

Hazardous Chemicals Control Bill

The Administration's Responses to Comments from Assistant Legal Adviser in her Letter of 12 June 2006

Section 2(3) of Part 2 of Schedule 2

Chemicals now included in Part 1 of Schedule 2 are non-pesticide hazardous chemicals regulated under the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (the Rotterdam Convention). These chemicals need not be subject to import/export control if they are in transit (see paragraph 8 of the LegCo Brief on the Bill). Section 2(3) of Part 2 of Schedule 2 seeks to reflect this.

Section 10(4)(a)(i)

2. Section 10(1) seeks to empower the Director¹ to issue a permit. Section 10(2) seeks to confer a power on the Director to renew any permit issued under section 10(1), including a permit for the manufacture of a "Type 1 chemical"². The powers of the Director to issue and renew a permit for the manufacture of a Type 1 chemical are however restricted by section 10(4)(a).

3. The effect of section 10(4)(a) is that the Director is not allowed to issue or renew a manufacture permit in respect of a Type 1 chemical under section 10(1) or (2), unless the conditions set out in section 10(4)(a)(i) and (ii) are satisfied. The expression "may not" is correctly used in the present context, and the Chinese text tallies with the English text. Furthermore, it is a rather standard expression used in similar provisions. An example could be found in section 28 of the Trade Marks Ordinance (Cap 559).

¹ The term "Director" is defined in the Bill to mean the Director of Environmental Protection or any Deputy Director of Environmental Protection.

² "Type 1 chemical" is any hazardous chemicals specified in Part 1 of Schedule 1 to the Bill.

Section 13(2) and (3)

4. Sections 13(2) and (3) seek to ensure that any variation of the permit conditions will be consistent with Hong Kong's obligations under the Rotterdam Convention and the Stockholm Convention on Persistent Organic Pollutants. As regards the second half of the sentence in section 13(3), this seeks to confirm, for the avoidance of doubt, the Director's power to vary the permit conditions even if this results in a more stringent measure than that required under the two Conventions.

Section 34(1)(b)

5. The expression "there are reasonable grounds for believing that there is or may be at the premises any thing that is or contains, or is likely to be or contain, evidence of the commission of an offence" in section 34(1)(b) also appears in other ordinances. An example is section 24(2) of the Non-Local Higher and Professional Education (Regulation) Ordinance (Cap 493). To persuade the court to issue a warrant, the Administration may need to give evidence to show the basis for issuing the warrant. Each case has to be considered, having regard to the circumstances of the case.

Section 41(a)

6. Section 41(a) is concerned with criminal proceedings against a person under the Bill in his capacity as employer. The provision seeks to make clear that it is not a defence for the employer to show that his employee acted without authority.

Section 41(b)

7. Sections 6(3), 7(3), 8(3) and 9(3) provide that "In any proceedings for an offence under subsection (1), it is a defence for the person charged to prove that he did not know and could not with reasonable diligence have known that the chemical was a scheduled chemical". An employer who is the subject of such proceedings may raise the defence by proving that he did not know and could not with reasonable diligence have known that the chemical was a scheduled chemical. The employer's ability to raise the defence is not affected by section 41(b), which provides that 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. The provision allows the

defendant to adduce evidence to raise an issue that he did not know the material fact that was known to his employee.

Section 44(c)(i)

8. The expression “a person apparently concerned in the management of, or apparently employed by, the body” would cover an officer and employee of the body corporate concerned. This expression appears in other ordinances. An example is section 206(1)(b) of the Mandatory Provident Fund Schemes (General) Regulation (Cap 485A).

**Environmental Protection Department
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