

立法會
Legislative Council

LC Paper No. CB(1) 1753/07-08
(These minutes have been seen
by the Administration)

Ref : CB1/BC/4/07/2

Bills Committee on Product Eco-responsibility Bill

**Minutes of the seventh meeting
held on Tuesday, 13 May 2008, at 8:30 am
in Conference Room A of the Legislative Council Building**

Members present : Hon CHOY So-yuk, JP (Chairman)
Hon Mrs Selina CHOW LIANG Shuk-ye, GBS, JP
Hon CHAN Yuen-han, SBS, JP
Hon SIN Chung-kai, SBS, JP
Hon Miriam LAU Kin-ye, GBS, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon Vincent FANG Kang, JP
Hon Andrew LEUNG Kwan-yuen, SBS, JP
Hon WONG Ting-kwong, BBS

Members absent : Hon Emily LAU Wai-hing, JP
Hon LEE Wing-tat

**Public officers
attending** : **For item II**

Environmental Protection Department

Mr Albert LAM, JP
Deputy Director of Environmental Protection

Mr Alfred LEE
Assistant Director (Waste Management Policy)

Mr TE Chi-wang
Senior Administrative Officer (Waste Management
Policy Division)

Mr Patrick LIU
Senior Environmental Protection Officer (Regional
South)

Department of Justice

Miss Shandy LIU
Senior Government Counsel
Law Drafting Division

Clerk in attendance : Miss Becky YU
Chief Council Secretary (1)1

Staff in attendance : Miss Kitty CHENG
Assistant Legal Adviser 5

Mrs Mary TANG
Senior Council Secretary (1)2

I Confirmation of minutes

(LC Paper No. CB(1) 1487/07-08 -- Minutes of the meeting held on
15 April 2008)

The minutes of the meeting held on 15 April 2008 were confirmed.

II Meeting with the Administration

(LC Paper No. CB(1) 1391/07-08(01) -- List of follow-up actions arising
from the discussion on
15 April 2008

LC Paper No. CB(1) 1489/07-08(01) -- Administration's response to
items 1 to 3 of LC Paper No.
CB(1) 1391/07-08(01)

LC Paper No. CB(1) 1489/07-08(02) -- List of follow-up actions arising
from the discussion on
29 April 2008

LC Paper No. CB(1) 1489/07-08(03) -- Administration's response of LC
Paper No. CB(1) 1489/07-08(01)

LC Paper No. CB(1) 1489/07-08(04) -- Examples of overseas legislative
provisions prepared by the Legal
Service Division for reference of
the Bills Committee

2. The Bills Committee deliberated (Index of proceedings attached at
Annex A).

3. The Administration was requested to -
 - (a) consider including “polluter-pays principle” in clause 2(1)(b) to require relevant parties to share the responsibility to minimize the environmental impact of certain types of products. To also consider replacing the last “and” in clause 2(1)(b) with “or” to reflect more accurately the different responsibilities of different parties;
 - (b) advise the criteria for appointment and the minimum ranking of “authorized officer” under clause 3. Reference should be made to other recently enacted environmental legislation in respect of appointment of authorized officer;
 - (c) consider combining Part 2 and Part 3 of the Bill such that all the provisions confined only to plastic shopping bags. To also conduct an overhaul of the Bill to delete any provisions which were not relevant to the implementation of product responsibility scheme on plastic shopping bags;
 - (d) advise the reasons for the arrangement under clause 6(3) for an authorized officer to take with him such persons as he reasonably required to assist him in the performance of a function under the Bill. To also advise how “reasonably requires” could be qualified and whether similar provision could be found in other existing legislation;
 - (e) review the extensive power under clause 7(1)(b) which required a person to provide all reasonable assistance, information or explanations in connection with any record or document kept by him/her, failure of which would be liable to a fine of \$200,000. To also advise whether similar power could be found in other existing legislation designed for the collection of levy; and
 - (f) advise the circumstances under which entry to and search of domestic premises with a warrant were required. To also consider excluding domestic premises from the entry and search provisions under the Bill.

