

**立法會**  
**Legislative Council**

LC Paper No. CB(1)102/14-15(04)

Ref: CB1/BC/1/14

**Bills Committee on  
Land (Miscellaneous Provisions) (Amendment) Bill 2014**

**Background brief**

**Purpose**

This paper provides background information on the Land (Miscellaneous Provisions) (Amendment) Bill 2014 ("the Bill") and a summary of major views and concerns expressed by Members on related matters at the meetings of the Legislative Council ("LegCo") and the Panel on Development ("DEV Panel") since the 2012-2013 legislative session.

**Background**

Existing regulatory framework

2. Under the Land (Miscellaneous Provision) Ordinance (Cap. 28) ("the LMP Ordinance"), the Lands Department ("LandsD") is responsible for managing unleased and unallocated Government land to protect such land from being unlawfully occupied. LandsD will also take land control action against unauthorised structures on Government land or unlawful occupation of Government land under the LMP Ordinance.

3. Under Section 6(4) of the LMP Ordinance, 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. The level of penalty has not been revised since 1972.

## Audit review in 2012

4. In deliberating the findings of Report No. 58 of the Director of Audit<sup>1</sup> concerning the management of Government land (which included, inter alia, the action of LandsD to prevent, detect and rectify unlawful occupation of Government land and the suggestion that the level of penalty for the offence under section 6(4) of the LMP Ordinance should be reviewed with a view to providing an effective deterrence) in May 2012, the Public Accounts Committee ("PAC") of the Legislative Council ("LegCo") opined that the fines for convicted cases of the offence under section 6(4) of the LMP Ordinance were too lenient to have an adequate deterrent effect. PAC 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 effect.

## **The Bill**

5. The date of First Reading of the Bill is 9 July 2014. The Bill seeks to amend the LMP Ordinance to increase the penalties for offences relating to unlawful occupation of unleased land<sup>2</sup>; 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.

6. The main provisions of the Bill are explained in paragraph 12 of the LegCo Brief (File Ref: DEVB(PL-L)30/30/87 issued on 26 June 2014), and paragraphs 6 to 10 of the Legal Service Division Report on the Bill (LC Paper No. LS76/13-14 issued on 29 September 2014). In particular, the following revised levels of penalty are proposed:

- (a) The penalty for an offence relating to unlawful occupation of unleased land under section 6(4) of the LMP Ordinance is proposed to be amended from a fine of \$10,000 and imprisonment for 6 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 6 months unchanged for both circumstances.

---

<sup>1</sup> The Report was submitted by the Director of Audit to the Legislative Council on 30 March 2012.

<sup>2</sup> Section 2 of the LMP Ordinance defines "unleased land" to mean land which is not leased land. Section 2 of the LMP Ordinance further defines "leased land" to mean land which is (a) held under a Government lease; or (b) vested in a person by an Ordinance.

- (b) The penalty for an 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 the LMP Ordinance 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 6 months unchanged for both circumstances.
- (c) The penalty for an offence relating to removal of earth, turf or stone from unleased land without a removal permit under section 7(4) of the LMP Ordinance is proposed to be increased from a fine of \$5,000 to \$250,000, with the existing maximum imprisonment term of 6 months unchanged.

7. According to the Administration, the relevant penalty provisions of the Town Planning Ordinance (Cap. 131) have been taken as the benchmark in proposing the changes to the LMP Ordinance.

### **Major views and concerns expressed by Members**

8. Members raised questions which touched on the unlawful occupation of Government land at the LegCo meetings of 9 October 2013 and 27 November 2013. DEV Panel was briefed on the proposed amendments to the LMP Ordinance at its meeting on 22 April 2014. Members' major views on the proposed legislative amendments and related issues are summarized in the ensuing paragraphs.

### Measures to tackle unlawful occupation of unleased Government land

#### *Overall review of management of unleased Government land*

9. When discussing the proposed legislative amendments, some DEV Panel members suggested that the Administration should conduct an overall review of the management of unleased Government land. The review should include, apart from the penalties for offences relating to unlawful occupation of unleased Government land, other relevant aspects such as enforcement, manpower, streamlining the procedures and issuing guidelines for the staff and the public.

