

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

This note serves to provide supplementary information about the Waste Disposal (Charging for Municipal Solid Waste) (Amendment) Bill 2018 (“the Bill”) in response to the letter from the Assistant Legal Adviser dated 24 June 2021, which requests clarifications on the following matters.

Difference in treatment between Government and non-Government-employed waste handler - The proposed section 20L of the Waste Disposal Ordinance (Cap. 354)

- (a) Please specify 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 (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**

2. As stated in the information note on “Legislative Intent of Proposed Sections 20K to 20P for the Waste Disposal Ordinance (Cap. 354) in relation to the Mandatory Use of Designated Garbage Bags or Designated Labels” (LC Paper No. CB(1)1013/20-21(01)), the Government will devise guidelines for government employees to ensure that they shall comply with the prohibition on depositing non-compliant waste in general.

3. Generally speaking, Government employees are subject to the rules and regulations of the civil service. There is also an established mechanism for handling disciplinary matters of the civil service in accordance with relevant rules and regulations with due regard to the principle of fairness and impartiality. Default in compliance will be subject to varying degrees of disciplinary actions according to the circumstances, such as verbal or written warnings, reprimand, severe reprimand, financial penalty, and even

reduction in rank, compulsory retirement or dismissal. To a government employee, these disciplinary actions may have more serious implications than a fine at level 2 (i.e. \$5,000) imposed under the proposed section 20L.

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

4. The policy objective of the Bill is to establish a charging scheme for the disposal of municipal solid waste (MSW). The Bill as a whole is “regulatory” in nature in that it lays down minimum standards on the design and use of MSW disposal services and facilities, and puts in place a framework which allows regulatory oversight to ensure the smooth operation of the MSW disposal regime. The essence of the scheme is to facilitate behavioural changes among the public in complying with the mandatory use of designated bags/designated labels and contribute to waste reduction, rather than to punish inherently “criminal conduct”.

5. The right to equality under Article 25 of the Basic Law and Article 22 of the Hong Kong Bill of Rights requires that like cases should be treated alike and different cases should be treated differently. The fundamental question in the present context in determining the equality issue is whether there is enough of a difference between Government-employed waste handlers and non-Government-employed waste handlers to justify the differential treatment accorded to them.

6. As stated in the information note on “Legislative Intent of Proposed Sections 20K to 20P for the Waste Disposal Ordinance (Cap. 354) in relation to the Mandatory Use of Designated Garbage Bags or Designated Labels” (LC Paper No. CB(1)1013/20-21(01)), the proposed section 20L provides that the non-Government-employed waste handlers shall not deposit non-compliant waste while working at certain enforcement locations (such as at refuse collection points (RCPs) or relevant refuse collection vehicles) so as to prevent such personnel from being requested or instructed to assist in disposing of non-compliant waste, and to maintain the integrity of the

charging mechanism. It should be noted that there can be occasions where disposal of non-compliant waste at certain enforcement locations should be permitted when the situation does not allow the granting of exemption on application or on the Director of Environmental Protection (DEP)'s own initiative e.g. due to urgency, hygiene or other reasons. To provide the operational flexibility needed, the proposed section 20L thus is not applicable to Government-employed waste handlers. In effect, it indirectly authorises these Government-employed waste handlers under law with certain power of discretion. Similar to other law enforcement officers, their exercise of the discretionary power will be governed by Government guidelines. Offenders will be subject to vary degrees of disciplinary actions as described in paragraph 3 above. We will devise guidelines for them accordingly before the charging scheme comes into effect. As non-Government-employees are not governed by Government guidelines and that they are subject to different regulatory regimes, it is inappropriate to let them have the same discretionary power.

7. Against the abovementioned considerations, even though the day-to-day duties performed by Government-employed waste handlers and non-Government-employed waste handlers may be similar in nature, they are not in a comparable or analogous position. Therefore, we believe that the proposed section 20L would not 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.

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

- (a) whilst section 20RA(5) only provides that the 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;**

8. It is our policy intent that the DEP may revoke an exemption granted under the proposed section 20RA(1) if the applicant provided any

information that was false or misleading in a material particular. Apart from that, the DEP may also revoke an exemption if the DEP is satisfied that there is no longer any justification for the exemption. We propose to amend the proposed section 20RA(6) accordingly. Please refer to Annex for the marked-up copy of proposed Committee Stage Amendments (CSAs). For easy perusal, all the CSAs as newly proposed in this round are shaded in yellow in the marked-up copy.

**(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);**

9. It is our policy intent to notify the applicants of the refusal or revocation of exemption in writing. To this effect, we propose to state it clearly in the proposed sections 20RA(3) and 20RA(7). Please refer to Annex for the marked-up copy of CSAs.

**(d) whether DEP would provide the reason of refusal (or revocation of an exemption) in writing; and**

10. It is our policy intent that DEP will provide the reason of refusal (or revocation of an exemption) in writing. To this effect, we propose to amend the proposed sections 20RA(3) and 20RA(7) accordingly. Please refer to Annex for the marked-up copy of CSAs.

**(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).**

11. The Bill aims to establish a charging scheme for the disposal of MSW which would affect all walks of lives. Given the strategic importance of the mandatory use of designated bags/designated labels under the proposed charging scheme to drive behavioural changes and reduce waste

generation, and that exemptions from such mandatory requirements should only be granted pursuant to the proposed section 20RA (or the proposed section 20RB as initiated by the DEP) under certain specific circumstances, we are of the view that an aggrieved applicant whose application for exemption is refused or whose exemption is revoked by the DEP under the proposed section 20RA may bring an application for judicial review if considered necessary.

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

**(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**

12. It is our policy intent to notify the person(s) and/or class of persons in writing that they have been granted exemptions or the exemption has been revoked under the proposed section 20RB. Meanwhile, considering that the legislative intent of the proposed section 20RB is to cater for certain specific circumstances, in case a written notification of the grant or revocation of exemption is not practicable, we are of the view that such notification may be given in a way that the DEP considers appropriate. To this effect, we propose to amend the proposed sections 20RB(3) and 20RB(7) accordingly. Please refer to **Annex** for the marked-up copy of CSAs.

**(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.**

13. The legislative intent of the proposed section 20RB is to cater for certain specific circumstances where MSW will have to be disposed of but should be exempted from the proposed section 20K, 20L or 20M. When recycling facilities, for example, failed to operate properly and could not continue to receive and handle recyclables due to unforeseeable reasons such as technical breakdown in an emergency, the related service providers, under no other viable options, might have to deliver the recyclables they collected

to scheduled facilities via RCPs, specified bins, or waste vehicles in Government service or waste vehicles in private use (with compactor) (i.e. the relevant enforcement locations under the proposed sections 20K, 20L and 20M) for disposal, or else it may cause problems of environmental hygiene.

14. Operationally, it is not feasible for the DEP to exempt any person or class of persons by notice published in the Gazette having regard to the necessary procedures and lead time involved in arranging publication of notice in the Gazette, especially during emergency situations. We consider that certain flexibility in respect of the choice of the suitable and appropriate means for communicating the DEP's decision of granting an exemption to those persons affected by the exemption under the proposed section 20RB as considered appropriate should be allowed.

Exemption granted under the proposed section 4A of the Waste Disposal (Refuse Transfer Station) Regulation (Cap. 354 sub. leg. M) (Cap. 354M)

**(a) Please clarify if DEP would 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;**

15. It is our policy intent that the DEP may revoke an exemption granted under the proposed section 4A(1) of Cap. 354M if the applicant has provided any information that was false or misleading in a material particular. Apart from that, the DEP may also revoke an exemption if the DEP is satisfied that there is no longer any justification for the exemption. We propose to amend the proposed section 4A(5) of Cap. 354M accordingly. Please refer to **Annex** for the marked-up copy of CSAs.

**(b) notify the applicant in writing if his/her application is granted or refused;**

16. The proposed section 4A of Cap. 354M in the original draft CSAs provides for the DEP to grant exemption on application or on the DEP's own initiative. For sake of clarity, we propose to split the proposed section 4A of Cap. 354M into the new sections 4A and 4B of Cap. 354M to respectively provide for the granting of exemption on application and on the DEP's own initiative.

17. For an exemption granted on application (i.e. the newly proposed section 4A of Cap. 354M), it is our policy intent to notify the applicants in writing if his/her application is granted or refused. As for exemption granted on the DEP's own initiative (i.e. the newly proposed section 4B of Cap. 354M), it is also our policy intent to notify the person concerned in writing. To this effect, we propose to state it clearly in the proposed sections 4A(3) and 4B(2) of Cap. 354M. Meanwhile, considering that the legislative intent of the proposed section 4B of Cap. 354M is to cater for certain specific circumstances, in case a written notification of the grant of exemption is not practicable, we are of the view that such notification may be given in a way that the DEP considers appropriate. To this effect, we propose to amend the proposed section 4B(2) of Cap. 354M accordingly. Please refer to **Annex** for the marked-up copy of CSAs.

**(c) provide in writing the reason of refusing an application for or revoking an exemption;**

18. It is our policy intent that DEP will provide the reason of refusing an application under the proposed section 4A of Cap. 354M in writing. It is also our policy intent that DEP will provide the reason of revoking an exemption granted on application under the proposed section 4A of Cap. 354M and granted on the DEP's own initiative under the proposed section 4B of Cap. 354M in writing. To this effect, we propose to amend the proposed sections 4A(3), 4A(6) and 4B(5) of Cap. 354M accordingly. Meanwhile, considering that the legislative intent of the proposed section 4B of Cap. 354M is to cater for certain specific circumstances, in case a written notification of the reason of revocation of exemption is not practicable, we are of the view that such notification may be given in a way that the DEP considers appropriate. To this effect, we propose to amend the proposed section 4B(5) of Cap. 354M accordingly. Please refer to **Annex** for the marked-up copy of CSAs.

