

Amend the Security and Guarding Services Ordinance.

Enacted by the Legislative Council.

1. Short title and commencement

(1) This Ordinance may be cited as the Security and Guarding Services (Amendment) Ordinance 2000.

(2) This Ordinance shall come into operation on a day to be appointed by the Secretary for Security by notice in the Gazette.

2. Interpretation

Section 2 of the Security and Guarding Services Ordinance (Cap. 460) is amended---

(a) in the definition of "security device", by adding ", except on or in a vehicle," after "any premises or place";

(b) in the definition of "security work", by repealing paragraph (b) and substituting---

"(b) guarding any person or place for the purpose of preventing or detecting the occurrence of any offence;"

(c) by adding---

"requisition notice" (要求召開會議通知書) means a notice given under section 5A(2);".

3. Security and Guarding Services Industry Authority

Section 4(2)(c) is amended by repealing "3" and substituting "5".

4. Meetings of the Authority

Section 5(3) is amended by repealing "3" and substituting "4".

5. Section added

The following is added---

"5A. Transaction of business by the circulation of papers

(1) The Authority may transact any of its business, other than business specified in subsection (4), by the circulation of papers; and, subject to subsections (2) and (3), a resolution in writing which is approved in writing by a majority of the members of the Authority shall be as valid and effectual as if it had been a resolution passed at a meeting of the Authority by the votes of the members so approving the resolution in writing.

(2) Any member of the Authority may, by notice in writing to the Secretary within 7 days after the date on which the Secretary circulates the papers, require any business which is being transacted by circulation of papers to be transacted at a meeting of the Authority.

(3) Where, in respect of any business being transacted by the circulation of papers, a notice is given to the Secretary under subsection (2), any resolution approved in writing under subsection (1) in respect of the business shall be void.

(4) This section does not apply to the following business of the

Authority---

- (a) an application for a variation of the conditions of a permit under section 16;
- (b) an application for a revocation or suspension of a permit under section 18;
- (c) an application for a revocation of a licence under section 25;
- (d) an application for a licence, an application for renewal of a licence or an application for variation of the conditions of a licence except as provided in section 20 or that section as applied by section 23(4), or in section 24 or 24A (as the case may be)."

6. Functions of the Authority

Section 6(1)(b) is amended---

(a) in subparagraph (iii), by repealing "and" at the end;

(b) by adding---

"(v) the matters to which the Authority shall have regard when determining whether the Authority should specify any, and if so what, period for the purpose of section 20(3)(a) or (6)(a) or 24A(4)(a); and".

7. Section substituted

Section 9 is repealed and the following substituted---

"9. Privileges and immunities

(1) No personal liability shall be incurred by any person in respect of anything done, or omitted to be done, by him in good faith in relation to the performance or purported performance of any function under this Ordinance.

(2) Without affecting the generality of subsection (1), any party, witness, representative or other person appearing at or otherwise participating in---

(a) any meeting of the Authority under this Ordinance (including any meeting to hear an application under this Ordinance);

(b) the transaction of business of the Authority by circulation of papers under section 5A, shall have the same privileges and immunities as he would have if the meeting or transaction of business were civil proceedings conducted by the Court of First Instance."

8. Renewal of permit

Section 15 is amended by adding---

"(4A) A prescribed fee is payable by the holder of a permit in respect of the renewal of the permit."

9. Application for variation of conditions of permit

Section 16(2)(a) is amended by adding "at least" after "give".

10. Application for revocation or suspension of permit

Section 18(2)(a) is amended by adding "at least" after "give".

11. Section added

The following is added---

"18A. Replacement of permit

The Commissioner may, if satisfied that any permit has been lost, stolen, damaged or destroyed, issue a replacement of the permit to its holder on payment of the prescribed fee."

12. Application for licence

Section 19(2) and (3) is repealed and the following substituted---

"(2) An application for a licence shall---

(a) be made to the Authority in such form and manner as the Authority may specify; and

(b) be accompanied by---

(i) a statement in writing containing such particulars in respect of the application as may be prescribed or as, in any particular case, the Authority may require; and

(ii) the prescribed fee."

