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**Paper for the House Committee meeting on 13 August 2021**

**Report of the Bills Committee Formed on 16 October 2020 to Study the Waste Disposal (Charging for Municipal Solid Waste) (Amendment) Bill 2018**

**Purpose**

This paper reports on the deliberations of the Bills Committee Formed on 16 October 2020 to Study the Waste Disposal (Charging for Municipal Solid Waste) (Amendment) Bill 2018 ("the Bills Committee").

**Background**

Need for municipal solid waste charging

2. Municipal solid waste ("MSW") comprises domestic, commercial and industrial waste, and excludes construction and demolition waste, chemical waste and clinical waste. As the need to reduce waste disposal has become more imminent and acute amidst the increasing amount of waste being disposed of at the landfills in recent years, and having regard to extensive support received from the public consultation concluded in 2012, the Administration aims to introduce an MSW charging scheme to create incentives to drive behavioural changes in waste generation and hence reduce overall waste disposal.

Proposed municipal solid waste charging framework

3. The Administration engaged the Council for Sustainable Development ("SDC") for an extensive public engagement exercise in 2013. Based on the implementation framework proposed by SDC in 2014 and having regard to the views from different stakeholders subsequently, the Administration proposed the modified charging arrangements in October 2017. Premised on the "polluter-pays" principle and built upon the existing MSW collection and disposal system, MSW charges are proposed to be levied through the dual modes

of (a) charging by pre-paid designated bags/designated labels ("DBs/DLs") and (b) charging by weight-based "gate fee". The charging mode applicable to a waste producer will depend on the waste collection service used by the producer.

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

4. The Waste Disposal (Charging for Municipal Solid Waste) (Amendment) Bill 2018 ("the Bill") was published in the Gazette on 2 November 2018 and received its First Reading at the Council meeting of 14 November 2018 to amend the Waste Disposal Ordinance (Cap. 354) and the Waste Disposal (Refuse Transfer Station) Regulation (Cap. 354M) to establish a charging scheme for MSW disposal ("the proposed charging scheme"); to make related amendments to the Waste Disposal (Charges for Disposal of Construction Waste) Regulation (Cap. 354N) and the Fixed Penalty (Public Cleanliness and Obstruction) Ordinance (Cap. 570); and to provide for related matters.

### **The Bills Committee**

5. A bills committee was formed on 16 November 2018 to study the Bill ("the former Bills Committee"). As the majority of its members held reservation on the feasibility of completing scrutiny of the Bill before prorogation of the Sixth Legislative Council ("LegCo") in July 2020, the former bills committee decided on 22 June 2020 to discontinue scrutiny of the Bill and reported to the House Committee ("HC") its deliberations and decision.<sup>1</sup> HC agreed at its meeting on 10 July 2020 to dissolve the former Bills Committee pursuant to rule 21(r) of the House Rules.

6. On 31 July 2020, the Government announced that the Chief Executive ("CE") in Council had decided to postpone the 2020 LegCo General Election for one year taking into account the Coronavirus Disease 2019 ("COVID-19") epidemic. On 11 August 2020, the Standing Committee of the National People's Congress decided that after 30 September 2020, the Sixth LegCo was to continue to discharge duties for not less than one year until the Seventh LegCo began.

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<sup>1</sup> The former Bills Committee had examined up to clause 4, out of 37 clauses of the Bill. Its report ([LC Paper No. CB\(1\)849/19-20](#)) was issued on 9 July 2020 vide LC Paper No. CB(2)1337/19-20. The report covered, among others, issues raised by the Legal Adviser to the former Bills Committee on several legal and drafting issues of the Bill ([LC Paper Nos. CB\(1\)205/18-19\(02\)](#) and [CB\(1\)875/18-19\(03\)](#)) and the Administration's written responses. ([LC Paper Nos. CB\(1\)396/18-19\(01\)](#) and [CB\(1\)1000/18-19\(04\)](#)). These papers form important references for the subsequent scrutiny work of the Bill in the 2020-2021 session.

The Government then announced in the Gazette dated 14 August 2020 that CE had revoked the decision to prorogue the Sixth LegCo with effect from 14 August 2020, and the Sixth LegCo continued to operate in the 2020-2021 session.

7. Pursuant to section 9 of the Legislative Council Ordinance (Cap. 542) and in accordance with Rule 11(4) of the Rules of Procedure, the consideration of any bill is not to be affected by the end of a session and may be resumed at any subsequent meeting, but is to lapse at the end of a term of office. In light of the above developments, HC agreed at its meeting on 16 October 2020 to form a new bills committee to study the Bill. The membership list of the Bills Committee is in **Appendix I**. Under the chairmanship of Hon Frankie YICK Chi-ming,<sup>2</sup> the Bills Committee has held five meetings to discuss the Bill with the Administration. The Bills Committee has also invited written views from the public on the Bill. A list of individuals/organizations which have provided written submissions to the Bills Committee is in **Appendix II**.<sup>3</sup>

### **Approach of scrutiny work**

8. At the first meeting held on 3 November 2020, the Bills Committee decided to continue with the scrutiny work of the former Bills Committee and hence continue the clause-by-clause examination of the Bill.

9. At the second meeting held on 16 November 2020, some members suggested that taking into account various factors including the then substantial changes in membership, the Bills Committee should re-consider how it should conduct its scrutiny work. In accordance with rule 24(n) of the House Rules, the Bills Committee decided at the third meeting on 27 January 2021 to reopen discussion on how to conduct the scrutiny work on the Bill. After discussion, it was agreed that the scrutiny work should start afresh from the policy aspects for the following reasons:

- (a) there had been substantial changes in the membership of the Bills Committee after the first meeting on 3 November 2020, and the majority of the incumbent members might not have supported the decision made at that meeting;

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<sup>2</sup> Hon Frankie YICK Chi-ming and Hon Steven HO Chun-yin were elected Chairman and Deputy Chairman respectively at the second meeting of the Bills Committee held on 16 November 2020 to fill the respective vacancies arisen.

<sup>3</sup> The Administration's consolidated responses to the written submissions are given in [LC Paper No. CB\(1\)1112/20-21\(02\)](#).

- (b) starting the scrutiny work afresh could better ensure fair participation of members in the process, as some members had not joined the former Bills Committee; and
- (c) outbreak of the COVID-19 epidemic and the resultant economic downturn warranted re-examination of the policy aspects of the Bill.

### **Deliberations of the Bills Committee**

10. Members in general have not raised objection to the proposed charging scheme. However, they have expressed various concerns, in particular about the preparation and enforcement of the scheme as well as the Administration's support measures for waste reduction and recycling.<sup>4</sup> Dr CHENG Chung-tai has indicated that he does not support the Bill in principle as the proposed charging scheme will increase the financial burden on the public. He is also worried that there may be a low level of buy-in from the grassroots for the proposed charging scheme, which may lead to evasion of MSW charges or bribery for handling non-compliant waste (i.e. MSW that neither is wrapped in a DB nor has a DL attached to it) in an illegal manner.