**(d) 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; and**

19. For both exemptions granted on application under the proposed section 4A of Cap. 354M and on the DEP's own initiative under the proposed section 4B of Cap. 354M, it is our policy intent to notify a person

who has been granted exemption or whose exemption has been revoked in writing. To this effect, we propose to amend the proposed sections 4A(3), 4A(6), 4B(2) and 4B(5) of Cap. 354M accordingly. Meanwhile, considering that the legislative intent of the proposed section 4B of Cap. 354M is to cater for certain specific circumstances, in case a written notification of the grant or revocation of exemption is not practicable, we are of the view that such notification may be given in a way that the DEP considers appropriate. To this effect, we propose to amend the proposed sections 4B(2) and 4B(5) of Cap. 354M accordingly. Please refer to **Annex** for the marked-up copy of CSAs.

**(e) 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.**

20. The regulatory target of the proposed section 4 of Cap. 354M has a limited scope which is confined to persons who dispose of MSW at scheduled facilities. The proposed sections 4A and 4B of Cap. 354M provide for the granting of exemption so that a person who does not satisfy the conditions in the proposed section 4(1) of Cap. 354M may dispose of MSW at scheduled facilities with a vehicle which is suitable for disposing of MSW at a scheduled facility under the proposed section 4C of Cap. 354M.

21. On the other hand, the proposed section 20RB of Cap. 354 provides for exemption from the proposed sections 20K, 20L and 20M, which apply to persons depositing, causing or permitting to be deposited any non-compliant waste at certain enforcement points under certain circumstances, and may have a wider scope of application than the proposed section 4 of Cap. 354M. In light of the aforesaid, the scope of the potential "exemption target" under the proposed section 4B of Cap. 354M is relatively limited, for example contractors engaged by other government departments and the potential "exemption target" should be easier to be individually identified when comparing with that under the proposed section 20RB of Cap. 354. We therefore take the view that, it is not necessary to provide for the granting of exemption to "any class of person" under the proposed section 4B of Cap. 354M.



**Environmental Protection Department  
July 2021**

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

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# A BILL

## To

Amend the Waste Disposal Ordinance and the Waste Disposal (Refuse Transfer Station) Regulation to establish a charging scheme for the disposal of municipal solid waste; to make a related amendment to the Waste Disposal (Charges for Disposal of Construction Waste) Regulation; and to provide for related matters.

Enacted by the Legislative Council.

### **Part 1**

#### **Preliminary**

##### **1. Short title and commencement**

- (1) This Ordinance may be cited as the Waste Disposal (Charging for Municipal Solid Waste) (Amendment) Ordinance 2018.
- (2) This Ordinance comes into operation on a day to be appointed by the Secretary for the Environment by notice published in the Gazette.

##### **2. Enactments amended**

- (1) The Waste Disposal Ordinance (Cap. 354) is amended as set out in Part 2.
- (2) The Waste Disposal (Refuse Transfer Station) Regulation (Cap. 354 sub. leg. M) is amended as set out in Part 3.



- (3) The Waste Disposal (Charges for Disposal of Construction Waste) Regulation (Cap. 354 sub. leg. N) is amended as set out in Part 4.
  - (4) The Fixed Penalty (Public Cleanliness and Obstruction) Ordinance (Cap. 570) is amended as set out in Part 5.
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## Part 2

### Amendments to Waste Disposal Ordinance

#### 3. Section 2 amended (interpretation)

- (1) Section 2(1), definition of *collection authority*, paragraph (b)—

**Repeal**

“Food and Environmental Hygiene”

**Substitute**

“FEH”.

- (2) Section 2(1), English text, definition of *waste treatment plant*—

**Repeal the full stop**

**Substitute a semicolon.**

- (3) Section 2(1)—

**Add in alphabetical order**

“*designated bag* (指定袋) means a bag that—

- (a) is produced by the Director or a person who is authorized to produce it under section 20S(2)(a); and

- (b) meets the requirements specified under section 20T;

*designated label* (指定標籤) means a label that—

- (a) is produced by the Director or a person who is authorized to produce it under section 20S(2)(a); and

- (b) meets the requirements specified under section 20T;

**Director of FEH** (食環署長) means the Director of Food and Environmental Hygiene;

**municipal solid waste** (都市固體廢物) means any waste except—

- (a) chemical waste;
- (b) clinical waste; and
- (c) construction waste;

**non-compliant waste** (違規廢物) means municipal solid waste that neither is wrapped in a designated bag nor has a designated label attached to it;

~~**private waste vehicle**~~ **waste vehicle in private use (with compactor)** (非公用廢物車輛設有壓縮裝置非政府用廢物車輛) means a vehicle (other than a ~~public waste vehicle~~ **waste vehicle in Government service**) that—

- (a) is being used for removing municipal solid waste and disposing of it at a scheduled facility; and
- (b) has an enclosed compartment equipped with a device designed for compacting waste within the compartment;

~~**waste vehicle in private use (without compactor)**~~ **waste vehicle in private use (without compactor)** (不設壓縮裝置非政府用廢物車輛) means a vehicle (other than a ~~waste vehicle in Government service~~) that—

- (a) is being used for removing municipal solid waste and disposing of it at a scheduled facility; and
- (b) is not equipped with a device designed for compacting waste carried on the vehicle;

~~**public waste vehicle**~~ **waste vehicle in Government service** (公用廢物車輛政府用廢物車輛) means a vehicle (whether or not equipped with a device designed for compacting waste carried on the vehicle) that is being used by, or on

behalf of, the Director of FEH for removing municipal solid waste and disposing of it at a scheduled facility;

***refuse collection point*** (垃圾收集站) means a place where—

- (a) municipal solid waste is collected and removed by, or on behalf of, the Director of FEH; and
- (b) the sign prescribed under section 20X(1)(a) is exhibited in the way prescribed under that section;

***removal services*** (運廢服務) means services connected with the removal of municipal solid waste;

***scheduled facility*** (附表設施)—see section 2 of the Waste Disposal (Refuse Transfer Station) Regulation (Cap. 354 sub. leg. M);

***specified bin*** (指明桶箱) means a container that, in the way prescribed under section 20X(1)(c), exhibits the sign prescribed under that section;

~~***waste collection officer***~~***Government-employed waste handler***  
(廢物收集人員政府所僱廢物處理員) means a person who—

- (a) is employed by the Government; and
- (b) carries out the duty of loading municipal solid waste onto a ~~public waste vehicle~~ ***waste vehicle in Government service*** or moving municipal solid waste at a refuse collection point;

~~***waste vehicle***~~ (廢物車輛) ~~means a public waste vehicle or private waste vehicle;~~

***wrapped in a designated bag*** (用指定袋包妥) means completely contained in a designated bag with the bag's opening tied so that no solid contents can escape from the bag during handling and transportation.”.

- (4) Section 2(1), definition of ***scheduled facility***—

**Repeal**

“Refuse Transfer Station”

**Substitute**

“Charge for Disposal of Municipal Solid Waste at Scheduled Facilities”.

**4. Part IVB added**

After Part IVA—

**Add**

**“Part IVB**

**Charging for Municipal Solid Waste**

**Division 1—Purpose of Part IVB**

**20J. Purpose of Part IVB**

- (1) The purpose of this Part is to establish a quantity-based charging scheme for the disposal of municipal solid waste to achieve waste reduction.
- (2) Division 2 provides for the mandatory use of designated bags or designated labels when disposing of municipal solid waste.
- (3) Division 3 regulates the production, sale and supply of designated bags and designated labels.
- (4) Division 4 contains miscellaneous provisions.

## Division 2—Mandatory Use of Designated Bags or Designated Labels

### 20K. Depositing non-compliant waste prohibited

- (1) A person commits an offence if the person deposits, or causes or permits to be deposited, any non-compliant waste—
  - (a) at a refuse collection point;
  - (b) onto a ~~waste vehicle~~waste vehicle in Government service or waste vehicle in private use (with compactor); or
  - (c) into a specified bin.
- (2) However, subsection (1) does not apply to—
  - (a) ~~the Director of FEHa~~Government-employed waste handler; or
  - (b) ~~another person who is acting in the course of providing removal services at a refuse collection point or by a waste vehicle;~~a person who—
    - (i) is not a Government-employed waste handler;  
and
    - (ii) is acting in the course of—
      - (A) providing removal services at a refuse collection point; or
      - (B) providing removal services by a waste vehicle in Government service or waste vehicle in private use (with compactor).
- (3) Section 20Q provides for the defences to, and section 20R provides for the penalty for, an offence under subsection (1).

**20L. Depositing non-compliant waste by removal services provider prohibited**

- (1) A person ~~(other than a waste collection officer) who is acting in the course of providing removal services at a refuse collection point or by a waste vehicle who—~~
- ~~(a) is not a Government-employed waste handler; and~~
  - ~~(b) is acting in the course of—~~
    - ~~(i) providing removal services at a refuse collection point; or~~
    - ~~(ii) providing removal services by a waste vehicle in Government service or waste vehicle in private use (with compactor).~~

commits an offence if the person deposits, or causes or permits to be deposited, any non-compliant waste at the refuse collection point or onto the ~~waste~~-vehicle.

- (2) Section 20Q provides for the defences to an offence under subsection (1).
- (3) A person who commits an offence under subsection (1) is liable to a fine at level 2.

**20M. Delivering non-compliant waste to certain persons prohibited**

- (1) A person commits an offence if the person delivers, or causes or permits to be delivered, any non-compliant waste to—
- (a) ~~a waste collection officer~~ Government-employed waste handler; or
  - (b) ~~another person who is acting in the course of providing removal services at a refuse collection point or by a waste vehicle~~ a person who—

- ~~\_\_\_\_\_ (i) is not a Government-employed waste handler;  
\_\_\_\_\_ and  
\_\_\_\_\_ (ii) is acting in the course of—  
\_\_\_\_\_ (A) providing removal services at a refuse  
collection point; or  
\_\_\_\_\_ (B) providing removal services by a waste  
vehicle in Government service or waste  
vehicle in private use (with compactor).~~
- (2) However, subsection (1) does not apply ~~if the person who delivers, or causes or permits the delivery of, the non-compliant waste is to an act done by—~~
- (a) ~~the Director of FEHa~~ Government-employed waste handler; or
- (b) ~~another person who is acting in the course of providing removal services at a refuse collection point or by a waste vehicle;~~ a person who—
- ~~\_\_\_\_\_ (i) is not a Government-employed waste handler;  
\_\_\_\_\_ and  
\_\_\_\_\_ (ii) is acting in the course of—  
\_\_\_\_\_ (A) providing removal services at a refuse  
collection point; or  
\_\_\_\_\_ (B) providing removal services by a waste  
vehicle in Government service or waste  
vehicle in private use (with compactor).~~
- (3) Section 20Q provides for the defences to, and section 20R provides for the penalty for, an offence under subsection (1).



