

LEGISLATIVE COUNCIL BRIEF

Foreshore and Sea-bed (Reclamations) Ordinance (Chapter 127)
Roads (Works, Use and Compensation) Ordinance (Chapter 370)

FORESHORE, SEA-BED AND ROADS (AMENDMENT) BILL 2003

INTRODUCTION

A At the meeting of the Executive Council on 21 January 2003, the Council ADVISED and the Chief Executive ORDERED that the Foreshore, Sea-bed and Roads (Amendment) Bill 2003 at Annex A should be introduced into the Legislative Council.

JUSTIFICATIONS

B 2. We propose to reduce the period available to the public to raise objections under the FS(R)O and R(WU&C)O from the existing two months to one month and the resolution of objections from the maximum of nine months to four months. Additionally, we propose to shorten the extension period for resolving objections as may be granted by the Chief Executive (CE) from the existing maximum of six months to three months. A line diagram showing the existing and proposed timeframe for raising and resolving objections is at Annex B. By virtue of section 26 of the WPC(S)R, the amendments to the R(WU&C)O will apply automatically to sewerage schemes gazetted under the WPC(S)R.

3. Under the existing public consultation procedures, Works Departments are required to present their proposed public works schemes to the relevant District Councils and other concerned parties prior to finalizing the project schemes for gazettal. Hence, the public will have been well-informed about a public works project to enable them to raise any objections quickly when a scheme is gazetted. As for resolving objections, experience shows that discussions to resolve objections are normally carried out during the initial few months of the existing nine-month period. Objections that are unresolved during this early period tend to drag on to

the end of the nine-month period. The latter part of the existing objection resolving period contributes little to reducing the number of unresolved objections that are eventually submitted to the CE in Council for consideration. We believe that the shortened periods should still provide adequate time for the public to raise their objections to any works schemes and for their views to be properly considered.

4. The proposed legislative amendments will shorten the pre-construction leadtime of public works projects by about six to nine months. An expedited works programme means that job opportunities associated with public works will be made available earlier. In addition, early completion of public works will enable the public to realize the benefits of the works sooner. Thus Government will be able to respond more quickly to the needs of the community for improved infrastructure which will also help boost the economy.

5. We propose the following transitional arrangements for project schemes that are already gazetted under the two Ordinances as at the date the legislative amendments come into effect -

- (a) The new four-month period for resolving objections shall be calculated from the date the legislative amendments come into operation or from the expiry of the objection period whichever is the later, provided that if the expiry of the four-month period so calculated is more than nine months from the expiry of the time for the lodging of objections, the period for resolving objections shall expire on a date nine months from the expiry of the time for the lodging of objections; and
- (b) Any further period for resolving objections that has been granted by the CE prior to the operation of the legislative amendments shall not be affected. For objections to projects already gazetted, the further period that may be granted by the CE for the resolution of objections will be limited to three months.

A line diagram demonstrating the proposed transitional arrangements is at C Annex C.

6. The proposed legislative amendments discussed in paragraphs 2 and 5 will also apply to non-public works projects which are required to be gazetted under the existing Ordinances.

THE BILL

7. The main provisions are paragraphs 1 and 2 of Schedules 1 and 2 which seek to shorten the time available for -

- (a) the lodging of objections against any proposed reclamations, plans or schemes under FS(R)O and R(WU&C)O; and
- (b) the submission of the proposed reclamations, plans or schemes and the objections to CE in Council for consideration.

D The existing provisions being amended are at Annex D.

LEGISLATIVE TIMETABLE

8. The legislative timetable will be –

Publication in the Gazette	7 February 2003
First Reading and commencement of Second Reading debate	19 February 2003
Resumption of Second Reading debate, committee stage and Third Reading	to be notified

IMPLICATIONS OF THE PROPOSAL

E 9. The proposal has economic, financial, civil service and productivity implications as set out at Annex E. The Bill is in conformity with the Basic Law, including the provisions concerning human rights, and will not affect the respective current binding effects of the FS(R)O and R(WU&C)O. It has no environmental or sustainability implications.

PUBLIC CONSULTATION

10. We consulted the Planning, Lands and Works (PLW) Panel of the Legislative Council on our proposal on 16 May 2002 and 6 December 2002. At the first meeting, some LegCo members expressed the view that the shortened periods might not be adequate for the public to raise objections and for the Government to resolve the objections. Two members also expressed their concern that the proposal would water down the public's right to raise objections.

