

Product Eco-responsibility Bill

Proposed Committee Stage Amendments (Second Batch)

This paper presents the second batch of the Administration's proposed Committee Stage Amendments (CSAs) to the Product Eco-responsibility Bill in response to suggestions made by the Bills Committee. The reasons for proposing these CSAs have been explained in LC Papers No. CB(1)1655/07-08(02), CB(1)1789/07-08(01) and CB(1)1801/07-08(01).

2. The second batch of the proposed CSAs covers the following clauses.

Clause 7(2)	To provide that a person will only be required to provide information that is in his possession. [See LC Paper No. CB(1)1789/07-08(01), paras. 1-2]
Clause 8	To provide that the power to enter and search non-domestic and domestic premises should be subject to the issue of a warrant. [See LC Paper No. CB(1)1655/07-08(02), para. 15]
Clause 11(b)	To delete the reference to "neglect". [See LC Paper No. CB(1)1801/07-08(01), para. 1]
Clause 15(1) and (1A)	To specify that at least <i>three</i> members, one of whom must be the Chairman, shall hear and determine an appeal. [See LC Paper No. CB(1)1801/07-08(01), paras. 7-8]

<p>Clause 16(5)</p>	<p>To clarify the policy intent regarding the arrangement upon resignation of a member of the Appeal Board during the hearing of an appeal.</p> <p>[See LC Paper No. CB(1)1801/07-08(01), para. 9]</p>
<p>Clause 16(6)</p>	<p>To explicitly provide that any party to an appeal may be legally represented in the proceedings before the Appeal Board</p> <p>[See LC Paper No. CB(1)1801/07-08(01), paras. 4-5]</p>

3. The draft of the proposed CSAs to the above clauses of the Bill is set out in marked-up form at the Annex for Members' consideration.

Environmental Protection Department
June 2008

**Proposed Committee Stage Amendments (Second Batch)
to the Product Eco-responsibility Bill**

Clause	Proposed CSAs in marked-up form
7(2)	<p>(2) — If an authorized officer reasonably believes that information relating to any levy or fee imposed under this Ordinance is possessed by a person, the officer may require the person to provide the information.</p> <p><u>(2) An authorized officer may require a person to provide information relating to any levy or fee imposed under this Ordinance that is in the possession of the person and is reasonably necessary to enable the officer to ascertain whether this Ordinance has been or is being complied with.</u></p>
8	<p>8. Power of entry and search</p> <p>(1) — Subject to subsection (2), an authorized officer may enter and search a place if he reasonably believes that —</p> <p>(a) — an offence against this Ordinance has been or is being committed in the place; or</p> <p>(b) — there is in the place anything that constitutes, or is likely to constitute, evidence that an offence against this Ordinance has been or is being committed.</p>

Clause	Proposed CSAs in marked-up form
<p style="text-align: center;">8 <i>(continued)</i></p>	<p style="text-align: center;">(2) Except with the consent of the occupier or person in charge of any domestic premises, an authorized officer shall not enter or search those premises without a warrant issued by a magistrate.</p> <p style="text-align: center;"><u>(1) Where a warrant has been issued under subsection (2) in respect of a place, an authorized officer may enter and search the place in accordance with this section.</u></p> <p style="text-align: center;"><u>(32)</u> A magistrate may issue a warrant authorizing an authorized officer to enter and search <u>any domestic premises a place</u> only if –</p> <ul style="list-style-type: none"> <li data-bbox="639 981 1337 1115">(a) the magistrate is satisfied by information on oath that there are reasonable grounds for suspecting that – <ul style="list-style-type: none"> <li data-bbox="756 1160 1337 1339">(i) an offence against this Ordinance has been or is being committed in the <u>premises place</u>; or <li data-bbox="756 1384 1337 1653">(ii) there is in the <u>premises place</u> anything that constitutes, or is likely to constitute, evidence that an offence against this Ordinance has been or is being committed; and

