

**NOISE CONTROL ORDINANCE
- CHAPTER 400**

LONG TITLE

Long title VerDate:30/06/1997

To provide for the prevention, minimizing and abatement of noise; the appointment of a Noise Control Authority; the powers and duties of the Noise Control Authority relating to the control of noise; the creation of offences; and for connected purposes.
(Enacted 1988)

[Sections 1 to 3, 8 to 12, 18 to 39 and 41 } 17 February 1989
Sections 6(1), (4), (5) and (6) and 40 in relation to items 5(b)(ii) and (e), 6, 8 and 9 of the Schedule } 17 August 1989
Section 6(3) } 17 November 1989}

L.N. 44 of 1989

Section 4, 5, 13(1)(a) and (c) and (2) to (8) and 40 in relation to items 1 to 4, 5(a), (b)(i) and (iii), (c) and (d) and 7 of the Schedule } 1 November 1989

L.N. 355 of 1989

Sections 14(1), (2), (4) and (5) and 15 to 17 } 1 March 1992

L.N. 42 of 1992

The provisions of section 6(2), to the extent of enabling construction work to be prescribed for the purposes of that section, and only to that extent } 1 May 1996
The remaining provisions of section 6(2) } 1 November 1996 }

L.N. 32 of 1996]

(Originally 75 of 1988)

SECT 1

Short title and commencement VerDate:30/06/1997

PART I

PRELIMINARY

- (1) This Ordinance may be cited as the Noise Control Ordinance.
- (2) This Ordinance shall come into operation on a day to be appointed by the Governor by notice in the Gazette and notices under this section may appoint different dates for the coming into operation of different provisions of this Ordinance.
(Enacted 1988)

SECT 2

Interpretation VerDate:01/07/2007

For the saving and transitional provisions relating to the amendments made by the Resolution of the Legislative Council (L.N. 130 of 2007), see paragraph (12) of that Resolution.

In this Ordinance, unless the context otherwise requires-

"annoyance" means annoyance that would not be tolerated by a reasonable person;

"Appeal Board" means the Appeal Board constituted under section 21;

"Authority" means the Noise Control Authority appointed under section 3(1);

"Chairman" means the person appointed as Chairman of the Appeal Board under section 20(2);

"construction noise permit" means a construction noise permit issued under section 8(1);

"construction site" means a place where construction work is carried out;

"construction work" includes-

(a) any work in connection with or for the construction, demolition, reconstruction, shoring, alteration, maintenance or repair, of the whole or any part of any building, arch, bridge, chimney, dock, hoarding, shelter, tunnel, wall, pier, wharf or other structure or any road, slope, embankment, street, railway, tramway, airport, channel, drain, service lane, sewer, water conduit, lighting or public utility;

(b) any work in connection with or for the extraction from the earth of any matter whatsoever;

(c) any work in connection with or for the reclamation of any foreshore and sea-bed;

(d) dredging or any work in connection with dredging;

(e) piling or any work in connection with piling;

(f) any work involved in preparing for any operation of the type referred to in paragraph (a), (b), (c), (d) or (e); and

(g) the use of machinery, plant, tools, gear and materials in connection with or for any operation referred to in paragraph (a), (b), (c), (d), (e) or (f);

"designated area" means an area established under section 8A;
(Added 2 of 1994 s. 2)

"domestic premises" means-

(a) any premises used wholly or mainly for residential purposes and constituting a separate household unit; and

(b) any part of a hotel or boarding-house that is let by the keeper of the hotel or boarding-house to a guest;

"functions" includes powers and duties;

"intruder", in relation to an intruder alarm system, means any unauthorized person who interferes with any premises or vehicle in respect of which the intruder alarm system is deployed to protect, whether such interference is intentional or unintentional; (Added 61 of 1996 s. 2)

"intruder alarm system", in relation to sections 13A and 13B, means an alarm system the purpose of which is to warn of the presence of an intruder by the emission of an audible signal activated by that intruder; (Added 61 of 1996 s. 2)

"percussive piling" means piling by sinking or driving a pile by direct or indirect hammering or other percussive means, including piling by the use of a drop hammer, diesel hammer, double acting hammer, single acting hammer, internal drop hammer, pneumatic hammer, steam hammer or other percussive device, other than a device that is portable and designed for operation while held by hand without any other form of support;

"pile" means any sheet, column, post, tube or caisson driven or formed in the ground and also means any pile known as a "jacked pile", "screw pile", "cast-in-place pile", "composite pile", "sand pile", "sheet pile", "bored pile", "caisson pile", and any other form of pile;

"piling" means any work in connection with or for the sinking or forming of a pile in the ground by hammering, jacking, screwing, augering, boring, jetting, vibrating, casting or any other means and also means the driving or sinking of any casing or tube into the ground to form a well or caisson for foundation purposes, whether or not the casing or tube is later extracted;

"place" means any place whether on land or water;

"powered mechanical equipment" means any machine or device driven by electrical, chemical or thermal energy including energy transmitted by compressed air, steam, or hydraulic means a principal function of which is to produce mechanical movement;

"public place" -

(a) includes all piers, thoroughfares, streets, roads, lanes, alleys, courts, squares, waterways, beaches, passages, paths, ways, parks, country parks, public gardens and any other place to which the public have access either continuously or periodically, whether the same are the property of the Government or of private persons; (Amended 29 of 1998 s. 105)

(b) does not include any place kept or used for the purpose of-

(i) any form of trade, business, commerce, craftsmanship, profession, calling or other activity carried on for the purpose of gain;

(ii) any form of association of persons established for the purpose of affording the members of that association facilities for social intercourse or recreation; or

(iii) any public entertainment as defined by section 2 of the Places of Public Entertainment Ordinance (Cap 172);

"registered owner" has the same meaning as in the Road Traffic Ordinance (Cap 374); (Added 61 of 1996 s. 2)

"Secretary" means the Secretary for the Environment; (Replaced 78 of 1999 s. 7. Amended L.N. 106 of 2002; L.N. 130 of 2007)

"vehicle" has the same meaning as in the Road Traffic Ordinance (Cap 374). (Added 61 of 1996 s. 2) (Enacted 1988)

SECT 3

Appointment of Noise Control Authority VerDate:30/06/1997

- (1) The Governor shall appoint a public officer to be the Noise Control Authority for the purposes of this Ordinance.
- (2) An appointment under subsection (1) shall be notified in the Gazette.
- (3) The Authority may authorize in writing any public officer to perform or exercise all or any of the functions which are imposed or conferred on the Authority by this Ordinance. (Enacted 1988)

SECT 4

Noise at night or on a general holiday VerDate:30/06/1997

PART II

CONTROL OF NOISY ACTIVITIES

Noise from Domestic Premises and Public Places

- (1) Any person who between the hours of 11 p.m. and 7 a.m., or at any time on a general holiday in any domestic premises or public place makes or causes to be made any noise which is a source of annoyance to any person commits an offence.
- (2) Any person being the owner, tenant, occupier or person in charge of any domestic premises who between the hours of 11 p.m. and 7 a.m., or at any time on a general holiday knowingly permits or suffers noise which is a source of annoyance to any person to emanate from those domestic premises commits an offence.
- (3) Any person who commits an offence under this section shall be liable to a fine of \$10000. (Amended 2 of 1994 s. 9) (Enacted 1988)

SECT 5

Noise at any time VerDate:30/06/1997

- (1) Any person who at any time in any domestic premises or public place-
 - (a) plays or operates any musical or other instrument, including any record or cassette player or radio or television apparatus;

- (b) uses any loud-speaker, megaphone, or other device or instrument for magnifying sound;
- (c) plays any game or engages in any pastime; or
- (d) carries on a trade or business,

the noise of which is a source of annoyance to any person commits an offence.

