

立法會
Legislative Council

LC Paper No. CB(1) 620/02-03
(These minutes have been seen
by the Administration)

Ref : CB1/BC/3/01/2

**Bills Committee on
Chemical Weapons (Convention) Bill**

**Minutes of sixth meeting held on
Friday, 13 December 2002 at 3:30 pm
in Conference Room A of the Legislative Council Building**

Members present : Hon Cyd HO Sau-lan (Chairman)
Hon James TO Kun-sun
Hon HUI Cheung-ching, JP
Hon LAU Kong-wah
Dr Hon LO Wing-lok
Hon Audrey EU Yuet-mee, SC, JP

Public officers attending : Ms Ellen CHOY
Principal Assistant Secretary for Commerce,
Industry and Technology (Commerce and Industry)

Miss Hinny LAM
Assistant Secretary for Commerce,
Industry and Technology (Commerce and Industry)

Ms Vivian SUM
Assistant Director-General
Trade and Industry Department

Ms Doris CHAN
Principal Trade Officer
Trade and Industry Department

Mr Andrew WONG
Head of Trade Controls
Customs and Excise Department

Mr K H NG
Principal Trade Controls Officer
Customs and Excise Department

Mr C Y AU YEUNG
Senior Chemist
Government Laboratory

Mr Geoffrey FOX
Senior Assistant Law Draftsman
Department of Justice

Ms Marie SIU
Senior Government Counsel
Department of Justice

Clerk in attendance : Miss Salumi CHAN
Chief Assistant Secretary (1)5

Staff in attendance : Miss Anita HO
Assistant Legal Adviser 2

Ms Cindy CHENG
Senior Assistant Secretary (1) 4

Action

- I. Confirmation of minutes of meeting**
(LC Paper No. CB(1)487/02-03 — Minutes of fifth meeting held on
19 November 2002)

The minutes of the fifth meeting held on 19 November 2002 were confirmed.

Action

II. Meeting with the Administration

(Matters arising from previous meetings)

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| LC Paper No. CB(1)59/02-03(02) | — | "Follow-up to the second meeting on 16 July 2002" prepared by the Legislative Council Secretariat |
| LC Paper No. CB(1)98/02-03(01) | — | "Follow-up to the third meeting on 18 October 2002" prepared by the Legislative Council Secretariat |
| LC Paper No. CB(1)305/02-03(03) | — | "Follow-up to the fourth meeting on 24 October 2002" prepared by the Legislative Council Secretariat |
| LC Paper No. CB(1)486/02-03(01) | — | "Follow-up to the fifth meeting on 19 November 2002" prepared by the Legislative Council Secretariat |
| LC Paper No. CB(1)486/02-03(02) | — | Administration's response to the issues of concern raised by members on clauses 2, 4, 7 and 38 |
| LC Paper No. CB(1)486/02-03(04) | — | Administration's response to the issues of concern raised by members on clause 5 |
| LC Paper No. CB(1)486/02-03(03) | — | Administration's response to the issues of concern raised by members about the loss of permanent resident status |

Clause-by-clause examination of the Bill

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|------------------------------|---|--|
| LC Paper No. CB(3)10/01-02 | — | The Bill |
| Ref: CIB CR14/46/6/1 | — | The Legislative Council Brief issued by the Commerce and Industry Bureau |
| LC Paper No. CB(1)1510/01-02 | — | Marked-up copy of the proposed consequential amendments to the Organized and Serious Crimes Ordinance (Cap. 455) and the Weapons of Mass Destruction (Control of Provision of Services) Ordinance (Cap. 526) |

Action

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|---------------------------------|---|
| LC Paper No. LS9/02-03 | — List of drafting issues raised by the Legal Service Division of the Legislative Council Secretariat |
| LC Paper No. CB(1)486/02-03(05) | — Draft proposed Committee Stage Amendments provided by the Administration) |

2. The Bills Committee deliberated (Index of proceedings attached at **Appendix**).

Follow-up actions to be taken by the Administration

- Admin 3. As requested by the Bills Committee, the Administration undertook to take the follow-up actions listed below:

(a) Clause 2(1)

On the definition of "claimant", the Administration was requested to consider if the word "petitions" was redundant, as it seemed that there was no reference to this word in Part 6 of the Bill.

(b) Clause 5(f)

Clause 5(f) of the Bill provided that "no person shall assist, encourage or induce, in any way, anyone to engage in any activity prohibited under the Convention". Section 89 of the Criminal Procedure Ordinance (CPO) (Cap. 221) provided that "any person who aids, abets, counsels or procures the commission by another person of any offence shall be guilty of the like offence". Members noted the Administration's advice that the scope of "assist", "encourage" and "induce" in clause 5(f) of the Bill was narrower than that of "aids", "abets", "counsels" and "procures" in section 89 of CPO and by virtue of the provisions of that section, a person who contravened clause 5(a) to 5(e) of the Bill might be prosecuted for the like offence. Members therefore queried the need to retain clause 5(f). They noted the Administration's view that it was appropriate to retain clause 5(f) to expressly set out the particular prohibition prescribed in paragraph 1(d) of Article I of the Convention. In this connection -

- (i) the Administration was requested to explain why the scope of "assist", "encourage" and "induce" in clause 5(f) of the Bill was narrower than that of "aids", "abets", "counsels" and "procures" in section 89 of CPO. In members' view, the scope of "encourage" was much wider than that

Action

of "abets" and it was not appropriate to use two different sets of words for the same type of offences; and

- (ii) While clause 5(f) was modelled on paragraph 1(d) of Article I of the Convention, members noted that there was no similar provision in the Chemical Weapons Act 1996 of the United Kingdom. The Administration was requested to reconsider the need to retain clause 5(f).

