

**Bills Committee on Chemical Weapons (Convention) Bill
Sixth meeting on 13 December 2002**

List of follow-up actions to be taken by the Administration

1. Clause 2(1)

On the definition of "claimant", please consider whether the word "petitions" is redundant, as it seems that there is no reference to this word in Part 6 of the Bill.

2. Clause 5(f)

Clause 5(f) of the Bill provides that no person shall assist, encourage or induce, in any way, anyone to engage in any activity prohibited under the Convention. Section 89 of the Criminal Procedure Ordinance (CPO) (Cap. 221) provides that any person who aids, abets, counsels or procures the commission by another person of any offence shall be guilty of the like offence. Members note the Administration's advice that the scope of "assist", "encourage" and "induce" in clause 5(f) of the Bill is narrower than that of "aids", "abets", "counsels" and "procures" in section 89 of CPO and by virtue of the provisions of that section, a person who contravenes clause 5(a) to 5(e) of the Bill may be prosecuted for the like offence. Members therefore query the need to retain clause 5(f). They note the Administration's view that it is appropriate to retain clause 5(f) to expressly set out the particular prohibition prescribed in paragraph 1(d) of Article I of the Convention. In this connection -

- (a) Please explain why the scope of "assist", "encourage" and "induce" in clause 5(f) of the Bill is narrower than that of "aids", "abets", "counsels" and "procures" in section 89 of CPO. In members' view, the scope of "encourage" is much wider than that of "abets" and it is not appropriate to use two different sets of words for the same type of offences; and
- (b) While clause 5(f) is modelled on paragraph 1(d) of Article I of the Convention, members note that there is no similar provision in the Chemical Weapons Act 1996 of the United Kingdom. Please reconsider the need to retain clause 5(f).

3. Clauses 5 and 29(2)

Please set out the rationale for the policy intent that the whole clause 5 should be offences of a strict liability.

4. Clause 38 (Appeals)

Clause 38 provides that an appeal against any decision of the Director-General of Trade and Industry (the Director) to which clause 10(4) applies may be made to the Chief Executive (CE). The Administration considers the resort to CE for appeal appropriate, as it is conceivable that important policy and political considerations, as well as sensitive information, such as intelligence obtained from other licensing/enforcement agencies of other governments may be involved in the Director's decision to grant permits and/or to impose conditions to the permits. Please consider whether the resort to CE in Council for appeal could also address these considerations. If the answer is in the affirmative, please consider whether it is more appropriate to provide in clause 38 that appeals may be made to CE in Council, instead of CE, having regard to the fact that the rules for handling appeals to CE in Council are set out in the Administrative Appeals Rules (Cap.1 sub. leg. A) while no specific rules are provided for handling appeals to CE.

Legislative Council Secretariat
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