

Hazardous Chemicals Control Bill

**List of follow-up actions arising from the discussion
at the meeting on 25 May 2007**

The Administration's Responses

- (1) To explain the policy intent of including an element of "honest belief" for exemption of civil liability for public officers while this is not required in the case of criminal liability.

The "honest belief" test is usually adopted in provisions relating to immunity from civil liability but not in provisions relating to immunity from criminal liability. By including such a test in clause 50A as a criterion for the immunity of a public officer from civil liability, a public officer will not be immune from liabilities arising from civil wrongs done by him maliciously. In the case of criminal liability of public officers, however, our policy intent, in line with the Government's general legal policy, is to provide for immunity of a public officer from criminal liability for offences under the Bill when performing public duties in the officer's capacity as such.

- (2) To review the drafting of the proposed Committee Stage amendments (CSAs) to clauses 41 and 50A to ensure consistency between the phrases "any act done or conduct engaged in" and "any act done or omitted to be done".

We have reviewed the drafting of the proposed CSAs to clauses 41 and 50A. In view of Members' comments, we propose to revise clause 41 as shown in the Annex.

- (3) To reconsider the need for including the phrase "in the course of employment" in the proposed CSA to clause 41(3)(b) when this has already been set out in clause 41(1).

To address Members' concern and to put the matter beyond doubt, we propose to revise clause 41(3)(b) as shown in the Annex.

~~41. Proceedings for or in connection with acts of employees~~

~~In any proceedings against a person under this Ordinance for or in connection with an act of his employee—~~

- ~~(a) it is not a defence for that person to show that his employee acted without his authority; and~~
- ~~(b) 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.~~

41. Liability of employers

(1) Any act done or omission made by a person in the course of his employment (the “employee”) is treated for the purposes of this Ordinance as done or made by his employer, as well as by him.

(2) In any proceedings for an offence under this Ordinance brought against an employer in respect of an act or omission of his employee, the employer is liable to be convicted of and be punished for that offence unless he establishes the defence described in subsection (3).

(3) Where any proceedings are brought against an employer by virtue of this section, it is a defence for the employer to prove that —

- (a) the act was done or the omission was made without his knowledge or consent; and
- (b) he exercised all reasonable diligence to prevent the employee from doing the act or making the omission, or doing an act or making an omission of that description, in the course of his employment.