

**立法會**  
**Legislative Council**

LC Paper No. CB(1) 811/06-07  
(These minutes have been seen  
by the Administration)

Ref: CB1/BC/2/05/2

**Bills Committee on  
Hazardous Chemicals Control Bill**

**Minutes of the fourth meeting  
held on Friday, 12 January 2007, at 8:30 am  
in Conference Room B of the Legislative Council Building**

- Members present** : Hon CHOY So-yuk, JP (Chairman)  
Hon SIN Chung-kai, JP  
Hon Audrey EU Yuet-mee, SC, JP  
Hon Andrew LEUNG Kwan-yuen, SBS, JP
- Public officers attending** : Environmental Protection Department  
  
Mr Esmond LEE  
Deputy Director of Environmental Protection  
  
Dr Stephanie MA  
Senior Environmental Protection Officer  
  
Department of Justice  
  
Ms Frances HUI  
Senior Government Counsel  
  
Ms Phyllis POON  
Government Counsel
- Clerk in attendance** : Miss Becky EU  
Chief Assistant Secretary (1)1
- Staff in attendance** : Miss Monna LAI  
Assistant Legal Adviser 7  
  
Mrs Mary TANG  
Senior Assistant Secretary (1)2
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**I Confirmation of minutes**

(LC Paper No. CB(1) 679/06-07 -- Minutes of the meeting held on 6 December 2006)

The minutes of the meeting held on 6 December 2006 were confirmed.

**II Meeting with the Administration**

(LC Paper No. CB(1) 1876/05-06(01) -- A list of questions raised by Hon CHOY So-yuk (Chinese version only)

LC Paper No. CB(1) 2287/05-06(03) -- Administration's response to LC Paper No. CB(1) 1876/05-06(01)

LC Paper No. CB(1) 683/06-07(01) -- List of follow-up actions arising from the discussion on 6 December 2006

LC Paper No. CB(1) 683/06-07(02) -- Administration's response to the lists of follow-up actions arising from the discussion on 20 November and 6 December 2006

LC Paper No. CB(1) 431/06-07(03) -- Assistant Legal Adviser's letter dated 5 December 2006 to the Administration

LC Paper No. CB(1) 702/06-07(01) -- Administration's response to LC Paper No. CB(1) 431/06-07(03))

2. The Committee deliberated (Index of proceedings attached at **Annex A**).

3. The Administration was requested to -

(a) advise, between having a general reference clause on the requirements of the two Conventions in the relevant clauses of the Bill and deleting the general reference clause to the two Conventions from the Bill, which would be a better alternative from its perspective and why;

(b) advise the liability of the Government and the relevant public officers in the event of non-compliance with the provisions in the Bill; and

(c) revert back to the Bills Committee the Administration's stance on regulating the possession and transaction of scheduled chemicals

4. Members agreed to continue discussion at the next meeting scheduled for Monday, 29 January 2007, at 2:30 pm.

*(Post-meeting note: The application of international convention in local legislation had been referred to the Panel on Administration of Justice and Legal Services (AJLS Panel) for follow up via a memo to the Clerk to AJLS Panel on 17 January 2007.)*

**III Any other business**

5. There being no other business, the meeting ended at 10:20 am.

Council Business Division 1  
Legislative Council Secretariat  
26 January 2007

**Proceedings of the meeting of the  
Bills Committee on Hazardous Chemicals Control Bill  
Meeting on Friday, 12 January 2007, at 8:30 am  
in Conference Room B of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action required
000000 - 000239	Chairman	Confirmation of minutes of the meeting held on 6 December 2006 (LC Paper No. CB(1) 679/06-07)	
000240 - 002711	Administration Chairman	<p>Administration's response to the lists of follow-up actions arising from the discussions on 20 November and 6 December 2006 (LC Paper No. CB(1) 683/06-07(02))</p> <p>(1) definition of "manufacture" -</p> <p>members agreed to the Administration's proposal of adding a new sub-clause under Clause 2 to further clarify that a scheduled chemical was not regarded as having been manufactured, if it was produced incidentally (as a by product) in the course of manufacture of any thing</p> <p>(2) Administration's explanation on the extent of power conferred on the Director in enforcing the requirement under the two Conventions -</p> <p>(a) The Bill had been suitably adapted to meet local situation;</p> <p>(b) It was not appropriate to delete the general reference clause on the requirements of the two Conventions in the Bill as such would limit flexibility; and</p> <p>(c) Consideration could be given to confining the reference clause to the scope of the Convention requirements to those relating to the "manufacture, import, export, use and disposal" or removing the general reference clause to the two Conventions as in the case of the Waste Disposal (Amendment) Bill</p>	

