

**Subcommittee on
Product Eco-responsibility (Plastic Shopping Bags) Regulation**

**The Administration's Response to the Follow-up Actions
Arising from the Meeting on 19 March 2009**

Performance Pledge

The Administration agrees that the speech to be delivered by the Secretary for the Environment at the moving of the resolution on the Regulation shall include the performance pledge that the Environmental Protection Department will accommodate the special needs of an applicant in unforeseen circumstances as far as practicable.

Type 2 Exemption

2. In the light of the Subcommittee's view, the Administration agrees that the requirement for a third party to have a business registration certificate or branch registration certificate at the retail location in question would be obviated. The revised amendments to the proposed new section 8(5) of the Regulation are set out at the **Annex**.

Dedicated Survey on the Disposal of Plastic Shopping Bags

3. The Administration agrees to provide more details on the dedicated survey on the disposal of plastic shopping bags to the Legislative Council Panel on Environment Affairs. The Administration also agrees to further explore with the retail trade on how to review the effectiveness of the environmental levy scheme, including the coverage of the dedicated waste disposal survey before the commencement of the scheme and annually thereafter.

Environmental Protection Department
March 2009

ANNEX

**PRODUCT ECO-RESPONSIBILITY (PLASTIC
SHOPPING BAGS) REGULATION**

Proposed Amendments
(Revised as at 20.3.2009)

[Shown in revision mode on the original text]

PRODUCT ECO-RESPONSIBILITY (PLASTIC SHOPPING BAGS) REGULATION

(Made by the Secretary for the Environment under section 29 of the Product Eco-responsibility Ordinance (32 of 2008) after consultation with the Advisory Council on the Environment and subject to the approval of the Legislative Council)

PART 1

PRELIMINARY

1. Commencement

This Regulation comes into operation on a day to be appointed by the Secretary for the Environment by notice published in the Gazette.

2. Interpretation

(1) In this Regulation, unless the context otherwise requires –

“criteria for a Type 1 exemption” (第 1 類豁免準則) means the criteria specified in section 8(3);

“criteria for a Type 2 exemption” (第 2 類豁免準則) means the criteria specified in section 8(5);

“non-specified goods” (非指明貨品) means goods not belonging to any category specified in section 1(2)(a), (b) or (c) of Schedule 4 to the Ordinance;

“Register” (登記冊) means the register maintained under section 20 of the Ordinance;

“specified form” (指明表格) means a form specified under section 16.

(2) Unless the context otherwise requires, all words and expressions used in this Regulation and defined in section 17 of the Ordinance for the purposes of Part 3 of the Ordinance have the same meaning as in that Part.

PART 2

REGISTRATION AND DEREGISTRATION OF RETAILERS

3. Application for registration of prescribed retailers

(1) For the purposes of section 19(2) of the Ordinance, a prescribed retailer, or a person who proposes to be a prescribed retailer, may apply for registration as a registered retailer in respect of a qualified retail outlet by making an application to the Director in writing and in the specified form.

(2) The applicant may, by giving the Director notice in writing, withdraw the application for registration at any time before it is determined under section 4.

(3) If a change in the information provided to the Director under this section occurs before the determination of the application, the applicant must, as soon as reasonably practicable, give the Director notice of the change in writing unless the application has been withdrawn.

~~(4) If a requirement under this section is not complied with, the application is to be treated as not properly made.~~

(4) The Director may, by notice in writing, require the applicant to provide further information and documents in connection with the application.

4. Determination of application for registration

(1) For the purposes of section 19(6) of the Ordinance, the Director must approve an application under section 3 unless it is rejected under subsection (2).

