

立法會

Legislative Council

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Paper for the House Committee Meeting on 8 February 2013

Legal Service Division Report on Pesticides (Amendment) Bill 2013

I. SUMMARY

1. The Bill

The Bill proposes to enable Hong Kong to comply with the requirements of the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade and the Stockholm Convention on Persistent Organic Pollutants by prohibiting the export or use, except under a permit, of pesticides covered by the Conventions.

Proposals are also made to update provisions relating to appeals, entry for inspection and ribbing of pesticide containers.

It is also proposed that the Government be made subject to the regulation under the Pesticides Ordinance (Cap. 133) as Government agencies in general should be governed by the same standards as those for private operators.

2. Public Consultation

According to the Administration, stakeholders and five organizations were briefed and consulted. All of them supported the legislative proposals.

3. Consultation with LegCo Panel

The Panel on Food Safety and Environmental Hygiene was consulted at its meeting on 12 July 2011. Various concerns were expressed by Panel members.

4. Conclusion

The Bill involves changes required for compliance with international obligations, updating certain provisions and bringing them in line with similar legislation. Scrutiny on its legal and drafting aspects is continuing.

II. REPORT

The date of First Reading of the Bill is 6 February 2013. Members may refer to the LegCo Brief (File Ref.: FH CR 2/3231/03) issued by Food and Health Bureau on 23 January 2013 for further information.

Object of the Bill

2. The Bill seeks to amend the Pesticides Ordinance (Cap. 133) and its subsidiary legislation (the Ordinance) to –

- (a) implement the requirements of –
 - (i) the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade; and
 - (ii) the Stockholm Convention on Persistent Organic Pollutants;
- (b) apply the Ordinance to the Government;
- (c) rationalize the powers of entry for routine inspection;
- (d) remove the appeal hearing function from the Chief Executive to the Administrative Appeals Board;
- (e) remove the ribbing requirement of pesticide containers;
- (f) make related, consequential and miscellaneous amendments.

Background

3. The two Conventions are international treaties aimed at protecting human health and the environment from persistent organic pollutants and hazardous chemicals, including pesticides and other industrial chemicals. The People's Republic of China is a signatory to the Conventions. The Central People's Government has applied the Conventions to the Hong Kong Special Administrative Region (HKSAR) since 11 November 2004 and 26 August 2008 respectively. The Hazardous Chemicals Control Ordinance (Cap. 595) (HCCO) was enacted in 2007 to comply with the requirements of the Conventions in respect of non-pesticide hazardous chemicals.

4. Under the existing regime, the control of pesticides is regulated under the Ordinance by a system of registration and the issuance of licence or permit. The Director of Agriculture, Fisheries and Conservation (DAFC) is obliged to maintain a register of pesticides.¹ A person must not import, manufacture, sell or supply registered pesticides except under a licence issued by DAFC.² The Ordinance prohibits the import, manufacture, sale, possession and supply of unregistered pesticides, except under a permit issued by DAFC.³ Only pesticides which are in transit or transshipment are exempted.⁴ Separately, under the Import and Export Ordinance (Cap. 60) (I&EO), each shipment of pesticides entering or leaving HKSAR is required to be covered by an import or export licence, except if it is in transit or if it is an air transshipment cargo.⁵

5. According to the Administration, all pesticides which are currently covered by the Conventions⁶ are unregistered and are subject to the permit control under the Ordinance⁷. However, the Ordinance falls short of regulating the export or use⁸ of pesticides which are covered by the Convention as required by the Conventions.

Provisions of the Bill

6. The Bill proposes to prohibit the export or use of such pesticides, except under a permit issued by DAFC. The lists of pesticides controlled under the Conventions will be set out in two schedules to the Ordinance (scheduled pesticides). The Secretary for Food and Health will be empowered to amend the schedules by notice published in the Gazette, and DAFC will be given powers, including inspection and investigation powers, for the purpose of implementing the requirements of the Conventions.

7. However, in line with the Conventions, a person importing, manufacturing, selling, supplying, in possession of, using or exporting any scheduled pesticide not exceeding 10g or 10mL⁹ that is contained in an individual package or container, and is used or intended to be used indoors for laboratory research, chemical analysis or as a reference standard would be exempted from the

¹ See section 4 of the Pesticides Ordinance (Cap. 133).

² See section 7 of the Pesticides Ordinance (Cap. 133).

³ See section 8 of the Pesticides Ordinance (Cap. 133).

