

LEGISLATIVE COUNCIL BRIEF

Protected Places (Safety) Ordinance (Cap. 260)
Public Order Ordinance (Cap. 245)
Shipping and Port Control Ordinance (Cap. 313)
Merchant Shipping (Local Vessels) Ordinance (Cap. 548)

PROTECTED PLACES (AMENDMENT) ORDER 2019
PROTECTED PLACES (SAFETY) (AUTHORIZED GUARDS)
(AMENDMENT) ORDER 2019
MILITARY INSTALLATIONS CLOSED AREAS (AMENDMENT)
ORDER 2019
SHIPPING AND PORT CONTROL (AMENDMENT)
REGULATION 2019
MERCHANT SHIPPING (LOCAL VESSEL) (GENERAL)
(AMENDMENT) REGULATION 2019

INTRODUCTION

To provide suitable legal protection to the Central Military Dock (“CMD”) and to ensure navigation safety as well as the safety of vessels at sea, after consulting the Executive Council, the Chief Executive (“CE”) ORDERED on 30 April 2019 that –

- Annex A (a) the Protected Places (Amendment) Order 2019 (**Annex A**) should be made under section 2 of the Protected Places (Safety) Ordinance (Cap. 260) (“PP(S)O”) to designate the land area of the CMD as “protected place”;
- Annex B (b) the Protected Places (Safety) (Authorized Guards) (Amendment) Order 2019 (**Annex B**) should be made under section 3 of PP(S)O to authorize qualified guards employed by a company engaged by the Hong Kong Garrison of the Chinese People’s Liberation Army (“the Garrison”) to act as “authorized guards” of the CMD;
- Annex C (c) the Military Installations Closed Areas (Amendment) Order 2019 (**Annex C**) should be made under section 36(1) of the Public

Order Ordinance (Cap. 245) (“POO”) to designate the four buildings in the CMD area as “closed areas”; and

Annex D

- (d) the Shipping and Port Control (Amendment) Regulation 2019 (**Annex D**) should be made under section 80 of Shipping and Port Control Ordinance (Cap. 313) to restrict non-local vessels from entering the restricted areas at the adjoining sea of the CMD, and staying, anchoring, mooring or berthing in the area in a way as set out in paragraph 11 below.

Annex E

The Secretary for Transport and Housing also made the Merchant Shipping (Local Vessel) (General) (Amendment) Regulation 2019 (**Annex E**) under section 89 of the Merchant Shipping (Local Vessels) Ordinance (Cap. 548) on 30 April 2019 to achieve the same purpose as the Shipping and Port Control (Amendment) Regulation 2019, but targeting at local vessels.

2. The aforementioned three Orders and two Regulations are hereafter collectively referred to as “Orders and Regulations”.

BACKGROUND

3. The Exchange of Notes between the Government of the People’s Republic of China and the Government of the United Kingdom on the arrangements for the future use of military sites in Hong Kong (“the Exchange of Notes”) entered into force on 11 November 1994. The CMD is one of the five military buildings/fixed facilities affected before 1 July 1997¹ which should be re-provisioned for the Garrison by the Hong Kong Special Administrative Region (“HKSAR”) Government as set out in the Exchange of Notes. According to the Exchange of Notes, the HKSAR Government shall leave free 150 metres of the eventual permanent waterfront at a place close to the Central Barracks for the re-provisioning of a military dock for the Garrison upon completion of the Central reclamation works. To fulfil the responsibility set out in the Exchange of Notes, the HKSAR Government has re-provisioned the military dock as part of the relevant reclamation works. The CMD

¹ The re-provisioning of military buildings and fixed facilities for the Garrison since they were affected by the disposal of military sites include the re-provisioning of the original Central Tamar naval base on the south shore of Stonecutters Island; the original King’s Park military hospital at the Gun Club Hill Barracks; the original Blackdown Barracks military storage facilities at the Shek Kong Barracks; the original Kai Tak Airport Military Joint Movements Unit at the Chek Lap Kok Airport; and a military dock at a place at the eventual permanent waterfront in the plans for the Central and Wanchai Reclamation close to the Central Barracks.

