

立法會
Legislative Council

LC Paper No. CB(1)1208/14-15
(These minutes have been seen
by the Administration)

Ref : CB1/BC/4/14/1

**Bills Committee on Promotion of Recycling and Proper Disposal
(Electrical Equipment and Electronic Equipment) (Amendment) Bill 2015**

**Minutes of fifth meeting
held on Monday, 20 July 2015, at 2:30 pm
in Conference Room 3 of the Legislative Council Complex**

Members present : Ir Dr Hon LO Wai-kwok, SBS, MH, JP (Chairman)
Hon Vincent FANG Kang, SBS, JP
Hon Jeffrey LAM Kin-fung, GBS, JP
Hon Andrew LEUNG Kwan-yuen, GBS, JP
Hon WONG Ting-kwong, SBS, JP
Hon Cyd HO Sau-lan, JP
Hon CHAN Hak-kan, JP
Hon WU Chi-wai, MH
Hon Charles Peter MOK, JP
Dr Hon Kenneth CHAN Ka-lok
Hon KWOK Wai-keung

Public Officers attending : **For item I**

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

Ms Fion CHUI
Acting Senior Environmental Protection Officer
(Waste Management Policy)³
Environmental Protection Department

Mr Gilbert MO
Deputy Law Draftsman
(Bilingual Drafting & Administration)
Department of Justice

Miss Elaine NG
Senior Government Counsel
Department of Justice

Clerk in Attendance : Ms Angel SHEK
Chief Council Secretary (1)1

Staff in attendance : Miss Evelyn LEE
Assistant Legal Adviser 10

Miss Lilian MOK
Senior Council Secretary (1)1

Ms Mandy LI
Council Secretary (1)1

Action

I. Meeting with the Administration

Matters arising from previous meeting

(LC Paper No. CB(1)996/14-15(01) — List of follow-up actions
arising from the meeting on
2 June 2015

LC Paper No. CB(1)1115/14-15(01) — List of follow-up actions
arising from the meeting on
22 June 2015

Clause-by-clause examination of the Bill

LC Paper No. CB(1)712/14-15(01) — Marked-up copy of the Bill
prepared by the Legal Service
Division (Restricted to
Members)

LC Paper No. CB(3)513/14-15 — The Bill

Action

File Ref: EP CR 9/150/28 Pt.4	— Legislative Council Brief
LC Paper No. LS52/14-15	— Legal Service Division Report
LC Paper No. CB(1)712/14-15(04)	— Background brief prepared by the Legislative Council Secretariat)

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

Follow-up actions to be taken by the Administration

Recycling fee payable by registered suppliers

Admin 2 In respect of the proposed section 44(3) of the Product Eco-responsibility Ordinance (Cap. 603) ("the PERO"), the Administration was requested to –

- (a) clarify the principles and considerations for determining the recycling fee, and provide the relevant legal justifications on not requiring the amount of the recycling fee to be limited with reference to the costs referred to in the proposed section 44(3);
- (b) consider whether it was necessary to amend the proposed section 44(3) to clearly reflect the Administration's policy intent if the recycling fee was to be determined at full cost recovery basis taking into account the development and operation costs of the Waste Electrical and Electronic Equipment Treatment and Recycling Facility and other management and administrative matters; and
- (c) consider amending the reference of "無須參照" in the Chinese rendition to tally with its corresponding English text of "not limited by reference to".

Admin 3 The Administration was requested to provide, before completion of scrutiny of the Promotion of Recycling and Proper Disposal (Electrical Equipment and Electronic Equipment) (Amendment) Bill 2015 ("the Bill"), an updated ballpark estimation on the amount of the recycling fee payable for each of the eight classes of regulated electrical equipment ("REE") proposed in Schedule 6 to the Bill.

