

LEGISLATIVE COUNCIL BRIEF

Import and Export Ordinance
(Chapter 60)

IMPORT AND EXPORT (AMENDMENT) BILL 2009

INTRODUCTION

A At the meeting of the Executive Council held on 27 October 2009, the Council Advised and the Chief Executive Ordered that the Import and Export (Amendment) Bill 2009 (the Bill) at **Annex A** should be introduced into the Legislative Council to amend the Import and Export Ordinance (IEO) (Cap. 60) to the following effect –

- (a) the Commissioner of Customs and Excise (C of C&E) may authorize any police officer, regardless of rank, to exercise any of the powers and perform any of the duties conferred or imposed on an authorized officer by the IEO; and
- (b) to better reflect the speedboats currently used by smuggling syndicates, the number and the total power of the engines of a vessel, or vessel under construction, of less than 250 gross tons that could be presumed to have been under construction, constructed or used for the purpose of smuggling be reduced to one or more than one engine the total power of which could exceed 168 kilowatts (225 horsepower).

JUSTIFICATIONS

To extend authorization made under section 4 of the IEO to cover all police officers

B 2. Under section 4 of the IEO (extract at **Annex B**), C of C&E may authorize in writing any person approved by the Secretary for Security, any public officer and any police officer of the rank of Inspector or above to exercise any of the powers and perform any of the duties conferred or imposed on an authorized officer by the IEO. In March 1991, in accordance

with section 4 of the IEO, the then C of C&E authorized all police officers of the rank of Inspector or above to act as authorized officers so that they can perform relevant enforcement duties under certain sections of the IEO (e.g. to stop, board and search any vessel, aircraft or vehicle; to arrest and detain person; to seize articles, vessels and vehicles; and to require production and examination of licence, record or document, etc.).

3. The methods of operation of smugglers have changed over time. To respond to the changing situation, Marine Police launched the “Versatile Maritime Policing Response” initiative in 2007 to enhance the policing of the waters of Hong Kong with a view to full implementation by mid-2010. Under this initiative, Marine Police are introducing technologically advanced surveillance systems and high-performance smaller vessels in phases. These smaller vessels are each commanded by a sergeant or a police constable.

4. While there are police officers at the rank of Inspector or above on patrol at all times at different locations in Hong Kong waters, the Police see the operational need for officers below the rank of Inspector policing the waters of Hong Kong on smaller vessels to be able to exercise the powers authorized under section 4 of the IEO as well so as to allow Marine Police more flexibility in manpower deployment in combating smuggling at sea. This would help enhance the effectiveness and efficiency of the Police’s anti-smuggling efforts. Therefore, we propose to amend section 4 of the IEO to the effect that C of C&E may authorize any police officer, irrespective of rank, to exercise any of the powers and perform any of the duties conferred or imposed on an authorized officer by the IEO.

To reduce the number and the total power of the engines of a vessel, or vessel under construction, of less than 250 gross tons that may be presumed to have been under construction, constructed or used for the purpose of smuggling under section 14A(6)(b)(iv) of the IEO

5. Smuggling by high-powered speedboat presents a constant law enforcement concern. It is difficult to intercept such speedboats as they are operated at very high speed and often in a reckless and dangerous manner.

B

6. Section 14A of the IEO (extract at **Annex B**) provides that –
- (a) it is an offence to construct a vessel of less than 250 gross tons for the purpose of smuggling;
 - (b) it is an offence to repair or maintain a vessel of less than 250 gross tons constructed for the purpose of smuggling;
 - (c) it is an offence for being a person found on board a vessel of less than 250 gross tons knowing that that vessel is being used for the purpose of smuggling; and
 - (d) it is an offence for being the master or other person in charge of a vessel of less than 250 gross tons used for the purpose of smuggling.

Section 14A(6) of the IEO further provides that a vessel, or vessel under construction, shall be presumed to have been under construction, constructed or used for the purpose of smuggling if relevant enforcement officers reasonably suspect that the vessel has been used or is intended to be used for the purpose of smuggling and has a facility to mount more than two outboard engines the total power of which could exceed 448 kilowatts (600 horsepower).

7. The IEO provisions set out in paragraph 6 above were enacted in 1991, when smuggling activities at sea were commonly undertaken by “Dai Fei (大飛)” equipped with four or five high-powered engines. In recent years, smuggling syndicates have gradually shifted to the use of single-skin, fibre-glass sampans outfitted with high-powered outboard engine(s). Statistics on the types of speedboat seized in connection with smuggling activities in 2006 to 2008 are set out below –

Speedboat Type	2006	2007	2008	Total
Mounted with one 250-horsepower engine	11	7	0	18
Mounted with two 250-horsepower engines	8	5	7	20
Mounted with two 200-horsepower engines	1	0	0	1
Others ¹	7	8	4	19
Total	27	20	11	58

8. Notably, of the 58 speedboats seized, 39 (or 67%) were outfitted with one or more engines the total power of which was above 225 horsepower but below 600 horsepower. Currently, such speedboats are not covered by section 14A(6)(b)(iv) of the IEO. Thus, the law enforcement agencies are unable to invoke the said provision against such vessels even if they have reasons to suspect that the vessels concerned have been used or are intended to be used for smuggling purpose. This has hampered the effectiveness of the fight against smuggling.