Annex F

occupies an area of about 0.3 hectares or 3% of the total area of the waterfront open space in the New Central harbourfront (which has an area of about 9.8 hectares). The site plan of the CMD is at **Annex F**.

4. The CMD is the only outstanding military facility in the Exchange of Notes which has yet to be handed over to the Garrison. The remaining 18 military sites have been used and managed by the Garrison for defence purposes since 1997. The HKSAR Government has the duty to complete the handover work of the CMD in order to fulfil the outstanding undertaking as stated in the Exchange of Notes.

5. The CMD is a military facility to be used for defence purposes. In accordance with the Law of the People's Republic of China on the Garrisoning of the HKSAR ("the Garrison Law"), military facilities within the HKSAR shall be managed by the Garrison; the Garrison and the HKSAR Government shall jointly protect such military facilities; no person other than members of the Garrison shall enter military restricted zones without the permission of the Commander of the Garrison or other officers as he may authorize to give such permission; and guards of the military restricted zones shall have the right to stop according to law any unauthorized entry into any military restricted zone or any act which damages or endangers any military facilities.

6. Apart from the Garrison Law, the 18 military sites currently used by the Garrison are also protected by the local laws of the HKSAR. These relevant laws include –

- (a) the POO: all of the existing 18 military sites are designated as "closed areas" under the Military Installations Closed Area Order (Cap. 245 sub. leg. B). No person shall enter a "closed area" without a permit issued by the Commander of the Garrison or his authorized persons;
- (b) the PP(S)O: four of the existing military sites (the Central Barracks, Headquarters House, Ching Yi To Barracks and two military buildings at Shek Kong Village) are also designated as "protected places" under the Protected Places Order (Cap. 260 sub. leg. A). The CE can authorize by order any person to act as an "authorized guard" to protect any property in or upon a "protected place", and to prevent any person from entering or

attempting to enter such place without proper authority, etc.;

- (c) the Shipping and Port Control Regulations (Cap. 313 sub. leg. A) and the Merchant Shipping (Local Vessels) (General) Regulation (Cap. 548 sub. leg. F): the waters within and adjoining the basin of the naval base at the Ngong Shuen Chau Barracks are designated as marine restricted areas under regulations 23 and 24 of the Shipping and Port Control Regulations (Cap. 313 sub. leg. A) and sections 14 and 16 of the Merchant Shipping (Local Vessels) (General) Regulation (Cap. 548 sub. leg. F), under which entry of local and non-local vessels into the “restricted area” without the permission of the Director of Marine and, entry of vessels into the naval base basin “restricted area” without the permission of the Garrison, is prohibited; and
- (d) the Defences (Firing Areas) Ordinance (Cap. 196): the areas used by the Garrison in the Tsing Shan Firing Range and San Wai/Tai Ling Firing Range for firing activities are specified as firing areas in this Ordinance

7. The Garrison Law is a national law applicable to the HKSAR under Article 18 and Annex III of the Basic Law. The HKSAR Government must comply with the Garrison Law. In addition to specifying the Garrison’s authority in managing its military facilities, the Garrison Law also specifically provides that the HKSAR Government “shall support the Garrison in its performance of defence functions and responsibilities and guarantee the lawful rights and interests of the Garrison and its members” (Article 10); shall jointly with the Garrison “protect the military facilities within the HKSAR” (Article 12); and “shall assist the Hong Kong Garrison in maintaining the security of the military restricted zones” (Article 12). The HKSAR Government must legislate for the CMD in order to provide suitable legal protection for the area.

JUSTIFICATIONS

- (a) Protected Places (Amendment) Order 2019

8. Being an important military facility, the CMD should have been delimited as a “closed area” under the Military Installations Closed Area

Order (Cap. 245, sub. leg. B) as in the case of other military sites. However, taking in account that the Garrison will in future consider, under the condition that the defence functions would not be affected, opening the movable gates enclosing the CMD to allow members of the public to enter the part of the CMD outside the four buildings, the HKSAR will designate the land area of the CMD as “protected place” rather “closed area”. This will facilitate the Garrison in considering in future allowing members of the public to enter the concerned area without the need for issuing individual permit, under the condition that the defence functions would not be affected.