10. The Administration advised that following the recommendations set out in the relevant reports of the Director of Audit and PAC published in 2012, a review had been conducted on management of unleased Government land and LandsD had implemented various improvement measures<sup>3</sup>. The proposal to increase the penalties and introduce a daily fine for offences relating to unlawful occupation of unleased Government land was another measure geared towards strengthening the control and management of Government land. LandsD had increased the frequency of patrol on black-spot sites and would fence off sites as appropriate to prevent unauthorized entry and unlawful occupation. It had also strengthened its enforcement work upon receipt of complaints or referrals on suspected cases.

*Manpower of the Lands Department for the control and management of Government land*

11. Noting that the Administration had handled around 11 000 cases of unlawful occupation of Government land in 2013 but 6 000 were still outstanding at the end of the year, DEV Panel members were concerned about whether LandsD had sufficient manpower to handle all the cases and take enforcement actions. They opined that LandsD should undertake a review on its manpower situation.

12. On the handling of cases of unlawful occupation of Government land, the Administration advised that LandsD would take appropriate land control actions depending on the actual circumstances of the case. In accordance with the LMP Ordinance, LandsD would first post a notice at the site of unlawful occupation of unleased land, requiring the occupation to cease before a specified date. In most cases, the occupation had ceased as required. If the occupation did not cease by the specified date, LandsD would arrange to have the structures/objects occupying the unleased land removed/cleared by contractors. Prosecution would be initiated against the occupier if there was sufficient evidence which warranted so doing. Since the handling of such cases would take time, some 6 000 cases were still being processed by LandsD as at the end of 2013. The Administration further advised that from 2009 to 2013, LandsD had on average 208 staff members who were responsible for land control as well as other duties, such as tree management and roadside publicity materials management. Nonetheless, there had been a slight increase in the manpower for land control work in recent years.

---

<sup>3</sup> Details on the improvement measures are given in the follow-up paper provided by the Administration (LC Paper No. CB(1)1549/13-14(01) (<http://www.legco.gov.hk/yr13-14/english/panels/dev/papers/dev0422cb1-1549-1-e.pdf>).

*Enforcement actions against unlawful occupation of Government land*

13. Some DEV Panel members expressed concerns about the effectiveness of LandsD's enforcement work, taking in view that only 21 cases had been convicted from 2008 to 2011. They queried why the penalty level had not been revised since 1972, whereas the property prices had risen dramatically during the period, and enquired about the average time taken to process a case and whether the Administration would be prone to tolerating unlawful occupation of unleased land after the introduction of a daily fine.

14. The Administration advised that it was impractical to regularly patrol and inspect all the unleased land over the territory. LandsD would take action when it discovered unlawful occupation of unleased land during its patrols or when it received complaints or information about such occupation through media reports. The Administration held the view that the number of convicted cases did not reflect the full picture of LandsD's work and efforts on land control and management. As the cases were different, it was difficult to provide the average time for completing a case. Priority would be given to those cases in which safety issues were involved.

15. Some Panel members urged the Administration to adopt a multi-pronged approach to strengthening land control, such as encouraging the public to report suspected cases, and asked about the time allowed by the Administration for the occupier to cease unlawful occupation of land after a notice had been posted according to the LMP Ordinance. Some pointed out that some people might have inadvertently used unleased land in the rural areas for planting or general storage. They were concerned whether the proposed increase in the penalty level would cause hardship to these people.

16. The Administration advised that under the LMP Ordinance, there was no stipulated timeframe for the occupier to cease the unlawful occupation after the notice had been posted. LandsD would allow a reasonable period for the occupier to rectify the situation, depending on individual circumstances. The general principle was that the occupier should clear the structure as soon as possible. If the situation was rectified before the specified date, no prosecution would be initiated.

17. At the LegCo meetings of 9 October 2013 and 27 November 2013, Hon Albert HO and Dr Hon LAM Tai-fai raised two written questions respectively on "Approved Outline Zoning Plans" and "Regulation of Private Columbaria and Increasing Supply of Public Niches" respectively. The former and the latter covered, inter alia, the illegal occupation of Government land in certain "Approved Outline Zoning Plans" and by columbaria respectively. The Administration set out in its replies the enforcement actions taken. Hyperlinks to the relevant questions and replies are given in the **Appendix**.

