

For discussion on
22 April 2014

**LEGISLATIVE COUNCIL
PANEL ON DEVELOPMENT**

**Proposed Increase in Penalties Relating to
Unlawful Occupation of Unleased Government Land under
Land (Miscellaneous Provisions) Ordinance (Chapter 28)**

PURPOSE

This paper briefs Members on and seeks Members' support for our proposals to amend the Land (Miscellaneous Provisions) Ordinance ("LMPO") (Cap.28) to increase the penalties for offences relating to unlawful occupation of unleased Government land for the purpose of enhancing the deterrent effect against the relevant offences.

BACKGROUND

2. The Government is responsible for ensuring that the use of land is properly controlled and managed. LMPO provides for matters relating to Government land to this end. Part II of LMPO (sections 4 to 7, extract at *Annex A*) contains provisions governing occupation of unleased land, erection of structure on unleased land, and removal of earth, turf or stone from unleased land, including enforcement powers, offences and penalties relating to such.

3. Specifically, LMPO provides for the statutory authority to take summary action to clear any unlawful occupation of unleased land or unlawful erection of structures on unleased land, instigate prosecution of any person held liable for the contravention, and recover from the person convicted of such an offence any cost incurred in or arising out of the demolition of any property or structure under these provisions. The relevant offences and penalties under sections 6(4), 6(4A) and 7(4) of LMPO are summarised in *Annex B*.

4. The level of penalty for the offence of unlawful occupation of unleased land under section 6(4) of LMPO, i.e. a maximum fine of \$10,000 and imprisonment for six months, has not been revised since the enactment of LMPO in 1972. Enforcement experience indicates that this level of penalty is

no longer an effective deterrent against unlawful occupation of unleased land. The situation is similar for the level of penalty for the other two offences, i.e. erection of unlawful structure on unleased land and unlawful removal of earth, turf or stone from unleased land.

5. In March 2012, the Audit Commission completed a review of the management of government land, covering the action of Lands Department (“LandsD”) to prevent, detect and rectify unlawful occupation of government land¹, which suggested that the level of penalty for the offence under section 6(4) of LMPO should be reviewed with a view to providing an effective deterrence. The Audit Commission also recommended that the Government should consider introducing legislative provisions to the effect that a daily fine would be imposed for the period over which the relevant contravention continued.

6. The findings of the Audit Commission were deliberated by the Public Accounts Committee (“PAC”) of the Legislative Council (“LegCo”) in May 2012². The PAC opined that the fines for convicted cases of the offence under section 6(4) of LMPO were too lenient to have an adequate deterrent effect. The PAC strongly urged the Government to promptly initiate legislative amendments to increase the relevant level of penalties and consider introducing a system of daily fine to reinforce the deterrent effect.

PROPOSAL

7. Taking into account the views and recommendations of the Audit Commission and PAC, we consider that there is a need to increase the level of penalties for the various offences relating to unlawful occupation of unleased Government land in order to provide an effective deterrent against such activities. Having regard to this objective and making reference to the penalty provisions for offences of a similar nature in other ordinances, specifically the Buildings Ordinance (Cap. 123), the Town Planning Ordinance (Cap. 131) and the Waste Disposal Ordinance (Cap. 354) (extract at *Annex C*), we propose to amend LMPO -

(a) to increase the maximum fines for the unlawful occupation of

¹ The Director of Audit’s Report No. 58, Chapter 7, “Unlawful occupation of government land” (www.aud.gov.hk/pdf_e/e58ch07.pdf).

² PAC Report No. 58, Chapter 2 of Part 4, “Unlawful occupation of government land” (www.legco.gov.hk/yr11-12/english/pac/reports/pac_rpt_58.htm).

unleased land and the unlawful erection of a structure on unleased land to a level commensurate with present day standard and providing the necessary punitive and deterrent effects;

- (b) to introduce an escalating scale of maximum fines for the first conviction and for the second/subsequent conviction for the unlawful occupation of unleased land and the unlawful erection of a structure on unleased land;
- (c) to introduce an additional daily fine for the unlawful occupation of unleased land;
- (d) to increase the maximum fine for unlawful extraction or removal of earth, turf or stone from unleased land; and
- (e) to clarify that the court may order a convicted person under relevant provisions of LMPO to pay any cost incurred in or arising out of the demolition of any property or structure for enforcement against unlawful occupation of unleased land or unlawful erection of structures on unleased land.

