

立法會
Legislative Council

LC Paper No. CB(1)1774/00-01
(These minutes have been seen
by the Administration)

Ref: CB1/BC/2/00/2

**Bills Committee on
Dangerous Goods (Amendment) Bill 2000**

**Meeting on
Thursday, 8 March 2001, at 2:30 pm
in Conference Room A of the Legislative Council Building**

- Members present** : Hon James TO Kun-sun (Chairman)
Hon Mrs Selina CHOW LIANG Shuk-ye, JP
Hon HUI Cheung-ching
Hon LAU Kong-wah
Hon Mrs Miriam LAU Kin-ye, JP
Hon Audrey EU Yuet-mee, SC, JP
- Public officers attending** : Mr D WONG
Principal Assistant Secretary for Security
- Mr K S LAU
Chief Fire Officer (Licensing and Control Command)
Fire Services Department
- Mr K M LEE
Assistant Director of Marine
- Mr D J HOWELLS
Assistant Director of Civil Engineering
- Mr Y C LEUNG
Senior Geotechnical Engineer/Mines
- Mr W B MADDAFORD
Senior Assistant Law Draftsman
- Miss Shirley WONG
Government Counsel

Miss LEE Choy-mei
Assistant Secretary for Security

**Attendance by
invitation**

: Park'N Shop

Mr Logan TAYLOR
Chief Executive Officer
and Chairman of Government Regulations Subcommittee
&
Executive Committee Member of
Hong Kong Retail Management Association

Mr Keith BARTLETT
Supply Chain Director

The Dairy Farm Co Ltd -Wellcome

Mr Jeff SHAW
Chief Executive Officer
and Executive Committee Member of
Hong Kong Retail Management Association

Mr David BOUND
Supply Chain Director

Mr Charlie WOOD
Legal Counsel

Hong Kong Retail Management Association

Ms Anita BAGAMAN
Executive Director

Clerk in attendance : Mr Andy LAU
Chief Assistant Secretary (1)2

Staff in attendance : Mr Stephen LAM
Assistant Legal Adviser 4

Mrs Mary TANG
Senior Assistant Secretary (1)2

I Confirmation of minutes of meeting
(LC Paper No CB(1)755/00-01)

The minutes of meeting held on 18 January 2001 were confirmed.

II Meeting with the Hong Kong Retail Management Association
(LC Paper No CB(1)531/00-01(02) and CB(1)764/00-01(01))

2. At the invitation of the Chairman, Mr Logan TAYLOR, Chief Executive Officer of Park'N Shop gave a presentation on the views of the Hong Kong Retail Management Association (HKRMA). In gist, he said that HKRMA recommended that clear distinction be made between the control of pure chemicals and consumer products that contained chemicals. He stressed the need for the Administration to consult the retail trade before the introduction of any subsidiary legislation to control the storage and conveyance of consumer products that contained chemicals. He also urged the Fire Services Department (FSD) not to take prosecution actions against the retailers except in cases where there were legitimate safety concerns. A copy of his speech was circulated to members of the Bills Committee under LC Paper No CB(1)764/00-01(01).

3. Mrs Selina CHOW was concerned about the over-regulation of consumer products that contained small quantities of chemicals and enquired whether HKRMA considered that the regulatory regime in Hong Kong was comparable to other developed countries. Mr David BOUND, Supply Chain Director, the Dairy Farm Co Ltd, Wellcome said that HKRMA had compared the regulatory regime between Hong Kong and other countries and found that the levels of exempted quantities for storage of consumer products that contained chemicals in overseas countries far exceeded those in Hong Kong. Mr Keith BARTLETT, Supply Chain Director, Park'N Shop added that the exempted quantity for naphthalene was 50 kilograms in Hong Kong as compared to 3,000 kilograms in Japan. Furthermore, the storage of naphthalene in Japan was not prohibited and retailers needed only to notify the fire services departments. As for Australia, the levels of exempted quantities were significantly higher and in some cases, no limit had been set for the retailers.

