

II. REPORT

The date of First Reading of the Bill is 26 June 2013. Members may refer to the LegCo Brief (File Ref.: EP CR 9/150/37 Pt.10) issued jointly by the Environment Bureau and Environmental Protection Department in June 2013 for further details.

Object of the Bill

2. The Bill seeks to amend the Waste Disposal Ordinance (Cap. 354) (the Ordinance) to provide for enhanced control of the depositing of construction waste on private land and to make consequential amendments.

Background

3. The Ordinance regulates, amongst other things, the production, storage, collection and disposal of waste.

4. Section 16A of the Ordinance provides that a person commits an offence if the person deposits, or causes or permits to be deposited, waste (which includes construction waste) in any place except with lawful authority or excuse, or with the permission of any owner or lawful occupier of the place. Such offence carries maximum penalties of a fine of \$200,000 and imprisonment for six months for the first offence, and a fine of \$500,000 and imprisonment for six months for a second or subsequent offence. In the case of a continuing offence, such person is further liable to a maximum daily fine of \$10,000.

5. As stated in paragraph 3 of the LegCo Brief, the Administration considers that enforcement against fly-tipping on private land is not effective as it is sometimes difficult to prove the lack of permission of a landowner or lawful occupier. According to the Administration, it is not unusual to receive incomplete or conflicting information from the depositor and the landowner or lawful occupier as to whether there has been indeed proper permission. Some cases involve uncertainty in ownership due to outdated records. More often than not, the Administration is not able to collect sufficient evidence in a suspected fly-tipping case within the statutory time limit of six months for initiating prosecution.

6. According to paragraph 4 of the LegCo Brief, fly-tipping of construction waste on private land was observed to have aggravated in the New Territories in the past few years. The Administration takes the view that an enhanced regime should be made for regulating the deposit of construction waste

on private land in addition to the existing regulation under section 16A of the Ordinance.

Provisions of the Bill

7. Clauses 4 and 10 of the Bill propose to add new sections 16B and 16C and new Schedule 13 to the Ordinance to provide for an enhanced regulatory regime for the depositing of construction waste on a private lot.

8. Under these new provisions -

- (a) before a person deposits or causes to be deposited construction waste on a private lot, the person must obtain the valid permission of the sole owner or all of the owners of the lot;
- (b) the permission, in order to be valid, must be given in a form specified by the Director of Environmental Protection (the Director) and the form giving the permission must bear an acknowledgement affixed by the Director;
- (c) the Director may affix an acknowledgement on a specified form only if -
 - (i) the form is submitted to the Director, together with the information and documents specified in it, at least 21 days before the intended commencement date of the depositing activity; and
 - (ii) the sole owner or owners identified in the form is or are the person or persons appearing from the register kept under the Land Registration Ordinance (Cap. 128) to be the sole owner or owners of the lot and the form is signed by or on behalf of the sole owner or all of the owners; and
- (d) a copy of the specified form in which the permission is given and acknowledged by the Director (acknowledged form) must be displayed in a conspicuous place on the lot at all times during the depositing activity as required.

9. The above enhanced regime does not apply to the depositing of construction waste on a private lot under either of the following circumstances -

- (a) if 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 and commenced in accordance with the Buildings Ordinance (Application to the New Territories) Ordinance (Cap. 121) or the Buildings Ordinance (Cap. 123).

10. It is an offence under new section 16B(3) if a person deposits, or causes to be deposited, construction waste on a private lot without the valid permission. It is also an offence under new section 16C(6) if a person submits to the Director a specified form or any information or document specified in it which the person knows to be incorrect or inaccurate in a material particular or does not believe to be correct and accurate in a material particular. If a person fails to display a copy of the acknowledged form in accordance with the prescribed requirements, the person commits an offence under new section 16C(7).

11. Clause 5 of the Bill seeks to amend section 18 of the Ordinance to provide for the penalties for these new offences. The offence under new section 16B(3) carries the same maximum penalties as applicable to the offence under section 16A of the Ordinance as set out in paragraph 4 above. As to the two offences under new section 16C(6) and (7), they are punishable with a maximum fine at level 6 (i.e. \$100,000).

12. Clauses 3, 6 to 9 of the Bill propose to make the following amendments to facilitate the enhanced regulatory regime -

- (a) adding a new definition of "private lot" to section 2(1) to mean a piece or parcel of ground held under a Government lease and identified by a lot number in the Land Registry;
- (b) empowering an authorized officer to require the production of an acknowledged form for inspection under section 23D;
- (c) extending the power of the Director to remove waste in case of imminent risk of adverse environmental impact under section 23EA to cover new section 16B;
- (d) making clarification under section 31 that it is not necessary for the prosecution to prove the mental elements of the offence under new section 16B; and
- (e) empowering the Secretary for the Environment (the Secretary) to amend the new Schedule 13 under section 37.

13. The Bill, if enacted, will come into operation on a day to be appointed by the Secretary by notice published in the Gazette.

Public Consultation

14. According to paragraph 14 of the LegCo Brief, the Administration consulted the public in 2010 in relation to the legislative proposal. The Advisory Council on the Environment, nine District Councils in the New Territories and Heung Yee Kuk were briefed and other stakeholders, such as the dump truck trade and green groups, expressed their views. According to the Administration, the wider community generally welcomed the Government to take further action to deal with the fly-tipping of construction waste and called for strengthened inspection and enforcement actions to deter such activity. However, some landowners expressed concern that the new mechanism will entail a more robust control and that such control will in effect impose restrictions on how they may use their own land.

Consultation with LegCo Panel

15. The Clerk to the Panel on Environmental Affairs has advised that the Panel was consulted on the legislative proposal on 22 February 2010 in the last term. In the current session, the Panel was briefed on the progress of the legislative exercise on 25 February 2013. Various concerns were expressed by members. These included the coordination among various Government departments in enforcing the proposed amendments, the need for a clear definition of waste to avoid circumvention of the new notification requirement by claiming that the construction and demolition ("C&D") materials deposited were not waste, the threshold for exemption, the need for increasing the penalties for illegal depositing activities, and the inability of the amendments to tackle small-scale fly-tipping of C&D waste at roadsides.

Conclusion

16. In view of the concerns of the public and Panel members, Members may wish to set up a Bills Committee. The Legal Service Division will seek clarification from the Administration regarding certain provisions of the Bill and will make a further report if necessary.

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24 June 2013