(2) Any person who at any time in any domestic premises operates, or causes or permits to be operated, any air-conditioning or ventilating system or part thereof, the noise of which is a source of annoyance to any person commits an offence.

(3) Any person who at any time in any domestic premises or public place keeps any animal or bird that makes any noise which is a source of annoyance to any person commits an offence.

(4) Any person who at any time in or near any public place, for the purpose of attracting attention to his goods, wares or trade, makes any noise which is a source of annoyance to any person commits an offence.

(5) Any person who commits an offence under this section shall be liable to a fine of \$10000.
(Amended 2 of 1994 s. 9)
(Enacted 1988)

SECT 5A

Exemptions from sections 4 and 5 VerDate:30/06/1997

Nothing in sections 4 and 5 shall apply to noise caused by -

- (a) a tram;
- (b) a vehicle of the North-west Railway within the meaning of the Kowloon-Canton Railway Corporation Ordinance (Cap 372); or
- (c) any other vehicle travelling in a public place, whether or not mechanically propelled, which is constructed or adapted for use on roads.(Added 6 of 1992 s. 2)

SECT 6

Noise from construction sites VerDate:30/06/1997

Noise from Construction Sites

(1) Subject to subsection (6), any person who at any place between the hours of 7 p.m. and 7 a.m., or at any time on a general holiday, uses, or causes or permits to be used, any powered mechanical equipment for the purpose of carrying out any construction work other than percussive piling-

- (a) in respect of which a construction noise permit is not in force; or

(b) otherwise than in accordance with the conditions of a construction noise permit in force in respect thereof, commits an offence.

(2) Subject to subsection (6), any person who at any place within a designated area between the hours of 7 p.m. and 7 a.m., or at any time on a general holiday, carries out, or causes or permits to be carried out, any construction work prescribed for the purposes of this subsection-
(Amended 2 of 1994 s. 3)

(a) in respect of which a construction noise permit is not in force; or

(b) otherwise than in accordance with the conditions of a construction noise permit in force in respect thereof, commits an offence.

(3) Subject to subsection (6), any person who at any place between the hours of 7 a.m. and 7 p.m. on any day, not being a general holiday, carries out, or causes or permits to be carried out, any percussive piling-

(a) in respect of which a construction noise permit is not in force; or

(b) otherwise than in accordance with the conditions of a construction noise permit in force in respect thereof, commits an offence.

(4) Subject to subsection (6), any person who at any place between the hours of 7 p.m. and 7 a.m., or at any time on a general holiday, carries out, or causes or permits to be carried out, any percussive piling commits an offence.

(5) Subject to subsection (6), any person who commits an offence under this section shall be liable-

(a) on first conviction to a fine of \$100000;

(b) on second or subsequent conviction, to a fine of \$200000,

and in any case to a fine of \$20000 for each day during which the offence continues. (Amended 2 of 1994 s. 9)

(6) The owner, tenant or occupier of domestic premises may perform construction work in those premises without a construction noise permit being in force in respect thereof provided that-

(a) the construction work is performed only by the owner, tenant or occupier, as the case may be;

(b) the only powered mechanical equipment used for the construction work is portable and designed for operation while held by hand without any other form of support; and

(c) only one item of powered mechanical equipment is in use in the premises at any one time.
(Replaced 2 of 1994 s. 3)
(Enacted 1988)

SECT 7

Noise from construction work contrary to regulations VerDate:

not yet in operation

- (1) Any person who at any place on any occasion carries out, or causes or permits to be carried out, any construction work contrary to any noise control regulations made under section 27(1) for the purposes of this section commits an offence.
- (2) Any person who commits an offence under this section shall be liable-
 - (a) on first conviction to a fine of \$100000;
 - (b) on second or subsequent conviction, to a fine of \$200000,

and in any case to a fine of \$20000 for each day during which the offence continues. (Amended 2 of 1994 s. 9)
(Enacted 1988)

SECT 8

Construction noise permits VerDate:30/06/1997

- (1) The Authority may issue construction noise permits and may impose in relation to any construction noise permit any condition he thinks fit.
- (2) An application for a construction noise permit shall be made to the Authority in the prescribed form and manner and be accompanied by the prescribed fee.
- (3) In considering an application under this section, the Authority shall be guided by any Technical Memoranda issued from time to time under section 9(1).
- (4) Not later than 28 days after an application made under this section is received by the Authority, he shall issue a construction noise permit or serve on the applicant written notice of his refusal to issue the permit, and if at the end of those 28 days he has done neither of those things a permit shall be deemed to have been issued.
- (5) The Authority may refuse to issue a construction noise permit if the issue of a permit would be contrary to any principle, procedure, guideline, standard or limit set out in any Technical Memoranda issued from time to time under section 9(1). (Amended 37 of 1997 s. 2)
- (6) Where the Authority issues a construction noise permit, the Authority shall serve written notice of that decision on the applicant and in the case of a permit subject to conditions issued in respect of percussive piling, shall adequately state in the notice the reasons for the imposition of those conditions.
- (7) Where the Authority refuses to issue a construction noise permit, the Authority shall serve written notice of that decision on the applicant and shall adequately state in the notice the reasons for such refusal.
- (8) No fee paid in respect of an application for a construction noise permit shall be liable to be refunded.
- (9) A construction noise permit-

(a) shall be in the prescribed form;

(b) shall be in force for such period as shall be specified therein; and

(c) may be renewed in the prescribed manner, before or after its expiry, for such further period or periods, and subject to such variation of conditions or the imposition of new conditions as shall be specified therein.

(10) The Authority may amend or vary the conditions of a construction noise permit including a construction noise permit deemed, by virtue of subsection (4), to have been issued or impose new conditions in relation to a construction noise permit if the Authority is satisfied that-

(a) a condition of the construction noise permit has been contravened;

(b) the construction noise permit was issued in consequence of misleading, false, wrong or incomplete information furnished by the applicant in connection with the application; or

(c) except where the construction noise permit is in respect of any percussive piling, the public interest so requires.

(11) The Authority may cancel a construction noise permit including a construction noise permit deemed, by virtue of subsection (4), to have been issued-

(a) if the person to whom the construction noise permit was issued requests the cancellation thereof;

(b) if the Authority is satisfied that-

(i) a condition of the construction noise permit has been contravened;

(ii) the construction noise permit was issued in consequence of misleading, false, wrong or incomplete information furnished by the applicant in connection with the application; or

(iii) except where the construction noise permit is in respect of any percussive piling, the public interest so requires.

