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Panel on Food Safety and Environmental Hygiene

**Background brief prepared by the Legislative Council Secretariat
for the meeting on 12 July 2011**

Pesticides (Amendment) Bill

Purpose

This paper gives an account of the past discussions by the Panel on Food Safety and Environmental Hygiene ("the Panel") on the Administration's proposed amendments to the Pesticides Ordinance (Cap. 133).

Background

Regulation of the use of pesticides

2. Pesticides are commonly applied in domestic premises and public places to control pests, as well as in agricultural production to improve yield and quality. At present, pesticides that are available in Hong Kong are registered under the Pesticides Ordinance with the Agriculture, Fisheries and Conservation Department ("AFCD"), which will examine the pesticides and register the product by their active ingredients. Activities related to the trade of pesticides are governed by a dual-licensing system under the Pesticides Ordinance and the Import and Export Ordinance (Cap. 60). The former empowers the Director of Agriculture, Fisheries and Conservation ("DAFC") to register pesticides and to regulate their manufacture, import, supply and sale through licensing control. The latter empowers the Director-General of Trade and Industry to control the import and export of pesticides by licence.

3. Pesticides are registered only on active ingredients. On registration, they are classified either as Part I pesticides (i.e. in a ready-to-use form for

domestic applications), or as Part II pesticides (i.e. all other pesticides including those in a concentrate form for professional and horticultural applications). The system allows pesticide traders to put on the market any pesticide products without further scrutiny by AFCD so long as the active ingredients are registered.

Problems with the present pesticide control system

4. According to the Administration, the main problems with the present pesticide control system are as follows -

(a) Limited control over inert ingredients and brand name

The inert ingredients of pesticides available on the market are not subject to registration. Pesticides with the same active ingredients can vary a lot in effectiveness and toxicity owing to the differences in the inert ingredients used. Products with similar names may also have very different registered active ingredients and combination of inert ingredients. These may confuse consumers as to the nature and toxicity of the pesticides they use and complicate medical diagnosis in the event of medical emergency.

(b) Limited control on the use and availability of pesticides

The existing legislation does not regulate the use of pesticides or restrict access to hazardous registered pesticides. Any member of the public may get access to registered pesticides that are not formulated as "ready-to-use" or for household use, such as agricultural purposes or professional pest control purposes.

(c) Fulfillment of obligations under international conventions

The Central Peoples' Government has ratified two international conventions, namely, the Stockholm Convention on Persistent Organic Pollutants ("the Stockholm Convention") and the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade ("the Rotterdam Convention"), to deal with the control of hazardous pesticides. As the two Conventions require control of transshipment and transit operations of the pesticides identified for regulation, the Administration intends to incorporate the necessary measures in the Pesticides Ordinance to fulfill the convention requirements.

Past discussions by the Panel

5. At its meeting on 13 February 2007, the Panel was briefed on the Administration's proposals to enhance the control of pesticides.

Proposals to improve the control of pesticides

6. To improve the control of pesticides, the Panel noted the following proposals put forward by the Administration to amend the Pesticides Ordinance and its subsidiary legislation -

- (a) Establishment of a four-part registration system for pesticides

The Administration proposed to replace the "active ingredient" approach with a "product" approach by restructuring the existing Pesticide Register into four parts (i.e. Parts I, II, III and IV) to reflect differences in toxicity, persistence, use pattern, and potential environmental and health hazards of pesticide products.

- (b) Enhanced control on product labelling

Under the proposed registration system, the safety of products and the accuracy of labels of all pesticide products would be assessed before they were registered and placed on the market.

- (c) Licensing of pesticide application service providers

The Administration proposed to introduce a licensing system for any pesticide application service provider who applied registered pesticides in public places or in private places in exchange for compensation, which might include but not limited to pest control companies and companies that applied pesticides during their course of business. The licensee should nominate a "responsible person" who had been registered as a pesticide applicator with AFCD to help oversee the management and operation of the pesticide application services.

- (d) Registration of pesticide applicators

The Administration proposed that pesticide applicators should complete an approved training course provided by local training institutes and be registered. Alternatively, a candidate might gain registration through seeking accreditation for the qualifications

acquired prior to the introduction of the amendment legislation or sitting an assessment imposed by DAFC. Pesticide application service providers would only be permitted to employ registered pesticide applicators.

- (e) Restricting the accessibility of restricted pesticides to trained individuals

Part III and Part IV pesticides under the proposed four-part registration scheme would be regarded as restricted pesticides and could only be made available to licensed pesticide application service providers and authorized individuals who had completed the necessary training. This proposal mainly catered for amateur gardeners and farmers who would apply restricted agricultural pesticides on their own premises or for the purpose of agricultural production. AFCD would offer training to farmers as an extension to the existing training programmes on pesticide application.

- (f) Control of transshipment and transit operations of pesticides regulated by the international conventions

The Administration proposed to require shipping companies or carriers to obtain a permit under the Pesticides Ordinance to import, export and tranship pesticides governed by the Stockholm Convention and the Rotterdam Convention, and for transit operations of the pesticides listed in the Stockholm Convention.

