



ENVIRONMENTAL POLLUTION ADVISORY COMMITTEE

(EPCOM 8/93-94)  
(For advice)

Noise Control (Amendment) Bill 1993

INTRODUCTION

This paper seeks Members' support for the submission to the Executive Council of the Amendment Bill for

- (i) the enabling of tightening up on control of noisy powered mechanical equipment (PME) and non-PME construction work within designated areas;
- (ii) the provision of a scheme of control over Exemption Orders granted by the Executive Council;
- (iii) the amendments to product noise provisions for a more effective enforcement; and
- (iv) the clarification of the appeal provisions.

BACKGROUND

2. At the fifth meeting of the 92/93 Session held on 22 June 1992, Members considered paper 16/92-93 on the above proposals and expressed their support in principle. Members also requested that they should be further consulted on the detailed legislative amendments and be informed of the industry's views. The draft Bill is now attached at Annex for Members' consideration.

THE NOISE CONTROL (AMENDMENT) BILL

Construction Noise Control  
(Clauses 2, 3 & 4)

3. The proposal is to empower the Secretary to establish designated areas and to prescribe the exact types of construction activities that would require a permit. The amendments to S.2 and S.6(2), and the new S.8A(1) are for the establishment of a Construction Noise Permit (CNP) system within the designated areas (Clauses 2, 3 and 4). The new S.8A(2) (Clause 4) empowers the Secretary to issue Technical Memorandum (TM) for designated areas.

4. After the Bill has been enacted, the following steps will be taken to effect the proposed control:

- (a) the Secretary to make Regulations to prescribe the control of the exact types of construction activities (i.e. non-PME activities involving rubble disposal, hammering, erection and dismantling of formwork);
- (b) the Secretary to issue a TM for designated areas specifying that a CNP would not normally be granted for works employing particularly noisy PME (i.e. dump truck, vibratory poker, concrete lorry mixer, bulldozer and hand held percussive breaker) and the prescribed non-PME works. The exception is for essential work or work that has important social implications. With a view to promoting quiet construction practice, quiet methods would also be considered; and
- (c) the Secretary to make miscellaneous amendments to the Noise Control (General) Regulations for the provision of relevant forms.

The general effect of these amendments would be to ban virtually all noisy construction activities in built-up areas during night-time and on holidays.

Amendments to S.14 - Product Noise Provisions  
(Clause 5)

5. The amendments provide that

- (a) the control is directed towards products intended for use in Hong Kong only (Clause 5(a) & (b));
- (b) the control in respect of import, manufacture and supply could be implemented independently (Clause 5(c)); and
- (c) the control on prescribed products would be effective, within a prescribed period, after their import or manufacture thereby allowing time for importers to apply for labels from the Authority (Clause 5(c)).

The above proposals would serve, respectively, to clarify the policy intent, to provide flexibility, and to provide for the implementation of the labelling requirement on imported items of prescribed products.

Amendments to S.18 - Appeal Provisions  
(Clause 6)

6. There has been no change in policy in respect of appeal against the issue of CNPs under S.8. The present amendment is solely to clarify the intent and to state explicitly that the only appeal permitted under S.18 is for percussive piling. Legal advice pointed to the fact that the wording of the current S.18 only ruled out appeals against the "issue" or otherwise of a CNP but did not explicitly rule out appeals against "conditions imposed".

Amendments to S.35 - Exemption Orders  
(Clause 7)

7. Under the existing structure, when certain conditions are attached to an Exemption Order to provide the maximum possible protection to those affected, there is no mechanism to ensure compliance with these conditions. The proposed amendments seek to make it an offence to contravene any condition attached to an Exemption Order; and to define the role of the Authority so that effective control can be exercised.

ECONOMIC IMPLICATIONS

8. The proposed tightening up of control for PME and non-PME work will have economic implications on the construction industry in that prescribed non-essential construction works within the designated areas during the restricted hours will be banned. However, the cost implication is not expected to be significant. The Housing Department has implemented a holiday ban for construction work since 1989 without any apparent ill effects. Essential construction work, which amounts to approximately 40% of the current night work CNPs issued would, in all practical circumstances, not be affected by the extended control. The other proposed amendments are intended for more effective enforcement of the NCO and relevant regulations and do not have any economic implications.

