

**立法會**  
**Legislative Council**

LC Paper No. CB(2)1767/12-13  
(These minutes have been seen by  
the Administration)

Ref : CB2/BC/1/12

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

**Minutes of the sixth meeting  
held on Friday, 7 June 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 Albert CHAN Wai-yip  
Hon Steven HO Chun-yin  
Dr Hon Helena WONG Pik-wan

**Member absent** : Hon Alan LEONG Kah-kit, SC

**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

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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)1262/12-13(01) to (03), CB(3)328/12-13, FH CR2/3231/03, CB(2)689/12-13(02) to (04) and CB(2)1147/12-13(01) to (02)]

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

Clause-by-clause examination of the Bill

2. The Bills Committee completed clause-by-clause examination of the Bill.

Follow-up actions required of the Administration

3. The Administration was requested to –

- (a) advise whether a person appealing against a decision of the Director of Agriculture, Fisheries and Conservation under the Ordinance might have legal representation at the hearing of the Administrative Appeals Board;

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- (b) consider the use of the term "routine inspection" in the heading of the proposed section 15A as it did not tally with the content of the provision;
- (c) consider replacing the acronym "CAS" in the proposed Schedules 1 and 2 with the full name;
- (d) provide a checklist of the follow-up actions undertaken by the Administration to further promote the safe and proper use of pesticides; and
- (e) provide its draft Committee stage amendments to the Bill.

*(Post-meeting note: The Administration's response and its draft CSAs were issued to members vide LC Paper Nos. CB(2)1375/12-13(01) and CB(2)1375/12-13(04) respectively on 17 June 2013.)*

4. The Administration also undertook to convey to the Environment Bureau the Bills Committee's request that consideration be given to amending the relevant provisions of the Hazardous Chemicals Control Ordinance (Cap. 595) relating to criminal liability of public officers so as to bring them in line with the Administration's proposed amendments to section 3A(2) of the Bill after its enactment.

**II. Any other business**

Date of next meeting

5. Members agreed that the next meeting of the Bills Committee would be held on 18 June 2013, at 10:45 am.

6. There being no other business, the meeting ended at 1:00 pm.

**Proceedings of the sixth meeting of the  
Bills Committee on Pesticides (Amendment) Bill 2013  
on Friday, 7 June 2013, at 10:45 am  
in Conference Room 2A of the Legislative Council Complex**

<b>Time marker</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action required</b>
000208 – 000224	Chairman	Opening remarks	
000225 – 000849	Chairman Admin	Briefing by the Administration on its responses to issues raised by members at the meeting on 9 May 2013 and by ALA4 in her letter dated 15 May 2013 (LC Paper Nos. CB(2)1262/12-13(01) to (03))	
000850 – 001047	Chairman ALA4 Admin	The Chairman's enquiry on the public officer(s) to be prosecuted for an offence under the Pesticides Ordinance (Cap. 133) ("the Ordinance") if the proposed exemption of public officers discharging duties from criminal liability was removed from the proposed section 3(2).  The Administration's response that it would depend on the circumstances of individual cases.	
001048 – 002841	Chairman Admin Mr Albert CHAN	The Administration's elaboration on its considerations in agreeing to members' request for removing the proposed exemption of public officers from criminal liability.  Referring members to the report of the Bills Committee on Hazardous Chemicals Control Bill to the House Committee (LC Paper No. CB(1)1939/06-07), the Chairman remarked that the issue of criminal liability was a matter of policy, and it would be for individual Bills Committees to decide whether immunity of public officers from criminal liability should be included in a bill.	
002842 – 003443	Chairman Admin Mr Albert CHAN	In response to Mr Albert CHAN's enquiry, the Administration's clarification that the purpose of the reporting mechanism proposed to be added to the proposed section 3A was to prevent recurrence of similar incidents of contravention of the Ordinance by government departments.	
003444 – 003721	Chairman Admin	The Bills Committee agreed in principle to paragraphs 16 to 21 of the Administration's paper (LC Paper No. CB(2)1262/12-13(01)), which proposed, among others, to -  (a) retain the exemption of the Government from criminal liability under the Ordinance;  (b) amend section 3A(2) of the Bill to remove the proposed exemption of public officers acting in official capacity from criminal liability under the Ordinance;	

