**For information**

# Paper for Bills Committee on the Dutiable Commodities (Amendment) Bill 2002 Matters arising from the Bills Committee meeting on 9 January 2003

## Purpose

This paper provides the Administration's response to the questions raised by Members at the meeting of the Bills Committee on the Dutiable Commodities (Amendment) Bill 2002 held on 9 January 2003.

## Power in licensing

2. At the Bills Committee meeting, some Members asked for further elaboration on the explanation of "absolute discretion" in paragraph 5 of the Administration's paper for that meeting.

3. The provision of section 7(1)(a) of the Dutiable Commodities Ordinance (Cap. 109) confers "absolute discretion" on the Commissioner of Customs and Excise (CCE) in granting and issuing licences subject to the provisions of the Ordinance. The discretionary power of the Administration in granting licences or giving approval is very common in the laws of Hong Kong. In general, when departments consider application/renewal of licences, they have the needed flexibility and discretion under section 41(1) of the Interpretation and General Clauses Ordinance (Cap. 1) to consider all relevant matters.

4. Nevertheless, as we have pointed out at the Bills Committee meeting, there is no absolute or unfettered discretion in public law. It is a basic principle of administrative law that whenever discretion is conferred by statutory power for public purposes, the exercise of the discretion is subject to legal limits imported under the common law. This principle applies to the "absolute discretion" conferred on the CCE in section 7(1)(a).

5. What is stated in paragraph 4 is a well-developed legal principle which applies to the discretionary power exercisable by the Administration in relation to public purposes no matter whether the discretion is termed as "absolute discretion" or "unfettered discretion" in the statutes. No matter how this discretion is termed, it must always be exercised in reasonable manner, in good faith and upon lawful and relevant grounds of public interest. It is also worth noting that "absolute discretion" is adopted in a good number of existing laws relating to licensing.

6. As we stated in the paper for the last meeting, the above principle of administrative law is explained clearly in p.356–361 of *Wade and Forsyth's Administrative Law 8th Ed.*, which is an authoritative reference book in this area. The relevant extract of the book is attached at **Annex A** for reference.

**CCE to give reasons for refusing to grant, renew or revoke licence**

7. Members suggested at the last meeting that alternative drafting suggestions for providing greater clarity to licence applicants/holders under the Open Bond System (OBS) in respect of the criteria to be taken into account by CCE, and a requirement for CCE to give reasons for refusing to grant or renew or revoking a licence, should be considered.

8. Having considered Members' views, we believe that Members' main concern is whether licence applicants/holders will be informed of the factors which CCE takes into account in making a licensing decision and the reasons on which an application is turned down or a licence is revoked.

9. Having reviewed the drafting of section 8A and the draft CSAs proposed in the paper for the last meeting, we are now prepared to propose an amendment to section 8A by adding a provision requiring CCE to give reasons to the applicant or licensee for his decision in refusing to grant or renew a warehouse licence, or for revoking a warehouse licence under section 7.

10. The reasons to be given by CCE will set out the matters that he is required to take into account under the proposed section 8A in refusing to grant or renew a licence or in revoking a licence, and those reasons may also set out the other relevant matters, if applicable, considered by him. Since CCE's discretionary power is subject to the legal requirements under the administrative law as explained above, the reasons given by him will form the bases of appeal action that may be taken by people aggrieved by the decision of CCE. With the addition of the requirement to give reasons, we propose to retain the references to "any other relevant matter" in the proposed sections 8A(1), (3) and (4), which could cater for any new relevant factors of consideration that may come to light under the constantly evolving circumstances of individual licensing cases. These will facilitate the trade by providing flexibility in the consideration of licence application by CCE. These are also necessary for C&ED to exercise his power to process licence applications/renewals in an effective manner, as it will not be possible to make an exhaustive list of the scenarios and circumstances which differ for individual cases and change from time to time.

11. Provisions which have structures similar to that of the proposed section 8A (i.e. "should take into account" certain criteria and "any other relevant matter") are also found in section 21 of the Electronic Transactions Ordinance (Cap. 553) which concern the recognition of certification authority; sections 12, 12A, 27, 32, 33 and 46C of the Firearms and Ammunition Ordinance (Cap. 238) which concern the licensing/authorisation/approval of range officers and possession of/dealing in arms and ammunition; and sections 7K, 7L and 36AA of the Telecommunications Ordinance (Cap. 553) which concern the consideration of whether a licensee is preventing or restricting competition, is in a dominant position and should be directed to share the use of a facility with another licensee.

