

立法會
Legislative Council

LC Paper No. CB(1) 1522/06-07
(These minutes have been seen
by the Administration)

Ref: CB1/BC/2/05/2

**Bills Committee on
Hazardous Chemicals Control Bill**

**Minutes of the seventh meeting
held on Friday, 13 April 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 Carlson K S CHAN
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 YU
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 Meeting with the Administration

- (LC Paper No. CB(1) 1309/06-07(01) -- List of follow-up actions arising from the discussion on 15 March 2007
- LC Paper No. CB(1) 1309/06-07(02) -- Administration's response to LC Paper No. CB(1) 1309/06-07(01)
- LC Paper No. CB(1) 1106/06-07(03) -- Assistant Legal Adviser's letter dated 7 March 2007 to the Administration
- LC Paper No. CB(1) 1152/06-07(01) -- Administration's response to LC Paper No. CB(1) 1106/06-07(03))

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

2. The Administration was requested to -

- (a) advise the action which the Administration could take against scheduled chemicals from unknown source which were kept together with products containing such chemicals, given that possession of scheduled chemicals was not subject to control under the Bill;
- (b) explain the consequences in the event that the Government/related officials were in breach of the Bill, particularly when it was the Administration's policy that criminal liability was not imposed on the Government/public officers while clause 4 provided that the Bill would bind the Government. To also advise whether express provisions for exemption of liability and disciplinary mechanism should be provided in the Bill, similar to other environmental protection legislation; and
- (c) consider revising clause 44(c)(i) along the following line -

“it is addressed to the body and delivered to any place in Hong Kong at which the body carries on business and giving to a person apparently concerned in the management of, or apparently employed by, the body; or”

3. Members agreed to continue discussion at the next meeting scheduled for Thursday, 10 May 2007, at 2:30 pm.

II Any other business

4. There being no other business, the meeting ended at 10:30 am.

**Proceedings of the meeting of the
Bills Committee on Hazardous Chemicals Control Bill
Meeting on Friday, 13 April 2007, at 8:30 am
in Conference Room B of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action required
000000 - 001530	Chairman Administration ALA7	<p>Clarification on the power of the Director in performing his statutory functions in the control of hazardous chemicals as there appeared to be a difference of interpretation between the Administration and ALA7 when the subject was discussed at the last meeting on 15 March 2007</p> <p>Administration's agreement to Ms Audrey EU's view as set out in the minutes of the meeting held on 29 January 2007 that even if reference was not made to the Convention requirements, this would not prevent the Director from making reference to such and any other requirements when performing his statutory functions so long as this did not contradict the express wording of the Bill</p> <p>Chairman's concerns -</p> <p>(a) given the extensive coverage and frequent changes of Convention requirements, the public might be unnecessarily caught by the Bill if the Director was to make reference to Convention requirements which were not set out in the Bill; and</p> <p>(b) relevant Convention requirements should be clearly specified in the Bill</p> <p>ALA7's view that the deletion of the general reference clause to Convention requirements was to clarify any uncertainties. However, the Administration's insistence that the Director could make reference to Convention requirements in performing his statutory functions would create ambiguities as to whether future amendments to the Conventions would have the force of law in Hong Kong without going through the law-making process</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>Ms Audrey EU's views -</p> <p>(a) agreed to the deletion of the general reference clause to the Convention requirements; and</p> <p>(b) the Director could consider any relevant factors including the Convention requirements. It would be a matter for the courts to decide in case the power of the Director was challenged</p>	
001531 - 002624	ALA7 Administration Chairman	Reference to the discussion by the Panel on the Administration of Justice and Legal Services on the implementation of international conventions in local legislation at its meeting on 26 March 2007 (LC Paper No. LS50/06-07)	
002625 - 003310	Mr Andrew LEUNG Chairman Administration	<p>Mr Andrew LEUNG's view that to facilitate compliance with the control regime on hazardous chemicals by the trades, all related requirements should be clearly set out in the Bill to avoid misunderstanding and disputes</p> <p>Administration's explanation -</p> <p>(a) the Director would need to set out the reasons for rejecting applications of permits;</p> <p>(b) applicants could appeal and/or apply for judicial review if they felt aggrieved by the Director's decision; and</p> <p>(c) unless there were ambiguities in the wording of the express provisions of the Bill, the courts would normally refer to the express provisions of the Bill in making judgment</p>	
003311 - 004043	Ms Audrey EU Chairman ALA7 Administration	Discussion on whether the Director should be disallowed from making reference to the Convention requirements in performing his statutory functions or should be allowed to make reference to the Convention	

