

香港警察總部
香港軍器廠街



HONG KONG POLICE FORCE
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ARSENAL STREET,
HONG KONG.

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11 December 2013

(Urgent by fax : 2840 0716 & e-mail sywan@legco.gov.hk)

Ms Mary SO
Clerk to Public Accounts Committee
Legislative Council Secretariat
Legislative Council Complex
1 Legislative Council Road
Central, Hong Kong

Dear Ms SO,

Public Accounts Committee
Consideration of Chapter 2 of the Director of Audit's Report No. 61
Management of Roadside Skips

(Revised Version)

Thank you for your letters of 4 and 5 December 2013 requesting us to provide additional information to facilitate Public Accounts Committee's consideration of the above subject. The information is set out below :-

- (a) In February 2004, subsequent to discussions at the then Team Clean Ad-hoc Inter-departmental Meeting on Street Management ("Team Clean") which was formed to identify practical means to tackle street management problems among departments, the HKPF agreed to take enforcement action against skips causing serious obstruction and/or imminent danger otherwise the Lands Department ("LandsD") would take action from a land control perspective under the Lands (Miscellaneous Provisions) Ordinance, Cap. 28. It was supposed to be a short term measure "pending a longer term solution" in which appropriate legislative amendments may be required.
- (b) Using skips for disposal of construction and renovation waste is an effective means to reduce environmental nuisance and facilitates the construction and fitting-out trades in disposing of such waste in a tidy and orderly manner. Therefore, police action has to be reasonable and proportional; and appropriate to the prevailing circumstances.

Since October 2001, the HKPF raised the issue of skips placed on public roads suggesting the setting up of a system to monitor the movement and placing of skips on public roads. In February 2004, the Team Clean reached an agreement whereby the Police will take immediate action at the scene if a skip is causing serious obstruction on a road or posing imminent danger to the public. Otherwise, all complaints would be referred to LandsD for land control action. For a roadside skip which causes serious obstruction or imminent danger to the public or vehicles, the Police will take removal action under the common law and prosecution action under section 4A of the Summary Offences Ordinance.

- (c) Factors for judging whether the presence of a skip is causing serious obstruction or imminent danger to the public will very much depend on different circumstances prevailing at the scene, such as the layout of the road; traffic flow; visibility and line of sight obstruction caused to motorists or pedestrians. A police officer has to make a professional judgement as to whether a skip is causing serious obstruction and/or imminent danger to the public and if so, a police officer of the rank of Sergeant or above will be called upon to make any decision regarding its immediate removal. The response of the police officer must be seen as appropriate to the prevailing circumstances and represent a reasonable and proportional response to the situation.
- (d) The terms ‘serious obstruction’ and ‘imminent danger’ are a matter of professional judgement. Having considered all the circumstances prevailing at the scene, such as the layout of the road; traffic flow; visibility and line of sight obstruction caused to motorists or pedestrians. Frontline duties have been reminded to take into consideration the Transport Department’s guidelines which may assist them in determining the degree of ‘serious obstruction’ or ‘imminent danger’.
- (e) Skips causing serious obstruction or imminent danger to the public on roads and pavements should be removed; this may be achieved through the owners’ own actions in removing the skip at the police’s request or by Police employing a contractor to remove the skip. The skip operator may be prosecuted by way of summons if there is sufficient evidence for a prosecution. Where a skip is not causing serious obstruction or imminent danger to the public, the case will be referred to LandsD for follow-up actions. However, an individual officer may give advice or warning to the skip operator on the basis of his professional judgement as to which is appropriate and proportional to achieve the objective of resolving the situation.
- (f) Since May 2010, the HKPF has regularly reminded frontline officers of their responsibility in respect of enforcement action against skips causing serious obstruction or imminent danger to the public. It must also be emphasized that enforcement action against roadside skips include immediate removal and other police actions, depending on the situation, such as, (a) if the skip owner could be located, they will be requested to remove the skip; (b) the issue of advice or warning to skip operator; (c) applying for a summons; and (d) refer to LandsD for follow-up actions.

According to the existing records, the HKPF has not used section 32 of the Summary Offences Ordinance (Cap.228) to require skip operators to remove their skips. Section 32(1) stipulates that :

“It shall be lawful for the Commissioner of Police to require any person whose duty it may be to remove any filth or obstruction, or to do any other matter or thing required to be done by this Ordinance, to do so within a certain time to be fixed by the said officer, and, in default of such requisition being complied with, the officer shall cause to be removed such filth or obstruction or do or cause to be done such other matter or thing as aforesaid”.

A skip causing serious obstruction or imminent danger to the public should be removed as expeditiously as the circumstances allow. Section 32 is not practical because it fails to secure the removal of a roadside skip causing a serious obstruction or imminent danger expeditiously. Legal advice was sought from the Department of Justice; it was confirmed that the use of section 4A was correct in that it achieves the objective of removing the skip and where felt appropriate and proportional prosecute the skip operator for placing the skip on a road causing serious obstruction or imminent danger.

Yours sincerely,



(LAM Man-wing)
for Commissioner of Police

c.c. Secretary for Financial Services and the Treasury (fax no. 2147 5239)