

立法會
Legislative Council

LC Paper No. CB(1)1894/00-01
(These minutes have been seen
by the Administration)

Ref: CB1/BC/2/00/2

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

**Meeting on
Tuesday, 22 May 2001, at 4:30 pm
in Conference Room B of the Legislative Council Building**

- Members present** : Hon James TO Kun-sun (Chairman)
Hon HUI Cheung-ching
Hon LAU Kong-wah
Hon Mrs Miriam LAU Kin-ye, JP
Hon Audrey EU Yuet-mee, SC, JP
- Member absent** : Hon Mrs Selina CHOW LIANG Shuk-ye, 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 K L SIU
Ag. Assistant Director of Civil Engineering
(Geotechnical/Mainland)
- Mr Y C LEUNG
Senior Geotechnical Engineer/Mines
- Mr W B MADDAFORD
Senior Assistant Law Draftsman

Miss Shirley WONG
Government Counsel

Mr W C SHAM
Senior Chemist for Government Laboratory

Mr K W CHAN
Assistant Secretary for Security

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)944/00-01)

The minutes of meeting held on 6 February 2001 were confirmed.

II. Meeting with the Administration
(LC Paper No. CB(1)764/00-01(02)

Administration's response to the concerns raised by the Bills Committee at its meeting on 6 February 2001;

LC Paper No. CB(1)787/00-01

Administration's response to the submission of the Hong Kong Retail Management Association;

LC Paper No. CB(1)1255/00-01(01)

Administration's response to the concerns raised by the Bills Committee at its meeting on 8 March 2001 (1st part);

LC Paper No. CB(1)1298/00-01(01)

Further submission from the Hong Kong Retail Management Association; and

LC Paper No. CB(1)1298/00-01(02)

Administration's response to the concerns raised by the Bills Committee at its meeting on 8 March 2001 (2nd part))

2. Mrs Miriam LAU relayed the concern of Mrs Selina CHOW, who was not available to attend the meeting, about the low levels of exempted quantities of dangerous goods (DG) for compliance by the trade. The Chairman said that while the subject could be further deliberated at this meeting, he reminded members that the existing levels of exempted quantities and the enforcement of the existing provisions of the Dangerous Goods Ordinance (DGO) were not parts of the Bill and should be more appropriately discussed by the Panel on Security. He acknowledged the trade's concern about the transitional enforcement arrangements pending the introduction of new exempted quantities under the amendment regulations and requested the Administration's explanation in this respect.

3. The Principal Assistant Secretary for Security (PAS/S) explained that the Bill sought to amend the principal ordinance by incorporating principal proposals to improve the control system of DG. It also contained empowering provisions for amending subsidiary legislation, in particular, on the exempted quantities of DG. In view of the Hong Kong Retail Management Association (HKRMA)'s concern over the difficulties in complying with the proposed level of exempted quantities for storage and conveyance in general of DG, the Administration was prepared to propose a general increase in the exempted quantities specifically for DG contained in consumer packs in the subsidiary legislation under preparation. It would continue its dialogue with the trade to help with the identification of DG among consumer products and to discuss with them how best to formulate reasonable control measures in the subsidiary legislation with a view striking a balance between ensuring public safety and facilitating business.

Prosecution policy

4. As regards the prosecution policy, PAS/S advised that it was one of the responsibilities of the Fire Services Department (FSD) to enforce the provisions under DGO. There was no rule that prosecution must automatically take place if a suspected offence was established against an individual. There were two stages in the decision to prosecute. The first stage involved a consideration of evidence while the second stage involved a consideration of public interest. Each case would have to be considered in the light of individual circumstances. If there was any doubt with respect to a case, FSD would seek advice from the Department of Justice. No person would be prosecuted by FSD unless it was in the public interest to do so. For a minor offence, FSD might consider issuing a warning letter to the offender notifying him of the contravention and allowing him to take appropriate remedial actions. Should the offender still fail to rectify the situation, FSD might then consider instituting criminal proceedings against him. In the enforcement of DGO, FSD would take into account whether the contravention of storage requirements of DG would pose a threat to public safety. Where the risk assessment indicated that the contravention would not pose safety threat and that it might not be in the public interest to prosecute the offender, prosecution would not be taken by FSD. Instead, the offender would be required to take appropriate fire preventive actions to improve the safety of the concerned premises. FSD would be working with individual members of HKRMA on the means of compliance with the storage and conveyance requirements for DG in consumer packs.

