

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

This note sets out the Administration's response to the issues raised at the ninth meeting of the Bills Committee on the Product Eco-responsibility (Amendment) Bill 2013 ("the Amendment Bill") held on 17 December 2013 –

- (a) *to clarify its position on the suggestion of monitoring the usage of plastic shopping bags ("PSBs") before and after the implementation of the proposed extension of the Environmental Levy Scheme on Plastic Shopping Bags ("the extended Scheme") by gathering statistics on the import of PSBs;*
- (b) *to advise the administrative measures for monitoring the usage of PSBs after the extended Scheme has been implemented;*

2. As explained in previous Bills Committee meetings, the Government will continue to monitor the usage of plastic shopping bags ("PSBs") through multiple measures. We will continue to make reference to the findings of landfill surveys on PSB disposal in assessing the effectiveness of the Environmental Levy Scheme on PSBs ("PSB Levy Scheme"). We will also consider tracking behavioural changes through dedicated surveys.

3. Regarding the landfill surveys that are conducted regularly to monitor PSB disposal, we have been conducting such surveys since mid-2009 (prior to the implementation of the current phase of the PSB Levy Scheme), and the surveys findings have provided us with valuable data for monitoring the impact of the PSB Levy Scheme and planning for the extension of the Scheme. Landfill survey data on PSBs disposal from mid-2009 to mid-2012 is shown in Table 1 of Annex A.

4. Apart from making reference to the landfill surveys, we will also explore how other statistics sources may be relevant in monitoring the effectiveness of the PSB Levy Scheme. At present, the Census and Statistics Department ("C&SD") collates trade statistics on domestic import and export of Hong Kong using the information collected from the import/export declarations lodged by importers and exporters. The figures are compiled in accordance with international practice mainly for

statistical purpose¹. While there is no specific merchandise classification code as “plastic shopping bags”, we have identified two classification codes (83199 and 89311) which maybe more relevant to packing bags, sacks, and shopping bags made of plastic, or similar bag items with plastic outer surface or plastic sheeting. On the other hand, as there are a wide range of bag products (e.g. rucksacks, cosmetic bags) grouped under these two classification codes and that some items capture only the value of the goods, the data collated from such import/export declaration do not serve the objective of monitoring the local usage of PSBs. As shown in Table 2 of Annex A, both the values and number of such imported bags under the selected classification codes recorded fluctuations between 2008 and 2012.

5. For instance, by simple comparison, we note that the number of PSBs disposed at landfills as shown in Table 1 of Annex A was 10 times of those recorded in import statistics of the concerned classification code. In summary, we will continue to conduct landfill surveys in assessing the disposal situation of PSBs which will help us monitor the effectiveness of the PSB Levy Scheme upon its extension.

6. We are also exploring with the Hong Kong Retail Management Association on the feasibility of the retail trade to publish PSB distribution figures on an annual basis. This will enhance the public’s understanding on the situation upon the extension of the PSB Levy Scheme.

(c) to clarify how a bag would be regarded as a bag which is "specifically designed for containing the goods" under the proposed section 1(4)(a) of Schedule 2;

7. In general, “a bag which is specifically designed for containing the goods” refers to (i) a bag, (ii) the bag carries certain design features (such as size, colour, material or shape) and (iii) such design features are specific for the purpose of containing the goods. The exemption seeks to implement our policy intent that a plastic bag that “forms part of the goods concerned” should not be subject to the mandatory charge.

¹ The Hong Kong Merchandise Trade Statistics is published by the C&SD and the publication is compiled based on the Standard International Trade Classification Revision 4 (“SITC Rev.4”) recommended by the United Nations for classifying trade statistics for economic analysis. C&SD collates the information contained in import/export declarations, and converts them into those nearly 3 000 SITC classification codes, and compile the trade statistics. At present, there is no specific merchandise code for PSBs.

Whether a bag falls under the relevant exemption under section 1(4)(a) of Schedule 2 will depend on actual circumstances.

