
Pesticides (Amendment) Bill 2013

Contents

Clause		Page
Part 1		
Preliminary		
1.	Short title and commencement	C13
2.	Enactments amended	C15
Part 2		
Amendments to Pesticides Ordinance (Cap. 133)		
3.	Section 2 amended (interpretation)	C17
4.	Section 3 amended (application)	C23
5.	Section 3A added	C25
	3A. Ordinance applies to Government	C25
6.	Section 5 amended (registration)	C25
7.	Section 6 amended (power of Director to cancel or modify registration)	C27
8.	Section 8 substituted	C27
	8. Control of scheduled pesticides and other unregistered pesticides	C27
9.	Section 9 amended (licence or permit for pesticides)	C31
10.	Section 13 amended (directions on disposal of pesticide where licence or permit cancelled)	C33

Pesticides (Amendment) Bill 2013

C9

Clause	Page
11. Section 15 amended (powers of entry, seizure, etc.).....	C35
12. Section 15A added	C35
15A. Power to enter premises, etc. for routine inspection	C35
13. Section 16 repealed (appeals).....	C39
14. Section 16A added	C39
16A. Appeals to Administrative Appeals Board	C39
15. Section 17 amended (offences and penalties).....	C41
16. Section 18A added	C45
18A. Director may exercise powers for implementing requirements of Rotterdam Convention or Stockholm Convention.....	C45
17. Section 19 amended (regulations)	C45
18. Sections 19A and 19B added	C45
19A. Power of Secretary for Food and Health to amend Schedules	C47
19B. Protection of public officers	C49
19. Section 23 substituted	C49
23. Transitional and savings provisions relating to Pesticides (Amendment) Ordinance 2013	C49
20. Schedules 1 and 2 added	C51
Schedule 1 Pesticides Listed under Stockholm Convention	C51

Clause	Page
Schedule 2	
Pesticides Listed under Rotterdam Convention and Limitations on Application of Section 8	C53

Part 3

Amendments to Pesticides Regulations (Cap. 133 sub. leg. A)

21.	Regulation 6 amended (application for licence or permit)	C65
22.	Regulation 11 amended (registered pesticide not to be sold or supplied except in proper container)	C65
23.	Regulation 17 amended (Director may issue directions relating to unregistered pesticides)	C65
24.	Regulation 19 amended (offences and penalties)	C67
25.	Schedule amended (fees)	C67

Part 4

Consequential Amendment to Administrative Appeals Board Ordinance (Cap. 442)

26.	Schedule amended.....	C73
-----	-----------------------	-----

A BILL

To

Amend the Pesticides Ordinance to implement the requirements of the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade and the Stockholm Convention on Persistent Organic Pollutants; to apply the Ordinance to the Government; to protect public officers from liability while exercising powers and performing functions under the Ordinance; to rationalize the powers of entry for routine inspection; to amend the provision about the appeal procedure under the Ordinance; and to make related, consequential and miscellaneous amendments.

Enacted by the Legislative Council.

Part 1

Preliminary

1. Short title and commencement

- (1) This Ordinance may be cited as the Pesticides (Amendment) Ordinance 2013.
- (2) This Ordinance comes into operation 6 months after the day on which this Ordinance is published in the Gazette.

2. Enactments amended

The enactments specified in Parts 2, 3 and 4 are amended as set out in those Parts.

Part 2

Amendments to Pesticides Ordinance (Cap. 133)

3. Section 2 amended (interpretation)

(1) Section 2—

Renumber the section as section 2(1).

(2) Section 2(1), definition of *licence*, after “import,”—

Add

“manufacture,”.

(3) Section 2(1)—

Repeal the definition of *permit*

Substitute

“*permit* (許可證) means—

(a) a permit to import, manufacture, sell, supply, be in possession of or use a scheduled pesticide or any other unregistered pesticide issued under section 9; or

(b) a permit to export a scheduled pesticide issued under section 9;”.

(4) Section 2(1), definition of *pesticide*, paragraph (iii)—

Repeal

“; and”

Substitute

“that is neither specified in Schedule 1 nor in Part 1 of Schedule 2;”.

