

Hazardous Chemicals Control Bill

The Administration's Responses to Comments from Assistant Legal Adviser in her Letter of 5 December 2006

Section 10(4)(a)(i)

There is no inconsistency between the English text and the Chinese text of clause 10 (including clause 10(4)(a)(i)) (see paragraphs 2 and 3 of the Administration's Responses to Comments from Assistant Legal Adviser in her letter of 12 June 2006). In gist, it is appropriate and correct to use the expression "may not" in clause 10(4); it is also correct to render "may not" in that provision as "不得" in the corresponding Chinese text. Examples of using the expression "may not" in existing legislation to abridge a right, privilege or power can be found in section 7 of the Rehabilitation Centres Ordinance (Cap. 567), section 7 of the Companies Ordinance (Cap. 32), Order 80, rule 2 of the High Court Rules (Cap 4, sub. leg. A) and rule 57 of the Rules of Procedure of the Legislative Council of the Hong Kong Special Administrative Region (Cap. 2501).

Sections 10(3) and (4), 11(2) and (3), 13(2) and (3), 19(1)(d), 22(2) and (3), 23(2) and (3) and 27(1)

2. Please see paragraphs 2 to 4 of the Administration's responses to list of follow-up actions arising from the discussion at the meeting on 20 November 2006 and 6 December 2006.

Section 41(a) and 41(b)

3. The wording of section 41(a) and 41(b) is similar to that of section 33(2) of the Pharmacy and Poisons Ordinance (Cap 138). These sections seek to impose criminal liability on the employer so as to make the legislation effective. Negligence is not an ingredient of the offences of the Bill.

Binding Effect – Section 4

4. The policy intent is that the Government and public officers in the course of carrying out duties in the service of the Government will not be held criminally liable for offences under the Bill. This is in line with the Government's legal policy.

Clause 26 and Clause 44

5. With Clause 44, it is irrelevant as to whether a person actually receives a notice under section 44. As long as the Director of Environmental Protection adopts the mode of service prescribed by the Bill, the notice will be regarded as having been duly served. That said, it is always open to the defence to argue that the Director has failed to comply with Clause 44 and hence the deeming provision could not be applied.

Environmental Protection Department
January 2007