WAY FORWARD

8. The details of the proposed amendments are being finalized. We plan to introduce the Amendment Bill into the LegCo in this legislative year. In parallel, we will continue to keep in view the operation of the other provisions in LMPO, and the need for their review as necessary and appropriate, with a view to ensuring the proper control and management of Government land. If warranted, further legislative amendments to LMPO will be considered and proposed as appropriate at a later stage.

ADVICE SOUGHT

9. Members' views are invited on the amendment proposals as set out in paragraph 7.

Development Bureau
April 2014

Chapter:	28	LAND (MISCELLANEOUS PROVISIONS) ORDINANCE	Gazette Number	Version Date
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		Long title	29 of 1998	01/07/1997
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Remarks:

Amendments retroactively made - see 29 of 1998 ss. 11 & 12

To provide for matters relating to Government land.

(Amended 29 of 1998 s. 11)

[1 October 1972] L.N. 186 of 1972

(Originally 54 of 1972)

Part:	II	OCCUPATION OF UNLEASED LAND	29 of 1998	01/07/1997
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Remarks:

Amendments retroactively made - see 29 of 1998 s. 12

Section:	4	Occupation of unleased land	29 of 1998	01/07/1997
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Remarks:

Amendments retroactively made - see 29 of 1998 s. 12

Unleased land shall not be occupied except under a licence or a deed or memorandum of appropriation.

Section:	5	Issue and validity of licences	29 of 1998	01/07/1997
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Remarks:

Amendments retroactively made - see 29 of 1998 s. 12

- (1) The Authority may, on payment of the appropriate prescribed fee, issue a licence to occupy unleased land.
- (2) Subject to subsection (3), a licence shall be valid for the period specified therein and may be renewed for such period as the licensing authority thinks fit.
- (3) A licence may be terminated by the licensing authority by giving such notice as may be specified in the licence.

Section:	6	Unlawful occupation of unleased land	29 of 1998	01/07/1997
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Remarks:

Amendments retroactively made - see 29 of 1998 ss. 12 & 105

(1) Subject to subsection (2A), if unleased land is occupied, otherwise than under a licence or a deed or memorandum of appropriation, the Authority may cause a notice, requiring the occupation of the land to cease before such date as may be specified in the notice, to be posted in one or more places- (Amended 56 of 1979 s. 3)

- (a) on or near the land; or
- (b) on any property or structure on the land.

(2) If the occupation of unleased land does not cease as required by a notice under subsection (1), any public officer, or other person, acting on the direction of the Authority may, with the assistance of such other public officers or other persons as may be necessary-

- (a) remove from the land the persons (if any) thereon; and

(b) take possession of any property or structure on the land.

(2A) Notwithstanding subsection (1), where-

(a) a structure is being erected on or over unleased land, otherwise than under a licence or a deed or memorandum of appropriation; or

(b) a structure has been erected on unleased land, otherwise than under a licence or a deed or memorandum of appropriation, and the Authority is reasonably satisfied that the structure is not being habitually and bona fide used,

any public officer, or other person, acting on the direction of the Authority may, with the assistance of such other public officers or other persons as may be necessary, and without giving any notice-

(i) remove from the structure any person or property therein;

(ii) demolish the structure; and

(iii) take possession of such property and of any property resulting from the demolition of the structure.

(Added 56 of 1979 s. 3)

(3) Any property or structure of which possession is taken under subsection (2)(b) or subsection (2A)(iii) shall become the property of the Government free from the rights of any person and may be demolished or otherwise dealt with as the Authority thinks fit. (Amended 56 of 1979 s. 3; 29 of 1998 s. 105)

(4) Any person occupying unleased land, otherwise than under a licence or a deed or memorandum of appropriation, who without reasonable excuse does not cease to occupy the same as required by a notice under subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine of \$10000 and to imprisonment for 6 months.