13. Investigation of application for licence

Section 20 is amended---

(a) by repealing subsection (2) and substituting---

"(2) 為根據本條進行調查，處長可用書面規定申請人出示處長指明的有關簿冊、紀錄或文件以供查閱，或提交處長指明的有關資料。在本款中，"有關" 指與該申請或與該申請人所進行或擬進行的業務有關。";

(b) in subsection (3)(a), by adding ", or of such longer period as the Authority may specify in the particular case under subsection (7)," after "60 days";

(c) in subsection (4), by repealing everything after "licence," and substituting "he shall, within a period of 7 days beginning on the material date, serve notice on the Authority of his intention to object and of the grounds of such objection, and he shall send a copy to the applicant.";

(d) by repealing subsection (5) and substituting---

"(5) Where the Commissioner has served a notice of his intention to object to the application under subsection (4), the Secretary shall, within 7 days after the service of the notice, fix a date for the hearing of the application.";

(e) by adding---

"(5A) Where the Commissioner---

(a) has, before the expiry of the period specified in subsection (4), notified the Authority in writing that he does not intend to object to the application; or

(b) has, on the expiry of the period specified in subsection (4), neither served a notice of his intention to object to the application under that subsection nor given the notification under paragraph (a), the Secretary shall, in order that the application may be determined by the Authority by circulation of papers in accordance with section 5A, circulate papers relevant to the application to members of the Authority.

(5B) Upon circulation of papers under subsection (5A)---

(a) if a requisition notice is given, the Secretary shall forthwith fix a date for the hearing of the application;

(b) if no requisition notice is given and the Authority resolves to grant the application in accordance with section 5A within 28 days after the material date, the resolution shall be as valid and effectual as if it were a determination made by the Authority after a hearing;

(c) if no requisition notice is given but no resolution under paragraph (b) has been approved, the Secretary shall forthwith fix a date for the hearing of the application.

(5C) The Secretary shall give at least 14 days' notice of the date fixed under subsection (5) or (5B) to the Commissioner and the applicant.";

(f) in subsection (6)---

(i) by repealing "(5)" and substituting "(5B)";

(ii) in paragraph (a), by adding ",or of such longer period as the Authority may specify in the particular case under subsection (7)," after "60 days";

(g) by adding---

"(7) Before the 60 days' period under subsection (3)(a) or (6)(a) expires or (where a longer period has been specified under this subsection) before the longer period expires, the Commissioner or the applicant may request the Authority to make a specification for the purposes of subsection (3)(a) or (6)(a). The Authority may---

(a) upon the request, specify a period if the Authority considers it appropriate to do so;

(b) exercise the power under paragraph (a) at most twice in respect of a particular application and may---

(i) for the first time, specify a period not longer than 90 days;

(ii) for the second time, specify a period not longer than 120 days, beginning on the day after the application was made or the Authority was informed of the amendment (as the case may be), and where a period is so specified the Secretary shall give notice in writing of the specification to the applicant and the Commissioner.".

14. Determination of application for licence

Section 21(1) is repealed and the following substituted---

"(1) The Authority shall, in considering an application for a licence, have regard to any evidence adduced by or on behalf of the applicant and any evidence adduced by or on behalf of the Commissioner.".

15. Section added

The following is added---

"21A. Licence fee

A fee is payable by the applicant in respect of a licence issued under this Part as follows---

(a) on the issue of the licence, the prescribed annual fee; and

(b) on or before each successive anniversary of the date of issue of the licence during the term of the licence as issued, a fee equal to the fee that was payable on the issue of the licence under paragraph

(a).".

16. Renewal of licence

Section 23 is amended by adding---

"(5A) A fee is payable by the licensee in respect of the renewal of its licence as follows---

(a) on the renewal of the licence, the prescribed annual fee; and
(b) on or before each successive anniversary of the date of renewal of the licence during the term of the licence as renewed, a fee equal to the fee that was payable on the renewal of the licence under paragraph (a).".