11. The main subjects deliberated by the Bills Committee are set out below:

- (a) waste collection service arrangements and proposed charging modes (paragraphs 12 to 15);
- (b) preparation for implementation of MSW charging (paragraphs 16 to 24);
- (c) new offences in relation to the mandatory use of DBs/DLs (paragraphs 25 to 37);
- (d) enforcement (paragraphs 38 to 40);
- (e) waste reduction and recycling complementary measures (paragraphs 41 to 51); and
- (f) impact of MSW charging on waste reduction (paragraphs 52 to 54).

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<sup>4</sup> These concerns will be discussed in detail in the ensuing paragraphs of this report.

## Waste collection service arrangements and proposed charging modes

12. At present, MSW is generally collected via two channels: (a) by the Food and Environmental Hygiene Department ("FEHD") or its waste collection service contractors through refuse collection vehicles ("RCVs"), refuse collection points ("RCPs") and bin sites; or (b) by private waste collectors ("PWCs") using RCVs with compactors or RCVs without compactors such as grab lorries, demountable trucks and tippers.

13. Building upon the existing MSW collection and disposal system, the Administration has proposed that MSW charges be levied through the dual modes of (a) charging through purchasing and using DBs/DLs and (b) charging by weight-based "gate-fee". The charging mode applicable to a waste producer will depend on the waste collection service used by the producer:

- (a) for MSW collected by FEHD through RCVs, RCPs and specified bins as well as MSW collected by PWCs using RCVs with rear compactors,<sup>5</sup> charge will be imposed through requiring the use of DBs. The MSW will have to be properly wrapped in DBs before disposal onto waste vehicles, at RCPs and into specified bins as well as at the waste reception chambers or areas on individual floors of multi-storey buildings;
- (b) for oversized waste collected by FEHD that cannot be wrapped into a DB, charge will be imposed through requiring the oversized waste to be affixed with a DL before disposal. A uniform rate of \$11 per piece will be charged, which is estimated with reference to the price for the largest size of DB of 100 litres for waste producers;
- (c) MSW that is neither wrapped in a DB nor has a DL attached to it and disposed of at the above locations will be regarded as non-compliant waste; and

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<sup>5</sup> Specified bins refer to refuse containers (usually large refuse bins of 240-litre or 660-litre capacity) managed by FEHD for collecting MSW and are normally placed at RCPs managed by the department. Given the constraints of time and space in RCP operations and having regard to the safety of the public and staff (for instance, enough room has to be provided for RCVs to safely head in and out of RCPs), these large refuse bins are sometimes temporarily relocated outside RCPs. Moreover, since most RCPs in rural areas are bin sites with no building structures, only large refuse bins (usually of 240-litre or 660-litre capacity) are placed there. To ensure effective implementation of MSW charging and to prevent the public from depositing non-compliant waste in these large refuse bins, it is necessary to define these large refuse bins managed by FEHD as specified bins. The Bill requires that a prescribed sign be exhibited on a specified bin for easy identification by the public.

- (d) for MSW collected by PWCs using RCVs without compactors, a "gate fee" will be charged based on the weight of MSW disposed of at the waste disposal facilities, i.e. refuse transfer stations ("RTSs") or landfills.

14. Having considered relevant factors including affordability, public acceptability and effectiveness in driving behavioural changes, etc., the per-litre charge for DBs is proposed to be set at \$0.11 for the first three years of implementation. At this charging level, if a three-member household uses the most common DB of 10 or 15 litres for daily disposal of MSW, it will have to pay respectively around \$1.1 or \$1.7 per day (i.e. \$33 or \$51 per month). The DBs will be of nine different sizes from 3-litre up to 100-litre to cater for the need of different users.<sup>6</sup> The requirements for DBs and DLs and amendments to the MSW charges, if any, will be specified by way of a notice published in the Gazette, which will be subject to the negative vetting procedure.

15. After reviewing, among others, the implementation arrangements and the proposed offences, the Administration intends to move amendments to the Bill to the effect of standardizing the arrangements for those living in general domestic premises under which their MSW is collected by FEHD or PWCs, i.e. both may use RCVs with compactors to collect MSW that is either wrapped in DBs or affixed with DLs.<sup>7</sup> A diagram showing the charging modes applicable to the two types of waste collection services is provided at **Appendix III**.

#### Preparation for implementation of municipal solid waste charging

16. The Bills Committee has noted that to drive necessary behavioural and cultural changes towards waste reduction and recycling, the Administration will adopt a multipronged strategy based on (a) provision of appropriate preparatory time for implementation of the proposed charging scheme; (b) enhanced support for waste reduction and recycling; (c) intensive public education, publicity and engagement drives; (d) application of innovation and technology initiatives; (e) assistance for the needy; and (f) risk-based enforcement approach.

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<sup>6</sup> 3-litre, 5-litre, 10-litre, 15-litre, 20-litre, 35-litre, 50-litre, 75-litre and 100-litre. There are also 240-litre and 660-litre DBs which will only be sold for use by buildings with refuse chutes such that frontline cleaning workers will not have to unnecessarily put NCW collected at the bottom of the refuse chutes into DBs for further disposal.

<sup>7</sup> Please refer to paragraphs 26 to 29 of this report for explanation of the relevant amendments in connection with the offence provisions.

17. To facilitate a gradual adaptation to MSW charging and drive behavioural changes among the community, the Environmental Protection Department ("EPD") originally proposed to put in place a preparatory period of 12 to 18 months after the passage of the Bill in order to provide appropriate time for the Government, various stakeholders and members of the public to prepare for the implementation of MSW charging. Bills Committee members in general opine that the general public may need a longer preparatory period to adapt to MSW charging and cultivate waste reduction habits in their daily lives. The Administration should also take into account the economic situation in planning when to commence implementation of MSW charging.

18. Addressing members' concern, the Administration has agreed to put in place a preparatory period of 18 months as a basic arrangement. During the preparatory period, the Administration will pay close attention to various aspects of the community, particularly the progress of economic recovery after the COVID-19 pandemic, and the level of preparation among different stakeholders. The Administration has indicated that it may extend the preparatory period as appropriate if considered necessary.

19. The Administration has undertaken to report to the Panel on Environmental Affairs ("EA Panel") on the progress of work during the preparatory period and consult EA Panel on the commencement date of the legislations at an opportune time. The Administration will publish the relevant commencement notices in the Gazette only if EA Panel agrees on the proposed commencement date. The commencement notices will be scrutinized by LegCo through negative vetting procedure. Upon obtaining EA Panel's support, the subsidiary legislations in relation to the relevant commencement notices will be published in the Gazette, which are also subject to the negative vetting procedure.

20. The Bills Committee has raised concern that the proposed charging scheme may cause undue burden and legal risks to the frontline cleaning staff as they may inadvertently commit a proposed offence under the Bill when handling non-compliant waste. The Administration is requested to provide guidance to enhance frontline cleaning staff's understanding of the requirements and their responsibilities under the proposed charging scheme.