(b) Protected Places (Safety) (Authorized Guards) (Amendment) Order 2019

9. Pursuant to the PP(S)O, CE may by order authorize any person to act as an “authorized guard” to guard a “protected place” specified in the Protected Places Order (Cap. 260 sub. leg. A). The Protected Places (Safety) (Authorized Guards) (Amendment) Order 2019 will authorize persons who are qualified guards employed by a company engaged by the Garrison to act as “authorized guards” of the CMD. An “authorized guard” may, among other things, arrest and hand over to the Police any person whom he finds in, or in the immediate vicinity of, a “protected place” and reasonably suspects of entering, attempting, or intending to enter the place without proper authority. Any person who fails to halt when challenged by an “authorized guard” or resists or obstructs an “authorized guard” in the discharge of his duties under the Ordinance is guilty of an offence (and liable on summary conviction to a fine at level 1 (i.e. HK\$2,000) and to imprisonment for 6 months).

(c) Military Installations Closed Areas (Amendment) Order 2019

10. There are four one-storey buildings within the land area of the CMD which will not be open due to defence operational needs. The Military Installations Closed Areas (Amendment) Order 2019 amends the First Schedule to the Military Installations Closed Area Order (Cap. 245 sub. leg. B) by adding the “CMD building areas” as a new item to designate the four buildings in the CMD land area as “closed areas”. No person shall enter the four buildings without an individual permit issued by the Garrison.

(d) Shipping and Port Control (Amendment) Regulation 2019

11. Since before 1997, the waters off a military basin have been designated as restricted area under the laws to restrict the entry of any unauthorized vessels so as to provide a buffer zone to ensure that there will be a safe distance between civil vessels and military vessels as well as the relevant berthing facilities. The Shipping and Port Control (Amendment) Regulation 2019 will designate two marine restricted areas at the waters off the CMD including –

- (a) an inner “restricted area” (230 metres along the harbourfront and 100 meters off the CMD), in respect of which any vessels without the permission of the Director of Marine shall not enter, stay, anchor, moor or berth; and
- (b) an outer restricted area (300 metres along the harbourfront and 200 meters off the CMD, but excluding the aforementioned inner restricted area), in respect of which vessels not exceeding 60 metres long may pass through, but not stay, anchor, moor or berth unless with the permission of the Director of Marine. Vessels with a length of 60 meters or longer may enter, stay, anchor, moor or berth only with the permission of the Director of Marine.

A drawing showing the locations of the inner and outer restricted areas is at **Annex G**.

Annex G

(e) Merchant Shipping (Local Vessel) (General) (Amendment) Regulation 2019

12. The Merchant Shipping (Local Vessel) (General) (Amendment) Regulation 2019 aims to achieve the same purpose as the Shipping and Port Control (Amendment) Regulation 2019, but targeting at local vessels.

Orders and Regulations

13. The effect of the main provisions of the Orders and Regulations include –

- (a) the Protected Places (Amendment) Order 2019 adds a new item to the Schedule to the Protected Places Order (Cap. 260 sub. leg. A) to designate the CMD land area as a “protected place”;
- (b) the Protected Places (Safety) (Authorized Guards) (Amendment) Order 2019 adds a new paragraph to the Protected Places (Safety) (Authorized Guards) Order (Cap. 260 sub. leg. C) to authorize qualified guards who are employed by a company engaged by the Garrison to act as “authorized guards” of the CMD;
- (c) the Military Installations Closed Areas (Amendment) Order 2019 amends the First Schedule to the Military Installations Closed Area Order (Cap. 245 sub. leg. B) by adding the “CMD building areas” as a new item to designate the areas of four buildings in the CMD land area as “closed areas”;
- (d) the Shipping and Port Control (Amendment) Regulation 2019 adds a new regulation to the Shipping and Port Control Regulations (Cap. 313 sub. leg. A) and adds two new items (paragraphs 34 and 35) to its Fifth Schedule to designate the inner and outer CMD marine areas as restricted areas and to restrict (in a way that is described in paragraph 11 above) non-local vessels from entering the restricted areas and staying, anchoring, mooring and berthing in the restricted areas; and
- (e) the Merchant Shipping (Local Vessel) (General) (Amendment) Regulation 2019 adds a new paragraph to the Merchant Shipping (Local Vessels) (General) Regulation (Cap. 548 sub. leg. F) to restrict (in a way that is described in paragraph 11 above) local vessels from entering the CMD restricted areas and staying, anchoring, mooring and berthing in the restricted areas.

