

立法會
Legislative Council

LC Paper No. CB(2)863/12-13
(These minutes have been seen by
the Administration)

Ref : CB2/BC/1/12

**Bills Committee on
Pesticides (Amendment) Bill 2013**

**Minutes of the first meeting
held on Tuesday, 26 February 2013, at 10:45 am
in Conference Room 2A of the Legislative Council Complex**

Members present : Hon SIN Chung-kai, SBS, JP (Chairman)
Hon Tommy CHEUNG Yu-yan, SBS, JP
Hon Alan LEONG Kah-kit, SC
Hon Albert CHAN Wai-yip
Hon Steven HO Chun-yin

Member absent : Dr Hon Helena WONG Pik-wan

Public Officers attending : Item II

Mr Philip CHAN, JP
Deputy Secretary for Food and Health (Food)2

Miss Hinny LAM
Principal Assistant Secretary for Food and Health
(Food)3

Miss Jeanne CHENG
Assistant Secretary for Food and Health (Food)1

Dr LEUNG Siu-fai, JP
Deputy Director of Agriculture, Fisheries and
Conservation

Action

Mr Clive LAU
Acting Assistant Director (Inspection & Quarantine)
Agriculture, Fisheries and Conservation Department

Ms Carmen CHU
Senior Government Counsel
Department of Justice

Clerk in attendance : Ms Amy YU
Chief Council Secretary (2)6

Staff in attendance : Miss Carrie WONG
Assistant Legal Adviser 4

Mr Jove CHAN
Senior Council Secretary (2)6

Miss Meisy KWOK
Legislative Assistant (2)6

I. Election of Chairman

Mr Tommy CHEUNG, the member present who had the highest precedence in the Council, presided over the election of Chairman.

2. Mr SIN Chung-kai was nominated by Mr Steven HO and the nomination was seconded by Mr Albert CHAN. There being no other nomination, Mr SIN Chung-kai was elected Chairman of the Bills Committee.

II. Meeting with the Administration

[LC Paper Nos. CB(3)328/12-13, FH CR2/3231/03, LS20/12-13, CB(2)689/12-13(02) to (05)]

3. The Bills Committee deliberated (index of proceedings attached at **Annex**).

4. The Bills Committee requested the Administration to provide the following information -

Action

- (a) a list of the pesticides that were sold, supplied or used in Hong Kong and relevant data on their usage such as number of permits and licences granted and trade volume; whether or not these pesticides were covered by the Stockholm Convention on Persistent Organic Pollutants and the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade ("the two Conventions"); and for those pesticides (such as Paraquat, also known as Gramoxone) which were not covered by the two Conventions, how they were regulated under the existing laws and whether the Administration had any plan to step up their regulation;
- (b) how the proposed amendments in the Bill would bring about improvements in the regulation of pesticides in Hong Kong; and measures to be taken by the Administration to tackle the problems on the regulation of pesticides which were not addressed by the Bill; and
- (c) how the system of regulation of pesticides in Hong Kong compared with that in Vancouver, Canada, and whether consideration would be given to the suggestion of adopting a more stringent approach in regulating the use of pesticides in residential areas.

5. The Bills Committee agreed to invite public views on the Bill. The Bills Committee further agreed that a general notice to invite public views be posted on the Legislative Council Website and invitation letters be sent to the five organizations which the Administration had individually consulted on the proposed legislative amendments. The Clerk would further consult members on other relevant organizations to be invited.

III. Any other business

Date of second and third meetings

6. Members agreed that the second meeting would be held on 15 March 2013, at 9:00 am, to receive views from deputations and the third meeting on 15 April 2013, at 10:45 am, to continue discussion with the Administration.

