

立法會
Legislative Council

LC Paper No. LS9/02-03

**Paper for Bills Committee
on Chemical Weapons (Convention) Bill
List of drafting issues raised by Legal Service Division**

| Clause No. | Issues | Administration's responses |
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| 1(2) | Is "the Secretary for Commerce and Industry" to be amended to "the Secretary for Commerce, Industry and Technology"? | Yes, CSA will be proposed. |
| 2 | Please clarify the term "operator". Does this term refer to an owner, a company, one of the directors, all directors or a manager of a company or all of them? In the Australian Act, "operator" means "the person having <u>ultimate</u> responsibility, as distinct from day-to-day management, in relation to operations carried on at the facility". | An operator means the person or persons having responsibility, as distinct from day-to-day management, in relation to operations carried on at the facility. Any of the persons mentioned can be an operator. |
| 2(2) | Given that there are many terms mentioned in different places in the text of the Convention and some may not be relevant to this Bill, which key definitions have been adopted in the Bill? | CSA to add the definitions of "chemical weapons", "discrete organic chemicals", "facility", "Organization" and "purposes not prohibited under the convention" in section 2. |
| 4 | Why is there an express power of delegation from the Director General of Trade and Industry to the Clerical Officer Grade? Is an exercise of power by a CO subject to an appeal to the Chief Executive? | <ul style="list-style-type: none"> ● Express power of delegation will enhance transparency and should be welcome by the trade. Limited powers such as powers to process permit applications will be delegated to clerical officers. Only decisions of the Director to which clause 10(4) apply will be subject to appeal to the Chief Executive. ● A CSA to delete the reference to Clerical Officer Grade will be proposed. |

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| 5 | <p>Anyone who contravenes clause 5 is liable on conviction to imprisonment for life. A person can use a "chemical weapon" if it is for permitted purposes and if the quantities have not exceeded a certain limit. Should every element of offence, including its exclusions be easily ascertained and specified in clause 5? (cf. ss.1 and 2 of the U.K. Act)</p> | <p>It is not necessary to set out exclusions.</p> |
| 5(f) | <p>Please elaborate on the offence "No person shall <u>encourage</u> anyone to engage in <u>any activity</u> prohibited under the Convention." (cf. s.2 of U.K. Act)</p> | <p>CSA to replace "any activity prohibited under the Convention" with "any activity prohibited under this section".</p> |
| 7 | <ul style="list-style-type: none"> ● Where a person finds an article he believes to be a chemical weapon, he has to notify a Customs officer or an authorized officer. An authorized officer means a member of the Customs, any police officer of the rank of inspector or above or any police officer with the Explosive Ordinance Disposal Bureau. In the Australian Act, one only needs to notify a constable. ● What is the rationale for creating this offence? No such offence is created in the Biological Weapons Ordinance (Cap. 491) and the Weapons of Mass Destruction (Control of Provision of Services) Ordinance (Cap. 526). ● If such an offence is created, should he have some reasons to believe? | <ul style="list-style-type: none"> ● Will propose a CSA to the effect that a person may notify a police officer. ● This clause is needed to help protect public safety, and to enable the Government to prepare declarations. ● It is modelled on s.13 of the Australian Act. Not aware of any concerns regarding the operation of s.13. ● Would add "reasonably" before the word "believes" and therefore no need to include defence provisions. |

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| 8 | In clause 8(1), why are the words "in all the circumstances of the case, a reasonable person would conclude" added? | To provide an objective test for determining the likelihood of the production of scheduled chemicals. |
| 9 | Are fees prescribed for the application of a permit? Currently, how many operators will be affected by this Bill and will be required to apply for a permit? | Current thinking is not to impose any fee on applications for a permit. The implementation of the Ordinance would not have a material burden on relevant establishments. |
| 10(3) | The Chinese version of 10(3) does not match with the English version. So are clauses 13(2), 15(2), 21(7), (13)(b), 24(2), 38(1) and 43. | Do not consider there is any discrepancy between the two texts in terms of contents. |
| 12 | In clause 12(2)(a)(v), what does "the Organization" stand for? | It has the same meaning as the same term in the Convention, which refers to the Organization for the Prohibition of Chemical Weapons established pursuant to Article VIII of the Convention. |
| 14 | In clause 14(1)(a), is a search warrant required if a Customs officer wants to enter a place where a declared facility is located? | No search warrant is required. |
| 28 | Why is clause 28(2)(i) enacted? In clause 28(2)(c), why are the words "in the performance of duties imposed by this Ordinance" added? | To put it beyond doubt that information obtained may be disclosed if it is permitted by other legislation. |
| 29(2) | Why is the defence provision not applicable to clause 5(e) and (f)? | CSA to provide a defence for a person charged with an offence under clause 5(e) and 5(f). |
| 29(4) | Why is the penalty fixed at a fine of \$100,000 and imprisonment for 6 months? Should a defence provision similar to subsection (2) be provided for an offence under section 7(1)? | The penalty strikes a right balance between the importance of public safety and discharge of an international obligation on one hand, and the burden on the public on the other. |

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| 30 | Under clause 30(1)(b), why is the mens rea element (i.e. intentionally or recklessly" omitted ? | It is appropriate to impose a strict liability for contravention of clause 8(1). |
| 31 | A person who fails to comply with a notice from the Director is liable on conviction to a fine of \$100,000 and to imprisonment for 1 year. Should there be two levels of penalty so that for summary conviction, there will be a lower penalty for minor breach of the offence? | There is no compelling need to provide for two levels of penalty. The court will have the discretion to impose a lower penalty. |
| 35 | In clause 35(1)(a), should the word "wilfully" be added before the word "obstructs"? Any reason for fixing the fine at \$100,000 and to imprisonment for 6 months? | CSA will be proposed to add the word "wilfully". |
| 38 | Why is an appeal made to the Chief Executive? | Similar appeal channel is provided for in s.6 of the Import and Export Ordinance (Cap. 60). |
| Schedule 1 | <ul style="list-style-type: none"> ● Have the Articles of the Convention such as the undertakings by a State Party, the set up of the Organization, the full force and effect of law in Hong Kong? ● In Part VI of the verification Annex, paragraph 5 bis. has not been incorporated in the Bill. There are some typographical errors in the Chinese version (see P. C1350, C1388, C1410 and C1470). | CSA will be proposed to delete Schedule 1. |

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