

立法會
Legislative Council

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**Subcommittee on
Pesticides Ordinance (Amendment of Schedule 1) Notice 2014**

Background brief prepared by the Legislative Council Secretariat

Purpose

This paper provides background information on the Administration's proposal to amend Schedule 1 to the Pesticides Ordinance (Cap. 133) ("the Ordinance") to add six pesticides that have recently become subject to the regulation of the Stockholm Convention on Persistent Organic Pollutants ("the Stockholm Convention") and highlights major views and concerns expressed by members of the Bills Committee on Pesticides (Amendment) Bill 2013 ("the Bills Committee") relating to the subject.

Background

The two international Conventions

2. The Stockholm Convention and the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade ("the Rotterdam Convention") 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 ("PRC") is a signatory to the Stockholm Convention and the Rotterdam Convention (referred collectively as "the two Conventions"). The Central People's Government ("CPG") has applied the Stockholm Convention and the Rotterdam Convention to the Hong Kong Special Administrative Region ("HKSAR") since 11 November 2004 and 26 August 2008 respectively. The Hazardous Chemicals Control Ordinance (Cap. 595) was enacted in 2007 to comply with the requirements of the two Conventions in respect of non-pesticide hazardous chemicals.

Regulation of the use of pesticides in Hong Kong

3. At present, the import, manufacture, sale and supply of pesticides is regulated under the Ordinance. The Director of Agriculture, Fisheries and Conservation ("DAFC") is obliged to maintain a register of pesticides. Section 7(1) of the Ordinance provides that a person must not import, manufacture, sell or supply registered pesticides except under a licence issued by DAFC. For pesticides that are not listed on the register ("unregistered pesticides"), section 8(1) of the Ordinance prohibits their import, manufacture, sale, supply or possession except under a permit issued by DAFC. Pesticides in transit or being transhipped are exempted from the requirements of the Ordinance. Separately, under the Import and Export Ordinance (Cap. 60), 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 it is an air transshipment cargo.

The Pesticides (Amendment) Ordinance 2013 ("the Amendment Ordinance")

4. To comply with the requirements of the two Conventions, the Administration introduced the Pesticides (Amendment) Bill 2013 ("the Amendment Bill") into the Legislative Council ("LegCo") in February 2013 to amend the Ordinance to prohibit the export or use of pesticides covered by the two Conventions except under a permit issued by DAFC. It was further proposed that the lists of pesticides controlled under the two Conventions were set out in two schedules to the Ordinance. Schedule 1 to the Amendment Bill set out the pesticides listed under the Stockholm Convention, whereas Schedule 2 set out the pesticides listed under the Rotterdam Convention. The Secretary for Food and Health ("SFH") would be empowered to amend the schedules by notice published in the Gazette. The Amendment Bill was passed at the Council meeting of 17 July 2013. The Amendment Ordinance commenced operation on 27 January 2014.

The Pesticides Ordinance (Amendment of Schedule 1) Notice 2014

5. According to the LegCo Brief on the Pesticides Ordinance (Amendment of Schedule 1) Notice 2014 ("the Notice"), at the time when the Amendment Bill was introduced into LegCo in February 2013, the Stockholm Convention covered 22 chemicals, of which 15 were pesticides and seven were non-pesticide chemicals. Of the 15 pesticides, five were added to the Stockholm Convention in 2009 and one in 2011, and PRC had yet to accede to their inclusion at that time. As such, only nine of the 15 pesticides listed under the Stockholm Convention that PRC had already acceded to were covered in Schedule 1. In January 2014, CPG notified the Government of HKSAR that ratification for inclusion of the

remaining six pesticides by PRC had been completed. In accordance with section 19A(1)(a) of the Ordinance, SFH has made the Notice to amend Schedule 1 to the Ordinance by adding the six pesticides concerned.