11. At the second Panel meeting, we provided further justifications on the Bill, and undertook to introduce concurrent administrative measures to enhance public consultation and notification of public works schemes both

prior to and during the gazettal of works. Furthermore, we proposed to set up project steering groups in Works Departments to ensure the speedy resolution of objections and to seek the views of objectors on the need for time extension where their objections are unlikely to be resolved within the original timeframe of four months. The LegCo members present welcomed the proposed arrangements. While two members still objected to the shortening of the period for raising objections from two months to one month, other members either supported or did not raise any objections to the amendment Bill.

12. As the proposed amendments to the R(WU&C)O will apply also to sewerage works, we consulted the Advisory Council on the Environment on the proposal on 21 May 2002. While members were against curtailing the two-month objection period for the same reason that the right of the public to raise objections must be protected, there was general support for the proposal to shorten the period for resolving objections from nine months to four months. They agreed that the shortened objection resolution period would expedite the delivery of public works and contribute to the economy.

PUBLICITY

13. A press release will be issued and a spokesman will be available to handle media and public enquiries.

ENQUIRIES

14. Enquiries about the brief may be directed to Mr C L Ng, Chief Assistant Secretary (Works) 2, at telephone number 2848 2439.

Environment, Transport and Works Bureau
29 January 2003

FORESHORE, SEA-BED AND ROADS (AMENDMENT) BILL 2003

A BILL

To

Amend the Foreshore and Sea-bed (Reclamations) Ordinance and the
Roads (Works, Use and Compensation) Ordinance.

Enacted by the Legislative Council.

1. Short title and commencement

(1) This Ordinance may be cited as the Foreshore, Sea-bed
and Roads (Amendment) Ordinance 2003.

(2) This Ordinance shall come into operation on a day to be
appointed by the Secretary for the Environment, Transport and
Works by notice published in the Gazette.

**2. Amendment of Foreshore and Sea-bed
(Reclamations) Ordinance -
(Schedule 1)**

The Foreshore and Sea-bed (Reclamations) Ordinance (Cap. 127)
is amended as specified in Schedule 1.

**3. Amendment of Roads (Works, Use
and Compensation) Ordinance -
(Schedule 2)**

The Roads (Works, Use and Compensation) Ordinance (Cap. 370)
is amended as specified in Schedule 2.

SCHEDULE 1

[s. 2]

AMENDMENT OF FORESHORE AND SEA-BED
(RECLAMATIONS) ORDINANCE**1. Objections**

Section 6(1) of the Foreshore and Sea-bed (Reclamations) Ordinance (Cap. 127) is amended by repealing "2 months" and substituting "30 days".

2. Authorization procedure if objection made

Section 8(1) is amended -

- (a) by repealing "9 months" and substituting "4 months";
- (b) by repealing "6 months" and substituting "3 months".

3. Transitional

Section 20 is amended by adding -

"(4) Section 8(1) as amended by the Foreshore, Sea-bed and Roads (Amendment) Ordinance 2003 (of 2003) shall apply to any proposed reclamation in respect of which a notice had been published under section 5 immediately before the commencement of that Ordinance subject to the following modifications -

- (a) the period of 4 months as specified in section 8(1) as so amended shall be calculated as from -

- (i) the commencement of that Ordinance;

or

- (ii) the expiry of the time for the making of objections to the reclamation as specified pursuant to section 6 in the notice, whichever is the later;
- (b) if the period so calculated under paragraph (a) expires more than 9 months from the expiry of the time for the making of objections to the reclamation as specified pursuant to section 6 in the notice, that period shall be taken to expire on a date 9 months from the expiry of the time for the making of those objections."

SCHEDULE 2

[s. 3]

AMENDMENT OF ROADS (WORKS, USE AND
COMPENSATION) ORDINANCE

1. **Objections**

Section 10(1) of the Roads (Works, Use and Compensation) Ordinance (Cap. 370) is amended by repealing "60 days" and substituting "30 days".

2. **Procedure after publication of
plan and scheme**

Section 11(1A) is amended -

- (a) in paragraph (a), by repealing "9 months" and substituting "4 months";
- (b) in paragraph (c), by repealing "6 months" and

substituting "3 months".

