

Product Eco-responsibility Bill

The Administration's Response to Views and Questions Raised at the Bills Committee Meeting on 29 May 2008

Clause 11

The Administration agrees to amend the Chinese rendition of the term “director” in clause 11, and to delete the reference to “neglect” in clause 11(b). The Administration will propose committee stage amendments for this purpose.

Matters which may be subject to appeal

2. Clause 13(2) specifies the matters which may be subject to appeal to the Appeal Board established under the Bill. As stated in LC Paper No. CB(1)1223/07-08(01), clause 13(2) covers all the decisions of a public officer in the determination of a person's civil rights and obligations under the Bill. Matters that are subject to appeal are also specifically enumerated in other environmental legislation and many non-environmental Ordinances¹.

3. The Administration considers it more appropriate for matters that are subject to appeal to be specified in the relevant provisions so that the Appeal Board can operate under clear terms of reference. The Administration does not propose to generalize clause 13(2)(d) to refer to all decisions made by the Director under the Bill because not all decisions should be referred to the Appeal Board indiscriminately.

Clause 15

¹ For instance, section 132A of the Banking Ordinance (Cap. 155); section 11 of the Amusement Game Centres Ordinance (Cap. 435); section 26 of the Bedspace Apartments Ordinance (Cap. 447); section 35 of and Schedule 6 to the Mandatory Provident Fund Schemes Ordinance (Cap. 485); section 97 of the Chinese Medicine Ordinance (Cap. 549); section 24 of the Drug Dependent Persons Treatment and Rehabilitation Centres (Licensing) Ordinance (Cap. 566) and section 33 of the Energy Efficiency (Labelling of Products) Ordinance (Cap. 598).

4. The provisions in clause 15 are modelled on similar provisions in other environmental legislation². Clause 15(8) provides that the Chairman of the Appeal Board may determine any form or matter of practice or procedure in so far as no provision is made for it in the Bill. The Chairman may therefore decide on matters concerning legal representation in the proceedings of the Appeal Board.

5. In the light of Members' suggestion, the Administration agrees to explicitly provide that any party to an appeal may be legally represented in the proceedings before the Appeal Board. The Administration will propose committee stage amendments for this purpose.

6. In the case of maladministration of the Appeal Board such as procedural impropriety or the Appeal Board acting beyond its jurisdiction, an aggrieved person may seek public law remedies through an application for judicial review.

Number of members in an Appeal Board

7. Clause 15(1) provides that the jurisdiction of the Appeal Board shall be exercised by the Chairman *and* such number of panel members as the Chairman may appoint for the appeal. The Administration notes Members' concern over the number of panel members that may be appointed by the Chairman to hear an appeal, especially where the Chairman has a casting vote under clause 15(4) in the event of an equality of votes.

8. In the light of Members' concern, the Administration agrees to specify that at least *three* members, one of whom must be the Chairman, shall hear and determine an appeal³. The Administration will propose committee stage amendments for this purpose.

² Section 33 of the Air Pollution Control Ordinance (Cap.311); section 26 of the Waste Disposal Ordinance (Cap.354); section 31 of the Water Pollution Control Ordinance (Cap.358); section 21 of the Noise Control Ordinance (Cap. 400); section 29 of the Dumping at Sea Ordinance (Cap.466); and section 19 of the Environmental Impact Assessment Ordinance (Cap.499)

³ Similar to section 19(4) of the Environmental Impact Assessment Ordinance (Cap. 499)

Hearing of an appeal

9. If a panel member who has been appointed to hear an appeal resigns after the commencement of the appeal, the hearing may continue so long as the minimum number of members as proposed in paragraph 8 above is met. If the number of members hearing the appeal falls below the minimum number proposed in paragraph 8 above, the Chairman of the Appeal Board may, with the consent of the parties to the appeal, appoint another panel member to continue to hear the appeal. In the absence of such consent, the Appeal Board will need to be reconstituted and the hearing of the appeal will start afresh. The Administration agrees to refine clauses 16(5) and 16(6) to clarify the policy intent and will propose committee stage amendments for this purpose.

Committee stage amendments

10. The Administration submitted the first batch of proposed committee stage amendments to the Bills Committee on 30 May 2008.

Environmental Protection Department
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