Discussions by the Bills Committee

Regulatory regime on pesticides

6. In response to members' enquiry about whether other commonly used pesticides were covered under the Amendment Bill, the Administration explained that Hong Kong had put in place a comprehensive regulatory regime on pesticides. All pesticides were subject to regulation under the Ordinance by a system of registration and the issuance of licence or permit. All pesticides intended for sale in Hong Kong must be registered with DAFC. In practice, the Agriculture, Fisheries and Conservation Department ("AFCD") would only register pesticides categorized as slightly or moderately hazardous by the World Health Organization ("WHO"). AFCD would also impose supply and retail sale restrictions on the formulation and concentration of such pesticides. Pesticides categorized as extremely hazardous by WHO were not allowed to be registered. A person must not import, manufacture, sell or supply registered pesticides except under a licence issued by DAFC. For unregistered pesticides, the Ordinance prohibited the import, manufacture, sale, possession and supply of such pesticides, except under a permit issued by DAFC. Permits were issued for specific pesticides, and were valid for an initial six-month period which could be renewed on a six-monthly basis. A permit holder was required to demonstrate competence in storing, handling and using the pesticide concerned. At present, all pesticides listed under the two Conventions were unregistered pesticides in Hong Kong and were already subject to permit control under the Ordinance. The Ordinance, however, fell short of regulating the export or use of Convention-regulated pesticides as required by the two Conventions. Therefore, the Amendment Bill was introduced to amend the Ordinance so as to comply with the requirements of the two Conventions in this regard.

Reference to the two Conventions

7. Under the proposed section 2(1) of the Amendment Bill, the term "Rotterdam Convention" was defined as the Rotterdam Convention "adopted on 10 September 1998 as amended from time to time and as applied to Hong Kong"; and the term "Stockholm Convention" was defined as the Stockholm Convention "adopted on 22 May 2001 as amended from time to time and as applied to Hong Kong". Members were concerned as to whether the use of the expression "as amended from time to time" in the proposed definitions would have the effect that any subsequent changes to the requirements of the two Conventions would

affect the relevant provisions of the Ordinance without the need for corresponding legislative amendments.

8. According to the Administration's explanation, the expression "as amended from time to time" in the proposed two definitions was used to cater for any subsequent changes made to the two Conventions. If the changes were to apply to Hong Kong, they would have to be extended to Hong Kong by CPG in accordance with the Basic Law. To meet the requirements arising from any subsequent changes to the two Conventions as extended to Hong Kong, SFH would be empowered under the proposed section 19A of the Amendment Bill to amend the relevant schedule by notice published in the Gazette. The notice would be a piece of subsidiary legislation subject to the negative vetting procedure of LegCo.

Measures to promote safe and proper use of pesticides

9. Members generally considered it necessary for the Administration to enhance its monitoring and control on the safe and proper use of pesticides by pest control practitioners and the public. Members made a number of suggestions to the Administration on measures to enhance safety in the use of pesticides, including standardizing the warning signs put up in public areas, making available appropriate leaflets on safe use of pesticides to members of the public and making public on the Government website records of operations involving application of pesticides.

10. In response to members' suggestions, the Administration advised that AFCD would discuss with the relevant government departments and other stakeholders to promote the safe and proper use of pesticides, particularly those that were related to the applications of pesticides, including improving the design, size and content of warning signs on the spot of pesticide application, as well as the location to place them. The enhanced safety measures, including requirements on warning signage, would be incorporated into the respective Codes of Practice for the pest control industry, as well as the training syllabus of the relevant training bodies. As regards the suggestion of making public information on operations involving application of pesticides, the Administration advised that given the potentially enormous amount of information involved and the difficulty in providing a precise description of the exact location where pesticides had been applied, the Administration considered it neither practicable nor cost-effective to collect such records and made them available for public inspection on the website.

11. The Administration also undertook to step up its efforts in promoting public awareness on the safe use of household pesticides. Appropriate leaflets and promotional materials would be provided to pesticide licensees for free

distribution to their customers. AFCD would also make additional efforts in checking the pesticide labels to ensure that adequate information had been incorporated and explored with the trade to see if the instructions and cautions on the labels could be highlighted and complemented by suitable pictograms. The Administration also agreed to step up its promotional and publicity efforts targeted at schools including publishing a set of educational leaflets on the safe and proper use of pesticides in schools. For the list of follow-up actions undertaken by the Administration to further promote the safe and proper use of pesticides, please refer to Appendix IV to the report of the Bills Committee (LC Paper No. CB(2)1508/12-13).

Relevant papers

12. A list of the relevant papers on the LegCo website is in the **Appendix**.

Council Business Division 2
Legislative Council Secretariat
17 April 2014

Relevant papers on the Pesticides Ordinance (Cap. 133)

Meeting	Date of meeting	Paper
Panel on Food Safety and Environmental Hygiene	12.7.2011 (Item VI)	Agenda Minutes CB(2)2305/10-11(06)
House Committee	5 July 2013 (Item VI (a))	Report of the Bills Committee on Pesticides (Amendment) Bill 2013

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