4. Members agreed to continue discussion at the next meeting scheduled for Tuesday, 27 May, 2008, at 8:30 am. They also agreed to the following schedule of meetings -
 - (a) Thursday, 29 May 2008, from 1:00 pm to 2:30 pm;
 - (b) Tuesday, 10 June 2008, at 4:30 pm; and
 - (c) Thursday, 12 June 2008, at 4:30 pm

III Any other business

5. There being no other business, the meeting ended at 10:34 am.

Council Business Division 1
Legislative Council Secretariat
5 June 2008

**Proceedings of the
Bills Committee on Product Eco-responsibility Bill
Meeting on Tuesday, 13 May 2008, at 8:30 am
in Conference Room A of the Legislative Council Building**

Time Marker	Speaker	Subject(s)	Action Required
000000 - 000014	Chairman	Confirmation of minutes of the meeting held on 15 April 2008 (LC Paper No. CB(1) 1487/07-08))	
000015 - 000837	Chairman Administration	Meeting arrangements Continuation of clause-by-clause examination of the Product Eco-responsibility Bill (the Bill) Clause 2 - Purposes of the Bill Chairman's proposal of including "polluter-pays principle" in clause 2(1)(b)	The Administration to consider including "polluter-pays principle" in clause 2(1)(b) to require relevant parties to share the responsibility to minimize the environmental impact of certain types of products
000838 - 001449	Ms Miriam LAU Administration ALA5	Ms Miriam LAU's suggestion of replacing the last "and" in clause 2(1)(b) with "or" to reflect more accurately the different responsibilities of different parties	The Administration to consider replacing the last "and" in clause 2(1)(b) with "or" to reflect more accurately the different responsibilities of different parties
001450 - 001834	Administration Chairman	Clause 3 - Interpretation	
001835 - 002426	Ms Miriam LAU Administration Chairman	Ms Miriam LAU's concerns about - (a) the lack of a minimum rank for "authorized officers", particularly in view of their extensive powers under clause 6 of the Bill; (b) criteria for appointment of authorized officers; and (c) the check and balance in place to prevent abuse of powers by authorized officers	

Time Marker	Speaker	Subject(s)	Action Required
		<p>Administration's explanation -</p> <p>(a) the Director of Environmental Protection (DEP) would issue written authorization to authorized officers of appropriate ranks to perform specific functions. An authorized officer, if requested, would need to produce the written authorization when performing functions under the Ordinance, if enacted; and</p> <p>(b) the appointment of authorized officers was a common provision in environmental legislation</p>	
002427 - 002553	Mr SIN Chung-kai Chairman	Mr SIN Chung-kai's remark that there were different requirements on the appointment of authorized officers as provided in other recently enacted environmental legislation	The Administration to advise the criteria for appointment and the minimum ranking of "authorized officer" under clause 3. Reference should be made to other recently enacted environmental legislation in respect of appointment of authorized officer
002554 - 002705	Mr WONG Ting-kwong Chairman	Mr WONG Ting-kwong's request for examples of legislation with provision for appointment of authorized officers	
002706 - 002931	Mr SIN Chung-kai Chairman Administration	<p>Mr SIN Chung-kai's concern about the need for empowering authorized officers to search premises other than domestic premises without a warrant when the focus of the Bill was merely on imposing a levy on PSBs rather than regulating a hazardous substance</p> <p>Administration's explanation that offences under the Bill might involve fraudulent acts, such as under-reporting of the levy collected</p>	

