

LEGISLATIVE COUNCIL BRIEF

Civil Aviation Ordinance
(Chapter 448)

Air Navigation (Hong Kong) Order 1995 (Amendment of Schedule 16) Order 2009

INTRODUCTION

A At the meeting of the Executive Council on 6 October 2009, the Council ADVISED and the Chief Executive ORDERED that the Air Navigation (Hong Kong) Order 1995 (Amendment of Schedule 16) Order 2009 (“the Order”) at **Annex A** should be made to implement the latest requirements of the International Civil Aviation Organization (ICAO)¹ for the safe transport of dangerous goods (DG)² by air.

B 2. On the same day, the Director-General of Civil Aviation (DGCA) made the Dangerous Goods (Consignment by Air) (Safety) Regulations (Amendment of Schedule) Order 2009 at **Annex B** to amend the references made to the provisions of the ICAO’s Technical Instructions for the Safe Transport of Dangerous Goods by Air (“TIs”) in the Dangerous Goods (Consignment by Air) (Safety) Regulations.

¹ The 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 190 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 According to the ICAO’s Technical Instructions for the Safe Transport of Dangerous Goods by Air, dangerous goods in the context of air transport include explosives, compressed gas, flammable liquids, flammable solids, oxidizing substances, toxic substances, infectious substances, radioactive material and corrosives, etc.

JUSTIFICATIONS

ICAO's Latest Requirements

3. The TIs set out the ICAO's requirements. The new edition of the TIs (i.e. the 2009-2010 edition) was published in December 2008 by the ICAO. Most of the changes covered by the new TIs are technical and textual in nature. The more significant changes aim to –

- (a) revise airlines' cargo acceptance requirements to clarify the requirements for the checking of DG to be performed by the airlines;
- (b) centralize the provisions for DG shipped under excepted quantities³ in the same chapter of the TIs for ease of reference;
- (c) require the airlines to report incidents involving DG that are allowed to be shipped as general cargo in accordance with the special provisions of the TIs;
- (d) clarify that DG carried for medical use by a patient during flight, including those that form part of the permanent equipment of the aircraft when it has been adapted for specialized use (i.e. air ambulances⁴), can be carried by air ambulances without complying with the general requirements on such DG; and
- (e) clarify the requirement of DG information to be provided to passengers to prevent DG from being carried by them.

THE ORDER

4. The main provisions of the Order are set out below -

- (a) Clause 2(4) extends the general exception to DG carried for medical use on air ambulances;

³ DG shipped and packed in excepted quantities are DG packed in very small quantities which do not have to comply with the normal requirements in the TIs.

⁴ Air ambulances are flights for the specific carriage of sick or injured persons.

- (b) Clause 2(8) clarifies the obligation of the operator of an aircraft before accepting for transport aboard the aircraft any package or unit load device containing DG;
- (c) Clause 2(13) revises the requirement on notices of DG information to passengers of aircraft; and
- (d) Clause 2(14) requires the operator of an aircraft to report an accident or incident involving DG carried on board the aircraft.

5. The target commencement date of the Order is 1 January 2010.

LEGISLATIVE TIMETABLE

6. The Order will be gazetted on 23 October 2009 and tabled in the Legislative Council on 28 October 2009.

IMPLICATIONS OF THE PROPOSAL

7. The proposal has no financial, civil service, productivity, sustainability and environmental implications. The new TIs have not introduced any substantially new requirements.

8. The proposal is in conformity with the Basic Law, including the provisions concerning human rights. It does not affect the binding effect of the existing legislation.

PUBLIC CONSULTATION

9. The Civil Aviation Department has consulted the Technical Sub-Committee of the Aviation Development Advisory Committee and the local air cargo stakeholders including the Hongkong Association of Freight Forwarding and Logistics Limited, the Hong Kong Shippers' Council, the Board of Airline Representatives and the Airport Authority on the new TIs. They generally support the proposed amendments. On 25 May 2009, we consulted the Legislative Council Panel on Economic Development. The Panel in general support the legislative proposals and requested the Administration to step up publicity of the requirements.

PUBLICITY

10. A press release will be issued on 21 October 2009. A spokesman will be available to handle enquiries.

BACKGROUND

11. To ensure aviation safety, the ICAO promulgates, under the Convention on International Civil Aviation (generally referred to as the “Chicago Convention”), a set of requirements regarding the carriage of DG by air. These requirements regulate matters such as the classification, packing, marking, labelling and loading of DG on board aircraft as well as training requirements for airlines, air cargo and security personnel. Under the Chicago Convention, such requirements are set out in the TIs. This document is normally updated and published by the ICAO biennially.

12. The Chicago Convention applies to Hong Kong. The TIs made under the Convention are given effect through the following two pieces of local subsidiary legislation made by the Chief Executive in Council, i.e. –

- (a) Air Navigation (Dangerous Goods) Regulations, as Schedule 16 to the Air Navigation (Hong Kong) Order 1995; and
- (b) Dangerous Goods (Consignment by Air) (Safety) Regulations.

The former generally regulates the DG operations of airlines and airport authorities whereas the latter regulates the shippers and freight forwarders in the proper handling of DG before offering them for air transport.

ENQUIRIES

13. Any enquiry on this brief should be directed to Mr Francis Cheng, Principal Assistant Secretary (Transport) (telephone number: 2189 7719).

Transport and Housing Bureau
21 October 2009

**AIR NAVIGATION (HONG KONG) ORDER 1995
(AMENDMENT OF SCHEDULE 16) ORDER 2009**

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

1. Commencement

This Order comes into operation on 1 January 2010.