5. Mrs Miriam LAU enquired whether actions would be taken against retailers whose storage of DG had contravened the existing levels of exempted quantities but not the proposed levels to be implemented under the subsidiary legislation. PAS/S said that the Administration was still working with the trade in setting out appropriate levels of exempted quantities for different DG. In deciding whether prosecution actions would be taken, FSD would take into account the individual circumstances of the case. However, it could not categorically set a safety level which, if not exceeded, would not warrant prosecution action. Where prosecution actions were not taken, FSD would issue warning letters to the retailer concerned advising on the proper control measures that should be adopted. The Chief Fire Officer (Licensing and Control Command) CFO(LCC) added that FSD would advise retailers on the proper safety measures to be taken on a self-regulatory basis for the storage of DG in consumer packs. A Working Group had been formed with HKRMA to sort out the details of the control, in particular on the proposed levels of exempted quantities for DG in consumer packs. Meanwhile, to help with the review exercise, a consultant had been commissioned to further assess the risk posed by DG in consumer packs and to work out the appropriate exempted quantities to be proposed for such products and the practical measures to improve the existing controls. The study, which was expected to complete by mid 2001, would take into account the views of the Working Group. Responding to the Chairman on the need to employ consultants for the study, PAS/S said that consultants were employed to undertake independent research and consultation and their work would facilitate the legislative process.

6. Mrs Miriam LAU said that as the Administration could not undertake that prosecution actions would not be taken against the retailers for storage of DG in excess of existing levels of exempted quantities but which did not pose a safety risk, she requested the Chairman to raise the matter for discussion at a meeting of the Panel on Security. The Chairman said that while he did not object to the matter being discussed by the Panel on Security, he reminded members that prosecution policies rested with the Department of Justice and were not decided by FSD alone. CFO(LCC) added that FSD would exercise discretion in deciding on whether prosecution actions should be taken. PAS/S assured members that prosecution actions would not be taken unreasonably.

Detention of vehicles conveying DG

7. At the Chairman's request, PAS/S took members through LC Paper No. CB(1)764/00-01(02), 1255/00-01(01) and 1298/00-01(02) which set out the respective information requested by the Bills Committee at its meetings held on 6 February 2001 and 8 March 2001. Referring to paragraph 2 of LC Paper No. CB(1)764/00-01(02), Mr HUI Cheung-ching questioned if it was necessary to provide the power to enable the Administration to detain vehicles conveying DG which were not in compliance with legal requirements. PAS/S said that the existing provisions of DGO already provided for enforcement by way of seizure of goods and detention of vehicles and vessels. The Administration proposed to extend the power of detention of vehicles so that it would be able to detain the

vehicle in question until the risk to public safety caused by the non-compliance had been removed.

8. Section 13 of the DGO required the report of any accident by explosion or fire in any licensed premises. The Administration had advised vide LC Paper No. CB(1) 764/00-01(02) that it intended to increase the fine from level 2 (currently \$5,000) as proposed in the Bill to level 3 (currently \$10,000) to increase the deterrent effect, but would not propose an imprisonment term as suggested by members. The Chairman asked to put on record that he did not concur with the Administration's views that the proposed penalty was sufficient to achieve a deterrent effect.

