

**Subcommittee on
Promotion of Recycling and Proper Disposal
(Electrical Equipment and Electronic Equipment)
(Amendment) Ordinance 2016 (Commencement) Notice 2017 and
Product Eco-responsibility
(Regulated Electrical Equipment) Regulation**

This note sets out the Government's response to the issues raised by Subcommittee members at the meetings on 16 and 23 May 2017.

List of follow-up actions arising from the meeting on 16 May 2017

(a) *provide information on the contractual obligations of the operator of the Waste Electrical and Electronic Equipment Treatment and Recycling Facility regarding the removal service for regulated electrical equipment ("REE"), including whether the operator is obliged to provide the said service within three days after the consumer/REE supplier has made the relevant request*

2. Through open tender, the Government awarded contract to ALBA Integrated Waste Solutions Hong Kong Limited ("ALBA-IWS") to design, build and operate ("DBO") the Waste Electrical and Electronic Equipment Treatment and Recycling Facility ("WEEETRF"). Amongst other things, the DBO contract requires ALBA-IWS to provide support to sellers of regulated electrical equipment ("REE") to facilitate their compliance with the statutory requirement to arrange removal service for REE consumers in Hong Kong. The relevant contractual requirements are outlined as follows –

- (a) ALBA-IWS must provide a free removal service, at the request of an REE seller, to collect an old REE item from the premises of a consumer who has purchased from the seller a new REE item of the same class;
- (b) ALBA-IWS must make necessary arrangements with the seller concerned to receive requests for a removal service, to confirm the timing of the removal service, to carry out the removal service, and to confirm and document the completion of the removal service; and

- (c) ALBA-IWS must provide the removal service at a time as agreed with the seller and confirmed in writing, with the requisite condition that there is an advance notice of no less than three working days before the conduct of the removal service.

3. Notwithstanding the above contractual provisions between ALBA-IWS and the Government, an REE seller might discuss with ALBA-IWS on its own removal terms to reflect its intended level of customer service. However, if its intended level of customer service exceeds the scope of service as required under the DBO contract, the Government will not pay ALBA-IWS any extra cost incurred, and ALBA-IWS must not collect any charge from the consumer for any old REE item collected through the statutory removal service.

- (b) *explain the requirements that a recycler should meet in order to obtain a waste disposal licence under the new licensing regime in respect of e-waste*

4. The licensing control for disposal of e-waste serves to ensure that the e-waste will be properly disposed of in Hong Kong in an environmentally sound and safe manner, and the operation standards of the recycling trade will be enhanced. The requirements for a waste disposal licence (“WDL”) for e-waste are set on the basis of the relevant provisions in the existing Waste Disposal Ordinance (Cap. 354) (“WDO”) in order to achieve this objective. The application mechanism is similar to that for the processing of WDLs for chemical waste and clinical waste. A WDL application for e-waste must be made in a specified form and with an application fee¹ together with an operational plan that will set out how the operation of the recycling facility will comply with the relevant requirements. The major requirements for applying a WDL for e-waste are set out below:-

- (a) the application must only be made by the owner or lawful occupier of the land or premises used for the conduct of the waste disposal operation in question.

¹ Prescribed under Schedule 2 to the Waste Disposal (Permits, Authorizations and Licences)(Fees) Regulation (Cap. 354D), the fees upon application for a new WDL under section 21(2) of the WDO or a renewal of WDL under section 23(2) of the WDO, for provision of a waste disposal service, are \$29,820 and \$14,840 respectively.

To this end, the Environmental Protection Department (“EPD”) will seek necessary advice from the Lands Department and the Land Registry regarding the identity of the applicant as appropriate;

