

立法會
Legislative Council

LC Paper No. LS99/19-20

**Paper for the House Committee Meeting
on 19 June 2020**

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 12 June 2020**

Tabling in LegCo : Council meeting of 17 June 2020

Amendment to be made by : Council meeting of 15 July 2020 (or the first meeting of the next session if extended by resolution)

**Merchant Shipping (Prevention of Oil Pollution)
(Amendment) (No. 2) Regulation 2020** (L.N. 120)

**Merchant Shipping (Prevention of Pollution by Garbage)
(Amendment) Regulation 2020** (L.N. 121)

**Merchant Shipping (Prevention of Air Pollution)
(Amendment) (No. 2) Regulation 2020** (L.N. 122)

L.N. 120 to L.N. 122 are made by the Secretary for Transport and Housing ("STH") under sections 3 and 3A of the Merchant Shipping (Prevention and Control of Pollution) Ordinance (Cap. 413) to implement the latest requirements under the International Convention for the Prevention of Pollution from Ships, 1973 ("MARPOL") of the International Maritime Organization ("IMO").¹ Annexes I, V and VI to MARPOL respectively set out the requirements to prevent pollution by oil, garbage and air pollutants from ships. Under these Annexes, various types of ships are required to keep on board record books to record various ship operations. In Hong Kong, the requirements under the above Annexes are implemented through the Merchant Shipping (Prevention of Oil Pollution) Regulations (Cap. 413A), the Merchant Shipping (Prevention of Pollution by Garbage) Regulation (Cap. 413O) and the Merchant Shipping (Prevention of Air Pollution) Regulation (Cap. 413P) respectively.

¹ MARPOL was adopted in 1973 and came into force in 1983. Its six Annexes regulate the discharge of different pollutants from ships.

L.N. 120

2. L.N. 120 amends Cap. 413A to give effect to the revisions made to Annex I² to MARPOL by IMO Resolution MEPC.314(74) ("Resolution"). The effect of the amendment is that a device or system used for recording matters in electronic form ("electronic record book") may be used for recording matters required to be recorded in an Oil Record Book under Cap. 413A if the electronic record book is approved by the Director of Marine for a Hong Kong ship or by the government of any place outside Hong Kong whose flag the ship is entitled to fly for a non-Hong Kong ship ("specified authorities").

L.N. 121

3. L.N. 121 amends Cap. 413O to give effect to the revisions made to Annex V³ to MARPOL by the Resolution. The effect of the amendment is that an electronic record book may be used for recording matters required to be recorded in a Garbage Record Book under Cap. 413O if the electronic record book is approved by the specified authorities or, for a fixed or floating platform engaged in the exploration, exploitation or associated offshore processing of sea-bed mineral resources adjacent to the coast over which the coastal state exercises its rights for the purposes of those activities, by the government of that state.

L.N. 122

4. L.N. 122 amends Cap. 413P to give effect to the revisions made to Annex VI⁴ to MARPOL by IMO Resolution MEPC.316(74) by, among others:

- (a) amending sections 11, 14A, 18 and 39 of Cap. 413P to the effect that an electronic record book may be used for recording matters required to be recorded in an Ozone Depleting Substances Record Book or in other records kept on board a ship under Cap. 413P if the electronic record book is approved by the specified authorities; and
- (b) amending the definition of "special ship" in section 2(1) of Cap. 413P to the effect that certain ships designed for operation in polar waters that fall within Category A of the International Code

² Annex I to MARPOL sets out the regulations for the prevention of pollution by oil.

³ Annex V to MARPOL sets out the regulations for the prevention of pollution by garbage from ships.

⁴ Annex VI to MARPOL sets out the regulations for the prevention of air pollution from ships.

for Ships Operating in Polar Waters ("Polar Code")⁵ are exempted from certain regulations on energy efficiency in Cap. 413P.

Commencement

5. L.N. 120 to L.N. 122 come into operation on 1 October 2020.

Public consultation

6. According to paragraph 14 of the Legislative Council ("LegCo") Brief (File ref: THB(T)PML CR8/10/90/1) issued by the Transport and Housing Bureau ("THB") and the Marine Department ("MD") in June 2020, the Administration consulted the Hong Kong Fleet Operation Advisory Committee of MD in October 2019. Members supported the proposal.

Consultation with Legislative Council Panel

7. As advised by the Clerk to the Panel on Economic Development, the Administration consulted the Panel on 10 December 2019 on a series of legislative proposals to incorporate the latest requirements of IMO into local legislation, including L.N. 120 to L.N. 122. Members were generally supportive of the proposals. Issues on the use of electronic record books on board ships, mechanism of consultation with the affected parties and implementation of the legislative proposals were discussed.