21. The Administration stresses that it will closely communicate with stakeholders from various sectors, including property management companies and cleansing service providers, to jointly work out operational guidelines for their respective sectors and provide them with relevant training, thereby assisting them in carrying out MSW charging. In this connection, the Administration has provided the Bills Committee with a set of preliminary draft guidelines for

reference by households from domestic premises which have engaged property management companies.<sup>8</sup>

*Provision of free designated garbage bags*

22. Some members have suggested that the Government should consider providing more assistance during the initial stage of the implementation of the proposed charging scheme, such as providing free DBs to the general public, so as to facilitate them to adapt to the arrangement of using DBs for proper waste disposal. The Administration has indicated that it will consider the suggestion. If so pursued, the details of free distribution of DBs will be worked out with reference to the provisions of the Bill as passed by LegCo and other operational considerations.

23. Some members urge the Administration to plan early on how to provide free DBs to the general public during the initial stage of the implementation of the proposed charging scheme, and prioritize target groups for making the free provision. They also opine that the duration of free provision should be long enough to achieve the purpose, i.e. to allow the public to adapt to the use of DBs and cultivate proper waste disposal habits. Dr CHENG Chung-tai, however, has queried the feasibility of this suggestion, taking into account the substantial quantity of DBs to be distributed territory-wide and the complex administrative issues involved.

24. The Administration has advised that a reasonable quantity of free DBs will be distributed. A waste producer will need to purchase DBs if the quantity of free DBs distributed cannot fully satisfy his/her need. EPD may collaborate with the Housing Department and property management companies for provision of free DBs to households of public rental housing estates and other residential buildings with property management companies respectively. The provision of free DBs through property management companies should be technically feasible, as most of them have been regularly providing garbage bags to individual households. The Administration is also studying potential modes of distribution for other types of premises, such as "three-nil buildings", i.e. buildings that do not have any property management company, incorporated owners association and residents' organization. It will take time for the Administration to study the options and discuss operational details with stakeholders. In any case, the Administration will consult EA Panel on the implementation proposal at an

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<sup>8</sup> The preliminary draft guidelines are given in Annex II to 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" provided by the Administration ([LC Paper No. CB\(1\)1013/20-21\(01\)](#)).



opportune time.

New offences in relation to the mandatory use of designated bags and designated labels

25. For the implementation of MSW charging through purchasing and using DBs/DLs, six new sections, i.e. sections 20K, 20L, 20M, 20N, 20O and 20P, are originally proposed to be added in Cap. 354 by way of clause 4 of the Bill to create offences in relation to the mandatory use of DBs/DLs.<sup>9</sup> As for charging by weight-based "gate-fee", it will be effected mainly through clauses 11 to 34 of the Bill, which amend Cap. 354M.

26. The proposed sections 20N and 20O of Cap. 354 under the Bill seek to prohibit the depositing of MSW affixed with DLs onto RCVs with compactors used by PWCs and the delivering of MSW affixed with DLs to PWC staff who provide removal services by such vehicles respectively. Under such arrangements, all oversized waste collected by PWCs should only be collected by RCVs without compactors and charged through the "gate-fee" mechanism.

27. The legislative intent of the above proposal is premised on the consideration that PWCs collect oversized waste mainly from commercial and industrial premises and certain domestic premises. These oversized waste items, such as large metalware and wood panels, come in a much greater variety in terms of quantity, volume and type, as compared with the general domestic oversized waste collected by FEHD or its contractors. If a uniform rate of \$11 (i.e. the charge through purchasing a DL) is charged for disposing of a single piece of oversized waste regardless of its size, this undermines the "polluter-pays" principle. However, there are views that such arrangements may cause inconvenience for certain domestic premises as their oversized waste can only be charged through the "gate-fee" mechanism. There are also views that as waste items affixed with DLs already have their MSW charges paid, it may be too harsh to criminalize the act of depositing such waste items onto RCVs with compactors used by PWCs.

28. Having reviewed the implementation and implications of the relevant arrangements, the Administration has indicated that it will move amendments to delete the proposed sections 20N and 20O with the effect that PWCs are allowed to use RCVs with compactors for collecting MSW affixed with DLs. In other words, PWCs may use RCVs with compactors to collect, at the same time, MSW that is either wrapped in DBs or affixed with DLs.

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<sup>9</sup> Please refer to paragraphs 26 to 30 of this report about the Administration's proposed amendments to the Bill to delete the proposed sections 20N and 20O.

29. The Bills Committee has noted that the proposed amendment will standardize the arrangements for those living in general domestic premises, under which their MSW is collected by FEHD or PWCs, i.e. both may use RCVs with compactors to collect MSW that is either wrapped in DBs or affixed with DLs. Such amendment will bring about waste collection arrangements that are broadly comparable to the existing ones for general domestic premises, hence facilitating their residents' understanding of the waste disposal requirements under the proposed charging scheme and thereby minimizing their chances of inadvertently infringing the law. As for commercial and industrial premises, the Administration notes that most oversized waste items generated from commercial and industrial premises are so voluminous or irregular in shape that, practically, they can only be collected by RCVs without compactors but not RCVs with compactors. Although the above amendment allows PWCs more flexibility in their collection arrangements for oversized waste, the Administration considers that in future the oversized waste generated from most of the commercial and industrial premises will still be collected by PWCs using RCVs without compactors and be charged through the "gate-fee" mechanism. Therefore, while enhancing the flexibility of the proposed charging framework, the amendment remains in accord with the legislative intent.

30. To dovetail with the aforesaid proposed amendment, the Administration has proposed consequential amendments, including those to the proposed sections 20Q(1), 20R and 31 of Cap. 354; and the proposed items 12 and 13 of Schedule 1, as well as the entries relating to Authority "Director of Environmental Protection" and Authority "Director of Food and Environmental Hygiene" of Schedule 2, to Cap. 570.

31. Members have stressed that the clarity and comprehensibility of the offence provisions will be pivotal to compliance and enforcement. To facilitate understanding by members and other stakeholders, the Administration has provided information to explain the legislative intent and operation of the remaining four proposed offence provisions under the Bill in relation to the mandatory use of DBs/DLs as well as the relevant penalties (**Appendix IV**).

32. Apart from its proposed amendments to delete the proposed sections 20N and 20O, the Administration has also indicated that it will move, among others, the following amendments to the Bill concerning exemptions from the relevant offence provisions:<sup>10</sup>

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<sup>10</sup> For details, please refer to information note on "Committee Stage Amendments Proposed by the Administration" provided by the Administration ([LC Paper No. CB\(1\)1013/20-21\(02\)](#)).

