

Chapter:	81	PORT CONTROL (CARGO WORKING AREAS) ORDINANCE	Gazette Number	Version Date
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		Long title		30/06/1997
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To provide for control of the use of water-front areas by persons, vehicles and vessels and generally for control of the handling of cargo in such areas.

[26 July 1974] *L.N. 154 of 1974*

(Originally 45 of 1974)

Section:	1	Short title		30/06/1997
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This Ordinance may be cited as the Port Control (Cargo Working Areas) Ordinance.

Section:	2	Interpretation		30/06/1997
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In this Ordinance, unless the context otherwise requires-

"berth" (停泊) means to berth, moor, anchor or secure any vessel;

"cargo" (貨物) means any freight carried, or intended to be carried, in or on any vessel or vehicle and means also ships' stores;

"cargo container" (貨櫃) includes an empty container of any kind used, or intended to be used, for the carriage of cargo and includes also any packing material used, or intended to be used, for or in connection with the carriage of cargo;

"Director" (處長) means the Director of Marine;

"excluded water-front" (例外的海旁) means an area declared under section 3 to be an excluded water-front;

"owner" (擁有人)-

- (a) in relation to any cargo or cargo container, means any person being or holding himself out to be the owner, importer, exporter, consignee, agent or person in possession of, or beneficially interested in, or having any control of, or power of disposition over, the cargo or cargo container;
- (b) in relation to a vehicle, includes the person in whose name the vehicle is registered and the person by whom the vehicle is kept and used and, in relation to a vehicle which is the subject of a hiring agreement or hire purchase agreement, means the person in possession of the vehicle under that agreement;
- (c) in relation to a vessel, includes the registered or licensed owner of the vessel and, in relation to a vessel which is the subject of a hiring agreement, means the person in possession of the vessel under that agreement; (Added 56 of 1982 s. 2)

"public cargo working area" (公眾貨物裝卸區) means an area declared under section 3 to be a public cargo working area;

"public water-front" (公眾海旁) means an area declared under section 3 to be a public water-front;

"vehicle" (車輛) means any vehicle intended or adapted for use on roads;

"vessel" (船隻) includes any ship, boat, junk or lorcha and any other description of vessel used in navigation and includes also any floating wharf, ramp, pontoon or landing place.

Section:	3	Declaration of areas to be public cargo working areas, public water-fronts and excluded water-fronts	L.N. 130 of 2007	01/07/2007
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Remarks:

For the saving and transitional provisions relating to the amendments made by the Resolution of the Legislative Council (L.N. 130 of 2007), see paragraph (12) of that Resolution.

(1) The Secretary for Transport and Housing may, by order published in the Gazette, declare any area of unleased Government land (including any road), and any area of water adjoining any such area, to be- (Amended 4 of 1995 s. 2; 29 of 1998 s. 105; L.N. 106 of 2002; L.N. 130 of 2007)

- (a) a public cargo working area;
- (b) a public water-front; or
- (c) an excluded water-front.

(2) In any order made under subsection (1) an area may be defined by reference to a plan deposited in the Land Registry, and a copy of any such plan purporting to be certified by the Director as a true copy thereof may be admitted as evidence of the plan without further proof in any criminal or civil proceedings before any court or magistrate. (Replaced 56 of 1982 s. 3. Amended 8 of 1993 s. 2)

(3) Any order made and any plan prepared and deposited under the provisions of this section in force immediately before the commencement* of the Port Control (Cargo Working Areas) (Amendment) Ordinance 1982 (56 of 1982) shall be deemed for all purposes to have been made, or prepared and deposited, as the case may be, under this section as amended by that Ordinance. (Replaced 56 of 1982 s. 3)

Note:

* In operation on 10.1.1983.

Section:	4	Public cargo working areas, etc. deemed to be public places	30/06/1997
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Every public cargo working area, public water-fronts or excluded water-fronts shall be a public place for the purposes of the Summary Offences Ordinance (Cap 228).