- (b) the waste disposal operation must be able to achieve all the limits, requirements, quality standards and quality objectives prescribed in the Air Pollution Control Ordinance (Cap. 311), the Water Pollution Control Ordinance (Cap. 358) and the Noise Control Ordinance (Cap. 400);
- (c) any emission or discharge arising from the waste disposal operation concerned must not pose a danger to public health, or become a source of pollution to the environment or cause nuisance to the neighbouring area. Pollution control measures have to be put in place to reduce the releases of potential pollutants. Environmental monitoring for pollutants that may be present has to be conducted according to the operation plan;
- (d) there should be proper treatment, reprocessing or recycling of e-waste. The operation, involving various dismantling, detoxification and recovery processes, should be capable of achieving a recycling rate of no less than 80% by weight of the e-waste received. Any chemical waste generated should be properly handled in accordance with the prevailing laws;
- (e) the site of the operation concerned has to comply with the applicable planning requirements on land use, and EPD will accordingly seek advice from the Planning Department in examining the applications;
- (f) there should be roofed structure and paved areas for proper sheltering and containment. The relevant structural safety requirements must be met, and EPD will seek advice from the Buildings Department (“BD”) in this regard. In addition, the site must be equipped with fire safety installations (including emergency vehicle access, emergency exit, fire extinguisher(s), etc.), and EPD will seek advice from the Fire Services

Department; and

- (g) there should be proper records and audits on the operation and management of the recycling facility, including quantity of e-waste treated, recycled or disposed of at the facility, and the recycling rate attained.

EPD will impose suitable terms and conditions which will be tailored having regard to the specific circumstances of the premises concerned including its location, the quantity and types of e-waste involved and the processes that will be employed, etc.. As noted above, in examining a WDL application, EPD will circulate the application materials to the relevant departments for advice as appropriate.

- (c) ***provide a summary of the views of the Advisory Council on the Environment in relation to the Product Eco-Responsibility (Regulated Electrical Equipment) Regulation and the licensing control for disposal of e-waste***

5. In accordance with section 44 of the Product Eco-Responsibility Ordinance (Cap 603) (“PERO”), the Advisory Council on the Environment (“ACE”) has been consulted before the Product Eco-responsibility (Regulated Electrical Equipment) Regulation (“REE Regulation”) was made. ACE members discussed this subject at their meeting of 13 February, 2017 and generally supported the implementation of the producer responsibility scheme on waste electrical and electronic equipment (“WPRS”) and the proposed REE Regulation. They also provided comments on the operation of the levy collection mechanism and the arrangements of removal services. Some Members also noted that the proposed licensing control would facilitate proper recycling locally and bring opportunities to the recycling industry. It would also promote the recycling and proper disposal of e-waste and enhance its import/export control whilst noting that some existing recyclers might not be able meet the new licensing requirements.

List of follow-up actions arising from the meeting on 23 May 2017

- (a) *implementation timetable of the new licensing regime in respect of e-waste ("new licensing regime"), including (i) when the Administration will make public the detailed requirements and application procedures for a waste disposal licence in respect of e-waste, (ii) the estimated processing time for each application, (iii) when the Administration will introduce the relevant subsidiary legislation to bring into effect the remaining provisions of the Waste Disposal Ordinance (Cap. 354) ("WDO") relating to the new licensing regime, and (iv) when the prohibition against disposal of e-waste without a licence under section 16 of WDO will commence*
- (b) *whether the Administration would consider deferring commencement of the prohibition against disposal of e-waste without a licence or introducing a grace period, so that the recycling trade will have more time to upgrade their facilities/operations in order to meet the relevant licensing requirements, and can continue to engage in e-waste recycling pending approval of their licence applications, and the reasons if the Administration would not consider so*

6. As mentioned in the Legislative Council Brief, subject to the progress of the processing of WDL applications, we plan to introduce a further commencement notice at the start of the 2017/18 legislative session to provide for the commencement date of the new licensing regime, with a view to commencing the licensing control and the import/export permit control by end 2017. As part of our preparatory work, we have been stepping up our publicity efforts since the enactment of the Promotion of Recycling and Proper Disposal (Electrical Equipment and Electronic Equipment) (Amendment) Ordinance 2016 ("Amendment Ordinance") for recyclers and traders of e-waste and other associated service providers (e.g. shipping companies). Trade briefings on the permit and licensing requirements under WDO have also been held. We have also arranged seminars for professional bodies to share their technical know-how in recycling of e-waste, so as to facilitate recyclers to upgrade their operational procedures in complying with the requirements.

