

立法會
Legislative Council

LC Paper No. CB(2)1766/12-13
(These minutes have been seen by
the Administration)

Ref : CB2/BC/1/12

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

**Minutes of the fifth meeting
held on Thursday, 9 May 2013, from 9:00 am to 10:45 am
in Conference Room 3 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 : 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 Stephen LAI Yue-hong
Senior Agricultural Officer (Regulatory) (Acting)
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

I. Meeting with the Administration

[LC Paper Nos. CB(2)1093/12-13(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 -

- (a) elaborate on the justifications for incorporating the proposed sections 3A and 19B into the Bill; and
- (b) consider amending the proposed section 3A, with reference to section 4 of the Lifts and Escalators Ordinance (Cap. 618), to remove the proposed exemption of public officers from criminal liability and to add provisions on the administrative mechanism to be adopted by the Administration to ensure public officers' compliance with the statutory requirements of the Pesticides Ordinance (Cap. 133).

Action

(Post-meeting note: The Administration's response was issued to members vide LC Paper No. CB(2)1262/12-13(01) on 6 June 2013.)

3. The Clerk was requested to provide for members' reference information on the relevant deliberations of the Bills Committee on Hazardous Chemicals Control Bill on the issue of criminal and civil liabilities of the Government and public officers.

(Post-meeting note: An extract of the relevant deliberations of the Bills Committee on Hazardous Chemicals Control Bill was issued to members vide LC Paper No. CB(2)1147/12-13(02) on 16 May 2013.)

II. Any other business

Date of next meeting

4. Members agreed that the next meeting would be held on 7 June 2013, 10:45 am.

5. There being no other business, the meeting ended at 10:41 am.

Council Business Division 2
Legislative Council Secretariat
4 September 2013

**Proceedings of the fifth meeting of the
Bills Committee on Pesticides (Amendment) Bill 2013
on Thursday, 9 May 2013, from 9:00 am to 10:45 am
in Conference Room 3 of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action required
000257 – 000521	Chairman	Opening remarks	
000522 – 000858	Chairman Admin	Briefing by the Administration on its response to issues relating to the proposed sections 3A and 19B raised at the meeting on 22 April 2013 (LC Paper No. CB(2)1093/12-13(01))	
000859 – 000954	Chairman Admin	The Chairman's clarification that members' main concern about the proposed section 3A lay in the proposed section 3A(2) which sought to exempt the Government and public officers acting in official capacity from criminal liability, and not the proposed section 3A(1) which sought to extend the application of the Pesticides Ordinance (Cap. 133) ("the Ordinance") to the Government.	
000955 – 001820	Mr Tommy CHEUNG Chairman Admin ALA4	<p>Mr Tommy CHEUNG's view that the Ordinance should apply to the Government, i.e. the proposed section 3A(1) should be retained.</p> <p>Mr Tommy CHEUNG's enquiries on whether the Ordinance as it currently stood applied to the Government and the legal effect if the whole of the proposed section 3A was deleted.</p> <p>The Administration's explanation that the existing Ordinance was silent on its application to the Government. By virtue of section 66 of the Interpretation and General Clauses Ordinance (Cap 1) ("IGCO"), in the absence of an express provision, 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". If the whole of the proposed section 3A was deleted, it was tantamount to maintaining this status quo.</p> <p>ALA4 remarked that the proposed sections 3A and 19B were modeled on sections 4 and 51 of the Hazardous Chemicals Control Ordinance (Cap. 595) ("HCCO") respectively, which was enacted in 2007 to implement the requirements of the same two international Conventions in respect of non-pesticides.</p>	
001821 – 002727	Chairman Mr Albert CHAN Admin ALA4	Mr Albert CHAN's concern about the implication of the deletion of the proposed section 3A(1) on the legal liability of the Government in complying with the requirements of the two Conventions.	

