

立法會 *Legislative Council*

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Bills Committee on Waste Disposal (Amendment) Bill 2013

Background brief prepared by the Legislative Council Secretariat

Purpose

This paper provides background information on the Waste Disposal (Amendment) Bill 2013 ("the Amendment Bill"), and gives a brief account of the views and concerns expressed by Members on fly-tipping of construction waste¹ on private land.

Background

2. At present, under section 16A of the Waste Disposal Ordinance (Cap. 354) ("WDO"), a person commits an offence if the person deposits or causes or permits to be deposited waste (including construction and demolition ("C&D") waste) in any place except with lawful authority or excuse, or except with the permission of any owner or lawful occupier of the place. Despite such control, law enforcement against unauthorized deposition of C&D waste on private land is not effective as it is difficult to prove the lack of permission of a landowner or lawful occupier. It is not unusual for the Administration to receive incomplete or conflicting information from the depositor and the landowner or lawful occupier as to whether there was indeed proper permission. Some cases involve uncertainty in ownership due to outdated records (e.g. when the owner on record has deceased). More often than not, it is difficult to collect sufficient evidence in a suspected fly-tipping case within the statutory time limit of six months for initiating prosecution. This has undermined the deterrent effect of the control.

¹ Construction waste is defined under section 2 of the Waste Disposal (Charges for Disposal of Construction Waste) Regulation (Cap. 354 sub. leg. N) to mean generally any substance, matter or thing that is generated from construction work and abandoned.

3. The Environmental Protection Department ("EPD") conducted a public consultation in 2010 seeking views on a proposal to introduce a notification procedure to EPD conveying the authorization by all owners concerned for depositing of C&D materials on private land in advance of the activity. Planning, lands and other authorities might also be alerted of such activity. The objective of the proposed notification procedure was to enable related government departments to remind the parties concerned of relevant statutory requirements, including precaution against adverse environmental impacts. The views of the public received during the consultation were generally positive and welcomed the proposal to enhance enforcement against fly-tipping of C&D waste on private land in order to better protect the interests of landowners as well as the environment.

4. Against the above background, the Administration introduced the Amendment Bill, proposing legislative amendments to WDO as set out in the ensuing paragraphs.

The proposed legislative amendments

Prior notification mechanism

5. Taking into consideration that the regulatory control will be enhanced if the Administration can become aware of any plans to deposit C&D waste on private land before the depositing takes place, the Amendment Bill provides for a prior notification mechanism under WDO with the following procedure –

- (a) before a person deposits or causes to be deposited C&D waste on a private land lot, the person must obtain the valid permission of each and every owner of that lot;
- (b) the permission will not be regarded as valid unless it is given in a specified form and the specified form bears an acknowledgement by the Director of Environmental Protection ("DEP") which will not be given unless –
 - (i) the specified form is submitted to DEP, together with certain information and documents relating to the depositing activity as specified in the form, at least 21 calendar days before the intended commencement date of the depositing activity;
 - (ii) the owners identified in the specified form are the persons who appear from the register kept under the Land Registration Ordinance (Cap. 128) to be the owners of the lot ("owners on record"); and

- (iii) the specified form is signed by or on behalf of all owners on record; and
- (c) the person who deposits the waste must display in a conspicuous place of the lot a copy of the acknowledged form.

6. The proposed prior notification mechanism is expected to enhance the regulatory control on fly-tipping of C&D waste on private land and enable relevant government departments to be alerted that depositing of construction waste may commence in a particular private lot such that they may take precautionary measures as appropriate.

Applicability

7. Taking into consideration that there is no case of the sole owner of a private lot fly-tipping on his or her own land, the Amendment Bill provides that the enhanced regulatory control does not apply in either of the following circumstances –

- (a) the area on which construction waste has been deposited within the lot remains small, by which a benchmark of the depositing area being no more than 20 m² is proposed;
- (b) the depositing activity is carried out as part of any building works commenced in accordance with the Buildings Ordinance (Application to the New Territories) Ordinance (Cap. 121) or the Buildings Ordinance (Cap. 123) on the lot concerned.

