

Marie SIU
Working Draft: 23.9.96
1st Draft: 5.10.96
2nd Draft: 14.10.96
3rd Draft: 17.10.96
OLPORD

A BILL

To

Amend the Ozone Layer Protection 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 Ozone Layer Protection (Amendment) Ordinance 1996.

(2) This Ordinance shall come into operation on a day to be appointed by the Secretary for Planning, Environment and Lands by notice in the Gazette.

2. Interpretation

Section 2 of the Ozone Layer Protection Ordinance (Cap. 403) is amended by adding -

"Advisory Council on the Environment" () means the advisory body established by the Governor to advise on matters relating to pollution control and sustainability of the environment;

"Secretary" means the Secretary for Planning, Environment and Lands."

3. Appeal to Administrative Appeals Board

Section 8 is amended -

- (a) in subsection (1) -
 - (i) by repealing "of" where it first appears and substituting "made in respect of him by";
 - (ii) by repealing "by notice in writing addressed to the Chief Secretary, appeal to the Governor" and substituting "appeal to the Administrative Appeals Board";
- (b) in subsection (2) -
 - (i) by repealing "The Governor may confirm, vary or reverse the decision appealed from or substitute any other decision that he considers appropriate and the" and substituting "The";
 - (ii) by repealing "Governor's" and substituting "Administrative Appeals Board's".

4. Forfeiture

Section 14 is amended -

- (a) in subsection (2), by adding ", upon payment of reasonable storage charges," after "release it";
- (b) by adding -

"(2A) Where anything seized under section 11(2) is without an apparent owner, the Director shall, within 7 days from the date of its seizure, cause a notice to be exhibited at the Environmental Protection Department in a place to which the public have access -

- (a) calling upon the owner to submit a claim of ownership within 30 days; and
 - (b) declaring his intention to apply for forfeiture of the thing at the expiration of the period if no claim of ownership is submitted.”;
- (c) in subsection (4) -
- (i) by repealing “If, on the hearing of an application under subsection (3),” and substituting “Upon the hearing of an application under subsection (3), other than in a case to which subsection (4A) applies, if”;
 - (ii) in paragraph (b), by adding “upon payment of reasonable storage charges and” after “agent”.
- (d) by adding -
- “(4A) Upon the hearing of an application under subsection (3) in a case where no claim of ownership has been submitted under subsection (2A)(a), if the court or magistrate is satisfied that the Director has complied with the provisions of subsection (2A), the court or magistrate may order that the thing be forfeited to the Government.”;
- (e) in subsection (5), by adding “the person who appears to him to be” before “the owner” where it twice appears;

(f) in subsection (6), by adding "apparent" before "owner" wherever it appears;

(g) by adding -

"(8) The Director shall determine the amount of storage charges payable under subsection (2) which shall not exceed the value of the thing seized."

5. Section added

The following is added -

"14A. Claims for the return of thing forfeited under section 14(4A)

(1) A person wishing to claim the return of anything forfeited to the Government under section 14(4A) may, within 6 weeks after the thing has been forfeited, give notice in writing to the Director of his intention to submit to the Secretary a petition under this section in respect of the thing forfeited.

(2) A petition shall be submitted to the Secretary by lodging it in triplicate with the Director within 30 days of giving notice under subsection (1).

(3) The Secretary may after considering the petition -

(a) upon payment of reasonable storage charges, order the return of the thing forfeited subject to any conditions that the Secretary may specify in writing; or

(b) reject the petition.

(4) The Secretary shall determine the amount of storage charges payable under subsection (3)(a) which shall not exceed the value of the thing forfeited.

(5) The decision of the Secretary under subsection (3) is final."

6. Section added

The following is added -

"15A. Protection of public officers

(1) A public officer shall not be personally liable in respect of any act or omission of his if it was done or made by him in the honest belief that it was required or authorized in the exercise of any function, duty or power of his under this Ordinance.

(2) The protection conferred on public officers by subsection (1) in respect of any act or omission shall not in any way affect any liability of the Government in tort for that act or omission."

7. Regulations

Section 16 is amended -

(a) in subsection (1), by repealing "The Governor in Council may" and substituting "The Secretary may, after consultation with the Advisory Council on the Environment,";

(b) by repealing subsection (1A).

8. Secretary may amend Schedule

Section 17 is amended by repealing "The Governor may" and substituting "The Secretary may, after consultation with the Advisory Council on the Environment".

9. Section added

The following is added -

"18. Application of Ordinance to Government

(1) Subject to this section, this Ordinance shall bind the Government.

(2) Sections 3, 4, 5(8), 6(6), 7(5) and 13 and any regulations made under section 16 shall not have effect to permit proceedings to be taken against, or to impose any criminal liability on, the Government.

(3) Any application for registration under section 5 or the issue of a licence under section 6 which is to be made or may be made by or on behalf of the Government may be made by any public officer on behalf of the Government.

(4) No fee or charge prescribed for the purposes of this Ordinance shall be payable by the Government."

Consequential Amendments

Administrative Appeals Board Ordinance

10. Schedule amended

The Schedule to the Administrative Appeals Board Ordinance (Cap. 442) is amended by adding -

"[]. Ozone Layer Protection
Ordinance (Cap. 403)

A decision of the Director of Environmental Protection under section 5, 6 or 7 or under provisions of the regulations that may be specified to be subject to an appeal under section 8."

Explanatory Memorandum

The purpose of this Bill is to amend the Ozone Layer Protection Ordinance (Cap. 403) to -

- (a) provide for appeals against the decisions of the Director of Environmental Protection to be made to the Administrative Appeals Board instead of to the Governor;
- (b) empower the Director to charge the owner or his authorized agent for storage of things seized and make provision for the handling of anything seized without an apparent owner;
- (c) empower the court or magistrate to charge the owner or his authorized agent for the storage of things seized;
- (d) make provision for claims for the return of anything forfeited under new section 14(4A);
- (e) provide for the protection of public officers in respect of any act or omission done in the exercise of their functions, duties or powers under the Ordinance;
- (f) empower the Secretary for Planning, Environment and Lands, after consultation with the Advisory Council on the Environment, to make regulations;
- (g) empower the Secretary, after consultation with the Advisory Council on the Environment, to amend the Schedule; and
- (h) specify that the Ordinance shall bind the Government subject to certain exceptions.