

**Hazardous Chemicals Control Bill**

**List of follow-up actions arising from the discussion  
at the meeting on 29 January 2007**

**The Administration's Responses**

- (1) 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 of the Bill. To also advise the liability of public officers who contravene any traffic legislation in the course of carrying out duties in the service of the Government.

We are considering the matter with a view to reverting to Members as soon as possible.

- (2) 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. To provide Committee Stage Amendments if necessary.

Members have suggested that a new permit should be issued to the permit holder upon return of his existing permit (“the original permit”), instead of requiring the holder to return the original permit as soon as practicable after the variation of permit conditions of the original permit. Members have also suggested that, in addition to Clauses 16(2) and 17(2), Clauses 21(1), 29(1) and 39(6) should be reviewed.

We have reviewed the drafting of the clauses in question. Clause 17(2) provides that the Director may refuse to issue a permit under Clause 17(1) to a permit holder if the permit holder fails to return the permit required to be returned under Clause 16(2). In general, the Director will not issue a new permit (with its conditions varied) to the permit holder unless upon return of the original permit. This said, in some justified cases, even if the original permit is not returned, the Director should have the power to issue a new permit (with its conditions varied) to the permit holder, for example, where the Director has varied the conditions of the permit on his own initiative under Clause 13(1)(a). The drafting of Clause 17 gives the Director such flexibility and need not be amended.

Clauses 21(1) concerns the return of a permit to the Director on cancellation of the permit. Clause 29(1) concerns the return of a permit to the Director on suspension of the permit. In these cases, the Director need not issue a new permit. Hence, Members' suggestion is not relevant, and the wording of Clauses 21(1) and 29(1) need not be amended.

Clause 39 concerns the Director's power to issue duplicates of permits. Clause 39(6) imposes an obligation on the permit holder to return the original permit to the Director where –

- (a) at the time of making the application for a duplicate permit, the original permit was not available to the permit holder; and
- (b) after the application is made, the original permit has become available to the permit holder.

In general, the Director will not issue a duplicate permit to the permit holder unless upon return of the original permit. This said, in some justified cases, even if the original permit is not returned, the Director should have the power to issue a duplicate permit to the permit holder, for example, where the permit holder has lost the original permit. The drafting of Clause 39 gives the Director such flexibility and need not be amended.

- (3) To review the drafting of Clause 40(4)(b) to make it clear how the period of six months shall be counted.

Clause 40(4) provides that proceedings may be brought within two years after the alleged commission of the offence or six months after the first discovery of the alleged commission of the offence by the Director, whichever expires first. Clause 40(4)(b), as it is drafted, already has the effect that the period of six months is to be counted from the first discovery of the alleged commission of the offence by the Director himself or any member of staff of the Environmental Protection Department acting on behalf of the Director. In the light of Members' view, we could consider amending Clause 40(4)(b) so that the period of six months is to be counted from the first discovery of the alleged commission of the offence by the Director or an authorized officer appointed by the Director under Clause 38, as the latter who is appointed for the purposes of the Ordinance (if enacted) may not necessarily be an agent of the Director.

- (4) To respond to the Assistant Legal Adviser's question on the drafting of Clauses 41(a) and (b) as spelt out in her letters to the Administration dated 11 January 2007 and 26 January 2007.

Clause 41 provides that in any proceedings against a person under the Ordinance (if enacted) for or in connection with an act of his employee, it is not a defence for that person to show that his employee acted without his authority (Clause 41(a)); and in the absence of evidence to the contrary, any material fact that is known to the employee is to be regarded as having been known to the employer (Clause 41(b)).

Clause 41, being a clause of presumption of evidence (instead of presumption of elements of the offence), if it is invoked, would make the offence against the employer one of strict liability because the criminal intent of the employee (to be proved by the prosecution) is presumed. Yet, the employer will still be entitled to rely on the statutory defence. The defence would come into two layers: (i) Clause 41(b), that an employer could raise evidence to the contrary to rebut the presumption and that he did not know the relevant facts known to the employee; (ii) Clauses 6(3), 7(3), 8(3) and 9(3), that he did not know (partly overlaps with Clause 41(b)) and could not with reasonable diligence have known that the chemical was a scheduled chemical.

