

For Information

**Legislative Council Bills Committee on
Employment (Amendment) (No. 2) Bill 2017
Draft Committee Stage Amendment Proposed by the Government**

Purpose

At the meeting held on 21 November 2017, the Government reported that it will propose to introduce a Committee Stage Amendment to the proposed clause 7 of the Employment (Amendment) (No. 2) Bill 2017 (the Bill) which increases the penalty level specified under sections 60(6) and (7) of the Employment Ordinance (Cap. 57) (EO) to generate greater deterrence against the offences therein. The draft Committee Stage Amendment (CSA) and the marked-up version of the relevant section of EO are at **Annex A** and **Annex B** respectively.

Proposed CSA

2. According to section 26 of the Magistrates Ordinance (Cap. 227), “[i]n any case of an offence, other than an indictable offence, where no time is limited by any enactment for making any complaint or laying any information in respect of such offence, such complaint shall be made or such information laid within 6 months from the time when the matter of such complaint or information respectively arose.” At present, there is no statutory time limit specified for the offences under section 60 (Offences) of EO and hence section 26 of Cap. 227 applies to those offences, including those under the existing sections 60(6) and (7) concerning unlicensed operation and overcharging job-seekers respectively.

3. At the meetings held on 13 October and 21 November 2017, Members suggested the Government to consider extending the statutory time limit for prosecution of the aforesaid offences so as to allow complainants sufficient time to file complaints, which may reduce the chance of unscrupulous employment agencies (EAs) escaping from criminal liability upon the expiry of the statutory time limit.

4. The Bill seeks to, among others, increase the maximum penalties for the offences of unlicensed operation of EAs (i.e. the proposed section 60(6)) and overcharging of commission by EAs from job-seekers (i.e. the proposed section 60(7)), so as to generate a greater deterrent effect against offenders. It is considered that the deterrent effect against the aforesaid two offences could be further enhanced by extending the statutory time limit for prosecution. The Government therefore agrees to propose a CSA to add a new subsection (7A) in section 60 to give effect to the proposed extension of time limit for prosecution of the two offences.

5. The proposed extension of the time limit from six to 12 months is to tie in with the requirement under section 56 of the EO that EAs have to retain records of job applicants for a period of not less than 12 months after the expiration of each accounting year of the EA concerned. Beyond that period, it would be difficult for investigators to secure sufficient evidence for prosecution of the offence(s).

Advice Sought

6. Members are invited to note the above.

Labour and Welfare Bureau
Labour Department
December 2017

Employment (Amendment) (No. 2) Bill 2017
Committee Stage

Amendment to be moved by the Secretary for Labour and Welfare
(Draft)

Clause

Amendment Proposed

- 7 By adding—
- “(7A) Despite section 26 of the Magistrates Ordinance (Cap. 227), a complaint may be made or an information laid in respect of an offence under subsection (6) or (7) within 12 months after the date of the commission of the offence.”.

Chapter:	57	Employment Ordinance	Gazette Number	Version Date
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Section:	60	Offences		30/06/1997
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(1) Any person who contravenes section 51(2) shall be guilty of an offence and shall be liable on conviction to a fine at level 3. (Amended 24 of 1988 s. 2; 28 of 1992 s. 8)

(2) Any person who contravenes section 53(5) or 55(4) shall be guilty of an offence and shall be liable on conviction to a fine at level 3. (Amended 24 of 1988 s. 2)

(3) Any licensee who contravenes section 52(2A), (2B) or (2C) or 56(1), (2) or (3) shall be guilty of an offence and shall be liable on conviction to a fine at level 3. (Amended 24 of 1988 s. 2; 28 of 1992 s. 8)

(4) (Repealed 24 of 1988 s. 2)

(5) Any person who—

(a) in connection with any application to the Commissioner under section 52(1) or 54(1) furnishes any information which he knows or reasonably ought to know to be false or misleading in any material particular; or

(b) in connection with any inquiry or inspection under section 58—

(i) fails without reasonable excuse to produce any record or other document relating to the employment agency when required to do so by the Commissioner or any public officer authorized in that behalf by the Commissioner; or (Amended 28 of 1992 s. 7)

(ii) furnishes to the Commissioner or any such public officer any information which he knows or reasonably ought to know to be false or misleading in any material particular,

shall be guilty of an offence and shall be liable on conviction to a fine at level 5. (Amended 24 of 1988 s. 2)

~~(6) Any person who contravenes section 51(1) shall be guilty of an offence and shall be liable on conviction to a fine at level 5. (Added 24 of 1988 s. 2)~~

(6) A person who contravenes section 51(1) commits an offence and is liable on conviction to a fine of \$350,000 and to imprisonment for 3 years.

~~(7) Any licensee who contravenes any provision of section 57 shall be guilty of an offence and shall be liable on conviction to a fine at level 5. (Added 24 of 1988 s. 2.)~~

(7) A person who contravenes section 57(1)(a) commits an offence and is liable on conviction to a fine of \$350,000 and to imprisonment for 3 years.

~~(7A) Despite section 26 of the Magistrates Ordinance (Cap. 227), a complaint may be made or an information laid in respect of an offence under subsection (6) or (7) within 12 months after the date of the commission of the offence.~~

(8) A person who contravenes section 57(1)(b) or (c) commits an offence and is liable on conviction to a fine at level 5.

(Amended 103 of 1995 s. 18)

Note: Revisions made in blue are amendments proposed by the Employment (Amendment) (No. 2) Bill 2017.

Revision made in red is the draft Committee Stage Amendment to be proposed by the Government.