

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 2021**

**Dangerous Goods (Consignment by Air) (Safety) (Amendment)
Regulation 2021**

INTRODUCTION

At the meeting of the Executive Council on 27 April 2021, the Council **ADVISED** and the Chief Executive **ORDERED** that the Air Navigation (Hong Kong) Order 1995 (Amendment of Schedule 16) Order A 2021 (“Amendment Order”) at **Annex A** and the Dangerous Goods (Consignment by Air) (Safety) (Amendment) Regulation 2021 B (“Amendment Regulation”) at **Annex B** 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.

JUSTIFICATIONS

2. The ICAO is a specialised agency of the United Nations established under the Convention on International Civil Aviation (“Chicago Convention”) in 1944, with the ambits 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 the Hong Kong Special Administrative Region.

3. The ICAO’s Technical Instructions for the Safe Transport of Dangerous Goods by Air (“TIs”) set out the ICAO’s requirements for the safe transport of DG by air. The TIs are given legal effect locally through two pieces of subsidiary legislation, namely, the Air Navigation (Dangerous Goods) Regulations (“AN(DG)R”), as Schedule 16 to the Air

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

Navigation (Hong Kong) Order 1995 (Cap. 448 sub. leg. C), and the Dangerous Goods (Consignment by Air) (Safety) Regulations (“DG(CAS)R”) (Cap. 384 sub. leg. A).

4. Whenever an updated edition of the TIs is published by the ICAO, the Civil Aviation Department (“CAD”) will review the relevant new requirements and pursue necessary amendments to our local legislation in order to keep Hong Kong’s regulatory regime in line with the international standards. The TIs were last updated by ICAO in November 2018 (i.e. the 2019-2020 edition) and the relevant changes were incorporated in the AN(DG)R and DG(CAS)R in January 2020. ICAO’s latest edition of the TIs (i.e. the 2021-2022 edition) was published in October 2020. Most of the changes in the new edition of the TIs are technical and textual in nature. Major changes that require legislative amendments are summarised below –

(a) Provision relating to DG training

The DG training requirements for employees of aircraft operators, shippers and freight forwarders have been revised from the current categorisation approach to a competency-based approach, which will become mandatory from 1 January 2023. Under the current categorisation approach, personnel handling DG are classified into 12

categories², and each category of personnel is required to undergo a standard package of DG training approved by the CAD. Under the new competency-based approach, those personnel will be required to receive DG training in accordance with their assigned responsibilities. According to the ICAO, the goal of this competency-based training is to produce a competent workforce by providing focused training. Consequently, aircraft operators, shippers and freight forwarders must review and update their DG training programmes, and ensure that their employees are provided with competency-based training programmes that have been approved by the CAD and that are commensurate with their assigned responsibilities, starting from 1 January 2023. As a transitional arrangement, the current categorisation approach as specified in Chapter 4 of Part 1 of the 2019-2020 edition of the TIs may continue to be used until 31 December 2022.

To facilitate the compliance of the industry with the new training requirements under the competency-based approach, during the first half of 2021, the CAD will provide the industry (including the air cargo industry representative bodies and the organisations providing DG trainings) with an

² The 12 categories include (i) shippers and persons undertaking the responsibilities of shippers; (ii) packers; (iii) to (v) staff of freight forwarders involved in processing DG, processing cargo or mail (other than DG) and handling, storage and loading of cargo or mail; (vi) to (viii) operator's staff accepting DG, accepting cargo or mail (other than DG), and involved in handling, storage and loading of cargo or mail and baggage; (ix) passenger handling staff; (x) flight crew members, loadmasters, load planners, flight operations officers and flight dispatchers; (xi) cabin crew members; and (xii) security screeners and their supervisors.

overview of those requirements. After taking into account the feedback and views gathered, making reference to the practices of major aviation authorities and considering the local circumstances, the CAD will produce model DG training and assessment templates for compliance by aircraft operators, shippers and freight forwarders closer to the effective date of the new training requirements on 1 January 2023. The model DG training and assessment templates aim to facilitate the meeting of the new training requirements by the industry while minimising their additional administrative work. In addition, the CAD has conducted a preliminary analysis and concluded that the core training content under the new competency-based approach would largely resemble the content of the DG training programmes currently approved by the CAD. As such, substantial changes to the training arrangements currently adopted will not be required.