- (5) Section 2(1), definition of *pesticide*, paragraph (iv)—

Repeal

“138);”

Substitute

“138); and”.

- (6) Section 2(1), definition of *pesticide*, after paragraph (iv)—

Add

“(v) any insecticide, fungicide, herbicide, acaricide or any substance (whether organic or inorganic) or mixture of substances described in paragraph (a) or (b), if—

- (A) it is neither specified in Schedule 1 nor in Part 1 of Schedule 2;
- (B) it is contained in an individual package or container and does not exceed 10 g or 10 mL; and
- (C) it is used or intended to be used indoors—
 - (I) for laboratory research;
 - (II) for chemical analysis; or
 - (III) as a reference standard;”.

- (7) Section 2(1)—

Repeal the definition of *agricultural pesticide*.

- (8) Section 2(1)—

Add in alphabetical order

“*Rotterdam Convention* (《鹿特丹公約》) means the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade adopted on 10 September 1998 as amended from time to time and as applied to Hong Kong;

scheduled pesticide (附表所列除害劑) means an unregistered pesticide specified in—

- (a) Schedule 1 or Part 1 of Schedule 2; or
- (b) both Schedule 1 and Part 1 of Schedule 2;

Stockholm Convention (《斯德哥爾摩公約》) means the Stockholm Convention on Persistent Organic Pollutants adopted on 22 May 2001 as amended from time to time and as applied to Hong Kong;”.

- (9) After section 2(1)—

Add

- “(2) In this Ordinance, a reference to manufacture, in relation to a scheduled pesticide or any other unregistered pesticide, includes causing the pesticide to be manufactured.
- (3) To avoid doubt, a scheduled pesticide or any other unregistered pesticide is not regarded as having been manufactured if it is produced incidentally in the course of the manufacture of another thing.
- (4) For the purposes of this Ordinance, a pesticide is in transshipment if—
- (a) it is consigned on a through bill of lading or air waybill from a place outside Hong Kong to another place outside Hong Kong; and
 - (b) it is or is to be removed from the ship, vehicle, train or aircraft in which it was imported into Hong Kong and—
 - (i) returned to the same ship, vehicle, train or aircraft before being exported from Hong Kong; or
 - (ii) transferred to another ship, vehicle, train or aircraft before being exported from Hong Kong.
- (5) Subsection (4)(b) applies whether—

- (a) the pesticide is or is to be transferred directly between the ships, vehicles, trains or aircraft; or
- (b) the pesticide is to be landed in Hong Kong after its importation and stored, pending exportation.”.

4. Section 3 amended (application)

(1) Section 3—

Repeal subsection (1)

Substitute

“(1) This Ordinance does not apply to a pesticide that—

- (a) is in transit;
- (b) is not a scheduled pesticide and is transhipped in Hong Kong; or
- (c) is a scheduled pesticide and is air transshipment cargo.”.

(2) Section 3(3)—

Repeal

“(1)(c)”

Substitute

“(1)(a)”.

(3) Section 3—

Repeal subsection (4)

Substitute

“(4) In this section—

air transshipment cargo (航空轉運貨物) means an article in transshipment that is both imported and consigned for export in an aircraft and which, during the period between its import and export, remains within the

cargo transhipment area of Hong Kong International Airport;

cargo transhipment area of Hong Kong International Airport
(機場貨物轉運區) has the meaning given by section 2 of the Import and Export Ordinance (Cap. 60).”.

5. Section 3A added

Part I, after section 3—

Add

“3A. Ordinance applies to Government

- (1) Subject to subsections (2) and (3), this Ordinance applies to the Government.
- (2) Neither the Government nor a public officer acting in his or her official capacity is liable to be prosecuted for an offence under this Ordinance.
- (3) No prescribed fee is payable by the Government.”.

6. Section 5 amended (registration)

- (1) Section 5(2), English text—

Repeal

“shall”

Substitute

“must”.

- (2) After section 5(3)—

Add

“(3A) The Director must not register—

- (a) a scheduled pesticide; or
- (b) a pesticide that consists of a scheduled pesticide.”.

