

立法會
Legislative Council

LC Paper No. CB(1) 837/02-03
(These minutes have been seen
by the Administration)

Ref : CB1/BC/3/01/2

**Bills Committee on
Chemical Weapons (Convention) Bill**

**Minutes of seventh meeting held on
Thursday, 9 January 2003 at 8:30 am
in Conference Room A of the Legislative Council Building**

Members present : Hon Cyd HO Sau-lan (Chairman)
Hon HUI Cheung-ching, JP
Hon LAU Kong-wah
Hon Audrey EU Yuet-mee, SC, JP

Members absent : Hon James TO Kun-sun
Dr Hon LO Wing-lok

**Public officers
attending** : Ms Ellen CHOY
Principal Assistant Secretary for Commerce,
Industry and Technology (Commerce and Industry)

Miss Amy CHAN
Assistant Secretary for Commerce,
Industry and Technology (Commerce and Industry)

Ms Vivian SUM
Assistant Director-General
Trade and Industry Department

Ms Doris CHAN
Principal Trade Officer
Trade and Industry Department

Mr Andrew WONG
Head of Trade Controls
Customs and Excise Department

Mr Paul SIT
Principal Trade Controls Officer
Customs and Excise Department

Mr C Y AU YEUNG
Senior Chemist
Government Laboratory

Mr Geoffrey FOX
Senior Assistant Law Draftsman
Department of Justice

Ms Marie SIU
Senior Government Counsel
Department of Justice

Clerk in attendance : Miss Salumi CHAN
Chief Assistant Secretary (1)5

Staff in attendance : Miss Anita HO
Assistant Legal Adviser 2

Ms Cindy CHENG
Senior Assistant Secretary (1) 4

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- I. Confirmation of minutes of meeting**
(LC Paper No. CB(1)620/02-03 — Minutes of sixth meeting held on
13 December 2002)

The minutes of the sixth meeting held on 13 December 2002 were confirmed.

II. Meeting with the Administration

(Matters arising from previous meetings)

- (LC Paper No. CB(1)486/02-03(01) — "Follow-up to the fifth meeting on 19 November 2002" prepared by the Legislative Council Secretariat
- LC Paper No. CB(1)486/02-03(03) — Administration's response to the issues of concern raised by members about the loss of permanent resident status
- LC Paper No. CB(1)638/02-03(01) — "Follow-up to the sixth meeting on 13 December 2002" prepared by the Legislative Council Secretariat)

Clause-by-clause examination of the Bill

- (LC Paper No. CB(3)10/01-02 — The Bill
- Ref: CIB CR14/46/6/1 — The Legislative Council Brief issued by the Commerce and Industry Bureau
- LC Paper No. CB(1)1510/01-02 — Marked-up copy of the proposed consequential amendments to the Organized and Serious Crimes Ordinance (Cap. 455) and the Weapons of Mass Destruction (Control of Provision of Services) Ordinance (Cap. 526)
- LC Paper No. LS9/02-03 — List of drafting issues raised by the Legal Service Division of the Legislative Council Secretariat
- LC Paper No. CB(1)486/02-03(05) — Draft proposed Committee Stage Amendments provided by the Administration
- LC Paper No. CB(1)305/02-03(01) — Administration's reply to the Assistant Legal Adviser
- LC Paper No. CB(1)2206/01-02(02) — Full text of the Chemical Weapons (Prohibition) Act 1994 of the Commonwealth of Australia)

- 2. The Bills Committee deliberated (Index of proceedings attached at **Appendix.**)

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Follow-up actions to be taken by the Administration

Admin 3. As requested by the Bills Committee, the Administration was requested to take the follow-up actions listed below:

(a) Clause 6(1)

Clause 6(1) provided that section 5 applied to acts done in Hong Kong, and acts done outside Hong Kong by Chinese nationals who were Hong Kong permanent residents. The Bills Committee noted that under paragraph 7 of Schedule 1 to the Immigration Ordinance (Cap. 115), a permanent resident of the Hong Kong Special Administrative Region (HKSAR) lost his permanent resident status if, being a person falling within the category in paragraph 2(d), or 2(e), or 2(f) of Schedule 1, had been absent from Hong Kong for a continuous period of not less than 36 months. In this connection -

- (i) the Administration was requested to advise whether the provision about the loss of permanent resident status stated in paragraph 7 of Schedule 1 to the Immigration Ordinance had been enacted upon the establishment of the HKSAR in July 1997; and
- (ii) as Article 24 of the Basic Law did not provide for the loss of permanent resident status after the person concerned had been absent from Hong Kong for a continuous period of not less than 36 months, the Administration was requested to advise whether the provision in paragraph 7 of Schedule 1 to the Immigration Ordinance contravened the Basic Law and whether it had been challenged in court.

