

BILLS COMMITTEE

NOISE CONTROL (AMENDMENT) BILL 2001

Purpose

Attached to this paper is the Administration's response to the submission made by Masons International Law Firm on the Noise Control (Amendment) Bill 2001.

Environment and Food Bureau
March 2002
(EFB 9/55/02/28)

**Administration's Response to Submissions on
Noise Control (Amendment) Bill 2001**

Submissions	Administration's Response
<p>A. Masons International Law Firm:</p> <p>1. Written warning to be issued within a certain period of the institution of proceedings against a body corporate? Will it be possible to attempt to prosecute individuals if the offence by the body corporate is repeated a year (or more) later?</p> <p>2. What will happen in circumstances where, for example, a sub-contractor repeatedly breaches a construction noise permit which is held in the name of the main site contractor?</p> <p>3. What level of proof will the Noise Control Authority consider sufficient for proof of delegation or immediate authority of a director?</p> <p>4. Will the Noise Control Authority take into account the practicality of prescribed works methods against the background of a contractor's obligations when considering whether to grant a construction noise permit?</p>	<p>Under the proposed amendment, the Noise Control Authority may issue a written warning to the directors and officers concerned of a body corporate to warn them of their personal liability under the NCO and remind them of their responsibilities, after proceedings have been instituted against the body corporate for an offence under the NCO in relation to a specific site. There is no expiry date for the written warning. The Noise Control Authority may prosecute the directors and officers concerned for any subsequent offences committed by the body corporate at the same site, without further warning after the written warning has been served.</p> <p>The proposed amendment does not change the existing legislative control. Under the existing NCO provisions, the Noise Control Authority may institute proceedings against any person who commits an offence. The proposed amendment only seeks to specify the responsibility of the corporate management of those bodies corporate which are already liable for prosecution under the existing NCO provisions.</p> <p>The standard of proof on the prosecution is beyond a reasonable doubt.</p> <p>The applicant of a construction noise permit is free to propose practicable construction methods and equipment which could meet the noise criteria set out in the relevant Technical Memorandum (TM) under the NCO. The Noise Control Authority will approve the application so long as the</p>

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<p>5. The proposed defence appears quite narrow, compared to defences relating directors' liability provided for under other environmental legislation. Given the strict nature of the proposed amendment, will 'works carried out in an emergency', for example, amount to a defence?</p>	<p>relevant criteria in the TM are met. The applicant could also apply for variation of the conditions set out in the permit or even apply for a new permit to take into account changes in site working conditions.</p> <p>The directors and officers concerned is only liable for a like offence committed by the body corporate at the same site after the issue of a written warning. The liabilities of the directors and officers concerned are therefore contingent upon the conviction of the body corporate for the said offence. Under section 33 of the NCO, certain special circumstances are already made available as a defence for the body corporate. Under the proposed amendment, due diligence defence is made available to the directors and officers concerned in respect of their personal liabilities.</p>