

Hazardous Chemicals Control Bill

**List of follow-up actions arising from the discussion
at the meeting on 12 June 2007**

The Administration's Responses

- (1) To review the English and Chinese text of clause 48(2) to ensure consistency in presentation.

We have reviewed the draft of clause 48(2). We are of the view that whilst it is grammatically correct and appropriate to place "other than the functions under this subsection and section 38" within commas in the English text, it is also grammatically correct and appropriate to put the corresponding Chinese text, that is "本款及第 38 條委予的職能除外", in brackets. Moreover, the two texts convey the same meaning and their legal effects are the same. It is therefore not necessary to amend either of the texts to achieve consistency in presentation.

That said, to address the Hon. Ms. Audrey Eu's concern, we may consider adopting the following alternate Chinese rendition so that the brackets could be removed:

"(2) 署長可將本條例委予他的任何職能 ~~(本款及第 38 條委予的職能除外)~~ 以書面轉授予任何公職人員, 但本款及第 38 條委予的職能除外。".

The above alternate Chinese rendition is incorporated into the draft formal CSAs attached at the Annex.

- (2) To introduce Committee Stage amendments (CSAs) to clauses 1 and 2 to replace "Secretary for the Environment, Transport and Works" with "Secretary for the Environment" following the resolution on the re-organization of policy bureaux to be moved by the Secretary for Constitutional Affairs on 13 June 2007.

We propose to revise clauses 1(2) and 2 to replace "Secretary for the Environment, Transport and Works" with "Secretary for the Environment". The proposed revision is incorporated into the draft formal CSAs attached at the Annex.

- (3) To provide a full set of CSAs to be introduced by the Administration for circulation to members of the Bills Committee

A full set of draft formal CSAs to be introduced by the Administration is attached at the Annex for advance circulation to members of the Bills Committee.

**Environmental Protection Department
June 2007**

Drafter: Ms Frances Hui

File ref: LDT 953/00/0C 'A' X

DRAFTING HISTORY TABLE

Draft no.	Release date	Doc. no. & version
1 st working draft	13 June 2007	#141016 v6

COMMITTEE STAGE AMENDMENTS

HAZARDOUS CHEMICALS CONTROL BILL

HAZARDOUS CHEMICALS CONTROL BILL

COMMITTEE STAGE

Amendments to be moved by the Secretary for the
Environment, Transport and Works

<u>Clause</u>	<u>Amendment Proposed</u>
1(2)	By deleting "Secretary for the Environment, Transport and Works" and substituting "Secretary for the Environment".
2	(a) By renumbering the clause as clause 2(1). (b) In subclause (1) - <ul style="list-style-type: none">(i) in the definition of "Director", by deleting "or any Deputy Director of Environmental Protection";(ii) by deleting the definitions of "duplicate permit", "function", "manufacture" and "notice of suspension";(iii) in the definition of "Secretary", by deleting "Secretary for the Environment, Transport and Works" and substituting "Secretary for

the Environment”;

- (iv) in the Chinese text, in the definition of “獲授權人員”, by deleting the semicolon and substituting a full stop.

2 By adding -

“(2) In this Ordinance, unless the context otherwise requires, a reference to manufacture, in relation to a scheduled chemical, includes causing the chemical to be manufactured.

(3) 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.”.

4(1) By deleting “subsection (2)” and substituting “this section”.

4 By adding -

“(1A) Neither the Government nor any public officer in the officer’s capacity as such is liable to be prosecuted for an

offence against this Ordinance.”.

10(3) By deleting everything after “regard to” and substituting “other enactments that govern the activity to which the application relates.”.

10 By deleting subclause (4) and substituting -
“(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.”.

11(2) By deleting everything after “regard to” and substituting “other enactments that govern the activity authorized under the permit.”.

11 By deleting subclause (3).

- 13(2) By deleting everything after "regard to" and substituting "other enactments that govern the activity authorized under the permit."
- 13 By deleting subclause (3).
- 16(2) By deleting "as soon as practicable" and substituting "not later than 10 working days".
- 19(1) (a) In paragraph (b), by adding "or" after the semicolon.
(b) In paragraph (c), by deleting "; or" and substituting a full stop.
(c) By deleting paragraph (d).
- 21(1) By deleting "As soon as practicable" and substituting "Not later than 10 working days".
- 22(2) By deleting everything after "regard to" and substituting "other enactments that govern the disposal of the chemical concerned."
- 22 By deleting subclause (3).

- 23(2) By deleting everything after "regard to" and substituting "other enactments that govern the disposal of the chemical concerned."
- 23 By deleting subclause (3).
- 27(1) (a) In paragraph (b), by adding "or" after the semicolon.
(b) In paragraph (c), by deleting "; or" and substituting a full stop.
(c) By deleting paragraph (d).
- 28 By adding -
 "(3) In subsection (1), "notice of suspension" (暫時吊銷通知) means a notice referred to in section 27."
- 29(1) By deleting "As soon as practicable" and substituting "Not later than 10 working days".
- 31(3) (a) By deleting "as soon as practicable" and
and
(4) (a) substituting "not later than 10 working days".
- 31(4) (c) In the Chinese text, by adding "以" before "內".
(ii) (A)

41 By deleting the clause and substituting -

"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.”.

44(a)(i) By adding “addressed to the Director and” before
“delivered”.

44(b)(i) By deleting “delivered to the individual” and
substituting “addressed to the individual and
delivered to him”.

44(c)(i) (a) By adding “addressed to the body
corporation,” before “delivered”.

(b) In the English text, by deleting “giving it”
and substituting “given”.

47 By deleting subclauses (3) and (4).

48(2) In the Chinese text, by deleting everything after
“任何職能” and substituting “以書面轉授予任何公職人員，
但本款及第38條委予的職能除外。”.

48 By adding -

“(3) In this section, “functions” (職能) includes powers and duties.”.

50 By deleting the clause and substituting -

“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).

(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"
(有關日期) means the day on which the
Secretary makes the order under subsection
(1)(a) or (b) in respect of the chemical
concerned."

New

By adding -

"50A. Protection of public officers

(1) A public officer is not personally
liable for any civil liability or claim
whatever in respect of any act done or
omitted to be done by the officer if the
officer did or omitted to do the act in the

honest belief that the act or omission was required or authorized by or under this Ordinance.

(2) The protection conferred by subsection (1) does not in any way affect the liability of the Government for the act or omission of the public officer.”.