

立法會
Legislative Council

LC Paper No. CB(1)521/13-14
(These minutes have been seen
by the Administration)

Ref : CB1/BC/9/12/1

Bills Committee on Product Eco-responsibility (Amendment) Bill 2013

Minutes of sixth meeting
held on Tuesday, 22 October 2013, at 10:45 am
in Conference Room 3 of the Legislative Council Complex

Members present : Dr Hon Kenneth CHAN Ka-lok (Chairman)
Hon Vincent FANG Kang, SBS, JP
Hon WONG Ting-kwong, SBS, JP
Hon Cyd HO Sau-lan
Hon CHAN Hak-kan, JP
Dr Hon Priscilla LEUNG Mei-fun, SBS, JP
Hon Paul TSE Wai-chun, JP
Hon WU Chi-wai, MH
Hon Gary FAN Kwok-wai
Hon CHAN Han-pan
Hon KWOK Wai-keung
Hon Tony TSE Wai-chuen

Members absent : Dr Hon Helena WONG Pik-wan
Ir Dr Hon LO Wai-kwok, BBS, MH, JP

Public Officers attending : **For item I**
Mr Albert LAM, JP
Deputy Director of Environmental Protection (2)
Environmental Protection Department

Mr Samson LAI
Assistant Director of Environmental Protection
(Waste Management Policy)
Environmental Protection Department

Miss Selina LAU
Senior Government Counsel
Department of Justice

Miss Libera CHENG
Senior Administrative Officer
(Waste Management Policy Division)
Environmental Protection Department

Clerk in Attendance : Ms Miranda HON
Chief Council Secretary (1)1

Staff in attendance : Miss Evelyn LEE
Assistant Legal Adviser 10

Mr Ken WOO
Senior Council Secretary (1)5

Action

I. Meeting with the Administration

(LC Paper No. CB(1)91/13-14(01) — List of follow-up actions arising from the meeting on 8 October 2013

LC Paper No. CB(1)112/13-14(01) — Administration's response to CB(1)91/13-14(01)

Relevant papers

LC Paper No. CB(3)540/12-13 — The Bill

File Ref: EP CR 9/150/20 Pt.24 — Legislative Council Brief

LC Paper No. LS47/12-13 — Legal Service Division Report

Action

LC Paper No. CB(1)1171/12-13(01) — Marked-up copy of the Bill prepared by the Legal Service Division (Restricted to Members)

LC Paper No. CB(1)1171/12-13(04) — Background brief prepared by the Legislative Council Secretariat)

1. The Bills Committee deliberated (index of proceedings attached at the **Annex**).

- Admin 2. The Administration was requested to –
- (a) consider amending the drafting style of the proposed sections 1(1)(d) and 1(3) in Schedule 2 so that the exceptions proposed in section 1(1)(d) and the exceptions to these exceptions which were provided under section 1(3) could be merged into one provision;
 - (b) consider the need for the proposed section 1(3)(a) in Schedule 2, as it appeared that the scope of the proposed section 1(3)(b) might have already included the said section 1(3)(a);
 - (c) consider making provision(s) to allow an exemption for plastic shopping bags ("PSBs") provided by a seller which contained an item of "temperature-controlled food", i.e. food which would change its physical state due to temperature difference in the course of its conveyance and something might spill out of the packaging despite that such packaging might have already rendered no part of the food being exposed to the environment (such as butter); and
 - (d) consider, given that the term "specifically designed" in the proposed section 1(4)(a) in Schedule 2 was not defined, whether a PSB to which the PSB charge applied pursuant to the proposed section 1(3) in the Schedule would nonetheless, under section 1(4)(a), be considered as a PSB specifically designed for containing the goods merely because the PSB provided by a seller was a bag which was used for the specific types of goods that it sold.

(Post-meeting note: The Administration's response to the request set out in paragraph 2 above was circulated to members vide LC Paper No. CB(1)223/13-14(02) on 5 November 2013.)

Action

3. Members agreed to the following schedule of meetings –
 - (a) Friday, 8 November 2013, at 10:45 am; and
 - (b) Friday, 29 November 2013, at 10:45 am.