LEGISLATIVE TIMETABLE

14. We will publish the Orders and Regulations in the Gazette on 3 May 2019, and submit the Orders and Regulations to the Legislative Council (“LegCo”) for the negative vetting procedures on 8 May 2019. Subject to the vetting result of the LegCo, the Orders and Regulations will take effect on 29 June 2019.

IMPLICATIONS OF THE ORDERS AND REGULATIONS

15. The Orders and Regulations are in conformity with the Basic Law, including the provisions concerning human rights. They have no civil service, sustainability, economic, environmental, productivity, financial, family or gender implications, and will not affect the current binding effect of the PP(S)O, POO, Shipping and Port Control Ordinance (Cap. 313) and Merchant Shipping (Local Vessels) Ordinance (Cap. 548).

PUBLIC CONSULTATION

16. We briefed the Local Vessels Advisory Committee on 18 March 2019 on the considerations behind the proposed marine area restriction. The trade representatives noted the considerations behind the arrangements. They also suggested that the relevant sea areas should be clearly demarcated (such as placing buoys on the sea surface) for safety considerations; and that the HKSAR Government should provide detailed information related to the restricted areas to the trade, etc.

17. We also consulted the LegCo Panel on Security (“the Panel”) on 2 April 2019 on the legislative proposals. During the meeting, a motion moved by Members supporting the legislative proposals was passed with majority support from the attending members.

PUBLICITY

18. We will issue a LegCo brief and a press release on the same day when the Orders and Regulations are published in the Gazette. A spokesperson will be available for answering media enquiries. We will notify the Local Vessels Advisory Committee and other representatives from the trade the arrangements of the marine restricted areas.

ENQUIRIES

19. Should there be any enquiries on this brief, please contact Ms Trinky Chan, Assistant Secretary for Security A1 at 3655 4302.

Security Bureau
3 May 2019

Protected Places (Amendment) Order 2019

(Made by the Chief Executive under section 2 of the Protected Places (Safety) Ordinance (Cap. 260) after consultation with the Executive Council)

1. Commencement

This Order comes into operation on 29 June 2019.

2. Protected Places Order amended

The Protected Places Order (Cap. 260 sub. leg. A) is amended as set out in section 3.

3. Schedule amended

(1) The Schedule—

Repeal

“Items 18 to 21:”

Substitute

“Items 18 to 22:”.

(2) The Schedule—

Add

“22. Central Military Dock Area enclosed by following points at KK07746701:
 KK07886696:KK07876694:
 KK07866694:KK07866695:
 KK07846695:KK07826696:
 KK07806697:KK07796697:
 KK07756699:KK07736700:
 KK07746700:
 KK07746701.”.



Chief Executive

30 April 2019

Explanatory Note

This Order amends the Protected Places Order (Cap. 260 sub. leg. A) to declare the Central Military Dock to be a protected place.

**Protected Places (Safety) (Authorized Guards)
(Amendment) Order 2019**

(Made by the Chief Executive under section 3 of the Protected Places
(Safety) Ordinance (Cap. 260) after consultation with the Executive
Council)

1. Commencement

This Order comes into operation on 29 June 2019.

2. Protected Places (Safety) (Authorized Guards) Order amended

The Protected Places (Safety) (Authorized Guards) Order (Cap. 260 sub. leg. C) is amended as set out in section 3.

3. Paragraph 7 added

After paragraph 6—

Add

“7. Authorized guards in respect of Central Military Dock

In respect of the Central Military Dock, as specified in item 22 of the Schedule to the Protected Places Order (Cap. 260 sub. leg. A), persons who are—

- (a) holders of permits under the Security and Guarding Services Ordinance (Cap. 460) that are valid for guarding any property at the Dock or preventing or detecting the occurrence of any offence at the Dock, or both;
- (b) employed by a company engaged by the Hong Kong Garrison; and

(c) assigned by the Hong Kong Garrison, or the
company, to guard the Dock,
are authorized to act as authorized guards.”.

