

(TRANSLATION)

Comparison of the key requirements of the Chemical Weapons Convention and the corresponding provisions in the Chemical Weapons (Convention) Bill

Key requirements of the Chemical Weapons Convention	Corresponding provisions in the Chemical Weapons (Convention) Bill (the CWC Bill)
<ul style="list-style-type: none"> • Article I, paragraph 1 requires a State Party to undertake never under any circumstances to: <ul style="list-style-type: none"> (a) develop, produce, otherwise acquire, stockpile or retain chemical weapons, or transfer, directly or indirectly, chemical weapons to anyone; (b) use chemical weapons; (c) engage in any military preparations to use chemical weapons; (d) assist, encourage or induce, in any way, anyone to engage in any activity prohibited to a State Party under this Convention. • Article VII, paragraph 1 requires a State Party to adopt necessary measures to implement its obligations under the Convention, including to prohibit natural and legal person anywhere on its territory or in any other place under its jurisdiction from undertaking any activity prohibited under the Convention, and to enact penal legislation with respect to such activity. The penal legislation shall be extended to any activity prohibited under the Convention undertaken anywhere by natural persons possessing its nationality. 	<ul style="list-style-type: none"> • Clause 5 provides that no person shall - <ul style="list-style-type: none"> (a) use a chemical weapon; (b) develop or produce a chemical weapon; (c) have a chemical weapon in his possession; (d) participate (whether directly or indirectly) in the transfer of a chemical weapon; (e) engage in military preparations, or in preparations of a military nature, intending to use a chemical weapon; or (f) assist, encourage or induce, in any way, anyone to engage in any activity prohibited under the Convention. • Clause 6(1) provides that Section 5 applies to acts done in Hong Kong, and acts outside Hong Kong by Chinese nationals who are Hong Kong permanent residents. • Clause 29(1) specifies that the maximum penalty for contravention of Section 5 is life imprisonment.

Key requirements of the Chemical Weapons Convention	Corresponding provisions in the Chemical Weapons (Convention) Bill (the CWC Bill)
<ul style="list-style-type: none"> • Article III, paragraph 1 requires a State Party to, within 30 days after the Convention enters into force for it, submit a declaration to the Organization for the Prohibition of Chemical Weapons (OPCW) (the initial declaration) with respect to chemical weapons (including “abandoned chemical weapons” and “old chemical weapons”) owned or possessed by it, or located in any place under its jurisdiction or control; chemical weapons production facilities; and riot control agents that it holds for riot control purposes. • Article IV, paragraph 9 requires that any chemical weapons discovered by a State Party after the initial declaration shall be reported, secured and destroyed. 	<ul style="list-style-type: none"> • Clause 7 provides that where a person finds an article that he believes may be a chemical weapon (including “abandoned chemical weapon” and “old chemical weapon”¹), he shall as soon as is practicable notify a member of the Customs and Excise Service or an authorized officer. • Clause 14 empowers a member of the Customs and Excise Service or an authorized officer to require the furnishing of any information that is relevant to a declaration required to be given to the OPCW. • The CWC Bill does not have any provision pertaining to riot control agent. This is because Article III of the Convention only requires a State Party to make declaration in respect of riot control agents that it holds for riot control purposes. The Government will collect such information through administrative means and make declaration to the OPCW accordingly.

¹ Pursuant to Clause 2(4) of the CWC Bill, the provisions of the Ordinance applicable to chemical weapons are also applicable to “abandoned chemical weapons” and “old chemical weapons” to the extent that the provisions may practicably apply to “abandoned chemical weapons” and “old chemical weapons” respectively. As defined in the Chemical Weapons Convention, “abandoned chemical weapons” means chemical weapons, including old chemical weapons, abandoned by a State after 1 January 1925 on the territory of another State without the consent of the latter; whereas “old chemical weapons” means chemical weapons which were produced before 1925; or chemical weapons produced in the period between 1925 and 1946 that have deteriorated to such extent that they can no longer be used as chemical weapons.