II. Any other business

4. There being no other business, the meeting ended at 12:45 pm.

Council Business Division 1
Legislative Council Secretariat
11 December 2013

Bills Committee on Product Eco-responsibility (Amendment) Bill 2013

**Proceedings of the sixth meeting
on Tuesday, 22 October 2013, at 10:45 am
in Conference Room 3 of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action required
<i>Agenda Item I - Meeting with the Administration</i>			
000306 – 000949	Chairman Administration	<p>The Administration's response to members' views and concerns raised at the meeting of the Bills Committee on 8 October 2013 (LC Paper No. CB(1)112/13-14(01)).</p> <p>The Chairman's remark that the Legal Service Division ("LSD") would provide a written advice on the justification test for assessing the "constitutionality" of the "dual" system proposed by some members, as highlighted in paragraph 6 of the Administration's response.</p>	
000950 – 002132	Chairman Mr WU Chi-wai Administration	<p>Mr WU Chi-wai's views that –</p> <p>(a) excessive use of plastic shopping bags ("PSBs") remained a serious problem for enterprises not covered by the Environmental Levy Scheme on Plastic Shopping Bags ("the PSB Levy Scheme"), such as chain fashion and bakery retailers. The Administration should not regard these retailers as small and medium enterprises ("SMEs") which lacked the administrative capability to keep records on PSBs distribution; and</p> <p>(b) riding on the success of the PSB Levy Scheme which required registered retailers to keep records and remit the levy collected to the Government, it would be desirable to maintain the record-keeping requirement under the proposed extension of the PSB Levy Scheme ("the extended Scheme") to facilitate monitoring of the level of compliance. He would propose Committee Stage amendments ("CSAs") to this effect. Consideration could be given to removing such a requirement at a later stage when the "bring your own bag" ("BYOB") culture took root.</p> <p>The Administration's response that –</p> <p>(a) during the public consultation on the extended Scheme, there was majority support for the PSB Levy Scheme to cover also SMEs, which accounted</p>	

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		<p>for over 99% of the retail establishments in Hong Kong. A phased approach of extending the PSB Levy Scheme on the basis of selected specific sectors was therefore not pursued; and</p> <p>(b) adopting the "dual" system would not be conducive to enhancing the evaluation of the extended Scheme's effectiveness, the justification of which had been given in the Administration's response.</p> <p>In response to Mr WU Chi-wai's question on whether his suggestion on the "dual" system would satisfy the "justification test" as stressed by the Administration, the Chairman said that LSD would study the relevant legal basis and provide legal advice as appropriate.</p>	
002133 – 002700	Chairman Mr WONG Ting-kwong	<p>Mr WONG Ting-kwong's views/concerns that –</p> <p>(a) there was insufficient consultation on the extended Scheme. Both the Import and Export functional constituency which he represented and himself were not consulted on the extended Scheme;</p> <p>(b) questioned the need to conduct landfill surveys on PSB disposal given that statistics on plastic bags imported were readily available from the Customs and Excise Department. If the PSB charge was imposed on the importation of plastic bags, whether or not to impose a charge on retailers would no longer be a matter of contention; and</p> <p>(c) repealing the record keeping and reporting mechanism as proposed under the "retention" approach would render monitoring and hence enforcement difficult given the large number of retailers and that some retailers might distribute PSBs to loyal customers free of charge.</p>	
002701 – 003037	Chairman Mr Tony TSE	<p>Mr Tony TSE's views/concerns that –</p> <p>(a) the proposal for retailers to retain the PSB charge was a substantial policy change under the producer responsibility scheme which might not be easily reverted. The "retention" approach would also render monitoring on the distribution of PSBs difficult; and</p> <p>(b) the Architectural, Surveying and Planning functional constituency which he represented had urged that clear criteria for exemption should be set and publicized extensively. For instance, it was not</p>	

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		<p>clear whether participants of seminars organized by the trade should be charged for the PSBs distributed and whether the charge could be included as part of the registration fee.</p>	
<p>003038 – 004320</p>	<p>Chairman Assistant Legal Adviser 10 ("ALA10") Ms Cyd HO Administration</p>	<p>Clause-by-clause examination of the Bill (Marked-up copy of the Bill (LC Paper No. CB(1)1171/12-13(01))</p> <p><u>Clause 16</u></p> <p>Members raised no query.</p> <p><u>Clause 15</u></p> <p>The Administration's response to Ms Cyd HO that –</p> <p>(a) the time allowed for the observance of the relevant notices for payment of penalties as stipulated in proposed Division 4A was in line with those of other similar pieces of legislation, such as the Smoking (Public Health) Ordinance (Cap. 371); and</p> <p>(b) the provision to empower the Legislative Council to amend the penalty amounts by resolution under the proposed section 28N also existed in other legislation. In the absence of a proposal put forward by the Administration, a Member might propose to adjust the penalty amount by resolution if the proposal satisfied the relevant provisions in The Basic Law, the Rules of Procedure and other relevant legislation.</p>	
<p>004321 – 005034</p>	<p>Chairman Mr CHAN Han-pan Mr WONG Ting-kwong Administration</p>	<p><u>Clause 15</u></p> <p>Mr CHAN Han-pan was concerned about the defence available to an employer in the event that a staff member of the employer had neglected an employer's verbal instruction to charge the customer for every PSB provided, and that the employer was subsequently charged with an offence under the proposed section 18A.</p> <p>Mr WONG Ting-kwong sought confirmation on whether a sales person would be liable under the Product Eco-responsibility Ordinance (Cap. 603) ("the Ordinance") in the above circumstances.</p>	

