

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

This note sets out the Administration's response to the issues raised at the tenth meeting of the Bills Committee on the Product Eco-responsibility (Amendment) Bill 2013 ("the Amendment Bill") held on 8 January 2014 –

(a) to provide information on the classification of plastic bags in landfill surveys and the survey findings in recent years;

2. Statistics on the disposal of plastic shopping bags ("PSBs") between 2009 and 2012 as revealed from the landfill surveys are at **Annex A**. The sources of the PSBs being identified are also listed out.

(b) regarding the English text of the proposed section 1(4) of Schedule 5, to clarify whether the word "this" or "that" should be used before the word "Ordinance";

3. The proposed section 1(4) of Schedule 5 reads –

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.

The reference to "that Ordinance" refers to the "pre-amended Ordinance" as defined in the proposed section 1(1) of Schedule 5, i.e. the Product Eco-responsibility Ordinance (Cap. 603) as in force before the amendments proposed in the Amendment Bill come into operation. Such reference must not be changed to "this Ordinance" which will mistakenly refer to the Amendment Bill itself (when it is enacted as ordinance).

(c) in the light of the proposed repeal of section 13(2)(a) and (b) of the Product Eco-responsibility Ordinance (Cap. 603) ("the PERO") which provides for appeals against rejections of applications on matters specified in sections 19 and 23 of the PERO respectively and the proposed repeal of Parts 2 and 3 of the Product Eco-responsibility (Plastic Shopping Bags) Regulation (Cap. 603A), to advise whether and how an application made under section 13(1) against a decision of any such rejection which is made on or after 1 April 2015 will be dealt with;

4. If the Director of Environmental Protection (“DEP”) rejects an application for registration or deregistration under section 19 of the PERO, or an application for exemption under section 23 of the PERO before 1 April 2015 (i.e. the currently assumed commencement date of the extended phase), the applicant may appeal to the Appeal Board against the decision under section 13 of the PERO if he is aggrieved by the decision. The right to appeal, once accrued, will be preserved under section 23 of the Interpretation and General Clause Ordinance (Cap. 1) even if the provision conferring the right (i.e. section 13(2)(a) and (b) of the PERO) is repealed.

5. In case the DEP has not rejected the application before 1 April 2015, the extended phase will take effect on the scheduled commencement date. There will be no need for the DEP to make any decision on the applications in this regard and therefore no appeal will arise.

(d) in the light of the proposed repeal of section 20 of the PERO which provides that the Director of Environmental Protection must maintain a register containing the information which is specified in section 20(1) of the PERO, to advise how the Administration would keep the records of the information so specified during the period which Schedule 5 is applicable;

6. Under the extended phase, the Environmental Levy Scheme on Plastic Shopping Bags (“PSB Levy Scheme”) will apply to the entire retail sector, and the requirements in registering retail outlets as “registered outlets” will cease. The need for maintaining a statutory register will become obsolete. That said, we intend to maintain a full list of registered retailers, registered retail outlets and other compliance-related information based on the relevant records as at the

day before the commencement of the amendment ordinance. We may do so through administrative means, for example, publishing the relevant information on the Environmental Protection Department (“EPD”) website.

(e) to advise the results of the Administration's discussion with the Hong Kong Retail Management Association on the feasibility of the retail trade to publish the distribution figures of plastic shopping bags on an annual basis after the implementation of the proposed extension of the Environmental Levy Scheme on Plastic Shopping Bags (paragraph 6 of LC Paper No. CB(1)671/13-14(02) refers); and

7. We have conveyed the suggestions of the Bills Committee to the Hong Kong Retail Management Association (“HKRMA”) and the initial feedback from them is positive. HKRMA suggested that a voluntary reporting system could be implemented by encouraging the registered retailers covered by the current phase of the PSB Levy Scheme to provide their PSBs usage to the Association on a yearly basis if the statutory reporting requirements are abandoned in the extended phase. The Association would then act as a single platform to collate figures provided by those retailers and help release the aggregate figures to EPD.

8. Along with this suggestion, the HKRMA has approached those members who are also registered retailers currently covered by the PSB Levy Scheme for their feedback to the proposed voluntary measures. So far 11 registered retailers operating some 2 960 registered retail outlets, who are mostly in the sectors of supermarkets, convenience stores, personal health and beauty stores and drug stores, have rendered their support to the proposed reporting system. These some 2 960 outlets represented about 85% of the total number of retail outlets covered by the current PSB Levy Scheme.

