

Bills Committee for Waste Disposal (Amendment) (No.2) Bill 2003

**The Administration's Proposed Amendments to the
Waste Disposal (Amendment) (No.2) Bill 2003**

Purpose

This paper seeks Members' comments on the Administration's proposed amendments to the Waste Disposal (Amendment) (No.2) Bill 2003 (the Bill).

Proposed Amendments

2. Our proposed amendments to the Bill are set out in paragraphs 3-7 below.

Section 16A(4)

3. The proposed section 16A(4) is modelled on the existing section 20G of the principal Ordinance and aims to provide the defendant with a defence under specific circumstances if the defendant can also prove that "he took all steps reasonably open to him to ensure that an offence would not be committed". However, we note Members' concern that an employee who acted under his employer's instructions may not know what additional steps the court would expect him to take to satisfy the requirement.

4. We consider that in the specific scenarios described in the proposed section 16A(4)(a) and (b), if the defendant can satisfy the court "and in either case that he had no reason to believe that an offence would be committed", as suggested by Members, it should be acceptable to regard the defendant as innocent. We therefore agree to propose an amendment to that effect.

Section 18(A)4

5. We have reviewed the similar provisions in both section 18A(1)(b) and section 23EA(2) involving the magistrate's order for the convicted person to pay the Director any expenses reasonably incurred by the Director in carrying out the removal of waste (i.e. an expense order). We consider that it may not be appropriate to make failure to comply with

an expense order under the proposed section 18A(1)(b) an offence. Instead, the expense orders issued under both proposed subsections 18A(1)(b) and 23EA(2) should be enforced as civil debts. This is consistent with the similar provisions in other Ordinances.

6. We therefore propose amending section 18A(4) by cross-referring to subsection (1)(a) instead of subsection (1). We also propose amending the proposed section 42 at clause 10 of the Bill to provide that the Director may recover any amount payable pursuant to an expense order made under section 18A(1)(b) or section 23EA(2) as a civil debt.

Section 23EA

7. We agree to the suggestion of the Legal Adviser to the Bills Committee of adding a provision similar to the existing section 23C(4) of the principal Ordinance, requiring the Director to produce a warrant, if required, when he enters any domestic premises in accordance with the warrant issued under section 23EA(4).

8. A mark-up version of the Bill showing the proposed amendments is at Annex.

Way Forward

9. Members are invited to comment on the proposed amendments to the Bill. Subject to the agreement of Members to resume second reading debate of the Bill after completion of Bills Committee's scrutiny, the Secretary for the Environment, Transport and Works will propose to move the proposed amendments to the Bill in committee of the whole Council.

Environment, Transport and Works Bureau
June 2004

**PROPOSED COMMITTEE STAGE AMENDMENTS
TO
WASTE DISPOSAL (AMENDMENT) BILL 2003**

[Shown in revision mode on the Gazette version of the Bill]

WASTE DISPOSAL (AMENDMENT)(NO. 2) BILL 2003

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**Fixed Penalty (Public Cleanliness Offences)
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A BILL

To

Amend the Waste Disposal Ordinance.

Enacted by the Legislative Council.

1. Short title and commencement

(1) This Ordinance may be cited as the Waste Disposal (Amendment) (No. 2) 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. Interpretation

(1) Section 2(1) of the Waste Disposal Ordinance (Cap. 354) is amended by repealing the definition of “trade waste” and substituting –

““trade waste” (行業廢物) means waste from any trade, manufacture or business, but does not include animal waste, chemical waste or construction waste;”.

(2) Section 2(1) is amended, in the definition of “waste”, by adding “construction waste,” before “household”.

(3) Section 2(1) is amended by adding –

““construction waste” (建築廢物) means any substance, matter or thing defined as construction waste by regulations made under section 33, but does not include chemical waste;

“designated waste disposal facility” (指定廢物處置設施) has the same meaning as in section 2 of the Waste Disposal (Designated Waste Disposal Facility) Regulation (Cap. 354 sub. leg. L);”.

3. Section substituted

Section 16A is repealed and the following substituted –

“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.

(2) For the purposes of subsection (1), if waste is deposited from a vehicle that is not being used as a public transport carrier, the following persons are regarded as causing the waste to be deposited –

- (a) the driver of the vehicle at the time when the waste is deposited from it; and
- (b) any person employing that driver to drive the vehicle at that time.