Direct reference approach

8. It is noted that the Administration has, pursuant to section 3A of Cap. 413, adopted the direct reference approach in L.N. 120 to L.N. 122 by referring directly to MARPOL and the Polar Code, as updated from time to time. According to paragraph 10 of the LegCo Brief, this approach allows the local legislation to remain up-to-date as far as practicable.

Merchant Shipping (Control of Ballast Water and Sediments) Regulation (Commencement) Notice (L.N. 123)

9. L.N. 123 is made by STH under section 1 of the Merchant Shipping (Control of Ballast Water and Sediments) Regulation (Cap. 413Q) to appoint 13 August 2020 as the day on which Cap. 413Q comes into operation.

⁵ The International Code for Ships Operating in Polar Waters governs ships navigating in polar waters and its requirements relate to the safety of ship operations, the protection of marine environment and seafarers' training, having regard to the challenging navigational conditions within the waters surrounding the two Poles. Under the Polar Code, ships are classified into one of three categories (Category A, Category B and Category C). Category A ships operate in the most severe ice condition.

10. Cap. 413Q, which was published in the Gazette on 18 May 2018 as L.N. 91 of 2018, is a new regulation made to implement the requirements of the International Convention for the Control and Management of Ships' Ballast Water and Sediments ("Ballast Water Management Convention") in Hong Kong. It mainly provides for the regulation of ballast water and sediments and the standards that are required to be met when ships conduct ballast water management, ballast water exchange and sediments management, and the offences against the owner and/or master of a ship for the contravention of the requirements under Cap. 413Q etc. No subcommittee was formed to scrutinize Cap. 413Q.

11. According to paragraph 3 of the LegCo Brief (File ref: THB(T)PML CR 8/10/90/15) issued by THB and MD in June 2020, the Central People's Government ("CPG") notified IMO on 13 May 2020 of the extension of the Ballast Water Management Convention to the Hong Kong Special Administrative Region ("HKSAR") and the extension will take effect on 13 August 2020. STH has accordingly appointed 13 August 2020 as the day on which Cap. 413Q comes into operation.

12. As advised by the Clerk to the Panel on Economic Development, the Panel has not been consulted on L.N. 123.

Import and Export (General) Regulations (Amendment of Schedules 1 and 2) Order 2020 (L.N. 124)

13. L.N. 124 is made by the Director-General of Trade and Industry under regulation 7(1) of the Import and Export (General) Regulations (Cap. 60A) to implement the obligation to restrict the import and export of mercury under the Minamata Convention on Mercury ("MCM Convention"). It amends Cap. 60A by adding a new item "elemental mercury (Hg(0), Chemical Abstracts Service registry number 7439-97-6), other than that contained in and forming part of a manufactured article" ("pure mercury") to Part 1 of Schedules 1 and 2 to Cap. 60A. The effect of the amendment is that, except under certain circumstances, a person who, on or after 1 November 2020, imports pure mercury without an import licence, or exports it to any place outside Hong Kong without an export licence, commits an offence under section 6C(2) or 6D(3) of the Import and Export Ordinance (Cap. 60) respectively, and is liable on conviction to a fine of \$500,000 and to imprisonment for two years.

14. According to paragraph 3 of the LegCo Brief (no file reference) issued by the Environmental Protection Department in June 2020, the People's Republic of China is one of the Parties to MCM Convention which entered into

force on 16 August 2017. Pursuant to Article 153 of the Basic Law, CPG sought the views of the Government of HKSAR and decided that MCM Convention would apply to Hong Kong.

15. According to paragraphs 13 to 16 of the LegCo Brief, the Administration conducted a series of consultations with members of the public and relevant trades and stakeholders in mid to late 2018. The consultation document together with a survey form was sent to more than 500 stakeholders. The Administration also consulted the Advisory Council on the Environment ("ACE") at its meeting on 8 July 2019. The respondents of the survey and ACE generally supported the legislative proposal.

16. According to paragraph 9 of the LegCo Brief, to ensure full compliance with all obligations of MCM Convention, the Administration plans to introduce a new piece of principal legislation at a later stage to allow effective implementation of MCM Convention in a holistic manner.

17. As advised by the Clerk to the Panel on Environmental Affairs, the Administration consulted the Panel on 25 May 2020 on the strategy for implementing MCM Convention in Hong Kong, including the legislative proposal to amend Schedules 1 and 2 to Cap. 60A to impose immediate control of import and export of mercury trading under phase one of the proposed two-phase legislative approach to regulate mercury trading. Members did not raise any objection to the proposed implementation strategy and supported the early introduction of the relevant legislative proposals.

18. L.N. 124 comes into operation on 1 November 2020.

Concluding observations

19. No difficulties have been identified in the legal and drafting aspects of the above items of subsidiary legislation.

Prepared by

Alvin CHUI
Assistant Legal Adviser
Legislative Council Secretariat
18 June 2020