8. At the Bills Committee meeting on 17 December 2013, Members discussed section 1(4)(a) of Schedule 2 with reference to the particular case of a bag commonly used by confectionary sellers. We considered that confectionaries are often sold in packs – see Figure 1 in Annex B. Generally speaking, in cases which confectionaries are already contained individually in airtight packaging – see Figure 2 in Annex B, an ordinary plastic bag distributed by the seller will be subject to a mandatory charge under section 18A(2). If a confectionary seller provides a carrying bag that resembles the other confectionary packaging – see Figure 3 in Annex B, then the carrying bag would be regarded as a bag “specifically designed for containing the confectionaries” and would be entitled to exemption under section 1(4)(a) of Schedule 2.

9. We appreciate that a bag used as a “container” for a specific goods may also be used to contain other goods that may fit into it even though the bag is NOT specifically designed to contain that goods. In such case, the bag will not be exempted under section 1(4)(a) of Schedule 2. We will provide guidelines to the retail trade to explain the principles involved in determining the scope of exemption under section 1(4)(a) of Schedule 2. We will also organize extensive education and publicity programmes for retailers and the public to enhance their understanding in the implementation of the proposed extension.

(d) regarding the Administration's proposed Committee Stage amendments (LC Paper No. CB(1)432/13-14(01)), to explain the relationship between the commencement date and the dates which would be specified in the relevant provisions of Schedule 5; and

10. The latest legislative approach proposed by the Administration is to include a specific commencement date as part of the Amendment Bill by way of Committee Stage amendments (“CSAs”) instead of leaving it open until the publication of a commencement notice in the Gazette by Secretary for the Environment. This will save the need for submitting another amendment bill/regulation to the Legislative Council afterwards to set out the commencement dates and other transitional and implementation details. The Administration will need about 12 months to undertake the preparatory and publicity work counting from the

enactment of the Amendment Bill before the extension of the PSB Levy Scheme can be brought into operation. Assuming that the resumption of the second reading debate of the Amendment Bill and proceedings of the third reading could be scheduled at the Legislative Council meeting before March 2014, we estimate that the commencement date could be 1 April 2015.

11. On this basis, we have tentatively indicated “1 April 2015” as the commencement date in the draft CSAs. Other critical dates for the necessary savings and transitional arrangements have also been worked out on this basis. Please see Annex C for details. These dates are subject to changes if the resumption of the second and third reading is deferred to meeting later than March 2014.

(e) having regard to members' view that the proposed fixed penalty level of \$2,000 for a specified offence under the proposed section 28A(4) is on the high side, to consider lowering the penalty level.

12. At the Bills Committee meeting on 17 December 2013, some Members opined that a fixed penalty at \$2,000 might be on the high side for small and medium enterprises (“SMEs”). At the same time, some Members expressed concerns about the need for effective enforcement in order to sustain compliance for the longer term. On balance, we will maintain our original proposal, i.e. setting the fixed penalty at \$2,000. This is because the proposed penalty level indeed corresponds to the penalty for similar offences committed during the current phase of the PSB Levy Scheme, which is mostly \$2,000 per conviction. As a matter of principle, the penalty level should reflect the seriousness of the offence rather than the offender’s readiness to pay.

13. In practice, a fixed penalty system also gives an offender an opportunity to discharge liability by paying a fixed fine rather than attending a court hearing, provided that the offender accepts guilt. As far as businesses are concerned, the expenses and opportunity costs for going through court hearings can be considerable. A low penalty level may however undermine the deterrence effect against non-compliance. To address Members’ concern about the potential impact on SMEs, we will stage necessary publicity to get the retail trade prepared before the extension of the PSB Levy Scheme comes into operation.