(12) Where the Authority cancels a construction noise permit or amends or varies the conditions of a construction noise permit or imposes new conditions in relation to a construction noise permit under subsection

(9), (10) or (11)(b), the Authority shall give written notice of the decision to the person to whom the construction noise permit was issued and shall adequately state in the notice the reasons for the cancellation, or the amendment or variation of conditions, or the imposition of new conditions, as the case may be.

(13) Without prejudice to the generality of subsection (1), (9) or (10) the conditions that the Authority may impose in relation to a construction noise permit may provide for-

(a) the display of the construction noise permit or a copy thereof at any specified location;

(b) maximum noise levels that shall not be exceeded at any specified location at any specified time;

(c) limitations relating to the time when any specified powered mechanical equipment may be used; and

(d) limitations relating to the time when any specified construction work may be carried out, and for the purposes of this subsection "specified" means specified in the construction noise permit. (Enacted 1988)

SECT 8A

Designated areas VerDate:30/06/1997

(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.

(Added 2 of 1994 s. 4)

(Enacted 1988)

SECT 9

Technical Memoranda relating to noise emanating from construction sites VerDate:30/06/1997

(1) The Secretary may issue from time to time Technical Memoranda setting out principles, procedures, guidelines, standards and limits for-

(a) the prediction, measurement and assessment of noise emanating from a construction site;

(b) the issuing of construction noise permits;

(c) the imposition and variation of conditions in relation to construction noise permits;

(d) the determination of whether or not the conditions of a construction noise permit are being complied with,

and those Technical Memoranda may require or authorize the Authority, in any particular case, to follow the advice of the Secretary in relation to paragraphs (b) and (c).

(1A) Without prejudice to the generality of subsection (1), a Technical Memorandum issued under that subsection may set out different principles, procedures, guidelines, standards and limits in respect of different types of percussive device that may be used in percussive piling. (Added 37 of 1997 s. 3)

(2) The Authority shall be guided by Technical Memoranda issued from time to time under subsection (1) when carrying out his functions in respect of noise emanating from a construction site.

(3) A copy of every Technical Memorandum issued from time to time under subsection (1) shall be made available by the Secretary for inspection by the public free of charge at such offices of the Government as the Secretary may direct, during the hours of business.
(Enacted 1988)

SECT 10

Technical Memoranda relating to noise emanating from places other than domestic premises, public places or construction sites VerDate:30/06/1997

Noise from Places other than Domestic Premises,Public Places or Construction Sites

(1) The Secretary may issue from time to time Technical Memoranda setting out principles, procedures, guidelines, standards and limits for-

(a) the measurement and assessment of noise emanating from any place other than domestic premises, a public place or a construction site;

(b) the issuing of noise abatement notices in respect of such noise;

(c) the determination of whether or not a noise abatement notice is being complied with.

(2) The Authority shall be guided by Technical Memoranda issued from time to time under subsection (1) when undertaking any measurement or assessment to determine if a noise abatement notice should be served under section 13(1)(c).

(3) A copy of every Technical Memorandum issued from time to time under subsection (1) shall be made available by the Secretary for inspection by the public free of charge at such offices of the Government as the Secretary may direct, during the hours of business.
(Enacted 1988)

SECT 11

Placing of Technical Memorandum before Legislative Council VerDate:03/05/2002

(1) All Technical Memoranda issued under section 9 or 10 shall be published in the Gazette and shall be laid on the table of the Legislative Council at the next sitting thereof after such publication.

(2) Where a Technical Memorandum has been laid on the table of the Legislative Council under subsection (1), the Legislative Council may, by resolution passed at a sitting of the Legislative Council held before the expiration of a period of 28 days after the sitting at which it was so laid, provide that such Technical Memorandum shall be amended in any manner whatsoever consistent with the power to issue such Technical Memorandum.

(3) If the period referred to in subsection (2) would but for this subsection expire-

(a) after the end of a session of the Legislative Council or a dissolution thereof; but

(b) on or before the day of the second sitting of the Legislative Council in the next following session thereof,that period shall be deemed to extend to and expire on the day after that

second sitting.

* (4) Before the expiration of the period referred to in subsection (2) or that period as extended by virtue of subsection (3), the Legislative Council may by resolution in relation to a Technical Memorandum specified therein-

(a) in the case of the period referred to in subsection (2), extend that period to the first sitting of the Legislative Council held not earlier than the twenty-first day after the day of its expiration;

(b) in the case where the period referred to in subsection (2) has been extended by virtue of subsection (3), extend that period as so extended to the first sitting of the Legislative Council held not earlier than the twenty-first day after the day of the second sitting in that next following session.
(Replaced 8 of 2002 s. 13)

(5) Any resolution passed by the Legislative Council in accordance with this section shall be published in the Gazette not later than 14 days after the passing thereof or within such further period as the Governor may allow in any particular case.

(6) In this section, "sitting", when used to calculate time, means the day on which the sitting commences and only includes a sitting at which subsidiary legislation is included on the order paper.
(Added 89 of 1993 s. 36)
(Enacted 1988)

Note:

* For the transitional provision relating to this subsection as amended by section 13 of the Extension of Vetting Period (Legislative Council) Ordinance 2002 (8 of 2002), see section 14 of that Ordinance.

SECT 12

Commencement of Technical Memoranda VerDate:30/06/1997

All Technical Memoranda issued under section 9 or 10 shall come into operation-

(a) in the case where before the expiration of the period referred to in section 11(2) or, before the expiration of that period as extended by virtue of section 11(3) or (4), the Legislative Council does not pass a resolution amending the Technical Memoranda, upon the expiration of that period or, upon the expiration of that period as so extended, as the case may be; and

(b) in the case where the Legislative Council passes a resolution amending the Technical Memoranda, upon the expiration of the day next preceding the day of the publication in the Gazette of such resolution under section 11(5).
(Enacted 1988)

SECT 13

Noise abatement notices VerDate:30/06/1997

Section 13(1)(b) not yet in operation

(1) Where the Authority is satisfied that noise is emanating from any place other than domestic premises, a public place or a construction site and that such noise, whether on its own or together with noise emanating from any other place other than domestic premises, a public place or a construction site,-

(a) is a source of annoyance to any person (other than a person in the place from which the noise is emanating) in any place considered to be a noise sensitive receiver in any Technical Memorandum issued under section 10; (Replaced 6 of 1992 s. 3)

(b) does not comply with any standard or limit prescribed for the purposes of this section; or

(c) does not comply with any standard or limit contained in Technical Memoranda issued from time to time under section 10(1),

the Authority may serve a noise abatement notice in the prescribed form on any or all of the following-

(i) the person making the noise or causing or permitting the noise to be made; or

(ii) the owner, tenant, occupier or person in charge of the place from which the noise is emanating.

(2) A noise abatement notice served under subsection (1) relating to noise emanating from any place may require the person on whom it is served to abate the noise within the period specified therein and to do all things as may be necessary for that purpose, and may require the person on whom it is served to-

(a) ensure that the noise emanating from such place does not exceed any limit or standard specified in the notice;

(b) where the noise is emanating from such place by reason of the operation of any plant, machinery, vehicle, equipment or process, ensure that any such plant, machinery, vehicle, equipment or process is operated in accordance with any condition specified in the notice; and

(c) notify the Authority in writing within the period specified in the notice that any requirement referred to in paragraph (a) or (b) and specified in the notice has been complied with.