Whether the employee acted without the employer's authority is not a relevant consideration (see Clause 41(a)). Clause 41(a) does not distinguish (a) the employee does what he is employed to do albeit in an unauthorized manner from (b) the employee does something which he is not employed or authorized to do at all.

With regard to Clause 26, which concerns offences regarding failing to comply with the Director's directions in respect of disposal of scheduled chemicals, the common law defence of honest and reasonable belief concerns the compliance with the directions (e.g. that a defendant honestly believes that he has done what is required by the Director). With regard to knowledge of the directions so given by the Director, it is something the prosecution has to prove and is presumed under Clause 44, which concerns service of notices, etc. Unless the prosecution has failed to satisfy the court that the presumption in Clause 44 could come into play, failure to receive an actual notice is not a defence available. In short, the defence of reasonable and honest belief is

available to the offence but it does not affect the provision for the mode of service which is conclusive.

- (5) To provide a draft of the Committee Stage Amendments proposed by the Environmental Protection Department and mentioned at the last meeting.

In the light of Members' views, we intend to amend a number of provisions as follows –

- (a) to amend Clause 2 to make clear that any scheduled chemical that is incidentally produced as a by-product in the course of the manufacture of any other thing is not required to obtain a manufacture permit under the Ordinance (if enacted);
- (b) to delete references to the requirements under the Rotterdam Convention and the Stockholm Convention in Clauses 10(3) and (4), 11(2) and (3), 13(2) and (3), 19(1)(d), 22(2) and (3), 23(2) and (3), 27(1)(d) and 47(3) and (4); and
- (c) to amend Clause 50 such that – (i) an order to make any amendment to Schedule 1 or 2 that relates to any “Convention-regulated chemical” or the removal of any chemical that used to be regulated under the Rotterdam Convention or the Stockholm Convention, or any amendment that is consequential, incidental or related to the above-mentioned amendment should be subject to the negative vetting by the LegCo; (ii) an order to make any other amendment to Schedule 1 or 2 should be subject to the approval of the LegCo; and (iii) an order to make any other amendment to Schedule 1 or 2 as mentioned in (ii) above may, if the Secretary for the Environment, Transport and Works thinks desirable, also include any matters that may be included in an order mentioned in (i) above.

The proposed amendments to the clauses in question are shown at the Annex in marked-up mode. They will be turned into Committee Stage Amendments.

**Environmental Protection Department**  
**March 2007**

## 2. Interpretation

(1) In this Ordinance, unless the context otherwise requires –

“authorized officer” (獲授權人員) means the Director or any public officer appointed to be an authorized officer under section 38;

“container” (容器) includes a packet;

“court” (法院) includes a magistrate;

“Director” (署長) means the Director of Environmental Protection or any Deputy Director of Environmental Protection;

“duplicate permit” (許可證複本) means a duplicate permit issued under section 39;

“export” (出口), in relation to a scheduled chemical, means to take the chemical, or cause the chemical to be taken, out of Hong Kong by air, land or water;

“function” (職能) includes a power and a duty;

“hazardous chemical” (有毒化學品) means any chemical that –

- (a) is not a pesticide; and
- (b) has potentially harmful or adverse effect on human health or the environment,

including any such chemical that is subject to the regulation of the Rotterdam Convention or the Stockholm Convention;

“import” (進口), in relation to a scheduled chemical, means to bring the chemical, or cause the chemical to be brought, into Hong Kong by air, land or water;

“manufacture” (製造), in relation to a scheduled chemical, includes causing the chemical to be manufactured;

“notice of cancellation” (取消通知) means a notice referred to in section 19;

“notice of suspension” (暫時吊銷通知) means a notice referred to in section 27;

“part” (部分), in relation to any thing, means any part of that thing, whether or not that part is a constituent element of that thing;

“permit” (許可證) means a permit issued or renewed under section 10;

“permit holder” (許可證持有人), where the context requires, includes a holder of a permit which –