7. Section 6 amended (power of Director to cancel or modify registration)

After section 6(a)—

Add

“(ab) cancel the registration of a pesticide if the pesticide is listed under the Rotterdam Convention or the Stockholm Convention;”.

8. Section 8 substituted

Section 8—

Repeal the section

Substitute

“8. Control of scheduled pesticides and other unregistered pesticides

(1) Subject to Part 2 of Schedule 2, except under and in accordance with a permit, a person must not—

- (a) import into or cause to be imported into Hong Kong;
- (b) manufacture;
- (c) sell or offer or expose for sale;
- (d) supply or offer to supply;
- (e) be in possession of; or
- (f) use,

a scheduled pesticide or any other unregistered pesticide.

(2) Subject to Part 2 of Schedule 2, except under and in accordance with a permit, a person must not export or cause to be exported a scheduled pesticide.

-
- (3) Subsections (1) and (2) do not apply to a scheduled pesticide if—
 - (a) it is contained in an individual package or container and does not exceed 10 g or 10 mL; and
 - (b) it is used or intended to be used indoors—
 - (i) for laboratory research;
 - (ii) for chemical analysis; or
 - (iii) as a reference standard.
 - (4) Subsection (1)(e) and (f) does not apply to a person to whom the scheduled pesticide or unregistered pesticide is sold or supplied by a permit holder in accordance with the permit conditions.
 - (5) If the registration of a pesticide is cancelled under section 6(ab) or (c), subsection (1) does not apply to a person in respect of the pesticide—
 - (a) for a period of 3 months from the date of cancellation; or
 - (b) if before the expiry of that period the person applies for a permit for the pesticide under section 9(1), until the permit is issued or refused under section 9(2).
 - (6) If the registration of a pesticide is suspended under section 6(c), subsection (1)(e) does not apply to a person who has been in possession of the pesticide since the time immediately before the suspension.
 - (7) If a person is in possession of a pesticide under a permit immediately before the date on which a notice to add the pesticide to Schedule 1 or 2 is published under section 19A(1)(a), subsection (2) does not apply to the person in respect of the pesticide until the permit expires.”.

9. Section 9 amended (licence or permit for pesticides)

(1) Section 9(1), English text—

Repeal

“shall”

Substitute

“must”.

(2) Section 9(3)—

Repeal

“he shall”

Substitute

“, the Director must”.

(3) Section 9(5)—

Repeal

“such conditions as he may think”

Substitute

“the conditions that the Director thinks”.

(4) Section 9(6), English text—

Repeal

“shall be”

Substitute

“is”.

(5) Section 9—

Repeal subsection (7)

Substitute

“(7) The Director may issue a permit subject to the conditions that the Director thinks fit.

(7A) A permit must specify the scheduled pesticide or unregistered pesticide to which it relates.”.

10. Section 13 amended (directions on disposal of pesticide where licence or permit cancelled)

(1) After section 13(1)—

Add

“(1A) When considering whether to give a direction or what directions to give under subsection (1), the Director must have regard to other enactments that govern the disposal of the pesticide.”.

(2) Section 13—

Repeal subsection (3)

Substitute

“(3) The Director must—

- (a) consider an application under subsection (2); and
- (b) within 14 days from receiving the application, advise the licence holder or permit holder in writing of the Director’s decision to confirm or vary the directions given under subsection (1).”.

(3) Section 13—

Repeal subsection (4)

Substitute

“(4) If a licence holder or permit holder referred to in subsection (2) appeals under section 16A against a decision under subsection (3), a period for compliance specified in the direction referred to in subsection (2) is extended by the period between presentation of the appeal and notification of the Administrative Appeals Board’s decision.”.

(4) Section 13(5), English text—

Repeal

“shall”

Substitute

“does”.

11. Section 15 amended (powers of entry, seizure, etc.)

Section 15—

Repeal subsection (3).