CONSULTATION

9. The construction industry has been consulted on the proposed construction noise controls as early as 1991 and was not opposed to it. The Housing Department, which accounts for half of the territory's annual output of residential units, has found the proposal agreeable. Clarifications were sought by the utility companies that their emergency or essential work would not be affected and this has been confirmed.

10. The Hong Kong Construction Association, while supporting the government's efforts, proposed that the adoption of quiet working methods and equipment should also be promoted. To encourage such adoption, a provision will be built into the TM for designated areas to allow the issue of CNPs using quiet methods.

11. The Association has also asked for a transitional ("grace") period of 18 months. It is, however, considered that a 6-month transitional period after enactment should be adequate for the industry to prepare for the incoming controls. For Members' information, a transitional period of 10 months was adopted when the very significant control on percussive piling was implemented in 1989. Comparatively speaking, the present proposal would have much smaller implications. Judging from Housing Department's 3-year's experience in implementing the no holiday work ban, it is not expected that the industry would have difficulties in preparing for the new controls in 6-month's time. If the Amendment Bill is enacted in July 1993, the new controls would then become operational in January 1994, which is 9 months from now. Given the early notice given during consultation, it is considered that the length of the transitional period proposed is appropriate. The construction industry would, however, be expected to press for a longer transitional period and some flexibility in enforcement at the initial stage.

#### PUBLIC REACTION

12. The public and the environmental groups should welcome the proposed amendments for the tightening up of control on construction activities during the restricted hours.

13. The remainder of the amendments for product noise, appeals and ExCo Exemptions, are either for the effective enforcement of the provisions or are administrative in nature. Therefore, it is not expected that there will be any particular views on these amendments.

#### ADVICE SOUGHT

14. Members are invited to recommend the draft Amendment Bill for the consideration of the Executive Council, with a view to introducing it to the Legislative Council in the current legislative session.

Planning, Environment and Lands Branch  
Environment Division  
March 1993

1st working draft: 12.10.92  
1st draft: 30.11.92  
2nd draft: 17.12.92  
3rd draft: 18. 2.93  
4th draft: 5. 3.93

Annex

A BILL

To

Amend the Noise Control Ordinance.

Enacted by the Governor of Hong Kong, with the advice and consent of the Legislative Council thereof.

1. Short title and commencement

(1) This Ordinance may be cited as the Noise Control (Amendment) Ordinance 1993.

(2) This Ordinance shall come into operation on a day to be appointed by the Governor by notice in the Gazette.

2. Interpretation

Section 2 of the Noise Control Ordinance (Cap. 400) is amended by adding -

"designated area" means an area established under section 8A;

3. Noise from construction sites

Section 6 is amended -

(a) in subsection (2), by adding "within a designated area" after "place"; and

(b) by adding -

"(7) It shall not be an offence under this

section for an owner, tenant or occupier of domestic premises to perform construction work prescribed for the purposes of subsection (2) in such premises, provided the construction work is performed only by the owner, tenant or occupier, as the case may be."

4. Section added

The following is added -

"8A. Designated areas

(1) The Secretary may, by notice published in the Gazette, establish an area as a designated area.

(2) Where a designated area has been established, the Secretary may, under section 9(1), issue Technical Memoranda applicable to one or more designated areas and, where there is a conflict between Technical Memoranda issued for a designated area and Technical Memoranda issued for the entire territory, the former shall apply."

5. Manufacture, etc. of products not in compliance with noise standards

Section 14 is amended -

(a) in subsection (2) by adding "or (3)" after "(1)";

(b) by repealing subsection (3) (a) and (b) and substituting -

"(a) intended for use in Hong Kong; and

(b) required by regulations made under section 27(1) to be -

(i) fitted or equipped with any

prescribed device or prescribed equipment so as to prevent, reduce or minimize the emission of noise; or

- (ii) fitted with a prescribed plate, label or other marking relating to noise emission,"; and

(c) by adding -

"(4A) Notwithstanding this section, a regulation made under section 27(1) may provide that the offence under one or more of subsections (1), (3) and (4) does not apply to one or more of the following -

- (a) importing;
- (b) manufacturing;
- (c) supplying or offering or exposing for supply,

and, in that case, no offence is committed by a person who contravenes the relevant subsection in a manner which has been excluded by the regulation.