*Proposed amendments relating to Cap. 354*

- (a) amendments to the proposed sections 20K(2)(a) and 20M(2)(a) mainly to narrow the scope of exclusion to "a Government-employed waste handler" instead of "the Director of FEH" (i.e. the Director of Food and Environmental Hygiene) to ensure consistency with the scope of exclusion of the proposed section 20M(1), thereby facilitating understanding of the correlations among the offences concerning the prohibition of depositing and delivering non-compliant waste pursuant to the proposed sections 20K, 20L and 20M. The Administration considers that the above amendments help maintain the integrity of the charging mechanism;
- (b) amendments to the proposed section 20Q(3)(a) in relation to the statutory defence for a person charged with an offence under the proposed section 20K, 20L or 20M (relating to the handling of non-compliant waste) by stressing that the defence is available for a person who deposits or delivers non-compliant waste (or causes or permits such non-compliant waste to be deposited or delivered) in an honest and reasonable belief that such non-compliant waste will not be disposed of at a scheduled facility, whether because the non-compliant waste is reasonably suitable for recycling or otherwise. The Administration considers that the above clarification helps to give readers a clearer picture of the circumstance under which the said statutory defence may operate;
- (c) addition of the proposed section 20RA to empower the Director of Environmental Protection to consider, if satisfied that it is reasonable to do so, granting exemption on a per application basis, to the effect that the proposed section 20K(1), 20L(1) or 20M(1) ("MSW handling requirement(s)") will not be applicable to any person who collects MSW for or on behalf of the Government, or any person providing service for collecting material which is reasonably suitable for recycling. The Director of Environmental Protection may also revoke an exemption under the specified circumstances (e.g. if Director is satisfied that the applicant has provided any information that was false or misleading in a material particular, or there is no longer any justification for the exemption);
- (d) addition of section 20RB to empower the Director of Environmental Protection, under certain circumstances, to grant exemption on his or her own initiative to the effect that the MSW handling requirement(s) will not be applicable to certain persons; and

*Proposed amendments relating to Cap. 354M*

- (e) addition of the proposed sections 4A, 4B and 4C mainly to empower Director of Environmental Protection to grant exemption on the basis of application or on DEP's own initiative taking into account the need for public safety, environmental hygiene or environmental protection, or exceptional circumstances which will make it impractical or unreasonable to require a person to comply with the relevant provisions, to any person who fulfills certain conditions, so that they do not need to use registered vehicles to dispose of MSW at scheduled facilities. The Director may also revoke such exemption under the specified circumstances (e.g. if the Director is satisfied that the applicant has provided any information that was false or misleading in a material particular, or there is no longer any justification for the exemption).

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

33. Under the proposed section 20L(1) of Cap. 354, non-government-employed waste handlers who are acting in the course of providing removal services at certain locations (such as at RCPs or relevant RCVs) will commit an offence for depositing non-compliant waste at the RCPs or onto the relevant RCVs. The Legal Adviser to the Bills Committee ("Legal Adviser") has asked about why this offence is not applicable to government-employed waste handlers ("the differential treatment");<sup>11</sup> and whether the differential treatment will 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.

34. The Administration has advised that 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

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<sup>11</sup> For details, please refer to paragraphs 2 to 3 of the letter dated 24 June 2021 from the Legal Adviser ([LC Paper No. CB\(1\)1045/20-21\(01\)](#)), and paragraphs 2 to 7 of the Administration's written response ([LC Paper No. CB\(1\)1112/20-21\(01\)](#)).

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.

35. The Administration has pointed out that the policy objective of the Bill is to establish a charging scheme for the disposal of 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". As regards the right to equality under Article 25 of the Basic Law and Article 22 of the Hong Kong Bill of Rights, 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.

36. The Administration explains that that 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 RCPs or RCVs) 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's own initiative e.g. due to urgency, hygiene or other reasons. Similar to other law enforcement officers, their exercise of the discretionary power will be governed by government guidelines and offenders will be subject to varying degrees of disciplinary actions. 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.

37. Against the abovementioned considerations, the Administration takes the view that 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, the Administration believes that the proposed section 20L will 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.

## Enforcement

38. Members have expressed concern about the Administration's capability and resources to enforce the proposed charging scheme and prevent aggravation of the illegal waste disposal problems. In particular, members are worried about delineation of powers and responsibilities among government departments on certain environmental hygiene issues (e.g. issues associated with the operation of street corner recycling shops, mobile recyclers and frontline collectors).

39. The Administration has advised that while evasion of MSW charges is likely to occur in the initial stage of the implementation of the proposed charging scheme according to the experiences of other cities, it is envisaged that the provision of free DBs during the initial stage of the implementation of MSW charging will help cultivate proper waste disposal habits and prevent fly-tipping or disposal of non-compliant waste to a certain extent. The Administration's plan is to set up a Municipal Solid Waste Reduction Office under EPD after the passage of the Bill to coordinate the efforts of various departments in the implementation and enforcement of MSW charging. Enforcement actions against non-compliant waste will be taken at black spots under a risk-based approach. The Administration has assured members that it will critically examine the need to create additional posts for enforcing the proposed MSW charging scheme, having regard to the compliance situation and other factors, with a view to ensuring prudent use of public resources.

40. The Administration has further advised that the efficiency of follow-up actions to fly-tipping and marine refuse incidents has already been improved through enhanced interdepartmental coordination. Following the use of a geographic information system platform together with increased enforcement manpower, there has been significant reduction in the amount of construction and demolition waste illegally disposed of. The Administration will make reference to such experience when preparing for the implementation of the proposed charging scheme. At the request of the Bills Committee, the Administration has provided supplementary information on its stepped-up efforts to combat illegal disposal of construction and demolition waste, and statistics to demonstrate the effectiveness of such efforts.<sup>12</sup>

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<sup>12</sup> The relevant information is given in paragraphs 10 to 15 of the Administration's written response to the list of follow-up actions arising from the meeting on 25 February 2021 ([LC Paper No. CB\(1\)880/20-21\(02\)](#)).

## Waste reduction and recycling complementary measures

41. The Administration has reported to the Bills Committee its waste reduction and recycling complementary measures launched or planned since June 2020 and their progress.<sup>13</sup> Notably, the Administration has launched in 2020 various pilot schemes of centralized collection and recycling services on recyclables including waste paper and plastic recyclable materials, and a pilot scheme to test out the application of reverse vending machines for collecting plastic beverage containers, with a view to enhancing public participation in waste separation and recycling while promoting sustainable development of the local recycling industry. The second phase of the Pilot Scheme on Food Waste Collection Service has also commenced in early 2021 and will progressively be expanded to cover domestic food waste.

42. Regarding enhancement of the Community Recycling Network, EPD has commenced the provision of regularized funding support since October 2020 for community recycling centre projects previously subsidized by the Environment and Conservation Fund, with the number of Recycling Stores increased to 22 covering 18 districts, more than 100 Recycling Spots set up across the territory and nine Recycling Stations (previously referred to as Community Green Stations) in operation.

43. To increase public confidence in proper handling of recyclables, EPD has taken over from FEHD the management of waste separation bins ("recycling bins") in public places (such as near pedestrian walkways) since 1 October 2020. EPD has introduced a series of new requirements under the new contracts for recyclables collection services and made some improvements on the recycling bins, including changing the original litter compartments to collect recyclables, so as to increase the collection capacity and reduce the chance of misplacement of litter into recycling bins by the public, with a view to improving the cleanliness of recyclables.

