

Fisheries Protection (Amendment) Bill 2019

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A BILL

To

Amend the Fisheries Protection Ordinance to provide for the registration of local fishing vessels in respect of which there was no valid operating licence on 15 June 2012 and the issue of provisional approvals for registration to owners or former owners of fishing vessels in respect of which there was no valid operating licence on 15 June 2012; to provide for the issue of certificate of eligibility for registration in relation to former trawlers in respect of which there was no valid operating licence on 15 June 2012; and to make related amendments to the Ordinance and the Administrative Appeals Board Ordinance.

Enacted by the Legislative Council.

Part 1

Preliminary

1. Short title

This Ordinance may be cited as the Fisheries Protection (Amendment) Ordinance 2019.

2. Enactments amended

- (1) The Fisheries Protection Ordinance (Cap. 171) is amended as set out in Part 2.
 - (2) The Administrative Appeals Board Ordinance (Cap. 442) is amended as set out in Part 3.
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Part 2

Amendments to Fisheries Protection Ordinance

3. Section 2 amended (interpretation)

- (1) Section 2, definition of *commencement date*—

Repeal

“2012 (13 of 2012)”

Substitute

“2019 (of 2019)”.

- (2) Section 2, before the definition of *ancillary vessel*—

Add

“**2012 certificate** (2012年證明書), in relation to a vessel, means the certificate of ownership of the vessel that was valid on 15 June 2012;

2012 owner (2012年船東), in relation to a vessel, means—

- (a) if the 2012 certificate for the vessel specifies 1 person—the person;
- (b) if the 2012 certificate for the vessel specifies 2 or more persons (*co-owners*), none of whom has died or ceased to exist—the co-owners; or
- (c) if the 2012 certificate for the vessel specifies 2 or more persons, one or more of whom has died or ceased to exist—the remaining co-owner or co-owners;”.

4. Section 14 amended (registration of local fishing vessels)

(1) Section 14(1)(a)—

Repeal

“is a valid operating licence on the commencement date”

Substitute

“was a valid operating licence on 15 June 2012”.

(2) Section 14(1)(b)(i)—

Repeal

“the commencement date” (wherever appearing)

Substitute

“15 June 2012”.

(3) Section 14(1)(c)—

Repeal

“section 19 or 21”

Substitute

“section 14A(2), 14B(8), 19(1), 21(1) or 21A(8)”.

(4) Section 14(2)—

Repeal

everything after “or (b)”

Substitute

“may only be made within 12 months after 15 June 2012.”.

(5) Section 14(3)—

Repeal

“may be made under subsection (1)(a) or (b)”

Substitute

“under subsection (1)(a) or (b) may be made at a later time”.

- (6) Section 14(3)(b)—

Repeal

“the commencement date”

Substitute

“15 June 2012”.

- (7) Section 14—

Repeal subsection (5)

Substitute

“(5) If the Director refuses an application under subsection (1) or section 14A(2), 14B(8), 19(1), 21(1) or 21A(8), the Director must send a notice of refusal to the applicant within 14 days after the date of the decision.”.

5. Sections 14A and 14B added

After section 14—

Add

“14A. Registration of local fishing vessels with no valid operating licence on 15 June 2012

- (1) This section applies in relation to a local fishing vessel—
- (a) in respect of which there is a valid operating licence but there was no valid operating licence on 15 June 2012; and

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- (b) that was not affected by the trawl ban introduced by the Fisheries Protection (Specification of Apparatus) (Amendment) Notice 2011 (L.N. 45 of 2011).
- (2) The Director may, on application by the owner of the vessel, register the vessel under section 14 if—
- (a) no provisional approval has been issued under section 14B(2) in respect of the vessel;
 - (b) the applicant shows to the satisfaction of the Director that—
 - (i) the applicant was also the 2012 owner of the vessel; or
 - (ii) the application is supported by a waiver given by the 2012 owner of the vessel under section 14B(6), or by proof that the person or persons specified in the 2012 certificate of the vessel has or have all died or ceased to exist; and
 - (c) the applicant shows to the satisfaction of the Director that—
 - (i) the vessel was used, or intended to be used, for the purpose of fishing up to the expiry of 14 June 2012;
 - (ii) the engine power of the vessel does not exceed that of the vessel immediately before 15 June 2012; and
 - (iii) the number of ancillary vessels the vessel has does not exceed that which the vessel had immediately before 15 June 2012.