9. Having reviewed the modus operandi of smuggling activities at sea in recent years and to enhance the effectiveness of law enforcement actions against smuggling by speedboat, we see a need to amend section 14A(6)(b)(iv) of the IEO to reduce the number and the total power of the engines of a vessel, or vessel under construction, of less than 250 gross tons that may be presumed to have been under construction, constructed or used for the purpose of smuggling to one or more than one engine the total power of which could exceed 168 kilowatts (225 horsepower), so as to better target the prevailing types of speedboat constructed or used for smuggling purpose.

10. Under section 14A(6)(a) of the IEO, enforcement against smuggling vessels requires an authorized officer to have reasonable suspicion that a vessel has been or is intended to be used for the purpose of smuggling. In addition, section 14A(7) of the IEO provides that it shall be a defence for the master or other person in charge of a vessel to prove that he did not know and could not with reasonable diligence have known that the vessel was used for smuggling. Therefore, the proposed amendment to

¹ Of the 19 speedboats under the category of "Others", six were mounted with one engine the power of which was below 100 horsepower. Statistics on the horsepower of the engines mounted on the remaining 13 speedboats were not available.

section 14A(6)(b)(iv) would not affect vessels of less than 250 gross tons engaged in bona fide purposes, even if outfitted with outboard engine(s) the total power of which exceeds 168 kilowatts (225 horsepower).

THE BILL

11. The main provisions of the Bill at **Annex A** are summarised below –

- (a) Clause 2 amends section 4 of the IEO so that C of C&E may authorize any police officer, irrespective of rank, to exercise any of the powers and perform any of the duties conferred or imposed on an authorized officer by the IEO; and
- (b) Clause 3 amends section 14A(6)(b)(iv) of the IEO to reduce the number and the total power of the engines of a vessel, or vessel under construction, of less than 250 gross tons that may be presumed to have been under construction, constructed or used for the purpose of smuggling to one or more than one engine the total power of which could exceed 168 kilowatts (225 horsepower).

12. The Amendment Ordinance comes into operation on the day it is published in the Gazette, pursuant to section 20(2)(a) of the Interpretation and General Clauses Ordinance (Cap. 1)².

LEGISLATIVE TIMETABLE

13. The legislative timetable will be -

Publication in the Gazette	6 November 2009
First Reading and commencement of Second Reading debate	18 November 2009

² Section 20(2) of Cap. 1 provides that an Ordinance commences –

- (a) at the beginning of the day on which it is published; or
- (b) if provision is made for it to commence on another day, at the beginning of that other day.

Resumption of Second Reading
debate, committee stage and
Third Reading

to be notified

IMPLICATIONS OF THE PROPOSAL

14. The proposal is in conformity with the Basic Law, including the provisions concerning human rights. It has no financial, civil service, productivity, environmental or sustainability implications. The improved anti-smuggling regime would enhance the image of Hong Kong as an international city with the rule of law and a level-playing field for all market participants. The proposed amendments to the IEO will not affect the current binding effect of the IEO.

PUBLIC CONSULTATION

15. In April and May 2009, we consulted the local vessel industry, including various fishermen associations and pleasure craft clubs, as well as the statutory Local Vessels Advisory Committee on the proposed amendments to section 14A(6)(b)(iv) of the IEO. The industry had no objection to the proposal. On 29 June 2009, we consulted the LegCo Panel on Security on the proposed amendments to sections 4 and 14A(6)(b)(iv) of the IEO. The Panel had no objection to the proposed amendments.

PUBLICITY

16. A spokesman will be made available to answer media enquiries.

ENQUIRIES

17. Enquiries on this Brief should be addressed to Mr David Lau, Principal Assistant Secretary (Security), at telephone number 2810 2329.

Security Bureau
30 October 2009

A BILL

To

Amend sections 4 and 14A of the Import and Export Ordinance.

Enacted by the Legislative Council.

1. Short title

This Ordinance may be cited as the Import and Export (Amendment) Ordinance 2009.

2. Power of Commissioner to appoint authorized officers

(1) Section 4 of the Import and Export Ordinance (Cap. 60) is amended by repealing “any public officer and any police officer of the rank of Inspector or above” and substituting “any police officer and any other public officer”.

(2) Section 4 is amended, in the Chinese text, by repealing “和” and substituting “， 以及”.

3. Construction, etc., of vessels for the purpose of smuggling

Section 14A(6)(b)(iv) is repealed and the following substituted –

“(iv) a facility to mount one or more than one outboard engine where the total power of the engine or engines could exceed 168 kilowatts;”.