44. The Administration has noted the following views/suggestions raised by individual members requesting the Administration to:

- (a) maintain environmental hygiene of recycling bins (managed by EPD) and recyclables collection points in the Community Recycling Network;

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<sup>13</sup> For details, please refer to the information note on "Waste Reduction and Recycling Complementary Measures Launched by Environmental Protection Department and their Progress" provided by the Administration ([LC Paper No. CB\(1\)187/20-21\(01\)](#)).

- (b) step up publicity and education to enhance the public's understanding of the proposed charging scheme;
- (c) engage wider participation in waste reduction and recovery by members of the public;
- (d) monitor the effectiveness of outsourced services, if any, for implementation of MSW charging as well as waste reduction and recycling;
- (e) explore with the Development Bureau ways to encourage the setting up of resource recovery facilities in new and existing domestic premises;
- (f) collaborate with the business sector in the provision of resource recovery facilities in supermarkets and convenience stores, and organization of reward schemes to encourage the depositing of recyclables into those facilities; and
- (g) enhance the development of local green industries and creation of green-collar jobs through the proposed charging scheme and other initiatives to promote waste separation and recycling.

### *Food waste collection*

45. Currently, the Administration has launched the Pilot Scheme on Food Waste Collection to provide free collection and delivery of food waste to food waste recycling facilities progressively according to the progress of the expansion of downstream food waste recycling facilities. The Administration also plans to arrange free collection and delivery of food waste properly separated from the catering trade to food waste recycling facilities progressively upon the implementation of MSW charging, subject to the development progress of such facilities. According to the Administration, more trials on source separation and collection of food waste in collaboration with associations of the catering trade will be conducted during the preparatory period of MSW charging.

46. Some members have expressed concerns on the implications of the implementation of MSW charging on various trades. For example, the catering trade will have to bear additional costs for handling food waste. There is a suggestion that exemptions from the proposed MSW charges on food waste be provided to encourage the catering trade and the general public to practice waste separation at source. Members have also urged the Administration to expand the free food waste collection and delivery service to residential premises in the long run. As most residential premises have yet to be covered by the free food



waste collection and delivery service, there is a concern that the general public may be in effect subsidizing the operators of some commercial and industrial establishments and public institutions in terms of food waste handling, given that the Administration's recycling work will be funded by the revenue to be generated from MSW charging.

47. The Administration has advised that if the catering trade separates food waste properly, food waste sent to food waste recycling facilities will not be subject to MSW charges. This arrangement will be same as the case where recyclables properly recovered by the general public will not be subject to MSW charges. The Administration will endeavour to engage the catering trade in the formulation of operational arrangements of the food waste collection service. The Administration also has plans to expand the service to the domestic sector in the long run, subject to the development progress of food waste recycling facilities.

#### *Financial and manpower resources*

48. The Bills Committee has discussed with the Administration the allocation of financial and manpower resources to implement the proposed charging scheme, and enhance support for waste reduction and recycling.

49. The Administration has advised that it has been providing additional recurrent resources to strengthen waste reduction and recycling work from the financial year 2019-2020 since the introduction of the Bill into LegCo in 2018. In the financial year 2019-2020, the actual expenditure incurred by EPD for strengthening waste reduction and recycling work is around \$100 million. With the progressive implementation of various waste reduction and recycling initiatives, the relevant estimated expenditure for the financial year 2020-2021 is around \$500 million.<sup>14</sup> Looking forward, the Administration expects that the annual provision will be further increased to no less than \$800 million to \$1 billion approximately, which will be commensurate with the estimated gross revenue to be generated from MSW charging during the initial period, so as to achieve the effect of "dedicated-fund-for-dedicated-use".<sup>15</sup>

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<sup>14</sup> All estimated expenditures are in money-of-the-day prices.

<sup>15</sup> At the request of the Bills Committee, the Administration has provided the details and expenses of waste disposal and recycling based on the waste statistics for 2019, as set out in Annex II to the Administration's written response to the list of follow-up actions arising from the meeting on 25 February 2021 ([LC Paper No. CB\(1\)880/20-21\(02\)](#)).

50. The Administration has further advised that, as the administration authorities of MSW charging, EPD and FEHD will require substantial manpower to undertake a wide range of heavy non-enforcement responsibilities. These include developing the infrastructure required for implementing MSW charging, as well as mapping out and administering the charging arrangements. Furthermore, additional manpower will be required to implement various complementary measures on waste reduction and recycling with a view to facilitating proactive public participation in waste reduction and resource recovery, thereby paving the way for the implementation of MSW charging in future. As some of the new posts created/to be created are non-civil service contract posts, it will enable the Administration to recruit suitable staff more flexibly to meet service needs. The new posts created will continue to undertake initiatives on waste reduction and recycling regardless of whether the Bill is passed.

51. At the request of the Bills Committee, the Administration has provided information setting out (a) the direct recurrent and non-recurrent costs associated with the proposed charging scheme that will be incurred by the Government before and after the passage of the Bill; and (b) details of related manpower planning, including the estimated number of staff and notional annual salary costs of relevant government departments for the implementation of MSW charging.<sup>16</sup>

#### Impact of municipal solid waste charging on waste reduction

52. The Bills Committee has sought the Administration's assessment of the potential impact of MSW charging on waste reduction.

53. The Administration has advised that according to the experiences of other cities with MSW charging in place, the implementation of MSW charging can generally help reduce MSW disposal by around 15% to 25% during the initial stage of implementation. Under the Waste Blueprint for Hong Kong 2035 ("the Blueprint") announced by the Environment Bureau on 8 February 2021,<sup>17</sup> the

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<sup>16</sup> The relevant information is given in paragraphs 5 to 14 of the Administration's written response to the list of follow-up actions arising from the meeting on 27 January 2021 ([LC Paper No. CB\(1\)605/20-21\(02\)](#)).

<sup>17</sup> Setting out the vision of "Waste Reduction · Resources Circulation · Zero Landfill", the Blueprint outlines the strategies, goals and measures to tackle the challenge of waste management up to 2035. To achieve those goals, the Government will promote six major areas of action, namely Waste Reduction, Waste Separation, Resources Circulation, Industry Support, Innovation and Cooperation, and Education and Publicity, leading the advancement of various policies and measures as well as building a circular economy and a sustainable green living environment.

Administration's medium-term target is to gradually reduce per-capita MSW disposal by 40% to 45% and increase the recovery rate to about 55% by implementing MSW charging together with other waste reduction and recycling initiatives. The Administration stresses that MSW charging is the main driving force behind waste reduction which helps drive enterprises and the public to practise waste reduction and recycling proactively. Whether the targets on waste reduction and recycling under the Blueprint can be achieved depends on the implementation of MSW charging, together with the progress of other waste reduction and recycling initiatives, including the implementation of new producer responsibility schemes, expansion of community recycling network and services, construction of new waste management facilities, and enhanced publicity and public education, etc.

54. The Administration has also advised that the implementation of MSW charging will be a decisive factor in the sustainable development of the local recycling industry, as MSW charging is expected to promote waste separation at source, thereby increasing the overall quantity of recyclables available for recycling and facilitating recyclers' achievement of the economy of scale.

