

立法會
Legislative Council

LC Paper No. CB(1)914/19-20
(These minutes have been seen
by the Administration)

Ref : CB1/BC/2/18/2

**Bills Committee on Waste Disposal (Charging for Municipal Solid Waste)
(Amendment) Bill 2018**

**Minutes of 15th meeting
held on Wednesday, 10 June 2020, at 8:30 am
in Conference Room 3 of the Legislative Council Complex**

Members present : Hon MA Fung-kwok, SBS, JP (Chairman)
Hon Steven HO Chun-yin, BBS (Deputy Chairman)
Hon Tommy CHEUNG Yu-yan, GBS, JP
Hon CHAN Hak-kan, BBS, JP
Hon Frankie YICK Chi-ming, SBS, JP
Hon WU Chi-wai, MH
Hon YIU Si-wing, BBS
Hon Charles Peter MOK, JP
Hon KWOK Wai-keung, JP
Dr Hon Fernando CHEUNG Chiu-hung
Hon IP Kin-yuen
Hon Elizabeth QUAT, BBS, JP
Hon POON Siu-ping, BBS, MH
Hon CHU Hoi-dick
Hon SHIU Ka-fai, JP
Hon Wilson OR Chong-shing, MH
Hon CHAN Chun-ying, JP
Hon HUI Chi-fung
Hon Kenneth LAU Ip-keung, BBS, MH, JP
Dr Hon CHENG Chung-tai
Hon Jeremy TAM Man-ho
Hon Vincent CHENG Wing-shun, MH, JP
Hon Tony TSE Wai-chuen, BBS

Members absent : Hon Paul TSE Wai-chun, JP
Hon Kenneth LEUNG
Ir Dr Hon LO Wai-kwok, SBS, MH, JP
Hon CHUNG Kwok-pan
Dr Hon Junius HO Kwan-yiu, JP
Hon Tanya CHAN

Public Officers attending : **For item I**

Mr TSE Chin-wan, BBS, JP
Under Secretary for the Environment

Mr Bruno LUK
Deputy Director of Environmental Protection (Special Assignments)
Environmental Protection Department

Mr Kenneth CHAN
Assistant Director (Special Assignments)
Environmental Protection Department

Mr CHENG Tak-kuen
Assistant Director (Waste Infrastructure Planning)
Environmental Protection Department

Mr Lawrence CHEUNG
Principal Environmental Protection Officer (Regional West)
Environmental Protection Department

Mr Ricky LIU
Principal Environmental Protection Officer
(Community Relations)
Environmental Protection Department

Mr Patrick LIU
Principal Environmental Protection Officer (Waste Transfer and Development)
Environmental Protection Department

Miss Jessica CHENG
Senior Administrative Officer (Special Duties Division)
Environmental Protection Department

Mr LAI Siu-kwong
Senior Superintendent (Municipal Solid Waste
Charging)/Acting Assistant Director (Operations)
Food and Environmental Hygiene Department

Mr Gilbert MO
Deputy Law Draftsman
Department of Justice

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

Staff in attendance : Mr Cliff IP
Assistant Legal Adviser 8

Mr Jason KONG
Senior Council Secretary (1)1

Action

I. Meeting with the Administration

Matters arising from previous meeting

(LC Paper No. CB(1)739/ — List of follow-up actions arising from
19-20(01) the meeting on 3 June 2020

LC Paper No. CB(1)739/ — Administration's response to the list of
19-20(02) follow-up actions arising from the
meeting on 3 June 2020)

Clause-by-clause examination of the Bill

(LC Paper No. CB(3)97/ — Waste Disposal (Charging for
18-19 Municipal Solid Waste) (Amendment)
Bill 2018 ("the Bill")

LC Paper No. CB(1)205/ — Marked-up copy of the Bill prepared by
18-19(01) the Legal Service Division (Restricted
to Members)

LC Paper No. CB(1)742/ — Information note provided by the
19-20(01) Administration