~~20N. Depositing labelled municipal solid waste onto private waste vehicle prohibited~~

- ~~(1) A person commits an offence if the person deposits, or causes or permits to be deposited, onto a private waste vehicle any municipal solid waste that has a designated label attached to it but that is not wrapped in a designated bag.~~
- ~~(2) Section 20Q provides for the defences to an offence under subsection (1).~~
- ~~(3) A person who commits an offence under subsection (1) is liable—~~
  - ~~(a) if, at the time of the offence, the person was acting in the course of providing removal services by the private waste vehicle— to a fine at level 2;~~
  - ~~(b) in any other case—~~
    - ~~(i) on the first conviction— to a fine at level 4 and to imprisonment for 6 months;~~
    - ~~(ii) on a subsequent conviction— to a fine at level 5 and to imprisonment for 6 months.~~

~~20O. Delivering labelled municipal solid waste to certain removal services provider prohibited~~

- ~~(1) A person commits an offence if the person delivers, or causes or permits to be delivered, to a person acting in the course of providing removal services by a private waste vehicle any municipal solid waste that has a designated label attached to it but that is not wrapped in a designated bag.~~
- ~~(2) However, subsection (1) does not apply if the person who delivers, or causes or permits the delivery of, the waste is~~

~~acting in the course of providing removal services by the private waste vehicle.~~

- ~~(3) Section 20Q provides for the defences to, and section 20R provides for the penalty for, an offence under subsection (1).~~

**20P. Depositing non-compliant waste in certain common areas prohibited**

- (1) A person commits an offence if the person deposits, or causes to be deposited, non-compliant waste in a common area of any premises that is used for depositing waste pending removal from the premises for disposal (*common area for waste*).
- (2) For the purposes of subsection (1), if a person deposits, or causes to be deposited, non-compliant waste into a waste chute of any premises (including any hopper to the chute), the person is regarded as depositing, or causing to be deposited, non-compliant waste in a common area for waste.
- (3) However, subsection (1) does not apply if—
  - (a) the non-compliant waste is deposited, or caused to be deposited, in a common area into a litter container designed for depositing a small quantity of small-sized municipal solid waste only;
  - (b) there is in place an arrangement under which the non-compliant waste—
    - (i) is delivered to a scheduled facility by a ~~vehicle that is not a waste vehicle~~ waste vehicle in private use (without compactor); and
    - (ii) is subject to the charges specified in the Schedule to the Waste Disposal (Charge for

Disposal of Municipal Solid Waste at Scheduled Facilities) Regulation (Cap. 354 sub. leg. M);

- (c) the non-compliant waste is deposited, or caused to be deposited, by any person in providing services connected with the removal of municipal solid waste from the premises; or
  - (d) the non-compliant waste is—
    - (i) reasonably suitable for recycling; and
    - (ii) deposited, or caused to be deposited, into a container, or in an area, that is reasonably used for depositing materials for recycling.
- (4) Section 20Q provides for the defences to, and section 20R provides for the penalty for, an offence under subsection (1).

### **20Q. Defences to particular offences**

- (1) It is a defence for a person charged with an offence under section 20K, 20L, 20M, ~~20N, 20O~~ or 20P to ~~prove~~ establish that—
  - (a) the person took all reasonable precautions and exercised all due diligence to avoid committing the offence;
  - (b) the person—
    - (i) did the act constituting the offence at the instruction of the person's employer or was not provided by the person's employer with the necessary means to comply with the section; and
    - (ii) took all steps reasonably open to the person to avoid committing the offence; or

- (c) the person—
  - (i) deposited or delivered, or caused or permitted to be deposited or delivered, the waste in an emergency to avoid danger to the public; and
  - (ii) informed the collection authority in writing of the deposit or delivery as soon as reasonably practicable.
- (2) It is a defence for a person charged with an offence under section 20K, 20L, 20M or 20P to ~~prove~~ establish that the non-compliant waste is a bag that visibly contains only waste wrapped in designated bags.
- (3) It is a defence for a person charged with an offence under section 20K, 20L or 20M to ~~prove~~ establish that—
  - (a) the person deposited or delivered, or caused or permitted to be deposited or delivered, the non-compliant waste in an honest and reasonable belief that it would not be disposed of at a scheduled facility, whether because it is reasonably suitable for recycling or otherwise; or
  - (b) the non-compliant waste was municipal solid waste that escaped from a designated bag that had been damaged or unfastened—
    - (i) during the compaction of the bag by a device designed for compacting waste; or
    - (ii) when the bag was deposited into a waste chute.
- (4) A matter that needs to be established for a defence under this section is taken to have been established if—
  - (a) there is sufficient evidence to raise an issue with respect to that matter; and

- (b) the contrary is not proved by the prosecution beyond reasonable doubt.

## **20R. Penalties for particular offences**

A person who commits an offence under section 20K, 20M, ~~20O~~ or 20P is liable—

- (a) on the first conviction—to a fine at level 4 and to imprisonment for 6 months;
- (b) on a subsequent conviction—to a fine at level 5 and to imprisonment for 6 months.

## **20RA. Exemption from section 20K, 20L or 20M granted on application**

(1) If satisfied that it is reasonable to do so, the Director may, on application by a person (applicant), exempt any person from section 20K(1), 20L(1) or 20M(1) in relation to any deposit or delivery of municipal solid waste that is collected—

- (a) for or on behalf of the Government; or
- (b) in the course of providing service for collecting material which is reasonably suitable for recycling.

(2) An application under subsection (1) must be made in the form specified by the Director.

(3) The Director must, by written notice, inform the applicant of—

- (a) the Director's decision to grant, or refuse to grant, the exemption; and
- (b) if the Director refuses to grant the exemption—the reason for the refusal.

(4) An exemption granted under subsection (1) may be subject to any condition specified by the Director.

(5) An exemption granted under subsection (1) is valid for such period as may be specified by the Director and may be renewed by the Director.

(6) The Director may revoke an exemption granted under subsection (1) if—

(a) in the application for the exemption the applicant provided any information that was false or misleading in a material particular;

(b) any condition specified under subsection (4) for the exemption is contravened; or

(c) the Director is satisfied that there is no longer any justification for the exemption.

(7) If an exemption is revoked under subsection (6), the Director must, by written notice, inform the applicant of the revocation and the reason for it.

**20RB. Exemption from section 20K, 20L or 20M granted on Director's own initiative**

(1) Subject to subsection (2), the Director may, on the Director's own initiative, exempt any person or class of persons (**exempted person**) from section 20K(1), 20L(1) or 20M(1).

(2) The Director must not grant an exemption under subsection (1) unless the Director is satisfied that—

(a) the exemption is necessary for public safety, environmental hygiene or environmental protection;  
or

(b) due to exceptional circumstances—

(i) it is impractical for the person or the class of persons to comply with section 20K(1), 20L(1) or 20M(1); or

- \_\_\_\_\_ (ii) it is unreasonable to expect such compliance.
- \_\_\_\_\_ (3) The Director must inform the exempted person of the Director's decision to grant the exemption—
- \_\_\_\_\_ (a) by written notice; or
- \_\_\_\_\_ (b) if a written notice is impracticable in the circumstances—in a way that the Director considers appropriate.
- \_\_\_\_\_ (4) An exemption granted under subsection (1) may be subject to any condition specified by the Director.
- \_\_\_\_\_ (5) An exemption granted under subsection (1) is valid for such period as may be specified by the Director and may be renewed by the Director.
- \_\_\_\_\_ (6) The Director may revoke an exemption granted under subsection (1) if—
- \_\_\_\_\_ (a) any condition specified under subsection (4) for the exemption is contravened; or
- \_\_\_\_\_ (b) the Director is satisfied that there is no longer any justification for the exemption.
- \_\_\_\_\_ (7) If an exemption is revoked under subsection (6), the Director must inform the exempted person of the revocation and the reason for it—
- \_\_\_\_\_ (a) by written notice; or
- \_\_\_\_\_ (b) if a written notice is impracticable in the circumstances—in a way that the Director considers appropriate.

### **Division 3—Designated Bags and Designated Labels**

#### **20S. Who may produce, sell or supply for free**

- (1) The Director may—

- (a) produce designated bags or designated labels;
  - (b) sell designated bags or designated labels; and
  - (c) supply designated bags or designated labels for free.
- (2) The Director may, on the terms and conditions specified by the Director, authorize any person to—
- (a) produce designated bags or designated labels;
  - (b) sell designated bags or designated labels; or
  - (c) supply, in the course of a profit-seeking business, designated bags or designated labels for free.
- (3) The Director may revoke an authorization granted under subsection (2) if any term or condition specified for the authorization is contravened.

**20T. Director may specify requirements**

The Director may, by notice published in the Gazette, specify requirements for designated bags and designated labels, including their sizes, shapes, designs and materials.

**20U. Sale by unauthorized person prohibited**

- (1) A person who is not authorized under section 20S(2)(b) commits an offence if the person sells, offers to sell or exhibits for the purpose of sale any designated bag or designated label.
- (2) However, subsection (1) does not apply if the person—
- (a) in the course of business, provides or arranges for the provision of a waste collection service; and
  - (b) sells, offers to sell or exhibits for the purpose of sale to a user of the service the designated bag or designated label at the price prescribed for the bag or label in Schedule 14.



- (3) A person who commits an offence under subsection (1) is liable—
  - (a) on the first conviction—to a fine at level 6;
  - (b) on a subsequent conviction—to a fine of \$200,000.