## **Amendments**

55. The Bills Committee has noted that apart from the amendments mentioned in paragraphs 28, 30 and 32 above, the Administration will move other amendments to the Bill relating to technical aspects to improve the drafting of provisions or which are consequential in nature.<sup>18</sup> The major ones are as follows:

### Proposed amendments relating to Cap. 354

- (a) amendments to the Chinese and English wording of certain proposed defined terms to make them more precise and easier to understand; and
- (b) amendments to the proposed sections 20K(2)(b), 20L(1), 20M(1)b and 20M(2)(b) to describe more specifically and clearly the identity of the persons concerned and make the text more readable and comprehensible.

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<sup>18</sup> For details, please refer to information note on "Committee Stage Amendments Proposed by the Administration" provided by the Administration ([LC Paper No. CB\(1\)1013/20-21\(02\)](#)).

56. In response to the enquiries raised by the Legal Adviser, the Administration has also provided supplementary information to explain its proposed amendments to the Bill.<sup>19</sup> The Bills Committee has examined and agreed to the amendments to be moved by the Administration. A full set of the amendments is in **Appendix V**. The Bills Committee will not propose any amendments to the Bill.

### **Resumption of Second Reading debate on the Bill**

57. The Bills Committee has no objection to the resumption of the Second Reading debate on the Bill at the Council meeting of 25 August 2021.

### **Advice sought**

58. Members are invited to note the Bills Committee's deliberations set out above.

Council Business Division 1  
Legislative Council Secretariat  
12 August 2021

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<sup>19</sup> For details, please refer to paragraphs 4 to 8 of the letter dated 24 June 2021 from the Legal Adviser ([LC Paper No. CB\(1\)1045/20-21\(01\)](#)), and paragraphs 8 to 21 of the Administration's written response ([LC Paper No. CB\(1\)1112/20-21\(01\)](#)).

**Bills Committee Formed on 16 October 2020 to Study the Waste Disposal (Charging for Municipal Solid Waste) (Amendment) Bill 2018**

**Membership list\***

<b>Chairman</b>	Hon Frankie YICK Chi-ming, SBS, JP
<b>Deputy Chairman</b>	Hon Steven HO Chun-yin, BBS, JP
<b>Members</b>	Hon Abraham SHEK Lai-him, GBS, JP Hon Tommy CHEUNG Yu-yan, GBS, JP Hon CHAN Hak-kan, SBS, JP Hon Paul TSE Wai-chun, JP Hon YIU Si-wing, SBS Hon MA Fung-kwok, GBS, JP Hon KWOK Wai-keung, JP Hon Elizabeth QUAT, BBS, JP Hon Martin LIAO Cheung-kong, GBS, JP Ir Dr Hon LO Wai-kwok, GBS, MH, JP Hon CHUNG Kwok-pan Dr Hon Junius HO Kwan-yiu, JP Hon SHIU Ka-fai, JP Hon Wilson OR Chong-shing, MH Dr Hon Pierre CHAN Dr Hon CHENG Chung-tai Hon Vincent CHENG Wing-shun, MH, JP  (Total: 19 members)
<b>Clerk</b>	Ms Angel SHEK
<b>Legal Adviser</b>	Miss Evelyn LEE

\* Changes in membership are shown in Annex to Appendix I.

**Bills Committee Formed on 16 October 2020 to Study the Waste Disposal (Charging for Municipal Solid Waste) (Amendment) Bill 2018**

**Changes in membership**

<b>Member</b>	<b>Relevant date</b>
Hon SHIU Ka-chun	Up to 5 November 2020
Prof Hon Joseph LEE Kok-long, SBS, JP	Up to 10 November 2020
Hon Claudia MO	Up to 10 November 2020
Hon IP Kin-yuen	Up to 10 November 2020
Hon HUI Chi-fung	Up to 11 November 2020
Hon Jeremy TAM Man-ho	Up to 11 November 2020
Hon James TO Kun-sun	Up to 12 November 2020
Hon WU Chi-wai, MH	Up to 12 November 2020
Dr Hon Helena WONG Pik-wan	Up to 12 November 2020
Hon Andrew WAN Siu-kin	Up to 12 November 2020
Hon LAM Cheuk-ting	Up to 12 November 2020
Hon KWONG Chun-yu	Up to 12 November 2020
Hon LEUNG Yiu-chung	Up to 15 November 2020
Dr Hon Junius HO Kwan-yiu, JP	Since 16 November 2020
Dr Hon Pierre CHAN	Since 16 November 2020
Dr Hon Fernando CHEUNG Chiu-hung	Up to 18 November 2020
Hon Tony TSE Wai-chuen, BBS, JP	Up to 25 June 2021

Changes in LegCo Membership

**Bills Committee Formed on 16 October 2020 to Study the Waste Disposal (Charging for Municipal Solid Waste) (Amendment) Bill 2018**

**List of deputations and individuals  
which/who have provided written submissions to the Bills Committee**

1. Adrienne NG
2. Advisory Council on the Environment
3. Aiko Stevenson
4. Alicia Shen
5. Anne Copeland
6. Asia Circular Economy Association
7. Basel Kirmani
8. Business Environment Council Limited
9. Cathy Pacific Airways Limited
10. Chartered Institution of Water and Environmental Management
11. Christian Family Service Centre
12. Circular City Limited
13. Civic Exchange
14. Claire Yates
15. Coco TANG
16. Designs on Life
17. Dr CHUNG Shan-shan
18. Dr Merrin Pearse
19. Drink Without Waste
20. Eco Enrich Company Limited
21. EcoDrive Hong Kong
22. EnviroEvents Hong Kong Limited
23. Federation of Hong Kong Industries
24. Food Made Good Hong Kong Limited
25. Friends of the Earth
26. GHM Greater Bay Area Institute of Urban Architecture (Hong Kong)
27. Green Dragons HK
28. Green Power
29. Green Sense
30. Greeners Action
31. Greenlace Environment Company
32. Harold YIP
33. HK Circular Economy Alliance
34. Hong Kong General Chamber of Commerce
35. Hong Kong Green Building Council Limited
36. Hong Kong Green Strategy Alliance
37. Hong Kong Institute of Qualified Environmental Professionals
38. Hong Kong Scrap Plastic Association
39. Hong Kong Waste Management Association
40. Hong Kong Women Professionals and Entrepreneurs Association Limited

41. Jacqueline Green
42. Julia Brown
43. Leigh Farina
44. LI Chung-chi
45. Liberal Party
46. Living Islands Movement
47. Louise Taylor
48. Megan Schmalzried
49. Metanoia HK
50. MilMill
51. Mutual Aid Committee of Fu Keung House, Tai Wo Hau Estate
52. New People's Party
53. Nimi Dsa
54. OIWA Limited
55. Path of Democracy
56. Patrick LAU
57. Paul Snelgrove
58. Plastic Free Seas
59. Professor Alexis LAU
60. Professor Benjamin Steuer
61. Professor Irene LO
62. Professor Jonathan WONG
63. Professor POON Chi-sun
64. Reconnect Environmental Institute
65. Reshma Sadashiv Uchil
66. Robert Clark
67. Ron CHUNG
68. Ryan Harper
69. Sarah Johnson
70. Steve Quilkey
71. Steve White
72. Steven Molyneux-Webb
73. Swire Coca-Cola HK
74. Swire Pacific Limited
75. Swire Properties Limited
76. Tessa Faure
77. The British Chamber of Commerce in Hong Kong
78. The Conservancy Association
79. The Environmental Management Association of Hong Kong Limited
80. The Green Earth
81. The Hong Kong Institution of Engineers
82. The Lion Rock Institute
83. Tony WONG
84. Wander Meijer
85. Yan Oi Tong
86. 236 members of the public



## Municipal Solid Waste Charging – Waste Collection Services and Relevant Charging Modes



[Source: Annex I to 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" provided by the Administration ([LC Paper No. CB\(1\)1013/20-21\(01\)](#)).