(b) Other amendments

The latest edition of the TIs has also incorporated some changes in the technical requirements on the classification, packing, marking and labelling of certain kinds of DGs for carriage by air. For instance, a revision to the size of lithium battery marking has been made, additional guidelines have been provided to assist shippers and freight forwarders in conducting an assessment on whether a lithium battery is

damaged or defective prior to offering it for air transport, and a new provision allowing the packaging of DG to bear more than one mark of tested packaging design type has been added.

5. 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 TIs. To ensure Hong Kong's implementation of the ICAO's latest requirements set out in paragraph 4 above, the making of the Amendment Order and the Amendment Regulation 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 AMENDMENT ORDER

6. The main provisions of the Amendment Order are set out below –

- (a) section 1 provides that the Amendment Order comes into operation on 2 July 2021;

- (b) section 3(1) amends Schedule 16 to Cap. 448 sub. leg. C by replacing “2019-2020” with “2021-2022” edition to reflect the new edition of the TIs;
- (c) section 3(2) amends Schedule 16 to Cap. 448 sub. leg. C by replacing the term “radiation level” with “dose rate” to align with the update of the references in the new edition of the TIs;
- (d) section 3(3) amends Schedule 16 to Cap. 448 sub. leg. C to update the reference to the relevant provision of the new edition of the TIs concerning the DG training requirements for aircraft operators and their employees; and
- (e) section 3(4) adds a new regulation to Schedule 16 to Cap. 448 sub. leg. C to provide for transitional arrangements as a result of the amendment referred to in paragraph (d) above.

THE AMENDMENT REGULATION

7. The main provisions of the Amendment Regulation are set out below –

- (a) section 1 provides that the Amendment Regulation comes into operation on 2 July 2021;

- (b) section 3 adds a new regulation to the DG(CAS)R to provide for transitional arrangements as a result of the amendments referred to in paragraph (c) below; and
- (c) section 4 amends the Schedule to the DG(CAS)R to reflect the new edition of the TIs and to specify the relevant provisions of that edition for the purposes of regulations 7(1)(b), 7(1)(d), 7A(1)(b), 7A(1)(d), 7B(1)(d) and 7B(1)(f) of the DG(CAS)R concerning the DG training requirements for shippers, freight forwarders, and their employees.

LEGISLATIVE TIMETABLE

8. The Amendment Order and the Amendment Regulation will be gazetted on 7 May 2021 and tabled in the Legislative Council sitting on 12 May 2021.

IMPLICATIONS OF THE PROPOSAL

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

10. 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

11. The CAD has already published the ICAO's amendments on its website, 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") about the proposal on 19 January 2021. The stakeholders and ADTAC supported the proposed amendments. On 25 January 2021, we consulted the Legislative Council Panel on Economic Development. The Panel supported the proposed amendments.

PUBLICITY

12. A press release will be issued on 5 May 2021. A spokesperson will be available to handle enquiries.

BACKGROUND

13. 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 aboard 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.

14. 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) The 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).

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

ENQUIRIES

16. Any enquiries relating to this brief should be directed to Mr TE Chi Wang, Principal Assistant Secretary for Transport and Housing (Transport) (Office Tel: 3509 8195).

Transport and Housing Bureau

5 May 2021

Air Navigation (Hong Kong) Order 1995 (Amendment of Schedule 16) Order 2021

(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 2 July 2021.

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

“2019–2020”

Substitute

“2021–2022”.

(2) Schedule 16, Regulation 6(6)—

Repeal

“radiation level”

Substitute

“dose rate”.

(3) Schedule 16, Regulation 8(3)(b)(iii)—

Repeal

“4.3”

Substitute

“4.6”.

(4) Schedule 16—

Add

“11. Transitional provisions relating to Air Navigation (Hong Kong) Order 1995 (Amendment of Schedule 16) Order 2021

(1) This Regulation applies during the period beginning on 2 July 2021 and ending on 31 December 2022.