Time marker	Speaker	Subject(s)	Action required
		<p>requirements subject to certain conditions</p> <p>ALA7's explanation -</p> <p>(a) Basic Law stipulated that the laws in force in Hong Kong should be laws enacted by the Legislature;</p> <p>(b) implementation of international conventions in local legislation would need to go through a law-making process where adaptation could be made to suit local needs ;</p> <p>(c) allowing the Director to make reference to Convention requirements in performing his statutory functions would mean that subsequent changes to the Convention requirements which had not gone through the law-making process would have legal effect in Hong Kong; and</p> <p>(d) power of the Director should be clearly set out in the Bill to avoid ambiguity and disputes. The Director should not be empowered to act outside the scope of the Bill</p> <p>Administration's response -</p> <p>The issue had been thoroughly discussed at the meeting held on 29 January 2007. The Administration was in agreement with Ms Audrey EU's view that even if a general reference clause on Convention requirements was not included in the Bill, the Director would not be prevented from taking into consideration such and any other relevant factors/requirements when exercising his discretion, for example, in relation to the issue/variation of permits. However, the most important point was that the Director, in performing his statutory functions, could not act beyond the powers conferred upon him by the Bill</p>	

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004044 - 010343	Ms Audrey EU Chairman ALA7 Administration	<p>Ms Audrey EU's views -</p> <p>(a) the Bill as drafted did not set out the considerations, including reference to any other requirements, which the Director should take in performing his duties, such as issuance of permits;</p> <p>(b) a certain scope should be defined if it was the intention of the Bills Committee that the Director's consideration should be confined in the Bill after deletion of the general reference clause. Such request should be recorded in the minutes of meetings; and</p> <p>(c) in any case, the judge would normally refer to the express provisions in the Bill and not the deliberations of the Bills Committee in considering any appeal against the Director's decision</p> <p>Chairman's views that the Administration should not state in its response that the Director could make reference to the Convention requirements if these had already been set out in the Bill</p> <p>Administration's explanation -</p> <p>(a) provisions such as clause 10(4) (in particular paragraph (a)(i)) and clause 11 had set out certain factors that the Director should take into consideration when performing his statutory functions in relation to the issuance of permits and imposition of permit conditions;</p> <p>(b) the Director could also make reference to the Conventions as well as other relevant factors in performing his statutory functions under the Bill so long as these did not contradict the express wording of the Bill. In any event, he could not act beyond the powers conferred upon him by the Bill; and</p>	

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		<p>(c) there was a need to clarify whether it was the Bills Committee's intention that the Director was not allowed to make reference to Convention requirements in performing his statutory functions, albeit the purpose of the Bill was to provide a legal framework to enable the implementation of the Conventions in Hong Kong</p> <p>Chairman's views that while there was no intention to specify that the Director should be disallowed from making reference to Convention requirements in performing his statutory functions, the Administration should not state in its response that the Director could make reference to the Convention requirements if these had already been set out in the Bill</p>	
010344 - 012023	<p>Mr Andrew LEUNG Mr SIN Chung-kai ALA7 Chairman Administration</p>	<p>Mr Andrew LEUNG's suggestion for the Secretary for the Environment, Transport and Works (SETW) to include in her speech to be delivered at the resumption of Second Reading debate on the Bill the scope of the Director's power. This would provide a reference in the event that the Director's power was challenged in the courts</p> <p>ALA7's views that the Bill should be clear in itself and any cross-referencing to the legislative intent was not desirable. This could be illustrated by the case set out in paragraph 4 of LS50/06-07 on the application of international conventions in local legislation</p> <p>Mr SIN Chung-kai's views that speeches to be delivered by the Bureau Secretaries at the resumption of Second Reading debate should not be meant to explain the legislative intent of the Bills which should be self-explanatory, but to provide details of implementation and timing of review which were to be worked out after enactment of the Bills</p>	

