

立法會
Legislative Council

LC Paper No. CB(1)759/13-14
(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 eighth meeting
held on Friday, 29 November 2013, at 10:45 am
in Conference Room 3 of the Legislative Council Complex

Members present : Dr Hon Kenneth CHAN Ka-lok (Chairman)
Hon WONG Ting-kwong, SBS, JP
Hon Cyd HO Sau-lan
Hon CHAN Hak-kan, JP
Hon Gary FAN Kwok-wai
Hon CHAN Han-pan
Hon KWOK Wai-keung
Dr Hon Helena WONG Pik-wan
Ir Dr Hon LO Wai-kwok, BBS, MH, JP

Members absent : Hon Vincent FANG Kang, SBS, JP
Hon Paul TSE Wai-chun, JP
Hon WU Chi-wai, MH
Hon Tony TSE Wai-chuen

Public Officers attending : **For item II**

Mr Andrew LAI, JP
Deputy Director of Environmental Protection (3)
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. Confirmation of minutes

(LC Paper No. CB(1)423/13-14 — Minutes of the meeting held on
8 October 2013)

The minutes of the meeting held on 8 October 2013 were confirmed.

II. Meeting with the Administration

(LC Paper No. LS17/13-14 — Note on "Comment on the
Administration's response to
the follow-up issues arising
from the fifth meeting"
prepared by the Legal Service
Division

Action

Draft Committee Stage amendments proposed by the Administration

LC Paper No. CB(1)432/13-14(01) — Draft Committee Stage amendments proposed by the Administration

Relevant papers

LC Paper No. CB(1)2667/11-12(01) — Administration's supplementary paper on extension of the Environmental Levy Scheme on Plastic Shopping Bag

LC Paper No. CB(1)112/13-14(01) — Administration's response to issues arising from the Bills Committee meeting on 8 October 2013)

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

Committee Stage amendments proposed by the Administration

3. The Bills Committee considered the Committee Stage amendments ("CSAs") proposed by the Administration on the Product Eco-responsibility (Amendment) Bill 2013 ("the Bill") (LC Paper No. CB(1)432/13-14(01)).

4. The Bills Committee noted the Administration's intention to propose four sets of CSAs to the Bill and the contents of the following two sets of CSAs had not been discussed by the Bills Committee previously –

- (a) the third set as set out in Annex C of LC Paper No. CB(1)432/13-14(01), which sought to repeal provisions under the Product Eco-responsibility (Plastic Shopping Bags) Regulation (Cap. 603A) ("the PSB Regulation") that were relevant only to the initial phase (e.g. registration) and prescribe the statutory forms for the new fixed penalty system; and
- (b) the fourth set as set out in Annex D of LC Paper No. CB(1)432/13-14(01), which sought to specify the commencement date and include provisions to ensure the remittance of the levy collected and related compliance requirements were followed for the final quarter (or part of a quarter) immediately before the

Action

commencement date to the Government under the existing compliance system.

5. The Administration explained that the above CSAs jointly provided for the savings and transitional arrangements for the extension of the Environmental Levy Scheme on Plastic Shopping Bags ("the extended Scheme") and other necessary amendments to the PSB Regulation after a specific commencement date. Proposing the consequential and related amendments at this stage could expedite the legislative process by completing all necessary amendments in one go.

6. The Chairman advised that as the Administration had provided the proposed CSAs only on the day before the meeting, members would need more time to study them in detail. The Bills Committee would continue the discussion on the CSAs proposed by the Administration at the next meeting.

Follow-up actions

Admin 7. The Administration was requested to –

- (a) provide the legal clarification that was sought in paragraph 6 of LC Paper No. LS17/13-14;
- (b) in relation to members' view that those retailers with the administrative capability should be required to submit information or returns on the distribution of plastic shopping bags to the Government with a view to facilitating the assessment of the effectiveness of the extended Scheme, reconsider proposing CSAs to this effect;
- (c) consider introducing a grace period upon the implementation of the extended Scheme, during which first-time offenders would only be given a warning instead of being issued with a fixed penalty notice; and
- (d) review whether the fixed penalty level of \$2,000 was reasonable for a specified offence under the proposed section 28A(4).