7. There being no other business, the meeting ended at 12:10 pm.

Council Business Division 2
Legislative Council Secretariat
26 March 2013

**Proceedings of the first meeting of the
Bills Committee on Pesticides (Amendment) Bill 2013
on Tuesday, 26 February 2013, at 10:45 am
in Conference Room 2A of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action required
000114 – 000244	Mr Tommy CHEUNG Mr Steven HO Mr SIN Chung-kai Mr Albert CHAN	Election of Chairman	
000245 – 002148	Chairman Admin	Briefing on the Pesticides (Amendment) Bill 2013 ("the Bill") by the Administration (Powerpoint presentation materials: LC Paper No. CB(2)708/12-13(01))	
002149 – 003700	Chairman Mr Albert CHAN Admin	<p>Mr Albert CHAN expressed concern that commonly used pesticides such as Paraquat were not covered by the amendments under the Bill. He pointed out that the common use of herbicides such as Paraquat in the vicinity of rural residential areas and kindergartens posed health hazards to residents, especially young children and the elderly, and was concerned whether the Bill could address the existing problems and loopholes in the regulation of pesticides in Hong Kong.</p> <p>Mr Albert CHAN sought information on the reasons for not including the regulation of Paraquat under the Bill; and the pesticides commonly used in Hong Kong and whether or not they were covered under the Bill.</p> <p>The Administration responded that -</p> <p>(a) at present, the import, supply, sale and manufacture of pesticides had already been regulated under the existing Pesticides Ordinance ("the Ordinance") (Cap. 133) through a registration system as well as a licence and permit system. The Agriculture, Fisheries and Conservation Department ("AFCD") categorized pesticides in accordance with the World Health Organization's ("WHO") recommendations and would impose restrictions on the formulation and concentration of the pesticides for retail sale. Pesticides categorized as extremely hazardous by WHO would not be allowed for registration. For unregistered pesticides, the Ordinance prohibited their import, manufacture, sale, supply or possession except under a permit issued by the Director of Agriculture, Fisheries and Conservation ("DAFC");</p>	

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		<p>(b) currently, Paraquat was a registered pesticide in Hong Kong. To ensure public safety, AFCD had imposed restrictions on the concentration and formulation of the pesticide when approving its registration. Paraquat must be diluted before use and its toxicity would decrease significantly after dilution. Furthermore, a stenching agent, a warning colourant and an emetic agent must be added to Paraquat to prevent accidental intake. The pesticide would be regarded as safe if it was used in accordance with the label instructions; and</p> <p>(c) that said, the Administration was aware that there was concern about the wide use of Paraquat and its impact on public health. AFCD had therefore conducted a review on Paraquat and had planned to gradually phase out its registration. As Paraquat was an effective herbicide and had played a major role in local agriculture, land management and mosquito control, AFCD would discuss with the relevant trades on the timetable for phasing out its registration with a view to maintaining a balance between the interests of the trade and the public.</p>	
003701 – 004223	Chairman Mr Tommy CHEUNG Admin	<p>Mr Tommy CHEUNG suggested inviting deputations to give views on the Bill.</p> <p>In response to Mr Tommy CHEUNG's enquiry on the implementation of the Stockholm Convention on Persistent Organic Pollutants ("Stockholm Convention") and the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (collectively known as "the two Conventions") in the People's Republic of China ("PRC"), the Administration advised that PRC was one of the founding members of the Stockholm Convention and had implemented the requirements of the two Conventions.</p> <p>Mr Tommy CHEUNG considered it unfair that the Government and public officers acting in official capacity were expressly exempted from any criminal liability under the Bill, while private operators, which were mainly small-sized enterprises, and their employees were not. He indicated intention to propose amendments to the relevant provisions of the Bill.</p>	

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		<p>The Administration responded that -</p> <ul style="list-style-type: none"> (a) Government agencies in general should be governed by the same level of standards as those applicable to private operators in the regulation of pesticides. Hence, the Administration proposed that the Ordinance as amended by the Bill should apply to the Government; (b) while the Bill proposed that the Government and public officers acting in official capacity would be exempted from criminal liability, an administrative mechanism would be put in place to ensure public officers' compliance with the statutory requirements; and (c) the same approach was adopted in the Hazardous Chemicals Control Ordinance (Cap. 595), which was enacted for the purpose of complying with the requirements of the two Conventions in respect of hazardous chemicals. 	
004224 – 005207	Chairman Mr Steven HO Admin	<p>Mr Steven HO raised the following questions -</p> <ul style="list-style-type: none"> (a) whether civil proceedings could be instituted against the Government and public officers concerned for contravention of the Ordinance; (b) details of the inspection and investigation powers under the Ordinance proposed to be given to DAFC for the purpose of implementing the requirements of the two Conventions; and (c) reasons for removing the ribbing requirement on pesticide containers and how the blind could distinguish pesticide products after such requirement was removed. <p>The Administration responded that -</p> <ul style="list-style-type: none"> (a) the proposed new section 3A only sought to exempt the Government and public officers acting in official capacity from criminal liability. As regards civil liability, the proposed new section 19B provided that public officers would not be personally liable for any act done or omitted to be done in exercising powers or performing functions under the Ordinance if the act or omission was done in good faith. The Government, however, had to bear any civil liability arising from such act or omission; 	

