

LEGISLATIVE COUNCIL BRIEF

Merchant Shipping (Prevention and Control of Pollution) Ordinance (Chapter 413)

MERCHANT SHIPPING (PREVENTION AND CONTROL OF POLLUTION) (AMENDMENT) BILL 1999

INTRODUCTION

At the meeting of the Executive Council on 9 March 1999, the Council ADVISED and the Chief Executive ORDERED that the Merchant Shipping (Prevention and Control of Pollution) (Amendment) Bill 1999, at Annex A, should be introduced into the Legislative Council.

BACKGROUND AND ARGUMENT

2. The Merchant Shipping (Prevention and Control of Pollution) Ordinance (‘the Ordinance’) and its subsidiary regulations were enacted to give effect to the International Convention for the Prevention of Pollution from Ships (‘the Convention’). The regulations are highly technical in nature and are subject to frequent amendments due to regular updating of provisions in the Convention to reflect improvements on ship building technology and safety standards.

3. Since the Secretary for Economic Services (SES) is responsible for maritime policy and he has been the authority for making regulations under other similar maritime Ordinances, we propose that he be made the authority for making regulations under this Ordinance.

4. We also propose to take the opportunity to introduce a few tidying up amendments to the Ordinance -

- (a) According to section 3(5)(a) of the Ordinance, regulations made under the Ordinance may include a general provision for carrying out inspections for the purpose of prevention and control of pollution by oil and other marine pollutants. However, that section is unclear as to whether it includes the power to board a ship for the purpose of carrying out such inspections. On the advice of the Department of Justice, we propose to add a new subsection 5(ba) to specifically provide that regulations made under the Ordinance may include provisions for the boarding of any ships within the waters of Hong Kong for such purpose.
- (b) Section 6 of Part III ‘Shipping Casualties Involving a Risk of Pollution’ of the Ordinance currently provides the Director of Marine (D of M) with power to give directions to the owner, the master and other related persons of a ship in case of shipping casualties involving a risk of pollution. However, similar power to give directions in the same Part of the Ordinance is still required to be exercised by the Chief Executive. For consistency and to improve administrative efficiency, we propose that all similar power under this Part of the Ordinance be transferred to D of M, since the matters regulated under this Part of the Ordinance are mainly operational in nature.
- (c) To enable the timely and effective implementation in Hong Kong of future international agreements related to the Convention, we propose that SES should be given the supplementary power to make regulations for the implementation of such agreements in future. Similar provisions already exist in other maritime ordinances relating to the implementation of international conventions for application to Hong Kong, such as the Merchant Shipping (Safety) Ordinance (Chapter 369) which gives effect to the International Convention for the Safety of Life at Sea.
- (d) We also propose, for consistency, to amend the definition of “oil” in section 2 of the Ordinance so that it is in line with the definition set out in Annex I of the Convention as defined in Part II of the Ordinance.

THE BILL

5. The main provisions are -
- (a) Clause 2 amends the definition of “Oil” in order to bring it in line with the definition set out in Annex I of the Convention as defined in Part II of the Ordinance.
 - (b) Clauses 3 and 8 transfer the regulation-making power (except the power to make regulations for fees) from the Chief Executive in Council to SES. Clause 3 also enables regulations made under the Ordinance to include provisions for the boarding of any ships within Hong Kong waters to carry out inspections.
 - (c) Clause 4 provides SES with the supplementary power to make regulations in relation to the implementation of international agreements relating to the Convention for application to Hong Kong.
 - (d) Clauses 5, 6 and 7 give effect to the transfer from the Chief Executive to D of M the power to give directions in case of shipping casualties involving a risk of pollution.

PUBLIC CONSULTATION

6. Public consultation is not considered because the amendments are technical and administrative in nature.

BILL OF RIGHTS IMPLICATIONS

7. The Department of Justice advises that the proposed legislation is consistent with the human rights provisions of the Basic Law.

BINDING EFFECT

8. The amendments will not affect the current binding effect of the existing provisions of the Ordinance.

FINANCIAL AND STAFFING IMPLICATIONS

9. There are no financial and staffing implications.

ECONOMIC IMPLICATIONS

10. There are no economic implications.

ENVIRONMENTAL IMPLICATIONS

11. The amendments will help to provide a more expeditious means of giving effect to the technical and operational provisions related to the prevention and control of marine pollution. Its implementation will be beneficial to the environment and will also reduce pollution hazards within Hong Kong waters.