(Post-meeting note: The Administration's response to the request set out in paragraph 7 above was circulated to members vide LC Paper No. CB(1)545/13-14(02) on 13 December 2013.)

8. Members agreed to continue discussion at the next meeting to be held on Tuesday, 17 December 2013, at 4:30 pm.

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III. Any other business

9. There being no other business, the meeting ended at 12:50 pm.

Council Business Division 1
Legislative Council Secretariat
21 January 2014

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

**Proceedings of the eighth meeting
on Friday, 29 November 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 – Confirmation of minutes</i>			
001245 – 001319	Chairman	The minutes of the meeting held on 8 October 2013 (LC Paper No. CB(1)423/13-14) were confirmed.	
<i>Agenda Item II - Meeting with the Administration</i>			
001320 – 002012	Chairman Administration	The Administration's response to members' views and concerns raised at the meeting of the Bills Committee on 8 November 2013 (LC Paper No. CB(1)432/13-14(01)).	
002013 – 002249	Chairman Assistant Legal Adviser 10 ("ALA10")	ALA10's response to the justification test for assessing the "constitutionality" of the "dual" system proposed by some members (LC Paper No. LS17/13-14).	
002250 – 002402	Chairman Ms Cyd HO Administration	Ms Cyd HO said that while she welcomed the proposal to extend the scope of the Environmental Levy Scheme on Plastic Shopping Bags ("the PSB Levy Scheme"), she would have difficulty supporting the proposed extension of the PSB Levy Scheme ("the extended Scheme") if the Administration insisted on not requesting those retailers with the administrative capability to submit information or returns to the Government on the distribution of plastic shopping bags ("PSBs") to enable the assessment of the effectiveness of the extended Scheme.	
002403 – 004032	Chairman Dr Helena WONG ALA10 Administration	Dr Helena WONG sought ALA10's clarification on whether the "dual" system proposed by Mr WU Chi-wai would result in differential treatment that would engage the justification test. ALA10 responded that as explained in LC Paper No. LS17/13-14, it appeared that the right to equality as protected under Article 22 of the Hong Kong Bill of Rights ("HKBOR") in the Hong Kong Bill of Rights Ordinance (Cap. 383) and Article 25 of the Basic Law	

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		<p>were related to "personal characteristics". The Administration would need to elaborate how "business turnover", "retail floor area of retail establishments" and "three or more business outlets in Hong Kong" as grounds for the proposed differential treatment were related to the personal characteristics of the retailers that would engage the justification test.</p> <p>The Administration's response that –</p> <p>(a) the "dual" system might contravene Article 22 of HKBOR as it might constitute differential treatment amongst retailers on the ground of "other status". Mr WU Chi-wai's proposal to require retailers with at least one retail outlet in Hong Kong with a retail floor area of not less than 100 square metres to submit to the Government quarterly returns setting out the number of PSBs distributed in all of the retailer's registered retail outlets might contravene HKBOR, as shops that satisfied the above criteria would be subject to less favourable treatment leading to fairness issues; and</p> <p>(b) the Administration would have difficulty in examining the "constitutionality" of members' proposals unless they were formalized as specific Committee Stage amendments ("CSAs").</p> <p>Dr Helena WONG's view/enquiry that –</p> <p>(a) she did not subscribe to the Administration's explanation. The first phase of the PSB Levy Scheme, which subjected only some 3 300 retail outlets to regulation, had already imposed differential treatment amongst retailers; and</p> <p>(b) whether the Administration could adopt a new phased approach for implementing the extended Scheme. Under this approach, all retailers including small and medium enterprises ("SMEs") would be subject to the PSB Levy Scheme and be required to remit to the Government the levy income, and the levy income would be designated for environmental uses. SMEs which had</p>	

