

立法會 *Legislative Council*

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Background brief on "Waste Disposal (Amendment) Ordinance 2013 (Commencement) Notice" prepared by the Legislative Council Secretariat

Purpose

This paper provides background information on the proposed commencement notice to be made to bring the Waste Disposal (Amendment) Ordinance 2013 ("the Amendment Ordinance") into operation, and gives a brief account of the views and concerns expressed by Members on the Waste Disposal (Amendment) Bill 2013 ("the Amendment Bill").

Background

2. Under the Waste Disposal Ordinance (Cap. 354) ("WDO"), it is illegal to deposit waste in any place without the permission of the landowners or lawful occupiers concerned. However, there is no statutory requirement on how the permission should be obtained. In the situation where an offence under WDO has been committed, the Director of Environmental Protection ("DEP") may undertake prosecution action against the offender. If the waste illegally deposited gives rise to an imminent risk of adverse environmental impact, and action needs to be taken immediately to reduce or eliminate that risk, DEP as the Authority of WDO may enter the place to remove the waste and recover the cost from the responsible person.

3. Despite the above control, law enforcement against unauthorized deposition of construction waste¹ 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

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.

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 Some cases involve uncertainty in ownership due to outdated records (e.g. when the owner on record has deceased).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.

The Amendment Bill

4. Against the above background, the Amendment Bill was introduced into the Legislative Council ("LegCo") on 26 June 2013. It sought to amend WDO to enhance the regulatory regime for the depositing of waste by requiring that the depositing of construction waste on private land could only be carried out with the permission from the sole owner or all of the owners of the land and that such permission must be given in a specified form affixed with an acknowledgement by DEP. The Amendment Bill was passed by LegCo on 18 December 2013.

Commencement of the Bill

5. It was provided in the Amendment Bill that, if enacted, it would come into operation on a day to be appointed by the Secretary for the Environment by notice published in the Gazette. According to the Administration, it aims to bring the Amendment Ordinance into operation as soon as possible. Before doing so, it would need sufficient lead time, say three months, to inform the affected stakeholders, including the dump truck trade, the construction trade as well as the rural committees, and to do other preparatory work.

Deliberations of the Bills Committee

6. The Bills Committee formed to study the Amendment Bill in general accepted that there was a genuine need to strengthen the legislation so that the Environmental Protection Department ("EPD") could effectively regulate unlawful depositing of construction waste. In the course of deliberation, the Bills Committee had examined the scope and effectiveness of the proposed enhanced regulatory framework and the relevant enforcement procedures to control fly-tipping activities. The major views and concerns expressed by members at the meetings of the Bills Committee are summarized in the ensuing paragraphs.

New provisions prohibiting fly-tipping on private land without permission and criteria for exclusions

7. In connection with the new provision that it would be an offence if a person deposited, or caused to be deposited, construction waste on a private lot without the valid permission, the Bills Committee raised questions on the

definition of private lot. The Administration clarified that subject to relevant exclusions, the enhanced regulatory control would apply to the depositing of construction waste on a private lot, which was defined as "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)".

Exclusions

8. The Bills Committee noted that the proposed enhanced regulatory regime would not apply to the depositing of construction waste on a private lot (a) if the total area on which construction waste had been deposited within the lot, regardless of who deposited the waste, did not exceed 20 m²; or (b) the depositing formed 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).

9. The Bills Committee had examined whether or not the proposed exclusions would undermine the effectiveness of the proposed enhanced regulatory regime. The Administration explained that the exclusions were proposed under the principle of reasonableness to cater for small-scale or other depositing activities that had not been regarded as fly-tipping problems. It was further clarified that there was no restriction on the height or depth of the construction waste deposited on or below the permitted area of 20 m², which was set after consultation with the public and taking into consideration the difficulties anticipated in enforcement and the pattern of fly-tipping activities. The Administration also explained that the boundary of the private lot on which construction waste had been deposited could be determined by standing surveying methods.

