

**Bills Committee on Chief Executive Election (Amendment) Bill 2010
and Legislative Council (Amendment) Bill 2010**

Follow up to Meeting on 20 January 2011

Information on new structure of amending provisions

Background

As a good document design will aid in clearer communication, the Law Drafting Division of the Department of Justice 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 in 2009 we proposed to make changes to the format and visual design of our legislation to make it more user-friendly and attractive.

2. We explained this proposal to the Panel on Administration of Justice and Legal Services in December 2009 (please see LC paper No. CB(2)615/09-10(01)). In the absence of any objection from the Panel, we implemented the new form and design from the beginning of Legislative Session 2010/2011 for both Bills and items of subsidiary legislation. The changes assist the reader to identify the location and relationship between provisions more easily, and aim at reducing eye strain by a better deployment of blank space and the use of a larger font. They also modernize the appearance of our legislation.

3. At the Bills Committee meeting held on 20 January 2011, a member expressed concerns about the operative provision in the new structure of amending provisions. The purpose of this paper is to provide relevant information.

New structure of amending provisions and operative provision

4. As explained in the LC paper, the amending provisions are restructured so that the reader can spot the amendments more readily. The Attachment to the LC paper provided to the Panel contained 2 pages of a sample of a mock-up Amendment Bill (please see **Annex A**). We explained in the LC

paper that there would be an operative provision (please see clause 2 of Annex A) and the relevant amendments would be set out more distinctly as shown, for example, in clause 3 of Annex A.

5. Since the Chief Executive Election (Amendment) Bill 2010 amends the Chief Executive Election Ordinance (Cap. 569) and two Regulations and one Order made under that Ordinance, the operative provision provides that “[t]he enactments specified in Parts 2, 3, 4 and 5 are amended as set out in those Parts”, instead of referring to a particular Ordinance or item of subsidiary legislation.

6. The meaning of “enactment” is clearly defined in the Interpretation and General Clauses Ordinance (Cap. 1). The term “enactments” is suitable for referring to more than one item of legislation. The following definitions in section 3 of Cap. 1 are relevant –

“enactment” (成文法則) has the same meaning as Ordinance.

“Ordinance” (條例) means –

- (a) any Ordinance enacted by the Legislative Council;
- (b) any Ordinance adopted by virtue of Article 160 of the Basic Law as a law of the Hong Kong Special Administrative Region;
- (c) any subsidiary legislation made under any such Ordinance except any such subsidiary legislation which has pursuant to Article 160 of the Basic Law been declared to be in contravention of the Basic Law; and
- (d) any provision or provisions of any such Ordinance or subsidiary legislation.

7. There are precedents of references to “enactments” in a similar context (e.g., a similar usage in section 16 of the Landlord and Tenant (Consolidation) (Amendment) Ordinance 2004 (16 of 2004)). That section provides that the enactments specified in the Schedule are amended as set out in that Schedule, and the Schedule includes both Ordinances and subsidiary legislation (see **Annex B**).

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;

13. 署長行使權力

第 119T(1B) 條現予修訂——

- (a) 在 (a) 段中，在末處加入“或”；
- (b) 在 (b) 段中，廢除“；或”而代以句號；
- (c) 廢除 (c) 段。

14. 釋義

第 120A 條現予修訂，廢除“終止租賃通知書”的定義。

15. 適用範圍

第 121(2) 條現予修訂——

- (a) 在 (h) 段中，在末處加入“及”；
- (b) 在 (j) 段中，廢除末處的分號而代以句號；
- (c) 廢除 (k) 及 (l) 段。

對其他成文法則作出的相應修訂

16. 對其他成文法則作出的相應修訂

附表所指明的成文法則，按附表所列的方式修訂。

附表

[第 16 條]

對其他成文法則作出的相應修訂

《土地審裁處條例》

1. 審裁處的司法管轄權

《土地審裁處條例》(第 17 章) 第 8 條現予修訂，加入——

“(10) 第 (6)、(7) 及 (8) 款就《業主與租客(綜合)條例》(第 7 章) 第 IV 或 V 部所適用的租賃而賦予的司法管轄權，須受《2004 年業主與租客(綜合)(修訂)條例》(2004 年第 16 號) 對該兩部的若干條文作出的廢除所規限。

(11) 審裁處具有在下列情況下作出收回管有命令的司法管轄權——

- (a) 依據《2004 年業主與租客(綜合)(修訂)條例》(2004 年第 16 號) 第 5(2) 條送達的過渡性終止通知書期限已屆滿；
- (b) 應業主按該條例第 7(2) 條的規定提出的要求收回管有的申請；
- (c) 該條例第 9(2) 條所適用的租賃已終止；

13. Exercise of powers of Commissioner

Section 119T(1B) is amended—

- (a) in paragraph (a) by adding “or” at the end;
- (b) in paragraph (b) by repealing “; or” and substituting a full stop;
- (c) by repealing paragraph (c).