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		<p>practical difficulties in complying with the Scheme's requirements could apply for exemption, but the clear target was that they would also be covered by the PSB Levy Scheme in a later phase.</p> <p>The Chairman drew members' attention to paragraph 2 of LC Paper No. LS17/13-14 and pointed out that a differential treatment might be constitutional if it satisfied the three criteria stipulated for the justification test.</p> <p>The Administration's response that –</p> <p>(a) it had been the Government's clear policy intent from the outset that the PSB Levy Scheme would be implemented by phases, with the first phase targeting at certain retailers, which were the main source of PSB disposal at that time. It was also widely accepted by then that as a start, the PSB Levy Scheme should be simple and easy to administer such that it could get off the ground smoothly, and a phased approach was thus considered acceptable. These were legitimate policy objectives justifying partial coverage of the PSB Levy Scheme and the differential treatments imposed;</p> <p>(b) the PSB Levy Scheme was not a revenue generating measure but to inculcate behavioral changes to avoid excessive use of PSBs. The extended Scheme would further reinforce the "bring your own bag" ("BYOB") message;</p> <p>(c) as opposed to the PSB Levy Scheme which covered only some 3 300 retail outlets, the extended Scheme would cover around 70 000 to 80 000 retail outlets, some 90% being SMEs. With the proposed extension to cover all retailers, the "remittance" approach with its elaborate compliance system would be too burdensome and the compliance costs too high for SMEs; and</p> <p>(d) compliance on the extended Scheme would be monitored through "snaking" operations and surprise checks.</p>	

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004033 – 005146	Chairman Ms Cyd HO Administration ALA10	<p>Ms Cyd HO's views/concerns that –</p> <p>(a) the removal of the existing compliance requirements involving the keeping of records for quarterly return to the Government would render assessments to the effectiveness of the extended Scheme difficult and might lead to a reversion of the behavioral change away from BYOB which had been successfully inculcated; and</p> <p>(b) members' proposal on requesting retailers with the administrative capability to submit information or returns to the Government on PSB distribution and having such a reporting requirement removed across the board ultimately was in fact in line with the phased implementation of the PSB Levy Scheme.</p> <p>The Administration's response that –</p> <p>(a) as the scope of retailers suggested to be required to submit returns to the Government was different among members, with Ms Cyd HO suggesting those retailers which were already covered under the first phase of the PSB Levy Scheme and Mr WU Chi-wai targeting at "big retailers", the Administration could give concrete comment on members' proposals only upon receipt of the relevant CSAs; and</p> <p>(b) as the differential treatment proposed by members might contravene Article 22 of HKBOR and Article 25 of the Basic Law, justification test would need to be applied in assessing the "constitutionality" of the differential treatment.</p> <p>ALA10 stressed that the Administration had yet to provide legal analysis of how the imposition of certain compliance requirements on "big retailers" only would constitute unfairness under Article 22 of HKBOR and Article 25 of the Basic Law.</p>	

