit, includes endorsement on any other documents issued by the Director in a legible form to replace the licence or permit;
- “length overall” (總長度), in relation to a local vessel, means the distance between the foreside of the foremost fixed permanent structure and the aftside of the aftermost fixed permanent structure of the vessel;
- “passage area” (通航區) means the area of the waters within the limits of a typhoon shelter set aside by the Director as a passage area under section 3;
- “typhoon shelter” (避風塘) means a typhoon shelter specified in column 2 of the Schedule.

3. Passage areas in typhoon shelters

(1) Subject to subsection (2), the Director may set aside any area of the waters within the limits of a typhoon shelter as a passage area for the passage of local vessels.

(2) The Director shall, upon the setting aside of a passage area under subsection (1)—

- (a) prepare a plan of the typhoon shelter on which the passage area is shown coloured grey;
- (b) sign and date the plan;
- (c) keep such plan in his office; and
- (d) make available a copy of such plan for inspection by the public free of charge at his office during the hours when the office is normally open to the public.

4. Use of typhoon shelters

(1) Subject to the provisions of this Regulation, a local vessel may enter and remain in a typhoon shelter.

(2) Except with the permission of the Director, a local vessel shall not enter or remain in a typhoon shelter if the vessel has on board any substance or article specified in Category 1, 2 or 5 in the Schedule to the Dangerous Goods (Application and Exemption) Regulations (Cap. 295 sub. leg. A).

(3) For the purposes of subsection (2), the substance or article referred to in that subsection does not include any substance or article which—

- (a) forms part of the equipment, stores or fuel of the vessel concerned; and
- (b) is required for the operation of the vessel or for use by the vessel during its passage.

(4) Except with the permission of the Director, a local vessel the length overall of which exceeds the permitted length overall specified in column 3 of the Schedule in relation to a typhoon shelter specified in column 2 of that Schedule opposite the reference to that permitted length overall shall not enter or remain in the typhoon shelter.

(5) A dwelling vessel shall not enter or remain in a typhoon shelter except in accordance with the Merchant Shipping (Local Vessels)(Dwelling Vessels) Regulation (Cap. 548 sub. leg. A) and with the conditions specified in the licence which is in force in respect of the vessel under that Regulation.

(6) If the Director is of the opinion that the presence of a local vessel in a typhoon shelter constitutes or is likely to constitute a hazard in the typhoon shelter owing to the size or design of the vessel, the Director may prohibit the vessel from entering or remaining in the typhoon shelter by—

- (a) endorsement on its operating licence;
- (b) endorsement on its permit which is in force under regulations made under section 89(2) of the Ordinance; or
- (c) a direction.

(7) If the Director is of the opinion that the presence of a local vessel in a typhoon shelter constitutes or is likely to constitute a hazard in the typhoon shelter owing to the number of vessels in the typhoon shelter, the Director may by a direction prohibit the vessel from entering or remaining in the typhoon shelter.

(8) The Director may by a direction prohibit a local vessel, which apart from this subsection could enter and remain in a typhoon shelter, from entering or remaining in the typhoon shelter if—

- (a) the presence of the vessel in the typhoon shelter endangers or is likely to endanger the safety of persons, other vessels or property;

- (b) the vessel is in such a condition that it poses a hazard to the environment; or
- (c) in any other case, it is in the public interest to do so.

(9) An endorsement made or a direction given under subsection (6), (7) or (8) in respect of a local vessel may apply to the vessel in relation to a particular typhoon shelter or to any number of typhoon shelters generally.

5. Transitional arrangement in relation to certain local vessels

(1) Where—

- (a) in respect of a local vessel a previous licence issued under the Merchant Shipping (Launches and Ferry Vessels) Regulations (Cap. 313 sub. leg. E) or the Merchant Shipping (Miscellaneous Craft) Regulations (Cap. 313 sub. leg. F) is in force immediately before the commencement of this Regulation; and
- (b) the length of the vessel as recorded in the previous licence does not exceed the permitted length overall specified in column 3 of the Schedule in relation to a typhoon shelter specified in column 2 of that Schedule opposite the reference to that length overall but the length overall of the vessel in fact exceeds such permitted length overall in relation to the typhoon shelter,

the Director may, by endorsement on the previous licence, permit the vessel to enter and remain in the relevant typhoon shelter.