Penalties

8. The Amendment Bill proposes that the same maximum penalties apply as in similar offences under section 16A of WDO, i.e. (i) a fine of up to \$200,000 and imprisonment for up to six months for the first offence; (ii) a fine of up to \$500,000 and imprisonment for up to six months for subsequent offences; and (iii) a daily fine of \$10,000 for continuing offence. For other auxiliary offences, a fine at level six, i.e. a maximum of \$100,000, is proposed.

Deliberation by Members

9. The Panel on Environmental Affairs ("the Panel") was briefed on the Administration's proposal to amend WDO in order to enhance the effectiveness of enforcing section 16A of WDO against depositing of construction waste on private land at its meetings on 22 February 2010 and 25 February 2013. The Subcommittee on Combating Fly-tipping, which was formed under the Panel in the last term, also discussed the legislative proposal at its meeting on

13 April 2010, during which deputations were invited to express their views. The major views and concerns expressed by members at the meetings are summarized below.

Co-ordination among different government departments

10. While agreeing that the legislative proposal to amend WDO were a step forward in the right direction to combat the problem of fly-tipping of construction waste, some members expressed concern about the co-ordination among various government departments in enforcing the proposed legislative amendments. They opined that there was a need to clearly define the inter-departmental co-ordination on enforcement actions, given that the control of depositing activities was a complex issue involving various policy areas.

Definition of waste

11. In response to members' enquiries about the definition of waste under WDO and the authority to adjudicate whether any deposited C&D materials should be regarded as waste, the Administration had explained that under WDO, construction waste referred to any substance, matter or thing that was generated from construction, maintenance, refurbishment and demolition of buildings, roads, drainage works, etc and was abandoned. The court would decide on the contravention of WDO based on the circumstantial situation and evidence collected in accordance with the provisions of WDO. Notwithstanding this, there was a concern that landowners might circumvent the new notification requirement by claiming that the C&D materials deposited on their land were for storage purposes but not waste.

Small-scale fly-tipping of construction waste at roadsides

12. A member was concerned whether the proposed legislative amendments could resolve small-scale fly-tipping of C&D waste left in heaps at roadsides during odd hours. The Administration had responded that while the proposed legislative amendments would facilitate enforcement against unauthorized depositing of abandoned C&D materials in rural areas, they might not be able to tackle small-scale fly-tipping of C&D waste at roadsides. Actions could be taken against the offenders for fly-tipping if they were caught on the spot.

Level of penalty

13. Some members noted with concern the rising number of complaints on fly-tipping activities on one hand and the small number of prosecutions on the other. They were of the view that the low level of penalty and the low prosecution figures had failed to deter unauthorized depositing activities. They opined that the penalties for unauthorized depositing activities, in particular the maximum penalty level, should be increased so that the court would take this

into account upon conviction of the offenders. In reply, the Administration had explained that it would be up to the court to decide on the penalty to be imposed on convicted cases of unauthorized depositing activities.

Exemption for small-scale depositing activities

14. The Administration had initially proposed that exemption be granted if the deposition involved an area of less than 100 m² on the same lot over a period of time (say one year). At the Panel meeting on 22 February 2010, some members expressed concern that such a threshold for exemption might encourage smaller-scale depositing activities to be scattered in different areas. To strike a right balance between protection of environment and land ownership rights, and in view of the fact that there might be circumstances under which depositing of C&D waste on private land should be exempted from the proposed notification procedure based on the principle of reasonableness, the Administration invited public views on the threshold for exempting deposition during the public consultation in 2010. Taking account of the views collated, the Administration now proposes that depositing activities which involve a total depositing area of no more than 20 m² will be exempted from the proposed notification procedure, as set out in paragraph 7(a) above.

15. In response to a member's enquiry about whether depositing activities on private land with the consent owners were allowed if such activities had given rise to environmental nuisances, the Administration had explained that depositing activities would be allowed with the consent of all the owners concerned before commencing such depositing activities. The nuisances associated with the depositing activities would be dealt with under other legislation.

Latest development

16. The Amendment Bill was gazetted on 21 June 2013 and introduced into the Council on 26 June 2013. At the House Committee meeting on 28 June 2013, Members agreed that a bills committee should be formed to examine the Amendment Bill.