3. **Transitional**

Section 42 is amended by adding -

"(7) Section 11(1A) (a) as amended by the Foreshore, Seabed and Roads (Amendment) Ordinance 2003 (of 2003) shall apply to any plan or scheme in respect of which a notice had been published under section 8 immediately before the commencement of that Ordinance subject to the following modifications -

(a) the period of 4 months as specified in section 11(1A) (a) as so amended shall be calculated as from -

(i) the commencement of that Ordinance;
or

(ii) the expiry of the time for the lodging of objections under section 10,

whichever is the later;

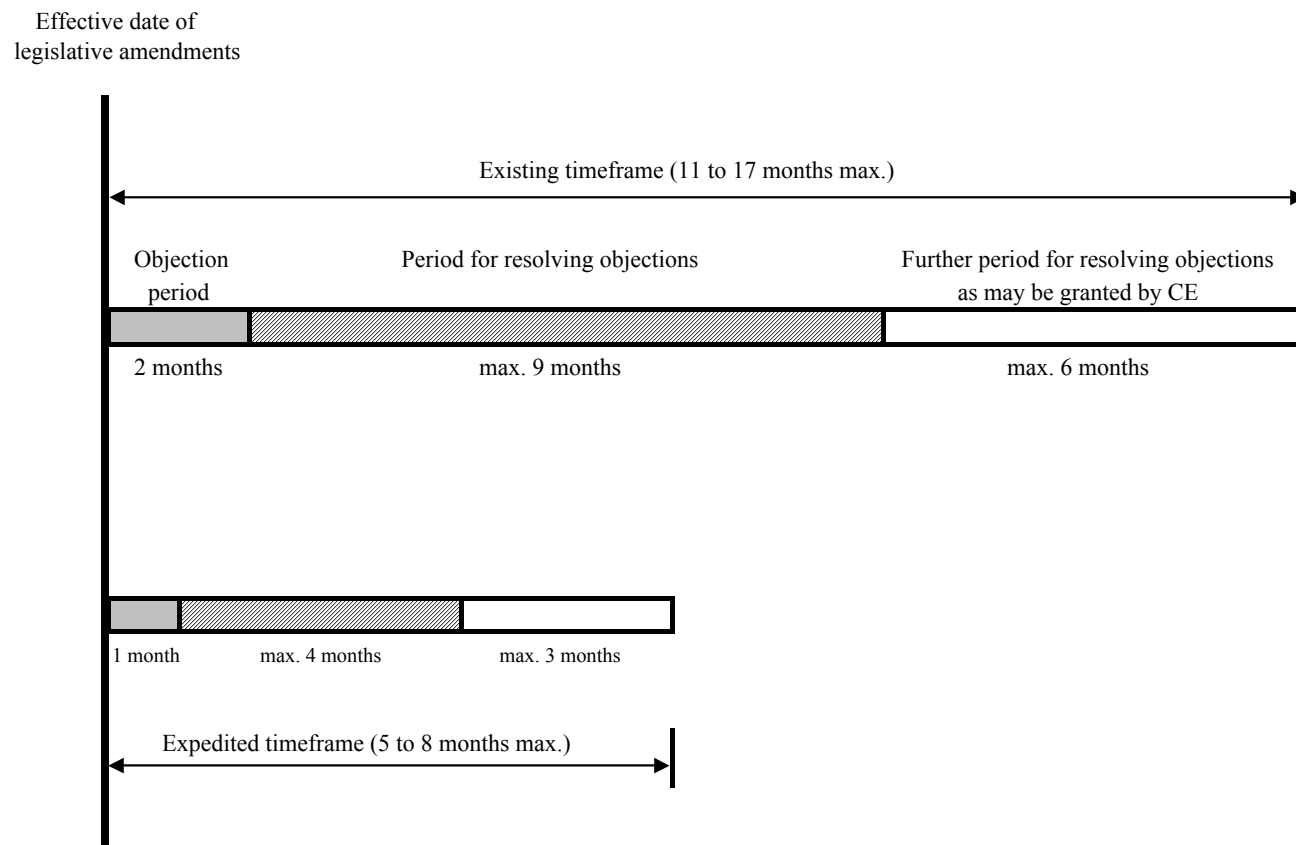
(b) if the period so calculated under paragraph (a) expires more than 9 months from the expiry of the time for the lodging of objections under section 10, that period shall be taken to expire on a date 9 months from the expiry of the time for the lodging of those objections.".