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		<p>The Administration's response that –</p> <p>(a) under the proposed section 18A, a "seller" referred to the retailer as a legal entity and not a sales person; and</p> <p>(b) the proposed section 18B(3) provided that "it is a defence to prove that the person exercised due diligence to avoid committing the offence".</p> <p>In response to Mr CHAN Han-pan's concern about the ambiguity with "exercised due diligence", the Administration explained that the above phrase was commonly used in law. The court would examine the offences case by case having regard to individual circumstances.</p>	
005035 – 005544	Chairman Mr WU Chi-wai Administration	<p><u>Clause 15</u></p> <p>Mr WU Chi-wai expressed concern that the Administration would have no way of proving an offence of free distribution of PSBs except through "snaking" operations, and that more manpower would have to be deployed to enforce the Ordinance.</p> <p>The Administration's response that –</p> <p>(a) apart from "snaking" operations, some organizations had volunteered to monitor the implementation of the extended Scheme and report cases of non-compliance;</p> <p>(b) a fixed penalty system was introduced by the Product Eco-responsibility (Amendment) Bill 2013 to enhance enforcement efficiency. Under the fixed penalty system, the enforcement officer would still need to gather sufficient proof of offence on the spot for the issuance of a penalty notice. To address the concern on justice, a person could dispute his liability for the penalty notice and the case would be dealt with by normal court proceedings; and</p> <p>(c) the extended Scheme would be enforced by the Environmental Protection Department. Upon implementation of the extended Scheme, the existing compliance system could be significantly streamlined and there would be room for redeployment of existing staffing resources. The Administration would step up publicity and public education efforts on promoting the BYOB habit and these would be conducive to compliance.</p>	

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005545 – 005945	Chairman Mr WONG Ting-kwong Administration	<p><u>Clause 15</u></p> <p>Mr WONG Ting-kwong was concerned that the extended Scheme might become a tool for dissatisfied employees to attack their employers or for competitors to attack each other, which would hamper daily business operations.</p> <p>The Administration's response that the extended Scheme was proposed having regard to the views collected from the extensive public consultation.</p>	
005946 – 010030	Chairman Administration	<p><u>Clause 17</u></p> <p>Members raised no query.</p>	
010031 – 012522	Chairman Ms Cyd HO Administration ALA10	<p><u>Clause 18</u></p> <p><i>In relation to the proposed section 1(3) in Schedule 2</i></p> <p>In response to Ms Cyd HO's enquiry, the Administration advised that it was open to members' suggestions on the scope of exemption to be provided, including exemption for "temperature-controlled food".</p> <p>ALA10's suggestions that the Administration should consider –</p> <p>(a) amending the drafting style of the proposed sections 1(1)(d) and 1(3) in Schedule 2 so that the exceptions proposed in section 1(1)(d) and the exceptions to these exceptions which were provided under section 1(3) could be merged into one provision; and</p> <p>(b) the need for the proposed section 1(3)(a) in Schedule 2, as it appeared that the scope of the proposed section 1(3)(b) might have already included the said section 1(3)(a).</p> <p>The Administration's response that –</p> <p>(a) as the scope of exemption for food hygiene purpose under the proposed section 1(1)(d) in Schedule 2 was being deliberated by the Bills Committee and CSAs might be proposed, the Administration would consider the drafting of the provision as a whole after the deliberation on the scope of exemption and CSAs, if any, was completed; and</p> <p>(b) so far no food packaging seemed to be capable of satisfying the conditions set out in the proposed</p>	<p>Admin (paragraph 2(a) of the minutes refers)</p> <p>Admin (paragraph 2(b) of the minutes refers)</p>

