

LEGISLATIVE COUNCIL BRIEF

**Animals and Plants (Protection of Endangered Species) Ordinance
(Chapter 187)**

**ANIMALS AND PLANTS
(PROTECTION OF ENDANGERED SPECIES) ORDINANCE
(REPLACEMENT OF SCHEDULE 5) ORDER 2000**

**ANIMALS AND PLANTS
(PROTECTION OF ENDANGERED SPECIES)
(EXEMPTION) (AMENDMENT) ORDER 2000**

**ANIMALS AND PLANTS
(PROTECTION OF ENDANGERED SPECIES) ORDINANCE
(AMENDMENT OF SCHEDULE 3) NOTICE 2000**

INTRODUCTION

At the meeting of the Executive Council on 16 May 2000, the Council ADVISED and the Chief Executive ORDERED that :-

- (a) the Animals and Plants (Protection of Endangered Species) Ordinance (Replacement of Schedule 5) Order 2000 (the Replacement Order), at Annex A, should be made under section 19(1) of the Animals and Plants (Protection of Endangered Species) Ordinance (Cap. 187) (the Ordinance) to expand the list of specified animal species so that all medicines made from such animal species would be regarded as “controlled medicines”^(note 1) and subject to control under the Ordinance; and
- (b) the Animals and Plants (Protection of Endangered Species) (Exemption)(Amendment) Order 2000 (the Exemption

^(note 1) “Controlled medicine” is defined in section 2 of the Ordinance to mean any medicine which contains or is claimed, represented or held out by any person, by advertisement or otherwise to contain any part or derivative, whether recognisable or not, of any animal specified in Schedule 5 to the Ordinance.

Amendment Order), at Annex B, should be made under section 18 of the Ordinance to widen the present exemptions relating to the import, possession or control of artificially propagated plant species.

2. At the same time, the Acting Secretary for the Environment and Food (the Acting Secretary) has made the Animals and Plants (Protection of Endangered Species) Ordinance (Amendment of Schedule 3) Notice 2000 (the Notice), at Annex C, under section 19(1A) of the Ordinance to extend the control to cover artificially propagated endangered plant species.

3. The purpose of the Replacement Order and the Notice is to bring our legislation more in line with the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). The purpose of the Exemption Amendment Order is to make certain exemptions for the artificially propagated endangered plant species to minimise inconvenience to the trade concerned without comprising our obligations under the CITES.

BACKGROUND AND ARGUMENT

General Background

4. The CITES is extended to the Hong Kong Special Administrative Region (HKSAR) through a ratification made by the People's Republic of China. It requires that the import and export of the following endangered species listed in its Appendices be subject to control:-

(a) **Appendix I :**

Species which are highly endangered and threatened with extinction.

(b) **Appendix II :**

Species which, unless trade is controlled, could be threatened with extinction.

(c) **Appendix III :**

Species identified by any party to the CITES as requiring protection from over-exploitation through international trade.

Examples of Appendices I, II and III species are set out at Annex D.

5. The Ordinance gives effect to the CITES in Hong Kong. It provides that a licence is required for the import, export, possession or control of any species

listed in the Schedules to the Ordinance^(note 2). The Schedules cover the species listed in Appendices I, II and III to the CITES. Although the CITES does not control the possession of endangered species as it controls international trade only, our current legislation maintains a certain degree of control over the possession or control of endangered species to help combat smuggling.

6. Nevertheless, the legislation in Hong Kong was identified by the CITES Secretariat as not fully meeting the CITES requirements in respect of the control over international trade in:-

- (a) medicines made from endangered species; and
- (b) artificially propagated CITES-listed plant species.

