

Panel on Administration of Justice and Legal Services

Information Paper for Meeting on 15 December 2009

Drafting of Legislation

Drafting-related initiatives for improving the quality of legislation

Access to Legislation

Professional development of counsel

Introduction

This paper informs Members of the Panel of the recent steps taken by the Law Drafting Division to improve the quality of and accessibility to Hong Kong legislation and the Division's continuing initiatives for the professional development of counsel.

2. The overall objectives are to improve the readability and comprehensibility of the laws of Hong Kong and to deliver a more effective and efficient drafting service. A number of initiatives have already been implemented. In addition, there are projects in the planning stage or under active consideration.

Plain language drafting: initiatives related to drafting practices and document design

3. The Law Drafting Division remains strongly committed to plain language drafting and to making the law more accessible. As Members would be aware, plain language is not confined to short sentences and simplified language. It covers a wide range of practices and techniques, including vocabulary, syntax, structure, document design and reader aids¹.

4. We are systematically examining our drafting practices, primarily to consider how the comprehensibility and the quality of the English and the Chinese texts can be improved. As a first step, a Divisional committee, the Drafting Techniques and Legislative Styles Committee, was established to

¹ Description of plain language in the paper "**Some Implications of Plain Language Drafting**" delivered by Professor Ruth Sullivan of the Law Faculty, University of Ottawa, at the conference "Legislative Drafting: Emerging Trends" (6-7 October 2000, Dublin); also published as an article in *Statute Law Review*, Volume 22, page 145.

review current drafting practices. As a result of this ongoing review, a number of changes to our drafting styles and practices have been introduced. A new practice is implemented only after internal discussion, first by the Committee, and then at a meeting of all counsel of the Division.

5. It is important to note that the purpose of introducing these text-based plain language drafting techniques is not to bring about changes of substance but to improve readability and facilitate the clearer understanding of legislation. They are essentially style-oriented guidelines and rules, designed to make formal improvements to the text without compromising or affecting its accuracy, meaning or legal effect. This is the principle on which new practices will be applied to both new legislation and amending legislation. In view of our practice of making textual amendments to existing legislation, if the new practices were to be confined to new legislation, it would be many years before the use of plain language principles would have any discernible effect on our legislation.

6. For the Panel's information, some of the more significant changes are described below.

7. **Use of “must” instead of “shall”** – A change that has already been implemented is the use of “must” to impose an obligation in place of “shall”. Consequently, “must not”, instead of “shall not” and “no person shall”, will be used to impose a prohibition. This new style is now used in all new legislation. It is also adopted when amending existing legislation. We are confident that the use of “must” to impose an obligation in an enactment in which “shall” has been used for the same purpose will not lead to an interpretation that “shall” has a different legal effect from “must” or vice versa. There are existing Ordinances in which both “shall” and “must” have been used to impose an obligation and we are not aware that this has caused any problems in interpretation². The modern trend to use “must” instead of “shall” to impose an obligation is a widely known plain language practice of which courts, lawyers and others involved in legislation would be aware. We would however look for opportunities in amending exercises to change “shall” to “must” (especially in provisions in the proximity of those in which “must” is used), for the sake of tidiness.

² e.g. Mandatory Provident Fund Schemes Ordinance (Cap. 485); Arbitration Ordinance (Cap. 341)

8. The main argument for using “must” is that it is more in line with a modern, plain language approach to law drafting. Also, many consider that using “shall” to indicate the imperative mood could be ambiguous as it is commonly understood in ordinary language as a way of making a statement about the future. In contrast, “must” has the advantage of being a term that plainly denotes, and is recognized in ordinary usage as denoting, an obligation. The use of “must” to impose an obligation is not new to Hong Kong legislation³.

9. Another benefit of dropping “shall” is averting its misuse (for e.g. its use in descriptive and declaratory provisions) and avoiding any doubt whether it is used in a temporal sense.

10. Some common law jurisdictions (e.g. Australia, New Zealand) have discarded “shall” in favour of “must” to impose an obligation. Jurisdictions like the United Kingdom⁴ and USA, which have been slower to embrace “must”, are now using it increasingly. The Department of Justice of Canada is currently reviewing its policy on the use of "shall" and is apparently well on the way to adopting the policy of using "must" and not "shall" in mandatory provisions.

11. In the past, a rather artificial distinction between “shall” and “must” was made in the Chinese text by adopting “須” and “必須” as the respective Chinese equivalents. With the adoption of “must” in the English text, “須” will be used as the standard Chinese equivalent. No interpretation problem is perceived.

12. **Gender-neutral drafting** – The Law Drafting Division has now adopted a policy of gender-neutral drafting. The use of language with a gender-bias is outdated and might even be viewed as discriminatory. Many consider that the

³ An example from existing legislation is the Mandatory Provident Fund Schemes Ordinance (Cap. 485). Section 7A(2) of this Ordinance came under judicial consideration in the CFI case of **HKSAR vs CNT Security Company Limited (Magistracy Appeal No. 887 of 2006)**. Lunn J “Section 7A(2) of the Ordinance is perfectly clear and simple. It states “*An employer.... must ... contribute*”. Subsection (3) provides “... *the amount to be contributed by an employer... is*”. Clearly, the effect of those provisions is to impose upon the employer a duty to make the required payment as calculated by reference to the appropriate percentage of the employee’s ‘relevant income’.”

⁴ The recommendations can be found at (<http://www.cabinetoffice.gov.uk/media/190076/shall>), referred to in footnote 2.

use of gender-specific language reinforces gender stereotypes. A gender inclusive policy recognizes that the language of the law needs to be sensitive to the beliefs and attitudes of the readers. There is also a wider aim; it improves comprehensibility⁵. Using the masculine gender to include the feminine can present an obstacle to clearer understanding for those unfamiliar with this drafting policy⁶; it is questionable whether in modern society anyone believes that “he” functions as a generic pronoun to include “she”. Some common law jurisdictions (e.g. Australia, Canada, New Zealand, Ireland) have pursued a gender-neutral drafting policy for several years now. Other jurisdictions (e.g. England⁷, Scotland, Wales) are now increasingly practising gender-neutral drafting. A policy of gender-neutral drafting would also be in tune with the gender mainstreaming policies of the Government⁸.

