

LEGISLATIVE COUNCIL BRIEF

Civil Aviation Ordinance
(Chapter 448)

Dangerous Goods (Consignment by Air) (Safety) Ordinance
(Chapter 384)

**Air Navigation (Hong Kong) Order 1995
(Amendment of Schedule 16) Order 2018**

**Dangerous Goods (Consignment by Air) (Safety)
Regulations (Amendment of Schedule) Order 2018**

INTRODUCTION

A At the meeting of the Executive Council on 23 January 2018, the Council **ADVISED** and the Acting Chief Executive **ORDERED** that the Air Navigation (Hong Kong) Order 1995 (Amendment of Schedule 16) Order 2018 (the AN(DG)R Amendment Order) at **Annex A** should be made to implement the latest requirements of the International Civil Aviation Organisation (“ICAO”) for the safe transport of dangerous goods (“DG”)¹ by air.

B 2. On the same day, the Director-General of Civil Aviation made the Dangerous Goods (Consignment by Air) (Safety) Regulations (Amendment of Schedule) Order 2018 (the DG(CAS)R Amendment Order) at **Annex B** to update the references made to the provisions of the ICAO’s Technical Instructions for the Safe Transport of Dangerous Goods by Air (“TIs”) in the Dangerous Goods (Consignment by Air) (Safety) Regulations.

¹ According to the ICAO’s Technical Instructions for the Safe Transport of Dangerous Goods by Air, dangerous goods in the context of air transport include explosives, compressed gas, flammable liquids, flammable solids, oxidising substances, toxic substances, infectious substances, radioactive materials and corrosives, etc.

JUSTIFICATIONS

The ICAO's Latest Requirements

3. The ICAO is a specialised agency of the United Nations established under the Convention on International Civil Aviation (“Chicago Convention”) in 1944, with a view to introducing policies and standards of international civil aviation and promoting its development in a safe and orderly manner. At present, it has 192 Contracting States and China is one of them. China recognises the international rights and obligations arising from the Chicago Convention and its associated regulations; these rights and obligations are also applicable to Hong Kong.

4. The ICAO’s TIs set out the ICAO’s requirements for the safe transport of DG by air. For example, the previous edition of the TIs (i.e. the 2015-2016 edition), which has been reflected in our existing legislation, already specified the proper marking, labelling and packaging of DG for transport by air. The responsibilities of aircraft operators in providing passengers with information on DG forbidden to be carried by passengers aboard an aircraft were also specified in the previous edition of the TIs.

5. Whenever an updated edition of the TIs is published by the ICAO, the Civil Aviation Department (“CAD”) will review the new requirements and pursue necessary amendments to our local legislation in order to keep Hong Kong’s regulatory regime in line with the most updated international standards. The new edition of the TIs (i.e. the 2017-2018 edition) was published in December 2016. Most of the changes in the new edition of the TIs are technical and textual in nature. The major changes which require legislative amendments as a result of the publication of the latest TIs are summarised below –

(a) Identification of the person who performs the acceptance check of DG to be carried by air as cargo

At present, aircraft operators are required by law to conduct a DG acceptance check by using a checklist² before a consignment containing DG is accepted for air carriage. In addition to the performance of the acceptance check, the new edition of the TIs now also requires aircraft operators to identify the person performing the check and preserve the records of identification of such person so that in the event of an accident or incident, this important piece of information will be available to facilitate the conduct of an investigation; and

(b) DG information conveyed to passengers

At present, the responsibilities of aircraft operators to provide passengers with information on DG forbidden to be carried by passengers aboard an aircraft are already provided under our existing legislation. However, with technological advancement, the procedures of checking in and boarding pass issuance have diversified. In this connection, the new edition of the TIs reinforces the current practice to ensure that aircraft operators would communicate to passengers about the DG which the passengers are forbidden to transport aboard an aircraft no matter how the passengers purchase their tickets and/or check in their flights. This practice would form part of the operating procedures stipulated in the aircraft operator's operations manual and/or other appropriate manuals. For instance, aircraft operators are now required by the new edition of the TIs to :

(1) inform passengers of the DG which passengers are forbidden to transport aboard an aircraft :

(i) at the point of ticket purchase or, if that is not practical, make the information available in

² Aircraft operators may develop their own checklist or adopt checklist templates of other entities (e.g. the International Air Transport Association ("IATA")) for conducting the DG acceptance check, provided that the acceptance check is conducted in accordance with the requirements of the TIs in respect of documentation, quantity, marking, labelling, shipping names, special handling instructions, packaging, etc.

another manner to passengers prior to boarding pass issuance; and

(ii) at boarding pass issuance or, when no boarding pass is issued, such information should be conveyed to passengers before they board the aircraft; and

(2) ensure that information on the types of DG which passengers are forbidden to transport aboard an aircraft is communicated effectively to them. Such information must be presented at each of the places at an airport where tickets and boarding passes are issued, passenger baggage is dropped off and aircraft boarding areas are maintained, and at any other locations where passengers are issued boarding passes and/or checked baggage is accepted.

