

Chemical Weapons (Convention) Bill
Follow-up to issues raised at the Bills Committee meetings

Clause 2

At the Bills Committee meeting held on 19 November 2002, Members asked whether the word “*petitions*” in the definition of “claimant” should be in singular form. Our lawyer advises that “*petitions*” is meant to be a verb and hence its current form is in order.

Clause 4

2. Clause 4 of the CWC Bill provides that the Director-General of Trade and Industry (the Director) may authorize in writing any public officer employed in the Trade and Industry Department (TID) in the Trade Officer Grade or in the Clerical Officer Grade, or any public officer acting in the capacity of Principal Trade Officer in TID, to exercise any of the powers and perform any of the duties conferred or imposed on the Director by the Ordinance. At the Bills Committee meeting held on 19 November, some Members expressed the view that given the sensitivity of the subject matter, the proposed delegation of powers and duties to Clerical Officer Grade might not be appropriate or necessary. They also noted that it was not a common practice to provide for delegation of powers and duties to Clerical Officer Grade in local legislation.

3. As we explained in our reply dated 24 November 2001 to the Assistant Legal Adviser (ALA), and repeated at the Bills Committee meeting held on 19 November 2002, we envisioned that only limited powers would be delegated to officers in the Clerical Officer Grade. These might include the powers to request and examine documents in support of permit applications, seek clarifications with the applicants as and when necessary etc.

4. Indeed, at present, in accordance with section 4A of the Import and Export Ordinance (see below), the Director has delegated similar powers and duties to Clerical Officers in the administration of various licensing and registration systems for operational convenience, for example, those relating to control on trade in textiles and trade in strategic commodities. Section 4A of the Import and Export Ordinance provides that “*the Director may appoint in writing any public officer to exercise any of the powers and perform any of the duties conferred or imposed on an appointed officer by [the] Ordinance*”.

5. Following a review, we remain of the view that the proposed delegation of powers and duties to Clerical Officers is appropriate and consistent with the current practice. That said, in view of the relatively small number of permit applications expected, we could cope with a system without delegation of powers and duties to Clerical Officers. We are therefore prepared to propose an amendment to delete the reference to Clerical Officer Grade in clause 4 as Members so prefer.

Clause 7

6. Clause 7(1) of the CWC Bill provides that where a person finds an article that the person believes may be a chemical weapon, the person shall as soon as is practicable notify a member of the Customs and Excise Service or an authorized officer of the finding, and of the whereabouts, of the article. By virtue of clauses 2 and 3, an authorized officer may include a public officer employed in the Customs and Excise Department in the Trade Controls Officer Grade, a police officer of the rank of inspector or above, or a police officer who is a member of the Explosive Ordnance Disposal Bureau. Some Members were of the view that a person should also be allowed to report the finding of an article he believed may be a chemical weapon to any police officer.

7. We agree that an ordinary person would usually turn to a police officer for assistance or reporting of suspected crime in the first instance. We are therefore prepared to propose an amendment to clause 7 to the effect that a person may notify a police officer of the finding of an article he believes may be a chemical weapon.

Clause 38

8. During the discussion at an earlier Bills Committee meeting, some Members asked whether the appeal channel under clause 38 of the CWC Bill was appropriate. Clause 38 provides that any person aggrieved by a decision of the Director under clause 10(4)¹ may lodge an appeal to the Chief Executive.

9. We explained in our reply dated 24 November 2001 to the ALA that similar appeal channel was provided for in section 6 of the Import and Export Ordinance (I&EO). Pursuant to that provision, a person aggrieved by a decision, act or omission of the Director or the Commissioner of Customs and Excise or of any other public officer taken, done or made in the exercise of any

¹ Such decisions include the decision by the Director to grant a permit subject to conditions; to refuse to grant a permit; to revoke or suspend a permit; to amend conditions specified in a permit; or to add conditions to a permit.

powers or the performance of any duties under the I&EO may lodge an appeal to the Chief Executive. Given that the powers of the Director under the I&EO and the CWC Bill are broadly similar, we believe it is reasonable to adopt the same appeal arrangement.

10. A wide range of duties and powers are conferred on the Director under the I&EO, including those relating to the issue of import and export licences, imposition of conditions to such licences, registration of textiles traders etc. Given the high administrative nature of the decisions concerned and that the decisions concerned might involve specific knowledge in trade control matters, the Administration is the view that appeal against such decisions under the I&EO should be vested in the executive authority, as opposed to a general appeal board.

11. In respect of clause 10(4) of the CWC Bill, the Director's decisions to grant permits and/or to impose conditions to the permits relate to government policy on control of Scheduled chemicals in compliance with an international convention. It is conceivable that important policy and political considerations, as well as sensitive information, such as intelligence obtained from other licensing/enforcement agencies of other governments may be involved in such decisions. As such, we remain of the view that the resort to the Chief Executive for appeal is appropriate.

Commerce, Industry and Technology Bureau
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