(3) A person charged with an offence under subsection (1) has a defence if he proves that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

(4) Without limiting the general nature of subsection (3), a person establishes the defence under that subsection if he proves –

- (a) that he acted under instructions from his employer; or
- (b) that he relied on information supplied by another person and had no reason to believe that the information was false or misleading,

and in either case that he ~~took all steps reasonably open to him to ensure that an offence would not be committed~~ had no reason to believe that an offence would be committed.

(5) If a person wishes to rely on a defence involving an allegation –

- (a) that the commission of the offence was not due to his acting under the instructions of his employer but was due to an act or omission of another person; or
- (b) that he relied on information supplied by another person,

he is not entitled, without leave of the court, to rely on the defence unless he has served on the prosecutor, at least 7 clear days before the hearing, a notice giving all information he then had that identifies or assists in identifying the other person.

(6) For the purpose of subsection (2), “public transport carrier” (公共交通工具) means a public bus, public light bus, taxi, train, light rail vehicle or tramcar.”.

4. Section added

The following is added –

“18A. Power of magistrate to order removal of waste from Government land or payment of Director’s expenses

(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 –

- (a) remove the waste from that land within the period specified in the order; or
- (b) if the Director has already removed the waste, pay the Director any expenses reasonably incurred by him in carrying out the removal.

(2) An order under subsection (1) is in addition to any penalty imposed under section 18 in respect of an offence under section 16A.

(3) A person who is subject to an order under subsection (1)(a) shall inform the Director immediately upon completion of the removal of the waste concerned by delivering by hand a written notice at his office or sending a written notice by registered post to his office address.

(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 –

- (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;
- (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
- (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.

(5) A person who, without reasonable excuse, fails to comply with subsection (3) commits an offence and is liable to a fine at level 3.

(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).”.

5. Section added

The following is added –

“23EA. Director’s power to remove waste in case of imminent risk of adverse environmental impact

- (1) If the Director has reasonable grounds to believe that –
- (a) an offence under section 16A has been committed in a place;
 - (b) the waste deposited in the place is likely to give rise to an imminent risk of adverse environmental impact; and
 - (c) action needs to be taken immediately to reduce or eliminate that risk,

then the Director may enter the place to remove the waste.

(2) If a person is convicted of an offence under section 16A in respect of waste that has been removed by the Director under subsection (1), the magistrate may, on application by the Director, order the person to pay the Director any expenses reasonably incurred by him in carrying out the removal.

(3) The Director shall not under subsection (1) enter any domestic premises unless he has first obtained a warrant issued by a magistrate under subsection (4) for that purpose.

(4) A magistrate may, for the purpose of subsection (1), issue a warrant to the Director to enter any domestic premises if the magistrate is satisfied by information on oath that there are reasonable grounds to believe that –

- (a) an offence under section 16A has been committed in those premises, or in a place that is accessible only through those premises;
- (b) the waste deposited in those premises or in that place is likely to give rise to an imminent risk of adverse environmental impact; and

- (c) action needs to be taken immediately to reduce or eliminate that risk.

(4A) Where the Director enters any domestic premises in accordance with a warrant issued under subsection (4), he shall, if required, produce that warrant.

(5) For the purposes of this section, a reference to domestic premises includes a reference to a dwelling place on any private land.”.

6. When appeal may be brought

(1) Section 24(1)(g) is amended by repealing the semicolon and substituting a full stop.

(2) Section 24(1)(h) is repealed.

(3) Section 24 is amended by adding –

“(1A) Subject to subsection (1B), a person who is aggrieved by a decision or direction of the Director made pursuant to regulations made under section 33 may also appeal to the Appeal Board established under section 25.

(1B) No appeal lies under subsection (1A) from any of the following –

(a) the Director’s decision whether or not to accept any waste at a designated waste disposal facility;

(b) the Director’s decision whether or not a charge is to be imposed in respect of any waste or class of waste accepted for disposal at a waste disposal facility as may be prescribed by regulations made under section 33.”.

(4) Section 24(2) is amended by adding “or (1A)” after “subsection (1)”.

7. Mental ingredients of certain offences under the Ordinance

Section 31 is amended by adding “18A,” after “17,”.

8. Regulations

(1) Section 33(1) is amended by adding immediately after paragraph (e) –

“(eaa) any substance, matter or thing to be defined as construction waste;”.

(2) Section 33(1B)(a) is amended by adding “facility,” before “transfer”.

