

LEGISLATIVE COUNCIL BRIEF

Merchant Shipping (Prevention and Control of Pollution) Ordinance (Chapter 413)

Implementation of the Latest Requirements under the International Convention for the Prevention of Pollution from Ships of the International Maritime Organization

INTRODUCTION

The Secretary for Transport and Housing has, under sections 3 and 3A of the Merchant Shipping (Prevention and Control of Pollution) Ordinance (Cap. 413) (“the Ordinance”), made the Merchant Shipping (Prevention of Air Pollution) (Amendment) (No. 2) Regulation 2019 (“the Amendment Regulation”), at **Annex**, to implement the latest requirements under the International Convention for the Prevention of Pollution from Ships (“MARPOL”) of the International Maritime Organization (“IMO”).

BACKGROUND

2. Annex VI to MARPOL¹ (“Annex VI”) sets out the requirements for preventing air pollution caused by ships. In Hong Kong, the requirements of Annex VI are implemented via the Merchant Shipping (Prevention of Air Pollution) Regulation (Cap. 413P) (“the Regulation”).

3. To reduce pollution caused by emissions from the burning of fuel oils on ships, the Regulation currently requires, among others, that the sulphur content of fuel oil used on board ships engaged in international

¹ Annexes to MARPOL govern various substances as follows:

- Annex I: Regulations for the prevention of pollution by oil;
- Annex II: Regulations for the control of pollution by noxious liquid substances in bulk;
- Annex III: Regulations for the prevention of pollution by harmful substances carried by sea in packaged form;
- Annex IV: Regulations for the prevention of pollution by sewage from ships;
- Annex V: Regulations for the prevention of pollution by garbage from ships; and
- Annex VI: Regulations for the prevention of air pollution from ships.

voyages must not exceed the applicable limits specified in Annex VI (“the sulphur content limits”). The Regulation also requires ships engaged in non-international voyages to comply with the same limit. As a general requirement, the existing sulphur content limit stands at 3.5% mass per mass. The limit will be reduced to 0.5% mass per mass from 1 January 2020 onwards². Ships navigating in sulphur oxides Emission Control Areas (“SO_x ECAs”)³ are subject to a more stringent sulphur content limit, which stands at 0.1% mass per mass⁴.

LEGISLATIVE PROPOSAL

4. The IMO from time to time collects feedback from its members on the enforcement and compliance with requirements under MARPOL. One such feedback from member States was that enforcement of the sulphur content limits would be challenging, especially on the high seas. To address such enforcement difficulties, the IMO adopted Resolution MEPC.305(73) (“the Resolution”) in October 2018 which stipulates⁵ that the sulphur content limits will apply not only to fuel oil used on board ships, but also to those carried for use on board ships. This requirement seeks to discourage ocean-going vessels (“OGVs”) from using non-compliant fuel on high seas and facilitate more effective enforcement by port authorities. The new requirement will come into force globally on

² The Regulation has stipulated that ships must comply with the requirement to use fuel with sulphur content of 0.5% mass per mass starting from 1 January 2020. Meanwhile, as a green initiative pursued by the Environment Bureau, through the enactment of the Air Pollution Control (Fuel for Vessels) Regulation (Cap. 311AB), which came into operation on 1 January 2019, the tightened sulphur content limit of 0.5% mass per mass has already been implemented in Hong Kong, as part of the Government’s efforts to establish a Domestic Emission Control Area (“DECA”) within the Pearl River Delta. All ships are required to use compliant fuels in Hong Kong waters. In other words, ocean-going vessels have already been required to switch to using compliant fuel oils upon entering Hong Kong waters before 1 January 2020.

³ ECAs are sea areas defined in Annex VI in which stricter controls are established to minimise airborne emissions from ships. Currently, ECAs designated by the IMO under Annex VI for controlling the emission of sulphur oxides and nitrogen oxides from ships are the Baltic Sea Area, the North Sea Area, the North American Area and the United States Caribbean Sea Area.

⁴ While the waters of Hong Kong and the nearby waters of the Pearl River Delta region are not MARPOL-designated SO_x ECAs, the HKSAR Government has signed a cooperation agreement with other governments in the Pearl River Delta region to establish a DECA to implement ECA requirements at our own pace.

⁵ The Resolution has also brought forth amendments to MARPOL which seek to introduce textual amendments to the list of ECAs designated under Annex VI, as well as to update the format of the International Air Pollution Prevention Certificate. Since such details are technical in nature, and we have adopted direct references to the relevant provisions wherever appropriate, no further legislative amendments are necessary.

