

Hazardous Chemicals Control Bill

**List of follow-up actions arising from the discussion
at the meeting on 13 April 2007**

The Administration's Responses

- (1) To advise the action which the Administration can take against scheduled chemicals from unknown source which are kept together with products containing such chemicals if possession of scheduled chemicals is not subject to the control under the Bill.

The hypothetical scenario as described above would be a suspicious case of illegal use of scheduled chemicals. The Administration would take immediate action to follow up the case by conducting a thorough investigation. Subject to further evidence being collected, the case might form a basis for prosecution.

- (2) To explain the consequences in the event that the Government/related officials are in breach of the Bill, particularly when it is the Administration's policy that criminal liability is not imposed on the Government/public officers while clause 4 provides that the Bill binds the Government. Also advise whether express provisions for exemption of liability and disciplinary mechanism should be provided in the Bill, similar to other environmental protection legislation.

Clause 4 of the Bill provides that the Ordinance (if enacted) binds the Government. As regards the criminal liability of the Government and public officers, the policy intent is that the Government and public officers in the course of carrying out duties in the service of the Government will not be held criminally liable for offences under the Bill. This is in line with the Government's legal policy that in respect of regulatory offences, criminal liability is not imposed on the Government and public officers and that in the absence of an express provision, a public officer will be entitled to immunity if it can be established that compliance with the statute would prejudice the Government.

In the event that a government department/public official is in breach of the Ordinance (if enacted), we would follow the current government practice under which the case would be promptly brought to the attention of a senior official in the concerned government department who will require the staff concerned to take immediate action to remedy the situation (e.g., apply for an activity-based permit under the Ordinance (if enacted)) and avoid recurrence in the future. If the non-compliance of the statutory requirements is attributable to staff misconduct, the concerned public officer may be subject to disciplinary actions according to established civil service regulations. We are confident that the problem would be effectively resolved at this point. In the unlikely event that the problem is not remedied to the satisfaction of EPD, attention would be brought to senior officials at the bureau or higher level if necessary.

With the adoption of the aforementioned government practice and the established disciplinary mechanism in the civil service to deal with acts of misconduct committed by civil servants, we do not consider it necessary to provide express provisions for (i) the exemption of criminal liability and (ii) the disciplinary mechanism in the Bill.

- (3) To 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”

In the light of Members’ views, we propose to amend clause 44(c)(i).

In order to maintain consistency, we also propose to make similar amendments to clauses 44(a)(i) and 44(b)(i).

**Environmental Protection Department
May 2007**