12. Section 15A added

After section 15—

Add

“15A. Power to enter premises, etc. for routine inspection

- (1) Any of the powers in this section may be exercised for the purpose of ascertaining whether this Ordinance has been or is being complied with.
- (2) An inspector or a member of the Customs and Excise Service may without a warrant enter, at any reasonable time, a relevant premises on which the inspector or member reasonably suspects a pesticide is being manufactured, used, kept, stored, sold, offered or exposed for sale, or supplied or offered to be supplied.
- (3) After entering the relevant premises, the inspector or member may—
 - (a) require the production of, inspect and examine—
 - (i) a thing that is or the inspector or member reasonably believes to be a pesticide; or

-
- (ii) a thing that contains or the inspector or member reasonably believes to contain a pesticide, including a thing that the inspector or member reasonably believes to have a pesticide as its part;
 - (b) require the production or provision of, inspect and examine—
 - (i) a licence, permit or any other document to which a pesticide relates, including a document relating to the pesticide's origin or nature; and
 - (ii) any other document, information or thing that the inspector or member reasonably believes to be relevant to an offence under this Ordinance;
 - (c) take and make copies of a licence, permit, document and information referred to in paragraph (b); and
 - (d) take a sample of a thing that the inspector or member may reasonably require for an examination and investigation in order to determine whether an offence has been committed against this Ordinance.
- (4) The inspector or member may take a sample without payment, but must issue a receipt for it.
- (5) After completing an examination and investigation in relation to a sample, the Director may direct that the sample or remaining part of the sample be—
- (a) returned to its owner or the relevant premises from which it was taken; or
 - (b) disposed of in any other way that the Director considers appropriate.

- (6) An inspector must produce written evidence of his or her authority as an inspector before exercising a power under this section.
- (7) In this section—
- relevant premises* (有關處所) means—
- (a) any premises or place (whether domestic or not) the address of which is stated in an application under regulation 6(c) of the Pesticides Regulations (Cap. 133 sub. leg. A); or
 - (b) any other premises or place (other than domestic premises).”.

13. Section 16 repealed (appeals)

Section 16—

Repeal the section.

14. Section 16A added

Before section 17—

Add

“16A. Appeals to Administrative Appeals Board

- (1) A person aggrieved by any of the following decisions of the Director may appeal to the Administrative Appeals Board against the decision within 28 days after receiving notice of the decision—
- (a) a decision to refuse to register a pesticide under section 5(3);
 - (b) a decision to register a pesticide subject to conditions under section 5(5);
 - (c) a decision to cancel or suspend the registration of a pesticide, or to modify, add to or cancel any condition, under section 6;

- (d) a decision to refuse to issue a licence or permit under section 9(2);
 - (e) a decision to issue a licence subject to conditions under section 9(5);
 - (f) a decision to issue a permit subject to conditions under section 9(7);
 - (g) a decision to vary the particulars of a licence or permit, or to modify, add to or cancel the conditions of a licence or permit, under section 9(8);
 - (h) a decision to cancel or suspend a licence under section 10;
 - (i) a decision to cancel a permit under section 11;
 - (j) a decision to confirm or vary under section 13(3)(b) the directions given under section 13(1).
- (2) Subject to section 13(4), a decision referred to in subsection (1) has immediate effect, or has effect from a date specified in the decision (if applicable), despite any appeal against the decision.”.

15. Section 17 amended (offences and penalties)

- (1) Section 17(1)—

Repeal

“of \$50,000”

Substitute

“at level 5”.

- (2) Section 17(2)—

Repeal

“of \$25,000”

Substitute

“at level 4”.

- (3) Section 17(3)(a), after “section 15”—

Add

“or 15A”.

- (4) Section 17(3)(b)—

Repeal

“15(3)”

Substitute

“15A”.

- (5) Section 17(3)(c), before “licence”—

Add

“thing,”.

- (6) Section 17(3)(c)—

Repeal

“15(3)”

Substitute

“15A”.

- (7) Section 17(3)—

Repeal

“of \$10,000”

Substitute

“at level 3”.

- (8) Section 17(4)—

Repeal

“of \$2,000”

Substitute

“at level 1”.

(9) Section 17(5)—

Repeal

“of \$2,000”

Substitute

“at level 1”.

16. Section 18A added

After section 18—

Add

“18A. Director may exercise powers for implementing requirements of Rotterdam Convention or Stockholm Convention

The Director may exercise the Director’s powers under this Ordinance for the purpose of implementing the requirements of the Rotterdam Convention or the Stockholm Convention.”.