6. According to the requirements of the ICAO, each Contracting State must take the necessary measures to achieve compliance with the detailed provisions contained in the TIs³. To ensure Hong Kong's implementation of the ICAO's latest requirements set out in paragraph 5 above, and to give legal effect to such requirements in Hong Kong, the making of the AN(DG)R Amendment Order is the only option. Non-compliance with the ICAO's requirements may result in criticisms by the ICAO during its safety oversight audits on Contracting States, which will reflect badly on Hong Kong as an aviation hub.

³ The latest requirements of the TIs are being implemented through administrative measures, because the IATA has updated its Dangerous Goods Regulations ("DGR") on 1 January 2017 to promulgate the latest amendments to the TIs. It is the established industry practice that in handling DG, airlines, freight forwarders and shippers will adhere to the DGR. Airlines would not accept non-compliant DG for air carriage due to safety consideration of the aircraft operations.

THE AN(DG)R AMENDMENT ORDER AND THE DG(CAS)R AMENDMENT ORDER

7. The main provisions of the AN(DG)R Amendment Order are set out below –

- (a) section 1 provides that the AN(DG)R Amendment Order comes into operation on 31 March 2018; and
- (b) section 3 amends Schedule 16 to the Air Navigation (Hong Kong) Order 1995 (Cap. 448 sub. leg. C) to the following effect :
 - (i) update the TIs to the “2017-2018” edition to reflect the introduction and applicability of the new edition of the TIs; and
 - (ii) in addition to the performance of acceptance checks, aircraft operators must identify the person who performs the acceptance check before a consignment containing DG is accepted for air carriage and must preserve the record of identification of such person for not less than six months; and
 - (iii) aircraft operators must communicate to the passengers about the categories of the DG that the passengers are forbidden to transport aboard an aircraft, in accordance with the latest requirements stipulated in the TIs. The aircraft operator must also describe such notification system in the aircraft operator’s operations manual and/or other manuals the operator considers appropriate.

8. The main provisions of the DG(CAS)R Amendment Order are set out below :

- (a) section 1 provides that the DG(CAS)R Amendment Order comes into operation on 31 March 2018; and
- (b) section 3 amends the Schedule to the Dangerous Goods (Consignment by Air) (Safety) Regulations (Cap. 384 sub. leg. A) to update the TIs to the “2017-2018” edition to

reflect the introduction and applicability of the new edition of the TIs.

LEGISLATIVE TIMETABLE

9. The AN(DG)R Amendment Order and the DG(CAS)R Amendment Order will be gazetted on 2 February 2018 and tabled in the Legislative Council on 7 February 2018.

IMPLICATIONS OF THE PROPOSAL

10. The proposal has no financial, economic, civil service, productivity, sustainability, environmental, family and gender implications.

11. The proposal is in conformity with the Basic Law, including the provisions concerning human rights. It does not affect the binding effect of the existing legislation.

PUBLIC CONSULTATION

12. The CAD has published the ICAO's amendments on its website and written to stakeholders to provide details of the amendments, and briefed the air cargo industry accordingly. The CAD also consulted the Aviation Development and Three-runway System Advisory Committee in June 2017. The stakeholders and the Committee generally supported the proposed amendments. On 21 July 2017, we consulted the Legislative Council Panel on Economic Development. The Panel generally supported the proposed amendments.

PUBLICITY

13. A press release will be issued on 31 January 2018. A spokesperson will be available to handle enquiries.

BACKGROUND

14. To ensure aviation safety, the ICAO has developed a set of provisions governing the transport of DG by air under Annex 18 to the Chicago Convention. These provisions regulate matters such as the classification, packing, marking, labelling and loading of DG on board an aircraft and other matters such as training requirements for related aviation personnel. Under the Chicago Convention, the detailed specifications are set out in the TIs which are updated and published by the ICAO biennially. Annex 18 to the Chicago Convention stipulates that the Contracting States shall take necessary actions to comply with the provisions in the TIs.

15. The Chicago Convention applies to Hong Kong. The relevant requirements of the TIs are given legal effect in Hong Kong through two pieces of local subsidiary legislation, viz –

- (a) Schedule 16 to the Air Navigation (Hong Kong) Order 1995 (Cap. 448 sub. leg. C) (“Air Navigation (Dangerous Goods) Regulations”); and
- (b) Dangerous Goods (Consignment by Air) (Safety) Regulations (Cap. 384 sub. leg. A).

16. The former regulates the DG operations of aircraft operators and aerodrome operators, whereas the latter regulates shippers and freight forwarders in respect of the proper handling of DG before offering them for air transport.

ENQUIRIES

17. Any enquiry on this brief should be directed to Ms Joyce Chan, Principal Assistant Secretary (Transport) (telephone number: 3509 8195).

Transport and Housing Bureau
31 January 2018

Air Navigation (Hong Kong) Order 1995 (Amendment of Schedule 16) Order 2018

(Made by the Chief Executive in Council under section 2A of the Civil Aviation Ordinance (Cap. 448))

1. Commencement

This Order comes into operation on 31 March 2018.

2. Air Navigation (Hong Kong) Order 1995 amended

The Air Navigation (Hong Kong) Order 1995 (Cap. 448 sub. leg. C) is amended as set out in section 3.