(2) The Director may reject the application if the Director considers that –

~~(a) the application is not properly made;~~

(a) the applicant has not complied with a requirement under section 3(1), (3) or (4);

- (b) the applicant is not a prescribed retailer, or will not become a prescribed retailer, based on the information provided in relation to the application; or
 - (c) the information so provided is incorrect or misleading.
 - (3) If an application is approved, the Director must –
 - (a) register the applicant as a registered retailer and enter the name and address of the retailer in the Register;
 - (b) register each qualified retail outlet of the retailer as a registered retail outlet and enter the name (if different from that of the retailer) and address of each such outlet in the Register;
 - (c) give the retailer notice in writing of the registration number assigned to each such outlet; and
 - (d) issue to the retailer a certificate of registration in respect of each such outlet.
 - (4) If an application is rejected, the Director must –
 - (a) give the applicant notice in writing of the decision; and
 - (b) include in the notice a statement setting out the reasons for the decision.
 - (5) Before rejecting an application, the Director must –
 - (a) give the applicant prior notice in writing of the Director's intention to do so and the reasons; and
 - (b) give the applicant an opportunity to make representations.

5. Change of information after registration

(1) If a change in the information provided to the Director in relation to an application for registration occurs after it has been approved, the registered retailer must give the Director notice of the change in writing and in the specified form within 30 days after its occurrence.

(2) A registered retailer who, without reasonable excuse, contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 2.

6. Application for deregistration of registered retailers or registered retail outlets

(1) For the purposes of section 19(5) of the Ordinance, a registered retailer may apply for deregistration in respect of a registered retail outlet by making an application to the Director in writing and in the specified form.

(2) The applicant may, by giving the Director notice in writing, withdraw the application for deregistration at any time before it is determined under section 7.

(3) If a change in the information provided to the Director under this section occurs before the determination of the application, the applicant must, as soon as reasonably practicable, give the Director notice of the change in writing unless the application has been withdrawn.

~~(4) If a requirement under this section is not complied with, the application is to be treated as not properly made.~~

(4) The Director may, by notice in writing, require the applicant to provide further information and documents in connection with the application.

7. Determination of application for deregistration

(1) For the purposes of section 19(6) of the Ordinance, the Director must approve an application under section 6 unless it is rejected under subsection (2).

(2) The Director may reject the application if the Director considers that –

~~(a) the application is not properly made;~~

(a) the applicant has not complied with a requirement under section 6(1), (3) or (4);

- (b) none of the circumstances specified in section 19(5) of the Ordinance under which the application may be made exists; or
 - (c) the information provided in relation to the application is incorrect or misleading.
- (3) If an application is approved, the Director must –
 - (a) deregister the registered retail outlet concerned;
 - (b) remove the name and address of the retail outlet from the Register;
 - (c) if the applicant no longer has any registered retail outlet after the deregistration referred to in paragraph (a), deregister the applicant as a registered retailer;
 - (d) remove the name and address of the retailer from the Register after the deregistration referred to in paragraph (c); and
 - (e) give the applicant notice in writing of –
 - (i) the relevant deregistration; and
 - (ii) the cancellation of the certificate of registration in respect of the deregistered outlet.
- (4) If an application is rejected, the Director must –
 - (a) give the applicant notice in writing of the decision; and
 - (b) include in the notice a statement setting out the reasons for the decision.
- (5) Before rejecting an application, the Director must –
 - (a) give the applicant prior notice in writing of the Director's intention to do so and the reasons; and
 - (b) give the applicant an opportunity to make representations.

PART 3

EXEMPTION OF PART OF THE AREA OF REGISTERED RETAIL OUTLETS

8. Application for exemption of part of the area of registered retail outlets or variation of exemption

(1) For the purposes of section 23(2) of the Ordinance, a registered retailer may apply to the Director for the exemption of part of the area of a registered retail outlet of that retailer, or for the variation of an exemption, ~~by making an application to the Director in writing and in the specified form~~ based on the criteria for a Type 1 exemption or the criteria for a Type 2 exemption.

(2) An application under subsection (1) must be made in writing and in the specified form.

(3) The following are specified as the criteria for a Type 1 exemption in relation to a registered retail outlet –

(a) the total floor area of the retail outlet in which only non-specified goods are displayed or offered for sale is more than 50% of the retail floor area of the retail outlet; and

(b) each part of the area to be exempted is a cashier's counter that accepts payment for non-specified goods only.

