

**Chemical Weapons (Convention) Bill -
The Administration's response to comments / questions
raised at the twelfth meeting of the Bills Committee
held on 14 April 2003**

Clause 15, 16, 21, 22 and 23

Detention of seized articles

Members requested us to consider how to strike a balance between the need to detain seized articles for investigation and the need to safeguard the interests of the owner concerned.

2. We are fully aware of Members' concern over safeguards for owners of seized articles and have indeed made earnest efforts to improve the proposed arrangements under the Bill to address Members' concerns. For example, we will propose CSAs to require the Commissioner to return the seized articles not liable to forfeiture to their owners or authorized agents when the articles are no longer required for the purpose of any criminal proceedings or investigation under the Bill or any other enactment. For transparency sake, we will also require the Commissioner to issue a "Notice of Seizure", within 30 days of the seizure, to the owner concerned or his authorized agent regardless of whether the articles, vessel or vehicle are seized in their presence and inform them of the reasons for seizure and liable to forfeiture in the "Notice of Seizure" and that the owner may object the intention of forfeiture within 30 days from the date of the Notice. Furthermore, for seized articles not liable to forfeiture, the Commissioner will, as an administrative practice, issue a separate notice to the owner informing him the list of seized articles not liable to forfeiture and the reasons for seizure and detention within 30 days of the seizure.

3. In addition to the above measures, a Member suggested that a preliminary procedure be provided well in advance of the formal hearing of the case in court, whereby the defendant would be asked to confirm in writing whether the seized article was needed for inspection and if not, the seized article should be released to the owner.

4. We have referred the subject to Department of Justice (DoJ). We have also asked our lawyers to take into account the arrangements under the Complex Commercial Crimes Ordinance (Cap. 394).

5. DoJ advised that there are more than 70 provisions in different ordinances containing similar powers in relation to detention of a vehicle which

is suspected to be in connection with an offence. Many of the ordinances are under the policy purview of the Security Bureau (SB). Member's suggestion should therefore be considered in a wider context as there might be read-across implications in policy areas other than the Bill. In the light of DoJ's advice, we suggest that while SB and DoJ are considering the review, the current provision in the Bill together with the CSAs should strike a reasonable balance between the need to detain seized articles for investigation and the need to safeguard the interests of the owners concerned.

Detention period for vessel and vehicle

6. Members asked why the detention period for vessel and vehicle (i.e. 12 hours) is different from that for aircraft (6 hours).

7. The length of detention period for vessel, vehicle and aircraft for search depends on its size, cargo capacity and other relevant factors, including berthing / parking time. Because of the large size and capacity to carry cargo, Customs officers usually take longer time to unload containers in a vessel than in an aircraft. Normally, Customs officers take more than 8 hours to search a vessel. Since the berthing time of a vessel is usually between 8 and 12 hours, the Bill proposes that the detention period for a vessel should not be more than 12 hours. This should avoid causing significant disruption to the port operation and substantial financial loss to the shipping company.

8. Compared with a vessel, an aircraft is smaller in both size and cargo capacity. Normally, Customs officers are able to complete searching an aircraft within a shorter period of time than a vessel. Given that the parking time of an aircraft is about 6 hours, we propose that the detention period for an aircraft should not be more than 6 hours.

9. As regards vehicles, the time required for detention for search hinges on factors including (i) where a vehicle is intercepted and where the vehicle should be brought to for a safe search; (ii) irregular construction feature of a vehicle to be searched; and (iii) the number of vehicles in a convoy to be searched¹. Customs officers would need sufficient lead-time to make arrangements for the vehicles to be taken to a certain spot where x-ray vehicle scanning system is available and for officers concerned to come to the scene to conduct a complete search. We therefore consider that a longer detention period (no more than 12 hours) would be required.

¹ Customs officers may need to detain vehicles in a convoy and to search the vehicles one after another.

Clause 27

Public officer

10. Members would like to know whether a member/officer of a Government advisory body who receives remuneration for his service is regarded as a “public officer” and would be appointed as “in-country escort”.

11. For inspections in the HKSAR, only public officers working in the Commerce, Industry and Technology Bureau, Customs and Excise Department, Trade and Industry Department and / or Government Laboratory will be nominated by the HKSAR Government (SARG) as “in-country escorts” for endorsement by the Central People’s Government (CPG). Persons working in other public bodies and statutory bodies as well as members of SARG advisory bodies will not be nominated.

Departments of CPG involved

12. As we understand it, the State Council has established the leading group for the implementation of the CWC in the People’s Republic of China (PRC). Under the leading group, the National CWC Implementation Office of the PRC has been formed. The Office is a standing establishment composed of relevant departments from the State Development and Reform Commission, Ministry of Foreign Affairs and Ministry of National Defense.

