

**BILLS COMMITTEE ON  
LAND (MISCELLANEOUS PROVISIONS)(AMENDMENT) BILL 2002  
MEETING ON 9 DECEMBER 2002**

**Follow-up to meeting on 18 November 2002**

In the Bills Committee on Land (Miscellaneous Provisions) (Amendment) Bill 2002 on 18 November 2002, the Administration was requested to follow up on certain issues. The following are the information provided on these issues.

**Question (a) To advise the availability of civil remedy against an act or omission on the part of the Government in contravention of Part III of the Bill relating to excavation in unleased land.**

**Answer (a)** Following the provisions of Section 2A, where Government is to become a permittee when carrying out excavation in a street (i.e. unleased land which is a street maintained by the Highways Department), then a person may have a civil claim in negligence against government if such person could establish negligence on the basis of any act or omission on the part of Government in carrying out the excavation work. The civil claim for negligence is already in existence in common law and should be applicable to government and private street excavation promoters alike.

**Question (b) To consider imposing a more stringent liability on the part of Government in case of contravention of Part III of the Bill, having regard to the proposed liabilities imposed on street excavation promoters and individuals under the Bill.**

**Answer (b)** We propose to modify section 2A to make every contravention by government departments reportable to SETW, instead of only those cases which are not stopped on intervention by the Authority. A draft of the proposed amendment is enclosed at Annex A for the Bill's Committee's consideration.

The following comparison shows that private street excavation promoters and Government street excavation promoters are essentially treated equally under the Amendment Bill:

<b>Aspect</b>	<b>Private Street Excavation Promoters</b>	<b>Government</b>
To get an excavation permit	Required	Required
To pay fees	Required	Required
To pay economic charges	Required	Required
To nominate his contractor to share the responsibilities	Available	Available
Breaching permit conditions and safety requirements	Fines only, and paid by the company unless the Permittee is an individual. Individuals are unlikely to be liable unless there is obvious evidence to prosecute an individual	Although government departments are not required to pay fines, individual officers may, subject to the relevant rules under the Civil Service Regulations etc., face disciplinary proceedings.
Causing injury in the course of street excavation	May be liable to civil suit	May be liable to civil suit
Causing death in the course of street excavation	May be liable to civil suit and if the individual involved is identified, may be liable to a charge of manslaughter out of gross negligence if so proved	May be liable to civil suit and if the individual involved is identified, may be liable to a charge of manslaughter out of gross negligence if so proved

**Question (c) To clarify whether records of convictions for offences under the Bill kept by the Highways Department would have any implication on the convicted companies/persons in bidding for a future Government contract or applying for a Government vacancy.**

Answer (c) Records of convictions for offences under the Bill kept by Highways Department do not have effect on a company's bidding for future government contract as currently, under the contractor management system for public works contracts, which is administered by the Environment, Transport and Works Bureau, offences in the Bill are not the class of offences for which regulating action is taken. If regulating action is taken, a company may be suspended from bidding for public works contract. In future, on ground of public interest, and if the situation warrants, we may include convictions for offences in the Bill as one of the classes of offences on which regulating action will be taken.

As regards employment opportunities in Government, a conviction for an offence is not necessarily a barrier to Government employment. Whether a job applicant who was found guilty of an offence would be employed depends on a number of factors, such as the nature and seriousness of the offence, operational needs of the recruiting departments/grades, public interest, etc. Each case will be considered on its own merits.

**Question (d) To consider introducing measures to facilitate individuals other than street excavation promoters to comply with the safety precaution and support requirements set out in the proposed new section 10Q(1).**

Answer (d) We do not envisage, from a practical point of view and from our experience, any individual without sufficient resources

in Hong Kong nowadays should have a need to carry out street excavations which normally involves expensive construction work. People (whether individuals, body corporate, or companies) that have a need to carry out street excavations should possess the necessary resources (or there are channels to obtain such resources) to hire suitable professional advisors to help them to comply with the safety precautions and support requirements set out in the proposed new section 10Q(1). These professional advisors should possess the knowledge of what those measures are.

However, we can amend section 10Q to list a number of factors that the court has to take into consideration in deciding whether a person charged under section 10(Q)(1) has taken all reasonable steps and exercised all due diligence to avoid committing the offence.

**Question (e) To consider introducing an incentive scheme for street excavation promoters, say, for example, in case a street excavation promoter could arrange to re-open an excavation site for a certain period for temporary passage of vehicular traffic or pedestrian access, consideration could be given to extending the validity of the excavation permit for a corresponding period.**

Answer (e) We note that the objective of Members' proposal about incentive scheme is to ensure maximum availability of roads to traffic and pedestrians. In the permit conditions, the permittee is already required to make a road available to users if the excavation is not worked on for any reason in any day unless approved by the Authority. Also, when issuing a permit, traffic arrangements are to be approved by the Authority, and the Authority will only approve traffic arrangements which are least disturbing to the traffic and pedestrians.

'Extending the validity of a permit for a period corresponding to the temporary reopening of a street to traffic' as suggested by Members is equivalent to a waiver (by refund) of economic charges in any subsequent extension excavation permit. We worry such waiver or refund, while it may 'encourage' temporary reopening during the course of excavation, may dilute the effect of using economic charge as an incentive to encourage the road work promoter to achieve **early/timely overall completion**. We have actually an incentive in the Bill to encourage overall early completion during an extension under section 10K(2).