Action

Additional surcharge in relation to recycling fee

Admin 4 In respect of the Chinese rendition of the proposed section 40(11)(b) of the PERO, which provided that "如在第(9)款所述的限期後的6個月屆滿時，有循環再造費及(a)段所述的附加費仍未繳付，該人亦有法律責任繳付一項額外附加費..." and in light of the Administration's response given at the meeting, the Administration was requested to consider amending "及" to "或" with a view to reflecting its policy intent which was elaborated by the Administration at the meeting.

Arrangements for removal service in respect of REE

Admin 5 The Administration was requested to address the following views/concerns expressed by members –

- (a) a consumer might not be aware of (i) the availability of removal service under which for every item of REE purchased by a consumer, an old equipment of the same class could be removed from a premise designated by the consumer for proper disposal at no extra charge on the consumer, and (ii) whether a REE seller had fulfilled the requirement to formulate a removal service plan for endorsement by the Government under the proposed section 41(1) of the PERO, and therefore did not request a REE seller to provide the removal service; and
- (b) a consumer might not be aware of (i) whether and when an explicit request for the removal service should/could be made to a REE seller (e.g. whether the request could only be made at the point of sale by the purchaser but not upon delivery of a REE by the seller to the designated premise); and (ii) whether a seller would remove a used REE from a premise designated by the consumer if the recycling label for the old equipment was lost or no longer available.

Admin 6 The Administration was further requested to provide clarification relating to clause 12 of the Bill as detailed in the letter dated 28 July 2015 from the Legal Adviser to the Bills Committee to the Administration.

Action

II. Any other business

Date of next meeting

7 The Chairman said that he would work out the date of the next meeting with the Clerk and inform members accordingly.

(Post-meeting note: With the concurrence of the Chairman, the sixth meeting of the Bills Committee was scheduled for Friday, 18 September 2015 at 10:45 am. The notice and agenda of the meeting were issued to members vide LC Paper No. CB(1)1155/14-15 on 27 July 2015.)

8 There being no other business, the meeting ended at 4:30 pm.

Council Business Division 1
Legislative Council Secretariat
27 August 2015

**Bills Committee on Promotion of Recycling and Proper Disposal
(Electrical Equipment and Electronic Equipment) (Amendment) Bill 2015**