LC Paper No. CB(1)205/ — Assistant Legal Adviser's letter dated

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- 18-19(02) 4 December 2018 to the Administration
- LC Paper No. CB(1)396/ — Administration's reply to Assistant
18-19(01) Legal Adviser's letter dated 4 December
2018
- LC Paper No. CB(1)875/ — Assistant Legal Adviser's letter dated
18-19(03) 25 March 2019 to the Administration
- LC Paper No. CB(1)1000/ — Administration's reply to Assistant
18-19(04) Legal Adviser's letter dated
25 March 2019
- File Ref: EP CR/9/65/3 — Legislative Council Brief
- LC Paper No. LS13/18-19 — Legal Service Division Report)

(Post-meeting note: the Deputy Chairman's letter dated 9 June 2020 to the Chairman (Chinese version only), which was tabled at the meeting, was circulated to members on 11 June 2020, vide LC Paper No. CB(1)748/19-20.)

Discussion

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

Follow-up actions to be taken by the Administration

2. The Administration was requested to consider taking the following actions:
 - (a) if the Second Reading debate on the Bill was resumed in the current legislative session, the Secretary for the Environment should consider stating in his speech at the debate with a view to assuring Members that the Administration would implement a pilot scheme on free collection service of food waste generated from some domestic and commercial and industrial sectors at selected areas by the end of 2020 and, subject to the result of the pilot scheme and with the development of more food waste treatment facilities in the long term, plan to extend the service to the whole territory at a later stage;

Action

- (b) consider amending the proposed section 20K(2)(a) of the Waste Disposal Ordinance (Cap. 354) to expressly state the scope of exemption from the proposed section 20K(1), such as to expressly specify the representative/deputy of and/or a person authorized by the Director of Food and Environmental Hygiene as exempted persons; and
- (c) consider amending the proposed section 20K(2) of Cap. 354 to enhance its comprehensibility, such as by considering suitably combining its paragraphs (a) and (b), or amending the Chinese text of paragraph (b).

(Post-meeting note: the Chinese and English versions of the Administration's written response were circulated to members on 19 and 22 June 2020 respectively, vide LC Paper No. 787/19-20(03).)

II. Any other business

- 3. There being no other business, the meeting ended at 10:28 am.

Council Business Division 1
Legislative Council Secretariat
29 July 2020

Bills Committee on Waste Disposal (Charging for Municipal Solid Waste) (Amendment) Bill 2018

**Proceedings of the 15th meeting
on Wednesday, 10 June 2020, at 8:30 am
in Conference Room 3 of the Legislative Council Complex**

Time marker	Speaker	Subject	Action required
<i>Agenda Item I – Meeting with the Administration</i>			
001705 – 002019	Chairman Mr Tommy CHEUNG	<p>Members noted the Deputy Chairman's letter dated 9 June 2020 to the Chairman as tabled at the meeting. In his letter, the Deputy Chairman expressed concern about the Bills Committee's progress of scrutiny work and requested the Chairman to consult members on the way forward of the Bills Committee.</p> <p>Mr CHEUNG considered that the Bills Committee should discuss the way forward as early as possible, preferably at the current meeting.</p> <p>The Chairman decided that the issue would be dealt with at a later stage, so that members would be given sufficient advance notice.</p> <p>[<i>Post-meeting note:</i> the above letter was circulated to members on 11 June 2020, vide LC Paper No. CB(1)748/19-20. By way of the same circular, members were consulted on whether the Bills Committee should discontinue its scrutiny work on the Waste Disposal (Charging for Municipal Solid Waste) (Amendment) Bill 2018 ("the Bill") and report to the House Committee its decision to discontinue its work. In the light of the consultation results, the Chairman subsequently directed that the Bills Committee would discuss its way forward at the meeting on 22 June 2020.]</p>	
<p><u>Clause-by-clause examination of the Bill</u> [<i>The Bill (LC Paper No. CB(3)97/18-19)</i>]</p>			
002020 – 003311	Chairman Administration Mr Tommy CHEUNG	<p>The Administration briefed members on its response to the list of follow-up actions arising from the meeting on 3 June 2020 (LC Paper No. CB(1)739/19-20(02)).</p> <p>Part 2 – Amendments to Waste Disposal Ordinance</p> <p><u>Clause 3 – Section 2 amended (interpretation)</u></p> <p>Discussion on the differential treatment for "waste collection officers" and other persons (including frontline cleaning workers who were not government employees, and waste producers) in respect of the proposed offences under the Bill.</p>	