Environmental Protection Department
January 2014

Table 1 : Landfill Survey on Plastic Shopping Bags Disposal (2009-2012)

Source of Disposal / Year	2009	2010	2011	2012
Total No. of PSBs disposed	4,679 million/year	4,444 million/year	4,544 million/year	5,247 million/year
No. of PSBs disposed by the three registered categories	657 million/year	153 million/year	147 million/year	156 million/year

Table 2 : Import Statistics on selected HK SITC Codes (2008-2012)




Ref. HK SITC Code (Unit)	Commodity Brief Description	Unit	2008	2009	2010	2011	2012
83199	Other travel goods, handbags and similar containers ¹	Number	808 ,467,480	518,591,783	510,953,576	511,900,550	417,042,044
		Value in HK\$'000	9,916,541	6,971,962	8,256,535	9,310,993	8,932,163
89311	Sacks and Bags for the Conveyance or packing of goods, of plastic ²	Value in HK\$'000	1,921,795	1,615,060	1,729,113	1,787,519	1,839,255

Source: Hong Kong Merchandise Trade Statistics Import, Census and Statistics Department

¹ Includes other travel goods, handbags and similar containers. Common product names include: shopping bag and knapsacks of plastic sheeting; shopping bags, backpack, tote bag, rucksacks, and toilet bags with outer surface of plastic sheeting; plastic sheeting cosmetics bag.

² Includes articles for the conveyance or packing of goods of plastics; stoppers, lids, caps and other closures, of plastics. Common product names include: packing bags, bags for conveyance or packing, sacks and bags and polybag made of plastic.

Bags Specifically Designed for Containing the Goods

	Description	Example
Figure 1	<ul style="list-style-type: none">• Common packaging for confectionaries• A plastic shopping bag distributed by the seller to contain this pack will be subject to a mandatory charge under section 18A(2)	
Figure 2	<ul style="list-style-type: none">• Generally confectionaries are already contained individually in airtight packaging• An ordinary plastic bag distributed by the seller will be subject to a mandatory charge under section 18A(2)	
Figure 3	<ul style="list-style-type: none">• If a confectionary seller provides a carrying bag that resembles the other confectionary packaging, then the carrying bag would be regarded as a bag “specifically designed for containing the confectionaries”, and would be entitled to exemption under section 1(4)(a) of Schedule 2	

Part 1

Preliminary

1. Short title and commencement

- (1) This Ordinance may be cited as the Product Eco-responsibility (Amendment) Ordinance 2013.
 - (2) This Ordinance comes into operation on 1 April 2015~~a day to be appointed by the Secretary for the Environment by notice published in the Gazette.~~
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Part 2

Amendments to Product Eco-responsibility Ordinance

2. Product Eco-responsibility Ordinance amended

The Product Eco-responsibility Ordinance (Cap. 603) is amended as set out in sections 3 to ~~20~~21.

16A. Part 3, Division 6 added

Part 3, after Division 5—

Add

“Division 6—Savings and Transitionals

**30. Savings and transitional provisions relating to Product
Eco-responsibility (Amendment) Ordinance 2013**

Schedule 5 provides for the savings and transitional
arrangements relating to the Product Eco-responsibility
(Amendment) Ordinance 2013 (of 2013).”.

21. Schedule 5 added

At the end of the Ordinance—

Add

“Schedule 5

[s. 30]

Savings and Transitional Provisions Relating to
Product Eco-responsibility (Amendment)
Ordinance 2013

1. Interpretation

(1) In this Schedule—

pre-amended Ordinance (《原有條例》) means this Ordinance as in force immediately before 1 April 2015;

PSB Regulation (《膠袋規例》) means the Product Eco-responsibility (Plastic Shopping Bags) Regulation (Cap. 603 sub. leg. A) as in force immediately before 1 April 2015;

specified form (指明表格) means a form specified by the Director under section 9 of this Schedule.

(2) In this Schedule, a reference to a provision having a continuing effect under Cap. 1 is a reference to the provision having a continuing effect by the operation of section 23 of the Interpretation and General Clauses Ordinance (Cap. 1).

(3) A word or an expression used in this Schedule, and defined or otherwise explained in section 17 of the pre-amended Ordinance or section 2 of the PSB Regulation, has the same meaning as in that section.

(4) The saving mentioned in this Schedule for the effect of a provision of the pre-amended Ordinance extends to any other provision of that Ordinance or the PSB Regulation—

(a) that defines a word or an expression used in the provision;

(b) in accordance with which the provision is to be construed; or

(c) by reference to which the provision is to operate.

