

LEGISLATIVE COUNCIL BRIEF

Port Control (Cargo Working Areas) Ordinance (Chapter 81)

Administrative Appeals Board Ordinance (Chapter 442)

PORT CONTROL (CARGO WORKING AREAS) (AMENDMENT) (NO. 2) REGULATION 1999

ADMINISTRATIVE APPEALS BOARD ORDINANCE (AMENDMENT OF SCHEDULE) ORDER 1999

INTRODUCTION

At the meeting of the Executive Council on 9 November 1999, the Council **ADVISED** and the Chief Executive **ORDERED** that –

- (a) the Port Control (Cargo Working Areas) (Amendment) (No.2) Regulation 1999, at *Annex A*, should be made under section 6 of the Port Control (Cargo Working Areas) Ordinance; and
- (b) the Administrative Appeals Board Ordinance (Amendment of Schedule) Order 1999, at *Annex B*, should be made under section 4 of the Administrative Appeals Board Ordinance,

to establish a statutory right of appeal against decisions of the Director of Marine (D of M) relating to the issue and cancellation of permits under the Port Control (Cargo Working Areas) Regulations and to improve other miscellaneous provisions.

BACKGROUND AND ARGUMENT

General Background

2. Public Cargo Working Areas (PCWAs) are waterfront areas managed by Marine Department (MD) for use of cargo operators for the loading or unloading of cargoes from vessels. Currently, there are eight PCWAs in different locations in the harbour. Activities in PCWAs are regulated and controlled through a permit system. Relevant fees and charges for the issues of permits are specified in the Schedule to the Regulations.

3. At present, there is no provision of statutory appeal against the D of M's decision to refuse to issue a permit or to cancel a permit if it is considered that a permit condition is contravened. The absence of a right of appeal may be inconsistent with the Hong Kong Bill of Rights Ordinance, Cap 383.

The proposal

4. To meet such concerns, we propose that a statutory right of appeal against the decision of the D of M should be established. Such appeals would be referred to the Administrative Appeals Board (AAB) which is a well-established channel of appeal for administrative decisions including miscellaneous licensing and permits appeals. In the meantime, the opportunity is also taken to introduce some tidying up amendments to remove some out-dated provisions that are not commensurate with the current operation of PCWAs. In addition, we suggest that suitable provisions should be made for the issue of some of the permits prescribed in the Schedule which were omitted in the Regulations.

THE AMENDMENT REGULATION AND THE AMENDMENT ORDER

5. The main provisions of the Amendment Regulation are as follows:

- (a) Section 3 provides for the Director of Marine (the Director) to prohibit the loading and unloading of cargo and cargo containers within a public cargo working area (PCWA) or public water-front (PW) outside operating hours.
- (b) Section 4 repeals the restriction on the way cargo may be loaded or unloaded.
- (c) Section 5 enables the Director to permit the carrying out of activity in PCWAs and PWs that is otherwise prohibited under regulation 6.
- (d) Section 6 extends the scope of activities covered by the operation area permit.
- (e) Section 7 provides for the issue of vanning and devanning permit and prescribes the penalty for failing to obtain such permit.
- (f) Section 8 provides for appeal to the Administrative Appeals Board in respect of certain decisions made by the Director or the Supervisor.

6. The Amendment Order amends the Schedule to Cap. 442 to provide for appeal to the AAB in respect of certain decisions made by the D of M or the supervisor.

LEGISLATIVE TIMETABLE

7. The legislative timetable will be –

Publication in the Gazette	19 November 1999
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Tabling at the Legislative Council	24 November 1999
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PUBLIC CONSULTATION

8. The existing PCWA operators and relevant trade associations have been consulted and they unanimously supported the proposals.

HUMAN RIGHTS IMPLICATIONS

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

BINDING EFFECT OF THE LEGISLATION

10. The amendments will not affect the current binding effect of the relevant provisions of the existing Regulations.

FINANCIAL AND STAFFING IMPLICATIONS

11. It is estimated that the creation of statutory right of appeal against D of M's decision to be lodged with the AAB will cause a very small increase in appeal cases to be handled by the Secretariat of the AAB each year. The proposal is unlikely to have significant financial or staffing implications for the Secretariat of the AAB. The resource implications for D of M should be insignificant. Additional resources, if required, will be absorbed from within their global allocations.

ECONOMIC IMPLICATIONS

12. The proposals will have no economic implications.

ENVIRONMENTAL IMPLICATIONS

13. There are no environmental implications.

PUBLICITY

14. A press release will be issued on 17 November 1999. A spokesman will be available to handle media enquiries.

ENQUIRY

15. For any enquiry on this brief, please contact Mr Y K LEE, Assistant Director of Marine at 2852 4541 or Mr Peter KWOK, Assistant Secretary for Economic Services at 2537 2842.

Economic Services Bureau

Date : November 1999

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PORT CONTROL (CARGO WORKING AREAS) (AMENDMENT)
(NO. 2) REGULATION 1999

(Made by the Chief Executive in Council under section 6
of the Port Control (Cargo Working Areas)
Ordinance (Cap. 81))

1. Commencement

This Regulation shall come into operation on a day to be appointed by the Secretary for Economic Services by notice in the Gazette.

2. Interpretation

Regulation 2 of the Port Control (Cargo Working Areas) Regulations (Cap. 81 sub. leg.) is amended -

(a) by repealing the definition of “operating hours” and substituting -

““operating hours” (操作時間) means the hours specified by the
Director under regulation 4A(1);”;

(b) by adding -

““vanning and devanning permit” (貨櫃裝箱拆箱許可證) means a
vanning and devanning permit issued under regulation
7E(1);”.

