



立法會秘書處 法律事務部
LEGAL SERVICE DIVISION
LEGISLATIVE COUNCIL SECRETARIAT

來函檔號 YOUR REF :
本函檔號 OUR REF : LS/B/4/18-19
電 話 TELEPHONE : 3919 3511
圖文傳真 FACSIMILE : 2877 5029
電 郵 EMAIL : cwkip@legco.gov.hk

By Fax (2136 3304)

25 March 2019

Mr Kenneth CHAN
Assistant Director (Charging Preparation)
Environmental Protection Department
15/F, East Wing
Central Government Offices
2 Tim Mei Avenue
Tamar, Hong Kong

Dear Mr CHAN,

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

I refer to your reply dated February 2019 (LC Paper No. CB(1)396/18-19(01)). I would be grateful if you could further clarify the following matters.

Meaning of "dispose" and "disposal", etc.

2. It is stated in paragraph 7 of your reply that, in line with the general principle of statutory interpretation, the terms "dispose" and "disposal", etc. in the proposed sections 20J(1), 20J(2) and 20Q(3)(a) of the Waste Disposal Ordinance (Cap. 354) should be construed in their ordinary meanings and in the light of the context and purpose of Cap. 354 (as amended by the Bill). It is noted that the word "disposal" means "the action of disposing of or getting rid of" (among other meanings) in Angus Stevenson (ed.). (2007). *The Shorter Oxford English Dictionary on historical principles*. 6th ed., vol. 1, Oxford University Press, p. 712. Please clarify whether this definition or any other

definition would be the ordinary meaning of "disposal" as stated in your previous reply.

Clause 4

Proposed section 20K of the Waste Disposal Ordinance (Cap. 354)

3. Concerning the proposed section 20K(1) of Cap. 354, it is stated in paragraph 10 of your reply that, "[a]s regards the term "permit", given the offence under proposed section 20K(1) is a strict liability offence (see section 31 as amended by clause 6) and having regard to the availability of statutory defences under the proposed section 20Q, the relevant permission may be express, or implied, and may include doing nothing to prevent the prohibited act from occurring". Please clarify:

- (a) with reference to relevant case authorities, whether and how "doing nothing to prevent the prohibited act from occurring" would amount to "permits to be deposited" under proposed section 20K(1); and
- (b) with reference to Justice Bokhary et al. (eds.). (2018). *Archbold Hong Kong 2019*. China, Sweet & Maxwell, p. 1145 and other relevant case authorities, whether the permitting party would need to have the relevant "actual knowledge ... or willful blindness like in the sense of actual suspicion on his part" as an element of the offence under proposed section 20K(1).

4. For a person who unties the opening of a designated bag ("DB") inside a specified bin in order to take away the soft drink cans etc. inside the DB and then leaves without re-tying the DB, it is stated in paragraph 14 of your reply that such an act is likely to constitute "depositing" for the purpose of the proposed section 20K. It is also noted that in paragraph 9 of your reply, you have stated that the term "deposits" should be construed to mean "put[s] or set[s] down in specific place ...". Please clarify, with reference to relevant case authorities, whether the person would be considered as "depositing" the relevant waste, which is at all material times at the place where the waste had first been disposed of by another person.

Proposed sections 20K, 20P, 20U etc. of the Waste Disposal Ordinance (Cap. 354)

5. It is noted that different acts of "depositing", "causing" and/or "permitting" are proposed to be criminal offences under the following proposed provisions of Cap. 354:

- (a) "depositing, causing or permitting" to be deposited non-compliant waste ("NCW") into a specified bin etc. under proposed sections 20K, 20L, 20M, 20N and 20O;
- (b) "depositing or causing" to be deposited NCW in a common area of any premises under proposed section 20P (i.e. "permitting" *per se* would not be an offence under proposed section 20P); and
- (c) selling, offering to sell or exhibiting for the purpose of sale any DB or designated label under proposed section 20U (i.e. "causing or permitting to be sold" *per se* would not be an offence under proposed section 20U).

From the perspectives of policy intent and law drafting, please explain to members the rationale for the different use of "causing" and/or "permitting" in the above provisions.

Proposed section 20L(1) of the Waste Disposal Ordinance (Cap. 354)

6. Regarding the proposed section 20L(1) of Cap. 354 which seeks to provide for an offence in respect of waste collection officers who are not employed by the Government, while not seeking to provide for a similar offence for those employed by the Government, it is stated in paragraph 24 of your reply that default in performance on the part of the waste collection officers employed by the Government (i.e. staff of the Food and Environmental Hygiene Department ("FEHD")) will be subject to disciplinary action which might have more serious implications. The Administration therefore does not consider it necessary to apply the proposed offence to FEHD's staff. Please provide, for members' reference, any other existing statutory provision(s) which provide(s) for similar differential treatment for Government employees and non-Government employees due to possible disciplinary action with more serious implications for Government employees.

Clause 6 – mental ingredients of certain offences

7. It is stated in paragraph 50 of your reply that the effect of clause 6 is to make the offences under the proposed sections 20K, 20L, 20M, 20N, 20O and 20P strict liability offences. Please clarify, with reference to relevant case authorities, whether the common law defence of "honest and reasonable mistaken belief" would be applicable in respect of the six proposed sections and the underlying rationale.

Clause 34 – charges for disposal of municipal solid waste at scheduled facilities under Part 3

8. It is noted that the proposed section 4(a)(ii) of Part 1 of the Schedule to the Waste Disposal (Refuse Transfer Station) Regulation (Cap. 354M) (under clause 34(3) of the Bill) seeks to provide for a proposed charge of \$150 for each unweighed load disposed of at a "Group 3 facility". Please clarify whether there is any corresponding item of charge under the existing Cap. 354M, and how that proposed amount of \$150 is arrived at.

I would appreciate your reply in both English and Chinese as soon as practicable, preferably by 10 April 2019.

Yours sincerely,



(Cliff IP)
Assistant Legal Adviser

c.c. Department of Justice
(Attn: Mr Vincent FUNG, Government Counsel (Fax: 3918 4613))
Legal Adviser
Senior Assistant Legal Adviser 1
Clerk to the Bills Committee