

**Extracts from the report of former Bills Committee on
Hazardous Chemicals Control Bill
for the House Committee meeting on 22 June 2007
(LC Paper No. CB(1)1939/06-07)**

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Deliberations of the Bills Committee

Liability of the Government and public officers

19. The Bills Committee has studied the binding effect of the Bill on the Government as well as the liability of the Government and public officers in the event of non-compliance with the provisions in the Bill. According to the Administration, the Government's legal policy is that criminal liability is not imposed on the Government and public officers in respect of regulatory offences, and that in the absence of an express provision, a public officer will be entitled to immunity if it can be established that compliance with the statute would prejudice the Government.

20. The Legal Adviser however points out that as set out in the paper submitted by the Panel on Administration of Justice and Legal Services to the House Committee on 7 July 2006, the issue of criminal liability is a matter of policy and not a matter of constitutional or legal principle. When legislative proposals are introduced into LegCo imposing obligations which are also binding on the Government, the issue of public officers' immunity from criminal liability in discharging their public duties should be considered on a case-by-case basis. It would be for individual Bills Committees to decide whether immunity from criminal liability should be included in the Bill. If so, this should be clearly spelt out in the Bills concerned.

21. The Administration's explanation is that most overseas common law jurisdictions have retained the concept of not imposing criminal liability on the Government and public officers. The Government takes the view that the legal policy should be retained, and that it is appropriate to keep the overall situation under review, having regard to overseas experience, and not to introduce radical changes to the long-standing approach. In the event that a government department/public official is in breach of the Ordinance (if enacted), it will follow the current government practice under which the case will be promptly brought to the attention of a senior official in the concerned government department who will require the staff concerned to take immediate action to remedy the situation. If the non-compliance of the statutory requirements is attributable to staff misconduct, the public officer concerned may be subject to disciplinary actions according to the established civil service regulations. In the light of members' concern on the need for clarity, the Administration agrees to include an express provision on the immunity of the Government and public officers to criminal liability, modeled on the CSAs to the Unsolicited Electronic Messages Bill. An express provision on the immunity of public officers to civil liability is also included under the Bill.

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