

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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