7. The requirements that an applicant should meet in order to obtain a WDL in respect of e-waste under the new licensing regime are set out in paragraph 4 above. During the deputation session on 23 May

2017, after taking into account views of some trade representatives, Members have suggested that more time be allowed for the trade to prepare for the commencement of the licensing control. In this regard, we have reviewed the preliminary information provided by some prospective applicants² and envisage that some existing operators might have to obtain prior approval of the Town Planning Board and/or BD in meeting the relevant licensing requirements. Against this backdrop, in order to allow more time for certain operators to complete the necessary procedures, we would consider deferring the commencement of the new licensing regime to a later date having regard to the possible implications. We will issue a WDL for the disposal of e-waste only after all the requirements set out in paragraph 4 have been met. The plan to commence the import/export permit control for e-waste would remain unchanged at December 2017. Application for a permit in respect of the import or export of e-waste will be accepted after the commencement of the new permit control. We will set out the specific dates in a further commencement notice to be gazetted.

(c) *the views and concerns expressed by the deputations at the meeting or in their written submissions*

8. The views and concerns expressed by the deputations (including written submissions) may be broadly grouped into three categories:

- (a) **General:** there was support from different individuals and organisations for the early implementation of the WPRS, including the Government's initiative to develop the WEEETRF, which will facilitate the development of a circular economy and benefit the overall development of the local recycling industry. To this end, we will continue with our preparatory work with a view to ensuring the timely commissioning of the WEEETRF in mid-2017 and progressively bringing the WPRS into operation in 2017 and 2018. In particular, a programme of publicity and public education initiatives (including posters, website and Announcements in the Public Interest) will be

² Subject to the completion of negative vetting on the Promotion of Recycling and Proper Disposal (Electrical Equipment and Electronic Equipment) (Amendment) Ordinance 2016 (Commencement) Notice 2017, we will accept formal applications for waste disposal licences in respect of the disposal of e-waste starting from 19 June 2017. However, we have been encouraging prospective applicants to seek our early advice on the materials that they need to pull together in anticipation of making such application.

implemented by phases to publicise the different features of the WPRS.

- (b) ***Downstream arrangements:*** there were concerns about the licensing requirements for the WDL for e-waste would be set too high. Sufficient time should be allowed before bringing the new licensing control into effect or some existing operators would not be able to continue their operation. Our responses are set out in paragraphs 4 to 7 above.

- (c) ***Upstream arrangements:*** some upstream stakeholders have raised observations on certain aspects of the operational details for suppliers and sellers of REE. Our responses are set out at **Annex A**. Having regard to the comments received, we also plan to introduce some amendments to the REE Regulation as outlined in **Annex B**.

Environmental Protection Department
May 2017

**Key Comments of Deputations and Government's Response:
Upstream Issues**

***Submission of Returns and Payment of Recycling Levies
(Sections 10-14 and 22-26 of the REE Regulation)***

There were requests for clarifications about the particulars of information that have to be included in the returns. As explained in the Legislative Council Brief, in order to enable the levy collection mechanism and associated monitoring to function well, each return submitted by a registered supplier must contain relevant inventory information for (i) REE (for the Director of Environmental Protection (“DEP”) to determine the amount of recycling levy payable by the supplier) and (ii) recycling labels (in facilitation of the provision of labels under section 36(1) of the PERO). Relevant details have been set out under section 14 of the REE Regulation. We will offer advice to suppliers as necessary to facilitate their preparation of a return.

2. **As regards suggestions to review the level of the recycling levy,** upon implementation of the WPRS, we will conduct fees and charges review in accordance with the Government's established policy. During the reviews, we will take into account various factors that may affect the level of recycling levy, e.g. inflation rate, participation rate in the recycling of REE, and fluctuations in the sales volume of REE.

***Record Keeping Relating to Returns
(Section 15 of the REE Regulation)***

3. **There were requests for clarifications about the record-keeping requirements.** As required under section 38(4) of the PERO, a registered supplier must keep records and documents relating to a return for five years after the submission of the return. Such records and documents should include all records, invoices, receipts, delivery notes, inventory records or any other documents that contain sufficient details to enable DEP to readily verify the information reported in the returns. We will offer advice to suppliers as necessary to facilitate their keeping of records. Electronic records are acceptable for the purpose of the record-keeping requirements.