13. There are many techniques to achieve gender-neutrality and we will adopt the technique that would have the minimum effect on brevity and intelligibility in the particular context. Gender-neutral drafting will be used in all new legislation. In amending legislation it will be used in a way that would not have an impact on the existing text.

14. Gender-neutrality has no significant implications for Chinese drafting. If the English text uses a noun to achieve gender neutrality (e.g. “Director” instead of “he”), the Chinese text can follow suit. However, the character “他” is more gender-neutral compared to “he”. For example, “他們” is used for a group of people of both sexes. Therefore, if no interpretation problem is likely to arise in the particular context, “他們” and “他” may continue to be used as they are suitable and concise.

⁵ “New Zealand and Australia were probably the first English-speaking countries to embrace the principle of gender-neutral drafting as one of the techniques of applying Plain Language to the way laws were written. (The End of the ‘Masculine Rule’? Gender-Neutral Legislative Drafting in the United Kingdom and Ireland. by Christopher Williams, Statute Law Review, Volume 29.)

⁶ As Members would be aware, section 7 of the Interpretation and General Clauses Ordinance (Cap. 1) does not *require* the use of “he”.

⁷ On 8 March 2007, on International Women’s Day, the UK Government gave an official pledge to implement a gender-neutral policy in legislation. Meg Munn, the Minister for women, and the instigator of the change – “It may seem a small thing in one sense, but language is important. We have a society in which we believe men and women are equal, so why shouldn’t the law refer to us equally? Many other English-speaking countries do so already. It is really outdated to have language which refers to ‘he’ when it means women as well. Most people would see this as a normal, sensible way forward”.

⁸ In the Gender Mainstreaming Checklist for Legislation, Public Policies and Programmes recommended by the Women’s Commission in its 2006 Report (Gender Mainstreaming – Hong Kong Experience), item 27 is “Gender-sensitive language” - Is gender neutral/sensitive language used throughout the legislation/public policy/programmes/press releases or any other related official document?”

15. **Harmonising the way in which legislation is drafted** – Clearly, stylistic uniformity and consistency in the use of language enhance comprehensibility. Therefore, guidelines are being put in place to promote the use of standard styles and a more uniform use of language⁹. To this end, we are reviewing certain types of provisions, to recommend, in each case, a model style. (Examples are provisions that specify statutory time limits; incorporate definitions by reference; create a right of appeal to the Administrative Appeals Board). However, these would be guidelines for good practice rather than rigid, prescriptive, rules as it is difficult to predict all the scenarios that a drafter could face. Also, it is important to leave the drafter with some flexibility to decide how best to achieve the legislative objective clearly and effectively in a given context. Another project that is under active consideration is developing model clauses for standard provisions, as far as it is possible to do so within policy constraints.

16. **Use of certain words and expressions** – The use of expressions such as “Unless the context otherwise requires”, “Unless the contrary intention appears”, “Where the context admits” will be discontinued. They are considered unnecessary as words and expressions are understood in their context even without this express qualification. Also, from a reader’s perspective, these expressions introduce an element of uncertainty into the text. If a defined term is used in an undefined sense in any context, and a contrary intention is not sufficiently clear, the user-friendly alternative is to indicate that by some specific means (e.g. excluding it from the general definition; using a different term).

17. Modern alternatives or plain language equivalents will be adopted for certain words and expressions often used in legislation; e.g. “despite” instead of “notwithstanding”, “given by” or “has” in place of “assigned” and “ascribed” in referential definitions, and as far as possible, “for” instead of “in the case of” and “if” instead of “where”. A more restrictive approach will be adopted in the use of expressions that can detract from clarity, such as “as the case may be”, “as may be appropriate”, “as may be applicable”, “whichever is applicable” and “as the case requires”. An alternative approach would be to use a drafting

⁹ In the initial stages of the transition from old styles to plain language – driven new styles there could be some inconsistencies in style and language.

technique that dispenses with the need for these expressions. The use of archaic words will be abandoned altogether. The use in the English text of words and expressions that could cause problems for the Chinese text will be avoided.

18. **Cross-headings**¹⁰ – The use of cross-headings, which are difficult to refer to in amending legislation, will be discontinued and they will be replaced by numbered Divisions and subdivisions with titles.

19. **Cross-references** – The use of cross-references will be limited to cases where their absence could create an ambiguity. The reduced use of cross-references will enhance clarity as they disturb the flow of the text and can sometimes distract more than assist the reader.

20. **Reader aids** – The use, where appropriate, of reader aids such as notes and examples will be encouraged. An ordinance-specific interpretation provision to clarify their status will be included in contexts in which clarification is required, while the question of a provision of general application is being considered.

21. **Initiatives to improve the readability of the Chinese-text** – Using shorter sentences is the key to the readability of the Chinese text. We will avoid long sentences and, for that purpose, practise greater flexibility as regards sentence structure so that the Chinese provisions are more readily comprehensible. Further, the effect of the techniques adopted to enhance comprehensibility and readability of the English text would be reflected in the Chinese text. However, ensuring that there is no discrepancy in meaning (whether actual or perceived) between the two texts remains our primary concern.

22. **Document design** – As a good document design will aid in clearer communication, We have been reviewing the format and visual aspects of our legislation. We have examined the design of legislation in other common law jurisdictions and also considered the possibilities now available to us with new word processing and printing technology. The outcome is that we propose to

¹⁰ A cross-heading is an un-numbered centrally aligned heading under which a group of related provisions are arranged.

make changes to the format and visual design of our legislation to make it more user-friendly and attractive. A mock-up copy of a Gazette version of a Bill for a new Ordinance and of an amending Bill, printed in the proposed new format, is attached for Members' information. The proposed changes will assist the reader to identify the location of and relationship between provisions more easily. The changes also aim at reducing eye strain by a better deployment of blank space and the use of a larger font. It is expected that the new document design and the style changes associated with it will play a key role in modernising the appearance of our legislation.