Time marker	Speaker	Subject	Action required
		<p>The Administration briefly explained the scope of application of the proposed sections 20K, 20L, 20M, 20N, 20O and 20P of the Waste Disposal Ordinance (Cap. 354), which sought to provide for six offences relating to non-compliance with the proposed charging scheme for the disposal of municipal solid waste ("MSW") ("the proposed charging scheme"), and would further explain these in detail and in context when the Bills Committee examined these provisions later.</p>	
003312 – 004912	<p>Chairman Administration Mr Tommy CHEUNG</p>	<p>Mr CHEUNG asked:</p> <p>(a) whether the Administration had considered/would consider collecting source-separated food waste from the commercial and industrial ("C&I") sectors free-of-charge (regardless of whether such food waste would be delivered to a treatment facility) and exempting such food waste from the proposed MSW charges, i.e. charging either by pre-paid designated bags ("DBs") or gate fees (if the Bill was passed), with a view to promoting source separation of food waste by the C&I sectors; and</p> <p>(b) whether the provisions of the Bill would provide for the exemption mentioned in (a).</p> <p>The Administration responded that:</p> <p>(a) the primary policy objective of the proposed charging scheme was to require the public to make use of DBs or designated labels ("DLs") for disposing of MSW at specified disposal points. As a waste producer would be incentivized to reduce the amount and size of the DBs he/she used in order to save resources and cost, it was expected that the proposed charging scheme would help promote the separation of recyclables from the waste stream (if the Bill was passed);</p> <p>(b) according to the provisions of the Bill, recyclables would not be subject to the proposed MSW charges if they would not be disposed of at a scheduled facility (if the Bill was passed); and</p> <p>(c) the Administration would implement a pilot scheme on free collection service of food waste generated from some domestic and C&I sectors at selected areas by the end of 2020 and, subject to the result of the pilot scheme and with the development of more food waste treatment facilities in the long term, plan to extend the service at a later stage.</p>	

Time marker	Speaker	Subject	Action required
		<p>Mr CHEUNG requested that, if the Second Reading debate on the Bill was resumed in the current legislative session, the Secretary for the Environment ("SEN") should consider stating in his speech at the debate with a view to assuring Members that the Administration would implement the said pilot scheme and, subject to the outcome, plan to extend the free collection service of food waste to the whole territory at a later stage. The Administration advised that it would consider the request.</p>	<p>Admin (paragraph 2(a) of the minutes refers)</p>
<p>004913 – 005721</p>	<p>Chairman Administration Mr Tommy CHEUNG Deputy Chairman</p>	<p>Members did not raise any further question on clause 3.</p> <p><u>Clause 4 – Part IVB added</u></p> <p><u>Division 1 – Purpose of Part IVB</u></p> <p><i>20J. Purpose of Part IVB</i></p> <p>Mr CHEUNG and the Deputy Chairman asked about the proposed prices of DBs and DLs, and the mechanism and procedure for adjusting the MSW charging level in future (if the Bill was passed).</p> <p>The Administration responded that the proposed Schedule 14 to Cap. 354 sought to prescribe the prices of DBs and DLs, and the proposed section 33(7) sought to empower SEN to revise the MSW charges by way of a notice published in the Gazette, which would be subject to negative vetting procedure. As stated in the Legislative Council Brief (File Ref: EP CR/9/65/3), the MSW charging levels would not be adjusted in the first three years of implementation of the proposed charging scheme (if the Bill was passed). After that, if there was a proposal for adjusting the MSW charging level, the normal legislative process would be gone through.</p>	
<p>005722 – 010723</p>	<p>Chairman Mr Tommy CHEUNG Administration</p>	<p><u>Division 2 – Mandatory Use of Designated Bags or Designated Labels</u></p> <p><i>20K. Depositing non-compliant waste prohibited</i></p> <p>Mr CHEUNG and the Chairman sought elaboration on:</p> <p>(a) what a "specified bin" would be, and how members of the public could distinguish clearly a specified bin from other containers for MSW disposal (if the Bill was passed); and</p> <p>(b) whether a person would commit an offence under the proposed section 20K(1) of Cap. 354 if he/she</p>	