(3) In specifying a period under subsection (2) within which noise is to be abated, the Authority shall have regard to the nature, difficulty and complexity of complying with any requirement in the noise abatement notice.

(4) The Authority may, by notice in the prescribed form served on any person on whom a noise abatement notice has been served under subsection (1), cancel the noise abatement notice or vary any requirement therein.

(5) A noise abatement notice served under subsection (1) or any notice served under subsection (4) varying a requirement in a noise abatement notice shall not take effect until a date specified in any such notice, being a date not less than 21 days after the day on which the notice is served.

(6) Any person who, having been served with a noise abatement notice under subsection (1) or a notice under subsection (4), fails to comply with any requirement therein commits an offence.

(7) Any person who commits an offence under subsection (6) shall be liable-

- (a) on first conviction to a fine of \$100000;
- (b) on second or subsequent conviction, to a fine of \$200000,

and in any case to a fine of \$20000 for each day during which the offence continues. (Amended 2 of 1994 s. 9)

(8) Any person who, having been required to notify the Authority in writing under subsection (2)(c) that any requirement has been complied with, makes or furnishes any statement in so notifying the Authority which to his knowledge is misleading or false in a material particular, commits an offence and is liable to a fine of \$50000.
(Enacted 1988)

SECT 13A

Intruder alarm system installed in any premises VerDate:30/06/1997

Noise from Intruder Alarm Systems
(Added 61 of 1996 s. 3)

- (1) Every person who controls an intruder alarm system installed in, over, under or in the vicinity of any premises shall ensure that the intruder alarm system is provided with an efficient automatic device which shall cause any audible signal to cease not more than 15 minutes after the activation of the signal.
- (2) Any person who fails to comply with subsection (1) commits an offence and is liable to a fine at level 3 and to imprisonment for 3 months.
- (3) The Secretary may, by notice in the Gazette, amend subsection (1) by substituting another number for any number appearing in that subsection.
(Added 61 of 1996 s. 3)

SECT 13B

Intruder alarm system installed in any vehicle VerDate:30/06/1997

- (1) Every registered owner of a vehicle who has an intruder alarm system installed in, on or under that vehicle shall ensure that the intruder alarm system is provided with an efficient automatic device which-
 - (a) shall not emit any audible signal caused otherwise than by an act of direct physical contact with the vehicle, whether that act is intentional or unintentional; and
 - (b) shall cause any audible signal to cease not more than 5 minutes after the activation of the signal.
- (2) Any person who fails to comply with subsection (1) commits an offence and is liable to a fine at level 3.
- (3) The Secretary may, by notice in the Gazette, amend subsection (1)(b) by substituting another number for any number appearing in that subsection.
(Added 61 of 1996 s. 3)

SECT 14

Manufacture, etc. of products not in compliance with noise standards VerDate:30/06/1997

Section 14(3) not yet in operation.

PART III

CONTROL OF NOISY PRODUCTS

(1) Any person who by way of trade or business imports, manufactures or supplies, or offers or exposes for supply, any product prescribed for the purposes of this Part which-

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

(b) when operated under prescribed test conditions emits noise that is not in accordance with any standard prescribed for the purposes of this section,

commits an offence.

(2) For the purposes of any proceedings under subsection (1) or (3), a product shall, until the contrary is proved, be presumed to be intended for use in Hong Kong. (Amended 2 of 1994 s. 5)

(3) Any person who by way of trade or business imports, manufactures or supplies, or offers or exposes for supply, any product prescribed for the purposes of this Part which is-

(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,

without the product being so fitted or equipped commits an offence.

(Amended 2 of 1994 s. 5)

(4) Any person who by way of trade or business imports, manufactures or supplies, or offers or exposes for supply, any product prescribed for the purposes of this Part which is fitted with a prescribed plate, label or other marking relating to noise emission without the product complying with any information stated on any such prescribed plate, label or other marking commits an offence.

(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. (Added 2 of 1994 s. 5)

(4B) A regulation referred to in subsection (4A) may specify that it is effective for a limited period of time. (Added 2 of 1994 s. 5)

(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. (Added 2 of 1994 s. 5)

(5) Any person who commits an offence under subsection (1), (3) or (4) shall be liable-

(a) on first conviction to a fine of \$100000;

(b) on second or subsequent conviction, to a fine of \$200000,

and in any case to a fine of \$20000 for each day during which the offence continues. (Amended 2 of 1994 s. 9)

(Enacted 1988)

SECT 15

Manufacture, etc. of products not complying with noise standards within warranty period

VerDate:30/06/1997

(1) Any person who by way of trade or business imports, manufactures or supplies, or offers or exposes for supply, any product prescribed for the purposes of this Part which-

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

(b) when tested within the warranty period emits noise that does not comply with any standards prescribed for the purposes of this section,

commits an offence.

(2) For the purposes of any proceedings under subsection (1), a product shall, until the contrary is proved, be presumed to be intended for use in Hong Kong.

(3) For the purposes of subsection (1) "warranty period", in relation to any product prescribed for the purposes of this Part, means the period prescribed as the warranty period for such product.

(4) It shall be a defence to a charge under subsection (1) that the product which is the subject of the offence has, since the date of importation, manufacture or supply, or the offer or exposure for supply-

(a) been modified or altered in a manner which increases materially the emission of noise therefrom;

(b) been subject to wear and tear beyond that which is normal; or

- (c) been used otherwise than in a manner in which the product was intended to be used.
- (5) Any person who commits an offence under subsection (1) shall be liable-
 - (a) on first conviction to a fine of \$100000;
 - (b) on second or subsequent conviction, to a fine of \$200000,

and in any case to a fine of \$20000 for each day during which the offence continues. (Amended 2 of 1994 s. 9)
(Enacted 1988)

SECT 16

Authority may require product for testing VerDate:30/06/1997

(1) The Authority may, by notice in the prescribed form served on any person who owns, uses or by way of trade or business imports, manufactures or supplies, or offers or exposes for supply, any product prescribed for the purposes of this Part, require such person at his own expense to- (Amended 6 of 1992 s. 4)

(a) produce or make available to the Authority for measurement, inspection or test any such product specified in the notice; or

(b) cause to be carried out any measurement, inspection or test specified in the notice, on any such product specified in the notice.

(2) A notice served under subsection (1) in respect of any product may-

(a) specify the place where the product is to be produced or made available or where any measurement, inspection or test is to be carried out;

(b) specify the date and time on or by which the product is to be produced or made available or any such measurement, inspection or test is to be carried out;

(c) require any such measurement, inspection or test to be carried out in the presence of any public officer authorized by the Authority in writing for the purposes of this section;

(d) require the results of any such measurement, inspection or test to be presented in writing to the Authority on or before a date specified in the notice; and

(e) identify any product by model, type, manufacturer's serial number or other markings or by reference to a label affixed to the product by an authorized officer under section 25(1)(e).

(3) A notice served under subsection (1) may, by notice in writing, be varied or cancelled by the Authority.

(4) Where any product is produced or made available to the Authority under subsection (1)(a), the Authority shall make arrangements for the product to be available for collection within 72 hours.