Proposed definition of DG under the Merchant Shipping (Safety) Ordinance

9. The Chairman noted that the proposed definition of DG under section 2(1) of the Merchant Shipping (Safety) Ordinance (MS(S)O), Cap 369, provided that -

"Dangerous goods means substances, materials or articles-

- (a) that are classified in the IMDG Code as dangerous for carriage by sea;
- (b) the properties of which would reasonably be considered to be dangerous when carried by sea,"

He opined that while part (a) of the definition was clear about what should be regarded as a DG, part (b) apparently was not and was subject to interpretation. Assistant Legal Adviser 4 (ALA4) explained in response that the proposed definition of DG in part (b) would apply to DG conveyed by sea which had been identified to have dangerous properties but had not yet been classified in the International Maritime Dangerous Goods (IMDG) Code.

10. The Assistant Director of Marine (ADM) explained the differences between conveyance of DG by sea and on land in Hong Kong. For controls of storage and conveyance of DG on land, the Administration had identified about 1,600 types of DG from within the 2,300 types of DG under IMDG Code, the names of which were set out in the relevant legislation. For controlling conveyance of DG on board a vessel in the waters of Hong Kong, the IMDG Code should be followed strictly. The intent of part (b) of the proposed definition was to enable the Administration to declare a substance to be dangerous and to promulgate detailed guidelines and safety practices for immediate compliance by the trade in the handling of the concerned substance. He also advised members that Hong Kong had taken the lead in 1996 in declaring a substance as DG for inclusion in IMDG Code.

11. The Chairman considered that the definition of DG as proposed in MS(S)O which included substances reasonably considered as dangerous when carried by sea was too vague. He was concerned that shippers found to have conveyed such substances would be inadvertently caught by the legislation. He suggested that it might be more appropriate if the phrase "and had been notified to International

Maritime Organization" was added to part (b) of the proposed definition as this would provide more certainty to the classification of the substance under IMDG Code. He said that consideration could also be given to requesting the inclusion of the substance to be notified in the gazette, so that affected parties would be made aware of the inclusion. ADM explained that substances with dangerous properties were normally listed in the Recommendations on the Transport of Dangerous Goods - Model Regulations published by the United Nations. Where these substances were required to be conveyed frequently by sea, they would be considered for inclusion in IMDG Code. Marine notices would be issued and International Maritime Organization (IMO) would be notified of the inclusion. Once declared as a DG under part (b) of the proposed definition, shippers would have to abide by the requirements set out by the authorities.

12. Noting that the intent of part (b) of the proposed definition of DG under MS(S)O was purely for declaration purpose, the Chairman enquired about the legal implications of the said provision, bearing in mind affected parties might not be aware of the change and caught by the legislation inadvertently. The Senior Assistant Law Draftsman said that within the context of the proposed definition of DG under MS(S)O, DG would mean substances which were classified in the IMDG Code as dangerous for carriage by sea. Actions taken by a local authority would not render a substance to be classified under IMDG Code. He said that under the proposed definition, a substance would be regarded as DG if it met the conditions set out in both parts (a) and (b). He said that provisions of part (b) were secondary and if the substance was not classified under IMDG Code, it would not be regarded as DG.

13. Ms Audrey EU pointed out that the proposed definition was confusing as provisions of parts (a) and (b) were not linked by any preposition. On the Chairman's enquiry on the Administration's intention that the proposed definition should be read as "(a) and (b)", or "(a) or (b)", ADM clarified that it should be interpreted as "(a) or (b)". He further indicated that the same definition was provided under Merchant Shipping (Prevention and Control of Pollution) Ordinance, Cap 413. The definition as proposed was a consequential amendment to the Bill.

14. The Chairman was concerned that the proposed definition of DG would pose difficulties of compliance, as it was unclear how shippers who had already set sail would be made aware of the inclusion of a substance as DG and its conveyance requirements. He said that members would need to be convinced that the proposed provisions would provide the certainty of law so that shippers would not be inadvertently caught by the legislation. It might be necessary to spell out more clearly the authority to declare the inclusion of a substance as DG and how it should be dealt with. ADM said that vessels carrying substances which were regarded as DG by overseas competent authorities would not contravene the provisions of MS(S)O if they had satisfied the requirements set out by the competent authorities. Likewise, vessels conveying substances which were regarded as DG by the local authorities would not have contravened the law of the country of destination if they abided by the requirements set out by local authorities. He said that while there

Admin. were established practices for inclusion of a substance as DG under IMDG Code, these had not been set out in MS(S)O. In response to the Chairman's request, the Administration would consider if the proposed provisions would provide certainty of law and would not create unfairness to those involved in the conveyance of DG by sea.