Explanatory Memorandum

The purpose of this Bill is to amend the Foreshore and Seabed (Reclamations) Ordinance (Cap. 127) and the Roads (Works, Use and Compensation) Ordinance (Cap. 370) in order to -

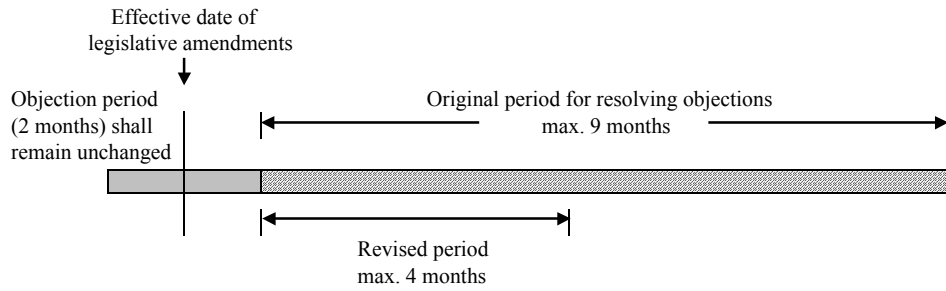
- (a) shorten the period for the lodging of objections against any proposed reclamations, plans or schemes under the Ordinances;
- (b) shorten the period for the submission of the proposed reclamations, plans or schemes and the objections to the Chief Executive in Council for consideration;
- (c) provide for transitional provisions.

Line Diagram Showing the Existing and Proposed Timeframes for Raising and Resolving Objections