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		<p>The Chairman urged the Administration to provide the Bills Committee with the legal basis for its views on the differential treatment under the "dual" system and avoid premature conclusion on members' proposed amendments to the Product Eco-responsibility (Amendment) Bill 2013 ("the Bill").</p> <p>Ms Cyd HO requested the Administration to, in relation to some members' view that those retailers with the administrative capability should be required to submit information or returns on the distribution of PSBs to the Government with a view to facilitating the assessment of the effectiveness of the extended Scheme, reconsider proposing CSAs to this effect.</p>	<p>Admin (paragraph 7(a) of the minutes refers)</p> <p>Admin (paragraph 7(b) of the minutes refers)</p>
005147 – 005615	Chairman Ir Dr LO Wai-kwok	<p>Ir Dr LO Wai-kwok's views/concerns that –</p> <p>(a) the first phase of the PSB Levy Scheme was very successful and it was not necessary to be excessively concerned that the public/retailers would find ways to circumvent the extended Scheme;</p> <p>(b) he did not see the need for differential treatment among retailers as this would be unfair to some retailers, and it would be difficult to draw the dividing line; and</p> <p>(c) while the Administration should give more funding support to environmental causes, it was not necessary to designate the PSB charge for environmental uses.</p>	
005616 – 010608	Chairman Mr WONG Ting-kwong Administration	<p>Mr WONG Ting-kwong's views that –</p> <p>(a) imposing the PSB charge at the import level rather than the retail level could address the controversies relating to the "dual" system and avoid the problems encountered by retailers, irrespective of their scale, and the PSB charge could be designated for environmental uses only. It would also be easier for the Administration to enforce the law;</p> <p>(b) the Administration's current proposal was not enforceable; and</p>	

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		<p>(c) the Administration should withdraw the Bill and consider his suggestion afresh.</p> <p>The Administration responded that imposing the PSB charge at the retail level would be more effective for inculcating behavioral change of the public towards using less PSBs.</p>	
010609 – 011729	Chairman Dr Helena WONG Administration	<p>Dr Helena WONG opined that the Administration should counter propose the segment of retailers to be subject to the reporting requirement if it did not accept members' relevant proposals.</p> <p>The Administration's response that –</p> <p>(a) the record keeping and reporting requirements of the first phase of the PSB Levy Scheme were in essence a measure to protect the Government's revenue as the relevant records could be used for assessing the levy receivable in case of doubts or non-compliance;</p> <p>(b) the record keeping and reporting requirements were proposed to be removed under the extended Scheme on account of operational feasibility and equality to all retailers. Removal of the above requirements would not undermine the policy objective of the Bill on inculcating behavioral change on using less PSBs; and</p> <p>(c) it could assess the effectiveness of the extended Scheme by administrative means, such as landfill and other surveys.</p> <p>Dr Helena WONG said that the Democratic Party was opposed to the Administration's proposal on removing across the board the record keeping and reporting requirements under the extended Scheme.</p> <p>The Chairman urged Dr Helena WONG to channel the Bills Committee's deliberations to Mr WU Chi-wai, who was absent from the meeting, and requested Mr WU to submit his CSAs as soon as possible.</p>	

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011730 – 012449	Chairman Administration	<p>Briefing by the Administration on its proposed CSAs (LC Paper No. CB(1)432/13-14(01)) ("paper on CSAs").</p> <p>The Chairman drew members' attention to the third and fourth sets of CSAs as detailed in Annexes C and D of the paper on CSAs respectively and pointed out that their contents had not been discussed by the Bills Committee. He invited members' views on whether those CSAs should be considered by the Bills Committee.</p>	
012450 – 013239	Chairman Administration ALA10	<p><u>Annex A of the paper on CSAs</u></p> <p>In relation to the proposed section 18(4)(d)(i), ALA10 enquired, as the state of an item of food, drink or medicine ("foodstuff") might change in response to temperature difference, whether a foodstuff item had to be in a frozen or chilled state at the point of payment in order to be eligible for exemption from the PSB charge.</p> <p>The Administration responded that the PSB charge would be collected at the time of payment when a PSB was distributed to customers. The previous state(s) of the foodstuff concerned was not relevant.</p> <p>ALA10 enquired whether and how the Administration proposed to deal with cases where a retailer might deliberately freeze those foodstuff which was not required to be frozen or chilled to avoid collecting the PSB charge.</p> <p>The Administration responded that it was unlikely that a retailer would deliberately keep all its products in a frozen or chilled state in order for the foodstuff items to be exempted from the PSB charge.</p>	
013240 – 013306	Chairman Administration	<p><u>Annex B to the paper on CSAs</u></p> <p>Members raised no query.</p>	
013307 – 020009	Chairman Administration ALA10 Ms Cyd HO	<p><u>Annexes C and D of the paper on CSAs</u></p> <p>At the request of Ms Cyd HO, the Administration undertook to provide all papers to the Bills Committee at least two clear days</p>	

