

Hazardous Chemicals Control Bill

List of follow-up actions arising from the discussion at the meeting on 20 November 2006 and 6 December 2006

The Administration's Responses

List of follow-up actions arising from the discussion at the meeting on 20 November 2006

- (1) To make it clear in the definition of “manufacture” under Clause 2 that the Bill does not cover the unintentional production and release of scheduled chemicals. To also review the drafting of the definition to eliminate any ambiguity between the Chinese and English renditions, in particular the phrase “causing the chemicals to be manufactured” which might give an impression that the Bill will cover chemicals produced during a manufacturing process, which is indeed not the policy intent.

To reflect our policy intent that the Bill does not cover the unintentional production and release of scheduled chemicals as by-products, meaning that anything that is produced incidentally as a by-product in the course of the manufacture of any other thing would not be covered, a “for the avoidance of doubt” provision could be added as a new sub-clause (2) under Clause 2 to further clarify that a scheduled chemical is not regarded as having been manufactured, if it is produced incidentally (as a by-product) in the course of the manufacture of any other thing.

- (2) The Bill as drafted is not clear on the extent of power conferred on the Director in enforcing the requirements under the two Conventions on the manufacture, export, import and use of scheduled chemicals. To consider setting out clearly parts of the two Conventions which are relevant to the provisions in the Bill.

2. The Bill seeks to provide for the prohibition of the import, export, manufacture and use of non-pesticide hazardous chemicals except under and in accordance with an activity-based permit. The permit system under the Bill applies in the same manner to (a) non-pesticide hazardous chemicals regulated under the two Conventions; and (b) non-pesticide hazardous chemicals not regulated under the two Conventions. The permit system enables the relevant key requirements

of the two Conventions to be implemented.

3. Under the permit system, the Director of Environmental Protection will exercise statutory powers to regulate non-pesticide hazardous chemicals. For example, Clause 11 provides that the Director may, on issuing or renewing a permit, impose any condition as he considers appropriate, for example, for the protection of public health or the environment. That clause also provides that the Director is to have regard to the requirements of the two Conventions. The references to the requirements of the two Conventions in this context are to make it explicit that the Director will have regard to the requirements of the two Conventions when considering whether to impose any permit condition. A similar approach has been adopted in the Protection of Endangered Species of Animals and Plants Ordinance enacted in 2006. Even if there were no such explicit references, the Director would need to exercise the statutory powers under the permit system having regard to and in a manner consistent with the requirements of the two Conventions. The Bill contains an appeal provision (Clause 42) for a person aggrieved by a decision of the Director relating to permit matters to appeal to the Administrative Appeals Board against that decision.

4. Having regard to the purpose of the references to the requirements of the two Conventions as explained in paragraph 3 above, we do not consider it appropriate to specify all the detailed requirements in the Bill. This said, it is possible to qualify the scope of the Convention requirements by reference to those relating to the “manufacture, import, export, use and disposal” of non-pesticide hazardous chemicals. This would enhance the transparency of law since it imposes a statutory obligation for the Director to have regard to the Convention requirements when exercising the statutory powers. We note that another approach has been adopted in the Waste Disposal (Amendment) Bill 2005, which did not include any references to the requirements of the relevant international convention. In such case, it is understood that the Director may continue to exercise his statutory powers having regard to and in a manner consistent with the Convention requirements, so long as this does not contradict the express wording of the Bill.

(3) To re-consider the suitable legislative tool, negative vetting, positive vetting or positive resolution, to be used for the inclusion of convention and non-convention chemicals in Schedules 1 and 2 of the Bill.

5. We are considering amending Clause 50 along the following lines –

(a) The Secretary for the Environment, Transport and Works may by order published in the Gazette -

(i) add to Part 1 of Schedule 1 or 2 any hazardous chemical that is a chemical regulated under the Rotterdam Convention or the Stockholm Convention;
or

(ii) remove from Part 1 of Schedule 1 or 2 any hazardous chemical that is no longer regulated under the Rotterdam Convention or the Stockholm Convention;

(iii) add or remove the relevant CAS registry number and make any other amendment to Part 1 of Schedule 1 or 2 that is incidental or related to such addition or removal (including amending the relevant item number).

(b) The Secretary may also by order published in the Gazette make any other amendment to Schedule 1 or 2, but such an order should be subject to the approval of the LegCo.

Note: It is proposed that whether or not the chemical is a chemical regulated under the Rotterdam Convention or the Stockholm Convention should be determined by the status of the chemical at the time of making the order concerned.

List of follow-up actions arising from the discussion at the meeting on 6 December 2006

- (1) To provide written response to the list of follow-up actions arising from the discussion at the meeting on 20 November 2006.
- (2) To re-consider specifying the requirements under the two Conventions which the Director would consider when exercising his powers under the Bill to regulate the manufacture, export, import and use of scheduled chemicals.
6. Please see paragraphs 1 to 4 above.
- (3) Section 34 provides that a court may issue a warrant in respect of any premises. To advise whether a magistrate/judge is also empowered to do so given that the definition of “court” under Clause 2 includes a magistrate. If so, whether similar provisions can be found in other legislation.
7. The definition is wide enough to cover judges and magistrates. Examples of similar definitions include section 2 of the “Costs in Criminal Cases Ordinance” (Cap 492) and section 2 of “Entertainment Special Effects Ordinance” (Cap 560).
- (4) To consider regulating the possession and transaction of scheduled chemicals with a view to protecting public health.
8. We are considering the matter with a view to reverting to Members.

**Environmental Protection Department
January 2007**