

Energy Efficiency (Labelling of Products) Bill

The Administration's Response to Action Items at the Bills Committee Meeting on 13 November 2007

Offences and penalties under the Bill

The types of offences under the Bill and the corresponding penalties are set out at Annex 1. We have reviewed the levels of penalties and their consistency, and propose to make the following amendments –

- (a) Including a penalty of imprisonment for the offence of unauthorized use of energy labels under clause 12 of the Bill - As the offence involves a person who has intent to deceive or mislead another person, we consider that a penalty of imprisonment will better reflect the gravity of the offence. The proposed penalty level is comparable to the penalty level for furnishing false information and documents under clause 20 of the Bill; and
- (b) Increasing the level of fine from level 1 to level 6 for failing to give notice to other suppliers about the removal of a reference number under clause 18 of the Bill - We are of the view that the requirement under clause 18 is important in prohibiting the continuous sale of the concerned products. The proposed penalty level is comparable to the penalty level for failing to publicize non-compliances under clause 30 of the Bill. The Department of Justice advises that the court will take into account whether the non-compliance is due to inadvertent omission or other circumstances in deciding on the penalty level.

The fine level under clause 12

2. Under clause 12 of the Bill, the maximum penalty of a conviction for unauthorized use of energy labels with intent to deceive or mislead is level 6. The Department of Justice advises that in normal circumstances, only one charge would be brought against the person even

if the offence involves many items of the same product model.

3. As stated in paragraph 1 above, we propose including a penalty of imprisonment for the offence of unauthorized use of energy labels to better reflect the gravity of the offence and increase the deterrent effect.

The remedy period for improvement notices

4. In determining the remedy period to be specified in an improvement notice, the Director of Electrical and Mechanical Services Department (the Director) will take into account the individual nature of each case, the impact of the contravention on the public and the time reasonably required for implementing the relevant remedial measures. In light of the comments of some Bills Committee members that the Director should be provided with a power to extend the remedy period if there are reasonable grounds to do so, we propose amending clause 14 of the Bill to reflect members' views.

The 14-day period under clauses 17 and 18

5. Under clause 17 of the Bill, after the Director has served a notice in writing on a specified person that a reference number is to be removed from the record, the specified person is invited to make written representation within 14 days of the notice on why the reference number should not be removed. In practice, when the Director suspects that a requirement under the Bill is being contravened, he would first investigate and ask for clarification, and where appropriate, serve an improvement notice or prohibition notice on the relevant person. Such arrangement provides the person with opportunities to explain or remedy the contravention. The Director will remove the reference number from the record only when the contravention is verified or if it persists. In view of the above, a person should already have knowledge about the contravention involved when he receives a notice under clause 17 about the removal of a reference number. Therefore, we consider it appropriate to provide a 14-day period for the person to make written representation under clause 17 of the Bill.

6. Clause 18 of the Bill requires that a specified person to give notice in writing to each person whom he has supplied the product about

a removal of reference number. However, the specified person is exempted from giving notice to a person to whom the prescribed product had been sold by retail or had been supplied at least 1 year before the removal of reference number from the record.

7. With the above-mentioned exemptions, we consider that a 14-day period to be appropriate as the specified person should have kept the trade record on whom he has supplied the product.

Appointment of authorized officers

8. The list of duties of authorized officers appointed under the Bill is at Annex 2. Clause 21 of the Bill empowers the Director to appoint in writing any public officer to be an authorized officer. This arrangement is consistent with provisions in other Hong Kong laws that appoint public officers to exercise similar powers, such as section 38 of the 《Hazardous Chemicals Control Ordinance》 (Cap. 595), section 14 of the 《Trade Descriptions Ordinance》 (Cap. 362), section 18 of the 《Consumer Goods Safety Ordinance》 (Cap. 456) and section 15F of the 《Smoking (Public Health) Ordinance》 (Cap. 371). This arrangement allows the Director to authorize suitable officers according to the circumstances of individual cases. For those ordinances that specify the minimum ranking of the public officers that might be appointed for certain enforcement powers, they usually involve the power of arrest or forcible entry.