Time marker	Speaker	Subject(s)	Action required
002712 - 003026	Ms Audrey EU Chairman	Ms Audrey EU's suggestion -  The application of international conventions to local legislation should be followed up by the Panel on Administration of Justice and Legal Services (AJLS Panel) to ensure consistency	
003027 - 004339	ALA7 Chairman	ALA7's views on the application of international conventions to local legislation -  The extent of the Director's power should be ascertainable to ensure clarity and certainty of the law. A general reference to the requirements of the two Conventions was undesirable as the extent of the Director's power would be ambiguous	
004040 - 005407	Chairman Administration	Mr SIN Chung-kai's support for requirements of the two Conventions to be clearly set out in the Bill  Administration's explanation -  (a) The permit system under the Bill enabled the relevant key requirements of the two Conventions to be implemented; and  (b) Setting out detailed requirements in the Bill would limit flexibility. Consideration could be given to confining the general reference clause to the scope of the Convention requirements to those relating to the "manufacture, import, export, use and disposal". However, if this was found not acceptable, consideration could be given to removing the general reference clause to the two Conventions from the Bill	The Administration to advise, between having a general clause on the requirements of the two Conventions in the relevant clauses of the Bill and deleting the general reference clause to the two Conventions from the Bill, which would be a better alternative from its perspective and why

Time marker	Speaker	Subject(s)	Action required
005408 - 010413	Mr SIN Chung-kai Administration Chairman ALA7	Discussion on whether the Bill as drafted would be user friendly  Administration's explanation -  (a) User guides and performance pledges would be provided to users; and  (b) Control of scheduled chemicals was set out in proposed sections 6, 7, 8 and 9	
010414 - 010337	Administration Chairman Mr SIN Chung-kai ALA7	Legislative tools for the inclusion/deletion of convention and non-convention documents  Members' acceptance that the inclusion/deletion of convention chemicals would be subject to negative vetting procedure while non-convention chemicals would be subject to positive vetting procedure	
010338 - 011450	Administration Chairman	Discussion on the definition of "court"  Administration's advice that it was appropriate to define "court" in clause 2 to include a magistrate	
011451 - 011621	Administration Chairman	Possession and transaction of scheduled chemicals	The Administration to revert back to the Bills Committee its stance on regulating the possession and transaction of scheduled chemicals

Time marker	Speaker	Subject(s)	Action required
011622 - 012359	Administration ALA7 Chairman	<p>Discussion on the Administration's response to comments from the Chairman (LC Paper No. CB(1) 2287/05-06)(03)</p> <p>Binding effect -</p> <p>Chairman's queries on the criminal liability of public officers in the event of non-compliance with the provisions in the Bill</p> <p>Administration's explanation -</p> <p>(a) The policy intent was that public officers in the course of carrying out duties in the service of the Government would not be held criminally liable for offences under the Bill and this was in line with Government's legal policy and common law; and</p> <p>(b) If the criminal liability under the Bill was interpreted by the court as applying to the individual public officers, any fine imposed would be payable by the public officer convicted</p>	
012400 - 012814	ALA7 Chairman Administration	<p>ALA7's reference to a paper submitted by the AJLS Panel to the House Committee which set out its views on the imposition of criminal liability on the Government and the relevant public officers (LC Paper No. CB(2)2460/05-06)</p> <p>(a) The issue of criminal liability was a matter of policy and not a matter of constitutional or legal principle;</p> <p>(b) The issue of public officers' immunity from criminal liability in the event of breaching of obligations in discharging their public duties should be considered on a case-by-case basis; and</p> <p>(c) It would be for individual Bills Committees to decide whether immunity from criminal liability should be included in the Bills and if so, this should be clearly spelt out in the Bills concerned</p>	

Time marker	Speaker	Subject(s)	Action required
012815 - 014514	ALA7 Administration Chairman Mr SIN Chung-kai	<p>Discussion on the imposition of criminal liability on the Government and public officers</p> <p>Chairman's view -</p> <p>Public officers should be held criminally liable for offences which they committed in the course of discharging public duties</p> <p>Administration's explanation -</p> <p>Under the seven environment-related ordinances, any contravention of the relevant regulatory provisions was required to be reported to the Chief Secretary for Administration who would ensure that the best practicable steps were taken to terminate contravention or avoid recurrence</p>	The Administration to advise the liability of the Government in the event of non-compliance with the provisions in the Bill
014515 - 014905	Administration Chairman	Discussion on clauses 7 and 8 regarding restriction of the import and export of scheduled chemicals	
014906 - 015111	Chairman Administration	Arrangements for the next meeting	