

**Bills Committee on Chemical Weapons (Convention) Bill
Eleventh meeting on 31 March 2003**

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

1. Clauses 5 and 29

The Administration is requested to consider replacing the word "*encourage*" in clause 5(f) by the word "*incite*".

The Administration is also requested not to add clause 5(e) and 5(f) to clause 29(2).

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

The Bills Committee notes from the Administration's written response (LC Paper No. CB(1)1234/02-03(01)) that the Commissioner of Customs and Excise (the Commissioner) will issue, within 30 days of the seizure, a "Notice of Seizure" to the owner concerned or his authorized agent, listing out all seized articles which are liable for forfeiture. The seized articles not listed in the "Notice of Seizure" may need to be retained for a longer period of time for enforcement and will be returned on conclusion of the investigations/proceedings. Members are concerned that the owner will have no idea of when the seized articles not listed in the "Notice of Seizure" will be returned to him and that there is no channel for him to appeal against the Commissioner's decision to further detain the seized articles. Members note the Administration's advice that a great majority of the seized articles are documents, copies of which could be made for the owner, if necessary. Members consider it essential to set out clearly in the "Notice of Seizure" all seized articles (including document, vehicle, vessel and aircraft), the status of each of the seized articles (e.g. further detention, liable for forfeiture), reasons for seizure and further detention/liable for forfeiture, and the channels for the owner to appeal against the Commissioner's decision. The Administration is requested to amend the relevant clauses to give effect to the arrangements proposed by members. The Administration is also requested to make reference to the Criminal Justice and Police Act 2001 of the United Kingdom (UK) which provides for the power of seizure, return and detention of the seized property, and application to the appropriate judicial authority for the return of the whole or a part of the seized property. The relevant provisions in this Act are also applicable to the Chemical Weapons Act 1996 of UK.

Members also note that clause 15(4) and (5) provide the time limits, and the extension of such time limits, for the detention of vessel and aircraft, but not for the detention of vehicle. The Administration is requested to consider amending clause 15(4) and (5) to cover the detention of vehicle and other types of seized articles.

3. Clause 23

Clause 23 provides that where an application has been made for forfeiture of a vessel or vehicle, a 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, order that the vessel or vehicle be delivered to the claimant thereof upon the condition that the vessel or vehicle be re-delivered into the custody of the Commissioner before the date of hearing of the application for forfeiture. The Bills Committee notes that the Administration considers it inappropriate to lower the minimum level of payment into court by way of security by the owner, as it would in effect compromise the deterring effect of the Bill (LC Paper No. CB(1) 1234/02-03(01)). Members are concerned that if the owner could not afford to pay the "sum of money not less in amount than the value of the seized vessel or vehicle" for the release of the seized vessel or vehicle prior to the hearing, his business might be duly affected by the seizure. If the owner could afford to pay the sum of money, he may purchase a new vessel or vehicle, instead of getting back the seized vessel or vehicle. Members therefore consider it more appropriate to provide the court with the discretionary power to determine the level of payment after taking into account the circumstances of each case, including the views of the Commissioner. The Administration is requested to consider amending clause 23 accordingly.

4. Clause 27

The Bills Committee notes from the Administration's written response (LC Paper No. CB(1)1155/02-03(01)) that the term "in-country escort" in clause 27 may refer to an officer of the Central People's Government or an officer of the Hong Kong Special Administrative Region Government. The Administration is requested to confirm whether a public officer, such as an officer of a Government advisory body, may be nominated as an "in-country escort".

5. Clause 42

The Administration is requested to confirm whether it could prescribe fees under clause 42; if so, to consider amending clause 42 to reflect this point.

6. Schedule 2 (Consequential amendment to the Organized and Serious Crimes Ordinance (OSCO) (Cap. 455)

If the word "*encourage*" in clause 5(f) is replaced by "*incite*", the Administration is requested to amend the proposed amendment to OSCO accordingly.