**Newly Created Offences in Relation to the Mandatory Use of Designated Bags/Designated Labels**

The proposed enforcement locations under sections 20K, 20L, 20M and 20P include:

- (a) refuse collection points ("RCPs") and specified bins managed by the Food and Environmental Hygiene Department ("FEHD");<sup>1</sup>
- (b) refuse collection vehicles ("RCVs") used by FEHD or its contractors;
- (c) RCVs with compactors used by private waste collectors ("PWCs"); and
- (d) temporary storage areas at premises for depositing municipal solid waste ("MSW") pending removal from the premises for disposal (such as refuse chambers or rear staircases on individual floors).

Section 20K – Depositing non-compliant waste prohibited

2. To prompt the public to pay for MSW as generated by them, it is necessary to prohibit the public from disposing of MSW that is not properly wrapped in designated bags ("DBs") or attached with designated labels ("DLs") (i.e. non-compliant waste) at certain waste collection points. The proposed section 20K provides that a person commits an offence if the person deposits non-compliant waste at an RCP, onto an RCV used by FEHD or its contractors, onto an RCV with compactors used by PWCs, or into a specified bin (such as depositing non-compliant waste at an RCP or into a specified bin that is generally provided for collecting MSW in rural areas). This section targets not only those who deposit non-compliant waste but also those who cause or permit others' non-compliant acts. This section is not applicable to personnel that are

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<sup>1</sup> Specified bins refer to refuse containers (usually large refuse bins of 240-litre or 660-litre capacity) managed by FEHD for collecting municipal solid waste and are normally placed at RCPs managed by the department. Given the constraints of time and space in RCP operations and having regard to the safety of the public and staff (for instance, enough room has to be provided for refuse collection vehicles to safely head in and out of RCPs), these large refuse bins are sometimes temporarily relocated outside RCPs. Moreover, since most RCPs in rural areas are bin sites with no building structures, only large refuse bins (usually of 240-litre or 660-litre capacity) are placed there. To ensure effective implementation of municipal solid waste charging and to prevent the public from depositing non-compliant waste in these large refuse bins, it is necessary to define these large refuse bins managed by FEHD as specified bins. The Bill requires that a prescribed sign be exhibited on a specified bin for easy identification by the public.

employed to work at relevant RCPs or RCVs who need to handle MSW as required by their duties.

Section 20L – Depositing non-compliant waste by removal services provider prohibited

3. To prevent the abovementioned personnel from being requested or instructed to assist in disposing of non-compliant waste, and to maintain the integrity of the charging mechanism, section 20L provides the same that such personnel shall not deposit non-compliant waste while working at certain enforcement locations:

- (a) an employee of FEHD contractors or PWCs commits an offence if the employee deposits non-compliant waste at an RCP or onto relevant RCV in the course of providing waste removal services. This section also targets those who cause or permit others' non-compliant acts; and
- (b) this proposed section is not applicable to government employees who are handling waste at relevant RCP or RCV to provide some operational flexibility. Nonetheless, they shall still comply with the above prohibition on depositing non-compliant waste in general. The Administration will devise guidelines for these government employees. Offenders will be subject to varying degrees of disciplinary actions.

Section 20M – Delivering non-compliant waste to certain persons prohibited

4. Similarly, to prevent the abovementioned waste-handling personnel from being requested or instructed to assist in disposing of non-compliant waste, the proposed section 20M prohibits the delivery of non-compliant waste by any person (including those who cause or permit others' non-compliant acts) to the abovementioned personnel who handle waste at relevant RCPs or RCVs. This section is not applicable to personnel that are employed to work at relevant RCPs or RCVs who need to handle waste as required by their duties.

Section 20P – Depositing non-compliant waste in certain common areas prohibited

5. For multi-storey domestic buildings, households usually deposit waste at common areas such as refuse chambers or rear staircases on individual floors for cleansing workers to collect.<sup>2</sup> To prompt households to pay by using DBs/DLs,

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<sup>2</sup> Such cleansing workers are usually directly employed by the households concerned or hired through PMCs/building management bodies.

the proposed section 20P prohibits households from disposing of non-compliant waste in common areas that are used for the temporary storage of waste pending collection and removal. Violation of this section constitutes an offence. Depending on the arrangements adopted by different premises, examples of common areas include refuse chambers, rear staircases and waste chutes (if any) on individual floors of multi-storey buildings. In addition to individuals who deposit non-compliant waste, this section also targets those who cause others' non-compliant acts.

6. The proposed section 20P is not applicable under certain circumstances. First, it is noted that PMCs of multi-storey buildings usually place small litter bins at lobbies or lift waiting areas for individuals to dispose of MSW that is of small quantity and small size, such as used tissue papers. As these small litter bins are not designed for individuals to dispose of daily waste from places such as households or offices, it is therefore not bounded by section 20P.

7. Moreover, if the waste concerned is collected by RCVs without compactors and charged by weight-based "gate-fee", it will not be bounded by section 20P. An example is the oversized waste collected and removed from an industrial building by an RCV without compactor.

8. To cater for the operational needs of cleansing workers who collect and deliver MSW within premises, this section allows them to collect non-compliant waste from any part of the premises and deliver them to the waste reception points. Taking multi-storey domestic buildings as an example, cleansing workers can collect MSW (including non-compliant waste) from any part of the premises (e.g. the refuse collection bin or refuse chamber on each floor), and deliver them to central refuse chambers for storage. However, personnel of the related PMCs or cleansing service providers are required to wrap non-compliant waste in DBs or affix DLs on it, before disposing of such waste onto RCVs used by FEHD or its contractors, or RCVs with compactors used by PWCs. If the concerned premises have their oversized waste collected by PWCs using RCVs without compactors (e.g. grab lorries, demountable trucks and tippers), the MSW charges payable will be levied through the "gate-fee" mode.

9. In addition, this section is not applicable to circumstances under which recyclables are deposited into relevant collection containers or areas. For instance, members of public are not required to wrap the waste glass in DBs or attach it with DLs when disposing of waste glass at the collection bin of waste glasses in a building.

