

DRAFT OUTLINE PROCEDURES TO BE ADOPTED BY THE ADMINISTRATION IN CASE OF A REPORT OF CONTRAVENTION BY A PUBLIC OFFICER IS RECEIVED BY THE SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS UNDER SECTION 2A OF THE LAND (MISCELLANEOUS PROVISIONS) (AMENDMENT) BILL 2002 ('the Bill')

APPLICATION OF THE ORDINANCE TO GOVERNMENT DEPARTMENTS

1. Section 2A(1) requires Part III of the Land (Miscellaneous Provisions) (Amendment) [Ordinance] to bind government in so far as it relates to excavations in unleased land which is a street maintained by Director of Highways is concerned.
2. Section 2A(3) provides that the Director of Highways (DH_y), being the 'Authority' in relation to unleased land which is a street maintained by the Highways Department should report to the Secretary for the Environment, Transport and Works (SETW) any act or omission in contravention of Part III of the Ordinance by any public officer, in carrying out his duties in the service of Government. The Authority is required to advise SETW in his report whether the act is continuing or has been terminated to his satisfaction.
3. The contraventions under Part III include:
 - a) Government making or maintaining an excavation without a permit (Section 10(2));
 - b) Government as a permittee, making or maintaining an excavation contravening the permit conditions (Section 10(3)); [Government as represented by a public officer, can be a permittee]; and
 - c) Government as as a permittee, in contravention of section 10Q(1), fails to (a) provide all necessary safety precautions to protect the public or personnel of the excavation from danger or injury; or (b) provide adequate support to adjacent structures etc. to prevent the public or personnel of the excavation endangered or injured by falling or displacement of earth or other materials.

THE AUTHORITY'S (DIRECTOR OF HIGHWAYS) ACTION

4. Where a government department or an individual public officer has been identified to be involved in a contravention, DHy will submit an immediate report to the SETW including details of the incident and evidence indicating that the government department or a particular public officer is responsible. DHy will also state in his report whether or not the contravention has been terminated.

IMMEDIATE CORRECTIVE ACTION

5. Sections 2A(4) and (5) provide for that SETW, on receipt of the report from the Authority, if the act of contravention is reportedly a continuing one, SETW shall investigate to ascertain if the contravention has been stopped, and if it is not stopped, he should take the best practicable steps to stop the contravention.

6. For the purpose of section 2A(5)(a), SETW will follow the following procedures:

- a) Request DHy to provide further evidence if not already provided to his satisfaction in the report;
- b) Request DHy and the public officer or the relevant government department in default to arrange any site visit as necessary to satisfy himself about the facts of the matter;
- c) Discuss with the DHy and the concerned public officer or government department about any corrective measures required to be taken;
- d) Order the immediate implementation of those corrective measures, or otherwise require the implementation of the corrective measures within an agreed shortest specified practicable time (depending on the nature of the contravention) either by the concerned public officer or government department, or where appropriate by the DHy; and
- e) Require the DHy and the defaulting public officer or department to report to him about the completion of the measures.

SUBSEQUENT INVESTIGATION AND PREVENTION OF RECURRENCE

7. Sections 2A(5)(b) and (6) provide for that the SETW, on receipt of the report, irrespective of the act of contravention is a continuing one or has stopped, shall, if he considers that the public officer concerned or any other public officer is likely to commit the like contravention, ensure the best practicable steps are taken to avoid the recurrence of the contravention.

8. For the purpose of implementing the requirement of this part of the legislation, depending on the nature and severity of the contravention, SETW may decide if an independent inquiry is required on the incident, or he may set up internal meetings or hearings to investigate the reported cases himself, provided always that action on section 2A(5)(a) is not to be delayed. The DHy, the concerned public officer or the heads and senior officials of a government department, as the case may be, will be involved in the investigation together with any other concerned parties.

9. SETW will look into, if he is investigating it personally, or require a report from the independent inquiry so set up to report on, the following matters:

- i) background to the incident;
- ii) how can such an incident occur;
- iii) whether it is a defect in procedure, or negligence or incompetence involving any individuals;
- iv) how to make good the defect in procedure and prevent recurrence;
- v) any conflicting views or facts or opinions received;
- vi) who are the individuals involved, their roles and any evidence of personal liability ; and
- vii) how to deal with the individuals, and whether disciplinary action should be called for, what provision under the various rules, and regulations such as CSR, or Public Service (Administration) Order should be potentially applicable.

10. SETW, on satisfying himself about the facts in the report, and where the contravention is likely to be committed by other public officers or government departments, may circulate the appropriate portion of the report

to the relevant departments, without revealing details of the offender or the offending department. The objective is to provide sufficient information to enable departments to avoid committing the same offence in similar situation in future.

DISCIPLINARY ACTION

11. SETW on satisfying himself or from the report by the independent inquiry about the roles of each individual involved, and that there are indeed individuals need to be personally responsible, shall determine the course of disciplinary action to be taken based on (but not limited to) the following factors

- a) nature of the offence and the circumstance surrounding the case;
- b) whether the offence is job-related (eg. abuse of official position);
- c) whether the offence reflects adversely on the officer's integrity;
- d) whether the offence resulted in any financial gain to the officer or financial loss to government;
- e) whether the offence is premeditated and committed with willful intent;
- f) whether the offence is an isolated or a repeated incident or if it is a continuing one;
- g) how detrimental is the consequence;
- h) the officer's position in the civil service;
- i) whether there is other crime committed at the same time (such as accepting bribes);
- j) whether the officer in the course of the investigation admitted his guilt and shown to be cooperative, or whether he prevaricated and obstructed the investigation, or whether he had shown genuine remorse about the offence; and
- k) what is the penalty set for the offence in the ordinance.

Informal Disciplinary Action

12. Considering the various factors, and in particular (k), that is, if the

offence is one of which may result only a fine of level 5 but not prison terms, then, SETW may advise the relevant disciplinary authority (generally, it is the head of a department or bureau, or head of grade) in the civil service to which the officer relates to consider taking informal disciplinary action.

13. Informal disciplinary action can result in a verbal or written warning, and may have effect on the officer's promotion for one year.

Formal Disciplinary Action

14. If the offence is one that may result in a fine of \$200,000 or imprisonment, then SETW may advise the relevant disciplinary authority (it may be the head of the relevant department, Secretary for the Civil Service (SCS), or the Chief Executive himself, depending on the case) to consider formal disciplinary action.

15. The procedures for formal disciplinary action and the punishment that can be inflicted are described in detail in the Public Service (Administration) Order (PSAO) and Public Service (Disciplinary) Regulations.

Other Forms of Action

16. Where it is determined the contravention is one that involves inadequacy in competency, diligence or integrity, consideration should be given to taking action under PSAO section 12 to require the officer to retire in the public interest. Action may also be taken under Civil Service Regulations 451 and 452 to stop or defer any increment to which the officer may be entitled.

17. Where other forms of crime is revealed in the course of investigation, SETW shall report that to the relevant law enforcement authorities.

REGULAR MONITORING

18. For the purpose of the above provisions, the DHy will submit regular reports to the SETW on the general performance of government departments. The report will include some pertinent statistics and details of non-compliance such as severity, frequency of occurrence and reoccurrence, whether contraventions have been terminated and improvement measures

taken.

19. Irrespective of whether particular public officers are identified as directly involved in a contravention, for departments frequently implicated in such offences, the head of the Department involved or any concerned senior officials may be given a personal warning by SETW, and his performance in terms of his ability to control the activities under his responsibilities properly reflected in his performance appraisal report.

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