Submission of Audit Report
(Sections 16-21 and 25 of the REE Regulation)

4. **There were suggestions for providing synergies with the sellers' established audit exercises.** To this end, under section 39(1) of the PERO, a registered supplier must submit an audit report to the DEP every year in respect of the returns he/she submitted. The audit report must be prepared by a certified accountant (practicing) as defined by section 2(1) of the Professional Accountant Ordinance (Cap. 50), who must not be an employee of the registered supplier. In the REE Regulation, we have already allowed certain flexibility such that a seller may opt for the audit year to end on 31 March, 30 June, 30 September or 31 December.

Provision of Recycling Labels and Receipts
(Sections 9, 27 and 28 of the REE Regulation)

5. **There were suggestions of allowing the computer trade to provide self-printed labels.** Under the Amendment Ordinance, a registered supplier and a seller may only discharge his/her liability in respect of the provision of recycling label using a recycling label provided by the DEP. Under our current proposal, the recycling label is not required to be provided by way of affixation onto the REE concerned. This has already provided sufficient flexibility to the trades to cater for their different modes of operation.

6. **There were other suggestions of requiring the recycling label to be affixed onto the REE before it is distributed to the Hong Kong market.** We understand that there could be operational challenges for the trades to affix a label onto the REE before it is distributed. Taking into account the recommendations of a Business Impact Assessment ("BIA") study conducted in 2010-11¹, we have been developing the WPRS on the basis that the labels will not have to be affixed by the suppliers or sellers by the time of distribution of REE. We will keep the requirement under review taking into account practical experience.

7. **In respect of the provision of receipts by an REE seller,**

¹ According to the BIA study, having label affixation will potentially require dedicated product line and incur additional production cost. The label affixation process may also cause time delay and extra labour cost owing to checking of the goods status and unwrapping of packaging. The study recommended that consumers should be allowed to affix the labels by themselves.

there were suggestions of streamlining the wording prescribed under Schedule 2 to the REE Regulation. The objective of requiring the relevant levy to be set out in the receipt is to provide such information to consumers to achieve a “visible fee” effect, though the recycling levy is collected at the upstream. We consider that our proposed wording would better serve this purpose.

Removal Service
(Sections 29-41 of the REE Regulation)

8. **There were suggestions of (i) allowing more collectors to be specified in the removal service plan and (ii) allowing the seller to provide removal service if needed.** The purpose of specifying a “default collector” is to provide certainty and reliability with regard to the removal service, which will also facilitate the sellers’ day-to-day arrangement. The additional collectors may act as back-up if the default collector is unwilling or unable to provide the requested removal service. Without prejudicing this objective, we have no in-principle objection to allow more flexibility to cater for practical circumstances envisaged by the sellers. Subject to the support of the Subcommittee, we plan to propose amendments to the REE Regulation to incorporate the suggestions.

9. **There were requests for clarifications about the requirement under the new section 43(1)(a) of the PERO** for the collector to ensure that any e-waste collected under a removal service plan must be transferred to a recycler specified in the plan within a “reasonable time”. We consider that it would not be difficult for a case of non-compliance to be established by the facts involved. For that matter, it would be impractical to prescribe any time limit for the transfer process.

10. **There were suggestions of shortening the lead time for a consumer to decide on the need of a removal service.** As we understand from further discussion with the trades, provision of a long lead time for the consumer to give consideration to the matter might not be useful because such a decision may usually be made by a consumer “on the spot”. Subject to the support of the Subcommittee, we plan to propose amendments to the REE Regulation to incorporate the suggestions.

Outline for Amendments to the REE Regulation

1. The seller may specify up to 5 (instead of 3) collectors in his/her removal service plan.
2. The seller may indicate in the removal service plan whether he/she will or will not provide removal service in case none of the collectors specified under the plan is able or willing to provide the service. If so –
 - the seller must also have written undertaking from a recycler to provide treatment, reprocessing and recycling service for the old REE collected by the seller;
 - for cases where the seller provides removal service, the seller must keep records of written confirmation from the respective collectors that they were unable or unwilling to provide the service and the reasons; and
 - the seller must ensure proper disposal of e-waste he/she collected, (i.e. to transfer the old REE to the specified recycler within a reasonable time and be accepted by that recycler).
3. A request for a removal service must be made by the consumer by the time when the seller and the consumer enter into a contract of distribution.