**20V. Sale at other than prescribed price prohibited**

- (1) A person who is authorized under section 20S(2)(b) commits an offence if the person sells, offers to sell or exhibits for the purpose of sale any designated bag or designated label at a price other than the price prescribed for the bag or label in Schedule 14.
- (2) A person who is authorized under section 20S(2)(b) commits an offence if the person offers to a customer any rebate or discount that—
  - (a) has the effect of directly or indirectly offsetting the price, or any part of the price, of a designated bag or designated label; and
  - (b) is not generally applicable to other goods offered for sale by the person.
- (3) To avoid doubt, if—
  - (a) a person purchases any designated bag or designated label from a seller;
  - (b) because of the purchase, the person receives a favour (whether or not transferable) that in effect reduces the price of an item (whether or not a designated bag or designated label) in a subsequent purchase from the seller; and
  - (c) the favour is offered under an arrangement that is generally applicable to the purchase of goods (whether or not a designated bag or designated label) from the seller,

the favour is not a rebate or discount that falls within subsection (2).

- (4) A person who commits an offence under subsection (1) or (2) is liable—
  - (a) on the first conviction—to a fine at level 6;
  - (b) on a subsequent conviction—to a fine of \$200,000.

#### **20W. Certain free supply prohibited**

- (1) A person commits an offence if the person supplies, in the course of a profit-seeking business, any designated bag or designated label for free.
- (2) However, subsection (1) does not apply if the person—
  - (a) is authorized under section 20S(2)(c); or
  - (b) provides or arranges for the provision of a waste collection service and supplies the designated bag or designated label for use in relation to the service.
- (3) A person who commits an offence under subsection (1) is liable—
  - (a) on the first conviction—to a fine at level 6;
  - (b) on a subsequent conviction—to a fine of \$200,000.

### **Division 4—Miscellaneous Provisions**

#### **20X. Prescribed signs**

- (1) The Director of FEH may, by notice published in the Gazette, prescribe—
  - (a) the sign to be exhibited at refuse collection points and the way of exhibition;

- (b) the sign to be exhibited on ~~public waste vehicles~~ waste vehicles in Government service and the way of exhibition; and
  - (c) the sign to be exhibited on specified bins and the way of exhibition.
- (2) The Director may, by notice published in the Gazette, prescribe the sign to be exhibited on ~~private waste vehicles~~ waste vehicles in private use (with compactor) and the way of exhibition.

**20Y. Waste vehicles must exhibit prescribed sign in certain circumstances**

- (1) The driver of a ~~public waste vehicle~~ waste vehicle in Government service must ensure the sign prescribed under section 20X(1)(b) is exhibited on the vehicle in the prescribed way.
- (2) The driver of a ~~private waste vehicle~~ waste vehicle in private use (with compactor) must ensure the sign prescribed under section 20X(2) is exhibited on the vehicle in the prescribed way.
- (3) If, in contravention of subsection (1) or (2), a prescribed sign is not exhibited on a ~~waste vehicle~~ waste vehicle in Government service or waste vehicle in private use (with compactor) in the prescribed way, each of the following persons commits an offence and is liable to a fine at level 4—
  - (a) the driver of the vehicle; and
  - (b) the driver's employer if—
    - (i) the driver did the act constituting the offence by the driver at the instruction of the employer; or

- (ii) the employer failed to provide the necessary means for the driver to comply with that subsection.
- (4) It is a defence for a driver charged with an offence under subsection (3) to ~~prove~~ establish that—
  - (a) the driver did the act constituting the offence by the driver at the instruction of the driver’s employer; or
  - (b) the driver’s employer failed to provide the necessary means for the driver to comply with subsection (1) or (2), as may be appropriate.
- (5) A matter that needs to be established for a defence under subsection (4) is taken to have been established if—
  - (a) there is sufficient evidence to raise an issue with respect to that matter; and
  - (b) the contrary is not proved by the prosecution beyond reasonable doubt.

**20Z. Vehicles must not exhibit prescribed sign in certain circumstances**

- (1) The driver of a vehicle must not allow the exhibition of the sign prescribed under section 20X(1)(b) on the vehicle when the vehicle is not a ~~public waste vehicle~~ waste vehicle in Government service.
- (2) The driver of a vehicle must not allow the exhibition of the sign prescribed under section 20X(2) on the vehicle when the vehicle is not a ~~private waste vehicle~~ waste vehicle in private use (with compactor).
- (3) If, in contravention of subsection (1) or (2), a prescribed sign is exhibited on a vehicle, each of the following persons commits an offence and is liable to a fine at level 4—

- (a) the driver of the vehicle; and
  - (b) the driver’s employer if the driver did the act constituting the offence by the driver at the instruction of the employer.
- (4) It is a defence for a driver charged with an offence under subsection (3) to ~~prove~~ establish that the driver did the act constituting the offence by the driver at the instruction of the driver’s employer.
- (5) A matter that needs to be established for a defence under subsection (4) is taken to have been established if—
- (a) there is sufficient evidence to raise an issue with respect to that matter; and
  - (b) the contrary is not proved by the prosecution beyond reasonable doubt.

**20ZA. Designated bag not subject to Product Eco-responsibility Ordinance**

To avoid doubt, a designated bag is not a plastic shopping bag to which the Product Eco-responsibility Ordinance (Cap. 603) applies.”.

**5. Section 24 amended (when appeal may be brought)**

After section 24(1)(bd)—

**Add**

“(be) section 20S(2) and (3) (refusing to grant, or revoking, an authorization to produce, sell or supply for free designated bags or designated labels);”.

**6. Section 31 amended (mental ingredients of certain offences under the Ordinance)**

Section 31, after “20E”—

**Add**

“, 20K, 20L, 20M, ~~20N, 20O, 20P~~”.

**7. Section 33 amended (regulations)**

(1) After section 33(1)(j)—

**Add**

“(jaa) the imposition of charges for the disposal of any waste, which charges may be set at above cost recovery level;”.

(2) After section 33(6)—

**Add**

“(7) If a Schedule to any regulations made under this section specifies the charges to be imposed in respect of any waste accepted for disposal at a waste disposal facility prescribed by the regulations, the regulations may provide that the Secretary may, by notice published in the Gazette, amend the Schedule to revise the charges.

(8) The Secretary may, under subsection (7), set the charges at above cost recovery level.”.

**8. Section 37 amended (amendment of Schedules)**

After section 37(3)—

**Add**

“(4) The Secretary may, by notice published in the Gazette, amend Schedule 14.

(5) The Secretary may, under subsection (4), set the prices prescribed in Schedule 14 at above cost recovery level.”.

**9. Schedule 14 added**

After Schedule 13—

**Add**

## **“Schedule 14**

[ss. 20U & 20V]

### **Part 1**

#### **Prices of Designated Bags**

| Column 1                   | Column 2      |
|----------------------------|---------------|
| Capacity of designated bag | Price per bag |
| 3 litres                   | \$0.3         |
| 5 litres                   | \$0.6         |
| 10 litres                  | \$1.1         |
| 15 litres                  | \$1.7         |
| 20 litres                  | \$2.2         |
| 35 litres                  | \$3.9         |
| 50 litres                  | \$5.5         |
| 75 litres                  | \$8.5         |
| 100 litres                 | \$11          |

| Column 1                   | Column 2      |
|----------------------------|---------------|
| Capacity of designated bag | Price per bag |
| 240 litres                 | \$26          |
| 660 litres                 | \$73          |

## **Part 2**

### **Price of Designated Label**

\$11 per label”.

**10. Schedule 14 amended**

Schedule 14—

**Repeal**

“& 20V]”

**Substitute**

“, 20V & 37]”.

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## Part 3

### Amendments to Waste Disposal (Refuse Transfer Station) Regulation

11. Title amended

The title—

**Repeal**

**“REFUSE TRANSFER STATION”**

**Substitute**

**“CHARGE FOR DISPOSAL OF MUNICIPAL SOLID WASTE AT SCHEDULED FACILITIES”.**

12. Section 2 amended (interpretation)

(1) Section 2—

- (a) definition of *contractor (other than a station operator)*;
- (b) definition of *non-peak hours*;
- (c) definition of *peak hours*;
- (d) definition of *refuse transfer station*;
- (e) definition of *registered account-holder*;
- (f) definition of *registered vehicle*;
- (g) definition of *service conditions*;
- (h) definition of *station operator*;
- (i) definition of *unacceptable waste*—

**Repeal the definitions.**

(2) Section 2—

**Add in alphabetical order**

“*account conditions* (帳戶條件) means—

- (a) in relation to a Type A account-holder—the terms and conditions imposed under section 6A for the time being in relation to the account-holder; or
- (b) in relation to a Type B account-holder—the terms and conditions imposed under section 6B for the time being in relation to the account-holder;

*account-holder* (戶主) means—

- (a) a Type A account-holder; or
- (b) a Type B account-holder;

*permitted vehicle* (獲准車輛), in relation to a scheduled facility, means a vehicle registered as a permitted vehicle for the facility under section 6A or 7A;

*scheduled facility* (附表設施) means a Group 1 facility, Group 2 facility or Group 3 facility as defined in section 1 of Part 1 of the Schedule;

*Type A account-holder* (甲類帳戶戶主), in relation to a scheduled facility, means a person registered as a Type A account-holder for the facility under section 6A;

*Type B account-holder* (乙類帳戶戶主), in relation to a scheduled facility, means a person registered as a Type B account-holder for the facility under section 6B.”.

### 13. Section 3 amended (application)

- (1) Section 3—

#### **Repeal**

“the Schedule”

#### **Substitute**

“Part 1A of the Schedule and to the disposal of municipal solid waste at a scheduled facility”.

(2) Section 3—

**Repeal**

“to the refuse transfer stations specified in column 2 of Part 1A of the Schedule and”.