**Proceedings of the fifth meeting
on Monday, 20 July 2015, at 2:30 pm
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>			
000350 - 000547	Chairman Administration	Administration's response to the follow-up actions arising from the meetings of the Bills Committee held on 2 and 22 June 2015 was to be provided.	
Clause-by-clause examination of the Bill (The Bill [LC Paper No. CB(3)513/14-15])			
000548 - 001055	Chairman Administration	<p>Part 2 – Amendments to Product Eco-responsibility Ordinance</p> <p><u>Clause 8 – Part 4 added</u></p> <p><u>Part 4 – Regulated Electrical Equipment</u></p> <p><u>Division 3 – Obligations of Registered Suppliers and Sellers</u></p> <p><i>Proposed section 38 – Registered supplier must submit returns</i></p> <p><i>Proposed section 39 – Registered supplier must submit annual audit report</i></p> <p>Members raised no query to the above proposed sections.</p>	
001056 - 001859	Chairman Administration Ms Cyd HO Assistant Legal Adviser 10 ("ALA10")	<p><i>Proposed section 40 – Recovering recycling fees by assessment notice</i></p> <p>In response to Ms Cyd HO's enquiry about the time limit for the service of an assessment notice demanding payment of the recycling fee payable under the proposed section 37, the Administration explained that according to the proposed section 38(4), if a registered supplier submitted a return in respect of a period in a calendar year, the supplier must keep the prescribed records and documents relating to the return during the five years after that year.</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>Accordingly, it was stipulated in the proposed section 40(7) that an assessment notice served in respect of the recycling fee payable under the proposed section 37 for a period must be served within five years after the end of that period.</p> <p>In respect of the Chinese rendition of the proposed section 40(11)(b), which provided that "如在第(9)款所述的限期後的 6 個月屆滿時，有循環再造費及(a)段所述的附加費仍未繳付，該人亦有法律責任繳付一項額外附加費...", ALA10 enquired whether the proposed additional surcharge would only be imposed if a person had not paid the whole or any part of the total amount of the recycling fee demanded under an assessment notice issued by the Director of Environmental Protection ("the Director") and the whole or any part of the 5% surcharge under the proposed section 40(11)(a) six months after the period mentioned in the proposed section 40(9).</p> <p>The Administration explained that its policy intent was that the proposed additional surcharge would be imposed on any amount remaining outstanding six months after the period mentioned in the proposed section 40(9), irrespective of whether the outstanding amount included the whole (or any part) of the recycling fee and/or the 5% surcharge.</p> <p>The Chairman requested and the Administration agreed to consider whether it was necessary to amend "及" to "或" in the Chinese rendition of the proposed section 40(11)(b), with a view to reflecting the above policy intent.</p>	<p>Admin (paragraph 4 of the minutes refers)</p>
<p>001900 - 004749</p>	<p>Chairman Administration Mr Andrew LEUNG Dr Kenneth CHAN Mr Vincent FANG ALA10</p>	<p><u>Division 4 – Seller to Arrange for Removal Service</u></p> <p><i>Proposed section 41 – Seller must have endorsed removal service plan</i></p> <p>Mr Andrew LEUNG enquired how the Administration could ensure that sellers of regulated electrical equipment ("REE") would provide removal services to their consumers.</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>The Administration responded that –</p> <ul style="list-style-type: none"> (a) according to the proposed section 41, a REE seller must have a removal service plan endorsed by the Director; (b) while REE sellers did not have to provide removal services directly, they were required to specify in their removal service plans the relevant service providers (which might or might not be the future operator of the Waste Electrical and Electronic Equipment Treatment and Recycling Facility ("WEEETRF")) and make necessary arrangements with them to provide the services; and (c) REE sellers were required to provide relevant information about the removal services to consumers and keep relevant records. <p>Dr Kenneth CHAN expressed concern that a consumer might not request a REE seller to provide removal services because the consumer might not be aware of –</p> <ul style="list-style-type: none"> (a) the availability of removal service under which for every item of REE purchased by a consumer, an old equipment of the same class could be removed from a premise designated by the consumer for proper disposal at no extra charge on the consumer; and (b) whether a REE seller had fulfilled the requirement to formulate a removal service plan for endorsement by the Director. <p>The Administration advised that –</p> <ul style="list-style-type: none"> (a) according to the proposed section 42(4), if a seller distributed any REE to a consumer, the seller was required to notify the consumer in writing of the seller's obligation in relation to removal services before entering into the relevant contract of distribution; (b) the requirements did not prevent any transactions from being done via, say, a 	<p>Admin (paragraph 5(a) of the minutes refers)</p>

Time marker	Speaker	Subject(s)	Action required
		<p>telephone order, in which case REE sellers might notify consumers of the removal terms in writing by electronic means (e.g. telephone text message); and</p> <p>(c) detailed notification requirements would be prescribed by regulation to be made under the proposed section 44.</p> <p>The Chairman and Dr Kenneth CHAN urged the Administration to –</p> <p>(a) design a standard form for REE sellers to set out their removal service plans for endorsement by the Director; and</p> <p>(b) require REE sellers to display the endorsed removal service plans in a conspicuous position in their retail shops and/or promulgate the plans online, and lay down the detailed arrangements for the removal services on the receipts to their customers.</p> <p>The Administration took note of the above suggestions.</p> <p>In response to Mr Vincent FANG and ALA10's enquiries, the Administration advised that –</p> <p>(a) the date of commencement of the Promotion of Recycling and Proper Disposal (Electrical Equipment and Electronic Equipment) (Amendment) Bill 2015 ("the Bill") and enforcement of the penalty provisions would tie in with the development of WEEETRF which was expected to come into operation in the second half of 2017. However, the registration of REE suppliers might be conducted before implementation of the Bill;</p> <p>(b) subject to enactment of the Bill, the necessary subsidiary legislation to provide for the operational details of the mandatory producer responsibility scheme ("PRS") on waste electrical and electronic equipment ("WEEE") and prescribe the recycling fees for REE would be submitted to the Legislative Council for approval in due course;</p>	