(4A) Any person who-

(a) is engaged in any way in the erection of a structure on unleased land; or

(b) arranges or directs the erection of a structure on unleased land,

being a structure being erected otherwise than under a licence or a deed or memorandum of appropriation, shall be guilty of an offence and shall be liable on conviction-

(i) where the offender has been engaged in any way in, or has arranged or directed, the erection of the structure for the purpose of disposing of the structure for gain for himself or another, to a fine of \$50000 and to imprisonment for 1 year; and

(ii) in any other case, to a fine of \$10000 and to imprisonment for 6 months. (Added 56 of 1979 s. 3. Amended 46 of 1982 s. 2)

(5) The Authority may recover from any person convicted of an offence under subsection (4) or (4A) any cost incurred in or arising out of the demolition of any property or structure under subsection (2A) or (3) and the exercise of the powers conferred by this section. (Amended 56 of 1979 s. 3)

Section:	6A	Presumption	29 of 1998	01/07/1997
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Remarks:

Amendments retroactively made - see 29 of 1998 s. 12

In any proceedings for an offence under paragraph (a) or (b) of section 6(4A) in respect of any structure, any person who is proved to have done any act specified in paragraph (a) or (b) of that section shall, until the contrary is proved, be presumed to have done so for the purpose of disposing of that structure for gain.

(Added 46 of 1982 s. 3)

Section:	7	Prohibition of removal of earth, turf or stone from unleased land	29 of 1998	01/07/1997
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Remarks:

Amendments retroactively made - see 29 of 1998 s. 12

(1) No person shall extract or remove earth, turf or stone from unleased land except under and in accordance with a removal permit issued under this section.

(2) The Authority may issue a removal permit authorizing the extraction and removal of earth, turf or stone from unleased land.

(3) A removal permit shall be valid for the period specified therein, but the Authority may extend the period for

which the permit is valid.

(4) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine of \$5000 and to imprisonment for 6 months.

Relevant offences and penalties under sections 6(4), 6(4A) and 7(4) of Land (Miscellaneous Provisions) Ordinance (Cap. 28)

Section	Nature (with extract of relevant provisions)	Penalty	
		Fine	Imprisonment
6(4)	<u>Unlawful occupation of unleased land</u> (4) Any person occupying unleased land, otherwise than under a licence or a deed or memorandum of appropriation, who without reasonable excuse does not cease to occupy the same as required by a notice under subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine of \$10000 and to imprisonment for 6 months.	\$10,000	6 months
6(4A)	<u>Unlawful structure erected / being erected on unleased land</u> (4A) Any person who- (a) is engaged in any way in the erection of a structure on unleased land; or (b) arranges or directs the erection of a structure on unleased land, being a structure being erected otherwise than under a licence or a deed or memorandum of appropriation, shall be guilty of an offence and shall be liable on conviction - (i) where the offender has been engaged in any way in, or has arranged or directed, the erection of the structure for the purpose of disposing of the structure for gain for himself or another, to a fine of \$50000 and to imprisonment for 1 year; and (ii) in any other case, to a fine of \$10000 and to imprisonment for 6 months.	For disposing of the structure for gain \$50,000 In any other case \$10,000	1 year 6 months
7(4)	<u>Removal of earth, turf or stone from unleased land without a removal permit</u> (1) No person shall extract or remove earth, turf or stone from unleased land except under and in accordance with a removal permit issued under this section. (4) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine of \$5000 and to imprisonment for 6 months.	\$5,000	6 months

Penalty Provisions for Offences of Similar Nature (as with s. 6 of Cap. 28) in Other Ordinances

Ordinance	Section	Nature (with extract of relevant provisions)	Penalty	
			Fine	Imprisonment
Buildings Ordinance (Cap. 123)	24(1) and 40(1BA)	<p><u>Failure to comply with the demolition order</u></p> <p>Section 24 – Order for demolition, removal, or alteration of building, building works (other than minor works commenced under simplified requirements) or street works</p> <p>(1) Where any building has been erected, or where any building works or street works have been or are being carried out in contravention of any of the provisions of this Ordinance the Building Authority may by order in writing require -</p> <ul style="list-style-type: none">(a) the demolition of the building, building works, or street works; or(b) (Repealed 43 of 1993 s. 6)(c) such alteration of the building, building works or street works as may be necessary to cause the same to comply with the provisions of this Ordinance, or otherwise to put an end to the contraventions thereof, <p>and in every case specify the time within which the demolition, alteration or work required by such order shall be commenced and the time within which the same shall be completed.</p> <p>Section 40 – Offences</p> <p>(1BA) Any person who, without reasonable excuse, fails to comply with an order served on him under section 24(1) shall be guilty of an offence and shall be liable on conviction -</p> <ul style="list-style-type: none">(a) to a fine of \$200,000 and to imprisonment for 1 year; and(b) to a fine of \$20,000 for each day during which it is proved to the satisfaction of the court that the offence has continued.	\$200,000 + \$20,000/day	1 year