Competent authorities in declaring substances as DG under IMDG Code

15. In response to Ms Audrey EU, CFO(LCC) explained that while amendments to IMDG Code would take immediate effect in the conveyance of DG by sea, such amendments would be examined for their necessity and suitability for inclusion in the regulations governing the conveyance of DG on land.

16. Ms EU pointed out that the proposed definition had made no reference to the authorities who were in a position to "reasonably" consider whether a substance was dangerous. ADM said that the declaration of a substance as DG could be made by the Director of Marine or by an overseas competent authority. Ms EU said that if this was the case, it should be clearly set out in the provisions of the Ordinance as otherwise it would be subject to interpretation.

Admin. 17. Ms EU further enquired if there were any other provisions in the legislation of Hong Kong which would allow for changes in overseas legislation to be automatically applied locally, as in the present case of inclusion of DG in IMDG Code. She was of the view that this would have the connotation of delegating the authority of amending local legislation to an overseas authority. ADM said that he believed that such practices were common in marine navigation as vessels were travelling on international waters. He cited the example of marine traffic regulations which were based on international prevention of collision regulations. Local legislation were kept in line with international regulations so that amendments in the latter would automatically take effect in the former. The same practice might apply in aviation also. The Chairman requested and the Administration agreed to provide for members' reference examples of such arrangements.

Defence provisions

18. Referring to the request of HKRMA in its letter dated 21 May 2001 for the inclusion of defence provisions in the subsidiary legislation, the Chairman enquired about the Administration's position on the matter. PAS/S said that the need for further provisions for defence had been set out in the Administration's response (LC Paper No. CB(1)1255/00-01(01)) and the request by HKRMA could be further considered in the light of the consultancy study.

III. Any other business

The way forward

19. PAS/S sought members' views on the way forward. He suggested that, if members were in agreement to the general principles of the Bill which provided a broad framework on the control of DG, consideration could be given to the early passage of the Bill, leaving the finer details of control such as levels of exempted quantities to be set out in the subsidiary legislation for introduction at a later stage. The Administration assured members that it would incorporate the findings of the consultancy study in the subsidiary legislation and would consult the Panel on Security before submitting the subsidiary legislation to the Executive Council for approval. He further advised that there was consensus with HKRMA on the need for a general increase in the levels of exempted quantities for DG in consumer packs. The Chairman said that he and other members of the Bills Committee would find it difficult to approve the Bill without making reference to the outcome of the consultancy study which was expected to complete in June 2001. Ms Audrey EU and Mr HUI Cheung-ching both concurred with the Chairman on the need to make reference to the consultancy report.

20. Responding to Ms Audrey EU on the progress of preparation of the subsidiary legislation and if the legal framework could be made available for members' reference, PAS/S said that the Administration was in the process of working out the finer details of control. CFO(LCC) added that the subsidiary legislation was still at an initial drafting stage and could not yet be made available for members' reference. To apprise members on the finer details of control, CFO(LCC) said that consideration could be given to preparing a preliminary report in advance of the consultancy report, as the latter might take a longer time for consultation. The Chairman agreed to hold the next meeting upon receipt of the preliminary report. He reminded members to provide the Bills Committee with advance copies of Committee Stage amendments to the Bill, if they intended to move them.

(Post meeting note - As it was unlikely that the scrutiny of the Bill could be completed within the 2000-01 legislative session, the Administration requested and the Chairman agreed that the next meeting be scheduled in the following session.)

21. There being no other business, the meeting ended at 6:40 pm.