

**立法會**  
**Legislative Council**

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**Paper for the House Committee meeting on 13 January 2012**

**Report of the Subcommittee on Frontier Closed Area  
(Amendment) Order 2011**

**Purpose**

This paper reports on the deliberations of the Subcommittee on Frontier Closed Area (Amendment) Order 2011.

**Background**

2. Following a review of the coverage of the frontier closed area ("FCA") in 2006, the Administration announced in January 2008 that the coverage of FCA would be substantially reduced from about 2 800 hectares to about 400 hectares. The reduced FCA will comprise a narrow strip of land covering the re-aligned boundary patrol road ("BPR") and areas to its north, together with crossing points along the boundary (i.e. the Boundary Control Points and Sha Tau Kok town).
3. According to the Administration, in order to implement the reduced coverage of FCA while maintaining the integrity of the boundary, it needs to construct a secondary boundary fence ("SBF") along BPR and new sections of BPR and the primary boundary fence ("PBF") at certain areas along the Hong Kong Special Administrative Region's boundary with the Mainland.
4. The construction works of SBF and new sections of BPR and PBF have been divided into four sections as follows –

	<u>Section</u>	<u>Construction Period</u>
(1)	Mai Po to the Lok Ma Chau Control Point Section	1 <sup>st</sup> quarter 2010 – 3 <sup>rd</sup> quarter 2011
(2)	Lok Ma Chau Control Point to Ng Tung River Section	1 <sup>st</sup> quarter 2010 – 4 <sup>th</sup> quarter 2012
(3)	Ng Tung River to Lin Ma Hang Section	1 <sup>st</sup> quarter 2012 – 1 <sup>st</sup> quarter 2015
(4)	Lin Ma Hang to Sha Tau Kok Section	4 <sup>th</sup> quarter 2009 – 3 <sup>rd</sup> quarter 2011

The required construction works started in the fourth quarter of 2009 and are expected to be completed in the first quarter of 2015. According to the Administration, the construction works for sections 1 and 4, i.e. the "Mai Po to Lok Ma Chau Control Point Section" and the "Lin Ma Hang to Sha Tau Kok Section", have been completed.

### **The Frontier Closed Area (Amendment) Order 2011**

5. Under section 36 of the Public Order Ordinance (Cap. 245) ("POO"), the Chief Executive may, where he reasonably believes that it is necessary for the protection of national security or public safety, or the protection of public order or public health, by order declare any area or place to be a closed area. Under section 38 of POO, any person who enters or leaves a closed area without a permit or contravenes any condition to which such permit is subject shall be guilty of an offence and shall be liable on summary conviction to a fine of \$5,000 and imprisonment for two years.

6. Pursuant to section 36 of POO, the Frontier Closed Area Order (Cap. 245 sub. leg. A) ("the FCA Order") was made on 7 September 1984 and the current coverage of FCA is specified in the Schedule to the FCA Order.

7. The Frontier Closed Area (Amendment) Order 2011 ("the Amendment Order") is made by the Chief Executive under section 36 of POO to substitute a new Schedule to the FCA Order to specify the reduced boundaries of the FCA after completion of the construction works for section 1 (the "Mai Po to Lok Ma Chau Control Point Section") and section 4 (the "Lin Ma Hang to Sha Tau Kok Section").

8. The Amendment Order will come into operation on 15 February 2012.

### **The Subcommittee**

9. At the meeting of the House Committee on 9 December 2011, members agreed that a Subcommittee should be formed to study the Amendment Order. The membership list of the Subcommittee is in **Appendix I**.

10. Under the chairmanship of Hon LAU Kong-wah, the Subcommittee held one meeting with the Administration.

11. To allow more time for the Subcommittee to study the Amendment Order, the scrutiny period of the subsidiary legislation has been extended from 21 December 2011 to 1 February 2012 by a resolution of the Council passed on 14 December 2011.

### **Deliberations of the Subcommittee**

#### Security of the reduced FCA

12. The Subcommittee has raised concern about the security of and the policing strategy for the reduced FCA. Noting that some aquaculture farms are operating in the Starling Inlet, which is within the FCA coverage, members have expressed concern about whether local fishermen are allowed to enter the closed area for carrying out ad hoc fishing activities.

13. According to the Administration, under POO, any person who enters or leaves the closed area is required to possess a valid Closed Area Permit. POO also states that the Commissioner of Police or an authorized person may issue a permit to allow any person to enter or leave the closed area. In general, persons who are able to show a need to enter a closed area to the satisfaction of the Police, such as those who live or work within the closed area, will be considered for the issue of permits. Persons on board vessels entering or leaving a closed area are therefore required to have valid Closed Area Permits.

14. While recognising the need for taking enforcement action against cross-boundary criminal activities, Mr WONG Yung-kan considers it not feasible for local fishermen to apply for Closed Area Permits when they have boarded the vessels. He has called on the Administration to introduce

facilitating measures to enable local fishermen to carry out ad hoc activities in the closed area.

15. The Administration has advised that the Marine Police have set up a check point at the Starling Inlet for the inspection of vessels entering and leaving FCA. At present, general applications for Closed Area Permits are handled by the Closed Area Permit Office at Sheung Shui Police Station during office hours. Additionally, renewal of resident Closed Area Permits and application for Closed Area Permits for ad hoc purpose can be processed at Sha Tau Kok Police Station. Upon the reduction of FCA in February 2012, the Police will expand its service and set up a Closed Area Permit Office at the Sha Tau Kok Checkpoint between 10:00 am and 12:30 pm from Monday to Friday (except public holidays) to handle applications from local residents (including fishermen) for Closed Area Permits. Applicants can arrange advance bookings with the Police for processing of the applications. The Police will continue to liaise with local fishermen to keep in view their need for Closed Area Permits.