12. The draft wording of a requirement for CCE to give reasons can be found in clause 3 of the revised draft CSAs at **Annex B**. We trust this proposal would meet the concerns expressed by Members.

**"Officer deputed by CCE" in proposed section 8A**

13. We have further considered the LegCo Assistant Legal Advisor's comments at the Bills Committee meeting, and are prepared to move a CSA to add "deputed by him in that behalf" after the "officer" in the proposed sections 8A(3) and (4). This will improve the clarity of the provision, by making them consistent with the proposed section 8A(1).

**Proposed Regulation 22AA**

14. We propose to require renewal applications to be submitted no earlier than two months before expiry of a licence because applications which are made too early would contain information which are outdated by the time of actual renewal of licence. To facilitate revenue protection, C&ED will need up-to-date information for making licensing decision, identifying high-risk areas and devising the appropriate audit plan in a timely manner.

15. C&ED's performance pledge is to grant the renewal of a licence within 12 working days from receipt of applications. A licensee who submits his renewal application two months before would have one and a half months before licence expiry to go through any appeal procedures which he might wish to initiate. The proposed section 22AA already provides a flexibility for CCE to consider out-of-period applications. CCE would always consider such applications favourably for trade facilitation if valid reasons are given.

16. There are many examples in the laws of Hong Kong which require a licensee to seek renewal of licence within a specified period before the licence expires. An example is regulation 13 of the Travel Agents Regulations (Cap. 218 sub.leg.), which requires travel agents to apply for renewal of their travel agent's licences not more than two months and not less than one month prior to the expiration of the licence.

**Commencement of the Amendment Ordinance**

17. As explained in paragraphs 2 and 3 of the Administration's letter to the LegCo Assistant Legal Advisor dated 28 February 2002, we intend

to have two different commencement dates for the two different sets of clauses in the Bill, one governing all bonded warehouses (i.e. all clauses in the Bill except clauses 10, 11 and 12), the other governing distilleries (i.e. clauses 10, 11 and 12). This is because the intention is to apply OBS to bonded warehouses except distilleries first (first phase), and to apply the OBS to distilleries six months after the first phase (second phase). The requirements to be repealed in the latter set of provisions are necessary for controlling distilleries under the closed bond system. They would remain in force and would not be repealed until the implementation of the second phase.

18. The Bill was introduced into LegCo in January 2002 and the original target of implementing the first phase was June 2002. By this time, C&ED has, in the past year, fully briefed the trade on the legislative changes proposed and the requirements under OBS. The traders are now fully prepared and have expressed their wish for early implementation of the OBS. We therefore propose to appoint a date for the commencement of the first phase - 1 April 2003; instead of to appoint a commencement date at a later date as originally provided for in the Bill.

19. We propose to move a CSA to stipulate that Amendment Ordinance will commence operation by phases and on 1 April and 1 October 2003 respectively. The related proposed amendments can be found in clause 1 of the draft CSAs at **Annex B**.

**Committee Stage amendments**

20. The whole set of draft CSAs the Administration is prepared to move is provided at **Annex B**.

**Financial Services and the Treasury Bureau/**
**Customs and Excise Department**
**January 2003**

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'*Wednesbury* principles' is a convenient legal 'shorthand' used by lawyers to refer to the classical review by Lord Greene MR in the *Wednesbury* case of the circumstances in which the courts will intervene to quash as being illegal the exercise of administrative discretion.

One of the grounds of review, he added, is 'unreasonableness in the *Wednesbury* sense'. In the same case Lord Bridge referred to the exercise of power 'unreasonably in what, in current legal jargon, is called the "*Wednesbury*" sense'. '*Wednesbury*' is now a common and convenient label indicating the special standard of unreasonableness which has become the criterion for judicial review of administrative discretion. It is explained in that context below, where the key passage from the judgment of Lord Greene MR is set out in full.[66]

In an important ex cathedra statement of the grounds for judicial review Lord Diplock preferred the term 'irrationality', explaining it as 'what can by now be succinctly referred to as *Wednesbury* unreasonableness'.[67] But it is questionable whether 'irrationality' is a better word.[68] Virtually all administrative decisions are rational in the sense that they are made for intelligible reasons, but the question then is whether they measure up to the legal standard of reasonableness. These are two different things, and for legal purposes they are best differentiated by the established terminology. For the sake of clarity as well as consistency it seems best to employ 'unreasonableness' as the key word, as the courts in fact often prefer to do.[69]

The expression 'arbitrary and capricious' is sometimes used as a synonym for 'unreasonable';[70] and in one case this has been transmuted into 'frivolous or vexatious' and 'capricious and vexatious'.[71] But the meaning of all such expressions is necessarily the same, since the true question must always be whether the statutory power has been abused.