**14. Section 4 substituted**

Section 4—

**Repeal the section**

**Substitute**

**“4. Disposal of municipal solid waste at scheduled facilities**

- (1) A person must not dispose of municipal solid waste at a scheduled facility unless—
- (a) it is disposed of from a vehicle;
  - (b) the registered owner of the vehicle is registered as a Type A account-holder for the facility;
  - (c) the vehicle is registered under section 6A or 7A for disposing of municipal solid waste at the facility; and
  - (d) if the municipal solid waste is disposed of on behalf of a Type B account-holder—the account-holder is registered for the facility.
- (2) Subsection (1) does not apply to—
- (a) the disposal of municipal solid waste from a vehicle owned by the Government; or
  - (b) the disposal of municipal solid waste collected by, or on behalf of, the Director of FEH.<sup>22</sup>

**4A. Exemption from section 4 granted on application**

- (1) Subject to section 4C, the Director may, on application by a person (*applicant*), exempt any person from section 4(1) for a period that the Director considers appropriate.
- (2) An application under subsection (1) must be made in the form specified by the Director.
- (3) The Director must, by written notice, inform the applicant of—
  - (a) the Director's decision to grant, or refuse to grant, the exemption; and
  - (b) if the Director refuses to grant the exemption—the reason for the refusal.
- (4) An exemption granted under subsection (1) may be subject to any condition specified by the Director.
- (5) The Director may revoke an exemption granted under subsection (1) if—
  - (a) in the application for the exemption the applicant provided any information that was false or misleading in a material particular;
  - (b) any condition specified under subsection (4) for the exemption is contravened; or
  - (c) the Director is satisfied that there is no longer any justification for the exemption.
- (6) If an exemption is revoked under subsection (5), the Director must, by written notice, inform the applicant of the revocation and the reason for it.

**4B. Exemption from section 4 granted on Director's own initiative**

(1) Subject to section 4C, the Director may, on the Director's own initiative, exempt any person (*exempted person*) from section 4(1) for a period that the Director considers appropriate.

(2) The Director must inform the exempted person of the Director's decision to grant the exemption—

(a) by written notice; or

(b) if a written notice is impracticable in the circumstances—in a way that the Director considers appropriate.

(3) An exemption granted under subsection (1) may be subject to any condition specified by the Director.

(4) The Director may revoke an exemption granted under subsection (1) if—

(a) any condition specified under subsection (3) for the exemption is contravened; or

(b) the Director is satisfied that there is no longer any justification for the exemption.

(5) If an exemption is revoked under subsection (4), the Director must inform the exempted person of the revocation and the reason for it—

(a) by written notice; or

(b) if a written notice is impracticable in the circumstances—in a way that the Director considers appropriate.

**4C. Supplementary provisions for sections 4A and 4B**

(1) The Director must not grant an exemption under section 4A(1) or 4B(1) unless the Director is satisfied—

(a) that—

(i) the exemption is necessary for public safety, environmental hygiene or environmental protection; or

(ii) due to exceptional circumstances—

(A) it is impractical for the person to comply with section 4(1); or

(B) it is unreasonable to expect such compliance; and

(b) that the vehicle from which the person disposes of municipal solid waste is suitable for disposing of municipal solid waste at one or more scheduled facilities.

(2) For the purposes of subsection (1)(b), a vehicle is suitable for disposing of municipal solid waste at a scheduled facility if—

(a) the vehicle is in good working condition;

(b) the vehicle is constructed in a way that does not—

(i) endanger the safety of any person at the facility;

(ii) create any nuisance, or any danger to health or the environment, arising from its activity in the facility; or

(iii) disrupt the operation of the facility or any collection, removal, transportation, transfer, reception or disposal (including treatment,

reprocessing or recycling) of waste in the facility; and

(c) if the vehicle is equipped with a device described in section 3B of the Waste Disposal (Designated Waste Disposal Facility) Regulation (Cap. 354 sub. leg. L)—it complies with the requirement in subsection (3) of that section.”.

**15. Section 5 repealed (application for registration)**

Section 5—

**Repeal the section.**

**16. Sections 5A and 5B added**

The Regulation—

**Add**

**“5A. Application for registration as Type A account-holder**

- (1) Any person (other than a Type B account-holder) may make an application to the Director—
  - (a) to be registered as a Type A account-holder for the purpose of disposing of municipal solid waste at one or more scheduled facilities; and
  - (b) to register in the person’s name one or more vehicles (of which the person is the registered owner) to be used for disposing of municipal solid waste at one or more scheduled facilities.
- (2) The application must—
  - (a) be made in a way and form specified by the Director; and

- (b) contain the particulars, information and materials the Director reasonably requires for the determination of the application.
- (3) Under subsection (2)(b), the Director may, for example, require the applicant to specify—
  - (a) the scheduled facility or facilities at which municipal solid waste is intended to be disposed of;
  - (b) the estimated amount of municipal solid waste that is intended to be disposed of monthly at the scheduled facility or facilities;
  - (c) the nature of the municipal solid waste; and
  - (d) the registration mark or marks of the vehicle or vehicles that is or are to be used for disposing of municipal solid waste at the scheduled facility or facilities.
- (4) In considering the application, the Director may, by written notice to the applicant, require the applicant to provide further particulars, information and materials the Director reasonably requires for the determination of the application as specified in the notice within the time specified in the notice.

**5B. Application for registration as Type B account-holder**

- (1) Any person (other than a Type A account-holder) may make an application to the Director to be registered as a Type B account-holder for the purpose of disposing of municipal solid waste at one or more scheduled facilities.
- (2) The application must—
  - (a) be made in a way and form specified by the Director; and



- (b) contain the particulars, information and materials the Director reasonably requires for the determination of the application.
- (3) Under subsection (2)(b), the Director may, for example, require the applicant to specify—
  - (a) the scheduled facility or facilities at which municipal solid waste is intended to be disposed of;
  - (b) the estimated amount of municipal solid waste that is intended to be disposed of monthly at the scheduled facility or facilities; and
  - (c) the nature of the municipal solid waste.
- (4) In considering the application, the Director may, by written notice to the applicant, require the applicant to provide further particulars, information and materials the Director reasonably requires for the determination of the application as specified in the notice within the time specified in the notice.”.

**17. Section 6 repealed (Director may register account-holders and vehicles)**

Section 6—

**Repeal the section.**

**18. Sections 6A and 6B added**

The Regulation—

**Add**

**“6A. Director may register Type A account-holders and vehicles**

- (1) If the Director is satisfied that the applicant making an application under section 5A is a fit and proper person to be registered as a Type A account-holder and that the

- vehicle or vehicles specified in the application is or are suitable for disposing of municipal solid waste at one or more scheduled facilities, the Director may—
- (a) register the applicant as a Type A account-holder; and
  - (b) register the vehicle or vehicles in the applicant's name as a permitted vehicle or permitted vehicles for the facility or facilities.
- (2) For the purposes of subsection (1), a vehicle is suitable for disposing of municipal solid waste at a scheduled facility if—
- (a) it is in good working condition;
  - (b) it is constructed in a way that does not—
    - (i) endanger the safety of any person at the facility;
    - (ii) create any nuisance, or any danger to health or the environment, arising from its activity in the facility; or
    - (iii) disrupt the operation of the facility or any collection, removal, transportation, transfer, reception or disposal (including treatment, reprocessing or recycling) of waste in the facility; and
  - (c) if the vehicle is equipped with a device described in section 3B of the Waste Disposal (Designated Waste Disposal Facility) Regulation (Cap. 354 sub. leg. L)—it complies with the requirement in subsection (3) of that section.
- (3) The Director may impose the terms and conditions for registration as the Director considers appropriate, including terms and conditions—

- (a) requiring the applicant to pay to the Director a deposit as security for payment of charges and surcharges under this Regulation; and
  - (b) limiting the registration of the applicant, or the registration of a vehicle in the applicant's name, to a particular scheduled facility.
- (4) The Director—
  - (a) must specify the terms and conditions imposed under subsection (3) in the notice under subsection (6); and
  - (b) may, from time to time, by written notice to the account-holder, impose, vary or revoke any term or condition.
- (5) The Director may refuse to register a person as a Type A account-holder if—
  - (a) the person fails to provide the particulars, information or materials under section 5A(2)(b) or (4);
  - (b) the person provides any false particulars, information or materials;
  - (c) the person has incurred any charge or surcharge under this Regulation and, as at the date of the person's application under section 5A, has not paid it;
  - (d) the person is a Type B account-holder; or
  - (e) because of the operation of subsection (2), no vehicle can be registered in the person's name as a permitted vehicle.
- (6) The Director must, by written notice to the applicant—

- (a) inform the applicant of the Director's decision to register, or refuse to register, the applicant as a Type A account-holder;
  - (b) if the Director decides to register the applicant—specify the amount of the deposit mentioned in subsection (3)(a) and the deadline for its payment; and
  - (c) if the Director decides to refuse to register the applicant—give the reason for the refusal.
- (7) If—
- (a) a Type A account-holder anticipates that the amount of municipal solid waste that the account-holder will dispose of monthly at the scheduled facility or facilities will change substantially;
  - (b) a Type A account-holder anticipates that the nature of the municipal solid waste that the account-holder will dispose of at the scheduled facility or facilities will change; or
  - (c) there is any change in the particulars, information or materials provided by a Type A account-holder under section 5A(2)(b) or (4),

the account-holder must, as soon as reasonably practicable, notify the Director of the change or anticipated change and give details of the change or anticipated change that are reasonably required by the Director for assessing the adequacy of the deposit mentioned in subsection (3)(a).

