

**Bills Committee on Chemical Weapons (Convention) Bill
Eighth meeting on 21 January 2003**

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

A. Issues raised at the meeting

1. Clauses 15, 16, 21, 22 and 23

The Bills Committee notes that clauses 15, 16, 21, 22 and 23 empower the Commissioner of Customs and Excise (the Commissioner) to seize, detain and forfeit articles, vessels and vehicles, and to release seized vessels and vehicles prior to hearing. While members appreciate the need for the Commissioner to seize, detain and forfeit articles, vessels and vehicles, they consider that the exercise of the relevant functions and powers on "seizure", "detention" and "forfeiture" should be clearly set out in the Bill and that the Commissioner should follow procedures prescribed in the provisions and interests of the owners of the seized articles, vessels and vehicles should be safeguarded. In this connection, the Administration is requested to consider the following points and make appropriate amendments to the relevant clauses:

- (a) Please restructure the relevant provisions in the Bill to set out clearly the procedures and the circumstances under which the powers of "seizure", "detention" and "forfeiture" will be exercised by the Commissioner, and the time limit for detention. Please make reference to the relevant provisions in the Karaoke Establishments Ordinance (Cap. 573).
- (b) Please state the reason in the notice of seizure (clause 21(3)), and serve such notice to the owner concerned irrespective of whether he was present or not when his article, vessel or vehicle was seized. A receipt handed to the owner upon seizure is not sufficient to protect the owner's interest. Clause 21(4)(a) should be deleted.
- (c) Clause 21(2) provides that the Commissioner may, within 30 days of the seizure, restore the seized article, vessel or vehicle to the owner concerned. It seems to imply that the Commissioner may or may not do so. It is however not clear whether the Commissioner has the power to further detain the seized article, vessel or vehicle after 30 days of the seizure when a decision on forfeiture has yet to be made. If the Commissioner has such

power, please set it out clearly in the Bill. Please also specify in the Bill that the Commissioner has to decide, within 30 days of the seizure, whether he will exercise this power. If the Commissioner decides to exercise this power, he has to inform the owner concerned of the reason for the further detention. If the Commissioner decides not to exercise this power, he must restore the seized article, vessel or vehicle to the owner concerned within 30 days of the seizure.

- (d) If the Commissioner decides to forfeit the seized article, vessel or vehicle, he has to inform the owner concerned of the reason for forfeiture and that the owner may claim that the article, vessel or vehicle is not liable to forfeiture.
- (e) In connection with item (d) above, please consider whether it is fair to require the owner concerned to give the notice of appeal within 30 days beginning on the date of the seizure (clause 21(7)).
- (f) Clause 23 provides that the court may, upon payment into court by way of security of a sum of money not less in amount than the value of the seized vessel or vehicle, release the vessel or vehicle prior to the hearing of the application for its forfeiture. The sum of money involved could be substantial. Members consider it unfair to the owner concerned, having regard to the fact that the seizure of the vessel or vehicle may have already affected their business and that they may not afford to pay the substantial sum of money for the release of the seized vessel or vehicle prior to the hearing. If they could not afford to pay, the seized vessel or vehicle may be detained for two years (the time limitation for criminal proceedings under clause 37). Please consider how this problem could be addressed.

2. Clause 26

As the Convention will be deleted from the Bill, please consider whether it is necessary to introduce amendments to clause 26.

3. Clause 27

Clause 27(1) empowers the Commissioner to issue authorizations in respect of the three kinds of inspection specified in clause 26. Under clause 27(4), an authorization shall have the effect of authorizing one or more than one in-country escort to accompany the inspection team. The term "in-country escort" seems to refer to Mainland officials. Given the implementation of the "one country, two systems" in the Hong Kong Special Administrative Region (HKSAR) and the Administration's

advice given at the Bills Committee meeting on 21 January 2003 that the agreed arrangement between the Central People's Government and the HKSAR Government is that the escort will be appointed by the HKSAR Government, members consider that "in-country escort" should be amended to reflect that the escort is a HKSAR official. Members also request the Administration to provide a paper to advise whether or not the implementation of the Convention is regarded as "foreign affairs" or "defence" referred to in Articles 13 and 14 of the Basic Law.

B. Issue raised after the meeting

4. Clause 27

Referring to the agreed arrangement between the Central People's Government and the HKSAR Government mentioned in item 3 above, the Chairman of the Bills Committee directed that the Administration be requested to clarify whether the agreement was in verbal or written form, and if it was in written form, to provide a copy of the agreement for reference of the Bills Committee.

Legislative Council Secretariat
12 February 2003