

## **LEGISLATIVE COUNCIL BRIEF**

### **IMPORT AND EXPORT (REMOVAL OF ARTICLES) (AMENDMENT) REGULATION 1998**

#### **INTRODUCTION**

A At the meeting of the Executive Council on 1 December 1998, the Council ADVISED and the Chief Executive ORDERED that the Import and Export (Removal of Articles) (Amendment) Regulation, at Annex A, should be made under section 31 of the Import and Export Ordinance, to allow notices to be sent by facsimile transmission.

#### **BACKGROUND AND ARGUMENT**

B 2. Section 20A of the Import and Export Ordinance (Cap. 60), at Annex B, empowers Customs and Excise Department (C&ED) officers to serve notices prohibiting the removal of articles from an incoming conveyance (vessel, aircraft or vehicle) so that officers may verify the identity of the consignees. Section 20B, also at Annex B, empowers C&ED officers to serve notices to remove articles from an incoming conveyance to a specified location for examination.

C 3. Regulation 6 of the Import and Export (Removal of Articles) Regulations (Cap. 60 sub. leg. F), at Annex C, stipulates that these notices have to be delivered personally by Customs officers. With the substantial increase in import cargo in recent years, on average 48 such notices are served on shipping companies, warehouse keepers and consignees each day. Due to the development of information technology, the personal service requirement has become an inefficient use of resources.

4. To alleviate the workload of C&ED and improve its efficiency, we propose that Regulation 6 of the Import and Export (Removal of Articles) Regulations (Cap. 60 sub. leg. F) be amended to allow the serving of notices by facsimile transmission. Similar provisions

to allow facsimile transmission are found in section 68 of the Personal Data (Privacy) Ordinance (Cap. 486) and section 61 of the Aviation Security Ordinance (Cap. 494)

## **THE REGULATION**

5. The Import and Export (Removal of Articles) (Amendment) Regulation 1998, at Annex A, seeks to -

- (a) provide for facsimile transmission as an alternative mode of service of notices under sections 20A or 20B of the Import and Export Ordinance; and
- (b) deem that, in the absence of evidence to the contrary, the service of notices by facsimile transmission is valid.

## **PUBLIC CONSULTATION**

6. No public consultation on the proposed Regulation has been carried out.

## **BASIC LAW IMPLICATIONS**

7. The Department of Justice advises that the proposed legislation does not conflict with those provisions of the Basic Law carrying no human rights implications.

## **HUMAN RIGHTS IMPLICATIONS**

8. The Department of Justice advises that the proposed Regulation is consistent with the human rights provisions of the Basic Law.

## **BINDING EFFECT**

9. The provisions which are amended by this Regulation do not bind the State by express provision.

## **FINANCIAL AND STAFFING IMPLICATIONS**

10. The serving of notices by facsimile transmission instead of personal delivery would result in more efficient use of resources in C&ED. This would bring about savings of two Customs Officers posts at an annual staff cost of \$0.6 million.

## **ECONOMIC IMPLICATIONS**

11. There will be no economic implications.

## **LEGISLATIVE TIMETABLE**

12. The legislative timetable will be -

Publication in the Gazette	11 December 1998
Tabling at the Legislative Council	16 December 1998

## **PUBLICITY**

13. A press release will be issued on 9 December 1998. The Regulation will be published in the Gazette on 11 December 1998. A spokesman will be available to handle enquiries.

## **ENQUIRIES**

14. Enquiries may be directed to Miss Estrella Cheung, Assistant Secretary for Trade and Industry, on 2918 7483 (Fax: 2869 4420).

Trade and Industry Bureau  
December 1998

**IMPORT AND EXPORT (REMOVAL OF ARTICLES)  
(AMENDMENT) REGULATION 1998**

Annexes

Annex A:	Import and Export (Removal of Articles) (Amendment) Regulation 1998
Annex B:	Sections 20A & 20B of the Import and Export Ordinance (Cap. 60)
Annex C:	Regulation 6 of the Import and Export (Removal of Articles) Regulations

**IMPORT AND EXPORT (REMOVAL OF ARTICLES) (AMENDMENT)  
REGULATION 1998**

**Annex A**

(Made by the Chief Executive in Council under section 31 of the  
Import and Export Ordinance (Cap. 60))

**1. Service of notice**

Regulation 6 of the Import and Export (Removal of Articles) Regulations (Cap. 60 sub. leg.) is amended -

- (a) by renumbering it as regulation 6(1);
- (b) in subregulation (1) -
  - (i) in paragraph (b), by adding “,or by sending it by facsimile transmission to,” after “leaving it at”;
  - (ii) in paragraph (c) -
    - (A) by adding “,or by sending it by facsimile transmission to,” after “leaving it at”;
    - (B) by adding “or” at the end;
  - (iii) in paragraph (d), by adding “,or by sending it by facsimile transmission to,” after “leaving it at”;
- (c) by adding -
  - “(2) Any notice served in accordance with subregulation (1) shall, in the absence of evidence to the contrary, be deemed to have been

duly served.”.