#### **6B. Director may register Type B account-holders**

- (1) If the Director is satisfied that the applicant making an application under section 5B is a fit and proper person to

- be registered as a Type B account-holder, the Director may register the applicant as a Type B account-holder.
- (2) The Director may impose the terms and conditions for registration as the Director considers appropriate, including terms and conditions—
    - (a) requiring the applicant to pay to the Director a deposit as security for payment of charges and surcharges under this Regulation; and
    - (b) limiting the registration of the applicant to a particular scheduled facility.
  - (3) The Director—
    - (a) must specify the terms and conditions imposed under subsection (2) in the notice under subsection (5); and
    - (b) may, from time to time, by written notice to the account-holder, impose, vary or revoke any term or condition.
  - (4) The Director may refuse to register a person as a Type B account-holder if the person—
    - (a) fails to provide the particulars, information or materials under section 5B(2)(b) or (4);
    - (b) provides any false particulars, information or materials;
    - (c) has incurred any charge or surcharge under this Regulation and, as at the date of the person's application under section 5B, has not paid it; or
    - (d) is a Type A account-holder.
  - (5) The Director must, by written notice to the applicant—

- (a) inform the applicant of the Director’s decision to register, or refuse to register, the applicant as a Type B account-holder;
  - (b) if the Director decides to register the applicant—specify the amount of the deposit mentioned in subsection (2)(a) and the deadline for its payment; and
  - (c) if the Director decides to refuse to register the applicant—give the reason for the refusal.
- (6) If—
- (a) a Type B account-holder anticipates that the amount of municipal solid waste that the account-holder will dispose of monthly at the scheduled facility or facilities will change substantially;
  - (b) a Type B account-holder anticipates that the nature of the municipal solid waste that the account-holder will dispose of at the scheduled facility or facilities will change; or
  - (c) there is any change in the particulars, information or materials provided by a Type B account-holder under section 5B(2)(b) or (4),

the account-holder must, as soon as reasonably practicable, notify the Director of the change or anticipated change and give details of the change or anticipated change that are reasonably required by the Director for assessing the adequacy of the deposit mentioned in subsection (2)(a).”.

**19. Section 7 repealed (registration of additional vehicle, etc.)**

Section 7—

**Repeal the section.**

**20. Section 7A added**

Before section 8—

**Add**

**“7A. Registration of additional vehicle etc. for Type A account-holders**

- (1) A Type A account-holder may at any time make an application to the Director—
  - (a) to remove any vehicle registered in the account-holder’s name from registration; or
  - (b) to register in the account-holder’s name, either in substitution for a vehicle removed from registration under paragraph (a) or as an additional vehicle, a vehicle of which the account-holder is the registered owner as a permitted vehicle.
- (2) If an application is made under subsection (1)(b), sections 5A and 6A apply, subject to necessary modifications, in relation to the application.
- (3) If a Type A account-holder ceases to be the registered owner of a vehicle already registered in the account-holder’s name under this section or section 6A, the account-holder—
  - (a) must immediately notify the Director; and
  - (b) until the Director acknowledges in writing the receipt of the notification, remains liable for all charges and surcharges incurred under this Regulation for the disposal of municipal solid waste from the vehicle.”.

**21. Section 8 amended (register of account-holder)**

- (1) Section 8, Chinese text, heading—

**Repeal**

“帳戶戶”

**Substitute**

“戶”.

(2) Section 8—

**Repeal**

“section 6 as he”

**Substitute**

“sections 6A, 6B and 7A as the Director”.

**22. Section 9 substituted**

Section 9—

**Repeal the section**

**Substitute**

**“9. Recording of weight and time at weighbridge**

A person intending to dispose of municipal solid waste at a scheduled facility from a vehicle must take such reasonable steps as may be necessary for ensuring that—

- (a) the time when the vehicle enters the in-weighbridge of the facility and the gross vehicle weight of the vehicle at the in-weighbridge at that time are recorded at the in-weighbridge computer; and
- (b) the gross vehicle weight of the vehicle at the time when it enters the out-weighbridge after the disposal is recorded at the out-weighbridge computer.”.

**23. Section 10 amended (charges for disposal of waste)**

(1) Section 10, heading, before “**waste**”—



**Add**

**“municipal solid”.**

- (2) Section 10—

**Repeal subsections (1) and (2)**

**Substitute**

- “(1) Subject to subsections (2) and (4), if municipal solid waste is disposed of—
- (a) at a scheduled facility from a permitted vehicle registered in the name of a Type A account-holder (otherwise than on behalf of a Type B account-holder); or
  - (b) on behalf of a Type B account-holder at a scheduled facility for which the account-holder is registered, the account-holder must pay to the Director charges specified in the Schedule for the disposal.
- (2) If municipal solid waste is disposed of at a scheduled facility in contravention of section 9, the charges payable under subsection (1) must be calculated as if the weight of the waste were—
- (a) the gross vehicle weight of the vehicle at the in-weighbridge before the disposal as recorded at the in-weighbridge computer; or
  - (b) if the weight is not recorded at the computer—the permitted gross vehicle weight of the vehicle.”.

(3) Section 10(3)—

**Repeal**

everything before “as if”

**Substitute**

“(3) If a person disposes of municipal solid waste at a scheduled facility in contravention of section 4, the person must, without prejudice to the person’s liability under section 18(1), pay to the Director charges for each load of waste disposed of”.

(4) Section 10(3)(a), after “disposal”—

**Add**

“as recorded at the in-weighbridge computer”.

(5) Section 10(4), before “the Schedule”—

**Add**

“Part 1A of”.

(6) Section 10(5), before “the Schedule”—

**Add**

“Part 1A of”.

(7) Section 10—

**Repeal subsection (4)**

**Substitute**

“(4) If a person claims that the municipal solid waste the person disposes of or intends to dispose of at a scheduled facility should be charged to a Type B account-holder, the Director may require the person to produce evidence that is reasonably required by the Director for substantiating the claim.”.

(8) Section 10—

**Repeal subsection (5).**

**24. Section 11 amended (payment of charges and levy of surcharge)**

(1) Section 11—

**Repeal subsection (1)**

**Substitute**

- “(1) The Director must, from time to time, issue a notice of demand to the account-holder mentioned in section 10(1) or the person liable to pay charges under section 10(3).
- (1A) The notice of demand must specify the amount of the charges payable for the municipal solid waste disposed of at scheduled facilities during the period specified in the notice.
- (1B) The charge must be paid within 30 days from the date of the notice of demand in the way specified in the notice.”.

- (2) Section 11(2)—

**Repeal**

“(1)”

**Substitute**

“(1B)”.

- (3) Section 11(3)—

**Repeal**

“registered account-holder and of any vehicle registered in his name, and any vehicle so suspended ceases to be a registered”

**Substitute**

“account-holder and of any vehicle registered in the account-holder’s name, and any vehicle so suspended ceases to be a permitted”.

- (4) Section 11(4)—

**Repeal**

“a registered account-holder, the Director shall”

**Substitute**

“an account-holder, the Director must”.

(5) Section 11(4)(b)—

**Repeal**

everything after “charges”

**Substitute**

“incurred before the suspension of the registration of that person.”.

(6) Section 11(5)—

**Repeal**

“registered account-holder to pay such amount as he”

**Substitute**

“account-holder to pay such amount as the Director”.

(7) Section 11(6)(b)—

**Repeal**

“a registered account-holder”

**Substitute**

“an account-holder”.

**25. Section 12 repealed (deposit)**

Section 12—

**Repeal the section.**

**26. Section 12A added**

The Regulation—

**Add**

**“12A. Deposit**

(1) A deposit paid by an account-holder under section 6A or 6B—

- (a) does not bear interest;
  - (b) is not transferable; and
  - (c) may, without prejudice to any other power under this Regulation, be applied by the Director at any time to the payment of any charge or surcharge owed by the account-holder under this Regulation.
- (2) Subject to subsection (1)(c), the Director must refund to a person the deposit or part of the deposit paid by the person if—
- (a) the person ceases to be an account-holder because the registration is revoked under section 11(6), 13A or 13B; or
  - (b) the Director is satisfied that the deposit, or that part of the deposit, is no longer required.
- (3) The Director may at any time, by written notice to an account-holder—
- (a) increase the amount of deposit for the account-holder's continued registration by an amount specified in the notice; and
  - (b) require the account-holder to pay the increase to the Director within the time and in the way specified in the notice.
- (4) Subsections (1) and (2) apply to any increased amount of deposit paid by any person for—
- (a) the person's continued registration as an account-holder; or
  - (b) restoring the person's registration under section 11(5).”.

**27. Section 13 amended (revocation of registration)**

- (1) Section 13(1)(e), after “conditions”—

**Add**

“imposed in respect of that person’s registration under section 6”.

- (2) Section 13—

**Repeal the section.**

**28. Sections 13A, 13B and 13C added**

Before section 14—

**Add**

**“13A. Revocation of registration of Type A account-holder**

- (1) Without prejudice to section 11, the Director may revoke the registration of any person as a Type A account-holder if—
- (a) unacceptable waste has been disposed of at a scheduled facility from a permitted vehicle registered under section 6A or 7A in the person’s name (*relevant vehicle*), or any person has attempted to dispose of unacceptable waste at a scheduled facility from a relevant vehicle;
  - (b) municipal solid waste has been disposed of at a scheduled facility from a relevant vehicle in contravention of section 9, or any person has attempted to dispose of municipal solid waste at a scheduled facility from a relevant vehicle in contravention of that section;
  - (c) damage has been caused to a scheduled facility by a relevant vehicle, or any person associated with the

- operation of a relevant vehicle has attempted to cause damage to a scheduled facility by the vehicle;
- (d) the Director requires the person to make a payment under section 11(5) or 12A(3) and the payment is not made as required;
  - (e) a breach of account conditions has occurred in relation to the person or a relevant vehicle;
  - (f) the person or the driver of a relevant vehicle has committed an offence under the Ordinance or this Regulation, or an offence under the Ordinance or this Regulation has been committed in relation to a relevant vehicle;
  - (g) the person's continued registration as a Type A account-holder is, in the opinion of the Director, prejudicial to the operation of any scheduled facility;
  - (h) the person fails to comply with section 6A(7); or
  - (i) no charge has been incurred in relation to the person under this Regulation for a continuous period of 12 months and the person does not, within 28 days from the date of a written request from the Director to do so, indicate the person's desire to maintain the registration.
- (2) In this section—
- unacceptable waste*** (不可接受廢物), in relation to a person, means the waste specified as unacceptable waste in the person's account conditions.

### **13B. Revocation of registration of Type B account-holder**

Without prejudice to section 11, the Director may revoke the registration of any person as a Type B account-holder if—

- (a) the Director requires the person to make a payment under section 11(5) or 12A(3) and the payment is not made as required;
- (b) a breach of account conditions has occurred in relation to the person;
- (c) the person has committed an offence under the Ordinance or this Regulation;
- (d) the person's continued registration as a Type B account-holder is, in the opinion of the Director, prejudicial to the operation of any scheduled facility;
- (e) the person fails to comply with section 6B(6); or
- (f) no charge has been incurred in relation to the person under this Regulation for a continuous period of 12 months and the person does not, within 28 days from the date of a written request from the Director to do so, indicate the person's desire to maintain the registration.