Level of penalties for offences relating to unlawful occupation of unleased Government land

18. Some DEV Panel members opined that Administration should consider increasing the level of penalties for unlawful occupation according to the size of the land concerned and that the level of penalties and the proposed daily fine should be commensurate with the area of land occupied. Members were also concerned that too drastic an increase in the level of penalties would create hardship to those occupiers who had occupied a small area of land inadvertently. The Administration took note of members' views.

Regularization of cases of unlawful occupation of Government land and short-term tenancies

19. In response to some DEV Panel members' views that the information of all unleased Government land should be published and the public should be allowed to apply for short-term uses of such land, the Administration advised that LandsD had maintained a list of Government sites which could be used for short-term greenery or community purposes through application. The list, updated regularly, was available on the website of LandsD. Relevant information was also circulated to the concerned District Councils on a regular basis.

20. Some members further suggested that the Administration should consider putting up suitable unleased Government land for short-term tenancies ("STTs") to the public to make better use of precious land resources as well as obviate the need for regular inspection and patrol. The Administration explained that its policy was that, where the long-term use of a site was yet to be determined or was not yet due for implementation, LandsD might put the site to appropriate temporary use(s) through STTs. At members' request, the Administration provided information to DEV Panel vide LC Paper No. CB(1) 1549/13-14(01) about unleased Government land (i) that had been held through STTs; (ii) that was available for STTs; and (iii) that was suitable for mid-term or long-term development.

21. Referring to media reports that there were some cases of unlawful occupation of unleased land involving the premises owned by the rich who were subsequently allowed to occupy the land through STTs, some members expressed concerns that the existing regulatory approach favoured the rich and queried whether LandsD had taken its enforcement actions in an impartial manner. They urged the Administration to explain the criteria for its different enforcement actions against unlawful occupation of unleased Government land.

22. The Administration advised that LandsD would take enforcement actions against unlawful occupation of unleased Government land according to the LMP Ordinance in an impartial and fair manner irrespective of the identities of the owners. If the party concerned in a particular case submitted an application for regularization, LandsD would process it according to the established procedures and criteria. Generally speaking, where the Government land could be used independently and had a market value, LandsD would consider putting it for short-term use as appropriate through open tender. Out of all the cases of unlawful occupation of Government land, the number of approved regularization applications in the past was relatively small. The Administration provided supplementary information to the Panel vide LC Paper No. CB(1) 1549/13-14(01) on the different circumstances under which LandsD would take clearance action against unlawful occupation of Government land, regularize the cases by granting STTs, put up the sites for STTs through public tender or initiate prosecution actions.

### **References**

23. A list of relevant papers with hyperlinks is given in the **Appendix**.

Council Business Division 1  
Legislative Council Secretariat  
27 October 2014

## Appendix

### List of relevant papers

Date	Event	References
4 July 2012	Report of the Public Accounts Committee ("PAC") on Report No. 58 of the Director of Audit on the Results of Value for Money Audits was tabled at the meeting of the Legislative Council ("LegCo")	<a href="#">Chapter 2 of the PAC Report</a>
24 October 2012	The Government Minute in response to the Report of PAC No.58 was tabled at the meeting of LegCo	<a href="#">Government Minute</a>
9 October 2013	Hon Albert HO raised a question at the LegCo meeting on approved Outline Zoning Plans	<a href="#">Hansard</a> (P. 128-131)
27 November 2013	Dr Hon LAM Tai-fai raised a question at the LegCo meeting on regulation of private columbaria and increasing supply of public niches	<a href="#">Hansard</a> (P. 3305-3323)
22 April 2014	The Panel on Development was consulted on the proposed amendments to Land (Miscellaneous Provisions) Ordinance (Cap. 28)	<a href="#">Administration's paper</a> (LC Paper No. CB(1)1248/13-14(04))  <a href="#">Minutes</a> (LC Paper No. CB(1)2014/13-14)  <a href="#">Follow-up paper</a> (LC Paper No. CB(1)1549/13-14(01))



9 July 2014	The Land (Miscellaneous Provisions) (Amendment) Bill 2014 received its First Reading	<a href="#"><u>The Bill</u></a> <a href="#"><u>Legislative Council Brief</u></a> <a href="#"><u>Legal Service Division Report</u></a> (LC Paper No. LS76/13-14)
-------------	--	--