Relevant papers

17. A list of relevant papers is set out in the **Appendix**.

Appendix

List of relevant papers

Council/ Committee	Date of meeting	Paper
Subcommittee on Combating Fly-tipping	3 February 2010	<p>Administration's paper on "Progress of Measures to Combat Land Filling and Fly-tipping Activities" (LC Paper No. CB(1)1026/09-10(01)) http://www.legco.gov.hk/yr09-10/english/panels/ea/ea_cft/papers/ea_cft0203cb1-1026-1-e.pdf</p> <p>Minutes of meeting (LC Paper No. CB(1)1518/09-10) http://www.legco.gov.hk/yr09-10/english/panels/ea/ea_cft/minutes/cft20100203.pdf</p>
Panel on Environmental Affairs	22 February 2010	<p>Administration's paper on "Proposal to further enhance the regulation of depositing of abandoned construction and demolition materials on private land" (LC Paper No. CB(1)1094/09-10(01)) http://www.legco.gov.hk/yr09-10/english/panels/ea/papers/ea0222cb1-1094-1-e.pdf</p> <p>Minutes of meeting (LC Paper No. CB(1)1660/09-10) http://www.legco.gov.hk/yr09-10/english/panels/ea/minutes/ea20100222.pdf</p>
Subcommittee on Combating Fly-tipping	13 April 2010	<p>Administration's paper on "Proposal to further enhance the regulation of depositing of abandoned construction and demolition materials on private land" (LC Paper No. CB(1)1094/09-10(01)) http://www.legco.gov.hk/yr09-10/english/panels/ea/papers/ea0222cb1-1094-1-e.pdf</p> <p>Minutes of meeting (LC Paper No. CB(1)1868/09-10) http://www.legco.gov.hk/yr09-10/english/panels/ea/ea_cft/minutes/cft20100413.pdf</p>
Subcommittee on Combating Fly-tipping	27 September 2010*	<p>Report of the Subcommittee on Combating Fly-tipping for submission to the Panel on Environmental Affairs (LC Paper No. CB(1)2894/09-10) http://www.legco.gov.hk/yr09-10/english/panels/ea/ea_cft/reports/ea_cftcb1-2894-e.pdf</p>

Council/ Committee	Date of meeting	Paper
Subcommittee on Combating Fly-tipping	24 February and 19 April 2011	Administration's paper on "Updates on the initiatives to Combat Land filling and Fly-tipping Activities" (LC Paper No. CB(1)1338/10-11(02)) http://www.legco.gov.hk/yr10-11/english/panels/ea/ea_cft/papers/ea_cft0224cb1-1338-2-e.pdf
Subcommittee on Combating Fly-tipping	28 June 2011*	Report of the Subcommittee on Combating Fly-tipping for submission to the Panel on Environmental Affairs (LC Paper No. CB(1)2526/09-10) http://www.legco.gov.hk/yr10-11/english/panels/ea/ea_cft/reports/ea_cftcb1-2526-e.pdf
Panel on Environmental Affairs	25 February 2013	Administration's paper on "Measures to tackle fly-tipping of construction and demolition waste and illegal land filling" (LC Paper No. CB(1)569/12-13(06)) http://www.legco.gov.hk/yr12-13/english/panels/ea/papers/ea0225cb1-569-6-e.pdf Updated background brief on "Depositing of inert construction and demolition materials on government and private land" prepared by the Legislative Council Secretariat (LC Paper No. CB(1)569/12-13(07)) http://www.legco.gov.hk/yr12-13/english/panels/ea/papers/ea0225cb1-569-7-e.pdf Minutes of meeting (LC Paper No. CB(1)1066/12-13) http://www.legco.gov.hk/yr12-13/english/panels/ea/minutes/ea20130225.pdf
Legislative Council	26 June 2013	Legislative Council Brief issued by the Environment Bureau/Environmental Protection Department in June 2013 (EP CR 9/150/37 Pt.10) http://sobfle02.legco.hksar/sharedoc/r&d/Waste_Disposal(A)Bill_2013-e.pdf

*Date of issuance of papers