17. Section 19 amended (regulations)

Section 19(2)—

Repeal

“of \$10,000”

Substitute

“at level 3”.

18. Sections 19A and 19B added

After section 19—

Add

“19A. Power of Secretary for Food and Health to amend Schedules

- (1) The Secretary for Food and Health may by notice published in the Gazette—
 - (a) add any Convention-regulated pesticide, including its CAS registry number or other description, to Schedule 1 or 2;
 - (b) remove any specified pesticide, including its CAS registry number or other description, from Schedule 1 or 2;
 - (c) make any amendment to Part 2 of Schedule 2 that only relates to a Convention-regulated pesticide or the removal of a specified pesticide; and
 - (d) make any amendment to Schedule 1 or 2 that is consequential, incidental or related to an addition, removal or amendment made under paragraph (a), (b) or (c).
- (2) For the purposes of subsection (1)—
 - (a) a pesticide is a Convention-regulated pesticide if the pesticide is subject to the regulation of the Rotterdam Convention or the Stockholm Convention on the publication day; and
 - (b) a pesticide is a specified pesticide if, at some time before the publication day, the pesticide has been subject to the regulation of the Rotterdam Convention or the Stockholm Convention but is no longer subject to the regulation on that day.
- (3) In subsection (2)—

publication day (刊登日期) means the day on which a notice to add or remove the pesticide concerned is published under subsection (1)(a) or (b).

19B. Protection of public officers

- (1) A public officer is not personally liable for an act done or omitted to be done by the public officer in good faith—
 - (a) in the exercise of a power or purported exercise of a power under this Ordinance; or
 - (b) in the performance of a function or purported performance of a function under this Ordinance.
- (2) Subsection (1) does not affect the liability of the Government for the act or omission.
- (3) In subsection (1)—
function (職能) includes duty.”.

19. Section 23 substituted

Section 23—

Repeal the section

Substitute

“23. Transitional and savings provisions relating to Pesticides (Amendment) Ordinance 2013

- (1) If a person was in possession of an unregistered pesticide under a permit immediately before the commencement date, section 8(1)(f) or (2) does not apply to the person in respect of the pesticide until the permit expires.
- (2) A right of appeal existing immediately before the commencement date under the repealed section 16 is to be treated as being a right of appeal to the Administrative Appeals Board under section 16A.

- (3) An appeal pending immediately before the commencement date under the repealed section 16 is to be treated and disposed of as if it were an appeal pending under section 16A.
- (4) If an appeal that is pending as referred to in subsection (3) was made by a licence holder or permit holder against a decision under section 13(3), a period for compliance specified in the direction referred to in section 13(2) is extended by the period between presentation of the appeal and notification of the Administrative Appeals Board's decision.
- (5) In this section—
- commencement date* (生效日期) means the date on which the Pesticides (Amendment) Ordinance 2013 (of 2013) comes into operation;
- repealed section 16* (已廢除的第16條) means section 16 repealed by section 13 of the Pesticides (Amendment) Ordinance 2013 (of 2013).”.

20. Schedules 1 and 2 added

After section 23—

Add

“Schedule 1

[ss. 2, 8 & 19A
& Sch. 2]

Pesticides Listed under Stockholm Convention

Item	Pesticide	CAS registry number
1.	Aldrin	309-00-2
2.	Chlordane	57-74-9

Item	Pesticide	CAS registry number
3.	DDT	50-29-3
4.	Dieldrin	60-57-1
5.	Endrin	72-20-8
6.	Heptachlor	76-44-8
7.	Hexachlorobenzene (HCB)	118-74-1
8.	Mirex	2385-85-5
9.	Toxaphene	8001-35-2

Schedule 2 [ss. 2, 8 & 19A]

Pesticides Listed under Rotterdam Convention and Limitations on Application of Section 8

Part 1

Pesticides Listed under Rotterdam Convention

Item	Pesticide	CAS registry number
1.	2, 4, 5-T and its salts and esters	93-76-5 (for parent compound only)
2.	Alachlor	15972-60-8