(5) Any person who fails to comply with a notice served under subsection (1), or who removes, alters or defaces any label affixed to any product under section 25(1)(e) commits an offence.

(6) Any person who commits an offence under subsection (5) shall be liable-

(a) on first conviction to a fine of \$100000; and

(b) on second or subsequent conviction to a fine of \$200000.

(Amended 2 of 1994 s. 9)

(Enacted 1988)

SECT 17

Use of products not in compliance with noise standards VerDate:30/06/1997

(1) Any person who uses, or causes to be used, any product prescribed for the purposes of this Part which does not comply with any requirement relating to noise emission prescribed for the purposes of this subsection commits an offence.

(2) Any person who being the owner of any product prescribed for the purposes of this Part which does not comply with any requirement relating to noise emission prescribed for the purposes of subsection (1) knowingly permits or suffers such product to be used commits an offence.

(3) For the purposes of any proceedings under subsection (1) or (2), any product which when tested under conditions prescribed for the purposes of this subsection does not comply with any requirement relating to noise emission prescribed for the purposes of subsection (1), shall, until the contrary is proved, be presumed to be a product which did not comply therewith at any time during the period of 30 days immediately prior to the date of the test.

(4) For the purposes of any proceedings under subsection (1) or (2), any person who has in his possession any product which when tested under conditions prescribed for the purposes of subsection (3) does not comply with any requirement relating to noise emission prescribed for the purposes of subsection (1) shall, until the contrary is proved, be presumed to have used that product at any time during the period of 30 days immediately prior to the date of the test.

(5) Any person who commits an offence under subsection (1) or (2) shall be liable-

(a) on first conviction to a fine of \$100000;

(b) on second or subsequent conviction, to a fine of \$200000,

and in any case to a fine of \$20000 for each day during which the offence continues. (Amended 2 of 1994 s. 9)

(Enacted 1988)

SECT 17A

Direction regarding use of prescribed product VerDate:30/06/1997

(1) For the purpose of reducing excessive noise emission during usage, the Authority may give a written direction-

(a) to any person who uses, or causes to be used, any product prescribed for the purposes of this Part; and

(b) requiring that person to use the product in accordance with such directions or instructions-

(i) in respect of the manner of using the product;

(ii) issued by the manufacturer of the product; and

(iii) referred to in that first-mentioned direction.

(2) Any person who uses, or causes to be used, any product prescribed for the purposes of this Part not in the manner as directed by the Authority under subsection (1) commits an offence.

(3) Any person who commits an offence under subsection (2) shall be liable-

(a) on first conviction to a fine of \$100000; and

(b) on second or subsequent conviction to a fine of \$200000,

and in any case to a fine of \$20000 for each day during which the offence continues. (Amended 2 of 1994 s. 9)

(Added 6 of 1992 s. 5)

SECT 18

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

VerDate:30/06/1997

PART IV

APPEALS

(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. (Replaced 2 of 1994 s. 6)

(2) No appeal shall lie under this section except in respect of a construction noise permit for the purpose set forth in subsection (1).

(Replaced 2 of 1994 s. 6)

(3) No appeal shall be made under this section except on the following grounds-

(a) that the refusal to issue a construction noise permit is not justified by the terms of this Ordinance or the Technical Memoranda issued under section 9(1);

(b) that the conditions imposed, amended or varied in relation to a construction noise permit are not justified by the terms of this Ordinance or the Technical Memoranda issued under section 9(1);

(c) that the refusal to issue a construction noise permit or compliance with the conditions imposed in relation to a construction noise permit or the cancellation of a construction noise permit would cause the appellant economic hardship seriously prejudicial to the conduct of his business; or

(d) that the cancellation of a construction noise permit is not justified by the terms of this Ordinance or the Technical Memoranda issued under section 9(1).

(4) Any person who wishes to appeal under this section shall lodge a notice of appeal in the prescribed form and manner within 21 days after the service under section 8 of notice of the decision of the Authority to which the appeal relates.

(Enacted 1988)

SECT 19

Appeals against service of notice by Authority under section 13 or 16 VerDate:30/06/1997

(1) Subject to subsection (2), if any person on whom a notice is served under section 13(1) or (4) or section 16(1)(a) or (b) is aggrieved by such service, he may appeal to the Appeal Board.

(2) No appeal may be made under this section except on any or all of the following grounds-

(a) that the service of the notice is not justified by the terms of this Ordinance or, in the case of a notice served under section 13(1) on the grounds set out in section 13(1)(c), by the Technical Memoranda issued under section 10(1);

(b) that there has been some material informality, defect or error in the form or content of the notice or in connection with the service of the notice;

(c) that the requirements of the notice are unreasonable in character or extent or are unnecessary;

(d) that compliance with the requirements of the notice would cause the appellant economic hardship seriously prejudicial to the conduct of his business; or

(e) that the notice should have been served on some person other than the appellant.

(3) Any person who wishes to appeal under this section shall lodge a notice of appeal in the prescribed form and manner within 21 days after the service of the notice to which the appeal relates.

(4) Where an appeal is made under this section the notice to which the appeal relates shall be suspended in its operation as from the day on which the notice of appeal is lodged until the time that the appeal is disposed of, withdrawn or abandoned unless suspension in the operation of the notice to which

the appeal relates would, in the opinion of the Authority, be contrary to the public interest and the notice to which the appeal relates contains a statement to that effect.
(Enacted 1988)

SECT 20

Appeal Board VerDate:30/06/1997

- (1) Every appeal under this Part shall be determined by the Appeal Board constituted under section 21.
- (2) The Governor shall appoint as Chairman of the Appeal Board a person who is qualified for appointment as a District Judge under section 5 of the District Court Ordinance (Cap 336).
- (3) Subject to subsection (6), the Chairman and any person appointed under subsection (4) shall be appointed for a term of 3 years but may be re-appointed. (Amended 6 of 1992 s. 6)
- (4) The Governor shall appoint a panel of persons whom he considers suitable for appointment under section 21 as members of the Appeal Board to hear any appeal under this Part.
- (5) An appointment under subsection (2) or (4) shall be notified in the Gazette.
- (6) The Chairman and any person appointed under subsection (4) may at any time resign by notice in writing to the Governor.
(Enacted 1988)

SECT 21

Constitution of Appeal Board VerDate:01/07/1997

Adaptation amendments retroactively made-see 25 of 1998 s. 2

- (1) The Appeal Board shall consist of the Chairman and such number of persons from the panel referred to in section 20(4) as the Chairman may, subject to subsection (4), appoint to be members thereof to hear any appeal under this Part.
- (2) In hearing an appeal under this Part the Appeal Board may, in relation to such appeal, give directions to the Authority with respect to the exercise by the Authority of such of the functions of the Authority under this Ordinance as are relevant to the appeal and the Authority shall comply with any such direction.
- (3) In relation to the hearing of appeals under this Part every question before the Appeal Board shall be determined by the opinion of the majority of the members hearing the appeal except a question of law which shall be determined by the Chairman; in the case of an equality of votes the Chairman shall have a casting vote.
- (4) The Appeal Board shall not at any time consist of a majority of persons who are public officers.
- (5) The contents of any Technical Memorandum issued under section 9 (1) or 10(1) shall not be called into question in any appeal under this Part.