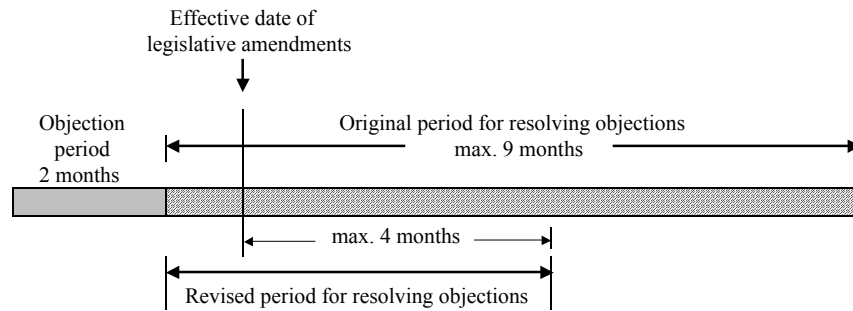
Transitional Arrangements

Case (a) Projects under objection period

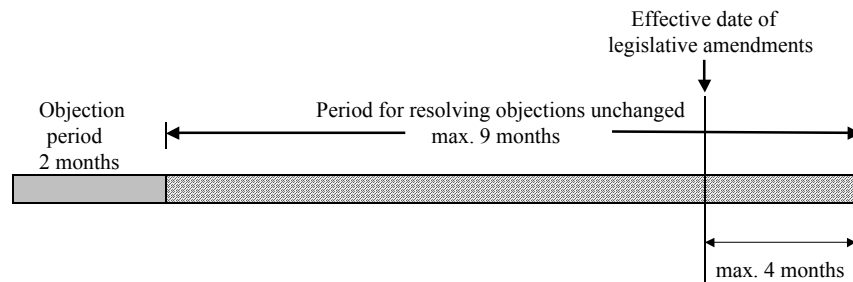


Case (b) Projects in objection resolution stage

Scenario 1

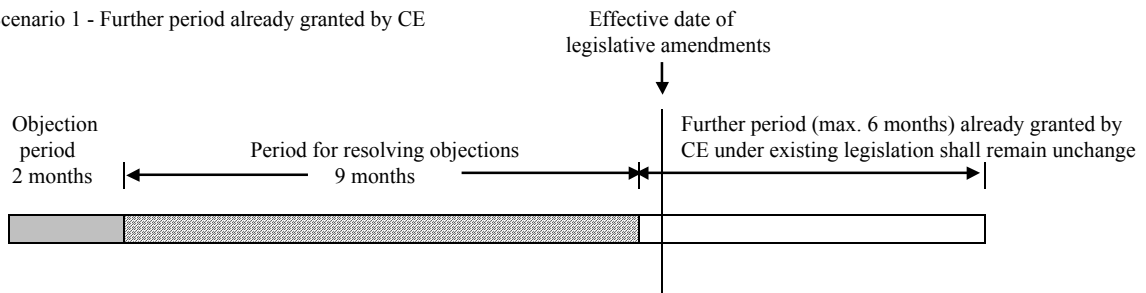


Scenario 2

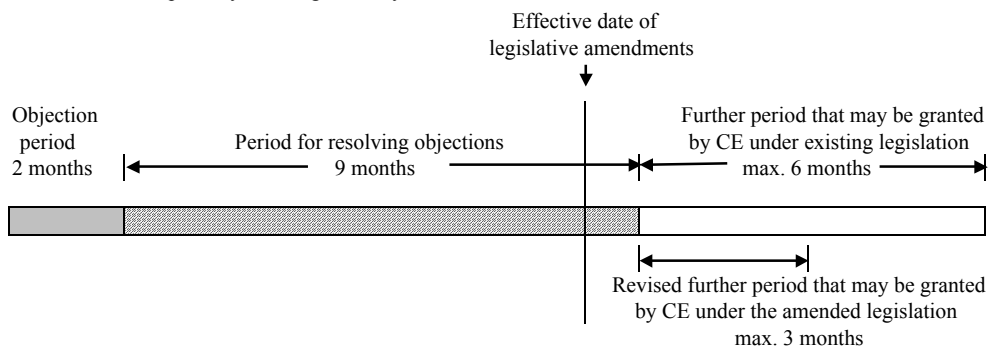


Case (c) Further period for resolving objections

Scenario 1 - Further period already granted by CE



Scenario 2 - Further period yet to be granted by CE



Annex D

Existing Provisions of Legislation Being Amended

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Chapter:	127	Title:	FORESHORE AND SEA-BED (RECLAMATIONS) ORDINANCE	Gazette Number:	
Section:	6	Heading:	Objections	Version Date:	30/06/1997

(1) Any person who considers that he has an interest, right or easement in or over the foreshore and sea-bed described in a notice published under section 5 may, by notice in writing delivered to the Director before the expiration of such time being not less than 2 months as shall be specified in the notice, object to the proposed reclamation.

(2) A notice of objection shall describe the interest, right or easement of the objector and the manner in which he alleges he will be affected.

(3) An objection delivered under subsection (1) may be amended or withdrawn in writing at any time before the proposed reclamation is considered under section 7 or 8; and if withdrawn, shall be treated for the purposes of those sections as not having been made.

(Enacted 1985)

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Chapter:	127	Title:	FORESHORE AND SEA-BED (RECLAMATIONS) ORDINANCE	Gazette Number:	17 of 1998
Section:	8	Heading:	Authorization procedure if objection made	Version Date:	03/04/1998

Remarks:

Adaptation amendments retroactively made - see 62 of 2000 s. 3

(1) Where at the expiry of the time for the making of objections under section 6 in respect of a proposed reclamation any objection has been delivered under that section, the Director shall, within a period of 9 months after the expiry of that time, or within such further period of not more than 6 months after the expiry of that period as may, upon the application of the Director, be allowed by the Chief Executive having regard to the circumstances of the case, submit to the Chief Executive in Council for consideration the proposed reclamation and any such objection, and the Chief Executive in Council shall consider the proposed reclamation and every objection and may-

- (a) decline to authorize the reclamation;
- (b) authorize the reclamation in part only and defer for further consideration at such future time as the Chief Executive in Council shall specify, any objection which relates to the remaining part of the reclamation not so authorized; or
- (c) authorize the whole of the reclamation. (Amended 17 of 1998 s. 2)

(2) Where a reclamation is authorized under subsection (1)(b) or (c), the plan relating to such reclamation shall be subject to such modifications and conditions as the Chief Executive in Council thinks fit. (Amended 62 of 2000 s. 3)

(Enacted 1985)

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Chapter:	127	Title:	FORESHORE AND SEA-BED (RECLAMATIONS) ORDINANCE	Gazette Number:	17 of 1998 s. 3
Section:	20	Heading:	Transitional	Version Date:	03/04/1998

(1) Notwithstanding the repeal of the Public Reclamations and Works Ordinance (Cap 113 1984 Ed.), that Ordinance shall continue to apply to any reclamation or proposed reclamation or other works of a public nature in respect of which a notice had been published under section 2 of that Ordinance before the commencement of this Ordinance.

