

Product Eco-responsibility Bill

The Administration's Response to Views and Questions Raised at the Bills Committee Meeting on 27 May 2008

Power to obtain information

Clause 7(2) provides that if an authorized officer *reasonably believes* that information relating to any levy or fee imposed under the Bill is possessed by a person, the officer may require the person to provide the information. Under clause 10, a person who, *without reasonable excuse*, fails to comply with any requirement properly made to him by an authorized officer will commit an offence. Similar powers to obtain information for the purposes of law enforcement can be found in the Air Pollution Control Ordinance (Cap. 311)¹, the Waste Disposal Ordinance (Cap. 354)² and the Water Pollution Control Ordinance (Cap. 358)³.

2. What would constitute a reasonable excuse for failing to comply with a requirement to provide information is to be determined according to the circumstances of individual cases. In view of Members' concern that a person may not possess the information required by an authorized officer, the Administration agrees to propose a committee stage amendment to revise clause 7(2) to the effect that a person will only be required to provide information that is in his possession.

"Entry and search" and "routine inspection"

3. As provided under clause 8(1), an authorized officer may exercise the power to enter and search only if he reasonably believes that an offence has been or is being committed in the place or there is evidence of an offence in the place. In exercising such power to enter and search, an authorized officer may take a more proactive approach in gathering information and ascertaining facts relevant to an offence.

¹ Section 27

² Section 23B

³ Section 35

Routine inspection, on the other hand, involves normal monitoring functions to ensure the regulatory requirements under the Bill are complied with. An authorized officer will adopt a relatively less intrusive approach by, for example, observing the relevant operation in the premises and requiring persons in the premises to provide information. In the case of plastic shopping bags, an authorized officer may, under routine inspection, observe whether a customer is charged for each plastic shopping bag provided at a cashier counter of a registered retail outlet.

Consultation with the Trade

4. The Administration has been developing the proposed environmental levy scheme in consultation with the trade, which involves meetings with the relevant trade associations, as well as individual affected retailers. The Administration would continue to apprise and consult the trade regarding the implementation and operational details of the environmental levy on plastic shopping bags to be set out in the proposed Product Eco-responsibility (Plastic Shopping Bags) Regulation.

Vetting of amendments to Schedules 1, 2 and 3

5. As stated in LC Paper No. CB(1) 1655/07-08(02), Schedules 1, 2 and 3 to the Bill set out the definition of plastic shopping bags, the exemptions and the level of the levy respectively. The Administration considers that there will be sufficient time for Members to consider amendments to those Schedules under the usual negative vetting procedure, as the Administration would have completed the necessary public and LegCo consultation before submitting any proposed amendments.

Clause 8(3)(b)(iii)

6. The Administration agrees to refine the Chinese rendition of clause 8(3)(b)(iii), and will propose a committee stage amendment for this purpose.

Material particulars

7. Clause 23 provides that a registered retailer shall submit returns as required by the regulation made under clause 27. Clause 24 further provides that a registered retailer shall keep such records and documents as required by the regulation made under clause 27. The Administration would set out such requirements in detail in the regulation so as to provide guidance on what constitutes “material particulars”.

Penalty under clause 9(1)

8. Clause 9(1) provides that “a person who, in purported compliance with this Ordinance, produces or provides any record, document, or information that is false, incorrect or misleading in any particular commits an offence and is liable on conviction to a fine of \$200,000 and to imprisonment for 6 months”. As the offence involves the provision of false, incorrect or misleading information, the Administration considers that the penalty should commensurate with the nature of the offence.

9. Other environmental legislation also provides for similar level of penalty for the offence of providing false information, including the Waste Disposal (Chemical Waste) (General) Regulation (Cap. 354 sub. leg. C)⁴, the Dumping at Sea Ordinance (Cap. 466)⁵ and the recently enacted Energy Efficiency (Labelling of Product) Ordinance (Cap. 598)⁶. Similar level of penalty can also be found in other non-environmental legislation, including the Insurance Companies Ordinance (Cap. 41)⁷, the Electronic Transactions Ordinance (Cap. 553)⁸ and the Clearing and Settlement Systems Ordinance (Cap. 584)⁹.

⁴ Section 37 [a fine of \$200,000 and imprisonment for 6 months]

⁵ Section 25(7)(c) [a fine of \$200,000 and imprisonment for 6 months]

⁶ Section 21 [a fine at level 6 (\$100,000) and imprisonment for 6 months]

⁷ Section 56(2) [a fine of \$200,000 and imprisonment for 2 years]

⁸ Section 47 [a fine at level 6 (\$100,000) and imprisonment for 6 months]

⁹ Section 45 [a fine of \$400,000 and imprisonment for 2 years]

Clause 9(4)

10. The Administration agrees to refine the Chinese rendition of clause 9(4), and will propose a committee stage amendment for this purpose.

Environmental Protection Department
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