

立法會
Legislative Council

LC Paper No. LS35/04-05

**Paper for the House Committee Meeting
on 18 February 2005**

**Legal Service Division Further Report on
Merchant Shipping (Prevention of Pollution by Sewage) Regulation
(L.N. 7 of 2005) and Merchant Shipping (Prevention and Control of
Pollution) (Fees) Regulation (L.N. 8 of 2005)**

At the House Committee meeting on 21 January 2005, a decision was taken to extend the scrutiny period of the Merchant Shipping (Prevention of Pollution by Sewage) Regulation (“the Sewage Regulation”) and the Merchant Shipping (Prevention and Control of Pollution) (Fees) Regulation to 9 March 2005 pending our further report.

2. Subsequently, we have raised some drafting queries with the Administration on the Sewage Regulation. On 16 February 2005, the Administration responded to the queries we raised (see the attached correspondence). About section 28(2) of the Regulation, the Administration considers that the definite article in “regulated by the other regulations” should be replaced by “any”. However, since the proposed amendment does not affect the operation of the Regulation, the Administration suggests to include the proposed amendment in the next Statute Law (Miscellaneous Provisions) Bill.

3. We have no further difficulties with the two Regulations.

Encl

Prepared by

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16 February 2005

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LS/S/15/04-05

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Dear Miss Ho,

**Merchant Shipping
(Prevention of Pollution by Sewage) Regulation
(L.N. 7 of 2005)**

Thank you for your letter of 26 January 2005 concerning the captioned subject. Our responses to your queries are as follows:

Section 2

“Initial survey” and “renewal survey”

2. Under Annex IV to the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating to the Convention, an initial survey will be carried out “before the ship is put in service or before the ISPP Certificate ... is issued for the first time” (reg.3.1.a of the Convention). Where an ISPP Certificate has been issued to a ship, all subsequent periodic surveys will be taken as renewal surveys. This requirement under the Convention is set out in section 9 of the Merchant Shipping (Prevention of Pollution by Sewage) Regulation (L.N. of 2005) (“the Regulation”). Under the Regulation, the factor that determines whether a ship is subject to an initial survey or a renewal survey is whether an ISPP Certificate has been issued. This is also the factor that differentiates an initial survey from a renewal survey.

3. It is agreed that section 10 has set out some of the requirements that regulate the carrying out of an initial survey or a renewal survey. However, section 10 does not have the effect of determining whether a survey shall be “initial” or “renewal”. It is only after the Director has determined that the ship requires an initial or renewal survey under section 9(2) that section 10 will be checked against to see whether that section has been complied with.

4. Hence, it is considered that a reference to section 9(2) is more appropriate for the purposes of describing an initial survey or a renewal survey taking into account that section 9(2)(a)(i) and (ii) has incorporated section 10 by reference.

5. It is noted that a reference is made to section 26 in the definition of "additional survey". Section 26 also sets out the circumstances under which an additional survey is required to be carried out. This is in line with the drafting of the definitions of "initial survey" and "renewal survey".

"sewage"

6. We do not intend to amend the definition of "sewage" as it is the same as that given in MARPOL Annex IV. In fact, when we are talking about drainage or other wastes from toilet or urinal in the context of sewage, we must be talking about those "discharged" from the toilet or urinal but not otherwise come from the toilet or urinal, the use of "排放" in the Chinese text is therefore not incorrect.

"any form of toilet or urinal"

7. In paragraph (a) of the definition of "sewage", the word "any" is used with singular nouns and therefore "toilet" and "urinal" are appropriate. Please note that this approach is also consistent with the definition of "sewage" in Cap. 413J.

Section 25(6)

8. We are requested to consider whether the drafting of "如處長信納在有關暫時中止後第(3)(b)款提述的糾正行動已就有關香港船舶採取" can be improved. Under section 25(6) of the Regulation, it is provided that if the Director is satisfied that the corrective action referred to in section 25(3)(b) has been taken in respect of a Hong Kong ship, he may restore the validity of the Certificate concerned. This provision does not stipulate who is to take the corrective action. The Director will be satisfied so long as **the corrective action required** has been taken. The focus is on the action itself but not on the person who takes the action. In the English text, we use passive voice to bring out the meaning ("if he is satisfied that the corrective action referred to in subsection (3)(b) has been taken"). In the Chinese text, we achieve the same by putting "第(3)(b)款提述的糾正行動" before "採取". As the Chinese text can correctly reflect the policy intent and there is no discrepancy between the Chinese text and the English text, we do not consider any amendment necessary.

Section 28(2)

9. We consider that the definite article in "regulated by the other regulations" should be replaced by "any".

10. Since the proposed amendment to section 28(2) (paragraph 9) above does not affect the operation of the Regulation, we will include this proposed amendment in the next Statute Law (Miscellaneous Provisions) Bill.

Yours sincerely,

(K M Fung)
for Secretary for Economic Development and Labour

c.c.

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26 January 2005

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Dear Mr Chan,

**Merchant Shipping (Prevention of Pollution by Sewage) Regulation
(L.N. 7 of 2005)**

I am scrutinising the legal and drafting aspects of the above Regulation with a view to advising Members and would like to seek your clarification on the following -

Section 2

2. In the definitions of “initial survey” and “renewal survey”, would it be more appropriate to refer to section 10 instead of section 9(2)(a)(i) and section 9(2)(a)(ii) respectively (cf. the definition of “additional survey”)?

3. In the definition of “sewage”, would it be necessary to add “discharged” after “wastes” and “drainage” etc. in the English version so as to reflect the Chinese term “排放”? Further, for “any form of toilet or urinal” in paragraph (a), should the plural form be used, i.e. “any form of toilets or urinals”?

Section 25(6)

4. Could the Chinese sentence “如處長信納在有關的暫時中止後第(3)(b)款提述的糾正行動已就有關香港船舶採取，……” be improved?

Section 28(2)

5. Should the definite article in “regulated by the other regulations” be deleted?
6. It is appreciated if you could reply in both Chinese and English at your earliest convenience.

Yours sincerely,

(Anita HO)
Assistant Legal Adviser

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LA