

立法會
Legislative Council

LC Paper No. CB(1) 1077/06-07
(These minutes have been seen
by the Administration)

Ref: CB1/BC/2/05/2

**Bills Committee on
Hazardous Chemicals Control Bill**

**Minutes of the fifth meeting
held on Monday, 29 January 2007, at 2:30 pm
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

Miss S K LEE
Senior Government Counsel (Treaties & Law) 2

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) 811/06-07 -- Minutes of the meeting held on 12 January 2007)

The minutes of the meeting held on 12 January 2007 were confirmed.

II Meeting with the Administration

(LC Paper No. CB(1) 751/06-07(01) -- Revised version of Assistant Legal Adviser's letter dated 11 January 2007 to the Administration

LC Paper No. CB(1) 814/06-07(01) -- Assistant Legal Adviser's letter dated 15 January 2007 to the Administration

LC Paper No. CB(1) 814/06-07(02) -- Administration's response to LC Paper Nos. CB(1) 751/06-07(01) and 814/06-07(01)

LC Paper No. CB(1) 814/06-07(03) -- List of follow-up actions arising from the discussion on 12 January 2007

LC Paper No. CB(1) 814/06-07(04) -- Administration's response to LC Paper No. CB(1) 814/06-07(03))

Other relevant papers

(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) 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) Revert to the Bills Committee on its position on the liability of the Government and the relevant public officers in the event of non-compliance with the provisions in the Bill. To also advise the liability of public officers who contravened any traffic legislation in the course of carrying out duties in the service of the Government;

- (b) Review the drafting of clauses 16(2), 17(2), 21(1), 29(1) and 39(6) so as to see if the procedures for issuing a new permit could be simplified. To provide Committee Stage amendments if necessary;
- (c) Review the drafting of clause 40(4)(b) to make it clear how the period of six months should be counted;
- (d) Respond to the Assistant Legal Adviser's question on the drafting of clauses 41(a) and (b) as spelt out in her letter to the Administration dated 11 January 2007; and
- (e) Provide a draft of the Committee Stage amendments proposed by Environmental Protection Department and mentioned at the last meeting.

4. Members agreed to continue discussion at the next meeting scheduled for Thursday, 15 March 2007, at 10:45 am.

III Any other business

5. There being no other business, the meeting ended at 4:27 pm.

Council Business Division 1
Legislative Council Secretariat
6 March 2007

**Proceedings of the meeting of the
Bills Committee on Hazardous Chemicals Control Bill
Meeting on Monday, 29 January 2007, at 2:30 pm
in Conference Room B of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action required
000000 - 000207	Chairman	Confirmation of the minutes of meeting held on 12 January 2007 (LC Paper No. CB(1) 811/06-07)	
000208 - 001010	Administration Chairman	Administration's explanation on its response to the list of follow-up actions arising from the meeting on 12 January 2007 (LC Paper No. CB(1) 814/06-07(04))	
001011 - 004903	Ms Audrey EU Chairman ALA7 Administration	<p>Discussion on the need to make general reference to the requirements of the two Conventions in the relevant clauses of the Bill</p> <p>Administration stated that even though in the absence of references to the Convention requirements, the Director could still have regard to and perform his statutory functions in a manner consistent with the Convention requirements. The Administration's preference was to make reference to the requirements of the two Conventions in the provisions of the Bill for the sake of greater transparency of law.</p> <p>Ms Audrey EU's views -</p> <p>(a) If reference was made to the Convention requirements in the Bill, this would have the effect of requiring the Director to take account of the Convention requirements, including any subsequent changes, even if the Convention requirements went further than what was permitted under the Bill;</p> <p>(b) Even if reference was not made to the Convention requirements in the Bill, this would not prevent the Director from making reference to such and any other requirements when exercising his discretion upon the issue/variation of permits. But the Director may only be empowered to carry out those functions which was expressly stipulated in the Bill; and</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>(c) There should be consistency in the implementation of international conventions through local legislation and the matter should be followed up by the Panel on Administration of Justice and Legal Services</p> <p>ALA7's concern that a general reference clause would have the effect of imposing the Convention requirements and their subsequent changes in local legislation without the law-making process and the necessary adaptation. The Director could only exercise power which was expressly provided in the Bill. If reference was to be drawn from the two Conventions, express reference to the Convention requirements had to be made in the Bill</p> <p>Chairman's views -</p> <p>(a) Relevant Convention requirements should be clearly specified in the Bill; and</p> <p>(b) The inclusion of a general reference clause on Convention requirements in the issue/variation of permits might not be necessary lest this might give rise to grey areas and uncertainties</p> <p>Administration's response -</p> <p>(a) Convention requirements were many and detailed. Not all requirements were set out in the Bill, but the Bill provided a framework enabling the Convention requirements to be implemented;</p> <p>(b) Even if reference was not made to the Convention requirements, the Director could perform his statutory functions having regard to and in a manner consistent with the Convention requirements so long as this did not contradict the express wording of the Bill. For example, the Director might take into account the Convention requirements in deciding not to issue a permit, or issue a permit subject to conditions; and</p>	