### *No unfettered discretion in public law*

The common theme of all the authorities so far mentioned is that the notion of absolute or unfettered discretion is rejected. Statutory power conferred for public

[66] Below, p. 365. Among much literature see [1987] PL 368 (J. Jowell and A. Lester); [1996] PL 59 (Lord Irvine of Lairg); Supperstone and Goudie, *Judicial Review*, 2nd edn., ch. 6 (P. Walker); Sir John Laws in Forsyth and Hare (eds.), *The Golden Metwand*, 185, exploring constitutional and ethical connotations.

[67] *Council of Civil Service Unions* v. *Minister for the Civil Service* [1985] AC 374 at 410. See Appendix 1 for context.

[68] For Lord Donaldson MR's dislike of it see *R.* v. *Devon CC ex p. G* [1989] AC 573 at 577 ('it is widely misunderstood by politicians, both local and national, and even more by their constituents, as casting doubt on the mental capacity of the decision-maker'); and see the criticism by Carnwath J in [1996] PL 244 at 253.

[69] e.g. in the *Nottinghamshire* case, above, and in *R.* v. *Home Secretary ex p. Brind* [1991] 1 AC 696.

[70] e.g. in *Weinberger* v. *Inglis* [1919] AC 606; *Roncarelli* v. *Duplessis* (above). This is the established formula in the United States: see below, n. 78.

[71] *R.* v. *Barnet and Camden Rent Tribunal ex p. Frey Investments Ltd.* [1972] 2 QB 342.

purposes is conferred as it were upon trust, not absolutely—that is to say, it can validly be used only in the right and proper way which Parliament when conferring it is presumed to have intended. Although the Crown's lawyers have argued in numerous cases that unrestricted permissive language confers unfettered discretion, the truth is that, in a system based on the rule of law, unfettered governmental discretion is a contradiction in terms.[72] The real question is whether the discretion is wide or narrow, and where the legal line is to be drawn. For this purpose everything depends upon the true intent and meaning of the empowering Act.

The powers of public authorities are therefore essentially different from those of private persons. A man making his will may, subject to any rights of his dependants, dispose of his property just as he may wish.[73] He may act out of malice or a spirit of revenge, but in law this does not affect his exercise of his power. In the same way a private person has an absolute power to allow whom he likes to use his land, to release a debtor, or, where the law permits, to evict a tenant, regardless of his motives.[74] This is unfettered discretion. But a public authority may do none of these things unless it acts reasonably and in good faith and upon lawful and relevant grounds of public interest. So a city council acted unlawfully when it refused unreasonably to let a local rugby football club use the city's sports ground,[75] though a private owner could of course have refused with impunity. Nor may a local authority arbitrarily release debtors,[76] and if it evicts tenants, even though in accordance with a contract, it must act reasonably and 'within the limits of fair dealing'.[77] The whole conception of unfettered discretion is inappropriate to a public authority, which possesses powers solely in order that it may use them for the public good.

There is nothing paradoxical in the imposition of such legal limits. It would indeed be paradoxical if they were not imposed. Nor is this principle an oddity of British or American law:[78] it is equally prominent in French law.[79] Nor is it a special restriction which fetters only local authorities: it applies no less to ministers of the

[72] A particularly clear decision to this effect is that of Sachs J in *Commissioners of Customs and Excise* v. *Cure and Deeley Ltd.* [1962] 1 QB 340, especially at 366–7.

[73] See *Re Brocklehurst* [1978] Ch. 14.

[74] As in *Chapman* v. *Honig* [1963] 2 QB 502 (tenant gave evidence against landlord, who then evicted him. Lord Denning MR dissented).

[75] *Wheeler* v. *Leicester CC* [1985] AC 1054, explained below, p. 392.

[76] *A.-G.* v. *Tynemouth Union* [1930] 1 Ch. 616.