Time marker	Speaker	Subject(s)	Action required
		<p>(c) provide for a reporting mechanism in the Ordinance along the lines of section 4(3) to (7) of the Lifts and Escalators Ordinance (Cap. 618) ("LEO"); and</p> <p>(d) retain the proposed section 19B relating to the civil liability of the Government and public officers.</p> <p>Members requested the Administration to consider amending the relevant provisions of the Hazardous Chemicals Control Ordinance (Cap. 595) ("HCCO") relating to criminal liability of public officers so as to bring them in line with the Administration's proposed amendments to section 3A(2) of the Bill after its enactment, in order that there would be consistency between the Ordinance and HCCO in respect of the approach on criminal liability of public officers.</p>	<p><b>Admin to convey the request to the Environment Bureau for consideration</b></p>
<b>Clause-by-clause examination of the Bill</b>			
003722 – 003940	Chairman Admin	<p><b>Part 2 – Amendments to Pesticides Ordinance (Cap. 133)</b></p> <p><u>Clause 9</u> - Section 9 amended (licence or permit for pesticides)</p>	
003941 – 004647	Chairman Admin Mr Albert CHAN Mr Tommy CHEUNG	<p><u>Clause 10</u> - Section 13 amended (directions on disposal of pesticide where licence or permit cancelled)</p>	
004648 – 004702	Chairman Admin	<p><u>Clause 11</u> - Section 15 amended (powers of entry, seizure, etc)</p>	
004703 – 012336	Chairman Admin Mr Tommy CHEUNG ALA4 Dr Helena WONG	<p><u>Clause 12</u> - Section 15A added</p> <p>The Administration explained that it proposed to replace the existing section 15(3) with the proposed section 15A to confine the existing power of entry without warrant to a relevant premises with a view to enhancing protection of privacy at domestic premises.</p> <p>In respect of the proposed section 15A(4), Mr Tommy CHEUNG enquired whether the Administration would subsequently arrange for payment to be made to the owner concerned for any sample which was taken without payment during an inspection.</p> <p>The Administration's response that an inspector or a member of the Customs and Excise Service would normally take such samples as might be reasonably required for an examination and investigation after having paid for them. For samples which were taken without payment, the owners concerned might seek to recover any payment from the Government by lodging a civil claim.</p>	

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		<p>ALA4's observation that the Chinese version of the phrase "require the production or provision of, inspect and examine" in the proposed section 15A(3)(b) did not tally with the English version, and the Administration's response.</p> <p>The Administration's advice that in response to ALA4's suggestion, it would propose a Committee stage amendment ("CSA") to add the word "及" at the end of the Chinese version of the proposed section 15A(3)(c), to achieve consistency with the English version.</p> <p>ALA4 remarked that the use of the term "routine inspection" in the heading of the proposed section 15A, i.e. "Power to enter premises etc. for routine inspection", did not tally with the content of the provision, which provided that a "reasonable suspicion" would have to be established when the power of entry without warrant was engaged.</p> <p>Dr Helena WONG sought clarification on the scope of the power of authorized officers to enter domestic premises without warrant for inspection.</p> <p>The Administration's explanation that –</p> <p>(a) the power to enter domestic premises without warrant was confined to those domestic premises which were stated by licensees and permittees as their registered addresses in their licence/permit applications; and</p> <p>(b) the Agriculture, Fisheries and Conservation Department would insert suitable notes in the licence and permit application forms to remind applicants that the address of any premises or place (whether domestic or not) stated in their applications would be subject to such inspection requirement.</p> <p><u>Clauses 13 and 14</u> - Section 16 repealed (appeals); Section 16A added</p> <p>The Administration's advice that in response to ALA4's suggestion, it would propose a CSA to the proposed section 16A(1)(d) to replace "section 9(2)" with "section 9(2)(b)" to enhance the clarity of the provision.</p>	<p><b>Admin to propose CSA</b></p> <p><b>Admin to consider ALA4's view</b></p> <p><b>Admin to propose CSA</b></p>
012337 – 014137	Chairman Admin Dr Helena WONG ALA4 Mr Albert CHAN	<p><u>Clause 15</u> - Section 17 amended (offences and penalties)</p> <p>The Chairman's and Dr Helena WONG's enquiries on the appropriateness of the existing level of penalties under section 17 of the Ordinance.</p> <p>The Administration's response that in the light of past experience in enforcement, the Administration considered that the existing levels of penalties had adequate deterrent effect.</p>	

