

立法會
Legislative Council

LC Paper No. LS 168/98-99

**Paper for the House Committee Meeting
of the Legislative Council
on 30 April 1999**

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 23 April 1999**

Date of Tabling in LegCo : 28 April 1999

Amendment to be made by : 26 May 1999 (or 2 June 1999 if extended by resolution)

**Merchant Shipping (Safety) Ordinance (Cap. 369)
Merchant Shipping (Safety) (Subdivision and Damage Stability of Cargo Ships Over
100 Metres in Length) (Amendment) Regulation 1999 (L.N. 99)**

This Regulation amends the Merchant Shipping (Safety) (Subdivision and Damage Stability of Cargo Ships Over 100 Metres in Length) Regulation (Cap. 369 sub. leg.) (“the original Regulation”) in order to give effect to the amendments to the International Convention for the Safety of Life at Sea, 1974 made on 4 June 1996. The present amendments enhance safety requirements in ship construction by extending the original Regulation, currently applicable to seagoing cargo ships over 100 metres in length, to seagoing cargo ships between 80 and 100 metres in length constructed on or after 1 July 1998. In relation to the reference to those ships constructed on or after 1 July 1998, the Legal Service Division has asked the Administration whether or not the builders and owners of those ships were informed about the proposed legislative change before the material date. In reply, the Administration confirms that the Director of Marine has already issued “the Hong Kong Merchant Shipping Notice” on 20 April 1998 to notify the whole shipping community including the builders and masters of ships about the proposed legislative amendment. The shipping industry was also consulted through the “Hong Kong Shipping Register, Shipping Consultative Committee” and the Director of Marine received no objection from the members of the Committee. Copies of correspondence between the Legal Service Division and Administration are at **Annex** for reference.

Members may refer to LegCo Brief File Reference: ECON 1/12/3231/86(99)VI of 21 April 1999 from Economic Services Bureau for background information.

The Regulation will come into operation on a day to be appointed by the Secretary for Economic Services by notice in the Gazette. The Administration intends that the Regulation will come into operation on or before 1 July 1999.

Lands Tribunal Ordinance (Cap. 17)
Lands Tribunal (Amendment) Rules 1999 (L.N. 100)

The Land (Compulsory Sale for Redevelopment) Ordinance (Cap. 545) (“the Ordinance”) provides, among other things, for application to the Lands Tribunal by the majority owner for compulsory sale of lot for redevelopment and opposition to such application by the minority owner and the tenant on various specified grounds.

These Rules add a new Part XIVA to the Lands Tribunal Rules (Cap. 17 sub. leg.) to deal with the matters of practice and procedure arising out of the Ordinance.

The Legal Service Division has raised with the Administration some legal and drafting questions about the Rules. We have received the Administration’s reply and are in the course of studying it. We will issue a further report on this item as soon as possible.

The Rules will come into operation on the commencement of section 14 (the enabling provision) of the Ordinance on 7 June 1999 (L.N 104 of 1999).

Public Health and Municipal Services Ordinance (Cap. 132)
Hawker (Regional Council) (Amendment) Bylaw 1999 (L.N. 101)
Hawker (Urban Council) (Amendment) Bylaw 1999 (L.N. 102)

The Hawker (Regional Council) (Amendment) Bylaw 1999 (L.N. 101) repeals by-law 34 of the Hawker (Regional Council) By-laws (Cap. 132 sub. leg.). Section 86A(1)(a) of the Public Health and Municipal Services Ordinance (Cap. 132) (“the Ordinance”), together with by-law 34, impose a mandatory requirement on the court to order the forfeiture of hawker equipment and commodities in the case where a person is convicted of a contravention of any of the following provisions-

- (a) hawking in a street without or not in accordance with a licence (section 83B(3));
- (b) hawking in the Regional Council area without or not in accordance with a licence (by-law 4(1));
- (c) cooking or heating any food or possessing a cooking stove or heating apparatus intended for cooking or heating food for the purposes of hawking without or not in accordance with a licence (by-law 4(3));
- (d) using a fixed pitch or a wall stall without being the holder of a fixed pitch hawker licence (by-law 8A(1));
- (e) hawking from any place other than that to which a fixed pitch hawker licence relates (by-law 8A(2));
- (f) using a pitch that is demarcated in visible form without having all of his wares, utensils, showboards and equipment placed within the boundaries of the pitch

so demarcated (by-law 26); and

- (g) hawking inside a hawker restricted area without permission to hawk therein (by-law 32(6)).

The Hawker (Urban Council) (Amendment) Bylaw 1999 (L.N. 102) repeals by-law 58 of the Hawker (Urban Council) By-laws (Cap. 132 sub. leg.). Section 86A(1)(a) of the Ordinance, together with by-law 58, impose a mandatory requirement on the court to order the forfeiture of hawker equipment and commodities in the case where a person is convicted of any of the following hawker offences-

- (a) hawking in a street without or not in accordance with a licence (section 83B(3));
- (b) hawking a commodity or service not specified in his licence (by-law 5(2));
- (c) cooking or heating any food or possessing a cooking stove or heating apparatus intended for cooking or heating food without or not in accordance with a licence (by-law 5(3));
- (d) hawking outside the hawker permitted area to which his licence relates (by-law 22(1));
- (e) hawking inside a hawker permitted area restricted to licensees of a class other than that to which the licensee belongs (by-law 22(2));

- (f) using a fixed pitch without being the holder of a fixed-pitch hawker licence (by-law 36(1));
- (g) hawking from any place other than that to which his fixed-pitch hawker licence relates (by-law 36(2)); and
- (h) using a fixed pitch without having all of his commodities and equipment placed within the boundaries of the pitch (by-law 48).

