

立法會
Legislative Council

LC Paper No. CB(1) 487/02-03
(These minutes have been seen
by the Administration)

Ref : CB1/BC/3/01/2

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

**Minutes of fifth meeting held on
Tuesday, 19 November 2002 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
Dr Hon LO Wing-lok
Hon Audrey EU Yuet-mee, SC, JP

Member absent : Hon James TO Kun-sun

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

Miss Hanny LAM
Assistant Secretary for Commerce,
Industry and Technology (Commerce and Industry)

Mrs Margaret CHAN
Principal Assistant Secretary for Security (A)

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 K H NG
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

Action

- I. Confirmation of minutes of meeting**
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| (LC Paper No. CB(1)161/02-03 | — | Minutes of third meeting held on 18 October 2002 |
| LC Paper No. CB(1)292/02-03 | — | Minutes of fourth meeting held on 24 October 2002) |

The minutes of the third and fourth meetings held on 18 and 24 October 2002 respectively were confirmed.

II. Meeting with the Administration

(Matters arising from the first meeting on 18 April 2002)

- LC Paper No. CB(1)2206/01-02(01) — Comparison of the Chemical Weapons (Convention) Bill to the Australia Chemical Weapons (Prohibition) Act 1994 and the UK Chemical Weapons Act 1996
- LC Paper No. CB(1)2206/01-02(02) — The full text of the Chemical Weapons (Prohibition) Act 1994 of the Commonwealth of Australia
- LC Paper No. CB(1)2206/01-02(03) — The full text of the Chemical Weapons Act 1996 (C.6) of the United Kingdom

(Matters arising from the third meeting on 18 October 2002)

- LC Paper No. CB(1)59/02-03(06) — Third letter dated 6 August 2002 from the Assistant Legal Adviser to the Administration
- LC Paper No. CB(1)305/02-03(01) — Administration's reply to the Assistant Legal Adviser
- LC Paper No. CB(1)98/02-03(01) — "Follow-up to the third meeting on 18 October 2002" prepared by the Legislative Council Secretariat
- LC Paper No. CB(1)305/02-03(02) — Administration's response to the list of follow-up actions to the third meeting on 18 October 2002

(Matters arising from the fourth meeting on 24 October 2002)

- LC Paper No. CB(1)305/02-03(03) — "Follow-up to the fourth meeting on 24 October 2002" prepared by the Legislative Council Secretariat
- LC Paper No. CB(1)305/02-03(04) — Administration's response to items 3 and 5 of the list of follow-up actions to the fourth meeting on 24 October 2002
- LC Paper No. CB(1)305/02-03(05) — Administration's response to item 4 of the list of follow-up actions to the fourth meeting on 24 October 2002 (**CONFIDENTIAL**)

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)

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

Follow-up actions to be taken by the Administration

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

(a) Clause 1(2)

The Administration was requested to move a Committee Stage Amendment (CSA) to replace "the Secretary for Commerce and Industry" by "the Secretary for Commerce, Industry and Technology".

(b) Clause 2(1)

On the definition of "claimant", the Administration was requested to consider whether the word "petitions" should be in singular form.

(c) Clause 4

(i) Heading of clause 4

The heading of clause 4 read "Power of Director to appoint public officers to exercise any of powers, etc., conferred on Director by this Ordinance". The Administration was requested to consider making appropriate amendments to the heading to make it clear what "any of powers, etc." was referred to.

(ii) Delegation of power to the Clerical Officer Grade

Clause 4 provided that the Director-General of Trade and Industry "may authorize in writing any public officer employed in the Trade and Industry Department in the Trade Officer Grade or in the Clerical Officer Grade, or any public officer acting in the capacity of Principal Trade Officer in the Trade and Industry Department, to exercise any of the powers and perform any of the duties conferred or imposed on the Director by this Ordinance". In view of the sensitivity of the subject matter of the Bill, the requirement for the Clerical Officer Grade to exercise any of the powers and perform any of the duties conferred or imposed on the Director, and the fact that such delegation of power to the Clerical Officer Grade rarely appeared in the existing legislation, the Administration was requested to consider whether it was more appropriate to delete "or in the Clerical Officer Grade" from clause 4.