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		<p>The Chairman's final remarks -</p> <p>(a) all relevant Convention requirements should be clearly set out in the Bill. If the Director wanted to make any reference to the Convention requirements, he could not go beyond the Convention requirements which were set out in the local legislation;</p> <p>(b) after the deletion of the general reference clause, if there was a need for the Director to perform specific requirements of the Convention not already covered by the Bill, the Administration might have to consider adding these requirements in the Bill by proposing Committee Stage amendments. The Convention requirements set out in the local legislation would be the basis for future reference; and</p> <p>(c) if there would be future changes in the Convention requirements that might affect the control regime on hazardous chemicals in Hong Kong, the Ordinance (if enacted) should be suitably amended to reflect such relevant changes</p> <p><i>(Post-meeting note: A letter from the Administration clarifying its stance was issued vide LC Paper No. CB(1)1724/06-07(01).)</i></p>	
012024 - 012601	Administration Chairman	Administration's response to the list of follow-up actions arising from the meeting on 15 March 2007 (LC Paper No. CB(1) 1309/06-07(02))	
012602 - 012700	ALA7 Chairman Administration Ms Audrey EU	<p>Chairman's suggestion to revise clause 44(c)(i) along the following line -</p> <p>“it is addressed to the body and delivered to any place in Hong Kong at which the body carries on business and giving to a person apparently concerned in the management of, or apparently employed by, the body; or”</p>	The Administration to consider revising clause 44(c)(i) as suggested by the Chairman

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012701 - 014150	Administration Chairman Mr SIN Chung-kai Ms Audrey EU	<p>Discussion on the need for extending the proposed control regime to possession of scheduled chemicals</p> <p>Chairman's concerns that if the possession of scheduled chemicals was not subject to control under the Bill, the Administration might need to consider introducing amendments to the Bill to regulate scheduled chemicals from unknown sources if there were reasons to believe that these chemicals in possession would be used. For example, chemicals from unknown source were kept together with products containing such chemicals</p> <p>Mr SIN Chung-kai shared the concern about the need to control possession of scheduled chemicals, but did not support the Chairman's approach which might be subject to abuse</p> <p>Ms Audrey EU pointed out that similar concerns on the need to extend control to possession were raised by the Subcommittee on Air Pollution Control (Volatile Organic Compounds) Regulation</p>	<p>The Administration to advise the action which the Administration could take against scheduled chemicals from unknown source which were kept together with products containing such chemicals, given that possession of scheduled chemicals was not subject to control under the Bill</p>
014151 - 015249	Administration	<p>Discussion on the liability of the Government and relevant public officers for non-compliance with the Bill</p> <p>ALA7 sought explanation on the consequences in the event that the Government/related officials were in breach of the Bill, given that clause 4 would bind the Government</p> <p>Administration's explanation that the Government/related officials would not be held criminally liable for offences under the Bill but disciplinary actions would be taken as appropriate</p>	<p>The Administration to explain the consequences in the event that the Government/related officials were in breach of the Bill, particularly when it was the Administration's policy that criminal liability was not imposed on the Government/public officers while clause 4 provided that the Bill would bind the Government. To also advise whether express provisions for exemption of</p>

Time marker	Speaker	Subject(s)	Action required
			liability and disciplinary mechanism should be provided in the Bill, similar to other environmental protection legislation
015250 - 015430	Chairman	Arrangements for the next meeting	

Council Business Division 1
Legislative Council Secretariat
23 May 2007