⁴ See section 3 of the Pesticides Ordinance (Cap.133).

⁵ See section 3 of, and Schedule 3 to, the Import and Export Ordinance (Cap. 60).

⁶ Currently, the Stockholm Convention covers 15 pesticides and the Rotterdam Convention covers 28 pesticides. However, this Bill only seeks to deal with nine pesticides covered by the Stockholm Convention and 28 pesticides covered by the Rotterdam Convention, as the People's Republic of China has yet to accede to the inclusion of the six recently added pesticides to the Stockholm Convention.

⁷ See section 8 of the Pesticides Ordinance (Cap. 133).

⁸ At present, only the importation, manufacture, sale, possession and supply of pesticides are regulated by the Ordinance, but not their export or use.

⁹ According to the Administration, the proposed threshold is sufficiently high to cater for use for laboratory research, chemical analysis or as a reference standard but unlikely to affect human health or the environment.

permit requirement. It should be noted that an import or export licence would still be required for the import and export of such pesticides under I&EO, except if they are in transit or air transshipment cargoes.

8. Registered or unregistered pesticides (not scheduled pesticides) not exceeding 10g or 10mL that is contained in an individual package or container, and is used or intended to be used indoors for laboratory research, chemical analysis or as a reference standard would also be exempted from the scope of the Ordinance, i.e. from the licence or permit requirements under the Ordinance and the import or export licensing requirements under I&EO.

9. If the Bill is passed, the scope of control under the Ordinance will be extended so that importing, manufacturing, selling, supplying, possessing or using scheduled pesticides and other unregistered pesticides exceeding the specified quantity requires a permit. In addition, a permit will still be required for exporting a scheduled pesticide.

10. The Bill also proposes to update certain provisions of the Ordinance relating to regulation of pesticides –

- (a) providing appeals against certain decisions of DAFC under the Ordinance be made to an independent body, the Administrative Appeals Board¹⁰, instead of the Chief Executive.
- (b) confining the existing power of warrantless entry for routine inspection of any premises by authorized officers under the Ordinance to any premises or place (whether domestic or not¹¹) the address of which is stated in an application for a licence or permit under the Pesticides Regulations or any other non-domestic premises or place; and
- (c) removing the ribbing requirement of pesticide containers, as it no longer serves any useful purpose in distinguishing the pesticide from other non-pesticide products.

11. The Administration in reviewing the scope of application of the Ordinance considers that the Ordinance as amended should apply to the Government as Government agencies in general should be governed by the same standards as those imposed on private operators. Accordingly, the Bill proposes to extend application of the Ordinance to the Government. However, in line with

¹⁰ Consequential amendments are also proposed to the Administrative Appeals Ordinance (Cap. 442) to reflect the changes.

¹¹ According to the Administration, some licensees and permittees use domestic premises as their registered addresses for a licence/permit granted under the Ordinance. A power to enter without a warrant such domestic premises for routine inspection of pesticides to ensure compliance with the Ordinance is necessary to protect public safety and is a justifiable and proportionate interference with the licensee's/permittee's privacy.

HCCO, a public officer acting in good faith in official capacity is exempted from any liability arising under the Ordinance.

12. The Bill, if enacted, will come into operation 6 months after the day on which the Ordinance is published in the Gazette.

Public Consultation

13. According to the Administration, the Agriculture, Fisheries and Conservation Department had five briefings with the stakeholders and individual meetings with five organizations¹² from May to September 2011 to consult them on the proposed legislative amendments. All of them supported the legislative proposals.

Consultation with LegCo Panel

14. The Clerk to the Panel on Food Safety and Environmental Hygiene has advised that the Panel was consulted on 12 July 2011. Members raised no query on the proposed amendments to the Ordinance to fulfil the obligations of the HKSAR under the Conventions. Some members expressed concerns about the training given to pesticide applicators and the availability of the codes of practice for the trade. There was also a suggestion of incorporating the codes of practice in the legislation to enhance protection for the public.

Conclusion

15. The Bill involves changes required for compliance with international obligations, updating certain provisions and bringing them in line with similar legislation. Scrutiny on its legal and drafting aspects is continuing.

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¹² The five organizations consulted were the Pest Control Personnel Association of Hong Kong, the Hong Kong Pest Management Association of Hong Kong, South China Turf Managers Association, Hong Kong Cleaning Association and the Federation of Vegetable Marketing Co-operative Societies Ltd.