Item	Pesticide	CAS registry number
3.	Aldicarb	116-06-3
4.	Aldrin	309-00-2
5.	Binapacryl	485-31-4
6.	Captafol	2425-06-1
7.	Chlordane	57-74-9
8.	Chlordimeform	6164-98-3
9.	Chlorobenzilate	510-15-6
10.	DDT	50-29-3
11.	Dieldrin	60-57-1
12.	Dinitro-ortho-cresol (DNOC) and its salts (such as ammonium salt, potassium salt and sodium salt)	534-52-1; 2980-64-5; 5787-96-2; 2312-76-7
13.	Dinoseb and its salts and esters	88-85-7 (for parent compound only)
14.	1, 2-dibromoethane (EDB)	106-93-4
15.	Endosulfan	115-29-7
16.	Ethylene dichloride	107-06-2

Item	Pesticide	CAS registry number
17.	Ethylene oxide	75-21-8
18.	Fluoroacetamide	640-19-7
19.	HCH (mixed isomers)	608-73-1
20.	Heptachlor	76-44-8
21.	Hexachlorobenzene (HCB)	118-74-1
22.	Lindane (gamma-HCH)	58-89-9
23.	Mercury compounds, including inorganic mercury compounds, alkyl mercury compounds and alkyloxyalkyl and aryl mercury compounds	
24.	Monocrotophos	6923-22-4
25.	Parathion	56-38-2
26.	Pentachlorophenol and its salts and esters	87-86-5 (for parent compound only)
27.	Toxaphene	8001-35-2
28.	All tributyltin compounds including—	
	– Tributyltin oxide	56-35-9
	– Tributyltin fluoride	1983-10-4
	– Tributyltin methacrylate	2155-70-6

Item	Pesticide	CAS registry number
	– Tributyltin benzoate	4342-36-3
	– Tributyltin chloride	1461-22-9
	– Tributyltin linoleate	24124-25-2
	– Tributyltin naphthenate	85409-17-2
29.	Dustable powder formulations containing a combination of—	
	– Benomyl at or above 7%	17804-35-2
	– Carbofuran at or above 10%	1563-66-2
	– Thiram at or above 15%	137-26-8
30.	Methamidophos (Soluble liquid formulations of the substance that exceed 600 g active ingredient per litre)	10265-92-6
31.	Methyl-parathion (Emulsifiable concentrates at or above 19.5% active ingredient and dusts at or above 1.5% active ingredient)	298-00-0
32.	Phosphamidon (Soluble liquid formulations of the substance that exceed 1 000 g active ingredient per litre)	13171-21-6

Part 2

Extent to which Section 8 does not Apply to Pesticides Specified in Part 1 of this Schedule

1. Limitations on application of section 8 to pesticides specified in Part 1 of this Schedule

Section 8 does not apply to a pesticide specified in Part 1 of this Schedule if the pesticide—

- (a) is not specified in Schedule 1; and
- (b) is, or is a part of, any of the following—
 - (i) food as defined by section 2(1) of the Public Health and Municipal Services Ordinance (Cap. 132);
 - (ii) additive as defined by regulation 2(1) of the Food and Drugs (Composition and Labelling) Regulations (Cap. 132 sub. leg. W);
 - (iii) radioactive substance as defined by section 2 of the Radiation Ordinance (Cap. 303);
 - (iv) waste as defined by section 2(1) of the Waste Disposal Ordinance (Cap. 354);
 - (v) chemical weapons as defined by section 2(1) of the Chemical Weapons (Convention) Ordinance (Cap. 578);
 - (vi) a thing listed in Schedule I or II of the Single Convention on Narcotic Drugs, 1961 which was adopted on 30 March 1961, as amended by the 1972 Protocol Amending the Single Convention on Narcotic Drugs, 1961 which was adopted on 24 March 1972;

-
- (vii) a thing listed in the Convention on Psychotropic Substances, 1971 which was adopted on 21 February 1971.”
-

Part 3

Amendments to Pesticides Regulations (Cap. 133 sub. leg. A)

21. Regulation 6 amended (application for licence or permit)

Regulation 6—

Repeal paragraph (c)

Substitute

“(c) the address of the premises or place in which a pesticide is to be manufactured, used, kept, stored, sold, offered or exposed for sale, or supplied or offered to be supplied, and if there are 2 or more such premises or places, the address of each of them;”.