Time marker	Speaker	Subject	Action required
		<p>deposited small-sized waste that was not wrapped in a DB into or at the side of a litter container or a recycling bin placed at a public place (if the Bill was passed).</p> <p>The Administration explained that:</p> <ul style="list-style-type: none"> (a) at present, large waste collection bins (with a volume of 240 litres or 660 litres) were placed at refuse collection points ("RCPs") as well as bin sites in rural areas, and some members of the public had been adopting the practice of directly depositing household waste into these waste collection bins; (b) if the Bill was passed, these waste collection bins would be designated as specified bins. In accordance with the proposed section 20X of Cap. 354, a prescribed sign would be exhibited on each specified bin. The requirements for the prescribed signs would be provided for in relevant subsidiary legislation; (c) during the preparatory period to be put in place after the passage of the Bill, the Administration would conduct an intensive, community-wide publicity and public education campaign to raise public awareness of various aspects of the proposed charging scheme, including the locations where the depositing of non-compliant waste ("NCW") would be prohibited; (d) litter containers and recycling bins placed at public place (e.g. on streets) would not be designated as specified bins for the proposed charging scheme, and depositing of small-sized waste/recyclables into these facilities would not require the use of DBs. Depending on the actual circumstances, the depositing of waste at the side or on top of a litter container might constitute an offence under relevant existing regulations; and (e) in some other jurisdictions, the implementation of MSW charging was coupled with reduced numbers of litter containers and increased numbers of recycling bins at public places. The Administration would make reference to the experiences of those jurisdictions in considering expanding the local resource recovery networks and support. 	

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010724 – 011842	Mr Tommy CHEUNG Chairman Administration Deputy Chairman	Mr CHEUNG and the Deputy Chairman's concerns and the Administration's responses about: (a) potential abuse of litter containers at public places by some members of the public as a means to evade the proposed MSW charges (if the Bill was passed), (b) the frequency of emptying litter containers at public places by the Administration, and (c) the Administration's capability for law enforcement against littering and fly-tipping.	
011843 – 012417	Chairman Assistant Legal Adviser 8 ("ALA") Administration	<p>ALA pointed out that pursuant to the proposed section 20K(1) of Cap. 354, if a person ("Person A") "caused" or "permitted" another person ("Person B") to deposit NCW at the specified locations, Person A would commit an offence (if the Bill was passed). According to the Administration's written replies to his relevant questions (vide paragraph 10 of LC Paper No. CB(1)396/18-19(01) and paragraphs 3, 4 and 7 of LC Paper No. CB(1)1000/18-19(04)), Person A could be Person B's employer or a client who engaged Person B's services, etc. As the offence under the proposed section 20K(1) was proposed to be a strict liability offence (pursuant to section 31 of Cap. 354 proposed to be amended by clause 6 of the Bill), the prosecution would not need to prove that Person A had the relevant "actual knowledge... or wilful blindness like in the sense of actual suspicion on his part" as an element of the proposed offence. ALA stated that the proposed section 20K might be considered together with clause 6 of the Bill.</p> <p>The Administration advised that the drafting of the proposed section 20K served to reflect the policy objective and intended regulatory approach to catch not only a person who deposited NCW, and the drafting approach was consistent with other existing waste-related offences. The policy intent was to deter waste producers and those involved in the provision of removal services from depositing NCW.</p>	
012418 – 012733	Chairman Mr Tommy CHEUNG Administration	In response to Mr CHEUNG's enquiry, the Administration advised that the proposed section 20P of Cap. 354 sought to prohibit the depositing of NCW in a common area of any premises that was used for depositing waste pending removal from the premises for disposal.	
012734 – 013047	Chairman ALA Deputy Chairman Administration	ALA pointed out that he had sought clarification on how the following policy was reflected in the provision(s) of the Bill (paragraph 13 of LC Paper No. CB(1)205/18-19(02)): charging for oversized waste collected by the Food and Environmental Hygiene Department that could not be wrapped into a DB would be imposed through requiring the oversized waste to be affixed with a DL before disposal (as stated in paragraph 8 of the Legislative Council Brief). The Administration's response was in paragraphs 15 to 17 of	

