

**立法會**  
**Legislative Council**

LC Paper No. CB(2)1765/12-13  
(These minutes have been seen by  
the Administration)

Ref : CB2/BC/1/12

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

**Minutes of the fourth meeting  
held on Monday, 22 April 2013, at 10:45 am  
in Conference Room 2B 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  
Dr Hon Helena WONG Pik-wan

**Public Officers attending** : Agenda item I

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

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

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

Dr Thomas SIT Hon-chung  
Assistant Director (Inspection & Quarantine)  
Agriculture, Fisheries and Conservation Department

Action

Mr Clive LAU Siu-ki  
Senior Agricultural Officer (Regulatory)  
Agriculture, Fisheries and Conservation Department

Ms Carmen CHU Ying-hung  
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

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**I. Meeting with the Administration**

[LC Paper Nos. CB(2)1000/12-13(01), CB(2)1016/12-13(01), CB(3)328/12-13, FH CR2/3231/03, CB(2)689/12-13(03) and CB(2)689/12-13(04)]

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

2. The Administration was requested to provide a response to members' views and concerns about the proposed exemption of the Government and public officers from criminal and civil liabilities.

*(Post-meeting note: The Administration's response was issued to members vide LC Paper No. CB(2)1093/12-13(01) on 8 May 2013.)*

3. The Administration agreed to include the follow-up actions it had undertaken to further promote the safe and proper use of pesticides in the speech to be delivered by Secretary for Food and Health during the resumption of Second Reading debate on the Bill.

Action

**II. Any other business**

Date of next meeting

4. Members agreed that the next meeting of the Bills Committee would be held on 9 May 2013, at 8:30 am.

*(Post-meeting note: With the concurrence of the Chairman, the starting time of the meeting on 9 May 2013 was changed to 9:00 am.)*

5. There being no other business, the meeting ended at 12:39 pm.

Council Business Division 2  
Legislative Council Secretariat  
4 September 2013

**Proceedings of the fourth meeting of the  
Bills Committee on Pesticides (Amendment) Bill 2013  
on Monday, 22 April 2013, at 10:45 am  
in Conference Room 2B of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action required
000124 – 000215	Chairman	Opening remarks	
000216 – 001525	Chairman Admin	Briefing by the Administration on its response to issues raised at the meeting on 15 April 2013 (LC Paper No. CB(2)1016/12-13(02))	
001526 – 002935	Mr Albert CHAN Admin Chairman Mr Steven HO	<p>Mr Albert CHAN's enquiry on whether pesticides derived from natural products fell within the ambit of the Pesticides Ordinance (Cap. 133) ("the Ordinance").</p> <p>The Administration's response that –</p> <p>(a) the term "pesticide" was defined in section 2 of the Ordinance and included any substance or mixture of substances used or intended to be used for pest control purpose; and</p> <p>(b) natural products which purported to be pesticides (for instance, if they bore labels or advertisements stating that the products are marketed for pest control purposes) would fall within the ambit of the Ordinance.</p> <p>Members' view that the existing regulatory requirements for pesticides derived from natural products might be too stringent and consideration should be given to granting exemption to such pesticides. The Administration agreed to keep in view the development of such pesticides and to refine the regulation on such pesticides as appropriate in consultation with the trade.</p>	
002936 – 004033	Chairman Admin Mr Albert CHAN Dr Helena WONG	<p>The Chairman's view that pesticide applicators should be required to undertake continuous professional training to ensure that they had up-to-date knowledge on the safe and proper use of pesticides.</p> <p>Mr Albert CHAN's view that Government departments should take the lead to impose specific conditions on the training requirement of their pest control workers as well as those engaged by their service providers. Dr Helena WONG's view that the private sector should also be encouraged to do the same.</p> <p>Mr Albert CHAN's suggestion of designating a dedicated staff member in each school to co-ordinate matters relating to the use of pesticides in schools.</p>	