Production of warrant issued under clause 25

9. Under clause 22 of the Bill, before or on exercising a power under the Bill, an authorized officer is required to produce written evidence of his identity if requested. In light of the comments of the Bills Committee members, we propose amending the clause so that apart from the above-mentioned requirement, in cases where an authorized officer enters a premise with a warrant issued under clause 25, he is also required to produce the warrant if requested.

Internal guidelines issued by the Electrical and Mechanical Services Department (EMSD)

10. EMSD will include in its internal guidelines on the exercise of

the powers under the Bill a reminder for authorized officers that they should advise the concerned person of his rights to legal advice and choice of lawyers for timely protection of their lawful rights and interests under specified situations.

11. The term “domestic premises” means any premise or place used or intended to be used solely or principally for residential purpose. The EMSD will include the definition of “domestic premises” in its internal guidelines and the authorized officer will be reminded to apply for a warrant under clause 25 of the Bill before entering the premise concerned in case of doubt.

Environment Bureau

Electrical and Mechanical Services Department

November 2007

Table of Offences and Penalties

Clause No.	Offences	Requirements on mens rea	Penalty levels
4	A manufacturer or importer commits an offence if he supplies a prescribed product that does not have a reference number assigned in his name and bear an energy label.	-	Fine at level 6
5	A person other than a manufacturer or importer commits an offence if he has not ensured that the prescribed product supplied by him is a product of a listed model and bears an energy label.	-	Fine at level 6
9	A specified person commits an offence if he fails to notify the Director of Electrical and Mechanical Services (the Director) of any change in the specified information or specified documents submitted.	-	Fine at level 1
10	A specified person commits an offence if he fails to submit to the Director up-to-date information of a listed model at intervals not exceeding 5 years.	-	Fine at level 1

Clause No.	Offences	Requirements on mens rea	Penalty levels
12	A person commits an offence if he attaches, affixes or uses an energy label on a product, so as to deceive or mislead another person into believing that the product is a listed model or the product conforms with the information on the energy label.	Intent to deceive or mislead	Fine at level 6
14	A person commits an offence if he contravenes a direction specified in an improvement notice.	-	Fine at level 4; Fine of \$1,000 for every day during which the offence continues
15	A person commits an offence if he fails to comply with a prohibition notice.	-	Fine at level 6; Fine of \$5,000 for every day during which the offence continues
18	A specified person commits an offence if he fails to give notice in writing to other suppliers about the removal of a reference number.	-	Fine at level 1
19	A person commits an offence if he fails to comply with a notice to provide information or document.	-	Fine at level 5

Clause No.	Offences	Requirements on mens rea	Penalty levels
20	A person commits an offence if he furnishes any false information or document.	Knows or ought reasonably to have known that the information or document was false or misleading	Fine at level 6 & imprisonment for 6 months
23/24	A person commits an offence if he fails to comply with a requirement made by an authorized officer or obstructs an authorized officer in exercising his power to enter a premise or investigate.	-	Fine at level 5 & imprisonment for 6 months
26	A person commits an offence if he obstructs an authorized officer in exercising his power of detention.	-	Fine at level 5 & imprisonment for 6 months
27	A person commits an offence if he fails to comply with a requirement of testing.	-	Fine at level 6
30	A person commits an offence if he fails to comply with a notice to publicize a non-compliance.	-	Fine at level 6

Clause No.	Offences	Requirements on mens rea	Penalty levels
38	A person commits an offence if he fails to comply with an order of the appeal board.	-	Fine at level 5

Duties of authorized officers

Clause No.	Descriptions of the duties
23	<ul style="list-style-type: none"> – Enter any premises (except domestic premises) or any specified premises for routine inspection – Exercise certain powers for carrying out the investigation, including: <ul style="list-style-type: none"> - requiring the production of prescribed products or documents; - examining testing processes and procedures; and - seizing and detaining prescribed products.
24 (with a warrant issued by the court)	<ul style="list-style-type: none"> – Enter any premises (including domestic premises) – Exercise certain powers for carrying out the investigation, including: <ul style="list-style-type: none"> - searching any person found at the premises subject to the conditions specified in the ordinance; - requiring the production of prescribed products or documents; - examining testing processes and procedures; and - seizing and detaining prescribed products.
26 (with a warrant issued by the court)	An authorized person may, during the time when he remains in the concerned premise or a shorter period, detain any person found on such premise subject to the conditions specified in the ordinance.