(2) Notwithstanding the repeal of the Foreshores and Sea Bed Ordinance (Cap 127 1984 Ed.), that Ordinance shall continue to apply to any Crown lease in respect of which a notice had been published under section 4 of that Ordinance before the commencement of this Ordinance.

(3) Where immediately before the commencement of the Foreshore and Sea-bed (Reclamations) (Amendment) Ordinance 1998 (17 of 1998), a notice had been published under section 5 in respect of a proposed reclamation, the period of 9 months as specified in section 8(1) shall be calculated as from-

- (a) the commencement of that Ordinance; or
 - (b) the expiry of the time for the making of objections under section 6,
- whichever is the later. (Added 17 of 1998 s. 3)

(Enacted 1985)

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Chapter:	370	Title:	ROADS (WORKS, USE AND COMPENSATION) ORDINANCE	Gazette Number:	
Section:	10	Heading:	Objections	Version Date:	30/06/1997

(1) Any person may, by notice in writing delivered to the Secretary not later than 60 days after the first publication of the notice mentioned in section 8(2), object to the works or the use or both and may, where relevant, object to the exercise of the power of the Secretary under section 42(2).

(2) A notice of objection shall describe the interest of the objector and the manner in which he alleges he will be affected by the works or the use.

(3) An objection lodged under this section may be amended or withdrawn in writing at any time before the works and the scheme are considered under section 11; and, if withdrawn, shall be treated, for the purposes of section 11(1), as not having been lodged.

Chapter:	370	Title:	ROADS (WORKS, USE AND COMPENSATION) ORDINANCE	Gazette Number:	14 of 1998 s. 2
Section:	11	Heading:	Procedure after publication of plan and scheme	Version Date:	03/04/1998

(1) When the time for the lodging of objections has expired and where no objections have been lodged under section 10, the Secretary may execute the works; and the works and the use shall be authorized under this Ordinance.

(1A) Subject to subsection (1), the Secretary shall not later than-

- (a) subject to paragraphs (b) and (c), 9 months after the expiration of the period for lodging objections under section 10(1);
- (b) subject to paragraph (c), where there is any amendment to the plan or scheme under section 7, 3 months after the expiration of the period for lodging objections under section 10(1) in respect of any such amendment or, where there is more than one amendment, the last of any such amendment;
- (c) such further period of not more than 6 months after the expiration of the period referred to in paragraph (a) or (b) (as the case may be) as the Chief Executive may, upon the application of the Secretary, allow having regard to the circumstances of the case, submit to the Chief Executive in Council for consideration the plan and scheme and any objections lodged under section 10(1). (Added 14 of 1998 s. 2)

(1B) The Chief Executive in Council shall consider the plan and scheme submitted and any objections lodged under section 10(1). (Added 14 of 1998 s. 2)

(2) The Chief Executive in Council, after considering the plan and scheme submitted and any objections lodged under section 10(1), may-

- (a) decline to authorize the works and the use; or
- (b) authorize the works and the use, with or without modification and subject to such conditions, as to the amelioration or avoidance of the effects of the works and the use or otherwise, as the Chief Executive in Council thinks fit. (Replaced 14 of 1998 s. 2)

(3) Before exercising the power under subsection (2), the Governor in Council may refer the plan, the scheme and the objections to the Town Planning Board appointed under the Town Planning Ordinance (Cap 131) and the Board shall, whether or not the works are shown on any draft plan under that Ordinance-

- (a) exhibit and advertise the plan and scheme under section 5 of that Ordinance as if it were a draft plan;
- (b) consider the objections lodged under section 10 and any other objections received by the Board; as if all the objections were objections to a draft plan sent to the Board under section 6 of that Ordinance;
- (c) report to and advise the Governor in Council on the plan, the scheme and the objections as the Board thinks fit.