23. **Editorial powers** – On the implementation of the new document design, in order to achieve uniformity within the statute book, there is likely to be a need to strengthen the editorial powers relating to the production of the loose-leaf edition of the laws. Consideration is now being given to the kind of editorial powers that will be needed to reconcile divergent forms in the new design environment and, in addition, to effect clerical and textual improvements. Naturally, if granted, these editorial powers would only be exercised subject to the fundamental principle that the legal effect will not be altered.

Other initiatives

24. **Legislative Editor (English text)** – The Law Drafting Division has recently engaged the services of a Legislative Editor (English text). The Legislative Editor will be responsible for examining the English text to ensure grammatical accuracy, and where standardization has been recommended, uniformity of style and consistency in language use. A style and grammar audit of this nature is best conducted from a centralised position and by a person with professional expertise in the English language, and it is expected that the Legislative Editor will fulfil this important task.

25. **Special review-related tasks** – As we intend to pursue an ongoing process of reviewing and refining our drafting practices, the Division has appointed on contract terms an experienced drafting counsel, whose duties include responsibility for projects designed to advance the initiatives outlined in this paper and identifying other areas for review. Some of the specific duties are developing standard clauses and conducting the necessary background research, reviewing and updating internal drafting rules and guidelines,

preparing a version of those for public release and undertaking Divisional knowledge sharing initiatives, including the consolidation of professional and operational advice into a systematic and readily accessible form for internal reference.

26. **Style guide for non-Government legislation** – The Law Draftsman’s certificate that has to accompany a non-Government Bill attests compliance with requirements as to the “Form of Bills” (Rules 50 and 51(2) of the LegCo Rules of Procedure) and the “general form” of Hong Kong legislation (Rule 51(2)). There is no such formal role for the Law Draftsman with regard to non-Government subsidiary legislation, but the established practice is to send draft subsidiary legislation to the Law Drafting Division for vetting. The integrity of the statute book is best preserved and the Law Draftsman’s role as the keeper of the statute book is best fulfilled if standard conventions of style (whether or not they are matters of “form” referred to in the Rules) are adhered to even in non-Government legislation. This issue is now under consideration. Meanwhile, to assist in the preparation of non-Government legislation, it is proposed to publish a style guide setting out drafting standards and stylistic conventions observed by this Division.

Access to legislation

27. We have been actively exploring ways to further improve public access to our legislation. For this purpose, the Department of Justice has engaged a professional consultancy firm to conduct a feasibility study into the establishment and maintenance of a verified and authenticated electronic database of Hong Kong legislation and the continued publication of the Loose-leaf Edition of the Laws of Hong Kong (or other hardcopy version) with source data from the database. In September 2009, one of our counsel, together with 2 members of the Information Technology Management Unit of the Department of Justice, visited several drafting offices in Australia and the drafting office of New Zealand, to learn from the experience of those jurisdictions in implementing an electronic database of legislation with official status. The information and insight gained from this visit would be of great value in planning any project for establishing an official database of Hong Kong legislation. The feasibility study is expected to be completed by January 2010. We will brief the Panel should a decision be taken to establish such a database.

Professional development of counsel

28. The professional development of counsel has always been a high priority for this Division. The Mentorship Scheme, under which each counsel in the Senior Government Counsel or Government Counsel rank, is assigned to a mentor at the directorate level, continues in operation and plays a significant role in the training of counsel.¹¹

29. Structured and comprehensive training in legislative drafting is also a key element of professional development. Last year, 6 counsel of the Division of the rank of SGC and GC attended an intensive in-house legislative drafting course that lasted for 24 weeks, from 13 May 2008 to 10 December 2008. Further, a series of internal workshops and seminars are currently being conducted for instruction in the principles and mechanics of plain language drafting.

30. Participation in International Drafting conferences presents counsel with valuable opportunities to broaden their exposure and share experiences with, and learn from the experiences of, their counterparts in other parts of the world. The Conference of the Commonwealth Association of Legislative Counsel 2009, which was held in Hong Kong from 1-3 April 2009, offered a unique opportunity for counsel at every level of experience to exchange views and ideas and network with legislative drafters from many jurisdictions. It was a highly successful conference with an attendance of about 150 and was a stimulating and instructive experience for the participants.

31. As information technology is now an integral aspect of the work of any drafting office, participation in legislative drafting IT forums is also a highly beneficial experience for the staff of the Division. In the field of publication of legislation, a new generation of technology has emerged that can meet the functional needs of the legislative-publishing process with much increased efficiency. It is extremely useful for this Division to have access to the progress made by drafting offices that have successfully employed these advanced publishing systems. Two counsel from this Division recently visited the Parliamentary Counsel Office of New South Wales, the Office of

¹¹ Panel Members were informed about the history and operation of this Scheme by an Information paper submitted in April 2006 (LC Paper No. CB(2) 1755/05-06(03)).

Parliamentary Counsel of the Australian Government and the Parliamentary Counsel Office of the Australian Capital Territory. They also attended a Parliamentary Counsel IT forum, held in Australia, with representatives (including 6 heads of drafting offices) from the drafting offices in Australia, New Zealand, the United Kingdom and Vanuatu. The entire experience has been highly productive, particularly from a Divisional perspective, as we face similar challenges as these jurisdictions. What has been evident is that a wise use of modern information technology can greatly enhance drafting effectiveness and efficiency and improve public access to legislation.

Briefing the legal professional bodies

32. Representatives of the Law Society and the Bar Association have been given a general briefing on the drafting-related initiatives and proposals related to access to legislation discussed in the information paper.

Law Drafting Division
Department of Justice
December 2009

本條例草案

旨在

推行措施，將若干種類產品對環境的影響盡量減低；並就相關事宜訂定條文。

由立法會制定。

第1部

導言

1. 簡稱及生效日期
 - (1) 本條例可引稱為《產品環保責任條例》。
 - (2) 本條例自環境局局長以憲報公告指定的日期起實施。
2. 本條例的目的
 - (1) 本條例的目的是—
 - (a) 將不同種類產品對環境的影響盡量減低，有關產品的種類可包括塑膠購物袋、車輛輪胎、電器及電子設備、包裝物料、飲品容器及可重複充電式電池；及

A BILL

To

Introduce measures to minimize the environmental impact of certain types of products; and to provide for related matters.