At the Conference of the Parties to the CITES held in 1997, we undertook to amend our legislation to meet the CITES requirements, subject to availability of resources. Specifically, we intend to amend Schedule 5 to the Ordinance to extend the control to cover “controlled medicines” made from animal species listed in the Sixth Schedule (equivalent to Appendix I animal species of wild origin) and to amend Schedule 3 to the Ordinance to extend the control to cover artificially propagated CITES-listed plant species. In this connection, the Chief Executive in Council has made the Replacement Order under section 19(1) of the Ordinance to amend Schedule 5 to the Ordinance. The Acting Secretary has also made the Notice under Section 19(1A) of the Ordinance to amend Schedule 3 to the Ordinance.

7. With the aforesaid amendments, our control would cover all medicines made from the highly endangered animal species of wild origin and address the main concern of the CITES. Our control would also cover artificially propagated CITES-listed plant species. We would still need to align our legislation with the CITES requirements in respect of control over international trade in medicines made from the other endangered species which call for amendments to the main Ordinance. We now plan to carry forward such amendments at a later stage together with the other possible amendments to the main Ordinance which is now under review.

8. Section 18 of the Ordinance empowers the Chief Executive to exempt any scheduled species from licensing control. At present, the Animals and Plants (Protection of Endangered Species) (Exemption) Order (Cap. 187 sub. leg.) (the Exemption Order) made under that section specifies exemptions covering mainly:-

^(note 2) Schedule 1 lists the animal species.
 Schedule 2 lists the animal parts and derivatives.
 Schedule 3 lists the plant species.
 Schedule 5 lists the animal species contained in “controlled medicines”, which currently cover two groups of Appendix I species only, namely, tiger and rhinoceros.
 The Sixth Schedule lists all the CITES Appendix I species, including both animals and plants.

- (a) the import of Appendix III species and products manufactured from Appendices II and III species (such as garments, handbags, jewellery, furnishings and ornaments), subject to the production of documents showing that the species or manufactured products concerned originate from CITES-approved sources;
- (b) the possession or control of certain Appendix II species (including certain cage-birds, snakes and plants) and Appendix III species; and
- (c) the import, export, possession or control of personal effects^(note 3), except those bought overseas by tourists.

9. The exemption mechanism arising from the Exemption Order allows the Government to focus our resources in enforcing the CITES in the most cost-effective way.

The Proposal

Amendment to Schedule 3 to the Ordinance

10. The CITES requires control over international trade in artificially propagated CITES-listed plant species. Schedule 3 to the Ordinance now lists the plant species of Appendices I, II and III. We propose to amend Schedule 3 to the Ordinance to cover their artificially propagated counterparts. As a result, the export, import, possession or control of artificially propagated CITES-listed plant species^(note 4) would be subject to control under the Ordinance.

Amendment to Schedule 5 to the Ordinance

11. The CITES prohibits international trade in the highly endangered species listed in Appendix I. At present, Schedule 5 to the Ordinance lists two groups of Appendix I species only, namely tiger and rhinoceros, contained in “controlled medicines”. The import and export of such medicines are prohibited while the possession or control requires a possession licence issued by the Director of Agriculture, Fisheries and Conservation (the Director). We propose to extend Schedule 5 so that all medicines made from Appendix I animal species of wild origin would be regarded as “controlled medicines” and subject to control under the Ordinance.

^(note 3) “Personal effects” refers to the personal property acquired at the owner’s country/place of usual residence.

^(note 4) Artificially propagated Appendix I plant species would be treated as Appendix II plant species as far as control is concerned.

Amendment to Exemption Order

12. Since the CITES does not require the licensing control of the import, possession or control of artificially propagated plant species, we propose to amend the Exemption Order concurrently with the amendments to Schedule 3 through the Notice so as to introduce certain exemptions where licensing control is not a priority for deployment of resources.

13. The proposed exemptions are not inconsistent with Hong Kong's international obligations under the CITES.

Interaction with the Mainland

14. The HKSAR is a separate customs territory under Article 116 of the Basic Law. Although the CITES does not control domestic trade, the Ordinance also applies to trade in endangered species between the HKSAR and the Mainland. To implement the proposed amendments, the Mainland authority has agreed to issue the required export licences for exporting artificially propagated CITES-listed plant species to the HKSAR. They have also taken note that upon commencement of the proposed control measures, medicines made from Appendix I animal species of wild origin (such as bear bile) would not be allowed to be exported to the HKSAR.