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		<p>LC Paper No. CB(1)396/18-19(01).</p> <p>ALA noted that the Administration had previously mentioned the Taipei MSW charging system several times. For members' reference, he pointed out that, subject to any further information/statute that the Administration might provide, under Article 3 of a Taipei legislation on MSW charging ("臺北市一般廢棄物清除處理費徵收自治條例" in Chinese), large-sized waste such as abandoned household furniture would be removed through an appointment with the relevant authorities in Taipei, and such waste was exempted from Taipei's MSW charge.</p> <p>The Administration said that different jurisdictions had adopted different MSW charging arrangements having regard to their actual circumstances. The proposed charging scheme was built upon the existing MSW collection and disposal system, with a view to minimizing its impact on the public. This arrangement was proposed having regard to extensive discussions on the proposed charging scheme over the past years, including a public consultation exercise conducted in 2012 and an extensive public engagement exercise conducted by the Council for Sustainable Development completed in 2014.</p>	
013048 – 013635	Chairman ALA Deputy Chairman Administration	<p>ALA pointed out that he had sought clarification on whether a person would commit an offence under the proposed section 20K(1) of Cap. 354 (if the Bill was passed) for depositing at an RCP MSW that was (a) different dismantled parts of the same abandoned furniture firmly tied together by a rope which was attached with one DL; and (b) a table and some chairs firmly tied together with one DL attached (paragraph 14 of LC Paper No. CB(1)205/18-19(02)). There were also discussions on related issues at some past meetings of the Bills Committee.</p> <p>The Administration's reply to ALA's question was in paragraphs 18 to 20 of LC Paper No. CB(1)396/18-19(01). While it was stated in paragraph 19 that "references would be made to such factors as the structure, functions, design, overall size and quantity of the waste in question in determining whether the MSW should be considered as one or several articles", ALA asked whether the Administration would consider suitably adding the above wording to the provisions of the Bill to enhance the clarity of the conditions under which the use of only one DL would be deemed to be in compliance with the proposed charging scheme.</p> <p>The Deputy Chairman also considered that the Administration might need to enhance clarity of the Bill's provisions relating to the use of DLs.</p>	