(4B) A regulation referred to in subsection (4A) may specify that it is effective for a limited period of time.

(4C) Notwithstanding subsection (3), a regulation made under section 27(1) may provide a period of time, after the importing or manufacturing, as the case may be, of a product

prescribed for the purposes of this Part but before the product is supplied or offered or exposed for supply, during which time an offence will not be committed by a person who has imported or manufactured the product without it being fitted or equipped as required by either subsection (3)(b)(i) or (ii) or both.".

Appeals against refusal of Authority to issue construction noise permit, etc. under section 8

Section 18(1) and (2) is repealed and the following substituted -

"(1) Subject to subsection (3), if any person who applies for a construction noise permit under section 8 to carry out percussive piling between the hours of 7 a.m. and 7 p.m. on any day, not being a general holiday, is aggrieved -

- (a) where the Authority refuses to issue the construction noise permit, by that refusal;
- (b) where the Authority issues the construction noise permit subject to any condition, or amends or varies any such condition or imposes a new condition, by that imposition, amendment or variation; or
- (c) where the Authority issues the construction noise permit and subsequently cancels the permit, by that cancellation,

he may appeal to the Appeal Board.

(2) No appeal shall lie under this section except in



respect of a construction noise permit for the purpose set forth in subsection (1)."

#### Regulations

Section 27 is amended -

(a) in subsection (1) by repealing "The" and substituting "Subject to subsection (1.1), the"; and

(b) by adding -

(1.1) The Secretary may, after consultation with the Environmental Pollution Advisory Committee, by regulation -

(a) prescribe construction work for the purposes of section 6(2); and

(b) prescribe anything required or permitted to be prescribed under Part III other than the form of notice prescribed under section 16(1).

#### Exemptions from provisions of the Ordinance

Section 35 is amended by adding -

"(3) Notwithstanding this section, where conditions or limitations are attached to an order made under this section, a person who contravenes such a condition or limitation commits an offence and shall be liable -

(a) on first conviction to a fine of \$50,000;

(b) on second or subsequent conviction, to a fine of \$100,000,

and in any case to a fine of \$10,000 for each day during which the offence continues.

(4) For the purposes of determining whether or not an offence has been committed under subsection (3), Part V applies.

(5) Section 33(b), (c) and (d) applies to an offence under subsection (3)."

#### Explanatory Memorandum

The purpose of this Bill is to make a number of miscellaneous amendments to the Noise Control Ordinance. The Bill -

- (a) provides that the requirement for a construction noise permit for additional types of construction work under section 6(2) of the Ordinance only applies in "designated areas" (clause 3);
- (b) empowers the Secretary for Planning, Environment and Lands to establish, by notice in the Gazette, designated areas and gives him the power to issue Technical Memoranda for designated areas (clause 4);
- (c) clarifies that the requirements of section 14(3) apply only to products intended for use in Hong Kong (clause 5(a) and (b));
- (d) provides that a regulation respecting control of noisy products may have its effect delayed and provides that the effect of the regulation may be limited to one or two of the 3 categories of importing, manufacturing or supplying (clause 5(c));
- (e) clarifies that the only appeal permitted under section 18 is in respect of percussive piling during

the hours of 7 a.m. and 7 p.m. on days other than Sundays and general holidays (clause 6);

(f) transfers from the Governor in Council to the Secretary for Planning, Environment and Lands the power to prescribe -

(a) the kinds of construction work for which a Construction Noise Permit will be required in the new designated areas (in addition to Powered Mechanical Equipment which already requires such a permit); and

(b) technical standards for noise emission by various prescribed power tools; and

(g) makes it an offence to contravene the conditions attached to an exemption order and makes the enforcement provisions of Part V applicable to such a contravention (clause 8).