Time Marker	Speaker	Subject(s)	Action Required
002932 - 003439	Chairman Mr SIN Chung-kai Chairman Administration	Part 2, Division 1 - Application Clause 4 - Prescribed products to which Part 2 applies Discussion on meaning of PSBs	
003440 - 003549	Administration	Part 2, Division 2 - Regulation: general powers Clause 5 - General provisions as to any regulation made under the Ordinance	
003550 - 003937	Mr WONG Ting-kwong Administration Chairman	Mr WONG Ting-kwong's concern about the extensive power of the Secretary for the Environment (SEN)/DEP under clause 5 of the Bill	
003938 - 004104	Ms Audrey EU Administration	Discussion on the power of SEN/DEP to grant exemptions	
004105 - 004808	Ms Miriam LAU Chairman Administration	Ms Miriam LAU's enquiry on the power to make regulations under clause 5 and clause 27 Administration's explanation- (a) clause 5 spelt out the general provisions for supplementing any regulation-making provisions under the Ordinance, if enacted. Such provisions might apply to other products to be added to the Ordinance later through an amendment bill; and (b) clause 27 empowered SEN to make regulations for and with respect to PSBs under Part 3 of the Bill	
004809 - 005526	Ms Audrey EU Chairman Administration	Ms Audrey EU's enquiry on the clause which would prevail if there was conflict between clause 5 and clause 27 Administration's explanation - (a) clause 5 supplemented clause 27 in the making of regulations and	

Time Marker	Speaker	Subject(s)	Action Required
		<p>the two clauses should be read together; and</p> <p>(b) the wording of clause 5 could be reviewed to make the cross-referencing more explicit</p>	
005527 - 005612	Chairman Administration	Clause 6 - Authorized officers	
005613 - 010057	Ms Miriam LAU Administration	<p>Ms Miriam LAU's concerns about -</p> <p>(a) the power under clause 6 to allow an authorized officer to take with him such persons as he reasonably required to assist him in the performance of a function under the Bill; and</p> <p>(b) there was no objective standard on “reasonably requires”</p> <p>Administration’s explanation that the objective standard of reasonableness was embodied in the expression “reasonably requires”</p>	<p>The Administration to advise the reason for the arrangement under clause 6(3) for an authorized officer to take with him such persons as he reasonably required to assist him in the performance of a function under the Bill. To also advise how “reasonably requires” could be qualified and whether similar provision could be found in other existing legislation</p>
010058 - 010158	Mr SIN Chung-kai	Mr SIN Chung-kai's request to specify the ranking of authorized officers under the Bill	
010159 - 011742	Miss CHAN Yuen-han ALA5 Chairman Administration	<p>Miss CHAN Yuen-han's concern about the extensive power of SEN/DEP in setting the levy on PSBs</p> <p>Chairman's views that -</p> <p>(a) the Bill should focus on the levy on PSBs; and</p> <p>(b) the general provisions applicable to other products should be introduced by way of an amendment bill</p>	
011743 - 011842	Ms Miriam LAU Administration	<p>Ms Miriam LAU's concerns -</p> <p>(a) there was a need to examine the</p>	<p>The Administration to consider combining Part 2 and</p>

Time Marker	Speaker	Subject(s)	Action Required
		<p>propriety of the powers under Part 2 when the focus of the Bill was merely on imposing a levy on PSBs; and</p> <p>(b) consideration could be given to deleting Part 2 and incorporating in Part 3 the relevant provisions under Part 2 which were necessary for taking forward the levy on PSBs</p> <p>Administration's explanation -</p> <p>(a) as presently drafted, clause 4 restricted the application of the general provisions in Part 2 to PSBs only. If additional products were to be included in this Part at a later stage by an amendment bill, the bill might modify some general provisions in Part 2 to make them suitable for specific products;</p> <p>(b) certain powers, such as the power to obtain information and search, were necessary to facilitate investigation and enforcement in implementing the levy on PSBs; and</p> <p>(c) similar powers were conferred in other legislation concerning levies</p> <p>Chairman's reiteration that the powers under the Bill should be confined to enforcement of the levy on PSBs only</p> <p>ALA5's advice that it remained a policy decision on whether Parts 2 and 3 should be combined</p>	<p>Part 3 of the Bill such that all the provisions confined only to PSBs</p>
011843 -012125	Mr SIN Chung-kai Chairman	Mr SIN Chung-kai's concern about the power of entry and search under clause 8 which might be overly excessive for the levy on PSBs	

