

Energy Efficiency (Labelling of Products) Bill

The Administration's response to Action Items of the Bills Committee meeting on 6 December 2007

Time limit for prosecution of summary offences

Under section 26 of the Magistrate Ordinance (Cap. 227), in any case of an offence, other than an indictable offence, where no time is limited by any enactment for making any complaint or laying any information in respect of such offence, such complaint shall be made or such information shall be laid within 6 months from the time when the matter of such complaint or information respectively arose.

2. Since for some of the offences under the Energy Efficiency (Labelling of Products) Bill (the Bill), prosecution can only be initiated until the completion of certain tests which may take a year or more, we propose to make it clear that the 6-month time limit counts from the commission of the offence or from the offence being discovered or coming to the notice of the Director.

3. Examples of other Hong Kong Laws that extend the usual 6-month time limit include section 21A of the Hotel and Guesthouse Accommodation Ordinance (Cap. 349); section 22 of the Drug Dependent Persons Treatment and Rehabilitation Centres (Licensing) Ordinance (Cap. 566); section 82 of the Merchant Shipping (Local Vessels) Ordinance (Cap. 548); and section 120A of the Copyright Ordinance (Cap. 528).

Testing arrangements under clause 27 of the Bill

4. Clause 27 empowers the Director of Electrical and Mechanical Services (the “Director) to require testing if he has reasonable grounds to suspect that a product does not conform with the test results submitted to the Director. In light of the comments of the Bills Committee, the Electrical and Mechanical Services Department (the EMSD) will include in its codes of practices arrangements on compliance monitoring testing, including that the EMSD will bear the cost of testing in its routine monitoring, whereas specified persons will bear the cost of testing conducted under clause 27.

The Chinese rendition of clause 28 of the Bill

5. We will propose amendments to the Chinese rendition of “collect” in clause 28 to achieve consistency.

Compensation for seizure and detention of products

6. According to the Department of Justice, the jurisdiction of the Small Claims Tribunal and the District Court under clause 31(3) of the Bill is non-exclusive. As a matter of right, the relevant person may choose to make a claim for compensation in higher levels of courts. Therefore, the court will unlikely penalize him in costs for having opted to make the claim in a higher court in the exercise of his legal right. The department also advises that the court will take into account relevant factors in the exercise of its discretionary power to award costs.

7. The arrangement under clause 31(3)(b) is to provide the claimant with an option to make claims for compensation at a lower court in which proceedings held may involve lower legal costs. Such arrangement is also found in other statutory provisions, such as section 25A of the Electricity Ordinance (Cap. 406) and section 32 of the Consumer Goods Safety Ordinance (Cap. 456).

8. Under clause 31(1), the onus is on the owner to prove to the court the loss he suffered as a result of the seizure or detention. The claimant may therefore prove to the court that the relevant transportation cost is a loss consequent to the seizure or detention.

Appeal to appeal board

9. In light of the comments of the Bills Committee, EMSD will include in its codes of practices the broad principles that the Director will take into account in deciding whether or not to suspend his decisions that are under appeal, such as the nature of the contravention and the impact of the non-compliance on the public.

How an appeal is to commence

10. Under clause 33(2)(a), a notice of appeal is to be lodged within

14 days of the date on which the relevant person has been notified of the decision or direction he intends to appeal against. The appellant will be notified of the decision or direction by a notice served on him. According to the advice of the Department of Justice, clause 33 should be read in conjunction with clause 46. The person should be considered as having been notified once a notice of the decision or direction is duly served on him in accordance with clause 46.

Appointing a legal professional to the appeal board

11. The subject matters against which appeals can be made are specified in clause 32(1), namely, decisions to refuse to assign a reference number, to issue an improvement notice, to serve a prohibition notice and to remove a reference number from the record, as well as the direction specified in an improvement notice. Under clause 37(4) of the Bill, a legal adviser may be present at any proceedings before the appeal board to advise it on any matter.

12. The subject of an appeal is normally technical in nature. We are of the view that the chairman of the appeal board, with the assistance of other members from the various sectors specified in clause 34 and the legal adviser, should be able to perform the functions of a chairman.

13. Examples of other appeal boards not chaired by a legal practitioner include those established under the Gas Safety Ordinance (Cap. 51), the Electricity Ordinance (Cap. 406), the Lifts and Escalators (Safety) Ordinance (Cap. 327).

Proceedings before the appeal board

14. As the subject matter of an appeal may involve commercially sensitive information relating to a prescribed product, including the production and technical design of the product, we consider that meetings of the appeal board under clause 35 may have to be held in camera under certain circumstances. We therefore propose to amend clause 35 to make it clear that the appeal proceedings are open to the public and to provide the appeal board with a discretion to allow an appeal proceeding on certain part of an appeal proceeding to be held in camera.

15. Examples of Hong Kong Laws that conduct hearings or appeals

partly or wholly in camera include section 62 of the Education Ordinance (Cap. 279), section 19 of the Medical Practitioners (Registration and Disciplinary Procedure) (Cap. 161E), section 9 of the Judicial Officers (Tribunal) Rules (Cap. 433A).

Environment Bureau

Electrical and Mechanical Services Department

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