

立法會
Legislative Council

LC Paper No. LS94/20-21

**Paper for the House Committee Meeting
on 16 July 2021**

**Legal Service Division Report on
Dangerous Goods (Miscellaneous Amendments) Bill 2021**

I. SUMMARY

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| 1. The Bill | <p>The Bill seeks to:</p> <ul style="list-style-type: none">(a) amend the Dangerous Goods Ordinance (Cap. 295) to empower the Secretary for Security to amend by notice published in the Gazette certain technical matters relating to dangerous goods ("DG") contained in the Schedules to the regulations made under Cap. 295; and to empower public officers to specify the forms of licences instead of requiring the forms to be provided by the regulations; and(b) make technical and related amendments to various enactments consequential to the change of the regulatory and classification system of DG. |
| 2. Public Consultation | <p>The Administration has consulted the public and relevant trades on the proposals to amend the regulatory regime on DG. Respondents generally supported the Administration's proposals.</p> |
| 3. Consultation with LegCo Panel | <p>As advised by the Clerk to the Panel on Security, the Panel was consulted on the proposed legislative amendments to the regulatory system of DG on 3 November 2020. Members were supportive of the legislative proposals.</p> |
| 4. Conclusion | <p>The Legal Service Division is scrutinizing the legal and drafting aspects of the Bill. Since the Bill relates to updating the regulatory regime of DG, Members may consider forming a Bills Committee to study the Bill in detail.</p> |

II. REPORT

The date of First Reading of the Bill is 14 July 2021. Members may refer to the Legislative Council ("LegCo") Brief (File Ref.: SBCR 1/1336/86) issued by the Security Bureau in June 2021 for further details.

Object of the Bill

2. The Bill seeks to:

- (a) amend the Dangerous Goods Ordinance (Cap. 295) to empower the Secretary for Security ("the Secretary") to amend by notice published in the Gazette certain technical matters relating to dangerous goods ("DG") contained in the Schedules to the regulations made under Cap. 295; and to empower public officers who may issue licences to specify the forms of licences instead of requiring the forms to be provided by the regulations; and
- (b) make technical and related amendments to various enactments consequential to the change of the regulatory and classification system of DG.

Background

3. First enacted in 1956, Cap. 295 and its subsidiary legislation, namely, the Dangerous Goods (Application and Exemption) Regulations (Cap. 295A), the Dangerous Goods (General) Regulations (Cap. 295B), the Dangerous Goods (Shipping) Regulations (Cap. 295C) and the Dangerous Goods (Government Explosives Depots) Regulations (Cap. 295D), currently provide for the control of the manufacture, storage, conveyance and use of DG. In order to update the regulatory and classification system of DG so as to align it with international standards,¹ amendments have been made to Cap. 295 and its subsidiary legislation by phases since 2002. The relevant amendments include:

- (a) the Dangerous Goods (Amendment) Ordinance 2002 (Ord. No. 4 of 2002) ("DGAO");²
- (b) the Dangerous Goods (Application and Exemption) Regulation 2012 (Cap. 295E), as amended by the Dangerous Goods (Application and Exemption) Regulation 2012 (Amendment) Regulation 2021 (L.N. 21 of 2021);

¹ According to the Administration, as most DG in Hong Kong are imported or exported by sea, the local regulatory system should follow the International Maritime Dangerous Goods Code.

² The Dangerous Goods (Amendment) Bill 2000 was passed by LegCo on 13 March 2002 and DGAO was published in the Gazette on 22 March 2002.

- (c) the Dangerous Goods (Shipping) Regulation 2012 (Cap. 295F); and
- (d) the Dangerous Goods (Control) Regulation (L.N. 20 of 2021) (Cap. 295G), which replaces Cap. 295B.

4. These amendments have not come into operation yet. According to the Administration, upon passage of the Bill by LegCo, the Secretary will appoint a commencement date for all amendments relating to the updated regulatory and classification system of DG to come into operation on the same date. The existing regulations, namely Cap. 295A, Cap. 295B and Cap. 295C will be repealed when Cap. 295E, Cap. 295G and Cap. 295F come into operation.

Provisions of the Bill

5. The major provisions of the Bill are summarized in the ensuing paragraphs.

Amendments relating to Cap. 295 (Part 2 of the Bill)

6. Under Cap. 295, a licence is required for the (a) manufacture, storage, conveyance or use of any DG;³ and (b) hiring out or supplying labour, vessels or equipment for loading, discharging or moving DG on vessels.⁴ Anyone who carries out any of these acts without a licence commits an offence punishable by a fine of \$25,000 and imprisonment for six months.⁵ At present, the forms of licences issued under Cap. 295 are provided for by regulation to be made by the Chief Executive ("CE") in Council under section 5(1) of Cap. 295.