10. Some members of the Bills Committee had expressed concern over fly-tipping in urban areas. They noted from the Administration that if construction waste was deposited on a private lot in urban areas, the proposed new section 16B would also apply subject to relevant exclusions and the person would need to obtain permission from all owners of the lot in writing vide a specified form following the requirements under the proposed new section 16B. They also noted that the Amendment Bill was not intended to regulate depositing activities inside a building but such activities would still be subject to the existing control under section 16A.

Display of the acknowledged form in a conspicuous place

11. The Bills Committee noted that the required part of the acknowledged form must be displayed in a conspicuous place on the lot at all times during the depositing activity. The Bills Committee had sought clarification on the meaning of "conspicuous place". The Administration advised that it was not uncommon under the existing legislation to provide for the display of certain

documents in a "conspicuous place". In actual practice, the Administration did not see major problems for a depositor to comply as the copy of the acknowledgment form being displayed would normally be quite visible in a depositing site.

Enforcement issues and penalties

12. The Bills Committee had also examined the enforcement procedures in real situation as well as the deterrent effect of the penalties to be imposed.

Enforcement procedures

13. In response to the Bills Committee's enquiry, the Administration had explained that the proposed enhanced regulated framework under WDO would be enforced by EPD. Where a person was found to be depositing construction waste, it required the presence of a public officer who had been authorized as an "authorized officer" under section 23A of WDO to take the necessary enforcement action. The Bills Committee was also advised that while EPD did not receive complaints round the clock, it might as necessary arrange ad hoc enforcement activities to combat fly-tipping activities that take place in the evening or early morning.

Reinstatement of land affected by depositing activities

14. The Bills Committee had studied if there was any responsibility on the part of the landowner to reinstate the lot used as the depositing area. The Administration advised that WDO provided for reinstatement of land lot used as depositing area if the deposited waste contained chemical waste. More specifically, DEP might, by notice in writing under section 31 of the Waste Disposal (Chemical Waste) (General) Regulation (Cap. 354 sub. leg. C), required the owner or occupier of the premises in which the waste was stored to remove the chemical waste to a particular facility and to establish to his satisfaction that such requirement was complied with. The Bills Committee also noted that other control regime, such as that under the Town Planning Ordinance (Cap. 131), might also be relevant.

Suggestion of minimum penalty

15. The Bills Committee had strongly urged the Administration to prescribe a minimum fine in WDO to enhance its deterrent effect. The Administration explained that no minimum penalty level was set out under WDO and that in general, the court would take into account various factors, such as the nature or seriousness of the offence, environmental impacts and mitigation, before sentencing in each case.

Prosecution against persons other than the drivers

16. The Bills Committee had also examined if there was any prosecution cases against persons who caused or permitted to be deposited construction waste without lawful authority on a piece of land apart from the drivers. The Administration confirmed that there had been cases where an employer of the driver or a person giving instructions to the driver for the waste deposition was successfully prosecuted.

Latest development

17. The Administration will update members on the legislative timetable for the commencement notice, which seeks to bring the Amendment Ordinance into operation, at the Panel meeting on 26 May 2014.

Relevant papers

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

Council Business Division 1
Legislative Council Secretariat
22 May 2014

List of relevant papers

Council/ Committee	Date of meeting	Paper
Panel on Environmental Affairs	25 February 2013	<p>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</p> <p>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</p> <p>Minutes of meeting (LC Paper No. CB(1)1066/12-13) http://www.legco.gov.hk/yr12-13/english/panels/ea/minutes/ea20130225.pdf</p>
Legislative Council	18 December 2013	<p>Report of the Bills Committee on Waste Disposal (Amendment) Bill 2013 (LC Paper No. CB(1)496/13-14) http://www.legco.gov.hk/yr12-13/english/bc/bc11/reports/bc111218cb1-496-e.pdf</p>