[77] *Bristol District Council* v. *Clark* [1975] 1 WLR 1443; *Cannock Chase DC* v. *Kelly* [1978] 1 WLR 1, holding that a local authority is under a stricter obligation than a private landlord but need not explain its reasons: *Sevenoaks DC* v. *Emmett* (1979) 39 P & CR 404 (from which the quotation comes). See also *Webster* v. *Auckland Harbour Board* [1983] NZLR 646; *West Glamorgan CC* v. *Rafferty* [1987] 1 WLR 457 (unlawful eviction of gipsies).

[78] In the United States s. 10(3) of the federal Administrative Procedure Act of 1946, in this respect restating the previous law, requires the court to set aside decisions which are arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. See Schwartz and Wade, *Legal Control of Government*, 262, 337.

[79] It is well stated in Vedel and Delvolvé, *Droit administratif*, 12th edn., ii. 328: 'En droit privé . . . un particulier peut agir par raison, par intérêt, par générosité, par caprice; le contrôle

Crown. Nor is it confined to the sphere of administration: it operates wherever discretion is given for some public purpose, for example where a judge has a discretion to order jury trial.[81] It is only where powers are given for the personal benefit of the person empowered that the discretion is absolute. Plainly this can have no application in public law.

For the same reasons there should in principle be no such thing as unreviewable administrative discretion, which should be just as much a contradiction in terms as unfettered discretion. The question which has to be asked is what is the scope of judicial review, and in a few special cases the scope for the review of discretionary decisions may be minimal.[82] It remains axiomatic that all discretion is capable of abuse, and that legal limits to every power are to be found somewhere.[83]

Before analysing this principle, which has many facets, it will be well to look now at a group of classic decisions which will show its general character, and which come from the period when the courts were breaking through the earlier boundaries and vigorously extending judicial review. These examples concern ministerial approval, the powers of the police and the revocation of licences. They are all illustrations of the rebellion by the judges against the idea of unfettered discretion.

### *Judicial rejection of unfettered discretion*

In two strong and almost simultaneous decisions of 1968 the House of Lords and the Court of Appeal boldly applied the law as so often laid down. In one, the House of Lords asserted legal control over the allegedly absolute discretion of the Minister of Agriculture and held that he had acted unlawfully. In the other, related in the next section, the Court of Appeal decided that they had power to condemn discriminatory action by the police in enforcing the criminal law, a species of discretion which is particularly difficult to challenge.

du juge ne s'exercera qu'à l'encontre d'un but illicite ou immoral. Au contraire, il n'existe pas en droit administratif de principe d'autonomie de la volonté. La volonté de l'Administration n'est pas autonome; l'Administration ne doit se décider que pour des raisons de fait ou de droit ayant existence objective réelle et adéquates à l'acte fait.'

[80] e.g. *Commissioners of Customs and Excise* v. *Cure and Deeley Ltd.* [1962] 1 QB 340; *Padfield* v. *Minister of Agriculture, Fisheries and Food* (below); *Congreve* v. *Home Office*, below, p. 364; and see the *Tameside* case, below, p. 421.

[81] *Ward* v. *James* [1966] 1 QB 273. For rejection of 'absolute discretion' see at 292 (Lord Denning MR). Similar law governs the discretionary powers of professional bodies and trustees: see e.g. *R.* v. *Askew* (1768) 4 Burr. 2186 at 2189 (admission to College of Physicians); *Re Baden's Deed Trusts* [1971] AC 424 at 456.

[82] As in the case of some prerogative powers (above, p. 350).

[83] Most of the above section, as it stood in the 6th edition, was approved by the House of Lords in *R.* v. *Tower Hamlets LBC ex p. Chetnik Developments Ltd.* [1988] AC 858 at 872.