(2) Upon the expiry of the previous licence referred to in subsection (1), the Director may, by endorsement on an operating licence issued in place of the previous licence, give the same permission as is mentioned in that subsection.

6. Local vessels entering or leaving typhoon shelters

(1) Subject to subsection (2), local vessels entering or leaving a typhoon shelter shall proceed one at a time.

(2) Where a local vessel which is permitted to tow under any provision of the Ordinance is engaged in towing within a typhoon shelter, it shall tow only one vessel in a chain or not more than two vessels alongside.

7. Local vessels to be anchored, etc. as directed

(1) The Director may direct a local vessel within a typhoon shelter to take up a particular position and to be berthed, moored, anchored or secured in accordance with the direction.

- (2) Unless directed to do so under subsection (1), a local vessel shall not take up any position or be berthed, moored, anchored or secured—
- (a) in a typhoon shelter so as to obstruct the free access of other vessels to any unoccupied space in the typhoon shelter; or
 - (b) in a passage area.

8. Power to remove local vessels in typhoon shelters

- (1) If a local vessel—
- (a) enters or remains in a typhoon shelter in contravention of section 4(2), (4) or (5);
 - (b) enters or remains in a typhoon shelter in contravention of a prohibition under an endorsement made or a direction given under section 4(6), (7) or (8);
 - (c) fails to take up a particular position as directed by the Director under section 7(1) or to be berthed, moored, anchored or secured in accordance with the direction;
 - (d) takes up a position or is berthed, moored, anchored or secured in a typhoon shelter or passage area in contravention of section 7(2),

the Director may, subject to subsections (2) and (3), take possession of the vessel and remove it from the typhoon shelter or move it from the position in which it is lying.

(2) Subject to subsection (3), the Director shall give to the owner of the vessel concerned, his agent or the coxswain of the vessel not less than 7 days' notice in writing of any proposed exercise of his powers under subsection (1) and the notice shall state the reason therefor.

- (3) The Director may exercise his powers under subsection (1)—
- (a) at any time after notice of the proposed exercise of his powers under subsection (1) is given, notwithstanding that the period of the notice has not expired, if a strong monsoon signal or a tropical cyclone warning signal is issued by the Hong Kong Observatory; or
 - (b) without giving notice, if the owner of the vessel concerned, his agent or the coxswain of the vessel cannot be found or if, in the opinion of the Director, the vessel is abandoned.

(4) If any person on board a local vessel obstructs the Director in the exercise of his powers under subsection (1), the Director may evict such person from the vessel.

(5) The Director may use such force as may be necessary for the exercise of his powers under subsection (1) or for the purposes of subsection (4).

9. Production of licence or permit, etc.

The Director may require the owner of a local vessel, his agent or the coxswain of the vessel to produce any licence, permit or other relevant documents issued in respect of the vessel—

- (a) for inspection for the purpose of ensuring compliance with this Regulation; or
- (b) for endorsement under section 4(6)(a) or (b) or 5.

10. Offences

(1) Subject to subsection (2), in the event of—

- (a) a contravention of section 4(2), (4) or (5), 6 or 7(2);
- (b) a contravention of a prohibition by an endorsement made or a direction given under section 4(6), (7) or (8);
- (c) a failure to comply with a direction given under section 7(1) or a requirement under section 9,

the owner of the vessel concerned, his agent and the coxswain of the vessel commit an offence and each of them is liable on conviction to a fine at level 2.

(2) It shall be a defence for a person charged with an offence under subsection (1) to show that the offence was committed without his knowledge and that he had taken all practicable steps to prevent the commission of the offence.