Enacted by the Legislative Council.

Part 1

Preliminary

1. **Short title and commencement**
 - (1) This Ordinance may be cited as the Product Eco-responsibility Ordinance.
 - (2) This Ordinance comes into operation on a day to be appointed by the Secretary for the Environment by notice published in the Gazette.
2. **Purposes of this Ordinance**
 - (1) The purposes of this Ordinance are—
 - (a) to minimize the environmental impact of various types of products, which may include plastic shopping bags, vehicle tyres, electrical and electronic equipment, packaging materials, beverage containers and rechargeable batteries; and

- (b) 為達致上述目標而推行生產者責任計劃或其他措施，規定製造商、進口商、批發商、零售商、消費者或任何其他人分擔減少使用該等產品的責任，以及分擔回收、循環再造及妥善處置該等產品的責任。
- (2) 上述計劃或措施可包括(但不限於)以下各項—
- (a) 推行產品回收計劃，規定製造商、進口商、批發商或零售商回收若干產品，以作妥善的廢物處理；
 - (b) 推行按金退還計劃，規定消費者繳付按金，而該按金須於將若干產品交回指明回收點時退還；
 - (c) 徵收循環再造費用，為對若干產品實行妥善的廢物處理提供資金；
 - (d) 徵收環保徵費，以降低使用若干產品的動機；及
 - (e) 限制於《廢物處置(指定廢物處置設施)規例》(第 354 章，附屬法例 L)第 2 條所界定的指定廢物處置設施處置若干產品。

3. 釋義

(1) 在本條例中，除文意另有所指外—

局長(Secretary)指環境局局長；

訂明產品(prescribed product)指第 4 條所述的任何產品；

產品(product)包括任何物品、物料及物質；

塑膠購物袋(plastic shopping bag)指本條例按照第 18 條所適用的塑膠購物袋；

- (b) to that end, to introduce producer responsibility schemes or other measures that may require manufacturers, importers, wholesalers, retailers, consumers or any other parties to share the responsibility for the reduction in the use, and the recovery, recycling and proper disposal, of those products.
- (2) Such schemes or measures may include (but are not limited to) the following—
- (a) a product take-back scheme under which a manufacturer, importer, wholesaler or retailer is required to collect certain products for proper waste management;
 - (b) a deposit-refund scheme under which a consumer is required to pay a deposit to be refunded on the return of certain products to a specified collection point;
 - (c) the imposition of a recycling fee to finance the proper waste management of certain products;
 - (d) the imposition of an environmental levy to discourage the use of certain products; and
 - (e) the restriction on the disposal of certain products at any designated waste disposal facility as defined in section 2 of the Waste Disposal (Designated Waste Disposal Facility) Regulation (Cap. 354 sub. leg. L).

3. Interpretation

(1) In this Ordinance, unless the context otherwise requires—

authorized officer (獲授權人員) means a public officer authorized under section 6;

Director (署長) means the Director of Environmental Protection;

plastic shopping bag (塑膠購物袋) means a plastic shopping bag to which this Ordinance applies according to section 18;

prescribed product (訂明產品) means any product mentioned in section 4;

署長 (Director)指環境保護署署長；

獲授權人員(authorized officer)指根據第 6 條獲授權的公職人員。

- (2) 在本條例中，除文意另有所指外—
- (a) 凡提述任何產品，即包括提述該產品的任何部分；
 - (b) 凡提述職能，即包括提述權力及責任；及
 - (c) 凡提述執行職能，即包括提述行使權力及履行責任。
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product (產品) includes any article, material and substance;

Secretary (局長) means the Secretary for the Environment.

- (2) In this Ordinance, unless the context otherwise requires—
- (a) a reference to any product includes a reference to any part of the product;
 - (b) a reference to a function includes a reference to a power and a duty; and
 - (c) a reference to the performance of a function includes a reference to the exercise of a power and the discharge of a duty.
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第2部

訂明產品：一般條文

第1分部

適用範圍

4. 第2部所適用的訂明產品
本部就以下任何產品而適用：塑膠購物袋。

第2分部

規例：一般權力

5. 關於根據本條例訂立的規例的一般條文
- (1) 根據本條例任何條文訂立的規例，可具有以下所有或任何效力—
- (a) 一般地適用，或參照指明的例外情況或因素而在適用範圍方面受到限制；
 - (b) 就不同情況訂立不同條文，及就個別個案或個別類別的個案作出規定；
 - (c) 賦權局長或署長，在一般情況下或個別個案中授予豁免，使獲豁免者無須遵從任何規定；

Part 2

Prescribed Products: General Provisions

Division 1

Application

4. Prescribed products to which Part 2 applies
This Part applies in relation to any of the following products, namely, plastic shopping bags.

Division 2

Regulations: General Powers

5. General provisions as to any regulation made under this Ordinance
- (1) A regulation made under any provision of this Ordinance may do all or any of the following—
- (a) apply generally or be limited in its application by reference to specified exceptions or factors;
 - (b) make different provisions for different circumstances and provide for a particular case or class of cases;
 - (c) empower the Secretary or Director to grant exemptions from any requirement, either generally or in a particular case;

- (d) 就署長或獲授權人員執行在該規例下的職能，訂定條文；
 - (e) 授權將任何事宜或事情交由指明的人或一組人士決定、施行或管理；
 - (f) 訂明根據本條例須以規例訂明或准許以規例訂明的任何事宜；
 - (g) 訂定為貫徹執行本條例條文的目的是而屬必需或合宜的附帶、相應、關於證據的、過渡性、保留及補充條文；
 - (h) 概括而言為更有效施行本條例的條文和更有效達致本條例的目的而訂定條文。
- (2) 規例可將任何人作出或不作出任何指明作為，定為罪行，並可授權—
- (a) 就該罪行處以不超過\$500,000的罰款；
 - (b) 就屬持續性質的罪行持續期間的每日(不足一日亦作一日計)，另處罰款\$10,000；及
 - (c) 判處不超過12個月的監禁。