14. Interpretation

Section 120A is amended by repealing the definition “notice of termination”.

15. Application

Section 121(2) is amended—

- (a) in paragraph (h) by adding “and” at the end;
- (b) in paragraph (j) by repealing the semicolon at the end and substituting a full stop;
- (c) by repealing paragraphs (k) and (l).

Consequential amendments to other enactments

16. Consequential amendments to other enactments

The enactments specified in the Schedule are amended as set out in that Schedule.

SCHEDULE

[s. 16]

CONSEQUENTIAL AMENDMENTS TO OTHER ENACTMENTS

Lands Tribunal Ordinance

1. Jurisdiction of the Tribunal

Section 8 of the Lands Tribunal Ordinance (Cap. 17) is amended by adding—

“(10) The jurisdiction conferred by subsections (6), (7) and (8) in respect of tenancies to which Part IV or V of the Landlord and Tenant (Consolidation) Ordinance (Cap. 7) applies is subject to the repeal of certain provisions of those Parts by the Landlord and Tenant (Consolidation) (Amendment) Ordinance 2004 (16 of 2004).

(11) The Tribunal shall have jurisdiction to make an order for possession—

- (a) upon the expiry of a transitional termination notice served pursuant to section 5(2) of the Landlord and Tenant (Consolidation) (Amendment) Ordinance 2004 (16 of 2004);
- (b) upon an application by a landlord for possession as provided by section 7(2) of that Ordinance;
- (c) upon the termination of a tenancy to which section 9(2) of that Ordinance applies;

(d) 在該條例生效當日或之後訂立的新租賃因時間期滿而終止。”。

2. 審裁處的常規及程序

第 10(2) 條現予修訂——

- (a) 在 (c) 段中，在末處加入“及”；
- (b) 在 (d)(iii) 段中，廢除“；及”而代以句號；
- (c) 廢除 (e) 段。

3. 決定的覆核

第 11A(6) 條現予修訂，廢除“或該條例第 119F(2) 條”。

《土地審裁處規則》

4. 法律程序的展開

《土地審裁處規則》(第 17 章，附屬法例 A) 第 68 條現予修訂，加入——

“(1A) 凡某租賃被依據《2004 年業主與租客(綜合)(修訂)條例》(2004 年第 16 號) 第 5(2) 條送達的過渡性終止通知書終止，則在此情況下提出的要求作出收回管有命令及給予其他濟助的法律程序，須藉申請人向司法常務官提交大致上符合表格 22A 格式的申請通知書而展開。

(1B) 為要求根據《2004 年業主與租客(綜合)(修訂)條例》(2004 年第 16 號) 第 7(1) 條作出收回管有命令及給予其他濟助而提出的法律程序，須藉申請人向司法常務官提交大致上符合表格 22B 格式的申請通知書而展開。”。

5. 反對通知書

第 69 條現予修訂——

- (a) 將該條重編為第 69(1) 條；
- (b) 在第 (1) 款中，在“答辯”之前加入“除第(2) 款另有規定外，”；
- (c) 加入——

“(2) 凡有關租賃藉以下方式終止——

- (a) 《業主與租客(綜合)條例》(第 7 章) 第 IV 部或第 V 部所指的終止租賃通知書；
- (b) 業主或租客發出遷出通知；
- (c) 退回租賃；
- (d) 依據《2004 年業主與租客(綜合)(修訂)條例》(2004 年第 16 號) 第 5(2) 條送達的過渡性終止通知書；或
- (e) 時間期滿，

則如有要求作出收回管有命令的申請在《2004 年業主與租客(綜合)(修訂)條例》(2004 年第 16 號) 的生效日期當日或之後提出，第(1) 款所述的 14 天期限須減至 7 天。”。

6. 表格

- (1) 附表現予修訂，在表格 7 中，廢除“或需佔用該處所的各人的姓名、年齡及與答辦人的關係(如反對通知書是根據《業主與租客(綜合)條例》(第 7 章) 第 119E(1)(b) 條發出的)”。
- (2) 附表現予修訂，加入——

(d) upon the termination by effluxion of time of a new tenancy entered into on or after the commencement of that Ordinance.”.

2. Practice and procedure of Tribunal

Section 10(2) is amended—

- (a) in paragraph (c) by adding “and” at the end;
- (b) in paragraph (d)(iii) by repealing “; and” and substituting a full stop;
- (c) by repealing paragraph (e).

3. Review of decision

Section 11A(6) is amended by repealing “, or under section 119F(2).”.