11. Amendment of Schedule

The Director may, by notice in the Gazette, amend the Schedule.

12. Saving

(1) Where a permit granted under regulation 4(1) of the repealed Regulations is in force immediately before the commencement of this Regulation in respect of a local vessel, the permit shall have effect from such commencement as if it were a permission granted under section 4(2) or (4), as the case may be, and the other provisions of this Regulation shall apply accordingly.

(2) Where a direction given under regulation 5(3) of the repealed Regulations is in force immediately before the commencement of this Regulation in respect of a local vessel, the direction shall have effect from such commencement as if it were a direction given under section 4(8), and the other provisions of this Regulation shall apply accordingly.

(3) Where an endorsement made or direction given under regulation 5(4) of the repealed Regulations is in force immediately before the commencement of this Regulation in respect of a local vessel, the endorsement or direction shall have effect from such commencement as if it were an endorsement made or direction given under section 4(6), and the other provisions of this Regulation shall apply accordingly.

(4) Where a permit, direction or endorsement that has effect by virtue of subsection (1), (2) or (3) has been granted, given or made, as the case may be, in respect of a specified period, the permit, direction or endorsement shall remain in force for so much of the period as remains unexpired from the commencement of this Regulation.

(5) In this section, “repealed Regulations” (已廢除規例) means the Shipping and Port Control (Typhoon Shelters) Regulations (Cap. 313 sub. leg. D).

SCHEDULE

[ss. 2, 4, 5 & 11]

PERMITTED LENGTH OVERALL FOR LOCAL VESSELS IN
TYPHOON SHELTERS

Item	Typhoon shelters	Permitted length overall (in metres)
1.	Aberdeen South Typhoon Shelter	30.4
2.	Aberdeen West Typhoon Shelter	30.4
3.	Causeway Bay Typhoon Shelter	30.4
4.	Cheung Chau Typhoon Shelter	50
5.	Hei Ling Chau Typhoon Shelter	50
6.	Kwun Tong Typhoon Shelter	50
7.	New Yau Ma Tei Typhoon Shelter	50
8.	Rambler Channel Typhoon Shelter	50
9.	Sam Ka Tsuen Typhoon Shelter	30.4
10.	Shau Kei Wan Typhoon Shelter	30.4
11.	Shuen Wan Typhoon Shelter	30.4
12.	To Kwa Wan Typhoon Shelter	50
13.	Tuen Mun Typhoon Shelter	50
14.	Yim Tin Tsai Typhoon Shelter	30.4

Stephen IP
Secretary for Economic
Development and Labour

19 February 2004

Explanatory Note

This Regulation provides for the regulation and control of local vessels in typhoon shelters following the repeal of the Shipping and Port Control (Typhoon Shelters) Regulations (Cap. 313 sub. leg. D) (“the repealed Regulations”).

2. Section 3 empowers the Director of Marine (“the Director”) to set aside any area of the waters in a typhoon shelter as a passage area for local vessels.
3. Section 4 provides for the use of typhoon shelters by local vessels and sets out the circumstances under which a local vessel is prohibited from entering or remaining in a typhoon shelter.
4. Section 5 provides for transitional arrangement to permit certain local vessels to enter and remain in a typhoon shelter.
5. Sections 6 and 7 impose further requirements on a local vessel when entering, leaving or remaining in a typhoon shelter.
6. Section 8 empowers the Director to remove a local vessel from a typhoon shelter or to move the vessel from the position in which it is lying under certain circumstances.
7. Section 9 empowers the Director to require relevant persons to produce a licence, a permit or other relevant documents for inspection for the purposes of the Regulation.
8. Section 10 provides that the contravention of, or the failure to comply with, certain specified provisions of the Regulation constitutes an offence.
9. Section 11 empowers the Director to amend the Schedule.
10. Section 12 saves permits, directions and endorsements granted, given or made under the repealed Regulations.