**Question (f) To advise the factors taken into account in determining the initial permit period, and extension of permit.**

**Answer (f)** There are a lot of factors determining the duration of an excavation. The likely factors include:

- (i) The nature of the work for which the purpose of the excavation is made, such as whether the actual work is cable laying, repairing or renewal of drain pipes, or water pipes, or resurfacing of a road, or for the construction of a foundation of some superstructure, or for construction of some tunnels.
- (ii) The depth and area of the excavation. The deeper and bigger is the excavation, the more likely it is to encounter complicated underground conditions.
- (iii) Locality of excavations. Usually, in old districts where there are dense utilities laid but for historical reasons, are not properly recorded, a lot of adhoc decision has to be made and this is time consuming. In some cases, the geology of the area, or some

underground structure left behind since a long time ago may affect the duration of work.

- (iv) Any restrictions on the hours of working such as day time ban for traffic reasons or nighttime ban for noise reasons.

But when agreeing initial periods or extensions between the Authority and utility undertakers the above factors are converted into some quantities that can be fed into some empirical formulae to work out a suitable duration. A methodology is being jointly developed by the utility undertakers and Highways Department. To be fair to the permittee, the Bill under new section 10K has a mechanism for granting extension for factors beyond the control of the permittee for such as inclement weather, suspension order from Government (provided that it is not due to the fault of the permittee), unexpected change in underground conditions, and other reasons that the Authority considers reasonable.

**Question (g) To advise the monitoring mechanism of road excavations, the action plan to tackle the various problems of road excavations, and the extend to which the problems could be addressed by the Bill**

Answer (g) The Authority controls street excavations through a 3 tier liaison system with major private and public street excavation promoters, namely, the Joint Utilities Policy Group, Utilities Technical Liaison Committee (UTLC), and Road Opening Coordination Committee (ROCC); the computerized utility management system (UMS) which provides the statistics to monitor globally the punctuality of street excavations; and the audit system to monitor the compliance with permit conditions and safety requirements of individual street excavations.

Currently, the Authority has limited means to control extensions and encourage timely completion other than by passively recording the delays and non-compliance with EP conditions and have them discussed on the UTLC and ROCC, where utilities are urged to improve their performance. With the passage of the Bill, there will be financial disincentive for unreasonable delays in completion of street excavations and more effective prosecutions to encourage compliance with permit conditions.

We have identified some common reasons for delays in completion of street excavations. Their numbers and proportions, based on statistics in year 2001/02 are:-

<b>Reasons for Extension</b>		<b>2001/2002</b>	
		<b>No. of extensions</b>	<b>Percentage</b>
1.	Obstruction by underground utilities and difficult ground conditions	1,987	13.4%
2.	Interference by other parties	2,225	15%
3.	Traffic arrangement and coordination	3,030	20.4%
4.	Inclement weather	1,992	13.4%
5.	Late commencement	1,271	8.6%
6.	Others such as due to waiting for delivery of materials, variations, slow progress of work, contractor problems etc.	4,320	29.1%
<b>Total</b>		<b>14,825</b>	<b>100%</b>

It is expected that the Bill can improve the above situation as follows:-

<b>For Reason</b>	<b>Improved by</b>
1.	Quite substantially because promoters will put in more effort to assess underground conditions by trial pits.
2.	As every party working on the same excavation is controlled by a EP, all of them should be working diligently. Delays can be reduced.
3.	This can be reduced substantially, as the streamlined process will sort out almost all EP's traffic coordination before the EP is issued.
4.	This cannot be controlled, and it is expected that this will make up the majority of delayed cases in future.
5.	Late commencement due to coordination with Police and Environmental Protection Department will not exist as this should have been solved by the streamlined process. The remaining reasons may be due to problems with street excavation promoters or their contractors. They will be encouraged to coordinate their work better due to the existence of economic charges.
6.	Should be substantially reduced due to existence of economic charges.

Director of Highways will include in their coming Controlling Officer's Report information about non-compliance of excavation permit conditions and unattended sites as recommend in Public Accounts Committee Report No 37.



LAND (MISCELLANEOUS PROVISIONS) (AMENDMENT) BILL 2002

**COMMITTEE STAGE**

Amendments to be moved by the Secretary  
for the Environment, Transport and Works

Clause

Amendment Proposed

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By repealing the new section 2A(3) and (4) and substituting -

"(3) If the Authority considers that a public officer, in carrying out his duties in the service of the Government, has done an act or made an omission in contravention of Part III, the Authority shall -

(a) report the matter to the Secretary for the Environment, Transport and Works; and

(b) in the report, advise him, that the act or omission has, as the case may be -

(i) been terminated to the Authority's satisfaction; or

(ii) not been terminated to the Authority's satisfaction.

(4) On receiving a report under subsection

(3) where paragraph (b)(ii) of that subsection is applicable, the Secretary for the Environment, Transport and Works shall inquire into the matter to which the report relates and ascertain if the public officer concerned is continuing to contravene Part III or has stopped the contravention.

(5) If an inquiry under subsection (4) shows that the public officer concerned is continuing to contravene Part III, the Secretary for the Environment, Transport and Works shall ensure that the best practicable steps are taken to -

- (a) stop the contravention; and
- (b) avoid the recurrence of any like contravention if he considers that the public officer concerned or any other public officer, is likely to commit the like contravention.

(6) If -

- (a) either -
  - (i) a report under subsection (3) is received where paragraph (b)(i) of that subsection is applicable; or
  - (ii) an inquiry under subsection

(4) shows that the public officer concerned has stopped the contravention; but

(b) the Secretary for the Environment, Transport and Works considers that the public officer concerned or any other public officer, is likely to commit a like contravention,

then the Secretary for the Environment, Transport and Works shall ensure that the best practicable steps are taken to avoid the recurrence of the like contravention."