

LEGISLATIVE COUNCIL BRIEF

Civil Aviation Ordinance
(Chapter 448)

Dangerous Goods (Consignment by Air) (Safety) Ordinance
(Chapter 384)

**Air Navigation (Hong Kong) Order 1995
(Amendment of Schedule 16) Order 2016**

**Dangerous Goods (Consignment by Air) (Safety)
Regulations (Amendment of Schedule) Order 2016**

INTRODUCTION

A At the meeting of the Executive Council on 7 June 2016, the Council **ADVISED** and the Acting Chief Executive **ORDERED** that the Air Navigation (Hong Kong) Order 1995 (Amendment of Schedule 16) Order 2016 (the AN(DG)R Amendment Order) at **Annex A** should be made to implement the latest requirements of the International Civil Aviation Organisation (ICAO) for the safe transport of dangerous goods (DG)¹ by air.

B 2. On the same day, the Director-General of Civil Aviation made the Dangerous Goods (Consignment by Air) (Safety) Regulations (Amendment of Schedule) Order 2016 (the DG(CAS)R Amendment Order) at **Annex B** to update 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 According to the ICAO's Technical Instructions for the Safe Transport of Dangerous Goods by Air, DG in the context of air transport include explosives, compressed gas, flammable liquids, flammable solids, oxidising substances, toxic substances, infectious substances, radioactive materials and corrosives, etc..

JUSTIFICATIONS

The ICAO's Latest Requirements

3. The ICAO was established by the Convention on International Civil Aviation (generally referred to as the “Chicago Convention”). At present, it has 191 Contracting States and China is one of them. China assumes responsibility for the international rights and obligations arising from the application of the above Convention and the relevant ICAO requirements, which also apply to Hong Kong. The ICAO’s 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.

4. The TIs set out the ICAO’s requirements for the safe transport of DG by air. The new edition of the TIs (i.e. the 2015-2016 edition) was published in December 2014 by the ICAO. Most of the changes in the new edition of the TIs are technical and textual in nature. Major changes that require legislative amendments are related to the Air Navigation (Dangerous Goods) Regulations and are summarised below –

- (a) at present, lamps containing DG² are subject to the relevant provisions in respect of the safe transport of DG by air, regardless of the amount or class of DG the lamps contain. The legislative amendment seeks to exempt lamps containing small amount of DG or those containing only certain kinds of DG from the provisions of the TIs, provided that such lamps meet the conditions specified in the TIs to ensure their safe transport by air;
- (b) at present, aircraft operators are required by law to conduct DG acceptance checks by using a checklist³ on every single journey of DG air cargo consignment to be carried in a series of journeys. The legislative amendment seeks to clarify the responsibilities of aircraft operators for conducting DG acceptance checks. Where a DG air cargo consignment is carried in a series of journeys, operators are only required to

² Examples of common DG in lamps are neon and argon.

³ The International Air Transport Association (IATA) provides a template of the DG air cargo consignment acceptance checklist to its airline members for reference in its Dangerous Goods Regulations (DGR), which is the globally recognised reference for transporting DG by air. The checklist requirement is provided for in the existing provisions.

verify the compliance of the DG air cargo consignment with the TIs by using a checklist if the consignment is accepted for carriage in Hong Kong for the first of those journeys by air. For the subsequent journeys of a consignment that is carried into Hong Kong by air, irrespective of whether there is any change in the operator of the aircraft, verification of the DG air cargo consignment will only be required in respect of marking, labelling and inspection of damage of the packaging of the DG without the need of a checklist; and

- (c) at present, the responsibilities of aircraft operators to provide passengers with information on DG forbidden to be carried by passengers aboard an aircraft are already provided under the local legislation. The legislative amendment seeks to ensure that passengers are clearly presented with such information in the following more direct and prominent manner as detailed in the relevant provisions of the TIs –

At the point of ticket purchase

- (i) an aircraft operator is required to **present** the information, for example in text or pictorial form, on the types of DG which are forbidden to transport aboard an aircraft at the point of ticket purchase or, if that is not practical, make available the information to passengers prior to the check-in process. If the ticket purchase process is conducted via internet, the process cannot be completed until passengers or persons acting on their behalf have been **presented** with this information and they have indicated that the restrictions are understood; and

At the point of check-in

- (ii) if the check-in process is conducted remotely, for example via internet or at an airport without the involvement of any airline staff or handling agents, an operator is required to ensure that the information on the types of DG which passengers are forbidden to transport aboard an aircraft is **presented**, for example in text or pictorial form, to passengers; and the check-in process cannot be

completed until passengers or persons acting on their behalf have been **presented** with this information and they have indicated that the restrictions are understood.