第3分部

執法

6. 獲授權人員

- (1) 署長可藉書面授權任何公職人員，執行署長在授權書內指明的署長或公職人員在本條例下的任何職能。

- (d) provide for the performance by the Director or an authorized officer of any function under the regulation;
 - (e) authorize any matter or thing to be determined, applied or administered by a specified person or group of persons;
 - (f) prescribe any matter that by this Ordinance is required or permitted to be prescribed by a regulation;
 - (g) provide for such incidental, consequential, evidential, transitional, savings and supplemental provisions as are necessary or expedient for giving full effect to the provisions of this Ordinance;
 - (h) generally provide for the better carrying out of the provisions and purposes of this Ordinance.
- (2) A regulation may make it an offence for a person to do or omit to do any specified act and may authorize—
- (a) the imposition of a fine, not exceeding \$500,000, for such an offence;
 - (b) if the offence is a continuing one, the imposition of a further fine of \$10,000 for each day or part of a day during which the offence has continued; and
 - (c) the imposition of a sentence of imprisonment for a period of not more than 12 months.

Division 3

Enforcement

6. Authorized officers

- (1) The Director may, in writing, authorize any public officer to perform any of the functions of the Director or an authorized officer under this Ordinance as the Director may specify in the authorization.

- (2) 獲授權人員在根據本條例執行職能時，如遇到要求，須應要求出示根據本條批予他的授權書。
- (3) 根據本條例執行職能的獲授權人員，可帶同他合理所需的人，以協助他執行該職能。

7. 取得資料及樣本的權力

- (1) 獲授權人員可就根據本條例規定由某人備存的紀錄或文件，作出以下所有或任何事情—
 - (a) 要求該人出示該紀錄或文件，以供查閱；
 - (b) 要求該人提供關於該紀錄或文件的一切合理協助、資料或解釋；
 - (c) 移走及在合理地需要的期間內保留該紀錄或文件，以作進一步查驗或複製，或在根據本條例進行的有關法律程序已獲聆訊和最終裁定之前，保留該紀錄或文件。
- (2) 如獲授權人員合理地相信，某人管有關於根據本條例徵收的任何徵費或費用的資料，該人員可要求該人提供該資料。
- (3) 在符合第(4)款的規定下，獲授權人員可為確定本條例任何條文是否遭違反，而取去任何產品的樣本。
- (4) 如合法保管上述產品的人作出要求，獲授權人員須—
 - (a) 就他擬取去的樣本，繳付市價；或

- (2) When performing a function under this Ordinance, an authorized officer must, if required, produce his written authorization granted under this section.
- (3) An authorized officer performing a function under this Ordinance may take with him such persons as he reasonably requires to assist him in the performance of the function.

7. Powers to obtain information and samples

- (1) An authorized officer may, in relation to any record or document required to be kept by a person under this Ordinance, do all or any of the following—
 - (a) require the person to produce the record or document for inspection;
 - (b) require the person to provide all reasonable assistance, information or explanations in connection with the record or document;
 - (c) remove and retain the record or document for such period as may be reasonably necessary for further examination or reproduction, or until the relevant proceedings under this Ordinance have been heard and finally determined.
- (2) If an authorized officer reasonably believes that information relating to any levy or fee imposed under this Ordinance is possessed by a person, the officer may require the person to provide the information.
- (3) Subject to subsection (4), an authorized officer may take samples of any products for the purpose of ascertaining whether any provision of this Ordinance is contravened.
- (4) If required by the person having the lawful custody of such products, the authorized officer shall pay for—
 - (a) the market price of the samples he proposes to take; or

- (b) (如市價不詳或並非可輕易確定)為該等樣本繳付一個合理價錢。
- (5) 為免生疑問，任何人如因披露根據本條例他須提供的任何資料而違反保密責任，均不須為此負上法律責任。
- (6) 除非獲授權人員信納，為根據本條例進行的法律程序的目的，有需要披露根據本條向他出示或交出的紀錄、文件或資料，否則不得作出該項披露。
- (7) 在本條中，凡提述某人，即包括提述為該人或代該人行事的人。

8. 進入及搜查的權力

- (1) 在第(2)款的規限下，獲授權人員如合理地相信有以下情況，可進入及搜查某地方—
 - (a) 有人已於或正於該地方犯違反本條例的罪行；或
 - (b) 在該地方有任何物品構成證據或相當可能構成證據，證明有人已經或正在犯違反本條例的罪行。
- (2) 獲授權人員除非獲得住用處所佔用人或掌管人同意，否則不得在沒有裁判官發出的手令的情況下進入或搜查該處所。
- (3) 裁判官只可在以下情況下發出手令，授權獲授權人員進入及搜查住用處所—
 - (a) 裁判官按經宣誓而作的告發，信納有合理理由懷疑—
 - (i) 有人已於或正於該處所犯違反本條例的罪行；或

- (b) if the market price is unknown or not readily ascertainable, a reasonable price of those samples.
- (5) For the avoidance of doubt, a person is not liable for breach of any duty of confidentiality arising from the disclosure of any information that he is required to provide under this Ordinance.
- (6) An authorized officer must not disclose any record, document or information produced or provided to him under this section unless he is satisfied that it is necessary to make the disclosure for the purposes of any proceedings under this Ordinance.
- (7) In this section, a reference to a person includes a reference to anyone acting for or on behalf of the person.