- (g) Deregulation of the retail of pesticide products for domestic application

To streamline control procedures without compromising public safety, the Administration proposed to repeal the current licensing requirement for pesticide retailers who only sold Part I domestic pesticides in a ready-to-use form.

- (h) Introduction of new permit system to facilitate trading of currently registered pesticides

The Administration proposed to introduce a new type of permit to allow traders to trade more than one type of pesticides that were presently registered but without brand names and their registration status would be affected by the change in registration system.

(i) Updating fines and charges

The Administration would update the charges taking into account the inflation rates and consider increasing the fines under the Pesticides Ordinance.

(j) Transitional arrangement

A transitional period of six months was proposed to re-register pesticides on a product basis and for all trading activities which were already in operation prior to the enactment of the amendment legislation. A two-year grace period would also be provided to license pesticide application service providers, to register pesticide applicators, and to authorize individuals for getting access to restricted pesticides. The provisions that concerned the Stockholm Convention and the Rotterdam Convention would come into immediate effect upon the passage of the amendment legislation.

Legislative timetable

7. Noting that the Stockholm Convention had been extended to the Hong Kong Special Administrative Region since August 2004 and a two-year grace period would be provided for the licensing of pesticide application service providers and the registration of pesticide applicators, members considered that it had taken too long for the Administration to carry out the necessary legislative work for fulfilling the convention requirements. Members called for the early introduction of the legislative proposals.

8. The Administration advised members that the provisions that concerned the Stockholm Convention and the Rotterdam Convention would come into immediate effect upon the enactment of the amendment legislation. As regards the proposed provision of a two-year grace period, there were about 3 000 pesticide workers in the trade and about 1 000 of them had already obtained the necessary qualifications for registration. The remaining 2 000 pesticide workers would be required to complete approved training courses provided by local training institutes prior to registration. The Administration therefore considered it reasonable to allow a two-year grace period to license pesticide application service providers and to register pesticide applicators.

New registration systems for pesticide products and pesticide workers

9. On whether the Administration had made any international reference when working out the proposed four-part registration system for pesticides and

the registration system of pesticide applicators, the Administration advised members that it had made reference to the relevant legislation in the United Kingdom, the United States, Canada and Australia in considering the proposals of amending the existing legislation. In these overseas countries, pesticide application service providers and pesticide applicators were subject to regulatory control under the law whereby pesticide application service providers were required to obtain licences and pesticide applicators to be registered.

10. Members raised concern that some members of the public might unknowingly breach the law when they brought pesticides that were registered as restricted under Part III and Part IV of the proposed registration scheme from the Mainland into Hong Kong. The Administration explained that even under the existing legislation, an individual without a licence/permit importing into Hong Kong or selling any pesticide or having in possession of any unregistered pesticide without a permit would breach the laws and would be liable on conviction to fines and imprisonment.

11. Members sought information on the time required for the remaining 2 000 pesticide workers referred to in paragraph 8 above to be qualified for registration under the new registration system and the fines and charges for contravening the provisions under the amendment legislation. According to the Administration, the training courses presently provided by local training institutes were of about 20 hours' duration. It was estimated that it would take about two years for the remaining 2 000 pesticide workers to be qualified for registration. As regards the penalties for breaching the provision on regulating the use of restricted pesticides, the Administration's preliminary thinking was that any person who applied pesticides in public places or in private places in exchange for compensation without being registered would be liable on conviction to a maximum fine of \$100 000 and to an imprisonment for one year.

Labelling of pesticide products

12. Members were concerned whether the Administration would tighten up the labelling requirements of the pesticide products when amending the existing legislation and whether there would be sufficient time for the trade to fulfill the labelling requirement prior to the enactment of the amendment legislation. The Administration explained that there was a provision on the labelling of pesticide products under the existing legislation. Under the proposed new control regime, when an applicant submitted an application for registration of a pesticide product, the applicant would be required to provide information on toxicity, persistence, use pattern, health hazards of the pesticide product and also the label to be affixed on the container or box of the product.

13. Regarding the definition of the toxicity level of pesticide products, members noted that the Administration would make reference to the toxicity levels as set by the World Health Organization in defining the toxicity level of a particular pesticide product.

Consultation on the proposals

14. Members expressed grave concern about the consultation on the proposals. According to the Administration, the representatives of the major trade associations were invited to a briefing on the proposals for amending the legislation in February 2007. They were generally supportive of the Administration's proposals to regulate the control of use of pesticides despite different views amongst themselves in certain aspects of the proposals. The Administration was open-minded about the views collected during the consultation exercise, and assured members that it would take into account the views given by the trade and the public and strike a balance of interests between them.

Relevant papers

15. A list of the relevant papers on the Legislative Council website is in the **Appendix**.

Council Business Division 2
Legislative Council Secretariat
6 July 2011

Relevant papers on the Pesticides Ordinance (Cap. 133)

Meeting	Date of meeting	Paper
Panel on Food Safety and Environmental Hygiene	13.2.2007 (Item IV)	Agenda Minutes CB(2)1079/06-07(01)

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