Lands Tribunal Rules

4. Commencement of proceedings

Rule 68 of the Lands Tribunal Rules (Cap. 17 sub. leg. A) is amended by adding—

“(1A) Proceedings for an order for possession and other reliefs upon the termination of a tenancy by a transitional termination notice served pursuant to section 5(2) of the Landlord and Tenant (Consolidation) (Amendment) Ordinance 2004 (16 of 2004) shall be commenced by the applicant filing with the Registrar a notice of application substantially in accordance with Form 22A.

(1B) Proceedings for an order for possession and other reliefs under section 7(1) of the Landlord and Tenant (Consolidation) (Amendment) Ordinance 2004 (16 of 2004) shall be commenced by the applicant filing with the Registrar a notice of application substantially in accordance with Form 22B.”.

5. Notice of opposition

Rule 69 is amended—

- (a) by renumbering it as rule 69(1);
- (b) in subrule (1), by repealing “The” and substituting “Subject to subrule (2), the”;
- (c) by adding—

“(2) The period of 14 days mentioned in subrule (1) is reduced to 7 days in the case of an application for an order for possession made on or after the commencement of the Landlord and Tenant (Consolidation) (Amendment) Ordinance 2004 (16 of 2004) if the tenancy has been terminated by—

- (a) notice of termination within the meaning of Part IV or Part V of the Landlord and Tenant (Consolidation) Ordinance (Cap. 7);
- (b) notice to quit given by the landlord or tenant;
- (c) surrender;
- (d) a transitional termination notice served pursuant to section 5(2) of the Landlord and Tenant (Consolidation) (Amendment) Ordinance 2004 (16 of 2004); or
- (e) effluxion of time.”.

6. Forms

(1) The Schedule is amended in Form 7 by repealing “or requiring to occupy the premises (if notice of opposition under section 119E(1)(b) of the Landlord and Tenant (Consolidation) Ordinance (Cap. 7))”.

(2) The Schedule is amended by adding—

- 致：1. 土地審裁處司法常務官。
2. 答辯人。

申請人的送達地址：.....

+ 申請人如屬公司/法人團體，請加蓋公司圖章及列明簽署人的姓名的全寫。

* 刪去不適用者。

註：如你擬反對此項申請，你必須於本通知書送達之日起 7 天內或土地審裁處命令的限期內，親自前往土地審裁處登記處，並提交反對通知書(表格 7)。”。

《差餉條例》

7. 署長的一般權力

《差餉條例》(第 116 章) 第 5(1B) 條現予修訂——

- (a) 在 (a) 段中，在末處加入“或”；
(b) 在 (b) 段中，廢除“；或”而代以句號；
(c) 廢除 (c) 段。

《地租(評估及徵收)條例》

8. 估價署長的一般權力

《地租(評估及徵收)條例》(第 515 章) 第 31(1B) 條現予修訂——

- (a) 在 (a) 段中，在末處加入“或”；
(b) 在 (b) 段中，廢除“；或”而代以句號；
(c) 廢除 (c) 段。

《電子交易(豁免)令》

9. 獲排除於本條例第 5 條的適用範圍之外的條文

《電子交易(豁免)令》(第 553 章，附屬法例 B) 附表 1 現予修訂，廢除第 1 項。

《地下鐵路條例》

10. 土地權益

《地下鐵路條例》(第 556 章) 第 47(a) 條現予修訂，廢除“、119E(2) 或 119H(1)(a)”。

- To: 1. The Registrar, Lands Tribunal.
2. The Respondent.

Applicant's address for service:

+ If the applicant is a company/incorporation, please affix the company seal and write down the full name of the signatory.

* Delete whichever is inapplicable.

Note: If you intend to oppose this application, you must personally attend at the Lands Tribunal Registry within 7 days of the date of service of this notice or within the time as ordered by the Tribunal, and file a notice of opposition (Form 7).”.

Rating Ordinance

7. General powers of Commissioner

Section 5(1B) of the Rating Ordinance (Cap. 116) is amended—

- (a) in paragraph (a) by adding “or” at the end;
(b) in paragraph (b) by repealing “; or” and substituting a full stop;
(c) by repealing paragraph (c).

Government Rent (Assessment and Collection) Ordinance

8. General powers of Commissioner

Section 31(1B) of the Government Rent (Assessment and Collection) Ordinance (Cap. 515) is amended—

- (a) in paragraph (a) by adding “or” at the end;
(b) in paragraph (b) by repealing “; or” and substituting a full stop;
(c) by repealing paragraph (c).

Electronic Transactions (Exclusion) Order

9. Provisions excluded from application of section 5 of Ordinance

Schedule 1 to the Electronic Transactions (Exclusion) Order (Cap. 553 sub. leg. B) is amended by repealing item 1.

Mass Transit Railway Ordinance

10. Interests in land

Section 47(a) of the Mass Transit Railway Ordinance (Cap. 556) is amended by repealing “, 119E(2) or 119H(1)(a)”.