

**Bills Committee on Chemical Weapons (Convention) Bill  
Thirteenth meeting on 19 May 2003**

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

1. Clause 2

- (a) The Bills Committee considers that the Chinese or English version of the definition of the term "claimant" could be rephrased so as to achieve consistency in the expression of both versions. Please make appropriate amendments.
- (b) The Bills Committee considers that the word "和" in the Chinese version of the definition of the term "facility" should be replaced by "或" in order to reflect the meaning of the word "or" in the English version. Please amend the Chinese version of the definition accordingly.
- (c) The Bills Committee considers it not necessary to amend item (d) of the Chinese version of the definition of the term "purposes not prohibited under the Convention".
- (d) The Bills Committee agrees that the definitions of "'toxic chemical" and "precursor" should be added to clause 2. Please provide the relevant draft Committee Stage Amendments (CSAs).
- (e) The Bills Committee notes the English version of the definition of the term "in-country escorts" tabled at the meeting. Members consider that the proposed definition does not reflect the agreed arrangement between the Central People's Government (CPG) and the Hong Kong Special Administrative Region Government (HKSARG) for specifying officers as "in-country escorts", as follows:
  - According to the paper provided by the Administration in March 2003 (LC Paper No. CB(1)1155/02-03(01)), the CPG and HKSARG have agreed that the HKSARG may, under normal circumstances, nominate officers as "in-country escorts" for endorsement by the CPG, and where necessary, the CPG may, after consultation with the HKSARG, specify officer(s) to be "in-country escort(s)" along with the HKSARG officers.

- According to the paper provided by the Administration in May 2003 (LC Paper No. CB(1)1572/02-03(02)), for the CPG, officials specified as "in-country escorts" could come from the relevant departments under the State Development and Reform Commission, Ministry of Foreign Affairs and Ministry of National Defense. For inspections in 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 HKSARG as "in-country escorts" for endorsement by the CPG.

Members consider that the arrangement should be clearly stated in the Bill to protect the interests of the CPG, HKSARG and the persons involved in the inspection, including the person under inspection. Please amend the definition of "in-country escorts" accordingly.

2. Clause 4

- (a) The Bills Committee agrees that the heading of clause 4 be amended to "Power of Director to appoint public officers to exercise powers and perform duties conferred or imposed on the Director by this Ordinance". Please provide the relevant draft CSAs.
- (b) The Bills Committee agrees that the Chinese version of the word "duty" in clause 4 be amended to "職責". Please provide the relevant draft CSAs.

3. Clause 5

- (a) The Bills Committee notes that the Administration proposes to amend clause 5(c) by replacing "have a chemical weapon in his possession" with "acquire, stockpile or retain a chemical weapon" to reflect the provisions in the Convention. Members are concerned that the word "retain" is not commonly used in Hong Kong legislation. Please conduct a research in this aspect and advise the Bills Committee.
- (b) The Bills Committee notes that the Administration has maintained its view that the word "encourage" in clause 5(f) should be retained to reflect the provisions in the Convention. To facilitate members' consideration of whether a CSA should be moved to replace the word "encourage" by "incite", please confirm whether such an

amendment would constitute a breach of the Convention or failure to fulfil any obligation under the Convention.

4. Clauses 16(5), 21(1) and 21(3)

The Bills Committee notes that under clause 21(3), the Commissioner of Customs and Excise (the Commissioner) shall, not later than 30 days beginning on the date of the seizure of an article, vessel or vehicle, serve a notice of the seizure on the owner concerned, "specifying the reasons for the seizure and accompanied by a copy of this section". Members consider that:

- (a) it should also be specified in the notice of seizure the grounds on which the seized article, vessel or vehicle is liable to forfeiture, i.e. to inform the owner concerned that it is liable to forfeiture because of the grounds provided in clause 21(1)(a), (b) or (c); and
- (b) it should be reflected in clause 21(3) the statutory duty of the Commissioner under clause 16(5) to restore the seized article, vessel or vehicle to the owner concerned where it is not, or is no longer, required for the purposes of any investigation or criminal proceedings and where it is not liable to forfeiture.

Please make appropriate amendments.

5. Clause 21(6)(c)

The Bills Committee notes that under clause 21(6)(c), a notice given under clause 21(3) or 21(5) shall be deemed to have been duly served if it is exhibited at the Customs and Excise Department. Members consider it not a desirable option, as it is not common for the public to go to the Customs and Excise Department to read notices. Please explore other options, such as publication of the notice in the Gazette.