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- (3) For subsection (2)(c)(i), the Director must take into account—
 - (a) whether there was a valid operating licence in respect of the vessel before 15 June 2012, and if there was, the validity period of the last valid operating licence in respect of the vessel before 15 June 2012;
 - (b) the reason why there was no valid operating licence in respect of the vessel on 15 June 2012; and
 - (c) any other factor the Director considers appropriate.
 - (4) An application under subsection (2) may only be made within 6 months after the commencement date.
 - (5) Despite subsection (4), an application under subsection (2) may be made at a later time if the applicant shows to the satisfaction of the Director that—
 - (a) the failure to make the application within the time specified in subsection (4) was not due to the applicant's default; and
 - (b) the applicant exercised due diligence to ensure that the application would be made as soon as practicable after the commencement date.

14B. Registration of fishing vessels with no valid operating licence on 15 June 2012 or their replacements—provisional approval

- (1) This section applies if—
 - (a) there was, on 15 June 2012, a fishing vessel in respect of which there was no valid operating licence (*original vessel*); and
 - (b) the original vessel was not affected by the trawl ban introduced by the Fisheries Protection (Specification of Apparatus) (Amendment) Notice 2011 (L.N. 45 of 2011).
- (2) The Director may, on application by the 2012 owner of the original vessel, issue to the owner a provisional approval for the registration of the original vessel or one other local fishing vessel (*PAR*) if—
 - (a) no *PAR* has been issued under this subsection in respect of the original vessel; and
 - (b) the applicant shows to the satisfaction of the Director that—
 - (i) the original vessel was used, or intended to be used, for the purpose of fishing up to the expiry of 14 June 2012;
 - (ii) any one or more of the following applies—
 - (A) the applicant no longer owns the original vessel;
 - (B) the original vessel has been lost or destroyed;
 - (C) the operating licence in respect of the original vessel has been cancelled by the Director of Marine;

- (D) the original vessel is no longer designed and equipped to be used primarily for fishing; and
 - (iii) the applicant has not waived under subsection (6) the entitlement to apply for a PAR in respect of the original vessel.
- (3) For subsection (2)(b)(i), the Director must take into account—
- (a) whether there was a valid operating licence in respect of the original vessel before 15 June 2012, and if there was, the validity period of the last valid operating licence in respect of the original vessel before 15 June 2012;
 - (b) the reason why there was no valid operating licence in respect of the original vessel on 15 June 2012; and
 - (c) any other factor the Director considers appropriate.
- (4) An application under subsection (2) may only be made within 6 months after the commencement date.
- (5) Despite subsection (4), an application under subsection (2) may be made at a later time if the applicant shows to the satisfaction of the Director that—
- (a) the failure to make the application within the time specified in subsection (4) was not due to the applicant's default; and
 - (b) the applicant exercised due diligence to ensure that the application would be made as soon as practicable after the commencement date.

- (6) The 2012 owner of the original vessel may, in a form specified by the Director, waive the entitlement to apply for a PAR in respect of the original vessel.
- (7) If the Director refuses an application under subsection (2), the Director must send a notice of refusal to the applicant within 14 days after the date of the decision.
- (8) The Director may, on application by the 2012 owner of the original vessel, register the original vessel, or one other local fishing vessel, under section 14 if—
 - (a) the application is accompanied by a PAR issued under subsection (2) to the applicant in respect of the original vessel; and
 - (b) the applicant shows to the satisfaction of the Director that—
 - (i) the applicant is the owner of the vessel under application;
 - (ii) there is a valid operating licence in respect of the vessel under application;
 - (iii) the engine power of the vessel under application does not exceed that of the original vessel immediately before 15 June 2012; and
 - (iv) the number of ancillary vessels the vessel under application has does not exceed that which the original vessel had immediately before 15 June 2012.
- (9) An application under subsection (8) may only be made within 2 years after the date of the issue of the PAR.

- (10) Despite subsection (9), an application under subsection (8) may be made at a later time if the applicant shows to the satisfaction of the Director that—
- (a) the failure to make the application within the time specified in subsection (9) was not due to the applicant’s default; and
 - (b) the applicant exercised due diligence to ensure that the application would be made as soon as practicable after the date of the issue of the PAR.”.