- (a) has been or is to be cancelled or suspended under section 19 or 27; or
- (b) has been or is to be partially cancelled or suspended under section 31;

“pesticide” (除害劑) means a pesticide as defined in section 2 of the Pesticides Ordinance (Cap. 133);

“premises” (處所) includes any place and in particular includes any aircraft, vehicle or vessel;

“prescribed fee” (訂明費用), in relation to any matter, means the fee payable under this Ordinance in relation to that matter and prescribed by any regulation made under section 46;

“Rotterdam Convention” (《鹿特丹公約》) means the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade adopted on 10 September 1998 as amended from time to time and as applied to Hong Kong;

“scheduled chemical” (受管制化學品) means a Type 1 chemical or Type 2 chemical;

“Secretary” (局長) means the Secretary for the Environment, Transport and Works;

“Stockholm Convention” (《斯德哥爾摩公約》) means the Stockholm Convention on Persistent Organic Pollutants adopted on 22 May 2001 as amended from time to time and as applied to Hong Kong;

“thing” (物品) includes a substance;

“Type 1 chemical” (第 1 類化學品) means a hazardous chemical specified in Part 1 of Schedule 1;

“Type 2 chemical” (第 2 類化學品) means a hazardous chemical specified in Part 1 of Schedule 2;

“vary” (更改) –

(a) in relation to the conditions of a permit, means –

(i) to modify any of those conditions;

- (ii) to substitute any condition for any of those conditions;
  - (iii) to add any condition to those conditions;
  - (iv) to cancel any of those conditions; or
  - (v) to do 2 or more of the acts mentioned in subparagraphs (i), (ii), (iii) and (iv); or
- (b) in relation to the directions given under section 22, means –
- (i) to modify any of those directions;
  - (ii) to substitute any direction for any of those directions;
  - (iii) to add any direction to those directions;
  - (iv) to cancel any of those directions; or
  - (v) to do 2 or more of the acts mentioned in subparagraphs (i), (ii), (iii) and (iv).

(2) For the avoidance of doubt, a scheduled chemical is not regarded as having been manufactured if it is produced incidentally in the course of the manufacture of any other thing.

## 10. Issue and renewal of permits, etc.

(1) The Director may, on an application that complies with any regulation made under section 45, and subject to the compliance by the applicant with any other requirement imposed under or by virtue of any such regulation in relation to the application, issue a permit for the carrying out of the following activities –

- (a) the manufacture of one or more scheduled chemicals;
- (b) the export of one or more scheduled chemicals;
- (c) the import of one or more scheduled chemicals;
- (d) the use of one or more scheduled chemicals.

(2) The Director may, on an application that complies with any regulation made under section 45, and subject to the compliance by the applicant with any other requirement imposed under or by virtue of any such regulation in relation to the application, renew a permit issued under subsection (1).

(3) When considering whether to exercise his power under subsection (1) or (2), the Director is to have regard to other enactments that govern the activity to which the application relates. ~~(4) The Director may not issue or renew a permit authorizing the manufacture of any Type 1 chemical unless the chemical is only for –~~

- (a) use for laboratory-scale research purpose;
- (b) use as a reference standard for chemical analysis; or
- (c) use for laboratory-scale research purpose and as a reference standard for chemical analysis.

刪除: –

(a) other enactments that govern the activity to which the application relates; and  
(b) the requirements under the Rotterdam Convention and the Stockholm Convention.

(4) The Director may not–

(a) issue or renew a permit authorizing the manufacture of any Type 1 chemical unless–

(i) the chemical is only for–  
(A) use for laboratory-scale research purpose;

(B) use as a reference standard for chemical analysis; or

(C) use for laboratory-scale research purpose and as a reference standard for chemical analysis; and

(ii) the issue or renewal of the permit would not be inconsistent with any of the requirements under the

Rotterdam Convention and the Stockholm Convention; and

(b) issue or renew a permit authorizing the manufacture of any Type 2 chemical, or export, import or use of any scheduled chemical unless the issue or renewal of the permit would not be inconsistent with any of the requirements under the Rotterdam Convention and the Stockholm Convention.