16. Members have sought information on the fencing of the reduced boundaries of FCA after the completion of the construction works for sections 1 and 4, given that the construction works for sections 2 and 3 have yet to be completed. The Administration has advised that to implement the reduced coverage of FCA while maintaining the integrity of the boundary, it will construct a SBF along BPR and new sections of BPR and PBF at certain sections, thereby enclosing the road and ensuring that PBF and BPR will be protected from deliberate or inadvertent interference. PBF and SBF will be erected along the northern and southern curbs of the re-aligned BPR respectively, except in some parts of Sha Tau Kok which are fenced off topographically. Signage will be erected in the vicinity where appropriate. Upon the Amendment Order coming into operation, any persons who wish to visit the released area will no longer be required to hold valid Closed Area Permits. The Police would continue to deploy its resources and manpower flexibly to ensure boundary security and integrity.

#### Implementation timetable

17. The Subcommittee has enquired about the estimated completion date for all the construction works so as to give full effect to the reduction in the coverage of FCA. The Administration has advised that the construction works of SBF and new sections of BPR and PBF have been divided into four sections. The Amendment Order seeks to specify the reduced FCA after the completion of construction works for sections 1 and 4. Construction works for section 2 (the "Lok Ma Chau Control Point to Ng Tung River Section") are underway. Phase 2 of the construction works will cover the remaining section, i.e. section 3

(the "Ng Tung River to Lin Ma Hang Section"). According to the Administration, it aims to complete the entire construction works by the first quarter of 2015. It will introduce further amendments to the FCA Order at a later stage after the completion of the relevant construction works.

### Public consultation

18. Members note that the Administration has consulted Heung Yee Kuk, the Town Planning Board, the Advisory Council on the Environment, North District Council, Yuen Long District Council, and Ta Kwu Ling, Sha Tau Kok, Sheung Shui and San Tin Rural Committees. According to the Administration, the Rural Committees and the District Councils are supportive of the reduction of FCA.

### Use of "notes" in the Amendment Order

19. The legal adviser to the Subcommittee has drawn members' attention to Note 5 of the new Schedule to the FCA Order which states that the "plans annexed to this Schedule are provided for information only". The Administration has explained that it is not necessary for the plans to be included as an integral part of the description of the reduced FCA which is clearly identified by the textual description and the coordinates listed in the Schedule. While Note 1, which specifies the grid system on which the coordinates are based, has legislative effect, Notes 2 to 5 are provided for information only and hence have no legislative effect.

20. The legal adviser has pointed out that Note 1 contains important information as to the system of coordinates used in the Schedule. To understand the coordinates in the Schedule that set out the boundary of the reduced FCA, this piece of information must be taken into account. The legal adviser considers it advisable to place Note 1 at a location where the coordinates first appear (i.e. in the main text of the Schedule rather than at the end of the Table) to further enhance comprehension. Members generally agree with the legal adviser's observation and the suggested approach.

21. After considering the views of the Subcommittee, the Administration has agreed that the approach suggested by the legal adviser to the Subcommittee is a viable alternative in achieving the desired purpose. The Administration will move a motion to amend the Amendment Order to delete Note 1 and add a new section 3 to the Schedule, the substance of which being the same as Note 1. As a consequence, Notes 2 to 5 will be renumbered accordingly as Notes 1 to 4.

**Recommendation**

22. Subject to the amendments to be made by the Administration (**Appendix II**), the Subcommittee supports the Amendment Order. The Subcommittee does not propose any amendment to the Amendment Order.

**Advice sought**

23. Members are invited to note the deliberations of the Subcommittee.

Council Business Division 2  
Legislative Council Secretariat  
11 January 2012

**Subcommittee on Frontier Closed Area (Amendment) Order 2011**

**Membership List**

<b>Chairman</b>	Hon LAU Kong-wah, JP
<b>Members</b>	Hon James TO Kun-sun
	Hon CHAN Kam-lam, SBS, JP
	Hon WONG Yung-kan, SBS, JP
	Hon Emily LAU Wai-hing, JP
	Hon Audrey EU Yuet-mee, SC, JP
	Hon CHEUNG Hok-ming, GBS, JP
	Hon Cyd HO Sau-lan
	Hon WONG Kwok-kin, BBS
	(Total : 9 Members)
<b>Clerk</b>	Miss Betty MA
<b>Legal adviser</b>	Mr Bonny LOO
<b>Date</b>	16 December 2011

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## Interpretation and General Clauses Ordinance

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### Resolution

(Under section 34(2) of the Interpretation and General Clauses Ordinance  
(Cap. 1))

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### Frontier Closed Area (Amendment) Order 2011

**Resolved** that the Frontier Closed Area (Amendment) Order 2011, published in the Gazette as Legal Notice No. 170 of 2011 and laid on the table of the Legislative Council on 7 December 2011, be amended as set out in the Schedule.

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## Schedule

### Amendments to Frontier Closed Area (Amendment) Order 2011

1. **Section 3 amended (Schedule substituted)**
  - (1) Section 3, new Schedule, after section 2—  
**Add**
  - “3. The coordinates are based on Hong Kong 1980 Grid System.”
  - (2) Section 3, new Schedule—  
**Repeal Note 1.**
  - (3) Section 3, new Schedule—  
**Re-number Notes 2, 3, 4 and 5 as Notes 1, 2, 3 and 4.**