4. As regards Mrs CHOW's further enquiry on whether HKRMA was aware of any overseas regulations imposed on retailers for the storage of consumer products that contained chemicals, Mr BARTLETT said that the Association was not sure whether retailers were regulated overseas. Ms Audrey EU enquired if the problem of control rested with quantity and if so, whether the setting of higher levels of exempted quantities would resolve the problem. She also enquired if packaged consumer products were in fact less dangerous. Mr BARTLETT said that the problem related to both quantity and the inherent differences between bulk chemicals and packaged consumer products. He stated for example that naphthalene had a different flash point when it was in powder form. He showed members some household items which when stored in cans would have different properties as compared to storage in raw form. He questioned the need to set

exemption limits on consumer products with low concentrations of chemicals since these were designed to be used in domestic premises and were inherently less dangerous than bulk chemicals.

5. Referring to the submission from HKRMA regarding the prosecution of retailers for violation of storage requirements under the existing Dangerous Goods Ordinance (DGO), Mrs Miriam LAU asked HKRMA if its concerns were not only on the proposed amendments under the Bill, but also on the existing provisions of the Ordinance. Mr Logan TAYLOR said that HKRMA sought to amend the legislation and called for a moratorium on the prosecution actions against excessive storage of consumer products that contained chemicals, pending a review of the legislation with reference to the operational requirements of the retail trade. He said that as retailers were required to maintain a certain level of stock to satisfy the need of consumers and having regard to the limited number of licensed warehouses in Hong Kong, retailers might have difficulties in meeting the requirements for the control of dangerous goods (DGs) in consumer pack as provided for in the legislation. He affirmed in response to Mrs LAU that it was only recently that the prosecution action had taken place more vigilantly.

6. Mrs Selina CHOW drew members' attention to an earlier submission from a retailer who asserted that prosecution action was taken unreasonably. The retailer informed that such action had not been taken in the past and was taken only recently. She said that the retail trade was concerned about the recent prosecution actions taken and had pointed out that the low exemption quantities for consumer products containing DG had posed difficulties of compliance. The retailers had to either stop selling the product or continue to do so at the risk of breaking the law. The Chairman enquired whether the packaging of consumer products would lower the fire and safety hazard and if there was any scientific evidence to support this assumption. Mr TAYLOR said that as the matter had just become a major concern, the retail trade would take time to conduct further research studies. At present, it was still not clear as to which consumer products fell within the scope of the legislation and separate meetings were held with the suppliers to follow up on the matter.

III Meeting with the Administration

Administration's response to the trade's concerns

7. At the invitation of the Chairman, the Principal Assistant Secretary for Security (PAS/S) briefed members on the Administration's response to the submission of HKRMA which was circulated to the Bills Committee under LC Paper No CB(1) 787/00-01. Responding to HKRMA's allegation that FSD had only recently consulted the retail trade on the impact of DGO, PAS/S said that a territory-wide consultation had been conducted in March 1999. A series of briefing sessions had been held and had been attended by many retailers and suppliers. At these briefing sessions, the Administration had clearly explained the implications of DGO on the trades. FSD had so far also received the Material

Safety Data Sheets (MSDS) in respect of 23 consumer products and it demonstrated that the trade was aware of the Administration's proposal. Following those sessions, FSD had met with representatives of the retail trade and HKRMA to discuss specific issues of mutual concern in the drafting of the subsidiary legislation so that a right balance between protecting public safety and facilitating legitimate business could be achieved.

8. As regards the trade's concern about recent prosecution actions, PAS/S said that according to FSD, there had been four recent prosecution cases, and actions were taken in response to reports to FSD. In one case, the amount of naphthalene mothballs stored amounted to 225,000 kilograms, which was much higher than the current exempted quantities. FSD would take into account all circumstances of the case before prosecution action was taken, and would seek advice from the Secretary of Justice when in doubt. It remained the intention of the Administration to raise the current levels of exempted quantities and to take into account the difficulty of the retail trade in finalizing the subsidiary legislation to be introduced.

9. On the trade's concern that a number of dangerous goods found in consumer packs might be inadvertently caught by DGO, PAS/S advised that for bleach containing more than a certain concentration of chlorine making the product classified as a DG in the International Maritime Dangerous Goods (IMDG) Code, there was a need to follow the proper recommendations in accordance with the Code to ensure safety. However, if the bleach was individually packed as consumer products, the control measures in the retail aspect should be considered separately. The Administration would take into account the operational difficulties of the retail trade before finalizing the subsidiary legislation. He assured members that the proposals would be submitted to the Security Panel for consideration before introducing them to the Executive Council.