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		<p>section 1(3)(b) was identified. The section was provided to serve a "catch-all" purpose rather than referring to any specific real-life example.</p> <p>Ms Cyd HO cited butter as an example and urged the Administration to consider making provision(s) to allow an exemption for the PSB provided by a seller which contained an item of "temperature-controlled food", i.e. food which would change its physical state due to temperature difference in the course of its conveyance and something might spill out of the packaging despite that such packaging might have already rendered no part of the food being exposed to the environment.</p> <p>The Administration advised that the proposed section 1(1)(d) in Schedule 2 relating to food hygiene exemption was intended to apply across the board to different types of food, drink or medicine that were for human or animal consumption. The Administration agreed with members' views that fruits, ice-cream and butter could be considered for exemption under the Ordinance.</p> <p>The Chairman asked whether the Administration had envisaged the possibility of retailers providing customers with larger plastic bags for purchases that were exempted from the PSB charge with a view to facilitating their purchase of other goods on which a PSB charge should be imposed.</p> <p>The Administration responded that it did not envisage such a problem to be serious as the provision of larger plastic bags would add to retailers' operating costs.</p>	<p>Admin (paragraph 2(c) of the minutes refers)</p>
<p>012523 – 015832</p>	<p>Chairman Mr KWOK Wai-keung Administration Ms Cyd HO Mr Vincent FANG ALA10</p>	<p><i>In relation to the proposed section 1(4) in Schedule 2</i></p> <p>In response to members' enquiries, the Administration responded as follows –</p> <p>(a) a plastic bag for containing dry ice which was provided with the packaging of food items, such as sashimi, fell under the scope of the proposed section 1(4)(b) in Schedule 2 and thus should be exempted from the PSB charge; and</p> <p>(b) as provided under the proposed section 1(1)(c)(ii) in Schedule 2, a sealed plastic bag used for pre-packaging clothes items before supplied to a seller would not be subject to the PSB charge.</p>	

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		<p>ALA10 said that in determining whether or not a shopping bag could be exempted from the PSB charge, consideration should be given to the proposed section 18A(2) to establish if a retail transaction had taken place, and whether the bag satisfied the definition which was specified in the proposed section 1 in Schedule 1. If the answers to both questions were in the affirmative, one would need to consider whether any of the exemptions in Schedule 2 as amended would be applicable to the bag. The Administration said that it shared ALA10's views.</p> <p>Mr Vincent FANG's views/concerns that –</p> <p>(a) while plastic bags used for pre-packaging clothes items were normally unsealed and hence did not satisfy the proposed section 1(1)(c)(ii) in Schedule 2 for the purpose of exemption, such plastic bags should not be charged to avoid affecting daily business operations; and</p> <p>(b) snack retailers might switch to paper bags if the PSB charge was imposed on plastic bags for holding candies.</p> <p>The Administration's response that –</p> <p>(a) plastic bags used for pre-packaging to give the goods protection (such as individual woven bags provided for each shoe) could be regarded as forming part of the goods and should satisfy the condition for exemption given in the proposed section 1(1)(e) in Schedule 2, irrespective of the mode of sealing; and</p> <p>(b) plastic bags distributed for holding candies could also be considered for exemption from the PSB charge under the proposed section 1(4)(a) in Schedule 2.</p> <p>ALA10 sought clarification on whether a plastic bag distributed for holding small pieces of snacks that had already been contained in airtight packaging (such as beef jerky and candies) would be exempted from the PSB charge.</p> <p>The Administration responded that it was relevant to consider the proposed section 1(3)(b) in Schedule 2 for food hygiene reason and the proposed section 1(4)(a) in Schedule 2 to determine whether the plastic bag concerned was "specifically designed" for holding the</p>	

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		<p>snacks (i.e. the plastic bag concerned was unfit for carrying other items apart from the snacks).</p> <p>Mr Vincent FANG commented that the proposed exemptions were confusing, and the trade would likely switch to paper bags instead to avoid committing an offence inadvertently.</p> <p>ALA10 urged the Administration to consider, given that the term "specifically designed" in the proposed section 1(4)(a) in Schedule 2 was not defined, whether a PSB to which the PSB charge applied pursuant to the proposed section 1(3) in the Schedule would nonetheless, under section 1(4)(a), be considered as a PSB specifically designed for containing the goods merely because the PSB provided by a seller was a bag which was used for the specific types of goods that it sold.</p>	Admin (paragraph 2(d) of the minutes refers)
015833 – 015932	Chairman	Date of next meeting	