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Chief Executive

30 April 2019

Explanatory Note

This Order amends the Protected Places (Safety) (Authorized Guards) Order (Cap. 260 sub. leg. C) to add certain persons as authorized guards in respect of the Central Military Dock.

Military Installations Closed Areas (Amendment) Order 2019

(Made by the Chief Executive under section 36(1) of the Public Order Ordinance (Cap. 245) after consultation with the Executive Council)

1. Commencement

This Order comes into operation on 29 June 2019.

2. Military Installations Closed Areas Order amended

The Military Installations Closed Areas Order (Cap. 245 sub. leg. B) is amended as set out in section 3.

3. First Schedule amended

First Schedule, after item 1—

Add

- | | |
|---|---|
| “1A. Central Military Dock building areas | Area enclosed by perimeter wall at KK07866695: KK07876695: KK07886695: KK07886694: KK07876694: KK07866694: KK07866695; area enclosed by perimeter wall at KK07826697: KK07846696: KK07846695: KK07826696: KK07826697; area enclosed by perimeter wall at KK07796698: KK07806697: KK07796697: KK07796698; and area enclosed by perimeter |
|---|---|

wall at KK07746700:
KK07756699: KK07746699:
KK07736700:
KK07746700.”.



Chief Executive

30 April 2019

Explanatory Note

This Order amends the Military Installations Closed Areas Order (Cap. 245 sub. leg. B) to declare Central Military Dock building areas to be closed areas.

Shipping and Port Control (Amendment) Regulation 2019

(Made by the Chief Executive in Council under section 80 of the Shipping and Port Control Ordinance (Cap. 313))

1. Commencement

This Regulation comes into operation on 29 June 2019.

2. Shipping and Port Control Regulations amended

The Shipping and Port Control Regulations (Cap. 313 sub. leg. A) are amended as set out in sections 3 and 4.

3. Regulation 23C added

After regulation 23B—

Add

“23C. Entry into Central Military Dock Inner and Outer Areas

- (1) A vessel must not enter the Central Military Dock Inner Area except with the permission of the Director.
- (2) Before giving permission under paragraph (1), the Director must obtain the consent of the Hong Kong Garrison.
- (3) A vessel must not enter the Central Military Dock Outer Area except with the permission of the Director.
- (4) Even if a vessel is permitted to enter the Central Military Dock Inner Area under paragraph (1) or the Central Military Dock Outer Area under paragraph (3), it must not stay, anchor, moor or berth in the Area, unless otherwise specified in the permission.

- (5) Paragraph (3) does not apply to a vessel that has an overall length not exceeding 60 metres if it only enters the Central Military Dock Outer Area for the purpose of passing through the Area directly without staying, anchoring, mooring or berthing in the Area.
- (6) If this regulation is contravened without reasonable excuse—
 - (a) in the case of a vessel not being towed—the master of the vessel commits an offence;
 - (b) in the case of a vessel being towed—the master of the vessel and the masters of the tugs or other vessels towing the vessel commit an offence, and is, or each of them is, as the case may be, liable to a fine at level 3 and to imprisonment for 6 months.
- (7) In this regulation—

Central Military Dock Inner Area (中區軍用碼頭內圍區域) means the area specified in paragraph 34 of the Fifth Schedule;

Central Military Dock Outer Area (中區軍用碼頭外圍區域) means the area specified in paragraph 35 of the Fifth Schedule.”.

4. Fifth Schedule amended (restricted areas, etc.)

- (1) Fifth Schedule—

Repeal

“& 24]”

Substitute

“, 23C & 24]”.
- (2) Fifth Schedule, after paragraph 33—

Add

“34. CENTRAL MILITARY DOCK INNER AREA

The area of the waters of Hong Kong bounded by straight lines joining the following positions—

- (a) latitude 22°17.053' north,
longitude 114°09.813' east;
- (b) latitude 22°17.103' north,
longitude 114°09.835' east;
- (c) latitude 22°17.057' north,
longitude 114°09.959' east;
- (d) latitude 22°17.007' north,
longitude 114°09.937' east;
- (e) latitude 22°17.053' north,
longitude 114°09.813' east.