Clause	Proposed CSAs in marked-up form
<p style="text-align: center;">8 <i>(continued)</i></p>	<p style="text-align: center;">(b) the magistrate is satisfied that –</p> <ul style="list-style-type: none"> (i) it is not practicable to communicate with a person entitled to grant entry to the <u>premises place</u>; (ii) such a person has unreasonably refused entry to the <u>premises place</u> by an authorized officer; (iii) an authorized officer apprehends on reasonable grounds that entry to the <u>premises place</u> is unlikely to be granted unless a warrant is issued; or (iv) the purpose of entry to the <u>premises—place</u> would be prejudiced unless an authorized officer arriving at the <u>premises place</u> can secure immediate entry. <p style="text-align: center;">(4) An authorized officer who enters any place under this section must, if entry is by warrant, produce that warrant.</p> <p style="text-align: center;"><u>(3) An authorized officer who enters and searches a place under a warrant must, if required, produce the warrant for inspection.</u></p> <p style="text-align: center;">(54) A warrant issued under this section continues in force until the purpose for which the entry is necessary has been satisfied.</p>

Clause	Proposed CSAs in marked-up form
<p style="text-align: center;">8 <i>(continued)</i></p>	<p style="text-align: center;">(65) An authorized officer who enters a place under this section may do all or any of the following –</p> <ul style="list-style-type: none"> (a) require any person present at the place to provide such assistance or information as may be necessary to enable the officer to perform his functions under this Ordinance; (b) <u>search and</u> seize any thing that the officer reasonably believes to be evidence of the commission of an offence under this Ordinance; (c) retain the thing for such period as may be reasonably necessary for further examination or reproduction, or until the relevant proceedings under this Ordinance have been heard and finally determined. <p>(76) An authorized officer must perform his functions under this section at a reasonable hour unless he believes that the purpose of their performance could be frustrated if he performs them at a reasonable hour.</p> <p>(87) In this section—<u>,</u></p> <p><u>“domestic premises” (住用處所) means any premises that are constructed or intended to be used for habitation;</u></p> <p>“place” (地方) includes any vehicle and vessel.</p>

Clause	Proposed CSAs in marked-up form
11	<p>11. Offences by body corporate</p> <p>If –</p> <ul style="list-style-type: none"> (a) a body corporate commits an offence under this Ordinance; and (b) it is proved that the offence was committed with the consent or connivance of, or was attributable to any neglect on the part of, a director of, or a person concerned in the management of, the body corporate, <p>the director or that person also commits the offence and is liable on conviction to the penalty provided.</p>

Clause	Proposed CSAs in marked-up form
15(1) and (1A)	<p data-bbox="443 331 932 416">15. Exercise of Appeal Board's jurisdiction</p> <p data-bbox="443 456 1337 591">(1) The jurisdiction of the Appeal Board on an appeal shall be exercised by the Chairman and such number of panel members as the Chairman may appoint for the appeal.</p> <p data-bbox="443 631 1337 766"><u>(1) The Appeal Board may exercise its jurisdiction in hearing and determining an appeal only if it is duly constituted.</u></p> <p data-bbox="443 806 1337 940"><u>(1A) The Appeal Board is duly constituted for the purpose of hearing and determining an appeal if it consists of the following members –</u></p> <p data-bbox="638 981 1018 1021"><u>(a) the Chairman; and</u></p> <p data-bbox="638 1061 1337 1196"><u>(b) at least 2 other members appointed by the Chairman from among the panel members to hear the appeal.</u></p>

Clause	Proposed CSAs in marked-up form
16(5) and (6)	<p>(5) — The hearing of an appeal may be continued notwithstanding any change in the membership of the Appeal Board as if the change had not occurred.</p> <p>(6) — A person may not be appointed as a member of the Appeal Board before which the hearing of an appeal has been commenced without the consent of the parties to the appeal.</p> <p><u>(5) If there is a change in the membership of the Appeal Board (whether in respect of the Chairman or any other member) during the hearing of an appeal, the following applies –</u></p> <p><u>(a) in the case where the Appeal Board remains duly constituted according to section 15(1A) without the participation of any new or acting member, the Appeal Board may continue the hearing despite the change;</u></p> <p><u>(b) if paragraph (a) does not apply and if every party to the appeal consents, the Appeal Board may continue the hearing after reconstitution; or</u></p> <p><u>(c) in any other case, the Appeal Board shall start the hearing afresh after reconstitution.</u></p> <p><u>(6) Any party to an appeal may be represented by a legal representative in the proceedings before the Appeal Board.</u></p>