1 March 2020. Accordingly, we will need to amend the Regulation to implement the same.

THE AMENDMENT REGULATION

Merchant Shipping (Prevention of Air Pollution) (Amendment) (No. 2) Regulation 2019

5. The Amendment Regulation amends the Regulation to give effect to the relevant amendments made to Annex VI under the Resolution, including the maximum limit of the sulphur content of fuel oil carried for use on board a ship.

Application of the Direct Reference Approach

6. The requirements of MARPOL are technical in nature and are updated from time to time by the IMO. In line with the established practice in incorporating the requirements of other marine-related international conventions into our local legislation, we have adopted a “Direct Reference Approach”⁶ in the Amendment Regulation wherever applicable and appropriate to allow our local legislation to be kept up-to-date as far as practicable.

LEGISLATIVE TIMETABLE

7. The Amendment Regulation will be gazetted on 27 December 2019 and introduced into the Legislative Council for negative vetting on 8 January 2020.

IMPLICATIONS OF THE PROPOSAL

8. The proposal carries positive environmental and sustainability implications as it is expected to facilitate the enforcement of the sulphur content limits and contribute towards reducing air pollution from ships.

⁶ Section 3A of the Ordinance stipulates that, for the purpose of giving effect to any provisions of any international agreements applicable to Hong Kong as in force from time to time, any regulations made under the Ordinance may set out or refer to those provisions.

9. The proposal is in conformity with the Basic Law, including provisions concerning human rights. It will not affect the current binding effect of the Ordinance and subsidiary legislation thereunder. The proposal has no financial, civil service, economic, productivity, gender or family implications.

PUBLIC CONSULTATION

10. The Hong Kong Fleet Operation Advisory Committee and the Local Vessels Advisory Committee of the Marine Department were consulted in April 2019 and September 2019 respectively and members of both Committees supported the proposal.

11. The Legislative Council Panel on Economic Development was consulted on the proposal in December 2019 and its Members supported the proposal.

PUBLICITY

12. A press release will be issued on 27 December 2019. A spokesperson will be available to handle press enquiries.

ENQUIRIES

13. Any enquiries on this brief can be addressed to Ms Louisa YAN, Principal Assistant Secretary for Transport and Housing (Transport) (Tel: 3509 8162) or Mr CHOI Chi-chuen, Assistant Director of Marine (Multi-lateral Policy) (Tel: 2852 4408).

Transport and Housing Bureau
Marine Department
December 2019

Merchant Shipping (Prevention of Air Pollution) (Amendment) (No. 2) Regulation 2019

(Made by the Secretary for Transport and Housing under sections 3 and 3A of the Merchant Shipping (Prevention and Control of Pollution) Ordinance (Cap. 413))

1. Commencement

This Regulation comes into operation on 1 March 2020.

2. Merchant Shipping (Prevention of Air Pollution) Regulation amended

The Merchant Shipping (Prevention of Air Pollution) Regulation (Cap. 413 sub. leg. P) is amended as set out in sections 3, 4 and 5.

3. Section 17 amended (sulphur content of fuel oil)

(1) Section 17—

Repeal subsection (1)

Substitute

“(1) The sulphur content of any fuel oil used, or carried for use, on board a ship must not exceed the limit set out in Regulation 14.1 of Annex VI.”.

(2) Section 17(2)—

Repeal

“The”

Substitute

“However, the”.

4. Section 46 substituted

Section 46—

Repeal the section

Substitute

“46. Sulphur content of fuel oil

The sulphur content of any fuel oil used, or carried for use, on board a ship must not exceed 0.50% mass per mass.”.

5. Section 56 amended (offences and penalties)


Section 56(1)—

Repeal

“46(1) or (2)”

Substitute

“46”.


Secretary for Transport and Housing

20 December 2019

Explanatory Note

This Regulation amends the Merchant Shipping (Prevention of Air Pollution) Regulation (Cap. 413 sub. leg. P) (*principal Regulation*) to give effect to the relevant amendments made to Annex VI to the International Convention for the Prevention of Pollution from Ships, 1973 (*MARPOL Annex VI*) under International Maritime Organization Resolution MEPC.305(73).

2. The relevant amendments made to MARPOL Annex VI include providing for the maximum limit of the sulphur content of fuel oil carried for use on board a ship.
3. The Regulation also repeals section 46(1) of the principal Regulation that is spent.