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		<p>(c) consumers might hand over any used REE to a community green station or other collectors including charitable organizations before WEEETRF came into operation;</p> <p>(d) the Design, Build and Operate contract of WEEETRF had been awarded through a tendering exercise and relevant construction works were in progress; and</p> <p>(e) the recycling fees for REE would be determined at full cost recovery basis taking into account the development and operation costs for WEEETRF and other management and administrative matters. The indicative range of the fees was around \$100 for a small piece of REE and around \$200 to \$250 for a bulky one.</p> <p>The Chairman and Mr Vincent FANG requested the Administration to provide, before completion of scrutiny of the Bill, an updated ballpark estimation on the amount of the recycling fee payable for each of the eight classes of REE proposed in Schedule 6 to the Bill.</p>	<p>Admin (paragraph 3 of the minutes refers)</p>
<p>004750 - 011522</p>	<p>Chairman Administration ALA10 Dr Kenneth CHAN</p>	<p><i>Proposed section 42 – Seller must arrange for removal service</i></p> <p>In light of the comment given by the Administration that the mere loss of a recycling label would not deprive a consumer the benefit of utilizing the proposed removal service, ALA10 enquired whether consumers could identify from the recycling label provided by REE suppliers/sellers the particular class of the REE purchased belonged to.</p> <p>The Administration explained that –</p> <p>(a) detailed designs of the recycling label would be worked out after consultation with the recycling trade and other relevant stakeholders;</p> <p>(b) public education would be stepped up to help consumers familiarize with the eight classes of REE proposed in Schedule 6 to the Bill;</p>	

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		<p>(c) the removal services to be arranged by REE sellers would be on a "new for old" basis, irrespective of whether a recycling label was affixed to the equipment to be removed; and</p> <p>(d) while WEEETRF was contractually obliged to accept any e-waste, consumers might hand over any used REE to a community green station or other private collectors/recyclers.</p> <p>The Chairman and Dr Kenneth CHAN expressed concern that a consumer might not be aware of –</p> <p>(a) whether and when an explicit request for the removal service should/could be made to a REE seller (e.g. whether the request could only be made at the point of sale by the purchaser but not upon delivery of a REE by the seller to the designated premise); and</p> <p>(b) whether a seller would remove a used REE from a premise designated by the consumer if the recycling label for the old equipment was lost or no longer available.</p> <p>The Administration advised that –</p> <p>(a) consumers should make an explicit request to REE sellers for removal services;</p> <p>(b) under the proposed section 42(4), if a seller distributed any REE to a consumer, the seller was required to notify the consumer in writing of the seller's obligation in relation to removal services before entering into the relevant contract of distribution, and under the proposed section 42(5), the seller would be required to notify the consumer in writing of any removal terms before entering into the contract of distribution; and</p> <p>(c) the mechanism for removal service arrangements would be worked out after consultation with the recycling trade and other relevant stakeholders, and public education would be stepped up to help</p>	<p>Admin (paragraph 5(b) of the minutes refers)</p>

Time marker	Speaker	Subject(s)	Action required
		<p>consumers familiarize with the relevant arrangements.</p> <p>ALA10 enquired whether there would be circumstances where, despite a consumer had bought a piece of REE from a seller and that the proposed recycling fee for the equipment had been paid to the Government, no removal service under the proposed section 42 would be provided to the consumer if, at the time when the consumer would like to remove the piece of REE, the consumer did not purchase any piece of new REE which belonged to the same class as that of the piece of REE which the consumer had bought from the seller. The Administration was also invited to explain the relevant rationale to members.</p> <p>The Administration explained that –</p> <p>(a) when a consumer purchased a piece of new REE from a seller, the seller would be required to arrange the removal of an old equipment of the same class (if any), irrespective of whether the old equipment was purchased from the seller; and</p> <p>(b) the proposed recycling fee to be collected from registered suppliers sought to recover the full costs of the mandatory PRS on WEEE. The fee would not be reimbursed to the suppliers even if consumers did not use any removal service to be arranged by REE sellers.</p>	
011523 - 011801	Chairman Administration	<p><i>Proposed section 43 – Proper disposal of electrical equipment or electronic equipment removed</i></p> <p>Members raised no query to the above proposed section.</p>	
011802 - 013053	Chairman Administration ALA10 Dr Kenneth CHAN	<p><u><i>Division 5 – Regulations</i></u></p> <p><i>Proposed section 44 – Secretary may make regulations for Part 4</i></p> <p>Discussion on the basis of prescribing the proposed recycling fee according to the proposed section 44(3) with reference to the correspondences between ALA10 and the</p>	