17. Application by the Commissioner for variation of conditions of licence

Section 24(1) and (2) is repealed and the following substituted---

"(1) The Commissioner may apply to the Authority for a variation of the conditions of a licence and shall at the same time send a copy of the application to the licensee.

(1A) Where the licensee intends to object to an application under subsection (1), the licensee shall, within 30 days after the day on which the application was made, serve notice on the Authority of his intention to object and of the grounds of such objection, and he shall send a copy to the Commissioner.

(1B) Where the licensee has served a notice of its intention to object to the application under subsection (1A), the Secretary shall, within 7 days after the service of the notice, fix a date for the hearing of the application.

(1C) Where the licensee has, before the expiry of the period specified in subsection (1A), notified the Authority in writing that it does not intend to object to the application ("no-objection notification"), the Secretary shall, in order that the application may be determined by the Authority by circulation of papers in accordance with section 5A, circulate papers relevant to the application to members of the Authority; and---

(a) if a requisition notice is given, the Secretary shall forthwith fix a date for the hearing of the application;

(b) if no requisition notice is given and the Authority resolves to grant the application in accordance with section 5A within 28 days after the day on which the Authority receives the no-objection notification, the resolution shall be as valid and effectual as if it were a determination made by the Authority after a hearing;

(c) if no requisition notice is given but no resolution under paragraph (b) has been approved, the Secretary shall forthwith fix a date for the hearing of the application.

(1D) If at the expiry of the period specified in subsection (1A) the licensee has neither served a notice of his intention to object to the application under that subsection nor given the no-objection notification, the Secretary shall, within 7 days after that expiry, fix a date for the hearing of the application.

(1E) The Secretary shall give at least 14 days' notice of the date fixed under subsection (1B), (1C) or (1D) to the Commissioner and the licensee.

(2) Before an application made under subsection (1) is determined, the Authority or any member of the Authority authorized by the Authority to do so may by notice in writing to the Commissioner and to the licensee vary the conditions of the licence until such time as the application is determined."

18. Section added

The following is added---

"24A. Application by the licensee for variation of conditions of licence

(1) A licensee may apply to the Authority for a variation of the conditions of its licence and shall at the same time send a copy of the application to the Commissioner.

(2) Where an application is made under subsection (1), the Commissioner may cause an investigation to be carried out in respect of the application for the purpose of determining whether, in the opinion of the Commissioner, there are grounds for objecting to the application.

(3) For the purpose of carrying out an investigation under this section, the Commissioner may in writing require the licensee making an application under subsection (1) to produce for inspection such books, records or documents or to furnish such information relating to the application or any business carried on or intended to be carried on by it as the Commissioner may specify.

(4) In respect of an application under subsection (1), no step shall be taken by the Authority before---

(a) the date immediately following the end of a period of 60 days, or of such longer period as the Authority may specify in the particular case under subsection (5), after the day on which the application was made; or

(b) the date on which the Commissioner notifies the Authority that any investigation carried out under this section in respect of the application has been completed, whichever is the earlier (in this section referred to as "the material date").

(5) Before the 60 days' period under subsection (4)(a) expires or (where a longer period has been specified under this subsection) before the longer period expires, the Commissioner or the licensee may request the Authority to make a specification for the purposes of subsection (4)(a). The Authority may---

(a) upon the request, specify a period if the Authority considers it appropriate to do so;

(b) exercise the power under paragraph (a) at most twice in respect of a particular application and may---

(i) for the first time, specify a period not longer than 90 days;

(ii) for the second time, specify a period not longer than 120 days,

beginning on the day after the application was made,
and where a period is so specified the Secretary shall give notice in writing of the specification to the licensee and the Commissioner.

(6) Where the Commissioner intends to object to an application under subsection (1), he shall, within a period of 7 days beginning on the material date, serve notice on the Authority of his intention to object and of the grounds of such objection, and he shall send a copy to the licensee.

(7) Where the Commissioner has served a notice of his intention to object to the application under subsection (6), the Secretary shall, within 7 days after the service of the notice, fix a date for the hearing of the application.