8. Power of entry and search

- (1) Subject to subsection (2), an authorized officer may enter and search a place if he reasonably believes that—
 - (a) an offence against this Ordinance has been or is being committed in the place; or
 - (b) there is in the place anything that constitutes, or is likely to constitute, evidence that an offence against this Ordinance has been or is being committed.
- (2) Except with the consent of the occupier or person in charge of any domestic premises, an authorized officer shall not enter or search those premises without a warrant issued by a magistrate.
- (3) A magistrate may issue a warrant authorizing an authorized officer to enter and search any domestic premises only if—
 - (a) the magistrate is satisfied by information on oath that there are reasonable grounds for suspecting that—
 - (i) an offence against this Ordinance has been or is being committed in the premises; or

- (ii) 在該處所有任何物品構成證據或相當可能構成證據，證明有人已經或正在犯違反本條例的罪行；及
- (b) 裁判官信納—
 - (i) 與有權批准進入該處所的人聯絡並非切實可行；
 - (ii) 該人曾不合理地拒絕獲授權人員進入該處所；
 - (iii) 獲授權人員有合理理由意恐除非有手令發出，否則相當不可能獲批准進入該處所；或
 - (iv) 除非獲授權人員到達該處所時，能立即進入該處所，否則進入該處所的目的會受到妨害。
- (4) 根據本條進入任何地方的獲授權人員如憑手令進入該地方，須出示該手令。
- (5) 凡為某目的而有必要進入處所，根據本條發出的手令持續有效，直至該目的已達到為止。
- (6) 根據本條進入某地方的獲授權人員可作出以下所有或任何事情—
 - (a) 要求在該地方的任何人，提供為使該人員能根據本條例執行其職能而屬必要的協助或資料；
 - (b) 檢取該人員合理地相信屬犯本條例所訂罪行的證據的物件；
 - (c) 在合理地需要的期間內，保留任何物件，以作進一步查驗或複製，或在根據本條例進行的有關法律程序已獲聆訊和最終裁定之前，保留該物件。

- (ii) there is in the premises anything that constitutes, or is likely to constitute, evidence that an offence against this Ordinance has been or is being committed; and
- (b) the magistrate is satisfied that—
 - (i) it is not practicable to communicate with a person entitled to grant entry to the premises;
 - (ii) such a person has unreasonably refused entry to the premises by an authorized officer;
 - (iii) an authorized officer apprehends on reasonable grounds that entry to the premises is unlikely to be granted unless a warrant is issued; or
 - (iv) the purpose of entry to the premises would be prejudiced unless an authorized officer arriving at the premises can secure immediate entry.
- (4) An authorized officer who enters any place under this section must, if entry is by warrant, produce that warrant.
- (5) A warrant issued under this section continues in force until the purpose for which the entry is necessary has been satisfied.
- (6) An authorized officer who enters a place under this section may do all or any of the following—
 - (a) require any person present at the place to provide such assistance or information as may be necessary to enable the officer to perform his functions under this Ordinance;
 - (b) seize any thing that the officer reasonably believes to be evidence of the commission of an offence under this Ordinance;
 - (c) retain the thing for such period as may be reasonably necessary for further examination or reproduction, or until the relevant proceedings under this Ordinance have been heard and finally determined.

(7) 除非獲授權人員相信若於合理時段執行他在本條下的職能，可能令他執行職能的目的不能達到，否則獲授權人員必須於合理時段執行該等職能。

(8) 在本條中—

地方(place)包括任何車輛及船隻；

任用處所(domestic premises)指供居住而建造或擬作居住之用的任何處所。

第4分部

罪行

9. 提供虛假資料等

- (1) 任何人出示或交出在要項上屬虛假、不正確或具誤導性的紀錄、文件或資料，充作遵守本條例，即屬犯罪，一經定罪，可處罰款\$200,000及監禁6個月。
- (2) 被控犯第(1)款所訂罪行的人如證明—
 - (a) 他既不知道亦無理由相信有關紀錄、文件或資料屬虛假、不正確或具誤導性；或
 - (b) 他已作出應有努力避免犯該罪行，即可以此作為免責辯護。
- (3) 任何人在出示或交出根據本條例規定他須出示或交出的紀錄、文件或資料時遺漏任何要項，即屬犯罪，一經定罪，可處罰款\$200,000及監禁6個月。

(7) An authorized officer must perform his functions under this section at a reasonable hour unless he believes that the purpose of their performance could be frustrated if he performs them at a reasonable hour.

(8) In this section—

domestic premises (住用處所) means any premises that are constructed or intended to be used for habitation;

place (地方) includes any vehicle and vessel.

Division 4

Offences

9. Providing false information, etc.

- (1) A person who, in purported compliance with this Ordinance, produces or provides any record, document or information that is false, incorrect or misleading in any material particular commits an offence and is liable on conviction to a fine of \$200,000 and to imprisonment for 6 months.
- (2) It is a defence to a charge under subsection (1) for the person charged to prove that—
 - (a) he did not know and had no reason to believe the record, document or information to be false, incorrect or misleading; or
 - (b) he exercised due diligence to avoid the commission of the offence.
- (3) A person who omits any material particular from any record, document or information required to be produced or provided by him under this Ordinance commits an offence and is liable on conviction to a fine of \$200,000 and to imprisonment for 6 months.

本條例草案

旨在

修訂《空氣污染管制條例》，藉以——

- (a) 藉着包括以下各項的措施，規管因進行若干電力工程而產生的二氧化硫、氮氧化物及可吸入懸浮粒子的排放——
 - (i) 將可從用於進行該等電力工程的處所排放該等污染物的權利，分配予指明牌照持有人；
 - (ii) 對指明牌照施加有關條款及條件；及
 - (iii) 指明遵從該等條款及條件的方式；
- (b) 刪除根據該條例第 35 條將根據該條例第 VI 部組成的上訴委員會的決定轉交覆核的權力；
- (c) 禁止公職人員獲委任為或出任為根據該條例第 VI 部組成的上訴委員會的主席，或獲委任為有資格獲委任為任何該等上訴委員會的委員的備選委員小組的成員；
- (d) 澄清該條例及其附屬法例中“牌照”的涵義；以及
- (e) 就附帶事宜訂定條文。

由立法會制定。

A BILL

To

Amend the Air Pollution Control Ordinance to—

- (a) regulate the emission of sulphur dioxide, nitrogen oxides and respirable suspended particulates as a result of the conduct of certain electricity works by measures including—
 - (i) the allocation to specified licence holders of the entitlement to emit those pollutants from premises used for the conduct of such electricity works;
 - (ii) the imposition of relevant terms and conditions on the specified licences; and
 - (iii) the specification of the manner in which such terms and conditions may be complied with;
- (b) remove the right of referring for review under section 35 of the Ordinance a decision of any Appeal Board constituted under Part VI of the Ordinance;
- (c) prohibit a public officer from being appointed as or to act as Chairman of any Appeal Board constituted under Part VI of the Ordinance, or from being appointed as a member of a panel of persons eligible for appointment as members of any such Appeal Board;
- (d) clarify the meaning of “licence” in the Ordinance and its subsidiary legislation; and
- (e) provide for incidental matters.