- (6) In hearing an appeal under this Part the Appeal Board may-
- (a) receive evidence on oath;
 - (b) admit or take into account any statement, document, information or matter whether or not it would be admissible in a court of law;
 - (c) by notice in writing summon any person to appear before it to produce any document or to give evidence;
 - (d) confirm, reverse or vary the decision or requirement appealed against; and
 - (e) make an award of such sum, if any, in respect of the costs involved in the appeal as is just and equitable in all the circumstances of the case.

(7) The Appeal Board shall have the powers which are vested in the Court of First Instance in the exercise of its powers under subsection (6). (Amended 25 of 1998 s. 2)

(8) If any person-

- (a) on being duly summoned as a witness before the Appeal Board makes default in attending; or
- (b) being in attendance as a witness refuses to take an oath legally required by the Appeal Board to be taken, or to produce any document in his power or control legally required by the Appeal Board to be produced by him, or to answer any question to which the Appeal Board may legally require an answer; or
- (c) does any other thing which would, if the Appeal Board had been a court of law having power to commit for contempt, have been contempt of that court,

the Chairman may certify the contempt of that person under his hand to the Court of First Instance and the Court of First Instance may thereupon inquire into the alleged contempt and after hearing any witnesses who may be produced against or on behalf of the person charged with the contempt and after hearing any statement that may be offered in defence, punish or take steps for the punishment of that person in like manner as if he had been guilty of contempt of the court. (Amended 25 of 1998 s. 2)

(9) A witness before the Appeal Board shall be entitled to the same immunities and privileges as if he were a witness in civil proceedings before the Court of First Instance. (Amended 25 of 1998 s. 2)

(10) Any sum awarded under subsection (6)(e) shall be enforceable as a civil debt and any sum payable by the Authority under such an award shall be charged on the general revenue.

(11) The Chairman may determine any form or matter of practice or procedure for which no provision is made in this Ordinance.(Enacted 1988)

SECT 22

Supplementary provisions VerDate:30/06/1997

(1) If the Chairman is precluded by illness, absence from Hong Kong or any other cause from exercising his functions, the Governor may appoint any person qualified for appointment as a District

Judge under section 5 of the District Court Ordinance (Cap 336) to act as Chairman and as such to exercise and perform all the functions of the Chairman during the period of his appointment.

(2) If a person appointed by the Chairman under section 21 (1) to hear an appeal under this Part is precluded by illness, absence from Hong Kong or any other cause from exercising his functions, the Chairman may appoint any other person from the panel referred to in section 20(4) to act in his place.

(3) The hearing of an appeal may be continued notwithstanding a change in the membership of the Appeal Board.
(Enacted 1988)

SECT 23

Case may be stated for Court of Appeal VerDate:30/06/1997

(1) The Appeal Board may, before an appeal under this Part is determined, refer any question of law arising in the appeal to the Court of Appeal for determination by way of case stated.

(2) On the hearing of the case the Court of Appeal may amend the case or order it to be sent back to the Appeal Board for amendment.
(Enacted 1988)

SECT 24

Authorized officers VerDate:30/06/1997

PART V

ENFORCEMENT

(1) The Authority may in writing authorize any public officer to exercise any of the powers conferred on an authorized officer by section 25 as the Authority may specify in the authorization.

(2) A public officer exercising under this section any of the powers conferred by section 25-

(a) may obtain the assistance of such persons as he reasonably requires for the purposes of the discharge of his functions under this Part;

(b) shall, if so required, produce his identity card issued under the Registration of Persons Ordinance (Cap 177), together with his written authorization under this section.
(Enacted 1988)

SECT 25

Powers of entry and inspection, etc. VerDate:30/06/1997

(1) Subject to subsection (2), an authorized officer may without warrant and on production, if so required, of his written authorization under section 24-

(a) enter and search any place if he reasonably believes that-

- (i) an offence against this Ordinance has been or is being committed in any such place;
- (ii) there is in any such place any thing that is or is likely to constitute evidence that an offence against this Ordinance has been or is being committed;
- (b) enter any place for the purpose of exercising any power under paragraph (c), (d), (e) or (f) or of serving any notice under section 13(1), 13(4), 16(1) or 16(3);
- (c) carry out any measurement, inspection or test as he reasonably believes is necessary in order to determine if an offence against this Ordinance has been or is being committed;
- (d) observe and monitor any measurement, inspection or test on any product required to be carried out under section 16(1)(b);
- (e) for the purposes of section 16(2)(e), affix a label to any product prescribed for the purposes of Part III;
- (f) do all that is reasonably necessary to determine whether or not any notice should be served under section 13(1), 13(4), 16(1) or 16(3).

(2) Notwithstanding subsection (1), an authorized officer shall not, save with the consent of the occupier or person in charge of the premises, enter domestic premises without a warrant issued by a magistrate under subsection (3) or (4).

(3) If it is made to appear to a magistrate by information on oath that there is reason to believe that-

- (a) an offence against this Ordinance has been or is being committed on domestic premises; or
- (b) there is on domestic premises any thing that is or is likely to constitute evidence that an offence against this Ordinance has been or is being committed,

the magistrate may issue a warrant authorizing an authorized officer to enter and search such premises.

(4) If it is made to appear to a magistrate by information on oath that it is necessary for an authorized officer to enter domestic premises for any of the purposes referred to in subsection (1)(b), the magistrate may issue a warrant authorizing the authorized officer to enter such domestic premises.

(5) An authorized officer who enters any place under subsection (1), (3) or (4) may require any person present at that place-

- (a) to give details of his identity, name and address and produce his identity card issued under the Registration of Persons Ordinance (Cap 177) for inspection by the authorized officer; or

- (b) who appears at the time to be responsible for or in charge of that place, to give such information or render such assistance as may be necessary to enable the authorized officer to carry out his functions under this Part.

(6) An authorized officer who enters any place under this section shall, if entry is by warrant issued under subsection (3) or (4), produce that warrant.

(7) A warrant issued under subsection (3) or (4) shall continue in force until the purpose for which the entry is necessary has been satisfied.
(Enacted 1988)

SECT 26
Offences in relation to section 25 VerDate:30/06/1997

Any person who-

(a) wilfully resists, obstructs or delays any public officer in the exercise of any power conferred by section 25 which he is authorized to exercise under section 24;

(b) fails without reasonable excuse to comply with any requirement duly made by any public officer in the exercise of any such power;

(c) in compliance or purported compliance with any such requirement produces any drawing, record or document which he knows to be incorrect or inaccurate in a material respect or does not believe to be correct or accurate; or

(d) wilfully or recklessly gives information which is incorrect in a material respect or withholds information as to any of the matters in respect of which information is required to be given under section 25, commits an offence and is liable to a fine of \$50000.
(Enacted 1988)

SECT 27
Regulations VerDate:30/06/1997

PART VI

MISCELLANEOUS

(1) The Secretary may, after consultation with the Advisory Council on the Environment, by regulation- (Amended L.N. 57 of 1994; 2 of 1994 s. 7; 12 of 1996 s. 2)

(a) prescribe anything required or permitted to be prescribed under this Ordinance;

(b) regulate appeals under Part IV and the practice and procedure of the Appeal Board;

(c) generally, provide for the better carrying into effect of the provisions and purposes of this Ordinance.