2. Returns and payment of levies due after 1 April 2015

(1) A person who was a registered retailer at any time within the period beginning on 1 January 2015 and ending on 31 March 2015 must ensure that—

(a) a separate return in respect of each registered retail outlet of the person for that period is submitted to the Director;

(b) the return is submitted to the Director in writing and in the specified form on or before 30 April 2015; and

(c) the return states the information specified in subsection (2).

(2) The information is—

(a) the total number of plastic shopping bags delivered to the registered retail outlet during that period, except for any bags to be provided from an exempted area of the retail outlet that 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 period from—

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- (i) the retail outlet; or
 - (ii) if there is an exempted area in the retail outlet, any area of the retail outlet that is not exempted;
 - (c) the total amount of levies payable for the bags referred to in paragraph (b); and
 - (d) if an application for registration or deregistration in respect of the retail outlet is approved during that period, the date on which the retail outlet becomes registered or deregistered.
- (3) On or before 30 April 2015, the person must also pay to the Government the total amount of levies stated in the return in person, by post or by any other means according to the payment instructions contained in the specified form of the return.
- (4) A person who contravenes subsection (1) or (3) commits an offence and is liable on conviction to a fine at level 5.
- (5) It is a defence to a charge under subsection (4) for the person charged to prove that the person exercised due diligence to avoid the commission of the offence.

3. Surcharges for offences in respect of payment of levies

- (1) This section applies if, on or after 1 April 2015, a person is convicted of an offence under either of the following provisions in respect of an amount of levies stated in a return that the person has failed to pay—
- (a) section 24(3) of the pre-amended Ordinance having a continuing effect under Cap. 1;
 - (b) section 2(4) of this Schedule.
- (2) The person is also liable to pay—

(a) a surcharge of 5% of the amount of levies that are outstanding on the expiry of the due date; and

(b) an additional surcharge of 10% of the total amount of levies and the surcharge referred to in paragraph (a) that are outstanding at the expiry of 6 months after the due date.

(3) In this section—

due date (到期日), in relation to levies stated in a return, means the 30th day after the end of the period to which the return relates.

4. Record keeping

(1) A person who has submitted a return under section 2(1) of this Schedule must ensure that the records and documents specified in subsection (2) relating to the return are kept until [31 March 2020](#).

(2) The records and documents are 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 person—

(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 an exempted area of the retail outlet;

(b) the amount charged for those bags by the person under section 23(1) of the pre-amended Ordinance;

(c) 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 an exempted area of the retail outlet that is subject to the criteria for a Type 2 exemption; and

(d) the number of plastic shopping bags procured by the person and relating to each shipment referred to in paragraph (c).

(3) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 5.

(4) It is a defence to a charge under subsection (3) for the person charged to prove that the person exercised due diligence to avoid the commission of the offence.

5. Assessment notice for conviction or acquittal before 1 April 2015

(1) This section applies if, before 1 April 2015—

(a) the Director may make an assessment for the plastic shopping bags provided by a person, and serve an assessment notice on the person, under section 26(2) of the pre-amended Ordinance but has not done so; or

(b) the Director has served an assessment notice on a person under that section.

(2) Section 26(2), (3), (4), (5), (6), (7), (8), (9), (10), (11) and (12) of the pre-amended Ordinance continues to apply in relation to an assessment under subsection (1)(a) as if a reference to a registered retailer in that section were a reference to the person.

(3) Section 26(3), (4), (5), (6), (7), (8), (9), (10), (11) and (12) of the pre-amended Ordinance continues to apply in relation to a notice under subsection (1)(b) as if a reference to a registered retailer in that section were a reference to the person.

(4) It is a defence to a charge under section 26(7) of the pre-amended Ordinance having a continuing effect under subsection (2) or (3) for the person charged to prove that

the person exercised due diligence to avoid the commission of the offence.

