



立法會秘書處 法律事務部
LEGAL SERVICE DIVISION
LEGISLATIVE COUNCIL SECRETARIAT

來函檔號 YOUR REF : FH CR 2/3231/03
本函檔號 OUR REF : LS/B/4/12-13
電話 TELEPHONE : 3919 3507

傳真 FAX : 2877 5029
電郵 E-MAIL : cwong@legco.gov.hk

By Fax (2136 3281)
18 June 2013

Mr Philip CHAN, JP
Deputy Secretary for Food and Health (Food)
Food and Health Bureau
Food Branch
17/F, East Wing, Central Government Offices
2 Tim Mei Avenue, Tamar
Hong Kong

Dear Mr CHAN,

Pesticides (Amendment) Bill 2013

At the Bills Committee meeting this morning, Members were concerned over the widely drafted disapplication provisions proposed by the Administration to be added to the Bill as sections 7A and 8(8). The Administration has agreed to consider whether and how those provisions may be narrowed down with more specificity.

The Administration verbally explained to the Bills Committee the need for those provisions. In the absence of anything in writing except the proposed Committee Stage amendments in draft form, two instances were cited as illustration.

The first is that the staff of the Department of Agriculture, Fisheries and Conservation may have to acquire pesticides (by import) for the purpose of carrying out the Pesticides Ordinance (Cap. 133) (PO). The pesticides may then have to be sent for field testing or to the Government Chemist for analysis, both for the purpose of carrying out PO. The Administration claims therefore it is necessary for such staff and the Government Chemist to be exempted from the need to acquire a licence or permit for possession of and/or offer to supply the pesticides in question, since they are merely carrying out PO.

Would the Administration please clarify, in the first instance, whether possession needs licensing under section 7 of PO? Further, if the pesticides are registered pesticides, whether the offer to supply the pesticides for field testing is not already exempted from licensing under section 7(2) of PO? If the pesticides in question are scheduled pesticides or unregistered pesticides and subject to permit under the proposed section 8(1) for possession or offer to supply, would the Administration clarify whether proposed section 8(3) already exempts such staff or the Government Chemist? If not, could that subsection (3) be amended instead to cater to that need?

The second instance cited is that pesticides may be seized, detained, forfeited and auctioned. Could the Administration please clarify whether when pesticides are seized and detained (which necessarily imply possession) under section 15, such possession by the inspector or member of the Customs and Excise Service concerned is subject to permit under section 8 provided that they are scheduled or unregistered pesticides? In other words, is such possession not already authorised by the express lawful authority conferred by section 15, despite section 8? The Administration may wish to make the same clarification with regard to forfeiture under section 18 of PO. With regard to sale by auction of forfeited pesticides, would the Administration clarify whether section 7(2) of PO could be suitably adapted to permit such sale by the Administration of registered, scheduled or unregistered pesticides.

In addition to the clarification sought on the need to introduce the sweeping exemption as proposed, the Administration may wish to assist the Bills Committee by providing the following information –

- (a) the policy intent of the proposed sections 7A and 8(8); and
- (b) specific identification of the persons to which section 7(2) and proposed 8(1) would be disapplied.

The Administration has also agreed at the meeting this morning to consider the following two drafting suggestions –

- (a) proposed section 3A(4)(b) – "該違例事項是否在令署長滿意的情況下終止。" be replaced by "署長對違例事項的終止，是否滿意。"; and
- (b) items 7 and 8 of the proposed Schedule to the Pesticides Regulations (also items 13 and 14 as suitably modified) –

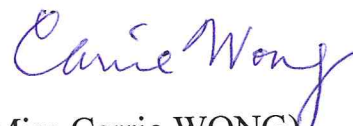
"For the issue of a permit under regulation 7(1) in respect of a scheduled pesticide or any other unregistered pesticide –

(a) imported or possessed only for re-export without re-packing (including transshipment of a scheduled pesticide in Hong Kong)\$700;

(b) in any other circumstances..... \$1,280."

I should be grateful if you would let me have the Administration's reply in both languages by 20 June 2013.

Yours sincerely,



(Miss Carrie WONG)
Assistant Legal Adviser

c.c. Clerk to Bills Committee