35. CENTRAL MILITARY DOCK OUTER AREA

The area of the waters of Hong Kong bounded by straight lines joining the following positions—

- (a) latitude 22°17.053' north,
longitude 114°09.813' east;
- (b) latitude 22°17.103' north,
longitude 114°09.835' east;
- (c) latitude 22°17.057' north,
longitude 114°09.959' east;
- (d) latitude 22°17.007' north,
longitude 114°09.937' east;
- (e) latitude 22°17.001' north,
longitude 114°09.952' east;

- (f) latitude 22°17.003' north,
longitude 114°09.957' east;
- (g) latitude 22°17.101' north,
longitude 114°09.999' east;
- (h) latitude 22°17.161' north,
longitude 114°09.837' east;
- (i) latitude 22°17.060' north,
longitude 114°09.794' east;
- (j) latitude 22°17.053' north,
longitude 114°09.813' east.”.

(3) Fifth Schedule, Note—

Repeal

“33”

Substitute

“35”.



Clerk to the Executive Council

COUNCIL CHAMBER

30 April. 2019

Explanatory Note

This Regulation amends the Shipping and Port Control Regulations (Cap. 313 sub. leg. A) to prohibit non-local vessels from entering the Central Military Dock Inner Area and the Central Military Dock Outer Area unless with permission or as otherwise provided.

Merchant Shipping (Local Vessels) (General) (Amendment) Regulation 2019

Section 1

1

**Merchant Shipping (Local Vessels) (General)
(Amendment) Regulation 2019**

(Made by the Secretary for Transport and Housing under section 89 of the
Merchant Shipping (Local Vessels) Ordinance (Cap. 548))

1. Commencement

This Regulation comes into operation on 29 June 2019.

2. Merchant Shipping (Local Vessels) (General) Regulation amended

The Merchant Shipping (Local Vessels) (General) Regulation (Cap. 548 sub. leg. F) is amended as set out in sections 3 and 4.

3. Section 19A added

After section 19—

Add**“19A. Prohibition of entry into Central Military Dock Inner and Outer Areas**

- (1) A local vessel must not enter the Central Military Dock Inner Area except with the permission of the Director.
- (2) Before giving permission under subsection (1), the Director must obtain the consent of the Hong Kong Garrison.
- (3) A local vessel must not enter the Central Military Dock Outer Area except with the permission of the Director.
- (4) Even if a local vessel is permitted to enter the Central Military Dock Inner Area under subsection (1) or the Central Military Dock Outer Area under subsection (3),

Merchant Shipping (Local Vessels) (General) (Amendment) Regulation 2019

Section 4

2

it must not stay, anchor, moor or berth in the Area, unless otherwise specified in the permission.

- (5) Subsection (3) does not apply to a local vessel that has an overall length not exceeding 60 metres if it only enters the Central Military Dock Outer Area for the purpose of passing through the Area directly without staying, anchoring, mooring or berthing in the Area.

- (6) In this section—

Central Military Dock Inner Area (中區軍用碼頭內圍區域) means the area specified in paragraph 34 of the Fifth Schedule to the SAPCR;

Central Military Dock Outer Area (中區軍用碼頭外圍區域) means the area specified in paragraph 35 of the Fifth Schedule to the SAPCR.”.

4. Section 20 amended (offences relating to restricted areas, etc.)


Section 20(1)—

Repeal

“or 19(1), (2), (3) or (4)”

Substitute

“, 19(1), (2), (3) or (4) or 19A (1), (3) or (4)”.