5. According to the requirements of the ICAO, each Contracting State must take the necessary measures to achieve compliance with the detailed provisions contained in the TIs.⁴ To ensure Hong Kong's implementation of the ICAO's latest requirements set out in paragraph 4 above, and to give legal effect to such requirements in Hong Kong, the making of AN(DG)R Amendment Order is the only option. Non-compliance with the ICAO's requirements may result in criticisms by the ICAO during its safety oversight audits on Contracting States, which will reflect badly on Hong Kong as an aviation hub.

THE AN(DG)R AMENDMENT ORDER AND THE DG(CAS)R AMENDMENT ORDER

6. The main provisions of the AN(DG)R Amendment Order are set out below –

- (a) section 1 provides that the AN(DG)R Amendment Order comes into operation on 1 November 2016; and
- (b) section 3 amends Schedule 16 to the Air Navigation (Hong Kong) Order 1995 (Cap. 448 sub. leg. C) to provide that –
 - (i) subject to certain conditions detailed in the TIs, the TIs do not apply to lamps containing no more than 1g of DG other than radioactive material or containing only Division 2.2 DG⁵; and
 - (ii) for carriage of DG air cargo consignment that involves a series of journeys by air, the operator of an aircraft, before accepting carriage of the consignment, is only required to verify the

⁴ The latest requirements of the TIs are being implemented through administrative measures, because the IATA has updated its DGR on 1 January 2015 to promulgate the latest amendments to the TIs. It is the established industry practice that in handling DG, airlines, freight forwarders and shippers will adhere to the DGR. Airlines would not accept non-compliant DG for air carriage due to safety consideration of the aircraft operations.

⁵ Division 2.2 DG refers to non-flammable, non-toxic gases.

compliance of the DG air cargo consignment with the TIs by using a checklist if the consignment is accepted for carriage in the first of those journeys by air in Hong Kong.

- (c) by updating the definition of the TIs (i.e. replacing “2013-2014 edition” with “2015-2016 edition”), the operator of an aircraft is required to ensure that passengers are clearly “presented” in accordance with the TIs, with information on DG forbidden to be carried by passengers aboard an aircraft.

7. The main provisions of the DG(CAS)R Amendment Order are set out below –

- (a) section 1 provides that the DG(CAS)R Amendment Order comes into operation on 1 November 2016; and
- (b) section 3 amends the Schedule to the Dangerous Goods (Consignment by Air) (Safety) Regulations (Cap. 384 sub. leg. A) by giving effect to certain amendments introduced by the new edition of the TIs, and updating the list of provisions of the TIs that are specified in the Schedule.

LEGISLATIVE TIMETABLE

8. The AN(DG)R Amendment Order and the DG(CAS)R Amendment Order will be gazetted on 10 June 2016 and tabled in the Legislative Council on 15 June 2016.

IMPLICATIONS OF THE PROPOSAL

9. The proposal has no financial, economic, civil service, productivity, sustainability, environmental, family and gender implications.

10. 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

11. The Civil Aviation Department has already published the ICAO's amendments on its website and written to stakeholders to provide details of the amendments, and briefed the air cargo industry accordingly. The Civil Aviation Department also consulted the Aviation Development and Three-runway System Advisory Committee on the proposal in November 2015. The stakeholders and the Committee generally supported the proposed amendments. On 24 March 2016, we consulted the Legislative Council Panel on Economic Development. The Panel generally supported the proposed amendments.

PUBLICITY

12. A press release will be issued on 8 June 2016. A spokesperson will be available to handle enquiries.

BACKGROUND

13. To ensure aviation safety, the ICAO promulgates a set of provisions governing the transport of DG by air. These provisions regulate matters such as the classification, packing, marking, labelling and loading of DG on board aircraft and other matters such as training requirements for related aviation personnel. Under the Chicago Convention, the detailed specifications are set out in the TIs, which are updated and published by the ICAO biennially.