(4) For the purposes of subsection (3), “retail floor area” (零售樓面面積) has the same meaning as in Schedule 4 to the Ordinance.

(5) The following are specified as the criteria for a Type 2 exemption in relation to a registered retail outlet –

(a) the retail business carried on in part of the area of the retail outlet to be exempted is registered in the name of a third party (not being the registered retailer) under the Business Registration Ordinance (Cap. 310);

~~(b) a valid business registration certificate or valid branch registration certificate relating to the third party's place of business at the address of the retail outlet is displayed in that area in compliance with the requirements of the Business Registration Ordinance (Cap. 310);~~

~~(a) the part of the area of the retail outlet to be exempted is used for the purposes of a business of a third party (not being the registered retailer) registered under the Business Registration Ordinance (Cap. 310);~~

~~(eb) that area is demarcated clearly by a sales counter and is used exclusively for the purposes of the third party's retail business;~~

~~(ec) the name, trade name, trade mark or brand name of the third party is displayed conspicuously in that area;~~

~~(ed) that area is staffed by an employee of the third party; and~~

~~(fe) all plastic shopping bags provided from that area bear the name, trade name, trade mark or brand name of the third party.~~

(26) For an application based on the criteria for a Type 1 exemption, the ~~The~~ specified form must be accompanied by a floor plan of the retail outlet indicating –

(a) any area in which only non-specified goods are displayed or offered for sale; and

(b) which part of the area of the retail outlet is intended to be exempted, or how an exempted part is intended to be varied, according to the criteria for a Type 1 exemption.

(7) For an application based on the criteria for a Type 2 exemption, the specified form must be accompanied by a floor plan of the retail outlet indicating which part of the area of the retail outlet is intended to be exempted,

or how an exempted part is intended to be varied, according to the criteria for a Type 2 exemption.

(38) The applicant may, by giving the Director notice in writing, withdraw the application under this section at any time before it is determined under section 9.

(49) If a change in the information provided to the Director under this section occurs before the determination of the application, the applicant must, as soon as reasonably practicable, give the Director notice of the change in writing unless the application has been withdrawn.

~~(5) If a requirement under this section is not complied with, the application is to be treated as not properly made.~~

(10) The Director may, by notice in writing, require the applicant to provide further information and documents in connection with the application.

9. Determination of application for exemption or variation of exemption

(1) For the purposes of section 23(3) of the Ordinance, the Director must approve an application under section 8 unless it is rejected under subsection (2).

(2) The Director may reject the application if the Director considers that –

~~(a) the application is not properly made;~~

(a) the applicant has not complied with a requirement under section 8(1), (2), (6), (7), (9) or (10);

(b) the information provided in relation to the application is incorrect or misleading; or

~~(c) the retail outlet does not meet the criteria for exemption specified in subsection (3).~~

(c) the retail outlet does not meet the following –

- (i) if the application is based on the criteria for a Type 1 exemption, any of the criteria for a Type 1 exemption; or
- (ii) if the application is based on the criteria for a Type 2 exemption, any of the criteria for a Type 2 exemption.

~~(3) For the purposes of subsection (2)(c), the following are specified as the criteria for exemption –~~

- ~~(a) the total floor area of the retail outlet in which only non-specified goods are displayed or offered for sale is more than 50% of the retail floor area of the retail outlet; and~~
- ~~(b) each part of the area to be exempted is a cashier's counter that accepts payment for non-specified goods only.~~

~~(4) For the purposes of subsection (3), “retail floor area” (零售樓面面積) has the same meaning as in Schedule 4 to the Ordinance.~~

~~(53) If an application is approved, the Director must –~~

- ~~(a) for the purposes of section 23 of the Ordinance, exempt the part of the area of the registered retail outlet, or vary the exemption, as indicated in the application subject to the following conditions –~~
 - ~~(i) the retail outlet continues to meet all the criteria for exemption specified in subsection (3);~~
 - ~~(ii) plastic shopping bags may be provided from an exempted area without payment of the charge required by section 23(1) of the Ordinance only if they are provided to customers who make payment for non-specified goods in that area and the number of bags so provided is not more than necessary for carrying those goods; and~~