(c) Clauses 5 and 29(2)

The Administration was requested to set out the rationale for the policy intent that the whole clause 5 should be offences of a strict liability.

(d) Clause 38 (Appeals)

Clause 38 provided that an appeal against any decision of the Director-General of Trade and Industry (the Director) to which clause 10(4) applied might be made to the Chief Executive (CE). The Administration considered the resort to CE for appeal appropriate, as it was conceivable that important policy and political considerations, as well as sensitive information, such as intelligence obtained from other licensing/enforcement agencies of other governments might be involved in the Director's decision to grant permits and/or to impose conditions to the permits. The Administration was requested to consider whether the resort to CE in Council for appeal could also address these considerations. If the answer was in the affirmative, the Administration was requested to consider whether it was more appropriate to provide in clause 38 that appeals might be made to CE in Council, instead of CE, having regard to the fact that the rules for handling appeals to CE in Council were set out in the Administrative Appeals Rules (Cap.1 sub. leg. A) while no specific rules were provided for handling appeals to CE.

Date of next meeting

4. The Chairman reminded members that the next meeting would be held on Thursday, 9 January 2003 at 8:30 am.

Action

III. Any other business

5. There being no other business, the meeting ended at 4:50 pm.

Council Business Division 1
Legislative Council Secretariat
17 December 2002

Appendix

**Proceedings of the sixth meeting of the
Bills Committee on Chemical Weapons (Convention) Bill
on Friday, 13 December 2002 at 3:30 pm
in Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action Required
000000-000030	Chairman	Confirmation of minutes of fifth meeting (LC Paper No. CB(1)487/02-03)	
000031-000313	Chairman	Opening remarks	
000314-001701	Administration	Briefing by the Administration on its response to the issues of concern raised by members on clauses 2, 4, 7 and 38 (LC Paper No. CB(1)486/02-03(02))	
001702-002734	Chairman Administration Mr James TO	Whether the Director-General of Trade and Industry would inform the applicants of the reasons for his refusal to grant a permit (Clauses 10(4) and 38) (LC Paper No. CB(1)486/02-03(02))	
002735-004205	Administration Chairman ALA2 Ms Audrey EU	Resort to the Chief Executive (CE), administrative appeal board or CE in Council for appeal (Clause 38) (LC Paper No. CB(1)486/02-03(02))	Admin to consider whether the resort to CE in Council may address the policy and political considerations; and if so, to consider whether it is more appropriate to

Time marker	Speaker	Subject(s)	Action Required
			provide in clause 38 that appeals may be made to CE in Council
004206-004330	ALA2 Administration	Whether the word "petitions" in the definition of "claimant" is redundant (Clause 2(1)) (LC Paper No. CB(1)486/02-03(02))	Admin to consider whether the word "petitions" in the definition of "claimant" is redundant
004331-004540	Administration	Briefing by the Administration on its response to the issues of concern raised by members on clause 5 (Clauses 5(e), 5(f) and 29) (LC Paper No. CB(1)486/02-03(04))	
004541-005949	Ms Audrey EU Administration ALA2	(a) Comparison of the scope of the terms used in clause 5(f) of the Bill and section 89 of the Criminal Procedure Ordinance: (i) "assist" and "abet"; (ii) "encourage" and "abet"; and (iii) "induce" and "procure" (b) Comparison between clause 5 of the Bill and section 2 of the Chemical Weapons Act 1996 of the United Kingdom (Clause 5) (LC Paper No. CB(1)486/02-03(04))	

Time Marker	Speaker	Subject(s)	Action required
005950-011113	ALA2 Chairman Administration	(a) Policy intent behind making the offences under clause 5 a strict liability (b) Comparison of clause 5 with the relevant provisions in the Biological Weapons Ordinance and similar legislation in USA and Australia (Clause 5) (LC Paper No. CB(1)486/02-03(04))	Admin to set out the rationale for the policy intent that the whole clause 5 should be offences of a strict liability
011114-011343	Ms Audrey EU Chairman ALA2 Administration	(a) Comparison of the scope of the terms used in clause 5(f) of the Bill and section 89 of the Criminal Procedure Ordinance (b) The need to retain clause 5(f) (c) Shift of burden of proof from the prosecution to the defendant if the offences under clause 5 are made a strict liability (Clause 5) (LC Paper No. CB(1)486/02-03(04))	On item (b), Admin to reconsider the need to retain clause 5(f)
011344-011637	Mr LAU Kong-wah ALA2 Administration Chairman	Comparison of the scope of the terms used in clause 5(f) of the Bill and section 89 of the Criminal Procedure Ordinance (Clause 5(f)) (LC Paper No. CB(1)486/02-03(04))	Admin to explain why the scope of "assist", "encourage" and "induce" in clause 5(f) is narrower than that of "aids", "abets", "counsels" and "procures" in section 89 of Criminal Procedure Ordinance

Time Marker	Speaker	Subject(s)	Action required
011638-011724	Chairman	Date of next meeting	

Note: **The audio records of the above proceedings are kept at the Legislative Council Library**

Council Business Division 1
Legislative Council Secretariat
17 December 2002