14. The Chicago Convention applies to Hong Kong. The relevant TIs requirements made under the Convention are given legal effect in Hong Kong through two pieces of local subsidiary legislation, 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.

15. The former regulates the DG operations of aircraft and airport operators, whereas the latter regulates shippers and freight

forwarders in respect of the proper handling of DG before offering them for air transport.

ENQUIRIES

16. Any enquiry on this brief should be directed to Ms Joyce Chan, Principal Assistant Secretary (Transport) (telephone number: 3509 8195).

Transport and Housing Bureau
8 June 2016

Air Navigation (Hong Kong) Order 1995 (Amendment of Schedule 16) Order 2016

(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 November 2016.

2. Air Navigation (Hong Kong) Order 1995 amended

The Air Navigation (Hong Kong) Order 1995 (Cap. 448 sub. leg. C) is amended as set out in section 3.

3. Schedule 16 amended (the Air Navigation (Dangerous Goods) Regulations)

(1) Schedule 16, Regulation 2(1), definition of *Technical Instructions*—

Repeal

“2013–2014”

Substitute

“2015–2016”.

(2) Schedule 16, after Regulation 3(3)(i)—

Add

“(ia) of a type specified in Chapter 2.6 of Part 1 of the Technical Instructions;”.

(3) Schedule 16, Regulation 6(1A)—

Repeal

“shall not accept for transport aboard”

Substitute

“must not accept for carriage by”.

(4) Schedule 16, after Regulation 6(1A)—

Add

“(1B) However, paragraph (1A) does not apply in relation to a package or unit load device that was carried by air to Hong Kong for further carriage by air to a place outside Hong Kong.”.

Clerk to the Executive Council

COUNCIL CHAMBER

2016

Explanatory Note

This Order amends Schedule 16 (*Schedule*) to the Air Navigation (Hong Kong) Order 1995 (Cap. 448 sub. leg. C) to give effect to amendments introduced by the 2015–2016 edition of the Technical Instructions for the Safe Transport of Dangerous Goods by Air (*Technical Instructions*) approved and published by decision of the Council of the International Civil Aviation Organization.

2. The effect of the amendments made by this Order includes—
 - (a) the Regulations set out in the Schedule do not apply to the carriage on an aircraft of the dangerous goods that are of a type specified in Chapter 2.6 of Part 1 of the Technical Instructions; and
 - (b) for carriage of dangerous goods that involves a series of journeys by air, the operator of an aircraft in which those goods are to be carried from Hong Kong is not required to verify, by using an acceptance check list, the matters set out in Chapter 1.3.1 of Part 7 of the Technical Instructions in respect of those goods if they were first accepted for carriage by air in a place outside Hong Kong.

Dangerous Goods (Consignment by Air) (Safety) Regulations (Amendment of Schedule) Order 2016

(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 November 2016.

2. Dangerous Goods (Consignment by Air) (Safety) Regulations amended

The Dangerous Goods (Consignment by Air) (Safety) Regulations (Cap. 384 sub. leg. A) are amended as set out in section 3.

3. Schedule amended

(1) The Schedule, Part 1—

Repeal

“2013–2014”

Substitute

“2015–2016”.

(2) The Schedule, Part 2, item relating to regulation 4(1)(e)—

Repeal

“to (k)”

Substitute

“to (j)”.

(3) The Schedule, Part 2, item relating to regulation 4(2)(b)—

Repeal

“and 2.2”

Substitute

“, 2.2 and 2.6”.

Director-General of Civil Aviation

2016

Explanatory Note

This Order amends the Schedule to the Dangerous Goods (Consignment by Air) (Safety) Regulations (Cap. 384 sub. leg. A) (*principal Regulations*) to give effect to amendments introduced by the 2015–2016 edition of the Technical Instructions for the Safe Transport of Dangerous Goods by Air (*Technical Instructions*) approved and published by decision of the Council of the International Civil Aviation Organization.

2. The amendments made by this Order are to update the list of provisions of the Technical Instructions that is specified in the Schedule to the principal Regulations for the purposes of regulation 4(1)(e) and (2)(b) of the principal Regulations.