3. Schedule 16 amended (the Air Navigation (Dangerous Goods) Regulations)

(1) Schedule 16, Regulation 2(1), definition of *Technical Instructions*—

Repeal

“2015–2016”

Substitute

“2017–2018”.

(2) Schedule 16, Regulation 4(5)(a)—

Repeal

“; and”

Substitute a semicolon.

(3) Schedule 16, Regulation 4(5)(b)—

Repeal

“check list completed under Regulation 6(1A)”

Substitute

“checklist completed under Regulation 6(1A)(a)”.

(4) Schedule 16, Regulation 4(5)(b)—

Repeal

“goods.”

Substitute

“goods; and”.

(5) Schedule 16, after Regulation 4(5)(b)—

Add

“(c) a record of the identification of the person referred to in Regulation 6(1A)(b), for any package or unit load device containing the dangerous goods.”.

(6) Schedule 16, Regulation 6—

Repeal paragraph (1A)

Substitute

“(1A) The operator of an aircraft must not accept for carriage by the aircraft any package or unit load device containing dangerous goods unless—

(a) the matters set out in Chapter 1.3.1 of Part 7 of the Technical Instructions are verified by use of an acceptance checklist; and

(b) the operator is able to identify the person who verified the matters.”.

(7) Schedule 16, Regulation 6—

Repeal paragraph (2)

Substitute

“(2) The operator of an aircraft must keep for not less than 6 months a record of any acceptance checklist completed

under paragraph (1A)(a) and a record of the identification of the person referred to in paragraph (1A)(b). The record must be in a legible form or, if it is in a non-legible form, be capable of being reproduced in a legible form.”.

- (8) Schedule 16, Regulation 8—

Repeal paragraph (2)

Substitute

“(2) The operator of an aerodrome, and the operator of an aircraft in which passengers are to be carried or the operator’s handling agent, must ensure that the passengers of the aircraft are notified as to which categories of dangerous goods may not be taken on board the aircraft (whether as checked baggage or baggage accompanying passengers), in accordance with the provisions in Chapter 5.1 of Part 7 of the Technical Instructions.”.

- (9) Schedule 16, Regulation 8—

Repeal paragraph (2A).

- (10) Schedule 16, after Regulation 8(2B)—

Add

“(2BA) The operator of an aircraft must also describe, in one or both of the following manuals of the operator, the system of providing the information required under paragraph (2) to the passengers of the aircraft—

- (a) operations manual;
- (b) another manual the operator considers appropriate.”.

- (11) Schedule 16, Regulation 9(c)—

Repeal

“check list”

Substitute

“checklist”.

- (12) Schedule 16, Regulation 9(c)—

Repeal

“6(1A)”

Substitute

“6(1A)(a)”.

- (13) Schedule 16, Regulation 9(d)—

Repeal

“Regulations.”

Substitute

“Regulations;”.

- (14) Schedule 16, after Regulation 9(d)—

Add

“(e) the record of the identification of the person referred to in Regulation 6(1A)(b) in a legible form in respect of any dangerous goods, referred to in Regulation 6(2).”.

Clerk to the Executive Council

COUNCIL CHAMBER

2018

Explanatory Note

This Order amends Schedule 16 to the Air Navigation (Hong Kong) Order 1995 (Cap. 448 sub. leg. C) to give effect to amendments introduced by the 2017–2018 edition of the Technical Instructions for the Safe Transport of Dangerous Goods by Air (*Technical Instructions*) approved and published by decision of the Council of the International Civil Aviation Organization.

2. The effect of the amendments includes—
- (a) the operator of an aircraft must be able to identify the person who performed an acceptance check set out in Chapter 1.3.1 of Part 7 of the Technical Instructions and must retain a record of the identification of the person;
 - (b) the operator of an aerodrome, and the operator of an aircraft or the operator's handling agent, must ensure that the passengers of the aircraft are notified as to which categories of dangerous goods may not be taken on board the aircraft; and
 - (c) the operator of an aircraft must describe, in the operations manual of the operator or another manual the operator considers appropriate, the system of providing the information mentioned in subparagraph (b).

Dangerous Goods (Consignment by Air) (Safety) Regulations (Amendment of Schedule) Order 2018

(Made by the Director-General of Civil Aviation under regulation 9 of the
Dangerous Goods (Consignment by Air) (Safety) Regulations (Cap. 384
sub. leg. A))

Director-General of Civil Aviation

1. Commencement

This Order comes into operation on 31 March 2018.

2018

2. Dangerous Goods (Consignment by Air) (Safety) Regulations amended

The Dangerous Goods (Consignment by Air) (Safety) Regulations
(Cap. 384 sub. leg. A) are amended as set out in section 3.

3. Schedule amended

The Schedule, Part 1—

Repeal

“2015–2016”

Substitute

“2017–2018”.

Explanatory Note

This Order amends the Schedule to the Dangerous Goods (Consignment by Air) (Safety) Regulations (Cap. 384 sub. leg. A) to give effect to the 2017–2018 edition of the Technical Instructions for the Safe Transport of Dangerous Goods by Air approved and published by decision of the Council of the International Civil Aviation Organization.