LEGISLATIVE TIMETABLE

12. The legislative timetable will be -

Publication in the Gazette	19 March 1999
First Reading and commencement of Second Reading debate	31 March 1999
Resumption of Second Reading debate, committee stage and Third Reading	to be notified

PUBLICITY

13. A press release will be issued on 17 March 1999. A spokesman will be available for answering media enquiries.

ENQUIRY

14. Any enquiry on this brief can be addressed to Mr. R. Tang, Assistant Director of Marine (2852 4408) or Mr. B.Y. Lee, Assistant Secretary for Economic Services (2537 2844).

Economic Services Bureau
16 March 1999

A BILL

To

Amend the Merchant Shipping (Prevention and Control of Pollution) Ordinance.

Enacted by the Legislative Council.

1. Short title

This Ordinance may be cited as the Merchant Shipping (Prevention and Control of Pollution)(Amendment) Ordinance 1999.

2. Interpretation

Section 2 of the Merchant Shipping (Prevention and Control of Pollution) Ordinance (Cap. 413) is amended by repealing the definition of “oil” and substituting-

““oil” (油類) means -

- (a) petroleum in any form including crude oil, fuel oil, sludge, oil refuse and refined products (other than petrochemicals which are subject to the provisions of Annex II of the Convention as defined in section 3(1); and
- (b) the substances listed in appendix I to Annex I of the Convention;”.

3. Regulations for the prevention and control of pollution

Section 3 is amended-

- (a) in subsection (2), by repealing “Governor in Council” and substituting “Secretary for Economic Services”;

(b) by adding-

“(2A) The Chief Executive in Council may make regulations for the payment of fees (whether prescribed under this Ordinance, the Merchant Shipping Ordinance (Cap. 281) or otherwise) in respect of any survey, inspection, certificate, service or other matter provided for by regulations made under this Ordinance.”;

(c) in subsection (5)-

(i) by repealing “subsection (2)” and substituting “subsections (2) and (2A)”;

(ii) by adding-

“(ba) for the boarding of any ships within the waters of Hong Kong to carry out inspections for the purposes of the regulations;”;

(iii) by repealing paragraph (f);

(iv) in paragraph (vii), by repealing “Governor in Council” and substituting “Secretary for Economic Services or Chief Executive in Council (as the case may be)”.

4. Section added

The following is added-

“3A. Supplementary regulation-making power in relation to international agreements applicable to Hong Kong

For the purpose of giving effect (whether in whole or in part) to any provisions of any international agreements applicable to

Hong Kong (including the Convention and the Protocol as defined in section 3(1)) -

- (a) as in force from time to time; and
- (b) so far as the agreement relates to any matter for or in relation to which provision may be made by regulations made under this Ordinance,

any such regulations may-

- (i) set out or refer to those provisions (whether in a schedule or otherwise);
and
- (ii) specify (whether in a schedule or otherwise) amendments, modifications or adaptations subject to which those provisions shall have effect.”.

5. Application of Part III

Section 5(2) is amended by repealing “Governor” and substituting “Director”.

6. Offences in relation to section 6

Section 8(2)(a) is amended by repealing “Governor” and substituting “Director”.

7. Service of directions under section 6

Section 9 is amended by repealing “Governor” where it twice appears and substituting “Director”.

8. Savings, amendments and repeals

Section 12(1)(b) is amended by repealing “Governor in Council” and substituting “Secretary for Economic Services”.

Explanatory Memorandum

The purpose of this Bill is to-

- (a) amend the definition of “oil” in section 2 of the Merchant Shipping (Prevention and Control of Pollution) Ordinance (Cap. 413) in order to make it in line with the definition set out in Annex I of the Convention as defined in Part II of the Ordinance (clause 2);
- (b) transfer the regulation-making power (except the power to make regulations for fees) from the Chief Executive in Council to the Secretary for Economic Services (clauses 3 and 8);
- (c) provide that regulations made under the Ordinance may include provisions for the boarding of ships within the waters of Hong Kong to carry out inspections for the purposes of the regulations (clause 3(c) (ii));
- (d) provide for the supplementary regulation-making power in relation to international agreements applicable to Hong Kong (clause 4);
- (e) transfer the power of giving directions in cases of shipping casualties which involve a risk of pollution from the Chief Executive to the Director of Marine (clauses 5,6 and and 7).