

Waste Disposal (Amendment) Bill 2013

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A BILL

To

Amend the Waste Disposal Ordinance to provide for enhanced control of the depositing of construction waste on private land; and to make consequential amendments.

Enacted by the Legislative Council.

1. Short title and commencement

- (1) This Ordinance may be cited as the Waste Disposal (Amendment) Ordinance 2013.
- (2) This Ordinance comes into operation on a day to be appointed by the Secretary for the Environment by notice published in the Gazette.

2. Waste Disposal Ordinance amended

The Waste Disposal Ordinance (Cap. 354) is amended as set out in sections 3 to 10.

3. Section 2 amended (interpretation)

Section 2(1)—

Add in alphabetical order

“*private lot* (私人地段) means a piece or parcel of ground held under a Government lease and identified by a lot number as defined by regulation 2 of the Land Registration Regulations (Cap. 128 sub. leg. A);”.

4. Sections 16B and 16C added

After section 16A—

Add**“16B. Prohibition of depositing of construction waste on private lot without valid permission**

- (1) This section applies in relation to the depositing of construction waste on a private lot except when—
 - (a) the total area on which construction waste has been deposited within the lot, regardless of who deposited the waste, does not exceed 20 m²; or
 - (b) the depositing forms part of any building works carried out on the lot that commenced in accordance with an enactment specified in Schedule 13.
- (2) In calculating the total area for subsection (1)(a), waste containing both construction waste and other waste is regarded as consisting entirely of construction waste.
- (3) Subject to subsection (5), a person who deposits, or causes to be deposited, construction waste on a private lot without the valid permission of the sole owner or all of the owners of the lot commits an offence.
- (4) For subsection (3), the permission is valid only if—
 - (a) it is given in a form specified by the Director under section 16C(2)(a); and
 - (b) the form giving the permission bears an acknowledgement affixed by the Director in accordance with section 16C(3).
- (5) For a private lot owned by a sole owner, the reference to “a person” in subsection (3) does not include the owner.

- (6) Section 16A(2), (3), (4), (5) and (6) applies in relation to an offence under subsection (3) in the same way as it applies in relation to an offence under section 16A(1). For this purpose, the reference to “subsection (1)” in section 16A(2) and (3) is taken to be a reference to subsection (3).

16C. Specified form for permission for depositing construction waste on private lot and Director’s acknowledgement

- (1) In this section—

acknowledged form (經認收表格), in relation to a depositing activity, means a specified form—

- (a) in which the permission for the depositing activity is given; and
- (b) on which an acknowledgement is affixed in accordance with subsection (3);

depositing activity (擺放活動) means the depositing of construction waste on a private lot;

owners (擁有人), in subsection (3)(b)(i) and (ii), includes a sole owner;

permission (許可), in relation to a depositing activity, means the permission of the sole owner or all of the owners of the lot on which the depositing activity is carried out;

specified form (指明表格) means a form specified under subsection (2)(a).

- (2) The Director may—

- (a) specify a form in which the permission for a depositing activity is to be given; and
- (b) specify in the form any information or document that the Director requires in relation to the permission.

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- (3) The Director may affix an acknowledgement on a specified form concerning a depositing activity only if—
- (a) the form is submitted to the Director, together with the information and documents specified in it, at least 21 days before the intended date on which the depositing activity is to commence; and
 - (b) the Director is satisfied that—
 - (i) the owners identified in the 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
 - (ii) the form is signed by or on behalf of all owners on record.
- (4) A person who deposits construction waste on a private lot must, at all times during the depositing activity, display in a conspicuous place on the lot a copy of the acknowledged form for the depositing activity.
- (5) However, subsection (4)—
- (a) only requires the display of the part of an acknowledged form which is specified in the form to be for display; and
 - (b) does not apply if the depositing activity may be lawfully carried out without the permission given in an acknowledged form.
- (6) A person commits an offence if the person submits under subsection (3)(a) a specified form, or any information or document specified in it, which the person—
- (a) knows to be incorrect or inaccurate in a material particular; or

(b) does not believe to be correct and accurate in a material particular.