(3) Section 33(4) is amended by adding –

“(ba) confer on the Director the power –

(i) to refuse to accept any waste at a designated waste disposal facility in such circumstances as the Director may think fit;

(ii) to determine whether a charge is to be imposed in respect of any waste or class of waste accepted for disposal at a waste disposal facility as may be prescribed by regulations made under this section;

(iii) to require any person who delivers any waste to a designated waste disposal facility to state the nature of the waste and give such other information as the Director may consider necessary to determine whether or not to accept the waste at that facility;

(iv) to close temporarily any designated waste disposal facility for a specified period of time;”.

(4) Section 33 is amended by adding –

“(6) If a Schedule to any regulations made under this section specifies –

- (a) the premises used for or in connection with any of the relevant activities referred to in subsection (4);
- (b) the charges to be imposed in respect of any construction waste accepted for disposal at a waste disposal facility as may be prescribed by the regulations; or
- (c) the types of waste to be accepted at the premises for the disposal of waste,

the regulations containing the Schedule may provide that the Secretary may, by notice published in the Gazette, amend the Schedule.”.

9. Amendment of Schedules

Section 37 is amended by adding –

“(3) Subject to the approval of the Financial Secretary, the Secretary may, by notice published in the Gazette, amend Schedule 12.”.

10. Sections added

The following are added –

~~“42. Charge or surcharge recoverable as civil~~

~~Any charge or surcharge payable under this Ordinance is recoverable by the Director as a civil debt due to the Government.~~

“42. Recovery of charges and other sums by the Director as civil debts

The following is recoverable by the Director as a civil debt due to the Government –

- (a) any charge or surcharge payable under this Ordinance;
- (b) any amount payable pursuant to an order made under section 18A(1)(b) or 23EA(2).

43. Payment to facility operator under agreement with Government

(1) Those parts or percentages of any charges imposed by any regulations made under section 33 which are required for –

- (a) settling a payment that a facility operator is entitled to receive under an agreement with the Government ; or
- (b) clearing or closing any advance account opened for that purpose,

shall, subject to the approval of the Financial Secretary, not form part of the general revenue and may, in the case of paragraph (a), be paid to the facility operator in accordance with the agreement.

(2) For the purpose of subsection (1), “facility operator” (設施經營人) means a person who has entered into an agreement with the Government for the operation or management of a facility specified in Schedule 12.”.

11. Schedule 12 added

The following is added –

“SCHEDULE 12 [ss. 37 & 43]

FACILITIES TO WHICH SECTION 43 APPLIES

| Item | Name | Address | Number of drawing or plan held by the Director by which boundaries of the facility are |
|------|------|---------|--|
| | | | |

delineated

- | | | | |
|----|--|---|----------------------------|
| 1. | Tuen Mun Area 38 Temporary Construction Waste Sorting Facility | Southern side of Tuen Mun Area 38, near River Trade Terminal, Tuen Mun, N.T. | Plan Number P 20332-1 |
| 2. | Tseung Kwan O Area 137 Temporary Construction Waste Sorting Facility | Southern side of Tseung Kwan O Area 137, N.T. | Plan Number P 20332-2”. |

12. “擺放” substituted for “存放”

Sections 16(2)(c) and (d), 20I(1) (the definition of “處置”) and 36(5) and (6) are amended by repealing “存放” wherever it appears and substituting “擺放”.

Consequential Amendments

Waste Disposal (Appeal Board) Regulation

13. Interpretation

(1) Section 2 of the Waste Disposal (Appeal Board) Regulation (Cap. 354 sub. leg. B) is amended, in the definition of “appellant”, by repealing “24(1)” and substituting “24”.

(2) Section 2 is amended, in the definition of “authority”, by repealing “24(1)” and substituting “24”.

14. Commencement of an appeal

Section 3 is amended by repealing “24(1)” and substituting “24”.

Waste Disposal (Refuse Transfer Station) Regulation

**15. Charge or surcharge recoverable
as a civil debt**

Section 15 of the Waste Disposal (Refuse Transfer Station) Regulation (Cap. 354 sub. leg. M) is repealed.

Fixed Penalty (Public Cleanliness Offences) Ordinance

16. Scheduled offence

Schedule 1 to the Fixed Penalty (Public Cleanliness Offences) Ordinance (Cap. 570) is amended, in item 8, by repealing “存放” and substituting “擺放”.

Fixed Penalty (Public Cleanliness Offences) Regulation

17. Schedule amended

The Schedule to the Fixed Penalty (Public Cleanliness Offences) Regulation (Cap. 570 sub. leg. A) is amended, in Form 1, by repealing “存放” and substituting “擺放”.