(8) Where the Commissioner---

(a) has, before the expiry of the period specified in subsection (6), notified the Authority in writing that he does not intend to object to the application; or

(b) has, on the expiry of the period specified in subsection (6), neither served a notice of his intention to object to the application under that subsection nor given the notification under paragraph (a), the Secretary shall, in order that the application may be determined by the Authority by circulation of papers in accordance with section 5A, circulate papers relevant to the application to members of the Authority.

(9) Upon circulation of papers under subsection (8)---

(a) if a requisition notice is given, the Secretary shall forthwith fix a date for the hearing of the application;

(b) if no requisition notice is given and the Authority resolves to grant the application in accordance with section 5A within 28 days after the material date, the resolution shall be as valid and effectual as if it were a determination made by the Authority after a hearing;

(c) if no requisition notice is given but no resolution under paragraph (b) has been approved, the Secretary shall forthwith fix a date for the hearing of the application.

(10) The Secretary shall give at least 14 days' notice of the date fixed under subsection (7) or (9) to the Commissioner and the licensee.

(11) Before an application made under subsection (1) is determined, the Authority or any member of the Authority authorized by the Authority to do so may by notice in writing to the Commissioner and to the licensee vary the conditions of the licence until such time as the application is determined.

(12) The licensee and the Commissioner may appear and be heard and be legally represented at the hearing of an application under this section.

(13) On an application under subsection (1) the Authority may, if it thinks fit, vary the conditions of the licence."

19. Application for revocation of licence

Section 25 is amended---

- (a) in subsection (1), by repealing "之" and substituting "人";
- (b) in subsection (2), by adding "at least" after "give".

20. Section added

The following is added---

"25A. Replacement of licence

The Authority may, if satisfied that any licence has been lost, stolen, damaged or destroyed, issue a replacement of the licence to the licensee on payment of the prescribed fee."

21. Appeals against decisions

Section 26(1) is amended by adding ", 24A(13)" after "24(4)".

22. Section added

The following is added---

"28A. Fees received to form part of the general revenue

(1) All fees received under this Ordinance form part of the general revenue.

(2) For the avoidance of doubt, all fees received before the commencement date for section 22 of the Security and Guarding Services (Amendment) Ordinance 2000 (of 2000) are declared to form and to have always formed part of the general revenue."

23. Regulations

Section 30 is amended---

(a) by repealing subsection (1) and substituting---

"(1) The Chief Executive in Council may by regulation prescribe the fees to be paid under sections 14(2), 15(2)(c) and (4A), 18A, 19(2)(b)(ii), 21A, 23(3)(c) and (5A) and 25A.";

(b) by adding---

"(1A) Any fees prescribed in regulations made under subsection (1) may be fixed by reference to the nature of business of the licensee.

(1B) Any fees prescribed in regulations made under subsection (1)---

(a) may be fixed at levels sufficient to effect the recovery of expenditure incurred or likely to be incurred by the Government or the Authority in performing any or all functions under this Ordinance;

(b) shall not be limited by reason only of the amount of administrative or other costs incurred or likely to be incurred by the Government or the Authority in performing any function under this Ordinance as regards any particular person or class of persons.";

(c) in subsection (2), by repealing paragraph (b) and substituting---

"(b) provide for the revocation of a licence for failure to pay any fee, or part thereof, required to be paid in respect of that licence; and"

24. Section added

The following is added---

"35. Savings and transitionals

(1) Where a licence issued before the commencement of section 2(b)

of the Security and Guarding Services (Amendment) Ordinance 2000 (of 2000) (in this section referred to as "the 2000 Amending Ordinance") makes reference to any activity which---

(a) is security work for the purposes of this Ordinance immediately before that commencement; but

(b) is not security work for the purposes of this Ordinance as amended by that section, the licence shall, in respect of the remainder of its term after that commencement, be treated as a licence that does not contain that reference.

