

(35) to HWF CR 1/4051/05
LS/B/23/04-05
2869 9468
2877 5029

Secretary for Health, Welfare and Food
(Attn : Mr Vincent Liu, PAS(FEH)2)
Health, Welfare and Food Bureau
Food and Environmental Hygiene Division
20/F, Murray Building
Garden Road
Hong Kong

18 May 2005

BY FAX

Fax No. : 2136 3281

Total no(s) of page(s) : (3)

Dear Mr Liu,

Public Health and Municipal Services (Amendment) Bill 2005

Thank you for your reply of 17 May 2005.

We have the following follow-up questions for your clarification:—

Clause 2(a)

Definition of “the appointed contractor”

- (a) Under the Buildings Ordinance (Cap. 123), neither the term “contractors” nor “registered contractors” is defined. According to your reply, in the definition of “the appointed contractor”, the term “contractor” is intended to refer to all contractors registered under the Buildings Ordinance (including “registered general building contractor” and “registered specialist contractor”) in respect of a building site. Would it be appropriate to amend paragraph (a) of the definition of “the appointed contractor” along the following line:—

“the person who is a registered general building contractor or registered specialist contractor appointed in respect of the site in accordance with the Buildings Ordinance (Cap. 123); or”

- (b) According to your reply, the expression “has entered on the site” has the meaning of occupying the site and the term “occupy” is defined under the Interpretation and General Clauses Ordinance (Cap. 1). Under the Interpretation and General Clauses Ordinance, the term “occupy” (佔用) includes use, inhabit, be in possession of or enjoy the land or premises to which the word relates, otherwise than as a mere servant or for the mere purpose of the care, custody or charge thereof. It is noted that the definition of “occupy” is non-exhaustive. Would you give examples to illustrate the appointed contractor having entered on the site within the meaning of “occupy” defined under the Interpretation and General Clauses Ordinance; and examples to illustrate the appointed contractor having entered on the site otherwise than within the meaning of “occupy” defined under the Interpretation and General Clauses Ordinance?

Clause 2(b)(i) and (c)

According to your reply, where the premises are owned by the Government, the notice will be served on specified persons other than the Government. How would the amended section 27(1) and new section 27(1A) operate if the occupier of the premises or the person responsible for the management of the premises occupies or manages the premises in the capacity of a Government official?

Clause 2(c) and (d)

In new sections 27(1B), 27(2B)(a)(i) and (ii), and 27(2B)(b)(i), apart from the application of section 126 of the Public Health and Municipal Services Ordinance (Cap. 132), what other provisions of the Ordinance will also be applicable to the Authority when he is exercising his powers under new section 27(1B), 27(2B)(a)(i) and (ii), and 27(2B)(b)(i)?

Clause 2(e)

- (a) According to your reply, where the premises are owned by the Government, the person whose act, default or sufferance the existence of larvae or pupae on the premises is attributable to may be guilty of an offence provided that the person is not acting in the capacity of a Government official. What would be the sanction against such person who has acted in the capacity of a Government official in contravention of new section 27(3A)?
- (b) In your reply, you specifically points out that even if section 27(3A) is applicable to a building site, this does not exonerate the person whose act, default or sufferance the existence of larvae or pupae on the premises is attributable to. It appears that new section 27(3A) deals with building site;

whereas new section 27(3) deals with premises other than building site.
Would you please elaborate on the point you wish to make in your observation?

It is appreciated your reply in both languages could reach us at your earliest convenience.

Yours sincerely,

(Stephen Lam)
Assistant Legal Adviser

c.c. DoJ (Attn: Mr Alan Chong, GC) (Fax No. 2869 1302)
LA
CCS(2)5