(2) For the purposes of Regulation 8(3)(b)(iii), an instructor who satisfies the requirements set out in Chapter 4.3 of Part 1 of the former TI is taken to be an instructor who satisfies the requirements set out in Chapter 4.6 of Part 1 of the Technical Instructions.

(3) In paragraph (2)—

former TI means the Technical Instructions as defined by Regulation 2(1) as in force immediately before 2 July 2021.”.



Clerk to the Executive Council

COUNCIL CHAMBER

27 April 2021

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 2021–2022 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 amendments made by this Order include—
- (a) replacing the reference to “radiation level” with “dose rate”;
 - (b) updating the provision of the Technical Instructions that sets out the requirements for instructors by whom the training programmes must be delivered; and
 - (c) providing for transitional arrangements as a result of the amendment referred to in subparagraph (b).

Dangerous Goods (Consignment by Air) (Safety) (Amendment) Regulation 2021

(Made by the Chief Executive in Council under section 3 of the Dangerous Goods (Consignment by Air) (Safety) Ordinance (Cap. 384))

1. Commencement

This Regulation comes into operation on 2 July 2021.

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 sections 3 and 4.

3. Regulation 10 added

After regulation 9—

Add

“10. Transitional provisions relating to Dangerous Goods (Consignment by Air) (Safety) (Amendment) Regulation 2021

- (1) This regulation applies during the period beginning on 2 July 2021 and ending on 31 December 2022.
- (2) For the purposes of regulations 7(1)(b), 7A(1)(b) and 7B(1)(d), a training programme described in Chapter 4.2 of Part 1 of the former edition is taken to be a training programme described in Chapters 4.1, 4.2, 4.3 and 4.4 of Part 1 of the new edition.
- (3) For the purposes of regulations 7(1)(d), 7A(1)(d) and 7B(1)(f), an instructor who satisfies the requirements set out in Chapter 4.3 of Part 1 of the former edition is taken

to be an instructor who satisfies the requirements set out in Chapter 4.6 of Part 1 of the new edition.

(4) In this regulation—

former edition (原有版本) means the 2019–2020 Edition of the Technical Instructions as defined by section 2 of the Ordinance;

new edition (新版本) means the 2021–2022 Edition of the Technical Instructions as defined by section 2 of the Ordinance.”.

4. Schedule amended

(1) The Schedule, Part 1—

Repeal

“2019–2020”

Substitute

“2021–2022”.

(2) The Schedule, Part 2, item relating to regulation 7(1)(b)—

Repeal

“Chapter 4.2”

Substitute

“Chapters 4.1, 4.2, 4.3 and 4.4”.

(3) The Schedule, Part 2, item relating to regulation 7(1)(d)—

Repeal

“4.3”

Substitute

“4.6”.

(4) The Schedule, Part 2, item relating to regulation 7A(1)(b)—

Repeal

“Chapter 4.2”

Substitute

“Chapters 4.1, 4.2, 4.3 and 4.4”.

- (5) The Schedule, Part 2, item relating to regulation 7A(1)(d)—

Repeal

“4.3”

Substitute

“4.6”.

- (6) The Schedule, Part 2, item relating to regulation 7B(1)(d)—

Repeal

“Chapter 4.2”

Substitute

“Chapters 4.1, 4.2, 4.3 and 4.4”.

- (7) The Schedule, Part 2, item relating to regulation 7B(1)(f)—

Repeal

“4.3”

Substitute

“4.6”.



Clerk to the Executive Council

COUNCIL CHAMBER

27 April 2021

Explanatory Note

This Regulation amends the Dangerous Goods (Consignment by Air) (Safety) Regulations (Cap. 384 sub. leg. A) (*principal Regulations*) to give effect to amendments introduced by the 2021–2022 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 amendments made by this Regulation are to update the list of provisions of the Technical Instructions that is specified in the Schedule to the principal Regulations for the purposes of regulations 7(1)(b) and (d), 7A(1)(b) and (d) and 7B(1)(d) and (f) of the principal Regulations.
3. This Regulation also adds a new regulation 10 to the principal Regulations to provide for transitional arrangements as a result of the amendments referred to in paragraph 2.