Consultation with the trade

10. Noting the serious implications of the proposed amendments to DGO, Mr HUI Cheung-ching asked if the Administration had specifically consulted the retail trade. PAS/S said that there had been a public consultation exercise conducted in March 1999 and invitations were extended to relevant trades including the retail trade to participate in forums organized by the Administration. He added that as the Administration was in the process of formulating the controlling measures for DG which would be set out in the subsidiary legislation, the retail trade and other affected trades would be further consulted. CFO(LCC) said that the DG content of some of the household items like bleach and insecticides were being analyzed. It was estimated that there would be about twenty items of household goods which would fall within the scope of DGO.

Prosecution statistics

11. Referring to the conviction and fine statistics for 1993-2000 at Annex A of LC Paper No CB(1)764/00-01(02), Ms Audrey EU noted that there had been

convictions in the past against storage of DG without valid licence. She enquired whether these convictions were only directed against bulk storage and if there were any convictions against the retail trade. PAS/S said that he did not have the information at hand but would arrange for the said information to be provided to members after the meeting.

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12. Noting that DGO was enacted in 1956, Mrs Selina CHOW expressed concern that the Administration had been using an outdated legislation to prosecute the retail trade. She was dissatisfied that prosecution action was taken against the trade despite no immediate threat to public safety was posed. She sought clarification on whether prosecution actions had not been taken before but was only taken recently. The Chief Fire Officer (Licensing and Control Command) (CFO(LCC)) said that as enforcement agencies, FSD had to adhere to the law and take prosecution action as necessary. There had been a few recent cases where the retailers were convicted and fined between \$2,000 and \$3,000 for excessive storage of DG without a licence, ranging from 864 to 22,500 kilograms. FSD had all along been enforcing DGO since its enactment in 1956. The Chairman enquired if the recent prosecution actions were taken because of safety considerations. CFO(LCC) affirmed that this was the case, adding that as naphthalene was a flammable solid and a strong supporter of combustion, its excessive storage would give rise to fire hazard. In response to the Chairman, the Administration agreed to provide the prosecution statistics for the past three years.

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13. Mrs CHOW further enquired if there were any differences between DG found in bulk and in consumer packs. CFO(LCC) said that as the inherent risk of storage of DG in individual consumer pack might be less than those in raw form, the Administration would take this into account in determining the exempted quantities for DG.

Overseas experience in the application of IMDG code

14. Responding to Ms Audrey EU on the overseas experience in the application of the IMDG code, PAS/S said that while the IMDG code provided for recommendations in respect of control over DG, countries adopting the IMDG code had implemented different systems in their control of DG. A licensing system was adopted in Hong Kong. In general the legislation did not draw a distinction between DG stored in bulk or in consumer packs. Whether such distinction should be drawn remained a matter which had to be resolved.

15. Through the Chair, Mr Charlie WOOD, Legal Counsel of the Dairy Farm Co LTD said that there appeared to be a lack of knowledge about overseas practice like the United Kingdom, Australia and United States in the control of DG. He said that since the Administration had acknowledged that the exempted quantities for some DG were too low, HKRMA would request that it should exercise discretion in taking prosecution action against the retailers. PAS/S said that the study of overseas legislation on the control of DG was conducted as part of the review of DGO. A Regulatory Impact Assessment was conducted on the proposed amendments to DGO and its subsidiary legislation. The consultants employed for the Assessment had

Admin. performed a research study on the overseas practice in the control of DG and the proposed amendments before members had taken into account the outcome of the study with adaptation to suit local circumstances. In response to Mrs Selina CHOW, the Administration would draw comparison between the system of control and legislative framework in Hong Kong and overseas countries.

Defence provisions

16. Ms Audrey EU was concerned that since an overseas supplier of consumer goods containing DG might not be aware of the need for compliance of IMDG code through the furnishing of MSDS, it might be necessary to consider the introduction of a due diligence defence provision in relation to section 6 of the principal ordinance. PAS/S replied in response that the IMDG Code should be followed strictly for controlling conveyance of DG on board a vessel. He understood that manufacturers of DG in many overseas countries would provide necessary information to the exporters or consignors of DG so that they could make the right declarations in the shipment of goods. The Assistant Director of Marine explained that IMDG code was a broad framework for the control of DG. It set out the classification according to the properties of DG and provided recommendations for their conveyance regarding labeling, packaging, stowage etc. The code itself did not provide for measures for the control of DG. Countries including the Mainland which were signatory parties to the International Maritime Organization had adopted their own system of control over DG. The system of control would also apply to conveyance of DG on land.