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## 11. Power of Director to impose conditions on permits

(1) Without affecting the generality of section 40(2)(b) of the Interpretation and General Clauses Ordinance (Cap. 1), the Director may, on issuing or renewing a permit under section 10, impose –

- (a) any such condition as he considers appropriate that relates to any premises at which the activity authorized under the permit is to be carried out;
- (b) any such condition as he considers appropriate that relates to any intended purpose or mode of operation of the activity authorized under the permit;
- (c) any such condition as he considers appropriate that requires the permit holder to comply with any other enactment that governs the activity authorized under the permit; and
- (d) any such condition as he considers appropriate for the protection of public health or the environment.

(2) When considering whether to impose any condition under subsection (1), or the conditions to be imposed under that subsection, the Director is to have regard to other enactments that govern the activity authorized under the permit.

刪除: –

刪除: (a) other enactments that govern the activity authorized under the permit; and

(b) the requirements under the Rotterdam Convention and the Stockholm Convention.

(3) The Director may not impose any condition that is inconsistent with any of the requirements under the Rotterdam Convention and the Stockholm Convention, but may impose a condition even if the imposition of such condition may result in a more stringent measure than any of those required by the Conventions.

### 13. Power of Director to vary permit conditions

- (1) The Director may vary the conditions of a permit –
- (a) on his own initiative; or
  - (b) on an application that complies with any regulation made under section 45, and subject to the compliance by the applicant with any other requirement imposed under or by virtue of any such regulation in relation to the application.
- (2) When considering whether to vary the conditions of a permit under subsection (1), or the variation to be made under that subsection, the Director is to have regard to other enactments that govern the activity authorized under the permit.

删除: –

删除: (a) other enactments that govern the activity authorized under the permit; and

删除: (b) the requirements under the Rotterdam Convention and the Stockholm Convention.

(3) The Director may not vary the conditions of a permit if the variation would be inconsistent with any of the requirements under the Rotterdam Convention and the Stockholm Convention, but may vary the conditions of a permit even if the variation may result in a more stringent measure than any of those required by the Conventions.

## 19. Power of Director to cancel permits

- (1) The Director may cancel a permit if –
- (a) the permit holder contravenes any provision of this Ordinance;
  - (b) the permit holder contravenes any condition of the permit;
  - or
  - (c) the cancellation appears to the Director to be necessary for the protection of public health or the environment.

(2) If the Director decides to cancel a permit, he shall, by notice in writing served on the permit holder, inform the permit holder of his decision and the reasons for his decision.

删除: ; or

删除: (d) the cancellation appears to the Director to be necessary in order to comply with any of the requirements under the Rotterdam Convention and the Stockholm Convention.

**22. Power of Director to give directions regarding disposal of scheduled chemicals on cancellation of permits, etc.**

(1) Where the Director cancels a permit under section 19, he may give such directions as he considers appropriate regarding the disposal of any scheduled chemical that, but for the cancellation, is authorized to be manufactured, exported, imported or used under the permit, including the disposal of any thing of which the chemical is a part and any container that is used for containing the chemical or thing.

(2) When considering whether to give any direction under subsection (1), or the directions to be given under that subsection, the Director is to have regard to other enactments that govern the disposal of the chemical concerned.

(4) If the Director decides to give any direction under subsection (1), he shall specify such direction in the notice of cancellation.

刪除: -

刪除: (a) other enactments that govern the disposal of the chemical concerned; and  
 (b) the requirements under the Rotterdam Convention and the Stockholm Convention.  
 (3) The Director may not give any direction that is inconsistent with any of the requirements under the Rotterdam Convention and the Stockholm Convention, but may give a direction even if the giving of such direction may result in a more stringent measure than any of those required by the Conventions.

### 23. Power of Director to vary directions given under section 22

(1) The Director may, on an application that complies with any regulation made under section 45, and subject to the compliance by the applicant with any other requirement imposed under or by virtue of any such regulation in relation to the application, vary the directions given under section 22.

(2) When considering whether to vary the directions under subsection (1), or the variation to be made under that subsection, the Director is to have regard to other enactments that govern the disposal of the chemical concerned.

