

ETWB(W) 660/72/01 Pt. 2

LS/B/30/01-02

Tel No.: 2848 2585

Fax No.: 2869 0167

12 November 2002

Ms Kitty Cheng
Assistant Legal Adviser
Legal Service Division
Legislative Council Secretariat
Legislative Council Building
8 Jackson Road
Central, Hong Kong

Dear Ms Cheng,

Land (Miscellaneous Provisions)(Amendment) Bill 2002

I refer to your letter dated 4.11.2002 ref. LS/B/30/01-02.

Taking your questions in turn, I would like to advise as follows:

1. Review of List of Recordable Offences by the Police (your para. 3)

We would like to advise that it is still the practice of the Police to determine which convictions are to be recorded. The Police review the list of offences so determined annually.

2. On disclosure of Review of List of Recordable Offences by the Police (your para. 4)

The Police maintains the position that it is appropriate to tell the whole truth about a person's convictions, irrespective of whether they are spent under the Rehabilitation of Offenders Ordinance, and if so required by a foreign government, such spent convictions are released with the consent of the data subject. This policy does not apply to the offences under the current Land (Miscellaneous Provisions) Ordinance (Cap 28), and the Land (Miscellaneous Provisions) (Amendment) Bill 2002 as it is decided by the Police that all such offences are not, and, subject to the offences and the penalties proposed in the Bill remaining unchanged when it is enacted into an ordinance (save the proposed change from a fine of level 5 plus 6 months imprisonment to just a fine of \$200000 for the offence in section 10Q(1) of the Bill), will not be recorded by the Police. Hence, such offences will not be relevant for a CNCC to be issued by the Police.

3. On discharge of duties under section 10Q by the permittee and the nominated permittee (your para. 5)

In section 10Q(1), both the permittee and the nominated permittee are under duty to provide the safety precautions and adequate support. Such duty is to be discharged by the permittee only if there is no nominated permittee, and such duty is to be discharged jointly and severally by both the permittee and the nominated permittee if there is a nominated permittee.

4. On drafting of section 10Q(2) (your para. 6)

The offence under section 10Q(2) is a strict liability offence and if there is evidence that a permittee or nominated permittee or both of them fails or fail to adopt all necessary safety precautions or provide adequate support, both the permittee and the nominated permittee shall be guilty of an offence and both could be prosecuted irrespective of whether such failure to provide the safety measures was intentional or unintentional on the part of the permittee and /or the nominated permittee. On conviction, each of them will be liable to a fine and imprisonment. This is in line with the Administration's intention to make both the permittee and the nominated permittee liable for failure to comply with their duties under section 10Q(1). The drafting of subsection (2) could be revised as follows to better reflect the policy intention:

- “(2) Where there is a permittee and no nominated permittee and subsection (1) is contravened, the permittee shall be guilty of an offence and shall be liable on conviction to a fine at level 5 and to imprisonment for 6 months.
- (2A) Where there is a permittee and a nominated permittee and subsection (1) is contravened, both the permittee and the nominated permittee shall each be guilty of an offence and shall each be liable on conviction to a fine at level 5 and to imprisonment for 6 months.”

I trust the above should be of help, but you are welcomed to write to us should you require further information.

Yours sincerely,

(S W Chia)
for Secretary for the Environment,
Transport and Works