**13C. Director to give notice of revocation of registration**

If the registration of a person as an account-holder is revoked under section 11(6), 13A or 13B, the Director must give the person written notice of the revocation and the reason for it.”.

**29. Section 14 amended (Director may appoint designated officers)**

- (1) Section 14(1), after “operator)”—

**Add**

“, a facility operator, any non-operator contractor”.

- (2) Section 14(1)—

**Repeal**



“a station operator, any contractor (other than a station operator),”.

- (3) After section 14(2)—

**Add**

“(3) In this section—

*facility operator* (設施營運者) means a person who has entered into an agreement with the Government for the operation or management of a scheduled facility;

*non-operator contractor* (非營運承辦商) means a person, other than a facility operator, who has entered into an agreement with the Government or with a facility operator for the carrying out of an activity, or the provision of a service, in connection with the operation or management of a scheduled facility.”.

**30. Section 16 substituted**

Section 16—

**Repeal the section**

**Substitute**

**“16. No charge for certain municipal solid waste**

- (1) No charge is payable under this Regulation for the municipal solid waste collected by, or on behalf of, the Director of FEH.
- (2) The Director may grant to any person, whether generally or in respect of any particular load of municipal solid waste, an exemption from any charge payable under this Regulation as the Director considers appropriate.
- (3) An exemption may be granted under subsection (2) with or without conditions.

- (4) If a person claims that the municipal solid waste the person disposes of or intends to dispose of at a scheduled facility is, by virtue of subsection (1) or (2), not chargeable under this Regulation, the Director may require the person to produce such evidence as may be reasonably necessary for establishing that the waste is collected by, or on behalf of, the Director of FEH or the person has been granted an exemption under subsection (2), as may be appropriate.”.

**31. Section 17 amended (notice, etc. given by the Director)**

- (1) Section 17(1)(b)—

**Repeal the full stop**

**Substitute**

“; or”.

- (2) After section 17(1)(b)—

**Add**

“(c) by sending it by fax transmission or electronic mail to the last known fax number or electronic mail address of the person to whom it is to be given.”.

- (3) After section 17(1)—

**Add**

“(1A) A notice or document given in accordance with subsection (1)(c) is deemed to have been given if a record generated by the means of communication establishes that the notice or document has been sent.”.

- (4) Section 17(2)—

**Repeal**

“registered”.

- (5) Section 17(2)(b)—

**Repeal**

“refuse transfer stations”

**Substitute**

“scheduled facilities”.

**32. Section 18 amended (offences and penalties)**

(1) Section 18(2), after “excepted”—

**Add**

“, 5A (other than subsection (3)(b)) or 5B (other than subsection (3)(b))”.

(2) Section 18(2)—

**Repeal**

“5 (subsection (3)(b) excepted),”.

**33. Sections 19 and 20 added**

After section 18—

**Add**

**“19. Secretary may revise charges in Schedule**

- (1) The Secretary may, by notice published in the Gazette, amend the Schedule to revise the charges specified in it.
- (2) The Secretary may, under subsection (1), set the charges at above cost recovery level.

**20. Termination of pre-existing accounts**

- (1) In relation to any waste disposed of at a refuse transfer station under the pre-amended Regulation and any claims, rights, obligations or liabilities arising from the disposal, the pre-amended Regulation continues to apply as if it had not been amended by the Amendment Ordinance 2018.

- (2) The pre-amended Regulation continues to apply in relation to an offence under section 18 of the pre-amended Regulation that was committed before the transition date as if the pre-amended Regulation had not been amended by the Amendment Ordinance 2018.
- (3) An application made under section 5 or 7 of the pre-amended Regulation, but not determined before the transition date, is deemed to have been withdrawn on the transition date.
- (4) If the Director is satisfied that there are no outstanding charges or surcharges to be demanded from, or to be paid by, a registered account-holder registered under the pre-amended Regulation in respect of the waste disposed of before the transition date from any vehicle registered in the registered account-holder's name, the Director must—
  - (a) revoke the registration of the registered account-holder within 60 days from—
    - (i) the date on which all outstanding charges and surcharges are paid; or
    - (ii) the transition date,  
whichever is the later; and
  - (b) refund to the registered account-holder—
    - (i) the deposit paid by the registered account-holder under section 6(2)(a), 11(5) or 12(3)(b) of the pre-amended Regulation; or
    - (ii) if the deposit has been applied under section 12(1)(c) of the pre-amended Regulation—any balance.

(5) This section is in addition to, and not in derogation of, section 23 of the Interpretation and General Clauses Ordinance (Cap. 1).

(6) In this section—

*Amendment Ordinance 2018* (《2018年修訂條例》) means the Waste Disposal (Charging for Municipal Solid Waste) (Amendment) Ordinance 2018 ( of 2018);

*pre-amended Regulation* (《未經修訂規例》) means this Regulation as in force immediately before the transition date;

*transition date* (轉制日期) means the date on which section ~~22~~14 of the Amendment Ordinance 2018 comes into operation.”.

**34. Schedule amended (charges for disposal of waste at refuse transfer stations)**

(1) The Schedule—

**Repeal**

“CHARGES FOR DISPOSAL OF WASTE AT REFUSE TRANSFER STATIONS”

**Substitute**

**“Part 1A**

**Charges for Disposal of Waste at Refuse Transfer Stations”.**

(2) The Schedule—

**Repeal**

“[ss. 3 & 10]”

**Substitute**

“[ss. 2, 10 & 19]”.

- (3) At the end of the Schedule—

**Add**

## “Part 1

### Scheduled Facilities and Charges for Disposal of Municipal Solid Waste

#### 1. Interpretation

In this Schedule—

**Group 1 facility** (第 1 組設施) means—

- (a) West New Territories Landfill at Lung Kwu Tan Road, Nim Wan, Tuen Mun, New Territories;
- (b) North East New Territories Landfill at Wo Keng Shan Road, Ta Kwu Ling, New Territories;
- (c) North Lantau Transfer Station at PLA No. TW 353, Siu Ho Wan, North Lantau, New Territories; or
- (d) Outlying Islands Transfer Facilities—Ma Wan Station at Pak Wan, Ma Wan, New Territories;

**Group 2 facility** (第 2 組設施) means—

- (a) Island East Transfer Station at 10 Sun Yip Street, Chai Wan, Hong Kong;
- (b) West Kowloon Transfer Station at 1 Ngong Shung Road, Kowloon;
- (c) Island West Transfer Station at 88 Victoria Road, Kennedy Town, Hong Kong;
- (d) Northwest New Territories Transfer Station at Shun Tat Street, Yuen Long, New Territories; or

- (e) Shatin Transfer Station at 2 On Hing Lane, Sha Tin, New Territories;

**Group 3 facility** (第 3 組設施) means—

- (a) Outlying Islands Transfer Facilities—Cheung Chau Station at 1 Cheung Kwai Road, Cheung Chau, New Territories;
- (b) Outlying Islands Transfer Facilities—Mui Wo Station at 35 Mui Wo Ferry Pier Road, Mui Wo, Lantau, New Territories;
- (c) Outlying Islands Transfer Facilities—Peng Chau Station at GLA IS 296 & GLA IS 335, Tai Lei Island, Peng Chau, New Territories;
- (d) Outlying Islands Transfer Facilities—Hei Ling Chau Station at western tip of Hei Ling Chau, adjoining the cargo pier, Hei Ling Chau, New Territories;
- (e) Outlying Islands Transfer Facilities—Yung Shue Wan Station at Yung Shue Wan, Lamma Island, New Territories; or
- (f) Outlying Islands Transfer Facilities—Sok Kwu Wan Station at Sok Kwu Wan, Lamma Island, New Territories;

**unweighed load** (未秤載量) means a load of municipal solid waste in respect of which the Director considers that—

- (a) it is impracticable to ascertain the actual weight of the load; or
- (b) to ascertain the actual weight of the load would be likely to cause public health problems.

## 2. Charges for Group 1 facility

For municipal solid waste disposed of at a Group 1 facility—

- (a) from a ~~vehicle other than a waste vehicle~~waste vehicle in private use (without compactor)—
  - (i) the charge for each load of 1 tonne or less is \$365;
  - (ii) the charge for each load of more than 1 tonne is \$3.65 per 0.01 tonne or part of 0.01 tonne; and
  - (iii) the charge for each unweighed load is \$365; and
- (b) from a ~~private waste vehicle~~waste vehicle in private use (with compactor), the charge for each load is \$0.

### 3. Charges for Group 2 facility

For municipal solid waste disposed of at a Group 2 facility—

- (a) from a ~~vehicle other than a waste vehicle~~waste vehicle in private use (without compactor)—
  - (i) the charge for each load of 1 tonne or less is \$395;
  - (ii) the charge for each load of more than 1 tonne is \$3.95 per 0.01 tonne or part of 0.01 tonne; and
  - (iii) the charge for each unweighed load is \$395; and
- (b) from a ~~private waste vehicle~~waste vehicle in private use (with compactor)—
  - (i) the charge for each load of 1 tonne or less is \$30;
  - (ii) the charge for each load of more than 1 tonne is \$0.3 per 0.01 tonne or part of 0.01 tonne; and
  - (iii) the charge for each unweighed load is \$30.



**4. Charges for Group 3 facility**

For municipal solid waste disposed of at a Group 3 facility—

- (a) from a ~~vehicle other than a waste vehicle~~waste vehicle in private use (without compactor)—
  - (i) the charge for each load is \$3.65 per 0.01 tonne or part of 0.01 tonne; and
  - (ii) the charge for each unweighed load is \$150; and
- (b) from a ~~private waste vehicle~~waste vehicle in private use (with compactor), the charge for each load is \$0.”.