Time Marker	Speaker	Subject(s)	Action Required
012126 - 012602	Administration	Administration's explanation on - Clause 7 - Power to obtain information and samples Clause 8 - Power of entry and search	
012603 - 013342	Ms Miriam LAU Administration Chairman	Ms Miriam LAU's concerns about - (a) the extensive power under clause 7(1)(b) which required a person to provide all reasonable assistance, information or explanations in connection with any record or document kept by him/her, failure of which would be liable to a fine of \$200,000; and (b) the need for the power of entry and search of premises other than domestic premises without a warrant when the focus of the Bill was on the levy on PSBs Administration's explanation - (a) reference to other environment legislation had been made in drafting the Bill; and (b) power of entry and search of domestic premises with warrant was present in other environmental legislation, such as the Hazardous Chemicals Control Ordinance (Cap. 595)	The Administration to review the extensive power under clause 7(1)(b) to require a person to provide all reasonable assistance, information or explanations in connection with any record or document kept by him/her, failure of which would be liable to a fine of \$200,000. To also advise whether similar power could be found in other existing legislation designed for the collection of levy
013343 - 013602	Miss CHAN Yuen-han	Miss CHAN Yuen-han's concern about the extensive power under clause 7 and clause 8 which might not be required for the levy on PSBs	
013603 - 013710	Mr SIN Chung-kai Chairman	Mr SIN Chung-kai's view that a direct comparison between hazardous chemicals and PSBs was not appropriate as the latter would not pose any threat to the community	

Time Marker	Speaker	Subject(s)	Action Required
013711 - 013836	Mrs Selina CHOW Administration Chairman	Mrs Selina CHOW's concern about possible abuse of the extensive power for the implementation of levy on PSBs Administration's explanation that Part 2 set out the general provisions while provisions particular to PSBs were set out in Part 3 and both Parts were complementary to each other	
013837 - 014225	Chairman Administration	Chairman's concern that clause 7 did not specify clearly the information and samples which should be kept Administration's explanation that according to clause 24, records and documents to be kept would be prescribed by regulation	
014226 - 014556	Miss CHAN Yuen-han	Miss CHAN Yuen-han's request for the Administration to review the drafting of clause 4 such that it only applied to PSBs Administration's explanation that the present wording of clause 4 restricted the application of Part 2 to PSBs only	
014557 - 015442	Ms Miriam LAU Administration Mrs Selina CHOW	Ms Miriam LAU's query about the need for the power to enter and search premises for minor offences in association with the levy on PSBs Mrs Selina CHOW's view that the power of entry and search of domestic premises in relation to the levy on PSBs should be removed Administration's explanation that the power of entry and search was meant to facilitate investigation into fraudulent acts by prescribed retailers	The Administration to advise the circumstances under which entry to and search of domestic premises with a warrant were required. To also consider excluding domestic premises from the entry and search provisions under the Bill
015443 - 015526	Mr Vincent FANG	Mr Vincent FANG's view that the Bill as presently drafted had included general provisions applicable to both PSBs and other products. As the focus of the Bill was on levy on PSBs, consideration should be given	The Administration to conduct an overhaul of the Bill to delete any provisions which were not relevant to

Time Marker	Speaker	Subject(s)	Action Required
		to deleting those provisions not relevant to PSBs	the implementation of PRS on PSBs
015527 - 015809	Ms Audrey EU Administration Chairman	Discussion on the need for powers of entry and search under Part 2 of the Bill	
015810 - 015943	Miss CHAN Yuen-han	Miss CHAN Yuen-han's suggestion for an overhaul of the Bill with a view to - (a) confining the extent of power to not more than necessary; and (b) deleting provisions which were not relevant to the implementation of PRS on PSBs	
015944 - 020606	Chairman	Date of next meeting	