

立法會
Legislative Council

LC Paper No. LS76/13-14

**Paper for the House Committee Meeting
on 3 October 2014**

**Legal Service Division Report on
Land (Miscellaneous Provisions) (Amendment) Bill 2014**

I. SUMMARY

- 1. The Bill**

The Bill seeks to amend the Land (Miscellaneous Provisions) Ordinance (Cap. 28) to increase the penalties for offences relating to unlawful occupation of unleased land, unlawful erection of a structure on unleased land and extraction or removal of earth, turf or stone from unleased land without a removal permit.
- 2. Public Consultation**

The Land and Development Advisory Committee was consulted on the proposal on 23 April 2014. Committee Members supported the proposal.
- 3. Consultation with LegCo Panel**

The Panel on Development was consulted on 22 April 2014 on the Bill. Members in general supported the proposals of the Bill. However, some members suggested that the level of penalties should vary with the area of the land unlawfully occupied while some members stressed that the enforcement actions of the Administration must be carried out with sufficient technical and manpower support, and in a fair and impartial manner regardless of the identities of the occupiers.
- 4. Conclusion**

In view of Members' concerns raised at the Panel meeting, Members may wish to set up a Bills Committee to study the Bill in detail.

II. REPORT

The date of First Reading of the Bill is 9 July 2014. Members may refer to the LegCo Brief (File Ref.: DEVB(PL-L)30/30/87) issued by the Development Bureau on 26 June 2014 for further details.

Object of the Bill

2. To amend the Land (Miscellaneous Provisions) Ordinance (Cap. 28) to increase the penalties for offences relating to unlawful occupation of unleased land¹; unlawful erection of a structure on unleased land; extraction or removal of earth, turf or stone from unleased land without a removal permit; and provide for related matters.

Background

3. Section 6(4) of Cap. 28 provides that "any person occupying unleased land, otherwise than under a licence or a deed or memorandum of appropriation, who without reasonable excuse does not cease to occupy the same as required by a notice under subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine of \$10,000 and to imprisonment for 6 months."² The level of penalty has not been revised since 1972.

4. In March 2012, the Audit Commission (the Audit) completed a review of the management of Government land, covering the action of Lands Department (LandsD) to prevent, detect and rectify unlawful occupation of Government land. The Audit suggested that the level of penalty for the offence under section 6(4) and pertinent offences of Cap. 28 should be reviewed with a view to providing an effective deterrence and recommended that the Government should consider introducing legislative provisions to the effect that a daily fine would be imposed for the period

¹ Section 2 of Cap. 28 defines "unleased land" to mean land which is not leased land. Section 2 of Cap. 28 further defines "leased land" to mean land which is (a) held under a Government lease; or (b) vested in a person by an Ordinance.

² Section 6(1) of Cap. 28 empowers the Director of Lands, the Director of Food and Environmental Hygiene and the Housing Authority to cause a notice, requiring the occupation of the land to cease before such date as may be specified in the notice, to be posted on or near the land or on any property or structure on the land if unleased land is occupied, otherwise than under a licence or a deed or memorandum of appropriation.

over which the relevant contravention continued, with reference to similar provisions under the Buildings Ordinance (Cap. 123)³.

5. The findings of the Audit were subsequently considered by the Public Accounts Committee (PAC) of the LegCo in May 2012, which strongly urged the Government to promptly initiate legislative amendments to increase the relevant level of penalties and consider introducing a system of daily fine to reinforce the deterrent effect⁴.

Provisions of the Bill

Penalties for unlawful occupation of unleased land

6. As regards the offence relating to unlawful occupation of unleased land under section 6(4) of Cap. 28, the penalty is proposed to be amended from a fine of \$10,000 and imprisonment for six months to an escalating scale of maximum fines of \$500,000 for the first conviction (and an additional fine of \$50,000 for each day during which the offence continues) and of \$1,000,000 for each subsequent conviction (and an additional fine of \$100,000 for each day during which the offence continues), with the existing maximum imprisonment term of six months unchanged for both circumstances.