6. Section 17 amended (alteration to conditions of registration)

Section 17—

Repeal subsection (4)

Substitute

- “(4) If the Director refuses an application under subsection (1), the Director must send a notice of refusal to the applicant within 14 days after the date of the decision.”.

7. Section 21 amended (registration of former trawlers or their replacements)

(1) Section 21(3)—

Repeal

“made under”

Substitute

“under”.

- (2) Section 21(4), definition of *certificate of eligibility for registration*, paragraph (a)—

Repeal

“is a valid operating licence on the commencement date”

Substitute

“was a valid operating licence on 15 June 2012”.

8. Section 21A added

After section 21—

Add

“21A. Registration of former trawlers with no valid operating licence on 15 June 2012 or their replacements—certificate of eligibility

- (1) This section applies if there was, on 15 June 2012, a trawler in respect of which there was no valid operating licence (*original vessel*).
- (2) The Director may, on application by a person, issue to the person a certificate of eligibility for the registration of the original vessel or one other local fishing vessel (*CER*) if—
- (a) no CER has been issued under this subsection in respect of the original vessel;
- (b) the applicant shows to the satisfaction of the Director that—
- (i) the applicant was the 2012 owner of the original vessel; or
- (ii) the applicant is the owner of the original vessel, and the application is supported by a waiver given by the 2012 owner of the

- original vessel under subsection (6), or by proof that the person or persons specified in the 2012 certificate of the original vessel has or have all died or ceased to exist; and
- (c) the applicant shows to the satisfaction of the Director that—
 - (i) the original vessel was used, or intended to be used, for the purpose of fishing up to the expiry of 14 June 2012; and
 - (ii) the original vessel was affected by the trawl ban introduced by the Fisheries Protection (Specification of Apparatus) (Amendment) Notice 2011 (L.N. 45 of 2011).
- (3) For subsection (2)(c)(i), the Director must take into account—
- (a) whether there was a valid operating licence in respect of the original vessel before 15 June 2012, and if there was, the validity period of the last valid operating licence in respect of the original vessel before 15 June 2012;
 - (b) the reason why there was no valid operating licence in respect of the original vessel on 15 June 2012; and
 - (c) any other factor the Director considers appropriate.
- (4) An application under subsection (2) may only be made within 6 months after the commencement date.
- (5) Despite subsection (4), an application under subsection (2) may be made at a later time if the applicant shows to the satisfaction of the Director that—

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- (a) the failure to make the application within the time specified in subsection (4) was not due to the applicant's default; and
 - (b) the applicant exercised due diligence to ensure that the application would be made as soon as practicable after the commencement date.
- (6) The 2012 owner of the original vessel may, in a form specified by the Director, waive the entitlement to apply for a CER in respect of the original vessel.
- (7) If the Director refuses an application under subsection (2), the Director must send a notice of refusal to the applicant within 14 days after the date of the decision.
- (8) The Director may, on application by the holder of a CER, register the original vessel, or one other local fishing vessel, under section 14 if—
- (a) the application—
 - (i) is accompanied by a CER issued under subsection (2) to the applicant in respect of the original vessel; and
 - (ii) is made in accordance with the terms and time limit (if any) specified in the CER; and
 - (b) the applicant shows to the satisfaction of the Director that—
 - (i) the applicant is the owner of the vessel under application;
 - (ii) there is a valid operating licence in respect of the vessel under application;
 - (iii) trawling with the use or aid of the vessel under application is unlikely;

- (iv) the engine power of the vessel under application does not exceed that of the original vessel immediately before 15 June 2012; and
- (v) the number of ancillary vessels the vessel under application has does not exceed that which the original vessel had immediately before 15 June 2012.”.

9. Section 26 amended (refusal of applications for issue or renewal of research fishing permit)

(1) Section 26(1)—

Repeal

“made under”

Substitute

“under”.

(2) Section 26(2) and (3)—

Repeal

“made under”

Substitute

“under”.

(3) Section 26(4)—

Repeal

“from”

Substitute

“after”.

10. Section 33 amended (right of appeal)

(1) Section 33—

Repeal paragraph (a)

Substitute

“(a) refusing an application for registration under section 14(1), 14A(2), 14B(8), 19(1), 21(1) or 21A(8) or an application for the issue or renewal of a research fishing permit under section 25;”.