Time marker	Speaker	Subject(s)	Action required
002728 – 003245	Chairman Mr Steven HO Admin	<p>Mr Steven HO's view that the proposed section 3A(1) should be retained.</p> <p>Mr Steven HO's enquiry on the effect on the criminal and civil liabilities of the Government and public officers if the whole of the proposed sections 3A and 19B was deleted.</p> <p>The Administration's advice that it would adopt administrative measures to ensure public officers' compliance with the statutory requirements of the Ordinance, details of which were set out in paragraph 9 of LC Paper No. CB(2)1093/12-13(01).</p>	
003246 – 004414	Chairman Mr Albert CHAN ALA4 Mr Tommy CHEUNG Admin	<p>ALA4's observation that while the proposed section 3A was in line with the approach adopted in HCCO, the Lifts and Escalators Ordinance (Cap. 618) ("LEO"), which was enacted five years after HCCO in 2012, contained in addition detailed provisions on the actions to be taken by the Administration in case of suspected contravention of a provision by a public officer.</p> <p>Mr Tommy CHEUNG's concern on whether the deletion of the proposed section 19B would affect the right of any person who intended to lodge a civil claim against the Government or public officers for contravention of provisions of the Ordinance.</p> <p>The Administration's advice that the deletion or otherwise of the proposed section 19B would not affect the right of the public to lodge civil claims against the Government or public officers because under the common law, an aggrieved party had the right to bring a civil claim in tort for the loss or damages he had suffered. It would be for the court to determine the civil liability of the Government and public officers concerned in the light of the facts and circumstances of each case.</p> <p>ALA4 referred members to the report of the Panel on Administration of Justice and Legal Services to the House Committee in 2006 on issues relating to the imposition of criminal liability on the Government (LC Paper No. CB(2)2650/05-06), which stated that the issue of immunity of public officers from criminal liability was a matter of policy which should be considered on a case-by-case basis.</p>	
004415 – 010304	Chairman Admin Mr Tommy CHEUNG Mr Albert CHAN ALA4 Mr Steven HO	<p>Mr Tommy CHEUNG's reiteration of his view that the proposed exemption of public officers from criminal liability for any offence under the Ordinance should be removed.</p> <p>Discussions on whether the proposed section 19B relating to the civil liability of the Government and</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>public officers should be retained.</p> <p>Mr Steven HO's concern that the deletion of the proposed section 19B(1) would reduce the protection afforded to public officers for an act done or omitted to be done in good faith.</p> <p>The Administration's assurance that the proposed section 19B(1) would not adversely affect the public's right to lodge civil claims for the following reasons –</p> <p>(a) 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</p> <p>(b) if the court found in favour of a claimant in a civil case, the Government would generally bear the relevant civil liability as may be decided by the court.</p>	
010305 – 012947	Chairman Mr Albert CHAN Mr Tommy CHEUNG Mr Steven HO Mr Alan LEONG Admin ALA4	<p>The Bills Committee's consensus that the Ordinance as amended by the Bill should expressly apply to the Government, i.e. the proposed section 3A(1) should be retained.</p> <p>Discussions on the proposed exemption of the Government and public officers from criminal liability under the proposed section 3A(2).</p> <p>Mr Tommy CHEUNG's and Mr Albert CHAN's views that the proposed exemption of public officers from criminal liability should be removed.</p> <p>Mr Steven HO's view that he had no objection to removing the proposed exemption of public officers from criminal liability from the proposed section 3A(2).</p> <p>Mr Tommy CHEUNG's and Mr Alan LEONG's views that while the adding of detailed provisions to the Bill on the administrative mechanism to ensure public officers' compliance with the Ordinance would improve the proposed section 3A(2), the proposed exemption of public officers from criminal liability should be removed.</p> <p>Mr Alan LEONG's view that in each case where a legislative proposal was introduced seeking to exempt the criminal liability of the Government and public officers, it was incumbent upon the Administration to justify the need for such exemption, having regard to the fundamental principle of equality before the law.</p>	<p>Admin to elaborate on the justifications for incorporating sections 3A(2) and 19B</p>
012948 – 014007	Chairman Mr Steven HO Admin ALA4	<p>The Chairman's observation that the proposed section 3A(2) was different from section 4(2) of LEO in that the latter only exempted the Government, and not public officers, from criminal liability.</p>	

Time marker	Speaker	Subject(s)	Action required
	Mr Tommy CHEUNG	<p>Members' suggestion that that the Administration should consider amending section 3A with reference to section 4 of LEO.</p> <p>ALA4 remarked that the provisions similar to the proposed sections 3A(2) and 19B of the Bill (i.e. sections 4 and 51) were added to the Hazardous Chemicals Control Bill by the Administration by way of Committee stage amendments in response to the views of the members of the Bills Committee on Hazardous Chemicals Control Bill.</p>	<p>Admin to consider amending the proposed section 3A</p> <p>Clerk to provide the relevant deliberations of the relevant Bills Committee for members' reference</p>
014008 – 014111	Chairman Mr Tommy CHEUNG	Date of the next meeting	

Council Business Division 2
Legislative Council Secretariat
 4 September 2013