3. Operating hours

Regulation 4A is amended by adding -

“(3) A person shall not without the permission in writing of the Director load or unload cargo or cargo containers outside the operating hours within a public cargo working area or public

water-front, or any part thereof, specified in a notice under paragraph (1).

(4) The Director may, upon application by any person and on payment of the prescribed fee, permit that person in writing to load or unload cargo or cargo containers outside the operating hours.

(5) The permission under subsection (4) is valid -

(a) only for the public cargo working area or public water-front specified in the permission; and

(b) for the period specified in the permission.

(6) Any person who contravenes paragraph (3) is guilty of an offence and is liable on conviction to a fine of \$10,000 and to imprisonment for 6 months.”.

4. Loading and unloading of cargo

Regulation 6 is amended -

(a) by repealing paragraph (2);

(b) in paragraph (4) by repealing “or (2)”.

5. Regulation added

The following is added after regulation 6 -

**“6AA. Director may permit carrying
out of activity prohibited under
regulation 6**

(1) The Director may, upon application by any person and on payment of the prescribed fee, permit that person in writing to carry out any activity prohibited under regulation 6 within a public cargo working area or public water-front specified in

the permission.

(2) The permission under subsection (1) is valid -

(a) only for the public cargo working area or public water-front specified in the permission; and

(b) for the period specified in the permission.

(3) This regulation shall not apply to any thing or activity for which provision is made elsewhere in these regulations.”.

6. Operation area permits

Regulation 7D(1) is amended -

(a) in subparagraph (c) by repealing “and”;

(b) in subparagraph (d) by repealing the comma and substituting”; and”;

(c) by adding -

“(e) van or devan a cargo container not across a seawall,”.

7. Regulation added

The following is added -

“7E. Vanning and devanning permits

(1) The supervisor may, upon application by any person and on payment of the prescribed fee, issue to that person a vanning and devanning permit to van or devan not across a seawall a cargo container specified in the permit, within a public cargo working area or public water-front specified in the permit.

(2) A vanning and devanning permit is valid -

(a) only for the public cargo working area or public

water-front specified in the permit; and

(b) until the vanning or devanning of the container specified in the permit is completed.

(3) Subject to paragraph (4), any person who vans or devans a container within a public cargo working area or public water-front without a valid vanning and devanning permit is guilty of an offence and is liable on conviction to a fine of \$5,000.

(4) Paragraph (3) does not apply to a person who has been issued with an operation area permit which is valid in respect of the public cargo working area or public water-front.”.

8. Regulation added

The following is added -

“21A.Right of appeal

Any person aggrieved by a decision made in respect of him by the Director or the supervisor under regulation 4A(4), 5B, 6AA, 7, 7A, 7B, 7C, 7D, 7E, 13 or 21 may appeal to the Administrative Appeals Board.”.

9. Fees and charges

The Schedule is amended -

- (a) in item 5 by repealing “機”and substituting “車”;
- (b) in item 11 by repealing “not otherwise specified” and substituting “under regulation 6AA”;
- (c) in item 13 by repealing “permit for working cargo” and substituting “permission for loading or unloading cargo or cargo containers”;

(d) by repealing item 14 and substituting -

“14. Vanning and Devanning Permit per cargo container per operation per day.....365”.

Clerk to the Executive Council

COUNCIL CHAMBER

1999

Explanatory Note

This Regulation amends the Port Control (Cargo Working Areas) Regulations (Cap. 81 sub. leg.) to -

- (a) prohibit the loading and unloading of cargo or cargo containers within a public cargo working area or public water-front outside operating hours except with permission of the Director of Marine (section 3);
- (b) repeal the restriction on the way cargo or cargo containers may be loaded or unloaded (section 4);
- (c) enable the Director to permit the carrying out of activity in the public cargo working area and public water-front which is otherwise prohibited under regulation 6 (new regulation 6AA in section 5);
- (d) extend the scope of activities covered by the operation

area permit (section 6);

- (e) regulate the issue of vanning and devanning permit (new regulation 7E in section 7);
- (f) provide for appeal to the Administrative Appeals Board in respect of certain decisions made by the Director or the supervisor (new regulation 21A in section 8).

**ADMINISTRATIVE APPEALS BOARD ORDINANCE
(AMENDMENT OF SCHEDULE) ORDER 1999**

(Made by the Chief Executive in Council under
section 4 of the Administrative Appeals
Board Ordinance (Cap. 442))

1. Commencement

This Order shall come into operation on the day appointed for the commencement of the Port Control (Cargo Working Areas) (Amendment) (No. 2) Regulation 1999 (L.N. of 1999).

2. Schedule amended

The Schedule to the Administrative Appeals Board Ordinance (Cap. 442) is amended by adding -

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| “46. Port Control (Cargo Working Areas) Regulations (Cap. 81 sub. leg.) | A decision of the Director or the supervisor under regulation 4A(4), 5B, 6AA, 7, 7A, 7B, 7C, 7D, 7E, 13 or 21.”. |
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Clerk to the Executive Council

COUNCIL CHAMBER

1999

Explanatory Note

This Order amends the Schedule to the Administrative Appeals Board Ordinance (Cap. 442) to provide for appeal to the Administrative Appeals Board in respect of certain decisions made by the Director of Marine or the supervisor under the Port Control (Cargo Working Areas) Regulations (Cap. 81 sub. leg.).