22. Regulation 11 amended (registered pesticide not to be sold or supplied except in proper container)

Regulation 11(1)(c)(ii)—

Repeal

everything after “plastic”

Substitute

“; or”.

23. Regulation 17 amended (Director may issue directions relating to unregistered pesticides)

(1) Regulation 17, heading, before “**unregistered pesticides**”—

Add

“**scheduled pesticides and other**”.

(2) Regulation 17(a), (b) and (d), before “unregistered pesticides”—

Add

“scheduled pesticides or other”.

24. Regulation 19 amended (offences and penalties)

(1) Regulation 19(1)—

Repeal

“of \$2,000”

Substitute

“at level 1”.

(2) Regulation 19(2)—

Repeal

“of \$2,000”

Substitute

“at level 1”.

(3) Regulation 19(3)—

Repeal

“of \$2,000”

Substitute

“at level 1”.

25. Schedule amended (fees)

(1) The Schedule—

Repeal item 7

Substitute

“7. For issue of a permit under regulation 7(1) in respect of a scheduled pesticide or any other unregistered pesticide imported or possessed only for re-export without re-packaging (including transhipment of a scheduled pesticide in Hong Kong) 700”.

(2) The Schedule—

Repeal item 8

Substitute

“8. For issue of a permit under regulation 7(1) in respect of a scheduled pesticide or any other unregistered pesticide—
(a) for any other purposes; or
(b) for the purpose specified in item 7 and for any other purposes 1,280”.

(3) The Schedule—

Repeal item 13

Substitute

“13. For extension of a permit under regulation 7(3) in respect of a scheduled pesticide or any other unregistered pesticide imported or possessed only for re-export without re-packaging (including transhipment of a scheduled pesticide in Hong Kong) 395”.

(4) The Schedule—

Repeal item 14

Substitute

“14. For extension of a permit under regulation 7(3) in respect of a scheduled pesticide or any other unregistered pesticide—

(a) for any other purposes; or

(b) for the purpose specified in item 13 and for any other purposes

910”.

Part 4

Consequential Amendment to Administrative Appeals Board Ordinance (Cap. 442)

26. Schedule amended

The Schedule—

Add

- “73. Pesticides Ordinance (Cap. 133) A decision of the Director of Agriculture, Fisheries and Conservation—
- (a) to refuse to register a pesticide under section 5(3);
 - (b) to register a pesticide subject to conditions under section 5(5);
 - (c) to cancel or suspend the registration of a pesticide, or to modify, add to or cancel any condition, under section 6;
 - (d) to refuse to issue a licence or permit under section 9(2);
 - (e) to issue a licence subject to conditions under section 9(5);
 - (f) to issue a permit subject to conditions under section 9(7);
 - (g) to vary the particulars of a licence or permit, or to modify, add to or cancel the conditions of a licence or permit, under section 9(8);

-
- (h) to cancel or suspend a licence under section 10;
 - (i) to cancel a permit under section 11;
 - (j) to confirm or vary under section 13(3)(b) the directions given under section 13(1).”.
-

Explanatory Memorandum

The main purpose of this Bill is to amend the Pesticides Ordinance (Cap. 133) (*the Ordinance*) to implement the requirements of the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (*the Rotterdam Convention*) and the Stockholm Convention on Persistent Organic Pollutants (*the Stockholm Convention*). It also seeks to improve certain provisions of the Ordinance and the Pesticides Regulations (Cap. 133 sub. leg. A).

2. Clause 3 amends section 2 of the Ordinance to amend the definitions of *permit* and *pesticide* and to insert a number of new definitions and interpretative provisions.
3. Clause 4 amends section 3 of the Ordinance to provide that the Ordinance does not apply to—
 - (a) pesticides that are in transit;
 - (b) transshipment of non-scheduled pesticides; or
 - (c) scheduled pesticides that are air transshipment cargoes.

However, transshipment of scheduled pesticides is regulated by a permit for import and export issued under the Ordinance.