- ~~(iii) such other conditions as the Director may reasonably impose from time to time;~~
- (i) if the application is based on the criteria for a Type 1 exemption, all the conditions set out in subsection (4); or
- (ii) if the application is based on the criteria for a Type 2 exemption, all the conditions set out in subsection (5);
- (b) give the applicant notice in writing of the decision; and
- (c) specify in the notice the conditions to which the exemption or the variation of the exemption is subject.

(4) For the purposes of subsection (3)(a)(i), if the application is based on the criteria for a Type 1 exemption, the following are the conditions to which the exemption, or variation of the exemption, of part of the area of the registered retail outlet is subject –

- (a) the retail outlet continues to meet the criteria for a Type 1 exemption;
- (b) plastic shopping bags may be provided from such an exempted area without payment of the charge required by section 23(1) of the Ordinance only if –
 - (i) they are provided to customers who make payment for non-specified goods in that area; and
 - (ii) the number of bags so provided is not more than necessary for carrying those goods; and
- (c) such other conditions as the Director may reasonably impose from time to time.

(5) For the purposes of subsection (3)(a)(ii), if the application is based on the criteria for a Type 2 exemption, the following are the conditions to which the exemption, or variation of the exemption, of part of the area of the registered retail outlet is subject –

- (a) the retail outlet continues to meet the criteria for a Type 2 exemption;
 - (b) plastic shopping bags may be provided from such an exempted area without payment of the charge required by section 23(1) of the Ordinance only if –
 - (i) they are provided to customers who purchase the goods offered for sale by the third party concerned in that area; and
 - (ii) the number of bags so provided is not more than necessary for carrying those goods; and
 - (c) such other conditions as the Director may reasonably impose from time to time.
- (6) The Director must also give the applicant notice in writing of any conditions imposed under subsection ~~(5)(a)(iii)~~ (4)(c) or (5)(c).
- (7) Before imposing any conditions under subsection (4)(c) or (5)(c), the Director must –
- (a) give the applicant prior notice in writing of the conditions that the Director intends to impose; and
 - (b) give the applicant an opportunity to make representations as to why the conditions should not be imposed.
- (78) If an application is rejected, the Director must –
- (a) give the applicant notice in writing of the decision; and
 - (b) include in the notice a statement setting out the reasons for the decision.
- (9) Before rejecting an application, the Director must –
- (a) give the applicant prior notice in writing of the Director's intention to do so and the reasons; and
 - (b) give the applicant an opportunity to make representations.
- (10) An exemption, or variation of an exemption, approved under this section applies only to the registered retailer by whom the application is made.

10. Revocation of exemption

(1) The Director may revoke an exemption approved under section 9 if the Director considers that –

- (a) a condition to which the exemption is subject has been breached; or
- (b) the information provided in relation to the exemption is incorrect or misleading.

(2) On revoking an exemption under subsection (1), the Director must –

- (a) give the registered retailer notice in writing of the decision; and
- (b) include in the notice a statement setting out the reasons for the decision.

(3) The Director may also revoke an exemption approved under section 9 on receiving an application made by the registered retailer in writing and in the specified form.

(4) On revoking an exemption under subsection (3), the Director must give the registered retailer notice in writing of the revocation having been completed.

(5) Before revoking an exemption under subsection (1), the Director must –

- (a) give the registered retailer prior notice in writing of the Director's intention to do so and the reasons; and
- (b) give that retailer an opportunity to make representations.

(56) In this section, a reference to an exemption approved under section 9 includes a variation of an exemption approved under that section.

11. Right of appeal to Appeal Board against Director's decisions

(1) The following decisions are specified as matters on which an appeal may be made under section 13 of the Ordinance –

- (a) rejection of an application for variation of an exemption under section 9(2);
- (b) imposition of a condition under section ~~9(5)(a)(iii)~~ [9\(4\)\(c\) or \(5\)\(c\)](#);
- (c) revocation of an exemption under section 10(1).