Ordinance	Section	Nature (with extract of relevant provisions)	Penalty	
			Fine	Imprisonment
Town Planning Ordinance (Cap. 131)	23(1) and (6)	<p><u>Failure to comply with the notice to discontinue unauthorized development</u></p> <p>Section 23 – Enforcement on land within a development permission area</p> <p>(1) Where, in the opinion of the Authority, there is or was unauthorized development, the Authority may, in a notice served on one or more of a land owner, an occupier or a person who is responsible for the relevant matters -</p> <p>(a) specify the relevant matters; and</p> <p>(b) specify a date by which the Authority requires the relevant matters to be discontinued, if they have not by then been discontinued.</p> <p>(6) Where, by the date specified in that regard in a notice under this section -</p> <p>(a) the relevant matters have not been discontinued as required by the notice;</p> <p>(b) steps have not been taken as required by the notice; or</p> <p>(c) land has not been reinstated as required by the notice,</p> <p>a person who is served with the notice commits an offence and is liable -</p> <p>(i) in the case of a first conviction, to a fine of \$500,000; and in addition, to a fine of \$50,000 for each day, after the date in the notice, during which the person continues to fail to so comply; and</p> <p>(ii) in the case of a second or subsequent conviction, to a fine of \$1,000,000; and in addition, to a fine of \$100,000 for each day, after the date in the notice, during which the person continues to fail to so comply.</p>	<p>First conviction</p> <p>\$500,000</p> <p>+</p> <p>\$50,000/day</p>	-
			<p>Second or subsequent conviction</p> <p>\$1,000,000</p> <p>+</p> <p>\$100,000/day</p>	-

Ordinance	Section	Nature (with extract of relevant provisions)	Penalty	
			Fine	Imprisonment
Waste Disposal Ordinance (Cap. 354)	16A(1) and 18(1)	<u>Unlawful depositing of waste</u> Section 16A – Prohibition of unlawful depositing of waste (1) A person commits an offence if he deposits or causes or permits to be deposited waste in any place except with lawful authority or excuse, or except with the permission of any owner or lawful occupier of the place.	First offence \$200,000 + \$10,000/day	6 months
		Section 18 – Penalties for offences under sections 16, 16A and 17 and defences (1) Any person who commits an offence under section 16 or 16A is liable - (a) for the first offence, to a fine of \$200,000 and to imprisonment for 6 months; (b) for a second or subsequent offence, to a fine of \$500,000 and to imprisonment for 6 months; and (c) in addition, if the offence is a continuing offence to a fine of \$10,000 for each day during which it is proved to the satisfaction of the court that the offence has continued.	Second or subsequent offence \$500,000 + \$10,000/day	6 months

Ordinance	Section	Nature (with extract of relevant provisions)	Penalty	
			Fine	Imprisonment
Waste Disposal Ordinance (Cap. 354) (cont'd)	18A(1), (2), (4) and (6)	<p><u>Failure to comply with the removal order</u></p> <p>Section 18A – Power of magistrate to order removal of waste from Government land or payment of Director’s expenses</p> <p>(1) If a person is convicted of an offence under section 16A in respect of waste deposited on Government land, the magistrate may, either on application by the Director or on the magistrate’s own initiative, order the person to -</p> <p>(a) remove the waste from that land within the period specified in the order; or</p> <p>(b) if the Director has already removed the waste, pay the Director any expenses reasonably incurred by him in carrying out the removal.</p> <p>(2) An order under subsection (1) is in addition to any penalty imposed under section 18 in respect of an offence under section 16A.</p> <p>(4) A person who, without reasonable excuse, fails to comply with an order made against him under subsection (1)(a) commits an offence and is liable-</p> <p>(a) to a fine of \$200,000 and to imprisonment for 6 months on the first occasion on which he is convicted of the offence;</p> <p>(b) to a fine of \$500,000 and to imprisonment for 6 months on each subsequent occasion on which he is convicted of the offence; and</p> <p>(c) to an additional daily penalty of \$10,000 for each day on which the offence is proved, to the satisfaction of the magistrate, to have continued.</p> <p>(6) For the purposes of this section, a reference to Government land is a reference to unleased land as defined in the Land (Miscellaneous Provisions) Ordinance (Cap 28).</p>	<p>First conviction</p> <p>\$200,000</p> <p>+</p> <p>\$10,000/day</p>	6 months
			<p>Second or subsequent conviction</p> <p>\$500,000</p> <p>+</p> <p>\$10,000/day</p>	