7. Clauses 4 and 6 of the Bill respectively seek to amend section 5(1) of, and to add a new section 8A to, Cap. 295 so that the form of a licence may be specified by the relevant public officer empowered to issue the licence rather than by a regulation made by CE in Council under Cap. 295.

8. Clause 5 of the Bill seeks to add a new section 5AA to Cap. 295 to empower the Secretary, by notice published in the Gazette, to amend any contents of a Schedule to a regulation made under Cap. 295 which relate to certain specified technical matters, including:

- (a) the application, or exemption from the operation, of Cap. 295 in respect of any substances, materials and articles;
- (b) the declaration of certain DG to be prohibited goods;

³ Section 6 of Cap. 295.

⁴ Section 8 of Cap. 295.

⁵ Section 14(1) of Cap. 295.

- (c) the control of and safety precautions to be taken in relation to DG;
- (d) the packing, marking and labeling of DG; and
- (e) the exhibition of DG signals and warning signs on vehicles and vessels. Any notice to be published in the Gazette by the Secretary would be subsidiary legislation subject to scrutiny by LegCo pursuant to the negative vetting procedure under section 34 of the Interpretation and General Clauses Ordinance (Cap. 1).

Technical and related amendments (Part 3 of the Bill)

9. Part 3 of the Bill seeks to amend 31 pieces of legislation to:
- (a) make technical and related amendments, mainly to substitute references to matters relating to DG in accordance with the updated regulatory and classification system of DG to be governed by the legislation referred to in paragraph 3 above: for example, the Bill seeks to (i) repeal all references to Cap. 295A, Cap. 295B and Cap. 295C and replace them by Cap. 295E, Cap. 295G and Cap. 295F respectively (e.g. clauses 15, 17 and 22); and (ii) update the classification and definition of DG (e.g. clauses 23, 27 and 60);
 - (b) add new provisions to seven items of subsidiary legislation relating to road tunnels and traffic control to provide for the transitional provisions in relation to the control of vehicles carrying DG: for example, clauses 33 and 35 respectively seek to amend the Road Tunnels (Government) Regulations (Cap. 368A) and the Road Traffic (Traffic Control) Regulations (Cap. 374G) to provide for a transitional period of 24 months beginning on the date on which the relevant provisions of the Dangerous Goods (Miscellaneous Amendments) Ordinance 2021 (if the Bill is passed by LegCo) come into operation ("commencement date") such that an act or omission during the transitional period that would otherwise contravene certain new requirements would not constitute an offence, provided that the relevant old requirements as in force immediately before the commencement date were complied with; and
 - (c) make other related and textual amendments and repeal obsolete provisions: for example, clause 12 seeks to repeal regulation 24 of the Gas Safety (Gas Supply) Regulations (Cap. 51B) which would become obsolete after the repeal of Cap. 295B comes into effect.

Commencement

10. The Bill, if passed, would come into operation on a day to be appointed by the Secretary by notice published in the Gazette. According to paragraph 11(e) of the

LegCo Brief, the Administration tentatively plans to bring the Bill into operation in the first quarter of 2022.

Public Consultation

11. According to paragraph 9 of the LegCo Brief, the Administration has consulted the public and relevant trades on the proposed amendments to the regulatory regime on DG. Respondents were generally supportive of the proposal.

Consultation with LegCo Panel

12. As advised by the Clerk to the Panel on Security, the Panel was consulted on the Administration's legislative proposals in respect of the regulatory system of DG at its meeting on 3 November 2020. The Administration advised the Panel that amendments would first be made to certain subsidiary legislation⁶ under Cap. 295 to update the classification of DG to align with international standards and enhance the safety of manufacture, conveyance, storage and use of DG. Thereafter, the Administration would introduce the Bill to make consequential amendments to other relevant Ordinances and subsidiary legislation. Members were supportive of the legislative proposals and raised no question concerning the phased legislative amendment exercise or the introduction of the Bill.

Conclusion

13. The Legal Service Division is scrutinizing the legal and drafting aspects of the Bill and will make a further report if necessary. Since the Bill relates to updating the regulatory regime of DG, Members may consider forming a Bills Committee to study the Bill in detail.

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⁶ The Dangerous Goods (Control) Regulation (L.N. 20 of 2021) and the Dangerous Goods (Application and Exemption) Regulation 2012 (Amendment) Regulation 2021 (L.N. 21 of 2021) were made by CE in Council under section 5 of Cap. 295 to replace the existing Cap. 295B with a new regulation and to amend Cap. 295E respectively: see LC Papers Nos. LS37/20-21 and LS55/20-21.