Section:	5	Director's powers in respect of abandoned cargo, etc.	30/06/1997
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(1) Without prejudice to any other provisions of this Ordinance relating to the deposit of any cargo or cargo container in a public cargo working area or a public water-front, if the Director is satisfied that any cargo or cargo container has been left or abandoned in a public cargo working area or public water-front, he may, by affixing to such cargo or cargo container in a prominent position a notice in a form specified by him, seize such cargo or cargo container.

(2) The Director shall cause a copy of a notice affixed under subsection (1) to be displayed in a conspicuous place within the public cargo working area or public water-front, as the case may be.

(3) The Director may cause any cargo or cargo container seized under subsection (1) to be removed to a place of storage.

(4) The owner of any cargo or cargo container seized under subsection (1) may, within 14 days after the date of seizure, claim the same by notice in writing to the Director.

(5) The Director shall-

- (a) on receipt of a claim in accordance with subsection (4); and
- (b) on payment to him of the prescribed fees and the costs, if any, of removal and storage within the period referred to in that subsection,

release the cargo or cargo container to the claimant.

(6) Where in respect of any cargo or cargo container seized under subsection (1)-

- (a) no claim is made in accordance with subsection (4); or
- (b) the prescribed fees and the costs, if any, of removal and storage are not paid within the period referred to in that subsection,

the Director may cause such cargo or cargo container to be sold or otherwise disposed of in such manner as he thinks fit and the proceeds, if any, of such sale or disposal, after deduction of the prescribed fees and the costs, if any, of removal and storage, and of the sale or disposal, shall be paid into the general revenue of Hong Kong at the expiry of 3 months from the date of such sale or disposal if not previously claimed by the owner of the cargo or cargo container.

(7) No action in respect of any damage to property shall lie against the Director or any other officer performing or exercising any function, duty or power under this section.

(8) Any person who interferes with or removes any cargo or cargo container seized under subsection (1), unless authorized or directed to do so by the Director, commits an offence and is liable to a fine of \$20000 and to imprisonment for 1 year.

(Replaced 56 of 1982 s.4)

Section:	5A	Obligation to give certain information in respect of offences		30/06/1997
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(1) Where the person in charge of a vessel or the driver of a vehicle is suspected of having committed an offence under this Ordinance, any person (including the owner of the vessel or vehicle, and the person in charge of the vessel or driver of the vehicle, as the case may be, at the time of the alleged offence) shall, on demand made by the Director or a supervisor within 3 months after the date of the alleged offence, give to the Director or a supervisor in the manner prescribed in this section the name and address of the person in charge of the vessel or driver of the vehicle, as the case may be, at the time of the alleged offence.

(2) A demand under subsection (1) may be made orally or by means of a notice served personally or by post on the person to whom it is made.

(3) Where a demand under subsection (1) is made orally to any person he shall-

- (a) if he was the person in charge of the vessel or driver of the vehicle at the time of the alleged offence, give immediately his name and address; or
- (b) if he was not the person in charge of the vessel or driver of the vehicle at the time of the alleged offence, give the information required under subsection (1) to the Director or to a specified supervisor either orally or in writing within 21 days after the date of the demand.

(4) A notice served under subsection (2) shall require the person to whom it is addressed-

- (a) to furnish to the Director, within 21 days after the date of the notice, a written statement, in such form as may be specified in the notice, giving the name and address of the person in charge of the vessel or driver of the vehicle, as the case may be, at the time of the alleged offence; and
- (b) to sign the statement.

(5) Subject to subsection (6), any person who contravenes subsection (1) commits an offence and is liable to a fine of \$5000 and to imprisonment for 3 months.

(6) In proceedings for an offence under subsection (5), it shall be a defence to show that the accused person did not know, and could not with reasonable diligence have ascertained, the name or address of the person in charge of the vessel or driver of the vehicle, as the case may be, at the time of the alleged offence.