The Bills Committee also noted from the Administration's response (LC Paper No. CB(1)486/02-03(03)) that there was no mechanism to check regularly which and how many permanent residents of the HKSAR would have lost permanent resident status under the conditions specified in paragraph 7 of Schedule 1 to the Immigration Ordinance. However, when a person applied for any facility or exercised his right by virtue of his permanent resident status, the Administration was obliged to verify whether he would have lost permanent resident status under the conditions specified in paragraph 7 of Schedule 1. The Administration was requested to advise whether a mechanism was in place for the bureau or department concerned to make the verification with the Immigration Department, and whether the

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personal data and privacy of the persons concerned would be protected during the verification process.

(b) Clauses 8 and 30

Under clause 8(1), the operator of a facility required a permit to operate the facility during a particular year if, in all circumstances of the case, a reasonable person would conclude that "Scheduled chemicals" were likely to be produced at the facility during the year. Clause 30(1), (2) and (3) provided that without, or otherwise than in accordance with, such a permit, produced "Scheduled chemicals" at that facility committed an offence and was liable on conviction to a fine and to imprisonment.

The Bills Committee noted from the Administration's response (LC Paper No. CB(1)305/02-03(01)) that clause 8 was modelled on section 16 of the Chemical Weapons (Prohibition) Act 1994 of Australia, with the addition of the words "*if, in all circumstances of the case, a reasonable person would conclude that*" to provide an objective test for determining the likelihood of the production of "Scheduled chemicals", i.e. whether a reasonable person in the same context would conclude that "Scheduled chemicals" would likely be produced. With such an objective test, the Administration considered it appropriate to impose a strict liability for contravention of clause 8(1), and on that basis, clause 30(1), (2) and (3) had been drafted. In this connection, a defence provision was provided in clause 30(6) under which a person charged with an offence under clause 30(1), (2) or (3) would have a defence if he could prove that he had taken reasonable precautions and exercised due diligence to prevent the commission of the offence.

The Administration was invited to consider:

- (i) whether it was appropriate to introduce the objective test in clause 8(1), having regard to the fact that a reasonable man, being a third party, could not know whether "Scheduled chemicals" were likely to be produced at the facility during a particular year; and
- (ii) adding the words "intentionally or recklessly" in clause 30(1)(b), (2)(b) and (3)(b), as provided in section 77(1)(b) of the Chemical Weapons (Prohibition) Act 1994 of Australia.

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(c) Clause 9

The Bills Committee noted that the Administration's current thinking was not to impose any fee on applications for a permit under the Bill so as to encourage the operators concerned to make the applications. The Bills Committee considered this approach not consistent with the current Government policy that fees were charged on a cost recovery basis. In view of the small number of establishments involved, however, the fees to be charged on a cost recovery basis could be substantial. The Administration was invited to consider charging a nominal fee for applications for a permit under the Bill, and to provide the updated information on the staffing resources required for processing the applications.

(d) Clauses 10(3), 13(2), 14(1)(e), 15(2), 21(7), 21(13)(b), 24(2), 38(1) and 43

The Bills Committee noted that the Chinese version of these clauses did not match with the English version. The Administration was requested to consider rephrasing either the Chinese or English version to achieve consistency in terms of syntactic and legal expressions.

Date of next meeting

4. Members agreed that the next meeting be held on Tuesday, 21 January 2003 at 8:30 am.

III. Any other business

5. There being no other business, the meeting ended at 10:40 am.

Council Business Division 1
Legislative Council Secretariat
29 January 2003

Appendix

**Proceedings of the seventh meeting of the
Bills Committee on Chemical Weapons (Convention) Bill
on Thursday, 9 January 2003 at 8:30 am
in Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action Required
000000-000616	Chairman	Confirmation of minutes of sixth meeting (LC Paper No. CB(1)620/02-03))	
000617-001029	Administration	Briefing by the Administration on its response to issues relating to the loss of permanent resident status (Clause 6) (LC Paper No. CB(1)486/02-03(03))	
001030-001629	Mr LAU Kong-wah Administration	Application of section 5 to acts done outside Hong Kong (Clause 6)	
001630-001935	Chairman Administration	(a) Whether a mechanism was in place for the bureau or department concerned to verify the permanent residence status of a person with the Immigration Department (b) Whether the personal data and privacy of the persons concerned would be protected during the verification process (Clause 6) (LC Paper No. CB(1)486/02-03(03))	Admin to provide supplementary information