(1A) (Repealed 12 of 1996 s. 2)

(2) Any regulation made under subsection (1) relating to the payment of fees may provide for different fees to be charged according to different circumstances.

(3) Any regulation made under subsection (1) may provide that a contravention thereof shall be an offence and may provide penalties for such offence not exceeding a fine of \$200000. (Amended 2 of 1994 s. 9)

(3A) Any regulation made under subsection (1) relating to the control of the emission of noise in respect of motor vehicles intended to be registered under the Road Traffic Ordinance (Cap 374) may for the purposes of such registration-

(a) authorize the Authority to confer exemptions from any provision of any regulation so made;

(b) provide for the application of vehicle design standards, specifications, descriptions, methods, procedures, requirements or tests laid down in documents, whether or not published or produced in Hong Kong, not forming part of the regulations, relating to the prevention or reduction of the emission of noise including the application of such standards, specifications, descriptions, methods, procedures, requirements or tests in relation to the prohibition or control of the emission of noise from motor vehicles;

(c) provide for any matter relating to conformity to standards as stringent as or more stringent than standards laid down in documents of the description mentioned in paragraph (b). (Added 12 of 1996 s. 2)

(4) Any regulation made under subsection (1) for the purposes of section 7(1) shall be subject to the approval of the Legislative Council.(Enacted 1988)

SECT 28

Offence to disclose confidential information obtained officially VerDate:30/06/1997

(1) A person who, except in the circumstances provided for in subsection (2), discloses or gives to another person any information that concerns a trade, business or profession, is confidential and has come to his knowledge or into his possession in the course of the discharge of his functions under this Ordinance commits an offence.

(2) A person does not commit an offence under subsection (1) if he discloses or gives any information to another person-

(a) for the purpose of the discharge of his functions under this Ordinance and proceedings connected therewith;

(b) pursuant to an order of a court under subsection (3); or

(c) with the consent in writing of all such persons as appear to him, after reasonable enquiry, to be interested in the confidentiality of the information.

(3) Where in any proceedings a court considers that the justice of the case so requires, the court may order the disclosure or giving of any information referred to in subsection (1).

(4) A person who commits an offence under subsection (1) is liable to a fine of \$20000 and to imprisonment for 6 months. (Amended 2 of 1994 s. 9)
(Enacted 1988)

SECT 28A

Liability of directors VerDate:08/10/2004

(1) Subject to section 28B, where an offence under this Ordinance has been committed by a body corporate, any person who at the time of the offence was:

- (a) a director concerned in the management of the body corporate;
 - (b) a director who has delegated his authority for the management of the body corporate to an officer;
 - (c) an officer mentioned in paragraph (b); or
 - (d) an officer:
 - (i) concerned in the management of the body corporate; and
 - (ii) acting under the immediate authority of a director of the body corporate,
- shall be guilty of the like offence.

(2) For the purpose of subsection (1), “body corporate” means any company, or other body corporate, incorporated in Hong Kong or elsewhere, but does not include any corporation registered under the Building Management Ordinance (Cap 344).

(3) It is a defence to a charge brought under any provision of this Ordinance (other than section 6(1)(a), (2)(a) or (3)(a)) for a person charged under subsection (1) to prove that he took reasonable precautions and exercised due diligence to prevent the commission of the offence by the body corporate.

(4) Without affecting the generality of subsection (3), a person establishes a defence under that subsection if he proves that he had:

- (a) established a proper system to prevent the commission of the offence concerned; and
 - (b) ensured the effective operation of the system.
- (Added 19 of 2002 s. 2)

SECT 28B

Restrictions on application of section 28A(1) VerDate:08/10/2004

- (1) Section 28A(1) shall not apply to a specified person in relation to a specified offence unless:
- (a) proceedings have been instituted against the specified body corporate for an offence under this Ordinance in relation to a specified place (and whether or not the specified body corporate is convicted of that offence);
 - (b) the Authority has, in relation to those proceedings, served on the specified person a notice in the form specified in the Schedule; and
 - (c) the specified offence:
 - (i) relates to that specified place; and
 - (ii) occurs after the date on which that notice is served on the specified person but before the 2nd anniversary of that date.

(2) The Authority may, by notice published in the Gazette, amend the Schedule.

(3) In this section:

“proceedings have been instituted” in relation to an offence under this Ordinance, means a complaint or information in respect of the offence has been made or laid, as the case may be;

“specified body corporate” in relation to a specified person, means a body corporate mentioned in section 28A(2) in respect of which the specified person is such a specified person;

“specified offence” means a like offence mentioned in section 28A(1);

“specified person” means a director mentioned in section 28A(1)(a) or (b) or an officer mentioned in section 28A(1)(c) or (d);

“specified place: means:

(a) any domestic premises, public place or construction site; or

(b) any place other than any domestic premises, public place or construction site.

(4) For the avoidance of doubt, it is hereby declared that the Authority has the power to serve the notice referred to in subsection (1)(b).

(Added 19 of 2002 s. 2)

SECT 28C

Codes of practice VerDate:08/10/2004

(1) The Authority may issue codes of practice containing such practical guidance as he thinks fit for the purpose of providing industries with good management practice in respect of section 28A(3).

(2) The Authority may from time to time revise the whole or any part of any code of practice issued under subsection (1) by revoking, varying or adding to its provisions or requirements.

(3) A code of practice or any revision to a code of practice shall be published in the Gazette.

(4) A code of practice or any revision to a code of practice commences at the beginning of the day on which it is published.

(Added 19 of 2002 s. 2)

SECT 29

Protection of Crown and public officers VerDate:30/06/1997

(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 discharge of any of his functions 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 Crown in tort for that act or omission.

(Enacted 1988)

SECT 30

Advisory Council on the Environment VerDate:01/07/1997

If any question arises as to who are the body of persons for the time being constituting the Advisory Council on the Environment, the matter shall be referred to the Chief Secretary for Administration who shall determine the question by certificate under his hand.

(Enacted 1988. Amended L.N. 57 of 1994; L.N. 362 of 1997)

SECT 31

Limit of time for laying information, etc. VerDate:30/06/1997

A complaint or information in respect of an offence against this Ordinance shall be made or laid, as the case may be, within-

(a) 6 months from the time the matter of such complaint or information respectively first came to the knowledge of the Authority or an authorized officer; or

(b) 1 year from the time of the commission of the offence,

whichever is the earlier.

(Enacted 1988)

SECT 32

Prosecution of offences VerDate:01/07/1997

(1) Subject to this section, proceedings for offences against this Ordinance may be instituted in the name of the Authority, and may be commenced and conducted by a public officer appointed under section 13 of the Magistrates Ordinance (Cap 227).