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		<p>Administration (Paragraph (e) of LC Paper No. CB(1)712/14-15(02) and paragraph 5 of LC Paper No. CB(1)712/14-15(03))</p> <p>The Administration stressed that the proposed recycling fee sought to raise funds to finance the proper waste management of e-waste, thus reflecting the "polluter pays" principle. The Administration would review the recycling fee from time to time to ensure that it was set at an appropriate level to achieve the environmental objective in addition to seeking the full cost recovery of the operation of the mandatory PRS on WEEE. The recycling fee would be prescribed by regulation to be made under the proposed section 44(1)(c).</p> <p>After discussion, the Administration was requested to –</p> <p>(a) clarify the principles and considerations for determining the recycling fee, and provide the relevant legal justifications on not requiring the amount of the recycling fee to be limited with reference to the costs referred to in the proposed section 44(3);</p> <p>(b) consider whether it was necessary to amend the proposed section 44(3) to clearly reflect the Administration's policy intent if the recycling fee was to be determined at full cost recovery basis taking into account the development and operation costs of WEEETRF and other management and administrative matters; and</p> <p>(c) consider amending the reference of "無須參照" in the Chinese rendition for the proposed section 44(3) to tally with its corresponding English text of "not limited by reference to".</p>	<p>Admin (paragraph 2(a) to (c) of the minutes refers)</p>
013054 - 013222	Chairman Administration	<p><i><u>Division 6 – Supplementary Provisions</u></i></p> <p><i>Proposed section 45 – Exemptions</i></p> <p><i>Proposed section 46 – Secretary may amend Schedules 6 and 7</i></p> <p>Members raised no query to the above proposed sections.</p>	

Time marker	Speaker	Subject(s)	Action required
013223 - 014109	Chairman Administration	<p><u>Clause 9 – Schedules 6 and 7 added</u></p> <p><i><u>Schedule 6 – Regulated Electrical Equipment to which this Ordinance Applies</u></i></p> <p><i><u>Schedule 7 – Regulated Electrical Equipment Exempted from Certain Provisions</u></i></p> <p>Members raised no query to the above schedules.</p>	
014110 - 014326	Chairman Administration	<p>Part 3 – Amendments to Waste Disposal Ordinance</p> <p><u>Clause 10 – Waste Disposal Ordinance amended</u></p> <p><u>Clause 11 – Section 2 amended (interpretation)</u></p> <p>Members raised no query to the above clauses.</p>	
014327 - 020022	Chairman Administration ALA10	<p><u>Clause 12 – Section 16 amended (prohibition of unauthorized disposal of waste)</u></p> <p>Discussion on the proposed licensing control for the disposal of e-waste.</p> <p>After discussion, the Administration was requested to explain the following matters as detailed in ALA10's letter dated 28 July 2015 to the Administration –</p> <p>(a) the circumstances to which the proposed section 16(2A) would be applicable; and</p> <p>(b) the rationale for applying for a licence under the proposed section 16(2A) even though section 16(1) did not apply to the use of land or premises under the circumstances in the proposed section 16(2)(ea) to (ec).</p>	Admin (paragraph 6 of the minutes refers)
020023 - 020153	Chairman Administration	Meeting arrangements	