17. On Ms EU's request, the Chairman invited representatives of HKRMA to express their views on the inclusion of a due diligence defence provision in the Bill. Mr TAYLOR said that while the retail trade needed to have a better understanding of the IMDG code, it appeared to him that the IMDG code was a broad framework which provided a guide rather than a solution to the control of DG. He said that HKRMA would expect to have more exchanges with the Administration on the control of DG. He also pointed out that apart from the retail trade, decoration and cleaning companies would be affected by the proposed provisions of the Bill on account of their need to keep in stock paints and cleaning agents which were classified as DG. There were other smaller trades and businesses which might not be aware of the implications of the Bill on their business operation. Therefore the impact of the Bill would be beyond the retail trade and would need to be carefully examined. There should be utter clarity in the provisions of control and more work was required before implementing the Bill. PAS/S said that paint (thinner base) was included as an entry in the IMDG code and was classified as a DG. It was therefore necessary to exercise appropriate control over the storage and conveyance of paint, with possible differentiation between paint in bulk and paint in consumer packs.

18. The Senior Assistant Law Draftsman said that provisions for defence of due diligence were provided for in existing section 14 of DGO for contravening section 10 of the same Ordinance. The defence provisions were however not extended to contravention of sections 6,7 or 8 of DGO. It would appear that, as a matter of

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policy, these sections were not considered appropriate at the time the DGO was enacted. It would not therefore be proper for the Administration to consider introducing defence provisions to other sections of DGO at this stage as this might create loopholes. However, consideration could be given to introducing defence provisions in the subsidiary legislation against specific offences. PAS/S added that as there was strict liability in some of the offences which affected public safety, the introduction of defence provisions would not be considered appropriate. He agreed with the Chairman on the need to review the exempted quantities for DG such that the affected trades and the public would not be unnecessarily caught by the law. At the request of Chairman, the Administration would inform members of its stance on the need for introducing a due diligence defence provision for the relevant offences under DGO.

Storage in raw form vis-à-vis storage in consumer pack

19. Referring to HKRMA's allegation that there was no distinction between the handling of pure chemicals and the handling of consumer goods containing small quantities of DG under the existing DGO, Mrs Miriam LAU enquired whether such was the case. Using the case of chlorine as an example, she enquired whether there were any difference in the control of chlorine in pure form and in diluted form. PAS/S said that both chlorine and bleaching powder were classified as DG under existing legislation. According to the health and safety executive guidelines, a bleach which contained not more than 10% of chlorine would not be classified as DG. A survey had been conducted on some twenty commonly used household chemicals including bleach solution. According to the Government Chemist, the bleach solution used commonly by households contained 5% of chlorine and was not classified as DG. He said that consideration would be given to reviewing the level of exempted quantities in respect of household items which were classified as DG.

20. PAS/S further advised that a DG substance in pure form and in diluted form would have different properties and characteristics. They would have different entries in the IMDG code and subject to different control measures. CFO(LCC) added that pure chlorine in gaseous form was a very dangerous substance and was classified as DG under Category 2 whereas bleach solutions containing 10% or more of chlorine was classified as DG under Category 4. There were threshold limits for chemicals and where necessary, the Government Chemist would be consulted on the exempted quantities. Through the Chair, Mr Keith BARTLETT, Supply Chain Director, Park'N Shop said that he was not aware of the distinction made between chemicals and consumer products containing DG. He was of the view that the exempted quantities under the existing legislation for consumer products containing DG were too low.

21. Mrs Selina CHOW said that the Administration had underestimated the impact of the proposed control on DG on retailers and suppliers engaged in the sale and supply of DG in consumer packs. While she supported that there should be control over DG, she was of the view that these should be targeted on bulk storage that posed safety hazard. She said that members would need to be convinced

about the Administration's proposals on the control of DG in consumer packs. It appeared to her that the Administration had not fully taken into account the impact of the Bill on the trade and the general public. Issues such as levels of exempted quantities for DG in consumer packs would need to be carefully assessed in consultation with the trade. PAS/S said in response that the Administration was well aware of the concerns raised and had taken these into consideration seriously. He informed members that under the existing legislation, the exempted quantities might vary according to the conditions of storage. The same principle would also apply in the subsidiary legislation to be introduced. For example, the exempted quantity for wines stored in consumer bottles were higher as compared to wines stored in large containers. The exempted quantity for wines stored in places equipped with sprinklers was also higher.