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		<p><u>Clause 16</u> - Section 18A added</p> <p>Given that the requirements of the two Conventions had been localized in the Ordinance (to be amended by the Bill), ALA4 sought clarification on the need for referring to the requirements of the two Conventions, rather than those requirements as incorporated into the Ordinance, in the proposed section 18A.</p> <p>The Administration's explanation that -</p> <p>(a) according to the legal advice of the Department of Justice, it was necessary to put it beyond doubt in the proposed section 18A that the Director of Agriculture, Fisheries and Conservation ("DAFC") might exercise his powers under the Ordinance for the purpose of implementing the requirements of the two Conventions; and</p> <p>(b) the scope of DAFC's powers under the Ordinance was clearly provided in the Ordinance and any changes to the scope of powers conferred to DAFC would be subject to approval by the Legislative Council.</p>	
014138 – 014150	Chairman Admin	<u>Clause 17</u> - Section 19 amended (regulations)	
014151 – 015213	Chairman Admin ALA4 Mr Albert CHAN	<p><u>Clause 18</u> - Sections 19A and 19B added</p> <p>In response to the enquiry of ALA4, the Administration's advice that -</p> <p>(a) the proposed section 19B(1), which sought to exempt the "personal liability" of a public officer in the specified circumstances, was intended to cover only the civil liability, and not criminal liability, of a public officer; and</p> <p>(b) the regime was designed to have criminal liability separately dealt with by the proposed section 3A(2), and the proposed section 19B(1) was not intended to deal with criminal liability.</p>	
015214 – 015504	Chairman Admin Mr Albert CHAN	<u>Clause 19</u> - Section 23 substituted	
015505 – 020100	Chairman Admin Mr Albert CHAN ALA4	<p><u>Clause 20</u> - Schedules 1 and 2 added</p> <p>Mr Albert CHAN's concern whether the Chinese names of the pesticides listed in the Schedules were the same as those adopted by other Chinese-speaking places outside Hong Kong and were commonly known by users or members of the public.</p>	

<b>Time marker</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action required</b>
		ALA4's suggestion that the acronym "CAS" be replaced with the full name for the sake of clarity.	<b>Admin to consider ALA4's suggestion</b>
020101 – 020123	Chairman Admin	<u>Clause 21</u> - Regulation 6 amended (application for licence or permit)	
020124 – 020230	Chairman Admin	<u>Clause 22</u> - Regulation 11 amended (registered pesticide not to be sold or supplied except in proper container)	
020231 – 020248	Chairman Admin	<u>Clause 23</u> - Regulation 17 amended (Director may issue directions relating to unregistered pesticides)	
020249 – 020302	Chairman Admin	<u>Clause 24</u> - Regulation 19 amended (offences and penalties)	
020303 – 021105	Chairman Admin Mr Albert CHAN ALA4	<p><u>Clause 25</u> - Schedule amended (fees)</p> <p>ALA4 sought clarification on the purposes referred to in "any other purposes" in the proposed items 8(a) and 14(a) of the Schedule to the Pesticides Regulations (Cap. 133 sub. leg. A). ALA4's suggestion that amendments be made to the drafting of these items to enhance clarity.</p> <p><u>Clause 26</u> - Schedule amended</p> <p>Mr Albert CHAN's enquiry on whether a person appealing against a decision of DAFC might have legal representation at the hearing by the Administrative Appeals Board.</p>	<p><b>Admin to consider ALA4's suggestion</b></p> <p><b>Admin to provide information</b></p>
021106 – 021618	Chairman Admin Mr Albert CHAN Clerk	<p>The submission from Mr Paul Melsom tabled at the meeting (issued vide LC Paper No. 1334/12-13(01) on 11 June 2013)</p> <p>The Administration agreed to prepare a checklist of the follow-up actions it would take to further promote the safe and proper use of pesticides. The Secretary for Food and Health would set out such follow-up actions in his speech to be delivered at the resumption of the Second Reading debate on the Bill.</p> <p>Date of next meeting</p>	<b>Admin to provide the checklist</b>