(2) After section 33(a)—

Add

“(ab) refusing to issue a provisional approval under section 14B(2);”.

(3) After section 33(c)—

Add

“(ca) refusing to issue a certificate of eligibility under section 21A(2);”.

11. Section 37 amended (Director may require information or document)

Section 37(2)—

Repeal

“made under”

Substitute

“under”.

12. Section 45 amended (transitional)

(1) Section 45—

Repeal paragraph (a).

(2) Section 45(b)—

Repeal

“has been made under section 14”

Substitute

“under section 14(1) or 14A(2) has been made”.

13. Schedule 3 amended (fees)

Schedule 3, item 1, column 2—

Repeal

“14, 19 or 21”

Substitute

“14(1), 14A(2), 14B(8), 19(1), 21(1) or 21A(8)”.

Part 3

Consequential Amendments to Administrative Appeals Board Ordinance

14. Schedule amended

- (1) The Schedule, item 72, column 3, paragraph (a)—

Repeal

“14, 19 or 21”

Substitute

“14(1), 14A(2), 14B(8), 19(1), 21(1) or 21A(8)”.

- (2) The Schedule, item 72, column 3, after paragraph (a)—

Add

“(ab) to refuse to issue a provisional approval under section 14B(2);”.

- (3) The Schedule, item 72, column 3, after paragraph (c)—

Add

“(ca) to refuse to issue a certificate of eligibility under section 21A(2);”.

Explanatory Memorandum

The Fisheries Protection Ordinance (Cap. 171) (*principal Ordinance*) does not allow the registration, under its section 14, of a local fishing vessel or former trawler in respect of which there was no valid operating licence on 15 June 2012 (*original vessel* and *former trawler* respectively). The main object of this Bill is to amend the principal Ordinance to introduce an arrangement for the registration of an original vessel or a former trawler, or its replacement. Among other requirements for registration, the original vessel or former trawler must be one that was used, or intended to be used, for the purpose of fishing up to the expiry of 14 June 2012.

Part 1—Preliminary

2. Clause 1 sets out the short title. If the Bill is passed, the Ordinance to be enacted (*Amendment Ordinance*) will come into operation on the day on which it is published in the Gazette.

Part 2—Amendments to Principal Ordinance

3. Clauses 5 and 8 add the new sections 14A, 14B and 21A to the principal Ordinance to provide for the arrangement. Clauses 3, 4 and 7 make related amendments.
4. The new section 14A provides for the application for the registration of an original vessel that is still designed and equipped to be used primarily for fishing. An application under that section may only be made within 6 months after the commencement date of the Amendment Ordinance.

5. The new section 14B provides for the issue to a person who was the owner of an original vessel on 15 June 2012 of a provisional approval for the registration of the original vessel or its replacement (*PAR*). Similar to an application under the new section 14A, an application for a PAR may only be made within 6 months after the commencement date of the Amendment Ordinance. However, an application for the registration of the original vessel or its replacement, pursuant to a PAR, may be made within 2 years after the date of the issue of the PAR.
6. The new section 21A provides for the issue of a certificate of eligibility for the registration of a former trawler that was affected by the trawl ban in December 2012, or its replacement (*CER*). An application for a CER may only be made within 6 months after the commencement date of the Amendment Ordinance, and a CER may provide for the terms and time limit for registration.
7. Clauses 6, 9 and 11 make minor amendments to sections 17, 26 and 37 respectively of the principal Ordinance.
8. Section 33 of the principal Ordinance contains a list of decisions of the Director of Agriculture, Fisheries and Conservation. A person aggrieved by any of the decisions may appeal to the Administrative Appeals Board. Clause 10 amends that section to add the decisions under the new sections 14A(2), 14B(2) and (8) and 21A(2) and (8) to the list.
9. Clause 12 amends section 45 of the principal Ordinance to extend the transitional arrangements under that section to local fishing vessels that are the subjects of pending applications under the new section 14A.

10. Clause 13 amends Schedule 3 to the principal Ordinance to add the new sections 14A(2), 14B(8) and 21A(8) to the list of items for which fees are payable.

Part 3—Consequential Amendments to Administrative Appeals Board Ordinance (Cap. 442)

11. Clause 14 amends item 72 of the Schedule to the Administrative Appeals Board Ordinance (Cap. 442), consequential to the amendments made by clause 10.