

立法會

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Subcommittee on Subsidiary Legislation to Implement the Latest Requirements under Conventions of the International Maritime Organization

Background brief

Purpose

This paper provides background information on the Merchant Shipping (Safety) (Ships Operating in Polar Waters) Regulation (L.N. 44), the Merchant Shipping (Prevention of Oil Pollution) (Amendment) Regulation 2019 (L.N. 45), the Merchant Shipping (Control of Pollution by Noxious Liquid Substances in Bulk) (Amendment) Regulation 2019 (L.N. 46), the Merchant Shipping (Prevention of Pollution by Sewage) (Amendment) Regulation 2019 (L.N. 47), and the Merchant Shipping (Prevention of Pollution by Garbage) (Amendment) Regulation 2019 (L.N. 48). It also summarizes the major views and concerns expressed by members of the Panel on Economic Development ("the Panel") on relevant matters.

The subsidiary legislation

2. L.N. 44 to L.N. 48 are made by the Secretary for Transport and Housing to implement the latest requirements under the International Convention for the Safety of Life at Sea ("SOLAS") and the International Convention for the Prevention of Pollution from Ships ("MARPOL") of the International Maritime Organization ("IMO") in relation to ships operating in polar waters as well as the requirements under MARPOL in relation to the discharge of sewage from passenger ships within the Baltic Sea Special Area. SOLAS and MARPOL are implemented in Hong Kong through the Merchant Shipping (Safety) Ordinance (Cap. 369) and the Merchant Shipping (Prevention and Control of Pollution) Ordinance (Cap. 413) and their subsidiary legislation respectively.

L.N. 44

3. L.N. 44 is a new regulation made under sections 107 and 112B of Cap. 369 to give effect to the requirements under the International Code for

Ships Operating in Polar Waters ("Polar Code")¹ adopted by IMO in relation to the safety of ships operating in polar waters. Under L.N. 44, certain ships registered in Hong Kong ("Hong Kong ships") operating in polar waters must have a Polar Ship Certificate which must be kept on board. Under Part 2 of L.N. 44, a Hong Kong ship operating in polar waters must comply with the applicable requirements in the Polar Code. Contravention of the relevant provisions is an offence and is subject to a maximum penalty of a fine at level 4 (currently \$25,000) and imprisonment for two years.

4. L.N. 44 also provides for the following matters:
- (a) the power of the Director of Marine to issue Polar Ship Certificates, and the form, duration, cessation, cancellation and alteration of Polar Ship Certificates;
 - (b) types of surveys that are required to be carried out for a passenger ship and a cargo ship before a Polar Ship Certificate is issued or renewed; and
 - (c) the defence to certain offences in Part 2 and transitional arrangements.

L.N. 45 to L.N. 48

5. L.N. 45 to L.N. 48 are made under sections 3 and 3A of Cap. 413 to implement various requirements of the Polar Code and the relevant amendments to MARPOL in relation to the protection of marine environment. The key provisions are set out below:

- (a) L.N. 45 amends the Merchant Shipping (Prevention of Oil Pollution) Regulations (Cap. 413A) to provide that oil or oily mixtures must not be discharged into the sea from Hong Kong ships in Arctic waters and Hong Kong ships that are constructed on or after 1 January 2017 must not operate in polar waters unless certain requirements in relation to the structure and arrangements of the ship have been complied with;
- (b) L.N. 46 amends the Merchant Shipping (Control of Pollution by Noxious Liquid Substances in Bulk) Regulations (Cap. 413B) to provide that noxious liquid substances ("NLS") or mixtures containing any NLS as defined in Annex II of MARPOL must not be discharged into the sea from Hong Kong ships in Arctic waters. Further, Hong Kong ships that are constructed on or after

¹ The Polar Code, which came into force in 2017, sets out requirements in various aspects including the safety of ship operation and the protection of the marine environment in polar waters.

1 January 2017 and operating in polar waters must not load or carry certain NLS unless certain conditions are complied with;

- (c) L.N. 47 amends the Merchant Shipping (Prevention of Pollution by Sewage) Regulation (Cap. 413K) to prohibit certain ships operating in polar waters and certain passenger ships within the Baltic Sea Special Area from discharging sewage into the polar waters and the Baltic Sea Special Area unless they have, among other things, an approved sewage treatment system in operation; and
- (d) L.N. 48 amends the Merchant Shipping (Prevention of Pollution by Garbage) Regulation (Cap. 413O) to impose additional requirements for discharge of garbage (such as food wastes) from certain ships into the sea in Arctic waters and the Antarctic area.

6. L.N. 44 to L.N. 48 come into operation on 31 May 2019.

Previous discussions

7. The Administration consulted the Panel on 22 January 2018 and 25 March 2019 on the legislative proposals to incorporate into local legislation the latest requirements of IMO in relation to ships operating in polar waters and the discharge of sewage within the Baltic Sea Special Area respectively. Members were generally supportive of the proposals.

8. Members noted from the Administration that there were currently no Hong Kong ships operating in polar waters. However, a shipping company had indicated to the Administration that it was building a ship which would operate in polar waters, and that the company planned to register the ship in Hong Kong. The Administration would keep in view the latest developments, and ensure that all Hong Kong ships would comply with IMO's requirements.

9. Noting that ships operating in polar waters would use de-icing and/or anti-ice fluids to remove and prevent snow and ice accumulation, a member expressed concern about the use of these fluids which might be regarded as NLS under the Polar Code. The Administration advised that regardless of the means adopted by ships to remove and prevent snow and ice accumulation, they should comply with the relevant requirements of IMO including the ones concerning the protection of marine environment of the Polar Code that were implemented through MARPOL.

10. On the enforcement of the new requirements, the Administration advised that in the local context, the Marine Department would conduct inspections to ensure that Hong Kong ships had complied with the relevant requirements of IMO. When ships were operating in overseas waters, port

authorities of IMO's member States would take appropriate actions to ensure ships' compliance with IMO's requirements.

Latest development

11. At the meeting of the House Committee on 12 April 2019, Members agreed to form a subcommittee to study L.N. 44 to L.N. 48.

Relevant papers

12. A list of relevant papers available on the Legislative Council Website (<http://www.legco.gov.hk>) is in the **Appendix**.

Council Business Division 4
Legislative Council Secretariat
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List of relevant papers

Issued by	Meeting date/ Issue date	Paper
Panel on Economic Development	22 January 2018 (Item V)	Administration's paper Minutes
	25 March 2019 (Item III)	Administration's paper
Transport and Housing Bureau	March 2019	Legislative Council Brief
House Committee	12 April 2019	Legal Service Division report