(2) Where, immediately before the commencement of sections 12 and 15 of the 2000 Amending Ordinance, a licence fee is payable in respect of any licence under this Ordinance as it then applied (whether or not allowed to be paid by instalments under section 4 of the Security and Guarding Services (Fees) Regulation (Cap. 460 sub. leg.)), then---

(a) the licence fee remains payable under this Ordinance as it then applied as if sections 12 and 15 of the 2000 Amending Ordinance had not been enacted;

(b) during the remainder of the term for which the licence was issued, section 21A of this Ordinance does not apply in relation to the licence.

(3) Where immediately before the commencement of section 13(d) and (e) of the 2000 Amending Ordinance---

(a) an application made under section 19 or 23 of this Ordinance is pending; and

(b) the Secretary has given notice of the date fixed for the hearing of the application (whether or not the hearing has commenced), the application shall be determined in accordance with this Ordinance as if section 13(d) and (e) of the 2000 Amending Ordinance had not been enacted.

(4) Where, immediately before the commencement date for sections 17 and 18 of the 2000 Amending Ordinance, an application made under section 24 of this Ordinance is pending, the application shall be determined in accordance with this Ordinance as if sections 17 and 18 of the 2000 Amending Ordinance had not been enacted.

(5) Except as provided in this section, any amendment made by a provision of the 2000 Amending Ordinance applies to and in relation to an application made or a licence issued under this Ordinance before the commencement of that provision as it applies to and in relation to an application made or a licence issued on or after that commencement."

Explanatory Memorandum

This Bill amends the Security and Guarding Services Ordinance (Cap. 460) ("the Ordinance").

2. Clause 2 amends---

(a) the definition of "security device" to exclude security devices for vehicles; and

(b) the definition of "security work" so that the category of "preventing or detecting the occurrence of any offence" (paragraph (b)

of the definition) is limited to cases involving the guarding of any person or place.

3. Clauses 3 and 4 increase the number of members of the Security and Guarding Services Industry Authority ("the Authority") and the number of members required to form a quorum for its meetings.

4. Clauses 5, 13(e), 14 and 17 and part of clause 18 provide for the transaction of business of the Authority by circulation of papers. Clause 7 extends the scope of privileges and immunities to cover the transaction of business by circulation of papers and also confers protection against personal liability on persons performing functions under the Ordinance.

5. Clause 18 extends the power of the Commissioner of Police ("the Commissioner") to carry out investigations to cover, in addition to an application for a licence, an application by the licensee to vary the conditions of a licence. Clauses 6 and 13(b), (f) and (g) and part of Clause 18 provide for the specification of a longer period by the Authority for the Commissioner to carry out investigation in the two types of applications.

6. Amendments relating to fees are made to---

(a) separately provide for the fee payable for the renewal of a permit (clause 8);

(b) replace the existing fee payable for the issue of a licence (being one fee payable by instalments) by an annual fee fixed as at the date of issue of the licence and payable on issue of the licence and thereafter annually (clause 15);

(c) separately provide for the fee payable for the renewal of a licence, being an annual fee fixed as at the date of renewal of the licence and payable on renewal of a licence and thereafter annually (clause 16);

(d) put beyond doubt that all fees received under the Ordinance are part of the general revenue (clause 22);

(e) remove size of the business of the licensee as a factor for fixing any fee (clause 23(a));

(f) add a global costing clause so that fees may be fixed for costs recovery in general instead of costs recovery for individual items (clause 23(b)).

7. Clauses 11 and 20 provide for the replacement of permits and licences.

8. Clause 24 is a transitional provision. It provides as follows---

(a) for an existing licence that covers any activity which ceases to be "security work" under the definition of the term as amended, the licence shall be treated as a licence that does not cover the activity;

(b) for a licence issued before the commencement date for the amendments relating to licence fees, the licensee's existing liability for licence fees is preserved;

(c) where, at the date of commencement date for the amendments providing for transaction of business by circulation of papers---

(i) an application for the issue or renewal of a licence is pending, it may be determined in accordance with those amendments only if no notice has been given of the date fixed for hearing the application;

(ii) an application for a variation of the conditions of a licence is pending, it shall be determined without regard to those amendments;

(d) unless otherwise provided, any amendment made by a provision of the Bill applies to all applications and licences (whether or not made or issued on or after the commencement of the amendment).