### Penalties

10. The Bill amends the Fixed Penalty (Public Cleanliness and Obstruction) Ordinance (Cap. 570) to provide for a fixed penalty of \$1,500 for offences stipulated in the newly created sections 20K, 20L, 20M and 20P. The fixed

penalty is imposed at the same level as the offence of littering in a public place under the Public Cleansing and Prevention of Nuisances Regulation (Cap. 132BK).

11. Prosecution by way of summons may also be brought against serious or repeated offenders. The proposed penalties are as follows:

- (a) Proposed section 20K – Depositing non-compliant waste prohibited: A person who commits the offence will be liable to a fine at level 4 (\$25,000) and to imprisonment for 6 months on the first conviction, and to a fine at level 5 (\$50,000) and to imprisonment for 6 months on a subsequent conviction. The level of penalty for a first conviction is the same as an offence of littering in a public place under the Public Cleansing and Prevention of Nuisances Regulations (Cap. 132BK).
- (b) Proposed section 20L – Depositing non-compliant waste by removal services provider prohibited: A person who commits the offence is liable to a fine at level 2 (\$5,000) without imprisonment penalty. The penalty level is lower as compared with that for the offence of similar nature under the proposed section 20K because the legislative intent of the Amendment Bill does not target the personnel concerned.
- (c) Proposed section 20M – Delivering non-compliant waste to certain persons prohibited: A person who commits the offence will be liable to a fine at level 4 (\$25,000) and to imprisonment for 6 months on the first conviction, and to a fine at level 5 (\$50,000) and to imprisonment for 6 months on a subsequent conviction. The penalty levels are consistent with those of the proposed section 20K.
- (d) Proposed section 20P – Depositing non-compliant waste in certain common areas prohibited: A person who commits the offence will be liable to a fine at level 4 (\$25,000) and to imprisonment for 6 months on the first conviction, and to a fine at level 5 (\$50,000) and to imprisonment for 6 months on a subsequent conviction. The penalty levels are consistent with those of the proposed sections 20K and 20M.

[Source: Adapted from paragraphs 6 to 16 of 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" provided by the Administration ([LC Paper No. CB\(1\)1013/20-21\(01\)](#)).

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

**Contents**

Clause		Page
<b>Part 1</b>		
<b>Preliminary</b>		
1.	Short title and commencement .....	1
2.	Enactments amended .....	1
<b>Part 2</b>		
<b>Amendments to Waste Disposal Ordinance</b>		
3.	Section 2 amended (interpretation) .....	3
4.	Part IVB added .....	6
<b>Part IVB</b>		
<b>Charging for Municipal Solid Waste</b>		
<b>Division 1—Purpose of Part IVB</b>		
20J.	Purpose of Part IVB .....	6
<b>Division 2—Mandatory Use of Designated Bags or Designated Labels</b>		
20K.	Depositing non-compliant waste prohibited .....	7
20L.	Depositing non-compliant waste by removal services provider prohibited .....	8

Clause	Page
20M. Delivering non-compliant waste to certain persons prohibited .....	8
20N. Depositing labelled municipal solid waste onto private waste vehicle prohibited.....	10
20O. Delivering labelled municipal solid waste to certain removal services provider prohibited .....	10
20P. Depositing non-compliant waste in certain common areas prohibited .....	11
20Q. Defences to particular offences .....	12
20R. Penalties for particular offences .....	14
<b>Division 3—Designated Bags and Designated Labels</b>	
20S. Who may produce, sell or supply for free .....	16
20T. Director may specify requirements .....	17
20U. Sale by unauthorized person prohibited .....	17
20V. Sale at other than prescribed price prohibited .....	18
20W. Certain free supply prohibited.....	19
<b>Division 4—Miscellaneous Provisions</b>	
20X. Prescribed signs.....	19
20Y. Waste vehicles must exhibit prescribed sign in certain circumstances .....	20
20Z. Vehicles must not exhibit prescribed sign in certain circumstances .....	21

Clause	Page
20ZA. Designated bag not subject to Product Eco-responsibility Ordinance.....	22
5. Section 24 amended (when appeal may be brought) .....	22
6. Section 31 amended (mental ingredients of certain offences under the Ordinance) .....	22
7. Section 33 amended (regulations) .....	23
8. Section 37 amended (amendment of Schedules) .....	23
9. Schedule 14 added.....	23
Schedule 14	24
10. Schedule 14 amended.....	25

**Part 3**

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

11. Title amended.....	26
12. Section 2 amended (interpretation) .....	26
13. Section 3 amended (application) .....	27
14. Section 4 substituted.....	28
4. Disposal of municipal solid waste at scheduled facilities.....	28
15. Section 5 repealed (application for registration) .....	32
16. Sections 5A and 5B added.....	32



---

Clause	Page
5A. Application for registration as Type A account-holder .....	32
5B. Application for registration as Type B account-holder .....	33
17. Section 6 repealed (Director may register account-holders and vehicles) .....	34
18. Sections 6A and 6B added.....	34
6A. Director may register Type A account-holders and vehicles.....	34
6B. Director may register Type B account-holders.....	37
19. Section 7 repealed (registration of additional vehicle, etc.) .....	39
20. Section 7A added .....	40
7A. Registration of additional vehicle etc. for Type A account-holders .....	40
21. Section 8 amended (register of account-holder).....	40
22. Section 9 substituted.....	41
9. Recording of weight and time at weighbridge.....	41
23. Section 10 amended (charges for disposal of waste).....	41
24. Section 11 amended (payment of charges and levy of surcharge).....	43
25. Section 12 repealed (deposit) .....	45
26. Section 12A added .....	45

---

Clause	Page
12A. Deposit .....	45
27. Section 13 amended (revocation of registration).....	47
28. Sections 13A, 13B and 13C added .....	47
13A. Revocation of registration of Type A account- holder .....	47
13B. Revocation of registration of Type B account- holder .....	48
13C. Director to give notice of revocation of registration.....	49
29. Section 14 amended (Director may appoint designated officers) .....	49
30. Section 16 substituted.....	50
16. No charge for certain municipal solid waste .....	50
31. Section 17 amended (notice, etc. given by the Director).....	51
32. Section 18 amended (offences and penalties).....	52
33. Sections 19 and 20 added .....	52
19. Secretary may revise charges in Schedule.....	52
20. Termination of pre-existing accounts.....	52
34. Schedule amended (charges for disposal of waste at refuse transfer stations) .....	54

**Part 4**

Clause Page

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

35.	Section 25 added .....	59
25.	Charges at above cost recovery level .....	59

**Part 5**

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

36.	Schedule 1 amended (scheduled offence) .....	60
37.	Schedule 2 amended (authorities and public officers).....	60

# 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.
-

## 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;

~~**private waste vehicle**~~ **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 ~~private 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) is not equipped with a device designed for compacting waste carried on the vehicle;

~~**private 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 a 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 that 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 a period 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 impracticable 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 a period 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 a 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>2</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 impracticable 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.”.
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## 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.