The effect of repeal of by-law 34 of the Hawker (Regional Council) By-laws and by-law 58 of the Hawker (Urban Council) By-laws is that mandatory forfeiture under section 86A(1)(a) of the Ordinance will no longer apply in respect of a conviction for any of those particular hawker offences under the respective By-laws. The court will have a discretion under section 86A(1)(b) of the Ordinance not to order forfeiture of the equipment or commodity in respect of those particular hawker offences, if it finds and specifies special reasons, which reasons shall be special to the facts of the case and not special to the offender as distinct from the offence.

Both Bylaws will come into operation on 1 June 1999.

**The Chinese University of Hong Kong Ordinance (Cap. 1109)
Statutes of the Chinese University of Hong Kong (Amendment) Statutes 1999
(L.N. 103)**

These amendments provide for The Chinese University of Hong Kong the addition of the University Dean of Students as a member of the Administrative and Planning Committee of the University and the conferring of a new master's degree, the Master of Midwifery (M.Mid.).

**Land (Compulsory Sale for Redevelopment) Ordinance (Cap. 545)
Land (Compulsory Sale for Redevelopment) Ordinance (Cap. 545) (Commencement)
Notice 1999 (L.N. 104)**

This Notice specifies 7 June 1999 as the day on which the Land (Compulsory Sale for Redevelopment) Ordinance (Cap. 545) ("the Ordinance") will come into operation. The purposes of the Ordinance are to enable persons who own a specified majority of the undivided shares in a lot to make an application to the Lands Tribunal for an order for the sale of all of the undivided shares in the lot for the purposes of the redevelopment of the lot; to enable the Lands Tribunal to make such an order if specified criteria are met; and for matters incidental thereto or connected therewith.

Port Control (Cargo Working Areas) (Amendment) Regulation 1999 (L.N. 71 of 1999)
Port Control (Cargo Working Areas) (Amendment) Regulation 1999 (L.N. 71 of 1999)
(Commencement) Notice 1999 (L.N. 105)

This Notice specifies 1 May 1999 as the day on which the Port Control (Cargo Working Areas) (Amendment) Regulation 1999 (L.N. 71 of 1999) (“the Regulation”) will come into operation. The main purpose of the Regulation is to introduce the operation area permit system, under which the holder of an operation area permit is entitled to carry out certain activities in a public cargo working area or public water-front without the need to make separate applications for a permit for each of the activities.

Encl

Prepared by

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Assistant Legal Adviser
Legislative Council Secretariat
28 April 1999

LS/S/42/98-99

Annex

LS/S/42/98-99
2869 9468
2877 5029

Mr Summy W S Chu
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Economic Services Bureau
38/F, Two Exchange Square
Connaught Place
Central
Hong Kong

23 April 1999

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Dear Mr Chu,

**Merchant Shipping (Safety) (Subdivision and
Damage Stability of Cargo Ships Over 100 Metres in Length)
(Amendment) Regulation 1999 (L.N. 99 of 1999)**

We are scrutinising the legal and drafting aspects of the amendment Regulation.

It is noted that new section 2(1)(b) applies the original Regulation to any seagoing cargo ships between 100 and 80 metres in length constructed on or after 1 July 1998.

Were the builders and masters of the ships to be affected aware of the proposed legislative amendment before 1 July 1998? If not, were they consulted about the proposed change?

When would the Administration intend the amendment Regulation to come into operation?

We should be grateful for your reply, in bilingual versions, to reach us by 26 April 1999.

Yours faithfully,

(Stephen Lam)
Assistant Legal Adviser

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Our Tel : 2537 2844

Your Ref:

26 April 1999

Legislative Council Secretariat
Legal Service Division
Legislative Council Building
8 Jackson Road, Central
Hong Kong
Attn.: **Mr Stephen LAM**
(Fax No.: 2877 5029)

Dear Mr. Lam,

***Merchant Shipping (Safety) (Subdivision and Damage
Stability of Cargo Ships over 100 Metres in Length)
(Amendment) Regulation 1999***

Thank you for your letter of 23 April 1999 regarding the above proposed amendment regulation.

Please be advised that the Director of Marine had already issued "the Hong Kong Merchant Shipping Notice" on 20 April 1998, to notify the whole shipping community including the builders and masters of ships, about the proposed legislative amendment. On the other hand, the shipping industry was also consulted through the "Hong Kong Shipping Register, Shipping Consultative Committee" and the Director of Marine received no objection from the members of the Committee.

Lastly, the Administration intends to have the proposed amendment regulation to come into operation on or before 1 July 1999.

Yours sincerely,

(Summy W S CHU)
for Secretary for Economic Services

c.c.

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