6. Assessment notice for conviction or acquittal on or after 1 April 2015

(1) This section applies if, on or after 1 April 2015, a person—

(a) is convicted of an offence under section 9 of this Ordinance relating to any record, document or information on an amount of levies stated in a return submitted by the person in respect of a period under either of the following provisions—

(i) section 24(1) of the pre-amended Ordinance;

(ii) section 2(1) of this Schedule;

(b) is acquitted of an offence mentioned in paragraph (a) in reliance on the defence under section 9 of this Ordinance;

(c) is convicted of an offence under section 24(3) of the pre-amended Ordinance having a continuing effect under Cap. 1 for failing to submit a return in respect of a period according to the requirements in section 24(1) of the pre-amended Ordinance;

(d) is acquitted of an offence mentioned in paragraph (c) in reliance on the defence under section 27 of the pre-amended Ordinance having a continuing effect under Cap. 1;

(e) is convicted of an offence under section 2(4) of this Schedule for failing to submit a return according to the requirements in section 2(1) of this Schedule; or

(f) is acquitted of an offence mentioned in paragraph (e) in reliance on the defence under section 2(5) of this Schedule.

(2) The Director may—

(a) assess the amount of levies payable for the plastic shopping bags provided by the person during that period; and

(b) serve an assessment notice on the person demanding payment of—

(i) that assessed amount; or

(ii) if the person has already paid part of that amount under section 24 of the pre-amended Ordinance, or under section 2 of this Schedule, the balance of that amount.

(3) The Director may replace an assessment notice with another assessment notice served for that purpose.

(4) An assessment notice served under this section in respect of plastic shopping bags provided during a period may only be served within 5 years after the end of that period.

(5) An assessment notice served under this section must also state—

(a) the reasons for serving the notice;

(b) how the amount of levies assessed by the Director is calculated;

(c) when and how payment is to be made; and

(d) the right of the person to appeal against the notice.

(6) The person must pay the amount of the demanded levies under an assessment notice within a period of 30 days after the date on which the notice is served.

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- (7) A person who contravenes subsection (6) commits an offence and is liable on conviction to a fine at level 5.
- (8) A person who is convicted of an offence under subsection (7) is also liable to pay—
- (a) a surcharge of 5% of the amount of levies that are outstanding on the expiry of the period referred to in subsection (6); and
 - (b) an additional surcharge of 10% of the total amount of levies and the surcharge referred to in paragraph (a) that are outstanding at the expiry of 6 months after the period referred to in subsection (6).
- (9) If an appeal is made under section 7 of this Schedule against an assessment notice served under this section, any amount of levies or surcharges that is outstanding remains payable under this section pending the determination of the appeal unless the Director decides otherwise.
- (10) The Director may at any time withdraw an assessment notice served under this section by serving a withdrawal notice to that effect.
- (11) A notice served under this section is regarded as duly served when it is sent by post to the last address provided by the person to the Director.
- (12) It is a defence to a charge under subsection (7) for the person charged to prove that the person exercised due diligence to avoid the commission of the offence.

7. Appeal

- (1) A person who is aggrieved by a decision of a public officer relating to an assessment notice served under either of the following provisions may, within 21 days after the date on which the notice is served on the

person, appeal to the Appeal Board by giving a notice of appeal to the Director stating the reasons for the appeal—

(a) section 26 of the pre-amended Ordinance having a continuing effect under section 5 of this Schedule;

(b) section 6 of this Schedule.

(2) For the purposes of Division 5 of Part 2 of this Ordinance, an appeal made under subsection (1) is to be regarded as an appeal made under section 13 of this Ordinance.

(3) In this section—

Appeal Board (上訴委員會) has the meaning given by section 12 of this Ordinance.

8. Levies and surcharges are recoverable as civil debt

An outstanding amount of levies or surcharges payable under section 2, 3 or 6 of this Schedule is recoverable as a civil debt due to the Government.

9. Specified form

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

(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 submitting a return under section

2(1) of this Schedule, the return is to be treated as not submitted in the specified form.

(4) 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.

10. Provisions of this Schedule not to derogate from section 23 of Interpretation and General Clauses Ordinance

The provisions of this Schedule are in addition to, and not in derogation of, section 23 of the Interpretation and General Clauses Ordinance (Cap. 1).”.
