

Amend the Dutiable Commodities Ordinance.

Enacted by the Legislative Council.

1. Short title and commencement

(1) This Ordinance may be cited as the Dutiable Commodities (Amendment) Ordinance 1999.

(2) This Ordinance shall come into operation on a day to be appointed by the Secretary for the Treasury by notice in the Gazette.

2. Regulations

Section 6(1)(i) of the Dutiable Commodities Ordinance (Cap. 109) is repealed and the following substituted---

"(i) dispensing with or relaxing any of the provisions of this Ordinance or duties imposed under this Ordinance relating to goods to which this Ordinance applies and empowering the Commissioner to impose conditions in respect of the dispensation or relaxation;"

3. Restrictions on dealing with and possession of certain goods

Section 17(3AB) is repealed and the following substituted---

"(3AB) A person shall not, except under and in accordance with a licence, manufacture---

- (a) alcoholic liquor, except as provided in section 64A;
- (b) methyl alcohol, tobacco or hydrocarbon oil."

4. Presumptions

Section 40 is amended---

(a) by repealing paragraph (c) and substituting---

"(c) if a person---

(i) sells, supplies, buys, receives or otherwise deals in light diesel oil (other than marked oil) or motor spirit; or

(ii) transfers light diesel oil (other than marked oil) or motor spirit to or from a vehicle's fuel tank,
and does so---

- (A) at a location other than premises in respect of which a licence for the storage of diesel oils (being dangerous goods in category 5, class 3) or petrol (being dangerous goods in category 5, class 1) (as the case may be) has been issued under Part VI of the Dangerous Goods (General) Regulations (Cap. 295 sub. leg.); and
- (B) in circumstances that give rise to a reasonable belief that the light diesel oil or motor spirit is dutiable,
the light diesel oil or motor spirit found in or about the location is dutiable

goods;"

(b) by adding---

"(ca) any light diesel oil found in the fuel tank of a motor vehicle and having a sulphur content in excess of that stipulated in Schedule 1 to the Air Pollution Control (Motor Vehicle Fuel) Regulation (Cap. 311 sub. leg.) is dutiable goods unless the circumstances are such that the exemption under regulation 12(1)(n), (p) or (pa) of the Dutiable Commodities Regulations (Cap. 109 sub. leg.) applies;"

5. Offences and penalties

Section 46(3) is repealed and the following substituted---

"(3) Except as expressly provided in this Ordinance, any person who contravenes a provision of this Ordinance set out in column 1 of Schedule 2 commits an offence and is liable on conviction to the penalty set out opposite that provision in columns 2 and 3 of that Schedule."

6. Illegal possession of still or fermented material, etc.

Section 58(1) is amended by adding ", or except as provided in section 64A" after "Commissioner".

7. Section added

The following is added---

"64A. Licence not required for home brewing

(1) A licence is not required for the manufacture of alcoholic liquor, other than by distillation and other than for sale, by a person aged 18 or over in premises which are used by the person exclusively as his place of residence and which constitute a separate household unit.

(2) Subsection (1) does not apply---

(a) if the person who manufactures the liquor is in possession, anywhere in Hong Kong, of alcoholic liquor purported to be manufactured under subsection (1) of a total quantity exceeding 50 litres;

(b) if there is kept in the premises in which the liquor is manufactured alcoholic liquor purported to be manufactured under subsection (1) of a quantity exceeding 50 litres;

(c) unless the alcoholic liquor so manufactured---

(i) is stored in sealed containers marked legibly in English letters or Chinese characters at least 4 mm high the words "Home Brewed, Not for Sale" or "家中自釀，不得售賣"; or

(ii) is for immediate consumption.

(3) For the purpose of manufacture of alcoholic liquor under subsection (1) in any premises, a person may without a licence possess in those premises---

(a) any utensil or apparatus, other than a still or part of a still, for manufacturing alcoholic liquor;

(b) fermenting or fermented materials not exceeding 60 litres.