(2) If an appeal is made under section 13 of the Ordinance against a decision specified in subsection (1), the appeal does not affect the operation of the decision pending the determination of the appeal unless the Director decides otherwise.

PART 4

OBLIGATIONS OF REGISTERED RETAILERS

12. Submission of quarterly returns

(1) For the purposes of section 24(1) of the Ordinance, a registered retailer must submit a separate return in respect of each registered retail outlet of the retailer for each quarter ending on 31 March, 30 June, 30 September and 31 December.

(2) The return must be submitted to the Director in writing and in the specified form within 30 days after the last day of each quarter.

(3) The return in respect of a registered retail outlet for each quarter must contain the following information –

- (a) the total number of plastic shopping bags delivered to the retail outlet during that quarter, [except for any bags to be provided from any area of the retail outlet that is exempted](#)

by the Director for the purposes of section 23 of the Ordinance and is subject to the criteria for a Type 2 exemption;

- (b) the total number of plastic shopping bags provided directly or indirectly to customers during that quarter from the retail outlet or, if part of the area of the retail outlet is exempted by the Director for the purposes of section 23 of the Ordinance, from any area of the retail outlet that is not so exempted;
- (c) the total amount of levies payable for the bags referred to in paragraph (b); and
- (d) the total number of plastic shopping bags provided directly or indirectly to customers during that quarter from any area of the retail outlet that is exempted by the Director for the purposes of section 23 of the Ordinance and is subject to the criteria for a Type 1 exemption.

(4) In relation to a quarter in which the application for registration or deregistration in respect of a retail outlet is approved, the return for that quarter must also specify the date on which the retail outlet becomes registered or deregistered.

13. Payment of levies

For the purposes of section 24(2) of the Ordinance, a registered retailer must pay the total amount of levies stated in a return to the Government in person, by post or by any other means according to the payment instructions contained in the specified form of the return.

14. Record keeping

For the purposes of section 25(1) of the Ordinance, a registered retailer must ensure that records, invoices, receipts, delivery notes or any other documents that contain sufficient details to enable the Director to readily verify

the following matters in respect of each registered retail outlet of the retailer are kept in accordance with that section –

- (a) the number of plastic shopping bags provided to a customer in each retail transaction of the retail outlet, except for any bags provided from any area of the retail outlet that is exempted by the Director for the purposes of section 23 of the Ordinance and is subject to the criteria for a Type 2 exemption; and
- (b) the amount charged for those bags (if any) by the retailer under section 23(1) of the Ordinance ~~in that transaction~~;
- (bc) the number of plastic shopping bags contained in each shipment of plastic shopping bags to the retail outlet, except for any bags to be provided from any area of the retail outlet that is exempted by the Director for the purposes of section 23 of the Ordinance and is subject to the criteria for a Type 2 exemption; and
- (ed) the number of plastic shopping bags procured by the retailer and relating to each shipment referred to in paragraph (bc).

15. Payment under assessment notices

For the purposes of section 26(6) of the Ordinance, a registered retailer must pay the amount of the demanded levies under an assessment notice within 30 days after the date on which the notice is served.

PART 5

MISCELLANEOUS

16. Specified forms

(1) The Director may specify the forms to be used under this Regulation.

- (2) A specified form may require that –
- (a) it be completed in a specified way;
 - (b) specified information or documents be included in or attached to it; and
 - (c) it be submitted in a specified manner.

(3) If any such requirement is not complied with in relation to a specified form for making an application under this Regulation, the application is to be treated as not made in the specified form.

(4) If any such requirement is not complied with in relation to a specified form for submitting a return under this Regulation, the return is to be treated as not submitted in the specified form.

- (5) The Director is to make copies of a specified form available –
- (a) during office hours at the office of the Director; and
 - (b) through any other means that the Director considers appropriate.