(4) The Governor in Council may reconsider any plan and scheme and-

- (a) authorize the works and the use which the Governor in Council has previously declined to authorize;

- (b) remove or vary any modifications or conditions previously imposed.
- (5) The Governor in Council may, after the expiry of at least 28 days notice served on any person affected, amend any plan and scheme already considered and authorize the works and use in accordance with that amended plan and scheme.
- (6) Where any objection has been lodged under section 10, the Secretary may execute the works only to the extent authorized, and subject to any subsisting modifications or conditions imposed, by the Governor in Council.
- (7) Where any subsisting condition imposed by the Governor in Council under subsection (2)(b) requires anything to be done by the Secretary to ameliorate or avoid the effects of the works or the use-
 - (a) anything done by the Secretary in compliance with that condition shall be part of the works;
 - (b) the Secretary may enter any land or building, after giving at least 28 days notice to the owner and the occupier, and do what is required to be done to comply with that condition; and
 - (c) the condition shall be deemed to have been met if the condition is met in respect of all the persons for whose benefit the condition was imposed other than those who waive compliance in writing.
- (8) The notice mentioned in subsection (7)(b) shall-
 - (a) describe the purpose of the entry; and
 - (b) be served on the owner and occupier.
- (9) Where-
 - (a) the Secretary proposes to execute the works under subsection (1); or
 - (b) the Governor in Council has declined to authorize the works and the use; or
 - (c) the Governor in Council has authorized the works and the use; or
 - (d) the Governor in Council imposes any modifications or conditions when authorizing the works and the use; or
 - (e) any modification or condition previously imposed is removed or varied,
 that fact shall be published in the manner mentioned in section 8(3).

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Chapter:	370	Title:	ROADS (WORKS, USE AND COMPENSATION) ORDINANCE	Gazette Number:	L.N. 106 of 2002
Section:	42	Heading:	Transitional	Version Date:	01/07/2002

(1) Notwithstanding the repeal of the Streets (Alteration) Ordinance (Cap 130, 1974 Ed.) and subject to subsection (2) of this section, that Ordinance shall continue to apply to any works included in an undertaking in respect of which a notice has been published under section 3 of that Ordinance.

(2) Notwithstanding anything done under section 3 of the repealed Streets (Alteration) Ordinance (Cap 130, 1974 Ed.) and subject to subsection (3) of this section, the Secretary for Transport may cease to act under that Ordinance and act under section 4 or 5 of this Ordinance in relation to any works if, and only if, no authority has been given under section 6 of that Ordinance in respect of any undertaking which includes those works. (Amended L.N. 106 of 2002)

(3) Where an undertaking which has been authorized under section 6 of the repealed Streets (Alteration) Ordinance (Cap 130, 1974 Ed.) is abandoned and the Secretary for Transport proposes to

carry out any works in place of and substantially different to the abandoned undertaking, he may act under section 4 or 5 of this Ordinance in relation to those works. (Amended L.N. 106 of 2002)

(4) Where, under subsection (2) or (3) of this section, the Secretary for Transport acts under section 4 or 5 of this Ordinance in relation to any works, this Ordinance shall apply to those works; and no person shall have any right against the Crown or any other person in relation to those works except under this Ordinance. (Amended L.N. 106 of 2002)

(5) (Repealed 51 of 1982 s. 2)

(6) Where immediately before the commencement of the Roads (Works, Use and Compensation) (Amendment) Ordinance 1998 (14 of 1998) ("the amending Ordinance"), a notice had been published under section 8 in respect of any plan and scheme, the periods specified in section 11(1A)(a) and (b) respectively shall be calculated as from-

(a) the commencement of the amending Ordinance; or

(b) the expiry of the time for the lodging of objections under section 10,

whichever is the later. (Added 14 of 1998 s. 3)

IMPLICATIONS OF THE PROPOSAL

ECONOMIC IMPLICATIONS

1. The speeding up of public works projects will help engender efficiency in project implementation, thereby bring forward the economic and social benefits stemming from the projects and the creation of jobs associated with the projects.

FINANCIAL AND CIVIL SERVICE IMPLICATIONS

2. The speeding up of public works projects will bring forth the expenditure and committed staffing requirements associated with the projects. The advanced cashflow requirement will however need to be justified and subject to the usual vetting and approval through the normal way.

PRODUCTIVITY

3. We estimate that about 100 projects will require gazettal under the relevant Ordinances/Regulation in the coming five years. With the proposed legislative amendments, the programme of these projects can be brought forward by about six to nine months.