Explanatory Memorandum

The object of this Bill is to amend the description of persons who may be appointed as authorized officers under section 4 of the Import and Export Ordinance (Cap. 60) (“the Ordinance”) and the description of vessels in section 14A(6)(b)(iv) of the Ordinance to which the rebuttable presumption as to smuggling purpose applies.

2. Under the existing section 4 of the Ordinance, the Commissioner of Customs and Excise may authorize, among others, any police officer of the rank of Inspector or above to exercise the powers and perform the duties conferred or imposed on an authorized officer by the Ordinance. Clause 2 amends section 4 of the Ordinance so that any police officer, irrespective of the rank of the officer, may be authorized.

3. Under the existing section 14A(6)(a) and (b)(iv) of the Ordinance, a vessel, or vessel under construction, of less than 250 gross tons is, in the absence of evidence to the contrary, presumed to have been under construction, constructed or used for the purpose of smuggling if a relevant officer reasonably suspects that the vessel has been used or is intended to be used for the purpose of smuggling and it is a vessel that has a facility to mount more than 2 outboard engines where the total power of the engines could exceed 448 kilowatts. Clause 3 amends the description of vessels in section 14A(6)(b)(iv) of the Ordinance so that the presumption applies to a vessel that has a facility to mount one or more than one outboard engine where the total power of the engine or engines could exceed 168 kilowatts.

Extract of Import and Export Ordinance (Cap. 60)

Chapter:	60	IMPORT AND EXPORT ORDINANCE	Gazette Number	Version Date
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Section:	4	Power of Commissioner to appoint authorized officers		30/06/199 7
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The Commissioner may authorize in writing any person approved by the Secretary for Security, any public officer and any police officer of the rank of Inspector or above to exercise any of the powers and perform any of the duties conferred or imposed on an authorized officer by this Ordinance.

(Amended L.N. 294 of 1982; 22 of 1991 s. 4)

Section:	14A	Construction, etc., of vessels for the purpose of smuggling		30/06/199 7
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- (1) Any person who constructs a vessel of less than 250 gross tons for the purpose of smuggling is guilty of an offence and liable-
 - (a) on summary conviction to a fine of \$500000 and to imprisonment for 2 years;
 - (b) on conviction on indictment to a fine of \$2000000 and to imprisonment for 7 years. (Amended 1 of 1994 s. 7)
- (2) Any person who repairs or maintains a vessel of less than 250 gross tons constructed for the purpose of smuggling is guilty of an offence and liable-
 - (a) on summary conviction to a fine of \$500000 and to imprisonment for 2 years;
 - (b) on conviction on indictment to a fine of \$2000000 and to imprisonment for 7 years. (Amended 1 of 1994 s. 7)
- (3) Any person found on board a vessel of less than 250 gross tons knowing that the vessel is being used for the purpose of smuggling is guilty of an offence and liable-
 - (a) on summary conviction to a fine of \$500000 and to imprisonment for 2 years;
 - (b) on conviction on indictment to a fine of \$2000000 and to imprisonment for 7 years. (Amended 1 of 1994 s. 7)
- (4) The master or other person in charge of a vessel of less than 250 gross tons used for the purpose of smuggling is guilty of an offence and liable-
 - (a) on summary conviction to a fine of \$500000 and to imprisonment for 2 years;
 - (b) on conviction on indictment to a fine of \$2000000 and to imprisonment for 7 years. (Amended 1 of 1994 s. 7)
- (5) Any vessel of less than of 250 gross tons that is under construction for the

purpose of smuggling is deemed to be a vessel constructed or used for the purpose of smuggling.

(6) In subsection (1), (2), (3), (4) and (5), where-

- (a) the Commissioner, and authorized officer or any member of the Customs and Excise Service reasonably suspects that a vessel has been used or is intended to be used for the purpose of smuggling; and
- (b) it is a vessel that has-
 - (i) any false bulkhead, bow, side or bottom;
 - (ii) any secret or disguised place adapted for the purpose of concealing any article;
 - (iii) any hole, pipe or other device adapted for the purpose of smuggling;
 - (iv) a facility to mount more than 2 outboard engines where the total power of the engines could exceed 448 kilowatts;
 - (v) fuel tanks or other on board fuel capacity exceeding 817 litres, such tanks or other capacity holding or suitable for holding fuel for outboard motors; or
 - (vi) metal plating fitted on the hull of the vessel that could be used for ramming other vessels or for armour protection,

the vessel, or vessel under construction, shall be presumed to have been under construction, constructed or used for the purpose of smuggling in the absence of evidence to the contrary.

(7) It shall be a defence to a charge under subsection (4) for the master or other person in charge of a vessel to prove that he did not know and could not with reasonable diligence have known that the vessel was used for smuggling.

(Added 22 of 1991 s. 6)