

## **Chapter 10**

### **Section 2 – Enforcement Procedure**

#### **1 Introduction**

The Director of Highways (DHy) is empowered by the Land (Miscellaneous Provisions) Ordinance Cap 28 (the Ordinance) to be the Authority responsible for issuing excavation permits and exercising controls on all excavations in unleased land which is a street maintained by the Highways Department (HyD). According to the Ordinance, any person who carries out road excavations without an excavation permit (XP) or emergency excavation permit (EXP), or breaches any conditions of XP/EXP, shall be guilty of an offence.

DHy has set up an audit inspection team in Research & Development Division (R&DD) and assigned the Quality Management Unit (QMU) in Headquarters of the Department to tighten controls in all excavations. QMU that is independent of permit issuing and works related offices is responsible for enforcing the law in accordance with this procedure under the Ordinance.

This document should be read in conjunction with the Ordinance, related legislation and procedures, and Guidance Notes issued by HyD.

#### **2 Definition of Offence**

QMU shall take note of the offences defined in Section 10(1), (2), (3), (4) and (5), and Section 10T (1), (2) and (3) of the Ordinance, and the defences under Section 10(6), (7) and Section 10T(4) and (5) of the Ordinance, when such offence(s) is identified and the respective evidence collected.

#### **3. Enforcement Cases**

3.1 Cases where QMU is referred to by R&DD and/or Regional Offices of HyD, under the following circumstances:

- (a) excavation without a valid permit
- (b) excavation without adequate support
- (c) contravention of permit conditions
- (d) suspension order has been issued to the Permittee and/or the Nominated Permittee, or
- (e) the Permittee/Nominated Permittee's site has been taken over by

the Authority.

3.2 Complaint cases or cases identified under ad hoc spot checks and inspections.

#### **4. Enforcement process**

For cases described in paragraph 3, the following process shall be followed.

##### **4.1 Site Inspection and Investigation**

- 4.1.1 QMU shall carry out site inspections and investigations to verify the cases and collect evidences for identifying any offence. They shall be responsible for laying information against the accused.
- 4.1.2 During site inspections, QMU may record the offence by means of photographing. They may take notes describing the circumstances with details of location, date and time of the event. They may also talk to labours and/or person in charge of the site in collecting evidence and identifying the parties who are suspected to have committed an offence or allegedly violated any permit conditions.
- 4.1.3 Staff of QMU who has personal knowledge of the offence or contravention, and/or has witnessed the offence or contravention, or taken records of the offence or contravention, and who lays information against the accused, may serve as a prosecution witness.

##### **4.2 Collection of Evidences**

QMU shall collect the following evidences to be presented to Department of Justice (DoJ):

- 4.2.1 Witness statements from inspectors of QMU
 

Inspectors of QMU, who have carried out site inspections or investigations, shall prepare witness statement based on their personal knowledge without personal interpretation. Witness statement may consist of the following information:

  - Particulars of the suspect
  - Date and time of the offence
  - Location of the offence
  - Description of the offence
  - Photos taken during site inspection

- 4.2.2      Witness statements from witnesses other than the inspectors of QMU  
Inspectors of QMU shall take witness statement from any person who has witnessed the offence if necessary.
- 4.2.3      Cautioned Statement from the suspect  
Inspectors of QMU shall take cautioned statement from the suspect if necessary.
- 4.2.4      Suspension order  
QMU shall keep records of all instructions to temporarily suspend the work issued by the respective Regional Office of HyD in accordance with Clause 7B of Conditions of XP, or Clause 8B of Conditions of EXP.
- 4.2.5      Computer printout  
In verifying the cases, QMU shall collect information recorded by other electronic means, such as computer printout of Utility Management System. These information may be accepted and admitted in court as direct evidence, providing that the information is not manipulated, according to Section 16C of the Ordinance.
- 4.2.6      Advisory letter  
QMU shall keep records of all advisory letters issued to the Permittee and/or Nominated Permittee by respective Regional Office of HyD and/or of R&DD.

QMU will open a case file and assign a case number for each the enforcement cases mentioned in paragraph 3 above. When investigation is complete, the inspectors of QMU will prepare a report detailing the investigation and evidence collected.

### **4.3 Making Recommendations on Enforcement**

- 4.3.1      After completion of the investigation or inspection, QMU shall seek approval from the Assistant Director/Technical (AD/T) for recommendations to be made to the Prosecution Division (PD) of DoJ. PD will decide whether to proceed with prosecution, and they would be responsible for conducting prosecution in court.
- 4.3.2      For cases where a government department or an individual public officer has been identified to be personally involved in a contravention with sufficient evidences, QMU will inform AD/T and assist in the fact finding and

reporting in accordance with the Reporting Procedures under Section 2A promulgated by the then Secretary for the Environment, Transport and Works in memo dated 29 July 2004. Under the existing Ordinance with version date of 1 July 2007, the case should be reported to the Secretary for Development.

#### **4.4 Preparation of Summons**

- 4.4.1 Upon receiving notification from DoJ on proceeding with the prosecution, QMU shall draft a summons application in a pre-approved Standard Offence Description (SOD) to AD/T for approval and authorisation for uploading the application in the Case and Summons Management System (CASEMAN).
- 4.4.2 When the draft summons is approved by AD/T, QMU shall upload the summons application in the CASEMAN.
- 4.4.3 QMU shall collect the original copy of summons from relevant courts.
- 4.4.4 QMU shall pass the case file to the prosecutor concerned with copies of brief facts and other relevant documents as requested by court.

### **5. Liaison with Department of Justice**

- 5.1 QMU shall liaise with PD of DoJ and prepare documents with DoJ's advice for prosecution.
- 5.2 QMU shall liaise with court prosecutor and first clerk of Magistrates' Court for the trial.
- 5.3 QMU shall ensure that their staff concerned shall appear in the court as a prosecution witness.
- 5.4 Where cases the defendant(s) plead not guilty (PNG) at the first plea taking in court, the presiding magistrate will adjourn the case for trial. Prior to the trial date, QMU will prepare necessary documents with the advice of DoJ and pass the documents to the prosecutor concerned for the trial.

### **6. Conviction Record**

When the case is settled and any person or the Permittee or Nominated Permittee is found guilty of offence, QMU will compile a record of convictions in confidence.