In *Padfield* v. *Minister of Agriculture, Fisheries and Food*[84] the House of Lords had to consider a dispute under the milk marketing scheme established under the Agricultural Marketing Act 1958. The Act provided for a committee of investigation which was to consider and report on certain kinds of complaint 'if the Minister in any case so directs'. The milk producers of the region close to London complained that the differential element in the price fixed for their milk by the Milk Marketing Board was too low, since it ought to reflect the increased cost of transport from other regions but had not been revised since the Second World War. But since that region was in a minority on the Board, and any increase would be at the expense of the other regions, the Board could not be persuaded to act. The minister had power, if the committee of investigation so recommended, to make an order overriding the Board. But he refused to direct the committee to act, saying that since the producers were represented on the board they should be content with 'the normal democratic machinery' of the marketing scheme. His officials also added, incautiously, that if the committee made a favourable report the minister might be expected to take action on it. The whole object of the minister's overriding power, however, was that he might correct the 'normal democratic machinery' where necessary; and the suggestion that he might be embarrassed by a favourable report was, as Lord Reid said, 'plainly a bad reason'. It was held that where there was a relevant and substantial complaint the minister had a duty as well as a power and that he could not use his discretion to frustrate the policy of the Act. Otherwise he would be rendering nugatory a safeguard provided by the Act and depriving the producers of a remedy which Parliament intended them to have. Mandamus was therefore granted to compel the minister to act as the law required.

Lord Reid expressly rejected 'the unreasonable proposition that it must be all or nothing—either no discretion at all or an unfettered discretion'. He said:

> Parliament must have conferred the discretion with the intention that it should be used to promote the policy and objects of the Act; the policy and objects of the Act must be determined by construing the Act as a whole and construction is always a matter of law for the court. In a matter of this kind it is not possible to draw a hard and fast line, but if the Minister, by reason of his having misconstrued the Act or for any other reason, so uses his discretion as to thwart or run counter to the policy and objects of the Act, then our law would be very defective if persons aggrieved were not entitled to the protection of the court.

Lord Upjohn said that the minister's stated reasons showed a complete misapprehension of his duties, and were all bad in law. The scarcely veiled allusion to fear of parliamentary trouble was, in particular, a political reason which was quite extraneous and inadmissible. One of the fundamental matters confounding the minister's attitude was his claim to 'unfettered' discretion:

[84] [1968] AC 997.

First, the adjective nowhere appears in section 19 and is an unauthorised gloss by the Minister. Secondly, even if the section did contain that adjective I doubt if it would make any difference in law to his powers, save to emphasise what he has already, namely that acting lawfully he has a power of decision which cannot be controlled by the courts; it is unfettered. But the use of that adjective, even in an Act of Parliament, can do nothing to unfetter the control which the judiciary have over the executive, namely that in exercising their powers the latter must act lawfully and that is a matter to be determined by looking at the Act and its scope and object in conferring a discretion upon the Minister rather than by the use of adjectives.

Having thus decisively rejected the notion of unfettered discretion, at the initial stage, the House of Lords went on to indicate that the minister might in the end decline to implement the committee's report, and that the assessment of the balance of public interest would be for him alone. Lord Reid said:

He may disagree with the view of the committee as to public interest, and, if he thinks that there are other public interests which outweigh the public interest that justice should be done to the complainers, he would be not only entitled but bound to refuse to take action. Whether he takes action or not, he may be criticised and held accountable to Parliament but the court cannot interfere.

In the end, perhaps predictably, the committee reported in favour of the complainants, but the minister refused to take action. No doubt even his ultimate discretion could be abused unlawfully if he could be shown to have acted on inadmissible grounds, e.g. from personal spite. But the distinction drawn by the House of Lords well shows how a statute which confers a variety of discretionary powers may confer wider or narrower discretion according to the context and the general scheme of the Act. Translated into terms of the traditional rule that powers must be exercised reasonably, this means that the standard of reasonableness varies with the situation. The pitfalls which must always be avoided are those of literal verbal interpretation and of rigid standards.

The importance of the House of Lords' decision was underlined by Lord Denning MR:[85]

The discretion of a statutory body is never unfettered. It is a discretion which is to be exercised according to law. That means at least this: the statutory body must be guided by relevant considerations and not by irrelevant. If its decision is influenced by extraneous considerations which it ought not to have taken into account, then the decision cannot stand. No matter that the statutory body may have acted in good faith; nevertheless the decision will be set aside. That is established by *Padfield* v. *Minister of Agriculture, Fisheries and Food* which is a landmark in modern administrative law.