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		<p>before meetings so that members would have time to study them.</p> <p>In response to ALA10, the Administration advised that the four statutory forms (in Annex C) prescribed for the new fixed penalty system would be specified in the Product Eco-responsibility (Plastic Shopping Bags) Regulation (Cap. 603A) ("the PSB Regulation").</p> <p>ALA10 asked why the proposed Part 6 regarding notices and certificates in relation to and payment of the fixed penalty system would be added to the PSB Regulation instead of the Product Eco-responsibility Ordinance (Cap. 603) ("the Ordinance").</p> <p>The Administration's response that –</p> <p>(a) the first phase of the PSB Levy Scheme was implemented through two pieces of legislation, viz. the policy framework provided under the Ordinance, followed by the PSB Regulation which set out the implementation details such as registration of prescribed retailers and payment arrangements of the levies; and</p> <p>(b) the extended Scheme was relatively simple as the requirements on registration and payment of levies were removed. The proposed CSAs as set out in Annexes C and D were thus proposed to be added to the PSB Regulation to expedite the legislative process by completing all necessary amendments in one go. A specific commencement date would also facilitate the relevant stakeholders to get prepared for the extended Scheme. This would allow sufficient lead time for publicity and public education programmes, and prepare the trade (especially SMEs) for the implementation of the extension.</p> <p>ALA10 pointed out that under section 5 of the Ordinance, "regulation (規例)" meant "any regulation made under section 29". Furthermore, the Secretary for the Environment ("SEN") might make regulations under section 29 of the Ordinance. As such, the</p>	

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		<p>Administration might consider whether to place the proposed Part 6 under the Ordinance or the PSB Regulation and advise the means through which the statutory forms and the implementation details could be amended after passage of the Bill.</p> <p>The Administration's response that –</p> <p>(a) in order to empower SEN to make regulations in respect of notices and certificates required to be prescribed, and the payment of fixed and additional penalties as well as other amounts payable under the extended Scheme, clause 16 of the Bill would amend section 29 of the Ordinance accordingly; and</p> <p>(b) under section 29 of the Ordinance, SEN might, after consultation with the Advisory Council on the Environment, make regulations to the matters as provided in section 29(1) of the Ordinance, and the regulation made would be subject to positive vetting of the Legislative Council ("LegCo").</p> <p>The Chairman advised that the Bills Committee and the Legal Service Division would need more time to study the proposed CSAs in greater detail, in particular the CSAs proposed in Annexes C and D which should otherwise be included in another piece of subsidiary legislation to be submitted separately to LegCo for positive vetting.</p>	
020010 – 020423	Chairman Dr Helena WONG Administration	<p>In response to Dr Helena WONG's concern on the possible disputes arising from enforcement of the extended Scheme, the Administration advised that similar to the Smoking (Public Health) Ordinance (Cap. 371) and the Motor Vehicle Idling (Fixed Penalty) Ordinance (Cap. 611), the Bill did not provide for a mechanism for giving a warning prior to issuing an offender with a fixed penalty notice.</p> <p>Dr Helena WONG requested the Administration to –</p> <p>(a) consider introducing a grace period upon the implementation of the extended</p>	Admin (paragraph 7(c) of

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		Scheme, during which first-time offenders would only be given a warning instead of being issued with a fixed penalty notice; and (b) review whether the fixed penalty level of \$2,000 was reasonable for a specified offence under the proposed section 28A(4).	the minutes refers) Admin (paragraph 7(d) of the minutes refers)
020424 – 020450	Chairman	Date of next meeting	

Council Business Division 1
Legislative Council Secretariat
21 January 2014