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<ul style="list-style-type: none"> • Article IV, paragraph 6 requires a State Party to destroy all chemical weapons owned or possessed by it, or that are located in any place under its jurisdiction or control, pursuant to Part IV(A) of the Verification Annex and in accordance with the agreed rate and sequence of destruction. • Part IV(B) of the Verification Annex sets out the regimes for destroying / handling “abandoned chemical weapons” and “old chemical weapons”. 	<ul style="list-style-type: none"> • Clause 21(1) provides that any chemical weapons found in Hong Kong shall be liable to forfeiture. If, upon the expiry of the period of time specified in clause 21(7), no notice of claim has been given to the Commissioner of Customs and Excise (the Commissioner), the article shall be forfeited forthwith to the Government. If a notice of claim has been given, the court may, after hearing, order that the article shall be forfeited to the Government. • Clauses 21(12) and 22(9) provide that the articles forfeited to the Government may be “disposed of, whether by destruction or otherwise, as the Commissioner thinks fit”. • Clause 24(4) provides that if an article liable to forfeiture under section 21(1) is, in the opinion of the Commissioner, a chemical weapon which poses an immediate threat to the health or safety of the public, the Commissioner may order that the article be destroyed or otherwise disposed of. • Pursuant to Clause 2(4), the provisions of the Ordinance applicable to chemical weapons are also applicable to “abandoned chemical weapons” and “old chemical weapons” to the extent that the provisions may practicably apply to the latter. In other words, if any “abandoned chemical weapon” and “old chemical weapon” is found in Hong Kong, the Government will forfeit and dispose of them in accordance with the procedures set out in the above provisions applicable to chemical weapons.

Key requirements of the Chemical Weapons Convention	Corresponding provisions in the Chemical Weapons (Convention) Bill (the CWC Bill)
<ul style="list-style-type: none"> • Article VI, paragraph 1 states that a State Party has the right, subject to the provisions of the Convention, to develop, produce, otherwise acquire, retain, transfer and use toxic chemicals and their precursors for purposes not prohibited under the Convention. “Purposes not prohibited under the Convention” means: <ul style="list-style-type: none"> (a) industrial, agricultural, research, medical, pharmaceutical or other peaceful purposes; (b) protective purposes, namely those purposes directly related to protection against toxic chemicals and to protection against chemical weapons; (c) military purposes not connected with the use of chemical weapons and not dependent on the use of the toxic properties of chemicals as a method of warfare; (d) law enforcement including domestic riot control purposes. • The above activities are nonetheless subject to the declaration and verification requirements set out in Parts VI to VIII of the Verification Annex. Such requirements include submission of annual declaration with respect to “Scheduled chemicals”. For transfer of “Schedule 1 chemicals”, a declaration should be given to the OPCW not less than 30 days before the transfer. 	<ul style="list-style-type: none"> • Part 3 enables the Director-General of Trade and Industry (the Director) to require a facility operator to obtain a permit to operate facilities where chemicals listed in the three schedules to the Convention may be produced, consumed, retained, acquired or transferred from the facilities. • Pursuant to Clause 12, facility operator granted with a permit shall submit regular reports to the Director, providing particulars on activities relating to “Scheduled chemicals”. • In addition, pursuant to Clause 13, the Director may require any person to give information that is relevant to a declaration required to be given to the OPCW under the Convention in respect of chemicals.
<ul style="list-style-type: none"> • Part IX of the Verification Annex sets out the declaration and verification requirements if “unscheduled discrete organic chemicals” exceeding the relevant thresholds have been produced in a facility. 	<ul style="list-style-type: none"> • Clause 11 requires a facility operator to notify the Director if he has produced “unscheduled discrete organic chemicals” exceeding the relevant thresholds.

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<ul style="list-style-type: none"> • Parts VI to XI of the Verification Annex set out the arrangements and general provisions for the various types of verification inspections. 	<ul style="list-style-type: none"> • Part 7 provides that the Commissioner may issue an authorization to the inspection team sent by the Secretariat of the Convention to confer on them the rights of access, entry and unobstructed inspection in Hong Kong.
<ul style="list-style-type: none"> • Part II(B) of the Verification Annex requires a State Party to grant certain privileges and immunities to members of the inspection team sent by the OPCW during the period of the inspection. 	<ul style="list-style-type: none"> • There is no corresponding provision. An order will be made under the International Organizations (Privileges and Immunities) Ordinance to confer certain privileges and immunities on members of the inspection team sent by the OPCW during the period of inspection.