Another potentially significant aspect of the case was that the House of Lords

[85] *Breen* v. *Amalgamated Engineering Union* [1971] 2 QB 175 at 190; see similarly *Secretary of State for Employment* v. *ASLEF* (No. 2) [1972] 2 QB 455 at 493; *Secretary of State for Education and Science* v. *Tameside Metropolitan Borough Council* [1977] AC 1014.

refused to accept that the court's control could be evaded by omitting to specify the grounds of decision.[86]

Two particularly striking examples of a minister's discretionary power being fettered by the policy of an Act of Parliament are the *Laker Airways* case and the *Criminal Injuries Compensation Board* case. These are explained below.[87]

The Privy Council has held that the discretion of the Malaysian head of state to revoke a proclamation of emergency is not entirely unfettered, and that failure to revoke it after he no longer considers it to be necessary would be an abuse of his discretion.[88]

### *Discretionary police powers*

The discretion possessed by the police in enforcing the criminal law was considered by the Court of Appeal in a case in which the applicant complained, merely as a citizen, that the police had adopted a policy of not prosecuting London gaming clubs for illegal forms of gaming.[89] The Commissioner's confidential instructions, when revealed to the court, substantially bore out the complaint, being based on the uncertainty of the law and the expense and manpower required to keep the clubs under observation. But while the case was pending the law was clarified, fresh instructions were issued, and the Commissioner undertook to withdraw the former instructions. The court therefore found no occasion to intervene. But they made it clear that the Commissioner was not an entirely free agent as his counsel contended. He had a legal duty to the public to enforce the law and the court could intervene by mandamus if, for example, he made it a rule not to prosecute housebreakers. On the other hand the court would not question his discretion when reasonably exercised, e.g. in not prosecuting offenders who for some special reason were not blameworthy in the way contemplated by the Act creating the offence. The court criticised the police policy of suspending observation of gaming clubs, as being clearly contrary to Parliament's intentions; and had it not been changed, they would have been disposed to intervene. But the police have a wide discretion in their operational decisions and their choice of methods, for instance if they call off the pursuit of robbers in a disturbed area because of concern for the safety of their officers,[90] or if their resources of manpower and finance are inadequate for providing continuous protection to exporters of live animals from attacks and obstruction by mobs of protesters.[91]

[86] See below, p. 387.

[87] p. 388.

[88] *Teh Cheng Poh* v. *Public Prosecutor, Malaysia* [1980] AC 458, holding that the duty would be enforceable by mandamus to the responsible ministers.

[89] *R.* v. *Metropolitan Police Commissioner ex p. Blackburn* [1968] 2 QB 118. See also *Adams* v. *Metropolitan Police Cmr.* [1980] RTR 289.

[90] *R.* v. *Oxford ex p. Levey*, The Times, 1 November 1986.

[91] *R.* v. *Chief Constable of Sussex ex p. International Trader's Ferry Ltd.* [1999] 2 AC 418. For this case see below, p. 384.

DRAFT

# DUTIABLE COMMODITIES (AMENDMENT) BILL 2002

## COMMITTEE STAGE

Amendments to be moved by the Secretary for Financial Services and the Treasury

| Clause | Amendment Proposed |
|---|---|
| 1 | By deleting subclause (2) and substituting –<br>"(2) Subject to subsection (3), this Ordinance shall come into operation on 1 April 2003.<br>(3) Sections 10, 11 and 12 shall come into operation on 1 October 2003.". |
| 3 | In the proposed section 8A –<br>(a) in subsections (3) and (4), by adding "deputed by him in that behalf" after "officer";<br>(b) by adding –<br>"(4A) The Commissioner or the officer mentioned in subsection (1) or (3), as the case may be, shall give reasons in writing to the applicant or |

licensee, as the case may be, for refusing an application to grant or renew a licence in respect of any premises, or for revoking a licence granted in respect of any premises, under section 7.".

6 By deleting paragraph (b).

20 (a) In the proposed regulation 98A(1) -

(i) in paragraph (a), by deleting "he issues" and substituting "is issued";

(ii) in paragraph (b) -

(A) by deleting "he";

(B) in subparagraph (i), by deleting "prepares" and substituting "is prepared";

(C) in subparagraph (ii), by deleting "receives" and substituting "is received".

(b) In the proposed regulation 98A(2), in the proposed definition of "relevant document", by deleting everything after "that" and substituting -

"-

(a) is issued, prepared or received (as the case may be) in the course of

the business of the warehouse; and

(b) relates to –

(i) the movement of goods into and out of the warehouse, including delivery orders, goods receipt notes, invoices, credit notes, debit notes, bills of lading or air waybills and air consignment notes; or

(ii) payments made and received in the course of the business of the warehouse, including ledgers, statements of accounts, profit and loss accounts, balance sheets and auditor's reports.".

(c) By deleting the proposed regulation 98A(3).