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

(1) Regulation 2(1) of Schedule 16 to the Air Navigation (Hong Kong) Order 1995 (Cap. 448 sub. leg. C) is amended, in the definition of “Technical Instructions”, by repealing “2007-2008” and substituting “2009-2010”.

(2) Regulation 3(1) of Schedule 16 is amended by repealing “suspended;” and substituting “suspended –”.

(3) Regulation 3(3) of Schedule 16 is amended by repealing “These” and substituting “Subject to Regulation 8A of these Regulations, these”.

(4) Regulation 3(3)(c) of Schedule 16 is amended by repealing everything after “and (3D),” and substituting –

“to provide medical aid to a patient during the flight and the dangerous goods –

(i) are placed on board with the approval of the operator of the aircraft; or

(ii) form part of the permanent equipment of the aircraft when the aircraft has been adapted for specialized use;”.

(5) Regulation 3(3D)(b)(x) of Schedule 16 is amended by repealing the semicolon and substituting a full stop.

(6) Regulation 3(3D)(b)(xi) of Schedule 16 is repealed.

(7) Regulation 3(4) of Schedule 16 is amended by repealing “Chapter 2.4 of Part 1” and substituting “Chapter 5 of Part 3”.

(8) Regulation 6 of Schedule 16 is amended by adding immediately before paragraph (1) –

“(1A) The operator of an aircraft shall not accept for transport aboard the aircraft any package or unit load device containing dangerous goods unless the operator has verified the matters set out in Chapter 1.3.1 of Part 7 of the Technical Instructions by an acceptance check list.”.

(9) Regulation 6(1)(a) and (b)(i) of Schedule 16 is repealed.

(10) Regulation 6(2)(a) and (b) of Schedule 16 is repealed.

(11) Regulation 6(2)(c) of Schedule 16 is amended by repealing “in accordance with this Regulation” and substituting “under paragraph (1A)”.

(12) Regulation 8(1)(a) of Schedule 16 is amended by repealing “4.1.4, 4.1.7 and 4.1.8” and substituting “4.1.3, 4.1.5, 4.1.8 and 4.1.9”.

(13) Regulation 8(2A) of Schedule 16 is repealed and the following substituted –

“(2A) The information shall be provided in notices that –

(a) include visual examples of the dangerous goods; and

(b) are prominently displayed, in sufficient number, at –

(i) each of the places at the airport where –

(A) tickets are issued;

(B) passengers are checked in;
or

(C) passengers assemble to board the aircraft; and

(ii) any other location where passengers are checked in.”.

(14) Schedule 16 is amended by adding –

“8A. Reporting of dangerous goods accidents and incidents

(1) The operator of an aircraft registered in Hong Kong or, if the operator's principal place of business or permanent residence is in Hong Kong, any other aircraft, shall report an accident or incident (wherever occurring) involving dangerous goods carried on board the aircraft to the Director-General of Civil Aviation in accordance with the reporting requirements of the Director-General of Civil Aviation.

(2) The operator of an aircraft other than an aircraft referred to in paragraph (1) shall report an accident or incident involving dangerous goods carried on board the aircraft that occurred in Hong Kong to the Director-General of Civil Aviation in accordance with the reporting requirements of the Director-General of Civil Aviation.”.

(15) Regulation 9(c) of Schedule 16 is amended by repealing “6(2)” and substituting “6(1A)”.

Clerk to the Executive Council

COUNCIL CHAMBER

2009

Explanatory Note

This Order amends Schedule 16 to the Air Navigation (Hong Kong) Order 1995 (Cap. 448 sub. leg. C) to give effect to certain amendments introduced by the 2009-2010 edition of the Technical Instructions for the Safe Transport of Dangerous Goods by Air approved and published by the decision of the Council of the International Civil Aviation Organization.

2. The amendments include –

- (a) extending the general exception to dangerous goods carried for medical use on air ambulances;
- (b) clarifying the obligation of the operator of an aircraft before accepting for transport aboard the aircraft any package or unit load device containing dangerous goods;
- (c) revising the requirement on notices of dangerous goods information to passengers of aircraft; and
- (d) requiring the operator of an aircraft to report an accident or incident involving dangerous goods carried on board the aircraft.

**DANGEROUS GOODS (CONSIGNMENT BY AIR)
(SAFETY) REGULATIONS (AMENDMENT OF
SCHEDULE) ORDER 2009**

(Made by the Director-General of Civil Aviation under regulation 9
of the Dangerous Goods (Consignment by Air) (Safety)
Regulations (Cap. 384 sub. leg. A))

1. Commencement

This Order comes into operation on 1 January 2010.

2. Schedule amended

(1) Part I of the Schedule to the Dangerous Goods (Consignment by Air) (Safety) Regulations (Cap. 384 sub. leg. A) is amended by repealing “2007-2008” and substituting “2009-2010”.

(2) Part II of the Schedule is amended, opposite the reference to regulation 4(1)(e), by repealing “Chapter 2.4.7 of Part 1, Chapter 7.9 of Part 2, Part 4, and Chapters 1.1 (paragraphs (e) to (k)),” and substituting “Chapter 6.1.5 of Part 1, Chapter 5.5 of Part 3, Part 4, and Chapters 1.1 (paragraphs (e) to (i)),”.

Director-General of Civil Aviation

2009

Explanatory Note

This Order amends the Schedule to the Dangerous Goods (Consignment by Air) (Safety) Regulations (Cap. 384 sub. leg. A) to give effect to certain amendments introduced by the 2009-2010 edition of the Technical Instructions for the Safe Transport of Dangerous Goods by Air (“TIs”) approved and

published by the decision of the Council of the International Civil Aviation Organization. The amendments to the Schedule are mainly to reflect the renumbering of Part 1, Part 3 and Part 5 of the new TIs.