4. Clause 5 adds a new section 3A which applies the Ordinance to the Government. Neither the Government nor a public officer acting in his or her official capacity is liable to be prosecuted for an offence under the Ordinance.
5. Clause 6 adds a new subsection (3A) to section 5 of the Ordinance. The new subsection expressly prohibits the Director of Agriculture, Fisheries and Conservation (*the Director*) from registering a scheduled pesticides (i.e. pesticides regulated by the Rotterdam Convention or the Stockholm Convention) so that

scheduled pesticides are regulated by section 8 and other provisions of the Ordinance.

6. Clause 7 adds a new paragraph (ab) to section 6 of the Ordinance which enables the Director to cancel the registration of a pesticide that is listed under the Rotterdam Convention or the Stockholm Convention.
7. Clause 8 replaces section 8 of the Ordinance with a new section 8. The new section extends the existing scope of control so that importing, manufacturing, selling, supplying, possessing or using scheduled pesticides and other unregistered pesticides requires a permit issued under section 9 of the Ordinance. The new section 8(2) also requires a permit for exporting a scheduled pesticide. However, the new section 8(1) and (2) does not apply to a scheduled pesticide not exceeding 10 g or 10 mL that is contained in an individual package or container and is used or intended to be used indoors for laboratory research or chemical analysis purpose or as a reference standard.
8. Clause 9 makes consequential and technical amendments to section 9 of the Ordinance.
9. Clause 10 adds a new subsection (1A) to section 13 of the Ordinance which requires the Director to have regard to other enactments governing the disposal of pesticides when giving directions on the disposal of pesticides.
10. Clause 11 repeals section 15(3) of the Ordinance and clause 12 adds a new section 15A which enables entry without a warrant to any relevant premises or place and the taking of samples etc. for routine inspection.
11. Clause 13 repeals the existing section 16 (which provides for appeals to the Chief Executive) of the Ordinance.
12. Clause 14 adds a new section 16A to provide that appeals may be made to the Administrative Appeals Board.

13. Clause 15 amends section 17 of the Ordinance by making certain consequential amendments and replacing the fines in dollar terms with fines at levels in order to tally with Schedule 8 to the Criminal Procedure Ordinance (Cap. 221).
14. The new section 18A added by clause 16 enables the Director to exercise the Director's powers under the Ordinance for the purpose of implementing the requirements of the Rotterdam Convention or the Stockholm Convention.
15. Clause 17 amends section 19(2) of the Ordinance by replacing the fines in dollar terms with fines at levels in order to tally with Schedule 8 to the Criminal Procedure Ordinance (Cap. 221).
16. Clause 18 adds new sections 19A and 19B to the Ordinance. The new section 19A empowers the Secretary for Food and Health to amend Schedule 1 or 2 in relation to Convention-regulated pesticides and specified pesticides. Under the new section 19B, public officers are not personally liable for any act done or omitted to be done in exercising their powers or performing functions under the Ordinance if they act in good faith.
17. Clause 19 repeals the obsolete section 23 of the Ordinance and substitutes a new section 23 (transitional and savings provisions relating to the Bill).
18. New Schedule 1 specifies pesticides listed under the Stockholm Convention and Part 1 of the new Schedule 2 specifies pesticides listed under the Rotterdam Convention. Those scheduled pesticides are regulated by section 8 and other provisions of the Ordinance. Part 2 of the new Schedule 2 provides that section 8 of the Ordinance does not apply to certain scheduled pesticides to the extent as specified in that Part.
19. Clauses 21 and 23 make consequential amendments to regulations 6(c) and 17 of the Pesticides Regulations (Cap. 133 sub. leg. A) (*the Regulations*).

-
20. Clause 22 amends regulation 11(1)(c)(ii) of the Regulations to remove the existing ribbing requirement on pesticide containers.
 21. Clause 24 amends regulation 19 of the Regulations by replacing the fines in dollar terms with fines at levels in order to tally with Schedule 8 to the Criminal Procedure Ordinance (Cap. 221).
 22. Clause 25 amends the Schedule to the Regulations to provide for fees payable in respect of the issue and extension of permits for certain purposes.
 23. Clause 26 makes consequential amendments to the Schedule to the Administrative Appeals Board Ordinance (Cap. 442).