THE NOTICE

15. The Notice extends the plant species (including its parts and derivatives) listed in Schedule 3 to cover their artificially propagated counterparts.

THE ORDERS

16. The Replacement Order extends Schedule 5 to the Ordinance to cover "controlled medicines" made from Appendix I animal species of wild origin listed in the Sixth Schedule.

17. The principal sections of the Exemption Amendment Order are as follows:-

- (a) **Section 2** extends the definition of "personal effects" to cover artificially propagated CITES-listed plant species;
 - (b) **Section 3** exempts the possession or control of artificially propagated plant species listed in Part 1 of Schedule 3 for non-commercial
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purposes^(note 5) from the licensing requirements unconditionally and those for commercial purposes, subject to the keeping of transaction records in a form specified by the Director or in any other form which contains the information as required in the specified form;

- (c) **Section 4** exempts the export, import and possession or control of artificially propagated CITES-listed plant species in its natural form which are personal effects from the licensing requirements; and
- (d) **Section 5** exempts the artificially propagated plant species listed in Part 1 of Schedule 3 from the import licensing requirements, subject to the production of a valid export permit issued by a competent authority of the exporting country/place concerned to the satisfaction of the Director.

18. The current Schedules 3 and 5 and Exemption Order are at Annex E. Under the current Exemption Order, no licence or transaction records would be required for the possession of artificially propagated Appendix III plant species.

PUBLIC CONSULTATION

19. The Endangered Species Advisory Committee, the Endangered Species Protection Liaison Group and the Chinese Medicines Board have been consulted. They either support or have no objection to the proposal.

20. Representatives of the trade have also been consulted. They understand that the controls are in accordance with the CITES requirements and have requested that the control measures should be as simple as possible. We have taken their views into account in drawing up the proposal. AFCD has stepped up public education effort on the need to introduce the changes caused by the legislative amendments.

21. The Legislative Council Health Services Panel has also been informed of our intention to amend the Schedules and the Exemption Order.

BASIC LAW IMPLICATIONS

22. The Department of Justice advises that the Orders and the Notice do not conflict with those provisions of the Basic Law carrying no human rights implications.

^(note 5) “Non-commercial purposes” refer to “purposes not for obtaining economic benefit including profit and not directed toward resale, exchange, provision of a service or other form of economic use or benefit”.

HUMAN RIGHTS IMPLICATIONS

23. The Department of Justice advises that the Orders and the Notice are consistent with the human rights provisions of the Basic Law.

BINDING EFFECT

24. The Orders and the Notice do not affect the current binding effect of the Ordinance.

FINANCIAL AND STAFFING IMPLICATIONS

25. To implement the proposal, \$3.3 million in full year cost has been earmarked for eight additional staff in the Agriculture, Fisheries and Conservation Department (AFCD).

ECONOMIC IMPLICATIONS

26. The proposal would bring our legislation more in line with the CITES. There should be little negative impact on the economy. Only the international trades in medicines containing highly endangered animal species of wild origin will be prohibited. The proposed exemptions to the import, possession or control of artificially propagated CITES-listed plant species could ensure that the inconvenience to the trade would be kept to the minimum.

LEGISLATIVE TIMETABLE

27. The legislative timetable is as follows-

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| Publication in the Gazette: | 19 May 2000 |
| Tabling at the Legislative Council: | 24 May 2000 |

Subject to no contrary view from Members, we intend to bring the Orders and the Notice into operation in September 2000.

PUBLICITY

28. The Orders and the Notice are published in the Gazette on 19 May 2000. A press release will be issued on the same day and a spokesman is available to handle enquiries.

ENQUIRY

29. Any enquiry on this brief should be directed to Miss Dora FU, Principal Assistant Secretary for the Environment and Food on tel. 2136 3288 or fax 2136 3281.

Environment and Food Bureau
May 2000