Time marker	Speaker	Subject(s)	Action required
		(c) Consideration could be given to removing the reference to the requirements of the two Conventions	
004904 - 005439	Administration Chairman ALA7 Ms Audrey EU Mr SIN Chung-kai	Discussion on the liability of the Government and the relevant public officers in the event of non-compliance with the provisions in the Bill	The Administration to revert to the Bills Committee on its position on the liability of the Government and the relevant public officers in the event of non-compliance with the provisions in the Bill. To also advise the liability of public officers who contravened any traffic legislation in the course of carrying out duties in the service of the Government
005440 - 010623	Chairman Administration	<p>Discussion on the possession and transaction of scheduled chemicals</p> <p>Administration's explanation -</p> <p>(a) The Bill aimed to regulate the import, export, manufacture and use of non-pesticide hazardous chemicals. It was considered inappropriate to extend the scope of the Bill to cover possession and transfer;</p> <p>(b) Permits to be issued under the Bill would contain conditions governing the proper possession of the chemicals; and</p> <p>(c) There was existing environmental legislation dealing with environmental pollution caused by improper storage/handling of scheduled chemicals</p>	

Time marker	Speaker	Subject(s)	Action required
010624 - 010745	Administration	Administration's explanation on its response to the list of questions raised by the Chairman (LC Paper No. CB(1) 2287/05-06(03))	
010746 - 013128	Administration Chairman	<p>Discussion on the timeframe for return of permits to the Director upon variation/cancellation/suspension/duplication of permits under clauses 16(2), 17(2), 21(1), 29(1) and 39(4)</p> <p>Chairman's suggestion that a new permit should be issued to the permit holder upon return of his existing permit, instead of requiring the holder to return the permit as soon as practicable after the variation/cancellation/suspension/duplication of permits</p>	The Administration to review the drafting of clauses 16(2), 17(2), 21(1), 29(1) and 39(6) so as to see if the procedures for issuing a new permit could be simplified
013129 - 013245	Administration Chairman	Discussion on clause 40(4)(b) on the timeframe for bringing charges against the provision of false or inaccurate information	The Administration to review the drafting of clause 40(4)(b) to make it clear how the period of six months should be counted
013246 - 013901	Administration ALA7 Chairman	Discussion on clause 41 regarding proceedings for and in connection with acts of employees	The Administration to respond to ALA7's question on clauses 41(a) and (b) as spelt out in her letter to the Administration dated 11 January 2007
013902 - 013944	Administration	<p>Clause-by-clause examination of the Bill</p> <p>Long title</p> <p>Clause 1-Short title and commencement</p>	

Time marker	Speaker	Subject(s)	Action required
013945 - 015102	Administration Mr SIN Chung-kai Chairman ALA7 Ms Audrey EU	Clause 2 - Interpretation	<p>The Administration to provide the Committee Stage amendments proposed by Environmental Protection Department and mentioned at the last meeting -</p> <p>(a) amendment to clause 2 to add a subclause to put it beyond doubt that a scheduled chemical is not regarded as having been manufactured if the chemical is produced in the course of the manufacture of another thing;</p> <p>(b) amendment to clause 50 in relation to the power to amend Schedules 1 and 2 of the Bill</p>
015103 - 015158	Administration	Clause 3 - Application of Ordinance	
015159 - 015203	Administration	Clause 4 - Ordinance binds Government (to be discussed at the next meeting)	
015204 - 015340	Administration	Clause 5 - Criteria under Rotterdam Convention or Stockholm Convention be followed when determining whether certain chemical is hazardous chemical	

Time marker	Speaker	Subject(s)	Action required
015341 - 015413	Chairman Administration	Arrangements for the next meeting	

Council Business Division 1
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6 March 2007