Time marker	Speaker	Subject(s)	Action Required
001936-002235	Ms Audrey EU Chairman Administration	<p>(a) Whether the provision about the loss of permanent resident status stated in paragraph 7 of Schedule 1 to the Immigration Ordinance had been enacted upon the establishment of the HKSAR in July 1997</p> <p>(b) Whether the provision in paragraph 7 of Schedule 1 to the Immigration Ordinance contravened the Basic Law and whether it had been challenged in court</p> <p>(Clause 6) (LC Paper No. CB(1)486/02-03(03))</p>	Admin to provide supplementary information
002236-002537	Administration Chairman	<p>Briefing by the Administration on the proposed Committee Stage Amendments to clause 7(1) and 7(2)</p> <p>(Clause 7) (LC Paper No. CB(1)486/02-03(05))</p>	
002538-005238	ALA Administration Ms Audrey EU Chairman Mr LAU Kong-wah	<p>(a) Whether it was appropriate to introduce the objective test in clause 8(1)</p> <p>(b) Whether the words "intentionally or recklessly" should be added in clause 30(1)(b), (2)(b) and (3)(b) to provide the mens rea element for the offence</p> <p>(Clauses 8 and 30) (LC Paper No. LS9/02-03) (LC Paper No. CB(1) 305/02-03(01)) (LC Paper No. CB(1) 2206/01-</p>	Admin to consider whether it was appropriate to introduce the objective test in clause 8(1) and to consider adding the words "intentionally or recklessly" in clause 30(1)(b), (2)(b)

Time marker	Speaker	Subject(s)	Action Required
		02(02))	and (3)(b)
005239-010337	Chairman ALA Mr LAU Kong-wah Mr HUI Cheung-ching Ms Audrey EU Administration	Whether fees should be charged for applications for a permit under the Bill (Clause 9) (LC Paper No. LS9/02-03)	Admin to consider charging a nominal fee for application for a permit under the Bill and to provide the updated information on the staffing resources required for processing the applications
010338-011028	ALA Administration Ms Audrey EU Mr LAU Kong-wah Chairman	Inconsistencies between the Chinese and English versions of some clauses in the Bill in terms of legal and syntactic expressions (Clauses 10(3), 13(2), 15(2), 21(7), 21(13)(b), 24(2), 38(1) and 43) (LC Paper No. LS9/02-03)	Admin to consider rephrasing either the Chinese or English version to achieve consistency in terms of syntactic and legal expressions
011029-011254	Chairman Administration	(a) Notification requirement under clause 11(1) (b) Number of facilities in Hong Kong that produced hydrocarbons or explosives (Clause 11)	

Time marker	Speaker	Subject(s)	Action Required
011255-011412	Administration Chairman	Requirement for the permit holder to submit report to the Director-General of Trade and Industry "at such intervals as are prescribed" (Clause 12(2))	
011413-011523	Chairman Administration	Inconsistencies between Chinese and English versions of clause 13(2) in terms of syntactic expressions (Clause 13(2))	Admin to consider rephrasing either the Chinese or English version to achieve consistency in terms of syntactic expressions in clause 13(2)
011524-013636	Chairman Administration Ms Audrey EU Mr LAU Kong-wah	(a) Difference between requiring information to be produced on a computer "in visible and legible form" under clause 14(1)(e) and in a form in which it is "capable of being retrieved on a computer" under clause 14(1)(f) (b) Meaning of "any reasonable time" in clause 14(1)(a) (c) Inconsistencies between Chinese and English versions in terms of syntactic expressions in clause 14(1)(e) (Clause 14(1)(a), 14(1)(e) and 14(1)(f))	On item (c), Admin to consider rephrasing either the Chinese or English version to achieve consistency in terms of syntactic expressions in clause 14(1)(e)
013637-013645	Chairman	Whether it was a common practice	

Time marker	Speaker	Subject(s)	Action Required
	Administration	to issue an order by writing under the hand of the Chief Secretary for Administration to detain a vessel or an aircraft (Clause 15(5))	
013646-013715	Chairman Administration	Power to seize articles or require production of information (Clause 16)	
013716-013729	Chairman Administration	Time limit for detention of controlled articles (Clauses 17 and 21(2))	
013730-010438	Chairman	Powers of arrest (Clause 18)	
010439-015039	Chairman Administration	Detention of any person who might appear to have in his possession or under his control any computer or device as was mentioned in clauses 14(1)(e) or 16(2) and (3) (Clause 19(1)(d))	
015040-015416	Chairman	Placing of locks and seals on premises etc. (Clause 20)	
015417-020623	Chairman Administration Mr LAU Kong-wah	(a) Whether the Commissioner had the power to further detain the seized article, vessel or vehicle after 30 days of the seizure, and whether such power should be set out clearly in the Bill	

Time marker	Speaker	Subject(s)	Action Required
		<p>(b) Whether it should be specified in the Bill that the Commissioner had to decide, within 30 days of the seizure, whether he would exercise his power to further detain the seized article, vessel or vehicle</p> <p>(c) Whether it should be specified in the Bill that when the Commissioner decided to exercise his power, he should inform the owner concerned of the decision and if he decided not to exercise the power, he must restore the seized article, vessel or vehicle to the owner</p> <p>(Clause 21(2) and (3))</p>	
020624-020636	Chairman	Date of next meeting	