

BILLS COMMITTEE**NOISE CONTROL (AMENDMENT) BILL 2001****INTRODUCTION**

The Noise Control (Amendment) Bill 2001 seeks to amend the Noise Control Ordinance (NCO) by stating explicitly that when a noise offence is committed by a body corporate, the management of the body corporate commits a like offence. The objective of the Bill is to promote changes in corporate philosophy with regard to environmental compliance so as to deter recurrent noise offences. This paper supplements the Legislative Council Brief issued in June 2001.

BACKGROUND AND ARGUMENT

2. The current provisions of the NCO do not contain sufficient deterrence against bodies corporate committing noise offences due to a lack of personal liability of the management. Notwithstanding the Government's efforts to promote good practices and vigorous enforcement actions, there are still many noise complaints and offences under the NCO.

3. The number of complaints and convictions related to construction and commercial/industrial activities for 1999-2001 are as follows -

Noise complaints	1999	2000	2001
Construction noise	2 369	1 777	2 285
Commercial/industrial noise	2 839	3 239	3 454
Total:	5 208	5 016	5 739

Noise offence convictions	1999	2000	2001
Construction noise	264	364	240
Commercial/industrial noise	73	61	49
Total:	337	425	289

4. Violations of the NCO by bodies corporate are considerably more serious than individual proprietors. In the three years between 1999 and 2001, over 85% of conviction cases related to construction and commercial/industrial activities involved bodies corporate. During the same period, 51 companies were convicted 5 times or more. 18 of these companies have more than 10 convictions. They included one company which has been convicted 31 times and two companies over 22 times for construction noise offences.

5. Under the existing provisions of the NCO, the maximum penalty is a fine of \$100,000 for the first conviction and \$200,000 for the second or subsequent conviction. Our records indicate that despite the imposition of heavy fines of between \$150,000 and \$200,000 on some of the second or subsequent noise offences, this had not been able to deter bodies corporate from recurrent offences. The significantly higher number of conviction cases involving bodies corporate indicate that individual proprietors give more serious regard to compliance with the NCO since they are personally liable while some corporate management continue to give little regard to compliance with the NCO due to a lack of personal liability for the actions of their companies.

6. We consider that increasing the maximum fine levels for noise offences could not achieve sufficient deterrent effect. There is a need to make the management of a body corporate accountable for noise offences committed by the body corporate. The Legislative Council Panel on Environmental Affairs indicated support for the proposal at its meeting on 8 May 2001 and asked the Administration to introduce the Bill as soon as possible.

THE BILL

7. Under the proposed amendments, the management of a body corporate will be held explicitly liable for offences committed by the body corporate. To enable the management of a body corporate to take all reasonable preventive steps before they are prosecuted for noise offences, the provisions of the Bill provide that directors and officers concerned would be convicted of the like offence only when –

- (a) proceedings for an earlier offence under the NCO have been instituted against the body corporate in relation to the same site;
- (b) the Noise Control Authority has served a warning notice to the persons concerned; and
- (c) the like offence occurs after that notice has been served.

8. The proposed amendments also provide for a due diligence defence. It would be a due diligence defence if the management can demonstrate that a proper system has been established and was in effective operation to prevent the offence.

THE WARNING SYSTEM

9. To address the concerns of the Hong Kong Construction Association (HKCA), a provision to the Bill is added to provide that the Director of Environmental Protection (DEP) should give a written warning to the directors and officers concerned of a body corporate after the body corporate has committed a noise offence at a particular site.

10. The written warning is to enable the directors and officers concerned to take all reasonable preventive steps before they are prosecuted for noise offences. If the body corporate commits any further offence under the NCO at the same site after the warning, DEP would prosecute the directors and officers concerned without further warning.

11. HKCA suggested that the Bill should be amended to provide a time limit for the warning system and that fresh warnings should be given to the management of a body corporate if the body corporate has not violated the NCO again within a certain period subsequent to the issue of a written warning. We have reservations on this suggestion. To address the trade's concern, we have already modified the original legislative proposal put forward in 2000 by adding a warning provision and holding directors liable to the like offence only when the body

corporate commits further offence at the same site. Imposing a time limit on the warning system will weaken the deterrent effect significantly and run counter to the principle that the directors and officers of any construction company should comply with the NCO at all times. But we will continue to take into account the views of the construction trade when finalising the operational procedures for the warning system.