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		<p>(b) the inspection and investigation powers exercisable by DAFC referred mainly to the powers to conduct inspection of relevant premises to examine the pesticides therein, inspect the relevant licences or permits and conduct investigation to determine whether an offence had been committed under the Ordinance; and</p> <p>(c) as ribs and grooves had become common features of food containers, the ribbing requirement no longer served any useful purpose in distinguishing pesticide products from non-pesticide ones. Removal of the obsolete ribbing requirement would alleviate unnecessary burden on traders.</p>	
005208 – 005441	<p>Chairman Mr Albert CHAN Admin</p>	<p>In response to the request of Mr Albert CHAN and the Chairman, the Administration undertook to provide written information on the following –</p> <p>(a) a list of the pesticides that were sold, supplied or used in Hong Kong and relevant data on their usage such as number of permits and licences granted and trade volume;</p> <p>(b) whether or not these pesticides were covered by the two Conventions;</p> <p>(c) for those pesticides (such as Paraquat) which were not covered by the two Conventions, how they were regulated under the existing laws and whether the Administration had any plan to step up their regulation; and</p> <p>(d) how the proposed amendments in the Bill would bring about improvements in the regulation of pesticides in Hong Kong; and measures to be taken by the Administration to tackle the problems on the regulation of pesticides which were not addressed by the Bill.</p>	Admin
005442 – 010604	<p>Chairman Mr Alan LEONG Admin</p>	<p>Mr Alan LEONG considered that the Administration should further explain the rationale for exempting the Government and public officers from criminal liability for offences under section 17 of the Ordinance.</p> <p>Mr Alan LEONG enquired about the rationale for replacing the existing section 15(3) with the proposed new section 15A.</p>	Admin

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		<p>The Administration explained that -</p> <ul style="list-style-type: none"> (a) the proposed new section 15A sought to confine the existing power of warrantless entry for routine inspection by authorized officers under section 15(3) of relevant premises (i.e. any premises or place (whether domestic or not) the address of which was stated in an application for a licence or permit under the Pesticides Regulations or any other premises or place (other than domestic premises)), with a view to enhancing protection of privacy of a person at his home; (b) the power of warrantless entry under the new proposed section 15A was intended for routine inspection of relevant premises. Unlike section 15(1) which provided for the powers of entry and search by warrant, the proposed new section 15A did not provide for the use of force if necessary to enter the premises; and (c) the timing of inspection without a warrant was proposed to be amended from "any time between the hours of 9 a.m. and 6 p.m." under the existing section 15(3) to "at any reasonable time" under the new proposed section 15A, so as to provide greater flexibility in the light of operational needs. 	
010605 – 011257	Chairman Mr Steven HO Admin	<p>Mr Steven HO sought clarification on the meaning of "produced incidentally in the course of the manufacture of another thing" in the proposed section 2(3).</p> <p>The Administration explained that in the manufacturing process of a non-pesticide product, a substance equivalent to a scheduled pesticide or any other unregistered pesticide might be incidentally produced. For the avoidance of doubt, the proposed section 2(3) provided expressly that such substance would not be regarded as having been manufactured as a pesticide.</p> <p>With regard to the proposed section 2(4) on the definition of transshipment of pesticides, Mr Steven HO enquired whether there was any time limit between period of the removal of a pesticide from the ship, vehicle, train or aircraft in which it was imported into Hong Kong and its return or transfer to the same or another ship, vehicle, train or aircraft before being exported from Hong Kong.</p>	

Time marker	Speaker	Subject(s)	Action required
		suggestion of adopting a more stringent approach in regulating the use of pesticides in residential areas.	
012213 – 012601	Chairman	Invitation for views on the Bill Date of subsequent meetings	

Council Business Division 2
Legislative Council Secretariat
26 March 2013