(7) In this section-

"alleged offence" (指控罪行) means the suspected offence referred to in subsection (1);

"supervisor" (主管) means a person appointed under regulations made under this Ordinance to be a supervisor at a public cargo working area or public water-front.

(Added 56 of 1982 s. 4)

Section:	5B	Proof in summary proceedings of identity of driver		30/06/1997
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If, in any summary proceedings for an offence under this Ordinance, there is produced to the magistrate a statement which-

- (a) purports to have been signed by the accused person;
- (b) was furnished in accordance with a notice served on him under section 5A(2); and
- (c) states that the accused person was the person in charge of the vessel or driver of the vehicle, as the case may be, at the time of the offence,

the magistrate shall admit the statement as prima facie evidence that the accused person was the person in charge of the vessel or driver of the vehicle at the time of the offence.

(Added 56 of 1982 s.4)

Section:	5C	Copies of notices admissible as evidence		30/06/1997
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(1) Where under this Ordinance a notice is required to be affixed to any cargo or cargo container or displayed in any place, a document purporting to be a copy of such notice, signed and certified as a true copy by the Director or by any person authorized by him, in writing, in that behalf, shall be admissible in any criminal or civil proceedings before any court or magistrate on its production without further proof as evidence of the original notice and, until the contrary is proved, the court or magistrate shall presume that-

- (a) the signature and certification to the document is that of the Director or a person authorized by him, in writing, in that behalf; and

(b) the document is a true copy of the original notice.

(2) Nothing in this section shall prejudice the admissibility of any evidence which would be admissible apart from the provisions of this section.

(Added 56 of 1982 s.4)

Section:	6	Regulations	64 of 1999	01/07/1997
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Remarks:

Adaptation amendments retroactively made - see 64 of 1999 s. 3

(1) The Chief Executive in Council may make regulations for all or any of the following purposes- (Amended 64 of 1999 s. 3)

- (a) providing for any matter or thing which is to be or may be prescribed under this Ordinance;
- (b) regulating entry to and the use of any public cargo working area, public water-front or excluded water-front;
- (c) controlling or providing for the control of-
 - (i) the handling, inspection or weighing of cargo or cargo containers in any public cargo working area, public water-front or excluded water-front;
 - (ii) vessels and vehicles in any public cargo working area, public water-front or excluded water-front;
- (ca) empowering the Director to set aside areas in a public cargo working area, public water-front or excluded water-front for purposes specified in the regulations; (Added 56 of 1982 s. 5)
- (cb) empowering the Director to specify the type of cargo handling machinery and equipment to be used in a public cargo working area, public water-front or excluded water-front for any purpose specified by him and to specify conditions subject to which such cargo handling machinery and equipment may be so used; (Added 56 of 1982 s. 5)
- (d) empowering the Director-
 - (i) to give directions in relation to such matters as may be specified;
 - (ii) to take such action as may be necessary to give effect to any such direction which is not complied with;
 - (iii) to recover the cost of any such action taken by the Director;
- (e) empowering the Director or any person authorized by him to require any person using any public cargo working area, public water-front or excluded water-front to provide his name and address; (Replaced 56 of 1982 s. 5)
- (f) empowering the Director to require persons using any public cargo working area, public water-front or excluded water-front, and the owner of any cargo or cargo container handled therein, to give any specified information in respect of the use of such area or water-front or in respect of any such cargo or cargo containers;
- (g) prescribing fees and charges; (Amended 56 of 1982 s. 5)
- (h) empowering the Director to waive the payment of any fee or charge or to remit any fee or charge so paid; and (Amended 56 of 1982 s. 5)
- (i) generally for the better carrying out of the purposes of this Ordinance.

(2) Regulations made under this section may provide that a contravention thereof shall be an offence and prescribe a penalty on conviction of any such offence not exceeding a fine of \$20000 and imprisonment for a term not exceeding 1 year. (Amended 56 of 1982 s. 5)