(4) In any prosecution for an offence under this Ordinance, the onus of proving the circumstances are such that subsection (1) applies shall be upon the accused."

8. Schedule 1 amended

Schedule 1 is amended---

(a) in Part I---

(i) in paragraph 1, by repealing "Subject to paragraph 3, duty" and substituting "Duty";

(ii) by repealing paragraph 3;

(b) in Part II---

(i) in paragraph 1, by repealing "Subject to paragraph 3, duty" and substituting "Duty";

(ii) by repealing paragraph 3.

Consequential Amendments

Dutiable Commodities Regulations

9. Exemptions

Regulation 12(1) of the Dutiable Commodities Regulations (Cap. 109 sub. leg.) is amended---

(a) in paragraph (e), by adding ", other than alcoholic liquor or tobacco," after "goods";

(b) by adding---

"(ea) subject to such conditions as the Commissioner may impose, alcoholic liquor or tobacco which is---

(i) either---

(A) imported of his own use and in his baggage by a passenger or crew member of any ship, aircraft, train or vehicle; or

(B) bought for his own use by such passenger or crew members at a licensed warehouse located at any place approved by the Commissioner in the arrival area at an entry point in Hong Kong; and

(ii) in such quantity as the Commissioner may determine and publish in the Gazette as applicable generally or to a class of passengers or crew members to which the passenger or crew member belongs;";

(c) by adding---

"(ga) alcoholic liquor manufactured in accordance with section 64A(1) of the Ordinance if---

(i) the person in possession of it is not in possession, anywhere in Hong Kong,

of such alcoholic liquor of a total quantity exceeding 50 litres;

(ii) it is kept in premises in which there is not kept such alcoholic liquor of a quantity exceeding 50 litres; and

(iii) it is---

(A) stored in sealed containers marked legibly in English letters or Chinese characters at least

4 mm high the words "Home Brewed, Not for Sale" or "家中自釀，不得售賣"; or

(B) for immediate consumption;".

Dutiable Commodities (Marking and Colouring of Hydrocarbon Oil) Regulations

10. Offences and penalties

Regulation 13(2) of the Dutiable Commodities (Marking and Colouring of Hydrocarbon Oil) Regulations (Cap. 109 sub. leg.) is amended by repealing "\$200,000" and substituting "\$1,000,000".

Explanatory Memorandum

The object of this Bill is to amend the Dutiable Commodities Ordinance (Cap. 109) ("the Ordinance")---

(a) to repeal the provision conferring power on the Chief Executive in Council to make regulations dispensing with or relaxing requirements under the Ordinance relating to certain categories of goods and replace it with a provision conferring a similar power in relation to goods generally (clause 2);

(b) to allow the manufacture without a licence, other than for sale, of alcoholic liquor not exceeding a specified quantity in residential premises and to exempt such liquor from duty (clauses 3, 6, 7 and 9(c));

(c) to extend the presumptions for facilitating enforcement action by the Commissioner of Customs and Excise in cases of use of prohibited fuel in motor vehicles (clause 4) so that---

(i) light diesel oil (other than marked oil) and motor spirit dealt in otherwise than in premises specifically licensed for the storage of diesel oils or petrol under Part VI of the Dangerous Goods (General) Regulations (Cap. 295 sub. leg.) is presumed to be dutiable goods;

(ii) subject to specific exemptions, light diesel oil with an excessive sulphur content is presumed to be dutiable goods;

(d) to relocate the provisions on exemption of duty for liquor and tobacco purchased at entry points from Schedule 1 to the Ordinance to regulation 12 of the Dutiable Commodities Regulations (Cap. 109 sub. leg.) for better presentation (clauses 8 and 9(a) and (b));

(e) to increase the penalty for offences relating to use of kerosene and marked oil in motor vehicles or pleasure vessels and offences relating to marking and colouring of light diesel oil (clause 10).