



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/1/20-21  
電 話 TELEPHONE : 3919 3513  
電 郵 EMAIL : elec@legco.gov.hk

By Email (jessicaykcheng@epd.gov.hk)

24 June 2021

Ms Jessica CHENG  
Assistant Director (Waste Reduction Policy)  
Environmental Protection Department  
15/F, East Wing, Central Government Offices  
2 Tim Mei Avenue, Tamar  
Hong Kong

Dear Ms CHENG,

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

We refer to your proposed amendments to the captioned Bill and your replies to our letters dated 4 December 2018 and 25 March 2019 ("Letters"). We would like to seek the following information to help members to further scrutinize the Bill and the proposed amendments thereto.

Difference in treatment between Government and non-Government-employed waste handler

2. The proposed section 20L of the Waste Disposal Ordinance (Cap. 354) seeks, among others, to prescribe a criminal offence for any non-Government-employed waste handler (such as an employee of an outsourced contractor of the Department of Food and Environmental Hygiene or a private waste collector) who contravenes the section by depositing non-compliant waste ("NCW") at a refuse collection point ("RCP") or onto certain waste vehicle(s) in the course of providing removal services at the RCP or by such vehicle(s). The offence is punishable by a fine at level 2, i.e. \$5,000 (see the proposed section 20L(3)) or a fine of \$1,500 under the Fixed Penalty (Public Cleanliness and Obstruction) Ordinance (Cap. 570) (see clause 36 of the Bill). However, Government-employed waste handlers who carried out the same prohibited act(s)

would not be subject to such criminality and fine ("differential treatment"). According to the Administration's replies to the Letters and LC Paper No. CB(1)1013/20-21(01):

- (a) the above treatment is based upon Government-employed waste handlers who carried out the prohibited act would be subject to disciplinary action which might have "more serious implications" and therefore it is not necessary to apply the offence to any Government-employed waste handler;<sup>1</sup>
- (b) there is no available information on other situations that provide for similar arrangements under any Ordinance;<sup>2</sup> and
- (c) the penalty level set for the contravention of the proposed section 20L is lower than that provided under the proposed section 20K because "the legislative intent of the Amendment Bill does not target the personnel concerned".<sup>3</sup>

3. In the light of paragraph 2 above, please provide the following clarifications:

- (a) the disciplinary consequence(s) that a Government-employed waste handler may face (for example, a verbal warning, a reprimand or termination of the employment contract, etc.) if the handler carried out the act prohibited under the proposed section 20L, and whether a supervisor of such handler has the discretion to decide whether to take disciplinary action against the handler for the contravention;
- (b) the basis upon which the Administration considers the disciplinary consequences mentioned in paragraph 3(a) above to have "more serious implications" than those which may be faced by a non-Government-employed waste handler who contravened the proposed section 20L; and
- (c) whether any differential treatment between Government and non-Government-employed waste handlers who committed the same act sought to be prohibited by the proposed section 20L in the light of the Administration's reply to paragraph 3(b) above would impinge upon the equality before the law enshrined by Article 25 of the Basic Law and Article 22 of the Hong Kong Bill of Rights, and

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<sup>1</sup> Paragraph 24 of LC Paper No. CB(1)396/18-19(01).

<sup>2</sup> Paragraph 10 of LC Paper No. CB(1)1000/18-19(04).

<sup>3</sup> Paragraph 16(b) of LC Paper No. CB(1)1013/20-21(01).

satisfy the proportionality test laid down by the Court of Final Appeal in *Hysan Development Co Ltd & Ors v Town Planning Board* (FACV21/2015).

Exemption granted under the proposed section 20RA of Cap. 354 on application

4. The Administration proposes to amend the Bill by adding a new section 20RA to Cap. 354, which, among others, empowers the Director of Environmental Protection ("DEP"), on application, to exempt any person from the proposed sections 20K(1), 20L(1) and 20M(1) of Cap. 354 in relation to any deposit or delivery of MSW ("Requirements") if certain conditions are satisfied. These conditions include the deposit or delivery of MSW collected for or on behalf of the Government (see the proposed section 20RA(1)(a)). In the light of the above, please provide the following clarifications:

- (a) whilst section 20RA(5) only provides that DEP may revoke an exemption granted if any condition specified by DEP under section 20RA(3) is contravened, please clarify whether DEP would also consider revoking any exemption granted under section 20RA(1) if it is discovered that the applicant has provided false or misleading information upon which DEP has relied in granting the exemption;
- (b) if the answer to (a) is in the affirmative, consider providing for DEP's power in the Bill accordingly;
- (c) how a person would know whether his/her application has been refused or whether any exemption granted has been revoked (for example, whether DEP would notify such person in writing, and if yes, consider stating it clearly in the legislation);
- (d) whether DEP would provide the reason of refusal (or revocation of an exemption) in writing; and
- (e) as the appeal mechanism provided under section 24 of Cap. 354 as proposed to be amended by the Bill (see clause 5 of the Bill) does not cover DEP's decision made under the proposed section 20RA of Cap. 354, what an aggrieved applicant whose application for exemption is refused or whose exemption is revoked by DEP under the proposed section 20RA can do, and consider providing for the arrangements accordingly (for example, by consequentially amending section 24 of Cap. 354 to cover DEP's decision made under the proposed section 20RA).

Exemption from the Requirements granted upon DEP's own initiative under the proposed section 20RB of Cap. 354

5. The Administration also proposes to amend the Bill by adding a new section 20RB to Cap. 354 under which DEP may, upon his initiative, exempt any person or class of persons from the Requirements. Such exemption must not be granted unless certain conditions are satisfied. In this regard, please provide the following information:

- (a) how DEP would notify the person(s) and/or class of persons (such as by notice in writing) that they have been granted exemption(s), or whether any exemption has been revoked, under the proposed section 20RB; and
- (b) the reason(s) for not providing that DEP may by notice published in the Gazette exempt any class of persons from the Requirement(s), with the effect that all persons affected by the exemption are duly informed, and specifying whether such notice is subsidiary legislation subject to negative vetting by the Legislative Council ("LegCo").

Exemption granted under the proposed section 4A of the Waste Disposal (Refuse Transfer Station) Regulation

6. The Administration also proposes to amend the Bill by adding a new section 4A to the Waste Disposal (Refuse Transfer Station) Regulation (Cap. 354M) to empower DEP, either upon his own initiative or on application, to exempt any person from any requirement in relation to the disposal of MSW at scheduled facilities provided under section 4(1) of Cap. 354M as proposed to be amended by clause 14 of the Bill. Such exemption must not be granted unless certain conditions (including those specified under the proposed section 4B of Cap. 354M) are satisfied.

7. Insofar as an exemption granted on an application is concerned, please clarify whether DEP would:

- (a) consider revoking any exemption granted under the proposed section 4A(1) if it is discovered that such exemption is granted based on false or misleading information provided by an applicant;
- (b) notify the applicant in writing if his/her application is granted or refused; and
- (c) provide in writing the reason of refusing an application for or revoking an exemption.


If any answer to (a) to (c) above is in the affirmative, consider providing for the relevant arrangements in the Bill; or if any of the answers is in the negative, the reasons for not providing for such arrangement(s) in the Bill.

8. As for an exemption granted upon DEP's own initiative under the proposed section 4A of Cap. 354M, please provide the following information:

- (a) how DEP would notify a person who has been granted exemption(s) under section 4A(1) of Cap. 354M, or whose exemption has been revoked under section 4A(5) of Cap. 354M;
- (b) while it is noted that under the proposed section 20RB of Cap. 354, DEP may exempt "any person or class of persons" from the Requirements, the proposed section 4A of Cap. 354M provides that DEP may exempt "any person" from section 4(1) of Cap. 354M. Please clarify whether it is the legislative intent that DEP may also exempt any class of persons under the proposed section 4A of Cap. 354M; and
- (c) if the answer to (b) above is in the affirmative, please :
  - (i) consider providing for such power by adding "or class of persons" after "any person" in the proposed section 4A(1); and
  - (ii) explain the reason(s) for not providing that DEP may by notice published in the Gazette exempt any class of persons from the relevant requirement(s) with the effect that all persons affected by the exemption are duly informed, and specifying whether such notice is subsidiary legislation subject to negative vetting by LegCo.

9. Please let us have your reply in both Chinese and English as soon as practicable.

Yours sincerely,



(Evelyn LEE)

Assistant Legal Adviser

c.c. Department of Justice (Attn: Mr Gilbert MO, Deputy Law Draftsman  
(Email: gilbertmo@doj.gov.hk))  
Legal Adviser  
Senior Assistant Legal Adviser 3  
Clerk to the Bills Committee