删除: -

删除: (a) other enactments that govern the disposal of the chemical concerned; and

删除: (b) the requirements under the Rotterdam Convention and the Stockholm Convention.

(3) The Director may not vary the directions given under section 22 if the variation would be inconsistent with any of the requirements under the Rotterdam Convention and the Stockholm Convention, but may vary the directions even if the variation may result in a more stringent measure than any of those required by the Conventions.

## 27. Power of Director to suspend permits

(1) The Director may suspend a permit for such period as he considers appropriate if –

- (a) the permit holder contravenes any provision of this Ordinance;
- (b) the permit holder contravenes any condition of the permit;
- or
- (c) the suspension appears to the Director to be necessary for the protection of public health or the environment.

(2) If the Director decides to suspend a permit, he shall, by notice in writing served on the permit holder, inform the permit holder of his decision and the reasons for his decision.

删除: ; or

删除: (d) the suspension appears to the Director to be necessary in order to comply with any of the requirements under the Rotterdam Convention and the Stockholm Convention.

#### 47. Exemptions

(1) The Secretary may, in any particular case, exempt in writing any person or chemical, or any class of persons or chemicals, from any provision of this Ordinance.

(2) An exemption under this section may be granted subject to such conditions as the Secretary considers appropriate.

删除: (3) When considering whether to grant any exemption under subsection (1), or the exemption to be granted under that subsection, the Secretary is to have regard to the requirements under the Rotterdam Convention and the Stockholm Convention.

(4) The Secretary may not grant any exemption that is inconsistent with any of the requirements under the Rotterdam Convention and the Stockholm Convention.

## 50. Power of Secretary to amend Schedules

- (1) The Secretary may by order published in the Gazette –(a) add any Convention-regulated chemical, including its CAS registry number or other description, to Part 1 of Schedule 1 or 2;
- (b) remove any specified chemical, including its CAS registry number or other description, from Part 1 of Schedule 1 or 2;
- (c) make any amendment to Part 2 of Schedule 1 or 2 that only relates to a Convention-regulated chemical or the removal of a specified chemical; and
- (d) make any amendment to Schedule 1 or 2 that is consequential, incidental or related to the addition, removal or amendment made under paragraph (a), (b) or (c).
- (2) Subject to subsection (3), the Secretary may by order published in the Gazette make any other amendment to Schedule 1 or 2.
- (3) An order made under subsection (2) is subject to the approval of the Legislative Council.
- (4) An order made under subsection (2) may, where the Secretary considers desirable, include any matters that may be included in an order made under subsection (1).

删除: The Secretary may by order published in the Gazette amend Schedules 1 and 2.

删除:

(5) For the purposes of subsection (1) –

(a) a chemical is a Convention-regulated chemical if the chemical is subject to the regulation of the Rotterdam Convention or the Stockholm Convention on the relevant day; and

(b) a chemical is a specified chemical if, at some time before the relevant day, the chemical has been subject to the regulation of the Rotterdam Convention or the Stockholm Convention but is no longer subject to such regulation on that day.

(6) In subsection (5), “relevant day” ( ) means the day on which the Secretary makes the order under subsection (1)(a) or (b) in respect of the chemical concerned.

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- (a) other enactments that govern the activity to which the application relates; and
  - (b) the requirements under the Rotterdam Convention and the Stockholm Convention.
- (4) The Director may not—
- (a) issue or renew a permit authorizing the manufacture of any Type 1 chemical unless—
    - (i) the chemical is only for –
      - (A) use for laboratory-scale research purpose;
      - (B) use as a reference standard for chemical analysis; or
      - (C) use for laboratory-scale research purpose and as a reference standard for chemical analysis; and
    - (ii) the issue or renewal of the permit would not be inconsistent with any of the requirements under the Rotterdam Convention and the Stockholm Convention; and
  - (b) issue or renew a permit authorizing the manufacture of any Type 2 chemical, or export, import or use of any scheduled chemical unless the issue or renewal of the permit would not be inconsistent with any of the requirements under the Rotterdam Convention and the Stockholm Convention.