Time marker	Speaker	Subject	Action required
		<p>The Administration responded that it would be impracticable to exhaustively prescribe the individual circumstances and criteria for defining what would constitute a piece of MSW for the purpose of determining the number of DL(s) required. The Administration considered that the proposed arrangement, i.e. one DL for each article, would be easy to understand. If the Bill was passed, the Administration would raise public awareness of the charging requirements relating to oversized waste through the intensive publicity and public education campaign. In considering the need for taking enforcement actions, enforcement staff would adopt the reasonable man standard and take into account facts and circumstances of a given case. The Administration would provide guidelines and training for enforcement staff beforehand.</p> <p>The Deputy Chairman asked whether MSW disposal in an emergency situation, such as disposal of furniture items damaged by a flood while the circumstances forbade the purchase of DLs, would be exempt from the requirement to use DL (if the Bill was passed). The Administration advised that the proposed section 20Q(1)(c) of Cap. 354 sought to provide for a defence to NCW-related offences to cater for emergency situations.</p>	
013636 – 013957	Chairman ALA Administration	<p>ALA pointed out that he had sought clarification on whether a person (say a scavenger) who untied the opening of a properly tied DB inside a specified bin in order to take away items inside the DB and then left without re-tying the DB would be considered as "depositing" that DB and the remaining waste therein, thereby contravening the proposed section 20K(1)(c) of Cap. 354 (if the Bill was passed) (paragraph 12 of LC Paper No. CB(1)205/18-19(02)). The Administration's reply was in paragraph 14 of LC Paper No. CB(1)396/18-19(01). ALA further sought clarification on whether a scavenger who took away items inside an untied DB inside a specified bin and then left without tying the DB would be considered as contravening the said proposed section.</p> <p>The Administration responded that the policy objective of MSW charging was to promote waste reduction and recycling through the use of DBs and DLs in general and inducing community-wide behavioural changes. Whether enforcement actions would be taken against individual activities such as scavenging activities that might be perceived as contravening the said proposed section would depend on the actual facts and circumstances on a case-by-case basis.</p>	

Time marker	Speaker	Subject	Action required
013958 – 014952	Chairman Administration Mr Tommy CHEUNG ALA	<p>Members noted that according to the proposed section 20K(2) of Cap. 354, the proposed section 20K(1) would not apply to (a) the Director of Food and Environmental Hygiene ("Director of FEH"); or (b) another person who was acting in the course of providing removal services at an RCP or by a waste vehicle.</p> <p>Mr CHEUNG and the Chairman sought explanation on the policy intent of specifying only the Director of FEH as an exempted person in paragraph (a) of the proposed section 20K(2).</p> <p>The Administration explained that under a common law principle, where a specified public officer was conferred powers or had duties imposed upon him or her by legislation, an act done by a public officer under the responsibility of the specified public officer was generally deemed to be done with proper delegation. The Administration therefore considered it unnecessary to expressly specify persons such as the Director of FEH's representative or deputy as exempted persons in the proposed section 20K(2)(a) of Cap. 354.</p> <p>ALA added that under another common law principle, generally speaking, a public officer would not be held criminally liable for an act done in the performance of his/her function, subject to exceptions.</p> <p>Given that in some provisions of existing legislation (such as the Public Health and Municipal Services Ordinance (Cap. 132)), the representative/deputy of and/or a person authorized by a specified public officer were expressly conferred the same powers as the specified public officer, Mr CHEUNG and the Chairman requested the Administration to consider amending the proposed section 20K(2)(a) to expressly state the scope of exemption from the proposed section 20K(1).</p>	Admin (paragraph 2(b) of the minutes refers)
014953 – 020146	Chairman Administration Mr Tommy CHEUNG	<p>In response to Mr CHEUNG's enquiry, the Administration explained that in practice, paragraph (a) of the proposed section 20K(2) of Cap. 354 would cover employees of FEHD who would be responsible for MSW collection and removal, while paragraph (b) would cover employees of private waste collectors (if the Bill was passed).</p> <p>At the request of Mr CHEUNG, the Administration undertook to consider amending the proposed section to enhance its comprehensibility, such as by considering suitably combining its paragraphs (a) and (b), or amending the Chinese text of paragraph (b).</p>	Admin (paragraph 2(c) of the minutes refers)

Time marker	Speaker	Subject	Action required
<i>Agenda Item II – Any other business</i>			
020147– 020243	Chairman	Concluding remarks	

Council Business Division 1
Legislative Council Secretariat
29 July 2020