(d) Clause 6(1)

Clause 6(1) provided that "section 5 applies to acts done in Hong Kong, and acts done outside Hong Kong by Chinese nationals who are Hong Kong permanent residents". The Bills Committee noted from the Administration's written response (LC Paper No. CB(1)305/02-03(04)) that there was no statutory provision for a permanent resident of the Hong Kong Special Administrative Region (HKSAR) to relinquish his permanent resident status. However, the Bills Committee also noted that under paragraph 7 of Schedule 1 to the Immigration Ordinance (Cap. 115), a permanent resident of 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, the Administration was requested to advise on the following:

- (i) whether a permanent resident of HKSAR, who fell within the category in paragraph 2(d), or 2(e), or 2(f) of Schedule 1 to the Immigration Ordinance and had been absent from Hong Kong for a continuous period of not less than 36 months, would automatically lose his permanent resident status;
- (ii) whether the Administration had the discretionary power to decide that the person mentioned in item (a) above would not lose his permanent resident status;
- (iii) whether a mechanism was in place to check regularly if there was any permanent resident of HKSAR who lost his permanent resident status under the circumstances mentioned in item (a) above; if yes,

Action

the Administration was requested to provide information on the mechanism;

- (iv) whether a person who had lost his permanent resident status would be formally notified in writing; and
- (v) whether a person who had lost his permanent resident status might apply for reinstatement of the status.

(e) Clause 7(1)

Clause 7(1) provided that where a person found an article that the person believed might be a chemical weapon, the person should as soon as was practicable notify a member of the Customs and Excise Service or an authorized officer of the finding, and of the whereabouts, of the article. Under clause 29(4), a person who contravened clause 7(1) committed an offence and was liable on conviction to a fine at level 6 and to imprisonment for 6 months. The Bills Committee therefore considered it necessary to facilitate a person who found a chemical weapon to notify a member of the Customs and Excise Service or an authorized officer. In this connection, the Bills Committee noted that "an authorized officer" meant a person authorized by the Commissioner of Customs and Excise under clause 3, including any police officer of the rank of inspector or above. As it might not always be possible for the person concerned to locate a member of the Customs and Excise Service or a police inspector at the time when he found the article, the Administration was requested to consider amending the relevant provisions to the effect that the person concerned might notify "any police officer" instead.

(Post-meeting note: The English and Chinese versions of the Administration's response to clauses 2(1), 4 and 7(1) (LC Paper No. CB(1)486/02-03(02)) were circulated to members on 11 and 12 December respectively. The English and Chinese versions of the Administration's response to the issues relating to the loss of status of permanent resident of HKSAR (LC Paper No. CB(1)486/02-03(03)) were issued to members on 11 and 12 December respectively.)

4. At the request of the Chairman, the Administration undertook to provide the draft proposed CSAs to the Bills Committee as soon as possible.

(Post-meeting note: The English version of the draft Committee Stage Amendments was issued to members via LC Paper No. CB(1)486/02-03(05) on 12 December 2002.)