(2) Nothing in this section shall be deemed to derogate from the powers of the Secretary for Justice in relation to the prosecution of offences. (Amended L.N. 362 of 1997)

(Enacted 1988)

SECT 33

Defence to proceedings under section 4, 5, 6, 7, 13 or 17 VerDate:30/06/1997

In any proceedings for an offence under section 4, 5, 6, 7, 13 or 17, it shall be a defence to show that the circumstances constituting or leading to the commission of the offence arose-

(a) by reason of the fact of any authorization under any licence, permit or exemption granted under any other Ordinance;

(b) in pursuance of the purpose of the prevention of injury to any person or the saving of the life of any person;

(c) in pursuance of the purpose of the prevention of damage to property where the circumstances placing the property in danger of being damaged could not reasonably have been foreseen by the person charged with the offence; or

(d) in pursuance of the purpose of the prevention of serious interruption or disruption to any public transport system where the circumstances which would otherwise cause such an interruption or disruption could not reasonably have been foreseen by the person charged with the offence.
(Enacted 1988)

SECT 34

Proof of permit, etc. VerDate:30/06/1997

For the purposes of any proceedings under this Ordinance a document purporting to be a copy of any permit or notice issued under this Ordinance and of any conditions to which the permit or notice is subject and purporting to be certified by the Authority to be a true copy, shall be received in evidence on its production without further proof and, until the contrary is proved, it shall be presumed that-

- (a) the document is a true copy of the permit or notice;
- (b) the document was certified by the Authority; and

(c) the permit or notice was issued in respect of the place stated in the document to the person stated in the document and is subject to those conditions.
(Enacted 1988)

SECT 35

Exemptions from provisions of the Ordinance VerDate:30/06/1997

(1) The Governor in Council may by order published in the Gazette exempt any area, place, premises or activity from all or any of the provisions of this Ordinance.

(2) An order under subsection (1) may-

- (a) be made subject to such conditions or limitations;
- (b) have effect for such period of time; or
- (c) have such partial operation,

as may be specified in the order.

(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 \$50000;
- (b) on second or subsequent conviction, to a fine of \$100000,

and in any case to a fine of \$10000 for each day during which the offence continues. (Added 2 of 1994 s. 8)

(4) For the purposes of determining whether or not an offence has been committed under subsection (3), Part V applies. (Added 2 of 1994 s. 8)

(5) Section 33(b), (c) and (d) applies to an offence under subsection (3). (Added 2 of 1994 s. 8) (Enacted 1988)

SECT 36

Application in respect of aircraft noise VerDate:30/06/1997

Nothing in this Ordinance shall apply to noise caused by aircraft. (Enacted 1988)

SECT 37

Application of section 13 to MTR Corporation Limited and Kowloon-Canton Railway Corporation VerDate:30/06/2000

Section 13 shall apply to the MTR Corporation Limited and the Kowloon-Canton Railway Corporation only so far as is practicable and compatible with the discharge of any function or the exercise of any power or duty conferred or imposed upon them according to law. (Enacted 1988. Amended 13 of 2000 s. 65)

SECT 38

Application to Crown VerDate:01/07/1997

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

(1A) Section 13B shall not apply to the Crown. (Added 61 of 1996 s. 4)

(2) Section 4, 5, 6, 7, 13, 13A, 14, 15, 16 or 17 shall not have effect to permit proceedings to be taken against, or to impose any criminal liability on, the Crown or on any public officer who causes or permits to be made any noise in the course of carrying out his duties in the service of the Crown. (Amended 61 of 1996 s. 4)

(3) If it appears to the Authority that any noise is being, or has been, made in contravention of section 4, 5, 6, 7, 13, 13A, 14, 15, 16 or 17 by any public officer in the course of carrying out his duties in the service of the Crown, the Authority shall, if the contravention is not forthwith terminated to his satisfaction, report the matter to the Chief Secretary for Administration. (Amended 61 of 1996 s. 4; L.N. 362 of 1997)

(4) On receipt of a report under subsection (3), the Chief Secretary for Administration shall enquire into the circumstances and, if his enquiry shows that a contravention of section 4, 5, 6, 7, 13, 13A, 14, 15, 16 or 17 is continuing or likely to recur, he shall ensure that the best practicable steps are taken to terminate the contravention or avoid the recurrence. (Amended 61 of 1996 s. 4; L.N. 362 of 1997)

(5) Any notice under this Ordinance concerning the making of noise which is to be, or may be, given or made by or on behalf of the Crown may be given or made by any public officer on behalf of the Crown.

(6) Any notice under this Ordinance concerning the making of noise which is to be, or may be, given by the Authority to the Crown shall be given to the principal officer of the Government Department which appears to the Authority to be responsible for such emission or, in the event of any question arising as to which Department is responsible, to such public officer as the Chief Secretary for Administration shall determine. (Amended L.N. 362 of 1997)

(7) No fee prescribed under this Ordinance shall be payable by the Crown.
(Enacted 1988)

SECT 39

Service of notices VerDate:30/06/1997

Any notice to be served by the Authority upon any person under this Ordinance may be served-

(a) by serving a copy personally or by registered post addressed to the last known place of business or residence of the person to be served;
or

(b) where the notice is to be served on the owner, tenant, occupier or person in charge of any premises or place, by affixing a copy upon a conspicuous part of the premises or place.
(Enacted 1988)

SECT 40

(Omitted as spent) VerDate:30/06/1997

(Omitted as spent)
(Enacted 1988)

SECT 41

(Omitted as spent) VerDate:30/06/1997

(Omitted as spent)
(Enacted 1988)

SCHEDULE VerDate:08/10/2004

[section 28B]

NOTICE UNDER SECTION 28B(1)(b) OF THE NOISE CONTROL ORDINANCE (CHAPTER 400)
TO DIRECTOR OR OFFICER OF BODY CORPORATE

FROM : The NOISE CONTROL AUTHORITY appointed under section 3(1) of

the Noise Control Ordinance (Cap 400)

TO : (name of person)

1. YOU ARE HEREBY ADVISED that

(a) proceedings have been instituted against (name of body corporate) for an offence under the Noise Control Ordinance (Cap 400) in relation to (address or other identifying particulars of domestic premises, public place, construction site, or other place, to which the offence relates); and

(b) it is believed that you are one or more of the following:

(i) a director concerned in the management of the above-named body corporate;

(ii) a director who has delegated his authority for the management of the above-named body corporate to an officer;

(iii) an officer mentioned in subparagraph (ii) above;

(iv) an officer:

(A) concerned in the management of the above-named body corporate;

and

(B) acting under the immediate authority of a director of the abovenamed body corporate; and

(c) whether or not the above-named body corporate is convicted of the offence mentioned in paragraph (a) above:

(i) in relation to any offence under any provision of the Noise Control Ordinance (Cap 400) committed in relation to the same domestic premises, public place, construction site, or other place, mentioned in that paragraph by that body corporate after the date of service of this notice on you but before the 2nd anniversary of that date; and

(ii) by virtue of sections 28A and 28B of the Noise Control Ordinance (Cap 400),

proceedings may also be taken against you for the offence mentioned in subparagraph (i) above in your capacity mentioned in paragraph (b) above.

2. Copies of sections 28A and 28B of the Noise Control Ordinance (Cap 400) are attached for your information.

Dated this day of 20

Signed :

Noise Control Authority/public officer authorized under section 3(3) of the Noise Control Ordinance (Cap 400)*

*Delete whichever is inapplicable. (Schedule replaced 19 of 2002 s. 3)