13. As mentioned in our previous submission, “in-country escorts” may refer to an official of the CPG and / or the SARG. For the CPG, officials specified as “in-escorts” could come from the relevant departments under the State Development and Reform Commission, Ministry of Foreign Affairs and Ministry of National Defense.

Duties of “in-country escorts”

14. Clause 27(4)(a) of the Bill² and paragraph 9 of the Part I of the Verification Annex³ state that the duties of “in-country escorts” are to accompany and assist the inspection team during the in-country period. As the duties of the “in-country escorts” are well defined in both the Bill and the

² Clause 27(4)(a) provides that “[An authorization under this section shall in addition have the effect of] authorizing one or more than one in-country escort to accompany the inspection team in accordance with the provisions of the verification annex.”

³ Paragraph 9 of Part I of the Verification Annex stipulates that “In-Country Escort” means individuals specified by the inspected State Party and, if appropriate, by the Host State, if they so wish, to accompany and assist the inspection term during the in-country period.

Convention, we consider it not necessary to impose additional requirement(s) in the Bill to govern the activities of CPG officials in Hong Kong.

Public enquires

15. Upon consultation, Security Bureau has confirmed that an enquiry about from which departments the officers appointed by the CPG as “in-country escorts” come from will not contravene either the existing provisions or proposed amendments to the Official Secrets Ordinance (Cap. 521).

16. As a matter of established practice, we are prepared to receive public enquiries and reply where appropriate.

Staffing resources for the implementation of the Bill

17. Based on the information gathered from the two industry surveys conducted in 1998 and 2001, the Customs and Excise Department, the Trade and Industry Department and the Government Laboratory have reviewed their resource requirements for implementation of the Bill. The total financial implications will be \$4.43 million. Their respective requirements are set out below.

Customs and Excise Department (C&ED)

18. For implementing the Chemical Weapons (Convention) Ordinance (the Ordinance), C&ED plan to create 6 posts comprising one post of Senior Trade Controls Officer, three posts of Trade Controls Officer and two posts of Assistant Trade Controls Officer. The total annual staff cost is around \$2.16 million.

19. Among these six posts, the post of Senior Trade Controls Officer and two posts of Trade Controls Officer have been created in December 2000 and January 2002 respectively to carry out the preparatory work, such as formulation of enforcement policies and strategies and drawing up procedures and guidelines. The remaining three posts will be created upon the enactment of the Ordinance.

20. Upon enactment of the Ordinance, the six officers of C&ED will carry out duties including collecting and disseminating intelligence relating to the enforcement activities under the Convention, conducting inspections and routine checks and facilitating inspection to be conducted in accordance with the Convention when necessary.

Trade and Industry Department (TID)

21. To prepare for the implementation of the Ordinance, TID has set up a team of five officers comprising one post of Trade Officer, one post of Assistant Trade Officer I, one post of Clerical Officer and two posts of Assistant Clerical Officer in June 1999.

22. Given the number of facilities that may be subject to the permit and notification requirements under the Ordinance will be less than expected, for better utilization of resource, the team has been required to take up other related duties as well, including implementing the import and export licensing system provided under the Import and Export Ordinance for chemicals controlled under the Convention and an international export control regime governing the transfer of chemicals.

23. Hence, workload generated from implementation of the Ordinance will only account for part of the duties of the team - 20% for the Trade Officer, 40% for the Assistant Trade Officer I and 50% for the clerical staff. The total annual staff cost is below \$ 0.67 million.

24. Upon implementation of the Ordinance, the duties of the team will include overseeing the implementation of the control system, administering the reporting and notification system as required by the Ordinance and conducting industry awareness programme to educate the industries concerned on the policy and requirements of the Ordinance.

Government Laboratory (GL)

25. GL is the technical advisor to the above two departments. To prepare for implementation of the Ordinance, a team of three officers comprising one Senior Chemist and two Chemists has been set up since April 1999.

26. In anticipation of lesser workload than expected, one Chemist has already been redeployed to work on other duties. For implementation of the Ordinance, the latest staffing requirements of GL are one Senior Chemist and one Chemist, with an annual staff cost of \$1.6 million.

27. In respect of implementation of the Ordinance, the two officers will be responsible for providing professional advice in identification of declarable activities and chemicals under control, providing technical support to the enforcement departments in respect of the permit and notification system and

domestic inspections and investigations, coordinating and conducting sample testing arising from the implementation of the Convention, and etc.

Commerce, Industry and Technology Bureau
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