Secretary for Transport and Housing

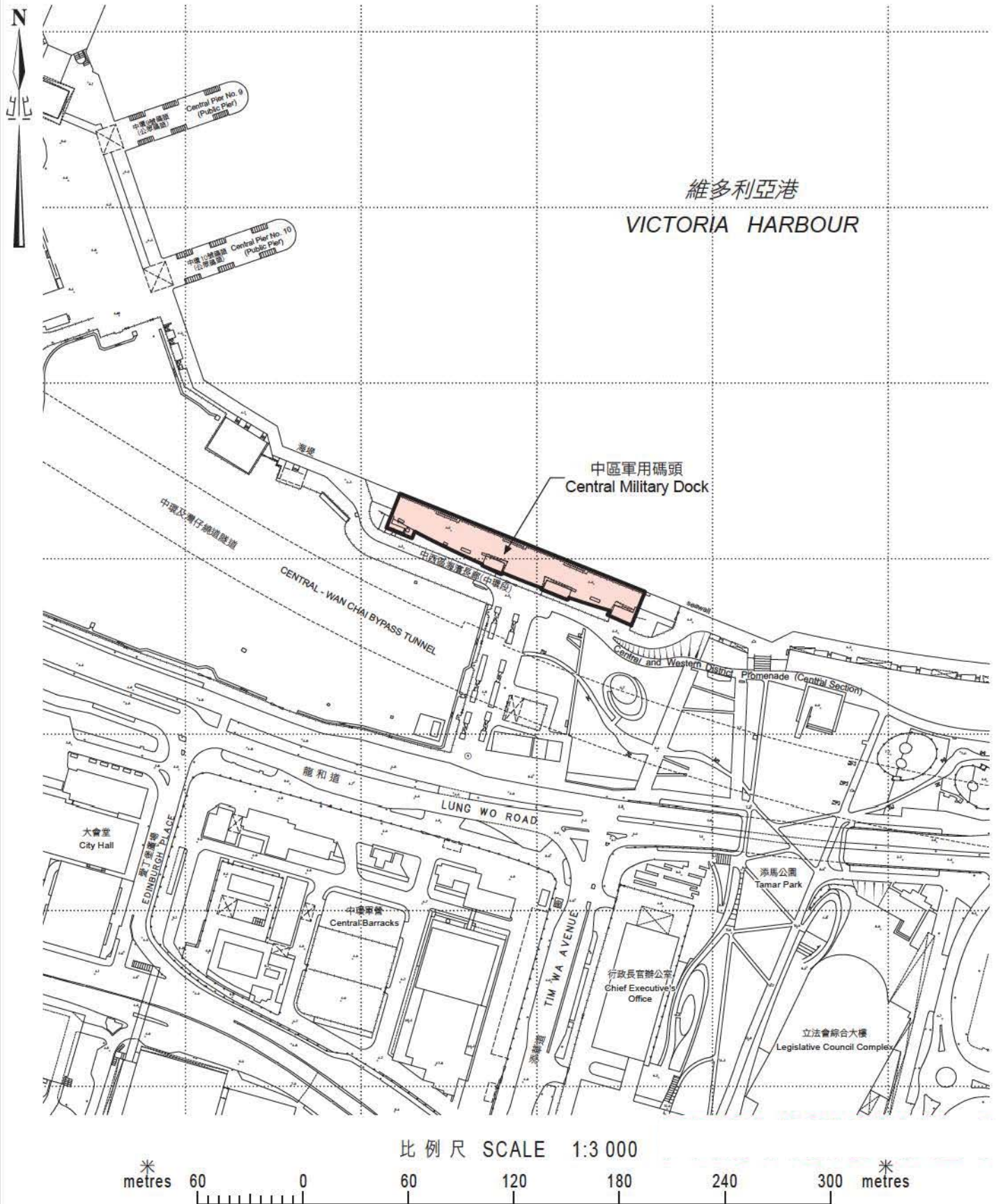
30 April 2019

Explanatory Note

This Regulation amends the Merchant Shipping (Local Vessels) (General) Regulation (Cap. 548 sub. leg. F) to prohibit local vessels from entering the Central Military Dock Inner Area and the Central Military Dock Outer Area specified in the Shipping and Port Control Regulations (Cap. 313 sub. leg. A) unless with permission or as otherwise provided.

中區軍用碼頭位置圖

Site plan of the Central Military Dock



只作識別用 FOR IDENTIFICATION PURPOSES ONLY

 地政總署 港島測量處
District Survey Office, Hong Kong
Lands Department

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發展藍圖編號 Layout Plan No. S/H24/9

參考圖編號 Reference Plan No. --

圖則編號 PLAN No. HKM10359

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海上限制區域位置

Location of the marine "restricted areas"