Provisions for exempted quantities and controlling measures

22. Mrs CHOW was concerned whether all of the concerns raised could be addressed in the subsidiary legislation and if not, whether consideration would instead be given to addressing the concerns in the principal legislation. Sharing similar concern Ms Audrey EU pointed out that since subsidiary legislation were mainly technical in nature, the main principles of the Bill should be resolved before the drafting of the subsidiary legislation. PAS/S said that DGO was an enabling Ordinance which allowed for the detailed controlling measures to be set out in the subsidiary legislation. Reasonable exemptions would be provided for in the subsidiary legislation if these were considered justified.

23. As to what would be provided in the principal legislation and the subsidiary legislation, PAS/S advised that the main legislation would provide for the types of DG that would be brought under control, the licensing arrangements for the conveyance and storage of DG, and the power to make regulations. Detailed arrangements including, inter alia, the setting of exempted quantities for DG would be provided in the subsidiary legislation. In setting the exempted quantities for DG, particularly for those found in consumer packs, care would be taken to ensure a proper balance between safety and convenience. CFO(LCC) added that there would be a few pieces of subsidiary legislation to be introduced. They covered the full list of DG under control, the exempted quantities, the labeling and packaging requirements, and the Codes of Practice. The subsidiary legislation would be introduced after the passage of the Bill.

24. Noting that the existing exempted quantities would continue to be applied even after passage of the Bill as the new exempted quantities to be proposed in the subsidiary legislation had yet to be drafted, Mrs Selina CHOW was concerned that the retail trade would have to face continuous prosecution actions for storage of DG in excess of exempted quantities. PAS/S said that the purpose of the Bill was to improve the control over DG and to make amendments to certain provisions which had been outdated. As in all other legislation with the enforcement provisions, the enforcing agencies would need to assess each individual case before taking prosecution actions. Where necessary, the enforcement agencies would consult the Department of Justice. While accepting

that a blanket moratorium on prosecution actions might not be appropriate, Mrs CHOW said that in view of the complexity of control and the outdated levels of exempted quantities, she considered it necessary to stipulate in the principal legislation that actions should only be taken against storage and conveyance of DG which posed hazard to public safety.

25. CFO(LCC) responded that FSD would be consulting the retail trade with a view to working out expeditiously the revised levels of exempted quantities for DG in consumer packs. This would form the basis of a standard for reference by the trade and the Department of Justice as a transitional arrangement pending the introduction of the subsidiary legislation. Mrs CHOW said that the standard to be set for reference should be based on international standard. She also reminded the Administration that the exempted quantities would not only affect the retailers, but also suppliers and other trades as well. The Chairman stressed that while reference should be made to international practice, the standards of safety should be set to suit local circumstances. Given the complex issues involved in the control of DG which ranged from concentration to conditions of storage, he doubted whether all details of controlling measures for the 1600 types of DG could be sufficiently provided for in the subsidiary legislation. Referring to the empowering provisions in section 5(1)(b) and (e) of DGO, he queried whether these were sufficient for the purpose of setting out all the circumstances under which the provisions for exempted quantities for different DG should apply, given that exempted quantities would vary in accordance with storage conditions in different premises with different fire safety provisions, and in different forms and concentrations. He also considered it necessary to have a scientific assessment on the inherent risk of excessive storage of DG in raw form vis-à-vis that in consumer pack. PAS/S said that while the existing legislation had provided for exempted quantities in respect of DG for industrial and non-industrial uses and the conditions of storage, he agreed to review the matter and provide a consolidated response to the concerns raised by members. Members agreed to meet again upon receipt of the Administration's response to the concerns raised at the meeting.

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(Post meeting note: In consultation with the Chairman and the Administration, the sixth meeting was scheduled for 22 May 2001 at 4:30 pm)

IV Any other business

26. There being no other business, the meeting ended at 4:30 pm.