9. The proposed voluntary measures as agreed by the HKRMA would effectively address the concerns of the Bills Committee in monitoring the situation of PSBs distribution upon the extension of the PSB Levy Scheme. We welcome the positive feedback from the HKRMA.

(f) to provide a written response to the draft Committee Stage amendments proposed by Hon WU Chi-wai.

10. In general, the draft Committee Stage Amendments (“CSAs”) proposed by Hon WU Chi-wai serve to reinstate provisions relevant to the compliance system under the first phase of the PSB Levy Scheme except that (i) definition of “prescribed retailer” will be widened (cf. operating “3 or more” qualified retail outlets in Hong Kong instead of “5 or more”; at least one qualified retail outlet in Hong Kong with a retail floor area of not less than 100 m² instead of “200 m²”); and (ii) these retailers will not be required to remit the PSB charge to the Government.

11. It has been the Government’s intention to foster a level-playing field in the retail sector. The CSAs (if approved by the LegCo) will require different retailers to follow different compliance systems and that will go against the level-playing field principle. As we have mentioned in our reply vide LC Paper CB(1)545/13-14(02), the Administration has to be prudent in considering whether the differential treatment is justifiable. As the positive response from the HKRMA should be able to address the intended purpose of the CSAs (i.e. to make available data on the implementation of the PSB Levy Scheme in the extended phase), we recommend Hon WU Chi-wai to reconsider the need for proposing the CSAs.

Environmental Protection Department
February 2014

Findings of the Landfill Survey on Disposal of Plastic Shopping Bags

(Unit: Estimated Annual Disposal)

Retailer Category	2009		2010		2011		2012	
	MM/Yr	%	MM/Yr	%	MM/Yr	%	MM/Yr	%
Supermarkets	488.22	10.44%	84.22	1.90%	75.71	1.67%	75.09	1.43%
Convenience Stores	89.98	1.92%	15.33	0.34%	17.55	0.39%	15.60	0.30%
Medicare and Cosmetic Bags	79.14	1.69%	53.57	1.21%	53.70	1.18%	65.12	1.24%
<i>Sub-total</i>	<i>657.34</i>	<i>14.05%</i>	<i>153.12</i>	<i>3.45%</i>	<i>146.96</i>	<i>3.23%</i>	<i>155.81</i>	<i>2.97%</i>
Bakeries and Cake Shops	262.18	5.60%	316.66	7.13%	324.46	7.14%	366.20	6.98%
Department Stores and Home Accessories Shops	47.62	1.02%	41.41	0.93%	38.06	0.84%	49.69	0.95%
Cooked Food Outlets	326.98	6.99%	349.68	7.87%	361.80	7.96%	251.71	4.80%
Books, Stationeries, Gifts and Novelties Shops	20.53	0.44%	20.69	0.47%	26.26	0.58%	22.22	0.42%
Fashion and Footwear Shops	34.79	0.74%	52.28	1.18%	47.20	1.04%	53.30	1.02%
Electrical and Telecom Shops	9.95	0.21%	10.69	0.24%	9.31	0.20%	8.81	0.17%
Newspaper and Magazine Bags	121.43	2.60%	98.79	2.22%	99.86	2.20%	92.33	1.76%
Others	3197.71	68.35%	3400.42	76.52%	3490.28	76.81%	4247.35	80.94%
<i>Sub-total</i>	<i>4021.19</i>	<i>85.95%</i>	<i>4290.62</i>	<i>96.55%</i>	<i>4397.23</i>	<i>96.77%</i>	<i>5091.61</i>	<i>97.03%</i>
<i>Grand Total</i>	<i>4678.53</i>	<i>100.00%</i>	<i>4443.74</i>	<i>100.00%</i>	<i>4544.19</i>	<i>100.00%</i>	<i>5247.42</i>	<i>100.00%</i>

Note:

Under the current phase of the PSB Levy Scheme, plastic shopping bag means a bag (i) that is made wholly or partly of plastic; and (ii) there is a handle, handle hole, perforated line for tearing out a handle hole, carrying string or strap, or any other carrying device on, or attached to, it.