Action

Date of next meeting

5. Members agreed that the next meeting be held on Friday, 13 December 2002 at 3:30 pm.

III. Any other business

6. There being no other business, the meeting ended at 10:30 am.

Council Business Division 1
Legislative Council Secretariat
12 December 2002

Appendix

**Proceedings of the fifth meeting of the
Bills Committee on Chemical Weapons (Convention) Bill
on Tuesday, 19 November 2002 at 8:30 am
in Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action required
0000-0544	Chairman	Confirmation of minutes of third and fourth meeting (LC Paper No. CB(1)161/02-03 and LC Paper No. CB(1)292/02-03)	
0545-1330	Chairman Administration Dr LO Wing-lok Ms Audrey EU Mr HUI Cheung-ching	Whether a closed meeting is necessary for the discussion of a confidential paper provided by the Administration (LC Paper No. CB(1)305/02-03(05))	
1331-2300	Administration Ms Audrey EU Chairman	Loss of Hong Kong permanent resident status (Clause 6(1)) (Schedule 1 to the Immigration Ordinance)	Admin to provide supplementary information
2301-2524	Chairman Administration	Comparison between clause 28 (Disclosure of information) with section 102 of the Australian Chemical Weapons (Prohibition) Act 1994 (Item 10 of Annex to LC Paper No. CB(1)2206/01-02(01))	
2525-3800	Chairman Mr LAU Kong-wah Administration	Proposed addition of the definitions of certain terms that are defined in the Convention in clause 2 (LC Paper No. CB(1)305/02-03(02))	Admin to prepare CSAs
3801-4221	Administration Mr LAU Kong-wah	Proposed deletion of Schedule 1 to the Bill and setting out the "Scheduled Chemicals" in the Bill	Admin to prepare CSAs

Time marker	Speaker	Subject(s)	Action required
4222-4600	Chairman Administration	Whether it should be expressly stated in the paragraph on the binding effect of the Bill in the Legislative Council Brief that the Bill will not apply to the garrison (LC Paper No. CB(1)305 02-03(04))	
4601-4722	Chairman Administration ALA2	To replace "the Secretary for Commerce and Industry" by "the Secretary for Commerce, Industry and Technology" (Clause 1(2))	Admin to prepare CSA
4723-4945	Ms Audrey EU Administration	Whether the word "petitions" referred to in the definition of "claimant" should be in singular form (Clause 2(1))	Admin to consider
4946-5614	ALA2 Administration Chairman	Definition of the term "operator" (Clause 2(1))	
5615-010101	Chairman Administration	Definition of the term "owner" (Clause 2(1))	
010102-010558	Chairman Administration ALA2	The need to retain clause 2(2)	
010559-010725	Chairman Administration	Powers conferred or imposed on an authorized officer (Clause 3)	
010726-012220	Chairman Administration Mr LAU Kong-wah	Proposed delegation of power and duties to the Clerical Officer Grade by the Director-General of Trade and Industry (Clause 4) (LC Paper No. CB(1)1511/01-02 (02)) (LC Paper No. CB(1)1511/01-02 (03))	Admin to consider whether it is more appropriate to delete "or in the Clerical Officer Grade" from clause 4

Time marker	Speaker	Subject(s)	Action required
012221-012609	Mr LAU Kong-wah Administration Chairman	Clarification on "any of powers, etc." in the heading of clause 4	Admin to consider making appropriate amendments to the heading of clause 4 to make it clear what "any of powers, etc." is referred to
012610-014410	Administration ALA 2 Mr LAU Kong-wah	<p>(a) Proposed addition of the word "reasonably" before "believes" in clause 7(1)</p> <p>(b) Justifications for the penalty imposed on a person who contravenes clause 7(1)</p> <p>(c) Proposed requirement that a person who finds an article which he believes may be a chemical weapon shall notify a member of the Customs and Excise Service or any police officer of the rank of inspector or above</p> <p>(Clauses 7(1), 29(4) and 3)</p> <p>(LC Paper No. CB(1)1511/01-02 (02))</p> <p>(LC Paper No. CB(1)1511/01-02 (03))</p> <p>(LC Paper No. CB(1)59/02-03 (06))</p> <p>(LC Paper No. CB(1)305/02-03 (01))</p>	<p>Admin to prepare CSA on item (a)</p> <p>On item (c), Admin to consider amending the relevant provisions to the effect that the person concerned may notify "any police officer"</p>
014411-015419	Chairman Administration Mr LAU Kong-wah Mr HUI Cheung-ching Dr LO Wing-lok	Date of next meeting	

Note: The audio records of the above proceedings are kept at the Legislative Council Library

Council Business Division 1
Legislative Council Secretariat
12 December 2002