

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 2019**

**Dangerous Goods (Consignment by Air) (Safety) Regulations
(Amendment of Schedule) Order 2019**

INTRODUCTION

A At the meeting of the Executive Council on 26 November 2019, the Council **ADVISED** and the Chief Executive **ORDERED** that the Air Navigation (Hong Kong) Order 1995 (Amendment of Schedule 16) Order 2019 (“the AN(DG)R Amendment Order”) at **Annex A** should be made to implement the latest requirements of the International Civil Aviation Organization (“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 2019 (“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

¹ According to the ICAO’s TIs, 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.

Goods by Air (“TIs”) in the Dangerous Goods (Consignment by Air) (Safety) Regulations (Cap. 384 sub. leg. A).

JUSTIFICATIONS

3. ICAO is a specialised agency of the United Nations established under the Convention on International Civil Aviation (“Chicago Convention”) in 1944, with the ambit of introducing policies and standards of international civil aviation and promoting the development of international civil aviation in a safe and orderly manner. At present, it has 193 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 ICAO’s requirements for the safe transport of DG by air. The TIs are given legal effect locally through two pieces of subsidiary legislation, viz. Air Navigation (Dangerous Goods) Regulations, as Schedule 16 to the Air Navigation (Hong Kong) Order 1995 (Cap. 448 sub. leg. C); and Dangerous Goods (Consignment by Air) (Safety) Regulations (Cap. 384 sub. leg. A).

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. For example, the previous edition of the TIs (i.e. the 2017-2018 edition) reinforced the practice of aircraft operators to ensure that the information on DG forbidden to be carried by passengers aboard an aircraft is conveyed to passengers, regardless of how they purchase their tickets and/or check in their flights. The new edition of the TIs (i.e. the 2019-2020 edition) was published in November 2018. Most of the changes in the new edition of the TIs are technical and textual in nature. Major changes that require legislative amendments as a result of the publication of the latest TIs are summarised below –

(a) Revised definition of DG

The definition of DG² has been refined. The word ‘risk’ is replaced with ‘hazard’³. Consequent upon this change, aircraft and airport operators, shippers and freight forwarders shall review and update their DG handling procedures and relevant manuals as appropriate;

(b) Provisions for DG carried by passengers and crew

Passengers and crew are forbidden to carry DG on board an aircraft unless the DG are permitted and specified in the TIs. Part 8 of the TIs, which specifies the types of DG that passengers and crew may carry on board an aircraft, has been substantially restructured. The provisions and restrictions are re-categorised into different tables and sections to enhance readability. Part 8 of the TIs has also incorporated new types of DG introduced due to technological advancement, including, for example, smart luggage with a built-in lithium battery. An icon on “Packing Tips for Air Passenger” has been provided at the front page of the CAD’s website for the public to easily retrieve the requirements for the carriage of DG by air passengers and crew. The relevant packing tips in the CAD’s website have also been updated according to the latest edition of the TIs.

(c) Provisions for cargo containing DG

The latest edition of the TIs has also incorporated some changes to the technical requirements for the safe transport of DG by air, including the classification, packing, marking and labelling of certain kinds of DG. Taking lithium

² In the latest edition of the TIs, “DG” are “articles or substances which are capable of posing a hazard to health, safety, property or the environment and which are shown in the list of dangerous goods in the Technical Instructions or which are classified according to those Instructions”.

³ According to the document (ST/SG/AC.10/C.3/2016/16 dated 1 April 2016) discussed at the UN Sub-Committee of Experts on the Transport of Dangerous Goods, “hazard” refers to the inherent properties of a substance or article that has the potential to do harm to persons, property or the environment, and “risk” refers to the likelihood that the harm may occur.

batteries as an example, there is a new segregation requirement in packing lithium batteries such that no other flammable items should be packed together with the lithium batteries.

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 TIs⁴. 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 and DG(CAS)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 international aviation hub.

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 January 2020;
- (b) section 3(1) amends Schedule 16 to the Air Navigation (Hong Kong) Order 1995 (Cap. 448 sub. leg. C) (i.e. replacing the word “risk” with “hazard” in the definition of “dangerous goods”) to align with the latest definition of “dangerous goods” under Chapter 3 of Part 1 of the new edition of the TIs;

⁴ The latest requirements of the TIs are being implemented through administrative measures, because the International Air Transport Association (“IATA”) has updated its Dangerous Goods Regulations (“DGR”) on 1 January 2019 to promulgate the latest amendments to the TIs. The IATA DGR is the globally recognized reference for transporting DG by air. 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.

- (c) section 3(2) amends Schedule 16 to the Air Navigation (Hong Kong) Order 1995 (Cap. 448 sub. leg. C) (i.e. replacing “2017-2018” with “2019-2020” Edition) to reflect the new edition of the TIs; and
- (d) section 3(3) amends Schedule 16 to the Air Navigation (Hong Kong) Order 1995 (Cap. 448 sub. leg. C) to update the references to Part 8 of the new edition of the TIs to provide for the types of dangerous goods that may be carried on an aircraft.

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 January 2020; and
- (b) section 3 amends the Schedule to the Dangerous Goods (Consignment by Air) (Safety) Regulations (Cap. 384 sub. leg. A) (i.e. replacing “2017-2018” with “2019-2020” Edition) to reflect the new edition of TIs.

LEGISLATIVE TIMETABLE

9. The AN(DG)R Amendment Order and the DG(CAS)R Amendment Order will be gazetted on 6 December 2019 and tabled in the Legislative Council on 11 December 2019.

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. The amendments do not affect

the current 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 (ADTAC) on the proposal on 21 May 2019. The stakeholders and ADTAC generally supported the proposed amendments. On 27 May 2019, 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 4 December 2019. 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) Air Navigation (Dangerous Goods) Regulations, as Schedule 16 to the Air Navigation (Hong Kong) Order 1995 (Cap. 448 sub. leg. C); 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
4 December 2019

Air Navigation (Hong Kong) Order 1995 (Amendment of Schedule 16) Order 2019

(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 January 2020.

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 *dangerous goods*, paragraph (a)—

Repeal

“risk”

Substitute

“hazard”.

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

Repeal

“2017–2018”

Substitute

“2019–2020”.

(3) Schedule 16, Regulations 3(3)(j) and 8(2D)(a)(iii)—

Repeal

“Table 8–1”

Substitute

“Note 2 to Chapter 1.1.9, or Table 8–1 or Table 8–2,”.

Clerk to the Executive Council

COUNCIL CHAMBER

2019

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 2019–2020 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) updating the definition of *dangerous goods*; and
 - (b) updating the references to Part 8 of the Technical Instructions to provide for the types of dangerous goods that may be carried on an aircraft.

Dangerous Goods (Consignment by Air) (Safety) Regulations (Amendment of Schedule) Order 2019

(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))

1. Commencement

This Order comes into operation on 31 January 2020.

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

“2017–2018”

Substitute

“2019–2020”.

Director-General of Civil Aviation

2019

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 2019–2020 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.