³ See paragraphs 3.29 and 3.30(d) and (e) of the Audit Report. It is noted that paragraph 3.29 of the Audit Report states the following -

"For benchmarking, Audit noted that, under the Buildings Ordinance, any person who, without reasonable excuse, fails to comply with a demolition order for unauthorized building works served on him under section 24(1) of the Ordinance shall be guilty of an offence and shall be liable on conviction to a fine of \$200,000 and to imprisonment for one year, and further to a fine of \$20,000 for each day during which it is proved to the satisfaction of the court that the offence has continued. However, a similar daily penalty is not provided in Cap. 28 Ordinance. **In Audit's view, the Lands D needs to consider the need for such a penalty in order to provide an effective deterrent on continued unlawful occupation of government land.**"

⁴ See point (e) at p.32 and point (b) at p.33 of the PAC Report. Point (e) at p.32 states that "the Development Bureau and the Lands D have failed to review the level of penalties (including fine and imprisonment) for unlawful occupation of unleased land under section 6(4) of the Land (Miscellaneous Provisions) Ordinance (Cap. 28) ("LMPO") during the current term of the Government, despite that the level of penalties has not been revised since 1972 and the fines for convicted cases of such offence were too lenient to have an adequate deterrent effect."; point (b) at p.33 states that PAC strongly urges the Secretary for Development and the Director of Lands to "promptly initiate legislative amendments to increase the level of penalties and consider introducing a system of daily fine to ensure that the penalty for unlawful occupation of government land will be adequate for achieving a deterrent effect".

Unlawful erection of a structure on unleased land and unlawful removal of earth, turf or stone from unleased land

7. According to paragraph 8 of the LegCo Brief, it would be necessary to increase the penalty level of the two related offences under sections 6(4A) and 7(4) of Cap. 28 so as to bring them in line with those under section 6(4) of Cap. 28. The existing level of penalties of these two offences have not been revised since 1982 and 1972 respectively. As regards the offence of unlawful erection of a structure on, or unlawfully arranging or directing the erection of a structure on unleased land under section 6(4A) of Cap. 28, the penalty is proposed to be amended to an escalating scale of maximum fines. If the contravening act is done for the purpose of disposing of the structure for the gain of the offender or another, the penalty is proposed to be increased to a fine of \$2,500,000 for the first conviction and \$5,000,000 for each subsequent conviction, with the existing maximum imprisonment term of one year unchanged for both circumstances. If the contravening act is done for any other purpose, the penalty is proposed to be increased to a fine of \$500,000 for the first conviction and \$1,000,000 for each subsequent conviction, with the existing maximum imprisonment term of six months unchanged for both circumstances.

8. As regards the offence relating to removal of earth, turf or stone from unleased land without a removal permit under section 7(4) of Cap. 28, the penalty is proposed to be increased from a fine of \$5,000 to \$250,000, with the existing maximum imprisonment term of six months unchanged.

Benchmarking of the proposed new level of penalties

9. According to paragraph 8 of the LegCo Brief, the Administration has taken the relevant penalty provisions of the Town Planning Ordinance (Cap. 131) as the benchmark in proposing changes to Cap. 28. They are section 23(1) and (6) -

- "(1) Where, in the opinion of the Authority, there is or was unauthorized development, the Authority may, in a notice served on one or more of a land owner, an occupier or a person who is responsible for the relevant matters-
 - (a) specify the relevant matters; and
 - (b) specify a date by which the Authority requires the

relevant matters to be discontinued, if they have not by then been discontinued.

.....

- (6) Where, by the date specified in that regard in a notice under this section-
- (a) the relevant matters have not been discontinued as required by the notice;
 - (b) steps have not been taken as required by the notice; or
 - (c) land has not been reinstated as required by the notice, a person who is served with the notice commits an offence and is liable-
 - (i) in the case of a first conviction, to a fine of \$500,000; and in addition, to a fine of \$50,000 for each day, after the date in the notice, during which the person continues to fail to so comply; and
 - (ii) in the case of a second or subsequent conviction, to a fine of \$1,000,000; and in addition, to a fine of \$100,000 for each day, after the date in the notice, during which the person continues to fail to so comply."

Related amendment

10. The proposed new section 6(6) and (7) of Cap. 28 expressly states the court's power to order the person convicted of an offence under section 6(4) or (4A) to pay any cost incurred in or arising out of the demolition of any property or structure under section 6(2A) or (3), in addition to any penalty imposed for the offences under section 6(4) or section 6(4A) of Cap. 28.

Public Consultation

11. According to paragraph 16 of the LegCo Brief, the Land and Development Advisory Committee (an advisory body advising the Government on policies and procedures relating to planning, land and buildings matters) was consulted on the proposal on 23 April 2014. Committee Members supported the proposal.

Consultation with LegCo Panel

12. The Clerk to the Development Panel has advised that the Panel on Development was consulted on 22 April 2014 on the Bill. Members in general supported the proposal to increase the penalties and introduce a daily fine for offences relating to unlawful occupation of unleased Government land. Some members suggested that the level of penalties should vary with the area of the land unlawfully occupied. Some members stressed that the enforcement actions of the Administration must be carried out with sufficient technical and manpower support, and in a fair and impartial manner regardless of the identities of the occupiers.

Conclusion

13. In view of Members' concerns raised at the Panel meeting, Members may wish to set up a Bills Committee to study the Bill in detail.

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