(7) A person commits an offence if the person fails to comply with subsection (4).”.

5. Section 18 amended (penalties for offences under sections 16, 16A and 17 and defences)

(1) Section 18, heading, after “**16A**”—

Add

“, **16B**”.

(2) Section 18, heading, before “**and 17**”—

Add

“, **16C**”.

(3) Section 18(1)—

Repeal

“or **16A**”

Substitute

“, **16A** or **16B**”.

(4) After section 18(1)—

Add

“(1AA) A person who commits an offence under section 16C(6) or (7) is liable to a fine at level 6.”.

(5) Section 18(2), after “**16A**”—

Add

“, **16B**”.

6. Section 23D amended (other powers of authorized officers)

(1) Section 23D(g)—

Repeal

“and”.

(2) Section 23D(h)—

Repeal

“officer.”

Substitute

“officer; and”.

(3) After section 23D(h)—

Add

“(i) require any person whom the officer reasonably suspects of having deposited construction waste on a private lot to produce the original or a copy of the acknowledged form within the meaning of section 16C for the depositing activity for inspection by the officer.”.

7. Section 23EA amended (Director’s power to remove waste in case of imminent risk of adverse environmental impact)

Section 23EA(1)(a), (2) and (4)(a), after “16A”—

Add

“or 16B”.

8. Section 31 amended (mental ingredients of certain offences under the Ordinance)

Section 31, after “16A,”—

Add

“16B,”.

9. Section 37 amended (amendment of Schedules)

Section 37(2B)(b)—

Repeal

“Schedule 9”

Substitute

“Schedules 9 and 13”.

10. Schedule 13 added

After Schedule 12—

Add

“Schedule 13

[ss. 16B & 37]

**Enactments Specified for Purposes of Section
16B(1)(b)**

1. Buildings Ordinance (Application to the New Territories) Ordinance (Cap. 121)
2. Buildings Ordinance (Cap. 123)”.

Explanatory Memorandum

Currently, the depositing of any waste in any place in general is regulated by section 16A of the Waste Disposal Ordinance (Cap. 354) (*Ordinance*). The object of this Bill is to amend the Ordinance to provide for an enhanced regulatory regime for the depositing of construction waste on a private lot, which is in addition to the existing regulation under section 16A of the Ordinance.

2. Clause 1 sets out the short title and provides for commencement.
3. Clause 3 amends section 2 of the Ordinance to add the definition of *private lot*, which basically means land held under a Government lease and identified by a lot number in the Land Registry.
4. Clause 4 adds new sections 16B and 16C to the Ordinance. Under the new sections—
 - (a) the depositing of construction waste on a private lot must be carried out with the valid permission of the sole owner or all of the owners of the lot (new section 16B(3));
 - (b) in order to be valid, the permission must be given in a form specified by the Director of Environmental Protection (*Director*) and the form giving the permission affixed with an acknowledgement by the Director (new section 16B(4)); and
 - (c) the form in which permission is given and acknowledged by the Director (*acknowledged form*) must be displayed (the required part of it) at all times during the depositing activity (new section 16C(4) and (5)(a)).

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5. Failure to comply with the requirements mentioned in paragraph 4(a) or (c) by a relevant person is an offence. Certain cases are excepted from the above requirements under the new sections 16B(1) and 16C(5)(b). The new section 16B(5) also makes it clear that the sole owner of a private lot is not required to declare self-permission in an acknowledged form.
 6. Clause 6 amends section 23D of the Ordinance to empower an authorized officer to require the production of an acknowledged form.
 7. Clause 9 amends section 37 of the Ordinance to empower the Secretary for the Environment to amend the new Schedule 13 added by clause 10, which specifies enactments for the purposes of the new section 16B(1)(b).
 8. Clauses 5, 7 and 8 consequentially amend sections 18, 23EA and 31 of the Ordinance respectively to add appropriate references to the new sections 16B and 16C.