Clerk to the Executive Council

COUNCIL CHAMBER

1998

#### Explanatory Note

This Regulation provides for facsimile transmission as a mode of service of notices required to be served under section 20A or 20B of the Import and Export Ordinance (Cap. 60). It also provides that notices served in accordance with the Import and Export (Removal of Articles) Regulations (Cap. 60 sub. leg.) will be deemed to have been duly served in the absence of evidence to the contrary.

Import and Export Ordinance (Cap. 60)  
Sections 20A & 20B

**20A. Removal of articles may be prohibited  
until importer known**

(1) In this section and section 20B—

“article” (物品) means article of cargo;

“consignee” (收貨人) includes the agent of the consignee and any person entitled to the delivery of an article:

“officer” (人員) means any member of the Customs and Excise Service or any authorized officer.

(2) Where any article is upon any vessel, aircraft or vehicle for importation into Hong Kong and an officer, for the purpose of carrying out his functions under this Ordinance, requires to know the identity of the consignee of the article or to verify the particulars supplied to him by any person, or in any document, relating to the identity of the consignee, the officer may give notice to the owner of the vessel, aircraft or vehicle prohibiting such owner from removing, or permitting the removal of, the article—

(a) from the vessel, aircraft or vehicle except to a place specified in the notice, being a place designated by such owner; and

(b) from such place,

save in accordance with permission therefor granted under subsection (4).

(3) A copy of any notice given under subsection (2) shall, where the goods are to be stored in premises occupied by a person other than the owner of the vessel, aircraft or vehicle, be given also to the person occupying such premises and such person shall not remove, or permit the removal of, the article from his premises save in accordance with permission therefor granted under subsection (4).

(4) The officer giving notice under subsection (2) shall, as soon as reasonably practicable, after he knows of the identity, or he verifies the particulars, of the consignee of the article to which the notice relates, permit the person upon whom the notice is served to remove, or permit the removal of, the article from the place where, by virtue of the notice, it may lawfully be kept either—

(a) unconditionally, in which case he shall notify the person on whom the notice is served in writing; or

(b) after examination of the article in accordance with the powers vested in such officer under section 20.

(5) It shall be the duty of the person upon whom a notice is served under subsection (2) or (3), at any time prior to the grant of permission under subsection (4), upon obtaining information as to the identity or particulars of the consignee of the article to which the notice relates, being information not previously supplied by such person to the officer giving the notice, to supply such information to the officer specified in the notice.

*(Added 36 of 1983 s. 5)*

**20B. Requirement that articles may be removed from vessel etc. for examination**

(1) Where any article is upon any vessel, aircraft or vehicle for importation into Hong Kong and an officer desires, in the exercise of his functions under section 20, to examine such article, but he is of the opinion that such article can be more conveniently examined after it has been removed from such vessel, aircraft or vehicle, he may give notice to the consignee of the article, or, in the case of an article in transit being a prohibited article, to the owner of the vessel, aircraft or vehicle, requiring the article to be removed for examination to premises specified in the notice, being premises nominated by the consignee or such owner, as the case may be.

(2) A copy of any notice given under subsection (1) shall, where the goods are to be removed to premises occupied by a person other than the consignee or such owner, as the case may be, be given also to the person occupying such premises.

(3) The consignee or such owner, as the case may be, and, in the event of a copy of the notice being served upon any occupier under subsection (2), the occupier, shall not remove, or permit the removal of, the article from the premises specified in the notice given under subsection (1) until—

- (a) the article has been examined by an officer in accordance with the powers vested in such officer under section 20; or
- (b) an officer has informed such consignee, owner or occupier in writing that such examination is unnecessary.

(4) Where an article is removed to any premises pursuant to a notice given under subsection (1), it shall be the duty of—

- (a) every person in control of such premises to permit an officer to have access to the article and to examine it in accordance with the powers vested in such officer under section 20; and
- (b) the Commissioner to ensure that such examination is made as soon as reasonably practicable.

(5) It may be the condition of any notice given under subsection (1) that the article shall, at all times until it is examined by an officer under section 20, be guarded by an officer and if there is such a condition, an officer may enter upon any place where the article is and take such measures as are reasonably necessary to protect the article from interference.

(6) Notice under this section and section 20A shall be in such form and given in such manner as may be prescribed.

*(Added 36 of 1983 s. 5. Amended 65 of 1991 s. 3)*

Import and Export (Removal of Articles) Regulations  
Regulation 6

**6. Service of notice**

A notice under section 20A or 20B of the Ordinance may be served on any person—

- (a) by delivery to him personally;
- (b) by leaving it at his usual place of abode or business;
- (c) in the case of a company as defined for the purposes of the Companies Ordinance (Cap. 32), by leaving it at the registered office of the *company*;
- (d) in the case of any body of persons, corporate or unincorporate, by leaving it at their principal place of business in Hong Kong.