Time marker	Speaker	Subject(s)	Action required
		At the request of the Chairman, the Administration agreed to include the follow-up actions it had undertaken to further promote the safe and proper use of pesticides in the speech to be delivered by Secretary for Food and Health during the resumption of Second Reading debate on the Bill.	<b>Admin</b>
<b>Clause-by-clause examination of the Bill</b>			
004034 – 004441	Chairman Admin	<b>Part 2 – Amendments to Pesticides Ordinance (Cap. 133)</b>  <u>Clauses 5 and 18</u> (the proposed sections 3A and 19B)  Briefing by the Administration on the proposed exemption provisions relating to the criminal and civil liabilities of the Government and public officers	
004442 – 004927	Mr Albert CHAN ALA4 Chairman	In response to Mr Albert CHAN's enquiry on whether similar exemption clauses were found in other ordinances, ALA4's advice that the issue of whether public officers should be exempted from criminal liability in respect of regulatory offences under an ordinance was a matter of policy to be considered on a case-by-case basis by individual Bills Committees.	
004928 – 010239	Mr Tommy CHEUNG Dr Helena WONG Admin Chairman Mr Albert CHAN	Mr Tommy CHEUNG's and Dr Helena WONG's view that public officers should not be exempted from criminal liability for offences under the Ordinance.  The Administration's explanation that:  (a) public officers did not have commercial incentive or pressure from employer for not complying with the requirements of the Ordinance in performing their duties;  (b) the proposed offences under the Ordinance were regulatory in nature and it was the Government's general policy that criminal liability was not imposed on the Government and public officers in respect of regulatory offences. Such an approach was in line with that adopted in most other common law jurisdictions;  (c) there would be an administrative mechanism to ensure public officers' compliance with the requirements of the Ordinance, and the proposed exemption of public officers from criminal liability would not affect the enforcement of the Ordinance; and  (d) the proposed approach in respect of the criminal and civil liabilities of the Government and public officers was in line with that adopted in the Hazardous Chemicals Control Ordinance (Cap. 595).	

Time marker	Speaker	Subject(s)	Action required
010240 – 012642	Chairman Mr Albert CHAN Mr Tommy CHEUNG Admin Dr Helena WONG	<p>Mr Albert CHAN's concern about the implications, if any, of the proposed section 19B(1) on the respective legal liability of the public officer concerned and the Government, where a public officer incurred civil liability in the circumstances set out in paragraph (a) or (b) of the proposed section 19B(1).</p> <p>Concern raised by Mr Albert CHAN and Mr Tommy CHEUNG on whether the proposed section 19B(1) would affect the right of a person who intended to lodge a civil claim against the Government.</p> <p>The Administration's response that -</p> <ul style="list-style-type: none"> <li>(a) the proposed exemption applied only to any act done or omitted to be done by a public officer in good faith in carrying out the Ordinance;</li> <li>(b) the proposed section 19B(2) expressly preserved the Government's civil liability for acts done or omitted to be done by a public officer in good faith; and</li> <li>(c) the Government generally would bear the civil liability incurred by the public officer concerned as may be decided by court.</li> </ul> <p>Mr Albert CHAN sought information on relevant court cases in respect of (c) above.</p> <p>The Administration's advice that by virtue of section 66 of the Interpretation and General Clauses Ordinance (Cap. 1), the Ordinance as it currently stood did not apply to the Government unless the court was satisfied that the Ordinance was binding on the Government by "necessary implication".</p> <p>Dr Helena WONG's view that she had no objection to the proposed extension of the application of the Ordinance to the Government and that there was contradiction between the proposed section 3A(1) and section 3A(2).</p> <p>Mr Tommy CHEUNG's view that consideration be given to deleting the relevant provisions on exemption of public officers from criminal and civil liabilities under the Ordinance.</p>	<p><b>Admin to provide a response to members' views and concerns about the proposed exemption of public officers from criminal and civil liabilities</b></p>
012643 – 013217	Chairman Admin Mr Tommy CHEUNG Mr Albert CHAN	<p><u>Clause 6</u></p> <p>The Administration's advice that in recent years, the Law Drafting Division of the Department of Justice had adopted the practice of using "must" to impose an obligation in place of "shall" when drafting new legislation as well as amending existing legislation.</p>	

<b>Time marker</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action required</b>
013218 – 013533	Chairman Admin	<u>Clause 7</u>	
013534 – 015244	Chairman Admin Mr Albert CHAN Mr Steven HO Mr Alan LEONG	<u>Clause 8</u>  Meaning of "reference standard" in the proposed section 8(3)(b)(iii)	
015245 – 015445	Chairman	Date of next meeting	

Council Business Division 2  
Legislative Council Secretariat  
4 September 2013