

Bills Committee on Noise Control (Amendment) Bill 2001

Information note on handling contravention of environment-related legislation by public officers

Background

In the course of deliberating on the Noise Control (Amendment) Bill 2001 at the meeting on 27 May 2002, members sought information on :

- (a) whether there are provisions in other ordinances which are similar to the existing section 38 of the Noise Control Ordinance (Cap. 400) (NCO) which deals with contravention by public officers (copy at **Appendix I**); and
- (b) the appropriate Panel(s)/committee(s) to follow up issues relating to the current mechanism for dealing with contravention of related ordinances by public officers.

Findings

2. A preliminary search has identified the following seven ordinances which contain provisions to the effect that criminal liability will not be imposed on public officers who contravened relevant sections of the ordinances in the course of carrying out their official duties, and that the relevant Authority will report the matter to the Chief Secretary for Administration who will ensure the taking out of the best practicable steps to terminate the contravention:

Ordinance	Section
Air Pollution Control Ordinance (Cap. 311)	44
Waste Disposal Ordinance (Cap. 354)	36
Water Pollution Control Ordinance (Cap. 358)	47
Noise Control Ordinance (Cap. 400)	38
Dumping At Sea Ordinance (Cap. 466)	3
Marine Parks Ordinance (Cap. 476)	28
Environmental Impact Assessment Ordinance (Cap. 499)	3

3. With the exception of the Marine Parks Ordinance (Cap. 476) in which the Director of Agriculture, Fisheries and Conservation is the enforcement authority, the Director of Environmental Protection is the enforcement authority for the other six ordinances.

4. Regarding some members' related concern about the criminal liability of public officers in relation to road excavation works, a proposed provision similar to the existing section 38 of the NCO is found in proposed section 2A of the Land (Miscellaneous Provisions) (Amendment) Bill 2002 in which the Secretary for Works is responsible for ensuring that the best practicable steps are taken to stop the contravention or avoid the recurrence. The Bill has been introduced into the Council on 24 April 2002 and the relevant extract of the Bill is at **Appendix II**.

Follow-up action

5. In view of the above findings, it is recommended that the Panel on Environmental Affairs should be the principal forum for following up issues relating to the existing mechanism for handling contraventions of environment-related legislation by public officers.

6. As the Land (Miscellaneous Provisions) (Amendment) Bill 2002 contains a specific proposed section on "Application to Government", it is recommended that the arrangement for dealing with contraventions by public officers for road excavation works should be examined in due course by the Bills Committee formed to study the Bill.

7. With the concurrence of the Bills Committee Chairman, paragraphs 5 and 6 above will be drawn to the attention of the Panel on Environmental Affairs and the Bills Committee on Lands (Miscellaneous Provisions) (Amendment) Bill 2002 accordingly.

Legislative Council Secretariat

31 May 2002

CAP. 400 *Noise Control*

38. Application to Crown

(1) Subject to this section, this Ordinance shall bind the Crown.

(1A) Section 13B shall not apply to the Crown. (*Added 61 of 1996 s. 4*)

(2) Section 4, 5, 6, 7, 13, 13A, 14, 15, 16 or 17 shall not have effect to permit proceedings to be taken against, or to impose any criminal liability on, the Crown or on any public officer who causes or permits to be made any noise in the course of carrying out his duties in the service of the Crown. (*Amended 61 of 1996 s. 4*)

(3) If it appears to the Authority that any noise is being, or has been, made in contravention of section 4, 5, 6, 7, 13, 13A, 14, 15, 16 or 17 by any public officer in the course of carrying out his duties in the service of the Crown, the Authority shall, if the contravention is not forthwith terminated to his satisfaction, report the matter to the Chief Secretary for Administration. (*Amended 61 of 1996 s. 4; L.N. 362 of 1997*)

(4) On receipt of a report under subsection (3), the Chief Secretary for Administration shall enquire into the circumstances and, if his enquiry shows that a contravention of section 4, 5, 6, 7, 13, 13A, 14, 15, 16 or 17 is continuing or likely to recur, he shall ensure that the best practicable steps are taken to terminate the contravention or avoid the recurrence. (*Amended 61 of 1996 s. 4; L.N. 362 of 1997*)

(5) Any notice under this Ordinance concerning the making of noise which is to be, or may be, given or made by or on behalf of the Crown may be given or made by any public officer on behalf of the Crown.

(6) Any notice under this Ordinance concerning the making of noise which is to be, or may be, given by the Authority to the Crown shall be given to the principal officer of the Government Department which appears to the Authority to be responsible for such emission or, in the event of any question arising as to which Department is responsible, to such public officer as the Chief Secretary for Administration shall determine. (*Amended L.N. 362 of 1997*)

(7) No fee prescribed under this Ordinance shall be payable by the Crown.

Appendix II

LAND (MISCELLANEOUS PROVISIONS) (AMENDMENT) BILL 2002

3. Section added

The following is added—

“2A. Application to Government

(1) Subject to this section, Part III binds the Government so far as it relates to an excavation in unleased land which is a street maintained by the Highways Department.

(2) Part III does not have effect to permit proceedings to be taken against, or to impose any criminal liability on, the Government or a person doing anything in the course of carrying out his duties as a public officer in the service of the Government.

(3) If the Authority considers that a public officer, in carrying out his duties in the service of the Government, has done an act or made an omission in contravention of Part III, the Authority shall, if the act or omission is not immediately terminated to his satisfaction, report the matter to the Secretary for Works.

(4) On receiving a report under subsection (3), the Secretary for Works shall inquire into the matter and, if his inquiry shows that a public officer is continuing to contravene Part III or is likely to contravene that Part again, the Secretary for Works shall ensure that the best practicable steps are taken to stop the contravention or avoid the recurrence (as the case may be).”

4. Part substituted

Part III is repealed and the following substituted—

“PART III

EXCAVATION IN UNLEASED LAND

8. Interpretation

- (1) For the purpose of this Part and the Schedule—
- “carriageway” (車路) means a street or part of a street over which the public has a right of way for the passage of motor vehicles;
- “initial period” (首段期間) means the initial period mentioned in section 10B(3);
- “street” (街道) includes any slope not used or frequented by the public or to which the public do not have access or are not permitted to have access;