(4) The Schedule—

**Repeal Part 1A.**

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## **Part 4**

### **Amendment to Waste Disposal (Charges for Disposal of Construction Waste) Regulation**

**35. Section 25 added**

Before Schedule 1—

**Add**

**“25. Charges at above cost recovery level**

- (1) If a Schedule specifies the charges to be imposed in respect of construction waste accepted for disposal at a prescribed facility, the Secretary may, by notice published in the Gazette, amend the Schedule to revise the charges.
  - (2) The Secretary may, under subsection (1), set the charges at above cost recovery level.”.
-

## Part 5

### Amendments to Fixed Penalty (Public Cleanliness and Obstruction) Ordinance

#### 36. Schedule 1 amended (scheduled offence)

Schedule 1, after item 8—

##### Add

|                |                           |   |                    |
|----------------|---------------------------|---|--------------------|
| “9.            | Section 20K(1)            | Depositing non-compliant waste  | \$1,500            |
| 10.            | Section 20L(1)            | Depositing non-compliant waste by removal services provider                       | \$1,500            |
| 11.            | Section 20M(1)            | Delivering non-compliant waste  | \$1,500            |
| <del>12.</del> | <del>Section 20N(1)</del> | <del>Depositing labelled—municipal solid waste onto private waste vehicle</del>   | <del>\$1,500</del> |
| <del>13.</del> | <del>Section 20O(1)</del> | <del>Delivering labelled—municipal solid waste to—removal services provider</del> | <del>\$1,500</del> |
| 14.            | Section 20P(1)            | Depositing non-compliant waste in certain common areas                            | \$1,500”.          |

#### 37. Schedule 2 amended (authorities and public officers)

- (1) Schedule 2, entry relating to Authority “Director of Environmental Protection”, column 1, after “8”—

##### Add

“, 9, 10, 11, ~~12, 13,~~14”.

- (2) Schedule 2, entry relating to Authority “Director of Food and Environmental Hygiene”, column 1, after “7”—

**Add**

“, 9, 10, 11, ~~12, 13,~~14”.

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## Explanatory Memorandum

The object of this Bill is to amend the Waste Disposal Ordinance (Cap. 354) (***Ordinance***) and the Waste Disposal (Refuse Transfer Station) Regulation (Cap. 354 sub. leg. M) (***Regulation***) to establish a charging scheme for the disposal of municipal solid waste. The Bill also makes related amendments to the Waste Disposal (Charges for Disposal of Construction Waste) Regulation (Cap. 354 sub. leg. N) and the Fixed Penalty (Public Cleanliness and Obstruction) Ordinance (Cap. 570).

2. Clause 1 sets out the short title and provides for commencement.

### Charging by designated bags and designated labels

3. Clause 3 amends section 2 of the Ordinance to add certain new definitions to the Ordinance, such as ***municipal solid waste*** and ***non-compliant waste***.
4. Clause 4 adds a new Part IVB to the Ordinance to provide for the framework of the charging scheme—
  - (a) the new sections 20K, 20L, 20M and 20P create offences to prohibit delivering non-compliant waste (i.e. municipal solid waste that neither is wrapped in a designated bag nor has a designated label attached to it) to a waste collection officer or another person who is acting in the course of providing services connected with the removal of municipal solid waste (***removal services***) (see the new section 20M) and depositing non-compliant waste—
    - (i) at a refuse collection point (see the new sections 20K and 20L);
    - (ii) onto a public waste vehicle or private waste vehicle (see the new sections 20K and 20L);
    - (iii) into a specified bin (see the new section 20K); and

- (iv) in a common area of any premises that is used for depositing waste pending removal from the premises for disposal (see the new section 20P);
- (b) the new section 20N creates an offence to prohibit depositing municipal solid waste that has a designated label attached to it but that is not wrapped in a designated bag (*unwrapped waste*) onto a private waste vehicle;
- (c) the new section 20O creates an offence to prohibit delivering unwrapped waste to a person who is acting in the course of providing removal services by a private waste vehicle;
- (d) the new section 20Q provides for the following defences to charges brought against a person—
  - (i) that the person took all reasonable precautions and exercised all due diligence (applicable to an offence under the new section 20K, 20L, 20M, 20N, 20O or 20P);
  - (ii) that the person was acting at the instruction of the person's employer (applicable to an offence under the new section 20K, 20L, 20M, 20N, 20O or 20P);
  - (iii) that the non-compliant waste or unwrapped waste was disposed of in an emergency to avoid danger to the public (applicable to an offence under the new section 20K, 20L, 20M, 20N, 20O or 20P);
  - (iv) that the non-compliant waste is a bag that visibly contains only waste wrapped in designated bags (applicable to an offence under the new section 20K, 20L, 20M or 20P);
  - (v) that the person honestly and reasonably believed that the non-compliant waste would not be disposed

- of at any scheduled facility (applicable to an offence under the new section 20K, 20L or 20M); and
- (vi) that the non-compliant waste was municipal solid waste that escaped from a designated bag that had been damaged or unfastened during processing by a compaction device or in a waste chute (applicable to an offence under the new section 20K, 20L or 20M);
- (e) the new section 20R provides for the penalty for an offence under the new section 20K, 20M, 20O or 20P;
  - (f) the new section 20S provides for the Director of Environmental Protection (*Director*)’s power to—
    - (i) produce, sell and supply for free designated bags and designated labels; and
    - (ii) authorize, and revoke an authorization for, the production, sale and supply for free of designated bags and designated labels;
  - (g) the new section 20T empowers the Director to specify requirements for designated bags and designated labels;
  - (h) the new section 20U creates an offence to prohibit the sale of designated bags or designated labels by unauthorized persons;
  - (i) the new section 20V creates offences to prohibit—
    - (i) the sale of designated bags or designated labels by authorized persons at prices other than the prices prescribed for the bags or labels in the new Schedule 14; and
    - (ii) the offering of a rebate or discount in the sale of designated bags or designated labels by authorized persons;

- (j) the new section 20W creates an offence to prohibit the supply of designated bags or designated labels for free in the course of a profit-seeking business by unauthorized persons other than persons providing or arranging for the provision of waste collection services;
  - (k) the new section 20X empowers the Director of Food and Environmental Hygiene and the Director to prescribe various signs (*prescribed signs*);
  - (l) the new section 20Y—
    - (i) requires that prescribed signs be exhibited on public waste vehicles and private waste vehicles in the prescribed way;
    - (ii) creates an offence for failing to do so; and
    - (iii) provides for a defence to the offence;
  - (m) the new section 20Z creates an offence to prohibit the improper exhibition of a prescribed sign on a vehicle and provides for a defence to the offence; and
  - (n) the new section 20ZA clarifies that a designated bag is not a plastic shopping bag to which the Product Eco-responsibility Ordinance (Cap. 603) applies.
5. Clause 5 amends section 24(1) of the Ordinance to add the new section 20S(2) and (3) to the list of provisions of the Ordinance under which decisions or directions may be made. A person aggrieved by any of those decisions or directions may appeal to the Appeal Board established under section 25 of the Ordinance.
6. Clause 6 amends section 31 of the Ordinance to add the offences created by the new sections 20K, 20L, 20M, 20N, 20O and 20P to the list of offences under the Ordinance which do not require the prosecution to prove that the acts or omissions in question were accompanied by a mental ingredient on the part of the defendant as to any element of the offences.



7. Clauses 7 and 8 respectively amend sections 33 and 37 of the Ordinance to empower—
  - (a) the Chief Executive in Council to make regulations that impose charges for the disposal of waste, with the power to set the charges at above cost recovery level;
  - (b) the Secretary for the Environment (*Secretary*) to revise the charges specified by the regulations, with the power to set the charges at above cost recovery level; and
  - (c) the Secretary to revise the prices of designated bags and designated label prescribed in the new Schedule 14, with the power to set the prices at above cost recovery level.
8. Clause 9 adds a new Schedule 14 to the Ordinance to prescribe the prices of designated bags and designated label.
9. Clauses 36 and 37 amend the Fixed Penalty (Public Cleanliness and Obstruction) Ordinance (Cap. 570) to provide for a fixed penalty for offences created by the new sections 20K, 20L, 20M, 20N, 20O and 20P.

### **Charging by gate fees**

10. Clauses 11 to 34 amend the Regulation to provide for a charging scheme that imposes gate fees on account-holders who dispose of municipal solid waste, or cause such waste to be disposed of, at landfills, transfer stations and transfer facilities (*scheduled facilities*).
11. Clause 11 amends the title of the Regulation.
12. Clause 12 amends the definitions contained in section 2 of the Regulation.
13. Clauses 14 to 20 and 23 to 26 amend sections 4 to 7 and 10 to 12 of the Regulation to provide for a charging scheme for the disposal of

municipal solid waste by account-holders at scheduled facilities by using vehicle-based and non-vehicle-based accounts.

14. Clauses 27 and 28 amend section 13 of the Regulation to provide for the revocation of registered accounts and the Director's duty to give written notice of a revocation of registration.
15. Clause 30 amends section 16 of the Regulation to empower the Director to grant exemptions from the charges for the disposal of municipal solid waste at scheduled facilities.
16. Clause 31 amends section 17 of the Regulation to empower the Director to give a notice or document required or authorized to be given under the Regulation by fax or email.
17. Clause 33 adds a new section 19 to the Regulation, which empowers the Secretary to revise the charges specified in the Schedule to the Regulation for the disposal of municipal solid waste at scheduled facilities, with the power to set the charges at above cost recovery level. That clause also adds a new section 20 to the Regulation to provide for transitional arrangements under which pre-existing accounts for the disposal of waste at refuse transfer stations will be terminated.
18. Clause 34 renames the existing content of the Schedule to the Regulation as Part 1A and adds a new Part 1 to the Schedule to prescribe the charges payable for the disposal of municipal solid waste at scheduled facilities. That clause also repeals that Part 1A when the new charging scheme comes into operation.
19. Clauses 13, 21, 22, 29 and 32 make related amendments to the Regulation.

### **Other amendment**

20. Clause 35 adds a new section 25 to the Waste Disposal (Charges for Disposal of Construction Waste) Regulation (Cap. 354 sub. leg. N) to empower the Secretary to revise the charges for the disposal of

construction waste, with the power to set the charges at above cost recovery level.