Enacted by the Legislative Council.

1. 簡稱

本條例可引稱為〈2008年空氣污染管制(修訂)條例〉。

2. 修訂〈空氣污染管制條例〉

第 3 至 16 條列出對〈空氣污染管制條例〉(第 311 章)的修訂。

3. 修訂第 2 條(釋義)

(1) 第 2 條,“牌照”的定義,在“批給的牌照”之後——

加入

“、根據第 16 條獲續期的牌照、根據第 17 或 18 條被更改的牌照、或根據第 18A 條而轉讓的牌照(視何者屬適當而定)”。

(2) 第 2 條,“技術備忘錄”的定義——

廢除

“或 9”

代以

“、9 或 26G”。

(3) 第 2 條——

加入

“**可排放量**(allowed emission) 就某類別指明污染物而言,指可在某排放年度從某牌照所涉處所排放的該類別污染物的數量,而該數量是藉參照以下數量而確定的:就該排放年度而適用於有關的指明牌照的該類別污染物的獲配限額的數量;

指明污染物(specified pollutant) 指屬下列任何類別的空氣污染物——

1. Short title

This Ordinance may be cited as the Air Pollution Control (Amendment) Ordinance 2008.

2. Air Pollution Control Ordinance amended

The Air Pollution Control Ordinance (Cap. 311) is amended as set out in sections 3 to 16.

3. Section 2 amended (Interpretation)

(1) Section 2, definition of “licence”, after “section 15”—

Add

“, a licence renewed under section 16, a licence varied under section 17 or 18 or a licence transferred under section 18A, as may be appropriate”.

(2) Section 2, definition of “technical memorandum”—

Repeal

“or 9”

Substitute

“, 9 or 26G”.

(3) Section 2—

Add

“**actual emission** (實際排放量), in relation to a type of specified pollutant, means the quantity, as ascertained by such method as specified in a specified licence, of that type of pollutant that has been emitted from the licensed premises;

allocated allowances (獲配限額), in relation to a type of specified pollutant, means the emission allowances allocated under section 26G(1) for that type of pollutant in respect of a specified licence in relation to an emission year;

- (a) 二氧化硫；
- (b) 氮氧化物；
- (c) 可吸入懸浮粒子；

指明牌照 (specified licence) 指進行附表1第7項指明的工序的牌照，但在沒有正常電力供應時提供後備電力供應為唯一目的而進行該等工序的牌照則除外；

指明牌照持有人 (specified licence holder) 指某指明牌照的持有人；

排放年度 (emission year) 指自每年1月1日開始的為期12個月的期間；

排放限額 (emission allowance) 就某類別指明污染物而言，指可在某排放年度從某牌照所涉處所排放一噸該類別污染物的權利；而為免生疑問，每項該等權利均予量化為一個排放限額；

牌照所涉處所 (licensed premises) 指某指明牌照所關乎的處所；

實際排放量 (actual emission) 就某類別指明污染物而言，指藉某指明牌照指明的方法確定的、已從有關的牌照所涉處所排放的該類別污染物的數量；

獲配限額 (allocated allowances) 就某類別指明污染物而言，指根據第26G(1)條，就某排放年度及某指明牌照而為該類別污染物分配的排放限額；”。

4. **修訂第10條(空氣污染消滅通知)**
第10(2)(a)條，在“備忘錄”之後—
加入

allowed emission (可排放量), in relation to a type of specified pollutant, means the quantity, as ascertained by reference to the quantity of allocated allowances for that type of pollutant as applicable to a specified licence in respect of an emission year, of that type of pollutant that may be emitted in the emission year from the licensed premises;

emission allowance (排放限額), in relation to a type of specified pollutant, means the entitlement to emit one tonne of that type of pollutant in an emission year from a licensed premises; and, for the avoidance of doubt, each such entitlement is quantified as one emission allowance;

emission year (排放年度) means a period of 12 months commencing on 1 January in each year;

licensed premises (牌照所涉處所) means the premises to which a specified licence relates;

specified licence (指明牌照) means a licence to conduct the process specified in item 7 of Schedule 1, other than a licence to conduct such process for the sole purpose of providing a stand-by power supply in the event of a loss of normal power supply;

specified licence holder (指明牌照持有人) means the holder of a specified licence;

specified pollutant (指明污染物) means an air pollutant of any of the following types—

- (a) sulphur dioxide;
- (b) nitrogen oxides;
- (c) respirable suspended particulates;”。

4. **Section 10 amended (Air pollution abatement notice)**
Section 10(2)(a), after “technical memorandum”—
Add

“(根據第 26G 條發出的技術備忘錄除外)”。

5. 修訂第 15 條 (批給或拒絕批給牌照)

第 15(4) 條——

廢除

在“合理期間，”之後的所有字句

代以

“並——

- (a) 在不損害根據 (b) 段施加的任何條款或條件 (如適用的話) 的原則下，可受監督認為適當的條款及條件 (包括關乎附表 2 所列的事項的條款及條件) 規限；及
- (b) (如有關的牌照屬指明牌照) 自 2010 年 1 月 1 日起，亦須受附表 2A 所列的條款及條件規限。”。

6. 加入第 4B 部

在第 IVA 部之後——

加入

“(other than a technical memorandum issued under section 26G)”.

5. Section 15 amended (Grant or refusal of licences)

Section 15(4)—

Repeal

everything after “2 years and”

Substitute

“—

- (a) without prejudice to any term or condition imposed under paragraph (b) (if applicable), may be subject to such terms and conditions (including terms and conditions relating to the matters set out in Schedule 2) as the Authority thinks fit; and
- (b) where the licence concerned is a specified licence, shall from 1 January 2010 onwards also be subject to such terms and conditions as may be set out in Schedule 2A.”.

6. Part 4B added

After Part IVA—

Add

“第 4B 部

指明牌照

第 1 分部

獲配限額

26G. 局長就指明牌照分配排放限額

- (1) 為施行本條例，局長須藉技術備忘錄，就於 2010 年 1 月 1 日或之後開始的每一排放年度，以及就每一指明牌照，為每一類別指明污染物分配某數量的排放限額。
- (2) 在根據第 (1) 款為某類別指明污染物作出分配時，局長須——
 - (a) 顧及防止排放該類別污染物的最好的切實可行方法；
 - (b) 以達致與保持任何有關的空氣質素指標作為其目標；及
 - (c) 顧及排放該類別污染物是否會或相當可能會損害健康。
- (3) 就第 (1) 款而言，局長亦可藉指明用以確定排放限額數量的方法，分配排放限額的數量。
- (4) 除非根據第 (1) 款為作出某項分配而發出的技術備忘錄，已於某排放年度開始前最少 4 年之前生效，否則根據該款作出的該項分配，並不就該排放年度而具有效力。

“Part 4B

Specified Licences

Division 1

Allocated Allowances

26G. Secretary to allocate emission allowances in respect of specified licence

- (1) For the purposes of this Ordinance, the Secretary shall by technical memorandum allocate a quantity of emission allowances for each type of specified pollutant in respect of each specified licence in relation to each emission year commencing on or after 1 January 2010.
- (2) In making an allocation under subsection (1) for a type of specified pollutant, the Secretary shall—
 - (a) have regard to the best practicable means for preventing the emission of that type of pollutant;
 - (b) have as his purpose the attainment and maintenance of any relevant air quality objective; and
 - (c) have regard to whether the emission of that type of pollutant would be, or be likely to be, prejudicial to health.
- (3) For the purposes of subsection (1), the Secretary may allocate a quantity of emission allowances also by specifying the method for ascertaining the quantity.
- (4) An allocation under subsection (1) does not have effect in respect of an emission year unless the technical memorandum issued under that subsection for making the allocation has commenced to have effect at least 4 years before the commencement of the emission year.

- (5) 凡任何分配藉着為施行第(1)款而具有效力的首份技術備忘錄而作出，第(4)款不適用於該項分配。

26H. 監督確定獲配限額的數量等

- (1) 如有排放限額的數量按第26G(3)條描述的方式分配，監督須在合理切實可行範圍內，盡快使用根據該條在有關的技術備忘錄內指明的方法，確定該數量。
- (2) 監督在根據第(1)款確定數量後，須在合理切實可行範圍內，盡快將如此確定的數量，以書面通知有關的指明牌照持有人。

第2分部

斷定若干條款及條件是否已獲遵從

26I. 斷定若干條款及條件是否已獲遵從

- (1) 凡有條款或條件規定某人作為指明牌照持有人須確保在某排放年度內，從有關的牌照所涉處所排放的某類別指明污染物的實際排放量，不多於就該排放年度而適用於該指明牌照的該類別污染物的可排放量，則在為施行本條例而斷定該人是否已違反該條款或條件時——
- (a) 於該等條款或條件中提述就該排放年度而適用的該類別污染物的可排放量，須解釋為提述可

- (5) Subsection (4) does not apply to any allocation made by the first technical memorandum having effect for the purposes of subsection (1).

26H. Authority to ascertain quantity of allocated allowances etc.

- (1) Where an allocation of a quantity of emission allowances is made in the manner described in section 26G(3), the Authority shall as soon as reasonably practicable ascertain the quantity by using the method specified under that section in the relevant technical memorandum.
- (2) After ascertaining the quantity under subsection (1), the Authority shall as soon as reasonably practicable notify the relevant specified licence holder in writing of the quantity so ascertained.

Division 2

Determination of Compliance with Certain Terms and Conditions

26I. Determination of compliance with certain terms and conditions

- (1) For the purposes of this Ordinance, in determining whether a person has contravened any term or condition that requires him, as a specified licence holder, to ensure that the actual emission of a type of specified pollutant from the licensed premises in an emission year is not greater than the allowed emission of that type of pollutant as applicable to the specified licence in respect of the emission year—
- (a) a reference in such term or condition to the allowed emission of that type of pollutant as applicable in respect of the emission year shall be construed as a

在該排放年度從該處所排放的該類別污染物的數量，而該數量是藉參照以下數量而確定的：就該排放年度而根據第3分部為本條的目的而調高或調低的有關的獲配限額的數量；及

- (b) (如就對上年度而言，有任何該等條款或條件已就該牌照及該類別污染物而遭違反) 在顧及就斷定有該項違反而根據本款作出的調整後得出的有關的實際排放量超逾如此得出的有關的可排放量的數量，須被視為該排放年度的該類別污染物的實際排放量的一部分。
- (2) 凡有關於就某排放年度而違反第(1)款提述的條款或條件的罪行，則就該罪行而根據第30A條進行的法律程序，須於緊接該排放年度之後的年份的3月31日之後方可展開。
- (3) 就本條而言——
對上年度(preceding year) 就某排放年度而言，指緊接該排放年度之前的排放年度。

reference to the quantity, as ascertained by reference to the quantity of the relevant allocated allowances as may be increased or reduced for the purposes of this section under Division 3 in respect of the emission year, of that type of pollutant that may be emitted in the emission year from the licensed premises; and

- (b) where there has been a contravention of such term or condition in respect of the preceding year in relation to the licence and that type of pollutant, the quantity by which the relevant actual emission exceeds the relevant allowed emission, after taking into account the adjustments under this subsection for the purpose of determining that there has been the contravention, shall be taken as part of the actual emission of that type of pollutant in the emission year.
- (2) Proceedings under section 30A for an offence relating to the contravention of any term or condition referred to in subsection (1) in respect of an emission year shall only be instituted after 31 March in the year immediately following the emission year.
- (3) For the purposes of this section—
preceding year (對上年度), in relation to an emission year, means the emission year immediately preceding that emission year.